

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

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1. Openers

Dear Readers:

Last year in this space I drew fire from anti-immigrant groups because I made a point of disputing specific facts cited in a story on business immigration story on CNN's daily show Lou Dobbs' Tonight. Dobbs' show kicks off CNN's prime time schedule and its anchor is one

of CNN's major figures. Dobbs has since broadcast dozens of stories on immigration and most immigration experts who watch his show know what to expect – universally negative coverage that looks like it was written by the anti-immigrant groups themselves. I've pointed this out numerous times here and on our web site's blog.

Others are noticing as well and beginning to take CNN to task. One of the best reviews we've seen is Peter Hart's recent analysis of several months of Dobbs' show for FAIR, the media watchdog group (this FAIR stands for Fairness and Accuracy in Reporting and should certainly not be confused with FAIR – the anti-immigrant Federation for American Immigration Reform). You can find Mr. Hart's piece at <http://www.fair.org/extra/0402/dobbs.html>.

This week we took the rare step of issuing a special newsletter to our readership alerting them to the fact that the H-1B quota was hit just five months into the fiscal year. You won't hear from Lou Dobbs how critical medical research in this country will slow as a result of the H-1B cap. Nor will you hear about public schools across the country that won't have enough teachers this fall because they can't get needed teachers visas. The same is true for the people of the small town that won't get that doctor they've been counting on. We'll do our best to keep you up to date with what is really happening. And when Congress takes up the issue of fixing the H-1B visa program, we'll provide you with the information you need to make your voices heard in Washington.

Speaking of caps, the American Immigration Lawyers Association is reporting this week that another visa may cap out soon. The H-2B is the temporary visa that is available to both skilled and unskilled workers coming to fill short-term positions where employers can show Americans are unavailable. This is, in many ways, at the root of President Bush's guest worker proposal. The key difference is that employers will not have to show the positions are temporary in nature. But much of the rest of the program mirrors the H-2B program. This is the first time the cap for H-2B visas has been reached, yet another indicator that the American economy is heating up.

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

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## 2. The ABC'S Of Immigration: The H-1B Cap

On October 1, 2003, the allotment of H-1B visas provided annually by Congress dropped from 195,000 to 65,000. On February 17, 2004, USCIS announced that it had received enough applications to meet the 2004 cap. The new cap will begin on October 1, 2004, and until then it will be impossible to obtain new H-1b visas for cap subject employees. It is not clear how the Congress and the employers will deal with this issue. Capitol Hill observers see little likelihood Congress will act soon to raise the cap in the near term and it is quite possible that the number will not be raised at all. There are also proposals to carve-out more exemptions from the cap.

### **Who is actually subject to the cap?**

Not every H-1B applicant is subject to the cap. Visas will still be available for applicants filing for amendments, extensions, and transfers unless they are transferring from an exempt employer or exempt position and were not counted towards the cap previously. The cap also does not apply to applicants filing H-1B visas through institutions of higher education, nonprofit research organizations, and government research organizations.

### **When was the last time the H-1B cap was hit?**

The H-1B cap was last hit on March 21, 2000.

### **What will happen to petitions that were not filed in time?**

USCIS will return all petitions for first-time employment subject to the annual cap received after the end of business on February 17, 2004. Returned petitions will be accompanied by the filing fee.

Those cases that were filed before the announcement issued by USCIS will be reviewed.

### **Can an applicant re-submit an H-1B application?**

Petitioners may re-submit their petitions when H-1B visas become available for FY 2005. The earliest date a petitioner may file a petition requesting FY 2005 H-1B employment with an employment start date of October 1, 2004, would be April 1, 2004.

### **What will happen to the petitions that do not count against the cap?**

Petitions for current H-1B workers normally do not count towards the congressionally mandated H-1B cap. USCIS will continue to process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States
- Change the terms of employment for current H-1B workers
- Allow current H-1B workers to change employers (unless the beneficiary is transferring from a cap exempt employer to a cap subject employer and was never counted towards the cap- in that case the beneficiary will be subject to the cap)
- Allow current H-1B workers to work concurrently in a second H-1B position

USCIS will also continue to process petitions for new H-1B employment filed by applicants who will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization. USCIS will also continue to process H-1B petitions for workers from Singapore and Chile consistent with Public Laws 108-77 and 108-78.

