Siskind's Immigration Bulletin

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1. MESSAGE FROM SISKIND, SUSSER, HAAS & DEVINE

Happy Thanksgiving to all our readers in the United States!

We're still catching our breath from last month's flurry of immigration-related legislative activity. There are actually a few measures we did not discuss that we are covering this month - a new visa category called the Q-2 for residents of Ireland and Northern Ireland as well as the long-awaited approval of the merger of the United States Information Agency into the State Department.

Many of our readers were avidly following last month's legislative activities. We know that because our web site (www.visalaw.com) received more than 1,000,000 hits last month, well in excess of our previous record of 827,000. We thank you for making our web site one of the most popular law-related web sites on the entire Internet and expect to continue to improve the quality of the site.

The big news story this month is, of course, the recent Congressional election. Republicans were expected to make gains in both Houses, but Democrats defied the conventional wisdom and held their ground in the Senate and actually gained five seats in the House of Representatives. Republican House Speaker Gingrich resigned his position in the wake of the poor showing by his party and President Clinton will now most certainly finish his term. This month, we'll take a look at the role immigration issues played in the election and take a look at the immigration record of Bob Livingston, the man who will replace Speaker Gingrich.

Other issues making the news this past month include the arguing of a key deportation case in front of the US Supreme Court, extension of TPS status for three more countries, temporary relief for illegal aliens from countries affected by Hurricane Mitch and more developments on Iranian visa restrictions. We cover these stories and include our regular features as well - Consular Focus, Non-Profit Corner, Visa Spotlight, Immigration and the Internet, Government Processing Times, Border News and Citizenship Update. Finally, your humble editor attended a meeting of a delegation of representatives of the American Immigration Lawyers Association with officials of the United States Information Agency in Washington, DC. We'll report on this meeting in our regular AILA/NAFSA/AGENCY meetings highlights report.

Siskind, Susser, Haas & Devine has been in the news this past month. The Lawyers Weekly, one of Canada's leading legal profession newspapers, interviewed your

editor Greg Siskind regarding the firm's web site. The article is also on the web at http://www.butterworths.ca/five.htm. Greg will also be delivering speeches this month to the Southeast Regional Meeting of the National Association of Foreign Student Advisors and to the Memphis Bar Association. Last week he gave a speech in Washington to the American Immigration Lawyers Association on the subject of using the Internet for immigration research.

If you work on immigration matters in your work, we remind you that we have a sister publication, Siskind's Immigration Professional. The newsletter provides notices of job openings, reporters seeking story leads, conference announcements, book and software reviews and other announcements that will be of interest to immigration lawyers, paralegals, foreign student advisors and anyone else who handles immigration matters for a living. If you wish to be added to our email distribution list, just email us at immigration.professional@visalaw.com and be sure to tell us a little bit about what kind of work you do and where you work. More than 400 of our readers who are immigration professionals have already subscribed and we are only going on our third issue. We only include professionals on this list so it is important to specify the type of work in which you are engaged.

We're pleased to announce a new addition to the staff of our Nashville office. Nanette Bernadou-Adair, currently the Director of International Services at Vanderbilt University (she handles all of the employment-based immigration matters for this top college), Nanette will begin work with our firm in January. Welcome Nanette! Finally, we offer congratulations to SSHD lawyers Mabel Arroyo and Duran Dodson, both of whom gave birth to healthy babies over the last month. The SSHD family continues to grow!

As always, we remind readers that this publication is put out by Siskind, Susser, Haas & Devine, an immigration law firm, and we are available for telephone or in-person consultations to answer immigration questions and discuss our representing individuals and employers in immigration matters. If interested, please go to http://www.visalaw.com/intake.html.

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2. LEGISLATIVE UPDATE - ELECTION ANALYSIS

The November 3rd election has provided definitive evidence that the Republican Party is in a major retreat on immigration matters. Republicans have been the sponsors of most of the anti-immigration bills of the past decade. That list includes the 1996 Immigration Act, Proposition 187 in California, and the 1996 Welfare Act. During this past session of Congress, however, Republicans have been trying to play down their anti-immigration positions. A number of bills were passed with Republican support reversing some of the harshest provisions of the 1996 Immigration Act and providing new forms of relief such as last year's Central American amnesty bill and the raising of the H-1B cap.

Republicans managed to blow what should have been one of their best elections in years. The President's party normally loses an average of 27 House seats in a mid-term election. And with the current President facing impeachment hearings, Republicans were predicting that they would make huge gains in both Houses of Congress. Instead, they failed to pick up a single Senate seat and actually lost five seats in the House. The loss of House seats was the first time the President's Party has gained in a mid-term election in 64 years. There were many factors that account for the Democrat's stunning success - chief among them a

good economy and the public's disgust with Republican handling of the impeachment inquiry. But immigration politics were important in deciding a number of races.

The Republicans were basically silent on immigration matters during the 1998 campaigns. This is in stark contrast to the past few elections where Republicans played on fears of immigration using Proposition 187, the 1996 Immigration Act and other bills as "wedges" to push white and black voters away from the Democratic Party. One sign of the change this year was the post-election reaction of anti-immigration advocacy group FAIR - The Federation for American Immigration Reform. FAIR issued a press release criticizing Republicans for their "unilateral abandoning of its most potent issue, immigration." In the few instances where Republicans spoke out on immigration matters, it was mainly to emphasize that they were PRO-IMMIGRATION.

Why the change of heart? Electoral reality. New Americans, particularly the very large Hispanic population, are becoming a greater portion of the electorate. Foreign-born populations are concentrated in states with the most electoral votes - California, New York, Texas, Florida and Illinois - making their votes even more important. Republicans are beginning to realize that the short term goal of playing the immigration card against their Democratic beginning to hurt them. Hispanic votes are voting in greater numbers than ever, electing more of their own candidates in both parties and punishing candidates with real or perceived anti-immigration records. More often than not, the punished candidates are Republicans.

The most prominent examples of new Hispanic voting power were the California races. Republicans have held the gubernatorial seat in the Golden State for sixteen years. Hispanic voters had a number of reasons to be angry with Republicans this year, however. Outgoing Governor Pete Wilson led the charge for Proposition 187, a measure that makes illegal aliens eligible for any public benefits, as well as the abolition of affirmative action in the state. Hispanics deserted Wilson during his last election race in 1994, but could not muster the votes to help the Democratic candidate win. This year, with larger numbers they were able to push Democrat Gray Davis to victory over Republican Attorney General Dan Lungren. Lungren's close ties to Wilson were clearly one reason he had trouble with Hispanic voters. Davis topped Lungren in the Hispanic community by a margin of 78 to 18 percent.

Democratic Senator Barbera Boxer was locked in a very tough re-election battle with Republican Matt Fong. Boxer received a commanding 72 percent of the Hispanic vote, a number that is credited with pushing her over the top.

Newly elected Lieutenant Governor Cruz Bustamante, a Democrat, became the first Latino candidate to win statewide election in more than 100 years in California. And Latino candidates picked up six more seats in the state's Legislature.

One race that was perhaps the best example of changing electoral demographics in California was the Orange County rematch of Democratic Congresswoman Loretta Sanchez, a Latina, against Bob Dornan. Two years ago, Sanchez beat Dornan by a mere 984 votes. Readers may recall that the election was contested by Dornan who argued that non-citizen Hispanic voters were unlawfully registered to vote in the race. Sanchez won this year by an overwhelming margin.

Not all Republicans did poorly with Hispanic voters. Texas Governor George W. Bush, son of the former President and a leading contender for the 2000 Presidential nomination of his party, has strong support from Hispanics. Bush

has actively courted the Hispanic vote and has an impressive pro-immigration record. Polls before the election were showing Bush with a 58 to 25 percent lead over his opponent for the Texas Governor's seat. Bush's brother Jeb won the governor's election in Florida also due in part to strong support from the state's Latin voters.

Bush's most likely opponent in the 2000 election, Vice President Al Gore, also has started to devote considerable time to courting the immigrant vote. In the days prior to the election, Gore and President Clinton campaigned heavily in the Hispanic community and conducted several interviews with Hispanic reporters. The two promised Hispanic voters they would support a more generous immigration policy and push for a "fair census" in 2000 that will accurately count Hispanics in this country.

So what does this mean for the next session of Congress? Unless the economy plunges and Republicans decide to blame immigrants, Anti-immigration Republicans are likely to find themselves more and more isolated and pro-immigration legislation is likely to stand a better chance of getting approved. Evidence of this trend was seen this past year in the House's Immigration Subcommittee, chaired by vocal anti-immigrant Congressman Lamar Smith (R-TX). Smith's controversial standing in his own party became quite clear during the H-1B debate this past session. Smith fought a very public battle with the Republican leadership in an attempt to basically kill the H-1B program. And several important bills were passed only because key Republicans were able to attach them to bills that did not pass through Smith's committee.

Republican leaders have already turned the tables on anti-immigration Senators. Senate Immigration Subcommittee Chairman Spencer Abraham has taken a much more open-minded approach to immigration matters than Lamar Smith (not to mention his anti-immigrant predecessor, retired Senator Alan Simpson.

Following the November 3rd election, House Speaker Newt Gingrich, the most visible Republican in the country, resigned his seat. The position is highly powerful and the choice of his successor, Robert Livingston, could have a big impact on immigration legislation. The good news is that of the half dozen candidates for the Speaker's seat, Livingston has the most pro-immigration record. But Livingston is not exactly favor of open borders. He has voted in favor of various immigration bills over the years that anti-immigration advocates have supported.

In the past, he voted to extend Section 245i of the Immigration and Nationality Act, a measure that allows immigrants to pay a penalty and process their green cards in the US as opposed to having to consular process. He voted to save the adult children immigration categories when they were threatened in 1996. He has not co-sponsored bills to cut legal immigration numbers. He voted in favor of raising the H-1B cap and in expanding the Visa Waiver Pilot Program. On the other hand, he voted in 1990 to put a cap on overall immigration and this year supported H.R. 1428 and in 1996 voted against a bill to create a new agricultural guest worker program. And he voted with the majority to pass the largely anti-immigrant 1996 Immigration Act.

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3. ADJUSTMENT OF STATUS PROCESSING PLACED ON HOLD AT ALL INS SERVICE CENTERS

The Immigration and Naturalization Service has revealed that it has suspended processing of all I-485 Adjustment of Status cases filed with the four regional INS Service Center on or after April 1, 1998.

The INS blames the suspension on an error made by EDS, its outside computer contractor. EDS provides and maintains the INS' case management software. The CLAIMS software apparently failed to deliver fingerprint data tapes to the Federal Bureau of Investigation and the Central Intelligence Agency in a format readable by each of those agencies. The problem has been handled with the FBI and fingerprints are current through September 1998. The CIA is only up to April 1998, however.

The INS reported the problem in a recent teleconference with representatives of the American Immigration Lawyers Association. They were not able to provide an estimate on how long the hold would take or the long-term impact of the problem on processing times.

The INS did say, however, that only cases at the Nebraska Service Center would be immediately impacted since the backlogs at most INS offices are considerably longer than seven months. The agency also noted that cases in danger of aging out because a child is close to 21 ARE NOT being processed. AILA recommended to its lawyers that they consider filing mandamus lawsuits in Federal Court to force INS to finish these cases on time.

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4. NATURALIZATION AND CITIZENSHIP UPDATE

-- INS Gets Big Funding Increase to Cut Waiting Times for Citizens

Last month we reported that Congress had granted the INS a big budget increase to reduce improve citizenship application processing and cut the serious backlogs around the country. Here now are the details.

