

Siskind's Immigration Bulletin – August 2, 2006

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Siskind Susser serves immigration clients throughout the world from its offices in the US and its affiliate offices across the world. 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:

This week marks an important milestone at Siskind Susser. We are pleased to note that on Tuesday, we will officially be merged with the Eric Bland Law Firm in New York City. The Eric Bland Firm has one of the largest arts, fashion and sports immigration practices in the nation and the combination of the firm's three lawyers and their support staff with our firm's already strong practice in arts and sports immigration means we will have, in my opinion, the strongest practice

in the country in this field of immigration law.

In recognition of the importance of the addition of this new team to our firm, we are changing the name of our firm to Siskind Susser Bland, P.C. effective August 1, 2006 . Aside from the name change, we will also mark the expansion of our arts/sports/fashion immigration practice by launching in the next several weeks a new newsletter covering that subject of immigration law as well as developing a section of our web site devoted to the topic (much like we do with our health care immigration practice).

We'll be adding to our web site biographies of the new lawyers and contact information for our new location in New York City shortly.

In immigration news, another cap has been reached. This time it is the H-1B cap for graduates of US masters and higher degree programs. The bonus quota of 20,000 for this group lasted less than four months and people in this highly valued category must now wait until October 2007 to begin work in H-1B status. Next on the horizon – expect the 50,000 green cards set aside for nurses last year to run out in October or November of this year. Congress has introduced legislation to correct these problems in the SKIL Bill and in the Senate's comprehensive immigration reform bill, but it is unlikely either bill will pass anytime soon.

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. ABCs of Immigration – H-2A Visas

The H-2A temporary agricultural visa is a nonimmigrant visa which allows foreign nationals to enter the U.S. to carry out temporary or seasonal agricultural labor or services. Given estimates that more than half of America 's agricultural workers are undocumented immigrants, the use of the H-2A visa is becoming more and more important.

What are employers required to do to obtain workers on H-2A visas?

Generally, employers must satisfy two criteria to hire nonimmigrant workers when filing an application with the USCIS:

1. The employer must show that able, willing, and qualified US workers are not available at the time and place needed
2. The employer must show that an adverse effect on wages or working conditions of similarly employed US workers will not result from the employment of foreign workers

Who may file an application for an H-2A visa?

· An agricultural company or employer who expect a shortage of U.S. workers needed to

perform temporary or seasonal agricultural labor or services

· An authorized agent filing on behalf of an agricultural employer

The employer may be an individual proprietorship, a partnership or a corporation. A collective of agricultural producers may file as either a sole employer, a joint employer with its members, or act as an agent on behalf of its members.

What steps must employers follow to do to obtain workers via the H-2A process?

First, two copies of the ETA-750 are filed, of which one should be sent to the appropriate Department of Labor (“ DOL ”) region, and the other to the respective state workforce agency (“SWA”) for the state in which the work is sought. This application has to be submitted at least 45 days before the H-2A temporary workers are needed and it also has to be approved by the DOL before the starting work date. The application fees, which must be paid by the employer, include \$100 base fee plus \$10 for each position certified, up to a maximum of \$1000.

Second, recruitment efforts follow, which are directed by the SWA for H-2A positions in one of three ways: the SWA refers candidates to the employer (with the employer using the state’s electronic data bank), the employer conducts independent recruitment, or the recruitment is conducted after the SWA certifies the applications. Generally, referrals come from the state agencies. Employers are required to hire US workers who apply for work until half of the contract period is over.

Third, following the recruitment period, a decision is made regarding certification. The SWA subtracts the number of US workers successfully referred from the total number of workers requested by employers to calculate and certify the remaining job openings.

Once certification is granted, the application is then filed with the DOL national processing center, which it may be filed for multiple unnamed workers. As they become available, however, the DOL must be provided with names. Finally, following DOL approval, the workers can then apply for visas at the appropriate consulate office.

What might be some reasons for which the DOL might not issue certification?

One pitfall preventing certification is if the DOL determines that US workers have filled all the job openings, or for example, if the DOL determines that H-2A candidates have been offered better working conditions than their US counterparts. Another reason preventing certification could be if a strike or a lockout results, or if the employer is in significant violation of the H-2A program with the previous two years. Yet another block could be if the employer fails to show that H-2A workers will be covered by workers compensation, or if the employer fails to comply with the recruitment efforts.

How long are the H-2A visas valid?

Generally, the H-2A visas are valid for a one year maximum. Extensions of up to one year, however, are possible but with a maximum of three years. After the alien has spent three years in the US under the H-2A status, then the alien must leave for six months before continuing H-2A employment. Subsequent to this time, however, the alien can reenter the US in any status not based on the performance of agricultural work.

How do employers calculate workers' earnings?

Usually farm workers receive either an hourly wage or are paid by the piece. Under the H-2A program, however, workers have to be offered a wage equal to that of US workers. In the past, this has been interpreted to mean the higher payout of the following:

- The prevailing industrial wage in the relevant labor market
- The state or federal minimum wage
- The "adverse effect wage rate" ("AEWR")

For workers earning money by the piece, an employer must pay any difference between worker earnings and the AEWR. Additionally, on or before each day the H-2A worker is paid, the employer must provide the worker with an earnings statement listing total earnings, hours of work offered versus actually worked, and whether the worker is paid hourly or by the piece.

What benefits are employers required to provide the workers?

