

Siskind's Immigration Bulletin -
August 26, 2005

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1. Openers

Dear Readers:

The immigration debate in the country is intensifying as we get closer to a showdown this autumn over immigration reform proposals in Congress. The latest news is the declaration of border emergencies by the governors of Arizona and New Mexico. Both are Democrats

and both have the reputation of being friendly to immigrants. These moves are causing concern in the pro-immigration community, however.

Some may criticize their actions as being politically motivated and designed to stave off criticism from anti-immigrant segments of the public. But I think that there is something to their actions. They call attention to the fact that the system is broken and lawmakers in Washington must act – and soon.

Both sides of the immigration debate can spin these new measures as supporting their cause. Anti-immigrant groups will rightly point out that Border states DO bear the brunt of the direct costs associated with the flow of undocumented immigrants across the border. Those costs include paying for health care, dealing with crime along the border, environmental problems associated with the massive flow of people and more. So, they argue, stopping the flow of illegal workers is key. Pro-immigration groups will argue that all this shows is that we need a guest worker program and all problems would be solved. Create an orderly system for workers to enter the country and there's no need for the chaotic entry of the throngs of undocumented workers.

Both sides are right. We need to get control of the borders not just to ensure that we have a credible immigration system, but also for homeland security reasons. But we also need to be realistic and know that we need to have a way to allow the flow of laborers in to meet our economic needs and that we cannot hope to suddenly replace the 11,000,000 estimated undocumented workers in this country with new workers who enter in such a guest worker program.

As a nation, it's obvious that we are in denial. We condemn those who break the law to come to the US, yet we utterly depend on these workers. Whether it's the typical family that gets help from an immigrant nanny, cleaner or gardener or a major corporation that gets busted for deliberately not asking hard questions about the legal status of its workers, the current system has made us into a system of law breakers.

Those who say immigrants take jobs away from Americans have a hard time explaining why we only have 5% unemployment in this country (near historic lows). If we deported every person illegally in this country and every unemployed American magically found work in one of the jobs that opened up, we would have zero unemployment with millions of jobs still open. And those who say they just want undocumented immigrants to do it the "legal way" are also in denial. There IS NO legal way for most of these people. We do not have a guest worker program in this country and coming in illegally is the only option for many of them.

And what would it cost to deport millions of people. According to a recent study by the Center for American Progress, we would have to spend more than \$200,000,000,000 a year to accomplish this task. Forget about the tremendous human misery that would result from such an effort. And are anti-immigration advocates prepared to level with the public and tell them what barring immigration would do to such critical items as food and housing prices.

Pro-immigration groups also need to be realistic. The complaints of people living in border states about the impact of illegal immigration are legitimate. And the worries expressed regarding having a system that basically winks and nods as millions of illegal workers come into the country and thousands of employers ignore the law are warranted. And the provision in the McCain Kennedy bill that allows undocumented workers in this country should get to become permanent residents simply by participating in a guest worker program for a couple of years is NOT fair. If workers legally in this country on work visas

have to go through a complex labor certification process to prove that Americans are not being passed up for their jobs, why should undocumented workers get a pass? I'm always optimistic so perhaps recent developments indicate that the White House is getting ready to make its move. This week, Homeland Security chief Michael Chertoff spoke out in favor of a guest worker program and also indicated that big plans are underway to further secure the border.

And suddenly key conservative pundits are making the case for genuine immigration reform that incorporates enforcement, a guest worker program and the creation of opportunities to get the undocumented population into legal status. David Brooks of the New York Times and Tamar Jacoby of the Manhattan Institute are two of the more prominent recent examples of conservatives making this case.

Finally, a recent Gallup Poll shows that the public has backed off some of the anti-immigrant feelings expressed after 9/11.

All of these factors may not be enough to push the immigration reform legislative process forward. But the prospects are starting to look better.

Stay tuned....

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In firm news, congratulations are in order for Yvette Sebelist, the managing attorney in our Nashville office. The *Nashville Business Journal* lists her as one of the top lawyers in the city in its latest Best of the Bar issue.

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As always, we remind readers that we're lawyers who make our living representing immigration clients and employers seeking to comply with immigration laws. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

2. The ABC's of Immigration: Immigration Options For Nannies, Au Pairs, and Child Care Workers

While families all over America have foreign-born nannies, the options for hiring them legally are very limited. A high portion of the families hiring such individuals is likely not complying with the nation's immigration laws.

There are some available legal strategies, however. They each have limitations and may require patience and money. But if you want to follow the law, you will need to consider these possibilities.

Many answers to the bold-faced questions are excerpted from [The J Visa Guidebook by Greg Siskind, William Stock and Steve Yale-Loehr published by Lexis Nexis.](#)

What is the J-1 visa for au pairs?

The au pair program has been controversial since its inception in 1985. When the first two pilot programs ended, the U.S. Information Agency (USIA), which administered the au pair program at the time, wanted to terminate their designation because it claimed that it lacked statutory authority to regulate the programs. In 1988 and 1990, Congress passed legislation authorizing and obliging the USIA to administer and regulate the au pair program. The program was supposed to end in 1995, but it was extended until 1997. In 1997 Congress extended the au pair program permanently.

Au pair programs allow foreign nationals to enter the United States, live with a U.S. family and experience American family life while providing limited child care and attending a U.S. post-secondary educational institution. Au pair participants may elect to participate in the "EduCare" program, a subset of the au pair program, which allows the au pair to reduce the number of hours per week spent on child care and to pursue academic studies more vigorously. Originally, the program was only available to individuals from Western Europe. In 1995, however, Congress expanded the program to admit students from around the world except those countries with which the United States has no diplomatic relations.

What is required of an au pair applicant?

All au pairs must be proficient in English, high school graduates and between the ages of 18 and 26.

Applicants to an au pair program must submit to an in-person interview in English, provide three non-family references, successfully pass a criminal background check, and satisfactorily complete a physical examination. Further, an applicant must have a personality profile done that is based on a psychometric test that measures the differences between the characteristics among applicants and those characteristics considered most important to successfully participate in the au pair program.

What is required of the sponsor of an au pair?

The sponsor is responsible for providing a host family with the prospective au pair's complete application, including references, so the family may determine whether the applicant would be compatible with them.

Host families must be fluent in English and must pass a background check. In addition, they must either be U.S. citizens or legal permanent residents. All adult family members living in the home must submit to an interview conducted by the program sponsor. In addition, the family must have the financial resources to pay the au pair a weekly stipend of at least the minimum wage and up to \$500 for academic expenses. Au pairs who participate in the EduCare program are paid 75% of the weekly rate paid to non-EduCare participants, and up to \$1000 for the au pair's academic work.

