

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:

Since the birth of the American democracy in the 18th century, immigrants have risen to the top of strata of our society. That remains as true today as ever. Just look at Henry Kissinger who shaped American foreign policy for two Presidents or Sergey Brin, the young Russian-American refugee who is about to become a billionaire when, Google, a little search engine you may have heard about, goes public. The foreign-born American citizen can have it all in our meritocracy. That is, all but leading our country. Our Founding Father's concerns with a takeover by a foreign monarch led to the inclusion in our Constitution of language prohibiting foreign-born citizens from becoming President.

That relic of an earlier age has recently become news again. It started with the election of Arnold Schwarzenegger to Governor California last year. Republicans suddenly see the merit in scrapping a law that would prevent one of the Party's shining stars from leading them to a future electoral victory. The election of Italian native Sonja Gandhi's party in India this week will likely lead to her being India's next Prime Minister. And her victory is likely again call attention to the fact that the same thing cannot happen in this country. We might get close to this if Mozambique native Teresa Heinz Kerry, wife of Presidential candidate John Kerry, moves in to the White House. But only when we finally scrap this anachronistic provision in the Constitution can America rightfully claim that the foreign-born among us are truly first class citizens.

We've been taking a low-key approach to the fact that we have some key milestones happening around now. In May 1994, I quit my job at a large law firm and set up this practice. I was a solo lawyer at the beginning with no employees, a handful of clients and virtually no money to tide me over until the business got going. But I made the fortunate decision to establish one of the first law firm web sites in the country (which went live in June 1994) and the rest is history.

When the history of the web is written, we hope there is a little place for a mention of our site. One of the most important social changes brought about by the Internet revolution is the empowering of the average citizen with the ability to easily get access to information on laws and legal procedures. In the immigration world, it is incredible how much more knowledgeable people are about immigration rules in the US today. People no longer rely on the word of government officials as gospel and can easily find out for themselves how the system works. Visalaw.com has certainly helped. Over the years, we've received so many stories from people whose lives were changed for the better because they were armed with information.

Immigration lawyers have benefited as well from these knowledgeable clients. There's a department store on the east coast that uses the slogan "An educated consumer is our best customer." It really is true for immigration lawyers as well. Clients are more likely to follow your advice when they have a better understanding of the immigration system. And the Internet exposes many to potential immigration strategies that lead people to pick up the phone or click on the mouse to contact a lawyer. Just think back to 245i in 2001. My guess is that tens of thousands more people applied because they found out about the program on the web.

This week, the National Law Journal wrote a story to mark the tenth anniversary of the first law firm web sites. Ours is one of the sites covered in the story and I provide a few

observations on where sites have been and where they are going. You can read that article on our site at www.visalaw.com/news.

I wanted to alert readers as well to a new sign-on letter requesting that the Department of Homeland Security stipulate to a grant of asylum for Malik Jarno, a mentally challenged orphan. That letter is now circulating among immigration advocates. The letter contains information on the growing support for Jarno as well as new evidence that his supporters are hoping will compel a grant of asylum. Jarno's individual hearing is scheduled for July 9, 2004, before Immigration Judge Churchill, the same judge who heard the case previously. If you are able to sign on, please notify Ruth Spivack at ruth_spivack@washlaw.org.

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: Parole Status

What is parole status?

An individual who is ineligible to enter the US as a refugee, immigrant or nonimmigrant may be 'paroled' into the US by the Secretary of Homeland Security. This provision of the law is only used for emergency, humanitarian and public interest reasons. The individual who is paroled into the US is known as a 'parolee'.

What are the different kinds of parole status?

An individual may be paroled into the US under either Humanitarian Parole or Public Interest Parole.

Who can request parole status?

Humanitarian Parole can only be requested for persons who are outside of the U.S. Anyone can file an application for humanitarian parole to include the prospective parolee, a sponsoring relative, an attorney or any other interested individual.

Are there special provisions for nationals of certain countries?

Public Law 101-67, also known as the Specter Amendment (formerly the Lautenberg Amendment) allows for the adjustment of status of individuals who are nationals of the former Soviet Union, Vietnam, Laos and Cambodia. These parolees may apply for green cards if they were paroled into the US between August 15, 1988 and September 30, 2004.

Can Humanitarian Parole applications be adjudicated for individuals currently in the United States?

Request for humanitarian parole can only be accepted for individuals who are currently outside of the United States.

