Siskind's Immigration Bulletin – January 26, 2007

Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser Bland, P.C., Attorneys at Law; telephone: 800-748-3819, 901-682-6455; facsimile: 800-684-1267 or 901-339-9604, e-mail: gsiskind@visalaw.com, WWW home page: http://www.visalaw.com.

Siskind Susser serves immigration clients throughout the world from its offices in the US and its affiliate offices across the world. To schedule a telephone or in-person consultation with the firm, go to http://www.visalaw.com/intake.html.

Editor: Greg Siskind. Associate Editor: Ken Bragdon. Contributors: Ken Bragdon

To receive a free e-mail subscription to Siskind's Immigration Bulletin, fill out the form at http://www.visalaw.com/subscribe2.html. To unsubscribe, send your request to visalaw-unsubscribe@topica.com.

To subscribe to the free Siskind's Immigration Professional Newsletter, go to http://www.visalaw.com/sip-intro.html.

****

1. Openers
2. ABCs of Immigration: I-9 Compliance – Avoiding Immigration Bombshells
3. Ask Visalaw.com
4. Border and Enforcement News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update

10. Notes from the Visalaw Blogs

11. Commentary: Sen. Patrick Leahy on Comprehensive Immigration Reform

---

1. Openers

Dear Readers:

While the House and Senate Immigration Subcommittees have yet to be named and while comprehensive immigration reform legislation has yet to be introduced, all indications are that Congress is set to get moving on passing a major immigration bill. Certainly that seems to be the mood in Washington given all the rhetoric we're hearing from Democrats. And President Bush is expected to make immigration a key part of this week's State of the Union Address. But we still have nothing concrete to report on the progress of this legislation.

*****

While Europeans are finding it easier and easier to travel to their neighbor countries, travel in North America just got more complicated. As of this week, all Americans must now have passports to fly to Canada, Mexico or countries in the Caribbean. The same is true for nationals of those countries seeking to visit the US. Tourism officials in all of these countries are deeply worried that people will decide simply not to travel. And I can understand why. I traveled with my family out of the US in December and was not happy at the price tag presented by the State Department. All five of us needed new passports because ours had recently expired. And because the decision to take the trip was taken at a relatively late date, we needed to expedite processing. Here's the bill:

Passport fees for two adults: $134

"Execution" fees for two adults: $60

Passport fees for three children: $156

"Execution" fees for three children: $90

Expedite fee for five applications: $300

Total fees: $740

Even if we did not have to pay the expedite fee, the price tag for the passports was high enough to make many middle class Americans seriously rethink traveling internationally. And that is really sad because international travel is one of the best ways to promote international understanding. Our government may be charging exactly what it costs to process passports, but we should seriously think about subsidizing the cost to encourage people to travel.

*****

I spent part of my travels earlier this month in Las Vegas where I attended the Consumer Electronics Show. As I do every year, I'll be writing a magazine column for Immigration Law Today showing my favorite new gadgets for the immigration lawyer (or anyone else who just likes cool new toys). This year I'll also be writing about all of them on my new technology blog at gregstips.blogspot.com. This blog joins five others I'm now maintaining. You can see what I've been blogging in our new column "Notes from the Visalaw Blogs" later in this issue.

*****

In firm news (http://www.visalaw.com/news/), I have been named again to Business TN Magazine's list of the top 150 lawyers in my home state of Tennessee. I also had an article on I-9 responsibilities for employers published by *Memphis Lawyer* which is reproduced in this issue of our newsletter. Jack Richbourg of our Memphis office is also quoted in the latest issue of the Tennessee Bar Journal in an article entitled "Liberty, Justice For All: A new program in Memphis connects immigrants with the pro bono legal help they need". Jack has played a critical role in developing an immigration pro bono in Memphis.

*****

As always, we remind readers that if they are interested in Siskind Susser handling their immigration matters, you can call our office at 901-682-6455 to set up an appointment. Have a great weekend!

