

Siskind's Immigration Bulletin
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1. Openers

Dear Readers:

Many of you have emailed me over the last few months asking about H-1B visa usage and how close we are to hitting the H-1B cap for the fiscal year that starts on October 1st. Late Friday afternoon, the American Immigration Lawyers Association reported that it is been advised by the Department of Homeland Security that as of August 4, 2004, it had received 40,000 cap-subject H-1B filings that are covered by the 2005 annual cap. 21,000 cases had actually been approved and the rest were filed, but not yet approved. Some of these cases will be denied, of course. But also keep in mind that the about 6,000 numbers are reserved for nationals of Singapore or Chile (though expect most of these numbers to be added back based on unused numbers for this year).

This pace of about 10,000 cap case applications being filed a month means that come October, there will be very few visas left. Don't expect any help from Congress before the election. There is just no political support right now for raising the numbers. After the election, Congress is more likely to focus on the genuine merits of the H-1B program. Also, despite what President Bush says, most Americans do NOT feel good about the job situation and as long as Americans feel insecure about their jobs, members of Congress are going to be reluctant to move on H-1B legislation. Unfortunately, there are plenty of fields where there are genuine worker shortages – teachers, physicians, nurses, etc. – and our H-1B program is not flexible enough to exempt many of these professionals from the cap.

In the mean time, readers would be wise to consult with their immigration counsel to devise backup strategies in case an H-1B visa is not available.

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. The ABC'S Of Immigration: J-1 Visas for Exchange Visitors

What is a J-1 Visa?

The J-1 visa is given to those who will be entering the US to participate in an approved educational or cultural program. It is one of the more complex types of visas, so we will be breaking our coverage of it into three articles. In this first article, we deal with the visas themselves, while later articles will address J-1 program designations and waivers of the two-year home residency requirement.

The J-1 non-immigrant visa category was created to promote educational and cultural exchange activities between the United States and other countries. First begun in 1948, the J-1 exchange visitor program is presently overseen by the State Department. The program went through a major overhaul in 2003 with the implementation of the Student and Exchange Visitor Program (SEVP). The program requires the J sponsors to track their exchange visitors and report certain changes in their program or personal information, as well as other activities, electronically. Also, the SEVP has implemented a new exchange visitor fee of \$100 for each J visitor, effective September 1, 2004. The exchange visitor

program is credited with exposing millions of foreign visitors to the United States, its peoples, cultures, business techniques and educational institutions.

What is a J-1 exchange visitor?

The J-1 exchange visitor is broadly defined by the Immigration and Nationality Act (INA) as an alien having a residence abroad, which he has no intention of abandoning, who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge; who is coming temporarily to the United States as a participant in a program designated by the State Department for the purpose of teaching, instructing, lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.

What type of exchange programs are available?

Exchange programs are available for the following individuals:

- College and university students
- Secondary school students
- Short-term scholars
- Trainees
- Teachers
- Professors and research scholars
- Specialists
- Alien physicians
- International and government visitors
- Camp counselors
- Summer work/travel students
- Au pairs
- Special education exchange visitors

What are the specifications of each program?

The limits of a person's stay in each type of program, as well as the activities allowed in each program, are discussed below.

College and University Students

The J-1 student visa category is reserved to those who are pursuing a full-time formal course of study at a college or university, and to those who are receiving English language training at an accredited educational institution. J-1 students are eligible for two types of employment – academic training and student employment. For academic training, it must be related to the field of study, the student must be in good academic standing, and the school's responsible officer must approve it in writing. Part time (no more than 20 hours a week) student employment is allowed if it is part of a scholarship or fellowship, is on campus, or is off campus and necessary because of unforeseen economic circumstances. This employment authorization is valid until the course of study is over, or 12 months, whichever is less. Following the completion of studies, undergraduate and pre-doctoral students are eligible for up to 18 months of practical training, and post-doctoral students are available for up to 36 months of training.

