

Siskind's Immigration Bulletin -  
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Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-345-0225; facsimile: 800-684-1267 or 630-604-9306, e-mail: [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com), WWW home page: <http://www.visalaw.com>.

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>.

Editor: Greg Siskind. Associate Editor: Penny Egel. Contributors: Hadley Bajramovic, Kathleen Hines, Virginia Stewart

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1. Openers

Dear Readers:

We're just learning of some movement on the legislative front concerning two of the biggest immigration problems facing skilled and professional workers today – the retrogression of EB numbers and the H-1B cap. We'll write about this proposal in a special alert that will go out separately from this newsletter. The alert will discuss what you can do to make your voices heard in Congress on the need for such legislation.

The President's political problems are not normally the subject of discussion in this newsletter. But they factor into the immigration debate twice this week. First, the Administration seems to be finally moving forward with plans to push immigration reform in Congress. Next week the Senate will have hearings on immigration reform and the White House is now planning on sending senior officials to testify on the need for reform. Last month they pulled their speakers at the last minute. Many speculate that immigration is one of the only issues left for the White House to make headway in Congress and that is why we're seeing movement on this question now.

The White House's post-Katrina problems also arose in the nomination of Julia Myers to head up Immigration and Customs Enforcement. In the wake of a barrage of criticism over cronyism in the appointment process, the appointment of Myers suddenly received more attention than would be expected. Critics question Myers experience in enforcement and management.

Even the Harriet Miers' nomination to the Supreme Court had an immigration connection this week. Miers is, according to many, a "blank slate" and everyone is anxious to know more about her positions on key issues. There are few answers, but we do know that she is remembered for taking on pro bono immigration cases while she was a private lawyer. She put in a significant number of hours working on immigration matters with Catholic Charities of Dallas. How Miers would vote on immigration questions is, of course, not known, but it is helpful to know that she has had real world contact with immigration clients and has some experience with their issues.

In firm news, lawyers at Siskind Susser were quoted in two newspaper articles this week. Jack Richbourg is quoted in the *Village Voice* in an article on undocumented immigrants in the military. And I was quoted in an article in the *Arkansas Democrat-Gazette*

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: K-3 and K-4 Visas

On December 21, 2000, the Legal Immigration and Family Equity (LIFE) Act amended the K nonimmigrant visa category to include the spouse and unmarried children of United States citizens. With this modification, the spouse and children of a United States citizen may be admitted to the United States as K-3 and K-4 nonimmigrants to complete their process for permanent residence. One of the principal benefits of K-3 and K-4 visas is that immediate

families will be unified several months faster than if they were pursuing a typical immediate relative immigrant petition.

### **How do I determine whether I am eligible for a K-3 or K-4 visa?**

To be eligible for a K-3 nonimmigrant visa, the individual must meet the following requirements:

- 1) Be the spouse of a United States citizen.
- 2) Have a pending relative petition, Form I-130 filed with the USCIS.
- 3) Have the intent to enter the United States in order to await the completion of the permanent residence process.
- 4) Have an approved Form I-129F, Petition for Alien Fiancé. This form shall be forwarded by the USCIS to the United States consulate where the spouse wished to apply for the K-3 visa. The consulate specified on the Form I-129F must be one of the following:
  - a) If the marriage occurred outside of the United States, the consulate where the marriage took place, OR
  - b) If the marriage occurred in the United States, the consulate with jurisdiction over the current residence of the alien spouse.

K-4 nonimmigrants are derivative beneficiaries of the K-3 nonimmigrant. To be eligible for the K-4, the applicant must be unmarried, under 21 years of age, and be the child of the principle K-3 visa applicant or holder. Separate Form I-130s and Form I-129Fs are not required for the K-4 applicant. However, in order to ensure that there are no problems during the adjustment of status process, it is recommended that the children's I-130 be filed concurrently with the I-130 for the K-3 applicant.

### **Where do I file the forms?**

The Form I-130 must be filed with the USCIS at the service center with jurisdiction over the residence of the United States citizen.

The Form I-129F must be submitted in the following manner:

If you are filing for your fiancé(e), file this petition at the Service Center with jurisdiction over your area of residence. If you are filing for your fiancé(e) and live outside the United States, submit this petition to the Service Center with jurisdiction over your last place of residence in the U.S.

If you are a U.S. citizen, and are using this form to bring in your wife or unmarried child under the LIFE Act, file this petition at:

U.S. Citizenship and Immigration Services  
P.O. Box 7218  
Chicago, IL 60680-7218

### **Do I have to apply for an adjustment of status?**

Obtaining the K visa and traveling to the United States does not complete the entire process for permanent residence. Once in the United States, each K-3/4 nonimmigrant must file a Form I-485, Application to Register Permanent Resident or Adjust Status, with the INS. These applications for adjustment of status can only be submitted after the spouse's Form I-130 has been approved by the Service. If a Form I-130 has not been completed for each of the K-4 children, the children must file a Form I-130 concurrently with their Form I-485.

**Am I allowed to work with a K-3 or K-4 visa?**

Both K-3 and K-4 nonimmigrants are eligible to obtain work authorization while their permanent residence application is pending. In order to apply for work authorization, individuals must submit a Form I-765, Application for Employment Authorization, with \$175 to the Chicago address listed for the submission of the Form I-129F.

**Can I travel on a K-3 or K-4 Visa?**

Once a nonimmigrant has been granted a K-3/4 visa, the individual may travel outside the United States and be readmitted with a valid K visa.

**How can my K-3 or K-4 status be terminated?**

These visas are no longer valid 30 days after one of the following:

- 1) Denial of the I-130.
- 2) Denial of Adjustment of Status.
- 3) A final divorce of the marriage.
- 4) A K-4 nonimmigrant turning 21 years old or marrying.
- 5) Approval of permanent residence for the K-3, thus terminating the derivative K-4 status.
- 6) The expiration of two years without a request for an extension of stay.

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3. Ask Visalaw.com

If you have a question on immigration matters, write [Ask-visalaw@visalaw.com](mailto: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 misplaced my green card and I would like to know how to go about replacing it.

A - You would file an I-90 form with USCIS. You can find the form and filing instructions at [www.uscis.gov](http://www.uscis.gov).

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Q - I've heard that you can married a permanent resident and apply for a work authorization Is that true?

A - No, it is not true. The permanent resident can typically apply for a green card, but then you need to get in a queue that lasts several years (or until the permanent resident becomes a citizen) before you can proceed to the next step of applying for adjustment of status and securing a work card.

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Q - What is the number still left for Masters Exemption H-1b Visa?

