

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:

Well, the big immigration news for this year has already happened and 2004 is just underway. Most of you have probably heard about President Bush's immigration

plan. A few quick comments based on the initial responses we've received from readers:

- The Bush plan is just that - a plan. It is not law. There has been no change in the rules and all we have is the POSSIBILITY that there will be changes in the future. It could take a long time for this to become law and may not even happen this year.
- You should not develop your immigration strategy based on the Bush plan. Even if the plan passes, it could look very different than what the President spelled out before it becomes law. Furthermore, the Departments of Homeland Security and Labor will likely need to write regulations to implement the programs and this could delay things even more. Also, these agencies have a history of basically re-writing laws to work differently than what Congress and the President intended.

For the record, we support the President's plan even though some pro-immigration groups have not endorsed it. We believe that the US needs a workable guest worker program regardless of the number of undocumented workers in this country and the President's proposal will go a long way to adding that component to our immigration system. The plan will also bring immigrants out of the shadows.

The proposal will also restore legal status and workplace rights to millions of undocumented immigrants and this will be crucial in integrating this large population into American society.

With that said, we urge the President to follow through on the last part of his program - increasing the number of employment-based green card slots available. The current number is not nearly high enough to support the large number of applications that will inevitably follow implementation of a program like this.

We also urge the President not to put caps on the program. We have seen with the H-1B program and other programs what happens when Congress and the President try and second-guess the marketplace in determining visa numbers. They inevitably raise the numbers after demand has peaked and lower the numbers at the end of an economic downturn.

We disagree with AILA and other groups calling for "earned legalization" that results in permanent residency processing. By creating an easier system to get permanent residency than people who entered legally and have maintained their status, this will foster the perception that the program is an amnesty and that people who break the rules are rewarded. Of course, green cards should be available to these guest workers and if multi-year queues develop for people seeking permanent residency, our opinion on this might be different.

We would also stress that the President's plan is not the end of the immigration reform process. It is wrong that permanent residents have to wait years to bring in their spouses. It is wrong that asylees have to wait four years or more to get permanent residency. It is wrong that labor certifications take more than three years in some locations in the country. There is no shortage of problems in the immigration system that will exist long after the Bush plan passes.

We congratulate the President on taking on this issue and presenting a far-reaching proposal that will definitely make life better for millions of people as well as help our economy. While it is not perfect, it is the best news immigrants have gotten from the White House in many, many years.

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 #6: J-1 Physician Waiver Overview

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

J-1 Physician Waiver Overview Flowchart:
http://www.visalaw.com/04jan2/physician_overview.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 want to apply for my citizenship ASAP and then apply for a green card for my mother who is an India Citizen but resident of Great Britain, UK. I believe I can apply for citizenship 90 days before the 5 years are up but what is the starting point. Is it the date I completed my interview in the UK under Consular Processing (CP) or is it the date I entered the country after CP or is it the date I got my green card? The reason is that the green card is dated in August 2000 but I returned from the CP interview in March 2000.

A - It would be the date you entered the US after approval of your permanent residency at the consulate. That's the date that should be on your green card.

Q - What happens if someone has an h1-b visa for three years then quits his job before the three years is up? Must he return to his home country or can he remain unemployed in the US until the visa is expired?

A - The moment the H-1B holder is no longer employed, he or she goes out of status and must leave the US. The exception to this rule is if another visa application is filed before termination. We typically advise clients to file a visitor visa application if a new job has not been lined up before the old job is terminated. It is really important to avoid going out of status so definitely find an immigration lawyer before this happens. You might find the article on our web site at <http://www.visalaw.com/01feb4/12feb401.html> helpful.

Q - Here is my situation. I was laid off after concurrent filing of I 140 and I 485 on "outstanding researcher" (EB-1, I guess) category. This happened within 180 days of filing where AC21 portability will not apply. The company that laid me off is lenient and promises not to withdraw my I-140 petition. I landed on another similar job immediately afterwards on new H1B without using my EAD. What's my best strategy to ensuring getting my green card at this moment?

A - You could look at a couple of things. First, there is debate over whether AC21 means that you need to be working for the sponsoring employer for 180 days or more or whether the I-485 simply needs to be pending for 180 days or more. If the latter - and I tend to believe this is the case - then you would be fine in most cases if you find a job in your field. The alternative is to file a new I-140 application and then use that application to substitute for the first one if there is a question.

