

Siskind's Immigration Bulletin

September 1998

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## 1. A MESSAGE FROM SISKIND, SUSSER, HAAS & DEVINE

This issue of Siskind's Immigration Bulletin marks a milestone and a new beginning for publishing at the immigration law firm of Siskind, Susser, Haas & Devine. Next month will mark the beginning of our fifth year publishing this online newsletter. Those of you who have visited the newsletter archives on our web site at <http://www.visalaw.com/bulletin.html> can see every one of those issues.

While we did not appreciate it at the time, Siskind's Immigration Bulletin and our firm's web site made history when they debuted in mid-1994. The law firm web site was the very first immigration law web site (at least that we have been able to document) and the very first one on the planet for a solo lawyer (though we now have many attorneys and operate in three countries). By the end of 1994, there were still fewer than 10 law firms in America on the web. Now there are probably between 7,000 and 10,000. This newsletter was also the very first law firm newsletter distributed by e-mail. The birth of this law firm and this newsletter also mark the start of the virtual law firm - a firm that uses the Internet not only as the source of most of its new business, but also that uses the Internet in every aspect of its practice to better serve its clientele across the world.

We are most proud, however, of being able to use the Internet to help revolutionize how information on the law and the government is distributed to the public. We have received hundreds of kind letters from readers over the last several years noting that the easy access to free, reliable and easy to understand immigration information has been a life saver. Before the Internet, most people were stuck relying on the INS or US consulates (if they could get through or wait on line for hours) just to get information that is frequently incorrect. They might have been able to reach an immigration lawyer, but for people outside the US or people in areas without immigration lawyers, this task was tough. And a better informed public is making life easier for enlightened immigration lawyers. The better people understand just how complex the immigration process is, the more likely they are to seek the services of an immigration lawyer. And clients that better understand the immigration process are more likely to help us devise a better case strategy, are more likely to follow our advice, are more likely to get better results and are more likely to be satisfied with the services received.

Our early issues included just a few articles each and covered only legal and procedural issues in immigration. Over time, the newsletter has expanded both in size and the scope of coverage. We now must send out this newsletter in multiple parts because in order to accommodate the 40+ articles we now publish every month. We also cover all of immigration news, not just the legal aspects. Early on, we focused mainly on student and employment immigration issues. We now cover the broad range of immigration topics - from deportations to asylum to investor visas to National Interest Waivers.

Having all of our past issues within easy reach of our readers can also help one develop some perspective on the course of immigration law over the past few years. INS processing times have slowed and slowed and slowed. Immigration enforcement has gotten much tougher. Immigration and Nationality Act Section 245i (which allowed people to pay penalty fees in order to be able to process their green cards in the US) came and went (and may be coming back). And of course, the Illegal Immigration Reform and Immigrant Control Act of 1996, the

1996 Welfare Law, and the 1996 Anti-Terrorism Act dramatically changed the way every immigration lawyer practices.

Over time, the readership for this publication has grown dramatically. We now have more than 17,000 e-mail subscribers with more than 750 new ones signing on each month. Most of our original readers were university students and faculty members as well as people working in the technology sector. It is no coincidence that those people were much more likely to have Internet access in 1994 than the rest of the populace. And as Internet access has grown, so has the diversity of our audience. We reach readers in more than 106 countries who seem to have every possible type of immigration issue. And our readers are no longer just immigrants. We are read by hundreds of immigration lawyers, immigration professionals, reporters covering the immigration beat, human resource professionals, and, yes, quite a few employees of the Immigration and Naturalization Service and the State Department. Our readers are often our best source of tips on immigration stories and as our rising circulation means better coverage.

Finally, I would like to thank the numerous readers over the last few years who have been kind enough to pass on tips and suggestions. Many of our stories are the direct result of information being provided to us by our readers. And your feedback has led to the incorporation of a number of features both in the newsletter and on our web site.

This month also marks the debut of our new newsletter, Siskind's Immigration Professional. Just like Siskind's Immigration Bulletin, this niche newsletter will be free and distributed only on the Internet. 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](mailto:immigration.professional@visalaw.com). be sure to tell us a little bit about what kind of work you do and where you work.

Very soon, visitors to our web site will see an important change. We will now be accepting financial support from advertisers. The site receives more than 8 million hits each year and the revenue from advertising will allow us to hire additional staff to provide even more information to our readers. We have ambitious site expansion plans and accepting advertising revenue will help us to achieve those goals. We have been testing the new site and been "tweaking" it to ensure that a) it loads as quickly the existing site and b) that the ads do not "clutter" the site and interfere with the visitor's experience. If you are interested in purchasing ad space, please contact us at [advertising@visalaw.com](mailto:advertising@visalaw.com) and we will send you information..

We are pleased to announce the expansion of our attorney staff in our Memphis office. We welcome new associate Brenda Boudreaux, a University of Memphis Law School graduate. In addition to practicing immigration law, Brenda is a news reporter for the Black Entertainment Television network.

This month's issue contains on a broad range of issues including major news on National Interest Waiver petitions, a summary of a new scathing report of human rights abuses by the INS and an update on the health care worker regulations. And we also include all of our regular features including Border News, Consular Focus, Government Processing Times and Immigration and the Internet.

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 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. INJUNCTION IN AMNESTY CASES LIFTED; DEPORTATIONS AND WORK CARD DENIALS MAY RESUME

The United States Ninth Circuit Court of Appeals has suspended a lower court's injunction in the CSS2 amnesty lawsuit. That lawsuit stems from the 1986 Immigration Amnesty and was filed by persons who claim that they were denied access to the amnesty due to an overly restrictive interpretation of the requirement that a person have resided continuously in the United States. The Ninth Circuit did not explain its reasons for suspending the injunction. However, in response to the court's expressions of concern, the INS promised to process the legalization applications and not to deport Group 1 class members - those who attempted to file a complete application and fee with the INS during the one year legalization application period, May 1987 to May 1988. This means that 270,000 of the 300,000 CSS plaintiffs may be facing deportation.

The injunction was issued to stop the INS from revoking work permits and beginning deportations of CSS class members. The Center for Human Rights and Constitutional Law Foundation (the "CHRCLF"), the organization that filed the CSS suit, recommends that in light of the decision, CSS 2 class members do not attempt to have their work authorizations renewed. According to the CHRCLF, the following scenarios are possible:

- the INS could make good on its promise to adjudicate the applications of Group 1 class members without further order of the court. Group 1 class members who request the INS to adjudicate their legalization applications are encouraged to report to the CHRCLF the results of those efforts, good or bad. CHRCLF can be reached by e-mail at [cholguin@sprynet.com](mailto:cholguin@sprynet.com) or by phone at 213-388-8693.
- the Court of Appeals could decide that a class action is not appropriate, in which case each Group 1 class member would have approximately five years to file an individual case in federal court, or intervene in - that is, join as a named plaintiff - the CSS2 lawsuit.
- the Court of Appeals could explain that the CSS2 injunction was overbroad in that it required the INS to give work permits to and defer the deportation of Group 2 and 3 class members. If this happens, the district court could reissue a preliminary injunction covering a narrower group of class members.
- The Court of Appeals could decide that the CSS2 injunction was overbroad in that it required the INS to give work permits to and defer the deportation of class members who had been front-desked by QDEs (that is, turned away by QDEs when an attempt to file an amnesty application was made). In this event, the district court could reissue a preliminary injunction much like the one originally issued, but covered persons "front-desked by INS".

The CHRCLF is reminding plaintiffs that they have the right to a hearing before they can be deported and that, by definition, they have been in the US long enough to be eligible for cancellation of removal. Also, Group 1 class members stand a good chance of winning in individual actions or as part of the CSS2

suit. And LULAC class members are still protected by the injunction in that case which bars deportations and mandates the renewal of work permits.

If you are not sure which case you are in, need to notify the lead counsel in this case of your current whereabouts, or have other questions on your status, you can reach the Center for Human Rights and Constitutional Law Foundation at 213-388-8693 or by e-mail at cholguin@sprynet.com or pschey@earthlink.net

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### 3. CHINESE APPLICATIONS FOR US VISAS INCREASE THREEFOLD

The United States Information Service has issued a statement saying that the number of Chinese nationals applying for non-immigrant visas to the United States has tripled over the past seven years. The Beijing consulate has processed 119,453 visas, compared with 77,733 in 1994 and 41,639 in 1991. The USIS attributes the rise to the growing Chinese economy.

Not surprisingly, the visa refusal rate for Chinese nationals is increasing. In the early 90s, only a small portion of the visas were refused. This year, 30% of visa applicants will be refused, up from 23% just last year.

Many Chinese are complaining about the increase in the number of refusals, but consular officials point to estimates that 50,000 Chinese overstay their visas each year. Consular officials claim the INS has warned them that they are being too lax in issuing visas.

Many people are also upset that even though the number of visa applications has tripled, there have been no increases in the number of consular officers handling cases. According to a recent report in the Wall Street Journal cramped quarters mean scores of applicants line up outside in the rain, snow or severe heat and inside visa officers engage in "bureaucratic triage" neglecting basic tasks like answering mail and faxes.

According to the Wall Street Journal report, the embassy is now restricting student visas to applicants who fall into specific categories such as students on full scholarship to Ivy league schools. These students stand the best chance of landing top jobs back in China. The Chinese media is taking notice and several major Chinese publications have of late been criticizing the new much tougher visa processing standards.

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### 4. IMMIGRANT CHILDREN TEND TO BE HEALTHIER THAN AMERICAN CHILDREN

A new study finds that the children of immigrants tend to be healthier than the children of American-born parents. But that the longer children are in the US, the more likely their health is to deteriorate. The report is entitled "From Generation to Generation: The Health and Well-Being of Children in Immigrant Families" and has been issued by the National Research Council and the Institute of Medicine. It is available online at <http://www.nap.edu/bookstore/isbn/0309065615.html>.

The report's panel members attributed this finding to a basic factor - these children tend to assimilate and their American-born counterparts have poorer

diets. The study is very important because one in five children under eighteen years of age has immigrant parents.

The study showed that the longer immigrant children remain in the US, the greater percentage of the diet consists of processed foods instead of fruits, grains and vegetables. The researchers also suppose that immigrants tend to be a self-selected heartier stock since they have been willing to take the risk of moving to a new country.

Children of immigrants experience fewer short-term and long-term health problems and have a smaller number of accidents than children of US-born parents. Immigrant mothers are more likely to have children of a healthier birth weight and the infant mortality rate in these families is lower (a surprising result considering the fact that immigrant women often have a lesser level of access to prenatal health care). Also, teenage children of immigrants have fewer mental problems and are less likely to abuse drugs or alcohol, become pregnant or become juvenile delinquents.

But the longer these children are in the US, the more likely they are to have the same problems of other American children. This is especially true for children of Mexican, El Salvadoran, Guatemalan, Nicaraguan, Haitian, Honduran, Dominican, Cambodian, Laotian, Thai, Vietnamese and Russian parents.

In another study also just released, Mexican immigrants were found to have only about 50% as many psychiatric disorders as US-born Mexican Americans. The authors of the study believe the findings run contrary to the conventional wisdom that migration causes damaging psychological problems. The study was reported in the Archives of General Psychiatry.

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##### 5. FRANTIC FILING AS NACARA DEADLINE PASSES

Amidst a great deal of confusion, on September 11th the filing deadline passed for filing motions to reopen deportation cases for those potentially eligible for the new immigration amnesty - the Nicaraguan and Central American Relief Act. The deadline applies to certain Salvadorans, Guatemalans and Eastern Europeans who filed asylum applications before a cutoff date in the early 1990s. Nicaraguans and Cubans are not affected by the deadline. While exact numbers of people affected by the deadline are not known, most estimate only one tenth of the NACARA-eligible have outstanding deportation orders.

