

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
2. The ABC'S Of Immigration: Health-Related Grounds Of Inadmissibility
3. Ask Visalaw.com
4. Border and Enforcement News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update
10. Campaign 2004
11. Migration Policy Institute Releases Study on Jobs Held by Immigrants
12. Court to Hear Case of Suspected Enemy Combatants
13. Second Circuit Criticizes Immigration Judge for Ignoring Evidence
14. Visa Restrictions May Cause Ripple Effect on US Economy
15. Government Cracking Down on Old Removal Cases

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1. Openers

Dear Readers:

This week my law partner Lynn Susser and I will join our American Immigration Lawyers Association colleagues from around the country to go to Capitol Hill and advocate on behalf

of immigration to America. There are a lot of important issues on the agenda this year. Among the important ones will certainly be:

- President Bush's immigration proposal
- The DREAM Act
- Problems with religious worker applications
- Health care immigration problems
- The H-1B and H-2B caps
- Continuing service problems at USCIS

Of course there are many more issues on our minds. As immigration lawyers, we're often in a better position to spot problems with the status quo and are able to see the bigger picture when it comes to the shortcomings of our immigration system. And since we usually represent a broad spectrum of the immigrant public, we can address the broad range of issues affecting this population. We look forward to seeing fellow immigration lawyers in DC.

This week we also are running an updated version of our ABCs of Immigration article on health-related grounds of inadmissibility to cover recent USCIS pronouncements on drunk driving, alcoholism and this particular admissibility issue.

We also cover a new report from Carnegie Mellon University warning that limiting access to foreign knowledge workers right now could come back to haunt the US if Europe takes advantage of the situation and becomes the destination of choice for the world's brightest young professionals. The report, of course, raises a notion that is really just common sense. In a globally competitive world, the US can only maintain its lead by either producing the most talented people or bringing them in from abroad. Right now we're jeopardizing both by diverting resources from our educational system and also making it tougher for employers and universities to recruit foreign talent.

In firm news, my partner Lynn Susser has been assisting with the immigration aspects of a very controversial child custody case here in Memphis that is now being covered by the national media. You can read more about the case in a USA Today quoting Lynn at http://www.visalaw.com/news/susserusatoday_22feb04. The case is also covered in this morning's New York Times at www.nytimes.com.

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. ABC'S Of Immigration: Health-Related Grounds Of Inadmissibility

Section 212 of the Immigration and Naturalization Act designates the health-related grounds that render an applicant for a visa, admission, or adjustment of status inadmissible. The medical grounds are determined according to the regulations published by the Department of Health and Human Services and include having communicable diseases,

physical or mental disorders, drug abuse or addiction problems as well as failing to demonstrate vaccination against certain vaccine-preventable diseases.

The following communicable diseases render a person inadmissible:

1. chancroid
2. gonorrhea
3. granuloma inguinale
4. acquired immune deficiency syndrome (HIV/AIDS)
5. Hansen's disease (infectious leprosy)
6. lymphogranuloma venereum
7. infectious state syphilis
8. infectious tuberculosis (TB) (clinically active)

The following vaccinations are required of all immigrant visa and adjustment applicants:

1. mumps
2. measles
3. rubella
4. polio
5. tetanus and diphtheria toxoids
6. pertussis
7. Haemophilus influenzae type b
8. hepatitis B

Note: The Advisory Committee on Immunization Practices may recommend additional vaccinations for the following diseases (though they are not yet required):

9. varicella
10. influenza
11. pneumococcal

Physical or mental disorders which render one inadmissible include the following:

1. Current physical or mental disorders, with harmful behavior associated with the disorder.
2. Past physical or mental disorders with associated harmful behavior that is likely to recur or lead to other harmful behavior.

Harmful behavior is behavior that may pose, or has posed, a threat to the property, safety or welfare of the applicant or others. A person who is mentally retarded is no longer inadmissible unless there is a determination that the applicant is exhibiting or has exhibited in the past, associated harmful behavior.