A - The latest cap count for H-1Bs is published online at <http://uscis.gov/graphics/services/tempbenefits/cap.htm>

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Q - I have an H1B stamped with current employer (expires 7/7/06). I will be changing my employer soon and getting a new H1 approval, In December I am visiting India. To reenter US do I have to get my visa stamped again or can I enter using previous employer's H1B and current employer's H1 approval letter?

A - If you have a new H-1B approval and have an unexpired H-1B visa, you should be able to enter with the same visa and your new employer's approval notice (plus proof you are working for the employer such as a letter from your employer or recent pay stubs).

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Q - I just received my green card (approval of I485 due to job). I read some pointers from the web site. But I have some questions here:

(1) Can I leave for my home country to attend my grandma's funeral (hope that I could make it?) with my green card? Is there anything I need to bring with me?

(2) With my green card status right now, do I still need to continue to apply for EAD?

(3) Do I need any special stamp on my passport?

(4) Do I still need to inform the immigration about change of address if I do decide to sell my home in one state and officially settle here in another?

A - You only need your passport and your green card to travel now (aside from a visa to the country to which you are traveling if you happen to need a visa to go the country).

You no longer need the EAD. That was a temporary work approval while you waited on your green card. Now that you have the green card that IS your work document.

As for a stamp, if you have the actual green card, you don't need a stamp. If you're waiting on the card still and need to travel, go to your local USCIS office and you can request an I-551 stamp in your passport which gives you temporary proof of permanent residency.

As for change of address, yes, you need to continue letting USCIS know of your address. This obligation will continue until you eventually become a US citizen.

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#### 4. Border and Enforcement News

In a recent news release from the Department of Homeland Security's Immigration and Customs Enforcement agency, the State of Arizona, and the Arizona Department of Correction (ADC), an agreement was reached among these agencies in which DHS would train and certify ADC personnel in the performance of specific federal immigration enforcement tasks. ADC Director Dora Schriro and ICE and DHS officials signed a memorandum of understanding under which ICE will train 10 ADC officers in duties normally carried out by federal immigration officers. These officers will operate in two Arizona correctional facilities and their tasks will include determining the cause of an immigration violation, completing the processing of criminal aliens, preparing documentation for deportation proceedings while the prisoner serves his or her term, and preparing documentation for deportation after the prisoner has completed his or her term. Training for the ADC officers will take place during a five-week program discussing such issues as immigration law, civil rights, and intercultural relations. Upon completion the officers will receive official certification from ICE. This program is hoped to facilitate the removal of criminal aliens from the United States and to improve immigration enforcement in Arizona. Similar programs are already underway in Florida and Alabama.

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In a recent press release from the Department of Homeland Security, Secretary Michael Chertoff discussed a new plan for the expansion of Expedited Removal (ER) to the entire southwest border, including all Customs and Border Protection (CBP) Patrol Sectors. The ER is focusing on reducing the number of "Other than Mexicans" (OTMs) who have been in the U.S. less than 14 days and who are caught within 100 miles of the U.S. border. Chertoff states that this plan is an attempt to provide greater protection to the United States against terrorists, as well as to return undocumented immigrants to their country of origin as quickly as possible.

ER has been in effect since 1996 as a part of the Illegal Immigration Reform and Immigrant Responsibility Act. It has been implemented in three border sectors already, and CBP agents have been trained and are prepared to implement the plan in all nine border sectors in the southwest.

According to DHS, this process is intended to increase the expediency of returning OTMs to their countries of origin and to reduce the amount of immigrant smuggling along the southwest border. Through recent recruiting efforts, CBP expects to have over 11,000 Border Patrol Agents by the end of they year.

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#### 5. News From the Courts

QUN WANG v. ATTORNEY GENERAL OF THE UNITED STATES, No. 04-2866 (3d Cir. 2005), 2005 U.S. App. LEXIS 20227, found that IJ had failed to maintain impartiality as required of judicial officers.

JUDGES: Van Antwerpen, Becker, Fuentes(Opinion):

Petitioner arrived in the United States from China without valid entry documents and was put into removal proceedings under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). Petitioner conceded removability but applied for asylum, withholding of removal, and protection under the Convention against Torture (CAT). In particular, Petitioner claimed that he had been subject to past persecution on account of political opinion alleging that his wife was forcibly sterilized after giving birth to a second child. The Immigration Judge ("IJ") found Petitioner lacked credibility and denied him relief from deportation. The Board of Immigration Appeals (BIA) affirmed. Petitioner appealed.

Petitioner claimed that because his first daughter was born with a disability and because Petitioner and his wife wanted to have a son. Petitioner's wife became pregnant again in violation of the 1989 Fujian Province Family Planning regulations and was forcibly dragged from their house and forcibly sterilized by the Chinese authorities. The officials also fined Petitioner 12,000 RMB (or "Renminbi"), and upon his refusal to pay, began deducting a penalty from his parents' retirement pension. Petitioner ultimately left China for the United States through a smuggler whom he paid approximately \$ 60,000 in borrowed funds.

The record showed that the IJ's questioned Petitioner during his asylum hearing as to why he had not paid the fine in order to restore his parents' pension and why Petitioner had never sought treatment for his daughter in the United States. The IJ was outraged that Petitioner jeopardized his parents' pension while he paid a smuggler and made comment that Petitioner should have taken better care of his living daughter instead of trying to conceive a son. In the course of her opinion, the IJ repeatedly focused on Petitioner's actions towards his elder daughter and parents.

The court concluded that the conduct of the IJ itself showed that she had failed to remain impartial and characterized her conduct as biased and prejudiced. The court found that the IJ's opinion was highly improper for both its contemptuous tone and its consideration of personal issues irrelevant to the merits of Petitioner's asylum claim. The court pointed out that the IJ was not called upon to determine whether Petitioner was a good father and son but whether petitioner's wife had been forcibly sterilized and whether, if he returned to China, the Chinese government would inflict improper punishment on him for leaving the country. The court stressed that IJs may not use the "personal choices that an asylum applicant has made concerning marriage, children, and living arrangements" to evaluate an alien's credibility.

The court concluded that it could not credit the IJ's adverse credibility determination because it was unsupported by substantial evidence. The court granted the petition for review and recommended that on remand the case would be assigned to a different IJ.

