

Siskind's Immigration Bulletin – February 28, 2008

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## 1. Openers

Dear Readers:

In my last Openers, I presented a scenario where the Democrats would bring back a major immigration reform bill this year. The idea would be to cause one of the following:

- John McCain would support the measure and be forced to confront angry members of his party, causing a public fight with his party and fomenting division
- McCain would oppose the measure, be labeled a "flip-flopper" and alienate Latino voters

- GOP leaders would decide that a public debate on the issue will hurt their presidential candidate and quickly and quietly broker a deal to get the subject behind them

In any case, the Democrats could find pushing immigration legislation again delivers political dividends.

I received a number of comments from people who agreed and who disagreed. One of the more interesting responses was very public. Stephen Dinan of the Washington Times actually wrote a column discussing my piece. You can find the Dinan column at

[http://video1.washingtontimes.com/dinan/2008/02/mccain\\_nomination\\_could\\_give\\_d.html](http://video1.washingtontimes.com/dinan/2008/02/mccain_nomination_could_give_d.html) .

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This past week on my blog at ILW.com, I featured individuals in my Immigrant of the Day column who were nominated for Academy Awards. On Sunday night's Oscar broadcast, foreign nationals did extraordinarily well winning in 13 out of 26 categories including all of the acting categories. That's the first time that has happened since 1964. As Jay Leno joked, will this mean Lou Dobbs will call for a wall to be built around Hollywood?

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In firm news, I am profiled in an article in the next issue of the ABA Journal. The article is now online at

[http://www.abajournal.com/magazine/ahead\\_of\\_the\\_curve/#When:15:41:00Z](http://www.abajournal.com/magazine/ahead_of_the_curve/#When:15:41:00Z) .

Also, I was a speaker at two conferences last week. I participated in an AILA national teleconference on Social Security no match letters. We expect the new version of the no match rule to be released in the next few days to weeks. I was also a panelist at the Tennessee Bar Association's 2008 Legal Tech program in Nashville. I'll be a speaker as well in two weeks at the ABA Techshow in Chicago. You can find more information about Techshow at [www.techshow.com](http://www.techshow.com).

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Finally, as always, if you are interested in becoming a Siskind Susser Bland client, please feel welcome to email me at [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com) or contact us at 800-748-3819 to arrange for a telephone or in person consultation with one of our lawyers.

Regards,

Greg Siskind

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## 2. The ABC's of Immigration: J-1 Visas – Establishing a J-1 Exchange Visitor Program

In our last issue of the Siskind's Immigration Bulletin, you'll remember that we covered the different activities one can participate in with a J-1 visa. As noted in the article, a J-1 visa holder can only come to the US with the sponsorship of an approved J-1 Exchange Visitor Program ("EVP"). This article describes procedures related to establishing such a program as well as maintaining the program.

What exactly is considered a J-1 Exchange Visitor Program?

An EVP can be established by a government agency (be it a federal, state, or local agency or an international organization). More frequently, however, EVPs are private sector programs. There are four basic types of private sector programs:

- Academic institutions - sponsors may include secondary schools, colleges, universities, seminaries, libraries, museums, and research laboratories affiliated with academic institutions. Programs are established to bring professors, researchers, short-term scholars, and students to these institutions.
- Medical Institutions - sponsors may include hospitals, medical centers and related institutions. Programs are established to bring certain medical trainees and research scholars to medical institutions. The Educational Commission for Foreign Medical Graduates (ECFMG) must sponsor foreign medical graduates entering the US to pursue graduate medical education or training.
- Nonprofit Organizations - sponsors may include teenage academic year/home stay organizations, summer camp counselor programs, au pair programs, student summer work/travel programs and research programs.
- Profit Making Organizations - sponsors may include banking, investment, manufacturing, industrial and other business organizations as well as other organizations involved in establishing ongoing specialized training and internship programs and research organizations.

Who can sponsor an EVP?

Program sponsors are expected to be US "citizens." This means an individual sponsor must be a citizen or lawful permanent resident and organizational or institutional sponsors should be created and operating under the laws of the United States. The responsible officer for an EVP must also be a citizen or permanent resident.

How do I go about becoming an EVP?

The main application form to become an EVP is Form DS-3036 and must be filed through the SEVIS system. Additional documents, dependent upon the EVP category requested, must be forwarded directly to the DOS for the initiation of the review process. Current EVP application fee is a non-refundable \$1748. Sponsors must meet a number of other additional requirements including the following:

- A demonstration that the EVP has the financial capacity to meet its program obligations (such as annual reports, financial statements, tax returns, etc.)
- Document how the EVP will ensure that J-1 visitors have adequate medical insurance
- A statement explaining why other visa programs are insufficient to meet the EVP's objectives
- Evidence of appropriate licensure or accreditation
- Documentation that the EVP will make available to visitors cross-cultural activities such as sports, cultural and social events
- Documentation that the program has reciprocity with programs that allow Americans to go abroad to be exchange visitors. The reciprocity need not be for a one-for-one exchange, but should make it generally easier for Americans to have access to the culture of other countries.

