Siskind's Immigration Bulletin – March 18, 2009

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Siskind Susser 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:

I am continuing to hear from many of you asking what to do if you lose your job. I've written an extensive article on the topic that can be found at http://www.visalaw.com/08oct2/2oct208.html. The article focuses mostly on how to stay legal and how employers can make sure they don't unnecessarily harm their workers.

There is one option I don't discuss in the article and it's near and dear to my heart. I founded my law firm 15 years ago when I was worried about my job security at a large law firm. But this lack of security was actually a blessing since it led me to take the plunge and start up my own business. It's one of the best decisions I've ever made. I have loved being my own boss and found that being an entrepreneur is really fulfilling. Not everyone is cut out for running their own business and many of you won't have the financial means to go this route. But if running your own business is something you've wanted to explore, there are a number of immigration options available.

Some think you need to invest $1,000,000 to qualify. But that is often not the case. Many people can qualify for a fraction of that amount – perhaps in the $100,000 to $200,000 range if they pursue an E-2 non-immigrant visa. And while the EB-5 green card sometimes requires a minimum investment of $1,000,000, you can sometimes invest in a targeted employment area with a high unemployment rate or in a non-metro area and cut the requirement to $500,000.

I'm going to be giving a seminar at the International Franchise Expo in Washington, DC on Saturday, March 21, 2009 at 2 pm. You can get free tickets to the seminar as well as the entire Expo by going to http://www.prlog.org/10181267-free-tickets-are-available-to-live-e2-and-eb5-seminar.html. The event is one of the largest franchise expos in the world so if you're looking at going this route to starting your business, this is a great event to attend.

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In firm news, I have just become of the president of the Memphis Jewish Family Service agency. Despite the name, the agency actually serves all religious faiths in our city providing refugee services, counseling, adoption services, programs for senior citizens, and emergency assistance to those facing financial crises and more.

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

Kind regards,

Greg Siskind

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2. The ABC's of Immigration, Employer Compliance Series: Re-verification and Recordkeeping of I-9 Forms

Re-verification

What are the Form I-9 re-verification requirements?

If an employee is not a U.S. citizen or lawful permanent resident, they are likely working based on a status with a defined end date. For these employees, the employer must note the expiration of their documents on the I-9 Form and then must pull their I-9 Form before the expiration date and re-verify that the employee's status has been extended. Employers need to establish a reliable tickler systems to prompt re-verification. Aside from complying with the re-verification rule, this system will also ensure that an employer that needs to extend a work visa for an employee will not forget to take care of this critical task (something that is, unfortunately, neglected by many employers and can result in an employee falling out of legal status). Green cards and passports with expiration dates do not need to be re-verified.

What if the re-verification section of the form has been filled out from a prior re-verification?

In this case, an employer can complete a new Form I-9 Section 3. The employer should put the employee's name in Section 1 and retain the new form with the original.

Can an employee present a Social Security card to show employment authorization at re-verification when they presented an expiring Employment Authorization Document or I-94 at the time of hire?

Yes as long as the Social Security card is not restricted with a statement such as "not valid for employment" or "valid for work only with DHS authorization" (these documents are not valid List C documents). Employers may not specify which documents an employee may present either at the time of hire or at the time of re-verification. Keep in mind that an employee may have become a permanent resident or otherwise received employment authorized status allowing the employee to obtain a Social Security card absent the sponsorship of the employer so the employer should not assume the employee is really unauthorized.

What if a new Form I-9 comes out between the date the initial Form I-9 is completed and the time of re-verification?

If a new Form I-9 has been released between the date of hire and the date of re-verification, the employer must complete Section 3 of the new version of the Form I-9 and only accept documentation of employment eligibility from the Lists of Acceptable Documents in the Form I-9 instructions.

Do prior employees resuming work with a company need to complete a new Form I-9?

Returning employees often don't need to fill out a new I-9, but if that is not done, the employer needs to re-verify the employee's work authorization in Section 3 of the Form I-9. Remember that if a new version of the Form I-9 has come out since the last time the Form I-9 was completed, the employee will need to complete a new form. And if the form has been filled out in Section 3 from a previous re-verification, the employer can complete Section 3 of a new Form I-9.

In order for an employee to be considered a re-hire, the employer must be rehiring the employee within three years of the initial hiring date of the employee and the employee's previous grant of work authorization must not have expired. Re-verifying employers must (a) record the rehiring date, (b) write the document title, number and expiration date of any document presented by the employee, (c) sign and date Section 3 and d) if the re-verification is happening on a new Form I-9, the employee's name is written in Section 1.

If an employee is being updated instead of re-verified, the employee must be rehired within three years of the initial date of hire and the employee is still eligible to work on the same basis as when the original Form I-9 was completed. In other words, simply updating the Form I-9 is permitted when the employee is coming back on the same basis as in the original Form I-9 and re-verification is needed when the basis for work has changed. Updating is done by recording the date of rehire, the employer signs and dates Section 3 and the employee's name is written in Section 1.

