

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: The K-1 Visa for Fiancé(e)s of U.S. Citizens
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. Lawmakers Request Machine-Readable Passport Deadline Extension
11. Judge Rules Salary Withholding for H-1B Worker is Not Discriminatory
12. Immigration Attorney Guilty of Fraud and Conspiracy
13. Sierra Club Rejects Anti-Immigration Candidates
14. USCIS Expands Case Status Online System
15. AAO Religious Worker Victory

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1. Openers

I don't claim to be any more savvy than other Americans when it comes to investing. And I don't pretend to know any more than most when it comes to setting national spending priorities. But I do feel strongly that one of the best investments this country can make is in having a generous and open asylum policy.

No better evidence of this was the news this week that the celebrated company Google is going public. One of the company's two young founders is Sergey Brin. The thirty-one year old is about to become one of the richest men in America when his company goes public in the very near future. He also happens to have been the beneficiary of America's asylum policies. Brin entered the US at the age of five when his family fled religious persecution in the Former Soviet Union.

Brin, by the way, is not the only refugee to have left his mark in Silicon Valley and on the world as a whole. Andrew Grove, the founder and CEO of Intel, is a survivor of the Nazi Holocaust. He was born Andras Grof and managed to avoid the sad fate of the vast majority of his fellow Hungarian Jews by hiding in a cellar in the countryside in a dark cellar for much of the World War II. His family hid in that same cellar in 1956 during his country's uprising against the Soviets.

We hear regularly about contributions made by other types of immigrants, but rarely do we hear about how asylees give back to their adopted country. While most asylees obviously can't match Brin's and Grove's business success, there are so many stories that are equally compelling. America is a richer country – in many ways other than just financially – as a result of our asylum policies. In recent years we have become less generous to those seeking asylum status. And it leaves me wondering whether we're turning away the next Brin or Grove when we decide we cannot afford to allow in more than a tiny number of refugees and asylees.

I'm off this week to Washington to lobby for the physician immigration bill pending in both the Senate and the House. The bill is critical if we are going to be able to get vitally needed foreign physicians into medically underserved communities across the country. Those of you interested in learning more about what's going on with these bills and how you can help, please let me know.

In firm news, Siskind Susser's award-winning web site is the subject of a feature article in the *Memphis Lawyer*, the magazine of the Memphis Bar Association.

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: The K-1 Visa for Fiancé(e)s of US Citizens

The K-1 visa has made the process of marrying a foreign national in the US easier than ever before. This visa is a surprisingly recent development, appearing only in 1970. Before then, there were only two options for a US citizen to marry a foreign national. The foreign

national could try to get a visitor visa, often a very difficult proposition because the pending marriage made it impossible to prove nonimmigrant intent. The second option was for the marriage to occur in the foreign country and for the US citizen to file an immigrant visa petition for their spouse, who would then have to wait abroad for the application to be processed.

What is a K-1 visa?

The K-1 visa enables US Citizens to bring their foreign fiancé(e)s to the United States in order to get married and pursue permanent residency.

What is the first step I must take in order to bring my fiancé(e) to the US to get married with a K-1 Visa?

Provided you are a US Citizen, you begin by filing an I-129F, petition for fiancé(e) visa with the regional service center of US Citizenship and Immigration Services (USCIS) that covers the state where you live. Approval is required before the fiancé(e) may apply for the K-1 visa. Approval timelines vary among the service centers and range anywhere from one to eight months. After the I-129F has been approved, the fiancé(e) has 4 months from the time the I-129F was approved to obtain the K-1 Visa at the US Consulate in the foreign country. If required, a consular officer this time period can be extended. The visa application process is generally similar in all countries, although each Consulate will vary a bit in their requirements.

What is required in order to obtain a K-1 visa?

There are three basic requirements to receive a K-1 visa:

- The parties must have met in person within the past two years (in some cases this requirement can be waived)
- They must have a good faith intention to marry
- They must be legally able and willing to get married within 90 days of the alien's arrival in the US

What if I didn't meet my fiancé(e) within the past two years?