According to the Secretary of Health and Human Services, alcohol abuse or dependence resulting in alcohol impaired driving may serve as a basis for determining whether an immigrant has a mental disorder associated with harmful behavior. Section 212(a)(1)(A)(iii) of the Immigration and Nationality Act discusses the inadmissibility in cases where an applicant for an immigration benefit has a significant record of alcohol-related driving incidents. According to the Centers for Disease Control and Prevention (CDC), alcohol-impaired driving is a significant health and safety issue that results in over 17,000 deaths, over 500,000 injuries and over \$51 billion in property damages each year.

As a result, Associate Director for Operations for the Department of Homeland Security William R. Yates issued a memorandum on January 16, 2004 requiring that applicants for immigration benefits who have a history of alcohol-related driving incidents be re-examined by a civil surgeon to ensure that they are not inadmissible on health-related grounds.

A re-examination is required by the Department of Homeland Security when the criminal record of an applicant for immigration benefits reveals a significant history of alcohol-related driving incidents. A significant criminal record of alcohol-related driving incidents includes:

1. One or more arrests or convictions for alcohol-related driving (DUI/DWI) while the driver's license was suspended, revoked or restricted at the time of the incident(s).
2. One or more arrests or convictions for alcohol-related driving where personal injury or death resulted from the incident(s).
3. One or more conviction for alcohol-related driving where the conviction was a felony in the jurisdiction where the incident occurred or where a sentence of incarceration was actually imposed.
4. Two or more arrests or convictions for alcohol-related driving with the preceding two years.
5. Three or more arrests or convictions for alcohol-related driving where one arrest or conviction occurred within the preceding two years.

Only applicants with a significant criminal record of alcohol-related driving incidents that were not considered by the civil surgeon during the original medical exam are referred for re-examination. The re-examination would be limited to a mental status evaluation specifically addressing the immigrant's record of alcohol-related driving incidents.

Drug Abuse or Addiction

Drug abuse or addiction applies to the nonmedical use of a psychoactive substance that is part of a pattern of abuse. There is an exception for experimentation. Clinical judgment is used to determine abuse or experimentation when the applicant's medical records indicate past nonmedical use of a psychoactive substance.

Medical Exams

Information about the health of an applicant for a visa is acquired through a medical examination by an authorized civil surgeon who must perform the exam according to the specific guidelines published by the Center for Disease Control and Prevention. An applicant's own admission is not sufficient to uphold a finding of inadmissibility on medical grounds. The determination must be based on the medical examination that is required by certain persons seeking admission into the United States.

Four groups of people are required to get medical examinations under the immigration laws. They include the following:

1. immigrant visa applicants
2. refugees applying for admission under Section 207 of the Act who are not eligible for a waiver
3. adjustment of status applicants (including asylees)
4. nonimmigrants in the following circumstances:
 - i. a consular officer may require an applicant to submit to an examination prior to issuance of a nonimmigrant visa; or

- ii. a USCIS officer at ports-of-entry may require a nonimmigrant (arriving with or without a visa) to submit to a medical examination.
- iii. K or V visa applicants outside the United States must undergo a medical exam as part of the visa application process.
- iv. V visa applicants inside the United States must submit with their application a medical exam report.

An authorized civil surgeon must endorse the Form I-693, Medical Examination of Aliens Seeking Adjustment of Status and an accompanying vaccination supplement. That form can be found on the USCIS web site at www.uscis.gov. To obtain names and telephone numbers of the designated civil surgeons in a particular area, one can call the USCIS National Customer Service Center at 1-800-375-5283. The caller will be asked to provide a zip code and will then have to write down the contact information for the doctor. Many USCIS offices will also distribute the list upon request or post the list at the USCIS office.

Generally, the Form I-693 is normally valid for a period of 1 year from the date it was endorsed by the civil surgeon. The US Citizenship and Immigration Services has taken a relaxed approach in accepting a medical evaluation as valid because it has been taking well over one year to complete the application process. An adjudicating officer may accept a medical exam report that is more than 1 year old if it was initially filed with an adjustment of status application and there is no medical condition noted that would render the applicant inadmissible.

In addition to being signed by a designated civil surgeon, the Form I-693 must be completed legibly in English. The surgeon must clearly indicate that all required tests were performed and the results. The form must be sealed in an envelope by the civil surgeon and must have no evidence of tampering.

