

Siskind's Immigration Bulletin -  
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1. Openers

Dear Readers:

This past week I spent the first part of the week walking the halls of Congress working on employment-based immigration legislation. I was joined by Robert Aronson, an immigration lawyer in Minnesota, and the two of us were representing the FMG Taskforce, a coalition of immigration law firms that work on physician cases. Most of our efforts were focused on the extension of the Conrad 30 J-1 physician program which expires in June. But we also discussed the H-1B/Employment-Based card provisions in the budget reconciliation bill. I've discussed that bill in previous issues, but to refresh readers' memory, the bill's language would do the following:

- Reclaim 90,000 unused employment-based green cards
- Eliminate spouses and children from the EB quota (as is the case with non-immigrant visas)
- Allow filing of an adjustment petition even when an employment-based green card number is not yet available
- Reclaim up to 30,000 H-1B visas per year that have not been used in past quotas (about 300,000 are currently available)
- Charge a \$500 tax on H-1Bs and EBs reclaimed from prior years
- Add a new fee for L-1s similar to the H-1B worker retraining fee

The Senate and House have each passed their versions of the bill. The Senate version contains all of the provisions above. The House version only has the L-1 tax. In the next few weeks, Congress is likely to take up the bigger bill. It barely passed in the House due to non-immigration-related provisions. We're watching the bill closely and will continue reporting.

As I noted, I also was working on physician immigration issues. We're pushing for a permanent or long term extension of the Conrad program, ways to make it easier for J-1 physicians to get to the US (such as making J-1s for doctors dual intent) and also providing more liberalized rules for disaster counties seeking doctors.

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President Bush gave a major address last week to try and accelerate his push for immigration reform. The speech emphasized better immigration enforcement on the border as well as cracking down on employers hiring undocumented workers. But the President has kept his word and is continuing to push for a guest worker program.

There are now a number of immigration bills pending in both houses of Congress that purport to reform the US immigration system. They generally fall into two categories – enforcement-only bills and enforcement/guest worker bills. Some proponents of enforcement-only bills claim that they are interested in first securing the borders and then, if successful, turning to the question of establishing a genuine guest worker program. But many pro-immigration advocates believe that sponsors of these bills have no real intention of ever getting to the visa side of the equation.

Within the enforcement/guest worker camp, there are also a variety of approaches. Some create a non-immigrant visa option for workers, but will make it difficult to get permanent residency status. Others create a clear path to citizenship. The President has still not clearly defined which guest worker approach he favors. But he may not have to get that specific. It is very possible that a compromise approach will be reached in the course of negotiations in Congress.

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By the way, the latest bill likely to be introduced will be by House Judiciary Committee Chair James Sensenbrenner. A key provision of that bill will be to make the Basic Pilot employment verification program mandatory for all employers. This is a program that allows employers to electronically verify the employment authorization of workers. You can find more information about this program at <http://uscis.gov/graphics/services/SAVE.htm#two> .

We also expect to see greater worksite enforcement of immigration laws based on recent pronouncements from the Department of Homeland Security and the White House. That will be a big change. According to a recent GAO report, the number of employer fines dropped from 417 in 1999 to 5 last year.

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An important friend of immigrants announced this week he is leaving Congress. Congressman Jim Kolbe, a Republican from Arizona, represents the pro-immigration wing of the Republican Party and he has played a key role in legislation in this area for the last five years. Kolbe will be retiring from Congress at the end of this session following the 2006 election.

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In firm news, I'll be a speaker at the annual conference of the American Immigration Lawyers Association's New York Chapter on Thursday. I look forward to again speaking at this conference and look forward to seeing many of our readers there.

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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

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## 2. ABCs of Immigration: Export Control Rules and the US Immigration System

Most employers, employees and immigration lawyers are unaware of a set of rules that can create serious liability if they are ignored. They are the export licensing requirements for foreign nationals and in the post-9/11 world of immigration, they are taking on more importance. The "deemed export" regulations hold that foreign nationals who gain access to controlled technologies are equivalent to a company exporting the technology to foreign markets. This is the case even when a company does not even export actual goods or services.

The deemed export rules are administered by the US Department of Commerce (though the State Department has a separate smaller program covering international trafficking in armaments (ITAR)). The rules mainly cover the defense and high tech industries as well as various other industries that use sensitive technologies. DOC regulations on the subject are included in the Export Administration Regulations (EAR) administered by the Bureau of Industry and Security (BIS). According to the BIS, the EARs are intended for the following purpose:

"The export control provisions of the EAR are intended to serve the national security, foreign policy, nonproliferation, and short supply interests of the United States and,

in some cases, to carry out its international obligations. Some controls are designed to restrict access to dual use items by countries or persons that might apply such items to uses inimical to U.S. interests. The EAR also include some export controls to protect the United States from the adverse impact of the unrestricted export of commodities in short supply."

DOC maintains an EAR database that has information on controlled technologies as well as lists of parties prohibited from exported controlled technologies due to prior violations.

***What action relating to a foreign national is deemed to trigger the export control rules?***

An export is defined by 15 CFR 734.2(b)(1) defines an "export" as an "actual shipment or transmission of items subject to the EAR out of the United States, or release of technology or software subject to the EAR to a foreign national in the United States.

Discussing with a foreign national in the US or a person acting on behalf of a foreign person is deemed to constitute an "export" if it reveals technical information regarding export-controlled technology.

***What kinds of foreign nationals are exempt from the EAR?***

For purposes of EAR and ITAR, US citizens, green card holders and asylee/refugees are US persons not subject to controls. However, if the technology is classified as well as controlled, permanent residents are deemed foreign nationals and are subject to controls. Persons in the US on non-immigrant visas are generally covered by the rules.

For dual nationals, the Commerce Department generally considers the last place of permanent residence or the last place citizenship was obtained to be the nationality for purposes of determining the country coverage under the deemed export rules.

***How would technology or software be "transferred" to a foreign national?***

A company must "release" a technology to the foreign national. "Release" is defined as

- i. Visual inspection by foreign nationals of U.S.-origin equipment and facilities;
- ii. Oral exchanges of information in the United States or abroad; or
- iii. The application to situations abroad of personal knowledge or technical experience acquired in the United States.

***Is there special language employers need to put on documents that are deemed to discuss controlled technologies?***

Yes, the following language needs to be placed on such documents:

**“WARNING** - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979, as amended (Title 50, U.S.C., App. 2401 et seq.). Violations of these export laws are subject to severe criminal penalties.”