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## 6. Government Processing Times

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

California (10/05/2005): <http://www.visalaw.com/california.html>  
Missouri (10/05/2005): <http://www.visalaw.com/missouri.html>  
Vermont (10/05/2005): <http://www.visalaw.com/vermont.html>  
Texas (09/30/2005): <http://www.visalaw.com/texas.html>  
Nebraska (10/01/2005): <http://www.visalaw.com/nebraska.html>

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## 7. News Bytes

The cap for H-1B non-immigrant worker visas for the 2006 fiscal year (FY) is currently 65,000, with a total of 51,939 cases approved and pending. The H-1B visas allow U.S. workers to enhance their existing labor force with highly skilled temporary workers, usually in specialty occupations that call for technical or theoretical expertise. Those admitted under H-1B visas can work in the U.S. for a period of three years with the possibility of an extension for another three years. The H-1B Visa Reform Act of 2004 made available an additional 20,000 visas for foreign workers with a master's or higher-level degree from a U.S. institution.

Under the H-2B visa category, the current cap is 35,000, with 24,404 cases approved and pending. This category applies to industries with peak load, seasonal or intermittent needs to increase their labor force with temporary workers, usually in such areas as construction, health care, landscaping, manufacturing, and food service/processing. As of May 2005, USCIS began accepting applications under two categories. For FY 2005, the cap is 35,000 workers who are new workers or who are not certified returning workers. For FY 2005 and 2006, all returning workers must be those who "were counted against the H-2B annual numerical limit of 66,000 during any one of the three preceding fiscal years of the requested start date. Any worker not approved during the three fiscal years before the requested start date will not be considered a returning worker and will therefore be subject to the relevant numerical limit that fiscal year.

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In the latest version of the I-90 form from U.S. Citizenship and Immigration Services, instructions are outlined for replacing a Permanent Residence Card (Green Card). Filing for any of the following reasons will result in a base application fee of \$185 and a biometrics fee of \$70: the card was lost, stolen, destroyed, or mutilated; biographic information has changed since the card was issued; the card is nearing its expiration; the holder has taken up Commuter status; the holder was formerly on Commuter status and will now become a resident; the status of the holder has been converted to permanent resident; the card is an old edition. Filing for any of the following reasons will result in a \$70 biometrics fee: the holder has passed his or her 14<sup>th</sup> birthday since the issuance of the card. Filing for any of the following reasons requires no fee, but special instructions must be followed: the card was never received; the card contains incorrect information due to an administrative error. Effective as of October 26<sup>th</sup>, 2005, the base filing fee is increasing from \$185 to \$190 and proper payment must be submitted with the forms.

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Anti-immigrant groups are complaining that relief aid is being given to evacuees of the Gulf Coast in the aftermath of Hurricane Katrina without requiring proof of being a legal resident of the United States. The *Arizona Daily Star* reports that some evacuees who cannot

produce the proper identification have been given the opportunity to sign a sworn affidavit of eligibility in order to receive the aid otherwise prohibited under Arizona state law, which requires proper ID to receive public benefits. This exception has been granted in order to ensure that assistance is given to those who need it, and the Arizona Department of Economic Security (DES) will confirm the Social Security numbers from the affidavits with those from the national database. The affidavits are signed under the penalty of perjury, which DES believes to be an adequate deterrent for any illegal aliens applying for aid.

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*Philippine News* recently reported that a U.S.-based immigration law firm, Reeves and Associates, sued the U.S. Department of State and the U.S. Embassy in Manila over "improper" questioning of individuals during a mandatory medical examination. The questioning concerned the experimental use of illegal drugs and was imposed upon visa applicants in order to bar them permanently from entering the U.S. as habitual drug users. The firm hopes to lift this ban on qualified applicants. The suit was filed on Aug. 29 of this year.

The Manila Embassy allegedly used deceit and misrepresentation to obtain "admissions" from visa applicants concerning any experimental or one-time use of drugs in order to impose a life-time ban on their entry into the U.S. One of the lawyers involved in the case, Robert DuPont, pointed out that many of American high-schoolers have experimented with drugs and that the deception involved in these medical exams will be detrimental to the process of the exam and the trust between the doctor and patient. The far-reaching effects of the lawsuit are expected to impact thousands of cases of wrongfully denied visa applicants and to reunite separated families.

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According to Mike McKee of *The Recorder*, several years ago California passed a law that required all applicants to the bar to give a Social Security number in order to be eligible in an attempt to crack down on dads that owed family- or child-support. One adverse effect of this law, however, has been that foreign lawyers applying to the bar were ineligible. Consulates from Great Britain, Ireland, and Italy have expressed concern over the law's apparent, if undesired, ban on foreign lawyers joining the California Bar.

A new bill was passed on Sept. 6 and 7 that would create an exception for lawyers living abroad who desired to become members of the California Bar, under which they could present a federal tax identification number or another appropriate form of identification in lieu of a Social Security number. The dilemma that currently faces the governor concerns the fact that the proposal was attached to bill AB 664, which would refer tenants in eviction actions with providers funded by State Bar trust funds in addition to federal funds. Despite the passage of the bill in its entirety, Californian Republicans strongly disapprove of the trust fund proposal and would like to see the bill vetoed. Gov. Schwarzenegger has not indicated whether or not he will approve or veto the bill, and he has until Oct. 9 to make a decision or allow it to pass into law without his signature.

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## 8. International Roundup

Austria and Germany have concerns over the long-term effects of incorporating the new Eastern European states into the EU. The Associated Press reports that these nations worry

that the unskilled labor market will be overwhelmed by workers from the new member states who will work for less than current laborers. According to Austria's Federal Economic Chamber, many new workers are by-passing regulations meant to protect its labor market by claiming to be self-employed, what Austrians are calling "fake firms." These one-person companies label themselves subcontractors and work mostly at construction sites as cheap employees.

These fake firms are feared to be detrimental to the labor markets of more developed members of the EU because the current labor market cannot compete with the new workers entering the market for wages much reduced and without paying taxes or for insurance. Current workers simply cannot compete with the depressed wages and governments fear a loss of tax money. An estimated 6,000 to 7,000 workers from the new EU members are employed by fake firms in Austria only. The Austrian Labor Ministry has been investigating reported cases and has doubled its raids on suspect construction sites. Companies caught hiring so-called fake firms are required to pay the taxes and social fees that should have been paid to the employees under normal circumstances, in addition to a fine. The workers are not punished. While entrepreneurs are encouraged in Austria, officials would like to see a fair and competitive labor market and do not want to become entrapped in a fear of a larger EU.

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*The Kathimerini* recently reported that Greece is currently considering launching 12 satellites to monitor its borders. The plan is a possibility, although factors such as cost and development are being taken into consideration. The satellites would orbit at a much closer distance to the earth than other satellites, and would be smaller and less expensive. In addition to monitoring for illegal border crossing, the satellites will also monitor for the construction of illegal buildings that do not have the necessary permits. Every year thousands of immigrants cross into Greece as a means to move on to other countries in Western Europe, and this plan is aimed at lowering that number. The exact cost of this proposed program is unknown, but it is believed that the European Union will be able to provide a portion of the cost.

