Dear Readers:

We’re hoping we can get this newsletter issue out on Monday of this week because Tuesday most of us here at Siskind Susser’s Memphis office will be out of the office all day. Election Day is not a holiday in the US and voters need to take time off of work.
At our firm, we’re trying something new this year that is fairly unusual for an employer. The partners at the firm have decided that any employee who wants may take the day off from work and be paid if they are doing work related to the election. Whether it is helping to give people rides to the polls, making phone calls to get out the vote, working as a volunteer poll watcher or any other similar activity, our lawyers and support staff are being encouraged to get involved. We’re also allowing anyone who wants to vote during work hours to take off time during the day without penalty.

By the way, we have both Democrats and Republicans in our firm and all are welcome to work for whichever side with which they agree.

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Next week the election will (hopefully) be behind us and we can begin to analyze the meaning. What will the makeup of Congress look like? If President Bush wins, what will a second term look like? If Senator Kerry wins, what changes can we expect in immigration policy?

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Nearly 3,000,000 new Americans were sworn in as citizens since the last Presidential election. Many readers of this newsletter are part of this group and we urge you to exercise your right to vote. I have seen data suggesting that new Americans don’t vote in the same ratio as seasoned Americans. I hope that I can report next week that this is no longer the case.

As always, we remind readers that we're lawyers who make our living representing immigration clients and employers seeking to comply with immigration laws. 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: Children

**How can my child obtain US citizenship?**

There are a number of ways for children under 18 to obtain US citizenship other than by birth. In some cases, they are naturalized when their parents are, and in some cases, when certain conditions are met, they can become citizens automatically. As with many laws dealing with citizenship and naturalization, the laws dealing with children have a long and complex history. However, much of this complexity was eliminated when the Child Citizenship Act of 2000 went into effect.

**What is required of a child to become a US citizen?**

Under the Child Citizenship Act, there are three primary requirements. First, at least one parent must be a US citizen, whether by birth or by naturalization. Second, the child must be under 18, and third, the child must be living in the US in the custody of the citizen
parent and be a permanent resident. Both natural and adopted children are treated the same under this law.

The Child Citizenship Act provides automatic citizenship to qualifying children, once all the requirements are met. No naturalization process is required, and the child can obtain proof of citizenship either by filing an application for a Certificate of Citizenship with the USCIS or an application for a US passport with the State Department.

**What if my child does not qualify under the Child Citizenship Act? Can he/she still be naturalized?**

Children who do not qualify for automatic citizenship under this law may still obtain naturalization. They must have one citizen parent, whether through birth or naturalization, and the parent must meet certain residency requirements (typically having lived in the US for a minimum of five years, two of them after age 14). The child must be in the physical and legal custody of the citizen parent, and must be lawfully in the US, although they are not required to be a permanent resident. The application can be filed from abroad, but the child must be in the US before he or she will be naturalized.

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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 applied to the D-V lottery last year (2003) but I have not heard from them, so do I conclude that my case was not processed?**

**A - That's a safe assumption. All winners have been notified already.**

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**Q - Can a USC step-child file for his step-mother? The USC child (now naturalized) was less than 18 years of age when his father married his step-mother. The father is still married to the step-mother.**

**A - If the stepparent relationship was created before the child was 18, then the child is considered the same as a biological child and can sponsor the stepparent for a green card.**

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**Q - I am 37/male/single. My parents filed a petition for me under F2B category when they were only permanent residents of US holding the green cards. My priority date is 11 June 1997. My father recently became a naturalized US citizen in April this year. How does this affect my immigration process? My F2B priority date is 11 June 1997. The current F1 priority date is 1 Nov 2000.**

**A - You automatically converted to the F1 category when your father naturalized. You can now process in that category using your original 1997 priority date. If you are outside the US, you will need to notify the National Visa Center of your father's new status. If you are in**
the US, you can proceed to filing to adjust status to permanent residency at a local USCIS office.