How does an individual apply for parole status?

Requests for Humanitarian Parole must be submitted to the following address:

Department of Homeland Security
425 I Street, NW
ATTN: Parole and Humanitarian Assistance Branch
Washington, DC 20536

A request for humanitarian parole may be submitted by anyone and should be submitted on Form I-131, Application for Travel Document. There is a filing fee for filing applications for humanitarian parole. Additionally, Form I-134, Affidavit of Support, is also needed to ensure that the applicant will not become a public charge. A parole request should include information that is specific, verifiable and complete. Evidence of the claimed circumstances should also be submitted.

Canadians must submit Form I-131, Application for Travel Document to the Director of the office that has jurisdiction over the area where the alien intends to enter the United States.

How can I find out the status of my application?

To check the status of your application, please contact the Parole and Humanitarian Assistance Branch, Washington, D.C. directly in writing. Please provide them with specific information about your application.

Does Humanitarian Parole expire?

Humanitarian paroles are granted for a period of time to coincide with the duration of the emergency or humanitarian situation that forms the basis for the request. There is a maximum time limit of 1 year.

What can I do if my case is not approved?

The denial of a request for humanitarian parole is a discretionary determination based upon a review of all of the evidence submitted. There is no statutory provision for appeal. If there are new facts that you would like considered however, a new submission may be sent to the Parole and Humanitarian Assistance Branch as a new case for consideration, with a new filing fee.

Can parolees work in the US?

Public interest parolees may apply for work authorization on Form I-765, Application for Employment Authorization. Parolees admitted for humanitarian or emergency reasons are not eligible to apply for employment authorization.

Can parolees apply for green cards (permanent resident status)?

Only parolees granted through the Specter Amendment, Cuban/Haitian parolees, or South East Asian Public Interest Parolees (PL 106-429) can apply for green cards. These individuals may apply for green cards after one year of physical residence in the US on Form I-485, Application to Register Permanent Residence or Adjust Status with the appropriate fees (applicant aged 14-79 must also pay a fingerprinting fee). These individuals must also submit medical exam results.

Individuals paroled for humanitarian or other emergency reasons are not eligible to apply for green cards as parolees. They can apply if they qualify under another immigration provision, such as employment.

Can a parolee file an immigrant petition on behalf of a relative abroad?

A parolee can file an immigrant petition on behalf of a relative abroad provided that the parolee has already adjusted to permanent resident status. However, if the relative is otherwise eligible for refugee processing, the parolee can file an affidavit of relationship on the relative's behalf.

Can parolees travel abroad?

Only parolees who have adjusted their status to permanent residents may travel abroad using a travel document.

Can parolees apply for citizenship?

Parolees are eligible to apply for citizenship five years from the date they entered the US as parolees if they have already adjusted to permanent resident status.

3. Ask Visalaw.com

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

Q - I am asylee and got married. My wife is currently a student in the USA with a student visa. Also we are expecting a baby. What kind of ways do I have to adjust her status?

A - Unfortunately, until you are a citizen, you're not going to be able to do much to keep her here legally through your own status. The rules for spouses of asylees require the marriage take place before asylum is granted. Otherwise, after you get a green card you can apply for an immigrant visa for your wife. But the wait in that category is several years - probably at least five - and your wife is not entitled to stay in the US while she waits. The likely scenario is that your wife will need to maintain her own visa status. Once done as a student, she'll probably need to get a work visa (such as an H-1B) and then would need to wait until you became a citizen. I'd suggest you consult with an immigration lawyer to discuss the specific options that might work. If you need a lawyer to consult, I can provide this service. Just call my office at 800-748-3819 to set this up.

Q - I got my H-4 visa extension for 3 years. I would like to know what documents I need to stamp my passport and where to send.

A - You would need to present proof of your marriage (generally, your marriage certificate), copies of your husband's approval I-797 approval notice and I-94, recent pay stubs showing your husband is employed with the right employer and a letter from your husband's employer verifying employment on all the terms approved in the H-1B petition. And, of course, the regular visa application items - forms, fees and photos. You can either apply at a consulate for a new visa stamp or apply by mail with the Department of State. You can find out procedures to re-validate your visa by mail by going to <http://travel.state.gov>. But note that this is a slow process and most people elect to consular process. We also believe that the procedure of re-validating by mail is going to stop in the near future.