Regards,

Greg Siskind

---

2. ABCs of Immigration: I-9 Compliance – Avoiding Immigration Bombshells

While immigration can be a highly divisive issue, employers need to focus on complying with the law. Most employers will never file a visa application for a worker. But the mistake many business owners make is assuming that no foreign employees means no need to worry about immigration laws.

This article will focus on the employment verification requirements under Immigration Reform and Control Act of 1986 ("IRCA"). Those provisions made ***every*** employer in the country a deputy of US Immigration and Customs Enforcement. Employers are required under that law to verify the identity and work authorization status of every employee of the business. The mechanism for compliance is the I-9 Employment Verification Form that every worker must complete on the day of hire or earlier. Failure to comply with IRCA's I-9 rules can result in significant fines, loss of access to government contracts and highly negative publicity for a company. But despite the focus on immigration in the news, a large number of companies fail to comply with IRCA's I-9 rules.

What is an I-9 Form?

The I-9 is a one page form employees complete verifying their identity as well as proving they are allowed to work in the United States. The form itself has three parts. Section 1 includes basic biographical information on the employee and also asks the employee to certify that he or she is a citizen, permanent resident or authorized to work under another status. The second section is completed by an employer who must verify what documents an employee presented to prove their identity and right to work and that the paperwork was completed in a timely manner. The third section is reserved for employers who must periodically update the I-9 Form if the worker is not authorized to permanently work in the US.

What documentation must an employee present along with an I-9 Form?

Employees must present documentation of identity and work authorization and can present documents from a pre-set list included in the I-9 Form's instructions. Some documents, like a US passport or a permanent residency card, can prove both identity and that one is legal to work. Some documents, like a driver's license, prove identity only and some documents, like a social security card (other than a card stating it is not valid for employment) prove work eligibility. Employers are not allowed to tell

employees which documents from the pre-set list they must present. Occasionally, an employee is authorized to work, but they have not been issued a document on the list. In such a case, an immigration lawyer may be able to provide a legal memorandum for an employer documenting the authorization to work and that will normally insulate an employer from liability. In some of these cases, the worker is entitled to 90 days to get the documentation to the employer though there are occasional cases where more time is permitted.

Who must complete an I-9 Form?

IRCA requires all employers to have all employees **hired** after 1986 complete I-9 verification paperwork. Workers who are not hired do not need to complete I-9 Forms and employers who selectively choose who will and will not complete I-9s could face penalties under anti-discrimination rules. Volunteers are not subject to I-9 rules since they receive no "remuneration" for their services. Independent contractors are also not subject to the I-9 rules, but employers should note that if they contract work to companies they know use unauthorized workers, they could be held liable as well under IRCA. Persons transferring within a company are not required to complete an I-9 form, but the easiest practice is usually to complete a new I-9 anyway rather than having to document the I-9 was done previously. Employees rehired by a company need not complete a new I-9 as long as they resume work within three years of completing the initial form I-9. Also, it is not necessary to complete a new I-9 after

- an employee completes paid or unpaid leave (such as for illness or a vacation),
- a temporary lay-off,
- a strike or labor dispute,
- gaps between seasonal employee.

When must the I-9 Form be completed?

The I-9 process must start on the day an employee starts work. The employee must complete the first section of the I-9 form and must provide the supporting documents noted above within three days of the date of hire. If the documents are not presented by that point, the employee must be removed from the payroll (though it is permissible to suspend the worker rather than terminating the worker all together). While it is possible to require people to complete the I-9 form before the first day of employment, many immigration lawyers caution against this because the form does elicit information about one's national

origin and a decision not to hire a worker could trigger a discrimination claim. To the extent an employer chooses to have I-9s completed before the date of hire, they should only be requested after a position has been offered and accepted and there should be a uniform policy applicable to all employees receiving an offer of employment having to complete the I-9 ahead of time.

