Siskind's Immigration Bulletin – April 1, 2009

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1. Openers

Dear Readers:

I spent the latter half of last week in Washington, DC walking the halls of Congress discussing with members of Congress and their staff the prospects for immigration reform. I'd love to be able to tell you the real story on

- When immigration reform will come up in the legislative session?
- What will be included in the reform package?
- What are the real chances for success this year?

There does seem to be a sense that we'll see an effort put forth this year and I did speak to at least one person who is actually in drafting. But there is still a great deal of uncertainty. The Los Angeles Times reported this week a possible plan to pass a great deal of the responsibility for determining employment based green card numbers to an independent commission. Unions are said to be pushing the proposal, a major departure from past reform proposals, but it is not clear how serious this proposal is or why the plan would benefit holders of any one particular view on the appropriate number of visas.

In any case, my message was the same – it's time to finally deal with immigration reform. We've made great progress on enforcing immigration laws – even anti-immigrant groups would agree with this – and conservative members of Congress can go to their constituents and accurately tell them that we are enforcing our laws and now we can move on to the next phase of immigration reform – dealing with putting the 10 million illegally present immigrants on a path to legal status and also dealing with a dysfunctional legal immigration system.

I also spent a day working on one particular bill – S.628. This bill would permanently reauthorize the Conrad 30 J-1 program and also allow physicians training on H-1B visas the opportunity to get an exemption from the H-1B cap in exchange for committing to work several years in a medically underserved American community. I, along with several other immigration lawyers from across the country, have been working for a long time on this bill with Senator Conrad's office and we're hopeful that this is the year we see this important legislation pass.

Finally, I visited USCIS' headquarters with a couple of colleagues at other firms that handle health care immigration matters and we had a very productive meeting with several policy officials at the agency and discussed some of the most pressing problems affecting health care employers.

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In firm news, I will be a panelist on an ILW.com panel on physician immigration Thursday at mid-day. If you are interested in signing up, you can register at www.ilw.com.

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I'm writing this Openers on March 31, 2009 and our office is scrambling to get our last H-1B cases out before the new quota opens tomorrow. No one knows yet what will happen, though H-1B usage is a good barometer of national economic conditions. Not surprisingly, we are expecting a major reduction in filings, but we'll have to wait and see.

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Finally, as always, we welcome your feedback. If you are interested in becoming a Siskind Susser client, please call our office at 901-682-6455 and request a consultation. We are a national immigration law firm and work on a broad range of immigration matters for clients locating across the country.

Kind regards,

Greg Siskind

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2. The ABC's of Immigration, Employer Compliance Series: Electronic I-9 Systems

For the past few years, employers have been eligible to file and store Forms I-9 electronically. As the national crackdown on employers of illegal immigration grows more intense and a number of vendors are now offering electronic I-9 products, employers are starting to weigh the benefits of ditching paper I-9s and going digital. This article first discusses the laws surrounding filing and then reviews why companies would want to make the switch.

Can a Form I-9 be completed electronically?

In October 2004, President George W. Bush signed Public Law 108-390 which for the first time authorized employers to retain Employment Eligibility Verification Forms (Forms I-9) in an electronic format. In April 2005, the law took effect and employers began to manage their Forms I-9 electronically. ICE issued rules setting standards for using electronic I-9s in June 2006 (8 CFR §274a.2) and the agency is actively encouraging employers to store their Forms I-9 electronically.

Why would companies want to switch to electronic I-9 systems?

There are numerous reasons why companies would prefer electronic I-9s over paper-based systems.

- Most of the major vendors use web-based systems. That means employers do not have to install software and only need Internet access and a web browser.
- Employees are not able to complete the Form I-9 unless the data is properly entered. Many vendors offer systems that guide workers and human resource officials through proper completion of the forms.

- Some of the systems are “intelligent” and ensure that based on answers provided in Section 1 of the Form I-9 only appropriate documents show up in Section 2.
- Some systems allow for certain sections of the form that are the same from applicant to applicant to be pre-filled to save time.
- The better electronic I-9 systems include help features that make it easier for human resource officials and employees to answer questions on the Form I-9.
- Employers with employees at multiple sites can more easily monitor I-9 compliance at remote locations.
- Re-verification is automated and employers are less likely to incur liability due to an inadvertent failure to update an employee’s I-9. Many systems send email reminders.
- Employers can integrate the system with E-Verify or other electronic employment verification systems in order to minimize the chances that unauthorized workers end up employed.
- Using an electronic I-9 system reduces the risk of identity theft from the robbery of paper I-9 records (a problem that has been occurring with more frequency of late). By law, electronic I-9s must have built in security systems to protect the privacy of employees and the integrity of the data.
- Using an electronic I-9 system can make it easier to respond to ICE audits. In addition to the audit trails required by regulation, some of the systems archive communications relating to the I-9.
- Electronic I-9 systems can integrate with payroll and employee database systems.
- Data from the electronic Form I-9 can be automatically uploaded in to E-Verify, the government’s electronic employment verification system. Several electronic I-9 vendors are federally approved E-Verify Designated Agents thus allowing for them to automate the entry of an employer’s data in E-Verify.
- An electronic I-9 system allows for the automation of the purging of Forms I-9 for employees no longer with the employer and for whom Forms I-9 must no longer be retained.
- Some of the systems contain instructions in multiple languages for employees that have difficulty understanding English.
- Employers can potentially achieve cost savings by storing Forms I-9 electronically rather than using conventional filing and storage of paper copies or converting paper forms to microfilm or microfiche.
- Electronically retained I-9s are more easily searchable and, hence, often a time saver for HR personnel. The better systems produce a variety of reports that make it easier to monitor I-9 compliance.
- Some of the systems also track visa and I-94 expiration dates.

