

Siskind's Immigration Bulletin
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1. Openers

Dear Readers:

This week I am writing this column from the American Bar Association's (ABA) annual meeting in Atlanta, GA. ABA is one of the largest voluntary professional organizations in the world and is the primary stake holder in matters involving the legal profession, and legal matters in general. One of the hot-topics this year was the much-discussed detainee rights in the war against terror. ABA has taken lots of heat this year in advocating legal rights to detainees regardless of nationality.

Another interesting session I attended was about outsourcing and off-shoring. This is another hot-topic, which involves lots of immigration issues. Outsourcing is contracting out a usually non-core function of a company to an outside source. Off-shoring, on the other hand, is carrying certain functions of a business overseas by creating a new corporate entity overseas. There was intense debate about outsourcing and off-shoring in the last year and it will be a hot-topic during the elections.

One of the interesting things I learned was the definition of "deemed exports" in the context of Export Administration Regulations (EAR). Under EAR, any release of technology (software, technical data, etc.) to a foreign person, regardless of place, is an export. A foreign person is defined as someone who is not a US citizen, a dual-citizen of the US, a lawful permanent resident, or an asylee or refugee. Therefore, release of technology to a H-1b, L-1A, E-1, J-1, F-1, etc. holder in the US (the person does not have to be outside of the US) can still be deemed to be an export. One of the groups that were discussed in this session were the IT administrators on H-1b visas in US businesses. If the person has unlimited access to the company's technical data and if that data is listed under the EAR or other export licenses, then the company may have to obtain an "export license" to cover this person in all technologies and items listed under the "Commerce Control List".

Those readers who hire foreign nationals in non-immigrant categories who have access to significant technical data of a US employer, or readers who are hired in non-immigrant categories and have unlimited or significant access to their company's technical data, may be effected by EAR and the licensing requirements. This was news to me and found it very interesting and wanted to share it with our readers. I, as an immigration attorney, am not familiar with the details of EAR and the licenses, but if you think you may be effected, it will be a good idea to check these issues with your company's general counsel or with a competent export and international trade attorney.

Issues like outsourcing, employment visas and other employment related immigration issues will be hot-topics in this year's election. We will try to keep you updated on emerging issues in our weekly "Campaign 2004" section.

This week we are offering an ABC's article on the P visas for athletes and entertainers. It is a very interesting visa category and we hope you will enjoy reading it. We are also reporting the termination of the crew list visa program and the extension of the temporary protected status (TPS) for Somalia. Also, we just received news of the termination of the TPS program for the nationals of Montserrat. Currently there are a little under 300 citizens of Montserrat in the temporary protected status in the US. TPS was granted due to volcanic activity in this island. DHS announced today that they will terminate the program by February 2005. We will have more information about this next week.

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

2. The ABC'S Of Immigration: The ABC's of Immigration - P-1 Visas for Athletes and Entertainers

The P categories, P-1, P-2 and P-3, are reserved for those aliens who will be coming to the US to perform in athletics or entertainment, and who do not meet the extraordinary ability standard required for classification in the O category. This article discusses the P-1 category.

How do I qualify for a P-1 if I am an athlete?

For an athletic team to petition for a foreign athlete, the team must have achieved international recognition in the sport. An athlete who will come to the US to compete in individual events rather than as a team must show that he or she is internationally recognized. The USCIS has defined "international recognition" as a "having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country." The event the athlete is coming to the US to participate in must have a distinguished reputation and must require the participation of athletes and teams of international recognition.

How do I qualify for a P-1 if I am an entertainer?

For an entertainer to obtain a P-1 visa, they must be part of an entertainment group. Individuals cannot usually obtain a P-1 visa – the only exception is for people who are coming to the US to join a foreign entertainment group. The group must be internationally recognized as outstanding in the area, and have a sustained period of achievement. Also, the individual members must have a substantial relationship to the group, generally satisfied by at least one year. This requirement may be waived in exigent circumstances, and is not imposed on circus personnel, so long as the circus is of national recognition. The group must have been together for at least one year, and at least three-fourths of the members must have been in the group for at least a year.

