

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

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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:

I'm back from the annual meeting of the American Immigration Lawyers Association that took place this past week in Salt Lake City, Utah. Nearly 3,000 immigration lawyers from around the US attended as well as various immigration lawyers from other countries. The meeting, as always, was a blockbuster, with three and half days of outstanding educational programs, AILA business meetings and an exhibit hall with the major vendors servicing immigration lawyers.

I was busy at several events. I was the moderator of the annual meeting's technology panel. We covered a variety of topics on the panel including case management systems, document assembly and document management solutions, new gadgets and advice on hiring IT professionals.

I spoke at the Foreign Nurse Taskforce meeting and the Foreign Medical Graduate Taskforce meeting. The FNT is the organization of lawyers that deals with nursing immigration issues. Members of the group submit a substantial portion of the nation's nurse immigration petitions. I've been leading the FNT's legislative advocacy efforts for much of the past year including the recently passed law allocating an additional 50,000 green cards for nurses. I spoke to FNT members about what lies ahead on the regulatory and legislative front.

The FMG Taskforce is the coalition of law firms that handle physician immigration issues. I am the current chair of that group and spoke to that group about the group's legislative agenda in the wake of the recently passed physician immigration bill. The FMG Taskforce led the lobbying effort to pass that bill.

One of the highlights for me was the honoring of my friend Dan Kowalski by the National Immigration Project of the National Lawyers Guild, Inc. Dan is the editor of the excellent Bender's Immigration Bulletin. I've been on the BIB's editorial board for a few years and Dan has become one of the most important sources of information on immigration law in the country. Many of the items you see in our issues of this newsletter are a result of Dan getting the word out. Congratulations Dan!

I also want to commend my law partner Lynn Susser on her speaking about L-1 visas on a fundamentals panel. Lynn's audience was comprised of several hundred novice immigration lawyers and Lynn did a great job in taking a number of complex issues and making them understandable for less experienced lawyers.

Aside from being away from several days at the AILA meeting, we held up the newsletter in the hope that we would be able to report on the release of the Cornyn-Kyl immigration reform bill. This is the bill that is expected to compete with the McCain Kennedy immigration reform bill proposed a few weeks ago. We'll try and quickly get a section by section summary of the new bill posted on our site after it is released. Senator Cornyn promised the bill would be released this month, but just this morning we learned that the bill is now going to be released after the Independence Day recess.

Next week I'm off on my annual summer vacation with the family and will be away for the better part of two weeks. This year we're off on an Alaska cruise and I've promised my wife and kids that I'll lay off the email and the writing. So my law partner David Jones will pitch in by writing next week's Openers and editing the newsletter. Thanks in advance David!

I'll miss his departure next week, but my colleague Arda Beskardes will be taking a summer sabbatical in Turkey beginning on July 6th. Arda will be taking two months off to go home to his native Turkey. We'll miss him while he's gone and will be eagerly awaiting his return in September.

I'll be out of pocket for the Fourth of July, but I wish everyone a happy Independence Day. One of the nice things to do on the holiday is to watch one of the mass swearing in ceremonies for citizens that traditionally are scheduled on that day. Check with your local USCIS office for information on the where and when details. I'll be trekking around in Alaska on the holiday, a change from the sweltering heat of Memphis. Enjoy everyone!

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

Regards,

Greg Siskind

2. The ABC's of Immigration: Third Preference Employment Based Immigration - Skilled and Professional Workers

The EB-3 category is the focus of this article.

How many visas are available for skilled and professional workers in this category?

Each year 140,000 employment-based immigrant visas are available. Ten thousand of these are available to immigrant investors, the EB-5 visa category. Ten thousand are available to "special immigrants," such as religious workers, certain employees of the US government abroad, and widows and widowers of US citizens, the EB-4 visa category. The remaining 120,000 visas are divided between the first three preferences. Forty thousand visas are available in the first preference, EB-1, which covers international managers and executives, outstanding professors and researchers, and people of extraordinary ability. Forty thousand visas, plus any that are not used in the EB-1 category, are available in the second preference, EB-2, which is available to aliens of exceptional ability and advanced degree professionals. Forty thousand visas, plus any that remain from the other two categories are available to the third category, EB-3, which is available to

- people with a bachelor's degree and skilled workers, and
- unskilled workers.

