

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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1. Openers

Dear Readers:

Those who read this newsletter on a regular basis know that while we clearly support that proposition that immigration is good for America, we rarely address the question of which political party is better on immigration issues. That's largely because one's party identification has not normally been a reliable indicator of one's position on immigration.

Libertarian-leaning Republicans have aligned with pro-business and diversity-minded Democrats. Right wing and protectionist Republicans often line up with anti-globalization, pro-union Democrats to oppose immigration. And there are many other permutations that skew one's views on immigration. The point is that is simplistic to say that one party is pro-immigration or anti-immigration.

And it gets more complicated. One may be quite progressive on legal immigration questions and happy to vote for raising family immigration quotas or more H-1B visas while casting a vote limiting due process rights for immigrants in removal hearings and opposing measures to make it possible for out of status individuals to legalize.

Still, it is clear that the party that seems to be more conflicted these days on immigration is the Republican Party. President Bush will have a much easier time getting Democrats to support his pro-immigration agenda than members of his own party. Given that he is determined to push through his plan during his second term as President, the battle could get ugly. To date, the President has not had to face a rebellion. In the first term, he basically ceded the debate to Congress on immigration and rarely confronted the legislative branch on this issue. Where he did take an active role dealing with immigration, it was mainly related to adding security measures to the system where he met little resistance from either party.

If the recent Conservative Political Action Conference provides a clue as to what most Republicans are thinking on immigration issues, the President can expect a great deal of hostility from his own backbenchers. The conference is a major event and this year featured speakers like Vice President Cheney, Former House Speaker Newt Gingrich and conservative author Ann Coulter. Immigration came up in many of the talks and the clear message from the conference was that while the President is trying to move his party in a more pro-immigration direction, he is encountering substantial resistance.

This week we report on the CPAC conference as well as the rest of the week's news.

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: Immigration Consequences of Mergers, Acquisitions and Other Corporate Changes

I. Introduction:

A corporate lawyer usually greets the closing of a deal with a sense of relief. Unfortunately, the ink on the signatures on a corporate transaction usually has dried before a company realizes that something terrible may have occurred. More than just changing the ownership of a business, the closing of a merger, acquisition, IPO or other corporate transaction can single-handedly render all of a company's immigrant workers illegal and subject an

employer to serious exposure for I-9 immigrant verification violations.

In October 2000, Congress passed legislation that seeks to reduce the likelihood of the kind of surprise scenario noted above. But even with Congress' intervention (and an additional regulation issued by the Department of Labor ("DOL") on December 22, 2000), the risks of a merger or acquisition becoming an immigration "train wreck" remain substantial. The new law only covers one visa category – the H-1B visa – and only a subset of cases within this category.

The solution to the problem begins with the due diligence process. As part of their due diligence, lawyers examine the legal and financial structure of a company in detail to find potential risks. It is a very careful process covering "almost" everything. Almost, because, rarely the visa status of a company's immigrant employees' or the company's I-9 compliance is checked. It is also equally rare to see representations and warranties covering immigration matters in a closing document.

This really is not surprising. Corporate attorneys seem to know very little about immigration law and lack an understanding of the immigration consequences of the deals about which they are advising.

Unfortunately, this single short-coming or oversight of the transition team may not only render all of a company's immigrant employees out of status, hence terminating their work eligibility for several months, but may also force them to travel outside the country, to a US Consulate, since out-of-status aliens cannot change their visas in the US.

Employers on the other hand, may not only be subject to fines up to 00 per employee for not having a valid I-9 on file, but may also be subject to lawsuits from employees terminated and rendered illegal as a result of the company's failure to keep their work eligibility valid. This is a serious threat, considering the fact that falling out-of-status significantly diminishes an alien's chance of gaining lawful permanent residence in the US.

Finally, corporate attorneys who fail to warn clients of the immigration consequences of their transactions may face malpractice liability themselves. Therefore, prudent corporate practitioners should integrate immigration issues into the due diligence process and identify the potential risks at the outset.

