

Siskind's Immigration Bulletin  
January 26, 2004

Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-345-0225; facsimile: 800-684-1267, email: [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com), WWW home page: <http://www.visalaw.com>.

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

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

To receive a free e-mail subscription to Siskind's Immigration Bulletin, fill out the form at <http://www.visalaw.com/subscribe2.html>. To unsubscribe, send your request to [visalaw-unsubscribe@topica.com](mailto:visalaw-unsubscribe@topica.com).

To subscribe to the free Siskind's Immigration Professional Newsletter, go to <http://www.visalaw.com/sip-intro.html>.

\*\*\*\*\*  
Are you a jobseeker looking for an employer to sponsor your work visa?  
Are you an employer or recruiter who can benefit from free online job postings?  
Visit Visajobs.com, the online career network, and create your new account  
(<http://www.visajobs.com>).  
\*\*\*\*\*

1. Openers
  2. The ABC'S Of Immigration - J-1 Waiver Flowchart #8: J-1 IGA Physician Waiver Flowchart
  3. Ask Visalaw.com
  4. Border and Enforcement News
  5. News From The Courts
  6. Government Processing Times
  7. News Bytes
  8. International Roundup
  9. Legislative Update
  10. State Department Visa Bulletin – February 2004
  11. Canadian Corner – January 2004
  12. United States Aliens: Do You Have To File a US Tax Return and Are You Subject To US Taxation? By Steven Weiser
  13. Mexican President Supports Bush's Policy, Not Amnesty
  14. Hagel- Daschle Earned Adjustment Proposal Introduced
  15. USCIS Releases FY 2004 First Quarter H-1B Numbers
  16. Health and Immigration Experts Question Tactics of CGFNS
  17. Supreme Court Grants Cert in Cuban "Lifer" Case
  18. India-Based IT Firms Taking Advantage of Visa Programs
-

## 1. Openers

Dear Readers:

Well, get ready. By mid-February it looks like we'll be out of H-1B numbers until October. The anti-immigration zealots who have been arguing relentlessly that H-1B workers are taking jobs from deserving Americans will now have achieved a key objective.

But maybe the cap being reached so early has a silver lining. The burden of proof will now shift. With such a long stretch of time without H-1B visas, if it is really true that lots of Americans are losing out on finding good jobs because of H-1B workers, we should see a sudden and pronounced change. Employers need the workers and if, as the restrictionists claim, they are just hiring H-1Bs for cheap labor, then they'll have no choice but to hire Americans now. So let's watch and see.

My guess is the story will be the exact opposite, particularly in many fields where there are shortages of key professionals. I look forward to hearing the restrictionists explain to an impoverished mother in rural Mississippi why the pediatrician her town has been waiting on for years cannot come. With a rapidly growing physician shortage in this country that is expected to approach 200,000 in the next few years, the lack of H-1B visas to bring physicians to underserved communities has a real impact.

I look forward to hearing the restrictionists explain to parents and schoolchildren why they will be in larger classes this fall and will not receive the quality education they expect. There is a shortage of school teachers in many parts of the country and H-1Bs are frequently being used to help school districts ensure there are an adequate number of teachers for our kids.

I look forward to hearing the restrictionists explain to economic development agencies around the country why foreign companies seeking to locate factories in the US cannot bring over many key managers, executives and essential employees. When these companies choose to bypass setting up factories in the US because it is too difficult for them to get their people to the US to oversee their investments, it will be interesting how the restrictionists explain to us that this is a good thing. I've always thought it was interesting, by the way, why the Lou Dobbs of the world, complain night after night about American companies locating factories in other parts of the world, but we do not think there is anything wrong with the thousands of companies from around the world that have opened factories here.

Maybe if we cannot get Congress' attention to deal with this issue, we should bring in the big guns – the fashion models. Many of our readers may not know that foreign fashion models have a special type of H-1B visa. That special H-1B visa is subject to the H-1B cap.

My point is that the media and the restrictionists' efforts to simplify the H-1B debate by portraying the visa as just a tech worker visa does the country a disservice. H-1Bs fill jobs in a wide variety of fields, many of which are NOT in areas where there are a lot of unemployed Americans. Hopefully, this message will get through.

In firm news, I received a nice accolade this week. *Business Tennessee Magazine* has published its list of the 101 best lawyers of our state's 6000+ attorneys. And yours

truly made the list. Congrats also to my friend Linda Rose who is an excellent immigration lawyer and who also made the list. The article can be found on our web site at [www.visalaw.com/news](http://www.visalaw.com/news).

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 #8: J-1 IGA Physician Waiver Flowchart

This is the final chart in our series of flowcharts for J-1 visa holders with a two-year home residency requirement. The flowchart linked below shows how J-1 physicians can determine if they are eligible to apply for a waiver through an Independent Government Agency.

J-1 Basic Physician IGA Waiver Flowchart:  
<http://www.visalaw.com/04jan4/physicianIGA.pdf>

---

## 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 - I am currently in the US on a student visa. I am pregnant and I will have the child while still in the US. My understanding is that the child will be eligible for US citizenship. My question: Is there any process/visa that will allow me to reside in the US to raise my child (a US citizen) in this country?

A - The child is automatically a US citizen if he or she is born here. But until the child is 21 years old, a parent cannot benefit from the child's citizenship status. The child is, of course, entitled to remain in the US. But most people bring their children home with them. The child can eventually choose to return to the US and will not require any sort of permission to do so. There is a common misperception that having a child in the US opens up a lot of doors to immigrate to this country. That's just a myth and having a child here really will not make a big difference for most people.

