

Siskind's Immigration Bulletin  
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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>.

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Editor: Greg Siskind. Associate Editor: Penny Egel.

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1. Openers
2. The ABC's of Immigration: Visa Options for Nurses, Part 1: Non-Immigrant Visa Options
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. Canadian Corner
12. DHS Introduces New Procedure to Expedite Honduran Removals
13. Leaders of Undocumented Alien Employee-Leasing Conspiracy Indicted

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1. Openers

Dear Readers:

This week the US Senate passed two amendments to the tsunami/Iraq spending bill that could have very important long term implications for the country.

The first provision, sponsored by Senators Mikulski (D-MD) and Gregg (R-NH), will change the H-2B visa program along the lines of the previously introduced "Save Our Small and Seasonal Businesses Act of 2005." That bill sought to address the problem of western ski resorts using up most of the H-2B visas in the first half of the fiscal year before east coast summer resorts and other employers had a chance to file applications. Under the provision passed in the Senate, half of the available H-2Bs would be reserved for the second half of the fiscal year.

The second key change in the H-2B program will be the exemption from the H-2B cap of people who have been counted in the prior three fiscal years. Right now, employees count against the cap each year so the new provision will have the effect of expanding the number of workers employers can bring in under this popular visa program. Because the jobs covered under the H-2B program are short term or seasonal and employers need to show an inability to find American workers, there has been less controversy with the H-2B program than other work visa categories.

The other immigration-related amendment to the spending bill is one that I have personally worked on for the last several months. It would amend the AC21 immigration law to allow unused employment-based green card numbers to be claimed now in order to reverse the visa retrogression that has caused multiyear delays for Filipino, Indian and Chinese nationals in the EB-3 green card category. The impact of the retrogression which started in January of this year has been disproportionately felt by nurses. Most of the foreign nurses being recruited to the US come from the Philippines and India. Unlike other professions, nurses lack access to a non-immigrant visa that would allow someone to work in the US while they wait on their case to come up in the queue.

Under a last minute compromise, half of the reclaimed EB-3 visas will be available to nurses and physical therapists. The other half will be open to all other occupations. One previous versions of the bill would have made no distinctions between occupations while another would have only allowed nurses and physical therapists to claim the numbers.

The draft language was sponsored by Senators Hutchison R-TX, Domenici (R-TX), and Schumer (D-NY) reads as follows:

"Recapture of Visas

Sec.6047. section 106(d)(2)(a) of the American competitiveness in the twenty-first century act of 2000 (PL106-313; 8 USC 1153 note) is amended-

(1)in paragraph (1), by inserting before the period at the end of the second sentence "and any such visa that is made available due to the difference between the number of employment-based visas that were made available in fiscal year 2001,2002,2003 or 2004 and the number of such visas that were actually used in such fiscal year shall be made available only to employment-based immigrants and the dependants of such immigrants, and 50% of such visas shall be made available to those whose immigrant worker petitions were approved based on schedule A, as defined in section 656.5 of title 20, Code of Federal Regulations, as promulgated by the Secretary of Labor"; and

(2) in paragraph(2)(A) by striking "and 2000" and inserting "through 2004""

The bill still faces a significant test in the House-Senate conference committee. The REAL ID Act is still a controversial item that could threaten the EB-3 fix. And while we received encouraging words from various key members of the House, the body as a whole is not nearly as pro-immigration as the Senate.

So our effort will now turn to the House to try and shore up support with key members there. Stay tuned and thank you to the many people who have worked on this effort.

One final development that is tied to the spending bill is worth noting. While Senator Craig (R-ID) failed to get the AgJobs bill included in the spending bill because he could not garner the special 60 vote requirement necessary to pass the bill, he did get 53 votes. This signals that there is enough support for that farm worker legalization bill to pass when the bill comes up for a vote in a standalone bill. Furthermore, the solid support for the Craig bill has apparently encouraged Senators Kennedy (D-MA) and McCain (R-AZ) to state that they intend introduce a major immigration reform bill next week. The bill is expected to be consistent with the immigration reform plan outlined by President Bush last year. Senator Cornyn (R-TX), the Senate's Immigration Subcommittee chair also announced that he intends to begin holding hearings on this subject this year.

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Many of you are closely following developments relating to the issuance of the 20,000 bonus H-1Bs available for this fiscal year under legislation signed by President Bush in December. Congress mandated that the USCIS start issuing these visas in early March, but the agency has yet to begin accepting applications. There is little news to report this week except that AILA issued a notice to members stating that the regulation to issue the visas has been stalled at the Office of Management and Budget. We'll continue to update readers as we learn what is happening on this issue.

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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

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## 2. The ABC's of Immigration: Visa Options for Nurses, Part 1: Non-Immigrant Visa Options

A growing shortage of nurses in the United States has forced many health care employers to look overseas for the nursing talent needed to care for American patients. But bringing those nurses to the US is challenging.

*What status can a nurse coming to the US receive?*

Nurses can enter the US in either non-immigrant or immigrant status. But before reaching the question of whether a nurse is best suited for immigrant or non-immigrant status, it's best to begin with an overview of immigration principles. "Immigrant" and "Non-Immigrant" are legal terms that have specific meanings. Every person applying for admission to the United States is considered to be an intending immigrant; and it is up to the person seeking admission to prove that they only intend to stay temporarily as a non-immigrant. This question becomes vitally important when a person applies for a visa because a consular officer has complete discretion to deny a request if he or she is not satisfied that the alien will leave the United States when their visa period expires. In short, if the alien is deemed to have immigrant intent when applying for a non-immigrant visa, the application will be denied.

