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Siskind's Immigration Bulletin – April 22, 2008

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1. Openers

Dear Readers:

A few major news items have dominated headlines in the United States for the last several months – the weakening economy, the war in Iraq and the feisty presidential campaign. But this week, the arrival of Pope Benedict for his first visit as pontiff to the US took top spot in the headlines. And the visit has had an impact on the immigration system in the US.

Earlier this week, the US House of Representatives expedited consideration of legislation to extend the religious worker visa program that was set to expire this coming October. Congressional leaders noted that the timing was meant to signal the

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value the country places on the work of its religious communities in anticipation of the Pope's visit.

The special immigration religious worker green card category is used by all of the major religious faiths in the US and those communities came together in a coalition to push Congress to extend the popular program. By voice vote, the House passed HR 5570. The bill extends the religious worker green card category by two years and if USCIS releases anti-fraud regulations by that date, the program will automatically extend until 2016. This is the first time I've seen immigration legislation drawn with an extension provision of this nature and I think it was a creative way to deal with concerns some in Congress had about the future of the program. HR 5570 must now pass in the Senate, something that is expected in the coming months.

It is no small feat by the way that the bill passed. This is only the second immigration bill to pass the House in this session of Congress.

The Pope's visit has also stirred discussion on the broader issue of immigration reform. Nearly a third of the US' 60 million Catholics are immigrants and the issue of immigration is of particular importance to a large segment of the American Catholic community. This morning's *New York Times* featured a front page story on how the Pope is prominently discussing the need to humanely treat immigrants during his trip to this country. You can read the *Times* story here.

Speaking of religion and immigration, a *Chag Sameach* to Jewish readers on the occasion of Passover, the original holiday honoring the freedom of movement. The Hebrew slaves in Egypt so fled Egypt were the original refugees. They entered Egypt as guest workers hundreds of years beforehand. They wandered as refugees for forty years before reaching the Promised Land. The Hebrews depended on miracles to reach freedom. Today we have the ability to offer such freedom to refugees around the world. The Jewish faith teaches its children to remember that "We were slaves in Egypt" and that each generation must be redeemed. Part of the way that happens is to help people today seeking freedom no matter their faith, race or nationality.

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The other major news for the week was hardly a surprise. The H-1B cap was reached immediately for fiscal year after the application period opened on April 1st. This year the bonus cap for master's degree holders was hit immediately as well, something that was not entirely unexpected, but nevertheless was bad news. The pressure on Congress to address the problem will be severe.

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For readers who are members of the American Immigration Lawyers Association, you will have the opportunity to vote for our board and executive committee members in the coming days. I don't often make endorsements, but I did want to suggest you carefully consider voting for my long time friend Doug Stump of Oklahoma who is running for AILA Secretary. Doug has been a tireless advocate on immigration issues both in Congress and with government agencies that regulate immigration. He'll be a great addition to the AILA executive committee.

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

Regards,

Greg Siskind

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2. The ABC's of Immigration: H-1C Visas for Registered Nurses

One of the few immigration measures passed in the last Congress was the extension of a little known nurse visa category called the H-1C. In November 2006, Congress approved legislation to extend the H-1C program for three more years. The program remains unchanged in substance.

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Late in 1999, Congress passed the Nursing Relief for Disadvantaged Areas Act, which calls for the creation of a new H-1C visa for nurses going to work for up to three years in health professional shortage areas. Up to 500 nurses per year can get the visa, but each state is limited to 25 H-1C nurses a year. Under the law, facilities interested in sponsoring nurses for H-1C visas must submit a document containing a number of attestations regarding the employment of H-1C nurses.

As with most immigration laws, the statute itself provides very little guidance on how the law will be applied, leaving it to USCIS (and as in most employment visa cases, the Department of Labor) to develop regulations. The regulations for the H-1C program became effective in September 2000.

One of the most surprising elements when the Labor Department released its regulations was a finding that based on the restrictive definition of "facility" Congress put in the statute, only fourteen hospitals in the country could be initially determined to qualify to apply for H-1C visas.

However, that was incorrect at the time and there are many more facilities that now meet the H-1C regulatory requirements.

H-1C employers must meet various attestation requirements. The attestation process is administered by the Employment and Training Administration at the Department of Labor. Enforcement of the attestations is overseen by the Employment Standards Administration's Wages and Hours Division.

