SISKIND'S IMMIGRATION BULLETIN - MAY 1999

E-mail subscribers as of May 29, 1999: 21,304 persons (50 states/126 countries)

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1. **MESSAGE FROM SISKIND, SUSSER, HAAS & DEVINE**
2. **LEGISLATIVE UPDATE – ADVOCACY UPDATE CENTER**
3. **NATURALIZATION AND CITIZENSHIP UPDATE**
4. **BORDER AND DEPORTATION NEWS**
5. **LATEST H-1B VISA NUMBERS**
6. **VISA SPOTLIGHT: INS RELEASES INTERIM NACARA REGULATION**
7. **INS ISSUES REGULATION DEFINING “PUBLIC CHARGE”**
8. **GOVERNMENT PROCESSING TIMES**
9. **STATE DEPARTMENT VISA BULLETIN**
10. **NEWS BYTES**
11. **HOUSE IMMIGRATION SUBCOMMITTEE HOLDS HEARING ON EMPLOYMENT VISA FRAUD**
12. **DALLAS FEDERAL RESERVE BANK PRESIDENT CALLS FOR MORE SKILLED IMMIGRANT WORKERS**
13. **INS ORDER EXPANDS RIGHTS FOR CUBANS**
14. **HEARD ON THE STREET**
15. **HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998 REGULATIONS ANNOUNCED**
16. **UNITED STATES INFORMATION AGENCY ISSUES REPORT PREDICTING MASSIVE MIGRATION FROM CENTRAL AMERICA**
17. **INS ANNOUNCES NEW POLICY ON REVIEW OF MANDATORY DETENTION CASES**
18. **MEXICAN PRESIDENT ZEDILLO VISITS CALIFORNIA**

19. SUPREME COURT BROADENS GROUNDS FOR DENYING ASYLUM
20. NEWS FROM THE COURTS
21. FEDERAL JUDGES IN WASHINGTON STATE PLAN TO MEET TO DISCUSS INDEFINITE DETENTION CASES
22. PROPOSED HUBBING PLAN DEFEATED
23. BORDER PATROL EXPERIENCES DIFFICULTY IN RECRUITING NEW EMPLOYEES
24. GENERAL ACCOUNTING OFFICE REPORT FINDS SOUTHWEST BORDER STRATEGY HAS CAUSED INCREASED IMMIGRANT DEATHS
25. MEMBERS OF CONGRESS RENEW ATTACK ON PRESIDENT CLINTON FOR "SURRENDERING" IN BORDER FIGHT
26. HUNGER STRIKE PROTESTING DETENTION LAWS COMES TO AN END
27. TWO MASSACHUSETTS COMPANIES SUE COMPETITION FOR HIRING UNDOCUMENTED WORKERS
28. INS BREAKS UP CENTRAL AMERICAN SMUGGLING RING
29. MORE NEWS ON NORTHERN MARIANAS ISLANDS SWEATSHOP LAWSUIT
30. BORDER PATROL PREPARES FOR SUMMER CROSSINGS
31. CONTINUING IMPACT OF KOSOVO CONFLICT ON U.S. IMMIGRATION
32. INS DEFENDS TREATMENT OF JAILED ASYLUM SEEKER
33. OPERATION VANGUARD INVESTIGATION OF NEBRASKA MEAT PACKING PLANTS UNCOVERS MANY ILLEGAL WORKERS
34. MEXICAN SOLDIER GRANTED ASYLUM
35. ILLEGAL IMMIGRATION TO GUAM ON THE RISE
36. FUNDING CRISIS PLAGUES INS TEXAS SERVICE CENTER
37. DV-2000 RESULTS RELEASED
38. IMMIGRATION AND THE INTERNET
39. CONSULAR FOCUS: ANTI-US DEMONSTRATIONS IN CHINA DISRUPT VISA PROCESSING
40. ELECTRONIC INFORMATION EXCHANGE PROGRAM FOR F-1 AND J-1 PROGRAMS MAKES PROGRESS

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

Dear Readers:

I am preparing this month's issue on the heels of my return from the 51st annual meeting of the NAFSA: The Association of International Educators. NAFSA is the national organization for the nation's foreign student advisors. This was my first NAFSA annual meeting and I left with even more respect for the job this organization does. I'll be reporting on some of what I learned at various points in this month's newsletter. I also had the opportunity to meet in person many people who subscribe to this publication. The feedback received will no doubt be helpful in producing a stronger product. I also spent some time meeting NAFSA members at

the Matthew Bender Company booth. Matthew Bender is the publisher of my new book, The J Visa Guidebook, which will be released shortly (hopefully by our next issue or soon after – look for the announcement here).

Next month, I'll be traveling along with most of our firm to the annual meeting of the American Immigration Lawyers Association in Seattle, Washington. I plan on trying to report daily from the conference on our web site so keep an eye out.

In firm news, Siskind, Susser, Haas & Devine is pleased to announce the addition of three new associate attorneys to the firm. Amy Ballentine and Kristie Crawford have joined our Memphis office. Laura Stewart has joined the firm's Nashville office. Welcome Amy, Khristie and Laura!

Earlier this month, I was a speaker at a seminar produced by the American Bar Association entitled "Management, Ethics & Technology: Essential Know-How for the Busy Lawyer." The seminar was held in conjunction with the ABA Law Practice Management Section's spring meeting in Asheville, North Carolina. G

This month we report on a number of important issues including the new NACARA regulation providing amnesty for many central American refugees in the US, the Administration's new immigrant welfare rules, new rules providing immigration relief for Haitians and more. And, as always, we include our regular features.

And as always, we remind readers that this publication is put out by Siskind, Susser, Haas & Devine, an immigration law firm, and we are available for telephone or in-person consultations to answer immigration questions and discuss our representing individuals and employers in immigration matters. If interested, please go to http://www.visalaw.com/intake.html. Employers interested in retaining the services of an immigration law firm are also welcome to call us at 800-748-3819.

Regards as always,

Greg Siskind

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2. LEGISLATIVE UPDATE – ADVOCACY UPDATE CENTER

House bills

H.R. 1573 – Rep. Gene Green (D-TX) has introduced a bill that would make elementary and secondary schools exempt from the fee requirements that ordinarily accompany the filing of an H-1B petition. The provision would be effective from its enactment date until October 1, 2001.

H.R. 441 - the Nursing Relief for Disadvantaged Areas Act of 1999 has been voted out of the House of Representatives and is now pending before the Senate. The

program would create 500 jobs for qualified foreign nurses working in shortage areas, with an authorized period of employment of up to five years. The new visa would be known as the H-1C visa and 500 visas would be available each year. States with populations under 9,000,000 will be eligible for 25 visas per year and states with more than 9,000,000 residents will be eligible for 50 visas per year. Eligible nurses will be entitled to admission for three years.

H.R. 1841 – Introduced by Luis Gutierrez (D-IL), this bill would revive Section 245i of the Immigration and Nationality Act. That section of the law expired in 1998 ending the practice of allowing people otherwise eligible to immigrate to the US but who had status violations to process their green card applications in the US in exchange for a $1000 penalty fee. Applicants now have to process applications at US consulates. However, because of the new reentry bars, many are ineligible consular process for up to ten years after leaving. A similar bill nearly passed last session and this is a piece of legislation we expect to be one of the more seriously debated pieces of legislation this session.

H.R. 1485 – Democratic Representative Barney Frank has introduced legislation to ameliorate some of the harsh results of the 1996 Immigration Act. This bill would allow people in the US for a long period of time to seek relief from deportation.

H.R. 1399 – Democratic Congressman Levin of Michigan has introduced another bill to roll back provisions in the 1996 Act. This bill would allow states to have the option of providing various forms of need-based assistance to immigrants that the 1996 Immigration Act bars.

H.R. 1156 – Congressman Frank has introduced legislation long supported by the American Immigration Lawyers Association and other immigration advocacy groups. This bill would create a Board of Visa Appeals within the Department of State to review decisions of consular officers concerning visa applications, revocations and cancellations. Consular officers currently have virtually unfettered discretion in issuing such decisions.

H.R. 840 – This bill, introduced by Congressman Pallone (D-NJ), would allow spouses and children of US permanent residents to enter the US as students and visitors while they await their priority dates becoming current. Such spouses and children are currently subject to separation for five years or even longer in some cases.

H.R. 1520 – In a surprise and welcome move, Immigration Subcommittee Chairman Lamar Smith (normally not one to introduce legislation making life better for immigrants), has introduced a bill that would give priority in immigrant visa processing to unmarried children of citizens who turn 21 after the date the original petition is filed.

Senate bills

S. 912 – The Border Patrol Recruitment and Retention Act of 1999, introduced by Sen. Jon Kyl (R-AZ) and sponsored by Sen. Kay Bailey Hutchinson (R-TX), Sen. Pete Domenici (R-NM), Sen. John McCain (R-AZ), Sen. Phil Gramm (R-TX), Sen. Jeff Bingaman (D-NM), Sen. Ernest Hollings (D-SC), Sen. Spencer Abraham (R-MI), and Sen. Dianne Feinstein (D-CA), would increase the basic pay scale for employees of the U.S. Border Patrol. The new provision would also create an Office of Border Patrol Recruitment and Retention. The purposes of this new office would be to develop outreach programs designed to increase recruitment for the Border Patrol, as well as programs designed to keep the agents from leaving the service. $50,000,000 would be appropriated to fulfill the requirements of the provision.

S. 890 – Minnesota Democrat Paull Wellstone has introduced this bill which would ease naturalization requirements for immigrants who served with special guerilla units or irregular forces in Laos during the US-Vietnam conflict.

S. 871 – Vermont Democrat Patrick Leahy has introduced legislation that would make it easier for veterans of the US armed forces to seek discretionary relief in deportation proceedings. The bill was recently publicized after the media reported the story of a 52 year old Vietnam veteran green card holder who was deported after the INS discovered a decade old minor burglary conviction in his background.

S. 792 – This is the Senate counterpart to H.R. 1399 described above.

State bills

The Colorado state house has approved a bill outlawing the practice of female genital mutilation. The bill has already passed the state senate, but it must be returned to that chamber for a final vote

Correction from April 1999 issue.

Thanks goes to long-time reader Dorothy van Schooneveld who correctly noted our incorrect description of HR 801. We incorrectly stated that the current residency requirement for transmission of citizenship to children born outside the US to one US citizen parent and one alien is that the US citizen parent must have resided for five years after the age of 16 in the US. Actually, Current law is that a U.S. citizen married to an alien can transmit citizenship to a child born overseas if the parent has lived AT LEAST FIVE YEARS IN THE U.S., AT LEAST TWO OF WHICH WERE AFTER THE AGE OF 14. And for people born BEFORE 1953, the citizen parent must have lived in the U.S. for a total of TEN YEARS, at least FIVE OF WHICH WERE AFTER THE AGE OF 16. The bill in question would only change the requirement for this latter group by now lowering the residence requirement to being in the US after age 16 to just three years. Thanks Dorothy!

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3. NATURALIZATION AND CITIZENSHIP UPDATE – "ELECTRONIC" FILING OF CITIZEN APPLICATIONS

A settlement has been proposed in the suit against the INS on behalf of disabled immigrants with pending naturalization applications whose applications for medical waivers were denied. The settlement must be approved by the Justice Department and a federal judge. If it does become effective, the INS will be required to review all applications that were rejected between March 1997 and December 1998, about 3000. New applications would not be required, but if the original application is found unacceptable, the petitioner will have two more opportunities to submit sufficient applications. The applications will be judged according to criteria issued last April 7 and reviewed in our Visa Spotlight article last April at www.visalaw.com/99apr.

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The INS has introduced a new "electronic" N-400 form for people filing for naturalization. The new system allows people to fill out their form on their computer and print the form out with a bar code that captures all of the information. The INS can then scan the bar code instead of hand typing in the information, thus ensuring greater accuracy and speeding up data entry. The system is fairly similar to the commonly used bar code scanning that you see at your typical grocery store.