Of course, it may be easier just to do new I-9s and an employer can certainly opt for this. Note that the rules on returning employees also apply to cases of recruiting or referring an individual.

What if a re-hired employee is re-hired after a new version of the Form I-9 is released?

If the Form I-9 has been modified since the form was filled out on the date of hire, the employer should not complete Section 3 of that form. Instead, the employer should complete Section 3 of the new form, list the employee's name in Section 1 and have the employee provide documentation of continued employment authorization from the current Lists of Acceptable Documents provided in the Form I-9 instructions.

Recordkeeping

What are the Form I-9 recordkeeping requirements?

Employers must keep I-9 Forms for all current employees though the forms of certain terminated employees can be destroyed. In the case of an audit from a

government agency, the forms must be produced for inspection. The forms may be retained in either paper or electronic format as well as in microfilm or microfiche format (see discussion below for more information on this subject).

When can Form I-9 be destroyed?

For terminated employees (the date employment in the U.S. ceased for employees transferred abroad), the form must be retained for at least three years from the date of hire or for at least one year after the termination date, whichever comes later. Employers should figure out two dates when an employee is terminated. The first is the date three years from the date of the employee's date of hire. The second is the date one year from the termination date. The later date is the date until which the Form I-9 must be retained.

Note that there is a different rule for recruiters or referrers for a fee. Those entities only are required to maintain the Forms I-9 for a three year period from the date of hire regardless of whether the employee has been terminated or not.

In addition to establishing a reminder system to re-verify Forms I-9, employers should also establish a "tickler" system to destroy forms no longer required to be retained.

Should recordkeeping be centralized at a company?

Keeping records in one location is generally advisable because it makes it easier to conduct internal audits to ensure the employer is complying with IRCA's rules and also to more easily prepare for a government inspection since having the forms at one location will allow more time for review.

The forms themselves can be kept onsite or at an offsite storage facility as long as the employer is able to produce the documentation within three days of an audit request from a federal agency.

Does an employer need to keep copies of the documents presented by the employee?

No. Retaining copies of the supporting documents is voluntary. Employers can retain copies of documents and must keep the copies with the specific Form I-9. While some would argue that maintaining copies of documents leaves an unnecessary paper trail for government inspectors, it is also true that maintaining documentation could provide a good faith defense for an employer in showing that it had reason to believe an employee was authorized even if the paperwork was not properly completed. IRCA compliance officers may also be suspicious of employers that don't keep copies of documents. It is also easier for an employer to conduct internal audits to ensure compliance when they can see what documents were actually provided to the human resource representative responsible for completion of the Form I-9. Whatever a company decides, however, it is important that the policy be consistently applied and it is important to remember that simply having copies of the documents does not relieve the employer of responsibility for fully completing Section 2 of the Form I-9. Also, consistency is important. Keep all the documents or keep none of

them since keeping copies only for certain employees could open the employer up to charges of discrimination.

Can Form I-9 be completed on paper be stored in another format?

Yes. In addition to paper, Forms I-9 may be retained in an electronic, microfilm or microfiche format.

DHS suggests the following with respect to microfilm or microfiche:

- use film stock that will last the entire retention period (which could be 20+ years for some businesses)
- use equipment that allows for a high degree of readability and can be copied on to paper
- for microfilms, place the index at the beginning or end of the series and for microfiche, place the indexes on the last microfiche.

Forms I-9 can also be retained in an electronic format (we'll cover the electronic I-9 process in the next ABC's of Immigration segment).

Should the Form I-9 records be kept with the personnel records?

This is generally a bad idea. First, it could compromise the privacy of employees by allowing government inspectors to review items that are completely unrelated to the Form I-9. Employers that want to prevent this would have to manually go through the personnel records and pull the Form I-9 paperwork, something that could cost valuable time as the employer prepares for the government inspection. Keeping the Forms I-9 separate will also make it easier to conduct internal audits to ensure compliance with IRCA and to re-verify forms as needed.

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3. Ask Visalaw.com

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

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Q - Do I have to file an I-212 waiver after completion of a 10 year bar for re-entry into the US?

A - If you have completed your ten years outside the US you do not need a waiver. Instead, you would need to provide documentation of your time outside the US when you are getting the visa to reenter the country.

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Q - I would like to know what I should do to get my citizenship. I've been in the US for two years. Is it possible to apply with three years residence

A - The residency period depends on how you got the green card. If you got it through a US citizen spouse, , the period is normally three years. For all other bases, the wait is normally five years.

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Q - For a person in the US on a B-2 status for medical treatment, is it possible to get a second 6 month extension of status after one 6 month extension has been granted?