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## 9. Legislative Update

[H.RES.487](#) : Supporting the goals and ideals of Korean American Day.

Sponsor: Rep Davis, Tom [VA-11] (introduced 10/7/2005)      Cosponsors (3)

Committees: House Government Reform

Latest Major Action: 10/7/2005 Referred to House committee. Status: Referred to the House Committee on Government Reform.

[H.RES.490](#) : Urging the United Nations to establish a commission on the prevention of slavery, human trafficking, and exploitation.

Sponsor: Rep Millender-McDonald, Juanita [CA-37] (introduced 10/7/2005)      Cosponsors (None)

Committees: House International Relations

Latest Major Action: 10/7/2005 Referred to House committee. Status: Referred to the House Committee on International Relations.

[H.R.4028](#): To require employers of temporary H-2A workers to pay such workers at least the greater of the Federal or State minimum wage rate.

Sponsor: Rep Davis, Lincoln [TN-4] (introduced 10/7/2005)      Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 10/7/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.4056](#): -- Private Bill; For the relief of Fouad Yousef Hakim Mansour and Saheir Gamil Shaker Mansour.

Sponsor: Rep Hunter, Duncan [CA-52] (introduced 10/7/2005)      Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 10/7/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

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10. Guest Article: What If They Gave A Visa And Nobody Came?: Why The H-1B Feels Unloved, by Gary Endelman

*Gary Endelman practices immigration law at BP America Inc. The opinions expressed in this column are purely personal and do not represent the views or beliefs of BP America Inc. in any way nor do they represent the views of Siskind Susser. This article is copyrighted by ILW.COM and is reprinted with permission. You can read other articles by Mr. Endelman, and subscribe to future articles at [www.ilw.com](http://www.ilw.com).*

Other than Hurricane Rita, the most explosive force to hit the Gulf Coast in recent days was the announcement on September 23, 2005 by the U.S. Citizenship and Immigration Services that large numbers of cap exempt H visa numbers for graduate degree holders from American colleges and universities remained unused for both FY 2005 and FY 2006, still ripe for the picking. Why is this so and will they wither on the vine? Since there is no reason to think that these underwhelming numbers are the product of employer retrenchment or economic decline, there must be some other reason. Is there a larger lesson perhaps, one that tells us something about the extent to which the employment-based immigration system still remains dangerously divorced from the economic reality that it is supposed to serve? Let's find out.

The H-1B Visa Reform Act of 2004, which took effect on May 5, 2005, makes 20,000 new H-1B visas for foreign workers who hold graduate degrees from US colleges and universities exempt from the H cap restrictions that applies to their less fortunate baccalaureate brethren. As of September 19th, only two weeks before FY 2006, and several months after USCIS started accepting applications, only 12,058 cap exempt H approvals have come down with an additional 868 pending for a grand total of 12,926 out of a possible 20,000. The tote board for FY 2006 is equally uninspiring: 7,099 approvals and 5,340 cases pending. Was all the hoopla over the H shortage worth it? Is this all the H-1B Visa Reform Act of 2004 brought us? Nothing more? This comes at a time when 5 US Senators, both Democrats and Republicans, wrote to DHS Secretary Chertoff to argue that his agency should make the unused FY 2005 Chile/Singapore H-1B visa numbers available on October 1, 2005 as required by Section 214(g)(8) of the Immigration and Nationality Act, rather than on October 1, 2006, the start of FY 2007, as previous DHS press releases indicated would be done.

It seems as if once again our policy makers have misjudged what the H demand is all about. If the customers want one type of H, why is Congress trying to sell another? Clearly, there is a need for more Bachelor H numbers and fewer graduate degree H exemptions. If the H is a work visa, why not give it the flexibility that the American economy wants it to have? There is no carry-over mechanism in the H-1B Visa Reform Act of 2004. This is a "use it or lose it" game: either a cap exempt H number is used during a specified fiscal year or it is gone. It cannot benefit a future H beneficiary, no matter how unique this person is or how much his or her services will be in demand by US employers. This makes no sense. Who benefits from such a straitjacket? There are several possible things that can be done. Pick your favorite:

If we can recapture unused immigrant visa numbers from past fiscal years, we should be able to do the same for H cap exempt numbers. Any excess H numbers should carry over into the next fiscal year. A simple technical amendment to the H-1B laws can accomplish this.

Since US employers are clearly more interested in recruiting foreign workers with bachelor-level degrees, any unused cap exempt numbers should be returned to the system in the first 45 days of the next fiscal year, precisely as is now done with the Singapore/Chile numbers. Taken together, this double dose of visa availability should jumpstart the moribund H visa lifeline and give it renewed relevance which it now sadly lacks. Here again, the patient does not require radical surgery; a neat nip and tuck on an out-patient basis should be enough to do the job.

The H visa is not really a temporary visa but a half-way house on the road to the green card. That being the case, why not allow a transfer of spare H numbers over to terribly backlogged immigrant visa categories, with special focus on India and China. If you prefer a geographically neutral approach, how about some life support from the H to the Unskilled Worker category to bring it back from the dead? After all, it is cold comfort to the PhD in Chemical Engineering who gets an H but has to leave the United States when his American employer can not wait a decade for the green card to materialize out of the mist. An expansive H policy cannot be reconciled with massive immigrant visa retrogression. A high level of H migration serves no discernible national purpose by itself. Employers recruit employees for the long haul, not just for three or six years.

The true critique of our current employment-based immigration policy is not that Congress has misjudged demand but that, having done so, it does not provide a sure and simple way to bring supply and demand into meaningful alignment. However, this is not the true problem, which is an unwillingness or inability to consider the consequences of a specific policy initiative for the employment-based system as a whole. That is the bill of indictment. It is, for example, unfair to note that the Child Status Protection Act will not help a child from India or China from aging out while waiting for their parent's priority date to become current, since there were no EB backlogs when Congress enacted the CSPA. What is worth saying is that Congress should have anticipated their return, or at least made provision for this possibility. When USDOL made PERM the centerpiece of its re-engineering, did anyone consider what impact all these newly minted certifications would have on the immigrant quotas from India, China or the EB 3 category? Would it not be consistent with the purpose of PERM to place in the PERM model some remediation trigger that could accelerate adjudication to avoid the impact of visa retrogression? How is it consistent to have no limit on the number of PERM approvals each year without any prospect of the alien beneficiary being able to do something with this certification? Much the same flaw surfaces in the notion of making US graduate degree holders exempt from the H cap. If you are going to take this first step, then take the next one and make such adjustment of status applications exempt

from the EB quota limits. If America needs Master's and PhDs who fill its graduate schools for a short time, then why do not need them for a long time?