\*\*\*\*\*

Q - My Mother will be taking oath as a US citizen on the 16th of Jan. 04. I filed a petition under the F2b immigrant visa category. My priority date is February 1998 and

my sister's priority date is January 1999. Once my mother becomes a US Citizen, will I jump to F2 first category?

A - Actually, you and your sister will jump to the F1 immigrant visa category once your mother naturalizes as long as both of you are still single. And you will retain your 1998 and 1999 priority dates. So because the F1 category is up to the year 2000, you will be eligible to proceed with green card processing. If you are in the US, you will just apply for adjustment of status. If you are outside the US, you will need to notify the State Department of your mother's naturalization. Only after that will they proceed with processing of the green card for you.

\*\*\*\*\*

Q - Hello, I am an international student and attended classes last semester, but transferred this semester only to find out I had a hold on my registration and did not know of that before. I am currently not taking classes now because I could not register. I would like to know if I should apply to reinstate, and if so how long would it take because I would like to be in class by next semester? I would also like to know if it is possible for someone who had worked without INS authorization to still reinstate.

A - You will need to apply for reinstatement immediately. How long it will take will depend on which part of the country that you are at. I would recommend you to discuss this with your international student advisor. Also, discuss with your adviser whether or not you can get back in to status by re-entering the US with a new SEVIS I-20 for "initial attendance". If your F-1 visa is still valid, taking a trip home and coming back using a new I-20 may be the quickest way to get back in status. The I-20 must be marked "initial attendance" though, and because you will not get a new I-94, traveling to Canada or Mexico will not do.

\*\*\*\*\*

Q - I am a US permanent resident and I received my green card a year back. I now wish to change my current employer. Can my current employer revoke my green card?

A - No. Only the USCIS could do that, and they would do that only if they believed you got your green card through fraudulent means. That sometimes means switching too quickly from one employer to another after the green card is approved. But that is almost never the case where the green card was obtained through adjustment of status since you are allowed to switch in many cases after the adjustment application is pending 180 days and your new job is in the same or a very similar field. In cases where a green card is received through consular processing, you will need to be more careful. There is no actual number of days you need to stay with an employer, but most immigration lawyers would probably agree that a year is plenty of time to allow before switching. Good luck.

---

#### 4. Border and Enforcement News

Since January 7, Border Patrol agents in Yuma, Arizona have apprehended approximately 200 illegal immigrants per day. Every year at this time, agents see an increase in the number of immigrants who are apprehended by the border. This

increase is attributed to the large number of illegal immigrants attempting to return to the US after visiting family and friends in Mexico for the holidays and those immigrants heading to California for the new agricultural season. Agents have also apprehended a large number of illegal immigrants attempting to enter the US for the first time.

\*\*\*\*\*

According to data compiled by the DHS, from 2002 to 2003, the number of travelers pulled out of line at passport screenings at airports, seaports and land crossings has increased by 500,000. In 2003, 10.4 million travelers were subjected to further scrutiny, known as secondary inspection, compared to 9.9 million in 2002. The increase in secondary inspections is attributed to increased wariness by inspectors and more names listed on criminal and terrorist computer databases.

In many cases, the names of travelers are similar to those names on criminal and terrorist databases, and these delayed travelers are ultimately cleared through security. However, in 2002, about 520,000 travelers were denied entry after secondary inspections, an increase since 2001.

Traveler scrutiny has increased since it was discovered that two of the nineteen September 11 terrorists had been subject to secondary scrutiny because inspectors thought they were trying to improperly use their visitor visas. They were cleared after inspectors learned that they had applied for student pilot visas.

\*\*\*\*\*

The Border Patrol intends to install 50 portable lights in Campo and Boulevard along the US-Mexico border. The lights are intended to halt the increase in illegal migration across the border at remote areas. Eventually, the Border Patrol intends to install lights across the entire border.

\*\*\*\*\*

Eighty people on four boats were returned to the Dominican Republic after Coast Guard officials found them at sea. The boats were found between Puerto Rico and the Dominican Republic. Nearly 500 people from the Dominican Republic have been prevented from illegally entering the United States since the beginning of the year.

---

## 5. News From The Courts

Rollins v. State  
2004 Ga. LEXIS 1  
January 12, 2004

The Defendant Petitioner, Michele Yearwood Rollins, a native of Barbados, was convicted on a guilty plea of violating the Georgia Controlled Substances Act after a DUI arrest lead to a subsequent search that revealed trace amounts of cocaine in her purse.

Pursuant to her counsel's advice, the Petitioner entered a plea and was treated as a First Offender. The Petitioner continued to live in the United States and attained an Associate degree, a double-major Bachelor degree, and a Juris Doctor degree. After graduating from law school, she took and passed the Florida State bar exam. After obtaining a copy of her First Offender guilty plea, however, the INS instituted deportation proceedings and the Florida State Bar holds its decision in abeyance of whether to admit her to the bar.

The Petitioner filed a petition for writ of habeas corpus on grounds of ineffective assistance of plea counsel. The Georgia Superior Court denied her petition. The Petitioner then filed an application for certificate of probable cause with the Supreme Court of Georgia to appeal the denial of the petition.

The Supreme Court of Georgia held that (1) her counsel's affirmative misrepresentations that she would suffer no negative consequences from pleading guilty was sufficient to warrant review of claim of ineffective assistance of counsel; (2) her counsel's failure to conduct simple research regarding the consequences of pleading guilty fell below the reasonable person standard; and (3) but for her counsel's affirmative misrepresentations, the Petitioner would not have pleaded guilty, but would have demanded trial.

\* \* \* \* \*

Muhur v. Ashcroft  
US Court of Appeals for the Seventh Circuit  
2004 US App. LEXIS 759  
January 20, 2004

Yordanos Muhur appealed a removal order following the denial of her request for asylum. The Seventh Circuit, with Circuit Judge Posner writing the opinion, reversed and remanded the decision.

