

Siskind's Immigration Bulletin –
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1. Openers

Dear Readers:

Last week we reported on progress on the Specter comprehensive immigration reform bill in the Senate. A few amendments have since been added to the bill that are worth noting. In this issue, we summarize these changes to the Specter bill.

We also report on recent criticism of the L-1 visa program and how USCIS is reacting. At one time, the L-1 visa was off the radar screen for anti-immigrant groups largely focused on

H-1B visas. But in recent years, the L-1 has come under attack, particularly as it has become a more popular option for companies facing the H-1B cap. Accusations of fraud and poor adjudicating at USCIS have become more common and the visa is under greater scrutiny.

In this issue, we also have a guest article from an unexpected source – Roy Lawson from the Programmers Guild. The Programmers Guild has been one of the leading voices OPPOSING increases in H-1B visas. While I know most of our readers don't share the views of the Programmers Guild, Roy's article provides insight into the views of H-1B opponents and also offers some interesting ideas that might provide common ground for eventual agreement on a new approach to admitting foreign professional workers.

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: Child Citizenship Act Regulations

The Child and Citizenship Act (CCA) of 2001 amended the Immigration and Nationality Act (INA) to provide US Citizenship to certain children born abroad. In 2004, the USCIS restructured the processing of Certificates of Citizenship for certain children adopted abroad. These procedures target newly entering IR-3 children, children fully and finally adopted abroad, who are automatically US Citizens upon arrival in the US. The changes made by the CCA significantly change nationality laws in the US by allowing automatic acquisition of citizenship and permanent protection from deportation for adopted children of US citizens. This article addresses frequently asked questions and issues surrounding the CCA and the streamlined processing for IR-3 children.

Which foreign-born children are eligible for automatic citizenship under the CCA?

A foreign-born child automatically acquires citizenship on the day that the following requirements are met:

1. The child must have at least one US citizen parent, whether by birth or naturalization. The parent need not have been a citizen at the time of the child's birth;
2. The child must be under age 18; and
3. If the child is adopted, a full and final adoption of the child; and
4. The child must be admitted to the US as an immigrant or lawful permanent resident.

How Does a Child Show Lawful Permanent Residence?

A child who has lawful permanent residence (LPR) will have a green card. Another way to show LPR status is the I-551 stamp in the child's passport. The I-551 stamp indicates the child enter the United States on an immigrant visa and/or has been admitted as a lawful permanent resident.

What Happens When the Child is Adopted in the United States?

A child who enters the United States on an IR4 visa (to be adopted in the United States) will acquire American citizenship when the adoption is full and final in the United States.

In what cases will a parent(s) be required to provide evidence of legal custody of the child?

If the child's parents are divorced, evidence of legal custody needs to be provided. If the child is an adopted orphan, evidence of this needs to be provided. Finally, if the child was born out of wedlock, evidence of legitimization needs to be provided.

How can a parent show legal custody of a child?

There are three recognized ways the US citizen parent can have legal custody of the child. First, a biological child lives with its natural parents, who are married is tantamount to legal custody for the natural parents. Second, biological child lives with one parent and the other parent is deceased constitutes legal custody for the living parent. Third, a biological child born out of wedlock but legitimized and residing with the natural parent gives that parent custody. In the case of an adopted child, legal custody depends on the existence of a final adoption. In cases where the natural parents are divorced, legal custody will depend on the terms of the divorce decree.

What is the application procedure for a child to acquire automatic citizenship?

Since the automatic citizenship is an operation of law on the day the child is admitted to the US, no application is necessary.

What documentation of citizenship is available under the CCA?

A child who is a citizen under the CCA permanently residing in the US can receive documentation by applying for the Certificate of Citizenship. The necessary application is Form N-600 Application for Certificate of Citizenship. The completed N-600 should be submitted to the USCIS office which has jurisdiction over the region of permanent residence along with the necessary fees. If the USCIS were to require evidence, it would likely be evidence of a final adoption and evidence that the child is a permanent resident of the US. For a biological child, evidence of the parent's US citizenship, the child's permanent residence in the US, and evidence of the biological relationship should be submitted along with photos of the child.

In addition to a Certificate of Citizenship, a US passport can be issued for the child by applying to the Department of State. For more information on how to apply for a passport, please visit http://travel.state.gov/family/adoption/info/info_457.html.

Can a child residing abroad apply for the Certificate of Citizenship?

A child residing abroad can apply for citizenship by filing the N-600k Application for Citizenship and Issuance of Certificate Under Section 322. This application can be filed at any USCIS office or sub-office in the US. Children presently outside the US can obtain US citizenship if five requirements are met.

1. The child must have one US citizen parent, whether by birth or naturalization;
2. The US citizen parent must have resided in the US for at least five years, at least two of which must have been after age 14, or have a US citizen grandparent who meets this residency requirement;
3. The child must be under age 18;
4. The child must be residing outside the US in the physical and legal custody of the US citizen parent; and
5. The child must be temporarily admitted to the US in lawful status and must maintain that status until taking the oath of citizenship

There are some cases in which a permanent resident of the US living outside the US may still be considered to reside in the US. However, because this is a highly technical legal issue, the USCIS and the State Department normally require the child to be physically residing in the US. Additionally, a child with permanent resident status who lives outside the US will be allowed to re-enter as a permanent resident and qualify under the CCA.

What documentation is necessary when filing for the Certificate of Citizenship for a child living abroad?

When the child is residing abroad, the following must be submitted in making the application for citizenship:

- Form N-600K
- Photos of the child;
- The child's birth certificate;
- Evidence of the US citizen parent's citizenship (birth or naturalization certificate);
- Marriage certificate (if applicable);
- Evidence of termination of prior marriages (if applicable);
- Evidence of US citizen parent's (or grandparent's) residence in the US;
- Evidence of the child's lawful admission to the US and continuing lawful status;
- Evidence of a final adoption (if applicable);
- Evidence of name change if applicable
- The custody requirements discussed above also apply in cases of children living abroad.

How fast can children with automatic citizenship receive the Certificate of Citizenship?

The USCIS implemented a streamlined process for newly entering IR-3 (indication of adoption abroad) children which ensures that these children receive the Certificate of Citizenship within 45 days of entering the US.

Are pending N-643 cases in the streamlined process?

The USCIS has implemented procedures to expedite pending N-643 cases.* Those individuals who have previously filed N-643 applications for Certificates of Citizenship should contact the USCIS National Customer Service Center at 1-800-375-5283 and have the child's A-number and date of filing readily available.

Is automatic citizenship available for those individuals 18 years or older?

No. Individuals who are 18 and over do not qualify for the benefits of the CCA. If such wish to become US Citizens, they may apply for naturalization following the same procedures and requirements currently existing for adult lawful permanent residents.

Can a Child Born Abroad, but without Citizenship, Get a Birth Certificate (Consular Report of Birth Abroad or CROBA) from the Embassy or Consulate?

No. Only a child who acquired citizenship at birth can get a birth certificate from an embassy or consulate.

