

Siskind's Immigration Bulletin
September 27, 2004

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1. Openers

Dear Readers:

This week our ABCs of Immigration article covers the topic of acquiring a green card through a spouse. This is one of the most common routes to getting permanent residency

and one that has the most potential for problems. The article is an introduction to the topic, but we highly recommend readers consult with an immigration lawyer early in the process to make sure they understand potential problems that could arise in the case, particularly on the subject of proving a marriage is genuine.

I'm off to the AILA Global Immigration forum this week in New York City. Today's immigration lawyers are more and more often having to assist clients with moving people around the globe, not just to the US. While I normally work with local counsel to assist in non-US immigration matters, it helps to have a basic idea of how immigration law works in key markets.

I'm also planning to visit a few of my favorite museums. One is Ellis Island, the immigration processing center for a half century. Ellis Island handled millions of cases and I've heard that nearly half of Americans have relatives that moved through there. Ellis Island is now a very interesting museum that has been restored beautifully. I'm also hoping to get to the Tenement Museum on the Lower East Side. This museum's mission is to educate visitors on what home life was like for the millions of immigrants that came to the US during the great wave from 1890 to 1924.

I'm particularly interested in the Tenement Museum not only because my own relatives came during this time and started out in this part of New York, but because I've just read an excellent book entitled *Triangle: The Fire That Changed America*, by David Von Drehle. The book tells the story of a fire at a clothing factory in the Lower East Side of New York City that killed nearly 200 workers, nearly all of them young female immigrants. That fire was the worst workplace disaster in New York history until the 9/11 attacks. The book does an excellent job telling about tenement life a century ago. And, more importantly, the author explains how this horrible disaster helped prod the government into taking workplace safety standards seriously. The book is well worth the read.

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: Obtaining Permanent Residency Through a Spouse

The spousal relationship is one of the most common bases for immigration to the US. US citizens can petition for foreign-born spouses as immediate relatives, meaning the spouse will have an immediately available visa number. Generally, if your non-citizen spouse is in the U.S. (through a lawful admission or parole) at the time you file the Form I-130, Petition for Alien Relative, your spouse may file a Form I-485, Application to Register Permanent Residence or to Adjust Status at the same time as part of the same petition package.

Lawful permanent residents can petition for their spouses, but the petition falls into the second preference family category. There is an annual limit of 114,200 visas in this category, plus whatever visas are unused in the first preference. The second preference also includes adult unmarried children of permanent residents. Within the second preference, spouses receive 77 percent of the visas, or just under 8,000. Spouses are also eligible to immigrate as derivative beneficiaries of a married adult child of a citizen and of brothers or sisters of citizens. These categories are backlogged several years.

What specific criterion must the marriage meet to be considered valid?

However the spouse will be immigrating, there are three very important standards that the marriage must meet.

- The marriage must have been valid at the time it was performed
- The marriage must still be in existence at the time the immigration process is completed (and not just when the application is submitted)
- The marriage must not have been entered into for immigration purposes

Was the marriage valid at the time of performance?

For a marriage to be valid, there are two primary requirements:

- Each party must have been legally able to marry, and
- The marriage ceremony must be considered legal under the laws where it was performed (there are certain exceptions to this such as in the case of same sex marriages or polygamous marriages)

In cases where one of the parties had previously been married, the divorce must be final and valid. Divorces in which neither party was present in the jurisdiction granting the divorce are almost always invalid, whereas those granted in a jurisdiction where both parties were present are almost always valid. Divorces granted when only one person was present, particularly those that occur in countries known for granting divorces in such cases, are highly suspect. Whether a subsequent marriage is valid depends on the law of the place of the new marriage.

Common law marriages, which are now quite rare in the US and only recognized in only a handful of states, can be valid for immigration purposes if the laws of the place of residence, or last previous residence, legally recognize them.

Customary marriages, those performed according to local custom but not licensed by civil authorities, may at times be valid for immigration purposes. Whether they are depends on whether the law of the country where the marriage occurred recognizes the marriage as valid. Such questions almost always require legal assistance from someone who is an expert in the laws of the particular country of marriage.