Are there downsides to using an electronic I-9 system?

There are some potential problems with using a digital system. They include the following:

- There are no 100 percent secure electronic systems (though the law requires electronic I-9 vendors and their employer customers to implement security measures).
- The electronic systems do not totally stop identity theft since a person can present doctored identification and employment authorization paperwork

making it appear that the employee is another person (though employers can undertake additional background checking to reduce the likelihood of problems).
- The cost of a paper I-9 form is free (aside from indirect costs like storage, training, etc.). Electronic systems typically charge a flat monthly fee or a per employee fee (though the per employee costs are usually no more than a few dollars with any of the major vendors).
- Most I-9s are Internet dependent. When the Internet is not available, the I-9 form may not be able to be completed (though an employer may be able to use a paper I-9 in such a case).
- If an electronic I-9 vendor goes out of business, the employer could be in a bind if precautions are not in place to make it easy to retrieve the employee's data (such as having back ups on the employers own computer system).

What requirements must electronic I-9 systems meet?

The 2006 rules set standards for completing forms electronically and also for the scanning and storage of existing I-9 forms. Since the change in the law a number of software products have come on to the market allowing for the electronic filing of I-9s and there are advantages to using such a system including improving accuracy in completing forms and setting up automated systems to prompt employers to re-verify I-9s for employees with temporary work authorization.

DHS regulations require I-9s generated electronically to meet the following standards:

- The forms must be legible when seen on a computer screen, microfiche, microfilm or when printed on paper.
- The name, content and order of data must not be altered from the paper version of the form.
- There are reasonable controls to ensure the accuracy and reliability of the electronic generation or storage system.
- There are reasonable controls designed to prevent and detect the unauthorized or accidental creation, deletion or deterioration of stored Forms I-9.
- The software must have an indexing system allowing for searches by any field.
- There must be the ability to reproduce legible hardcopies.
- The software must not be subject to any agreement that would limit or restrict access to and use of the electronic generation system by a government agency on the premises of the employer, recruiter or referrer for a fee (including personnel, hardware, software, files, indexes and software documentation).
- Compression or formatting technologies may be used as long as the standards defined above are met.
- There is a system to be able to identify anyone who has created, accessed, viewed, updated, or corrected an electronic Form I-9 and also to see what action was taken.

Employers that know or should reasonably have known that an action or lack of action will result in loss of electronic Form I-9 records can be held liable under IRCA.

Employers may use more than one kind of electronic I-9 system as long as each system meets the standards noted above.

Employers using an electronic I-9 system must also make available upon request descriptions of the electronic generation and storage system, the indexing system and the business process that create, modify and maintain the retained Forms I-9 and establish the authenticity and integrity of the forms, such as audit trails. The I-9 software vendor should, of course, provide such documentation to the employer, though this is not a requirement in the regulations.

There are special audit requirements for electronically stored I-9s and a discussion of those requirements is set out below in the section of this chapter discussing the regulation of government inspections.

How is an electronic Form I-9 "signed" by an employee and employer?

DHS regulations require that electronic I-9s can be "signed" electronically through a system where the person providing the information will acknowledge that he or she has read the attestation.

The signature must be affixed to the document at the time the attestation is provided. The form must also be printed out and provided to the person providing the signature at the time the document is signed. This applies to the employee as well as the employer, recruiter, or referrer for a fee.

What are the Form I-9 recordkeeping requirements for electronic I-9s?

Employers must keep I-9 Forms for all current employees though the forms of certain terminated employees can be destroyed. In the case of an audit from a government agency, the forms must be produced for inspection. The forms may be retained in either paper or electronic format as well as in microfilm or microfiche format.

What privacy protections are accorded workers when they complete Form I-9 electronically?

Employers with electronic I-9 systems are required to implement a records security program that ensures that only authorized personnel have access to electronic records, that such records are backed up, that employees are trained to minimize the risk of records being altered, and that whenever a record is created, accessed, viewed, updated, or corrected, a secure and permanent record is created establishing who accessed the record.

How does an employer who uses an electronic I-9 system respond to an ICE audit?

Original I-9 forms must normally be provided for inspection to ICE examiners. If an employer retains Forms I-9 in an electronic format, the employer must retrieve and reproduce the specific forms requested by the inspecting officer as well as the associated audit trails showing who accessed the computer system as well as the actions performed on the system in a specified period of time. The inspecting officer must also be provided with the necessary hardware and software as well as access to personnel and documentation in order to locate, retrieve, read, and reproduce the

requested Form I-9 documentation and associated audit trails, reports, and other related data.

Finally, an inspecting officer is permitted to request an electronic summary of all of the immigration fields on an electronically stored Form I-9.

