

Siskind's Immigration Bulletin
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Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-345-0225; facsimile: 800-684-1267 or 630-604-9306, email: gsiskind@visalaw.com, WWW home page: <http://www.visalaw.com>.

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

Editor: Greg Siskind. Associate Editor: Penny Egel. Contributors: Steve Barlow, Paola Palazzolo, Rae Richardson, Esther Schachter, Maryam Tanhaee, Megan Turngren and Joel Wimbiscus.

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1. Openers

Dear Readers:

As I noted last week, I'm in the middle of a ten day road trip that will conclude tomorrow at a conference of administrators of the nation's Conrad 30 J-1 physician waiver programs. I'll be speaking to the group and, more importantly, updating folks on the status of legislation to extend the Conrad program.

I've just attended the annual meeting of the American Immigration Lawyers Association in Philadelphia, Pennsylvania. This is my 14th AILA annual conference and I find the program valuable every year. Several thousand lawyers read this newsletter every week and if you are one and do not have membership in AILA, you're really missing out. The conference is just one of many types of educational programming that AILA provides. You can learn about joining AILA at www.aila.org.

This year I spoke on two panels at the AILA meeting. The first was on a panel updating AILA on physician immigration. The focus of my remarks was explaining what the new physician immigration legislation would mean and providing information on the new HHS and Delta Regional Authority waiver programs. The second program was on law office management issues and I was charged with providing tips on incorporating the latest technologies in an immigration practice.

Speaking of technology, we at Siskind Susser were fortunate enough to be selected for the second year in a row as having the nation's top law firm web site by the organization that is the major arbiter of such honors. You can see what the award selection folks had to say about www.visalaw.com by going online to www.htmlawyer.com. I want to publicly acknowledge the hard work that the people at my office put in on our site and newsletters that make it all possible. Thank you Esther Schachter, Penny Egel, Megan Turngren, Maryam Tanhaee, Virginia Nesbitt, Paola Palazzolo, Mick Wright and everyone else who has contributed, coded, proofed, etc. to get this big project done week in and week out.

And speaking of accomplishments, congratulations are due to my good friend Robert Divine who was named this week as the Chief Legal Advisor to the director of USCIS. Robert is a fellow immigration lawyer in my home state of Tennessee and we've been active together in our local AILA chapter for nearly a decade and a half. Robert is eminently qualified for this important job and his many years representing immigrants will give him perspective on the process that is too often lacking at the USCIS. Good luck Robert!

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

Regards,

Greg Siskind

2. The ABC'S Of Immigration: L-1 Intracompany Transfer Visas

What is an L-1 intracompany transfer visa?

L-1 intracompany transfer visas are non-immigrant visas available to persons coming to work in the US for an employer that is related to a company the applicant worked for prior to entering the US.

What are the advantages of an L-1 intracompany transfer visa as opposed to other types of visa?

While there are a number of important requirements to qualify in this category, the category offers a number of advantages that make it worth considering over other types of visas. For example, there is no annual limit on the number issued, one may pursue permanent residency while on an L-1 visa and for many L-1As, there is a matching permanent residency category that makes getting a green card relatively quick and pain-free.

What are the requirements for an L-1 intracompany transfer visa?

The first requirement for the L-1 is for the applicant to have been continuously employed abroad for one year of the last three for a parent, affiliate, or subsidiary of a US employer. The employer may be a company or other legal entity including a profit, non-profit, religious, or charitable organization. It does not matter if the company is incorporated or not. Any time spent working in the US will not count toward the one year of required employment, though time spent in the US will not be considered to have disrupted the continuity of employment abroad. It is possible to use a combination of part-time employment for affiliated companies under certain circumstances.

Second, the foreign firm and the US firm must have a "qualifying relationship." Both the US and the foreign firm must have common majority ownership, or, where there is less than majority ownership, common control by the same person or entity. Ownership by a common group of owners where no owner has control or a majority interest can cause a problem if each individual owner does not own approximately the same amount of both the US and the foreign company. This problem can sometimes be worked around if the owners have set up a voting agreement to ensure that there are not different groups controlling the foreign firm and the US firm.

