

Siskind's Immigration Bulletin
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1. Openers

Dear Readers:

Occasionally we make mistakes in this publication and I try and correct them when they're discovered. I made one last week in this very column when I discussed the Republican

Party's position on immigration in connection with the drafting of its Convention Platform. The Republican National Committee posted an old version of the platform on its web site and did not indicate that this was not the new language (even though the Platform had already been adopted). I should have immediately caught this and I apologize.

For the record, here's the updated language:

"Supporting Humane and Legal Immigration

The Republican Party supports reforming the immigration system to ensure that it is legal, safe, orderly and humane. It also supports measures to ensure that the immigration system is structured to address the needs of national security. America is a stronger and better nation because of the hard work and entrepreneurial spirit of immigrants, and the Republican Party honors them. A growing economy requires a growing number of workers, and President Bush has proposed a new temporary worker program that applies when no Americans can be found to fill the jobs. This new program would allow workers who currently hold jobs to come out of the shadows and to participate legally in America's economy. It would allow men and women who enter the program to apply for citizenship in the same manner as those who apply from outside the United States. There must be strong workplace enforcement with tough penalties against employees and employers who violate immigration laws. We oppose amnesty because it would have the effect of encouraging illegal immigration and would give an unfair advantage to those who have broken our laws.

To better ensure that immigrants enter the United States only through legal means that allow for verification of their identity, reconnaissance cameras, border patrol agents, and unmanned aerial flights have all been increased at the border. In addition, Border Patrol agents now have sweeping new powers to deport illegal aliens without having first to go through the cumbersome process of allowing the illegal alien to have a hearing before an immigration judge. We support these efforts to enforce the law while welcoming immigrants who enter America through legal avenues."

This version of the platform contrasts sharply with the previous one. There are few details. The endorsement of the Bush plan is certainly encouraging, but the lack of specifics certainly supports the notion that the Republican Party is deeply divided on the immigration issue. The President is far closer to the middle on immigration issues than many vocal members of the Republican Party and the language finally adopted reflects that.

A few weeks back reported that the H-1B quota for the new fiscal year, which starts October 1st, was already 2/3 of the way to being filled. In the last two weeks, another 5,000 cases have been filed and it is appearing that the quota will likely be filled by the end of October, just one month into the year. That is the earliest the H-1B quota will ever have been filled. Look for the H-1B cap to become a big issue AFTER the election when the pressure of politics will have eased and our Legislature and President will have a freer hand to make decisions that they deem necessary.

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: J-1 Visas - Establishing a J-1 Exchange Visitor Program

Recently, we covered the different activities one can participate in with a J-1 visa. As noted in the article, a J-1 visa holder can only come to the US with the sponsorship of an approved J-1 Exchange Visitor Program ("EVP"). This article describes procedures related to establishing such a program as well as maintaining the program.

What exactly is considered a J-1 Exchange Visitor Program?

An EVP can be established by a government agency (be it a federal, state, or local agency or an international organization). More frequently, however, EVPs are private sector programs. There are four basic types of private sector programs:

- Academic institutions - sponsors may include secondary schools, colleges, universities, seminaries, libraries, museums, and research laboratories affiliated with academic institutions. Programs are established to bring professors, researchers, short-term scholars, and students to these institutions.
- Medical Institutions - sponsors may include hospitals, medical centers and related institutions. Programs are established to bring certain medical trainees and research scholars to medical institutions. The Educational Commission for Foreign Medical Graduates (ECFMG) must sponsor foreign medical graduates entering the US to pursue graduate medical education or training.
- Nonprofit Organizations - sponsors may include teenage academic year/home stay organizations, summer camp counselor programs, au pair programs, student summer work/travel programs and research programs.
- Profit Making Organizations - sponsors may include banking, investment, manufacturing, industrial and other business organizations as well as other organizations involved in establishing ongoing specialized training programs and research organizations.

Who can sponsor an EVP?

Program sponsors are expected to be US "citizens." This means an individual sponsor must be a citizen or lawful permanent resident and organizational or institutional sponsors should be created and operating under the laws of the United States. The responsible officer for an EVP must also be a citizen or permanent resident.

How do I go about becoming an EVP?

