

Siskind's Immigration Bulletin
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1. Openers

Dear Readers:

This week we include an interesting commentary from regular contributor Gary Endelman. Gary's columns always provide food for thought because they examine the bigger picture issues involved with immigration. So often it is easy to get bogged down in the here and now of the policy debate and lose sight of the fact that what we do today has an impact on our country for years to come.

Gary looks this week at how immigration as well as outsourcing can, in fact, help us address a potentially massive problem we will be facing in the years to come – the aging of our population and the coming shortage of younger workers to take the place of workers who will be retiring. This is a worldwide phenomenon. But the US is at least better prepared to handle this – at least according to Fed Chairman Alan Greenspan – than most of our competitor countries who have more restrictive immigration policies than America.

Certainly, the recent up tick in employment has given fuel to the anti-immigration forces in the country. But speak to sociologists and economists monitoring the future of the American workforce and you'll hear precisely the opposite concerns – how will the US deal with a coming massive worker shortage. The key will be to figure out how to keep the best jobs for American workers and either outsource the less desirable ones or find immigrant workers to fill the gap.

I've been on the road of late with four trips in four weeks. Some of the trips have been to deliver talks to various groups on US immigration. Others have been to visit clients and prospective clients. This week I'm off to San Antonio, Texas for the mid-year meeting of the American Bar Association. I serve on the governing council of the ABA's Law Practice Management Section as well as Chair of its book publishing program. I'll also be speaking at a continuing legal education program on trade show marketing for lawyers at the meeting. For those attorney readers in the San Antonio-area, I encourage you to come to the Law Practice Management Section's events and check out how the ABA can help your practice. You can learn more by going to www.abanet.org.

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 800-343-4890 or 901-682-6455.

Regards,

Greg Siskind

2. The ABCs Of Immigration: Expedited Naturalization for Assisting with Intelligence Gathering

Certain officials in the Justice Department are allowed to permit the entry or expedite the naturalization of certain aliens who assist US intelligence activities. The regulation affects 28 CFR § 0.62 part O with regard to the authority under 50 USC § 403h and 8 USC § 1427(f).

Which officials hold this power?

The Attorney General, the Director of Central Intelligence and the INS Commissioner were given this authority through the Central Intelligence Act of 1949.

How is the distribution of the Attorney General's power changed by this statute?

Previously, 28 CFR § 0.63 delegated the Attorney General's authority under these provisions to the Assistant Attorney General in charge of the Criminal Division. The rule implemented in 1992 amends the section by adding the Deputy Assistant Attorneys General, Criminal Division, to the list of individuals empowered to exercise the AG's authority with regard to these statutes.

Why did that change take place?

The change was intended to enhance the Criminal Division's ability rapidly and consistently to approve the entry and naturalization of specified qualified aliens.

What power is given to these individuals?

These officials now have the authority to permit the entry of aliens into the US for permanent residence "when it is in the interest of the United States or essential to the furtherance of the national intelligence mission."

What about INA § 316(f)?

This section confers upon the same three officials the authority to expedite the naturalization of certain "foreign intelligence sources," without regard to the residence and physical presence requirements of the INA.

Who is included in the "foreign intelligence sources" category?

The affected individuals are those who are otherwise eligible for naturalization and have made "extraordinary contributions" to the national security or to the conduct of US intelligence activities.

According to § 403h, these aliens and their immediate family members shall be admitted to the US for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations, or to the failure to comply with such laws and regulations pertaining to admissibility.

Is there a limit on how many aliens are allowed entry under this provision?

The number of aliens and members of their immediate families admitted to the US under this section shall not exceed one hundred persons in any one fiscal year.

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 - Could you please tell me if H1B extensions for an additional 3-year period are subject to the H1B cap too? I was told that the cap is only applicable for new H1B visas issued. Thank you for your time

A - Extensions are not subject to the cap in most cases. One important exception is if a person enters in a position that is exempt from the cap and then applies to change and extend H-1B status by moving to another employer that is not exempt from the cap. In that case, the worker would be subject to the H-1B cap.

Q - How much time one has before he has to join a job after arriving on H1-B visa into US. I will appreciate your reply.

A - Within ten days.

Q - Have H1-B, pending I-140 and I-485. Have to change employment, where do I stand?

A - Once the I-140 is approved, if the I-485 has been pending for more than 180 days and you find a new job in the same or a very similar field, you can sometimes change employers. We usually recommend staying put, but if you have to move, make sure you abide by these rules. And check with your immigration lawyer beforehand.