Non-immigrant visas typically allow foreign nationals for a limited period for a specific purpose. Such purposes include undergraduate or graduate study or employment with a sponsoring company or organization. Non-immigrant visas are designated by letter, each letter corresponding to a different type of visa (B-2, F-1, H-1B, etc.).

Immigrant visas, on the other hand, permit foreign nationals to enter the U.S. to remain indefinitely as permanent residents. Rather than show that they only intend to stay in the U.S. for a limited time, a person applying for an immigrant visa needs only to prove that they meet the requirements of the visa classification and that they are not "inadmissible". The grounds for inadmissibility include certain criminal convictions, communicable diseases, and terrorist activity.

When a person comes to the United States with an immigrant visa, they enter as legal permanent residents and will be issued an Alien Registration Card as proof of their status. Permanent resident status is popularly known as having a "green card." Green cards are no longer green, but the popular name has remained the same. Permanent residents are entitled to work, travel freely, and to remain indefinitely. However permanent residence can be abandoned or taken away, and it does not give some of the rights that U.S. citizens enjoy. Therefore, some permanent residents opt to apply for naturalization and become U.S. citizens. One cannot apply for citizenship before being a permanent resident first.

*I've heard that health care workers are barred from entering the US? So how are all these foreign nurses working in the US?*

A key aspect of nursing immigration is a bar to the admission of health care workers – including registered nurses – seeking to enter the US. That bar does not apply, however, to health care workers who obtain a certification from an organization approved by USCIS (formerly the Immigration and Naturalization Service) that states that the nurse's education and licensing credentials are equivalent to an American's. Currently, only one organization - the Commission on Graduates of Foreign Nursing Schools – is approved as an agency authorized to issue the certification document for nurses (CGFNS refers to the documents as a VisaScreen certificate). And right now, only green card applications are affected. The health care certification rules are set to change dramatically in July 2004 including the expansion of the program to non-immigrants (though several organizations are actively pushing to delay or drop the program's expansion to this category of visa applicants). An extensive discussion of the new rules is contained as an appendix to this document.

## **Non-Immigrant Visa Options**

Under current U.S. immigration laws, non-immigrant visa options for nurses are limited, mainly because most employers only require a two year degree rather than four-year bachelor's degree and because most states do not require bachelor's degrees for a nurse license.

During the last nursing shortage, the U.S. Congress carved out a specific non-immigrant visa category, designated H-1A, for registered nurses. This visa type did not become a permanent part of the immigration laws, and was allowed to expire on September 1, 1995, when Congress believed the shortage had subsided. A similar provision, which would provide a new visa category for general registered nurses, is currently under consideration by Congress, and will be discussed separately below.

#### *What is an H-1B non-immigrant visa?*

The H-1B "Specialty Occupation" visa is available to individuals who can demonstrate qualification in a "specialty occupation" and who are sponsored by a U.S. employer to work temporarily in the U.S. in a "specialty occupation". The Immigration & Nationality Act defines a specialty occupation as "an occupation that requires (A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Persons who typically will be eligible for this visa include members of the professions such as engineers, teachers, lawyers, as well as scientists and other highly qualified persons. Only 65,000 H-1Bs are granted each year. That limit was by fiscal year 2005 and visas are currently not available again until October 2005. Note that university employees and employees of non-profit and government research institutions are exempt from the cap. That would cover nurses in numerous university and research-oriented hospitals around the country.

#### *Aren't nurses prohibited from getting H-1B visas?*

Through policy memos and case decisions, the USCIS has determined that nursing, as a profession, is not a per se a specialty occupation, since a bachelor's degree is not generally required to become a registered nurse. This determination is based on the findings of the Department of Labor as to the educational preparation required for most nurses published in the Occupational Outlook Handbook (1995) and the Dictionary of Occupational Titles (1991). Many people have criticized the USCIS because many employers have dropped the requirement for a bachelor's degree precisely because of the severe shortage of nurses and not because the ideal nurse does not need such a degree. They argue that if the point of the H-1B visa is to help employers find qualified workers when there may be a shortage, then the USCIS policy totally thwarts the intention of Congress.

The USCIS does acknowledge, however, that there are areas of nursing where the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Late in 2002, the USCIS issued a field memorandum that spelled out for the first time when H-1B visas are appropriate for nurses. Unfortunately, the USCIS has applied the memo with very strict scrutiny.

#### *What kinds of nurses can qualify for H-1Bs?*

The USCIS memorandum made it clear that normal RN positions will not qualify for H-1B visas unless the state where the nurse seeks a license requires a bachelor's degree. No state currently requires a bachelor's degree for RNs (the last state to do this – North Dakota – dropped the requirement in 2003). The USCIS did, however, list a number of more specialized RN positions that might qualify for an H-1B visa and the 2002 guidance will hopefully lead to greater consistency in reviewing H-1B petitions.

*What are the general requirements for demonstrating that a nurse should qualify for an H-1B visa?*

In order to qualify for an H-1B visa, an employer of a nurse must show the following:

1. A bachelor's or higher degree (or its equivalent) is normally the minimum requirement for entry into the position;
2. The degree requirement is common to the industry for parallel nursing positions (i.e., employers in the same industry require their employees to hold the degree when they are employed in the same or a similar position);
3. The employer normally requires a degree or its equivalent for the position or the nature of the position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree (or its equivalent).

Employers who can meet these requirements and can show they are paying the prevailing wage for the job can apply for an H-1B visa.