In August 2005, the Department of State proposed regulations requiring the cross checking of family member names through state sex offender registries. Program sponsors would also be required to report any allegations of sexual abuse to law enforcement authorities.

What are the regulations regarding placement of au pairs with host families?

Just days after the USIA merged into the State Department in 1998, the State Department issued new rules on the selection and orientation of both host family and au pair

participants. The State Department indicated that the purpose of the new rule was to provide greater consistency in the au pair program (and presumably in response to a highly publicized au pair murder trial in New England involving a British J-1 visa holder). The rules break down into four general categories: placement of the au pair, requirements for selection as a host family, orientation to the program, and reporting requirements.

The following are requirements related to the placement of au pairs:

- A parent or other responsible adult must remain in the home for the first three days the au pair is there.
- An au pair is not to be placed with a family with a child under three unless a parent or responsible adult is in the home.
- An au pair is not to be placed in a family with a child under two unless the au pair has at least 200 hours of documented infant care experience.
- An au pair is not to be placed in a family with a special needs child unless the au pair has documented prior experience and the family has reviewed it.

A written agreement between the au pair and the host family is required, and must spell out that the au pair will provide no more than 45 hours of child care per week. EduCare participants may provide no more than 10 hours per day or 30 hours of child care services each week.

- The au pair must be provided with a private bedroom.
- There must be a telephone interview between the au pair and the host family before the au pair leaves home to come to the United States.
- The requirements for a host family are as follows:
- The host parents must be U.S. citizens or permanent residents.
- The host parents must be fluent in spoken English.
- All adults living in the host family must be interviewed by the program sponsor.
- All adults living in the host family must pass a background investigation, including employment and personal character references.
- The host family must have financial resources commensurate with its obligations as host.
- The host family must be provided with a copy of the au pair's application, including all references.

The au pair must be provided with copies of all rules and regulations that govern his or her participation in the au pair program, as well as a detailed profile of the family and community where he or she will be placed and any schools in the area, including costs of attendance. The host family must attend a host family conference, and must be provided with copies of regulations governing the au pair program.

What is required of the au pair's sponsor?

The regulation also requires the program sponsor to file an annual report with the State Department. The report must include the following information:

- The results of surveys of host families and au pairs regarding their satisfaction with the program;
- Lists of complaints about the program, including actions taken in response;
- Copies of all promotional literature; and
- A report by a certified public accountant affirming that the program is complying with the procedures and reporting requirements of these regulations.

In addition to these requirements, sponsors have a number of other responsibilities in administering the au pair program:

- Au pairs should provide no more than 45 hours per week or 10 hours per day of child care. EduCare participants may provide no more than 10 hours per day or 30 hours of child care services each week. Au pairs must be given one and one-half days off per week, one full weekend off per month and two weeks of paid vacation per year;
- Au pairs must enroll in an accredited post-secondary educational institution for at least six semester credit hours or its equivalent, or 12 semester hours for EduCare participants;
- Au pairs may not participate in the program for more than one year; and
- Each host family must attend at least one "family day conference" to be given by the sponsor during the placement year.

In addition, sponsors must inform au pairs of their child care duties and what is considered unacceptable behavior. The sponsor must also provide the au pair with a summary of his or her travel arrangements and a detailed description of the host family, the community in which the au pair will live and the educational institutions in that area including the tuition costs. Program sponsors must ensure that the au pair's compensation is at least the minimum wage set forth by the Department of Labor, with appropriate deductions for room and board. Participants in the EduCare program are to be paid 75% of the weekly rate paid to non-EduCare participants.

Program sponsors are also responsible for providing child care training for au pairs. Au pair program participants must receive at least eight hours of child safety instruction, of which four must be specifically infant-related. In addition, they must receive at least 24 hours of child development instruction, of which no fewer than four hours must be instruction in the care of children under two years old. This child development instruction should include topics such as stress management and Shaken Baby Syndrome. Such training may be provided in the au pair's home country.

The State Department has approved the following au pair program sponsors:

American Institute For Foreign Study

River Plaza
9 West Broad St Stamford CT 06902
Tel.: 203-399-5025
Fax: 203-399-5592
www.aifs.org

AuPairCare Inc.
600 California St., Floor 10
San Francisco CA 94108
Tel.: 415-434-8788 ext. 501
Fax: 415-674-5211
www.aupaircare.com

InterExchange Au Pair
161 Sixth Avenue New York NY 10013
Tel.: 212-924-0446
Fax: 212-924-0575
<http://www.interexchange.org/>

EurAuPair Intercultural Child Care Programs
250 North Coast Highway
Laguna Beach CA 92651
Tel.: 949-494-5500 ext. 215
Fax: 949-497-6235
<http://www.euraupair.com/>

Cultural Care Au Pair
EF Center Boston
1 Education Street Cambridge MA 02141
Tel.: 617-619-1444
Fax: 617-619-2102
<http://www.culturalcare.com/>

USAuPair, Inc.
P.O. Box 2126 Lake Oswego OR 97035
Tel.: 503-697-6872
Fax: 503-699-7776
<http://www.usaupair.com>

Face The World Foundation dba Au Pair Foundation
1010 B Street, Suite 200 San Rafael CA 94901
Tel.: 415-257-4787 ext. 204
Fax: 415-257-4784
<http://www.facetheworld.org/>

Agent Au Pair
1450 Sutter Street #526
San Francisco CA 94109
Tel.: 415-462-1906
Fax: 415-462-0369
<http://agentaupair.com/>

Cultural Homestay International

104 Butterfield Rd. San Anselmo CA 94960
Tel.: 415-459-5397 ext. 122
Fax: 415-459-2182
<http://www.chinet.org/>

American Cultural Exchange, LLC, dba goAuPair
310 Highland Ave. Montclair NJ 07043
Tel.: 201-859-0693

Au Pair International, Inc.
3163 S. Columbine Street Denver CO 80210
Tel.: 720-221-3563
Fax: 720-227-0682

The DOS list of approved au pair programs is also on the Internet at
<http://exchanges.state.gov/education/jexchanges/about/catalog/aupair.pdf>

What are the other visa possibilities for au pairs?

While the J-1 visa is by far the most common visa category for au pairs, other child care workers occasionally come in using other visa categories.