The software can be downloaded from the INS web page at http://www.ins.usdoj.gov/natz/n400p1.htm. To use the software, you much be running Windows 95, 98 or NT and have a laser printer. The software will guide you through the completion of the form. After completing the form, simply print, sign and mail to the appropriate INS Service Center along with the required supporting documents.

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4. BORDER AND DEPORTATION NEWS

The mayor of Douglas, Arizona, Ray Borane, has asked Attorney General Janet Reno to deputize local law enforcement officials, thus allowing them to deal with illegal immigration. A provision of the Immigration and Nationality Act allows such a move when there a "urgent circumstances requiring an immediate federal response." Borane says that while he does not expect Reno to grant his request, he maintains that the situation in Douglas meets the requirements of the federal law,

adding that illegal immigration in the area "has had a devastating impact on Douglas and surrounding communities. The city is also considering filing a lawsuit against the federal government to recoup funds it expends in dealing with illegal immigration.

An internal report of the Border Patrol obtained by the Associated Press admits that an agent fired a pellet gun at a raft carrying three migrants across the All-American Canal. The shot caused the raft to capsize. Only two of the rafters were seen on shore following the incident, and searches have not yet discovered the third. The agent, whose name was not available, has been placed on administrative leave. T.J. Bondurant, an investigator with the Department of Justice involved with the case, worries that the rapid growth of the Border Patrol has both decreased training and made it more difficult to investigate claims of misbehavior.

A detainee at the INS detention center in San Pedro, California was killed during an escape attempt. He tried to escape by hiding beneath a bus carrying detainees to Los Angeles for court hearings. Officials believe he was accidentally run over as the bus began to move. The death prompted at lockdown at the detention center, which houses 600 people awaiting deportation.

A routine traffic stop in Missouri has led to the break up of a fraudulent document ring. Searching a van after stopping it for erratic driving, officers found 20,000 Social Security cards and 14,000 Resident Alien cards. The value of the documents found is estimated to be $2.5 million.

Violence against people attempting to illegally cross into the U.S. is on the rise, according to officials from both the U.S. and Mexico. Along with increasing reports of robbery, more and more women are reporting having been raped. Officials say one of the reasons for the increase is the tighter border security in cities, forcing immigrants into deserted areas where they often fall prey to bandits. The Mexican consul in Nogales has suggested increased patrols by U.S. police and Grupo Beta, a Mexican police force entrusted with ensuring the safety of northbound migrants.

Judge Richard Matsch, who gained national attention as judge in the trial of Timothy McVeigh, threw out a plea agreement offered to an employer of undocumented workers. The government sought a sentence of 12-18 months and a $350,000 fine. The total possible punishment for the six offenses to which the employer pled guilty is 60 years and $1.5 million. In throwing out the agreement, Matsch criticized the government for its willingness to deal so lightly with an employer who is encouraging illegal immigration. Sentencing will be at the end of July.

The U.S. Border Patrol has started a toll-free 800 number for residents in Arizona to report suspected illegal immigrants. The agency does not expect it to be a long-term solution, but hopes the additional resource will improve response times and community involvement. The hotline may also be used to report medical

emergencies, a situation that will doubtless become more important as the hot summer months approach.

Federal authorities in San Diego have broken up a counterfeit document ring alleged to have supplied thousands of illegal immigrants across the nation with fraudulent papers. During the raid of a home north of San Diego, agents seized 9,200 documents, a scanner, and a color copy machine. The operation was unusual in that each false document was not produced individually, rather, templates were being produced and then the individual information was filled in, making the documents look more authentic.

According to officials, illegal immigration through New Mexico is on the rise. Thus far during fiscal year 1999 (which began in October of 1998) over 1,000 apprehensions have been made. During all of fiscal year 1998, only 800 arrests were made. Few of the arrests are made near the border, leaving officials with the belief that the migrants are entering through another state and then being taken into New Mexico to work.

The captain and chief mechanic of a cargo ship have each been sentenced to prison for smuggling immigrants into the U.S. Each was sentenced to the minimum term and was not ordered to pay a fine. Chinese nationals paid $40,000 each to be smuggled, which involved being flown and boated around the world. The immigrants have been released on bail pending their asylum hearing.

Responding to pressure from Congress, the INS is giving new attention to the U.S.-Canada border. As part of the plan to begin tracking all arrivals and departures in the U.S. the northern border is receiving many new high-tech devices designed to improve border security and speed the process of crossing for those entering legally. According to government statistics, Canadians are the fourth largest group living illegally in the U.S., with 140,000 Canadians illegally in the U.S.

During April, the Arizona segment of the Border Patrol apprehended over 47,000 undocumented immigrants crossing from Mexico, down from the March total of over 65,500. During April of 1998 the number apprehended was about 38,600. The increase in the numbers in 1999 over 1998 is most likely due to conditions in Central America following Hurricane Mitch in October of 1998.

A routine traffic stop in Missouri led to the discovery of fourteen undocumented Hispanics. The sheriff's deputy who made the stop contacted the INS, which was unable to take custody of the men because they had no way to transport them, nor anywhere to house them.

Fifty-four people suspected of working without authorization are being held following a raid of a landscaping company in Baltimore. They were being paid less than the regional prevailing wage for such work, and at least three of the workers

were minors. This was the largest number of illegal immigrants apprehended at one time in Maryland in many years.

The Office of the Inspector General, a division of the Justice Department charged with maintaining ethical standards within the agencies of the Department, is investigating claims that a Border Patrol agent assaulted and seriously wounded a 16 year old boy attempting to make an illegal entry. Antonio Gomez, a Guatemalan national, claims he was chased across the desert after the car he was being transported in was stopped. He says that when he was caught, the agent began kicking him, resulting in a broken leg. Spokespeople for the Border Patrol have yet to make an official comment on the incident.

Thomas Sylvain was deported to Haiti in late January, over protests that he was a U.S. citizen and his possession of a U.S. passport. In early May, the INS allowed him to return to the U.S. Immigration advocates say federal authorities failed to properly investigate his claims of citizenship. During his stay in Haiti, Sylvain fell gravely ill and he is still in a hospital in Miami. There is no word yet on whether Sylvain will sue the INS for the mistake.

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5. INS RELEASES LATEST H-1B NUMBERS

The INS has announced that as of April 30, 107,753 H-1B petitions have been approved thus far this year. The total number of H-1B visas available for fiscal year 1999 is 115,000.

We do not yet know what the Service plans to do with the petitions it receives after all the available visas have been used. We do know that petitions submitted before April 6 will be adjudicated before any other steps are taken. Once all four Service Centers have dealt with petitions filed before that date, the INS will determine how many visas remain, and will also make determinations as to how to allocate them.

Don’t expect help this year from Congress. Senator Spencer Abraham, the Senate Judiciary Committee Chairman who led the charge on raising the cap last year has stated that he will not push for a further lifting of the cap unless the Clinton Administration signals its support. And, to date, that support has not been coming.

When the cap is announced, the INS is also expected to issue an announcement regarding the treatment of applications filed before and after the cap is reached. We plan on detailing that document’s contents in our next issue.

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6. VISA SPOTLIGHT: INS RELEASES INTERIM NACARA REGULATION

The INS has finally released the rule that will implement section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) which has amended some of the harsher provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). It allows nationals of certain Central American and former Soviet bloc countries to apply for relief under the law as it existed prior to the IIRAIRA. The principle areas addressed in the interim rule are jurisdiction over NACARA applications and the treatment of the extreme hardship requirement for relief.

This rule is an interim rule that will go into effect on June 21, 1999. It is based on comments received in response to the proposed rule issued on November 24, 1998. The INS will still accept comments on the rule until July 20, 1999. The Service decided to issue an interim rule because while there are still many issues on which it wants additional comments, there are many people dependent on the relief NACARA will provide who should not be made to wait any longer.

The interim rule does not make any change in the jurisdictional plan announced in the proposed rule. Thus, it is still shared between asylum officers and immigration courts. If the applicant for NACARA relief has an asylum claim pending with the INS, the asylum officer will also adjudicate the NACARA petition. Similarly, if the asylum claim is pending before an immigration court, the court will adjudicate the NACARA petition. A claim is considered pending until a final order is issued. There are two exceptions to this rule. The first is for applicants who registered for benefits under the American Baptist Churches v. Thornburgh settlement and whose cases before the immigration court were administratively closed or continued. These ABC class members are allowed to file NACARA applications with the INS. The second exception applies to qualified family members (children and spouses) of an individual with a NACARA application pending before the INS, or has already been granted NACARA relief. This scheme results in some people who are NACARA eligible but are not eligible to affirmatively apply for relief with the Service. They must wait until they are put into proceedings, then they can raise a claim for NACARA relief before the immigration court. Many commentators requested the INS develop a procedure for placing these people into proceedings, but the Service is waiting to see how large an impact adjudicating the already pending NACARA eligible cases has before deciding what to do about this.

The interim rule also sets forth requirements for initial substantive eligibility. NACARA requires that the applicant maintain continuous physical presence in the U.S. Brief, casual and innocent absences are allowed. In defining and applying these terms the INS decided to define brief as visits of no longer than 90 days, with all visits totaling less than 180 days. Absences of greater length are to be considered on a case by case basis. The applicant has the burden of proving that the visit was casual and innocent, regardless of the length of the visit.

One of the most important issues addressed by the interim rule is the issue of extreme hardship to the alien or a qualified relative who is a U.S. citizen or legal permanent resident. Many immigration advocates argued for a presumption of extreme hardship upon deportation for all potential NACARA beneficiaries. The INS declined to adopt such a presumption, but did adopt a rebuttable presumption of extreme hardship for ABC class members who are eligible for NARACA relief. This is an extremely important provision, and gives hope to the 240,000 ABC class members who have now been in the U.S. for over 10 years in many cases. Since the ABC settlement in 1990, they have legally been living and working in the U.S., during which time they have developed extensive ties to this country.

The fees for registering for NACARA relief will be $215 for an individual and $430 for families, regardless of any fees paid to the INS in the past.

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7. INS ISSUES REGULATION DEFINING "PUBLIC CHARGE"

On May 26, 1999, the INS issued a proposed regulation that would define what is a "public charge" for the first time. The purpose of the regulation is to clarify what public benefits an immigrant may receive without becoming a "public charge," a status that prevents one from adjusting status to legal permanent resident, and subjects one to deportation. It is also hoped the regulation will lead to increased consistency in agency decision making.

While the concept of "public charge" has been a part of U.S. immigration law for more than 100 years, it has never been defined by any law or regulation. However, the immigration consequences of being labeled a "public charge" are very serious. One likely to become a public charge in the U.S. is inadmissible, and cannot become a legal permanent resident. Furthermore, anyone found to have become a public charge within five years of admission is subject to deportation.

Recent changes in immigration laws have led to great confusion as to what benefits will cause one to be considered a "public charge." The result of this has been that immigrants have not sought benefits for which they are eligible for fear of damaging their chances of becoming an LPR. One of the purposes of the new regulation is to prevent this situation from continuing.

The regulation would define "public charge" as an alien who is or is likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense." This definitions, however, is not the end of the "public charge" inquiry. Other factors the agency is to consider are the applicant's age, health, family status, assets, resources, financial status, education and employment skills. No single factor is to be determinative.

Certain programs that are not intended to function as income maintenance programs are not to be considered in the "public charge" inquiry. Among these programs are Medicaid, Children's Health Insurance Program, food stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), public healthcare benefits such as immunization and prenatal care, as well as emergency medical assistance, housing, educational and job-training assistance programs, and emergency disaster relief.

Among the programs that will render a beneficiary a "public charge" are Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF), and other state and local cash assistance programs.

While an alien who is a "public charge" is subject to deportability, the alien has an opportunity to avoid deportation by repaying the benefits. Even if the alien has not repaid the benefits, he can avoid deportation by showing receipt of the benefits was required by a condition that arose after entry to the U.S.

