

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,

The end of the summer is not normally a crazy time for immigration lawyers. But the second half of September is shaping up to be a busy one. The sudden retrogression of EB-1 and EB-2 numbers for Indian and Chinese nationals and the fears of worldwide backups in the near future are causing lawyers to scramble to get cases filed by the September 30th deadline. In many cases, applications that were not quite ready to go are being rushed.

In our office, we're also still dealing with issues arising out of Hurricane Katrina, filing physician Conrad 30 waiver cases to claim last minute numbers and getting ready to file green card lottery cases.

So if your immigration lawyer is a little slow responding to your emails and messages for the next few days, you'll know why.

Fortunately for me, I have a great team of lawyers and support staff at my office because I'll be gone next week at the annual meeting of the International Bar Association in Prague. I'll be moderating a panel presentation on international migration rules for health care professionals.

Speaking of Hurricane Katrina, as I type this I have an eye on the television watching news of yet another catastrophic storm barreling across the Gulf of Mexico. I chair the Katrina Taskforce for the American Immigration Lawyers Association and have been working with my committee helping lawyers affected by the hurricane get their practices back on track. I learned this morning that our committee will be working with "Rita" lawyers deal with the aftermath of this second hurricane. Lawyers from Texas who are affected by the storm are encouraged to contact me and I'll facilitate getting to the right people at AILA for assistance. I can be contacted at gsiskind@visalaw.com.

In firm news, after last week being listed in the Best Lawyers in America guide, two of our lawyers – myself and my law partner Lynn Susser – have been listed as Leaders in their Field by Chambers Global, the international attorney ranking service. Information on the Chambers guides can be found at www.chambersandpartners.com.

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: Issues in Losing Citizenship

Many people believe that once they become a citizen of the US, they will always remain so. In fact, this is not always the case, even for people who are US citizens by birth. A few months ago, we covered the ways in which a person can lose their citizenship (<http://www.visalaw.com/05jul1/2jul105.html>). This week, we will discuss in more detail what can cause a person to lose their citizenship, and how, in some cases, the person can prove the government wrong and regain their status as US citizens.

Why do people lose their citizenship?

There are seven basic ways in which US citizenship can be lost:

- Being naturalized in a foreign country, upon the person's own application made after reaching 18 years of age;

- Making an oath or other declaration of allegiance to a foreign country or division thereof, again, after reaching 18 years of age;
- Serving in the armed forces of a foreign country if those armed forces are engaged in hostilities against the US, or if the person serves as an officer;
- Working for the government of a foreign country if the person also obtains nationality in that country, or if to work in such a position an oath or other declaration of allegiance is required;
- Making a formal renunciation of US citizenship before a US consular officer or diplomat in a foreign country;
- Making a formal written statement of renunciation during a state of war, if the Attorney General approves the renunciation as not contrary to US national defense; and
- Committing an act of treason against the US, or attempting by force or the use of arms to overthrow the government of the US. Renunciation by this means can be accomplished only after a court has found the person guilty.

Each of these acts, however, to be the basis for the loss of US citizenship, must have been performed voluntarily and with the intent for renouncing that citizenship. Until recently, this was not the case, and a renouncing act, regardless of its motive or intent, would lead to the loss of citizenship. In 1986, responding to a series of Supreme Court decisions holding that because US citizenship is grounded in the Fourteenth Amendment to the Constitution, Congress cannot determine when a person loses their citizenship, only the person can, Congress amended laws dealing with the renunciation of citizenship to clarify that it can only be accomplished voluntarily and intentionally.

How does the Government determine whether or not I intend to renounce citizenship?

Government regulations state that there is a presumption in favor of retaining US citizenship, but in practice, the State Department is likely to find renunciation occurred in almost every situation involving a qualifying act. In some cases, however, the intent to renounce citizenship will be obvious, or it will otherwise be impossible to overcome the presumption that renunciation was the intent. For example, a formal written renunciation of citizenship made during war would be considered conclusive evidence of the intent to renounce US citizenship. Other cases, however, are not so clear.