What is required for someone to qualify for employment based preference?

There are several requirements common to each of the first three employment based preference categories.

- The alien must be offered a full-time, permanent position in the US (note: there are some exceptions to this requirement in the first two preference categories).
- The Department of Labor must certify that there are no available US workers (note: there are some exceptions to this requirement in the first two preference categories).
- The alien must meet the minimum requirements for the position offered and the employer must be able to pay the salary offered.

What is required for EB-3 petitions?

All petitions filed in the EB-3 category require a job offer and a labor certification (the labor certification process is discussed in depth in a different article). Despite this common element, there are important differences between the three subgroups. Regardless of the total number of visas available in the EB-3 category, only 10,000 visas are available each year for unskilled workers. The result of this is a backlog in the "other workers" category. The category has been backlogged by about six years as of mid-2005. The rest of the EB-3 category has also been backlogged recently and is expected to become more and more oversubscribed in the next few years. Consequently, applicants would be wise to begin planning early to deal with their permanent residency.

Who is considered a *professional* by the USCIS?

This category is available only to those who hold a US bachelor's degree or its foreign equivalent. Unlike the H-1B nonimmigrant category, one is not able to make up for a lack of education through experience. A profession is a field entry into which requires at a minimum a bachelor's degree. While these two requirements seem to equal the same thing, there is no requirement that the bachelor's degree be in the field of offered employment.

Who is considered a *skilled worker* by the USCIS?

For a person to qualify as a skilled worker, the position offered must require at least two years training and experience. The alien must possess the requisite background, but simply because the alien has two years of training and experience does not make it a skilled position if it does not otherwise require two years of training and experience.

Under USCIS regulations, whether a position involves skilled labor is determined by reference to the Department of Labor approved labor certification. Because of the backlog in the other worker category, it is vitally important that the employer demonstrate to the USCIS that the position does require at least two years training and experience. The primary issues that occur here result from conflict between the employer's belief that the position does require two years and Department of Labor guidelines on specific vocational preparation that show the position requires less. Therefore this issue will be resolved before the application is submitted to the USCIS.

Who is considered an *other worker* by the USCIS?

This category covers "unskilled labor," defined by the Department of Labor as work that takes less than two years training or experience to perform. Because there is an annual limit of 10,000 visas in this subcategory, regardless of how many are available in the entire EB-3 category, there are extreme backlogs in visa numbers for this category. Currently this backlog is about six years.

What should someone know before applying for the EB-3 visa?

After the Department of Labor has approved the labor certification, or in cases in which the Department does not need to approve a labor certification (such as a Schedule A case for a nurse), an application for an immigrant worker may be filed along with a concurrent adjustment of status petition. The principle forms used for these petitions are the I-140 Immigrant Petition for an Alien Worker and the I-485 adjustment of status application. The forms are submitted to the appropriate regional INS Service Center along with the approved labor certification, a letter from the employer and the appropriate additional supporting documents and filing fee.

Normal petition items include documents showing that the employer has the financial resources to pay an offered wage which is at least the prevailing wage. An application must also include documentation that proves the position is within the preference category sought. In the EB-3 category, this evidence would depend on which subclassification is sought. Such documentation can come from Department of Labor resources, or from industry standards. Finally, evidence must be submitted that the alien meets the job requirements, such as a copy of a bachelor's degree or evidence of work experience.

If the USCIS approves the petition, the applicant can now pursue permanent residency by either adjustment of status in the US or by consular processing at a US Consulate in their native country.

