

Siskind's Immigration Bulletin -
July 7, 2005

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Siskind Susser serves immigration clients throughout the world from its offices in the US, Canada, Mexico, Argentina and the People's Republic of China. To schedule a telephone or in-person consultation with the firm, go to <http://www.visalaw.com/intake.html>.

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Siskind Susser is seeking an experienced immigration case manager to work in our Memphis office. Emphasis will be on employment immigration matters with an emphasis on physician and nursing immigration. Interested applicants should reply to Greg Siskind at gsiskind@visalaw.com.

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1. Openers

Dear Readers,

As you know if you read last week's newsletter, Greg and his family have departed on a cruise in Alaska for his annual summer vacation. In the meantime, I have the honors of writing the Openers for the bulletin. Have a good time, Greg!

As of last Friday, July 1, 2005, EB3 immigrant visa numbers have been made unavailable. No immigrant visas in the category will be available until October 1, 2005. Until that date, no new applications for Adjustment of Status in this category may be filed, and no pending applications can be adjudicated.

On July 1, 2005 USCIS announced that it has decided to extend the validity of EADs issued to Honduran or Nicaraguan nationals. Due to the large number of TPS beneficiaries, USCIS does not believe the can adjudicate the applications in a timely manner. The extensions will be for an additional 90 days, from July 5, 2005 until October 5, 2005. The Federal Register notice regarding this extension was published July 7, 2005 (Volume 70, Number 129).

This time every year students become concerned regarding the gap between the expiration of their OPT status and the commencement for their H-1B status on October 1, when the new fiscal year begins. This issue is often referred to as the "Gap-gap." In the past, CIS has issued memos allowing these F-1 students to remain in the US in valid status until the October 1 date. CIS officials at the annual AILA conference held in Salt Lake City this year, however, stated that the "Cap-gap" memo may not come out this year because of security concerns raised by the Bush administration regarding students changing to employment visas, particularly when sensitive or technology information might be involved.

Timed nicely for this newsletter's discussion of U.S. citizenship, The Center for Immigration Studies released a report on July 7, 2005 entitled *Births to Immigrants in America, 1970-2002* by Steven A. Camarota (www.cis.org/articles/2005/back805.html). The report found that in "2002 almost one in four births in the United States was to an immigrant mother (legal or illegal)", and that "nearly ten percent of all births in the country were to illegal-alien mothers."

Siskind Susser congratulates Robert Divine on being named the interim Director of US Citizenship and Immigration Services. Robert is the current chief lawyer for USCIS and practiced for many years as an immigration lawyer in Tennessee before leaving to join USCIS in Washington. He is the first immigration lawyer ever to hold the post.

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

Regards,

David Jones

2. The ABC's of Immigration: Losing US Citizenship

In this article, we will discuss actions a person takes that result in the automatic loss of citizenship as opposed to government decisions to revoke a person's citizenship, which can only be done in the case of naturalized citizens.

Can natural born US citizens lose their citizenship?

Natural born US citizens – those people who are citizens by virtue of their birth in the US – can lose their citizenship only through their own actions and cannot be denaturalized.

The Fourteenth Amendment, passed shortly after the US Civil War, makes "All persons born ... in the United States ... citizens of the United States." The impact of this language is clear – those born in the US, regardless of their parents' immigration status, regardless of the circumstances that led to their birth in the US, are US citizens (there are exceptions for children of foreign diplomats, but these are not relevant for this discussion).

Since that time, there have been laws dealing with the circumstances that could lead natural born citizens to lose their citizenship. There has been substantial development in these laws over the years, but as the situation currently stands, to lose citizenship, the person must voluntarily engage in an expatriating act with the specific intention of relinquishing US citizenship. Also, that act must result in the loss of citizenship under the law in effect at the time of the act.

How can US citizenship be lost?

Under the current scheme, there are seven acts that are considered expatriating and will result in the loss of citizenship. These are:

1. Being naturalized in a foreign country, upon the person's own application made after reaching 18 years of age;
2. Making an oath or other declaration of allegiance to a foreign country or division thereof, again, after reaching 18 years of age;
3. Serving in the armed forces of a foreign country if those armed forces are engaged in hostilities against the US, or if the person serves as an officer;
4. Working for the government of a foreign country if the person also obtains nationality in that country, or if to work in such a position an oath or other declaration of allegiance is required;
5. Making a formal renunciation of US citizenship before a US consular officer or diplomat in a foreign country;
6. Making a formal written statement of renunciation during a state of war, if the Attorney General approves the renunciation as not contrary to US national defense; and

7. Committing an act of treason against the US, or attempting by force or the use of arms to overthrow the government of the US. Renunciation by this means can be accomplished only after a court has found the person guilty.

