

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:

We are still in the dark about when USCIS will release the 20,000 extra H-1B visas Congress authorized last year. We're nearly a month past the deadline Congress set and are still being told the announcement is due any day.

In the mean time, on April 1st, the quota for fiscal year 2006 (which starts October 1, 2005), opened up for 65,000 applicants. We have heard from the American Immigration Lawyers Association that there will be a provision in the announced rules that will allow cases filed for the FY2006 quota to be converted to an FY2005 filing if the applicant would be eligible for the 20,000 quota. Still no word on who for sure will qualify, but it now seems to be the case that filing for October start dates might make sense and then request a conversion when we learn how that will work. What we also don't know is how to ask for a change of status when there is a gap between an October 1st start date and the expiration of someone's current status before October 1st. Stay tuned....

The other news item just out (and we'll report more next week) is an announcement by the State Department that starting in 2008, Canadians will require passports to enter the US and Americans will need passports to go to Canada (as well as Mexico). This will have major repercussions when it comes to tourism and business and the State Department will be inundated with a tidal wave of applications for passports. They've got two years to figure this out and I would suggest our governments start planning now.

The infamous REAL ID Act was not included in the Senate Appropriations Bill during markup yesterday. The House version of the bill includes REAL ID and the measure will have to be added or dropped in the conference committee charged with reconciling the two bills. The exclusion of this deeply troubling immigration bill from the Senate version can only be considered good news.

In firm news, I'll be speaking at the annual meeting of the National Association of Physician Recruiters in New Orleans, Louisiana. I'll be updating the nation's physician recruiters on major changes in the J-1 waiver process.

Finally, 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

The ABC's of Immigration: Grounds of Inadmissibility

This week, we present the first of a series of ABCs articles dealing with grounds of inadmissibility to the U.S. To be "admitted" to the US one must be inspected by an

immigration inspector at the port of entry. Not every person in the US has been admitted, such as those who have entered without inspection and those who have been paroled into the US. While the concept of “admission” was replaced with that of “entry” in 1996, admission remains the commonly used phrase.

What is inadmissibility and how can I tell if it applies to me?

The concept of inadmissibility arises in a number of contexts. It is an issue when the visa application is made and when the foreign national seeks entry to the US. It also comes up when a person in deportation proceedings is alleged to have been inadmissible at the time of entry or was not inspected at their entry. It can also be a factor if a permanent resident is alleged to have abandoned their permanent residency.

What are the grounds of inadmissibility?

There are 10 basic grounds of inadmissibility. These are:

- Health related grounds;
- Criminal grounds;
- Security grounds;
- Public charge grounds;
- Labor certifications;
- Undocumented entry and immigration status violations;
- Documentation requirements;
- Ineligibility for citizenship;
- Previous removal or unlawful presence; and
- Miscellaneous

Each of these grounds will be discussed in more detail in the upcoming weeks, but now a brief overview of each is provided.

What are health related grounds of inadmissibility?

Persons with communicable diseases that are considered significant public health risks are inadmissible. Among these diseases are HIV and tuberculosis. Also, a failure to show documentation of certain vaccinations is a ground of inadmissibility. Persons with a history of physical or mental disorders that have or may in the future pose a threat to the property, safety, or welfare of the person or others is inadmissible. Finally, people found to be drug abusers are inadmissible.

What are criminal grounds of inadmissibility?

A conviction of a crime involving moral turpitude makes a person inadmissible. However, a single offense that occurred before the age of 18 and more than five years ago will not be considered, nor will offenses for which the maximum punishment was only one year and the alien was sentenced to six months or less. Convictions for crimes involving controlled substances lead to inadmissibility. Convictions for more than one crime for which the person was sentenced to at least five total years in prison make a person inadmissible. Engaging in prostitution or commercialized vice is a basis for inadmissibility. A person who has committed a serious offense in the US and has claimed immunity from prosecution is inadmissible. Engaging in the persecution of other on the basis of their religious beliefs is a ground of inadmissibility, as is engaging in the trafficking of human beings.

What are security grounds of inadmissibility?

If a consular officer or USCIS inspector has a reasonable ground to believe that the person is coming to the US to engage in espionage or sabotage, or to violate any law relating to prohibitions on exports from the US, the person is inadmissible. Members of a group designated as a terrorist organization are inadmissible, as are people engaged in terrorist activities. If it is determined that the alien's presence in the US would have negative foreign policy consequences, the person can be denied admission. People who were members of the Communist Party or other totalitarian organizations are generally inadmissible, as are people who assisted in Nazi era persecution. Finally, those who have engaged in genocide are inadmissible.