Can an I-9 Form be completed electronically?

In October 2004, legislation was enacted that allows for the I-9 to be completed, signed and stored on a computer. In June 2006, regulations were issued implementing the new statute. The new rules sets standards for completing forms electronically and also for the scanning and storage of existing I-9 forms.

What are the I-9 recordkeeping requirements?

Employers must keep I-9 Forms for all current employees. For terminated employees, the form must be retained for at least three years from the date of hire or for at least one year after the termination date, whichever comes later.

Retaining copies of the supporting documents is voluntary, however. Employers can retain copies of documents and attach them to the completed I-9 Form. Immigration lawyers disagree over whether employers should or should not retain copies of supporting documents. Certainly maintaining documentation could provide a good faith defense for an employer in showing that it had reason to believe a worker was authorized even if the paperwork was not properly completed. IRCA compliance officers may also be suspicious of employers that don’t keep copies of documents. Of course, keeping documents also leaves a paper trail. Whatever a company decides, however, it is important that the policy be consistently applied. Keep all the documents or keep none of them.

What are the I-9 re-verification requirements?

If an employee is not a US citizen or lawful permanent resident, they are likely working based on a status with a defined end date. For these employees, the employer must note the expiration of their documents on the I-9 Form and then must pull their I-9 Form before the expiration date and re-verify that the worker’s status has been extended. Employers need to establish a reliable tickler systems to prompt

re-verification. Aside from complying with the re-verification rule, this system will also ensure that an employer that needs to extend a work visa for an employee will not forget to take care of this critical task (something that is, unfortunately, neglected by many employers and can result in an employee falling out of legal status). Green cards and passports with expiration dates do not need to be re-verified.

How do mergers, acquisitions and other major changes affect I-9 requirements?

While a closing may be a cause for celebration at a company, it can also be the cause of a nightmare for a company since it can instantly render all completed I-9s for an acquired company invalid. If the acquiring company does not assume all of the assets and liabilities, then the I-9s will likely not transfer. In a merger case where the acquiring entity is a successor in interest, new I-9s will not be needed. However, I-9s should be checked in the due diligence process to ensure that the acquired I-9s are in good shape. Employers should consider adding I-9s to a merger checklist and have all employees of the combined company complete I-9 forms on the day of closing or beforehand. In any case, an immigration lawyer should be consulted in any merger, acquisition or divestiture to ensure that the transaction does not result in new immigration problems.

What are the IRCA anti-discrimination and document abuse rules?

While employers need to be diligent about complying with IRCA's employment verification rules, they should not be so overzealous that they end up penalizing qualified workers. IRCA also has anti-discrimination rules that can result in an employer facing stiff sanctions. Employers of more than three employees are covered by the IRCA anti-discrimination rules (as opposed to the 15 or more employees required by Title VII of the Civil Rights Act). IRCA protects most US citizens, permanent residents, temporary residents or asylee/refugee from discrimination on the basis of national origin or citizenship status if the person is authorized to work. Aliens illegally in the US are not protected.

Under IRCA, employers may not refuse to hire someone because of their national origin or citizenship status and they may not discharge workers on those grounds either. The employer is also barred from requesting specific documents in completing an I-9 Form and cannot refuse to accept documents that appear genuine on their face. But note that an employer must be shown to have had the intent to discriminate.

Employers can separately be sanctioned based on legislation passed in 1990 if they request more or different documents than required by the I-9 rules. Employers originally were held strictly liable for violations under this category, but in 1996 legislation was passed requiring a showing that employers

intended to discriminate.

What penalties does an employer face for I-9 violations?

