

Siskind's Immigration Bulletin  
September 9, 2003

E-mail subscribers as of 10 October 2001: 30,159 persons (50 states/144 countries).  
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Siskind Susser serves immigration clients throughout the world from its offices in the  
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1. Openers

Dear Readers:

The 2004 Presidential election campaign is now in full swing. This will be the third  
Presidential election to happen since this publication debuted in 1994 as one of the

world's first online legal newsletters (perhaps THE first one since we've never identified one that came before Siskind's Immigration Bulletin - whether immigration-related or any any other legal topic). The election cycle is always filled with immigration news. As bad as the environment for immigrants has been since 9/11, 1996 was arguably the worst election year. Immigration was under severe attack and one of the most anti-immigration bills in the nation's history - the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 - became law. This coming year, immigrants are likely to see good news. Every candidate - all the Democrats and President Bush - are already proposing new amnesty and guest worker programs that could make life a lot better for the nation's millions of illegal aliens.

In the 2000 election, President Bush lost a number of critical states with large immigrant populations. This year, he wants to make it clear to Hispanic voters that he wants their votes and is willing to support programs that will truly help them. This week we cover one candidate's proposed immigration reform plan. Look for more coverage in coming months of the candidates' immigration policy plans.

We also are pleased to present a guest article from our friend Gary Endelman on the relationship (or lack of a relationship) between US immigration policy and outsourcing jobs.

Finally, as always, we remind readers that we're lawyers who make our living representing immigration clients. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

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## 2. The ABC's Of Immigration – J Waivers for Physicians

Most graduates of foreign medical schools who come to the US to pursue graduate medical training or education do so on a J-1 visa. This category is highly regulated, and anyone who receives graduate medical education on a J-1 visa is automatically subject to the two-year home residency requirement. However, only those programs that involve providing health care services to patients are considered graduate medical education. Programs that involve only observing, consulting, researching or teaching with no patient care are not considered medical education. Because the only program sponsor for foreign medical graduate students who will be involved in more than incidental patient contact is the Educational Commission for Foreign Medical Graduates (ECFMG), if a person is sponsored by the ECFMG, they are likely subject to the home residency requirement.

Without a waiver of the home residency requirement, the physician is not eligible to apply for a change within the US to a non-immigrant visa, any change to permanent residence, or any change to an H or L non-immigrant visa. This two-year period must be spent in the alien's home country, or the country in which they last permanently resided before coming to the US. Because this restriction is placed on nearly every foreign medical graduate, the demand for waivers is quite high.

Most foreign medical graduates pursue waivers based on their profession, but they are not limited to this. They can pursue waivers based on exceptional hardship to a US citizen or permanent resident spouse or child, or based on the claim that they would face persecution based on race, religion or political opinion in their home country. Waivers based on a letter of no objection from the alien's home country are not available to physicians. Extreme hardship and persecution-based waivers are difficult to obtain because of the high level of proof required, and many physicians simply will not have a case that fits the requirements. This leaves them with waivers based on a request from an interested government agency. There are a number of agencies that will sponsor waivers, as well as the Conrad State 30 program.

### **Appalachian Regional Commission (ARC)**

The ARC is a joint federal-state program dedicated to improving the quality of life for people living in Appalachia. As part of this mission, it will recommend waivers for primary care physicians. The waiver request must be sponsored by a state within ARC (Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia and West Virginia), and must include a written recommendation by the governor of the state. The place of employment must be located in a Health Professional Shortage Area within ARC territory (the only state that is entirely within ARC is West Virginia; in the other 12 states, only portions of the state are ARC designated). The physician must agree to work for a minimum of three years, at a minimum of 40 hours a week, and the employment contract cannot include any restrictions on the physician's future practice.

The request must be accompanied by evidence that the employer has made reasonable efforts to recruit a US physician for the position within the past six months. At a minimum, the recruitment should include advertisements in national medical journals and job opportunity notices at all medical schools in the state of employment.

The physician must be licensed to practice medicine in the state of employment, and must have completed a residency in family practice, general pediatrics, obstetrics, general internal medicine, or psychiatry. Also, the facility at which the physician will be employed must show that it provides medical care to people without regard to their ability to pay or whether payment will be made by Medicare or Medicaid. The facility must also use a sliding fee scale for people at or below 200 percent of the poverty level. A public notice containing this information must be posted.

### **Delta Regional Authority (DRA)**

The Delta Regional Authority is a new government agency with its headquarters in Clarksdale, Mississippi. It serves a 240 county/parish area in an eight state region comprising parts of Mississippi, Louisiana, Alabama, Arkansas, Tennessee, Kentucky, Missouri, and Illinois. The DRA program is available to primary care physicians, which includes general or family practice, general internal medicine, pediatrics, obstetrics and gynecology and psychiatry. The DRA is committed to helping all residents of the Delta region to have access to quality, affordable healthcare as a core part of the region's economic development. It is with this in mind that the DRA will sponsor J-1 physicians. Physicians seeking a waiver must commit to providing primary care for three years or more, for not less than forty hours per week in a Health Professional

Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Population (MUP) in a DRA county.

