

Siskind's Immigration Bulletin  
May 4, 2003

E-mail subscribers as of 10 October 2001: 30,159 persons (50 states/144 countries).  
Published by Greg Siskind, partner at the Immigration Law Offices of Siskind, Susser,  
Haas & Devine, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-  
345-0225; facsimile: 800-684-1267, email: gsiskind@visalaw.com, WWW home  
page: <http://www.visalaw.com>.

SSHD serves immigration clients throughout the world from its offices in the US,  
Canada and the People's Republic of China. To schedule a telephone or in-person  
consultation with the firm, go to <http://www.visalaw.com/intake.html>. Editor: Greg  
Siskind. Contributors: David Delgado, Shadrick King and Mick Wright.

To receive a free e-mail subscription to Siskind's Immigration Bulletin, fill out the  
form at <http://www.visalaw.com/subscribe2.html>. To unsubscribe, send your request  
to [visalaw-unsubscribe@topica.com](mailto:visalaw-unsubscribe@topica.com).

To subscribe to the free Siskind's Immigration Professional Newsletter, go to  
<http://www.visalaw.com/sip-intro.html>.

\*\*\*\*\*  
Are you a jobseeker looking for an employer to sponsor your work visa?  
Are you an employer or recruiter who can benefit from free online job posting?  
Visit [Visajobs.com](http://www.visajobs.com), the online career network, and create your new account  
(<http://www.visajobs.com>).  
\*\*\*\*\*

1. Openers
2. The ABC's Of Immigration – Employment Options For Students, Part III –  
Optional Practical Training For F-1 Students
3. Ask Visalaw.com
4. Border News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update
10. DHS Marks First 100 Days With Plans For New US VISIT System And The  
End Of NSEERS
11. Iraqi Who Helped Rescue POW Granted Asylum
12. Temporary Protected Status Extended For Hondurans and Nicaraguans
13. Supreme Court Rules In Favor Of Automatic Detention For Criminal Green  
Card Holders
14. Court Holds That Retroactive Application Of EB-5 Rules Is Impermissible

- 
1. Openers

Dear readers,

I am writing this Opener from Austin, Texas. Austin is a beautiful city with a rich history. It is the capital of one of the largest states in the country and it is also a city that reflects immigration in America in the 21st century. Austin is a city with a strong Latino flavor. Since the days when Texas was a part of Mexico, Austin has been the home to a large Mexican population. It is also the home to many of America's largest technology companies. For example, Dell Computers was started here and is one of the city's major employers. High tech professionals from across the world reside in this city and have helped to build it into a high tech mecca.

Austin is also home to one of the nation's largest universities. More than 45,000 students are enrolled here at the University of Texas. Many of the students and faculty members at UT are here on F-1, J-1, H-1B and O-1 visas. UT is one of the most important economic driving forces in this city, and its international students and faculty play a vital role.

And Austin's role as the home of Texas' legislature and state government is important to the national immigration policy debate. Texas has grappled with and is still grappling with issues like granting driver's licenses to undocumented immigrants, making in-state tuition rates available to those immigrants and making health benefits available as well.

By the way, I'm here in Austin attending the ABA Law Practice Management Section's spring meeting. I chair the section's Publishing Board and also serve on its Governing Council. LPM is without doubt the best resource for help with issues relating to law office technology, management, finances and marketing. For the thousands of lawyers who read this newsletter each week, you can learn more about LPM by going to the section's web site at [www.lawpractice.org](http://www.lawpractice.org). If you are already an ABA member, consider spending \$40 and joining the section. If you are not an ABA member, consider joining and then signing up for LPM membership. You'll get discounts on LPM books, a free subscription to Law Practice Management Magazine and access to a number of other incredibly useful resources to help you manage your law practice. If any of you join, please drop me an email and let me know. My email address is [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com).

There are a number of important items in the news this week. Tom Ridge announced that special registration is now being relegated to the history books and will be replaced by the new US VISIT system. The Iraqi hero who helped American soldiers rescue POW Jessica Lynch has been granted immigration status to come legally to the US. Honduran and Nicaraguans have had their TPS status extended.

There was also a Supreme Court decision upholding the 1996 Immigration Act provision which requires the mandatory detention of immigrants who commit crimes. The decision was 5-4 and is very controversial. The case involved a young man who had been in the US since the age of six and had been convicted of two relatively minor offenses - breaking into a tool shed and shoplifting about \$100 worth of goods.

There was also a significant victory for immigrants in the courts. Florida immigration attorney Ira Kurzban was successful in convincing the courts to throw out a BCIS regulation that allowed the BCIS to retroactively apply EB-5 green card regulations to immigrants already in the US with conditional EB-5 green cards.

Finally, as always, we remind readers that we're lawyers who make our living representing immigration clients. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

---

## 2. The ABC's Of Immigration – Employment Options For Students, Part II - Optional Practical Training For F-1 Students

Over the last few weeks we have been discussing employment options for F-1 student visa holders. This week we move to the important topic of optional practical training ("OPT"). OPT allows students to work off campus for employers in order to gain training in the student's field of study. Unlike curricular practical training, OPT is not offered as a part of a set curriculum for the student.