The consequences of a corporate change differ depending on the visa category of an affected worker and the type of corporate transaction involved. Therefore, a transition team should first "map" the immigration structure of the corporation. This map will provide a blueprint for handling potential immigration problems and risks. Also, they should test the I-9 compliance of the target corporation by conducting a sample audit, if feasible, or at least a review of the immigrant employees' I-9 forms.

II. Basic Concepts:

The law divides the alien workers into two separate groups: non-immigrant and immigrant. Non-immigrant workers usually fall under the H-1B, L, E and TN visa categories, while immigrant workers are those who have obtained or in the process of obtaining lawful permanent residency. Also, employers are federally mandated to verify the employment eligibility of their entire workforce via the I-9 Employment Eligibility Verification Form.

The most common employment visa, H-1B, is used for an "alien who is coming to perform services in a specialty occupation" in the United States. L visas are used for intracompany

transferees that enter the US to render services "in a capacity that is managerial, executive, or involves specialized knowledge", while E visas are used for "treaty traders and investors". Finally, the TN category includes "Canadian and Mexican citizens seeking temporary entry to engage in business activities at a professional level" as listed in the North American Free Trade Agreement.

Corporate changes that typically have immigration consequences are stock or asset acquisitions, mergers, consolidations, initial public offerings, spin-offs, corporate name changes, changes in payroll source, and the relocation of an employer or its employees.

Acquisitions involve the purchase of assets or stock. In an asset acquisition, the purchaser may not accept the liabilities of the seller. In a merger, two or more legal entities combine all their assets in what is called the "surviving entity". Other entities, which are called the "merged entities", cease to exist. The surviving entity assumes all of their liabilities. In a consolidation, however, two or more legal entities combine all their assets to form a new entity. The new entity assumes their liabilities, and they cease to exist. An IPO changes the ownership structure of a corporation, similar to an acquisition.

III. Spotting the Issues: Different Visa Types, Different Implications

In an H-1B visa case, the questions to analyze are whether a corporate change results in a new employer and, if so, to what extent are the interests of the target corporation being assumed.

An H-1B visa requires separate applications to the DOL and the U.S. Citizenship and Naturalization Services ("USCIS"). A petitioner should first obtain an approved Labor Condition Application from the DOL, and then should get its I-129 Petition for a Nonimmigrant Worker approved by the USCIS.

Prior to December 2000, the DOL considered a change in an employer's Federal Employer Identification Number enough to trigger a need to file a new LCA. Under the rules adopted December 22, 2000, a new LCA will not be required merely because a corporate reorganization results in a change of corporate identity, regardless of whether there is a change in EIN, provided that the successor entity, prior to the continued employment of the H-1B worker, agrees to assume the predecessor's obligations and liabilities under the LCA with a memorandum to the "public access file" kept for LCA purposes.

Material changes in the employee's duties and job requirements and the relocation of the employee may also require a new LCA. Therefore, if employees are relocated due to a merger or sale, new LCAs will be required for H-1B workers (DOL uses the Standard Metropolitan Statistical Area, SMSA, as criteria in determining the need for a new LCA or Labor Certification. If the employee is relocated outside the SMSA, then new filing is required). However, a simple name change will not trigger the need for a new LCA.

The rules governing when a new I-129 petition must be filed are similar to the LCA, but not identical. The need to file a new I-129 can be a fairly expensive requirement. For each new employment petition, the employer must pay the American Competitiveness and Workforce Improvement Act fee, which was recently increased to 500 dollars.

The new law creates an exemption from filing a new I-129 in cases of corporate structuring where the new employer is a successor in interest that assumes the interests and the obligations of the prior employer. This is a restatement of the existing USCIS policy stating that if an employer, for H-1B purposes, "assumes the previous owner's liabilities which

include the assertions the prior owner made on the labor condition application” then there is no need for a new or amended petition. However, because an implementing regulation is not yet published and the law not yet tested, there is room for a variety of interpretations. If a new or amended petition is not needed, then the employer may wait until filing an extension petition for the employee to notify the USCIS.

Since LCAs are not required for obtaining a TN visa or status for a citizen of Canada or Mexico, a basic successor in interest analysis is required to determine how to proceed here.