The 1999 law is very similar to a 1989 law that created the H-1A visa for nurses. That visa category expired several years ago after unsuccessful efforts to extend its life. The key differences between the two programs are that a much smaller number of H-1C visas have been allocated and that the facility where the nurse will work

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must be in a health professional shortage area. There are also requirements limiting a facility's dependence on H-1C nurses (something that is hard to imagine given that only 500 H-1C nurses are permitted into the country each year, with no more than 25 allowed to work in a single state).

The Department of Labor has created an attestation form called the ETA 9081. On the form, the facility must attest to the following:

1. That it is a qualifying facility. If the ETA 9081 is the first one being filed by a facility, then the form must be accompanied by copies of the pages from the paperwork filed with the Department of Health and Human Services showing the number of acute care beds and the percentages of Medicaid and Medicare reimbursed acute care inpatient days. A copy of this paperwork must also be kept in a public access file.

2. That the employment of H-1C nurses will not adversely affect the wages or working conditions of similarly employed nurses.

3. That the facility will pay the H-1C nurse the facility wage rate.

4. That the facility has taken and is taking timely and significant steps to recruit and retain nurses in order to reduce dependence on immigrant nurses. At least two such steps must be taken unless it can show that the second step is not reasonable. Documentation of these steps needs to be included in the facility's public access file for H-1C nurse petitions. Steps, which may be taken, can include:

    a. Operating a training program for registered nurses at the facility or financing or providing participation in a training program elsewhere.

    b. Providing career development programs and other methods of facilitating health care workers to become RNs.

    c. Paying registered nurses wages at a rate at least 5% higher than the prevailing wage for the area.

    d. Providing reasonable opportunities for meaningful salary advancement by registered nurses.

    e. Any other steps that would be considered significant efforts to recruit and retain nurses.

5. That there is not a strike or lockout at the facility, that the employment of H-1C nurses is not intended or designed to influence an election for a union representative at the facility and that the facility did not lay off and will not lay off an RN within the 90 day period and 90 day period after the date of filing an H-1C petition.

6. That the employer will notify other workers and give a copy of the attestation to every nurse employed at the facility within 30 days of filing. E-mail attachments are acceptable.

7. That no more than 33% of the nurses employed by the facility will be H-1C nonimmigrants.

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8. That the facility will not authorize H-1C nonimmigrants to work at a worksite not under its control and will not transfer an H-1C nurse from one worksite to another.

The paperwork must also be accompanied by a filing fee. After the attestation is approved by the Labor Department and used in support of an H-1C petition approved by USCIS, the employer is required to send a copy of the H-1C petition and USCIS approval to the Labor Department. Also, as noted above, the employer must create a public access file that includes the attestation and its supporting documentation. The file must be produced for any interested party within 72 hours upon written or oral request.

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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 am planning to send my children to the USA to attend school - grade 3 and Grade 6. I will apply for F-1 student visas and am in the process of obtaining the I-20 documents. However, I will be sending my wife with them as their In-Country Guardian but do not know which visa she would need. I will be supporting them financially, so she would not NEED to work but I am sure she would LIKE to work, even part-time or temporary to overcome the boredom of sitting at home all day. Which visa should she apply for?

A - There is no visa specifically designated to be a guardian so the one she'll need is a B-2 visitor visa. No work is permitted on B-2 status, though volunteer positions are not considered work if they are positions of a truly voluntary nature (e.g. helping a charitable organization versus working in a job in hopes of a work visa coming through and eventually converting it to a paid position). Getting a visa continuously extended will likely be a problem and you should know on the front end that this will be no easy task.

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Q - If two people who are third cousins, one is a US Citizen and one is living abroad and they are romantically involve with each other, can the US Citizen seek to bring the person from abroad to the US through the K-1 visa and marry the person in the US? The I-129F asks if the two people are related. They don't want to have to lie about the family tie to one another, but does USCIS allow this?

A - If a marriage is legal in the state where the marriage will be conducted, it should be fine for the K-1. I'm not a family law expert, but I would be deeply shocked if a third cousin relationship is a problem anywhere in the US. You should disclose the

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relationship as asked in the question, but then provide the documentation showing the relationship so USCIS knows that there is no issue with respect to the law. Note, however, that the question is mainly asked because marrying a relative, even if legal, may be considered to be an indicator that the marriage is not genuine. So the couple should be careful to prove their case that the engagement is indeed bona fide.

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Q - I was legally adopted by my paternal grandparent and I am a naturalized citizen. Can I petition my biological mother back in the Philippines?

A - If you were able to immigrate due to the sponsorship of an adopted parent, you are not permitted to sponsor your biological parents or siblings.