Other program requirements are that the number of visitors must be greater than five each year (unless the EVP gets a reduction approved by the State Department), the program must last longer than three weeks (except for short-term scholar programs) and the program must have a sufficient orientation program.

What is the difference between an EVP and a training/internship program?

Training and internship programs have a number of additional rules. Such programs can be in any of the following categories: arts and culture; information media and communications; education, social sciences, library science, counseling and social services; management, business, commerce and finance; health-related occupations; aviation (not allowed for internship programs); the sciences, engineering, architecture, mathematics and industrial occupations; construction and building trades; agriculture, forestry and fishing; public administration and law; and hospitality and tourism. Training programs for unskilled workers will not be approved.

In the aftermath of September 11, the aviation training requirements became much more stringent.

Training and internship program applications must be accompanied by certification that the EVP has adequate physical facilities, equipment and personnel for the program, that the program is not designed to train employees to work in the US and it is not designed to displace American workers. The EVP must also submit a generalized training plan containing a statement of the training and/or internship program's objectives, the skills to be taught, a summary of the supervision and evaluation process, the program syllabus and an explanation of why any on-the-job training may be used. If a third party will be conducting the training, the application must be accompanied by documents showing how the EVP intends to assure the third party meets State Department rules as well as the actual executed contract with the third party.

Training and internship program sponsors also must meet additional recordkeeping requirements. Among the items that must be kept in the files:

- A customized training/internship plan for each visitor
- The trainee/intern's resume and an evaluation of why the visitor was selected for the program
- Documentation that the trainee/intern has sufficient English skills
- Documentation that the trainee/intern has received the necessary information about the program (the trainee should sign the document explaining the rules)
- A statement that the orientation program has been completed
- Documentation that cross-cultural activities were offered or made available to the visitor
- Mid-term and final evaluations of the visitor
- A record of contacts with the visitor to check whether any problems arose for the visitor

What follow-up must an EVP do?

All EVPs must prepare and submit an annual report that accounts for all DS-2019 forms issued to visitors, data on the actual number of visitors that participated in the program, documentation of efforts to provide reciprocity, a record of cross-cultural offerings, and documentation relating to the orientation program. The SEVIS program keeps track of this information and has made the annual report procedure much easier.

How long does it take before an application is processed and/or approved?

The State Department recommends allowing six months for processing of an application, though one would be wise to plan on it taking even longer than this. Especially with private training, internship and work-study programs, the period is taking much longer.

Programs are approved in five-year increments, with the exception of the au-pair programs, which must be redesignated every two years. The DOS normally approves expansions of EVPs to include new types of participant categories when the programs come up for renewal. However, a request can be made earlier. Redesignation application must be made via the SEVIS Form DS-3036. Documents do not need to be resubmitted if they have not changed since the first application. However, in lieu of the document, a statement that the document has not changed should be submitted.

A list of approved programs can be found on the Department of State website at the following link: <http://exchanges.state.gov/jexchanges/>.

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3. Ask Visalaw.com

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

Q - I was under 18 years old when my parents became U.S. Citizens. Do I still have to file a N600 to become a citizen or is there another application?

A - You would file the N-600 to document your citizenship or instead file for a passport from the State Department.

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Q - I have a couple of questions related to an I-130 family-based 3rd preference immigration application.

My father, a naturalized U.S citizen, filed an I-130 for my brother based on family third preference. My brother is married with a wife and son (12 years old). The I130 was received by USCIS on March 15, 2007. USCIS sent out notice I-797 on March 21, 2007 (notice date). However, the priority date on the notice is empty. My first question is: Does my father need to file additional form to establish priority date for the case? Or the priority date is assumed to be date that USCIS received the I-130.

My 2nd questions is: the visa number won't be current for possibly another 8 years, and probably my nephew's age will exceed 21 when the visa number become available. Will CSPA be applicable to him to prevent him (derivative beneficiary) to age out? After I read the original CSPA and various comments, I am still confused about what is the effective age for the derivative child (for immigration purpose) if the I-130 becomes current after the child's 21 birthday.

My third question is: If my nephew applies for F-1 or B-2 visa before the I-130 visa become current, how should he answer to the question: is there immigration petition filed on his behalf? If my bother want to apply for B-2 visa before I130 visa is current, how should he answer the same question?