If a nanny would like to come to the US to work with a family coming to the US on a work visa, the nanny may be able to work on a B-1 visa. Under Section 41.31 of the Foreign Affairs manual, personal or domestic servants who accompany or follow to join employers entering the US in B, E, F, H, I, J, L or M nonimmigrants may enter the US if

1. The employee has a residence abroad which he or she has no intention of abandoning (notwithstanding the fact that the employer may be in a non immigrant status which does not require such a showing);
 2. The employee can demonstrate at least one year's experience as a personal or domestic servant, and
 3. The employee has been employed abroad by the employer as a personal or domestic servant, for at least one year prior to the date of the employer's admission to the United States; or
 4. If the employee-employer relationship existed immediately prior to the time of visa application, the employer can demonstrate that he or she has regularly employed (either year-round or seasonally) personal or domestic servants over a period of several years preceding the domestic servant's visa application for a nonimmigrant B-1 visa.
 5. The employer and the employee have signed an employment contract which contains statements that the employer guarantees the employee the minimum or prevailing wages, whichever is greater, and free room and board and will be the only provider of employment to the servant.
- 41.31 N6.3-4 Servants of Lawful Permanent Residents (LPRs).

When can an H-2B visa be used and what are the rules associated with this type of visas for au pairs?

H-2B visas are sometimes used by child monitors. H-2B nonimmigrant work visa provides a method for US employers and agents to obtain the services of foreign nationals to fill temporary needs for additional workers. The annual cap on this type of visa is 66,000. Until recently, the limits and requirements of the category caused usage of the visa to be marginal. For example, in 1995, only 2,398 H-2B visas were issued. However, the visa has become very popular in recent years, particularly in the hospitality industry. The limit was reached early in fiscal year 2005, though recent legislative changes should make more H-2Bs available

H-2B visas require employers to go through a process of advertising for a position to show no Americans are available to fill the position and are immediately available.

The length of the stay on an H-2B visa is limited by the duration of the employer's temporary need for additional workers. The maximum authorized period of stay is one year, and the visa may be extended for a total of three years. However, extension applications are closely scrutinized. Either skilled or unskilled workers may be employed on an H-2B visa. Several unpublished decisions provide what little guidance is available on this subject. What does seem to be key is proving the need for the worker is temporary. If an employer does not explain why the need for the child monitor will end or hinting that the position is permanent will hurt the petition. An employer, for example, might want to specify that the need for the child monitor will end when a child registers in school.

Can a Nanny apply for an employment-based immigrant visa?

Yes, an employer can now apply to sponsor an alien as a Nanny or Nanny/Household Manager, under the EB3 employment- based immigrant visa. The new PERM regime now classifies the occupation of "Nanny" as a "Skilled Worker" instead of the previous classification of "Other Worker." The newly defined classification, gives way for favorable treatment by the USCIS as the Specific Vocational Preparation (SVP) range for the occupation of Nanny is now 6.0<7.0. This means this occupation now requires training in vocation schools, relevant work experience, and/or an associates' degree under PERM. Some positions may even require a bachelor's degree. A Nanny's duties may include, but are not limited to, the following:

- Ability to perform CPR and first aid.
- Preparation and planning of meals
- Transportation of children
- Regulation of child's rest periods.
- Participation in regular meetings with parents to discuss child activities and development.
- Child instruction on safe behaviors such as crossing the street with an adult and avoiding dangerous objects.
- Organization and implementation of age-appropriate activities for children.
- Observation of child's behavior for irregularities such taking child's temperature, transporting child to the doctor, maintaining child's health.
- Performance as a role model of appropriate social behaviors and the cultivation of interpersonal relationships and communication skills.
- Participation in the implementation of discipline programs to promote desirable behaviors in the child.
- Observation and development of family schedule.

Note that high demand in the EB-3 category has caused a backlog of applications and potentially long waits for green cards.

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 - If a child is born in the United States but his parents are undocumented is that child a US citizens?

A - Yes, children born in the US are US citizens (except for a very small number of children born to diplomats working in the US).

Q - My wife and myself got H-4 and H-1B from Company A and I moved to U.S.A on in January 2005 but my wife has not arrived yet

I moved to company B, but until now I do not have a receipt number (almost 1 month).

Can my wife come to the US by using my old company A approval which was stamped on her H-4 visa.

Or can she submit the recent paystub/offer letter/Employment letter of my company B at her port of entry(neither Receipt No nor approval).

A - An H-4 need not be re-filed just because the H-1B moves from company to company. As long as you can verify you are in valid H-1B status, she should simply be able to present this documentation to enter in H-4 status regardless of whether you are working for the original employer. The key will be to document that you remain in H-1B status. To avoid confusion, I would recommend her waiting until your new approval notice arrives. I'd consider premium processing to get the approval more quickly. Technically, she should be able to enter with proof that the H-1B change of employer is pending. But I would not want to make it hard for a port of entry officer to understand your status.

Q - May a paternal uncle can submit a petition for his 21 year old nephew? If possible, how long will it take for immigration to the USA?

A - Aunts and uncles cannot petition for nephews and nieces. The only way would be for an uncle to sponsor his sibling (the nephew's parent) and then have the parent sponsor the child. This would take probably at least 15 to 20 years, however.

Q - I am on F-1 status until August 31st 2005. I also got H-1B approved to be able to work from October 1st of 2005. Will I be considered "Out of Status" between Sept 1st to 31st? Is there a "Grace Period" for my case? I am not enrolling in classes for Fall 05(which starts Sept 1st). Instead I want to start working from Oct 1st on H1.

A - You have a 60 day grace period that follows the conclusion of your F-1 time. That will take you to your October 1st start date on the H-1B and is presumably why you got the change of status approved.

* * * * *

Q - My friend had his N-400 interview at Pittsburgh, PA recently. He passed the interview on the spot, but was told that the local office can't schedule him for the oath ceremony until they've got FBI clearance on his name check. Between now and the time he takes the oath, if my friend relocates to a different state under a different service center, will his current N-400 application still be valid? Or does he have to spend 6 months in his new residence before starting the N400 process all over again?

A - Most offices will keep a case even if the applicant moves to a new jurisdiction, and the application would not need to be re-filed. The oath ceremony, however, could pose a problem. The Court cannot execute the oath if you are not living in that Court's jurisdiction. The oath will have to be scheduled based on the residence.

4. Border and Enforcement News

The United States has withdrawn a proposed December deadline for implementing new rules that would require Americans to show passports when returning from the Caribbean. Caribbean tourism officials had complained that the measures would hurt the vital industry. Similar rules were also proposed for Canada, Mexico and Bermuda, and Caribbean officials also complained that Mexico and Canada would have gain an edge because Americans returning from those countries would not have to show passports until Dec. 31, 2006.