As originally adopted, the K-1 visa had no personal meeting requirement. It was added in 1986 as part of the Immigration Marriage Fraud Amendments. The requirement can be waived in some cases. To obtain a waiver, the application must show that complying with the requirement would result in extreme hardship to the US citizen, or that complying would violate traditional customs in the alien's home country. This second method of obtaining a waiver will be strictly scrutinized to ensure there is no attempt to avoid application of immigration laws. In the event an application is denied because of failure to satisfy the personal meeting requirement, the parties are free to meet and re-file the petition, and the new application will not suffer because of the denial of the first.

How can I document proof of a relationship with my fiancé(e)?

While there is no minimum, using as many of these items as possible will make it less likely that you will receive a Request for Evidence (RFE) from an USCIS Service Center.

- Copies of all airline-boarding passes, train passes, itineraries, hotel receipts, passport stamps (make sure you can read the dates on the stamps), and other documentary evidence that you have met your fiancé(e) within the last two years. You may want to highlight the relevant dates and locations on the copies (to make the adjudication easier) for the person reviewing your file.
- Color photos of you and your fiancé(e). Make sure you write your names, date, and location on the back of every photo. Place photos in a plastic bag or photo sheet and label the sheet. Note that you may not receive originals of photo's back. A good alternative is to make color photocopies of the photos and then put the relevant information underneath the pictures.
- Copies of phone bills, cell phone bills, emails (you can edit personal info with a marker), letters (edit personal info also), stamps on the letters (to document the date they were sent), and other written documentary proof. Provide a reasonable amount; two to four of each type. Pick a range of dates up to and including the present.

Who determines whether or not the petition is approved?

The application is filed at the INS Service Center with jurisdiction over the place where the US citizen lives. The alien's minor children should be included on the application, since they will be given derivative status and allowed to enter the US with their parent. The application must include proof of the petitioner's US citizenship and proof that each party is legally able to marry (e.g. divorce decrees). It is also wise to submit evidence of marriage plans.

For how long is the petition valid?

Once approved, the petition remains valid for four months. In the event that the alien does not enter the US in that period, the petition can be revalidated by either an INS district officer or a State Department consular officer for another four-month period, so long as the parties are still free to marry and intend to marry.

How does the State Department determine whether or not my fiancé(e) will receive a K-1 visa?

In determining whether to issue the K-1 visa, the State Department approaches the applicant like they are applying for an immigrant visa. They must pass a medical exam and not be subject to any grounds of inadmissibility. For example, people who have had a J visa and are subject to the two-year home residency requirement are not eligible for a K-1 visa until serving the residency requirement or having it waived. Also, the State Department requires the following documents to be submitted:

- A valid passport
- Birth certificate
- Police certificates from each place the alien has lived since age sixteen
- Medical exam
- Evidence that they will not become a public charge
- Evidence of termination of previous marriages, if not submitted with the petition application

Remember that if any of these documents are in any other language, they must first be translated into English.

What happens after the State Department receives the required documents?

After it receives these documents, the Consulate will conduct a background investigation and then schedule an interview. If the interview is successful, the beneficiary will be issued a visa. The beneficiary is given a copy of their petition and additional entry paperwork in a sealed envelope to present at the port of entry. The alien will be admitted for 90 days, during which time they are authorized to accept employment in the US. Aliens admitted in K-1 status are not allowed to seek an extension of status, or to change to any other nonimmigrant classification. During the 90-day period of admission, the alien must marry the US citizen petitioner. After the marriage, the US citizen spouse may file an application for adjustment of status for the alien spouse. One note of caution - if one does not marry quickly and apply for adjustment of status, there may be a gap between the work authorization received at entry and the work authorization granted after applying for adjustment of status.

For how long is the K-1 visa valid?

The visa is given along with a sealed envelope of documents, which must be given to the USCIS (INS) officer when entering the US. The visa is good for 6 months. The fiancé(e) is allowed to enter the US once with the visa, with the purpose of getting married. The fiancé(e) is not allowed to travel freely into and out of the US with the visa, it is good for one entry only. If there is a K2 visa involved, the K2 may enter up to a year after the K-1.

Once the fiancé(e) arrives in the US, how long do we have until we must marry?

Once in the United States, you have 90 days to get married.

What if the marriage does not occur?

If the marriage does not occur, the alien must leave the US within their 90-day period of authorized admission. If they fail to leave within this time, they become subject to deportation.

What steps must be taken after the marriage occurs?