A - 1) The priority date for the I-130 is the Receipt Date on the Notice of Receipt.

2) You will not be able to make a determination of whether the CSPA will protect your nephew's status until you know when the visa will become available, which will not happen until the priority date is reached on the DOS Visa Bulletin. You cannot make that determination at this time. The best you could do is making an estimated guess once the I-130 is approved.

3) The I-130 filed on behalf of your brother would not obligate your nephew to answer yes to this question. Your brother WOULD be required to answer yes to this question.

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Q - I am a holder of B1/B2 Multiple visa which is valid up to June 5, 2017. Last July 8, 2007 I travelled to Los Angeles, California to visit my children and grandson and stayed up to January 3, 2008, four (4) days short to duration of stay of six (6) months granted by the Immigration authorities.

My query - Is there a prescribe interval of travel per year for holder of multiple visa? I am planning to travel again to Los Angeles on April 2008 to visit again my children, all of my children are working in California under working visa. For information, I am a retired overseas worker, sixty seven (67) years old.

A - There is no prescribed limit, but I usually suggest waiting a few months between trips in order to demonstrate that you don't have a job in the US (a quick return to the US might indicate that) and that you have an overseas residence you are maintaining. So the four months you're staying outside the US will probably be sufficient. There are no guarantees, of course.

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#### 4. Border and Enforcement News

In the few days that the new federal Border ID rules have gone in affect along the nation's borders, there appears to be little delay for travelers unprepared for the change. The Associated Press reports that Customs officials said that most motorists had the documentation they needed, and in many cases where they didn't, most were allowed to cross with a warning.

Officers both at the border roadways and ports had latitude to admit people who are unaware of the changes once their identities were confirmed, and many points were offering a grace period and handing out fliers explaining the changes. "It's been a very smooth transition," said Thomas Winkowski, asst. commissioner of the Border Patrol's Office of Field Operations. "There have been no issues with wait times."

The rules eventually will get tougher for U.S. citizens entering the country from Canada, Mexico and the Caribbean because of the Western Hemisphere Travel Initiative (WHTI). The driver's license-birth certificate combination will not be allowed when the WHTI is fully implemented in June 2009.

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In response to a duo of anti-immigration laws passed in both Arizona and Oklahoma, a rush of undocumented immigrants have begun entering Texas to obtain employment, The Houston Chronicle reports. Though few estimates are available because undocumented immigrants are difficult to track, community activists say

immigrants have arrived in Houston and Dallas in recent months, and expect hundreds more families soon. "They're really tightening the screws," said Mario Ortiz, an undocumented Mexican worker who came to Houston after leaving Phoenix last year. "There have been a lot coming – it could be 100 a day."

The massive influx into the Lone Star State is a result of both the Oklahoma statute, which took effect in November, and makes it a crime to hire or transport undocumented immigrants; and the Arizona statute, effective Jan. 1, which suspends the business licenses of employers who knowingly hire undocumented workers. Conversely, Texas has yet to pass any statewide laws targeting the employment of undocumented immigrants.

The exodus of immigrants has caused a sharp decline in both businesses and real estate in Tulsa and Oklahoma City. "I think we swung the pendulum too far; we're hurting people, the immigrant families, and we're going to hurt the economy," said Mike Means, executive vice president of the Oklahoma State Homebuilders Association. David Castillo, executive director of the Greater Oklahoma City Chamber of Commerce also notes the effect the migration has had on rental property, newly vacated by fleeing immigrants. "There's been a tremendous impact in Oklahoma City," Castillo said. "We've had several companies close shop and leave the state. Banks have called us and say they're closing 30 accounts per week."

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During a recent press conference, Texas Governor Rick Perry did an about face from his previous stance on the issue, saying that he now favors border fences in some areas, The Fort Worth Star Telegram reports. Perry suggested to those immigrants looking to obtain U.S. citizenship "There's a line. Get in it just like everybody else." The press conference came just one day after Rudolph Giuliani dropped out of the campaign and would be endorsing Arizona senator John McCain. Perry said he too is endorsing McCain and said that the senator would visit Texas to see the state's border security initiative in action.

Perry's enthusiasm for border fencing contradicts statements he made a few months ago when he met with Mexican President Felipe Calderon in Mexico City. Perry railed against what he considered "mean rhetoric" sparked by the immigration debate in Washington, declaring that border fences absolutely won't work," adding that when dealing with border security, "you don't do it by building a fence."

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## 5. News From the Courts

[Scheerer v. Chertoff](#), (11th Cir. Jan. 15, 2008)

The Attorney General did not exceed his authority in promulgating 8 CFR §1245.2(a)(1), which bars IJ jurisdiction over most applications for adjustment of status by arriving aliens in removal proceedings and places jurisdiction over such applications with USCIS.

