Siskind's Immigration Bulletin – July 22, 2008

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1. Openers

Dear Readers:

Those of you who read my blog at http://blogs.ilw.com/gregsiskind know that something disturbing is going on at the Department of Labor. The agency has all but declared war against employers. It is through a combination of measures:

1. Targeting high profile, well-respected law firms and auditing the firms' files (essentially slowing processing down for the firms' clients)
2. Debarring employers from filing labor certifications all together
3. Increasing the number of PERM cases audited from just 1 in 10 when PERM started to 3 in 10 today

Theories abound regarding the motivations of the Labor Department. Some say it is part of an effort to get the attention of Congress and garner more funding for the PERM program (though it remains a mystery to me why the DOL still is not charging a fee for PERM petitions, something that is reasonable and, in my opinion, not likely to garner much opposition).

Some argue that DOL is trying to send a message to employers not to hire immigration lawyers and to file cases on their own. Those pesky immigration lawyers have a habit of arguing when cases are denied on wrongful grounds and they tend to advise their clients on what their obligations and rights are under the law.

Some argue that the DOL wants to discourage PERM filing all together.

Of course, some defend the DOL arguing that the agency is simply trying to ensure that employers are taking the process seriously and US workers' interests are being protected.

Regardless of the motives, I have been forceful in criticizing one particular tactic being used by DOL. The agency has been issuing press releases announcing the targeting of law firms and companies. These releases can destroy livelihoods and reputations without any due process or effective opportunity to defend oneself. One of the firms looks like it was targeted for political reasons since it made statements on a YouTube video that the DOL may have found embarrassing and which garnered criticism on Capitol Hill.

Whether the DOL maelstrom is subsiding or only picking up steam is hard to say. Certainly, when the country is moving in to rougher economic straits, the agency may feel more room to maneuver. On the other hand, the immigration bar has been very tepid to this point and has tried to have a collaborative relationship with the agency. That is likely to end soon and when the agency is forced to defend its actions in court, the bravado of the agency will be tested.

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In firm news, the National Association of Legal Search Consultants has just published an article I've written on immigration options for attorneys. I'm including a longer version of the piece in this issue as our ABCs feature. The article is not in the usual Q & A format, but I think people will still find it easy to follow.

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In other firm news, Siskind Susser Memphis Attorney Ari Sauer led a discussion panel in the American Immigration Lawyers Association teleconference entitled "Insights for the Tricky Concept of Unlawful Presence."; the panel was held on July 21st.

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2. The ABC's of Immigration: Immigration Options for Attorneys Entering the US

by Greg Siskind

The news has been filled with stories of one profession after another facing shortages of workers as the US economy continues to grow, overall unemployment remains at historically low levels and baby boomers are starting to retire in ever increasing numbers. While we hear about too few nurses, doctors, teachers, engineers – but we're not hearing about a looming shortage of lawyers.

The perception in and out of the profession for many years is that the US has far too many lawyers. And without getting in to the controversial debate over whether America is too litigious or whether non-lawyers should be able to take on more forms of work traditionally considered legal in nature, the same demographic and economic pressures affecting the rest of the workforce are affecting the legal profession. Baby boomers have begun retiring and the number of workers replacing them cannot keep up.

Furthermore, US law firms – particularly the country's largest law firms – have done a brilliant job competing for global legal work and that has driven their continued growth. The largest law firms in the US have now crossed the 3,000 lawyer mark and there is no reason to expect this trend to slow anytime soon. Those firms hire an incredibly large number of students. Latham and Watkins, the number four law firm in the NLJ 250 survey, hired 268 summer associates last year compared to just 164 in 2004.

Finally, a most surprising trend – one that has never been a problem for American employers in prior generations – is a reverse brain drain where American lawyers are being recruited by foreign law firms that place a high value on American legal experience or top American legal education. The National Law Journal recently reported a single year jump of 23% in the number of American law graduates going to work for foreign firms.

The pressures on the legal labor market are starting to show up in the statistics. The number of law students graduating from US law schools each is approximately 40,000 and that number has been relatively flat for several years. The number being recruited to work for NLJ 250 firms is now about 10,000 and the demand is increasing year to year. While producing more lawyers is not as difficult as producing more physicians or more pharmacists, the fact that virtually all professions are facing shortages at the same time that are expected to get worse, simply saying that we will increase the number of lawyers is not so simple when there is considerable competition to attract students.

Law firms are using a variety of strategies to address the crisis. Most involve traditional techniques like more aggressively recruiting, opening doors for women and minority attorneys, raising salaries and the often counterproductive strategy of trying to get lawyers to bill astronomically large numbers of hours.

The top law firms are also going further down the list as far as considering applicants from schools that are not in the top tier and are considering students that are graduating lower in their class, but they also face limits as they must maintain a quality edge if they are to compete for global work.

A growing number of firms are starting to take their cues from other professions and their overseas competitors and have begun to seek out global legal talent. In the past, many international lawyers were recruited from the ranks of those pursuing

J.D. and LLM degrees from US law schools. That pool of students is still an important source of talent. But American law firms are now combing the planet in search of top lawyers

Nowhere is this more evident than in Australia where US firms have been recruiting heavily. Ask a lawyer at any large Sidney law firm and you're likely to get an earful about American and UK firms pursuing their lawyers. Well-known attorney recruiting firm Major, Hagen and Africa (www.mlaglobal.com) recently launched an Australia initiative and more firms are likely to follow soon.

Why Australia? Several reasons:

- English fluency
- A common law legal tradition similar to America's
- Lower salaries in Australian firms compared to their counterparts in the US
- A new visa category specifically available to Australians that makes getting work authorization in the US much faster and easier

Most of the Australians are heading to New York firms or branch offices. New York has traditionally been the state with the most liberal requirements for foreign lawyers seeking entry to the US and much of the international transactional work that is driving demand for more lawyers happens in the Big Apple.

But New York is far from the only place where international lawyers are headed. You'll now find foreign lawyers in every state and in most large law firms. And smaller and mid-sized firms have gotten in to the game as well.

Assuming you are able to identify an attractive candidate from overseas, how does an employer weave its way through the immigration maze?

Non-Immigrant Visas – The Alphabet Soup

There's a reason why there are 10,000 immigration lawyers in the United States (probably 90% of the world's lawyers practicing in this field). The US has arguably the most complex set of immigration laws and the largest immigration bureaucracy of any country. And that's very likely because despite several years of news stories describing America's declining popularity, the US is still far in front of any other country in terms of demand for visas.