### **What will happen to F and J visa holders who are beneficiaries of an H-1B petition?**

In the past, INS (now USCIS) had safeguards in place for those with F and J visa status. According to 8 CFR Section 214.2 (f)(5)(vi), if it can be determined that all of the H-1B visas will be used before the end of the current fiscal year, the director of USCIS can extend the duration of status of any F-1 student if the employer has timely filed an application for change of status to H-1B.

To be eligible for this extension, the nonimmigrant must not have violated the terms of his or her nonimmigrant stay. An F-1 student whose duration of status has been so extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her F nonimmigrant stay. An extension made under this paragraph applies to the F-2 dependent aliens.

8 CFR Section 214.2(j)(1)(vi) has similar language regarding those in J status. If the USCIS director can determine that all of the H-1B visas will be used before the end of the current fiscal year, the director of USCIS can extend the duration of status of any J-1 nonimmigrant if the employer has timely filed an application for change of status to H-1B.

To be eligible for this extension, the nonimmigrant must not have violated the terms of his or her nonimmigrant stay and must not be subject to the 2-year foreign residence requirement in Section 212(e) of the Act. Any J-1 student whose duration of status has been so extended shall be considered to be maintaining lawful nonimmigrant status for all purposes under the Act, provided that the alien does not violate the terms and conditions of his or her J nonimmigrant stay. An extension made under this paragraph also applies to the J-2 dependent aliens.

The Federal Register Notice is available at <http://www.aila.org/infonet/fileViewer.aspx?docID=705&index=0>.

Note: Physicians who received a J waiver under the Conrad State 30 Program are exempt from the cap.

### **What will happen if I am not exempt from the cap and my current status expires after the numbers run out?**

It is unclear on the date of publication how USCIS will treat those who are not exempt from the cap but whose status will lapse before new H-1B numbers are available. For many, other non-immigrant visas will be available including H-2B visas (though those are likely to cap out in April), J-1 trainee visas, E-2 and E-1 visas and TN visas.

An option available to many this year will be filing for permanent residency. There are many work-related green card applications that can be filed without a time consuming labor certification. Now that concurrent filing of I-140 and adjustment of status applications are available, it may be possible to secure an employment authorization document in a matter of a couple of months.

We advise people subject to the cap looking for alternative strategies to consult early with their immigration lawyers. Also, we expect that without Congressional action, the cap will be reached even earlier next year. So acting early to get a visa under the allotment for 2004-2005 is very important.

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### 3. Ask Visalaw.com

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

Q - Is the H1-B Cap reached for the year of 2004? I am from Singapore.

A - It is, but there is an exception for nationals of Chile and Singapore. Recently signed treaties have resulted in a large number of H-1Bs being reserved for Chilean and Singapore nationals. So you are going to be in greater demand for the next several months.

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Q - I'm planning to get married in the US but we don't want to wait for the K-1 visa. So it means I am using my B-1/B-2 visa to enter to the US and then get married. Is the process very difficult? Do you think it will be suspicious? What advice can you give me?

A - You run the risk of being denied entry and possibly accused of attempting fraudulent entry. My advice is to do things by the books. The US immigration system is not as forgiving as it used to be and you could end up regretting for the rest of your life your decision to act in haste.

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Q - Can you file for I-765 (Employment Authorization) if: (1) An I-130 (Petition for Alien Relative) has been filed - pending processing - INS received on Sept. 26, 2003, AND (2) Visa has recently expired during Feb. 2004?

A - The EAD can only be filed with an adjustment application after the I-360 has been approved. The concurrent filing rules allow applicants in I-140 cases to file employment authorization documents at the beginning of the case. But that rule does not extend to I-130 cases.

