

## Siskind's Immigration Bulletin – December 1999

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Published by Greg Siskind, partner at the Immigration Law Offices of Siskind, Susser, Haas & Devine, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-345-0225; facsimile: 800-684-1267, email: [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com), WWW home page: <http://www.visalaw.com>. SSHD serves immigration clients throughout the world from its offices in the US, Canada and the People's Republic of China. To schedule a telephone or in-person consultation with the firm, go to <http://www.visalaw.com/intake.html>. Writers: Amy Ballentine and Greg Siskind.

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

The end of the millennium is on everyone's minds these days and it is still hard to comprehend that the momentous New Year's Eve is almost here. There seems to be an immigration twist to many of the world important events and even a celebration like the turning of the centuries has consequences. Immigration practitioners have already been thinking about Y2K for several years as demand surged for overseas technology workers to help address the well-known millennium computer problems. The cap on H-1B visas has run out early for the last three years. Predictions are that the cap will be hit even earlier this coming year possibly. If Y2K computer problems are anything other than extremely mild, the lack of computer workers in this country could have dire consequences. In this issue, we report extensively on the H-1B cap.

The new millennium will also have an immediate impact on US consulates around the world. Consulates will not be processing immigrant and non-immigrant visas in early January in order to allocate staff to dealing with

**potential Y2K emergencies for Americans overseas. The State Department is also issuing an unusual terrorist warning to Americans around the world and they are no doubt going to be very busy assisting Americans in dealing with this dangerous development. The threat of terrorism is also having an impact on the movement of people in and out of the US. The US has tightened security at the border with Canada and Mexico in the wake of the capture of an Algerian man attempting to smuggle explosives into the US. Officials are concerned that terrorists will attempt to commit acts of atrocity to coincide with millennium celebrations.**

**Rumors are also circulating around the globe that the US will grant amnesty to any people in the US on January 1<sup>st</sup> as part of America's millennium celebration. There is a similar rumor that people in England in that nation's Millennium Dome will be granted British residency. As we report later in this issue, both rumors are completely false.**

**Immigration-related matters are also dominating the headlines beyond the Y2K questions. It has been some time since Americans discussed US asylum rules in everyday conversation. But the plight of a 6 year old Cuban boy found floating off the coast of South Florida has ignited tensions between the US and Cuba not seen in years. Coincidentally, a standoff between Cuban INS detainees has forced important behind the scenes negotiations between Cuban and American officials regarding the deportations of Cubans. We discuss all of these stories as well as dozens of other news items and our regular features in this month's issue.**

**In firm developments, we are also excited to announce that SSHD has reached agreement to provide immigration content to two of the most important web sites on the Internet. Starting this month, Greg Siskind will be hosting live chat sessions on Monster.com, the largest career site on the Internet. SSHD will also write immigration related stories for Monster.com. We provide all of the details in the story immediately following this one. Beginning this month, we will also be a content partner on Silicon Valley Bank's eSource site. eSource is a password accessible web site providing a wide assortment of business-related content for SVB's 6000 computer and biotech company clients.**

**Finally, this last monthly bulletin of 1999 will be our last monthly publication - beginning in the first week of January 2000 we will begin publishing the newsletter on a weekly basis. In this way we will be able to bring our readers news when it is more timely.**

**And, as always, we remind our readers that this publication is produced by SSHD, a law firm serving clients in all 50 states as well as Canada. Readers are welcome to request telephone or in person consultations with our firm's lawyers. Just go to <http://www.visalaw.com/intake.html> to learn**

more. We are normally able to schedule appointments within two business days of making a request.

Warm regards,

Greg Siskind and Amy Ballentine

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## **2. SISKIND, SUSSER, HAAS & DEVINE CHOSEN TO WORK WITH MONSTER.COM**

SSHD is very pleased to have issued the following press release this week:

Siskind, Susser, Haas & Devine has been selected to work with Monster.com in providing information on US and Canadian immigration law for its popular website.

Attorneys from the law firm will host weekly online chat sessions at Monster.com's website ([www.monster.com](http://www.monster.com)). The chats are held on Wednesdays at 2 pm eastern US time. The firm will also provide articles specifically geared to individuals seeking visas to work in the United States. The content will also help employers learn about compliance with US immigration laws.

"Monster.com is one of the most respected global online networks for career seekers and businesses striving to use innovative technology in the recruiting process. Our firm is very excited to be working with a company that shares our commitment to serving the public through the Internet," noted Greg Siskind, a founding partner of the law firm and co-author of the J Visa Guidebook, an overview of the J-1 exchange visitor visa program.

Siskind, Susser, Haas & Devine was the first US immigration law firm with a World Wide Web site ([www.visalaw.com](http://www.visalaw.com)). Their site receives over 100,000 hits weekly from visitors from more than 130 countries. *The Wall Street Journal*, *USA Today* and *The New York Times* are among the prestigious publications that have profiled the firm and its innovative use of internet-based technologies to attract both an international client base and educate the public about the latest immigration issues.

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## **3. LEGISLATIVE UPDATE – ADVOCACY UPDATE CENTER**

## **HOUSE BILLS**

**H.R. 3272, the Keeping Families Together Act of 1999, introduced by Representative Bob Filner (D-CA), would restore the definition of aggravated felony to what it was before 1996, as well as return some other immigration provisions to their pre 1996 state. The bill would allow people who have been negatively impacted by the 1996 change in the definition of aggravated felony to apply for adjustment of status or cancellation of removal. It would return detention policy to what it was before 1996 and would restore section 212(c) discretionary relief for permanent residents.**

**H.R. 3273, the Military Families Unification Act of 1999, introduced by Representative Bob Filner (D-CA), would exempt spouses and children of Philippine men serving in the US Navy from some bars to admission and relief.**

**H.R. 3508, introduced by Representatives David Wu (D-OR), Thomas Davis (R-VA) and Fortney Pete Stark (D-CA) would amend the H-1B visa program. Under this bill, 65,000 additional H-1B visas would be available annually between 2000 and 2002. To obtain this visa, the potential employee must hold a master's or Ph.D. degree from a US institution, or the equivalent from a foreign school. Also, the employer must make a contribution to the scholarship fund of a US institution of higher learning that is at least equal to the maximum Pell Grant award. For 1998-1999, this amount was \$3000.**

## **SENATE BILLS**

**S. 1940, the Refugee Protection Act of 1999, introduced by Senators Patrick Leahy (D-VT), Sam Brownback (R-KS), Russell Feingold (D-WI), Edward Kennedy (D-MA), John Kerry (D-MA), James Jeffords (R-VT), and Frank Lautenberg (D-NJ) is designed to reduce the chances that a bona fide refugee will be returned to the country of persecution. The bill provides for increased review of asylum decisions and more discretion on whether to detain asylum seekers.**

**S. 1953, the Legal Employment Authentication Program (LEAP) Act of 1999, introduced by Senator Robert Kerrey (D-NE), would redesign current employment eligibility confirmation programs. The existing I-9 employment verification program has become very controversial in Kerry's home state of Nebraska as the INS has been cracking down on the employment of illegal workers in the state's large meatpacking industry. Participation in the new program will be largely voluntary, and receiving confirmation of a person's eligibility to work in the US through the program established will create a presumption that the employer has not violated the prohibition against employing people without proper authorization.**

Participation in the program would be mandatory for the federal government and for certain employers found to have employed unauthorized workers. Failure to comply with the program by employers who are required to participate would result in a presumption that the employer did hire an unauthorized worker. Inquiries into a person's employment authorization must be made within three days of hiring. The confirmation system would be designed to disclose only whether a person is authorized to work and would not be allowed to disclose any information relating to a person's Social Security account. A companion bill has been introduced in the House.

Nebraska's other Senator, Republican Charles Hagel, has introduced a bill that would establish a new pilot program for confirming employment eligibility for employees hired by businesses subject to Operation Vanguard, primarily the Midwestern meatpacking industry. The most important provision in the proposed law would allow INS agents to use Social Security records to both confirm eligibility and determine whether someone is claiming another person's identity.

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#### 4. INS REMAINS SILENT ON OVERISSUANCE OF H-1B VISAS IN 1999

[Readers following the H-1B cap issue closely may be interested in the H-1B Emergency Update page at the SSHD web site (<http://www.visalaw.com/h1bpage.html>). Longtime visitors to our site may recall that that section of our web site has been one of the most complete and up-to-date sources of news during previous H-1B cap crises.]

A computer malfunction at the INS resulted in the accidental issuance of 20,000 more H-1B visas than the law allows during fiscal year 1999. Along with adding ammunition for those who believe the INS must be reorganized, this mistake has also added to the politicization of the H-1B program. As our readers know, the H-1B program, which provides temporary work visas for skilled foreign workers, has been the subject of many intense political debates. The counting mistake by the INS and how the agency will deal with it are likewise the subject of much debate.

However, the debate is occurring without much guidance from the INS, which has remained almost completely silent on the issue. When the news of the extra visas first came out, some within the INS suggested the extra visas issued last year would be accounted for by reducing this year's allotment by 20,000. This proposal met with criticism from nearly all fronts, most notably the office of Senator Spencer Abraham (R-MI), which issued a strong letter to the INS disputing its authority to make such a decision.

While the INS has not issued any formal announcement with regard to the overcount, its silence is seen by some as equal to a statement. The American Immigration Lawyer's Association is taking the agency's silence to mean the extra visas issued last year will be counted against those allotted for this year. According to AILA, based on this assumption, all H-1B visas available for fiscal year 2000 could be used before the year 2000 even begins. While this is not a certainty, employers and employees should be prepared to file H-1B petitions as soon as possible to avoid the cap should it be reached early than expected.

In related news, the INS has instructed the four Service Centers to temporarily stop processing new H-1B petitions so that the Centers will be closer together in their processing times, and so that the agency will have a better idea of how many petitions have been approved. The agency is emphasizing that this move is not an indication that the cap is about to be reached, but only an attempt to improve their counting accuracy. If the temporary halt has the desired effect, the agency may implement it on a monthly basis.

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## 5. US BORDER POLICY CRITICIZED BY UN COMMISSIONER FOR HUMAN RIGHTS

During a recent visit to Mexico, the United National High Commissioner for Human Rights toured portions of the US-Mexico border and arrived at the conclusion that US border policy is endangering the lives of many who attempt to migrate. The Commissioner, Mary Robinson, former President of the Republic of Ireland, had harsh words during a news conference following her tour.

Robinson said her impression of the border was that hopeful migrants were deflected to areas where their lives are at greater risk. According to immigrant advocates, her impression is accurate. They claim that lives are put in danger as a result of Operation Gatekeeper, a massive deployment of Border Patrol agents that has shut down traditional crossings and forced people to journey through dangerous and isolated terrain to avoid US officials. Since the implementation of Operation Gatekeeper five years ago, over 450 people have died attempting to cross the border.

Robinson said she plans to discuss US border policy with officials in Washington, D.C.

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## **6. BUREAU OF LABOR STATISTICS TECH WORKER PREDICTIONS SHOW DEMAND WILL CONTINUE TO OUTPACE SUPPLY OF AVAILABLE US WORKERS**

The Bureau of Labor Statistics, a division of the Department of Labor, recently released its employment projections report for 1998-2008. The new report shows growth of the labor market in the software and computer industries will be even more rapid than the Bureau predicted in its previous employment report, released in 1996. The 1996 numbers predicted an explosive growth in demand for software workers of 138,000 workers annually, but these numbers pale in comparison with the 200,000 new workers the Bureau says will be needed in each of the next ten years to keep up with demand.

These numbers will far outpace the supply of workers provided by US schools. Only 46,000 people a year graduate from US colleges with degrees in the software field, and 10,000 of these are associate degrees, requiring only two years to obtain. The gap between demand for software workers and the US supply almost certainly means the US will have to seek skilled workers from abroad, which will mean a continuation of the high-profile role of the H-1B program.

The H-1B cap was temporarily raised to 115,000 in 1998, largely due to the efforts of the software and related industries. One of their most effective arguments was that the additional workers were needed to address the Y2K problem. In 2002 the annual cap will return to 65,000, but according to the BLS report, the crisis in the tech-worker market will not be over. Therefore, it is likely that bills to lift the cap will continue to be proposed, and we may even see one passed.

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## **7. NEW INS MEMORANDUM ON "NEW EMPLOYMENT" FOR H-1B WORKERS**

On December 9, 1999, the INS sent a memorandum to the four Service Centers outlining the proper procedure for filing in Part 2 of Form I-129. The procedures stated in this memo differ in some substantial ways from the practice of most immigration attorneys, so the memo may have a significant impact.