Q - My wife and I are both on H1's. Our I-140/I-485 have been filed on Oct 9th-03 in TSC through my wife's company. My EAD was approved today and my wife will be getting hers soon. She will be resigning from the job in a week's time, because of some health reasons and we are filing for her H4 soon.

We enquired with the HR and they said they would NOT be withdrawing her I-140.

In this backdrop...here are my queries:

1. Is there any way she can take up another job of similar/same responsibilities with another company AFTER 6 to 8 months (hopefully her I-140 will be approved by then) by invoking AC21 portability?
2. Is it possible for me to use my EAD?
3. Is there any way I can hire an attorney to continue processing the GC?

A - The AC21 portability provisions have never been fully interpreted by USCIS so I can't say with certainty how USCIS will interpret the 180 day provision you seek to use in your case. There is an argument that can be made that as long as the adjustment is not adjudicated within 180 days, it does not matter whether one remained with an employer or not. I usually recommend that clients try and wait 180 days before switching employers in order to be on the safe side. But in those cases where this is not possible, we usually seek to get a new I-140 substituted if we have time. If that is not possible, then you should certainly try to argue that the law should be read literally.

As for using your Employment Authorization Document, I don't see a problem with this as long as the adjustment application is pending.

As for hiring a lawyer, yes, you can hire a lawyer and the lawyer can certainly be of use in arguing that the 180-day provision includes your wife's situation. Good luck.

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

Government documents obtained under access-to-information legislation state that the United States would virtually close the Canada-US border if a terrorist attack were launched anywhere near it. The documents also show concern over newly implemented US anti-terrorism legislation, warning it could hurt Ontario manufacturers.

The legislation requires trucking firms, air cargo companies and railway shippers to submit electronic data about their deliveries of food and beverage products before they can enter the United States.

Sylena Britt, a former employee with the Social Security Administration, was sentenced to 30 months in prison for her role in processing paperwork to grant more than 200 Social Security cards to undocumented immigrants. The cards cost approximately \$1,000 each. Investigators have failed to identify and locate most of the new holders of the false Social Security cards.

More than 340 border patrol agents were added to the US-Canada border in 2003, bringing the total to 1,000 agents on the border. The number of agents on the US-Canada border has tripled since September 11, 2001.

Jose Antonio Vasquez Villasenor, 22, was indicted by a federal grand jury on charges of immigrant smuggling resulting in the death of a US Border Patrol agent. The agent, James Epling, drowned after rescuing one of the immigrants who fell into the Colorado River near the California-Arizona state border. His body was found three days later in the 54-degree, 27 feet deep water. He is the seventh Border Patrol agent to die on duty since 1967. Villasenor faces life in prison if convicted.

5. News From The Courts

Gonzalez v. INS
US Court of Appeals for the 9th Circuit
Filed December 31, 2003

The Ninth Circuit Court of Appeals denied the petitioner's petition for review of the BIA's order affirming the denial of her application for adjustment of status.

The Petitioner entered the United States in 1991 without inspection. She later filed an application for asylum, withholding of removal and voluntary departure. While her application was pending, the Department of State selected her application for an immigration visa through the Diversity Immigration Visa Lottery Program (DV Lottery Program) for 1997 as eligible. As a result, the Petitioner submitted an application to the INS for adjustment of status and withdrew her application for asylum and withholding of removal.

The DV Lottery Program expired on September 30, 1997. At that time, the Petitioner did not receive a diversity visa, and therefore did not have a visa in support of her application for adjustment of status.

As a result, the IJ denied the Petitioner's adjustment application and found her to be deportable. The Petitioner argued on appeal that the doctrine of equitable tolling should be applied to extend the one-year statutory requirement for the DV Lottery Program because she was defrauded by a notary when applying for her adjustment of status.

The doctrine of equitable tolling is an equitable remedy available to courts of equity. When equity demands, a court may apply the doctrine to toll, or pause, time when a statutory time requirement exists.