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Q - Is an H1-B worker (who filed for a labor certification, ETA Form 9089) who is filing to extend his status beyond the 6-year period required to travel outside the US (and for how long) prior to being granted the extension?

A - You don't need to leave the US to get a sixth year extension if you are maintaining status in the US and are eligible. So, for example, if you have a labor certification that has been pending for more than a year, you would likely be eligible to extend your status in the US and would not need to travel outside the country.

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Q -A green card holder filed an I-130 immigrant petition in 1992 (and also approved in 1992) for his wife. All the children are included on the petition as derivative beneficiaries in the F-2A category.
One son has now turned 21 but the priority date is almost current for F-2B from Mexico. The mother died in 1997 without immigrating. The son is now in removal proceedings and I was thinking he could adjust in front of a judge based on this petition. Can the son use this old petition? He was and is a beneficiary. The petitioner is still alive and still a green card holder. Does the fact that the primary beneficiary died void the petition?

A - Unfortunately, the State Department's Foreign Affairs Manual has this to state on the subject:

42.53 N8 Death of Principal Beneficiary
(TL:VISA-61; 6-5-92)

In the case of the death of the principal beneficiary prior to admission to the United States, neither the petition nor the priority date would remain valid for a derivative beneficiary.

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4. Border and Enforcement News

In a sweeping use of its authority, the Department of Homeland Security announced this month that it plans to bypass environmental reviews to speed construction of fencing along the Mexican border, *The New York Times* reports. DHS Secretary Michael Chertoff issued two waivers covering 470 miles of the border from California to Texas as well as a separate 22-mile stretch in Hidalgo County, Tex., where the department plans to build fencing up to 18 feet high into a flood-control levee in a wildlife refuge.

The announcement angered environmental groups, which have raised concerns through lawsuits and public hearing about the damage that fencing could cause to wildlife. Property owners, particularly along the Rio Grande, have also objected to what they considered federal intrusion on their land and access to the river. Defenders of Wildlife, an environmental group that had already asked the Supreme Court to review the waiver of environmental law in an Arizona fence project, said it would amend its petition to the court to reflect Mr. Chertoff's new decision. "Clearly, this is out of control," said Rodger Schlickeisen, president of Defenders of Wildlife.

Chertoff's waiver power has also drawn concern from some members of Congress. Jodi Seth, spokeswoman for the House Commerce and Energy Committee, responded, "when we asked the department to justify the need to waive these environmental laws, we were stonewalled." The Interior Department, which controls several tracts where the fencing is planned, raised their objections as well. "We will continue to work with them closely to protect environmental values and mitigate impacts," the department said.

Under the Secure Fence Act of 2006, the department was authorized to build up to 700 miles of fencing along the 2,000-mile Southwest border, where most undocumented immigrants cross.

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A former Immigration and Customs Enforcement inspector was convicted last week of letting drugs into the US in exchange for sex with a British Columbian prostitute, and was sentenced to nearly three years in prison, *The Seattle Times* reports. Desmond Bastian, a US citizen who lived in Surry, BC and worked for the city's ICE department, allowed the woman to drive through the Blaine crossing while carrying large loads of marijuana and other drugs. Agents confirmed that between 2004 and 2005, Sandra Maas transported hundreds of pounds of marijuana, and testified that she had an understanding with Bastian to let her through in exchange for sex.

US District Judge James Robart called Bastian's action "an incredibly serious offense…a trusted servant of the US government allowed an individual to make multiple trips into the US without any supervision. From agents initial confrontation with him to the trial, Bastian has insisted that he was innocent and misunderstood, testifying that he "never ailed to do my duty," adding, "I did my job with a lot of integrity, and a lot of pride."

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Groups of Texas cattle ranchers along the US-Mexico border have pleaded with the Department of Homeland Security officials to abandon the stifled construction of border fencing along the Rio Grande Valley, and instead move it westward. The request not only deters undocumented immigrants and drug smugglers, but also the dreaded, fever tick.

The San Antonio Express News reports that border ranchers have been working feverishly to contain the tick after recent outbreaks forced the government to expand quarantine zones for the first time in nearly 60 years. But the ticks keep coming, typically catching rides on livestock wandering over from Mexico and multiplying on the domestic game that ranchers have stocked to supplement their income with hunting leases.

The US Department of Agriculture estimates that tick eradication efforts cost the US livestock industry an estimated $1 billion annually. Officials from the Department of Homeland Security responded that they would not act on the requests from the ranchers, and will continue to construct fencing in the areas designated by the Secure Fence Act.