Form I-129 is used for most temporary work visas, including the H-1B. Part 2 of the form allows the petitioner to list the basis upon which the requested classification is sought. It is the section of the form that the INS uses to track the number of H-1B visas issued each year, so it is not

surprising that the agency wants to clarify procedures for completing this section.

The petitioner is allowed four types of employment classification:

- New employment
- Continuation of previously approved employment without change
- Change in previously approved employment
- New concurrent employment

Only cases involving new employment count toward the annual cap, and not all of those are counted. Cases involving new employment where the employee already holds an H-1B visa are not counted against the cap.

The INS says it is working on the creation of a new version of Form I-129 that will make keeping track of the number of visas issued easier, but until then it will use the current version.

This announcement also raises questions of whether the confusing form has led to the INS over counting H-1B usage for years. It is widely agreed that many immigration lawyers and HR professionals have routinely been incorrectly completing the form to indicate an application is subject to the cap. The INS' need to review all of these cases may also explain why the agency is unable to release any statistics on H-1B usage.

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## 8. BORDER AND DEPORTATION NEWS

The rules governing the entry of Mexican nationals are being slightly amended. Until now, Mexican nationals have been able to enter for a period of up to 72 hours, and up to 25 miles into the US without obtaining an I-94 Arrival – Departure Record. The new rule, which will apply only to Arizona, will allow Mexican nationals to travel up to 75 miles into Arizona. The reasons for this change are twofold: first the increase in cross-border trade created by the North American Free Trade Agreement, and second, the fact that Tucson, the most southerly major city in Arizona, is 55 miles from the Mexican border.

Two Pennsylvania men are facing up to 120 years in prison and fines of \$3.75 million dollars for their role in an immigration document fraud ring. According to a recently unsealed federal indictment, the men sold about 50 fraudulent documents, including green cards, employment authorization documents, and Social Security cards, over a two-year period for a profit of

about \$17,000. Authorities say an as yet unidentified New Jersey company provided the counterfeit documents, but have not revealed whether there is an investigation into this.

A 65 year-old grandmother was released from Krome Detention Center after spending five days there. According to the INS Virticia Gonzalez should have been deported over 20 years ago, and it could still happen. Gonzalez was ordered deported in 1975 after overstaying a tourist visa. She voluntarily departed the US, obtained a green card, and returned to the US in 1977. According to the INS she is now deportable because she lied on her green card application when she said she had never been deported. Her family says she thought that because she left voluntarily, she was not deported. The INS has emphasized that it did not release Gonzalez out of sympathy, but to make room in the overcrowded facility for criminal aliens awaiting removal.

A smuggling operation was discovered when one of the immigrants went to police in Colorado to report that the smuggler had kidnapped the immigrant's son because the immigrant could not pay the smuggling fee. Local sheriff's deputies found the smuggler and the boy unharmed in a hotel room outside of Denver. The father has agreed to return to Mexico voluntarily, but may stay longer if needed for a trial.

A Korean immigrant has been sentenced to 22 months for his role in a smuggling ring that brought Chinese immigrants from South American to the Bahamas and the US. Nam Jick Cho was arrested in 1997 when 23 undocumented Chinese men were found on the New Jersey shore. He has been in custody since then, which means he should be released shortly. His sentence was about have the maximum possible, a reflection of his cooperation with authorities during the investigation. Cho also faces possible deportation.

The Hispanic liaison for the Green Bay, Wisconsin police department has resigned amid questions about his work authorization. After a complaint was made questioning whether his employment card was valid, the department questioned him, and he chose to resign. A Mexican national, he had apparently obtained work authorization by submitting documents showing he was from El Salvador. Under the Nicaraguan Adjustment and Central American Relief Act, Salvadorans who arrived in the US before 1990 were given work authorization.

**Charges have been dropped in the second trial of an Arizona man accused of shooting at a group of migrants crossing his property and wounding one. According to the District Attorney the charges were dropped because the four primary witnesses, including the man who was injured, could not be located.**

**A Honduran woman has been sentenced to 2 1/2 years in prison after pleading guilty to renting her seven-month old baby to migrants to aid them in crossing the border. Because the INS lacks the resources to care for families with infants, couples that cross the border without documentation but with a child are not taken into custody, but are released pending a hearing date.**

**An Italian national sentenced to two years in jail last year for shoplifting has been ordered deported to Italy, where she has not lived since her family came to the US when she was five years old. She was convicted on three misdemeanor counts, but because she was sentenced to more than one year in prison, she is considered an aggravated felon. She stole \$25 worth of goods from a local store.**

**Construction is about to begin on the last segment of a new fence between California and Mexico. The 3 1/2 mile segment will start at the Pacific Ocean and stretch into nearby mountains. Officials say it will give the Border Patrol the capability of stopping almost 100% of people who attempt to cross the border on foot. This segment will cost \$6 million and will take until 2002 to finish.**

**Officials have arrested eight men suspected of being alien smugglers in connection with the rapes of two Mexican women they were smuggling. They are also said to have beaten the man who was with them. According to this man, as many as 20 people were involved in the rapes, which occurred while the Mexicans were being held until they could pay the smugglers' \$1200 per person fee. The suspects are thought to be part of a family of smugglers who are known for their rough treatment of people who cannot pay the fee.**

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## **9. RUMORS OF YEAR END AMNESTY ONLY RUMORS**

For months rumors have been circulating that there will be an amnesty granted to those people who are unlawfully present in the US when the year 2000 begins. These rumors are only that, rumors, and there is no planned visa or amnesty for the end of the year. Indeed, a far-reaching amnesty like that of 1986 appears extremely unlikely, and no one should rely on the possibility of one.

The US is not the only place such rumors abound. The British embassy in Pakistan has issued an official statement debunking the notion that anyone inside the Millennium Dome in London at midnight on New Year's Eve will be given British citizenship or residency.

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## **10. CUBAN-US SHOWDOWN OVER REFUGEE CHILD CONTINUES**

Yet another tragedy has occurred involving an attempt by Cubans to escape to the US, this time involving not only the deaths of many of those attempting to immigrate but also what is rapidly becoming an international child custody dispute. Thirteen people, including a five-year old boy, Elian Gonzalez, were in a boat that sank off the coast of Florida. Among the 10 people who died was the boy's mother. Her death has led to intense debate over the boy's fate.

Like many Cubans, Elian has family in Florida, and they want for him to stay in the US. The boy's father, who remains in Cuba, maintains that Elian was kidnapped by his mother, and wants him returned to Cuba. The boy has been released into the custody of relatives while a decision is reached. This decision will undoubtedly be a difficult one, pitting as it does the traditional American view that a child should be raised by a parent against long standing hostility to Cuba and the knowledge of the country's increasing economic woes.

The federal government has declined to have any role in the custody battle, saying child custody determinations are best left to state courts. Most people involved hope the matter can be resolved without resorting to the courts. However, because Elian is an alien, there are issues not normally found in child custody cases, even ones that involve international kidnapping.

Under the Cuban Adjustment Act of 1966, Cuban nationals can obtain lawful permanent residence in the US. In 1995, a new migration agreement was entered into under which only those people who actually set foot on US soil are allowed to become permanent residents, and others are returned to Cuba. Elian was found at sea by a fisherman, and would ordinarily have been returned to Cuba. However, he was taken ashore by

the Coast Guard, according to officials for medical treatment, where he became eligible under the Cuban Adjustment Act. Cuban officials point to this as evidence that the US is not following its own rules.

Cubans who do not make it to US soil may still apply for asylum, and an asylum application has been filed on behalf of Elian. However, the case does not clearly demand a grant of asylum. Asylum is granted to a person who has suffered persecution or has a reasonable fear of future persecution because of a few protected grounds – religious and political beliefs, nationality, and membership in a particular social group. At this stage, it is difficult to see how Elian's case could meet this standard. Moreover, it is questionable that a six year old will be able to establish a reasonable fear of anything as is normally understood in the law.

Elian will remain in the US until at least January 21, 2000, the date the INS has set for an initial hearing in his asylum case. Meanwhile, five leading Republican Senators have called for Elian to be granted US citizenship. Congress can grant a person citizenship by a private bill, a special type of legislation designed to benefit a single person.

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## **11. NATURALIZATION AND CITIZENSHIP UPDATE**

A Canadian-born pastor has been granted US citizenship despite having been convicted of possession of over an ounce of marijuana when he was 18 years old. Steven Mullenix came to the US in 1995 on a religious worker visa and worked at the Assemblies of God church in Rochester, New York. As the son of a US citizen who moved to Canada at age 14, he sought citizenship. However, the 1996 immigration law made his conviction a basis for permanent exclusion from the US. He sued to try to change this law, but now that he has citizenship has dropped the suit. He plans to get a degree in theology and work as a prison chaplain.

As part of the INS Direct Mail program, which is designed to centralize naturalization application processing at the four regional Service Centers instead of local offices, the INS will now only be accepting naturalization applications from people serving in the military who are applying for naturalization based on their military service.

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## **12. IMMIGRANTS NEED TO BE PREPARED FOR TIGHTER MILLENNIUM BORDER SECURITY**

The recent apprehension of an Algerian man as he crossed the US-Canada border in Washington state with almost 120 pounds of explosives, including some nitroglycerin, an extremely powerful substance, along with some other incidents, has led to increasing concerns that radical groups may use the millennium as a backdrop for terrorist activities within the US. The matter has been compounded by another apprehension of a Canadian woman and Algerian man with terror group connections at the US-Canadian border in Vermont. The incidents have led in turn to increased monitoring and patrolling of the borders.

People crossing the border over the next few weeks should expect longer than usual delays as officials conduct more in depth questioning of more people. Noncitizens should be prepared for increased scrutiny, and to avoid any unnecessary situations, should remember to bring proper identification and documentation of their right to enter the US.

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### **13. INS ANNOUNCES PLAN TO CREATE FEE FOR F, J, AND M NONIMMIGRANT STUDENTS**

Among the many new rules in immigration created in 1996 was a provision instructing the INS to develop a program to gather information on foreign students and exchange visitors studying in the US. In order to institute this program, the INS has proposed a \$95 fee to be paid by F-1, J-1 and M-1 students. The INS is accepting comments on the proposal until February 22, 2000. The text of the regulation can be found in the Documents Collection of the Visalaw.com web site at <http://www.visalaw.com/docs/>.

Under the plan as currently proposed, the schools and exchange visitor programs would be responsible for collecting the fee and submitting it to the INS. The fee would be imposed whenever the student transfers to a new school, begins a new program of study, or changes exchange visitor category. Failure by the student to pay the fee or by the school to submit it to the INS would cause the student to be out of status and in need of reinstatement. The INS will issue receipts for the fee, and the receipt or a copy must be included with each subsequent request for an immigration benefit.

A few students would be exempt from the fee. These include J-1 exchange visitors who are participating in programs sponsored by the US government, and F-1 and M-1 students attending private elementary schools, private high schools, and public high schools. Dependents in F-2, J-2 or M-2 status would not be subject to the fee.

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#### **14. MOTIVATED BY ONGOING HIGH TECH VISA SHORTAGE, SOME COMPANIES MOVE OPERATIONS ABROAD**

Even as high-tech companies continue to pressure Congress to raise the annual limit on the number of H-1B visas, they are developing other ways of coping with the technology worker shortage, including sending their business overseas. Some reports claim that the amount of work now being sourced overseas is increasing by 30% a year. Many companies see this new trend as a way to employ high-tech workers without the hassle of going through US immigration procedures. Already, major outsourcing operations have developed in India, Ukraine, Ireland and Israel.

The pattern may become more common in the future, especially if the trends that have encouraged its growth continue. In fiscal year 1998, when there were 65,000 available H-1B visas, the annual cap was reached with three months left in the year. In fiscal year 1999, with 115,000 visas available, the cap was hit with five months left. Now, in fiscal year 2000, which began on October 1, there are rumors that the cap could be reached as early as January, only four months into the fiscal year.

While there are countries that have benefited from the movement of technology jobs overseas, critics worry that the trend will not benefit the US. Labor unions and other critics worry that it will hurt US workers, both in the short term by eliminating jobs, and in the long run by reducing the chances that US workers will be retrained for technology jobs. Ironically, labor unions have also been some of the organizations most harshly critical of raising the H-1B cap.