- Transportation to and from the workers' temporary home to the workplace
- When the contract period is up, transportation home or to their next workplace
- Housing to all workers who do not commute, which must be inspected by the Department of Labor as well as meet minimum federal standards for temporary labor camps
- Either three meals a day or facilities in which the workers can prepare food
- Any tools and supplies necessary to perform the work
- Workers compensation insurance where required by state law; if state law does not require it, the employer must provide equivalent insurance

3. Ask Visalaw.com

Q - If an "essential employee" and E2 visa holder is terminated by the Treaty Investor, is there any rule, regulation or law governing who's responsibility it is to repatriate the terminated "essential employee" (and accompanying family)?

A - No, there is no rule on this. There is something along the lines you note in your question for H-1B visa holders, but it does not extend to the E-2 visa. H-1B employers are required to pay the return transportation costs home of terminated H-1B employees. No such rule is applicable in the E-2 context and the employer would not have a responsibility in this regard.

Q - I just got the I-551 visa stamp. But I didn't receive my green card yet. I want to know whether I have problem re-enter the US if I travel to Mexico for 4 days.

A - The I-551 stamp has the same legal meaning as the green card so as long as it is not expired you can use it the same way you would the card.

Q - I am a naturalized USA citizen. I have applied for family based immigration visa for my brother and his family in 2004. I lived the US at that time. Currently I am temporarily living in

the UK. My husband is a UK citizen and we decided to spend some time working in the UK. When my petition for my brother's visa is approved (probably in about 2-3 years???), do I have to be physically present in the States or I can still be in Europe ?

A - You don't need to show residence until your brother becomes current in the visa queue. As you probably know, however, the F-4 category is backlogged about 12 years so it will be quite some time before you need to be back.

Q - I was convicted of forgery on April 2000 in Texas. I received 3 years probation. I'm an RN now and have an employer to sponsor me for green card. Was wondering if I could be denied the green card?

A - You may be guilty of an aggravated felony if you committed document fraud as described under 18 USC 1543 unless the purpose of the violation was to assist your spouse, parent, or child. If you are an aggravated felon you will be barred from adjusting and may end up in deportation proceedings if you try to adjust. I would let an attorney look at it very closely before I filed anything.

If it is not an aggravated felony, you would still have to obtain a waiver under 212(h) which would require you to prove extreme hardship to your United States citizen spouse, parent or child. If you don't have one of those relatives, you should not seek to adjust because you may be placed into deportation proceedings without the ability to seek a waiver.

Q - Do you know if I could visit my fiancé in the U.S. while my I-129 Fiancé application is in process?

A - This is possible in theory, but extremely difficult in practice. Most border officers are going to assume that you are not going to leave after your visit and therefore would not have visitor intentions. I always advise clients to avoid this.

4. Border and Enforcement News

U.S. Customs and Border Protection reported that on July 18th, eight undocumented immigrants, including five children, were found hidden in the baggage and engine compartments of two chartered busses. According to the Associated Press, the immigrants were found at a checkpoint in Sarita, Texas. All eight immigrants are Mexican citizens. The ages of the children ranged from 8 to 14. Border officials expressed concern regarding the hiding locations, stressing that the compartments were hazardously close to both the heat of the engine, as well as the fumes of the exhaust system.

The Washington Post has reported that 58 civilian workers were detained upon entry to Fort Bragg, an army base in North Carolina. On July 18th, agents from both Immigration and Customs Enforcement (ICE) and the FBI detained these workers between 6 a.m. and 7:30 a.m., the time most of the soldiers and employees enter the base. An ICE spokesperson stated that some of the people detained were from Mexico, El Salvador, Honduras, and Guatemala.

Persons attempting illegal entry into Fort Bragg with false identification can be charged with both criminal trespass and presenting false identification. Within the past year, over 150 people have

been detained at the Fort Bragg entry post for entry without proper ID. In addition to the 58 initially detained, four of the detainees were arrested for drug possession.

The Los Angeles Times reports that eight Ecuadorian nationals were taken into custody in Port Hueneme, California, after hiding in a banana boat for nearly 10 days. The boat originated in Ecuador, but made stops in Columbia and Guatemala, before reaching California on July 17. Authorities were notified beforehand that stowaways were aboard, but found no one when they searched the ship.

Around 8 a.m. Monday, authorities saw five men walking down a walkway on the boat. Later that day three men were spotted walking on the deck. All men were taken into custody. The stowaways told authorities that they either hid among the bananas in the cargo hold or hid in the operator's cab of the ship's crane. Three men were hospitalized for dehydration and three others for frostbite after their apprehension. According to a U.S. Customs and Border Protection spokesperson, all eight men were to be detained and extradited to Ecuador.

According to a report by The Associated Press, deputies discovered three undocumented immigrants in desert 50 miles west of Phoenix on July 19. The immigrants alleged that three others accompanying them had died in the desert, but a search yielded no bodies. The immigrants surrendered to authorities on Interstate 10, outside the Phoenix area.

This discovery occurred a day after authorities found nearly 100 immigrants abandoned by smugglers in the surrounding area. 25 of the immigrants and three deputies were hospitalized, with one woman in critical condition, and three others in serious condition. Most of the immigrants had been released by Wednesday, though many immigrants had been treated for heat-related illnesses.

A Dallas woman was sentenced to 10 years in prison after admitting to making undocumented immigrant women pay off their smuggling debt through prostitution. The Houston Chronicle reports that Mi Na Malcolm, a Korean woman, pleaded guilty in March to conspiracy to hold or harbor illegal aliens for purposes of prostitution, harboring illegal aliens for commercial advantage and private financial gain, and bulk cash smuggling. Malcolm was additionally ordered to pay a \$460,000 fine, as well as forfeit her two luxury automobiles, \$218,900 in cash, and electronic equipment.