How are public charges related to inadmissibility?

A person who is likely to become a public charge is inadmissible. The effect of this is that family-based immigrants must have a valid affidavit of support.

How can labor certification lead to inadmissibility?

A person coming to the US to work must have a labor certification, unless they are able to qualify for one of the other employment-based immigration categories. People coming to the US to work as physicians must pass part I and II of the National Board of Medical Examiners Examination, or its equivalent. Other health care workers must present certification from designated entities.

How can undocumented entry and immigration status violations lead to inadmissibility?

Anyone who comes to the US without permission of the USCIS or State Department is inadmissible. Failure to attend removal proceedings without a good reason makes a person inadmissible for five years. Anyone who engages in fraud or misrepresentation in an effort to enter the US is inadmissible, as are those who have made a false claim of US citizenship. Those who violate the terms of a student visa are also inadmissible for five years.

How are documentation requirements related to inadmissibility?

If the applicant for entry does not possess a valid immigrant or nonimmigrant visa, they are inadmissible.

How is ineligibility for citizenship related to inadmissibility?

A person permanently barred from obtaining US citizenship is inadmissible. This category of people primarily includes people who got out of military service based on their alienage, and people who left the US to avoid the draft.

How is previous removal or unlawful presence related to inadmissibility?

Aliens who have been deported are inadmissible. After a first deportation, the person is inadmissible for five years, and after subsequent deportations, the period of inadmissibility is 20 years. A person deported because of an aggravated felony is permanently inadmissible. People who have been unlawfully present in the US for more than 180 days but less than a year are inadmissible for three years. Unlawful presence of more than a year leads to inadmissibility for ten years.

What are miscellaneous grounds of inadmissibility?

Persons coming to the US to engage in polygamy are inadmissible. A person is also inadmissible if it is determined that they are required to assist another person who is inadmissible. Persons who have detained a US citizen child outside the US are inadmissible until they comply with any court order regarding the child's custody. Finally, former US citizens who renounced their citizenship for tax purposes are inadmissible.

3. Ask Visalaw.com

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

Q - As a U.S. citizen do I require a passport to enter Mexico and return to the U.S for a vacation? Or will a birth certificate be sufficient?

A - You will need a tourist visa and you may request one at your nearest Mexican Consulate or once you are in Mexico. All you will need is your US passport and about \$20.00 for the 30 days visa. (Thanks go to Mariano Esparza in our Mexican affiliate office for answering this question. Mariano can be reached at Mexico@visalaw.com).

Q - Does my wife have to file an I-134 Support Affidavit with the I-130?

It does not say that on the I-130, but I was told we have to.

A - Not with the I-130. Later, you'll submit an affidavit of support when you get to consular processing or adjustment of status.

Q - I am married in the US to an American Citizen for almost two years now. Previously I had been studying with a F-1 visa, and I had a work permit which expired last August (H-1 B). We have only recently applied for a green card and my interview is in June. I know it is not always wise to ask others in similar cases, but a friend of mine said that if I get an interview before two years of marriage, I will only receive a temporary green card. Those who get interviewed after two years get a permanent green card immediately? Is this true? Is there a law for this?

A - You are thinking of what is called "conditional residency." If you are married less than two years when you are set to adjust status to permanent residency, you'll get a two year green card with a requirement that you have the USCIS review your case again and then

issue you permanent residency. If you're married for more than two years at the time you adjust, you'll get a ten year normal green card. Keep in mind that you have only limited control over when you're interviewed.

Q - If a child is relinquished for adoption in a foreign country by two parents is the child considered an orphan by United States standards?

A - If the child is adopted from a government agency and not privately, I believe it will meet the definition of orphan.

Q - I will be becoming citizen in a month or so and my wife is on H-1B and her son (my stepson) is on H4. If I apply for my wife's LPR what is her son's status. Can he apply for LPR also or do I have to adopt him and apply for Citizenship?

A - If the son is under 21 and became your stepson before he turned 18, then he should be eligible to apply for green card status along with his mother.