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#### **15. ANOTHER PERSON DETAINED ON SECRET EVIDENCE IS RELEASED**

Last month we told you about the release of Hany Mahmoud Kiareldeen, an immigrant who had been detained by the INS on the basis of secret evidence claimed to link him to the World Trade Center bombing (<http://www.visalaw.com/99nov/17nov99.html>). Now another person being held on the basis of secret evidence has been released and the INS has decided not to appeal the decision to the Attorney General Janet Reno.

Nasser K. Ahmed has finally been released after spending over three years in INS custody. Ahmed was detained based on secret FBI evidence claimed to link him to Sheik Omar Abdel Rahman, the Muslim cleric

convicted of conspiring to blow up the United Nations building in New York. Ahmed was order released by an Immigration Judge and the Board of Immigration Appeals, but each time the INS appealed the decision.

Some analysts suspect the reason for the INS' decision to not seek an answer from Reno was to avoid a decision that would have had an impact on all those detained because of secret evidence (about 20 cases in all). By taking this approach, while Ahmed was released, the INS is still free to detain others using secret evidence.

The use of secret evidence in immigration proceedings has been hotly debated. The government claims such evidence must be used to ensure national security. Immigrant advocates and groups such as the American Civil Liberties Union claim the use of secret evidence is unconstitutional and is often used when there is really no evidence at all. For support, they point to the fact that in most of these cases when judges finally do see the evidence, they order people released. For example, in Ahmed's case, before the judge saw the secret evidence he ordered Ahmed deported. After some of the evidence was released, the same judge ruled that Ahmed should not be deported, and should be released from custody.

Next year the deportation case against Ahmed is expected to continue. The INS claims he is a terrorist and a threat to US national security. Ahmed is seeking political asylum, claiming he will be tortured if forced to return to Egypt.

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## **16. CUBAN DETAINEE HOSTAGE CRISIS ENDS WITH SURPRISE AGREEMENT TO DEPORT DETAINEES TO CUBA**

On December 13, 1999, the warden and three deputies at the St. Martin Parish Jail in Louisiana were taken hostage by five Cuban detainees. One of the hostage takers was being held on criminal charges; the other four were INS detainees. They demanded their release from prison and their deportation to Cuba. This would ordinarily have already occurred, but the US and Cuba have no deportation agreement, and no third country contacted would accept the men. After a weeklong standoff, the situation was resolved with the surprising news that the detainees would be deported to Cuba.

The situation began as the detainees were returning to the inside of the jail following exercise time. The men used homemade knives to take the guards by surprise. One of the deputies was released Monday afternoon, shortly after being taken hostage, and another was released during the

week. By the end of the crisis, most of the inmates were removed from the jail, leaving only five female inmates, who were also being held hostage.

A Miami-based group, Mothers for Freedom, that rose to prominence earlier this year after supporting Cuban detainees on a hunger strike at Krome Detention Center, received a letter from one of the Louisiana detainees in late November. A member of the group, Ruby Feria, says they forwarded the letter to INS Commissioner Doris Meissner. The INS confirms receipt of the letter, but did nothing because it had received no complaints about treatment of detainees at the facility.

This is not the first time Cuban detainees have taken matters into their own hands. In 1987, riots at two major facilities in Oakdale, Louisiana and Atlanta, Georgia used for housing Cuban detainees led to the current practice of dispersing detainees throughout local jails. Sixty percent of the 17,000 people in INS custody are kept at local jails, with the federal government paying between \$40 and \$65 a day for each detainee.

The deportation of these men to Cuba is a surprise, but not unheard of. In 1984, talks between the US and Cuba produced a list designating 2,700 people who arrived in the US during the 1980 Mariel boatlift as career criminals. Since then, 1,400 people have been returned to Cuba. The hostage takers are being deported under this mechanism.

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## 17. NEWS BYTES

A Border Patrol agent has resigned rather than face criminal charges for shooting a pellet gun at a raft ferrying three people across the All American Canal, which separates California from Mexico. As part of the agreement, the agent admitted shooting at the raft and trying to cover it up by throwing the gun in the canal. According to a witness, one of the three rafters did not make it to land, but no body was ever found.

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## 18. STATE DEPARTMENT VISA BULLETIN – JANUARY 2000

### IMMIGRANT NUMBERS FOR JANUARY 2000

A. STATUTORY NUMBERS (This communication provides priority dates and other transitional information as taken from the State Department's Visa Bulletin released December 15, 1999.) On the following chart, the listing of a date for any class indicates that the class is oversubscribed;

"C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available.

PREFERENCE

	All Charge- ability Areas Except Those Listed	INDIA	MEXICO	
PHILIPPINES				
Family				
1st	15SEP98	15SEP98	22OCT93	22MAR88
2A*	15SEP95	15SEP95	22JUN94	15SEP95
2B	22NOV92	22NOV92	22AUG91	22NOV92
3rd	08OCT95	08OCT95	08JUL91	15NOV87
4th	01OCT88	15MAR87	01OCT88	15JUL79

**\*NOTE: For JANUARY, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 22JUN94. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 22JUN94 and earlier than 15SEP95. (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	C	C	C	C
2nd	C	C	C	C	C
3rd	C	C	C	C	C
Other	01NOV93	01NOV93	01NOV93	01NOV93	01NOV93
Workers					
4th	C	C	C	C	C
Certain	C	C	C	C	C
Religious					
Workers					
5th	C	C	C	C	C
Targeted Employ- ment Areas/ Regional Centers	C	C	C	C	C

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

## ADDITIONAL HIGHLIGHTS FROM THE JANUARY VISA BULLETIN

### B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For JANUARY, immigrant numbers in the DV category are available to qualified DV-2000 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 12,800	Except: Ghana AF 6,040 Nigeria AF 5,801
ASIA	AS 4,940	
EUROPE	EU 14,200	Except: Albania EU 5,100
NORTH AMERICA (BAHAMAS)	NA 15	
OCEANIA	OC 753	
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	SA 1,650	

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-2000 program ends as of September 30, 2000. DV visas may not be issued to DV-2000 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2000 principals are only entitled to derivative DV status until September 30, 2000. DV visa availability through the very end of FY-2000 cannot be taken for granted. Numbers could be exhausted prior to September 30. Once all numbers provided by law for the DV-2000 program have been used, no further issuances will be possible.

## 19. GOVERNMENT PROCESSING TIMES

### Texas Service Center Processing Times

Jurisdiction: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee and Texas.

The following is the Texas Service Center Processing Times Report for the period ending November 30, 1999:

Application/Petition	Days to Initial Process.	Process. Receipt Date	Time/Days From To		No. of cases in the Work Distribution Unit
I-90 Replacement Card	25	11/05/99	60	90	12,825
I-90A SAW	188	05/21/99	30	60	69
I-102-Replace Arrival doc	0	Current	30	60	0
I-129/S New/A/Ni Worker	46	10/14/99	30	60	3,773
I-129/L New	29	11/01/99	30	60	807
I-129 Other	28	10/22/99	30	60	137
I-129(F) Fiancé(e)	0	Current	30	40	0
I-130 Spouse	42	10/18/99	60	90	2,375
I-130 Other Relative	689	12/22/97	650	750	51,141
I-131 Advanced Parole	35	10/25/99	30	60	1,437
I-140 Imm. Wkr. (1st/2nd)	13	11/17/99	350	400	145
I-140 Immigrant Wkr. (3rd)	14	11/16/99	200	275	114
I-360 Pet. Widow/Spec. Imm.	33	10/27/99	120	180	93
I-589 Asylum	0	Current	60	90	0
I-698 Legal - Adj. to LPR	0	Current	525	575	0
I-485 Adjustment	419	09/01/98	500	550	40,053
I-526 Investor	0	Current	60	90	0
I-539 Chg/Ext NI Stat EB	55	10/05/99	90	120	7,686
I-539 Chg/Ext NI Stat - Other	56	10/04/99	200	250	686
I-724 Waivers	0	Current	60	90	0
I-730 Ref/Asy Rel Pet	n/a	File @ NSC			
I-751 Remove Conditions	0	Current	60	90	0

I-765 EA-Asylum Based	14	11/16/99	30	60	0
I-765 EA-Other	22	11/08/99	60	90	14,856
I-817 Family Unity	55	10/06/99	30	60	270
I-824 Actions Apprd Petitions	122	07/28/99	30	60	1,723
I-829 Remove Cond/Investor	1,090	11/25/96	600	650	343
N-400 Naturalization	n/a	Preprocess	550	730	
*THE WORD "CURRENT" MEANS WITHIN 30 DAYS					

Source: [American Immigration Lawyers Association](#)

### Vermont Service Center Processing Times

**Jurisdiction: : Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington D.C. and West Virginia.**

The following is the Vermont Service Center Processing Time Report for the period ending November 30, 1999:

Application/Petition Type	Processing for Initial Receipt Date	Receipt Notice Processing Time in Days	
		From	To
<b>Business &amp; Non-Immigration Services</b>			
I-102	Current	60	90
I-129/S New Amended NI Worker	10/26/99	15	21
I-140 Immigrant Worker	06/21/99	90	180
I-360 Pet for Widow/Spec Imm	05/06/99	60	120
I-526 Investor	Current	15	30
I-539 Change/Extend NI Status	10/18/99	30	60
I-724 Waiver	Current	30	180
I-829	Current	30	45
<b>Family Services</b>			

I-129(F) Finance (e)	Current	15	21
I-130 Immed Rel	Current	180	240
I-130 Preference	01/08/99	180	240
I-751 Remove Conditions	Current	30	45
I-817 Family Fairness	Current	30	60
I-824 Actions of Approved Petitions	Current	60	90
Resident Status Services			
I-90-A SAW	Current	30	60
I-131	11/26/99	30	60
I-485 Adjustment	12/05/98	180	360
I-589	Current	30	90
I-698 Legalization-Adjustment to LPR	Current	30	60
I-765 Employment Authorization-Asylum Based	11/13/99	60	90
I-765 Employment Authorization-Other	10/26/99	60	90
N-400 Naturalization-Initial Processing	11/22/99	240	300
N-600 Application for Citizenship	07/01/99	30	60
I-90 Replacement Card	08/05/99	240	360

Source: [American Immigration Lawyers Association](#)

### Nebraska Service Center Processing Times

Jurisdiction: Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

The following is the Nebraska Service Center Processing Time Report for the period ending November 30, 1999:

Application/Petition Type	Receipting Processing Date*	Receipting Processing Time in Days	Volume of Frontlog Cases	Total Processing Time by Date	Range of Total Processing Time in Days From To	
I-90 Replacement	11/04/99	<b>26</b>	<b>603</b>	<b>09/15/99</b>	<b>75</b>	<b>105</b>

Card						
I-102 Replacement of Arrival Document	<b>11/09/99</b>	21	74	<b>03/26/99</b>	244	274
I-129/S New/Amended NI Worker	<b>11/16/99</b>	14	2,354	<b>09/28/99</b>	60	90
I-129(F)/Fiance(e)	<b>11/18/99</b>	12	141	<b>10/29/99</b>	60	90
I-130 <b>Spouse</b>	<b>11/12/99</b>	18	2,397	<b>04/26/99</b>	214	244
I-130 other	<b>11/12/99</b>	xx	xx	<b>11/27/98</b>	363	393
I-131 Reentry Permit	<b>11/22/99</b>	8	1,695	<b>07/14/99</b>	136	166
I-131 Ref, Travel Doc.	<b>Current</b>	xx	xx	<b>11/15/99</b>	25	45
I-140 Immigrant Worker	<b>11/15/99</b>	15	398	<b>11/12/98</b>	378	408
I-360 Pet. for Widow/Spec. Imm.	<b>Current</b>	5	-	<b>08/13/99</b>	107	137
I-485 Employment	<b>11/24/99</b>	6	92	<b>07/28/98</b>	482	512
I-485 Health Care Workers	<b>10/25/99</b>	xx	xx	<b>08/31/98</b>	420	450
I-485 Asylee	<b>10/07/99</b>	53	3,925	<b>06/02/98</b>	700	750
I-485 Refugee	<b>08/15/99</b>	105	9,795	<b>07/30/98</b>	480	510
I-485 HRIFA	<b>11/22/99</b>	8	859	<b>06/11/99</b>	169	199
I-539 Change/Extend NI Status - Employment Based	<b>11/09/99</b>	21	976	<b>08/13/99</b>	107	137
<b>I-539 Change/Extend NI Status - Other</b>	<b>11/09/99</b>	xx	xx	<b>03/29/99</b>	241	271

I-589 Asylum	<b>11/26/99</b>	<b>5</b>	<b>135</b>	<b>Not Adjudicated</b>	<b>15</b>	<b>30</b>
I-698 Legalization - Adjustment to LPR	Current	<b>5</b>	-	<b>Current</b>	<b>15</b>	<b>45</b>
I-730 Refugee/Asylee Relative Petition	<b>11/08/99</b>	<b>22</b>	<b>389</b>	<b>Current</b>	<b>150</b>	<b>180</b>
I-751 Remove Conditions	11/04/99	<b>26</b>	<b>1,502</b>	<b>08/31/99</b>	<b>180</b>	<b>210</b>
I-765 Employment Authorization-A5	<b>11/22/99</b>	<b>xx</b>	<b>xx</b>	<b>11/19/99</b>	<b>10</b>	<b>20</b>
I-765 Employment Authorization-Other	<b>11/22/99</b>	<b>8</b>	<b>512</b>	<b>09/13/99</b>	<b>60</b>	<b>90</b>
I-817 Family Unity	<b>Current</b>	<b>5</b>	-	<b>Current</b>	<b>60</b>	<b>90</b>
I-821 TPS	<b>Current</b>	<b>5</b>	-	<b>Current</b>	<b>60</b>	<b>90</b>
I-824 Actions on Approved Petitions	<b>11/15/99</b>	<b>15</b>	<b>114</b>	<b>09/25/98</b>	<b>425</b>	<b>455</b>
N-400 Naturalization	<b>11/22/99</b>	<b>8</b>	<b>998</b>	<b>Not Adjudicated</b>	<b>340</b>	<b>370</b>
I-724 All Waivers	<b>11/04/99</b>	<b>26</b>	<b>32</b>	<b>04/23/99</b>	<b>100</b>	<b>130</b>

Total Pending Applications 53,244

(All types, pending first time adj)

\*\*Cases of the form type received in the Center on the date listed were being fee receipted at NSC on October 29, 1999.

