

Siskind's Immigration Bulletin  
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1. Openers
2. The ABC'S Of Immigration: S Visas for Aliens Assisting Law Enforcement
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. New Regulation to Extend Validity of Employment Authorization Documents
11. Department of Agriculture Employee Arrested for Visa Fraud
12. USCIS Changes to Passport-Style Photographs Effective 9/1/04
13. SEVIS Fee Required Before Applying for Visas
14. Astounding Drop in the Issuance of Non-Immigrant Visas

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1. Openers

Dear Readers:

Greg Siskind is taking a long-deserved vacation and this week and the next I will be joining you as a guest-editor. This has been a very busy summer in the immigration front. As the summer progresses, not a week passes without a major change or announcement. This week we have news about changes in the EAD processing, the implementation of the SEVIS fee rule for students and exchange visitors in the F, J, and M statuses, and the new immigration photo requirements. We also are publishing an updated version of our ABCs article on S visas. S visas, also called snitch visas, are a true rarity and we sincerely hope that our readers will not need to utilize them. They are issued to individuals who seek entry to the US to testify against criminal organizations, terrorist organizations, etc.

A new regulation was published, enabling examiners to issue EADs for periods longer than a year. This should be a life-saver in many lengthy immigration applications. Before this regulation, EADs were issued for a maximum period of one year. As you know, many immigration applications may take several years to complete and therefore applicants had to go through the motions of renewing their EADs every year, until the completion of their applications. This was not only an inconvenience for the applicants (and a major risk for falling out of status, if the EAD was not issued in a timely manner), but, also a huge administrative burden on the CIS. Under the new regulation, CIS can issue EADs for longer periods than a year. This should cut their work significantly and offer convenience to applicants.

Also, the SEVIS fee collection is now a reality. Department of State issued a cable about the fee collection and clarified who is and who is not subject to the fee. Initially the fee will be collected by the DHS, but the Department of State is also testing the feasibility of collecting the fee via the Consular posts at two pilot programs in China and India. It is no surprise that China and India were chosen for the pilot program: those are the two countries with the highest number of student and exchange visitor visa applications.

DOJ and DHS are cracking down on websites "impersonating" official government immigration websites. These websites try to create the impression that they are official US government websites and attempt to use this impression for financial gain. Naturally they use lots of red, blue, and white, US flags and real links to official US government websites, but actually are fraudulent operations. We advise our readers to keep in mind that most official US government sites end with ".gov". Websites ending with ".com", ".us", ".org", ".net", ".cc", etc. are almost never official US government websites. So, please exercise caution and don't be a victim of these impersonators.

Additionally, we are printing interesting data on the decreasing number of nonimmigrant visas being issued. In the last couple of years, the number of visas issued decreased significantly. The major decrease was in B (business and tourism) visas. Especially the decrease in tourism visas is bound to have a significant impact on the US economy.

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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,

Arda Beskardes

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## 2. The ABC'S Of Immigration: S Visas for Aliens Assisting Law Enforcement

We hope that none of our readers ever need to make personal use of this information, but in the interest of making a complete survey of the nonimmigrant visa classifications, this week's article discusses the S visa, often known among practitioners as the "snitch visa."

### **What is an S visa?**

The S visa is given to aliens who assist US law enforcement to investigate and prosecute crimes and terrorist activities. Until 1994, there was no separate classification for such people. Instead, they were admitted into the US in parole status. In 1994, The Violent Crime Control and Law Enforcement Act created the S category. There are two types of S visas, the S-5 and S-6.

### **How does one qualify for an S-5 visa?**

To qualify for an S-5 visa, the Attorney General must determine that the person -

- \* Possess reliable information regarding an important aspect of a crime or pending commission of a crime,
- \* Is willing to share this information with law enforcement officials or to testify in court, and
- \* That their presence in the US is necessary to the successful investigation or prosecution of the case.

### **How does one qualify for an S-6 visa?**

To qualify for an S-6 visa, both the Attorney General and the Secretary of State must determine that the person -

- Possesses reliable information regarding an important aspect of a terrorist organization or plot,
- Is willing to share this information with law enforcement officials or to testify in court,
- Has or will be placed in danger for providing that information, and
- Is eligible to receive an award from the State Department for providing such information.

### **How does one apply for an S visa?**

The petitioner in an S visa classification is the law enforcement agency with which the alien is cooperating. The application is made on Form I-854, called the Inter-Agency Alien Witness and Informant Record. The application must include the agency's reasons for seeking the cooperation of the alien. The law enforcement agency must also assume responsibility for the alien from their admission until departure. Spouses unmarried and married children and parents of S-5 and S-6 nonimmigrants are allowed to enter the US in S-7 status. They must be included on the Form I-854.