*When can OPT take place?*

OPT can take place either before graduation or in the year following graduation. OPT that takes place before graduation can only be used for up to 20 hours per week during the school year (though full time work is permitted during holidays and vacation periods). After graduation, the employment can be full-time. Post-graduation OPT must be completed within 14 months of the student's graduation.

*How much OPT time can a student get?*

A student can have OPT for a maximum of twelve months after graduation. Pre-graduation practical training will be deducted at half the rate so up to 24 months of training are possible.

*Who is eligible for OPT?*

Only students in universities who are pursuing degrees are eligible for OPT. English language students and elementary and secondary school students are not eligible for OPT.

*Can a student work in any type of job while on OPT?*

The student is authorized only to accept positions that are directly related to the student's major area of study. Beyond that there is little guidance and students are generally given a fair amount of leeway here.

*Can a student get an additional year of practical training if the student enrolls in a new program at a higher educational level?*

Yes. New rules allow students to get an additional year of OPT when they move into a degree program at a higher educational level. For example, a student can receive one year of OPT upon completion of a bachelors degree program. When the student then completes a masters degree program, he or she would get another year. And then an additional year of OPT would be available if the student later enrolls in a Ph.D. program.

*What if the student transfers?*

Authorization to engage in practical training employment is automatically terminated when the student transfers to another school.

*What is the procedure for applying for OPT?*

An F-1 student must request OPT from the DSO at his or her institution. The request must include a completed Form I-538 accompanied by the student's current Form I-20. If the DSO wishes to recommend the student be granted OPT, the DSO will certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level. The DSO will also endorse and date the student's Form I-20 ID to show that practical training in the student's major field of study is recommended "full-time (or part-time) from (date) to (date)." And then the DSO will return to the student the Form I-20 ID and send to the BCIS data processing center the school certification on Form I-538.

The student will then submit a copy of their I-94 and I-20 ID with Form I-765 application for employment authorization and the required fee to the BCIS service center with jurisdiction over the student's place of residence.

*When can work begin after application is made for OPT?*

Work can only start after receiving an employment authorization document (EAD). The EAD is a laminated small card that resembles a driver's license or a green card.

There may still be a waiting period before work can begin even if the EAD has been issued. For students seeking pre-graduation practical training, the EAD will only be valid as of the date employment is scheduled to begin or the date of the issuance of the EAD, whichever is later. For post-graduation OPT, the EAD is valid as of the date of completion of studies or issuance of the EAD, whichever is later. A school may properly consider the date of graduation to be the date of completion of studies unless the studies are finished in a prior academic session.

*When should OPT be requested?*

Post-completion OPT must be requested from a designated student official (DSO) prior to completing course requirements or prior to completing the course of study. It cannot be requested during the student's post-graduation grace period. The new rule also requires students seeking OPT during the summer vacation period after the first year of study to request OPT at least 90 days prior to the end of the first academic year.

OPT can be requested up to 120 days prior to the date of intended employment. The INS by regulation must complete processing on the EAD application within 90 days.

*What happens if the BCIS cannot adjudicate the EAD application within 90 days?*

If the regional service center is taking longer than 90 days, then the student can apply for an interim EAD with a local BCIS office. Local BCIS offices have varying procedures for handling such applications.

*What happens if the student decides to withdraw the EAD application?*

A student can withdraw an EAD application if the employment has not yet begun. If the I-538 has been endorsed and sent by the DSO but the I-765 has not yet been filed, the DSO will send the BCIS a duplicate I-538 with the word "canceled" as well as a copy of the I-20 with "canceled" written on the recommendation section of the form.

If the I-765 has been filed, the student should send the BCIS a written request to withdraw the application. If the EAD has been issued but the period of employment has not yet begun, the EAD can be returned to the BCIS service center with a request to cancel the OPT.

If the employment period has begun, a student may not reclaim any eligibility time. Also, if a student transfers schools, all eligibility time is lost.

*What happens if the F-1 student leaves while the EAD application is pending?*

The BCIS considers an alien who leaves the US with a pending I-765 application to have abandoned the application.

*What about travel after the EAD is issued?*

Travel for periods of up to five months is permitted as long as the DSO has endorsed the student's I-20 for travel within the previous six month period.

*What if the F-1 student travels after getting the EAD and needs a new visa stamp?*

F-1 students in theory can get a new visa stamp at a consulate prior to re-entering the US. However, it can often be challenging to prove sufficient ties to the student's home country when the student is coming only to pursue employment rather than to continue coursework. So students should consider getting a new F-1 stamp prior to commencing OPT.

*What about the spouse and children of the F-1? May they accept employment as well?*

No.

---

### 3. Ask Visalaw.com

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

\*\*\*

Q - I am a green card holder and currently I am a student. My parents are abroad and I go visit them every summer. My question is, when I will apply for my citizenship in a couple of years will the time that I have been out of the US affect the processing or the 5 year period I am given after which to apply.

A - No. Being absent for a couple of months a year will not be a problem as long as you have spent a total of 50% of your time in the US and have no periods of more than six months in a row outside the US. If there are periods longer than that but less than a year, it may still be possible to naturalize, but it will require a showing that you did not intend to abandon permanent residency.