Can a company using an electronic I-9 system batch load data to E-Verify?

Yes. DHS has a real-time batch method that requires a company develop an interface between its personal system or electronic Form I-9 system and the E-Verify database. Employers interested in more information on this including design specifications, should call ICE at 800-741-5023.

Can employers convert existing I-9s in to an electronic format?

Yes. Many employers are scanning and indexing their current I-9 Forms and storing them electronically using electronic I-9 software.

Where can I find out which companies offer electronic Form I-9 products and services?

Links to vendors can also be found at the author's employer compliance blog at http://www.visalaw.com/blog_i9/blog_i9.html.

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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.

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Q - I am starting the visa application process for my husband, who is a Mexican citizen and currently lives in Mexico. Several years ago, he was in the United States illegally and was twice detained by the Border Patrol and twice removed by voluntary repatriation, or expedited removal.

He doesn't have any documents from these removals and I want to file a Freedom of Information Act request with the Border Patrol to get any information they have. We need the documents to apply for reentry permission/a waiver.

A - When you send a FOIA request in to the Customs and Border Protection you can ask to receive a copy of the entire file.
Instructions for making a FOIA request to CBP can be found at
http://www.cbp.gov/xp/cgov/admin/fl/foia/making_a_request/reference_guide.xml.

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Q -People in the USA can 'sponsor' (to show financial support) a B1/B2 non-immigrant visa applicant. Does the 'sponsorship" by a US Citizen help in any way towards a favorable decision on the B1/B2 application?

My understanding is that (1) the "sponsorship" is only to provide financial support to the Non Immigrant Visitor, whilst in the US and (2) the decision on whether to approve a B1/B2 visa is based on the applicant providing sufficient proof, to convince the consular official, so that a visa is approved.

This is for a relative (unmarried), who had filed for a green card through her parents and was denied due to "age-out" (i.e. applicant turned 21 years before parents application were approved) about three years ago.

A - An affidavit of support in a B-1/B-2 application can be helpful when a person needs to be able to document that they are not going to need to resort to illegal work in the US during their visit. The applicant will still need to demonstrate to a consular officer that he or she is not an intending immigrant and having close family members who are green card holders or citizens could be viewed as a negative factor. The applicant will need to show strong evidence that there are solid ties to the home country giving a person a good reason to go home. I would discuss the case with an immigration lawyer before seeking the visa since the first try for a visitor visa is usually the one with the best chance of success.

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Q - I'm in the process of filling out my N-400 application (I've been on a green card for almost 5 years) in which they ask for employment dates. My green card was approved in 9/04, but I was laid off at the end of 7/04 and didn't get a new job until 10/04. My attorney at the time said: no problem, your process is far enough along. But is this period of unemployment when I was, I'm guessing, out of status, going to be an issue with my naturalization?

A - Unemployment is really irrelevant in a naturalization case if you were laid off. It's really only an issue if you were an employment-based green card holder and quit your job right after getting the green card. That was not the case with you.

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Q - Is it illegal for an F1 visa holder in the United States to buy lottery tickets? What happens if she wins a substantial sum?

A - There is no bar to buying lottery tickets just because you are on an F-1 visa. And winning would not create an immigration problem.

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Q - Do you have any idea where my son born Dec. 1990 could get information about possibly giving up his US citizenship? He was born and raised in Germany. German father, American mother.

A - The process is outlined at
http://travel.state.gov/law/citizenship/citizenship_776.html.

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4. Border and Enforcement News

According to *The Imperial Valley News*, two former Border Patrol agents were arraigned last week on 18 counts of smuggling, money laundering, witness tampering and bribery. Raul & Fidel Villarreal, brothers and former agents, along with two co-conspirators, were extradited from Mexico and taken into custody in Tijuana in October 2008. The arrests are the result of a two-year investigation conducted by ICE.

According to the April 2008 federal grand jury indictment, the defendants allegedly operated an immigrants smuggling operation between 2005 and 2006. The Villarreal brothers picked up undocumented immigrants from their contacts at the border, transporting them into US in official Border Patrol Vehicles.

"This arrest is a reminder for criminals to think twice before fleeing the United States to evade prosecution and punishment for crimes they have committed here," said Miguel Unzueta, special agent in charge of the ICE Office of Investigations. "ice works closely with law enforcement agencies in Mexico to ensure our border will not be barriers to bringing serious criminals to justice."

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An immigration advocacy group has filed a lawsuit against of the Department of Homeland Security, claiming that in 2007, ICE agents arrested a group of 24 Hispanics in the parking lot of a 7-11 in Baltimore because they had to meet arrest quotas. *The Latin American Herald Tribune* reports that CASA de Maryland wrote the complaint alleging that after the arrests, there were contradictions among the sworn statements given by the arresting agents.

"First they said that they went to buy something because they were hungry and the immigrants came up to them and said they were looking for work," whereupon the agents arrested them, said Mario Quiroz, spokesman for CASA de Maryland. But the store's surveillance tapes, to which the organization had access to, show three agents arresting immigrants without even an exchange of words. "They arrested some who were inside and others who were waiting for the bus on the street to the side," said Quiroz, adding that the agents only arrested people who had Latino features.