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Q - My company is about to merge with another company. In November 2003, they filed a H-1B extension for me. It has not returned yet. I'd like to know how this will affect my H1B.

A - You probably will be okay if this is a true merger. But there are specific procedures that need to be followed by the new company's immigration lawyers. The article on our web site at <http://www.visalaw.com/01mar1/12mar101.html> should also be helpful.

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Q - I am international student advisor in the University. Many of our international students change their F-1 visa status to H-1B when they complete the program and start the Optional Practical Training. Now, when the H-1B cap has been reached, the CIS does not accept new H-1B petitions until April 1, 2004, and the new petitions will be for the H-1B starting date as of October 1, 2004.

What will be your advice on the following situation:

The student's OPT ends, suppose, in mid-May, his grace period ends in mid-July. His petition for H-1B will be sent during his valid status - that is after April 1, 2004. However, the starting date of H-1B status will be indicated as October 1, 2004.

What should the student do when the OPT ends – between July and October? May the student stay in the USA legally and wait for the CIS decision, or he has to leave the USA and re-enter by October 1 if his petition is approved? Does the CIS have some policy on such cases?

A - This is a tricky question and will, unfortunately, become quite common. In the past, the USCIS was somewhat relaxed in allowing student to remain in the US legally while awaiting a visa number. And they do have the authority to issue an order making it possible for students to remain legally during the gap period. But these are different times and we do not know. However, there is still the possibility of applying for a visitor visa to remain in the US and that is probably going to be frequently used. It is also likely that a student will need to leave the US and get the visa for October at a US consulate. I intend to cover this issue in our newsletter as we learn more.

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#### 4. Border and Enforcement News

Texas state officials have shut down the offices of two notarios on allegations that they were defrauding immigrants and charging money to process immigration forms, violating a new state law, passed to prevent scam artists from exploiting the term “notary public” to the Spanish “notario publico” – a title given to experienced lawyers.

Both Martha Uresti, owner of Uresti Immigration/Notary Services, and Ruth Thomas, owner of Trámites Migratorios, deceived customers into thinking that they could legally assist migrants in obtaining US permanent residency, work permits and other immigration benefits. The two businesses charged customers over \$1000 to process documents that were either improperly filed, or never filed at all. If convicted, the two face 6 months in jail.

The Department of Public Safety and the Attorney General’s office in Texas are asking that all victims of any immigration scam pass their complaints to the attorney general office by calling (800) 252-8011.

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Officials at the Pentagon have confirmed that smuggling rings in Latin America are attempting to smuggle al-Qaeda operatives into the US. In a Defense Department briefing on February 13, 2004, reporters were told that Defense Secretary Donald Rumsfeld would provide details on al-Qaeda’s Latin America connections on a future date.

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Four Mexican police officers are seeking asylum in the US after they fled under heavy gunfire. The police officers were at the Mexican police station about two blocks south of the international crossing between Palomas and Columbus, New Mexico. The officers were fired upon by a drug-trafficking family.

US Customs and Border Protection reported hearing a lot of gunfire coming from south of the border. Moments later, ten people arrived at the port of entry: eight police officers and the wife and child of one of the officers. The police officers were unarmed, having abandoned their weapons before crossing the border. Four of the officers returned to Mexico.

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Following a weeklong outburst of political violence against Haiti's president that has left nearly 50 people dead, the US government is preparing for a mass migrant flow from the country. Some spokespersons of US-based relief organizations said that State Department officials have asked recently what kind of services they would provide to Haitian migrants at Guantanamo. State Department officials, however, are denying any expectations for a mass migration.

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## 5. News From The Courts

Nyombi v. Ashcroft  
US Court of Appeals for the Tenth Circuit  
2004 U.S. App. LEXIS 961

An Immigration Judge (IJ) denied the respondent's application for asylum, withholding of removal and relief under the Convention Against Torture. The Board of Appeals affirmed without opinion. On appeal, the respondent did not argue the CAT claim. While the Court did not evaluate the respondent's credibility, the court did seek to determine if there is a rational connection between the credibility determination and the reasons offered for the decision.

