

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:

We return this week to our regular newsletter format after catching our breath from a week of major news developments. The appropriations bill containing REAL ID, new green card numbers for nurses, reforms to the H-2B visa category and a new E-3 visa for Australians has now passed both houses of Congress and is on the way to the President for signature. If

you need information on any of these items as well as the H-1B regulations that take effect tomorrow, please review last week's newsletter which is archived on our web site, www.visalaw.com.

But just as we thought we could rest on our laurels, another major development is taking center stage. Remember last year when we reported on President Bush's major immigration policy speech. The first bill was introduced in Congress this week that would put into law what the President outlined in his address. The bill is 150 pages long and has a lot of important provisions in it. We're in the process of summarizing all of the bill's key provisions and will have a separate newsletter on the new law later this week.

In other news, there is a new proposed regulation from USCIS regarding O-1 and P-1 visas. The regulation seeks to require applicants to apply at least six months ahead of time and no more than a year ahead of time. Some of my colleagues are speculating that USCIS simply made a drafting error in requiring applicants to apply six months ahead of time because they can't believe that a policy this misguided would have deliberately been issued. I'm of the opinion that USCIS simply did not realize just how impractical requiring O-1 and P-1 employers to apply so early would be. I represent many clients that file these kinds of cases and can say confidently that this provision would impose a major hardship on employers and workers with no appreciable benefit.

I am writing this article on an airplane on the way to two back to back events that I've been looking forward to for a while. This week the American Bar Association's Law Practice Management Section is having its spring meeting in Orlando. I've plugged LPM before and am happy to do so again. I've been active in this section of the ABA for the last nine years, most recently chairing the book publishing program. If you're one of our lawyer readers and are looking for a great resource for information on finance, management, marketing and technology issues, you ought to consider joining the LPM Section of the ABA. Feel free to email me at gsiskind@visalaw.com if you need more information.

Next, I'm off to Washington, D.C. for a lobbying trip for members of the Board of Directors of the Hebrew Immigrant Aid Society. HIAS, founded in 1881, is the world's oldest refugee organization. It helped to settle my family in the US at the turn of the last century and is today involved in helping refugees of all faiths. With passage of REAL ID and various other attacks on asylum laws over the last few years, HIAS has its hands full. That's why I consider trips like this one so important. Most people never take the time to go to Washington to tell government officials and elected representatives what they think. But such trips can be very effective.

After that, I will be joining a few lawyers who handle physician immigration cases in a meeting at USCIS to discuss issues affecting MDs. It has been nearly a decade since the last such meeting. Hopefully, however, this is the beginning of an ongoing discussion with USCIS on physician questions.

In firm news, several publications interviewed me last week on the passage of the appropriations bill. I was interviewed by Modern Healthcare on the nurse provisions, various Australian papers regarding E-3 and two papers in California on border enforcement issues. And I was interviewed on Bloomberg Radio about REAL ID's drivers license provisions. The articles are linked at www.visalaw.com/news.html.

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: Visa Options for Nurses, Part 2: Immigrant Visa Options

The immigrant visa is normally the only option for nurses because most of the non-immigrant visa classifications are not available to the typical registered nurse seeking employment in the United States.

What are the basic requirements for a worker to qualify for a green card?

Employment-based immigrant visas typically involve three main steps. First, the employer files a Labor Certification application with the U.S. Department of Labor. The purpose of the application is to test the employer's local labor market for available workers. If no qualified and available workers are located, the position is certified as open for a foreign worker.

Second, the employer files an I-140 Alien Worker Petition with the USCIS. The purpose of this petition is to verify that the foreign worker has the minimum requirements to fill the open position, and serves to classify the foreign person as eligible for a particular visa category.

Third, on the basis of the Labor Certification and Alien Worker Petition, the foreign worker makes an application for an immigrant visa at a U.S. Consulate. If the foreign worker is legally present in the U.S., he or she may instead apply for permanent resident status via a process called adjustment of status. A nurse in the US can simultaneously apply for the I-140 and for adjustment of status.

The entire process can take several years. Labor certifications can take anywhere from six months to three years depending on where in the country the application is filed. The I-140 can take anywhere from a month to a year. And another year to two years can be added for consular processing or adjustment of status. As explained below, however, nurses receive processing that is partially expedited.

