Dear Readers:

1. Openers

Siskind's Immigration Bulletin
November 29, 2004

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Siskind Susser serves immigration clients throughout the world from its offices in the US, Canada, Mexico, Argentina 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.

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We return to our regular format this week after last week’s special issue on legislative developments. The passage of a major J-1 physician bill and a comprehensive H-1B/L-1 reform package as well as the defeat of the 9/11 bill (which contained a number of potentially far-reaching immigration provisions) all came within hours of each other. The two bills that passed were the only two major immigration bills to pass this year.

One item that was not addressed by Congress will loom when the new legislative session begins in January is the coming establishment of cut off dates in the EB-3 green card category. Many are predicting that dates will roll back to mid-2001. If that happens, a range of hardships will follow for those needing to finalize green card processing and are stuck waiting on a visa to become available. It will also cause problems for those who are prevented from filing adjustment of status petitions because of the backlog.

What to do? First, do everything possible to get your adjustment cases filed by the end of the year. Cases pending are likely to be continued as needed until a priority date is filed. If you are waiting on a labor certification, discuss with your lawyer the possibility of filing based on a category that does not depend on a labor certification. Talk to your lawyer about non-immigrant visa options and about extending your status as needed while you wait on a priority date.

And, of course, work to get Congress to address the problem. One fix would be to extend the “borrowing” provision in the AC21 immigration law, which allowed the State Department to pull unused green card numbers from 1999 and 2000. Congress could extend that provision and free up enough visas to make this problem go away. These are green card slots that Congress allocated already and a provision like this is not the same as raising the green card caps.

Stay tuned for more news on this coming crisis.

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In firm news, I’m quoted today in the American Hospital Association’s AHA News regarding the coming EB-3 rollback and its effect on nursing immigration. You can find the article on our web site at www.visalaw.com/news/.

And readers will note that this week’s News from the Courts features a win by Siskind Susser’s very own Jack Richbourg. This is a win in the Sixth Circuit and carries precedent within its jurisdiction. Congratulations Jack!

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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

2. The ABC’s of Immigration: Assignment of Social Security Numbers
Who can apply for a Social Security number?

The Social Security Administration (SSA) gives cards to individuals who are U.S. citizens or non-citizens who are lawfully admitted to the U.S. for permanent residence, or who have permission from the Department of Homeland Security (DHS) record to work in the United States, such as refugees, asylees, work visa holders and citizens of Compact of Free Association countries.

What is a “valid nonwork purpose”?

Previously, the SSA issued social security numbers for some “valid nonwork purposes”, such as obtaining a driver’s license. Under updated regulations, a “valid nonwork purpose” under Sec. 422.104 will be those instances when a Federal statute or regulation requires an alien to have an SSN in order to receive a federally-funded benefit to which the alien has otherwise established entitlement, or when a State or local law requires an alien who is legally in the U.S. to have an SSN in order to receive general public assistance benefits to which the alien has otherwise established entitlement. Therefore, the SSA will no longer assign an SSN to an alien for any nonwork purpose other than to receive Federal, State, or local benefits as described in Sec. 422.104.

The Social Security Administration responded to concerns about individuals not being able to get a SSN in order to obtain a driver’s license by saying that this will no longer be “valid nonwork reason”. The SSN decided to change its policy because fraud and misuse regarding SSNs for nonwork purposes has been almost exclusively in relation to SSNs issue for driver licensing. In addition, many states have altered their requirements to not require a Social Security card in order to obtain the license.

What are the requirements for applicants under 18?

Previously, a child under age seven did not have to provide any evidence of identity and any child under the age of 18 was not required to do an in-person interview. However, the new rules eliminate the waiver of evidence of identity for children under age 7 who are applying for an original SSN card. Also, an in-person interview will be required of all individuals age 12 or older who are applying for an original SSN. The goal of this early interview age is to prevent obtaining social security cards through fraudulent means. The SSA also reasoned that children need social security numbers at an early age in order to receive benefits and to be reported on income tax returns. However, the agency decided to set the threshold age at 12 because they felt that requiring the presence of younger children at in-person interviews would be overly burdensome on the children and unproductive for the SSA.