A - It is possible to get an extension of visitor status from USCIS. Of course, this is a matter of discretion so you will need to convince USCIS that you have the means to pay for your treatment and support yourself during the time here and that you continue to have strong ties to your home country.

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Q - My father-in-law will become a US citizen within 15 days. After a getting citizenship he wants to come to India. How much time he can stay in India? Also, I want to whether a long stay in India will affect his US citizenship.

A - Once your father becomes a citizen, there is no time limit on how long he can stay outside the country.

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Q - Do you have any idea where my son born in December 1990 can get information about possibly giving up his US citizenship? He was born and raised in Germany.

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

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4. Border and Enforcement News

Earlier this month, the Department of Homeland Security published a report indicating that, after years of rising numbers, the population of undocumented immigrants in the US decreased between 2007 & 2008. According to *The Washington Times*, DHS' Office of Immigration Statistics that the number of undocumented immigrants in 2008 was 11.6 million, decreasing by 200,000 from January 2007.

While an official cause for the decline was not given, DHS spokeswoman Amy Kudwa suggested that "increased border security and interior-enforcement efforts, along with the state of the economy, may contribute to this." However, the DHS office

cautioned against reading too much into a single year's figures, as it may not be indicative of a larger trend shift.

The DHS report also includes demographic data for undocumented immigrant groups in the past year. The report notes that Mexicans continue to consist of the majority of undocumented immigrants and that 74% of all undocumented immigrants in the US between 2000 and 2008 came from Mexico. From a geographic perspective, the report suggests that California is still the most popular state for undocumented immigrants, with an estimated 2.9 million living in the state in 2008.

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DHS Secretary Janet Napolitano announced that more security personnel may soon be headed to the US-Mexican border to quell increasing drug-fueled violence, *Politico* reports. She declined to say when the additional border security might start, or the number of people sent to the border, but noted during a press conference last week that "you can assume that this is taking top priority for the department."

In the two years since the Mexican military renewed a crackdown on rampant drug cartels and corruption, deaths from related fighting have increased dramatically. Last year, an estimate 6,000 people were killed, and so far this year, over 1,000 people have died.

The violence has escalated so much that last week Texas Gov. Rick Perry asked the federal government for 1,000 additional personnel – National Guard or otherwise – along his state's border with Mexico. But dispatching the Guard is a sensitive issue. In 2008, the agency halted Operation Jump Start, a program designed to improve border security by deploying guardsmen to the border for their annual training stints. Restarting a similar initiative would require another presidential directive, Guard Bureau chief Gen. Craig McKinley told reporters.

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The San Antonio Express-News reports that the recently-passed federal economic stimulus bill included a portion set aside exclusively for border initiatives. An estimated $1.7 billion of the stimulus will provide funding for a wide variety of projects, all of which pertain to increase border protection and secure trade routes. Of the most significant projects, the funding will cover upgrades to land ports ($720 million), technological improvements for the US Border Patrol ($160 million), research & development for barrier technologies ($100 million), and initiatives designed to curb drug running to Mexico ($10 million).

While border enforcement remains the key priority for this cut of stimulus funding, a substantial amount was allocated to counter the slowdowns in commerce between US and Mexico. Cross-border US-Mexico trade was valued at a record-high $797 billion in 2007, but tougher immigration laws, a drastic increase in border violence, and general recessionary woes have seen the volume of trade significantly drop in 2008.

Though the plan assists with general border protection, projects like upgrading land ports and curtailing border crime serve to stimulate the ailing cross-trade economy, according to some. "There will be job creation in construction, but the greater impact is economic activity," Border Trade Alliance spokesman Matthew Howe said of

the potential job growth with the proposed projects. "If you're able to reduce the time it takes for Mexican citizens or US citizens to cross the border, you're going to increase commerce."

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Despite months of numerous rallies supporting the extension of Temporary Protected Status to Haitian immigrants, as well as personal appeals from advocates to the Obama Administration, DHS recently issued a statement indicating that they "intend to continue the removal of Haitian nationals to Haiti," according to *The South Florida Sun Sentinel*.

Advocates and congressional leaders have been asking the government to grant Haitian protects status for years, with numbers of supporters increasing after four tropical storms destroyed much of the island's infrastructure in 2008. The last administrative decision on the matter came in September, when ICE temporarily halted deportations to Haiti, which gave advocates hope. However, the agency resumed deportation proceedings in December.

Supporters of TPS status for Haitian nationals had expressed optimism in the new presidential administration, and hoped they could appeal to President Obama and DHS to reverse the Haitian TPS removal ordered by the Bush administration. While the federal response to the request has been a definitive "no," advocates for Haitian immigrants are hopeful that the deportation status is temporary. "We were advised that the intent was not to deny our request," said Cheryl Little, executive director of the Florida Immigration Advocacy Center. "It's still under consideration. But time is of the essence."