Q - If you have a pending National Interest Waiver I-140 based Adjustment of Status (I-485) application, can you maintain that AOS application in a valid state and simultaneously apply for Consular processing based on a separate labor certification I-140 petition.

If you have an employment authorization document and advance parole travel document based on NIW I-140 pending AOS, can you use the EAD/AP while you are being processed for consular processing for labor cert I-140?

A - This has never been a question that could be clearly answered. Nothing in the law as far as I read prohibits simultaneously pursuing adjustment of status. But the USCIS will close an adjustment application based on abandonment if it learns that a consular application is being pursued. So if you file an I-824 form with the USCIS to notify a consulate that you wish to pursue processing there, expect the adjustment application to run into problems. On the other hand, if you state on your I-140 form that you want a consulate notified initially and then you choose to adjust status after that, then you probably will not run into a problem.

Q - I am a permanent resident in the US. My mom overstayed in the U.S. in 1992 for over one year. Is there a period of time she has to wait to reapply for her visa? Is it better for me to apply for her at the immigration office over here or can she apply on her own in her country?

A - First, you have to be a US citizen to apply for a parent to immigrate through you. But once you become a citizen, your mother should not be penalized for the overstay in 1992 because the overstay occurred before the penalties for overstaying did not kick in until 1997 and only cover overstays after that date. Even if they did apply, your mother has been outside the US for more than ten years. If she just wants a visitor visa, she would be eligible now. But having a permanent resident child could be a reason for denying the case since it would possibly be considered to show intentions to immigrate.

Q - I applied for my kids on my green card for immigrant visas in the Family-based second preference category. Now after gaining my citizenship, can I apply convert their cases to the family-based third preference category?

A - The good news is that you need do nothing. Your children automatically convert to the F1 green card category for adult children of citizens (assuming they are still unmarried). Plus, they will retain their priority date from the first petition. If they married before you got citizenship, however, the news is not so good. Since there is no category for adult children of permanent residents, a married child would have lost their status and you would have to start over with a new I-130 for the F3 category for married children of US citizens. And they will not retain their priority date from the first petition.

4. Border and Enforcement News

On May 4th, Border Patrol agents caught 118 illegal border crossers in Organ Pipe Cactus National Monument in Pima County, Arizona. Some persons in that group said that they had entered with smugglers through Sonoyta, Sonora at the western edge of Pima County and they were headed towards Phoenix and Los Angeles.

On the same day, a currently unidentified Mexican man in his twenties died in a car crash five miles north of Ajo. The remains of another Mexican man who died of heat exposure 10 miles southwest of Ajo, and two other skeletal remains were found over the prior weekend. Since October 1, 2003, officials have recovered the bodies of 33 illegal border crossers.

Esi Antobam, who pleaded guilty in February to one count of mail fraud and admitted she had smuggled undocumented immigrants into the US and falsified immigration documents, was sentenced to 2 ½ years in prison last week. Antobam succeeded in illegally receiving nearly \$100,000 in benefits as a result of her schemes. In one of her plots, she adopted three children who she sent to Ghana while continuing to collect benefits for them here in the US.

David Aguilar, the newly appointed Border Patrol chief, told the Associated Press last week that his main goal is operational control of the borders. According to Aguilar, more border security is needed on all four frontiers. His plan includes coordination efforts between agents, increased mobility to hard to reach areas, and enhanced technology and infrastructure.

The Arizona Daily Star reported last week that the U.S. Border Patrol is now using remote-control planes to search for illegal border crossings on the Arizona-Mexico border. The two drones are not the first to patrol the border, as a private group known as the American Border Patrol has been using similar, yet smaller versions for the past year. They claim that the smaller, less expensive drone program will provide an independent assessment of the U.S. border patrol's effectiveness by informing the public of their results via the internet and will help the agency to be more effective in policing the border. The U.S. Border Patrol has so far ignored the private group's effort.

The *Tucson Citizen* reported last week that U.S. Border Patrol is increasing its efforts to protect the lives of those who dangerously try to cross into the U.S. through the desert. In previous years, more undocumented immigrants have tried to cross into the U.S. through the desert because the implementation of a policy aimed at stemming the illegal crossings in border cities.

According to Border Patrol statistics, 1,971 migrants have died attempting to cross the U.S.-Mexican border since 1998. Because of critics' claims that the policy has increased the death toll of migrants, the U.S. Border patrol is implementing the following programs this year: a public advertising campaign in Mexico is warning people of the dangers of desert crossings; ten rescue beacons located in the desert; and horse patrols to seek out migrants in distress.