In addition, evidence of identity must contain sufficient biographical or physical information to identify the individual. The SSA determined that birth certificates would not be sufficient to establish identity due to problems with fraudulent documentation. The applicant will need evidence such as a medical record or a school record in order to establish identity.

How can an immigrant apply for a Social Security number while applying for an immigrant visa?

Non-citizens applying to enter the United States can apply for a Social Security as part of the immigrant visa application. In order to do this, the applicant must be 18 or older when they enter the United States and must be a lawfully admitted permanent resident. When filling out Form DS-230, the Application for Immigrant Visa and Alien Registration, the applicant must answer “yes” to questions 33a and 33b. Question 33a simply states that the
applicant wants the Social Security Administration to assign a Social Security number and issue a card. Question 33b authorizes disclosure of Form DS-230 to the Bureau of Citizenship and Immigration Services, the Social Security Administration, and any other government agencies that may be needed in order to get a Social Security number.

According to the Social Security Administration, once the applicant arrives in the U.S., a Social Security card should arrive at their mailing address in about three weeks. If the applicant changes their mailing address after arriving but prior to receiving their card, they must call the Social Security Administration.

**What if the immigrant does not meet the requirements to apply for a SSN while applying for a visa, or the immigrant simply failed to do so?**

If the applicant did not request a Social Security number as part of the visa application or the applicant did but was under age 18, he or she must apply for a card at a Social Security office. When the applicant has a permanent address, he or she can go to the nearest SSA office. The applicant can go to the SSA website to find an office at www.socialsecurity.gov or can call Social Security’s toll-free number, 1-800-772-1213, Monday through Friday between 7 a.m. and 7 p.m. (Eastern time).

When the applicant visits the Social Security office to apply for a Social Security card, he or she should take the following original documents for each family member applying for a number:

1. The passport or travel document
2. Permanent Resident Card (Form I-551), if he or she has received it
3. Birth record
4. I-94, Arrival/Departure Record

When the applicant arrives at the SSA office, he or she should complete the SS-5, or Application for a Social Security Card. In addition, all documents must be either originals or copies certified by the issuing agency. Photocopies and notarized copies of documents are not acceptable.

Someone at the office will help the applicant complete the application. The applicant should then receive the card in about two weeks after the SSA has everything that it needs to process the application. However, if the SSA has to verify any document with the issuing agency, it may take longer to receive the card.

**The applicant was issued a card that says “not valid for employment” when they first applied, but now the Department of Homeland Security has given them work permission. What should they do?**

If the Department of Homeland Security (DHS) has granted the applicant permission to work, the applicant needs to apply for a replacement card without the legend “Not Valid for Employment”. The replacement card will have the same number as the current card.

To apply for a replacement card, he or she needs to complete Form SS-5, which is available for download at [http://www.socialsecurity.gov/online/ss-5.html](http://www.socialsecurity.gov/online/ss-5.html). The applicant may get a Form SS-5 by calling 1-800-772-1213 or visiting the local Social Security office. The applicant must submit Form SS-5 with evidence of identity and current authorization to work from the DHS. All documents must be either originals or copies certified by the issuing agency. The SSA cannot accept photocopies of documents.
If the applicant is a non-citizen, the SSA must verify the documents with the DHS before issuing a replacement SSN card. The SSA will issue the card within two days of receiving verification from DHS.

**How much does a Social Security card cost?**

The Social Security Administration does not charge a fee to assign a Social Security number or issue a Social Security card. The SSA will replace the card for free if the card is lost.

**Does the applicant need to have a Social Security number before starting work?**

There is no federal law administered by any federal agency that prohibits the hiring of a person based solely on the fact that the person does not have a SSN. Similarly, there is no federal law that prohibits the making of a payment to a person based solely on the fact that the person does not have an SSN.