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 am an Australian citizen. I plan to visit my boyfriend in the US who is a foreign student there on an F1 visa. I understand that I can stay in the US for 90 days without a visa under the visa waiver programme between the US/Australia. Once the 90 days expires, what can I do to re-enter the US legally? Is it simply a case of leaving for a short time and later re-entering the US for another 90 days? Could I look for work whilst in the US to take advantage of the new E3 visa issued to Australians under the Aus-US Free Trade Agreement?

A - You are correct that the Visa Waiver program allows Australian citizens to enter the US for up to 90 days as tourists or business visitors without having to get a visa stamp first. The 90 days cannot be extended and it would necessary to leave the US before you could get an additional stay in the US. Note that if you leave and seek to quickly reenter the US,

this could be taken to mean that you are not really a tourist and are making the US your place of residence.

You can seek work in the US while here on the Visa Waiver and if you find a sponsoring employer and can meet the rules of the particular visa program, you can leave the US to process a visa at a consulate. The new E-3 visa is not yet available and it will likely be no earlier than September or October before it becomes available.

Q - I recently filed a green card petition for my mother. My mother has two minor children. How can I get my mother's children to come with her without filing for them separately?

A - Unfortunately, this is a common question and a problem with no easy solution. Your mother's minor children are not entitled to come in as part of the same petition. You have a couple of options, none of which are likely to be what you want to hear:

1. File for the kids separately (and wait the 12+ years for the priority dates to become current)
2. Have your mother enter as a permanent resident and then re-file for the kids after that (and wait several years on those cases to become current)
3. Have your mother enter on a non-immigrant visa and bring the kids as dependents (assuming your mother could qualify for a non-immigrant visa which may be a big assumption)
4. Have the kids seek non-immigrant visas of their own (perhaps student visas) and then hopefully later be able to pursue a longer time visa strategy on their own or through you or your mother.

There could be other options to discuss with your immigration lawyer, of course. I've seen many cases where a parent delays entering the US until the non-sponsoring children are older and can live independently. But I know it is a difficult dilemma for many families.

Q - Is there any regulatory impediment for an individual to remain in the US as a J-1 overstay, obtain a waiver of the 2 yr HRR and then apply for adjustment under Section 245(a) as the spouse of a US citizen without leaving the U.S.?

A - A marriage to a US citizen and a waiver of the home residency requirement would be enough in most cases to get permanent residency. The status violation could complicate the case, but it should be an obstacle your immigration lawyer can address.

Q - A child is born in the US to parents who currently holding H-1B and H-4 status. Does this provide any immigration advantages for them?

A - The child is a citizen, but he or she cannot sponsor a parent for anything until he or she turns 21. So the benefit to the parent is pretty remote.

Q - My EB I-485 has been pending for 3 months. I-140 has been approved. I work with an EAD. Because my health is not good, I may have to ask for a short term disability leave. If the CIS issues the RFE about my employment or adjudicate my I-485, I will immediately go back to work. My question is whether I have to keep working full time during the period of I-485 pending. Thank you for your answer.

A - If your case is based on a labor certification, the key is whether you intend to work for the employer when the green card is approved, not WHILE the green card application is pending. So a short term disability should not have a seriously negative effect unless there is a question of whether it is really a permanent leave. And returning to work in a reasonable time will dispel that notion.

4. Border and Enforcement News

The U.S. government has deported two undocumented immigrants found in May on a Pennsylvania home construction site, according to *The Morning Call*, an Allentown, PA newspaper. The builder of the homes said police were trying to serve a federal warrant on against one of his subcontractors on a construction site when they discovered the Salvadoran workers. Police turned the men over to the federal Bureau of Immigration and Customs Enforcement. Both were returned to El Salvador.

Federal immigration agents arrested three people on suspicion of alien smuggling two days after a van packed with migrant workers crashed outside of Columbia, MO, killing five and injuring 15 more. Immigration agents asked the U.S. attorney's office in Kansas City to charge the driver with alien smuggling. The driver and two other passengers were being held night at a jail in Shawnee County, KS. Officials said the driver has been deported from the United States twice before.

