Siskind's Immigration Bulletin – February 12, 2008
Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser Bland, P.C., Attorneys at Law; telephone: 800-748-3819, 901-682-6455; facsimile: 800-684-1267 or 901-339-9604, e-mail: gsiskind@visalaw.com, WWW home page: http://www.visalaw.com.

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Editor: Greg Siskind. Associate Editor: Ken Bragdon. Contributors: Ken Bragdon.

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1. Openers

Dear Readers:

This was an eventful week in politics in the US and there could be a significant impact on immigration. Mitt Romney, a leading Republican candidate who was in favor of tough new immigration laws, dropped out of the race and Senator John McCain became the likely nominee. McCain is one of the most progressive members of Congress on immigration issues and was the lead sponsor of immigration reform legislation last year.

So what does this mean for immigration legislation? I've written a pair of pieces on my blog at blogs.ilw.com/gregsiskind that offers my take:

A Piece of Advice for the Democrats

I've had this little idea floating around for the last few months, but did not want to discuss it until McCain locked up the nomination. I think you'll understand why when you read further.

John McCain is still supporting comprehensive immigration reform and just recently told Tim Russert of NBC that he believes the bill bearing his name was correct two years ago and he would vote for it if he had the opportunity today. I believe him.

Let's just suppose Majority Leader Harry Reid and Speaker Nancy Pelosi decided to bring back the 2006 version of the comprehensive immigration reform bill - the good one - and schedule it for, let's say, a good several weeks of very public debate this spring or summer in each House. Do you think the GOP is going to allow their rank and file members to attack their nominee day in day out over the immigration issue? If they do, the results could be disastrous as McCain will be going around the country trying to unite a very fractured party that is already pretty suspicious of his conservative bona fides. Can you imagine one Republican after another having to come to the microphone to denounce the McCain-Kennedy bill (and that's what Reid and Pelosi need to call it every chance they get)? And then McCain being dogged by reporters asking about it multiple times each day?

It also occurs to me that McCain will be in a difficult spot if he tries to nuance or change his position and talk about "enforcement first" since he now has to convince Hispanic voters not to abandon the GOP as polls are suggesting they are doing in droves. Given the likelihood that many Republicans will stay home because of their dislike of McCain, he'll badly need to keep Hispanic votes at the same level or higher than in past elections.

The Democrats are fretting today about continuing their internal fighting all the way to the convention and McCain having a basically free pass to go out and rally support. But throwing the immigration "grenade" and stirring up the immigration storm in the GOP may make the Democrats bickering look pretty tame.

So how might the grown ups in the GOP prevent this nightmare scenario from playing out? I think what you might see is a sudden willingness to work a deal quickly and behind the scenes and largely on the Democrats' terms. Aside from protecting their nominee, some of the GOP leaders are probably starting to ask the question of why McCain was able to get the nomination if the anti-immigration issue was so potent. Maybe Republicans are safer on this issue than they thought and don't have to worry quite so much about taking a moderate immigration position.

While the Democrats might have been timid about this issue given how things went last summer when it looked like they could be seriously hurt, a few months is an eternity in politics. Bringing back immigration reform would have virtually no drawbacks now and could reap major rewards, both political (if McCain is seriously damaged or distracted) and substantive (if immigration reform actually passed).

A Piece of Advice for the Republicans

The first thing I would suggest to the GOP is to anticipate the Democrats' playing the immigration card by re-introducing reform legislation and start planning on how to flip the issue in your favor. Polls show the American public is greatly concerned about border security, but that they want Congress to look at the matter pragmatically and pass legislation that punishes unauthorized immigrants, but ultimately allows a path to normalizing their immigration status. This is the position of the vast majority of Americans.

You have a nominee for President who is so closely identified with this position that you will not be able to escape this issue. Rather than fighting in public with your nominee or forcing him to abandon his position and appear to be a "flip-flopper", you have a golden opportunity to help McCain lead your party to broker a deal over the next few months on this issue. Americans are fed up with extreme partisanship and are looking for a President who can solve problems and work with the other party.

John McCain's ability to reach across the aisle to address the major problems of the day are one of the reasons for his success. If McCain is seen as brokering a deal on immigration, he'll demonstrate in a dramatic way that he's capable of delivering results. He'll also very visibly demonstrate to Hispanic voters in the country that the GOP is not the Anti-Hispanic party.

The votes are there to pass immigration reform legislation. There are enough potential supporters in the Senate to pass the bill. It passed in 2006, after all. And there are enough Democrats in the House, plus plenty of Republicans not running for re-election, to make passage there possible as well. Let the Republicans get credit for finally dealing with this major issue of the day.

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In firm news, I will be speaking at several upcoming live and telephonic programs. They include

February 21st – American Immigration Lawyers Association – teleconference on no match letters and related topics

February 22nd – Tennessee Bar Association – Law Technology 2008 - Nashville – Internet marketing - https://www.tnbaru.com/CLE/catalog_course_details.php?course=5114

March 6th – AILA DC Chapter – Washington – Winning the Championship: Overcoming the Obstacles Facing Immigration Lawyers Today

March 15th – American Bar Association Techshow – Chicago – www.techshow.com

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Finally, as always, if you are interested in becoming a Siskind Susser Bland client, please feel welcome to email me at gsiskind@visalaw.com or contact us at 800-748-3819 to arrange for a telephone or in person consultation with one of our lawyers.

Regards,
Greg Siskind

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2. The ABC's of Immigration: J-1 Visas

What is a J-1 Visa?