The INS will get the full $171 million it requested earlier this year. This past summer we reported on the ironic news that an unexpected drop in naturalization applications would actually worsen backlogs since fee income would drop as well. The funding increase will offset the estimated $88 million loss and provide another $88 million to cut the backlogs. The INS now estimates that is will cut processing times nationwide to ten to twelve months by the end of Fiscal Year 1999 on September 30, 1999.

According to the INS, the funding will provide the following:

- $30.2 million to fund a new telephone center, a records center in Missouri to centralize INS' files; and indexing and conversion of INS microfilm images to CD-ROM or other electronic format

- $11.7 million for 200 term employees to work on the citizenship application backlog

- $6.5 million to improve records procedures and facilities

- $6.8 million to provide Automated Data Processing support to field offices

- $5.6 million for a file review initiative at the Service Centers

- $4.3 million to reduce backlogs at the Regional Service Centers

- $3.8 million for clerical support

- $3.4 million for overtime

- $3.2 million for data entry

- $3 million to continue the Price Waterhouse Coopers "re-engineering" contract

- $2.7 million for publishing a new user-friendly "Guide to Naturalization" and the new N-400 Application for Naturalization

- $2.4 million for reprinting applicants with expired fingerprint checks

- $1.2 million for consolidating medical waivers at the Service Centers

- $1 million for a pilot program to improve fingerprint identification through the naturalization process

-- Boston Naturalization Applicants Protest Backlogs

A group of several dozen Boston-area immigrants brought media attention to the INS citizenship backlogs by protesting at an election-eve rally in Massachusetts. They were protesting the fact that INS inefficiency has effectively disenfranchised them. That is, the INS is actually playing a role in elections by controlling the makeup of the electorate.

-- KPMG Releases Latest INS Citizenship Audit Results

KPMG Peat Marwick, the international accounting firm, has released the third in a series of reviews on INS naturalization procedures. The report is based on a series of unannounced office visits that occurred between July 27, 1998 and August 14, 1998. The intent of the audits is not to measure how efficient the citizenship application is, but, rather, to see how well the INS is preventing the naturalization of ineligible applicants. The report generally gives the INS good marks on this. KPMG states that the INS has been able to get its Naturalization Quality Procedures (NQP) disseminated to the field offices, continued to emphasize security control procedures, adequately trained employees and gotten managers on board in implementing the NQPs.

-- The INS now has 127 Application Support Centers (ASCs) operating around the country. These offices handle INS fingerprinting and will one day handle INS photos and, possibly, administering the English and citizenship exams. Of the 127, 59 are in permanent locations, 14 are located in temporary facilities and 54 are located in INS field offices. 10 more facilities should be ready by the end of next month and five more are in the planning stage.

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5. IMMIGRATION AND THE INTERNET - THE ONLINE NATURALIZATION SELF-TEST

This month we take a look back at some of the new and interesting features showing up on government web sites.

One of the better uses of the INS web site is the online naturalization self-test at http://www.ins.usdoj.gov/exec/natz/natztest.asp. Applicants for American citizenship must pass an exam in American history and government. The INS has placed an online, interactive study guide on its web site to help people study for their citizenship test.

The online INS test is set up in a multiple choice format. During the actual exam, however, the INS officer will not offer multiple choices. But, the examiner will ask questions from the same list of questions as the online test. In any case, the site will help in learning the necessary information.

When one goes to the Self-Test page, she will be asked to push a button to generate questions. Readers will then see five questions on the test's question list. After choosing answers, the reader then clicks "review" and can see the correct answers.

The State Department's Belgrade consulate has also contributed something unique to the Internet's array of immigration resources. Visitors to the site can now find an online help section to help people figure out the new I-864 Affidavits of Support. The page is geared to people of any country, not just Serbians.

The I-864 help page is located at http://www.amembbg.co.yu/consular/i864/i864-1.html. On the first page, readers will find a graphical image of the I-864 form. The form is really an image map and one can click on any question on the form to get more information. The major drawback of the site is the very limited nature of the answers provided. For example, part 4b of the form asks whether in the last three years the sponsor has received means-tested public benefits. Rather than explain what "means-tested benefits" actually means, the annotation simply states "Do NOT skip this part!" This is hardly useful information. The site does have a very helpful Question and Answer document on Form I-864. It might be more helpful to incorporate more of that information into the annotated form or provide links back to the appropriate part of the Q & A document.

Another site we came across this month that we found interesting (and amusing) is the INS' new US Border Patrol Employment Page (http://www.ins.usdoj.gov/borderpatrol/default.htm). The INS has been aggressively recruiting to fill 2,000 slots in the Border Patrol. The INS has obviously hired a skilled advertising firm since the extremely attractive web site makes working in the Border Patrol seem like a vacation in Tahiti - beautiful pictures of sunsets, the ocean, kayaking, cowboys, etc. The site describes the Border Patrol with lofty descriptions like "Border patrol agents are traditionally known for the intense loyalty and their esprit de corp" and "Some agents say Border Patrol is the best job in the world." Best job in the world? Really?

There is some useful information including details on the specific requirements to join the Border Patrol, sample questions from the qualifying exams, an online job application and a detailed question and answer document.

Actually, we should not be sarcastic about the page. The INS has done a nice job with the page and private employers can emulate the INS their recruiting pages. If I were thinking about joining the Border Patrol, the site would be an important resource.

One might wonder, however, why, with 1000s of positions in INS adjudications remaining unfilled around the US and immigration and citizenship applications

getting further and further behind, the INS is not making a similar push on its site to find qualified administrative workers. Once again, the INS adjudications function takes the back seat to enforcement. Perhaps this is more evidence why its time to formally split the INS into an adjudications agency and an enforcement agency?

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6. ASYLUM DETAINEE ON THE RUN FROM OFFICIALS

An Algerian asylum applicant who had been detained by the INS for more than two years escaped from a Miami mental hospital and is believed to have left the country. Yahia Meddah, 27, applied for asylum on the basis of his political opinions. Meddah claimed he escaped Algeria under threat from the opposition forces after they had allegedly kidnapped his father and sister and killed many of his relatives. But the INS denied his case because the agency accused him of participating in terrorist activities. The appeal to an immigration judge was denied partially on the basis of secret evidence. Meddah had been detained while his case was on appeal. Meddah had never been charged with any criminal activities and he claimed no involvement with terrorist activities. The escaped detainee had publicly challenged the US government to charge him with a crime if evidence really existed supporting their assertions.

Meddah's case was highlighted in Human Rights Watch's recent report on INS detention procedures (see the September 1998 issue of Siskind's Immigration Bulletin). The report called Meddah's case "one of the most disturbing and complicated cases Human Rights Watch discovered during our extensive research." Meddah had been detained in four local jails, one INS Service Processing Center and three mental hospitals during a two-year period. According to the report, Meddah's prolonged detention and the punitive treatment he received by jail officials had an "extremely negative effect" on his mental health.

The Human Rights Watch report emphasized that despite not being charged with any crime, Meddah was transported to a prison in Pennsylvania in shackles and placed in isolation at the jail. For four consecutive months, he was held in a disciplinary segregation room, subject to 24 hour a day lockdown.

Meddah twice attempted to commit suicide, according to Human Rights Watch. After Meddah attempted to cut his chest with a razor, he was confined naked to a section of the jail called "the hole" and forced to sleep on the floor without a mattress. According to a prison psychiatrist, the abusive treatment received by Meddah caused him severe psychological trauma.

Meddah was transferred between several jails and mental hospitals before ending up at the Krome Service Processing Center detention facility in Miami, Florida. Meddah went on a hunger strike there in the hope that "the INS will do something about my situation." When the INS did not respond, Meddah again attempted suicide by ingesting cleaning fluid. The INS then sent him to a local hospital where Meddah claims he was shackled to the bed for four days until his feet began to bleed.

He was then transferred to the Windmoor Psychiatric Hospital in Miami, the place from which he escaped last month.

INS officials believe Meddah fled to Canada. Human Rights Watch has defended its report saying that the escape does not mean the underlying asylum claim was invalid and that the escape may have been out of desperation relating to his poor treatment in detention.

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7. GOVERNMENT ACCOUNTING OFFICE REPORT CRITICIZES IMMIGRANT DETENTION SYSTEM; NEW DETENTION LAW TAKES EFFECT

Last month we reported that new statutory requirements relating to the detention of aliens with criminal histories went into effect. Over the last few months, we have also been reporting on ongoing problems the INS has had with the detention process. The INS has been accused of serious human rights violations, they have faced hunger strikes and riots in some of their facilities and they have admitted that they are having enormous difficulties dealing with overcrowding.

During the past month, there have been several new developments.

a. The Government Accounting Office has recently released a report evaluating the Immigration and Naturalization Service's efforts to initiate and complete removal proceedings for criminal aliens through the agency's Institutional Hearing Program (IHP). This is a cooperative program involving the INS, the Executive Office for Immigration Review, and federal and state prison agencies. The IHP's goal is to enable the INS and EOIR to complete removal proceedings for criminal aliens while they are still serving their sentences. This will eliminate the need for agents to locate aliens after they are released and free up beds in INS detention facilities.

The Report was commissioned at the request of the House of Representatives Immigration Subcommittee and covered the following:

- the extent to which deportable criminal aliens were included in the IHP
- the extent to which INS completed removal hearings for deportable aliens during their time in prison or after their prison release, and
- whether INS had acted on recommendations made in a July 1997 report previously conducted by the GAO.

The new GAO report shows the INS has had mix results in its attempt to implement the IHP program. The GAO reports the following:

- The INS had begun to establish an automated system for tracking potentially deportable criminal aliens in Federal Bureau of Prisons facilities, but it had not determined whether it will be able to use this system to track potentially deportable criminal aliens in state prison systems.

- The INS had not taken specific actions to ensure that aggravated felons are placed in removal proceedings while they are incarcerated and then taken into custody upon their release from prison.

- The INS completed a draft workless analysis model in June 1998 that IHP managers intend to use to determine what resources are needed to accomplish short term program goals.

- The INS has not resolved the problem of high attrition among INS agents.

- The INS has taken limited actions to address the GAO's earlier recommendations to improve its management oversight to meet program performance goals.

The GAO analyzed data for 19,639 foreign-born inmates who were released from federal and four state prisons between January 1st and June 30th of last year. The INS did not have records on 7,144 (36%) of the released inmates. Of those 7,144 released inmates, 1,903 (27%) were potentially deportable criminal aliens, according to the GAO. 1,198 (63%) of the potentially deportable criminal aliens had committed appeared to be aggravated felons. Aggravated felons have fewer rights and are more likely to be deportable.

The GAO tracked what happened to the 1,198 aggravated felons after they were released:

- 80 were rearrested

- 19 were charged with committing additional felonies, and

- 15 of the 19 were convicted of the felony charges.

In the GAO's July 1997 report it recommended that the INS establish a nationwide data system to track foreign-born inmates in state and federal prisons. The INS responded by indicating to Congress that it recognized this need and had begun an effort to establish an automated tracking system. Right now, the INS is testing the system at federal facilities. It then hopes to extend the system to state facilities.

b. The new law requiring the INS to detain almost all "criminal aliens" subject to deportation is putting an enormous stress on the INS' detention system. According to a November 2nd report in the Washington Post, INS field managers are considering reducing enforcement raids so that personnel and detention space can be set aside for aliens with criminal backgrounds. The Rocky Mountain News in Denver, Colorado likewise reports that Denver INS agents have been pulled off enforcement activities to provide manpower to arrest and detain criminal aliens pursuant to the new immigration law.

c. The INS has released information on the Criminal Alien Review Plan for "nonremovable" deportees who cannot be returned to their home countries because the US lacks diplomatic relations with the home country. There are more than 3,000 people in INS custody who are considered "unremovable." Most are Cuban, but a number of Vietnamese, Cambodians and Laotians are represented in the number. The new plan puts procedures in place to allow for the release of detainees in specific circumstances. Deportation officers review the criminal history of the alien, how the alien entered the country, family history, employment history, and evidence of rehabilitation. A lawyer may be present at the review, but his or her role is limited to clarifying questions and making a closing statement. The deportation officers then make a recommendation to the District Director. The INS claims it is releasing 25% of interviewed aliens, but observers question the veracity of that statistic. Critics also complain that inadequate notice is being provided to aliens and their counsel, interpreters were sometimes only available by phone, the decision maker is the district director, not someone who was present at the review, and there is no centralized system in place for handling these cases. If you are having problems with the review process in your district, contact Tomas Curi, INS, 425 Eye Street, Washington, DC 20536.

d. The INS is working with local police round up illegal immigrants in remote areas of the country. The INS states that its goal is to help local authorities apprehend people living illegally in places where the INS has little reach. Congress has appropriated $22 million for 200 INS agents to work on the project.

