

Siskind's Immigration Bulletin –  
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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:

While many pundits predicted President Bush would only mention efforts to increase border enforcement in his annual State of the Union address to the nation this week, the President specifically promoted the concept of a guest worker program. He was careful to note, however, that the program would not offer an "amnesty" though there is little agreement on the meaning of that term.

The President briefly mentioned immigration reform twice in his speech:

"We hear claims that immigrants are somehow bad for the economy even though this economy could not function without them. All these are forms of economic retreat, and they lead in the same direction – toward a stagnant and second-rate economy."

He went further later in the speech to say

"Immigration reform must be a priority. American needs an immigration system that upholds our laws, reflects our values, and serves the interests of the economy. Our nation needs orderly and secure borders. To meet this goal, we must have stronger immigration enforcement and border protection. And we must have a rational, humane guest worker program that rejects amnesty, allows temporary jobs for people who seek them legally and reduces smuggling and crime at the border."

The President elaborated on his remarks on Wednesday at an address in Nashville, Tennessee. He called for more detention facilities along the border to cut down on the need to "catch and release" undocumented immigrants.

He also focused on the need to end the system that "encourages smuggling and pressure on the border" by creating a legal means for people to pursue work in the US beyond the inadequate system that currently exists.

The President again noted he is against amnesty because it would have the effect of drawing another wave of people to want to enter the country.

None of the sponsors of the major immigration plans in Congress would argue that their plans call for an amnesty. The most generous program is the Kennedy-McCain legislation. It allows workers to pursue permanent residency, but only after paying steep financial penalties. Other plans call for workers to first leave the US and then seek to reenter.

President Bush has yet to specifically endorse a proposal and has not clarified what he would consider an "amnesty."

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This week we announce that the bonus cap of 20,000 H-1B visas for graduates of US graduate education programs has been reached. The fact that these visas were used up only one-fourth of the way through the fiscal year shows there is still tremendous demand for H-1B visas. Now the long wait begins with no visas available for nearly eight months.

Regular readers of this newsletter know that the Senate passed legislation that would have alleviated the problem by allowing unused H-1B numbers from prior years to roll forward. Unfortunately, the House did not pass the measure and the bill died. But the measure is expected to be revived shortly along with efforts to deal with the retrogression of employment-based green card numbers.

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In firm news, we have received a major accolade this week following last week's naming of me as one of the best lawyers in Tennessee. Chambers and Partners ([www.chambersandpartners.com](http://www.chambersandpartners.com)), publishers of the world famous guides to law firms and lawyers, began this year ranking immigration lawyers in the United States. Chambers is

known for extensive research in the marketplace and their guides are relied on by corporate counsel shopping for a law firm.

We are pleased to report that Siskind Susser is listed as one of the top 15 law firms in the US. I'm included on the list of the 25 best immigration lawyers in the United States and my law partner Lynn Susser is included in the top 50 list. The list includes many people I consider mentors over the years and I'm flattered to be included on the attorney list. I think the fact that the firm is listed as one of the best is a tribute to the many incredibly dedicated team members at the firm who strive to provide outstanding service every day.

This past week I participated in two programs on physician immigration. I moderated a teleseminar for the American Bar Association's Health Law Section. My co-panelists were Bruce Larson, immigration counsel for the Mayo Clinic, and Bill Stock, my co-author on the J-1 Visa Guidebook and a lawyer in Philadelphia. On Thursday, I spoke at the Physician Recruiting Expo in Las Vegas. Next week, I speak on the topic again at a meeting of the American Health Lawyers Association in Ft. Lauderdale.

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I also am scheduled to speak next month at the Texas Bar's annual Immigration Law Institute. The program will be held in Houston on March 2<sup>nd</sup> and 3<sup>rd</sup>. The program will have several mock demonstrations including

- Nonimmigrant consultation
- Permanent resident consultation
- Disgruntled clients
- Naturalization interview
- Criminal issues
- Wrapping up your case
- Removal hearing

The program has excellent speakers including frequent Siskind's Immigration Bulletin columnist Gary Endelman who will speak on Congress' plans for immigration reform. I'll be speaking on immigration resources on the Internet and also moderating a panel on retainer agreements and fee arrangements.

You can register for the program online and see the full brochure by going to <http://www.texasbarcle.com/CLE/AABuy0.asp?sProductType=EV&IID=5835>

As always, we remind readers that we're lawyers who make our living representing immigration clients and employers seeking to comply with immigration laws. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

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2. ABCs of Immigration: Preserving Green Card Status During Trips Abroad

## **Can extended trips abroad effect lawful permanent residence status, or create concerns for citizenship applications?**

It is an all too common situation – after years of bureaucratic entanglements, a person finally obtains lawful permanent residence in the US, only to find they still have business or family concerns that will keep them out of the US for an extended period of time. Often, the lawful permanent resident (LPR) will try to reenter the US, only to have a port of entry officer or consular official tell them they have abandoned their permanent residence status. Absences from the US of more than six months raise a rebuttable presumption that an individual intends to abandon permanent resident status, and absences of more than one year invalidate the green card as an entry document unless the person holds a valid re-entry document. This means that a foreign national who has been continuously abroad for more than 12 months may still be a permanent resident, but a special immigrant visa issued by a US consul may be necessary to re-enter the US unless the individual has a valid re-entry permit.