However, there are federal laws and regulations that require the reporting of a payee’s Taxpayer Identification Number (TIN), which can be either the SSN or Individual Taxpayer Identification Number (ITIN), on federal information returns and payee statements such as forms W-2, 1099, 1042-S, etc.

**What potential problems might I face on the job without a Social Security Number?**

In a situation in which an alien is work-authorized under the immigration law and is eligible to request an SSN but is experiencing delays in securing a SSN caused by delays with the SSA, the Internal Revenue Service (IRS) unfortunately will not issue an ITIN.

With respect to this issue, the fact that the payor does not have a payee TIN to report because the SSA is delaying an issuance of an SSN due to the agency’s procedures will likely cause the IRS to be more favorable toward considering this situation one in which reasonable cause exists for not asserting penalties. The payor should keep documentation to show that his failure to supply a payee TIN is caused solely by the SSA’s procedures for issuing SSNs to aliens.

The following two points are important to remember, however:

- A Form W-4 submitted to an employer that does not report the employee’s SSN is an invalid form W-4, and the employer is required to withhold on the employee’s wages at the rates corresponding to single filing status, zero personal exemptions allowed. Withholding at these rates must continue until the employee submits a proper Form W-4 reporting his SSN.

- Any withholding agent (with certain exceptions) who receives a Form 8233, W-8BEN, or W-9 without a payee TIN for the purpose of claiming a tax treaty benefit is not allowed to grant such tax treaty benefit until he receives a proper Form 8233, W-8BEN, or W-9 which does report the payee’s TIN. However, a form 8233 or W-8BEN without a payee TIN is still valid for the purpose of declaring that the payee is a foreign person, subject to the withholding and reporting rules that apply to payments made to foreign persons.
Do foreign students who are studying in the U.S. have to have a Social Security number?

Foreign students who are temporarily studying in the United States do not have to have a Social Security number. Schools are not authorized to use the SSN in administering educational programs, so when the student does not have an SSN or prefers not to provide his/her SSN, the school assigns the student an internal number. A school policy to require an SSN to enroll in school or college is not a valid non-work reason to assign an SSN to an individual who does not otherwise meet SSA’s requirements for an SSN. Note that an SSN is needed to engage in employment on campus.

If a foreign student works in the U.S. does he or she have to pay Social Security?

Work performed by some non-resident aliens who visit the United States for a limited period of time is not covered by Social Security and, therefore, not subject to Social Security taxes. F-1, J-1 and M-1 visa holders working in connection to their studies or for the purpose of their visit to the U.S. are not covered by Social Security. This means that there will be no withholding of Social Security or Medicare taxes from the pay received for these services. These types of services are very limited, and generally include only on-campus work, practical training, and economic hardship employment. For more information on taxation, visit the Internal Revenue Service at www.irs.gov.

How can I contact the Social Security Administration?

In the United States, call the telephone number listed for the Social Security office in the local telephone directory under “United States Government” or Social Security’s toll-free number, 1-800-772-1213. To locate an office or for more information on Social Security numbers, go to the Social Security Administration’s homepage: www.socialsecurity.gov. If you need to contact SSA before you leave for the United States, the SSA is assisted outside the United States by United States embassies and consulates throughout the world.

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 F-2 visa holder and living in Ohio. I know many international graduate student families put their US born children on public assistance. Some of them do intend to want children being born here during their stay in the U.S. in order to get public benefits. As you know, international students are usually wealthy enough to have proof of sufficient funds to bring their spouses come to the U.S. Since F visa holders are not permitted to work in the U.S., US welfare government department always regard international students family as "Low-Income" households automatically and approve their benefits. Therefore, we often can see international students drive BMW, Benz or Lexus vehicles on the street but their US Born children are considered US citizens who have been accepted by welfare benefits. This is kind of strange phenomenon.

My family is also an international student family and we have a US citizen child. We begin wondering that if public charge is not a crime and US government does not force any
international students cannot accept public benefits on behalf of US citizen children. We consider to use public benefits just like them. Is that legal?