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Last week, thousands of protesters descended on the streets of downtown Phoenix, marching nearly 4 miles, protesting against Sheriff Joe Arpaio and the federal regulation that allows local police to enforce federal immigration laws. *The Arizona Republic* reports that the protest was created by several immigrant advocacy groups with the goal of calling attention to 287(g), a federal program that they claim not only has allowed Arpaio's Maricopa County's deputies to enforce immigration law, but abuse the program. The event's organizers want to see 287(g) ended entirely, and instead have the federal government look to comprehensive immigration reform.

In response, Arpaio, the subject of a Justice Department investigation, held a news conference shortly after the protest to exclaim that the protesters were "just not civil." Despite the protest he pledged to remain unwavering with his methods of law enforcement. "We're not backing down," he said.

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Last week, House Speaker Nancy Pelosi and other congressional leaders joined hundreds of families at a rally in San Francisco's Mission District, demanding an end to the ICE immigration raids and deportations that separate parents from children. *The San Francisco Chronicle* reports that Pelosi used the forum to call for a comprehensive immigration program that recognizes the broad contributions immigrants have made to the country.

Pelosi's San Francisco appearance came during the stop of a 17-city national "Family Unity" tour led by leaders of the Congressional Hispanic Caucus. Members plan to meet with President Obama in the near future to discuss the country's immigration policy.

"No city in America has been spared the devastating effects of our broken system," said Illinois Congressman Luis Gutierrez, a Democrat who is leading the five-week tour. "We cannot wait any longer for fair and just immigration reform."

Organizers of the events said raids and family separations, where parents and children are separated, run counter to a country where early Irish Italian, Asian and African-American families founded some of the country's most important institutions. In addition, the group argues that such prohibitive measures have devastating impacts on the young children who are left behind, or are forced to move with their deported parents.

"Our future is about our children," Pelosi told the mostly Latino crowd at the San Francisco event. No matter if those families arrived two days ago or centuries ago, Pelosi said "that opportunity, that determination, that hope has made American more American. Taking parents from their children…that's un-American."

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5. News From the Courts

Gomez v. Palacios v. Holder (9th Cir. March, 12 2009)

"An in absentia removal order should not be revoked on the grounds that an alien failed to actually receive the required statutory notice of his removal hearing when the alien's failure to receive actual notice was due to his neglect of this obligation to keep the immigration court apprised of his current mailing address."

In 1999, Petitioner was found unlawfully present in the US by Border Patrol agents in Texas. The same day, he was charged in a Notice to Appear (NTA) with removability under 8 USC §1182, and ordered to appear before an immigration judge at a time and date "to be set." The Notice contained a section, "Failure to appear," in which he was required to provide INS with his mailing address, and to notify the immigration court of any change of address.

The Notice charged that Petitioner acknowledged receipt and understanding of the Notice with his signature, and reported his address. In 2000, the notice of hearing (NOH) was mailed to the address provided by petitioner, informing him of the time of his removal hearing. The notice was returned with the notation that the address did not exist. Nonetheless, the hearing took place, and the day of the hearing, petitioner was ordered removed based on the charge in the NTA. However, in 2001, the immigration judge sua sponte reopened the proceedings, finding that petitioner had provided a change of address specifying his correct address.

Acknowledging that a correct address was submitted, the immigration court mailed an NOH on August 11, 2001, indicating the time for the new removal proceedings, on August 28, 2002. The NOH was returned with an "attempted, not known" notification. As a result, he was ordered removed in absentia.

Four years later, Petitioner filed a motion to reopen his removal proceedings on the ground that the required statutory notice of the removal hearing was not provided. The motion was denied on the basis that Petitioner failed to demonstrate that his failure to appeal was through no fault of his own. Petitioner appealed the denial to the BIA. The BIA denied the appeal, holding that Petitioner failed to receive the NOH because he neglected to provide the court with a valid address. Petitioner petitioned the 5th Circuit court for review of the BIA's findings.

Petitioner argues that he did not receive the required notice because the NTA he received in person was defective because 1) it did not provide an adequate warning of the consequences of failing to provide updated contact information and 2)it did not include the specific time and date of his hearing. Petitioner also argues that he did not receive notice because there is no record that he actually received notice of the August 28, 2002 removal hearing or that it was mailed to the correct address.

On review, the court dismissed petitioner's argument, citing that this court has held that an alien's failure to receive actual notice of a removal hearing due to his neglect of his obligation to keep the immigration court apprised of his current mailing address does not mean that the alien did not receive notice under §1229a(b)(5)(C)(ii).

The court holds that Petitioner was not entitled to rescission of his removal order because his failure to receive actual notice of the time of his postponed hearing was the result of not complying with his obligation to keep the immigration court apprised of his current mailing address. Such a failure is grounds for denying rescission of a removal order §1229a. In light of the fact that the record shows that the August 28, 2002 NOH was mailed to the last address provide by Petitioner and returned to the immigration court stamped "attempted, not known," there is substantial evidence to support the BIA's finding that Petitioner did not receive notice of his second hearing because he failed to comply with his obligation provide the immigration court with current address information.