While an extended absence alone is not grounds for revoking permanent residence, it is one factor the government considers very important. Extended absences may also adversely affect US citizenship eligibility, despite the existence of a re-entry permit. Therefore, when planning an extended trip abroad, it is necessary to plan ahead to avoid abandonment.

Furthermore, Congress did change the law several years ago to hold that permanent residents who leave the US for more than six months can be held inadmissible if there is something in their background now that would have barred them from getting a green card had it been true at the earlier date. For example, if one cannot meet the public charge requirements, security clearance or has gotten a communicable disease, then they could face problems reentering. For most, this will probably not be a major concern.

## **What can a permanent resident do to prevent abandonment of the immigrant status in the case of an extended absence from the US?**

Among the many factors that influence the decision on abandonment are the length and reason for the absence and the number and type of connections the LPR maintains in the US. There are many steps a LPR can take to demonstrate his or her intention to maintain their status in the US.

Of course, the LPR can obtain a re-entry permit if the absence is to be longer than one year. A re-entry permit, filed on Form I-131, is usually granted for two years and serves as recognition by the USCIS that the individual does not intent to abandon permanent residence despite prolonged absence from the US. This application is typically submitted by the individual while physically present in the US and must be used prior to the expiration of the document, or two years from the date of issuance. If the holder of a re-entry permit is a conditional permanent resident, the permit will be valid to the date the conditional resident must apply for removal of conditional status.

One of the most important factors in preserving permanent residence is the proper filing of US tax returns while abroad and filing as a US resident and not as a nonresident. Because of international tax laws, there will often be no tax owed to the US government, but failure to file a return is almost always considered a sign that LPR status has been abandoned. The LPR should also maintain a bank account and credit cards in the US. These accounts should be as active as possible. For example, if the LPR is employed abroad, the salary should be deposited in the US account. The LPR should also continue to renew his/her US driver's license. If possible, the LPR should purchase property in the US.

If the LPR's absence is due to employment, a letter from the employer detailing the terms and length of employment is very important. If the absence is for family or personal reasons, these should be well documented. While such reasons are acceptable, the ease with which they can be manipulated means they should be very well documented.

However, many of these same factors are involved in the decision of whether to issue such a permit, and even with a re-entry permit the LPR can still be deemed to have abandoned status.

### **What should a lawful permanent resident do while traveling abroad to prevent abandonment of lawful permanent resident status?**

It is important that the LPR traveling abroad for an extended period be prepared to document his/her intent to remain a US resident if questioned by immigration or consular officials. One of the best ways to do this is to carry copies of relevant documents in a single location so that they can be presented readily to officials. Among these documents should be copies of past tax returns, deeds showing property ownership, records of bank account activity, relevant letters from employers, and letters explaining the purpose of the extended absence.

A commonly held but mistaken assumption is that a visit every year to the US will preserve LPR status. While an LPR needs only the green card to reenter the US after an absence of less than one year, this is not enough to indicate the intent to remain a resident of the US. The LPR must take additional action to preserve their status as mentioned above.

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### 3. Ask Visalaw.com

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

Q - I have a question about how my daughter (a green card holder) can bring her baby to the US without having problems. My daughter, unmarried, 23 years old, has had a green card for two years, was a student in international business, went in December 2004 to Germany, started in Jan. - May 2005 an internship in Germany. End of January she got pregnant, came back end of May 2005 and traveled back to Germany end of June. The baby was born in Germany in Oct. 2005. Now her flight is scheduled to come back to the USA end of April and in Sept 2006 she will continue to finish her study. Does she have to fill the I-94 for her baby? If yes, does it mean the baby may stay in the USA just 3 months? What is possible in this case, so she can stay and live with her baby in the USA without problems?

A - A child born abroad of green card holding parents may enter the U.S. without a green card as long as the child is under two at the time of the initial entry to the country. You'll want to bring proof of the parent-child relationship. The child is considered a green card holder and you can file an I-90 form to get the card for the child.

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Q - I had a student visa 2 years ago but because of financial difficulties I stopped going to school. I start doing some small business and I read about the EB-5 investor green card program.

I would like to know if my present situation can be an obstacle for filing a petition.

A - You probably can apply for an EB-5 visa and would not be barred because student visas come with I-94s marked "d/s". This means that your stay is tied not to the expiration date on an I-94, but to an I-20 student document. So you will likely not face a reentry bar for overstaying an I-94. Obviously, you'll want to consult your attorney and you should know that you'll ultimately likely have to process your green card at a consulate abroad because of the status violation. I would, of course, remind you that you need to document the source of the \$500,000/\$1,000,000 investment and your recent financial difficulties may raise questions regarding the source of the funds for your investment.

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Q - I am a US Green Card holder from Canada and my family wants to hire a nanny from Canada. She is a Canadian Citizen, 40 years old with lots of childcare experience. Is this possible? What would the time frame be to have her come to California to start with us?

A - It won't be easy. There are few good options available to sponsor nannies other than via the J-1 visa and that is limited to younger nannies (under 26 years old). I've written an article at <http://www.visalaw.com/05aug3/2aug305.html> that may be helpful. Also, keep an eye on legislation working its way through Congress that would create a guest worker program that will be open to nannies. We could have some news on this in the next few months.

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Q - I need information if there is an appeal process for a B-2 visitor visa denial at a consulate. My relative applied for renewal of her B-2 visa at the US consulate in Guatemala and was denied without explanation.