The main application form to become an EVP is Form DS-3036 and must be filed through the SEVIS system. Additional documents, dependent upon the EVP category requested, must be forwarded directly to the DOS for the initiation of the review process. Current EVP application fee is a non-refundable \$799. Sponsors must meet a number of other additional requirements including the following:

- A demonstration that the EVP has the financial capacity to meet its program obligations (such as annual reports, financial statements, tax returns, etc.)
- Document how the EVP will ensure that J-1 visitors have adequate medical insurance
- A statement explaining why other visa programs are insufficient to meet the Eva's objectives
- Evidence of appropriate licensure or accreditation
- Documentation that the EVP will make available to visitors cross-cultural activities such as sports, cultural and social events
- Documentation that the program has reciprocity with programs that allow Americans to go abroad to be exchange visitors. The reciprocity need not be for a one-for-one exchange, but should make it generally easier for Americans to have access to the culture of other countries.

Other program requirements are that the number of visitors must be greater than five each year (unless the EVP gets a reduction approved by the State Department), the program must last longer than three weeks (except for short-term scholar programs) and the program must have a sufficient orientation program.

What is the difference between an EVP and a training program?

Training programs have a number of additional rules. Such training programs can be in any of the following categories: arts and culture; information media and communications; education, social sciences, library science, counseling and social services; management, business, commerce and finance; health-related occupations; aviation; the sciences, engineering, architecture, mathematics and industrial occupations; construction and building trades; agriculture, forestry and fishing; public administration and law; and other fields. Training programs will only be approved if they are for specialty occupations (those requiring at least a bachelors degree) or skilled positions (those requiring at least two years of job experience). Training programs for unskilled workers will not be approved.

In the aftermath of September 11, the aviation training requirements became much more stringent.

Training program applications must be accompanied by certification that the EVP has adequate physical plant, equipment and personnel for the training program, that the program is not designed to train employees to work in the US and it is not designed to displace American workers. The EVP must also submit a generalized training plan containing a statement of the training program's objectives, the skills to be taught, a summary of the supervision and evaluation process, the program syllabus and an explanation of why any on-the-job training may be used. If a third party will be conducting the training, the application must be accompanied by documents showing how the EVP

intends to assure the third party meets State Department rules as well as the actual executed contract with the third party.

Training program sponsors also must meet additional recordkeeping requirements. Among the items that must be kept in the files:

- A customized training plan for each visitor
- The trainee's resume and an evaluation of why the visitor was selected for the program
- Documentation that the trainee has sufficient English skills
- Documentation that the trainee has received the necessary information about the program (the trainee should sign the document explaining the rules)
- A statement that the orientation program has been completed
- Documentation that cross-cultural activities were offered or made available to the visitor
- Mid-term and final evaluations of the visitor
- A record of contacts with the visitor to check whether any problems arose for the visitor

What follow-up must an EVP do?

All EVPs must prepare and submit an annual report that accounts for all DS-2019 forms issued to visitors, data on the actual number of visitors that participated in the program, documentation of efforts to provide reciprocity, a record of cross-cultural offerings, and documentation relating to the orientation program. The SEVIS program keeps track of this information and has made the annual report procedure much easier.

How long does it take before an application is processed and/or approved?

The State Department recommends allowing six months for processing of an application, though one would be wise to plan on it taking even longer than this. Especially with private training and work-study programs, the period is taking much longer.

Programs are approved in five-year increments, with the exception of the au-pair programs, which must be redesignated every two years. The DOS normally approves expansions of EVPs to include new types of participant categories when the programs come up for renewal. However, a request can be made earlier. Redesignation application must be made via the SEVIS Form DS-3036. Documents do not need to be resubmitted if they have not changed since the first application. However, in lieu of the document, a statement that the document has not changed should be submitted.

A list of approved programs can be found on the Department of State website at the following link:

http://www.exchanges.state.gov/education/jexchanges/designated_sponsors.pdf.

3. Ask Visalaw.com

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

Q - My mother is a US citizen and she filed my I-130 under the 3rd preference as I was married. Now that I am divorced does my application automatically move to the 1st preference or does it still stay under the 3rd preference?

A - You automatically converted to the Family 1st preference category as soon as you divorced. And you retain your original priority date.

