

Siskind's Immigration Bulletin
June 7, 2004

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1. Openers

Dear Readers:

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.

I'm writing to you on a three-leg road trip this week. I start with a trip to New York to attend the annual meeting of the Hebrew Immigration Aid Society, an agency to which I serve as a board member. HIAS is the world's oldest refugee resettlement agency and is now in its 13th decade of operation. It helped my family when they came to the US as refugees more than 100 years ago and its mission has evolved to working with people of multiple religious faiths from all over the world. HIAS also holds a major scholarship awards ceremony every year at the annual meeting. I've been privileged to serve on the awards committee in the past and have been inspired at the amazing achievements of young people who entered the US with nothing and have gone on to take advantage of the great opportunities of Americans.

I'll leave from New York to attend the annual meeting of the American Immigration Lawyers Association in Philadelphia. The AILA annual meeting is a "must attend" event for immigration lawyers. The program features four days of educational programming, an exhibit hall with vendors offering just about every service an immigration lawyer could need and an opportunity to interact with nearly 3,000 fellow immigration lawyers. I'll be speaking on two panels at AILA. Like last year, I'll be speaking on technology and immigration law. And I'll be moderating a panel on physicians immigration. I'm looking forward to seeing many of you there.

Finally, I'll end my trip in Chicago where I will speak at a meeting of the administrators of the Conrad 30 J-1 physician waiver programs. That program is in danger of ending and I'm sure the talk at this meeting will be on what the future holds for J-1 waivers. More information on this hot topic can be found later in this issue.

* * * * *

President Ronald Reagan died this afternoon and there is no shortage of people discussing his legacy for this country. From an immigration point of view, Reagan will best be remembered for signing the Immigration Reform and Control Act of 1986 ("IRCA"). IRCA was a contradiction of idealism and pragmatism, as was the case with the President who signed the bill into law. It took the pragmatic view that while the government frowned on illegal immigration, we could provide an amnesty to help normalize the lives of millions of American residents. Indeed, millions of American citizens were legalized under the program and owe a thanks to the President for proposing what was then a very controversial plan.

IRCA also provided hardliners with something they too sought – the deputization of millions of American employers to assist the then Immigration and Naturalization Service. IRCA created the I-9 forms that every employer must check to ensure that an employee is authorized to work in the US.

The theory of IRCA was that by legalizing the country's undocumented population and then creating a stronger enforcement system, we would end illegal immigration. That was, of course, a naïve proposition. Market forces would soon come into play and the flow of illegal immigrants has only intensified over the last 18 years. That has brought us to the current debate over what to do about our immigration system and the debate continues on whether we need a more open system where employers can simply petition to bring over an immigrant worker when it can show that Americans are not available to do the work at an acceptable salary.

However one feels about immigration, Ronald Reagan deserves at least some credit for trying to address an issue that has been controversial since the country's founding. He

attempted to craft a compromise and cashed in his "political chips" to get the bill passed. Other Presidents have only offered rhetoric and hoped the immigration debate would not get too fierce. Whether IRCA was ultimately helpful or harmful is certainly subject to argument, but no one can say Reagan shirked his responsibilities to try and improve the system.

Regards,

Greg Siskind

2. The ABC'S Of Immigration: Consular Processing Versus Adjustment of Status

There are two methods of securing permanent residence in the US once a person is approved for immigration. One is called consular processing; the other is adjustment of status. As the name implies, consular processing applicants apply for and process an immigrant visa at a US consulate abroad, most often in their home country. Adjustment of status is the process by which a person already in the US has their immigration status adjusted to that of a permanent resident. The applicant determines the desired method of processing at the time the initial petition for classification as an immigrant is filed.

Consular processing was once the only way to obtain an immigrant visa. When adjustment of status was created, it became highly popular and that attraction only increased after reentry bars were created in 1996. Those bars prevent certain people who leave the US after overstaying a visa from reentering the US.

CONSULAR PROCESSING

How does one apply to consular process?