The only purpose of any employment-based immigration is to serve the American economy and make it more competitive in the world arena for the benefit of US employers and the workers who provide the talent and energy that makes them run. This cannot be done unless our immigration policy has the capacity to respond to change in the same way that the economy does. It is not surprising that we have a static immigration policy designed to serve a dynamic economy. Indeed, we could hardly expect anything else from policymakers who think of immigration as a problem to be controlled rather than an asset to be maximized. Only when the veil is lifted from the eyes of Congress will this change. Nor is Congress alone here, for what unites the Left and the Right is a shared belief that immigration is international social work designed to help the poor immigrant; neither Sen. Kennedy nor Pat Buchanan thinks the rest of the world can do the home folks much good. Employment-based immigrants are only grudgingly accepted as a necessary evil, an afterthought that must be tolerated, but always at arms length, never to be accepted or embraced. The true objection to the employment-based immigration policy we have today is not there are too few visas, although this is surely the case, nor that the system is overly complex and excessively bureaucratic serving no significant national purpose. While all this is so, that is beside the point.

The true objection is that those who make the immigration laws do not understand why we have them. When they figure that out, change will come, but not until then. While the current employment based immigration system shortchanges aliens and frustrates employers, the real sin is that it fails to provide America with the human capital on which global economic dominance most surely depends. The issue is not whether an H quota is large or small. The issue is that the H quota, or any visa quota, must vary according to changes in the American economy - more when it is called for and less when it is not. The notion of a fixed immigration quota that is set in stone and can never change, unless and until Congress acts, deprives American employers of the ability to adapt when adaptation is necessary. It limits economic growth and is a job killer.

We can no longer have immigration reform on the cheap, if we ever could. America has never had the courage to look itself in the mirror and decide how much immigration it wants and what it is willing to pay to get it. It would be intellectually consistent, if economically insane, to call for a moratorium on H approvals in the face of chronic immigrant visa backlogs. What is not logical is to think that the H visa, or any single element of the EB mosaic can be understood by itself, separate and apart, in isolation from the whole. This is the cost of complexity, the consequence of an EB system that has grown like topsy without any real rationale or sustaining purpose. If we want more immigrants, then let us have them, and not simply extend the H status as a quick fix substitute. If we want more Hs, then let us acknowledge that this is an empty gesture devoid of substance unless there is a direct and dramatic expansion of the EB quota. But, if we as a nation decide we do not want large scale migration, then there should be no cap exempt H cases or any PERM system for that matter. What is the point? We have never had this national conversation and we need to. While there is still time.

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11. Guest Article: RFID and the Immigration Surveillance Society: New DHS U.S. Visit Pilot Program to Use RFID Tagging to Track I-94 Admission Documents for all Nonimmigrants, by Angelo A. Paparelli

Angelo A. Paparelli is a California certified specialist in immigration and nationality law and managing partner of the California-based Paparelli & Partners LLP. Angelo serves on two nonprofits (the American Immigration Law Foundation and Children First) and writes a blog offering solutions to America's dysfunctional laws and policies: [www.nationofimmigrators.com](http://www.nationofimmigrators.com). All opinions expressed in this articles are personal and do not represent the views or beliefs of Siskind Susser.

Planning to work, engage in business or research, tour or study in the United States? Thinking about entering the country from one of the land borders in Arizona, New York or Washington State? Well if you are, then you will be enrolled in a new Homeland Security Radio Frequency Identification (RFID) pilot program at the land ports of Nogales East (Deconcini) and Nogales West (Mariposa) in Arizona; Alexandria Bay (Thousand Islands) in New York; and Pacific Highway and Peace Arch in Washington State.

Since August 4, 2005, the Form I-94 you receive upon entry at one of these ports – the "Admission/Departure Record" that confirms your nonimmigrant visa category and period of admission – will be embedded with an RFID chip that can be read from a distance of 30 feet. An RFID reader will reveal a number tied to your file at the Department of Homeland Security (DHS), and your entry and departure from the U.S. (assuming you also leave from one of these ports) will be tracked electronically.

But how else might your movements be tracked?

The DHS has gone to great lengths in its [Federal Register notice](#) to describe its privacy protections and try to reassure us that there will be tight controls on access to, and use of, the RFID-enabled records. The agency has even published a [Privacy Impact Statement](#), and offered soothing words in a recent [press release](#):

*"There are layers of defense to ensure privacy: no personal information will be included on the RFID tag; and the serial number on the tag cannot be changed. Additionally, personal information is only processed within DHS databases and RFID technology tags are tamper proof and difficult to counterfeit, with security features to prevent the misuse of information."*

But to this blogger, as reported in the linked article ("[Electronic Tags to Track Immigrants](#)"), the electronic surveillance of nonimmigrants' entries and departures may be just the nose of the camel under liberty's tent and may portend even greater encroachments on civil rights and privacy.

Well, if you share these concerns, let your voice be heard. The DHS is soliciting written comments, which must be submitted on or before October 3, 2005

Here is how the government explains the procedure:

"You may submit comments identified by DHS-2005-0011 to the Docket Management Facility at the EPA. To avoid duplication, please use only one of the following methods:

"Web site: <http://www.epa.gov/edocket>. Follow the instructions for submitting comments at that Web site.

"Mail: Written comments may be submitted to Craig Howie, US-VISIT, Border and Transportation Security; Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209."

12. Hurricane Katrina Assistance for Affected Persons with Immigration Concerns -  
UPDATED

**What disaster assistance is available to immigrants and other aliens affected by Hurricane Katrina?**

Many different programs offer disaster assistance to qualified immigrants (usually permanent residents) including food, rental and mortgage assistance, temporary housing allowances, grants for repairs, short-term cash, small business loans and more. The Guide to Immigrant Eligibility for Federal Programs, Revised September 2005 published by the National Immigration Law Center lists the following agencies with an overview of the disaster assistance available to qualified immigrants:

**Federal Emergency Management Agency (FEMA)** provides:

Temporary housing assistance, or rental payments for persons displaced due to Hurricane Katrina.

Mortgage and rental assistance for economic hardship suffered offered to Hurricane Katrina's victims who may also face eviction or foreclosure.

Minimal repair money up to \$10,000 for homeowners so that they may restore habitability of their homes.

Look for **FEMA** Disaster Recovery Centers in affected areas.

**The Individual and Family Grant Program (IFGP)** provides:

Money for repairs, replacement of household items, job essentials, medical, dental and funeral costs in the form of grants to those affected by Hurricane Katrina.

