

Siskind's Immigration Bulletin
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Siskind Susser serves immigration clients throughout the world from its offices in the US, Canada, Mexico, Argentina and the People's Republic of China. To schedule a telephone or in-person consultation with the firm, go to <http://www.visalaw.com/intake.html>.

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1. Openers
2. The ABC'S Of Immigration: US-VISIT
3. Ask Visalaw.com
4. Border and Enforcement News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update
10. Campaign 2004
11. US-VISIT Extended to Visa Waiver Countries
12. Farm Worker Bill Gaining Momentum
13. Cannon Targets Anti-Immigration Groups
14. Indiana BMV Gets Involved in Immigration Enforcement
15. CLEAR Act Calls for Local Police to Enforce Immigration Policies
16. Lawmakers Urge DHS to Rethink Certification Requirements for Foreign Educated Nurses
17. Letter to the Editor

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1. Openers

Dear Readers:

The big immigration news this week is the extension of the US VISIT program to Visa Waiver country nationals. The timing of the change is interesting. While many have complained that making the entry process too arduous for visitors to the US will hurt our tourism industry, there has been a push to extend the digital fingerprinting and photographing to all nationals and not just people requiring a visa. This has largely been tied to a nagging fear that terrorists would use the Visa Waiver program to more easily enter the US. After the March 11th attacks in Spain, it is less likely that American allies in Europe will be as opposed to this type of measure and there is an indication that other countries may even be planning similar systems for themselves. Personally, I am not opposed to the system if it can be implemented in a way that minimizes the disruptions in the processing of visitors at ports of entry. Taking a digital fingerprint and photo takes just a few seconds so this should not cause delays if the training and equipment are in place. And I'd rather have these types of measures in place than simply closing our borders.

I had the pleasure this week to watch the three night PBS miniseries "The New Americans." The documentary follows five groups of immigrants from the point when they are leaving for the United States through their first few years in this country. As an immigration lawyer, I obviously have more exposure to the immigrant experience than most Americans. Yet I still found the series eye opening. PBS tracked a variety of people and the differences and similarities in their stories tell a lot about immigration in America today.

The groups tracked included several Ogoni refugees from Nigeria, Dominican baseball players trying to make it into the Major League, an Indian technology worker and his family, Mexican farm workers and a Palestinian woman who came to the US to be with her US-born Palestinian-American husband.

The common theme interwoven throughout the documentary was the psychological hardship that each of the families must face. That included being far away from loved ones in other countries especially during a family crisis. That included facing grave financial crises. That included trying to maintain legal status in the US when the laws are frequently unclear and unforgiving. The hardships also included trying to adapt to being in a new homeland while maintaining ties to one's homeland.

What I think I found most interesting was the fact that the filmmakers made a point of tracking the families for several years. After a short time, people become so comfortable with the cameras that you get the sense that they are paying very little attention anymore. And the honesty with which their lives are portrayed seemed more telling than any of the so-called reality shows airing on the major networks.

Little was sugar coated and the happy endings you might expect - family overcomes adversity and lives the American dream - did not always materialize. For example, Anjan, the Indian computer programmer, comes to the US just as the tech bubble is bursting and finds himself losing his job - and his immigration status - just as he learns his wife is pregnant with their first child. The strain on the couple's marriage is telling and when they return to India, it is with a terrible sadness at failing to make a success of their time in the US. Naima, the Palestinian woman, is torn between trying to live a quiet life in the US free from the raw emotion of the Arab-Israeli conflict. She works in a Jewish pre-school while her American husband is becoming a rising leader in an Arab political organization that is deeply involved in protesting Israeli policies in the region. The extremely frank dialogs between Palestinians in the documentary probably were some of the most interesting discussions I have ever seen on television concerning the conflict.

While immigrants can presumably relate to the stories presented in the series, the folks that one really wishes would have tuned in are the Lou Dobbs and others out there who have attempted to de-humanize immigrants in America and portray them as being criminals out to break our laws and steal our jobs. I doubt that people who buy into this are likely to be watching PBS and so I am somewhat pessimistic that the series will really have a big impact on the public debate. But I congratulate PBS and the series producers for bringing these stories to the American people. I also encourage you to visit the web site for the series at <http://www.pbs.org/independentlens/newamericans/newamericans.html> and to consider buying the videotapes of the series.

It's great having now practiced several years and knowing many of the best immigration lawyers in the country. It's even better seeing lawyers that started out around the same time I did in immigration law who are now becoming stars in this field. One such person is Margaret Stock. I met Margaret in the early 90s at an annual meeting of the American Immigration Law Association. She and I both were running our own immigration law offices in less traditional markets – Margaret in Anchorage, Alaska and me in Nashville, Tennessee. A few years ago, Margaret left Alaska to become a professor at West Point, the country's premiere military university. She is now one of the top experts on immigration and national security issues as well as immigration and the military. This week I has the pleasure of watching Margaret testify in front of the Immigration Subcommittee of the US Senate. Margaret ably argued that solid intelligence building is probably more effective in fighting terrorism than making immigration virtually impossible.

