

Siskind's Immigration Bulletin  
September 20, 2004

Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-345-0225; facsimile: 800-684-1267 or 630-604-9306, e-mail: [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com), WWW home page: <http://www.visalaw.com>.

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>.

Editor: Greg Siskind. Associate Editor: Penny Egel. Contributors: Augusta Akpotu, Haydee Dijkstal, Esther Schachter, Sehrish Siddiqui, and Claire Workman.

To receive a free e-mail subscription to Siskind's Immigration Bulletin, fill out the form at <http://www.visalaw.com/subscribe2.html>. To unsubscribe, send your request to [visalaw-unsubscribe@topica.com](mailto:visalaw-unsubscribe@topica.com).

To subscribe to the free Siskind's Immigration Professional Newsletter, go to <http://www.visalaw.com/sip-intro.html>.

\*\*\*\*\*

Are you a jobseeker looking for an employer to sponsor your work visa?  
Are you an employer or recruiter who can benefit from free online job postings?  
Visit [Visajobs.com](http://www.visajobs.com), the online career network, and create your new account (<http://www.visajobs.com>).

\*\*\*\*\*

1. Openers
2. The ABC'S Of Immigration: Family Based Immigration Overview
3. Ask Visalaw.com
4. Border and Enforcement News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update
10. State Department Visa Bulletin
11. Memo Offers Guidance on Adjudication of L-1Bs for Chefs and Specialty Cooks
12. House of Representatives Removed Provision on Matrícula Consular Identification Card
13. Texas Attorney General Wins Case Against Notario Operation
14. GAO Suggests Guidance for Biometric Visa Program

- 
1. Openers

Dear Readers:

We're rapidly coming to the end of the legislative year in Washington. Congress will soon be leaving town in order to go home and campaign and if any bills are going to pass, that's going to have to happen soon.

This has been one of the quietest years in quite some time when it comes to immigration legislation. That's not to say that there have not been big efforts to make changes – both pro- and anti-immigration. But there is basic deadlock in the Congress on immigration issues. The Republicans control both Houses of Congress and the White House. But the Republican Party is bitterly divided on immigration issues. Anti-immigration advocates effectively control the House Immigration Subcommittee while the Senate committee is more moderate. The President takes a relatively pro-immigration position on issues, but is usually not willing to exercise any leverage to move immigration legislation.

The best evidence of this deadlock has been the President's plan for comprehensive immigration reform. The President gave a major policy speech in January outlining a serious plan to reform the US immigration system. It did not go as far as many Democrats hoped, but it certainly represented an improvement on what we now have. But the proposal was condemned by restrictionist members of his own party and has gone nowhere.

The same is true for plans to restrict immigration as well. There have been many restrictive bills introduced, the latest being a plan to make it tougher to recognize matricula consular identification cards (see the article in this issue on the subject). But pro-immigration advocates have been able to stop those bills as well.

Maybe this breathing period has been a good thing. The rabid anti-immigrant sentiment many people felt after 9/11 seems to be waning and cooler heads are beginning to prevail. But this deadlock will soon cause serious problems as major issues need to be addressed. One that will come up soon is the H-1B limit. The USCIS will announce in the next few weeks that all of the numbers for fiscal year 2005 are used up. That will wreak serious havoc for employers across the US. Schools won't get their teachers, towns won't get their doctors, and companies needing key employees won't see those needs met. Look for even more outsourcing as employers realize that they cannot meet their worker needs in this country.

\*\*\*\*\*

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: Family Based Immigration Overview

Immigration through a family member who is a US citizen or permanent resident is the most common way of gaining US residency. All that is required is the qualifying family relationship. The ease with which a person can immigrate through a family member is in keeping with American notions of the importance of the family.

**Which relationships qualify to sponsor a visa?**

The first question to address in a family-based immigration case is whether a qualifying family relationship exists. Qualifying relationships are grouped into two main categories – immediate relatives and other close family members. Immediate relatives of US citizens are given special preferential treatment. First and foremost, they are allowed to immigrate in unlimited numbers.

