

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

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1. Openers

Dear Readers:

Just as we were going to press, we learned that the USCIS announced a partial extension of the implementation date for the VisaScreen regulation as they pertain to non-immigrant visa holders. The extension only covers people working in the US and licensed as of September 23, 2003 and only TN visa applicants. We'll report more on this in our issue next week.

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We have been reporting for several years on the coming implementation of the PERM e-filing system for labor certifications. That new system is supposed to bring nearly instantaneous processing of labor certification cases. A proposed regulation was issued some time back and we have been expecting the final rules and implementation of the program in the late summer or early fall. As we report this week, the DOL has published its anticipated regulatory agenda for the second half of the year and that list includes a regulation to launch PERM as well as a regulation to consolidate the backlog of labor certification cases at a single DOL regional office. The DOL PERM proposed regulation was very controversial and it is not yet known what changes we will see.

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After 9/11, I remember the stories in the news reporting how the US was planning on winning the public relations battle in the war on terror. So I'm left baffled trying to figure out how the Department of Homeland Security's recent crackdown on visas and the entry journalists helps. Journalists have been denied visas at higher rates, they've been recently cutoff from visa revalidation (something that people on I visas heavily use), they have been detained upon entry and summarily shipped back home, and otherwise given anything but the red carpet. These are the people that tell the rest of the world what is happening in America and what Americans are like. Surely there is a way we can do the basic security screening and at the same time make these people feel welcome? The damage we do by not treating journalists with basic respect is far worse than any security benefit we gain. We report on some of these problems this week as well.

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Finally, as always, we remind readers that we're lawyers who make our living representing immigration clients and employers seeking to comply with immigration laws. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

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2. The ABC'S Of Immigration: A, G, and NATO Visas For Foreign Government Representatives

This week we discuss visas available to officials of foreign governments and representatives of international nongovernmental organizations. There are three types of visas available - A, G, and NATO categories. A visas are granted to diplomats, officials and employees of foreign governments coming to the US for official business. G visas are granted to employees of nongovernmental organizations and to lower ranking officials of foreign governments. NATO visas are granted to representatives of countries that are members of the North Atlantic Treaty Organization (NATO). Because these visas are an important component of US foreign policy, they are largely under the control of the State Department, with little USCIS involvement.

### **What are the different types of A visas?**

There are three types of A visas – A-1, A-2 and A-3. A-1 visas are issued to the heads of foreign states, official diplomatic and consular officers, the heads of the branches of government of a foreign state, and to the immediate family members of these people. A-2 visas are issued to full-time embassy or consulate employees who do not have A-1 visas, to those who are coming to the US to do work on behalf of their government, and to their immediate family members. A-3 visas are issued to attendants, servants and personal employees of A-1 and A-2 visa holders, and to the A-3 visa holder's immediate family.

Many A visa holders have what is known as a diplomatic visa. Because of the issues of foreign relations and the need to maintain good relationships with foreign governments, diplomatic visa holders are not subject to most restrictions on admission to the US. They cannot be required to post a departure bond, and they cannot be deported – the only way they can be expelled from the US is with the approval of the Secretary of State. There are some national security grounds on which diplomatic visa holders can be excluded from the US. Also, people often hear of foreign government officials escaping prosecution for criminal actions by asserting diplomatic immunity. While one can escape prosecution, using diplomatic immunity to do so can be a basis for exclusion from the US in the future.

### **How long may I stay in the United States if I have an A visa?**

Admission in the A-1 and A-2 classifications is without time limitation. As long as the Secretary of State recognizes the person's official position, they may remain in the US without the need to file any extension. A-3 visa holders are admitted for an initial period of up to three years, which may be extended for two-year periods. Family members in A status may attend school without needing to change status. Employment authorization is obtained not through the USCIS, but through the State Department. If the family member works without State Department authorization, the USCIS cannot consider it a status violation. The agency can only report it to the State Department for it to proceed as it sees fit.

### **How can I qualify for a G visa?**

G visas are issued to people involved with international organizations. For the organization to qualify for G visa classification, it must be recognized by the President through an executive order. The following organizations are currently recognized:

- African Development Bank
- African Development Fund
- Asian Development Bank
- Border Environment Cooperation Commission