As was the case for last minute filings under Section 245i of the Immigration and Nationality Act which expired in January, Immigration Courts stayed open past their normal hours on September 11th to handle the demand for filing.

Cases filed in the wrong venue will be transferred to the correct court and the INS has noted that it will not oppose these transfers. And the motion for suspension of deportation can be submitted apart from the motion to reopen.

If the INS plans to oppose a motion to reopen, it must file its response within 45 days of the motion filing.

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## 6. HUMAN RIGHTS ORGANIZATION CONDEMNS INS DETENTION PROCEDURES

A major human rights organization has issued a report criticizing the Immigration and Naturalization Service for detaining aliens in jails where they are mixed with the criminal population and subject to abuse. The report has been released by Human Rights Watch (HRW) and is linked on our web site at <http://www.visalaw.com/docs/>.

The report states that the INS is now holding more than 60% of its 15,000 detainees in local jails throughout the country. According to HRW, the agency has handed over control of its detainees to local sheriffs and other jail officials without ensuring that basic international and national standards requiring humane treatment and adequate conditions are met. Some of the detainees are being subjected to physical mistreatment and grossly inadequate conditions of confinement. HRW is careful to note that the INS detainees studied in the report are not being held for criminal matters and the INS has simply contracted with local jails to hold the detainees. Some of the detainees, in fact, have simply applied for asylum from their home countries.

HRW interviewed more than 200 INS detainees in fourteen local jails in seven states. The report's authors also received hundreds of letters and telephone calls from detainees around the country. HRW interviewed INS officials, jails officials, immigration judges, immigrant rights advocates and immigration attorneys and obtained documents acquired through the Freedom of Information Act, legal documents and press reports.

The report made the following findings:

- The INS has failed to provide oversight or to insist on humane conditions and treatment in the local jails with which it contracts to hold INS detainees. There are no laws, federal regulations, or national INS policy memoranda governing how local jails holding INS detainees should be inspected and monitored. Once detainees are placed in jails, INS contact with detainees is usually infrequent, even though they remain the INS' ultimate responsibility.
- Jail officials state that INS detainees "are treated just the same as regular inmates" even though INS detainees are held for administrative, not criminal purposes and should not be subject to punitive or rehabilitative treatment.
- The INS has begun to institute detention standards in its Service Processing Centers (SPCs) and contract facilities, but the standards are not being implemented at local jails, where the majority of INS detainees are currently held and where future increases in detention will be absorbed.
- Medical and dental care a substandard in many of the jails holding detainees.
- Access for legal representatives, family and friends is severely curtailed by strict jail rules that are inappropriate for immigration detainees. As a result, many detainees do not have legal representation which undermines their ability to present their cases and removes a critical element of monitoring treatment of INS detainees in the local jails.
- Jailsstaff are often unable to communicate with INS detainees due to language barriers.

The Human Rights Watch report listed a number of examples of problems. In one case in Florida's Jackson County Jail, INS detainees alleged that jail officials

administered electric shocks on shackled detainees in July 1998. The report also listed the convictions of guards at the Union County Jail in Union, New Jersey for physically abusing INS detainees (we reported on this conviction earlier this summer).

Human Rights Watch also criticized the INS for transferring detainees on the basis of bed availability alone rather than based on a detainee's family ties or legal representation. Individuals taken into custody in New York, for example, may be sent to a jail in Pennsylvania and then transferred to an INS facility in Louisiana. Detainees are frequently transferred from jail to jail often without an opportunity to provide appropriate notice to family members. And attorneys are frequently not notified that their clients have been transferred.

HRW's report also found that detainees often suffer severe emotional distress as a result of the treatment outlined above. Some have become suicidal and, rather than receiving appropriate mental health services, are treated instead as a disciplinary problem by jail officials. Others were reportedly so ashamed of being held in a jail that they did not contact their families.

HRW expressed significant concern for detainees who cannot be deported because they are stateless or because their own country will not accept them back. These detainees are held indefinitely, theoretically getting a life sentence for an offense that may be as minor as overstaying a tourist visa.

The cost of holding INS detainees at local jails can cost as much as \$20,000 per year per detainee. Yet despite these costs, HRW reports that the INS has been slow to develop release programs or to utilize alternatives to detention that already exist. For example, a program to allow the supervised release of detainees has shown promising results in New York. More than 80% of detainees are showing up for their court appearances and the cost to taxpayers is a fraction of the cost of detaining them, presumably more than offsetting the cost to society of the 20% who do not show up.

INS Commissioner Doris Meissner stated that she welcomed the report's recommendations, but noted that a fast rise in detentions relating to increased INS enforcement efforts have forced the INS in the position of holding detainees in facilities it does not control.

Meissner went on to say, "Ideally, we would like to house all detainees in INS-run facilities because they are the ones over which we have the greatest control of conditions. This is not a viable option, however, given the growth in demand for bed space and budgetary constraints we face." According to Meissner, the number of INS detainees has risen from 6,600 to 16,000 in the last three years. 9,000 of these people are in jail facilities.

Meissner denied that the agency is "shirking" its responsibilities to ensure proper treatment of illegal immigrants and asylum seekers. But she did state that the INS is revising its jail selection and inspection standards. Of course, one might ask the basic question - should the INS even be detaining so many people when it cannot ensure that basic human rights are being observed?

The sudden and extreme political earthquake that has surrounded the release of the Starr Report is affecting every aspect of lawmaking in Washington, including immigration legislation. We assume most of our readers, even those outside the US, are quite familiar with the accusations of crimes by the President in connection with his affair with Monica Lewinsky.

First, there is the shift in political dynamics. Suddenly, power has shifted to Congress and the President is forced to take positions that might be more extreme than he would like. The President cannot afford to alienate groups like labor unions or allies on the left wing of the Democratic Party. The President is now probably engaged in head counting on possible impeachment actions and any possible defections in his own party could prove fatal. On the H-1B debate, for example, some feel that the President will have no choice but to veto any bill lifting the cap unless extreme and onerous projectionist provisions that are favored by labor unions are included.

Many are already planning for the next session of Congress where the Republicans could have a much larger majority and could conceivably override a Presidential veto. This might be good news on business and employment immigration matters where Republicans of late have taken the lead in pushing for more liberal rules. On family, deportation and asylum matters, this could be bad news where Democrats have traditionally taken the side of immigrants. It could also mean bad news for the INS. There is no love lost between Republican leaders in Congress and the agency and this coming year may be the one that finally spells the end for the troubled agency.

The second immediate consequence of the Lewinsky Affair is that it is causing major disruptions in progress on a number of legislative matters. Aside from the not inconsiderable amount of time Congressmen are spending reviewing the voluminous materials presented by Judge Starr, Congress has to determine how to proceed on impeachment proceedings. Many in Congress are spending much of their time trying to gauge the opinions of their constituents. And Congressional offices are so inundated now with calls, faxes and e-mails from constituents, that many staffers have been diverted from their normal activities to handle the work. Unfortunately, there are only a few days left in the session. Whether this leads to bills actually not being voted has yet to be seen.

There have been no significant votes on immigration bills since Congress was out of session in August and the beginning of this month. The next several weeks will be critical, however. Votes are scheduled on bills that would revive INA Section 245i, the H-1B cap, a new agricultural guestworker bill and relief for Haitian illegals. By the time we release our October issue, we should have considerable news to report.

As a reminder, the following bills are the ones to watch in the final days of this session of Congress -

S. 2312 (includes H.R. 4104) - This is the Treasury Department Appropriations Bill, but it happens to include a provisions granting permanent residence status to an estimated 40,000 Haitians in the US prior to December 31, 1995. Passed the Senate.

S.2260 - The appropriations bills for the Departments of Commerce, Justice and State. It includes a permanent extension of Section 245(i), a repeal of the 1996 Immigration Act's entry/exit control system and a guest worker program. Passed the Senate. House bill is H.R. 4276 but does not contain these provisions.

S. 1723 - The H-1B bill. Passed the Senate. Awaiting House compromise bill. Bill is H.R. 3736 in the House. The House may also attach a provision introduced by Kentucky Republican Congressman Harold Rogers that would establish the Bureau of Enforcement and Border Affairs within the Department of Justice with reporting authority directly to the Attorney General. The new agency would take over INS responsibility for the Border Patrol, intelligence, detention and deportation, as well as investigations and inspections. The American Immigration Lawyers Association opposes this measure stating that it would "throw the INS into a state of chaos and, in its focus on enforcement, fail to address the service side of the immigration function (though one could reasonably argue that that is already the status quo).

H.R. 2920 - Would modify the proposed exit/control system by requiring a study before system implemented at land borders and seaports. Passed Senate. The new entry/exit control system is to go into effect on October 1st so action this session on this bill is critical. Please call your House Representatives and urge them to support this bill. The Congressional switchboard telephone number is 202-216-2403.

H.R. 2759 - The H-1C visa for nurses working in health professional shortage areas. Passed House.

H.R. 2183 - Would bar permanent residents from making campaign contribution. Passed House.

On September 16th, the Senate Subcommittee on Immigration held hearings on the possible reorganization of the INS. Subcommittee Chair Spencer Abraham (R-MI) laid out five key concerns with the current INS detention system:

1. the inability of the INS to take into custody deportable foreign nationals;
2. inconsistent asylum bond and release policies from INS district to INS district
3. people who have basically been lost in the INS detention system
4. the practice of mixing asylum applicants in local jails with a criminal population (see story earlier in this issue on the Human Rights Watch report criticizing this practice)
5. INS recalcitrance in considering alternatives to detention such as supervised release programs.

Finally, one bill that is long overdue was introduced by Congressman Barney Frank recently. H.R. 4539 would establish a Board of Visa Appeals within the Department of State to review decisions of consular officers concerning visa applications, revocations and cancellations. Amazingly, State Department consular officers have total discretion to deny visas and their denials cannot be reviewed no matter how unjust. There will probably not be enough time for this bill to pass this session, but it is refreshing to see the issue being raised in Congress. The full text of the bill is included on our web site Documents Collection at <http://www.visalaw.com/docs/>.

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## 8. SALT LAKE CITY COUNCIL VOTES AGAINST INS PILOT PROJECT TO DEPUTIZE POLICE OFFICERS

The Salt Lake City, Utah City Council has voted 4 to 3 against participating in a pilot project that would have allowed Salt Lake policeman to enforce immigration laws. City Council members opposing the bill were concerned that the program would institutionalize prejudice against Hispanics because there is already a perception that illegal immigrants are behind the city's criminal drug problems. Proponents of the bill supported the project claiming that it would increase the manpower available to deport illegal aliens who commit crimes.

The City Council voted against the plan after hearing testimony from more than 70 people, most of whom spoke against the plan.

The proposal, the first of its type in the US, would have deputized 20 police officers to act on behalf of the Immigration and Naturalization Service. The pilot program would implement a provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The measure was strongly backed by Attorney General Janet Reno and Utah Republican Senator Orrin Hatch.

Currently, when police make an arrest and they suspect someone of being illegally present in the US, they contact the INS and wait for the INS to come and process the person, possibly for deportation. Often, the INS is not able to send someone because of the agency's limited resources. The proposal would allow an INS-deputized police officer to process the person and deliver them to the INS detention center in Denver.

In a related matter, the Alamance County, North Carolina City Commission is discussing a similar proposal to give police officers there the power to investigate, arrest and deport illegal aliens. However, the proposal in North Carolina will not proceed for the time being now that the Salt Lake City pilot project has been tabled.