***What are the penalties for violating the export control rules with respect to transferring controlled information to a foreign national?***

According to the The penalty for unlawful export of items or information controlled under the ITAR is up to 2 years imprisonment, or a fine of \$100,000, or both. The penalty for unlawful export of items or information controlled under the EAR is a fine of up to \$1,000,000 or five times the value of the exports, whichever is greater; or for an individual, imprisonment of up to 10 years or a fine of up to \$250,000 or both.

***What laws cover export controls?***

- Executive Order 12923 Continuation of Export Control Regulations, 30 June 1994.
- Title 22 USC 2778 et seq. – Arms Export Control Act.
- Title 50 USC 2401 et seq. – Export Administration Act of 1979 (as amended).
- Title 50 USC Appendix, Section 10 – Trading With the Enemy Act of 1917.
- Title 15 CFR Export Administration Regulations, part 770.
- Title 15 CFR part 779 Technical Data.
- Title 22 CFR (Dept. of State) Subchapter M, The International Traffic and Arms Regulation (ITAR) Part 121-130.

***How do I know whether the technology with which a foreign national works requires an export license?***

Under EAR, items on the Commerce Control List are covered. Stanford University has published links to the list at [http://www.stanford.edu/dept/DoR/exp\\_controls/lists.html#ccl](http://www.stanford.edu/dept/DoR/exp_controls/lists.html#ccl). The rules are complicated and companies in affected industries should carefully review the list with an attorney who has a specialized background in this area rather than relying on immigration counsel.

***If a technology or software is on the Commerce Control List does it automatically trigger export control restrictions?***

Not necessarily. First, not all technologies are barred from all countries. One should cross reference the Commerce Country Chart to see if a license is necessary. For example, for close allies like Australia and Japan, licenses are often not necessary. The regulations also list numerous license exceptions.

***What if I am still not sure if I need an export license?***

The Bureau of Industry and Security is required to provide an advisory opinion regarding whether an item or technology is subject to the EAR if so requested.

***What should a company do if it turns out a foreign employee will trigger export control rules?***

Assuming an employer chooses to hire the employee, it will need to secure an export license. The application process for obtaining an export license is outlined on the Bureau of Industry and Security web site at <http://www.bis.doc.gov/licensing/applying4lic.htm>

***How much time is needed to get an export license?***

Expect the process to take at least 90 days for a Commerce Department license and 60 days for a State Department license.

***What kinds of technology or software are excluded from the EAR?***

With the exception of certain encryption technology and software, published and public availability technology and software are not covered by the EAR. Fundamental research, including university-based research, is also excluded under the regulations. Educational information released by instruction in catalog courses and teaching laboratories of academic institutions are excluded.

***What kinds of questions should an immigration lawyer ask the employer client to determine whether export control rules may be an issue?***

A lawyer should discuss what form of access a worker will have to controlled technology. Is the worker exposed to internal company research materials, does the worker participate in meetings and conference calls regarding such technology. Is the worker exposed to written communications such as emails and interoffice memoranda?

The immigration lawyer should also explore what access the worker has to the company's server. The lawyer should discuss the possibility of limiting access to the server for employees likely to trigger export controls.

Counsel should also advise clients to list eligibility to received controlled technology as a condition of employment in order to avoid accusations of employment discrimination. Human resource personnel should also inform an applicant that information collected for export control purposes will not be used for any other purpose.

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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 a religious worker (R1 visa holder) in the process of adjusting of status. I was allowed to work without EAD only for my religious organization. I was issued EAD recently (c 9). Can I work for non-religious organization and receive a salary on this base or I need to wait for a Green card?

A - You can take on extra work with the EAD, but if you fail to work the hours you've described in your I-360 petition for your sponsoring organization, USCIS might question the validity of the petition.

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Q - I have read that there are two kinds of citizenship - state citizens and Federal citizens. Can a person be either of these to be a citizen of the United States? Also, is there a difference between a national of the United States and a federal citizen?

A - Not quite. A person can only be a citizen of the US. But states have separate rules regarding who is a resident. This makes a difference in taxation and access to benefits such as in state tuition discounts for state residents.

Nationals of the US are people from certain territories and possessions of the US who owe allegiance to the US and have many of the same rights as citizens, but who are not actual US citizens.

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Q - Would you please let me know what kind of documents I may be asked to produce at the citizenship interview? Also, do they give me the opportunity to swear in right after the interview on the same day?

A - You should have original documents of anything you submitted in the application as well as anything USCIS tells you to bring in the appointment letter. Most locations in the US will have an immigration judge issue the oath of citizenship. It usually will take several weeks to a couple of months to be sworn in after a successful interview.

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Q - Is a person with an associate's degree eligible for an H-1B visa?

A - An AA degree would normally not be enough since you must show the position normally requires a bachelors degree. Occasionally, someone with an AA degree and many years of experience can qualify if they can show the job requires a bachelors degree.

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4. Border and Enforcement News

Thirteen Arizona hotel owners have been accused by federal authorities of harboring undocumented aliens brought by smugglers into the United States. Authorities will seek to seize their businesses as part of a nationwide investigation into a network "stash houses," which are usually hotels and motels, but also include apartments and houses, reports the *Washington Times*. After a nine-month undercover investigation, the owners of six hotels in Mesa, Arizona, have been charged with harboring undocumented immigrants and aiding human smuggling. Twelve of those named in the indictments have been arrested and are described as "ethnic Indians," eight of whom are U.S. citizens while the other five are listed as British citizens in the United States on green cards.

Stash houses, also known as "safe houses" or "drop houses," are locations where undocumented immigrants seek temporary shelter after coming into the U.S. and before they are taken, for a fee, to other locations throughout the country. The property owners or managers are paid by the smugglers for harboring the aliens. During the investigation, the motel owners rented rooms on numerous occasions to undercover ICE agents posing as smugglers, sometimes charging the agents higher rates than what they would normally charge their customers. The owners also instructed the agents on how to conceal their smuggling activities, advising them to register under false names, rent several rooms, and park their vehicles in inconspicuous places.

