

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>. Editor: Greg Siskind. Associate Editor: Esther Schachter. Contributors: Penny Egel, Paola Palazzolo, Maryam Tanhaee and Megan Turngren.

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1. Openers

Dear Readers:

We trust the New Year's holiday was joyous for you and despite the uncertainty in the world, there is much for which to be hopeful in 2004. This year we may see serious immigration reform designed to address the seemingly perpetual issue of massive illegal immigration in this country. President Bush seems committed to finally designing a system that allows America's employers to bring in foreign workers readily when it is clear Americans are not available for the work. America's employers have been so desperate over the last 20 years that they have been willing to risk serious financial penalties and even jail sentences in order to find workers.

The Lou Dobbses of the world pretend that market forces are not really important and that employers could find enough workers if they simply paid a decent wage. That sounds fine except that employers are in business to earn a profit and if they cannot do so, they will cease operating. And in a global marketplace, employers have to compete against overseas companies often able to produce goods and services with much lower wages and overhead expenses than firms in America.

It is, therefore, a difficult balancing act for the typical American employer. A company must pay a high enough wage to attract workers while at the same time, paying a low enough wage to keep the price of their products competitive with firms in China, India and other nations where outsourcing has become a huge industry. Employers who keep their operations in the US are condemned for hiring foreign workers and not paying high enough salaries. Those that give up and simply move operations overseas are condemned for betraying American workers.

There must be a solution and immigration policy is certainly part of it. When employers can be assured of having a stable and available work force in this country willing to work at wage levels that ensure companies can compete with goods and services produced abroad, then they will keep their operations in the US. That means that Americans and immigrants will both have jobs available to them. When a plant closes and its operations move overseas, both Americans and immigrant workers lose their jobs – often permanently.

There are, of course, other important solutions. Investing in the education of Americans is vital. Outsourcing of work to immigrants and overseas operations seems a lot less scary when Americans fill high end, high paying jobs requiring considerable skills and training. And investing in technology needs to continue in order to maximize productivity. The more American companies can produce per hour on American soil for the same or lower costs, the less sense it may make to move jobs overseas. Finally, we may need to make difficult decisions regarding which industries it makes sense to support through government policies and which ones should rightfully move overseas. Some industries – like food production - may be important to keep here strictly for national security reasons even if strict economic theory suggests that we should not. But we may decide that other industries don't produce the kinds of high paying jobs that should be a priority for this country.

Obviously this is a debate that will continue for years to come and I don't pretend to have the answers. But what is clear is that difficult choices will need to be made and Americans may have to choose between instincts to protect workers and industries

and a desire to have an affordable cost of living with the “always low prices” that have become the norm in our modern economy.

On a separate note, we have to say “SHAME ON YOU!” to the State Department for its utter failure in managing this year’s green card lottery application process. An online lottery application should have been a simple procedure. But complicated photo submission rules and an utterly negligent lack of server capacity meant millions of applicants probably could not access the system. The State Department did not even offer an apology when its system was basically shut down during the lottery’s last two days. Instead, a spokesman said applicants should have applied earlier. That’s like penalizing tax payers who file on the last day. Of course, after more than fifteen years of running the lottery, the State Department should have known that there is always a rush at the end. Furthermore, people file on the last day because the law permits this and it is not the government’s concern why a person times an application in a certain way as long as the person complies with the law. A simple apology would have gone a long way here. Instead, their handling of the mess only hardens beliefs that our immigration officials are arrogant and incompetent.

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 Waiver Flowchart #5: Hardship Waivers

This is the fifth in a series of flowcharts for J-1 visa holders with a two-year home residency requirement. The flowchart linked below shows how J-1 holders can determine if they qualify to apply for a hardship waiver.

J-1 Hardship Waiver Flowchart:
<http://www.visalaw.com/04jan1/hardship.pdf>

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 - I am a US citizen, and have filed I-130 for my mother who lives in Singapore. Is she able to visit the US before I-130 is approved? Singapore has a visa waiver.

A - Once a green card application is filed, it is very difficult to enter the US. It is possible, but filing a green card application is evidence of immigrant intent, which is a basis for denying entry. If a case is years away from processing and there are strong ties to the home country, that could be enough to overcome the presumption of immigrant intent despite an I-130 file.