The J-1 visa is given to those who will be entering the US to participate in an approved educational or cultural program. It is one of the more complex types of visas, so we will be breaking our coverage of it into three articles. In this first article, we deal with the visas themselves, while later articles will address J-1 program designations and waivers of the two-year home residency requirement.

The J-1 non-immigrant visa category was created to promote educational and cultural exchange activities between the United States and other countries. First begun in 1948, the J-1 exchange visitor program is presently overseen by the State Department. The program went through a major overhaul in 2003 with the implementation of the Student and Exchange Visitor Program (SEVP). The program requires the J sponsors to track their exchange visitors and report certain changes in their program or personal information, as well as other activities, electronically. Also, the SEVP has implemented a new exchange visitor fee of $100 for each J visitor, effective September 1, 2004. The exchange visitor program is credited with exposing millions of foreign visitors to the United States, its peoples, cultures, business techniques and educational institutions.

What is a J-1 exchange visitor?

The J-1 exchange visitor is broadly defined by the Immigration and Nationality Act (INA) as an alien having a residence abroad, which he has no intention of abandoning, who is a bona fide student, scholar, trainee, intern, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge; who is coming temporarily to the United States as a participant in a program designated by the State Department for the purpose of teaching, instructing, lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.

What type of exchange programs are available?

Exchange programs are available for the following individuals:

College and university students
Secondary school students
Short-term scholars
Trainees
Interns
Teachers

Professors and research scholars
Specialists
Alien physicians
International and government visitors
Camp counselors
Summer work/travel students
Au pairs
Special education exchange visitors

What are the specifications of each program?
The limits of a person's stay in each type of program, as well as the activities allowed in each program, are discussed below.

College and University Students

The J-1 student visa category is reserved to those who are pursuing a full-time formal course of study at a college or university, and to those who are receiving English language training at an accredited educational institution. J-1 students are eligible for two types of employment – academic training and student employment. For academic training, it must be related to the field of study, the student must be in good academic standing, and the school's responsible officer must approve it in writing. Part time (no more than 20 hours a week) student employment is allowed if it is part of a scholarship or fellowship, is on campus, or is off campus and necessary because of unforeseen economic circumstances. This employment authorization is valid until the course of study is over, or 12 months, whichever is less. Following the completion of studies, undergraduate and pre-doctoral students are eligible for up to 18 months of practical training, and post-doctoral students are available for up to 36 months of training.

Secondary School Students

Foreign students can attend secondary schools in the US for at least one but no more than two semesters on a J-1 visa. Along with providing a place at school for the visitor, the program sponsor must also secure a host family with whom the student will stay. The screening process for host families is a rigorous one. J-1 secondary students are not authorized to work, except for intermittent work such as babysitting.

Short-Term Scholars

This category encompasses professors, research scholars or persons with similar skills who are coming to the US to lecture, observe, consult or participate in workshops, seminars, conferences, and the like. The purpose of the short-term scholar category is to foster professional relationships between US and foreign scholars. The maximum period of entry for short-term scholars is six months, and no extensions are authorized. Unlike the others J-1 categories, there is no minimum period of stay in the US.

Trainees and Interns

This category is reserved for individuals seeking to enhance their skills in their academic field. Training programs and internships in unskilled occupations are not

available. Under State Department rules, the following fields are eligible for training and internship programs:

Arts and culture
Information media and communications
Education, social sciences, library science, counseling and social services
Management, business, commerce and finance
Health-related occupations
Aviation
Science, engineering, architecture, mathematics, and industrial occupations
Construction and building trades
Agriculture, forestry and fishing
Public administration and law
Hospitality and tourism

The training cannot duplicate training the alien has already received, and must provide training at the appropriate level. The maximum period of stay is 18 months for trainees; 24 months for aviation training programs; and 12 months for hospitality and tourism training programs, agriculture training programs and internship programs.

Teachers

This category is available to individuals teaching full-time in a primary or secondary school. To be eligible for a J-1 teachers visa the person must meet the following requirements:

Be qualified to teach primary or secondary school in their home country

Meet the standards of the US state in which they will teach

Be of good reputation and character

Intend to teach full time at an accredited primary or secondary school

Have three years of teaching experience.

Professors and Research Scholars

Professors are aliens who have come to the US to teach, lecture, observe or consult at post-secondary educational institutions. They may also conduct research unless their program sponsor specifically forbids it. Research scholars are individuals who are in the US primarily to conduct research, observe or consult at research institutions, educational institutions and similar organizations. Unless specifically forbidden by the program sponsor, research scholars may teach and lecture. The position filled by the J-1 alien must be temporary. The Form DS-2019 issued to a professor or research scholar may be granted for up to five years. Only the DOS has the authority to extend the J-1 visitor's stay up to five years from the initial expiration date. The five-year period is not an aggregate of five years, but rather a continuous five-year period given to an exchange program participant, which begins on the program start date. The five-year period is counted continuously during any uninterrupted stay, regardless of how many programs the visitor participates in, or for how long he or she actually participates in them.

Applicants are barred from participating in a J professor or research scholar program if they were present in the United States in J status for any part of the twelve-month period preceding the beginning of the exchange program. However, if an applicant was in the United States for less than six months or was in the United States for a short-term scholar exchange program, he or she is exempt from the bar. Additionally, there is a 2-year bar on repeat participation as a Professor or Research Scholar after prior participation in one of those categories. This bar applies in two circumstances: 1) If the Professor or Research Scholar completes a full five years of program participation with one or more sponsors; *or* 2) If, before the full five-year period is over, the Professor or Research Scholar completes his or her program.