Muhur, who was born in Eritrea, became a Jehovah's Witness in 1992 after moving to Ethiopia. She later married a Muslim Ethiopian who converted to the Jehovah's Witness faith in order to marry her. The couple then moved to Saudi Arabia, where Islamic law deems it a capital offense for a Muslim to convert to another religion. Muhur's husband returned to Islam and attempted to force his wife to do the same and "behave like a Muslim wife." At this point, Muhur got a visitor's visa to go to the United States, where her family had already immigrated. She then applied for asylum.

Judge Posner noted evidence that Eritrea persecutes Jehovah's Witnesses. Muhur, who has Ethiopian citizenship, could return to Ethiopia, which does not discriminate against Jehovah's Witnesses. But since a recent war between the two countries, Ethiopia discriminates against individuals of Eritrea ethnicity. Due to these circumstances, Muhur was concerned that removal to Ethiopia would immediately put her back in Eritrea, where she would not be allowed to openly practice her religion. While the immigration judge passed over this concern, the Court of Appeals thoroughly considered this possibility.

The immigration judge did not find that Muhur was a Jehovah's Witness, but he also did not find that she is not. He stated that she did not provide adequate details of her faith, nor did she provide evidence that she was persecuted while she was in Eritrea.

As Judge Posner points out, Muhur did not join the faith until she moved to Ethiopia. Therefore, she did not have an opportunity to be persecuted in Eritrea. Also, the Court of Appeals doubted the importance that the immigration judge and asylum officer placed on Muhur's knowledge of specific details of her religion. Judge Posner pointed to the fact that many religious people, even Roman Catholics, are not likely to know who founded their church or have an identification card from the church.

However, the biggest problem that Judge Posner noted with the immigration judge's decision was the IJ's decision that one is not entitled to a claim of asylum on the basis of religious persecution if one can escape the notice of the persecutors by concealing one's religion. The Court of Appeals opinion detailed how this idea would mean that Christians were not prosecuted in the Roman Empire because if they could maintain their religious practices in secret, they would not be thrown to the lions.

The case was remanded to determine whether Muhur is a Jehovah's Witness and where she would likely end up if she was removed to Ethiopia. In addition, the opinion noted: "In view of the mishandling of Muhur's claim by the immigration judge, we urge that the case be assigned to a different immigration judge."

---

## 6. Government Processing Times

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

Nebraska (01/15/2004): <http://www.visalaw.com/nebraska.html>

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

---

## 7. News Bytes

In his State of the Union Address on January 20, President George W. Bush reiterated his wish for Congress to pass his immigration reform proposal:

Tonight I also ask you to reform our immigration laws, so they reflect our values and benefit our economy. I propose a new temporary worker program to match willing foreign workers with willing employers, when no Americans can be found to fill the job. This reform will be good for our economy - because employers will find needed workers in an honest and orderly system. A temporary worker program will help protect our homeland - allowing border patrol and law enforcement to focus on true threats to our national security. I oppose amnesty, because it would encourage further illegal immigration, and unfairly reward those who break our laws. My temporary worker program will preserve the citizenship path for those who respect the law, while bringing millions of hardworking men and women out from the shadows of American life.

\*\*\*\*\*

Special Agents for the Office of Investigation of the Treasury Inspector General for Tax Administration are using IRS records to identify immigrants who are deportable. The

Treasury Inspector General for Tax Administration is part of the Treasury Department, but was separated by the IRS in 1999.

In November 2003, IRS officers began using computer records to identify taxpayers who used ITIN's instead of Social Security numbers on their W-2 forms and then filed their tax returns. The IRS then contacts Immigration and Customs Enforcement to verify that the names discovered in the ITIN search are not resident aliens. One these deportable immigrants are identified, the Treasury Inspector General for Tax Administration then files a criminal complaint charging these immigrants with possessing fake resident alien cards. Then USCIS is notified, and deportation proceedings are initiated.

To date, the IRS has compiled a list of 250,000 persons the IRS suspects are illegal immigrants. The Treasury Inspector General for Tax Administration has advised that for national security reasons, the agency plans to prosecute as many of these illegal immigrants as possible.

\*\*\*\*\*

Since President Bush proposed his guest worker program on January 7, 2004, immigrants-rights groups have been receiving calls from individuals who mistakenly believe that the President's plan has been approved and passed by Congress. Some of these immigrants have been deceived by legal-sounding businesses into paying for the "new" work permits. Immigration experts are now warning immigrants to be wary of such businesses claiming they can begin the legalization process based on the President's proposal.

An "immigration service center" in Santa Ana, California named La Guadalupana has allegedly defrauded thousands of Mexican nationals. Immigration experts have said that this kind of fraud is becoming more common.

\*\*\*\*\*

Although the Homeland Security Secretary Tom Ridge has publicly said that the Bush administrations plan to grant temporary legal status to millions of undocumented workers would make it harder for terrorists to infiltrate the US-Mexico border, both supporters and opponents agree that that any temporary-worker program could add millions of new applications to the nation's already overburdened immigration system.

Ridge has said that if the program is adopted, undocumented workers would no longer need to hire the same document forgers and smugglers that terrorists use to enter the US. However, it could cost billions of dollars to administer and require hiring and training thousands of new immigration workers to process the applications, possibly taking years to implement.

\*\*\*\*\*

American business and travel industry groups have growing concerns about the decrease in international visitors following the newest security measure, US-VISIT. US-VISIT requires those traveling on a visa to have two digital fingerprint scans and a digital photograph taken on arrival.