* Applications for documentation of citizenship using Form N-643 Certificate of Citizenship in Behalf of an Adopted Child were replaced by the N-600.

3. Ask Visalaw.com

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

Q - I am writing to you to ask for assistance in applying for an asylum on social persecution grounds (I am a homosexual male, living in a post-Soviet country - Estonia). Being a homosexual I am not eligible for marriage since our laws do not allow same-sex marriage. I am looking forward to reside in a country with more liberal social values and marriage laws. How can you help me in assisting with receiving asylum in the USA?

A - I can tell you that I very much doubt you would qualify for asylum on the basis of not being eligible to marry since most US states don't allow for this either. Homosexuality can be the basis for asylum claims, however, if your country has a well documented history of discrimination or you have faced specific violence or persecution. You might find the web site at <http://www.immigrationequality.org/> helpful. They have a lot of good information there.

Q - I'm Venezuelan/Italian with a Tourist visa and it intend to come to the US to marry my American fiancé. If I enter with my European passport and then get married is it faster than if I enter with my Venezuelan passport with Tourist VISA.

A – Whether entering on your European passport or on your South American one, you need to be very, very careful. Entering on a visitor status with the intention of marrying and applying for permanent residency could be considered visa fraud. Most of the time, the safest strategy is to wait several months to marry after entering. I usually recommend at least three months. That would tend to favor entering on the South American passport. But if you really want to do this the safe way, you should come on a fiancé visa. The wait is longer, but you will have the peace of mind of knowing you will not be barred from entering the country or found to have fraudulent intent and deported after your green card interview. The fiancé visa route normally takes six to nine months.

Q - I am an American. I recently married a Brazilian woman who was previously an international student in the US. I would like to know if she can apply for permanent residency even though when she was a student in the US, she made private student loans that she could not manage to pay and they went delinquent. We do not live in the US anymore, so she does not make enough money to afford all together and the bank could not do much since she is not a citizen and lives abroad, so there were not that much pressure to pay it. But now, I am worried that this will become a problem.

A - Credit problems are not a factor in the granting of a green card so this should not be a serious impediment. Of course, a lender would have the same rights to force the repayment of the loan as they would normally have against any American in a similar situation. Note, however, that you will still need to demonstrate that your household has the income and assets to avoid becoming public charges. If you can't meet this test on your own, you will have to get someone to co-sign an affidavit of support on your behalf.

Q - I have applied for Green Card in my last year of H-1B, i.e. 6th. I got my labor certification approved under PERM and my I-140 is pending right now. The 6 years is ending in April, and I have to apply for H1 extension. I was wondering if I can get H1 extension since I have applied GC in the 6th year. I am running out of time to apply for extension.

A - If your labor certification has not been pending 365 days, you would not be able to extend the H-1B on that ground. But there is another provision that might allow you to extend up to three years if the I-140 is approved. This is based on a green card category being backed up. Your immigration lawyer should be able to advise.

Q - I'm an international student. I'm currently on Optional Practical Training and it expires 05/28/2006. A company is interested in hiring me and sponsoring me an H1B visa. However, they said they can only file me in April 2006 and I will probably get my H1B visa in October 2006. By then, my OPT is already expired. Is it possible for me to extend my OPT? What are my options?

A - Your problem is fairly common. If the employer is not eligible for an H-1B cap exemption, it must wait until an H-1B visa is available if the next allotment of visas that

opens up on October 1st. The earliest date to apply for a visa under that quota is April 1st. You will not be entitled to extend OPT. You do get a 60 day grace period after your expiration date that will allow you to remain in the US after your OPT expires, but you cannot work during this period. Some people have succeeded in getting a visitor status during the gap period, but, again, work is not permitted and it would likely be necessary to leave the US to apply for the H-1B visa at a consulate before you could start work on October 1st. The article on our web site at <http://www.visalaw.com/05aug2/2aug205.html> may be helpful.

4. Border and Enforcement News

Governor Janet Napolitano of Arizona wants federal assistance to place National Guard troops along the border to help alleviate some of the strain on Border Patrol officers. The National Guard volunteers would work at border checkpoints and operate "roving patrols" in order to free up Border Patrol officers for more appropriate jobs. Despite having spoken with both Donald Rumsfeld and members of the Department of Homeland Security, Napolitano has made little progress in acquiring her requested assistance. According to the Arizona Star, Napolitano has simply been given the run-around on the issue by federal officials. The article suggests a possible reason for the run-around could be the proposed cuts in National Guard strengths across the board. Napolitano has made it clear that, despite initial setbacks, she intends to continue to investigate the issue until she receives a definitive response.

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.

Balbuena v. IDR Realty LLC, et al.; Malinjer v. Cassino Constr. Corp. et al, Nos.19 & 49/SSM 1 (N.Y. 2006) holds that aliens who are not legally authorized to work in the United States and injured at a work site as a result of the New York Labor Law violations are not precluded from recovering lost wages due to their immigration status.

GRAFFEO, J. (Kaye, G.B. Smith, Ciparick, Rosenblatt concur):

In two separate law suits, Plaintiffs alleged that they had been injured while working on construction sites and commenced personal injury litigation predicated on Defendants' purported violations of the state Labor Law. In both cases, Plaintiffs were aliens unlawfully present and had no authorization to work in the United States. Both plaintiffs were injured while performing construction job and sustained severe debilitating injuries that have rendered them unable to work. Plaintiffs sued Defendants for common-law negligence and violations of New York Labor Law §§ 240(1) and 241(6), seeking various categories of damages, including lost wages. Defendants moved for a partial summary judgment on the issue of lost wages relying on the United States Supreme Court's decision in *Hoffman Plastic Compounds Inc. v National Labor Relations Bd.* (535 US 137 [2002]), which held that an undocumented alien who provided fraudulent work papers in violation of federal law could not be awarded back pay for work not performed as a result of an employer's unfair labor

practice. As the result of these law suits, two inconsistent decisions were rendered by the lower courts and by their corresponding appellate divisions.

The court determined that the INA expressed only a "peripheral concern" regarding the employment of illegal aliens and did not make it "unlawful for an employer to hire an alien who is present or working in the United States without appropriate authorization" or for "an alien to accept employment after entering this country illegally." *Sure-Tan Inc. v National Labor Relations Bd.*, 467 US 883, 893 (1984).

Immigration Reform and Control Act (IRCA) made it a crime for an alien to provide a potential employer with documents falsely acknowledging receipt of governmental approval of the alien's eligibility for employment. 8 USC § 1324c (a). Similar to the INA, however, IRCA does not penalize an alien for attaining employment without having proper work authorization, unless the alien engages in fraud, such as presenting false documentation to secure the employment.

The court determined that IRCA, did not contain an express statement by Congress that it intended to preempt state laws regarding the permissible scope of recovery in personal injury actions predicated on state labor laws. The court found that the preemption language in 8 USC § 1324a (h)(2) was intended to apply only to civil fines and criminal sanctions imposed by state or local law. The court explained that the primary purpose of civil recovery in a personal injury action premised on state Labor Law provisions was not to punish the tortfeasor but to compensate the worker for injuries proximately caused by negligence or the violation of statutory safety standards.

