

Siskind's Immigration Bulletin
September 30, 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:

Today began on a sad note at our office. A client passed away over the weekend
quite suddenly. Our client was a man in the prime of life who left behind a wife and
three children. We had been working with him for quite some time and he was in the

final stages of adjusting status. We had gotten to know this client and when his widow called with the news, we were stunned. The widow called to discuss her own suddenly changed situation. Unfortunately, our immigration laws are not particularly friendly to surviving family members. The family members' underlying visa status is dependent on the deceased spouse remaining in that visa category. The same holds true for the green card adjustment practice. Not only do the surviving family members have to deal with their own grief and make funeral arrangements, they are confronted with the fact that after many years of being in the US legally and always complying with the rules, they are suddenly illegally in the US. Fortunately, this family may have some options. The mother can probably qualify for a new visa on her own if she decides to stay in the US. But we could easily envision cases where the family would have no options but to leave. And they not be easy if the kids are in school, the family owns property, and the property must be settled according to the state's laws of trusts and estates. Two thoughts cross our mind. First, just as a responsible person should have a will and a plan to deal with providing for their family's economic needs in the case of an untimely death, that person should be prepared for the immigration consequences of an untimely demise. Second, why is it that the law does not provide for relief from the surviving spouses and children's family? Why not allow a grace period to enable family members enough time to settle their affairs and leave or transition into another status? What could the policy justification be to put families in this situation?

There were several interesting immigration stories this week that we're covering. First, a major immigration bill was introduced that would create amnesty possibilities for agricultural workers. This may be a prelude to a much broader "earned adjustment" bill that would allow many of the estimated 10 million people working in this country without paper's to legalize their status. A major computer virus infected the State Department's computers and halted visa processing. Immigrants from across the US are currently on a cross-country trip on their way to Washington, DC as part of the Immigrant Freedom Bus Ride.

I recently finished the very funny book *Lies and the Lying Liars Who Tell Them* by the comedian Al Franken. Franken is the outspoken liberal comic who has gained notoriety for taking on the right wing media and conservative politicians. In the book (which, incidentally, has reached the number one spot on the New York Times bestsellers list), Franken particularly takes aim at the Fox News Channel. I enjoyed the book, but I think Franken might have noted that the so-called "mainstream" networks seem to be drifting in the direction of the first place Fox News Channel. At least on the immigration issue, CNN can no longer be seen as taking an unbiased, balanced view of the story. I'm speaking in particular about Lou Dobbs who has given up any pretenses of trying to show more than just the "anti" side of the immigration debate. Night after night he has been attacking immigration often through off-handed editorial comments and through the seemingly endless series "The Great American Giveaway" which has "exposed" the hidden truth of how immigrants are here to take jobs away from Americans and destroy everything that is dear to our hearts. As someone who follows immigration news more closely than most people, I'd like to think I'm aware of which news organizations have reporters that genuinely try and learn how the immigration system truly runs and try to provide fair coverage of the issue. CNN is NOT one of those news organizations. Lou Dobbs' show has gotten the facts wrong consistently on this issue and when people have written in to correct the errors and distortions, no corrections or apologies have been forthcoming. By the way, the last time I took the time to criticize Dobbs in this column, my remarks were picked up by Rob Sanchez, a virulent anti-immigrant who

decided to embark on a very public debate with me on immigration issues. I presume I'll hear from him again this time. I'll let you know...

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

2. The ABC's Of Immigration – The H-1B Cap

On October 1st, the allotment of H-1B visas provided annually by Congress will drop from 195,000 to 65,000. Capitol Hill observers see little likelihood Congress will act soon to raise the cap in the near term and it is quite possible that the number will not be raised at all. Even in a down economy, it is likely that 65,000 would not be enough to cover the demand for the professional worker visa. In the fiscal year that ends September 30, 2003, the government is expected to issue around 75,000 H-1B visas against the allotment. If the economy starts to improve in the next fiscal year, demand for H-1B visas is likely to increase.

When will the H-1B cap be hit?

That's impossible to say exactly, of course. But there are indications that the cap will be hit within the next few months if actions are not taken by Congress. First, even in a slow economy, 65,000 is not enough to meet demand. For the fiscal year ending September 30th, 2003, about 76,000 cap H-1B visa will be issued. Already, there are about 32,000 visas that are going to be counted against the cap. This includes cases pending with USCIS right now that won't be adjudicated until after October 1st when the new fiscal year and an allotment of 6,000+ H-1B visas under the new free trade agreements with Singapore and Chile. That means that only about 33,000 visas are left. That should be enough to take us into the winter.

Who is actually subject to the cap?

Not every H-1B applicant is subject to the cap. Visas will still be available for applicants filing for amendments, extensions, and transfers. The cap also does not apply to applicants filing H-1B visas through institutions of higher education, nonprofit research organizations, and government research organizations. Physicians taking jobs under State 30 waivers may be subject to the cap, but the language in the statute is not clear and further interpretation is probably needed.