The rule is being implemented immediately, through field guidance memoranda being issued to INS offices and other guidance being sent to consular offices by the Department of State. However, the rule is still under consideration, and the INS is seeking public comments for 60 days.

The "public charge" test does not apply to applications for naturalization, or to cases of non-citizens sponsoring relatives for entry to the U.S. The latter applications, however, must be accompanied by an Affidavit of Support. The "public charge" test does not apply to refugees or asylees, nor to applicants adjusting status under the Cuban Adjustment Act, the Nicaraguan Adjustment and Central American Relief Act. Or the Haitian Refugee Immigration Fairness Act.

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8. GOVERNMENT PROCESSING TIMES

Source: American Immigration Lawyers Association

CSC Processing Dates

Just In Time Report
5/14/99

Petition Type	Case Date	Data Entry
I-90	98-250	09/23/98
I-102	98-132	04/08/98
I-129 L	99-148	04/29/99
I-129 H1B COS	99-132	04/08/99
I-129 H1 EOS	99-094	02/17/99
I-129 H2/H3	99-157	05/11/99

I-129 E	**98-198**	**07/13/98**
I-129 O/P/Q	**99-157**	**05/13/99**
I-129 R	**98-237**	**09/04/98**
I-129 F	**99-137**	**04/15/99**
I-130 (IR) Spouse	**99-104**	**03/02/99**
I-130 (IR) M/C	**99-085**	**02/02/99**
I-130 (IR) Other	**99-019**	**10/27/98**
I-130 Pref. Spouse	**98-074**	**01/16/98**
I-130 Pref. M/C	**98-095**	**02/17/98**
I-130 Pref. Other	**98-058**	**12/23/97**
I-131	**99-153**	**05/06/99**
I-140	**98-207**	**07/24/98**
I-360 FPL/Widows/Widowers	**99-080**	**02/16/99**
I-360 BPL/Religious	**98-090**	**02/09/98**
I-526	**Vacant**	**Vacant**
I-539	**98-244**	**09/15/98**
I-485 JTT Ready/Health Care Workers Included	**98-014**	**10/21/97**
I-751	**99-131**	**02/16/99**
I-765 Special Students	**Vacant**	**Vacant**
I-765 (c)(8)(a)(11)(Initial)	**99-153**	**05/06/99**
I-765 (c)(8)(a)(11)(Renewal)	**99-135**	**04/13/99**
I-765 (c)(9)	**99-141**	**04/20/99**
I-765 (a)(13)	**99-004**	**10/06/98**
I-817 Extensions	**98-248**	**09/21/98**
I-824 BPL	**98-149**	**05/04/98**
I-824 FPL	**98-126**	**04/01/98**
I-824 RPL	**99-003**	**10/05/98**
I-829	**99-008**	**10/08/98**

Nebraska Service Center Processing Times Report

The following is the Nebraska Service Center processing times report for the period ending April 30, 1999:

Application/Petition Type	Processing for Initial Receipt Date	Receipt Notice Processing Time in Days	
		From	To
I-90 Replacement Card	10/12/98	198	220
I-102 Replacement of Arrival Document	08/03/98	267	297
I-129/S New Amended NI Worker	03/22/99	25	30
I-129/F Fiance(e)	Current	25	30
I-130 Spouse US	01/25/99	85	90
I-130 Spouse	03/09/98	411	441
I-130 Other Relatives	09/28/98	300	400
I-131 Reentry Permit	01/19/99	90	120
I-131 Ref Travel Doc	Current	25	30
I-131 Advance Parole	Current	25	30
I-140 Immigrant Worker	09/21/98	219	249
I-360 Pet for Widow/Spec. Imm.	01/25/99	60	90
I-485 Employment	05/20/97	700	730
I-485 Asylee	07/06/98	400	500

I-485 Refugee	07/06/98	400	500
I-526 Investor	Not Adjudicated	30	60
I-539 Change/Extend NI Status	11/23/98	157	187
I-589 Asylum	Not adjudicated	15	30
I-698 Legalization-Adj to LPR	Current	15	45
I-730 Refugee/Asylee Relative Pet.	12/23/98	100	130
I-751 Remove Conditions	03/01/99	59	89
I-765 Employment Authorization-A5	Current	25	35
I-765 Employment Authorization-Other	Current	75	90
I-817 Family Unity	01/19/99	75	00
I-821 TPS	01/11/99	518	548
I-824 Actions of Approved Petitions	09/01/98	239	269
I-829 Removal Conditions (Investors)	None Pending	15	30
N-400 Naturalization	Not Adjudicated	540	600
N-600 Application for Citizenship	Not Adjudicated	15	120
I-724 All Waivers	01/06/99	90	120
Total Pending Applications – 92,895 (All types, pending first time adj.)			
*On April 30, 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.			

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

Application/Petition	Days to Initial Process.	Process. Receipt Date	No. of cases in the Work Time/Days From	To
I-90 Replacement Card	242	08/28/98	250	300
I-90A Saw	0	Current	30	60
I-102 Replacement of Arrival Doc	54	03/06/99	30	60
I-129/S New/Amended NI Worker	25	04/05/99	30	60
I-129/L New	0	Current	30	40
I-129 Other	0	Current	30	60
I-129(F) Fiance(e)	0	Current	30	40
I-130 Spouse	319	06/11/98	300	350
I-130 Other Relative	550	11/20/97	525	575
I-131 Advance Parole	na	Current	30	60
I-140 Immigrant Worker (1st & 2nd)	336	05/29/98	350	400
I-140 Immigrant Worker (3rd)	229	09/11/98	200	275
I-360 Pet. for Widow/Spec. Imm.	483	01/19/98	450	500
I-485 Adjustment	543	11/01/97	500	550
I-526 Investor	261	09/08/98	275	325
I-539 Chg/Ext NI Stat.- Employ-Bsd	00	Current	90	120
I-539 Cg/Ext NI Stat.- Other	237	09/25/98	200	250

I-589 Asylum	7	04/23/99	30	60	189
I-698 Legal-Adj to LPR	557	11/15/97	525	575	315
I-724 Waivers	n/a	Current		60	90
I-730 Ref/Asylee Relative Pet.	na	filed at NSC			
I-751 Remove Conditions	00	Current		60	90
I-765 Em. Auth.-Asylum Based	n/a	Current		30	60
0					
I-765 Em. Auth.-Other	65	02/25/99		60	90
I-817 Family Unity	51	03/09/99		30	60
I-824 Actions on Approved Pet.	58	03/02/99		30	60
I-829 Remove Conditions /Investor	293	06/03/98		275	325
N-400 Naturalization	n/a	Preprocess		550	730

***The word "Current" means within 30 days.**

INS LOCAL OFFICE PROCESSING TIMES

District/ Suboffice	Permanent Residence Filing - Approval I-485	Naturalization Filing Until Swearing In	Advance Parole Approval	Work Auth. Approval
Albuquerque	365-540	365-540	30-45	30-45
Atlanta	450-540	630-720	45-60	75-90
Baltimore	395-515	395-515	1	45-90
Boston	210	n/a	1	1
Buffalo	165-380	330-390	2-14	1-14
Charlotte	425-485	730-790	10-30	75-90
Chicago	540	540-720	1	30
Cincinnati	240-330	270-510	7	1
Denver	540-570	540-720	5-7	21-28
El Paso	485-545	485-545	60	60
Harlingen	742	610	162	91
Honolulu	240-300	30-60	3-7	1
Houston	820-850	600-700	30	90
Indianapolis	180-240	300-330	1-30	1-30
Kansas City	390-430	330-420	1-30	1
Louisville	540-660	720-840	60-90	60-90
Los Angeles	570-690	30-90	14-45	7-14
Milwaukee	n/a	n/a	30-45	30
Newark	390-465	515	1	90-180
New Orleans	365-575	365-575	10-30	30-120
New York	450-540	450-840	50-60	75-80
Oklahoma City	450-510	365-420	30-120	30-90
Omaha	365-545	365-425	30-60	30-60
Orlando	270-300	365-485	15-30	45-55
Phoenix	720-780	900-1080	150-180	90-120
Pittsburgh	180-270	360-420	4-7	1
Portland	450	365	15	15
Sacramento	450	510	1-5	1-3
Salt Lake City	450-540	365-450	14-21	21-60
San Antonio	425-450	425-450	30-60	30-60
San Diego	710-730	485-500	60-70	60-90
San Francisco	330-365	420-450	1-10	1-30
San Juan	365-420	365	7	1
Tampa	420-450	1080-1140	10-14	80-90
Wash, DC (Arlington)	365-420	180-420	10-21	30-45

Further Instructions of 1-4:

(1) I-485 Filing Until Approval
(2) Naturalization Filing Until Swearing-In
(3) Advance Parole Approval
(4) Work Authorization Approval

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9. STATE DEPARTMENT VISA BULLETIN

IMMIGRANT NUMBERS FOR JUNE 1999

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during June. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Immigration and Naturalization Service reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by May 10th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

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

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

FAMILY-SPONSORED PREFERENCES

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

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

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

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

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

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

EMPLOYMENT-BASED PREFERENCES

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

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

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

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

**4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and
PHILIPPINES.**

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is earlier than the cut-off date listed below.)

PREFERENCES

Family	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	15FEB98	15FEB98	15FEB98	08AUG93	22AUG87
2A*	22DEC94	22DEC94	22DEC94	22NOV93	22DEC94
2B	08JUL92	08JUL92	08JUL92	22JUL91	08JUL92
3rd	01AUG95	01AUG95	01AUG95	08NOV90	01JUL87
4th	22JUL88	22JUL88	15AUG86	01APR88	15JAN79

***NOTE: For June, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 22NOV93. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 22NOV93 and earlier than 22DEC94. (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.)**

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01JUL98	C	C	C
2nd	C	22MAY97	08JAN98	C	C
3rd	C	15MAY95	15MAY96	C	C
Other Workers	01NOV92	01NOV92	01NOV92	01NOV92	01NOV92
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C

5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

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

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides 50,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. DV visas are divided among six geographic regions. Not more than 3,500 visas (7% of the 50,000 visa limit) may be provided to immigrants from any one country.

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

Region	All DV Chargeability Areas Except Those Listed Separately			
AFRICA	AF 33,500			
ASIA	AS 10,000			
EUROPE	EU 20,460	EXCEPT:	ALBANIA	EU 16,290
NORTH AMERICA (BAHAMAS)	NA 24			
OCEANIA	OC 950			
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	SA 2,600			

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-99 program ends as of September 30, 1999. DV visas may not be issued to DV-99 applicants after that date. Similarly, spouses and children accompanying or following to join DV-99 principals are only entitled to derivative DV status until September 30, 1999. DV visa

availability through the very end of FY-1999 cannot be taken for granted. Numbers could be exhausted prior to September 30. Once all numbers provided by law for the DV-99 program have been used, no further issuances will be possible.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN JULY AND AUGUST

For July, immigrant numbers in the DV category are available to qualified DV-99 applicants chargeable to all regions/eligible countries as follows:

Region	All DV Chargeability Areas Except Those Listed Separately			
AFRICA	AF 38,180			
ASIA	AS 11,970			
EUROPE	EU 22,340	EXCEPT:	ALBANIA	EU 18,900
NORTH AMERICA (BAHAMAS)	NA 24			
OCEANIA	OC 1,012			
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	SA 2,850			

For August, immigrant numbers in the DV category are available to qualified DV-99 applicants chargeable to all regions/eligible countries as follows:

Region	All DV Chargeability Areas Except Those Listed Separately
AFRICA	AF Current
ASIA	AS Current
EUROPE	EU 25,100
NORTH AMERICA (BAHAMAS)	NA 24
OCEANIA	OC Current
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	SA 3,071

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10. NEWS BYTES

Attorney General Janet Reno has appointed Margaret Philbin to the new position of Deputy Director to the Executive Office for Immigration Review. Ms. Philbin is currently the General Counsel to the EOIR. The role of the Deputy Director is to assist in the overall management of the EOIR, in particular supervising the staff, a role that is currently performed by the Office of the Associate Director. It is hoped that increased administrative oversight will improve all aspects of the services provided by the EOIR.

