Siskind's Immigration Bulletin – March 25, 2008
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1. Openers

Dear Readers:

Immigration lawyers are working diligently this week to prepare their clients' H-1B cases for the year. We expect that the entire allotment of H-1B visas for the 2009 fiscal year will be used up this week despite the fact that the US is most certainly in a recession. Nearly 80 years ago, the US was in a much deeper economic downturn - the Great Depression. At that time, the American Congress passed legislation that was arguably one of the greatest economic blunders of the 20th Century - the Smoot-Hawley tariff. Imports were taxed at a rate of 60%. President Hoover signed the bill and in doing so kept a promise to farmers who lobbied for protection from foreign producers. The result - a contraction of international trade by 14% and a

60% drop in US exports. Unemployment rose from 7.8% when the tariff passed to 25.1% within three years.

I mention Smoot-Hawley because there is always a tendency to impose trade barriers when interest groups have enough influence to affect policymakers. And while imposing those barriers may be politically expedient, the consequences for the broader economy can be disastrous.

Trade barriers do not just include tariffs on goods. They include restrictions on importing skilled labor. And the US is stifling growth in our economy at precisely the time we need stimulation the most. We have a cap on H-1B and H-2B temporary worker visas and on employment-based green cards that were set nearly 20 years ago for a much smaller US economy. The H-2B guestworker program has shrunken in size as a key provision affecting the counting of those visas has been left to expire. These provisions have the effect of causing some companies to slow their growth plans and others to move operations overseas. In any case, no credible economist believes a cap on highly skilled workers is good for the US economy. It's time to uncap visas for workers in categories deemed to be important to the US economy, particularly in the STEM fields - the sciences, technology, engineering and math.

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This past week the Department of Homeland Security released a proposed rule designed to address the objections of Judge Charles Breyer who issued an order blocking DHS from releasing a rule on "no-match" letters from the Social Security Administration. The proposed rule makes essentially no changes to the rule released in September, but it does seek to explain to the judge that the rule was thought out by DHS before it was issued. DHS also claims to have conducted a thorough analysis of the costs of the rule and that companies will not pay an unduly large amount to comply. Whether this will satisfy the judge is very much in doubt, but DHS may simply be preparing to try and set itself up for arguing the case in front of the 9th Circuit Court of Appeals. I've included a summary of the proposed rule and a detailed question and answer document outlining the no-match rule.

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In firm news, this month I was fortunate enough to be the subject of two separate magazine articles. Both cover my work over the years building my firm's web site and our blogs. The *ABA Journal*, the magazine of the 600,000 member American Bar Association, and *Law Practice,* the magazine of the ABA's Law Practice Management Section are the two publications. It was fitting that these two issues should be appearing this month since I was a speaker at the ABA Techshow in Chicago last week.

Karen Weinstock, the attorney in charge of SSB's Atlanta office, has just had a major book published by ILW on H-1B visa processing. I'll have more news to report on this exciting news in the near future. But an early congratulations to Karen!

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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: J-1 Visas – J Waivers of Physicians

In the last of our four part series on J-1 Visas, we now turn attention to the rules and regulations concerning foreign physicians, and the programs designed to securing J-1 visas for them.

Most graduates of foreign medical schools who come to the US to pursue graduate medical training or education do so with a J-1 visa. This category is highly regulated, and anyone who receives graduate medical education on a J-1 visa is automatically subject to the two-year home residency requirement. However, only those programs that involve providing health care services to patients are considered graduate medical education. Programs that involve only observing, consulting, researching or teaching with no patient care are not considered medical education. Because the only program sponsor for foreign medical graduate students who will be involved in more than incidental patient contact is the Educational Commission for Foreign Medical Graduates (ECFMG), if a person is sponsored by the ECFMG, they are likely subject to the home residency requirement.

Without a waiver of the home residency requirement, the physician is not eligible to apply for a change within the US to a non-immigrant visa, any change to permanent residence, or any change to an H or L non-immigrant visa. This two-year period must be spent in the alien's home country, or the country in which they last permanently resided before coming to the US. Because this restriction is placed on nearly every foreign medical graduate, the demand for waivers is quite high.