Money for purposes other than medical, dental and funeral for those persons affected by Katrina and not eligible for SBA loans, or for those persons who received an inadequate SBA loan.

**IFGP** is administered through Offices of Emergency Services or similar state agencies

**Disaster Unemployment Assistance (DUA)** provides:

Cash to replace income for those who are unemployed due to Hurricane Katrina.

**DUA** is administered through the Department of Labor through state employment agencies.

**Food Programs** provide:

Emergency food stamps and food are provided to meet emergency needs.

**Food Programs** are administered through state social services agencies and similar local organizations as a service provided by the U.S. Department of Agriculture.

**Small Business Administration (SBA)** provides:

Low interest loans for repairs to homeowners and renters as well as to large and small business owners.

**National Immigration Legal Center (NILC)** has an overview of Immigrant Eligibility for Disaster Assistance on the website at [www.nilc.org](http://www.nilc.org)

### **Which immigrants qualify for these programs?**

“Qualified” immigrants can apply for any of the benefits described above. They include the following groups:

- lawful permanent residents
- refugees, asylees and certain parolees
- Cuban/Haitian entrants
- battered spouses and children pursuing immigration benefits based on that status

Undocumented and non-immigrant workers in the US are eligible for non-cash, in kind emergency disaster relief such as food and shelter, search and rescue and emergency medical care.

For more information, go to [http://www.nilc.org/disaster\\_assistance/Disaster\\_Relief.pdf](http://www.nilc.org/disaster_assistance/Disaster_Relief.pdf).

### **Can non-immigrants accept aid from FEMA?**

In certain circumstances, non-immigrants may be eligible for relief, including cash relief, if the non-immigrant is displaced from a household that included a person individually qualified for aid as a “household member.” The qualified member of the household must submit the FEMA applications. As we have recently learned, in the case of a Foreign Student with F-1 status, a roommate may be considered a member of a household for the purposes of FEMA relief eligibility.

### **If I accept emergency assistance, am I at risk of being considered a “public charge.”**

No. Accepting assistance will not have a negative consequence on your immigration status unless you fraudulently obtain such assistance.

### **Will undocumented aliens expose themselves to deportation if they seek help?**

Estimates suggest that about 40,000 undocumented Mexicans were living in Louisiana, the majority in New Orleans, at the time Hurricane Katrina devastated the area.

**According to an Associated Press report, the Department of Homeland Security has refused to state that undocumented immigrants who seek help will not be arrested and deported (despite making such a statement after 9/11. And Immigrations and Customs Enforcement has stated that ICE officials continue to operate in the affected area (though they state their goal is to preserve law and order).**

President Vincente Fox announced last Friday, September 2, 2005, that Mexican and U.S. government officials have agreed those migrants who are not documented, and are affected by Hurricane Katrina, will not be subject to any pressure or prosecution by U.S. officials. The agreement allows those victims who are undocumented to approach authorities and ask for support and aid. But we have not seen any other information about such an impending agreement.

Additionally, temporary foreign consulates will be set up near the disaster area to help Mexicans and Central Americans in need of assistance. Embassies from other countries should also be contacted for advice. Visit [www.embassy.org](http://www.embassy.org) to find the embassy of your country.

### **Can employers hire an individual who has no personal documents for I-9 Employment Eligibility Verification?**

The Department of Homeland Security (DHS) announced on September 6, 2005 that it will refrain from initiating employer sanction actions for the next 45 days for violations of I-9 Employment Eligibility Verification procedures. U.S. employers are responsible for completing and retaining documents from hired individuals. Regulations require employers to verify employment eligibility and identity through original documents presented by employees.

Due to the losses caused by Hurricane Katrina, many individuals have lost documents required by this procedure. Also, many government agencies in the affected regions have suffered destruction or damage so that many individuals are unable to apply for replacement documents.

The DHS will not enforce this procedure for the next 45 days so that employers can hire individuals evacuated or displaced from affected areas, otherwise eligible for employment, but lacking personal documents. DHS will review this policy at the end of 45 days.

Note that employers are still required to complete I-9 forms for new employees as much as possible but will not be penalized if documentation is not available.

### **What will happen with all petitions and cases pending at the USCIS, DOL, and EOIR offices in New Orleans?**

All offices in New Orleans are currently closed. As of September 9, 2005, the USCIS has reported that all files in New Orleans are intact, but it will likely be some weeks before they are accessible.

USCIS employees have been deployed to impacted areas so that they may reach out to affected USCIS customers personally.

In the meantime, the New Orleans operations office is located in the Memphis, Tennessee Sub-Office and all other USCIS offices will be assisting in providing services and benefits to those affected by Katrina. In addition, many questions can be answered and forms can be filed by visiting the website at [www.uscis.gov](http://www.uscis.gov).

The address for the Memphis Sub Office is 842 Virginia Run Cove, Memphis, Tennessee 38134.

Other regional offices servicing USCIS customers are as follows:

**USCIS office/ Mississippi**

100 West Capitol Street  
Jackson, Mississippi 39269

**USCIS office/ Arkansas**

4977 Old Greenwood Road  
Fort Smith, Arkansas 72903

The USCIS established the following points of contact for those in need of assistance in Texas:

**Dallas District Office**

8101 North Stemmons Freeway  
Dallas, Texas 75247

Located between Mockingbird Lane and Empire Central inbound side of I-35.

Contact: [Jerry.Sapp@dhs.gov](mailto:Jerry.Sapp@dhs.gov)

**Houston District Office**

126 North point  
Houston, Texas 77060

Located in north Houston in Greens point area, approximately five miles south of Bush International Airport.

Contact: Norma Eskimo Lacy (281) 774-5873

**San Antonio District Office**

8940 Fourwinds Drive  
San Antonio, Texas 78239

Located in northeast San Antonio in the cloverleaf intersection of I-35 and Loop 410.

Contact: Jacque Crouse (210) 967-7141

Also, the National Service Center can provide immigration assistance and direction to displaced customers who call 1-800-375-5283. For the latest information on services provided to USCIS customers affected by Katrina, visit: <http://uscis.gov/graphics/katrina.htm>.

No filings can be made at Immigration Court in New Orleans and the Board of Immigration Appeals (BIA) has suspended work on cases that originated from New Orleans. At this time, the Executive Office of Immigration Review (EOIR) is working on uniform policy for filings for the regional offices in affected areas and is considering issues such as aging of petitions, filings, deadlines, reconstruction of files and more as they come up.

The Department of State (DOS) will give priority appointments to Family and Next of Kin of hurricane victims. All DOS posts will give humanitarian consideration to applicants and accommodate emergency cases as quickly as possible. This special consideration will be limited to family and next of kin. DOS officers will refer applicants looking for loved ones to the website compiled by FEMA at <http://www.dhs.gov/dhspublic>. Click on Finding Friends and Information.