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AILA is reporting that INS Service Centers are improperly denying H-1B petitions in cases where Labor Condition Applications are submitted in response to requests for additional evidence. The cases involve instances where the LCAs are dated a date later than the date the H-1B petition is filed, but where the LCA was filed prior to the H-1B filing. The problem has been accentuated because LCA processing at the Department of Labor was disrupted for several months during the transition to the new LCA faxback system.

***

Local INS offices and the Service Centers are now authorized to process adjustment of status cases filed prior to June 30, 1998. The delays are being blamed on the CIA name check program which can only handle 7,000 name checks per week. The CIA is currently backlogged nearly a quarter of a million cases. Relief will not come until a new computer system is installed in the later part of the year.

The INS is expected to issue a memorandum outlining various issues relating to adjustment of status cases including instructions for expediting cases where minor children will age-out of eligibility for dependent status and cases of DV applicants subject to a September 30, 1999 processing deadline. The INS requests that they be notified at least six months in advance on age-out cases.

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The Department of Labor appears closer to proceeding with its plans to implement its massive overhaul of the labor certification system. The overhaul is expected to have three components:

- **a realignment of the program from the DOL's Employment and Training Administration to the DOL's Employment Standards Administration.**

- **moving to a system where the program is supported by user fees**

- **changing the basic scheme of review for labor certification cases**

The DOL would like to implement a system where 75% to 80% of cases that are obviously approvable can be processed quickly so that attention can be focuses on the more difficult cases.

AILA is already on record as opposing the plan, particularly the part that envisions shifting responsibility from ETA – a program-operating agency – to the ESA – an enforcement agency.

The DOL does not plan on implementing the program any earlier than October 1, 1999 even though many details are already in place. The delay is partially due to the fact that ETA and ESA have different computer systems and the employees in each agency are represented by different unions.

In the meantime, the DOL claims its current backlog reduction program is going well and that it will have reduced its backlog by 50% by July of this year. The reduction is only for cases at the region and does not include cases still at the state level.

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Referrals of Indian H-1B cases for fraud investigations continue. While the practice has ceased at the Nebraska Service Center, the Texas Service Center is still referring cases to the US consulate in Chennai for credentials investigations.

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California Governor Gray Davis has stated that he will not implement a provision of the controversial Proposition 187 that would ban illegal immigrant children from the state's public schools. Proposition 187 was passed by the state's voters in 1995 and would bar illegal immigrants from receiving a variety of public benefits. The measure has never been fully implemented due to various court challenges.

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The American Bar Association's Section of Legal Education and Admission to the Bar has made a controversial recommendation calling for tighter restrictions on the licensing of foreign lawyers in the United States. The ABA Section is preparing a letter to the chief justices of the supreme courts of each state urging them to prohibit LLM degree holders from taking the state bar examinations. A number of law schools around the US offer such masters in law degrees to foreign lawyers. In addition to educating these lawyers on the American legal system, these degrees are often an important source of cash for law schools since these students frequently receive no financial aid. Over the last decade, law schools have seen an overall decline in enrollment and many are relying more and more on their foreign law students to help make up the gap.

The Section's position puts it up directly against another ABA section – the Section on International Law. Leaders of that section have spoken out vigorously arguing that, among other things, the proposal is contrary to international trade obligations of the United States and could lead to a backlash against the growing number of American lawyers practicing outside the US.

Currently, twelve states and the District of Columbia permit foreign-trained lawyers to take the bar exam.

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11. HOUSE IMMIGRATION SUBCOMMITTEE HOLDS HEARING ON EMPLOYMENT VISA FRAUD

In a hearing before the House Immigration Subcommittee in early May testimony focused on fraud relating to two employment visas – the H-1B and the L-1. H-1B visas are reserved for skilled workers; L-1 visas are for managers of multinational corporations. While there is only a small amount of fraud involved, in some areas of the world, especially China, India and Russia, fraudulent visa applications are more common.

Most instances of fraud involved over stating educational background and work experience, and companies passing themselves off as bigger than they are.

Among the sources of the problem discussed were understaffing at consular offices and a lack of training. Another source cited was the lack of coordination between the INS and the State Department.

Advocates for both the skilled workers seeking these visas and those hoping to employ them stressed that fraud is not that widespread, and that most workers do qualify for the visas and are needed by U.S. employers.

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12. DALLAS FEDERAL RESERVE BANK PRESIDENT CALLS FOR MORE SKILLED IMMIGRANT WORKERS

Robert McTeer, President of the Dallas branch of the Federal Reserve Bank called upon Congress to increase the numbers of skilled immigrants admitted to the U.S. to work during a speach before the Louisiana Bankers Association. His comments came just one day after Alan Greenspan, the chairman of the Federal Reserve, warned that the country's tight labor market could begin to create inflation unless the economy continues is growth and expansion. Greenspan worried that if the labor market becomes too competitive, wages could begin to increase at rates exceeding increases in worker productivity, which will lead to consumer price increases.

McTeer reflects the concerns of many connected to high-tech industries, many of which have been experiencing severe labor shortages for the past few years. Indeed, the creation of the American Workforce Competitiveness and Improvement Act of 1998 was passed largely as a result of lobbying efforts by high-tech industry. That bill provides for a temporary increase in the most common visa used by skilled

foreign workers, the H-1B. The increased numbers will no longer be available after 2001, at which point we will almost certainly see a return of the conditions that led to its passage.

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13. INS ORDER EXPANDS RIGHTS FOR CUBANS

In a memorandum issued in late April, the INS clarified its position on the treatment of undocumented Cubans arriving in the U.S. The purpose of the memorandum was to make explicit that Cubans arriving at places other than designated ports of entry (air ports, sea ports, etc.) must receive the same treatment as Cubans to do arrive at such designated ports.

Under the Cuban Adjustment Act, passed in 1966, Cubans who arrive in the U.S. are given parole and after one year are eligible to apply for permanent resident status. A grant of parole also includes work authorization. The clarification was necessary following the passage of IIRIRA in 1996, which created questions about the treatment of Cubans who did not arrive at regular ports of entry.

Undocumented Cubans already in the U.S. must surrender themselves to the INS before they will be given parole. According to the Border Patrol, 615 undocumented Cubans arrived in the U.S. during fiscal year 1998, and during the first half of fiscal year 1999 (October 1998 to March 1999) 848 undocumented Cubans have already landed.

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14. HEARD ON THE STREET

We have heard of new requirements being enforced at the Moscow Embassy relating to the filing of an application of an H-1B petition. Specifically, the embassy is now requesting copies of diplomas and other educational documents, certified copies of the employers tax returns filed with the IRS for the past two years, the company's payroll records for the prior year, and a company prospectus. Another new requirement the embassy appears to be demanding is proof of the beneficiary's experience in the proposed field of work. Evidence of this would include a resume, letters of recommendation from previous employers, publications, and work related correspondence.

We have been informed of an unusual occurrence at the U.S. Consulate in Toronto. An Indian national doing research in the field of Medicinal Chemistry went to the consulate to obtain a multiple entry stamp for his H-1B visa. During the interview he was asked what areas in particular his research encompassed. After responding

that he did work developing anti-viral compounds, the interviewer read terms out of a file relating to basic medical research and asked the applicant if he was familiar with them. The applicant said yes, and was then told he could not be granted his request for the visa stamp. The reason given for this was a new policy attempting to prevent the use of knowledge gained in the U.S. for "wrong purposes" upon return to India. We would be interested in hearing from anyone with a similar experience.

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15. HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998 REGULATIONS ANNOUNCED

The INS has announced a proposed final rule establishing procedures for Haitians adjusting status to legal permanent resident under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). The rule will become effective on June 11, 1999, and will be open for public comments until July 12, 1999.

Section 902 of HRIFA provides that the Attorney General shall adjust status of certain Haitian nationals to that of lawful permanent resident. To qualify for adjustment under § 902, the applicant must be a Haitian national present in the U.S. on December 31, 1995, have been continuously physically present in the U.S. since that time, not be subject to certain grounds of inadmissibility under § 212(a) of the INA, file an application to adjust status by April 1, 2000, and fall within one of five classes of persons defined in HRIFA. These classes are: Haitian nationals who applied for asylum before December 31, 1995; Haitian nationals who were paroled into the U.S. before December 31, 1995 on the grounds of credible fear of persecution; Haitian children who arrived without parents and have remained without parents; Haitian children who were orphaned after arrival; and Haitian children who were abandoned after arrival.

The benefits of adjusting status under HRIFA are numerous. First, the applicant may have entered illegally. Second, the applicant may have worked without authorization, and may have overstayed an authorized visa. Third, applicants are not subject to the visa preference system, exempting them from the worldwide quotas. Fourth, certain grounds for inadmissibility do not apply, such as becoming a public charge, illegally entering, or violating certain documentary requirements. Fifth, HRIFA applicants who were paroled into the U.S. and are now in exclusion or removal proceedings are not barred from applying for adjustment of status.

One of the most difficult barriers to proving eligibility to relief will be showing the applicant was in the U.S. on December 31, 1995. If the applicant was admitted through legal channels, the INS documentation will provide a rebuttable presumption that the applicant was present.

Application procedures for HRIFA relief will depend on the position of the applicant. Applicants who have a case pending before the Immigration Court will

have their application heard by that court. Applicants with an appeal pending before the Board of Immigration Appeals will have their case remanded to the Immigration Court for an adjudication of the HRIFA petition. Applicants with a case pending before either a court or the Board may apply for relief with the INS if they receive administrative closure of their case. Administrative closure requires the consent of the Service. Applicants who are under a final order of exclusion, deportation, or removal are to file their applications with the INS, unless the applicant has a pending motion to reopen before the Board or a court, in which case the application will be heard by one of those bodies.

Employment authorization is to be granted if the HRIFA applicant independently qualifies. Otherwise, employment authorization is to be granted only when the HRIFA application has been pending for 180 days.

Applications must include an Application to Register Permanent Residence or Adjust Status (Form I-485), a Biographic Information Sheet (Form G-325A), a birth certificate, a medical report, photographs, documentation of admission (if available), a police report from each country of residence, and documents to prove presence in the U.S. on December 31, 1995 and continuous physical presence since then. If employment authorization is also sought, an Application for Employment Authorization (Form I-765) must also be submitted. The fee for the application is $220 for Form I-485, and a $25 fingerprinting fee. Applications filed with the INS should be sent to the Nebraska Service Center.

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16. UNITED STATES INFORMATION AGENCY ISSUES REPORT PREDICTING MASSIVE MIGRATION FROM CENTRAL AMERICA

According to a United States Information Agency (USIA) report at least 600,000 Central Americans plan to seek work in the U.S. following the devastation of the region by Hurricane Mitch in October 1998. 280,000 people have reportedly already begun the journey. The INS, however, sees no reason to be concerned. According to a spokesperson for the agency, according to the figures they have, based on the number of people attempting to cross the U.S.-Mexico border, the number of people leaving Central American is actually decreasing.

The USIA report was prepared at the request of the Gallup Corp. by Costa Rican researchers. The information was gathered by interviewing a random sample of 4000 people, 1000 each in Honduras, Nicaragua, Guatemala and El Salvador. The cause for the mass exodus is apparently the mistaken impression the migrants have of U.S.immigration policies toward them. Many people interpreted the Temporary Protected Status granted the people of the region already in the U.S. at the end of 1998 to extend to people arriving afterwards.

Rep. Lamar Smith (R-TX) calls the situation "a growing illegal migration crisis" and worries that if even half of the predicted 600,000 people make it to the U.S. border, resources would be overwhelmed. The recent tightening of the border in southern cities has already had the dramatic effect of forcing migrants to attempt crossing either dangerous waters or barren deserts, leading to hundreds of deaths. More people attempting to cross the border will only mean more deaths. Adding to the difficulty of the situation is the recent explosive growth of the Border Patrol, which has led to under-training of many agents.