A - Unfortunately, there is no ability to appeal a denial of a visa at a US consulate. You can only request the consulate review the case again and change its mind.

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Q - Recently George Bush made way for a Canadian Ice Dancer to gain her citizenship sooner than "letting the application take its course" so that she can be an American citizen while competing in the Olympics for the US next month. I was wondering if others can gain advantage from that action by President Bush. I'm a Green Card holder (through work not marriage) for 1.5 years and intend to gain US citizenship.

A - Unfortunately, the case was handled in a way that only the athlete could take advantage. A special bill was passed that was only valid for a couple of days - just enough time to let this case be submitted and approved. However, note that spouses of US citizens

already get a break on residency. You are able to apply for citizenship after two years and nine months of permanent residency, two years faster than everyone else.

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#### 4. Border and Enforcement News

On January 19, 2006, customs officials at the San Ysidro and Otay Mesa ports of entry became the first in the nation to implement a program of civil fines for citizens and legal residents caught smuggling people into the country. A first offense is punishable by a fine of \$5,000. Second-time offenders will be fined twice as much. Adele Fasano, Director of field operations for California's border ports, Adele Fasano notes that the Department of Homeland Security hopes that the fines will further discourage alien smuggling.

Federal prosecutors in San Diego have difficulty in prosecuting smugglers because they have so many cases. In 2005, 92 percent of all smuggling cases at ports of entry took place at the San Ysidro and Otay Mesa ports. Only the worst cases, such as those involving the endangerment of the people being smuggled, are typically prosecuted. Until this new program, there have been no administrative penalties for U.S. citizens who get caught smuggling. According to U.S. Customs and Border Protection spokeswoman, Kelly Klundt, the guidelines of the San Diego and Otay Mesa ports will apply nationwide and that fines may be implemented immediately.

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According to Texas police and the FBI, Mexican soldiers and civilian smugglers had an armed standoff with nearly 30 U.S. law enforcement officials on the Rio Grande in Texas on Monday afternoon. Mexican military Humvees were towing what appeared to be thousands of pounds of marijuana across the border, at Neely's Crossing, about 50 miles east of El Paso, into the United States, said Chief Deputy Mike Doyal, of the Hudspeth County Sheriff's Department. Deputies captured one vehicle in the incident, a Cadillac Escalade reportedly stolen from El Paso, and found 1,477 pounds of marijuana inside. Doyal said such incidents are common at Neely's Crossing.

However, the Associated Press recently reported that Mexican and U.S. officials are now saying that the men in military style uniforms were not soldiers at all. Authorities told the AP that known drug traffickers are using military uniforms (and that these outfits are not even regulation uniforms).

No shots were fired during the confrontation and the traffickers escaped back into Mexico with much of the marijuana. Mexican officials told the AP that soldiers are instructed to avoid that area known as the "alert zone" unless they are authorized.

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Dorismar, stage named, Dora Noemi Kerchen, has worked in the United States, among other things, as a Playboy Playmate, calendar pinup, and performer at a Democratic National Convention party. She recently was designated an "Alien of Extraordinary Ability" as part of the process of applying for permanent residency in the US. The 29-year-old Argentine media star was deported with her husband/manager Alejandro Schiff on Jan. 5, after five years in Miami living as an undocumented immigrant, according to *The Miami Herald*. Dorismar arrived in the United States under the visa waiver pilot program which

allowed Argentine tourists to come to the US without a visa from a consulate. That program ended for Argentines in 2002. Dorismar was one of the many that stayed passed the 90 day limit under the visa waiver program. Those who stay even one day over are subject to immediate deportation without recourse and can be barred from the United States for up to 10 years depending on the length of the overstay, according to Barbara Gonzalez, a U.S. Immigration and Customs Enforcement spokeswoman. Dorismar is seeking a waiver of her 10-year-ban at the consular offices in Buenos Aires so that she can pursue her extraordinary ability-based green card petition

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According to *The Sunday Express* of India, Narendra Mandalapa, an Indian citizen has been arrested by US immigration authorities in New Jersey, and is being charged with fraud and misuse of visas. After filing nearly 1,000 possibly fraudulent labor-based petitions in one of the biggest immigration frauds to be uncovered, Mandalapa is now in the custody of the United States Marshals Service. All of these petitions were filed on behalf of skilled Indian and Pakistani computer professionals trying to enter or remain in the US. In order to file the petitions, Mandalapa created two small businesses. The seizures from Mandalapa include four accounts in Edison, N.J., two brokerage accounts in New York, a Mercedes van, and a Lexus sedan. Investigators are now trying to determine how many individuals actually entered the US under these fraudulent petitions and received benefits.

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According to a *Reuters* article, the U.S. Office of Border Patrol claims that a new pilot program that jails illegal immigrants who cross into the town of Eagle Pass, Texas, and surrounding area from Mexico, has significantly decreased the numbers of attempters. The program instituted on December 12, is called Operation Streamline II. According to the article, officials believe part of the reason for the decline in undocumented immigrants attempting to cross the border at Eagle Pass is due to rumors of increased border patrol security. In mid-2005, approximately 150 undocumented immigrants were apprehended daily by Border patrol, but since its institution, the numbers have dropped to about 10 per day. Under this new program, 740 undocumented immigrants have been arrested and charged with misdemeanor illegal entry. After they are arrested, they are generally tried in federal court and jailed up to 180 days.