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## 9. BORDER AND ENFORCEMENT NEWS

- A New Jersey resident has been convicted and sentenced to three years probation for the interstate transportation of fraudulent US immigration stamps. The man intended to use the stamps to change dates on his Trinidad passport in order to show that he had not stayed beyond his authorized time in the US.

- Eight workers were arrested in northern Florida for possessing fraudulent green cards

- A Chinese alien smuggler has admitted that he illegally transported at least 100 people to the US on as many as five trips from South America over a year and a half period. Smuggler Nam Jick Cho pleaded guilty to Federal conspiracy charges in New York. The aliens apparently paid \$25,000 to \$40,000 each to be brought to the US. Cho could face a ten year jail term and a \$250,000 fine. He was nabbed on his latest attempt along with 23 Chinese nationals. Cho and four other Koreans are charged with alien smuggling. The 23 detained Chinese nationals were recently ordered released from government custody on bail pending determination of their requests for political asylum.

- Four Hialeah, Florida men are being held in Florida on suspicion of alien smuggling. The four were supposed to be fishing near the Bahamas, but were taken into custody in Cuban waters. Smuggling Cubans has become more profitable of late - as much as \$5000 per person. Cuban and US authorities are in a crackdown, however.

- The INS arrested three people in a document fraud scheme in California. More than 16,000 counterfeit documents were seized including fake green cards, Social Security cards, birth certificates and driver's licenses.

- Immigration authorities in the US Virgin Islands recently detained 15 Chinese and 3 Haitian nationals. The aliens were abandoned by a freighter and are the incident is the latest in a trend. 164 Chinese nationals have been detained since the beginning of the year. Some of these immigrants have told authorities that they agreed to years of indentured servitude in exchange for being smuggled in to the US.

- Massachusetts Bay Community College faces a loss of federal funding for employing illegal workers. The College passed the blame on to a contractor who supplied the laborers. The workers supplied false Social Security Numbers and obtained employment on that basis.

- 30 Cuban nationals have been sent back to Cuba after they were found in waters off the Florida keys. More than 700 Cubans have been detained by the Coast Guard this year, with 108 in August alone.

- Pomona, California police acting on a tip raided a home and found thirteen illegal immigrants apparently being held against their will.

- Jupiter, Florida police are investigating an alien smuggling ring based in Freeport, Bahamas that is connected to the recent capture of 33 Haitian aliens who attempted to swim to the Florida beach from a nearby sandbar. Two Haitians drowned during the attempt to get to shore. The smuggled aliens apparently paid up to \$9000 each to be brought near the US shore. While illegal immigration from Haiti has declined substantially since 1994 when a civilian government was restored, many people are still fleeing due to political unrest and rising crime. Just a few days after the 33 were detained, another 21 were detained in Highland Beach, Florida after they were spotted walking down a street. They were fairly easy to identify since they had damp, sandy clothing. More than 116 Haitians were detained in Florida in August alone.

- Border Patrol agents have detained 113 illegal immigrants after witnesses heard cries from help from inside a tractor-trailer truck. Several people in the truck suffered dehydration and near asphyxiation. The two drivers of the truck were arrested for alien smuggling.

- Coast Guard officials off California have intercepted a boat believed to be smuggling more than 150 people into the US from Mexico. The boat was spotted about 100 miles off Baja, California in Mexico and its passengers were of Asian descent. Last year, a boat with 69 Chinese nationals was intercepted in the same area.

- INS officers have detained 26 illegal workers, the majority from former Soviet countries in a raid in Colorado. The INS is investigating a South Carolina business that is allegedly placing illegal Eastern Europeans in jobs across the country. The workers initially entered the country apparently on H-2B visas.

- Twenty-two stowaways from the Dominican Republic were found on a freighter off Detroit, Michigan. Crewmembers denied they knew of the stowaways, but the INS is investigating.

- A Mexican woman has died of heat exhaustion in the desert after crossing into the US near the California border. Members of the group with whom she was traveling attempted to get help from nearby a nearby army base, but paramedics' attempts to revive the woman failed. Another Mexican national also died in Arizona last month of heat-related causes. In a related matter, Border Patrol leaders had a meeting in Nogales, Arizona last month to develop strategies to reduce the number of deaths during summer crossings on the border. The INS stated that it would try to cooperate more with Mexican authorities to warn of the dangers of illegal border crossings. The US Embassy in Mexico City has sent public service announcements to Mexican broadcasters and about 40 radio and television stations in Mexico are running them.

- One month before the end of Fiscal Year 1998, the Border Patrol's Tucson, Arizona sector has broken its previous record of 305,415 apprehensions.

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#### 10. TEMPORARY PROTECTED STATUS EXTENDED FOR BOSNIANS AND MONTSERRAT NATIONALS

The Attorney General has extended Temporary Protected Status (TPS) for nationals of Bosnia-Herzegovina and Montserrat. The extension for Bosnians is limited to those who registered for TPS during the initial registration period that ended on August 10, 1993. For Bosnians, TPS is extended until August 10, 1999. For Montserrat nationals, TPS is limited to those who applied for TPS during the initial registration period that ended on August 27, 1998. TPS for Montserrat nationals is being extended until August 27, 1999.

Bosnians must re-register by September 22, 1998 and Montserrians must re-register by September 25, 1998.

The Attorney General is authorized to grant TPS to eligible aliens who are nationals of a country where there is a finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of countries from returning in safety. The Attorney General has found that armed conflict continues in Bosnia and that a volcanic eruption continues to make Montserrat uninhabitable.

To file for an extension, applicants should submit Form I-821 without a fee together with an I-765 Application for Employment Authorization with a check for \$70 to the local INS office. If an applicant does not seek work authorization than just the Form I-821 and no fee would be filed.

All Bosnian applicants must have been in the US continuously since August 10, 1992 and all Montserrian registrants must have been continuously present since August 27, 1998.

The INS is also instructed to take a liberal policy regarding late re-registrations. Also, the INS will allow initial registration late under limited circumstances if a person has been physically present since the dates specified above.

About 400 Bosnians and 300 Montserrians are estimated to be available for extension.

Other groups are also expected to get their status extended soon. They include Sierra Leone, Sudan, and Burundi nationals. TPS status for Liberian nationals is not likely to be renewed.

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#### 11. INS IN TEXAS STAGES MASSIVE ROUNDUP OF PEOPLE WITH DRUNK DRIVING CONVICTIONS

The INS has been engaged in an operation in Texas to round up and deport green card holders with three or more drunk driving convictions. Under Operation Last Call, nearly 500 immigrants have been nabbed and another 150 are being sought in Texas. While most of the detainees are Mexican, there were also Korean, Chinese, Afghan and Vietnamese immigrants.

The INS stated that the operation was intended to get drunk driving offenders off the streets before Labor Day and to serve notice on others that drunk driving is taken seriously. According to INS spokesman Lynn Ligon, "Our posture is, living in this country - if you're not a citizen - is a privilege."

Immigrant advocacy organizations have made clear their opposition to the crackdown. "This is tearing up families, tearing up communities, tearing up the lives of women and children, making them dependent on what's left of the welfare system," stated Rogelio Nunez, executive director of advocacy organization Proyecto Libertad, in an interview with the Harlingen Valley, Texas MORNING STAR. Others claim the program is specifically targeting Hispanics, noting that most of the deportees are Mexican and that a similar program is not occurring on the US-Canada border.

The 1996 Immigration Act and a recent decision by the Board of Immigration Appeals have cleared the way for the removal of any permanent resident with three or more drunk driving convictions. Three drunk driving convictions are now considered equivalent to an aggravated felony which is deportable.

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#### 12. INS TRAINEE INDICTED ON CHARGES OF BRIBERY AND CIVIL RIGHTS VIOLATIONS

An Immigration and Naturalization Service inspector trainee at the Juarez-Lincoln Bridge at the US-Mexican border has been indicted on charges of bribery and civil rights violations.

The employee is 32-year-old Juan H. Villarreal and his indictment alleges that he accepted \$400 on two occasions last year for illegally providing immigration documents to people crossing in to the US from Mexico. Villarreal is also charged with transferring a fraudulent birth registration card.

Villarreal is also alleged to have demanded sex from a Mexican female in exchange for returning her immigration documents that had been seized and for allowing her to make illegal entry into the United States. He is being charged with civil rights violations for this conduct.

Villarreal could face 15 years in prison and a \$250,000 fine if convicted on the bribery charges and up to 10 years and a \$250,000 fine for the civil rights violations.

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### 13. COURT FINDS IMMIGRANTS HAVE RIGHT TO CHALLENGE DEPORTATIONS IN COURT

A federal appeals court in San Francisco has issued a 3-0 ruling that could have a major impact on the future of deportation procedures in this country. In *Magana-Pizano v. INS*, the Ninth Federal Circuit Court held that immigrants have a constitutional right to fight a deportation order in court. 1996's Anti-Terrorism and Effective Death Penalty Act of 1996 Act eliminated the right to appeal a number of different kinds of drug-related crimes. Congress was attempting to block people from filing frivolous appeals, but the measure has been criticized by human rights and Constitutional Law scholars.

The case has been linked on our web site at <http://www.visalaw.com/docs/>.

Specifically, the court found that the law is contrary to the Constitution's Suspension Clause which states that "The Privilege of the Writ of Habeas Corpus shall not be suspended unless when in Cases of Rebellion or Invasion the public Safety may require it." The INS tried to argue that the Suspension Clause only required access to the courts when there could be a serious miscarriage of justice. But the Court rejected such a restrictive interpretation.

In an interview with the Washington Post, Lucas Guttentag, one of the lawyers who argued the case, and also the director of the national immigrants' rights project of the American Civil Liberties Union, stated "This is a ringing endorsement of judicial review and the constitutional requirement that any individual subject to government abuse can challenge the government's actions in a court." In a separate interview in the Los Angeles Times, Guttentag commented that "The court has found that the US Constitution does not permit the attorney general or the INS to be judge, jury and prosecutor in a deportation case."

The case involved Daniel Magana-Pizano, a twenty-five year old Mexican national who had been a permanent resident of the US since the age of five. He was convicted in 1995 of the misdemeanor drug offense of being under the influence of cocaine and methamphetamine. The INS sought to remove him and Magana-Pizano conceded deportability. But he sought a waiver of deportability to avoid having to leave the country. The INS blocked the waiver by retroactively applying a provision in the 1996 Immigration Act and argued that the courts lacked authority to review their decision. The INS lost and Magana-Pizano will now be able to argue for a waiver in front of a federal district court in Arizona if the case stands.

The INS loss could mean that thousands of people now have the ability to appeal INS decisions. And though this case deals specifically with legal immigrants in deportation proceedings, many feel that the same principles could be applied to illegal immigrants.

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### 14. CENTER FOR IMMIGRATION STUDIES POSTS I-9 VIOLATORS DATABASE ONLINE

Under the Immigration Reform and Control Act of 1986, American employers are subject to fines if they hire illegal immigrants. A number of immigration restriction advocates have recently come forth complaining that the INS is doing an inadequate job enforcing the laws. One organization, the Center for Immigration Studies (<http://www.cis.org>) has gone a step further. The INS has fined thousands of companies, but that information is not easily accessible to the public. The CIS has now taken the information and done what the INS cannot or will not - it has established an Employer Sanctions Database to make it possible for any member of the public to look up the data on the CIS web site (<http://www.cis.org/search.html>).

The CIS Employer Sanctions Database includes all employers who have been cited for the knowing hire or continuing employment of unauthorized workers. Employers who were only guilty of paperwork violations such as faulty record keeping were not included. Also, the records only go back to 1989 leaving the first three years of the Employer Sanctions Program out (though enforcement before that time was spotty). The database also reports the number of violations, the total amount assessed in the original Notice of Intent to Fine (FIF) and the total amount collected.