### **Department of Health and Human Services (HHS)**

HHS will sponsor physicians for waivers of the home residency requirement. HHS has two distinct waiver programs. The first is not based on the location where the physician will be employed, but, rather, on the nature of the physician's work. Indeed, for an HHS researcher waiver, providing care to a medically underserved area is not a factor. Essentially, HHS requires the physician to be involved in a program of national public interest and to be essential to the program's continuance. It is very difficult for physicians who will be employed by a private practice to obtain an HHS waiver, and because of the requirement that the physician be involved in a program, most physicians will need to be engaged in a research project to qualify.

The second HHS program is available to primary care physicians working in underserved areas. Primary care training must be completed within a year or applying so that will largely eliminate people progressing towards specialization from using the HHS program.

### **Veterans Administration (VA)**

The VA will sponsor foreign medical graduate if the loss of the physician would require the discontinuance of a program. Evidence of unsuccessful efforts to recruit US workers must be included. The individual VA facility will make the initial waiver request to a regional VA director. The request must include documentation of the recruitment efforts, which must include copies of advertisements placed in national medical journals. It should also include a letter from the facility director describing the proposed employment and how employment of the foreign physician will help the facility address patient care needs. Finally, the application should include evidence regarding the physician's qualifications.

Waivers from the VA have become more difficult to obtain over recent years. For example, physicians working on O visas must have the O visa for two years before the VA will sponsor the J waiver.

### **Conrad State 30 Programs**

The Conrad State 30 programs allow states to sponsor up to 30 foreign medical graduates for a waiver of the home residency requirement each year. While each state can regulate the program as it sees fit, there are some elements that are the same for each state. The employment location must be in a HPSA and the contract must be for a minimum of three years, at 40 hours a week. Some states will sponsor specialists, but the vast majority of positions are available only to physicians who will be doing primary care.

The following states do not participate in the State 30 program:

1. Idaho
2. Oregon
3. Wyoming

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3. Ask Visalaw.com

*If you have a question on immigration matters, write [Ask-visalaw@visalaw.com](mailto:Ask-visalaw@visalaw.com). We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.*

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Q - I am a Computer Science masters student I on my F-1 Visa. I will be graduating in Dec 2003. I had a question regarding my OPT after graduation. What happens to my OPT if I join another masters after Dec 2003? I'm planning to do second masters in Regional Economic and Social Development at the same school. I have come to know that If I change my masters I will no longer be able to work in my computers field during my OPT which If I take after my second masters?

A - If you enroll in another masters program while you are on your Optional Practical Training, you would lose the remaining time on your card. You might want to ask for less than a year and then reserve that leftover time for later. If you don't enroll in the master's program, you can apply for an extension on your OPT. Note, however, that it can take up to three months to get your extension and you would not be authorized to work while the extension application is pending if the earlier approval has expired. So you will want to make sure you apply for the extension well in advance.

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Q - My wife and I and two of our daughters have been permanent residence since 2001 and will be applying for citizenship in 2006. We would like to petition our eldest daughter and her spouse.

- 1.) Do we have to be citizens before we start the process?
- 2.) Can we petition them both at the same time ?

A - You cannot apply for married children to get green cards until you become citizens. You can file now, however, for an unmarried child. The waiting time for a married child of a citizen will probably take five years or more. For an unmarried child of a permanent resident, expect seven+ years. Note, however, that when you become citizens, the unmarried child would automatically upgrade to a higher category and would retain the filing date from the original application.

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Q - I hold green card for almost 3 years. Recently I got married to a US citizen girl. When can I apply for citizenship?

A - If you are married to a US citizen, you can apply for citizenship two years and nine months after being granted permanent residency, regardless of the basis for the green card approval.

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#### 4. Border News

A federal immigration panel has granted political asylum to a man kidnapped from his African village as a child and forced to fight as a soldier in Uganda's civil war. The decision put a stop to the government's four-year effort to deport him. Bernard Lukwago said he escaped from the rebel group fighting against the Ugandan government and used a fake passport to travel to Germany, the Netherlands and ultimately the United States. Immigration agents detained Lukwago immediately upon his arrival and held him for two years while his asylum application was processed. He was ordered deported twice before a federal appeals court ordered the immigration panel to review his case.

Lukwago, now 21, said he is afraid he would have been killed if returned to his country, and the insurgent group that took him is still fighting in northern Uganda, where human rights groups say thousands of children have been kidnapped to use as soldiers or sex slaves.

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When a man speeding at 90 mph along a popular smuggling route in southern Arizona lost control of his car and flipped into a ditch, the undocumented-immigrant death toll hit 146, making this the state's deadliest year on record. This summer, migrants crossing into Arizona have died at a rate of almost one per day, many of them suffering dehydration and heat exposure in remote stretches of desert.

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The Texas Legislature has passed a bill making human trafficking a second-degree to first-degree felony, punishable by a maximum penalty of life in prison. The new law also makes it a misdemeanor to transport a person inside a trailer. The bill's authors said they wrote the legislation in response to the deaths of 19 undocumented immigrants found dead in a tractor-trailer near Victoria, Texas, earlier this year, in what was the deadliest case of human smuggling in U.S. history.

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Immigration and Customs Enforcement returned 279 smuggled Pre-Columbian artifacts to the Honduran Ambassador last week at the Honduran Embassy in Washington, D.C. Acting Assistant Secretary Michael Garcia said the artifacts, including ornate figurines, bowls and pottery made by the Mayan culture between 600 and 900 AD, were purchased in Honduras and smuggled into the United States in 1998. Last year, a shopkeeper from Ohio and a Guatemalan national were indicted and successfully prosecuted in connection with the smuggling effort.