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Q - I am currently married to a US citizen for 4 yrs. I am a permanent resident. She has put in the initial papers to file for a divorce. I had my conditional status removed about 5 months ago for my permanent residency. We have 2 children who were born here in the US. What would be the implications for me remaining here in the U.S. and am I able to apply for citizenship. Any help on this topic would greatly be appreciated.

A - You should not have a problem remaining in the US. However, you'll have to wait five years to apply for citizenship like everyone else rather than three years as a spouse of a US citizen.

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Can someone that is currently out of status (but entered legally) marry and then apply for permanent residency?

Yes, section 245(a) of the Immigration and Nationality Act would permit this. No waiver would be necessary. That would not have been the case if the person entered without inspection.

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A helpful reader sent me this note that I wanted to pass on to readers. I appreciate the correction and encourage readers to let me know when we err:

In the 11 October 2004 issue of Siskind's Immigration Bulletin, in the Ask Visa Law section the question was asked “Where can I download the form FD-258 (Fingerprint Notification Form for Military personnel)?”

You responded with the following information:

“The FBI has it online at http://www.fbi.gov/hq/cjisd/PDF/fpcardb.pdf.”

According to USCIS that is wrong for the following reason:

“This is not acceptable because the ORI is incorrect. We don't want to send our fingerprint cards to CJIS. Plus, the ORI code is supposed to be the ORI of the facility that's taking the prints.”

The forms are available in the military supply system. The stock number for the FD-258 is 0104LF0069600. If it is a military individual who is filing for their citizenship this is the only acceptable fingerprint card.

4. Border and Enforcement News

The Arizona Daily Star announced that two U.S. Border Patrol agents were injured Monday afternoon when their helicopter made an emergency crash landing southwest of Tucson.
near Kitt Peak. The helicopter crashed about a half-mile south of Arizona 86, about 20 miles west of Three Points while on a routine patrol, said Andy Adame, a spokesman for the Border Patrol. However, both occupants suffered non-life-threatening injuries and the cause of the crash remains under investigation, Adame concluded. It is the third crash of a Border Patrol OH-6 in the Tucson Sector in four years.

5. News From The Courts

Barco Corado and her two children Karen Aquino Corado and Jose Aquino Corado, citizens of Guatemala, applied for asylum three months after arriving in the United States on the grounds that Corado and her children had a “well founded fear of persecution” and for their lives based on their political opinion. Upon appearing before the Board of Immigration Appeals (BIA) the immigration judge’s decision to deny their applications for asylum and withhold their removal was upheld.

Barco Corado established that while in Guatemala, she was raised by her uncle who, along with herself, was a visible member of the political group Union del Centro Nacional (UCN). Corado was told that because of her uncle’s affiliation he was killed by policeman aligned with the political party, Movimiento de Accion Solidaria (MAS). Subsequently, Corado was also visited several times by MAS who told Corado that she and her children would be harmed or killed if she didn’t provide them information about UCN. Each visit from MAS escalated in the severity of the threats and on the fourth visit, Corado was beaten and told that she would suffer the same fate as her uncle if she did not comply. Consequently, Corado fled two days later with her children to the United States where she applied for asylum.

The immigration judge’s decision was based on the conclusion that Barco Corado had failed to show that her political opinion had caused her to suffer sufficient past persecution in Guatemala thus rendering no credibly findings regarding her testimony. The IJ stated that Corado’s claim that the visits of four members of MAS to her home, resulting once in her beating that did not need hospitalization, did not “constitute a pattern and practice of mistreatment that rises to the level of persecution.” Corado argues that the definition of persecution used by the IJ is an impermissible definition, for while she did not need medical attention as a result of her beating, her life was threatened on account of her political opinion by government agents of Guatemala.

When brought to the United States Court of Appeal for the Eighth Circuit, the court took the opinion of Corado when deciding how to handle the definition of persecution. The court stated, “We have never held that a specific, credible, and immediate threat of death on account of political opinion is outside the definition of "persecution," just because it occurs during a single incident.” The court further stated that they actively define persecution to include the threat of death.