*What specific types of nurse positions can qualify?*

#### Advance Practice Registered Nurses

The USCIS 2002 memorandum also discussed specific nurse positions. First, advance practice registered nurses (APRNs) will generally qualify for H-1B visas because these are advanced level positions requiring more education and training than the typical RN. An employer may require that the prospective employees hold advanced practice certification as one of the following: clinical nurse specialist (CNS), certified registered nurse anesthetist (CRNA), certified nurse-midwife (CNM), or certified nurse practitioner (APRN-certified). If the APRN position also requires that the employee be certified in that practice, then the nurse will be required to possess an RN, at least a Bachelor of Science in Nursing (BSN), and some additional graduate level education.

The USCIS lists the following positions that will normally qualify for an H-1B visa:

- Clinical Nurse Specialists (CNS): Acute Care, Adult, Critical Care, Gerontological, Family, Hospice and Palliative Care, Neonatal, Pediatric, Psychiatric and Mental Health-Adult, Psychiatric and Mental Health-Child, and Women's Health
- Nurse Practitioner (NP): Acute Care, Adult, Family, Gerontological, Pediatric, Psychiatric & Mental Health, Neonatal, and Women's Health.

- Certified Registered Nurse Anesthetist (CRNA); and
- Certified Nurse-Midwife (CNM).

#### Administrative Positions

The USCIS will also approve H-1B visas for certain administrative nurse positions. According to the USCIS memorandum, "upper level nurse managers" in hospital administration positions may work for H-1B visas since these positions usually require bachelor's degrees. Nursing Services Administrators should work since these positions involve supervisory functions and they typically require a graduate degree in nursing or health administration.

#### States that Require Bachelors Degrees

As noted above, the USCIS will consider an H-1B visa to be appropriate for any RN if the state where the nurse's position is requires a bachelor's degree. However, all states had dropped their requirements that nurses have bachelor's degrees.

#### Specialized Nurse Positions

Aside from the Advanced Practice Registered Nurses noted above, nurses in certain specialized areas may file for H-1Bs. The USCIS specifically cites critical care and peri-operative (operating room) nurses as two examples of positions requiring a higher degree of knowledge and skill than a typical RN or staff nurse position. The USCIS indicates that passing a certification examination for a particular type of position is an important indicator. Examples of these types of certification examinations are school health, occupational health, rehabilitation nursing, emergency room nursing, critical care, operating room, oncology and pediatrics.

Such nurses should meet the general requirements noted above. Evidence to show these requirements could include affidavits from independent experts or other means showing that the job duties are so specialized and complex that a bachelor's or higher degree is appropriate. The USCIS notes that these cases will be adjudicated on a case-by-case basis so the outcome of such applications is far from certain.

#### *Can Mexican and Canadian nurses qualify for visas under the NAFTA – The North American Free Trade Agreement?*

Yes. TN-1 visas are available under the North American Free Trade Agreement ("NAFTA") to Canadian and Mexican citizens for a limited group of specialty occupations. Although not uniformly recognized as a specialty occupation for H-1B purposes, registered nurses were specifically included on the list of professions for which TN visas could be used and any registered nurse position can potentially qualify.

Under NAFTA, the applicant must possess the required credentials to be considered a professional under the TN category. Registered nurses must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted the registered nurse must present a permanent state license, a temporary state

license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment.

Once admitted, a worker is granted an initial stay of one year. Thereafter, a TN professional may seek extensions of stay in one year increments. There is currently no limit on the number of extensions that may be granted.

Canadian nurses applying for TN visas can simply bring the required documentation to a port of entry and enter right away after being inspected by an examiner at the port of entry. A nurse can extend his or her status by mail with the USCIS Nebraska Service Center or by leaving and reentering with the required documents through a port of entry. Mexican nurses go through a similar process. However, they must first apply for a visa at a consulate and cannot simply show up at a port of entry (though the requirement of processing first with the USCIS ended per NAFTA's original provisions after NAFTA's tenth anniversary in January 2004).

Note that unlike H-1B visas, TN visa holders are supposed to be able to demonstrate an intention to leave the US when they complete their TN stay. So nurses who apply for permanent residency while in the US must be very careful about traveling outside the US or applying for a TN extension after a green card application has been submitted.

#### *What is the H-1C visa for registered nurses?*

Late in 1999, Congress passed the Nursing Relief for Disadvantaged Areas Act, which calls for the creation of a new H-1C visa for nurses going to work for up to three years in health professional shortage areas. Up to 500 nurses per year can get the visa, but each state is limited to 25 H-1C nurses a year. Under the law, facilities interested in sponsoring nurses for H-1C visas must submit documentation containing a number of attestations regarding the employment of H-1C nurses. This visa is rarely used both because it is weighed down with very strict rules and because so few actual visas are available under the category. In fact, only a small number of H-1C visas have actually ever been issued.

As with most immigration laws, the statute itself provided very little guidance on how the law would be applied, leaving it to the USCIS (and in most employment visa cases the Department of Labor as well) to develop regulations. The regulations for the H-1C program were released by the Department of Labor last summer, and became effective in September 2000. The USCIS released its regulations in June 2001.

One of the most surprising elements of the Labor Department's regulations is a DOL finding that based on the restrictive definition of "facility" Congress put in the statute, only fourteen hospitals in the country could be initially determined to qualify to apply for H-1C visas. These facilities are:

1. Beaumont Regional Medical Center, Beaumont, TX
2. Beverly Hospital, Montebello, CA
3. Doctors Medical Center, Modesto, CA
4. Elizabeth General Medical Center, Elizabeth, NJ
5. Fairview Park Hospital, Dublin, GA
6. Lutheran Medical Center, St. Louis, MO
7. McAllen Medical Center, McAllen, TX
8. Mercy Medical Center, Baltimore, MD
9. Mercy Regional Medical Center, Laredo, TX

10. Peninsula Hospital Center, Far Rockaway, NY
11. Southeastern Regional Medical Center, Lumberton, NC
12. Southwest General Hospital, San Antonio, TX
13. St. Bernard Hospital, Chicago, IL
14. Valley Baptist Medical Center, Harlingen, TX

Note, however, that there are many more hospitals across the country that can potentially qualify for H-1C visas.

