

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:

With all the bad news on immigration in Congress over the last year, I'm happy to report on some good news. Congress is very close to passing a physician immigration bill that will make a number of improvements to the current system for J-1 waiver processing. In my role as chair of the National Healthcare Access Coalition, a group of immigration law firms

and health care employers interested in physician immigration, I've been very involved with the drafting of the bill.

My role in lobbying for the bill has led me to deliberately keep quiet in this newsletter on the progress of the bill. Much of my work has been behind the scenes. But at this point, the bill has made enough progress that I'm comfortable letting readers know what to expect.

As many of you know, the Conrad 30 J-1 waiver program for physicians that allows state health agencies to sponsor physicians had a renewal date of June 1st. Once June 1, 2004 passed, only physicians already in the US training at that point could apply for Conrad waivers of the J-1 home residency requirement. That created a need for legislation to extend the bill. It also created an opportunity to make some fixes to the J-1 waiver program in order to better match needed physicians with communities across the country.

The bill has now passed the House (H.R. 4453) and has passed the Senate Judiciary Committee (S.2302) with approval by the Senate expected shortly after the election. The bill is expected to be signed by the President. There is still a remote possibility the legislation will be derailed, but that is not likely since the bill enjoys strong bipartisan support.

So what will change? First and foremost, the Conrad program will continue for two more years. Other important changes are the following:

- State and Federal agency waiver applicants will be exempt from the H-1B numerical cap
- Each state will be able to have the flexibility to use five waivers per year for applicants taking jobs outside of federally designated medical shortage areas IF they can demonstrate that they will actually be serving people who live in shortage areas.
- Both State and Federal agencies can sponsor specialists (only state agencies and the Veterans Administration can do so now).

The bill will have a major impact by paving the way for many more specialists to work around the country. The Delta Regional Authority is expected to be the first Federal agency to take advantage of the new law. The expansion of the H-1B cap exemption to Federal waivers is also important since the H-1B cap has been reached and Federal waiver programs have been hampered by not being able to offer physicians the ability to actually work in their sponsoring communities.

Thanks to all of those reading this newsletter who have played a role in working on this legislation. I look forward to reporting soon that it has become law. The next big health care issue to tackle is the reaching of the EB-3 cap (expected in early 2005) and the backlogging of green cards for employment green card holders. This is going to have a major impact on nurses who rely on this category to enter the US. The US lacks an appropriate non-immigrant visa for nurses and this news is likely to cause major problems for employers of foreign nurses.

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,

2. The ABC's of Immigration: The ABC'S Of Immigration: M Visas for Vocational Students

What is an M Visa?

The M visa is available to international students who are coming to the US to pursue a full-time course of study at an established vocational school or other nonacademic school that has been approved by the USCIS. Typical institutions that accept M students include community and junior colleges that provide vocational and technical training, vocational high schools, and other schools that provide nonacademic training, other than English language instruction. The school must demonstrate that its international student program will fulfill educational objectives and will not be used as a means of making the students work. Students are designated M-1 and their spouses and children are M-2.

What is required to qualify for an M Visa?

The most basic requirement for a course of study to qualify for an M-1 visa is that it must lead to a specific educational or vocational objective. The student must engage in a full course of study, the definition of which depends on the type of institution.

- At community and junior colleges, a full course of study is defined as at least 12 semester hours of instruction per academic term, except in cases where the student requires fewer hours to complete the course of study;
- At other postsecondary schools, a full course of study consists of 12 hours of study per week;
- In vocational and nonacademic programs, a full course of study must consist of at least 18 hours of study per week if classroom instruction is the dominant part of the course, or 22 hours of study per week if the dominant part of the course is in the laboratory or workshop; and
- In vocational and nonacademic high schools, a full course of study is the minimum hours the school sets for progress toward graduation.

What should I know about finding a program?

Before a foreign student can obtain M-1 status they must first receive a Form I-20 issued by the school that provides information about the school and the student. Before the school can issue an I-20 the following conditions must be met:

- The student must have made a written application to the school
- The school must have received the student's academic record and evidence of financial support
- The student must meet the school's qualifications for admission, including any English language proficiency
- The student must have been accepted by the school

How do I obtain the M Visa and what are its conditions?

