Siskind's Immigration Bulletin –
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Siskind Susser Bland serves immigration clients throughout the world from its offices in the US and its affiliate offices across the world. To schedule a telephone or in-person consultation with the firm, go to http://www.visalaw.com/intake.html.

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1. Openers

Dear Readers:

If you are one of the tens of thousands of H-1B applicants who are angling for a fiscal year 2009 visa, best of luck. We don't know how many people will apply, but all indications are that the competition will be fierce. Which raises the question of why there needs to be this type of competition in the first place? I've reported on study after study that shows that H-1Bs deliver enormous benefit to the country and the costs to Americans are relatively small. In most fields filled by H-1B employees, shortages of Americans persist and the long-term demographic trends in the US point to decades-long problems.

H-1B workers not only help the companies that sponsor them, but many eventually start their own firms. Some of the country's best known companies were started by

people on this visa and studies show a substantial portion of the jobs created in high tech were at companies started by immigrants. And while there are not many studies on the subject, anecdotal evidence points to the fact that the children of these workers perform extremely well in US schools. Take a look at the finalists for the National Spelling Bee and you'll see a lot of children of people who received work visas.

Perhaps the best indicator of our problem is the fact that our major competitors, such as the UK and Canada, take an unlimited number of professionals similar to our H-1Bs. And that is precisely why Microsoft opened a research center just north of the border in Vancouver. Look for that outsourcing trend to continue if we don't get our hands around this issue.

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Finally, immigration legislation seems to be moving in Congress. An O-1 30 day bill has passed in the House. The bill, HR 1312, would mandate O-1 cases be adjudicated in a one month timetable or automatically convert at no cost to the applicant to premium processing. Today, the House Immigration Subcommittee moved extension bills for religious workers, immigrant investors and physicians.

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In firm news, we've been busy speaking at various seminars and forums. Christi Hufford and I were speakers at ILW.com's latest national teleconference. We each spoke on issues in consular processing. I was a speaker last Friday at the West Tennessee Associated Builders and Contractors annual conference here in Memphs. I spoke on immigration compliance issues for employers and spoke on the same topic the day before in front of the local Hispanic Business Alliance and the week before at a local meeting of the National Federation for Independent Business (NFIB).

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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: No-Match Letters

In August 2007, a long awaited "no-match letter" regulation from US Immigration and Customs Enforcement was released. The rule describes the obligations of employers when they receive no-match letters from the Social Security

Administration or receive a letter regarding employment verification forms from the Department of Homeland Security. The rule also provides "safe harbors" employers can follow to avoid a finding the employer had constructive knowledge that the employee referred to in the letter was an alien not authorized to work in the US . Employers with knowledge that an immigrant worker is unauthorized to accept employment are liable for both civil and criminal penalties.

The rule finalized a proposed rule released on June 14, 2006. The Department ofHomeland Security, ICE's parent department, received nearly 5,000 comments on the rule from a variety of interested parties including employers, unions, lawyers and advocacy groups. According to DHS, the opinions were highly varied with both strong opposition and support being enunciated. DHS also held a meeting with business and trade associations to discuss the proposed rule.

The rule was challenged in court prior to it taking effect in September 2007 was withdrawn. It is expected to be re-released in early 2008.

[NOTE: THIS CHAPTER WILL BE RE-WRITTEN WHEN THE NEW RULE IS RELEASED IN THE NEXT FEW WEEKS]

Why did ICE issue this rule?

All employers in the US are required to report social security earnings for their workers. Those W-2 form reports listing an employee's name, social security number and the worker's earnings are sent to the Social Security Administration. In some cases, the social security number and the name of the employee do not match. In some of these cases, the SSA sends an employer a letter informing the employer of the no-match.

In some cases, the no-match is the result of a clerical error or a name change. In other cases, it may indicate that an employee is not authorized to work.

ICE issues similar letters to employers after they conduct audits of an employer's

Employment Eligibility Verification forms (the I-9s) and find evidence that an immigration status document or employment authorization document does not match the name of the person on the I-9 document.

To date, there has been considerable confusion and debate over an employer's obligations after receiving a letter like this as well as whether an employer would be considered to be on notice that an employee is not unauthorized to work. This rule clarifies both issues albeit in a way that will be very unfriendly to employers and workers.

DHS cites the Mester Manufacturing case from the 9th Circuit Court of Appeals to remind employers that if they will have "constructive" knowledge that an employee is out of status, they are in violation of IRCA, the statute that punishes employers for knowingly hiring unlawfully present workers or violating paperwork rules associated with the I-9 employment verification form.

When is this rule effective?

It becomes effective September 14, 2007.

How has the definition of "knowing" changed in the rule?

Two additional examples of "constructive knowledge" are added to the list of examples of information available to employers indicating an employee is not authorized to work in the US. First, if an employer gets a written notice from the SSA that the name and SSN do not match SSA records. And second, written notice is received from DHS that the immigration document presented in completing the I-9 was assigned to another person or there is no agency record that the document was assigned to anyone.

However, the question of whether an employer has "constructive knowledge" will "depend on the totality of relevant circumstances." So this rule is just a safe harbor regulation telling how an employer can avoid a constructive knowledge finding, but not guaranteeing that an employer will be deemed to have constructive knowledge if the safe harbor procedure is not followed.

What steps must an employer take if it gets a no-match letter?

