

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

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1. Openers

Dear Readers:

I am writing this from Washington, D.C. instead of my office in Tennessee. I'm here again in the nation's Capitol advocating on immigration issues. This time I'm here in my capacity as a Board Member of the Hebrew Immigrant Aid Society and will be joining fellow HIAS board members in meetings with USCIS, DOS, White House, Homeland Security and UNHCR

officials. We'll be discussing refugee admissions, religious worker visas, comprehensive immigration reform, the DREAM Act and other major issues.

On my second day in DC, I'll be taking off my HIAS hat and going to Capitol Hill to discuss the pending J-1 physician bill. That bill would extend the Conrad 30 program and add make needed changes to the program. Hopefully, a bill will be passed by Congress in the coming weeks.

Over the last few years, I've gotten more involved in lobbying on immigration issues. Instead of just reacting to changes in the immigration system, I'm learning that it is possible to influence the debate. I used to be intimidated by the process, but the more involved I've gotten, the more I realize that it is not that tough and can actually be fun. Immigration lawyers reading this should really consider getting involved with AILA's advocacy efforts. And for everyone else, there are plenty of other organizations that organize grassroots advocacy on immigration issues. Go to the American Immigration Lawyers Association web site at www.aila.org for information.

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: C Visas for Aliens in Transit Through the US and D Visas for Crewmembers

What is a C Visa?

The C visa category is reserved for aliens who are passing through the US on their way to another country. To obtain a C visa, the person must demonstrate that they will be in "immediate and continuous transit through the US." C visas are available in four general categories:

- General – merely passing through the US
- TWOV transit – Transit without visa; under agreements with transportation lines, aliens from certain countries can transit through the US without fulfilling documentary requirements. Entry must be made at a designated international airport, and a person's stay in the US is limited to eight hours.
- Transit to UN Headquarters – certain people involved in the UN can travel to the UN
- Foreign government officials – must be passing through the US to another country

How long can I stay in the country with a C visa?

The maximum length of a C visa is 29 days. Applicants must meet all of the standard nonimmigrant requirements, plus they must prove the following:

- Their only purpose in coming to the US is to pass through in transit
- They have a ticket or other means to reach their final destination
- They have sufficient funds to reach their final destination
- They have permission to enter the country in which their final destination is located, if such permission is needed

What restrictions come with holding a C visa?

Entering the US on a transit visa is not considered an official entry into the US. C visa holders cannot change status in the US, except to that of an employee or official of a foreign government or international organization. Aliens in transit cannot work, and they cannot seek any extensions of stay.

What is a D visa?

D visas are reserved to crewmembers, which includes workers on both ships and airplanes. A crewmember must be part of the regular functioning of the vessel. Family members cannot get derivative status.

What restrictions come with holding a D visa?

Since 1990, D visa holders have been specifically prohibited from performing longshoreman work, except in a few limited cases. They are, however, allowed to load and unload hazardous materials. If their country of origin has an agreement allowing US crewmembers to do longshoreman work, the D visa holder can. If the area longshoremen's union has a collective bargaining agreement allowing alien crewmembers to perform such work, it is allowed. Also, where there is no such agreement, the employer can attest to the prevailing practice of allowing alien crewmembers to do such work.

The person in charge of the vessel must present to USCIS at docking a crew list showing the names of all crewmembers, their position on the ship, and whether they will be discharged at that port. Vessels working solely within the Great Lakes do not need to fulfill this obligation, except for crewmembers who are not US, Canadian, or British citizens. When the vessel prepares to leave, it must present a list documenting any changes in the crewmembers. If there have been no changes, a statement to that effect should be submitted.

Before an alien crewmember can be allowed to leave the vessel, they must be inspected by USCIS. Operators are subject to serious penalties if they fail to fulfill this requirement. Even after the inspection, the crewmember cannot leave unless they are given a conditional landing permit. Again, the operator is subject to harsh penalties if this rule is not followed. The crewmember has no right to appeal the denial of shore leave.

As a general rule, crewmembers are not allowed to extend their stay or change their status. However, crewmembers who, because of unforeseen circumstances are not able to leave with their vessel, can change to another crewmember visa that will allow them to leave with another vessel.

Crewmembers are not eligible to seek relief from a deportation order, and are not allowed to apply for adjustment of status except under section 245(i).