In this case, the statute required the Petitioner to provide a visa before the IJ could grant an adjustment of status. Aliens may only receive a diversity visa through the DV Lottery Program only in the year in which they were selected as eligible. Since the Petitioner did not receive a visa in 1997, therefore, she could not produce a visa to the IJ, and therefore was ineligible for an adjustment of status.

The court also held that the doctrine of equitable tolling could not be applied to "override Congress's explicit public policy determinations," including the one-year statutory deadline of the DV Lottery Program.

6. Government Processing Times

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

Nebraska (01/01/04): <http://www.visalaw.com/nebraska.html>

7. News Bytes

The State Department Visa Revalidation Unit will now only accept Form DS-156 with a bar code for visa revalidations. This form can be found on the State Department's website at <http://www.state.gov/documents/organization/7766.pdf>.

"SafeSend," a new Bank of America program allowing Mexican nationals in the United States to wire cash home, has raised concern among law enforcement officials. The program, which provides online access for Mexican nationals to transfer money from "any phone or computer" to relatives or associates in Mexico who hold a SafeSend automated teller machine card, is leading officials to wonder if it also gives terrorists and drug smugglers a new way to route illicit cash out of the country.

There is a \$1,500-per-transaction limit, which is below government reporting requirements for cash transactions of \$10,000 in a single day. Spokespeople for Bank of America defend the program, as it complies with federal law, including the USA Patriot Act, in requiring proper identification to open an account and limiting the amount of cash that can be sent in any given transaction.

The US Department of Homeland Security late last month ordered inspectors at the nation's international airports to speed the processing of foreign passengers. International flights must now be cleared within 60 minutes of arrival. The new one hour processing rule applies even under the code orange threat level, which is expected to remain in effect at least through the end of the month.

At the same time, inspectors are taking on additional duties under the US-VISIT program. Some inspectors maintain that Washington is bowing to pressure from the airlines to speed up processing of foreign passengers.

NAFTA has resulted in an increase of exports from California to Mexico and an increase in illegal immigrants, pollution, and poverty from Mexico to California. According to a study co-published by the UCSD's Center for US-Mexican Studies, illegal border crossings across the US-Mexico border increased steadily during the second half of the 1990s. The study also predicted that the flow of illegal immigration would decline within the next five years.

The Coalition for the Future of the American Worker recently produced and sold anti-immigrant political ads that currently air on KCCI and WHO television stations in central Iowa. The ads are directed at the presidential candidates and encourage the candidates to change their positions on allowing more immigrants to enter the United States.

The ad depicts a fist hitting a punching bag printed with a human face. A narrator talks about the negative aspects of immigration - lower wages and taking jobs away from Iowans. The narrator asks the viewers to "tell the candidates it's time to take a

stand for Iowa's workers." Labor leaders in Iowa have urged television stations to pull the ads.

According to 2001 US Equal Employment Opportunity Commission reports, there are currently approximately 25,600 Hispanic workers in Iowa.

8. International Roundup

A Brazilian judge furious with the US's new plans to fingerprint and photograph Brazilians entering the United States, has ordered Brazil to do the same to US citizens. Currently, Brazil requires US citizens to have a visa when entering the country.

In Australia, Qantas Airlines is concerned that passenger safety is being compromised because the airline is not given adequate information about hundreds of prisoners aboard its aircraft, which include illegal immigrants being removed from the country. Many of these prisoners are unescorted on the flights.

The Philippines will deport two American brothers who were arrested two weeks ago for alleged dealings with local Muslim militants and charities that authorities say may be fronts for al Qaeda. Immigration Commissioner Andrea Domingo said that the brothers arrived on tourist visas but carried documents indicating they were soliciting funds for the construction of mosques and Muslim schools. According to Philippine intelligence reports, one of the brothers, James Stubbs, met with several charity groups that authorities suspect are al Qaeda fronts.

South Korea is planning to begin cracking down on illegal migrants due to the recent appearance of several suspected cases of severe acute respiratory syndrome (SARS) in the Asian region. Although South Korea has not had any reported cases of SARS, concerns about the disease have grown following the outbreaks in China and Taiwan.

9. Legislative Update

Legislative Update will return next week.