The attestation process is being administered by the Employment and Training Administration at the Department of Labor. Enforcement of the attestations is being overseen by the Employment Standards Administration's Wages and Hours Division.

The 1999 law is very similar to a 1989 law that created the H-1A visa for nurses. That visa category expired several years ago after unsuccessful efforts to extend its life. The key differences between the two programs are that a much smaller number of H-1C visas have been allocated and that the facility where the nurse will work must be in a health professional shortage area. There are also new requirements which limit a facility's dependence on H-1C nurses (something that is hard to imagine given that only 500 H-1C nurses permitted into the country each year, with no more than 25 allowed to work in a single state).

A qualifying hospital will meet four requirements:

1. The hospital must be located in a Health Professional Shortage Area. You can find out which areas are HPSAs online at <http://www.bphc.hrsa.gov/databases/newhpsa/newhpsa.cfm>.
2. The facility must have at least 190 acute care beds
3. At least 35% of the facility's acute care inpatient days must be reimbursed by Medicare
4. At least 28% of the facility's acute inpatient days must be reimbursed by Medicaid

The Department of Labor has created a new attestation form called the ETA 9081 that is submitted as part of the H-1C application process. On the form, the facility must attest to the following:

1. That it is a qualifying facility. If the ETA 9081 is the first one being filed by a facility, then the form must be accompanied by copies of the pages from the paperwork filed with the Department of Health and Human Services showing the number of acute care beds and the percentages of Medicaid and Medicare reimbursed acute care inpatient days. A copy of this paperwork must also be kept in a public access file.
2. That the employment of H-1C nurses will not adversely affect the wages or working conditions of similarly employed nurses.
3. That the facility will pay the H-1C nurse the facility wage rate.
4. That the facility has taken and is taking timely and significant steps to recruit and retain nurses in order to reduce dependence on immigrant nurses. At least two such steps must be taken unless it can show that the second step is not reasonable. Documentation of these

steps needs to be included in the facility's public access file for H-1C nurse petitions. Steps which may be taken can include:

- a. Operating a training program for registered nurses at the facility or financing or providing participation in a training program elsewhere.
  - b. Providing career development programs and other methods of facilitating health care workers to become RNs.
  - c. Paying registered nurses wages at a rate at least 5% higher than the prevailing wage for the area.
  - d. Providing reasonable opportunities for meaningful salary advancement by registered nurses.
  - e. Any other steps that would be considered significant efforts to recruit and retain nurses.
5. That there is not a strike or lockout at the facility, that the employment of H-1C nurses is not intended or designed to influence an election for a union representative at the facility and that the facility did not lay off and will not lay off an RN within the 90 day period and 90 day period after the date of filing an H-1C petition.
  6. That the employer will notify other workers and give a copy of the attestation to every nurse employed at the facility within 30 days of filing. E-mail attachments are acceptable.
  7. That no more than 33% of the nurses employed by the facility will be H-1C non-immigrants.
  8. That the facility will not authorize H-1C non-immigrants to work at a worksite not under its control and will not transfer an H-1C nurse from one worksite to another.

The paperwork must also be accompanied by a filing fee. After the Attestation is approved by the Labor Department and used in support of an H-1C petition approved by the USCIS, the employer is required to send a copy of the H-1C petition and USCIS approval to the Labor Department. Also, as noted above, the employer must create a public access file that includes the Attestation and its supporting documentation. The file must be produced for any interested party within 72 hours upon written or oral request.

Under the USCIS regulations, there are three primary eligibility requirements for foreign nurses who wish to work in the US on an H-1C visa:

- They must have an unrestricted license to work as a professional nurse in the country where they received their nursing training, or have received that training in the US;
  - They must pass an examination approved by the Department of Health and Human Services or have a license to work as a professional nurse in the state where they will work; and
  - They must be eligible to work as a registered nurse under both the laws of the state where they will work and the regulations of the facility where they will work.
- Currently, the acceptable examination is that offered by the Commission on Graduates of Foreign Nursing Schools (CGFNS). CGFNS certifies that the foreign nurse's training and license are equivalent to a similarly situated US nurse, that all their documents are authentic, that the foreign nurse has an unrestricted license, that the foreign nurse is sufficiently proficient in written and spoken English, and that the foreign nurse has in fact

passed a state licensing exam. Questions about the exam may be directed to CGFNS through its website at <http://www.cgfns.org>.

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### 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 - I am an Indian citizen residing in Ecuador, South America. My mother is a US resident since 2002. If she sponsors me ,will I have to go back to India.

A - You should be able to process the visa in Ecuador if you are residing there (i.e. you are not just a tourist). The State Department has a rule requiring consulates to process people RESIDING in the consulate's jurisdiction and not just those who have the nationality of the country where they are living. Some consular officers don't always seem to understand this, but your immigration lawyer should be able to succeed if they document your residency properly.

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Q - We are finally scheduled for our interview (family based application) and I was wondering if we'll receive the actual green card right after the interview is over? I read somewhere that nowadays they stamp your passport instead and mail you the green card? Will you be able to travel outside the US immediately after the interview, even if you don't have the actual green card in your hand yet and just a stamp in your passport?

