Dear Readers:

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 postings? Visit Visajobs.com, the online career network, and create your new account (http://www.visajobs.com).

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1. Openers
2. The ABC's of Immigration: First Preference Employment Based Immigration - Outstanding Professors and Researchers
3. Ask Visalaw.com
4. Border and Enforcement News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update
10. Powell Says Bush Administration is Ready to Change Current Immigration Laws
11. Supreme Court Rules in Favor of Immigrant in DUI
12. Quarterly USCIS Report Shows Significant Backlog Improvements in Third Quarter
13. 9/11 Bill: Anti-Immigrant Provisions Blocking Intelligence Reform
14. GAO Examines the Progress of Incorporating Immigration Enforcement Within DHS

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1. Openers

Dear Readers:
Last week we reported on the effects of the election on the immigration debate. One of the developments we reported was the resignation of Attorney General John Ashcroft. We now know that Ashcroft will be replaced by Alberto Gonzalez. Gonzalez is not an immigrant, nor the child of immigrants. His grandparents were from Mexico. But his parents were migrant workers in Texas and certainly Gonzalez’s heritage is likely to give him more perspective on the Latino immigrant experience in America. On the other hand, Gonzalez is already being criticized by many for his role in the treatment of prisoners in Guantanamo Bay and Abu Ghraib. Gonzalez signed off on a memo that indicated that the Geneva Convention was inapplicable. Gonzalez really has not been in a position to develop a record on immigration issues so we’ll likely need to hear more about his opinions during confirmation hearings to be able to form a meaningful opinion.

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Last week we also discussed the prospects for Bush’s immigration plan which was briefly mentioned by the President earlier this year then promptly dropped when it became clear it would not help him politically. The plan looks like it may have some life, however. Last week we reported that officials in the Mexican government as well as Senator Kay Hutchinson, a close Bush ally, were discussing getting the plan moving. This week, Secretary of State Colin Powell again indicated that the President would like to get the plan moving again.

We still don’t know what the plan will specifically include and what the President’s strategy is for getting it through Congress. But the fact that Administration officials are talking about it again is good news.

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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

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2. The ABC’s of Immigration: First Preference Employment Based Immigration - Outstanding Professors and Researchers

Last week we discussed the first subcategory within the first preference employment-based immigration category, aliens of extraordinary ability. This week we discuss the second subcategory, outstanding professors and researchers.

**What evidence is required for this category?**
The evidentiary requirements for this category are as follows:

- International recognition as outstanding in a specific academic field
- At least three years teaching or research in the field. The teaching or research experience can be gained while in pursuit of an advanced degree, but only if the alien had full responsibility for the courses taught, or the research is recognized as outstanding.
- An offer of employment. There are three forms this offer can take:
A tenure or tenure-track teaching position or a comparable research position, or
A research position with no fixed term in a position where the employee would generally have the expectation of permanent employment, or
A research position with a private company if the employer has at least three full time researchers and has documented research accomplishments in the field.

Unlike aliens in the extraordinary ability subcategory, aliens in the outstanding professor or researcher subcategory must have a job offer. However, as with all first preference employment petitions, no labor certification is required.

**How can an applicant prove him/herself to be outstanding?**

An alien demonstrates that their work has been recognized as outstanding in the international arena by presenting evidence similar to that required to show extraordinary ability. Two of the following types of evidence are required:

- Receipt of a major international prize or award for outstanding achievement in the academic field,
- Membership in associations that require outstanding achievements of their members,
- Material in professional publications written by others about the alien’s work,
- Participation as a judge of the work of others in the field,
- Original contributions in the field, or
- Authorship of scholarly books or articles in journals with international circulation.

There, of course, are types of evidence that are more useful than others. A book published by a vanity press will not be given much weight, nor will mentions of the alien’s work without evaluation. Strong evidence includes peer-reviewed publications and participation as a peer-reviewer. As always, one of the strongest types of evidence is the submission of letters from academic peers.

Also, the alien must submit letters from past employers documenting at least three years of teaching or research experience.

**How can I prove that I’ve been offered a job?**

Along with the petition, the potential employer must submit a letter outlining the employment offer. The letter must include the basic terms of employment, including the salary offered. More difficult is describing the position. If the position offered is a tenured position, or a tenure-track position, then it is simple. However, few research positions are tenured. Qualifying research positions, therefore, can include positions that do not have a fixed duration but are the sort of position in which the alien can expect permanent employment.