Q - Why does it say that you have to "withdraw all requests for other relief, if you have made any" in a voluntary departure request?

A - If you are issued a notice to appear in court when you have been in the US less than 1 year, then you are only eligible for voluntary departure if you are not requesting other relief such as asylum, adjustment of status, etc. For example, if you request asylum in this circumstance, you cannot receive voluntary departure.

Once you have been granted voluntary departure, you have 90 days to reopen your case if something new is available to you during that time.

Q - How can I get a court order DNA test for an alleged child in the Dominican Republic?

A - Try Genelex at <http://www.genelex.com/paternitytesting/paternityhome.html> or Orchid Genescreen at <http://www.orchid.com/businesses/genescreen.asp>.

Q - If someone's priority date comes up before the I-130 is approved, can the person apply for adjustment of status or do they need to wait until the I-130 is approved?

A - In many local USCIS offices, you can resubmit the I-130 with a receipt from the first application. And it should not be necessary to repay the I-130 filing fee. But you'll need to check with your local office on this.

Q - I work in Dallas, TX and would like to know what is the prevailing minimum salary for a person working on H1B Visa in the State of Texas? The job being that of an Entry-Level Programmer.

A - You can look this up yourself by going to <http://www.flcdatacenter.com/>.

4. Border and Enforcement News

During Fiscal Year 2003, US Customs and Border Protection (CBP) Officers and US Immigration and Customs Enforcement (ICE) Special Agents in South Texas seized a

large amount of narcotics, currency, false documents, undocumented immigrants, and uncovered several agricultural violations.

Both the CBP and ICE were formed in March 2003 by the Department of Homeland Security. The CBP replaces the former US Customs, Immigration and Agriculture Inspectors and the Border Patrol.

A 1998 Immigration law designed to provide permanent residency to illegal aliens from Haiti who lived in the US prior to 1996 might not entirely serve its proper purpose. The law excludes waivers for Haitians who used forged documents to enter the United States (called "airplane refugees") after fleeing abuses and killings after the 1991 coup and fall of President Jen-Bertrand Aristide. Legislators who worked on and drafted the 1998 law stated that they did not intend to exclude the "airplane refugees" from the waiver. According to Paul Virtue, general counsel at the former INS in 1998-1999, "it was an oversight that they were excluded."

A US General Accounting Office Report found that as of October 2003, more than 11,000 of the 37,851 green card applications filed by Haitian migrants had been approved.

5. News From The Courts

Galyautdinov v. Ashcroft
No. 02-72738
US Court of Appeals for the Ninth Circuit
2003 US App. LEXIS 25365

The Petitioner, Shamil Galyautdinov, a native and citizen of Russia, challenged the Immigration Court's denial of asylum and withholding of removal.

The BIA stated that in order to be eligible for asylum, "an applicant must establish a well-founded fear of persecution that is both subjectively genuine and objectively reasonable." The BIA reaffirmed the holding in *Mgoian v. INS* that "the subjective component is satisfied by credible testimony that the applicant genuinely fears persecution; the objective component can be satisfied by either an establishment of past persecution, or a showing that the applicant has 'a good reason to fear future persecution.'"

Once a petitioner establishes past persecution, a presumption arises that he also has a well-founded fear of future persecution. The government has the burden of rebutting the presumption, and must show by a preponderance of the evidence that the conditions of the petitioner's country of nationality have changed such that the petitioner no longer has a well-founded fear of future persecution when he returns.

In this case, the government submitted documentary evidence and the Petitioner's cross-examination as evidence. The BIA held that this evidence was insufficient and therefore, the government did not fulfill their burden to rebut the presumption. The BIA reversed and remanded the decision of the IJ.

6. Government Processing Times

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

California (12/19/2003): <http://www.visalaw.com/california.html>

Missouri (12/19/2003): <http://www.visalaw.com/missouri.html>

Nebraska (12/19/2003): <http://www.visalaw.com/nebraska.html>

Vermont (12/19/2003): <http://www.visalaw.com/vermont.html>

7. News Bytes

Last year, the substantial labor certification backlog caused the Department of Labor (DOL) and Employment Training Administration (ETA) to hire an outside contractor to conduct a six-month study on the processing of labor certification petitions. That study is now complete and the contractor has prepared a draft training manual to be used for processing backlogged labor certifications in 2004.