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U.S. Customs and Border Protection is currently hiring border patrol agents. US border patrol agents work to prevent terrorist and terrorist weapons from entering the United States. Additionally, agents detect and prevent the smuggling and unlawful entry of undocumented immigrants into the United States, and apprehend those in violation of immigration laws. For more information about the position, go to [www.cbp.gov](http://www.cbp.gov), click on Careers, and then click on Border Patrol Agents. All applications must be received by February 21, 2005.

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## 5. News From the Courts

The News From the Courts column is written by Maria Bjornerud, an immigration attorney with an office in Southaven, MS. Originally from Russia, Ms. Bjornerud is licensed to practice law in Tennessee and Mississippi. She can be contacted via email at [mbjorne@msn.com](mailto:mbjorne@msn.com)

CALIFORNIA v. CABRERA, H028487, 2005 Cal. App. Unpub. LEXIS 11634 (Ca. Ct. App. 2005) holds that a trial court has no jurisdiction to summarily revoke an alien's probation for failure to report to the probation department, when an alien has been immediately deported upon his release from custody and a probation order provides for personal appearance at the department as a condition of probation.

JUDGES: RUSHING, PREMO, DUFFY:

Defendant pleaded no contest to inflicting corporal injury on a cohabitant, within seven years of a prior conviction. The court suspended imposition of sentence and granted defendant three years probation and ordered as conditions of probation that Defendant spend eight months in the county jail, and report to this probation officer. Defendant was released to the custody of the INS from the Santa Clara County jail after serving his sentence and was immediately returned to Mexico. Defendant's probation was revoked on the grounds that Defendant had failed to contact his probation officer as he was required to do as a condition of his probation. In 1999, his probation was summarily revoked and a bench warrant was issued for defendant's arrest. Defendant was arrested on the bench warrant several years later. Defendant appealed the trial court's order revoking his probation for failure to report to the probation department.

The court found that Defendant had not willfully failed to report to the probation department at his release from custody while he was in Mexico as a result of his deportation. The court determined that reporting order clearly implied a personal appearance at the department in order to comply with probation conditions. Defendant was prevented from doing so by his deportation. Therefore, the violation underlying the summary revocation was not supported by substantial evidence as required for tolling the running of the probationary period. *People v. O'Connell*, 107 Cal.App.4th 1062, 1066(2003). As a result, the probationary period was not tolled from the time of his deportation, Defendant's probation expired while he was still in Mexico, and the court lacked jurisdiction to revoke defendant's probation when he returned to the United States years later.

QASSIM, et al. v. BUSH, Civil Action No. 05-0497 (JR), 2005 U.S. Dist. LEXIS 34618 (D.D.C. 2005) holds that an indefinite detention by the United States government of an alien non-enemy combatants at Guantanamo Bay facility is unlawful; nevertheless, the court had authority to order the government neither release such aliens into general population of a military facility, nor allow their entry into the United States on parole.

JUDGE ROBERTSON:

Petitioners are Muslim Uighurs, natives of China's Xinjiang province. They were captured by Pakistani security forces in late 2001 or early 2002, delivered into U.S. custody, and held in Afghanistan for approximately six months. In 2002, they were transferred to the naval base at Guantanamo Bay, Cuba, where they were detained as "enemy combatants," and where they remain to this day, even though a Combatant Status Review Tribunal (CSRT) determined that "they should no longer be classified as enemy combatants. Petitioners sought a writ of habeas corpus in 2005.

The government claimed that it had authority for petitioners' continued detention because the Executive has the "necessary power to wind up wartime detentions in an orderly fashion," providing that petitioners' detention was lawful in the first place. *Hamdi v. Rumsfeld*, 542 U.S. 507, 516 (2004). Nevertheless, the court found that the government

had not stated that Petitioners were ever suspected of having engaged in armed conflict against the United States, only that they were captured as they fled towards Pakistan after the inception of coalition bombing.

The court explained that the authority to detain in wartime was grounded in the need to prevent captured individuals from returning to the battlefield. *Hamdi*, 542 U.S. at 518-21. Because of this limited purpose, to prevent combatants to go back to the battlefield, the laws of war require that detention last no longer than the active hostilities. *Id.* at 521. The court concluded that even if Petitioners' initial detention was lawful, and even assuming that some reasonable wind up period of detention was allowable, their continued detention for nine months after the CSRT found them to be non-enemy combatants far exceeded the presumptive limit of six months the Supreme Court applied in the analogous context of removable and excludable aliens detained under immigration statutes. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Therefore, the detention of Petitioners has become indefinite and unlawful.

Petitioners were urging the court to invoke the plain language of the habeas statute and order the government to "produce...the bodies" of the Petitioners at the court hearing so that the court could evaluate the government's security concerns and set appropriate conditions for Petitioners' release into the community, on parole, until the government could arrange for their transfer to another country.

The court held that the command of the habeas required the court to order the body of Petitioner produced "unless the application for the writ and the return present only issues of law." 28 U.S.C. § 2243. The court rejected the government's invocation of the doctrine of consular non-reviewability because the Petitioners were not applying for visas, and there had been no exclusion or removal order, and the government conceded that petitioners were not enemy combatants. Therefore, only legal issues of law were presented, and there was no requirement to produce the bodies.