When was the last time the H-1B cap was hit?

The H-1B cap was last hit on March 21, 2000.

How will the USCIS let the public know that the cap is nearing or is hit?

If past practice is an indicator, the USCIS will release an announcement in the Federal Register. The announcement will likely tell the public that additional H-1B applications received after the announcement is received will not be adjudicated until additional H-1B visas are available. They are likely to count the number of cases already approved and the number of cases in the pipeline and when that number is at the cap amount, they will stop adjudicating cases. At that point, the agency is likely only to take cases with a start date after October 1, 2004. Cases received asking for a start date earlier than the next fiscal year would likely be returned along with the filing fee. If the USCIS is wrong in its count and a case is accepted, but a visa is actually not available, it would likely go ahead and adjudicate the case with a start date of October 1st and count the applicant against the 2005 fiscal year cap.

The last time the cap was hit, employer not willing to wait until they next October for employment to begin were required to notify the INS in writing that they wanted the petition withdrawn. If the petition had already been approved with an October 1 start date, the employer was supposed to notify the INS in writing that it wanted the petition revoked. In neither of these cases did the INS refund the fee.

How is the USCIS likely to deal with those in F or J status who are beneficiaries of an H-1B petition?

Again, we can only go on what happened in 2000 when the cap was last hit. Fortunately for those individuals, the INS took the approach that F and J nonimmigrants who were the beneficiaries of timely filed H-1B applications would have their status extended until the new fiscal year on October 1, 2000, or until the H-1B petition was adjudicated. Dependents in F-2 and J-2 status also had their status extended. Note however, that while such people were in valid nonimmigrant status, they were not work authorized. However, the INS did allow such people to receive signing bonuses, as those were not payment for services rendered.

What about extra visas for this fiscal year that were never used? Will the USCIS be allowed to count them to the 2004 cap?

In the past, this was a hotly contested issue. It was finally resolved after the last cap when Congress stepped in and ordered the INS to apply those numbers to a later fiscal year. But that was a one-time fix and the USCIS may not agree to doing this again without legislation from Congress.

What about premium processing cases? Will fees be refunded if no numbers are available?

This is hard to answer because the premium processing fee was not around the last time the H-1B cap was hit. If the USCIS issues an announcement simply saying no more H-1B cases will be accepted for the FY 2004 allotment (as opposed to announcing after the fact that the cap was hit), then premium processing will not be that much of a problem because the USCIS will know that it has the numbers available to approve already filed premium processing cases. What will be trickier is if the USCIS slows down processing as it has done in past years while it tallies up the numbers. If that causes cases to take more than 15 days to process, the USCIS would presumably have to issue massive fee refunds.

What else changes after October 1st?

Certain provisions of the 2000 law that increased the H-1B cap for three years go out of force on September 30th. They include the \$1000 worker retraining fee and the H-1B dependency rules. That means that until Congress decides to bring that fee back, H-1B filing fees will drop from \$1130 to \$130 (this does not include premium processing fees which are unaffected by the cap). Congress is likely to eventually bring the fee back as it accounted for more than \$200 million in the latest fiscal year so the window of opportunity for saving money with the reduced fee is likely to be short.

3. Ask Visalaw.com

If you have a question on immigration matters, write 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.

Q - Can I get a visitor visa to the US while my K-3 petition is still pending?

A - It is extremely difficult to get this. In theory you can, but I seriously doubt a consular officer would approve it since a B visa requires you to show non-immigrant intent. Obviously, the K-3 visa shows the opposite.

Q - I'm on here on religious Visa. While in the green card process, during on I-360 application, my visa was valid, but later, during I-485 APPLICATION My was expired, does that really matter...?

A - Your R-1 expiring while your adjustment application is pending should not be a problem, but your employer cannot legally employ you unless you have a work authorization document. Also, if you have to leave the US, you will have to reenter with an advance parole document.

Q - In July President Bush signed an executive order that provides expedited naturalization for members of the military active during Operation Enduring Freedom. My question is, is the law retroactive? For example, does it extend to those immigrants ordered into combat during the first Gulf War?

A - I consulted with Margaret Stock on this. Margaret is on the faculty at West Point and is one of the country's foremost experts on immigration and the military, According to Margaret:

"There was a different order in effect for people who served in the first Gulf War. That order was issued by President George H.W. Bush (father of the current President). People can still naturalize under that order if they meet the requirements.

The current order only applies to people who were in the military on or after 9/11/01. But prior Presidents issued similar orders in prior wars."

Thanks Margaret!

Q - I am currently in H-1B visa. Can I open a partnership business with my friends? Will my action violate my current status?