### **Who is considered an immediate relative?**

The following are immediate relatives:

- Spouses
- Children, unmarried and under 21
- Parents

### **Who can be considered a preference relative?**

Other close family members of citizens and permanent residents are also allowed to immigrate, subject to annual numerical limitations. The following are other relatives who are allowed to immigrate:

- Unmarried adult children of citizens
- Spouses and unmarried children of permanent residents
- Married adult children of citizens
- Siblings of citizens

There are many technical rules relating to the allotment of visas in this group, as well as definitions of the family relationship.

### **What do I need to know about preparing my application?**

The elements of the application that must be submitted to USCIS are the same for each type of family member. The main USCIS form that is used in all family cases is the I-130 Petition for Alien Relative. The petitioning relative must complete this form. The application must include documentation of the qualifying family relationship, and of the petitioner's status as a citizen or permanent resident. The filing fee is \$185.

When the application is made for a spouse, it must include copies of Form G-325A – Biographic Information for each spouse, as well as two color photos of each spouse. When the application is filed for an immediate relative not subject to annual numerical limitation and the relative is in the US, an application for adjustment of status may be filed at the same time. An adjustment application is the actual process where someone converts their status to permanent resident. Think of the I-130 as being a form where someone is determined to be eligible to immigrate in a specific family category and gets a place in the queue for green cards in a particular category. The adjustment application is filed when the preference family member gets to the front of the queue in their preference category.

If the petitioner is in the US, the application is filed with either the appropriate USCIS Service Center or USCIS local office. Applications for immediate relatives are filed with local offices and those for other relatives are filed with the Service Center. If the petitioner is outside the US, they may file the application either with the Service Center that had jurisdiction over the place where they last resided in the US, or with the overseas USCIS office that has jurisdiction over their overseas residence. If the petitioner is overseas on US

government business, the application is filed in the US. In some cases, a petitioner residing outside the US may file the application with the US consulate having jurisdiction over their residence. However, not all US consulates accept such petitions.

If the application is in order and shows the qualifying relationship, if the alien is an immediate relative, they can either adjust status or immediately apply for an immigrant visa at a US consulate. If the alien is not an immediate relative, they must wait until a visa number become available to either adjust status or apply for an immigrant visa through the State Department and process the green card through a US consulate overseas. In such cases, the priority date is the date on which the USCIS received the complete application.

---

### 3. Ask Visalaw.com

If you have a question on immigration matters, write [Ask-visalaw@visalaw.com](mailto: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 - Can I obtain F1 visa without leaving the USA. I already have an approval f my status from the INS.

A - You need to get your F-1 visa stamp at a consulate outside the US. You cannot get it in the US.

\*\*\*\*\*

Q - I participated in an exchange visitor program in 1993 under a (J-1) visa and have served my two year residency back home. Do I qualify to apply for a permanent status?

A - Satisfying the home residency requirement merely removes a bar from getting permanent residency. It does not qualify you for permanent residency in and of itself and you'll need to qualify for a visa - non-immigrant or immigrant - the same as anyone else.

\*\*\*\*\*

Q - I have all the requirements to file a form for naturalization. However, I have one question. I was arrested and charged with DWI, possession of marijuana (less than 30g), and possession of paraphernalia in April 2003. Eventually, this case was dismissed a few months later, because the officers make an illegal stop. I was wondering if this would prevent me from obtaining citizenship. Do I have to report this in the form?

A - You could have problems because even though you were not convicted, it is the conduct that is the focus in the evaluation of good moral character. The arrest must be disclosed on the application for citizenship. Due to the facts of the dismissal, I would think it unlikely that your application would be approved since the actual conduct does not seem to be in dispute. Speak with your own immigration lawyer, but I suspect you will be told to wait five years from the incident to apply.

\*\*\*\*\*

Q - I am a Singapore citizen and had approval for the Fiance/fiancee visa. I want to know if upon my marriage and issued green card, do I need to give up my citizenship as Singaporean. If I do it, wont I be stateless'? Is there anything thing wrong with this?

A - Securing a green card should not affect your citizenship in Singapore. That may not be the case if you went on to acquire US citizenship later on. Every country has different rules on whether becoming a US citizen would lead to a loss of your home country's citizenship. But you don't need to become an American citizen to remain in the US permanently.

