

Siskind's Immigration Bulletin  
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1. Openers

Dear Readers:

This is one of the most important weeks in immigration law in many months. We have the release of a major regulation as well as passage of several key immigration provisions in Congress. In this issue, we provide information on each of these major developments. We'll return next week with our regular features and the rest of the news.

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Today, the USCIS will release the long-awaited H-1B rules relating to the "bonus" quota of 20,000 H-1Bs Congress set aside for graduates of US graduate degree programs. We received an advance copy of the regulations and in this week's ABCs of Immigration article, we provide a summary of the new rules.

In this week's ABC's of Immigration article, you'll find a summary of the changes brought about by the new H-1B regulation.

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We also have been waiting to find out what Congress is going to do on the REAL ID Act, H-2B visas and EB-3 retrogression. Agreements have just been reached on all three and we report on the final version of each measure separately in this issue. The controversial REAL ID bill passed largely intact with some minor softening. H-2B reform passed unchanged from the Senate version. EB-3 retrogression relief passed, though in a more limited fashion both in terms of numbers and because it is limited to nurses and physical therapists only.

The REAL ID Act is mostly bad news and we include this week a press release from the American Immigration Lawyers Association criticizing Congress and the President for passing this legislation without any public hearings. One good piece of news, however, in REAL ID was the last minute addition of a provision eliminating the annual cap on asylum adjustment applications. 10+ year waits will now be a thing of the past for asylees wishing to move toward getting a green card and eventual US citizenship.

Also, a surprise measure was added in to the conference report – a new E-3 non-immigrant visa for Australians that looks a lot like an H-1B and has a cap of 10,500. This is welcome news for Australians and we report on this as well in this issue.

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I know many of our readers are members of the American Immigration Lawyers Association. I rarely speak publicly about AILA elections, but I did want to publicly endorse my friend Tammy Fox Isicoff, a candidate for AILA Secretary. I've known Tammy for many years and admire her for her fighting spirit when it comes to defending the rights of immigrants and pushing for sensible immigration laws. She is savvy when it comes to working with the media and an excellent immigration lawyer as well. She'll make an excellent addition to the AILA executive committee and I urge people to cast their vote for her during the upcoming election.

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In firm news, I was interviewed about REAL ID yesterday on Bloomberg Radio regarding REAL ID. I explained why REAL ID sounds good in theory to some, but is, in reality, a really bad idea. The radio show host who interviewed me was supportive of the bill so we had a polite and interesting debate.

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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

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## 2. The ABC's of Immigration: The New 20,000 Bonus H-1B Quota FAQ

The USCIS has released long awaited regulations implementing the new 20,000 bonus H-1B quota for graduates of US graduate degree programs. The 65,000 available visas for fiscal year 2005 were used up on October 1, 2004, the very first day of the fiscal year.

This bonus quota was created last year by Congress and will be available this year and in future years in addition to the annual 65,000 H-1B visa quota as well as in addition to H-1Bs that fall outside the cap.

### **When will the rule become effective?**

The regulation will be published on May 5, 2005 and applications will begin to be accepted five BUSINESS days later (i.e. May 12, 2005).

### **We heard that the regulation would allow any H-1B applicant to file for the bonus quota for 2005? Is that no longer the case?**

The USCIS backed off its originally announced plan to allow all H-1B applicants to file for 2005 numbers. The proposal sparked controversy and was likely one of the reasons for the delay in releasing the new rules.

### **Is this rule final?**

This is an interim final rule. It is in force now, but USCIS is accepting comments for sixty days and may make changes based on feedback from the public. Comments will be accepted for the next two months and can be submitted online at [www.regulations.gov](http://www.regulations.gov).

### **What is the basis of the bonus quota?**

On December 8, 2004, President Bush signed a spending bill that included the H-1B Visa Reform Act of 2004. The new law changed the filing fees for H-1B cases and also included a provision creating a new cap exemption for people who have "earned a masters' or higher degree from a United States institution or higher education (as defined in section 101(a) of the Higher Education Act of 1965 ... until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000."