In light of this, the US Court of Appeal for the Eighth Circuit granted Corado’s petition and remanded the case to the BIA once again for further consideration in response to the correct standard of the definition of persecution.
7. News Bytes

*The Associated Press* reports that Federal authorities have uncovered a scheme to lure Filipino teachers to the United States with false promises of jobs in Texas school districts. The authorities charged the Tolentinos, owners of Omni Consortium, a company that specialized in recruiting Filipino teachers, and three others, with conspiracy to commit alien smuggling, visa fraud, mail fraud, and money laundering. Furthermore, two former West Texas public school administrators, and an elementary school principal, Lokey and the Aguilars, also face charges that they sponsored work visas for dozens of the teachers in exchange for free trips to Asia.

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*The San Diego (CA) Union-Tribune* reported that a decade after images of illegal immigrants dashing across the border into San Diego helped fuel California's Proposition 187, immigration anxiety is slashing a new political divide in the Grand Canyon State, where the undocumented population has quadrupled from the 88,000 estimated by federal officials in 1990. A debate is raging over Proposition 200, an initiative that will require proof of identification and citizenship from voters and applicants for some government services that are not federally mandated. Government officials who fail to report violations could face a misdemeanor charge, stated *The Arizona Daily Star (Tuscon).*

Its advocates call it the Protect Arizona Now, or the PAN, initiative. The initiative's authors made sure the ban did not include any federally mandated services – such as elementary and high school education and emergency medical care – that a federal court cited in striking down California's Proposition 187.

*The Business Journal (Phoenix)* adds that the latest poll by Northern Arizona University shows 42 percent of voters support Proposition 200, with 29 percent opposed and 29 percent undecided. Previous state polls showed support for Proposition 200 to be above 60 percent. That drop in support and the high number of undecided gives hope to critics of Proposition 200.

8. International Roundup

The Canadian Globe and Mail reported on October 26 that a plot to sell 246 stolen passports was defeated by the RCMP. When an informant tipped the RCMP off about stolen passports from the Scarborough passport office being sold on the streets of Toronto for bargain prices of around 1,00 dollars a piece, two dozen officers were assigned to "Operation O Pass."
However, before all 246 passports could be recovered some passports were passed to international people-smuggling organizations, with more than 33 in the possession of people-smugglers in the Caribbean and European.

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Officials from the Ministry of Public Security in China recently reported that China is still facing a hard task of guarding and combating illegal immigration activities, according to The People’s Daily Online. The report asserts that the number of people in and out of China has increased in recent years. However, the unlawful activities, such as stealing into another country and illegal immigration, have also become a kind of serious trans-national organized crime.

9. Legislative Update

For a review of all the immigration bills that have been recently introduced, visit our legislative chart at www.visalaw.com/advocacy.html.

10. Campaign 2004

According to The Kansas City Star, Kansas’ third district Republican candidate for US Congress, Kris Kobach, has run into a slippery debate centering around immigration at our border and national security.

Kobach has run his campaign with the idea that militarizing the borders with thousands of troops and strictly limiting immigration will help curb the potential of terrorist coming into the country. Kobach’s militarizing policy looks toward placing 20,000 National Guard troops on the borders of the United States to prevent terrorism.

Many groups have rallied support in response to Kobach’s ideas immigration policies, many that Democratic opponent U.S. Rep. Dennis Moore says have “extremist views on immigration and race” in order to protect American culture and prosperity.

Those opposing Kobach policy idea state that immigrations problems are not solved by simply lining up thousands from the National Guard on the border and that these policies have taken too much of a tone of extremist agendas.

On the opposite end of the spectrum, Democratic candidate for the California 76th Assembly District seat, Lori Saldana, has been criticized by her opponent Republican, Tricia Hunter, for being to lenient with immigration into the United States.

Saldana, a community college professor has called for driver’s licenses for undocumented immigrants, banning border fences and having free education for people of all immigration statuses at community colleges.