The number of arrivals in the US has fallen from a record 51 million in 2000 to an estimated 40 million last year. The industry claims that the sharp decline cost the American economy \$15 billion. The Tourism Industry Association of America, which is heading a campaign to delay new passport requirements, predicts arrivals will increase by five percent this year, adding \$69 billion to the US economy.

\*\*\*\*\*

A new civics test for prospective citizens is being developed for use by next year. The agency is also experimenting with alterations to the English-language test that prospective citizens must also pass.

Immigrant advocates are concerned that the new test could serve as a bar to citizenship. According to the USCIS, the goal of the department is to make the test more meaningful, moving toward a more standardized test as opposed to the present oral examination. The present test can allow different individuals to receive different questions, with differing degrees of complexity.

\*\*\*\*\*

Judge Roger B. Colton is being criticized for reporting illegal immigrant children that appeared in his courtroom. The reports have occurred at least four times since October. Colton writes down names, addresses, and birth dates of immigrant children and their families, and then faxes the information to the US Border Patrol.

Colton claims to be doing his duty, but immigration advocates are concerned that his actions will prevent immigrants from coming forward as witnesses.

---

## 8. International Roundup

The German government has announced that the number of people seeking asylum dropped by nearly a third in 2003, reaching its lowest level since 1984 as applications from Iraqis, Afghans and Turkish decreased. The German government is trying to pass an immigration law meant to admit highly qualified workers while tightening asylum rules, but the legislation is being blocked by conservative states that object that the law fails to impose sufficient limits on the inflow of foreign workers and refugees.

\*\*\*\*\*

Currently, Portuguese children must have proof of legal residency in order to register for a public school or receive medical treatment. Portugal's government plans to table legislation by the end of January, which would grant the children of illegal immigrants to the country access to public services, such as education. The number of people in Portugal who are foreign-born compose about 5% of the nation's population, which is one of the highest proportions in the European Union.

\*\*\*\*\*

According to opposition leader Mark Latham, one of the biggest problems for Australia's migration system are the number of illegal migrants who are being exploited. Latham wants the government to crackdown on the nations borders.

Latham said that foreigners working in Australia would be issued a photo identity card when their visa is granted, which would expire with the visa. Any immigrant found to be without the ID card will be deported and those who employ illegal workers would also face certain penalties.

\*\*\*\*\*

Ontario's Liberal government is considering reforming the current system for identifying people by using biometric data on drivers' licenses and other internationally recognized documents as part of a continent-wide effort to prevent identity theft. Former immigration minister Denis Coderre had supported the idea of a national identity card before he was switched to another post late last year.

---

## 9. Legislative Update

In reaction to President Bush's immigration plan to legalize as many as 8 million immigrants who work and live in the United States illegally, US Representative Tom Tancredo (R-CO) is putting together a Colorado state constitutional amendment on the November ballot that would bar people living in Colorado illegally from receiving state services.

While Tancredo's amendment would not ban undocumented immigrants from receiving emergency medical care or K-12 education, it would restrict non-emergency services of the state of Colorado except as mandated by federal law.

Critics say it would cost the state more money. For example, if undocumented immigrants were unable to get regular medical exams they would probably go to the emergency room, which would cost more. If the proposed amendment is passed, many questions would be raised such as what the consequences would be if someone gave services to an undocumented immigrant, how the law would be enforced and exactly what services would be exempted.

\*\*\*\*\*

[HR3701](#): To amend the Immigration and Nationality Act to extend the provisions governing nonimmigrant status for spouses and children of permanent resident aliens awaiting the availability of an immigrant visa, and for other purposes.

Sponsor: Rep Andrews, Robert E. [NJ-1] (introduced 1/20/2004)

Committees: House Judiciary

Latest Major Action: 1/20/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[HR3727](#): A Private Bill for the relief of Maria Del Refugio Plascencia and Alfredo Plascencia-Lopez.

Sponsor: Rep Lantos, Tom [CA-12] (introduced 1/21/2004)

Committees: House Judiciary

Latest Major Action: 1/21/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[S2010](#): A bill to strengthen national security and United States borders, reunify families, provide willing workers, and establish earned adjustment under the immigration laws of the United States.

Sponsor: Senator Hagel, Chuck [NE] (introduced 1/21/2004)

Latest Major Action: 1/21/2004 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).

---

## 10. State Department Visa Bulletin – February 2004

### A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during February. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by January 8th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

#### FAMILY-SPONSORED PREFERENCES

First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the

worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

#### EMPLOYMENT -BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers."

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: MEXICO, INDIA and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no

numbers are available. (NOTE: Numbers are available only for applicants whose priority date is earlier than the cut-off date listed below.)

Priority Dates for Family Based Immigrant Visas				
	All Chargeability Areas Except Those Listed	INDIA	MEXICO	PHILIPPINES
Family				
1 <sup>st</sup>	08SEP00	08SEP00	15OCT94	01JUN90
2A*	01MAR99	01MAR99	01AUG96	01MAR99
2B	08MAY95	08MAY95	08DEC91	08MAY95
3 <sup>rd</sup>	15SEP97	15SEP97	08JAN95	15JAN90
4 <sup>th</sup>	01APR92	22DEC90	01APR92	22JAN82

\*NOTE: For February, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 01AUG96. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 01AUG96 and earlier than 01MAR99. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Priority Dates for Employment-Based Immigrant Visas				
	All Chargeability Areas Except Those Listed	INDIA	MEXICO	PHILIPPINES
Employment-Based				
1 <sup>st</sup>	C	C	C	C
2 <sup>nd</sup>	C	C	C	C
3 <sup>rd</sup>	C	C	C	C
3 <sup>rd</sup>	C	C	C	C
Other Workers	C	C	C	C
4 <sup>th</sup>	C	C	C	C
Certain Religious Workers	C	C	C	C
5 <sup>th</sup>	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at (202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