U.S. Attorney Paul K. Charlton's Arizona office will be prosecuting the cases and has stated that they will seek seizure of the properties. The thirteenth owner, Roshankumar Bharatbhai Bhakta, 20, has been declared a fugitive and is still at large. All of the arrested has been charged with one count of conspiring to harbor undocumented immigrants, and if convicted, would face a maximum sentence of 10 years in prison and a \$250,000 fine.

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Six U.S. Navy crew members were among 10 people caught in an FBI sting operation targeting fake marriages to undocumented aliens for profit. The six are assigned to the USS Eisenhower in Norfolk, Virginia. Kenneth Adam Howard, 26 of Baltimore, approached them about entering the sham marriages for \$3,000 to \$4,000. Marriage of immigrants to U.S. citizens can aid in their claim for citizenship or employment. The seamen came to New York believing that they would be meeting undocumented immigrants from Egypt, Russia, South America and Europe, but were instead confronted by undercover FBI agents or informants and cooperating witnesses. The defendants could face a maximum sentence of five years in prison and a \$250,000 fine if convicted. Bail is set at \$200,000.

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The *Arizona Daily Star* reports that Gov. Janet Napolitano has ceased pursuing plans to seek federal emergency fund to help pay for more law enforcement on Arizona's southern border. The governor's decision is said to be based, at least in part, on the billions of dollars being spent as relief for the victims of Hurricanes Katrina and Rita by the federal government. Gov. Napolitano has said that she plans instead to ask the government to do more to help Arizona, and other border communities, on an on-going basis to deal with the problems of illegal border crossing. Some aid is forthcoming since Congress passed the State Criminal Assistance Alien Program earlier in November. This program would reimburse states for the costs of detaining undocumented immigrants convicted of state crimes and would provide \$405 million nationwide, up from \$355 million. According to some of the governor's reports, the state was due \$71 million last year, but received less than \$7 million. Gov. Napolitano

had considered seeking a federal emergency declaration after having used her own powers to declare a state emergency in Cochise, Santa Cruz, Pima and Yuma counties.

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A Cuban woman received political asylum after having stowed away in a wooden crate flown by a cargo plane from the Bahamas to Miami, according to the Associated Press. Sandra de los Santos, 25, stowed away until a crew unloading the filing-cabinet sized DHL crate at Miami International Airport found her. The presiding immigration judge cited fear of persecution, especially given the unusual means of transportation, she might face if returned to Cuba as one of the reasons for which he granted her asylum status. The so-called wet-foot, dry-foot rule, which usually allows those Cubans who reach U.S. soil to stay and sends back those who are caught while at sea, was also cited. De los Santos left Cuba in May 2004 for Nassau, and packed herself into the DHL crate three months later.

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Virginia Representative Virgil H. Goode Jr. and California Representative Duncan Hunter want Congress to build a 2,000 mile fence along the Mexican border. Senators Goode and Hunter proposed a plan for a fence from the Pacific Coast to the Gulf of Mexico, which will cost an estimated \$5 billion to \$7 billion. According to the Associated Press, there are currently many long segments across the U.S. border that have no physical barrier to entering the country. This bill would increase border patrol officers by 10,000 and immigration investigators by 1,250. Critics of the bill believe that it is unfeasible, and that immigrants who wish to cross into the United States will find other ways, through tunnels or boats for example.

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Near Campo, CA, a border patrol agent opened fire on a man who swung at him with a machete. The agent reportedly was patrolling alone in the mountains near a campground that is frequently used by undocumented immigrants. The agent saw a man who appeared to be attempting to cross the border. When confronted, the man attacked the agent with a machete. The agent fired at least two rounds and the man was hit twice in the upper body. The suspect was taken to the hospital and is now in intensive care. Border Patrol agents cite this as an example of the recent rise in attacks against border patrol officers.

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## 5. News From the Courts

The News From the Courts column is written by Maria Bjornerud, an immigration attorney with an office in Southaven, MS. Originally from Russia, Ms. Bjornerud is licensed to practice law in Tennessee and Mississippi. She can be contacted via email at [mbjorne@msn.com](mailto:mbjorne@msn.com)

DJOUMA v. GONZALES, No. 04-2086, 2005 U.S. App. LEXIS 24525 (7th Cir. 2005) holds that a family membership may constitute "membership in a particular social group;" "persecution" is not necessary to qualify for the Convention Against Torture relief.

JUDGES: POSNER, KANNE, and WILLIAMS:

The Immigration Judge (IJ) rejected Petitioner's claim of asylum and ordered him removed (deported), and the BIA summarily affirmed. Petitioner is a citizen of Chad, and the nephew of a former government official who fled Chad and became active in a movement to forcibly overthrow the existing regime in Chad. Immediately after his uncle fled Chad, Petitioner was arrested, jailed, interrogated, and whipped. Petitioner fled to Cameroon, and remained there without seeking asylum before coming to Canada. After Petitioner was denied asylum in Canada, he applied for asylum in the United States.

The U.S. IJ's primarily based its credibility finding on the Canadian immigration proceeding and its incomplete transcript with missing pages. The IJ failed to order a complete copy of the Canadian hearing transcript. The IJ found it suspicious that Petitioner had not applied for asylum in Cameroon and that he found his uncle in Benin by looking him up in the phone book. The IJ did not give reasons for her disbelief.

The court pointed out that the Department of Homeland Security and the Justice Department had failed to provide the IJs and the members of the BIA with any systematic guidance on the resolution of credibility issues. The court stressed that there were no conducted studies of patterns of true and false representations made by the applicants, of sources of corroboration and refutation, or of the actual consequences to asylum applicants who were denied asylum and removed to the country that they claimed would persecute them. The court concluded that absent such systematic evidence the IJs were likely to misinterpret minor contradictions and were lacking background knowledge which was required to make reliable determinations of credibility.

The court disagreed with the IJ's conclusion that Petitioner was not a member of "a particular social group" because he was merely a witness to his uncle's whereabouts. The court stressed that the term "membership in a particular social group" would cover Petitioner regardless of his political activities or opinions because he was a member of his uncle's family. *Bernal-Rendon v. Gonzales*, 419 F.3d 877, 881 (8th Cir. 2005). Nevertheless, the court concluded that Petitioner failed to show that he would be persecuted as a member of his uncle's family because several members of the Petitioner's and his uncle's families remained in Chad undisturbed.