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8. BORDER AND DEPORTATION NEWS

Here's a roundup of some of the latest INS enforcement activities around the country:

- Three Cuban men are in deportation proceedings in Florida in connection with their commandeering of a plane to enter the US. The INS argued the three men hijacked the plane by threatening the pilot, but the immigrants' lawyer pointed out that a jury found the men not guilty of hijacking. He also claimed his clients' lives would be threatened if they returned to Cuba.

- INS agents arrested 60 undocumented workers in Southern Mississippi in October. The workers were working on casino-related construction projects in the Biloxi, Mississippi area.

- Thirteen Cubans were detained by INS officials after their boat came ashore in the Florida Keys. One of the passengers is said to have died on the way.

- A Border Patrol agent was killed in a plane crash in Northwest Washington. The veteran Walter P. Schoott, 53, had more than 20 years experience as a Marine fighter pilot.

- A Thai woman in Los Angeles has been charged with four counts of involuntary servitude and four counts of harboring illegal aliens. The woman was accused of bringing in Thai workers to work in her home and in her restaurants and preventing them from contacting anyone outside. She is also alleged to have held their passports, screened their mail, barred them from attending religious services and issued physical threats.

- A Mexican man has been indicted for allegedly attempting to run over two Border Patrol agents with his car last September. Alejandro Mora has been charged with 11 counts of alien smuggling and re-entering the US after being deported. He was not charged with assaulting a federal officer, something for which the Border Patrol pushed. Mora was shot in the chest during the incident and is recovering. He has pleaded innocent to the charges.

- The INS has detained more than 80 workers in the La Hacienda chain of restaurants. The chain's eight restaurants are located in Charleston, South Carolina and surrounding communities. All eight restaurants remain closed following the deportations. Sixty-three people have been deported and three managers are facing criminal charges.

- California resident Noel Rowe was sentenced last month to 30 months in federal prison for selling false immigration documents to illegal aliens. Rowe pleased guilty to trafficking in counterfeit immigration documents. He will also pay a fine of $151,164. Federal authorities believe Rowe is hiding up to $2 million, but Rowe disputes that charge. Rowe actually advertised his services on television in California, claiming he could fix anyone's immigration problems.

Rowe collected the passports of his customers and stamped them with a fraudulent INS permanent residency stamp.

- Human rights activists held a demonstration in Tijuana last month to protest Mexican and US government policies they say contributed to the recent deaths of hundreds of migrants who died crossing the border into the US. According to the Mexican government, more than 200 people have died this year alone, mostly from the heat. That compares with 85 deaths in 1997. The activists put much of the blame on the INS' crackdown on the border around the major urban areas in Texas and San Diego. Migrants have taken more dangerous treks to the US through sparsely populated areas.

- Two Florida men are being questioned by INS officials in connection with the smuggling of 30 Cubans into the US. The Cubans were found on Big Pine Key in the Florida Keys and the two men were discovered on a boat in nearby Marathon. The two men's boat is being tested for fingerprints to see if they match any of the 30 detained Cubans.

- A Ukrainian national has been indicted for helping dozens of immigrants from the former Soviet Union file fraudulent asylum applications claiming the individuals were Jews fleeing persecution. The applicants have been in the US since before the breakup of the Soviet Union. Victor Voinenko allegedly earned $13,000 for preparing the asylum petitions. Authorities claim that none of the applicants are Jewish and none of the persecution claims are true.

- The US has deported 59 convicted criminals to the Dominican Republic. The Dominican government says it will free the prisoners, some of who served time in US prisons for murder and rape, because none of them have committed crimes in the Dominican Republic. None of the deportees completed their sentences in the US.

- Two brothers have pleaded guilty in Miami in an alien smuggling operation that resulted in the deaths of three Cuban nationals. Nicandro and Abel Morejon charged 14 Cubans $1500 each to transport them from the Bahamas to Miami. The boat used to transport the refugees capsized off the Florida coast in March and three of the passengers, including a four year old girl, drown. The men are facing sentences of up to 70 years in jail. Prosecutors originally sought the death penalty in the case. Alien smuggling that results in death can be punished by death.

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9. SUPREME COURT HEARS ARGUMENTS IN PALESTINIAN DEPORTATION CASE

The Supreme Court heard arguments earlier this month in the case American-Arab Anti-Discrimination Committee v. Reno. This is the first of what may be a series of cases the Court is expected to hear relating to "court stripping" provisions in the 1996 Immigration Act. Just this week, the INS asked to the Supreme Court to review the Goncalves and Magana-Pizano cases which cover similar issues.

The AAADC case began eleven years ago when the INS began deportation proceedings against eight Palestinian men on account of their political activities. The men were charged with raising funds for a known terrorist group. The individuals fought the INS in Federal District Court in California and were successful. They again beat the INS when the case was appealed to the 9th Circuit Court of Appeals.

But in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act. Under the 1996 law, Congress attempted to curtail the appeals process in deportation cases. IIRAIRA contains a provision that states

"No court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings" to remove an alien.

Only after a final deportation has been issued can an alien seek a review in a federal appeals court.

The "L.A. Eight" are arguing that they had the right to seek immediate access to the courts because their free speech rights were being violated. The US government argued that the men and women must wait until the end of the conventional deportation process before trying to show the government singled them out for their political opinions.

Lawyers for the L.A. Eight took the position that free speech arguments based on the Constitution's First Amendment should not have to wait until the lengthy, expensive deportation process is over.

Proponents of the 1996 Immigration Act argue that the US needs such laws to protect the nation against terrorists.

The Supreme Court Justices appeared to have mixed views on the matter. Some Justices seemed to be looking for a way to allow aliens to make constitutional arguments. Justice Sandra Day O'Connor, for example, told the government's lawyer "If no review is available of these constitutional claims, it might influence our interpretation of the statute." Justice Antonin Scalia, however, did not appear to be impressed by the Constitutional arguments: "It's clear that these amendments were intended to prevent exactly what's happening here. Everybody knows this is the name of the game: String it out, and the longer it's strung out, the less likely deportation will be."

The case was argued by American Immigration Lawyers Association member Marc Van Der Hout and Georgetown University Law Professor David Cole.

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10. GOVERNMENT PROCESSING TIMES

Source: American Immigration Lawyers Association

[Sorry - We do not have local INS office processing times to report this month]

Nebraska Service Center Processing Times

The following is the Nebraska Service Center Processing Time Report for the period ending October 30, 1998:

Application/Petition Type	Processing for Initial Receipt Date	Receipt Notice Processing Time in Days	
		From	To

I-90 Replacement Card	02/13/98	257	287
I-90A Saw	09/30/98	30	60
I-102 Replacement of Arrival Document	01/05/98	295	325
I-129/S New Amended NI Worker	10/15/98	15	30
I-129/F Fiance(e)	10/05/98	25	65
I-130 Spouse US	10/02/98	28	58
I-130 Spouse	10/01/97	329	359
I-130 Other Relatives	05/22/97	158	188
I-131 Reentry Permit/Ref Travel Doc	09/07/98	35	65
I-131 Advance Parole	09/30/98	30	60
I-140 Immigrant Worker	09/03/98	57	87
I-360 Pet for Widow/Spec. Imm.	09/14/98	46	76
I-485 Employment	04/12/98	198	228
I-485 Asylee	07/01/98	150	200
I-485 Refugee	07/01/98	150	200
I-526 Investor	07/20/98	100	130
I-539 Change/Extend NI Status	06/24/98	126	156
I-589 Asylum	Not adjudicated	15	30
I-698 Legalization-Adj to LPR	None pending	15	45
I-730 Refugee/Asylee Relative Pet.	06/25/98	125	155
I-751 Remove Conditions	10/06/98	24	54
I-765 Employment Authorization-A5	09/24/98	36	66
I-765 Employment Authorization-Other	08/06/98	84	114
I-817 Family Unity	11/01/97	359	389
I-824 Actions of Approved Petitions	05/12/98	168	198
I-829 Removal Conditions (Investors)	None Pending	15	30
N-400 Naturalization	Not Adjudicated 540	600	
N-600 Application for Citizenship	Not Adjudicated 15	120	
I-724 All Waivers	01/22/98	100	130

Total Pending Applications

(All types, pending first time adj.) 89,972

California Service Center

Below are the California Service Center Processing Times as of November 6, 1998.

(Processing Dates)

PETITION TYPE	JULIAN DATE	DATA ENTRY DATE
I-129 H-1 COS	99-017	10/23/98
I-129 H-1 EOS	99-016	10/22/98
I-129 H-2/H3	99-024	11/03/98
I-129 R	98-179	06/15/98
I-129 E	98-180	06/16/98
I-129 O/P/Q	99-011	10/14/98
I-129L	99-016	10/22/98
I-129 H1B Cap	98-238	08/27/98
I-765 Students/Others	98-045	09/28/98
I-131	99-021	10/29/98
I-360 FPL/Widows/Widowers	98-244	09/15/98

I-360 BPL/Religious	98-090	02/09/98
I-539	98-136	04/15/98
I-140	98-159	05/18/98
I-130 M/C (Immed. Relative*)	98-085	02/02/98
I-130 Spouse (IR)	98-225	07/21/98
I-817 Extensions	98-179	06/15/98
I-90	98-187	06/25/98
I-824 BPL	98-229	08/25/98
I-824 FPL	98-010	10/10/97
I-824 RPL	98-216	08/06/98
I-765 (c)(8)(a)(11)	99-003	10/05/98
I-751	98-336	08/31/98
I-765 (c)(9)	98-254	09/03/98
I-485	--------	02/01/98

*does not include preference aliens.
Report Date 11/06/98

TEXAS SERVICE CENTER

The following is the Texas Service Center Processing Times Report for the period ending October 30, 1998:

Application/Petition	Days to Initial Process.	Process. Receipt Date	Time/Days From	To	No. of cases in the Work Distribution Unit
I-90 Replacement Card	314	12/17/97	275	365	52,110
I-90A Saw	43	09/17/98	120	180	11
I-102 Replace Arr Doc	87	08/03/98	60	90	731
I-129/S New/Amended NI Worker	29	04/20/98	30	60	1,768
I-129 New	00	*Current	30	40	00
I-129 Other	235	03/05/98	150	260	564
I-129(F) Fiance(e)	4	10/26/98	30	40	68
I-130 Spouse	271	02/04/98	180	270	34,520
I-130 Other Relative	371	11/20/97	365	395	34,702
I-131 Advance Parole	na	Current 30	45	00	
I-140 Immigrant Worker (1st & 2nd)	230	03/10/98	180	225	3,788
I-140 Immigrant Worker (3rd)	136	06/15/98	120	150	1658
I-360 Pet. for Widow/ Spec. Imm.	271	01/19/98	240	365	1028
I-485 Adjustment	367	10/28/97	260	400	56,518
I-526 Investor	140	06/10/98	120	150	58
I-539 Chg/Ext NI Stat.- EB	00	current	90	120	21
I-539 Cg/Ext NI Stat.- Other	131	06/19/98	90	120	14,368
I-589 Asylum	n/a	Current	30	60	00
I-698 Legal-Adj to LPR	348	11/15/98	365	395	535
I-724 Waivers	n/a	Current 60	90	00	
I-730 Ref/Asylee Relative Pet.	na	filed at NSC			

I-751 Remove Conditions	10	10/20/98	60	90	307
I-765 Em. Auth.-Asylum Based	n/a	Current	15	30	00
I-765 Em. Auth.-Other	00	Current	60	90	00
I-817 Family Unity	213	03/27/98	180	270	1181
I-824 Actions on Approved Pet.	51	09/09/98	120	180	885
I-829 Remove Conditions/Investor	145	06/03/98	125	150	55
N-400 Naturalization	n/a	Preprocess	550	730	

*The word "Current" means within 30 days.