#### B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. This reduction has resulted in the DV-2004 annual limit being reduced to 50,000. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For February, immigrant numbers in the DV category are available to qualified DV-2004 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

All DV Chargeability Areas Except Those Listed Separately

*Region*

AFRICA: AF 20,400 Except: Ethiopia  
18,600, Nigeria 15,400  
ASIA: AS 9,225 Except: Bangladesh 5,900  
EUROPE: EU 15,600  
NORTH AMERICA (BAHAMAS): 11  
OCEANIA: OC 600  
SOUTH AMERICA, and the CARIBBEAN:  
1,250

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2004 program ends as of September 30, 2004. DV visas may not be issued to DV-2004 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2004 principals are only entitled to derivative DV status until September 30, 2004. DV visa availability through the very end of FY-2004 cannot be taken for granted. Numbers could be exhausted prior to September 30. Once all numbers provided by law for the DV-2004 program have been used, no further issuances will be possible.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN MARCH

For March, immigrant numbers in the DV category are available to qualified DV-2004 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

All DV Chargeability Areas Except Those Listed Separately

### *Region*

AFRICA: AF 23,200 Except: Ethiopia  
21,900, Nigeria 16,475  
ASIA: AS 10,500 Except: Bangladesh 6,940  
EUROPE: EU 17,800  
NORTH AMERICA (BAHAMAS): 13  
OCEANIA: OC 685  
SOUTH AMERICA, and the CARIBBEAN: SA  
1,400

#### D. VISA AVAILABILITY IN THE FAMILY PREFERENCE CATEGORIES DURING FISCAL YEAR 2004

The cut-off date movement during the past two years in most categories has been much greater than might ordinarily be expected. This has been a direct result of a decrease in demand for visa numbers for CIS adjustment of status cases. Continued forward movement can be expected for the foreseeable future, especially in the F2A category, as the Visa Office attempts to insure the use of as many numbers as possible under the annual numerical limitations.

Should CIS demand begin to increase, the cut-off dates can be expected to slow or stop. Moreover, in some of the categories there could be a retrogression of the cut-off dates.

---

#### 11. Canadian Corner – January 2004

##### New Immigration Minister

On December 12, 2003, Prime Minister of Canada announced the appointment of Judy Sgro as the Minister of Citizenship & Immigration.

##### New service center in Morocco

Starting January 1, 2004 the visa office at the Canadian embassy in Morocco (Rabat) will become a full service processing center and will be responsible for immigration files originating from Morocco.

##### Federal Statistics – 2002

The top 10 source countries whose foreign nationals obtained Canadian landing status are:

1. China – 33,231
2. India - 28,815
3. Pakistan - 14,164
4. Philippines - 11,000
5. Iran - 7,742
6. Korea - 7,326
7. Romania - 5,692

- 8. US – 5,288
- 9. Sri Lanka - 4,961
- 10. U.K. - 4,720

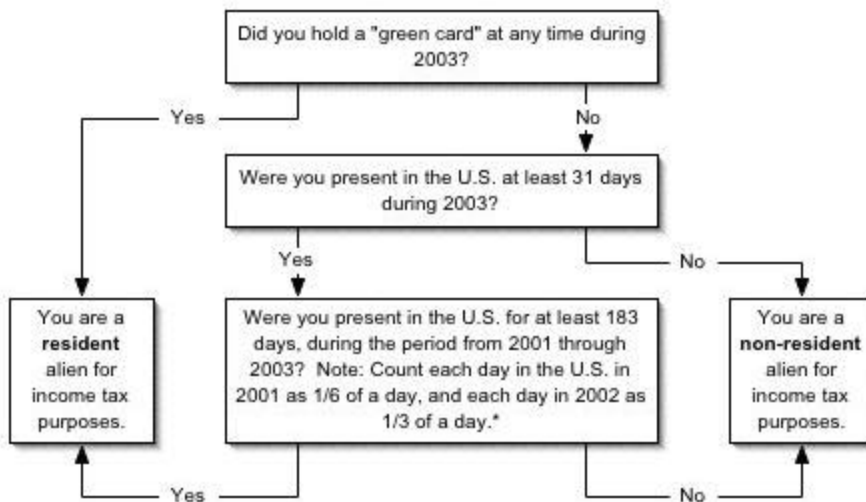
If you have any questions about Canadian Immigration laws please contact Leonard Pearl at our Canadian office ([lpearlvisalaw@sprint.ca](mailto:lpearlvisalaw@sprint.ca) or 905-764-8767).

12. United States Aliens: Do You Have To File a US Tax Return and Are You Subject To US Taxation? By Steven Weiser

*Steven Weiser is a tax lawyer with a practice focusing on international tax matters. His contact information and information on his practice can be found on his web site at <http://www.lw-law.com/>.*

Now that 2003 has ended many of us are getting ready for the 2004 tax season and the approach of the April 15 tax return filing deadline. Some of us can expect to see significant tax refunds as a result of changes in the tax laws that occurred during 2003.

Aliens residing in the US are often subject to a different system of taxation from US citizens. This is particularly true of those individuals deemed "non-resident aliens" for US tax purposes. The following chart will help you to determine your status as a "resident" or "non-resident" alien for US income tax purposes:



\* You can also use the following formula: Number of days =  $x + (y/3) + (z/6)$ , where x is the number of days present in 2003, y is the number of days present in 2002, and z is the number of days present in 2001. This calculation is known as the "substantial presence test."

If you are a resident alien, you will need to file Form 1040, US Individual Income Tax Return, by April 15<sup>th</sup>, unless you file a valid tax return extension by that date (keep in mind that an extension only extends the time period for filing a return and is not an extension of time to pay).