Third, the applicant must be coming as a manager, executive or specialized knowledge employee. "Specialized knowledge" refers to employees with

- a special knowledge of the company's products and their applications in world markets;
- an advanced or proprietary knowledge of the company's processes or procedures.

Fourth, the applicant must intend to depart the US when his or her stay is over. But the applicant may also pursue permanent residency simultaneously without a negative impact on the ability to keep or extend an L visa. This is because the doctrine of dual intent applies to L-1 visas (just like H-1B visas). This makes the L visa a popular option for multinational firms.

What is the difference between an "executive" and a "manager"?

An "executive" is one who directs the management of the company or a major part or function of the organization. Typical executive positions are presidents, vice-presidents and controllers. An executive is expected to have a supervisory role in the company (either over personnel or a function) and would not include people who are primarily performing the specific tasks of production or providing service to customers. A "manager" directs the

organization, a department, or a function of the organization. Like executives, a qualifying manager will not be overseeing the primary performance of a task. Exceptions apply when a manager or executive is coming to open a new office.

How long can executives and managers stay in L-1 status?

Executives and managers may stay in L-1 status for up to seven years. They are granted L-1A status.

How long can “specialized knowledge” employees stay in L-1 status?

Specialized knowledge employees may stay in the US for up to five years. Their visas are called L-1Bs. Those who wish to obtain L-1B visas must do labor certification. The visas will be granted with an expiration of up to three years. Whether the visas are multiple entry or not depends on the applicant's country of origin.

What about people coming to open up a new office in the US?

Persons coming to open up a new office in the US will only be granted a one-year stay in the US. The INS will also typically require additional information about the plans for the new office such as proof that office space has been obtained, that the applicant has had the appropriate experience with the foreign company and that the foreign company will remain in existence during the full period of the applicant's transfer to the US. If the company wants to have the L-1 visa extended beyond the initial year, it will have to demonstrate at the time of extension that it has proceeded with the plans outlined in the initial petition.

The INS will also more closely scrutinize cases where the transferred employee also has an ownership interest in the company, since the INS may not believe the owner intends to ever leave the US. The US employer will need to show here that the firm's need for the transferee is not indefinite and that the transferee's foreign business interests are a strong lure for the person to return upon the expiration of the transferee's stay in the US.

How do I apply for L-1 status?

Applications for L-1 visa status must first be approved by the Regional INS Service Center having jurisdiction over the location where the transferred employee will be situated. The employer must send the Application for Non-Immigrant Visa and L Supplement, petition letter, supporting documentation and filing fee to the INS Service Center. After the INS Service Center approves the application, the employee must apply at the US Consulate for the visa. The Consulate normally approves the application unless it believes the INS has been defrauded or the INS was not aware of important information.

What if my company has a large number of applicants?

There are special procedures that make it easier for companies sending over large numbers of applicants to get L-1 visas for their employees. Companies that qualify can receive a “blanket approval” for all of their workers rather than having to apply to INS individually for each employee. To qualify for a blanket petition, the company must meet the following tests:

- The US and foreign offices must be engaged in commercial trade or services;
- The employer's US office must have been in business for at least a year;

- The employer must have at least three domestic or foreign branches, subsidiaries, or affiliates;
- The Employer must show one of the following: a) at least ten L-1 visas were approved in the last year; b) the company had US sales of at least million, or c) the US work force numbers over 1,000 workers.

The procedures for filing are largely similar to a normal L-1 application except that the employer must also submit evidence showing the above requirements are met and the firm's petition letter can be replaced with a company letter summarizing the basis for the L-1 petition. A key difference between blanket L-1 employees and regular L-1 employees is that the employee need only work for six months outside the US for the company rather than a year.

Are there any benefits available to L-2 spouses of L-1 visa holders?

L-2s can seek employment authorization by submitting an I-765 application after acquiring L-2 status. Applicants for employment authorization should remember, however, that it could often take up to three months to get this work authorization.