The CIS is hoping reporters and others use the database to find out if firms or individuals have been fined for violations. For example, popular political commentator (and wife of a California US Senate candidate) Arianna Huffington and former Attorney General nominee Zoe Baird both show up in the database. The discovery by the media that each had hired illegal nannies had explosive repercussions in their election and confirmation efforts. The database on the CIS site should certainly make it easier for reporters to find such information.

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#### 15. NATURALIZATION AND CITIZENSHIP NEWS

- Welfare recipients in San Jose, California will soon be employed by the INS to help process the massive backlog in citizenship applications. Up to 10 welfare recipients will be employed to open mail and for data entry. This will mean a doubling of the staff in this area. The workers' salaries, expected to be around \$25,000, will be paid by Santa Clara, County, not the INS. The INS is in negotiation with cities like Los Angeles, San Francisco, Miami and New York. Waiting times for citizenship interview in San Jose have grown from six months to two years. Santa Clara County has also agreed to provide nine county employees to the INS to help reduce the naturalization backlog.

- The former head of the INS' Sacramento office claims he was transferred because his staff was approving too many citizenship applications. Lionel Nurse, was recently reassigned from the position of Officer in Charge of the Sacramento INS office to the Border Patrol in Sacramento. Nurse, a black who was born in Panama, claims the transfer was racially motivated. He also claims that he received several warnings from superiors that he needed to cut down on approvals.

- In an illustration of the problems with the INS fingerprint policy as well as plain old bureaucratic idiocy, the Washington Post recently reported a case of a 26-year-old British man whose naturalization application was delayed for 15 months because he was unable to supply a full set of fingerprints. Tal Klement was born with shortened arms and only has three fingers on his right hand and two on his left. Klement, a Yale law school student, submitted two sets of fingerprint in mid-1997, but they were rejected because they were not a full set

of 10 fingers. INS policy requires fingerprints be rejected twice before asking the FBI to run a name check to verify a person's identity. Klement's lawyer has filed a complaint with the Justice Department claiming the INS fingerprint policy violates the 1989 Rehabilitation Act. That law requires federal agencies to provide reasonable accommodations to disabled people. The INS has stated that it is reconsidering its fingerprint policy in light of this case.

- INS Commissioner Doris Meissner recently visited the Los Angeles INS office and announced that that office is making substantial progress in reducing the backlog of naturalization cases. The LA office is now scheduling 1,300 naturalization interviews per day, twice the figure of just a couple of months ago. Meissner credits the improvement to additional funding that has allowed the agency to pay more than \$1 million in overtime and to hire 24 new staffers to conduct interviews. The LA office has been under fire in recent years as naturalization applicants have been waiting up to three years or more to be sworn in. And INS policy requires all of those people to be re-fingerprinted since the prints are more than 15 months old. The INS Commissioner has set the goal of six months for the turnaround time on naturalization applications. 410,000 applications are still pending in LA, representing 25% of the national backlog.

- Recently, I had the opportunity to interview an INS Officer in Charge of an INS field office about problems with the naturalization backlogs. The officer asked to remain anonymous. We were told that the increase in the number of applications filed is not the main reason naturalization backlogs are increasing around the country. According to this OIC, the real crisis is in the hiring system - there are simply not enough officers and a very large number of positions around the country remain unfilled because the INS has an incredibly inefficient system for filling positions. The system involves a field office making the request with its District Headquarter office that office in turn notifying the INS headquarters in DC. Headquarters must approve the positions and then will place the positions in a central job database. Someone interested in a position would have to look for a position through the headquarters and then hope to find a position in their city or they would have to indicate an interest to re-locate. After an individual is selected, they have to go through a cumbersome and long interview and background checking process. The process can take many months (possibly even more than a year) and, of course, once the position is finally offered, the candidate still must be available. If not, the process must start all over again. Consequently, positions go unfilled and backlogs get longer and longer. According to this official, until the INS re-engineers its hiring process, the backlog problems will not be resolved.

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## 16. CONSULAR FOCUS: UPDATE ON EMBASSY CLOSURES

Consular services at US embassies around the world are still being disrupted as a result of the US Embassy bombings last month in Kenya and Tanzania. All visa processing is still on hold, according to the State Department, at the consulates in Nairobi, Kenya; Dar Es Salaam, Tanzania; Tirana, Albania; and Islamabad, Pakistan. The Tirana and Islamabad consulates have been closed due to terrorist threats. Also, the Kinshasa, Congo Embassy remains closed to all visa processing because of civil unrest in that country. Consular posts around the world have been instructed to accept nationals of affected countries for processing of NONIMMIGRANT visas. Immigrant visas have special procedures as outlined below.

The State Department is releasing the following country specific information -

Tirana, Albania - closed for all visa processing; non-immigrant visa applicants may go to any US visa-issuing post to process. Emergency immigrant visa cases are being handled in Athens or any other post where an Albanian can travel. Emergency is defined to include a) DV-98 cases, b) people who will be turning 21 and "aging out" of their visa category, c) fiancée cases and d) urgent family reunification cases (to be determined on a case by case basis).

Yaounde, Cameroon - The Cameroon embassy is handling Congolese cases. First time DV applicants from Congo should be at the Consular Section at 8 am on Mondays. Those asked to supply further documentation should return to the consulate on a Tuesday with the additional information. Emergency immigrant visa cases should call the consulate at 237-22-17-94 after 2 p.m. Monday through Friday. Tanzanian and Kenyan applicants should identify themselves as such so the post can provide specific information on documentation. Cases from Congo, Tanzania and Kenya will be given expedited appointments. Non-immigrant visa applicants can apply Wednesday through Friday 8 am to 11 am. Immigrant visa applications are accepted Mondays and Tuesdays 8 am to 12 p.m.

Kinshasa, Democratic Republic of Congo - Embassy closed to all visa processing; non-immigrant visa applicants may go to any US visa-issuing post to process. Emergency immigrant visa cases are being handled in Cameroon or any other post where a Congo national can travel. See Tirana, Albania entry for definition of "emergency".

Addis Ababa, Ethiopia - Handling emergency cases from Kenya and Tanzania. Applicants can just show up with out an advance appointment. Be sure to identify yourself as Kenyan or Tanzanian to guards and staff. The consulate will expedite these cases. Hours - 8 to 10 am Monday through Friday.

Athens, Greece - Handling Albanian emergency immigrant visa cases (see Albania above to find out what constitutes an "emergency case"). Albanian immigrant visa applicants should contact the consulate by fax (30-1-725-3025), e-mail (consul@ibm.net), or by phone between 2 and 4 pm (30-1-720-2451). Albanian citizens need visas to get into Greece. Nonimmigrant visa applicants should appear Monday through Friday between 8 am and 11 am. Immigrant visa applicants should appear on Mondays, Tuesdays, Thursdays and Fridays until 8:30 am.

Nairobi, Kenya - Closed to all visa processing. Non-immigrant visa applicants may process at any post in the world. Emergency immigrant visa cases are being handled in Addis Ababa, Johannesburg, Harare, or any other post where a Kenyan national can travel.

Islamabad, Pakistan - Closed to all but extremely limited emergency visa processing. See definition of "emergency" in the Tirana, Albania entry. Non-immigrant visa applicants by appointment only except properly documented F-1 and J-1 cases. These applicants can walk in to the consulate between 9 am and 12 noon Monday through Friday. Appointments will not be scheduled more than 30 days in advance. All local and TCS drop box services and requirements remain unchanged.

Johannesburg, South Africa - Handling emergency immigrant cases from Kenya and Tanzania. Those applicants should contact the consulate at 27-11-646-6900 in advance and identify themselves as a Kenyan and Tanzanian. Case details can be

faxed to 27-11-646-6913 to get a head start. Nonimmigrant visa applicants should show up Monday through Friday 8:30 to 11:30 am.

Dar Es Salaam, Tanzania - Closed to all visa processing. Non-immigrant visa applicants may process at any post in the world. Emergency immigrant visa cases are being handled in Addis Ababa, Johannesburg, Harare, or any other post where a Tanzanian national can travel.

Kampala, Uganda - Processing nonimmigrant visa applications for Kenyans and Tanzanians. Kenyans and Tanzanians are being scheduled for interviews between 1:30 and 3:30 p.m. Monday through Friday. Appointments must be obtained in person at the consulate.

Harare, Zimbabwe - Handling emergency immigrant visa cases from Tanzania and Kenya (see definition of "emergency" under Tirana, Albania). Contact the consulate at 263-4-794-521 ex.232 in advance and identify yourself as Tanzanian or Kenyan. You may also fax your case details to 263-4-796-488. Nonimmigrant visa applicants can appear Monday through Friday between 8 am and 12 noon.

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#### 17. INVESTOR VISA FIRM UNDER FEDERAL INVESTIGATION

Immigrant investment company Interbank is under investigation by the Federal government and its offices in Herndon, Virginia were recently raided by Federal agents. The company specializes in placing investments to enable people to qualify in the EB-5 immigrant visa category. The EB-5 category is available to people who invest \$500,000+ and create jobs for 10 people. The investigation is centered on the question of whether the program has been misused to bilk immigrants seeking green cards. Specific allegations have not been released. A spokesman for Interbank told a DC-area television station that the firm has, in fact, made investments with the money collected including the purchase of a home construction company in California and it has launched a series of telemarketing companies in some of the poorest counties in West Virginia.

The firm's offices were raided on August 28th and truckloads of documents were hauled away. The raiding agents represented the INS, FBI, IRS and the State Department. The search and seizure was authorized by grand jury subpoenas stemming from the investigation mentioned above. Interbank called the raid a "hostile attack on the foreign investor program" and said it is seeking to file suit against the INS to force it to approve 700 pending applications for EB-5 visas. The company argues that the INS is effectively blocking jobs for 7,000 Americans.

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#### 18. INS FEE HIKE SET TO TAKE PLACE NEXT MONTH

The INS is set to raise fees across the board for the first time in four years. All but one of the fees will go up on October 13th, many more than doubling. The fee for naturalization applications will go up on January 15, 1999. The new fee schedule is on the Siskind, Susser, Haas & Devine web site at <http://www.visalaw.com/docs/>.

The INS claims the new fee schedule will increase revenues by up to \$230,993,000 annually though many believe the revenues will actually not increase quite this

much because some people simply will avoid applying for benefits because of the high fees.

A number of immigrant advocacy organizations have complained about the steep increases. Many are particularly concerned that naturalization petitions will now have a fee of \$225 (the current fee is \$95). That may be as much as a week's income for many applicants.

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#### 19. COLLADO CASE DISMISSED BY COURT

The highly publicized Collado deportation case has been terminated with prejudice possibly putting a serious dent in one of the most onerous sections of the 1996 Immigration Act.

The Collado case (Board of Immigration Appeals Int. Dec. 3333, Dec. 18. 1997) states that any Lawful Permanent Resident is to be regarded as seeking an admission into the United States for purposes of the immigration laws without further inquiry into the nature and circumstances of a departure from and return to this country. Collado won at the Immigration Judge level, but the INS appealed to the BIA and won.

The case involves Jesus Collado-Munoz, a national of the Dominican Republic who has been a green card holder for more than 25 years. After leaving the US for two weeks last year to visit his native country, he was charged by the INS with inadmissibility under Section 212(a)(2) of the Immigration and Nationality Act based on a 1974 conviction of sexual abuse of a minor. The facts of that case were more innocuous than the charges sound - Collado was a young man in his late teens and was charged with having sex with his girlfriend who was a minor just a few years younger. Collado received three years probation for that offence and has had no trouble with the law since then. The issue in the case centered on whether the trip outside the US was "brief, casual and innocent" such that it should not count as a departure and readmission for purposes of the new immigration law.