"These items are not souvenirs to be sold to the highest bidder, but cultural treasures that belong to the people of Honduras. I am pleased to return these precious items to their rightful owners," Garcia said.

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## 5. News From The Courts

### **Gloria Arevalo v. John Ashcroft**

In this case from the First Circuit, the petitioner, Ms. Arevalo, had first arrived in the United States in 1986 under the pseudonym "Maria Guadalupe Sillas-Mendoza." She had been apprehended by the INS and due to the fact that she had not been legally admitted to the U.S. and did not have proper documentation, an immigration judge had ordered her deported to Guatemala. However, in 1990 the petitioner had illegally reentered the United States, using the name "Gloria Arevalo." She had remained here from that time forward and given birth to two children, both of whom are American citizens.

Acting under the INA's current reinstatement provision, the INS had resurrected the previous order of deportation and instructed the petitioner that she had no right either to seek a hearing before an immigration judge or to apply for discretionary relief. The petitioner challenged the Attorney General's authority to summarily reinstate the previous order of deportation. This case from the U.S. Court of Appeals for the First Circuit had to answer two questions:

1. What standard is applied by the new law when considering whether to grant stays of removal pending an appeal.
2. Whether the new statutory procedures for reinstating previous removal orders can be applied retroactively to an illegal reentrant who had requested discretionary relief before those procedures took effect.

In answer to the first question, the First Circuit held that under the new law such stays of removal are guided by essentially the same standard that informs the grant or denial of preliminary injunctions. The proposal by the INS that the clear and convincing evidence standard should apply to a stay of removal was rejected and the court adopted the preliminary injunction standard. Under this standard the petitioner must demonstrate

- (1) That she is likely to succeed on the merits of her underlying objection;
- (2) That she will suffer irreparable harm absent the stay;
- (3) That this harm outweighs any potential harm fairly attributable to the granting of the stay; and
- (4) That the stay would not disserve the public interest.

In answer to the second question, the First Circuit held that the recent changes to the reinstatement provisions of the INA would, if given retroactive effect, unfairly attach new legal consequences to the petitioner's preexisting application for an adjustment of status. Therefore it was held that the new reinstatement provision could not be applied in this instance.

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### **Xuan Wang v. John Ashcroft**

In this case from the Ninth Circuit, Xuan Wang ("Wang"), the petitioner, appealed the Board of Immigration Appeal's decision which had affirmed the Immigration Judge's (IJ's) adverse credibility determination. The IJ had found Wang removable from the U.S. because she had been employed without authorization while present in the U.S. as the spouse of a nonimmigrant student. Wang had then applied for

asylum and withholding of removal because she had been subject to two forced abortions pursuant to China's strict one-child policy, and would be subject to sterilization procedures if she returned to China. She had provided testimony and documentary evidence that she had had two forced abortions. The Ninth Circuit reviewed the BIA's decision to determine whether it was supported by substantial evidence.

The Ninth Circuit determined that the plain statutory language provides that forced abortions are per se persecution and trigger asylum eligibility. The statute also provides protection for individuals who are forcibly sterilized. Since Wang had established past persecution through two forced abortions and an IUD insertion, there existed a rebuttable presumption that she had a well-founded fear of future persecution.

The INS could have rebutted this presumption by showing, by a preponderance of evidence, that the conditions in the applicant's home country had changed such that she no longer had a well-founded fear of persecution. The INS was not able to present such evidence to rebut the presumption, and therefore did not meet its burden.

Although there were discrepancies in this case, the Ninth Circuit found that these discrepancies did not go to the heart of Wang's asylum case, and therefore cannot constitute substantial evidence. For instance, Wang had failed to remember the exact date on which she was subjected to abortion and an IUD insertion was not material. It was held that discrepancies in dates which do not reveal anything about an asylum applicant's fear of her safety are not an adequate basis for an adverse credibility finding.

The Ninth Circuit concluded that:

1. The BIA erred in denying Wang's application for asylum because the adverse credibility determination was not supported by substantial evidence; and
2. The INS failed to rebut the presumption of future persecution.

It was decided that Wang had established her eligibility for asylum with credible, direct and specific evidence of past persecution and had shown a genuine and well-founded fear of future persecution should she return to China.

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## 6. Government Processing Times

This week there are new times to report for the following service centers:

Texas - <http://www.visalaw.com/texas.html>

California - <http://www.visalaw.com/california.html>

Nebraska - <http://www.visalaw.com/nebraska.html>

These are not official USCIS processing times, nor are they endorsed by the Central Office. Source: [American Immigration Lawyers Association](#)

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## 7. News Bytes

The American Immigration Lawyers Association (AILA) says it has received reports from Citizenship and Immigration Services officials that the "BCIS plans to have adjudicators at the Service Centers start issuing Notices to Appear, possibly as early as October 1, 2003." AILA said the program is likely to begin with TPS applications, and with respect to aggravated felonies, and eventually branch out to all types of filings. The BCIS has already held training sessions and a conference on the subject, AILA said.