Employers can face stiff penalties for IRCA violations that include substantial fines and debarment from government contracts. Penalties can be imposed for hiring unauthorized workers as well as simply for committing paperwork violations even if all workers are authorized to work. Fines for hiring unauthorized workers will amount to anywhere from $250 to $5,500 per worker depending on the prior history of violation. Employers can also be barred from competing for government contracts for a year if they knowingly hire or continue to employ unauthorized aliens. Paperwork violations can also result in significant fines. Each mistake or missing item on a form can result in a $100 penalty up to $1000 for each form. A missing form would automatically be assessed at $1000. An employer, for example, that had 100 employees and did not complete I-9 Forms might face a $100,000 fine. IRCA investigators have considerable discretion in assessing fines and will look at factors like the size of the company, the seriousness of the violations, whether the employer was trying to comply in good faith and the pattern of past violations.

Employers should also be cautioned that knowingly accepting fraudulent documents from employees is a different kind of violation that can be criminally prosecuted under other immigration laws.

What are the best ways to prevent being prosecuted for I-9 violations?

Employers can minimize the chances for being found to have violated IRCA's employment verification rules by undertaking several steps:

1. Conducting a preventative internal audit of the I-9 files to see if there is a pattern of violations requiring remediation. Such an audit should be conducted by, or under the close supervision of, an immigration lawyer familiar with IRCA.

2. Establishing a regular training program for human resource professionals regarding I-9 compliance rules. The training should be conducted by an attorney familiar with IRCA rules.

3. Establishing uniform company policies regarding I-9s. Should copies of documents be retained or not? What kinds of questions can be asked about national origin and citizenship status before the date of hire? Is their uniformity in terms of when the employment verification is commenced?

4. Establishing a re-verification tickler system to ensure I-9s are checked in a timely manner.

5. Centralizing the I-9 Form recordkeeping process.

6. Establish a process for human resource professionals to check quickly with counsel when there are any problems in the verification process.

7. Establish a backup system to ensure timely compliance with I-9 rules when a human resource professional is out of the office.

---

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 was approved for my GC (I-485) under extraordinary ability in science. After GC approval in 2004 I have been in similar job of science. But now, I am leaving Science and want to start take up small retail sales associate job with intention to start my own import export business in coming months, which is un-related to Science. I was wondering at the time of N400 consideration (citizenship) would it amount to be wrong on my part that I am not keeping my outstanding category job and will affect my citizenship application. One has to remain for 5 years in Science (extraordinary ability based on which GC was approved) till time for citizenship comes.

A - You are not required to work in your field for the five years of residency needed to naturalize. Switching to something new right away after getting your green card might have looked suspicious, but two+ years should be fine in my experience

*****

Q - My father who is a US citizen has filed for me. My priority date is March 2000. I am married and he has filed for me under the married person category. However, I have a stepson (who is 15 years old) who lives with us and my husband has sole custody. I would like to know whether I would be able to take him with us when we immigrate to the US. Is it a case where I would be able to add his name to the forms when they are sent to me for execution?

A - When applying under the Family 3rd category (married children of a US citizen), spouses and children under 21 can immigrate with you. As you married your husband prior to the stepchild's 18th birthday, he will be able to immigrate with you and your husband as long as the visa number becomes available prior to his turning 21.

*****

Q - I am a GC holder from May 2000. I used to come to US once a year to maintain my status. In July 2004 came back to US permanently. Can I apply for Citizenship in 4 years and 1 day? I have never had any problems with INS/Border patrol. Thank you!!

A - You have to meet several tests to apply -

- 2.5 years total time in US over last five years
- 4 years and nine months of green card status
- No more than a year absent from the US and no more than six months absence - without proof of intentions to remain in the US as a green card holder
- 90 days residency in the district where you are applying for citizenship.

If you meet all these residency tests, you should be eligible to apply for citizenship.

*****

Q - My wife and I are in the Family Third family immigrant category and the priority date is May 2000. I was told in 2002 that we would be called in 4 years as of 2006, but when I call the embassy now I learn they are dealing with priority date as of December 1998 what do you think we can do to rush the case?