The evaluation includes a general physical examination and a mental status evaluation. Applicants 2 years and older must have a tuberculin skin test (TST). A chest X-ray is required only when the reaction to the TST is 5 millimeters or more. Serologic (blood) tests are required of all applicants 15 years of age and older to see if an applicant has syphilis or a human immunodeficiency (HIV) infection. Other tests may be required depending on the applicant's age and/or possible exposure to a particular disease.

Vaccinations

The following people must be vaccinated:

1. adjustment of status and immigrant visa applicants
2. refugees applying for adjustment of status under Section 209 of the Act
3. asylees applying for adjustment under Section 209 of the Act
4. K and V visa applicants outside the United States, but will not be refused admission solely because the requirement has not been met
5. K and V nonimmigrants that adjust their status to lawful permanent resident
6. internationally adopted children within 30 days of admission

Civil surgeons are required to document that the applicant has the necessary vaccinations by including a special supplement form with the I-693 form. The vaccination form is not available on the Internet. However, the Centers for Disease Control and Prevention (CDC) has sent the vaccination supplement directly to the civil surgeons for them to photocopy, fill out on behalf of each applicant, and attach to Form I-693 for submission to USCIS.

When a person is found to be inadmissible for health reasons, it does not definitively prevent the person from being issued a visa or entering the United States. A physical or mental condition can be corrected or one can prove that they do not fall into the categories. Waivers are also available for most of the medical grounds of inadmissibility. See <http://www.visalaw.com/03apr1/2apr103.html> for an article on waivers for health-related grounds of inadmissibility.

3. Ask Visalaw.com

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

Q - My OPT expired on Feb 12, 2004 and my H1 petition got denied on Feb 17, 2004. I know I can stay during the grace period for 60 days—but what if I find employer who can sponsor me during that time and file premium processing on April 1, 2004, am I able to legally stay in the United States between April 12, 2004 until my H1 get approved? Or do I need to go home and come back? I am also planning to appeal my denial- am I able to stay here legally?

A - The answer to your question is not clear yet. In the F-1 regulations, there is a provision that gives USCIS the right to authorize your stay while your H-1b application is pending due to the cap. But that provision needs to be activated by the Department of Homeland Security, and they have not done it yet. So, stay tuned and follow our newsletter. As soon as there is a change, we will announce it.

Q - I'm currently working under an H1B visa and my employer has applied for Labor Certification for my position. I know it's possible to work for a second employer under the H1B visa, but is it possible to have concurrent Labor Certification Applications? My potential second employer has indicated a willingness to apply for Labor Certification.

A - It is possible to have multiple labor certification applications pending, but the petitioning employer must be offering a full time position.

Q - I was on a J-1 visa 5 years ago but then I changed my status to F-1 and I have remained in that status ever since (5 years).

1. Am I still a subject to a 2-year home residency requirement?
2. If my employer sponsors my H-1B visa, will USCIS grant me the permission to change my status to H-1B?

A - Switching to F-1 status does not get rid of the home residency requirement. You either need to get it waived, meet the requirements or show that it does not apply in your case. But note that the 212(e) home residency requirement never expires.

Getting the H-1B change of status is possible, but that is because you are barred from getting an H-1B visa stamp and not H-1B status per se. But this also means that if you leave the country, you will need an H-1B stamp to reenter and would not be able to do this. So you are basically trapped in the US unless you get a waiver. Also, note that the H-1B cap has been hit, so if you are looking for a job with an employer not exempt from the H-1B cap, you would have that problem as well.

Q - Are primary and secondary teachers exempt from cap when applying to H-1B? Our visas expire in July and we don't want to get caught in the middle.

A - No, unfortunately only university teachers would be exempt. However, visa extensions are not normally subject to the cap so if you are already in H-1B status you are probably okay.

Q - I am an F-1 Student. My wife is here in F-2 status. I applied for OPT and got a new I-20 with the OPT information. Does my wife need a new I-20 or can she stay in the US and also travel abroad with the old one?

A - You should ask your DSO to issue a new F-2 dependent I-20 for your wife that matches the dates and the information on your OPT I-20.