Do nurses receive any sort of special treatment in green card processing that makes the green card application process faster or easier?

Yes, nurses seeking green cards do operate under an easier system and get their green cards faster than their counterparts in other professions.

Nurses do fit into a green card category with a limited quota. During early 2005, the category for nationals of the Philippines, India and China was backlogged by several years and many nurses have been affected. Congress has just signed a bill that will make 50,000 extra green cards available to nurses so processing should soon return to normal .

As noted above, most employment immigration cases require the employer to first recruit and test the labor market for qualified citizens or permanent residents. After this test is complete, the Department of Labor will certify that no qualified, American worker is immediately available to fill the position. Only then will the employer be able to sponsor a foreign worker. While these labor certifications are often successful, they can be time intensive and do not reflect the immediate needs of the business world.

In 1996, Congress passed legislation that retained nurses on a very short list of pre-certified occupations for which a labor shortage was recognized. The list is included in Schedule A of the labor certification regulations and these types of green card cases are called "Schedule A labor certifications". The Department of Labor (DOL) has already determined that there are not enough American workers who are able, willing, qualified, and available to fill all of the openings for professional nurses. Therefore, no test of the labor market is required and the case can be directly filed with the USCIS. This does not necessarily mean that all cases are approvable or will be handled quickly. The importance of nursing being pre-certified is that it skips the first and most time consuming part of the employment based immigration process.

Note that this pre-certification is limited in scope. It only applies to "professional nurses". Schedule A is not available to Licensed Practical Nurses, Nurse Assistants, or other nursing aides. Professional Nursing is defined as a course of study in professional nursing resulting in a diploma, certificate, baccalaureate degree, or associate degree. More specifically, an acceptable course of study for professional nurses generally includes theory and practice in clinical areas such as obstetrics, surgery, pediatrics, psychiatry, and medicine. Whatever training the nurse has received should result in licensure in the country in which the training occurred. This coursework may have been completed at a U.S. nursing school or an approved foreign nursing program. For an immigrant visa, it is not required that a nurse have a bachelor's degree in nursing, only that he or she completed a professional program in nursing and have subsequently been licensed.

What is the first step in filing for a green card for a nurse?

The initial step in a Schedule A case is to file a Form I-140 application package to the appropriate supporting documentation to the appropriate USCIS service center. There are four regional USCIS service centers. They are located in Vermont, Texas, Nebraska, and California and each service center has jurisdiction over a section of the country. A case is properly filed in the service center having jurisdiction over the place of employment or in the service center covering the region where the employer's office is located. When there is a choice of service centers, employers need to be cautious because the processing times can vary dramatically. This may account for varying experiences in the HR industry as to how long it is taking to obtain the approval necessary before the nurse can apply for consular processing or adjustment of status. For example, beginning in 2003, the Vermont Service Center began expediting cases for nurses. Processing at the VSC is down to less than two months in most nurse cases. However, the other service centers can take as long as a year for the same kind of petition.

What kind of documentation must be submitted with an I-140 employment-based immigrant petition?

Supporting documentation must be submitted with the I-140 as prescribed in 20 C.F.R. 656.22(c)(2). This supporting evidence includes the following:

1. Completed PERM labor certification forms (the recruiting process under PERM need not, however, be completed);
2. A posted notice of the job opening. This notice must include a job description, work hours, and rate of pay. The notice must be posted in the worksite for a minimum of ten business days;
3. Evidence that the petitioning employer has the financial ability to pay the salary offered to the nurse. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. If the U.S. employer employs 100 or more workers, the USCIS may accept a statement from a financial officer of the organization;
4. CGFNS certificate or nurse license from state where the nurse will be working or proof of passing the NCLEX licensing exam and evidence that the nurse cannot obtain a license because he or she cannot obtain a social security number;
5. Nursing diploma or degree;
6. Nursing registration/licensure from the country where the degree was obtained.