Malcolm paid smuggling debts of several Korean women who arrived in the United States without documentation. The women were forced by Malcolm to work off their debt at one of the three Dallas brothels (operating under the labels of spas and massage parlors) she owned. The women worked six to seven days a week and most were on call as prostitutes on a 24 hour basis, according to court documents. Malcolm kept records of many of the women's earnings and debt payments, in addition to charging them for rent and food. Malcolm acknowledged monitoring the women's movements, both through and escort and via video surveillance.

Police and U.S. Immigration and Customs Enforcement (ICE) agents arrested Malcolm last year after several search warrants were issued for her brothels. U.S. Attorney Richard B. Roper stated that "Malcolm preyed upon some of society's most vulnerable individuals – frightened runaways and illegal immigrants who are trapped in a cycle of violence, prostitution and forced labor" and that Malcolm's sentence would "serve as a warning to all who would traffic in and harbor illegal aliens – you will be found and you will pay the price."

According to a Akron Beacon Journal report, A federal grand jury has returned a criminal indictment charging two temporary labor companies, their president, Maximino Garcia, as well two of their directors with violations related to a significant undocumented immigrant employment and money laundering scheme.

Allegedly, the Garcia Labor Company Inc. and Garcia Labor Company of Ohio, Inc. (collectively known as Garcia Labor Companies) contracted in December 1999 to provide temporary workers to sort freight for ABX Air, an air cargo transportation company. The agreement with ABX Air affirmed that the temporary workers provided were in compliance with applicable laws.

The indictment alleges that Garcia Labor Co. and the three other defendants intentionally employed undocumented immigrants and presented them as legal contract workers to ABX Air. From December 1999 until January 1, 2000 the defendants allegedly allowed over 1,000 undocumented workers to be utilized by ABX Air, knowing that the employees were unauthorized to work in the United States .

The Transportation Security Administration conducted an inspection and Audit of ABX Air in January 2005. The audit resulted in every Garcia Labor employee utilized by ABX Air terminated after it was determined that every employee was using an invalid Social Security number. Allegedly, ninety percent of the aliens presented fraudulent Social Security cards and Resident Alien cards to complete the I-9 Employment Eligibility Verification Form for employment by Garcia Labor Co.

All defendants are charged with one count of conspiracy to induce illegal aliens to reside in the United States and one count of conspiracy to commit money laundering. Maximino Garcia is charged with 16 counts of inducing illegal aliens to remain in the U.S. and 19 counts of harboring illegal aliens. Human Resources Director Gina Luciano is charged with 14 counts of inducing illegal aliens to remain in the United States, three counts of transporting illegal aliens, and three counts of harboring illegal aliens. Each immigration charge carries a maximum punishment of ten years imprisonment and a \$250,000 fine.

5. News From the Courts

The News From the Courts column is written by Maria Bjornerud, an immigration attorney with an office in Phoenix, AZ. Originally from Russia, Ms. Bjornerud is licensed to practice law in the US. She can be contacted via email at mbjorne@msn.com.

Ms. Bjornerud is on vacation and this column will resume upon her return.

6. Government Processing Times

There are new processing times for the following service centers:

Vermont (7/19/2006): <http://www.visalaw.com/vermont.html>

California (7/19/2006): <http://www.visalaw.com/california.html>

Missouri (7/19/2006): <http://www.visalaw.com/missouri.html>

Nebraska (8/01/2006): <http://www.visalaw.com/nebraska.html>

Texas (7/15/2006): <http://www.visalaw.com/texas.html>

7. News Bytes

The Washington Times reported that during a press conference with Canadian Prime Minister Stephen Harper, President Bush voiced support for extending a January 1, 2008 deadline for implementation of a law requiring people crossing the border from Canada to have proper identification documents. The Senate has expressed interest in extending the deadline. Despite encouragement from both the President and the Senate, the House has yet to address the issue.

This law, the Western Hemisphere Travel Initiative, was introduced by the U.S. to address the lax immigration regulations in Canada, which has the highest per capita immigration of any developed nation. 250,000 immigrants entered Canada last year, with 35,000 of these immigrants seeking asylum. Mr. Harper has concerns about this law, maintaining that the Canadian government has not been kept informed of the law's progress. Additionally, Mr. Harper advised that restricting the border between countries may merely be an overreaction to perceived terrorism.

During a speech presented at the annual conference of the National Council of La Raza, former President Bill Clinton praised President Bush for his support of immigration reform that would allow millions of illegal immigrants to seek U.S. citizenship.

According to an article published by the Associated Press, Clinton said that he was "proud of [Bush] for doing it and I thanked [Bush] for doing it." In particular, Clinton noted that Bush's roots in Texas, a state with one of the nation's largest Hispanic populations, shaped Bush's views on immigrants, stating that "[i]t's hard to demonize people if you know them."

Clinton argued that the immigration debate is being fueled by Republicans hard-liners who want to divide America, and that they support a "financial elite" instead of equal opportunity because they favor "concentrated wealth and power." "They really believe the world works better if they run it and keep their mouths shut," he said.

Addressing the Council before Clinton's speech, Los Angeles Mayor Antonio Villaraigosa noted the impact of the recent rallies on the debate, including the rally of 500,000 demonstrators in Los Angeles in March. "You literally reshaped the political landscape of our nation...we can still see a movement blooming before our very eyes."

Felipe Calderón, recently named president-elect of Mexico, denounced U.S. plans to build a wall along the United States-Mexico border. According to an article in the Daily Bulletin (Ontario, CA), in his first post-election news media briefing Calderón said that the best solution to the immigration crisis was creating jobs in Mexico, "not walls or troops," in reference to President Bush's plan to send National Guard troops to protect the border.