5. News From the Courts

ORACLE CORPORATION

Case nos. 2004-INA-103 through 109
2004 BALCA Lexis 241

Oracle Corporation ("Oracle"), seeking labor certification for Software Engineers, submitted requests that the applications be processed under the Reduction in Recruitment procedure. Because of layoffs by Oracle Corporation, the Certifying Officer ("CO") held that "labor certification cannot be granted when there has been any loss of job status to U.S. workers and that such workers cannot be supplanted by foreign worker." Oracle then requested reconsideration, which was denied.

On appeal to the Board of Alien Labor Certification Appeals ("BALCA"), Oracle only requested reversal of the denial of labor certification and that the application be remanded to the State Workforce Agency for regular processing.

BALCA granted the motion for remand, but also held that the CO had not abused his discretion. The Board stated, "The scope of the layoffs supports the CO's decision not to

accept prior recruitment to support the applications, and therefore we find that the decision was not arbitrary and capricious or an abuse of discretion.”

6. Government Processing Times

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

Missouri (06/21/2005): <http://www.visalaw.com/missouri.html>

Vermont (06/21/2005): <http://www.visalaw.com/vermont.html>

California (06/21/2005): <http://www.visalaw.com/california.html>

Texas (06/21/2005): <http://www.visalaw.com/texas.html>

7. News Bytes

According to an e-mail report by attorney Anna Marie Gallagher, the Department of State is currently updating the Foreign Affairs Manual (FAM), with completion of the projected expected in 2006. The Visa Office confirmed the report, and added that while it has finished its contribution to the new Manual, visa law changes so often that the Visa Office is ‘constantly making corresponding changes.’

The Department of State issued a ruling amending the admissibility rules for aliens that vote unlawfully. Previously, any violation of Federal, State, or local voting laws would result in ineligibility for a visa. According to the amendment, which becomes effective July 21, 2005, voting unlawfully would not result in ineligibility provided each of the following three conditions are met: (1) that each natural or adoptive parent of the alien is or was a citizen, (2) the alien resided in the United States permanently before attaining the age of 16, and (3) that the alien believed at the time that he or she was a citizen.

The Department of Homeland Security (DHS), in conjunction with its US Citizenship and Immigration Services (USCIS) and US Immigration and Customs Enforcement (ICE), has re-branded the Employment Eligibility Verification Form (I-9), according to a DHS press release issued last Tuesday. The new form includes no more references to the outdated Immigration and Naturalization Service or the Department of Justice, two government organizations restructured by the Homeland Security Act (Public Law 107-296). No other changes were made to the form, although the DHS reports that it is in the process of modifying the more pertinent areas of the form.

In a recent press release, the US Citizenship and Immigration Services (USCIS) announced that it will no longer accept petitions from employers of H-1B Free Trade nonimmigrants from Chile or Singapore without the additional filing fee required by the H-1B Visa Reform Act of 2004. The new fee took effect Dec. 8, 2004, but USCIS has been receiving petitions without the fee. Effective July 20, 2005, all petitions without the fee would be rejected. The new fee is \$750 for employers with fewer than 25 employees and \$1500 for larger firms.

8. International Roundup

Spanish police have broken up a gang of Romanian human traffickers who were faking identity documents and credit cards. Twenty-two people have been arrested, the majority of them Romanians, between Valencia and Alicante in southeast Spain. In the past month, police have broken a similar gang involved in prostituting Eastern European women who were brought to Spain on false pretences. The investigation began in 2003, after a Romanian girl claimed a gang had forced her into prostitution. The gang specialized in bringing Romanian women, often under-age girls, to Spain to force them into prostitution, using fake documents. Police seized false passports, identity papers, credit cards, scanners, computers, printers and one firearm and one fake gun.

Nearly 250 violators of United Arab Emirates immigration rules have been detained by the emirate's Criminal Investigation Department in the past three months. A police official said the Criminal Investigation Department (CID) had been organizing frequent raids throughout the emirate. According to Gulf News Online, The officer said the 242 offenders comprised those who had violated UAE immigration rules after arriving in the country and those who had entered the country illegally. The official added all the violators have been referred to the authorities to be deported and said the inspection campaigns would continue in the emirate.