How is the petition for a P-1 visa filed?

A P-1 petition may be filed by a US employer or organization, a foreign employer, or by a US agent. The petition must include the following information: any written contract between the alien and the petitioner, or, if there is no written contract, a thorough description of their oral agreement; an explanation of the event and an itinerary; and a consultation from a labor organization.

If a US employer or agent is filing the petition, it should be filed at the regional USCIS Service Center with jurisdiction over the petitioner. If a foreign employer files the petition, it should be filed at the regional Service Center with jurisdiction over the place where the alien will begin employment.

What types of evidence are needed for athletes trying to obtain a P-1 visa?

When the application is filed on behalf of an athlete or team, at least two of the following types of evidence need to be presented:

- Participation to a significant extent in a prior season with a major US sports league,
- Participation on a national team at international events,
- Participation to a significant extent in a prior season with a US collegiate team,
- A written statement from an official in the governing body of the sport outlining how the athlete or team is internationally recognized,
- A written statement from a member of the sports media or other recognized expert outlining how the athlete or team is internationally recognized,
- Evidence that the alien is highly ranked if the sport uses a ranking system, or
- Evidence that the alien or team has received a significant award for performance.

What types of evidence are needed for entertainers trying to obtain a P-1 visa?

When the application is being filed on behalf of an entertainment group, the petition must include details about each person's length of membership in the group. The petition must also demonstrate the group's sustained international recognition. This may be done in two ways, first by nomination or receipt of awards for outstanding achievement in the field, and second, by submitting three of the following types of evidence:

- The group has and will continue to perform a starring role in productions or events with a distinguished reputation, evidenced by reviews, advertisements, press releases, contracts, or endorsements,
- The group has international recognition, evidenced by reviews in papers, trade journals, etc.,
- The group has and will continue to perform a starring role in productions or events with a distinguished reputation, evidenced by articles in newspapers, trade journals, etc.,
- The group has had commercial success
- The group has gained significant recognition for achievements from leaders in the field, or
- The group commands a high salary compared to others similarly situated.

Do I qualify for a P-1 if I am considered support personnel?

Aliens coming to the US to work as support personnel for P-1 athletes, teams, or entertainment groups are also given the P-1 classification. The application must contain a consultation from a labor organization, a statement describing the alien's essential role, and a copy of the contract or summary of the oral agreement between the support alien and the employer.

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 am on H-1B visa holder. I have valid H1B visa up to 2005 October. But I have moved to another company, and I have got new H1B approval that is up to 2007. For that do I need to send my passport for stamping right now or I need to wait until the first one will expire. And with the old visa can I travel to India or not?

A - You can reenter on the stamp from the first employer as long as you provide documentation at the port of entry that you have properly changed status in the US and are complying with the terms of your H-1B approval with the new employer.

Q - If a person is here in the US and is in Optional Practical Training status and he/she marries a person who has just gotten his/her green card:

- (A) Does the person get to stay in the US after his/her Optional Practical Training expires?
- (B) What will his status be?
- (C) Will he/she have work authorization to work here in the US?

A- Unfortunately, you only get a place in line in the 2B green card category and cannot remain in the US just because that application is pending. You won't get any right to stay until after that petition is current (which will take a number of years) or your spouse gets citizenship. You'll need to be able to find a way to stay on your own.

There is no (and there never was) an extension of OPT once the 12 months is used. Therefore, the day your OPT ends, your employer will have to get you off the payroll and you cannot work until your H-1B is approved and becomes effective. Note as well that there is a new rule that enables people in your status to remain in the US until October 1, 2004 (even if their OPTs have expired and it is out of their grace periods) if they have an H-1b approved for October 1, 2004 and they file for the change of status by the end of July.