Specialists

Specialists are experts in a field of specialized knowledge or skill. They may come to the U.S. to observe, consult or demonstrate special skills. The category specifically excludes short-term scholars, professors and research scholars, and alien physicians in graduate medical training. The maximum authorized stay in the US is one year.

Alien Physicians

Graduates of foreign medical schools may enter the United States to pursue graduate medical training or education. This category is highly regulated. The program sponsor for foreign medical graduate students who will be involved in more than incidental patient contact is the Educational Commission for Foreign Medical Graduates (ECFMG). Other programs can sponsor alien physicians so long as there will be little or no patient contact, and the program involves observation, consultation, teaching or research. When other programs than the ECFMG sponsor J-1 physicians, they must include a special certification regarding the amount of patient care that will be provided. The duration of authorized stay is generally limited to the time necessary to complete the program or seven years. Caution: Individuals participating in this category are automatically subject to the two-year home country physical presence requirement of INA §212(e).

International and Government Visitors

This category is reserved for the exclusive use of US federal, state or local government agencies. International visitors are those selected by the State Department for consultation, observation, training or demonstration of special skills in the US. Government visitors are essentially the same, only they are selected by governmental agencies. The maximum period of stay for international visitors is 12 months, and for government visitors it is 18 months.

Camp Counselors

A foreign national who is at least eighteen-years of age and either a bona fide youth worker, student, teacher or an individual with a special skill may qualify as a summer camp counselor. This category is limited to a four-month stay.

Summer Work/Travel Students

This category allows sponsors to bring foreign university students to the US during their summer vacations to travel and work in the US. Sponsors are encouraged to

select visitors who, because of their distance from the US, would most likely not be able to afford to come to the US without temporary work authorization. This is the only J-1 category in which the number of foreign nationals the sponsor helps enter the US must be the same as the number of US students it sends abroad.

Au Pairs

The au pair program is one of the most closely monitored of the exchange visitor programs. The category allows the entry of individuals between the ages of 18 to 26 (although DOS has proposed increasing the age limit to 30), who are coming to perform childcare services for a US host family while attending a post-secondary school. The foreign national must be proficient in English and a high-school graduate. Prospective au pairs are extensively screed, including a background investigation, criminal check, physical and psychological exams. The screening process for host families is almost as demanding. The host family must pay the au pair at least the minimum wage, and cannot request the au pair to provide more than 45 hours of childcare a week. The au pair must also be provided with a private bedroom. An au pair cannot be placed in the following situations: there is a child under three months in the home, unless a parent is home as well, or in a family where there are children under 2, unless the au pair has over 200 hours of prior infant care experience. The program sponsor must provide the au pair with at least eight hours of child safety instruction, and at least 24 hours of child development instruction.

While currently au pairs are only allowed extensions of six, nine or twelve months for first year program participants, DOS has also proposed allowing those who previously participated in the au pair program to repeat program participation.

Special Education Exchange Visitors

This category is limited to fifty individuals per year and permits an alien to enter the US for up to 18 months to obtain practical training and experience in the education of children with physical, mental or emotional disabilities.

How does the exchange visitor program work?

Each exchange visitor must be sponsored. The sponsor of the J-1 visa program is a legal entity designated by the State Department to conduct an exchange visitor program. The following entities are eligible to apply for designation as a sponsor:

> United States federal, state and local government agencies;
>
> International organizations of which the U.S. is a member and which have an office in the United States; or
>
> Reputable organizations that are citizens of the United States.

The sponsoring entity is required to submit an application (DS-3036) to the State Department through the Student and Exchange Visitor Information System (SEVIS) and to comply with all provisions of 22 CFR Part 514. Once the program is approved, it receives notification through the SEVIS system. Alternatively, if the State Department has not designated the organization as a sponsor, the organization may

participate in the program through an intermediary, known as an umbrella organization, which acts as the sponsoring agency.

How do I know if I am subject to the two-year home country physical presence requirement?

An alien admitted in J-1 status may be subject to a two-year foreign (home country) residence requirement. Without a waiver of this requirement, the alien is not eligible to apply for a change within the US to a non-immigrant visa, any change to permanent residence, or any change to an H or L non-immigrant visa. This two-year period must be spent in the alien's home country, or the country in which they last permanently resided before coming to the US. An alien is subject to the home residence requirement if:

> The alien's participation in an exchange visitor program was financed by the government of the country of his or her last residence;
>
> At the time of admission, the alien was a national or resident of a country which the Department of State had designated as clearly requiring the services of individuals with the alien's special skills or knowledge; or
>
> The alien came to the United States to receive graduate medical education or training.

Limited waivers of the two-year foreign residence requirement are available in certain situations. The ways in which a waiver can be obtained will be discussed in a future article.

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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 - We have Iranian nationality and have had green cards for 4 years . My wife has a plan to stay with her family in Iran for 2 months. Does it delay her approval for citizenship? We are going to apply for citizenship next year.
A - A two month trip should not be a problem assuming you have a total of 2 and ½ years accumulated in the US since permanent residency was granted (at the time your fifth year anniversary of permanent residency rolls around) and no long gaps (exceeding six months). I've got some good articles on residency requirements for naturalization at www.visalaw.com/abcs.html.