Generally, resident aliens are subject to US taxation on their worldwide earnings; however, several exceptions exist. For example, under a "closer connection

exception" if a resident alien is actually present in the US less than 183 days during 2003, maintains a home in another country and can prove a "closer connection" with that country than with the United States, the alien will be treated as a non-resident. Additionally, if a tax treaty exists between the United States and a taxpayer's home country, the treaty may provide that only income from US sources is subject to US taxation.

In limited circumstances days of presence in the United States are disregarded in applying the above substantial presence test. For example, certain aliens, including foreign government related individuals, certain teachers, trainees or students, and professional athletes in the US to compete in charitable sporting events, are treated as "exempt individuals".

A foreign government-related individual is someone present in the US (1) due to his or her diplomatic status; (2) by reason of a visa representing full-time diplomatic or consular status; or (3) as a full-time employee of any public international organization that the President of the United States has designated as being entitled to enjoy certain privileges. Immediate family members of foreign government-related individuals are also treated as foreign government-related individuals.

A teacher, trainee or student is an individual admitted temporarily in the US as a nonimmigrant under specified provisions of the Immigration and Naturalization Act, more particularly, "F," "J," "M," and "Q" visa holders. The individual must substantially comply with the terms of such visas. Failure to comply with the terms of these visas, or engaging in activities considered prohibited by the Immigration and Naturalization Act can result in the loss of exempt individual status. Unauthorized employment or not being engaged in a course of full-time study may be treated as a failure to comply with the individual's visa requirements. Family members of individuals qualifying as teachers, trainees and students temporarily present in the US are themselves treated as teachers, trainees and students.

An individual may not exclude days of presence as an exempt teacher or trainee if the individual has been exempt as a teacher, trainee or student for any part of two of the prior six calendar years. In the case of a temporary "F," "J" or "Q" visa-holder whose compensation is paid by a foreign employer, the preceding sentence is modified by providing that the individual may not exclude days of presence if the individual has been exempt as a teacher, trainee or student for any part of four of the prior six calendar years.

Y is temporarily present in the US during the calendar year as a teacher. Y holds a "J" visa, and has not received compensation from a foreign employer. Y was treated as an exempt student for two of the prior six calendar years. Even if this is the first year that Y seeks exempt individual status as a teacher, Y will not be an exempt individual because Y was exempt as a student for at least two of the prior six years.

Finally, an individual cannot exclude days of presence as an exempt student if the individual has been exempt as a teacher, trainee or student for any part of more than five calendar years, unless the approval of the Internal Revenue Service is obtained.

Another example of an exception to the substantial presence test includes "exempt days." Exempt days include days during which an individual is prevented from leaving the US due to a medical condition, days on which a regular commuter residing in

Canada or Mexico commutes to and from employment in the US, days on which an individual is in transit between two points outside the US, and days on which an individual is temporarily present in the US as a regular member of a crew of a foreign vessel engaged in transportation between the US and a foreign country.

Z, a Canadian citizen, owns a residence in Toronto. On January 1, 2002, Z begins working in Niagra Falls, New York, commuting from home to his place of employment six days a week. Although X is physically present in the US approximately 300 days during 2002, none of these days apply in calculating whether the substantial presence test is met. Z is not a resident for US income tax purposes.

A regular commute exists if the individual must travel from her residence to the place of employment more than 80% of the workdays in the current year. A "commute" is defined as travel to and from employment within a twenty-four hour period.

An individual is treated as not being present in the US if such individual is present in the US for less than twenty-four hours and is transit between two points outside the US "In transit" includes activities related to completing travel to another location. If an individual attends a business meeting while in the US the day is no longer exempt. Similarly, a day present in the US as a member of a vessel engaged in transportation is not an exempt day if such individual conducts business in the US on such day.

It is possible for an individual to be both a resident and non-resident alien in the same year. This generally occurs during an alien's first year of residency or in the year in which the alien departs the US. When this occurs the individual effectively divides the tax year into two portions and must determine whether income was received while a resident or non-resident alien to determine if regular US income taxes apply.

Where resident aliens are subject to the regular income tax imposed upon US citizens, nonresident aliens may find themselves subject to two very different US income tax regimes. The first regime applies to certain limited types of US source income that are not effectively connected with a trade or business operated within the US. The second regime applies to income that is effectively connected with the conduct of a US trade or business. The rules regarding the taxation of nonresidents are often confusing, complex and subject to many exceptions.

Most types of non-business income from US sources received by a non-resident alien are subject to a tax regime that withholds 30% of all income to be paid as a tax to the non-resident. The most significant type of income exempt from the withholding tax is capital gain derived from US sources. Generally, a tax return need not be filed by a non-resident alien subject to the withholding tax. A second tax regime applies to all income derived by a non-resident alien if such income is effectively connected with a United States trade or business. Individuals should note that performing services in the US for a salary is often enough to give rise to a United States trade or business. If a non-resident derives income effectively connected with a United States trade or business a US tax return should be filed. Again, a tax treaty between the United States and the non-resident alien's home country may alter the manner in which US income taxes are imposed.

Due to the complex nature of the US tax laws, particularly with respect to alien taxpayers a competent tax professional should always be consulted to help you determine your US tax liability, if any.

---

### 13. Mexican President Supports Bush's Policy, Not Amnesty

Last week President Vicente Fox offered his support for Bush's proposal that could begin to resolve America's immigration situation. Mexico's Foreign Secretary suggested to the press that Mexico would lobby members of the US Congress to ensure the Bush plan is approved quickly.

Fox told the press that the Bush plan would help the millions of undocumented Mexicans currently living and working in the United States obtain legal status and proper documentation. He did make it clear, however, that he favors open borders across North America, but not amnesty for Mexican citizens living illegally in the United States. Fox said the program announced by President Bush would not encourage aliens to remain in the United States because they love their home country.