Q- My roommate was recently granted an H-1B visa, came to the US, and went to the local Social Security office to apply for a number so she could begin her employment. She was told that it could be up to 4 weeks before Immigration had entered her number in the system, and that they could not process her application until then! She is concerned because she must work to honor her visa and remain in status, but cannot work without a Social Security number. She has been told that most employers of H-1Bs allow the employee to work before the SS# has been issued. Is this advisable?

A - Actually, it is possible to work legally without the SS# if the employer wants to employ the worker. The work visa is what is needed to legally work, not the SS#. But employers have to withhold taxes and then make the contribution once the number is available. That's a little bit of a pain in the neck, but probably worthwhile if the employer really needs the worker to start right away. And this is becoming more common as the Social Security Administration's performance gets worse and worse.

Q - My wife and I have had work authorization card based on political asylum for more than fifteen years. Could we apply for Permanent Residence?

A - Yes, you should be able to pursue permanent residency since you have been in refugee status in the US for more than one year.

Q - This question is regarding the Green Card processing. Are there fees that have to be sent to the State or Federal government with labor application ETA-750?

A - There is no fee for the labor certification part of the case. We understand that the Labor Department is considering changing this policy, but for now it is a free process. The later I-140 and I-485 parts of the case, of course, have significant filing fees.

4. Border and Enforcement News

Luxembourg was granted a waiver of the October 1, 2003 machine-readable passport requirement for travelers entering the US visa-free under the Visa Waiver Program (VWP), joining the 21 other countries with waivers. The waivers are valid until October 26, 2003.

There are four remaining VWP countries that did not request a waiver: Andorra, Brunei, Liechtenstein and Slovenia. Belgium was ineligible for a waiver.

Edwin Ramones of Bay Shore, NY has been charged with smuggling over 100 Ecuadorians into Long Island throughout the past several years. Authorities discovered his operation, which uses boats, trucks and safe house in South and Central America, while investigating Ramones' half-brother, Wilson Marcelo Lopez, who in December, pleaded not guilty to a charge that he headed a smuggling organization. Ramones is being held without bail as an illegal immigrant.

5. News From The Courts

Neli v. Ashcroft
6th Circuit Court of Appeals
Case No. 02-3749
2003 US App. LEXIS 26602

The Petitioners escaped Albania following repeated beatings and torturing of the husband. The couple determined escape was imperative after learning that the husband's name was on the Communist government's political death list.

At the hearing, a former coworker of the Petitioner verified the stories of the beatings and stated that although the government had changed, the same people were still in power. The immigration judge denied the Petitioners' application for

asylum and for withholding of removal, but granted their request for voluntary departure. The IJ placed considerable weight on the Country Report and Asylum Report, which indicated that individuals were no longer persecuted on political grounds. The BIA affirmed without opinion.

The Sixth Circuit Court of Appeals found support for the IJ's determination that the Petitioner's suffered past persecution and no well-founded fear of future prosecution. However, the Court agreed with the Petitioners that the IJ abused his discretion by not considering whether the long-term persecution of the Petitioner and his family was sufficiently atrocious to merit a discretionary grant of asylum under *In re Chen*, 20 I&N Dec. at 18.

Since the IJ did not address the issue of humanitarian asylum in his opinion, the Court remanded for a decision as to whether the persecution that the Petitioners suffered was sufficient to merit a grant of asylum for humanitarian reasons. The Court instructed the IJ to offer a clear explanation and determination of whether the Petitioners' past persecution warrants a discretionary grant of asylum.

Zhang v. Ashcroft
9th Circuit Court of Appeals
2004 US App. LEXIS 719

Xiaodong Zhang, a native and citizen of China, petitioned for review of the Board of Immigration Appeals' holding denying him asylum, withholding of removal, and relief under the Convention Against Torture.

The Ninth Circuit Court of Appeals granted the petition and held that the BIA's and IJ's holdings that the Petitioner was not credible were not supported by substantial evidence. Further, no determination was made as to whether the Petitioner's testimony, if credible, was sufficient to establish eligibility for relief.

As a result, the Ninth Circuit granted the petition and remanded the case back to the BIA.

Cardenas-Morfin v. Ashcroft
9th Circuit Court of Appeals
2004 US App. LEXIS 807

Sergio Cardenas-Morfin petitioned for review of the Board of Immigration Appeals and the Immigration Judge's denial of his application for cancellation of removal and voluntary departure.