While the court agreed that Petitioner was not entitled to relief under Convention Against Torture (CAT), the court disagreed with the IJ's characterization of Petitioner's whipping during his detention in Chad as merely "harassment." The court pointed out that certain levels of whipping would amount to torture even under the Convention's restrictive definition of "torture." 8 C.F.R. §§ 208.18(a)(1), (a)(2). The court stressed that the CAT did not protect only victims of persecution. *Niang v. Gonzales*, 422 F.3d 1187, 1196 (10th Cir. 2005). Nevertheless, the court concluded that it was "more likely than not" that Petitioner would not be tortured if returned to Chad.

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MONTER v. GONZALES, No. 03-4070, 2005 U.S. App. LEXIS 24477 (2<sup>nd</sup> Cir. 2005) holds that where an immigration court finds that an alien has made a material misrepresentation, the IJ must also determine whether that alien has rebutted the resulting presumption that he or she will have been removable if the true facts have been known to the INS; denial of motion to change venue to the place with the most nexus to the case, which resulted in failure of the key witness to appear, and when the government interests are adequately protected by respondent's counsel's stipulation is prejudicial.

JUDGES: MINER, SACK, and SPATT:

Petitioner is married to a United States citizen. After Petitioner had been married for several years and after he had been granted conditional permanent residency status, he submitted a form I-751 Petition to Remove the Conditions of Residence to the INS, which was approved without an interview. The INS later discovered that Petitioner at the time was separated from his wife and had made a misrepresentation in his I-751 form. The IJ found that this misrepresentation was "material" and therefore, petitioner was removable. The BIA affirmed.

The removal proceedings were held in Buffalo, New York. Petitioner's counsel requested a change of venue from Buffalo to New York City. Petitioner's counsel stipulated that the statement which had been knowingly made by Petitioner in Buffalo would be received in evidence, and therefore, the presence of Buffalo officer who had taken the statement would not be necessary at the New York proceeding. Petitioner's counsel further stipulated to the admissibility of the I-751 and other documents tendered by the INS to the IJ. The government did not contest the change of venue. Despite the fact that the key witness, the wife of Petitioner, resided in New York, the IJ would not permit a change of venue, unless there was a complete and unconditional acquiescence in the charges. The Petitioner's counsel asked for continuance because the wife could not be present at the scheduled hearing. The IJ denied the motion and, when Petitioner's wife failed to appear, held the hearing without her presence, and refused to consider her affidavit attesting to bona fides of the marriage.

The IJ concluded that Petitioner had procured removal of the conditions of his residence by fraud and ordered him removed from the United States. The BIA affirmed, concluding that Petitioner suffered no prejudice from the denial of his motion for a change of venue.

The court found that because the Government's interest would be protected by Petitioner's stipulations, and because the key witness, Petitioner's wife, lived in New York, the change of venue would be justified as having the most nexus to the issues to be tried. The court found that the record did not establish that Petitioner's wife would have been unable to testify had the hearing been transferred to New York, and held that the IJ's denial to change venue was prejudicial.

The court agreed that Petitioner's misrepresentation was "material" under 8 U.S.C. § 1182(a)(6)(C)(i). Nevertheless, the court pointed out that 8 U.S.C. § 1451(a) had four elements: "the naturalized citizen must have misrepresented or concealed some fact, the misrepresentation or concealment must have been willful, the fact must have been material, and the naturalized citizen must have procured citizenship as a result of the misrepresentation or concealment." *Kungys v. United States*, 485 U.S. 759, 767(1988). Therefore, if a court concludes that the misrepresented or concealed fact is "material," then it must determine whether the applicant "procured" his or her citizenship by means of those misrepresentations or concealments. *Id.* at 776. The showing of "materiality" created only a presumption that the petitioner was disqualified from naturalization. *Id.* at 777. The court held that a naturalized citizen should be able to refute the presumption by establishing that he or she did in fact meet the statutory qualification that the misrepresentation had a tendency to influence.

The court concluded that Petitioner's misrepresentation was material under the definition provided in *Kungys*. The court held that Petitioner was not given the opportunity to rebut presumption of removability and might have been prejudiced by the IJ's denial of his motion for a change of venue.

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## Russian Woman Granted Appeal for Asylum

The Ninth Circuit Court of Appeals Judge D.W. Nelson issued his opinion on Galina Ivanovna Smolniakova v. Alberto R. Gonzales, Attorney General, in favor of the petitioner. Smolniakova, a citizen of Russia, sought review of the order of the Board of Immigration (BIA), which denied her request for asylum and withholding of removal and review of the termination of her conditional permanent resident status. Immigration Judge (IJ) Anna Ho refused Smolniakova's asylum claim because of a lack of credibility, failure to establish past persecution, and failure to establish a well-founded fear of future persecution upon returning to Russia. The IJ also refused her request to review the termination of her conditional resident status because Smolniakova had not proved a "heavy burden" that her 1993 marriage to a U.S. citizen was genuine, and found her deportable.

Smolniakova, 39, was born in Kaliningrad, Russia, and is the daughter of a Jewish mother and non-Jewish father. In her asylum application, Smolniakova noted many instances of discrimination and harassment because of her Jewish identity, and stated that the environment in which she lived was inhospitable, if not openly hostile, to Jews. Smolniakova was a part of a Jewish community organization that met secretly from 1988 to 1991. She recounted the murders of a close Jewish family that was never resolved and testified that in 1991 she was attacked by two men who attempted to strangle her while she was walking home. One of the assailants called her a "Jewish bitch." Six months after this attack, two men came to her home and threatened to kill her if she did not let them in and referred to her home as a "Jewish snake nest." Smolniakova and her sister called the police, who refused to help.

In 1991 Smolniakova entered into a marriage with a Russian man who was a seaman. During their time together she lived with him at his parents' home, but was separated shortly thereafter when he had to return to sea. Smolniakova stated that her mother-in-law would express her displeasure at her Jewish background, and she and her husband decided that she should go to the United States for safety until she could reunite with him in Germany. She was granted a six-month visitor's visa and left Russia in December 1991. Upon her arrival, she learned from her sister that her husband was seeing other women and sought a divorce and political asylum in the United States. Smolniakova filed her asylum application without counsel on April 17, 1992. Her application was denied in October 1992 for failure to provide a well-founded fear of persecution.