First, an employer must check its records to determine if the error was a result of a typographical, transcription or similar clerical error. If there is an error, the employer should correct the error and inform the appropriate agency – DHS or SSA depending on which agency sent the no-match letter. The employer should then verify with that agency that the new number is correct and internally document the manner, date and time of the verification. ICE is indicating in the preamble to the regulation that 30 days is an appropriate amount of time for an employer to take these steps.

If these actions do not resolve the discrepancy, the employer should request an employee confirm the employer's records are correct. If they are not correct, the employer needs to take corrective actions. That would include informing the relevant agency and verifying the corrected records with the agency. If the records are correct according to the employee, the reasonable employer should ask the employee to follow up with the relevant agency (such as by visiting an SSA office and bringing original or certified copies of required identity documents). Just as noted above, thirty days is a reasonable period of time for an employer to take this step.

The rules provide that a discrepancy is only resolved when the employer has received verification from SSA or DHS that the employee's name matches the record.

When 90 days have passed without a resolution of the discrepancy, an employer must undertake a procedure to verify or fail to verify the employee's identity and work authorization. If the process is completed, an employer will NOT have constructive knowledge that an employee is not work authorized if the system verifies the employee (even if the employee turns out not to be employment authorized). This assumes that an employer does not otherwise have actual or constructive knowledge that an employee is not work authorized.

If the discrepancy is not resolved and the employee's identity and work authorization are not verified, the employer must either terminate the employee or face the risk that DHS will find constructive knowledge of lack of employment authorization.

What is the procedure to re-verify identity and employment authorization when an employee has not resolved the discrepancy as described above?

Sections 1 and 2 of the I-9 would need to be completed within 93 days of receiving the no-match letter. So if an employer took the full 90 days to try and resolve the problem, they then have three more days to complete the new I-9. And an employee may not use a document containing the disputed SSN or alien number or a receipt for a replacement of such a document. Only documents with a photograph may be used to establish identity.

Does an employer need to use the same procedure to verify employment authorization for each employee that is the subject of a no-match letter?

Yes, the anti-discrimination rules require employer to apply these procedures uniformly. DHS is also reminding employers about the document abuse provisions which bar employers from failing to honor documents that on their face appear reasonable. But employers now have the safe harbor of a new regulation stating that this provision does not apply to documents that are the subject of a no-match letter.

DHS notes that if employers require employees to complete a new I-9 form, the employer must not apply this on a discriminatory basis and should require an I-9 verification for ALL employees who fail to resolve SSA discrepancies and apply a uniform policy to all employees who refuse to participate in resolving discrepancies and completing new I-9s.

What if the employer has heard that an employee is unlawfully present aside from hearing from SSA or DHS in a no-match letter?

Employers who have ACTUAL knowledge that an alien is unauthorized to work are liable under the INA even if they have complied with the I-9 and no-match rules. But the government has the burden of proving actual knowledge. DHS also notes that constructive knowledge may still be shown by reference to other evidence.

Does DHS have the authority to regulate the treatment of notices received by the SSA?

A number of comments on the rule questioned this issue, but they were dismissed by DHS. Presumably, the issue could be the source of litigation.

Why is DHS issuing this rule when the White House supports comprehensive immigration reform that would give employers legal options for hiring these workers?

DHS indicated in the preamble to the rule that while it wants to work with Congress on such legislation, there is no way to predict when it will pass and interior enforcement needs to be conducted. Others are arguing that the White House is

interested in demonstrating to Congress that it is "getting tough" on illegal immigration in order to increase the likelihood that members of Congress would support CIR.

Will following the procedures in this rule protect an employer from all claims of constructive knowledge, or just claims of constructive knowledge base on the letters for which the employers followed the safe-harbor procedure?

An employer who follows the safe harbor procedure will be considered to have taken all reasonable steps in response to the notice and the employer's receipt of the written notice will there not be used as evidence of constructive knowledge. But if other independent exists that an employer had constructive knowledge, the employer is not protected.

Are there any special rules for circumstances such as seasonal workers, teachers on sabbatical and employees out of the office for an extended period due to excused absence or disability?

No, but DHS has noted that the rule provides a safe harbor to prove an employer does NOT have constructive knowledge and that if an employer makes a good faith effort to resolve a situation as rapidly as practicable and documents such efforts, that would be considered in evaluating the question of constructive knowledge.

What are the time frames required under the rule to take each necessary action after receiving the no-match letter?

- Employer checks own records, makes any necessary corrections of errors, and verifies corrections with SSA or DHS *(0 – 30 days)*
- If necessary, employer notifies employee and asks employee to assist in correction *(0 - 90 days)*
- If necessary, employer corrects own records and verifies correction with SSA or DHS *(0 - 90 days)*
- If necessary, employer performs special I-9 procedure *(90 - 93 days)*

May an employer continue to employ a worker a worker throughout the process noted above?

Yes. The only reason an employer would have to terminate prior to 93 days if the employer gains actual knowledge of unauthorized employment. DHS notes that it is not requiring termination by virtue of this rule; rather, they are just providing a safe harbor to avoid a finding of constructive knowledge. Employers may be permitted to terminate based on its own personnel files including failing to show up for work or an employee's false statement to the employer. [Note: SSB always recommends consulting labor counsel before terminating employees for such reasons during the no-match process].

Employers may terminate as well if they notify an employee of the no-match letter and the employee admits that he or she is unauthorized to work.

What if the no-match letter is sent to the employee, not the employer?