The Petitioner argues on appeal that the Immigration Judge violated his constitutional right to due process in denying him a full and fair hearing.

The Ninth Circuit Court of Appeals found that the Immigration Judge prevented the Petitioner from testifying in support of his application for cancellation of removal. This denial of testifying denied him from presenting crucial evidence to support his application. The court also found that the IJ limited the Petitioner's testimony in

support of his application for voluntary departure. The Immigration Judge refused to allow testimony in support of the Petitioner's good moral character after the INS introduced evidence that the Petitioner intentionally made false statements to the IRS on old tax returns.

The Ninth Circuit found that the Immigration Judge's refusal to allow the Petitioner a chance to rebut the INS's contentions likely did affect the outcome of the proceedings. As a result, the court granted the petition and remanded the case for future proceedings.

6. Government Processing Times

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

California (01/22/2004): <http://www.visalaw.com/california.html>

Missouri (01/22/2004): <http://www.visalaw.com/missouri.html>

Texas (01/15-31/2004): <http://www.visalaw.com/texas.html>

Vermont (01/22/2004): <http://www.visalaw.com/vermont.html>

7. News Bytes

Alluding to the electoral impact the 9 million ethnic Poles in the US could have on President Bush's reelection efforts, Polish President Aleksander Kwasniewski challenged the Bush administration to allow Poles to travel to the US without visas. The Polish President stated that his country had hoped that in exchange for its help in the war in Iraq, the US would ease visa regulations for Poles to match the visa exemptions granted to European nations, including some that opposed the war, such as France and Germany.

The challenge came during a televised discussion in the White House, where President Kwasniewski stressed, "The future is no visa."

While President Bush refused to guarantee easing visa restrictions, the two presidents released a joint statement regarding a US program in Warsaw to pre-screen visitors traveling between Poland and the US.

US District Judge Fred Biery approved a settlement between the federal government and Serafin Olvera Carrera, obligating the government to pay Carrera's family \$2.15 million. In March 2001, during a raid, immigration officials threw Carrera to the ground, breaking his neck. The three officials, who were convicted of willfully denying medical care to Carrera after injuring him, stated that they thought he was faking his injuries.

Carrera was paralyzed from the neck down, and later suffered from heart and respiratory problems due to the paralysis. He was pronounced brain dead and was taken off life support.

The Department of Homeland Security has published a notice in the Federal Register regarding expansion of the USCIS direct mail program. Under this program, individuals applying for certain immigration benefits are directed to mail their applications directly to a service center instead of a local office for processing.

Effective February 23, 2004, those applying for special immigrant classification under section 101(a)(27)(I) of the Immigration and Nationality Act should mail their applications, whether submitted separately or together with adjustment of status applications, to the Nebraska Service Center.

The El Paso Service Processing Center, the immigration detention facility in El Paso, Texas, is acting like a mini-hospital for detainees. Between 150 and 200 come to the center for medicine, exams, blood analysis, X-rays and dental work. The Joint Commission on Accreditation of Health Care Organizations, the National Commission on Correctional Health Care and the Commission on Accreditation for Corrections recently accredited the detention facility.

The detention facility houses about 700 immigrants and its medical center has a physician, a psychiatrist, nurses and a visiting dentist, most of whom are bilingual.

The California Employment Development Department (EDD) has announced that effective February 2, 2004, it will send out Preassessment Letters as the first step in processing regular labor certification cases. The purpose of these letters is to confirm that the case is still active before the EDD begins to review the case. Petitioners will have 45 days to provide written confirmation that the case is still active. If a petitioner does not respond, the EDD will cancel the case.

A sample Preassessment Letter can be viewed at the following web address:
<http://www.aila.org/infonet/fileViewer.aspx?docID=12078&index=0>

We reported last week that Special Agents for the Office of Investigation of the Treasury Inspector General for Tax Administration are using IRS records to identify immigrants who are deportable by reviewing who used ITIN's instead of Social Security numbers on their W-2 forms.

The IRS responded "it is not the policy of the IRS to release tax returns or return information to federal agencies for investigation of nontax crimes" and denied any allegation that the IRS compiled a list of 250,000 persons who used ITIN's that the IRS suspects are illegal immigrants.

A provision of the Medicare bill provides \$1 billion for hospitals that provide emergency medical care for undocumented immigrants. Much of this money will be allocated over a period of four years to hospitals in states that have the highest numbers of undocumented migrants. The Department of Health and Human

Services still needs to determine how much money should be given to the individual hospitals that qualify.