Americans have needed only birth certificates or driver's licenses for travel to and from the countries. The U.S. government had set a tentative Dec. 31 deadline for the Caribbean, but is now reconsidering the date, according to the State Department.

5. News From the Courts

Krotova v. Gonzales
United States Court of Appeals for the Ninth Circuit
August 4, 2005

The Petitioners, Lioudmila Krotova and her daughters are natives and citizens of Russia who applied for asylum and withholding of removal in 1998 after arriving in the United States in 1994. In 2002, the Petitioners conceded to the charge of removability for overstaying their visas and requested asylum, withholding or removal, relief under the Convention Against Torture and, in the alternative, voluntary departure. After a hearing before an Immigration Judge ("IJ"), the IJ denied all forms of relief based on issues of credibility and lack of grounds for persecution. The Board of Immigration Appeals ("BIA") affirmed the IJ's decision on the sole ground that the incidents described by the Petitioner did not rise to the level of persecution. The Petitioner appealed the decision to the United States Court of Appeals for the Ninth Circuit ("the Court"). The Court granted petition for review based on its jurisdiction arising from 8 U.S.C. § 1252.

In the individual hearing, the Petitioners testified that she is from an eastern region of Russia comprised of Amurskaya, Promorskiy, and Madagon. The Petitioner's mother was born in Russia, but her birth certificate lists her nationality as Jewish. Since the community identified the Petitioner as Jewish, she suffered from economic discrimination, sexual harassment, violence, and religious discrimination. The Petitioner is trained as a meteorologist, but could find work only as an unskilled laborer because the best jobs were reserved for ethnic Russians. Her supervisor sexually harassed her, but her complaints were met with cynicism. She was denied promotions and salary increases because she was Jewish. She, and the few Jewish members of the community, attempted to practice their faith, but their synagogue was defaced with threatening language. Groups of people dressed in black (a uniform used by skinheads and Nazis) threatened the Jewish community. Twice the Petitioner was personally attacked by small bands leaving her with bruises and lip wounds. The Petitioner's reports to the local police were ignored. The Petitioner decided to move to the U.S. until conditions improved. After arriving in the U.S., she decided to apply for asylum after learning that a close friend of the family had been beaten to death because he was Jewish and other attacks on the Jewish community were growing worse. The Petitioner offered US State Department 2001 Country Reports, which noted discrimination and prejudice against the Jewish community, to support her testimony.

After the testimony, the IJ found: (1) the discrimination did not rise to the level of persecution, (2) the government had no control over the criminals committing the discriminatory acts, (3) the Petitioner was not credible on matters concerning the persecution based on her Jewish background. The BIA affirmed solely on the ground that the incidents of discrimination did not rise to the level of persecution.

The Court, in its review of the BIA's denial, first held that since the BIA's opinion was silent on the issues of credibility, then the BIA must have found the Petitioner to be credible. On the issues of persecution, the Court looked at the cumulative effect of economic disadvantage, severe anti-Semitic violence, the individualized nature of the attacks on the Petitioner which were serious and caused mental suffering, and the fear of practicing her religion. The Court found the combined effect to cumulatively amount to persecution. Additionally, the Court held testimony that the local Russian authorities ignored the Petitioner's reports of violence, along with corroborating evidence in State Department reports, are sufficient evidence that the government is unwilling or unable to control anti-Semitic groups. For the reasons listed above, the Court granted the petition for review finding the Petitioner suffered past persecution, entitling her to the presumption of a well grounded fear of future persecution under 8 C.F.R. § 208.13(b)(1) and remanded the case for the agency to determine whether the government can rebut the presumption by a preponderance of the evidence.

6. Government Processing Times

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

Nebraska (08/05/2005): <http://www.visalaw.com/nebraska.html>

California (08/18/2005): <http://www.visalaw.com/california.html>

Missouri (08/18/2005): <http://www.visalaw.com/missouri.html>

Vermont (08/18/2005): <http://www.visalaw.com/vermont.html>

7. News Bytes

According to AILA InfoNet, H-1B numbers remain for both fiscal 2005 and 2006 for graduates of U.S. masters or above programs. For fiscal 2005 numbers (i.e., a start date earlier than 10/1/05), the petition should be filed at the Vermont Service Center at this special address: USCIS Vermont Service Center, 1A Lemnah Drive, St. Albans, VT 05479-7001. Petitions for fiscal 2006 numbers (i.e., a start date of 10/1/05 or later) should be filed at the service center having jurisdiction over the place of employment.

Individuals who have recently applied for a U.S. passport and want to know the status of their application may do so by accessing http://travel.state.gov/passport/get/status/status_2567.html using a standard Internet browser. Customers can securely enter their last name, date of birth, and the last four digits of their Social Security Number to receive information on the status of their application. A customer's personal information will remain in the system only long enough for he or she to complete their inquiry, thus protecting that data, as authorized by law. This information will then be deleted from the system.

Customers may still request an application status-check via email, at travel.state.gov, or by calling, toll-free, the National Passport Information Center at 1-877-487-2778 (TDD/TTY 1-888-874-7793).

Actress Margot Kidder became a citizen of the U.S. last week to avoid possible deportation to her native Canada when she begins protesting the war in Iraq, she said.

Kidder, best known for playing Lois Lane in the motion picture 'Superman,' was among 19 people who became citizens during a naturalization ceremony in federal court in Butte, Montana.

8. International Roundup

According to the *Manila Standard Today*, the Department of Labor and Employment yesterday warned Filipinos not to be lured into paying processing fees on nonexistent jobs in Brunei. Foreign workers who wish to extend their work permits have been advised to apply

for extension directly with the Brunei Immigration Department. Filipino workers should check first with the Philippine Overseas Employment Administration for any job opening in Brunei. Filipino workers in Brunei are advised to get in touch with the Philippine Overseas Labor Office for assistance in connection with their stay in Brunei. The advisory was issued in the wake of reports indicating that shady agents producing fake work permits operate in Brunei.

Australia is embarking on a new immigration campaign to resolve the country's labor shortage.

The campaign will soon begin promoting the benefits of Australian living through an international roadshow aimed at convincing doctors, engineers, pastry chefs, hairdressers and a wide range of skilled trades to move to Australia.

It is the first major immigration drive of its kind since the 1950s and 1960s.

9. Legislative Update

H.R.3320 - To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees.

Sponsor: Rep Davis, Tom (introduced 7/18/2005)

<http://www.congress.gov/cgi-lis/bdquery/z?d109:H.R.3320:/>

H.R.3057 - An act making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2006, and for other purposes.