The court summarily rejected to order the release of Petitioners into the general population of the base at Guantanamo Bay because the court had no authority to order the military to allow a civilian, much less a foreign national, access to a military base.

The court found that the government had yet not found another country that would accept Petitioners. Invoking separation of powers doctrine, the court held that it had no authority to grant Petitioners entry into the United States because the power to exclude aliens "is inherent in the executive power to control the foreign affairs of this nation," *Knauff v. Shaughnessy*, 338 U.S. 537, 542-43 (1950), and that "the conditions of entry for every alien... have been recognized as matters... wholly outside the power of courts to control." *Fiallo v. Bell*, 430 U.S. 787, 796 (1977).

The court found that a federal court had no relief to offer Petitioners.

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## 6. Government Processing Times

There are new processing times for the following service centers:

California (01/24/2006): <http://www.visalaw.com/california.html>

Vermont (01/24/2006): <http://www.visalaw.com/vermont.html>

Nebraska (02/01/2006): <http://www.visalaw.com/nebraska.html>

Texas (01/31/2006): <http://www.visalaw.com/texas.html>  
Missouri (01/24/2006): <http://www.visalaw.com/missouri.html>

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## 7. News Bytes

South Florida's three Cuban-American members of Congress, Republican U.S. Reps. Lincoln Díaz-Balart, Mario Díaz-Balart and Ileana Ros-Lehtinen, pressed the Bush administration Monday to allow foreign nationals from El Salvador, Nicaragua, Honduras and Haiti to remain in the United States by means of renewing their "temporary protected status", known as TPS, while their countries rebuild from the devastation of Hurricane Mitch, one of the worst hurricanes in recent memory to strike Central America. More than 300,000 are at risk of losing TPS and being deported. They also asked President Bush to make Haitian nationals eligible for TPS for the first time, too. They cited recent "undemocratic actions" of ousted Haitian President Jean-Bertrand Aristide and argued that he has created conditions that make it "extremely dangerous for Haitians to return to their country at this time."

TPS, a temporary work-residency program, created by Congress, grants citizens of designated countries plagued by armed conflict, natural disasters or other emergencies, the right to live and work in the United States for certain periods of time. That status is usually reviewed every 18 months, and is often extended depending on instability in the home countries. The Bush administration has reportedly been considering dropping TPS and perhaps rolling it into a guest-worker initiative now being considered by Congress.

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According to FBI officials, Pablo Rosario, 31, a Border Patrol agent for five years, allegedly molested three immigrant women and then released them without processing them. He has been indicted on charges of civil rights violations and making false statements and suspended without pay. He faces up to five years in prison on each of the four counts of charges and up to \$250,000 in fines. The indictment alleges Rosario detained and sexually molested a mother and her 15-year-old daughter crossing the border from Mexico in March 2004.

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According to *The Chicago Tribune*, Ozzie Guillen, former major-league player, coach, and now manager of the World Series champion White Sox along with his wife, Ibis, and 19-year-old son Oney passed their citizenship tests last Friday and were sworn in by Judge Marvin Aspen at the U.S. Citizenship and Immigration Services office. When asked how he felt, Ozzie said "This is my dream. Do you know how many people die every week trying to be an American? It's not an easy thing to do."

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The Department of State has announced significant policy changes regarding J-1 flight training programs. Currently, eight organizations facilitate the entry into the United States of some 350 foreign nationals yearly for the purpose of flight training. The USA Patriot Act of 2001 mandated that the Department of State, the Department of Homeland Security, the Department of Education, and the Attorney General, all take cognizance of and undertake certain actions regarding flight training programs. The Department of State has determined

that it does not have the expertise and resources to fully monitor flight training programs and insure their compliance with the national security concerns expressed in the Patriot Act.

Consequently, as a matter of policy, the Department of State will no longer designate any new J visa flight training programs, nor will it permit currently-designated flight training programs to expand their programs, pending a determination as to which Federal agency ultimately will be tasked with the administering and monitoring of such programs. Redesignation of programs will continue as required by existing regulations. This policy is effective January 24, 2006.

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The Department Of State also announced Scaling back J-1 agricultural training programs. In 2005, the Government Accountability Office (GAO) examined the Department's management of the J visa Summer Work Travel and Trainee programs to ensure that only authorized activities are carried out under the programs and to identify potential risks of the programs. The GAO Report found that there was a potential that the trainee programs could be misused as employment programs and that trainees could be exploited by employers or other third parties. Agricultural training programs were found to be particularly problematic because of the potential for fraud.

The GAO report also cited cases where certain employers referred to their program participants as employees, rather than trainees. In one case cited, four trainees were placed with dairy farms that had an agreement with the program sponsor, but only one of the four farms participating in the program had a structured training plan. There were concerns that these programs were merely utilizing trainees for cheap labor and whether the trainees were simply receiving enough training to perform their work. The Department has consulted with the Department of Labor and the Department of Agriculture in order to develop ways to better monitor agricultural training programs and to determine whether such agriculture training programs are subject to and in compliance with existing statutes such as the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Workers Protection Act. Pending the Department's resolution of these outstanding issues, the Department of State will not designate any new J visa agricultural training programs, nor permit currently-designated agricultural training programs to expand.