USCIS forwards the approved immigrant petition to the National Visa Center (NVC), which is part of the State Department. When an immigrant visa number becomes available, the NVC will send a barcode sheet to the applicant, which must then be returned to the NVC with the appropriate fees (one check or money order per family member). Once payment has been received, the NVC will send form DS-230 Part I to the applicant for completion. Once that form has been returned to the NVC, the NVC will send form DS-230 Part II along with a list of documents that should be brought to the consular appointment.

Are any other forms required?

Applicants will have to submit an Affidavit of Support (Form I-864) along with their complete federal tax returns.

Where do I send the forms?

The address for the NVC is:

National Visa Center
32 Rochester Avenue
Portsmouth, New Hampshire 03801-2909

All correspondence with the NVC for a particular case should include the applicant's case number in the upper right hand corner.

After the paperwork and interview are completed, what is the next step?

If the application is approved, the person will be issued an immigrant visa, which is good for only six months. If the person does not enter the US within that period of time, the visa will expire and the opportunity to immigrate will be lost.

If the application is denied, the principle consular officer at the post reviews it. If the officer desires, he can get a second opinion from the State Department. However, if, after this point, the denial is upheld, there is no appeal available to the applicant.

ADJUSTMENT OF STATUS

How does one apply through adjustment of status?

A person applies for adjustment of status with the USCIS from within the US. Family-based adjustment applications are generally filed with a local USCIS office and employment-based applications are generally filed with a USCIS regional service center. However, there are exceptions to this basic rule so be sure to check at uscis.gov before a case is filed. Along with the adjustment form, results of a medical examination, an affidavit of support, if required, evidence of the approval for immigration and a copy of the applicant's passport must be submitted. Evidence of any familial relationships must also be submitted, if family members are seeking to adjust their status with the principle applicant. The adjustment of status application may be filed together with the immigrant visa petition.

Are any other forms required?

If the applicant wishes to work or travel abroad while the adjustment of status application is pending, additional forms must be filed. A person can receive work and travel authorization for only one year at a time, so in many cases, because of USCIS processing delays, the applicant must renew these documents.

Do adjustment of status applicants have to appear for an interview?

Not all adjustment of status applicants are interviewed, although the law provides that any adjustment applicant may be interviewed. Interviews are always conducted in marriage cases, but are less frequent in other family relationships. Interviews are much less typical in employment-based cases.

After the forms and interview are completed, what is the next step?

After approval for adjustment of status, it takes some months before the physical green card is obtained. If the approval follows an interview, the USCIS will stamp the applicant's passport with an indication that they are a US permanent resident. If there is no interview, the applicant will receive a notice that the application has been approved, which they can take to a local USCIS office and obtain the stamp. A few months later, they will receive the green card.

If the decision takes longer than 180 days, because of portability, an employment-based applicant may change employers.

Applicants should note that even without the physical card, once adjustment has been granted, the applicant IS a permanent resident. The stamp in the passport is legally equivalent to the actual green card.

CHOOSING BETWEEN CONSULAR PROCESSING & ADJUSTMENT OF STATUS

Deciding whether to pursue consular processing or adjusting status can be a difficult choice. The chief advantage of consular processing is speed. Consular processing is generally much faster than adjusting status. Six to eight months is not unusual compared to one to three years at various USCIS offices around the US.

Adjusting status has several advantages. First, processing can take place with no traveling abroad. Also, the applicant can work while waiting for processing to take place. Additionally, if the decision takes longer than 180 days, because of portability, an employment-based applicant may change employers. Finally, processing in the US sometimes means that potential bars on reentry can be avoided that would keep an applicant outside the US for several years.

Another key advantage of adjusting status is that an I-140 employment based immigrant application and I-130 petitions for immediate relatives can be filed simultaneously with an adjustment of status application. This has helped to cut down the time advantage of consular processing. Recently, the USCIS has announced it will begin testing pilot programs for speedy processing of simultaneously filed petitions.