\* On October 29, 1999, the notice resulting from the first adjudicative action was being sent for cases received on the date listed. Some cases are adjudicated earlier than this date by regulation or policy; however, only one processing time can be listed on receipt notices for each form type.

**xx = This count is included in the form line immediately above**

Source: [American Immigration Lawyers Association](#)

**CSC – new times should be announced before Christmas, current through mid-December**

Local Times

District or Suboffice	Permanent Residence Filing Until Approval I-485 (1)	Naturalization Filing Until Swearing In (2)	Advance Parole Approval (3)	Work Authorization Approval (4)
Albuquerque	540-730	365-540	30-45	14-21
Atlanta	450-540	365-540	30	90
Baltimore	365-540	365-540	1-14	14
Boston	n/a	n/a	1	1
Buffalo	200-300	365-390	2-15	1-14
Charlotte	730	240-1095	30-60	80-90
Chicago	540	540-720	1-2	21-30
Cincinnati	240-330	270-510	7	1
Dallas	790-820	720-750	60-90	120-150

Denver	630-720	240-300	10-12	42-56
Detroit	365-455	425-545	21-30	21-30
El Paso	730-910	730-910	15-30	15-30
Harlingen	910	760	162	91
Honolulu	240-300	30-60	3-7	1
Houston	980-1200	670-730	30	90
Indianapolis	180-365	180-365	1-14	1
Kansas City	360-420	150-450	21	1
Louisville	480-600	600-720	21-30	21-30
Los Angeles	720-750	30-90	60-75	14-30
Memphis	600-720	420-480	30-60	80-100
Miami	540-720	540-720	3-5	80-90
Milwaukee	730-883	913-1005	22-75	14-21
Newark	360-420	270-570	1	90-180
New Orleans	360-500	180-360	1-14	30-90
New York	500-515	455-820	80-85	75-80
Oklahoma City	300-360	300-360	30-90	30-60
Omaha	545-730	365-455	20-30	20-30
Orlando	365	545	45	90
Phoenix	990	630-720	90-160	90-120
Pittsburgh	90-180	420-480	3-7	1
Portland	1050	240	21-30	21-30
Sacramento	570-630	290	1-3	1
Salt Lake City	570-600	265-365	14	45-60
San Antonio	425-450	425-450	60-75	60-75
San Diego	850-880	545-700	42-60	80-90
San Francisco	420	420-450	1-10	1-90
San Juan	365-420	365-420	14	1
Seattle	240-300	365-400	14-28	14-28
St. Paul	365-540	240-300	3-6	1-3
Tampa	540-600	365-900	10-14	90-120
Wash, DC (Arlington)	365-420	180-420	10-21	30-45

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## **20. LAWSUIT OVER INS FAILURE TO ISSUE DIVERSITY VISAS HEADS FOR TRIAL**

The diversity visa, or DV, lottery, gives citizens of certain countries the opportunity to immigrate to the US by entering a drawing. Millions of applications are received each year for 50,000 visas, so chances of winning are very slim. The lottery drawing is held in the spring, and winners are notified during the summer. Processing occurs between the October after notification and the next October. For example, a person who entered the 2000 lottery enters in the fall of 1998, is selected in the spring of 1999, and is processed between October 1999 and October 2000, fiscal year 2000. Those who are selected generally act promptly so submit all the necessary documents so they can obtain their visa before the end of the fiscal year. But all the speed on the part of an applicant cannot prevent bureaucratic delays.

Teodor and Lelia Paunescu know this all too well. They entered the DV-1998 lottery, and were selected for processing in July 1997. The INS received their completed applications, including fingerprints, on November 5, 1997, one month into the 1998 fiscal year. Interviews were scheduled for February 23, 1998. At this interview, Teodor was told the FBI had rejected his fingerprints, and he would need to submit a new set. The same day Teodor sent in a new set of prints. On July 24, 1998 he was told his fingerprints had not yet cleared, but was not given a reason. He was not told to resubmit fingerprints. On September 18, 1998 they were told they had an interview on September 21, 1998. At this interview Teodor was told to resubmit his fingerprints, which he did the same day. On September 23 the Paunescu's filed suit in federal court, seeking a writ of mandamus ordering the INS to issue them visas before September 30, the end of the fiscal year. The court issued such an order, but made it contingent on whether the INS received cleared fingerprints from the FBI. The fingerprints were not received, so visas were not issued.

Although visas were not granted, the lawsuit continued. The INS made two arguments that the court did not have jurisdiction. The first relied on section 242(g) of the Immigration and Nationality Act (INA). This section eliminates federal court jurisdiction over cases related to the decision of the Attorney General to "commence proceeding, adjudicate cases, or execute removal orders." The court found that this section applied only to a narrow set of cases involving deportation orders, and certainly not this case involving a visa petition. The INS' other argument against jurisdiction rested on section 242(a)(2)(B) of the INA, which eliminates federal court jurisdiction over cases involving the decision of the Attorney General to

**grant discretionary relief in cases involving adjustment of status. The court found this statute inapplicable.**

**The court found the responsibility of the INS to process lottery winners is not discretionary, nor did it involve the need to make any decisions. According to the court, the plaintiffs did “not ask this court to ‘review’ a governmental action, but to examine and rectify a gross inaction.” Having determined that no statute eliminated jurisdiction, the court then examined whether the case warranted an exercise of mandamus jurisdiction.**

**Three factors must be present for a court to issue a writ of mandamus. First, the plaintiff must have a clear right to the relief sought. Second, the defendant must have a clear duty to perform for the plaintiff. Third, there must be no other adequate remedy. The INS argued that the plaintiffs had no right to relief, and that they did not have a duty to them, because all decisions related to adjustment of status are discretionary. The court rejected this argument, finding that the INS had a non-discretionary duty to rule on the plaintiffs applications for adjustment of status within a reasonable time. It is not a particular decision the court said the INS must issue, but that the agency must issue some decision on the application pending before it.**

**The INS’ last argument was that there was an adequate remedy for plaintiffs – wait until the INS begins deportation proceedings and raise their arguments there. The court found no merit in this argument, and so proceeded to determine what form of relief was proper. The court ruled that the plaintiffs must be given the visas they would have received had the INS dealt with their application in a timely manner. Although the INS argued that it could not complete the applications because fiscal year 1998 was over, this argument was rejected, with the court finding that the plaintiffs “should not be penalized for the government’s misfeasance.”**

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## **21. CAMPAIGN 2000**

**We are only weeks away from the New Hampshire primary and Iowa caucus, the first major tests in the 2000 presidential race. In the coming months, we will be reporting regularly on how immigration issues are dealt with by the candidates. As the race heats up, we thought it might be useful to summarize the positions of the major presidential candidates on immigration related issues:**

**DEMOCRATS:**

- **Bill Bradley, former Senator from New Jersey – has voted in favor of public assistance for legal immigrants and against it for undocumented immigrants. Has sponsored legislation calling for tougher enforcement of immigration laws. Bradley’s wife is a German immigrant herself and has been very vocal in favor of open immigration policies.**
- **Al Gore, Vice-President – favors bilingual education, supports public assistance for legal immigrants; Gore will also no doubt be linked to the Clinton Administration’s policies including signing the 1996 immigration acts. Those laws have been harshly criticized by the pro-immigration community. Furthermore, Clinton dragged his feet on raising the H-1B cap in 1998 and has not come out in favor of any of the new bills to remedy the worsening H-1B problem.**

## **REPUBLICANS**

- **George W. Bush, Governor of Texas – wants to increase available visas for skilled workers, and expand programs for temporary farm and service workers. Bush has been highly popular in with Hispanic votes in Texas and has argued in favor of applying the principals of “compassionate conservatism” to the immigration policy debate.**
- **John McCain, Senator from Arizona – would increase access of legal immigrants to some forms of public assistance. Does not favor eliminating all social services for undocumented immigrants. McCain is the sponsor of a bill to raise the H-1B cap.**

## **REFORM**

- **Pat Buchanan, political commentator – would reduce legal immigration to 250,000-300,000 a year and conduct a “national campaign of assimilation” for immigrants, including English language skills. Would deny all government benefits to undocumented immigrants and erect barriers along the Mexican border; Buchanan is widely considered the most anti-immigrant presidential candidate not only in this election, but also in the last several decades.**
  - **Donald Trump, real estate developer – would dramatically reduce legal immigration; has said little else.**
-

## **22. SCIENTISTS CRITICIZE MORATORIUM ON FOREIGN VISITORS TO US LABORATORIES**

The National Academy of Sciences, the leading scientific advisory group in the US, has issued a report condemning the moratorium on exchange visitors from “high risk” countries imposed by Congress in the wake of allegations that Chinese scientists were conducting nuclear espionage. According to the Academy, the limits, which effect only the three national laboratories where nuclear research is conducted, Los Alamos, Lawrence Livermore, and Sandia, are both unfair to foreign scientists and could end up hurting American scientists and their research.

The moratorium is imposed against scientists from countries such as Russia, China and India, which are seen as more likely to engage in espionage and arms proliferation. This policy, according to the National Academy of Sciences, is misplaced because it is those countries with which exchanges are most helpful. Also, there is a fear these countries will begin to retaliate by limiting the access American scientists have to their research facilities. According to the report, this has already happened in Russia. Another result of the moratorium has been to make recruiting foreign scientists from all nations more difficult.

Rather than limit access, the National Academy of Sciences recommends educating laboratory employees about security, improving security procedures, and encouraging people to avoid prejudices against foreign scientists. As the report points out, some of the most important contributions to national security this century have been made by foreign born individuals.

In related news, Dr. Wen Ho Lee, the physicist at the center of the controversy, has been arrested. He has been charged with negligent handling of secrets, which is not quite espionage. Dr. Lee, who has been a US citizen since 1974, has sued the government for allowing evidence about its case against him to be leaked to the press.

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## **23. INS OPPOSES DISABLED MAN'S ATTEMPT TO NATURALIZE**

Gustavo Galvez Letona, a 27 year-old immigrant from Guatemala, has lived in the US since he was 10. He suffers from severe Down syndrome, and as a result he has the mental age of a child less than two. Because of this, the INS has refused to let him take the oath of citizenship, even though he meets all of the other requirements.

In 1996, the Social Security Administration told Galvez' mother that he would no longer be eligible for disability benefits because of the new immigration law, and that to retain these benefits, he should apply for citizenship. So he did just that. After an interview with an INS agent, his application was denied, ostensibly because he would not demonstrate that he was "attached to the principles of the Constitution of the United States and favorably disposed toward its good order and happiness."

Galvez appealed the denial, and a judge ordered the INS to grant him citizenship. The judge reasoned that children are not made to take the oath if they are not able to understand its meaning, and that because of Galvez' medical condition he was no different than a child. Despite the judge's strong words in favor of granting citizenship, the INS has appealed the decision. According to the INS, they have been more than accommodating to Galvez' needs, waiving the requirement that he take the test on US history and civics.