9. Legislative Update

[H.R.2983](#): -- Private Bill; For the relief of Zhuljeta Zhegra.

Sponsor: Rep Brady, Robert A. [PA-1] (introduced 6/17/2005)

Committees: House Judiciary

Latest Major Action: 6/17/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.2984](#): -- Private Bill; For the relief of Shpetim Daku.

Sponsor: Rep Brady, Robert A. [PA-1] (introduced 6/17/2005)

Committees: House Judiciary

Latest Major Action: 6/17/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3010](#): Making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 2006, and for other purposes.

Sponsor: Rep Regula, Ralph [OH-16] (introduced 6/21/2005)

Committees: House Appropriations

House Reports: 109-143

Latest Major Action: 6/24/2005 Passed/agreed to in House. Status: On passage Passed by the Yeas and Nays: 250 - 151 (Roll no. 321).

[H.R.3038](#): To affirm the authority of the executive branch to detain foreign nationals as unlawful combatants, to enable a person detained as an unlawful combatant to challenge the basis for that detention and to receive a disposition within 2 years, to provide for the President to establish military tribunals to try such persons, and for other purposes.

Sponsor: Rep Schiff, Adam B. [CA-29] (introduced 6/22/2005)

Committees: House Armed Services; House Judiciary

Latest Major Action: 6/22/2005 Referred to House committee. Status: Referred to the Committee on Armed Services, and in addition to the Committee on the Judiciary, 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.

10. Guest Op-Ed Column: Missouri Family Needs Your Help!, by Kim Schepers

Kim Schepers is a member of the Gonzalez Group, a group of community members in Jefferson City, Missouri, who have come together to support and lobby on behalf of the Gonzalez family.

Jefferson City, Missouri is a quiet little town in the heart of the country. It's a place where kids still address adults as "Mr." and "Mrs.", where neighbors look out for one another and where strangers wave as they pass on the street. Despite these small town qualities – or maybe because of them- our community finds itself in the center of a national political fight to keep an immigrant family being deported.

I never aspired to be a political activist any more than Marvin, Marina and Marie Gonzalez aspired to become undocumented immigrants. Marvin and Marina Gonzalez are parents from Costa Rica who came to the United States looking for a better life for their daughter Marie. I'm a stay-home mom with four sons under the age of seven, mounds of laundry, a few gray hairs and a nice life in Jefferson City. Our lives have become intertwined because Marina teaches my 6 and 7 year olds Spanish at Immaculate Conception Grade School.

Recently, I, along with the parents of over 500 other school children, had to explain to our children why their Spanish teacher (one of their favorite teachers) has to leave the country on July 5. "Why do Mrs. Gonzalez and her family have to go back to Costa Rica?" "Why can't President Bush change the laws so they can stay?" my sons asked. "Mommy, it's JUST NOT FAIR!" they said through tears as I struggled to explain a broken immigration system to them.

How do I help them understand that it doesn't matter that the Gonzalez family came here legally from Costa Rica on a visitor's visa in 1991, sought legal advice to gain citizenship, followed that legal advice only to discover that it was inaccurate and then got caught up in the changes in immigration law that came about as a result of September 11, 2001? How do I explain to my kids that Homeland Security doesn't care that the Gonzalez family legally obtained social security numbers, owned their own business, paid taxes for ten years, purchased a home and truly believed that they were on their way to their American Dream? My boys couldn't possibly understand the intricacies of a political system that allows the best interest of a constituency to be overshadowed by the political interest of the elected official or the loopholes in an immigration system that allows marriage for the sake of citizenship but can't help those who won't compromise their moral integrity. How do I explain that even though our community has collected over 3,000 signatures on petitions of

supports, written hundreds of letters and made hundreds of phone calls to our Federal legislators, received the support of city, county and state government and attracted media attention on the local, national and international level, it still isn't enough to persuade our Senators to work on a Private Bill.