**Are there different requirements for private employers?**

Private employers face additional requirements. The employer must show that they employ three full-time researchers and that research conducted by the employer has resulted in documented accomplishments. INS rules provide no information on how a private employer can document research accomplishments. The best evidence possible should be submitted, which would include any patents issued to researchers at the institution, and articles published by employees.
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 - How soon can one apply for Extension petition of H1B1? I am referring to the submission of I-129 petition to CIS for continuation of the same employment for the same employer. It is my understanding that this can be done 6 months in advance. Is that correct?

A - You can apply up to 180 days ahead of the expiration of the I-94.

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Q - I’m a U.S. soldier stationed in Germany and I have met someone who will be my wife when I leave the military. My question is will I be able to live in Germany as a German citizen and still have full U.S. citizenship?

A - The US recognizes dual citizenship and won't care if you become German. But I don't believe that is the case for Germany and you'll want to consult with a German lawyer before you seek to acquire German citizenship. They may require you to renounce your American citizenship. You can also direct questions to the German Embassy in Washington at the following location:

Embassy of the Federal Republic of Germany Consular Section
4645 Reservoir Dr., NW
Washington, DC 20007
Embassy Telephone: 202-298-4360
Fax: 202-471-5558
www.germany-info.org
www.undp.org/missions/germany
www.government.de/english/01/newsf.html

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Q - Can I work beside a full-time and get another part time job while on my practical training?

A - There is no limit to the number of employers you can have while you are in practical training.

After adjusting status based on a marriage to a U.S. citizen who is not subject to the conditional residence, is anyone who has been married for over two years to a U.S. citizen at the time of adjustment not subject to the conditional residence period?
If the marriage has existed for more than two years at the time of adjustment of status, then the green card will not be issued conditionally.

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Q - Can a person from Britain enter the U.S. without a visa?

A - British nationals are normally eligible for the Visa Waiver Program. This program allows people from countries with very low visa overstay rates to enter the US for up to 90 days in visitor status without having to get a visa stamp at a US consulate. You still need to convince a border officer that you are only coming on holiday or as a business visitor, but you can avoid the inconvenience of applying for a visa in advance.

4. Border and Enforcement News

Maria de Jesus Valle-Maldonado, a Mexican national who recruited women and girls as young as 14 to work in her South Los Angeles brothel in exchange for smuggling them into the United States was sentenced Monday to 4½ years in federal prison. Valle-Maldonado pleaded guilty in July to one count of conspiracy, two counts of importing illegal immigrants to work as prostitutes and three counts of bringing illegal immigrants into the country. She admitted at her plea hearing to arranging for the girls and women to be smuggled into the United States and requiring them to work off the costs by serving as prostitutes. At least 12 undocumented immigrants were found working at her brothel when agents from the federal Bureau of Immigration and Customs Enforcement raided it.

5. News From The Courts

The AAO has censored the parties’ names in this case. However, the case is identified by case number mar2204_01a1245 and can be accessed at the following link: http://uscis.gov/graphics/lawsregs/admindec3/a1/2004/mar2204_01a1245.pdf.

In a March 2004 employment-based immigration case, a native and citizen of India seeking approval of his I-140 employment-based immigrant petition as a skilled worker in order to adjust his immigrant status was denied by the district director on a technicality concerning location of the listed job of the employment application.

According to a Department of Labor Form ETA 750 approved on June 1, 2001, the petitioner filed with proof of his employment with a software engineering company in Waltham, Massachusetts. The form further showed an address in Waltham as proof of his residence in Waltham.

However, upon applying for employment-based adjustment of case the petitioner informed the district director that while working for the same company as filed on the previous Form ETA 750 with the same job description, the petitioner now lived in Maryland. Because of this fact, the district director concluded that because the petitioner was still not working in Waltham, Massachusetts, the “area of intended employment,” the petitioner's previous Form ETA 750 was invalid, thus negating the petitioner's eligibility for adjustment of status under his filed I-140 Form.
In response to this, the petitioners' counsel maintained that the petitioner was now simply being offered a position with the same company but in “various locations throughout the United States.” Still not swayed from the earlier claim, the district director stated that under the American Competitiveness in the Twenty-first Century Act of 2000 an immigrant wishing to apply for employment-based adjustment of status may change jobs or employers as long as the occupational classification and duties remain the same. In the petitioner's case, the district director specified that since the petitioner was still working for the same software engineering company he was neither working at a “new job” or with a “new employer” he was technically did not fall under the act’s oversight. Thus, the district director concluded that the petitioner had not found a “new job” justifying his relocation and had therefore violated the provisions of the labor certification he was bound to.