Immediately after marriage, you must apply for an Adjustment of Status, Form I-485, to become a permanent resident. You will also apply for an Employment Authorization Document (EAD), and advance parole in case you want to travel outside the United States and re-enter before getting your green card. After that, you may wait a year or more to be interviewed for "Conditional" Permanent Resident status (green card). After two more years, you apply to have the "Conditional" status removed. Only after all these steps can you apply to become an American citizen (naturalization).

If the couple does not marry, can the immigrant remain in the U.S.?

It is EXTREMELY difficult for a person to remain in the US if the marriage does not take place. And the marriage must be to the K-1 petitioner and not to another US citizen. K-1 visa holders who fail to follow through with marrying the K-1 petitioner and getting

permanent residency through that marriage should plan on leaving the US and reentering on a new visa if they seeking to stay in the US.

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.

4. Border and Enforcement News

A federal inspector at Newark Liberty International Airport last week pleaded guilty to taking a \$4,000 bribe to help smuggle nearly 200 immigrants from India into the U.S. He said he split the money with another inspector who is currently awaiting trial.

British writer Ian McEwan received an official apology from the U.S. Customs and Border Protection division of the U.S. Department of Homeland Security after being denied entry into the U.S. earlier this year. McEwan had been seeking to come to Seattle for a speaking appearance when an American inspector refused him admittance to the U.S. at the Vancouver airport immigration processing center.

Immigration officials at the Vancouver airport had determined that the size of McEwan's speaking fees were too large to be considered the honoraria that visitors are allowed to receive. However, research at the Washington, D.C. headquarters of the U.S. Customs and Border Protection's Office of Field Operations revealed that no current regulations determine the size limit of allowable honoraria.

Community activists in Alabama are criticizing a sweep performed by federal immigration officials that resulted in the arrests of 27 day laborers in the city of Hoover last week.

Hispanic community advocates in the area contend that the agents are only making blanket arrests and are not checking documents. ICE agents told *The Birmingham News* that the arrests were the results of ongoing ICE investigations, and that the agency is still processing the detainees to find out the identities and backgrounds of each one.

A crackdown on migrant smuggling has forced some involved in the practice to move to into communities that are not historically known as stopover points for undocumented immigrants, according to a statement by a Phoenix immigration official to the Associated

Press last week. Smugglers are now being prompted by the attention such immigrant transporting hubs such as Phoenix are receiving to move their business practices to Tucson and other communities in Arizona.

The government wants to use the same approach in Los Angeles, San Diego and El Paso as they did in Phoenix, because tighter border enforcement in Arizona is expected to send illegal immigrants to other areas, according to officials in the ICE office in Phoenix.

5. News From The Courts

Iouri Petrov v. John Ashcroft
U.S. Court of Appeals for the Ninth Circuit
Filed March 25, 2004

The Petitioner, Iouri Petrov, a native and citizen of Russia, petitioned the court for a review of a Board of Immigration Appeals (BIA) order that affirmed an Immigration Judge's denial to reopen his deportation proceedings. The deportation proceedings were held in absentia when Petrov failed to appear for the hearing.

The Immigration Judge denied Petrov's motion to reopen the case because the Order to Show Cause was mailed to Petrov's last known address after Petrov had moved and failed to notify the court of his new address.

The Ninth Circuit found that the BIA erred in its decision to deny the motion to reopen because it did not consider whether Petrov had received the notification of his obligation to notify the court of a change of address. The Ninth Circuit, therefore, granted the petition for review.

Jhon Jairo Lasprilla v. John Ashcroft
U.S. Court of Appeals for the First Circuit
April 22, 2004

Jhon Jairo Lasprilla, a native and citizen of Colombia, petitioned the court for a review of a Board of Immigration Appeals (BIA) order denying his motion to reconsider the denial of his earlier motion to reopen. Lasprilla wanted to reopen his case to apply for adjustment of status based on his marriage to a US citizen.

Lasprilla entered the US without inspection in 1994. In September 1995, INS issued Lasprilla an Order to Show Cause as a deportable immigrant. Lasprilla filed a petition for asylum and withholding of removal, which was denied in October 1997. He appealed the decision, which was denied by the BIA without opinion in August 2002. Lasprilla filed his motion to reopen with the BIA that same month so that he could apply for an adjustment of status. The BIA denied his motion, saying that Lasprilla had not demonstrated eligibility for adjustment under "grandfathering" provision of the Immigration and Nationality Act (INA). Lasprilla filed a second motion to reopen and the BIA too denied this in March 2003.