The CGFNS certificate provides evidence that the nurse has complied with a three step review of their nursing skills: 1. a credentials evaluation; 2. passage of an English language proficiency exam; and 3. passage of the CGFNS qualifying exam. Once these requisites have been met, the Commission on Graduates of Foreign Nursing Schools will issue the nurse a CGFNS certificate. The purpose of this certification program is to serve as a predictive evaluation process to accurately judge which nurses will be able to meet the requirements for U.S. licensure once admitted to the country. If the nurse has already passed the NCLEX-RN exam, they are exempted from the requirement of obtaining a CGFNS certificate.

When does the health care workers credentialing certificate (the "VisaScreen") come into the picture?

The VisaScreen certificate must be presented to the USCIS prior to adjustment of status and a US consulate prior to issuance of a permanent residency visa. The certificate is NOT required at the start of adjustment application or prior to an I-140 application's approval.

What steps are required aside from submitting the I-140 and getting the VisaScreen certificate?

Upon approval of the I-140 and receipt of the VisaScreen certificate, a nurse is eligible to obtain their immigrant visa through consular processing. If they are in the United States in a lawful status they may adjust their status to that of permanent resident. Adjustment of status applications can be submitted at the same time as an I-140 application or at any time after the I-140 is submitted or approved. See the discussion below for more information on adjustment of status.

Nurses are also required to adhere to licensing requirements of the state in which they intend to work. Licensing requirements for registered nurses are maintained on a state-by-state basis, and each state has slightly different requirements for licensing. To demonstrate eligibility and preparedness for the NCLEX exam, most states require a combination of materials be submitted with the license application. The documents may include CGFNS certification, copies of foreign academic credentials with certified translations, an

education/credentials evaluation and a demonstration of proficiency in English (e.g. TOEFL exam results).

All states permit an individual to obtain a license through examination, and some state permit licensing by endorsement, or acceptance of a registered nurse license from another state or country as evidence of the person's credentials.

Consult the license chart included as an appendix to this handbook for more information on requirements in each of the states.

How does a nurse in the US adjust status?

If a nurse is in the United States, then processing via adjustment of status will typically be easier and it will be possible to get authorization to work much more quickly than through consular processing.

A nurse's employer must file an I-140 for a nurse in the United States just like a nurse residing abroad. But a nurse in the US has the ability to take the NCLEX examination. If the nurse can pass the NCLEX exam, then it is not necessary to take the CGFNS examination. Otherwise, the nurse would still need to present a CGFNS certificate or proof that the nurse has a full and unrestricted license as an RN. A nurse can file an adjustment of status application as well as an application for an employment authorization document at the same time they submit the I-140 application. Once the nurse is licensed by a state and the nurse is in possession of an employment authorization document, the nurse can begin work. License processing times vary between the states. USCIS regional service centers are required to process employment authorization documents in less than 90 days (applicants have the right to request an interim employment document at a local USCIS office if 90 days pass after applying). Adjustment applications typically take 18 to 24 months at USCIS regional service centers. A nurse still needs to present a VisaScreen Certificate prior to completing adjustment of status.

Conclusion

The immigration process may seem somewhat like a maze. However, with proper guidance and some practical experience, it should not discourage a potential employer from pursuing prospective employees. Those who have been successful in obtaining international employees often find them to be very dedicated staff members. Given the current labor crisis in the healthcare industry, the international labor market should not be discounted.

3. Ask Visalaw.com

If you have a question on immigration matters, write Ask-visalaw@visalaw.com. We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.

Q - I have a Bachelors of Engineering degree in electronics. I have no Management Degree. What is the Educational Requirements for a BLANKET L1 A Visa petition?

A - Unlike an H-1B, there are no specific educational requirements for an L-1A position. You just need to show you are able and qualified to do the job.

Q - I am an international student from Pakistan and I completed my Bachelor of Arts degree in May 2004 from a US college. After graduation I applied for Optional Practical Training and was issued an Employment Authorization Card from INS on June 1st, 2004, which is valid for twelve months until June 1st, 2005. I am now almost at the end of my OPT. My F1 visa expires on the 24th of May. However, since my EAD is valid until June 1st I think I am legally allowed to work up to May 31st, correct? Also, I plan to leave the United States and return to Pakistan. I was told by the International Students' Office at my college that I have 30 days after the date my EAC expires to exit the country without any problems from the immigration authorities. Could you please confirm whether this information is correct?