Q - I am a Canadian citizen, but my wife is not. If I apply for the TN visa to work in US, What visa my wife could apply for?

A - Your wife could still get TD status even if she is not Canadian.

4. Border and Enforcement News

According to the Los Angeles Times, 60 illegal immigrants were discovered in a cramped "drop house" at a Riverside home. According to the immigrants, they were smuggled in small groups across the Arizona desert. Immigration officials report that they allegedly paid smugglers between \$4500 and \$6000 for a "guided" package that covered their movement to Los Angeles and a one-way commercial flight to the East Coast.

Two men have been arrested for smuggling these illegal immigrants. They were caught after being spotted outside the Pleasant Street house in Riverside and appeared to be serving as outlooks. The illegal immigrants are from Guatemala, El Salvador, Honduras and Mexico.

5. News From The Courts

Garcia-Martinez v. Ashcroft
U.S. Court of Appeals for the Ninth Circuit
2004 U.S. App. LEXIS 11589

Petitioner Reina Izabel Garcia-Martinez (Garcia) appeals the IJ's denial of her asylum claim, which the BIA affirmed without opinion. Born and raised in the small Guatemalan village of San Andreas Villa Seca, Garcia experienced firsthand the atrocities of the civil war that ravaged the country for decades. In 1983, when she was nine years old, fighting erupted in her village between the Guatemalan military and insurgent guerrillas. The guerrillas terrorized Garcia's village, beating and kidnapping men into their service, including her brother. Under the mistaken belief that the residents had willingly joined and aided the guerrillas, the military retaliated by beating men, women, and children and systematically raping women. The soldiers threatened to kill anyone who informed the police of these attacks. The police not only failed to respond to reports of abuse but also disclosed the identities of the informants, whom the military then killed. When Garcia was 19, soldiers invaded her home, repeatedly beat her parents and then took turns beating and raping her. Fearful that they would return to hurt her and her family again, Garcia fled to the U.S. via Mexico.

When the INS issued Garcia a Notice to Appear in 1998 for entering the country without admission or parole, she requested relief in the form of asylum, withholding of removal, voluntary departure, and protection under the Convention Against Torture. Although the IJ found Garcia's testimony credible, she nevertheless held that the evidence did not support a finding that Garcia had suffered past persecution on one of the statutory grounds: political opinion or affiliation, race, religion, or membership in a particular social group. The IJ characterized Garcia's rape as an isolated criminal act, lacking evidence to support a finding that the Guatemalan government condoned it or was unable or unwilling to control the perpetrator. Moreover, the IJ determined Garcia had failed to prove a well-founded fear of future persecution by any pro or anti-government affiliate. The IJ found Garcia ineligible for all forms of requested relief.

The Court of Appeals for the Ninth Circuit reversed the IJ's decision, noting that asylum can be based on past persecution alone, including rape. The applicant need only show the severity of the past abuse and that the government's persecution of her was in some way motivated by her belonging in one of the statutory classifications. If she meets this burden, a rebuttable presumption of well-founded fear of future persecution arises. The government can rebut with a preponderance of evidence that the conditions in the applicant's country have changed such that she, individually, no longer has a well-founded fear of persecution.

The Court criticized the IJ's treatment of Garcia's rape and her brother's kidnapping as isolated incidents, where the IJ had noted the ten-year interim during which Garcia's family was not personally targeted. Furthermore, the IJ erroneously focused on a single motive for Garcia's persecution, requiring her to provide direct evidence that her attack stemmed from

her brother's forced alignment with the guerrillas. The Court affirmed that circumstantial evidence (such as imputed political opinion here) would suffice, and that perpetrators often have mixed motives for their violent acts. The IJ should have analyzed Garcia's attack within the larger context of the systematic targeting of Garcia's entire village as a perceived guerrilla stronghold, recognizing that rape is used to intimidate perceived political opponents during war.