### **How many S visas are issued annually?**

Only 200 people may be admitted in S-5 status each year, and only 50 may be admitted in S-6 status. The maximum period of admission in S status is three years.

It may strike many as odd that the US has a special program for admitting S nonimmigrants. These people must be sufficiently involved in criminal or terrorist activity to provide information to US law enforcement, which would ordinarily render them inadmissible. They are allowed in the US because under the S visa program the Attorney General is authorized to waive all grounds of exclusion except those involving Nazi persecution and genocide if such a waiver is in the national interest.

### **Are there any restrictions for S visa holders while they are in the US?**

S nonimmigrants are subject to many restrictions while in the US. These are:

- Reporting to the Attorney General every three months regarding their whereabouts and activities;
- Not being convicted of a crime that is punishable by one or more years in prison;
- They must agree that they will not contest a deportation order by any means other than an application for withholding based on fear of persecution if returned home if the deportation proceedings are begun before the alien becomes a permanent resident; and
- They must adhere to any other conditions on their stay the Attorney General imposes.

### **Can S visa holders adjust their status?**

S visa holders are allowed to adjust status to permanent resident under a special provision under Section 245(j) of the Immigration and Nationality Act. If the information supplied by the alien has "substantially contributed" to a successful investigation or prosecution of a crime, they are eligible for adjustment of status. Similarly, if the alien's information "substantially contributed" to the prevention of an act of terrorism, or to the apprehension of a person involved in terrorist activities, they are allowed to adjust their status.

### **What options do family members of S visa holders have?**

Spouses, unmarried and married children and parents of S-5 and S-6 nonimmigrants are allowed to enter the US in S-7 status. Family members who have been admitted in S-7 status are allowed to adjust status as well. As with the initial application for S status, the application for permanent residency must be made by the law enforcement agency and must be filed on Form I-854. The application must be approved by the Assistant Attorney General in charge of the Criminal Division of the Justice Department and by the Commissioner of BCIS. After this approval, the alien is allowed to apply for adjustment of status on Form I-485.

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3. [Ask Visalaw.com](http://Ask-Visalaw.com)

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

Q - I wanted to know if for the October 2004 quota of H-1B Visas, we would need to go back to the country of origin to have the visa issued? I am currently residing in Texas and am on Optional Practical Training which will expire January 2005. I filed for H-1B on April 10, 2004 for the October Quota.

A - If you asked for a change of status and your OPT does not expire until January, you should be okay to change to H-1B status from within the US in October. Since the visa numbers for the Fiscal Year 2005 is also anticipated to be used up very early, it is recommended that you apply for your change of status as early as possible.

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Q - My name is Danuta Zablocki, I am a Polish citizen residing permanently in USA. I have a green card. In three weeks I am going to visit Poland. I already bought a ticket to Warsaw. I recently heard from my friend that I have to apply for USA visa to be able to return to USA from my vacation. Is that really truth?. If so, where I have to apply for this visa and how long does it take to get it. I have a Polish Passport and a Green Card.

A - You do not need a visa if you are a green card holder. Occasionally, if you are traveling for long periods of time, you might want to get a reentry permit. But for a short trip like this, that will not be necessary

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Q - My green card is in process and my labor certification application has gone from state (SWA) to regional (USDOL), but my management is changing, so the person who initially signed for my LCA application will no longer be with the company. Will this affect me when I file for I-140 and I-485?

A - The departure of the employee of the company who signed your initial paperwork would not be a problem assuming that the company is still the same company and there are no major corporate changes. That does not sound to be case here.

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Q - I am a student in USA. I first came on F-1 visa last year and then went back for summer vacation. When I returned from the summer vacation at airport immigration the officer asked me to write down the old I-94 number on a new card and I did so but he did not cross out the printed number. Now there are two numbers on my I-94 and I am not sure that which number is being used in INS on my file. Can you please let me know that what number should I use or any way I can find out that what is the number that INS is using for me?

A - It is the number that you handwrote. The same number should have been handwritten on your visa page and your I-20 when you initially entered. It may change in the future, but for the time being that is your permanent I-94 number as long as you stay a F-1.

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Q - I just got my green card, so can I sponsor my sister (who is here in the US on student visa) for a green card now or do I have to wait until I get my citizenship?

A - You would not be able to sponsor your sister until you become a citizen. You can only sponsor your spouse and children right now. Citizens can sponsor those relatives plus parents and siblings.