Finally, as always, we remind readers that we're lawyers who make our living representing immigration clients and employers seeking to comply with immigration laws. 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. ABC'S Of Immigration: US-VISIT

What is US-VISIT?

US-VISIT is part of a new immigration system that tracks the millions of visitors to the United States through the use of biometrics.

What is the purpose of the program?

US-VISIT is intended to help secure US borders and facilitate the entry and exit process for foreign visitors, while enhancing the immigration system and respecting the privacy of foreign visitors.

When Did US-VISIT go into effect?

On January 5, 2004, the US-VISIT program became operational at ten major airports and one major seaport nationwide. By September 2004, it will be operational at 115 US airports and the 14 seaports servicing major cruise lines. The Department of Homeland security expects to have all the exit kiosks in place by September 2004.

Will the new program affect all foreign visitors?

Only those visitors who are required to have a US visa for travel must submit to the new screening process, or they will be denied entry into the US. However, by September 30, 2004, residents of Visa Waiver countries will also have to comply with US VISIT requirements.

What is required of entering foreign visitors?

Foreign visitors are required to submit two electronic copies of their fingerprints, through the use of inkless fingerprint scanners, and a digital photograph of their face to inspection officers at routine interviews at US ports of entry. The submission of electronic fingerprints and a photograph is known as biometrics.

Will the program create longer lines at ports of entry?

According to officials, the entire process will add only fifteen seconds to the clearance process for entering visitors. The Department of Homeland Security claims it is committed to not dramatically increasing wait times at ports of entry into the US.

What are the exit procedure?

Exiting visitors will not have to submit to an interview. Foreign visitors leaving the US will check out of the country at electronic kiosks. This exit confirmation will allow Homeland Security officials to monitor visitors who have overstayed their visas. Visitors will be asked to scan their travel documents at the kiosk and repeat the fingerprinting process.

What are the consequences for a visitor who overstays his or her visa?

The consequences for overstaying vary. Depending on the circumstances, a visitor who overstays his or her visa may face a review with immigration officials, removal from the US or a bar from future entry into the country.

Why are biometrics being used?

Biometric identifiers will protect visitors from identity theft if their travel documents are stolen or duplicated. The addition of these identifiers will also make the security system more effective than a database of names alone. However, the Department of Homeland Security is probably most concerned with reducing visa fraud where people falsify their identity in order to gain entry to the US.

How will visitors' privacy be protected?

According to DHS, visitors' travel data is securely stored and made available only to authorized officials and law enforcement agencies on a need-to-know basis in order to protect US citizens and visitors from those who intend harm.

Which government agencies are involved with the program?

Within the Department of Homeland Security, US Citizenship and Immigration Services, US Immigration and Customs Enforcement, US Customs and Border Protection and the Transportation Security Administration are responsible for border security. Outside of the

DHS, the Department of Transportations, the Department of State and the General Services Administration are also involved in the program.

Who enforces US-VISIT?

The Secretary of Homeland Security is responsible for enforcing the provisions of the program. Within the DHS, The Undersecretary for Border and Transportation Security is responsible for implementing the program.

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 - I have a student whose boyfriend has applied for his adjustment of status. He underwent the medical test and is concerned about the HIV test. What would happen if he tested positive?

Would he be deported, asked to leave the country on his own or put under medical surveillance?

A - If he tests positive for HIV, then he will have to apply for a medical waiver and it may be very hard to get. You can find further information at:
http://uscis.gov/graphics/Medical_Exam.htm#pos.

Q - I am a legal permanent resident and I want to file I-130 for my son who is over 21 and not married. My question is this: can I file I-485 concurrently with I-130?

A - You would need to wait for the priority date for your son to become current before you could file the adjustment application. And that will be several years. Concurrent filing in family situations is only available in immediate relative cases - spouses of US citizens, minor children of US citizens and parents of US citizens.

Q- My wife and I are Green Card Holders and Indian Citizens. Through employment based petition 3 years back I got my Green Card and as my spouse my wife got her Green Card. My wife is going to go for 4 months for trip to India. Last year she had visited India for 2 months. Couple of years from now, I believe we will be eligible for citizenship application.

As far as citizenship application is concerned, 4 months absence from USA, will it cause any problem?

A - 4 months of absence would not be a problem for a citizenship application. You would only run into problems if any trips were more than six months and/or you had not been in the US for half of the five year residency period required to apply for citizenship.

Q - How long after I have got an H1B visa can I apply for a green card?

A - There's no waiting period. In fact, many people apply for the green card even before they get the H-1B.