\*\*\*

Q - I have a green card which expires in nine years. My wife (US Citizen) and I are planning to return to Europe for three years. Will I still be allowed to re-renter the country with this green card or does it expire if I don't live here?

A - You could very well lose your permanent residency. You might find the article I've written on this subject at <http://www.visalaw.com/01jan4/12jan401.html> helpful.

\*\*\*

Q - Can I file an Advance Parole while an I-360 case is pending?

A - No. It must be approved and you need to then file an adjustment of status application to qualify to apply for advanced parole.

\*\*\*

Q - Is there a way of knowing the approximate time our petition will be processed? I guess it is necessary to know the number of petitions filed for our priority level, at least from 1994 to 1996

A - Predicting when visas will become current is similar to picking lottery numbers. You would just be guessing like everyone else. You can try and study the movement of the various lines over the years, but, ultimately, the movement of numbers in the future depends on how many applications are submitted in the future.

---

#### 4. Border News

The U.S. and Mexico have issued a joint statement on progress achieved in talks concerning border policy. Last month President Bush and President Fox endorsed a Border Partnership accord accompanied by a 22-point plan that outlined specific actions they would take to create a border that would embrace 21st century technology and bilateral cooperation. The governments resolved to work closely to ensure the security of trade and travel across the border, as well as the infrastructure necessary to protect against crime and terrorism. Border control agencies will open lines of communication to assess points of demand and prevent delays. Security forces will continue to cooperate in preventing terrorism. The United States pledged to expand the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) and reduce the waiting period for issuance of the SENTRI card to two months or less by June. Border officials from both countries will meet regularly in three separate working groups: the Border Working Group, the Enforcement Working Group and the Technology & Customs Procedures Working Group.

\*\*\*

Last week a Mexican man accused of smuggling immigrants into the United States was set free thanks to the dissenting opinion of one appeals court judge who persuaded federal prosecutors to drop all charges. Juan Ramirez Lopez was convicted and lost an appeal and ended up serving three years. Another appeal took him to the U.S. 9th Circuit Court of Appeals, where Judge Alex Kozinski pointed out that federal agents had deported to Mexico nine undocumented immigrants who had crossed the border with Ramirez before they could testify that he was not the smuggler.

\*\*\*

The American Immigration Lawyers Association released a "Countries of Interest" list apparently used by Bureau of Customs and Border Protection (BCBP) inspectors to determine who should be subjected to additional security checks before entering the U.S. The list includes these 54 countries:

Afghanistan  
Algeria  
Angola  
Argentina  
Armenia  
Bahrain  
Bhutan  
Brazil  
Congo  
Cyprus  
Democratic Republic of Congo  
Egypt  
Eritrea  
Ethiopia  
Georgia  
India

Indonesia  
Iran  
Iraq  
Israel  
Jordan  
Kazakhstan  
Kenya  
Kuwait  
Kyrgyzstan  
Lebanon  
Liberia  
Malaysia  
Mongolia  
Morocco  
Myanmar  
Nepal  
Oman  
Pakistan  
Panama  
Paraguay  
Philippines  
Qatar  
Republic of Yemen (Sanaa)  
Saudi Arabia  
Somalia  
Sri Lanka  
Sudan  
Syria  
Tajikistan  
Tunisia  
Turkey  
Turkmenistan  
United Arab Emirates  
Uruguay  
Uzbekistan  
Venezuela  
Yemen (Aden)  
Yemen (South Republic of)

Posted on AILA InfoNet at Doc. No. 03042943 (Apr. 29, 2003).

\*\*\*

Government officials and leaders of international education organizations met recently for a forum at George Washington University on "Sustaining Exchanges While Securing Borders" and agreed that the two U.S. visa policy goals of "secure borders" and "open doors" are not mutually exclusive. They called for the US to more effectively communicate visa policies, introduce transparency into the visa application procedures and adjudicate visas in a timelier manner.

Marlene Johnson, executive director and CEO of the National Association of Foreign Student Advisors (NAFSA), said that "well intentioned actions on the part of public

policymakers are seriously jeopardizing exchanges, making it more difficult rather than less difficult to build a safer world."

"We are making continued improvements in the efficiency of this process, without sacrificing anything in thoroughness," said Maura Harty, State Department Assistant Secretary for Consular Affairs. "While procedures have been tightened substantially, we have made every effort to minimize inconvenience to the applicant."

Conference participants agreed that progress has been made but that the United States must continue to strive to achieve both security and openness in order to maintain healthy international education exchanges.

\*\*\*

An audit by the Agriculture Department's inspector general finds that only a small number of officers are patrolling the 1,000 miles of border on national forest land. Auditors said that the Forest Service should come up with a plan to cover the forest areas of the border, despite limited staff and authority.

\*\*\*

Border Patrol's new unmanned aircraft was tested this week and, within minutes, followed a group of people suspected to be illegal border crossers. The development of the radio-controlled prototype UAV - known as Border Hawk - has cost \$5,000 so far. Officials plan to add a global positioning system (GPS) that would use satellite signals to locate specific positions along the border. The aircraft will also be programmed to respond to remote sensors that will guide it along predetermined flight patterns.