According to CASA de Maryland, the agents had just finished their shift and because they had not fulfilled their detention quotas, they targeted a place frequented by Hispanic workers. "Desperation to reach a monthly quota" motivated the ICE agents to conduct these arrests "with the only criterion being that (the people they arrested) resembled Hispanics," said the organization.

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The US Border Patrol announced that it will poison plant life along a 1.1 mile stretch of the Rio Grande riverbank to eliminate the dense foliage used by suspected undocumented immigrants to hide, *The Associated Press* reports. If successful, the

$2.1 million project, estimated to begin next week, could extend as far as 130 miles of river in the heavily-travelled Laredo Sector, as well as other points along the US Mexico Border.

As with many of their initiatives, the program has been met with criticism from local government officials and Mexican representatives. Members of the Laredo City Council have raised concerns about the spraying program, and have called upon Mexico President Felipe Calderon to intervene. Mexican officials have raised concerns, warning that the herbicide could threaten the Nuevo Laredo water supply, a vital resource for much of the farming and livestock in the area.

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In an effort to further deter drug and weapon smuggling across the US-Mexico border, US Border Patrol has begun to implement X-ray detection technology on their vehicles, *The Associated Press* reports. The surveillance system, utilizing the same image-sculpting technology tested at some US airport terminals last year, will be used by Border Patrol to check vehicles for hidden compartments and contraband. "This is closer to the vehicle cargo inspection systems used at most ports of entry," said agent Don White. "It uses nonintrusive inspection technologies."

When first unveiled at airports, this incredibly accurate x-ray technology has faced criticism from those who argue that they are an unacceptable invasion of a person's privacy. "I continue to believe that these are virtual strip searches," said Barry Stenihardt, technology director for the ACLU.

The first of the vehicle-mounted devices has been in use since Feb. 13 at the heavily-trafficked Tucson sector. Three additional devices have been earlier this month. So far, the device in use along I-19 has detected over 1,500 pounds of marijuana hidden in gas tanks, in tractor trailers and other compartments. Border Patrol also attributes the devices to help nab five undocumented immigrants in a hidden compartment beneath a transport truck.

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While most know that ever-expanding fence between the US-Mexico border is intended to be a physical barrier, US Border Patrol is optimistic of the border's *other* physical barrier. *The Associated Press* reports that a 12-foot deep, 100-yard long underground concrete wall was built between Nogales, Ariz. & Nogales, NM, replacing a drainage system popular with drug smugglers. Ever since the construction of the underground wall, this border route no longer became an option.

"Organizations were breaking out of the main tunnel and digging 5 feet and going north," Border Patrol Omar Candelaria said. "The barrier was built to the west of the port in the area where we've had most of our tunnels," indicating that since the wall was built, there has not been a single tunnel found. Candelaria said patrol officials are evaluating how the barrier works, but have no plans yet for expanding it elsewhere. "As we get better, they look to different alternatives to get their product across the border, and the Border Patrol is always looking for ways to make sure that we keep that stuff out of the United States," he said.

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5. News From the Courts

Ravix v. Mukasey (1st Circuit Court of Appeals, 3/16/09)

Petitioner, her husband, and their two children, are natives of Haiti, and seek review of the decision of the Board of Immigration Appeals (BIA) dismissing their appeal from the decision of an immigration judge (IJ) denying their claims for asylum, withholding of removal, and relief under the Convention Against Torture (CAT) and reinstating an order of voluntary departure.

Petitioner and her husband were member of the Parti Louvri Barye (PLB), which was opposed to Haiti's then-ruling Lavalas party. Petitioner's husband ran as the PLB candidate in the 2000 national election. On October 28, 1999, petitioner's husband, returning from a political meeting, had his bus stopped. He got out and was struck in the head by a stone. He was told by friends that the attack was politically motivated by a pro-Lavalas gang. In March 2000, Petitioner's husband was fired from his job after making an anti-Lavalas speech. Petitioner testified that around this time, she was subject to verbal abuse. On May 21, 2000, after the 2000 election, pro-Lavalas members showed up to Petitioners' house. The family fled their home; Petitioner went to live with her parents while her husband travelled to continue his political career. Petitioner visited the US on behalf of the PLB on two occasions in September 2000 and January 2001, returning to Haiti both times.

In February 2001, petitioner's family moved back home; during the same month, a Lavalas member was elected president. After receiving more threats upon their safety, petitioner's husband fled to the US as a visitor permitted to remain until November 28, 2001. Although the petitioner returned to Haiti two weeks later, her husband has yet to leave the US & has not filed for asylum. Upon her return, petitioner continuously received threats upon her, her husband's, and her children's lives. On October 1, 2002, petitioner and her children entered the US, admitted as nonimmigrant visitors until March 30, 2003. Petitioner filed a timely application for asylum, naming her and the children on the application.

Petitioner and her family were charged with remaining in the US longer than permitted, under 8 USC §1227(a)(1)(B). Petitioner's family conceded their removability status, but sought asylum, withholding of the removal, relief under the CAT, or in the alternative, voluntary departure. The IJ denied all relief save voluntary departure, but issued a supplemental decision withdrawing his grant of voluntary departure as the petitioner rescinded the request for it. The BIA affirmed and reinstated the voluntary departure rescind.