A - The answer on how quickly you'll be granted permanent residency after the interview depends on the local office and the examiner. In some cases, you can be interviewed even though the case is not completed. Security checks may remain to be completed; documents may still be missing; etc. Assuming the case is ready to approve, you will likely be granted permanent residency and an I-551 stamp will be placed in your passport. That is the legal equivalent of the green card which may take several months to arrive. You can travel and work with the stamp in the same way as you would use the green card. The main difference is that one is valid for a year and the other is valid for two or ten years (depending on the basis for the green card).

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Q - Can I apply for a normal processing for my H1b application and upgrade that to Premium processing at a later stage?

A - Yes, this is permitted. You would only need to have a receipt from the initial application and then file the premium processing form and fee.

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Q - Is someone who returned to Mexico after Voluntary Departure was granted at Master Calendar subject to a re-entry bar? Can they return on a K-1 Visa or is there an amount of time required before all legal immigration efforts can start again?

A - The re-entry bar depends on how long the person was here prior to being put into Removal Proceedings and prior to the issuance of the Voluntary Departure order. If she was in the US legally and complied with the Voluntary Departure order, there will be no bar. If she was here illegally or "out of status" for more than one year prior to the institution of proceedings, there is a 10-year bar for which she will need a waiver to return on a K1. This is a complicated issue and you should definitely consult with your immigration lawyer.

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Q - A 4 year old child born to a U.S. Citizen mother in Mexico is currently living in the U.S. and entered without inspection. The child has not been legitimated. Can he acquire U.S. citizenship or must he go through the I-130 Petition process? If so, can he qualify to apply for an adjustment of status or must he apply for a visa abroad? Note: the mother did live in the U.S. for more than one year prior to her child's birth.

A - According to the given facts, the child acquired U.S. citizenship at birth as long as the mother was a U.S. citizen at the time of the birth and as long as she was continuously present in the U.S. for one year prior to the birth. There is no legitimation requirement when the citizen parent is the mother, and once citizenship is automatically acquired it cannot be lost (except through denaturalization or revocation).

The Immigration and Nationality Act Section 309(c) states that a person born outside of the U.S. and out of wedlock shall be held to have acquired at birth the nationality status of his mother if:

1. the mother had the nationality of the United States at the time of such person's birth, and
2. the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

You should consider having the child apply for a U.S. passport. A person may apply for a U.S. passport directly to the passport office without submitting an application for a certificate of citizenship. If the passport is granted, it is conclusive proof of U.S. citizenship.

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#### 4. Border and Enforcement News

U.S. Immigration and Customs Enforcement announced this week that 80 citizens of Nigeria were deported Friday, including 63 felons with convictions that ranged from rape, robbery and aggravated assault to drug dealing, burglary, forged documents, fraud, and credit card theft. Also included on the deportation flight was criminal alien Celestine Ifeanacho Okafor, a native and citizen of Nigeria who contended he could not be deported because he was a

United States citizen despite failing to participate in the required public oath of allegiance ceremony.

Ultimately, the Attorney General of the United States reaffirmed that taking the oath of allegiance to the United States at a public ceremony or before a court is required except in certain circumstances such as when an applicant is permanently incapacitated or disabled, clearing the way for Okafor's deportation. The aliens were deported from the United States aboard a government flight, and they were escorted by detention and removal officers and medical personnel.

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U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) agents arrested three suspected alien smugglers in three separate cases, which included 77 illegal aliens, in Texas and New Mexico last weekend.

On Saturday April 16, ICE special agents arrested Juan Burciaga, 28, a truck driver and U.S. citizen from Raymondville, Texas, Saturday after finding 44 aliens inside a trailer parked behind a shopping center. U.S. Border Patrol agents received an anonymous call, and forwarded the tip to ICE agents.

On Friday, April 17, Manuel Martinez, 31, of Ciudad Juarez, Mexico, was arrested along with 14 aliens who were occupying three rooms at a hotel in West El Paso, Texas. One of the women in the group was pregnant.

On Friday April 17, agents arrested Leonardo Armando Sanchez-Villagran, 24, at a U.S. Border Patrol checkpoint south of Hatch, New Mexico. Nineteen aliens – 14 adult males, two adult females, and three male juveniles – were riding in two 1988 Dodge Ram Chargers. Sanchez-Villagran was driving one of the vehicles. The driver of the other vehicle ran away, and ICE agents are attempting to identify and locate him.

ICE special agents said that the people arrested Saturday inside the trailer had gallon containers filled with water, but they didn't have any ventilation in the trailer. Under similar conditions in May 2003, 19 aliens died in Victoria, Texas.

The aliens in the trailer paid their smuggler \$2000 each and included 31 Mexicans, four Ecuadorians, and nine Colombians. The 38 adult males, five adult females and a 4-year-old girl were traveling to Dallas; one woman was pregnant. All but two of the Mexican nationals were voluntarily returned to Mexico. The citizens from Ecuador and Colombia were placed in removal proceedings, and are detained at the El Paso Processing Center.

A New Mexico federal magistrate denied bond for Sanchez-Villagran, and he remains in custody awaiting trial. Burciaga and Martinez are scheduled to make an initial appearance in El Paso in federal court.

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## 5. News From The Courts

Kouanchao v. USCIS, 2005 US Dist. LEXIS 2898, Minn.

The US District Court for the District of Minnesota granted a petition to correct a Certificate of Naturalization where the mistake on the Certificate was made with no improper motive, where the correction will confer no additional benefit to the Petitioner, and where the change will not prejudice the Government.

The Petitioner fled to Thailand from Laos in 1978 without any documentation of her identity and was then held in Thai custody. While the Petitioner was in custody, the Petitioner's cousin prepared documents for the Thai government that accidentally misstated Petitioner's birth date. After 1978, the Petitioner relied upon this documentation from her cousin to show her birth date, as it was the only documentation that she had. The documentation stated that she was born in 1945, but she was actually born in 1942. When she came to the US, the Petitioner used the incorrect 1945 birth date on all immigration and naturalization documents submitted to the US government. She obtained her Certificate of Naturalization in 1985, and it contained the incorrect 1945 date.