### **Are the records lost from USCIS in New Orleans?**

The USCIS has announced that their office in New Orleans was not damaged and that its records are intact.

The National Records Center recovered the immigration files from the New Orleans offices and is currently developing procedures for access to these files by offices assisting hurricane evacuees.

### **How will the Immigration Court in New Orleans be affected?**

The court is closed until further notice. We have been informed that no action will be taken on any case arising out of hurricane-affected areas until proper procedures are set up.

We do not yet know the state of records at the Immigration Court and the court has said very little except that its personnel are safe.

### **Have naturalization services been cancelled for USCIS customers from the New Orleans district?**

Yes, naturalization services in the affected areas have been cancelled until further notice. Those who have pending naturalization and adjustment of status interviews will be contacted as soon as information becomes available.

However, USCIS offices are currently working with court systems to offer naturalization services to applicants outside normal jurisdictions.

### **How can affected USCIS customers replace lost immigration documents?**

All USCIS offices will assist those affected by Katrina in replacing immigration documents. The USCIS offices will verify identity and immigration status through electronic file data before re-issuing immigration related documents.

### **What should J-1 exchange visitors do if their programs have been disrupted by the hurricane?**

The DOS advises all J-1 exchange visitors to contact their program sponsors. We do not expect J-1 visa holders will be penalized in any way for the disruption, but have not received further information yet.

### **What should F-1 or M Foreign Students do if they are currently studying at a school affected by the disaster?**

Foreign students should attempt to contact the designated school official if available. If not, contact the SEVIS office at 202-305-2346 or email [SEVIS.source@dhs.gov](mailto:SEVIS.source@dhs.gov) and include date of birth, SEVIS ID# and school information. Foreign students should let the SEVIS officer know if they plan to delay entry until the school is operational, or transfer to another educational institution. New F or M students who were unable to contact their designated school will receive a new report date and new I-20 if the school is operational. Students who transfer to a new school should contact the school directly for the new I-20. This particular transfer will not be subject to a new SEVIS fee. Still, students may need to obtain a new visa that indicates the new school. Students will also not have to pay a new MRV fee.

The Department of State asks that inquiries about foreign students be directed to SEVIS to <http://www.ice.gov/SEVIS>, which has detailed information for students affected by Hurricane Katrina concerning the following issues:

- Transfers
- Transcripts
- Status concerns
- Residence and money problems
- Lost documentation
- Address changes
- OPT issues
- Fall enrollment problems
- Contact information

### **What happened to passport applications processed through the New Orleans Passport office?**

The DOS announced on September 7, 2005 that all materials in the New Orleans Passport Agency have been collected and transported to another location. These materials include personal documents and applications from individuals applying for passports.

The Bureau of Consular Affairs is in the process of mailing postcards to applicants notifying them of the disruptions and possible delays caused by Hurricane Katrina. Anyone with pending passport applications at the New Orleans Passport Office planning to travel in the next six weeks should contact the National Passport Information Center at 1-877-487-2778.

The DOS has established two offices to help people who need a passport in 14 or fewer days. The emergency office number is 202-663-1822. Those who can wait more than two weeks to get passport may call 1-877-487-2778.

**What if I have family impacted by Hurricane Katrina and need to travel to the US as quickly as possible?**

The Department of State has announced that consular posts are instructed to expedite visa appointments for immediate family members and next of kin of Hurricane victims and are requested to extend "humanitarian considerations.

**What if I lost my job as a result of the hurricane and I am on a non-immigrant work visa specific to that job?**

Technically, one must be employed by the sponsoring employer in the typical non-immigrant work visa scenario in order to remain in legal status.

If one is still on the payroll of an employer, then arguably there is no status violation. The worker could argue that the leave was involuntary and applies across the board to all workers so there is no "benching." And USCIS is expected to take a liberal approach when it comes to people affected by Katrina.

As for terminated workers, we still have no instructions from USCIS. We believe it will be accommodating in forgiving status violations caused by the storm and allow late filed change of status applications as workers locate new employment. Regulations permit late filing when there are extraordinary circumstances and this would certainly be the case here.

A possible strategy would be to file to change status to that of a visitor and request a waiver of the requirement to timely file for such a change. Then when a new job is found, apply to change back.

We will advise readers as we learn more.

**What if the hurricane causes me to be late in meeting a filing deadline or miss an interview?**

We are awaiting information from USCIS, DOS, EOIR and DOL on late filings, but expect each agency to be accommodating. One key deadline is for Diversity Visa applicants who must complete processing by September 30<sup>th</sup>. AILA is working with each agency on establishing a policy to ensure applicants are not penalized because of the storm.

**Do I need to file an AR-11 form if I have been displaced?**

All immigrants and non-immigrants are required to submit an AR-11 form each time they move to a new location. USCIS has not commented yet on what to do with respect to AR-11 forms, but the easiest thing to do is just to download the form at [uscis.gov](http://uscis.gov) and mail it in. If that is not possible, we expect USCIS to be forgiving as long as the requirement is met as soon as possible.

**What will happen with cases pending in the United States Fifth Circuit Court?**

The U.S. Fifth Circuit is closed and will remain closed until September 13, 2005. No filings can be made at this time. Therefore, all filing deadlines on or after August 24, 2005

through September 30, 2005 have been automatically extended until October 3, 2005 and may be extended further. Please check filing procedures after Hurricane Katrina posted on the website at [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov) before filing.

True emergency matters, e.g. deportation cases with imminent and confirmed deportation dates, may be filed by fax at 713-250-5050 or mailed or delivered to the following address:

Chambers of Chief Judge Carolyn Dineen King  
Room 11020  
515 Rusk Street  
Houston, Texas 77002

The Fifth Circuit anticipates opening the clerk's office on September 14, 2005 to handle a broader range of matters. Please consult the website frequently to receive updated information.

### **Can immigration lawyers displaced by Hurricane Katrina practice law in other states without a license?**

Immigration lawyers have always had greater flexibility to practice in other states than where they took the bar examination because immigration law is strictly federal in nature. However, beyond this, state bars in states bordering those directly affected by the hurricane have issued memoranda in recent days making it clear that they will be flexible. A good place to go for more information on this topic is [www.helpkatrinalawyers.org](http://www.helpkatrinalawyers.org).

Texas is a good example of a state that has quickly moved to make things easier. The Texas Supreme Court ordered that displaced lawyers from regions affected by Hurricane Katrina would be permitted temporarily to practice law in Texas.

