

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

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1. Openers

Dear Readers:

I'm starting to conclude that Eduardo Aguirre is a different kind of INS/USCIS director. In the past, USCIS directors apologized for poor processing times, made lofty promises about improvements and then presided over slower and slower service.

Certainly, as in the past, Aguirre and the Administration have promised improved times. In fact, a six-month turnaround time on all applications is the specific promise. But will the agency deliver? The first hint that the USCIS is really serious about delivering on this promise was delivered this week with the announcement of a new program to complete processing of adjustment applications at the Dallas USCIS District Office within 90 days. This, of course, is lightning fast compared to the years it takes to process these applications elsewhere. So fast is this time that it won't even be necessary to issue Employment Authorization Documents or Advance Parole travel documents since these are designed to make life easier when applications drag on.

Everyone wins here. The USCIS wins because it will cut the overall workload it handles by not having to handle work and travel documents. And, of course, the customer receives expeditious service. Let's hope this pilot program is successful and is quickly extended nationwide. This week we cover the pilot program in our ABCs of Immigration article.

In firm news, Siskind Susser attorneys have been on the lecture circuit. Arda Beskardes spoke at a training program for Tennessee foreign student advisors. And I spoke at the Member Bar Association's Champion Series. I was selected as a "Champion of Marketing" mainly due to interest in our firm's Internet success story. Believe it or not, our web site will turn ten years old in June and my talk was largely an evaluation of what we've learned in a decade.

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: I-485 Filing Pilot Program

The Dallas District of USCIS has announced that on May 3, 2004, it will launch a pilot project to determine whether adjustment of status applications (using Form I-485) can be adjudicated within 90 days. The pilot program will track different aspects of the adjudication process to determine its strengths and weaknesses.

We normally don't cover local office issues in our ABCs column, but because this program is a pilot program that could be replicated around the country, we felt that readers would be interested in seeing how this will work.

NOTE: Acceptance into the pilot program does not mean that your application has been approved. Applicants must meet all of the eligibility requirements for permanent residency. If your case cannot be completed within ninety days, you will be sent further instructions.

Who qualifies for the program?

All family-based applicants, Diversity Visa lottery winners, Special Immigrant Juveniles and any other Special Immigrants with an approved Form I-360 may qualify for the program.

How do I apply for the program?

The following documents are needed to apply for the program:

- Form I-485, Application to Register Permanent Residence or Adjust Status with supporting documentation
- Form I-130, Petition for Alien Relative with supporting documentation for family-based applicants
- State Department notification for Diversity Lottery recipients with supporting documentation
- Medical exam (Form I-693) and Supplemental Form (I-693A)
- Affidavit of Support (Form I-864) for family-based applicants and supporting documentation
- 2 photographs
- Form I-129F approval notice, if applicable

As each form requires specific supporting documentation, you should review the individual forms to see what needs to be included. Additionally, your interview notice will include a list of the specific documents you need to bring with you. You **MUST** have all of the required documents in order to be interviewed. **NOTE:** You should bring in originals and photocopies of all documents as original documents will not be returned if there are no copies.

Where can I find the forms?

All forms can be found online at www.uscis.gov, except for the medical exam forms, which are provided by the doctor who conducts the examination.

Which doctors are authorized to conduct medical exams for immigration purposes?

A list of approved physicians for the Dallas District is available at <http://uscis.gov/graphics/exec/cs/index.asp>.

How does one get an interview appointment?

All appointments will be scheduled through INFOPASS, the new online appointment request system currently in use in the Miami office. Applicants will receive electronic appointment notices, which must be brought to the USCIS office located at 3010 North Stemmons Freeway in Dallas, Texas. Both the applicant and petitioner (if family-based) must report to the USCIS office no earlier than thirty minutes prior to the appointment time.

What will occur during the interview?

If all the required documents have been brought, the case will be forwarded to a district adjudications officer who will conduct the interview. If the officer sees that a case cannot be completed within ninety days, he or she will provide instructions for filing for employment and travel authorization.

If all required documents have not been brought to the interview, the applicant will have several options for rescheduling the interview.

What happens after the interview?

Once the interview is complete, the case will be sent to the National Benefits Center (NBC) in Missouri for processing. The NBC will assign a case number (or "A" number) to the applicant. The NBC will send instructions to schedule a fingerprinting appointment.