Regarding the asylum claim, to show entitlement to asylum, petitioner had to establish "a well-founded fear of future persecution on account of…political opinion," under 8 USC §1101(a)(42)(A), and that a "showing of persecution gives rise to a rebuttable presumption of future persecution." The court found the petitioner's persecution to be credible, but that the events they recounted did not rise to the level of past persecution. Specifically, the threats to the petitioner were not due to her own political activities but to those of her husband, and that she was never personally harmed.

The court further found that the petitioner did not have a well-founded fear of persecution that was objectively reasonable. The facts show that her husband could be regarded as in hiding following the May 2000 election since he continued to publicly participate in political activity. Further, after the election, her husband

traveled to the US but did not seek asylum. In addition, while political conditions in Haiti remained unstable for the duration of the factual background, the Lavalas party is no longer in power and democratic elections have been held.

Being ineligible for asylum, petitioner's family could not meet the higher withholding of removal standard. The CAT claim was properly rejected by the IJ for lack of evidence of any threat of torture. On appeal, the BIA concedes that the voluntary removal direction was erroneous because "[v]oluntary departure may not be granted unless the alien requests such voluntary departure and agrees to its terms and conditions," under 8 CFR §240.25(c).

As a result, the petition for review was denied except for the provision ordering voluntary removal be stricken.

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6. News Bytes

Signaling a further trend in decreased immigration, USCIS announced that the number of citizenship applications dropped sharply between 2007 and 2008. *The Dallas Morning News* reports that in fiscal year 2007, a record 1.4 million legal permanent residents applied to become naturalized US citizens; by fiscal year 2008, the number of citizenship applications dropped to about 518,000. "We are seeing the effect of the economy," said deputy director Michael Aytes. "[But] we are particularly concerned about naturalizations."

The drop can be attributed to a number of factors, such as economic downturn, tougher immigration ordinance, or the sharp increase in filing fees. "In July 2007, the government raised their filing fees by 60%," said Steve Ladik, former president of the American Immigration Lawyers Association. "In this economic climate, it is the fees that have reduced demand." The fee increase has even affected the coveted H-1B category, where federal filing fees can cost up to $3,320 per application. "Many high-tech companies haven't stopped filing, but they have probably slowed down their rate of hiring," Ladik said.

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Labor Secretary Hilda Solis announced last week that she wants to reassess the rules set forth by the Bush administration that changed the nation's guest farm worker program. According to the *Associated Press*, the overhaul by the former president was intended to make it easier for farmers to hire foreign field workers. The rules have faced criticism from many in the industry: farm worker advocates argue that the changes would lower wages in the fields and erode labor protections; growers argue that the rules do not streamline the process or provide the comprehensive immigration reform they had hoped for.

Solis announced that she will suspend the new rules for the program for nine months so her department can further review and reconsider their options. The proposal to suspend was made official last week, and is currently in the 10-day public comment stage.

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Immigrant Advocate groups Human Rights Watch and Florida Immigrant Advocacy Center (FIAC) recently released respective reports, both highlighting the routine delays, denials, or inadequacies in medical care for immigrants in detention, *The Associated Press* reports. Both reports blame ICE for hiring unskilled or indifferent staff, overcrowding, language barriers, and limited services available to detainees.

Both groups argue that alternatives to detention, such as requirements to check in by phone or in person, are "more human" and could cost taxpayers as little as $12 a day, compared with $95 a day to keep someone in immigration custody. They also argue that many medical problems could be avoided if ICE did not lock up people who are elderly, have health issues, or lack criminal records. "ICE needlessly detains people with severe illnesses and those who pose no harm to US communities. Doing so drives up ICE costs even as the agency provides increasingly inadequate medical and mental health care to those in its custody," said FIAC executive director Cheryl Little.

Human Rights Watch emphasized that female detainees are especially at risk, because commonplace reproductive health issues do not receive adequate attention in a system that emphasizes emergency care. Women told the group's researchers that they had been shackled while pregnant, missed appointments for mammograms and pap smears, or failed to receive prenatal care while in immigration custody. "This overall approach, as well as specific restrictions on pap smears, hormonal contraception, and access to specialist care, undermined the health of a number of women," according to the Human Rights Watch report.

Both groups allege that inadequacies in medical care may have contributed to the deaths of some detainees in ICE custody. According to ICE, 77 immigrants have died in detention in the last five fiscal years, although they do not specify the causes of any deaths.

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This week, President Obama signed an executive order extending the Temporary Protected Status of approximately 3,600 Liberians, allowing them to continue living in the US for an additional 12 months, *The Associated Press* reports. The 18-month extension issued by former President Bush was set to expire on March 31, with advocates for the Liberians hopeful for Congress to reach a more permanent solution. Liberians "have contributed to our society for more than a decade, becoming active members of our communities and providing for their families," said Rep. Patrick Kennedy (D-RI) of the extension. "I am pleased that the president has acted to preserve their status here, preventing a grave injustice."