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

10. Light From The Dark Side: Why Tancredo May Be Right On The H Visa, By Gary Endelman

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

Please sit down. As a liberal internationalist who thinks that more immigration is good for America, I have, at long last, been forced to admit that most painful of truths: Some things are true even if Tom Tancredo believes them. In late November, Rep. Tancredo (R-CO), Chairman of the inaptly named Immigration Reform Caucus, introduced the Border Enforcement and Revolving Employment to Assist Laborers (BE REAL) Act of 2003. Any proposal from the most prominent nativist in Congress who has shamelessly exploited immigrant bashing for partisan political purposes is bound to be met with a healthy dose of skepticism. Yet, a decent respect for the opinions of mankind, to borrow Jefferson's felicitous phrase, forces us to admit that Darth Vader may be on to something here. Unwittingly, Rep. Tancredo shows us how the gordian knot of H visa paralysis can be cut- with a little help from his "friends".

Thanks to Rep. Tancredo, some relief for essential workers may come in 2004. The "BE REAL" Act provides a guest worker regime that does three very important things: (1) applies to all workers- professional and unskilled; (2) effectively abolishes "body shops"; and (3) links H visas to the domestic unemployment rate. The BE REAL Act would replace all current H nonimmigrant visas with a single H visa issued to those coming temporarily to perform work for which no American citizen or green card holder are available or qualified. The Department of Labor could not approve any labor condition applications in any occupation or geographic region if the unemployment rate exceeds 5% and the percentage of new hires who are H nonimmigrants is 15% or more. For the first time, US immigration policy would back away from its unhealthy fascination with educational credentials and focus instead on attracting specialized expertise to do the hard, dirty, and unglamorous jobs that remain fundamental to our information-based economy.

Interestingly, Rep. Tancredo has been bombarded with criticism from his usual supporters who claim that he has sold out. The Internet is full of such anguished outcries (<http://www.ZaZona.com>) Robert Rivers of the American Engineering Association (<http://www.aea.org>) explains what a 5% unemployment rate would mean for engineers. He points out that the average engineering unemployment rate is 1.7%; anything over 2% suggests problems and above 3% is severe. Moreover, Mr. Rivers contends that the "real" unemployment rate for electrical engineers is 3.3 times higher than the published one. If this is so he says, Rep. Tancredo would accept a 16.5% unemployment rate for these engineers before any H visa limits would kick in. Moreover, employers are able to spread the pain of unemployment among different occupational categories so that an H visa for a civil engineer could be issued regardless of how many mechanical engineers were out of work. Beyond that, high tech unemployment in Silicon Valley would not preclude an H visa alien coming to work as a software engineer in New York or Texas, not to mention San Diego or elsewhere in California. The possibilities for such visa musical chairs present an open invitation to future controversy says Mr. Rivera.

The economic logic underpinning the BE REAL concepts remains open to question. Elimination of so-called "body shops" would force multi-national employers to open

direct recruiting centers in Bangalore and Hyderabad, thus increasing the cost of labor, raising prices for goods and services, and potentially dampening the surging consumer demand whose robust expression in recent months has spurred hopes of economic revival. The impact of H1B workers on wages and employment does not support the direct linkage at the heart of the Tancredo bill. In 2001, the National Research Council report entitled Building a Workforce for the Information Economy (<http://www.nap.edu/execsumm/0309069939.html>) speculated that, at most, H-1Bs keep wages for US workers from rising as quickly or dramatically as otherwise might be expected in a tight labor market. This past September, in the first direct study of the link between H-1B and unemployment among IT workers, Madeline Zavodny, a research economist for the Federal Reserve Bank in Atlanta, concluded in The H-1B Program and Its Effects on Information Technolog Workers that "H-1Bs do not appear to have an adverse impact on contemporaneous unemployment rates" although they may affect unemployment rates a year later. Available at <http://www.frbatlanta.org/index.cfm> (Click on "Publications" and then "Periodicals"). Ms. Zavodny's study essentially validates the conclusions advanced earlier by Lindsey Lowell that any H-1B influence on comparable American workers is so subtle as to escape open or obvious detection in the data. See., B. Lindsey Lowell, Skilled Temporary and Permanent Immigrants in the United States, 20 Population Research and Policy Rev. 33 (2001).