Marriages entered into in the US are almost always valid, unless one of the parties was under the age of consent, or if the family relationship between the spouses was too close. Divorces obtained in the US are also almost always valid as well.

Is the Marriage Still in Existence?

For a person to immigrate through the spousal relationship, the marriage cannot have been

legally terminated. Furthermore, if the parties are separated and do not plan to live again as husband and wife, a petition can still be denied.

In places with no-fault divorce laws, where a legal separation can mature into a divorce, the period of separation will most likely not be considered to still be in existence.

Was the Marriage Entered into for Immigration Purposes?

Over the past two decades, Congress and the INS have grown increasingly suspicious of marriages. Since 1986, a foreign-born spouse who has been married to the petitioner for less than two years is given conditional permanent residence for two years. While this conditional status is for the most part the same as regular permanent residence, it is designed to provide assurance that the parties did not marry for immigration purposes by allowing in some cases for the conditional status to be revoked if the marriage does not last two years.

It is important to note at the outset that it is not against the law to consider immigration in deciding to get married. Considering immigration benefits will only be a problem if that was the ONLY reason to marry and there are no other legitimate reasons. Therefore, it is important to know what factors will make the agency suspect marriage fraud.

Some of the most obvious of these are if the couple did not know each other for very long before marrying or had seen each other only a few times before marrying. Also, if the couple does not live together, the USCIS will be very suspicious, even more so if they have never lived together. Additionally, marriages between couples from different backgrounds, especially those that lack a common language, are sometimes viewed with suspicion (this is probably a violation of the law, but it is pretty tough to prove immigration offers are engaged in such behavior).

The USCIS is very suspicious of marriages entered into after one of the parties is placed in removal proceedings or is being investigated by the USCIS. There are a number of kinds of supporting documents that can be presented to show that the marriage is bona fide. This would include, but not be limited to, evidence of the parties' joint ownership of property and their cohabitation, evidence of children born in the marriage, joint finances, as well as affidavits from friends and family testifying to the bona fides of the marriage.

Lawful permanent residents who obtained their status through marriage as a spouse of a US citizen or permanent resident are precluded for a period of five years from getting approval for second-preference visa petition filed for a new spouse. The bar does not apply if the petition can show by "clear and convincing" evidence that the relevant earlier marriage was not entered into for purposes of getting a green card. It also does not apply if the first spouse died.

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.

I need to apply for a visa to work in London. I have the work permit. I was just informed that my credit may be checked and I could be denied a visa if my credit is bad? Is this true?

Not true. Credit checks are not conducted in immigration matters.

Where can I find the current J-1 waiver skills list?

You can find the list at http://exchanges.state.gov/education/jexchanges/participation/skills_list.pdf .

I have a question regarding filing 2 employment based I-485 application for the same person at different service centers. I and my wife both are employed on H1B visas, I in Texas and she in Pennsylvania. Both of us had our labor certification application approved recently. My wife's got approved first and so we filed for employment based I-485 for her and for me as her spouse through her employer at the Vermont service center. Recently my Labor Certification got approved and we are thinking of filing another set of employment based I-485 for me and for her as my spouse through my employer at the Texas service center. Will having dual applications cause any problems for us or is this a normal practice where when one I-485 application gets approved you withdraw the other I-485 application.

You can only have one I-485 legally pending at a time.

I am a pharmacist and I recently passed the Foreign Pharmacy Graduate Exam. I am presently in the US on a tourist visa and I am authorized to stay in the US until December 2004. Once I find an employer who will be willing to sponsor me, will there be any problems in changing my B2 to a H1B? Would I need a lawyer? Another case that I need help on is my wife. She is a physician who was fortunate enough to receive a H1B. She started her residency last July. Can she apply for a green card now? If not, when can she start applying?

B to H changes are not that unusual and will likely be available if you meet all the requirements for an H-1B and you did not tell the consulate anything that would make it seem that your intentions when applying for the B-1 were fraudulent. I would always recommend a lawyer for the H-1B process since the process and rules are complex. As for your wife, she's most likely going to need to wait until after finishing her medical residency before she can apply for the green card. The first employer that is post-training can probably apply for her. Let me know if you need help finding an employer.