A - Your question really bothers me. F-1s are NEVER supposed to seek Welfare benefits and if some are “working the system” to get those benefits, they’re risking serious problems. Yes, you can get public benefits for US born children. But if any F-1 or F-2 family members receive any benefits then they are putting themselves at risk of deportation on public charge grounds. And it will certainly cause problems if you eventually seek a green card. I’d strongly urge you NOT to accept the benefits. You also promised the consulate when you got the F-1 that you had the funds to support yourself so your accepting benefits tend to make a person think you were not being honest. Even if you only get benefits for a US citizen child, a consulate could decide you don't have adequate funds to be a student in the US and could deny a visa renewal.

In any case, you are permitted to work on campus. And if you have a dramatic change in your financial circumstances, your international student officer has the ability to seek emergency work authorization for you.

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Q - Someone told me his friend's mother who lives abroad had to enter the U.S. every 6 months to retain her green card. What's the general requirement?

A - The article on our web site at http://www.visalaw.com/01jan4/12jan401.html may be helpful in addressing this question.

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Yes, there is no minimum age to qualify for an F-1 visa.

Can I apply for a F-1 student visa if i'm under 21 years old?

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Q - I got my I-485 approved last week. And the local INS office in NY stamped I-551 on my passport and marked "Employment authorized". The stamp is valid for one year.

The INS representative told me I can travel to oversea with this stamp, and I will receive the actual plastic green card in the mail within weeks to 10 months. But I saw from a lot of Internet that saying there is no guarantee that I can come back to US if I travel overseas with the stamp in my passport. Can you give me some accurate information regarding this? I don't have other documents to prove that I am lawful permanent resident. Plus the local INS office took back my work authorization card.
A – The internet information is incorrect. You can use the I-551 stamp in your passport the same way as a green card and it is fine for traveling. Also, you can use the stamp as proof of your right to work.

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Q - I was born in Bahrain in 1965 but returned to India at the age of 6 months and since then have lived in India and for 10 years in the US on a nonimmigrant visa. I hold an Indian passport. Can I still claim to be a native of Bahrain for DV2006?

A - You are eligible for the lottery based on your place of birth, not your nationality. So you can enter assuming you meet the rest of the lottery rules.

4. Border and Enforcement News

_The Tucson Citizen_ reported that on September 30, at the end of the 2004 fiscal year, the US Border Patrol issued its annual report stating the number of arrests within the Tucson sector of Arizona for illegal crossing of the border. Within the report, the number of arrests for the year was around half a million for the Tucson sector, a number higher than previous years.

Though the number of arrests per year for the sector has jumped considerably, the number of individuals arrested is much lower, with 325,000 individuals arrested for the sector. This number brings the logical conclusion that individuals arrested are not first and only time offenders, but have been arrested multiple times, racking up the number of arrests recorded and creating the perception that more immigrants are flooding in the US.

These numbers do not mean that in recent years immigrants have begun to illegally cross the border more often, instead they indicate increased amount of efficiency in performance by the Border Patrol has resulted in more arrests.

Border Patrol spokesman Andy Adame contributed the increased number of arrests and efficiency to several factors, including the fingerprint ID system distributed more widely to federal agents. Adame also claimed that Arizona Border Patrol’s plan of hiring new agents and securing urban crossing points known for receiving heavy illegal crossing traffic, has also attributed to the substantial increase in arrests made in the 2004 fiscal year.

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In the Tucson sector of Arizona, conflict has arisen over the need for permanent checkpoints. Border Patrol agents believe they can reduce smuggling attempts, and decrease accidents that result from smuggling attempts, by setting up permanents checkpoints, reported _KVOA_. However, in the meantime, Border Patrol agents have to set up temporary checkpoint locations until policy makers decide on the effectiveness of permanent checkpoints.