Q - I am a British citizen living and working in the USA on an L1 visa. Recently, I applied for a green card subject to medical exam with civil surgeon. I am a healthy 55 year old but have a condition called Sarcoidosis, which is an immune system disorder. I am worried that this might make me inadmissible to the USA and therefore I will not get the green card.

A - This should not be an issue. There is a specific list of diseases that would render you inadmissible -

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

Sarcoidosis is not on the list so you should be okay. Sometimes, people with health conditions can run into problems if they cannot demonstrate they have the financial means to deal with their health problem. But this is pretty unusual.

Q - Currently I am working for an American company in H-1B status. However, I have an offer to establish my own distributorship in N.J. For that I am considering to register my own company in the U.S.

Will I be able to get a visa through my own company? If I will open my company, I will not be able to stay with my current employer. What status I might obtain in this case?

A - It is possible to get an H-1B to manage your own company, but it is not easy. You'll need to show that the company is in solid financial shape in order to demonstrate the position is bona fide and the company can afford to pay the prevailing wage. You'll also need to show that the position really requires a bachelor's degree. You're going to need to apply for a change of status.

Q - Is there anything barring an NIV or LPR or other non-citizens from contributing money to a political campaign (but of course not voting)?

A - Only LPRs or USCs can make political contributions, NIVs cannot. foreign companies operating in the US can't either. Here is the FEC guidance on the issue:

<http://www.fec.gov/pages/brochures/foreign.htm>

Q - For a Canadian citizen after getting the I-797 approval for an H-1B, is it necessary to get a visa stamped from a US consulate in Canada.

A - No, Canadian citizens don't need to go to a consulate for H-1B visa stamping.

4. Border and Enforcement News

The U.S. Customs and Border Protection announced a new initiative last week dedicated to improving the professionalism of the agency. The CBP Professionalism Initiative promises courteous and helpful service to visitors, immigrants and travelers, as well as the appropriate use of discretion in dealing with technical immigration violations. CBP Commissioner Robert C. Bonner announced the initiative last week, saying that professionalism and courtesy will be the hallmark of every CBP Officer.

5. News From The Courts

News From the Courts will return next week.

6. Government Processing Times

There are no new processing times to report.

7. News Bytes

The Texas and Nebraska Service Centers will be forwarding many new I-130 petitions to the California Service Center for processing, and these cases will receive CSC receipts.

Applicants should monitor the processing time reports for California, rather than for the service center that transferred the cases. However, filings should continue to be made at the service center having regular jurisdiction, and that center will forward the cases to CSC.

Additionally, TSC will be transferring pending immediate relative I-130s and family-based I-130s with current priority dates to California. CSC will not be issuing receipts on these, but applicants should receive a transfer notice indicating that the case has been shipped if it is transferred. Once the case is transferred, processing times for CSC, not TSC will apply.

The New Delhi Department of Homeland Security suboffice has tightened its rules for US citizens seeking to direct file I-130s there. From now on, the United States Consulate will be required to show 60 days presence in India prior to filing for immediate relatives. The 60 days starts upon arrival into India, and must be immediately preceding the filing of the petition, with no departures from the country within that 60-day period. It is not necessary for the petitioner to remain in India subsequent to the filing of the I-130 at this office, but filing at this office must be done in person, by both spouses.

8. International Roundup

The Times (of London) reported last week that under a new Home Office immigration guidance, immigrants to Britain can not be denied entry to the country solely based on their past illegal immigration history. Previously, many civil servants claimed that Hungarian and Bulgarian immigrants entered Britain under the entrepreneurial scheme of claiming to have intentions of setting up a private business. However, entry clearance officers now believe that nine out of ten of these migrants falsely claimed these intentions.

Under the new guidance all migrants claiming this entrepreneurial status must prove that they have the skill necessary to succeed in this intention. The migrants must do such things as prove they can speak English and provide evidence of bank statements. Furthermore, these migrants must also give detailed account of their business plans and be able to demonstrate that they understand the commitment of becoming a self-employed businessperson.

As for immigration officers, the new guidance states officers may use an immigrant's past history when considering an application, however, they must also acknowledge the immigrant's commitment to their entrepreneurial status of entering the country before passing their judgment.