For example, the US allows dual citizenship. Therefore, in some cases, it is possible to take an oath of allegiance or become naturalized in another country without losing US citizenship. The critical factor is whether the act was intended to renounce US citizenship. There are a number of reasons why a person would be naturalized in another country. For example, doing so can make it easier to obtain employment and other benefits. It can also secure family relationships. It can even, in some cases, where hostility toward the US is high, prevent harm from coming to a person.

In an increasingly international world, more and more people born in the US grow up elsewhere. At some point in their lives, it is not unlikely that they will take an oath of allegiance to the country in which they live, or will seek employment with the government. These things can be done without any intention of renouncing US citizenship. Even though the acts may be performed voluntarily, and even with the intent of obtaining a benefit, this does not mean that there was the intent to renounce citizenship. To ensure that there is the intent to renounce, consular officers are instructed to obtain an affidavit in which the person specifies that they committed the renouncing act with the intent of losing US citizenship. Even with such a document, it is possible to successfully argue that one did not renounce

his or her US citizenship, but such cases are very time consuming and require substantial effort.

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 had an interview scheduled on October 12th in New Orleans and now it is gone because of the hurricane. How do I proceed?

A - We have spoken to New Orleans District Director Stella Jarina. They are hoping to retrieve the New Orleans files in the next few days. If your address is the same do not worry, they will contact you with a new place and date. If you have been forced to move, she said to call the 800 number on your N400 receipt notice and give them your change of address. Her people will check the system for changed addresses once they start to work those files again in the next couple days.

Q - I filed a battered spouse petition which was approved. I went in to my interview on 9/8 to readjust my status and it was denied. I have been married twice. My first husband and I never consummated our marriage I saw him about 2 years later and he told me he filed for a divorce and was unable to locate me and remarried. After my second marriage, I found my first husband did not file for a divorce. Based on the fact that I was still married to my first husband USCIS denied my request to adjust my status and told me my petition would be revoked. I filed for a divorce on 8/31 ruling my first marriage non pro tunc. The immigration officers would not keep that in mind. What should I do?

A - If you were not properly divorced from the first husband then in fact the second marriage was void. Typically in situations like this, and they arise often, we have the person get divorced and then remarry. A second I-485 must be filed because it must be approvable at the time of filing.

However, if the second husband was the "batterer" on which the I-360 was based re-marrying is obviously a problem. I'm not sure you can overcome this problem because you were never legally married to the second husband and therefore ineligible for the I-360.

Your situation is complicated and I would advise you to talk to an immigration lawyer in your area to discuss an alternative strategy.

Q - My Brother in law and wife are going to get their H1 visas stamped in London on 23rd Sep'05. They have two daughters who are going to get H4 visas. Since both wife and

husband need to travel for the 1st year because of their job situation, they were wondering if they can leave the children in our custody and apply for limited guardianship so they can go to school. I am a green card holder and my husband is a US citizen.

A - Once the children enter on H-4 status, as long as the parent retains H-1B status in the US, it should not matter that they are frequently traveling outside the country. As for transferring custody, I don't believe immigration law addresses this particular situation, but I am not aware of anything in the regulations that would prohibit this type of arrangement.

Q - I have been a US permanent resident since 8/20/2001. I understand that I can apply for US citizenship after 5 years of residency. But someone said that one can count the 5 year period from the date when the petition immigration petition was approved (in my case the date is 11/13/2000). I will appreciate it if you let me know if this is correct--and if so, where I can find the relevant provision?

A - Look on your green card and it will say what day you became a permanent resident. That's the day you can start counting. You can usually apply 90 days prior to your fifth anniversary as a permanent resident.

Q - I am a 21 year-old student and do not have income at all. Can I file an application to bring my husband from Vietnam to US if my parents co-sign the financial support with me? How much is the required income of a 5-people household?

A - You can have your parents co-sign on an affidavit of support. For a household of five, you'll need to show \$28,262 of annual income.

4. Border and Enforcement News

Border and Enforcement News will return next week.