Secondary School Students

Foreign students can attend secondary schools in the US for at least one but no more than two semesters on a J-1 visa. Along with providing a place at school for the visitor, the program sponsor must also secure a host family with whom the student will stay. The screening process for host families is a rigorous one. J-1 secondary students are not authorized to work, except for intermittent work such as babysitting.

Short-Term Scholars

This category encompasses professors, research scholars or persons with similar skills who are coming to the US to lecture, observe, consult or participate in workshops, seminars, conferences, and the like. The purpose of the short-term scholar category is to foster professional relationships between US and foreign scholars. The maximum period of entry for short-term scholars is six months, and no extensions are authorized. Unlike the others J-1 categories, there is no minimum period of stay in the US.

Trainees

This category is reserved for individuals seeking to enhance their skills in either "specialty" or "non-specialty" occupations. Training in unskilled occupations is not available. Under State Department rules, the following fields are eligible for training programs:

- Arts and culture
- Information media and communications
- Education, social sciences, library science, counseling and social services
- Management, business, commerce and finance
- Health-related occupations
- Aviation
- Science, engineering, architecture, mathematics, and industrial occupations
- Construction and building trades
- Agriculture, forestry and fishing
- Public administration and law
- Other fields specified by the program sponsor

The training cannot duplicate training the alien has already received, and must provide training at the appropriate level. The maximum period of stay is 18 months, 24 months for aviation training programs.

Teachers

This category is available to individuals teaching full-time in a primary or secondary school. To be eligible for a J-1 teachers visa the person must meet the following requirements:

- Be qualified to teach primary or secondary school in their home country
- Meet the standards of the US state in which they will teach
- Be of good reputation and character
- Intend to teach full time at an accredited primary or secondary school
- Have three years of teaching experience.

Professors and Research Scholars

Professors are aliens who have come to the US to teach, lecture, observe or consult at post-secondary educational institutions. They may also conduct research unless their program sponsor specifically forbids it. Research scholars are individuals who are in the US primarily to conduct research, observe or consult at research institutions, educational institutions and similar organizations. Unless specifically forbidden by the program sponsor, research scholars may teach and lecture. The position filled by the J-1 alien must be temporary. J-1 professors and research scholars may enter for a three-year period, initially, and the program sponsor may approve a six-month extension. After this extension, the person's stay can be extended another three years, with the approval of the State Department.

Specialists

Specialists are experts in a field of specialized knowledge or skill. They may come to the U.S. to observe, consult or demonstrate special skills. The category specifically excludes short-term scholars, professors and research scholars, and alien physicians in graduate medical training. The maximum authorized stay in the US is one year.

Alien Physicians

Graduates of foreign medical schools may enter the United States to pursue graduate medical training or education. This category is highly regulated. The program sponsor for foreign medical graduate students who will be involved in more than incidental patient contact is the Educational Commission for Foreign Medical Graduates (ECFMG). Other programs can sponsor alien physicians so long as there will be little or no patient contact, and the program involves observation, consultation, teaching or research. When other programs than the ECFMG sponsor J-1 physicians, they must include a special certification regarding the amount of patient care that will be provided. The duration of authorized stay is generally limited to the time necessary to complete the program or seven years. Caution: Individuals participating in this category are automatically subject to the two-year home country physical presence requirement of INA §212(e).

International and Government Visitors

This category is reserved for the exclusive use of US federal, state or local government agencies. International visitors are those selected by the State Department for consultation, observation, training or demonstration of special skills in the US. Government visitors are essentially the same, only they are selected by governmental agencies. The maximum period of stay for international visitors is 12 months, and for government visitors it is 18 months.

Camp Counselors

A foreign national who is at least eighteen-years of age and either a bona fide youth worker, student, teacher or an individual with a special skill may qualify as a summer camp counselor. This category is limited to a four-month stay.