Not only is the economic wisdom of the BE REAL Act unproven, but the departure from the current system of LCAs could not be more striking. This truly is a case of back to the future. There is no mention in the BE REAL scheme of the need to prove the absence of a "willing" American worker; the "availability" of "qualified" US workers is all that counts. Rep. Tancredo makes no mention of an individualized recruitment process. DOL need only resort to a statistical analysis of job banks where employers would have to post job vacancies. The unintended effect of such an approach would be to return to what Congress had in mind in 1965 when it created the modern system of labor certification that we still use today. As the Senate floor manager for the 1965 immigration amendments that abolished the national origins quota, Sen. Edward Kennedy, in words that could just as easily justify the Be REAL proposal, assured his critics that placing the burden on the alien to prove no adverse effect would neither be time-consuming nor unduly burdensome:

It was not our intention, nor that of the A.F.L.-C.I.O that all intending immigrants must undergo an employment analysis of great detail that could be time consuming and disruptive to the normal flow of immigration. We know that the Department of Labor maintains statistics on occupations, skills, and labor in short supply in this country. Naturally, then, any applicant for admission who falls within the categories should not have to wait for a detailed study by the Labor Department before his certificate is issued...The function of the Secretary is to increase the quality of immigration, not to diminish it below levels authorized by the law. 111 Cong.Rec. 24227 (daily ed.Sep. 17,1965)

Much of what Rep. Tancredo suggests now could just as easily come out of the mouth of Sen. Edward Kennedy who, like Tancredo, believes that the employment of aliens is inimicable to the legitimate interests of US workers. The union of political extremes on this issue is not at all surprising. What unites Left and Right is a coherent world view that is morally opposed to immigrant labor. What distinguishes them is that business would carve out an individualized exception when the law is applied, while labor would prefer an outright ban on any employment-based

migration. As the striking similarity between what Kennedy advanced in 1965 and Tancredo's current BE REAL bill suggests, this fundamental point has remained essentially constant from the mid-1960's until today. That Tancredo is willing to reaffirm it at this critical time and make such a fundamental concession to business interests only underscores the force of the pressures building up in Congress and his desire to hop on the legislative train before it leaves the station.

So, with so many unanswered questions, why make a deal with Rep. Tancredo? Because it would establish three things:

1. solve the essential worker problem (since the proposed H will encompass H1s and H2s);
2. abolish the body shops and;
3. link Hs to the unemployment rate.

Why are the above important? Simple. The current immigration system does not adequately provide for unskilled labor. This is the root cause of our massive undocumented problem. By viewing labor as labor regardless of a degree or the lack of it, we not only address the constant H1 cap problem, but simultaneously attack the essential worker problem.

Much of the criticism of the current H1 program focuses on body shops. By eliminating body shops - root and branch - we rob our opponents of these arguments once and for all. The pro-immigration advocates have argued for years that the "abuse" in the H1 program is confined to a small category of questionable employers - almost all of them being body shops. Well, why not get rid of them, since they are a political liability? By linking Hs to the unemployment rate, we would be making provision for US worker protection at the heart of the visa system. This is the best way to eliminate the false polarity between helping aliens and protecting American workers. Both can and must be done. So long as immigration advocates needlessly abandon the cause of the American worker to its false friends in the nativist camp, we should not be surprised if displaced white collar workers who are enormously influential on Capitol Hill mistakenly see us as the enemy. It is important to point out that some employers would lose by this bargain with Darth Vader. However, overall, more employers would benefit from the deal than lose. Simplicity has its price but it is a price well worth paying.

There is much in the BE REAL Act to dislike. We need to carve out the guest worker provisions that can be saved from the rest of the bill which cannot. Even if Tancredo is wrong, striking a deal now completely undercuts the entire logic of the restrictionist position which has always been a broad based assault not merely on Hs but on the very concept of having foreigners work in the United States. Think of it. In one swift moment, all of the oxygen would be sucked out of the H-1B opponents. What would be left for them to complain about? For too long, the H-1B has been an albatross around the neck of all employment-based immigration. The fall-out from the H-1B debate has confused the public, emboldened restrictionists and caused advocates to pull back from a whole host of policy initiatives.