- Caribbean Organization
- Commission for Environmental Cooperation
- Commission for Labor Cooperation
- Commission for the Study of Alternatives to the Panama Canal
- Customs Cooperation Council
- European Bank for Reconstruction and Development
- European Space Agency
- Food and Agriculture Organization
- Great Lakes Fishery Commission
- Hong Kong Economic and Trade Offices
- Inter-American Defense Board
- Inter-American Development Bank
- Inter-American Institute of Agricultural Sciences
- Inter-American Investment Corporation
- Inter-American Statistical Institute
- Inter-American Tropical Tuna Commission
- Intergovernmental Maritime Consultative Organization
- International Atomic Energy Agency
- International Bank for Reconstruction and Development
- International Boundary and Water Commission, United States and Mexico
- International Centre for Settlement of Investment Disputes
- International Civil Aviation Organization
- International Coffee Organization
- International Committee of the Red Cross
- International Cotton Advisory Committee
- International Cotton Institute
- International Criminal Police Organization (INTERPOL)
- International Development Association
- International Development Law Institute
- International Fertilizer Development Cent
- International Finance Corporation
- International Food Policy Research Institute
- International Fund for Agricultural Development
- International Hydrographic Bureau
- International Joint Commission - United States and Canada
- International Labor Organization
- International Maritime Satellite Organization
- International Monetary Fund
- International Pacific Halibut Commission
- International Secretariat for Volunteer Service
- International Telecommunication Union
- International Telecommunications Satellite Organization (INTELSAT)
- International Union for Conservation of Nature and Natural Resources
- International Wheat Advisory Committee (International Wheat Council)
- Interparliamentary Union
- Israel-United States Binational Industrial Research and Development Foundation
- Korean Peninsula Energy Development Organization
- Multilateral Investment Guarantee Agency
- Multinational Force and Observers
- North American Development Bank
- North Pacific Anadromous Fish Commission
- North Pacific Marine Science Organization

- Organization for European Economic Cooperation (now known as the Organization for Economic Cooperation and Development)
- Organization for the Prohibition of Chemical Weapons
- Organization of African Unity (OAU)
- Organization of American States (includes Pan American Union)
- Organization of Eastern Caribbean States
- Pacific Salmon Commission
- Pan American Health Organization (includes Pan American Sanitary Bureau)
- Preparatory Commission of the International Atomic Energy Agency
- Provisional Intergovernmental Committee for the Movement of Migrants from Europe (now known as the Intergovernmental Committee for European Migration)
- South Pacific Commission
- United International Bureau for the Protection of Intellectual Property (BIRPI)
- United Nations
- United Nations Educational, Scientific, and Cultural Organization
- United Nations Industrial Development Organization
- Universal Postal Union
- World Health Organization
- World Intellectual Property Organization
- World Meteorological Organization
- World Tourism Organization
- World Trade Organization

### **What are the different types of G visas?**

There are five types of G visas:

- G-1 visas are issued to a foreign government's primary representative to an international organization, their staff and immediate family
- G-2 visas are issued to other representatives from a foreign government to an international organization, their staff and immediate family
- G-3 visas are issued to representatives to an international organizations either from a government that the US does not recognize or that is not a member of the international organization, and to their immediate family
- G-4 visas are issued to officers and employees of international organization, and to their immediate family
- G-5 visas are issued to attendants, servants and personal employees of other G visa holders, and to their immediate family

### **How long may I stay in the United States with a G visa?**

Like the A visa classification, there is no time limit on the stay in G classification, except for G-5 status. G-5 visa holders are admitted for up to three years initially, and can request two-year extensions.

Employment without authorization of family members in G classification is considered a status violation. However, they may apply for work authorization if their country of nationality provides reciprocal benefits to US citizens. Dependents in G-4 status may work without these reciprocal agreements.

### **How do I know if I qualify for a NATO visa?**

Under the North Atlantic Treaty Organization, certain representatives and staff from member countries can enter the US as temporary visas. Under the treaty, they are not subject to normal immigration inspections and documentary requirements. Instead, consular officials decide whether they are admitted. Admission is for as long as the Secretary of State recognizes their status. Employment authorization is obtained through the State Department.

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### 3. Ask Visalaw.com

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

Q - I done my visa revalidation on march 2003 and my got visa stamped on July 2003 and is valid until September 2005, I joined new employer on Feb. 2004 and got New H1B petition, when I go to India do I need new Visa stamped (Transfer visa) because my current visa is having my prior employer name?

A - You should be able to reenter with your new visa stamp if you are maintaining your H-1B status and have an approval notice for a new H-1B employer. Getting a new stamp just because you have a new employer is not necessary if the USCIS has approved the employer change.

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Q - 1) I am currently on my OPT expiring in Mar 2005 and have just applied for my H1B. Do you think I need to go in for premium processing or will the quota definitely not expire?

2) If I leave the US while my H1B is under processing - around Mid-August - to work as an expat in my home country, does that in any way affect my status here, or in other words, is there a possibility I might not be able to re-enter into the US?

A - 1. Premium processing will not be necessary- the cap is according to the date of filing, not the date of approval. In other words, if you file before the cap is reached, you are okay.