The question often arises over whether it is possible to pursue BOTH consular processing and adjustment of status simultaneously. The question is controversial. There is no statutory bar to processing both ways, but the USCIS takes the position that if it learns that one is pursuing both consular processing and adjustment of status at the same time, it will consider an adjustment application abandoned. This would typically arise when someone is in the process of adjusting status and files a request with the USCIS to cable an approval notice to a consulate to initiate consular processing. However, the issue will typically not arise in the reverse circumstances – when one begins with consular processing and then decides to pursue adjustment of status.

3. Ask Visalaw.com

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

Because all of our lawyers are at the AILA national conference this week, Ask Visalaw.com is taking a holiday. We'll be back for our next issue.

4. Border and Enforcement News

The San Francisco Chronicle reported last week that a Zimbabwean refugee has filed a federal lawsuit alleging she was refused the right to apply for asylum in 2002 when she

arrived at San Francisco International Airport and was told by an immigration official to “go back to the jungle.”

The plaintiff in the case said she was then wrongfully jailed, strip-searched and deported. She is currently living in South Africa and the Lawyers’ Committee for Civil Rights is handling her case. There was no comment from Border and Customs Patrol.

Although the Arizona Border Control Initiative, which included the addition of 260 agents, four helicopters, two unmanned aerial drones and expanded detention space to hold undocumented immigrants, was supposed to get started last week, plans have changed. According to *The Arizona Republic*, because more than half of the agents have not arrived, officials have decided against expanding the detention areas and the drones are still on the ground.

Asa Hutchinson, Homeland Security Undersecretary, has acknowledged that the project is over budget and behind schedule. He also said that although this project is not living up to expectations, there has been some improvement along the Arizona-Mexico border and arrests have increased significantly since March.

The problems in the progress of the initiative have been attributed to manpower limitations as well as technical and training issues relating to the unmanned drones. Officials have delayed the first patrol of the drones until June 30.

5. News From The Courts

Lissitchev v. Ashcroft
Tenth Circuit Court of Appeals
2004 U.S. App. LEXIS 7997

Petitioner Bisser Lissitchev, who claimed that he was repeatedly beaten and threatened because of his political affiliation in Bulgaria, applied for asylum and sought withholding of removal. Asylum was denied because his application was untimely. The IJ denied withholding of removal based on its conclusion that the Petitioner’s testimony was not credible. The Board of Immigration Appeals (BIA) affirmed the IJ’s decision. The Petitioner appealed the BIA’s decision and the Tenth Federal Circuit Court of Appeals vacated the BIA’s order and remanded for further proceedings.

The Petitioner must show a “clear probability of persecution attributable to race, religion, membership in a particular social group, or political opinion” to be granted withholding of removal. The IJ denied withholding because he concluded that the Petitioner’s testimony as to such persecution was not credible. Specifically, the IJ pointed out the following: the State Department did not regard Bulgaria as a country where the authorities would persecute based on membership in an organization; the Petitioner’s political group was part of the coalition government from 1997 to 2000; there were inconsistencies between the Petitioner’s testimony and his application for asylum; and the Petitioner’s physical injuries were not credible because he could not suffer so many beatings without sustaining permanent injuries.

The 10th Circuit held that the BIA’s decision to affirm the IJ’s holding was not supported by substantial evidence and therefore vacated the decision. The Circuit court pointed out the

following as reasoning for its decision: persecution need not come from governmental authorities; the Petitioner suffered persecution before his political group became part of the coalition government; the stated inconsistencies arose due to inadequate translations; and Petitioner had pointed out that even though the beatings were great in number, they did not cause permanent injuries.