Most foreign medical graduates pursue waivers based on their profession, but they are not limited to this. They can pursue waivers based on exceptional hardship to a US citizen or permanent resident spouse or child, or based on the claim that they would face persecution based on race, religion or political opinion in their home country. Waivers based on a letter of no objection from the alien's home country are not available to physicians. Extreme hardship and persecution-based waivers are difficult to obtain because of the high level of proof required, and many physicians simply will not have a case that fits the requirements. This leaves them with waivers based on a request from an interested government agency. There are a number of agencies that will sponsor waivers, as well as the Conrad State 30 program.

Appalachian Regional Commission (ARC)

The ARC is a joint federal-state program dedicated to improving the quality of life for people living in Appalachia. As part of this mission, it will recommend waivers for

primary care physicians. The waiver request must be sponsored by a state within ARC (Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia and West Virginia), and must include a written recommendation by the governor of the state. The place of employment must be located in a Health Professional Shortage Area within ARC territory (the only state that is entirely within ARC is West Virginia; in the other 12 states, only portions of the state are ARC designated). The physician must agree to work for a minimum of three years, at a minimum of 40 hours a week, and the employment contract cannot include any restrictions on the physician's future practice.

The request must be accompanied by evidence that the employer has made reasonable efforts to recruit a US physician for the position within the past six months. At a minimum, the recruitment should include advertisements in national medical journals and job opportunity notices at all medical schools in the state of employment.

The physician must be licensed to practice medicine in the state of employment, and must have completed a residency in family practice, general pediatrics, obstetrics, general internal medicine, or psychiatry. Also, the facility at which the physician will be employed must show that it provides medical care to people without regard to their ability to pay or whether payment will be made by Medicare or Medicaid. The facility must also use a sliding fee scale for people at or below 200 percent of the poverty level. A public notice containing this information must be posted.

Delta Regional Authority (DRA)

The Delta Regional Authority is a new government agency with its headquarters in Clarksdale, Mississippi. It serves a 240 county/parish area in an eight state region comprising parts of Mississippi, Louisiana, Alabama, Arkansas, Tennessee, Kentucky, Missouri, and Illinois. The DRA program is available to primary care and sub-specialty physicians. The DRA is committed to helping all residents of the Delta region to have access to quality, affordable healthcare as a core part of the region's economic development. It is with this in mind that the DRA will sponsor J-1 physicians. Physicians seeking a waiver must commit to providing medical care for three years or more, for not less than forty hours per week in a Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Population (MUP) in a DRA county. Additionally, there is a $3000 fee to apply for the DRA program.

Department of Health and Human Services (HHS)

HHS will sponsor physicians for waivers of the home residency requirement. HHS has two distinct waiver programs. The first is not based on the location where the physician will be employed, but, rather, on the nature of the physician's work. Indeed, for an HHS researcher waiver, providing care to a medically underserved area is not a factor. Essentially, HHS requires the physician to be involved in a program of national public interest and to be essential to the program's continuance. It is very difficult for physicians who will be employed by a private practice to obtain an HHS waiver, and because of the requirement that the physician be involved in a program, most physicians will need to be engaged in a research project to qualify.

The second HHS program is available to primary care physicians working in underserved areas. Primary care training must be completed within a year or applying so that will largely eliminate people progressing towards specialization from using the HHS program.

Veterans Administration (VA)

The VA will sponsor foreign medical graduate if the loss of the physician would require the discontinuance of a program. Evidence of unsuccessful efforts to recruit US workers must be included. The individual VA facility will make the initial waiver request to a regional VA director. The request must include documentation of the recruitment efforts, which must include copies of advertisements placed in national medical journals. It should also include a letter from the facility director describing the proposed employment and how employment of the foreign physician will help the facility address patient care needs. Finally, the application should include evidence regarding the physician's qualifications.

Waivers from the VA have become more difficult to obtain over recent years. For example, physicians working on O visas must have the O visa for two years before the VA will sponsor the J waiver.