5. News From The Courts

In the Matter of Sunny View Farms
Case No. 2004-TLC-6
U.S. Department of Labor; Office of Administrative Law Judges

An employer, Sunny View Farms, filed two H-2A temporary alien labor certifications with the U.S. Department of Labor Employment and Training Administration on February 4, 2004.

The ETA denied the certification, finding that Sunny View had not complied with the requirements of 20 C.F.R. § 655.102(b)(2) which requires the employer to provide the alien with workers' compensation insurance in compliance with state law, and if the employment sought is not covered by state law, then the employer must provide the alien with insurance at least equal to those provided under the state law for comparable employment to cover injury and disease arising out of and in the course of the worker's employment.

Sunny View requested an expedited administrative review of the matter, and the Administrative Law Judge affirmed the denied of the application, finding that pursuant to North Dakota law, Sunny View was required to provide \$272.96 insurance per week to each alien applicant. Sunny View provided evidence of providing only \$150.00 insurance per week, and therefore, falls short of the requirement.

Roble v. Pontesso
Tenth Circuit Court of Appeals
2004 U.S. App. LEXIS 3826

Petitioner Ali Nur Roble filed a petition for a writ of habeas corpus seeking release from pre-removal incarceration and challenging a final administrative order removing him to Somalia or alternatively to Kenya. The district court denied his petition and the Tenth Circuit vacated and remanded the case for further consideration.

Roble was admitted to the US with a Kenyan passport. In 1999, in an application for asylum, he asserted that the Kenyan passport used for entry was not genuine and that he was actually a Somalian national. Roble's Kenyan passport appeared to be genuine, and the IJ found his testimony regarding his Somalian origin to lack credibility. The IJ denied Roble's asylum application, and ordered him removed to Somalia and alternatively to Kenya. Roble was placed in civil detention in April of 2002. The BIA summarily affirmed the IJ's decision on August 9, 2002. In January of 2003, the US District Court for the Western District of Washington entered a permanent injunction enjoining the INS from removing Somalis to Somalia because Somalia does not have a functional government to accept aliens removed from the US.

Roble sought release pending removal, and claimed that his indefinite incarceration was unlawful. The Tenth Circuit held that Roble's removal period had expired, and noted case law supporting detention beyond the removal period only if the alien is a risk to the community or unlikely to comply with the order of removal. The court found that Roble's removal to Somalia did not appear imminent, and that the INS had not asserted grounds for continuing to hold Roble beyond the removal period.

The court sent the case back to the district court with instructions to first determine the likelihood that Roble would be removed within the reasonably foreseeable future. If the district court finds that it is likely that Roble will be removed in the reasonably foreseeable future, the INS may then be authorized to continue to detain Roble only if the district court determines that Roble is a flight risk or a risk to the community. The district court judgment was vacated and the matter was remanded.

6. Government Processing Times

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

Missouri (05/06/2004): <http://www.visalaw.com/missouri.html>

DHS Local Offices (05/12/2004): <http://www.visalaw.com/local/localtimes.html>

7. News Bytes

A new sign-on letter requesting that the Department of Homeland Security stipulate to a grant of asylum for Malik Jarno, a mentally challenged orphan, is circulating among immigration advocates. The letter contains information on the growing support for Jarno as well as new evidence that his supporters are hoping will compel a grant of asylum. Jarno's individual hearing is scheduled for July 9, 2004, before Immigration Judge Churchill, the same judge who heard the case previously. If you are able to sign on, please notify Ruth Spivack at ruth_spivack@washlaw.org.

The South Dakota International Business Institute (SDIBI), Dairy Economic Development Region (DEDR) has been designated as a regional center to participate in the Immigrant Investor Pilot Program. The center will have a commercial investment focus on the

commercial enterprise areas of animal dairy farm operations and animal heifer ranch operations. Those seeking immigrant visas through the Immigrant Investor Pilot Program may file individual petitions with USCIS for these new commercial enterprises located within the SDIBI/DEDR regional center area comprised of 12 counties in eastern South Dakota.