This manual describes the preparation for implementation and performance of contracting out and centralizing the processing of the backlogged Foreign Labor Certification cases at a single location. The text of the draft manual can be viewed at: http://www.ilw.com/lawyers/immigdaily/dol_news/2003,1219-SIMTraining.pdf.

Wal-Mart is opening up a new battle with the government over the well-publicized raids that resulted in the arrests of 250 illegal immigrants working as cleaning crews in 61 stores across 21 states. Wal-Mart says managers at many levels knew about the problem of illegal workers in its stores, because they had been cooperating for as long as three years in federal investigations in both Pennsylvania and Chicago.

Wal-Mart says it was led to believe it was not a target of the investigations, and it says it didn't take action to sever its ties with the contractors because federal officials specifically asked it to leave the relationships in place. Before and after the raids, Wal-Mart says it did what it could to ensure that its contractors were hiring legal workers. In its defense, the company stated that anti-discrimination sections of the immigration code limit an employer's ability to investigate an employee's legal status, not a contractor's employees.

ImmigrationPortal.com and other plaintiffs have joined to file a lawsuit against the USCIS challenging processing delays of some applications for employment based immigrants. The complaint alleges that in many cases, the process for obtaining employment based on Lawful Permanent Residence status may often take up to six

years. These delays have occurred for applicants in all five preference groupings of the employment-based category. Prior to filing the complaint, the plaintiffs did seek other avenues of relief. Thousands of petitions, for example, were signed and delivered to the government and legislature.

A complete copy of the complaint may be found at <http://boards.immigration.com/attachment.php?s=&postid=651497>

On December 23, 2003, the Secretary of State re-designated Jaish e-Mohammed and Lashkar e-Tayyiba as Foreign Terrorist Organizations. Both groups were originally designated as Foreign Terrorist Organizations in 2001 and the designation was set to expire December 26.

Pursuant to the Immigration and Nationality Act, persons in the United States or subject to US jurisdiction are forbidden from providing material support to groups or group members of Foreign Terrorist Organizations. Currently, the Secretary of State has designated 36 countries as Foreign Terrorist Organizations.

Since 2000, there has been a massive increase in Immigration Court cases on the federal docket. In Memphis, for example, the caseload has grown from 1,215 to 1,836 in just three years.

Greg Gagne, spokesman for immigration review with the US Department of Justice in Falls Church, Virginia, explained that the reason for this increase is greater enforcement of immigration laws. According to Gagne, however, the number of court cases has been steadily increasing since before September 11.

8. International Roundup

As part of a new effort to enforce immigration law in Norway, in November, police stopped a total of 468 arriving foreigners, all suspected of either carrying false identification, false visas or no entry documents. More than 80 of the new arrivals sought asylum. This intensified effort resulted in 29 deportations during the course of two weeks.

According to official statistics, in 2003, the number of immigrants to Israel decreased by 31%. The decrease is due to a sharp decline in the number of Jews coming from the former Soviet Union and Argentina. Only the number of US immigrants is increasing. As a result of low immigration levels, the Arab Palestinian population is projected to become a majority in less than a decade.

The decline in immigration to Israel is attributed to the security situation since the beginning of the Palestinian uprising (Intifada) in September 2000 and the

subsequent economic crisis. Israeli media estimates that between 10,000 to 15,000 people have left Israel since the Intifada started.

Singapore police say that the number of foreigners arrested while trying to enter Singapore illegally by jumping off boats and swimming to shore has more than doubled in 2003. Many of these illegal immigrants have been promised safe entry into Singapore and have paid considerable sums of money. Most of these foreigners come from Myanmar, one of the poorest nations in Southeast Asia.

None of the arrested people had claimed asylum and they were all charged with unlawful entry and face six months in jail, at least three strokes of the cane and a maximum fine of 6,000 Singapore dollars (3,529 US dollars).

9. Legislative Update

President Bush is developing a plan that would allow immigrants to cross the border legally if jobs are waiting for them. The administration also wants to provide a way for some undocumented workers in the United States to move toward legal status.