By law, hospitals cannot turn away patients who need emergency medical care, nor can they ask about a patient's immigration status. Health care analysts estimate that hospitals pay \$2 billion to treat undocumented immigrants who cannot pay their bills.

In response to the United States' increase in visa fees and tougher entrance policies, foreign countries have enacted similar retaliatory policies.

Russia, for example, has increased their visa fees and now requires all American men between the ages of 16 and 45 to complete a form that lists several questions, including whether they ever served in the American armed services. Brazil now requires all Americans to be fingerprinted upon their arrival in addition to increased visa fees. Saudi Arabia requires an original letter of invitation from a registered company in Saudi Arabia. China and Thailand raised their fees 67% for American visitors, and Chile charges a \$100 reciprocity fee upon arrival.

The Immigration and Customs Enforcement, an agency under the Department of Homeland Security, is making inspections at college campuses across the US as part of mandatory campus inspections that require colleges to release the names of their international students and a sample of school and accreditation records before receiving their recertification.

International students must participate in the Student and Exchange Visitor System (SEVIS) before colleges may enroll them. The SEVIS database is a list that includes the names, nationalities, addresses, ages, courses of study, and academic standings of all international students. The database, which is updated each semester, currently includes about a half million international students.

International students pay an estimated \$11.4 billion each year in college tuition.

8. International Roundup

In 1999, New Brunswick signed on to the Provincial Nominee Program, which allows provinces to fast-track the federal application process for immigrants they consider desirable. For New Brunswick, the nominee program had a painfully slow start, but it has gained speed and more applicants are being received every year.

Only a tiny fraction of Canada's annual immigrant population settles down in Atlantic Canada. On average, New Brunswick gets between 700 and 800 immigrants a year and most do not go through the nominee program.

Peter Mesheau, the provincial minister responsible for immigration, said that ways to boost immigrant numbers for Atlantic Canada will be a major topic of discussion in his meeting with other provincial immigration ministers in Victoria.

The EU will hold informal meetings in Ireland in order to focus on the introduction of common asylum policies for all member states. Ireland, which holds the EU presidency, wants to secure an agreement on a series of measures that will reduce asylum and the expulsion of immigrants from the EU. This is the seventh attempt by the EU to establish an immigration policy.

The total number of international students enrolled in British universities increased by nearly a quarter last year. The largest increase was in the number of Chinese students, which increased by 80% to 31,938, followed by Indian students, which rose by 82% to 10,899. Currently, there is a total of 174,575 foreign students.

In Belgium, the committee against foreigners' voting rights has organized several petitions opposing a planned new law that would give non-European nationals living in Belgium the right to vote in local elections. 50,000 people have signed a "physical" petition, 8,000 have sent SMS messages of support from mobile phones and another 10,000 people have signed an online version of the petition.

9. Legislative Update

A Congressional hearing on the Potential Impact of Recent Temporary Guest Worker Proposals on the Agriculture Sector was held on January 28, 2004. The opening statements of the witnesses who testified are available at <http://agriculture.house.gov/hearings/testimony.htm>

[HR.3722](#): To amend section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to impose conditions on Federal reimbursement of emergency health services furnished to undocumented aliens.
Sponsor: Rep Rohrabacher, Dana [CA-46] (introduced 1/21/2004)
Committees: House Energy and Commerce
Latest Major Action: 1/21/2004 Referred to House committee.
Status: Referred to the House Committee on Energy and Commerce.

[HR.3735](#): A Private Bill for the relief of Kadiatou Diallo, Laouratou Diallo, Ibrahima Diallo, Abdoul Diallo, Mamadou Bobo Diallo, Mamadou Pathe Diallo, Fatoumata Traore Diallo, Sankarela Diallo, and Marliatou Bah.
Sponsor: Rep Rangel, Charles B. [NY - 15] (introduced 1/27/2004)
Committees: House Judiciary
Latest Major Action: 1/27/2004 Referred to House committee.
Status: Referred to the House Committee on the Judiciary.

[S.2012](#): A Private Bill for the relief of Luay Lufti Hadad.
Sponsor: Sen Levin, Carl [MI] (introduced 1/21/2004)

Committees: Senate Judiciary
Latest Major Action: 1/21/2004 Referred to Senate committee.
Status: Read twice and referred to the Committee on the Judiciary.

[S.2036](#): A private bill for the relief of Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda.
Sponsor: Sen Feinstein, Dianne [CA] (introduced 1/28/2004)
Committees: Senate Judiciary
Latest Major Action: 1/28/2004 Referred to Senate committee.
Status: Read twice and referred to the Committee on the Judiciary.