Without getting in to a long discussion of how the US immigration system works, it helps to know that essentially there are five types of statuses that any person in the US can have:

- US citizenship based on place of birth, having a US citizen parent or naturalization
- Lawful Permanent Residency (LPR), commonly referred to as the green card (and also called an immigrant visa)
- Non-immigrant status such as students, work visa holders and visitors
- asylum, refugee and temporary protected status
- unlawfully present immigrants

Lawyers practice in the US in all of these categories (yes, even the last category though that would typically only be the case for a lawyer who had a work visa and fell out of status).

This article focuses on non-immigrant and immigrant visa categories.

The H-1B visa

If you have been following the immigration debate in the news, you might have heard about Bill Gates making the rounds in Washington seeking more visas for technology workers. What most people don't realize is that the H-1B visa – the temporary work visa used by America's technology companies to hire information technology professionals – is also the visa used by every other industry to hire foreign university-educated professionals.

The number of H-1B visas available today is the same as the number set in 1990 and has not kept up with overwhelming demand. The 65,000 allotted H-1B visas can be claimed up to six months before each new fiscal year begins and on April 1, 2007, the allotment for the fiscal year that began October 1, 2007 opened. Within hours, US Citizenship and Immigration Services received a staggering 200,000 applications and had to have a lottery to determine which companies would get their workers.

Law firms may have a slight edge, however. In the early part of this decade, Congress passed legislation creating a special bonus pool of 20,000 H-1B visas for those receiving advanced degrees from US universities. This covers foreign law students receiving JD and LLM degrees in the US. The 20,000 bonus visas were used up after just a few weeks in 2007, but at least a law firm able to file a case in early April could secure a visa with an October 1st start date without having to go through a lottery. Of course, not all firms have the luxury of being able to time an application for an April filing.

Congress has also created an exemption from the 65,000 visa limit for universities and non-profit research institutions so legal departments at those employers can use as many H-1Bs visas as they need.

H-1B applications for attorneys have a few key requirements:

- the applicant must have an employer sponsor
- the employer must demonstrate that the applicant will be paid the prevailing salary in the metro area or at least as much as similarly employed lawyers at the same firm possessing the same experience and credentials
- the employer can show that it has the ability to pay the offered salary
- the applicant has the requisite qualifications to work in the position (e.g. possession of the necessary education and a license, if required, or proof that all requirements for licensure have been met if actual possession of the visa is a requirement for licensure)
- demonstrating the position is one normally requiring a bachelors degree or higher (obviously this is not a problem to demonstrate for attorney positions)

H-1B petitions require the attorneys to demonstrate that they will be qualified to practice under the jurisdiction where they will be employed. While a discussion of licensing is included at the end of this article, one of the key problems in H-1Bs is getting a license in place prior to filing the petition. Some firms elect to initially sponsor foreign lawyers to work in positions that do not require licenses such as law clerks or paralegals. A law clerk position will normally require at least a bachelors

degree and a bachelors degree for a paralegal is something frequently required in that profession.

And foreign legal consultants (foreign lawyers only advising on the law of their home country) can be licensed in that capacity without taking a bar exam.

H-1B applications are initially filed with US Citizenship and Immigration Services and the processing times vary depending on where the case is filed and how much money is paid. Normal processing takes three to four months. For $1000 on top of normal filing fees, a case will be decided in 15 days or less.

The $1000 for speedy processing is just the start, however, on the USCIS fees. H-1B employers also must pay roughly $800 in base filing fees plus potentially another $750 or $1500 depending on the size of the employer and the type of employer (universities and non-profit research institutions may be able to avoid the fees).

After USCIS approves the initial applications, persons in the US (such as those on student visas) can begin work if an H-1B number is available. If an applicant is not changing their status in the US, then a US consulate abroad will process a visa application. The waiting time can be just a few days up to a few months depending on the demand for appointments at the particular consulate. Consular fees will usually run a few hundred dollars and vary depend on reciprocal agreements between the US and the applicant's country.

Congress is expected to take up legislation soon that would increase the number of H-1B visas available and create new exemptions from the H-1B cap that could make this a more user-friendly category in the future.

Treaty Visas

Another popular visa strategy for hiring a foreign lawyer is to apply based on a treaty between the US and the lawyer's home country.

Canadian and Mexican lawyers can apply for TN visas based on the North American Free Trade Agreement (NAFTA). There are few restrictions except that a lawyer must be licensed either in the US or in the home country and the lawyer needs an employer sponsor in the US. There is no limit on the number of TNs that can be issued in a year and an applicant can apply for issuance of the TN classification on the spot at a US port of entry (usually at an airport or a land crossing).

As noted above, Australian lawyers can apply for E-3 visas. The requirements for the E-3 are essentially the same as for the H-1B visa including possessing a license or showing that all requirements for licensure have been met except for providing a visa. 10,000 E-3 visas are available each year. However, this supply has so far exceeded demand by a wide margin.

While Australians can pursue H-1Bs and other categories, there are a couple of key benefits that make the E-3 attractive (aside from its general availability when the H-1B cap is filled). First, E-3s can be filed directly at a US consulate. This means that expensive USCIS filing fees applicable to H-1Bs are not collected. It also means that a visa can be secured in a matter of days as opposed to several months. Another key

benefit of the E-3 is that spouses can obtain a card granting permission to work for any employer as long as the attorney spouse remains in E-3 status.

Nationals of Singapore and Chile were recently granted a special H-1B visa category of their own with an annual allocation of over 5,000 visas.

And national of more than 50 countries are eligible for E-1 and E-2 visas. E-1 treaty trader visas are available to people from a country with a commercial trade treaty with the US who are engaged in trade between the US and the treaty country. Trade in services, such as legal services, is a permitted form of trade under the E-1 category. The employer must be majority-owned by nationals of the treaty country (and green card holders or dual citizens in the US don't count). This then means that the E-1 is basically only available to foreign law firms with offices in the US or instances where a lawyer has her own practice and is contracting services out to other firms. The E-1 also requires a substantial volume of trade between the US and the treaty country. This might not be a problem for a US branch office of a foreign law firm as long as it can demonstrate that the majority of the work involves matters involving the treaty country.

E-2 treaty investor visas are used much more frequently and are based on the making of a substantial investment in a commercial enterprise in the US. Like the E-1, the majority of the ownership has to be in the hands of nationals of the treaty company. E-2 status is tied to the size of the investment. US immigration rules do not specify a dollar amount to qualify for the E-2, though if a foreign firm can demonstrate it has a business plan and can document adequate capital to run the office, this often will satisfy a consular officer.

The E-1 and E-2 are available to executives, managers and essential skills employees. This would normally include partners and attorneys with supervisory responsibilities. It would also include associates who have skill sets difficult to find in a local market. Like the E-3 visa, one can apply for the E-1 and E-2 directly at a consulate. However, some consulates can take many months to schedule an appointment. London, for example is backed up eight months. One advantage that is the same as the E-3 is the availability of work authorization for a spouse.