Upon review by the Administrative Appeals Office (AAO) stated that the purpose of this “new job, new employer” section was to “allow certain adjustment applicants the flexibility to seek a new job in the same or similar occupational field due to lengthy delays in adjudicating adjustment applications. Therefore, the AAO withdrew the decision of the district director and remanded the back to the district director for a decision that relates to the regulatory requirements for eligibility as explained in this light.

6. Government Processing Times


7. News Bytes

On August 31, 2004, the Department of Homeland Security (DHS) published in the Federal Register at 69 FR 53318, an interim rule which extended the US-VISIT program to include persons traveling without visas under the Visa Waiver Program, expanded US-VISIT to the 50 most highly trafficked land border ports of entry, and made several other minor changes to the US-VISIT program. The comment period for this regulation was set to expire on November 1, 2004. However, DHS has extended the comment period for this interim rule for an additional 30 days. The comment period has been extended until December 1, 2004. For information on how to submit comments, visit the following web site: http://www.epa.gov/edocket.

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The DHS’s Office of Immigration Statistics has released its monthly statistical report for the month of August 2004, covering topics such as inspections, Southwest border apprehensions, immigration benefits, naturalization benefits, removals, and asylum. It can be viewed at the following web site: http://uscis.gov/graphics/shared/aboutus/statistics/msraug04/index.htm.

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*The Washington Times* recently reported that The Mexican American Legal Defense and Educational Fund (MALDEF) has declared to fight the recently passed initiative in Arizona requiring verifiable identification to vote or receive public benefits, known as the Arizona
Taxpayer and Citizens Protection Act. MALDEF is planning to ask a federal judge to issue a preliminary injunction against the new Arizona law as soon as election results are certified Nov. 22, arguing that the initiative does not specify what benefits can be withheld and does not detail how much implementing the initiative will cost taxpayers, according to the article. The initiative passed with 56 percent of the vote.

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In order to cut waiting times on a contractor-operated, toll-free customer service line, Citizenship and Immigration Services is routing some calls back to federal employees. CIS has started forwarding a random 3 percent of calls to agency employees normally on reserve for more complex inquiries to bring the wait time closer to its target. CIS set a 1½ minute goal for the company running the phone service from call centers in Kansas, Kentucky and Virginia. However, the typical caller has to wait more than 10 minutes to reach a live assistant on CIS’ toll-free number.

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The main Canadian Web page for immigration into the country experienced a six-fold increase of visitors after the re-election of President Bush. On November 3, the day after the presidential election, the Web site’s visitation log cited 115,016 visits as American seemed to consider a move to their more liberal northern neighbor.

The Web site, www.cic.gc.ca, expects on an average day 20,000 people browsing the site, however, the effects of the American election spiked the visitation number so much that initially the number toped the previous record high by two-fold. Furthermore, as the passions over the election have begun to subside over the last week, the numbers have still only lowered to 65,803 in a day.

Although there has been a dramatic rise in interest of immigrating to the north by Americans in the last week, there has been no hike in activity at the visa missions in the United States.

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*The Miami Herald* reported recently that the U.S. Department of Homeland Security is recommending opposition to a request by Haiti’s interim prime minister and immigration advocates to spare thousands of undocumented Haitians from deportation while their country recovers from devastating floods.

Local immigration advocates and South Florida elected officials have long been advocating for Temporary Protected Status (TPS) for an estimated 20,000 Haitians who they believe are living here illegally. TPS would entitle them to temporary emergency residence and work permits for up to 18 months.
Instead of granting TPS, immigration officials have decided not to immediately repatriate undocumented Haitians in custody who have not been convicted of aggravated felonies and who come from areas affected by Tropical Storm Jeanne.

8. International Roundup

The November 9, 2004 issue of *The Haaretz* reports that Israeli police suspect Likud MK Abraham Hirchson, Knesset Finance Committee chairman, of employing an illegal Filipino foreign worker for five years. In addition, police suspect that Hirchson also arranged for his son to hire the Filipino woman's husband.

Immigration Police deputy-chief, Superintendent Orit Friedman, said that the police intend to request the deportation of the couple. However, police have agreed to put off the couple's deportation until the end of December because they have two children.

Hirchson responded to the suspicion, claiming that the Filipino worker had taken care of his wife while she lied in a coma for six years, and afterwards, had acted as a substitute mother for his two children. "Even though I am a public figure, I am also a human being, and my children deserve support," he said.

According to Hirchson, the woman was employed legally for ten years and he denies hiring the woman's husband. However, he believes the deportation of the couple would be an inhumane act as they have two children.