Why can I lose my citizenship if I am naturalized in a foreign country?

Because a legal application for naturalization in a foreign country must be made, obtaining citizenship in a foreign country by an automatic act of law will not result in the loss of US citizenship. If, in making the oath to the new country, the person is required to renounce allegiance to the US, and does so with the intent of losing US citizenship, he will. However, if the person makes such an oath believing that it will not impact his US citizenship, it is not a renouncing act. In those cases where the new country does not require a renunciation of loyalty to the country of original citizenship, it is very difficult to prove that a person has renounced his US citizenship.

Why can I lose my citizenship if I make an oath of allegiance to a foreign country?

This situation is most commonly encountered when a US citizen serves in the military or government of a foreign country. In some cases, such an oath must be made to obtain a passport. As with all renouncing acts, the oath must be made with the intention of renouncing US citizenship. For dual nationals exercising their rights as a national of a country other than the US, such as military service or obtaining a passport, making the oath will not be treated as a renouncing act. Indeed, there is a presumption that, without additional evidence, making an oath of allegiance to another country will not be considered an effort to renounce US citizenship.

Why can I lose my citizenship if I serve in the armed forces of a foreign country?

The primary issue in this case is whether the person served in the actual armed forces of the country, or in some sort of national defense force, and whether the person was serving in the forces of a country. Serving in a military training program or defense force that must specially be called out for military service is not considered a renouncing act, nor is service in an insurgent or revolutionary military group. Also, service in industries closely related to military efforts, such as munitions, is not considered a renouncing act.

Why can I lose my citizenship if I work for the government of a foreign country?

Generally, acceptance of only high political posts in a foreign government, along with a purposeful renunciation of US citizenship, will result in the loss of US citizenship as a result of employment in a foreign country. Also, if the oath involved is simply that the person will obey the laws of a foreign country that is not sufficient as evidence of renunciation.

Why can I lose my citizenship if I make a formal renunciation abroad?

A formal renunciation of US citizenship is the most effective and clear expatriating act. In most cases, the renunciation is made to a diplomatic or consular officer of the US in a foreign country. Because this is so clear, the primary focus is on whether the person making the renunciation understood the full impact of the renunciation, and their intent in making the renunciation. In essence, the purpose and intent must be to make oneself ineligible for all benefits of US citizenship.

Why can I lose my citizenship if I make a formal renunciation in the US?

Formal renunciations of US citizenship may also be made within the US, but only when the US is engaged in a war. The primary use of this provision was to force Japanese Americans to renounce US citizenship during World War Two. Most of these renunciations were ineffective because they were obtained under duress and were not voluntary.

Why can I lose my citizenship if I commit treason?

Treason remains a basis for the loss of US citizenship, while similar provisions dealing with military desertion and draft avoidance have been repealed. The treason provision is infrequently used and there are questions about whether it is constitutional.

If it is determined, in most cases by a diplomatic or consular official abroad, that a person has in fact effectively renounced US citizenship, the official is to prepare a certificate of loss of citizenship and forward it to the State Department. The State Department then makes an official determination, and if it concludes that the renunciation was effective, forwards the certificate of loss of citizenship to the INS and sends a copy to the consular official to return to the person. At that point, the person has one year in which to appeal the loss of citizenship. The person can also, at any point in the future, regain citizenship if there was no written declaration of the intent to renounce citizenship.

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 - I have question regarding form DS-156. I'm going to apply for H4 Visa. Previously, my H1B petition was denied when I was in US.

Under question 31, "Have you ever been refused US VISA"? Should I answer yes or no to this question?

A - A visa is only applied for at a consulate. Sounds like you were denied H-1B STATUS, which is not the same thing. If a consulate has never denied you a visa and you never applied for visa revalidation with the State Department in the US, I think you're safe in answering no.

Q - Do I need a lawyer if I've won the green card lottery?

A - People do sometimes successfully manage these cases on their own. But for an explanation of the reasons to consider hiring a lawyer, I'd suggest you read the article on our web site at www.visalaw.com/hal.html.

Q - My husband has a green card and will be eligible to apply US citizen 4 years later. I am now in US with H1B status and I can stay with this status for another 4.5 years.

What I am confused is should he give me petition from a green card holder or I am just better wait until he becomes a US citizen?

As far as I knew if the petition is submitted by a green card holder, I need to maintain my own status and wait for 5 years. So, what are the benefits of giving petition from a green card holder?