---

## 5. News From The Courts

We report on two important cases this week in separate articles. News From The Courts will return next week.

---

## 6. Government Processing Times

These are not official INS times, nor are they endorsed by the Central Office. Source: [American Immigration Lawyers Association](#)

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

Texas Service Center Processing Time Report April 30, 2003	
Form	We are Processing cases with these

	receipt notice dates:
I-90 to replace lost, damaged or destroyed I-551	4/10/2002
I-90 to renew expiring I-551	n/a
I-102 for replacement/initial nonimmigrant arrival/departure form	8/6/2002
I-129 for H1B classification	10/18/2002
I-129 for H2A classification	current
I-129 for H2B classification	3/3/2003
I-129 for H3 classification	3/3/2003
I-129 for L classification	2/24/2003
I-129 for Blanket L petition	3/10/2003
I-129 for O classification	3/10/2003
I-129 for P classification	2/3/2003
I-129 for Q or R classification Q	Q Current - R 1/09/2003
I-129 for TN classification	n/a
I-129F (fiancée)	11/6/2002
I-129 For E classification	1/2/2003
I-130 for Spouse, Parent or Child of US Citizen	6/8/2001
I-130 for Spouse of Lawful Permanent Resident	4/3/1998
I-130 for Other Relative	4/3/1998
I-131 for Advance Parole	11/29/2002
I-131 for Advance Parole for HRIFA principal applicant	n/a
I-131 for Reentry Permit	n/a
I-131 for Refugee Travel Document	n/a
I-140 A (extraordinary ability) IST PEF	5/20/2002
I-140 B (outstanding professor or researcher) IST PEF	5/20/2002
I-140 C (multinational executive or manager) IST PEF	5/20/2002
I-140 D (professional holding adv. degree/alien of exceptional ability) 2ND PEF	8/29/2002
I-140 E (skilled worker or professional) 3RD PEF	9/13/2002
I-140 I (National Interest Waiver)	6/26/2002
I-140 G (other worker) 3RD PEF	9/13/2002
I-212 permission to reapply for admission after deportatation/removal	n/a
I-360 petition for Amerasian, widow(er), or Special Immigrant	3/25/2003
I-485 Asylum-based	n/a
I-485 Refugee-based	n/a
I-485 Employment-based	11/1/2000

I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	n/a
I-526 Immigrant Petition by Alien Entrepreneur	3/3/2003
I-539 for extension of stay for F or M non-immigrant	1/16/2003
I-539 for extension of stay for J non-immigrant	n/a
I-539 for extension of stay for L or H non-immigrant	1/16/2003
I-539 for extension of stay for other non-immigrant	1/16/2003
I-539 to change nonimmigrant classification to F or M	1/16/2003
I-539 to change nonimmigrant classification to J	1/16/2003
I-539 to change nonimmigrant classification to L or H	1/16/2003
I-539 to change to other nonimmigrant classification	1/16/2003
I-612 waiver of foreign residence requirement	9/17/2002
I-730 Refugee/Asylee Relative Petition	n/a
I-751 Petition to Remove Conditions on Residence	10/14/2002
I-765 for initial asylee or asylum applicant authorization C-8	2/5/2003
I-765 for employment authorization associated with Hurricane Mitch TPS	7/8/2002
I-765 for employment authorization associated with El Salvador TPS	8/1/2002
I-765 for employment authorization while I-485 is pending C-9	11/29/2002
I-765 for all other employment authorization	12/17/2002
I-817 Application for Family Unity Benefits	12/17/2002
I-821 for El Salvador	4/13/2001
I-821 for Hurricane Mitch countries	8/17/1999
I-824 Application for Action on an Approved Application or Petition	8/8/2002
I-829 Petition by Entrepreneur to Remove Conditions	3/22/1999
I-914 Application for T Non-Immigrant	n/a

---

## 7. News Bytes

The Executive Office Of Immigration Review (EOIR) released its 2002 Statistical Yearbook this week. Among the findings, EOIR says Board of Immigration Appeals (BIA) completions increased 49 percent in Fiscal Year 2002 over the year before. Asylum filings at the immigration courts increased 19% over the year before. For each of the past five years, six nationalities were among the top ten granted asylum: China, Russia, Albania, Somalia and Haiti. The full report can be accessed online at <http://www.usdoj.gov/eoir/statspub/fy02syb.pdf>

\*\*\*

The Government released the Naturalization Section of its forthcoming 2002 Yearbook Of Immigration Statistics. In FY 2002, the INS naturalized 573,708 persons, six percent less than those naturalized in 2001 (608,205). Fewer petitions were denied in 2002 - 139,779, compared with 218,326 denied in 2001, though at the end of 2002, there were 623,000 naturalization applications pending a decision. The number of petitions filed with the INS increased to 700,649 over 501,649 in FY 2001. The full report can be accessed online at <http://www.immigration.gov/graphics/shared/aboutus/statistics/NATZ2002yrbk/NATZ2002.pdf>

\*\*\*

The Department of Homeland Security issued an interim final rule amending regulations to permit applicants and petitioners to use an electronic signature on applications filed with the Bureau of Citizenship and Immigration Services (BCIS) electronically. The new rule will help pave the way for the electronic filing of immigration applications, which will begin later this month.