With the filing of his first asylum application, the respondent, a native of Uganda, was assisted by an INS interpreter who had previously been involved with fraudulent applications. The interpreter told the respondent to state that he was part of a human rights organization in Uganda. The asylum officer determined that the respondent's statements lacked credibility because of the similarity to those in other fraudulent applications and recent reports from Uganda about the treatment of human rights organization members.

The respondent then filed a second application prior to appearing before the IJ. He stated the information previously provided about his involvement with a human rights organization was not true, but argued that the other statements regarding the murder of his father and the beatings that he suffered were true. The IJ based his credibility finding on issues other than the discrepancies between the two applications.

First, the IJ believed the respondent was not abused because he was a government employee. However, the Court stated that this statement had no support in the record and deference is expressly conditioned on support in the record.

Second, the IJ noted that the false claims in the first application demonstrate that the respondent spent a great deal of time constructing his story. The Court noted that this does not affect whether or not the rest of his story is false. The rejection of his testimony also failed to acknowledge the evidence, which supported key points in his testimony.

Third, the IJ rejected a psychologist's opinion that the respondent suffered from post-traumatic stress disorder. The Court found that the IJ substituted his own opinion for that of a medical practitioner.

Based upon these findings, the Court held that the IJ's determinations did not merit deference because it was not supported by relevant evidence and was based on

“speculation, conjecture, or an otherwise unsupported personal opinion.” However, the Court did not find that the respondent’s testimony was credible. The matter was remanded to the agency for further proceedings.

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Mengistu v. Ashcroft  
US Court of Appeals for the Seventh Circuit  
2004 U.S. App. LEXIS 912

Thomas Mengistu, a citizen of Ethiopia of Eritrean decent, petitioned for review of the order of the Board of Immigrations Appeals (BIA) denying his motion to reopen deportation proceedings.

Mengistu filed a motion to reopen his case as a result of changed country conditions in Ethiopia in 2000. At the time, Ethiopia and Eritrea were at war with each other, and Ethiopia began persecuting persons of Eritrean descent living in Ethiopia. The war ended in December 2000, and the immigration service responded to the motion in April 2001. The denial stated that because the war had ended, the Appellant’s changed country conditions claim was no longer valid.

In granting Mengistu’s motion, the Seventh Circuit Court of Appeals found that the evidence that Ethiopia was beginning to withdraw its troops from Eritrea following end of war between the two countries, and that a United Nation’s peacekeeping mission had been dispatched was insufficient to demonstrate that conditions in Ethiopia had changed from what they were during war to warrant denial of the Appellant’s motion to reopen based on changed country conditions.

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## 6. Government Processing Times

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

Nebraska (02/18/2004): <http://www.visalaw.com/nebraska.html>  
Texas (02/1-25/2004): <http://www.visalaw.com/texas.html>

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## 7. News Bytes

The Urban Institute Immigration Studies Program recently published its findings on undocumented immigrants in response to the immigration reform proposals that have been introduced. According to the study, there are an estimated 9.3 million undocumented immigrants in the US. They compose 26% of the foreign-born population.

Over half of these undocumented immigrants are from Mexico. Another 23% are from other Latin American countries, 10% are from Asia, 5% from Europe and Canada and %5 from other parts of the world.

Most of the undocumented immigrants live in six states: 26% live in California, 12% live in Texas, 10% live in Florida, 8% are in New York, 4% are in Illinois and 4% live in New

Jersey. However, the most rapid growth of undocumented immigrants has been outside of these states.

An estimated six million undocumented workers are working in the US. These workers earn considerably less than US workers.

1.6 million children under age 18 are undocumented immigrants. 3 million children are the US citizen children of undocumented immigrants.

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According to police, in the last three years, undocumented immigrants have been easy targets for robbers and burglars in Bridgeton, New Jersey. In 2000, 27% of victims for aggravated assault, robbery and burglary were Hispanics. In 2003, the number grew to 42%. Officials say that many of the victims are Mexican farm workers, many of who are illegally in the country.