Summer Work/Travel Students

This category allows sponsors to bring foreign university students to the US during their summer vacations to travel and work in the US. Sponsors are encouraged to select visitors who, because of their distance from the US, would most likely not be able to afford to come to the US without temporary work authorization. This is the only J-1 category in which the

number of foreign nationals the sponsor helps enter the US must be the same as the number of US students it sends abroad.

Au Pairs

The au pair program is one of the most closely monitored of the exchange visitor programs. The category allows the entry of individuals between the ages of 18 to 26, who are coming to perform childcare services for a US host family while attending a post-secondary school. The foreign national must be proficient in English and a high-school graduate. Prospective au pairs are extensively screened, including a background investigation, criminal check, physical and psychological exams. The screening process for host families is almost as demanding. The host family must pay the au pair at least the minimum wage, and cannot request the au pair to provide more than 45 hours of childcare a week. The au pair must also be provided with a private bedroom. An au pair cannot be placed in the following situations: there is a child under three months in the home, unless a parent is home as well, or in a family where there are children under 2, unless the au pair has over 200 hours of prior infant care experience. The program sponsor must provide the au pair with at least eight hours of child safety instruction, and at least 24 hours of child development instruction.

Special Education Exchange Visitors

This category is limited to fifty individuals per year and permits an alien to enter the US for up to 18 months to obtain practical training and experience in the education of children with physical, mental or emotional disabilities.

How does the exchange visitor program work?

Each exchange visitor must be sponsored. The sponsor of the J-1 visa program is a legal entity designated by the State Department to conduct an exchange visitor program. The following entities are eligible to apply for designation as a sponsor:

- United States federal, state and local government agencies;
- International organizations of which the U.S. is a member and which have an office in the United States; or
- Reputable organizations that are citizens of the United States.

The sponsoring entity is required to submit an application (DS-3036) to the State Department through the Student and Exchange Visitor Information System (SEVIS) and to comply with all provisions of 22 CFR Part 514. Once the program is approved, it receives notification through the SEVIS system. Alternatively, if State Department has not designated the organization as a sponsor, the organization may participate in the program through an intermediary, known as an umbrella organization, which acts as the sponsoring agency.

How do I know if I am subject to the two-year home country physical presence requirement?

An alien admitted in J-1 status may be subject to a two-year foreign (home country) residence requirement. Without a waiver of this requirement, the alien is not eligible to apply for a change within the US to a non-immigrant visa, any change to permanent

residence, or any change to an H or L non-immigrant visa. This two-year period must be spent in the alien's home country, or the country in which they last permanently resided before coming to the US. An alien is subject to the home residence requirement if:

- The alien's participation in an exchange visitor program was financed by the government of the country of his or her last residence;
- At the time of admission, the alien was a national or resident of a country which the Department of State had designated as clearly requiring the services of individuals with the alien's special skills or knowledge; or
- The alien came to the United States to receive graduate medical education or training.

Limited waivers of the two-year foreign residence requirement are available in certain situations. The ways in which a waiver can be obtained will be discussed in a future article.

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 - My I-94 expired on 2-20 and the application for the extension of status was just received on 2-20. Was the application received just on time or the application has one-day gap? Thanks.

A - If you can document the application was received the same day the I-94 expired, you should be okay. Hopefully, your receipt confirms that it was received on 2-20 or before. If not, if you sent the extension application using certified mail (or something comparable) and can document that the extension was received before the expiration date, you should still be okay.

Q - Is it possible for an F-2 visa holder to obtain a social security card labeled "NOT VALID FOR WORK?" This social security number will only be used for the issuance of a driver license. If this is not possible, is there any other way by which an F-2 visa holder can obtain driver license in the state of Illinois?

A - No, unfortunately it is not possible. Actually, under the current Social Security rules, it is not even possible for a F-2 to receive a social security card with the "not valid for work" annotation. I am not familiar with the Illinois' driver's license requirements, therefore will not be able to assist you in this.