The Board of Immigration Appeals ruled against Collado stating that the earlier doctrine of "brief, casual and innocent" departures was superceded by the 1996 Act that now uses the new concept of "admission." The new law states that a lawful permanent resident is considered to be seeking admission if he or she has committed an offense listed in Section 212(a)(2) of the Immigration and Nationality Act. Collado's offense is covered in this section. Based on this, the BIA sent the case back to the Immigration Judge with an order to conduct further proceedings.

So why did the Immigration Judge dismiss the case when the BIA told the judge not to. The INS is the surprising reason. Apparently, the INS has changed its position completely and now is indicating that it was not able to prove that Collado was inadmissible. The reasoning stems from a defense called the "petit offense exception" which would allow for leeway when a crime is very minor.

Expect this case to have an impact across the country.

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## 20. 425,000 IMMIGRATION CASES IN NEWARK TRAPPED IN ENVIRONMENTAL CLEANUP

Using one of the more bizarre excuses for not processing cases in a timely manner, the INS in Newark, New Jersey has announced that the files of more than 425,000 are trapped in the top-floor offices of the INS' headquarters office there. Why? On April 20th, a crew repairing the roof of the building found asbestos insulation and the building manager ordered workers on the affected floor to vacate their offices. Those workers were located elsewhere in the building, but no one has had access to those files since then.

Numerous applications including naturalization petitions, work authorization applications and many other types of applications were all left in haste.

INS spokeswoman Lynn Durko told the public, "Your immigrant visa could be in there, immigrant photos, records. There could be criminal records in there." She went on to say that the INS "is a victim in this, as well."

The closure is expected to continue until at least December. The INS does expect to have access to some of the files by November.

The question is now what will the INS be doing to help people suffering as a result of the closure? Critics are complaining that the INS is not informing people whether their cases are affected. Durko states that it would not be practical to notify all of the affected people. It would be incredibly time consuming and the INS is not even sure which people are affected.

One thing is clear. Newark applicants can plan on adding many months to their processing and should be conscious of this when making their plans.

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## 21. USIA REVERSES COURSE TWICE AND APPROVES J-1 PHYSICIAN HARDSHIP CASE

Those immigration lawyers who handle J-1 home residency cases know they can be very difficult. These are cases for people who come on J-1 exchange visitor visas and who become subject to a requirement to return to their home country for two years before they can switch to permanent residency status in the US (they are also barred from changing non-immigrant status in the US or applying for an H-1B or L visa). And one of the toughest types of J-1 waiver cases is that based on hardship.

Recently, Siskind, Susser, Haas and Devine successfully handled a hardship case that illustrates just how difficult these cases can be. The matter involved an Indian physician subject to the home residency requirement. Physicians are very limited in their J-1 waiver options - normally only being able to choose from getting the backing of a US government agency (such as by working in a health professional shortage area) or by seeking a hardship waiver. The waiver applicant has a permanent resident husband who is also a doctor and who is in his residency program for another two years. And the couple had two US-born children - one age four and the other age seven.

The case argued hardship from several perspectives including

scenario #1 - hardship if the mother returned home and left the children with the father in the US

scenario #2 - hardship if the whole family returned to India

scenario #3 - hardship if the mother returned to India with the children and left the father in the US.

Evidence was presented showing that serious hardship would result in any of these cases.

With respect to scenario #1, the case was made that the mother would be unlikely to find a job in India and that the father would have to support two households on a single medical resident's income (about \$25,000) per year. More importantly, the children could suffer irreversible psychological damage if they were separated from their mother for two years. Additional evidence was presented showing that the children would basically become latchkey kids with no parental supervision since the father works about 60 hours per week and could not afford a nanny.

With respect to scenario #2, the financial issues would be even worse. Neither parent would be likely to find a job. Furthermore, if the father left his position in his residency program, he basically could be throwing his career away since he would find it very difficult to be readmitted to a residency program. Furthermore, substantial documentation was presented showing several hardships the children would suffer in India. First, the children only speak English and it would be necessary to travel two to three hours each day to the nearest American school. Plus, the tuition at the school would amount to nearly \$10,000 per year, well beyond the means of the family. The local school submitted documentation stating that they do not have the means to accommodate children who don't speak the language and that the children would basically have to fend for themselves. Finally, evidence was presented showing that one of the children had a serious asthma problem and that the location of the children's family in India is in an area with a serious air pollution problem.

With respect to scenario #3, the hardships to the children of returning to India would be the same. Furthermore, the problems of financially supporting two households remained and the children would face the emotional hardship of being separated from their father.

The case was initially submitted to the INS. The INS agreed that hardship was shown and sent the case off to the USIA which must concur before the waiver can be approved. That's where the problems in the case started.

The USIA recommended against approving the waiver stating that the decision was made for "policy reasons." No further reasons were enunciated. This is the standard response given to most hardship waiver denials. After calling the USIA waiver review officer and presenting my objections, I was told that the case was passed around to several officers and they all agreed that the denial was proper. We tried to get some specifics regarding why they felt the case did not merit a waiver, but this did not get me anywhere. Theoretically, the case should have been dead at that point. There is no appeals procedure and the INS would basically have no choice but to then deny the application. The only option would be to resubmit the case, but without new arguments or new evidence, the chances of getting the matter overturned would be negligible.

The next place we went was our local Congressman. The Congressman's office was particularly helpful and took the step of contacting Les Gin, the General Counsel for the USIA asking that the agency reconsider the matter. Rather than reversing the decision, the USIA took the unusual step of reversing the denial and, instead, sent the matter up to the USIA Waiver Review Board for their

decision. This Board normally takes close call cases that have yet to be decided, not cases already denied.

We obviously were elated that the Board was going to be reviewing the matter and felt that the case would get the attention needed to make a just decision. Our hopes were dashed, however, when a few weeks later we learned that the Board denied the case.

At that point, we basically became resigned to the fact that we had lost. Our Congressman's office was still making calls on our client's behalf to the USIA, but we had little hope that this would get us anywhere. The only other action we were planning was to take the case to the media to show just how unjust the J-1 home residency requirement can be. Perhaps the USIA would reverse their decision when the light of public scrutiny was applied.

And then we received an incredible surprise. The INS Service Center called us to tell them that they had been instructed to halt processing on the case. The USIA had changed its decision and chosen to recommend approval. And within a few days the waiver approval came in the mail. The exact reason for this second reversal is not yet clear.

The case was quite typical in its beginning. The USIA turns down sympathetic cases every week for "policy reasons" seemingly without regard to the family tragedies that often result from being forced to comply with the home residency requirement. Its ending, however, was quite unusual, but it does prove that persistence can sometimes pay off in J-1 waiver cases.

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## 22. H-1B UPDATE

Once again, this newsletter can only report that the H-1B cap remains in place and that Congress has yet to pass a bill raising the numbers. Congress had scheduled a vote on the bill and again the vote was postponed. The latest target date for a vote is September 24th. And it is still not clear whether the Clinton Administration has reached agreement with the Congress on what an acceptable compromise bill will look like.

One development that is worth noting since our last issue is the fact that H-1B approvals for the next fiscal year are now being issued by the four service centers. And processing times are starting to improve significantly. The INS also issued a guidance memo outlining how pending H-1B cases are to be handled. No real surprises, but it does put in writing several policies we have reported earlier. To see that memo plus read the latest news on the H-1B cap, visit our H-1B Emergency Update Page at <http://www.visalaw.com/h1b.html>.

Also of interest on the H-1B front is the endorsement by California Governor Pete Wilson of H.R. 3736, the H-1B bill which this publication supports. Wilson has publicly urged President Clinton not to veto the bill stating that the long-term economic interests of the US should be considered over placating the "short-sighted, protectionist demands of organized labor pressure groups."

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## 23. VISA SPOTLIGHT: INS CASE DEALS MAJOR BLOW TO NATIONAL INTEREST WAIVER CASES

The Board of Immigration Appeals has issued an opinion that could make National Interest Waiver cases considerably more difficult. The case, IN RE NEW YORK STATE DEPT OF TRANSPORTATION (Interim Decision #3363) involved a petition filed by the State of New York on behalf of one of its civil engineers. The BIA made the following three findings:

1. An alien seeking immigrant classification as an alien of exceptional ability or as a member of the professions holding an advanced degree cannot meet the threshold for a national interest waiver of the job offer requirement simply by establishing a certain level of training or education which could be articulated on an application for a labor certification.
2. General arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field or seeking an as yet undiscovered solution to the problematic issue.
3. A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

The difficulty with the case is that the decision is so broad it gives the INS latitude to deny almost any case. The second point, that it is not enough to show that the area where an alien is going to be working is in the national interest and that the applicant is working in that field, is also troubling. That would seem to be a completely appropriate type of case for an NIW. Plus, the door seems to be open to an entirely new, non-statutory requirement that an applicant explain why a labor certification is not an appropriate case strategy.

The BIA noted that that several factors must be considered when evaluating a request for a national interest waiver.

First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. The BIA found that requirement met in this case. The beneficiary's field of endeavor, engineering of bridges, clearly satisfies this requirement. But a petitioner cannot establish qualification for a national interest waiver based solely on the importance of the alien's occupation.

Next, it must be shown that the proposed benefit will be national in scope. In this case, the alien's work, while limited to just the State of New York, involved interstate transportation since New York's bridges and roads connect the state to the national transportation system. So the BIA concluded that this requirement was met. The BIA does state in a footnote, however, that it is using a tougher standard here than in the old "exceptional ability" cases under Section 203(b)(2)(A) of the Immigration and Nationality Act. In that type of case, the local labor market is considered through the labor certification process and the activity performed need not have a national effect. For example, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. This seems to be a significant departure from a number of cases previously approved by INS that seemed to indicate the opposite - that is, that it was not necessary to show that an individual's work would have a nationwide impact as long as it overall contributes to the nation's interest.

Third, the petitioner seeking the waiver must persuasively demonstrate that the national interest would be adversely affected if a labor certification were required for the alien. This finding is perplexing as it appears to be a completely new requirement that has no foundation in the legislative history or the plain meaning of the statute. The National Interest Waiver category is designed to make immigrating faster and easier for a select number of people providing important services to the country. The program was not designed to be used as a category for people who could not otherwise pursue a labor certification.

The BIA goes on to state "that the petitioner must demonstrate that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making available to US workers the position sought by the alien. The labor certification process exists because protecting the jobs and job opportunities of US workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. An alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process."

The BIA states in the case, that the third requirement can be restated as requiring that a US employer or the alien establish that the alien will serve the national interest to a substantially greater degree than would an available US worker having the same minimum qualifications. It is not enough to list an alien's qualifications since a labor certification could reveal an available US worker with the same qualifications. And it cannot be argued that an alien plays a critical role in a project if an available US worker could fill such a role. This is also contrary to the reasoning enunciated by the INS over and over again in national interest cases - that is, that the alien should play a significant role in a project and cannot be easily replaced if forced to leave the country. The BIA fails to provide any guidance or examples of how one could actually prove that a labor certification would be inappropriate. It only states one example of what would not work - an argument that an applicant is in an occupation where the individual is self-employed and would have no US employer to apply for a labor certification. Of course the BIA fails to address why more and more people are turning to NIWs - the utter collapse of the labor certification system. In some parts of the country, labor certifications can take more than three years and then INS processing can add another one to two years. For people with a limited amount of time remaining on a non-immigrant visa, this wait can mean that they have to leave the country and, consequently, no longer perform the work that is in the nation's interest.