A - You will have 60 days from the date that your OPT expires unless you're admitted to a new program and receive a new I-20 for the new program. In that case, you will have 5 months from the date your OPT ends to begin your new program.

Q - I married a US citizen in 2002. My green card, obtained through employment, was approved in 2003. My questions are:

1. My husband and I are planning to start a family. I am considering these options: (A) working part-time for 6 months (same job, same pay rate), (B) taking time off from work for 6 months (may not get same job and same pay rate), (C) quit working for a year or more and doing childcare at home for extra income. My question is, can I do those options without jeopardizing my PR status?

2. How long do I have to wait to apply for citizenship?

A - I would not worry about jeopardizing your green card status if you quit your job. As for when you can apply for citizenship, it is normally four years and nine months unless you are currently married to and living with a U.S. citizen AND have been married to and living with that same U.S. citizen for the past 3 years AND your spouse has been a U.S. citizen for the past 3 years.

Q - My daughter is currently sponsoring her husband but needs a joint sponsor. I on the other hand I am also a sponsoring my husband can I be a joint sponsor for her and a sponsor for my husband

A - If you can document you have the income to support both, then you can also sponsor your son-in-law.

Last week a federal jury in El Paso, Texas, convicted a former Border Patrol agent Noe Aleman, Jr., of conspiracy to defraud the United States and two substantive counts of alien smuggling. As a result, Aleman faces up to 15 years in federal prison and a maximum \$750,000 fine.

According to a press release, from January 5, 2004, to June 15, 2004, in order to circumvent age limits of U.S. immigration and legal adoption policies he attempted to adopt three teenage girls from Mexico. Testimony during trial revealed that Aleman provided false testimony to the adoption court in order to obtain crossing orders for the teenagers. The crossing orders prohibited the girls from staying in the United States past March 12, 2004. Jurors found the Aleman knowingly violated the orders, keeping the girls in the United States after that date. Jurors also found that he repeatedly provided false information to the United States and the adoption court regarding their ages, whereabouts and parentage. Sentencing for Aleman is scheduled for 9:00 am on July 26, 2005.

The president of the largest union representing Border Patrol has resigned, citing the organization's failing bureaucracy, according to *The Inland Valley Daily Bulletin*. Joseph Dassaro announced his resignation on April 18, 2005. Dassaro has been president of the National Border Patrol Council's Local 1613 since 2000, and has been a Border Patrol agent for 13 years. Chris Bauder, a border agent, will take over as president of Local 1613, which represents nearly 2,500 agents in the San Diego, California sector. Dassaro will continue to advocate for Border Patrol agents and has agreed to join Friends of the Border Patrol, a civilian organization, as a consultant.

U.S. authorities arrested nearly 150 Brazilians who got into Texas unlawfully from Mexico last week. The U.S. Bureau of Customs and Border Protection said the arrests brought the number of Brazilians caught crossing the border illegally from Mexico to 15,428 since the start of the fiscal year on October 1, up from 8,629 in the whole of fiscal year 2004. According to Reuters, U.S. and Mexican government sources attributed the rise to the abolition of visas required by Brazilians entering Mexico in recent years and a catch-and-release policy by law enforcement agencies in the United States.

An organization called Friends of the Border Patrol announced last week that it is forming volunteer brigades to patrol the border near San Diego. Representatives from the group told *The Sacramento Bee* that the patrols would initially be limited to the stretch of border from San Diego to the Imperial Valley. Eventually, they could extend to the Arizona border. U.S. Border Patrol officials say that it could be dangerous for civilians to attempt to stop undocumented immigrants and are cautioning that such activity could interfere with official government patrols.

5. News From The Courts

Eastern District of Virginia Awards Attorney's Fees and Costs Under FOIA

Jarno v. Department of Homeland Security, 2005 U.S. Dist. LEXIS 6912 (E.D. Vir.).

The Plaintiff, an orphaned political asylum seeker from Guinea, sought documents relating to his immigration proceedings and detention by federal immigration officials under the Freedom of Information Act (FOIA). After receiving no response to his request for over three months (far beyond the statutory deadline of 20 to 30 days for response), the Plaintiff filed a complaint against the Department of Homeland Security (DHS). The parties agreed to terms by which the DHS would produce the requested materials, and the Court signed an Agreed Order in accordance with those terms. Pursuant to the Court's Order, DHS provided the requested documents and Plaintiff moved to voluntarily dismiss all claims and requested an award of attorney's fees and court costs.