The court examined the legislative history of the Labor Law and determined that the Legislature intended to protect workers by placing responsibility for safety practices at building construction jobs on the owner and general contractor instead of on workers. Moreover, the Labor Law applies to all workers in qualifying employment situations, regardless of their immigration status. *Abbatiello v. Lancaster Studio Assocs.*, 3 N.Y.3d 46, 50-51 (2004). The court concluded that there is a compelling reason to allow an award of damages against a person responsible for an illegal alien's employment when that person knew or should have known of that illegal alien's status.

The court also factually distinguished *Hoffman Plastic Compounds*. The court pointed out that Plaintiffs in present cases, unlike the alien in *Hoffman*, did not commit a criminal act under IRCA. Unlike the undocumented alien in *Hoffman*, who criminally provided his employer with fraudulent papers purporting to be proper work authorization, Plaintiffs in present cases were not even asked by the employers to present the work authorization documents as required by IRCA. Therefore, even if Plaintiffs' stay and work in the United States were a transgression, the civil recovery under New York law was not foreclosed because Plaintiffs' were engaged in construction work, which by itself was entirely lawful.

The court noted that the New York common-law doctrine of mitigation of damages was not implicated when a worker's injuries were so serious that the worker was physically unable to work. The court found that Plaintiffs' situations were readily distinguishable from the alien worker in *Hoffman*, who was not physically injured and could have sought new employment in violation of IRCA by tendering the same false documents that allowed him to work in the first place.

The court suggested that a jury may be permitted to consider immigration status as one factor in its determination of the damages warranted under the Labor Law.

The court held that **under Labor Law §§ 200, 240(1) and 241(6) and in the absence of proof that plaintiffs tendered false work authorization documents to obtain employment, an undocumented alien is not barred by IRCA to maintain claims for lost wages.**

R. S. Smith, J. (dissenting): found that while plaintiff's claims were not seeking the enforcement of illegal contracts, they, nevertheless, sought to obtain the benefit of illegal arrangements. Thus, Plaintiffs' recovery was barred by the rule of New York law that the courts would not aid in achieving the purpose of an illegal transaction. *Szerdahelyi v. Harris*, 67 N.Y.2d 42, 48 (1986). Even if New York law did permit the recovery, it was preempted by federal immigration law as interpreted in *Hoffman Plastic Compounds, Inc. v NLRB*, 535 US 137 (2002), because the preemption issue depended not on whether plaintiffs had committed criminal violations of IRCA, but on whether awarding them lost earnings would undermine IRCA's policy. Dissent determined that an award of lost earnings was indistinguishable from an award of back pay in *Hoffman*.

ACOSTA v. GONZALES, No. 04-72682 (9th Cir. 2006) holds that an alien permanently inadmissible under § 1182(a)(9)(C)(i)(I) is eligible for penalty-fee adjustment of status based on marriage to the United States Citizen, but is ineligible for the extreme hardship waiver of § 1182(a)(9)(B) (v).

Before: O'SCANNLAIN:

Petitioner, who was permanently inadmissible under INA § 212(a)(9)(C) (i)(I), 8 U.S.C. § 1182(a)(9)(C)(i)(I) because he had accrued more than one year of unlawful presence in the United States followed by an illegal reentry, married a United States citizen in April 2001 and applied for adjustment of status based on his marriage, filing the required paperwork and paying the \$1,000 penalty fee pursuant to INA § 245 (i). His application was denied due to inadmissibility and he was served with a Notice to Appear. At the hearing, the IJ denied Petitioner's application for adjustment of status based on the same inadmissibility rule. He granted Acosta voluntary departure with an alternate order of removal to Mexico. Petitioner appealed that decision to the BIA, which affirmed the IJ's decision without opinion.

The court found that the INA did not clearly indicate whether the inadmissibility provision or the penalty-fee adjustment of status provision should take precedence in Petitioner's situation. The court revisited its decision in *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783, 791 (9th Cir. 2004), which held that an inadmissible alien— one who had been removed and reentered the country—was nevertheless eligible for penalty-fee adjustment of status. The court re-stated that the statutory terms of § 245(i) clearly extended adjustment of status to aliens living in this country without legal status" and affected two groups of aliens who were permanently inadmissible under § 1182(a)(9)(C)(i)(II) and § 1182(a)(9)(C)(i)(I). The court re-affirmed its conclusion in *Perez-Gonzalez* that "nothing in the statutory provisions regarding adjustment of status, nor in the discussion of its purposes, suggests that aliens who have been previously deported or removed are barred" from adjustment of status under INA § 245 (i). The court determined that with respect to Petitioner's case, there was also nothing to suggest that aliens who reenter the country after accruing more than one year of unlawful presence were ineligible for penalty-fee adjustment of status.

The court rejected the Government's attempt to distinguish the present case from *Perez-Gonzalez* based on the different grounds of inadmissibility as unpersuasive. The court found that the alien's inadmissibility in *Perez-Gonzalez* was based on 8 U.S.C. § 1182(a)(9)(C)(i)(II), a companion of the provision under which Petitioner was inadmissible,

§ 1182(a)(9)(C)(i)(I). The court concluded that Congress did not intend to distinguish between two groups of aliens when it provided for a penalty-fee adjustment in order to prevent the needless separation of families and to forestall harsh results. Moreover, the court found support for its decision in *Padilla-Caldera v. Gonzales*, 426 F.3d 1294 (10th Cir. 2005), holding that the government bore the burden of proving that penalty-fee adjustment of status did not provide an exception for inadmissibility.

The court examined the LIFE Act and concluded that the statute benefits those individuals with a preexisting period of physical presence in the United States, as long as that period included the date of enactment, December 21, 2000. Therefore, the provision excludes from adjustment all entrants later than December 21, 2000. The court determined that an alien inadmissible for accruing more than one year of unlawful presence was eligible for penalty-fee adjustment of status as long as he had entered during the time allocated by statute.

The court rejected Petitioner's claim that he was eligible for the extreme hardship waiver of § 1182(a)(9)(B) (v) because it was incorporated into § 1182(a)(9)(C) along with the definition of "unlawful presence." The court held that it would presume that "unlawful presence" had the same general meaning in both parts of the statute. The court, nevertheless, declined to automatically presume that the exceptions and waiver provisions were also incorporated, particularly where they were contained in separate provisions and not within the definition itself. The court found that the plain text of the various exceptions and the extreme hardship waiver weighed against incorporation of anything other than "unlawful presence."