[S.2044](#): A bill for the relief of Alemseghed Mussie Tesfamical.
Sponsor: Sen Schumer, Charles E. [NY] (introduced 2/2/2004)
Committees: Senate Judiciary
Latest Major Action: 2/2/2004 Referred to Senate committee.
Status: Read twice and referred to the Committee on the Judiciary.

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

In debates, advertisements and town hall meetings, the Presidential candidates are tending to scatter Spanish words throughout their speeches in the hopes of attracting Hispanic voters, the largest minority in the US. While for some of the candidates trying to speak the language is a problem, some Latinos interpret the candidates' attempts to speak their language as a sign of respect for their growing political influence.

In a campaign appearance at the New Mexico Military Institute in Roswell, President Bush proposed a big increase in homeland-security spending and promoted his temporary-worker initiative to aid illegal immigrants. He said he predicted an increase of almost 10 percent on homeland security throughout the government.

Bush said that as long as employers and workers are willing, there should be an open and honest system that allows for temporary work. He was quick to say that he wholeheartedly opposes amnesty because it encourages further illegal immigration and rewards law breakers. He said that the current system ignores reality, and needs to be changed.

US Senate candidate Howard Kaloogian, former member of the California state assembly, came out last week against President Bush's plan to ease the way for immigrants to work in the United States. He also won the endorsement of Ron Prince, the author of Proposition 187, the controversial anti-illegal immigration measure that voters approved and a court later overturned. Kaloogian has said

publicly that the program proposed by Bush triggers more illegal immigration, as well as questions the fairness of granting legal status to people already in the country.

As those running for a seat in the Illinois Senate are gearing up their campaigns, immigration issues are dividing both Democratic and Republican hopefuls. Democrats are uniformly criticizing the Bush administration's proposal, with the biggest immigration divide over spending, as some support spending more on border patrols with Mexico and others say enough is spent.

Republicans are generally split on the immigration plan proposed by the president, as only two called it a good starting point for debate while the remaining Republicans criticized it. Nearly all the Republican candidates support more spending on border security.

None of the 14 candidates supports an amnesty program that would legalize all current illegal immigrants living and working in the United States. Nearly all Republicans and Democrats said businesses that employ illegal immigrants should face criminal fines and penalties.

11. Guest Commentary - Immigration and Off-Shoring: The Graying of America,
By Gary Endelman

Gary Endelman practices immigration law at BP America Inc. The opinions expressed in this column are purely his own and do not represent the views or beliefs of BP America Inc. or Visalaw.com in any way.

More than any other single factor, increasing levels of immigration is necessary to ensure that the United States experiences the labor force growth to compensate for the graying of America. Absent this, the centrifugal forces behind the off-shoring of good paying jobs can only accelerate. As the nation plans for the massive Baby Boom retirement that will soon hit, an appreciation of how immigration can keep white-collar jobs in the United States is an essential ingredient of any coherent strategy. Nativists who want to cut back on immigration are unwittingly leaving American employers with no alternative but to satisfy their manpower needs overseas. In the global competition for talent that commands the energy and attention of all developed nations, only those who use immigration to compensate for a declining birth rate will maintain their competitive position and be able to exert sustained leadership.

Testifying before Congress on the aging of the American work force, Federal Reserve Chairman Alan Greenspan warned that the tsunami of baby boom retirements could trigger labor shortages that would undermine Social Security, destabilize Medicare, and weaken the economy. Without an increase in immigration or dramatically higher productivity growth, Greenspan warned that benefits for seniors would have to be slashed, or payroll taxes hiked. Higher payroll taxes, however, discourage hiring and would only serve to aggravate the impending labor shortage. For this reason, far from stealing US jobs, as the nativists would have an unsuspecting public believe, immigration actually acts as a brake on off-shoring.

Experts estimate that America will need 5%, or 15.6 million, more workers by 2015 to maintain the current ratio of workers to the total population. Despite current fears about job losses as a consequence of off-shoring, the US economy will need more, not fewer, workers to maintain current levels of revenue.

The US Census Bureau estimates that there will be 82 million elderly by 2050 as compared to 34.6 million today. This trend will be most evident between 2011 and 2030 when those baby boomers born from the late 1940's to the early 1960's hit retirement age. Right now, one in three workers is over age 55 and the Monthly Labor Review forecasts the number of workers between the ages of 55 and 64 to soar by almost 50% between 2000 and 2025.