Congress made the increase effective March 8, 2005, but USCIS did not issue regulations until this month.

### **Are physicians in graduate medical training in the US covered?**

We do not believe these doctors are covered. Residency and fellowship programs are not degree programs and do not appear to be covered by the legislation.

### **Will USCIS reopen cases previously filed and approved in order to put them under the new quota and free up those numbers for people who don't qualify for the bonus quota?**

No. With the exception of cases filed for FY2006, USCIS notes that Congress did not require this and it is only implementing the new quota on a "going forward" basis only.

The USCIS only recently began collecting information in H-1B applications on the level and source of the degree as of the release of its latest version of the I-129 form released earlier this spring.

### **How do I file for one of the new H-1Bs for the 2005 fiscal year?**

Employers seeking H-1B workers for FY2005 will file an H-1B petition at a single USCIS Service Center – the Vermont Service Center. The application should be sent to

USCIS Vermont Service Center  
1A Lemnah Drive  
St. Albans, VT 05479-7001

Applications will be accepted on a first-in, first-out basis until it has allocated all 20,000 H-1B exemption numbers authorized. Applications may not be filed in person and must be submitted by US Mail or by a shipping service normally accepted by the VSC.

### **Can my FY2005 petition be e-Filed?**

No. USCIS will not accept FY2005 applications via e-filing.

### **What about FY2006 cases?**

USCIS is temporarily suspending e-filing of FY2006 cases until it has received all petitions that would apply to the bonus FY2005 quota. USCIS will provide a notice on their web site when e-filing will resume for FY2006 numbers.

### **Can my FY2006 application be "upgraded" to allow for an FY2005 start date?**

Yes. Employers who have already filed an FY2006 H-1B petition which USCIS has approved or which is still pending with USCIS will be given the option to upgrade the application and receive a sooner start date if numbers are available.

In order to "upgrade", the petitioner must submit to USCIS the following:

1. a letter requesting the upgrade
2. either (a) a copy of the approval notice for the FY2006 petition or (b) a copy of the receipt notice for the FY2006 petition or (c) a copy of the first two pages of the related Form I-129 if a receipt notice has not yet been received, or (d) a new Form I-129; and
3. a certified LCA for the period of requested employment (or a copy if not already provided with the FY2006 petition)

The upgrade request must be sent to

USCIS Vermont Service Center  
1A Lemnah Drive  
St. Albans, VT 05479-7001

**Will there be a fee to upgrade a previously filed or approved FY2006 petition?**

No. And there will be no need to pay an additional premium processing fee if that fee was paid previously.

**Won't people who filed for FY2006 numbers and who seek to upgrade have an unfair advantage over the people who waited to file until this rule came out?**

No. Requests to upgrade will be treated as having been filed on the date of receipt at the VSC address and will be subject to the same timing rules as newly filed cases.

**How will USCIS track bonus cases for FY2006 and beyond?**

Starting with the fiscal year that begins in October, USCIS will accept and work cases on a first-in, first-out basis and will track those petitions that qualify for the bonus quota.

Petitions eligible for exemptions based on being a university or qualifying non-profit will be first pulled out and not counted against the 65,000 cap. Cases only qualifying for the bonus quota and not one of the regular exemptions will then be subtracted from the 20,000 bonus quota. After those numbers are used, any H-1B granted for an H-1B applicant with a master's degree or higher from a US institution will be counted against the 65,000 regular cap.

**I read that USCIS issued 10,000 too many H-1B visas last year. What is being done to prevent that from happening again?**

USCIS says it is implementing new technology and enhancing its system capability to allow the agency to monitor H-1B petition receipts on a daily basis. It still must forecast when the H-1B cap will be reached based on the number of petitions already approved, denied and still pending, the period of time that unadjudicated petitions have been pending, and the education level of the petitions that are pending. The USCIS admits that this is an inexact science, but that they must still forecast using those factors. The USCIS will count applications on a daily basis and will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account the factors noted above. Once the USCIS determines that it has received enough petitions to exhaust the 65,000 quota it will announce this and stop accepting applications received after that day. If the cap is reached on the first day filings can be made, USCIS will randomly apply all of the numbers among the petitions filed on the final receipt date and the following day.