5. News From The Courts
Sekou Sylla v. Immigration and Naturalization Service
United States Court of Appeals for the Sixth Circuit
No. 03-3077

On November 12, 2004, the Sixth Circuit Court of Appeals vacated the judgment of the BIA and remanded the case for further proceedings consistent with their opinion on the issue of the Respondent’s credibility. Immigration Kevin G. Bradley (on detail in Memphis out of Baltimore) had ruled that the Respondent was not credible and denied his claims for asylum, withholding and relief under the Convention against Torture on February 14, 2001. The BIA adopted the credibility of the IJ and dismissed the appeal on December 17, 2002. The Sixth Circuit vacated the judgment ruling that while the IJ should be afforded substantial deference on a credibility finding, the IJ’s finding must be based upon issues that go to the heart of the applicant’s claim and cannot be based upon irrelevant inconsistencies.

The Sixth Circuit stated that the inconsistencies cited by the IJ regarding the amount paid by the Respondent for his RPG membership card and whether he was a student when the card was issued were minor and irrelevant inconsistencies, which cannot constitute the basis of an adverse credibility determination.

The Court held the IJ was wrong when he stated the Respondent did not know the names of his cellmates because the record revealed that while he did not know them at first, he got to know then during the course of his imprisonment and was able to give their names on cross-examination by the government. Further, the Court discounted the IJ’s reliance on the testimony of the Respondent’s corroborating witness that he did not see the Respondent during the time they were both at the prison because there was no testimony regarding the size of the prison, the number of prisoners, or how they interacted.

The Sixth Circuit disagreed with the IJ that Mr. Sylla’s testimony lacked detail concerning his arrest, imprisonment, and subsequent release and travel to the United States holding that Sylla gave specific answers to almost every question asked. Finally, the Court determined that our own State Department Country Report for Guinea corroborated the testimony of Sylla because it catalogued the violence directed against opposition parties and the cruel treatment given government protestors by Guinean security forces.

The Court concluded that the record did not support the reasons offered by the IJ for an adverse credibility determination, vacated the BIA’s order and remanded the case to the BIA for further proceedings consistent with the opinion. To read the full text of the opinion point your browser to the following hyperlink:

6. Government Processing Times

Processing times are available this week for the following service centers:

Texas (11/15/04): http://www.visalaw.com/texas.html
Nebraska (11/15/04): http://www.visalaw.com/nebraska.html
7. News Bytes

On November 5, 2004, The Associated Press reported that the U.S. government might allow some illegal immigrants from Haiti to stay in the U.S., but only if they are not violent criminal and only if they come from communities destroyed by Tropical Storm Jeanne. According to Bill Strassberger, a spokesman for the U.S. Bureau of Citizenship and Immigration Services (CIS), it is not definite how many illegal immigrants will be offered temporary status or how long they will be allowed to stay in the U.S. because “the decisions will be made on a case-by-case basis,” he said.

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According to a November 16th News Release from U.S. Immigration and Customs Enforcement (ICE), the number of alien removals and fugitive alien apprehensions has reached an all time high for the fiscal year 2004. The News Release states that “ICE’s Office of Detention and Removal Operations (DRO), responsible for removal of aliens, credited the fiscal year increases with the agency’s more aggressive focus on targeting criminal and fugitive aliens – those who pose the most serious risks to public safety and national security.”

ICE reported 157,281 alien removals and 11,063 fugitive alien apprehensions in the 2004 fiscal year. In addition to the removals, DRO offers two new “cost-effective alternatives to detention for aliens who do not pose threats to national security or public safety.” These alternatives include the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD). Both programs allow the agency to track down aliens “who fail to report for removal and increase[s] ICE’s ability to identify alien absconders as early as possible.” Aliens who do not conform to the program requirements are immediately apprehended.

8. International Roundup

The Sydney Morning Herald reported on November 16 that while the number of visa overstayers and foreigners trying to come in on counterfeit documents went down, the number of foreigners not receiving clearance into Australia shot up.

In the last fiscal year, those denied access to the country went from 937 to 1241 people. 242 people were caught with counterfeit documents as opposed to last year’s 311 and in the last year only 51,000 people overstayed their visa compared to the 60,000 last year.