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Q - Employer agreed to submit application on behalf of me for H1 visa however i have completed high school +4 years working experience in the required field (IT). I saw in the visa requirements it is mentioned that you should be BACHELOR. On the will of employer/job requirement is it possible to get H1 visa on high school education?

A - I do see problems here. H-1Bs are reserved for people in specialty occupations. Specialty occupations are those jobs normally requiring at least a bachelor's degree. If you lack a bachelor's degree in the correct field, you would need to show you have relevant work experience for at least three years for every year of university you are missing (and US bachelors programs require four years of education so this means at least 12 years of work experience if you have no higher education). I would, of course, recommend you speak with an immigration lawyer, but on the face of it, you don't seem eligible for an H-1B

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Q - I received a green card in 2002. I am applying for US citizenship now. I have a question about the N-400 form. I do not know whether I need to answer 'Yes' or 'No' for the following question: 'Are you a male who lived in the United States at any time between your 18th and 26th birthdays in any status except as a lawful nonimmigrant?' The reason for my confusion is: My birth year is 1972 and I came to the US in 1996 on an H1B visa. I was in the US when I was 24 years old. I applied for the green card in 1998 and I have filed my I-485 on 2001. So, could you please kindly tell me whether I need to select the answer as 'Yes' / 'No' for this question?

A - The question is aimed at figuring out if a person failed to register for the draft, something generally required of all males between 18 and 26 except non-immigrants. Since you were in H-1B status until age 29, the answer to the question would be no since you were in a lawful non-immigrant status.

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Q - I have J-1 visa and I am subject to the 2-year residency rule. If I am to leave the US for two years then to apply for an immigration visa from my home country, how would the consulate check for my compliance? Would they get my passport and count the days?
A - The burden is on the J-1 visa holder to prove he or she was in the home country. Passport stamps, travel documents, banking deposit and withdrawal records, pay stubs, bill receipts, rent records, and anything else that proves your whereabouts can be presented.

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Q - I lived in the USA in 1980 with my first husband and two children. My husband wanted to return to Europe and we had no choice but to go with him. I have since married an American and am an American citizen. My daughter is 31, a British citizen, and wants to immigrate to America now. Can she reinstate her green card, as she had no choice but to leave with her family at that time?

A - You will most likely not be able to reinstate your daughter's abandoned green card. I am assuming that you were not a US citizen when your daughter was born.

In all likelihood, if you wish for your daughter to be come a US permanent resident, you will have to file a petition on her behalf. It will take a minimum of 5 years before she is eligible to be granted US permanent residence.

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4. Border and Enforcement News

A new pact was announced last week between the U.S. and Vietnamese governments which will allow U.S. officials to begin deporting undocumented immigrants from Vietnam who have committed crimes in this country, *The Los Angeles Times* reports. The repatriation pact, announced after over 10 years of negotiations between the two countries, affects about 1,500 Vietnamese nationals – many of them described by the U.S. government as people who were convicted of crimes in the U.S. – who arrived in the U.S. after July 12, 1995, when the two countries resumed diplomatic relations. The repatriations are scheduled to begin in two months.

In addition to the announced 1,500 people, an additional 6,200 Vietnamese nationals have received final deportation notices. However, because they arrived in the U.S. before 1995, they cannot be returned to Vietnam under the new pact. Instead, they face possible deportation to a third country, according to the Bureau of Immigration and Customs Enforcement (ICE).

The pact has caused a great deal of concern with Vietnamese immigrants, with many reacting with anger or hesitation to the idea of returning any Vietnamese nationals to a country in communist control. "The Vietnamese have already been persecuted. I am afraid that sending those people back would give them another life sentence," said Loc Nam Nguyen, director of the Immigration and Refugee Department of Catholic Charities in Los Angeles. Nguyen said that after the agreement was announced he received frantic calls from members of the Vietnamese community who worried it might affect them. "For those who go back to Mexico, they go back to their families and nothing happens to them," Nguyen said. "But for people who go back to Vietnam, it's a totally different ballgame. They will be discriminated against. They will be denied household registration and even identification papers because they cannot provide their background in the bureaucracy process. They will have a hard time finding jobs."

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According to *The Arizona Republic* of Phoenix, a Scottsdale, Arizona man who ran four Western Union stores in the city was indicted last week on 80 counts of money laundering and other crimes that are suspected of financing human smugglers and drug dealers. Bruce Dennis Love, along with two other men were indicted in the four-year-old, $56.8 million money laundering scheme. Vincent Picard, spokesman for the ICE regional office in Phoenix, which participated in the 23-month long investigation, said the indictments shut down one of the "illegal support structures for human smugglers and drug traffickers." Picard said the scheme involved 'Coyotes' hired by Love who would bring undocumented immigrants from Mexico to Phoenix. Afterwards, family members of the smuggled immigrants would wire money to Love's store.

The indictment claims that Love and the two unidentified suspects violated state money-laundering laws by making false statements and reports, not filing suspicious-activity reports, and accepting false personal identification receiving the wired money. If convicted, Love could face up to 100 years in prison terms if served consecutively.

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Politicians from the Mexican region bordering Arizona say they are receiving numerous reports of immigrants who are 'self-deporting' and landing in border communities because of Arizona's employer sanctions law, *The Associated Press* reports. The law, which calls for punishing Arizona employers who knowingly employ undocumented immigrants has yet to go in effect, but it already has Mexican lawmakers concerned about the border. "We have yet to feel the full impact, but the moment (immigrants) leave Arizona, we're going to have problems," said Enrique Flores Lopez, director of the state migrant advocacy department in the Mexican state of Sonora.