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A group of Cuban musicians were unable to attend last week's Latin Grammy Awards show in Miami, because their visas were not approved. One group complained that they were denied visas, but State Department spokesman Richard Boucher said the primary reason four Cuban nominees still haven't heard if they can travel to Miami is that they applied late. Since Cuba is classified by the U.S. government as a state sponsor of terrorism, more extensive background checks are required for visa applicants, which takes the government six to eight weeks to complete.

"You can't expect us to do all the necessary, legally required, and prudent checks in a very, very short length of time with an event coming up in a few days," Boucher said.

Officials in Cuba's Culture Ministry said earlier this month that they began the process of seeking approvals for nominees on August 2, according to the Washington Post, which also reported that seven of the applicants had been denied.

Twelve Cuban acts were nominated, including Ibrahim Ferrer, the singer of the Buena Vista Social Club, which is considered a pro-Castro group. A group of Cuban-American exiles had planned to protest the event, but the demonstrators stayed home when they learned that the Cuban artists would not be getting visas in time for the show.

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Democrat Presidential candidates held the first ever bilingual presidential debate last week on the University of New Mexico campus. The debate was sponsored by the Congressional Hispanic Caucus, co-produced by Spanish-language network Univision, and moderated by the network's anchor, Maria Elena Salinas, allowing an opportunity for the candidates to make a special appeal to the increasingly important Hispanic voting community.

Hispanics are now the largest minority group, and in New Mexico, Hispanics account for 42 percent of the population.

This week the Annenberg Public Policy Center at the University of Pennsylvania released a survey finding that most Hispanic voters tilt toward Democrats on economic issues, but favor Republicans on social issues such as abortion and school vouchers. The survey suggested that party affiliation varies considerably among Hispanics of different national heritages. Those of Cuban descent were more likely to

vote Republican, while those of Caribbean heritage were nearly five times as likely to favor Democrats.

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Last week thirty-four Senators led by Joseph Lieberman and Patrick Leahy, all Democrats, signed a letter to Homeland Security Secretary Tom Ridge urging him to reconsider his decision to open the jobs of Immigration Information Officers (IIOs) to competition with private contractors. The Senators said the move "could potentially compromise the nation's security and cause yet more delays in the immigration process."

"I am deeply troubled that Secretary Ridge would consider sidelining these experienced, well trained and knowledgeable employees at a time when they are needed most. As threats to our security grow, Secretary Ridge should be focused on uniting his team at the new department, not undermining it through costly competition," Lieberman said.

The full text of the Lieberman / Leahy letter is available online at:

<http://leahy.senate.gov/press/200309/090503a.html>

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A group of I-485 applicants is circulating a petition to "draw the attention of BCIS to the excruciatingly slow progress of our I-485 applications at California, Nebraska, Texas and Vermont Service centers" and alert them to "the increasing processing times in which applicants and future citizens are being required to endure."

The petition is available online at:

[http://www.immigration.com/common/rsk/petition\\_I485.html](http://www.immigration.com/common/rsk/petition_I485.html)

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The National Immigration Law Center is compiling a chart of cities that have passed laws and resolutions against police enforcement of immigration laws. The list details the specific resolutions and laws passed by about 30 state and local governments, including Los Angeles, San Diego, San Francisco, D.C., Portland, Baltimore, Detroit, Minneapolis, Albuquerque, New York City, Philadelphia, Austin, Houston, Seattle, as well as the states of Alaska and Oregon. Readers with information about local policies in their local areas are urged to contact the NILC's Sara Campos at [campos@nilc.org](mailto:campos@nilc.org)

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According to a survey conducted by AILA, nearly 80% of those using the BCIS National Customer Service Center's 800 number are dissatisfied with the experience, with 63% giving the lowest possible satisfaction rating. AILA collected results from more than 500 users and has posted the results online at

<http://www.aila.org/newsViewer.aspx?bc=273&docID=11045>

According to a report in The Times (UK), many new British citizens cite VIP treatment when traveling as one of the country's major draws. Immigrants, in particular Indians, Pakistanis and Bangladeshis, "told Home Office researchers that [British citizenship] allowed them VIP travel as they could rely on support and resources from British embassies abroad."

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Senior Filipino officials are calling for an extension of the overseas voter registration period, which ends September 30. Since registration started August 1, fewer than 90,000 voters of the 7.5 million Filipino citizens working abroad filed for voting rights at one of the country's 81 embassies and consular offices worldwide.

"We are short by 94.72 percent and we have only 28 days for the registration period," said Presidential adviser Heherson Alvarez. "We must make this extension to make the Overseas Absentee Voting Law a historic, meaningful and significant democratic process for our country and people."

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Australia's Opposition Labor Party revealed figures that are potential embarrassing for Immigration Minister Philip Ruddock, during the first public hearing of the Senate's inquiry into the use of ministerial discretion to grant immigration visas. According to Immigration Department statistics cited by the Opposition, Karim Kistrwani, a Liberal Party donor and self-described close friend of Mr Ruddock, made a list of the top 10 law firms, agents and individuals requesting Ruddock's intervention in immigration matters over the past three years. Kistrwani's success rate was higher than the Refugee Review Tribunal, and may have been as high as 50 percent, compared to the Tribunal's 18 percent success rate. The Opposition has alleged that Ruddock has been influenced by political donations, such as those from Kistrwani, when intervening to grant visas. Ruddock has denied the allegations.