Courts typically do not award attorney's fees to a prevailing party absent explicit statutory authority. However, Congress has authorized district courts to shift attorney's fees and costs in cases brought under FOIA. The Act states that the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed. The plaintiff is required to show first that he is eligible for, and second, that he is entitled to the fees and costs.

A prevailing party is one whose lawsuit results in the material alteration of the legal relationship of the parties. The Court found that even though the parties reached an agreement on their own, the Court issued an Order that materially altered the legal relationship of the parties and provided the Plaintiff with the relief that he sought in his claim. The Order provided that the parties had agreed to terms, but also gave specific dates on which DHS would be required to provide the information that was requested. Additionally, the Order provided for the Court's ongoing supervision and the Court retained the power to enforce its Order. Therefore, the Court found that the Order was a court-approved settlement that materially altered the legal relationship of the parties, and that the Plaintiff was eligible for attorney's fees and costs.

After finding that the Plaintiff was a prevailing party and therefore eligible for fees and costs, the Court stated that it must weigh four factors in order to determine whether the Plaintiff is entitled to fees and costs. These factors include 1) the public benefit derived from the case, 2) the commercial benefit to the Plaintiff, 3) the nature of the Plaintiff's interest in the records sought, and 4) whether DHS's withholding of the information had a reasonable basis in law. The Court found that the public benefited from the Plaintiff's action under FOIA because the documents requested provided information to the public regarding DHS's handling of the Plaintiff's high profile political asylum case. The Court reasoned that since the case had drawn substantial media attention, these media reports illuminated for the public the overall immigration policies of DHS and of the United States. The Court stated that attorney's fees are appropriate where a FOIA response helps to protect the public's interest in the "fair and just" administration of justice. The Court concluded that it had considered all of the factors required, and in light of the facts that DHS did not question the reasonableness of the amounts sought and that the Plaintiff proved to the Court that the fees were reasonable, that the Plaintiff was entitled to a full award of attorney's fees and costs.

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

Missouri (05/03/2005): <http://www.visalaw.com/missouri.html>
Vermont (05/03/2005): <http://www.visalaw.com/vermont.html>
California (05/03/2005): <http://www.visalaw.com/california.html>
Texas (04/30/2005): <http://www.visalaw.com/texas.html>
Nebraska (05/01/2005): <http://www.visalaw.com/nebraska.html>

7. News Bytes

U.S. Immigration and Customs Enforcement (ICE) has published a fact sheet as preliminary information for employers seeking to learn more about a new federal law that allows the electronic signature and storage of federal employment verification forms. The new law went into effect Friday, April 29, but final regulations on its implementation have not been finalized.

For nearly two decades, all U.S. employers have been legally required to verify the identity and employment eligibility of all employees through the use of the Employment Eligibility Verification Form (Form I-9) and are required to maintain these records for three years after the date of hire or one year after termination. Under a new law signed by the president in October 2004, employers can now choose options for electronic signatures and storage of these forms. These new electronic signature and storage options promise greater convenience and potential cost savings for employers.

For more information, refer to the www.ice.gov Web site for the fact sheet titled "Electronic Signature and Storage of the I-9 Employment Eligibility Verification Form" (April 26, 2005).

The Office of Exchange Coordination and Designation (Exchange Visitor Program) has moved into a new office space. Their Web site shows new room, telephone and fax numbers at <http://exchanges.state.gov/education/jexchanges/contact.htm>. This office is responsible for the administration and oversight of the following categories: government visitor, international visitor, professor, research scholar, students (secondary and college/university), short-term scholar, specialist and teacher.

Mexican lawmakers have proposed a bill to stop Mexicans from traveling to dangerous border areas. The measure is a sensitive one, and the Interior Department has asked its sponsor to temporarily withdraw it for some last-minute changes. The department wants to specify that only police - not soldier - can stop migrants. The bill would allow police or Mexico's migrant-protection agents to designate border areas as temporary high-risk zones and declare them off-limits to average citizens. The bill passed the seven-member Senate Population and Development Commission unanimously in mid-April and was headed for debate on the floor of the Senate when migrant activists in the United States heard about it and began publicly criticizing it.