A - If you are anything other than a silent partner, you would likely be violating the terms of your visa. You can invest in a business, but not in any way be involved in managing or working in the business. Otherwise, you could be considered to be working illegally. Keep in mind that being paid is not the only test used to determine whether you are working. If you are doing work that an American might expect to be paid to do, even if you are unpaid, you could be found to be working for immigration purposes. If that is the case, you would need a second concurrent approval to work in the second job.

Q - I'm currently in H1b status. If I want to get one more part-time job and file a H1b concurrent application, would my application subject to the H1b quota? Also, can I start work right away once I submit the application? And finally, do I need to pay the \$1,000 again to the government?

A - No, concurrent employment is not subject to the H-1B quota. You should be able to start work right away upon filing the application. The employer would normally have to pay the \$1000 retraining fee. However, note that on October 1st, the fee will go out of existence. Congress may later choose to bring it back, but that is far from clear.

Q - I am a naturalized Canadian citizen born in Nepal. Can I participate in DV lottery program?

A - Yes. Your country of birth would allow you to file as a native of Nepal.

Q - Can students on J-1 visa doing graduate work here in the U.S. apply for the Green Card Lottery?

A - Yes, a person, regardless of their visa status, can apply for the Green Card (Diversity Visa) Lottery. However, if the J-1 is subject to the 2 year home country residence requirement (INA 212(e)), then the person will not be able to obtain a green card, even if she wins the lottery, unless she gets a waiver of the 2 year requirement.

Q - I am currently holding F1 visa and recently got married to an Asylee applying for a green card. My spouse got his asylum status in 2000 and has applied for an adjustment of status to Permanent Resident under I-485 (Asylum) category since 2001. Is there any way for me to stay in the US without holding F1 status? My nationality differs from my spouse's. Is that a problem?

A - Unfortunately, you would have had to have been married to your spouse before your spouse got asylum status in order to adjust to permanent residency as part of your spouse's petition. Your spouse would have to file an I-130 as an F-2A spouse after the adjustment application is approved. That category is backlogged several years, however, so you will need to plan on maintaining your status independently for the next few years in all likelihood.

Q - I am an international student studying with an F-1 student visa. My advisor over at the International Student Office told me that I "MUST" have health insurance in order to be in status according to immigration law. Is this true?? Also, if it is required that all international students "MUST" have insurance every semester, does that mean that it "MUST" be the one that the school offers or I am free to choose whichever insurance I want. Are there laws that require students to have "specific" type of insurances according to the state and school, in order for us to be compliant with immigration policies and laws, or is it school policies supervised by state legislature?? I would appreciate information and sites where I could check up on these types of laws regarding international students.

A - There is no federal government mandate for international students in the F-1 status to buy health insurance. However, given the extremely expensive health system of the United States, many schools and states mandate it. If your school or state requires it, then you must purchase and maintain it as a condition of your enrollment. For instance, the higher education system in Tennessee requires it from all international students.

4. Border News

El Paso-area Border Patrol agents delayed two busloads of Los Angeles activists for four hours last week as they were taking part in the Immigrant Worker Freedom Ride, sponsored by the AFL-CIO and other unions. The two buses were stopped at the Sierra Blanca checkpoint on Interstate 10, about 70 miles southeast of El Paso, and put into administrative detention, where the riders were questioned. No arrests were made. Some of the riders apparently were illegal immigrants, but federal authorities decided to let them go. A total of eighteen buses left cities throughout the United States are expected to converge on the capital for a rally Oct. 1 to demand amnesty and better protection for illegal immigrants.

Attorney General John Ashcroft has reportedly agreed to declassify information about how often Section 215 of the USA PATRIOT Act has been used.

The Attorney General's concession comes three months after the American Civil Liberties Union (ACLU) filed a challenge to the PATRIOT Act targeting a provision that permits the FBI to request court orders requiring the disclosure of information about suspects' reading habits, Internet surfing, medical histories, business activities and other information and imposes a gag order on those who are forced to give up the records.

This week U.S. Immigration and Customs Enforcement (ICE) announced the 44-month sentence handed down to Rafael Ruiz, a permanent resident alien from the Dominican Republic, by a U.S. District Court for Conspiracy to Commit Sex Trafficking.

Ruiz operated a house of prostitution in Plainfield, N.J., and was involved in a scheme to smuggle female juveniles from Mexico into the United States for the purpose of prostitution. Ruiz is the fourth defendant to be sentenced out of eight defendants prosecuted under the ICE investigation, called "Operation Sonic."

A senior immigration inspector is in federal custody for allegedly providing his girlfriend and her family with fake passports and is being held without bail after agents found two unregistered submachine guns with silencers stashed in his closet.

Hector Aybar-Mendez was accused of falsifying the passports of his girlfriend, Rocio Ortega, her two children and an adult niece, and giving them fake identification numbers so they could obtain Social Security cards and jobs.

On Wednesday, Aybar-Mendez, an employee assigned to Orlando International Airport, pleaded not guilty in federal court.