The Sydney Morning Herald reported this week that the cases of 42 Iraqi refugees, eight of which are children, will be reassessed due to the United Nations High Commission for Refugees receiving new information about the state of Iraq as it transforms into a sovereign nation.

For the 42 Iraqi refugees, past judgment ruled that the refugees were currently of no need of the protection the refugee status would grant. 27 are Iraqi nationals being held on the island of Nauru in the Pacific Ocean. The other fifteen Iraqi refugees to have their cases reassessed are being held on the mainland of Australia.

Senator Vanstone of Australia stated that before considering the fact that Australia took on average 13,000 people claiming humanitarian and refugee status each year, the government had not been interested in processing the refugee claims of the 27 Iraqis in Nauru.

9. Legislative Update

California lawmakers last week voted to give driver's licenses to illegal immigrants who pass a criminal background check, despite objections by Gov. Arnold Schwarzenegger. The measure passed 21 to 14 in the California Senate, and 42 to 35 in the Assembly. However, the governor's aides have said that he would veto it, according to the *Los Angeles Times*. The governor opposes the bill because it did not require a notation on the license identifying the holder as an undocumented immigrant. Supporters of the bill maintained that this notation would not improve security and would only yield discrimination. The background checks would include screening by federal anti-terrorism authorities and the required submission of fingerprints. If the bill does pass, it will become law January 1, 2005.

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

10. Republican Platform States Party's Stance on Immigration

In the midst of the Republican National Convention this week in New York, some conservative Republicans are realizing that their ideas on the problem of millions of illegal immigrants in the United States are not as congruent with Bush's new guest worker plan as previously thought. Bush's immigration program, which will be endorsed by the GOP's platform committee and presented to the convention this week, aims to legalize eight to ten million of the United States' illegal immigrants with temporary three-year visas, in order to incorporate these immigrants into the U.S. economy.

The official position the party holds regarding immigration is supportive when it comes to reforming the immigration system to make it safe and legal, and also addresses the needs of national security. The platform mentions President Bush's proposal for a new temporary worker program that applies when no Americans can be found to fill the jobs.

The platform states that the President's temporary guest worker program would allow undocumented immigrants to emerge from anonymity and legally participate in America's economy. The program would allow undocumented individuals that are currently in the United States to apply for citizenship in the same manner as those who apply from outside the United States.

Although the platform does promote the President's proposal, it insists there must be strong workplace enforcement with tough penalties against employees and employers who violate immigration laws. The Republican Party officially opposes amnesty because it would

encourage illegal immigration and would give an unfair advantage for those people that have violated laws that the United States has in place.

The platform states that reconnaissance cameras, border patrol agents, and unmanned aerial flights have all been increased at the border to better ensure the United States only through legal means that allow for verification of their identity. Additionally, Border Patrol agents now have extensive new powers to deport illegal aliens without having first to go through the process of allowing the illegal alien to have a hearing before an immigration judge. The Republican Party's platform emphasizes its support of these enforcement efforts, and at the same time welcomes immigrants who arrive in the United States through the legal channels.

Opponents to Bush's proposal declare that the plan works as an amnesty program, pardoning and rewarding aliens who have broken immigration laws. Furthermore, they state that the plan would only further encourage immigrants towards future illegal immigration.

However, Republicans in favor of the guest worker plan affirm that it is not an amnesty program. Instead they advocate that the program is designed to allow those immigrants who already have jobs to contribute to the U.S. economy and work for willing employers by obtaining three-year renewable workers visas, with the understanding that once the visas expire the immigrants would have to return to their country.

As for mixed feeling within the party, some Republicans vow to oppose the guest worker plan during this week's Republican National Convention, such as GOP Rep. Tom Tancredo of Colorado.

11. Report Outlines Effects of U.S. Immigration Policy on Foreign-Born Scientists and Engineering

A new report from the Immigration Policy Center (IPC) recently found that foreign-born scientists and engineers play a significant role in the science and engineering industry in the United States. However, the U.S. visa system and the security procedures instituted since September 11, 2001, may be causing an increasing number of foreign-born scientists and engineers to avoid coming to the United States according to the study.