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#### 4. Border and Enforcement News

An Arizona faith-based campaign that goes by the name *No More Deaths* has made it their mission to aid efforts of undocumented immigrants, saying that they are saving lives. The No More Deaths campaign has 239 volunteers and have aided over 500 people in the desert by feeding, giving water and sometimes bringing them into Tucson for medical aid.

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California border patrol officials announced last week that despite rumors, border patrol is not conducting door-to-door immigration raids in the Central Valley. It was suggested that robbers are impersonating border officials as a way to get into the victims' homes. Officials are telling anyone who was tricked by robbers impersonating immigration officials to call the police.

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#### 5. News From The Courts

Castellanos Garcia v. Ashcroft  
U.S. Court of Appeals for the Ninth District  
2004 U.S. App. LEXIS 9477

Petitioners Mario Rene Castellanos Garcia, his wife and five children, appeal from the Board of Immigration's affirmation of the Immigration Judge's ("IJ") denial of the Petitioners' application for asylum and withholding of removal. Upon review, the U.S. Court of Appeals for the Ninth District remanded based upon its finding that the IJ's adverse credibility finding was not supported by substantial evidence.

The Petitioners, natives of Guatemala, were imprisoned, threatened with death, and tortured by the military due to their cooperation with United Nations Inspection Mission to Guatemala. Evidence of past persecution creates a presumption of future persecution. Because the IJ did not consider evidence as to changes in Guatemala since the Petitioners had fled, the Ninth Circuit found that the government did not overcome the presumption of future persecution. To overcome such a presumption, the government needs to provide evidence that shows by a preponderance of the evidence that the Petitioners' fears of future persecution are unfounded.

The Ninth Circuit court of Appeals remanded the case to determine whether the government is able to rebut the presumption of future persecution if the Petitioners were to return to Guatemala.

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#### 6. Government Processing Times

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

California (07/15/2004): <http://www.visalaw.com/california.html>

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## 7. News Bytes

Newschannel 5 of Weslaco, TX reported a recent incident in which a South African native was taken into custody when she tried to board a plane at the McAllen Miller International Airport. According to documents of the Federal Bureau of Investigation, Farida Goolam Mahomed Ahmed was taken into custody after presenting a passport that had no entry or exit stamps, and had several pages torn off. She was also found to be carrying a bag of wet, muddy clothes.

Upon further investigations, travel itineraries showed that she had flown from South Africa to London and six days later, to a flight from London to Mexico City. Upon further interrogation, the detainee admitted to being smuggled into the United States through the Texas Border. She is currently in custody and facing three charges of breaking US Code including mutilating her passport, making false statements and entering the country illegally. According to available documents and reports, there is currently no evidence of terrorist ties.

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According to the Washington Times, a pilot aboard Flight 327 from Detroit to Los Angeles on June 29 radioed for law-enforcement assistance after he observed "suspicious activity" from a group of 14 men of Syrian descent on board a Northwest Flight. This was a musical band group traveling to join a popular musician in the Syrian community. After taking the men into custody it was deemed that 13 of the men had overstayed their P3 visa by a couple of weeks. The 14<sup>th</sup> member was an American citizen.

Although a spokesman for Homeland Security disputed reports from crews and marshals and said they had "no intelligence that terrorists are conducting test flights on airlines." Air marshals insist that incidents such as these are one of a series of probes of terrorists who are testing the security system of the United States. They cite a previous incident in which a group of six men with musical instruments were reported by American Airlines to law enforcement officials.

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According to the Associated Press, the city attorney's office of Los Angeles that criminal charges have been filed against seven business consultants in Koreatown for allegedly violating the state's Immigrant Consultant Act. According to officials, these charges were filed after an investigation by authorities of 25 businesses that advertised as immigration services in Korean phone directories and newspapers.

According to a spokesman for the city attorney's office, these cases ranged from charging a fee and not providing services to allegedly providing misleading advice. The supposed violations include the failure to file a bond with the with California Secretary of State, which is a requirement for all immigration consulting businesses in the State of California and unlawfully giving legal advice in an immigration related matter.

The investigations were prompted after receiving complaints from consumers. These involved investigators and undercover Korean-speaking volunteers posing as clients. These particular cases are among the 25 filed by the city's attorney's office just this year.

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According to AILA InfoNet, Secretary of State Colin Powell has concluded that there are sufficient facts to designate the Continuity Irish Republican Army as a foreign terrorist organization pursuant to §219(a) of the Immigration and Nationality Act. This classification is effective July 13, 2004.