Lopez, along with other politicians from Sonora, plan to travel to Mexico City later this month to seek help to house and feed the many workers who may flee Arizona. Sonora Governor Eduardo Bours, said Mexico must do more than point a finger at the U.S. "We need to find the opportunities in our country," Bours said. "To me, it seems too easy to blame the United States and not do anything ourselves."

Under the Arizona state law, businesses that knowingly employ undocumented immigrants could face a 10-day business license suspension for a first offense. An additional offense may lead to a permanent revocation of the license. Though the law took effect Jan. 1 of this year, the county prosecutors of Arizona have agreed to wait until March 1 until enforcement, with the intention of giving the federal judges adequate time to rule on court challenges to the law.

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5. News From the Courts

***Burke v. Mukasey*, (5th Cir. Dec. 10, 2007)**

A conviction for third-degree criminal possession of stolen property under NY Penal Law §165.50 is an aggravated felony theft offense under INA §101(a)(43)(G).

Petitioner was convicted of criminal possession of stolen property in the third degree in violation of NY Penal Law §165.50. The immigration judge found Petitioner removable as a result of his conviction for an aggravated felony under INA §101(a)(43)(G). The BIA affirmed.

Under NY Penal Law §165.50,

> [a] person is guilty of criminal possession of stolen property in the third degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeds three thousand dollars.

Under INA §101(a)(43)(G), "a theft offense (including receipt of stolen property)" is an aggravated felony. In *Hernandez-Mancilla v. INS,* 246 F.3d 1002, 1009 (7th Cir. 2001), the Seventh Circuit found that the "modern, generic and broad definition" of §101(a)(43) includes "a taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent." *See also United States v. Corona-Sanchez*, 291 F.3d 1201, 1205 (9th Cir. 2002) (en banc); *United States v. Vasquez-Flores*, 265 F.3d 1122, 1125 (10th Cir. 2001). The court formally adopted this interpretation and found that the elements necessary for conviction under NY Penal Code §165.50 "plainly fall within the generic definition used in [INA §101(a)(43)(G)]."

The court explained that similar to the generic definition, "possess" under New York law means "to have physical possession or otherwise to exercise dominion or control over tangible property." Moreover, under both the generic definition and the New York statute, there must be an intent to deprive the owner of the benefit proceeding from possession of the stolen goods. Therefore, the court held that a conviction under NY Penal Law §165.50 constitutes an aggravated felony theft offense under INA §101(a)(43)(G).

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6. News Bytes

Immigrants waiting to become U.S. citizens are being told “not to get their hopes up” that the long-expected delays in citizenship applications will be shortened, warned USCIS director Emilio Gonzalez. *The Sacramento Bee* reports that Gonzalez’s comments came from his appearance last week at a special ceremony at the California governor’s mansion, where he swore in 20 new citizens from Northern California.

The agency predicts that citizenship applications filed after last July could take almost three times longer to process in some cities than last year. The average wait has grown from seven months to 16 to 18 months in some cities. The reason, Gonzalez said, is a dramatic surge in applications, especially right before citizenship fees increased 69 percent – from $400 to $675 – on July 30. About 1.4 million applications were filed from October 2006 to September 2007, nearly double the amount filed the year before.

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Last week, shortly after the Federal Reserve slashed interest rates, New York City mayor Michael Bloomberg stressed the need for immigration reform, citing the shortsightedness of immigration policy is part of the cause for the stock market’s

volatility, *Newsday* reports. Bloomberg reiterated a theme he has hit on regularly in recent weeks as speculation about a possible presidential bid grows: Immigration is the key to economic growth. "All these economies are linked together and our country has tried to look inward at the very time we should be looking outward," the mayor said at a news conference. "We should be encouraging the best and brightest from around the world to move here, bring their knowledge, bring the capital bring their spirit, to expand the economy. And sadly," he added, "I think we're going in the other direction."

The mayor has denied he is running for higher office, but his aides have been conducting national polls to gauge his chances and he has been making more visits outside of New York State, speaking more often on national issues.

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According to *The Government Executive*, the Department of Homeland Security awarded over $160 million in contracts to two companies last week in an effort to speed up border crossings to and from the United States. General Dynamics, a developer for a radio frequency identification passport card that travelers can use at U.S. land border crossings and sea ports of entry, was awarded a five-year $99.3 million contract to develop and make the cards. In addition, DHS awarded Unisys with a $62 million contract to provide the RFID equipment needed to read the new cards and to install technologies that can capture images of automobile license plates as travelers drive through Customs. DHS is planning on implementing the equipment at the busiest 39 land border ports, beginning this month.

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7. International Roundup

According to *Reuters*, Spain's Socialist government last week said opposition calls for immigrants to learn Spanish and respect Spanish customs were xenophobic, raising immigration issues ahead of next month's national election.

Popular Party leader Mariano Rajoy said on Wednesday immigrants should sign a legally binding contract promising to integrate into Spanish society, a move compared here to plans backed by President Nicolas Sarkozy in France.

'Who's going to say which customs are right or not?' Interior Minister Alfredo Perez Rubalcaba said at a news conference, calling the proposals 'smoke with a whiff of xenophobia'.

Rajoy said immigrants would have to leave the country if they cannot find work after a year and will be expelled if they commit crimes. The end of a building boom is leaving Spain with a large population of unemployed foreigners for the first time.