The designation by the USCIS of the SDIBI/DEDR as a regional center does not reflect any determination on the merits of individual petitions filed by entrepreneurs under the Investor Pilot Program. All petitions for those seeking immigrant visas that invest within the regional center will be adjudicated by the USCIS on a case-by-case basis and each petition must be fully documented and submitted to the Texas Service Center. For questions concerning the SDICI/DEDR designation under the Immigrant Investor Pilot Program, contact the Office of Programs and Regulation Development, at (202) 616-7862.

Nancy Stephenson, a former employee of the Immigration and Naturalization Service's California Service Center in Laguna Niguel, CA, pleaded guilty last week to accepting thousands of dollars in bribes for issuing work permits she was not authorized to approve. Although Stephenson was authorized to adjudicate employment-based immigration petitions, she was not authorized to approve applications for work permits. The prosecuting attorneys have said that she charged at least 99 applicants up to \$4,000 each to mark their applications with a coded INS stamp indicating approval, along with having made false entries in INS computer records supporting the fraudulent approvals.

Stevenson faces up to 25 years in federal prison on charges of bribery and issuing work permits fraudulently when she is sentenced August 12, 2004.

The *Wall Street Journal* reported that the U.S. State Department has delayed implementing the Hague Convention on Intercountry Adoption, an international treaty governing adoptions. This agreement was to be implemented by the end of 2004, but the date has been moved to 2006 because the agency needs to address the more than 1,500 comments they have received from parents and adoption agencies. This treaty is designed to curb abuses, such as child trafficking, and the outcome of the delay in ratifying the treaty could make it tougher to adopt from certain countries. Families currently in the adoption process are not likely to be affected.

On Cinco de Mayo, about 400 people, mostly Hispanic families, participated in a protest and march in South Bend, Indiana. This demonstration was formed to oppose a March 2004, rule change within the Indiana Bureau of Motor Vehicles. In an effort to verify authenticity, the BMV began screening foreign nationals' immigration documentation. According to the South Bend Tribune, the BMV's new screening procedure has created a culture of fear for immigrants who attempt to obtain driver's licenses. This policy, according to protestors, has increased the number of drivers who are uninsured and not properly trained. The BMV stated that they could not issue driver's licenses to people who can't prove their legal right to be in the United States, because a driver's license serves as a primary identification document.

Under a new U.S. Immigration and Customs Enforcement (ICE) program, certain aliens who are under supervision and would otherwise be detained prior to their deportation may now report their whereabouts via telephone. Aliens who are under supervision are those who

have been ordered deported, but cannot return to their country due to unstable conditions. ICE will select certain aliens who it determines are not a threat to society. Once selected, the aliens no longer have to report to the specified office but may report to ICE by calling a system that verifies the individual's voice.

The new program, which allows officers to prioritize their time to seek out the more than 80,000 criminal alien fugitives, is currently employed in Anchorage, Chicago, Detroit, Miami, Orlando, Portland and Seattle.

ANG Newspapers reports that Oakland City Council President Ignacio De La Fuente released documents proving his U.S. citizenship. The 2006 mayoral candidate's stated reason was to refute local radio talk show host Gene Burns' on-air suggestions that he was an illegal immigrant. De La Fuente was born in Mexico but moved to the U.S. in 1971 and was naturalized in 1979.

8. International Roundup

The German Parliament's lower house has passed a new law cracking down on illegal workers in Germany, which Berlin claims cost the government EUR 370 billion in lost tax revenue last year. Critics of the legislation claim that it does not address underlying issues, which foster illegal workers, such as high employment taxes and high non-labor costs of employing workers. The bill now goes to the parliamentary upper house for final approval.

About \$267 million over the next four years has been put aside in Australia's budget to assist the settlement efforts of refugees and migrants. The government has said the increased funding will be allotted for medical checks, a no-interest loan scheme, language courses and long-term accommodation. There are also funds to assist individuals between the ages of 16-24 with low schooling to get up to 400 hours of tuition.

The United Kingdom's Prime Minister Tony Blair agreed to cooperate with China to fight illegal immigration during Chinese Prime Minister Wen Jiabao's visit to the U.K. last week. The proposed crackdown on people-smuggling rings is inspired by a recent tragedy at Morecambe Bay, where at least 20 Chinese workers died. During a joint press conference, Blair said the two countries would have annual summits beginning next year, to address the immigration issue.

9. Legislative Update

A bill that proposed offering in-state tuition rates to undocumented immigrants was killed in the Colorado House last week. Rep. Ted Harvey (R) introduced the bill, which originally would have barred undocumented immigrants from attending state colleges at the in-state

rates. Proposed amendments would have changed the bill and allowed illegal immigrants to attend at a lowered tuition rate. Harvey said it was for this reason that he killed the bill.