Lasprilla married a US citizen in September 1996, while his deportation proceedings were pending. In March 1997, his wife filed a visa petition on his behalf. In July 1997, the

petition was denied because Lasprilla's wife failed to respond to INS requests for additional evidence about their marriage. Lasprilla divorced his wife in May 2001, while the BIA decision to his appeal was pending.

When Lasprilla filed the first motion to reopen, he did not present enough evidence to demonstrate that he was eligible for an adjustment of status. His second motion argued that he was eligible to adjust his status because of the visa application filed by his US citizen wife under the grandfathering provision of the INA. This grandfathering provision allows immigrants who entered the US without inspection to be eligible for an adjustment of status if the immigrant is a beneficiary of a visa petition filed on or before April 30, 2001 and that the petition was "approvable when filed."

The Respondent, Attorney General John Ashcroft, contended that Lasprilla was not eligible under the grandfathering clause because the visa petition, while filed before April 30, 2001, was not "approvable when filed" because Lasprilla married his US citizen wife while he was in deportation proceedings. 8 USC § 1154(g) states that a petition for "immediate relative status or preference status by reason of marriage" which was entered into while administrative or judicial proceedings were pending "may not be approved."

The First Circuit stated that Lasprilla could have demonstrated that he was eligible for an exception to this regulation, found at 8 USC § 1255(e)(3), wherein he would have to show that he entered into the marriage in "good faith and ... not entered into for the purpose of procuring the alien's admission as an immigrant." However, Lasprilla did not provide evidence that he was within the exception when given two opportunities to do so.

The First Circuit, therefore, affirmed the BIA denial to reconsider the denial of the motion to reopen.

6. Government Processing Times

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

National Benefits Center (04/22/2004): <http://www.visalaw.com/missouri.html>

7. News Bytes

USCIS is reminding customers that the USCIS immigration benefit fees have increased, effective April 30. All applications postmarked on or before Thursday, April 29, 2004, will be subject to the previous fees.

The new USCIS immigration benefit application fees are available at:
<http://uscis.gov/graphics/publicaffairs/newsrels/USCISFeeStructure.pdf>

The Texas Service Center has acknowledged that the numerous rejections of cap-subject H1-B visas filed after April 1, 2004 were in error. TSC is urging people to re-file

immediately, as the TSC mailroom is now under instructions not to reject an H1-B filing that has a start date on the I-129 of October 1st or later, provided it is not more than 6 months from the date of filing.

Service centers have been instructed by a procedural guidance memo from the Director of Service Center Operations to concurrently adjudicate concurrently filed I-140s and I-485s. Only if the fingerprints and name checks have cleared on the I-485 will the agency adjudicate previously filed concurrent packages.

The memo is located at <http://www.aila.org/infonet/fileViewer.aspx?docID=12802>.

Instructions on how to apply for a waiver of special registration requirements at both the New York and Los Angeles field offices have been provided by the respective offices. Instructions on how to file in New York are located at <http://www.aila.org/infonet/fileViewer.aspx?docID=12846> and instructions on how to file in Los Angeles are located at <http://www.aila.org/infonet/fileViewer.aspx?docID=12845>.

Malik Jarno, an orphaned teenager from Guinea who is mentally disabled, appeared for his asylum hearing on April 22, 2004. Jarno could qualify for asylum on several grounds - a Guinean mental health expert has submitted written testimony attesting to the persecution a mentally retarded orphan could face in Guinea; his home was destroyed and his father, a religious leader, was imprisoned and later killed by the Guinean government in 1998; Guinean officials have also stated their intention to persecute Jarno upon his return to Guinea because of the embarrassment his case has caused for the country.

The Washington Lawyers' Committee for Civil Rights and Urban Affairs, Amnesty International and a group of over 70 lawmakers have been urging the Department of Homeland Security to agree to grant Jarno political asylum.

Immigration and Customs (ICE) officials told *The Salt Lake Tribune* last week that the agency is investigating Bear Creek Country Kitchens, a Heber food company for possibly employing undocumented immigrants. An audit revealed that up to 46 workers provided fraudulent paperwork, including alien registration, proof of citizenship and Social Security numbers.