A - Any predictions made in 2002 were just that - predictions. No one knows in advance how quickly numbers will move because they are based on visa usage that changes from year to year. You can only watch the numbers as they are posted in the Visa Bulletin at travel.state.gov. Unfortunately, you cannot process until your priority date is current according to the Visa Bulletin.

*****

Q - I just want to ask what does this mean when I check my receipt number at the USCIS site...

Application Type: I130, IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN

Current Status: Approval notice sent.

On March 13, 2005, we mailed you a notice that we have approved this I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN. Please follow any instructions on the notice. If you move before you receive the notice, call customer service.

Is this means that my application has already been approved?

A - It means the I-130 application was approved. If this is an immediate relative case (spouse of US citizens, parent of adult US citizen, child under 21 of US citizen), processing can proceed for the green card. If it is another kind of family case, then you need to wait until you get to the front of the queue for that category. You can check the progress by consulting the Visa Bulletin at travel.state.gov.

---

4. Border and Enforcement News

A U.S. Immigrations and Customs Enforcement (ICE) press release has announced that ICE officials have arrested a 52-year-old Haitian national on human rights violation charges. Placide Jolicoeur, former commander of Mirebalais, a Haitian township, was identified as a human rights violator by the U.S. State department, and part of the 240-person list of human rights violators from the United Nation's International Civilian Mission's list.

Jolicoeur was first denied immigration relief by a federal judge on Oct. 6, 1997. His appeal to the Board of Immigration Appeals was dismissed on Jan. 24, 2006. Since this dismissal, Joliceur has failed to comply with his order of removal. He is currently being held in Krome Detention Center, an ICE facility, awaiting deportation proceedings.

*****

Two illegal aliens from Mexico have been sentenced to 19 months in prison for creating a Louisville, KY-area fraudulent document ring. A U.S. Immigration and Customs Enforcement (ICE) news release announced that Christopher Martinez-Juarez, 23 and Hector Lavoe-Gonzalez, 30, both of Louisville were sentenced in federal court for conspiracy to possess and sell document-making instruments and false identification documents.

Upon serving their sentences, both men will be turned over to ICE and placed in deportation proceedings. This sentencing is the latest action of enforcement under the new immigration enforcement strategy announced April 20 by Homeland Security Secretary Michael Chertoff.

*****

According to the ICE, sixty-two fugitives were arrested in Miami during a one-week period in which U.S. ICE deportation officers worked with ICE's Miami Fugitive Operations team. Fifty of those arrested were fugitive aliens who ignored their lawful orders of removal and remained in the country. The remaining 12 were in violation of U.S. immigration laws and have been charged. The criminal histories of many of those arrested range from aggravated assault with a deadly weapon to prostitution and probation violations.

---

5. News From the Courts

The U.S. Supreme Court recently decided the case of *Gonzales v. Duenas-Alvarez*. The Court granted Certiorari, vacating the case, and remanding it back to the Board of Immigration Appeals. The decision, written by Justice Breyer, held that "theft offense," for which alien may be removed, includes crime of "aiding and abetting" a theft offense, and violation of California statute prohibiting taking vehicle without consent was "theft offense."

The facts of the case are as follows: Respondent Duenas-Alvarez was convicted of violating Cal. Veh. Code Ann. §10851(a), which states that "…any person who is a party or an accessory to an accomplice in the driving (of a vehicle) or unauthorized taking or stealing, is guilty of a public offense."

After Duenas-Alvarez was convicted, the Federal Government, claiming that the conviction was for a generic theft offense, began removal proceedings. A federal Immigration Judge, agreeing with the Government that the California offense is "a theft offense…for which the term of imprisonment is at least one year," found Duesas-Alvarez removable. Any "theft offense" may subject an alien to removal.

Duenas-Alvarez argued that §10851 holds liable accessories after the fact and to prove that n individual was an accessory after the fact does not require the government to show that the individual committed a theft. Second, the respondent argues that §10851 applies to "joyriding," which he argues involves so limited a deprivation of the use of a car that it falls outside the generic "theft" definition.