The new rule only applies in cases where the written notice is to the employer.

Does it matter which person at the employer receives the letter?

No and DHS will not allow a designated person to receive these letters despite concerns raised about a no-match letter not making it to the appropriate party for too long. DHS has noted that an employer can determine an office within a company that becomes the recipient of all mail from DHS and SSA.

Does verification through systems other than that described in this rule provide a safe harbor?

No, and this includes instances where SSA provides options SSN verification as well as the USCIS electronic employment verification system. But DHS does note that DHS may choose to use prosecutorial discretion when employers take such steps.

Does an employer filing for a labor certification or employment-based green card application have constructive knowledge constitute "constructive knowledge" that a worker is unauthorized?

The new rule includes language stating "an employee's request that the employer file a labor certification or employment-based visa petition on behalf of the employee" may be an example of a situation that may, depending on the totality of relevant circumstances, require an employer to take reasonable steps in order to avoid a finding of constructive knowledge. But DHS notes that some employees are work-authorized and are not necessarily unauthorized to work just because they request such sponsorship from an employer.

Does an employer have to help an employee resolve the discrepancy with SSA or DHS?

No. An employer merely needs to advise the employee of the time frame to resolve. They are not obligated to help resolve the question or share any guidance provided by SSA.

In what manner must employers retain records required under the new rule?

The rule is flexible in this regard and employers may use any manner it chooses. The rule permits employers to keep records alongside the I-9 form. Employers are encouraged to document telephone conversations as well as all written correspondence.

If a new I-9 is prepared based on this rule, does that affect the amount of time the I-9 must be retained?

No. The original hire date remains the same even though the safe harbor procedure is used. So if an employer was hired several years ago, for example, has the I-9 form prepared again and then moves on to a new employer, the original date of hire applies for purposes of determining whether the one year retention requirement still applies.

Doesn't requiring an employee to fill out a new I-9 form per this rule constitute document abuse?

DHS does not believe this is the case because any document presented that contained a suspect SSN or alien number would not be facially valid and that it is proper for employers to require new documentation.

Won't this rule lead to massive firings across the country?

Many people are certainly worried that employers won't bother to go through the safe harbor procedures and will just panic and fire all workers that are the subject of these notices or will simply decide not to spend the effort complying. DHS denies that this is likely to be the case and has said the rule is in response to confusion under the current process.

Will an employer be liable for terminating an employee who turns out to be work authorized if they get a no-match letter?

If the employee IS authorized to work and an employer does not go through the various safe harbor steps in the rule, then the employer might be liable in an unlawful termination suit.

Won't this rule result in a major negative economic impact on the country?

That is an argument being advanced by many opponents of the rule. DHS only responds that this is speculative and also that complaints that small firms would be disproportionately affected because of the costs in complying are speculative as well.

What if the employee is gone by the time the no-match letter arrives?

An employer is not obligated to act on a no-match letter for employees no longer employed by them.

Aren't SSA and DHS databases unreliable?

DHS admits that the SSA and DHS databases have problems (as evidenced by GAO studies). But they say a no-match letter is nothing more than an indicator of a problem and that this does not warrant alone stopping the changes proposed in the rule.

Won't this rule encourage identity theft?

DHS denies it, but critics are concerned that the only step left for workers is to ensure that a social security number and name match and the only way for an

unlawfully present worker to ensure this is to usurp someone's identity. DHS believes the criminal penalties for identity theft will act as a sufficient deterrent.

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3. Ask Visalaw.com

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

Q - We already filed an I-485 adjustment of status application at the Nebraska Service Center for our 14 year old child. Can we go for a consular processing for the child after filing the I-485 here? The child is studying abroad and cannot disrupt the studies and spend 4 to 5 months in the US waiting on the advance parole document.

A - It is possible to apply for something called "following to join" where a child or spouse of an adjustment applicant can consular process after the parent or spouse's adjustment is finished. However, it can be a problem entering the US while the adjustment is pending unless the parents are maintaining H-1B or another non-immigrant status. Definitely consult with your immigration lawyer before abandoning the child's adjustment.

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Q - I am an international student who holds F-1 status and I've been dating my boyfriend who has asylum status. What's going to happen if we get married? Is it possible for me to apply for a green card since I really don't want to apply for asylum? How complicated is it for our situation later after we get married?

A - You are not going to get status anytime soon as a result of marrying an asylee, so you don't really have the choice you think you have. To gain any status as a result of a marriage to an asylee, the marriage must take place before asylum is granted. After the asylee gets permanent residency status, then your husband can file an F-2A green card petition and you can wait several years for a priority date to become current. You may have options tied in to your own status, but you should really consult with an immigration lawyer to explore those possibilities.
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Q - I came to the US on a J-1 visa as a high school student. I changed my status to F-1 student status and attend currently a private university. My parents won the green card lottery and will move to the US this summer. I would like to file for a family based visa. Is it true that I will have to leave the US in order to do this? Or is there any way I can stay here?

A - Generally, high school students are not subject to the requirement to go back to your home country for two years as other J-1s are. The exception usually comes up when you have received any government funds. You really should have an immigration lawyer examine the DS-2019 paperwork you received for the J-1 visa in order to say with certainty whether you are or are not going to have an issue. If you

are not subject to the home residency requirement and are under the age of 21 when your parents' rank number becomes current, you should be able to immigrate with them. Note that under the Child Status Protection Act, you may be able to be somewhat older than 21 when their rank number becomes current depending on when your parents submitted their lottery application and when they received their notification that they won.