According to government officials, these numbers contributed to Australia’s advancement in fraud apprehension, closer watch on foreign travelers and the ‘dib-in line’ system that allows citizens to call authority about suspected illegal workers in the country.

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Using figures published by the United Nations High Commissioner for Refugees (UNHCR), the UN Agence France Presse of November 16, 2004 reported last week that while there is a decline in asylum applications in other industrialized countries, France has witnessed an increase in the number of asylum applications. According to United Nations officials, France
is still the first choice for asylum applicants for the fourth quarter in a row, with an increase of 15 percent over the third quarter.

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. State Department Visa Bulletin

IMMIGRANT NUMBERS FOR DECEMBER 2004

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during December. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by November 8th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

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

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

FAMILY-SPONSORED PREFERENCES

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

Second : Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:
A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

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

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

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

EMPLOYMENT-BASED PREFERENCES

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

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

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

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

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

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

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

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<thead>
<tr>
<th>Priority Dates for Family Based Immigrant Visas</th>
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<tr>
<td>All Chargeability Areas Except Those Listed</td>
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<td>Family</td>
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*NOTE: For December, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 22SEP97. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 22SEP97 and earlier than 01JUL00. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

**Priority Dates for Employment-Based Immigrant Visas**

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<tr>
<th>Employment-Based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>INDIA</th>
<th>MEXICO</th>
<th>PHILIPPINES</th>
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<td>Certain Religious Workers</td>
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<td>Targeted Employment Areas/Regional Centers</td>
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The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

**B. DIVERSITY IMMIGRANT (DV) CATEGORY**

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2005 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.
For December, immigrant numbers in the DV category are available to qualified DV-2005 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

<table>
<thead>
<tr>
<th>REGION</th>
<th>All DV Chargeability Areas Except Those Regions Listed Separately</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>AFRICA</td>
<td>AF</td>
<td>14,000</td>
</tr>
<tr>
<td>ASIA</td>
<td>AS</td>
<td>5,000</td>
</tr>
<tr>
<td>EUROPE</td>
<td>EU</td>
<td>13,000</td>
</tr>
<tr>
<td>NORTH AMERICA (BAHAMAS)</td>
<td>NA</td>
<td>10</td>
</tr>
<tr>
<td>OCEANIA</td>
<td>OC</td>
<td>330</td>
</tr>
<tr>
<td>SOUTH AMERICA, AND THE CARIBBEAN</td>
<td>SA</td>
<td>640</td>
</tr>
</tbody>
</table>

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2005 program ends as of September 30, 2005. DV visas may not be issued to DV-2005 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2005 principals are only entitled to derivative DV status until September 30, 2005. DV visa availability through the very end of FY-2005 cannot be taken for granted. Numbers could be exhausted prior to September 30. Once all numbers provided by law for the DV-2005 program have been used, no further issuances will be possible.

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

For January, immigrant numbers in the DV category are available to qualified DV-2005 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

<table>
<thead>
<tr>
<th>Region</th>
<th>All DV Chargeability Areas Except Those Region Listed Separately</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>AF</td>
<td>17,400</td>
</tr>
<tr>
<td>ASIA</td>
<td>AS</td>
<td>5,100</td>
</tr>
<tr>
<td>EUROPE</td>
<td>EU</td>
<td>14,900</td>
</tr>
</tbody>
</table>
D. EMPLOYMENT THIRD PREFERENCE VISA AVAILABILITY IN JANUARY
In recent months we have been experiencing very heavy applicant demand in the Employment categories as the Citizenship and Immigration Service has begun to address their backlog of cases. Section 201(a)(2) of the Immigration and Nationality Act states that not more than twenty-seven percent of the Employment annual limit may be used in each of the first three quarters of a fiscal year. Based on the current rate of demand it is likely that we will exceed twenty-seven percent of annual limit during the first quarter of FY-2005. Therefore, it may be necessary to impose an Employment Third preference cut-off date for January, to limit number use during the second quarter. At this time it is not possible to offer any estimate regarding what that cut-off date might be, but it is likely to apply only to the following chargeability areas: China-mainland born, India, and the Philippines.