VERMONT SERVICE CENTER

The following is the Vermont Service Center Processing Time Report for period ending October 30, 1998:

Application/Petition Type	Processing For Initial Receipt Date	Receipt Notice Processing From	To
Business & Non-Immigrant Services			
I-102	Current	15	30
I-129/S New Amended NI Worker	10/07/98	15	30
I-140 Immigrant Worker	07/02/98	60	180
I-360 Pet for Widow/Spec Imm	07/25/98	60	180
I-526 Investor	Current	15	30
I-539 Change/Extend NI Status- Employment Based;	10/09/98	30	60
I-539 Change/Extend NI Status-Other	Current	30	60
I-724 Waivers	Current	15	30
I-829	Current	30	180
Family Services			
I-129 (F) Finance (e)	Current	15	21
I-130 Immed Rel	09/30/98	60	90
I-130 Preference	05/15/98	200	240
I-751 Remove Conditions	Current	30	45
I-817 Family Fairness	Current	30	60
I-824 Actions of Approved Petitions	Current	60	90
Resident Status Services			
I-90 A-SAW	Current	30	60
I-131 Reentry Permit/Ref Travel Doc	10/14/98	30	60
I-485 Adjustment	11/09/97	120	180
I-589	Current	1	5
I-698 Legalization-Adjustments to LPR	Current	30	60
I-765 Employment Authorization-			

Asylum Based	10/22/98	30	60
I-765 Employment Authorization-Other	10/20/98	30	60
N-400 Naturalization - Initial			
Processing	Current	120	180
N-600 Application for Citizenship	10/08/98	60	90
I-90 Replacement Card	12/08/97	30	90
Total Pending Applications (All Types)			

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11. STATE DEPARTMENT VISA BULLETIN FOR DECEMBER 1998

1. This bulletin summarizes the availability of immigrant numbers during December.

Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Immigration and Naturalization Service reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by November 9th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits.

Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

1. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000.

Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

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

FAMILY-SPONSORED PREFERENCES

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

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

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

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

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

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

EMPLOYMENT-BASED PREFERENCES

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

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

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

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.)

PREFERENCES

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Family					

1st	15AUG97	15AUG97	15AUG97	01AUG93	01APR87
2A*	15MAY94	15MAY94	15MAY94	08MAY93	15MAY94
2B	01MAR92	01MAR92	01MAR92	08JUL91	01MAR92
3rd	08MAY95	08MAY95	08MAY95	22MAR90	15MAR87
4th	22APR88	22APR88	01MAY86	08OCT87	01AUG78

*NOTE: For December, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 08MAY93. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 08MAY93 and earlier than 15MAY94. (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	15NOV97	C	C	C
2nd	C	08JUN96	01JUL97	C	C
3rd	C	22SEP94	08JAN96	C	C
Other Workers	15MAR92	15MAR92	15MAR92	15MAR92	15MAR92
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	01OCT97	C	C	C
Targeted Employment Areas/ Regional Centers	C	01OCT97	C	C	C

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

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides 50,000 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. DV visas are divided among six geographic regions. Not more than 3,500 visas (7% of the 50,000 visa limit) may be provided to immigrants from any one country.

For December, immigrant numbers in the DV category are available to qualified DV-99 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately		
AFRICA	AF 9,144		
ASIA	AS 2,710		
EUROPE	EU 7,441	EXCEPT:	ALBANIA EU 5,067
			BULGARIA EU 7,266
NORTH AMERICA (BAHAMAS)	NA 24		
OCEANIA	OC 261		
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	SA 1,442		

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-99 program ends as of September 30, 1999. DV visas may not be issued to DV-99 applicants after that date. Similarly, spouses and children accompanying or following to join DV-99 principals are only entitled to derivative DV status until September 30, 1999. DV visa availability through the very end of FY-1999 cannot be taken for granted. Numbers could be exhausted prior to September 30. Once all numbers provided by law for the DV-99 program have been used, no further issuances will be possible.

C. NOTE ON FUTURE VISA AVAILABILITY IN THE EMPLOYMENT THIRD "OTHER WORKERS" PREFERENCE CATEGORY

The cut-off date in the Employment Third "Other Workers" category has moved forward very quickly during recent months. The corresponding increase in number use for adjustment of status cases at INS offices has not yet become apparent, however, since offices need time to process such cases. Once there is a significant increase in INS visa numbers use, future cut-off date movement in this category could stop.

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12. HIGHLIGHTS OF NAFSA/AILA/AGENCY MEETINGS

USIA-Liaison Meeting 10/30/98

Members of the American Immigration Lawyers Association met with officials of the United States Information Agency on October 30th. Various aspects of the J-1 visa program were discussed. Greg Siskind, this publication's editor, serves on AILA's USIA liaison committee and attended the meeting and this report is based on his own notes, not the official minutes which have not yet been released.

Les Jin, the USIA's chief lawyer, opened up the session by announcing that Marcia Price has been promoted to the position of Waiver Branch Chief. She is charged with overseeing the USIA staff that reviews applications to waive the two year home residency requirement, a requirement applicable to many J-1 visa holders.

The first issue discussed at the meeting is the new legislation calling for the merging of the USIA into the Department of State within a year. The merger law was incorporated into the massive budget bill signed by the President last month. Within 60 days from the October signing date, a reorganization plan must be submitted to Congress and the President. The plan must be effective on the earlier of October 1, 1999 or earlier if President approves the plan. The USIA will be abolished and transferred to the State Department. The USIA's broadcasting arm will remain independent. No word has yet been received about whether the USIA's building will change. Les Jin did confirm that the USIA's name will go away.

Based on earlier formulated plans, Jin expects the USIA's Program Designation Branch to go to the State Department's Education Bureau and waivers will go to consular affairs.

Asked whether changes are going to happen in the way J cases work, Jin responded that nothing is apparent right now. But there may be more resources available to perform the agency's functions over time and that may mean better service.

A question was asked of Jin whether Program Designations will be an Office-level position at the State Department. The answer is not yet known. AILA asked whether it can push for office level and the USIA responded by stating that AILA should make its views known directly with E Bureau.

- Extension/reinstatement/transfer issues.

Proposed extension/transfer/reinstatement rule - A proposed extension/transfer/reinstatement rule that has been in the drafting stage was discussed. The USIA is considering suggested changes made by AILA and the National Association of Foreign Student Advisors. According to the USIA, the regulations will be in a "plain English" format and should be ready within a few weeks (though no guarantees were made). The rule will be issued as proposed rule instead of an interim rule.

Between January 1998 and October 20, 1998, the USIA received 500 requests for reinstatement. Most were approved. The denials that were issued tended to be in cases where the J-1 visa holder's objectives have changed, when he or she requested to go beyond maximum time of program. No statistics are kept regarding whether the reinstatements filed within 30 day grace period or not.

A question was raised whether one can transfer from one program to another without USIA intervention when the program category changes. The answer is no. You can approve reinstatement and change in category simultaneously.

- Program Designation Issues

Program designation adjudication time periods are taking longer now. Decision times have gone from three months to much longer. From May 1997 to May 1998, 154 new applications in all categories were submitted. 77 were approved. 5-10 were denied. 5-6 were sent back for information. The USIA official position is a 6 month turnaround. Realistically, however, many take longer. Budget ten months for the process.

The USIA is pushing for "work at home" overtime to help alleviate processing time problems in program designation cases. Two clerical positions have recently been filled and this may help. In the long term, the USIA expects to engage in a "re-engineering process" and will consider the possible elimination of certain functions and processes to save time.

The USIA noted several problems with program designation applications -

- The USIA's checklist to help people complete the application process is not always being used. It is on the USIA web site.
- Insurance policies have exclusions that don't cover programs. But they may exclude pre-existing conditions
- Training programs are not complete or are not being sufficiently described.

Delays have also been caused by program designators working with people to correct deficient applications. USIA will try and help correct problems if it thinks program is a good idea.

While statistics are not available, the USIA believes the overall approval rate has increased over the last few years.

The USIA addressed the issue of using outside entities to fulfill program sponsor obligations such as selecting participants, orienting participants or administering program. The USIA is concerned with one organization fronting for another. This is theoretically possible, but will be scrutinized more heavily.

- Program Redesignation Issues

Redesignations - 60 to 70 programs are being told to reapply based on 1993 regulations. Intent to cancel letters will be sent soon for programs the USIA considers "unviable." The USIA questions whether many of these programs are legitimate. Specific programs previously designated are being denied approval, some having been designated more than 30 years ago. According to the USIA, the programs must be canceled because there is no longer an appropriate category under the 1993 regulations. The USIA claims it "has bent over backwards" to find a slot for these old programs, but some just won't fit. Q visas are being suggested in some cases.

- ECFMG Issues

AILA asked what the basis is for the one year bar to come back in to the ECFMG program. AILA claims that regulations barring reentry in a J program for a year only apply to scholars. ECFMG claims that the USIA is telling them to apply to doctors as well. This was basically confirmed by Stanley Colvin of the USIA who noticed that a notice of policy will be published in the Federal Register regarding this issue. AILA requested that a notice of proposed rule making first

be issued. The USIA does not appear to be interested in having any public input on the matter and said it will stick to the publication without comment position. But Les Jin did agree to let AILA preview the policy memorandum before publication. AILA commented that logic tells us that it is desirable to have doctors with both research and clinical experience and that the one year bar on reentering and switching programs is not in the public interest. The USIA did indicate that a clinical to clinical switch does not trigger the bar (e.g. clinical fellow) if new program is accredited clinical program. The USIA commented that all J-1 doctors in clinical programs must be in a clinical leading to board certification and all clinical work must be accredited.

AILA and the USIA discussed the designation of clinical programs for J-1 purposes. The USIA uses the "Green Book" from the Department of Health and Human Services as a guide. The USIA stated it does not have expertise to designate acceptable programs, but the Green Book provides for provisionally approved programs being allowed. The recognition of specialty boards is accepted and they accept correspondence from accrediting specialty boards in emerging specialization areas.

- Section 214(l) Change of Employer Issues

AILA noted to USIA that it is unhappy that the USIA has been notifying the INS when waiver physicians leave a position before three years have been completed. The INS appears to be reading the notice as an indication that the USIA will be revoking its waiver recommendation. AILA requested the USIA include a letter indicating the notice should not be construed as an intent to revoke a waiver and that a transfer of employers is permissible in certain cases of hardship. Marcia Price of the USIA stated that she had no problem with including such a letter, but the language on hardship would be troublesome.

AILA asked whether USIA would entertain a new waiver request if a physician was originally sponsored by an interested government agency and then seeks a hardship waiver. This might be the case if the physician has lost his or her job and is at risk of getting the waiver revoked. A new waiver based on hardship might be a way to avoid this problem. The USIA stated that it will not adjudicate a waiver a second time and that this would be an INS issue. But Les Jin indicated he would work with AILA to see if a compromise could be reached.