\*\*\*

The EOIR has taken disciplinary action against five attorneys after charging them with violations of the rules of professional conduct for immigration practitioners. In each case, a Petition for Immediate Suspension and Notice of Intent to Discipline was filed with the BIA by EOIR's Office of the General Counsel. The BIA ordered each attorney to be suspended immediately from practice before Immigration Courts, the BIA, and the BCIS. The attorneys suspended are Dennis Detmer Burchard, Samuel G. Kooritzky, Michael Louis Leavitt and Rufino J. Villarreal.

\*\*\*

The 10th U.S. Circuit Court of Appeals granted an emergency stay of the May 1 cutoff that would have caused legal immigrants in Colorado to lose their Medicaid benefits. Legislators voted in March to cut Medicaid benefits for an estimated 3,500 legal immigrants in the state in order to help balance the budget. The ACLU filed a class-action lawsuit on behalf of the immigrants, arguing that the cutoff was unconstitutional because it unfairly targeted immigrants living the state legally. State officials said Medicaid coverage for immigrants is optional under federal law. Eight states do not provide Medicaid coverage to immigrants, and Colorado would be the first to have covered immigrants and then cut them off. Denver U.S. District Judge Robert Blackburn ruled against the ACLU, saying the state's constitutional duty to balance its budget outweighs the possible harm to people losing Medicaid benefits.

\*\*\*

Members of the American Immigration Lawyers Association (AILA) in Arizona and San Francisco reported seeing re-arrests at master calendar hearings of permanent residents who appear to meet the criteria under the Kim Supreme Court decision (see the story on this decision later in this issue). AILA has asked to be contacted by anyone who has observed similar arrests, via email at [reports@aila.org](mailto:reports@aila.org).

\*\*\*

Marie Jean-Baptiste, a 57-year-old Haitian woman with a mental disability that has kept her silent for 13 years, has filed a lawsuit against the BCIS and Attorney General John Ashcroft in federal court, saying they should waive the requirement that she speak the oath of allegiance and allow her to become a U.S. citizen. She said the Bureau refused to accommodate her disability by waiving the oath, although a 2000 law permits the attorney general to grant such waivers.

Jean-Baptiste's husband and two of her six children became U.S. citizens several years ago, but she has struggled to become a citizen for more than 20 years. She enrolled in citizenship classes in the early '80s, but was unable to complete the naturalization process due to the deterioration of her mental health. In February 2002, immigration officials approved her request for a medical waiver for the exams but said they could not do the same for the oath until regulations were written on how to proceed with a waiver.

\*\*\*

Representative Gary Ackerman announced this week that a Queens teenager facing deportation under new immigration laws would be granted an exemption, thanks in part to the the lawmaker's help. Mohammad Sarfaraz Hussain, an 18-year-old basketball star, came to New York from Pakistan as a 7-year-old and was raised in Queens by his uncle without ever having obtained proper immigration status. Both his parents died while on the verge of getting their legal immigration documentation. He also has four siblings living legally in New York City as naturalized citizens. In February, when Hussain reported to immigration officials for special registration, he was told he was in the country illegally and that removal proceedings would be started against him. Hussain was due to appear before an immigration judge on Thursday, until Ackerman intervened by contacting BICE Interim Director Edward McElory and urged for dismissal of the case on humanitarian grounds. McElory responded and sent a letter saying that Hussain would not be deported.

\*\*\*

The New York Law Journal reported on a new Legal Aid Society project that will be known as the "Juvenile Immigrant Representation Project," which will provide legal services to unaccompanied immigrant children with the help of volunteer lawyers. Such children frequently appear alone in immigration court, without counsel, and are disadvantaged by language and cultural barriers in addition. The Legal Aid Society is also working with the New York Immigration Court to create a juvenile docket so that a single judge with an appreciation of the unique issues facing children could hear the bulk of those cases and to make it easier for volunteers to participate in the project.

---

## 8. International Roundup

The United Arab Emirates has extended its four-month amnesty period one extra month to allow processing for illegal immigrants who rushed to immigration offices in the final days leading up to the deadline. Citing "humanitarian reasons," UAE officials said the cabinet decided to extend amnesty until the end of May. The Interior Ministry warns of severe punishment for any illegal immigrants who do not have not left the country by the end of the amnesty period.

\*\*\*

Media tycoon Rupert Murdoch joins four other Australian-born global business leaders in a new book encouraging Australia to maintain a vigorous immigration program. The authors of 2020 Vision say immigration is a critical issue for Australia, and immigrants are the key to "real wealth and influence." Murdoch said Australia has missed opportunities to take skilled workers from around the world and should accept more immigrants in order to strengthen the economy.

\*\*\*

Just days after the World Health Organization issued a warning against travel to Toronto, the WHO reversed course. On Wednesday the organization lifted its advisory against nonessential visits, bringing relief to Canadian officials who had argued that the advisory was unnecessary and damaged the Canadian economy and its international image. The WHO's warning came in reaction to documented cases of the SARS epidemic in Toronto.