Another factor is that the U.S. cannot simply send Central Americans back across the border to Mexico. It takes much longer to process someone for return to Central America, which will lead to an increased burden on the already overwhelmed INS detention facilities.

The final impact of the most devastating storm to strike the Western Hemisphere this century is likely to be felt far from the area the hurricane actually struck.

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17. INS ANNOUNCES NEW POLICY ON REVIEW OF MANDATORY DETENTION CASES

Responding to increasing pressure from family and immigrant advocates, the INS has instituted a policy for reviewing cases of those who are under an order of deportation but who are not able to be repatriated. For those unable to be deported and facing mandatory detention, a deportation order can become the equivalent of a life sentence in prison.

Cases must be reviewed once during the 90-day removal period following a deportation order. If the detainee is not suitable for release into the community, they will have their case reviewed every six months. Before this policy statement, INS District Directors had the authority to conduct such a review, but the review was discretionary and there was no set time for it to occur.

The INS is concerned with the difficulty of reaching a balance between the need to protect communities and the need to protect the freedom and liberty of those being held without a criminal conviction. In order to achieve this balance, the INS plans on developing uniform, standardized procedures for review of long-term detainees. Further announcements on the development of these procedures will be forthcoming.

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18. MEXICAN PRESIDENT DISCUSSES TREATMENT OF IMMIGRANTS DURING CALIFORNIA VISIT

A few months after newly elected California Gov. Gray Davis visited Mexico, Mexican President Ernesto Zedillo made a three day visit to California. This was the first visit by the President of Mexico since California voters passed Proposition 187, and may reflect an important change in relations between the state and its southern neighbor. Mexico recently passed Japan as California's leading trade partner.

Pres. Zedillo and Gov. Gray both called for increased business and trade relations, as well as better treatment of Mexicans living in California, whether authorized or not. Reflecting on Prop. 187, which would deny educational and health benefits to illegal immigrants, including children, Pres. Zedillo noted the important role Mexican workers, both legal and otherwise, have played in the state's booming economy. He also spoke of how impressed he was by the progress made by Mexican-Americans in the state, citing Lt. Gov. Cruz Bustamante and Speaker of the State Legislature Antonio Villaraigosa as examples.

Zedillo also urged Mexicans living in California to not forget their Mexican heritage, but did not go so far as to endorse the efforts being made to allow Mexican nationals living elsewhere to vote in Mexican national elections. Before leaving Zedillo became the first ever Mexican president to address a joint session of the California state legislature.

Another important point made by President Zedillo was the growing concern in Mexico about the numbers of migrants crossing the U.S.-Mexico border that die each summer. There is a feeling in Mexico that the primary cause of the growing numbers of deaths is the increased Border Patrol presence in border cities, forcing migrants to more remote and inhospitable areas. He did not call for any specific action by the U.S., most likely because of the upcoming meeting between officials from the two countries. On June 3rd and 4th cabinet level officials from the U.S. and Mexico will be holding an annual meeting.

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19. SUPREME COURT BROADENS GROUNDS FOR DENYING ASYLUM

On May 3 the U.S. Supreme Court issued a unanimous opinion authored by Justice Kennedy in the case of INS v. Aguirre-Aguirre, reversing the Ninth Circuit's ruling that the Board of Immigration Appeals (BIA) applied an improper standard in determining that Aguirre-Aguirre had committed a "serious nonpolitical crime" before entry into the U.S.

Aguirre-Aguirre was a student activist in his native Guatemala, who, while protesting the government's treatment of students, in particular the need for student transportation, burned busses, assaulted passengers, and destroyed private property. The BIA determined that these were serious nonpolitical crimes making Aguirre-Aguirre ineligible for asylum even if he did prove that persecution was likely to occur if he was returned to Guatemala. The Ninth Circuit reversed, primarily on the ground that the BIA failed to take into consideration the political necessity and effectiveness of his actions, as well as whether the acts were grossly out of proportion with the goal he sought. The Ninth Circuit also ruled that the BIA erred in weighing the likelihood of persecution against the nature of the crimes.

As an initial point, the Supreme Court noted that the Illegal Immigration Reform and Immigrant Responsibility Act did not apply because the BIA rendered its final decision in May 1996. Under IIRAIRA, Aguirre-Aguirre would not be eligible for asylum at all. Prior to IIRAIRA, a grant of asylum was discretionary whatever the circumstances of the case; under IIRAIRA, asylum may not be granted if "there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States."

The primary basis for the reversal of the Ninth Circuit was its failure to give the appropriate level of deference to the BIA's decision. Because the BIA's decision rested on its interpretation of the law it administers, the Ninth Circuit should have applied the standard of whether the agency's decision was "based on a permissible construction of the statute." In each of the Ninth Circuit's bases for reversing the BIA, it erred in failing to give the Board the appropriate level of deference.

According to the Supreme Court, the most serious error of the Ninth Circuit was its requirement that the BIA balance the nature of the criminal acts with the risk of persecution if returned. The Supreme Court wrote "As a matter of plain language, it is not obvious that an already-completed crime is somehow rendered less serious by considering the further circumstance that the alien may be subject to persecution if returned to his home country." While the United Nations Handbook on Determining Refugee Status does contain language about striking a balance between the crime committed and the persecution faced, the Handbook is not binding on either the Attorney General, the BIA, or the courts of the U.S.

The Ninth Circuit also erred, according to the Supreme Court, in finding the BIA must consider whether the crimes committed were atrocious or grossly out of proportion with the political objective. The Supreme Court found the BIA had in fact made this very determination.

The Ninth Circuit's final error was in ruling that the BIA should take into consideration the success of the respondent in achieving his political objectives. First, the BIA had correctly determined that Aguirre-Aguirre's crimes were nonpolitical because disproportionate to the objective. Second, because Aguirre-Aguirre had the burden of proof and failed to submit any argument on this point to

the BIA, the BIA's failure to thoroughly address the issue was not grounds for reversal.

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20. NEWS FROM THE COURTS

United States v. Graham, Third Circuit

In this case, the Third Circuit held that an offense classified as a misdemeanor under state law can nonetheless be an aggravated felony for immigration purposes.

Graham appealed the sentence he received upon conviction for illegal reentry following deportation, 72 months. Graham had been convicted by state courts on three occasions: for unlawful marijuana possession, attempted unlawful marijuana possession, and petit larceny, all state law misdemeanors. The last conviction carried a sentence of up to one year. The district court found the attempted possession and petit larceny convictions were convictions of aggravated felonies.

The Third Circuit found the district court erred in it treatment of the attempted possession conviction, but that the increased sentence it imposed on the basis of the aggravated felony determination was justified on the basis of the petit larceny conviction. It based this decision on the language of the Illegal Immigration Reform and Immigrant Responsibility Act that defined "aggravated felonies" to include all theft offenses punishable by one year in prison. This, the court found, is the standard, regardless of the minimum possible sentence.

Despite the historical importance of the one year prison sentence as a primary distinction between felonies and misdemeanors, the court found Congress intended to include all theft offenses punishable by at least one year, whether technically classified as felonies or misdemeanors.

Borja v. INS, Ninth Circuit

The Ninth Circuit reversed the BIA's finding that economic extortion motivated by political disagreement was not persecution on the basis of political opinion. Teresita Moral Borja fled her native Philippines following threats by the New People's Army (NPA), a violent opposition group. In September 1992, members of the NPA approached her and asked her to join their organization. She refused, and offered to pay them money so they would not kill her. Following this, the NPA made monthly demands for payment. In February 1993 they doubled the amount demanded, and when Borja said she did not have that much money, they beat her at gunpoint and cut her with a knife. After this she went into hiding and then fled to the U.S.

Finding that persecution need not be solely on the basis of political opinion does not mean there is not persecution on that basis. Merely because the persecution took the form of economic extortion does not mean it was not also motivated by the NPA's anger at Borja's political refusal to join them. The Ninth Circuit found that were it not for Borja's willingness to pay, she would likely have been killed during her first encounter with the NPA because of her disagreement with their political aims and methods, and that her inability to pay a few months later would have resulted in her death had she not gone into hiding. Thus Borja demonstrated past persecution, and the Ninth Circuit found, based on the State Department Country Conditions Report on the Philippines, that the NPA is still active and represents a threat to Borja if she is returned.

The Ninth Circuit found Borja entitled to nonrefoulment, or mandatory withholding of deportation, finding she had established a clear probability that she would be subject to persecution on the basis of political opinion were she forced to return to the Philippines.

Mayers v. Reno, Eleventh Circuit

In this case the Eleventh Circuit, while not officially overturning the case of Richardson v. Reno, severely limited its effect. This was this first deportation habeas corpus case this court of appeals had heard since the Supreme Court issued its opinion in Reno v. American-Arab Anti-Discrimination Committee.

In light of the Supreme Court's determination that section 242(g) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), suspending judicial review, applied only to "decisions or actions to *commence* proceedings, *adjudicate* cases, or *execute* removal orders" the Eleventh Circuit found that the final order of deportation at issue in this case was not governed by IIRAIRA. Thus the issue became whether habeas corpus jurisdiction survived the enactment of the Antiterrorism and Effective Death Penalty Act (AEDPA). That statute did affirmatively repeal the grant of habeas corpus jurisdiction in the Immigration and Nationality Act, but did not address the general grant of habeas corpus jurisdiction found at 28 U.S.C. § 2241.

The Eleventh Circuit agreed with the First Circuit case Goncalves v. Reno, where the court held that Congress could not repeal the general grant of habeas corpus jurisdiction by implication. The Eleventh Circuit's ruling means that aliens who fall within the transitional rules of IIRIRA and are seeking judicial review of a final order of deportation may in some cases obtain that review by a petition for habeas corpus. Qualifying cases would effect substantial rights and would be of the nature traditionally enforced by courts.

In the present case, the claim was that retroactive application of § 440(d) of AEDPA, making certain criminal aliens ineligible to apply for suspension of deportation. An opinion of the Attorney General, in the Matter of Soriano, held that the section was to be retroactively applied. There is a general presumption against retroactivity, and a statute should not be applied retroactively unless there is a clear intent on the part of Congress that it be so applied. While many of the provisions of the AEDPA do contain affirmative statements that they are to be applied retroactively, § 440(d) does not. This implies a congressional intent that § 440(d) not be applied retroactively.

The court remanded to the district court with instructions to grant the petitioner's request for habeas corpus.

Mercado-Amador v. Reno, District of Oregon

In this case the district court found it retained habeas corpus jurisdiction despite the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act and the Antiterrorism and Effective Death Penalty Act.

Mercado was issued an order to show cause before the IIRAIRA was passed; therefore his case fell under that laws transitional provisions. He appealed his final order of deportation to the district court by a petition for habeas corpus, which the court granted. In ruling, the district court found that retroactive application of AEDPA § 440(d), denying withholding of deportation from certain criminal aliens, violated Mercado's due process rights.

Unlike many courts that have ruled on this issue, this court continued on to address Mercado's claim that § 440(d) also violated his right to equal protection of the laws, a claim the court agreed with.

Haddam v. Reno, Eastern District of Virginia

In this case the district court ruled that habeas corpus was available to review the indefinite detention of the petitioner.

Haddam, an Algerian national, was politically active and in 1991 was elected to the Algerian parliament. In 1992 a military coup ended the democratically elected government, and Haddam fled to the U.S. In 1993 he applied for political asylum and withholding of deportation (he had overstayed his visitor's visa). While his application was pending he received advance parole numerous times, allowing him to travel abroad and continue his political work. In October 1996 the INS denied Haddam's asylum application and on December 5 his parole status was revoked and he was placed in detention. Haddam has been in custody since then.

The district court found that habeas corpus review of certain cases was not barred by the transitional rules of the IIRIRA. Haddam alleged two violations of his constitutional rights: his indefinite detention, and the use of secret evidence to deny his asylum application.