Q - If a family member won a green card and others (family members) are coming with him, can he as the only person not go to USA? or come later?

A - The principal applicant must come first. Others can come later, but not before.

Q - I am a French citizen. My brother is married to a American citizen, and he has been a green card holder for 2 years now. Is his wife (being my sister in law) entitled to ask for me (and my wife) a Family visa ? Or it can only my brother asking for it ?

A - Unfortunately, only your brother can apply for you and he can only do this after he is a citizen. And the wait would then be at least 12 years. So I would suggest you consider alternative visa strategies.

Q - Can F2 visa holder do home-based business without any employees?

A - No. This would constitute unauthorized work and you would be violating your F-2 status. You need a work visa regardless of whether you are self-employed or employed by others.

4. Border and Enforcement News

U.S. Customs and Border Protection introduced its new fleet of Border Patrol helicopters last week that will patrol 6,000 miles of U.S. land and sea borders. Border Patrol's air and marine headquarters in El Paso, Texas used the first helicopter of this type. The new helicopters are part of an effort to replace the 40-year -old fleet used currently. During the 2003 fiscal year, Border Patrol aircraft accumulated more than 44,000 flight hours, apprehending 79,512 people, and were used to seize about \$214,000 in illegal narcotics every day, according to the *Washington Post*.

5. News From The Courts

Yang v. Ashcroft
U.S. Court of Appeals for the Ninth Circuit
2004 U.S. App. LEXIS 10191

Petitioner De Ren Yang, a Chinese citizen, seeks review of the Board of Immigration Appeals' (BIA) decision to affirm, without opinion, the Immigration Judge's (IJ) denial of Yang's applications for asylum and withholding of removal. The IJ determined that Yang was not credible because his story varied in his credible fear interview, asylum application, and hearing before the IJ. At his credible fear interview, Yang referred to sterilization threats against himself. In his application, he discussed sterilization threats against his wife but omitted those against himself. At his hearing, Yang testified to Chinese authorities' mistreatment of both himself and his wife.

The U.S. Court of Appeals for the Ninth Circuit granted Yang's petition for review, finding no substantial evidence in the record to support the IJ's adverse credibility determination. Because a credible fear interview merely assesses an individual's eligibility to apply for

asylum or withholding of removal, it does not require as much detail as an actual asylum claim. The Ninth Circuit found it reasonable that Yang did not mention his wife during the credible fear interview because he was embarrassed and felt that he only needed to discuss his own arrest.

Moreover, the Court reiterated the IJ's assertion that Yang's asylum claim could be based on threats of sterilization targeted at either Yang or his wife. Although the Court found Yang's omission of his own mistreatment in his application "troubling," it nonetheless concluded that Yang's piecemeal relaying of his story did not destroy his credibility. The Court also noted that Yang never contradicted his story when retelling it, and that it corresponded to reports of conditions in China.

The Court noted that typically when it reverses an adverse credibility determination, it remands an asylum case to the BIA to determine whether the applicant has met the other criteria for asylum. By statute, forced sterilization of oneself or one's spouse automatically renders an applicant eligible for asylum. Yang's resistance to China's coercive population control measures and his wife's forced sterilization form the basis of his eligibility. Therefore, the Court limited the issue on remand to the BIA's exercise of discretion in granting asylum claims.

6. Government Processing Times

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

Texas (08/15/2004): <http://www.visalaw.com/texas.html>
Nebraska (08/15/2004): <http://www.visalaw.com/nebraska.html>
Vermont (08/18/2004): <http://www.visalaw.com/vermont.html>
Missouri (08/18/2004): <http://www.visalaw.com/missouri.html>
California (08/18/2004): <http://www.visalaw.com/california.html>