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5. News From the Courts

Kosak v. Aguirre, (3d Cir. Mar. 6, 2008)

The district court did not err in according Chevron deference to the BIA's decision that adopted children may not petition for their biological siblings under INA §203(a)(4).

Appellant, a native of Taiwan, was adopted by her U.S. citizen aunt and uncle and entered the U.S. as a lawful permanent resident in 1981. After becoming a U.S. citizen, Appellant filed an I-130 petition on behalf of her biological sister under INA §203(a)(4). The Vermont Service Center approved the petition, but when a visa became available, the U.S. Consulate in Taiwan refused to issue the visa. The Consulate returned the petition back to the VSC and the VSC revoked the petition on June 24, 2005. The BIA dismissed Appellant's appeal, *citing Matter of Li*, 20 I&N Dec. 700, 703 (BIA 1993), where the BIA had previously held that the appellant's adoption severed his relationship with his natural sibling because they no longer shared a common parent. Appellant filed an appeal in the district court and moved for summary judgment, arguing that the BIA's decision was erroneous. The government also filed a motion for summary judgment which was granted by the district court. The court held that the BIA's interpretation of INA §203(a)(4) was entitled to Chevron deference. *Kosak v. Devine*, 439 F.Supp. 2d 410, 417-18 (E.D. Pa. 2006).

The court reviewed the BIA's interpretation of INA §203(a)(4) pursuant to Chevron USA, Inc. v. NRDC, 467 U.S. 837 (1984). Under *Chevron*, the court first examined

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the language of the statute to determine if Congress spoke directly to the issue of whether an adopted child may petition for her biological sibling. Appellant argued that under INA §203(a)(4), Congress intended the "normal and natural" definitions of "brothers" and "sisters" to control and that because she and her sister are both "children" of their biological "parents" as those terms are defined in INA §101(b)(1) and (2), they should therefore, be recognized as "sisters" for purposes of §203(a)(4). *See Matter of Fujii*, 12 I&N Dec. 495, 496 (DD 1967), (BIA District Director holding that the "relationship of brother and sister created by the legitimate birth of the petitioner and beneficiary to the same parents" is not destroyed "by the subsequent adoption of the latter"). To the contrary, the government argued that because adoption legally severs the relationship between biological parent and child for immigration purposes, INA §101(b)(1)(E)(i), it also severs the relationship between natural siblings. *See Matter of Li*, 20 I&N Dec. at 703; *Matter of Xiu Hong Li*, 21 I&N Dec. 13, 17-18 (BIA 1995); *Young v. Reno*, 114 F.3d 879, 888 (9th Cir. 1997). The court noted that both parties advanced plausible constructions of the statute and explained that because of the statutes ambiguity, it would defer to the BIA's conclusion as long as it is a reasonable interpretation.

Appellant first argued that the BIA's interpretation was impermissible because determining a person's status as a parent is not within Congress's or the BIA's immigration authority. The court rejected this argument, explaining that INA §203(a)(4) requires the BIA to define the relationship between siblings in order to determine eligibility for immigration status. While the BIA defines siblings as children with at least one common parent, *Matter of Kong*, 17 I&N Dec. 151, 153 (BIA 1979), adoption terminates the natural parent-child relationship under INA §101(b)(1)(E)(i). Therefore, the BIA concluded, adoption also terminates the sibling relationship for immigration purposes. The court found that such determinations were well within the BIA's authority regarding immigration matters. The court also rejected Appellant's argument that denying visa status to the natural sibling of an adopted child is unnecessary to enforce the "Congressional bar to natural parents receiving immigration status from a child they put up for adoption." While the "tracking system" proposed by Appellant to prevent adopted children from petitioning for their natural siblings who then petition for their natural parents may be feasible, the court found the BIA's construction equally permissible and representative of a "reasonable accommodation" of the "conflicting policies" of keeping families together and preventing natural parents from obtaining immigration benefits through children they put up for adoption. *See Young*, 114 F.3d at 886. The decision of the district court was affirmed.

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6. News Bytes

According to *The Wall Street Journal*, the allocated number of H-1B visas for the next fiscal year has already reached its limit, just a little under a week after first being made available. The H-1B, a visa for skilled foreign workers, is imposed by a yearly cap of 65,000 visas, and an additional 20,000 visas for academic professions.