3. Ask Visalaw.com

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

4. Border and Enforcement News

The North County Times of California reported last week that a new policy proposed by the Department of Homeland Security aimed to discourage U.S. Border Patrol agents from speaking to the media.

The policy was initiated after Border Patrol agent, Ron Zermeno, notified the media recently of the cancellation of controversial immigrant sweeps by official in Washington D.C. In informing the media of this fact, Zermeno incited 1,000 residents of Southwest County in California toward public protest and a town hall meeting that summoned Homeland Security Undersecretary Asa Hutchinson to visit and answer the questions of angry protesters.

The new policy, therefore, muzzles the agents by making it easier for the Department of Homeland security, the agency that oversees Border Patrol, to fire agents for speaking to the media. While the Department of Homeland Security declared that the new policy won't change the requirement for firing an agent, it will initiate a performance review system, giving management the power to punish those agents who speak to the media. Though the performance review system would include a presidentially appointed Merit Systems Protection Board to make the final call in disciplinary action appeals processes, in the past this processes was done by a neutral third party arbiter.

Critics of the new policy, such as National Border Patrol Council President T.J. Bonner, declare that free speech protection is revoked with the policy, allowing management to simply declare that an agent's performance has dropped when releasing him for talk to the media.

5. News From The Courts

Camphill Soltane v. US Department of Justice; Immigration & Naturalization Service
U.S. Court of Appeals for the Third District
No. 03-1626

Camphill Soltane ("Camphill"), a non-profit organization dedicated to providing services to young adults with mental disabilities, appealed a final order of the United States District Court for the Eastern District of Pennsylvania affirming the denial of Camphill's visa petition on behalf of an employee sought to be classified as a "special immigrant religious worker." The employee, Annagret Goetze, was originally admitted into the United States in the R-1 classification as a nonimmigrant religious worker. In 2000, Camphill filed an I-360 immigrant visa petition on behalf of Goetze with the Immigration and Naturalization Service (INS), which sought to have Goetze classified as a special immigrant religious worker so that she could serve in the proposed position of houseparent, music instructor and religious

instructor at the Camphill facility. After requesting more evidence, the INS ultimately denied Camphill's petition in February 2001, finding that Camphill had failed to establish that Goetze was to be employed in a religious occupation.

After Camphill filed an appeal with the Administrative Appeals Unit in December 2001, the Administrative Appeals Office of the INS affirmed the original decision on four independent grounds. Camphill was not recognized as a religious organization as required under the regulations, the proposed position of houseparent was neither a religious occupation nor a religious vocation, there was insufficient evidence to determine whether Goetze had worked in a religious position for two years preceding the petition, and Camphill provided insufficient evidence to prove that there was a qualifying tender of a job to Goetze. In February 2003, the District Court entered judgment against Camphill, affirming the AAO decision on all four grounds.

In the final appeal, USCIS conceded that based on the Yates memo, Camphill, a mental health service provided, was indeed a religious organization. The court stated that a religious worker immigrant petition is not a discretionary decision of the Attorney General, and that 8 CFR 204.5(m)(2) does not require that a religious occupation involve only religious functions.

6. Government Processing Times

Nebraska (09/01/2004): <http://www.visalaw.com/nebraska>

7. News Bytes

USCIS recently initiated InfoPass in the district offices in Anchorage, Atlanta, Detroit, Denver, Fresno, Guam, Honolulu, Las Vegas, Phoenix, Portland OR, Reno, Sacramento, San Diego, San Francisco, San Jose, Seattle, Spokane, Tucson and Yakima. With InfoPass, the public can go online to schedule a date and time to meet with an immigration information officer, avoiding the need to wait in line.

Recently, the US government revoked a visa it had issued to a prominent Swiss theologian who had accepted a visiting profession position at the University of Notre Dame. The theologian is a Muslim scholar who is an advocate for democracy and an opponent of extremism and terrorism. The American Immigration Lawyers Association put out a press release condemning the visa denial and the "culture of no" that has, according to the release, "permeated the visa issuance and immigration admissions process since 9-11. AILA contends that while purporting to keep America safe from terrorist threat, these measures harm America by keeping out prominent international scholars and others who would be beneficial to the country.