4. Border and Enforcement News

A federal grand jury recently indicted two Syrian men on charges of impersonating U.S. citizens after Border Patrol agents stopped them in southern Arizona and found an undocumented immigrant in their car. The two men told Border Patrol agents that they were naturalized U.S. citizens born in Syria, but agents found they were in the country unlawfully. Authorities have not yet established a link between the pair and the undocumented Mexican man in their car, except that they were all in the same vehicle. The two men are being held in federal custody until trial.

A man accused of helping smuggle more than 20 immigrants into the United States from the Middle East was arrested in Jordan recently. The man was part of a conspiracy that helped issue forged documents for people from the Middle East to travel to the Milwaukee area. The visas allowed people to travel to the United States for up to a year for work or recreation, but the foreigners weren't entitled to them because they were obtained with forged papers, according to the Associated Press. The FBI's Milwaukee office was told of the arrest last week, as the man was wanted on an Interpol warrant after a December indictment issued by the U.S. Attorney for the Eastern District of Wisconsin. Some of the undocumented immigrants involved were returned to Jordan and others are still in the U.S. They remain under investigation and will eventually be sent home.

5. News From The Courts

Karouni v. Gonzales, Slip No. 02-72651 (9th Cir. March 7, 2005).

Petitioner is a native and citizen of Lebanon, and sought asylum in the United States because he fears that if returned to Lebanon, he will be persecuted for being homosexual, suffering from AIDS, and being a Shi'ite. This fear is based upon that fact that Hizballah, an Islamic paramilitary organization, largely controls the southern region of Lebanon where the Petitioner is from. Hizballah applies Islamic law in areas under its control, and Islamic law considers homosexuality punishable by death. Furthermore, the Lebanese government also vehemently condemns homosexuality.

In the late 1970's, the Petitioner and his cousin were close friends, and spent time together meeting other homosexual men. In 1984, the Petitioner's cousin was confronted at the cousin's apartment by Hizballah, and was shot in the anus as punishment for being a homosexual, but survived the injury. Later in 1984, a man that the Petitioner had a relationship with was arrested and beaten by militiamen. The Petitioner never saw him again, but believed that the man told the authorities that the Petitioner was also gay. Shortly after the man's apprehension, two armed militiamen with machine guns came to the Petitioner's apartment, interrogated him about being a homosexual, and attempted to arrest him. A neighbor interrupted the encounter and the militiamen left.

In 1986, the Petitioner's cousin was again confronted, but this time was shot and killed. The Petitioner fled Lebanon for the United States shortly thereafter. He returned to Lebanon in 1992 to see his father who was dying of cancer, but returned to the United States prior to the funeral out of fear of persecution. He returned a second time in 1996 to see his mother who had fallen ill. He delayed his trip out of fear of persecution, and his mother had died by the time that he arrived. He refrained from going out in public during these visits, but did attend a few private dinner parties with other homosexuals during his visit in 1992. After returning to the U.S., the Petitioner learned that three of the friends with whom he had attended the dinner parties with had been arrested, detained, beaten, and/or killed because they were gay. One of the friends had been arrested by the Lebanese police, and had been beaten and interrogated for names of other homosexuals. This friend "outed" the Petitioner and another man. The other man was jailed and beaten by the police. The Petitioner fears that if he were removed to Lebanon, he would be identified and persecuted for having associated with these homosexual friends.

Additionally, the Petitioner fears persecution because he has AIDS. He cannot seek treatment in Lebanon for his disease, because if he sought treatment, it would confirm suspicions that he was gay. Reports indicated that Lebanese AIDS sufferers are often placed under house arrest and denied treatment. Furthermore, the Petitioner's family is very prominent, and it is very unlikely that he could live in anonymity.

The Immigration Judge found that the Petitioner was credible, and that he had established that individuals in Lebanon are persecuted for homosexual conduct. However, the Immigration Judge determined that the Petitioner had only suffered an interrogation at the hands of militants, and such did not give rise to a level of past persecution. Also, the Immigration Judge agreed with the Attorney General that the Petitioner's fear of persecution was not on account of his status as a homosexual, but on account of committing future homosexual acts. The Petitioner appealed to the Board of Immigration Appeals, who affirmed the Immigration Judge's decision. Petitioner then petitioned for review to the Ninth Circuit Court of Appeals.