Where does one get their fingerprints taken?

There are four Applications Support Centers in the Dallas district. To find the support center nearest you, go to <http://uscis.gov/graphics/fieldoffices/ascs/asc7.htm#texas>.

Please ensure that you have the Form I-797 fingerprint notice and two forms of identification when you go to your fingerprint appointment.

When does one become a Lawful Permanent Resident?

If you meet all of the eligibility requirements, including the security checks, you will be sent an approval notice to your e-mail of home mailing address on or after the 70th day of your interview. The notice will instruct you to come to the district office to have your valid passport stamped until your permanent resident card arrives via mail.

What happens if a case is not completed within ninety days?

If your case is not completed by the 70th day after your interview, you will be sent a notice to you email or mailing address stating that you have the option of filing for employment and/or travel authorization. The notice will also include an appointment date and time to process the employment and/or travel applications. If the district office cannot complete the case by the appointment date, the applicant will receive an approval notice or a stamp in a valid passport as proof of permanent residence.

An applicant may file for employment and/or travel authorization at any point during the processing of a case if an emergency arises.

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 - I have a question about green card interview. My sister has recently married her college US boyfriend, and will have to undergo the green card interview. She is very nervous, based on the horror stories she has heard about the grilling process. Can you give some insight about the type of questions she might face?

A - The questions will largely focus on whether the marriage is bona fide or not. Based on our experience, the following factors will make an interview more difficult:

- the immigrant spouse was out of status at the time of the marriage
- the courtship was very short
- either of the spouses have been married more than once before
- the couple is not of the same ethnic background (completely inappropriate and appalling, of course, but reality)
- the US citizen's family is not aware of and supporting the marriage
- the wedding was attended by virtually no one and was performed in front of a judge
- the couple has not merged their finances
- the couple is not yet living together

You should suggest that the couple at least consult an immigration lawyer who can then size up the facts and offer an assessment on the difficulties the couple can expect to encounter.

Q - I am a Korean international student studying at in the US. I would like to know if it is possible to renew my F-1 visa in the US. The expiration date of my visa is 7/18/2004 while the expiration date of my passport is 12/16/2004. I am a transfer student pursuing a PhD, so I have a new I-20 (SEVIS). The approximate complete study date is May, 2009.

If I can renew my visa in US, I would like to know where I should go and what documents I need to do so. Also, I would like to know how long it would take for me to actually receive a renewed visa in hand.

A - It is not possible to renew a F-1 visa in the US and you will have to do it while you're in Korea. There are only a handful of visa types that can be renewed in the US and F-1 is not included in that list. Go to <http://www.travel.state.gov/revals.html> for more information.

Q - I have a green card that was renewed last year after I submitted application. My wife is a US citizen. I have and still continue to work abroad in Japan since 1992. I used to file tax returns initially but was advised that it is not needed since I have no earned income in US. My last filing was in 1995 or so. I have an online stock brokerage account in the US which I have been using actively since 2001...prior to that, held equities w/ major brokerage firm. Filed capital gains in Japan. I had a US VISA credit card years ago but terminated it years ago. Last month, I started a new AMEX credit card that I will start using. I travel for business and pleasure 2-3 times per year in and out of the US (mainland, Guam, Saipan). I thought by visiting US territory every 6 months, I am safe to hold my green card. I am now uncertain after reading your web site. What do you think about my status?

A - I would, quite frankly, be concerned about your green card status. One of these days you are likely to be stopped at the border and given problems. It is very possible you can be found to have abandoned your permanent residency. In short, you need to document that you make the US your primary place of residence and that when you are out for extended periods of time, it is for good reason and that it does not show your intentions to no longer reside permanently in the US. The fact that your wife is a US citizen helps. But you may find that the main reason it is useful is because you'll be stuck applying for permanent residency again. There are a lot of variables here depending on the facts of your situation and you should definitely consider speaking with an immigration lawyer to assess your case.

Q - I have an H-1 visa stamp from Mexico for a previous research employer, Now I changed type of job and employer and have new H-1 approval until 2004 June, but will soon be getting extension of stay until 2006.