Police say the number of victims is probably higher, but they do not report the crimes for fear of being deported. Others say victims do not come forward because of language barriers and cultural stereotypes.

In Latin American countries, police corruption is common. Immigrants' bad experiences with police in their home countries deter them from approaching police in the US. Since these victims do not report the crimes, police are unaware that there is a problem. Experts say that Latin Americans have a higher risk of being victims of crime than any other immigrant group.

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Beginning March 1, 2004, the Los Angeles USCIS District Office will begin requiring a completed I-864, Affidavit of Support, with all necessary supporting documents and a medical examination at the time of an initial I-485 filing. If the petitioner does not financially qualify for the I-864, the co-sponsor's I-864 with all necessary supporting documentation must also be submitted at the time of the initial filing. (Thanks to Los Angeles immigration lawyer Greg Berk for providing this information.)

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The Commission on Graduates of Foreign Nursing Schools (CGFNS) told the Department of Homeland Security (DHS) that it does not object to the American Hospital Association's recent call to delay a pending rule which would require Canadian and other immigrant nurses and health professionals to be certified by an approved credentialing body before they can work as a health professional in the US.

The American Hospital Association (AHA) has urged the DHS to delay the rule's effective date by at least a year and exempt health professionals who already have valid licenses to practice in the US. However, CGFNS does not support the AHA's request to exempt health professionals from the new certification requirement.

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The American Immigration Lawyer's Association (AILA) has announced that sources in the government have indicated that USCIS believes that the 66,000 cap for H-2B petitions may be reached this year around April.

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Five Georgia teens were charged with armed robbery, aggravated assault and false imprisonment after beating two immigrant day laborers with pipes, sticks and fists and stealing approximately \$570, the cash the immigrants had on them. They had lured these immigrants by promising them jobs. Spokespeople from the Georgia Hispanic Chamber of Commerce said in response that police and businesses should collaborate to create better and safer jobs for Hispanic workers, many who are struggling immigrants.

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## 8. International Roundup

The Brazilian government has approved the requirement that visiting Americans must be fingerprinted and photographed. The requirement was initially an act of revenge by a judge who was offended by the new US-VISIT program, which he called "Nazi-like."

While American visitors to Brazil will have to go through the same processing that Brazilian visitors face when they enter the United States, the new Brazilian rules call for the immediate installation of electronic fingerprinting equipment and Web cameras to speed up the screening process, which Brazilian authorities had dragged out. In a concession to US diplomatic objections, American visitors will no longer be called out of lines and made to stand separately and slowly processed. The new rules also allow Brazil's Federal Police to waive the fingerprinting and photographing of US cruise-ship passengers if authorities at Brazilian ports of entry cannot handle their processing.

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Over 2,000 asylum seekers from Iraq have arrived in Great Britain since last May – about 200 a month – despite the fall of Saddam Hussein and the liberation of Iraq last year. Home Secretary David Blunkett has said that he would like those asylees to return home to assist in the rebuilding of Iraq since they are no longer threatened. The British Home Office is contemplating offering Iraqis £3,000 in grants to get them to voluntarily return home.

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For Jews leaving Eastern Europe, Germany has become a more popular immigration goal than Israel. In 2002, 19,200 Jewish Eastern European immigrants arrived in Germany, compared with the 18,000 who went to Israel. Reasons cited for this trend are the difficult Hebrew language, the harsh climate in Israel and the ongoing Middle East conflict.

Since 1989, Germany's Jewish population has increased from 30,000 to 100,000. A 1990 German law allows Jews from Eastern Europe and the former USSR to settle in Germany.

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Russia has recently passed new visa and registration regulations in order to keep closer track of foreigners, particularly those from former Soviet republics who live and work illegally in the country.

One of the changes in registrations was prompted by a number of cases of people being registered in apartments where they never lived and without the knowledge of those registered to live there. Expatriates and tourists staying in a private apartment now need a letter of permission from their landlord and anyone else registered in the apartment. The landlord has to get the document officially stamped by the local maintenance department.