For an L-1 visa, the law requires a qualifying relationship between the US entity and the foreign entity from which the employee will be transferring. This relationship must be within the definitions of a “parent, branch, affiliate or subsidiary” as defined by the USCIS. Obviously, changes in the ownership structure of either one of the entities, through a corporate change may terminate the qualifying relationship and, consequently, invalidate the underlying L visas. However, if the petitioner, after a corporate change, can document that the qualifying relationship survives, then, only an amended petition will be necessary.

Under the E-1 and E-2 visas, certain investors and traders may be admitted to the United States and be employed therein, if a “treaty-qualifying” company petitions and obtains status for them. A company is qualified based on its nationality. A corporate change may change a corporation’s nationality, and, therefore, result in the termination of the qualification.

A lawful permanent residency (“LPR”) application consists of three steps. First, the employer usually must prove that despite reasonable recruitment efforts, it has not been able to find a domestic employee to fill the alien’s position. This is called the labor certification, and is handled through the DOL. Second, it files a Form I-140, Immigrant Petition for Alien Worker, with the USCIS. After the I-140 petition is approved, the employee files a petition for the adjustment of her immigration status to the status of a lawful permanent resident with the USCIS.

The Department of Labor takes a liberal view of when a new labor certification petition must be re-filed. If after an acquisition, a new owner remains the worker’s employer, and has assumed all of the past owner’s obligations, the new owner should qualify as a “successor-in-interest” and a labor certification will survive.

In LPR cases, USCIS traditionally used a stricter version of the successor in interest theory, and permitted an employer to continue with the prior employer’s petition, only if the new employer assumed “all” of the prior employer’s liabilities. Without successorship, a new I-140 petition may be necessary even when an adjustment of status application is already pending.

The LPR process may take several years, and until recently, unless the case did fit under certain exceptions, beneficiaries of immigrant petitions were not able to change employers until the completion of the entire process. Therefore, corporate changes that created a new employer were potentially causing further delays. Another new law Congress recently passed, however, makes it possible in many instances to change employers while an adjustment application is pending, so this may be a moot issue.

Finally, a successor also assumes the I-9 liabilities of a corporation. Failure to comply with I-9 requirements may result in serious sanctions, up to 00 dollars per employee. Therefore, before a corporate re-structuring, the transition team should examine the I-9 compliance of the entity by either a sample I-9 audit or a review of the alien employees’ I-9s. Especially

for I-9 issues, representations and warranties should be required at the closing.

IV. Conclusion:

In conclusion, given the potential risks, transition teams and corporate counsel should integrate immigration issues to the due diligence process, and should require warranties at the closing.

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 - Is there a gap of a few months between the time a priority date becomes current and the actual date of immigration interview at the U.S. embassy?

A - There can be a gap. Often, however, the State Department will initiate processing a few months ahead of the anticipated advancement of numbers in order to avoid delays.

Q - I have a question concerning how a child gets US citizenship. Here's the scenario:

- 1) child admitted into US with non-immigrant Visa at age 3
- 2) child adjusted status to Permanent Resident at age 6
- 3) father becomes US Citizen

Can the child in question apply for US citizenship?

A - The child automatically becomes a citizen with the parent if the child is under 18 at the time the parent naturalizes. The child would then file an N-600 form to document this and can simultaneously pursue a passport application.

Q - I have temporary evidence of lawful admission for permanent residence stamped on my passport valid until December 20, 2005. I have not received my green card as yet. Can I travel to the UK for 2 weeks and come back? If so, do I have to take the approval notices of my I 485 with me or will the stamp on my passport suffice for me to re enter?

A - Yes, you can travel with the I-551 stamp which is the legal equivalent of the green card. You only need your passport with the stamp and none of the I-485 paperwork.

Q - I would like to know if I need a Social Security Card to file a Form I-485, Application to Register Permanent Residence or Adjust Status. I am here on a K-1 Fiancé Visa and need to file a Form I-485.

A - You do not need a social security card to file Form I-485.

Q - I got my travel document today but it said that if I've been in America after 1997 and stayed 180 days past my allowed stay, I may be found inadmissible when I try to enter with my travel document and if I was found inadmissible I need to qualify for a waiver of inadmissibility.