8. International Roundup

The Guardian reported last week that Papa Wemba, the world music star known as the King of Congolese Rumba Rock, will be tried in France in October for allegedly smuggling at least 150 people into the country by claiming they were members of his band. According to the article, Wemba faces similar charges in Belgium, where some of the undocumented immigrants arrested last February said they had paid \$3,500 (£2,000) to get to Europe. Under police investigation since December 2000, Wemba admitted to French and Belgian police that he obtained visas for a few dozen of his fellow-countrymen, but insisted he was acting for humanitarian reasons. The singer, who spent three months in prison last year before being released on bail, is scheduled to appear in court on October 25 and will be charged with aiding illegal immigration, forgery, fraudulently obtaining official documents and criminal association. He faces up to 10 years in jail and a fine of €750,000 (£500,000).

The Telegraph reported this week that Fritz Bolkestein, a European Single Market Commissioner incited many when he claimed that Turkey's accession into the European Union would put Christian civilization in jeopardy if 70 million Turkish Muslims were allowed to join the union.

The former leader of the Dutch liberals declared that the European Union's hopes of a 'fully integrated European superstate' would fail if the fragile system tried to absorb the citizens of Turkey into the union. Bolkestein compared the EU's controversial predicament to the late Austrian-Hungarian empire, which took in so many culture that it was eventually ungovernable, in a speech at Leiden University in the Netherlands.

The question of whether to let Turkey into the European Union as a member is also a controversy in public opinion in France and Germany today.

9. Legislative Update

[H.R.5006](#): Making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2005, and for other purposes.

Sponsor: Rep Regula, Ralph [OH-16] (introduced 9/7/2004)

Committees: House Appropriations

House Reports: 108-636

Latest Major Action: 9/9/2004 Passed/agreed to in House.

Status: On passage Passed by the Yeas and Nays: 388 - 13 (Roll no. 440).

[H.R.5040](#): To implement the recommendations of the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

Sponsor: Rep Shays, Christopher [CT-4] (introduced 9/9/2004)

Committees: House Intelligence (Permanent Select); House Armed Services; House International Relations; House Government Reform; House Judiciary; House Rules; House Transportation and Infrastructure; House Energy and Commerce; House Ways and Means; House Homeland Security (Select)

Latest Major Action: 9/9/2004 Referred to House committee.

Status: Referred to the Committee on Intelligence (Permanent Select), and in addition to the Committees on Armed Services, International Relations, Government Reform, the Judiciary, Rules, Transportation and Infrastructure, Energy and Commerce, Ways and Means, and Homeland Security (Select), for a period to be subsequently determined by the

Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

[H.R. 5062](#) : -- Private Bill; For the relief of Helene Jensen.
Sponsor: Rep Shaw, E. Clay, Jr. [FL-22] (introduced 9/9/2004)
Committees: House Judiciary
Latest Major Action: 9/9/2004 Referred to House committee.
Status: Referred to the House Committee on the Judiciary.

[S. 2774](#) : A bill to implement the recommendations of the National Commission on Terrorist Attacks Upon the United States, and for other purposes.
Sponsor: Sen McCain, John [AZ] (introduced 9/7/2004)
Latest Major Action: 9/8/2004 Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 692.

[S. 2775](#) : -- Private Bill; A bill fo the relief of Raheela Naz Khan.
Sponsor: Sen Landrieu, Mary [LA] (introduced 9/7/2004)
Committees: Senate Judiciary
Latest Major Action: 9/7/2004 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

At a recent town hall meeting in Des Moines, Iowa, Vice President Dick Cheney commented on the current state of immigration and border security. He said that while border security has improved significantly since September 11, it still remains a problem. Cheney said that most undocumented immigrants are coming to the U.S. to work, and that the government has no idea of who is actually in the country. He voiced his support for President Bush's guest worker program, so the government could keep track of who was coming in to the country and of when they would leave. He insisted that these individuals could not become citizens and that the proposal was only an idea or concept at this point.

Cheney said that it is extremely necessary to know who is in the country at all times, and that there isn't enough security yet to employ this proposal. He said the proposal is an attempt to address the problem of screening out terrorists to the maximum extent possible.

The *Pacific News Service* in California reported last week that at the 17th Constitutional Convention of the United Farm Workers in Fresno, California, Democratic presidential hopeful, John Kerry, asserted his claim to sign the bipartisan AgBill bill if elected into office. The AgBill works to giving legal residency status to undocumented farm workers in the United States. This statement comes as part of Kerry's proposed initiative to comprehensively reform immigration policy during his first 100 days in office.