**Which form do I use to file?**

Employers may use the Form I-129 issued on March 18, 2005 which incorporates the new Form I-129W, H-1B Data Collection and Filing Fee Exemption as well as the H and H-1B Supplements. The new form MUST be used after May 30, 2005. The older forms can still be used over the next few weeks, but must be annotated according to instructions issued by USCIS. We recommend using the new form to avoid confusion.

**Will Premium Processing be available?**

Yes. Cases for both FY2005 and FY2006 may be filed using premium processing.

**What if I file for an FY2005 start date and too many applications are received?**

USCIS will assume that petitions filing for FY2005 numbers are willing to accept an FY2006 start date if an earlier state date is unavailable. Petitions who seek an FY 2005 number ONLY must, in addition to indicating a state date for employment before October 1, 2005 clearly annotate on the top of the first page of the I-129 the phrase "FY 2004 only."

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### 3. REAL ID Act To Become Law; Asylum, Drivers License Rules to Change

After nearly a yearlong fight between Congressman James Sensenbrenner and allies his in Congress versus nearly 600 organizations advocating for the rights of immigrants, the controversial REAL ID Act of 2005 will become law. The measure will be included in the Emergency Supplemental Appropriations package (H.R. 1268) that is set to be passed as early as this week in Congress and be signed by the President shortly after that.

REAL ID has three major sections – one dealing with asylum applications and removal proceedings; another covering drivers license standards; and a third covering border security.

#### Asylum Provisions

Section 101 of the bill is entitled "Preventing Terrorists from Obtaining Relief from Removal." It makes a number of changes to evidence requirements in asylum applications, applications for withholding of removal and other forms of relief from removal. These changes will generally take effect when President Bush signs the law.

The bill requires asylum applicant so prove that one of the enumerated grounds for asylum was or will be "at least one central reason" for the applicant's persecution. This is actually a softening of earlier language that said that one of the five grounds was "the central reason" for persecution.

Immigration judges will now require asylum and withholding applicants to obtain corroborating evidence unless and applicant cannot reasonably obtain the evidence. The availability of corroborating evidence will be considered a finding of fact not easily reviewable by a higher court.

Asylum adjudicators and Immigration Judges making credibility determinations will make decisions viewing the "totality of the circumstances" and all relevant factors including "demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements... the internal consistency of each such statement, the consistency of such statements with other evidence of the record...and any inaccuracies or falsehood in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor."

The last part regarding whether an inaccuracy needed to be relevant to an asylum claim has been one of the most controversial provisions in REAL ID. According to immigrant rights advocates, minor inconsistencies are not unusual for asylum applicants who have experienced traumatic life events.

The standard above will also apply to withholding of removal cases, removal under the Convention Against Torture law, cancellation of removal, Violence Against Women Act cancellation cases, NACARA, Cuban Adjustment Act cases and other discretionary cases.

Courts will now be barred from reviewing discretionary decisions regardless of whether made as part of a removal process.

The final negotiated version of the bill included a provision stating that while there is no presumption of credibility, if no adverse credibility determination is explicitly made by at the time of the asylum determination, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

A very good piece of news in REAL ID is the elimination of the annual cap on the number of asylees who are eligible to adjust status to permanent residency. Also, the annual limit on the number of people eligible to be granted asylum as a result of being subject to coercive population control measures is now eliminated as well.

### Border Fence

Section 102 of REAL ID waives all legal requirements the Secretary of Homeland Security deems necessary to proceed with the construction of security fences and barriers along the country's borders. Only constitutional arguments may be heard by district courts and only if claims are filed within 30 days of an action by Homeland Security. And the actions of district courts can only be reviewed by the US Supreme Court.