[H.RES.636](#) : Expressing the sense of the House of Representatives encouraging the active engagement of the United States in world affairs and urging the Secretary of State to coordinate with implementing partners to create an online database of international exchange programs and related opportunities.

Sponsor: Rep McGovern, James P. [MA-3] (introduced 5/11/2004)

Committees: House International Relations

Latest Major Action: 5/11/2004 Referred to House committee.

Status: Referred to the House Committee on International Relations.

[H.R.4350](#) : To amend titles XIX and XXI of the Social Security Act to provide for FamilyCare coverage for parents of enrolled children, and for other purposes.

Sponsor: Rep Dingell, John D. [MI-15] (introduced 5/12/2004)

Committees: House Energy and Commerce

Latest Major Action: 5/12/2004 Referred to House committee.

Status: Referred to the House Committee on Energy and Commerce.

[H.R.4360](#) : To provide for continuing Federal reimbursement of emergency health services furnished to illegal aliens through foreign aid funds.

Sponsor: Rep Davis, Jo Ann [VA-1] (introduced 5/13/2004)

Committees: House International Relations; House Energy and Commerce

Latest Major Action: 5/13/2004 Referred to House committee.

Status: Referred to the Committee on International Relations, and in addition to the Committee on Energy and Commerce, 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.

[S.2396](#) : A bill to make improvements in the operations and administration of the Federal courts, and for other purposes.

Sponsor: Sen Hatch, Orrin G. [UT] (introduced 5/10/2004)

Committees: Senate Judiciary

Latest Major Action: 5/10/2004 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

The Arizona Daily Star reported last week that immigration laws are at issue in a US Congressional Primary that represents a portion of Tucson. Seeking an 11th term, the Republican incumbent candidate Jim Kolbe is challenged by Randy Graf, a proponent of stricter immigration laws that deny publicly-funded services to undocumented aliens. Kolbe's record includes introducing legislation that grants more freedom to foreigners seeking entrance for employment purposes.

11. U.S. Immigration Inspectors to be Placed at Foreign Airports

According to GovExec.com, Commissioner Robert Bonner of the U. S. Customs and Border Protection agency announced that within the month, the government would send teams of inspectors to airports abroad to screen visitors coming to the United States. The initiative originated at the old Immigrations and Naturalization Service, but was disbanded when the INS and the Homeland Security Department merged.

A team of seven specially trained inspectors will be placed within the month at Poland's Warsaw International Airport. The primary mission will be to thwart terrorism, but the team will also perform more traditional roles such as detecting fake travel documents. The Customs and Border Protection agency will assess the status of this project within six months in hopes to expand it to other airports, such as Amsterdam's Schiphol Airport.

Bonner said that counterterrorism was not a focus of border and customs agents before the September 11th terrorist attacks, and the 19 hijackers entered the United States 33 times before 9/11.

Bonner said he hopes other nations are open to the new program because it is expected to add to overall security and because it is in the best interest of all airlines that are coming into the United States. He said the agency refuses entry into the US every day due to the belief that the prohibited individuals are associated with terrorism. The agency is currently trying to decide which airports will be covered under the new program.

12. Changes in the Required Documentation for U.S. Employment for Citizens of Republic of the Marshall Islands Outlined

As of May 5, 2004, Citizens of the Republic of the Marshall Islands (RMI) need only a valid RMI passport and valid admission documentation as proof of authorization to work in the United States. This represents a departure from previous requirements set by the U.S.

The RMI, along with the Federated States of Micronesia (FSM) attained independence from the United States in 1986 pursuant to the Compact of Free Association (CFA). The Republic of Palau also gained independence under a similar compact. These three island nations are referred to as the "Freely Associated States" (FAS). Under the compacts, the citizens of all three island nations could enter the U.S. with a passport or birth certificate. Upon entrance, the FAS citizen had to apply for an EAD by submitting a Form I-765 Application for Employment Authorization.

The requirements for employment authorization have now changed for citizens of the RMI. Presently, a valid RMI passport is required for entrance to the U.S. The only additional document required for employment authorization is the unexpired I-94 issued at the port of entry. These two documents are evidence of both identity and employment eligibility for I-9 purposes and should be entered under Section 2 of List A documents. An EAD is no longer necessary but still may serve as valid work authorization.