What my sons do understand is that Jefferson City is a much better place because Marvin, Marina and Marie Gonzalez live here. Each member of the Gonzalez family has made significant contributions to our community. Marvin served as a courier under Gov. Holden in 2001. One of his duties was to open the mail for the State Capitol during the anthrax scares. Marvin performed his job every day with a dedication and resolve that few "American Citizens" would have.

Marina volunteers as a Spanish teacher at Immaculate Conception School. Because of her program, our kindergarteners through 6th graders are learning a foreign language. My kids love learning Spanish from Mrs. Gonzalez. They don't yet realize the impact that learning a foreign language will have on their futures. They just know that Mrs. Gonzalez is a great teacher who loves her students and makes learning fun.

Marie graduated from Helias High School with honors in 2004. Because of her current situation, she was unable to attend college this year so she has chosen to focus her energies on immigration reform. She is the National Spokesperson for the DREAM Act. She has been to DC to speak on immigration issues. She has testified at the State level here in Jefferson City. She was featured in the 2004/2005 January issue of Latina Magazine as one of the Top 10 Latina Women of the Year. She has appeared in newspaper articles and on television/radio programs across the country and internationally. She is currently involved with Center of Community Change, Josh Bernstein and the National Immigration Law Center and National Council of La Raza. These organizations are planning a media event in Washington DC sometime in June to coincide with the reintroduction of the DREAM Act in the House. The Gonzalez family will be a featured family at this event.

As a family, the Gonzalez's have volunteered with Habitat for Humanity, Samaritan Center, El Puente, Cinco de Mayo Committee, Community Blood Bank, Red Cross, Knights of Columbus, Young Life, Teen Encounter Christ, Helias High School and Immaculate Conception School and many other organizations. They tutor children in Spanish. The Gonzalez's help a local couple who have been plagued themselves by tragedy. They have donated countless hours of time and support for a wife who is blind and for the husband left a quadriplegic after a tragic auto accident. They have taken Young Life Groups to build houses for Habitat for Humanity. They have translated at hospital for Hispanic women having babies. They work with our children each summer in Vacation Bible School. They have helped countless people in our community in numerous ways.

Citizenship implies working towards the betterment of the community one lives in through participation, volunteer work and efforts to improve life for all citizens. The Gonzalez family is the epitome of this definition. The family came to the United States looking for a better life. In their quest for that life, they have made the United States and especially Jefferson City, a much better place.

I believe that if enough people stand up and say, "What is happening to the Gonzalez family is JUST NOT FAIR!" Maybe, just maybe, we can affect a legal system that wants to send them away. As a community, we are asking for your help in our plight to keep the Gonzalez family here. We would encourage you to contact your legislators to ask them to either sponsor a private bill for the family or to contact Michael Chertoff, Secretary of Homeland Security, to ask for deferred action in their case. Thank you for your efforts!

11. House Committee Reviews Diversity Visa Program

The House Subcommittee on Immigration, Border Security, and Claims recently held an oversight hearing to examine the Diversity Visa Program, an initiative that would give immigrants from a wider selection of countries a better chance at immigration. Among those present were the Honorable Bruce Morrison, former member of Congress, Mark Krikorian, the executive director of the Center for Immigration Studies, and Rosemary Jenks, director of government relations for the group NumbersUSA, an anti-immigration organization.

Chairman Morrison offered testimony to the consequences of the Immigration Act of 1990 (a bill which he authored) and the further history of the Diversity Visa Program. He then discussed the continued success of the program, noting that the program positively impacted the number of Africans immigrating by choice for the first time in our nation's history. He concluded with his opinions on possible improvements to the program. The Honorable Howard Krongard, Inspector General of the United States, agreed with Chairman Morrison, adding concerns about the security risks posed by the lottery system offered by the Diversity Visa Program.