Both major parties favor continuing immigration into Spain, and neither wants to see any reduction. The majority of economic immigrants are Moroccans, Latin Americans and Eastern Europeans.

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New immigration rules will stop doctors from outside the EU applying for postgraduate training posts in the UK, it has been announced. *The Press Association* of UK reports that the country's Home Office has laid out new regulations to prevent overseas doctors applying for foundation and specialty training posts.

The regulations stem from criticism that homegrown doctors are unable to find jobs once they graduate from UK medical schools.
The rules, which will first affect recruitment in 2009, would see a drop of between 3,000 and 5,000 overseas applications next year, official estimates suggest.

The rules apply to doctors currently not resident in the UK - it will not affect doctors with medical jobs already present in the country. The Government estimates that around 10,000 non-EU medical graduates are currently in the UK.

Figures suggest that up to 1,100 UK doctors could still miss out on a training post in 2009 and beyond owing to the number of overseas doctors. The Government said therefore it was launching a consultation on guidance which says doctors currently in the UK on HSMP can only get a job here if there is no UK or EU doctor suitable for the role.

The Court of Appeal ruled in November that such guidance was unlawful. The Government appealed against that decision and the case is due to be heard by the House of Lords, with a decision expected in May.

Around 1,300 UK graduates missed out on a training post last year.

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8. Legislative Update

Oklahoma Congresswoman Mary Fallin announced this week her support and co-sponsorship of the Fence by Date Certain Act, Oklahoma's *Tulsa World* reports. The bill, HR 4987, requires over 700 miles of double-layered fence to be built along border spots in California, Arizona, New Mexico, and Texas. The bill also seeks to ensure that sufficient funds are required for the fence and mandates its completion by June 30, 2009.

"The endless flow of illegal immigrants across our southern border is a threat to our national security, our economy and our culture," Fallin said in a statement. "The American people understand this, even if our leaders in Congress do not."

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A statewide comprehensive immigration bill is expected to reach the South Carolina House floor in the next few weeks after lawmakers discussed the bill and added amendments. Columbia, S.C.'s *The State* reports that during a House Judiciary Committee hearing, state lawmakers made the final additions to the bill, which echoes many sentiments covered in similar state bills in the past year. Specifically the bill would require employers to check the legal status of their employees, bar undocumented adults from public assistance (including public schooling and non-emergency medical treatment), and prohibit attendance to public colleges.

Gov. Mark Sanford is backing the bill because it allows local governments to pass more strict immigration rules. Members of South Carolina Minutemen, a volunteer group that seeks to crack down on undocumented immigration in the state, say they're pleased with the House proposal. "We wanted something we could actually get through," said the group's spokesman. "This is pretty much what we can get."

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9. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

House Dems to Push for Scaled Back Immigration Reform
Michael Maggio: 1947-2008
Will Michigan Drivers License Law Drive Out Doctors?
Immigrant of the Day: Jan Stenerud – NFL Hall of Fame Member
Amy Winehouse, etc.
Jewish Press Outlet Covers Olbermann Slamming of Dobbs
Olbermann: Dobbs' ADL Remark Earns Him Worst Person in the World Award
Navarette: Antis are Loud, Weak
Michigan Approves Drivers License Fix
Breaking News: Court Upholds Arizona Employer Sanctions Law

The SSB Employer Immigration Compliance Blog

Arizona Farm Bureau: New Licensing Law Will Lead to Discrimination in Hiring
Washington Post: Be Careful of Changes in Employer Laws
50 Workers Arrested in Utah
Oklahoma Lawsuit Posted
Arizona and Oklahoma Laws Send Workers Fleeing for Texas
Arizona Business License Law Leading to Skyrocketing Apartment Vacancy Rates
Virginia Governor Indicates He'll Veto Bills Targeting Employers
Business Groups Challenge Oklahoma Law
South Carolina Approves Employer Immigration Legislation
Indiana Senate Passes Business License Bill

Visalaw Health Blog

Will Michigan Drivers License Law Drive Out Doctors?
Physician Facing Deportation after Asylum Denied
Filipino Nurses at Center of Controversy
Las Vegas Sun Follows Up on J-1 MD Exploitation Series
Arizona Hospitals Protest Birth Certificate Proposal
Report: Undocumented Latinos Access Health Care Less than the Native Born
More Links to *Las Vegas Sun* J-1 Physician Abuse Stories
Nurse Immigration Measure Included in Senate Budget Bill

Visalaw International Blog

South Africa's Immigration System Under Attack
Prestación Por Razón de Necesidad a Favor De Los Españoles Residentes en El Exterior Y Retornados
New UK Points System Begins
Italy Filing Online Work Permits
Canada: Immigration Medical Fraud Alleged to be Rampant in China
Proof of US or Canadian Citizenship Now Required To Enter US at Land and Sea Entry Points
Canada and Philippines Sign Labor Accord
Canada: IT Industry Facing Labor Shortages
Switzerland: Parliament Bans Ballot Box Votes on Citizenship

Visalaw Fashion, Sports, & Entertainment

Winehouse Secures Visa, But Still not Coming to Grammies
Amy Winehouse Denied Visa
From Green Card to SAG Card
Circus Owners Worried about Lack of H-2B Visas
Could Tejada Face Deportation over Steroids Scandal?