Q - I have a question regarding friends of mine. Two parents are H-1B visa holders, working in Michigan. Their child was born in Michigan while they were working under H-1B visas. When their work visas expire, can they be deported? If yes, isn't that in effect deporting a US citizen? Can the parents convert from a work visa to a permanent visa?

A - The child's US citizenship status really will have no bearing on the parents legal status until the child is 21. The child is entitled to stay if the parents want to arrange for someone to care for him or her. Harsh, but that's the rule. The parents are going to have to pursue the green card on their own and not through the child.

4. Border and Enforcement News

Senators Bob Graham and Bill Nelson stated last week that the Bush administration is failing to take stronger measures to prevent an influx of Haitian refugees from entering the United States. The Democratic Senators from Florida are concerned with the possibility of an immediate influx of Haitian refugees fleeing to the US as a result of the recent rebellion in Haiti. According to the Coast Guard, 149 Haitians were intercepted at sea in February.

The Bush administration met with Canada's foreign minister and leaders of the Caribbean Community last week. Canada and France offered to send police officers to Haiti once peace is restored.

In response to concerns by the US Chamber of Commerce and other business groups, a senior Homeland Security official defended the Department of Homeland Security's new biometric border identification scheme.

The new system, called US-VISIT, requires visa holders to be digitally photographed and fingerprinted at ports of entry and compared to watch lists of terrorists and other criminals. The system was only implemented in the nation's airports and seaports January 5, but businesses worry about the implementation of the project at the 50 busiest land crossings.

Stewart Verdery, Assistant Secretary of the Border and Transportation Security Directorate of the Department of Homeland Security, told an audience at the Heritage Foundation in Washington that the DHS is looking into new technology measures in an attempt to keep wait times down for travelers.

Park Rangers in the Huachuca Mountains in the Coronado National Memorial in Arizona have recently been faced with an increase in armed drug smugglers and illegal immigrants. In the past two weeks, federal officials have fired three times at suspects, including once where a suspected smuggler pulled a gun on a ranger.

The Rangers argue that they are understaffed and need more rangers to combat the sudden rise in armed drug smugglers and illegal border crossers.

A group of Phoenix volunteers have followed the lead of Humane Borders Inc. in providing water stations in the desert at the Arizona-Mexico border. The non-profit volunteers have been trying to recruit more volunteers in an attempt to double the number of water stations from last year's 45 to 90.

Humane Borders gave the Phoenix group a flatbed pickup truck with a 350-gallon water tank, which in turn uses the truck to fill two water stations twice a month. Humane Borders began their project in March 2001 in response to the increase in migrant deaths in the hot Arizona desert.

Critics of the volunteers say that by increasing the number of water stations in the desert, they are actually encouraging more illegal immigrants to cross the US-Mexico border.

5. News From The Courts

Padash v. INS
Ninth Circuit Court of Appeals
No. 02-70439

Padash sought asylum and withholding of deportation to India or Iran. He stated that his father disappeared while he and his mother were in India and they came to the United States shortly thereafter. His mother then disappeared shortly after arriving in the US in 1992. He stayed with relatives until he was charged with overstaying his temporary visa in 1995. The IJ found Padash credible, but denied his application holding that he has not

established past persecution or a well-founded fear of persecution if returned to India or Iran.

In 1984, a fourth preference family-based visa petition was filed by Padash's uncle, who is a United States citizen. Padash was included as a derivative beneficiary on this petition. The INS approved the petition in 1984 and transferred it to the American Embassy in Bombay to await issuance of the permanent resident visa.

While Padash's appeal was pending with the BIA in 1996, the permanent resident visa became available. He filed a motion to reopen claiming that he was eligible for adjustment of status. He was under 21 years of age in 1996, thus making him eligible for immediate issuance of a visa.

The BIA remanded the case, but the IJ did not hear the case for another year. The IJ decided that Padash was no longer eligible for permanent residency because he had turned 21 before the IJ heard the case. The BIA affirmed. The Court affirmed the denial of his asylum application and withholding of deportation, holding that the Padash did fail to establish past persecution on the account of his religion.