In a recent examination of the impact of global outsourcing on the US economy, the research firm Evaluserve looked at statistics from the US Congressional Budget Office and the Bureau of Labor Statistics. Anticipating an annual GDP growth of 3.20%, the report forecasts a domestic labor shortage of 5.6 million by 2010 due to an aging population and slow population growth. Evaluserve predicted that this could cost the US economy up to two trillion dollars. At a recent forum sponsored by the Center for Strategic and International Studies, American Enterprise Institute Senior Fellow Ben Wattenberg predicted that, by 2010, the US could have a labor shortage of 7-8%.

Nor is this solely an American phenomenon. In a recent study by Robert Stowe England for the Center of Strategic and International Studies (CSIS) entitled "The Fiscal Challenge of An Aging Industrial World," we learn that the coming gross imbalance between active workers and retirees has the potential to disrupt the economies of all industrialized nations by throwing them into massive deficits occasioned by vastly higher levels of health care expenditures with fewer and fewer people to pay the bills. Between 2010 and 2030, the UK anticipates an 82% surge in the elderly population while the working age population grows by only 5%. Who is going to pay the bills?

It is certainly true that technology can diminish the need for more workers, but only up to a point. When the gap between productivity and consumer purchasing power grows too large, as it did in the late 1920's, there are not enough dollars to soak up the goods and services in circulation. Depression inevitably follows as the pattern of economic life is shattered irrevocably. Moreover, increased productivity without increased employment does nothing to sustain the levels of payroll tax revenue on which much federal discretionary spending is based. Machines do not pay taxes, workers do. If this discretionary spending drops, so will the federal commitment to technology research and innovation on which our entire economic competitiveness depends.

An alternative way to compensate for chronic labor shortage resulting from the graying of America is off-shoring. While there has been much ink spilled in recent months over this phenomenon, very little attention has been paid to what jobs are leaving and which ones will stay behind. "What will continue to go overseas are the repetitive activities, the things that will ultimately be automated anyway," says Nancy Markle, president of the Society for Information Management and former Arthur Andersen CIO. "High-level IT jobs that are core to a company's strategy are not leaving. Sun Microsystems, for example, expects to outsource 50% of non-core activities by 2010 according to CIO H. William Howard. Will Sun send everything off-shore? Hardly. "The things that are core," Howard explains, "that are tightly tied to

business process and the local business community, won't." Cingular CIO Thaddeus Arroyo views off-shoring as a targeted strategy that he uses to make a difference only when the right situation presents itself. While Cingular sends 10% of its IT work offshore, this is mostly low-level maintenance; Arroyo retains a US staff to keep "new and more complex development close...Offshore outsourcing simply allows us to remain productive so we can deliver innovation here."

Even the most ardent advocates of off-shoring cannot insulate themselves from the need for home-grown talent to do the key jobs that can only be done in America, at least so long as the companies themselves remain here. If they leave, all bets are off. In their December 11th article on "Re-locating the Back Office," the Economist cited the comments of Craig Barrett, the chief executive of Intel that employs a good number of Indian engineers on H-1B temporary worker visas, who observed that a shortage of well-trained engineers would encourage American firms to shift more, not less, work to India as a result of the reduction in the H-1B visa allotment from 195,000 to 65,000 per fiscal year. Immigrant bashers bring closer the day when core American IT jobs have to leave because there will be no one to do them.

At the end of the day, there is no substitute for high levels of immigration to forestall the detonation of our demographic time bomb. It is sweet irony that the most severe critics of immigration often allege that foreign workers accelerate the exodus of American jobs by coming here to facilitate the transition of sending work overseas. Truth be told, nativists only make off-shoring that much more inevitable. When American employers lack the human talent to do the core jobs that they want to keep close at hand, and cannot bring in the best and the brightest from other lands, they will have no choice but to either relocate their entire operations or send these jobs to India. It would be hard to devise a strategy more pleasing to the Indian software industry than to clamp down on immigration to the United States.

The aging of the American work force represents a major challenge to our continued dominance as a world power. As fewer workers have to support more retirees, our policymakers are presented with the Hobson's choice of raising payroll taxes or cutting benefits. Neither is acceptable. Increasing high levels of immigration is the only alternative. When you consider that payroll taxes today are 34% of all federal revenues, not only do immigrant workers underwrite our social compact, but they also provide the human talent necessary to keep core jobs at home. Immigrant bashing, if successful, will accelerate the flight of these jobs to low wage markets overseas by leaving desperate employers with no alternative. Keep it up guys and you may end up getting what you wish. I sure hope not.