Q - Hi, I am being transferred by my company to the US under an L1. My wife is already there under an H1-B. If she wanted to adjust her status to L2 would there have to be a gap in her employment or can she continue working for her employer until she gets her L2?

A - Unfortunately, there's no way to avoid the gap since she would first need to be in L-1 status to apply for the employment card.

4. Border and Enforcement News

The increase in arrests involving illegal entry into the US from Mexico may indicate that alien smugglers are in a rush to beat the Border Patrol enforcement effort announced earlier this month that will begin in June. Unmanned aerial vehicles, more helicopters and 200 new agents will be working on the Arizona-Mexico Border as part of what is being called the Arizona Border Control Initiative. Although arrests of illegal border crossers in large numbers and in vehicles have been more common in the past couple weeks, but the agency is not saying why they are occurring.

Mexican and American officials met in Mexico City recently to discuss plans to repatriate Mexican some border crossers deep into Mexico rather than returning them to the border. Mexican officials insist that any such program must be voluntary, and have concerns about funding and logistics. The US effort is aimed at stopping the revolving door of illegal immigration in border states, particularly Arizona. Due to tightened border security in California and Texas, Arizona is becoming a key state of entry for illegal immigrants, accounting for about 40% of all illegal entries. Most migrants caught illegally crossing are quickly transported to the border, where many try again repeatedly to cross within a short time frame. Last year, of the 400,000 people caught illegally entering the US in Arizona, federal prosecutors brought charges against only 3,000.

Various government departments have been working on creating a unified terrorist watch list. This unified database would allow police and airport inspection officials to run names against one list of suspected terrorists. This effort has met several challenges because the nine agencies involved have twelve lists, which are incompatible and contain overlapping but different information. Other challenges are the need for established guidelines to determine the criteria for adding and removing names to the list, how information is shared across different agencies and how agencies should react to a "hit" on the list.

In written testimony to a joint hearing of subcommittees for the House Judiciary and Homeland Security committees, Director of the Terrorist Screening Center Donna Bucella stated that the center is in phase three of unifying the lists, which should be concluded before the end of 2004. According to Bucella this third phase would "create a more dynamic database and use a single, integrated system for ensuring known or suspected terrorists' identities are promptly incorporated into all appropriate screening processes."

The Customs and Border Protection Bureau (CBP) has requested \$340 million in spending increases for 2005 in order to implement its 'smart border initiatives.' The bureau wants to improve its technology in order to identify high-risk containers being brought into the US instead of trying to inspect close to 23 million containers every year. CBP stated that its goal is not to find large amounts of dangerous cargo but to deter terrorist groups from exploiting cargo containers.

5. News From The Courts

Flores-Chavez v. Ashcroft
2004 U.S. App. LEXIS 5572
US Court of Appeals for the 9th Circuit
No. 01-70748

The petitioner was fifteen years old when the INS detained him for illegally entering the United States and then released him into the custody of an adult relative. The INS only served the petitioner with the Order to Show Cause and the information specifying the date and time of his upcoming hearing and his attendant rights and obligations. Although the adult relative was presumed to take responsibility for the petitioner's appearance at his deportation hearing, the agency did not serve the adult with the Order to Show Cause and Notice of Hearing. The petitioner failed to appear at the hearing and was ordered deported in absentia.

The BIA rejected the petitioner's claim that he did not receive adequate notice because the INS was required to serve only him and not the adult to whom he was released into the custody of because he was over fourteen years of age. The Court found that the petitioner was not give proper notice of his deportation proceedings and therefore ordered that he be released from government custody. The Court held that since the adult was responsible for ensuring the petitioner's appearance at the proceedings, the INS should have been required to give notice of the hearing to that adult. Accordingly, the only reasonable interpretation of the regulation required that the agency serve notice to both the juvenile and to the person to whom the regulation authorizes release.

Dominguez-Olivas v. Ashcroft
2004 U.S. App. LEXIS 3007

Miguel Manuel Dominguez-Olivas appealed from a decision of the Board of Immigration Appeals, which denied his request to reopen his application for cancellation of removal. The Appellant claimed that because his attorney did not file a supporting brief and did not inform

him that his appeal was denied, his attorney's performance on his original appeal to the BIA constituted ineffective assistance of counsel.

The Ninth Circuit Court of Appeals held that the denial of the appellant's motion to reopen his application was not an abuse of discretion, despite the presumption of prejudice that arose from the attorney's failure to file a supporting brief on appeal because the Appellant had no plausible grounds for relief because he failed to show extreme hardship to his U.S. citizen daughter.