Another new registration rule requires that the registration be stamped on the migration card people complete when arriving in Russia. This will mean that those with business visas will have to re-register each time they enter the country because border officials collect the migration card when foreigners leave the country.

A foreigner working in Russia must now have a work visa and not a one-year multi-entry visa as in the past. Those with one-year multi-entry visas, which are for business travelers, can no longer stay in the country for more than 180 days at a time. This will mean that foreigners will now have to leave and then re-enter the country at least every six months. The visa is also single entry, meaning a foreigner cannot leave the country and return later on the same visa. Also, the visa requires that the holder to apply for an exit permit 45 days in advance of his planned departure.

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China and the EU have ratified an agreement that could lead to a significant increase in the number of Chinese tourists traveling to Europe. In the agreement, the EU provides simplified visa procedures, especially for Chinese tourist groups, and China grants, "approved destination status" to EU member states, allowing tour groups to travel to China.

The agreement is trying to prevent the problem of Chinese overstays in countries Chinese citizens visit in search of illegal employment. This issue has arisen in other countries accepting Chinese tour groups. In the agreement with the EU, China agreed to take back the overstays.

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## 9. Legislative Update

[H.RES.525](#): Urging the Secretary of Homeland Security and the Secretary of State to designate Poland as a program country under the visa waiver program established under section 217 of the Immigration and Nationality Act if Poland satisfies the requirements in subsection (c)(2) of such section.

Sponsor: Rep Johnson, Nancy L. [CT-5] (introduced 2/11/2004)

Committees: House Judiciary

Latest Major Action: 2/11/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[S.2069](#): A bill to expand the S visa classification to include aliens who are in possession of critical reliable information with respect to weapons of mass destruction, to establish a Weapons of Mass Destruction Informant Center, and for other purposes.

Sponsor: Sen Brownback, Sam [KS] (introduced 2/12/2004)

Committees: Senate Judiciary

Latest Major Action: 2/12/2004 Referred to Senate committee.

Status: Read twice and referred to the Committee on the Judiciary.

[S.2071](#): A bill to expand the definition of immediate relative for purposes of the Immigration and Nationality Act.

Sponsor: Sen Kohl, Herb [WI] (introduced 2/12/2004)

Committees: Senate Judiciary

Latest Major Action: 2/12/2004 Referred to Senate committee.

Status: Read twice and referred to the Committee on the Judiciary.

[S.2074](#): A private bill for the relief of Klas Dieter Hinze, Heidi Hinze, Annamarie Hinze, and Robert Arndt.

Sponsor: Sen Dorgan, Byron L. [ND] (introduced 2/12/2004)

Committees: Senate Judiciary

Latest Major Action: 2/12/2004 Referred to Senate committee.

Status: Read twice and referred to the Committee on the Judiciary.

[S.2089](#): A bill to allow aliens who are eligible for diversity visas to be eligible beyond the fiscal year in which they applied.

Sponsor: Sen Chambliss, Saxby [GA] (introduced 2/12/2004)

Committees: Senate Judiciary

Latest Major Action: 2/12/2004 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](http://www.visalaw.com/advocacy.html).

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## 10. Campaign 2004

A Democratic campaign strategy memorandum told Democrats they must attract Hispanic voters, who have voted Republican in recent years, or they risk losing this year's presidential election. The memo told Democrats that Hispanic immigrants do not have the same loyalty to the Democratic Party that second and third generation Hispanic voters have.

In the 2000 election Hispanics composed about 6% of the total vote: President Bush received 35% and Al Gore received 62%. However, Democrat officials estimate that the Hispanic vote has grown to 9% of the total electorate, and they are concerned because President Bush and his brother, Florida Governor Jeb Bush are especially popular among Hispanic voters. Democrat Party officials told their party members that the President needs to increase his Hispanic vote by only 5 or 6 percent to be reelected.