Demand for the visas seems unaffected by the slowing economy, unlike 2001 when some visas went unused. Congress lifted the cap to 195,000 that year to accommodate employers but over time has allowed the number to fall because of the

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high-tech bust and has never returned to the higher number. This is troubling for the US's largest high-tech employers, who have been leaning on Congress for years to lift the caps on H-1B visas. Robert Hoffman, vice president of Oracle Corp., presents an example typical of the dilemma most companies of this type have faced: last year the company was forced to sent its domestic jobs to Ireland and India when it couldn't get enough H-1B visas, and that the company has 1,000 openings for skilled jobs that it is unable to fill domestically.

USICS didn't say how many visa applications it received, but there were enough that it will hold a lottery to determine which applications it accepts. The visas are for workers who could take jobs beginning Oct. 1 first or later. An employer whose application isn't accepted can't hire a worker until Oct. 1, 2009.

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Last month, the US government officially announced that US and Canadian citizens coming back into the US through a land port won't need a passport until June 1, 2009—a year later than officials planned and nearly 3 years after the requirement went into effect for air travelers.

The Department of Homeland Security says it was on schedule to implement the rule as early as this summer but was prevented from doing so until June 2009 by language in the fiscal year 2008 appropriations bill passed by Congress, according to a DHS spokesperson.

Currently, US and Canadian citizens coming back from Mexico via land or sea need to present either a passport or a combination of a government-approved photo ID and proof of citizenship. People traveling to Mexico by airplane have been required to carry a passport or one of a handful of other approved secure documents since January 2007.

The delay will allow more travelers more time to obtain the necessary documents and lessen the impact of ports of entry, said DHS officials when announcing the land and sea portion of the Western Hemisphere Travel Initiative. DHS officials plan to roll out an extensive outreach campaign to make people aware of the upcoming rule change, according to *The Arizona Daily Star*. Customs and Border protection officials will continue meeting with travel and trade associations, educational institutions, airlines, border communities, mayors and other elected officials on both sides of the border to advise them of the new rules, said Border Patrol spokesman Brian Levin.

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Last month, the US Supreme Court ruled that President Bush overstepped his authority when he ordered a Texas court to reopen the case of a Mexican national on death row, *One News Now* reports. The national, Jose Ernest Medellin, was sentenced to death in October 1994 after providing a written confession to the rape and murder of two teenage girls in June 1993. But when police arrested Medellin, they failed to tell him that he could request assistance from the Mexican consulate. According to the Vienna Convention, people arrested abroad must have access to their home country's consular officials.

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In 2003, Mexico sued the US in the International Court of Justice on behalf of Medellin and 50 other Mexicans on death row in the US who had also been denied access to their country's diplomats, saying the prisoners should therefore have new trials. President Bush sided with Medellin and said the US would discharge its international obligation by having the Texas state court grant the death row prisoner a new hearing. By a 6-3 vote, however, the Supreme Court ruled that the president does not have the authority to order a new hearing for the prisoner.

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7. International Roundup

Thousands gathered in London last week to protest against new rules which they claim makes it more difficult to bring skilled foreign cooks and chefs for curry houses and Chinese eateries, according to *Agent France Presse*.

The protesters said changes in the immigration laws and the implementation of a points-based migration system favoring migrants with top educational degrees worked against ethnic restaurants.

'Successive governments' immigration policies have neglected to fully recognize the needs of skilled labor of Britain's ethnic catering enterprises,' said a spokesman for the Ethnic Catering Alliance, which organized the protest.

'The new points-based system will exacerbate this and will, as a result, seriously damage the catering industry and in turn, the economic well-being of our communities and the country.'

Organizers claimed that some 19,000 people from the Bangladeshi, Indian, Pakistani, Chinese and Turkish communities participated in the demonstration, but London's Metropolitan Police estimated that the figure was closer to 4,500.

Under the new system, prospective migrants can work in Britain if they score the requisite number of points, which they can earn with a good educational background, the ability to speak English, and previous work experience.

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According to *The Central News Agency* of Taiwan, The National Immigration Agency (NIA) is currently revising laws to deal with the problem of foreign spouses of Taiwanese nationals who overstay their residency permits. NIA Director-General Wu Chen-chi made the remarks at the Home and Nations Committee of the legislature in response to questions by opposition lawmakers from the Kuomintang (KMT).

KMT criticized as inhumane the immigration laws that stipulate that foreign spouses of Taiwan citizens should return to their home countries before they apply for re-entry to Taiwan when they overstay their residency permits. KMT cited a case of a foreign spouse living in the offshore island of Kinmen, who was ordered to return to her home country for one year before she can apply for re-entry to Taiwan because

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she overstayed her residency permit for one year.