More than 250,000 Liberians currently live in the United States, stemming from a series of TPS extensions. Bush announced the 2007 extension would be the last one, as the Liberian civil wars that warranted the initial TPS status have since ceased. Liberian supporters have long argued that although the quality of living in the African nation has improved, it is still a dangerous environment with high unemployment, inadequate infrastructure and electricity, among other problems.

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One of the largest Hispanic groups in the US has expressed its disappointment over President Obama's nomination for head of the Justice Department's civil rights division. According to *The Los Angeles Times*, the criticism from the National Council of La Raza isn't directed towards who Obama selected, but rather, who he *didn't* select. Many Hispanic advocates were hopeful that the administration would select Thomas Saenz, advisor to Los Angeles Mayor Antonio Villaraigosa and leading contender for the DOJ position, wasn't selected for the job.

Supporters of Saenz allege that the snub relates to his strong advocacy for immigration rights, and may indicate that President Obama is hesitant to touch the issue of immigration. "This action may lead some to question whether the White House is ready to fulfill its promise on immigration reform," said La Raza president Janet Murguia.

Saenz, a former vice president of litigation for the Mexican American Legal Defense and Educational Fund (MALDEF), has pushed for anti-discrimination protection from Border Patrol sweeps. When the rumor circulated that he would be picked for one of DOJ's top spots, prompted opposition from anti-undocumented immigration groups.

The nominee the Obama administration did choose is Thomas Perez, Maryland's secretary of labor and a first-generation Dominican-American. Perez, despite his involvement with immigrant advocacy groups CASA de Maryland and National Immigration Forum, has made virtually no public statements regarding immigration reform.

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USCIS announced that, for fiscal year 2009, it plans to distribute $1.2 million among community organizations that assist applicants through the procedures of obtaining citizenship, *The Latin American Herald Tribune* reports. USCIS officials insist that the services of these organizations must concentrate on providing education in English, history and civics, and require both a written exam and an interview with USCIS officials. The funds are intended for these organizations to buy books, set up computers and language programs, and to train personnel and volunteers who work in services dedicated solely to obtaining citizenship.

As to which organizations get funding, this remains still undecided. "This donation won't cover a lot since it has been divided into 12 parts of $100,00 each and the competition among community agencies to get their share will be tough," said Mina Torres of the Catholic Legal Immigration Network. "These funds should also be taken by local agencies as training, since when immigration reform is approved, at local levels these organizations will have a lot of work to do helping legalize the immigration status of thousands of undocumented aliens," she said.

The USCIS initiative will give priority to organizations that offer citizenship services to people over 65 years old, eligible refuges and exiles, as well as any groups facing difficult economic circumstances.

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7. International Roundup

According to *The Telegraph*, the UK's Office for National Statistics announced that over 1 million immigrants moved to the UK between 2004 and 2007, attracted by the strong economy and the easy availability of low-skilled jobs that Britons did not want to take. Its analysis of the Annual Population Survey showed that the numbers of people living in the UK who were not born here rose by 21% between 2004 and 2007, from 5.2 million to 6.3 million.

Much of the increase came from residents of the 'A8' countries that joined the EU in May 2004 – the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. Of these, two thirds were Polish, making Poland the third most common country of birth for immigrants living in Britain, after India and the Republic of Ireland.

Most of the new arrivals settled outside of the south of England, with the east of the country seeing a 34 per cent rise in its non-UK born population and both the north west and east midlands recording 32% increases. In London, which has long been home to immigrants from all over the world, one in three residents was born abroad by 2007.

The ONS said: 'The size of the non-UK born population is increasing while the UK-born population has remained mostly constant. "This increase is in part due to the accession of the A8 countries in 2004 to the European Union, and also from the large numbers of people resident in the UK from countries such as India and Pakistan," the report says.

The ONS report is available online at:
http://www.statistics.gov.uk/statbase/Product.asp?vlnk=6303

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New Zealand's *The Press* reports that their government is poised to cut the number of migrants entering New Zealand on temporary work permits, facing increased pressure to save Kiwi jobs during the recession. At the time, the Government indicated it had no plans to limit the numbers heading to New Zealand on temporary permits, despite the Australian Government announcing it would cut 20,000 places from its skilled-migrant category to protect Australian jobs.

Coleman said he expected the Department of Labour would ensure that fewer migrants entered the country on temporary permits during the recession. "As you've got the recession getting worse, New Zealanders are increasingly available," he said. "It's going to be a situation where temporary migrants won't be having their permits renewed and won't be getting new permits either, so there won't be new migrants coming in."

New Zealand takes 45,000 permanent migrants each year, most through the skilled-migrant category. Thousands more arrive on temporary permits to work in industries where their skills are deemed by the NZ Labour Department to be in short supply. Before the permits are issued, employers must prove to the department that they have searched for New Zealand workers for the jobs and that no available New Zealand worker could be suitably trained for the task.

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The Italian government's hard-line measures to restrict immigration have not deterred an influx of foreigners from outside Europe. According to *ADN Kronos International*, new statistics released this week by Italy's statistical agency ISTAT show that there are more than two million residents from outside the European Union living legally in Italy. Albanians top the list with 303,818 permits of stay issued in 2008, followed by 277,329 Moroccans, 139,711 Ukrainians with 139,711 and 137,912 Chinese migrants.