Petitioner, a native and citizen of Germany, entered the U.S. on August 9, 2000 as a conditional parolee and filed an application for asylum and withholding of removal. The immigration judge denied relief and the BIA affirmed. While his petition for review was pending, Petitioner filed a motion to reopen so that he could apply for adjustment of status based on his marriage to a U.S. citizen. Citing 8 CFR §1245.1(c)(8), the BIA denied the motion, concluding that as an arriving alien, Petitioner was ineligible for adjustment of status. A second petition for review was filed and consolidated with the first petition. In November 2005, Petitioner was removed to Germany. On review, the court struck down 8 CFR §1245.1(c)(8) as an impermissible construction of the statute, reversed the denial of Petitioner's motion to reopen and remanded the case to the BIA. [Scheerer v. U.S. Att'y Gen. \(Scheerer I\)](#), 445 F.3d 1311 (11th Cir. 2006).

In response to the court's decision in *Scheerer I* and similar decisions in other circuits, the Attorney General repealed 8 CFR §1245.1(c)(8) and replaced it with 8 CFR §1245.2(a)(1). Unlike the former regulation, the new provision permits arriving aliens in removal proceedings to apply for adjustment of status, but strips the IJ of jurisdiction over most cases and requires the applications to be filed with and adjudicated by USCIS. The BIA relied on the interim regulation to deny the remanded motion, finding that Petitioner did not fall within the exception permitting IJ adjudication. The BIA also denied Petitioner's subsequent motion to reconsider.

The court first addressed the validity of amended 8 CFR §1245.2(a)(1). Petitioner argued that the amended regulation is substantively identical to the repealed 8 CFR §1245.1(c)(8), in that it bars virtually all parolees from seeking adjustment of status, and therefore, is contrary to the intent of INA §245(a). The court began by applying the first of the familiar two-step test set forth in *Chevron USA, Inc. v. NRDC*, 467 U.S. 837 (1984). In *Scheerer I*, the court found that INA §245(a) is ambiguous as to whether the Attorney General may regulate eligibility for adjustment of status. 445 F.3d at 1321. The court noted, however, that the precise question at issue in the present case is different because the amended regulation does not alter eligibility for adjustment, but rather "removes a category of applications from the jurisdiction of the immigration courts...." Because Congress did not expressly state whether DHS or the IJ has authority to adjudicate adjustment applications filed by arriving aliens in proceedings, and the statute does not unequivocally authorize the Attorney General to remove such applications outside the jurisdiction of DOJ, the court found that the regulation's validity is more properly analyzed under the second *Chevron* step. Therefore, the court considered whether the regulation is based on a permissible construction of the statute.

In *Scheerer I*, the court invalidated 8 CFR §1245.1(c)(8) because it excluded a class of aliens from eligibility for adjustment of status. However, the court noted, unlike the former regulation, 8 CFR §1245.2(a)(1) does not bar arriving aliens in removal proceedings from eligibility for adjustment of status—such persons are eligible for adjustment, but must generally file their applications with USCIS instead of with the IJ. The new regulation therefore, simply delineates the forum in which the applications must be adjudicated. Moreover, the court found the amended regulation to be a reasonable construction of INA §245(a)'s delegation of authority to the Attorney General. The court held that the Attorney General did not exceed his authority in promulgating 8 CFR §1245.2(a)(1) and upheld its validity.

The court also rejected Petitioner's argument that due process required the BIA to review his motion to reopen under the law that existed at the time of remand, rather than under the new regulation. The court explained that 8 CFR §1245.2(a)(1) does not have retroactive effect because statutes and regulations that dictate jurisdiction "speak to the power of the court rather than to the rights or obligations of the parties" and such provisions generally are not considered retroactive. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994). See also [Labojewski v. Gonzales](#), 407 F.3d 814, 819 (7th Cir. 2005). Furthermore, the court found, Petitioner's due process claim must fail because there is no constitutionally protected liberty interest in either the granting of a motion to reopen or in adjustment of status, both of which are purely discretionary forms of relief. See *Garcia v. AG of the United States*, 329 F.3d 1217, 1224 (11th Cir. 2003) (per curiam).