- Section 212(e) Waivers and O-1 Classification

AILA noted to the USIA that the Department of Veterans Affairs was not handling some waiver requests because it mistakenly believed that only facilities in underserved areas were eligible for waivers. The USIA reported that Dr. Toni Mitchell at DVA is now satisfied and is not denying applications anymore just because a VA facility is not in Health Professional Shortage Area or a Medically Underserved Area. The DVA also now recognizes that waivers can be for positions other than those relating to primary care.

O-1 issues. AILA noted a problem with some states giving licensing problems to physicians subject to the J-1 home residency requirement reentering the US on O-1 visas. This is perfectly legal and the states are misinterpreting the law. The USIA indicated that it will send a letter to the New York Department of Health and any other states that AILA tells the USIA are giving doctors such problems.

- Hardship/Persecution Waivers

The USIA indicated that physician hardship waiver requests should NOT present as a factor that the person is over-trained to work in the home country. This will actually be perceived negatively, not favorably since the physician presumably should have known about the job market in the home country at the time of coming to the US.

AILA questioned the USIA over its perfunctory denials of hardship waiver cases due to "Program and policy considerations" even after the INS has recommended a waiver approval. AILA questioned the USIA on the fact that cases from the same countries with very similar facts were now being denied. AILA inquired whether the USIA was now applying tougher standards. The USIA indicated that in the particular case raised by AILA, there was a substantial improvement in the conditions in the home country and the hardship was no longer as severe..

AILA asked whether there was a backlog in approving hardship cases. The USIA indicated that there is no backlog per se. They are down one officer and two new officers being trained. The USIA should be back on track soon. 120 days is the normal processing time, but difficult cases may take longer.

AILA asked whether the USIA would automatically approve cases where the INS recommended a waiver and no government funds were involved. The USIA told AILA to forget it.

AILA asked the USIA how it determines country conditions when it reviews hardship cases. The USIA indicated that it uses a wide variety of sources. All hardship cases with medical arguments are being sent to the applicant's state department of health for their opinion.

- Home Residence Requirement Compliance

AILA asked the USIA whether nationals of the People's Republic of China can satisfy the home residency requirement in Hong Kong. The USIA indicated that the State Department's guidelines would govern here. A similar issue was raised with respect to the Former Soviet Union and Yugoslavia. If you are technically a citizen of one country, but in the ethnic group of another, where can you satisfy the home residency requirement. For example, if you are a Russian born in Latvia to Russian parents, can you satisfy the home residency requirement in Russia where you have all of your family and cultural ties. The current policy would seem to dictate that the requirement be satisfied in Latvia. Les Jin indicated that he personally disagreed with this (though he has not indicated he will do anything about this). AILA indicated that it wishes to discuss the matter further with USIA.

Communication Issues

AILA asked whether USIA officers will communicate via e-mail with lawyers and the public. The USIA indicated that e-mail not being encouraged now for fear of overload on officers.

AILA/INS Headquarters Meeting

AILA met with high-ranking INS officials in Washington on September 24th. The main issue on the agenda was the implementation of the new Immigrant Services Division within the Office of Field Operations. The INS indicated to AILA that customer service is chief on the mind of the agency and that the reorganization will result in more consistent and efficient service.

The new ISD will be charged with everything having to do with INS field services, a new national telephone system for the public, and improving consistency at the INS District level.

The INS warned that problems could be expected during the transition and the INS was unwilling to make any pledges or commitments about the benefits that can be expected.

AILA criticized the INS over Operation Last Call in Texas. Readers of this newsletter may recall from our September issue that this involved the round up and placement if deportation proceedings of hundreds of green card holders with drunk driving convictions. The INS is claiming these individuals are aggravated felons subject to deportation. The INS defended the operation as legitimate, but admitted it was not handled perfectly. The INS asked AILA to help in composing guidelines to cover these cases.

The INS indicated that it is working on regulations governing Section 245i and that it will issue a memorandum in advance. The memorandum and regulations will provide clarification on matters such as grandfathering, substituting of beneficiaries and new spouses.

AILA also requested that the INS begin processing DV cases at the beginning of the fiscal year or earlier even if no numbers are currently available in the State Department Visa Bulletin.

AILA/INS Immigrant Services Division Meeting - 11/5/98

INS Service Centers are frequently requesting information from US Consulates in India to verify education and experience credentials in certain H-1B cases. AILA reports that turn-around times vary from as little as a week to as long as ten weeks in unusual cases. The average response time is 30 to 45 days.

AILA reports that the Vermont Service Center received a substantial number of applications on Saturday, October 10, 1998 just before the INS fee increase went into effect. The VSC rejected the cases claiming the fee was incorrect. The VSC admitted this was an error and that the proper date to determine the fee is the date of physically delivery, not the filing date. For example, H-1B petitions received on any day up to November 30, 1998 do not need to have the $500 fee, but applications physically received after that date must contain the additional fee. The VSC is willing to remedy problems and the minutes outline special procedures for AILA members to follow to remedy the problem.

AILA/INS Immigrant Services Division Meeting - 11/19/98

AILA complained about the wide disparity in INS Service Center processing times. The INS indicated that it was performing a study to help prioritize and establish uniform processing time standards for the four service centers. The INS would like to establish uniform times for the following case types: I-129, I-130 (Immediate Relative), I-765, I-485 (aging-out only), I-730, I-131, I-539

(on a seasonal basis), I-140, I-751 (non-interview). The INS expects to announce uniform standards by the end of the year, though no timelines for compliance were noted.

The INS reported that it will have a new version of its software in place by the end of this month and should be able to handle the new $500 H-1B filing fee.

The INS announced that its CLAIMS software will be Y2K compliant by January 1, 1999.

AILA/Executive Office for Immigration Review - 11/5/98

The EOIR reports receiving several hundred comments on its proposed Rules of Professional Responsibility for attorneys published earlier this year. In response, a number of changes have been incorporated and final rules will soon be sent to the Attorney General for her review and approval. AILA expressed concern that the proposed rules do not cover INS trial attorneys and there is no stated duty of zealous representation. AILA is concerned that the rules will have a "chilling effect on aggressive advocacy." EOIR assured AILA the final rules will address the latter issue. As for trial attorneys, they will be covered in rules implementing the contempt powers of the Immigration Judges. Those rules are in draft stage.

The EOIR circulated a memo to twenty-five immigration judges asking them what were the top complaints they have about immigration lawyers. The number one complaint is lack of preparation. One judge found that attorneys sometimes do not appear to have done any advance preparation and seem to be doing an initial client interview during the direct examination of the client in front of the Immigration Judge.

AILA members reported that several clerk offices are having problems logging in appeals and requests for additional time for briefs in a timely manner even though the applications were submitted on time. EOIR asked AILA members to report these problems immediately to the Office of the Clerk, 703-605-1007 or call Neil Miller at 703-305-0287.

AILA/State Department Visa Office - October 30, 1998

AILA complained that some consular posts have an inflexible rule that the INS hard copy of both L and H petitions be received by the consulate before a visa will be issued. AILA asked DOS to name which posts require this so that AILA members could warn clients about potential delays. DOS noted that many high fraud posts will require this in all "suspect" H-1B cases, but to their knowledge, only Manila has a policy of requiring both L and H petitions in all cases.

The DOS has advised that the comment period for the proposed new OF-156 form has passed and that the new form will soon be distributed to consular posts and to the public.

AILA asked the DOS to comment on H.R. 4539, a bill that would create a new court to review consular decisions. The DOS is firmly opposed stating

"Although the VO was not asked by Congress to comment on H.R. 4539 after it was introduced, AILA should be aware that VO has consistently opposed all forms of

this bill as unnecessary, too costly and too time-consuming. We believe that the current requirement for review by a supervisory consular officer of a visa denial and the opportunity through counsel or on one's own to obtain an advisory opinion from the Department provides sufficient relief to the applicant."

[Editor's note: The DOS position is not surprising. Consular posts have basically unfettered discretion to deny cases and getting an advisory opinion from Washington (which are not binding on consular officers) is unreliable at best. H.R. 4539 would finally introduce an independent judge to ensure that the State Department complies with the law. Virtually every other administrative agency has the same setup.]

The DOS will add comprehensive notes to the Foreign Affairs Manual in the next few months incorporating previous guidance memoranda on the subject of the unlawful presence reentry bars.

DOS has made a special e-mail address available for AILA members needing assistance. That e-mail address is available on the AILA Infonet on the web in the AILA/DOS minutes for October 30th.

AILA/INS General Counsel 9/25/98

Though this meeting occurred two months ago, the minutes have only recently been released.

The INS agrees that with respect to INA Section 245i, after-acquired spouses of grandfathered aliens who are accompanying or following to join grandfathered aliens are eligible to adjust status. The INS current policy on persons who have withdrawn or had a denial of a labor certification petition filed by January 14th is that such persons on not grandfathered. The INS is considering changing this policy based on AILA's brief on the subject. They expect to issue a guidance memorandum on the subject soon.

The INS indicated that where people file extensions for employment authorization documents in a timely manner, the EAD cards will be dated back to the expiration date of the previous EAD card in order to avoid an employment gap. This policy will be put in writing.

The INS defended the Matter of Izumi decision which says the INS is not bound by opinions of the INS General Counsel or written statements of policies from officials in authoritative positions at the INS.

The INS may parole in an alien into the US for public interest or for humanitarian reasons. As long as the alien complies with the terms of the parole, no time will accumulate to trigger the three and ten year re-entry bars.

A person with a bona fide asylum application does not accumulate time toward the 3 and 10 year reentry bars while the application is pending. If an asylum application was filed many years ago, the application was denied and an Order to Show Cause or Notice to Appear was not served or filed with the court, the INS MAY accept AILA's position that the alien is still protected from the bars until the alien can renew the application with the judge. The INS is still considering this.

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13. TEMPORARY PROTECTED STATUS EXTENDED FOR NATIONALS OF BURUNDI, SIERRA LEONE, AND SUDAN

Nationals of Sierra Leone, Sudan and Burundi will continue to receive Temporary Protected Status for another year. TPS allows nationals of a country undergoing armed conflict, environmental disaster or other extraordinary conditions to remain in the US until conditions improve.

Individuals who are nationals of the three counties should re-register by December 2, 1998 and will have their status extended until November 3, 1999. Late re-registrations are possible if good cause is shown. The three countries were originally designated for TPS status in 1997 in response to their civil wars. Eligible applicants must be able to show that they have been "continuously physically present" and have "continuously resided" in the United States since November 7, 1997. The applicant should have been in legal status at that time.

To re-register for TPS status, applicants should submit Form I-821 to the local INS office along with Form I-765, the Application for Work Authorization. All applicants must submit Form I-765 even if they do not wish to work. If the person really wishes to work based on the I-765, he or she should submit a filing fee of $100 with the application.

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14. INS AND FLORIDA SIGN AGREEMENT ON HANDLING IMMIGRANTS

The Immigration and Naturalization Service and the State of Florida have signed an agreement to provide a joint response to what the INS calls a potential "mass influx of aliens." The agreement stems from the Cuban immigration wave in 1994 in which 32,000 Cubans sought refuge in the United States. Florida sued the US government for $1.5 billion to cover anticipated costs of taking care of the needs of the immigrants. The INS emphasized that it has no information to indicate that a mass migration is imminent.

Under the agreement, Florida will support INS operations in response to an actual or imminent mass migration into Florida. Florida would be able to provide logistical and law enforcement support to the INS upon the request of the agency and the INS will reimburse Florida for expenses incurred. Florida law enforcement officials will receive periodic training on immigration law to be better prepared to help the INS.