The USCIS has updated the following forms: I-765, I-485, I-526 and I-698. The new forms are located at <http://uscis.gov/graphics/newforms.htm>.

8. International Roundup

The New Zealand Department of Labor's immigration fraud unit is investigating allegations a former Immigration Service employee kept passports and charged clients for work that was not done. The department last week received four formal complaints about immigration consultant Patrick Ott.

The four complainants said Ott retained their passports and took their money but did not lodge any applications with the department on their behalf. The amounts of money involved range from \$1280 to \$7000.

The four complainants, all of whom were in New Zealand unlawfully, had been advised to make an application to the nearest branch of the department if they wished to remain in New Zealand. Their applications will be considered on a case-by-case basis.

People from the Gulf states of Bahrain, Oman and Qatar can apply for a tourist visa for Australia on the internet, officials in Canberra told Deutsche Presse-Agentur last week. Visitors from the three countries now have an alternative to queuing at an Australian immigration office or mailing their passport to an embassy. The Immigration Department said it would take about 20 minutes to complete the electronic application, which would be processed in seven to 10 days.

9. Legislative Update

[H.CON.RES.95](#) - Establishing the congressional budget for the United States Government for fiscal year 2006, revising appropriate budgetary levels for fiscal year 2005, and setting forth appropriate budgetary levels for fiscal years 2007 through 2010.

Sponsor: Rep Nussle, Jim (introduced 3/11/2005)

Bill Status: 4/26/2005 5:34pm: Mr. Nussle asked unanimous consent that the House disagree to the Senate amendment, and agree to a conference.

Bill Status: 4/26/2005 5:34pm: On motion that the House disagree to the Senate amendment, and agree to a conference Agreed to without objection.

Bill Status: 4/26/2005 5:35pm: Ms. Herseth moved that the House instruct conferees.

Bill Status: 4/26/2005 6:48pm: The previous question was ordered without objection.

Bill Status: 4/26/2005 7:28pm: On motion that the House instruct conferees Agreed to by the Yeas and Nays: 348 - 72 (Roll no. 134).

Bill Status: 4/26/2005 7:28pm: Motion to reconsider laid on the table Agreed to without objection.

Bill Status: 4/26/2005 7:33pm: The Speaker appointed conferees: Nussle, Ryun (KS), and Spratt.

CRS Product: IB10136 Arctic National Wildlife Refuge (ANWR):

Controversies for the 109th Congress

CRS Summary: Passed House, without amendment. Go to the Web page to see the new summary.

[H.R.1268](#) - An act making Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief, for the fiscal year ending September 30, 2005, and for other purposes.

Sponsor: Rep Lewis, Jerry (introduced 3/11/2005)

Bill Status: 4/26/2005 4:37pm: Mr. Lewis (CA) asked unanimous consent that the House disagree to the Senate amendments, and agree to a conference

Bill Status: 4/26/2005 4:37pm: On motion that the House disagree to the Senate amendments, and agree to a conference

Agreed to without objection.

Bill Status: 4/26/2005 4:38pm: Mr. Obey moved that the House instruct conferees.

Bill Status: 4/26/2005 4:54pm: The previous question was ordered without objection.

Bill Status: 4/26/2005 7:11pm: On motion that the House instruct conferees Agreed to by the Yeas and Nays: 417 - 4 (Roll no. 133).

Bill Status: 4/26/2005 7:11pm: Motion to reconsider laid on the table Agreed to without objection.

Bill Status: 4/26/2005 7:32pm: The Speaker appointed conferees: Lewis (CA), Young (FL), Regula, Rogers (KY), Wolf, Kolbe, Walsh, Taylor (NC), Hobson, Bonilla, Knollenberg, Obey, Murtha, Dicks, Sabo, Mollohan, Visclosky, Lowey, and Edwards.

CRS Product: IB98006 Agricultural Export and Food Aid Programs

[H.R.1587](#) - To match willing United States workers with employers, to increase and fairly apportion H-2B visas, and to ensure that H-2B visas serve their intended purpose.

Sponsor: Rep Tancredo, Thomas G. (introduced 4/13/2005)

[H.R.1737](#) - To amend the Haitian Refugee Immigration Fairness Act of 1998 to benefit individuals who were children when such Act was enacted.