12. Unanswered Questions Remain in Recent Immigration Proposals

President Bush's announcement of a new immigration proposal has energized both immigration advocates and opponents. Additionally, Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD) recently introduced their own immigration reform proposal.

The President's immigration reform plan would at first allow for both undocumented people as well as foreign workers living abroad to remain in the US for three years, with their participation renewable. The benefits to the temporary guest workers are that they would be allowed to travel back and forth between their countries or origin

and the US, and that it includes incentives for people to return to their home countries.

It is unclear, however, if President Bush's plan would handle immigration advocates' concerns such as long backlogs in legal immigration. The plan calls for participants of the program to be able to apply for permanent legal residency, but they would be placed in line behind those already in line. Under current conditions, the process to obtain legal permanent status would take decades for these temporary workers. In the existing immigration laws, bars and grounds of inadmissibility create obstacles for those trying to adjust. It is also unclear as to whether the Bush administration's plan would adequately deal with these roadblocks. Additionally, the current immigration system is known for having long backlogs that keep close family members separated for as long as 20 years and this issue has yet to be addressed by the Bush administration.

The Immigration Reform Act is the only program introduced to date that includes the three components immigration advocates consider essential for total immigration reform. They include family reunification through family backlog reduction, a new temporary worker program and access to an earned adjustment for eligible people already living and working in the US.

The Immigration Reform Act, sponsored by Senators Hagel and Daschle, caps the H-2B program at 100,000 for five years and reverts to 66,000 thereafter. Admission of H-2B visa holders would be limited to nine months in any twelve-month period and is not portable. The act also calls for the creation of a new H-2C program, which is a two-year program that is renewable for another two years and capped at 250,000 annually. The H-2C visa would be portable after three months, with some exceptions. The bill creates a commission to review the program and to provide a report on wage decisions.

13. Border Patrol Union Outraged by Bush's Immigration Proposal

The US Border Patrol's union has spoken out against President Bush's immigration proposal, saying it is offensive to federal agents who risk their lives to keep illegal border crossers out of the country, and rewards illegal immigrants that the agency fails to catch. Some agents stated they plan to resign from the border patrol because the proposal is viewed as an insult to agents who are already demoralized.

Border Patrol union representatives have told the press that Bush's plan will make the agency's job even more difficult, as it will increase the number of illegal border crossings. Agents are warning that security on US borders presents a clear and increasing danger as even more illegal aliens enter the country.

While union representatives are being vocal regarding the subject, federal officials have instructed border patrol agents not to disclose information that might reflect poorly on the idea. A spokesman from the agency told the press that the purpose of these instructions was meant to prevent confusion about how to handle questions on the president's proposal and statistical information on apprehension numbers will be available, but only through headquarters.

Meanwhile, US border patrol agents have been told to ask a series of questions when they capture illegal immigrants, including whether the immigrants have heard of Bush's proposal.

A border patrol union official said to the press that the warning's intent was not only to maintain consistency, but also to intimidate agents into not raising concerns about problems they could face in dealing with a flood of illegal immigrants.

14. CSS Settlement Approved

The class action amnesty case, *Catholic Social Services, Inc. v. Tom Ridge, Department of Homeland Security* (Civ S-86-1343-LKK), was approved by US Federal Judge Lawrence K. Karlton on January 23, 2004. This case was the longest pending class action suit against the former INS.

In September 2003, the Center for Human Rights and Constitutional Law and the Department of Homeland Security (DHS) reached a settlement allowing over 150,000 undocumented immigrants to apply for legal resident status under a one-time amnesty program that became law in 1986. The law allowed undocumented immigrants who had resided in the US since 1982 to obtain legal status. The class action suit challenged an INS rule that disqualified those who had briefly traveled abroad during the period of required residence for the amnesty.

In April 1988, Judge Karlton ruled that the travel rule was illegal and extended the application period for four months for those who had been turned away. INS agreed to change the rule, but appealed the judge's decision to grant an extension. For the next fifteen years, INS repeatedly appealed federal court orders upholding the extension.

While the appeals were pending, class members were temporarily protected from deportation and were allowed to apply for work permits.

Under the approved settlement, immigrants who believe they qualified for the 1986 amnesty but were turned away have a one-year period beginning in May 2004 to apply to legalize their status. Class members will be allowed to work while their applications are pending. The DHS also agreed to pay the plaintiffs' attorneys' fees.