INS Commissioner Doris Meissner commented on the agreement:

"This MOU [Memorandum of Understanding] is the latest milestone in a continuing effort to improve coordination of the overall U.S. government response to mass migration events. It is an example of responsible government in action and demonstrates that contingency plans are in action to deal with such an emergency whenever it might occur. This signing recognizes the work accomplished to date, ratifies the procedures for coordinated response operations, and reaffirms the commitment INS and the State of Florida have made to continue the process."

The INS had been negotiating with Florida for four years prior to reaching a final agreement with Florida, the first of its type.

Under the agreement, the INS is responsible for

- functioning as the lead federal agency

- providing immigration law training to state and local law enforcement officers designated to enforce immigration law

- coordinating utilization of resources and personnel to support an operation

- coordinating the reimbursement of the state and local governments for support provided at INS' request

Florida will be responsible for the following:

- provide operational support, at its discretion, as requested by INS

- serve as a coordinator between its political subdivisions and INS

- provide law enforcement and logistics support, at its discretion, to the federal mass migration response operations as requested by INS

- maintain law and order within the state.

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15. BILL INTRODUCED TO HELP CUBAN BASEBALL PLAYERS

A Bronx, NY Congressman has filed a bill with the US House of Representatives to allow Cuban baseball players to play baseball in the American major leagues without having to first defect from their homeland. Democrat Jose Serrano introduced similar legislation last year without success.

Under the proposed legislation, Cuban baseball players would only be permitted to have visas during the baseball season.

Serrano says he introduced the bill because it is unfair to make Cuban players renounce their countries and their loved ones to play in the United States. He also believes the bill would offer an opportunity to open doors with Cuba. The Congressman is a strong advocate for normalizing relations between the US and Cuba.

Critics of the bill claim it is just a scheme to send money to the Castro government, a charge Serrana strongly disputes.

The Cuban government has also recently indicated it is interested in cooperating in sports with the US. Cuban Sports Minister Humberto Rodriguez told the Spanish-language news agency Prensa Latina "We are receptive to any proposal by the major leagues as long as it respects the principals of Cuban socialist sports." Fidel Castro also recently told American reporters that he is not against Cuban teams competing in the US.

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16. IRANIAN VISA CONFUSION CONTINUES

Over the past several months, we have reported on possible policy changes by the Immigration and Naturalization Service in the handling of Iranian employment-based nonimmigrant and immigrant visa cases. The INS indicated that it might revoke certain visas or deny extensions for Iranians.

In our September report, we asked readers to let us know if they had specific information to confirm an INS change in policy. Recently a reader sent us a denial letter for a case involving an application to change from a student to an H-1B professional worker's visa. The case was denied in the late spring. The language of the denial was as follows:

"On January 15, 1998, the Office of General Counsel, Immigration & Naturalization Service, issued a policy memorandum. The policy memorandum titled "Prohibition on employment-based immigration from Iran" is signed by Acting General Counsel, Lori L. Scialabba. The memorandum outlines restrictions limiting the approval of certain employment based petitions for Iranian nationals. Those limitations are outlined below. The basis for these limitations is Executive Order 12,959,60 issued by the President of the United States in 1995. The trade sanction regulations are codified at 31 Code of Federal Regulations, Part 560.

Executive Order 12,959 prohibits "the importation into the United States...of any goods or services of Iranian origin." E.O. 12,959 also prohibits "any transaction...by a United States person relating to... services of Iranian origin." Furthermore, the President of the United States directed all Executive agencies "to take all appropriate measures within their authority to carry out the provisions." E.O. 12,959, 3, of the Iran trade sanctions.

The Office of Foreign Assets Control, United States Department of Treasury (OFAC) has reviewed the executive order and OFAC found that an employer in the United States may not lawfully make a binding offer of employment to an Iranian national residing in Iran.

It follows from this finding that the Service has determined employment-based immigrant or nonimmigrant visa petitions filed by United States employers on behalf of Iranian nationals residing in Iran must be denied in compliance with the executive order. Additionally, the Service find that Iranian nationals presently in the United States in nonimmigrant classifications that specifically require the maintenance of a foreign residence must also be denied in compliance with the executive order.

It has been determined that the petition in question is an employment based which seeks to employ an Iranian national. Additionally, if it is found that the beneficiary's residence or foreign residence requirements make the petition subject to the executive order outlined above.

Therefore, this petition must be denied based on Executive Order 12,959."

The denial appears to contradict earlier INS assertions from INS officials that there is no bar to Iranian citizens not physically residing in Iran from applying for extension of status, change of status or adjustment of status to an employment-based visa. Specifically, the INS told the American Immigration Lawyers Association that in the case of a student switching status to H-1B status, there would be no bar unless the student was residing in Iran in fact.

That was not the case in the above example. Whether this is an isolated case or not has yet to be determined. Readers who are aware of other similar cases are encouraged to inform us by sending e-mail to gsiskind@visalaw.com.

In related news, the organization Iranians for International Cooperation is seeking grassroots support to urge INS not to take an overly restrictive approach in its interpretation of the sanctions requirements. On the group's web site at http://www.iic.org, readers can find a sample letter to Congress to let Congressional representatives to let them know they are unhappy about the current situation.

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17. VISA SPOTLIGHT: NEW Q-2 VISA TO BENEFIT IRISH NATIONALS

With little fanfare, Congress by unanimous vote created a new visa category last month as part of a bill entitled the "Irish Peace Process Cultural and Training Program Act of 1998. President Clinton signed the bill on October 30th. The bill is now downloadable from the Documents Collection at the Siskind, Susser, Haas & Devine web site (http://www.visalaw.com/docs/). The bill was sponsored by Representative Jim Walsh (R-NY) in the House of Representatives and outgoing New York Republican Senator Alphonse D'Amato.

Under the bill, the Department of State and the INS are charged with establishing a program to allow young people from disadvantaged areas of certain counties in Ireland and Northern Ireland to enter the US "for the purpose of developing job skills and conflict resolution abilities in a diverse, cooperative, peaceful and prosperous environment, so that those young people can return to their homes better able to contribute toward economic regeneration and the Irish peace process. The program shall promote cross-community and cross-border initiatives to build grassroots support for long-term peaceful coexistence." According to Congresswoman Sheila Jackson-Lee of Texas, "this program offers a great opportunity to show others how Americans from many different religions live and work peacefully together."

The counties were selected based on a history of sectarian violence and high structural unemployment. They are the six counties of Northern Ireland and the counties of Louth, Monaghan, Cavan, Leitrim, Sligo and Donegal within the Republic of Ireland.

The new visa will be called the Q-2 because it will be listed in Section 101(a)(15)(Q)(ii) of the Immigration and Nationality Act. 4,000 visas are available for each of the three years the program is authorized. Congress will reduce the number of H-2B visas permitted annually on a one to one basis as Q-2 visas are issued. Only a small portion of the 60,000 H-2B visas allotted each year get used so this should not cause problems (it also sends a reminder that the H-2B program is basically unworkable and employers are not using it). Readers should not confuse the H-2B visa with the H-1B visa for professional workers.

To be eligible for the program, applicants must be thirty-five years of age or younger, reside in one of the eligible counties, have no intention of abandoning residence in their home country and be coming to the US to participate in a cultural and training program approved by the State Department and the INS.

Spouses and minor children may accompany the principal applicant. Applicants will be permitted to come to the US for up to three years. Thus, the last new applicants will be admitted at the end of the third year of the program and the program sunsets at the end of six years.

Congress did not specify how the State Department and INS were to go about approving sponsoring programs and no deadlines were placed for setting regulations or guidelines. As more information is released, however, we will inform our readers.

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18. CONGRESS GRANTS GREEN CARDS TO SIX INDIVIDUALS IN CLOSING DAYS OF SESSION

At the very end of the 105th Congress last month, bills were passed allowing six individuals to qualify for green cards. The rare private bill process allows Congress to create specific legislation to allow a single person into the country. The private bill process is an arduous one that is often only successful in the most sympathetic of cases.

Individuals from California, Georgia, Illinois, Pennsylvania and Virginia will benefit. The bills were held up and almost did not pass in time due to the objections of New Jersey Democratic Senator Frank Lautenberg, a Democrat. Lautenberg did not have specific objections to any of the individuals, but, rather, hoped that his opposition would help him pass a bill for a seventh individual from his home state.

Lautenberg had been pushing for a special bill for Vova Malofienko, an eight-year-old boy from Ukraine with Leukemia. Doctors suspect the Chernobyl nuclear accident in the 1980s led to the illness. Lautenberg failed in getting the bill passed because of the opposition of Wisconsin Republican Congressman James Sensenbrenner. Sensenbrenner opposed Lautenberg's private bill because it was not reviewed in advance by a House Committee.

One of the cases approved was for Virginia resident Mercedes Cruz. Ms. Cruz' husband was an Army veteran who died 23 months after the couple was married. Immigration law would have allowed her to petition as the widow of a veteran if they were married just one month longer.

The Georgia case involved Larry Pieterse, who was in deportation proceedings because his wife planted cocaine in his house.

In California, Jasmin Salehi, was facing deportation after her husband was killed during the robbery of a restaurant.

And in Illinois, Nurata Kadiri, a Nigerian national, was abandoned in the US by her parents.

At least nine other cases did not make the cut this year. The Congressional Representatives must reintroduce the cases next session and must request the INS continue to review the matters instead of proceeding with deportations.

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19. FEDERAL APPEALS COURT RULES FOR UKRANIAN ALIEN IN KEY ASYLUM CASE

The Ninth Circuit Court of Appeals has approved the asylum claim of a Russian-born, Jewish Ukrainian woman, overturning the decisions of both the Immigration Judge and the Board of Immigration Appeals. Vera Korablina's testimony was not disputed. But, the lower courts ordered the woman deported because she only showed "discrimination" and not "persecution."

Korablina was able to show she had been denied educational opportunities throughout her life due to her religious heritage. She was fired from her job of twenty-eight years because her new boss, a member of an extreme ultranationalist, anti-Semitic group, did not want Jews working for him. Korablina testified that a number of other employees - all Jewish - were also fired at the same time.

After she was fired, she began working as a secretary for a Jewish man. In October, 1993, three men burst into their offices and demanded money from her boss, claiming that, as a Jew, he was living at the expense of the Ukrainians. Her boss was beaten and robbed. An ambulance arrived after more than thirty minutes, but the police never even arrived.

After this incident, the extortionists returned on a monthly basis. On one occasion, they stole a list of employees and from that point on, she began to receive threatening phone calls and notes, often several times a week. Several threatened to kill her and warned her that if she sought help from others, the ultranationalists would kill them too. Korablina knew that reporting the crime to the police would have been useless anyway since the police did little to protect other Jews in the same situation. Many, in fact, are members of the same anti-Semitic, ultranationalist groups.

She did report the incidents to a friend at city hall who offered to help her. But the friend soon disappeared, never to be heard from again.

On another occasion, two men attacked her at a trade show demanding certain business papers in her possession. When she refused, they put a noose around her neck and tightened it until she relented and gave them the papers. They told her that even though she had a Russian name, they knew she was Jewish. She was left tied up and had to be taken to the hospital to treat a concussion suffered from being struck in the head by the men with a blunt instrument.

In September 1994, members of the ultra-nationalist group again came to the office, ransacked it, painted a Star of David on the wall, and threatened Korablina's boss. He soon also disappeared.

Korablina's adult daughter corraborated her testimony and also spoke of several threats and severe beatings she and her father suffered by members of the same groups on account of being married to his wife.

Korablina came to the US on a visitor visa and applied for asylum shortly before the visa was set to expire. The Immigration Judge ruled that what Korablina had described amounted to merely discrimination, and did not rise to the level of persecution. The BIA received an appeal and dismissed it, it named Ukraine instead of Russia as the country for deportation.