7. News Bytes

A Spanish language reality TV show is getting negative attention from immigrant rights groups. Liberman Broadcasting's "Gana la Verde" or "Win the Green" is shown on Spanish language stations in Los Angeles, San Diego, Houston and Dallas offers a competition in which winners win a year's worth of legal guidance toward a green card for legal residency. While the show does not guarantee winners a U.S. residency card, the show describes the contestants as undocumented immigrants working toward a final goal of obtaining a green card. Although Liberman representatives have said that they have not received any contestant complaints, immigration advocate groups are calling for the cancellation of the show, claiming that the show takes advantage of individuals that are desperate to immigrate to the United States. Representatives from the American Immigration Lawyers Association have let the broadcasting company know that the organization is considering a boycott of the program's advertisers and/or legal action for alleged false advertising and unlawful legal advice if the show does not offer more realistic portrayals of the immigration system.

According to a United States Citizenship Immigration Services (USCIS) public notice, the agency will terminate its contract with Designated Law Enforcement Agencies (DLEAs),

where some immigrants in rural locations have gone for fingerprint services. The contract is being terminated because the DLEAs cannot meet the new USCIS biometric standards, including the ability to take and store electronic fingerprints, photographs and signatures. Beginning October 1, 2004, USCIS will direct customers to the nearest Application Support Center, U.S. consular posts and military installations abroad for fingerprinting services.

U.S. Citizenship and Immigration Services (USCIS) today formally introduced InfoPass this week in Houston, Texas. The launch is a part of a national effort to implement InfoPass in all 22 USCIS District offices around the country, including all 34 sub-offices 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.

The Texas Lawyers' Committee and the law firm Cooley Godward, LLP are seeking additional plaintiffs for a nationwide class action suit challenging the U.S. Citizenship and Immigration Services' delay in issuing green cards to legal permanent residents granted that status by an immigration judge or the board of immigration appeals. The suit is intended to verify certify a class of individuals who were or will be granted legal permanent resident status by the Executive Office of Immigration Review and to whom USCIS has failed to issue evidence of registration as a lawful permanent resident. If you know of anyone interested in participating in the suit, e-mail info@visalaw.com for the contact information.

In follow-up to a news byte from last week, the U.S. Embassy in Colombo, Sri Lanka, is returning to normal operating hours after temporarily closing due to a discovery of an envelope with white powder on the premises. Tests conducted on the white powder proved negative for any toxic substances. The embassy is working to set new appointments for visa applicants that have missed their appointments and will notify new applicants by fax of their new interview dates.

8. International Roundup

According to the Associated Press, a group of North African immigrants were found on the Italian coastline. A cargo ship came across the small, wooden boat carrying more than 70 Africans south of Sicily and towed it to the island's southeastern port earlier this month. One of those aboard died on arrival, and survivors told police that several others perished during the journey and were thrown overboard. Italian police estimated that 100 people, mostly from Liberia, boarded the ship in North Africa. But only 73 were alive when the boat was discovered.

TV images of the emaciated survivors and the tales of dead passengers - including a 1-year-old - reignited demands to find a way to resolve the immigration problem in Italy. The 25-nation EU has no common policy on immigration matters. Plus, the open-borders policy that many of its nations share means that once inside, one can move freely from one country to another without checks. The Italian government is working in conjunction with the Liberian government and other EU members in order to enforce and help solve the immigration problem.

According to the Agency France Press, eighteen thousand illegal immigrants have been whipped in Malaysian prisons in the past two years since the introduction of tough new laws. Another 16,900 are awaiting their turn, the New Straits Times said, quoting prison sources. Most receive three strokes with the cane, the paper said. Caning is meted out for several crimes in Malaysia and was introduced for illegal immigrants in August 2002 after a crackdown, which saw nearly half a million people repatriated during a four-month amnesty period.

Malaysia gave notice last month that it planned a major new sweep against illegal immigrants, which could see more than a million people detained and punished before being deported. Under the new laws, illegal immigrants and those who harbor or employ them face fines of up to 10,000 ringgit (\$2630) per offense, a jail sentence of up to five years, or both, with whipping. Local prisons are now becoming overcrowded, with foreigners making up 40% of the prison population and increasing prison capacities to 10,000 more than they were designed to hold.