Smolniakova's divorce was finalized in February 1993. She testified that she met her second husband, Roberto Quitevis, at a party in December 1992, and the two were married in June 1993. Quitevis then filed an immediate relative visa on her behalf, which was approved by INS, and Smolniakova was granted two-year conditional permanent resident status as the spouse of a U.S. citizen. By December 1994, her marriage to Quitevis had deteriorated significantly, and on June 1, 1995, the INS revoked her conditional resident status upon the belief that her marriage to Quitevis was a sham. Their divorce was finalized in November 1995, and deportation proceedings began in December. During her deportation proceedings, Smolniakova presented documentary evidence including wedding pictures, a joint tax return, a marriage certificate, checks from a joint banking account, joint phone bills, and a lease in both names. Sixteen witnesses also presented evidence in her favor.

Quitevis testified against her in the proceedings by stating that he had been approached by Smolniakova about a business proposition through which he would receive a payment of \$5,000 in exchange for marrying her. He further testified that the couple created the illusion

of a happy marriage, but denied ever having had sexual relations with Smolniakova. Quitevis stated that the marriage was merely one on paper. During her deportation proceedings Smolniakova entered into a relationship with Tony Roland, and the two were wed in December 1995. Roland filed a Petition for an Alien Relative visa on Smolniakova's behalf on March 4, 1996, which was denied on the marriage-fraud bar for such petitions.

The IJ reviewing Smolniakova's case denied her petitions on grounds of lack of credibility on her asylum claim, which the Appeals Court believed tainted the ruling on her marriage claim as well. Judge Nelson reversed the IJ's credibility finding in the asylum context and found that Smolniakova had suffered past persecution because of her religion and that she has a well-founded fear of future persecution. The judge also found Smolniakova eligible for asylum. The opinion of the court called for an exercise of discretion on Smolniakova's asylum claim and for further consideration of the withholding of removal claim. The court further reversed the IJ's denial of Smolniakova's petition for the review of the determination that her marriage to Quitevis was a sham and remanded to the BIA for a new hearing for this petition and also of the INS's termination of Smolniakova's conditional permanent resident status.

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#### Court Rules Against Nebraska Service Center in Educational Equivalency Case

In *Grace Korean United Methodist Church v. Chertoff*, Plaintiffs Grace Korean United Methodist Church and Jeong Mi Park sought judicial review of a decision made by the Nebraska Service Center Director of the United States Citizenship and Immigration Services (CIS) which denied the Church's I-140 immigrant visa petition.

In 1996 the Church filed an Application for Alien Employment Certification, also known as a "labor certification," with the Oregon Employment Department. The Church was looking for a candidate with a bachelor's degree "or equivalent" in the field of theology to fill a vacant position. The Department of Labor (DOL) issued the labor certification, stating that U.S. workers were recruited, but that none were available to fill the position. The Church then filed an I-140 immigrant visa petition with the Nebraska Service Center (NSC) on behalf of Park. To demonstrate that Park met the requirements of the position, the Church submitted evidence of Park's education and experience, attesting that her education and experience were the equivalent of a B.A. The NSC denied the petition on the grounds that it failed to demonstrate that Park had the equivalent of a B.A. in theology based solely on her formal education. The Church appealed this decision, and presented a letter from Dong Hwan Lim, D. Min., the Dean of the Graduate School of Bethesda Christian University and Bethesda Theological Seminary. Dean Lim's letter stated that based on Park's Korean education, his University would admit Park into its Masters of Divinity program as if she had the equivalency of a B.A. in theology. The appeal was dismissed by the Administrative Appeals Office (AAO). The Church then filed a motion for reconsideration, arguing that the NSC director misinterpreted the phrase "B.A. or equivalent" to mean "B.A. or equivalent foreign degree" instead of "B.A. or the equivalent of a B.A.". The AAO affirmed that Park did not possess the specific degree required by the labor certification. The Church filed another motion for reconsideration, stating that education and experience may be accepted in place of a degree when the labor certification requires a "B.A. or equivalent." The AAO once again affirmed its decision.

According to the Administrative Procedures Act, a reviewing court should not dismiss an agency's decision unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...." The Plaintiffs claim that the Defendants' interpretation of "B.A. or

equivalent" is incorrect, and that Park's education and experience suffice, according to the decision. The Defendants contended that the "skilled worker" or "professional" classification under which the I-40 petition was filed does not allow for equivalency based on education and experience, and that Park must possess an appropriate degree. Neither the statute nor the regulations, however, require a degree under the "skilled worker" classification, according to the court. Thus, USCIS is not authorized to enforce its narrow definition of "B.A. or equivalent" as provided in the labor certification. For those reasons, the court ruled in favor of the Plaintiffs, stating that the Defendants' decision was "arbitrary, capricious, and an abuse of discretion." The court ordered the Defendants to approve the I-140 petition on behalf of Park.

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#### 6. Government Processing Times

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

Texas (11/30/2005): <http://www.visalaw.com/texas.html>  
Vermont (11/18/2005): <http://www.visalaw.com/vermont.html>  
California (11/18/2005): <http://www.visalaw.com/california.html>  
Missouri (11/18/2005): <http://www.visalaw.com/missouri.html>  
Nebraska (12/1/2005): <http://www.visalaw.com/nebraska.html>

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#### 7. News Bytes

The inspector general of the Department of Homeland Security (DHS) recently stated that immigrations and customs operations of the department should be combined because they are inefficient, Reuters reports. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) were created in 2003 when 22 agencies were combined into DHS. The inspector general's report states that the two are incapable of coordinating their efforts and should be merged to encourage their cooperation. The report suggests that the merge would result in a consolidated border security agency that would be better placed to coordinate priorities and organize resources. Senator Susan Collins, chairman of the Homeland Security and Governmental Affairs Committee, criticized the current structure of the two entities as "dysfunctional." CBP coordinates customs and immigrations activities while ICE investigates customs and immigrations enforcement cases and is responsible for the detention and removal of undocumented aliens. The inspector general's report stated that the lack of intelligence sharing between the two agencies caused problems with the apprehension and detention of undocumented immigrants, as well as the capture of fraudulent travel documents and import and export violations.