What is the difference between EB-1 Multinational Manager/Executive category for employment-based green cards and the L-1A visa category?

The EB-1 Multinational Manager/Executive category for employment-based green cards closely resembles the L-1A visa category. The green card requires a showing of all of the same evidence. The main additional requirement is that the US operation be in existence for at least a year. The category is very popular because applicants can avoid the onerous labor certification process, they can have an ownership interest in the company and they can proceed to the green card relatively quickly. Note, however, that if an employee hopes to get a green card via the multinational executive route, he or she will need a year abroad working for the company. That could be a problem for L-1s who came on blanket petitions and only had six months with the company.

3. Ask Visalaw.com

We apologize, but Ask Visalaw.com is not available this week due to our attendance at the annual meeting of the American Immigration Lawyers Association. The column will return next week. You can send your questions in the mean time to ask-visalaw@visalaw.com

4. Border and Enforcement News

Three Central Americans are filing a class action lawsuit against Department of Homeland Security Secretary Tom Ridge, Attorney General John Ashcroft and two Texas based immigration agents. The plaintiffs claim they were coerced into waiving their right to appear before an immigration judge.

One plaintiff claimed, according to the Associated Press, that while he was detained he was told that if he signed some papers he would be returned to Nicaragua within four days. Instead, the signed forms waived his right to a lawyer, a hearing or a request for asylum. The other plaintiffs have similar stories. Their attorney told the press that immigration

judges should confirm that these immigrants can read and understand these waivers before they are signed.

Twelve undocumented immigrants were injured in an effort to evade a Border Patrol vehicle last week. The immigrants' truck rolled over when the driver made a U-turn after spotting a Border Patrol vehicle in front of them. According to the passengers' statement to the *Los Angeles Times*, the driver turned off the headlights and drove off the road into the open desert. The driver lost control when he attempted to return the vehicle to the road.

Nine would-be undocumented immigrants were caught crossing the Niagara River from Canada last week and were arrested when they reached the shore. Three women from India, a Pakistani family of four and two Canadians arrived on Grand Island on an inflatable raft, according to *The Buffalo News*.

Seven of the individuals will face criminal and administrative charges of illegally entering the United States, and one of the Canadians will be charged with smuggling. One of the Pakistani couple's two young children was born in the United States, and will therefore not face legal action. Their court appearance is scheduled for Monday in U.S. District Court.

The United States and Canada recently entered into a new cooperation agreement, which will involve heightened use of science and technology by both sides in response to new types of threats to common infrastructure and common borders. Under the broad agreement, shared resources will be used to address common problems. In addition to government agency participation, private universities and research organizations will also participate in activities under the agreement.

The European Union has approved the USDHS program to collect air passenger data for flights between the US and the EU. The agreement will be in effect for three and a half years. Under the terms of the agreement, CBP will have to carefully monitor and maintain any data collected, and such data will strictly be used to prevent and combat terrorism and other serious crimes and flight from warrants or custody for those same crimes.

U.S. and Mexican officials have finalized a plan that will return illegal migrants caught crossing the Mexican border to their interior hometowns rather than just over the border. This plan is an attempt to prevent recurring attempts to cross the border illegally and to slow down smuggler efforts. The "deep repatriation" program is strictly voluntary on the part of the Mexican citizen returned to Mexico, in keeping with relevant provisions of the Mexican constitution. The U.S. will pay for the transportation costs involved, and will avoid the use of physical restraints on returning trespassers. Both U.S. and Mexican officials agree that this initiative could save the lives of many would-be border crossers who might otherwise die in a second effort to cross deserts.

5. News From The Courts

Ohio v. Creary

Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
2004 Ohio App. LEXIS 792

Creary, a nineteen-year-old Jamaican man charged with robbery, pled guilty to robbery after his lawyer advised him to plead guilty to the single count indictment rather than be subject to deportation if he went to trial and was found guilty. Creary claimed to rely on his lawyer's advice, believing that the guilty plea would reduce his chances of being deported, which he later found not to be the case when deportation proceedings were begun against him after his guilty plea and sentencing to one year in prison. Creary's postsentence motion to withdraw his guilty plea based on ineffective assistance of counsel was denied, and Creary appealed.