The Ninth Circuit Court of Appeals held that if the Lebanese government and Hizballah believe that the Petitioner engaged in homosexual acts in the past, it does not matter

whether he engages in any acts in the future. They found that by virtue of his past acts alone the Petitioner faces at least a ten percent chance of persecution in the future. The Court further stated that even if he were to not be persecuted for his past acts, the Petitioner is faced with two unacceptable options: either face persecution for future acts, or live a life of celibacy. It is noted that the sexual identities of homosexuals are so fundamental to their human identities, that they should not be required to change them. The Ninth Circuit held that there is no appreciable difference in persecution on account of being a homosexual and being persecuted for engaging in homosexual acts, and that the persecution that the Petitioner fears qualifies as persecution on account of membership in a particular social group.

The Immigration Judge found that the Petitioner was credible. Based on this credibility finding, the Ninth Circuit stated that no further corroboration was required to establish the facts to which the Petitioner testified. His testimony established that he had been "outed" as a gay man based upon his past contacts with other Lebanese homosexuals who have already been apprehended and persecuted, and that the interrogation that he suffered was probably a result of the apprehension and questioning of his contacts. It was established that militant groups and certain factions of the Lebanese and local governments are a credible threat to homosexuals, and that it was likely that he would be persecuted again based on this status in the future. Furthermore, the record indicated that the prominence of the Petitioner's family name and his infection with AIDS would make it extremely difficult for him to avoid his persecutors if returned to Lebanon.

The Immigration Judge also contended that the Petitioner's returns to Lebanon undercut his claim that his fear is objectively well founded. The Ninth Circuit stated that his two return trips were of short duration, that his 1992 trip was cut short out of fear, his 1996 trip was delayed due to fear, that he should not be faulted for returning to see his dying parents, and found that the trips did not undercut the Petitioner's claim. They held here, and additionally in response to other concerns held by the Immigration Judge, the Immigration Judge's speculation and conjecture cannot substitute for substantial evidence.

The Ninth Circuit held that the Petitioner was statutorily eligible for asylum as had established that he had a well-founded fear of future persecution, but remanded to the BIA to determine whether he had established eligibility for withholding of removal.

6. Government Processing Times

Texas (03/31/2005): <http://www.visalaw.com/texas.html>

All processing times are online at www.visalaw.com/processing.html.

7. News Bytes

The American Civil Liberties Union (ACLU) recently announced that the 950 volunteers expected to take part next month in an Arizona border vigil against undocumented

immigration will be monitored to ensure none of the aliens are abused. The organization will have lawyers on standby ready to file civil cases against the volunteers. The volunteers will be posted at 200-yard intervals a mile inside the border to observe undocumented aliens coming into the U.S. and report them to the U.S. Border Patrol, but is not to confront them.

The effort to voluntarily patrol the border is being referred to as the Minuteman Project, in which volunteers plan fan out across 23 miles of the San Pedro Valley to watch the border and report any illegal activity to federal agents -- an exercise some law enforcement authorities and others fear could lead to vigilante violence. Many volunteers were recruited over the Internet and some plan to be armed.

8. International Roundup

At least 13 people died after a makeshift boat with 23 people on board ran into difficulties off Spain's Canary Islands, according to rescue services. Rescuers said five more passengers were in a critical condition, having drifted at sea for more than a week without food. The bodies of 13 passengers were located at sea, rescuers said after the boat was intercepted by a fishing vessel some 150 miles off the island of Hierro, the most southwesterly of the island chain in the North Atlantic.

A report by a government-led working group released last week said the Finnish government must step up efforts to combat human trafficking in Finland, a target destination for hundreds of victims of the phenomenon each year. The majority of victims of human trafficking in Finland are adult women and men, but the possibility of child victims crossing the Nordic country's borders cannot be ruled out, according to the study. The report showed that most often, the victims end up being exploited in prostitution rings or in the illegal labor market.

9. Legislative Update

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

10. Phase Two of USCIS Direct Mail Program Begins

U.S. Citizenship and Immigration Services (USCIS) reminded its customers last week via a press release last week that they must now mail the following applications directly to the Chicago lockbox instead of submitting them to their local District Office:

- Form I-485 (Application to Register Permanent Residence or Adjust Status – Family-based Adjustments only);
- Form I-765 (Application for Employment Authorization);
- Form I-131 (Application for Travel Document).

The new procedures for the above listed applications are in compliance with a *Federal Register* notice published on November 19, 2004, and went into effect on April 1, 2005.