As the end of the fiscal year approaches on September 30, U.S. Border Control statistics claimed that the death toll of migrants crossing the Arizona border had declined. Border Patrol officials in Arizona stated that the Arizona Border Control Initiative launched in June was responsible for the lower death toll, quoted at 118 this week. However, *The Arizona Republic* of Phoenix further reported that these remarkable numbers might not be wholly complete. The discrepancy in numbers occurred when the Tucson sector changed its approach to calculating the numbers of migrant deaths. Previously, the sector released numbers to the media and the official report to Washington headquarters that included the number of migrant's skeletal remains found in the area, but now this additional number was left off the tally given to the media.

Given this new method to account for migrant deaths, officials claimed that the Tucson sector death toll had come to a total of 118 deaths for the fiscal year, however with the 19 skeletal remains in the picture the death count would have surpassed last year's numbers of 136 deaths.

Critics to the ABC Initiative criticized the government strategy, which spent over \$23 million dollars adding 200 new agents, new equipment and technology such as helicopters and unmanned drones and even free plane tickets to illegal Mexican immigrants to the interior of Mexico. President of Humane Borders, Rev. Robin Hoover, went on to advocate his suspicion of the effectiveness of the government border initiative, stating that "The public can't rely on the Border Patrol to provide comprehensive data. Therefore, all of their program evaluations of their own effectiveness and efficiency are called into question." However, officials of Arizona Border Control defended the intentions of this week's death toll announcement by recognizing the fact that the way the numbers were presented made the situation look more favorable than was true. They continued by stating that they had no intention to mislead the public and had initiated an investigation into this occurrence.

5. News From The Courts

Dhillon v. Ashcroft
U.S. Court of Appeals for the Ninth Circuit
2004 U.S. App. LEXIS 10487

Petitioner Narinderjit Singh Dhillon seeks review of the Immigration Judge's denials of his motion to reopen deportation proceedings and of his claim for relief under the Convention Against Torture ("CAT"), which the Board of Immigration Appeals affirmed without opinion. The IJ denied Dhillon's claim under CAT after finding his testimony not credible. Although the Court of Appeals for the Ninth Circuit finds that the record fails to substantiate some of the IJ's reasons for the adverse credibility determination, it nevertheless concludes that substantial evidence does support the IJ's decision. The Court emphasizes that Dhillon was unable to explain the discrepancy between his testimony and documents he had submitted to the former INS regarding the date of his marriage to his first wife. According to the Court, this inconsistency "went to the heart of Dhillon's claim" because Dhillon testified that he fled India after a police raid following his wedding in 1996. Therefore, the Court holds that the IJ did not abuse his discretion in denying Dhillon's CAT claim.

Due to his attorney's error, Dhillon did not appear at his deportation hearing and was ordered deported in absentia. The IJ denied Dhillon's motion to reopen the proceedings because he failed to comply with the requirements established in *Matter of Lozada*, namely that of filing a state bar complaint against his attorney. The Ninth Circuit holds that the IJ

and BIA erred in failing to reopen proceedings on this basis. It notes that under similar circumstances, it has dismissed the requirement of strict compliance with *Lozada* when the record clearly indicates counsel's ineffectiveness. However, the Court adds that a petitioner must show that his counsel's performance prejudiced his claims in order for his request to reopen to be granted. The Court finds that Dhillon cannot make such a showing with respect to his asylum and withholding of deportation claims because they are based upon the same testimony which the IJ properly held to be not credible. Dhillon, however, can show that his counsel's mistake prejudiced his application for voluntary departure. At the hearing on Dhillon's CAT claim, the IJ was inclined to grant Dhillon voluntary departure, but his deportation in absentia made him ineligible for that form of relief. The Court remanded the case to the BIA to determine whether to grant Dhillon the discretionary relief of voluntary departure.

6. Government Processing Times

There are no new processing times to report.