6. Government Processing Times

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

Texas (05/31/2004): <http://www.visalaw.com/texas.html>

California (06/01/2004): <http://www.visalaw.com/california.html>

Nebraska (06/01/2004): <http://www.visalaw.com/nebraska.html>

7. News Bytes

Republican National Convention delegates Pat McDonough and Rick Impallaria of Baltimore County, Maryland have written letters to President Bush, Attorney General John Ashcroft, and other high-ranking federal officials requesting that federal funds be deleted from agencies that "flagrantly" violate U.S. immigration laws. The *Washington Times* reported last week that these two lawmakers want funding cut from the Maryland Motor Vehicle Administration if it allows undocumented immigrants to obtain driver's licenses, and from law enforcement agencies that refuse to assist the federal Immigration and Customs Enforcement agency from deporting illegal immigrants.

Impallaria compares his request to the same principle as cutting federal funds from agencies that do not comply with federal fair housing regulations. His intention is to persuade state and local authorities to accept their part of the responsibility for preventing terrorist activity. A Prince George's County Democrat, Delegate Victor R. Ramirez, said that this request is hypocritical. McDonough and Impallaria want separation between state and federal government agencies, and when conditions displease them they run to the federal government for help.

Impallaria and McDonough's public opposition of undocumented aliens has created problems for them with immigrant communities. The two lawmakers have submitted five bills in the 2004 General Assembly to enforce illegal alien regulations and none were passed.

This week, the anti-immigration Federation for American Immigration Reform (FAIR) reported that Rep. Tom Tancredo (R-CO) asked President Bush to review the delay of the October 26 deadline for visa waiver countries to begin issuing machine-readable passports that contain a biometrics identifier. The current law states that people from visa waiver countries without the new passports by the October deadline must have a visa to enter the United States.

Tancredo states that the State Department and the Department of Homeland Security's request to push back the deadline of these important security standards is alarming. Attorney General Ashcroft's warning of terrorist attacks and recent news reports of large

numbers of passports stolen in France—5,000 blank ones in Marseille and hundreds more in Lyons—will leave the American people more open to attacks by potential would-be terrorists from more than 20 visa waiver countries.

The Kansas City Star reported that the unborn child of a pregnant woman awaiting a deportation hearing has been granted U.S. citizenship by Federal District Judge Scott Wright. The mother, Myrna Dick, is accused of falsely claiming that she was a U.S. citizen when she crossed into the U.S. from her native Mexico. Even if Dick loses her hearing, Wright claims that she can not be deported until her child is born. According to Wright, the Unborn Victims of Violence Act grants the unborn child equal protection under the law. Assistant U.S. Attorney Jeffrey P. Ray says that the action will be appealed.

The Department of Homeland Security and the European Union announced an agreement that will allow the U.S. Customs and Border Protection (CBP) to collect the Passenger Name Records from air carriers that fly between the U.S. and the countries of the European Union. Although an interim agreement has provided for PNR collection since March 2003, the present agreement will provide a legal basis for the collection and transferal of such information consistent with U.S. and European Union laws.

The agreement states that the passenger information can only be used for the purposes of preventing and combating terrorism, other serious crimes, and the prevention of flight from the perpetration of such crimes. The Department of Homeland Security claims that the guidelines define the extent to which such passenger information can be used by the CBP and that it aims to protect the privacy of individuals.

A former Colorado State Patrol worker, Danzena C. DeGuzman, was convicted last week on a total of 14 federal counts of mail and wire fraud, harboring immigrants, fraud and misuse of immigration permits and inducing immigrants to the country.

According to the Associated Press, DeGuzman took out advertisements in the Philippines advertising technology job openings that did not exist from June 2000 to March 2003. DeGuzman then obtained fraudulent visas for the victims and after they came to the United States, she demanded money and housed them in an unfinished basement of her house. She also made them pay her money out of the paychecks they obtained from the odd jobs they were forced to get when the technology positions she had "lined up" for them fell through. After one victim told a church member what was going on, the church convinced him to call the FBI.

DeGuzman could be fined more than \$1 million.

United States Citizenship and Immigration Services (USCIS) is instructing individuals who filed their applications on or before April 29, 200, with the fee that was in effect at that time and who believe their application was improperly rejected, but only because of the fee increase, should re-send the entire application package as originally submitted, to the Service Center where they originally filed. The following are also required.