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Q - I am on H-1B visa currently finishing up 6 years in 2009. I was sponsored by 3 employers in the past for the H-1B and I am pretty sure I was counted in the cap at least once. How is it possible to find out if I was counted in the cap? I looked at the partially available paper work of my filings but it is confusing. Will the USCIS respond to a query for a such a thing?

A - Really the only way to know if you were counted in the cap is to look at the petition itself or if the application was accepted at a time when the cap was reached, that would be an indicator that you were previously counted. USCIS will not tell you whether the case was or was not counted. You can also figure out the answer if you know the amount of the filing fee that was paid.

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Q - I'm planning to go to the Philippines in the coming months and marry my long time girlfriend. I know the K-3 visa involves more paperwork and may be a longer process. But this is something my girlfriend and I want to do.

My question is this: I'm in the process of bankruptcy now, mainly because my house is going thru foreclosure due to the rate adjustments. I make well over the 125% over the poverty wages. My earnings are roughly 33,000. I'm single with no dependants. So will bankruptcy interfere with my spousal petition?

A - First, I am sorry to hear about your dilemma. But I am happy to tell you that bankruptcy is not a basis for denying a family-based green card petition as long as you can demonstrate you have sufficient income in your household to meet the public charge requirements in the green card petition. Good luck.

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4. Border and Enforcement News

The Bush administration recently announced its renewal to crack down on US companies that hire undocumented immigrants by altering the conditions of "no-match" letters, an initiative stalled by a federal judge since last September. According to *The Washington Post*, if the new proposal satisfies the court, the government could begin warning 140,000 employers in writing in early as June about suspect Social Security numbers used by their employees and force businesses to either solve questions about their employees' identities or fire them within 90 days.

The letters were enjoined by US district Judge Charles R. Breyer while he hears a lawsuit brought by a wide-ranging coalition of major American labor, business, farm

and civil liberties groups. The plaintiffs, including the AFL-CIO, the US Chamber of Commerce ant the ACLU, allege that the plan will cause major workplace disruptions and discriminate against legal workers, including native-born Americans.

Critics have noted that the Social Security Administration's inspector general has concluded the database used to cull suspicious numbers contains erroneous records on 17.8 million people, 70 percent of whom are native-born US citizens. Even if the actual error rate of no-match letters is far lower, labor leaders say that unscrupulous employers will use the rule of burden or harass anyone who looks or sounds foreign. "It's an attempt to justify the fundamentally flawed database without actually fixing any of the problems," said Lucas Guttentag, director of the ACLU immigrants' rights project.

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A program that has rotated thousands of National Guardsmen along the Mexican border to augment US Border Patrol agents comes to a close in four months, despite calls by at least one border state governor to extend the Guard's mission, *The Associate Press* reports. Operation Jump Start, which began in mid-2006, deployed up to 6,000 troops at a time during the first 12 months in non-enforcement roles that freed up Border Patrol agents for front-line duty. The mission will wind down to a July 15 finish, though some Guard personnel will remain to finish up paperwork and account for equipment.

Arizona Gov. Janet Napolitano has expressed interest in the soldiers staying. The Democratic governor wrote a letter this month to DHS Secretary Michael Chertoff, urging him to "reconsider the drawdown of Operation Jump Start, and instead retain National Guard personnel." Chertoff's spokesman said while DHS is sticking with the National Guard drawdown plan, they hope that the Border Patrol has 18,000 agents by the end of 2008 and has asked Congress to approve funding for an additional 2,000. "We've been abundantly clear since Day One about the intent and timeline for Operation Jump Start," spokesman Russell Knocke said.

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Department of Homeland Security Secretary Michael Chertoff has denied a request by senators on both sides of the aisle to delay the deadline for states to comply with new federal regulations for state-issued driver's licenses and identification cards. According to *The Washington Times*, Chertoff rebuked the lawmakers for requesting that the congressionally mandated timeline be changed to implement Real ID, saying "this plain statutory language mandates the May 11 deadline. You may disagree with the foregoing law, but I cannot ignore it," Mr. Chertoff said in a March 20 letter to the lawmakers.

Lawmakers who called the deadline "arbitrary and ineffective" include Republican Sens. Susan Collins and Olympia J. Snowe of Main and John Sununu of New Hampshire; plus Democratic Sens. Patrick J. Leahy of Vermont, Daniel K. Akaka of Hawaii, and Max Baucus and Jon Tester of Montana. "These regulations raise disturbing constitutional issues regarding the ability of some citizens to travel freely and access their federal government," the lawmakers wrote in a March 12 letter to Chertoff.

States have until March 31 to request an extension to enroll in the program to set standards for determining which state-issued identifications are secure enough to be

accepted by the federal government, which determines whether those IDs are good for such purposes as boarding commercial flights and entering federal buildings.

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5. News From the Courts

Ayanbadejo v. Chertoff, (5th Cir. Feb. 8, 2008)

INA §242(a)(2)(B)(ii) does not bar judicial review of determinations pertaining to I-130 visa petitions.