Republican officials have said that the proposal draws on, among other sources, a bill introduced by Senator John McCain (R-AZ) that would create a web-based job registry to be run by the Labor Department. The other half of the program would be involved in giving legal status to undocumented workers in this country.

Some conservative lawmakers remain opposed to any changes that could be portrayed as an amnesty encouraging immigration, which makes the proposal's outlook on Capitol Hill uncertain. However, presidential advisers said they believe that Hispanic voters, one of the targets for Bush's reelection campaign, will give him credit for pushing the changes even if nothing is enacted before the election. The proposal is to be sent to Capitol Hill sometime this month. Democrats, however, have sharply criticized Bush for offering rhetoric on immigration with no real efforts to make progress on immigration reform.

For the purpose of federal law, under the Defense of Marriage Act, marriage is defined as a union between a man and a woman. Because of this, gay couples face many difficulties because one spouse cannot sponsor the other for permanent residency. Many gay bi-national couples are forced to commute between countries or illegally live in the US.

The Permanent Partners Immigration Act is a controversial bill supported by gay couples. The bill, which has 119 co-sponsors in Congress, would grant gay couples the same immigration benefits as married couples.

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

10. Government Releases New Social Security Regulations for F-1 Students

On December 16, 2003, the Social Security Administration (SSA) released a proposed regulation changing the Social Security Number (SSN) issuance procedures for international students in F-1 immigration status. The changes are not actually new. Rather, they are the codification of long-standing local SSA practices.

Under the new proposed regulations, without a valid employment authorization document issued by the USCIS, SSA now requires an F-1 student to prove that he or she has secured a job before the agency will issue a number. According to the SSA, this increased evidentiary requirement is being proposed to reduce the opportunity for fraud and to prevent the misuse of SSNs.

In the past, the fact that an F-1 student was eligible for on-campus employment was sufficient for SSN issuance. Nevertheless, despite the lack of authority in the regulations, many local SSA offices were insisting on evidence of a secured position, or at least a pending job offer, before accepting SSN applications from F-1 students. The proposed rule codifies this longstanding, but controversial requirement.

According to SSA regulation 20 CFR 422.107, in order to apply for a SSN, a non-citizen must prove that he or she was admitted to the United States by USCIS in a status that is authorized for employment. Because they are not (and cannot be) authorized to work, SSA consistently denied SSNs to non-immigrants in the B, F-2, H-4, etc. statuses due to this regulation.

Because F-1 students are authorized to work on-campus incident to their status, the SSA in the past required only proof of their valid F-1 status before issuing an SSN. Nonetheless, some local SSA offices were requiring either an authorization from the designated school official (DSO) of the student, authorizing the student for on-campus employment, or proof of a secured on-campus position or a pending job offer before issuing the number. This was criticized because under the F-1 on-campus employment regulations (8 CFR 214.2(f)(9)(i)), an authorization from the DSO is not required for on-campus employment.

The new rule proposes to change the language of 20 CFR 422.107(e) and 422.105 to implement additional evidentiary requirements for F-1 students. According to the new rules, an F-1 student, in addition to proving his or her lawful F status, must also demonstrate either:

1. An unexpired USCIS employment authorization document (EAD); or
2. Evidence that:
 - a. the student has authorization from his/her school to engage in employment, and
 - b. the student is engaging in, or has secured, employment

To meet the second requirement, the F-1 student must submit a letter from his/her DSO and employer. According to the proposed language of 20 CFR 422.107(e)(2), an F-1 student first must offer evidence from his or her DSO that he/she is

authorized for employment. Then the student must offer documentation from the DSO stating:

1. The nature of the employment the student is or will be engaged in, and
2. The identification of the employer for whom the student is or will be working.

In addition to the letter from the DSO, the student must also offer evidence of employment. The student must provide documentation proving that he/she is engaging in, or has secured employment (e.g., a statement from the student's employer).

The SSA states that the increased evidentiary burden is necessary for fraud prevention purposes and to protect the "integrity of the social security number system." Also, the SSA stated that they are trying to prevent the misuse of the SSNs by refusing to issue numbers to students without secured employment since "they do not intend to work but need an SSN to obtain goods or services in the community." Even though in practice Social Security numbers are an essential requirement and an integral part of our daily lives, SSA has always emphasized that SSNs are for employment purposes only, and all their other uses are incidental to their primary purpose.