A - This is a normal precaution about the serious impact violating your visa status in the past could have on your ability to get back into the US when you travel. If you have always maintained your legal status in the US, you don't need to worry.

On the other hand, if you have had problems, I would consult a lawyer and I would be VERY careful about traveling. I normally highly recommend not traveling if you need a waiver to reenter. The waivers are only available to people with certain close American or permanent resident relatives. Also, you need to show exceptional circumstances justifying the waiver. You can only apply for the waiver when you are outside the US. And the wait can be several months.

If you are denied the waiver, you could face a bar on reentering the US for several years. So be careful.

4. Border and Enforcement News

37 undocumented immigrants were detained in Fort Worth, Texas, after Union Pacific Railroad police conducting a routine inspection discovered them last week hiding in large containers on a Dallas-bound train. A few of the people on the train were believed to have escaped as police tried to round them up. Officials from the Mexican consulate said human smugglers were not believed to be involved.

Forty-two illegal entrants were pulled unhurt out of a moving truck in Arizona last week. U.S. Border Patrol agents received a tip about a U-Haul truck on Highway 191. When agents pulled the truck over, the driver and a passenger jumped out and ran into the desert, according to a press release. The passenger was caught and 42 people were pulled from the back of the truck. Men, women and children were found in the moving truck, which had a 3-inch hole cut into the roof for ventilations. The entrants were returned to Mexico and a commercial towing company stored the truck.

5. News From The Courts

Ali v. Ashcroft, No. 03-71731 (9th Cir. Jan. 15, 2005).

Ninth Circuit Reverses Lower Court on Finding of Persecution and Eligibility for Asylum

On review to the Ninth Circuit Court of Appeals, a Board of Immigration Appeals' decision affirming a denial of a petitioner's request for asylum, withholding of removal, and protection under the Convention Against Torture, was remanded on the grounds that the Petitioner was statutorily eligible for asylum. The Petitioner and her two sons were citizens of Somalia and members of the Midgan clan. Traditionally, members of this clan were considered lower class, and were not allowed to engage in political work. Under the government of Siad Barre, the Migdan clan was allowed to assume political positions, and the Petitioner's husband was given a position within the government. Permitting the traditionally lower class clan to engage in the workings of the government angered higher-class clans. These higher-class clans, which included the United Somali Congress ("USC") militia, overthrew the Siad Barre government in 1991. Clan warfare has ravaged Somalia ever since.

In January of 1991, six armed members of the USC militia broke into the Petitioner's home, brutally gang-raped the Petitioner, executed her brother-in-law in front of her, and kidnapped her husband. The militia members looted everything of value and destroyed household decorations. The militia members taunted the Petitioner and her family during the rape, calling them Midgan traitors, telling them that their class was not supposed to advance in society, and made comments that Siad Barre could not save them now. The Petitioner recognized one of the militiamen as a neighbor who knew that her husband worked for the Siad Barre government. The Petitioner's husband was released after two weeks of detainment with broken ribs and wrists. The family fled to Ethiopia, where the Petitioner's husband left her, as he could no longer view her as his wife after the rape.

The Petitioner and her two sons remained in Ethiopia, but did not apply for protection from the Ethiopian government because they would have been placed in refugee camps, where they would have been subject to persecution for their association with the Siad Barre government and their Midgan clan status. Additionally, because of her status as a Midgan, she was not eligible for permanent residence in Ethiopia.

Petitioner spent five years in Ethiopia in hiding from the Ethiopian government, and working as a maid. When the family that she worked for moved to France, the Petitioner and her two sons entered the United States without inspection. She thereafter filed for asylum and had her petition denied. Despite finding her testimony credible, the Immigration Judge denied the petitions for asylum, withholding of removal, and the Convention Against Torture claim on the basis that she failed to establish past persecution on account of a protected basis. He held that the sole motivation for the murder, detention, and robbery was simply to steal, and that the rape was merely for gratification. He further held that the Petitioner and her sons had resettled in Ethiopia before entering the United States because the Petitioner chose not to live in refugee camps and was not bothered by the authorities. The Board of Immigration Appeals affirmed the Immigration Judge's decision.