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6. News Bytes

A newly-proposed adjustment to the E-Verify program will ensure that foreign-born citizens eligible to work in the US will not be denied a job due to identity mismatches, according to a joint press release from DHS and USCIS last week. Phoenix's *KNXV News* reports that under the new approach, if the Social Security Administration is unable to immediately confirm the work eligibility of a person, USCIS can now check State Department records prior to a potential mismatch.

The press release stresses that if a citizen's information clears, then E-Verify will be able to, without error, confirm the individual's work eligibility. The adjustment to the program, which was implemented last month, is a positive departure from mismatches normally associated with E-Verify. Since 2007, when some states legally required employers to use it, the program has been faced consistent criticism. Advocates against mandatory E-Verify argue that the program uses an outdated,

error-filled Social Security database, causing instances of information mismatches between undocumented immigrants and US citizens.

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Last month, the results of a study on immigrants attending American universities and their actions post-graduation was released, yielding results the study's authors warn is an indicator of the increasing disparity between domestically-schooled repatriate students and students who remain in the US after graduation. The study, conducted by Duke University's Pratt School of Engineering, interviewed 1,200 highly-skilled Indian and Chinese professionals who returned to their countries after living in the United States. Most of the respondents indicated that they returned to their home nation for better job opportunities with higher salaries.

Vivek Wadhwa, professor at the Pratt School and co-author of the study, found the results particularly troubling, and that the trend of highly-skilled domestic and retained immigrant students being gradually phased out by temporary immigrant students, who take their vital industry/technology expertise with them when they leave. Wadhwa told *The Raleigh News & Observer* that "for the whole of American history, immigrants have come here on one-way tickets. Now we're exporting our critical talent. The message here is we better wake up. We have this arrogance as if we're still the only great place in the world."

Note: The complete study results are available online at Duke's Sociology page.

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The Obama administration recently named the new head of Immigration and Customs Enforcement. *The Associated Press* reports that John Morton, if confirmed, will be the third federal prosecutor to be in charge of the immigration agency. Morton is currently the acting deputy assistant of the Justice Department's Criminal Division.

According to the DHS Press Release, from September 2007 until last month, he was Acting Chief of the Domestic Security Section and Senior Counsel to the Assistant Attorney General for the Criminal Division. Prior to this, he was Deputy Chief of the Domestic Security Section. In these roles, he was responsible for the prosecution of criminal cases and the development of DOJ policy in the areas of immigration crime, particularly human smuggling and complex passport and visa frauds; human rights offenses, particularly torture, war crimes, genocide, and the use of child soldiers; and international violent crime, particularly violent crime under the Military Extraterritorial Jurisdiction Act.

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In an effort to reform case overburdening, as well fixing the recent hiring problems associated with immigration judge hires during the Bush administration, the National Association of Immigration Judges have called for US Attorney General Eric Holder to appoint a chief judge with actual experience in immigration court. According to *The National Law Journal*, the federal immigration court system remains short on basic legal resources. The organization does not back a specific candidate, but insists that the appointment avoid the previous favoritism in previous hires. "This is not the time to appoint a chief immigration judge based on political or bureaucratic

connections," said organization president Judge Dana Leigh Marks. "We have been totally resource-starved and things have been very slow in coming."

The Executive Office for Immigration Review acknowledges that, in addition to being overwhelmed by the volume of cases, the immigration court system also remains short of training and basic legal resources. While a recent EOIR press release said there is no time frame yet for appointment of a new chief judge, the agency has added 10 judges in the past six months, increasing judge totals from 214 to 224 in the past six months. The EOIR also has pledged to improve audio taping of immigration hearings, and provide a more education and training for additional law clerks and training for judges.

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Foreign adoption rates by Americans have experienced a sharp decrease over the past few years, from the peak of 22,884 in 2004, down to 17,438 in FY 2008. *The Washington Times* reports that the drop in foreign adoptions, expected by adoption experts to drop below 12,000 in 2009, has largely been fueled by new restrictions by foreign governments and diminishing financial resources among parent hopefuls.

Decreases in adoptions from Russia and China account for almost 90% of the 2008 decline according to a State Department assessment. Russian authorities, worried about parental negligence and credibility of adoption agencies, implemented stricter adoption regulations last year, contributing to a decrease 4,000 adoptions from the country over the past 5 years. Russia has not signed onto The Hague Adoption Convention, an agreement that establishes international standards for adoptions involving more than one country.

"This is a difficult economic time, and people don't add to their family when they are worried about losing their job or their home. But you have to remember that while we get hit here, [children] get hit harder there," said Linda Brownlee, executive director of the Adoption Center of Washington. "It is more difficult for families to keep their children in struggling countries, and more children end up in orphanages, which are also impacted by these economic times," she said. "When families adopt from an orphanage, they often continue supporting in some way the orphanage, making it a little bit better."