The BIA goes on to say that the alien here must still show that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. The BIA here seems to now be requiring that an alien meet the requirements of the EB-1 category for aliens with extraordinary ability. The focus now in an NIW case is on showing the alien is significantly better qualified than others in the field. The traditional understanding of immigration lawyers is that the EB-1 category focused on the alien's qualifications and the EB-2 NIW category focused on the importance of the alien's work. Now the EB-2 NIW requirement has two broad requirements - prove the work is in the national interest AND prove the worker is of extraordinary ability. Why anyone would choose the EB-2 NIW category anymore is hard to fathom.

The BIA does make other pronouncements of significance. According to the BIA, a petitioner's subjective assurance that he or she will, in the future, serve the national interest cannot suffice to establish a prospective national benefit. While the national interest waiver hinges on PROSPECTIVE national benefit, it clearly must be shown that the alien's past record justifies projections of future benefit to the national interest.

Many NIW lawyers are in agreement that the INS has deliberately chosen this case to avoid having to go through the regulatory process. In 1995, the INS issued proposed NIW regulations to define "national interest" that were soundly criticized by the immigration bar. The regulations were criticized so much that the agency never issued final rules. Instead, in its own admission, the agency chose one case to pursue in order to get a definition of "national interest" on the books. The NY Dept of Transportation case is that case.

According to Jill Nagy, the attorney who argued the case, the decision will not be appealed by the New York State Department of Transportation because the employee has, in fact, already secured a labor certification and no longer needs a National Interest Waiver. That means that another would be National Interest Waiver applicant must challenge the BIA's decision and get it off the books. Otherwise, the INS will have succeeded in thwarting the will of Congress by killing the National Interest Waiver program.

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#### 24. CALIFORNIA JUDGE RULES ILLEGAL IMMIGRANTS MUST HAVE ACCESS TO PUBLIC NURSING CARE

A judge in California has blocked the State from cutting off state-funded nursing care for elderly and sick immigrants who cannot prove they are legally in the US. Many of these people are in nursing homes and, according to some, would die without that care.

The State argued that federal law requires California to end a program of making long-term nursing care available to elderly or disabled people who cannot document their status. Immigration advocates, however, successfully argued the point that many in the program may be legal residents or even citizens but, because of their physical or mental condition, are unable to prove their status.

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#### 25. RAPE VICTIM BATTLES INS

INS recalcitrance and lack of compassion is making headlines in Sacramento, California. A recent case involves a 32 year old woman who was raped and beaten and whose husband, two children and brother-in-law were brutally murdered. On July 12th, the estranged husband of the woman's sister-in-law lured the woman and her family to a ranch north of Auburn, California. He'd called asking for transportation to an INS appointment. When the family arrived, the brother-in-law allegedly shot the woman's husband and then her brother. After raping the woman, the brother-in-law then allegedly bludgeoned her young children. The brother-in-law was later captured near San Diego.

The woman is now all alone and waiting to testify in the murder trial. She has sought permission to bring three relatives up from Mexico to remain with her as she awaits the trial. The woman has stated that she needs emotional support from her family members in the wake of the horrific crime. She has requested "emergency parole" travel passes for her relatives and is now being turned down by the INS.

The former INS Officer in Charge of the Sacramento office, Lionel Nurse, had promised to help the woman and her family before he was removed from his office (see the story on this above in this month's Citizenship Update article on the controversy surrounding Nurse's removal). Now a spokeswoman for the INS District Office in San Francisco, which oversees the Sacramento office, is stating the woman's request is being denied because this is not an "emergent situation." The INS has not commented on why it is not honoring Mr. Nurse's commitment to the family.

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#### 26. US AND MEXICAN GOVERNMENTS AT ODDS OVER ILLEGAL BORDER CROSSING

A Mexican government official has drawn criticism from the US because of comments recently made regarding Mexico's encouragement of illegal border crossings. Recently, Fernando Solis Camara, the head of Mexico's migration agency told a Mexican reporter that "At no time will we take any action that could discourage Mexicans from emigrating to the United States. That is because these are people who leave their families and their homes with the legitimate goal of bettering their lives."

The US would like to see the Mexican government take a stand against illegal crossings, particularly in light of the deaths of dozens of Mexicans this summer in the deserts of the Southwestern US.

But Mexican government officials point to Article 11 of the Mexican Constitution which guarantees that all Mexicans have freedom of movement and the right to go where they wish. Mexican officials believe this means those wishing to leave the country too. Nevertheless, they are working with the US government to offer more protection to those making the trip. New signs are being posted warning about natural hazards and rescue teams now patrol the area to help migrants in need.

Following the remarks, US Ambassador to Mexico Jeffrey Davidow criticized the Mexican policy. "I believe that the Mexican government has a policy of not impeding the flow of immigrants to the United States. I do not agree with that policy."

Many expect the flow of immigration Mexico to increase if the worldwide economic crisis spreads in Latin America.

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#### 27. NEW INS RULE MAKES PROCESSING OF REFUGEE FAMILY MEMBERS TOUGHER

The INS has issued a notice indicating that it will take a tougher policy in allowing family members of refugees to enter the US. The new INS policy will allow refugees seeking entry to the US to only bring in spouses and minor unmarried children. The previous policy allowed a qualifying refugee's other

family members (such as parents and adult children) to enter as derivative refugees. The other family members must now establish refugee eligibility in their own right. The INS states that it is implementing the policy because there is no statutory basis to allow other family members to enter as derivatives.

However, the INS recognizes that there may be humanitarian reasons to include in a case other individuals who cannot derive refugee status, such as an elderly parent or an unmarried son or daughter. While these people are not able to have derivative status and must qualify as refugees in their own right, they may be granted a refugee interview as long as they are household members and are part of the same economic unit as the interviewed principal refugee applicant. These people are not required to fall within a designated processing priority to gain access to a US refugee program and they are accorded the same priority as the principal applicant. This same special procedure is available in Lautenberg Amendment cases for certain Russians and East Asians covered in that program.

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#### 28. RECENT AAO DECISION SAY INS NOT BOUND BY ITS OWN POLICY PRONOUNCEMENTS

The INS' Administrative Appeals Office (AAO) has issued a recent opinion that stands for the proposition that the INS is not bound by its own public pronouncements. In *Matter of Izumii*, a case involving the EB-5 Immigrant Investor Pilot Program, the AAO stated that a petitioner has no right to rely on an INS Office of General Counsel Opinion:

"As far as the petitioner's criticism that the Texas Service Center's decision in this case failed to mention, distinguish, or explain away the above prior decisions and OGC opinions, it is not clear why the center director would reference them at all. Neither of the above decisions had any precedential value ... OGC memoranda are merely opinions. OGC is not an administrative body and is in the position only of being an advisor; as such, adjudicators are not bound by OGC recommendations."

Later in the opinion, the AAO again states that neither the AAO nor other INS adjudicators are bound by OGC opinions.

The lawyers for the petitioner, one of whom is actually a former INS General Counsel, also made a claim of estoppel, that is, reliance, based on the fact that the lawyer met in 1996 with the Senior INS representative in charge of immigrant investor programs and was given a model petition to use to pattern his own petitions. He was told by the INS officer that if he followed the model, his cases would be approved. The lawyer noted that the next 95 petitions he submitted using the model were approved. The AAO states, however, that the INS is not bound by the opinions of a single INS officer. The AAO further states that the petitioner did not detrimentally rely on any prior representation by an INS official (though this conclusion seems completely contradictory to the facts presented). The AAO basically says that the petitioner should have (and therefore did) know better. The only way to obtain a determination of eligibility would be to actually file the petition.

The case should make immigration lawyers and would be immigrants shudder. It is no longer unfair to say that the INS operates beyond the rule of law. The agency has a consistent pattern of not issuing regulations in key areas - see the discussion of the recent NY State Department of Transportation National Interest Waiver case earlier in this Bulletin as an example - and operates on internal,

often unpublished, guidelines. Immigration lawyers are forced to rely on field memoranda and General Counsel opinions as the only source of authority in many areas including the EB-5 program discussed in this case. And now immigration lawyers are being advised that even these scraps of authority have no meaning other than to advise INS on how to act. The INS now has the green light to make up the rules as it goes along.

To say that one should simply file a petition to determine if it is appropriate is to ignore reality. First, the expenses involved with filing an immigrant petition can be considerable - lawyers' fees, fees to the business broker, moving capital into a position that satisfies the requirements of the program, etc., can add up to tens of thousands of dollars in expenses. Second, valuable time can be wasted. For example, what if an investor has a child who is going to turn 21 and will no longer be eligible for a visa? Is it fair to make a person file petitions as if they were floating trial balloons? Second, the filing of an immigrant petition can have repercussions on one's ability to qualify in certain non-immigrant visa categories. The OF-156 Nonimmigrant Visa Application specifically asks about past immigration petitions. The mere filing of a petition could negatively affect one's ability to qualify for a visitor visa, student visa, TN visa and other types of temporary visas.

As a matter of fundamental fairness, it is wrong to ask people to comply with the law if, in fact, the law is unwritten, secretive or non-binding on the administrating agency.

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#### 29. FEDERAL AGENCY REOPENS COMMENT PERIOD FOR NEW DRIVER'S LICENSE PROPOSED RULES TARGETING ILLEGAL IMMIGRANTS

The National Highway Traffic Safety Administration has issued a notice indicating that it is reopening the comment period on a proposed rule to implement a section of the 1996 Immigration Act. The provision in the 1996 Act states that after October 1, 2000, Federal agencies may not accept as proof of identity driver's licenses or other comparable identification documents issued by a state unless the document conforms to specific requirements. The requirements concern the application process for driver's licenses and identification documents, the form of driver's licenses and identification documents (including security features) and the use of social security numbers on these documents.

The NHTSA issued a proposed rule on June 17, 1998 and gave until August 3, 1998 to submit comments. The NHTSA noted, however, that it soon became apparent that "there is considerable public interest in the proposed regulations." In response to numerous public requests including requests from several Congressmen, the agency agreed to reopen the comment period and is now informing members of the public that they have until October 2, 1998 to submit comments.

If you are interested in submitting comments, send them to the following address:

Docket Management  
Room PL-401  
National Highway Traffic Safety Administration  
Nassif Building  
400 Seventh Street, SW

Washington, DC 20590

Be sure to reference Docket No. NHTSA-98-3945, RIN 2127-AG91.

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### 30. HEALTH CARE WORKER LAWSUIT FILED

Sources in close communication with INS officials working on the new health care worker regulations continue to report that the INS is very close to issuing regulations required by Section 343 of the 1996 Immigration Act. We have heard that the regulations could be issued any day now, though the INS' history of delays should make people cautious before assuming that the INS will act anytime soon.

In our March 1998 issue, we mentioned that the American Immigration Law Foundation (AILF) was seeking plaintiffs for a lawsuit over the lack of regulations. Last month, AILF and the law firm of Dechert Price & Rhoads filed a suit in federal court in Washington against the INS and the Department of Health and Human Services as a result of their failure to issue regulations. Section 343 added a requirement to the law that health care workers present proof of certification by the Commission on Graduates of Foreign Nursing Schools or an equivalent certifying body. However, the law has never taken effect because in the last two years neither the INS nor HHS have issued implementing regulations. Instead, all permanent residency processing for health care workers has come to a halt and thousands of health care workers have had their cases put on indefinite hold.

The plaintiffs in the case are three Registered Nurses and a physical therapist each of whom has suffered damage because of the failure to issue regulations. They either had a) children who turned 21 during the prolonged waiting period and who no longer are eligible to immigrate with their parents or b) a spouse who has been unable to join them in the US in the last two years because the petitioning spouse has been unable to adjust to permanent residency.