\*\*\*

Britain forcibly deported a group Afghan asylum-seekers for the first time this week. The government's actions attracted fierce criticism that Afghanistan was still too dangerous for their return, even though the Taliban regime has fallen. The group of 25 refugees were removed from a London airport and included men, women and children. Britain's voluntary return plan, which offered single people £600 and families up to £2,500 to go home, attracted just 39 applicants.

---

## 9. Legislative Update

This week legislators in both houses of Congress introduced bills (H.R. 1850 and S. 940) that would make it easier for immigrants serving in the armed forces to become naturalized citizens. Related bills include H.R. 1714, H.R. 1799, H.R. 1806, H.R. 1814, S. 897 and S. 922.

\*\*\*

The following bills were recently introduced in the Congress:

- H.R. 1850, sponsored by Rep. Luis Gutierrez [IL-4] (introduced 4.29.2003), to provide for automatic naturalization for noncitizen members of the Armed Forces ordered to serve in a combat zone, and to extend immigration benefits to surviving spouses, children, and parents of persons granted posthumous citizenship through death while on active-duty service in the Armed Forces.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h1850ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1850ih.txt.pdf)

- S. 940, sponsored by Sen. Lindsey Graham [SC] (introduced 4.29.2003), to amend the Immigration and Nationality Act relating to naturalization through service in the Armed Forces of the United States.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:s940is.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s940is.txt.pdf)

\*\*\*

To see what immigration-related legislation is pending in Congress, visit our legislative chart at [www.visalaw.com/advocacy.html](http://www.visalaw.com/advocacy.html).

---

#### 10. DHS Marks First 100 Days With Plans For New US VISIT System And The End of NSEERS

The Department of Homeland Security reflected on its 100-day anniversary this week with a speech by Secretary Tom Ridge before the National Press Club. Ridge gave an assessment of the department's progress and introduced the launching of a new entry-exit system, which will replace the controversial special registration program.

Officials said Ridge would order the end of the domestic component of the National Security Entry-Exit Registration System (NSEERS) because he believes it has accomplished its mission to ferret out potential national security problems. NSEERS required males age 16 and over from certain countries to be photographed, fingerprinted and interviewed. The fourth, and possibly last, round of domestic registrations ended this week, targeting males from Bangladesh, Egypt, Indonesia, Jordan and Kuwait. Immigration advocates said the program discriminated against foreigners, particularly Middle Easterners.

In his speech, Ridge said the new U.S. Visitor and Immigrant Status Indication Technology (VISIT) system will capture point of entry and exit information on visitors. Using a minimum of two biometric identifiers, the VISIT system is designed to make entering the U.S. easier for tourists, students and business travelers, while making it more difficult for illegal visitors to gain access, Ridge said. Data from photographs, fingerprints or iris scans will be entered into the electronic system and will be integrated with the department's new student-tracking system, SEVIS. The VISIT system is scheduled to be in its first operational phase at international air and sea ports of entry by the end of 2003.

The Department of Homeland Security was created on January 24 in the largest transformation of the federal government since 1947, when President Truman merged the branches of the armed forces into the Department of Defense. The DHS supervises 180,000 employees from 22 combined agencies. Together, they are responsible for intelligence analysis, infrastructure protection, border patrol, response and recovery operations, and immigration policy, processing and enforcement.

"Within the first 100 days of the Department of Homeland Security, we've launched a number of initiatives that have brought this country to its highest level of security and protection than at any other time in our nation's history," Ridge said.

Among the new departments achievements, Ridge included:

- deployment of BICE agents to Iraq to help trace the source of \$700 million in U.S. currency seized to date
- orchestration of Operation Iraqi Heritage - a plan to return artifacts looted from the Iraqi museum
- launch of Operation Liberty Shield, to build guard the country against terrorist attacks during the war in Iraq.
- creation of the Ready campaign, designed to encourage citizen preparedness. Ready.gov became one of the most visited websites in America
- reorganization of border agencies
- development of defensive measures to secure strategic ports throughout the U.S.
- technological progress with the introduction of electronic filing for two of the most commonly submitted immigration forms, I-90 and I-765.
- plans to standardize the English, government and U.S. history tests administered to citizenship applicants.

"In a very short period of time, we think we've come a considerable distance. I can report to you that your nation's newest department has made solid, productive, and measurable progress in a very short amount of time," Ridge said. "Our job is to turn resolve into results and results into readiness."

---

## 11. Iraqi Who Helped Rescue POW Granted Asylum

One of the most heroic missions in Iraq was made possible by the bravery of an Iraqi citizen, Mohammed Odeh Al Rehaief, who put his life at great risk in order to rescue an American prisoner of war. Early this week, Homeland Security Secretary Tom Ridge announced that Mr. Al Rehaief, his wife and 5-year-old daughter were granted asylum in the United States.

Al Rehaief, 33, is an Iraqi lawyer who helped U.S. forces locate Jessica Lynch, an Army supply clerk, who was captured March 23 after her maintenance convoy was ambushed just outside the city of Nasiriyah. Lynch was taken to Saddam Hospital in the city and held captive there. She suffered from a head wound, spinal injury and fractures to her right arm, both legs and her right foot and ankle.