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A former US diplomat pleaded guilty last week to engaging in an agreement that saw gemstone rings, trips with exotic dancers offered in exchange for expedited work visas, *The Los Angeles Times* reports. The scam began when Mike O'Keefe, then the deputy nonimmigrant chief at the US consulate in Toronto, began personally fast-tracking a large number of visa applications for New York jeweler STS Jewels. O'Keefe was compensated with a variety of gifts given to him by Sunil Agrawal, a native of India, and CEO of the jewelry company.

Prosecutors argue that O'Keefe pushed through 21 visas for foreigners exclusively for STS Jewels. From court-submitted e-mails between the two, the prosecution showed that O'Keefe personally handled all aspects of the jeweler's applications, and fast-tracked the visa process. In one particular e-mail, O'Keefe said to Agrawal that he

was growing frustrated with subordinates who were "determined to find problems" and reject the initial applications submitted by STS. O'Keefe overturned these rejections, even after an instance when a subordinate indicated that jewelers commonly serve as a means for funding terrorism.

O'Keefe, 61, pleaded guilty to accepting an illegal gratuity, a felony that carries a two year prison sentence and a $250,000 fine. Agrawal, 49, worked a deal that would allow him to plead guilty to a misdemeanor illegal supplementation of salary charge.

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7. Siskind's Legislative Update

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

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APPEALS COURT WON'T OVERTURN ARIZONA EMPLOYER SANCTIONS LAW
Unless the Supreme Court weighs in, the Arizona law is going to be around awhile. The Ninth Circuit Court of Appeals has now washed their hands of the matter and will not overturn Arizona's employer sanctions law.

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SENATE PASSES CONRAD 30 AND RELIGIOUS WORKER EXTENSION
The Senate has passed by unanimous consent HR 1127 which extends the Conrad 30 and religious worker green card programs until September 30th. The President is expected to sign the bill into law soon.

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SENATE VOTES TO TABLE E-VERIFY FIVE YEAR EXTENSION
An attempt to amend the Omnibus budget bill to extend the E-Verify program by five years has failed after Senators voted 50 to 47 to table the measure indefinitely. This likely means three things -
1. E-Verify will be extended until September 30th.
2. Congress will presumably deal with a permanent authorization as part of a comprehensive bill this summer.
3. Pro-immigration groups will likely be able to use the need to extend e-Verify as a bargaining chip in negotiations on other measures needing approval of Congress.

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COHEN INTRODUCES PATIENT VISA BILL
I'm proud of my hometown's Congress Steve Cohen who has just introduced HR 1033, a bill that would make it easier for people coming to the US for medical treatment to get a visa for their trip. The bill will also make it easier for parents of

children coming to the US for long term treatment to be able to get employment authorization documents. For many years, I have provided pro bono assistance to families of patients at a couple of children's hospitals. When I told Congressman Cohen about the terrible financial stress families undergo when they have to give up their jobs and businesses overseas to save the lives of their children, Congressman Cohen asked he could help. And now he has taken action with the introduction of this bill. This bill represents the best of America and I hope Congress takes action soon.

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KENTUCKY HOUSE PASSES SANCTIONS BILL

The Kentucky House of Representatives has passed House Bill 441 by a margin of 87 to 7. The bill would require government contractors to verify the legality of their work forces or face a bar on receiving contracts for five years. An E-Verify mandate was removed from the bill before it passed.

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BILL TO DELAY UTAH SANCTIONS LAW FAILS

SB 81, one of the nation's toughest sanctions laws, will go in to force in July as planned after a bill to delay the bill a year failed to pass a vote in a Senate committee.

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INDIANA SENATE PASSES TOUGH NEW EMPLOYER SANCTIONS BILL

SB 580, a bill that would suspend business licenses and impose an E-Verify requirement on Indiana employers, has passed the state's senate by a margin of 37-13. The bill has yet to be considered in the state's House of Representatives

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HOUSE PASSES HR 1127 EXTENDING MD AND RELIGIOUS WORKER VISA PROGRAMS

Both programs are set to expire on March 6th and this bill will allow them to continue until September 30, 2009. The measure passed on a suspension vote. The Senate is expected to take the measure up shortly.