2. Leaving the country will not terminate your employer's H-1b petition, BUT will terminate your change of status application. So, when you return you will be readmitted as a F-1 OPT and when the H-1b is approved, for it to take effect, you will have to leave the country and apply for a H-1b visa to be stamped in your passport. Therefore, unless you travel back and forth a lot and travel would not be a problem, I would recommend you to remain in the US until your H-1b is approved. Then, when you leave the country, you will still have to visit the consulate for the appropriate H-1b visa again.

Currently regular H-1b processing is taking about 2 months in most service centers. This is the best advise I can give without knowing the H-1b beginning date you asked, your home country, and the service center where your H-1b is filed.

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Q - Can someone with a J-1 Physician Waiver position change jobs?

A - Yes, under exceptional circumstances it is possible to move J-1 physician shortage area waiver positions. One example is if a facility closes. You would need to find another shortage area and prove you have a contract to serve out the balance of your obligation period. Keep in mind that the standard is not easy and you should not assume that getting approval is automatic. It also helps to get the support of the agency that sponsored you. Their support is influential in the USCIS' decision to approve or not approve the transfer. The proper mechanism to change positions is via an H-1B transfer application.

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Q - I filed an I-140 in the National Interest Waiver category June this year. My H1-b visa expires in October 31, 2005. I haven't prepared my I-485 application yet but I intend to. I'd like to see whether my I-140 application is approved or not, as this is a very unpromising category – but had no other option right now. Do I need an advance parole I-131 approved in order to be able to travel outside of US or that is needed only when I-485 has been filed? The second, more interesting question is: what is the priority date for the I-485 in such a case? The receipt date of I-140 filed earlier or the receipt date of I-485? Is there a time gap that one must not exceed in such a case?

A - First, I'm presuming that your NIW was not for work as a physician. There are special rules for physician NIWs. Second, you can continue to travel in and out of the US on the H-1B up to and after the adjustment application is filed. An I-131 is not necessary if you want to maintain your H-1B status. If you want an advance parole document, you'll need to wait until you file the I-485. As for the priority date, it is the date of filing the I-140, not the I-485.

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Q - My green card is in process and has gone from state(SWA)to regional(USDOL) but my management is changing, so the person who initially signed for my LCA application will no longer be with the company. Will this affect me when I file for I-140 and I-485?

A - The departure of the employee of the company who signed your initial paperwork would not be a problem assuming that the company is still the same company and there are no major corporate changes. That does not sound to be case here.

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#### 4. Border and Enforcement News

This week the *Detroit Free Press* reported that a high-tech network system of surveillance cameras to be installed along Michigan's 804-mile border with Canada is still not operational. Border agents have said that the surveillance cameras provide agency manpower in remote areas of the northern and southern borders.

Due to a more than one-year delay of the network system's installation, the Office of the Inspector General for the General Services Administration spent a week in Michigan examining the situation. The investigation was launched after a departmental audit discovered considerable financial waste and phony contracts within the General Services Administration. The Office of the Inspector General is responsible for conducting audits of financial contracts and examining criminal misconduct.

The General Services Administration awarded a \$200-million contract in 2002 to International Microwave Corp. (IMC), based in Connecticut. Soon after the agreement was signed, IMC was purchased by L-3 Communications Inc. Company officials of L-3 Communications Inc. could not be reached for comment.

Homeland Security Department Undersecretary Asa Hutchinson appeared at a June 17th budget hearing before a U.S. Senate committee on science and transportation. Even though the first set of cameras is more than a year overdue, Hutchinson presented a FY05 budget request of \$64 million for additional surveillance cameras along the Michigan and Canada borders.

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The *Arizona Daily Star* recently reported that 27 illegal border crossers were rescued in Arizona in three separate incidents on the same day. In the first incident, a call was made to the Tucson Border Patrol station, reporting that a group of 23 people was out of water and in distress in the desert west of Kitt Peak Observatory. At about the same time the Special Response Team was patrolling another area and came across an immigrant who informed them that three individuals accompanying him were left behind because of extreme fatigue. The third incident involved a confrontation of another agent who was patrolling a village and found an entrant in distress. In response to all three incidents, the entrants were located and given appropriate treatment by the Border Patrol's Search, Trauma and Rescue Team (BOR-STAR).

As of last Thursday, 321 illegal border crossers have been rescued since the beginning of the fiscal year in October 2003. Now, 110 agents are committed to the BOR-STAR unit and rescues are up from 245 at about this time last year.

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## 5. News From The Courts

Ramos v. Ashcroft  
U.S. Court of Appeals for the Seventh Circuit  
2004 U.S. App. LEXIS 11692

Petitioner Miguel Angel Ramos filed a timely petition for review in the Seventh Circuit after the Board of Immigration Appeals dismissed his appeal of a removal order. The Department of Justice made a motion to transfer the case to the Eighth Circuit, pursuant to a statute requiring an appeal to be filed in the circuit where the immigration judge "completed" the proceeding. The Court confronted the issue of where a proceeding is "completed" when it involves teleconferencing between two locations.