- A cover letter, asking that the rejection be reconsidered;
- The rejection notice from the Service Center;
- The check or money order originally submitted, for the fee that was in effect on or before April 29, 2004;
- Proof that the original submission was mailed on or before April 29, 2004. Proof of mailing can include any envelopes with the postmark, certified mail return receipts or express courier receipts showing proof of delivery.

If it is determined that the case was improperly rejected, normal processing will resume and the benefit of the earlier filing date will be given. If the case was properly rejected the first time, it will be rejected again with instructions to correct the deficiency. Case processing does not begin, and priority dates are not assigned, until a case is properly filed.

The Nebraska Service Center has announced that the fax machine used to receive Premium Processing faxes was down between Friday, May 21 and Tuesday, May 25. If you sent information to the Premium Processing Unit during those times, please resend the information since the NSC did not receive any of the faxes sent between 4:00 p.m. on Friday, May 21 and 2:00 p.m. on Tuesday, May 25.

8. International Roundup

The Ministry of Labor has imposed tighter restrictions on the issuance of visas to Saudi employers who harass their staff in order to protect the rights of domestic workers. Visas will not be issued for domestic helpers, like housemaids, to Saudi employers who have violated local regulations and contractual obligations. Although similar measures were in place before, they were not enforced.

The Ministry of Labor is working to compile a list of violating employers. The ministry will blacklist all sponsors involved in cases of harassment. A first-time violator will have to sign an agreement with a clause ensuring full protection to workers. If the offense is repeated, the employer will be disqualified from applying for any more visas.

According to a statement from Singapore's Immigration and Checkpoints Authority, the country will impose visa requirements on Moroccan visitors from June and Moroccan visitors will also be required to have a local contact for their visa applications. This could be due to the international attention Moroccans are receiving amid suspicion over the involvement of Moroccan militants in terror attacks, although the authority did not offer an explanation for the changes were being implemented.

Twelve Israeli Border Policemen were arrested last week for allegedly beating and robbing Palestinians. Nine have admitted to the allegations and are currently under house arrest. All Border Patrol troops in Israel have been ordered to attend lectures on civil rights and how to treat civilians. The Public Security Minister's office said in a statement that although

this type of behavior by Border Policemen is an exception to the rule of conduct, it is reprehensible.

9. Legislative Update

The Associated Press reported last week that Congresswoman Jo Ann Davis has introduced legislation that would reimburse hospitals that provide emergency care for undocumented immigrants with funds subtracted from the foreign aid earmarked for the patient's country. The congresswoman hopes that such a policy would create an incentive for other countries to better police their borders against undocumented immigration to the U.S.

[H. RES. 655](#): Condemning the crackdown on democracy protestors in Tiananmen Square, Beijing, in the People's Republic of China on the 15th anniversary of that tragic massacre. Sponsor: Rep Cox, Christopher [CA-48] (introduced 6/1/2004)
Latest Major Action: 6/3/2004 Passed/agreed to in House.
Status: On motion to suspend the rules and agree to the resolution Agreed to by the Yeas and Nays: (2/3 required): 400 - 1 (Roll no. 228).

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

10. Campaign 2004

On June 8th in South Carolina, according to *The Charleston Post and Courier*, Bob Batchelder of Myrtle Beach will challenge U.S. Rep. Henry Brown, R-Hanahan for the U.S. House District 1 Republican congressional seat.

Like two years ago, Batchelder has once again been critical of his opponent, calling Brown "a liberal Republican" who supports and follows the President's agenda including the war in Iraq, the nation's trade policies that favor corporate profits at the expense of outsourcing American jobs overseas and Bush's immigration policy.

Brown has responded by saying that his goals for a third term include advocating for better health care of veterans and senior citizens, making permanent the tax cuts put in place by the Bush Administration, eliminating the death tax and increasing military pay levels.

Because no Democrats have filed for this primary, whoever wins this race is almost certain to be victorious in November.