Plaintiff husband, a native and citizen of Nigeria, entered the U.S. as a nonimmigrant visitor and married his U.S. citizen wife shortly thereafter. Plaintiff wife submitted an I-130 petition and Plaintiff husband filed an accompanying application for adjustment of status. USCIS denied the I-130 petition and I-485 application after an investigation raised doubts about the validity of the marriage. The BIA affirmed without opinion. Plaintiffs filed a complaint in district court, and a subsequent motion to amend their complaint to allege that (1) they were denied the right to a full and fair hearing before CIS and the BIA; (2) their rights under FOIA were violated when they did not receive their immigration documents within 30 days of filing a request; and (3) their rights under the International Covenant on Civil and Political Rights were violated by CIS and the BIA. The district court found no constitutional violations with respect to the agency's determinations regarding the validity of Plaintiffs' marriage. In addition, the district court found the FOIA claim moot and found no cognizable action with regard to Plaintiffs' claim under the ICCPR. The court denied the motion to amend the complaint and ultimately granted the government's motion to dismiss for lack of subject matter jurisdiction, finding that CIS's denials of the I-130 and I-485 were within its discretion and were therefore, not subject to judicial review.

On appeal, the court addressed an issue of first impression in the Fifth Circuit: whether the district court has subject matter jurisdiction to review the denial of an I-130 petition and an I-485 application. Under INA §242(a)(2)(B)(ii), "no court shall have jurisdiction to review…any other decision or action of the Attorney General or Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or Secretary of Homeland Security…." In *Zhao v. Gonzales*, 404 F.3d 295 (5th Cir. 2005), the court interpreted this provision to mean that courts are precluded from reviewing those decisions "specified in the statute" to be discretionary. *Zhao* emphasized that the language in §242(a)(2)(B) was meant to "delineate definitively which types of decisions are discretionary, and thus nonreviewable by a court." While §242(a)(2)(B)(i) explicitly points to "any judgment regarding the granting of relief under…section [245]" as discretionary, INA §204(a)(1)(A)(i), which governs I-130 petitions, is not mentioned in §242(a)(2)(B)(i). Therefore, the court concluded that the district court properly found that it lacked jurisdiction to review the denial of Plaintiff husband's I-485 application, but incorrectly concluded that it did not have subject matter jurisdiction over the denial of Plaintiff wife's I-130 petition. The court also found that the district

court did not err in denying Plaintiffs' motion to amend their complaint to add the FOIA and ICCPR claims.

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6. News Bytes

The San Jose Business Journal reports on a new study released last week which argues that the 65,000 H-1B visas available for highly skilled foreign workers is not nearly enough, and that despite a weak US economy, demand for these temporary work visas will continue to far exceed the supply. The study, conducted by the National Foundation for American Policy (NFAP), surveyed every company listed in the S&P 500; the companies posted a combined 140,000 tech-worker openings in January for people who have at least an undergraduate degree; the timing, NFAP feels, is not coincidence. "We don't see these kinds of job openings as a temporary phenomenon," said NFAP Executive Director Stuart Anderson.

In recent years, the high-tech industry has been pushing Congress to increase the cap on H-1B visas, arguing that US companies need foreign engineers and scientist because there aren't enough Americans to fill these jobs. Microsoft chairman Bill Gates urged the House Immigration Subcommittee last week to make it easier for large tech companies to hire foreign workers, a workforce that has the skills and education these companies need to survive. In addition, Google and Cisco have been closely working on the issue with Compete America, a coalition of corporations, educators, research institutions and trade associations committed to making sure US employers can hire and retain the world's best talent. Cisco spokesperson Jennifer Greeson says its strategy is also to recruit and hire the best and most qualified individuals; unfortunately, she says there is an ever-increasing shortage of US workers with the skills necessary to fill certain types of engineering and science positions.

While tech-industry heavyweights are feeling the pressure of being unable to hire the desired amount of foreign professionals, the dearth of available H-1B visas leads smaller companies to suffer as well. "The tech-worker shortage may be even more serious for smaller firms, which don't have the resources large companies have to recruit talent," says Christopher Hansen, president of AeA, a tech-industry trade association. "These companies could become the next Microsoft or Google Inc., but they'll never get there if they can't get the talent."

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A group of 500 foreign welders and pipefitters brought in to work at Gulf Coast oil rig yards after Hurricane Katrina said last week that they had sued their employer, claiming they were lured with false promises of permanent-resident status, forced to live in inhumane conditions and then threatened when they protested. As first reported by *The New York Times,* the workers were recruited in India and the United Arab Emirates and brought in late 2006 and early 2007 under the US temporary guest worker program. They worked at Signal International, an oil rig repair and construction company in Pascagoula, Mississippi, and Orange, Texas. The company says it had brought them in to supplement a labor force depleted by Hurricanes Katrina and Rita.

At a press conference, the workers' lawyers, members of the Southern Poverty Law Center, said that their clients had given up life savings, sold family jewelry, and paid up to $20,000 in immigration and travel fees after being assured that the company would help them to become permanent US residents. In a statement following the suits, the company called the workers' charges "baseless and unfounded" and said it had spent "over $7 million constructing state-of-the-art housing complexes" for the workers. The company said that the "vast majority of the workers" recruited had been satisfied with their conditions and that the workers were being paid "in excess" of prevailing rates and in full compliance with the law.

The claims made by the company were disputed by the workers and their advocates. Ignorant of American immigration law, advocates said, the workers were unaware that they had been brought in only temporarily.