Transfer cases

Law firms transferring in attorneys from an overseas office can take advantage of the L-1 intra-company transfer visa. There are several key requirements for L-1 visas:

- the attorney must have been employed abroad by the firm for a year
- the US office and the foreign office have a qualifying relationship. If the US office is a branch office, subsidiary, parent or has common ownership, then it likely will qualify; offices that are merely part of an alliance likely will not.
- the attorney must be coming in an executive, managerial or specialized knowledge capacity
- firm's establishing a new office in the US will need to demonstrate it has sufficient business plans and capitalization to show it is financially viable and can afford to pay the transferee.

To meet the executive, managerial or specialized knowledge requirement, the firm will want to show that the attorney will be managing paralegals and, if applicable,

other attorneys. Attorneys who manage a "function" can also qualify even if no personnel are being managed. Attorney with unusual specialties and skill sets can also qualify as specialized knowledge employees if the firm can show that it would be impractical to find someone in the local market with a similar expertise.

To meet the requirement for a qualifying relationship, traditional branch offices are normally fine as are typical law firm partnerships and corporate structures where each office is owned 100% by the partnership or the corporation. Problems may arise, however, if the US and the foreign office operate under the same name but have different ownership structures. If one owner controls 50% or more of both offices, then there will be no problem as the offices will be considered affiliates. If no party has a controlling interest and the ownership breakdown of each office is not the same, there could be a problem. A joint venture between two firms may qualify despite the fact that the foreign firm does not have a controlling interest in the US branch as long as the foreign entity transferring the attorney has a 50% interest. Many firms have offices that operate under the same name, but are independently owned and merely part of an alliance. These types of relationships will also not qualify.

L-1A visas are available to managers and executives and can be obtained for up to seven years. L-1Bs are available to specialized knowledge employees and can be obtained for up to five years. Employees of new offices will be approved for an initial period of a year and then can be extended.

L-2 spouses are permitted to seek independent employment authorization after entering the US. Two to three months are normally needed to acquire an employment card.

Trainee Categories

The J-1 exchange visitor trainee category allows those coming for training in public administration and law to come to the US for up to 18 months. An employer can work through an approved J-1 exchange program which is charged with making sure that the employer provides genuine and proper training.

An employer sponsor will need to provide a training program that describes the training objectives, the skills the trainee attorney will acquire or be exposed to through the training program and justify the use of on-the-job training. The sponsor must also provide details on the stipend to be paid to the trainee and an estimate of living costs in the US.

The H-3 trainee category is also available, but for attorneys is almost never the best category since productive employment is not permitted. The J-1, in contrast, allows the training to be conducted in the setting of productive employment. A J-1 also does not need to show that the training is unavailable in the home country.

The J-1 may also be the visa of choice for attorneys who are not able to or interested in acquiring a state law license. J-1s can be used by those in law clerk or paralegal positions as well as foreign legal specialist positions.

Like the E and L categories, J-2 spouses are permitted to seek employment authorization after entering the US in J-2 status.

Foreign students on F-1 student visas are entitled to a one year work authorization period called "optional practical training" upon conclusion of their studies. Given the large number of LLM students at US law schools, this can be useful especially given the scarcity of H-1B visas. The OPT can often allow for the lawyer to work legally while waiting on an H-1B visa number to become available or until work authorization tied to permanent residency comes through.

Visitors

Sometimes going through the complicated application process to obtain a work visa may not be necessary and an attorney can enter as a B-1 business visitor.

B-1 visitors must meet the following basic tests:

- Have a residence in a foreign country, which they do not intend to abandon;
- Intend to enter the United States for a period of specifically limited duration; and
- Seek admission for the sole purpose of engaging in legitimate activities relating to business.

There are a number of legitimate activities in which lawyers typically engage that are specifically permitted by the State Department's Foreign Affairs Manual:

1. Participating in seminars, conventions and conferences
2. Consulting with business associates or clients
3. Assisting clients negotiating contracts
4. Engaging in independent research
5. Board of directors and partnership meetings and related activities
7. Assisting investor clients scoping out investment opportunities and engaging in startup activities
8. Attending trade shows

A key to B-1 cases is that the applicant has specific and realistic plans for the entire period of the contemplated visit. The absolute length of the stay is not as important as showing that the stay has some finite limit. But the total authorized stay on each entry is limited to 180 days (with extensions permitted).

The B-1 applicant must also be prepared to demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin. And the applicant should show a salary from abroad and adequate resources to demonstrate that there is no need to work illegally in the US.

Applicants from 27 countries that have no problems with visa overstays can qualify in the Visa Waiver Program which allows applicants to enter the US for up to 90 days without obtaining a visa stamp. The 27 current countries are Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, the Netherlands, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Note that extensions of stay for Visa Waiver entrants are not permitted.

Finally, when an attorney is being paid by a foreign entity but coming to the US to perform activities similar to an H-1B or an H-3 worker, the B-1 may be used in lieu of the H-1B or H-3. But note that many consulates. In order for an employer to be considered a "foreign firm" the entity must have an office abroad and its payroll must be disbursed abroad. To qualify for a B-1 visa, the employee must customarily be employed by the foreign firm, the employing entity must pay the employee's salary, and the source of the employee's salary must be abroad. Note that many consulates are reluctant to issue B-1s in lieu of Hs and the firm should do research on the attitude of a consulate before pursuing this type of visa.

O-1 Extraordinary Ability Applicants

Attorneys who can demonstrate that they have extraordinary ability in their field of business can potentially qualify for O-1 visas. Applicants need to show that they have reached the top of their field either in the US, internationally or in the applicant's home country.

O-1s need to show a single one time accomplishment demonstrating extraordinary ability or evidence showing a combination of at least three of the following:

- receipt of nationally or internationally recognized prizes or awards for excellence in the attorney's field;

- documentation of the attorney's membership in associations in the field which require outstanding achievements of their members, as judged by recognized national or international experts;

- published material in professional publications or major media or major media about the lawyer;;

- evidence of the attorney's participation on a panel, or individually, as a judge of the work of others in the field;

- evidence of the lawyer's original contributions of major significance in the field;

- evidence of the attorney's authorship of scholarly articles in professional journals or other major media;

- evidence that the attorney has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

- evidence that the lawyer has commanded and now commands a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

O-1s are available for up to three years at a time and require a consultation letter from a peer group stating. For lawyers, this might include a local, state or national bar organization. The letter is essentially a statement indicating the group has no objection to the granting of the visa.