The inspector general's report is available online at:  
[http://www.dhs.gov/dhspublic/interapp/editorial/editorial\\_0334.xml](http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0334.xml)

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Sabrina Eaton of Cleveland, Ohio's *The Plain Dealer* reports that the U.S. Department of Justice will open an immigration court in Ohio next year in order to reduce the state's nearly 3,000-case backlog. Ohio has the largest backlog of the 27 states that do not currently have their own immigration court, and currently handles all of its immigration cases by teleconference with judges in Virginia. The state asked Attorney General Alberto Gonzales

last month to open a court there and argued that a court in Ohio would allow judges to evaluate cases in person and would streamline court dockets in both Ohio and Virginia. The Justice Department's Executive Office for Immigration Review has promised the state that it will open a court by the end of next summer; however, it did not specify whether the court would exclusively handle Ohio's cases.

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A report from the Congressional Budget Office explains that increased immigration of low-skilled workers from Mexico and Central America may explain the slow wage growth in the U.S. This influx of immigration, however, may also mean that the wage gap between U.S. workers with low and high levels of education may be smaller than it is actually thought to be. The earnings of Latin American men in the U.S. are one half of those of American-born men on average. 40 percent of recent immigrants are from Latin America, and have lower education levels than the average U.S. worker. The increase of foreigners in the work force has increased from 13 million to 21 million in the past ten years, which accounts for 50% of the growth in the total U.S. work force.

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*The Washington Times* reports that a study by Rand Corp. has shown that undocumented immigrants have comprised a third of the growth of uninsured adults from 1980 to 2000. 65 percent of undocumented immigrants in this study were uninsured, compared to 12 percent of native-born Americans, 18 percent of naturalized citizens, and 32 percent of those with green cards. The study considered Spanish and English-speaking families in Los Angeles and extended this data to the whole U.S. population. The study found that undocumented immigrants are less likely to use services such as Medicaid and other social insurance programs than native-born Americans. Those undocumented immigrants who are covered by insurance are 50% more likely to lose it, and lack of insurance tends to be prevalent among this group.

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The US and Vietnam have entered into an agreement which allows certain Vietnamese citizens to immigrate to the U.S. The agreement applies to those who were eligible under the Orderly Departure Program (ODP) and unable to immigrate before the program ended in 1994. ODP allowed nearly 500,000 Vietnamese refugees to resettle in the US between 1980 and 1994. Those who were eligible for ODP had to have spent at least three years in Vietnamese re-education camps, or to have worked for the U.S. government before the Vietnam War ended. In 1995, Vietnam and the U.S. restored diplomatic relations, and trade between the two countries has soared since.

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## 8. International Roundup

The Federation of Islamic Associations claims that Muslims are being detained in New Zealand airports without just cause, according to *Radio New Zealand*. The Department of Labour responded in saying that it will detain anyone whom it believes requires further investigations. Immigration lawyer Simon Laurent, however, argues that ethnic profiling is being used to unfairly target Muslims. Many New Zealand citizens who have never had problems before are now being detained and interrogated.

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The U.K.'s *Sunday Telegraph* is reporting that a group of women, aged 18 to 24, were found locked in the cellar of a motel in western Macedonia, being kept as sex slaves. The women were predominantly from eastern European countries, lured from their countries by promises of jobs as au pairs or waitresses, and then forced into slavery. It is thought that the women were ultimately destined to be moved into Western countries, such as Britain, to work as prostitutes. This is not an isolated incident, however, and at least two other groups of women have been found in western Macedonian cities, forced into sex slavery. This area is one of Europe's largest human-trafficking centers, and the gangs who run these trafficking rings have connections with criminals in Britain who control the prostitution circuit. Britain is a prime target for sex traffickers, due to the seemingly weak immigration controls and high demand for sexual services.

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A man believed to be one of several false council members who obtained passports irregularly was arrested last week at Las Americas International Airport in the Dominican Republic after having arrived from Spain. According to DR1 News, Fernando Beltre, from Azua, entered the country using an official passport that states that he is a council member of the Municipal City Hall of Tabara Abajo. Migration officials detained him on November 23 upon his arrival. Apparently, Beltre traveled to Spain in June without learning of the fact that mafia members who had issued official passports to false council members had been caught. Beltre will be indicted if found to be involved in the case.

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After a series of riots and vandalism that wreaked havoc in France in November, Prime Minister Dominique de Villepin has announced that tighter controls on immigration will be implemented. Under the new regulations, marriages abroad between French citizens and foreigners will no longer be automatically recognized in France. Instead, couples must be screened by consular officers before the foreign spouse can be granted French identity papers. This measure and another outlawing polygamy are hoped to be adopted by parliament in the first half of 2006. President Jacques Chirac stated two weeks ago that France needs tougher enforcement of a law that allows immigrants to bring spouses and children to France, and Villepin, while not questioning the law, would like to extend the time from one to two years before an immigrant living in France can bring over family members. The government is affecting these changes in response to the problems leading up to the violence that France experienced last month in the impoverished suburbs that are home to many North and West African immigrants. In addition to tighter controls on immigration, the government is planning to ease unemployment for youths and to fight racial discrimination.

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## 9. Legislative Update

According to Republican lawmakers, undocumented immigrants are overwhelming hospitals and law enforcement departments in border communities. Representative Henry Bonilla of Texas stated that gangs and drug traffickers may easily overwhelm small law enforcement departments. Representative Steve Pearce of New Mexico said that small sheriff's offices in his district are spending 25 percent of their operating budget in helping Border Patrol stop undocumented immigrants from crossing the border. At a hearing of the House subcommittee on immigration, some representatives argued that immigrants are wrongly

being scapegoated as economic problems. Representative Luis Gutierrez of Illinois believes that immigrants are an important part of the working community and play a large economic role. The hearing examined the economic effects of immigration, as well as terrorist threats posed by immigrants. Recent immigration proposals, such as the guest-worker program, have split many Republicans in Congress.

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H.R.1745 - To amend the Social Security Act to enhance Social Security account number privacy protections, to prevent fraudulent misuse of the Social Security account number, and to otherwise enhance protection against identity theft, and for other purposes.

Sponsor: Rep Shaw, E. Clay, Jr. (introduced 4/20/2005)

Bill Status: 4/27/2005: Referred to the Subcommittee on Social Security.

Committee: House Social Security (subcommittee)

<http://www.congress.gov/cgi-lis/bdquery/z?d109:HR01745:/>

H.R.2862 - An Act making appropriations for the Departments of Commerce and Justice, Science, and related agencies, for the fiscal year ending September 30, 2006, and for other purposes.