5. News From The Courts

Haifa Saleh El Himri; Musab El Himri v. John Ashcroft U.S. Court of Appeals for the Ninth Circuit

Haifa Saleh El Himri and her son, Musab El Himri, petitioned for a stay of voluntary departure, pending review of the BIA's final order of removal. The Immigration Judge (IJ) denied their application for asylum, withholding of removal and relief under the Convention Against Torture (CAT), and ordered the Himris removed to Jordan. The Judge gave the petitioners 62 days in which to voluntarily depart from the U.S. upon posting a \$500 voluntary departure bond. The BIA affirmed the decision and granted the Himris another 30 days in which to voluntarily depart

The Himris then filed a petition for review by the Ninth Circuit and a motion for stay of removal and voluntary departure. Relying on *Zazueta-Carrillo v. Ashcroft*, 322 F.3d 1166 (9th Cir. 2003), the Himris argued that the Ninth Circuit has jurisdiction to stay voluntary departure in cases where a stay of removal is also warranted. The

Attorney General opposed the motion for stay of voluntary departure, contending that the Ninth Circuit does not have the power to do so.

The Court found that "the standards for obtaining a stay of removal shall also apply to stays of voluntary departure." However, the Court added that a petitioner must show either "a probability of success on the merits and the possibility of irreparable injury," or (2) "that serious legal questions are raised and the balance of hardships tips sharply in the petitioner's favor."

The Himris argued that there were "serious legal questions" in that the IJ did not analyze their claims under CAT separately from their asylum and withholding petitions. Also, the Himris argued that they are stateless Palestinians born in Kuwait, and as neither one of them has ever lived in Jordan, the IJ was mistaken in ordering their removal to Jordan. The Himris also argued that the IJ did not consider Musab's petition separately from his mother's petition. Additionally, the Himris demonstrated that they would suffer hardship because they have lived in the U.S. for thirteen years and four of Haifa's five children are U.S. citizens and would be separated from their mother if she was removed from the U.S.

The Court granted the Himris a stay of voluntary departure.

6. Government Processing Times

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

California (9-19-2003): <http://www.visalaw.com/california.html>

Vermont (9-15-2003): <http://www.visalaw.com/vermont.html>

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

7. News Bytes

The 2002 USCIS Immigration Statistical Yearbook is now available online at: <http://www.immigration.gov/graphics/shared/aboutus/statistics/Yearbook2002.pdf>

Each year, this data is compiled and published in the Yearbook of Immigration Statistics, previously known as the Statistical Yearbook of the Immigration and Naturalization Service prior to the Fiscal Year 2002 edition.

The American Immigration Lawyers Association reports that USCIS personnel received an email withdrawing the 2002 "zero tolerance memo", by which it was declared that there would be no tolerance for failure to follow procedures. Much of today's "culture of no" has been traced to this memo. AILA is attempting to obtain a copy of the email.

The U.S. Treasury Department announced it will not make changes to rules regarding banks' ability to accept foreign identification.

The Department released results of the notice of inquiry published in the Federal Register July 1, 2003 requesting additional information pertinent to the final rules implementing customer identification requirements for financial institutions under Section 326 of the USA PATRIOT Act.

After reviewing over 34,000 comments, Treasury found that no new information had been presented that had not been considered prior to issuing the final rules. Accordingly, Treasury is recommending no changes to the rules.

The Department of Treasury's press release can be viewed online at: <http://www.treas.gov/press/releases/js743.htm> For more information on this, see our weekly ABCs of Immigration article in this issue.

Evelyn Upchurch, the newly appointed director of the USCIS Texas Service Center, recently met with the Texas State Bar's Immigration Committee. She noted that the TSC's backlog elimination efforts have fallen off track since 9/11. This is now being discussed internally, and then will go to Congress. A production plan is outlined in three tiers: statutory and regulatory requirements, then those affecting district office cases, and then all others. They have the first quarter completed and are 4% under goal as not every application goal was met. Their production completion goals involve all applications and petitions. Ms. Upchurch stated that the I-765 Employment Authorization Documents are getting caught up to within 120 days from date of filing and should soon be within 90 days with the next target being I-90 green card replacement applications. Lawyers should see movement on I-130s and CIS is looking at innovative ways to address the issue. Fiancé applications are take longer now. But TSC leaders expect to be current in the future. Cases are moving but they don't have all the needed resources. [Thanks go to Paul Parsons, Chairman of the Committee for sharing this information].

This morning, the State Department notified USCIS District Offices that all of the DV 2003 lottery visa numbers have been used and no more DV 2003 visas are available. Between last Friday when the State Department advised AILA that sufficient numbers were available, and this morning, a large influx of visa number requests led the State Department's Legal Advisors to conclude that they could not issue any additional numbers this year. Accordingly, the State Department notified local USCIS District Offices of the cut off. Practitioners should confirm with their local offices whether visas were allocated to their clients' cases prior to the expiration of their availability. This is the first time since the lottery program was enacted that the State Department has announced that it has used up all of its visa before the end of a fiscal year.