Because the Court found that Garcia had established sufficient evidence of past persecution, it remanded to the BIA to review the IJ's finding that Garcia lacked a well-founded fear of future persecution. Neither the IJ nor the BIA had determined whether conditions in Guatemala had changed such that Garcia could return without fear of persecution. The Court also remanded for the BIA to consider the humanitarian exception, whereby Garcia's past persecution alone could support a discretionary grant of asylum. The Court lacked jurisdiction to review the IJ's denial of the other forms of relief Garcia requested because she did not raise them on appeal to the BIA.

Vukmirovic v. Ashcroft
U.S. Court of Appeals for the Ninth Circuit
2004 U.S. App. LEXIS 6420

The Petitioner, Predrag Vukmirovic, appealed a decision by the Immigration Judge ("IJ") denying his application for asylum to the Ninth Circuit Court of Appeals. The IJ, as was summarily affirmed by the Board of Immigration Appeals ("BIA"), denied asylum because the Petitioner engaged in persecution of others when he defended himself from the attacks of other religious groups. The Ninth Circuit granted review of the decision and remanded the case with instructions that self-defense does not qualify as persecution of others.

The Petitioner, a Bosnian-Serb from Bosnia-Herzegovina, participated in a group whose purpose was to defend its town from the attacks of Bosnian-Croats. He admitted to "breaking the noses and foreheads" of the attackers, but stated that he did not participate in the ethnic-cleansing campaign. The Petitioner later gained employment as a cruise ship worker and entered the U.S. while his ship was docked at a U.S. port. After living in Florida from 1991-94, the Petitioner was issued a notice a deportation. He applied for asylum and withholding of removal.

After lengthy proceedings, the IJ denied the application for asylum due to its determination that the acts of self-defense constituted persecution. The IJ stated that immigration law does not provide for a self-defense exception when the applicant has committed violent acts against members of another religious, racial, political or ethnic group.

The Ninth Circuit disagreed with the IJ, stating that the applicant's individual behavior should be examined to determine whether or not he or she committed acts of persecution. Furthermore, the court stated that ruling that acts of self-defense are persecution when the applicant was attacked because of religious and ethnic affiliations would frustrate the intent of the statute creating asylum. Based upon such findings, the Ninth Circuit remanded for further proceedings consistent with its opinion.

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

Vermont (07/21/2004): <http://www.visalaw.com/vermont.html>

Missouri (07/21/2004): <http://www.visalaw.com/missouri.html>

Texas (07/31/2004): <http://www.visalaw.com/texas.html>

California (08/01/2004): <http://www.visalaw.com/california.html>

Nebraska (08/01/2004): <http://www.visalaw.com/nebraska.html>

7. News Bytes

The *Associated Press* reported last week that according to officials, Homeland Security Department Secretary Tom Ridge has said that he will probably resign after the November elections because of his personal finances and job stress. Ridge has also expressed frustration about the continuing problems of reorganizing the 22 different agencies that makeup the Homeland Security Department. He has faced personal criticism over recurring but vague public warnings about possible terrorist activity, and was ridiculed for urging homeowners to stockpile plastic sheeting and duct tape to seal their doors and windows during a biological or chemical attack. In addition, Congress and the 9/11 Commission have criticized portions of the plan to fight terrorism, including the vague color-coded warning system and lack of cooperation between intelligence agencies.

U.S. Citizenship and Immigration Services (USCIS) today formally introduced InfoPass this week in Philadelphia and Pittsburgh, Pennsylvania. The launch is a part of a national effort to implement InfoPass in all 33 USCIS Districts by early September 2004. With InfoPass, the public can go online to schedule a date and time to meet with an immigration information officer, avoiding the need to wait in line.

Anyone who has sent I-130s to the Nebraska and Texas Service Centers should be aware that those centers are sending immediate relative I-130s to the California Service Center for adjudication. Thus, petitions filed at TSC or NSC may receive a receipt notice from CSC.