By giving in to Tancredo on the issue of availability as a condition to H approval, pro-immigration forces would gain an enormous strategic victory. No longer could critics maintain there was a need for an H-1B cap. No longer would the labor condition application have any role to play. No longer could the lunatic fringe mask their xenophobia behind a facade of respectability. No longer could they shed crocodile

tears for the US workers they really don't give a damn about. Support for Tancredo should only be extended in exchange for abolition of the numerical cap and the LCA mechanism that has so bedeviled the vast majority of honest employers. That's the deal that the friends of immigration can put on the table. By so doing, they can force their opponents to do something that was once thought impossible: get DOL out of the H visa business while helping employers, aliens and US workers. Not a bad trade. I told you to sit down.

11. President Announces Major New Immigration Initiative

On January 7, 2004, President George W. Bush addressed the nation from the White House to introduce a major immigration reform proposal that would have dramatic effects on the lives of millions of immigrants residing without legal status in the US. While the program does not go as far as many immigration advocacy groups had hoped, the program will significantly alter the immigration system in the US and provide opportunities to legalize the status of an estimated 7 to 14 million people who lack legal status. The President's announcement was preceded by a press conference with the White House Press Secretary, Scott McClellan, where portions of the new proposal were broadly discussed.

The President began his remarks by extolling the contributions immigrants make to the US, such as their values, their approach to hard work and the self sacrifices made by foreign active servicemen of the US military. He stated that immigrants work for and help the US, and the US should have a system of laws that work for immigrants.

He pointed out the problems of the current system, such as the millions of undocumented immigrants and the unknown number of these immigrants who are illegally working in the US, as well as the employers who help these immigrants break US laws by hiring them. President Bush also pointed out that US citizens are not filling jobs that are being generated, so employers are forced to hire foreign labor. Another problem is that undocumented workers are afraid to return to their home countries to see their families because they are afraid of being barred from re-entering the US. The President emphasized that American immigration policy should allow willing immigrants to fill jobs that are unfilled by Americans.

"As a nation that values immigration and depends on immigration, we should have immigration laws that work and make us proud. Yet today we do not. Instead we see many employers turning to the illegal labor market. We see millions of hard working men and women condemned to fear and insecurity in a massive undocumented economy. Illegal entry across our borders makes more difficult the urgent task of securing the homeland. The system is not working."

President Bush outlined a number of basic principles before unveiling his outline for a new visa program. First, he made it clear that America must control its borders, particularly in the wake of the 9/11 attacks. Illegal border crossings need to be reduced by developing legal ways for workers to enter the US.

Second, our laws should serve our economic needs. The President indicated that our current immigration laws do not serve the needs of the US economy. He stated, "Our nation needs an immigration system that serves the American economy and

reflects the American dream." When there are no American workers available to fill jobs, the country should welcome foreign labor.

Third, citizenship is an unfair reward for those who break our laws. People who break immigration laws should not receive an unfairly easy path to permanent residency and citizenship and should not have an easier time getting a green card than people who have always complied with US immigration laws.

Finally, immigration reform should include incentives for temporary workers to leave the US.

The President then detailed a new temporary worker program that is designed to match "willing workers with willing employers." The program is designed to provide legal status to the millions of workers illegally working in the US as well as workers abroad who are seeking employment in the US.

The president also emphasized that a guest worker program should have several characteristics:

The program should be "clear and efficient" and employers should be able to get decisions quickly on bringing in a worker.

Workers in the US must have a job and workers abroad must have a job offer

A worker will be able to procure a three-year, renewable visa. The visa will be lost if the worker is not employed by the sponsoring employer or the worker breaks the law.

Employers will recruit Americans via a government-maintained web site and must first hire willing Americans available to do the job.

Employers will be required to report guest workers who leave their employment.

Workers in the US without status will pay a penalty fee to use the program; workers outside the US will not.

Guest workers will receive a card that will allow them to legally enter and exit the US; reentry bars currently in place for people overstaying visas or who enter the US without authorization would not apply.

Guest workers will have financial incentives to go home. They will get credit for social security payments and will be able to set up savings accounts from which they can draw when they leave the US.

Guest workers will be eligible to apply for green cards in the same way as they do now.

The annual allotment of green cards will be increased (though how high was not announced)

The White House also released a fact sheet outlining the President's proposal. The written summary emphasized that the program is NOT an amnesty and illegal aliens would be in no better position to get permanent residency than workers here legally.