Sponsor: Wolf, Frank R. (introduced 6/10/2005)

CRS Product: IB95095 Abortion: Legislative Response

<http://www.congress.gov/cgi-lis/bdquery/z?d109:HR02862:/>

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)

CRS Product: IB95095 Abortion: Legislative Response

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

H.R.4360 - To enforce law and order by establishing a program to authorize, fund, and otherwise assist local Sheriffs' offices in designated counties to provide a second line of defense alongside and in close cooperation with the United States Customs Border Protection (CBP) and Immigration and Customs Enforcement, to conduct law enforcement operations in their counties along the southern international border of the United States, and to prevent lawlessness in border areas.

Sponsor: Rep Culberson, John Abney (introduced 11/17/2005)

Short title as introduced: Border Law Enforcement Act of 2005

<http://www.congress.gov/cgi-lis/bdquery/z?d109:HR04360:/>

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10. IMMIGRANT NUMBERS FOR DECEMBER 2005

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during December. 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 November 9th 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".

Schedule A Workers: Employment First, Second, and Third preference Schedule A applicants are entitled to up to 50,000 "recaptured" numbers.

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 Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Family					
1 <sup>st</sup>	22APR01	22APR01	22APR01	01JUN94	22AUG91
2A*	01JAN02	01JAN02	01JAN02	15DEC98	01JAN02
2B	08JUN96	08JUN96	08JUN96	01FEB92	08JUN96
3 <sup>rd</sup>	08JUN98	08JUN98	08JUN98	01SEP94	08FEB91
4 <sup>th</sup>	01MAY94	01MAY94	15NOV93	01APR92	01SEP83

\*NOTE: For December, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 15DEC98. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries

EXCEPT MEXICO with priority dates beginning 15DEC98 and earlier than 01JAN02. (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.)

	All Chargeability Areas Except Those Listed	CH	IN	ME	PH
Employment-Based					
1 <sup>st</sup>	C	01JUL01	01FEB03	C	C
2 <sup>nd</sup>	C	01FEB01	01JUL00	C	C
3 <sup>rd</sup>	15MAR01	01JAN01	01JAN99	01FEB01	15MAR01
Schedule A Workers	C	C	C	C	C
Other Workers	01OCT00	01OCT00	01OCT00	01OCT00	01OCT00
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

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-2006 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 December, immigrant numbers in the DV category are available to qualified DV-2006 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 Listed		

	Separately		
AFRICA	AF	7,500	Except: Ethiopia 6,800
Nigeria 5,400			
ASIA	AS	2,500	Except: Bangladesh 2,300
EUROPE	EU	5,500	
NORTH AMERICA (BAHAMAS)	NA	5	
OCEANIA	OC	270	
SOUTH AMERICA, and the CARIBBEAN	SA	400	

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-2006 program ends as of September 30, 2006. DV visas may not be issued to DV-2006 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2006 principals are only entitled to derivative DV status until September 30, 2006. DV visa availability through the very end of FY-2006 cannot be taken for granted. Numbers could be exhausted prior to September 30.

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

For January, immigrant numbers in the DV category are available to qualified DV-2006 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	9,000	Nigeria 6,400
ASIA	AS	3,100	Except: Bangladesh 3,025
EUROPE	EU	6,800	
NORTH AMERICA (BAHAMAS)	NA	6	
OCEANIA	OC	330	
SOUTH AMERICA, and the CARIBBEAN	SA	550	

#### D. EMPLOYMENT PREFERENCE VISA AVAILABILTIY

Many of the Employment preference cut-off dates have advanced for the month of December. This is being done based on the amount of demand currently being received from Citizenship and Immigration Services (CIS) for adjustment of status cases, and consideration for CIS's processing procedures and staffing patterns. Applicant demand for numbers may be expected to increase following rapid advances in the cut-off dates. This could cause cut-off date movement to be sporadic, and eventually slow or stop later in the fiscal year. At this time, it is not possible to predict the rate of movement in future months.

#### E. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is: <http://travel.state.gov>

From the home page, select the VISA section which contains the Visa Bulletin.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

[listserv@calist.state.gov](mailto:listserv@calist.state.gov)

and in the message body type:

Subscribe Visa-Bulletin *First name/Last name*  
(example: *Subscribe Visa-Bulletin Sally Doe*)

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address:

[listserv@calist.state.gov](mailto:listserv@calist.state.gov)

and in the message body type: Signoff Visa-Bulletin

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

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

[VISABULLETIN@STATE.GOV](mailto:VISABULLETIN@STATE.GOV)

(This address cannot be used to subscribe to the Visa Bulletin.)

Department of State Publication 9514  
CA/VO: November 9, 2005

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11. DHS Allows Part-time Employment for F-1 Visa Holders Affected by Hurricane Katrina

The Department of Homeland Security (DHS) announced that US Citizenship and Immigrations Services (USCIS) will temporarily suspend certain regulatory requirements for those F-1 nonimmigrant students who were affected by Hurricane Katrina. These students will be granted short-term employment authorization and will be deemed to be in a "full course of study" during their short-term employment, provided they meet certain minimum course load requirements. The students must be nonimmigrant aliens holding F-1 visas who were lawfully present and enrolled in an approved institution in the U.S. on August 29, 2005, and who are experiencing economic difficulties in the aftermath of Hurricane Katrina. DHS is allowing part-time employment for these students because many of them, approximately 5,500, were enrolled in institutions located in the areas affected by Hurricane Katrina and, as a result, are now suffering economic hardship resulting from costs to replace lost or damaged possessions and/or transferring to new schools.

The rule that on-campus employment for an F-1 student can work no more than 20 hours per week while maintaining their full-time student status has been temporarily revoked. Concerning off-campus employment, a student under the temporary rules can work more than 20 hours per week, does not have to be enrolled for a full academic year, and does not need to demonstrate that part-time employment will not interfere with a full course of study. F-1 students who are granted employment authorization will be said to have a "full course of study" for the duration of their employment authorization, provided that undergraduate students complete a minimum of 6 semester/quarter hours of instruction per academic term and graduate students complete 3 semester/quarter hours of instruction. Students can use distance or online credits to complete this requirement.