The workers' assertions are the latest in a series of complaints about exploitation of foreign laborers on the Gulf Coast after Hurricane Katrina. Previous complaints involved Hispanic hotel and construction workers and farm laborers and have centered on low pay and harsh working conditions. In the summer of 2006, Hispanic hotel workers sued a prominent New Orleans developer over inadequate pay, and last month, fruit pickers walked off the job in a parish north of New Orleans over exploitative conditions. The Southern Poverty Law Center has also sued on behalf of immigrant workers involved in the reconstruction and cleanup of New Orleans after the storm. It maintains that immigrants brought in under the guest worker program are "systematically exploited and abused," all over the country.

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7. International Roundup

Asylum requests fell by 10 percent last year in France, which lost its place as the most popular destination for asylum seekers in Europe, an official report showed Thursday.

Agence France Presse reports that the number of applications was down by 9.7 percent, at 35,520, in line with a trend begun in 2004. Confirming estimates from the French refugee office OFPRA. France still had the second highest number of asylum seekers in the European Union in 2007, after Sweden, which handled 36,207 applications -- a 50-percent increase year-on-year -- and ahead of Germany, Greece and Britain.

Asylum requests are also falling towards traditional host nations Germany and Austria, but have boomed on the EU's southern and eastern borders: in Greece, Italy, Spain and Poland, the report showed.

The head of the asylum seeker rights group CFDA, Patrick Delouvin, said the fall in France was due 'largely to government measures restricting access to our territory and intended to dissuade asylum seekers from coming.' French authorities granted refugee status to 8,781 people in 2007, or 29.9 percent of applicants, compared to 19.5 percent the previous year.

The largest groups of first-time asylum applicants were Kosovo Albanians, Turks, and

Russians -- many of them Chechens. France counts 130,926 people with official refugee status, with applications by Malians, Eritreans and Rwandans the most often accepted. Most likely to have their applications turned down are Turks, Chinese and citizens of the Democratic Republic of Congo.

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The European Jewish Press reports that the prestigious 2008 Israel Prize for 'lifetime achievement and special contribution to society and the State of Israel' will be awarded to the Jewish Agency for Israel, the governmental body in charge of immigration, the Israel Prize Committee and the Ministry of Education announced in Jerusalem.

The prize, Israel's highest civilian honor to organizations and individuals, will be presented to the agency next month, on Israel's 60th Independence Day, for its work as a pioneering force in the establishment of the State of Israel and its contributions to shaping Israeli society in the 21st century.

In making the announcement, the Committee noted the Jewish Agency's 'tireless efforts' as a pioneering force in the establishment of the State of Israel and its continuing contributions in strengthening Israeli society, partnering the people of Israel with Jewish communities around the world, and deepening the connection of the Jewish next generation throughout the world.

'Receiving the Israel Prize on Israel's 60th anniversary is a symbolic expression of the central contribution of the Jewish Agency to the establishment of the State of Israel and to the strengthening of Israeli society over the last 80 years,' Jewish Agency Chairman Zeev Bielski said.

'In being named for the Israel Prize, we recognize the role of the Jewish communities and federations around the world which have stood behind the work of the Jewish Agency over the decades, and especially our founding partners, the United Jewish Communities and Keren Hayesod,' Bielski said.

The Jewish Agency was established by the World Zionist Organization (WZO) at the 16th Zionist Congress, in August 11, 1929 as a partnership between the WZO and non-Zionist Jewish leaders, among them Louis Marshall , Leon Blum, and Felix Warburg.

Also known as the 'Sochnut', it served as the pre-state Jewish government before the establishment of Israel and later became the organization in charge of immigration and absorption of Jews from around the world.

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8. Legislative Update

A coalition of business groups recently endorsed a piece of federal legislation that would require employers to verify the eligibility of employees to work in the US, *The Nashville Business Journal* reports. The New Employee Verification Act, sponsored by Rep. Sam Johnson (R-TX), would require employers to enter employee identification data through their state's 'new hire' reporting program, an electronic portal already widely used to track down parents who owe child support. The legislation gives businesses the option of conducting a background check and

collecting a thumbprint or other biometric to determine a worker's identity and prevent the use of a phony Social Security number or driver's license.

The endorsing coalition, the Society for Human Resource Management (SHRM) says the verification would be more favorable than the government's voluntary E-Verify system because the "new hire" database is more reliable than the databases used by E-Verify. SHRM, which includes the National Association of Manufacturers, National Association of Home Builders, as well as several other business groups, conducted a poll in January in which 85% of its respondents think a mandatory national employment verification system is an important characteristic of a system to make sure only legal workers get jobs.

Despite the criticisms against the program, Department of Homeland Security continues to promote E-Verify, in which employers check the Social Security or visa numbers from new employees against government databases. The government will soon issue a proposed regulation that would require all federal contractors to use E-Verify, according to DHS Secretary Michael Chertoff.

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Mississippi governor Haley Barbour signed a bill last week which will require the state's employers to use a federal database to check immigrants' status. According to *The Associated Press*, the bill will become law Jan. 1, 2009. It will require employers to use the US Homeland Security electronic verification system (more commonly known as "E-Verify") to check whether new hires are legal residents. Employers who hire undocumented immigrants could lose their business license for a year and any state contract work for up to three years. Any undocumented immigrants found working in the state could face a one-year prison sentence and a fine of up to $10,000.

Despite the planned usage of E-Verify, Barbour is wary of its consistency. "I am concerned about mandating the E-Verify system as the sole source from which an employer in Mississippi can verify a potential employee's eligibility, especially since the federal government itself has said E-Verify is not a reliable system," Barbour said in a news release.