Hunter in return says that the issue of immigration has once again returned to the forefront of debate with the possibility that terrorist could sneak across the border and therefore should be taken more seriously.
Republicans are turning voter’s attention to the issue of illegal immigration, according to The Raleigh (NC) News and Observer. Republicans have employed this strategy in the senatorial and gubernatorial races in North Carolina, the state with the nation’s second fastest growing Latino population, continues the report. In North Carolina rural areas, a persistently bleak economic outlook has fueled the perception that illegal immigrants are competing with natives for scarce jobs.

Democratic Governor Mike Easley called the Republicans’ focus on the immigration issue “pernicious.” He also states that the tactic could backfire if voters are turned off by what some describe as its divisive nature. Advocacy groups are also accusing Republicans of playing to voters' fears and continuing in the tradition of the “white hands” ad – used by Jesse Helms in 1990 to stir fears about white workers losing jobs because of affirmative action.

Rep. Tom Tancredo said Monday that if the war in Iraq were to suddenly end today, he'd call President Bush's decision to topple Saddam Hussein's regime a “mistake.” The Rocky Mountain News reports that the three-term congressman made his remarks during a taping of a 6th Congressional District debate. Sixth District Libertarian candidate Jack Woehr called the United States the world’s newest empire, arguing that the country has gotten itself into a quagmire in Iraq.

The race’s Democratic candidate, Joanna Conti, accused Tancredo of fixating on the issue of illegal immigration. “I don't think we can solve the problem of illegal immigration with troops on the border,” she said. Woehr added the strict border control Tancredo favors doesn't address the fundamental issues of inequality between Americans and Mexicans. However, Tancredo said he has been outspoken on border issues because no one else in Congress was willing to embrace the subject describing his stance on illegal immigration as setting “the goalposts all the way down the field” in the national debate.

According to an October 15th New York Times article, The New York Immigration Coalition reported that in New York City nearly 63,000 immigrants are waiting for processing for their citizenship applications have lost the chance to vote due to delays by the Department of Homeland Security. Many other key battleground states in the elections are reported to having very similar problems.

President Bush set the national standard for citizenship application processing time at six months but many states have backlogs up to as much as 21 months, eliminating the first chance these potential new citizens would have to vote in a presidential election.

Reasons for the backlogs, the coalition declared, lie in the requirement for each applicant to pass three layers of security checks and the shortage of staff members to process these checks in a timely manner. The three layer security checks include inspection from the Interagency Border Information System database, FBI fingerprinting and the FBI name check, with the FBI responsible for many times for the delays. In 2003, the accumulation of applications could also be attributed to the fact that many agents set to process naturalization application were temporarily reassigned to a 'special registration' program that proved to be useless in finding terrorists.
In the meantime, US Citizenship and Immigration Services acknowledges the backlog and says they are fully committed to eliminating it by 2006. However, waiting until 2006 to clear to reservoir of application waiting to be processed leaves 25,000 immigrants in Florida, about 12,000 immigrants in New Jersey and around 6,500 immigrants in Arizona shut out of next week's elections whose applications should have met the six month deadline.

Even some immigrants whose applications have just been processed and who have recently taken the citizenship oath were informed that their move to citizenship status was too late to meet the voter registration deadline. However, the New York Times later reported in an October 16 article that in the case of the newest American citizens in New York State there is a loophole. Those immigrants that were sworn in after the October 8th registration deadline are permitted to “register in person at the Board of Elections headquarters in their county until 10 days before the election.”

11. US Fingerprinting System and Border Control Evaluated

The Washington Post reported on October 19th that as written in a letter by Rep. Jim Turner (D-Tex.) the government’s use of a two print system of fingerprinting instead of one functioning on ten fingerprints has resulted in being “no more than 53 percent effective in matching fingerprints with poor image quality against the government’s biometric terrorist watch-list.” In his letter Turner declared that, “It's going to be a coin toss as to whether we can identify terrorists. It's a 50-50 chance, and that's not good enough.”

Turner’s claims are directed toward the government’s border security system called the US-VISIT program. That system uses networking, databases, fingerprinting and other biometric indicators to create a “virtual border” for foreigners that must register their name before entering the United States.