5. News From the Courts

The State of New Hampshire v. Barros-Batistele

Cheshire-Hillsborough County
Jaffrey-Peterborough District Court
Nashua District Court

Decided August 12, 2005

This case involves an Order on Motions to Dismiss and Objections filed by Defendants in response to criminal trespass charges based on novel trespass theory and filed by the New Ipswich Police Department in New Hampshire. According to New Hampshire RSA 635:2, a

person is guilty of trespass as a violation if that person knowingly remains or enters a place in which he has no license or privileged to do so. The eight Defendants charged in this case are all illegal aliens, initially engaged by officers for reasons other than trespass, but were later charged with criminal trespass because they were knowingly in the United States, more specifically the towns of New Ipswich and Hudson, without proper documentation or privileged to enter and had not taken steps to lawfully enter and remain. The New Hampshire Court granted all Motions and dismissed all criminal charges based on the application of RSA 635:2 in a manner that violates the Supremacy Clause.

In its analysis of the charges, the Court looked at the federal powers granted by the Supremacy Clause, of the United States, Article IV, cl.2 as well as the federal laws governing naturalization adopted by Congress pursuant to U.S. Constitution Article 1, §8 that preempt state action to regulate immigration. The Court used the test of constitutionality, established by the U.S. Supreme Court Decision in De Canas v. Bica, 424 U.S. 351 (1976). The De Canas case sets forth the criteria for determining whether a state law, or its application, is an unconstitutional entry into an area preempted by federal law. The criteria are as follows: (1) whether the federal law explicitly preempts state regulation in the area; (2) whether state law infringes on an area where Congress intended federal law to have complete jurisdiction absent specific preemption; (3) whether the state law conflicts with the federal law.

First, the Court recognized that Congress expressed its central concern in the Immigration & Naturalization Act ("INA") that the terms and conditions of admission and the subsequent treatment of aliens lawfully in the country be the exclusive province of federal law. The Court stated in its reasoning that the mere fact that RSA 635:2 was applied to the illegal aliens is not unconstitutional because there is no explicit prohibition in the INA to state involvement in the treatment of aliens since past cases have held that states may regulate matters affecting the employment of aliens. Thus, the first of the criteria, as held in the De Canas case, allows for certain state regulations in the area of immigration.

However, the Court held based on the second criteria Congress intended federal law to "occupy the field" of violations and penalties for illegal entry into the country pursuant to the scheme set forth in the INA. The Court found that the federal scheme detailing the array of offenses, sanction and penalties is so pervasive that it allows no room for States to supplement it. Therefore, state sanctions in the same area are not permitted.

Finally, the Court held that, based on the foregoing, the State law, as applied in the instant case, clearly conflicts with the federal statutory scheme. Thus, the criminal trespass charges were unconstitutional attempts to regulate in an area occupied exclusively by federal schemes of enforcement for immigration violations and were in violation of the Supremacy Clause of the United States Constitution. Therefore, the Court dismissed all charges against the eight Defendants.

The court noted that this finding does not preclude efforts by local law enforcement officials to participate and assist in the enforcement of the federal laws governing immigration violations.

6. Government Processing Times

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

Nebraska (09/15/2005): <http://www.visalaw.com/nebraska.html>

California (09/20/2005): <http://www.visalaw.com/california.html>

Missouri (09/20/2005): <http://www.visalaw.com/missouri.html>

Vermont (09/20/2005): <http://www.visalaw.com/vermont.html>

Texas (09/15/2005): <http://www.visalaw.com/texas.html>

7. News Bytes

According to a USCIS fact sheet, 200,000 of 250,000 Temporary Protected Status (TPS) visas and Employment Authorization Documents (EADs) for El Salvadorans currently in the United States have been approved for re-registration. Approximately 15,000 of those same requests were denied. Those still awaiting the arrival of their new EAD after having been to a biometrics appointment should have received or will soon receive a 90-day card until USCIS completes the application process, or they will receive notification of any remaining requirements that they have failed to meet. Those who have scheduled but who have not been to a biometrics appointment will receive a sticker for their current EAD that will extend its validity until December of this year. These stickers may only be obtained at Application Support Centers. Any TPS re-registrant who fails to appear at an ASC risks denial of their application and withdrawal of their current TPS.