With the exception of the new filing address, all immigration-filing procedures remain unchanged. According to the release, the lockbox is a post office box used by USCIS to accelerate the collection of receivables. In the case of the above listed forms, the lockbox accelerates this process of applications by electronically capturing data and images from these forms and by performing fee receipting and fee depositing.

The above listed fees must now be sent to one of the following addresses:

US Citizenship and Immigration Services
P.O. Box 805887
Chicago, IL 60680-4120

Or

For non-U.S. Postal Service deliveries (e.g. private couriers)

US Citizenship and Immigration Services
Attn: FBASI
427 South LaSalle – 3rd floor
Chicago, IL 60605-1098

The release said that USCIS is facilitating the Direct Mail rollout in two phases. Last December during Phase One, residents of 36 states, the District of Columbia, Puerto Rico, Guam and the Virgin Islands began using the Chicago lockbox for filing these applications. Phase Two of the rollout includes the states of Alaska, California, Idaho, Iowa, Kansas, Maryland, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Texas and Washington. Detailed instructions on filing the above listed forms are available at www.uscis.gov.

11. USCIS Announces Guidance Regarding Indochinese Parolee Adjustments

US Citizenship and Immigration Services announced last week via a press release two changes to the management of the Indochinese Parolee Adjustment Program. Statutory changes included in the Consolidated Appropriations Act of 2005 have eliminated both the three-year filing period window and the adjustment cap.

Prior to the recent changes, section 586 of Public Law 106-429 limited the total number of eligible individuals who could adjust under this provision to 5,000. The Act also required individuals to file their applications within a three-year period that began on January 27, 2003 and was scheduled to end on January 25, 2006. Both of these restrictions have been eliminated. The Indochinese Parolee Adjustment Act authorizes the granting of lawful permanent resident status to certain eligible parolees from Vietnam, Cambodia and Laos.

Following the Vietnam War, certain individuals from those three countries were paroled into the United States and have remained here without a permanent resolution of their immigration status.

To qualify for adjustment of status under Section 586, the applicant must be a native or citizen of Vietnam, Cambodia or Laos who was inspected and paroled into the United States prior to October 1, 1997 and was physically present in the United States on October 1, 1997. In addition, the applicant must have been paroled into the United States in one of three ways: from Vietnam through the Orderly Departure Program, from a refugee camp in East Asia, or from a displaced person camp administered by the United Nations High Commissioner for Refugees in Thailand.

Eligible individuals applying for adjustment of status under section 586 must send Form I-485 (Application to Register Permanent Resident or Adjust Status), all required documentation, and all corresponding application to: Nebraska Service Center, P.O. Box 87485, Lincoln NE 68501-7485. Eligibility and procedural requirements are explained on the USCIS website at: www.uscis.gov.

12. USCIS Announces Information Regarding Asylee Adjustment of Status for FY2005

The Nebraska Service Center last month began sending a mass mailing to all asylee adjustment applicants who have been identified by the NSC as eligible for adjustment in fiscal year 2005. The mailing is a request for initial evidence addressed to the specific applicant, and referencing their specific I-485 receipt number. There are three separate pieces of evidence that are being requested and they are listed as follows:

1. A completed Form I-693, Medical Examination of Aliens Seeking Adjustment of Status. The examination must be both conducted by and then signed by a designated civil surgeon.
2. Supplemental Form to I-693, Adjustment of Status Applicant's Documentation of Immunization. USCIS is reminding applicants that the person signing this form must be a medical doctor, and photocopies of the supplemental form are not acceptable.
3. A properly updated and completed Biographic Information Sheet, Form G-325A, must also be submitted. This form must bear the original signature of the applicant. This form can be downloaded from the USCIS website: www.uscis.gov.

The release reminded asylee adjustment applicants to make every effort to keep USCIS updated regarding their current address in order to receive information about their cases from the NSC. Contact the National Customer Service Center at 800-375-5283 to report any changes of address.

Applicants who submitted Forms I-693 and the Supplemental Form to I-693 as initial evidence with the Form I-485 do not have to resubmit these documents in response to this mass mailing. They should, however, submit the updated G-325A and a statement that they submitted both medical forms as initial evidence. Failure to comply with the Request for Initial Evidence within the time allotted will result in the application being denied due to abandonment.