Republican Party officials have been heavily targeting Hispanic voters and have used Spanish-language television as a vehicle to reach more voters. Officials for the Republicans say that they will continue to aggressively communicate their message to Hispanic voters in Spanish and English on TV, radio, print media and on the Internet.

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The GOP candidates for Senate in California are all but outwardly criticizing Bush and his immigration proposal to legalize many undocumented workers. The four candidates, Howard Kaloogian, Toni Casey, Rosario Marin and Bill Jones, are opposed to amnesty and interpret Bush's plan as just that.

Kaloogian seems to be the most outspoken on the subject. He has said that Bush's proposal is bad for both California and the United States. It is his opinion that the US should increase border security and government officials should deal with the source of the problem through pressuring Mexico to improve its conditions so that fewer people will want to come to the US. Additionally, he would strengthen enforcement at the border. He categorizes Bush's plan as amnesty over time.

Casey also calls Bush's plan an "amnesty." She intends to allow seasonal migrant workers to stay in the country less than one year. Jones has yet to take an official position on the plan, as it is not a legislative bill. He has, however, stated that he is opposed to amnesty. Marin, who emigrated from Mexico when she was a teenager, also has not taken an official position on the president's plan. She has vowed to work with the Mexican government to reform its economic policies.

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A platform was announced by a coalition of organizations that represents Asian-Americans' intentions to increase politicians' involvement with this specific ethnic group. The platform covers topics such as immigration changes, poverty and hate crimes and is planned to educate the parties and help Asian-Americans make educated voting choices.

Asian-American leaders have said recently that as opposed to the Latino community, comparatively little attention had been paid to the many people in their communities who had been detained, deported or delayed in applying for permanent residency as a result of stricter procedures. New restrictions also have hampered family reunification for immigrants with family members threatened by ethnic, political and religious persecution in Asia.

Large-scale voter education and registration programs to improve civic involvement in Asian-American communities are planned for the months leading up to the presidential election.

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#### 11. Senate Judiciary Committee to Debate Three Guest-Worker Bills

The Senate Judiciary subcommittee on immigration and border security is faced with several competing guest-worker bills that are sponsored by lawmakers from Arizona, Texas, Nebraska, and South Dakota. The first hearing on these bills, held on February 12, 2004, is expected to be part of series of hearings on the various proposals seeking to reduce the number of illegal immigrants entering the country, improve national security, and fill low-skill labor shortages.

The Subcommittee Hearing held on February 12 focused on President Bush's plan, which proposes to allow foreign workers to obtain a three-year visa that could be renewed for an additional three years. It does not guarantee permanent residency.

During the hearing, officials from the Department of Homeland Security (DHS) outlined details of the President's plan, saying that the proposed guest worker program would grant legal status to illegal immigrants who were living in the United States on January 7, 2004. The officials also said that legal status would be granted to the families of immigrants participating in the program as long as the workers earned enough to provide for their relatives.

The guest workers, who would have to undergo security clearances along with their relatives, would be granted temporary work permits for three years. The officials said that the permits could be renewed several times and that the workers could apply for permanent residency without leaving the United States.

Officials also urge Congress to approve legislation allowing illegal immigrants who participate in the program to travel in and out of the US without restriction. Currently, immigrants without proper documentation are barred from re-entering the country for several years.

DHS officials testifying before the subcommittee were Asa Hutchison, an undersecretary at the DHS and Eduardo Aguirre, director of US Citizenship and Immigration Services. Others testifying on behalf of the Bush administration included several Republican senators.

Another bill to be presented before the subcommittee is one introduced by Senator John Cornyn of Texas, which would reduce the number of immigrants admitted into the US. Like the President's proposal, it does not guarantee permanent residency for temporary visa holders.

A third bill is sponsored by Senate Minority Leader Tom Daschle of South Carolina and Senator Chuck Hagel of Nebraska. It proposes to create a limited guest-worker program, as well as to give legal status to undocumented immigrants who can prove they have worked in the US for at least four years.