Sponsor: Kolbe, Jim (introduced 6/24/2005)

<http://www.congress.gov/cgi-lis/bdquery/z?d109:HR03057:/>

H.R.3199 - To extend and modify authorities needed to combat terrorism, and for other purposes.

Sponsor: Rep Sensenbrenner, F. James, Jr. (introduced 7/11/2005)

CRS Summary: Passed Senate, amended. Go to the Web page to see the new summary.

<http://www.congress.gov/cgi-lis/bdquery/z?d109:HR03199:/>

H.R.3322 - To amend the Immigration and Nationality Act with respect to the H-1B and L-1 visa programs to prevent unintended United States job losses, to increase the monitoring and enforcement authority of the Secretary of Labor over such programs, and for other purposes.

Sponsor: Rep Johnson, Nancy L. (introduced 7/18/2005)

<http://www.congress.gov/cgi-lis/bdquery/z?d109:HR03322:/>

H.R.3333 - To enhance border enforcement, improve homeland security, remove incentives for illegal immigration, and establish a guest worker program.

Sponsor: Rep Tancredo, Thomas G. (introduced 7/19/2005)

<http://www.congress.gov/cgi-lis/bdquery/z?d109:HR03333:/>

10. Guest Column: A Nation at Risk: Immigration and the National Interest, by Gary Endelman

Gary Endelman practices immigration law at BP America Inc. The opinions expressed in this column are purely personal and do not represent the views or beliefs of BP America Inc. in any way nor do they represent the views of Siskind Susser. This article is copyrighted by ILW.COM and is reprinted with permission. You can read other articles by Mr. Endelman, and subscribe to future articles at www.ilw.com.

SUMMARY:

The purpose of immigration should be to strengthen the nation, not aid the immigrant. Chain migration does not do that. Most family categories are an unregulated jobs program. All numerical limits on the family second preference should be lifted but all other family preferences should be abolished. It is impossible to protect US workers through restrictions on employment immigration alone when the vast majority of immigrants who come to work arrive as family preference cases. America needs to shift most family visas over to the employment categories, give the aliens themselves much greater control over their own visas, extend the concept of portability and allow the economic needs of the nation, as well as those of states and localities, to shape our immigration policy. No longer should the specific needs of individual employers play a decisive role. No longer should all occupations or all countries be given equal weight or treatment when it comes to visa validity or allocation. Flexibility, transparency and enlightened national self-interests should be the hallmarks of a new system that is nation-centered, not alien-centered.

WHY WE SHOULD CARE

Is America ready and able to compete in the global economy? That question remains very much unanswered. In its most recent July 25th issue, Fortune Magazine worried aloud:

No one is saying that Americans can't adapt and win once more. But look at our preparedness today for the emerging global economy and the conclusion seems unavoidable. We're not ready.

What will it take to reverse this trend and make America able to seize and occupy the high ground? We learn from Columbia University's Jeffrey Sachs that "there is no other fundamental mover of economic development than science and technology." Immigration can be a vital tool to win the battle for economic supremacy. How can we make that happen? The answer to that should shape our national policy for the future.

THE VIRTUE OF DEREGULATION

One place to start is to eliminate micromanagement by the government. Mass migration and micromanagement cannot co-exist. Either micro-management or mass migration will have to go. Deregulate the system. Mass migration can only exist if regulated with a light touch. Congress should decide how many immigrant visas to issue and then charge employers a registration fee. In effect, employers would buy the right to hire foreign-born workers on a permanent basis. Let Congress set the going rate, put willing employers together with willing workers, to use President Bush's felicitous phrase, and then get out of the way so that the concerned parties can sit down and negotiate a deal.

STRATEGIC IMMIGRATION

We need a paradigm shift in the way that the US Government thinks of immigration. With the exception of the rarely used investor visa, we have always had a passive approach to immigration that is driven the specific needs of individual employers. Whatever comes in over the transom, that is what the INS/CIS decides. Our economy needs a more activist approach. Just as we use tax policy to encourage business activity and shape investment decisions, so immigration policy can and must be deployed in a targeted and highly disciplined fashion to promote those with certain knowledge or talent to come while discouraging others. Immigration must become a tool that we can use to fashion the kind of society we want to create. Granting immigration credits to an employer for some sponsorship, for example, while withholding them in others, or making some cases subject to a numerical cap while exempting others, or even allowing employers to trade or sell immigration credits between or amongst themselves, is neither a new nor particularly shocking idea. Governments on all levels already do the same things in many other areas of American life, such as environmental remediation, urban renewal and corporate relocation. Immigration is now so inextricably intertwined in all areas of our national, regional and local economic life, and in all sections of the nation, as opposed to traditional areas of immigrant concentration, that incentives based on immigration can be just as powerful a magnet in fostering the kind of economic activity we want to underwrite as government encouragement, tax abatements or relaxation of building code restrictions. A market driven system would be simple, honest and transparent. It would protect American workers far better than the false promises of the current regime by giving immigrants what they need and want the most- true occupational mobility that is not tied to the need for employer sponsorship. For the first time, foreign workers could vote with their feet as they seek to realize in full measure the promise of American life for themselves and their families. No longer would government red tape subsidize an inefficient system that serves mostly to perpetuate itself and protect the vested interests of those elites who take false refuge in its complexity. Deregulation, not more of the same, is the cure for our immigration ills.

EMPLOYMENT OVER FAMILY

While the US needs to retain a core commitment to asylum, refugee rights, and family unit, immigration is neither social outreach nor international self-help. Properly understood, it is an exercised in enlightened national self-interest. Most Americans would be surprised to learn that the vast majority of legal workers never had a work visa. They came in as family migrants even though they came to work. That is what family migration has become, an unregulated jobs program. While most Americans love their siblings and adult children, they do not live with them. It is unconscionable that the families of permanent residents are divided for years on end. That must stop and all caps on family second preference must go. Once that is done, all other family categories must be abolished with their numbers shifted over to the employment side of the ledger. This should also be done with the diversity visa lottery for which there is no economic rationale. This can be phased in gradually so as not to hurt those who have waited in line for so long. Alternatively, they can immigrate on the basis of these extended family relationships subject to a labor market test. If America does not need the siblings of US citizens, or married children, they should not come. In truth, they would be able to come faster than they do today.

The primary reason for immigration should not be to help the immigrant but to enrich the nation. We need not to protect those jobs that now exist but to use immigration as a way to create new jobs and expand national wealth. When US immigration policies are set without reference to global realities, mature industries lose jobs and emerging industries lose

something equally precious but harder to spot, the possibility for jobs. These jobs are lost to the US economy even before they are created.