Permanent residency

Labor certifications

When a non-immigrant work visa is either not available or will not allow an employer to bring over an attorney for as long as needed, applying for permanent residency may be an option worth considering. Attorneys will normally qualify for permanent residendy in the EB-2 green card category reserved for those with advance degrees (a bachelors degree or higher).

Visas in the EB-2 category usually do not run out, though per country limits are currently causing delays for a few nationalities (including India and China).

The key challenge for attorneys seeking permanent residency, however, is successfully navigating the labor certification process required for most applicants. A labor certification is a process where an employer goes through a recruitment process to demonstrate the lack of availability of qualified American job candidates immediately able to do the work. Employers must carefully define a job to make it clear what skill set is required for the position lest the rejection of a candidate not genuinely suitable for the position cause an application for a labor certification to be denied. Of course, rejecting a candidate with the necessary education and experience but lacking the "pedigree" suitable for a specific firm is not permissible in the labor certification process.

Like the H-1B category, an employer must demonstrate it is paying the prevailing wage and has the ability to pay the offered salary.

Multinational executives and managers

The EB-1 green card category has requirements very similar to the L-1 non-immigrant category except that specialized knowledge employees are not covered and a US office must be operational for at least one year. This will normally be the green card option of choice for those qualifying in multiple categories.

Extraordinary Ability

EB-1 green cards are available to those with extraordinary ability in business, athletics, the arts, education and science. The EB-1 is almost identical in its requirements to the O-1 category described above. EB-1 cases, however, do not require a peer group consultation.

National Interest Waiver

If a lawyer can demonstrate that his or her work provides a substantial benefit to the public, a green card may be possible in the EB-2 green card category. This category is rarely used by lawyers, though if one can, for example, demonstrate they are playing a critical role in economic development in the US or perhaps are playing are providing legal services of a public service nature. But USCIS often applies a very high standard in this category and will frequently want the applicant to demonstrate the benefits will be national in scope as opposed to local.

Licensing Questions

One key issue for attorneys will be obtaining a license or demonstrating that a license is not required for the work to be performed. A foreign lawyer coming to the US to practice the lawyer's home country law as a foreign legal consultant would only need to demonstrate he or she is qualified to practice that nation's law. Some states like California, Florida, New York and Illinois actually have a separate license for foreign legal consultants. The regulations in those states are similar in barring the foreign legal consultant from engaging in traditional lawyer roles such as representing clients in US courts or preparing documents based on US or state laws. They also require a demonstration of being licensed in good standing in the home country and some require a certain amount of experience abroad before the license will be approved.

Some states permit foreign lawyers to sit for the bar examination and qualify as a full member of the bar, though they often require a demonstration that the foreign education is equivalent to a US legal education. Some states require a social security number to obtain a license, something that is basically impossible if one does not already have a work status in the US. In such a case, if the state will allow the lawyer to sit for the bar exam and otherwise satisfy all of the licensing requirements and a state bar will verify this, USCIS may issue a visa.

Conclusion

While the number of attorneys immigrating to the US has been relatively modest to date, that will certainly change in the years to come as the demand for the services of highly qualified attorneys will increase and the supply of attorneys will likely remain flat. With careful immigration planning, US and foreign law firms should be able to recruit legal talent globally.

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3. Ask Visalaw.com

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

Q - I have received my H-1B approval today and it will be active starting 1st Oct 2008. But I am pregnant and my due date is in December so I cannot work may be until March 2009. Can you please let me know if my visa is invalidated if I don't work until March? Please let me know a solution for this.
A - You have until the expiration date of the visa stamp to enter so that probably gives you some flexibility on the date of entry (assuming the job is still open).

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Q - My husband and I married in 2003 when his son was 14 years old. I am a US citizen and my husband is now a Legal Permanent Resident and can be a citizen in 2.5 years. I am very confused by conflicting information on "unmarried sons and daughters" category of US citizens and LPRS. The son will turn 21 at the end of 2008. He is now 20 years old and we want him to come and live with us. Who should file the I-130- .me (the US citizen stepmom) or my husband (the Legal Permanent Resident)?
A - You can be the petitioner since the step-parent relationship was created before the age of 18. That means your stepson is considered the same as a biological child for immigration purposes. As a back up, your husband can also file a petition. Your immigration lawyer can provide additional details on the process.

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Q - I've heard that if a person has been a legal permanent resident of the US for 50 years, they automatically become a citizen. Is there any truth to this?

A - Sorry. That's not the case.

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Q- What if your priority date becomes current in the State Department Visa Bulletin for EB-3 and you file the I-485. Then three months later in the Visa Bulletin the EB-3 date regresses or becomes unavailable. Have I been included in the previous count, or will the USCIS take no action on the I-485 until my priority date becomes current again?

A - Your case will be allowed to continue so you can get work authorization and travel documentation, but the case will not be approved until the priority date becomes current again.

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Q - I am currently on H-1B and am wondering if I am allowed to sell Mary Kay or Avon cosmetics which are home based business apart from my actual job.

A - Unfortunately, that would violate immigration law unless you have a specific work authorization permitting it (such as a separate work visa or an employment card tied to a pending green card application).

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4. Border and Enforcement News

Last week, Border Patrol agents found 16 suspected undocumented immigrants in a locked truck near San Diego, *The Associated Press* reports. They were discovered quickly, and no injuries were reported.

Border Patrol spokesman Mark Endicott says agents spotted the migrants early Thursday when they crossed the border near Tecate, about 35 miles east of San Diego. Agents followed them to a parking lot less than a mile away, where they filed into a truck. The door was closed with what the spokesman called a heavy-duty padlock. The driver and passenger were arrested on felony smuggling charges.

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According to *The Associate Press*, the first of 400,000 trees have been planted by the Mexican government along the US-Mexican border as a sign of protest against the fencing that the US is building along the border they share with Mexico. The line of trees, called the "green wall" will eventually stretch for 318 miles along the border between the Mexican State of Coahuila and Texas.

Coahuila Gov. Humberto Moreira Valdes says the treeline is "our wall of life, and it competes with shame and hate." The mayor of Eagle Pass, Texas border town attended the inaugural tree planting last week in Piedras Negras. Mayor Chad Foster is one of a number of critics who oppose the US government's ongoing construction of 670 miles of border fence.

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Last week, Annapolis, Maryland, police said they rounded up 45 suspected undocumented immigrant workers at various locations throughout the city, *The Capital* of Annapolis reports. About 50 county police officers participated in the joint operation with ICE. Units raided Annapolis Painting Services, where many of the workers were employed.

"This will send a very strong signal that this administration, with the cooperation of ICE, will not tolerate the hiring of illegal immigrants in this county," said County Executive John R. Leopold said. Col. James Teare Sr. said officers were pulled from other details in all areas of the department to help with the operation. "This is a coordinated effort that was well planned out," Teare said.