11. Green Cards Get a New Look
U.S. Citizenship and Immigration Services (USCIS) announced last week that it has made minor changes to the look of the Permanent Resident Card (Form I-551), commonly known as the “Green Card.” The new look of the Permanent Resident Card now features the DHS seal on the front and significantly mentions the “Department of Homeland Security” on the back.

Changes to the Green Cards occurred because the agency ran out of Department of Justice cardstock used by the old Immigration and Naturalization Service (INS). USCIS has also added enhanced security features to the card.

USCIS began mailing the new Permanent Resident Card November 15 to qualified immigrants approved for either renewal of their card or for adjustment of status to lawful permanent resident. Those cards already in circulation remain valid until the expiration date listed on the card or until recalled by USCIS. Permanent Resident Cards are issued by USCIS as evidence of a lawful permanent resident’s authorization to live and work in the United States.

U.S. Citizenship and Immigration Services (USCIS) announced last week that it has received H-2B petitions for about 33,150 beneficiaries counting against the statutory visa cap for fiscal year 2005 (October 1, 2004 through September 30, 2005). The fiscal year 2005 statutory visa cap is 66,000.

The H-2B visa category allows U.S. employers in industries with peak load, seasonal or intermittent needs to augment the existing labor force with temporary workers. Typically, H-2B workers fill labor needs in occupational areas such as education, construction, health
care, landscaping, lumber, manufacturing, food service/processing and resort/hospitality services.

Based on previous years, USCIS will need to approve approximately 100,000 beneficiaries to fully utilize the 66,000 H-2B visa cap during a fiscal year. As the 100,000 beneficiary target is approached, USCIS will use more exacting counts to determine if it needs to stop accepting H-2B petitions during fiscal year 2005.

On March 9, 2004, USCIS stopped accepting H-2B petitions that counted against the fiscal year 2004 statutory cap. USCIS continued to process petitions for current H-2B workers that did not count against the cap throughout fiscal year 2004. Those petitions were filed to:

- Extend the stay of a current H-2B worker in the United States.
- Change the terms of employment for current H-2B workers.
- Allow current H-2B workers to change or add employers.

USCIS anticipates imposing a similar cut-off with similar exceptions during fiscal year 2005.

13. Hispanic Votes in Presidential Election Analyzed

The *Houston Chronicle* reported last week that the number of Hispanic votes received by Bush in the November 2 election increased to about 44 percent.

Polls showed that when voters decide which presidential candidate to vote for, record numbers favored Bush when deciding on terms of the candidate’s religious beliefs, morals and values and national security strategy. It was only when one’s vote was decided on economic grounds that the Hispanic vote fell towards Kerry, *The Washington Post* reported on November 8.

Furthermore, exit polls looked even more favorable among Hispanic voters in some states where percentages jumped even higher than the national percentages. In Texas, the number of Hispanics voting for the republican candidate rose from 16 percent to 59 percent of Hispanics in the state. Other states that voted Republican were Florida and New Mexico, states in which large Hispanic populations defeated the traditional Democrat vote with the close margin of around 55 percent votes for Bush.

However, critics of the impressive new numbers say that exit poll numbers are calculated to make them appear more extraordinary than they actually are. A Latino organization, the Willie C. Velázquez Institute, claims that media polling designed to survey the general public gives inaccurate results, because most Hispanics live in urban areas compared to the rural and suburban areas that are included in the survey. The organization further reported that these polls accounted for around 10 million Hispanic voters while only 7 million are registered voters.

15. USCIS Chief Counsel Memo Regarding NSEERS Gives Hope
A memo from USCIS Chief Counsel Robert Divine states that a willful and unexcused failure to comply with NSEERS, commonly known as special registration, or the presence of any other ground of inadmissibility, would not justify the denial of an immigrant benefit petition separate from a request for a visa, admission or status.