Initiating the probe were former employees of Bear Creek who called ICE to complain that they were losing their jobs to undocumented immigrants. Spokespeople for Bear Creek said only seven of the people in question were full-time employees. ICE officials said they plan on tracking each worker whose documents look suspicious.

The Israeli government has had success in its campaign to deport illegal foreign workers from the country, according to a report published by the Immigration Police. According to the report, there are currently 120,000 undocumented foreign workers in Israel and the immigration Police expect that number to drop to 70,000 by the end of this year. In 2002, there were a quarter of a million undocumented foreign workers.

Immigration Police are attributing the latest figures to an increased efficiency of the agency. At the beginning of 2003, 19 percent of foreign workers investigated by police were arrested and at the end of the year that percentage rose to 40 percent.

According to the Spanish government, over 120,000 foreigners residing in the country can vote in the upcoming European elections. According to Spain's National Institute of Statistics' (INE) latest figures, there were 123,642 citizens from European Union countries now living in Spain. About 35 million European citizens have the right to vote in the European elections on June 13. Foreign voters can contact their embassies or consulates between April 26 and May 3 in Spain.

Belgian police arrested 15 Brazilian people in connection with a major forgery scam involving fraudulent identity papers. Two of the alleged forgers had already been arrested last year and were handed over to Brussels prosecutors, while among the other 13 people arrested, five have been deported to Brazil and four have been ordered to leave Belgium. Police estimate the false documents sold for between EUR 200 and EUR 400 a piece on the black market.

The First Minister, Jack MacConnell, told the Scottish Trade Union Congress in Glasgow that Scotland had the fastest-falling population in Europe and without fresh talent the economy growth would vanish in an attempt to urge the country's trade unions not to consider an influx of skilled immigrants as a threat to the jobs of Scottish workers.

MacConnell suggested a well-managed asylum and immigration system for the UK would benefit Scotland. He has initiated a Fresh Talent movement, which he said would hopefully bring more skilled immigrants into Scotland.

Turkey has recently reduced the price of tourist visas for U.S. citizens to \$20 from \$100, the price it has been since late 2002 when the cost was raised for Americans in response to an increase imposed by the U.S. for non-immigrant visas and border-crossing cards.

Turkey has additionally reduced port fees for visiting cruise ships by 40 to 50 percent, depending on the port. Americans must obtain visas to enter Turkey either upon entering the country or in advance from one of the Turkish consulates in the United States.

On April 29, 2004, the US House of Representatives held a hearing on the Diversity Visa program. Testimonies were given by Anne W. Patterson Deputy Inspector General, Department of State and Steven A. Camarota, Director of Research, Center for Immigration Studies. Also on April 29th, the House held a hearing on transportation and homeland security.

A press conference will be held May 4 concerning the Democratic Comprehensive Immigration Reform Bill to be introduced by Senator Edward Kennedy, Representative Bob Menendez and Representative Luis Guterrez next week. This is a legislative proposal that, when implemented, will make legality the prevailing norm in the US immigration system.

The bill has four parts. It reduces the years of family separation caused by a backlogged bureaucracy and restrictive laws and it gives immigrants who are in the U.S., working, paying taxes and learning English a chance to earn legal residency over time. It also reduces exploitation and downward wage pressures by creating a worker visa program that protects the wages and working conditions of U.S. workers and provides equal rights to immigrant workers admitted in the future to fill available jobs. The press conference will be at La Fuente Learning Center in Austin, TX.

Other bills recently introduced include the following:

[H.R.4245](#): To amend title 36, United States Code, to grant a Federal charter to the Irish American Cultural Institute.

Sponsor: Rep Walsh, James T. [NY-25] (introduced 4/28/2004)

Committees: House Judiciary

Latest Major Action: 4/28/2004 Referred to House committee.

Status: Referred to the House 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. Lawmakers Request Machine-Readable Passport Deadline Extension

Congress set a deadline of October 26, 2004 for all 27 visa waiver countries to issue machine-readable passports with biometric technology for their citizens to be able to visit the United States. In recent weeks, it has become apparent to the government that these 27 countries, which have agreed to use the technology in their passports, will not have the technology in place by the deadline. The Bush administration has therefore requested that Congress extend the deadline until October 2006.