Tech Notes - The Immigration Lawyer Blog

The World of the Future: 1999
How to Dispose of an Old Cell Phone
Voltaic Backpack: Your Bag Becomes Your Power Source
AMLAW Technology Marketing Slides

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10. Campaign '08

This week, *Newsday* sent 10 questions to all presidential candidates running for president. Among the questions was the subject of immigration reform and bilingual education.
The candidates on immigration reform:

Barack Obama – "We need comprehensive immigration reform that creates a system that is fair consistent, compassionate, and emphasizes both maintaining the rule of law and the security of our borders while working to keep families together and putting the undocumented on an earned path to citizenship.
Hillary Clinton – "I support comprehensive immigration reform that includes strengthening our border; placing stronger sanctions on employers; supporting family reunification; and providing a path to earned legalization for people who have been living in the US respecting the law, learning English, and willing to meet a high bar."

> John McCain – "I believe a secure border is an essential element of our national security. I believe that the federal government has utterly failed in its responsibility to ensure its security. As president, I will secure the border and also require that border-state governors certify that the border is secure.
> Mike Huckabee – "I will build the fence and increase the border patrol. Illegal will be required to register within 120 days and leave the country, where they will go to the 'back of the line.' I believe cracking down on employers will result in attrition – if illegals can't find work, they'll go home.

On bilingual education:

> Obama – "The federal government should be doing more to encourage transitional bilingual education. Federal spending on bilingual education is stagnating while the number of students who lack English proficiency is growing rapidly. Spending on bilingual education should at least keep pace with the expanding need."
> Clinton – "Research has shown that children learn best when they receive instruction in their native language and, at the same time, are taught English. That should be our approach, with the goal of having every child in a US school learn English because that skill will enable them to succeed.
> McCain – "The primary objective of language programs targeted at English learners must be fluency in the English language. In many cases, the best approach is targeted, bilingual education programs specifically designed to ensure children do not fall behind in their general educational development as they move to English proficiency.
> Huckabee – "I support intensive immersion in English rather than bilingual education."

For the rest of the Q&A sessions, visit
http://www.newsday.com/news/nationworld/nation/ny-candidates-qanda-pg,0,3230140.photogallery?index=2

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11. USCIS Announces Long-Awaited Proposed Rule Changes for H-2A Temporary Agricultural Worker Program

Note: The following article was written by Elissa Taub, an Immigration Attorney for Siskind Susser Bland. If you have any questions regarding the piece, you can contact her at etaub@visalaw.com.

Over the years, US agricultural employers have faced a shortage of US workers who are able, willing and qualified to fill agricultural jobs. Those employers often turn to foreign labor to accomplish these tasks. The H-2A temporary agricultural worker program was created to meet the agriculture industry's need for legal seasonal and temporary labor. The H-2A program has been used sparingly by US agricultural businesses, in part, because of the high costs and the onerous regulatory requirements and restrictions placed both on the H-2A employers and on the H-2A nonimmigrants.

H-2A regulations are issued by both the US Department of Labor ("USDOL") and the USCIS. USDOL's regulations cover the labor certification process through which employers must show that there are no US workers able, willing and qualified to fill the available positions. In late 2007, USDOL proposed its own set of minor rule changes for the H-2A program. Once a labor certification is granted, the H-2A employer must petition USCIS on Form I-129 for approval of the visas.

USCIS regulations cover almost every aspect of the H-2A petition process. For instance, they limit the use of unnamed and multiple beneficiaries in a petition; require that all foreign nationals covered by one petition entered the US at a single port of entry; and limit the ability of H-2A workers to freely change employers. To combat the deterrent effect of this regulatory scheme, USCIS has issued long-awaited proposed rule changes that aim to make the process more attractive to US employers. Overall, these changes will hopefully make the H-2A process more user-friendly.

H-2A Portability

One of the more interesting aspects of the proposed rule is its portability provision. The new rule would allow H-2A workers to begin working for a new employer that is a registered user of USCIS's E-Verify system while waiting for the approval of a petition to change employers and extend their status. During this portability time, the worker may work for the new employer for up to 120 days from the received date on the I-797 showing that the petition to change employers was received by USCIS. Clearly, USCIS is using this provision as an extra incentive for employers to register with E-Verify.

Land Border Exit System Pilot

Another interesting aspect to the new rules, which is clearly aimed at ensuring the continued lawful status of H-2A workers, is the Land Border Exit System Pilot. The Department of Homeland Security is establishing this program in recognition that, oftentimes, foreign nationals forget to surrender their I-94 cards upon departing the US. With this new pilot program, whose details will be determine by CBP, an individual admitted on an H-2A visa at a port of entry participating in the program must also depart through a port of entry participating in the program and present designated biographic and/or biometric information upon departure at the conclusion of their authorized period of stay. USCIS also is considering including H-2B visa holders (temporary non-agricultural workers) in this pilot program.

Labor Certifications

USCIS is using the proposed rule changes to get out of the business of evaluating labor certification applications. At present, USCIS regulations allow an employer to submit a denied labor certification along with its H-2A petition, and USCIS has the discretion to approve the visas despite the labor certification denial. The proposed rule ends this procedure and requires that all H-2A petitions be submitted with an approved labor certification.

Similarly, the proposed rule will provide for the immediate and automatic revocation of an H-2A petition where USDOL revokes a labor certification in response to the employer's violation of the terms of that labor certification.

Beneficiaries

Current USCIS regulations require that all beneficiaries be named in the H-2A petition, which can be troublesome if last minute changes occur. The proposed rule continues to require employers to name those employees who are currently in the US, but it eliminate the requirement for those employees located outside the US at the time of the petition. By not having to name those employees who are located abroad, employers presumably will have more flexibility in recruiting workers who are able to begin working on the date of need.