The Court also remanded the motion to reopen for consideration of the Appellant's voluntary departure after finding that because the Appellant was significantly prejudiced in his appeal of the denial of his application for cancellation of removal by his attorney's failure to file a brief renewing alien's petition for voluntary departure and to notify alien of the denial of his appeal, the Appellant was not on notice of the court's remand for consideration of his request for voluntary departure. As a result, he was granted voluntary departure by the Immigration Judge but could not take advantage of it since he did not know his case had been resolved.

6. Government Processing Times

Processing times are available this week for the following service centers:

California (04/01/2004): <http://www.visalaw.com/california.html>

Nebraska (04/01/2004): <http://www.visalaw.com/nebraska.html>

7. News Bytes

Salomon Juarez, who had a deportation order, was hired by Superior Protection to patrol the Houston, Texas immigration office as an armed guard. Mr. Juarez was arrested on March 3 and Superior Protection is now under a federal investigation. The investigation will also look at the role of the Federal Protective Service, the federal agency that contracts with Superior Protection for security at many federal offices in Houston. The agency is also responsible for conducting background checks for security employees.

Juarez entered the US in 1992 and was charged with possession of a firearm as an illegal immigrant. Juarez's attorney stated that Juarez's is in "legal limbo" and that at the time the background check was conducted, Juarez did have a legal work permit. That permit has since expired.

Immigration and Customs Enforcement (ICE) officials have announced that the "Hartford Pilot Program" being conducted in Hartford, Connecticut to determine the impact of detaining immigrants who have been issued final removal orders has been extended to Denver and Atlanta. Instead of allowing immigrants several weeks to reappear for their deportation, under the program, ICE immediately detains these immigrants in order to ensure that those who have been issued removal orders are removed quickly.

Over 40,000 non-detained immigrants fail to leave the country each year after they have been granted voluntary departure by a judge according to ICE. ICE currently has a list of 400,000 absconders who must be deported, including 80,000 criminal immigrants.

A General Accounting Office (GAO) study conducted in 2001 discovered that only 15% of those immigrants not immediately detained actually depart the country. The Hartford Pilot Project has reported that so far, 94% of those detained by ICE at the time of the judge's order are removed from the US. The remaining 6% cannot be removed for diplomacy/foreign relations issues.

Immigration advocates are calling the program unconstitutional and are requesting less costly alternatives.

At a meeting of the Homeland Security Advisory Council, Homeland Security Secretary Tom Ridge announced his priorities for the following year. Included in his priorities are expanded information sharing, greater infrastructure protection, improvements in cross-jurisdictional communication and the use of new technologies and new tools to enhance the department.

Ridge said the department plans to work to loosen visa restrictions on non-immigrant foreigners, particularly for business and student applicants. He acknowledged that businesses have been negatively affected by the increased travel restrictions since the September 11 terrorist attacks, and that the department will do its best to ease them.

Ridge has said that the budget proposed by President Bush for FY 2005 would provide adequate funding for putting these priorities into action.

The US Citizenship and Immigration Service (USCIS) is reminding those with applications for adjustment of status to that of lawful permanent resident to obtain Advance Parole by filing Form I-131 (Application for Travel Document with the USCIS before traveling abroad) before leaving the United States. Travel outside the US without advance parole could yield harsh penalties for certain people who are in the process of adjusting their status, as they may be unable to return to the US, their applications may be denied or both.

The USCIS announced on March 23, 2004 that thousands of illegal immigrants may qualify for amnesty under the terms of a settlement of two lawsuits filed in the 1980's. Those eligible must fall within narrow criteria, including entry into the US prior to January 1, 1982, unlawful residence in the US until May 5, 1987, and refusal of amnesty in the past for reasons such as visa violations or leaving and returning illegally. The new application period is from May 24, 2004, to May 23, 2005, and an English form application will soon be available online at the agency's website.

8. International Roundup

Spanish police arrested five more people with suspected links to the March 11 train bombings. Three were identified as Moroccans. Germany's federal prosecutor's office,

confirmed that authorities had searched the apartment of a Moroccan man in the central city of Darmstadt in connection with the terrorist bomb attacks in Madrid.

If the suspicions against the Moroccan were to be found true, then it would be the second link to Germany of radical Islamic terrorism, after the core conspirators in the September 11, 2001 suicide plane attacks have lived in the northern German city of Hamburg.

The 2004 Athens Olympics will be the first Summer Games since the Sept. 11, 2001 terrorist attacks that changed the world. For the first time, spectators at the ancient site were forced to go through metal detectors. Greece presents what security planners call a challenge.

The nations involved are working closely with the FBI, the CIA and other intelligence agencies to minimize the threat that terrorists might try to carry out strikes during the Olympic Games in Athens this Aug. 13-29.

Thousands of illegal immigrants from Iraq, Iran, Afghanistan and elsewhere cross from Turkey to the Greek islands and mainland every year, raising fears terrorists could use similar routes. Neighboring Turkey has blamed al-Qaida for a pair of truck bombings in Istanbul last November, and concerns have risen that terrorists might use Turkey as a staging point to strike Greece during the Olympics.