Immigrants' advocates had called on Barbour to veto the bill, which they said targets Latinos. Bill Chandler, executive director of the Mississippi Immigrants Rights Alliance, said he is appalled that Barbour signed the legislation. "This is the grossest form of discrimination and it's the most racist legislation that's been passed since the Sovereignty Commission and the Jim Crow laws," Chandler said of the bill. The Sovereignty Commission was Mississippi's state-sponsored agency that spied on civil rights activists. It existed from 1956 to 1973.

Barbour, who won a second term in 2007, said early in his campaign that immigration is strictly a federal issue. He also said Mississippi's Hurricane Katrina recovery had gotten a boost from immigrant workers. But in the final weeks of the campaign, Barbour sharply changed his stance on the issue, running numerous ads saying he would enforce immigration laws in the state.

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Republican lawmakers in South Carolina are pushing a bill into the state's Congress, which would require anyone registering to vote to show a passport, birth certificate or naturalization, *The Associated Press* reports. Supporters of the bill say it will

protect elections by ensuring undocumented immigrants can't cast a ballot. Critics argue that it's just a GOP move to hassle people who might vote for Democrats.

"The only people stifled from voting are those who can't legally vote," said Rep. Alan Clemmons, who lead the subcommittee that approved the measure earlier this year. Clemmons said requiring residents to verify what they put on their voter application form is not a burden. "It's a simple matter to produce a birth certificate," Clemmons said, adding he'll volunteer to help secure one for any South Carolinian without it.

But Democrats contend poor and rural residents are less likely to have a birth certificate, much less a passport, and that getting either takes time and money. Some older residents weren't even born in a hospital, said Brett Bursey, executive director of the state Progressive Network. "The measure is aimed squarely at suppressing the Democratic vote."

In January, the Democratic presidential primary drew 87,000 more South Carolina voters than the Republican primary, a stunning figure in a state where the GOP controls both chambers of the Legislature, all but one statewide office, and six of eight seats in the US House and Senate. The latest Census estimate puts South Carolina's Hispanic and Latino population at roughly 130,000. But advocates say it's closer to over three times that number, and climbing. Bursey accused Republicans of using the fear surrounding undocumented immigration to suppress Democratic votes. "Today's boogeyman is immigrants," he said.

The bill's author and sponsor, Rep. Gloria Haskins, said her intent was not to make everyone submit proof of citizenship when registering, but only people born in another country, as she was. Haskins, who emigrated from Colombia with her family at 12 years old, said she's more concerned with immigrants who are here legally but are not citizens trying to vote, and she pledged to amend the bill. "I don't want to stifle the process at all," Haskins said. "My intention is to maintain the integrity of the process. If you're born here, you don't need to prove you can vote."

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9. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- Soy Hombre
- Message to USCIS: Fix E-Verify Before Courts Shut It Down
- Immigrant of the Day: Luc Richard Mbah a Moute – Basketball Player
- The New Opt Rule FAQ
- Stem Professions
- My Summary of the Opt Rule
- The ABC's of E-Verify
- USCIS Releases Rule Extending F-1 Practical Training to 29 Months
- Extension Bills Advance in House
- DHS' Official Wink-Wink REAL ID Announcement

- USCIS and FBI Announce Plan to Eliminate Security Clearance Backlogs
- 30 Day O-1 Processing Bill Passes in House Judiciary Committee
- 15% of Arizona Employers are Using E-Verify
- Drew Carey on the Beckham Factor
- UK's Immigration Policies Helping Them Out-Compete US
- 17 Month Opt Coming for F-1 Students
- MVL Video Contest Finalists
- Four Immigration Bills Set to Advance on Wednesday
- The Yin And Yang of Immigration
- How Illegally Present Immigrants Help Both The Elderly and The Young
- *NY Times* and *Washington Post* Cover Horsely Entry Denial
- Democratic Congressmen Warn on Expanding E-Verify Right Now
- Rhode Island Latest State to Get Employer Sanctions Rules
- Driving While Latino
- Breaking News: Shuler Claims McCain Killed Enforcement Bill
- Oklahomans Ask "What Have We Done?"
- Religious Right Leader Apologizes Over Gay Immigration Rights Remark

The SSB Employer Immigration Compliance Blog

- TN Senate Passes Bill Allowing Secret Complaints to be Filed in Sanctions Cases
- Arizona House Approves Bill to Modify Sanctions Law
- Sanctions Bill Passes Key Hurdle in Missouri
- SC Lawmakers Again Seek to Reach a Deal
- 15% of Arizona Employers Using E-Verify
- Rhode Island Groups Protest New Governor's Order
- Democratic Congressmen Warn on Expanding E-Verify Right Now
- Rhode Island Latest State To Get Employer Sanctions Rules
- Texas Business Leader: No-Match Leader Not Connected to Reality
- National Immigration Law Center Criticizes Revised No-Match Rule Proposal
- Economists Project Potentially Massive Costs for Oklahoma Immigration Law
- Nevada Attorney General: US Constitution Actually Means Something
- California Latest State to Propose Sanctions Bill
- South Carolina Bill Criticized for not Being Harsh Enough

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

Visalaw Health Blog

- 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 week, on NPR's "Morning Edition," Republican presidential candidate John McCain suggested that strong anti-immigrant rhetoric contributed to two recent, high-profile GOP Congressional losses – of former Pennsylvania senator Rick Santorum, who badly lost to Sen. Bob Casey in 2006, and Jim Boerweis, who lost the heavily Republican seat of former House Speaker Dennis Hastert last month in a special election. "I know that there have been some races, like here in Pennsylvania,

where Senator Santorum emphasized that issue [immigration] and lost by a large number," McCain said. With regards to Hastert, McCain added, "the Republican candidate out there, I am told, had a very strong anti-immigrant rhetoric also, so I would hope that many of our Republican candidates would understand the political practicalities of this issue."