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Dutch Immigration Minister Rita Verdonk said recently that the 40 percent failure rate for foreigners taking the new naturalization exams is appropriate. Since April immigrants have needed to take exams testing their knowledge of Dutch government and society in order to be considered for citizenship and to obtain a passport in the Netherlands. Around 600 people have applied to take the exam so far, a number that includes only those who meet the requirements of having lived in the country for five years or more and having obtained a residence permit. Those who fail the test are free to re-take it.

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## 9. Legislative Update

On Wednesday, President Bush signed two bills implementing international free trade agreements. H.R. 2738, the United States-Chile Free Trade Agreement Implementation Act, became public law 108-77. H.R. 2739, the United States-Singapore Free Trade Agreement Implementation Act, became public law 108-78. Bush said the United States is now negotiating with Australia and Morocco, five

nations in Central America and the Southern African Customs Union and will soon begin negotiations with Bahrain and the Dominican Republic.

A day later the Senate Appropriations Committee unanimously approved legislation to prohibit the Office of the US Trade Representative from entering into trade agreements containing immigration provisions. Senator Dianne Feinstein (D-CA) sponsored the legislation, which was tacked on as an amendment to a funding measure for the Departments of Commerce, Justice, and State.

"I strongly believe that trade agreements are not the appropriate vehicle for enacting immigration laws, because they interfere with Congress plenary powers to regulate this nations immigration policy, including the admission of foreign nationals," Feinstein said.

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The following bills were recently introduced in Congress.

H.J. RES. 67, sponsored by Rep John Conyers, Jr., (introduced 9/3/3003), proposing an amendment to the Constitution of the United States to permit persons who are not natural-born citizens of the United States, but who have been citizens of the United States for at least 20 years, to be eligible to hold the Office of President.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:hj67ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:hj67ih.txt.pdf)

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H.R. 3002, sponsored by Rep Bob Beauprez, (introduced 9/4/2003), to amend the Internal Revenue Code of 1986 to suspend the tax exempt status of designated foreign terrorist groups, and for other purposes.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h3002ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h3002ih.txt.pdf)

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H.R. 3013, Rep Zach Wamp, (introduced 9/4/2003), to require the Secretary of Homeland Security to conduct a public hearing before establishing or relocating any Quick Response Team that works with State and local law enforcement officers to take illegal and criminal aliens into custody and remove them from the United States.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h3013ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h3013ih.txt.pdf)

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S. 1580, sponsored by Senator Orrin Hatch, (introduced 9/3/2003), to amend the Immigration and Nationality Act to extend the special immigrant religious worker program.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:s1580is.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1580is.txt.pdf)

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For a review of all the immigration bills introduced this year, visit our legislative chart at [www.visalaw.com/advocacy.html](http://www.visalaw.com/advocacy.html).

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## 10. DHS To Reveal New Oath Of Allegiance

Next week the Department of Homeland Security will mark Citizenship day by making public a new Oath of Allegiance and unveiling a new Office of Citizenship. The oath will lose archaic lines such as those requiring immigrants to renounce loyalty to "princes and potentates." The government will revise it in a way that will, as Citizenship and Immigration Services Director Eduardo Aguirre Jr. put it, "make more sense to the brain."

The oath is "being recrafted so it has more meaning to those who are raising their right hand and swearing" to it, Aguirre said.

Officials have released only a few details of the rewrite, during a panel discussion that included Aguirre. However, the Center for Immigration Studies (CIS) has learned from unnamed sources in the administration that the changes to the oath will follow recommendations offered by the US Commission on Immigration Reform in the mid-1990s, which gathered on the grounds that the current oath, dating back to 1952, contains dated language.

According to the CIS, the changes will be issued as an interim rule in the Federal Register and will be made effective September 17, bypassing the normal review process by the Office of Management and Budget and the sixty-day comment period, in order to avoid a delay that "would be contrary to the public interest."

The new Oath of Allegiance obtained by CIS reads as follows: Solemnly, freely, and without any mental reservation, I hereby renounce under oath all allegiance to any foreign state. My fidelity and allegiance from this day forward is to the United States of America. I pledge to support, honor, and be loyal to the United States, its Constitution and laws. Where and if lawfully required, I further commit myself to defend the Constitution and laws of the United States against all enemies, foreign and domestic, either by military, noncombatant, or civilian service. This I do solemnly swear, so help me God.

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## 11. Guest Article - Fall Guy: U.S. Immigration And The Myth Of Offshoring, By Gary Endelman

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If conventional wisdom holds, the immigration landscape will be transformed beyond recognition within a few short months as a panicked Congress takes a meat axe to the H-1B and L-1 visa categories. Spooked by blaring headlines, dramatic testimony and anecdotal evidence of visa abuse, the politicians will run up to the 2004 election cycle by trying to find someone to blame for the nation's economic ills. When they round up the usual list of suspects, immigrants will doubtless be at the head of the line. Congress will not wait for the conclusions of the President's Council of Advisors on Science and Technology whose report on how America can maintain its high-tech leadership is due by year's end. Decisions on immigration policy will come before next spring when the General Accounting Office, the investigative arm of Congress, will tell us what the impact of offshore outsourcing of technology jobs is on the domestic job market. The political imperative to do something now must and will prevail. Desperate to regain power, the Democrats will find immigration restriction a painless way to make themselves culturally acceptable. The Executive Council of the AFL-CIO has already adopted a resolution demanding that Congress act to "reform" the H-1B and L-1 while increasing federal regulation of employers who use them. What will this mean for the rest of us?