The Petitioner was later able to obtain her school identification card and a Laotian birth certificate that both contained the correct 1942 birth date. The Petitioner used these documents to obtain a corrected driver's license and corrected Social Security Card. In 1999, the Petitioner signed an Affidavit of Support supporting her relatives as immigrants to the US, and stated in the affidavit that her birth date was the incorrect 1945 date. Problems arose when her passport expired in 2003, as she was unable to obtain a renewed passport because the birth date on her expired passport and Certificate of Naturalization did not match the birth date on her driver's license. The Petitioner then attempted to correct her Certificate of Naturalization.

The US District Court for the District of Minnesota stated that the Petitioner bears the burden of showing that the 1945 date on her Certificate of Naturalization is incorrect and that the 1942 date is correct. The Court notes that the Petitioner swore multiple times on various forms and an affidavit that the 1945 birth date was correct, but point out that after fleeing a war torn country, it would have been reasonable for her to assume that confirmation of her exact birth date would have been difficult or impossible. The Court states that although her delayed presentation of a birth certificate presents the opportunity for fraud, in this case the Government has presented no evidence to contradict the birth certificate and identification card aside from the immigration documents that the Petitioner filled out.

Since the Government suffered no prejudice in the Petitioner not correcting her mistake earlier in time, and since it was not alleged that the Petitioner intentionally misled or received any benefit from misstating her birth date on the immigration and naturalization papers, the Court held that the Petitioner should be issued a new Certificate with the corrected date. The Court found that no consequence would arise from the changing of her birth date on the Certificate other than giving her the ability to renew her passport. The Court held that it has the power to amend a Certificate of Naturalization where the mistake was not made with improper motive, where correction will confer no additional benefit to the Petitioner, and where the change will not prejudice the Government.

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## 6. Government Processing Times

Processing times are available this week for the following service centers:

Nebraska (04/15/2005): <http://www.visalaw.com/nebraska.html>

Texas (04/15/2005): <http://www.visalaw.com/texas.html>

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## 7. News Bytes

The lead consultant for a gas pipeline project in Alaska was turned away at the U.S. border for unspecified visa problems this week. Pedro van Meurs, a Netherlands native, tried to enter Alaska from Vancouver for negotiations in Anchorage but was forced to participate in the meetings by phone, according to the Associated Press.

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At a convention of the American Society of Newspaper Editors last week, President Bush said that he was surprised by his administration's plans to require U.S. citizens to show a passport when reentering the country from Mexico, Canada and the Caribbean, and he ordered an administration review of whether the entry rules should be relaxed. The changed policy is aimed at preventing terrorists from entering the country by exploiting a lenient policy. In most cases, U.S. citizens must show only driver's licenses to reenter from Mexico and Canada. The new rules will also require Mexicans and Canadians to present a passport or another official document to enter the United States.

According to the *Washington Post*, the president said that he has instructed Secretary of State Condoleezza Rice and officials from the Department of Homeland Security to see if there is enough flexibility in the new policy to accommodate regular travelers, including truckers and tourists. Bush said one option might be electronic fingerprint imaging.

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A new ordinance has been presented recently in Elsmere, Delaware, regarding undocumented immigrants, landlords who rent to undocumented immigrants and employers who employ undocumented aliens. The ordinance states that officers of the town must require individuals to produce a document verifying his/her legal status within the U.S. if the officer has reasonable suspicion to believe that the individual is an undocumented alien. Failure to provide such documentation subjects the individual to a fine of \$100. The ordinance also states that any landlord who rents living space to an individual who is proven to be an undocumented alien shall be fined \$100 for each undocumented alien residing within the rental unit. Additionally, any business owner within the Town of Elsmere who employs an undocumented alien shall be fined \$1000 for each undocumented alien employed.

\*\*\*\*\*

The following notice was included in the May Visa Bulletin, warning of retrogression or complete unavailability of numbers in the Other Worker category:

As mentioned in both the February and March Visa Bulletins, demand for visa numbers in the Other Worker category remains very high. A cut-off date was established for March in an attempt to limit number use. The imposition of that date has not had the desired effect and the level of demand remains excessive. Therefore, it is likely that the cut-off date will retrogress or numbers become "unavailable" in the near future.

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## 8. International Roundup

Spanish police this week intercepted a boat carrying 21 undocumented African immigrants including a dead baby, three live small children, a 12-year-old girl and four pregnant women, according to figures given by officials to *Deutsche Presse-Agentur*.

Police arrested a total of 16 adult immigrants - eight women and eight men - as well as the Moroccan captain of the boat spotted near Tarifa after crossing the Strait of Gibraltar. Police allowed the boat to land for fear that it might capsize if intercepted at sea.

Health workers said the baby died from hypothermia. A three-year-old girl was hospitalized for the same condition. Two of the pregnant women were also taken to hospital, one of them in labor.

\*\*\*\*\*

The Bangladeshi navy has busted a human trafficking ring, rescuing at least 90 young men who were huddled on a fishing trawler bound for Europe, according to *Deutsche Presse-Agentur*. The undocumented immigrants, who were arrested by port police along with three trawler operators, said they were lured by promises of lucrative jobs in Europe. They were initially heading to Greece after which they were to be smuggled into wealthier European countries.

Police suspect that the Bangladeshi traffickers were acting as the local agents of an unnamed Europe-based international human smuggling network.