A - Were you married at the time your husband got his green card status approved? If not, as an H-1B visa holder, an I-130 filed by your husband is not likely to affect your status. However, you would likely find that you will get permanent residency first on the basis of your husband becoming a citizen. Of course, you never know what will happen with a citizenship application and filing the I-130 now might be a good backup. If, by the way, you were married when your husband got his permanent residency status approved, you can probably file now for adjustment to permanent residency.

Q - My wife is a permanent resident. We have been married for 3 years, and I am a US Citizen. We are considering doing a debt settlement program, which would reduce our credit card debt total but hurt our credit rating. Would this affect her ability to become a citizen?

A - Credit ratings are not considered in naturalization proceedings and are not considered relevant to moral character.

4. Border and Enforcement News

Hundreds of state and federal law officers descended on massage parlors in San Francisco and other California cities last week in a wide-ranging investigation into immigrant smuggling, according to *The San Francisco Chronicle*. A spokesman for the U.S. Attorney's Office in Los Angeles told the Associated Press more than three-dozen search warrants were issued in southern California alone. In addition to the San Francisco probe, a second investigation netted an unknown number of arrests in Los Angeles, Santa Monica, Anaheim and elsewhere.

Federal officials last week announced they have arrested 25 illegal aliens in Montgomery County, Maryland, as part of a three-day operation to remove criminal aliens from the United States, according to *The Washington Times*. Fourteen of the 25 aliens arrested were fugitives that already had been ordered to be deported by immigration officials. A spokeswoman for the U.S. Immigration and Customs Enforcement (ICE) agency, said those 14 will be deported. ICE officials said they determine who will be released on a case-by-case basis.

5. News From the Courts

Raduga USA Corp., Nikolai Romanovski, and Vladlena Yakovleva vs. US Department of State, et. al

United States District Court, Southern District of California

Case number 04CV996

2005

The Honorable Barry T. Moscowitz presided over the case in which Raduga USA Corp., a computer and electronics dealer in San Diego, CA, sued the State Department, the United States Embassy in Moscow, and two top officials in the Department of Homeland Security for a writ of mandamus. A writ of mandamus is a directive from a high court instructing a government office to take a certain action. In this case, the certain action was to render final judgment on the visa applications from Nikolai Romanovski, the president and sole shareholder for Raduga USA, and his dependent, Vladlena Yakovleva, two Russian citizens.

On April 8, 2001, Mr. Romanovski and his dependent filed for visas at the US Embassy in Moscow, pursuant to Immigration Petitions filed on their behalf by Mr. Romanovski's company. They submitted the proper paperwork, took an interview with a consular official, and never got a judgment. Almost two years after this first interview, another was scheduled for the pair. They refiled, reinterviewed, and still heard nothing. They went through the process one more time after this, and still no word whether their applications were accepted or denied. After four years, the plaintiffs decided to take action.

The process of convincing the court to compel a government agency to take action is very complicated it involves proving that the plaintiff has standing, a proper venue, and the right to ask for mandamus. Standing, in itself, entails "an [actual] invasion of legally protected interest," a clear path of injury from the defendant to the plaintiff, and an understanding that a mandamus would help the situation. By showing all three, Raduga USA was granted proper standing.

Because most of the government's case for arguing venue rested on the fact that Raduga did not have standing, their argument failed. Raduga USA Corporation was incorporated in the United States, and therefore any legal action it takes shall be carried out in US courts.

Finally, asking for a writ of mandamus has three parts: (1) that the claim is clear and certain, (2) that the duty in question is objective and easily arranged, and (3) that there is no other possible solution. The plaintiff is asking for a simple yes or no on their application, so there is no confusion on the claim. By giving this yes or no, the official duty involves no form of discretion, and after four years, the consular office has shown that the only thing that would compel them to give this judgment is a writ of mandamus. The plaintiffs made their case.

The Court found on behalf of the plaintiff, and ordered the US Embassy in Moscow to issue a judgment on the visa applications within sixty days of the ruling. The motion was denied, however, for all offices other than that which would directly involve the visa application.

6. Government Processing Times

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

Texas (06/30/2005): <http://www.visalaw.com/texas.html>

Nebraska (07/01/2005): <http://www.visalaw.com/nebraska.html>

7. News Bytes

The Associated Press recently reported that Republican congressman Tom Tancredo has called into question the Department of Homeland Security's (DHS) methods in handling a document containing survey results. The survey reportedly indicates, among other things, that nearly half of all immigrants lacking proper documentation taken into custody between January 7 and January 27 of this year said that they believed the Bush administration would grant amnesty to temporary workers, as per the president's plan. Rep. Tancredo cited concerns such as security risks and increased incidents of unlawful immigration as his complaints with DHS and White House behavior. Both immigration advocates and DHS spokeswoman Kristi Clemens denied the importance of the survey, calling it "silly" and "out of context."