Calderón's remarks triggered negative reactions from U.S. proponents of increased border security. Rep. Tom Tancredo (R-Colo) said in a phone interview that he was "insulted" by the

statement, "just as Mexico would be rightly offended if we were to not only condemn their immigration policies but actively work to aid and abet illegal immigration." Another proponent of increased border fencing, Rep. Duncan Hunter (R-Calif.), stated in an e-mail statement that he was "hope Mexico's president-elect will also look more closely at the benefits security fencing brings to both sides of the border."

According to an article published by Reuters, two Latin radio hosts credited for mobilizing hundreds of thousands this year in pro-immigration protests have recently announced they would join the drive to increase the Hispanic and immigrant vote in the 2008 U.S. Presidential elections. Los Angeles disc jockeys Piolin ("Tweetybird") and El Cucuy ("The Bogeyman") said they will work with the National Council of La Raza to push Latino immigrants living in the United States to become citizens and register to vote in time to cast ballots in 2008.

An estimated eight million Latinos are legal residents of the United States and qualify for naturalization as U.S. Citizens. In addition, California is home to another three million legal residents. National Council of La Raza president Janet Murguia stated that, by encouraging these legal residents to naturalize and vote, the disc jockeys could help add another three million votes to the 7.5 million votes cast in 2004 that helped to elect pro-immigrant politicians.

According to an article published by the Chicago Tribune, the 21st Century Paul Revere Riders were met by approximately 100 counter-demonstrators in Chicago during a summer-long cross-country motorcycle ride advocating against illegal immigration.

The Paul Revere Riders, a group pushing for a fence to be built from the Pacific Ocean to the Gulf of Mexico, want the government to do "whatever it takes" to stop illegal border crossing, including ordering U.S. troops to the border, punishing companies that hire undocumented workers, and demanding drastic reductions in the number of people allowed to enter the U.S. legally.

During the protest, both sides carried American flags and yelled at each other through bullhorns. Shouts of "open up the border" and "shut the racists down" were countered by "No way, Jose!" from immigration oppositionists. "We are tired of being the collateral damage for this kind of invasion," said Frosty Wooldridge of Denver, an organizer of the ride that began May 29 in Colorado and is slated to end in Washington in August.

Lucas Sifuentes, 18, a freshman at the University of Illinois at Chicago said, "They wanted to come here to give themselves a better chance. When people want to stop them, it's absurd. America was founded on people coming over here to pursue a better way of life."

According to the New York Times, Sen. Diane Feinstein (D-CA) introduced an amendment to a bill that would ban underground passages connecting Border States to Mexico and Canada. This amendment would not only target those who build and pay for the construction of tunnels, but intends to discipline people who knowingly allow such construction to occur. This includes property owners involved in tunnel construction or leasing of property along the U.S. border.

In a speech to the Senate, Feinstein described the range of these border tunnels, from short range "gopher holes" to a professionally constructed "megatunnel," which connects Mexico with San Diego and houses thousands of pounds of marijuana. The amendment passed and is part of a bill that increases Homeland Security spending (see below). The bill is slated for fiscal year 2007.

According to a recent article in the Miami Herald, foreign nationals born outside Cuba who have a Cuban parent have a new way to seek a green card or permanent residency even if they don't have a Cuban passport, birth certificate or citizenship certificate. This important change could affect potentially thousands of people born outside Cuba who have a Cuban parent.

In its ruling on June 30, 2006, the USCIS reversed a longstanding practice in the Miami immigration office to turn down such applications. After hundreds of similar denials, attorneys for Liliano Lozano Buschini successfully sued the federal government, arguing that the Cuban constitution itself states that anyone born abroad with at least one Cuban parent can claim Cuban citizenship, and that the policy of denying such applicants was inconsistent with practice in other immigration offices. Under the newly expanded list of acceptable documents, applicants may present a Cuban Civil Registry document, a Cuban consular certificate of citizenship, or a document signed by a Cuban official with appropriate authority over the registration of citizens stating that the person is a citizen.

According to the American Immigration Lawyers Association, on July 13th the Senate unanimously approved a bill which grants \$32.8 billion to Homeland Security for fiscal year 2007. The bill, H.R.5441, differs from the version of the bill passed earlier by the House, which requested \$350 million more than the Senate. Passed amendments included a \$350 million allotment for border resources, such as vehicle and equipment upgrades, an increase in the number of border patrol agents along the Canadian border, and the penalization of the construction of underground tunnels, connecting Mexico or Canada to the U.S. Border.

In the same day, the Associated Press reports that the Senate approved several additional programs to reinforce border security during a session discussing government-regulated security for chemical manufacturing plants in the United States. The price increases introduced in this particular session include \$50 million be given to police programs along border communities and have increased surveillance increase among the U.S.-Canada border.

The Senate Armed Services Committee held a hearing in Miami on July 10th to give people the opportunity to discuss topics concerning immigrants currently serving or previously served in the U.S. military. According to the Miami Herald, the hearing was intended to influence people about how the Senate bill is more favorable to immigrants than immigration-based legislation from the House. Five senators who attended the Miami hearing said the House bill passed in December would discredit immigrants in the armed forces by labeling their undocumented family members as criminals. The bill passed by the Senate in May allows immigration reform which would give over nine million out of the 12 million undocumented immigrants a potential route to U.S. citizenship, including family members of immigrants in the armed forces.