The court ruled that questions about the use of secret evidence were within its jurisdiction, but that at this stage of the litigation, the question was premature. The issue of indefinite detention, the court found, was also within its jurisdiction, but again the record did not provide sufficient basis for review. Because the INS never stated a reason for Haddam's continued detention, there was no way for the court to review its decision. Therefore, the district court remanded for a hearing at which the INS is to articulate its reasons for the continued detention.

<u>In re Reyes-Torres, Board of Immigration Appeals</u>

In this case the Board of Immigration Appeals, of its own initiative, without an appeal having yet been filed, reversed a prior decision in which it found a conviction for driving while intoxicated was a crime involving moral turpitude.

Reyes-Torres, a Mexican national and legal permanent resident of the U.S., was placed in deportation proceedings following a second conviction of driving while intoxicated. The Immigration Judge (IJ) ruled that because the conviction was part of an overall regulatory scheme and did not require the state to prove any mental state, it was not a crime involving moral turpitude. The Board reversed the IJ, and then reversed itself.

The Board's earlier holding focused on the known dangers of driving while intoxicated; it's second holding focused on the fact that the state, in obtaining the convictions was never required to proved that Reyes-Torres had a bad state of mind. The elements of the crime that the state had to prove were strictly regulatory – that a person drove a vehicle on public roads while intoxicated. The key element defining a crime of moral turpitude is the defendant's intent, and because the state never proved the defendant's intent in this case, the convictions could not be for crimes of moral turpitude.

<u>In re Nolasco-Tofino, Board of Immigration Appeals</u>

In this case the BIA addressed the issue of when the period of continuous physical presence necessary to eligibility for suspension of deportation is terminated. They determined that the period ends when the Order to Show Cause is issued, regardless of the nature of the proceeding.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) created the current scheme, with its "stop time" rule. Prior to 1996, the

period of continuous physical presence did not end until an application for relief was made. Like so many other provisions of IIRIRA, the "stop time" rule was made retroactive, applying to notices issued before, on or after IIRIRA's effective date. In the present case, the respondent entered the U.S. on May 17, 1989. The INS issued an Order to Show Cause why he should not be deported on March 26, 1996 (before IIRIRA's effective date). He applied for suspension of deportation on October 9, 1996. Nolasco-Tofino's application for relief was more than 7 years after his entry into the U.S., but the Order to Show Cause was issued before the 7-year period was attained. Thus, for Nolasco-Tofino, the issue of the "stop time" rule was crucial.

Finding "a clear legislative intent to apply the stop time rule to all applications for this particular type of relief," the BIA found Nolasco-Tofino could not establish prima facie eligibility for suspension of deportation.

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21. FEDERAL JUDGES IN WASHINGTON STATE PLAN TO MEET TO DISCUSS INDEFINITE DETENTION CASES

On June 17, five federal judges from Washington State will meet in an unprecedented method of deciding cases. The five cases at issue are habeas corpus petitions brought by detainees in INS custody awaiting deportation. The detainees are criminal aliens subject to automatic deportation under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). IIRAIRA also mandates that they be held without bond pending deportation. For these 5 men, and more than 3500 like them across the country, these provisions have resulted in an indefinite period of detention, essentially incarceration, because the home countries refuse to accept them.

While many of the people being held like this were convicted of serious criminal offenses, many of them were convicted only of misdemeanor offenses or technical immigration status violations, often occurring decades ago.

The June 17th meeting is the result of negotiations occurring this spring between the judges, the federal public defenders representing the detainees and the U.S. attorneys representing the INS. Each judge is expected to issue a separate opinion. These opinions will have to decide whether indefinite detention violates the detainees' rights to due process. Attorneys representing the detainees argue that there is no evidence the INS is making any progress on the cases while the detainee waits and waits, and that when review is obtained, the chances of the detainee receiving a fair hearing are slim. In these cases the INS serves the functions of judge, jury and jailer. One of the proposals put forth is that the INS prove the same elements required to civilly commit someone, a much higher standard than the agency is currently held to.

The government argues that the INS is working diligently on these cases to find a solution, and that the detention provisions are necessary to protect citizens from criminal aliens who are a threat to public safety.

The INS has recently issued a new policy on review of these cases of mandatory detention. For more on this, see the article in this issue of Siskind's Immigration Bulletin at www.visalaw.com/may99/.

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22. PROPOSED HUBBING PLAN DEFEATED

Last month we brought you an article about the proposed plan for hubbing all detainees in the INS Central Region based on the country to which they were to be removed. Following pressure from immigrant advocate groups, the INS has backed off the plan and is now going to review it and take further input from immigration practitioners. Many advocates criticized the plan on the basis that it would separate immigrants facing deportation from their families and lawyers. Rep. Luis Gutierrez (D-IL), who worried that the proposal would violate the due process rights of the detainees by denying them a fair hearing, voiced similar criticism.

The INS still plans on developing some sort of detention plan for the Central Region that will hopefully be implemented by the end of this summer. Advocates hope that the new plan does not sacrifice legal access and closeness to family for efficiency, one of the hallmarks of the defeated proposal.

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23. BORDER PATROL EXPERIENCES DIFFICULTY IN RECRUITING NEW EMPLOYEES

Appearing before the House Immigration Subcommittee at the end of April, Gus de la Vina, the Chief of the Border Patrol said his agency would be able to hire only 200-400 new agents this year, not the 1,000 agents Congress has said it is to hire. The size of the Border Patrol has doubled since 1993 to about 8,000 agents, making it the largest law enforcement agency in the federal government. It is also one of the most inexperienced: 40% of the agents have less than two years experience, and 60% have less than five years. Some in Congress believe there should be 20,000 agents on the U.S.-Mexico border.

The primary cause for the difficulty in meeting the recruiting goals Congress has set is the strong economy and its booming labor market. Another cause might be the entry level pay rate, only $24,000 per year. However, by the second year the base salary is $33,000.

The agency also has problems keeping the agents it has. Many agents are required to perform "visual deterrent positions," sitting in a car on a piece of high ground visible to the border for stretches of up to 9 hours. The strategy is said to be crucial to the overall border strategy, but it is unpopular with the agents.

The San Diego office is having particular difficulty retaining agents. In 1998 the office lost 339 agents of 2,300. This may be in large part due to the southwest border strategy, which has tightened the border at San Diego so much that there is little work for the agents to do. During 1998 arrests by the Border Patrol numbered only 248,000, an 18 year low.

Most recruits have either military or local law enforcement experience, and knowledge of Spanish is a requirement. To graduate from Border Patrol Academy, the trainees must take 744 hours of class in subjects ranging from Spanish to law to psychology. The Border Patrol is a very busy agency, making more arrests than any other law enforcement agency – over 1.5 million a year –and seizes more than $1 billion in illegal drugs.

[Editorial note: To many, us included, this story points out an obvious irony. A linchpin of American immigration policy is protecting jobs for American workers. If ever there was evidence that we don't need to be worrying about American jobs being taken by foreigners, this story is it.]

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24. GENERAL ACCOUNTING OFFICE REPORT FINDS SOUTHWEST BORDER STRATEGY HAS CAUSED INCREASED IMMIGRANT DEATHS

According to a report issued by the General Accounting Office (GAO), the investigative arm of the Congress, the U.S.'s southwest border strategy has moved the mass of migrants attempting to remote and desert areas, resulting in an increased number of deaths in those areas. While the report does not say that more people overall are dying, it does say that "some evidence exists that deaths resulting from attempted crossings in remote areas are increasing."

The new Southwest border Strategy was created in 1994, and used dramatically increased numbers of agents, fences and electronic sensors to deter illegal crossings, especially around San Diego and El Paso. The aim of the program was to push migrants to the center of the border, which has occurred. This has also led to an increased number of deaths from heat exhaustion, exposure, and related problems.

The GAO report also noted as results of the southwest border policy an increase in the number of people paying smugglers to sneak them into the U.S., and an increase in the number of migrants entering with fraudulent immigration papers.

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25. MEMBERS OF CONGRESS RENEW ATTACK ON PRESIDENT CLINTON FOR "SURRENDERING" IN BORDER FIGHT

Led by Rep. Silvestre Reyes (D-TX), a former sector chief with the Border Patrol, 47 Representatives and 12 Senators signed a letter to President Clinton accusing him of failing to address the needs of the southwest border, especially in regards to drug trafficking and illegal immigration. The immediate cause of the letter is the failure of the INS to hire 1000 new Border Patrol agents this year, as required by congressional mandate. This failure, however, in not necessarily the result of any laxity on the part of the Clinton administration; it may in large part be the result of the burgeoning economy and other factors that have made it more difficult for the Border Patrol to attack new agents. See the story above for more on this phenomenon.

Rep. Reyes has also called for the separation of the Border Patrol from the immigration services of the INS. His plan would call for the creation of a Bureau of Border Enforcement, which would be on par with the FBI. He plans on introducing legislation to this effect within the month.

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26. HUNGER STRIKE PROTESTING DETENTION LAWS COMES TO AN END

After going without food for 47 days, four Cuban-American parents with children in detention called off the hunger strike after Roman Catholic Church officials successfully persuaded federal officials to make concessions. For over one and one-half months the strikers, sitting across from Krome Detention Center in Miami, Florida, brought national attention to the problems faced by long-term detainees. Their children, and all those in the same situation, are under an order of deportation but cannot be returned home for one reason or another. Most of those in long-term detention are Cubans and cannot be returned because of the lack of diplomatic relations between the U.S. and Cuba.

Shortly before the protest ended Senator Bob Graham (D-FL) met the strikers. He has promised to introduce legislation to repeal the harshest parts of the IIRAIRA, including retroactive application of the news rules, and calling for deportation on the basis of minor crimes. Rep. Lincoln Diaz-Balart (R-FL) has also announced his intention to seek some changes in the law.

The efforts made by these parents have been tremendously invaluable in bringing attention to the plight of those in long-term detention. They won the right to have their children's cases reviewed, which led to their release, and also were a leading

force in bringing about the INS' decision to provide for mandatory review of cases of long-term detention. There are currently approximately 4,000 people in long-term detention.

Following extensive criticism from religious leaders and immigration advocates for his office's approach to the hunger strike, Robert Wallace, the regional District Director has asked for his critics' aid in reviewing his office's actions. The district office's hands off approach has been criticized for prolonging the strike and necessitating the involvement of INS Commissioner Meissner when Wallis had full authority to deal with the situation. All sides now look toward focusing their efforts at rebuilding the community relationships damaged during the month and a half long strike.

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27. TWO MASSACHUSETTS COMPANIES SUE COMPETITION FOR HIRING UNDOCUMENTED WORKERS

Two Massachusetts cleaning companies and four laid-off janitors have initiated a lawsuit against a Rhode Island competitor, accusing it of using undocumented workers to gain an unfair competitive advantage in Massachusetts. The four janitors represent the union Service Employees International.

A report released last year by the Massachusetts auditor's office revealed that the Rhode Island firm paid its workers less than the prevailing wage, and disclosed many workers giving false Social Security numbers. In 1992, the INS cited the Rhode Island firm, Aid Maintenance, Inc. for having as much as 38 percent of its workforce working without proper documentation.

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28. INS BREAKS UP CENTRAL AMERICAN SMUGGLING RING

Operation Figaro, an undercover INS investigation into immigrant smuggling in Central America, has resulted in indictments of 17 people, 10 of whom have already been arrested. The smuggling ring is suspected of having sneaked thousands of people into the U.S., for prices as high as $9000.

Officials say the smugglers charged half of the fee up front, and the rest when the trip to the U.S. was completed. Once in the U.S., the smugglers hid the aliens in a "safe-house" in Phoenix, where living conditions were often atrocious. The smugglers would not release the person until the entire fee was paid. The investigation revealed that more than $500,000 passed through the operation since 1996.

INS officials feel Operation Figaro has been a complete success, not only for the 17 indictments, but also for all they have learned about the methods of immigrant smuggling rings. This knowledge should be useful in future investigations, and increase INS success in its investigations of smuggling rings.