McCain campaigned heavily for Oberweis last month, helping the campaign raise about $300,000. Oberweis will be on the ballot again in November, running against Rep. Bill Foster (D-Ill). During the campaign, Oberweis proposed his own plan to crack down on undocumented immigration, including airing television ads arguing that politicians in Washington "can't seem to fix" the issue.

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US News & World Report has compiled a list of quotes and key voting records of the three remaining presidential candidates, helping understand where they stand on immigration.

Border Fencing

Barack Obama – "The key is to consult with local communities when creating any kind of barrier." Obama voted for the Secure Fence Act of 2006, which authorized a fence on the Mexican border but has since de-emphasized his support.

Hillary Clinton – "Let's deploy more technology and personnel, instead of the physical barrier." Clinton also voted for the fence, but has softened her support by criticizing the fence's execution

John McCain – "Borders are borders, and there should be agreements between the landowners and the federal government." McCain voted for the fence and has encouraged agreements to allow the government to enter private property to survey land.

Guest-Worker Program

Obama – "Illegal immigration is bad for illegal immigrants and bad for the workers against whom they compete." Obama supports a guest-worker program with a database of workers, arguing it will improve wages and conditions for all workers.

Clinton – "It is easier sometimes to employ people who are immigrants and … really take advantage of them." Despite voting for the failed McCain-Kennedy bill, Clinton says she opposes a guest-worker program because it could depress US wages.

McCain – "We need workers in this country. There are certain jobs that Americans are simply not willing to do." McCain cosponsored the failed Senate bill that proposed a guest-worker program with a registry and a path to legalization for undocumented immigrants.

Legalization/Amnesty

Obama – "Give the 12 million people who are here illegally, many of whom have US citizens for children, a pathway to legalization." Obama supports allowing undocumented immigrants to apply for legal residency if they pay a penalty and don't have a criminal record.

Clinton – "[Deporting all undocumented immigrants] is absolutely unrealistic, and it is not in keeping with American values." Clinton supports giving undocumented immigrants a path to legal residency, similar to Obama's position.

McCain – "Make them earn citizenship because they have broken our laws." As a principal author of last year's failed immigration bill, which would have given undocumented immigrants a path to citizenship, McCain has struggled to convince conservatives that his plan is not amnesty.

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11. State Department Visa Bulletin for April 2008

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 11th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits.

Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

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

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

FAMILY-SPONSORED PREFERENCES

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

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

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

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

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

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

EMPLOYMENT-BASED PREFERENCES

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

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

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

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

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

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

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

Family	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	22FEB02	22FEB02	22FEB02	08JUL92	01MAR93
2A	08MAY03	08MAY03	08MAY03	01MAY02	08MAY03
2B	22MAR99	22MAR99	22MAR99	01APR92	01FEB97
3rd	22MAY00	22MAY00	22MAY00	22JUL92	01APR91
4th	22JUL97	15DEC96	22NOV96	01DEC94	22FEB86

*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-Based					
1st	C	C	C	C	C
2nd	C	01DEC03	01DEC03	C	C
3rd	01JUL05	08FEB03	01OCT01	01OCT01	01JUL05
Other Workers	01MAR02	01MAR02	01MAR02	01MAR02	01MAR02
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 April, immigrant numbers in the DV category are available to qualified DV-2007 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	21,500	Except: Egypt : 17,900 Ethiopia 14,150 Nigeria 9,900
ASIA	9,100	
EUROPE	20,625	
NORTH AMERICA (BAHAMAS)	11	
OCEANIA	1,200	
SOUTH AMERICA, and the CARIBBEAN	1,425	

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 MAY

For May, 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	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	

D. INDIA EMPLOYMENT SECOND PREFERENCE VISA AVAILABILITY

Section 202(a)(5) of the Immigration and Nationality Act provides that if total demand will be insufficient to use all available numbers in a particular Employment preference category in a calendar quarter, then the unused numbers may be made available without regard to the annual "per-country" limit. It has been determined that based on the current level of demand being received, primarily by Citizenship and Immigration Services Offices, there would be otherwise unused numbers in the Employment Second preference category. As a result, numbers have once again become available to the India Employment Second preference category. The rate of number use in the Employment Second preference category will continue to be monitored, and it may be necessary to make adjustments should the level of demand increase substantially.

E. SI CATEGORY VISA AVAILABILITY FOR IRAQI AND AFGHANI TRANSLATORS

The National Visa Center has already scheduled 485 Special Immigrant Translator cases for interview in FY-2008. Of these, 332 SIVs have been issued to principal applicants and there are another 170 cases scheduled for March. Given the number of cases scheduled, along with the 221(g) cases still pending, it is likely that the FY-2008 numerical limitation of 500 visas in this category will soon be reached.

F. OBTAINING THE MONTHLY VISA BULLETIN

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

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

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

listserv@calist.state.gov

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

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

listserv@calist.state.gov

and in the message body type: Signoff Visa-Bulletin

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

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

VISABULLETIN@STATE.GOV

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