### Terrorist Activities

Section 103 through 105 of REAL ID address terrorist activities and the removal of terrorists. Section 103 broadens the Immigration and Nationality Act's definition of "has engaged in a terrorist activity" and expands the grounds of inadmissibility for engaging in activities seen to be assisting "terrorist organizations." These provisions apply retroactively which means that cases may be reopened by USCIS that have already closed.

According to the American Immigration Lawyers Association, this provision breaks an agreement negotiated during the debate of the PATRIOT Act. Under the Patriot Act, according to AILA, a foreign national who supports a designated terrorist group is automatically deportable. Support of a non-designated group will result in deportation only if the foreign national supports the group's "terrorist activity." Under REAL ID, a person is deportable unless he can prove that he did not know that the group was engaged in terror activities. Also, according to AILA, the provisions would apply to spouses and minor children even if the spouse or child had no knowledge of the terrorist activity or association.

### Habeas Corpus

The restrictions imposed on judicial review under anti-immigration provisions passed in the 1990s are further expanded in Section 106 of REAL ID. The new law will eliminate habeas corpus review wherever judicial review is eliminated under the Immigration and Nationality Act.

Only US Courts of Appeals can review claims under the Convention Against Torture Act as well as constitutional claims or questions of law. Cases pending at US District Courts on the day of enactment will be transferred to US Courts of Appeal.

According to AILA, this provision is likely to be litigated on constitutional grounds and it notes that this is the first such restriction on Habeas relief since the US Civil War.

### Drivers' Licenses

While one might think that the elimination of habeas corpus relief or imposing new restrictions on asylum would be the most important provisions in REAL ID, the drivers' license sections have been the ones that have gotten most of the media attention.

Under Title II of REAL ID, the drivers license provisions of the Intelligence Reform Act passed in 2004 are repealed and new requirements take its place. Beginning in 2008, federal agencies will be barred from accepting for official purposes a driver's license or state identification card unless the issuing state meets new federal requirements. That means no getting on airplanes, entering federal buildings, etc. without an approved license. Realistically speaking, every state will find itself compelled to comply with the law since failure to issue a complying license will have severe implications for a state's residents.

To meet the requirements of REAL ID, the license must include the following:

1. the person's full legal name
2. the person's date of birth
3. the person's gender
4. the person's license or identification card number
5. a digital photograph of the person
6. the person's address of principal residence
7. the person's signature
8. physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes
9. a common machine-readable technology

States must also set up systems to verify identity. License applicants must present a photo identity document or a non-photo document if it includes the person's full legal name and date of birth. The applicant must present documentation showing the person's date of birth. The applicant must present proof of their social security number or verification that the person is not eligible for a number. And the applicant must present documentation of their name and address.

Finally, a state must require evidence that the person is

1. a citizen or national of the US
2. an alien lawfully admitted for permanent or temporary residence in the US
3. has conditional permanent residence in the US
4. has an approved application for asylum or has entered the US in refugee status
5. has a valid, unexpired non-immigrant visa or non-immigrant status
6. has a pending application for asylum in the US
7. has a pending or approved application for temporary protected status in the US
8. has approved deferred action status or

9. has a pending application for adjustment of status to lawful permanent resident status in the US

If a person can prove they fit into at least one of these nine categories, they will be eligible for a temporary license or identification card that will only be valid during the period of time the applicant is authorized to stay in the US or, if there is no definite end to the period of authorized stay, for a period of one year. The fact that the documents are temporary would need to be prominently noted on the card.

In order to extend the validity of the card, applicant would need to present documentation of continuing legal status.

States will now be required to verify with the issuing agency the issuance, validity and completeness of each document presented. Foreign documents other than a passport may not be presented. States will have to sign agreements with DHS by September 11, 2005 to use the Systematic Alien Verification for Entitlements (SAVE) program to verify the legal presence of a person, other than a US citizen, applying for a license or identification card.