The *Desert Morning News* of Salt Lake City reported last week that anti-immigrant group Project USA has issued a challenge to U.S. Rep. Chris Cannon and his opponent in a June 22 primary in the 3rd Congressional District, Matt Throckmorton. The challenge is to allow a panel of impartial lawyers to evaluate immigration legislation that Cannon supports to

determine if it can be defined as amnesty. There is one catch to this challenge: both candidates have to accept the panel's decision. Throckmorton said he would probably accept the invitation, Cannon said he would not.

The key piece of legislation being questioned is Cannon's proposal to reform the nation's agricultural guest worker program. In addition, this pending bill would give some undocumented agricultural workers the ability to apply for temporary visas and permanent residence. Cannon estimates that between 300,000 and 500,000 workers nationwide would qualify for the benefits of this bill. Throckmorton contradicts those figures and raises the estimated numbers to 1 million eligible workers and families.

Project USA's director, Craig Nelsen, says that even though the forum of the challenge would be unbiased, his group does have a clear agenda—to reduce illegal immigration to sustainable levels and to end illegal immigration. Nelsen has appeared on local talk radio shows to discuss these issues, and Project USA has sponsored billboards in Utah County that say Cannon supports amnesty.

Cannon says he does not support amnesty and that all of his proposed legislation is available on the Internet, available to individuals to read, ask questions and make their own decisions about the bills.

The Winston-Salem Journal reported last week that North Carolina radio station WSJS suspended 5th Congressional District candidate Republican Vernon Robinson's campaign ad and forced him to change the required disclaimer from Spanish to English. Political ads for federal candidates must include a statement that includes the name of the organization that funded it.

Vernon's advertisement states in English that undocumented immigrants "sponge off the American taxpayer" and "commit heinous crimes against us." The ad ended with a disclaimer in Spanish. Vernon claims that the purpose of the Spanish disclaimer was to make a political point that English ought to be the official language of the U.S.

WSJS discontinued the version using the Spanish disclaimer fearing action from the Federal Election Commission (FEC) and the Federal Communications Commission (FCC). Vernon says that the two commissions' regulations do not include any specific language requirement for disclaimers. Tom Hamilton, senior vice president of WSJS, says that the disclaimer ought to indicate to the listeners which organization sponsored the ad. Because WSJS is an English-language station, Hamilton feels that its listeners would not understand a Spanish disclaimer.

Although Vernon disagreed with the changes, he acquiesced citing the need to have his ads run on the popular talk-radio station.

11. New Los Angeles I-90 Pilot Program Launched

United States Citizenship and Immigration Services announced last week the launch of the I-90 pilot project in Los Angeles that will reduce the wait time to replace or renew a permanent resident card or green card from a year to less than a week.

Customers wanting to take advantage of the new I-90 pilot can go to www.uscis.gov and file by using the E-Filing feature. The receipt that is produced by that transaction shows a toll-free number that applicants can call to make an appointment at the USCIS Application Support Center that is closest to them. During the visit, the ASC will order a permanent resident card for customers to receive in under a week.

The current wait time for green cards to be produced by the USCIS California Service Center is just under one year. Customers who wish to speed up the process of an already-filed I-90 application can elect to re-file electronically and participate in the new pilot program.

12. Accenture LLP Named Prime Contractor for US-VISIT

The Department of Homeland Security issued a press release this week announcing a five-year contract for the US-VISIT Program was awarded to primary supplier Accenture LLP and its team. The contract is worth between \$10 million and \$10 billion.

Accenture LLP will provide a wide range of services including strategic support, design and integration activities, technical solutions, deployment activities, training, and organizational change management. The purpose of the operation will be to assist the US-Visit Program in the management of data on foreign nationals before they enter the United States, when they enter, during the visit, and after exit. The goal of this process is to eventually create a virtual border management system.