However, the Court reversed the BIA's ruling on the adjustment of status claim. The Court found that Padash met all three criteria of the Child Status Protection Act (CSPA), which was enacted following the IJ's decision. The Court ruled that "final determination" in the statute means final determination of the matter and not final determination by the agency involved. Therefore, since the CSPA applies to Padash, the issue was remanded for determination by the BIA in consideration of the CSPA.

Hakobyan v. Ashcroft
Ninth Circuit Court of Appeals
2004 US App. LEXIS 1235

The Appellant, Knarik Hakobyan, a native of Armenia, petitioned for review of the decision of the Board of Immigration Appeals denying her application for asylum, withholding of deportation, and relief under the Convention Against Torture. The Ninth Circuit Court of Appeals granted her petition and remanded the case back for further proceedings.

The Appellant testified that although she was not a member of a political party in Armenia, she was singled out for persecution after she refused to kill one of her patients who was a member of an opposition party. The Court found that her testimony was sufficient to establish a well-founded fear of persecution on the basis of an imputed political belief.

The Court also held that the IJ's adverse credibility determination was not supported by evidence. In so finding, the court stated that whether the IJ's stated that minor inconsistencies in the Appellant's testimony are not sufficient for an adverse credibility determination. The Court further stated that pursuant to *Shah v. INS*, "Speculation and conjecture cannot form the basis of an adverse credibility finding, which must instead be based on substantial evidence."

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

California (02/20/2004): <http://www.visalaw.com/california.html>

Missouri (02/20/2004): <http://www.visalaw.com/missouri.html>

Vermont (02/20/2004): <http://www.visalaw.com/vermont.html>

7. News Bytes

In 2003, the State Department issued almost 79,000 H-2B visas – even though there is a yearly limit of 66,000 H-2B visas. Neither the State Department nor USCIS, who keeps track of the number of approved H-2B petitions, knows who is to blame. Once USCIS approves an H-2B petition, it is passed on to the State Department for final processing.

H-2B visas are used to bring unskilled, non-farm workers into the US. These unskilled workers usually work in landscaping, hospitality, forestry and construction.

New York Yankees pitcher Jose Contreras has hired an immigration attorney in his attempt to bring his wife and two daughters out of Cuba. Contreras has accused the Cuban government of punishing his family for his defection by not issuing them “white cards” – which would allow them to leave Cuba.

The Department of Labor sent its final PERM regulation to the Office of Budget Management (OMB). The OMB has 90 days to review the regulation and can choose to either return it to the Labor Department for more work or send it to be published in the Federal Register. The Labor Department has stated that the new regulation will take effect 120 days after publication in the Federal Register.

The Department of Homeland Security (DHS) has issued an informational sheet highlighting its priorities for the year. Priority number six is to improve customer service for immigrants: “TO reduce the backlog of immigration service applications, the Department of Homeland Security will re-engineer existing systems to substantially decrease processing times and create fast track options for the bulk of applicants. The department is creating a series of new pilot programs aimed at a systematic deduction in processing times and paper flow. By May 2004, three new pilot programs will be in operation around the country. Lessons learned from these programs will be incorporated into a more wide scale overhaul of the process.”

Although there is disagreement between the US and Brazil over the US-VISIT program, other countries have chosen not to retaliate against the program. While some countries have imposed visa fees that are higher than the fees two years ago, spokesman for the Bureau of Consular Affairs at the Department of State, Stuart Patt, stated that the Department has not seen “any pattern of retaliation or response.”

Countries who have made changes to their regulations for Americans include

China – stopped accepting visa requests by mail on May 1, 2003 and visa applicants must now apply in person; raised the \$30 processing fee to \$50; there is still no visa required for Hong Kong.

Chile – now charges a reciprocity fee of \$100 for American visitors, however, can now be paid by credit card instead of only cash.

Russia – raised its lowest single-entry fee for Americans from \$70 to \$100; men ages 16 to 45 must complete a new form inquiring about their military service.

Thailand – increased tourist visa fees for all visitors from \$15 to \$25.

One of the undocumented immigrants who were arrested after the raids in the Wal-Mart stores has been granted a temporary reprieve from deportation. This will allow him to testify in a federal criminal investigation into Wal-Mart's labor practices. While prosecutors are continuing to gather evidence, federal officials are attempting to protect others from deportation as well.