7. News Bytes

The Department of Homeland Security has released its compilation of statistics for 2003. The document shows enforcement, benefits and other immigration-related figures and can be found at the following link:

<http://uscis.gov/graphics/shared/aboutus/statistics/2003Yearbook.pdf>.

AILA recently posted on its website that it is likely to be "several weeks" before the filing of cap-subject H-1B petitions is cut off for fiscal year 2005. The reason it is not being cut off sooner is the recapture of unused Singapore/Chile free trade numbers.

Labor certification applications pending at the Dallas and Philadelphia DOL regional offices are being transferred to the Backlog Reduction Centers in those cities. As part of the data entry process at the Centers, letters are being sent to employers and their representatives to advise them that the applications have been transferred from the regional office to the Backlog Reduction Center and to request updated information.

Employers are given 45 days to respond to these letters. According to DOL, an untimely an/or incomplete response will not be accepted and will result in the case being closed.

8. International Roundup

Wedding ceremonies at a register office in south-west London, were this weekend interrupted by immigration officers, leading to the arrest of the suspected ringleader of a gang behind what they believe was UK's biggest sham marriage racket, *The Guardian (UK)* reported.

The gang is believed to have arranged up to 300 ceremonies, charging would-be husbands

£10,000 to find a bride who could enable them to stay in the UK, but only paid the brides between £1,000 and £2,000 to take part in the marriages. Immigration officials became suspicious after noticing a pattern of women flying on single airline tickets from the Netherlands. They initially believed the women were drugs mules, but further investigations unearthed the marriage scam.

The scam is understood to have involved flying women from the Netherlands - who claimed to be working in the UK - into Britain to marry West African men. Foreign nationals who are married to EU citizens working in the UK are currently entitled to remain here without showing an intention to live together.

The Guardian (UK) also reported that a spokesman said the Asylum and Immigration Act 2004, to be implemented this week, contained new measures designed to combat suspicious marriages. 'The legislation will require non-European economic area foreign nationals who wish to marry to produce a certificate of approval or proof of entry clearance as a spouse or marriage tourist, and give notice of intended marriage at a designated register office,' he said.

Home Office officials are exploring the possibility of giving registrars the power to deny a marriage they suspect is being carried out for the purposes of illegal immigration, or with the use of false documents.

Expatica News reports that high income, highly skilled expats working in the Netherlands will no longer need work permits. Instead, so-called "knowledge expats" earning over 45,000 euro a year will be eligible to obtain residence permits for the period of their work contracts, lasting as long as five years. Foreign doctoral students as well as postgraduates and university teachers under thirty years of age will not have to meet the income requirement, except that those under thirty must earn at least 32,600 euro. Knowledge expats will not have to renew the permits unless they decide to stay in the Netherlands permanently, but their family members will have to apply for regular permits. The migrants will also have to obtain temporary entry visas (MVV), which together with the residence permits will cost 424 euro. The Dutch government plans to expedite the processing of the knowledge expats' applications, taking no longer than two weeks. Although the change does not apply to other foreign workers, they, along with the knowledge expats, will benefit from having to deal with only one agency. This will simplify, if not accelerate, the process. Students will be eligible for residence permits and MVVs, but will have to renew their permits annually, at the cost of 50 euro.

The more liberal policy reflects the government's effort to fill voids in the Dutch labor market and develop a more competitive labor force. In particular, Economic Affairs Minister Jan Laurens Brinkhorst hopes to give the Dutch economy a more competitive edge by easing restrictions on the entry of foreign engineers and software developers. Under pressure from Parliament, the Netherlands is still restricting the entry of workers from the ten new European Union member states. Generally, before a citizen of one of these states can obtain a work permit, an employer must prove that no Dutch workers can fill the position, except in certain economic sectors with proven labor shortages. This policy contrasts sharply with that of the U.K., which opened its borders to new E.U. migrants on May 1. Citing the fact that only 8000 individuals from these new member states entered Britain in July, Brinkhorst assuages fear of a mass influx of foreign workers.