Opponents of the new regulations argue that these requirements are contradictory to the F-1 regulations since the on-campus employment rules do not require a separate authorization from the DSO for employment, and the authority to engage in employment is incident to the F-1 status and therefore need not be granted by the schools. They also argue that refusing SSNs imposes an extreme hardship on students because it is very hard for someone to live in the US without a Social Security number. Without the SSN it is very difficult (and sometimes impossible) for F-1 students to rent apartments, open bank accounts, apply for credit cards, obtain driver's licenses, etc. Because they usually remain in the US for several years, all these are essential needs for F-1 students.

The proposed regulations were published in the Federal Register on December 16, 2003 and are at their comment period. The comment period will end on February 17, 2004. Comments may be sent to:

Social Security Administration,
Attn: SSA Reports Clearance Officer,
1338 Annex Building,
6401 Security Boulevard,
Baltimore, MD 21235-6401,
Fax Number: 410-965-6400

The proposed regulation may be read at:

[http://policy.ssa.gov/erm/rules.nsf/0/1de29b988d3968c585256dfe0051793e/\\$FILE/in0960_af87p.htm](http://policy.ssa.gov/erm/rules.nsf/0/1de29b988d3968c585256dfe0051793e/$FILE/in0960_af87p.htm)

11. IRS Outlines Consequences of Providing Incorrect Information on Tax Returns for Employers

In a letter to the Chair of the Information Reporting Program Advisory Committee, the IRS summarizes the consequences of using incorrect information when filing Form W-2. Sections 6721 and 6722 impose penalties for filers who incorrectly file their tax returns. The letter is important in the immigration context because employers hiring undocumented workers are more likely to run afoul of IRS rules.

Section 6721 imposes a penalty for failing to include all required information or for including incorrect information. The penalty can be \$50 per tax return, to a maximum of \$250,000 per filer per year. If the filer corrects the information within thirty days, this penalty can be reduced to \$15 per return, to a maximum of \$75,000 per year. If the information is corrected by August 1, the penalty may be reduced to \$30 per return, to a maximum of \$150,000 per year. For filers who intentionally file incorrectly, there is no annual limit on the penalty amount.

Section 6722 imposes a penalty for failing to provide an employee or payee statement on or before the due date, failing to include required information or for including incorrect information. The penalty for this is \$50 per payee statement, up to an annual limit of \$100,000 per filer per year. If the filer intentionally files incorrectly, there is no annual limit.

There are provisions of the Internal Revenue Code for situations "beyond the filer's control," such as an employee who provides an incorrect social security number to the employer filing the return. In this case, the filer (the employer) must demonstrate that the failure to provide the required information to the IRS was the result of the employee's failure to provide information to the employer, or the result of the employee providing incorrect information to the employer, upon which the employer relied. The employer may qualify for a waiver of any penalties if he/she can demonstrate that he/she acted responsibly, before and after the failure to provide complete and correct information.

12. House Hears Testimony on Impact of Visa Review Process on Small Business

The House Committee on Small Business received testimony from several individuals regarding visa backlogs and their affect on the US economy, particularly, their affects on small business. Among those who testified were Janice L. Jacobs, Deputy Assistant Secretary of State for Visa Services; William A Reinsch, President of the National Foreign Trade Council, Inc.; and Robert Garrity, Jr., Deputy Assistant Director of the Federal Bureau of Investigations.

Janice L. Jacobs, Deputy Assistant Secretary for Visa Services at the Department of State (DOS) testified that the backlogs could be attributed to the efforts of federal agencies to increase homeland security. She stated "security is and will continue to be the top priority in the processing of visas for international visitors." She then proceeded to outline the measures taken by the Department of State in order to protect national security, such as the Consular Lookout Automated Support System (CLASS) and Machine Readable Visas, among other measures.

Jacobs also mentioned how the DOS is working with other agencies and private sector groups to reform the visa clearance process so that it focuses on those

individuals who pose the greatest risk to national security. She asserted that the DOS is "aware of the need to balance national security interests with other strategic interests such as promoting US business interests, tourism, exchanges and the overall health of our economy" and is "committed to working towards a continued free flow of people, information and ideas."