As stated in a Notice to the Public from the Toronto consulate regarding Australian E-3 Visas, the Consulate will process these visas after the completion of required systems upgrades. Treaty Visa Unit will not manage these visas. The E-3 visa is most comparable to the H-1B1, and will be dealt with similar to the work visas such as H and L. Anyone interested in applying for an E-3 visa must schedule an appointment through the following contact information.

In Canada call: 1-900-451-2778 (charges apply)

In the United States call: 1-900-443-3131 (charges apply)

Or go online at: www.nvars.com

8. International Roundup

His Majesty Sultan of Brunei has agreed to the Amendment of the Immigration Act Order 2005. According to Brunei Direct, this amendment states that anyone caught harboring offenders will receive a prison sentence of a maximum of two years, or a fine ranging from \$3,000 to \$6,000, or both. Any further violations of this act will result in imprisonment of up to a maximum of four years, or a fine between \$6,000 and \$12,000, or both. In addition to these penalties, the Immigration and National Registration Department will be working in conjunction with law enforcement agencies to inspect areas where immigrants are

suspected to be hiding.

The UAE's *Gulf News* recently reported that a new rule for passport photos in Great Britain will soon come into effect. The new rule will require pictures in which the person photographed does not smile. Non-smiling photos would be used as part of the new biometrics databases and would make it easier for customs officials to recognize the individuals from their passport. This rule would also ensure that British citizens can continue to participate in the United States' visa waiver program. Among other requirements for the new photos are the stipulations that the background be either off-white, cream, or light gray and that the face cover 65-75% of the picture. These new requirements have been agreed upon by the International Civil Aviation Organization. Other plans for the future include adding "e-Passports" that will contain a chip storing facial image data. Canada has a similar system already in place.

9. Legislative Update

[H.R.3647](#) : To render nationals of Denmark eligible to enter the United States as nonimmigrant traders and investors.

Sponsor: Rep Sensenbrenner, F. James, Jr. [WI-5] (introduced 9/6/2005) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 9/6/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3648](#) : To impose additional fees with respect to immigration services for intracompany transferees.

Sponsor: Rep Sensenbrenner, F. James, Jr. [WI-5] (introduced 9/6/2005) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 9/6/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3657](#) : To regulate international marriage broker activity in the United States, to provide for certain protections for individuals who utilize the services of international marriage brokers, and for other purposes.

Sponsor: Rep Larsen, Rick [WA-2] (introduced 9/6/2005) Cosponsors (1)

Committees: House Judiciary

Latest Major Action: 9/6/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3658](#) : To amend the Haitian Refugee Immigration Fairness Act of 1998.

Sponsor: Rep Meek, Kendrick B. [FL-17] (introduced 9/6/2005) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 9/6/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3693](#): To require the Secretary of Homeland Security to prevent all unlawful entries into the United States by January 1, 2007, and for other purposes.

Sponsor: Rep Price, Tom [GA-6] (introduced 9/7/2005) Cosponsors (6)

Committees: House Homeland Security; House Resources

Latest Major Action: 9/7/2005 Referred to House committee. Status: Referred to the Committee on Homeland Security, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

[H.R.3695](#): -- Private Bill; For the relief of Daniel Acevedo.

Sponsor: Rep Cardoza, Dennis A. [CA-18] (introduced 9/7/2005) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 9/14/2005 Referred to House subcommittee. Status: Referred to the Subcommittee on Immigration, Border Security, and Claims.

[H.R.3819](#): -- Private Bill; For the relief of Vicente Beltran Luna.

Sponsor: [Rep Gonzalez, Charles A.](#) [TX-20] (introduced 9/15/2005) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 9/15/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3821](#): -- Private Bill; For the relief of Alejandra Arias Martinez.

Sponsor: [Rep Pastor, Ed](#) [AZ-4] (introduced 9/15/2005) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 9/15/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3822](#): -- Private Bill; For the relief of Milton De Jesus Marroquin.