Over 1.2 million permits of stay were issued for working purposes, while 680,000 were issued for family reasons. There were also 45,000 issued student visas, while 24,000 were issued for religious reasons and 21,000 for humanitarian reasons. However, the number of undocumented immigrants in Italy is over 650,000, according to the ISTAT report.

The current conservative Italian government has adopted a tough stance on immigration and stepped up the repatriation of illegal immigrants or those deemed a security threat.

Immigrants can take over 12 months to obtain a renewal of their permit of stay, which is often issued for only a few months. That means many find themselves in a constant state of 'irregularity'. In Italy, 'irregular' immigrants include those who entered the country illegally and those whose legal permit of stay has expired.

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8. Siskind's Legislative Update

The content in Legislative Update is crossposted from Siskind Susser's blogs, and follows the federal and state laws, regulations, and legislative proposals that impact the lives of immigrants. Check out our blog index for listings of the latest blog entries.

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IS THIS THE YEAR THE DREAM IS REALIZED?

Leaders in Congress today re-introduced the Development, Relief and Education for Alien Minors Act, better known as the DREAM Act. The bill would allow immigrant students raised in the US and who are graduates of US high schools to attend college or join the military and embark on a path to citizenship.

The bill's lead sponsors in the Senate are Richard Durbin (D-IL) and Richard Lugar (R-IN). In the House, the lead sponsors are Howard Berman (D-CA), Lucille Roybal-Allard (D-CA) and Lincoln Diaz-Balart (R-FL).

Immigration advocacy organization America's Voice described the importance of the bill:

"The DREAM Act would fix one of the clearest examples of America's nonsensical immigration laws," said Frank Sharry, Executive Director of America's Voice. "For too long, high school valedictorians and college graduates have been unable to fully live

up to their potential. Imagine growing up in the United States nearly your whole life, going to school, making it to college and living in constant fear of being arrested and deported to a country you hardly know."

An estimated 65,000 undocumented young people who have spent their childhoods in America would be impacted by this important piece of legislation. An effort to pass comprehensive immigration reform would also include the DREAM Act.

"Their stories are heartbreaking but their spirit and resilience is nothing short of amazing," Sharry continued. "For years, these young people, many working in the 'United we Dream' coalition, have courageously stood up and organized to change an unjust law. Now, Senator Durbin, Rep. Berman and the other cosponsors are also showing courage. Today's introduction of the DREAM Act is a testament to their hard work and should serve as an inspiration to all of us as we work together to fix our broken immigration system."

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HOUSE DEMOCRATS GEARING UP FOR INTRODUCTION OF COMPREHENSIVE IMMIGRATION REFORM BILL

The Hill's take is consistent with what I'm hearing from my own sources at the Capitol.

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HISPANIC LEGISLATORS PUSHING ON IMMIGRATION REFORM

Two developments today:

1. Members of the Congressional Hispanic Caucus had a meeting today with President Obama to press on immigration reform. The President indicated he is going to push on a reform bill this year. That we knew. But he also indicated he would hold some kind of "public forum" in about two months.

2. Senator Mel Martinez of Florida, one of the very small group of pro-immigration Republicans, is pressing the White House to get them moving on immigration reform. Martinez is retiring in 2010 and says he wants to focus on getting this accomplished during his final years in Congress.

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JUDGE INVALIDATES ILLINOIS E-VERIFY CLAUSE

Illinois' law barring employers in the state from using E-Verify until DHS could guarantee near complete reliability of the electronic verification system has been struck down by a court in the state on the ground that the law violates the Supremacy Clause of the Constitution.

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SANCTIONS BILL STALLS IN IDAHO

A bill that would allow for the suspension of business licenses has been pulled from a committee agenda in the state's senate.

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9. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- ICE Openly Defies Secretary Napolitano
- Australia Latest Country to Guarantee Immigration Equality to Same Sex Couples
- Court Rules USCIS Must Allow Concurrent Filing of Religious Worker Adjustment Applications
- Is ICE about to Embarrass White House Again with an Unauthorized Work Site Raid?
- A Plan to Take Congress Out of the Equation on Determining Foreign Worker Numbers?
- Is This the Year the DREAM is Realized?
- Clinton Promises Mexico Action on Immigration Reform
- Humor: CBP Airport Officer Training Video Discovered?
- House Democrats Gearing Up for Introduction of Comprehensive Immigration Reform Bill
- Dobbs Apologizes for Hispanic Chamber Remark
- Hispanic Legislators Pushing on Immigration Reform
- Sheriff Joe Won't Cooperate with Judiciary Committee
- How Immigrants Can Fix The Housing Bubble

The SSB I-9, E-Verify, & Employer Immigration Compliance Blog

- USCIS Issues Updated M-274 I-9 Guidebook
- Judge Invalidates Illinois E-Verify Clause
- Sanctions Bill Stalls in Ohio
- SC Plant Supervisor Gets Prison for Identity Theft
- Another Agriprocessor Supervisor Sentenced

Visalaw Healthcare Immigration Blog

- New Study Shows Not Enough Nursing Program Applicants Being Accepted
- CGFNS and FCCPT Weigh in Against USCIS CSC PT Decisions
- USCIS Responds to Ombudsman Nurse Visa Recommendations
- *Reuters:* Nurse Shortage Still Hitting US Employers