These claims from the respondent were not considered; the question that the Supreme Court agreed to decide is whether "theft offense" in the federal statute "includes aiding and abetting the commission of the offense." Since neither of respondent's claims fall within this line of questioning, the judgment of the Ninth Circuit was vacated and remanded for further proceedings.

---

6. Government Processing Times

There are new processing times for the following service centers:

Vermont (1/17/2006): http://www.visalaw.com/vermont.html

California (1/17/2006): http://www.visalaw.com/california.html

Missouri (1/17/2006): http://www.visalaw.com/missouri.html

Nebraska (1/17/2006): http://www.visalaw.com/nebraska.html

Texas (1/17/2006): http://www.visalaw.com/texas.html

---

7. News Bytes

According to a press release by the House Subcommittee on Immigration, Border Security, and Claims, a lawsuit which challenged the constitutionality of the 2005 International Marriage Broker Regulation Act (IMBRA) was dismissed in U.S. District Court. The lawsuit, brought by various international marriage brokers (IMB's), alleged that the law requiring them to provide information to foreign women about their legal rights and the criminal backgrounds of their potential American husbands infringed upon IMB's constitutional rights.

The international marriage brokers, more commonly known as "mail-order bride" agencies, had their motion denied by the U.S. District Court of the Southern District of Ohio. This motion was for a temporary restraining order preventing the enforcement of the International Marriage Broker Regulation Act.

*****

The American Immigration Law Foundation (AILF) is contemplating filing a lawsuit against the U.S. Citizenship and Immigration Services (CIS) because of its delay in getting work authorization cards to many applicants that are eligible for them.

The AILF, a non-profit organization dedicated to protecting immigrants' rights, will potentially file the

lawsuit against the CIS for violation of 8 C.F.R. § 274a.13(d), which says that CIS must decide an EAD application within 90 days. If CIS fails to decide the application within 90 days, the regulation requires CIS to give the applicant a temporary interim EAD that will allow the person to work. This temporary card is good for up to 240 days or until a decision is made on the application for the permanent EAD.

AILF argues that the harm to EAD applications is significant because an interim EAD is essential for them to work while they wait for the existing immigration application to be decided upon. Without an interim EAD, many applicants will lose their jobs or have already lost their jobs or potential employment opportunities.

For more information on this lawsuit, please visit the AILF website at www.ailf.org.

---

8. International Roundup

The *BBC News* reports that U.K. holding centers for immigration offenders are under scrutiny by government officials. Chief Inspector of Prisons Anne Owens said conditions in these facilities need to be improved, citing that detainees spent unacceptably long periods of time locked in single rooms. The facilities are used to hold people for a maximum of seven days following their detention by U.K. Immigration services to which they are transferred to long-term centers.

A report issued by the Home Office acknowledged that despite the criticism, the detainees did have access to healthcare, welfare and race relations support which is not always available in other countries. However the report acknowledged that the staff at three of the main centers needed more training in the care and protection of children.

*****

According to *The Sun Star* of the Philippines, a Department of Justice (DOJ) panel has recommended the filing of criminal and administrative charges against immigration officials for allegedly aiding the escape of an international terrorist in 2005. Despite the recommendation, a 23-page report by DOJ Undersecretary Ernesto Pineda has not found incriminating evidence against the Bureau of Immigration. Justice Secretary Raul Gonzalez Sr. said: “It’s possible that there is conspiracy, there could have been a confabulation. That’s why we have to look deeper into this.”

---

9. Legislative Update

A Colorado statute took effect earlier this month, which requires Colorado employers to examine the legal work status of any newly hired employee. This law is to assure that employers have not altered or falsified the employee's identification documents, and prevent employers from knowingly hiring an undocumented immigrant. A first offender of the statute can be held to a $5,000 fine, with $25,000 for a second and any subsequent offense. House Bill 06S-1017 went into effect on January 1, 2007.