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According to a press release from Immigration Customs and Enforcement (ICE), upon President Bush's signing of the Trafficking Victims Protection Reauthorization Act (TVPRA-H.R. 972), ICE reaffirmed its law enforcement commitment to identify victims of human trafficking and bring perpetrators of this crime to justice. The number of ICE investigations against traffickers increased by more than 400 percent in the first six months of FY 2005, compared to the total number of cases in FY 2004.

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Daphiney Caganap, former head of the INS anti-corruption unit and the San Ysidro, California border, was sentenced to three years of probation after admitting she lied to an FBI agent who was investigating a smuggling ring. She first lied to the investigator about having dinner with a border inspector who was actively involved with a Mexican smuggling incident but then she later confessed.

According to the *San Diego Union Tribune*, Caganap had accepted money and items from the smuggler. Because she offered a guilty plea, her charges for 36 years were dropped.

She has also agreed to pay a fine and no longer works as head of customs in the Detroit airport. The border inspector, Michael Taylor, the inspector, plead guilty to smuggling marijuana and immigrants and will face 4 ½ years of prison.

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According to *Reuters*, A U.S. coalition of business, labor unions and religious groups launched a campaign on Thursday to defeat a bill backed by Republicans that would turn about 11 million undocumented immigrants into felons. The coalition of 24 organizations, including the US Chamber of Commerce and various labor unions, denounced the bill passed by the House of Representatives last month and called on the Senate to enact legislation to include a guest worker program and a process for undocumented immigrants to gain legal status.

The Senate is expected to take up immigration next month and is expected to produce a bill that differs with the House version and include some form of guest worker program. The two versions would then have to be reconciled through negotiations.

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## 8. International Roundup

The Dominican Republic's immigration agency announced that it will not grant permits for the hiring of new groups of Haitian laborers due to the fact that sugar mills do not need to hire additional personnel, according to *The Dominican Today*. Immigration Director Carlos Amarante said that there is sufficient Haitian manual labor in the national territory to be used for that work.

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According to *The Daily Journal* (Caracas), the Argentine government is set to give residence papers in March to a million foreign workers from nine countries in the region.

The immigrants from Bolivia, Perú, Ecuador, Colombia, Venezuela, Chile, Brazil, Uruguay and Paraguay will thus be able to legally work in and travel freely into and out of the country. The initiative comes within the framework of the National Program to Normalize Immigration Documentation.

Spokesmen told the press that the aim of the strategy is to reduce off-the-books employment in Argentina, a situation currently engaged in – to one degree or another – by 47.5 percent of the country's workers. To begin the process of regularizing one's immigration status, a person must go to sites set up by the Immigration Directorate, present identification and fill out a form, after which one may receive a "temporary residence" permit.

With the permit, a foreign worker may "remain in, leave and re-enter the national territory, work and study during the period" in which the temporary residence is in force. If an immigrant has no criminal record and is earning money legally, he or she may receive temporary residence for a period of not less than two years and then may apply for permanent residence. If the immigrant has parents, a spouse, children less than 21 years of age or disabled relatives, he or she may apply directly for permanent residence.

The plan to give residency to a million foreigners does not include all the immigrants

currently living in Argentina since, for instance, about two million persons in the country – half of them undocumented – come from Bolivia alone.

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According to *Expatica News* in Germany, the number of people who are pursuing asylum has dropped significantly in the year 2005 compared to the past 22 years. Information from the Ministry of the Interior showed that 28,914 refugees requested asylum in Germany last year, a 18.8 percent decrease from 2004. 0.9 percent of requests for asylum in Germany were granted. The downward trend in asylum seekers follows reform of Germany's asylum laws in 1993. Although overall numbers are down in Germany, asylum seekers from Iraq and Serbia and Montenegro have increased. Last year, 1,983 Iraqis applied for asylum in Germany, which is a 53.4 percent increase in applications. Asylum applications from Serbia and Montenegro rose by 43.2 percent to 5,522.

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According to *Lifesite.net*, Spain has introduced changes to its immigration policy that would allow asylum to refugees who claim discrimination based on gender or sexual orientation. The draft law will grant asylum to homosexuals who claim that the exercise of their sexual preference is curtailed in their native country. In addition, women who claim discrimination based on gender would now also be granted refuge.

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## 9. Legislative Update

The Republican Party formally endorsed a guest worker program on January 20th that would permit more workers from abroad to work legally and temporarily in the United States. This vote preempted an Arizona activist's resolution that argued that permitting guest workers would fuel more illegal immigration. Observers believe that had the Republican National Committee supported the anti-immigrant resolution, efforts to push for a guest worker program in Congress would have ground to a halt.

According to the *Los Angeles Times*, aides of President Bush and other Republican strategists agree that taking a hard lined stance against immigrants would alienate Latino voters. The activist and national committee member from Arizona, Randy Pullen, told the press that he represents many Republicans. He said that letting foreign workers take jobs legally is unacceptable to his voters in Arizona. Pullen withdrew his resolution after the full committee voted almost unanimously in favor of the guest worker program. Pullen was the only committee member to oppose the guest-worker proposal.