On appeal, the Ninth Circuit Court of Appeals stated that the law only required the Petitioner to show that the militia was motivated *in part* by her clan status or political opinion. They

held that the words used by the militia while taunting the Petitioner evidenced that they were motivated, at least in part, by the Petitioner's clan status and political opinion, and not solely by criminal opportunism. Additionally, the fact that one of the militiamen was the Petitioner's neighbor and knew the Petitioner well enough to know that her husband worked for Siad Barre, further supported the conclusion that the militia were motivated by the Petitioner's political opinion. The Court held that since the militia members were motivated, at least in part, by the Petitioner's clan membership and political opinion, the Petitioner suffered past persecution.

The Court stated that because the Petitioner had established past persecution, that she is presumed to have a well-founded fear of future persecution, and that the burden shifts to the Department of Homeland Security to rebut that the Petitioner is eligible for asylum. The government may satisfy this burden by showing that there has been a fundamental change in circumstances within the country, such that the Petitioner and her sons no longer have a well-founded fear of persecution or that they could avoid persecution by moving to another part of Somalia. The Court held that the government did not succeed in rebutting the presumption, and that evidence in the country report indicated that persecution of member's of Siad Barre's former government, as well as members of low-class clans, still continues.

The Court finally stated that the Petitioner would be ineligible for asylum if she were firmly resettled in Ethiopia prior to entering the United States. For such "firm resettlement" to bar an asylum claim, the Petitioner must have been offered permanent resident status or its equivalent by the Ethiopian government. Since the Petitioner presented testimonial evidence that she never had a right to permanently remain in Ethiopia, the substantial length of time spent there did not give rise to a possible presumption of firm resettlement. The Court held that the fact that the Petitioner evaded detection by the government while living illegally in Ethiopia does not allow for a finding that she was firmly resettled, and reversed the Immigration Judge.

The Court remanded the issue of the withholding of removal claim to consider the claim in light of the finding that the Petitioner was persecuted in the past, since past persecution gives rise to a presumption of withholding of removal. The Court did affirm the Immigration Judge's determination that the Petitioner and her sons were ineligible under the Convention Against Torture, since no evidence was presented to support a finding that they were eligible.

The Ninth Circuit Court of Appeals found that the Petitioner established past persecution and was therefore entitled to a presumption of future persecution. Since she did not receive an offer of permanent residence in Ethiopia, she was not firmly resettled there prior to her entrance to the United States, and was therefore statutorily eligible for asylum. The Court remanded to the Immigration Judge to exercise his discretion on the asylum claim, and for further consideration of the withholding of removal.

6. Government Processing Times

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

California (02/23/2005): <http://www.visalaw.com/california.html>

Missouri (02/23/2005): <http://www.visalaw.com/missouri.html>

Vermont (02/23/2005): <http://www.visalaw.com/vermont.html>

7. News Bytes

According to GovExec.com, the Homeland Security Department wants to redirect nearly \$300 million to its Immigration and Customs Enforcement bureau in order to address ongoing financial shortfalls for the remainder of fiscal year 2005. The department is planning on submitting a request to the Office of Management and Budget in the near future, asking that it give ICE more funds. ICE's financial problems have resulted in a hiring freeze for more than a year as well as sending restrictions. Speculation has been raised that ICE might be merged into the Customs and Border Protection bureau.

Mexico's House of Representatives approved a bill last week that will allow Mexicans to vote for president at polling stations set up in the United States and other countries. The bill was approved 391-5 with 22 abstentions. The measure is expected to pass the Senate within weeks and be signed into law by President Vicente Fox.

Illinois launched the New Americans Initiative this week, which will allocate \$3 million this year to agencies that provide immigrants with guidance to pass the citizenship test and properly fill out the immigration forms. The money also will pay for ads in Spanish, Polish, Korean and Chinese to encourage eligible documented immigrants to pursue U.S. citizenship. The state will coordinate a network of agencies that will track immigrants through the process to help them successfully complete it.

Last week the Iowa Supreme Court dismissed a class action lawsuit brought by two undocumented aliens against state officials who refused to issue them driver's licenses, unanimously upholding a lower court ruling that said illegal aliens had no legal right to obtain a license. The suit stated that the state's refusal to issue the licenses violated rights guaranteed to undocumented immigrants under both the U.S. and Iowa constitutions. The suit was a class action on behalf of all undocumented immigrants in Iowa who wanted or had sought driver's licenses.