The Ninth Circuit discussed what standard should be used to determine whether one has faced persecution. The court defined persecution as "the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive." Suffering violence can provide important

evidence of persecution as long as the creates "a pattern of persecution closely tied to the petitioner."

Korablina also needed to demonstrate that a person in her situation would have a reasonable fear of persecution. The Immigration Judge admitted that Korablina did indeed fear persecution. But he held that while she suffered a "serious [form] of discrimination because she is Jewish," her experience did not amount to persecution.

The Appeals Court held that Korablina meets all the tests and that the cumulation of experiences she suffered surely proves discrimination. The Court politely told the lower courts that the earlier decision was outrageous:

"With all respect, the IJ's determination and the BIA's affirmance that Korablina experienced merely discrimination are not "supported by reasonable, substantial, and probative evidence on the record considered as a whole. The suffering inflicted on Korablina because she is Jewish was not simply a "minor disadvantage or trivial inconvenience." It amounted to "the infliction of suffering or harm upon [one] who differ[s] (in race, religion, or political opinion) in a way regarded as offensive."

The case can be found on the web at http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=9th&navby=case&no=9770361.

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20. INS PROPOSES RULE TO CRACKDOWN ON AIRLINES BRINGING PASSENGERS WITH FALSE DOCUMENTS

The Immigration and Naturalization Service has issued a proposed rule to allow the agency to crack down on airlines that allow too many people to come to the US with fraudulent documents in comparison to the industry standard. The INS would first be able to fine an offending carrier. If the airline's performance does not improve, the INS would issue a warning letter indicating that it would cancel the carrier's contracts. If the airline's record still does not improve, the INS would then issue a notice of intent to suspend the company's privilege to transport aliens to the US. Finally, if performance still does not improve, the INS could suspend the airline's privilege to transport aliens. This would effectively shut down international flights for domestic carriers and flights in to the US for foreign carriers since it would be tough to make the routes economically viable with just American passengers.

The 1996 Immigration Act authorizes the INS to suspend an airline's privilege to transport aliens to the United States. The agency believes, however, that this would be a last resort and would rarely be used. The INS expects that the use of monetary penalties will be enough to keep airlines in line.

The complete proposed rule can be found at http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=7973929140+0+0+0&WAISaction=retrieve. Written comments on the rule must be submitted on or before December 22, 1998.

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21. SOCIAL SECURITY ADMINISTRATION'S NEW RULE WILL EASE ISSUING OF SOCIAL SECURITY NUMBERS TO IMMIGRANTS

As part of the Social Security Administration's efforts to "re-engineer" its operations in order to better serve the public, the Social Security Administration is changing its procedures to make it easier for immigrants to get Social Security Numbers automatically at the time of immigrating. It recently published a final rule describing the changes.

Previously, the Social Security Administration (SSA) assigned a Social Security Number (SSN) to an alien when the individual submitted to a local SSA field office a completed SS-5 form and proof of age, identity, and lawful admission for permanent residence or authorization to work. Adult SSN applicants had to appear for an interview at a local SSA office.

The SSA, State Department (DOS) and Immigration and Naturalization Service (INS) have agreed on new procedures for DOS and INS to forward information to SSA. The DOS and INS will collect the information the SSA needs to issue a SSN and the INS will now electronically transmit the information to the SSA.

The SSA will then assign SSNs to aliens when they enter the US. Cards will be mailed to the alien at the address given to the INS at the time of entry or, in the case of a refugee where a final address is not yet known, the card will be mailed to the agency sponsoring the refugee. In person interviews will not be required anymore, though applying in person at the local SSA office for a new or replacement card is still permitted. The SSA expects the new procedure to cut down on the use of counterfeit INS documents to obtain SSNs. It will also save the government considerable money by increasing the efficiency of the process.

The new rules also amend SSA rules on the presumption of authority of a nonimmigrant alien to accept employment. The SSA rule clarifies that a nonimmigrant alien who has not been issued a Form I-94 showing a visa category authorizing work, must present a current employment authorization document or other document from the INS which permits the alien to work. Otherwise, the SSN will be issued with the words "NOT VALID FOR EMPLOYMENT."

The SSA noted in the preamble to the regulation that the INS will only be able to collect information on about 60% of aliens who need SSNs. The INS claims it will be several more years before it will be able to collect information on all applicants.

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22. REPORT CRITICIZES INS POLICY ON WORK SITE RAIDS

In related news, a coalition of human rights, immigrant, labor and religious groups have issued a report criticizing INS policies regarding the raiding of employment locations. Specifically, the National Network for Immigrant and Refugee Rights (NNIRR) claims the INS regularly abuses the civil rights of US citizens as well as noncitizens.

The report, entitled "Portrait of Injustice," studied more than 200 INS raids in 31 cities. The account outlines a pattern of rights violations including

physical and verbal abuse, sexual assault and damage to small businesses as a direct result of INS raids.

The NNIRR condemns raids because they violate the right of US citizens to protection against unlawful searches and seizures. When the INS raids an employer, everyone in the office, US citizens and noncitizens alike, are questioned. The organization argues that this is a violation of the Fourth Amendment to the Constitution's protections against illegal searches.

The NNIRR has called on Congress to require INS to end the practice of work site raids, keep detailed records on raids and establish a system for people to report abuses. The group also suggested that Congress hold hearings on the impact of the raids.

The report also outlined an interesting phenomenon where employers actually call the INS to raid the work site. This has occurred when employers learn of union organizing activities at the work site. The INS can do the dirty work of getting rid of potentially troublesome workers who support bringing in a union rather than the employer having to fire the employee.

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23. LAW FIRM WINS FIRST BATTLE IN WAR AGAINST NEW LABOR CERTIFICATION PROCESS

A law has won a key battle in its attempt to sue the Department of Labor (DOL) over that agency's efforts to "re-engineer" the labor certification process. In October 1996, the DOL issued General Administrative Letter No. 1-97 which dramatically altered the way the labor certification process works. Certain aspects of the new process have drawn enormous criticism from immigration lawyers. Law firm Tidwell, Swaim & Associates sought to challenge the method the DOL used to impose this change on the public.

In July, 1997, Tidwell filed a Freedom of Information Act request with the Department of Labor seeking all documents concerning the issuance and implementation of GAL 1-97. The Department of Labor responded a week later by providing Tidwell with 1) a copy of the GAL 1-97 and 2) a response to a survey of the labor certification processing procedures under GAL 1-97 from a member of the American Immigration Lawyers Association. The DOL withheld five documents claiming the documents were privileged materials not subject to FOIA.

Tidwell was unhappy with the documents received since the documents were items easily obtainable from other sources and they told nothing not already known. They filed an appeal with the DOL's Office of Solicitor on July 18, 1997. The Office of Solicitor General failed to respond in time thus giving the Tidwell the right to file a complaint in Federal District Court. Tidwell then filed a complaint with the District Court for the Northern District of Texas on August 26, 1997.

The DOL argued that the documents were preserved pursuant to the deliberative process privilege. It then asked for summary judgment to close the case claiming Tidwell failed to show any genuine issue of material fact.

The judge denied the DOL's motion for summary judgment and ordered the DOL to turn over the requested documents for the court's own internal review. If the

court does not buy the DOL privilege claim, it will release the documents to Tidwell.

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24. CLINTON SIGNS LAW EXTENDING BENFITS FOR POOR AND ELDERLY IMMIGRANTS

President Clinton has signed into law a bill that will allow about 20,000 poor and elderly immigrants to continue receiving their Supplemental Security Income checks.

The "Noncitizen Benefit Clarification and other Technical Amendments Act of 1998" provides for the continuing eligibility for SSI for people who were receiving such benefits when the 1996 Welfare Law was became effective on August 22, 1996 but who were found not to qualify for further benefits. Congress previously extended eligibility until September 30, 1998 and this legislation permanently extends access to benefits for that group.

President Clinton pushed for the legislation stating that the new law "will further the efforts that I have undertaken to reverse unduly harsh benefit restrictions on legal immigrants that have nothing to do with moving people from welfare to work. H.R. 4558 will ensure that thousands of elderly and disabled legal immigrants who are dependent on Supplemental Security Income (SSI) and Medicaid will continue to receive such benefits."

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25. INS UNVEILS NEW PLAN TO TARGET EMPLOYERS OF UNDOCUMENTED WORKERS

The Immigration and Naturalization Service recently unveiled a new "interior enforcement strategy" that will involve a further crackdown on employers of undocumented workers.

The plan was unveiled at a strategy meeting in Denver, Colorado of the nation's top INS officials. The new plan involves placing more agents in remote regions, use of wiretaps and improvements in communications among INS agents in offices across the US and in overseas INS offices.

Though the INS has received substantial increases in its enforcement budget over the past several years, the number of fined employers has actually dropped significantly. At the beginning of the decade, the INS fined more than 2,000 employers each year. Last year, just 888 firms were fined. The amount of the fines has also dropped from $17 million to $7.7 million in the same time period.

Not on the list of new enforcement tools is an electronic verification system for employers to check the work authorization of a new employee. The INS has been conducting a number of pilot programs around the country that involve electronic verification, but Congress has been reluctant to approve the actual implementation of the system.

Many in Congress who support a tough border and deportation strategy are not as interested in going after businesses, particularly small businesses that may be struggling to survive.

One difficulty employers face is the lack of a workable visa program to bring in temporary workers when there is a severe shortage of US workers. INS officials often comment in the media that there is no excuse for hiring illegal workers since there are legal ways to bring the workers in. But the only realistic visa for temporary unskilled workers is the H-2B visa. This visa requires documentation that there are no US workers available and that the need for the employees is only temporary or seasonal. The difficulty comes when an employer tries to show a position is temporary in nature. The position must be one that has a defined end that is less than one year - e.g. a temporary project, a seasonal business needing workers for just a few months, etc. But many employers in areas with extremely low unemployment rates needs workers for all types of positions - a waiter, a janitor, a day laborer, etc. - that would not meet the test. A permanent residency category for unskilled workers is on the books, but there is an eight-year waiting period for employers to qualify workers.

In related news, across the country in Seaford, Delaware, the INS signed a novel contract with a poultry plant which calls on the INS and Allen Family Foods to work together to limit the number of illegal workers at the company's plants. Allen Family Foods will no longer have to worry about surprise work site raids. Instead, the INS will be able to make unannounced spot checks, review payroll records and randomly interview the firm's workers.

In the last five years, Allen Family Foods has lost nearly 200 workers in work site raids and the firm has paid $42,000 in fines for knowingly hiring illegal aliens.

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26. BOARD OF IMMIGRATION APPEALS STREAMLINING PROPOSAL COMES UNDER FIRE

Last month we reported on a new proposal that the Board of Immigration Appeals establish a system to streamline the appeals process. Under the plan, individual BIA judges could review cases and dismiss those that are not "close calls." The proposal allows such appeals to be denied without a written opinion. Cases with a "realistic chance" of reversal must be referred to a three-member panel.

Philip G. Schrag, a Professor at Georgetown University's law school, is leading a fight against the proposed rules. Schrag has produced a sign on letter for immigration experts and refugee and human rights organizations that outlines problems with the proposed rules.

According to Schrag, elimination of the requirement for written opinions "would represent an abdication of the Board's important reviewing role."

Schrag is not bothered by the idea of allowing single judges to issue opinions. In fact, Schrag believes that aspect of the plan might actually increase the quality of BIA decisions. Aside from potentially speeding up the whole process (it now takes more than a year for an appeal to be heard in many cases), some immigration lawyers believe immigrants may benefit. The theory holds that the BIA is dominated by anti-immigrant judges and more sympathetic judges are routinely outvoted. Single judge rulings would give a greater voice to pro-immigration judges.