It is ironic that the hue and cry is loudest now when the numbers are heading south. As of March 2003, according to India's National Association of Software and Service Industries (NASSCOM), the number of H-1 visas issued to Indian IT professionals dropped from 77,000 in 2001 to 33,000 in 2002 while the 2003 level is expected to be in 30,000 neighborhood. Nearly 40,000 Indian H-1B visa holders went home over the past two years as the IT bubble burst in the United States. While 15,000 L1 intracompany transferees traveled from India to the United States, this is a fraction of the 315,000 L visas issued this past year. Before Congress slashes the H-1B rolls, perhaps they would want to consider the fact that 170 Indian IT companies employed nearly 60,000 people in the United States in 2001. These Indian H-1B engineers paid almost \$ 500 million in income taxes, made a significant social security contribution, and purchased \$1.2 billion in goods and services. Beyond this, take a look at the findings from a study just completed by the global consulting firm of McKinsey & Company. It is certainly true that India software and service exports to the United States in 2003-2004 are expected to be a hefty \$8.5 billion. It is, however, also true, though not as frequently or loudly mentioned, that the savings to the U.S. economy by offshoring work to India over this same period is estimated at between \$10 billion and \$11 billion. When you factor in the Indian importation of \$3 billion in American high tech imports, some of which will be used to write software for export, as well as the tax and social security contributions noted above, McKinsey concluded that the aggregate benefit to the American economy from Indian offshoring to be a healthy \$16.8 billion.

By 2010, through IT offshoring, McKinsey predicts a net savings to the American economy of \$390 billion. Free Trade creates direct and significant economic benefit in the United States. The Global Personnel Alliance reports that the L-1 visa program has created 1.5 million jobs in the United States as a result of international investment; 450,000 jobs in Georgia and California alone were created or kept alive by foreign investment. For every \$1 in offshoring, America gets back \$1.15. During the recent debates over ratification of the Singaporean and Chilean free trade agreements, the United Parcel Service, the nation's largest employer of Teamsters members, announced that international profits had soared more than 150% over the past quarter; UPS estimated that, for every 40 packages shipped overseas, it was

able to create one additional ( usually unionized) US job. Teamster President James Hoffa Jr. warned that congressional Democrats who were tempted to oppose such trade pacts "ran the risk of paying a high price." The growing profitability of US companies boosts the economy, leads to fewer job reductions at home, and enables competitive employers to redeploy displaced workers to higher-value jobs. Such workers can receive training under both the Workforce Investment Act and the Trade Adjustment Assistance Act. Given the depressed equity markets, maximizing profitability by cutting costs is no longer optional. A recent report by Deloitte Research sees offshoring as essential to financial survival. Absent such a strategy, the share price of any such unfortunate employer could be expected to fall off the table as analysts write off the stock. If US companies do not make offshoring part of their overall labor arbitrage planning, their competitors will undercut them. In the long run, such uncompetitive businesses will either be forced to close their doors or lay off more American workers. Rather than causing the loss of American jobs, offshoring is a mechanism to maintain levels of domestic hiring that would otherwise simply not be possible. US banks, insurance companies and financial service providers have saved \$6 billion in the past 4 years by offshoring to India. During this same period, such savings made it possible for these same employers not only to avoid layoffs but actually add on 125,000 new jobs.

A classic example of why offshoring may not be the menace to American workers that it seems at first glance is the difference between the US automobile and steel industries. Detroit, which long ago embraced offshoring, remains the largest automobile industry in the world. The US automobile industry employs about 900,000 workers, roughly the same number as in 1974 and 1994. Employment in car-related sales and services has grown 20% from 2 million to 2.4 million over this same period. Operating from around the world, shunning the false promise of protectionism, the American automobile industry made the key strategic decision to invest in new equipment and ways of working. It is one of our most impressive success stories. By contrast, the US steel industry, which has stubbornly resisted offshoring and lobbied for tariffs, has endured a consistent decline. Steel production in America has plummeted from 145 million tons in 1974 to 99 million tons in 2001. Employment plunged from 610,000 in 1974 to 181,000 in 2001, despite subsidies, tariffs and quotas that totaled \$30 billion since 1976. No US steel producer now ranks among the top ten. Not satisfied with the current level of protection, the U.S. steel industry now demands a 20% tariff as the price of its political support. A recent NASSCOM study reveals that such a tariff would save 9,000 steel producing jobs, but cost 74,000 steel consuming jobs- a loss of 8 jobs for every steel job retained.

It is not so easy these days to tell the players without a scorecard. For decades, Ford has built cars in Spain and England while General Motors has done the same in Germany. Are these American or European cars? What about the car that Toyota manufactures in Kentucky or the one that Honda builds in Ohio? Japanese or American ? While the loss of jobs is certainly an important way to define America's stake in the high stakes global economic competition, it is not the only, or even the most logical way to do so. Listen to what the Honorable Bruce Mehlman, Assistant Secretary for Technology Policy in the U.S. Department of Commerce, had to say this past June to the House Committee on Small Business:

While policymakers try to promote national interests, it is getting much harder to define them as the global economy develops. For example, is it better for America to buy a BMW made in South Carolina or a Ford made in Canada? How about IT services procured through IBM but performed in India, versus services purchased

from Infosys but staffed using H1B workers living and spending their salaries in America? Is it better to help manufacturers remain competitive by enabling them to cut IT costs through Offshoring or help IT service-workers remain employed by shielding them from global competition? New Jersey recently wrestled with a similar question when its Department of Human Services...off-shored a basic call center used to support a welfare program. In the wake of the controversy, the State returned the nine jobs to New Jersey, albeit at 20 per cent higher cost (thereby reducing the amount of funds available for the welfare recipients, for whom the call center is needed). How will we answer the question when seeking to maximize resources for medical care for the elderly, education for our children or homeland defense?