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8. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- How Immigrants Can Fix The Housing Bubble
- *Washington Post* Endorses Proposal for Immigration Equality for Same Sex Couples
- Border Patrol Tries Using Music as Propaganda Tool
- DHS Now Seeking to Deport Dead People
- USICS Document Reveals Official Policy to Discriminate Against Small Businesses in H-1B Cases
- H-2A Regs Suspended for Nine Months
- Dobbs Goes Loco

- Time to Pursue a New Business Investment Visa?
- Senate Passes Conrad 30 and Religious Worker Expansion
- Sheriff Joe is Being Investigated by The Justice Department!
- Lou "I Love Illegal Immigration" Dobbs Goes After Foreign Nurses
- April Visa Bulletin Shows Retrogression for Employment Cases
- ICE Agent Accused of Taking Bribes
- Cohen Introduces Patient Visa Bill
- Recession Isn't Resolving Nurse Shortage
- Time to Bring Back Visa Revalidation

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

- Another Agriprocessor Supervisor Sentenced
- Kentucky House Passes Sanctions Bill
- Number of E-Verify Employers Growing by 1,000 Per Week
- DHS Issues Minor Correction of Recent I-9 Rule
- Appeals Court Won't Overturn Arizona Employer Sanctions Law
- Senate Votes to Table E-Verify Five Year Extension
- Alabama Republicans Pushing for E-Verify Mandate
- Bill to Delay Utah Sanction Law Fails
- Texas AG Opines that Sanctions Law is Unconstitutional
- Indiana Senate Passes Tough New Employer Sanctions Bill

Visalaw Healthcare Immigration Blog

- *Reuters:* Nurse Shortage Still Hitting US Employers
- Health Care Companies Comment on President's Remarks on Foreign Nurses
- Recession Isn't Resolving Nursing Shortage
- Obama Warns Against Relying on Foreign Nurses to Deal with Shortage
- Q & A on New Health Care Worker Military Naturalization Program
- House Passes HR 1127 Extending MD and Religious Worker Visa Programs
- Arizona House Members Introduce Nurse Visa Bill

Visalaw Investor Immigration Blog

- EB-5 Regional Center Program Extended
- Bill Introduced to Permit E-2 Investors to Get Green Cards
- Idaho Program Seeks To Attract Global Investors
- USCIS Warns on EB-5 Partial Sunset
- Orlando EB-5 Regional Center Opens

Visalaw Fashion, Sports, & Entertainment Blog

- USCIS Works Out Solution for 10 Year Limit on P Athletes
- The Slumdog Effect
- Politics, Sports, and Visas
- Former NFL Player Now Working as Border Patrol Agent
- Fresno Hockey Players Face Uncertain Immigration Future

Visalaw International Blog

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

The Immigration Law Firm Management Blog

- Hey! Paste It
- Wiki Wiki
- Best of CES: Telephone and PDA Devices
- BEST of CES: Cameras
- Sending Big Files

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9. State Department Visa Bulletin for April 2009

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **April**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by **March 6th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits.

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

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

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

FAMILY-SPONSORED PREFERENCES

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

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

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

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

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

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

EMPLOYMENT-BASED PREFERENCES

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

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

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

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

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

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

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

Family	**All Charge-ability Areas Except Those Listed**	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
1st	15AUG02	15AUG02	15AUG02	08OCT92	01AUG93

2A	15AUG04	15AUG04	15AUG04	01JAN02	15AUG04
2B	01SEP00	01SEP00	01SEP00	01MAY92	15JAN98
3rd	22AUG00	22AUG00	22AUG00	22OCT92	15JUN91
4th	15APR98	08JAN98	15APR98	22APR95	22JUN86

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

	All Chargeability Areas Except Those Listed	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
Employment-Based					
1st	C	C	C	C	C
2nd	C	15FEB05	15FEB04	C	C
3rd	01MAR03	01MAR03	01NOV01	01MAR03	01MAR03
Other Workers	01MAR01	01MAR01	01MAR01	01MAR01	01MAR01
4th	C	C	C	C	C
Certain Religious Workers	U	U	U	U	U
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

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

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105 - 139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000

annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States . The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2009 annual limit being reduced to 50,000**. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **April**, immigrant numbers in the DV category are available to qualified DV-2009 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off this number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	26,900	Except: Egypt: 17,400 Ethiopia 15,700 Nigeria 9,900
ASIA	17,400	Except: Bangladesh 11,000
EUROPE	20,800	
NORTH AMERICA (BAHAMAS)	7	
OCEANIA	715	
SOUTH AMERICA, and the	900	

CARIBBEAN		

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2009 program ends as of September 30, 2009. DV visas may not be issued to DV-2009 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2009 principals are only entitled to derivative DV status until September 30, 2009. DV visa availability through the very end of FY-2009 cannot be taken for granted. Numbers could be exhausted prior to September 30.