Ramos, his lawyer, witnesses, and the government's lawyer attended a hearing in Council Bluffs, Iowa via teleconference with an immigration judge who issued a removal order from his chambers in Chicago. The DOJ argued that a proceeding is "completed" where the lawyers and witnesses appear for the proceeding, not where the court issues the order. The Seventh Circuit disagreed. In the absence of a regulation on the issue, the Court noted that the statute itself examines where "the immigration judge completed the proceedings." Here, this occurred in Chicago, where the judge issued the order and also where the parties filed all of their motions. The Court analogized the situation to one where just because a federal judge conducts a hearing by teleconference with a prisoner does not mean that the

prisoner's appeal lies in the circuit where the prison is located. Therefore, the Court denied the DOJ's motion to transfer.

Finally, the Court chastised the DOJ for filing its motion to transfer on the day its brief was due while requesting more time to file a brief if its motion were denied. The Court condemned this practice as a "self-help extension," unauthorized by any rule. Instead, a party should request an extension in advance but may not substitute a motion for a brief. A motion to transfer should have been filed within a month or two after Ramos filed his petition. The DOJ waited five months, after Ramos had already served his brief. The Court explained that if it had granted the DOJ's motion, Ramos would have to suffer the cost and inconvenience of preparing a new brief in line with the Eighth Circuit's rules and past decisions. Rather than dismissing the DOJ's motion on timeliness grounds, the Court gave the government an extra week to submit its brief.

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Al Kouri v. Ashcroft  
U.S. Court of Appeals for the Eighth Circuit  
2004 U.S. App. Lexis 6070

The Petitioner, Chehade Dib Lichas Al Kouri, is a Lebanese citizen who appealed the Board of Immigration Appeals' ("BIA") decision affirming the Immigration Judge's ("IJ") denial of his application for asylum, withholding of removal, and relief under the United Nations Convention Against Torture. The Eighth Circuit Court of Appeals heard the appeal and remanded for a new hearing.

The Petitioner claimed that soldiers in Lebanon beat him because of his refusal to transport weapons and due to the fact that he was Christian. He tried to enter the U.S. with a fraudulent visa and was detained and placed in removal proceedings by the Immigration and Naturalization Service. The Petitioner subsequently sought asylum and was denied by the IJ. During the removal proceedings, the Petitioner's attorney filed a motion to withdraw. After granting the motion, the IJ informed the Petitioner that he could proceed with or without an attorney. The Petitioner opted to proceed pro se and the IJ refused to grant the Petitioner a continuance. The withdrawn attorney had handed the Petitioner his 200-page application for asylum. The Petitioner, whose native language was Arabic, was given ten minutes to review the application and was then asked by the IJ under oath if the contents were truthful. During the hearing, the IJ instructed the Petitioner only to respond to the questions that were asked of him. The IJ denied asylum based on his finding that there were discrepancies between the Petitioner's testimony and his application. The BIA affirmed.

The Eight Circuit Court of Appeals granted the petition to review and remanded the case based on its finding that the Petitioner was denied his Fifth Amendment Due Process rights when there was a fundamental procedural error and that such error resulted in prejudice. A fundamental procedural error existed because the IJ only permitted the Petitioner to answer presented questions and did not allow the Petitioner to elaborate and fully explain. Also, the Petitioner did not have reason to believe that his testimony needed to be as complete as his application because the IJ told him that he had read it. The appellate court found that the situation was compounded by the fact that the Petitioner was given so little time to prepare.

Due Process is only violated in this situation if the fundamental procedural error has resulted in prejudice. The Court said that there is prejudice when the IJ gives an

inadequate explanation of the hearing procedures and fails to elicit pertinent facts that prevent the petitioner from offering evidence relevant to the claim. Given that the Petitioner was not able to fully develop his testimony due to the IJ's instructions, the Court determined that the fundamental procedural error did in fact result in prejudice towards the Petitioner. Finding that the Petitioner's Due Process rights were violated, the Court remanded the case for a new hearing.

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## 6. Government Processing Times

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

California (07/12/2004): <http://www.visalaw.com/california.html>

Vermont (07/12/2004): <http://www.visalaw.com/vermont.html>

Missouri (07/12/2004): <http://www.visalaw.com/missouri.html>

Nebraska (07/15/2004): <http://www.visalaw.com/nebraska.html>

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## 7. News Bytes

Beginning July 6, 2004, the Department of Homeland Security's Citizenship and Immigration Services is sending all approved I-129 petitions to the Kentucky Consular Center (KCC). The KCC will now scan the petitions and transmit them electronically to the overseas processing post. I-129F petitions for fiancés and K-3s are not affected by this change.