In his testimony, President of the National Foreign Trade Council, Inc., William A Reinsch, said that the new, post-September 11 visa application review process needs revision, because it "ignores commercial considerations, strains our foreign relations by telling business visitors they are unwelcome, and does little to achieve the increased security objectives for which it was intended." Reinsch also testified that before these new procedures were implemented, businesses were able to determine when they would receive decisions regarding the status of applications. However, after the implementation of the new procedures, "both the certainty of timing and the transparency of the process have disappeared", which has led to a lack of confidence in the new system and has hurt US businesses. He used the example of the damage that has been caused to the hotel industry as a result of the new visa review process. Conventions and conferences that have invited foreign guests have been forced to move their meetings to Canada or other countries in order to ensure that the foreign guests can attend. Reinsch also mentioned the damages done to the scientific projects, which are costly, because of visa delays.

Acting Assistant Director of the FBI Robert J. Garrity, Jr. began his testimony on the assessment of the review process by saying that "the FBI is sensitive to the impact that delays in visa processing may have on business, education, tourism, this country's foreign relations, and worldwide perceptions of the United States." He stressed that because national security is a priority, and there are times when the "FBI's review of a visa request must require as much time as needed." Garrity admitted that when the National Name Check Program (NNCP) was first implemented, the FBI could not predict visa-processing times. However, through modification and development of the system, there is more coordination with the State Department and the FBI can now account for processing times.

13. Green Card Lottery Applications Decrease as State Department Online System Fails

The Green Card lottery has attracted less than half the usual number of applications this fiscal year, falling from 13 million to 5 million. The decline is due to the fact that for the first time applications are being accepted by computer only. Government officials say duplications and fraud have been curtailed, but immigrants and their advocates say the falloff results from a fear of giving information to the government online, lack of access to computers, new opportunities for immigrants to be defrauded and a serious lack of server capacity in the lottery's final days that alone may have kept a million people from applying.

The lottery is open only to those from countries that have sent fewer than 50,000 people to the United States in the past five years. From millions of applicants, the State Department randomly selects about 110,000 winners, and sends them invitations to apply for a visa at the closest consular office. About half of the

applicants fail to complete the process in time or are disqualified. The supply of diversity visas goes to the rest on a first-come, first served basis.

Some people lack access to the tools needed to apply, such as a digital photo scanner, a computer and an Internet connection. Some immigrants already in the US fear that leaving a computer trail could make them targets for deportation. Hundreds of thousands of immigrants who thought that they were applying for the lottery were tricked by official looking websites run by a Fort Lauderdale couple that fraudulently collected fees for Internet lottery applications that were never submitted.

Despite calls by immigration advocacy groups to extend the deadline, the DOS indicated that it had no plans to alter its procedures this year.

In the final days of the lottery, State Department servers locked out the vast majority of applicants. An estimated 900,000 applications were not accepted because DOS servers were overwhelmed. The State Department did not apologize for its failure to handle the applications. Instead, a State Department spokesman criticized applicants for waiting until the end. Critics of the State Department countered that given 15 years of history, the State Department should have known that there is always a massive surge of applications in the lottery's final days. The DOS should have foreseen the surge and either planned properly to have adequate server capacity or warned applicants that they might not be able to submit an application in the lottery's final days.

14. Foreign Students and Scholars with Scientific Knowledge Barred from Entering the US

Thousands of foreign students and scholars have been denied or delayed entrance into the US due to stringent visa requirements enacted after September 11, which bar scientific visitors who might hand over strategic knowledge and technologies to US enemies, even though many have no connection to sensitive technologies.

The United States is basing these new procedures is a government technology watch list that identifies scientific fields with potential military importance. Anyone studying those areas can be screened for months before being allowed to enter the country, even if they have previously studied or worked in the US for years.

The list includes research areas with clear military significance, such as bioweapons, navigation and laser technology and also includes whole fields of science that have both peaceful and military uses. These areas include all of microbiology, much of chemistry and physics, and areas such as urban planning, landscape architecture, housing and civil engineering.