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## 12. HHS Releases New Poverty Guidelines

The Department of Health and Human Services (HHS) has released an update of the HHS poverty guidelines to account for last year's increase in prices as measured by the Consumer Price Index. The guidelines are important in immigration applications because applicants' sponsors must show they make 125% of the applicable poverty guideline.

2004 Poverty Guidelines for the 48 Contiguous States and the District of Columbia:

Size of family unit	Poverty guideline
1	\$9,310
2	\$12,490
3	\$15,670
4	\$18,850
5	\$22,030
6	\$25,210
7	\$28,390
8	\$31,570

Family units with more than eight members should add \$3,180 for each additional member.

2004 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1	\$11,630

2	\$15,610
3	\$19,590
4	\$23,570
5	\$27,550
6	\$31,530
7	\$35,510
8	\$39,490

Family units with more than eight members should add \$3,980 for each additional member.

#### 2004 Poverty Guidelines for Hawaii

Size of family unit	Poverty guideline
1	\$10,700
2	\$14,360
3	\$18,020
4	\$21,680
5	\$25,340
6	\$29,000
7	\$32,660
8	\$36,320

Family units with more than eight members should add \$3,660 for each additional member.

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### 13. Immigrants Need to be Wary in Seeking Help to Obtain Benefits

Immigrants preparing to apply for benefits under the amnesty-related settlements need to be aware of possible bad advice from unscrupulous members of the legal profession, according to immigration advocates. There are specific criteria that an applicant must meet in order to qualify and there is a concern that immigrants may pay for help that would only help the person who is offering the advice.

The first settlement, which was approved last month, is expected to benefit approximately 150,000 immigrants nationwide. A second settlement is awaiting approval at any time.

In order to qualify, the beneficiaries must have lived in the United States illegally prior to Jan. 1, 1982, until the date between May 1987 and May 1988 when they were turned away by immigration authorities or by a nonprofit government contractor.

The process is expected to begin in May, with immigrants having one year to apply. However, it is too early to hire consultants to help process paperwork according to the lead attorney on both settlement cases.

In order to make the process more streamlined, applicants can began gathering documentation of the time that they spent in the United States, including rent receipts, stamped letters, photographs, utility bills and paycheck stubs. Applicants can also make a list of people who would sign declarations attesting to the applicants' presence in the US.

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### 14. DHS Now Supports Gender Asylum Policy

The Department of Homeland Security (DHS) has recommended to Attorney General John Ashcroft to support a policy regarding gender asylum. The DHS supports the asylum claim of Rodi Alvarado, a Guatemalan woman who was abused by her husband for ten years. After Guatemalan police and courts refused to intervene, Alvarado fled to the US in 1995. In 1996, an Immigration Judge granted her petition for political asylum.

To qualify for political asylum, the potential asylee must demonstrate that they have been persecuted in the past or who has a well-founded fear of future persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion. Alvarado was granted asylum due to her gender, which falls under the category of a social group.

The INS appealed the decision to the Board of Immigration Appeals (BIA), who overturned the judge's decision in 1999. Then Attorney General Janet Reno voided the BIA's decision and the Justice Department proposed that domestic abuse is grounds for political asylum. However, due to an administration change, the issue was placed in limbo. Last year, Attorney General Ashcroft looked over the policy and the DHS is expected to finalize rules on gender asylum.

In the brief the DHS filed on February 19, 2004, the DHS requests that the Attorney General (AG) remand the case to the BIA with instructions to summarily grant asylum without opinion. The DHS further requests that should the AG refuse to remand to the BIA, it asks that the AG wait to render a decision until the final DHS regulation is published, since this will then make Alvarado eligible for asylum. The brief states that the DHS plans to work with the Department of Justice to finalize the proposed regulations on gender asylum.

In 1995, the US adopted guidelines on gender asylum, joining Canada, as the only two nations to have this policy. Other countries have since adopted similar policies.

The DHS brief is available here:

[http://www.uchastings.edu/cgrs/documents/legal/dhs\\_brief\\_ra.pdf](http://www.uchastings.edu/cgrs/documents/legal/dhs_brief_ra.pdf)