According to the Washington Times, a hearing held by the House International Relations subcommittee met in Zapata County, Texas, which shares a border with Mexico. The committee met to assess voter opinions on reformation of immigration laws. Laredo, Texas, Sheriff Sigifredo Gonzalez Jr. warned House members that most people now sneaking across the Mexican border are involved in drug cartels and gang activity. Gonzalez notified the subcommittee that the influx of undocumented immigrants from places other than Mexico has swelled to almost five times the amount in the past four years. Reynaldo M. Garza, chief patrol agent for Laredo, told the subcommittee that violent incidents in the Laredo area have sharply increased in recent years.

AILA has updated its members with information on visa processing in Beirut in light of the current conflict in the region. The U.S. Embassy in Lebanon will continue to remain open. However, processing for Nonimmigrant Visas will be temporarily delayed. Processing for Immigrant Visas and American Citizen Services will continue normally. The U.S. State Department advises any American citizens to assess their own safety, and to remain in contact with the U.S. Embassy for any continuing changes in their visa processing policy.

The United States Citizenship and Immigration Services (USCIS) has announced this past week that the 20,000 H-1B cap for people with advanced degrees from US institutions has been depleted.

According to a U.S. Citizenship and Immigration Services (USCIS) press release, over 10,000 U.S. companies are participating in the Basic Pilot Employment Verification Program, as of July 24. This program permits managers to run online checks on Social Security Administration and Department of Homeland Security (DHS) databases to confirm if their employees are authorized to work in the U.S. Participation in the Employment Verification program has more than doubled throughout this fiscal year, with almost 200 companies joining the program each month. USCIS estimates that over one million hires a year are being verified through the Program by approximately 36,000 U.S. companies.

USCIS Director Emilio Gonzalez says that "Participation in the Employment Verification Program is the solution for businesses committed to maintaining a legal workforce" and that the program "protect[s] jobs for authorized U.S. workers." Employers can register for the Basic Pilot Employment Verification Program on-line at <https://www.vis-dhs.com/EmployerRegistration>.

The Social Security Administration (SSA) has published an updated version of its Policy Operations Manual System (POMS) which includes E-1, E-2, and L-2 spouses among the categories of "aliens work authorized without specific Department of Homeland Security (DHS) authorization." The SSA requires evidence that an employee is authorized in order to process an application of a Social Security Card to enable an immigrant to work. This evidence may either be a Form I-94, Arrival/Departure Record, or an EAD (Form I-766 or I-688B).

The new listing published in the POMS shows that nonimmigrants who are authorized to work in the U.S. without specific DHS authorization will not have the DHS employment authorization stamp on their individual I-94, nor will they likely have an EAD. Included on this list are E-1, E-2, and L-2 spouses. When these categories of aliens apply for an SSN card and do not submit an EAD as evidence of employment authorization, they must submit, in addition to evidence of immigration status, evidence of marriage to the E-1, E-2, or L-1 alien in the form of a marriage document.

8. International Roundup

Australian newspaper The Age reports that Treasurer of Australia Peter Costello has come under fire by critics from his remarks that Australians breed more to offset the risk of a population altered by immigration. Costello commented that if birth rates in Australia continued to run below replacement level, the makeup of the Australian population would change. "Increasing

immigration to cover natural population decline will change the composition of our population and raise concerns about social dislocation,” he said. He likened Australia’s situation with European nations, stating that low birth rates and high immigration in these nations have “caused a lot of social division, social disruption and violence.”

The comments, made in a speech to commence the national census, incited complaints from Muslim and ethnic leaders, condemning the arguments are “prehistoric”, “culturally paranoid”, and designed to incite “false panic”. Waleed Aly, president of the Islamic Council of Victoria, said that Costello appeared to be promoting a social theory created to exclude migrants, especially non-Anglo migrants. Costello made similar remarks to the Sydney Institute in February, where he called for Muslims to either adopt Australian value or leave.

A published report stated that the invitation of new members of the European Union to work in Britain caused the greatest swell of immigration ever reported in the United Kingdom. The report, Globalisation, Population Mobility and Impact of Migration, notes that in 2005, there were approximately 1.5 million foreign nationals in the British workforce, which comprised 4.1 percent of all employees in the U.K. The United Kingdom’s Yorkshire Post reported that this figure increased by nearly 70,000 in 2004, chiefly due to job-seekers from the eight new EU members from central and eastern Europe.

The report comes from the Economic and Social Research Council, commissioning two university professors specializing in population research. One of these professors, John Salt, explains the reason for the immigration surge: “Opening up the labour market to citizens of the new member states of the EU from May 2004 initiated what is almost certainly the largest single wave of immigration the British Isles have ever experienced, with Poles the largest ever single national group of entrants.” Prof. Salt further approximates that the white population of the densely inhabited English county of Yorkshire and the Humber will see a decline to 89.4 percent of the total population in 2020, compared with 93.7 percent today.

9. Legislative Update

According to an Associated Press report, President Bush personally presided over a formal citizenship procedure for three soldiers injured in Iraq . Spc. Noe Santos-Dilone, a Dominican Republic citizen, and Spc. Sergio Lopez and Pfc. Eduardo Leal-Cardenas, both Mexican citizens, were referred to by Bush as “men who knew the cost of freedom and were willing to pay that cost so others could live free.” After the domestic attacks of September 11, 2001 , Bush signed an executive order, Bush signed an executive order making immigrants automatically eligible for U.S. citizenship if they served in the U.S. armed forces.