The memo follows an April 2, 2004 Bill Yates memo that outlined the necessary compliance with NSEERS for an immigrant to be eligible for immigration benefits such as approval of visa petition. USCIS adjudicators routinely ask for proof of NSEERS registration in requests for additional evidence in all cases that they adjudicate and have erroneously denied petitions based on failure to register. However, the new Divine memo clearly states that even the willful and unexcused failure to comply with NSEERS cannot be used by USCIS in order to deny a benefit petition filed on behalf of that person, such as an I-130 family based petition, I-140 employment based petition or I-360 special immigrant petition. That is because the legal issue of whether a person is eligible for a benefit is narrower and different from the issue of whether such person is admissible to the United States.

The memo explains further that in immigrant and nonimmigrant applications, USCIS has limited discretion in adjudicating the case. For example, an I-130 family based immigrant visa application must be approved if a requisite family relationship exists between the petitioner and beneficiary. When the elements of the petitions are proven, USCIS must approve those petitions. A similar scenario applies to I-140, I-360 and I-526 applications as well as all non-immigrant visa applications.

However, whether a person later may be admitted into the U.S. as an immigrant or non-immigrant, or whether that person is qualified for change or extension of nonimmigrant status or other benefits, such as adjustment of status, may still require proof of NSEERS registration, because a willful and unexcused failure to register is a ground of inadmissibility. Therefore, examiners may notate on the visa approval that the beneficiary may have an apparent NSEERS violation or a possible ground of inadmissibility.

USCIS must also prove the “willful and unexcused” provision. If the person shows that he or she did not willfully violated the NSEERS provisions, he or she may be excused.

Written by Karen Weinstock, Managing attorney of Siskind Susser’s Atlanta, GA office, and Tovah R. Ackerman, Paralegal in the Atlanta, GA office.

16. Cuban Performance Troupe Wants Asylum

According to the *New York Times*, members of a Cuban troupe plan to seek political asylum in the United States. The Cuban performers came to the Stardust Resort and Casino, in Las Vegas, where their "Havana Night Club" revue is booked for a three-month run. However, when the show is completed, many of the members, including 44 dancers, singers and musicians, have no intention of returning to Cuba.

Cast members were allowed to leave Cuba despite previous orders not to apply for U.S. entry visas "because the issue had received widespread attention in the United States and because the Castro government did not want to be seen as impeding the flow of culture,” said cast members.
In addition, organizers of the show said several influential people were instrumental in getting permission for the cast members including the actor, Kevin Costner, Siegfried & Roy, and Pamela Falk, a law professor at the City University of New York. Members of the “Havana Night Club” revue who intend to seek political asylum claim they fear for the safety of family members residing in Cuba.

17. USCIS Address Change for Certain Immigration Filings

The USCIS announced last week that individuals filing certain applications with USCIS District Offices should mail their forms directly to the Chicago Lockbox instead of submitting them to their District Office. The forms included in this notice are:

- Form I-485, Application to Register Permanent Residence or Adjust Status;
- Form I-765 Application for Employment Authorization;
- Form I-131 Application for Travel Document

All filing procedures remain unchanged besides the new filing address. USCIS will implement this rollout in two phases.


Phase Two will begin on April 1, 2005 and will affect certain aliens filing Form I-485, Form I-765, and Form I-131 residing in: Alaska, California, Idaho, Iowa, Kansas, Maryland, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Texas, and Washington.

Effective December 1, 2004, those aliens described in Phase One, and effective April 1, 2005, those aliens described in Phase Two, must send their Form I-485, and/or Form I-765, and/or Form I-131, and all supporting documentation for each application, directly to one of the following addresses:

U. S. Citizenship and Immigration Services
P.O. Box 805887
Chicago, IL 60680-4120

Or

For non-United States Postal Service (USPS) deliveries (e.g. private couriers):
U. S. Citizenship and Immigration Services
427 S. LaSalle – 3rd Floor
Chicago, IL 60605-1098

For more information, visit www.uscis.gov.