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29. MORE NEWS ON NORTHERN MARIANAS ISLANDS SWEATSHOP LAWSUIT

In early May, a federal court issued subpoenas against 17 clothing retailers and manufacturers named as defendants in a lawsuit filed in January. The lawsuit contends that the defendants make promises to potential foreign workers to lure them into working on the island, and then force them to live in barracks and threaten them with termination whenever they complain about the substandard conditions.

The Northern Marianas Islands, or Saipan, is a U.S. owned territory, but is not subject to U.S. labor or immigration laws. The advantage of manufacturing clothing in the territory is that wages are less than what must be paid in the U.S., but the clothing is not subject to Customs duties and may be labeled "Made in the U.S.A." Among the defendants named in the suit are the Gap, J. Crew, Tommy Hilfiger and Wal-Mart. While many of the defendants have not publicly addressed the suit, those that have make the argument that worker conditions on Saipan are better than they are in the workers' home countries. While this may be the case, the plaintiffs still contend the 12-hour days, 7 days a week, spent working form the basis for a suit.

There are three suits on this matter. The primary claim was filed under the Racketeer Influenced and Corrupt Organizations Act, (RICO) a law that was originally passed to combat organized crime but has in recent years been put to wider use.

In late May, the human rights organization Global Survival Network issued the results of an 8-month investigation into conditions on the islands. According to this report, the sweatshop conditions in the garment industry are not the only human rights violations. There is also evidence of organized crime, sexual slavery and debt bondage – the practice of forcing labor in repayment of a debt. The report prompted a letter to Attorney General Reno, signed by more than 10 organizations, including a division of the American Bar Association, calling for an investigation into the actions of House Majority Whip Tom DeLay (R-TX). Such organizations claim DeLay improperly used his position to block attempts at reform legislation.

The Global Survival Network report says workers are charged as much as a $10,000 fee by recruiters who tell the workers they will receive high salaries and be in the U.S. Saipan is allowed to set its own minimum wage, currently $3.05 an hour, and while it is a U.S. territory, U.S. immigration laws are not effective there. The report also says that many female garment workers are being diverted to a growing prostitution industry on the islands.

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30. BORDER PATROL PREPARES FOR DANGEROUS SUMMER CROSSINGS

The Border Patrol across the state of Texas has made an early effort to prevent deaths as people attempt to migrate into the U.S. As part of the "Stay Out, Stay Alive" campaign, the Border Patrol is running advertisements on television and radio warn about the dangers from the heat, and well as the possibility of drowning while crossing the Rio Grande. The ads will appear in both U.S. and Mexican media outlets.

Last summer hundreds of undocumented migrants died attempting to cross into the U.S., and there are fears the death toll may be even higher this summer. Meteorologists say this summer should be as hot if not hotter than last summer, and the Rio Grande is faster and deeper than usual this spring. Another potential danger is the American Canal, where 17 died last year. There are plans in Washington, D.C. to build a fence along the U.S. side of the canal to deter crossers.

Of course, given the economic conditions for many Mexicans and the opportunities presented in the U.S., it is not likely any amount of effort can prevent all attempts at crossing the border. As Nathan Selzer of the Immigration Law Enforcement Monitoring Project says, "it is ridiculous to think that publicizing the dangers of crossing into the U.S. is going to deter anyone who is fleeing a war or is trying to feed their family."

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31. CONTINUING IMPACT OF KOSOVO CONFLICT ON U.S. IMMIGRATION

On May 5th, the U.S. began to accept refugees from the Yugoslav province of Kosovo. Thus far almost 3,000 refugees have been admitted to the U.S. The majority of the refugees have been sent to Fort Dix in New Jersey, and a few hundred are staying with friends and family already in the U.S.

The INS has divided the refugees into two large groups, those with relatives in the U.S. and those who are otherwise vulnerable, such as single mothers and people with medical conditions. Those in the first group are going through the complete

refugee screening process at the refugee camps in Macedonia before being sent on to the U.S. Those in the other group are only being given the initial interview in Macedonia; the other steps in processing will be completed when they arrive in the U.S.

Refugees will be given work authorization, and may adjust their status to that of permanent resident after one year. The U.S. government expects that most of the refugees will wish to return home once the conflict has ended and the situation has been stabilized.

The State Department has a contact number for people in the U.S who are interested in assisting the refugees – 1 800 727-4420.

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32. INS DEFENDS TREATMENT OF JAILED ASYLUM SEEKER

Oluwole Aboyade, a Nigerian asylum seeker being held in Elizabeth, New Jersey made claims of verbal and physical abuse that prompted the INS to call for an FBI investigation of the detention facility. Now the INS has put him in a prison disciplinary cell following his complaints about being required to clean toilets at the facility.

Before the move, Aboyade was being held in the non-criminal section of the facility, along with many other asylum seekers. According to his attorney, Penny Venetis, he is now being held in solitary confinement because he spoke out against alleged abuses by guards.

This incident highlights the concerns of human-rights activists relating to the U.S. policy of detaining asylum seekers. While they are not generally held with criminals, the practice of essentially jailing them is inappropriate treatment given their status. When a detainee is placed in with the general prison population the INS no longer has primary control over their treatment and care. Allyson Collins of the Human Rights Watch worries that once a detainee is placed in a prison, they are punished for conduct violations as a criminal would be when "the punishment they receive shouldn't be the same as that received by a criminal inmate who is serving time. The problem is that any kind of punishment that is received by an immigrant in this kind of setting is, by its nature, inappropriate."

The FBI has decided it will not investigate conditions at the facility

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33. OPERATION VANGUARD INVESTIGATION OF NEBRASKA MEAT PACKING PLANTS UNCOVERS MANY ILLEGAL WORKERS

Operation Vanguard, a program begun under the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to ensure a legal workforce in the Nebraska meat processing industry, has stepped up its investigations. In April the INS announced that of the 66 facilities it investigated, 40 were employing undocumented workers.

The INS has conducted on site investigations at two facilities where more than 670 workers were suspected to be illegally employed. By the time the INS arrived, many of the suspected illegal workers had quit, and most of the workers were found to be legally employed. Only a few cases are still under investigation at these facilities, and only one person has as yet been arrested pending deportation.

The investigations have already had a dramatic impact on the industry, slowing production and decreasing prices. INS officials cite this as an example of the success of Operation Vanguard in discouraging undocumented workers from seeking jobs in the meat processing industry.

Sherry Edwards of the American Meat Institute looks warily at the INS crackdown. While the meat packing industry wants a legal workforce, they worry about the difficulty of attracting workers to what is a repetitive and often dangerous job. In Nebraska, the current unemployment rate is only 2.3 percent, well below the national average, making the prospect of replacing unauthorized workers appear quite difficult.

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34. MEXICAN SOLDIER GRANTED ASYLUM

Jesus Valles, a former captain in the Mexican army, has been granted asylum on the basis of his refusal to kill Native Mexicans during the Chiapas rebellion. During 1994 Valles told his commanding officer he would not kill anyone he thought was a member of the Zapatista Army of National Liberation. After this, he was transferred out of the unit and later advised to "disappear." Out of fear of being imprisoned or even murdered, he then fled to the U.S. with his wife.

Immigration Judge Bertha Zuniga granted him asylum, finding there was reason to believe that the Mexican government had engaged in the murder and repression of civilians. This is the first case of a Mexican soldier being granted asylum by the U.S. Ten years ago Canada granted asylum to a Mexican soldier who claimed he had been forced to kill civilians.

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35. ILLEGAL IMMIGRATION TO GUAM ON THE RISE

The government of Guam is worried that its problems with illegal immigration are going unnoticed in the U.S. Guam, a 36-mile-long island in the western Pacific Ocean, is a U.S. territory. Once on shore, immigrants can seek asylum there. The vast majority of recent illegal entrants have been Chinese nationals from the Fujian province, brought in by smugglers called 'snakeheads.' They charge between $20,000 and $30,000 and often collect the fees through indentured servitude.

While the numbers are not as large as illegal entrants into the mainland U.S., they are threatening to overwhelm available resources on the island. Nearly 600 Chinese are being held on Guam, and 400 are being held on a nearby island following their capture at sea. Officials suspect as many as 2,000 more may be living undetected on the island.

Under a Presidential order issued on April 17 the U.S. Coast Guard has been intercepting smuggling boats at sea and towing them to islands off Guam. Immigration officials are being sent to speak to them to determine if any have a viable asylum claim. Those who do not present a legitimate claim will be returned to China.

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36. FUNDING CRISIS PLAGUES INS TEXAS SERVICE CENTER

Inside sources reveal that a serious shortfall in available funding and personnel at the INS Texas Service Center is resulting in a dramatic increase in processing backlogs and a serious morale problem at the large processing facility. The Texas Service Center handles a substantial portion of the immigration applications in the southeastern portion of the United States and is one of four INS regional service centers.

TSC officials estimate that the current caseload will require approximately 91,000 work hours to adjudicate. However, the TSC's 99 available adjudications officers can realistically be expected to produce only 81,081 hours of work. One solution might be to authorize 10,000 hours of overtime at an estimated cost of $250,000. Another solution would be to add 13 to 16 new officers to the TSC adjudications staff. The problem with the latter solution is that the TSC has no additional space or computer workstations to support new staff. So the overtime solution is more attractive.

Part of the problem stems from a dramatic increase in the number of applications being handled by the TSC. The total number of cases pending at the Texas Service

Center increased from approximately 750,000 cases in the spring of 1997 to approximately 2,250,000 two years later. The number of cases adjudicated, however, has remained relatively constant.

The problems have grown worse despite a substantial increase in fees that was imposed last year. According to our sources, the fees are not being allocated back to the service centers to adjudicate cases. Instead, the money is going to separate budgets for enforcement, asylum cases and naturalizations. For every $51 million collected in fees, only $1 million is being returned to the TSC.

Officials expect the processing problem to grow dramatically worse if a funding increase is not approved. I-130s in spouse cases, for example, could stretch to as long as two years.

TEXAS SERVICE CENTER PRODUCTIVITY THROUGH 09/30/99

	Goal	Pending	Receive Monthly	Will Receive Additional Cases	Hourly Rate	Total Cases to Process by 09/30/99	Hours Needed
I-130(s)*	90 days	39210	4300	12900	4.07	52118	12804.41
I-130(o)	120 days	29016	2700	8100	4.32	37116	8591.67
I-485	120 days	61290	4600	9200	2.00	70490	35245.00
I-90	120 days	36594	4700	9400	9.50	45994	4841.47
I-539	120 days	14868	5200	10400	10.4	25268	2429.62
I-102	120 days**	500	500	1000	8.10	1500	185.19
I-765*	75 days**	15000	15000	60000	10.50	75000	7142.86
I-824	60 days**	600	600	2400	5.80	3000	517.24
I-131*	30 days**	1300	1300	6500	23.00	7800	339.13
I-751	90 days**	2600	2600	7800	7.30	10400	1424.66
I-821	120 days**	12000	1000	2000	7.00	14000	2000.00
I-829	90 days**	25	25	75	1.00	100	100.00
I-817	30 days**	400	400	2000	2.80	2400	857.14
I-526*	60 days	121	10	20	.50	141	282.00
I-360	120 days	1287	80	160	1.50	1447	964.67
I-140*	60 days	6348	1000	4000	1.40	10348	7391.43
I-129*	30 days**	6000	6000	30000	6.60	36000	5454.55
I-129f	30 days**	300	300	1500	4.20	1800	428.57

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37. DV-2000 RESULTS RELEASED

The State Department has announced that all winners of the DV-2000 green card lottery have been selected and that the National Visa Center has notified winners. About 110,000 winners were selected for 50,000 actual available visas. The State Department estimates that because many people will choose not to proceed or will have already obtained permanent residency through other means, the larger number of selected applicants is necessary to ensure that all 50,000 visa slots are used.

According to the State Department, more than 8 million qualified entries were received. More than 2.5 million other applied and were rejected because they were improperly submitted. Overall, the chances of winning were just 1.25%. Nevertheless, for many, the lottery is the only way they could ever have qualified to immigrate to the US since the other routes normally require close family members who are green card holders or citizens, a skilled or professional job, a sizable investment, or a claim of asylum.