9. Legislative Update

[S.2816](#) : A bill to provide for adjustment of immigration status for certain aliens granted temporary protected status in the United States because of conditions in Montserrat.

Sponsor: Sen Schumer, Charles E. [NY] (introduced 9/20/2004)

Committees: Senate Judiciary

Latest Major Action: 9/20/2004 Referred to Senate committee.

Status: Read twice and referred to the Committee on the Judiciary.

[S.2823](#) : A bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

Sponsor: Sen Craig, Larry E. [ID] (introduced 9/21/2004)

Latest Major Action: 9/22/2004 Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 711.

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

In a town hall meeting on September 17 in Oregon City, Oregon Vice President Dick Cheney addressed a question regarding the Bush administration's intentions of securing and strengthening the United States' border if the president was to be reelected in November.

The Vice President responded first by asserting the fact that a lot had been achieved in border control during the tenure of the Bush administration, but that there was still a lot more to be accomplished. Cheney continued by stressing the idea that a "crucial characteristic...of American identity" lies in our history of free flowing goods, people and ideas, with borders that allow people to pass back and forth freely.

He followed, however, by acknowledging that this tradition of openness has made the United States vulnerable to threats, such as threats by terrorists. With this reality present, Cheney affirmed that the United States must take measures to protect itself from the threat of terrorist without diminishing this tradition or risking harm to basic economic policies such as international commerce.

To accomplish this, Cheney stated that the Bush administration would especially look toward visa policies regarding those wishing to visit the United States. Also on the list was advancement towards better control and cooperation with the Canadian and Mexican borders to make sure the problem of illegal immigration was diminished. Furthermore, he declared that the administration has reorganized the Department of Homeland Security, combining such offices as Border Patrol and Customs and "beefing up their services."

The Washington Post reported that ProjectUSA, an organization opposed to looser immigration policies, caught the discrepancy between the Bush campaign's Spanish language and English language websites. The paper reported that on the Spanish website, prominent display is given to a translation of Bush's Jan. 7 speech proposing an immigration

plan involving 'guest workers' and the Mexican flag is displayed prominently in the main photograph. However, this same speech is missing from the Bush campaign's English language website, which includes almost every speech Bush gives.

According to *The Washington Post*, a Bush campaign official said that the missing immigration speech was 'a complete oversight' and quickly posted the Jan. 7 speech on the English language website, but the Mexican flag remains on the Spanish language website.

11. State Department Visa Bulletin

IMMIGRANT NUMBERS FOR OCTOBER 2004

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during October. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by September 8th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First : Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second : Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third : Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth : Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First : Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second : Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third : Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Fourth : Certain Special Immigrants: 7.1% of the worldwide level.

Fifth : Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is earlier than the cut-off date listed below.)

Priority Dates for Family Based Immigrant Visas				
	All Chargeability Areas Except Those Listed	INDIA	MEXICO	PHILIPPINES
Family				
1 st	22OCT00	22OCT00	22MAR93	15AUG90
2A*	01MAY00	01MAY00	15SEP97	01MAY00
2B	01JUL95	01JUL95	22NOV91	01JUL95
3 rd	22OCT97	22OCT97	15OCT92	01APR90
4 th	15AUG92	01NOV91	15AUG92	22MAR82

*NOTE: For October, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 15SEP97. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 15SEP97 and earlier than 01MAY00. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Priority Dates for Employment-Based Immigrant Visas				
	All Chargeability Areas Except Those Listed	INDIA	MEXICO	PHILIPPINES
Employment-Based				
1 st	C	C	C	C
2 nd	C	C	C	C
3 rd	C	C	C	C
3 rd	C	C	C	C
Other Workers	C	C	C	C
4 th	C	C	C	C
Certain Religious Workers	C	C	C	C
5 th	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2004 annual limit being reduced to 50,000** . DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For October, immigrant numbers in the DV category are available to qualified DV-2005 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

REGION	All DV Chargeability	
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	Areas Except Those Regions Listed Separately	
AFRICA	AF	9,900
ASIA	AS	9,600
EUROPE	EU	10,850
NORTH AMERICA (BAHAMAS)	NA	5
OCEANIA	OC	150
SOUTH AMERICA, AND THE CARIBBEAN	SA	300