8. International Roundup

The Magistrates' Court in Brunei has sentenced a 39-year-old Thai national to ten months in prison for breaking the Immigration Act. Wichian Kladkham came to Brunei as laborer in 1989 and stayed illegally for a total of 7 years and three months until he was arrested for overstaying his visa.

The Japanese Justice Ministry's Immigration Bureau has added a new section on its website that allows people to submit information on undocumented foreigners in a government effort to halve the number of illegal foreign residents within five years. Ministry spokesmen said the new system makes it easier for Japanese citizens to report information on undocumented foreigners. Spokesmen also stated that the ministry has no intention of encouraging more people to report on foreign residents or to cause alarm about the presence of illegal foreigners.

In the Dominican Republic, migration director Miguel Vasquez has placed a temporary freeze on repatriations of illegal Haitian migrants until the current rebellion in Haiti ends. Normally, up to 4,000 Haitians are sent back to their country every month.

It has been reported that the Haitian border town of Ouanaminthe is now under the control of rebel forces, who burned down the police station. Dominican authorities have closed the border at Dajabon, the border town next to Ouanaminthe to prevent a stampede of refugees.

In Saudi Arabia, the majority of deportees are Muslims who come before Ramadan, overstay till Haj and then want to return home either on their own, are caught by authorities, or surrender voluntarily for a flight home, for which they have to pay themselves. Many choose this last option because this is the only way they can afford to go on Haj.

Airlines who fly through Saudi Arabia have said that a significant amount of their business comes from deportees. However, this business is decreasing as the government makes new efforts to reduce overstaying by strictly implementing the new Haj and Umrah regulations. Umrah overstayers have about 45 days following Haj to return on their own, after which they are deported.

Jeremy Hinzaman, a US soldier refusing to fight in Iraq, claimed refugee status in Canada. He fled Fort Bragg in North Carolina on January 2, 2004, with his wife and 18-month-old son, to Toronto two days before his regiment was scheduled to leave for Iraq.

Mr. Hinzman is believed to be the only US soldier seeking refugee status. However, pacifist organizations in the US say the number of conscientious objectors in the US military is growing and some are looking to escape active duty by fleeing to Canada, where many soldiers took refuge during the Vietnam War.

Mr. Hinzman's lawyer argues that the US army is "forcing him to participate in a war that is unlawful according to international law." He stated that if Mr. Hinzman is denied refugee status, they will look at other options, which include requesting that he remain in Canada on humanitarian grounds.

9. Legislative Update

[S.2128](#): A bill to define the term "natural born Citizen" as used in the Constitution of the United States to establish eligibility for the Office of President.

Sponsor: Sen Nickles, Don [OK] (introduced 2/25/2004)

Committees: Senate Judiciary

Latest Major Action: 2/25/2004 Referred to Senate committee.

Status: Read twice and referred to the Committee on the Judiciary.

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

10. Campaign 2004

GOP state Representative Randy Graf is considering running for US congress against Representative Jim Kolbe because of Kolbe's leading role in creating an immigration reform bill that would allow undocumented immigrants to work in the US. Graf is a supporter of a ballot initiative to deny services to illegal immigrants and has said that the immigration laws that are currently on the books are not being enforced.

California Governor Arnold Schwarzenegger is supporting a constitutional amendment to allow foreign-born citizens to run for president. He told the NBC's Meet the Press last week that Henry Kissinger and Madeleine Albright are both examples of foreign-born people that made significant contributions to the country while serving as part of the US government.

After speaking out against President Bush's guest worker plan and a new proposal similar to 1994's anti-illegal immigrant measure, Proposition 187, a Latino political group endorsed Senator Barbara Boxer's reelection campaign for the US Senate. It is Boxer's position that Bush's guest worker proposal is flawed and would only reward lawbreakers. Four major Republican candidates hoping to defeat Boxer all agree to disagree with her views on granting benefits to illegal immigrants and her support of same-sex marriages.