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Until now, strict laws in Korea against illegal immigration have turned away ethnic Koreans because they were not listed in the family registration system used to validate access to immigration if an applicant's family is recorded for up to five generations. However, according to *The Chosun Ilbo* of Seoul, on November 4, the Justice Ministry of Seoul looked to easing the family registration system by allowing applicants to prove family relation in Korea through DNA testing on top of the traditional registered family list requirement.

9. Legislative Update

House Reports: 108-531

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

10. Powell Says Bush Administration is Ready to Change Current Immigration Laws

While on a plane to Mexico City, Secretary of State Colin L. Powell said President Bush would make a renewed push during his second term for a temporary worker program to
give legal status to some of the immigrants currently living illegally in the United States. Powell said that because of the recent campaign efforts, the President and his administration has done little more than announce its proposal to reform immigration laws.

Under the proposal, foreign workers with a job or job offer could get legal status for three years, with the possibility of renewal. While many Congressional Republicans and Democrats oppose the plan for fear that it would reward undocumented immigrants with assigning legal status to undeserving individuals, the Bush administration has denied these claims.

Powell said that since September 11, the administration has progressed with securing US borders. Because of the added security, Powell said that he predicts a favorable environment for changing immigration laws. However, he said making such changes always proves to be difficult for Congress.

11. Supreme Court Rules in Favor of Immigrant in DUI Case

The United States Supreme Court in Josue Leocal v. John D. Ashcroft, 03-583 has issued an important decision regarding the Immigration and Nationality Act.

In January 2000, Josue Leocal was charged with driving under the influence of alcohol (DUI) and causing serious bodily injury, in violation of Florida State law. Mr. Leocal, a Haitian citizen who is a lawful permanent residence in the U.S, “had driven through a flashing red light and struck another car resulting in the injury of two people,” reported The Associated Press. He pleaded guilty to both counts and was sentenced to two and a half years in prison.

In November 2000, while he was serving his sentence, the Immigration and Naturalization Service (INS) initiated removal proceedings against him pursuant to §237(a) of the Immigration and Nationality Act (INA). Since the INS claimed that Leocal’s DUI conviction was a "crime of violence" and therefore an "aggravated felony" under the INA, an Immigration Judge and the Board of Immigration Appeals (BIA) ordered that Leocal be deported to Haiti. The Court of Appeals for the Eleventh Circuit agreed, dismissing Mr. Leocal’s petition for review.

However, the Supreme Court ruled that the “negligent conduct involved in a DUI offense” was not grounds for deportation. The Supreme Court said that the statute suggests a "crime of violence" must require intent in causing harm not negligence, as in Leocal’s case, before immigrants are subject to deportation. "Drunk driving is a nationwide problem, as evidenced by the efforts of legislatures to prohibit such conduct and impose appropriate remedies," Rehnquist wrote, "but this fact does not warrant our shoehorning it into statutory sections where it does not fit."

12. Quarterly USCIS Report Shows Significant Backlog Improvements in Third Quarter

Every fiscal quarter the US Citizen and Immigration Services releases a report that presents the organization’s progress on its initiative to eliminate the backlog of pending immigration applications by the end of the 2006 fiscal year. The third quarter of the 2004 fiscal year has proved immensely successful in moving towards fewer backlogs in the immigration system.
As the Backlog Elimination Plan was presented in June, director Aguirre of the USCIS challenged employees and supervisors to "to focus on a single vision, to provide the right benefit to the right person in the right amount of time without allowing the wrong person the access immigration benefits."

Aguirre stressed that the USCIS is striving to ensure that national security is not sacrificed in trying to cure the backlog problem.

Over the last fiscal year application backlog trends have taken a dramatic change. Before the beginning of 2004 the application backlog was still on the rise, however, as the fiscal year went underway backlog numbers not only settled in January but then began to decline.

Numbers showed that since January the backlog had been reduced by 12.9% and by 477,961 applications. The third quarter was particularly successful with 400,000 of these 477,961 applications being processed during this time. Since the twenty-eight month trend of continual backlog increase was reversed in February the number of applications processed from the backlog has averaged 120,000 per month.

As part of the effort to decrease backlog numbers the USCIS’s initiative includes spending time and significant work on issues in Quality, Anti-Fraud, information Technology, Streamlining and pilot initiatives of applications and Refugee Corps. By working on each of these areas contribution can be made to help eliminate the backlog completely by 2006 as hoped.

The USCIS backlog reduction report can be downloaded at http://uscis.gov/graphics/aboutus/repsstudies/BEPQ3v2_1.pdf.