Al Rehaief was visiting his wife, who worked as a nurse there, when he noticed an increase of security forces in the building. After a doctor showed Al Rehaief where Lynch was being held, he witnessed an Iraqi soldier slap her twice.

"My heart stopped," he said. "I knew then I must help her be saved. I decided I must go to tell the Americans."

Al Rehaief traveled a long distance on foot, through Iraqi-held territory, until he reached a U.S. military post and gave them information about the captive soldier.

Marine officers questioned Al Rehaief and asked him to return to the hospital to gather more information about the layout of the hospital, security and shift changes. Once again Al Rehaief put himself in harm's way and returned to the hospital, where over the course of two days he and his wife made maps showing Lynch's location.

Using the information Al Rehaief and other informants gathered, U.S. Special Forces led a team of Marines, Army Rangers, Navy SEALs and airmen into enemy fire April 1 and rescued Lynch from the hospital. She was found in the room, alive, lying in a bed, with a sheet over her head.

On April 10, Al Rehaief and his family were brought to the United States at his request. On Monday, the Bureau of Citizenship and Immigration Services granted the family humanitarian parole. Al-Rehaief was injured during his treks between the hospital and the U.S. military station and he will undergo surgery next week. Humanitarian parole is not common, but it is used for foreign nationals in need of medical treatment. Homeland Security spokesman Bill Strassberger said Iraq was not yet stabilized "to the extent we could assure his and his family's safety." With the grant of asylum, the family can remain in the United States indefinitely. After one year, Al Rehaief will be able to apply for U.S. permanent residency status.

"Mr. al Rehaief should know that Americans are grateful for his bravery and for his compassion," Ridge said.

Al Rehaief and his family have also been rewarded by private citizens. Livingston Group, a lobbying firm in Washington headed by former Representative Bob Livingston, has offered Al Rehaief a job, and a surgeon has volunteered to perform the medical operation he needs at no cost.

---

## 12. Temporary Protected Status Extended For Hondurans and Nicaraguans

The Bureau of Citizenship and Immigration Services announced this week that Temporary Protected Status (TPS) for Honduras and Nicaragua will be extended for 18 months, as part of the Administration's efforts to assist countries affected by Hurricane Mitch. The extension will go into effect July 5 and will remain until January 5, 2005. The 60-day TPS re-registration period begins May 5.

TPS is a temporary immigration status granted to eligible nationals of designated countries. During the period for which the Secretary of Homeland Security has designated a country under the TPS program, beneficiaries are not required to leave the United States and may obtain work authorization. TPS does not lead to permanent resident status. Upon termination of a country's TPS status, the alien returns to the status he or she had prior to TPS or a status obtained while registered for TPS.

BCIS is also granting an automatic extension of the expiration date of the Employment Authorization Document (EAD) to December 5, 2003, in order to provide ample time for eligible Hondurans and Nicaraguans to re-register and prevent gaps in employment authorization while they wait for their applications to be processed. The automatic EAD extension does not relieve beneficiaries of the responsibility to re-register for TPS benefits.

Re-registration is limited to persons who registered during the initial period that ended on August 20, 1999 or who registered after that date under the late initial registration provision, and who timely re-registered during the previous 12-month extension. Those who have never registered for TPS may be eligible for late initial registration if they meet certain requirements. Individuals who have been convicted in the US of either a felony or two or more misdemeanors committed in the United States, or individuals subject to certain criminal or security-related bars to asylum, are not eligible for TPS.

According to a BCIS news release, the TPS extension covers an estimated 87,000 Hondurans and 6,000 Nicaraguans.

Additional information concerning the TPS program is available on the BCIS website at [www.bcis.gov](http://www.bcis.gov).

From the archives: <http://www.visalaw.com/00may2/7may200.html>  
<http://www.visalaw.com/01may1/18may101.html>

---

### 13. Supreme Court Rules In Favor Of Automatic Detention For Criminal Green Card Holders

The United States Supreme Court has held that designated criminal lawful permanent residents (LPRs) shall be detained for the brief period necessary for their removal proceedings under Section 236(c) of the Immigration and Nationality Act. 8 U.S.C. § 1226(c). The court reasoned that members of Congress justifiably require detention as they were concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers. The law provides that “[t]he Attorney General shall take into custody any alien who” is removable from this country because he has been convicted of one of a specified set of crimes. Bond hearings are not allowed under 8 U.S.C. § 1226.