According to the report outlining the IPO's study, entitled "Maintaining A Competitive Edge: The Role of the Foreign-Born and U.S. Immigration Policies in Science and Engineering," the foreign-born accounted for 16.6 percent of all scientists and engineers in the United States in 2000, which exceeds their 11.1 percent share of the U.S. population as a whole. In specific industries, the foreign-born comprise 42.2 percent of all physical scientists and 38.6 percent of all life scientists in educational and health services in 2000, as well as 26.2 percent of all physical scientists in manufacturing.

The foreign-born account for 51 percent of engineers with a doctorate degree, and 45 percent of life scientists, physical scientists and mathematical and computer scientists with a doctorate. The report states lengthy delays in visa processing for scientists and engineers are widespread and significant, and often have nothing to do with the amount of time it takes to actually perform a security check on the applicant.

The number of non-immigrant visas issued by the State Department, which are the primary means by which foreign-born scientists and engineers enter the United States, fell by 35.7 percent from FY 2001 to FY 2002. That number includes declines of 33.7 percent in H-1B visas for highly skilled professionals and 26.5 percent in F-1 student visas.

The report is available online at <http://www.immigrationpolicy.org>.

12. Interim Rule Expands US-VISIT to Most Highly Trafficked Land Borders

The Department of Homeland Security (DHS) has expanded its authority to collect biometric data for United States Visitor and Immigrant Status Technology Program (US-VISIT), an integrated, automated entry-exit system that records the arrival and departure of aliens; verifies aliens' identities; and authenticates aliens' travel documents through comparison of biometric identifiers. The Federal Register in January 2004 published an interim rule, which is to go into effect September 30, 2004, as the first step in the implementation of US-VISIT.

The interim rule authorized DHS to require aliens seeking to be admitted to the United States with non-immigrant visas to provide fingerprints, photographs or other biometric upon arrival in, or departure from, the United States at air and sea ports of entry. The rule expands the US-VISIT program to the 50 most highly trafficked land border ports of entry in the United States, all of which will be integrated into the US-VISIT program and will be identified no later than December 31, 2004.

The rule going into effect at the end of this month also further identifies the population of aliens who are required to provide biometric identifiers and other information under the US-VISIT program. Certain officials of the Taipei Economic and Cultural Representative Office are exempt from the US-VISIT biometric data collection requirements, while crewmembers applying for landing privileges may be required to provide biometric data under the program. Additionally, DHS may require biometric data collection from nonimmigrant aliens who are visa exempt under the Visa Waiver Program. The interim rule does provide that DHS has authority to require Mexican nationals who have a Border Crossing Card to provide biometric data when entering and exiting the United States. However, the DHS along with the Department of State have together determined that Border Crossing Card travelers who are not required to be issued a Form I-94 Arrival/Departure Record at the time of admission are exempt from the US-VISIT biometric data collection requirements.

DHS is accepting public comment on all aspects of US-VISIT; however, they must be submitted on or before November 1, 2004.

13. Former Nazi's US Citizenship Revoked

A Romanian-born former member of the Nazi SS had his US citizenship revoked last week by a federal judge. The 84-year-old Joseph Wittje is accused of serving as a concentration camp guard, according to the Associated Press.

At his hearing, the government said Wittje served in the Romanian Army from February 1942 until July 1943, and was a member of the Waffen SS, a Nazi party organization that included combat and guard units in concentration camps, from 1943-1945. An international military tribunal classified the group as a criminal organization in 1946. In his immigration

papers from 1950, Wittje did not reveal his membership in the Waffen SS according to the Justice Department complaint. Instead, his attorney said Wittje was stationed near Sachsenhausen and belonged to an SS Death's Head battalion, but was never a guard.

In 1978, US immigration laws were amended to allow deportation of anyone who assisted or participated in Nazi acts of persecution. Furthermore, the Justice Department has had an office dedicated solely to investigating cases of former Nazis living in the United States. The department has won cases against more than 90 people.

In Wittje's case, the government declared that Wittje was unlawfully admitted to the United States when he was granted citizenship in August 1959 because the Nazi Waffen SS was a movement hostile to the United States. The government filed a complaint that sought to revoke Wittje's citizenship in September 2003. Last week his certificate of naturalization was canceled and the Immigration Judge ordered him to turn it over to the attorney general.