Sponsor: Rep Meek, Kendrick B. (introduced 4/20/2005)

Short title as introduced: HRIFA Improvement Act of 2005

[H.R.1867](#) : -- Private Bill; For the relief of Mohammed Manir Hossain, Ferdous Ara Manir, and Maish Samiha Manir.

Sponsor: Rep Andrews, Robert E. [NJ-1] (introduced 4/26/2005)

Committees: House Judiciary

Latest Major Action: 4/26/2005 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[H.R.2040](#) : -- Private Bill; For the relief of Malik Jarno.

Sponsor: Rep Van Hollen, Chris [MD-8] (introduced 4/28/2005)

Committees: House Judiciary

Latest Major Action: 4/28/2005 Referred to House committee.

Status: Referred to the House Committee on the Judiciary.

[S.20](#) - A bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women's health care.

Sponsor: Sen Reid, Harry (introduced 1/24/2005)

Related Bill: H.R.1709

[S.256](#) - A bill to amend title 11 of the United States Code, and for other purposes.

Sponsor: Sen Grassley, Chuck (introduced 2/1/2005)

CRS Summary: Other action. Go to the Web page to see the new summary.

[S.600](#) - An original bill to authorize appropriations for the Department of State and international broadcasting activities for fiscal years 2006 and 2007, for the Peace Corps for fiscal years 2006 and 2007, for foreign assistance programs for fiscal years 2006 and 2007, and for other purposes.

Sponsor: Sen Lugar, Richard G. (introduced 3/10/2005)

Bill Status: 4/26/2005: Returned to the Calendar. Calendar No. 48.

CRS Product: RL32880 Administrative Subpoenas and National Security Letters in Criminal and Foreign Intelligence Investigations: Background and Proposed Adjustments

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

10. Immigration Attorneys Indicted for Smuggling, Fraud and Money Laundering

An indictment was unsealed last week charging a local immigration attorney and two co-conspirators with visa fraud, alien smuggling and money laundering, following an investigation by U.S. Immigration and Customs Enforcement (ICE).

Kenneth L. Rothey, 64, an attorney who practiced immigration law in the Houston area, Horacio Golfarini, 43, a permanent resident born in Uruguay and also president of Capital Services Group, and his employee, Norman Chapa, 52, a U.S. citizen, were indicted March 9, and unsealed last week.

Horacio Golfarini and Norman Chapa were arrested by ICE and Internal Revenue Service Criminal Investigation agents. They are scheduled to appear for hearings before a U.S. Magistrate Judge. Kenneth L. Rothey is believed to be in China; efforts are underway to secure his return to the U.S.

All three defendants are charged with filing fictitious immigration petitions for Chinese nationals and for soliciting local businesses to sell or act as local petitioners to encourage these Chinese nationals to enter the United States and seek employment.

ICE agents uncovered this international visa scam from May 1999 to Jan. 2004 at Rothey's law offices in Houston. Under this visa scheme, Rothey, Golfarini, and Chapa purportedly employed these Chinese nationals at any one of the eight businesses located in Houston, and acted as petitioners on behalf of the Chinese clients seeking to gain employment in the U.S. and ultimately adjust their immigration status in this country.

Rothey and his co-conspirators would then allegedly pay these businesses anywhere from \$10,000 to \$20,000 to control an interest in the company, and then would encourage the Chinese nationals to enter the U.S. as representatives of the Chinese based companies to work as intra-company transferees, or as managers and executives. The defendants are accused of creating the illusion that there was an affiliation between the Chinese-based company and the U.S.-based company and fill out fictitious immigration forms and send them to the U.S. Citizenship and Immigration Service's (CIS) Texas Service Center (TSC) for processing.

Once CIS and the TSC could see the affiliation between the Chinese-based company and the U.S.-based company, the Chinese nationals were allegedly encouraged to enter the country with the help of Rothey and his co-conspirators. The transactions were allegedly supported by Golfarini and others to present these petitions as valid.