According to Roy Petty, the Executive Director of AILF, "There's no excuse for it [the failure to issue regulations]. It's the ultimate in bureaucratic bungling. And it isn't just the health care workers and their families that are hurt by this, but also the hospitals and clinics where they were going to work, and the communities they serve."

The suit seeks a request from a judge that the government does what it is supposed to do. Money damages are not be sought, only an order requiring the INS and HHS to immediately issue regulations and adjudicate permanent residency petitions right away.

In our June 1998 issue, we reported that the Commission on Graduates of Foreign Nursing Schools filed a similar lawsuit against the INS. Last month, the CGFNS moved for summary judgment in its suit. CGFNS argues in its motion that the INS and State Department

1. Violated Section 343 of the 1996 Act by refusing to accept CGFNS certificates issued to foreign health care workers;

2. Violated Section 212(d)(3)(A) of the Immigration and Nationality Act by waiving the certification requirements of Section 343 on a blanket basis;

3. Violated the Administrative Procedures Act by taking arbitrary, capricious and abusive actions; and

4. Have deprived CGFNS of property without due process of law in violation of the 5th Amendment of the Constitution.

The two lawsuits obviously are ratcheting up the pressure on the INS to finally issue the regulations. The INS has a strong incentive to issue the regulations soon in order to avoid having to further defend themselves in the cases.

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### 31. HIGHLIGHTS OF AILA/INS MEETINGS

Members of the American Immigration Lawyers Association and representatives of the INS recently met to discuss various policy matters. Some of the issues discussed include the following:

IMMIGRANT SERVICES DIVISION (teleconference on August 13, 1998)

- Requests for Evidence. AILA complained about inconsistent language in Requests for Evidence issued by the four Service Centers. The INS indicated that it is looking to standardize the language in INS notices.

- AILA noted a problem with INS district offices re-interviewing naturalization applicants for whom it has been one year since the date of their initial interview. The ISD noted that it would look into the matter.

IMMIGRANT SERVICES DIVISION (teleconference on September 3, 1998)

- The ISD has prepared the following estimate of approved and pending H-1B petitions which will be applied against the FY99 cap:

- approved H-1B petitions with a 10/1/98 start date - about 20,000

- pending H-1B petitions at the four INS Service Centers - about 18,000

Based on these numbers, ISD estimates that the H-1B cap will be hit before the end of December of this year.

ISD also reminded AILA members that the confusing fee schedule for H-1B cases is being simplified in the new INS fee list. Currently, requests for extension of status cost \$125 and requests for a change of status cost \$155. Under the new fee schedule, there is a single fee of \$110 for either an extension or a change of status.

- Naturalization. The INS indicated that it has discontinued the practice of re-interviewing naturalization applicants for whom it has been more than one year since the initial interview. The ISD has asked AILA to let it know if there are violations by INS officers in the field. Notify Elissa McGovern at AILA national if there is a problem.

VERMONT SERVICE CENTER (August 5, 1998)

- The VSC is considering establishing a web site to facilitate communications with the public. However, this would have to go through INS headquarters. [Editor's note - given how long it took INS headquarters to establish its own web site in comparison to other Federal agencies, don't expect anything soon].

- AILA questioned why I-140 processing times have suddenly jumped from 30 days to 90+ days. The VSC blamed the slowdown on an increase in filings of I-129 non-immigrant visa applications that have a processing deadline. VSC expects to get additional overtime authorizations soon and expects I-140 times to improve. But this may depend on what happens with the H-1B bill in Congress.

- The VSC admitted that it is basically shelving all I-485 adjustment applications and its backlog now dates back to August 25, 1997. It is, however, processing employment authorization documents and advance parole applications. The only adjustment cases being worked are for lottery winners and cases where a minor child of the applicant will be turning 21.

- The VSC indicated that while it is no longer required to submit a separate check for the \$25 fingerprint fee along with the I-485 adjustment of status fee or N-400 naturalization fee, separate checks are still preferred.

- The VSC indicated that it would accept H-1B applications without an approved Labor Condition Application as long as the applicant later presents it.

- The VSC admitted that it has no system in place to notify applicants for adjustment of status whose fingerprints are rejected that they need to be re-fingerprinted. Cases simply sit on the shelf. The VSC indicated they are working on a manual system and will then begin processing these cases again.

- The VSC indicated that it has a system in place to scan through its files to identify cases where children will be aging out in order to pull those cases for expediting. AILA is requesting members to make sure they flag these cases on the outside envelope and in the filing material.

- AILA noted that a National Interest Waiver for a physician was recently denied because the physician offered a contract for three years. The VSC stated in the denial that this was proof that the position was not permanent. The VSC now indicates that while permanent employment is, in fact required, it understands that most employment agreements are for a finite period of time. They will now simply look for a statement from the intending employer indicating that the employer fully expects to extend or renew the employment contract at the time of expiration.

- The VSC reminded AILA members that the separate PO Box numbers and zip codes for specific types of cases are no longer used and that all petitions should now be sent to 75 Lower Weldon Street, St. Albans, Vermont 05479.

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32. REFUGEE GREEN CARD CASES NOW TO BE FILED DIRECTLY AT INS NEBRASKA SERVICE CENTER

The INS has now transferred the responsibility for adjudicating adjustment of status cases for refugees from local INS offices to the Nebraska Service Center. All refugee cases will now be processed there.

Aside from normal adjustment of status filing procedures, the following special rules will apply to these cases:

- Refugee adjustment applicants do not need to pay a filing fee
- Only the vaccination supplement is required, not the full medical exam
- \$25 fingerprint fee for all applicants between applicants age 14 and 74
- For refugee adjustment cases only, all state and local health departments are designated civil surgeons and can complete the vaccination forms. The CDC will send to each health department the Vaccination supplement to Form I-693

Asylum adjustment of status applicants are also filed in Nebraska. A key difference is that asylee refugee applicants must pay the I-485 filing fee. Plus, the asylee must have a full medical exam in addition to the vaccination supplement.

All applications are to be sent to the Nebraska Service Center, PO Box 87485, Lincoln, NE 68501-7485.

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### 33. COURT DISMISSES NATURALIZATION CLASS ACTION SUIT

The Federal Ninth Circuit Court of Appeals has dismissed a class action lawsuit, *Sze v. Reno*, which was filed to compel the INS to adjudicate backlogged naturalization case. The case has been dismissed because the INS has now ruled on each of the class members' cases and the court has found that it no longer has jurisdiction since none of the plaintiffs has a claim. The plaintiffs contended that the INS timed the adjudication of the plaintiffs' cases in order to kill the litigation, but the court stated that the cases were approved in due course.

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### 34. INS PLANS NEW EB-5 REGULATIONS

The INS is now working on two new regulations to address EB-5 issues addressed by the INS Office of General Counsel (see Siskind's Immigration Bulletin - April 1998 - <http://www.visalaw.com/98apr/23apr98.html>). The regulations are expected to reflect the position taken by the INS in the OGC memo as well as positions taken in the recent *Izumii* and *Soffici* cases handed down by the INS's Administrative Appeals Office. The INS has not yet stated when the regulations will be released.

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### 35. PROPOSED RULE WOULD CHANGE THE WAY HEALTH PROFESSIONAL SHORTAGE AREAS ARE DETERMINED

The Department of Health and Human Services has issued a proposed rule that would consolidate the processes for designating medically underserved populations (MUPs) and health professional shortage areas (HPSAs). The rules are intended to simplify and improve the way underserved areas are designated by incorporating up-to-date measures of health status and access barriers and eliminating inconsistencies and duplication of effort. HPSA designation is important since many J-1 physicians must seek positions in HPSAs in order to qualify for home residency waivers. Also, the proposed H-1C nurse visa would require a nurse to be working in a HPSA. Under current rules for most waiver programs, the physician can look to the MUP or the HPSA. Now that the lists are being merged, there will be just one source to which to look.

According to DHS, the designation processes and criteria are being revised to accomplish several goals and alleviate problems associated with the existing methods of designation. The goals include consolidation and simplification, proactivity and automation and an increased role for states.

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#### 36. NEW INS RULE SETS PROCEDURES FOR SURRENDERING OF DEPORTABLE ALIENS

The INS has issued a proposed rule to amend its regulations by requiring aliens subject to a final order of removal to surrender to the INS. The rule also establishes procedures for the surrender and bars people violating the new rules the opportunity to obtain discretionary immigration benefits.

The rule applies to aliens not in INS detention at the time when a removal order is issued. While the INS has the right to apprehend an alien ordered removed, the proposed rule is being issued to make it clear that an alien not detained at the time an order becomes final has a legal obligation to surrender for removal. The new rule would provide deadlines for surrender.

In general, aliens would have 10 days from the date an order is issued to surrender to the INS. Notice of the surrender obligation would be incorporated into the Notice to Appear. The rule would also require the immigration judge to notify the alien of the location where the alien must surrender in the event the alien becomes subject to a final order of removal.

The proposed rule would penalize aliens failing to surrender on their own by barring the alien from discretionary relief while the alien is in the US and for ten years from the date of departure. A waiver is only available from an INS District Director if the applicant is able to demonstrate that the surrender was due to exceptional circumstances beyond the control of the alien.

The INS is seeking comments, particularly comments from bonding companies concerning the effect the proposed rule would have on their obligation to produce bonded aliens.

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#### 37. CALIFORNIA WORKER WHO TURNED IN ILLEGAL IMMIGRANTS GETS JOB BACK

A California county clerical worker who was fired for turning in an illegal alien who was delinquent in his child support payments has been reinstated to her position. Anti-immigration activists praised the decision, but immigration

advocates worry that the decision will cause illegal immigrants to avoid police departments, hospitals, schools and other government institutions. Others discounted the importance of the matter since the case was decided by an arbitrator, not by a court, and, consequently, the decision is not precedent-setting.

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#### 38. IMMIGRATION AND THE INTERNET: VISAJOBS.COM

This month I am pleased to announce that Visajobs.com (<http://www.visajobs.com>), a site I played a role in developing, is now operating. Visajobs.com is designed to fill a critical role in the visa process - finding a position that meets the criteria for a non-immigrant work visa or an employment-based green card. While there are perhaps hundreds of web sites that list jobs, Visajobs.com is probably the first and only site that specifically is geared toward people seeking work visas or green cards. The site has a few cosmetic changes to go - the artwork for the site, for example, is still under development.

The site is quite simple in its structure and concept. Employers interested in filling a position and who are willing to hire a foreign national may post that position on the site free of charge. The employer is asked the following three important questions:

- Are you willing to sponsor a qualified applicant for a nonimmigrant visa?
- Are you willing to sponsor a qualified applicant for an immigrant visa?
- Are you willing to conduct the interview process by phone or e-mail?

The employer's answers to these questions as well as related comments are posted in each job listing.

People seeking positions are asked to fill out a profile form and paste or type in their resume. The job seeker can then search the job bank and if a particular job is of interest, the job seeker simply clicks a button to send his or her resume to the employer.

Employers can also search the resume database to find qualified employees. Therefore, even if a specific job is not listed that the employee is interested in, it is possible that an employer can find a qualified applicant before they even post a job.

Just as the focus of this employment site differs from others, so does this fee structure. Most employment sites charge employers to post positions and do not charge the job seeker. This site does the opposite. The site's developers came to the conclusion, however, that many employers are unfamiliar with or intimidated by the immigration process and might be reluctant to pay to post positions. This is might be the feeling of employers since they may have to pay an attorney legal fees and will also have to deal with issues like cultural barriers, language skills and the uncertainty inherent with the immigration process (such as the H-1B cap). In order to maximize the number of jobs on the site, the decision was made to instead charge the job seeker who will presumably see an additional value in this site that they will not find elsewhere. The site has an introductory annual fee for job seekers of \$50 per year.