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The Associated Press reported last week that a Florida man was sentenced to three years in prison for illegally operating a website that represented itself as "USA Immigration Services" and charged prospective immigrants for an opportunity to acquire U.S. visas through a lottery. John Romano promised ineligible applicants that their applications would meet U.S. guidelines in exchange for a fee. The Federal Trade Commission, which reached a settlement with Romano for \$2.2 million based on civil charges, has targeted a total of eight fraudulent websites this year that have tried to capitalize on the visa lottery. As a reminder to our readers, the Diversity Visa Lottery application is a free application and there are no government fees for the initial application. The "winners", however, are responsible for paying the normal immigrant visa application or adjustment of status fees.

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According to the *El Paso Times*, Texas state Attorney General Greg Abbott handed down a legal decision that hospitals in the state are not required to, but can, provide non-emergency health care to undocumented immigrants. This legal decision was in response to the inquiry by Montgomery County Hospital District's board members, who wanted to know if they were mandated to provide such care.

However, all hospitals are required to provide emergency care to all and are prohibited by federal law from asking the immigration status of patients. Last year, the Texas legislature passed a law requiring hospitals to use local funds for non-emergency services to undocumented immigrants.

Health care advocates report that by providing preventative care at primary care clinics saves money because most illnesses can be detected before they become emergency room cases.

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## 8. International Roundup

This week, the *Haaretz Daily Newspaper* reported that due to resistance from the Justice Ministry, a proposal by Interior Minister Avraham Poraz and Welfare Minister Zevulun Orlev to grant permanent legal status in Israel to the children of illegal foreign workers would be denied.

The opinion of the Justice Ministry declares that it is impossible to distinguish between the children of illegal Israeli foreign workers, and the children of illegal Palestinian or Jordanian

foreign workers living in Israel. Justice Ministry attorney Yochi Gnessin cited that any proposal to distinguish between these children would likely be perceived as a racist decision. If the ministerial committee grants visas to the illegal foreign workers, it could be interpreted that the government is supporting unlawful actions.

Poraz conveyed his disappointment with the Justice Ministry's position and said that he would not resign his efforts to regulate the status of illegal foreign workers' children.

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*The Observer* (UK) has reported that British ministers have dropped a proposal that would require all prospective immigrants to be screened for HIV. Fearing that such a requirement would lead to an increase in undocumented immigration, ministers have declined to adopt a policy that 46 other countries, including the U.S. and Canada, have implemented. Some ministers feared that the proposed requirement would lead to an increased demand for forged health certificates in certain African countries. Others said that the proposal was racist because they claimed that it was principally aimed at African immigrants.

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According to *The Moscow Times*, Lieutenant Colonel Igor Vyalkov, a Russian border guard, has been charged with state treason in the form of espionage. Specifically, he is accused of passing classified information on issues of national security to Estonia's intelligence agency from 2001 to 2002. He is also accused of illegally crossing the border several times to deliver his data. Vyalkov has pleaded not guilty to the charges. If convicted, he faces a prison term of 12 to 22 years.

Trials began during the first week of July but were halted after the defendant expressed distrust in his lawyers. A new lawyer was added to the existing legal team. The newspaper *Gazeta* reported July 6 that Vyalkov could be suspected of passing information to Estonia and that Estonia, a NATO member since earlier this year, could have handed the information over to the intelligence agency of another country, such as Britain.

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## 9. Legislative Update

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

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## 10. New Regulation to Extend Validity of Employment Authorization Documents

United Citizenship and Immigration Services will release today a much anticipated regulation authorizing examiners to issue Employment Authorization Documents (EADs) for periods longer than a year. EADs are used for a variety of purposes, but one of the major uses is to provide interim work authorization for people waiting on permanent residency adjustment of status applications. Adjustment applications can take several years to complete and it is not unusual for applicants to have to renew the one year documents several times.

In order to improve customer service and to save millions of dollars in resources (more than 950,000 cards are issued each year), the agency will now issue documents for periods longer (and shorter in some cases) than a year. Four major criteria will determine how long to issue a card:

1. The applicant's immigration status
2. The general processing time for the underlying application or petition
3. Required background checks and processing times for background checks by other agencies
4. Other security concerns

There are no set validity periods listed in the new rule except as it pertains to asylees. Asylees will be receiving five year employment authorization documents. This will help address a problem that many have had proving their ability to work. This will largely cover them until they are eligible for green cards.

USCIS will issue field guidance to standardize how EAD validity lengths will be determined. In some cases, such as EADs issued to students as part of Optional Practical Training, the validity times are limited by statute.

The USCIS also noted that validity times could get shorter as BCIS approaches its goal of six month maximum processing times on all cases.