In this case, *Charles Demore, District Director v. Hyung Joon Kim*, the Immigration and Naturalization Service (INS) charged respondent with being deportable from the United States in light of his convictions of first-degree burglary and petty theft with priors. One day after Kim finished serving his three year sentence, INS detained him pending his removal hearing. Kim filed a habeas corpus action in the United States District Court for the Northern District of California challenging the constitutionality of § 1226(c). He argued that his detention under § 1226(c) violated due process because the INS had made no determination that he posed either a danger to society or a flight risk. The District court agreed. Kim was released on \$5,000 bond. The Court of Appeals for the Ninth Circuit upheld the District court decision. The Circuit court reasoned under *Zadvydas v. Davis*, 533 U.S. 678 (2001), that the INS had not provided a justification “for no-bail civil detention sufficient to overcome a lawful permanent resident alien’s liberty interest.” *Kim v. Ziglar*, 276 F. 3d 523, 535 (2002)

The Supreme Court decision was split 5-4. The majority decision reasoned that “in the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Matthews v. Diaz*, 426 U.S. 67, 79-80 (1976). The Court notes that despite the Court’s

longstanding view that the government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings, Kim argues that the narrow detention policy reflected in 28 U.S.C. § 1226(c) violates due process. The court discussed the fact that the Third, Fourth, Ninth, and Tenth Circuits have held the statute to be unconstitutional, relying heavily upon the opinion in *Zadvydas*. The Seventh Circuit rejected such a constitutional challenge.

The Supreme Court distinguished *Zadvydas* from this case in two material respects. In *Zadvydas*, the aliens challenging their detention following final orders of deportation were ones for whom removal was “no longer practically attainable.” The Court thus held that the detention there did not serve its purported immigration purpose. In this case the statutory provision at issue governs the detention of deportable criminal aliens pending their removal proceedings and serves an immigration purpose of preventing flight before an order. Secondly, the Court explained that in *Zadvydas*, the period of detention at issue was “indefinite” and “potentially permanent,” *Zadvydas*, 533 U.S., at 690-691, while the detention period here is of a much shorter duration. The Court further held that detention during removal proceedings is a constitutionally permissible part of that process.

Another majority through concurring opinions held that aliens may appeal the “no bond” determination through a habeas corpus challenge in Federal Court. Justice Souter writing for the dissenting Justices explained that this case is not about the national government’s undisputed power to detain aliens in order to prevent flight or to prevent danger to the community. He further explained that the issue was whether that power may be exercised by detaining a still lawful permanent resident alien when there is no reason for it and no way to challenge it. The INS never contended that Kim posed either a danger to society or a flight risk.

Since this decision, an immigration attorney noticed two Deportation Officers from the Department of Homeland Security during an Immigration Court’s master calendar hearing. They sat in the back of the Courtroom, and listened to cases involving LPRs. Any LPR believed to fit the criteria for mandatory detention was immediately taken into custody upon leaving the Courtroom. The American Immigration Lawyers Association confirmed other similar reports.

---

#### 14. Court Holds That Retroactive Application Of EB-5 Rules Is Impermissible

The United States Court of Appeals for the Ninth Circuit has held that the 1998 changes in the EB-5 rules are impermissibly retroactive as applied to the evaluation of the appellants’ petitions to remove the conditions on their permanent residency. The appellants are seven “Immigrant Investors” who have participated in the EB-5 program, which grants lawful permanent resident (LPR) status in the United States who make qualifying investments under the Immigrant Investor Law (ILW). 8 U.S.C. §§ 1153(b)(5), 1186b; 8 C.F.R. §§ 204.6, 216.6. In 1998, after these appellants investment proposals and business plans had been approved and they and their dependents had moved to the United States, the Immigration and Naturalization Service (INS) changed the rules of the EB-5 program.

In this case, *Chang v. United States*, the appellants contend that the INS applied the new rules to reject their applications at a stage in the process that called only for

confirmation that they had fulfilled their part of the originally approved bargain. The INS approved the appellants' initial I-526 petitions between July 1996 and July 1997. EB-5 requires the Immigrant to file a second petition, an I-829, between 21 to 24 months after the first petition. The INS is to approve the I-829 petition, and grant unconditional LPR status, if it finds that the petitioner made no material misrepresentations in the I-526 petition and complied with the EB-5 requirements. 8 C.F.R. §§ 204.6, 216.6.

The appellants' I-526 petitions contained features that the INS now believes contravene the terms of the IIL program. At the time the INS approved appellants' I-526 petitions, these features were not considered by the INS to be disqualifying. The precedent decisions that the INS relied on were issued subsequent to the INS's approval of appellants' I-829 petitions. The INS argue that based on the precedent decision, a review of appellants' I-829 petitions will not allow it to certify that appellants have complied with the legal requirements of EB-5. The appellants brought suit to force consideration of their I-829 petitions based solely on the criteria that were in effect when their I-526 petitions were approved.

In determining the improper retroactive effect, this court applied the factors presented in Montgomery Ward & Co. v. FTC, 691 F.2d 1322, 1333 (9<sup>th</sup> Cir. 1982). Under Montgomery Ward, the considerations are 1) whether the particular case is one of first impression, 2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, 3) the extent to which the party against whom the new rule is applied relied on the former rule, 4) the degree of the burden which a retroactive order imposes on a party, and 5) the statutory interest in applying a new rule despite the reliance of a party on the old standard. The court held that on balance, after applying the Montgomery Ward factors, the application of the INS's intended change in the function of I-829 review is impermissibly retroactive as applied to appellants.

The court concluded that all of the appellants' claims were ripe, none were moot, no further exhaustion of the administrative process was necessary, and no statute ousted the courts jurisdiction.