Sponsor: Rep Paul, Ron [TX-14] (introduced 9/15/2005) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 9/15/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3823](#): -- Private Bill; For the relief of Alcibiades Velasquez Olarte, Paulina Garzon de Velasquez, Luis Eduardo Velasquez Garzon, Sandra Pena Escobar, Nicholas Jose Velasquez Pena, Luis Felipe Velasquez Pena, Miguel Antonio Velasquez Garzon, Rocio Suarez Mendez, Michelle Camila Velasquez Suarez, Maria Hilma Velasquez Garcon, Teresa Velasquez Garcon, Sandy Paola Olarte Velasquez, Flor Ines Velasquez Garzon, Ramon Domingo Claro Correa, Sebastian Camilo Claro Velasquez, Marina Velasquez Garzon, and Clara Imelda Velasquez Garzon.

Sponsor: Rep Wexler, Robert [FL-19] (introduced 9/15/2005) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 9/15/2005 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[S.1620](#): A bill to provide the nonimmigrant spouses and children of nonimmigrant aliens who perished in the September 11, 2001, terrorist attacks an opportunity to adjust their status to that of an alien lawfully admitted for permanent residence, and for other purposes.

Sponsor: Sen Corzine, Jon S. [NJ] (introduced 9/7/2005) Cosponsors (8)
Committees: Senate Judiciary
Latest Major Action: 9/7/2005 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

10. State Department Visa Bulletin

IMMIGRANT NUMBERS FOR OCTOBER 2005

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during October . Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by September 8th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First : Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second : Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third : Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth : Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First : Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second : Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third : Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers". Schedule A Workers are entitled to up to 50,000 "recaptured" numbers.

Fourth : Certain Special Immigrants: 7.1% of the worldwide level.

Fifth : Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is earlier than the cut-off date listed below.)

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Family					
1 st	22APR01	22APR01	22APR01	01JAN93	22MAY91
2A*	01NOV01	01NOV01	01NOV01	01OCT98	01NOV01
2B	22APR96	22APR96	22APR96	01DEC91	22APR96
3 rd	15APR98	15APR98	15APR98	01JAN93	08NOV90
4 th	01FEB94	01FEB94	01AUG93	01FEB91	01MAY83

*NOTE: For October, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 01OCT98. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 01OCT98 and earlier than 01NOV01. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Chargeability	CH	IN	ME	PH
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	Areas Except Those Listed				
Employment-Based					
1 st	C	01JAN00	01AUG02	C	C
2 nd	C	01MAY00	01NOV99	C	C
3 rd	01MAR01	01MAY00	01JAN98	01JAN01	01MAR01
Schedule A Workers	C	C	C	C	C
Other Workers	01OCT00	01OCT00	01OCT00	01OCT00	01OCT00
4 th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 th	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2006 annual limit being reduced to 50,000** . DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For October , immigrant numbers in the DV category are available to qualified DV-2006 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	AF	6,000
ASIA	AS	1,000
EUROPE	EU	3,000
NORTH AMERICA (BAHAMAS)	NA	4
OCEANIA	OC	140
SOUTH AMERICA, and the	SA	135

CARIBBEAN		
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Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2006 program ends as of September 30, 2006. DV visas may not be issued to DV-2006 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2006 principals are only entitled to derivative DV status until September 30, 2006. DV visa availability through the very end of FY-2006 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN NOVEMBER

For November , immigrant numbers in the DV category are available to qualified DV-2006 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut -off number:

Region	All DV Chargeability Areas Except Those Region Listed Separately		
AFRICA	AF	6,000	Except: Ethiopia 4,600 Nigeria 3,700
ASIA	AS	1,700	Except: Bangladesh 1,650
EUROPE	EU	3,900	
NORTH AMERICA (BAHAMAS)	NA	5	
OCEANIA	OC	200	
SOUTH AMERICA, and the CARIBBEAN	SA	275	

D. MEXICO FAMILY PREFERENCE VISA AVAILABILITY

Continued heavy applicant demand for numbers in most categories has resulted in October cut-off dates, which are earlier than those that prevailed for Mexico during most of FY-2005.

E. EMPLOYMENT PREFERENCE VISA AVAILABILITY

Item D in the Visa Bulletin (number 85) announcing the September cut-off dates provided information regarding the prospects of visa availability during the early months of FY-2006. Many categories have become oversubscribed for October, and cut-off dates established due to continued heavy demand for numbers by CIS for adjustment of status cases. Forward movement of the cut-off dates in these categories is likely to be limited.

F. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

http://travel.state.gov

From the home page, select the VISA section which contains the Visa Bulletin. To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:

Subscribe Visa-Bulletin First name/Last name
(example: Subscribe Visa-Bulletin Sally Doe)

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address :

listserv@calist.state.gov

and in the message body type:

Signoff Visa-Bulletin

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)

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11. Guest Column: The Day Of The Bandaid Is Over: Visa Retrogression And Our Moment Of Truth, 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.

Where were you Gramps when the era of the big bandaid ended? That is the question your grandchildren will be asking and you will know how to answer: At my desk on September 13, 2005 when the U.S. Department of State issued the Visa Bulletin for October 2005. This was the moment when you first learned of widespread visa retrogression in all employment categories. Until right then, the contradictions and inadequacies of the US immigration system could be bypassed, ignored, or papered over with a series of temporary solutions that did their job, if only for a time. No longer. The system has crashed and burned. It will not come back on line in our lifetime. A new chapter has been opened and, this time, there is not a bandaid big enough for the job.

For Indian citizens, the cutoff date for baccalaureate holders in the third employment category is January 1, 1998, while Chinese nationals in this and the second employment category are backed up to May 1, 2000. The EB-2 cut-off date for Indian graduate students is pegged at November 1, 1999, a modest advantage over their EB-3 brethren, but not much. What is perhaps most shocking is that the retrogression virus has infected the precincts of the priority workers, until now a virtual cordon sanitaire that we all thought (or hoped) would be immune from the winds of change. Even multi-national managers, outstanding professors/researchers and/or persons of extraordinary ability are going to be in for a long wait, at least if they have the misfortune to be Indian or Chinese. EB-1 India

has retreated to August 1, 2002, while the People's Republic of China (PRC) is all the way back to January 1, 2000. By the way, the same Visa Bulletin that brought this cheery news also cautioned that the remainder of 2005 will see little forward movement in priority dates.

Why should we care you say? Here's why: Please say hello to Section 245(a)(3) of the Immigration and Nationality Act which prevents anyone from seeking to adjust their status to lawful permanent resident unless "an immigrant visa number is immediately available to (the worker) at the time his(or her) application is filed." The October bulletin means that it will be many years before anyone with a Bachelor's degree, or anyone from India or China in the EB-2 or the EB-1 categories, will be able to file an I-485 adjustment application or have the exquisite pleasure of applying for an immigrant visa at one of our friendly US Consulates around the world. Enlightened minds like Dinesh Shenoy want to allow the beneficiaries of approved I-140 petitions to get in the green card line, even if their priority dates are years into the future. See http://www.ilw.com/articles/2005_0916-shenoy.shtm A good idea that has much to commend it but it has two problems. First, it ain't gonna happen and second, even if it did, the patient would still be sick. Even a good bandaid sometimes just is not enough.

Here is where the rubber meets the road: Most immigrants who come to the United States to work do so under one or another of the family quota categories without any labor market control test. The few unfortunate souls who do not have sufficiently recent family ties to link up with this chain migration have to resort to immigration through employment. There are only 140,000 employment-based visas in any fiscal year and most of these go to spouses and unmarried minor children, rather than visa principals. Now, if you figure that there are over 300,000 labor certifications gathering dust at the two backlog elimination centers, a euphemism if there ever was one, and they will be evenly split between EB-2 and EB-3, it does not take a Nobel Laureate to calculate the impact on visa waiting times. Even if we ignore the fact that immigrant families tend to be larger and indulge the fantasy that this is not so, conservative estimates tell us that a tsunami of about 1 million EB-2 and EB-3 cases will be dumped into the system pretty soon if PERM works the way we all hope it will. This, of course, does not factor in the great many immigrant cases where no labor certification is required, such as the national interest waiver, outstanding researcher, extraordinary ability or multi-national manager applicants. This is a classic example of how even really good bandaids, like 245(i) and PERM, can have severely unanticipated consequences.