The Court of Appeals of Ohio reversed the denial of Creary's motion and remanded. The court outlined the clear immigration statutes which demonstrate that Creary's robbery conviction subjected him to deportation and even expedited removal, and the court found that Creary had significant evidence that his lawyer had misinformed him about the possibilities legally available. Since Creary's lawyer knew that Creary was interested in deportation consequences and allegedly misinformed him about the state of unambiguous law, and since Creary would not have pleaded guilty if his lawyer had given him correct legal information, the court held that Creary's claim of ineffective assistance of counsel potentially satisfies the manifest injustice standard required to withdraw a guilty plea postsentence.

Since Creary's motion merited a hearing on the ineffective assistance of counsel claim, the court reversed the lower court and remanded for further proceedings.

Somsanuk v. Morones

U.S. District Court for the District of Oregon

Petitioner Kipoung Somsanuk, a Laotian native, brought a habeas petition claiming that he was being illegally detained. The U.S. District Court granted the petition and ordered that the Petitioner be released from custody within ten days.

The Petitioner came to the U.S. from Laos in 1981 to live with his grandparents in Oregon. In July 2003, the petitioner was convicted of third degree rape, third degree sodomy and providing liquor to a minor. After serving a 90-day sentence, the Bureau of Immigration and Customs Enforcement (BICE) took the Petitioner into custody and ordered that he be deported. The order became final when the Petitioner did not appeal. BICE's request for travel documents from the Laotian Embassy was denied when a consular official stated that the Petitioner was not a Laotian citizen. After the statutory 90-day removal period expired, BICE continued to detain the Petitioner, who then brought the present action.

The Court held that the Petitioner must be released because the detention was unreasonable. Although BICE may detain an individual for up to six months after the 90-day period has elapsed, it may only do so if removal is reasonably foreseeable. In this case, the court said that it was not reasonably foreseeable that Laos would recognize citizenship of the petitioner and therefore ordered that the Petitioner be released within ten days.

6. Government Processing Times

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

Missouri (06/04/2004): <http://www.visalaw.com/missouri.html>

Vermont (06/04/2004): <http://www.visalaw.com/vermont.html>

7. News Bytes

Reuters reported last week that a prominent group of U.S. doctors and dentists have asked the U.S. Department of Homeland Security to stop using X-rays to determine the ages of young asylum seekers because the tests are inaccurate. X-rays taken of dental and wrist bones can show the age of a person, but the doctors and dentists claim that there is a margin of error of 3 years. The error range is important because juvenile asylum seekers have a better chance of remaining in the U.S. while adults can be deported immediately under U.S. immigration law.

The Associated Press reported last week that a new law in Minnesota allows immigrants with E-2 visas to buy up to 1,500 acres for use as a dairy farm. E-2 visas are available to residents who have made a substantial business investment in the U.S. and are from certain countries that have a treaty with the U.S. The law requires that the immigrant live in Minnesota at least 10 months of the year and try to gain either residency or resident alien status within three years of buying a dairy farm.

U.S. Immigration and Customs Enforcement (ICE) officials are warning residents of Irving, Texas of bogus flyers that were distributed claiming that police, federal agents and Dallas County officials would conduct door-to-door interviews. The flyers contained various misspellings and false telephone numbers. Officials cited the scam as a possible attempt by criminals to gain entry into residents' homes. ICE stated that while it enforces the nation's immigration and customs laws, it does not do so by door-to-door interviews announced through flyers.

A recent statement from U.S. Immigration and Customs Enforcement (ICE) discussed an incident in which ICE agents from Jacksonville, FL, responded to a complaint that Russian college students in St. Augustine, FL, were possibly being exploited by a U.S. company that had sponsored them as part of a J-1 work exchange program in the United States. In the statement, ICE said it was determined that the students are legally in the country at this time, and that they are considered by ICE to be potential victims/witnesses. Agents are not only continuing to look into the matter, but are also coordinating with local authorities and with community officials to help care for the students.