Bush’s visit to the three troops at the Walter Reed Army Medical Center was to promote the nation’s stagnant immigration laws, encouraging Congress to pass legislation that “must be comprehensive.” At the citizenship event, Bush stated that securing the nation’s borders must be the first goal. Next, Bush says legislation much offer a temporary worker program, harsher consequences for employers who hire undocumented employees, and settle the status of undocumented immigrants in the U.S.

The Chicago Tribune reports that next week the House Armed Services Committee will be holding a hearing to further discuss border security between the United States and Canada. The hearing aims to get input which will help them come up with a bill that resolves the discrepancies between the House bill, which calls for stiff penalties against illegal immigrants, and the Senate

bill, which offers a guest worker program. The hearing will be held at Selfridge Air National Guard Base in Michigan, a state that shares 700 miles of the 4,000 miles of the U.S.-Canada border.

Congress, fearing a drop in trade and tourism between the U.S. and Canada, is considering delaying an implementation of new border identification rules. The new rules require people who cross the U.S. border from Canada to have passports. These rules would currently be effective by January 1, 2008. Congress is currently considering proposals to delay the plan until 2009.

According to the Arizona Star, U.S. House Speaker Dennis Hastert, along with other Congressmen, visited sites in Arizona along the U.S.-Mexico border. The visit was intended to gain an "understanding what the problems are" and to "make sure the borders are safe," according to Hastert. The congressional delegation, comprising seven Republican congressmen and one Democrat congressman, visited three border sites in Arizona, ending their two-day tour in El Paso, TX. The delegation made stops in Yuma and accompanied Border Patrol agents in Nogales on a late-night ride-along. Hastert equated lax border security to a patient bleeding to death, saying that the border must be secured first, before other immigration initiative could be considered.

Democratic Rep. Raúl Grijalva, who represents Yuma and Nogales, was not asked to be a part of the delegation. Grijalva said the visit was a "road show" created to "keep the Republican majority" and that instead of border security, Congress must first "deal with the realities of the people who are here." Despite Grijalva's protest, Hastert claimed the tour was "a bipartisan thing. We're bipartisan here."

[H.R.251](#) : To assist aliens who were transplanted to the United States as children in continuing their education and otherwise integrating into American society.

Sponsor: Rep Jackson-Lee, Sheila [TX-18] (introduced 1/6/2005)

Committees: House Judiciary

Latest Major Action: 3/2/2005 Referred to House subcommittee. Status: Referred to the Subcommittee on Immigration, Border Security, and Claims.

[H.RES.932](#) : Expressing the sense of the House of Representatives that the Congress should make additional emergency supplemental appropriations for necessary expenses for enforcement of laws relating to border security, immigration, and customs.

Sponsor: Rep Berry, Marion [AR-1] (introduced 7/20/2006)

Committees: House Homeland Security; House Judiciary; House Ways and Means

Latest Major Action: 7/20/2006 Referred to House committee. Status: Referred to the Committee on Homeland Security, and in addition to the Committees on the Judiciary, and Ways and Means, 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.2863](#) : Making appropriations for the Department of Defense for the fiscal year ending September, 30, 2006, and for other purposes.

Sponsor: Young C.W. Bill [FL-10] (introduced 6/10/2005)

Committees: House Appropriations; Senate Appropriations

Latest Major Action: 12/30/2005 Became Public Law No: [109-148](#).

[H.R.4313](#) : To amend the Immigration and Nationality Act and other Act to provide for true enforcement and border security, and for other purposes.

Sponsor: Rep Hunter, Duncan [CA-52] (introduced 11/14/2005)

Committees: House Judiciary; House Homeland Security; House Ways and Means; House Government Reform

Latest Major Action: 2/6/2006 Referred to House subcommittee. Status: Referred to the Subcommittee on Immigration, Border Security, and Claims.

[H.R.4580](#) : To prohibit loans by Federal agencies to aliens who are unlawfully present in the United States.

Sponsor: Rep Foxx, Virginia [NC-5] (introduced 12/16/2005)

Committees: House Financial Services

Latest Major Action: 12/16/2005 Referred to House committee. Status: Referred to the House Committee on the Financial Services.

[H.R.4939](#) : Making emergency supplemental appropriations for the fiscal year ending September 30, 2006 , and for other purposes.

Sponsor: Rep Lewis, Jerry [CA-41] (introduced 3/13/2006)

Committees: House Appropriations

House Reports: 109-388

Latest Major Action: 3/16/2006 Passed/agreed to in House. Status: On passage Passed by the Yeas and Nays: 348 - 71 (Roll no. 65).

[H.R.5131](#): To amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.

Sponsor: Rep Diaz-Balart, Lincoln [FL-21] (introduced 4/6/2006)

Related Bills: [S.2075](#)

Latest Major Action: 5/24/2006 Referred to House subcommittee. Status: Referred to the Subcommittee on 21st Century Competitiveness.

[H.R.5323](#) : To require the Secretary of Homeland Security to provide for ceremonies on or near Independence Day for administering oaths of allegiance to legal immigrants whose applications for naturalization have been approved.

Sponsor: Rep Farr, Sam [CA-17] (introduced 5/09/2006)

Committees: House Judiciary

Latest Major Action: 7/17/2006 Placed on the Union Calendar, Calendar No. 331.

[H.R.5384](#) : Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and related agencies for the fiscal year ending September 30, 2007 , and for other purposes.

Sponsor: Rep Bonilla, Henry [TX-23] (introduced 5/12/2006)

Committees: House Appropriations, Senate Appropriations

Latest Major Action: 6/22/2006 Placed on Senate Legislative Calendar under General Orders. Calendar No. 477.

[H.R.5441](#) : Making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2007 , and for other purposes.