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A Fort Lauderdale federal judge sentenced a former US Immigrations and Customs Enforcement agent to seven years in prison this month for forcing a female detainee in his custody to have sex with him at his home, according to *The South Florida Sun Sentinel.*

Wilfredo Vazquez, 35, pleaded guilty in April to two counts of sexual abuse, admitting he brought the woman to his home in September 2007 while transporting her to a Broward County holding facility for deportation to Jamaica.

Vasquez had volunteered to transport the detainee between two Miami-Dade County ICE processing centers, according to court records. In exchange for allowing the detainee to use his cell phone to make personal calls, Vasquez requested sexual favors. When she protested, he drove her to his house and demanded sex. The woman later told authorities that she was afraid to resist, as Vasquez had a firearm on him.

Vasquez initially denied having sexual contact with the woman, according to court records. However, her story convinced authorities because she was able to describe the route to Vazquez's residence and the home's interior. A review of SunPass records for the vehicle Vazquez drove while transporting the woman confirmed that he exited the Florida Turnpike en route to his home.

US District Judge William Dimitrouleas called the incident a "horrific crime" that sent a terrible message to people in US custody. The woman, identified in court records as M.C., did not attend the hearing; she sent a letter to Dimitrouleas, recalling the experience as causing "lingering shame, emotional distress, pain, and guilt. Whatever sentence this Court imposes will be far lighter than the nightmarish existence that I must endure for the rest of my life."

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5. News From the Courts

Does New York State have the right to restrict legal but non-permanent resident healthcare professionals from practicing there? According to *The Daily Record of Rochester,* in a recent decision by the US District Court for the Western District of New York, it doesn't. Regarding *Kirk v. New York State Department of Education*, Judge Charles J. Siragusa held that Edcuation Law Sect. 6704 requirements restricting permanent licenses from visiting veterinarians, who aren't citizens or green card-holding permanent residents, are unconstitutional.

The decision allows Simon Kirk, a Canadian-born vet, to continue his practice with Animal Hospital of Pittsford, NY. Kirk, who specializes in emergency veterinary medicine, interned and worked at the facility for the past four years under a non-renewable temporary license. Without the ruling, he would have lost his ability to practice at the end of July.

In his decision, Judge Siragusa found the state requirements to be in violation of the Constitution's equal protection clause, which prohibits discrimination on the basis of race, gender, nationality, and other factors. Aliens have long been held by courts to be a protected class, but some courts have ruled that there may be a difference between permanent resident aliens and non-permanent resident aliens. In *Kirk*, Judge Siragusa ruled such a difference is not valid.

He further found that the restrictions violate North American Free Trade Agreement (NAFTA) provisions and, therefore, the Constitution's supremacy clause, which invalidates state legislation that conflicts with federal laws and treaties. While Kirk does not have a green card, he does have a work-related TN Visa issued through the treaty. NAFTA allows those who hold such visas to work and live in other member countries as long as they do not plan to reside there permanently. Conversely, New York's legislation prohibits permanent licenses to those who do not intend to stay her permanently, Judge Siragusa noted.

"In the court's view, these statutes are in conflict," the decision said. "By requiring the plaintiff to become a US citizen or obtain Permanent Resident Alien status, Education Law 6704(6) imposes an additional burden on him that apparently was not contemplated by NAFTA."

Kirk's attorney, Margaret Catillaz, said she believes the decision will have strong implications on the state. New York is one of only a few states requiring veterinarians, pharmacists, dentists, dental hygienists and other persons in healthcare to be citizens or permanent residents in order to obtain permanent licenses – as a result, the state has experienced shortages in many of these professions. "As a community, we struggle to recruit and retain this kind of talent, yet we're closing the door in their face, said Catillaz. "Forty-seven other states are saying 'Please, come in.'"

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6. News Bytes

A government estimate released last week reveals that the number of Mexican-born immigrants who became US citizens swelled by nearly 50% last year, an increase attributable to a massive campaign by Spanish-language media and immigrant advocacy groups to help eligible residents apply for citizenship. *The Los Angeles Times* reports that 122,000 Mexicans attained citizenship in 2007, up from 84,000 from the previous year. The number of citizenship applications filed doubled to 1.4 million last year.

Mexican immigrants, who have had historically low rates of naturalization compared to other countries' immigrants, have defied historical trends the past year; Hispanic advocates attribute the positive statistic to the ever-growing issue of undocumented immigration. "Immigrants are tired of the tone and tenor of the immigration debate, which they feel is humiliating and does not recognize their contributions," said Rosalind Gold of the National Assn. of Latino Elected and Appointed Officials' Educational Fund in Los Angeles. That climate has fueled their desire to have their voices heard.

The increase in Latino citizens could affect the political landscape in November, according to analysts. Louis DiSipio, a UC-Irvine political science professor, said one of the biggest impacts could be in Florida, a key battleground state that posted 54,500 new citizens last year, adding that the typically conservative-leaning Cuban population of the state has been outnumbered by other Latin American citizens; for the first time this decade, more Florida Latinos were registered as Democrats than Republicans, according to DiSipio.

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After numerous delays, the Bush administration announced last week that it plans on moving forward to admitting as many as 27,500 endangered Iraqis who have rendered "faithful and valuable service" to the US since the invasion of Iraq. According to *The Houston Chronicle*, the Department of Homeland Security has been authorized to admit up to 5,000 additional Iraqis in each of the next five years who face "an ongoing serious threat" stemming from their ties to US forces. These numbers are a far cry from the previous visa limit, 500 Iraqis in each of the past two years.

The announcement implements congressionally mandated changes from House members who have long pressed the White House to admit Iraqis imperiled by their roles as translators for the US military. Some critics have accused the Bush administration of resisting the admission of large number of the refugees because it

would signal setbacks in Iraq. But DHS Secretary Michael Chertoff defended the delays, citing concerns that terrorists might sneak into the US as refugees, as well as the logistics and personnel challenges of interviewing thousands of refugees in Syria and Jordan.

Amid criticism from House and Senate members, the administration have dramatically stepped up Iraqi refugee screening and admissions over the past year, even before expanding the separate program to grant admission to Iraqis with US ties. Since Oct. 1, immigration officials have interviewed at least 14,376 Iraqis for admission, approved at least 9,903 Iraqis for resettlement, and admitted at least 4,872 – almost five times the rate by authorities the year before.

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Over 170,000 Oregon jobs and $17.7 billion in annual state production could be lost if a proposed federal immigration rule were enacted, says a study released by a coalition of 20 Oregon employer associations. According to Oregon's *The Forest Grove News Times*, the study was commissioned by the Coalition for a Working Oregon, an organization that includes Oregon's Farm Bureau, Restaurant Association, and Association of Nurseries, and represents over 300,000 state employees.