In order to obtain the employment authorization, the F-1 student should demonstrate to the Designated School Official (DSO) that this employment is necessary in order to avoid economic hardship brought on by Hurricane Katrina. The DSO must sign and date the student's Form I-20 on page 3, and include in the employment box the notation: "Approved for more than 20 hours per week of on/off-campus employment until February 1, 2006, pursuant to Hurricane Katrina Special Student Relief." A student applying for authorization to work off-campus must also submit a Form I-765, Application for Employment Authorization, to the USCIS Texas Service Center at: U.S. Citizenship and Immigration Services, Texas Service Center, P.O. Box 853062, Mesquite, TX 75815-3062. On the front of the envelope, on the bottom right-hand side, the student should write "Hurricane Katrina Special Student Relief." A complete application for off-campus employment authorization should include a complete Form I-765 with the required fee and a complete Form I-20 with a recommendation from the DSO at the institution where the student is currently enrolled. If USCIS approves the student's application, they will send the student a Form I-766, Employment Authorization Document, as evidence of the student's employment authorization.

The expiration date for all revised F-1 student employment rules is February 1, 2006. At this point in time, USCIS will no longer approve applications for employment authorization that do not meet the requirements set forth in the Immigration and Nationality Act prior to Hurricane Katrina. There is no time specified for filing a completed Form I-765, and students will not need to reapply for reinstatement after February 1. An F-2 dependant (spouse or minor children) of an F-1 student may not accept employment. DHS will continue

to monitor the effects of Hurricane Katrina in the affected areas to determine whether modification of these special provisions is needed.

For a list of the schools to which these rules apply, see the Federal Register's website at <http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WALSdocID=4663516585+0+0+0&WALSaction=retrieve>

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## 12. Search Warrants Reveal Undocumented Aliens Working at Wal-Mart Construction Site

U.S. Immigration and Customs Enforcement (ICE) recently announced that 125 foreign nationals were arrested who had been working illegally for five sub-contracting companies at the construction site of a Wal-Mart Distribution Center in Butler Township, Pennsylvania. Federal search warrants were executed on trailers belonging to the five sub-contractors at the construction site. These companies include: Destin Drywall & Paint Inc., Frazier Drywall, Jay-Ton Concrete, CS Construction Services, and Republic Refrigeration.

The potential violations of the five companies include money laundering and harboring, transporting and encouraging undocumented aliens to reside in the U.S. The 125 individuals were arrested shortly after their arrival to work, and ICE agents found that some had used invalid, altered or falsified documents to obtain employment. Those arrested were from Costa Rica, El Salvador, Guatemala, Honduras and Mexico, and all were placed into removal proceedings. ICE agents are continuing to investigate the circumstances concerning how these undocumented immigrants were hired by the companies.

This operation is part of ICE's strategy for worksite enforcement, which is aimed at promoting national security, protecting critical infrastructure, and ensuring labor standards. In accordance with this strategy ICE agents focus their investigations on cases involving criminal employer violations and widespread abuses that ICE enforcement actions can create a strong deterrent to other employers who hire undocumented aliens. Normally these worksite enforcement cases involve additional violations, such as alien smuggling and harboring, document fraud, money laundering, fraud, and some forms of worker exploitation.

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## 13. GAO Study: Options Exist for Data Sharing Between IRS and USCIS

A GAO Study on the benefits of data sharing between the IRS and U.S. Customs and Immigration Service showed that options exist for implementing such a system, but that there are several problems that still need to be addressed. GAO conducted the study in response to an estimate in 2000 that federal agencies made stating that they had saved at least \$900 million annually through data sharing programs. The study determined the potential benefits of a data sharing program and the options and challenges of implementing such a system.

The study found that tax compliance would improve if businesses applying to sponsor immigrant workers are required to meet tax filing and payment requirements. Furthermore, such changes might, according to the study, improve the accuracy and timeliness of USCIS's immigration eligibility. IRS data can help USCIS make more accurate eligibility decisions by helping to identify unqualified businesses that have not paid assessments or not filed returns. In December of 2003, IRS databases showed that approximately 19,000

businesses applying to sponsor immigrant workers had \$5.6 billion in unpaid assessments. Requirements to meet tax obligations placed on future businesses would require these businesses to arrange a means of compliance with the IRS. No explicit prohibition exists in immigration law against conditioning approval of employer applications on their tax compliance at the present time, but USCIS officials would like to see a change to this situation because there are legal concerns about the agency's authority to issue such a rule without the specific authority to do so. GAO took a random selection that showed approximately 68,000 of 413,723 (16 percent) business sponsors were in the IRS nonfiler database when they applied.

Under an applicant-initiated data-sharing arrangement implemented under the existing Internal Revenue Code authority through taxpayer consent to release information, the USCIS could verify applicant-provided data by obtaining tax returns and transcripts. Generally, data-sharing is more efficient when done entirely electronically, but officials fear the long-term costs, as well as legal and technological difficulties, of implementing such a system.

The GAO's suggestions include requiring businesses applying to sponsor immigrant employees to meet tax filing and payment obligations and authorizing a user fee to be maintained by the IRS to cover compliance-related costs. In addition, the GAO recommended that USCIS consult with the IRS in conducting a pilot data-sharing test by using taxpayer consents. Both agencies have agreed with the pilot study, although USCIS raised several issues concerning such a study.

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#### 14. Illinois Governor Orders the Creation of New Americans Immigrant Policy Council

Last month, Governor Rod Blagojevich signed the "New Americans Executive Order," an initiative that will create an office to coordinate policies and programs to help new immigrants assimilate to the state, provide services to the immigrants living in Illinois and to study the impact of immigration policy on the state.

According to a press release from the office of the governor, the new state policy will create the following four entities:

- Office of New Americans Policy and Advocacy in the Governor's Office - will coordinate the policies, actions, planning, and programs of the state's government with respect to immigrant integration in Illinois, and the impact of immigration policy on Illinois and Illinoisans.
- New Americans Immigrant Policy Council - will consult with immigrant leaders, state governmental leaders, and national policy experts to recommend strategic directions on key issues. The Policy Council will be comprised of 15 Illinois business, faith, labor, community, and philanthropic leaders with experience in this field. In the next year, the Council will focus on a range of issues, including U.S. citizenship, human services, healthcare, and education.
- Public-private State Task Force - will examine, department-by-department, how state government can address the rapidly changing population of the state.

- A National Advisory Council - will help guide the work of the New Americans Executive Order Policy Project. The Council will consist of prominent national academics, business leaders, advocates and governmental practitioners who will lend their vision to the project and share the project's recommendations through their national networks.

The order became effective once Governor Blagojevich signed it. The policy has received support from national organizations focused on immigrant issues.