Requirements for citizens of FSM and Palau have not changed. While Congress has authorized the same changes for the FSM as those that the FMI citizens now enjoy, additional diplomatic agreement is necessary before such changes go into effect for FSM citizens. Such an agreement is expected sometime later this year. For the citizens of Palau, no such changes have been negotiated or agreed upon by Congress at this time.

13. Proposal Would Require Hospitals to Report Undocumented Immigrants to DHS

The Undocumented Alien Emergency Medical Assistance Amendments of 2004, under which health care professionals would have to tell federal authorities about undocumented immigrants seeking medical treatment, could come to a vote this week.

This bill, sponsored by Rep. Dana Rohrabacher (R-CA), would override the current legislation that prohibits hospitals from inquiring about a patient's immigration status. Late last year, a law was signed that allots at least \$1 billion over the next four years to help cover the cost of giving undocumented immigrants emergency services. At that time, Rohrabacher only agreed to vote yes on the Medicare measure if House leaders committed to considering his bill for a vote.

The Undocumented Alien Emergency Medical Assistance Amendments of 2004 would obligate medical providers to obtain names, addresses, fingerprints, photographs and names of employers from undocumented immigrants admitted into any hospital. The information gathered would then be provided to the Homeland Security Department, for purposes of deportation. The employers of the undocumented immigrants would be billed for the medical charges. Although participation in this program would be voluntary, those that did not participate would not be eligible for federal funds to cover the costs of treating undocumented immigrants.

Immigration advocates and hospital associations worry the bill will turn hospital staff into immigration officials and create a public health threat. Rohrabacher released a press statement contending the bill would not inconvenience hospitals.

14. CRS Report Addresses Immigration-Related Detention

A recently released Congressional Research Service Report for Congress details current legislative issues regarding immigration-related detention. Alison Siskin, an Analyst in Social Legislation for the Domestic Social Policy Division, compiled the report.

The report addresses the numerous changes that have taken place with regard to noncitizen detention since the Sept. 11 attacks. Following the attacks, the government gained broader authority under the Immigration and Nationality Act (INA) to detain aliens while awaiting a determination of whether they should be removed from the United States. Certain categories of aliens also became subject to mandatory detention by the Department of Homeland Security. Aliens subject to mandatory detention include those arriving without documentation or with fraudulent documentation, those who are inadmissible or deportable on criminal grounds, those who are inadmissible or deportable on national security grounds, those certified as terrorist suspects, and those who have final orders of deportation. If an alien is not subject to mandatory detention, he or she may be detained, paroled, or released on bond.

Certain aliens are in indefinite administrative custody because they cannot obtain travel documents to another country and the DHS refuses to release them even though they have been ordered removed from the U.S. In 2000, the INS estimated that it had 5,000 aliens in indefinite administrative custody. In addition, certain aliens are subject to expedited removal and detention because they arrive in the U.S. without valid documentation or with

false documentation. Under expedited removal, the decision is not subject to any further hearings, reviews, or appeals.

Some of the policy issues that surround detention of aliens include the number of aliens subject to mandatory detention, the justness of mandatory detention, the length of time in detention for aliens who have been ordered removed, and the amount of detention space available. Statistics show a spike in detention numbers in 1997-1998, which was the first year that all the laws of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) were implemented. IIRIRA increased the number of aliens subject to mandatory detention, creating a concern about mandatory detention as applied to asylum seekers arriving without appropriate documentation. The numbers show a steady increase following that spike. Some are concerned that decisions regarding when to release or detain aliens may be based on the amount of detention space instead of the merits of the individual case. For FY2004, 22,812 noncitizens were in DHS detention on an average day. In FY2002, INS budgeted \$1,583,025 per day for 21,107 beds. In FY2004, the DHS has budgeted \$80 a day for each detainee in detention, not including the cost of transportation or deportation.

The administration and detention of noncitizens is now in the control of the DHS' Bureau of Immigration and Customs Enforcement (ICE) following the government's reorganization after Sept. 11. While all authority and function of the DHS to administer and enforce immigration laws is vested with the Secretary of Homeland Security, the language of the Homeland Security Act of 2002 may have left the Attorney General with concurrent authority over immigration laws. In *Armentero v. INS*, the Ninth Circuit determined that until the language was clarified, immigration habeas petitioners should name the Attorney General AND the DHS Secretary as respondents in their habeas petitions. In addition, it can be argued that the Attorney General shares concurrent powers with the DHS Secretary authority for bond determinations for aliens and the authority to arrest, detain, and release aliens.