The Tel Aviv District Court issued sentences ranging from seven years in jail to a one-year suspended sentence to three people, including a woman, convicted of trafficking in women from the former Soviet Union. The court said the sentences in the plea bargain deals did not fit the severity of the crime.

Interior Minister Avraham Poraz decided to give victims of women trafficking residency and work visas in Israel without having to undergo a long bureaucratic process. "This is a basic human step for the protection of the victims of human trafficking" Poraz said.

While U.S. anti-terrorism measures are making visas tougher to get, many European countries are granting citizenship to children of European immigrants around the world. Even though Europe may be more wary of foreigners in the wake of the March 11 subway bombings in Madrid that killed more than 190 people, Venezuelans of European descent will reach Europe as citizens with passports in hand, rather than as immigrants. This, many say, makes the U.S. a much less attractive alternative.

Italian, Portuguese and Spanish consular officers have unofficially estimated that there could be as many as 300,000 Venezuelans eligible for European Community passports.

The home secretary of the United Kingdom stopped all visa applications last week from Bulgarians and Romanians wanting to enter Britain after allegations of an organized immigration scam. Letters leaked revealed that the Immigration and Nationality Directorate had been warned of the scam as far back as August 2002.

Among the leaked documents are letters showing that migrants from Bulgaria and Romania were allowed to come to Britain to set up businesses even though some could speak no English, had few skills and had no money. All immigration applications from Bulgaria and Romania were immediately suspended as the British Home Office attempted to deal with the allegations regarding immigration controls.

9. Legislative Update

[H.R.4035](#): To amend section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide a 2-year extension of supplemental security income in fiscal years 2005 through 2007 for refugees, asylees, and certain other humanitarian immigrants.

Sponsor: Rep Cardin, Benjamin L. [MD-3] (introduced 3/25/2004)

Committees: House Ways and Means

Latest Major Action: 3/25/2004 Referred to House committee.

Status: Referred to the House Committee on Ways and Means.

[H.R.4041](#): To waive, in fiscal year 2004, the numerical limitation applicable to a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, if the employer petitioning on behalf of the nonimmigrant employed such a nonimmigrant in fiscal year 2003, and for other purposes.

Sponsor: Rep Goodlatte, Bob [VA-6] (introduced 3/25/2004)

Committees: House Judiciary

Latest Major Action: 3/25/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[H.R.4049](#): A private bill for the relief of Ahmad Khabaz Taghizadeh and Azammolok Taghizadeh Vatani.

Sponsor: Rep Jackson-Lee, Sheila [TX-18] (introduced 3/25/2004)

Committees: House Judiciary

Latest Major Action: 3/25/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[H.R.4052](#): To increase the number of aliens who may receive certain nonimmigrant status during fiscal year 2004 and to require submissions of information by the Secretary of Homeland Security.

Sponsor: Rep Delahunt, William D. [MA-10] (introduced 3/29/2004)

Committees: House Judiciary

Latest Major Action: 3/29/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[H.R.4055](#): A private bill for the relief of Amina Silmi.

Sponsor: Rep Kucinich, Dennis J. [OH-10] (introduced 3/29/2004)

Committees: House Judiciary

Latest Major Action: 3/29/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary

[H.R.4064](#): To require certain Federal service contractors to participate in a pilot program for employment eligibility confirmation.

Sponsor: Rep Blackburn, Marsha [TN-7] (introduced 3/30/2004)

Committees: House Judiciary; House Education and the Workforce
Latest Major Action: 3/30/2004 Referred to House committee.
Status: Referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

[H.R.4098](#): A private bill for the relief of Zhuljeta Zhegra.
Sponsor: Rep Brady, Robert [PA-1] (introduced 3/31/2004)
Committees: House Judiciary
Latest Major Action: 3/31/2004 Referred to House committee.
Status: Referred to the House Committee on the Judiciary.

[H.R.4099](#): A private bill for the relief of Shpetim Daku.
Sponsor: Rep Brady, Robert [PA-1] (introduced 3/31/2004)
Committees: House Judiciary
Latest Major Action: 3/31/2004 Referred to House committee.
Status: Referred to the House Committee on the Judiciary.

[S.2252](#): A bill to increase the number aliens who may receive certain non-immigrant status during fiscal year 2004 and to require submissions of information by the Secretary of Homeland Security.
Sponsor: Sen Kennedy, Edward M. [MA] (introduced 3/29/2004)
Committees: Senate Judiciary
Latest Major Action: 3/29/2004 Referred to Senate committee.
Status: Read twice and referred to the Committee on the Judiciary.