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## 9. Legislative Update

[H.R.1628](#): -- Private Bill; For the relief of Elvira Arellano.  
Sponsor: Rep Gutierrez, Luis V. [IL-4] (introduced 4/13/2005)  
Committees: House Judiciary  
Latest Major Action: 4/13/2005 Referred to House committee.  
Status: Referred to the House Committee on the Judiciary.

[H.R.1673](#): -- Private Bill; For the relief of Laura Maldonado Caetani.  
Sponsor: Rep Fortuno, Luis G. [PR] (introduced 4/14/2005)  
Committees: House Judiciary  
Latest Major Action: 4/14/2005 Referred to House committee.  
Status: Referred to the House Committee on the Judiciary.

[S.RES.104](#): A resolution expressing the sense of the Senate encouraging the active engagement of Americans in world affairs and urging the Secretary of State to take the lead and coordinate with other governmental agencies and non-governmental organizations in creating an online database of international exchange programs and related opportunities.  
Sponsor: Sen Feingold, Russell D. [WI] (introduced 4/12/2005)  
Committees: Senate Foreign Relations  
Latest Major Action: 4/12/2005 Referred to Senate committee.

Status: Referred to the Committee on Foreign Relations.

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).

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## 10. State Department Visa Bulletin

### **IMMIGRANT NUMBERS FOR MAY 2005**

#### A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during May. 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 April 12th 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: CHINA-mainland born, 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.)

	All Chargeability Areas Except	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
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	<b>Those Listed</b>				
<b>Family</b>					
1 <sup>st</sup>	01APR01	01APR01	01APR01	22OCT94	15JAN91
2A*	01MAR01	01MAR01	01MAR01	01MAR98	01MAR01
2B	08NOV95	08NOV95	08NOV95	15MAR92	08NOV95
3 <sup>rd</sup>	22JAN98	22JAN98	22JAN98	22APR95	01SEP90
4 <sup>th</sup>	01JUL93	01JUL93	22OCT92	01JUL93	22DEC82

\*NOTE: For May, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 01MAR98. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 01MAR98 and earlier than 01MAR01. (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.)

	<b>All Chargeability Areas Except Those Listed</b>	<b>CH</b>	<b>IN</b>	<b>ME</b>	<b>PH</b>
<b>Employment-Based</b>					
1 <sup>st</sup>	C	C	C	C	C
2 <sup>nd</sup>	C	C	C	C	C
3 <sup>rd</sup>	C	01JUN02	01JUN02	C	01JUN02
Other Workers	01JUL01	01JUL01	01JUL01	01JUL01	01JUL01
4 <sup>th</sup>	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 <sup>th</sup>	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C

## Regional Centers

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-2005 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 May, 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	27,700	Except: Nigeria 21,300
ASIA	AS	7,250	Except: Bangladesh 5,400
EUROPE	EU	20,000	
NORTH AMERICA (BAHAMAS)	NA	13	
OCEANIA	OC	900	
SOUTH AMERICA, and the CARIBBEAN	SA	1,600	

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-2005 program ends as of September 30, 2005. DV visas

may not be issued to DV-2005 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2005 principals are only entitled to derivative DV status until September 30, 2005. DV visa availability through the very end of FY-2005 cannot be taken for granted. Numbers could be exhausted prior to September 30. **Once all numbers provided by law for the DV-2005 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 JUNE

For June, 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		
<b>AFRICA</b>	AF	28,450	Except: Nigeria 21,400
<b>ASIA</b>	AS	7,900	Except: Bangladesh 5,975
<b>EUROPE</b>	EU	20,500	Except: Poland 20,000  Ukraine 5,750
<b>NORTH AMERICA (BAHAMAS)</b>	NA	13	
<b>OCEANIA</b>	OC	1,000	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	SA	1,775	

In recent months we have experienced very heavy demand for DV numbers by applicants from Poland and Ukraine. Therefore, it will be necessary to establish rank cut-offs for those two countries beginning in June. This is being done to hold DV number use within the annual per-country limits as outlined in the Immigration and Nationality Act.

#### D. EMPLOYMENT-BASED THIRD PREFERENCE "OTHER WORKER" CATEGORY VISA AVAILABILITY

As mentioned in both the February and March Visa Bulletins, demand for visa numbers in the Other Worker category remains very high. A cut-off date was established for March in an attempt to limit number use. The imposition of that date has not had the desired effect and the level of demand remains excessive. Therefore, it is likely that the cut-off date will retrogress or numbers become "unavailable" in the near future.

#### E. UPDATE ON DIVERSITY VISA LOTTERY 2006 (DV-2006) NOTIFICATION

The Kentucky Consular Center in Williamsburg, Kentucky is responsible for the notification of winners of the DV-2006 diversity lottery. The notification process will take place beginning in late April, and will be concluded by July. Therefore, persons who applied for the DV-2006 lottery, and are selected, can expect to receive a notification sometime during that time period. Only those selected to participate in the DV-2006 program will be notified. This Visa Bulletin will provide an official announcement when the notification letters have been sent to all winners.

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#### 11. Canadian Corner

##### CANADIAN IMMIGRATION CHANGES – APRIL 18, 2005

**In response to the possibility of a Federal election this summer, the Honourable Joe Volpe, Minister of Citizenship and Immigration, today announced a series of measures aimed at improving service delivery and the efficiency of Canada's immigration and citizenship programs.**

"Canada's immigration system is a model for the world and today's measures allow us to maintain and enhance our position. We will do this by reducing application processing times for permanent residents who want to become Canadian citizens and sponsored parents and grandparents who want to be reunited with their family in Canada. International competition for talented international students is fierce and today's announcement moves Canada even further ahead," said Minister Volpe.