The Executive Office of Immigration Review has issued warnings to several judges at Newark's federal immigration court for their inappropriate or casual dress while on the bench. Since 1994, immigration judges have been expected to wear their black robes while they preside in court. Immigration review officials have visited several sites and found Newark to be the only site so far where there was a need to issue warnings regarding judges' dress policy.

At the same time, an official decided that Newark Judges Alberto Riefkhol, Annie Garcy and William Strasser will no longer hear cases in which an immigrant is detained in jail. Immigration lawyers in the New Jersey area speculate that these three judges have the most cases pending with the courts and the removal of these cases will lighten their caseloads. Lawyers in the area seem to think that the change in assignments given to these judges does not indicate a demotion in their status.

Recently the Department of State announced a one-year extension on the requirement that travelers have machine-readable passports to be admitted under the visa waiver program, provided that those countries submit a request. Twenty-one participating countries took advantage of the extension, while five visa waiver countries did not request postponement because nearly all of their citizens already hold machine-readable passports: Andorra, Brunei, Liechtenstein, Luxembourg, and Slovenia. As of October 1, 2003, visa waiver travelers from those five countries must present either a machine-readable passport or a United States visa. The same is required of Belgian citizens, as they have been required to present a machine-readable passport since May 15 of this year.

USCIS Director Eduardo Aguirre announced the names of those appointed to fill the top management positions at the agency this week. The remaining District Director, Asylum Director, and Officer-in-Charge positions will be made within the next thirty days. The appointments are as follows:

HEADQUARTERS

Associate Director, Operations - William (Bill) Yates
Deputy Associate Director, Operations - Janis Sposato
Director, Field Operations - Terrance (Terry) O'Reilly
Director, Service Center Operations - Fujie Ohata
Director, Information & Customer Service - Michael (Mike) Aytes
Director, Fraud Detection & National Security - Louis (Don) Crocetti
Director, Modernization - Patricia (Patty) Cogswell
Director, Production Management - Ann Palmer
Director, International Affairs - Joseph (Joe) Cuddihy
Associate Director, Asylum Operations - Joseph Langlois
Associate Director, Refugee Operations - Kathleen Thompson
Director, Administrative Appeals Office - Robert (Bob) Wiemann

REGIONAL DIRECTORS

Eastern Region, Burlington, Vermont - Steven Farquharson
Central Region, Dallas, Texas - Kenneth Pasquarell
Western Region, Laguna Niguel,
California - Carolyn Muzyka

DISTRICT DIRECTORS

District Director, Atlanta - Rosemary Melville
District Director, Buffalo - M. Francis Holmes
District Director, Cleveland - Mark Hanson
District Director, Detroit - Carol Jenifer
District Director, El Paso - Raymond Adams
District Director, Los Angeles - Jane Arellano
District Director, Miami - Jack Bulger
District Director, Newark - Andrea Quarantillo
District Director, Omaha - Gerard Heinauer
District Director, Phoenix - Stephen Fickett
District Director, San Francisco - David Still
District Director, Seattle - Robert Okin
District Director, St. Paul - Curtis Aljets

SERVICE CENTER DIRECTORS

Director, Vermont Service Center - Paul Novak
Director, Nebraska Service Center - Terry Way
Director, Texas Service Center - Evelyn Upchurch
Director, California Service Center - Don Neufeld

NATIONAL BENEFIT CENTER

Director, National Benefit Center - Robert Cowan

ASYLUM DIRECTOR

Asylum Director, Los Angeles - Robert Looney

OFFICERS-IN-CHARGE

Officer-in-Charge, Albany - Gary Hale
Officer-in-Charge, Charlotte - Richard Gottlieb
Officer-in-Charge, Cherry Hill - Carol Bellew
Officer-in-Charge, Fresno - Don Riding
Officer-in-Charge, Las Vegas - Karen Dorman
Officer-in-Charge, Louisville - Michael Conway
Officer-in-Charge, Memphis - David Angotti
Officer-in-Charge, Orlando - M. Stella Jarina
Officer-in-Charge, Providence - Jeffery Trecartin
Officer-in-Charge, Sacramento - Susan Curda
Officer-in-Charge, San Bernardino - Irene Martin
Officer-in-Charge, San Jose - Warren Janssen
Officer-in-Charge, Santa Ana - Marta Salgado-Nino
Officer-in-Charge, St. Albans - Noel Induni
Officer-in-Charge, St. Louis - Chester Moyer
Officer-in-Charge, Tucson - William Johnston
Officer-in-Charge, Ventura - J. T. Watson

8. International Roundup

Chinese spouses of Taiwanese citizens are protesting an amendment proposed by the Taiwanese government that will revise its law regarding Republic of China

identification cards. The revised law would extend the length of time Chinese spouses must wait to obtain ID cards from eight to eleven years. Under current law, Chinese spouses have to wait five years in order to qualify to apply for the cards, while other foreign spouses are eligible to apply for ID cards one year after they obtain right of abode in Taiwan.