Visalaw Investor Immigration Blog

- Vermont EB-5 Program Profiled in Television News Story

- Philippines Introduces New Investor Visa Program
- USCIS Ombudsman Issues Recommendations to Improve EB-5 Program
- EB-5 Regional Center Program Extended

Visalaw Fashion, Sports, & Entertainment Blog

- USCIS Works Out Solution for 10 Year Limit on P Athletes
- The Slumdog Effect
- Politics, Sports and Visas

Visalaw International Blog

- Canada: Supreme Court Restores Deportation Order Against Street Racer
- Canada: More Controversy over Former Board Member
- Canada: Bizarre Case Points to Systemic Flaws

The Immigration Law Firm Management Blog

- Hey! Paste It
- Wiki Wiki
- Best of CES: Telephone & PDA Devices

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10. State Department Visa Bulletin for April 2009

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **April**. 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 **March 6th** 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 sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

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

FAMILY-SPONSORED PREFERENCES

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

Second : Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

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

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

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

EMPLOYMENT-BASED PREFERENCES

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

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

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

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

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

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: 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 Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	15AUG02	15AUG02	15AUG02	08OCT92	01AUG93
2A	15AUG04	15AUG04	15AUG04	01JAN02	15AUG04
2B	01SEP00	01SEP00	01SEP00	01MAY92	15JAN98
3rd	22AUG00	22AUG00	22AUG00	22OCT92	15JUN91
4th	15APR98	08JAN98	15APR98	22APR95	22JUN86

***NOTE:** For **April**, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN02. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JAN021 and earlier than 15AUG04. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Employment-Based					
1st	C	C	C	C	C
2nd	C	15FEB05	15FEB04	C	C
3rd	01MAR03	01MAR03	01NOV01	01MAR03	01MAR03
Other Workers	01MAR01	01MAR01	01MAR01	01MAR01	01MAR01
4th	C	C	C	C	C
Certain Religious Workers	U	U	U	U	U
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-2009 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 **April**, immigrant numbers in the DV category are available to qualified DV-2009 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off this 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	26,900	Except: Egypt: 17,400 Ethiopia 15,700 Nigeria 9,900
ASIA	17,400	Except:

		Bangladesh 11,000
EUROPE	20,800	
NORTH AMERICA (BAHAMAS)	7	
OCEANIA	715	
SOUTH AMERICA, and the CARIBBEAN	900	

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-2009 program ends as of September 30, 2009. DV visas may not be issued to DV-2009 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2009 principals are only entitled to derivative DV status until September 30, 2009. DV visa availability through the very end of FY-2009 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 MARCH

For **May,** immigrant numbers in the DV category are available to qualified DV-2009 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	32,400	Except: Egypt 19,150 Ethiopia 17,750 Nigeria 11,550
ASIA	22,800	
EUROPE	24,900	
NORTH AMERICA (BAHAMAS)	10	
OCEANIA	825	
SOUTH AMERICA,	1,000	

and the CARIBBEAN		

D. EXPIRATION OF TWO EMPLOYMENT VISA CATEGORIES

Program Act (Pub L. 110-391), the nonminister special immigration program expires on March 6, 2009.

Employment Fifth Preference Pilot Program Categories (I5, R5):

Pursuant to Section 144 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110-329), the immigrant investor pilot program expires on March 6, 2009.

The cut-off dates for the above categories are shown as "Unavailable" for April. Congress is considering an extension for each of these categories, but there is no certainty when such legislative action may occur. If legislation to extend either of these categories is enacted, the cut-off date for that category would immediately become "Current."

E. RETROGRESSION OF THE WORLDWIDE, MEXICO, AND PHILIPPINES EMPLOYMENT THIRD PREFERENCE CUT-OFF DATES FOR APRIL

Despite the established cut-off date having been held for the past five months in an effort to keep demand within the average monthly usage targets, the amount of demand being received from Citizenship and Immigration Services (CIS) Offices for adjustment of status cases remains extremely high. Therefore, it has been necessary to retrogress the April cut-off dates in an attempt to hold demand within the FY-229 annual limit. Since over 60 percent of the Worldwide and Philippines Employment Third preference CIS demand received this year has been for applicants with priority dates prior to January 1, 2004, the cut-off date has been retrogressed to 01MAR03 to help ensure that the amount of future demand is significantly reduced. As indicated in the last sentence of Item A, paragraph 1, of this bulletin, this cut-off date will be applied immediately. It should also be noted that further retrogression or "unavailability" at any time cannot be ruled out.

It has also been necessary to retrogress the Employment Third Preference Other Worker cut-off date for all countries in order to hold the issuance level within the annual limit.

F. VISA AVAILABILITY IN THE COMING MONTHS

During the past year, many preference categories have experienced steady and sometimes rapid cut-off date movement. Such action is normally followed by an increase in applicant demand. Heavy applicant demand for number in some categories could require cut-off date movements to slow, stop, or even retrogress at some point during the remainder of FY-2009, in order to hold visa use within the applicable annual numerical limits. Should such action occur, it would most likely be temporary in nature, pending the start of the new fiscal year in October.

G. 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