Generally the changes to the Citizenship & Immigration programs are:

1. **CITIZENSHIP:** An investment of \$69 million over two years to restore, by 2007–2008, processing times to an average of 12 months for a grant of citizenship and four months for a proof of citizenship.
2. **CITIZENSHIP:** Citizenship and Immigration Canada (CIC) is also exempting citizenship applicants from undergoing language ability and knowledge-of-Canada tests at 55 rather than 60 years of age.
3. **FAMILY SPONSORSHIP:** The measures to speed up the processing of sponsorship applications for parents and grandparents coming to Canada as family class immigrants include tripling the number of parents and grandparents who can immigrate to Canada from 6,000 to 18,000 a year in 2005 and in 2006.

4. **FAMILY SPONSORSHIP:** The issuance of multiple-entry visitor visas will be facilitated so that parents and grandparents can visit their families in Canada while their applications are in process.
5. **STUDENT WORK VISA:** CIC is expanding two pilot initiatives for international students to enhance the competitiveness of Canada's education industry. The first will allow international students across Canada to work off-campus while completing their studies and the second will allow them to work for a second year after graduation. This second initiative will apply outside of Montreal, Toronto and Vancouver to help spread the benefits of immigration to more regions in Canada.

***A more detailed discussion of these changes will appear in the next Canadian corner newsletter.***

If you have any questions about Canadian Immigration laws please contact Leonard Pearl at our Canadian office ([lpearlvisalaw@sprint.ca](mailto:lpearlvisalaw@sprint.ca) or 905-764-8767).

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## 12. DHS Introduces New Procedure to Expedite Honduran Removals

The Department of Homeland Security (DHS) announced plans last week with the Government of Honduras to facilitate the deportation process to that country with the use of video teleconferencing (VTC) by Honduran consular officers for travel document interviews with Honduran nationals detained in the U.S.

Honduras is the first foreign government to participate in the VTC process, which according to a DHS press release has a goal of decreasing detention time for Honduran nationals who qualify for Expedited Removal (ER) from the current average of 27 days to an average of 15 days. The release stated that the ER process allows DHS the ability to speed the removal of undocumented aliens attempting to enter the U.S. by using fraudulent documents or by attempting to elude U.S. Customs and Border Protection (CBP) agents. When a CBP agent places an alien into expedited removal proceedings, the alien is transferred into U.S. Immigration and Customs Enforcement (ICE) custody and then removed to his or her country of origin as soon as circumstances will allow.

Interviews by Honduran consular officers are a required part of the removal process and are typically a pre-requisite for the adjudication of travel documents. Without official government issued travel documents, removals often cannot occur.

According to the release, it is anticipated that the VTC equipment and process would be initially set up in two Honduran consulates, Los Angeles and Houston, as a pilot program before expansion. The VTC equipment is already in place at U.S. detention centers.

As of March 31, 2005, there were more than 1,750 Honduran nationals in ICE custody. Honduran nationals are the second largest group by nationality in ICE custody, and represent nine percent of the total ICE detainee population. During the 2004 Fiscal Year, ICE removed 7,911 Honduran nationals; 30 percent were criminal aliens.

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## 13. Leaders of Undocumented Alien Employee-Leasing Conspiracy Indicted

Three individuals have been arrested and three others charged in a criminal indictment regarding an alleged nationwide employee-leasing conspiracy that used hundreds of undocumented aliens at farms, dairies and factories in the United States, the Department of Homeland Security and the Department of Justice announced last week.

The individuals arrested were Jaroslaw Sawczuk, a 37-year-old Polish citizen formerly of Coral Springs, Florida; Jozef Bronislaw Bogacki, a 42-year-old native of Poland and naturalized U.S. citizen residing in Clearwater, Florida; and Pavel Preus, a 38-year-old Polish citizen residing in Pompano Beach, Florida.

Also charged in an indictment, returned by a federal grand jury in Ft. Lauderdale, Florida, on Jan. 13, 2005, were Lucia Kanis, a 30-year-old Slovak citizen; Ivan Kanis, a 38-year-old Slovak citizen residing in the Slovak Republic; and Andor Pikali, a 36-year-old Slovak citizen residing in Coral Springs, Florida.

The 26-count indictment alleges that from 1995 to the present, the defendants conspired to provide unauthorized workers, mostly East Europeans who had entered the United States on tourist visas, to American companies with whom the defendants had contracted to provide legally authorized foreign workers. The indictment alleges that more than 550 illegal aliens were brought into the United States by the defendants.

According to the indictment, the alien workers obtained tourist visas to enter the United States and were employed illegally in the Midwest and Southeastern United States on farms, in dairies and in factories. The defendants allegedly contracted with American employers to provide workers, for whom the defendants were to pay payroll taxes and workers' compensation deductions. The indictment alleges that the defendants did not pay the taxes or workers' compensation deductions. The indictment alleges that during the course of the conspiracy, the defendants failed to pay \$6 million in payroll taxes and laundered more than \$20 million.

Charges against the defendants include conspiracies to commit visa fraud, wire fraud, and mail fraud, money laundering, and tax fraud. If convicted, the defendants face maximum penalties of up to 20 years in prison and fines of up to \$500,000. In addition, the government is seeking forfeiture of the defendants' assets.

The investigation, known as Operation Pisces, started in 2002. The investigation was led by the Kansas City Office of U.S. Immigration and Customs Enforcement (at the time, the INS); the U.S. Department of Labor Office of Inspector, Labor Racketeering and Fraud Investigations; and the Miami field office of the Internal Revenue Service. Subsequently, the Miami division of the U.S. Postal Inspection Service joined the investigation.