My H-1 visa stamp will expire in June 2004, can I send it for revalidation to dept of state for up to 1-year after the old H-1 visa stamp (from a different employer, different job category) expires, to get New H-1 for the current employer?

I know you can send for visa revalidation even after h-1 stamp visa expires for up to 1-year, but I thought if it is a H-1 stamp for the same employer that you want to extend.

Is it still ok, if you had visa stamp for a different employer in the past and now request stamp for a new employer and job after that previous employer H-1 stamp expired?

A - As long as you are in the 60-day prior to one year after period for the expiration of the visa stamp, you can use visa revalidation even if you change employers. Our sources tell us that the visa revalidation program is in danger and may be killed soon. It is already taking many months to clear visas so we're advising clients to be careful about using the visa revalidation process to extend visas if there is any possible need to travel in the near term.

Q - I got my GC about 2.5 years back. I am now considering an offer based outside the country. The company is based here in US with operations outside (India). The company is publicly traded in US and I will be paid in foreign currency during the tenure. I plan to file for the Re-entry permit and N-470 to keep the GC going and eventually go for Citizenship.

Will I be eligible to apply for N-470 (to retain continuity of residency, while being outside). Is it true that one of the requirements here is, 1 year of continuous stay in US without any break, after acquiring the GC? What documentation is required to be produced for N-470.

A - If you are eligible under Section 316(b) or 317 of the Immigration and Nationality Act to file an N-470 application to preserve your residence for purposes of applying for naturalization after going abroad for an extended period of time, you do have to have a one year continuous period of residency in the US after having gotten your green card. There is no official list of documents that would be the right ones to submit, but I would generally suggest sending your tax return for the years in question, pay stubs, bank statements, a letter from your employer verifying you were here, a complete copy of your passport, credit card statements, utility bills, etc.

4. Border and Enforcement News

On Monday, March 22, Tyson Foods completed its internal audit of its Dakota City plant. The audit uncovered another 100 names of immigrants that may have been working illegally. Tyson Foods has investigated a total of 350 immigrants since the audit began in March. The employees must produce valid work documentation in order to return to work.

According to Tyson, the loss of undocumented workers has lowered efficiency and temporarily hurt the company. Tyson conducts at least two audits annually at its plants and one annual corporate audit.

Rafael Antonio Peralta, Honduran national who has a temporary residence permit received a letter in early March ordering him to surrender at the Miami immigration building on April 5 for deportation or expulsion. On March 19, federal immigration officials at the U.S. Immigration and Customs Enforcement agency admitted that the letter was a mistake and would be corrected.

5. News From The Courts

Ememe v. Ashcroft
US Court of Appeals for the 7th Circuit
2004 U.S. App. LEXIS 2312

The Petitioner, a native of Ethiopia, sought review of an immigration judge's order denying her application for asylum and withholding of removal. The petitioner claimed that she was raped and tortured during an imprisonment in Ethiopia. Her imprisonment was based upon her ethnicity. Her mother, father and brother were killed by the same group that arrested her. The petitioner was able to flee to Italy, where she worked as a house servant for seven years before traveling to the United States.

Upon arrival in the United States, the INS officers interviewed her with the aid of an Italian translator. The officers were unable to obtain an interpreter who spoke the petitioner's native language of Amharic. When she appeared before the immigration judge, she explained that she was unable to fully explain herself in Italian because it was much easier to express her feelings in her native language.

The immigration judge rejected her testimony because he found that it was not supported by corroborating evidence and because it was inconsistent with the information that she had given at her credible fear interview, which was conducted with the Italian translator. However, her testimony before the IJ was aided by a translator of Amharic. The IJ did not consider the petitioner's ability to comprehend the questions posed at the credible fear interview. The BIA affirmed without opinion.

The Court determined that the petitioner's Italian language skills were crucial to the disposition of her claims. The Court reviewed the testimony that was offered to determine that there were important matters skipped in the interview. When the petitioner responded in an unclear fashion, the interviewer simply moved on to the next question without attempting to clarify the statement. The Court held that absent an evaluation of the petitioner's language skills, the testimonial inconsistencies alone did not provide adequate support for the immigration judge's conclusion that Ememe's testimony was not credible. The matter was remanded for a determination of the petitioner's ability to accurately communicate in Italian at her credible fear interview.