Finally, the court rejected the argument that the BIA abused its discretion in denying Petitioner's motions. Specifically, Petitioner argued that the BIA should have granted the motion, thus permitting Petitioner to reenter the U.S. and continue his case until USCIS issued a decision on his adjustment application. Petitioner cited a number of cases where the court found an abuse of discretion in the denial of a continuance where a visa petition was pending and the alien was seeking adjustment of status. See e.g. [Haswanee v. United States AG](#), 471 F.3d 1212, 1218 (11th Cir. 2006) (per curiam); *Merchant v. United States AG*, 461 F.3d 1375, 1379 (11th Cir. 2006). However, the court found Petitioner's reliance on these cases misplaced because the petitioners were not arriving aliens and were therefore entitled to initiate or renew adjustment applications in proceedings before the IJ. See 8 CFR §§1245.2(a)(1)(i), (a)(5)(ii). The court explained that continuances in those cases were warranted because the IJ would have authority to adjudicate the applications. In the present case, where there was no possibility that Petitioner's application would be adjudicated by the IJ, the BIA did not abuse its discretion in denying the motions. The petition for review was denied.

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## 6. News Bytes

State Department officials announced this week that during the past four months, only about 1,400 Iraqis have been given visas to enter the United States. This figure falls far short of the 7,000 estimated visas that Bush administration officials promised last year would be granted, *The New York Times* reports. The State Department cites a complicated and cumbersome "refugee resettlement" system, which some critics say has worked more to keep people out than to let them in.

"Resources are finite and at this point, we're robbing Peter to pay Paul," said James Foley, senior coordinator for the department's Iraqi Refugee Issues office. He said that the department wanted to admit 12,000 refugees this fiscal year, but acknowledged that it was already four months into that term with only 1,400 refugees approved. Only a small number had been approved in 2007 before accelerated efforts began.

In a statement, Refugees International, an advocacy group representing potential Iraqi visa recipients, expressed disappointment at what it called "the U.S. administration's continual failure to meet its resettlement targets." "It's hard to

imagine a stable Iraq when millions of Iraqis are languishing in neighboring countries," said Kristele Younes, an official of the group. "A year ago, the United States made a pledge to address the Iraqi refugee crisis and we have failed to keep that promise."

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The Bush administration plans on spending 19% more on border security and immigration enforcement in the next federal budget year, Homeland Security Secretary Michael Chertoff said last week. In his annual budget request, Bush asked Congress to allocate \$12.1 billion to construct more border fencing, hire more Border Patrol agents and expand the teams that conduct raids on businesses using undocumented immigrants. Chertoff pointed out that the request for the 2009 fiscal year marks an increase of more than 150% on immigration enforcement since Bush took office. "We will be continuing to build on the progress that we have made with respect to securing the border and enforcing the interior," Chertoff said. According to The Los Angeles Times, Chertoff declined to discuss the full budget request for the Department of Homeland Security for the next fiscal year.

Shortly after Chertoff's press conference, a group of senators sent the DHS chief a letter expressing concern that the various border projects are not being managed properly and is overly reliant on independent contractors. The comprehensive border fence project, known as SBInet, and of which \$2 billion of the 2009 fiscal budget has been allocated towards, has long faced criticism. "Securing our borders is an important Homeland Security priority; however, wise use of taxpayer dollars requires that the SBInet project have clearly defined goals," said the letter signed by Sens. Joe Lieberman (I-Conn.), Susan Collins (R-Maine), Daniel K. Akaka (D-Hawaii), and George Voinovich (R-Ohio).

The proposed budget also includes requests for \$442 million to hire additional border agents, with the aim of having 20,000 agents by September 2009; \$3 billion for internal enforcement by ICE; \$100 million for the expansion of the Basic Pilot and E-Verify programs; and \$100 million to hire about 50 federal prosecutors and strengthen operations at the Drug Enforcement Administration and immigration courts.

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## 7. International Roundup

Holland's Social Affairs Minister, Piet Hein Donner, has expressed concern that the influx of Polish, Bulgarian and Romanian workers in his country is beginning to level off, Expatica News reports.

Donner says more Poles and East Europeans are opting to stay in their home countries. He acknowledges that there are problems with issues like housing, but 'we would have much more of a problem on the labour market if the Poles weren't here.'

Donner, the leader Christian Democrat CDA party, warned a meeting of 150 business owners and local leaders in the Noord-Holland town of Zwaagdijk on Wednesday that we 'mustn't miss the boat.' 'That means that if we do not provide decent facilities and housing in the Netherlands, the businesses will have to move to Poland to have

their work done there. Governments, employers and employees all have a vested interest in not letting the Dutch economy get to that point.'

Donner said that the number of workers from Poland and other East European countries that have joined the EU since 2004 has not grown since the Dutch labour market was opened up to them in May 2007. 100,000 to 150,000 of these labour migrants have been working in the Netherlands since the border was opened, most of them Polish.

Bulgarians and Romanians, EU members since 2007, still need a work permit to work in the Netherlands. The Centre for Work and Income (CWI) issued 3,654 permits for workers from these countries last year, compared to 3,005 in 2006. Most of these labour migrants work in the agriculture and horticulture sectors.