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

A North Carolina congressional candidate has recently launched an ad campaign accusing Kamran Akhtar, a Pakistani man arrested after he was seen videotaping uptown buildings in Charlotte, of being a "terrorist" with intentions to kill people. Officials say he also has taped buildings in Dallas, Austin, Houston and Las Vegas. Republican candidate Vernon Robinson was airing the ad on the final weekend before the primary runoff for 5th district congress. Akhtar's attorney told the *Charlotte Observer* that Akhtar has not been accused of anything and no charges have been brought against him, and is therefore surprised that Robinson would target his client in an ad.

Akhtar's attorney told the paper that his client has been charged with providing false information, giving a false name when arrested and failing to leave the United States after a voluntary departure was ordered in 1998. Robinson said Akhtar's arrest underscores his call for tighter immigration controls.

11. U.S. Will Grant Parole to Certain Visitors who Overstayed Their Last Visa

U.S. Customs and Border Protection ("CBP") Commissioner Robert Bonner has announced that CBP officers have been given discretion to grant parole to non-risk travelers from Visa Waiver countries who have overstayed their previous visit to the U.S. Bonner said that the powers were given in order to avoid disproportionate punishment for minor violations.

In the past, visitors from Visa Waiver countries who had overstayed a previous visit by a few days had been handcuffed upon arrival and detained overnight until the next available

return flight. According to the CBP, many of these travelers posed no threat to the U.S. Bonner states that the new policy will not lessen the agency's ability to keep terrorists out, but will provide a more fair way of dealing with foreigners whose violations were slight.

Prior to this change, visitors from Visa waiver countries who had overstayed a previous visit had to apply for a visa in order to enter the U.S. Visitors who were not aware of the rule on their subsequent visit were detained and deported upon arrival. Now, no-risk visitors who overstayed the previous visit will be placed on parole and will no longer have to apply for the visa.

12. Department of Justice Outlines Forms of Relief from Removal

The U.S. Department of Justice has released a fact sheet that describes the most frequently requested forms of relief that are available to a foreigner who has been found to be removable. The main forms of relief fall under two different categories: discretionary relief and administrative and judicial relief. Under discretionary relief, voluntary departure, cancellation of removal, asylum and adjustment of status are most frequent forms of review that are sought. Under administrative and judicial relief, the most frequent forms are motions to reopen or reconsider, stay of removal, administrative appeal and judicial review. The following paragraphs will detail the main points of these forms of relief.

The first form of discretionary relief from removal is voluntary departure. Once removal proceedings begin, Immigration Judges ("IJ") will inform the immigrant about the availability of this form of relief. Voluntary departure avoids the stigma of formal removal by allowing the immigrant to depart the U.S. at his or her own expense within 60 days of the conclusion of removal proceedings or 120 days after the commencement of the removal proceedings.

The second form of discretionary relief, cancellation of removal, is available to qualifying lawful permanent and non-permanent residents. To qualify for this form of relief from removal, a lawful, permanent resident of at least five years must have continuously resided in the U.S. for 7 years and have not been convicted of an aggravated felony. A non-permanent resident may also qualify if he or she has been continuously present in the U.S. for at least 10 years, has good moral character during that period, has not been convicted of an offense that makes him or her removable, and must demonstrate that removal would cause unusual and extreme hardship to his or her immediate family members who are either U.S. citizens or are lawful permanent residents.

A third form of relief from removal is asylum. The Attorney General may grant asylum to an immigrant who qualifies as a refugee. A refugee is one who demonstrates an inability to return to his or her country because of past persecution or a well-founded fear of future persecution because of his or her race, religion, nationality, political opinion or membership in a particular social group. To qualify for asylum, an immigrant must also file a timely application and have not been convicted of an aggravated felony nor be considered a danger to national security.