As posted on AILA InfoNet (July 12, 2004), the goal of this processing change is to centralize information within the Consular Consolidated Database. These records will be accessible to the overseas processing posts. Starting in the fall, a Fraud Prevention Unit will identify fraud indicators, and posts will be able to analyze these indicators during the visa adjudication process.

KCC will not handle individual public case questions, and will continue to refer these inquiries to the overseas embassies and consulates.

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A memo of corrections from the Bureau of Immigration and Customs Enforcement (ICE), Department of Homeland Security, regarding the new SEVIS fees was posted on AILA InfoNet at Doc. No.04070962 (July 9, 2004).

These ICE corrections will become effective September 1, 2004:

- Publication 69 FR 39814, dated July 1, 2004:  
PART—NONIMMIGRANT CLASSES  
Sec. 214.13 [Corrected]
- Page 39825, second column, paragraph (b)(3), fourth line:  
August 31, 2004, *not* May 31, 2004.

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According to an announcement last week by the U.S. Citizenship and Immigration Services (USCIS), the agency plans to formally open its Internet-based appointment system known as InfoPass to New York City area residents. InfoPass allows the public to go online to schedule a date and time to meet with an immigration information officer, avoiding the need to wait in line.

USCIS plans to implement InfoPass nationwide by early September this year. InfoPass is now offered in 12 languages including Arabic, Chinese, Creole, English, French, Korean, Polish, Portuguese, Spanish, Tagalog, Russian and Vietnamese. USCIS plans to add additional languages to InfoPass.

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The Texas Service Center is having problems receiving I-797s. If an I-797 has not found its way to either the attorney of record or the petitioner, please send an e-mail to [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com), and the concern will be passed on to the appropriate person.

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AILA announced on its InfoNet last week that the California Service Center has been showing an unusually high rate of denials of I-140s. AILA is requesting that people share any denials that you do not think you would have received in the past by faxing to Crystal Williams at 202-783-7853 or e-mailing to [reports@aila.com](mailto:reports@aila.com).

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According to a Department of State press release, on July 12, 2004, the United States Government Printing Office (GPO) released the final Request for Proposal (RFP) to procure the technological components needed to produce the first U.S. biometric passport. The final RFP provides the specifications for passport book covers, which will contain an electronic computer chip.

Biometric U.S. passports will include a digital image of the bearer's face and biographic information on the electronic chip embedded in the passport. This will facilitate verification of identity through facial recognition at U.S. ports of entry through the Department of Homeland Security's US-VISIT system. A pilot test for the issuance of biometric passports to U.S. government employees is planned for late December 2004. Issuance to the general public is expected to begin in the first quarter of calendar year 2005. By the end of 2005, all domestically produced U.S. passports will be biometric passports.

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## 8. International Roundup

The *Sydney Morning Herald* reported last week that the Australian government will permit 9,500 temporary protection visa (TPV) holders to apply for permanent residency without leaving the country. The thousands of TPV holders already eligible for permanent status will now have an additional opportunity to obtain permanent visas. Furthermore, unsuccessful applicants will now receive return-pending visas, allowing them to remain in Australia 18 months while retaining Medicare and employment rights.

The government created the three-year TPV in 1999 to cope with an influx of unauthorized boat arrivals. Immigration Minister Amanda Vanstone declared that the decision recognizes

the contribution many TPV holders have made to the Australian community without compromising border security. She denied that the move was a political ploy in an election year and also dismissed fears that human smugglers would target Australia.

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Foreigners in Belgium are going without essential medical care, due to the confusing nature of the country's health system, according to *Expatica News*. Medical charities are seeing more patients at its drop-in centers in Belgium because people say they cannot understand all the red tape that comes with a hospital visit. The charity said that 96 percent of the 10,000 people treated in 2003 were foreign born. Under Belgian law, anyone living in Belgium has the right to health care, even if they are living in the country illegally.

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Several officers of Russia's Interior Ministry have been arrested for allegedly selling illegal travel documents to travel agencies, according to *Radio Free Europe/Radio Liberty Newsline*. The agencies provided documents for illegal immigrants from China, Iran and other countries who used Russia to transit to the West. Among those reported using the bogus documents were alleged terrorists operating in the North Caucasus.

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## 9. Legislative Update

[H.R.4811](#): Private Bill for the relief of Saikou A. Diallo.

Sponsor: Rep Crowley, Joseph [NY-7] (introduced 7/9/2004)

Committees: House Judiciary

Latest Major Action: 7/9/2004 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.4834](#): To waive visa-processing fees for nonimmigrant visitors who are nationals of countries providing combat troops in Afghanistan and Iraq.

Sponsor: Rep Lipinski, William O. [IL-3] (introduced 7/14/2004)

Committees: House Judiciary

Latest Major Action: 7/14/2004 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[S.CON.RES.124](#): A concurrent resolution declaring genocide in Darfur, Sudan.