The Vermont Service Center has announced that it will be permanently closing its public window as of September 1, 2004. Thus, it will no longer conduct business on a walk-up basis.

According to the *Wall Street Journal*, Wal-Mart Stores, Inc. is in talks to settle the federal investigation that is examining whether or not the company knowingly hired undocumented immigrants to work in its stores. According to people on both sides, Department of Justice officials and Wal-Mart have discussed a settlement of around \$10 million. The settlement will likely include conditions that allow for a harsher penalty if the company hires undocumented workers in the future. If Wal-Mart knowingly hired contractors who supplied illegal workers and had a practice of doing so, it could have faced a fine of as much as \$10,000 for each illegal worker hired.

8. International Roundup

Reports this week by *The Independent* and *The Telegraph* (UK) confirm that Steve Moxon, an official in the Immigration and Nationality Directorate, has been dismissed from his job "with immediate effect." He was initially suspended from the Sheffield offices of the Immigration Service in March after disclosing that hundreds of visas from Eastern European migrants were approved without proper checks. An internal investigation validated Moxon's allegations, and officials confirmed that the applications were rushed in order to alleviate backlogs.

Moxon received a five-page dismissal letter from the Home Office saying that he did not act "reasonably" under the terms of the 1998 Public Interest Disclosure Act, the legislation introduced to protect whistleblowers. The letter also informed Moxon that he was "in breach of his contractual obligations" and "failed to follow internal procedures" resulting in an "irretrievable breakdown in trust between you and the department." Moxon said last week that he would take his former employers to the employment tribunal. He has no wish to return to his previous job, but will take legal action "on a point of principle."

According to *The Age*, the Immigration Department of Australia has called in federal police to investigate claims that guards and police used excessive force to deal with unrest at the Port Hedland detention centre. It has also referred the claims of brutality by centre guards and Western Australian police officers to the WA Corruption and Crime Commission and written "letters of regret" to some of the asylum seekers involved. The investigation was initiated from a complaint to Commonwealth Ombudsman John McMillan after tear gas and batons were used to put down protests at the centre last December when detainees, including women and children, had been beaten, kicked and punched.

Upon investigation, various incidents were discovered including one in which a female guard at the centre was suspended after she protested about the handcuffing of a detainee who was not involved in the protest and who collapsed with convulsions. The Australian government has not yet made the reports public.

According to the *Australian Associated Press*, Hong Kong has begun the second phase of a rollout of new identity cards that uses technology developed by smartcard company Keycorp. This multi-function smart ID card contains the photograph, basic identity details and fingerprint biometric of each cardholder. This chip also has the ability to include an electronic certificate for electronic transactions. It will replace the existing laminated plastic photo ID cards.

The first phase provided the new cards to new arrivals in Hong Kong, people who had lost their existing cards, those who desired to amend their existing details, police and other government officials. The second phase will provide the new cards to all Hong Kong citizens. ID cards have been used by Hong Kong since 1949 in order to deter illegal immigration.

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.

10. Campaign 2004

The *Ventura County Star* reported last week that neither presidential candidate will propose immigration reform until after the election because any stance on this controversial issue could potentially alienate voters. During the beginning of his term, President Bush attempted to introduce an amnesty for undocumented workers and a temporary program where "guest" workers could remain in the U.S. for up to six years. Staunch conservatives denounced the legalization initiative, and instead proposed a law requiring local and state police to enforce immigration laws. Law enforcement agents vehemently opposed this idea because they believed it would deter immigrants from reporting accidents and crimes.

Democrats feared the guest worker program would exploit cheap foreign labor while simultaneously relegating U.S. citizens to prolonged unemployment. In order to retain the 60 percent Latino vote that the Democrats typically attract, they proposed a legalization of undocumented immigrants who have been in the U.S. for at least five years. They would also decrease the 175,000 annual H1-B and H1-V employment visas that enable foreign workers to fill jobs that lack qualified American applicants. Although both Bush and Kerry may be able to skirt immigration policy during their campaigns, the future president will have to confront bipartisan concerns surrounding immigration's impact on national security, labor and employment, and the allocation of public resources.