According to a DHS press release, the United States, Mexico, and Canada have agreed on an initial report of the Security and Prosperity Partnership (SPP). The respective leaders of the represented nations met earlier this year and created the SPP to "further our common security goals and achieve transformational improvements." Among the specific aims of the partnership are a Trusted Traveler Program, combating piracy, strengthening regulations on e-commerce and industrial goods, and enhancing public health and safety.

8. International Roundup

The Irish government introduced legislation last week for awarding US-style green cards to skilled immigrant workers in order to protect them better and ensure the country's economy continues growing. Due to Parliament's break for summer that started July 1, the bill published last week by Enterprise and Employment Minister Micheal Martin will be debated in the autumn session. The Employment Permits Bill will allow the minister to establish the number of employment permits in total and by sector, and to identify the skills and employment categories for work permits.

The laws will provide a number of new protections for migrant workers. The work permit will be granted to them rather than to the employer.

Trade unions and immigrant support groups have complained the existing system has led to exploitation of vulnerable immigrant workers.

Chinese tourists will be allowed to stay in Korea for up to 30 days without a visa when they travel to and from Europe via Incheon International Airport. According to the *Korea Times*, the Ministry of Justice recently said that Chinese travelers to and from Europe will be able to stay in Korea for a maximum of 30 days by showing a visa or permanent residency from one of 30 European countries along with a connecting air ticket at the immigration desk of the airport.

The 30 European countries include eight that have direct flights between Korea. Chinese travelers in this group will be qualified for "B-2" immigration status, which will grant them a 30-day travel period.

9. Legislative Update

H.R.2876: To reauthorize the Violence Against Women Act of 1994.

Sponsor: Rep Green, Mark [WI-8] (introduced 6/14/2005) Cosponsors (49)

Latest Major Action: 6/14/2005 Referred to House committee. Status: Referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, Energy and Commerce, Financial Services, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R.293: To amend the Immigration and Nationality Act to render inadmissible and deportable aliens who have participated in criminal street gangs, and for other purposes.

Sponsor: Rep Forbes, J. Randy [VA-4] (introduced 6/16/2005) Cosponsors (15)

Latest Major Action: 6/28/2005 House committee/subcommittee actions. Status: Subcommittee Hearings Held.

H.R.3057 Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2006, and for other purposes.

Sponsor: Rep Kolbe, Jim [AZ-8] (introduced 6/24/2005) Cosponsors (None)

Related Bills: H.RES.341

Latest Major Action: 6/30/2005 Placed on Senate Legislative Calendar under General Orders. Calendar No. 150.

House Reports: 109-152; Senate Reports: 109-96

10. State Department Visa Bulletin

VISA BULLETIN FOR JULY 2005

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during July. 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 June 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 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 st	08APR01	08APR01	08APR01	01JAN83	08FEB91
2A*	22MAY01	22MAY01	22MAY01	22MAY98	22MAY01
2B	01JAN96	01JAN96	01JAN96	01JAN91	01JAN96
3 rd	01FEB98	01FEB98	01FEB98	01JAN92	01SEP90
4 th	08SEP93	08SEP93	15JAN93	01JAN87	01JAN83

*NOTE: For July, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 22MAY98. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 22MAY98 and earlier than 22MAY01. (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 st	C	C	C	C	C
2 nd	C	C	C	C	C
3 rd	U	U	U	U	U
Schedule A Workers	C	C	C	C	C
Other Workers	U	U	U	U	U
4 th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 th	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-2005 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

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

Region	All DV Chargeability Areas Except Those Region Listed Separately		
AFRICA	AF	32,800	Except: Ethiopia 29,400 Nigeria 21,300
ASIA	AS	9,200	Except: Bangladesh 6,700
EUROPE	EU	20,500	Except: Ukraine 10,800
NORTH AMERICA (BAHAMAS)	NA	13	
OCEANIA	OC	1,180	
SOUTH AMERICA, and the CARIBBEAN	SA	1,800	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2005 program ends as of September 30, 2005. DV visas may not be issued to DV-2005 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2005 principals are only entitled to derivative DV status until September 30, 2005. DV visa availability through the very end of FY-2005 cannot be taken for granted. Numbers could be exhausted prior to September 30.