Sponsor: Sen. Brownback, Sam [KS] (introduced 7/13/2004)

Committees: Senate Foreign Relations

Latest Major Action: 7/13/2004 Referred to Senate committee.

Status: Referred to the Committee on Foreign Relations.

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

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## 10. Campaign 2004

The Chicago Tribune reported last week that the departure of the two leading Republican candidates has left the party's nomination for a U.S. Senate seat in question. State Sen.

Steve Rauschengerger, who had stepped in after Jack Ryan withdrew his candidacy, removed him from consideration due to a lack of funding. State GOP officials are reluctant to tap James Oberweis, the second place finisher in March's Senate primary. Oberweis, who has strong anti-immigration views, is out of favor with the White House after his sharp critique of Bush's efforts to appeal to Latino voters. Republican sources said that an Oberweis candidacy is unlikely because it would alienate Bush. The Illinois GOP expects to announce the party's candidate in the near future.

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#### 11. USCIS Processing Form I-130 as Visa Numbers Become Available

Last week, US Citizenship and Immigration Services (USCIS) released a public notice advising all customers with a pending I-130 Petition that the agency is processing Form I-130 (Petition for Alien Relative) as a visa number becomes available. Because eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident, USCIS announced it is offering this service so it can concentrate resources first on cases where visas are actually available.

USCIS said in the notice that it is not expecting this process to delay the ability of one's relative to apply for an immigrant visa or adjustment of status. The agency is advising applicants to refer to [www.state.gov/travel](http://www.state.gov/travel) to determine current visa availability dates.

According to the memorandum, anyone who filed an I-30 petition that is currently pending with USCIS is advised that USCIS will adjudicate petitions based upon visa availability. This means that the estimated processing time listed on receipt notices may no longer be accurate.

U.S. Citizens or lawful permanent residents planning to file a petition for a qualifying relative are encouraged to file as soon as they are eligible, in order to establish their relative's place in line, even if the petition may not be decided in the near future. Upon filing, USCIS will send a receipt that will establish a place in line for a visa called a "priority date." USCIS will adjudicate Form I-130 prior to visa availability, or within six months if a visa is immediately available upon filing.

For more information, visit [www.uscis.gov](http://www.uscis.gov) or call 1-800-375-5283.

[Editor's note: The USCIS notice did not address the common situation where a person automatically converts to a category with a shorter wait. Historically, it has been difficult to get the USCIS to update their records accordingly and shift a case into the faster category.]

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#### 12. Bureau of Consular Affairs Announces New Internet Services

The Department of State last week released a press statement announcing that the Department of State's Bureau of Consular Affairs has improved the information and services available on the Consular Internet website at <http://travel.state.gov>. The website is intended to be more user-friendly. Navigational tools facilitate the ability to find information more quickly and accurately.

Additionally, the Bureau of Consular Affairs is introducing the Internet-Based Registration System (IBRS). IBRS will enable U.S. citizens to register themselves and fellow travelers, itineraries, and emergency contact information through the Internet. The system includes the creation of country-specific listservs that registrants can join to receive, via e-mail, updates to Consular Information Sheets, Public Announcements, and Travel Warnings specific to the countries of their choosing.

U.S. Citizens traveling or residents abroad will have the ability to register under two separate registration categories: short-term or long-term. Short-term registration is for those travelers who will be on temporary visits to a country or countries. Long-term registration is for those travelers who are residents in a foreign country and members of their household, or persons making frequent or extended trips to a country or countries. Groups and organizations may also establish accounts to register travelers. For more information, visit <https://travelregistration.state.gov.ibrs>.

[Editor's note: Several readers noticed that the USCIS is posting a four month old version of the Visa Bulletin. As of press time, that old bulletin is still online. The August 2004 numbers have just been released and we will publish the numbers in our next issue.]

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### 13. USCIS: Changes to Naturalization Exam Will Lead to Greater Reliability and Consistency

Prospective U.S. citizens may soon have to adjust their preparation for the naturalization exam. According to Reuters, U.S. Citizenship and Immigration Services (USCIS) plans to implement a more nuanced test that more accurately measures an applicant's understanding of the English language as well as the significant political philosophies and historical movements that have shaped this country. Moreover, the government intends to minimize the current wide variations in exams across the U.S. with a more consistent exam nationwide.

Since 1950, in theory, the naturalization exam has required applicants to demonstrate their ability to speak, read, and write English and their knowledge of U.S. history and government. In practice, most prospective citizens need only write one sentence in English and answer one or two civics questions. The new English requirements, still being revised, seek to measure an applicant's ability to use English in everyday life. They test an applicant's ability to converse, give simple directions, express needs and preferences, respond to warnings, read and understand basic material, and write about a person, object, place, or situation. Further, they require an applicant to complete forms like a job application or a driver's license form. With respect to history and government, the new exam tests an applicant's knowledge of momentous events such as the country's birth, the Civil War, and the civil rights movement.