Asa Hutchinson, Under Secretary of Border and Transportation Security for the Department of Homeland Security, said that the US-Visit Program is a top priority for this department and has four goals:

- Enhance the security of U.S. visitors and citizens
- Facilitate legitimate travel and trade
- Ensure the integrity of the immigration system
- Safeguard the personal privacy of visitors

Since January 5, 2004, The US-VISIT Program has processed more than 4.5 million foreign nationals at 115 airports and 14 seaports. More than 500 persons with prior or suspected criminal activity have been intercepted. Presently, US-VISIT requires that most foreign visitors arriving at an air or seaport have their two index fingers scanned and a digital photograph taken to verify identity.

13. T Visa Field Instructions Updated

U.S. Citizenship and Immigration Services released an interoffice memo dated April 15, 2004 on the subject of the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA). This memo specifically highlights Section 4(b) of the TVPRA which contains five conditions that amend the Immigration and Nationality Act (INA). Section 4(b) will affect benefits for victims of a severe form of trafficking in persons and who are applicants for T nonimmigrant status and their descendants.

The five conditions of Section 4(b) are:

1. The eligibility requirement of any applicant for T nonimmigrant status complying with reasonable assistance requests to investigate or prosecute acts of trafficking in persons was raised from age 15 to age 18.
2. The addition of unmarried siblings under 18 years of age to the list of family members of any principal T nonimmigrant status holder or applicant.
3. An unmarried alien under the age of 21 is provided age-out protection if the parent applied for T-1 status before the date the child turned 21. This condition also includes principal applicants and immediate family members.
4. T nonimmigrant status applicants can no longer be found inadmissible on the basis that he/she is likely at any time to become a public charge.
5. Adjudicators are allowed to consider statements from State and local law enforcement officials regarding compliance with any reasonable requests for assistance in the investigation of crimes of severe forms of trafficking in persons. This condition can not be implemented immediately and will be given careful consideration.

The TVPRA is effective immediately for T nonimmigrant status applications pending on or filed after December 19, 2003.

14. L Visa Reform Bill Would Eliminate "Specialized Knowledge" and Impose Annual Cap

On May 20, 2004, Representative Henry J. Hyde (IL-6) introduced H.R. 4415 – the Save American jobs Through L Visa Reform Act of 2004. The bill proposes to amend the Immigration and Nationality Act (INA) to eliminate the L-1B "specialized knowledge" basis for obtaining nonimmigrant status as an intracompany transferee and to impose an annual numerical limitation on nonimmigrant visas for such transferees.

The text of the bill states that testimony given on February 4, 2004 at a hearing of the Committee on International Relations of the House of Representatives "indicated that there is widespread abuse by companies subcontracting to other companies nonimmigrants who obtained status under the Immigration and Nationality Act by satisfying the requirements for intracompany transferees with 'specialized knowledge'". Evidence of abuse cited in the text includes the displacement of US citizens by nonimmigrants and nonimmigrants that claimed to possess "specialized knowledge" but actually did not possess this knowledge at the time they entered the U.S. The bill also draws attention to the fact that in fiscal year 2003, 57,245 intracompany transferee visas were issued.

If passed, the bill would amend the INA by replacing the phrase "managerial, executive or involves specialized knowledge" with "managerial or executive". The bill would also impose an annual cap of 35,000 intracompany transferee visas.

The bill has been referred to the House Committee on the Judiciary and to the House Committee on Education and the Workforce.

15. GAO Reports on Undocumented Immigrants' Impact on Hospitals' Uncompensated Care Costs

A recently released report from the United States General Accounting Office (GAO) examined the relationship between treating undocumented aliens and hospitals' costs not paid by patients or insurance. Additionally, the GAO examined federal funding available to help hospitals offset costs of treating undocumented aliens and the responsibility of the Department of Homeland Security for covering medical expenses of sick or injured aliens discovered by Border Patrol and U.S. port-of-entry officials.

The GAO's findings were inconclusive regarding an accurate measure of undocumented aliens' impact on hospitals' care costs not paid by patients or by insurance, because hospitals generally do not collect information on their patients' immigration status. Additionally, the GAO was unable to determine the effect of undocumented aliens on hospitals' uncompensated care costs because of a low response rate to key survey questions and challenges in estimating the proportion of hospital care provided to undocumented aliens.