6. Government Processing Times

There are new processing times for the following service centers:

Vermont (2/22/2006): <http://www.visalaw.com/vermont.html>
California (2/22/2006): <http://www.visalaw.com/california.html>
Missouri (2/22/2006): <http://www.visalaw.com/missouri.html>
Nebraska (3/1/2006): <http://www.visalaw.com/nebraska.html>
Texas (2/28/2006): <http://www.visalaw.com/texas.html>

7. News Bytes

After touring immigration detention centers in Southern California, Senate Majority Leader Bill Frist said he would oppose offering an amnesty program for undocumented immigrants in the United States. According to Peter Prengaman's article in the Associated Press, Frist has been very reserved when making statements regarding immigration and future policy. Besides amnesty, Frist has refused to offer any positions on immigration. When questioned about a guest worker program, Frist merely declined to comment on the subject. Prengaman's article suggests that Frist's position on amnesty is not uncommon and notes that most lawmakers who support guest worker programs are against blanket amnesty. Though the Senate Majority Leader offered little in the way of specific plans for the immigration bill coming before the Senate, he appeared to be focused primarily on the security aspects of immigration reform.

Julie Myers, the chief of US Immigration and Customs Enforcement (ICE), has expressed a need for stricter punishments for those businesses which hire undocumented immigrants. Myers believes that enforcing fines or economic penalties are necessary to combat the mindset that immigrant employees are simply a necessary business strategy. A spokeswoman for Immigration and Customs Enforcement said that fines could range from as low as two hundred and fifty dollars per employee for first time offenders to a maximum of ten thousand dollars for repeat offenders. According to an article by Peter Prengaman, Myers has requested greater access to Social Security information so her department can track individuals using fake Social Security Numbers for employment. In an effort to help businesses from unknowingly hiring undocumented immigrants, ICE will be offering a voluntary program aimed at industries who commonly hire immigrant workers.

8. International Roundup

According to *The Graphic Ghana*, sixty Ghanaians were arrested and deported to Ghana from the United Kingdom for violating that country's immigration regulations between December 6, 2005 and January 6, of this year.

Between 30 and 40 percent of those deported were refused outright entry because the information they provided on arrival at the airport was incompatible with that provided during the interview at the British High Commission in Ghana. The stories some of them told were also not compatible with those of their hosts, while others panicked when they appeared before immigration officials.

According to *The United Press International*, Japanese ports of entry will introduce fingerprinting and facial photos as part of new anti-terrorism measures. The newly revised Immigration Control Act will oblige all foreigners above 16 years old to have their fingerprints and facial photos taken at immigration control, the Yomiuri Shimbun reported Wednesday.

The legislation also stipulates that captains of incoming flights and vessels have to submit in advance name lists of all passengers and crews. The Cabinet expects the legislation to be passed during the current session of the Diet (parliament). Tighter immigration control has been studied since the government adopted action plans to prevent terrorism in December 2004.

9. Legislative Update

Protests have begun over the Sensenbrenner immigration bill recently passed in the House. The bill, which makes it a crime to harbor or aid immigrants, is drawing stiff opposition from both immigrant rights and aid organizations. Many of the protesters argue that the bill is

un-American and is not representative of our nation's founding principles. Others point out that the bill ignores the necessary labor force which immigration provides.

Supporters argue that the bill's specificity is necessary to prosecute smugglers and maintain that aid groups will not become the target of this legislation. Despite assurances from members of the House who support the bill, many people, including diplomats from Latin and South American countries, have spoken out against the bill which they feel will be detrimental to both Americans and immigrants. The protestors are hoping that their voices are heard by the Senate, who will be reviewing and voting on the bill in the upcoming months.

[H.RES.691](#) : Supporting the goals and ideals of Anti-Slavery Day.

Sponsor: Rep Engel, Eliot L. [NY-17] (introduced 2/16/2006) Cosponsors (18)

Committees: House International Relations

Latest Major Action: 2/16/2006 Referred to House committee. Status: Referred to the House Committee on International Relations.

[H.R.4754](#) : To establish a student loan forgiveness program for members of the Sudanese Diaspora to enable them to return to southern Sudan and contribute to the reconstruction effort of southern Sudan.

Sponsor: Rep Tancredo, Thomas G. [CO-6] (introduced 2/15/2006) Cosponsors (7)

Committees: House Education and the Workforce

Latest Major Action: 2/15/2006 Referred to House committee. Status: Referred to the House Committee on Education and the Workforce.

[H.R.4816](#) : To amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction of tunnels between the United States and another country.

Sponsor: Rep Hayworth, J. D. [AZ-5] (introduced 2/28/2006) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 2/28/2006 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.4830](#) : To amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or reckless permitting (on one's land) the construction or use of a tunnel or subterranean passageway between the United States and another country.

Sponsor: Rep Dreier, David [CA-26] (introduced 3/1/2006) Cosponsors (5)

Committees: House Judiciary

Latest Major Action: 3/1/2006 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.4844](#) : To amend the National Voter Registration Act of 1993 to require any individual who desires to register or re-register to vote in an election for Federal office to provide the appropriate State election official with proof that the individual is a citizen of the United States to prevent fraud in Federal elections, and for other purposes.

Sponsor: Rep Hyde, Henry J. [IL-6] (introduced 3/2/2006) Cosponsors (None)

Committees: House Administration

Latest Major Action: 3/2/2006 Referred to House committee. Status: Referred to the House Committee on House Administration.

[H.R.4878](#) : -- Private Bill; For the relief of Karen Poppell.

Sponsor: Rep LaTourette, Steve C. [OH-14] (introduced 3/2/2006) Cosponsors (None)

Committees: House Judiciary

Latest Major Action: 3/2/2006 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[S.2296](#): A bill to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes.

Sponsor: Sen Inouye, Daniel K. [HI] (introduced 2/16/2006) Cosponsors (3)

Committees: Senate Homeland Security and Governmental Affairs

Latest Major Action: 2/16/2006 Referred to Senate committee. Status: Read twice and referred to the Committee on Homeland Security and Governmental Affairs.

[S.2305](#): A bill to amend title XIX of the Social Security Act to repeal the amendments made by the Deficit Reduction Act of 2005 requiring documentation evidencing citizenship or nationality as a condition for receipt of medical assistance under the Medicaid program.

Sponsor: Sen Akaka, Daniel K. [HI] (introduced 2/16/2006) Cosponsors (9)

Committees: Senate Finance

Latest Major Action: 2/16/2006 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

[S.2326](#): A bill to provide for immigration reform, and for other purposes.