ICE officials have advised the Russian Embassy in Washington, D.C. of the situation and will inform the office of any developments.

The USCIS Chief Counsel has announced that the services centers will be instructed that, for purposes of section 245(k), an adjustment of status applicant needs to demonstrate maintenance of status only from his or her last entry up to the date of filing of the adjustment of status application. This ruling is in response to the Texas Service Center requiring proof of maintenance of status for all stays in the U.S. Although the written guidance is not out yet, those who receive an RFE or denial on this basis, contact the American Immigration Lawyers Association for more information.

According to the American Immigration Lawyers Association, the new appointment system for consular posts in China should be back in operation as of June 4, 2004, following resolution of concerns raised by the host government.

The New Delhi DHS suboffice has tightened its rules for US citizens seeking to direct file I-130s there. From now on, the USC will be required to show 60 days presence in India prior to filing. Usually, showing an entry stamp can fulfill this requirement.

A daily briefing from the Department of Homeland Security was posted on **GOVEXEC.com** this week. Agency auditors have successfully reconciled the budget deficit issues that occurred as a result of combining various accounting systems. These deficits led to a hiring freeze earlier this year, but officials say they won't resume recruitment because personnel goals for 2004 have already been reached. According to DHS spokesman Dennis Murphy, many current DHS employees have stayed longer than expected, and new hires will not be brought in until next year.

Recently, President Bush announced 17 new personnel decisions in the administration. One key nomination will be for William Sanchez to be Special Counsel for Immigration-Related Unfair Employment Practices at the Department of Justice for a term of four-years. The President also plans to appoint a number of individuals as Members of the President's Advisory Commission on Asian Americans and Pacific Islanders.

8. International Roundup

In the Dutch town of Groningen, an asylum seeker expulsion center will be established, averting a feared crisis in housing for deportees. Over the strong objections of protestors, the town council approved the new center, which will house 400 asylum seekers awaiting deportation. Over the next three years, the Dutch government plans to deport around 26,000 asylum seekers.

In Australia, almost one-fifth of overseas students at some universities have had their visas cancelled by the Department of Immigration. Often visas are cancelled when students do not meet the minimum standard of 80% minimum attendance because of work-related responsibilities. In response, some colleges and universities have offered to provide illegal flexible attendance regimes to attract students, and the Department of Immigration is cracking down on these and other schemes taking advantage of the restriction.

In England, the Medical Practitioner's Union has started a petition against government rules that withhold NHS hospital care from asylum seekers with failed asylum claims. The physicians are demanding that health care workers be allowed to refuse to identify asylum seekers for the purpose of denying them medical care. The medical community highlights its professional and moral responsibility to respond to the medical needs of individuals without regard to non-clinical factors such as asylum status, and emphasizes that health care is a right for everyone. Advocates for these asylum seekers are quick to point out that the asylum seekers are not the cause of the NHS financial problems, but that the cause is more than two decades of severe under-funding.

9. Legislative Update

[H.R.4526](#): To ensure the coordination and integration of Indian tribes in the National Homeland Security strategy and to establish an Office of Tribal Government Homeland Security within the Department of Homeland Security, and for other purposes.

Sponsor: Rep Pallone, Frank, Jr. [NJ-6] (introduced 6/8/2004)

Committees: House Resources

Latest Major Action: 6/8/2004 Referred to House committee.

Status: Referred to the House Committee on Resources.

[H.R.4530](#): To amend the National Voter Registration Act of 1993 to require any individual who desires to register or re-register to vote in an election for Federal office to provide the appropriate State election official with proof that the individual is a citizen of the United States to prevent fraud in Federal elections, and for other purposes.

Sponsor: Rep Hyde, Henry J. [IL-6] (introduced 6/9/2004)

Committees: House House Administration

Latest Major Action: 6/9/2004 Referred to House committee.

Status: Referred to the House Committee on House Administration.