The proposed "No Match" rule, designed to locate and remove undocumented workers from the country, will significantly reduce the number of jobs in the state, says Oregon State University resource economics professor/Coalition study director William Jaeger. Additionally, by driving out the estimated 100,000 undocumented workers in Oregon without having a contingency plan to replace them, the impact on state businesses will be devastating, according to Jeff Stone, director for the Oregon Association of Nurseries. "The time is here and now for us to stand up and be the voice of reason in this debate," said Stone.

Jaeger gathered data for the peer-reviewed study by researching previous national studies on undocumented immigrants. In addition to the job losses and lost revenue, Jaeger also found that state tax revenues would decrease by nearly $600 million. His analysis further shows that within the next couple of years, with full "no match" rule enforcement, Oregon could lose 76,000 domestic workers – 7.7% of Oregon's workforce.

The economic report is available online at: http://www.oregoncanwork.org.

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An immigration activist is questioning the White House decision to give foreign nationals with HIV/AIDS a special waiver to obtain short-term visas to enter the country, *OneNewsNow.com* reports. William Gheen, president of Americans for Legal Immigration PAC, takes issue with the move, in which President Bush directed the Secretary of State to provide a categorical waiver for HIV-positive people wishing to enter the US, in an effort to create a more streamlined process.

"Whether you feel that people with HIV should or should not be allowed into the country for treatment or short-term visas – regardless of how you feel about that – that should be debated by the American public [and] debated in Congress. Bush is playing king again," said Gheen, warning that easing restrictions on AIDS visas will open the floodgates for those individual to come to the US. "It says that the

president is ordering a short-term visa – a blanket waiver – which means people who might have been looking to immigrate to the US can now actually use the HIV-positive status to obtain a short term visa," Gheen contends.

The president, according to Gheen, overstepped his authority in issuing this directive. Gheen believes granting short-term visas, even for people with infectious diseases like AIDS, would be more tolerable if Immigration and Customs Enforcement (ICE) officials were doing their job of deporting those who overstay their visas.

The discussion is likely to become moot, however, since the Senate this week approved a measure removing HIV as a bar to admission to the US.

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7. International Roundup

Libya called on the European Union to revise new rules against illegal immigration last week, saying it would urge African Union members to take action if the EU stuck by measures that treated African migrants as criminals, reports *Reuters*.

EU ministers have backed French proposals for a European pact to stem undocumented immigration and attract highly skilled job-seekers, weeks after the EU decided undocumented immigrants could be detained for up to 18 months and face a 5-year re-entry ban.

"Africa will not accept any law based on repression and in dealing with African migrants, including children and disabled people, as criminals," Libya's Foreign Ministry said in a statement carried by the official Libyan news agency Jana. "If they insist to keep the stand unchanged, Libya will consult with other African Union members to study this (EU) law and its repercussions and take a unified position on the move," the ministry said.

The European Commission estimates there are up to 8 million undocumented immigrants in the 27-nation European Union. More than 200,000 were arrested in the EU in the first half of 2007 with just under 90,000 expelled.

The 18-month detention limit is longer than the current maximum period in two-thirds of the EU states. Although EU states can keep a lower limit if they want, rights groups say it will encourage authorities to lock up more illegal immigrants.

Under the migration pact, to be finalized in October, EU states pledge to expel more undocumented immigrants while promoting legal migration and a common asylum police by 2010.

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According to *The Brisbane Times*, sixteen desperate Nigerian jobseekers died and 21 were seriously injured during recruitment exercises across the country for the immigration service. In Enugu, South-East Nigeria, the victims died in an exercise to open a gate, the Controller of Nigeria Immigration Service (NIS) in Enugu State, David Paradang, said last week.

An eyewitness told Deutsche Presse-Agentur that 500 candidates were told to race to a venue and that only the fastest would be considered for the next stage of recruitment.
'We found the place locked and decided to try to force the gate open...but many passed out in the process,' he said.

An additional twelve people died across the country yesterday during the fitness exercises, including a pregnant woman.

The immigration service was screening 197,000 applicants jostling for 3,000 jobs.

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8. Legislative Update

This month, Missouri Governor Matt Blunt signed legislation that creates new restrictions on undocumented immigrants, as well as new requirements for business that employ them. *Forbes* reports that under the state's immigration legislation, applicants for food stamps, housing and other public benefits will need to prove they are US citizens; the Highway Patrol will need to seek special federal immigration training; commercial driver's license tests will be given in English with no translation assistance; and cities would risk state aid and grants if community leaders adopt policies to not cooperate with federal immigration authorities.

Though the immigration bill passed the state legislature with little opposition, a particular provision came under scrutiny: how best to implement a strategy to ensure that employer's follow the new law. Lawmakers initially sought to require everyone to use E-Verify, but this was met with resistance from business leaders, pointing to database errors and uncertainty about the system's future; they accused lawmakers of trying to turn the state's employers into immigration agents. E-Verify, which has been plagued with numerous problems since its 1996 creation, and its state-by-state adoption has been less than favorable; some states, most recently Illinois, excluded E-Verify in its latest legislation regarding immigration enforcement.

In addition to deciding whether to require employers to use the federal database, Missouri lawmakers also battled over whether to punish employers who misclassify their workers as contractors. For contractors, employers don't have to pay withholding taxes, provide other benefits, or take responsibility if the worker is an undocumented immigrant. The immigration bill signed allows fines of up to $50,000 for business that misclassify workers and have at least five employees performing public works.

The content of Missouri HB1549 is available online at:
http://house.mo.gov/content.aspx?info=/bills081/bills/hb1549.html.

*****

Due to a rigorous petition campaign by Arizona business owners which concluded last week, Arizona voters will get a chance this fall to vote on key provisions of the state's employer-sanctions law, *The Arizona Star* reports. The measure contains the same penalties against employers who hire undocumented immigrants, but adds a provision that would require prosecutors to prove the owner of a company had "actual knowledge" that a worker is there illegally. The provision also seeks to provide protection from prosecution for businesses if they had taken reasonable

steps when screening prospective workers. Finally, the law seeks to bar anonymous complaints on employers to authorities, and will require a signed complaint before any investigations can begin.

The petition, titled Stop Illegal Hiring, received nearly 284,000 signatures, passing the 153,365 signatures required by Arizona to put it to a statewide vote.