Mr. Krikorian and Ms. Jenks were of a differing opinion, however, citing inequality and injustice in the lottery system. Mr. Krikorian argued that the current system poses too many workload and fraud issues, and that leaving immigration up to chance is irresponsible and potentially harmful to national security. Ms. Jenks vehemently disagreed with the contention that the Diversity Visa Program strives to eliminate national-origins based discrimination, saying, "It discriminates to the detriment of some and to the benefit of others based solely on a person's nationality." Both feel that the program should be discontinued immediately.

12. Pew Hispanic Center Conducts Study of Undocumented Migrants

On June 14th the Pew Hispanic Center released the results of a study conducted on undocumented immigration (the study uses the term "unauthorized immigrants" and this article will use that term though this publication normally uses the term "undocumented" immigration) through the 2004 year. The study was designed to lay a foundation of facts upon which the Independent Task Force on Immigration and America's Future could deliberate and make recommendations. The study has four main focus areas, which are condensed here into three headings: (1) Number and trends of immigration, (2) Characteristics of the unauthorized immigrants, and (3) a detailed look at Mexican Migration.

Number and Trends

The study estimates that there are 10.3 million unauthorized migrants in the United States, which is roughly 30% of the total number of immigrants (unauthorized, authorized, naturalized and refugees) in the United States. Of the unauthorized migrants, more than 80% are from Latin America and, specifically, 57% of the total from Mexico. It appears that unauthorized immigration peaked between the years of 1995-1999 at almost 750,000 persons/year, which is most likely even higher because this number does not include those

who left the United States or those who received documentation. In the most recent period studied, 2000-2004, the number has dropped to about 700,000.

The study also shows that unauthorized immigrants, although continuing to follow traditional settlement paths, have in increasing numbers settled into non-traditional areas. In the 1990's, unauthorized immigrants had settled most commonly in California, New York, Texas, Florida, Illinois or New Jersey. Other areas, however, in 1990 had been home to only about 12% of the unauthorized migrant population, in 2004 hosted 39% of the population or about 3.9 million unauthorized migrants. While California and other traditional migrant destinations continue with the highest numbers of unauthorized migrants, non-traditional states such as Georgia, North Carolina and Tennessee have witnessed sizeable growth.

New settlement states stretch across a wide geographic distribution. States as diverse as Idaho, Minnesota and Mississippi now all rank among the states with the highest percentage (40-54%) of unauthorized migrants. Although these numbers do necessarily correlate with high overall numbers of immigrants, the data do show a diversification of settlement among new migrants.

Characteristics of Unauthorized Migrants

The Pew Hispanic Center study, as stated earlier, estimates the overall unauthorized population to be near 10.3 million. The study also estimates that there are 13.9 million people in unauthorized families (family is defined to include married or unmarried couples with or without children, other adults with children or solo adults). Adult men make up around 4.9 million or 56% of the adult unauthorized population. Adult women number about 3.9 million. There are an estimated 1.6 million unauthorized children in the United States, which is 14% of the total unauthorized population. Unauthorized families also include 3.1 million children, who are U.S. citizens.

Concerning education, unauthorized migrants show dramatically lower graduation and college attendant rates. The study shows that 50% of unauthorized migrants "dropout" of high school, compared with 21% of legal immigrants and 11% of natives. This number does include migrants who never attended a high school in the U.S. and those that stopped attending before entering the U.S. Of those who graduate from high school, only 48% of unauthorized migrants attend college versus 73% of legal immigrants and 70% of natives. Unauthorized adults are shown to have had much less education than legal immigrants and natives. Approximately one-third of unauthorized migrant adults have had less than a 9th grade education, but the unauthorized population does contain about 15% who have at least a college degree. The legal immigrant and native populations fair significantly better. About one-third of all legal immigrants and natives have a college degree and only 2% of natives have less than a 9th grade education.