SOME MODEST PROPOSALS

Now is not the time to tinker. Now is the time for bold thinking . We have serious problems and we need serious solutions to solve them. Try these on for size:

- We need more green cards and fewer H1Bs. Congress should remove all numerical caps on the H but only allow for three years with no extensions.
- Abolish the labor condition application and give the alien ownership of his or her own work visa. Allow self-petitioning valid for any employer under the H-1B category. Take the concept of H1B portability all the way to its logical conclusion. Allow the alien to file an H petition much as he or she can now file a national interest waiver or extraordinary ability immigrant petition. The H-1B approval would then truly belong to the H-1B worker and not to the employer who loses any leverage that the market would not otherwise provide. Armed with such a weapon to guard against unreasonable employer demands, the H-1B alien would have no need for a labor condition application which can be abolished.
- Adopt the suggestion advanced by John Doerr, legendary Silicon Valley venture capitalist, under which every foreign student who graduates from a US university with a Ph.D. gets a green card.
- There is no reason why real-time data cannot tell us what real-world labor shortages exist. Using the Bureau of Labor Statistics's occupational projections, the DOL should be able to tell us what occupations are in short supply. If BLS numbers indicate that the number of vacancies in any occupational category, when adjusted for regional or even metropolitan differences, will outpace the ability of the domestic labor pool to fill them, then grant the H-1B and allow that alien to apply for the green card without any further need to advertise the job or demonstrate the lack of qualified, willing or available Americans.
- Reward not past achievement but future potential when deciding which aliens have the talent to enrich the American economy. Decisions on extraordinary ability, national interest waivers or outstanding researchers should be governed not by what someone has done before but on what they are likely to do once they get here. We need people who are going to do their best work for us in the years to come, not those whose salad days are long gone, even if their resume looks more impressive right now.
- We need much tougher enforcement and much higher levels of immigration. Opponents of immigration should no longer be able to frustrate what the economy needs but supporters must stop acting as if September 11th never took place.
- Recognize, as noted above, that the real threat to US workers comes not from the distinctly limited number of employment visas but from the much larger number of family visas whose entry is unchecked by any labor market controls.
- It should be harder to come and easier to stay. Impose more restrictions on nonimmigrants and fewer on those who seek green card status.

- The American people must understand the laws and feel they have a stake in its interpretation, enforcement and evolution. It must belong to them, not to lawyers, lobbyists, bureaucrats or think tanks.
- Remove any artificial caps on employment-based categories. When employers no longer need to hire, they will not need big brother to tell them not to. We do not need a law to encourage the hiring of Americans first. At the same time, make it much more expensive for those employers that do bring in immigrants. Both supporters and opponents of immigration must learn to trust the culture of capitalism and believe in its legitimacy.
- Employment-based immigration should care more about the creation of new economic opportunity, rather than the preservation of what exists now. Growth not protection is the goal. Facilitating future growth and not punishing past transgressions is what all who care about America must place first.
- Abolish the practice of allocating immigrant visas by nation states. Why do we continue to insist that Denmark and China get the same number of immigrant visas? We should base our decisions on what the economy needs, not on an accident of geography.
- If we keep a nation-centered immigrant visa allocation scheme, institute a flexible cap so that no nation, read India or China, can grab more than 10-15% of the quota. Once this limit was reached, nationals of this nation could still come but preference would be given to under-represented nations and graduates of US universities regardless of their country of origin.
- Double the number of employment-based immigrant visas by only counting principal visa applicants, not family members.
- Allow for flexibility to meet unusual demand in changing times. Congress can set a fixed number of immigrant, or even non-immigrant visas, every few years, say for a three-year projection. Thereafter, a market-based auction can be conducted, perhaps quarterly subject to prevailing wage oversight and subject to random audits, so that additional visas can be released to meet unexpected demand. The Committee for Economic Development suggested something very close to this several years ago when Congress passed the American Competitiveness in the 21st Century Act. The idea is to allow the economy, not federal regulators, to open or close off the visa spigot when demand rises or falls.
- For the first time in American history, immigration is a national, not a regional or local phenomenon. Places that never knew or cared about immigration now realize that it can be used to reverse population decline, replenish fading neighborhoods, restore burned out inner city cores, and promote new business creation. The consequences of immigration going national cannot be overlooked. The paradigm of employment-based immigration must begin to shift away from one based on responding to the specific needs of individual employers towards the larger requirements of local, state and regional economies. It is more important to help Appalachia or bring dead New England mill towns back to life than to assist a particular employer. This does not mean that the current model of employer sponsorship must be cast aside. It does mean that an alternative model should be tried, perhaps on a trial basis. Abolish the Diversity Visa lottery for which there is no sustaining rationale. Give out these same 55,000 visa numbers as credits to the

states much as is now done with carbon credits for emission controls. Allow the states to trade or exchange these credits between themselves since no one knows what the different economies of America need more than the people who live there. Use immigration as a practical incentive to restore and revive those parts of America that have been left behind. Let those who come give hope to those now there who have none.

- Create a blanket H-1B visa that can be applied for directly at a US Consulate, much as it is now possible to apply for a Blanket L visa. Eligibility for this Blanket H should depend on the number of approved H petitions in the past year, the percentage of full-time equivalent H workers in their employ (no eligibility for dependent H employers) and documentation of a demonstrated ability to pay the prevailing wage. No employer who is guilty of a willful or material H wage violation can apply.
- Having or not having a college degree should not be the only criteria for H-1B eligibility. Does the person have special talent? Do they have a demonstrated ability to solve important technical or commercial problems? Can they perform cutting-edge research? Will their employment have a multiplier effect allowing the sponsoring employer to hire more US workers? All of these should go into the mix. If America needs skilled plumbers, electricians or mechanics more than MBAs, or talented systems analysts with only a high school diploma but an expert grasp of cutting-edge technology, then these are the people who deserve an exempt or a cap subject H visa slot.
- Does the economy have the same need for all H-1B occupations? The question literally answers itself. Prepare a list of occupations deserving of H approval. This is precisely what USDOL has long since done with labor certification in the form of its Schedule A. Annual revision of the list will keep it current. For those occupations not on the list, they can still get an H visa but only for shorter duration and with no exemption from the intending immigrant presumption found in Section 214(b) of the Immigration and Nationality Act. This is a one time grant with no extension.
- All visas are not created equal. So, for example, in those places where US workers do not want to go, or for those occupations that are growing, or in those disciplines that Americans will not gravitate towards, such as auto mechanic where there is a yawning vacancy of some 60,000 jobs, make the visa longer and give it a larger share of the quota. This would easily apply in the H visa context but might apply elsewhere as well. Correspondingly, if a region has no need of imported expertise, or if an industry is stagnant and has fallen back into negative growth, then cut back on the number or validity of the visa, or even ban it entirely until growth resumes or rises to whatever level Congress finds acceptable.
- Rather than extending the scope of the labor condition application to the L-1, why not give L-1 workers true protection by enabling them to look for a better job without sacrificing visa eligibility? Extend the concept of portability under the American Competitiveness in the 21st Century Act so that any L-1 who is being cheated, lied to, or taken advantage of can port to any other employer who does business in the USA and at least one other country.