[S.2258](#): A bill to revise certain requirements for H-2B employers for fiscal year 2004, and for other purposes.
Sponsor: Sen Hatch, Orrin G. [UT] (introduced 3/30/2004)
Committees: Senate Judiciary
Latest Major Action: 3/30/2004 Referred to Senate committee.
Status: Read twice and referred to the Committee on the Judiciary.

There are currently two draft bills in the Senate, one with Republican support that would increase the cap by 40,000 this fiscal year, and one with bipartisan support that would allow employees who have worked for a specific employer during the past two years to return to that employer without counting against the cap. There was also at least one bill introduced in the House as of March 25, 2004. The House bill would allow employers to hire the same number of H-2B employees they received last year.

The Maryland House of Delegates gave preliminary approval to a bill that will grant in-state tuition at public colleges and universities to undocumented immigrants. The bill would allow undocumented immigrants to receive in-state tuition if they attend a Maryland high school for at least three years, graduate from high school, pay withholding tax on income for at least one year, and sign an affidavit affirming they will apply for permanent residency.

Last year, Governor Robert L. Ehrlich Jr. vetoed a similar bill, but he claims that his concerns have been addressed in the current bill and does not anticipate another veto.

For a review of all the immigration bills that have been recently introduced, visit our legislative chart at www.visalaw.com/advocacy.html.

10. Campaign 2004

Utah's Third Congressional District election race between incumbent Rep. Chris Cannon and former state Rep. Matt Throckmorton has turned to the issue of immigration reform. The candidates' differences are rooted in their views towards proposals giving illegal farm workers in the country a chance to become permanent residents.

Negative campaign advertising has turned the campaign into a "single-issue race," third Republican candidate Greg Hawkins told The Salt Lake Tribune on March 29, 2004. The May 8 state Republican primary winner will face the sole Democratic challenger, Beau Babka.

President Bush defended his immigrant proposal on March 26, claiming that it would not give priority to illegal aliens from Mexico over legal immigrants in the U.S. The President emphasized the need for humanitarian treatment toward those illegal Mexicans who are helping the American economy by filling menial jobs that U.S. workers do not want.

The proposal is unpopular among conservative voters, a constituency that the President needs during the upcoming election.

11. US-VISIT Extended to Visa Waiver Countries

The US will begin electronically fingerprinting and photographing individuals from Visa Waiver Program countries beginning no later than September 30th of this year. The announcement by the Department of Homeland Security and Department of State jointly announced the extension of the US-VISIT program to nationals of the 27 Visa Waiver Program countries and also noted that the deadline for those 27 countries to start issuing machine-readable passports will be extended until October 2006. More than 2.5 million people have already been processed under the US-VISIT program since it was launched in early January of this year.

"In our ongoing collaboration between the Departments of State and Homeland Security, we are making two complementary decisions," said Asa Hutchinson, Under Secretary of Border and Transportation Security of the Department of Homeland Security. "Since most countries are unable to meet the original October 2004 date to include biometrics in passports due to several technology-related reasons we have asked Congress for a two year extension of that requirement. Also, by September 30, visitors traveling under the Visa Waiver Program who arrive at airports and seaports will be enrolled in US-VISIT."

The Visa Waiver Program is used by 13 million visitors each year from 22 countries as well as Australia, Singapore, New Zealand, Brunei and Japan. For more information on the

program, visit the article on our web site at <http://www.visalaw.com/02feb2/12feb202.html>.

The US-VISIT program is already being used to track visitors from the rest of the world's countries. The Department of Homeland Security claims that more than 200 individuals have already been intercepted due to immigration or criminal violations as a result of the US-VISIT program. These include convicted rapists, drug traffickers, individuals convicted of credit card fraud, a convicted armed robber and numerous immigration violators and individuals attempting visa fraud. Biometric identifiers will make it harder, according to the DHS, for individuals to enter the US using false documents.

Under the program, Visa Waiver visitors will arrive at a US airport or seaport and will be enrolled in US-VISIT as part of the primary inspection process. Later, land entry points will also use US-VISIT. Visitors will have their left and right index fingerprint scanned using an inkless digital scanner. They will also have a digital photograph taken. As before, immigration inspectors will also review the applicant's travel documents and will question the applicant about their intended stay in the US. According to the Department of Homeland Security, the fingerprinting and photographing of applicants will only add about 15 seconds to the entry process.

Another major change that will take effect on September 30th is the introduction of exit tracking. Visitors will be required to register their departure from the US in a new exit confirmation computer system at their port of exit from the US.

Asa Hutchinson, Undersecretary of Homeland Security, told reporters that his agency has received intelligence that terrorists have considered using the Visa Waiver program as a vehicle to gain entry to the United States. He also acknowledged that other countries might retaliate by instituting reciprocal measures for American visitors to their countries. But Hutchinson said the Bush Administration would welcome such measures. He further indicated that the Department of Homeland Security did not believe the new measures will deter tourists from entering the US.