The US-VISIT program has received a lot of criticism when Homeland Security decided to adopt the precedent of the two print system used in the former Immigration and Naturalization Service program called IDENT, instead of the Justice Department’s ten fingerprint system called the Integrated Automated Fingerprint Identification System, which is proven to produce better results.

Homeland Security officials claim that the decision to initiate the two print system was made in order to quickly implement the system with the intention to move to a ten print system in the future. However, Turner rebutted, saying deploying biometric screening as quickly as possible has resulted in creating an unreliable biometric watch list unable to fully complete its goal of keeping known terrorists from crossing our borders.

When commenting of the broader issue of border control, however, U.S. Homeland Security Secretary Tom Ridge said Thursday, as reported by CBS News, that “there isn't a day that goes by, literally, where a couple of people aren't turned away from our borders because they are associated in some manner, shape or form with terrorists or terror-related organizations.” Officials have claimed that between January and September of 2004, 1,100 people wishing to cross the border have been turned away because of some sort of record raising a link to terrorist ties.

Others challenge that the threat of terrorist penetrating the American border and security is over exaggerated such as Roger Gallaway, a Liberal MP who represents Sarnia, who states
that many of those turned away from the US border are for reasons not relating to terrorist ties.

Furthermore, the new head of Mexico’s federal police force, Adm. Jose Luis Figueroa, stated on Oct. 19 that he doesn’t believe the US-Mexico border is a prime way for terrorists to sneak into America and there is no evidence that these route of entry has yet been used. Figueroa went on to say that “up until now, we have not detected one terrorist in this country.”

12. CRS Released Report on Visa Waiver Program

The Congressional Research Service recently issued a report that outlined the visa waiver program and its current status. Since September 11, 2001, concerns have been raised about the ability of terrorists to enter the United States under the visa waiver program. The Visa Waiver Program (VWP) allows nationals from certain countries to enter the United States as a temporary visitors (nonimmigrants) for business or pleasure without first obtaining a visa from a U.S. consulate abroad. Temporary visitors for business or pleasure from non-VWP countries must obtain a visa from Department of State (DOS) officers at a consular post abroad before coming to the United States. The VWP constitutes one of a few exceptions under the Immigration and Nationality Act (INA) in which foreign nationals are admitted into the United States without a valid visa. Under Department of Homeland Security (DHS) regulations, as of September 30, 2004, VWP participants arriving at airports and seaports have been subject to US-VISIT.

By eliminating the visa requirement, this program facilitates international travel and commerce and eases consular office workloads abroad, but it also bypasses the first step by which foreign visitors are screened for admissibility to enter the United States. In 2003, 13.5 million visitors entered the United States under this program, constituting 49% of all overseas. To qualify for the VWP, the INA specifies that a country must offer reciprocal privileges to United States citizens; have had a nonimmigrant refusal rate of less than 3% for the previous year or an average of no more than 2% over the past two fiscal years with neither year going above 2.5%; certify that the country issues, or will issue, machine-readable passports; and not compromise the law enforcement or security interests of the United States by its inclusion in the program. Countries can be terminated from the VWP if an emergency occurs that threatens the United States’ security interests.

The USA Patriot Act enacted a requirement that by October 1, 2003, all aliens applying for admission under the VWP must have machine-readable passports; however, the act allows the Secretary of State to waive the requirement until September 30, 2007, and the requirement was waived for 22 of the 27 countries participating in the VWP. In addition, the Enhanced Border Security and Visa Reform Act of 2002 requires that by October 26, 2004, all countries participating in the VWP must issue their nationals machine-readable passports that incorporate biometric identifiers. The 9/11 Commission Report recommends that DHS complete as quickly as possible a biometric entry-exit screening system. S. 2845 as passed by the Senate, would require that each VWP country, as a condition of being in the VWP, have a program to issue tamper-resident, machine-readable visa documents that incorporate biometric identifiers which are compatible with the biometric identifiers used in the US-VISIT program. There is no comparable provision in the House-passed version of S.2845. Additional legislation, H.R. 4550, would require those entering under the VWP to undergo an electronic verification of admissibility before entering the country.