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## 10. State Department Visa Bulletin

### IMMIGRANT NUMBERS FOR FEBRUARY 2006

#### A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during February. 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 January 9th 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: Employment First, Second, and Third preference Schedule A applicants 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 <sup>st</sup>	22APR01	22APR01	22APR01	08AUG94	22AUG91
2A*	08FEB02	08FEB02	08FEB02	15APR99	08FEB02
2B	01JUL96	01JUL96	01JUL96	15FEB92	01JUL96
3 <sup>rd</sup>	15JUL98	15JUL98	15JUL98	01JAN95	08FEB91
4 <sup>th</sup>	22AUG94	22AUG94	01FEB94	01JAN93	01OCT83

\*NOTE: For February, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 15APR99. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 15APR99 and earlier than 08FEB02. (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 Areas Except Those Listed	CHINA	INDIA	MEXICO	PHILLIPINES
Employment-Based					

1 <sup>st</sup>	C	01JAN03	01FEB04	C	C
2 <sup>nd</sup>	C	01APR02	01AUG01	C	C
3 <sup>rd</sup>	22APR01	22APR01	01JAN00	15MAR01	22APR01
Schedule A Workers	C	C	C	C	C
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4 <sup>th</sup>	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 <sup>th</sup>	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.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105 - 139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

#### 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 February, 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		
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	Listed Separately		
AFRICA	AF	11,600	Nigeria 8,150
ASIA	AS	3,900	
EUROPE	EU	8,300	
NORTH AMERICA (BAHAMAS)	NA	6	
OCEANIA	OC	400	
SOUTH AMERICA, and the CARIBBEAN	SA	700	

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 MARCH**

For March, 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	14,200	Nigeria 9,550
ASIA	AS	4,700	
EUROPE	EU	9,850	
NORTH AMERICA (BAHAMAS)	NA	7	
OCEANIA	OC	500	
SOUTH AMERICA, and the CARIBBEAN	SA	820	

**D. VISA AVAILABILITY IN THE EMPLOYMENT PREFERENCE CATEGORIES**

The movement of Employment cut-off dates during the past several months has been greater than originally anticipated. This has been a direct result of low visa number demand by Citizenship and Immigration Services (CIS) for adjustment of status cases. It is not possible at present to speculate how soon CIS number use will significantly increase. Once increased demand does materialize, however, cut-off date movements will necessarily slow or stop.

#### E. 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](mailto: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](mailto: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](mailto:VISABULLETIN@STATE.GOV)

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

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11. Guest Column: It is time to tackle immigration reform, by Stephen Yale-Loehr

*Stephen Yale-Loehr is an adjunct professor of immigration law at Cornell Law School and also counsel at Miller Mayer LLP in Ithaca. This article originally appeared in The Ithaca Journal on Jan. 17, 2006.*

President Bush's recent statements on immigration reform are a courageous first step toward resolving a complex problem. But do they go far enough?

Everyone agrees that we must increase our border security. However, enforcement only works if the law to be enforced is sensible.

While we need secure borders, we also need foreign workers for such diverse purposes as hospitals and nursing homes, high-tech industries, entertainment, teaching, agriculture and just about everything else. At the present time it is virtually impossible to bring these workers in legally or to obtain "papers" for those already here without them. So there should be little wonder why there are so many illegal immigrants when the law doesn't provide a legal way to come here.

Maintaining a supply of able workers-from laborers to highly skilled technicians - keeps our economy strong and helps maintain our place in a world of increasing global competition. If our economy stagnates or declines, we won't need border security, because there will be no reason for people to come here, and we will all suffer as a result.

Furthermore, it's not just U.S. employers that suffer; it's also U.S. families that may have one or more of their family members without legal status. Current processing backlogs and quotas require family members to wait, in many cases more than ten years, before they can reunite. Separating husbands from wives and children from parents does not make our country more secure. Promoting family unity is an overwhelmingly American value, and this country should openly practice what we preach.

Lastly, for those millions of undocumented aliens who are already here, living and working in the shadows, willing but unable to participate in the burdens, not just the benefits, of being legal, immigration reform must include a path to permanent residency and eventually citizenship for those who learn English, pay their taxes and stay out of trouble. Those who came to the United States without papers should have to pay substantial penalties and fees, be fingerprinted, photographed and have background checks conducted, but should be allowed to stay. It is not amnesty when those who have broken our immigration laws must pay hefty fines in order to stay. But it is financially and logistically impossible to deport the ten million plus undocumented aliens already here. Once legal, these aliens can pay their own way, including helping to sustain the social security system. Moreover, law enforcement will have an easier time identifying those in our midst who may intend to do us harm, because everyone will be fingerprinted, photographed and catalogued as an added precondition to their legalization.

So I thank President Bush for initiating this important debate. I urge all political leaders to tackle this politically charged yet critical issue and to see our long term security as dependent on more than bricks, barbed wire and guards with guns.

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## 12. e-Passport Process to be Tested at San Francisco International Airport

A live test of e-Passports began January 15, 2006 at Terminal G at San Francisco Airport (SFO). According to a press release from the Department of Homeland Security (DHS), the test is a collaborative effort between the United States, Australia, New Zealand and Singapore and will run through April 15, 2006.

e-Passports contain contactless chips with biographical and biometric information. The test will assess the operational impact of using new equipment and software to read and verify the information embedded in the e-Passports. The e-Passport contains the holder's biographic information and a digital photograph embedded in a chip set in the passport. They are also enabled with a security feature known as Basic Access Control (BAC), which helps prevent the unauthorized reading of information from e-Passports.

Travelers will present their e-Passports when arriving in the United States at SFO, at Changi Airport in Singapore or at Sydney Airport in Australia.