On April 21, 2004, Secretary of State Colin Powell testified before the House Judiciary Committee to request the deadline extension. He informed Congress that failure to extend the deadline would result in a 70 percent workload increase for the already overworked consular visa staff. Powell also noted that this increased workload would mean extra costs and extended wait times, which could adversely affect US tourism and business.

"It is not likely that any of the Visa Waiver Program countries will produce 100% biometric passports by the October 2004 deadline set by Congress in the Border Security Act, which is why we are asking Congress to extend or waive that deadline for VWP countries," he stated in an Op-Ed column in the *Wall Street Journal* the day he testified.

One day earlier, on April 20, 2004, Senator Saxby Chambliss of Georgia introduced S.2324, the Visa Waiver Program Compliance Amendments of 2004, in order to extend the deadline for the visa waiver countries. The bill would amend the Enhanced Border Security and Visa Entry Reform Act to require immigrants applying for visas under the visa waiver program by November 30, 2006 to have a machine-readable passport with embedded biometric data.

The text of this bill can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s2324is.txt.pdf.

11. Judge Rules Salary Withholding for H-1B Worker is Not Discriminatory

In the Matter of Administrator, Wage and Hour Division, Department of Labor, v. Teachers' Placement Group, et al., 2003-LCA-14 (OALJ, Feb. 23, 2004), the Office of Administrative Law Judges said that there was a need for a salary withholding from the salaries of fifteen H-1B teachers because the Newark Public School System refused to pay the Teachers' Placement Group (TPG), the H-1B Employer/Contractor for the teachers' services, and instead insisted on paying the teachers directly.

On February 5, 2003, the Administrator of the Wage and Hour Division of the US Department of Labor issued a determination letter to TPG for willfully failing to pay the required wages to fifteen H-1B immigrant teachers, discriminating against the fifteen teachers and failing to establish a prevailing wage in accordance with Labor Condition Application (LCA) regulations. TPG contested the determination and requested a hearing, which was held from June 9-10, 2003.

TPG hired fifteen math and science teachers from India for the Newark, New Jersey public school system and filed an LCA with the Department of Labor in March 2001. The LCA set the prevailing wage at \$18,680 per year according to the Occupational Employment Wage Survey. The LCA was certified in April 2001.

TPG had all fifteen teachers sign an employment agreement that stated TPG would pay \$38,000 per year to those teachers who passed all of the Praxis examinations required for teacher certification in New Jersey. Those who did not pass the exams would receive a salary of \$22,000 per year.

TPG's petition for fifteen H-1B visas was approved in August 2001. The teachers arrived in the US in late September and early October, and began working in early October. As there was a three-month delay in paying the teachers, TPG paid the teachers three salary advances at \$1,250 per advance. The advances were repaid in full to TPG in December 2001 when the teachers received their salaries.

The delay in paying the salaries was due to confusion between Newark Public Schools and TPG. When Newark Public Schools contracted TPG to hire the teachers, it was agreed that the school system would pay TPG and TPG would pay the teachers. In November, the

Superintendent of Human Resources for Newark Public Schools, Randall Kanter, informed TPG that Newark Public Schools could not make TPG a vendor and the teachers would have to be paid directly by the school system. TPG explained that because it was the employer listed on the H-1B visas, it had to pay the teachers' salaries. Newark Public Schools reached a compromise with TPG whereby the school system would pay the teachers directly and would arrange for money to be deducted from the teachers' salaries and paid to TPG. The teachers' salaries would be set at the Newark salary scale minus twenty-five percent, which would be paid to TPG.

TPG met with the teachers in December 2001 to inform them of Newark's decision regarding their salaries and asked the teachers to sign an agreement authorizing Newark Public Schools to deduct twenty-five percent of the gross salary as a fee to TPG. A Newark Public Schools representative also met with the teachers to ensure that there were no concerns about the salaries to be paid. All fifteen teachers signed the agreement.

Shortly after signing the agreement, the teachers filed a grievance with the Superintendent of Schools regarding the twenty-five percent withholding from their salaries. The school board determined that the situation was a problem between TPG and the teachers. The withholding continued until May 2002 when the teachers informed Newark Public Schools that it was revoking the withholding authorization. Newark Public Schools subsequently sponsored the teachers' H-1B visas. TPG then filed a Civil Action for damages against the Newark Public Schools and the fifteen teachers in US District Court.