The group of scientists delayed or denied includes an environmental engineering student from Mexico, Russian epidemiologists, an Egyptian AIDS specialist, Israeli and Chinese cancer researchers and an Iranian earthquake-safety engineer. Top Russian scientists collaborating with US colleagues on counter terrorism and arms have also been denied.

The screening process is known as "Visas Mantis." Relying on the technology alert list, Mantis requires anyone working in a sensitive field to undergo detailed consular interviews and intensive security checks when applying for a visa. Some face double jeopardy checked under both Mantis and "Visas Condor," which flags a range of possible security risks, including applicants from a handful of nations considered sponsors of terrorism.

In the past, most foreign students and scholars could routinely return to the US after visits home or trips to scientific meetings abroad and could get a new visa at a local US consulate in a matter of hours. Now, if they leave the country, they may have to return to their home countries to obtain a new visa and receive the same intense scrutiny as newcomers.

15. Report Reveals Illegal Recording of Attorney-Client Meetings at Detention Center

A government investigation has revealed that employees at a federal immigrant detention center violated prison rules and federal law when they recorded private conversations between attorneys and their clients who had been arrested after the September 11 attacks.

A report by the Justice Department on Thursday, December 18 revealed that guards and other employees intentionally made more than 40 videotaped recordings of attorney-client meetings at the federal Metropolitan Detention Center (MDC) in Brooklyn, NY.

The report also revealed that approximately 20 guards at the MDC engaged in physical and verbal abuse of the detainees held after September 11 on immigration charges, pending an investigation to determine whether they were involved in the terrorist attacks.

While Attorney General John Ashcroft issued a directive in October 2001 permitting monitoring of attorney-client meetings in cases of national security with the approval of the attorney general and notice to the inmate and the attorney, this authority was not used at MDC. In addition, a December 2001 memo to wardens of federal prisons in the Northeast stated that attorney-client visits may be visually recorded, but explicitly stated that they could not be voice recorded.

16. New California Proposal Similar to Proposition 187

The same organizers who wrote and rallied for Proposition 187 are the sponsors of a new California initiative designed to limit and prohibit illegal immigrants from receiving public services.

The new proposal would (1) require public health and other service providers to verify an applicant's permanent residence status; (2) require state and local officials to report immigration law violations to federal authorities. Failure to comply would

be punishable as a misdemeanor; (3) require the state to verify the legal residence status for driver's license applicants; and (4) prohibit the state from accepting foreign issued identification cards.

To qualify for the November 2004 ballot, organizers must collect 500,900 signatures by April and receive certification from the California Secretary of State.

California voters approved Proposition 187 in 1994 in a 60% to 40% vote. The proposition, however, never took effect and was soon overturned by a federal judge in 1998 on the grounds that it violated federal welfare laws as well as the Constitution, which gives Congress and the federal government exclusive control over immigration issues.

17. BIA Reopens Case of Mentally Disabled Guinea Teenager

Last week the Department of Homeland Security released Malik Jarno, a mentally disabled teenager, to the custody of the International Friendship House, a refugee shelter, in York, Pennsylvania. A child orphan who fled persecution in Guinea, Jarno was apprehended upon his arrival and detained.

Jarno has been released after more than 35 months in detention pending the outcome of new asylum proceedings that have been ordered by the Board of Immigration Appeals.

The Board of Immigration Appeals agreed to reopen his case on Monday, December 22, in part based on new evidence from experts in Guinea who confirmed that Jarno would be in real danger if deported to Guinea where he would be a homeless orphan subject to abuse on the streets of his home country.

The lawyer representing Jarno, Christopher Nugent, stated that the teenager had suffered every imaginable problem that a child could be subjected to in the immigration system and that the system has not considered that some detainees are children first and should be treated as such.

In 2000, Jarno fled to France from Guinea after government forces killed his father who was a Muslim cleric and political activist. When he was fifteen, immigration officials detained him at Dulles international Airport as he tried to enter the country with a fake French passport. He was held for eight months in adult jails before seeing an immigration judge to apply for asylum. Jarno later sued Piedmont Aid in central Virginia, claiming he was severely beaten by guards and assaulted with pepper spray; he lost the civil suit.