Another case occurred on the outlying island of Matsu, involving a spouse who was 'relatively luckier' than the first case as the NIA asked her to leave Taiwan for a short period time before she applied for re-entry as she only overstayed her residency permit for three months. KMT legislator Chao Erh-chung noted that demanding foreign spouses of Taiwanese citizens to leave Taiwan before they apply for re-entry is a practice that dates back to the period when Taiwan was still under martial law. 'Such a formality is inhumane and has caused so much inconvenience to the foreign spouses of Taiwanese as some of them just forgot to apply for the extension of their residency permits,' Chao said.

In response, Wu noted that there are indeed many foreign spouses of local citizens who do not know they should apply for an extension of their residency permits or who do not know when their permits expire. 'The NIA has been trying to revise the immigration rules to impose a fine on foreign spouses who overstay their permits or allow an afterward application instead of asking them to leave the country before they apply for a re-entry,' Wu said. However, he did not elaborate when the new immigration rules will be in place.

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8. Legislative Update

The state house in Florida has tackled the issue of immigration policy for the first time, with a proposal on the floor to kick out of the country undocumented immigrants in the state's prisons who volunteer to be deported. Even so, the measure has been billed by supporters more as a cost-saving measure than a bid to crack down on undocumented immigration, according to *The South Florida Sun Sentinel*.

The Senate Bill (SB1086), which cleared the Criminal Justice Committee by unanimous vote Tuesday, would allow for deportation of an estimated 5,000 undocumented immigrants in Florida prisons, as long as they've served 50 percent of their sentences and agree to be deported. Similar laws in New York and Arizona saved the states $141 million and $13 million in inmate costs from 2005 to 2007, respectively. Still, some Florida legislators believe the bill is the first step in introducing a comprehensive immigration policy for the state. Bill co-sponsor, Sen. Jeff Atwater, sent a letter to constituents vowing to push state legislation to "awaken Congress and the Florida Legislature about the consequences associated with the complex issue of granting blanket amnesty to illegal immigrants."

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The Missouri state Senate passed a sweeping immigration reform bill this month, after near-unanimous approval of the bill. *The Kansas City Star* reports that the bill, which includes an array of measures aimed at denying state resources for undocumented immigrants, as well as prevention of finding work, passed on a voice vote, and now goes to the state House. "I think it's a level-headed approach that makes sense and a fair way to deal with this issue," said Sen. Scott Rupp, Republican and co-sponsor of the bill. "This bill represents everything we legally can do to curb the problem.

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Immigrant rights groups, however, assailed the legislation and the process by which it was approved. "They just perfected a really imperfect piece of public policy," said Joan Suarez, chairwoman of Missouri Immigrant and Refugee Advocates. She added that "it's incredible that a bill this large and pervasive got just one hour of debate and that the chairman moved to perfect it with just a handful of senators on the floor."

Among the bill's provisions is the requirement that employers check all employees against a federal database (E-Verify) of legal workers, and that those who use the system would be protected against penalties for hiring undocumented immigrants before the check if they did. The bill also denied access to public benefits—such as welfare, food stamps or college scholarships—to undocumented immigrants, and bars all undocumented immigrants from attending public universities and junior colleges in the state.

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Nearly half of the Arizona state Legislature has thrown its support this month behind a proposal to fix perceived shortcomings in a state law that prohibits employers from knowingly hiring undocumented immigrants. *The Associated Press* reports that proposed changes to the law were sought by Arizona business groups that felt the law was unclear on many key points, such as whether the law applied to all employees on a company's payroll or only those hired this year and thereafter. There was also confusion as to what protections were in place to employers who made good-faith hirings of undocumented immigrants; the law in its current state would still allow prosecutors to pursue anonymous complaints, which some businesses felt left them unfairly vulnerable to rivals and embittered employees.

Arizona business groups have been wary of the state's immigration employment policy thus far: E-verify, the comprehensive federal database required for business to use to verify a new hire's legal status, as well as the benchmark for this and other states' immigration employment legislation, has received underwhelming enthusiasm from the state's businesses. Nearly after half a year of availability, E-Verify has only had 22,000 of the estimated 145,000 Arizona employers register for its services.

Another proposed revision to the law, which has drawn considerable criticism, would prohibit all state and local government agencies from giving business licenses to people who can't prove that their presence in the country is lawful. "The passage of this bill would essentially make the state of Arizona a police state," said Democratic Rep. Theresa Ulmer of Yuma, an opponent of the bill who believes the provision would in effect turn agency employees into immigration officers.