Former Utah state representative Matt Throckmorton announced last week that he would run against fellow Republican Chris Cannon in Utah's third Congressional District. Throckmorton has said that he will base his campaign around immigration reform, the economy, education and the No Child Left Behind Act. Throckmorton supports legal immigration but is against illegal entry into the US.

A main focus of discussion during a forum for Republican candidates for the second Congressional District in Texas was President Bush's proposed immigration policy. Most believed that the plan is not strict enough for Texas, and none of the candidates support Bush's plan because they say it encourages illegal immigration. Although the candidates did acknowledge that illegal immigrants do provide cheap labor, the strain it places on social services, education and health are not worth the savings. Several candidates offered solutions such as improving the economy in Mexico and modifying the plan to ensure against amnesty. One of the candidates, John Nickell, is in favor of dismissing the plan.

Undocumented immigrants driving while unlicensed is a focus of the two candidates seeking the Democratic nomination for the forty-third Illinois House seat, whose jurisdiction is mostly over the Elgin area. Both agree that this is a problem, but they differ on the solution. Candidate Michael Noland is in favor of acknowledging that undocumented immigrants are an important labor source and should be granted Illinois driver's licenses. Candidate Daniel Rich contends that the real issue is making the process of becoming a US citizen more effective, and vows to consider a proposal for licenses for undocumented immigrants, but wouldn't guarantee a vote either way. Of the approximately 32,000 Latinos in Elgin, 15 percent are believed to be in the country illegally.

William Bodell, a candidate for California State Representative in the twenty-ninth district, is building his campaign around reforming legal and illegal immigration, as well as border control. He intends to restrain immigration, increase the nation's military and put barriers on trade. His district includes Armenian, Latino and Korean populations.

If elected, Howard Kaloogian, a Californian Republican candidate for the US Senate, says he will introduce a proposal under which illegal immigrants would be barred from transferring money to foreign countries. His campaign revolves around the issue of undocumented immigrants. Specifically, Kaloogian opposes the issuance of driver's licenses and government services for them. He has said that immigrants have transferred more than \$30 billion last year to Mexico and elsewhere in Latin America, mainly using wire transfers. If the proposal passed, he said it would put another barrier in the way for undocumented workers to send money home.

Of the two Republican candidates running for the thirty-fifth Senate District seat in Orange County, California, Assemblyman John Campbell has endorsements from both Governor Schwarzenegger and from the outgoing seat holder, who has to leave his post due to term limits. Campbell has received criticism from his opponent for having a soft approach to illegal immigration. Campbell defended his approach by explaining that he voted for Mexican Consulate identification cards because their use was supported by law enforcement officials and he voted to allow illegal immigrants to pay in-state tuition because it helps a very limited group of individuals who have lived in California for at least three years, are California high school graduates and have applied for legal status.

11. Migration Policy Institute Releases Study on Jobs Held by Immigrants

According to the US census bureau, 14 percent of the civilian labor force in the US is foreign born. The Migration Policy Institute has released information on the occupation and industry of foreign-born workers from the 2002 Current Population Survey.

Currently, there are 18.9 million foreign-born workers in the US, with over one-third from Central America. Most of the Central Americans hail from Mexico. Over half of the Central American foreign-born workers are operators, fabricators and laborers or in service occupations.

Of all foreign-born workers, 19 percent work in professional industries, such as health care, education and other professional services, while another 19 percent work in retail trade. Central American workers, however, show a different pattern of employment, because of the 7.1 million employed workers from Central America, 21 percent work in retail trade and only 9 percent work in professional related industries.

By comparison, the 116.2 million native US workers mostly work in managerial, professional and technical, sales, and administrative support occupations.

12. Court to Hear Case of Suspected Enemy Combatants

On February 20, 2004, the Supreme Court agreed to decide whether the Constitution forbids the holding of US citizens indefinitely and without access to lawyers or courts because they are suspected of being "enemy combatants."

Jose Padilla, an American citizen and newly converted Muslim, was arrested in his home after returning from a trip to Pakistan. According to the government, Padilla allegedly was part of a plot to detonate a radiological "dirty bomb" in the US. Padilla's case is accompanied by the case of Yaser Esam Hamdi, another US citizen accused of being an enemy combatant. The Court will hear both cases simultaneously and thereby address the rights of all US citizens captured in the US and abroad. Both cases are expected to be heard in April and a ruling is due in the summer.