Galvez' attorneys argue that the INS' position violated the Rehabilitative Act of 1973, a federal law that prohibits government agencies from denying benefits because of a person's disability. Only "essential requirements," such as sight for a driver's license, are a basis for denying a benefit because of a disability.

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#### **24. CRASH INVOLVING UNDOCUMENTED MIGRANTS REVEALS SMUGGLING RING**

In the early morning hours of December 4, 1999, a van carrying 17 undocumented farm workers crashed on Interstate 40 outside of Albuquerque, New Mexico, killing 13 of the passengers. The accident occurred when the driver of the van failed to notice traffic had slowed because of another wreck farther up the highway and ran into the rear end on a tractor-trailer. According to highway patrol officials the stretch of road on which the accident occurred is known to be dangerous in bad weather.

As soon as investigators arrived on the scene, they suspected the van was part of a migrant smuggling operation. Most of the seats in the van had been removed in order to fit more people into the vehicle. Also, the driver, who died in the accident, had a list of the names of the people in the van along with the amounts being charged them for transportation. The workers who survived said they were being taken to Kentucky, which made authorities suspicious. The tobacco harvest, which is the main crop in Kentucky, is over. Also, most people from the areas in Mexico where the

people involved in this incident were from work in Florida, which is where the van was registered, and where the driver was licensed.

The US Department of Labor is also investigating whether any US employers were involved. If there were, they could face criminal sanctions for their part in the smuggling.

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## **25. US ADOPTIONS OF FOREIGN CHILDREN INCREASING**

According to a report released by the National Council for Adoption, 17 percent of the children adopted by US parents in 1996 were born in foreign countries. The number of international adoptions of children under two by US parents is even higher, perhaps one-third of all adoptions of infants. In 1992, only ten percent of children adopted by US parents were foreign born.

The report looked at many factors leading to these new trends in adoption. According to the authors, there are two primary reasons for the increasing adoptions of foreign-born children. First, more single mothers in the US are choosing to raise their child rather than put it up for adoption. Second, the US adoption process is complicated and time consuming, which leads many potential parents to avoid the system by adopting abroad.

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## **26. SURVEY SHOWS US UNIVERSITIES POPULAR WITH FOREIGN STUDENTS**

The Institute of International Education has released its annual survey on higher education, and the survey indicates an increasing number of Americans studying abroad as well as rises in the number of foreign students studying in the US. The survey, "Open Doors 1998/99" collected and analyzed data from the 1997-1998 school year.

During that year, 114,000 American college students earned course credit while studying abroad, a 15% increase from the previous year and the most since the Institute began keeping records in 1985. There were 491,000 foreign students at US colleges and universities. This number was up two percent from the previous year and is the largest number since 1949, when the Institute first began counting enrollment of foreign students.

New York University accepted the largest number of foreign students, 4,749, but Columbia University, at 20%, had the highest proportion of foreign enrollment. This translates to 4,165 foreign students, which is also the fourth most. Boston University, with 4,447 foreign students, was

second, and UCLA, with 4,278, was third. With 64,011 there are more foreign students in California than any other state. The largest concentration of foreign students is New York City, with 30,150. Indeed, ten percent of all international students in the United States attend schools within a 50-mile radius of midtown Manhattan.

The slight two percent growth in foreign students in the US comes in spite of substantial drops in enrollments from Korea, Thailand, Indonesia, and Malaysia, where many students were adversely effected by the Asian financial crisis. These countries sent 75,387 students to the US, 10,472 fewer than the year before. Despite these drops, students from Asian still account for 56% of foreign students in the United States. China sent the most students, 51,000. Japan sent 47,000, and South Korea 43,000.

The foreign student population contributes more than \$13 billion to the U.S. economy. About 75 per cent of the funds foreign students use for support comes from outside the United States, and 65 per cent of the students cited personal and family resources as their primary sources of support.

Foreign students in American are evenly split between undergraduate and graduate programs. One new trend, however, is the increasing attendance of foreign students at US community and junior colleges. During 1997-1998 there were 81,000 foreign students at community colleges, an increase of 32% over the last six years.

The supervisor for research at the Institute for International Education, Peggy Blumenthal, says the findings reflect the increasing globalization of the world economy and students' desire to be familiar with many cultural settings.

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## **27. US RETURNS CUBAN BOAT HIJACKERS**

Avoiding further escalation of already tense relations between the US and Cuba, US officials have turned over six people allegedly involved in the hijacking of a yacht in the Florida Straits. The six hijackers and the two passengers on the boat arrived back in Cuba just days before the beginning of the annual talks on migration accords between the US and Cuba.

The suspected hijackers, five men and one woman all of whom are in their twenties, boarded the boat at a Cuban port and after a struggle with the two crewmembers, turned the boat to the US. They were apprehended near Key West, Florida after the boat ran out of gas.

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## **28. HIGH-TECH WORKER SUES EMPLOYERS FOR EXPLOITATION**

**Kamsan Mao, a Cambodian national, has filed suit against two Silicon Valley companies, claiming he was fired because he refused to do extra work at home for less than minimum wage. According to the complaint, Top Line Electronics, his employer, would force him to work at home nights and weekends to assemble and repair computer power supplies. Mao says he was paid less than minimum wage, sometimes as little as \$5 for three hours of work. He also claims to have been exposed to toxic fumes from cleaning solutions and soldering irons.**

**Mao is in the US on a valid work visa, so this case does not implicate the new policy of the Equal Employment Opportunity Commission with regard to remedies for mistreatment of undocumented workers.**

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## **29. LAWYERS SEEK THE RELEASE OF 130 INDEFINITE DETAINEES IN CALIFORNIA**

**Attorneys in California recently appeared before a US District Court to argue for the release of almost 130 immigrants who are being held in INS custody with no apparent hope of release. The detainees, and the over 3500 others in the same situation, are called “lifers” because the law as the INS currently applies it allows for their perpetual detention.**

**Lifers are subject to final orders of deportation, but cannot be deported because the US lacks diplomatic relations with their native countries. They cannot be released because of a 1996 provision prohibiting the release of aggravated felons. Most lifers are from Cambodia, Cuba (see the story earlier in this issue about Cuban “lifers” who rioted over this issue in Louisiana), Laos and Vietnam. Under a recently revised INS regulation, these detainees are to receive a review of their custody within 90 of the time the deportation order becomes final, but according to a federal public defender involved in the case, only four of 122 clients had received such a review.**

**Last summer a panel of federal judges in Washington State ruled that indefinite detention violated the constitutional rights of the detainees. That ruling however was binding only in the western part of the state.**

**A ruling on the California case is expected in mid-January.**

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### **30. IRAN UPSET AT US TREATMENT OF SCHOLARS**

The fingerprinting of a group of Islamic scholars from Iran who are in the US to attend a seminar at Georgetown University in Washington, D.C. has caused outrage in Iran. The scholars were fingerprinted and photographed upon their arrival in New York. This is standard procedure for all Iranians who enter the US, as well as for nationals of other countries the US says are linked to terrorism.

Following this incident, the Iranian delegation withdrew from the seminar, which was to focus on the study of the Koran. Ironically, one of the primary purposes of the seminar was to foster cultural exchanges between the US and Iran in an attempt to improve relations between the two countries. The conference organizer, John Esposito, a professor at Georgetown and leading expert on Islam, said US regulations have made this sort of cultural exchange “almost impossible.”

The incident has added ammunition for those in Iran who do not want normalized relations with the US. Hard-line newspapers in Iran have been calling for the cancellation of an upcoming soccer match.

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### **31. VISA SPOTLIGHT – Q VISAS FOR INTERNATIONAL CULTURAL EXCHANGE VISITORS**

One of the lesser-known types of nonimmigrant visas is the Q visa. This visa was created by the Immigration Act of 1990 and allows for the admission of “international cultural exchange visitors.” There is no annual numerical limit on Q visas, perhaps because the situations that call for the use of a Q visa are very limited.

The purpose of the Q visa is to facilitate the sharing of international cultures. Only employers who administer cultural exchange programs are allowed to petition for Q nonimmigrants. The Attorney General must certify that the employer’s program qualifies, but this is not an additional step as the Attorney General makes this determination at the same time the Q petition is submitted.

For the Attorney General to approve the program, it must meet the following requirements. First, the program must be accessible to the US public. For example, if the program were to occur in a private home or business, it would not qualify. Most programs that occur within a school, museum or similar environment will qualify. The exchange program must

have a cultural element as an integral part of the Q visa holder's duties in the US. This part of the program should be designed to exhibit or explain the customs, heritage and traditions of the visitor's country of nationality. Finally, the visitor's employment in the US must be the vehicle by which the visitor shares his culture.

Qualifying to be the beneficiary of a Q visa is quite easy. One need only be at least 18 years of age, qualified to perform the services to be rendered, and able to communicate the culture of one's country to the people of the US. This generally translates into an English language requirement, however, there is no such requirement for those whose cultural exchanges are nonverbal, such as dance.

Employer qualifications are more detailed, but are still easy to meet. The employer must demonstrate that it maintains an international cultural exchange program. There must be a designated employee who is responsible to administering the program, who will also serve as the liaison with the INS. The employer must be actively conducting business in the US. Finally, the employer must offer the Q visa holder wages and work conditions comparable to US workers performing similar tasks in the same geographical region, and demonstrate that it has the financial ability to pay the nonimmigrant.

The length of the stay allowed in the US on a Q visa is limited by the duration of the cultural exchange program, with a maximum stay of 15 months.

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## **32. NEWS FROM THE COURTS**

### **Kuhai v. INS, Seventh Circuit**

In this case, the court remanded to the Board of Immigration Appeals, finding the Board had not provided a fair hearing in its affirmation of a deportation order.

The petitioner was born in the USSR in a town that is now in Ukraine. At age 17, she went to Tashkent to assist survivors of an earthquake. While there she married and settled in the city. In 1991, following the fall of the USSR, Tashkent became the capitol of the new nation Uzbekistan. The government favored Uzbek natives, and non-Muslim Slavs such as Kuhai were routinely fired from their jobs and often threatened with physical violence. Kuhai herself was fired from her job, lost her home, and was prevented from attending Russian Orthodox church services. In late 1993, Kuhai went to Russia, and then to the US on a tourist visa.

The INS placed Kuhai in deportation proceedings for overstaying the tourist visa, and Kuhai filed a claim for asylum, claiming she had suffered past persecution and feared future persecution is forced to return to Uzbekistan. The Immigration Judge found that her treatment in Uzbekistan, while discriminatory, did not rise to the level of persecution. He granted her request for voluntary departure, and designated Uzbekistan as the country of deportation if she did leave the US within the allowed time.

Kuhai appealed to the Board of Immigration Appeals. The Board affirmed the decision of the Immigration Judge, but changed the country of deportation from Uzbekistan to Ukraine, apparently on the basis of a State Department advisory opinion stating that Kuhai still had Ukrainian citizenship. The Board declined to address whether Kuhai might face future persecution, finding that she could not be a refugee because she did not face persecution in the country of her citizenship.

Before the Seventh Circuit, Kuhai did not dispute the finding that her treatment in Uzbekistan did not constitute persecution. Rather, the issue was whether she had Ukrainian citizenship and could be deported there. The Seventh Circuit found that Kuhai had never had Ukrainian citizenship. There was no Ukraine until 1991, at which time Kuhai lived in, and gained citizenship of, Uzbekistan. Because the Board ruled that she was a Ukrainian citizen without allowing either her or the INS to brief the issue, her hearing before the Board was not fair.

Therefore, the case was remanded so that the issue of Kuhai's Ukrainian citizenship could be addressed. The court also ruled that the Board must address the issue of future persecution in Uzbekistan.

### Vega-Zazueta v. INS, Ninth Circuit

In this case, the court returned the case to the Board of Immigration Appeals with orders to give the petitioner a hearing on whether she is eligible for a suspension of deportation.

The petitioner, a long-time US resident with four US citizen children, was placed in deportation proceedings in 1992. She failed to file an application for suspension of deportation within the allotted time and was ordered deported. She filed an appeal with the BIA, and also submitted a well-documented application for suspension. The BIA took the appeal as a motion to reopen, which it denied because the petitioner failed to sufficiently explain her failure to file a timely application for suspension.