The myth is that greedy American IT employers are using offshoring as an excuse to get rid of their IT staff. Truth is that most companies who have gone to offshoring retain 70% or more of their IT employees. Since many companies lose 5% anyway through annual attrition, combining planning with offshoring can reduce or eliminate layoffs. David Samson, a spokesman for Oracle, calls the expansion of operations in India as "additive" and had not resulted in any job losses in the United States. Ralph Szygenda, the Chief Information Officer at General Motors Corporation, says that the greatest risk is to ignore the realities of a global economy. "You can," he explains, "probably protect your internal resources if you have a five-to-10 year transition." Joe Drouin, the Chief Information Officer at automobile-parts maker TRW Inc. did just that when his company began outsourcing IT work offshore three years ago. Reducing staff through normal attrition, TRW never fired a single worker. "We haven't let TRW people go so that we could build up our IT resources in India," Drouin explains. "Everything we've done up until now has been supplemental."

Much ink in the press has been given to the prediction by John McCarthy, Forrester Research's Group Director of Research, that 3.3 million U.S. services industry jobs and \$136 billion in wages will move offshore over the next 15 years. The fact that this represents only 2% of total U.S. employment today is rarely mentioned. An equally dramatic forecast comes from Gartner Research that some 80% of U.S. corporations will have considered offshore outsourcing by next year. Jon Piot, the Chief Executive Officer of the Impact Innovations Group in Dallas, warns that "software development in the U.S. will be extinct by mid-2006, with gradual job losses much like the U.S. textile industry experienced during the last quarter of the 20th century."

Other projections are considerably less alarmist. A new report just released by the Rand Corporation's National Defense Research Institute concludes that the United States will remain the leader in information technology for the foreseeable future. Richard Hundley, lead author, dismisses potential software development and E-commerce challengers as "losers or laggards." In May, the Information Technology Association of America surveyed 400 hiring managers from both IT and non-IT companies; only 6% of all respondents, and about 12% of IT managers, said they had already moved jobs overseas. Dan Griswold, Associated Director of the Cato Institute's Center for Trade Policy Studies, reminds us that, even if Forrester is on target, and 220,000 IT jobs do leave annually, this is far less than the two to three million jobs that would disappear as a result of normal economic changes in technology and business competition. In fact, what Forrester conveniently leaves out, is the fact that the US economy typically adds a net one to two million jobs annually. The Bureau of Labor Statistics estimates that 22 million new jobs will be created between 2000 and 2010. In fact, the most rapid job growth will occur precisely in those sectors- computer and data processing- that are most susceptible

to offshoring. Between 2000 and 2010, the BLS anticipates employment here will soar by 86%. Even if 300,000 computer and data processing jobs are offshored by 2010, this is only 8% of the total 3.9 million such jobs that will then exist. This pales in comparison to the impact that new areas like nanotechnology will have. Michael Roco, senior advisor for nanotechnology for the National Science Foundation, predicts that nanotechnology will inject \$1 trillion into the global economy in the next 15 years and employ some 2 million people.

Off-shoring has its limits, though opponents and advocates do not seem to know what they are. Issues of cultural diversity, data privacy, intellectual property and political stability, to name but a few potentially complicating factors, may all play a part in slowing down its momentum. The impact on India itself may not be as universally positive as it first appears. A 1999 study by NASSCOM worried that the cost of employing top drawer software engineers in India could rival that in America in only 15 years, while other Indian experts predict that wage equalization could happen even faster. Already, in an effort to lower costs, Indian IT service firms are themselves sending work to cheaper markets, such as China. Beyond economics, India may find that the IT off-shoring wave that links it even closer to the American economy also serves to modulate the exercise of Indian foreign policy, particularly in such hot spots as Kashmir. The danger of a nuclear exchange between India and Pakistan is unlikely to entice more US Fortune 500 companies to come to India. When the Indians have to choose between national pride and economic enticement, which will win out? Beyond that, India's preferred position may not survive an even newer phenomenon, that of "near-shoring" in which such closer markets as Canada, Brazil, Mexico, even Russia, position themselves for a slice of the lucrative US pie.