Members of the 108th Congress have introduced several bills concerning the detention of noncitizens, but none of the bills have received any action. H.R. 47 would allow judicial review of bond and detention determinations, legislate the six-month post-removal-order custody determination, and allow for de novo review of post-removal-order detention. H.R. 47 and other bills, including H.R. 184, H.R. 3309, H.R. 3115, and H.R. 3918, would make changes to the mandatory detention provisions codified in IIRIRA. Other bills would increase funding for detention space or provide reimbursement to local entities for the cost of detaining aliens. (H.R. 1238, H.R. 2235, H.R. 2671, H.R. 3522, H.R. 3534, S. 1906, S. 1024) Three of these bills, H.R. 2671, H.R. 3522, and S. 1906, address issues of the authority to apprehend and detain aliens.

15. Airman 1st Class Charged With Identity Theft

The *Austin American-Statesman* reported last week that Liliana Plata, known to the Air Force as Cristina Alaniz, surrendered to authorities in Valdosta, Ga. on Tuesday and was released on bail the same day. She is charged with fraudulent use or possession of identifying information. A hearing set for next month will decide the punishment she faces of two years behind bars, a dishonorable discharge from the Air Force, and deportation to Mexico.

According to the *American-Statesman* report, Plata came to the U.S. illegally from Mexico City and hoped to join the military. After learning she needed a Social Security card to join, she borrowed \$2,000 from her mother and purchased documents from a man in Los Angeles who sold new identities. After being assured that her new identity was that of a deceased person, Liliana Plata became Cristina Alaniz.

She went through basic training at Lackland Air Force Base in San Antonio and served as part of the 822nd Security Forces Squadron with Operation Iraqi Freedom. Alaniz (Plata) has consistently been praised for her performance on duty as well as earning an Air Force Achievement Medal.

During these 2½ years of military service, the real Cristina Alaniz, a 22-year-old Texas State University student, found out from the Social Security offices that her identity had been stolen. Her credit report led her to Moody Air Force Base, and after a full investigation the fraud was uncovered.

A written statement from spokeswoman Capt. Erin Dick of Moody Air Force Base said that military policy makes discharge mandatory for undocumented immigrants in service. Plata is assigned to administrative duties pending the outcome of her hearing, and her security clearance has been revoked.

Plata is now fighting to stay in the Air Force and avoid deportation. Her military lawyer, Capt. Randy Hicks said to the press, "I don't condone fraudulent enlistment, but when all the mitigating factors are considered, her service in the war and the fact that she was brought to this country at age 10, she is by and large a victim of the circumstances she was in."

16. Letter to the Editor

[A reader sent an interesting letter to us regarding unemployment insurance options for non-citizen workers. The following are his comments. Readers are always welcome to submit letters and we will publish them from time to time. Just email us at gsiskind@visalaw.com]

This is my experience going to the unemployment service today 05/03/2004 in Elizabeth, NJ:

The unemployment service sent me a mail requesting a copy of my social security and my Alien card in order to continuo my unemployment claims.

I went to the unemployment office today and I gave them my SS Card and my Travel Document. They said my travel document is not valid to claim unemployment. They said that I needed the employment card form INS. I told them that since I am Asylee I don't need to apply for EAD. All Asylee are automatically authorized to work in the USA. I told them this was the law and it was posted on the INS website. They said I was wrong and they didn't care. If I don't have my EAD they would stop my unemployment benefits. After arguing with them for while I gave them my EAD which luckily I had with me and it was not expired. If this had happened a month ago my EAD was expired because the new one I requested was taking to long to come to me.

At the end, the woman from the unemployment office said that I should apply for Citizenship to avoid all this problems. I said to her that I would be happy to apply for citizenship if there was not this big gap for adjust status for asylees. I could not apply for citizenship because I still don't have my greencard.

If you ever talk to anyone from INS or/and from the US Congress, tell them this is one more reason this limit of 10,000 greencard per year should be banished. All asylee people should get their greencard at least one year later after they were granted the asylum. I already had problems to renew my drive license, get my unemployment benefits, renew my EAD, renew my travel document and employers don't accept travel document as proof to work in the USA. I am not even counting the money I spend to renew all these documents every year.

Thanks

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