According to the Ninth Circuit, her failure to file a timely application was the result of medical needs of her children and the physical abuse she

suffered at the hands of her husband. Under circuit law, such “social and humane” considerations are properly considered in making the decision on whether to reopen a case.

On remand the BIA will hear both the suspension of deportation claim as well as a claim for relief under the Violence Against Women Act, which has been pending before the Board for over two and a half years.

### Le v. INS, Eleventh Circuit

In this case the court upheld the rulings of an Immigration Judge and the Board of Immigration Appeals that the petitioner had been convicted of a crime of violence and an aggravated felony. Le was convicted of driving under the influence and causing serious bodily injury. A crime of violence for immigration purposes is defined in the US Code as an offense that involves the use, attempted use, or threatened use of force against the person or property of another. The existence of serious bodily injury necessary for Le’s conviction made it a crime of violence. The court did not address whether the offense fit the other definition of a crime of violence, that it by its nature involved a substantial risk that physical force might be used against the person or property of another.

### Saavedra v. Albright, D.C. Circuit

Saavedra, a citizen of Bolivia, challenged the decisions of two American consulates, one denying him an L-1 visa, the other revoking his tourist visa. The D.C. Circuit Court upheld the district court decision dismissing his case.

Saavedra came to the US in 1993 on an F-1 student visa. He also possessed a tourist visa valid until 2002. While in the US he founded a music production company. The company petitioned to have Saavedra classified as an L-1 manager. This petition was granted and Saavedra was given an L-1 visa valid for one year. A petition to extend the L-1 visa was filed and granted. Saavedra then traveled to Panama to have the visa renewed. The consular official in Panama saw Saavedra’s name on a list of suspected drug traffickers and denied the visa extension. Saavedra returned to the US, and after a brief detention at the border was given an immigration hearing. At this hearing an immigration officer told him to return to Bolivia to straighten things out with the US Embassy there. Saavedra’s attorney presented evidence to the Embassy to counter the allegations of drug trafficking, but the consular officials remained unconvinced and revoked his tourist visa. At this point Saavedra brought suit.

**Saavedra brought sued under the Administrative Procedures Act (APA), which, subject to some limitations, provides a cause of action to a person who has been harmed by agency action. There are three limits on the APA's general grant of judicial review. First is if a statute specifically precludes judicial review. Second is if the action complained of is committed to agency discretion. Third is a general provision clarifying that the general pattern of judicial review established by the APA does not alter certain fundamental jurisdictional rules applied to all cases brought in federal court. One of these rules is known as the political question doctrine, under which the courts will not hear cases arising from purely political actions of the political branches of government. Because of the intensely political aspects of the admission of foreign nationals into the US, courts have generally declined to hear claims that a person was improperly denied a visa or improperly refused entry. Therefore, Saavedra's claim could not be heard.**

**The D.C. Circuit went farther than relying on the political question doctrine, and also found that a statute specifically precluded judicial review. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amended the provision giving general jurisdiction to federal courts, restricting the federal courts to hearing only cases brought by the US.**

### **Lacey v. United States, District of Columbia**

**This case is a claim under the Privacy Act that the INS used improper methods to obtain information.**

**The plaintiffs, a husband and wife, were investigated for welfare fraud by the Clinton County, New York Department of Social Services (DSS). According to the plaintiffs, the DSS investigator got his wife, who worked for the US Customs Service, to contact the INS to aid in the investigation. Mr. Lacey, a Canadian, was a permanent resident of the US since 1960, and Mrs. Lacey was a dual national who had US citizenship since 1956. The INS began gathering information on the Laceys, in part from INS records and in part through contacts with the Royal Canadian Mounted Police (RCMP).**

**The Lacey's were indicted for welfare fraud and following their release pending trial, moved to Canada. In Canada, they filed a request with the Office of the Privacy Commissioner of Canada (OPCC) to find out whether any Canadian governmental body had disclosed information about them to DSS. They also filed a complaint with the INS by mail and by phone. The INS agent with whom they spoke told them not to sue because they did not have enough evidence and that the INS would be issuing a report on their complaint in the near future.**

The OPCC told the Lacey's that the DSS investigator had used the INS to get information on the Lacey's from the Canadian government. The Lacey's told the INS agent of this, and were again told a report was forthcoming. A few months later the INS agent told them the agency had committed some of the violations alleged and was planning corrective action.

In this opinion, the issue was whether the suit was filed in time, or whether their claim was barred by the two-year statute of limitations on Privacy Act claims. Ordinarily, the news from the OPCC would be a sufficient basis on which the Lacey's could have sued. To counter this, the Lacey's pointed to their conversations with the INS agent, who repeatedly told them not to sue, but to wait for the INS report. The court found that these actions constituted a willful misrepresentation that prevented the statute of limitations from running. Therefore, the case was allowed to go forward.

#### In re G-D-, Board of Immigration Appeals

The respondent, a Lithuanian Jew whose request for asylum was denied in early 1996, filed a motion with the Board asking them to reconsider their decision denying asylum, arguing that a subsequent decision made substantial changes in the Board's asylum law that he would now be granted asylum. The Board declined to do so.

The statute of limitations on a motion to reconsider, which must be heard, had passed, so the respondent was required to request the Board to reconsider the case on its own motion. The Board has the discretionary power to make such reconsiderations, but found one was not warranted in this case. According to the Board, the decision on which the respondent relied did not make any fundamental change to the law, but was only a small development of the sort that is always occurring. Moreover, the needs of administrative efficiency outweighed the slight possibility that the outcome of the decision in the respondent's case would be different. Therefore, the Board refused to reconsider its decision denying asylum.

#### In re Saleem Hassan Masri, Board of Immigration Appeals

In this case, the Board addressed the issues of its jurisdiction over proceedings to rescind grants of adjustment of status and the confidentiality provisions of statutes providing for the adjustment of status of seasonal agricultural workers (SAW). The Board found that it did have jurisdiction and that the INS cannot rely on information covered by the confidentiality provisions to rescind a grant of adjustment.

**Section 246(a) of the Immigration and Nationality Act (INA) authorizes the Attorney General to rescind an adjustment within five years after it was granted, if it is shown that the immigrant was not in fact eligible. The regulations implementing this statute provide for a hearing on rescission before an Immigration Judge, and because the Board has jurisdiction over decisions of Immigration Judges, it therefore has jurisdiction over rescission proceedings.**

**Section 210 of the INA provides for the adjustment of status of SAWs. The section also contains a confidentiality provision prohibiting the INS from using information submitted by the SAW for any purpose other than a determination on adjustment. According to the Board, once this determination on adjustment is made, this information can no longer be used. The INS is free to rescind the adjustment based on other information, but it cannot use the information submitted by the SAW. In this case, the only information the INS had that the respondent had committed fraud was protected by the confidentiality provisions. Therefore, the rescission proceeding was properly terminated.**

#### **In re Ydalia Cruz-Garcia, Board of Immigration Appeals**

**In this case, the Board ruled that there are no statutory or regulatory limits on the time within which a motion to reopen deportation proceedings conducted in absentia under INA section 242(b) must be filed. It also ruled that the standard to be applied in deciding whether to reopen is whether the alien had a reasonable cause for failing to appear at the deportation hearing.**

**In 1990, Cruz-Garcia entered the US without authorization, and later that year was personally served with an Order to Show Cause. She failed to appear for the deportation hearing, and the Immigration Judge issued an order for her deportation. In 1997 She filed a motion to reopen the proceeding so she could adjust status based on an approved immigrant visa petition filed by her US citizen husband. The Immigration Judge denied the motion, finding it was not filed in a timely manner and that the respondent did not show exceptional circumstances for her failure to appear at the deportation hearing.**

**Motions to reopen most deportation orders must be filed within 90 days of the order. Deportations conducted in absentia under section 242B may be filed within 180 days if the alien shows exceptional circumstances causing their absence, and if the alien can show they were in state or federal custody, or did not receive notice of the hearing, there is no time limit on a motion to reopen. However, neither section 242(b), under which Cruz-**

Garcia was deported, nor its accompanying regulations, provides any time limit on a motion to reopen. Therefore, Cruz-Garcia's motion could be considered.

The Board also ruled that the standard to be applied in deciding to reopen was whether there was a reasonable cause for the alien's failure to appear for the hearing. Cruz-Garcia argued that the reason for her failure to appear was the ineffectiveness of her attorney at the time. According to the Board, because she had received personal notice of the hearing, and because she failed to establish the elements necessary for an ineffective assistance of counsel claim, her failure to appear at the hearing was not due to a reasonable cause. Therefore, her motion to reopen was denied.

### In re K-V-D-, Board of Immigration Appeals

In this case, the Board addressed the statutory provisions defining "aggravated felony", particularly those outlining under what circumstances "drug trafficking crimes" should be considered an aggravated felony.

The respondent, a native of Vietnam and permanent resident since 1987, pled guilty in Texas state court to simple possession of less than 28 grams of cocaine. He was placed on probation, and an entry of guilt was deferred pending successful completion of probation. A failure to report to his probation officer resulted in a five-year prison sentence and an official entry of guilt. The crime of simple possession is a felony under Texas law.

The INS placed the respondent in deportation proceedings, charging him with deportability as an alien convicted of a controlled substance offense and as an aggravated felon. The Immigration Judge ruled that the respondent was convicted of an aggravated felony because the crime was a felony under state law. The respondent was therefore ineligible for any form of relief from deportation, which he would have been if he were found deportable only because of the controlled substance offense.

On appeal, the respondent argued that the Immigration Judge's decision was erroneous because it was contrary to a prior decision of the BIA that held that regardless of the state classification of a drug offense, it must be punishable as a felony under federal law to be an aggravated felony for immigration purposes. The INS argued that a decision from the Fifth Circuit Court of Appeals altered the BIA's prior decision and was binding on them in this case because it arose in Texas, which is covered by the Fifth Circuit.

The section of the Immigration and Nationality Act that makes drug trafficking crimes aggravated felonies provides the definition of drug

trafficking by cross-referencing another section of the US Code. This section defines a drug trafficking crime as “any felony punishable under the Controlled Substances Act.” The Fifth Circuit case the INS relied on held that a state felony drug conviction was a felony for purposes of federal criminal sentencing enhancements, even if the offense could not be punished as a felony under federal law.

The BIA declined to follow the Fifth Circuit case for a number of reasons. First, the case was not about deportation, but rather a sentence enhancement for the offense of illegal reentry. The BIA found that the interpretation of aggravated felony for purposes of sentence enhancements is not necessarily the same as for immigration purposes. Moreover, the BIA has taken the position that a drug offense is not an aggravated felony unless punishable as a felony under federal law since the term “aggravated felony” was added to the INA. To change this interpretation would result in widely varied immigration consequences for the same offense, depending on the criminal law of the state of conviction. Therefore, to be an aggravated felony for immigration purposes, the offense must be a felony under federal law. The case was remanded with instructions that the respondent was eligible to seek relief from deportation.

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### 33. HIV POSITIVE CUBAN WINS ASYLUM

Alfonso Ramirez Batista was picked up by the US Border Patrol near the Mexican border one year ago. Border Patrol officials thought he was a Mexican without authorization to be in the US. However, he is a Cuban who came to the US as part of the Mariel boatlift in 1980. Like all Mariel Cubans he was paroled into the US, a legal fiction that maintains a person has never been officially admitted to the US, even though they are physically present. Paroled aliens are not allowed to leave and reenter the US.

Ramirez did leave the US, and lived for a year in Sonora, Mexico. When he reentered the US, the INS detained him and he was convicted of illegal entry. He applied for asylum, claiming that he would be persecuted in Cuba because he was a homosexual. His sexual orientation had caused problems for him in Cuba, including detention, which is why he fled to the US in 1980. The asylum case was not resolved and Ramirez was released.

Later the INS again took Ramirez into custody. A few months before, Ramirez had learned he was HIV positive, a fact he shared with the INS. This new element made his case for asylum both stronger and more tenuous. Persecution because of HIV is a basis for asylum, but HIV is also

considered a communicable disease and can render a person inadmissible to the US. Because Ramirez was only paroled into the US, he was subject to grounds of inadmissibility.

The Cuban government segregates people with HIV in sanitariums, ostensibly because they present a health threat to the rest of the population. The INS argued that this did not constitute persecution. The Immigration Judge disagreed, finding that Ramirez did have a well-founded fear of future persecution on the basis of his homosexuality and HIV status and granting him asylum.