CONCLUSION

The stakes are huge. It is not that much of an exaggeration to predict that the continued erosion of scientific and technical leadership can pull down the American standard of living

that is the envy of the world, and cripple our ability to project American influence in preservation of key national goals or strategic objectives. Immigration is hardly the only answer, but it is certainly part of the answer. We must stop thinking of immigration as a problem to be controlled and start thinking of it as an asset to be maximized. It makes no sense to have a system where, as Geoffrey Colvin writes in Fortune, if "Albert Einstein wanted to move in today but had no US relatives, he'd have to get in line behind thousands of poorly educated manual laborers who did." America can do better. As Emerson reminded us in his address to the American Scholar, there is still time for discovery: "Come my friends, it is not too late to seek a newer world."

11. NSEERS Related Deportation Halted

According to a recent press release from the American-Arab Anti-Discrimination Committee (ADC), the group welcomed a New York City immigration court decision to stop the deportation of an Egyptian citizen due to the National Security Entry-Exit Registration Services (NSEERS) program. The release stated that the judge ruled against the deportation because the case violated the immigrant's fundamental and constitutional rights.

The Judge ruled that the individual complied with all the program's requirements, and that he was unlawfully detained and arrested. The Judge also stated that immigration officers used coercive methods to obtain information.

NSEERS was labeled an immigration law enforcement measure in March 2003. As such, regulations require the Bureau of Citizenship and Immigration Services to register certain individuals in the interest of national security or law enforcement. NSEERS procedures require the following:

- Being registered upon arrival to and departure from the United States
- Being interviewed at a Bureau of Citizenship and Immigration Services office if remaining in the United States for more than 30 days and/or for more than one year
- Notifying the Bureau of Citizenship and Immigration Service within ten days of any changes regarding place.

According to the release, the violations mentioned in the decision exemplify the concerns that ADC has expressed relative to NSEERS.

12. Temporary Protected Status Extended for Liberians

The Department of Homeland Security (DHS) today announced a 12-month extension of Temporary Protected Status (TPS) for Liberia until October 1, 2006. Under this extension, those who have already been granted TPS are eligible to live and work in the United States for an additional year and continue to maintain their TPS status.

The extension of Liberia's designation for TPS is effective October 1, 2005 and will remain in effect until October 1, 2006. Nationals of Liberia (or those with no nationality who last habitually resided in Liberia) who have been granted TPS must re-register for the 12-month extension during the 60-day re-registration period, which begins on August 16, 2005 and

will remain in effect until October 14, 2005. To ensure timely scheduling for biometric collection at a U.S. Citizenship and Immigration Services (USCIS) Application Support Center (ASC) and to prevent a lapse in employment authorization, Liberia TPS beneficiaries are encouraged to file their applications as quickly as possible.

To ensure minimal disruption of employment authorization while TPS re-registration applications are processed, a sticker will be affixed to the current EAD of an eligible TPS beneficiary at the time biometrics are collected at the ASC. This sticker will extend the current EAD through February 28, 2006. Therefore, all re-registrants who have previously been issued a TPS-related EAD must bring their current EAD to the ASC. They should bring their ASC appointment notice and TPS receipt notice. Note that the EAD extension sticker will be provided only at the ASC. The USCIS district offices and sub-offices will not be providing this service.

Instructions for re-registering for TPS have changed. Re-registration applications must be mailed to the USCIS Lockbox addresses noted below. Applicants should **not** submit applications to USCIS District Offices or sub-offices as they have done in the past.

To re-register for TPS under this extension, each applicant must submit Form I-821 (Application for Temporary Protected Status) without filing fee, Form I-765 (Application for Employment Authorization), and a \$70 biometric services fee. Applicants under the age of 14, who are not requesting an Employment Authorization Document (EAD), need not submit the \$70 biometric services fee. All applicants seeking a new EAD to be valid through October 1, 2006, must also submit a \$175 filing fee. An applicant who seeks only to re-register for TPS and does not seek an EAD need not submit the \$175 filing fee but still must submit the Form I-765. Applicants may request a fee waiver for the Form I-765 in accordance with the regulations; however, the biometric services fee will not be waived. Failure to properly complete and submit Forms I-821 and I-765 with all applicable fees or fee waivers may delay processing or lead to the rejection of the re-registration application.

Unlike previous re-registration periods, applicants are not required to submit a photograph with their re-registration material, as both photographs and fingerprints, i.e., biometrics, will be collected at the ASC. In order to obtain an appointment at the ASC, you must file a re-registration package (including I-821, I-765 and required fees as stated above). Applicants will then be notified of their ASC appointment by mail.

The Form I-821, Form I-765, fees, and any required supporting documentation must be filed at the USCIS Chicago Lockbox at:
U.S. Citizenship and Immigration Services
Attn: TPS Liberia
P.O. Box 87583
Chicago, IL 60680-0583

Or, for non-United States Postal Service deliveries:

U.S. Citizenship and Immigration Services
Attn: TPS Liberia
427 S. LaSalle – 3rd Floor
Chicago, IL 60605

Note that these addresses are not the same as where TPS application packages were submitted during previous re-registration periods for Liberia. Also note that USCIS has published a revised Form I-821. **Only Form I-821 with Revision Date**

11/5/04 will be accepted. Earlier versions of this form will be rejected. The newly revised form, as well as other forms, are available on the USCIS web site at www.uscis.gov, at local USCIS offices, and via the USCIS Forms line, 1-800-870-3676.

More information can be obtained from the USCIS National Customer Service Center toll-free number: 1-800-375-5283.

13. DOS Announces New Sexual Misconduct Rules Affecting J-1 Programs

The Department of State (DOS) has announced proposed changes to the J-1 program rules. This authority allows around 1450 program sponsors to facilitate the entry of over 275,000 exchange participants each year. A vital section of the participants are secondary school students who, through the exchange program, serve to inform opinion of foreign youth about the United States. The proposed changes affect high school exchange students.