The fact sheet also noted that family members of guest workers would be able to remain legally in the US.

The President's plan received immediate praise from many Democrats though many are doubtful that the President is serious about getting legislation passed. Democrat Presidential candidate Howard Dean described Bush's plan as "a cynical gesture in an election year." He stated that the proposal "will help big corporations who currently employ undocumented workers, but it does nothing to place hard-working immigrants on a path to citizenship and would create a permanent underclass of service workers with second-class status."

Some pro-immigration groups were unhappy that the proposal offers only temporary solutions and no opportunity for acquiring permanent status. Immigration opponents are calling the proposal an amnesty. Critics of the plan accuse President Bush of pandering to the growing Hispanic population in order to win election votes

Though the President enjoys considerable support in a Republican-controlled Congress, the proposal comes late in the legislative year and getting a bill passed anytime soon will be difficult.

The President will meet privately today with Mexican President Vicente Fox at the Summit of the Americas in Monterrey, Mexico, and the two will discuss the President's proposal. Since more than half of the illegal workers in the United States are Mexicans, President Bush is seeking strong support from President Fox. The Mexican President has said that while he supports the proposal in theory, he would like the proposal to be more than a temporary program and do more for migrants.

12. Debut of US-VISIT

Last week US immigration authorities began the US-VISIT program, which electronically photographs and fingerprints foreign travelers at airports and seaports. The program was introduced in 115 airports and at cruise ship terminals at 14 seaports.

The program is aimed at visitors who arrive in the United States on visas and is designed to allow immigration authorities to quickly check if an arrival has a criminal background, is on a terror watch list or is using a false name.

Information obtained by immigration authorities will be securely stored and made available only to authorized officials. The start of the program comes more than two weeks after the Bush administration put the nation on high alert for a terrorist attack. Since then, several international flights from Britain, France and Mexico have been canceled because of security concerns. The US-VISIT program has already prompted Brazil to retaliate by imposing similar security measures on US travelers.

The program was first tested at the Atlanta airport late last year, and the trial run turned up 21 people on the FBI's criminal watch list for crimes such as drug offense, rape and visa fraud, according to Homeland Security officials. During the trials, the system added an average of about 15 seconds to arrival processing, according to the government.

The departure component of US-VISIT is supposed to take effect by the end of 2004. Visitors leaving the country will be required to have their fingerprints scanned at special kiosks. Arrival and departure information would then be automatically reconciled. The government expects to reduce the number of foreigners who overstay their visas. Overstays account for about a third of the estimated 10 million illegal immigrants in the US

US citizens and green card holders will not be subject to US-VISIT, and neither will people from 27 countries whose citizens are not required to have visas to travel to the United States.

At the request of border-area groups, the government is considering a recommendation to exempt Mexican citizens who hold a US border-crossing card from US-VISIT. Holders of the card, who generally have strong work-related or family ties in the United States, account for about 30% of all land crossings.

13. Court Grants Illegal Worker \$200,000 in Damages

A San Francisco federal jury awarded Macan Singh, an illegal Indian immigrant, \$200,000 in damages after his uncle and employer, Charanjit Jutla, reported him to the INS one day after Singh signed an out-of-court settlement against Jutla in 1999. The jury found that Jutla was liable under the Fair Labor Standards Act and the California Labor Code and ordered him to pay \$40,000 in compensatory damages and \$160,000 in punitive damages.

According to a press release from the LAC Employment Law Center, Jutla arranged for his nephew to be illegally trafficked into the United States in 1995. From 1995 to 1999, he forced Singh to work 12-hour, seven-day work weeks without pay. Singh filed a claim with the California Labor Commission in 1999 and was awarded \$70,000 in an out-of-court settlement. Jutla reported Singh the next day.

This holding is the first case in California where a jury awarded damages to an illegal immigrant who suffered from retaliation after asserting his rights since the Supreme Court's March 2002 holding that denied back pay to an illegal immigrant.

The Singh case can be distinguished from the March 2002 holding in that when an illegal immigrant is reported to the INS with a retaliatory motive, the court will find an otherwise legal act to be one that violates federal and state law. Singh is currently in deportation proceedings.