13. 9/11 Bill: Anti-Immigrant Provisions Blocking Intelligence Reform

Seth M. M. Stodder, author of an article in The New Republic and who also served in the Department of Homeland Security as Director of Policy and Planning for U.S. Customs and Border Protection, recently said Congress should say “no” to anti-immigration provisions, which would hold up intelligence reform.

Last month, the Senate passed a bipartisan bill that would reform the intelligence community and enact most of the 9/11 Commission's recommendations. But while House Republicans also passed a bill enacting some of these proposals, their version contained a number of “anti-immigrant provisions” that the Bush administration and most Democrats cannot support, wrote Stodder.

According to the article, The House bill includes provisions that, among other things, would require Homeland Security officers to use "expedited removal" authority to deport people without any hearing or process for review. This authority is based merely on the determination of an officer that the person has been residing in the U.S illegally for up to five years. However, Stodder claims that this is unfair to victims of human trafficking, battered spouses brought here by their abusers, and refugees fleeing religious or political persecution because these people might have been residing in the U.S illegally for up to five years.
The article claims that “this provision makes little sense” because current law permits the Department of Homeland Security (DHS) to use “expedited removal” for aliens living in the U.S for up to two years who are usually apprehended close to the border, within hours of entry, not within days or years. So the expansion of “expedited removal” authority would mainly affect “interior” enforcement. Stodder’s final recommendation: “Congress should strip them [anti-immigrant provisions] out of the bill, and get on with the business at hand.”

Martine Kady II of the *Congressional Quarterly* reported last week that the Senate consented to the opinion of the House on several decisions in Congress, in order to strike a final compromise before the lame-duck session set.

What seemed to be the most major concession addressed the issue of the national intelligence budget when the Senate agreed to forgo its provision to declassify the total budget figure on national intelligence spending even though it was recommended in the September 11 commission report and by Senate negotiators.

According to Kady’s article, second on the Senate’s concessions agenda was the amount of personnel and money the national intelligence director could transfer from one agency to another. The Senate originally proposed that the director have full control to transfer unlimited numbers of personnel and money at a time, but after negotiations the decision, though not stated whether it is final or not, turned out a restriction allowing the director to only transfer ten percent of the two from agency to agency.

During the Senate and House negotiations that led to these major concession, the Senate also agreed to several other “House-backed provisions” in areas such as civil penalties for airlines, deportation of foreigners trained by terrorists without judicial review, additional Border Patrol agents and wiretap surveillance of suspected terrorists.

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14. **GAO Examines the Progress of Incorporating Immigration Enforcement Within DHS**

After the terrorist attacks of September 11, 2001, the former Immigration and Naturalization Service (INS) and other federal agencies began merging their law enforcement functions into the U.S. Bureau of Immigration and Customs Enforcement (ICE) within the Department of Homeland Security. The Government Accountability Office (GAO) recently sought information on how the newly formed ICE was addressing legacy INS’s immigration enforcement objectives. In its investigation, GAO addressed the status of ICE’s efforts to incorporate legacy INS’s interior immigration objectives. Additionally, the office examined how ICE is developing budget needs, workforce plans, and performance measures for immigration related objectives.

By way of this examination, GAO found that although ICE does not have a formal, distinct interior enforcement strategy, all of the objectives contained in the legacy INS interior enforcement strategy have been incorporated within a broader mission aimed at strengthening homeland security through joint customs and immigration investigations. Two ICE offices, the Office of Investigations (OI) and the Office of Detention and Removal Operations (DRO), have responsibility for addressing these objectives. Through six enforcement units in four operating divisions, OI is primarily responsible for addressing the following legacy INS objectives: deterring, dismantling, and diminishing the smuggling and trafficking of aliens; responding to community complaints about illegal immigration; minimizing immigration benefit fraud; and removing employers’ access to undocumented workers. DRO is primarily responsible for identifying and removing criminal aliens, with some assistance from OI.
Additionally, GAO found that DRO has begun to align its goals with its budget requests and workforce plans in order to determine what resources it needs in fiscal year 2005 and beyond. DRO is also developing performance measures to help identify future workforce plans and budget requests. DRO officials reported to GAO that until performance measures have been developed for all activities, it would be difficult to determine which efforts are most effective. To develop its budget request and workforce plans for fiscal year 2007 and beyond, OI field offices conducted threat assessments to identify risks on a regional basis. Related performance measures have been developed, but are not in use, therefore, they will not be used for workforce planning in ICE’s fiscal year 2006 budget request. OI’s fiscal year 2005 budget request was based on other considerations, such as the need to monitor foreign visa holders. The Department of Homeland Security reviewed a draft of GAO’s report and had no official comments.