\*\*\*\*\*

Q - I am on an L1B visa. If a US company wishes to hire me and get me an H1B premium visa, how long is the validity of that H1 visa? Is it for a max of 6 years or will it be 6 years minus the time I have already spent here in the US on another visa which is 4 years already?

A - You will have your L-1B time deducted from your six years of H-1B eligibility.

---

#### 4. Border and Enforcement News

Arrests of child sex offenders and other sexual predators Operation Predator, an initiative by U.S. Immigration and Customs Enforcement (ICE) that draws upon the agency's law enforcement authorities to identify, investigate, arrest and, in the case of foreign nationals, deport child sex predators, went over the 4,000 mark last week. Since the initiative's launch in July 2003 by Homeland Security, ICE agents have arrested 4,045 individuals, 1,500 of which were foreign nationals and have been deported. Thousands more face immigration or criminal proceedings. Additionally, foreign law enforcement officials, acting on ICE leads, have arrested more than 750 sexual predators in their respective countries.

---

#### 5. News From The Courts

News From the Courts will return next week.

---

#### 6. Government Processing Times

California (09/17/2004): <http://www.visalaw.com/california.html>

Missouri (09/17/2004): <http://www.visalaw.com/missouri.html>

Texas (09/17/2004): <http://www.visalaw.com/texas.html>

Vermont (09/17/2004): <http://www.visalaw.com/vermont.html>

---

#### 7. News Bytes

According to the Bureau of Public Affairs, all visa waiver travelers from all 27 Visa Waiver Program (VWP) countries must present either a machine-readable passport (which allows data in the passport to be scanned automatically by a machine) or a valid U.S. visa, effective Oct. 26, 2004. However, travelers with a valid U.S. visa will not be required to have machine-readable passports.

In addition, as of September 30, 2004, all VWP travelers arriving at a U.S. port of entry will be required to enroll in U.S Visitor and Immigrant Status Indicator Technology (US-VISIT), a program involving digital photograph and finger scans.

\*\*\*\*\*

The Philadelphia Bar Association's Professional guidance Committee recently published an opinion that a lawyer who was not admitted to practice law in Pennsylvania could still maintain an in-state office for the practice of immigration law so long as the out-of-state lawyer did not claim to be a Pennsylvania lawyer. Additionally, said attorney would have to focus all activities exclusively on immigration matters and would need to reveal the limitation in his practice in any advertisements, stationery or business cards. The committee made this conclusion based on a new Pennsylvania Rule of Professional Conduct 5.5(d)(2).

\*\*\*\*\*

The U.S. Senate last week narrowly rejected President Bush's attempt to privatize 1,000 federal jobs nationwide, saving the jobs of about 115 immigration information officers at the Nebraska Service Center who were targeted under Bush's plan. The Senate voted 49-47 last week to keep the President from contracting the jobs to private workers.

Nebraska senators Ben Nelson and Chuck Hagel split their votes as Democratic Senator Nelson opposed the President, and Republican Senator Hagel supported him. Sen. Nelson was a co-sponsor of the measure to block Bush's plan, and supported the opinion that the current officers should remain because the workers have frequent access to confidential information that pertains to national security. The President has threatened to veto the Homeland Security bill if the prohibition of private workers is included in the final proposal.

---

## 8. International Roundup

*Expatica News* reported last week that immigrants who can prove they have an employment offer and a contract of employment for at least one year will be granted legal permission to work in Madrid. In addition, immigrants have to pay social security to qualify for the work permits. Furthermore, illegal immigrants who can prove they have been in the country for a "sufficient time" will be granted legal status.

\*\*\*\*\*

In Amsterdam last week it was reported that lawyers and other experts addressed a Dutch parliamentary hearing about the recent increase in complaints about the IND, the Dutch Immigration and Naturalization Service. Grievances towards the IND included claims that the IND has become so shortsighted of its own procedures and so unwilling to investigate case files that those seeking residence permits are experiencing long delays.