The problem with bandaids is not that they fail, but that they work, often too well. By treating the symptoms without addressing the underlying sickness, these interim measures actually made the long-term situation measurably worse by lulling people into a false sense of security and thereby wasting precious time during which a true solution could have been implemented. While we were all focused on taking full advantage of the short-term fix, the fundamental misalignment of the system remained unaddressed. Has it really turned out to be all that great to have the H quota set at 195,000 for several years? How many of these "nonimmigrants" have gone home? What do the advocates of a higher H quota say now about their crusade? They have suddenly lost their voice it seems. The visa retrogressions are the direct result of the huge strides made by the USCIS's backlog elimination efforts that former Director Aguirre, now on his way to Madrid, can rightly claim credit for. PERM does offer some hope for keeping labor certification alive. The recapture of thousands of unused immigrant visa numbers by AC 21 and the Real ID Act, with the latter being the only reason why Schedule A Third Category remains available, were all genuine victories. The ability to get 6, 7, even 9 years in H-1B status, as provided for by Section 106(a) in AC 21 does keep hope alive for the talented scientists and engineers so essential to our economy. Now, with per country caps a serious problem in the EB arena for the first time, the ability to get 3 years at a time more to stay in the USA under AC 21 Section 104(c) for the H-1B

beneficiaries of approved I-140 petitions is a lifeline to their continued pursuit of the American dream. No honest observer can be dismissive of what these bandaids have meant and continue to mean to the individuals involved or their families.

But, how long will an employer wait for the magic green card to come? If a freshly scrubbed Indian or Chinese college graduate has to sit on his or her heels for, pick a number, 15 years, will any serious employer be that patient? Once this truth spreads throughout US campuses, and the true effect of visa retrogression sinks in, is there any question that the best and the brightest international students will accept jobs overseas because there are no available options for them to live and work in the United States? When this happens, how long, if at all, will it be before US employers, who depend on such talent to develop new products and technologies on which they depend to stay alive, follow and increasingly relocate top-end jobs, especially research and development, where the big brains are? Is there any question that visa retrogression will only accelerate the exodus of white collar jobs from the United States to India, China and Eastern Europe? While family ties do not wither with time, workplace relationships undoubtedly do and no employer will put his plans on hold forever while the goal of the green card remains a distant and elusive dream never to be realized but always out there on the horizon. Indefinite H extensions or adjustment of status portability, to name but few favorite AC 21 bandaids, will offer cold comfort to an alien whose job has migrated to Bangalore or whose H-4 spouse has seen their career frozen by visa immobility.

There are things which can be done but the solutions are far less important than realizing the problem is not temporary but permanent, a consequence of deep-seated structural imbalances that few want to confront. The pressure on employment visas will not lessen until the dominance of family migration is ended. So long as employment is an afterthought, so long as the extended family is given preferences it does not deserve and privileges it did not earn, there is no possibility for sustained visa advance on the employment side of the ledger. If the immigration bar really wants to help its business clients, lobby for an immediate end to the diversity visa lottery, thus liberating 55,000 numbers for EB categories. This is already taking place with action by the Republican-dominated House Immigration Subcommittee without any support from those who stand most to gain. If the business community really wants to keep top young foreign talent here, lobby for an immediate end to all family-based categories with the exception of the family 2A that should be unlimited, much as immediate relatives are now. We all love our siblings and older or married children, but few of us live with them. Progress on the employment front will not happen unless the biological family is enshrined as the guiding precept of family migration and all else is dropped, root and branch.

It is not necessary, nor is it particularly logical, for derivative family members to be counted against the EB immigrant visa quotas. Why is this done? Why not count only principal visa applicants? This is done with the H-1B and E-3 quotas, why not here? Simply by changing the way we count immigrant visa applicants would exponentially enlarge employment flows to the USA without the need for Congress to create a single new immigrant visa.

Why is it hard to stay in the United States, but easy to come, and should it not be precisely the opposite? Why do we have limits on the number of immigrant visas but none on the nonimmigrants which is where virtually all the immigrants come from? Could we not have numerical caps on nonimmigrants that, if not met, would simply default over to the permanent visa applicants so that more of them could come? Why are immigrant visas allocated by nation states so that Denmark gets the same amount as China? Would it not make more sense to choose a method that reflects the importance of the country or the importance of the individual skill set to the American economy? Why do we reward past

achievement rather than nurture future potential? The answers to these and many other questions are the subject for open and honest debate by serious men and women of genuine concern and honest good will. The important point is to ask the questions, whatever the answers may be. Sometimes, palliatives make the patient worse by hiding the true symptoms. Sometimes, bandaids let us forget how sick the patient truly is. Perhaps, after the October Visa Bulletin, now is a time to remember.