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9. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

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- Posner Blasts Immigration Courts
- Virginia County Grapples with Crackdown Decision
- Immigrant of the Day: Jun Gao – Table Tennis Star
- Tancredo Attacks Pope on Immigration
- Visa Waiver Status Coming Soon for South Koreans
- USCIS Advises on Converting Cases in Cap Gap Situations
- Can McCain Win over Hispanics as well as GOP Anti-Immigration Faction?
- *NY Times*: Fix The Database First
- ICE Breaks Up Large Identity Theft Ring at Poultry Plants
- House of Representatives Passes Religious Worker Extension Bill
- USCIS Conducts H-1B Lottery
- Immigrant of the Day: Isabel Allende – Author
- Group Files Complaint over Elton John Contribution to Clinton Campaign
- Rhode Island Cabinet Member Attacks Boss Over Sanctions Order, then Backs Down
- Candidates Get Snippy over Who Broke Most Election Laws
- Under the Same Moon
- ICE to Double Foreign Student Tax
- "The Visitor will Make Lou Dobbs Head Explode"
- Immigrant of the Day: Gene Simmons – Rocker
- Tennessee Attorney General Rules Bill Criminalizing Working Illegally Unconstitutional

The SSB Employer Immigration Compliance Blog

- Iowa House Passes Bill Mandating Use of State IDs in Seeking Employment
- South Carolina Sanctions Bill Hits a Snag
- NJ Senator Pushing Sanctions Law
- 11 Restaurant Owners Criminally Charged After Work Site Raids
- Florida Legislature Considering Bill Requiring Government Employers to Use E-Verify
- California Republicans Introduce Package of Sanctions Bills
- Tennessee Attorney General Rules Bill Criminalizing Working Illegally Unconstitutional
- LA Mayor: DHS Should Focus on Deporting Criminals instead of Workers
- Costs of SAVE Bill Raise Questions
- ICE Arrests 59 at Northern Virginia Resort
- US Citizens Being Caught Up in Faulty E-Verify System
- TN Senate Passes Bill Allowing Secret Complaints to be Filed in Sanctions Cases

Visalaw International Blog

- Overseas Workers – Skill Shortages and Employer Obligations of Sponsorship
- Canada: Nova Scotia Immigration Program Failed Applicants
- Canada: Immigration Quotas Coming Too Soon?
- Van der Elst Visa
- HR Professionals Face Difficulties in Hiring
- Canada: Federal Budget Highlights on Immigration and Border Security
- Switzerland Wants to Open the Door – But It's Still Hard to Squeeze in
- Canada: Poland to Gain Visa Exemption
- Nazi War Criminal Finally Deported from Canada

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- Bloomberg Publishes Greg Siskind's Article on Physician Immigration
- South Africa's Immigration System Under Attack

Visalaw Health Blog

- Community Health Centers Weigh in on Proposed Rule to Dramatically Change How Shortage Areas are Determined
- Kaiser Family Foundation Releases Report on Immigrants and Health Care
- *Boston Globe* Reports on Impact of Foreign Healthcare Workers
- More Medical Students from Both US and Abroad Match for Residency Slots
- DC Program Links Immigrants to Translators Who Can Help with Health Care Needs
- Will Michigan Drivers License Law Drive Out Doctors?
- Physician Facing Deportation after Asylum Denied
- Filipino Nurses at Center of Controversy
- *Las Vegas Sun* Follows Up on J-1 MD Exploitation Series
- Arizona Hospitals Protest Birth Certificate Proposal
- Report: Undocumented Latinos Access Health Care Less than the Native Born
- More Links to *Las Vegas Sun* J-1 Physician Abuse Stories
- Nurse Immigration Measure Included in Senate Budget Bill

Visalaw Fashion, Sports, & Entertainment

- House Judiciary Committee Passes P-1 Extension Bill
- *LA Times* Reports on O-1 30-Day Bill
- *New York Times* Covers O-1 Bill Passing in House
- 30-Day O-1 Processing Bill Passes in House Judiciary Committee
- *New York Times* and *Washington Post* Cover Horsely Entry Denial
- *New York Times*: Soccer's Immigrant History Explored
- Immigration Crackdown Quiets Soccer Fields in DC Suburbs
- British Author Horsley Denied Entry into US

The Visalaw.com Blog

- Karen Weinstock's H-1B Book is Published
- SSB Headquarters Wins Architecture Award
- Greg Siskind's Slides from TBA Legal Tech 2008

Tech Notes - The Immigration Lawyer Blog

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

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10. Campaign '08

Last month, Senator and presidential hopeful Barack Obama publicly endorsed a national holiday in favor of a Cesar Chavez Day, in honor of the late, legendary activist for labor rights and fair treatment of minorities. *The Chicago Tribune* reports that Obama, via a press release on Chavez' birthday, expressed the importance of remembering the immigrant hero and role model, and that his legacy should continue.