Another pending amendment proposes to eliminate the limit on Chinese spouses applying for right of abode. Currently, only 3600 Chinese spouses can apply. However, officials at the Mainland Affairs Council (MAC) are opposed to this portion of the amendment, which will encourage Chinese people to migrate to Taiwan.

The Australian parliament has passed legislation that will impose harsh penalties on corrupt migrant agents. The new legislation toughens the registration for migration agents and allows unregistered agents who give migration advice to be imprisoned for up to ten years. The Migration Agents Registration Authority will also be granted more power to discipline agents who submit false claims or overcharge their clients. The new legislation was introduced as a result of concerns over Immigration Minister Philip Ruddock's abuses of his discretionary power to grant visas.

Russian President Vladimir Putin has introduced a bill that will improve the ability of residents of former Soviet republics to obtain Russian citizenship. The presidential legal amendments eliminate several of the conditions for obtaining Russian citizenship contained in the July 2002 citizenship law.

The 2002 law extended the requirement to spend three years in Russia to five years. It also required applicants to pass a Russian language examination and to have a job. Supporters of the 2002 law said that the previous law allowed anyone to become a Russian citizen, which resulted in an increase in crime.

Putin's amendments would allow former Soviet citizens who were officially registered in Russia as of July 1, 2002 to receive Russian citizenship without the five-year residence requirement, language exam, job requirement and a residence permit. These rules will apply to those who apply for naturalization by January 1, 2006. Critics of the amendments claim that immigration to Russia will be hindered.

9. Legislative Update

Senator Saxby Chambliss (R- GA) recently introduced [S. 1635](#), the "L-1 Visa (Intracompany Transferee) Reform Act of 2003." Narrower in scope than previous L legislation, the bill clarifies and strengthens current law, re-instates the 1 year work requirement for blanket applicants, and mandates the collection of L-1 statistical data. Using L-1B employees to work as contractors at other companies would be prohibited under the Chambliss bill.

The following bills were recently introduced in Congress:

[H.R.3191](#): To prescribe the oath of renunciation and allegiance for purposes of the Immigration and Nationality Act.

Sponsor: Rep Ryun, Jim [KS-2] (introduced 9/25/2003)

Committees: House Judiciary

Latest Major Action: 9/25/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3142](#): To provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

Sponsor: Rep Cannon, Chris [UT-3] (introduced 9/23/2003)

Committees: House Judiciary

Latest Major Action: 9/23/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

For more information about this bill, see the article printed later in this issue.

[S.1645](#): A bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

Sponsor: Sen Craig, Larry E. [ID] (introduced 9/23/2003)

Committees: Senate Judiciary

Latest Major Action: 9/23/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

For more information about this bill, see the article printed later in this issue.

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

10. Agricultural Worker Amnesty Bills Introduced in Congress

Bills were introduced this week in both the House of Representatives and the Senate which would provide legal status for hundreds of thousands of agriculture workers in the US. Both bills had bipartisan sponsorship. In the House, H.R. 3142 was introduced by Republican Chris Cannon of Utah and California Democrat Howard Berman. S. 1645 was sponsored in the Senate by a number of Republicans and Democrats including Norm Coleman (R-MN), Larry Craig (R-ID), Ted Kennedy (D-MA) and Hillary Clinton (D-NY). The bills are known as the "Agricultural Job Opportunity, Benefits, and Security Act of 2003" or AGJOBS.

The 100+ page bills would apply to those agricultural workers who have already been working at least 100 days in a twelve month period in the 18 month period ending August 31, 2003. They would be able to apply for a temporary visa. If they then work at least 75 days during each of the three twelve month periods between 2003 and 2006 and for at least 360 days in agricultural jobs during the next three

year period ending August 31, 2009, including 240 days after getting temporary status then following that, they would earn the right to apply for permanent residency. Advocates of the legislation also see the bill as a model for a much broader future bill that would apply to all illegal workers.

Workers participating in the program will be able to travel in and out of the US legally and will be able to accept additional jobs as long as they meet their obligations to work in agriculture. Family members may remain legally, though they will not be authorized to work until the principal applicant applies for permanent residency. Criminals and those who fail to meet the requirements of the program are subject to removal.

The bills also make modifications in the current H-2A visa program. H-2A workers would only be eligible to work up to ten months, down from the current 364 day a year limit. The new program would drop the labor certification requirement and replace it with a program that involves filing a labor condition application, much like the current H-1B visa program. The H-2A applications by employers would have to be adjudicated within seven days by the USCIS. Employers would still have to engage in recruiting including listing the job with a local job service for 28 days before bringing workers in to the US. There are also a number of modifications and clarifications of the work conditions applicable to H-2A workers. Regulations enacting H-2A provisions of the law would have to be in place within a year of the law passing.