Brazil has already been fingerprinting American visitors since the US-VISIT program rolled out in January. And this week China stated that it would now prohibit US citizens from applying for visas at Chinese airports and would require some American citizens to be interviewed for tourist visas. But some European government spokesmen indicated that they would not object to the changes and were considering similar measures in the wake of the Madrid bombings.

Travel industry officials have expressed concern that the new measures will create enormous problems. "While we appreciate the rationale for the federal government's action, TIA is nonetheless greatly disappointed and very concerned about potential negative reactions in key inbound tourism markets in western Europe, Japan and other important Visa Waiver countries," said William S. Norman, president and CEO of the Travel Industry Association of America ("TIA"). "We expect 2004 to be a turnaround year where the travel industry can finally see positive growth in inbound international travel to the US. Therefore, we are concerned that this announcement will discourage visitors to the extent that they choose other destinations," said Norman.

The TIA reminded the Bush Administration that since 9/11, inbound overseas travel to the US has declined by 30 percent. According to the TIA, a forecast increase of 5% in foreign tourism, mostly from the UK, a Visa Waiver country, was in jeopardy.

12. Farm Worker Bill Gaining Momentum

Members of Congress are pushing forward with legislation that would legalize as many as 500,000 undocumented immigrants employed as farmworkers. The Bush administration has yet to endorse this measure, but analysts believe that this measure stands a better chance of winning approval before the general election in the fall than other immigration reform measures.

The Agricultural Job Opportunity, Benefits and Security Act, or "AgJobs Bill," has been in the works for over seven years. Backers of the bill include the American Farm Bureau, the United Farm Workers, the AFL-CIO, the U.S. Chamber of Commerce, and the National Council of La Raza.

Under the bill, immigrants who could prove they worked in agriculture for 100 days from March 1, 2002, to August 31, 2003, would qualify for a temporary-work visa. They could then "earn" legalized status if they continue to work in agriculture for at least 360 days over the next six years. The bill would also make it easier for farmers to hire foreign workers through a less bureaucratic temporary-visa program.

Sen. Larry Craig, R-Idaho, and Sen. Edward Kennedy, D-Mass., the bill's chief sponsors, have attracted 54 sponsors so far from both parties. Over the next couple of weeks, the pair seeks to gain 60 votes of support, which would allow the bill to overcome delay tactics in the Senate.

The bill still faces considerable opposition in the House, with only 94 House co-sponsors, far short of the 218 needed for passage.

13. Cannon Suggests Anti-immigration Groups May be Fronts for Hate and "Anti-Life" Organizations

Utah Congressman Chris Cannon charged that some of the groups that are leading the fight against the legalization of undocumented workers are fronting for hate groups as well as groups with "anti-life" agendas such as free on-demand abortion, sterilization of low-income people, and euthanasia of the elderly.

Cannon is one of the sponsors of a bill to give farm workers who are in the country illegally an opportunity to become permanent legal residents. Last week he spurred the debate with accusations at a House Judiciary subcommittee hearing.

After all other members of the panel had left to vote on the floor, Cannon questioned anti-immigration witnesses for 40 minutes. The interrogation ended when the subcommittee chairman came back to the room and ordered Cannon to end the questioning.

Cannon questioned organizations, such as the Center for Immigration Studies, NumbersUSA, and the Diversity Alliance for a Sustainable America about their ties to John Tanton, former Zero Population Growth president and founder of the Federation of American Immigration Reform. Representatives acknowledged that their groups were involved with the network of nonprofits founded by Tanton although denying the characterization offered

by Cannon. Also, the groups stated that Tanton did not control them, nor do they share in any of the purported extreme beliefs.

Cannon read off newspaper articles about Tanton, including one from the The Wall Street Journal, which stated that Tanton has received more than \$1.5 million from the Pioneer Fund, a white supremacist organization promoting racial purity through eugenics, a theory of selective human breeding espoused by Adolf Hitler's Nazi regime. He also stated that Tanton received money from groups that finance research to prove the genetic superiority of the white race and fund abortion promotion.

Members of the targeted groups argued that the lower-income, uneducated U.S. citizens would suffer the most from the plan to legalize large groups of immigrants. They believe it would drive down wages and allow employers to find even more employees overseas.

14. Indiana Motor Vehicle Agency Gets Involved in Immigration Enforcement

In Elkhart County, Indiana, employees at the Bureau of Motor Vehicles are being instructed to call police if they have doubts about documents that cross their counters. Police and prosecutors will respond with arrests and felony charges, as warranted.

The new policy comes after months of publicity about lax security and fraud at BMV branches in Indiana. Under a statewide BMV policy that started March 15, the local focus is on foreign nationals. The BMV will work with federal immigration officials to determine the validity of all immigration documents presented as identification at license branches. The comparison of the presented documents with official ones will happen in Indianapolis, where a BMV office will have access to a federal immigration database.