According to the State Department, the rule stems from concerns regarding the security of young people participating in exchange programs. The amendments would require program sponsors to complete background checks for officers, employees, agents, representatives and volunteers acting on behalf of the exchange program and to maintain monthly contact with the host families and students. Additionally, the amendments would require the vetting of all adult members of a host family through a sex offender registry maintained by the state of residence of the host family. Registries of sex offenders have been in place for several years in 48 of 50 states.

The State Department has noted in the proposed rules that it believes that the vetting of individuals for sexual offenses should be convenient and cost effective. Additionally, proposed changes require any report of sexual misconduct involving an exchange program participant to be reported to both the Department of State and local law enforcement officials. To help overcome possible cultural differences that may cause reluctance to speak out or report such matters, the Department of State would mandate that all participants receive written information regarding the reporting of sexual exploitation or abuse.

Furthermore, the proposed changes target the pool of eligible student participants for the Exchange Visitor Program. A participant would be a bona fide student not more than 18 years and six months of age as of the program start date since students past this age normally would have completed high school studies in their home countries and would be more appropriately placed in higher education institutions. The DOS also believes that benefits from this program are limited for students over the proposed age.

The amendments also address the necessity of complete, timely placement reports of exchange students. All placement reports for students arriving for the academic year must be submitted by August 31st of that academic year/ Fall Semester. For exchange students arriving for Spring Semester, placement reports must be submitted by January 15th of that semester year. Students not placed by August 31st should not enter the U.S. that academic year/Fall Semester and must wait until the next Spring semester to participate in the Exchange Visitor Program.

The DOS published these proposed changes with a 60-day provision allowing the acceptance of public comments up until October 11, 2005. The proposed changes to 22 C.F.R. Part 62 and regulatory analysis and notices for this announcement can be viewed at <http://www.regulations.gov/index.cfm>.

Comments on the proposed changes may be sent by email, fax or mail to the DOS Office of Exchange Coordination and Designation as follows:

Email: jexhcnages@state.gov (Must include RIN on subject line)

Fax: 202-203-5087

Mail: DOS Office of Exchange Coordination and Designation
SA-44, 301 4th Street, SW., Room 734
Washington DC 20547

14. Report Released Regarding Latino Attitudes About US Immigration

The Pew Hispanic Center released a poll recently on U.S. Latinos' attitudes toward immigration, as well as a poll from Mexico on attitudes toward migration to the U.S. The poll confirms that Latinos overall, and Latino immigrants especially, view immigration as an important issue, are far more likely to hold pro-immigrant views and support generous immigration levels than the general public, and strongly favor immigration reform that includes a path to permanent residence for the undocumented already here, while being far more skeptical of a "work and return" guest worker proposal.

According to the report:

- 80% of Latino immigrants and 75% of native-born Latinos say that immigration is an extremely important or very important issue (in polls of the general public in which respondents rate the importance of ten issues, immigration usually comes in last)
- 89% of Latino immigrants and 65% of the native-born say immigrants strengthen our country rather than being a burden (a recent Pew survey that found 45% of the general public agrees)
- 76% of Latino immigrants and 55% of the native-born say undocumented immigrants help the economy by providing low cost labor rather than hurt the economy by driving wages down
- 76% of Latino immigrants and 72% of native-born say that legal immigration levels should be increased or stay the same (a recent poll sponsored by the National Immigration Forum and American Immigration Lawyers Association found that 48% of the general public supports increased or current levels of immigration)
- 88% of Latino immigrants and 78% of the native-born favor giving undocumented immigrants a chance to remain here permanently with legal status and to eventually become U.S. citizens
- 55% of Latino immigrants and 59% of the native-born favor a temporary worker program that would require the workers to eventually return to their home countries

For more information on the opinions of the Pew Hispanic Center, visit www.pewhispanic.org.

15. MPI Reports on Post 9/11 Visa Policies

The Migration Policy Institute, a pro-immigration think tank, has released a report last week on visa policy changes since the September 11, 2001 attacks on the United States. The report suggests that in order for nonimmigrant tourists and visitors to enjoy their time in the US, the country has to loosen the rules for visas. The reports points out that many administrative procedures have changed significantly, including a requirement for personal interviews with almost all visa applicants. The government has more closely scrutinized visa waiver countries, curtailed airline passengers' ability to travel through the U.S. en route to other countries without visas, and established requirements for visa waiver countries to have machine-readable passports with biometric identifiers by October 1, 2005.

The authors of the MPI report recommend changes to clarify the application process and make it more transparent; facilitate visa re-issuance from the United States; and waive interviews for travelers who have been issued visas recently. The authors also recommend improving the quality of interviews through the use of a secondary-like inspection at consular posts to target possible security risks. The report states that improved intelligence-gathering, greater investments in staff expertise and training, and online access to all relevant information about applicants are essential, because a major weakness continues to be variable access to information through different agencies' databases.

The report states that a challenge will be countering international perceptions that the United States has become more hostile to visitors.

The report can be found on the web at <http://www.migrationpolicy.org/>.

16. Arizona and New Mexico Declare Border Emergency

Last week, the governors of Arizona and New Mexico issued state of emergency declarations due to a recent rise of smuggling and violence along the US-Mexico border.

In her declaration, Arizona Governor Janet Napolitano stated that the federal government has failed in its responsibility to secure the United States and Mexico border, thereby necessitating immediate action by the state to aid its border counties. She states that the increase in unauthorized border crossings and the related increase in deaths, crime and property damage justifies a declaration of a State of Emergency. The declaration directs that \$200,000 from Arizona's general fund be made available to the Director of the Arizona Division of Emergency Management.

New Mexico Governor Bill Richardson's declaration makes \$750,000 in state emergency funding immediately available to the affected counties. The Governor pledged an additional \$1 million in assistance for the area. The funds will be used to support state and local law enforcement efforts, create and fund a field office for the New Mexico Office of Homeland Security to coordinate assistance to the area, and help build a fence to protect a livestock yard near Columbus, along a favorite path for illegal immigration where a number of livestock have been stolen and killed.

The Governor also called on Mexico to bulldoze the abandoned town of Las Chepas, which is

directly over the border from Columbus. Las Chepas is a notorious staging and resting area for those who smuggle drugs and immigrants into the United States. Richardson also directed the New Mexico Department of Agriculture to work with the New Mexico Livestock Board to assess the security and safety of livestock in this border region.

This is a state declared emergency rather than a federally declared disaster. Under Section 501 (b) of the Stafford Act (P.L. 100-517), the President has the authority to declare an emergency situation with or without a request from a state's governor. This authority is routinely used during hurricanes and other natural disasters.