If you were selected, it is important to act quickly since all processing on a DV-2000 case must be completed by September 30th of next year. That may sound like a long time, but in immigration processing, it is very soon. Applicants in the US may want to consider applying at a State Department US consulate abroad instead of or in addition to processing in the US via adjustment of status. In the recent past, State Department processing has been much more reliable than INS processing.

The State Department will not notify people not selected in the lottery and will not confirm whether you have won or lost. If you do not have a winner's notification package, you will be unable to process. Note that although the State Department says all winners have been notified, past experience indicates that it still may be quite a while before all winners receive their packages. Last year, we received two winner notification packages in August, more than two months after the final results memorandum was released.

The next entry period for a green card lottery will be from noon on October 4, 1999 to noon on November 3, 1999. Instructions for entering that lottery will be released on August 2, 1999 and will be posted on the Siskind, Susser, Haas & Devine web site at http://www.visalaw.com. As we have for the last five years, we will also send out a special issue of our newsletter to all of our subscribers.

The following is the breakdown of winners:

AFRICA

ALGERIA 1,499	ERITREA 220	NAMIBIA 10
ANGOLA 12	ETHIOPIA 2,284	NIGER 22
BENIN 89	GABON 24	NIGERIA 8,550
BOTSWANA 8	GAMBIA, THE 122	RWANDA 35
BURKINA FASO 31	GHANA 8,662	SAO TOME AND PRINCIPE 0
BURUNDI 13	GUINEA 332	SENEGAL 207

CAMEROON 860
CAPE VERDE 3
CENTRAL AFRICAN REP. 18
CHAD 29
COMOROS 2
CONGO 51
CONGO, DEMOCRATIC REPUBLIC OF THE 386
COTE D'IVOIRE 333
DJIBOUTI 12
EGYPT 3,301
EQUATORIAL GUINEA 5
GUINEA-BISSAU 1
KENYA 1,514
LESOTHO 3
LIBERIA 1,762
LIBYA 79
MADAGASCAR 20
MALAWI 47
MALI 86
MAURITANIA 47
MAURITIUS 28
MOROCCO 3,007
MOZAMBIQUE 7
SEYCHELLES 3
SIERRA LEONE 2,617
SOMALIA 1,678
SOUTH AFRICA 663
SUDAN 2,294
SWAZILAND 2
TANZANIA 267
TOGO 664
TUNISIA 175
UGANDA 169
ZAMBIA 72
ZIMBABWE 97

ASIA

AFGHANISTAN 59
BAHRAIN 7
BANGLADESH 9,175
BHUTAN 0
BRUNEI 0
BURMA 553
CAMBODIA 103
HONG KONG SPECIAL ADMIN. REGION 136
INDONESIA 758
IRAN 489
IRAQ 49
ISRAEL 67
JAPAN 367
JORDAN 86
NORTH KOREA 3
KUWAIT 29
LAOS 7
LEBANON 47
MALAYSIA 102
MALDIVES 0
MONGOLIA 4
NEPAL 128
OMAN 4
PAKISTAN 3,187
QATAR 6
SAUDI ARABIA 83
SINGAPORE 33
SRI LANKA 220
SYRIA 66
THAILAND 117
UNITED ARAB EMIRATES 42
YEMEN 63

EUROPE

ALBANIA 6,401
ANDORRA 0
ARMENIA 1,214
AUSTRIA 170
AZERBAIJAN 423
BELARUS 896
BELGIUM 83
BOSNIA & HERZEGOVINA 83
BULGARIA 4,381
CROATIA 123
CYPRUS 37
CZECH REPUBLIC 215
DENMARK 88
ESTONIA 152
FINLAND 72
FRANCE 602
  Martinique 3
  Guadeloupe 0
GEORGIA 423
GERMANY 3,417
GREECE 107
HUNGARY 219
ICELAND 35
IRELAND 564
ITALY 294
KAZAKHSTAN 689
KYRGYZSTAN 181
LATVIA 288
LIECHTENSTEIN 1
LITHUANIA 1,316
LUXEMBOURG 4
MACEDONIA, FORMER YUGOSLAV REP. OF 397
MALTA 27
MOLDOVA 418
MONACO 1
NETHERLANDS 112
  Aruba 2
  Netherlands Antilles 7
NORTHERN IRELAND 73
NORWAY 39
PORTUGAL 67
  Macau 16
ROMANIA 3,494
RUSSIA 6,481
SAN MARINO 0
SERBIA-MONTENEGRO 597
SLOVAKIA 375
SLOVENIA 26
SPAIN 123
SWEDEN 272
SWITZERLAND 420
TAJIKISTAN 190
TURKEY 1,368
TURKMENISTAN 66
UKRAINE 8,035
UZBEKISTAN 964
VATICAN CITY 0

NORTH AMERICA

BAHAMAS, THE 36

OCEANIA

AUSTRALIA 656	NAURU 0	SOLOMON ISLANDS 0
FIJI 1,069	NEW ZEALAND 357	TONGA 178
KIRIBATI 0	PALAU 2	TUVALU 0
MARSHALL ISLANDS 7	PAPUA NEW GUINEA 9	VANUATU 0
MICRONESIA, FEDERATED STATES OF 0	SAMOA 24	

SOUTH AMERICA, CENTRAL AMERICA, AND THE CARIBBEAN

ANTIGUA AND BARBUDA 11	DOMINICA 58	PERU 1,040
ARGENTINA 404	ECUADOR 496	SAINT KITTS AND NEVIS 7
BARBADOS 23	GRENADA 36	SAINT LUCIA 22
BELIZE 18	GUATEMALA 302	SAINT VINCENT AND THE GRENADINES 26
BOLIVIA 78	GUYANA 166	SURINAME 23
BRAZIL 940	HONDURAS 143	TRINIDAD AND TOBAGO 607
CHILE 75	NICARAGUA 38	URUGUAY 39
COSTA RICA 150	PANAMA 100	VENEZUELA 526
CUBA 1,286	PARAGUAY 7	

Natives of the following countries were not eligible to participate in DV-2000: Canada, China (mainland and Taiwan, except Hong Kong S.A.R.), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, the Philippines, Poland, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

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38. IMMIGRATION AND THE INTERNET

While attending the NAFSA annual meeting in Denver earlier this month, I was able to meet with a number of proprietors of web sites geared to people interested in studying in the United States. All have useful articles and databases for the intending international student. The following are the web addresses for a number of them:

International Student Guide to the United States of America – http://www.spindleopub.com/isg

Studying in America – http://www.transworldedu.co.uk

CollegeEdge – http://www.collegeedge.com

US Education Journal – http://www.usjournal.com

International Education Service – http://www.ies-ed.com

Studyabroad.com – http://studyabroad.com

International Students Organization in America – http://www.isoa.org

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The Immigration and Naturalization Service has made an interesting addition to its web site. Five district INS offices now are posting information through the headquarters site. The first five to post are the ones you might expect – six of the largest offices in the country. They are Chicago, New York, Los Angeles, San Francisco, San Jose and Miami.

The sites actually do have a fair amount of useful information including maps, phone numbers, a list of personnel, local filing procedures and more. To get to the INS web site, go to http://www.ins.usdoj.gov.

This is the first part of a project designed to get all local offices, regional service centers and asylum offices on the web site. The INS is soliciting feedback and has provided a mail address for comments in the "About Us" section of each web page [editor's note - the fact that an e-mail link is not provided here pretty much says it all when it comes to the question of the agency's commitment to public service].

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39. CONSULAR FOCUS: ANTI-US DEMONSTRATIONS IN CHINA DISRUPT VISA PROCESSING

Following the bombing of the Chinese Embassy in Yugoslavia earlier this month and the well-publicized anti-US demonstrations that ensued, visa services at the US Embassy in Beijing and all of the US consulates in China were suspended.

The State Department initially issued a travel warning on May 9th alerting the public that there were on-going large-scale demonstrations, incidents of harassment of private Americans and damage to US businesses in China. The US Embassy was also under siege and the American Ambassador, James Sasser, remained trapped in the building. Americans were urged to defer traveling to China until the all-clear had been given by the State Department.

Consular services were immediately shutdown as all US government personnel in the PRC were ordered to remain at home. US Consulates were immediately closed for a two day period on May 10th and May 11th.

On May 13th, the State Department issued a public statement indicating that damage to the US Embassy in Beijing and the Consulates General in Chengdu and Shenyang would cause those facilities to remain closed until Monday, May 17th. The

US Consulates in Guangzhou and Shanghai would reopen on May 14th with immigrant visa processing delayed in Guangzhou until May 17th. However, nonimmigrant visa processing would be halted at all US consulates in China until further notice was provided.

It was not until May 20th that further information was provided. The State Department announced that nonimmigrant visa processing would resume on May 24th in Beijing, Shanghai and Guangzhou. New phone numbers were also provided for those consulates and they are the following:

Beijing: 010-6532-2228 or 6532-5305
Guangzhou – 020-8184-6781
Shanghai – 021-6471-1451

The Consulate in Shenyang would not resume processing nonimmigrant visas until an indefinite time in the future and nonimmigrant visa processing in Chengdu would be suspended indefinitely. Chengdu applicants were redirected to process in Shanghai, but only after calling the Consulate General in Chengdu by calling 028-555-2517. As of May 30th, no official word has come from Shenyang, but persons processing there can call (024) 2322-2147 for further information.

On a side note, a delegation of lawyers from the American Immigration Lawyers Association, led by AILA president Jimmy Wu, was scheduled to meet with the US Consular General during the siege of the embassy. The meeting was canceled, of course, and, unfortunately, was unable to be rescheduled. The delegation was, however, able to meet a week later with consular officials in Guangzhou. The planned tour of the facility had to be canceled, however, due to damage to the building.

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40. ELECTRONIC INFORMATION EXCHANGE PROGRAM FOR F-1 AND J-1 PROGRAMS MAKES PROGRESS

The Coordinated Interagency Partnership Regulating International Students, also knows as CIPRIS, was demonstrated at the recent annual NAFSA meeting for international educators. CIPRIS is designed to modernize and streamline the current process for bringing in international students and exchange scholars to the United States and for maintaining information on F-1 and J-1 visa holders. The program is a cooperative effort of the INS, State Department, US Information Agency and the US Department of Education and is currently being tested at 21 schools around the United States. The program will go nationwide within the next two years.

CIPRIS is actually designed to meet a mandate created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA"). When the system is implemented, students will have to pay a fee to financially support the system. The fee will be limited to $100 in the first year. The phase in of the fee will be announced in a proposed rule the INS is expected to announce this summer.

The following types of events will be reported using the CIPRIS system:

- **registration for study or program**
- **program extensions**
- **USIA Category, Subject/Field and Site**
- **Activity changes (J-1 only)**
- **DSO recommendations for economic hardship employment (F-1 only)**
- **Curricular Practical Training (F-1 only)**
- **DSO Recommendations for Optional Practical Training**
- **Transfers in and Transfers out**
- **Change of major**
- **Completion/termination of program**

Various information will also need to submitted on students including the

- **student's name and date of birth**
- **financial support and sources**
- **dependent information**
- **program of study/research school and sponsor**
- **place of activity**
- **current US address**
- **current academic status, and**
- **full time/part time status**

The program will not be software-oriented. Rather, it will have a web site front-end that will ensure that end users are not bogged down with installation and maintenance problems. The INS promises to use the latest encryption technology to ensure that sensitive information is not accessible to unauthorized people.

To get ready for the implementation of CIPRIS at all institutions, the INS is recommending international student offices take the following initial steps:

- **start by forming a working group with members from your office, the registrar and admissions offices and the information technology office on your campus**

- **then begin reviewing your current data and business processes related to international students and exchange visitors and think about ways to facilitate information exchange**

- **beginning in the summer of 1999, start checking the INS web site for the latest program and technical system updates.**