Sponsor: Sen Domenici, Pete V. [NM] (introduced 2/17/2006) Cosponsors (None)

Committees: Senate Judiciary

Latest Major Action: 2/17/2006 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

10. State Department Visa Bulletin

IMMIGRANT NUMBERS FOR APRIL 2006

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during April. 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 March 8th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

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

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

FAMILY-SPONSORED PREFERENCES

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

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

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

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

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

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

EMPLOYMENT-BASED PREFERENCES

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

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

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

Schedule A Workers: 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	PHILIP-PINES
Family					
1 st	22APR01	22APR01	22APR01	08AUG94	22AUG91
2A*	01MAR02	01MAR02	01MAR02	15JUN99	01MAR02
2B	15JUL96	15JUL96	15JUL96	15FEB92	08JUL96
3 rd	22JUL98	22JUL98	22JUL98	01JAN95	08FEB91
4 th	08NOV94	08NOV94	01APR94	15AUG93	08OCT83

*NOTE: For April, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 15JUN99. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 15JUN99 and earlier than 01MAR02. (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	PHILIP-PINES
Employment-Based					
1 st	C	01JAN04	01JAN05	C	C
2 nd	C	01JAN03	01JUL02	C	C
3 rd	01MAY01	01MAY01	01FEB01	08APR01	01MAY01
Schedule A Workers	C	C	C	C	C
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4 th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 th	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C

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

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

Region	All DV Chargeability Areas Except Those Listed Separately		
AFRICA	AF	16,950	Nigeria 10,900
ASIA	AS	5,350	
EUROPE	EU	11,225	
NORTH AMERICA (BAHAMAS)	NA	8	
OCEANIA	OC	610	
SOUTH AMERICA, and the CARIBBEAN	SA	975	

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 MAY

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

Region	All DV Chargeability Areas Except Those Listed		
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	Separately		
AFRICA	AF	20,400	Ethiopia 18,950 Nigeria 12,350
ASIA	AS	6,100	
EUROPE	EU	12,850	
NORTH AMERICA (BAHAMAS)	NA	10	
OCEANIA	OC	735	
SOUTH AMERICA, and the CARIBBEAN	SA	1,175	

D. POTENTIAL RETROGRESSION OF SEVERAL FAMILY PREFERENCE CUT-OFF DATES FOR MAY

A dramatic increase in the amount of demand being received from Citizenship and Immigration Services offices for adjustment of status cases makes it likely that the following cut-off dates will retrogress for May:

Mexico: 1st, F2B and 3rd

Philippines: 3rd

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

and in the message body type:

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

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

listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

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

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

VISABULLETIN@STATE.GOV

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

11. Guest Column: Abolish the H-1B; Green Cards for US Graduates Instead, by Roy Lawson

Roy Lawson is on the Board of Directors of the Programmers Guild and a long time activist in matters relating to Information Technology trends. He writes a blog (<http://techpol.blogspot.com>) to discuss political issues relevant to American technology workers. Issues include non-immigrant visas, offshore outsourcing, overtime pay, discrimination, professional licensing, patent laws, and whatever interests the reader. His views are his own.

The H-1B visa is a 3-6 year temporary worker program originally designed to allow corporations to sponsor workers to fill an alleged worker shortage - this has since been disproved in the IT market which is the largest destination for IT workers on the H-1B visa. Until 2003 the H-1B cap was set to 195,000 and has since been lowered to 85,000 with the majority still flooding the IT job market.

After years of addressing the problem of H-1B visas, it is time to push for an entirely different approach. It has become clear that the practice of giving power over a person's immigration status to a corporation is unethical and should be banned. The H-1B visa harms American workers and foreign workers alike; the law was drafted to subsidize corporations with cheap skilled labor and not to protect American jobs or foreign workers from abuse.

The largest share of H-1B visas go to "body shops" or companies that outsource their services. Wipro, Infosys, and Tata (large Indian outsourcing companies) use this visa to enable offshore outsourcing of American jobs. Instead of meeting a shortage of IT workers falsely claimed by the IT lobby in the late 1990s, it is now a supply of cheap labor. The IT lobby predicted over 2 million jobs would be created from 2000-2010. As of today, we have lost 170,000 IT jobs since 2000. So much for job creation.

The H-1B doesn't always go to the best and brightest; the majority of H-1B IT workers are in their early to mid twenties and work for on average \$13,000 less than their American counterparts, according to a report issued by the CIS. Don't be fooled, this visa is not filling high-skilled jobs that Americans are unwilling to do or not trained to do.

Every time we work to close one loophole in the H-1B, unscrupulous companies are hard at work exploiting another vulnerability. The number of H-1B visas are limited, so it was important that they go where our society needs them most - like to doctors and truly skilled innovators who would make our country more competitive as opposed to using the visa as a tool to export American jobs.

The only true fix to the H-1B is a total ban of the visa. I acknowledge that there will always be professional immigration to the United States and don't advocate closing the door to them; we should be smart about who we let in and where they go. I would offer them something better than a temporary visa: a green card.

The H-1B visa should be replaced with a path to a green card for graduates with advanced degrees from accredited American universities. A green card creates a worker who is truly mobile and a real participant of the free market. Additionally they gain an interest in the future of our nation and will help create jobs as opposed to exporting them. Any such system should offer protections to the American workforce and show preference to the most experienced and educated immigrants.

Such a visa would have the following attributes:

Best and Brightest

Advanced graduates of accredited American universities should be eligible. GPA should matter.

Mobility

Workers on the green card have the ability to participate in the free market and change jobs at will. If they are being mistreated they can leave without jeopardizing their immigration status. Their ability to negotiate better wages is good for American workers who should not be forced to compete with exploited and lower paid workers in our own workforce.

Labor Protections

When American workers experience difficult times and a sour job market, it is not fair to force them to compete with additional foreign workers. Occupations experiencing high unemployment as shown by the BLS OES survey should be closed to immigrants until things improve. A good measure is the historical average unemployment across all occupations - usually below 2.5%. over the past six years. Any occupation with an unemployment rate above 3% should be closed to immigration. Occupations with the lowest unemployment should be open to the largest share of immigrants.

Education Protections

American students should not be displaced to foreign students. If universities want to accommodate more immigrants they should build larger facilities and hire more professors. The quality and access to a higher education for American students should never be jeopardized.

Permanent

We should not risk losing the investment in education and training to foreign companies. We should want to hoard as many smart people as possible. This is part of being competitive in the global economy. Reward these immigrants with a green card for their hard work and encourage them to become American citizens. Better that they are on our team than India or China's.

Such a plan would only work with a total ban of the H-1B visa. Employment sponsored visas have become tools to exploit skilled labor and replace American workers. We need the best and brightest skilled workers, not the most exploitable and cheapest workers.

A recent report conducted by the DHS Inspector General has prompted debate over alleged abuse in the L visa program. The report claimed that the L program has several vulnerabilities, and could be exploited by dishonest petitioning employers wishing to bring improperly qualified employees to the US or to bypass the restrictions of the H-1B program.

The OIG report has already come under criticism in a report issued by the National Foundation for American Policy (<http://www.bibdaily.com/%2Fpdfs%2FNFAP%20L-1%203-06.pdf>) which says that the report doesn't adequately consider recent changes made by Congress to address the abuses cited in the DHS report. The NFAP report also levels a number of other criticisms that are discussed later in this article.

The L visa was designed to facilitate the temporary transfer of management, executive, and "specialized knowledge" employees from a foreign national company to a US parent, branch, subsidiary, or affiliate company. The L-1A visa is given to employees who are in a managerial or executive position, while the L-1B visa is given to those whose employment involves "specialized knowledge." "Specialized knowledge" is knowledge of a product in international markets, or an advanced level of knowledge of the petitioning employer's processes and procedures. Additionally, that knowledge must be uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor.