[H.R.4532](#): To amend title 10, United States Code, to allow nationals of the United States to attend military service academies and receive Reserve Officers' Training Corps (ROTC) scholarships on the condition that the individual naturalize before graduation.

Sponsor: Rep Faleomavaega, Eni F. H. [AS] (introduced 6/9/2004)

Committees: House Armed Services

Latest Major Action: 6/9/2004 Referred to House committee.

Status: Referred to the House Committee on Armed Services.

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

10. Businesses Counting the Costs of Tightened Security Since 9/11

The cost of tighter border controls and visa delays to US firms has been in the tens of billions of dollars according to recent research by leading business groups. Business leaders have expressed concern that the present administration has cast its security net too wide at the expense of international commerce, resulting in increasing pressure for firms to outsource work or set up offices abroad. Some of the nation's leading scientific and academic organizations have warned that if action is not taken quickly, U.S. academic institutions could lose millions of dollars in tuition and other revenues, in addition to losing much of the brainpower responsible for keeping the U.S. at the forefront of science and technology.

The study, conducted by the Santangelo Group and released June 2, 2004, is entitled "Do Visa Delays Hurt U.S. Business?" Researchers surveyed 734 members of eight leading international trade associations. According to released findings, U.S. companies suffered \$30.7 billion (\$25.35 billion in revenue losses, and \$5.15 billion in indirect costs) in financial impact between July 2002 and March 2004 as a result of delays and denials in the processing of business visas. Medium sized companies reported the greatest income loss. Companies surveyed reported that the most severe processing issues were length and unpredictability of processing times, excessively long waiting times to receive an interview, and apparently arbitrary visa denials. Visa applicants from China, India and Russia who were trying to conduct business in the U.S. were found to have the most difficulty obtaining visas.

Many other findings were reported in the survey, which culminated in a list of suggestions for streamlining the visa processing system. Specific suggestions outlined in the study were: 48-hour visa processing times, with a maximum of 30 days; Greater transparency of consular posts and more consistency in consular procedures; a "Gold Card" program for frequent users of immigration services to allow for more efficiency and communication; Integration of government databases; Increased availability of multiple-entry, longer duration visas; Internet interviews with consular posts; and Increased Congressional oversight of consular services.

Administration officials say that they are aware of the risk of increased costs to businesses with tighter security, and claim they are making efforts to address them. Some of these efforts include an increase in number of consular offices and an investment in new computer systems and software. According to one spokeswoman for the Bureau of Consular Affairs, more than 80% of visa applications requiring extra screening are now processed within three weeks.

11. GAO Releases Study That Documents Lack of Enforcement of Visa Overstays

The General Accounting Office (GAO) released a study showing that the Department of Homeland Security (DHS) has been extremely unsuccessful in its attempt to track and remove visa overstays. Since the 9/11 terrorist attacks, the U.S. has become particularly

concerned with overstays due to the fact that four of the terrorists involved were in the U.S. on expired visas.

The GAO focused on the fact that only a few hundred of the 13,900 overstays who are from countries that "sponsor terrorism" had been removed from the U.S. The study also pointed out that the lack of DHS enforcement has allowed many overstays to find jobs inside airports, military bases, nuclear power plants and other secure facilities that are possible terrorist targets. The agency further mentioned that in 2002, only 2% of overstays were arrested.

The GAO pointed out that these figures do not include Mexican and Canadian citizens who overstay their visas. Mexicans who claim that they will only stay in the U.S. for 72 hours and Canadians who claim that they will stay less than six months are not required to fill out a form I-94. Such forms can be used to track overstays. While most Mexican and Canadian overstays are economically motivated, the GAO noted that some overstays from those countries have been involved in terror-related activities.

Although the GAO reported that the DHS has done a poor job in tracking overstays, he believes that the implementation of the U.S.-Visit program next year will help control the overstay problem. The program requires that foreign visitors be fingerprinted and will have a centralized computer system will monitor their arrivals and departures.