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#### **34. INS PUBLISHES MEMORANDUM ON ENFORCEMENT OF ACADEMIC HONORARIA REGULATIONS**

Responding to concerns expressed by groups involved in international education, the INS has clarified its policy regarding the admission of B-visa holders who will receive honoraria while in the United States. The memorandum, issued on November 30 memorandum, called attention to a provision of the American Competitiveness and Workforce Improvement Act of 1998, which allows B-1 and B-2 scholars who engage in academic activities to receive honoraria.

The memorandum was necessary because the INS has not yet published regulations to implement this law. This failure has led to differences in practices at INS field offices, and caused difficulties for foreign scholars seeking admission into the United States. Ordinarily, visitors to the US on a B visa are not allowed to earn money while in the US. The memo was prompted by concerns that applications were being denied because of this, without regard to the exception created in 1998.

Under the law, which will hopefully be applied evenly at each INS office, visitors may receive honoraria from academic institutions in exchange for services that benefit the institution, so long as the visitor has not accepted other honoraria from more than five institutions in the previous six months.

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#### **35. DALLAS NEWSPAPER REPORT SHINES LIGHT ON SECRET INDEFINITE DETENTIONS**

The Dallas Morning News, through Freedom of Information Requests and many months of research and investigation, has obtained information that the INS has been holding 294 people for over three years. Not only has the

**INS had custody of these people, who are not serving criminal sentences, they will not release their names, nor the names of about 5000 other detainees.**

**According to the INS, the agency cannot release the names of the detainees because of a Justice Department policy. While the federal Privacy Act applies only to citizens and permanent aliens, in 1996 Janet Reno decided to extend the Act's protection to all people in the US, regardless of immigration status. The impetus for this decision was a 1994 Senate race in California, in which both candidates were accused of hiring illegal immigrants.**

**The purpose of the law may have been to protect privacy, but reliance on it in this situation has been severely criticized by many bar leaders. Philip Anderson, immediate past president of the American Bar Association, calls the practice of withholding names of detainees "contrary to the basic precepts of this country." Most states and the federal government reveal the names of their prisoners. A spokesperson for the Texas Department of Criminal Justice, Glen Castlebury, points out why the INS' refusal to reveal names is worrisome: "It's pretty fundamental when the state takes custody of someone, they have to account for what they've done with that person. I sometimes wonder if (INS officials) are reluctant because they don't know where their people are."**

**This may well be part of the problem. A decade ago the INS housed detainees in only a few facilities. Today, however, the INS uses 190 facilities in 24 different states, only a few of which are exclusively for INS detainees.**

**Most of the 294 detainees are from countries with which the US does not have diplomatic relations, meaning they are not deportable. However, according to records obtained by the Dallas Morning News, 47 of the detainees are from countries with which the US does have relations, including Mexico, India and Poland. There is no explanation why these people are still in custody.**

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### **36. DESPITE ONGOING CONTROVERSIES, ANNUAL US-CUBA MIGRATION TALKS ARE HELD**

**Since 1994, the US and Cuba have held talks twice a year on migration from Cuba. The meetings were instituted as part of the 1994 agreement to halt the then increasing number of Cubans attempting to reach the US. Part of the 1994 agreement was that the US would stop allowing Cubans picked up at sea to get US residence, but would rather return them to Cuba. Cuba**

promised to patrol its waters for those attempting to leave, and to not retaliate against those the US returned. The US also made available 20,000 immigrant visas each year for Cubans.

Despite these pledges, illegal migration from Cuba continues, and is a major topic of discussion at this year's meeting. In particular, Cuba wants to address what it perceives as the US's ongoing attempts to encourage people to leave Cuba by broadcasting descriptions of the island's economic hardships. Cuba blames the US economic embargo for its economic problems, and blames the US policy of allowing Cuban migrants who reach shore to stay in the US for creating a rise in human smuggling.

Cuba also maintains that this US policy is in direct violation of the 1994 agreement, under which the US promised to not admit "Cuban migrants who reach US territory in irregular ways." However, the Cuban Adjustment Act of 1966 states that all Cubans who reach the US, by whatever means, are eligible to stay. The INS has answered this apparent contradiction by explaining that the Cuban Adjustment Act is discretionary, and that the 1994 agreement says only that the US cannot allow all Cubans to stay, and does not regulate which Cubans the US can admit.

While Cuba wants to discuss the smuggling and admission issues, the US is concerned that Cuba is not issuing exit permits to medical personnel. US officials also want to discuss possible mistreatment of Cubans returned to the island after failed attempts to reach the US.

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### **37. CONTINUING CUSTODY OF JUVENILE CHINESE ASYLEE RAISES CONCERNS ABOUT DETENTION PRACTICES**

In the spring of 1999, a wave of refugees smuggled from China arrived in Guam, among whom were several teenagers. The INS brought the juveniles to the US to allow them to seek asylum. Because they had no family in the US, and arrived without proper documentation, they were detained by the INS and placed among the general criminal population in a juvenile facility in Oregon. One of them, a 15 year-old girl, was granted asylum on October 27, but still remains in custody.

The INS has explained that the children are in detention because they were smuggled in, and without any family to care for them, if released they could be at the mercy of the smugglers who would demand payment of the \$40,000 smuggling fee. The agency has not been as successful in explaining why the girl granted asylum remains in custody. She told them of an uncle in New York when she arrived in the spring, but it took the INS

until December 6 to conduct a home study. The INS has still not approved his application for sponsorship, and is investigating why it took so long to conduct the home study.

The girl, who has not been identified to protect her and her family in China, was granted asylum because of the persecution she suffered as a third child. China has a strict two-child limit per family and denies citizenship, medical care and education to third children.

The continuing detention of this girl has drawn the attention of Senator Gordon Smith (R-OR). He has sent a letter to INS Commissioner Doris Meissner calling it “completely unacceptable that a child should remain in prison because the bureaucracy failed to complete a simple step of placing them in a caring home.” He also urged the agency to avoid such “travesties” in the future.

While in detention the Chinese youths have been housed with the general population, which includes some violent offenders. They have also been treated like the juveniles in custody for criminal acts, and are transported in handcuffs and have been subjected to body searches.

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### **38. AS NACARA APPLICATION DEADLINE NEARS, NICARAGUAN AMBASSADOR URGES PEOPLE TO SEEK RESIDENCY**

NACARA, the Nicaraguan Adjustment and Central American Relief Act, passed in 1997, provides an opportunity for Nicaraguans who fled the country during the civil war of the 1980s to become permanent residents of the US. An applicant must prove that they have been in the US since December 1995 and that they have not been convicted of a felony offense. Applicants from Nicaragua, unlike those from other Central American countries, enjoy a presumption that they would face extreme hardship if forced to return to Nicaragua, making them almost automatically eligible for adjustment.

Despite the relative ease of obtaining relief under NACARA, it is estimated that only 40,000 of the 150,000 eligible Nicaraguans in the US have applied. This concerns the Nicaraguan Ambassador to the US, Francisco X. Aguirre Sacasa, because the deadline for NACARA applications is March 31, 2000. The Ambassador is trying to increase the number of NACARA applicants by speaking to Nicaraguan communities in the US to encourage them to seek the benefits available to them by law.

While it seems unusual that the ambassador of a country would encourage citizens to immigrate to another country, there may be a good reason in these circumstances. Most beneficiaries of NACARA have been in the US since the early 1980s, and many have been here longer. Over these years, they have become members of US communities, but have never enjoyed a legally clear status. Once registered for permanent residence, Nicaraguans in the US would be in a much more stable position. Also, once the NACARA application period is closed, Nicaraguans will be subject to removal and will no longer be entitled to a presumption of hardship if returned to Nicaragua.

Information about NACARA eligibility and the application process is available from a toll-free number, 1-877-478-8472.

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### **39. CONGRESSIONAL BLACK CAUCUS CALLS FOR CHANGES IN US REFUGEE POLICY**

Following the termination of the family reunion program for refugees from some African nations on December 1, the Congressional Black Caucus has called for changes in US policy toward refugees. At a recent meeting, the Caucus called for the reinstatement of the family reunion program, as well as a program to grant citizenship to Liberians of American origin. Freed American slaves founded Liberia, on the west coast of Africa, in the early 19th century.

The Black Caucus charges that current US refugee policy is racially discriminatory. To support this charge, they point to the fact that 4.3 million of the world's 13.2 million refugees are African, more than from any other continent, yet the US admitted only 6000 refugees from Africa last year. In contrast, 48,000 refugees from Europe were allowed into the US.

A resolution has been introduced in the House as follows: "Be it further resolved that the US immediately institute a refugee admission policy which offers fair and equitable treatment of all war victims irrespective of race, religion and national origin."

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### **40. CONSULAR FOCUS: SANTIAGO, CHILE**

**Address:**

**US Embassy  
Avenida Andres Bello 2800  
Santiago, Chile**

**Immigrant Visas:**

- **Open on a walk in basis from 9:30 AM to 11:00 AM, Tuesdays and Fridays. US citizen parents adopting a child from Chile will be attended to any day, Monday to Friday.**
- **Telephone inquires are accepted from 2:00 PM to 5:00 PM, Monday to Friday - [56] (2) 232-2600. People with detailed questions or questions about a particular case may want to send a fax first - [56] (2) 330-3005.**

**Nonimmigrant visas:**

- **Open on a walk in basis from 8:30 AM to 10:30 AM, Monday through Friday**
- **Open for travel agents between 11:30 AM and 12:30 PM, Monday through Friday**

**In Chile, about 60% of the nonimmigrant visa applications are received through travel agencies. An application submitted through a travel agency will be processed after one business day.**

**Applications submitted on a walk in basis take about three days to process. People who have been denied a visa within the past two years must use this method.**

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#### **41. HAIR SALON INDICTED ON VISA FRAUD CHARGES**

**Jacque Dressange, Inc., a chain of hair salons and a subsidiary of a French company, is facing 30 counts of immigration fraud based on allegations that it improperly obtained visas for as many as 50 French hairstylists to work in the US. Along with the salon, the attorneys who did the paperwork are also facing charges. According to federal officials, the plan was part of an effort to rapidly expand the salon's business in America.**

**The hairdressers entered the US on L-1 visas, which are restricted to intra-company transfers of high-level managers and executives. On the forms the attorneys filed with the INS, the workers were assigned to management**

positions that did not exist. The forms also stated that they would be paid \$1000 a week, when the contracts between the stylists and the company actually guaranteed a much lower salary.

If convicted, Jacque Dressange faces up to a \$500,000 fine for each count, and the attorneys face \$250,000 fines for each count, as well as five years in prison for conspiracy. The attorneys have declined to publicly comment on the matter. The salon maintains it did no more than rely on bad legal advice, and has brought a malpractice suit against the attorneys.

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#### **42. SETTLEMENT ENDS ALABAMA TAX ASSESSOR'S DISCRIMINATION AGAINST NONENGLISH SPEAKERS**

A few months ago we told our readers about a lawsuit brought by three immigrants in Alabama against a local tax assessor who refused to give proper tax credits to homeowners who did not speak English (<http://www.visalaw.com/99jun/32jun99.html>). He maintained that they should learn to speak English, and used his position to deny them benefits to which they were legally entitled. A settlement has now been reached in the case, and the assessor's office will repay the three plaintiffs the money they overpaid in taxes.

Under the settlement, the assessor, 83 year-old Wayland Cooley also agreed to allow interpreters for those homeowners who do not speak English very well. Previously he had not allowed interpreters, saying he could not be sure whether they would provide accurate translations. By settling Cooley avoided admitting any liability in the matter.

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#### **43. MINOR VISA CHANGES RESULT FROM MACAU'S REVERSION TO CHINA**

On December 20, 1999, Macau, a Portuguese colony for the past 442 years, will be formally transferred to Chinese control. This transfer will, of course, have an impact on immigrating to the US.

The Macau Special Administrative Region (MSAR) will issue passports and travel permits. Passports will be issued to people with the right to abode in Macau; others will receive a travel permit. Both of these documents identify the bearer as a Chinese national, but also indicate the bearer's

right to permanently reside in Macau. The State Department believes that MSAR will continue to allow US citizens to enter without a visa, and will continue to give reciprocity for holders of MSAR passports and travel permits.

The largest immigration impact of the transfer will be on the issuance of immigrant visas. Despite pending legislation to address the situation, when Congress recessed this year they failed to create a new chargeability category for Macau. So now, instead of being charged to Portugal, immigrants from Macau are charged to China. For the Diversity Visa lottery this change has the effect of eliminating Macau natives from eligibility since China is usually excluded from the program. Winners of the lottery from Macau must have had their applications processed before December 20. The National Visa Center flagged winning entries from Macau in the DV-99 lottery for immediate processing, so there should be no negative impact due to the transfer. However, natives of Macau who entered the DV-2000 and DV-2001 lotteries are no longer eligible for selection.