Of all the myths that surround off-shoring, none is more pernicious than the threadbare argument that is a threat aimed solely at American workers. The off-shoring trend impacts equally US workers and US employers. Their fortunes are joined at the hip. This is NOT a worker vs. employer issue. To believe that is to misunderstand what is radically new here. Jobs have left America for cheaper labor markets before, but this is the first time that America's primacy in the global economy is under serious and sustained challenge. Corporate executives who are ready and willing to cut labor costs may not fully grasp that their own survival is also at stake. Writing recently in Fortune Magazine, <http://www.fortune.com/fortune/subs/print/0,15935,475047,00.html>, Geoffrey Colvin captures the true essence of what off-shoring means:

The difference this time, as we keep reading, is that outflowing jobs are higher paying and have more intellectual content. That's a difference not just of degree but of kind. Until now, smart, educated people in the U.S. have thought up ways to create wealth and then paid others to do the labor, often in foreign countries... No more. Those developing countries, which obviously always had people just as smart as ours, are now turning out people just as educated. They can design the work, too, and because educational and living costs are a fraction of ours, companies in those countries can afford to hire those people. That is a profound change: Designing the work is the essence of business, management, competitiveness... What makes anyone think that progression is suddenly going to stop? The next rungs on the ladder are product innovation, brand building and overall management. We're looking at three billion people getting better by the day at the things that make us the world's leading economy...We don't have to lose out in this historic shift. But nothing says we're destined to win either. We've never seen this movie

before. Which is why it's a mistake to cast the latest outflow of U.S. jobs in the familiar terms of labor vs. management and the plight of the worker. It's that-but it's much more.

While America's markets can adjust, there is, and for good reason, considerably less confidence in the ability of our educational system to do so. At a time when Americans continue to earn fewer graduate degrees in computer science and mathematics, the need for such knowledge continues to grow. What is at stake is the intellectual future of the nation. American students fall further behind their international competition in virtually any test of math and science literacy. The blame for this cannot be placed at the doorstep of the H-1B and L-1 workers. Once it is the ability of IBM itself to remain competitive, then the shareholders will sit up and really take notice. Such a challenge cannot be met by limiting the number of H-1B or L visas. At most, such restrictions will slow down the ability of India to present itself as a viable strategic IT alternative but will not stop it. America has serious issues to deal with in the 21st century and it needs serious solutions to solve them. Slamming the doors shut is not one of them.

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## 12. Lieberman Proposes Legalization And Other Immigration Reforms

On the eve of the first-ever bilingual Presidential debate, Senator Joseph Lieberman took the opportunity to promote his multifaceted agenda for US immigration reform, focusing particularly on issues affecting the Hispanic community.

Lieberman lent his support to what some consider the most controversial immigration plan on the horizon - amnesty for illegal aliens. Though he had already expressed support for the idea in June, Lieberman has now released specifics detailing how legalization would work. The plan would allow undocumented immigrants who have lived in the US for five years, paid taxes, and followed the law the right to become residents under a one-time "earned legalization" program.

In addition to amnesty, Lieberman proposed the creation of a temporary work visa program for unskilled and semiskilled workers to fill labor shortages in the construction and service industries.

Lieberman's reform plan would also raise the cap on family visas for spouses and minor children, relax income requirements and application fees, and appropriate a larger share of the budget to Citizenship and Immigration Services.

Finally, Lieberman called for the creation of an American Dream Fund, a public-private partnership that would raise money to create new programs to teach English as a second language and expand existing programs, citing significant backlogs for such classes throughout the nation.

Lieberman pledged to "end the deadlock" on the acceptance of matricula consular ID cards as President, saying he would encourage banks to recognize the cards "instead of forcing undocumented immigrants further into the shadows."

"American immigration is under threat today, and George Bush retreated long ago from his campaign promise of reform," Lieberman said. "As President, I'll make sure

that immigrants once again have the chance to realize the American Dream that brought my grandparents, wife, and so many others here in search of opportunity."

Lieberman also criticized the President Bush's handling of immigration reform talks with Mexican President Vicente Fox since 9-11 and said he vowed to resume those talks immediately if he were to take office as President.

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### 13. DHS Releases Temporary Protected Status Notices For Sudan, Burundi, El Salvador and Sierra Leone

The Department of Homeland Security has announced a one-year extension to the Temporary Protected Status (TPS) for nationals of Sudan and Burundi. The extension covers 525 Sudanese individuals and 30 nationals of Burundi and will allow them to reside and work in the country until November 2, 2004. The extensions are only available to those who already have TPS and re-register between September 3 and November 3 of this year.

To re-register for the TPS extension, applicants must submit Form I-821 (Application for Temporary Protected Status), Form I-765 (Application for Employment Authorization) and two photographs to the Citizenship and Immigration Service district office no later than November 3, 2003. Those seeking an extension of employment authorization must submit a \$120 filing fee, but there is no fee for those only seeking to re-register for TPS.

The Department also announced the termination of TPS for nationals of Sierra Leone, affecting about 2,700 people. The DHS will allow a six month extension of Employment Authorization Documents (EADs) until May 3, 2004. Upon conclusion of TPS status, beneficiaries return to the immigration status they maintained before registering for TPS, unless that status has expired or been terminated, or to any other status acquired while registered for TPS.

Lastly, officials reminded eligible Salvadorans to immediately re-register for TPS. Applications must be postmarked no later than Monday, September 15, 2003. Nearly 300,000 Salvadorans are eligible for TPS extension. Officials caution that those eligible must re-register even though EADs have been automatically extended for a period of six months from September 9, 2003 to March 9, 2004; the automatic EAD extension is meant to prevent employment authorization gaps while re-registration applications are processed, and it does not relieve beneficiaries of the need to re-register for TPS.

Further information about TPS is available online at [www.immigration.gov](http://www.immigration.gov).