USCIS will launch a pilot program to administer the new exam in several cities next year, with nationwide implementation by 2006. Applicants who fail the test will be able to take it again for no extra fee. A third try will require a new fee and a wait of several months.

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### 14. Foreign Journalist Deportations Highlight Tension Between National Security and Freedom of the Press

As another reflection of the tension between protecting national security and preserving civil liberties, foreign journalists, the Associated Press this week reported that a number of journalists have been barred from entering the US because they have sought to enter on visitor visas rather than "I" visas. We recently reported that the USCIS was going to be more lenient in allowing journalists to enter a single time on visa waiver visitor status with a stern warning to use the "I" visa for future visits.

Although the I-visa requirement has been in place since 1952, it has only recently been strictly enforced. Media advocacy groups assert that many reporters do not know of the I-visa because it has not been adequately publicized. This unawareness has resulted in the deportations of at least 18 journalists since January 2003. Often, these foreign reporters are locked overnight in degrading detention cells and then handcuffed before being returned to their home countries.

As noted above, protests of the regulation and the reporters' treatment prompted U.S. Customs and Border Protection to ease its policy somewhat. Port directors now have discretion to admit a foreign journalist without the I-visa upon the individual's first entry. Some reporters criticize this change as creating more inconsistency and arbitrariness. The American Society of Newspaper Editors urges Congress to amend the Immigration and Nationality Act to accord foreign journalists of "friendly" countries the same privilege of entry as their compatriots. Reporters Without Borders notes that only countries like Saudi Arabia, Iran, Vietnam, North Korea, and Cuba require special visas for reporters.

Media groups feel an especially urgent need for reform as foreign journalists prepare to cover the upcoming political conventions and presidential election. They also fear that the crackdown on foreign journalists in the U.S. will provoke other countries to deny American journalists access abroad.

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## 15. DOL's Semiannual Regulatory Agenda Published

On June 28, 2004, the Department of Labor (DOL) published its Semiannual Regulatory Agenda in the Federal Register. This document presents the Department's semiannual agenda of regulations that were selected for review or development during the coming year. Several items were announced that reveal important immigration law changes in the near future. Below are the provisions in the report relating to immigration matters:

### **H-1B**

The H-1B visa program allows employers to temporarily employ nonimmigrants admitted into the United States under the H-1B visa category in specialty occupations. The employer must file a labor condition application (LCA) with the DOL before USCIS may approve a petition to employ a foreign worker on an H-1B visa. The Department published a proposed rule on January 5, 1999, in response to statutory changes in the H-1B program made by the American Competitiveness and Workforce Improvement Act of 1998.

Changes made by the act place additional obligations on "H-1B-dependent" employers (those whose work forces were comprised of more than 15 percent H-1B workers) and on willful violators. These employers must recruit and hire US workers who are at least as qualified as H-1B workers, and not displace US workers by hiring H-1B workers or placing them at another employer's job site. Additionally, the 1998 amendments imposed additional obligations on all H-1B employers, such as offering similar benefits to H-1B workers as

those offered to US workers, and payment to H-1B workers during periods they are not working for an employment-related reason.

On December 20, 2000, the Department published an interim final rule to implement the recent amendments and clarify the existing rules, and requested further public comment on those provisions.

## **H-2B**

Under the redesigned H-2B temporary nonagricultural program employers seeking to import H-2B workers, (except for applications filed for employment on Guam or in logging), would file directly with the Department of Homeland Security (DHS). The employer will be required to conduct recruitment before filing its petition and DHS will administer the petition adjudication process. After adjudication, the Department of Labor (DOL) will audit selected approved petitions. In such audits, DOL will determine whether the employer has complied with those aspects of the approved petition related to the labor market and other related attestations.

Employers will be expected to have documentation supporting their attestations and will be required to provide this documentation to DOL within 30 days from the notice of audit. If, after completion of the audit, DOL determines that the employer has failed to comply with the terms of the attestations contained in the DHS petition or made material misrepresentations in its attestation, after notice to the employer and opportunity for a hearing, DOL will recommend to DHS that the employer be debarred for a period up to three years.

## **LCA**

Currently, the DOL allows employers to file labor condition applications (LCA) electronically, by facsimile transmission (fax), and by mail. The Department has proposed eliminating the provision that allows employers to file LCAs by fax. Employers that could not file LCAs electronically due to physical impairments would be allowed to submit LCAs by mail. The Rulemaking would also inform employers of an impending change in address for the submission of LCA by mail. The Department believes the e-filing process will ensure faster processing of H-2B petitions and limit the number of potentially incomplete applications. In addition it will ease the filing burden on employers. Through e-filing, the Department will be better able to obtain statistics and analyze program data to identify areas that need improvement and any fraud or abuse.