In addition, current regulations require all beneficiaries in a single petition to enter the US through a single port-of –entry. USCIS seems to have realized that this requirement was not only burdensome, but also expensive, for employers who had to file multiple petitions for the same worksite because they were hiring workers who ultimately would enter the country at different ports-of-entry. Under the proposed rule, employers could petition for all H-2A workers in a single petition regardless of their intended port-of-entry.

Payment of Fees

In the proposed rule changes, USCIS admits its knowledge that certain job recruiters and US employers are requiring potential H-2A workers to pay job placement fees to obtain H-2A employment. USCIS has learned that these fee payments not only are economically burdensome but also, in some instances, leads to the workers effectively becoming indentured servants.

USCIS' proposed rule seeks to end these fee payment by providing for the denial or revocation of any H-2A petition if it determines that 1) an alien beneficiary has paid or agreed to pay any such fee or other form of compensation, whether directly or indirectly, to the petitioner, or 2) that the petitioning employer is aware that the alien beneficiary has paid or agreed to pay a fee to any facilitator, recruiter or similar employment service, in connection with obtaining H-2A employment. The proposed rule also provides for a thirty-day grace period in which those H-2A workers whose H-2A visas are later revoked because of this rule can obtain new employment, apply for an extension of stay or leave the US.

In addition, the proposed rule will require three related attestations from each H-2A employer. First, each employer must attest that it has not received and does not intend to receive any fee, compensation or other form of remuneration from the workers it intends to hire or from any person, agency or other entity. Second, each employer would have to attest to whether it used a facilitator, recruiter or other similar employment service to locate foreign workers to fill the H-2A positions and if so, identify those facilitators, recruiters or services. Finally, each employer will have to attest that it understands and will abide by the H-2A program requirements and limitations.

Notifications and Damages

Presently, H-2A regulations require employers to notify USCIS when an employee does not report for work or absconds after entering the country. These regulations impose onerous timing and information requirements with which most employers are unable to comply. The proposed rule seeks to eliminate this problem by narrowing

the notification requirements to include the following situations: 1) where an H-2A worker fails to report to work within five days of the employment start date; 2) the employment terminates more than five days early; or 3) the H-2A worker absconds from the worksite. The new regulations will also define the term "abscond."

In addition, the rule will increase the penalty for failing to meet the notification requirement from $10 to $500 per instance "because the $10 amount is not a sufficient deterrent against noncompliance."

Nationals of Countries That Refuse Repatriation

The proposed rule will provide that H-2A petitions will be denied for nationals of countries that either consistently deny or unreasonably delay the prompt return of their citizens. A list of such countries will be issued by the Department of Homeland Security.

Periods of Admission and Interruptions

Currently, H-2A employees enjoy a 10-day grace period of lawful admission following the expiration of their visas. The proposed rule would extend that grace period to an absolute 30 days.

In addition, H-2A employees may work in the US for a maximum of three years, at which time they must depart the country for a minimum of six months before they may reenter on another H-2A petition. The proposed rule seeks to shorten the required period of stay outside the country to three months, and also seeks to clarify the rules regarding interruptions of the three year stay. The proposed rule seeks to reduce from three months to 45 days the minimum period spent outside the US that would be considered interruptive of accrual time towards the three year limit, where the foreign national has spent less than 18 months in the US. Where the foreign national has spent more than 18 months in the US, the proposed rule would make the interruptive period two months.

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12. Department of Homeland Security Backs Border Crossing ID Rules, Despite Criticism

Homeland Security (DHS) Secretary Michael Chertoff Wednesday said new border-crossing requirements will continue to stay into effect as scheduled, despite opposition from Congress and concerns from state officials that commerce and tourism will be disrupted. As reported by *The Congress Daily*, Chertoff said that DHS plans to begin phasing in new requirements under the proposed Western Hemisphere Travel Initiative (WHTI).

Chertoff, in a speech made last month to a border security advisory panel in Washington, said that the new rules will apply to travelers coming to the U.S. at land crossings from Canada and Mexico and by water from the Caribbean. Border inspectors will no longer accept oral declarations of citizenship, meaning U.S. citizens will have to present documentation proving they reside in the country, Chertoff said. In addition, he says DHS will also begin preparations to limit the types of documents

that can be used to prove citizenship. Currently, border inspectors accept about 8,000 different documents.

Beginning last year, DHS requires people coming into the U.S. by air from Canada, Mexico and the Caribbean to present a passport or other government-approved identification. Though Chertoff says the compliance rates for the air rules are near 99%, he hasn't acknowledged the problems and delays that U.S. citizens had obtaining passports from the State Department last year, with delays becoming so problematic that DHS had to delay implementation of the air rules by six months.

Another problem that DHS' program must contend with is the response from Congress. Last session, both the House and Senate expressed their opposition, passing legislation that prohibits DHS from implementing all aspects of the program until June 2009.

"Congress has mandated a delay for the Western Hemisphere Travel Initiative … but [DHS] will nevertheless, in the intervening time, take some reasonable and very important measures to eliminate what I consider to be unacceptable vulnerabilities at our land border," Chertoff said. Due to the congressional restrictions, border inspectors "will still accept many of the documents that are currently available, Chertoff said, adding, "we are not implementing WHTI but we are certainly rationalizing the existing system."