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2004 program ends as of September 30, 2004. DV visas may not be issued to DV-2004 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2004 principals are only entitled to derivative DV status until September 30, 2004. DV visa availability through the very end of FY-2004 cannot be taken for granted. Numbers could be exhausted prior to September 30. **Once all numbers provided by law for the DV-2004 program have been used, no further issuances will be possible.**

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN NOVEMBER

For November, immigrant numbers in the DV category are available to qualified DV-2005 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Region Listed Separately		
Africa	AF	10,300	Except: Nigeria 9,900
ASIA	AS	4,300	
EUROPE	EU	10,850	
NORTH AMERICA (BAHAMAS)	NA	8	
OCEANIA	OC	250	
SOUTH AMERICA, AND THE CARIBBEAN	SA	450	

D. VISA AVAILABILITY DURING THE COMING MONTHS

During the past two years, the visa allocation system compensated for the reduction in CIS visa number demand by making very rapid advances in the visa cut-off dates. As the cut-off

dates advanced, tens of thousands of applicants became eligible to file for adjustment of status at CIS offices. Heavy demand was expected as CIS began to address their backlog and finalize action on such cases. The Visa Office has been alerting interested parties to this possibility over the past two years, and this is exactly what has recently begun to happen.

FAMILY : As CIS demand for visa numbers continues to increase, little if any forward movement of cut-off dates is expected during FY-2005, and the potential for retrogressions in certain categories cannot be ruled out. While retrogression of certain Family cut-off dates is not likely in the immediate future, it cannot be ruled out late in the fiscal year. This is because the CIS backlog is likely to include large numbers of applicants in all categories with priority dates well before the current cut-off dates.

EMPLOYMENT: The increasing CIS use of numbers is likely to require the establishment of cut-off dates in one or more categories during FY-2005. Such action is expected in the Employment Third preference category as early as January.

12. Biometric Identification Technology Operating in Every CBP Border Patrol Station

The United States Department of Homeland Security along with the Department of Justice announced last week that integrated ten-print biometric identification technology is operating in every US Customs and Border Protection Border Patrol station throughout the country.

This new capability allows Customs and Border Protection Border Patrol agents to simultaneously search the FBI's fingerprint database. The Integrated Automated Fingerprint Identification System (IAFIS) and DHS's Automated Biometric Identification System (IDENT) can identify individuals' outstanding criminal warrants through electronic comparison of ten-print digital fingerscans against a nationwide database of previously obtained fingerprints.

The IDENT/IAFIS program began as a pilot in the San Diego Border Patrol Sectors Brown Field Station and the Calexico Port of Entry in August 2001. By the end of 2003, the program was installed at 31 Border Patrol Stations and 48 ports of entry.

Last week, the IDENT/IAFIS program became fully operational within all 148 Border Patrol stations and is in the process of being deployed to all the ports of entry nationwide. As part of US-VISIT deployment, all 115 air and sea ports of entry and the busiest 50 land border ports of entry will have this capability by November 15, 2004.

According to a recent press release, CBP Border Patrol agents have arrested 138 homicide suspects; 67 kidnapping suspects; 226 sexual assault suspects; 431 robbery suspects; 2,342 suspects for assaults of other types; and 4,801 suspected traffickers of narcotics as a result of IAFIS technology.

13. Ridge Outlines DHS Accomplishments During Constitution Week

Secretary of the Department of Homeland Security Tom Ridge recently addressed the attendees of the US Citizenship and Immigration Services Civic Integration Symposium in honor of Constitution Week, giving the crowd an overview of the DHS's positive steps and accomplishments, as well as goals for the future.

Ridge mentioned in his speech that Constitution Week's celebrations began with Citizenship Day ceremonies, which welcomed more than 20,000 new citizens in communities across the country. In order to help these people become acclimated to life as active citizens, USCIS has put together an orientation guide for new immigrants that has just been launched. The guide contains basic information such as how to participate in local government or become involved in the community, as well as practical information such as how to obtain a driver's license, get a social security number or open a bank account.