The Administrator of the Wage and Hour Division charged TPG with failing to establish a proper prevailing wage. To support this charge, the Administrator brought the testimony from the Enforcement Coordinator for the DOL, Wage and Hour Division, Mary Dodds. Dodds testified that while the prevailing wage chosen by TPG is applicable to teachers, only educational institutions could use this rate. As TPG is clearly not an educational institution, Dodds stated that TPG should have chosen a "slightly higher" wage rate, but did not specify what the rate should have been. The Office of Administrative Law Judges (OALJ) stated that the Administrator did not establish that the Respondent had a violation with its choice of prevailing wage rates. The OALJ further ruled that "the Administrator has not shown that TPG did not pay the wage required by its LCA to the fifteen non-immigrant teachers it employed to teach at Newark."

In its letter to TPG, the Administrator contended that \$3,050 was improperly collected by TPG from each teacher for reimbursement of business expenses. 20 CFR § 655.731(c)(9)(iii)(c) states that authorized deductions from an employer's wage cannot include reimbursement for the employer's business expenses. The OALJ agreed with the Administrator and ruled that TPG must return the \$3,050 it collected from each teacher.

The Administrator also asserted that TPG discriminated against the fifteen teachers when it had them sign the withholding agreement. Under 20 CFR § 655.801(a), for an employer's actions toward an employee to be considered discriminatory, the actions must be in response to the employee disclosing information that "evidences a violation of section 212(n) of the INA or any regulation relating [thereto] or cooperated or sought to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 212(n) of the INA." The OALJ found that "the conduct described by the Administrator as discriminatory was not in response to a disclosure of a violation or participation in an investigation."

The OALJ concluded that TPG must pay the DOL \$3,050 for each of the fifteen teachers it sponsored for H-1B visas, the DOL's claim that TPG failed to pay the required wage was

dismissed, the DOL's claim that TPG discriminated against the teachers was dismissed, the DOL's claim that TPG failed to establish a prevailing wage in compliance with the LCA was dismissed and the DOL's assessment of a penalty against TPG was dismissed.

12. Immigration Attorney Guilty of Fraud and Conspiracy

A Washington D.C. immigration lawyer pleaded guilty this week 164 counts of immigration fraud, money laundering and conspiracy after filing more than 200 fraudulent visa applications, a scam that made him at least \$2 million over a seven-year period.

Mohamed Alamgir was jailed immediately after his guilty plea, and could face several years in prison and be forced to forfeit \$2 million in assets. Alamgir's crime involved manipulating the process in which an employer can apply to the Labor Department for a certification that will aid a prospective employee in obtaining a visa.

According to legal papers, prosecutors said Alamgir would pay employers to file false applications for people who would never work for them. He would also forge an employer's signature on the application and file applications with fictitious information for nonexistent people. Alamgir would often deposit receipts in the bank accounts of associates, rather than his own in order to conceal the flow of money to and from him, according to prosecutors.

One of the accounts used served as a red flag for federal investigators and the case began as a money-laundering investigation. Simultaneously, Labor Department investigators were noticing an unusual jump in the amount of applications filed by certain employers. Late last summer, investigators from the FBI, Internal Revenue Service and the Labor Department inspector general's office began questioning Alamgir.

13. Sierra Club Rejects Anti-Immigration Candidates

Although anti-immigration groups were trying to take over the Sierra Club, this week the organization's leadership at a board of director's election defeated a slate of independent candidates who wanted to see the club adopt a tougher stance on immigration. Instead, the club's membership elected the five candidates endorsed by the organization's nominating committee. Each candidate supports maintaining the club's neutral stance on immigration.

This election is widely seen as a referendum on the Sierra Club's immigration policy. The organization has been urged in recent years to adopt a tougher stance on immigration, as anti-immigrant advocates call the growing U.S. population, and its consumption of natural resources the greatest threat to the environment.

Before the election, the club's leaders warned the voting body by a written ballot notice warning that anti-immigration and non-environmental groups were trying to influence the vote.

Some club leaders organized a movement called Groundswell Sierra to defeat what they called an attempted takeover by outside groups. Groundswell Sierra volunteers communicated with group members via phone, e-mail and postcards and encouraged them to vote for the candidates nominated by the group's nominating committee.