Attorney Andrew Pacheco, chairman of the group that filed the initiative, said this is not a license for companies to accept bogus documents. Rather, the provision seeks to address what his group sees as a dangerous flaw in Arizona's current immigration employment legislation: determining the difference between having "actual knowledge" of illegal hires, or mere "constructive knowledge", where prosecutors currently need to show that a business owner knew, or should have known based on the evidence, that the potential employee was unauthorized. Pacheco's provision would require prosecutors to prove not just "actual knowledge"

State Rep. Russell Pearce (R-Mesa), the drafter of Arizona's current employer sanctions law, defends the existing statutory language, claiming that proof of actual knowledge "is an impossible task." He argues that the introduced provision undermines the ability for ICE agents and prosecutors to effectively do their job. By merely requiring employers to submit documents, the content or legitimacy of what is submitted is of no consequence so long as the employer claims they acted reasonably. If the new provision were to pass, "all you have to do is have documents," says Pearce. "It doesn't matter that they're good or not. This is employer amnesty."

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Middletown, NJ, mayor Gerard Scharfenberger announced in a monthly township committee meeting that the city intends on adopting an ordinance that would penalize landlords for renting to undocumented immigrants. *The Ashbury Park Press* reports that the city's proposal would require landlords to verify the legal status of all tenants and to instruct policy to notify federal authorities should a tenant be found to be undocumented.

Middletown's 2006 population increased by 5.3 percent from 2000, when it was 66,327, according to the US Census. During the same period, Hispanics in Middletown increased by 58.2 percent. Frank Argote-Freyre, director of the Monmouth County chapter of the Latino Leadership Alliance, said that given the relatively small size of Middleotwn's minority population, he questions Scharfenberger's motivation for bringing up the issue. "This will further discourage landlords from renting to anyone who looks brown," he said. "The mayor's proposal turns landlords into immigration agents."

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Last month, Democratic Sen. Dianne Feinstein introduced a private bill on behalf of an Armenian student living in California and facing deportation. Arthur Mkoyan, his parents, and his naturalized 12-year-old brother were ordered late June by ICE to

return to Armenia. The bill, if passed, would grant permanent legal residency to Arthur and his family.

Arthur's family, who entered the US on tourist visas, fled the former Soviet Union and has been seeking asylum since 1992. Arthur's father, Ruben Mkoyan applied for an asylum application that was rejected. Mkoyan appealed the the US 9th Circuit Court of Appeals in San Francisco; the court rejected his appeal, saying he was unable to demonstrate that he or his family would be in danger if they returned to Armenia.

Arthur, a 4.0 grade-point-average student, who received a scholarship offer from UC-Davis shortly before the ICE order, has drawn national media attention after *The Fresno Bee* first reported his story.

Since January 2005, congressional records show that members of the House and Senate have introduced 301 private bills. Some of these have been duplicates, carried over from one Congress to another. Many, though not all, of these private bills deal with immigrants and refugees.

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9. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

NY Times Praises Employers' Increasing Assertiveness on Immigration
First African-American Woman Billionaire Praises Immigrants
Mayors to Bush: Stop the Reform and Push Through Immigration Reform
33 Naturalized US Citizens to Compete for Their Country in Beijing
Naturalization Cases – How Long is Too Long?
Is this America's Friendliest City?
Postville Congressman Blasts DHS Over Contradictions
SHRM Responds to Insulting Blog Post by DHS Official
Hitting Americans in Their Waistline
The Air Branch? Really?
Judge Awards $25,000 in Legal Fees in Mandamus Case
Senate Lifts HIV Travel Ban
Canada Seeks to Lure Dissatisfied Highly Skilled Immigrants
Bills are Moving in Congress
DHS Attacks Nation's Human Resource Managers
NY Times Editorial Highlights Translator's Essay
Cleveland, Ohio: We Want Smart, Entrepreneurial Immigrants
$1.7 Trillion…
When People Get Creative
Pendulum Swings the Other Way in Arizona
Naturalization of Mexicans Jumps 50% in 2007
Debate over McCain's Eligibility to Become President Continues

The SSB Employer Immigration Compliance Blog

Coalition Pushes for Limited Extension of E-Verify Program
Worksite Raids Update
ICE Chief Warns Employers to Expect Tough Enforcement Through End of 2008
Governor Signs Missouri Sanctions Law
New Chertoff Blog Addresses Worksite Enforcement
Prosecutors to Target Employer in Action Rags Case
Podcast: Cato's Jim Harper Slams E-Verify
Great NY Times Article on State Business Immigration Coalitions
Four Supervisors Arrested in NC Poultry Plant Case
First Supervisors Arrested in Agriprocessors Case
ICE Targets Maryland Paint Company
E-Verify Suffers Setback in House Vote
Is ICE Being Easy on Employers?
California Lawmakers Seek to Bar E-Verify
ICE Arrests 160 Workers at Houston Rag-Exporting Company
ICE Raids Aerospace Manufacturer
Rhode Island Sanctions Bill on Life Support
DHS Claims E-Verify has Spotted 200,000 Unauthorized Workers
Grassley Introduces E-Verify Extension Bill

Visalaw International Blog

Canada: Refugee Gang Operating In Airports Busted
Canada: Alberta Courts Controversy in The UK
Canada: Panel Urges More Open Trade and Immigration
EU: Americans Taking Advantage of Dual Citizenship Rules
United States: DHS Report Card
United States: Bush Administration Orders Government Contractors to Use Electronic Verification System
Canada: Major Immigration Changes Coming Soon
Canada: Marriage Scams Rampant in India
Canada: Mayor of Border City Tries to Discourage Illegals
Canada: Audit Finds Carelessness at CBSA
Chinese Government Confirms Extent of New Visa Policies, Overseas Interns Affected
In Spite of Initial Enthusiasm China Reluctant to Broaden Scope of Green Card Scheme

Visalaw Health Blog

Rhode Island Program Retrains Foreign Health Care Workers for US Medical Migrants
Suffolk, NY Employer Sanctions Law Tossed by Court
New White House E-Verify Order to Impact Most Health Care Employers
Leading State 30 Administrator Dies
J-1 Bill Passes in House
House Conrad 30 Extension Bill Advances
AHA Endorses Wexler-Sensenbrenner Nurse Visa Bill
VA: H-1B Prevailing Wage Rules Don't apply to US
Bipartisan Nurse Bill Introduced in House

Visalaw Fashion, Sports, & Entertainment

33 Immigrants to Represent US at Olympics
Will this Post Get My Passport File Pulled?
Kobe Bryant: NBA Will Soon be Half Foreign
Boy George Denied Entry to US
Immigrant Athletes to Compete Under American Flag in Beijing
Red Sox's Ortiz Becomes a US Citizen
NY Daily News Covers Fashion Model Bill
Martha Stewart Denied UK Visa
Weiner Pessimistic on Chances for Fashion Model Visa Bill this Year
Visa Advocates Argue that Foreign Models are Job Creators
CNBC Blogger Criticizes Fashion Model Bill
Reuters: Latino Artists Reluctant to Push for Immigration Reform
Liza Minnelli Runs in to UK Visa Trouble
French NBA Star Arrested on Marijuana Charge
South Dakota College Basketball Player Faces Deportation
House Judiciary Committee Approves Fashion Model Bill
NYT: Dominican Politics Keeping Haitian Baseball Players out of US