Fox said undocumented immigrants would rather temporarily earn a living in the United States and safely visit their families back in Mexico on a regular basis than become US citizens. He agrees with Bush that there should not be a blanket amnesty that would make most undocumented immigrants eligible to apply for residency in the United States.

What excited Fox the most, he said, is that the proposal would allow millions of current undocumented workers to come home to see their families in Mexico without having to risk their lives to sneak back into the United States. Fox said he intends for Mexico to work closely with Bush and do all it can to help this proposal become a reality.

Currently, there are as many as 8 million Mexicans believed to be living illegally in the United States. Mexican immigrants send home an estimated \$13 billion per year.

---

### 14. Hagel-Daschle Earned Adjustment Proposal Introduced

On January 21, 2004, Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD) introduced S.2010, The Immigration Reform Act of 2004: Strengthening America's National Security, Economy and Families. The bill will reform immigration laws to strengthen national security, improve economic stability and reunite families.

Hagel stated that "congress must reform the patchwork of immigration laws that have created an underground, black market labor force...President Bush deserves credit for the leadership he has shown in putting this issue back on the agenda. Congress must now meet that leadership by having a courageous debate on the tough issues of immigration reform."

The bill, known as the Hegel-Daschle Bill, will strengthen national security by identifying undocumented immigrants now living in the US and track foreign workers who enter the US looking for jobs. The bill will also provide funding for the Department of Homeland Security to improve border security, as well as criminal and background checks on visa applications.

Economic stability will be improved by the bill through the creation of an enforceable program to bring needed workers to the US to fill jobs unfilled by American workers. The program will increase the number of visas available for those immigrants who have followed American law and are waiting to be reunited with their US citizen and legal resident family members. This will reduce processing backlogs and remedy inequalities under current immigration law. The bill will also penalize those who continue to break immigration laws.

Undocumented workers and their families currently living in the US will be able to become invested stakeholders in the country if they meet certain guidelines, such as passing national security and criminal background checks, have resided in the US for five years before the bill was introduced, have worked in the US for a minimum of five years, have paid all federal taxes and have paid all application fees.

The bill has been referred to the Senate Judiciary Committee.

---

#### 15. USCIS Releases FY 2004 First Quarter H-1B Numbers

On January 21, 2004, USCIS issued a statement that for FY 2004 first quarter H-1B processing, the total number of H-1B cap case approvals and those pending in the queue for adjudication is 43,500 that could count against the H-1B cap for FY 2004. Based on the pace of visas issued so far, the H-1B cap should be hit during the month of February.

In December we reported that USCIS released an official statement that the H-1B cap was close to being reached due to the reduction in visa numbers, an increase in H-1B usage, a backlog of H-1B cases at the beginning of the fiscal year, many premium-processing cases and a reduction in numbers because of the Singapore and Chile Free Trade Agreements.

In late December, AILA-USCIS Liaison Chair Bob Deasy contacted the Deputy Director, Citizenship and Immigration Services, William R. Yates, for information on the H-1B cap. Mr. Yates responded that USCIS is

“not near the cap at this time...[and] will release information at the end of January regarding where we stand and at that time will decide whether we need to notify customers of a projected ‘cap date.’ Of course it is theoretically possible that we could reach the cap by the end of the calendar year but we would have to receive record levels of filings... I still believe that we will hit the cap this spring, but I won't be more specific until I see the numbers in January.”

On October 1, 2003, the allotment of H-1B visas provided annually by Congress dropped from 195,000 to 65,000. 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 H-1B cases that are not subject to the cap. Only those petitions regarding what USCIS considers to be “new employment” count against the cap. These cases are those filed on behalf of foreign nationals who are not currently in H-1B status.

Extension of status cases, even if the foreign national changed employers, do not count against the cap. Also, a case that has been counted against the cap for the previous six years does not count against the cap limit, unless the applicant would be eligible for a full six years of authorized admission at the time the petition is filed.

Other cap exemptions include individuals who are employed at higher educational institutions and individuals employed by non-profit research organizations or government research organizations due to the American Competitiveness in the Twenty-First Century Act (AC-21), enacted in 2000. Also exempted from the cap are J-1 nonimmigrants changing to H-1B status who received waivers through the Conrad State 30 Program (though it is not clear whether this exemption expired on September 30<sup>th</sup> of last year)

If the H-1B cap is close to being hit, USCIS will release an announcement in the Federal Register. The announcement will likely tell the public that additional H-1B applications received after the announcement is received will not be adjudicated until additional H-1B visas are available. They are likely to count the number of cases already approved and the number of cases in the pipeline and when that number is at the cap amount, they will stop adjudicating cases. At that point, the agency is likely only to take cases with a start date after October 1, 2004. Cases received asking for a start date earlier than the next fiscal year would likely be returned along with the filing fee. If the USCIS is wrong in its count and a case is accepted, but a visa is actually not available, it would likely go ahead and adjudicate the case with a start date of October 1st and count the applicant against the 2005 fiscal year cap.

The last time the cap was hit, in March 2000, employers not willing to wait until the next October for employment to begin were required to notify the INS in writing that they wanted the petition withdrawn. If the petition had already been approved with an October 1 start date, the employer was supposed to notify the INS in writing that it wanted the petition revoked. In neither of these cases did the INS refund the fee.