After the school issues the I-20, it sends it to the student abroad, who then applies for a visa at their local US consulate. To make the visa application the student must present the I-20, their passport, the necessary visa fee (which varies from location to location), Form

OF-156 Application for a Nonimmigrant Visa, and evidence of financial support. Unless there are unusual circumstances, the visa will generally be issued on the day the application is submitted, or only a few days afterward. A prospective student who has not yet decided on a school can request a B-2 prospective student visa, and once in the US they can seek M-1 status. Note, however, that if a prospective student does make his or her intentions clear at the time of entry, the INS could very well deny the case.

After receiving the visa, the student may make an application for admission at a US port of entry. The student must present their passport, visa, evidence of support and the I-20. If admission is granted, the INS will keep one copy of the I-20 and return the second to the student. The student is issued an I-94 Arrival/Departure Record that contains a unique control number. This number is noted on the I-20, and becomes a sort of permanent identifier. For example, if an F-1 student leaves the US, upon reentry they are given a new I-94. However, the number on it is crossed out and replaced with the initial number noted on the I-20.

M-1 students are admitted for a period of one year, or for the amount of time required to complete the course of study. They are also given 30 days grace period in which to depart following completion of the course.

Can I transfer to another school on an M Visa?

M-1 students are not permitted to change schools after six months, unless there are circumstances beyond their control. Before six months, transfers are possible, although the student must take care to ensure that they do not fall out of status. The application to change schools is made on Form I-539. The student must include their I-20s from both their old and new schools. Failure to do any of the following will render the student out of status:

- Transfer to a new school without submitting a transfer application,
- Enrolling in the new school before the INS approves the transfer unless 60 days have passed since submission of the transfer application,
- Failure to pursue the full course of study at the school last approved by the INS without seeking reinstatement.

Is it possible to obtain an extension of stay on an M Visa?

To obtain an extension of stay, the student must submit Form I-538 to the INS along with a copy of Form I-20. The student must show that they have maintained valid status and will continue to do so through the period of the extension. The extension may be granted for a period of up to one year, or the length of time required for completion of the program. If the request for an extension is denied, the student has a period of time, between 10 and 30 days, in which they must leave the US. If they do not leave, they are subject to being placed in deportation proceedings.

Am I allowed to work on an M Visa?

M-1 students are not authorized to accept on- or off campus employment. They are, however, allowed to participate in practical training following the completion of their course of study.

A request for practical training must be submitted no more than 60 days before the

completion of studies, and no later than 30 days after completion. The period of practical training is determined by authorizing one month of training for each four-month period of study, however, the practical training is not to exceed six months.

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 Mexican citizen under an expired H1B status and I am getting married with a U.S. citizen. Do I have to leave the U.S. at any point of the process before I receive my permanent residency ("green card")?

A - You can process the green card case in the US, but don't try and travel while the case is pending without consulting with your lawyer. Since you entered the US legally, you should be eligible under Section 245(a) of the Immigration and Nationality Act to adjust to permanent residency on the basis of your spouse. But your overstaying your H-1B status could subject you to the reentry bars. It seems unlikely you'll be able to legally travel until the green card is done.

Q - How long does it take for a person to start working with a company after the company start the H1-B Filing process?

A - Depends on

A. if there is an H-1B visa available. There is a limit on H-1B visas issued each year and if the cap has been hit, you'll need to wait until the new government fiscal year begins. The job might qualify for an exemption from the H-1B cap so that is worth checking.

B. how much money you spend on processing. The normal fee will typically get you a three to four month turnaround. If you pay an extra \$1000 for premium processing, the decision will come in less than two weeks.

I'm assuming the case is approval when sent. Delays from requests for additional evidence are not unusual.

Q - Hi! I would like to ask if it is possible for an H1B visa holder who is an accountant / CPA to prepare income tax for individuals for a fee (outside of H1B employer). And if this is reported on the H1B applicant's personal individual income tax return, how would this affect the immigrant petition filed by employer on behalf of the beneficiary.

A - That would be unauthorized work and a violation of H-1B status (unless a concurrent H-1B got approved for this side work).

Q - I found a company that is willing to sponsor my visa. However, I heard that H1-B cap has been reached. I called U.S. Citizenship and Immigration Services and I was told that the cap does not apply to me since it is a change of status from F-1 or H1-B and not an initial H1-B. Can I still have my employer file I-129 form?

A - If you're on F-1 status now, you're subject to the cap. If you were already in H-1B status, then you probably would not be subject to the cap (unless you were now with an employer exempt from the cap).

Where can I download the form FD-258 (Fingerprint Notification Form for Military personnel).

The FBI has it online at <http://www.fbi.gov/hq/cjisd/PDF/fpcardb.pdf> .