States will also now be required to use special digital photography technology, verify social security numbers, refuse to issue licenses to people holding out of state licenses unless the state confirms the license in the other state has been terminated, secure the storage and security of license materials, run security checks on people working at motor vehicle offices, and limiting the validity date of all licenses to know more than 8 years.

States failing to comply with the new requirements will be required to clearly state on their cards that they are not valid for federal purposes and they must use a unique color to alert Federal agencies that they are not acceptable.

States can continue to issue alternative identification documents – like Tennessee's driver's certificates – that state clearly that the document may not be accepted by any federal agency.

Privacy advocates are also concerned about a new database that will be made available to DHS and the states containing the information collected under this Act.

AILA also points out that this law would not have prevented any of the 9/11 hijackers from getting driver's licenses. All entered on valid visas that could have been used to secure licenses under REAL ID. The group that will largely be affected are Mexicans who enter the US without a valid visa.

There is a provision in the statute permitting the federal government to make grants to help states in the transition to REAL ID. However, there is a \$500 million estimated price tag associated with the new law and there is no statement in the law regarding just how much money might be made available.

#### Border Infrastructure and Technology Integration

DHS will be required to study for five years the technology, equipment and personnel needed to address security vulnerabilities within the US for each field office of CBP.

DHS will be required within six months from the date President Bush signs this law to begin a pilot program to use ground surveillance technologies to enhance border security.

Also within six months, DHS is required to develop along with the Transportation Department a plan to improve communications systems between the various federal departments and agencies and state and local agencies.

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#### 4. The New E-3 Visa for Australians – Q & As by Greg Siskind

Congress has created a new work visa category for Australians that in many respects will make it one of the most attractive visas in US immigration law. The new law will largely take Australians out of the H-1B quota (which has a long queue right now) and offer them a visa that is similar, but more flexible than the H-1B. It also has some of the elements of an E treaty visa and can be viewed as a hybrid that should be highly useful to Australian nationals seeking work in the US.

##### **What is the new E-3 visa?**

Section 501 of the Real ID Act of 2005 has made a change to the Immigration and Nationality Act to allow for a new category of E treaty visa. This change creates a new INA Section, Section 101(a)(15)(E)(iii), which allows for the admission of an alien who is a national of the Commonwealth of Australia, and who is entering to perform services in a "specialty occupation."

##### **What is a specialty occupation?**

The term "specialty occupation" means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. The definition is the same as the Immigration and Nationality Act definition of an H-1B "specialty occupation."

##### **What is required of petitioning employers?**

The petitioning employer will be required to file a Labor Condition Application with the Secretary of Labor as required under Section 212(t)(1). The process for this should be virtually identical to the process currently used with H-1Bs. Employers must also file labor condition applications like in H-1B cases and make the same attestations including those regarding paying the prevailing and actual wages, not breaking up strikes, maintaining public access files, etc.

##### **Is there a limit on the number of E-3 visas that will be issued?**

The number of E-3 visas that will be issued will be limited to 10,500 per fiscal year. The spouse and children of the E-3 are allowed to accompany or follow to join the principal, and such spouses and children will not count against the 10,500 cap.

##### **What are the time limits on E-3s?**

E-3 I-94 time limits are the same as E-1 and E-2 visas (as opposed to H-1Bs). More significant, however, is that they can be renewed indefinitely.

### **Can spouses of E-3s work?**

Unlike H-4s, spouses of E visa holders are entitled to work authorization.

### **Can I convert from H-1B to E-3 status?**

The statute does not bar this and it should be possible to change from H-1B to E-3 status

### **When can I file for an E-3?**

In theory, applications can be submitted immediately as implementing regulations are not required. In practice, USCIS may not adjudicate these cases until they have at least established guidelines.

Interestingly, one might simply apply for an E-3 at a consulate and bypass USCIS. The applicant would need to present an LCA and the other documents required above, but USCIS should not have to approve it in advance. This would mean that E-3 applicants can secure visas within days of applying and be in the US quickly.

We will have to wait and see what USCIS and DOS announce, however.