Rai v. Ashcroft
Ninth Circuit Court of Appeals
2004 U.S. App. LEXIS 2982

Hakumat Singh Rai, a Sikh from the Punjab region of India, petitioned for review of an order of the Board of Immigration Appeals which affirmed the IJ's decision to deny his application for asylum.

The Appellant's asylum claim rests on his assertion that he was a victim of past persecution in India on account of his religion and political opinion. The IJ did not make a specific finding that the Petitioner was not a credible witness, and the BIA summarily affirmed the IJ without opinion.

The Ninth Circuit held that as a result of either the IJ or BIA's failure to make an express finding regarding the Appellant's credibility, which was a determinative issue in the denial of his application for asylum, the case must be remanded to the IJ to make an express credibility determination.

6. Government Processing Times

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

California (03/22/2004): <http://www.visalaw.com/california.html>

Missouri (03/22/2004): <http://www.visalaw.com/missouri.html>

Vermont (03/22/2004): <http://www.visalaw.com/vermont.html>

7. News Bytes

On March 17, 2004, US Border patrol agents arrested a Mexican illegal immigrant driving a van painted and disguised as a FedEx vehicle. According to the agents, a white Ford van with the words "FedEx" painted on its side drove past the agents who noticed that the lettering was poorly painted. They pulled the van to the side of the road where they arrested the 32-year-old driver.

The Texas Service Center has a new fax number effective April 15, 2004. Only requests to expedite applications and petitions faxed to 214-962-2632 will be accepted.

8. International Roundup

Mexico has opened a second border facility in Mexicali to receive Mexican minors repatriated from the US. The facility will offer psychological, legal and social-worker support to help the minors during the ordeal of being returned to Mexico. Officials say these facilities help the Desarrollo Integral de la Familia (Family Development, or DIF) get an exact count of how many minors are being repatriated.

The oldest British immigrant to Israel, 100-year-old Simon Clyne, arrived in Israel on March 18, 2004. Clyne left his London old-age home because of his "great attachment to Israel."

On March 19, the Belgian police arrested the star striker of the Flemish soccer club, Sint Truiden, for alleged people trafficking. Truiden is suspected of smuggling fellow Rwandans into Belgium by claiming that they were members of his family.

The Saudi Arabian Passports Department announced that Saudi passports issued before 2002 are now invalid everywhere. The new electronically readable passports, which were first introduced two years ago, will continue to be issued free of charge unless the old passport has already expired. Visas in the old passports are still valid, but travelers will have to present both passports.

9. Legislative Update

[H.R.3998](#): To expand au pair exchange visitor programs to include the provision of in-home independent living services for adults with disabilities, and for other purposes.

Sponsor: Rep Cooper, Jim [TN-5] (introduced 3/18/2004)

Committees: House International Relations

Latest Major Action: 3/18/2004 Referred to House committee.

Status: Referred to the House Committee on International Relations.

[H.R.4011](#): To promote human rights and freedom in the Democratic People's Republic of Korea, and for other purposes.

Sponsor: Rep Leach, James A. [IA-2] (introduced 3/23/2004)

Committees: House International Relations; House Judiciary

Latest Major Action: 3/23/2004 Referred to House committee.

Status: Referred to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

[H.R.4018](#): To amend the Immigration and Nationality Act to assure that immigrants do not have to wait longer for an immigrant visa as a result of a reclassification from family second preference to family first preference because of the naturalization of a parent or spouse.

Sponsor: Rep Case, Ed [HI-2] (introduced 3/23/2004)

Committees: House Judiciary

Latest Major Action: 3/23/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

California legislatures are faced with three new laws that propose to combat immigration consultant fraud. One bill would prohibit consultants from giving legal advice. Another bill would make it easier for local district attorneys to shut down fraudulent operations. The third bill would help law enforcement officers track down the consultants that break laws.

Consultant fraud has become a large problem in California, where fraud has cost victims large amounts of money, their personal documents such as birth certificates or passports, and even deportation in some cases. California has passed a series of laws in the past 10 years in an attempt to combat the problem.

Senator John McCain spoke before the Senate Foreign Relations Committee regarding several immigration issues on March 23, 2004. The Senator discussed the rising rate of illegal immigrant deaths through the U.S.-Mexico border. He discussed the improbability of sealing all of the US borders against illegal immigration.