The bills drew praise from a variety of organizations. The US Chamber of Commerce quickly endorsed the proposal. "This legislation represents an historic agreement between business and labor on an important issue for the future of our country – reform of immigration rules to address our current and future workforce needs," said Bruce Josten, the US Chamber's executive vice president for Government Affairs. "The excellent work of members of Congress on both sides of the aisle to achieve this result should be commended. This comprehensive bill recognizes that immigration reform must include both legal ways for employers to hire foreign workers when U.S. workers are not available, and a path to legitimize the status of those immigrants that have been supporting our industries and economy with their labor," continued Josten. "While the needs of the agricultural community are unique, we hope that this approach can help pave the way for legislation to address the needs of the broader business community for essential workers."

The bill also is supported by the American Immigration Lawyers Association. "This measure reflects an historic agreement between the representatives of farm workers and the agricultural industry, and the pressing need, for humanitarian, economic, and security reasons, to reform our immigration laws in this sector of our economy," said Jeanne Butterfield, Executive Director, and Judith Golub, Senior Director of Advocacy and Public Affairs of the American Immigration Lawyers Association (AILA).

"The AgJobs Act reflects difficult compromises made by both sides. As is the case with the best compromises, both sides in this historic deal did not get everything they wanted, but all have agreed to work together to make sure that the AgJobs Act becomes law," said Golub. "As we work to enact needed change in the agricultural sector, we also must forge ahead with the more comprehensive immigration reforms so vital to our broader immigration system. Such comprehensive reform is needed to fully address our economic, humanitarian and security needs," concluded Butterfield and Golub.

11. Homeland Security Erects New Barrier to Nursing Immigration

Two months after the release of final regulations on the certification of foreign health care workers were released by the Department of Homeland Security, William Yates, the Associate Director of Operations for Citizenship and Immigration Services (formerly the INS and BCIS), has released a memorandum providing guidance on the implementation of the new regulation. The July rule provided for the phased in implementation of the VisaScreen credentialing process to non-immigrant workers. It also provided guidelines on the documentation of a health care worker's English skills.

The Yates memo first recites a summary of the new rules including which occupations are affected - nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists, medical technicians and physician assistants. It then provides a history of the rules that have implemented the section of the 1996 immigration law that called for the credentialing requirement. The memo then discusses the phase in of the new rules for non-immigrant visa holders, particularly the one-year waiver period that will allow non-immigrants to enter without VisaScreen until July 24, 2004.

Where the Yates memo departs from the regulations and all prior policies is in the section of the memorandum regarding applicants applying to adjust status to permanent residency in the US. The memorandum first notes that immigrant health care workers are currently required to present certification to the Department of State at the time of immigrant visa issuance. That policy is longstanding. However, the memorandum then goes on to state that a health care working adjusting status must demonstrate that they have VisaScreen AT THE TIME the adjustment application is filed. Previously, the INS/BCIS/USCIS accepted VisaScreen at the time the nurse adjusted status. Yates bases this on the notion that all eligibility requirements - not just VisaScreen - must be met at the time of filing the application for adjustment of status.

Yates does not mention that the USCIS routinely varies from this policy in other types of adjustment cases. For example, while applicants for family-based adjustment petitions must submit an affidavit of support at the time of filing, immigration examiners look to the financial condition of the applicants at the time of adjusting - not the time of filing - to determine if the public charge requirements are met. Applicants applying for adjustment of status who were previously subject to the J-1 home residency requirement have traditionally been allowed to file for adjustment of status after they have received their waiver recommendations from the State Department and have not had to wait for the INS/BCIS/USCIS' final adjudication of the waiver.

Nursing immigration advocates have reacted with dismay to the new barrier being imposed by USCIS to the green card application process. Many are bewildered that they agency would seek to toughen rules at the time of a serious nursing shortage in this country. Recent studies have indicated that the shortage of nurses is already having a severely negative effect on patients and that death rates in hospitals are increasing when there are not enough nurses to go around.

12. CLASS Attacked By Computer Virus

Last week, a computer virus attacked the State Department's electronic system known as CLASS, the Consular Lookout and Support System. The system, which contains records from the FBI, State Department and U.S. immigration, drug-enforcement and intelligence agencies, and is used to check visa applicants for terrorist or criminal history, failed worldwide, making the U.S. government unable to issue visas.

The State Department's automated systems are programmed to not print a visa until the visa applicant is checked against the names in the CLASS database. Included in the database's 12.8 million records are the names of 78,000 suspected terrorists.

An internal message was circulated among embassies and consulates warning that CLASS was "down due to a virus found in the system." While it is unclear which specific virus attacked the system, a separate message sent to embassies and consular offices warned that the "Welchia" virus had been detected in one facility.