Donner has not yet made a decision on opening the border to Bulgarians and Romanians. He first wants to see a report on labour migration, which is expected before the summer.

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According to The Daily Trust of Nigeria, The Nigeria Immigration Service was launched this week, introducing an e-passport system. Governor Bukola Saraki who launched the passport on Tuesday at the state head office of Immigration Service commended the initiative of the Service. Saraki urged passport users to patronize the new passport. He assured that the government would support the initiative to make it functional and effective.

The Comptroller-General of the Service, C.J. Odey, said the passport is referred to as Harmonized ECOWAS Electronic (Smart) passport and that it is specially computerized to fight fraud and forgery as well as check abuses to which the machine readable one had been subjected.

He said the back page of the passport holds an electronic chip and an antenna while the holder's personal details, finger print and photograph are printed on the front cover.

Odey added that the passport does not only meet standards set by the International Civil Organization (ICAO), its pages contain the country's landmarks, symbol of democracy, cultural heritage and is tamper proof.

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## 8. Legislative Update

Two new bipartisan bills which concern incarceration of undocumented immigrants will make the rounds in Congress this week, The Washington Post reports. The bills, introduced by Sen. Dianne Feinstein (D-CA), and sponsored by Sens. John Cornyn (R-TX) and Kay Hutchison (R-TX), intends to expand the State Criminal Alien Assistance Program (SCAAP). SCAAP reimburses states and counties for the unfounded mandate of detaining undocumented immigrants arrested in connection with crimes other than immigration violations. The proposed bills, jointly called the SCAAP Reimbursement Protection Act of 2008, would extend reimbursement to states and localities for incarcerating undocumented immigrants if they have been charged with one felony or two misdemeanors.

The bill aims to encourage timely reimbursement from the Justice Department to state and local governments; the legislation would require payment within 120 days of the application deadline. The bill also clarifies the language of the existing SCAAP statute; under the existing wording, the Justice Department only reimburses states and counties for the costs of housing convicted criminal immigrants. It does not reimburse states for housing undocumented immigrants who have been charged with a crime.

“Border law enforcement officials and Texas taxpayers should not have to foot the bill for a job the federal government is failing to do,” said Sen. Cornyn, co-sponsor and member of the Immigration and Border Security subcommittee. “This legislation will expedite the reimbursement process and expand the types of services eligible for reimbursement. It will help eliminate this unfounded mandate and make our communities safer.”

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The Virginia House passed a bill that prohibits undocumented immigrants from attending public colleges and universities, The Associated Press reports. The bill passed 73-26 and now heads to the Democrat-controlled Senate. Supporters of the bill said undocumented immigrants should not be allowed to attend a higher education institution supported by tax dollars. While not all of Virginia’s 15 public universities and 23 community colleges check students’ legal status, they all charge those known to be undocumented out-of-state tuition.

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In an effort to revitalize the state’s stagnant farming industry, Colorado’s House will examine a proposed bill that seeks to open an immigration office in Mexico with the intent to bring more seasonal foreign workers to the state. Rep. Marsha Looper, R-Calhan, says farms throughout the state and country are suffering because they can’t get the guest workers needed to harvest labor-intensive crops. Looper argues that the federal H-2A visa program is too slow and produces only about 35,000 employees annually rather than the 700,000 needed nationwide.

The proposition for a regional office stems from what Looper calls “a big black hole;” H-2A applications from around the country go through a single federal office in Chicago, and approvals come halfway through the growing season, when farmers are behind on their work.

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## 9. Notes from the Visalaw.com Blogs

### [Greg Siskind’s Blog on ILW.com](#)

- McCain’s Immigration Tightrope
- Immigration Myth #41: Immigration Brings Crime
- MPI Explains Surge in Naturalization Applications

- Visa Benefits Coming Soon for Czech Citizens
- Immigrant of the Day: Yael Naim
- The Government that Couldn't Shoot Straight
- Foreign Actors Sweep the Oscars
- Despite World Tourism Boost, US Still Below 9/11 Levels
- A National Shame
- Immigrant of the Day: Cate Blanchett
- Lunch with Lou
- Can McCain Hold Latino Republicans?