For more information on the immigration on Capital Hill, see our blog at www.visalaw.com/blog.html.

---

10. Notes from Visalaw.com Blog

Visalaw.Com Blog

- Bush: We Need an Immigration System Worthy of America
- Passport Requirement Kicks in Tuesday
- Republican's Tap Pro-Immigration Senator for RNC Head
- Tancredo to Run Anti-Immigrant Campaign for President
- Florida Congressman Proposes Bill to Give TPS to Haitians
- AgJobs Bill Introduced in House

Tech Notes

- CES: Apple's Phone Announcement Overshadows CES
- CES Highlights: Unlimited Battery Life on Your Phones and PDAs?
- USCIS Announces AR-11 Address Change Form to Go Web-Based

- Shocking (Not!) DHS Report Criticizes IT Modernization Efforts at USCIS

Visalaw Fashion, Sports, & Entertainment

- Sponsor of Fashion Model Visa Bill Appointed to Judiciary Committee
- Los Angeles Times: Creative Director is Granted US Visa
- David Beckham Signed to Five Year Contract with Los Angeles Galaxy
- USCIS Memo Gives Go Ahead to Start Processing New Compete Act Applications for Athletes
- Celebrity Chefs Face Visa Troubles
- Labor Cert Confuses Alaskan Hockey Fans

Visalaw Health Blog

- Conrad 30 Extension Bill Signed by President
- Reporter for Major Newspaper Seeking to Interview People for J-1 Physician Story
- USCIS Advices Field on H-1C Nurse Visa Extension
- ECFMG Sets Up Advisor Network for IMGS

Visalaw International Blog

- Los Angeles Times: Young Poles Changing Face of Europe
- Visalaw International Lawyers Speak at International Business Immigration Conference in Austria
- Small Firms Align in Central and Eastern Europe

---

11. Commentary: Sen. Patrick Leahy on Comprehensive Immigration Reform

Senator Patrick Leahy,[D-Vt., the incoming Chairman of the Senate Judiciary Committee, called on the Senate Thursday to enact comprehensive immigration reform. Below is Senator Leahy's statement, as prepared, and the text of the immigration legislation introduced as part of the Democratic Leadership package.

As the new Congress begins, we have a tremendous opportunity before us to enact fair, comprehensive immigration reform. It is time for bipartisan action. Accordingly, I join with Senators from both sides of the aisle to call for Comprehensive Immigration Reform and will work to enact it. We need to put aside the mean-spiritedness and short-sighted policies driven by fear and recognize the dignity of those whose work contributes to reinvigorating America. Consistent with our heritage as a nation of immigrants we need to bring people out of the shadows.

Through comprehensive immigration reform, we can increase the opportunities for American businesses to obtain the workers they need while ensuring that priority is given to willing domestic workers -- from dairy farms in Vermont to multi-national corporations. We have been told of the plight of American farmers from New York to California and have seen the photographs of piles of rotting fruit that have gone unharvested. We hear American technology companies lamenting the lost opportunities and the loss of skilled innovators to other countries. In Vermont, dairy farmers are yearning for more available legal workers, while others have watched families in their employ be torn apart through piecemeal, inconsistent and sometimes heavy-handed enforcement efforts. No American farmer or other business should be put in the position of having to choose between obeying the law or losing their livelihood.

Where American workers can fill available jobs, they should be given priority. Where these jobs are available and unclaimed by American citizens, it makes no sense to deny willing foreign workers the opportunity to work. Through our collective efforts we can strike the balance to protect our domestic workforce while meeting the needs of a productive economy.

We must streamline and reform our visa system for low-skilled workers so we can help reduce the crippling backlogs that affect American businesses. And we must increase the number of low-skilled work visas issued each year to keep up with the needs of our economy. We should enact stronger, consistent employer verification procedures. We should impose penalties for those employers who flout the law and exploit those who have no voice. We can do this by working together and enacting comprehensive reform.