According to the *Los Angeles Times* last week, the controversy over a series of immigration sweeps in early June by Border Patrol agents has brought the illegal immigration issue to the forefront in an upcoming November election.

Rep. Joe Baca (D-San Bernardino), a steadfast Latino rights advocate, is running for reelection for the 43rd Congressional District seat. His protest of the sweeps has drawn criticism from his supporters, which include a Southern California Border Patrol union.

Baca declared the sweeps illegal and accused the Border Patrol of overstepping their authority and using racial profiling. Baca discussed the events with Department of Homeland Security (DHS) undersecretary Asa Hutchinson, who confirmed that the immigration sweeps were a violation of agency policy, and DHS must approve any future action far from the border.

The debate over this issue has brought support to Baca's Republican challenger, Ed Laning. Political novice Laning is an adamant supporter of the Border Patrol operations. Laning reports that at least \$1,000 of his campaign contributions has come from this dispute. Baca is still considered the favorite, but the race has changed from an easy win for him into a contest focused on the topic of illegal immigration.

The Los Angeles Times reported that a local talk radio show is putting pressure on local Republican politicians to take a firmer stance against immigration. The Ken & John Show of KFI is interviewing local Congressional representatives and imploring them to pass

legislation to significantly tighten border security. In response to listeners' discontent, the show has set up a poll to select the Republican who should be voted out of office for not taking action to stop undocumented immigration.

11. CIS Announces Policy on Transsexual Applicants

In an interoffice memorandum, William R. Yates, Associate Director for Operations of the U.S. Citizenship and Immigration Services (CIS) announced that in its adjudication of spousal and fiancé petitions, the agency would not recognize a marriage or intended marriage where either party claims to be a transsexual. Whether or not either party plans or actually undergoes sex reassignment surgery has no bearing on this decision. The CIS adopted this approach to create nationwide consistency in lieu of varying state treatment of marriages involving transsexual applicants. Some states issue a new birth certificate to a transsexual who undergoes sex reassignment surgery, which then enables that individual to obtain a marriage license.

Federal law determines the recognition of a marriage for immigration purposes. The Defense of Marriage Act prohibits recognition of a same sex union as a "marriage" for immigration purposes, even if a state issued a marriage license to a homosexual couple. Although neither this statute nor any other federal law discusses the legal status of a transsexual's marriage, the CIS has followed its predecessor, the INS, by refusing to recognize a marriage where one party has undergone sexual reassignment surgery. The agency requires exclusive recognition of an applicant's gender as listed in his or her A-file unless the applicant presents a federal court order directing CIS to change its records. The memo instructs CIS officers to follow objective indicators regarding name changes. If an individual claims a different name than that in his or her A-file, which is typically used by the opposite sex, the officer should issue a request for evidence to establish an applicant's identity.

In all other kinds of cases where gender does not play a central role in the adjudication of applications and petitions, CIS will not consider an individual's claimed transsexuality. Any documents will indicate the applicant's gender at the time of issuance, so long as the individual submits the proper medical and other documentation of the new gender and legal name. Unlike spousal and fiancé petitions, other types of adjudications no longer require an applicant to present a federal court order directing CIS to change its records when claiming a different gender than that in the A-file. A non-citizen who requests a replacement document to indicate a name change after sex reassignment surgery must submit both the birth certificate issued at birth and the newly issued one reflecting the sex reassignment as well as the court order granting the legal name change.

12. U.S.-Visit Exit Program Expands to 13 More Cities

According to a press release on Aug. 3, 2004, U.S.-Visit, a program instituted by the Department of Homeland Security ("DHS") that aims to improve security by identifying and tracking foreign visitors, will soon expand its pilot program. The program has been tracking the entrance of foreign visitors using biometric information at 115 airports since January. Baltimore-Washington Airport and Miami's International Cruise Line Terminal, which have been the only two departure points to track the exit of foreign visitors, will soon be joined by 13 other air and seaports when the pilot program expands in August and September.