12. Border Security Contract with Accenture Blocked

According to the *Washington Post*, the House Appropriations Committee voted last week to block the border-security contract between Accenture LLP and the Homeland Security Department for facilitating US-VISIT because Accenture is located outside the United States.

The committee voted 35-16 in favor of a budget amendment that would prohibit contracts between the Homeland Security Department and corporations based abroad. Additionally, the amendment would prevent an overseas company already under a government contract from receiving additional ones. Representative Rosa DeLauro (D-CT) sponsored the amendment, according to the *Post*, on the grounds that Bermuda-based Accenture would be exempt from paying the majority of its taxes to the United States.

US-VISIT is intended to record the entry and exit of non-United States citizens and verify the identity of incoming visitors through the use of digital-finger scans and digital photos taken at ports of entry and check entrants' visa and immigration status.

The Accenture contract is set to last five years and has five additional one-year options. It is worth up to \$10 billion. Accenture executives told the *Post* that they understand it is early in the legislative process and they plan on watching all developments closely.

13. Robert Divine Appointed First Principal Legal Advisor for USCIS

U.S. Citizenship and Immigration Services (USCIS) and the Office of the General Counsel (OGC) within the Department of Homeland Security (DHS) announced last week that President Bush has appointed Robert Divine as the agency's first Principal Legal Advisor. Divine practices immigration law in Chattanooga, Tennessee.

In a press release, Director of USCIS Eduardo Aguirre said, "I am proud to welcome Mr. Divine as a member of the USCIS family. He brings with him 17 years of business immigration law experience and will serve our agency and its customers as part of my Senior Executive Staff."

In the same release, General Counsel Joe Whitley said, "We are fortunate to have a person of Mr. Divine's caliber become a part of the DHS General Counsel's Office. Mr. Divine's many years of immigration practice will serve the department well in this critical new position."

Divine was the sole author of "Immigration Practice," a treatise addressing all aspects of U.S. immigration law. He was recently highlighted in the 2003-2004 publication, *Best Lawyers in America*, and has been given an A/V rating by the Martindale Hubbell law directory. Divine has been a member of the American Immigration Lawyers Association since 1986 and served as elected Chair for AILA's Mid-South Chapter from 2001-2003. Until his appointment, he had served as an expert on behalf of the U.S. Commission on Religious Freedom in its congressionally mandated study of the "expedited removal" process used at U.S. ports of entry.

14. H-1B and O Issues Addressed by Nebraska Service Center

This week the American Immigration Lawyers Association (AILA) reported that the Nebraska Service Center (NSC) has initiated a two-month targeted review of I-129 adjudications as well as providing guidance on O and H-1b adjudications.

The three main points of this report are:

1. An extension of status is possible under the following conditions: a foreign national in the 7th year of H-1b status due to pending labor certification #1, then labor certification #1 is denied. Labor certification #2 has been filed and undecided for more than one year. During this time, if the 7th year of H-1b status has expired, the alien is eligible to obtain an 8th year H-1b extension based on labor certification #2.
 2. AILA members need to be aware of the NSC's recently expressed standards for adjudications of O petitions. Some occupations won't qualify for O status even though they seem to be within the allowable fields. The quantifiable evidence must show an individual's success as compared to others in the field. Letters of reference from persons not within the alien's circle of colleagues can be given substantial weight. A request for O classification can not be given based on the alien's future potential.
 3. Gregory Christian, Acting NSC Director, has addressed concerns over issuance of the needless Requests For Evidence (RFEs) and examiners' hostility toward attorneys and evidence presented in these cases. Christian executed a two-month targeted quality review of I-129s. Normal procedure for quality reviews is to have supervisors review the RFEs and Product Line Managers review the denials.
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15. "Operation Endgame" Adopted to Prevent Immigrants from Evading Deportation

According to the South Florida Sun-Sentinel, the U.S. Immigration and Customs Enforcement (ICE) is adopting stricter detention policies. In an effort to stop immigrants from evading deportation, the first step of "Operation Endgame" is to detain immigrants as soon as judges deny their cases and order the immigrants removed from the United States. Presently, deportable immigrants without a criminal record remain free as they pursue appeals or dissolve their households. Officials report that every year tens of thousands of deportable immigrants go underground instead of complying with final deportation verdicts.