The Senator also stressed the immediate need for comprehensive immigration reform that addresses current undocumented immigrants, as well as future workers who want to come to the US to work.

Congress is working on several bills that would implement an 'emergency fix' to the H-2B visa shortage. In the Senate, two draft bills are being circulated. Senator Saxby Chambliss (R-GA) and Senator Orrin Hatch (R-UT) circulated a bill on March 25, 2004 that would allow employees who have worked for the same employer for either of the past two years to return to that employer and not be counted against the cap. The second Senate bill, which has bipartisan support but no lead sponsor as of yet, would increase the H-2B cap by 40,000 for this fiscal year.

In the House, a bill was introduced by Representative Bob Goodlatte (R-VA) on March 25, 2004, and more House bills are expected to be introduced soon. The Goodlatte bill would allow employers to get the same number of H-2B employees they received last year.

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

Republican 68th Assembly District candidate Van Tran could be the highest-ranking Vietnamese American elected official in the United States if he is elected in California.

UC Irvine political science professor Mark Petracca told The LA Times that as a political group, Asian Americans don't have particularly high voter participation rates. As a result, Tran has recently given interviews to the BBC, Radio Free Asia, and the Voice of America. Tran won the March 2 primary and will face Democratic candidate Al Snook in November.

11. Federal Courts Approve CSS and LULAC Settlements

On January 23 and February 28, federal courts approved settlement agreements in the Catholic Social Services (CSS) and LULAC cases.

These two cases were class action lawsuits involving claims by individuals who did not apply for legalization under the Immigration Reform and Control Act of 1986. The settlements allow those individuals who did not previously apply to apply or reapply for Temporary Resident status pursuant to the Act of 1986. Both settlements allow for an application period of one year for individuals who lived in the United States in unlawful status prior to 1982 and who were eligible to apply for legalization under the 1986 Act. Applicants must complete a class membership worksheet and an application for legalization on Form I-687.

The application period will begin on May 24, 2004 and end on May 23, 2005. Application instructions and further information can be found at www.uscis.gov.

12. ICE Reevaluates in the Wake of Tragedy in Spain

In order to determine how the Immigration and Customs Enforcement (ICE) bureau can help increase US security efforts, ICE is waiting to receive initial results of the investigation into train bombs that killed 201 people earlier this month in Madrid, Spain. Agency officials said ICE would comb through databases for suspicious immigration patterns, protecting federal infrastructure and mobilizing explosive detection units in order to increase security.

According to officials, immigration and law enforcement tactics have improved since the September 11 terrorist attacks on the US, especially in the areas of border security, sharing database information between agencies and the initial use of a biometric identification verifications system at airports and seaports.

ICE has also requested a budget that would fund 30 new fugitive operations teams, whose only responsibility would be to apprehend and deport alien fugitives. Officials have predicted that the additional teams would help ICE catch about 25,000 fugitives.

13. NY Immigration Lawyer Co-Produces Play About His Famous Case

The immigration case work New York attorney Leon Wildes did for a celebrity client has proved to be lucrative for him 32 years later, as he is now the co-producer of "Ears On a Beatle: Life, Liberty and the Pursuit of John Lennon," a new off-Broadway play about law, politics and an unlikely client-attorney relationship.

Possession of illegal substances charges in 1972 sparked a major effort by President Richard Nixon, Attorney General John Mitchell, FBI Director J. Edgar Hoover and Senator Strom Thurmond to deport former Beatle John Lennon. Although Wildes was able to win permanent resident status for Lennon's wife, Yoko Ono, he failed with Lennon until three suits against the government in the US District Court for the Southern District of New York were finally settled by the US Court of Appeals for the Second Circuit in *Lennon v. United States*, 527 F. 2nd 187.

Wildes used a classified FBI memo written by Thurmond to prove that Lennon was a victim of selective prosecution, and he won Lennon his green card on September 8, 1976. The legal saga of Lennon has been the subject of an immigration class taught by Wildes at Cardozo School of Law for 24 years.

After first seeing the play in Massachusetts, Wildes is now the co-producer of the play, which was revised for a New York production at the DR2 Theatre. "Ears" opened March 28, 2004.