12. Proposed Rule Would Limit Immigrant Workers' Unemployment Compensation

The Department of Labor recently proposed a new rule to limit unemployment compensation (UC) to aliens working in the United States. The proposed limitation would augment the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA) by placing restrictions on states' UC spending to only those unemployed who are able and available (A&A) to work. The A&A requirement states that an unemployed person must be able to work and available for work, provided that there is a labor market open in which they can participate.

Because the A&A requirement is not made explicit under federal law, the Department of Labor deemed it necessary to define its purpose and to propose its implementations. Examples of those who would be denied UC are those who refuse government-sponsored re-employment programs or who are unwilling to re-enter the work market. The principles underlying UC are that a worker can be assured of a reserve of funds during employment from which they can withdraw necessary funds should they become unemployed and unable to find other work. To be eligible for UC, an individual must be able to accept an offer of work, available to accept that offer and cannot refuse the offer. State laws differ regarding the requirements for UC.

Concerning an alien's right to receive UC, the Department of Labor expects that they also meet the A&A requirements. Furthermore, the alien must be legally permitted to work in the United States, according to the regulations of the United States Citizenship and Immigration Services, in order to be considered "available" for work. Any alien not meeting the requirements of the USCIS will be considered unavailable for work, and, thus, denied unemployment compensation. The rule does not address particular statuses of aliens, nor does it require proof that the alien is authorized to work in the U.S.

For further information on this proposal, see <http://www.workforcesecurity.doleta.gov>.

13. DOS Final Rule Amends Passport Regulations

A final rule, first published as a proposed rule by the Department of State on February 18th, 2005, eliminates the amendment process for US passports, and increases the opportunity to receive a replacement passport free of charge. This rule discontinues the practice of amending or editing the personal data or validity period of the passport holder, and as a result, all information will be presented only on the passport data page. In the future, passports will be issued with an electronic chip that cannot be edited for security purposes, and this chip will match the information on the passport data page.

Under this new rule, if any changes must be made to the personal information or validity period, the passport must be cancelled and a new one will be reissued with a new electronic chip. The government still reserves the possibility, however, of amending passports in rare occasions when it is most advisable to do so, such as for limited validity passports for return

to the U.S.

This rule also introduces new and broader requirements for free, replacement passports. Any individual whose name has changed will be able to return his or her passport, along with a completed application and other necessary information, in exchange for a replacement passport at no cost. The application must be submitted within a year of the name change. Those who have been issued limited validity passports may apply for a replacement, full-validity passport within a year of the issuance at no cost.

Under this new act, if passport fees are not collected, not only will actions be taken to collect those fees, but the Department may send a letter to the bearer informing him or her of the invalidation of the passport.

This is now a final rule, after being published as a proposed rule and allowing a 45-day period for comments. It will become effective on September 26, 2005.

14. DHS Identifies New Ports of Entry for US-Visit Implementation

In a Notice published in the Federal Registrar, The Department of Homeland Security is identifying additional land ports-of-entry (POEs) for processing aliens under the United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT). US-VISIT records the entry of aliens into the country through land ports-of-entry through a list of biometric identifiers. In an August 2004 interim, the second phase of US-VISIT was announced, requiring certain aliens to provide identification data, such as fingerprints or photographs, upon entry at POEs.

Between November and December of 2004, the 50 most-trafficked POEs were identified under US-VISIT. According to the August 2004 interim rule, all POEs with permanent facilities will be identified by Notice in the Federal Registrar and will begin implementing the arrival procedures of US-VISIT in 2005.

The November Notice only identifies POEs which will enroll aliens upon entry. In the August 2004 rule, DHS stated that it will announce the procedure for data collection upon the departure of aliens through a separate Notice for selected ports. In an effort to avoid unnecessary impediments during the peak holiday period in December, DHS hopes to execute these changes by the 2005 holiday season.