Another step in the strategy of Operation Endgame is to release many of the immigrants and track them with an intensive supervision program that could include ankle-bracelet monitors. A participant in this current pilot program, Orfa Salazar, says she feels much freer than she did during her 10 months in detention and hopes for more flexible supervision under the new program.

Critics of this plan say that these measures are far from efficient and excessively harsh. Immigration lawyers note that the stress of an asylum hearing has been multiplied by the fear of possible immediate detention after judgment. This fear has led to an increase in the number of petitioners who skip their final immigration hearings.

ICE officials stated that they did not know when these policies would be enforced on a national level, or how the steps of the plan would fit together.

16. Four Themes Cited in AAO Decisions on R-1 Religious Worker Visas

The American Immigration Lawyers Association (AILA) has prepared a report that summarizes the January 2004 posting of 415 decisions by the Administrative Appeals Unit (AAO) of the Citizenship and Immigration Services (CIS).

Four themes are apparent throughout the decisions:

1. Satisfaction of the two-year period of job experience must be met as required under the statute.
 - voluntary service will not fulfill this requirement.
 - proper documentation must be produced.
2. The post must be a traditional religious function.
 - if not, required training for the position must be approved by the governing body of the religion and directly relate to this denomination's creed.
3. The church must submit a valid job offer and include the following details:
 - proof that the church is a legitimate organization.
 - confirmation of the petitioner's ability to pay the proffered wage in fulfillment of the requirements of 8 CFR §204.5(g)(2).

4. The religious organization must establish tax-exempt status as required by IRS codes §501(c) (3) and §170(b)(1)(A)(i).

- note: if a case has been denied by the AAO solely because the petitioner was not a “church,” a Motion to Reopen should be filed.

The summary also includes discussion of the decisions (mostly denials) of some specific cases included in the report.

17. CIS Memo Clarifies Adjudication of Special Immigrant Juvenile Petitions

An interoffice memo from William R. Yates, Associate Director for Operations of U.S. Citizenship and Immigration Services (CIS) was posted this week that offers guidance on adjudication of Special Immigrant Juvenile (SIJ) Status Petitions.

This memo defines a “special immigrant juvenile” as only those persons believed to be eligible for long-term foster care based on abuse, neglect, or abandonment. The granting of an SIJ petition confers no Federal Government duty or liability to any state child welfare agency. In addition, any juvenile who changes status through an SIJ classification is able to benefit from lawful permanent residence which includes eligibility to naturalize after five years.

Two other provisions requiring the consent of the Secretary of the DHS were included. The first, *specific consent* (permission granted), to a juvenile court’s jurisdiction over dependency proceedings for a juvenile in DHS custody. The specific consent must be obtained before the juvenile may enter court proceedings; if not, any order issued by the court will be invalidated. The second, *express consent* (request is valid), to the juvenile court’s dependency order serving as a precondition to a grant of SIJ status. CIS officers arbitrating these cases only need to consider if the juvenile court order satisfies the consent requirements.

USCIS encourages the concurrent filing of the Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) and the Form I-485 (Application To Register Permanent Residence or Adjust Status). Listings of records that must be submitted for documentation requirements of SIJ petitions are included on each form.

USCIS urges juvenile courts to include a finding in the court order that evidence has been provided to establish the best interests of the child not to return to his or her home country. If not, an SIJ petition cannot be granted.

SIJ applicants are exempt from the following inadmissibility grounds: provisions prohibiting entry of those likely to become a public charge, those without proper labor certification, those without a proper immigrant visa, humanitarian purposes, family unity, or otherwise in the public interest.

When the adjustment process is complete, SIJ applicants must be under the age of 21. Limited age-out protection, 45 days beyond the applicant’s 21st birthday, is provided under §424(2) of the USAPATRIOT Act.

For more information on any of these issues, contact the Operation and Regulations Developments or the Field Operation offices of the CIS.