The DHS Inspector General's report stated that USCIS adjudicators feel that the L category is subject to fraud and abuse, and lacks the proper regulatory guidance on adjudication procedures. The report identified three specific problems with the L visa program. Based in part on input from USCIS adjudicating officers, the report found that it is often difficult to verify the managerial or executive duties of the beneficiary, that the regulatory definition of "specialized knowledge" is too broad, and that it is difficult to verify the legitimacy of the foreign entity.

The Inspector General's report indicated that experienced petitioners and immigration attorneys submit applications that are vague or too technical, thus making it hard to verify that applicants have legitimately done, or will actually do, the managerial or executive level work as claimed in the application.

In interpreting the definition of "specialized knowledge," USCIS adjudicators felt that they have very little regulatory guidance, and would prefer a bright-line test to determine whether or not an applicant possesses "specialized knowledge." The report stated that the current definition is too broad, and appears to allow virtually limitless applicants to qualify as possessing specialized knowledge since USCIS adjudicators cannot objectively determine if knowledge in certain sectors (such as high tech) is specialized or merely general.

The L visa permits foreign entities to transfer L beneficiaries to the US to open new branch, subsidiary, or affiliate companies. USCIS adjudicators said that it is very difficult to verify the legitimacy of the foreign entity in this "new office" application because there is not yet a US counterpart to review. Foreign companies supply evidence of their existence in the application, but this evidence usually consists of foreign financial and business documents that an adjudicating officer in the US is unfamiliar with. However, officers who suspect fraud can forward the suspect information to the US consulate office in the applicant's country or to the USCIS Fraud Detection Center.

In response to these three major concerns, the Inspector General's report recommended that better procedures be established for obtaining verification of overseas petitioning companies and of the employment positions of overseas beneficiaries, such as new

cooperative verification programs between USCIS and ICE and USCIS and DOS. Additionally, the report requested a change in regulations to ensure that the beneficiary will be used as a manager or executive, to further define "specialized knowledge," and to clarify what criteria or proof is required to obtain "new office" L.

The DHS Inspector General's report also stated that the Department of State has expressed concern over the L-1B visa program in particular, commenting that employers are using the L-1B visa as a substitute for the H-1B visa due to the fact that the L program is much more attractive to petitioning employers. The L-1B is similar to the H-1B, but the L visa is numerically unrestricted and does not have a prevailing wage limitation. Some believe that workers who enter on an L are circumventing the H-1B program and are displacing US workers. However, the report indicated that the DOS' concerns are somewhat unfounded, and that this phenomenon does not seem to represent a "significant national trend." The report cited evidence that Ls are not being widely used as alternatives to Hs, illustrating that in 2004, H-1B numbers were significantly reduced but no increase in L receipts or approvals was noticed.

USCIS Acting Deputy Director Robert Devine issued a memo on January 10, 2006 conceding that the adjudication of L-1 applications was difficult and that the category has the potential for abuse. The Deputy Director states that the USCIS plans to conduct a benefit fraud assessment to determine the nature and extent of fraud in the L program, but indicates that the suggested changes are not completely practical.

The USCIS memo seems to indicate that a change in regulatory definitions is unnecessary, and summarizes the current regulatory definitions and agency interpretations of personnel managers, functional managers, and executives. In interpreting these definitions, the memo points out that the USCIS does not discriminate against small companies who have a few, or only one, employees in determining managerial or executive status, and that the reasonable needs of the company should be considered if staffing levels are examined. The memo also states that adjudicators should focus on whether or not the beneficiary has and will primarily engage in qualifying managerial or executive duties.

There is no bright line test that identifies "specialized knowledge," because Congress intentionally did away with a bright line test under IMMACT. "Specialized knowledge" is determined on a case-by-case basis, but there are specific guidelines to assist adjudicators in making the determination. A prior USCIS memo from 2004 requires that the petitioner demonstrate the complexity of knowledge, that the knowledge is not generally found in the industry, and it would be economically disruptive if petitioner had to hire someone else. The memo states that despite the concern over "broad definitions," the current standards are reasonable, a relatively low number of L-1Bs are granted annually, and that there is no indication of using L-1B to circumvent the H-1B cap.

The USCIS memo comes down hard on the report's critique of "new office" applications. It states that there are safeguards in place to insure that just any foreign company cannot send any worker to the US to open an office. The company is required to show that they are currently doing business, that they are able to support the beneficiary while in the US, that the beneficiary's services will be temporary, and that the company will remain in business while the beneficiary is present in the US. Furthermore, the petitioner must be a qualifying entity in that they have a related operation in the US. Therefore, some steps toward establishment of the US operation must have already been taken by time of application to ensure that business establishment has at least begun. Additionally, a new office petition is valid for only one year and at the time of extension the petitioner must demonstrate that

business is viable and running within the US. The petitioner must also explain any deviations in business plan from first application to extension.

In response to the Inspector General's report, USCIS will conduct an assessment, but feels that it is better to use the current DOS system and the Office of Fraud Detection and National Security. USCIS states that it will look into working with ICE, but notes that ICE does not have offices in the top five L-1 petitioning countries. The DOS suggests in response to the report that standard operating procedures be developed for the USCIS to request that the DOS investigate L fraud allegations.

As noted above, the National Foundation for American Policy (www.nfap.net), a non-profit, non-partisan public policy research organization focusing on trade and immigration policy, has issued its own report criticizing the DHS Inspector General's findings. Among the NFAP findings:

- No evidence exists that L-1 visas are being widely used to circumvent restrictions on L-1 visas for skilled professionals. The NFAP reports cites DHS' own admission that L-1 visa approvals have declined by more than 20% in the last five years even with the H-1B cap being hit in several of those years.
- The NFAP report also refutes claims of widespread displacement of US workers. It notes that the DHS report admits this when it stated "While many of the claims that appear in the media about L-1 workers displacing American workers and testimony may have merit, they do not seem to represent a significant national trend."
- DHS failed to interview any companies or their attorneys about L-1 visa adjudication.

According to the NFAP, had DHS interviewed users of the program, they would have found "that rather than being too lenient, companies are frustrated by denials of L-1 visa petitions for seemingly capricious reasons due to adjudicators' poor understanding of international business or technology."

The NFAP report also faulted DHS for not accounting for recent changes passed by Congress that are designed to cut down on abuse in the L-1 visa program. The examples of abuse cited by DHS all preceded the legislative changes and the report recommended waiting to see the impact of the new law before making further policy changes. Instead, the report recommended DHS focus more on training its examiners to make quality adjudications.

Another government report that indirectly supports the L-1 visa was issued by the Department of Commerce this week. The report, entitled "Foreign Direct Investment (FDI) Creates New Jobs: US Affiliates of Foreign Companies (majority owned) employ 5.0 million US workers, or 4.7% of private industry employment. According to the Commerce Department, foreign employers pay higher salaries to US workers than their American-owned counterparts. According to the report, the difference may be as much as 15%. Most of these foreign corporations rely on the L-1 visa in order to send managers, executives and key employees to the US. US employees of these corporations, based on figures in the report, likely outnumber sponsored visa holders at these companies by 100 to 1.