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

For **May,** immigrant numbers in the DV category are available to qualified DV-2009 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	32,400	Except: Egypt 19,150 Ethiopia 17,750 Nigeria 11,550
ASIA	22,800	
EUROPE	24,900	
NORTH AMERICA (BAHAMAS)	10	
OCEANIA	825	
SOUTH AMERICA, and the CARIBBEAN	1,000	

D. EXPIRATION OF TWO EMPLOYMENT VISA CATEGORIES

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

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

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

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

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

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

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

F. VISA AVAILABILITY IN THE COMING MONTHS

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

G. OBTAINING THE MONTHLY VISA BULLETIN

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

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

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

listserv@calist.state.gov

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

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

listserv@calist.state.gov

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

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

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

VISABULLETIN@STATE.GOV

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10. Implementing Immigration Reform in The Age of Belt Tightening, By Greg Siskind & Nolan Rappaport

On May 30, 2007, the US Citizenship and Immigration Services (USCIS) bureau announced an increase in fees for the processing of immigration benefit applications and petitions. The immigration benefits application processing system is almost entirely funded by the fees charged by USCIS. On September 20,2007, the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law held an oversight hearing on the fee increase. Arturo Vargas, Executive Director of the National Association of Latino Elected and Appointed Officials Educational Fund, testified that the fee increase would impose a prohibitive financial burden on countless immigrant families.

Unfortunately, this fee increase will not cover the anticipated legalization program to provide lawful status for the twelve or more million immigrants who at the present live in the United States without legal status. This figure does not include the anticipated guest worker program or the anticipated increases the bill would make in both family-based and employment-based visas.

The supporters of legalization apparently believe that the legalization application fees would be more than enough to provide the funds needed to process their applications. The problem with that approach is that it does not allow for funds to cover the start-up costs of the program, and these funds will be needed before USCIS can begin to process the millions of applications that will no doubt be filed once the application process opens. USCIS will have to hire and train a large number of additional personnel, purchase or lease additional office equipment, design software systems, lease additional office space, and so on. The funds for these start-up costs could be appropriated, but this would be a departure from the

fee-based funding currently used to cover the cost of processing the benefit applications.

Even if the funds were appropriated, the mammoth task of rolling out a legalization program along the lines being discussed would take time. In fact, it could take USCIS years to fully process the applications for the millions of individuals expected to apply. The proposals call for extensive background checks, English examinations, medical examinations, payment of back taxes, verification of residency in the US, etc. There are strong policy arguments in favor of these requirements, but achieving the goal of beginning to integrate these people into American society would be delayed an intolerably long period.

We propose supplementing the legalization program with a pre-registration program that would provide modest interim benefits and also provide funds for the start-up costs of the large legalization program without requiring an appropriation. The system would be offered online in order to quickly register the expected mass number of applicants. Under this system, the legalization applicants would be encouraged to preregister on the Internet for the legalization program. The preregistration fee would be a partial prepayment of the anticipated fee for the later legalization application. For instance, if the registration fee is 40% of the fee for the legalization application, the person registering for the program would receive a 40% credit towards payment of the fee for the legalization application.

The status we are proposing is similar to Temporary Protected Status (TBS), which is a temporary remedy that provides a safe haven for aliens who are fleeing from potentially dangerous situations. Applicants who register for the legalization program would obtain a temporary, very restricted new form of lawful status. A status document with a short expiration date (perhaps thirty or sixty days) would be downloaded and printed, and then later a more secure card that could be renewed periodically would be mailed to the registrant. This would provide a temporary lawful status and work authorization to encourage people to “come out of the shadows.” Immigration restrictionists may object to even this limited benefit, but the reality is that the undocumented immigrants who would benefit from this program already are living and working the United States. They would not be provided with the other benefits of a legalization program, such as being able to travel into and out of the United States or being able to bring their families here to live with them. Also, the limited lawful status would be temporary. It would terminate after a specified period of time if the alien does not apply for legalization or when the registrant completes the legalization application process and his or her application is either granted or denied.

The program would be coupled with severe penalties for fraud and willful misrepresentation to ensure that individuals who know they are ineligible do not attempt to pre-register. Moreover, the pre-registration documents themselves would not be permitted to be used for identification purposes. For example, employers would still need to see photo identification (like a passport) to comply with employment verification rules during the pre-registration phase. All of the grounds of inadmissibility that would apply in the legalization context – criminal activity, security risks, etc. – would apply to this program as well.

Pre-registration would solve the “chicken and egg” problem of how to start a massive legalization program quickly without having to burden taxpayers and without making

applicants and employers wait years to begin participating. The program could handle millions of applications and also ensure that the enforcement efforts contemplated under the comprehensive immigration reform proposals do not ensnare precisely the people a legalization program is intended to cover while those individuals are waiting on the program's implementation.

Nolan Rappaport *was the immigration counsel for the Democrats when they were in the minority. He has more than thirty years of experience as an immigration lawyer, including seven on the House Judiciary Committee. He has written numerous immigration bills, including the Rapid Response Border Protection Act, HR 4044; the Foreign Anti-Sex Offender Protection Act, HR 5610; the Save America Comprehensive Immigration Act, HR 2092; the Commercial Alien Smuggling Elimination Act, HR 2630; the Comprehensive Immigration Fairness Reform Act, HR 3918; and the Tsunamis Temporary Protected Status Act, HR 60.*