The Visalaw.com Blog

Medical Migrants
E-Verify Proposed Rule Answers Some Questions
DHS Report Card
House Hears Testimony on E-Verify
Karen Weinstock's H-1B Book is Published
SSB Headquarters Wins Architecture Award
Greg Siskind's Slides from TBA Legal Tech 2008

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10. Campaign '08

Last week, Republican presidential candidate Sen. John McCain told the National Sheriff's Association that if elected he will require the federal government to pick up more of the costs associated with detaining and deporting undocumented immigrants who commit crimes. *The Indianapolis Star* reports that McCain, who sponsored the last year's now-dead immigration bill which offered immigrants a path to citizenship, made no mention of it at the conference, instead focusing on ways to best help law enforcement deport undocumented immigrants.

"We know as well that tens of thousands of felons – in custody and at large – entered our country illegally. Why has it fallen to sheriffs and other local officials to protect their citizens from these foreign-born felons? Because our federal government failed to protect our borders from their entry, and this serious dereliction of duty," McCain said to the estimated 2,000 law enforcement officials.

To rectify what he sees as an immigration problem, McCain touted the importance of the Criminal Alien Program, saying that while it has "made some progress in recent years," the costs burdening local and state authorities has been too great. "So as president, I will expand the Criminal Program," said McCain. "We will require that the federal government assume more of the costs to deport and detain criminal aliens."

The Criminal Alien Program was introduced by ICE officials to identify the immigration status of currently incarcerated felons, to which they are scheduled for deportation once identified. The program has come under fire from immigrant advocacy groups for exceeding its original scope, such as targeting immigrants who merely have Class C misdemeanors.

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This month, Republican presidential nominee John McCain's campaign released a new ad tailored to Hispanic audiences, *The Wall Street Journal* reports. The ad, "God's Children," is currently running in the Western swing states of Colorado Nevada and New Mexico; it features footage of McCain from a June 2007 Republican primary debate in which he extols the contributions Hispanic immigrants have made in the US, particularly through military service.

"My friends, I want you the next time you're down in Washington, DC, to go to the Vietnam War Memorial and look at the names engraves in black granite. You'll find a whole lot of Hispanic names," McCain says in the ad, "When you go to Iraq or Afghanistan today, you're going to see a whole lot of people who are of Hispanic background. You're even going to meet some of the few thousand that are still green car holders who are not even citizens of this country, who love this country so much that they're willing to risk their lives in its service in order to accelerate their path to citizenship."

The ad seeks to sway the increasingly influential Hispanic vote, which could have a significant impact on key battleground states. For McCain, the ad is one of a series of aggressive steps in appealing to Latinos: this month, McCain, along with Democratic presidential nominee Barack Obama, addressed the League of United Latin American Citizens convention in Washington DC, as well as spoke at the UNITY: Journalists of Color convention.

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11. State Department Visa Bulletin for August 2008

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **August**. 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 **July 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 calculated under INA 201 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: CHINA-mainland born, 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.)

Family	**All Charge-ability Areas Except Those Listed**	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
1st	15MAR02	15MAR02	15MAR02	08AUG92	22MAR93
2A	01OCT03	01OCT03	01OCT03	U	01OCT03
2B	01NOV99	01NOV99	01NOV99	15APR92	15MAR97
3rd	08JUN00	08JUN00	08JUN00	08SEP92	01APR91
4th	08SEP97	22SEP97	22SEP97	08JAN95	08MAR86

***NOTE:** For August, 2A numbers **EXEMPT from per-country limit** will be unvailable because the annual limit for such visas have been reached. This will only impact the processing of Mexico F2A applicants.

	All Chargeability Areas Except Those Listed	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
Employment-Based					
1st	C	C	C	C	C
2nd	C	01JUN06	01JUN06	C	C
3rd	U	U	U	U	U
Other Workers	U	U	U	U	U
4th	C	C	C	C	C
Certain	C	C	C	C	C

Religious Workers					
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

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.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105 - 139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

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-2008 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 **August**, immigrant numbers in the DV category are available to qualified DV-2007 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:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	47,000	Except: Egypt : 31,000 Ethiopia 22,800 Nigeria

		16,600
ASIA	Current	
EUROPE	Current	
NORTH AMERICA (BAHAMAS)	Current	
OCEANIA	Current	
SOUTH AMERICA, and the CARIBBEAN	Current	

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-2008 program ends as of September 30, 2008. DV visas may not be issued to DV-2008 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2008 principals are only entitled to derivative DV status until September 30, 2008. DV visa availability through the very end of FY-2008 cannot be taken for granted. Numbers could be exhausted prior to September 30.

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

For **September,** immigrant numbers in the DV category are available to qualified DV-2008 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:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	62,300	Except: Nigeria 18,450
ASIA	Current	
EUROPE	Current	
NORTH AMERICA (BAHAMAS)	Current	
OCEANIA	Current	
SOUTH AMERICA, and the CARIBBEAN	Current	

D. EMPLOYMENT THIRD PREFERENCE "OTHER WORKER" VISA AVAILABILITY

Demand for numbers will result in the Employment Third preference Other Worker category reaching the annual FY-2008 numerical limit. As a result, the category will become "unavailable" beginning in August and will remain so for the remainder of FY-2008. Such action will only be temporary, however, and the Employment Third preference Other Worker cut-off date will return to 01JAN03 in October, the first month of the new fiscal year.

E. FRAUDULENT DIVERSITY VISA WEBSITES

There have been instances of fraudulent websites posing as official US Government sites. Some companies posing as the US government have sought money in order to "complete" lottery entry forms. (To learn more, readers may want to consult the Federal Trade Commission Warning on this type of issue.) Applicants selected in the Diversity Visa random drawing are notified by the Department of State, Kentucky Consular Center by letter, NOT e-mail and are provided instructions on how to proceed to the next step in the process. No other organization or company is authorized by the Department of State to notify the Diversity Visa lottery applicants of their winning entry. All applicants selected to participate in the DV-2009 program have already been notified.

F. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:
http://travel.state.gov

From the home page, select the VISA section which contains the Visa Bulletin.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:
Subscribe Visa-Bulletin *First name/Last name*
(example: Subscribe Visa-Bulletin Sally Doe)

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address :

listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)