### [The SSB Employer Immigration Compliance Blog](#)

- Alabama Senate Committee Delays Hearing on Employer Sanctions Bill
- NJ Legislator Pushing Arizona-Style Employer Sanctions Law
- Indiana House Republicans Walk Out in Fight over Employer Sanctions Bill
- DHS Announces Higher Fines in Employer Worksite Enforcement Cases
- Utah Legislators Pull Legislation Out for Now
- Business Leaders Push to Have Oklahoma Law Revisited
- Indiana House Committee Passes Employer Sanctions Bill

### [Visalaw International Blog](#)

- Canada: Federal Budget Highlights on Immigration and Border Security
- Switzerland Wants to Open the Door – But It's Still Hard to Squeeze in
- Canada: Poland to Gain Visa Exemption
- Nazi War Criminal Finally Deported from Canada
- Bloomberg Publishes Greg Siskind's Article on Physician Immigration
- South Africa's Immigration System Under Attack
- Prestación Por Razón de Necesidad a Favor De Los Españoles Residentes en El Exterior Y Retornados

### [Visalaw Health Blog](#)

- DC Program Links Immigrants to Translators Who Can Help with Health Care Needs
- Will Michigan Drivers License Law Drive Out Doctors?
- Physician Facing Deportation after Asylum Denied
- Filipino Nurses at Center of Controversy
- Las Vegas Sun Follows Up on J-1 MD Exploitation Series
- Arizona Hospitals Protest Birth Certificate Proposal
- Report: Undocumented Latinos Access Health Care Less than the Native Born
- More Links to Las Vegas Sun J-1 Physician Abuse Stories
- Nurse Immigration Measure Included in Senate Budget Bill

### [Visalaw Fashion, Sports, & Entertainment](#)

- Twin's Lariano Gets Visa
- H-2B Crisis Hits Sports and Entertainment Companies
- Twin's Lariano Faces Visa Troubles
- H-2B Cap Causes Circus to Cancel Season
- Winehouse Secures Visa, But Still not Coming to Grammys
- Amy Winehouse Denied Visa

## [Tech Notes - The Immigration Lawyer Blog](#)

- ABA Techshow Preview
- The World of the Future: 1999
- How to Dispose of an Old Cell Phone
- Voltaic Backpack: Your Bag Becomes Your Power Source
- AMLAW Technology Marketing Slides

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### 10. Campaign '08

La Opinion, the largest Spanish-language publication in the US, has endorsed both Democrat Barack Obama and Republican John McCain, choosing both presidential candidates largely on the basis of their immigrant-friendly positions. According to Reuters, the 124,000-circulation newspaper's endorsement focused almost entirely on the issue of immigration, considered a chief concern among Latinos.

La Opinion's editors said Hillary Clinton would make "an excellent president" but were unhappy with the New York senator's refusal to get behind driver's licenses for undocumented immigrants. "We were disappointed in her calculated decision opposing driver's licenses for the undocumented, which contrasts markedly from the forceful argument in support made by Obama," the paper said.

With McCain, the paper applauded the Arizona senator's role as one of the authors of last year's stalled immigration bill that would have granted a path to citizenship to the approximately 12 million undocumented immigrants in the US.

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### 11. State Department Visa Bulletin for March 2008

#### VISA BULLETIN FOR MARCH 2008

##### A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during March. 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 calculated under INA 201 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".

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.)

Family	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	15FEB02	15FEB02	15FEB02	01JUL92	01MAR93
2A	15APR03	15APR03	15APR03	01MAY02	15APR03
2B	08FEB99	08FEB99	08FEB99	01APR92	01FEB97
3rd	15MAY00	15MAY00	15MAY00	15JUL92	01APR91
4th	15JUL97	01DEC96	01NOV96	15NOV94	22FEB86

\*NOTE: For March, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 01MAY02. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 01MAY02 and earlier than 15MAR03. (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-mainland born	INDIA	MEXICO	PHILIPPINES
Employment-Based					
1st	C	C	C	C	C
2 <sup>nd</sup>	C	01DEC03	C	C	C
3 <sup>rd</sup>	01JAN05	01DEC02	01AUG01	01MAY01	01JAN05

Other Workers	01JAN02	01JAN02	01JAN02	01JAN02	01JAN02
4 <sup>th</sup>	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 <sup>th</sup>	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

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

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

#### B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States . The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. This reduction has resulted in the DV-2008 annual limit being reduced to 50,000. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For February, immigrant numbers in the DV category are available to qualified DV-2007 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	18,500	Except:

		Egypt : 15,700 Ethiopia 12,100 Nigeria 8,750
ASIA	7,875	
EUROPE	17,600	
NORTH AMERICA ( BAHAMAS )	8	
OCEANIA	1,025	
SOUTH AMERICA, and the CARIBBEAN	1,350	

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-2008 program ends as of September 30, 2008. DV visas may not be issued to DV-2008 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2008 principals are only entitled to derivative DV status until September 30, 2008. DV visa availability through the very end of FY-2008 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 JANUARY**

For April, immigrant numbers in the DV category are available to qualified DV-2008 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	21,500	Except: Egypt : 17,900 Ethiopia 14,150 Nigeria 9,900
ASIA	9,100	
EUROPE	20,625	
NORTH AMERICA ( BAHAMAS )	11	

OCEANIA	1,200	
SOUTH AMERICA, and the CARIBBEAN	1,350	

#### D. EMPLOYMENT VISA AVAILABILITY

The cut-off date movement for March in several Employment categories has been greater than those experienced in recent months. Advancement of the cut-off dates at this time should prevent a situation later in the fiscal year where there are large amounts of numbers available but not enough time to use them. If the expected increase in CIS number use materializes, future cut-off date movements could slow or stop.