Sponsor: Rep Rogers, Harold [KY-5] (introduced 5/22/2006)

Committees: House Appropriations, Senate Appropriations

Latest Major Action: 7/13/2006 Resolving differences / Conference -- Senate actions. Status: Senate insists on its amendment, asks for a conference, appoints conferees Gregg; Cochran; Stevens; Specter; Domenici; Shelby; Craig; Bennett; Allard; Byrd; Inouye; Leahy; Mikulski; Kohl; Murray; Reid; Feinstein.

[H.R.5456](#) : To respond to the crisis of illegal immigration in the United States .

Sponsor: Rep Burton, Dan [IN-5] (introduced 5/23/2006)

Committees: House Judiciary; House Homeland Security; House Education and the Workforce; House Ways and Means

Latest Major Action: 7/14/2006 Referred to House subcommittee. Status: Referred to the Subcommittee on Education Reform.

[H.R.5672](#) : Making appropriations for Science, the Departments of State, Justice, and Commerce, and related agencies for the fiscal year ending September 30, 2007 , and for other purposes.
Sponsor: Rep Wolf, Frank [VA-10] (introduced 6/22/2006)
Committees: House Appropriations, Senate Appropriations
Latest Major Action: 7/13/2006 Placed on Senate Legislative Calendar under General Orders. Calendar No. 516.

[H.R.5806](#) : To make grants to carry out activities to prevent teen pregnancy in racial or ethnic minority or immigrant communities, and for other purposes.
Sponsor: Rep Solis, Hilda L. [CA-32] (introduced 4/20/2005)
Committees: House Energy and Commerce
Latest Major Action: 7/13/2006 Referred to House committee. Status: Referred to the House Committee on Energy and Commerce.

[H.R.5845](#) : -- Private Bill; For the relief of Zhen Xing Jiang.
Sponsor: [Rep Brady, Robert A.](#) [PA-1] (introduced 7/19/2006)
Committees: House Judiciary
Latest Major Action: 7/19/2006 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.5846](#) : -- Private Bill; For the relief of Tian Xiao Zhang.
Sponsor: [Rep Brady, Robert A.](#) [PA-1] (introduced 7/19/2006) Committees: House Judiciary
Latest Major Action: 7/19/2006 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[S.2075](#) : A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes.
Sponsor: Sen Durbin, Richard [IL] (introduced 11/18/2005)
Committees: Senate Judiciary
Latest Major Action: 11/18/2005 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

[S.2611](#) : A bill to provide for comprehensive immigration reform and for other purposes.
Sponsor: Sen Specter, Arlen [PA] (introduced 4/7/2006)
Latest Major Action: 5/25/2006 Passed/agreed to in Senate. Status: Passed Senate with amendments by Yea-Nay Vote. 62 - 36. Record Vote Number: 157.

[S.2612](#) : A bill to provide for comprehensive immigration reform and for other purposes.
Sponsor: Sen Hagel, Chuck [NE] (introduced 4/7/2006)
Committees: Senate Judiciary
Latest Major Action: 4/24/2006 Referred to Senate committee. Status: Read the second time and ordered referred to the Committee on the Judiciary.

[S.3433](#) : Private Bill; A bill for the relief of Michael Anthony Hurley.
Sponsor: Sen Landrieu, Mary L. [LA] (introduced 6/6/2006)
Committees: Senate Judiciary
Latest Major Action: 6/6/2006 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

S.3614 : A bill to provide comprehensive procedures for the adjudication of cases involving unprivileged combatants.

Sponsor: Sen Specter, Arlen. [PA] (introduced 6/29/2006)

Committees: Senate Armed Services

Latest Major Action: 6/29/2006 Referred to Senate committee. Status: Read twice and referred to the Committee on Armed Services.

10. Notes from Visalaw.com Blog

The Visalaw Blog updates readers on late breaking developments in immigration law and offers our comments on what is happening on the legislative front. You can read our blog at <http://www.visalaw.com/blog.html>.

Saturday, July 29, 2006

NEW COMPROMISE PROPOSAL BEING FLOATED

A new compromise plan designed to break the logjam stalling immigration reform legislation is being circulated by Texas Senator Kay Bailey Hutchison (R-TX) and Mike Pence (R-PA). The plan would involve triggers and processing of undocumented immigrants at "Ellis Island" centers across the US border, as previously suggested by Representative Pence, but further details are emerging on the proposal including

- Two years of implementation of the enforcement provisions of the bill and then the President would certify that the borders were secure. After that, the guest worker program could start.
- A new guest worker visa called the "Good Neighbor SAFE Visa" where workers would leave the US and apply for a new visa outside the US at an "Ellis Island Center." Significantly, the program will only apply to nationals of CAFTA and NAFTA member countries - Canada, Mexico, Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua, and the Dominican Republic.
- The new guest worker visa is valid for two years and then extendable five times in two year increments. Workers must demonstrate English proficiency after the first two years. Spouses and kids can enter, but none will be eligible for any public benefits.
- After the first six terms, a five year extension can be requested and then after the 17th year, the worker could apply for permanent residency (a green card). No provisions are included to increase the number of green cards to cover the workers in the plan.

While I think the pro-immigrant community could live with a delayed implementation of the program as well as processing at "Ellis Island Centers" the idea that people would need to wait 22 years to become citizens (that's 17 years of guest worker status plus five years on a green card before citizenship could be granted), the cynic in me tells me that this is largely designed to ensure that the millions of beneficiaries of the plan will have to wait decades before participating in US elections. Could it be that these GOP fears these new Americans are most likely going to vote Democratic?