Through comprehensive and smart reforms, we can also increase our security. Let us work to focus enforcement efforts on protecting us from those who seek to do us harm. Let us put an end to the conditions that end in too many needless deaths in the deserts of the Southwest.

We must take a smarter approach to dealing with the millions of people already here—one that does not divide families and make instant criminals out of millions of people, but rather honors our nation's best traditions. When we enact reforms to bring the millions of undocumented people in this country out of the shadows, greater accountability will follow. When we provide incentives for undocumented people to enter a path to citizenship, we will encourage them to live up to our traditions of citizenship and civic responsibility. When we endow those who seek to better their lives—and the lives of their families—with the tools to do so legally, we help instill in them a sense of belonging, of patriotism, and of opportunity. Those who decry this aspect of immigration reform must carefully consider the alternative path. By driving more people underground, we foster a culture of lawlessness and mistrust.

We cannot wall ourselves off from the world. A 700-mile fence on a 2000-mile border is not the answer. Last fall, the Republican Congress rushed through a bill to build 700 miles of fencing and did so against the advice of the Department of Homeland Security. That fence bill was neither fair nor comprehensive. I share the disappointment of tens of millions of Americans who had hoped President Bush would have exercised his constitutional authority to veto that costly, cobbled-together and mean-spirited law.

Instead, the President seemed to have abandoned his principles in signing the Secure Fence Act that will cost between $2 billion and $9 billion and fail to perform as advertised to seal our southern border. Scarring our southwestern landscape with a symbol of fear, pandering and intolerance offends the great heritage of our nation while sending the wrong message to our neighbors and to the world about American values. It was a pricey 'bumper sticker' law passed to curry favor in certain quarters before the elections. Instead, by focusing on technology, innovation, and personnel rather than partisan politics and divisive walls, we can do a better job of securing our border.

The President has said many times that in order for the United States to achieve real security, we must have comprehensive immigration reform, which must include a realistic solution to bring out of the shadows the millions of undocumented immigrants in the country and to meet the pressing needs of employers for willing workers along with border security. In numerous statements, including a speech in Mission, Texas, in August 2006, he recognized that without all components of comprehensive reform working together, immigration reform will not work.

I will continue working to enact legislation that will secure America's borders, strengthen our economy and bring about a realistic solution to the millions of people who want to work and live legally in our country. I will continue to support fair and comprehensive immigration reform and to respect the dignity of those who seek to join mainstream American society and to better their lives in the United States. Today, we join together in the hope that common sense and bipartisanship will prevail. I ask unanimous consent that a copy of the bill be inserted into the Record.

# # # # #

(Text of the Legislation)

S.9

To recognize the heritage of the United States as a nation of immigrants and amend the Immigration and Nationality Act to provide for more effective border and employment enforcement, to prevent illegal immigration, to reform and rationalize avenues for legal immigration, and for other purposes.

110th CONGRESS

1st Session

January 4, 2007

IN THE SENATE OF THE UNITED STATES

MR. REID (for himself and MR. Leahy and _____) introduced the following bill; which was read twice and referred to the Committee on Judiciary.

A BILL

To recognize the heritage of the United States as a nation of immigrants and amend the Immigration and Nationality Act to provide for more effective border and employment enforcement, to prevent illegal immigration, to reform and rationalize avenues for legal immigration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

SHORT TITLE- This Act may be cited as the `Comprehensive Immigration Reform Act of 2007'.

SECTION 2. SENSE OF CONGRESS.

SENSE OF THE CONGRESS- It is the Sense of Congress that the Senate and the House of Representatives should pass, and the President should sign, legislation to recognize the heritage of the United States as a nation of immigrants and to amend the Immigration and Nationality Act to provide for more effective border and employment enforcement, to prevent illegal immigration, and to reform and rationalize avenues for legal immigration.

# # # # #