"As farmworkers and laborers across America continue to struggle for fair treatment and fair wages, we find strength in what Cesar Chavez accomplished so many years ago," Obama's statement said. "And we should honor him for what he's taught us about making America a stronger, more just, and more prosperous nation. That's why I support the call to make Cesar Chavez's birthday a national holiday. It's time to recognize the contributions of this American icon to the ongoing efforts to perfect our union."

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After an Immigration and Customs Enforcement investigation, Republican congressional candidate Chris Hackett has been cleared of accusations of wrongdoing when he failed to notify federal authorities that his housekeeper was not a documented immigrant. *The Times Leader* of Wilkes-Barre, PA, reports that the Pennsylvania candidate said he didn't notify authorities because he didn't feel he was required to do that.

Hackett and his GOP opponent for the state's 10th District, Dan Meuser, have been involved in a heated, back-and-forth exchange on the issue of immigration. Meuser himself has run into immigrant hiring problems before; his company, Pride Mobility Products, paid a $23,000 settlement to the federal government 12 years ago for hiring undocumented immigrants.

Hackett campaign spokesman Mark Harris said the employee was a "sporadic household worker" whom Hackett barely knew, and that the candidate believes the job of policing undocumented immigrants lies with law enforcement: "[Hackett] does not favor turning homeowners into law enforcement agents who have to monitor and enforce the legal status of an occasional house painter, lawn service worker, or babysitter they might hire."

Meuser campaign spokesman Eric Wallace said Hackett's actions raise questions. "The pattern of hypocrisy that Chris Hackett has displayed in his negative campaign, attacking Dan for an isolated incident 13 years ago, while at the same time employing an illegal alien in his own home…undoubtedly leaves voters questioning his judgment," Wallace said.

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11. State Department Visa Bulletin for May 2008

VISA BULLETIN FOR MAY 2008

A. STATUTORY NUMBERS

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http://www.jdsupra.com/post/documentViewer.aspx?fid=2f338e9d-4e72-457c-b183-353e1d25fe74

1. This bulletin summarizes the availability of immigrant numbers during **May**. 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 **April 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.

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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	08MAR02	08MAR02	08MAR02	08JUL92	15MAR93
2A	08JUN03	08JUN03	08JUN03	01MAY02	08JUN03
2B	01JUN99	01JUN99	01JUN99	01APR92	15FEB97
3rd	08JUN00	08JUN00	08JUN00	22JUL92	01APR91
4th	08JUL97	15JAN97	01JAN97	15DEC94	08MAR86

***NOTE:** For March, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates earlier than 01MAY02. 2A numbers **SUBJECT to per-country limit are** available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01MAY02 and earlier than 08MAY03. (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					

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-Based					
1st	C	C	C	C	C
2nd	C	01JAN04	01JAN04	C	C
3rd	01MAR06	22MAR03	01NOV01	01NOV01	01MAR06
Other Workers	01JAN03	01JAN03	01JAN03	01JAN03	01JAN03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
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 **May**, 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**	

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	Areas Except Those Listed Separately	
AFRICA	26,700	Except: Egypt : 20,500 Ethiopia 16,000 Nigeria 11,600
ASIA	10,500	
EUROPE	23,500	
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,400	
SOUTH AMERICA, and the CARIBBEAN	1,550	

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 **June**, 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	32,000	Except: Egypt : 22,000 Ethiopia 17,750 Nigeria 13,000

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ASIA	11,900	
EUROPE	26,500	
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,500	
SOUTH AMERICA, and the CARIBBEAN	1,700	

D. MEXICO F2A VISA AVAILABILITY DURING THE COMING MONTHS

Continued heavy demand in the Mexico F2A category may require the retrogression of this cut-off date to hold number use within the annual numerical limit Such action could occur as early as June.

E. EMPLOYMENT VISA AVAILABILITY

Many of the Employment cut-off dates have continued to advance more rapidly than might ordinarily be expected. This is a result of consultations with US Citizenship and Immigration Services (USCIS) regarding their pending demand, which is currently using approximately 90% of all Employment numbers. USCIS has indicated that they would prefer to review a substantial number of cases at this time to ensure than number use in the various categories can be maximized. Should USCIS projections of the resulting number use prove to be incorrect it may be necessary to adjust the cut-off dates during the final quarter of FY-2008.

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.

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

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