H-1B CAP FOR ADVANCED DEGREE HOLDERS EXHAUSTED

Two months before the government year begins on October 1st, the bonus H-1B cap of 20,000 available to graduates of US masters and other graduate degree programs has been filled. Applicants must now wait until April 1, 2007 to apply for H-1B positions with start dates no earlier than October 1, 2007. The unusually early reaching of this bonus H-1B cap indicates how much demand there is in the US economy for H-1B workers and will no doubt add pressure on Congress to deal with the situation.

posted by Greg Siskind @ 2:21 PM

Tuesday, July 25, 2006

MEDIA CONTINUES TO IGNORE HOUSE SHOWBOATING

Rather than actually working on the immigration bill, House Speaker Dennis Hastert wasted more valuable time holding hearings that are designed to score political points rather than discuss new issues and doing yet another trip to the US-Mexico border to have a [photo-op](#).

Is it helping? In the short run, perhaps it will help some Republicans. But according to [David Broder](#), one of the nation's leading political commentators, the strategy could be disastrous for the GOP. Already, the President's approval ratings have sunk from 60% to 38% with Hispanic voters and many analysts point to the harsh rhetoric of Republican politicians as the reason for this drop. Hispanic voters now constitute a large enough part of the electorate to swing elections in a number of states.

11. Former Department of State Agent Pleads Guilty to Visa Fraud

A former agent for the Department of State pleaded guilty to aiding and abetting visa fraud. According to a Justice Department press release, Harold Countryman and his wife, Kimberly Countryman, a northern Virginia realtor, admitted to using a fraudulent visa to continue the coerced labor of a Cambodian woman working for them.

Court documents show that the Countrymans provided false information to the Department of State to obtain a visa for the woman. They then brought her to the United States to work for them as a servant for two years. Mrs. Countryman acknowledged that the obtained visa was to be used to commit a felony, specifically forced labor. She further confessed that she withheld some amount of the woman's pay, took her passport, and physically abused the woman.

Visa fraud carries a statutory maximum penalty of 10 years imprisonment and a \$250,000 maximum fine. As part of their plea agreement, the Countrymans are required to pay \$50,000 in restitution and \$50,000 in forfeiture. Sentencing for the two is scheduled for Oct. 13, 2006, before U.S. District Judge Gerald Bruce Lee. The Federal Bureau of Investigation and Department of State, Diplomatic Security Service, investigated the case.

Attorney Wan J. Kim of the Justice Department's Civil Rights Division says that the Countrymans' "plea makes clear that those individuals who use fraud to thwart our immigration laws and take advantage of the most vulnerable members of our society will be aggressively prosecuted."

12. BALCA Issues Favorable Decision in First PERM Case

The Board of Alien Labor Certification Appeals (BALCA) has delivered its decision in Matter of HeathAmerica as being in favor of the Employer, holding that “although an agency may impose a rigid regulatory scheme to promote administrative efficiency, under the particular circumstances of this case, the ETA Certifying Officer’s (“CO”) denial of reconsideration was an abuse of discretion. BALCA considered that “the CO’s policy not to consider mistakes made by employers is arbitrary and capricious and not supported by any regulatory language, regulatory history or decisional law.” It is the first appeal docketed by BALCA under the regulatory method, the Program Electronic Review Management (PERM), made effective March 28, 2005 .

On June 29, 2005 , HealthAmerica submitted an online Application for Permanent Employment Certification (ETA Form 9089). The Department of Labor, Employment and Training Administration (DOL) does not allow a submission of ETA 9089 without accompanying documentation in support of the ETA Form. Due to a clerical error, the application contained an erroneous date indicating that the employer placed a Monday ad instead of the required Sunday placement, when in fact the employer had acted to place the ad on Sunday. On July 25, 2005 , nearly one month later, the DOL denied that the application indicated that a Sunday edition of the newspaper was available but was not used.

HealthAmerica submitted a timely Request to Reconsider/Review the denial, submitting a copy of the Sunday request sheet. On February 24, 2006 , DOL upheld the denial, stating that it could not consider the evidence submitted with the Request to Reconsider because, pursuant to 20 CFR §656.24(g)(2) such a Request may not include evidence not previously submitted.

Under DOL ’s explanation of the regulation, the employer’s record of evidence consists solely of ETA Form 9089. DOL asserted further that PERM has no method for correcting information after submission, and that denials will only be reversed upon Requests for Reconsideration when the mistakes were committed by DOL as its authority.

BALCA received the Appeal File from HealthAmerica on February 28, 2006 , and on March 9, the Board granted en banc review. At the heart of the appeal, BALCA asked all parties to specifically address the proper interpretation of 20 CFR §656.24(g)(2) as it applies to this case, as well as the relief available if it is determined that the CO should have reconsidered the application.

In regards to the Reconsideration motion, the CO argued that “under pre-PERM law the CO was only required to reconsider ‘when the motion is grounded in allegations of oversight, omission or inadvertence’ by the CO.” The CO’s decision on reconsideration is based largely on FAQ No. 5, a FAQ posting on the PERM web site. The Board held that “although web site postings are a very powerful method of disseminating information...they are not a method by which an agency can impose substantive rules that have the force of law.” Ultimately, the Board determined that the online FAQ was not “supported by PERM ’s regulatory history, nor consistent with notions of fundamental fairness and procedural process.”

The Board looked to the language of CFR §656.24(g)(2), ruling that the section’s language determine that “documentation ‘submitted’ in support of a labor certification application constructively includes the materials held by an employer under the recordkeeping provisions of PERM.” BALCA considered the problem and “injustice,” since “the consequences to the Employer were out of proportion to the mistake.”