It was further alleged that IND officials and staff frequently avoid and discount court rulings that favor asylum seekers, causing immigration procedures to take even longer for these aliens. Some lawyers have argued that the IND will look for contradictions in the court ruling or simply not directly act on the ruling, further hindering the timely immigration path to naturalization.

Other complaints deal with difficulties contacting the IND with simple questions or problems. It was reported that 94 percent of callers to the IND helpline were not able to get through in the promised three minutes of hold time. In recent years, the Dutch government has looked towards limiting the flow of immigrants into the country. Instead the government aims to concentrate on integrating those immigrants already in the country into the Dutch society and culture.

---

## 9. Legislative Update

[H.RES.768](#) : Calling on the United Nations Security Council to immediately consider and take appropriate action to respond to the growing threat that the ruling State Peace and Development Council in Burma poses to the Southeast Asia region and to the people of Burma.

Sponsor: Rep Gallegly, Elton [CA-24] (introduced 9/13/2004)

Committees: House International Relations

Latest Major Action: 9/13/2004 Referred to House committee.

Status: Referred to the House Committee on International Relations.

[H.J.RES.104](#) : Proposing an amendment to the Constitution of the United States to make eligible for the Office of President a person who is not a natural born citizen of the United States but has been a United States citizen for at least 20 years.

Sponsor: Rep Rohrabacher, Dana [CA-46] (introduced 9/15/2004)

Committees: House Judiciary

Latest Major Action: 9/15/2004 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[H.R.5070](#) : -- Private Bill; For the relief of Ana Maria Moncayo-Gigax.

Sponsor: Rep McKeon, Howard P. (Buck) [CA-25] (introduced 9/13/2004)

Committees: House Judiciary

Latest Major Action: 9/14/2004 House committee/subcommittee actions.

Status: Forwarded by Subcommittee to Full Committee by Voice Vote.

[S.2792](#) : A bill to permit athletes to receive nonimmigrant status under certain conditions, and for other purposes.

Sponsor: Sen Collins, Susan M. [ME] (introduced 9/13/2004)

Committees: Senate Judiciary

Latest Major Action: 9/13/2004 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](http://www.visalaw.com/advocacy.html).

---

## 10. Memo Offers Guidance on Adjudication of L-1Bs for Chefs and Specialty Cooks

A recent memo to USCIS Service Center Directors from Fujie Ohata, Director of Service Center Operations was sent in order to give guidance to Citizenship and Immigration Services staff on the adjudication of L-1B petitions for aliens seeking to obtain a Chef and Specialty Cook position. The memorandum clarifies that Chefs or Specialty Cooks generally are not considered to have “specialized knowledge” for L-1B purposes, even though they may have knowledge of a restaurant’s special recipe or food preparation techniques.

A March 9, 1994, Legacy INS policy memo provides general guidance for adjudicating specialized knowledge cases and still remains in effect. According to that memo, in addition to demonstrating the complexity of the knowledge and the fact that the knowledge is not generally found in the industry, it is necessary to determine the extent to which the place of employment would suffer economic inconvenience or disruption to its U.S. or foreign based operations if it had to hire someone other than the particular overseas employee on whose behalf the petition was filed. Therefore, it is necessary to consider not only how skilled the chef or cook is and whether or not his or her skills are common to other chefs, but also the role the chef plays within the petitioning organization and the impact his or her services would have on the operations of the U.S. based business. In deciding whether those responsibilities constitute specialized knowledge, it would be necessary to assess the length and complexity of in-house training required to perform such duties.

The most recent memo offered guidance for adjudicating petitions for L-1B Chefs or Specialty Cooks, stating that adjudicators should assess the extent of the alien’s experience in that profession, the levels of training and education or technical expertise, whether the product is noteworthy and uncommon, or if the knowledge of the process and procedure is advanced. Additionally, the adjudicator should determine whether the knowledge would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign entity. To qualify as “specialized knowledge,” the knowledge of the product or the process must be of the sort that is not generally found in the particular industry, although it need not be proprietary or unique.