The situation with regard to other immigrant visas looks favorable for natives of Macau right now, as there is no backlog for China. However, the backlogs are almost certain to return, and in that case, Macau natives would suffer from the imposition of cut-off dates if legislation addressing the situation is not passed.

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#### **44.INS REMOVES CONDITIONAL STATUS FROM ASYLUM GRANTED IN 1998 BASED ON COERCIVE POPULATION CONTROL**

Recently, the INS sent notices to people who had been granted asylum conditionally during fiscal year 1998 (October 1997 through September 1998) based on persecution through coercive population control to let them know they are now eligible for full asylum benefits.

This procedure is necessary because the law limits the number of people who can receive asylum on this basis to 1000 a year. Therefore, asylum is granted conditionally, and at the end of the year, the cases are arranged in order of application and 1000 cases are changed to full asylum.

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#### **45.SOUTH AFRICA EXTENDS IMMIGRATION RIGHTS TO SAME-SEX COUPLES**

In early December, South Africa became the thirteenth country to recognize same sex partners for immigration purposes. The other countries are

Australia, Belgium, Canada, Denmark, Finland, France, Iceland, the Netherlands, New Zealand, Norway, Sweden and the United Kingdom. In some countries same-sex relationships are given the same status as a marriage for immigration, while in others the immigration rights are enforced on a more informal basis. Most countries require one of the partners to be a citizen or permanent resident.

While sexual orientation has been the basis for some successful asylum claims, current US law denies same-sex couples immigration rights. Moreover, other federal laws allow both the federal government and the states to discriminate against homosexual relationships, even if the relationship has been legally recognized. For example, the Vermont State Supreme Court recently ruled that the state constitution prohibited discrimination on the basis of sexual orientation. Because of this decision, Vermont may begin allowing same-sex marriages. While legal and recognized in Vermont, federal law allows these marriages to be ignored by other states and by the federal government.

According to the Lesbian and Gay Immigration Rights Task Force, an advocacy group, during the next few months Congressman Jerrold Nadler (D-NY) will be introducing a bill that would recognize same-sex partnerships under US immigration law.

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#### **46. LOCAL POLICE DEPARTMENT TESTS ELECTRONIC TRANSLATING MACHINE TO IMPROVE COMMUNICATION WITH IMMIGRANTS**

The growing number of immigrants who do not speak fluent English has been a challenge for many local police departments, which are lucky if a few people on the force can speak Spanish, much less Vietnamese or Farsi. However, a new device currently undergoing testing could make life easier for local police and the immigrants that they encounter. The Voice Response Translator, which is now being tested in Oakland and San Diego, and in Nashville, Tennessee, is small enough to fit in an officer's shirt pocket, and can be set up to accommodate almost any language spoken in the US.

The device is not a traditional translator, but rather works by recognizing a few words spoken by an officer, such as "driver's license," and translates it in the desired language as "May I please see your driver's license." While the device will not be able to translate the responses, it will allow police increased communication with people who would otherwise not understand.

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#### **47. FEDERAL COURT RULES STATE MUST PROVIDE DRIVER'S LICENSE EXAMS IN LANGUAGES OTHER THAN ENGLISH**

Until 1991, the state of Alabama offered driving tests in 14 different languages. That changed when the state adopted a constitutional amendment making English the official language of the state and the licensing test was given only in English. This rule was challenged by the Southern Poverty Law Center and the American Civil Liberties Union, which claimed it discriminated against non-English speakers in the state.

In 1998, a District Court judge ruled the law was unfair discrimination, and the 11th Circuit Court of Appeals has recently upheld his decision. The state Attorney General promises to take the case to the US Supreme Court, saying the law does not discriminate, and that providing tests in multiple languages places an undue burden on the state. Alabama was the only state that refused to give the licensing exam in any language but English.

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#### **48. AUDIT REVEALS CALIFORNIA AGENCIES DO NOT PROVIDE SUFFICIENT TRANSLATION SERVICES**

A report recently released by the California Bureau of State Audits revealed that state and local government agencies are not doing enough to make their services known to non-English speakers. Of the ten state agencies reviewed, only one provided translations in all necessary languages.

A 1973 state law requires state and local agencies to provide translations in all languages spoken by five percent or more of the people they serve. This law, however, does not impose penalties for noncompliance, and there is no agency designated to enforce it.

The agencies agreed that they could do a better job, but contend that they lack the money to perform services as they would like to. Part of the reason for the lack of translation services may be that the linguistic information the agencies have dates from 1995, because the state legislature has not required the State Personnel Board to conduct a language survey since then.

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#### **49. STATE DEPARTMENT ANNOUNCES NEW AFFIDAVIT OF SUPPORT RULE FOR IMMIGRANT VISA PROCESSING**

The State Department has announced and implemented a new requirement for immigrant visa processing. Henceforth, for family-based applicants to meet the minimum documentary requirements, a signed and notarized Form I-864 Affidavit of Support must be on file. Therefore consulates will begin sending out the form in Packet III. For an applicant to continue processing at that point, they must have completed and returned OF-230, Part 1, OF-169, and have submitted a signed and notarized Form I-864. While Form I-864 must be signed and notarized, it does not need to be filled out. Up until now, the Affidavit of Support could be submitted at a later time.

The Department is implementing this new rule in hopes of reducing the number of people who arrive at the consulate unprepared for further processing.

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#### **50. CALIFORNIA REPUBLICAN PARTY TRIES TO AVOID ASSOCIATION WITH NEW ANTI-IMMIGRANT LAW**

Even before the measure has received approval to be placed on a ballot, many Republican politicians in California have already come out in opposition to the newest version of Proposition 187. Proposition 187 is a measure designed to eliminate access to government services and benefits for anyone illegally in the US. This current stance is a marked departure from the state Republican Party's wholehearted embrace of Prop 187. While this law did pass in 1994 with almost 60% of the vote, it became a divisive issue, driving many Hispanic voters out of the Republican Party.

In the 1990 gubernatorial election, the Republican Pete Wilson received 30% of the Hispanic vote. During the 1998 election, the Republican candidate received less than 20% of the Hispanic vote. Aware of this marked trend, Republicans in California are now toning down their anti-immigrant rhetoric, and many have taken positions in opposition to the new version of Prop 187.

The new version is most different from the original in that it does not ban the children of illegal immigrants from public schools, a provision that was almost immediately declared unconstitutional. Despite this, most Republicans are likely to not support it. The State Republican Party Chairman has not come out against the proposal yet, but has said "issues

related to 187 will not be part of a policy agenda the GOP caucus will pursue.”

Of course, some Republicans have embraced the new version, and criticize their fellow Republicans for what they consider pandering for votes. One of the co-sponsors of Prop 187, who will also sponsor the new version, Barbara Coe, says that people who have left the Republican Party because of Prop 187 “are not good American citizens.”

Supporters want the new proposal to be on the ballot in November 2000, and will probably begin collecting petition signatures in early 2000.

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#### **51. MEDICARE FRAUD SCANDAL IN CALIFORNIA CENTERS ON ARMENIAN IMMIGRANTS**

An FBI investigation has resulted in the discovery of a fraud scheme in which Medi-Cal, the California state Medicare program, was bilked out of almost \$1 billion. Of the 364 cases in which there is an indictment or an ongoing investigation, only a few do not involve ethnic Armenians. This consistency led to newspaper reports that struck some members of the Armenian community in Los Angeles as discriminatory, prompting many ethnic leaders to openly dispute the perceived connection between ethnicity and the fraud.

Since the late 1980s, over 200,000 Armenians have arrived in Los Angeles, the center of the fraud scheme, after receiving political asylum. Leaders defending their community are quick to point out that in the Armenia or the Soviet Union, corruption was a way of life. Armenia had one of the highest standards of living of any Soviet republic, which meant that it had one of the strongest black markets. Community leaders and scholars think this experience, not some supposed ethnic tendency, is the cause of the current scandal.

There is a history of immigrants from countries where corruption is common committing fraud against the government in the US. In 1984, over one hundred physicians from Vietnam were charged with filing false Medicare claims for hundreds of millions of dollars. And in 1991, a similar scheme to the one involving Armenians was discovered involving Filipino immigrants.

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## **52. CHICAGO INS OFFICE CONTINUES TO RECEIVE CRITICISM FOR LACK OF SERVICE**

The INS Chicago District Office has been the subject of much criticism in recent months, coming under fire for its failure to provide adequate public service. Critics are again blasting the office, this time for its failure to provide adequate resources for its hearing impaired customers. The problem is so bad that a local disability rights group, Access Living of Metropolitan Chicago, is planning to file an administrative complaint against the office. The primary complaints are that the office's failure to provide sign language interpreters or other means of communications result in failures of citizenship exams, and that the office is unsafe because it lacks visual warning systems in case of an emergency.

We recently reported on how a Chicago Congresswoman went undercover as an immigrant seeking information from the INS. She found that the treatment she received from the Chicago INS office was abysmal stating that she was shocked by the shabby treatment she received.

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## **53. STUDY SHOWS CHILDREN OF IMMIGRANTS ON FINANCIAL PAR WITH CHILDREN OF CITIZENS**

One of the most common arguments used by groups who want to decrease current levels of immigration is that the children of immigrants who lack English language proficiency and job skills will be unable to integrate into US society and will continue their parents' dependence on government assistance. A new study shows this argument may be wrong.

According to a report released by the National Bureau of Economic Research, the children of immigrants are far more economically successful than is widely believed. The study compared the educational achievements and financial success of four groups: children of immigrants who arrived before 1940, children of immigrants after 1970, and children of citizens from each time period. The success of the children was compared to that of their parents.

Despite significant changes in the places from which people immigrate to the US, primarily southern and eastern Europe in the earlier part of this century to Latin American and Asia in more recent times, the achievements of children of immigrants remain consistently strong. Children in each group made up between 50% and 60% of the difference between the average US wage and the wages earned by immigrants in their parents' ethnic group.

Even more surprisingly, when children of citizens and immigrants of the same socio-economic background are compared, the children of immigrants achieve more in their education and receive higher earnings than the children of citizens.

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#### **54. FEES FOR SOME INS FORMS WILL CHANGE WITH THE NEW YEAR**

Effective January 14, several INS fees will be changed. Fees for Form I-360 Petition for Amerasian, Widow, or Special Immigrant will be raised from \$80 to \$110. Fees for Form N-336, Request for Hearing on a Decision in Naturalization Proceedings Under Section 336 of the INA will also be raised, from \$110 to \$170. Fees for two forms will be lowered. The fee for Form N-300, Application to File Declaration of Intention will be reduced from \$75 to \$50, and the fee for Form N-470, Application to Preserve Continuity of Residence for Naturalization Purposes will be lowered from \$115 to \$80.

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#### **55. CHICAGO SCHOOL SYSTEM TO BEGIN RECRUITING FOREIGN TEACHERS**

Over four months of negotiations between the INS, the Department of Labor and Chicago city schools have yielded a unique new way of recruiting teachers – looking abroad. Each year Chicago hires 1,700 teachers, but still has about 400 teaching positions it cannot fill.

Officials hope that the Global Educators Outreach Program will alleviate the teacher shortage, especially in areas such as math, science and foreign languages. Two factors converge to make programs such as this increasingly necessary: growing numbers of children in schools and the tight labor market. Experts are predicting that within the next ten years, over 2.2 million new teachers will have to be hired in the US, a number that does not include teachers that must be hired to replace current teachers who may leave the profession.

The foreign teachers would use H-1B temporary work visas. Applicants, who must be fluent in English, will be screened by the school board and consulates. They must then pass a test given by the Illinois State Board of

**Education.** The school system has already identified six potential teachers, three of whom may begin teaching in Chicago as early as next month.

An obvious problem with the plan is the potential that the H-1B cap will be reached early and visas will not be available for the teachers.

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#### **57.COMING UP IN OUR FIRST WEEKLY EDITION**

**Beginning in the first week of January, Siskind's Immigration Bulletin will begin publication on a weekly basis. In our first weekly issue we will cover a range of topics, including any developments in the case of Elian Gonzales and the current high profile stops along the US-Canadian border. We will also be updating our readers on recent court cases, including Magana-Pizano v. INS, in which the Ninth Circuit ruled that certain portions of the 1996 immigration laws cannot be applied retroactively, and that habeas corpus is available to aliens who wish to dispute a deportation order against them.**