During his phone conversation with delegates of the Convention, Kerry described every child in America being covered by childcare. Kerry said "Within hours of being sworn in, there

will be health care for all Americans. In addition to that, we will be introducing an opportunity for kids to graduate from high school differently.”

President of United Farm Workers, Arturo S. Rodriguez, guaranteed the union’s support of Kerry’s candidacy throughout his campaign. Reversely however, John Sweeney, president of AFL-CIO, the union federation which UFW is under, criticized the Bush administration for problems with job loss and health insurance coverage for Americans. Sweeney stated that the Bush administration let Americans down when 5 million jobs were promised to the American people and the loss of 2 million jobs resulted.

According to the *Arizona Daily Star*, President Bush’s nephew, George P. Bush, did not apologize for a previous comment regarding U.S Border Patrol’s use of pepper-ball guns, calling it reprehensible. However, after a rally at the University Marriott for his uncle’s re-election, Bush backed off his charge, and told some Tucson reporters that “I made an error and I accept it but...there shouldn’t be this use of arms.”

Border Patrol Tucson Sector spokesman, Andy Adame, said the pepper-balls are used “to de-escalate a violent situation where an agent’s life is threatened, but he doesn’t have to rely on deadly force.” According to Adame, the pepper-ball guns have been used 71 times since they were introduced in August 2002. The paper also reported that the Mexican government, in turn, has been criticized by Mexican lawmakers for approving the use of “*balas de goma*” – translated literally as rubber bullets – against illegal border-crossers.

11. USCIS Announces FY 2005 H-1B Processing

U.S. Citizenship and Immigration Services (USCIS) announced last week that the agency has received 45,900 H-1B petitions that will count against the Congressionally mandated cap for fiscal year 2005 (October 1, 2004 through September 30, 2005). The limit in fiscal year 2005 is 65,000.

The cap limits the number of requests for initial employment that USCIS may approve each year. Petitions seeking extensions or modifications to current H-1B employment are not counted against the cap. In addition, persons working for employers that are exempt from the cap (such as institutions of higher education, or nonprofit research organizations) are not counted against the cap.

The H-1B category allows U.S. employers to augment the existing labor force with skilled temporary workers. H-1B workers are admitted to the United States for an initial period of three years, which may be extended for an additional three years.

12. Protected Status for 3,000 Sierra Leoneans Canceled

Last week the *Washington Post* reported of the Department of Homeland Security’s decision to cancel the temporary protected status of those from Sierra Leone. The decision called those under the protected status who had not obtained U.S. citizenship to return to Sierra Leone by May 3, 2004.

Citizens of the West African Nation, which was plagued by a ten year civil war that ended in 2002, were granted the temporary protected or 'special' status that allowed them to access driver's licenses, property and work during their stay in the United States. The one year protected status for the Sierra Leoneans was first issued in 1997 and subsequently extended five times during the Clinton and Bush administration until the civil war ended.

Critics of the May 3 return date are claiming that Sierra Leone is still an unsafe country, with its conditions still reflecting the affects of the brutal civil war. Such critics included the Friends of Sierra Leone, the nonprofit organization established by former volunteers of the Peace Corps. The organization is lobbying for an extension to the temporary protected status under the fact that Sierra Leone's conditions of corruption and torture are unsafe for its citizens.

The law for temporary protected status, which was passed by Congress in 1990, stipulated that the status would apply to those aliens enduring armed conflict, environmental disaster or extraordinary circumstances. Furthermore, the president has the power, on top of Congress, to extend the temporary workers status if the conditions of the country are still threatening.

Those aliens who would return to Sierra Leone today claim that the conditions of the country bordered by the other troubled state of Liberia are still far from safe. Though the brutal civil war ended in 2002, acts that were common place during the war, such as rebels killing and burning people in their homes, amputating limbs with machetes and forcing hands into boiling water are still taking place against its citizens.

As for those under the former protected status, fear of deportation back to Sierra Leone has lead some to stay in their homes and not answer the doors. Others have found that their recent change in status has resulted in job loss and denial. Some, such as journalist Paul Barrow, have even been seized from their homes and forced into deportation back to Sierra Leone.