14. USCIS Expands Case Status Online System

U.S. Citizenship and Immigration Services (USCIS) announced last week the expansion of the Case Status Online system. Customers are now offered the chance to build a portfolio of up to 100 cases and monitor the cases online at all times. This new service is not only offered for the use of individuals, but also to employers and immigration attorneys to check the status of cases for their employees or clients.

Customers or authorized users can access Case Status Online by establishing a user ID and password at <http://www.uscis.gov>, and logging in to create their portfolio cases.

If the status of a pending application changes, an e-mail notification is sent automatically to registered applicants. Information entered into the portfolio is not used anywhere else within USCIS and is not disclosed to outside parties. Customers without portfolios may still check case status online by providing their application receipt number.

Information regarding the Case Status Online Portfolio system is provided in both Spanish and English by calling the USCIS National Customer Service Center at 1-800-375-5283. Customers can still access their case status by calling this number as well.

Siskind Susser has also learned that USCIS will begin accepting electronic filing of a number of new application forms beginning later this month. Those forms will include I-129s, I-140s and I-539 applications. We will report more on this as information becomes available.

15. AAO Hands Victory to Religious Worker

Note: The names of the Petitioner and Beneficiary in this AAO case have been withheld.

On April 20, 2004, the Administrative Appeals Office (AAO) reversed a Nebraska Service Center decision that denied a special immigrant religious worker petition (I-360). This decision comes at a time when the four service centers have adopted a trend of denying religious worker petitions filed by religious organizations that are not classified as 'churches' under the Internal Revenue Code at section 501(c)(3).

Under Immigration and Naturalization Act (INA) § 101(a)(27)(C) and 8 CFR § 204.5(m), religious entities applying for religious worker immigrants must be "exempt from taxation as organizations described in IRC § 501(c)(3) as it relates to religious organizations." The regulations require these organizations show they either are exempt under 501(c)(3) as a religious organization, such as a church, or have the documentation required by the Internal Revenue Service to be eligible for exemption as a religious organization under 501(c)(3). The regulations include these two separate options because according to IRS Tax Publication

#1828, entitled "Tax Guide for Churches and Religious Organizations", churches are considered automatically exempt from taxation and are therefore not required to obtain a formal 501(c)(3) determination letter.

However, immigration adjudicators have been interpreting the regulations to mean that a religious organization must be classified as a church under IRC § 170(b)(1)(A)(i). This trend was first seen in Administrative Appeals Office (AAO) decisions in 2000, as reported by American Immigration Lawyers Association (AILA) members. Similar problems then began to show up at USCIS service centers. If a religious organization could not demonstrate that it was a church, the petition was denied.

In its original application, the petitioner had submitted a copy of an IRS letter dated September 30, 1987 recognizing the petitioner as tax-exempt under IRC 501(c)(3) and is an organization described in IRC 170(b)(A)(vi) under the provisions that refer to charities that receive a substantial part of their support in the form of contributions from publicly supported organizations, from a governmental unit or from the general public. The petitioner had also submitted a copy of an IRS letter dated November 13, 1984 that stated that for the purposes of sections 501 through 514, 4940 through 4947 and 6033 of the IRC, the petitioner was a religious order.

The NSC denied the petition, stating that this submitted evidence did not establish that that petitioner was a "bona fide religious organizations as recognized by the IRS." On appeal, the petitioner submitted a brief and additional supporting evidence to demonstrate that the NSC had misinterpreted the law.

In its decision, the AAO stated that the NSC was correct that classification as a 501(c)(3) organization under IRC 170(b)(1)(A)(vi) is not sufficient in and of itself to establish that the organization has been recognized as tax-exempt as a religious organization. However, the AAO pointed out that the NSC was incorrect in its decision to deny the petition because of a lack of evidence establishing that the organization was a "bona fide religious organization as recognized by the IRS" as the petitioner had submitted a second IRS letter that explicitly stated that the petitioner was a religious organization. The AAO also drew attention to portions of the IRS Publication 1828 that were submitted by the petitioner on appeal that pointed out that the IRS does recognize religious organizations that are not churches that may be tax-exempt under 501(c)(3). The AAO stated, "Therefore, the petitioner has overcome the finding of the [NSC] director that the petitioner is not a bona fide nonprofit religious organization."

The AAO concluded that the NSC's determination that "only churches qualify as religious organizations is overly broad and is, therefore, withdrawn."