The last form of discretionary relief is adjustment of status and is available to change a foreigner's status from non-immigrant to a lawful permanent resident. Several conditions must be met, including that there must be an immigrant visa available at the time of application and that the alien must be admissible for permanent residence.

The first form of administrative and judicial relief from removal is a motion to reopen or reconsider. The motion to reopen is used when the applicant seeks to introduce new and additional evidence that was not available at the previous hearing before the IJ or the Board of Immigration Appeals ("BIA"). The motion to reconsider seeks a review of a decision based on alleged errors of law and facts. These motions are considered if they are filed in a timely fashion and they do not suspend the execution of a removal order unless a stay is issued by the IJ or BIA.

The second form of administrative and judicial relief from removal is a stay of removal, which prevents the Department of Homeland Security ("DHS") from executing an order of removal. An immigrant who appeals a decision can be automatically granted a temporary stay while the appeal is pending. This stay is temporary and usually is accompanied by a motion to reopen or reconsider.

An administrative appeal is the third form of relief from removal in this category. The BIA is the highest administrative body with power to interpret Federal Immigration laws. An immigrant or the DHS may appeal decisions of the IJ to the BIA. The BIA may sustain or dismiss the appeal, remand the case to the IJ, or refer it to the Attorney General for his or her decision. Precedent from BIA decisions are binding on DHS and IJs throughout the country unless the Attorney General overrules the decision.

Judicial review is the last form of relief from removal. The Immigration and Nationality Act confers jurisdiction to the Federal courts over certain decisions appealed from the BIA. The appellant has 30 days from the date of a final removal decision to file an appeal. Appeals are usually heard by the Court of Appeals.

13. UN Report Shows Insensitivity to Asylum Seekers in US Airports

According to the *Contra Costa Times*, a confidential report conducted by the United Nations in cooperation with the Department of Homeland Security has found that airport inspectors with the power to summarily deport undocumented immigrants have sometimes intimidated and handcuffed travelers fleeing persecution and have discouraged some from seeking political asylum. These findings highlight the challenges facing the department as it grants border patrol agents new powers to deport illegal immigrants from the Mexican and Canadian borders without providing them the opportunity to make their case before an immigration judge.

Until now, border patrol agents usually delivered undocumented immigrants to the custody of the immigration courts, where judges determined whether or not they should be deported. However earlier this month, Homeland Security officials announced a policy shift and said border agents would be trained before deporting illegal immigrants to ensure that asylum seekers and legitimate travelers are not mistakenly sent home. Now, supervisors will receive two days of training and border patrol agents will each typically receive a one-day, eight-hour training session during the next few weeks, officials said.

To conduct its study, U.N. officials reviewed more than 300 case files, interviewed dozens of inspectors, supervisors and asylum officers and sat in on more than 100 interviews with asylum seekers at various international airports. The Department of Homeland Security granted the United Nations access to internal documents, staff and asylum seekers on the condition that the report would not be released to the public after it was completed in late October.

The United Nations discovered that many inspectors held negative views of asylum seekers that included viewing them as frauds trying to enter the US under false pretenses. The report concluded that this resulted in instances where inspectors intimidated or treated asylum seekers with derision. For example, at John F. Kennedy Airport in New York, asylum seekers were routinely handcuffed and restrained with belly chains and leg restraints. Under the new policy, border agents will summarily deport illegal immigrants caught within 100 miles of the Mexican and Canadian borders who have spent up to 14 days within the United States.

Following this report, the Bush Administration also recently announced that border policy restrictions would be eased for visitors from certain European and Pacific Rim countries. Under the new policy, travelers will only be turned away if they pose a security risk, have a criminal record or are believed to likely remain in the US as illegal immigrants. However, they can still be permitted even if they carry previous technical violation of immigration rules. This only affects citizens of countries who do not need a visa to enter the US for personal or business trips of up to 90 days.