### **Is the E-3 a dual intent visa?**

They are not dual intent in the sense of H-1Bs and L-1s, but they do not have a foreign residence requirement. Applicants need to attest that they intend to depart when their status terminates. A statement is usually enough unless they have clear intentions showing the opposite. But there is case law stating that the expression of a desire to remain in the US permanently as opposed to intending to remain even if legally not permitted, is permissible on an E visa. In other words, wanting to remain permanently is okay as long as one is willing to leave if this is not permitted by law.

E visa applicants also need not demonstrate that they are coming for a limited period of time and they do not need to show a home in their home country to which they plan to return. This would be impractical given the fact that E visa holders can remain in the US for decades.

### **What are the fees for an E-3 visa?**

We don't know what USCIS will charge for a change of status to an E-3 visa but it will presumably be the same as for the E-1 and E-2 categories (\$185). However, the expensive H-1B fees included in the recent H-1B legislation (ranging from \$1250 to \$2000) don't appear to apply to this category. Consular fees should be the same as for other E visas.

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## 5. Congress Offers Booster Shot to Foreign Nurse Employers

One of the unintended consequences of the tech boom of the late 1990s and early part of this decade was the creation of a backlog in visa applications for foreign nurses. Nurses can only enter the US on the EB-3 green card category – the same category used by technology workers. Congress raised the H-1B cap to accommodate the need for more tech workers, but never raised the corresponding green card quotas.

The surge in green card demand that resulted from all of the extra H-1B technology workers finally came to a breaking point at the beginning of this year when the State Department was forced to roll back processing dates – “priority dates” – for workers from the Philippines, China and India. More than 90% of foreign nurses seeking to come to the US are from these three countries. Starting this past January, only applications filed before 2002 were being processed. Most nurses would face an additional two years of waiting.

Facing a dramatically severe shortage of nurses in the country and the sudden prospect of 1000s of nurses not arriving to fill positions at hospitals and nursing homes across the US, Congress acted by freeing up 50,000 green cards that failed to get used over the past four years. Those were visas that might have been issued but since there was no provision for the numbers to roll forward to the next year, they were wasted.

As part of the Tsunami/Iraq spending bill Congress is set to pass this week, Congress extended a provision in the American Competitiveness in the 21<sup>st</sup> Century Act of 2000 that allowed unused employment-based green cards from 1999 and 2000 to be reclaimed for later years. The new law allows for the continuation of this practice for the years 2001 through 2004 as long as the numbers are allocated for nurses and physical therapists (Department of Labor Schedule A occupations) and as long as the number used does not exceed 50,000.

The green cards should become available immediately after President Bush signs the bill next week, but it is not clear how quickly consulates will move to issue the approvals. The bill is not quite as generous as an earlier version approved in the Senate that would have allowed all 140,000 of the potentially available unused green cards to be reclaimed. Half would have been available to nurses and the rest would have been available to all other workers.

While the bill will likely mean enough green cards for the next two to three years based on current demand estimates, employers of foreign nurses will likely still want to pursue further changes. Lengthy processing times for nurses are still a serious problem. Nurses lack a non-immigrant visa category and waiting times to bring nurses into the US are still typically between a year and two years.

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## 6. H-2B Reform Included in Appropriations Law - FAQs

Congress is including in the new spending bill provisions designed to improve the H-2B program. The changes will make more H-2B visas available and also change the way they are allocated to make sure that industries on different schedules have equal access to H-2Bs.

**How will the new law change the way H-2Bs are allocated each year?**

First, employers that need H-2Bs in the second half of the fiscal year have been out of luck recently as winter ski resorts on the west coast have gobbled up available visas early in the fiscal year leaving little for the summer resorts on the east coast, hockey teams needing players, the seafood industry in several states, and various other employers across the country that can't use H-2B workers during the October through March period.

The new law now allocates half of the 66,000 annual H-2B cap for applications for people entering the US in the first half of the fiscal year and half for those entering in the second half.