Rothey and Golfarini are both charged with nine counts of encouraging unlawful immigration and twelve counts of visa fraud. In addition, Rothey and Golfarini also are charged with a scheme that laundered the funds obtained from their Chinese national clients. Money laundered involving \$267,000 in funds earned by their scams and eight additional counts for money laundering related to financial transactions that helped them conceal the source and nature of these funds.

A fourth defendant, Ricardo Aguirre, 53, from Houston, was also charged in Aug. 2004, with immigration fraud. Aguirre worked with Rothey and admitted he had paid U.S. business owners approximately \$20,000 each for creating fraudulent subsidiary relationships with Chinese companies in order to sponsor the employment-based petitions for his Chinese clients.

The payments were made as part of down payments by a Chinese company to purchase a controlling interest in the U.S. based company, but the deals were never consummated. Rothey paid Aguirre and Golfarini a commission for each U.S. based company that successfully recruited into the scheme.

Aguirre is scheduled to be sentenced June 6 facing up to 10 years in prison, and fines up to \$250,000.

Each defendant faces up to five years in prison and fines of up to \$250,000 for the immigration fraud conspiracy, up to 10 or 15 years for the visa fraud scheme, with fines of \$250,000 and up to 20 years imprisonment per visa fraud count and fines up to \$500,000. The government is seeking to forfeit over \$490,000 in proceeds earned from the defendants' visa scam.

The Internal Revenue Service (IRS) Criminal Investigations Unit also worked with ICE on this investigation.

11. Pilot Program for NAFTA (TN) Visa Begins in Toronto

U.S. Customs and Border Protection will implement a pre-qualification pilot program from April 27 to July 26, 2005 for travelers eligible to apply for admission into the United States under the NAFTA visa category. Canadian citizens who meet the criteria established under NAFTA and who will be employed in a qualifying occupation in the United States are invited to apply for pre-qualification on Tuesdays, Wednesdays and Saturdays between the hours of 10:00 a.m. and 1:00 p.m. in Terminal 3 of Toronto Pearson International Airport. The 90-day pilot program will be available only at Toronto Pearson International Airport.

During the above hours, a pre-qualification adjudicator will be on hand to interview applicants and review their documents. Applicants must present documentation related to their education and experience, in addition to a detailed letter from their prospective employer in the U.S. Applicants who graduated from foreign schools must also present an equivalency evaluation of their credentials. Applicants that fail to meet the conditions for

per-qualification will be advised immediately and given instructions about re-submitting their applications.

A citizen of a NAFTA country may work in a professional occupation in the U.S. provided that all of these conditions are met:

- The profession is recognized under NAFTA.
- The alien possesses the specific criteria for that profession.
- The prospective position requires someone in that professional capacity.
- The alien is going to work for a U.S. employer.

Applicants that meet the conditions for pre-qualification will receive a written notice. Pre-qualified applicants will have 14 days after being approved to enter the U.S. under the TN visa category. On the day that admission into the U.S. is sought, pre-qualified TN travelers must present the written notice of TN approval and pay an application approval fee of \$50 at Toronto Pearson International Airport pre-clearance.

12. High-tech Foreign Passports Won't Be Ready by Deadline

During a recent hearing of the House Judiciary Subcommittee On Immigration, Border Security and Claims, Homeland Security officials said the United States will not be prepared to read high-tech passports of foreign visitors this fall. Officials said the department would not have enough passport readers deployed to every port of entry by October 26, 2005, even if Congress does not extend the deadline for certain foreign countries to have the imbedded biometric technology.

That date reflects a one-year extension approved by Congress last year requiring every country participating in the 'visa waiver' program to have facial recognition technology imbedded into passports or other travel documents by this fall.

Many of the 27 countries in the program have said they would need another extension to meet the October deadline. The European Union has asked Congress to extend the deadline until August 28, 2006.

According to GovExec.com, House Judiciary Committee Chairman James Sensenbrenner, R-WI, has said recently it is unlikely that Congress would support another extension. Homeland Security Secretary Michael Chertoff is scheduled to meet with Sensenbrenner next month to discuss the issue.

Last year, the department asked for a two-year extension, and Congress provided one extra year. Supporters of an extension argue that visa-waiver countries contribute billions of dollars to the U.S. economy each year. The Visa waiver program allows foreign visitors to travel to the United States for tourism or business for 90 days or less without obtaining visas.