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### 13. Overview of Chertoff-Rice Plan to Improve Border Security

Since 9/11, the Bush Administration has implemented many changes relating to border security. According to the Bush Administration, these changes have presented a challenge in balancing stronger security with facilitated travel. The Department of State recently outlined a plan of action that Secretary of State Condoleezza Rice and Secretary of Homeland Security Michael Chertoff have collaborated to create a three part initiative utilizing technology to address these concerns. According to a statement from the Department of State (DOS), the three sections of this new plan are as follows: Renewing America's Welcome with Improved Technology and Efficiency, Travel Documents for the 21<sup>st</sup> century, and Smarter Screening.

The purpose of the first section, according to officials, is to welcome business travelers, tourists, and students – while ensuring the US is secure. This division of the plan includes several underway actions that will aid in carrying out the goal. The first plan is *Model Ports of Entry: Create a Transparent and Welcoming Entry Process for all Visitors*. The Departments of Homeland Security (DHS) and State, along with the private sector and State and local governments, will introduce a pilot "model airport" in order to ensue a more welcoming environment for foreign visitors. The program will encompass features such as public customized video messages with informational about the entry process, improved screening and efficient movement of people through the border entry process, and further assistance for foreign travelers after they have been admitted to the US.

DHS and State are now offering new procedures to facilitate the visa process for the United States' foreign employees, partners, and customers. These procedures include enrolling companies for expedited visa processing. A new pilot program to complete applications and make appointments online will be included. State has already established a Business Visa Center to facilitate visa application procedures for U.S. businesses with upcoming travel or events. Hundreds of U.S. companies are being helped every month.

This program is aimed at finding an alternative approach to applicants going to one or very few U.S. diplomatic posts in their country. Another future plan is an enhanced partnership with the private sector, which will create an advisory board that provides regular, institutional, outreach with travel, business, and academic communities by taking their views into account.

DHS and DOS will extend the time foreign students are issued visa and arrive in the U.S. before their academic study. Student visas will be issued up to 120 days in comparison to the current 90 day regulation. Entry will also be 45 days, compared to the current 30 days.

As stated, the second division of the Rice-Chertoff plan is Travel Documents for the 21<sup>st</sup> Century. In the past, fraudulent documents have been used to cross borders and violate immigration laws. In order to decrease this, DHS and State Department plan to use the latest technologies to establish more secure travel documents, which will protect personal identity and expedite safe international travel. The increased use of Machine Readable Passports with digitized photographs has strengthened security and e-passports are

expected to do the same. The U.S. will complete its transition to exclusive production of e-passports by the end of 2007.

The final section to assist in the facilitation of crossing the border into the U.S. is smarter screening. This branch of facilitation will make it possible for governmental officials to leverage technology wherever they might encounter a traveler. Through US-VISIT, DHS officers can screen foreign passengers entering the U.S. against integrated databases which contain information individuals with criminal, immigration violation, or terrorism-related history.

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#### 14. Extension of Validity of Medical Certifications on Form I-693

According to an interoffice memorandum from USCIS associate director Michael Aytes, the validity of civil surgeon endorsements on Form I-693 for certain adjustment of status applicants has been extended until January 2007.

In December of 2004, a policy of the U.S. Citizenship and Immigration Services (CIS) extended the validity of the civil surgeon endorsement on Form I-693 until the adjustment of status application was judicially settled, only for those applicants where no Class A or Class B medical condition was certified.

Usually, for adjustment of status applicants, the endorsement of a civil surgeon on Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, is valid for one year. Some adjustment of status applications are simultaneously filed with an immigrant visa petition as provided for at 8 CFR 245.2(a)(2) and a number of these applications remain pending longer than a year. Without this policy, the medical exams would need to be resubmitted in these cases.

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#### 15. USCIS Reaches H-1B Cap for FY 2006

On January 18, 2006, the U.S. Citizenship and Immigration Services (USCIS) reached its maximum H-1B petitions for the foreign workers with a U.S.-earned master's or higher degree. The number of aliens exempted from the H-1B cap cannot be more than 20,000 petitions. The final receipt date was January 17, 2006.

The following are procedures that the USCIS will follow for these workers who have submitted their petitions by January 17, 2006:

- For petitions received on the "final receipt date," USCIS will apply computer-generated random selection process. This process will randomly select the exact number of petitions from the day's receipts needed to meet the congressionally mandated cap exemption of 20,000.
- After random selection, any remaining H-1B petitions for foreign workers with a U.S.-earned master's or higher degree that do not receive an FY 2006 number and are not otherwise exempt will be rejected and returned along with the filing fee(s).
- Petitioners may re-submit their petitions when H-1B visas become available for FY 2007.

- The earliest date for which a petitioner may file a petition requesting FY 2007 H-1B employment with an employment start date of October 1, 2006 is April 1, 2006.

According to a press release from USCIS, petitions for current H-1B workers do not count toward the congressionally mandated H-1B cap. USCIS will continue to process petitions filed to do the following:

- Extend the amount of time a current H-1B worker may remain in the U.S.
- Change the terms of employment for current H-1B workers.
- Allow current H-1B workers to change employers.
- Allow current H-1B workers to work concurrently in a second H-1B position

The H-1B visa program is used by U.S. businesses to employ foreign workers in specialty occupations that require the employee to be trained or have technical expertise in a specialized field.