The Court will also hear the case of foreign-born terrorist suspects held indefinitely in Guantanamo Bay, Cuba. That case questions whether the 650 prisoners in Guantanamo can challenge their detention and treatment in US courts. A ruling in the case is also due by the summer.

13. Second Circuit Criticizes Immigration Judge for Ignoring Evidence

In the case of a Roman Catholic asylee from China, the Second Circuit Court of Appeals has ruled that the Immigration Judge (IJ) was mistaken in his ruling. Tian-Yong Chen fled to the US in 1995 because of religious persecution.

At his 1997 deportation hearing, Chen testified that he had been arrested in China in 1994 for soliciting funds for an unsanctioned Roman Catholic church in his village in the province of Fujian. He claimed he had been interrogated, rebuked and beaten while in custody. After his release, Chen said he continued to raise funds for the church and also wrote and distributed pamphlets about Roman Catholicism. He testified that he fled China after hearing the police were looking to arrest him again.

At the hearing, the IJ allowed a 1995 State Department report in human rights in China to be admitted into evidence. The report stated that while the Chinese government was concerned about the rapid growth of unsanctioned Christian churches, the government generally targeted religious leaders and priests rather than individual worshippers.

The IJ denied Chen asylum for failing to establish past persecution or a well-founded fear of future persecution. The Board of Immigration Appeals (BIA) upheld the IJ's decision, stating that Chen had not testified that he had been beaten by Chinese authorities and citing the State Department report as proof that religious persecution in China was aimed at religious leaders.

The Second Circuit criticized immigration authorities for ignoring Chen's claim of physical abuse by police in China. The court decided that the BIA might have reached a different conclusion about Chen's persecution if it had considered evidence that he had been beaten. The Court vacated the decision and remanded the case for a new hearing with the instruction that the immigration judge not place "excessive reliance" on State Department reports, since these reports are "sometimes skewed toward governing administration's foreign policy goals and concerns." The Court also noted that Chen's participation in his church in China could make him regarded as a leader.

14. Visa Restrictions May Cause Ripple Effect on US Economy

A report released recently by researchers at Carnegie Mellon University's Software Industry Center indicates that the United States' efforts to restrict immigration may hamper the economy, as overseas scientists and technologists travel to other countries to develop new technology.

The report, "Europe in the Creative Age," says that the worldwide perception of the United States as unilaterally aggressive and unwelcoming of foreign-born people is pushing individuals to seek opportunities in other nations. With this shift, European nations, which are considered more tolerant, will be in a position to benefit from innovation and economic growth.

The US has long been considered the unchallenged leader in attracting international talent. A study at the University of California shows that new immigrants founded about one-third of all high-tech businesses created in Silicon Valley in the 1990s. However, statistics show that visas for foreign-born workers in science and technology fell by an astonishing 55% between 2001 and 2002.

15. Government Cracking Down on Old Removal Cases

Critics of the Alien Absconder Apprehension Initiative claim the program is tearing apart families as the government is enforcing old removal orders. The crackdown began in 2002 against immigrants from predominantly Muslim countries, and last June, incorporated those convicted of crimes. Recently, the Initiative has shifted to anyone who has violated immigration rules.

Many of the immigrants that are facing removal did not realize that there was an order of removal pending against them. A number of individuals are being arrested and deported years after the order of removal was finalized, leaving their families scattered around the globe.

According to a government study of the issue, approximately two-thirds of orders were issued in absentia when the immigrant failed to show up for a hearing. While some of the immigrants fled the country, a majority of the files were simply hampered by wrong addresses, backlog, and other problematic data, leaving the former INS plagued with incidents of failing to notify immigrants of hearings and of removal orders.

The crackdown is intended to improve the immigration department's track record of deporting only 13 percent of those who were not detained when they were ordered removed. Immigration and Customs Enforcement stated that the operation was simply an overdue enforcement of existing laws.

Once an immigrant has a final order of removal on file, they are not entitled to a hearing or a bond because they are deemed to have already exhausted their due process rights by not being present at the hearing.