Schrag notes in his letter that written opinions have at least three other important values:

- written rulings enable a losing party to accept the legitimacy of an appellate decision. If an alien feels that there arguments were understood and treated fairly, they may be less likely to appeal the case further.

- written opinions ensure that harried adjudicators really read the cases and formulate a reasoned response, and

- in cases where further judicial review is permitted, written reviews are needed to provide the higher courts with insight into why the BIA did not agree with the appellant's contentions.

Schrag also criticizes the proposed rules use of inconsistent language to describe when a case must be referred to a three-judge panel. At one point in the regulation's preamble, the Board states that a BIA member will refer to a panel all cases deemed to have "realistic chance" of reversal and the other cases would be affirmed without opinion. Elsewhere in the preamble, the Board says the correct standard to be applied is when there is a "chance that the result below was incorrect." Elsewhere, the standard is described in terms of whether "the appellant makes a substantial argument" for reversal. And the rule contains a completely different standard. It allows a single BIA member to affirm whenever he or she concludes that there "is no" legal or factual basis for reversal, or where he or she determines that the result under review "was" correct. According to Schrag, this standard contradicts the preamble language because it suggests that "the member should make an appellate determination of the correctness of the decision below, not a threshold assessment of whether any other Board member might reasonably think that reversal would be warranted." Schrag believes the "realistic chance" standard is unworkable because members will each have a different view of what is realistic. If a referral rule is adopted, however, Schrag recommends a lower standard where a Board member only affirms decisions when it is clear that no reasonable Board member could support reversing the opinion.

Schrag also criticizes the rules because they appear to include a systematic, institutional bias against alien appellants. Affirming lower court opinions is relatively easy since no written opinion is required. Reversing decision requires more work since a full opinion is required. Statistically, it is much more likely that an alien ordered deported will appeal than the INS appealing the Immigration Judge's decision not to deport. The proposed rule, according to Schrag, creates the appearance of systematically favoring the deportation of aliens. Instead, the BIA should allow a single member to reverse without referring to a panel if it is clear that no reasonable BIA member would vote to affirm the Immigration Judge's decision.

Another flaw in the proposed rules, according to Schrag, is that it allows the selective delegation of authority. The BIA Chairman has the power under the proposed rules to "determine who from among Board members or the Chief Attorney Examiner is authorized" to affirm cases without opinion or to dismiss appeals summarily. No provisions are made for rotating such responsibilities and no standards are set for how the responsibility should be delegated. One could abuse this authority by selectively choosing members who share a certain viewpoint. Schrag notes that Federal Appeals Court panels were once chosen by the Chief Judge of a circuit, but the system was abandoned in favor or a random selection system.

Finally, Schrag reminds the BIA that the cases most needing speedy processing are not covered by the proposed rule. Detained aliens with pending appeals

actually have to wait for months behind bars because there are not enough typists to type case transcripts for BIA members to review.

If you wish to access the letter on the worldwide web, go to http://www.tidalwave.net/~sarahsam/.

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27. ELLIS ISLAND TO MAKE RECORDS AVAILABLE TO THE PUBLIC

Between 1892 and 1924, more than 18 million immigrants coming to America were processed at the Ellis Island immigration entry center. More than 40% of the American population can trace their ancestry to the tiny island that lies between New Jersey and New York a short distance from the Statue of Liberty. Not surprisingly, Ellis Island, now the nation's immigration museum, is one of the most popular attractions in New York.

But while visitors to Ellis Island can learn a great deal about the history of American immigration, they cannot learn much about their own families' passage during their visit. But that will change soon. Officials at Ellis Island have announced that the American Family Immigration History Center will open at the museum in 2000. It will have a computerized database of arrival records from the ships that transported passengers to their new homeland.

According to Lee Iacocca, former chairman of Daimler-Chrysler and chairman emeritus of The Statue of Liberty-Ellis Island Foundation, said making the ship manifests available to the public has been a goal since the foundation was created in 1982.

The records have been available on microfilm at the National Archives in Washington, D.C. for several years. Now members of the Mormon Church are involved in the major volunteer project to enter all the records into a database. Despite the major savings from having so much labor on the project donated, the Immigration History Center will still cost $15 million. All of the money will come from private fundraising.

For a small fee, visitors will be able to access one of thirty-five computer stations and search the records by name. The database will also search for similar sounding names and similarly-spelled names. The American Family Immigration History Center's design is being overseen by Edwin Schlossberg, wife of John F. Kennedy's daughter Caroline.

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28. ALLEGED NAZI TO BE DEPORTED

An Indiana housing contractor found to have participated in Nazi atrocities has been placed in deportation proceedings. The decision was made after the US 7th Circuit Court of Appeals affirmed a lower court's ruling stripping Hammond, Indiana resident Kazys Ciurinskas of his citizenship.

According to the head of Justice Department's Office of Special Investigations, the office that handles the US government's Nazi hunting operations, "Ciurinskas participated in horrific atrocities as part of this Nazi-backed battalion and we are seeking to have him removed from this country as expeditiously as possible."

A Federal Court found that he aided in the persecution and murder of thousands of Jews while serving in the 2nd Lithuanian Schutzmannschaft Battalion. This unit conducted mobile killing operations at the orders of the Nazis. The Battalion murdered more than 10,000 civilians in Byelorussian in one month alone in 1941. Ciurinskas was found to have participated in the killings.

Ciurinskas, now 80, entered the US in 1949 after emigrating from Germany and became a citizen six years later. The US courts found that he lied about his war record. Ciurinskas alleges that he was a miller during the war years.

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29. USIA TO BE MERGED INTO STATE DEPARTMENT

On October 1, 1999, the United States Information Agency will cease to operate as an independent agency and its operations will be folded into the State Department. While the possibility of this change had been discussed for the last several years, many were caught by surprise when the legislation making the shift possible was incorporated at the very last minute into the massive omnibus budget package signed by President Clinton on the last day of the 105th Congress' legislative session.

While few specific details are known as to how the transition will occur, few immediate changes are expected in the way the J-1 Exchange Visitor Visa Program is administered. Some changes are known, however. For a more complete description of the proposed changes, please see the AILA-USIA meeting summary in story 11 of this issue entitled "HIGHLIGHTS OF NAFSA/AILA/AGENCY MEETINGS."

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30. RENO MAKES NEW EXECUTIVE OFFICE FOR IMMIGRATION REVIEW APPOINTMENTS

Attorney General Janet Reno has appointed Kevin Rooney to serve as Director of the Executive Office for Immigration Review (EOIR). Rooney leaves his position as Assistant Director for Administration in the Bureau of Prisons to succeed Anthony Moscato who has been appointed to the Board of Immigration Appeals.

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31. NON-PROFIT CORNER - THE HEBREW IMMIGRANT AID SOCIETY

This month we feature an organization that has been helping refugees enter the US for more than 125 years. It is also an organization on which this publication's editor serves as a Board member and which was responsible for resettling his family in this country a number of years ago.

The Hebrew Immigrant Aid Society (http://www.hias.org) primarily assists Jews who face persecution to settle in the United States and other countries of their choice. HIAS also has played a key role in assisting thousands of non-Jews settle in the US. For example, in recent years, HIAS has helped numerous Iranian Bahais, Bosnians and Vietnamese find safe haven in the United States. However, HIAS is best known for helping hundreds of thousands of Jews from the Former

Soviet Union and from Iran escape anti-Semitism and settle in communities across the United States.

Originally called the Hebrew Emigrant Aid Society, HIAS was founded in 1880 and charged with helping Jews who had recently escaped the Pogroms of Czarist Russia. Among other activities, the organization provided basic shelter, food and clothing to the newly arrived immigrants. During the World War II years, HIAS worked to help Jews escape Hitler and after the war played a critical role in bringing in Holocaust survivors. And in recent years, attention has turned back to the rescue of Jews from Russia and surrounding countries.

HIAS' refugee resettlement activities start well in advance of the arrival of a new American. It has representatives in Russia and other places in the world to assist refugees with the emigration process. It then works to ensure the provision of resettlement assistance to the refugees and migrants through cooperation with a network of resettlement and social service agencies throughout the United States. Finally, HIAS advocates for the needs of refugees and migrants at the international, national and community levels.

In fact, HIAS is a highly respected voice in Washington refugee and immigration policy circles. It has a representative office in DC that is actively involved in analyzing immigration policy and in coordinating grassroots advocacy efforts.

To receive information on joining HIAS, call 212-967-4442 or visit their web site.

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32. CENTRAL AMERICAN HURRICANE DISASTER PROMPTS CHANGES IN DEPORTATION POLICY

The Immigration and Naturalization Service has offered relief for people in deportation from countries devastated by Hurricane Mitch. The INS will hold off on removing affected people until January 7, 1999. The covered countries are El Salvador, Guatemala, Honduras and Nicaragua.

According to the INS, "The extension of the temporary suspension through January 7, 1999 gives the Central American countries and the international humanitarian assistance efforts that are underway time to work on the urgent recovery needs of the region. The Administration is closely monitoring conditions in these countries and will re-evaluate the situation in January."

The INS is also considering the possibility of granting parole status to detained illegal immigrants from affected Central American countries as long as the detainee has no criminal record.

Other immigration problems related to Hurricane Mitch have also become apparent. Asylum applicants and others in the US seeking to return home to find out the fates of loved ones will, unfortunately, be risking losing their asylum claims if they return home. In fact, there are hundreds of thousands of Central Americans in the US that fit that profile. Readers are strongly advised to speak to an immigration lawyer before making the return trip.

Elaine Lomis, an INS spokeswoman recently told the New York Times, "I would never tell them what to do. But if we were having a secret conversation, I would

tell everyone to stay firm and try to communicate through telephone, letters, Internet, any other means possible until they adjust their status."

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33. CONSULAR FOCUS: BELGRADE YUGOSLAVIA

Street Address:

American Embassy
Consular Section
50 Kneza Milosa St.
11000 Belgrade
Former Republic of Yugoslavia (Serbia-Montenegro)

Mailing Address:

American Embassy
US Department of State
Washington, DC 20521

Phone: 381-11-645-655

Fax: 381-11-644-053

Web: http://www.amembbg.co.yu/

Email: consular@statebg.co.yu

Jurisdiction: Handles cases from Serbia-Montenegro, Macedonia and Bosnia (green card applicants only)

Nonimmigrant Visas: Open from 8 am to 11 am Monday through Friday. The NIV section's phone number is 381-11-645-655 x. 717.

Immigrant Visas: Applications are accepted between 8 am and 10 am Monday through Friday. The IV section's phone numbers are 381-11-645-655 ext. 700,709 and 711. The visa processing fee is $260 per person plus a $65 issuance fee for each applicant.

Refugees: The US Refugee Resettlement Program also processes refugee cases for persons from countries in the former Yugoslavia from the US Embassy in Belgrade. A question and answer document on refugee applications is provided at the site.

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34. INS BUSTS COUNTERFEIT DOCUMENT RING

The announce recently announced that it seized more than two million fake identification documents during a raid in Los Angeles. The documents included fake green cards, Social Security cards and driver's licenses from nine states. The agency estimates the documents to have a street value of nearly a billion dollars.

Agents of the INS' Los Angeles District office led the investigation and eventual seizure. The investigation began nine months ago.

In addition to the documents, the INS seized a large commercial grade printing press, a professional print plate making machine, 40 printing plates and a number of other counterfeiting implements.

According to INS Commissioner Doris Meissner, "We put out of business what we believe to be the largest organized crime group responsible for manufacturing and distributing phony identification documents in the United States. This operation should have a significant effect on the supply of counterfeit immigration documents nationwide."

The INS expects to make a number of arrests in the case, but none have been announced yet.

Prior to this, the largest seizure had been 400,000 documents in a Los Angeles raid in 1993.