## **Labor Certification**

The Employment and Training Administration (ETA) is in the process of reengineering the permanent labor certification process in order to streamline the process, save resources, improve the effectiveness of the program and better serve DOL customers.

The labor certification process has been described as being complicated, costly and time consuming. ETA, therefore, is taking steps to improve the effectiveness of the requirements and application processing procedures, which would save resources both for the Government and employers, without diminishing protections now afforded U.S. workers by the current requirements.

On May 6, 2002, the Department published a notice of proposed rulemaking and requested further public comment on those provisions.

## H-1B1

The DOL intends to amend the regulations for the temporary employment of foreign professionals in order to implement requirements for a new visa category: the H-1B1 visa. Congress created the new visa category as part of its approval of the Chile-United States Free Trade Agreement and the Singapore-United States Free Trade Agreement. Under the legislation and the Chile and Singapore agreements, the H-1B1 program would be similar to the existing H-1B program for temporary employment in specialty occupations. Employers in the United States seeking to temporarily employ foreign professionals in specialty occupations through H-1B1 visas must file a labor condition application with the Department of Labor making the same attestations regarding payment of prevailing wages, working conditions, absence of strikes or lockouts, and notice to other employees that employers currently make when seeking entry of a foreign worker under the H-1B program.

## H-1C

The Nursing Relief for Disadvantaged Areas Act of 1999 amended the Immigration and Nationality Act (INA) to create a new temporary visa program for nonimmigrant aliens to work as registered nurses for up to three years in facilities serving health professional shortage areas, subject to certain conditions.

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### 16. Texas Attorney General Targets Fraudulent Immigration Consultation Businesses

Articles posted on AILA InfoNet (July 12, 2004) report that Texas Attorney General Greg Abbott is seeking out and attempting to shut down fraudulent businesses that pose as immigration consultants. The businesses advertise themselves as being able to secure immigration benefits such as work permits and permanent residency for immigrants, however, some provide little, if any, service. Two recent announcements show that Abbott is using both civil and criminal courts to shut down these immigrant-abusing operations.

In a Cameron County State District Court, Martha Uresti was ordered to pay fines and attorneys' fees of nearly \$200,000 because she falsely advertised herself as an attorney who could assist immigrants. Uresti, a notary public, violated Texas law when she presented herself to clients as a "notario público"—a title used in Latin America for a highly experienced attorney. She often charged immigrants as much as \$3,000 for services that she never provided nor was legally permitted to provide. Criminal charges against Uresti remain pending.

In Northern Texas, a federal court convicted Maria Elena Garza and two family members for defrauding hundreds of immigrants in the Dallas area. Abbott teamed with the U.S. Attorney's Office to investigate and bring charges against Garza, who had promised benefits to immigrants and never delivered. In February, Abbott successfully sued Garza for \$1.4 million in an independent civil lawsuit. Garza will serve 97 months in a federal prison for her convictions.

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### 17. Visa Revocation Process Still Weak, According to GAO

This week, The General Accounting Office (GAO) released a follow-up report about the visa revocation process of the Departments of State and Homeland Security. The original report was conducted in 2003 and found that the visa revocation process needed to be strengthened in order to be effective as an antiterrorism tool. The goal of the follow-up investigation was to determine if the weaknesses reported in the original study have been addressed.

The findings of the follow-up report of a random sample of just 35 cases are:

- Delays exist in matching names of suspected terrorists with current visa holders. In at least 3 cases, it took State six months or longer to revoke visas after receiving notification.
- In 3 of the 35 cases, after revoking visas, it took State a week or longer to notify DHS.
- DHS took several months or failed to notify immigration investigators about 10 cases of individuals still in this country with revoked visas. Also, the immigration investigators did not request field investigations for more than two months on these same individuals.

The beginning of this follow-up investigation by the GAO in January 2004 prompted the DHS and State to take action to improve the visa revocation process. In March, DHS developed new written procedures and took steps to ensure that immigration investigators knew of individuals who may be in the country on revoked visas. In April and May, State modified the procedures and the tracking system for visa revocation cases.

However, the GAO found that disturbing flaws still remain in the visa revocation process. The GAO report cited lack of procedure and performance standards, outstanding policy and legal issues, and lack of coordination between the DHS and State are some of the areas that continue to be deficient.

The GAO recommends that the Secretaries of Homeland Security and State jointly (a) develop a government policy that defines roles and responsibilities as well as sets performance standards and (b) address outstanding legal and policy issues in the visa revocation process area.

DHS concurred with the report, and State agreed to consult with DHS regarding the recommendations of the GAO.