### **Does the new law increase the H-2B cap?**

Not directly. But it will still have the effect of increasing the cap. The new law will increase the overall number of H-2B visa holders in the US by no longer counting H-2B workers toward the cap if such workers have been counted against the H-2B cap in any one of three fiscal years prior to the year of the start date of the H-2B applications. This is expected to increase substantially the number of H-2B visas available each year since many H-2B seasonal workers have been counted multiple times against the cap.

### **When will the new law go into affect?**

The law regarding not counting previously counted workers against the cap goes into affect for this fiscal year as if the law was enacted on October 1, 2004.

### **Is the cap exemption provision permanent?**

No. It expires on October 1, 2006 and Congress will need to extend it next year.

### **When can I file cases under the cap exemption provision?**

USCIS must begin accepting cases within two weeks after the President signs the law. DHS will also be able to accept applications based on statistical estimates on how many people they think will become cap exempt under the new law since the cap was hit several months ago for this fiscal year.

### **Are there new fees?**

Of course. The fraud detection and prevention fee recently added to H-1B and L-1 cases will now apply in H-2B cases, except the amount will be \$150.

### **When will the new fee go into effect?**

It will go into effect fourteen days after the President signs the new law so the fees will need to be included with all new cases filed under this law.

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7. AILA Statement on REAL ID

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

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THE WHITE HOUSE AND CONGRESS TAKE THE WRONG DIRECTION

Washington, D.C. — Congress is poised to pass, and the White House to sign, the Emergency Supplemental Appropriations bill (H.R. 1268) that would support the military efforts in Iraq and Afghanistan and tsunami relief efforts. Sadly, the White House and Republican leadership compromised the integrity of that important measure by attaching to it the highly controversial, ill-conceived, divisive, and anti-immigrant REAL ID Act (H.R. 418). This measure has generated well-deserved opposition from more than 650 religious, ethnic, privacy, libertarian, immigration, and conservative groups, as well as representatives of state and local governments.

Once enacted, the REAL ID Act will have numerous negative consequences, including: making it extremely difficult for people fleeing persecution to obtain refuge in the United States; suspending the Great Writ of habeas corpus for the first time since the Civil War; increasing the number of uninsured, unlicensed drivers on our roadways; severely limiting the critical law enforcement utility of Department of Motor Vehicle databases; imposing impossible and unfunded mandates on the states; undermining our fundamental commitment to free speech and association; and waiving all laws related to construction of fences at our borders, thereby granting unprecedented, and unnecessary, authority to the Department of Homeland Security.

Along with being fatally flawed substantively, this bill gives Congress a black mark procedurally.

Because Congress held no hearings or meaningful debate on the legislation and amended it to a must-pass spending bill, the REAL ID Act did not receive the scrutiny necessary for most measures, and most certainly not the level required for a measure of this importance and impact. Consistent with the lack of debate and discussion, conference negotiations also were held behind closed doors, with Democrats prevented from participating.

Proponents of the REAL ID Act have cloaked this measure in the rhetoric of enhanced security and/or of controlling illegal immigration. Nothing could be further from the truth. In fact, this measure will not make us safer. Rather, it offers a dangerous detour that will accomplish nothing in terms of safety, and diverts us from the task of enacting comprehensive immigration reform which the American voters strongly support.

AILA welcomes initiatives that will truly make us safer and do not gratuitously scapegoat immigrants.

The White House and Congress should be repudiating rather than passing the REAL ID. Given this measure's negative consequences, we urge Congress to plan rigorous oversight and be prepared to revisit this flawed measure. We also urge the White House and Congress to take the right direction and focus on enacting comprehensive immigration reform to change a broken immigration system into one that is controlled, safe, and legal.

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Founded in 1946, AILA is a nonpartisan, nonprofit organization that provides its Members with continuing legal education, information, and professional services. AILA advocates before Congress and the Administration and provides liaison with the DHS and other government agencies. AILA is an Affiliated Organization of the American Bar Association.

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