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#### 11. Department of Agriculture Employee Arrested for Visa Fraud

The Department of Justice has announced that a Department of Agriculture employee has been sentenced to 21 months imprisonment for his role in a visa fraud scheme. Hsin Hui Hsu, who obtained 99 visas for Chinese nationals and collected \$77,400 in payments over a three year period, was convicted of visa fraud by U.S. District Court Judge Colleen Kollar-Kotelly.

Hsu worked as an agriculture economist in the Department of Agriculture. Hsu's position gave him the authority to invite Chinese nationals with expertise in agricultural science to the U.S. to participate in educational meetings with U.S. agricultural scientists. Beginning in the late 1990's, Hsu partook in a conspiracy that located Chinese nationals who sought to obtain U.S. visas. He wrote letters to U.S. consulates in China, providing false biographical information and requesting visas so that the applicants could enter the U.S. to attend the education conferences. Hsu wrote the letters knowing that the applicants were not agricultural specialists and that they would not attend any such education conferences.

Hsu's sentence has been significantly lessened due to his cooperation with investigative authorities. His wife, Jing Ling Wu Hsu, received a probationary sentence for aiding and abetting.

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#### 12. USCIS Changes to Passport-Style Photographs Effective 9/1/04

USCIS will start accepting the Department of State (DOS) standard style photographs for all benefits applications on August 1, 2004. Three-quarter right profile-style photographs will be accepted until September 1, 2004. The USCIS will issue a Federal Register notice regarding new photo specs and applicable deadlines in the near future.

The Nebraska Service Center (NSC) will accept either ADIT-style or passport-style photographs until the expected target date of August 1, 2004. After the target date passes, NSC will only accept passport-style photos.

The California Service Center (CSC) requests that all new applications and petitions that require be submitted with passport-style photographs. For any pending applications and petitions, new photos are not to be submitted unless requested to do so by the CSC.

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### 13. SEVIS Fee Required Before Applying for Visas

This week, the US Department of State issued a cable on the subject of SEVIS fees to all diplomatic and consular posts.

All persons applying for F, J, and M visas with I-20 or DS-2019 forms with an issue date of September 1, 2004 or later must pay the SEVIS fee (currently \$100) before applying for their visas. Consular sections will be responsible for verifying the paid SEVIS fee but won't be responsible for collecting the fee.

There are three options for SEVIS fee payment:

1. DHS has a lock box to accept fee payment by mail, in the form of a check or money order drawn on a U.S. bank.
2. DHS has set up a web site on the Internet to accept credit card payments of the fee.
3. Exchange visitor program sponsors may apply for participation in the "Bulk Filer" program. This option requires prior approval of DHS.

The exceptions to this notice are:

- Individuals sponsored by the Federal Government are exempt from payment.
- Individuals applying for the above visas in India and China will be required to pay the SEVIS fee at the post. These two countries are participating in a pilot program to test the feasibility of collecting fees at the post.

Students and exchange visitors who are already in the US in the F, J, or M statuses will not have to pay the SEVIS fee unless they are applying for a reinstatement to status, a change of status to one of the F, J, or M categories, or have to apply for a new visa abroad, after September 1, 2004, or are returning to the US after an absence of 5 months or more, except in the authorized cases of study abroad. Students and exchange visitors should discuss the applicability of this fee to their cases with their Designated School Officials or Responsible Officers before leaving the country or applying for a change of status or reinstatement.

To ensure verification of the payment, the fee must be processed at least three business days before the visa interview. After paying the fee, the individual will receive a receipt by return mail, or electronically. This receipt will be presented to the consular officers at the time of the visa filing. The SEVIS fee is valid for twelve months from the date of the initial application.

For more information, please view [www.ice.gov/graphics/enforce/imm/sevis/index/htm](http://www.ice.gov/graphics/enforce/imm/sevis/index/htm).

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#### 14. Astounding Drop in the Issuance of Non-Immigrant Visas

The U.S. Department of State reported the data of all classifications of nonimmigrant visas issued for the years 1999-2003. Within this listing, the grand total of non-immigrant visas issued for the years 1999-2003 plunged from 6,192,478 to 4,881,595.

The most significant change in number of visas issued emerged in the following classifications:

Visa Symbol	Class	1999 # Issued	2003 # Issued
B-1	Temp. visitor/ business	93,019	60,892
B-2	Temp. visitor/ pleasure	642,676	271,358
D-Crewlist	Crewlist visa	10,768	4,631
H-2B	Temp. worker performing other services	30,642	78,955
K-3	Spouse of U.S. citizen awaiting available immigrant visa	3 (2001)	12,403

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