[NOTE - The Visajobs site is independent of the law firm of Siskind, Susser, Haas & Devine and users of the site are under no obligation or expectation to use the law firm to handle a resulting immigration petition.]

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### 39. GOVERNMENT PROCESSING TIMES

Note: We publish all times available to us. Please do not send request for other processing times. Please also note that your case time may not be as fast (or as slow) as reported below.

Source: American Immigration Lawyers Association Local Processing Times

Local Processing Times [Note: If these times look familiar its because they are the same as published in our August newsletter. We have not received new times for this month, so these statistics are not as up to date as normal].

Office	Permanent Residence Filing		Until Approval
	I-485*	I485i**	I485***
Albuquerque	565-745	565-745	565-745
Atlanta	365-395	365-395	n/a
Baltimore	180-240	180-365	150-180
Boston	240	240	n/a
Buffalo	210-365	210-360	210-360
Charlotte	425-485	425-485	n/a
Chicago	180-365	180-365	180-300
Cincinnati	120-140	120-140	n/a
Cleveland	124-160	124-160	n/a
Dallas	390-420	390-420	420-330
Denver	270-300	270-300	270-300
Detroit	n/a	120-150	120-150
El Paso	480-570	365-547	480-540
Harlingen	490	490	490
Hartford	90-100	90-100	90-100
Honolulu	120-160	120-160	n/a
Houston	690-725	690-725	n/a
Indianapolis	120-180	120-180	120-180
Kansas City	120-240	120-240	n/a
Las Vegas	300	300	n/a
Louisville	365-540	365-540	365-540
Los Angeles	365-485	365-485	240-300
Memphis	300-365	300-365	210-240
Miami	360-390	360-390	360-390
Milwaukee	575-600	575-600	n/a
New Orleans	180-360	180-360	180-360
New York	300-390	300-390	390-420
Newark	210-240	210-240	n/a
Oklahoma City	270-365	270-365	270-365
Omaha	365-420	365-420	n/a
Orlando	60	60	60
Philadelphia	150-180	150-180	150-180

Phoenix	690-720	690-720	240
Pittsburgh	90-120	90-120	180-240
Portland	240-365	240-365	240-365
Sacramento	365	365	365
San Antonio	360-420	360-420	360-420
San Francisco	300-365	300-365	n/a
San Jose	548-730	548-730	n/a
Seattle	240-300	240-300	150-210
St. Paul	180-240	180-240	n/a
Salt Lake City	270-300	270-300	270-300
Tampa	365-450	365-450	n/a
Washington DC/VA	210	n/a	n/a

\* 1-485 Filing Until Approval (Interview, Non-245I (Supp. A Form not filed))

\*\* 1-485 Filing Until Approval (interview, 245i)

\*\*\* 1-485 Filing Until Approval (No Interview)

Office	Naturalization Filing Until Interview+	Advance Interview Until Swearing In++	Parole	EADs#
Albuquerque	565-745	14-21	30-60	n/a
Atlanta	730-1095	330-365	21-30	75-90
Baltimore	240	1	1	n/a
Boston	300	90	1	1
Buffalo	360-390	60-90	10-20	1
Charlotte	730-790	30-90	10-30	75-90
Chicago	540-720	30-60	1	30
Cincinnati	300-360	120-180	3-8	1-2
Cleveland	300-360	120-180	3-8	1-2
Dallas	450-520	140-180	120-180	30-60
Denver	365-515	1	21-28	28-35
Detroit	270-365	15-30	1	1
El Paso	480-570	30	21-30	21-30
Harlingen	450	90-120	162	91
Hartford	150	30	5	90
Honolulu	150-190	20-30	2-7	1
Houston	480-520	60-90	30	90-120
Indianapolis	180-210	15-45	7-10	1
Kansas City	180-240	20-50	1-21	1-90
Las Vegas	240	90	5	90
Louisville	365-540	30	21	21
Los Angeles	365-485	30-60	15-60	15-21
Memphis	240-270	90-120	3-5	90-120
Miami	360-390	90-120	3-5	90-120
Milwaukee	545-570	60-180	7-30	60-90
New Orleans	270-550	30-360	5-21	90-180
New York	360-510	45	30-45	65-90
Newark	365-425	1	1	30-90
Oklahoma City	365-540	90-120	30-90	30-90
Omaha	300-365	30-40	10-30	10-30
Orlando	240	120	300	30-210

Philadelphia	270-360	30-60	4	90-120
Phoenix	540-630	210	120-150	150
Pittsburgh	60-90	10-40	3-9	1
Portland	720	60-90	7	21
Sacramento	515	30-90	1-3	1
San Antonio	360-390	90-150	60-80	60-90
San Francisco	390-480	30-120	30-210	1-30
San Jose	240-730	30-640	2-14	1-2
Seattle	240-300	1	10-15	14-28
St. Paul	180-240	90-120	2-4	1
Salt Lake City	270-300	60-90	60-90	90-120
Tampa	720-900	14-64	14-21	24-48
Washington DC/VA	300	14	14	n/a

- + Naturalization Filing Until Interview
- ++ Naturalization Interview Until Swearing-In
- # Work Authorization (Non-Asylum) Approval

The following is the NEBRASKA SERVICE CENTER Processing Time Report for the period ending July 31, 1998:

Application/Petition Type	Processing for Initial Receipt Date	Receipt Notice Processing Time in Days From To	
I-90 Replacement Card	10/13/97	291	321
I-90A Saw	02/09/98	172	202
I-102 Replacement of Arrival Document	09/30/97	304	334
I-129/S New Amended NI Worker	06/26/98	35	65
I-129/F Fiance(e)	06/22/98	40	70
I-130 Spouse US	03/16/98	139	169
I-130 Spouse	03/29/97	480	510
I-130 Other Relatives	09/22/97	312	342
I-131 Reentry Permit/Ref Travel Doc	06/10/98	50	90
I-131 Advance Parole	06/30/98	30	60
I-140 Immigrant Worker	03/10/98	143	173
I-360 Pet for Widow/Spec. Imm.	06/17/98	45	75
I-485 Adjustment	10/15/97	289	310
I-526 Investor	07/20/98	10	40
I-539 Change/Extend NI Status	03/16/98	137	167
I-589 Asylum	Not adjudicated	15	30
I-698 Legalization-Adjustments to LPR	None pending	15	45
I-730 Refugee/Asylee Relative Petition	05/20/97	428	458
I-751 Remove Conditions	07/13/98	20	50
I-765 Employment Authorization-A5	07/17/98	15	45
I-765 Employment Authorization-Other	05/13/98	79	109
I-817 Family Unity	10/01/97	303	333
I-824 Actions of Approved Petitions	03/21/98	132	162
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	171	201

Total Pending Applications  
(All types, pending first time adj.) 125,294

The following is the TEXAS SERVICE CENTER Processing Times Report for the period ending July 31, 1998.

Application/Petition	Days to Initial Process.	Process. Receipt Date	Time/Days From	To
I-90 Replacement Card	251	11/20/97	120	180
I-90A Saw	21	07/10/98	120	180
I-102 Replacement of Arrival Document	131	03/20/98	60	90
I-129/S New/Amended NI Worker	137	03/16/98	30	40
I-129 New	00	Current	30	40
I-129 Other	148	03/02/98	90	120
I-129(F) Fiance(e)	00	Current	30	40
I-130 Spouse	210	01/02/98	180	270
I-130 Other Relative	257	11/13/97	180	270
I-131 Reentry Permit/Ref. Travel Doc.	na	Current	10	20
I-140 Immigrant Worker (1st & 2nd)	198	01/13/98	150	180
I-140 Immigrant Worker (3rd)	73	05/18/98	60	90
I-360 Pet. for Widow/Spec. Immigrant	195	01/15/98	90	150
I-485 Adjustment	300	09/01/97	240	365
I-526 Investor	284	10/17/97	30	60
I-539 Change/Extend NI Status- Employment-Based	30	05/30/98	90	120
I-539 Change/Extend NI Status- Other	52	06/08/98	90	120
I-589 Asylum	n/a	Current	30	60
I-698 Legalization-Adjustment to LPR	00	Current	60	90
I-724 Waivers	n/a	Current	60	90
I-730 Refugees/Asylee Relative Pet.	n/a	filed at Lincoln		
I-751 Remove Conditions	21	07/09/98	60	90
I-765 Em. Auth.-Asylum Based	n/a	Current	15	30
I-765 Em. Auth.-Other	37	06/23/98	60	90
I-817 Family Unity	169	02/11/98	60	90
I-824 Actions on Approved Petition	178	02/02/98	120	180
I-829 Remove Conditions/Investor	101	04/20/98	30	60
N-400 Application Naturalization	n/a	Preprocessing only	550	730

## A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during October. 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 September 9th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

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

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

### FAMILY-SPONSORED PREFERENCES

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

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

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

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

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

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

### EMPLOYMENT-BASED PREFERENCES

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

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

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

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 Charge-	ability Areas			
	Except Those	CHINA-			
	Listed	born	INDIA	MEXICO	PHILIPPINES
Family					
1st	01JUL97	01JUL97	01JUL97	01AUG93	22MAR87
2A*	01APR94	01APR94	01APR94	08APR93	01APR94
2B	22JAN92	22JAN92	22JAN92	01JUL91	22JAN92
3rd	22MAR95	22MAR95	22MAR95	08FEB90	08MAR87
4th	22MAR88	22MAR88	01APR86	01SEP87	01JUL78

\*NOTE: For October, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 08APR93. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 08APR93 and earlier than 01APR94. (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 Charge- ability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES
Employment- Based					
1st	C	01NOV97	C	C	C
2nd	C	15MAY96	22MAY97	C	C
3rd	C	08SEP94	22DEC95	C	C
Other Workers	15FEB92	15FEB92	15FEB92	15FEB92	15FEB92
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	01SEP97	C	C	C
Targeted Employ- ment Areas/ Regional Centers	C	01SEP97	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 October, 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 Charge- ability Areas Except Those Listed Separately
AFRICA	AF 5,780

ASIA	AS	1,312		
EUROPE	EU	5,351	EXCEPT:	ALBANIA EU 2,090
NORTH AMERICA	NA	10		
(BAHAMAS)				
OCEANIA	OC	173		
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	SA	1,235		

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. ESTABLISHMENT OF A CUT-OFF DATE FOR THE CHINA-MAINLAND BORN EMPLOYMENT FIFTH (INVESTOR) PREFERENCE CATEGORY

A cut-off date has been established for the CHINA-mainland born Employment Fifth preference category. No projection of possible cut-off date movement is possible at this time, since visa number availability in this category will depend on the extent to which numbers unused by other categories fall to the Employment Fifth preference.

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41. INS INTENDS TO REVOKE CERTAIN IRANIAN VISAS

Directors of the INS Service Centers have confirmed to the American Immigration Lawyers Association that they intend to revoke previously approved employment-based immigrant or nonimmigrant visa petitions that would not be approvable under Executive Order 12959. The Service Centers have also indicated that they will deny nonimmigrant extension applications submitted by Iranians in those nonimmigrant categories requiring maintenance of a foreign residence. The Executive Order outlines a boycott on Iranian goods as well as services. The issuance of employment-based nonimmigrant visas to Iranian nationals is considered to be a violation of the rule. If any readers get a revocation notice from the INS, please let me know by e-mailing me at [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com).

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42. GREEN CARD LOTTERY ENTRY PERIOD STARTS OCTOBER 1ST

A reminder to our readers - the DV-2000 green card lottery entry period begins October 1st and continues on through October 31st. All of the information you will need to enter the lottery is posted on our web site at [http://www.visalaw.com/lottery\\_page.html](http://www.visalaw.com/lottery_page.html).