14. DHS Seeks to Reconcile Border Enforcement and Immigrants' Concerns

The *Washington Times* describes the Department of Homeland Security's (DHS) response to the Border Patrol arrests of 450 undocumented aliens in inland Southern California last June. The Mobile Patrol Group, a newly trained 12-member Border Patrol team, apprehended the aliens in public places based on tips from local police and residents. Asa Hutchinson, Undersecretary for border and transportation security, condemned the arrests as unauthorized and contrary to Customs and Border Protection (CBP) policy. He conceded that Immigration and Customs Enforcement (ICE) should have been in charge of the arrests because most of the aliens involved had been living and working in the U.S. for over a year. In contrast, CBP Commissioner Robert C. Bonner characterized the arrests as legal and within the Border Patrol's authority.

At a town hall meeting in Temecula, where the Mobile Patrol Group is based, Hutchinson told community leaders and Border Patrol agents that DHS was seeking to reconcile border enforcement and immigrants' concerns. In response to allegations of racial profiling and panic in the Latino community, Hutchinson promised that DHS would enforce immigration laws "in a reasonable manner," considering the "sensitivities" surrounding the issue. T.J. Bonner, president of the National Border Patrol Council, declared that the arrests were deterring potential undocumented aliens from Mexico and advocated for continued interior operations by Border Patrol agents.

The department proposes limiting Border Patrol arrests to the areas along the 7000 miles of the U.S. borders, apprehending aliens traveling north from the border and those at border highway checkpoints and transportation centers. ICE would enforce immigration laws within the interior. With only 2300 agents and recent budget constraints, ICE officials admit that they lack the capacity to assume more responsibility. Meanwhile, the Mobile Patrol Group remains operational and will support the Border Patrol's mission to protect the country against terrorism and weapons of mass destruction.

15. DHS Authorizes Longer Temporary Visits for Mexicans with Less Paperwork

Last week in the *Federal Register*, the Department of Homeland Security (DHS) promulgated an interim rule extending the time period certain Mexican nationals may stay in the U.S. without obtaining additional documents. Formerly, a Mexican holding a Form DSP-150, B-1/B-2 Visa and Border Crossing Card (BCC) did not need to obtain a Form I-94 to remain in the U.S. less than 72 hours within 25 miles of the border (or 75 miles within Arizona). The interim rule, which became effective August 13, enables BCC holders to stay up to 30 days within the same geographic parameters without needing an I-94.

DHS asserts that the new rule will facilitate commerce, tourism, and trade along the U.S.-Mexican border. Longer stays by Mexicans will help fuel the economies of southern border cities, made increasingly interdependent by NAFTA. Moreover, the rule approaches a more equal treatment of Mexican and Canadian nationals. Canadians can stay in the U.S. up to six months without obtaining additional documents. The rule also increases administrative efficiency by eliminating the additional paperwork Mexican BBC holders formerly needed to stay longer than 72 hours. Many of these individuals previously made unnecessary trips across the border every three days merely to avoid the inconvenience of the additional paperwork.

With less paperwork, resources can be channeled into enhancing security in other areas without compromising security pertaining to Mexican visitors. The rule will likely encourage more Mexicans to obtain BBCs, which include machine-readable biometric identifiers such as fingerprints and photographs. In order to obtain one, a Mexican must provide information about his residence, employment, and reason for frequent border crossings. The State Department then conducts biographic and biometric checks on the individual. Immigration officials will inspect BBC holders at ports-of-entry to ensure their identities. They will also analyze the new policy's effect on overall violations of terms of admissions and apprehensions of Mexican BBC holders who fail to obtain Form I-94 or violate the new time or geographic limitations.

The rule does not alter the 72-hour time limit for Mexicans entering the U.S. solely to apply for a Mexican passport or other official document at a Mexican consulate in the U.S. Nor does it extend the 72-hour limit for those who enter as nonimmigrant visitors with valid passports and visas without obtaining Form I-94. DHS is accepting written comments regarding the interim rule until October 12, 2004.