13. Updated Information for Those Affected by Hurricane Katrina

What disaster assistance is available to immigrants and other aliens affected by the hurricanes?

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

Federal Emergency Management Agency (FEMA) provides:

Temporary housing assistance, or rental payments for persons displaced due to the hurricanes.

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

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

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

The Individual and Family Grant Program (IFGP) provides:

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

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

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

Disaster Unemployment Assistance (DUA) provides:

Cash to replace income for those who are unemployed due to the hurricanes.

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

Food Programs provide:

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

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

Small Business Administration (SBA) provides:

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

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

Which immigrants qualify for these programs?

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

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

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

For more information, go to http://www.nilc.org/disaster_assistance/Disaster_Relief.pdf.

Can non-immigrants accept aid from FEMA?

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

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

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

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

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

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

President Vincente Fox announced last Friday, September 2, 2005, that Mexican and U.S. government officials have agreed those migrants who are not documented, and are affected by the hurricanes, will not be subject to any pressure or prosecution by U.S. officials. The agreement allows those victims who are undocumented to approach authorities and ask for

support and aid. But we have not seen any other information about such an impending agreement.

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

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

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

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

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

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

What is the current status of the USCIS offices in New Orleans as well as pending cases?

The New Orleans operations office for the USCIS currently is located in the Memphis, Tennessee Sub-Office. The USCIS New Orleans Office will be fully restored by the end of May in Metairie, LA, a suburb of New Orleans.

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

Other regional offices servicing USCIS customers are as follows:

USCIS office/ Mississippi
100 West Capitol Street
Jackson, Mississippi 39269

USCIS office/ Arkansas
4977 Old Greenwood Road
Fort Smith, Arkansas 72903

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

Dallas District Office

8101 North Stemmons Freeway
Dallas, Texas 75247

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

Contact: Jerry.Sapp@dhs.gov

Houston District Office

126 North point
Houston, Texas 77060

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

Contact: Norma Eskimo Lacy (281) 774-5873

San Antonio District Office

8940 Fourwinds Drive
San Antonio, Texas 78239

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

Contact: Jacque Crouse (210) 967-7141

Also, the National Service Center can provide immigration assistance and direction to displaced customers who call 1-800-375-5283.

For the latest information on services provided to USCIS customers affected by Katrina, visit: <http://uscis.gov/graphics/katrina.htm>

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

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

What services are currently offered by the USCIS for the New Orleans area?

The USCIS has offered Naturalization, Adjustment of Status and I 751 interviews in the New Orleans area since November in a temporary location lent by the City of Kenner. The USCIS also has been conducting

interviews since October in Jackson MS for persons living in Mississippi and Northern Louisiana.

Are the records lost from USCIS in New Orleans?

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

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

What is the current status of the Immigration Court in New Orleans ?

The New Orleans Immigration Court is now operational and will be open to the public on December 19, 2005. The Court is now in the process of rescheduling cases for the 2006 calendar.

Are Naturalization services in process for USCIS customers from the New Orleans district?

Naturalizations are currently performed for Katrina-affected individuals in the Federal Courts in the outlying areas of Baton Rouge, Lafayette, Shreveport, and Jackson, MS. The only area where Naturalization Cases have not been taken to completion at a Naturalization ceremony has been for those persons residing within the jurisdiction of the Eastern District of Louisiana (at New Orleans). Still, on February 3, an Administrative Naturalization ceremony was conducted in Kenner of 20 persons. These ceremonies will continue every week, until early March, at which time the Federal Court will once again begin holding Judicial Naturalization Ceremonies every month. Upon full restoration of the New Orleans office in May, the USCIS will resume administrative ceremonies in addition to the Judicial ones.

What effects did Hurricane Wilma have on USCIS offices and services in the Florida area?

Due to the effects of Hurricane Wilma, the following offices were closed as of 10/25/05:

- Florida USCIS Offices in the cities of Miami, West Palm Beach, Orlando, and Tampa.
- All asylum offices were closed as of 10/25/05.

The InfoPass system did go down as a result of Hurricane Wilma, but is in service again.

No USCIS files were damaged as a result of Hurricane Wilma and no significant damage occurred in any of the USCIS offices.

For all reopening dates and information about the USCIS offices affected by Hurricane Katrina, please visit: <http://uscis.gov/graphics/exec/filedoffices/closings/index.asp>.

How can affected USCIS customers replace lost immigration documents?

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

When will fingerprinting services be restored to those residing in the Katrina-affected areas?

All information services and fingerprinting services will continue to be conducted out of Jackson until the New Orleans office reopens in May. Individuals required to make fingerprints should make an Info pass appointment. In May, the USCIS New Orleans Office will be on a strict Info pass only basis in the Information Office.

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

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

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

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

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

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

What issues should be addressed by host schools and closed schools enrolling students affected by Katrina who have student visas now that Fall Semester is coming to a close?

NAFSA: Association of Foreign Educators, in discussions with DHS and the State Department, recently identified issues for the end-of-the term affecting students displaced

by Hurricane Katrina. As a result of these discussions, NAFSA officials have released guidance for host schools, closed schools and affected students. First steps to be taken by schools affected by Hurricane Katrina:

Closed Schools - Please check that SEVP has all current information regarding your institution. The SEVP is receiving many undeliverable messages sent by their offices to affected DSO.

Host Schools - Most importantly, extend the program-end date to February 1, 2006 or later. This will decrease chances that data fixes will be required because of the deactivation of a student file. This should be done regardless of whether or not the student will travel abroad over the break and regardless of whether the student will transfer or leave the US completely. This extension will help students who do not finish a degree as planned and will keep the record active without requiring a request to data fix as well as allow Katrina-affected schools the ability to assess student's academic status and issue new I-20s if necessary. If the transfer of the SEVIS record occurs too late for the original school to issue and send the student a transfer I-20, the student can use the extended I-20 to apply for a visa at the US consulate and can use a faxed copy of the transfer I-20 from the original school to re-enter the country.

If possible, host schools should work with Katrina-affected schools to facilitate the transfer in a manner that is most beneficial to the original school and the student.

Transfer of Records - According to SEVP, there is no problem with host schools transferring students back to New Orleans schools before the end of the term, or the student may continue with the temporary host school under the current enrollment provisions. SEVP will suspend normal prohibitions on on-campus employment following transfer of SEVIS records. Katrina-affected displaced students only may continue to work and be paid for the remainder of the term by the temporary host school pursuant to the on-campus provisions even after SEVIS records have been transferred back the original school.

As previously mentioned, schools are instructed to extend the program end date to February 1, 2006, or later.

Both Institutions - Please use the comment/remark fields of the forms to indicate that such forms concern a Katrina-affected student.

Travel - Students traveling need to have an unexpired I-20 from either a host, or closed institution, which clearly indicates a future program end date. Ports have been notified that they should re-admit Katrina affected students with fax copies of I-20s issued by the New Orleans area schools. Faxes will be accepted in lieu of original I-20s until February 1, 2006. Ideally, students should travel with I-20 documents issued by institutions for where they will attend Spring 2006 semester.