The Iowa State Department of Transportation had refused to issue licenses to undocumented immigrants, saying state law required license recipients to have a Social Security card or other proper immigration documents in order to obtain an operator's permit. Those who filed suit argued that undocumented aliens should have licenses as a matter of public safety, issued after they pass the same tests given to all motorists; that licenses would allow the aliens to buy car insurance and to find jobs.

A rule was proposed last week by the State Department that would amend passport regulations to incorporate changes needed for the issuance of electronic passports. The rule would define an electronic passport, would include a damaged electronic chip as an additional basis for possible invalidation of a passport, would abolish the U.S. passport

amendment process except for the convenience of the U.S. Government, and would enlarge the reasons for issuing a replacement passport at no fee. The rule would also add unpaid fees as a ground for invalidating a passport. The Department of State will be accepting comments from the public up to 45 days from February 18, 2005, regarding this proposed rule. Individuals may view the proposed rule and provide comments by going to the regulations.gov Web site at www.regulations.gov/index.cfm.

According to data recently released from the Census Bureau, immigrants who came to the USA this decade are more educated than those who arrived in the late 1990s. The data also indicate that the adult children of immigrants are exceeding their parent's income and education levels.

According to the data, more than 34 million people in the USA, or almost one in eight, were born in another country, according to the government's survey of 62,500 households in March 2004. About 6 million arrived since 2000, 59% of them from Latin America and 23% from Asia.

Of the 3.4 million immigrants age 25 or older that arrived from 2000 to 2004, 30.7% were high school dropouts. That compares with 33.2% of the 3.5 million who came from 1995 to 2000. More recent arrivals are college-educated, as 34.3% had a bachelor's degree or higher, compared with 32,5 in the late 1990s.

Of the foreign-born Hispanics age 25 or older who arrived since 2000, about 13% had bachelor's degrees or more compared with 9% of those who came in the 1990s, and almost 65% of Asian immigrants had college degrees.

The government issued 195,000 visas a year to specialized, college-educated foreign workers sponsored by employers in 2001, 2002 and 2003.

8. International Roundup

Ghana's immigration service last week announced it had broken up a Chinese human trafficking ring, which promised jobs in Europe and the United States to Chinese migrants smuggled in and then out of the west African country.

The bust highlights the growing problem of illegal immigration to Ghana by migrants from around the globe who believe that access to Europe or North America will be easier from Africa than from their home countries in the Middle East or Asia.

Seven Chinese nationals who paid as much as 5,000 dollars each to the ring were to be deported on Sunday.

Next week's Canadian federal budget will set aside \$400-million to help immigrants settle into Canada and with job training.

The Liberal minority government will also work for quicker recognition of professional

credentials from other countries -- a move that could help with the doctor shortage.

9. Legislative Update

On March 3, 2005, the Subcommittee on Immigration, Border Security, and Claims will hold an oversight hearing on "The Immigration Enforcement Resources Authorized in the Intelligence Reform and Terrorism Prevention Act of 2004." The hearing will evaluate the need for full funding for the increase in Border Patrol Agents as authorized by the Intelligence Reform and Terrorism Prevention Act of 2004.

For a review of all the immigration bills that have been recently introduced, visit our legislative chart at www.visalaw.com/advocacy.html.

10. GAO Analyzes US-VISIT

The U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) is a program that was established by the Department of Homeland Security (DHS) to collect, maintain, and share information including biometric identifiers, on elected foreign nationals who travel to the United States. By congressional mandate, DHS is required to develop and submit for approval an expenditure plan for US-VISIT that satisfies certain conditions, including being reviewed by the General Accounting Office (GAO). The GAO recently reported on whether the plan satisfied these conditions offered observations on the plan as well as DHS's program management.

According to the GAO, DHS's fiscal year 2005 expenditure plan and related documentation at least partially satisfied all conditions established by the Congress, including meeting the capital planning and investment control requirements of the Office of Management and Budget (OMB).