4. Border and Enforcement News

Twenty-one owners or managers at 11 Phoenix used-car dealerships have been indicted by a state grand jury involving a scheme to keep smugglers supplied with vehicles to transport undocumented immigrants and drugs from the U.S.-Mexican border. Authorities said smugglers would pay cash for cars at the dealerships. Dealers then would put false names on vehicle titles and create fake liens. If the care was later seized near the border, it would revert to the dealer because of the lien, rather than be seized by the state. Once the cars had been retrieved, the car dealers would turn the vehicles back over to the smugglers and receive a "recovery fee."

In the past, smuggling rings relied on stolen or rented vehicles to transport undocumented immigrants but switched methods when law enforcement authorities began impounding vehicles used for smuggling. The 21 people indicted face felony charges ranging from conspiracy and fraud to money laundering and participation in a criminal syndicate. Four other defendants were arrested on felony charges of possession of cocaine for sale. The defendants are in custody or have been released on bond, according to authorities.

5. News From The Courts

News From the Courts will return next week.

6. Government Processing Times

California (09/22/2004): <http://www.visalaw.com/california.html>

Texas (09/30/2004): <http://www.visalaw.com/texas.html>

7. News Bytes

The American-Arab Anti-Discrimination Committee (ADC) has confirmed through federal government sources that Immigration and Customs Enforcement (ICE) has initiated, or soon will initiate, specific enforcement actions in major metropolitan areas prior to the November 2 Presidential election. The ICE initiative consists of a stepped up effort to arrest a number of non-citizens whose immigration paperwork is "out of status." According to a recent press release from ADC, the organization opposes the idea that immigration sweeps are being portrayed as successes in the war on terror, as well as any selective enforcement initiative that is based solely on race, national origin or religion.

Through the US Resettlement Program, the United States admitted 52,875 refugees representing more than 40 nationalities during fiscal year 2004. This represents more than an 85% increase over the number of refugees admitted in fiscal year 2003.

8. International Roundup

Voter registration for Afghan refugees living in Pakistan ended last week with an estimated 650,000 expatriate Afghans registering to vote in their country's presidential election. Around 600,000 Afghan refugees living in Iran are also eligible to vote. While the expatriate Afghans who have registered make up about 10 percent of the total number of Afghans eligible to vote, another estimated 2 million Afghans, also living in Iran and Pakistan were not registered.

A study conducted by the United Nations Children's Fund (Unicef) and the Faculty for Social Sciences (Flacso) reveals that around 6,000 minors a year are trafficked to the DR in complicity with Dominican and Haitian military members. The organizations say that a relative brings most of the youths, but many are victims of scams by human smugglers. Both Unicef and Flacso have begun a program to increase the awareness in Haiti and the DR on the smuggling of minors. USAID and the Pan American Development Foundation of Haiti (PADF) finance the program.

9. Legislative Update

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

10. DHS Announces 12-Month Extension and Re-Designation of Temporary Protected Status for Sudan

The Department of Homeland Security recently announced the extension and re-designation of Sudan for Temporary Protected Status until November 2, 2005. Nationals of Sudan, or aliens having no nationality who last habitually resided in Sudan, who have already received

TPS may re-register for TPS under the 12-month extension. There are approximately 449 individuals who are eligible for re-registration under the TPS extension for Sudan. Others may be eligible for TPS for the first time under the re-designation if they have been continuously physically present in and continuously resided in the United States since October 7, 2004. USCIS estimates that fewer than 1,500 additional nationals of Sudan, or aliens having no nationality who last habitually resided in Sudan, may be eligible for initial registration under the re-designation.

The extension and re-designation of Sudan for TPS is effective November 2, 2004 until November 5, 2005. Nationals of Sudan, or aliens having no nationality who last habitually resided in Sudan, who are renewing TPS under the extension must re-register during the 60-day re-registration period, which begins October 7, 2004 and ends December 6, 2004. Individuals who are registering for TPS for the first time must register during the 180-day registration period, which begins on October 7, 2004 and will remain in effect until April 5, 2004.

On November 4, 1997, the Attorney General, who retained authority over TPS designations prior to the creation of the DHS on March 1, 2003, initially designated Sudan for TPS based on an ongoing armed conflict as well as extraordinary and temporary conditions. The Attorney General subsequently extended and re-designated Sudan for TPS. Since then, the U.S. Government has examined conditions in Sudan, and the Secretary of DHS has determined that a 12-month extension is warranted because the armed conflict in Sudan continues.