Welchia exploits a software flaw in recent versions of Microsoft Windows. This virus, and the related "Blaster" virus have infected hundreds of thousands of government computers worldwide, including those at the Federal Reserve in Atlanta, Maryland's motor vehicle agency and the Minnesota Transportation Department.

The CLASS system, which had no backup system available immediately, was shut down for several hours. An embassy spokesman in Seoul said that it was a "short outage" and that visa interviews continued to take place.

13. GAO Concludes US-VISIT Is A "Risky Endeavor"

In a congressionally mandated review of the US VISIT program, the General Accounting Office (GAO) has analyzed and reported on influential factors at stake, including potential costs and a governance structure that has not yet been established. In its report, the GAO concluded that the US-VISIT program is a "risky endeavor."

The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program is a DHS operation designed to strengthen management of the pre-entry, entry, status and exit of foreigners who travel to the U.S. US-VISIT will facilitate trade and travel as well as enhance national security.

The GAO found that some risk factors are inherent to the program, such as its mission criticality, its size and complexity, and its enormous potential costs. Other factors spring from the immature state of the program's governance and management. The GAO reported that ten factors in particular make it "uncertain that US-VISIT will be able to measurably and appreciably achieve DHS's stated goals for the program" and current investments may not deliver promised capabilities within the expected budget and timeframe set aside for its development.

The ten factors that make US-VISIT a “risky endeavor,” according to the GAO, are as follows:

- The mission is critical
- The scope is large and complex
- Milestones are challenging
- Potential cost is significant
- Existing systems have known problems
- Governance structure is not established
- Program management capability is not implemented
- Operational context is unsettled
- Near-term facilities solutions pose challenges
- Mission value of first increment is currently unknown

To address these issues, the GAO report recommends that the DHS establish an executive body to guide and direct the program and to take steps to “establish an effective program management capability.” The DHS concurred with the recommendations and officials said they were making progress toward addressing them.

The full report, titled “Risks Facing Key Border and Transportation Security Program Need To Be Addressed,” is available online at:
<http://www.gao.gov/highlights/d031083high.pdf>

14. USA PATRIOT Act Identity Verification Requirements

On May 9, 2003, the United States Department of Treasury, the Financial Crimes Enforcement Network and the federal financial regulators announced final regulations implementing customer identification and verification requirements under Section 326 of the USA PATRIOT Act. The rule requires that financial institutions develop a Customer Identification Program (CIP) that implements reasonable procedures to: (1) collect identifying information about customers opening an account; (2) verify that the customers are who they say they are; (3) maintain records of the information used to verify their identity; and (4) determine whether the customer appears on any list of suspected terrorists or terrorist organizations.

In July 2003, the Treasury Department initiated a 30-day comment period to seek inquiry about certain provisions of the final rules implementing Section 326 of the USA PATRIOT Act. The Treasury Department sought information regarding two specific provisions: (1) whether financial institution should be required to retain photocopies of identification documents used to verify customers’ identities; and (2) whether financial institutions should be prohibited from accepting foreign government issued identification documents other than passports as an acceptable form of identification. The notice of inquiry, which was published in the Federal Register, ended on July 31, 2003.

After sorting through over 34,000 comments, the Treasury Department determined that there was no new information presented that was not considered prior to issuing the final rules. Therefore, the Treasury decided to not seek changes to the final rules to prohibit acceptance of foreign issued identification documents, such as consular

IDs, or to require that financial institutions maintain photocopies of identification documents.

The final breakdown of the comments received included an overwhelming response to not change the regulations. Of the total 34,602 comments, 10,704 weighed in on the photocopy issue, while 23,898 commented on the identification card issue. Of those commenting, 89.0% were in favor of no change on the photocopy issue and 82.73% were in favor of no change on the identification card issue.

The Treasury Department concluded that security concerns about the acceptance of foreign issued identification documents were handled through the risk-based approach taken by the final rules and the ability to notify financial institutions if concerns arise with specific identification documents. The Treasury Department decided that the financial institutions needed some leeway in the way they identify and verify the identity of their customers. The final rules allow the financial institutions flexibility, while also holding them accountable for the effectiveness of their customer identification programs.

In addition, the Treasury Department concluded that the maintenance of photocopies in all cases did not provide a security benefit that justified the additional record-keeping burden. The final rules implementing Section 326 require that financial institutions maintain records of the steps taken to verify identify. While these records may include photocopies of identification documents, the financial institutions are not required to keep these documents as part of the customer's file.

The Treasury Department expects all financial institutions covered by the customer identification regulations to have their customer identification program drafted and approved by October 1, 2003 as scheduled. The following financial institutions are covered under the rule: banks and trust companies, savings associations, credit unions, securities brokers and dealers, mutual funds, and futures commission merchants and futures introducing brokers.