The terms of the settlement are available at www.centerforhumanrights.org.

In a separate class action case, *Newman v. Citizenship and Immigration Services*, the Center for Human Rights and Constitutional Law also represent the plaintiffs. The case addresses another 100,000 immigrants who were turned away by INS during the amnesty program because they too had briefly traveled abroad. However, these plaintiffs returned by improperly using non-immigrant visas such as student and visitor visas. A settlement has been reached in this case, which is pending approval by a federal court in Los Angeles.

15. Panel Finds Officials Could Have Prevented 9/11 Attacks

For the past two years, US officials have contended that immigration officials had no reason to suspect the September 11 hijackers, who legally entered and resided in the US. However, in the seventh hearing held by the September 11th Commission, the body found that the US government repeatedly missed opportunities to prevent thirteen of the September 11 hijackers from entering the US. The report issued by the panel found that immigration agents missed false passports, none of the hijackers filled out their visa forms correctly and that at least three lied on their forms.

The passports belonging to eight of the nineteen hijackers had evidence of "fraudulent manipulation" and five had "suspicious indicators." The report also said that six hijackers, including Mohammad Atta, violated immigration laws either while residing in the US or when entering the US. Five of these were individually questioned by officials, but were eventually allowed to enter the US. Atta was admitted to the US on a tourist visa, despite informing an inspection officer that he was a student in the US. Six of the hijackers had overstayed their visas.

The panel was informed that the hijackers had an easy time entering the country because consular and inspection officials were trying to identify those individuals who might try to settle in the US. Identifying terrorists was not a priority.

The report did point out that at least five suspected al Qaeda members were prevented from joining the 9/11 plot. Four were denied visas, and a fifth, Mohamed al Qahtani, was sent back to Saudi Arabia. Al Qahtani made his way to Afghanistan, where he was captured; he is now being held in Guantanamo Bay, Cuba.

Jose Melendez-Perez, the Orlando, FL official who inspected al Qahtani testified that al Qahtani had no return ticket or hotel reservations, and also refused to identify a friend who would provide him with money and assistance on his trip. Melendez-Perez stated that al Qahtani reminded him of a 'hit man', because "a 'hit man' doesn't know where he is going because if he is caught, that way he doesn't have any information to bargain with." Officials believe al Qahtani's 'friend' to be Atta, who was caught on an airport security camera complaining because his friend had been refused entry to the US.

Officials believe that al Qahtani was the "twentieth" hijacker – a theory that explains why one of the planes had four hijackers, while the others had five on board. Officials theorize that because Flight 93 had only four hijackers, the passengers were able to overcome their attackers and crash the plane in Pennsylvania, instead of a suspected target in Washington, DC.

16. DHS' Broad Application of Post-9/11 Rule Being Questioned

The Department of Homeland Security's use of a post 9/11 administrative rule to detain sex offenders is pushing cases through the court systems.

The "automatic stay" rule was originally written immediately following September 11 to allow the government to detain Muslims suspected of having ties to al-Qaeda. The present implementation of the regulation has allowed the government to detain a number of men whose offenses were minor, whose convictions were served years ago and who have lived law-abiding lives in the meantime.

“Operation Predator” is the DHS’ program that automatically jails immigrants convicted of sex crimes before removal. A large number of arrests have put illegal and legal immigrants in jail for extended periods of time.

The “automatic stay” rule is activated when an attorney at the Bureau of Immigration and Customs Enforcement checks the applicable box on an intake form. In Operation Predator cases, the box is automatically checked.

The litigation stems from the fact that federal agents are forcing people to serve extensive jail terms because of the checked box. With the box checked, the DHS is able to implement the regulation by ignoring bond decisions and release orders by immigration judges and the BIA. The immigrants are detained at the attorney general’s discretion.

While the cases have been decided for both sides, all the judges involved have moved past the portion of the statute that authorizes the detention rule. 8 USC 1226 states: “The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.” Some of the judges have stated that they are not reviewing the decisions but the constitutionality of the process.

Some of the cases, especially those involving statutory rape, may stem from cultural differences regarding the age when women can marry and bear children. In one case, a native of El Salvador was arrested for having a consensual sexual relationship with a 15-year-old girl when he was 28 years of age. He only served two years probation, with a psychiatrist noting that in his culture, it was not uncommon for girls to be married at age 14.

None of the cases has made it to the Appellate level yet, but both sides are pushing for a final determination of the issue.