Students applying for new visas should be advised that consulates can not issue a visa without an unexpired original I-20. Students MUST have an original I-20, either the extended I-20 from the temporary host school or an original transfer I-20 from the school they will attend in Spring. Normal security checks will apply!

Optional Practical Training - Recommendations for OPT should be made by the school from which the student will receive his/her degree. The original school should work with the student to recommend OPT.

Students Who Left the US Prior to or After Katrina and are Now Returning-

Students who left the US and still have active SEVIS records should be given new I-20 documents for travel and should re-enter the US no later than February 1, 2006. Students who have been out of the US for longer than five months, or whose records have been terminated, will need "Initial Attendance" I-20 documents issued and are subject to SEVIS fees unless already paid and the student is re-entering on or before February 1, 2006. Those students who have paid SEVIS fees for a previous SEVIS record should send an email to fmjfee.SEVIS@DHS.gov to request a fee transfer from the old SEVIS record to a new one. Long-time students who were previously exempt from the SEVIS fee, but have been out of the US for longer than 5 months, will now have to pay the SEVIS fee if the SEVIS record has been terminated.

Special Work Permission for Hurricane Katrina Affected Students- Students on campus are automatically eligible for work authorization subject to regular terms/conditions that attach to all students. Those students demonstrating economic hardship may apply for work authorization through the Regional Service Center. Students in this category are subject to the normal conditions except they will not need to show presence in the US for one year. Such students must maintain enrollment and can not work more than part-time while school is in session. Student Special Relief work authorization can be applied for through the Texas Service Center and is valid only through February 1, 2006. This relief allows for full-time employment with a reduced credit load of 6 credits for undergraduates and 3 for graduates.

Out of Status Students - Students who have fallen out of status due to Hurricane Katrina can apply for deferred action preferably with the assistance of a qualified immigration attorney. This step effectively postpones action by the DHS and allows the student to apply for reinstatement. In the alternative, a student may exit the US and return which will reset the clock for practical training, economic hardship applications and more.

Please see the SEVP website for more information on these issues available at http://www.ice.gov/graphics/sevis/Katrina/faq_transfers.htm

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

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

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

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

What if I have family impacted by the one of the hurricanes and need to travel to the US as quickly as possible?

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

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

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

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

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

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

We will advise readers as we learn more.

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

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

What forms am I required to file if I am displaced by either of the hurricanes?

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

Furthermore, any persons with cases pending at the New Orleans Immigration should have their attorneys file an EOIR-33 if the Respondent is relocated.

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

The US Fifth Circuit Court announced that it will shut down temporary operations in Houston, Texas on December 16, 2005. The 5th Circuit Court will reopen on January 9,

2006 at the John Minor Wisdom Court of Appeals Building in New Orleans. The first hearing following Katrina has been scheduled for Wednesday, January 18, 2006 for en banc proceedings and regular panel hearings of the Court will begin in February 2006 continuing thereafter.

Please check filing procedures after Hurricane Katrina posted on the website at www.ca5.uscourts.gov before filing.

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

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

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

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

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

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

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

Since the New Orleans Immigration Court is not operational and attempting to reschedule cases, displaced attorneys should notify the court immediately of their whereabouts. Attorneys should also file the EOIR-33 if their clients are Respondents in a pending case and have been relocated.

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

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

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

First, as chair of the American Immigration Lawyers Association's Katrina Task Force, I have been in contact with most of the immigration lawyers affected by Katrina. Only a few have not been in communication with me. The American Immigration Lawyers Association is working with all affected lawyers to get their phones working and we expect this to be accomplished within the next few days. While they are scattered across many cities, they still will be able to represent you. In most cases, it is not necessary to use a local immigration lawyer. And where a local lawyer is needed, AILA members are working with Gulf Coast lawyers to appear on their behalf.

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

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

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

The USCIS New Orleans Office officials wish to make the best of scarce resources. Therefore, no appointment and printing certificates will be mailed out to those with addresses in the affected areas because of a low likelihood of someone at those addresses receiving a notice. The USCIS will not be scheduling interviews for persons residing in areas that, according to the postal service, are not yet receiving mail delivery at their addresses (i.e. they have to go to the post office to receive their mail), and those zip codes on the US Postal Service website that indicate that they are only getting partial service. All notices that are sent out are now sent at least 30 days in advance to account for forwarding of mail. Applicants should contact the 1800 number to provide new addressees (as required by law). Please visit www.uscis.gov for that information.

Can the USCIS New Orleans Office receive correspondence?

The USCIS New Orleans office cannot receive mail at the temporary site. All correspondence is to be sent to the Memphis office where the files are being housed.

Are pending cases being denied for failure to show for those affected by Hurricane Katrina?

The USCIS is not at this time denying any cases for failure to show, if they have been scheduled for an appointment after the storm. After the USCIS moves into the permanent office, notices will be sent to all persons who have failed to show to give them a window of opportunity to state their interest in pursuing their applications. However, if a notice comes back undeliverable as there is no forwarding order on file, they will be denied at that time.

14. Modifications to Specter Bill

The following are some of the amendments passed on March 9, 2006 modifying the Specter draft comprehensive immigration reform bill:

1. Kyl (R-AZ) provision to provide for more fencing in Arizona.
2. Kennedy (D-MA) accompanying amendment requiring a study prior to constructing any additional physical barriers.
3. Sessions (R-AL) amendment requiring increasing the number of Border Patrol agents from 2,000 to 2,400.
4. Kennedy (D-MA) amendment regarding interagency coordination on alien smuggling.
5. Sessions (R-AL) amendment to extend preemption to the required construction of day laborer shelters.
6. Grassley (R-IA) amendment to require DHS to review all contracts worth more than \$20,000,000 connected with the Secure Border Initiative.
7. Sessions (R-AL) amendment requiring detention of "Other Than Mexicans" caught at or between ports of entry. Phase in approach with bonds of at least \$5000 permitted beginning sixty days after passage and then mandatory detention after October 1, 2006. Cubans excepted.
8. Cornyn (R-TX) provision bars those convicted of sex crimes from sponsoring family members.
9. Grassley (R-IA) amendment to increase enforcement personnel allocated to each state.
10. Brownback (R-KS) amendment to permanently authorize the Conrad J-1 physician waiver program.
11. Coburn (R-OK) amendment requiring DHS to impose expedited removal within 14 days for people apprehended within 100 miles of the border (excluding lawful permanent residents).
12. Feinstein (D-CA) amendment excepting refugees and asylees from the passport fraud language.

A key amendment from Senator Durbin (D-IL) to take out the controversial provisions from the bill criminalizing unlawful status and to soften smuggling provisions to ensure that smuggling crimes don't include the work of humanitarian assistance were deferred and Senator Specter instructed the committee staff to work out language before the amendment would be reconsidered.

The Judiciary Committee has been granted a March 27th deadline by Senator Majority leader Bill Frist (R-TN) or he will bring his own enforcement-only bill up for a vote.