---

#### 16. Health and Immigration Experts Question Tactics of CGFNS

Some nurses, nurse recruiters, immigration experts and hospitals are accusing the Commission on Graduates of Foreign Nursing Schools of delaying or denying the applications of an unknown number of qualified immigrants, according to an investigative article published this past week in the Philadelphia Inquirer newspaper. They say it acts as a monopoly with inaccessible customer service. CGFNS is a nonprofit screening company that has a stronghold over nurse credentialing and is colliding with the labor shortage that has left one in ten nursing jobs vacant, as it has sole authority to screen foreigners seeking a US nursing visa or license.

Experts are concerned that waiting times may worsen in July, when CGFNS will start screening thousands of Canadian nurses, whose current NAFTA-based exemption will end under a new federal rule. Because foreign recruitment is one technique for dealing with the nursing shortage, anything that slows the recruitment process greatly worries hospitals.

Beyond screening nurse-visa applicants, the company runs interference for state nursing boards. Forty states require foreign-educated nurses seeking a license to first to pass the CGFNS qualifying test. The test is given a few times each year at 40

foreign and 9 US cities and predicts whether the applicant will pass the national nursing-board exam, which is a requirement in order to obtain a state license. Only after nurses get their certificate from the Commission on Graduates of Foreign Nursing Schools may they apply for a visa at a US consulate.

CGFNS contends that some are bound to get upset by its meticulous process of scrutinizing education and credentials, testing nursing knowledge, verifying language ability and checking for fraud. Spokesmen said the vast majority of qualified nurses pass its reviews smoothly. They do, however, admit that the company had trouble with its filing and customer-service systems and has made costly investments in the last year to fix them.

With immigrants now accounting for a third of new US nurses each year, some hospitals, recruiters and regulators are demanding alternatives or improvements to the company's screening process, which can take six months to two years.

The number-one complaint of customers has been the inability to contact the company. According press statements by CGFNS, about one-third to one-half of the 1,300 daily phone calls to its customer-service line in Philadelphia end in busy signals, hang-ups or automatic disconnects after a long wait. However, the company says that it is trying to fix these problems. Applicants can now check their status through a new automated phone system or through the Web. It also has more customer service representatives to answer the phones and e-mails.

CGFNS may not retain the monopoly that it has now. Two firms have expressed interest in competing. The CGFNS's board president told the press that it welcomes the competition.

---

## 17. Supreme Court Grants Cert in Cuban "Lifer" Case

The Supreme Court granted certiorari last week in Benitez v. Wallis. The oral arguments will be heard during the current session, with the final reply brief not due to be filed until April 19, 2004. The case involves the interpretation of the Supreme Court case Zadvydas v. Davis and the present circuit split concerning this case.

Daniel Benitez, a native and citizen of Cuba, is an inadmissible alien who brought a petition challenging his indefinite detention. Both the District Court and the 11<sup>th</sup> Circuit Court of Appeals agreed with the INS determinations that Benitez posed a danger to the community and was likely to engage in further violent behavior as facially legitimate and bona fide reasons to detain him until removal to Cuba is possible.

Benitez was paroled into the United States after an attempted entry from the port of Mariel, Cuba, in 1980. Benitez was then convicted of second-degree grand theft in Florida in 1983. Thereafter, he applied for lawful permanent resident status. His application was denied based upon his previous conviction for grand theft, which was determined to be a crime involving moral turpitude.

In 1993, Benitez pled guilty in Florida state court to armed burglary of a structure, armed burglary of a conveyance, armed robbery, unlawful possession of a firearm while engaged in a criminal offense, carrying a concealed firearm, aggravated battery,

and unlawful possession, sale or delivery of a firearm with an altered or removed serial number. He was sentenced to 20 years in prison.

At this time, the INS revoked Benitez's immigration parole, determining that the parole was now against public interest. In 1994, he was found excludable by an immigration judge and eligible for deportation to Cuba because of his criminal convictions. He was released into INS custody in 2001. At this time, he appeared before the Cuban Review Panel, which concluded that Benitez was releasable when he had suitable sponsorship to a halfway house.

In 2003, the INS revoked Benitez's Notice of Releaseability without a hearing because they believed that Benitez was involved in a planned jail escape. Therefore, his current detention stems from his inadmissible alien status, violations of earlier immigration parole and the INS' determination that he has not refrained from criminal conduct while in custody.

---

#### 18. India-Based IT Firms Taking Advantage of Visa Programs

A study by Rochester Institute of Technology Professor Ron Hira and statistics from Securities and Exchange Commission filings are offering a new perspective on the ever-growing H-1B and L-1 visa categories.

The study shows that Indian information technology companies operating in the United States constitute a large portion of applications for H-1B visas and L-1 visas. The report sheds light on the assumption that US companies are the only ones taking advantage of the immigration laws that offer the opportunity to hire foreign workers.

As of September 30, 2003, India-based Wipro is reported to have 850 workers in the United States on H-1B visas and 1,401 employees on L-1 visas, with these visa workers making up a majority of the company's personnel. In comparison, US-based IT services company Electronic Data Systems applied for 452 H-1B visas in the year that ended September 30, 2001, while Wipro applied for 3,120.

The report states that India-based companies Wipro, Tata Consulting Services and Infosys Technologies were among the top 15 H-1B petitioners between October 1999 and February 2000.

Another area on which Hira focused was the use of guest worker visas by three India-based tech firms: Wipro, Infosys, and Satyam Computer Systems. The report indicates that Infosys' number of H-1B guest workers nearly doubled by over 2,000 from March 2001 to the end of 2002, while the US technology industry lost hundreds of thousands of jobs.

Hira believes that the number of applications from India-based companies will continue to grow following recent changes in H-1B laws. While the cap fell last year from 195,000 to 65,000, the rules also now allow a company with a large proportion of H-1B workers to apply for another H-1B without demonstrating that they first sought US workers.

Hira's paper will be published this year in the journal *Technological Forecasting and Social Change*.