In its observations about the expenditure plan and DHS's management of the program, the GAO noted that it recognized accomplishments to date, but still noted the need for rigorous and disciplined program practices. For example, US-VISIT has acquired the services of a prime integration contractor to augment its ability to complete US-VISIT. However, DHS has not employed rigorous, disciplined processes typically associated with successful programs, such as tracking progress against commitments. According to GAO's analysis, delays have occurred in delivering capability to track the entry and exit of persons entering the United States at air, land and sea ports of entry the figure compares original and current commitments in this effort, as well as progress in delivering capability.

Additionally, the GAO found that the effort to pilot alternatives for delivering the capability to track the departure of persons exiting the United States is faced with a compressed time line, missed milestones, and potentially reduced scope. In particular, the pilot evaluation period has been reduced from 3 to 2 months, and as of early November 2004, the alternatives were deployed and operating in only 5 of the 15 ports of entry scheduled to be operational by November 1, 2004. According to US-VISIT officials, this is largely due to delays in DHS granting security clearances to the civilian employees who would operate the equipment at the ports of entry. These changing facts and circumstances surrounding the pilot introduce additional risk concerning US-VISIT's delivery of promised capabilities and benefits on time and within budget.

The GAO reiterated its previous recommendations and is making several new recommendations to better ensure that the US-VISIT program is worthy of investment and is managed effectively. Included in these recommendations is that DHS fully disclose in future expenditure plans its progress against previous commitments and that it reassess plans for deploying an exit capability. DHS concurred with GAO's findings and recommendations.

11. HHS Releases New Poverty Guidelines

The Department of Health and Human Services (HHS) has released an update of the HHS poverty guidelines to account for last year's increase in prices as measured by the Consumer Price Index. The guidelines are important in immigration applications because applicants' sponsors must show they make 125% of the applicable poverty guideline.

2005 Poverty Guidelines for the 48 Contiguous States and the District of Columbia:

Size of family unit	Poverty guideline
1	\$9,570
2	\$12,830
3	\$16,090
4	\$19,350
5	\$22,610
6	\$25,870
7	\$29,130
8	\$32,390

Family units with more than eight members should add \$3,260 for each additional member.

2005 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1	\$11,950
2	\$16,090
3	\$20,110
4	\$24,190
5	\$28,270
6	\$32,350
7	\$36,430
8	\$40,510

Family units with more than eight members should add \$4,080 for each additional member.

2005 Poverty Guidelines for Hawaii

Size of family unit	Poverty guideline
1	\$11,010
2	\$14,760
3	\$18,510

4	\$22,260
5	\$26,010
6	\$29,760
7	\$33,510
8	\$37,260

Family units with more than eight members should add \$3,750 for each additional member.

12. Gingrich Talks Immigration at Conservative Conference

On the closing day of the 32nd annual Conservative Political Action Conference (CPAC), Newt Gingrich voiced his opinion on the immigration system and the need for strict enforcement policies. Gingrich said he wants the United States to completely seal off its border along Mexico and Canada, deport illegal aliens within 72 hours of their arrest and exclude U.S. courts from reviewing such deportations. Gingrich was known for his moderate record on immigration while serving as the speaker of the House of Representatives.

Gingrich said thinking that undocumented immigrants have the same rights as U.S. citizens is misreading the 14th amendment. He said legal immigrants should have to learn American history to pass a citizenship test and must pass such a test in English.

The three-day meeting featured other big-name attractions, including Deputy White House Chief of Staff Karl Rove and author Ann Coulter. Most speakers, including conservative talk show host Pat Buchanan and activist Phyllis Schlafly spoke in opposition to President Bush's guest worker proposal.

The speakers at CPAC emphasized the themes of limited government and individual freedom. Gingrich said the country needs an open green-card policy to eliminate pressure from Mexico and elsewhere and from U.S. firms seeking workers.

Some conservatives in attendance, however, noted that Gingrich did not explain how the open green-card program would work, or what more the administration should do to seal thousands of miles of border to the south and north. Additionally, Gingrich neglected to say whether he backed some form of President Bush's guest worker program to allow undocumented immigrants holding jobs in the United States to remain or whether such aliens eventually could apply for citizenship.