Pending verification, local license branches will issue 60-day driving permits to applicants. Applicants whose documents fail the immigration check will be notified by mail and given the chance to pursue an administrative appeal.

Immigration advocates are questioning the motives of the BMV, and the focus on foreign nationals has raised concerns among many immigrant groups. Some advocate groups have said that the whole community, not just immigrants, will be negatively affected if immigrants who live and work in this area feel forced to drive without licenses or insurance. Advocates are also questioning the BMV's participation in immigration enforcement, beyond its traditional focus on motoring.

BMV officials maintain that they cannot issue driver's licenses to people who cannot prove their legal right to be here, especially since driver's licenses serve as fundamental identity documents.

15. CLEAR Act Calls For Local Police To Enforce Immigration Policies

Several conservative lawmakers are warning that they will not support President Bush's proposal to legalize some undocumented immigrants unless a newly introduced bill is approved. The Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act would not only allow federal agents to ask about a person's immigration status but also let local police get involved. Currently, local police are not allowed to inquire about someone's status.

Under the CLEAR Act, cities and states could lose some federal grants if their police refuse to help the Department of Homeland Security track down illegal immigrants for deportation. The bill calls on local and state police to enact policies that let officers ask for immigration papers as easily as they do driver's licenses. If an immigrant is found to be undocumented, the local officers could arrest him or her.

More than 115 lawmakers have co-sponsored the bill, claiming that local and state police are the first line of defense and would supplement overburdened federal immigration agents.

Some police officials, however, say that making the CLEAR Act a law would be counterproductive, and some immigration advocates are working to defeat the bill.

The ACLU and other critics of the CLEAR Act doubt that local police would receive adequate training to properly fulfill their new duties, and worry that racial profiling would occur if police assume all immigrants are here illegally.

Congress has held hearings on the proposal, which is in committee.

16. Lawmakers Urge DHS to Rethink Certification Requirements for Foreign Educated Nurses

Fourteen US senators wrote a letter to Homeland Security Secretary Tom Ridge last week, urging him to delay the effective date of a Department of Homeland Security regulation that they are concerned will aggravate the country's current nursing shortage and disrupt the delivery of health care services in many hospitals.

Section 343 of the Illegal Immigration Reform and Immigration Responsibility Act is of concern to the lawmakers because it states that health care workers, excluding physicians, must acquire a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) to be admitted to the US to work in their fields. In the letter, the lawmakers state that this condition is superfluous in that it applies to foreign health care workers currently licensed to work in a state, who have passed a state licensing exam, and to foreign professionals who were educated in the United States.

The group of senators suggests that implementation of this regulation will increasingly burden CGFNS's workload and cause delays to the already lengthy process of obtaining certificates.

The Senators have urged DHS to postpone the effective date of the regulation until October 1, 2005, in order to provide these nurses time to complete the certification process rather than deem these nurses unable to work.

17. Letter to the Editor

Dear Editor:

In the March 29, 2004 edition of *Siskind's Immigration Bulletin* a question was asked dealing with a green card that was renewed the previous year. The writer went on to say that he "used (sic) to file tax returns initially but was advised that it is not needed since I have no earned income in US." The writer indicated that his last filing was sometime before or after 1995. Furthermore, he has an online stock brokerage account in the US and that he has been using this actively since 2001 along with other equity and brokerage accounts. In addition, he travels for business and pleasure 2-3 times per year in and out of the US (mainland, Guam, Saipan). He thought by visiting a US territory every 6 months, he was safe to hold his green card and questioned his status.

The response was that he should be concerned about his green card status and he could likely be stopped at the border and given problems. The response went on to say that it is very possible he could be found to have abandoned his permanent residence in the US. In short, he needs to document that he made the US his primary place of residence... You strongly recommended that he consult with an immigration lawyer to assess his case.

I also suggest he consider talking to a tax lawyer about his status. If an alien has a green card, the alien is a resident and taxed on his or her worldwide income wherever earned, just as if the alien was a US citizen. A resident alien for tax purposes is defined as an individual who has been lawfully admitted to the US for permanent residence as well as someone who meets the substantial presence test. An alien is a lawful permanent resident (for IRS purposes) if he/she has been lawfully admitted to the U.S. for permanent residence in accordance with US Citizen and Immigration Services (USCIS) laws and that status has not been "administratively or judicially determined to have been abandoned". Therefore, if an alien has a green card that has not been revoked by USCIS or abandoned as determined by a court, for tax purposes the alien can be considered a US permanent resident no matter where he or she makes his or her home. It appears from the limited information provided that the writer is also not in compliance with the US tax laws.

Sincerely,

Ronald P. Rivelli