The Texas Supreme Court also instructed the State Bar to withhold for 30 days suspensions due to nonpayment of fees for Texas licenses for those lawyers from affected regions with Texas licenses. Additionally, late fees will be waived for those applicants from Katrina-affected regions who are planning to take the next Texas bar exam, but did not meet the August 30 deadline.

### **Will Congress act to help immigrants facing adverse immigration consequences as a result of the hurricane?**

A legislative package is in the works that will address many issues immigrants are facing as a result of the storm. The bill may resemble a similar law passed after 9/11. There are some in Congress who have already expressed hostility and want to ensure that no one is better off from an immigration point of view after the storm than before it. We will report on this as we learn more.

### **I have had difficulty reaching my lawyer. What should I do?**

First, as chair of the American Immigration Lawyers Association's Katrina Task Force, I have been in contact with most of the immigration lawyers affected by Katrina. Only a few have not been in communication with me. The American Immigration Lawyers Association is working with all affected lawyers to get their phones working and we expect this to be accomplished within the next few days. While they are scattered across many cities, they

still will be able to represent you. In most cases, it is not necessary to use a local immigration lawyer. And where a local lawyer is needed, AILA members are working with Gulf Coast lawyers to appear on their behalf.

In the mean time, you can contact AILA at [hurricane@aila.org](mailto:hurricane@aila.org) and they should be able to get you in contact with your lawyer if you have not already had success.

Most affected lawyers, by the way, still have email working and still have web sites running. So consider using those means of communicating.

### **What will happen to correspondence from government agencies being sent to addresses in affected areas?**

The American Immigration Lawyers Association is working with USCIS right now on a policy that will minimize problems associated with correspondence going awry due to the storm. We will report as we learn more about the policy that will be taken.

The USCIS announced that Service Centers quickly changed procedures to ensure that correspondence was not sent to addresses that could not accept mail as a result of Hurricane Katrina.

Disclaimer: This newsletter is provided as a public service and not intended to establish an attorney client relationship. Any reliance on information contained herein is taken at your own risk.

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### 13. ICE Nominee's Qualifications Questioned

Julie L. Myers, the Bush administration's choice to head U.S. Immigrations and Customs Enforcement, has recently come under fire from lawmakers and experts on immigration who do not believe she is qualified for such a demanding position. According to Eileen Sullivan and Jim Morris of CQ Homeland Security, these critics believe that the new leader of ICE should have experience in both law enforcement and management, qualifications that they say Myers does not have. Myers was the former chief of staff under Michael Chertoff, the current head of the Department of Homeland Security (DHS), in the Department of Justice.

The position requires five years of management experience in law enforcement, which Myers just barely fulfills. Her experience includes work as an assistant U.S. attorney, work in the Departments of Treasury and Commerce, and experience as chief of staff in the Criminal Division of the Department of Justice under Michael Chertoff, who is now the current Secretary of Homeland Security. The principle objections to Myers' nomination stem from her qualifications and several senators do not believe that her experience is sufficient for the post. One such senator is George V. Voinovich of Ohio, who originally doubted her qualifications and particularly her ability to manage a 20,000-employee organization. Voinovich, however, changed his mind after speaking with Myers and her prospective boss, Michael Chertoff. Chertoff wants Myers for the job, and their previous professional relationship is promising for future success.

ICE was formed from parts of the Immigration and Naturalization Service (INS) in 2003 as a part of the new DHS and is now the second-largest investigative government agency. The

only confirmed chief of ICE to date, Michael Garcia, was the acting INS commissioner and a federal prosecutor before becoming the leader of the new agency. Garcia's predecessor, James Ziglar, also did not have a background in immigration law. Critics of Myers consider her to be even less experienced than her colleagues, while her defenders state that her experience in DHS and as a prosecutor give her a range of experience that will aid her in resolving any specific problems that could potentially arise.

The American Federation of Government Employees (AFGE) has not taken an official position on Myers, but has expressed a wish that the new chief of ICE be willing to partner with the union. The AFGE represents approximately 7,800 ICE employees and another 14,200 DHS employees. The union would like the leader of ICE to seek out feedback from ICE employees to ensure that they are receiving what is necessary for their job, namely equipment and training.

The criticisms of this appointment come at a time when President Bush is also receiving criticism for the performance of the head of the Federal Emergency Management Agency Michael D. Brown in the aftermath of Hurricane Katrina. Brown, who lacked emergency management experience, resigned this month after having been pulled out of Louisiana.

Before confirming Myers, some senators of the Committee on Homeland Security and Governmental Affairs would like her to answer more questions.

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#### 14. Electronic Passports are Introduced

According to *The Chicago Tribune*, beginning at the end of 2005 all new passports will become electronic. These new E-passports will not differ in appearance from current passports. The only difference will be an electronic chip located in the back cover that contains all of the biometric information found on the data page of the passport. Aside from the U.S., 27 other countries are implementing this plan, mostly Western European nations. These new passports are intended to be more secure, since the information on the passport data page must match the information in the electronic chip to verify that it has not been altered.

One of the possible obstacles of the new passport is the relative ease with which this information can be read without security control. Two of these security issues are "skimming" and "eavesdropping". Ideally, an electronic passport should only be read from a few inches away, but anyone with the proper equipment might be able to skim information from several feet away without the knowledge of the passport holder. Eavesdropping may occur in an airport with anyone who has an antenna and receiver and can intercept radio waves from up to 30 feet away.

These security concerns have been solved by new technology that will require the chip to be activated only when the information on the data page has been recognized by the electronic scanner of the passport reader. Another protective measure is the encryption of the data that can only be decrypted once it is received by the reader. All current passports will still be valid until their expirations, but all newly-issued passports will be electronic. Citizens over 16 years of age applying for a new passport will be charged a \$97 fee. Those under 16 years of age will be charged \$82. The renewal fee is \$67.

## 15. Registered Traveler Program Results in Inconclusive Findings

A recent pilot program known as "Registered Traveler" is expected to end its test period this week. This program was implemented in six U.S. airports last summer and allows for passengers to expedite the security checkpoint process in return for personal information. The current participants are several thousand frequent-flyers who have been selected by airlines.

*The Washington Post* describes one such participating airport as National Airport, where fliers enrolled with American Airlines provide name, address, date of birth, and phone number, as well as undergo a fingerprint and iris scan as a means of identification. When participants arrive at National Airport, they go to a kiosk for an iris or fingerprint scan. Once this data is verified, they may advance to the front of the security line.

The Transportation Security Agency is currently evaluating the results of this program to decide whether it should be implemented in other airports or remain limited to its current locations. It is believed that the expansion of the program could be improved if the identification information is made applicable at all participating airports.