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

For August, immigrant numbers in the DV category are available to qualified DV-2005 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off

number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Region Listed Separately		
AFRICA	AF	39,500	Except: Ethiopia 30,100
ASIA	AS	10,200	Except: Bangladesh 7,820
EUROPE	EU	20,500	Except: Ukraine 15,100
NORTH AMERICA (BAHAMAS)	NA	13	
OCEANIA	OC	1,275	
SOUTH AMERICA, and the CARIBBEAN	SA	2,300	

D. EMPLOYMENT VISA AVAILABILITY FOR JULY AND THE REMAINDER OF FY-2005

The Employment Third and Third Other Worker categories have reached their annual limits and no further FY-2005 allocations are possible for the period July through September. With the start of the new fiscal year in October, numbers will once again become available in these categories. It is not possible to make any estimates regarding potential cut-off dates at this time.

E. VISA AVAILABILITY FOR THE MEXICO FAMILY-SPONSORED CATEGORIES

It has been necessary to retrogress the Mexico F1, F2B, F3 and F4 cut-off dates for July to hold issuances within the annual numerical limits. With the start of the new fiscal year in October, these cut-off dates can be expected to move ahead once again.

F. VISA AVAILABILITY BASED ON THE "RECAPTURE" OF EMPLOYMENT-BASED NUMBERS

Title V, Section 502 of the REAL ID Act of 2005 (Division B of Pub. L. 109-13 enacted May 11, 2005) provides for the recapture of 50,000 Employment-based immigrant visa numbers that were unused in fiscal years 2001 through 2004. Such numbers are to be made available to Employment-based immigrants described in the Department of Labor's Schedule A and their accompanying spouses and children. The immigrant classification for these 50,000 visa numbers has been designated as Schedule A Worker with the category symbol being "EX". Beginning immediately, "EX" visa numbers may be allocated to Schedule A immigrants and their dependents only; all other immigrants within the Third preference will continue to use the traditional Third preference classification. Note that any Schedule A applicant will first be eligible for a visa number under the traditional Third preference cut-off date. "EX" visa numbers may be allocated to all Third preference Schedule A applicants from

all countries, including China, India, and Philippines, only if their priority date is beyond the established Third preference cut-off date or if the Third preference category is "Unavailable". The "EX" category is CURRENT, and will remain Current for the foreseeable future.

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

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11. India and WTO Negotiate for More Visas

The Economic Times of India recently reported that India is awaiting response from the United States regarding its proposal to approve 130,000 more H1-B visas, increasing the total to 195,000. India made a formal request to the World Trade Organization (WTO) to this effect.

The extra visas come in reaction to the steadily increasing number of Indian professionals in the healthcare, technology, and education fields. The US temporarily increased the current quota of 65,000 by 20,000 for the current year to meet the exceptionally high demand.

In exchange for the additional visas, India would "favorably consider demand" from Europe and the United States for a greater share of the market for industrial goods, services, and agriculture, according to sources. The issue of visas is important to the Indian government, along with tariff peaks, export subsidies, and Nama- non-agricultural market access.

12. White House Develops Frequent Traveler Program

A new international travel program is in the works, according to the National Journal's Technology Daily. The "global enrollment system," as Elaine Dezenski, acting assistant secretary for border and transportation security at DHS called it, would include such measures as quicker lines and security screenings in exchange for a fee and biographical and biometric data. This proposal is based on a current, controversial domestic registered-travel system.

Although many civil rights advocates have expressed concern with the new program, citing questions of cost, privacy, and whether or not it will actually improve security, White House officials believe that it will strengthen the nation's borders, especially in the cases of those who cross the border frequently. A new database would contain names and biometric information, such as fingerprints or scanned irises, for travelers who cross borders on a regular basis.

13. House Committee Hears Testimony on Immigration Procedures

The House Subcommittee on Immigration, Border Security, and Claims heard testimony Thursday morning on "Immigration Removal Procedures Implemented in the Aftermath of the September 11th Attacks." Among those present were the Deputy Associate Attorney General Lily Swenson and Paul Rosenzweig, Senior Legal Research Fellow for The Heritage Foundation.

The hearing focused on the measures taken in the days immediately following the terrorist attacks of September 11, 2001 and their ramifications now almost four years later. Those provisions discussed in greatest detail were the closures of immigration hearings and the 48-hour rule.

All present agreed that in certain sensitive cases, removal hearings should be closed in the interest of national security, but that during "normal" circumstances, the greatest amount of transparency is necessary during these hearings. Mr. Rosenzweig put it "We should strongly prefer openness and transparency of governmental functions where possible."

Many questions related to due process came up during the hearing. First, that a DHS official must issue a Notice to Appear within 48 hours of his arrest or detention, and second, that a non-citizen can request a bond hearing individualized to his specific case. Many made the point that this creates a significantly greater amount of work for the courts, but that these rights need to be preserved, even during immigration proceedings.