Ridge said a major goal of Homeland Security has been to improve immigration customer service and immigration practices, such as InfoPass. InfoPass has virtually eliminated the waiting-in-line aspect of immigration offices. Now, customers can go online to make an appointment rather than standing in line. The process is even easier, thanks to the new E-Filing initiative, allowing applicants to complete the most popular forms online. He said that by the end of fiscal year 2006, E-Filing would include a total of 12 forms that will account for more than 90% of the applications for benefits filed yearly.

Ridge said another focus for DHS is to eliminate the immigration backlog. To date, DHS has completed 1.1 million more cases this year compared to the same period a year ago. Ridge said the progress has not necessarily come from hiring more people, but rather from improvements to the process made by CIS. He said that DHS expects to meet its goal of having the backlog down to zero by 2006.

14. DHS Answers Questions Regarding SEVIS Fee

The Department of State has issued a reminder cable about the SEVIS fee, which went into effect on September 1. Before applying for F, J and M visas with initial I-20 or DS-2019 forms issued on or after this date, individuals must pay the "SEVIS I-901 fee." Most students and exchange visitors will pay the full \$100 SEVIS fee, which is non-refundable unless it is paid in error. Certain short-term exchange visitors (au pairs, summer work/travel and camp counselors) will pay a reduced fee of \$35. Individuals participating in a program sponsored by the Federal Government whose program number prefix begins with "G-1," "G-2" or "G-3" are statutorily exempt from the fee. Only principal applicants pay the SEVIS fee prior to visa issuance; F-2, J-2, and M-2 derivatives need not pay. Foreign students in the U.S. who are studying while in another nonimmigrant classification likewise do not have to pay.

Schools and exchange programs should provide their students and exchange visitors with Form I-901, the SEVIS Fee Application, but it is also available on the SEVIS fee website, the DHS SEVIS website, and at domestic DHS form centers. Individuals can pay the fee with a credit card at www.fmjfee.gov or with a U.S. dollar check or international money order mailed to a lockbox address in the United States. An exchange visitor program sponsor may pay the fees for its participants directly to DHS in a "bulk payment" process if DHS first approves the sponsor's participation in this payment process. DHS is also negotiating with Western Union to collect the SEVIS fee. Until the two in-country SEVIS fee collection pilot programs are operative in India and China, students and exchange visitors from those two countries should use the two available SEVIS fee collection methods provided by DHS.

The SEVIS CCD screen will indicate whether the SEVIS fee has been paid, but verification of a fee paid less than three days before an interview may not appear on CCD. In this case, consular officers may accept the receipt for SEVIS fee payment, either generated by the website or sent to the applicant by mail on a Form I-797, as proof of payment. The SEVIS

fee paid on one Form I-20 may be applied to a different Form I-20. Similarly, the SEVIS fee paid on one Form DS-2019 may be applied to a different Form DS-2019 if the SEVIS fee paid is greater than or equal to the SEVIS fee due. Consular officers must deny visas to applicants who cannot prove that they have paid the SEVIS fee.

Generally, nonimmigrants must only pay the SEVIS fee once, as long as they maintain the status in which they were initially admitted. For F or M students, the covered period generally extends from the time the students obtain F or M status to the time they fall out of status, change status, or leave the U.S. for an extended period of time. F or M students will not be required to pay a new fee upon transfer to a new school, extension of stay, change in educational level, when obtaining a new visa for re-entry for program continuation, upon a temporary absence of less than 5 months, or upon a period of approved absence in which the students are studying abroad as part of their U.S. educational program requirements. J exchange visitors who apply for reinstatement after a substantive violation of status, or who have been out of valid program status for longer than 120 days but less than 270 days during their program, must pay a new fee. Moreover, some nonimmigrants who participate in multiple subsequent programs will have to pay a new fee for each new program.

More information on SEVIS and the SEVIS fee can be found on the U.S. Immigration and Customs Enforcement's Student and Exchange Visitor Program (SEVP) web site, www.ice.gov/sevis.