#### E. OBTAINING THE MONTHLY VISA BULLETIN

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

<http://travel.state.gov>

From the home page, select the VISA section which contains the Visa Bulletin.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

[listserv@calist.state.gov](mailto:listserv@calist.state.gov)

and in the message body type:

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

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

[listserv@calist.state.gov](mailto:listserv@calist.state.gov)

and in the message body type: Signoff Visa-Bulletin

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

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

[VISABULLETIN@STATE.GOV](mailto:VISABULLETIN@STATE.GOV)

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

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12. Immigration Debate on Cable News Programs Has Begun to Accept, Embrace Hate Speech, Civil Right Organization Says

In response to what it considers a surge in hate speech that has surrounded the immigration debate on news programming, The National Council of La Raza (NCLR) called for a nationwide campaign to end hate speech and has called for media network executives and presidential candidates to distance themselves from known hate and vigilante groups and end the demonizing of immigrants. From a NCLR press release, NCLR President Janet Murguía chastised cable news television for “handing hate a microphone” over the past three years by hosting spokespeople from hate and vigilante groups such as Dan Stein of Federation for American Immigration Reform and Jim Gilchrist and Chris Simcox of the Minuteman Project more than 110 times, usually identifying them only as “anti-immigration advocates.” She singled out television pundits such as CNN’s Lou Dobbs and Glenn Beck and MSNBC political commentator Pat Buchanan for parroting hate speech and driving the immigration debate in a manner that demonizes the Hispanic community.

Presidential candidates who Murguía characterizes as seizing on the immigration issue to avoid talking about other issues such as Iraq and the economy also came under fire. She faulted the candidates for “amigo shopping,” a derogatory term used by suburban youth who attack and rob day laborers knowing that their victims have little recourse. Murguía specifically called on Mike Huckabee, 2008 presidential candidate and former governor of Arkansas, to renounce the endorsement of, and sever all ties to, Jim Gilchrist, a cofounder of the Minuteman Project and a self-avowed “vigilante.”

“There’s a bully in the room,” said Murguía, “and each of these candidates has a choice. They can stand up to the bully or they can cater to him. It is a question of courage or cowardice. To date, we have seen far too little courage.”

Citing study results from the Southern Poverty Law Center and the Anti-Defamation League, Murguía points out four categories of derogatory terms that have become commonplace on news programming:

- Referring to immigrants as “an army of invaders” or an “invading force”
- Associating immigrants with animals and refers to them as “a massive horde” or “swarm”
- Accusing immigrants of “bringing crime and disease” to America, including “leprosy, tuberculosis, and malaria” and “gang warfare”
- Purveying the conspiracy theory of “reconquista” or “Atzlán” – the taking back of lands in the southwestern United States for Mexico

In the campaign to raise awareness and promote tolerance, NCLR has launched a site in addition to their own, [www.wecanstophate.org](http://www.wecanstophate.org). The site provides examples of hate speech on news programming, as well as the goals NCLR hopes to achieve with the campaign. For example, NCLR has called on Republican presidential candidate Mike Huckabee to renounce his endorsement by Minuteman Project co-founder Jim Gilchrist, a frequent speaker on cable news programs opposing immigration reform. The organization has also written to executives of Fox News, MSNBC, and CNN to discuss extremists appearing regularly on their programming (as of this writing, CNN Worldwide’s CEO has agreed to meet with the group).

Murguía says she recognized that ultimately the power to change the debate lies with the Hispanic community itself, prompting this call to action. "Latinos buy products from the advertisers supporting these programs," she said. "Latinos vote in primaries and in the general election. We have a significant role to play picking winners and losers in both arenas. We need to make it clear to those who embrace hate that they do so at their own economic and political peril."

NCLR's web site is being joined by the Anti-Defamation League which this week also established a web page to fight hate speech on cable news networks and in other places. The site is at [http://www.adl.org/Civil\\_Rights/immigration.asp](http://www.adl.org/Civil_Rights/immigration.asp) .

Lou Dobbs attracted controversy recently when Murguía was a guest on his show and he called ADL a "joke." Greg Siskind reported on the remark at <http://blogs.ilw.com/gregsiskind/2008/02/jewish-press-ou.html>.

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