To re-register for TPS under the extension, an applicant must submit the following: Form I-821 (Application for Temporary Protected Status) without the filing fee, Form I-765 (Application for Employment Authorization), and two identification photographs (full face frontal, passport size) to the local USCIS district office with jurisdiction over his or her place of residence. All applicants seeking employment authorization must submit a \$175 filing fee with Form I-765. If an applicant does not want work authorization, he or she is required to submit Form I-765, without fee, for data collection purposes. Additionally, all applicants for re-registration age 14 and older must be fingerprinted, and need to include the \$70 biometric services fee with their application.

To initially register for TPS under the re-designation an applicant must submit the following: Form I-821 (Application for Temporary Protected Status) with the \$50 filing fee, Form I-765 (Application for Employment Authorization), and two identification photographs (full face frontal, passport size) to the local USCIS district office with jurisdiction over his/her place of residence. All initial registrants between the ages of 14 and 65 (inclusive) seeking employment authorization must submit a \$175 filing fee with Form I-765. Applicants may request a waiver of the TPS and employment authorization fees in accordance with the regulations. If an applicant does not want work authorization, he/she is required to submit Form I-765, without fee, for data collection purposes. Additionally, all applicants for initial registration age 14 and older must be fingerprinted, and thus, need to include the \$70 biometric services fee with their application.

Interim Employment Authorization Documents will not be issued to an applicant unless the Form I-765 (Application for Employment Authorization) has been pending with USCIS more than 90 days after all requested initial evidence has been received by USCIS, including collection of the applicant's fingerprints at an Application Support Center. Therefore, applicants are encouraged to appear at a Support Center for fingerprints as soon as possible after submission of the TPS registration package to a USCIS district office.

More information can be obtained at the USICS web site at www.uscis.gov.

11. Immigrants Could Seek Presidency Under New Bill

A new bill would allow immigrants to run for President of the United States. The bill defines the term "natural born citizen" as it is used in the Constitution and will, therefore, end uncertainty about the eligibility requirements to run for the Office of the Presidency. Republicans are pushing the bill mainly to pave the way for California Governor Arnold Schwarzenegger to one day run for President.

The bill defines the term "natural born citizen" to include the following three categories:

- Any person born in the United States and subject to the jurisdiction thereof,
- Any person born outside the United States to a U.S. citizen parent or parents who are eligible to transmit citizenship, and
- Any person adopted by the age of 18 by a U.S. citizen parent or parents who are otherwise eligible to transmit citizenship to a biological child.

Supporters of the bill say all Americans, whether by birth or naturalization, should be able to run for president. Hundreds of thousands of immigrants complete the naturalization process each year, and more than 700 immigrants have received the Medal of Honor and remain ineligible to be a candidate for president. Opponents, however, say the requirement seeks to guarantee that the president's only allegiance is to the United States.

12. ICE Deports Accused Ecuadorian Cop Killer

U.S. Immigration and Customs Enforcement (ICE) announced recently that it has completed the deportation of accused cop killer Reinaldo Gustavo Zamora-Sandoya, one of Ecuador's most wanted fugitives. Zamora-Sandoya, a citizen of Ecuador, was convicted of crimes in the United States under the assumed name "Edwin Andrades-Rojas" and believed federal officials did not know his real identity.

Zamora-Sandoya is accused of killing two police officers while robbing a bank and then throwing money into the street in order to attract a crowd and facilitate his escape. While imprisoned in the United States, Zamora-Sandoya openly boasted that he was never arrested or convicted for murdering the police officers. Wanted by police in Ecuador, he illegally entered the United States sometime during 1993.

Zamora-Sandoya was arrested in New York City March 2, 1995, for Grand Larceny, Criminal Possession of Stolen Property, Unauthorized Use of a Vehicle, Resisting Arrest and Reckless Endangerment. He was convicted and sentenced to nine months in prison.

On December 9, 1998, he was again arrested in New York and was convicted for Conspiracy to Obstruct Via Robbery (using a gun). For this crime, a judge sentenced Zamora-Sandoya to 95 months incarceration and ordered him to pay \$1.35 million in restitution under a payment schedule of \$50 per month.

Zamora-Sandoya completed his sentence September 7 at the Federal Correctional Institution at Ray Brook, New York. He was immediately taken into custody by ICE's

detention and removal officers and placed in the Batavia, New York detention facility. ICE deportation officers and Ecuadorian police escorted him from the United States.