Unauthorized migrants account for about 4% of the nation's labor force or approximately 6.3 million workers. They are typically employed in lower wage jobs: 33% of unauthorized workers are in service occupations, 17% in construction and 16% in production, installation, and repair. Unauthorized workers make up significant contributions of a variety of sectors such as farming, cleaning, and construction. In certain specific occupations within those larger groupings, the concentration of unauthorized workers is extremely high - between 20-30% of all U.S. workers in drywall installation, masonry, roofing, painting, housekeeping, and agriculture are unauthorized workers. Unauthorized workers, however, are not restricted to low wage jobs, as approximately 12% of all unauthorized workers are in the professional and business services sector. Unauthorized income is, however,

dramatically low when compared to legal immigrants and natives. The average unauthorized family has an income of \$27,400, while legal immigrant families and native families have an income of about \$48,000. This is a larger problem in the context of family size. The study shows that families of unauthorized workers are larger than their native and legal immigrant counterparts.

Health insurance is also a dramatic problem for unauthorized families. 59% of unauthorized immigrant adults are uninsured, while only 14% of native adults are not. More troubling is that 53% of children who are unauthorized or whose parents are unauthorized do not have health insurance, while only 9% of native children do not have insurance.

Mexican Migration

A large Mexican migration has led to about 9% of the Mexican-born population residing in the United States. And an estimated one-half of those migrants are unauthorized. The Mexican population has also moved away from traditional settlement states and expanded into new destinations. The rise in Mexican migration, however, has coincided with a decrease in fertility.

More detailed information on this study can be found at www.pewhispanic.org.

13. L-1 Visa Reform Act of 2004 Implemented by USCIS

U.S. Citizenship and Immigration Services (USCIS) announced recently the implementation of new provisions to the L-1 temporary worker program, commonly known as intracompany transferees. The changes were mandated by L-1 Visa Reform Act of 2004 which became law last December as part of the Omnibus Appropriations Act for FY 2005.

The L-1 Visa Reform Act amends previous legislation to address the "outsourcing" of L-1B temporary workers. An L-1B nonimmigrant is an alien who has been employed overseas by a firm with an affiliated entity in the U.S., who comes to the U.S. to perform services for the international entity that involve specialized knowledge. L-1B temporary workers can no longer work primarily at a worksite other than that of their petitioning employer if either: (a) the work is controlled and supervised by a different employer or (b) the offsite arrangement is essentially one to provide a non-petitioning party with local labor for hire, rather than a service related to the specialized knowledge of the petitioning employer.

USCIS will interpret the "control and supervision" provisions of the new law to require an L-1B petitioning employer to retain ultimate authority over the worker. The determination as to whether an alien is or will be employed primarily at a worksite other than that of the petitioner will depend on the specific facts presented. In addition, the bar will not apply if the satisfactory performance of such off-site employment duties requires that the L-1B temporary worker must have specialized or advanced knowledge of the *petitioning employer's* product, service, or other interests, as defined under current USCIS regulations. General skills or duties that relate to ordinary business or work activities would not meet the test of whether specialized knowledge is required for the work.

The "outsourcing" provisions described above applies to all L-1B petitions filed with USCIS after June 6, 2005, and includes extensions and amendments involving individuals currently in L-1 status.

The Act also requires that all L-1 temporary workers must have worked for a period of no less than one year outside the United States for an employer with a qualifying relationship to the petitioning employer. Previously, participants in the "blanket L-1" program could participate after as little as six months of qualifying employment. This change applies to petitions for *initial* L-1 classification filed with USCIS after June 6, 2005; extensions of status under the blanket program are not affected by this new provision.

Petitioners are reminded that the Form I-129 must be filed with:

- The base filing fee of \$185.00 plus;
- The new \$500.00 Fraud Prevention and Detection Fee as applicable. [Employers seeking a worker's initial grant of H-1B or L nonimmigrant classification and employers seeking to hire an existing H-1B or L worker currently employed by another employer must pay the \$500 Fraud Prevention and Detection Fee. The \$500 fee does not need to be submitted by: 1) employers who seek to extend a current H-1B or L alien's status where such an extension does not involve a change of employers; 2) employers who are seeking H-1B1, Chile-Singapore Free Trade Act nonimmigrants; or 3) dependents of H-1B or L principal beneficiaries.]