The GAO did determine that three federal funding sources have been available to help cover costs of treating undocumented aliens. Medicaid covers emergency medical services for undocumented aliens who meet Medicaid eligibility requirements. Medicaid disproportionate share hospital payments have provided supplemental payments to certain hospitals serving a larger number of low-income patients. The Balanced Budget Act of 1997 made \$100 million available to 12 states in fiscal years 1998 through 2001 for emergency services furnished to undocumented aliens.

Additionally, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 was recently enacted and appropriated \$1 billion over fiscal years 2005 through 2008 for payments to hospitals and other providers for emergency services provided to undocumented and certain other aliens. Border Patrol officials reported to GAO that while the agency may cover medical expenses only for people in its custody, sick or injured people they encounter generally receive medical attention without being taken into custody. In most situations, Homeland Security is not responsible for aliens' hospital costs.

The GAO recommended that the Secretary of Health and Human Services develop appropriate internal controls to ensure payments are made only for emergency services for undocumented or certain other aliens that were not reimbursed. The Centers for Medicare and Medicaid Services and Homeland Security agreed with the GAO's recommendation.

16. House Immigration Subcommittee Votes to Extend Conrad Program for Just One Year

The House Immigration Subcommittee has marked up H.R. 4533, a stripped down version of H.R. 4156, a bill that extends the Conrad 30 J-1 waiver program which allows international physicians to remain in the US after completing residency training in exchange for committing to work in physician shortage areas on H-1B visas for three years.

H.R. 4156, introduced by Kansas Republican Jerry Moran, would have extended the ten year old Conrad program by five years, exempted Conrad doctors from the J-1 cap and allowed

state health agencies to designate certain facilities as eligible for waivers even if they don't meet federal shortage area criteria. H.R. 4533 only extends the program for a year and contains no state health agency flexibility language.

Congresswoman Sheila Jackson Lee attempted to introduce amendments that would have made H.R. 4533 identical to H.R. 4156, but committee Chairman Hostettler (R-IN) adamantly rejected the move. The amendment language was rejected on party lines by a vote of 4 to 3.

According to the National Journal, the Department of Health and Human Services opposes states having the ability to designate facilities for fear of local politics coming into play. However, the argument drew raised eyebrows from critics who point out that on most issues, Republicans argue that states should have the right to determine their own policies. Similar arguments could be made regarding any policy area including education, welfare benefits and even programs like Medicaid.

Congresswoman Jackson Lee noted with respect to the extension period that the Conrad program has "been successful for 10 years in bringing highly qualified physicians to work in rural and urban medically underserved areas. We do not have to be so tentative about extending it."

According to the National Journal, Hostettler said he wanted to limit the program's renewal to one year for two reasons. First, he said, several local groups are pressing for states to be able to use their waivers to assign the doctors to locations "not designated as shortage areas by HHS." He noted that the Bush administration is "very much opposed" to that idea.

Hostettler did not elaborate on who specifically in the Bush Administration has said the Administration is against the idea or why they would be against the idea. Advocates of the clause point out that the current shortage area designation criteria only measure shortages in an immediately surrounding area and do not account for the regional patient-bases of many hospitals. Also, the shortage designations are based on primary care physician shortages even though state waivers can be for specialty physicians.

Hostettler also made the odd argument that the Conrad doctors were somehow threatening to take positions from Americans wishing to go to medical school. However, Conrad waivers are for physicians coming to the US after medical school and not FOR medical school. Furthermore, all American medical school graduates are guaranteed residency slots before international medical graduates can seek any of the extra 25% of slots available. Advocates of the program also point out that the US is facing a dire physician shortage that has not been disputed by anti-immigration advocates.

The bill next moves on to the House Judiciary Committee for further markup. A bill matching H.R. 4156 is due to be marked up in the Senate soon.