---

#### 11. House of Representatives Removed Provision on Matrícula Consular Identification Card

Despite Republican attempts to restrict the Matrícula Consular identification card, the House of Representatives removed a Republican provision from a spending bill that would have prohibited the Treasury Department from implementing regulations that allow financial institutions to accept matricula consular identification cards as part of a valid customer identification program. All but 16 Democrats voted in favor of permitting the continued use of the Matrícula card, and the final vote was 222 to 177.

According to a press release, House Democratic Leader Nancy Pelosi said that the vote ensured that Mexican immigrants can access the financial system without fear, and that law enforcement and financial institutions can effectively protect the United States. She said the identification card allows immigrants to contribute to the American economy by opening bank accounts.

Congressman Rubén Hinojosa, who co-sponsored the amendment to remove the provision, said that the passing of the amendment proves that the matricula consular ID card is secure and should be sued as a valid form of identification for those wishing to open a new account.

The Matrícula Consular is internationally recognized as a valid form of identification, much like the consular registration issued by the U.S. State Department to our citizens living abroad. Many state and local governments, including more than 1,000 police departments, and more than 120 financial institutions in the U.S. recognize it.

---

## 12. Texas Attorney General Wins Case Against Notario Operation

The Texas Attorney General's office won a verdict against a Weslaco, TX business that offered unauthorized legal services to immigrants last week. A Hidalgo county jury awarded over \$1 million against Ruth and John Thomas and their business, Trámites Migratorios (Immigration Proceedings). The verdict included over \$900,000 in restitution to consumers under the Texas Deceptive Trade Practices Act (DTPA), in addition to civil penalties and attorney's fees.

The jury determined that the business and its owners violated the DTPA and a new law prohibiting notaries public from representing themselves as attorneys and charging fees to prepare and submit immigration documents. Attorney General Greg Abbott sued Trámites Migratorios and its owners last February, claiming that they were unlawfully providing legal services without authorization from federal immigration officials or a license to practice law.

Federal law requires that companies offering immigration consulting services be non-profit agencies accredited by the Department of Justice's Board of Immigration Appeals. The defendants were neither properly accredited, nor are they licensed attorneys.

Additionally, a criminal action is pending against Ruth Thomas for allegedly misusing her license as a notary public. In Texas, notary commissions allow the holder to witness the signing of legal documents. Scam artists have long exploited the misunderstanding between the term "notary" and the similar-sounding Spanish term "notation," used in Latin America to address highly experienced attorneys. Texas law specifically forbids notaries from providing immigration services unless they hold a separate license to practice law.

---

## 13. GAO Suggests Guidance for Biometric Visa Program

The General Accounting Office (GAO) recently reviewed the State Department's rollout of the Biometric Visa Program, including its implementation progress. The State Department is implementing the Biometric Visa Program at all 207 overseas consulates by October 26, 2004, as a complement to the Department of Homeland Security's United States Visitor and Immigrant Status Indicator Technology program. The program requires that all persons applying for U.S. visas have certain biometrics and a digital photograph collected during the visa application interview. This information must be cleared through the DHS Automated Biometric Identification System before an applicant can receive a visa.

The GAO found that the State Department is installing the equipment and software for the Biometric Visa Program on schedule and will likely meet the October 26, 2004, implementation deadline. However, DHS and the State Department have not fully developed guidance for the program's use. As of September 1, 2004, the State Department had installed program hardware and software at 201 out of a total of 207 overseas posts and plans to complete the installation at the remaining 6 posts by September 30. The posts

with the program are now collecting fingerprints of each visa applicant and processing the prints through the DHS Automated Biometric Identification System.

DHS and the State Department have not developed and not provided comprehensive guidance that includes directions to consular officers on when in the visa process prints are to be scanned and when and how information from the database on visa applicants should be considered by consular officers. Because of the absence of such guidance, GAO found that consular officers are unclear on how to use the program and the information available from the DHS Automated Biometric Identification System on visa applicants.

GAO is recommending that DHS and the State Department develop and provide to consular posts guidance on how the program should be used to help adjudicate visa and that the State Department direct each consular post to develop an implementation plan based on this guidance. The State Department and DHS generally agreed with the recommendations.

---