The new exit procedures of the airports will reflect the goals of the U.S.-Visit program—to enhance the security of U.S. citizens and foreign visitors by matching their identity with travel documents. The program aims to help facilitate travel and trade by using biometric information technology to expedite border crossings.

The pilot program will test out different methods at the departure points to track departing visitors. Procedures will include automatic scanning of travel documents, electronic fingerprinting, and the taking of photographs. Any foreigner with a visa must comply with the program. Visitors from visa-waiver countries must comply starting September 30.

13. Crew List Visas Eliminated by State Department

The *Federal Register* published a ruling this week by the Department of State regarding the elimination of crew list visas due to security reasons. This rule (67 FR 76711) is adopted as a final rule effective July 21, 2004 after a 60-day provision for post-promulgation public comments and review.

A crew list visa (Section 221(f) of the Immigration and Nationality Act) exempts aliens serving in good faith as crewmen on board a vessel or aircraft from being considered immigrants. Subject to approval by a consular officer, this visa permits an alien to enter the United States on the basis of a crew manifest. The original intent of §221(f) was as a temporary or emergency measure only to be used until individual documents could be issued to each member of a crew.

Because of increased security concerns, the elimination of the crew list visa will ensure that each crew member entering the United States will complete the nonimmigrant visa application forms, present a valid passport, and go through an interview and background check. Also, all visas issued after October 26, 2004 must have a biometric indicator.

The State Department received 100 comments in opposition to the rule change. Almost all of the opposing remarks were about the extensive length of time waiting to receive a U.S. visa and the special circumstances of a vessel's crewmember not having advance knowledge of his/her schedule.

While the State Department recognizes these issues, officials believe that shipping companies and unions will encourage their associates to get a visa if there is a possibility that the associate may be required to enter the United States. Once the visa is obtained, it is generally valid for five years. This length of time will certainly cover most, if not all, of the crewmembers of companies that ship to the U.S.

For further information, contact the Legislation and Regulations Division, Visa Services, Department of State at (202) 663-1205.

You may also view this rule online at <http://www.regulations.gov/>

14. Extension of Temporary Protected Status for Nationals of Somalia

The Department of Homeland Security and Immigration (DHS) announced last week a 12-month extension of Temporary Protected Status (TPS) for nationals of Somalia until

September 17, 2005. Under this extension, those who have already been granted TPS are eligible to live and work in the United States for an additional year and continue to maintain their status. According to a DHS press release, approximately 324 nationals of Somalia are eligible for re-registration.

The extension of TPS for Somalia is effective September 17, 2004, and will remain in effect until September 17, 2005. Nationals of Somalia who have been granted TPS must re-register for the 12-month extension during the 60-day re-registration period, which begins on August 6, 2004, and will remain in effect until October 5, 2004. U.S. Citizenship and Immigration Services (USCIS) is advising Somalia TPS beneficiaries who are applying for work authorization to do so before their current EAD expires.

To re-register for TPS under the extension, a TPS applicant must submit Form I-821 (Application for Temporary Protected Status) without the filing fee, Form I-765 (Application for Employment Authorization), two identification photographs (full face frontal, 2" x 2") and a \$70 biometrics services fee for each applicant age 14 and older to the local USCIS district office. Note that both the Form I-765 and I-821 must be submitted for re-registration. If the applicant is only seeking to re-register for TPS and not seeking an extension of employment authorization, there is no filing fee for the Form I-765. However, all applicants seeking an extension of employment authorization until September 17, 2005, must submit a \$175 filing fee with Form I-765. Applicants may request a fee waiver in accordance with the regulations. Failure to submit the filing fees and the required photographs will result in the rejection of the re-registration application.

More information can be obtained by visiting the USCIS web site, www.uscis.gov.