Conrad State 30 Programs

The Conrad State 30 programs allow states to sponsor up to 30 foreign medical graduates for a waiver of the home residency requirement each year. While each state can regulate the program as it sees fit, there are some elements that are the same for each state. The employment location must be in a HPSA and the contract must be for a minimum of three years, at 40 hours a week. Some states will sponsor specialists, but the vast majority of positions are available only to physicians who will be doing primary care.

Also, each state is allowed to use five of its waivers each year to sponsor physicians who will be employed outside of federally designated shortage areas if they can demonstrate that they will be serving the residents of shortage areas. However, not every state has chosen to utilize these "Flex Five" slots.

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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 - Can someone with an approved I-140 that was subsequently withdrawn due to layoff request the old priority date from the underlying LC for their GC application

with a new employer?

A - You should be able to retain the first priority date in a subsequent case. This is not that rare. The State Department's Foreign Affairs Manual has this to say on the subject:

42.53 N3.6 Subsequent Petition in Employment-based Classifications

a. Unless revoked pursuant to 8 CFR 205.2 for fraud or misrepresentation, a priority date accorded by approval of an employment-based first, second or third preference petition is retained by the beneficiary for any other first, second or third preference petition approved subsequently for the same beneficiary . In all cases, the beneficiary of multiple petitions is entitled to the earliest of the filing dates of the various petitions.

b. A priority date established in the employment-based first, second or third preference category, however, is not transferable to employment-based fourth or fifth preference petitions or to a family-sponsored petition.

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Q - Where is the "nonimmigrant visa number" on a visa? I am preparing documents for a friend so I only have a copy of her visa and everything I read tells me that "it is the number in red".

A - Look at the top bar running across the visa stamp. Underneath the words "United States of America" and to the right of the word "Visa" you'll see a number in red.

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Q - My friend was 19 years old when he received Green card as a dependent from his father. His father got an employment-based green card. We know his father has to wait for five years, but is my friend's green card under family-based or employment-based? Does he need to wait three years or five years to apply for citizenship?

A - Your friend received a derivative employment-based green card. But it doesn't really matter. He'll have to wait five years for citizenship. The only folks that get three years are certain spouses of US citizens.

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Q - Apparently I require an E-2 spouse visa in order to be able to join my husband who is already living and working in the US for a company there. I will have to apply for the visa at the US Embassy in London but their website is a minefield!!

Everywhere I seem to read that I should be filling in visa application forms to support my visa request but as I am merely the wife of a current E-2 visa holder, I have no business or economical justification for my request other than being married to a current Visa holder.

Which documents do I require in order to progress my application please?

A - You'll need to schedule a visa appointment at the consulate and can file for an E-2 visa as a spouse of an E-2 visa holder. Information can be found at http://london.usembassy.gov/cons_new/visa/niv/interview.html. You'll need to file the normal non-immigrant visa paperwork (DS-156 form, photos, fees, etc.) as well as documentation proving you are married and proof of maintenance by your husband of his E visa status.

You will want to contact your husband's immigration lawyer to go over the specifics, of course..

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Q - I am currently working on a H-1B visa. In addition to my career, can I build a direct marketing business like Amway? Until now I have been told that this is feasible because

- it is similar to freelance work
- and that I get 1099 that is taxable and therefore similar to bank interest.
- and it is not the same as doing two jobs.

A - I think you're wrong on your assumption and this would be viewed as unlawful work. Just because you are an independent contractor does not mean you do not require a work visa. You need a visa to work for yourself and not just from an employer. Double check with your immigration lawyer, of course.

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4. Border and Enforcement News

In an effort to step up deportations and ease the burden of the immigration court system, immigration officials have increased scouring jails and courts nationwide and reviewing years-old criminal records to identify undocumented immigrants, *The Washington Post* reports. Immigration and Customs Enforcement announced that over a 12-month period ended Sept. 30, it placed 164,000 immigrants in deportation proceedings, a sharp increase from the 64,000 the agency deported the 12-month period before. ICE estimates that the number will rise above 200,000 this year.

Since 2006, according to ICE chief Julie Myers, ICE has studied the demographics of correctional facilities across the country and has assigned more agents to check facilities with higher numbers of foreign-born offenders. The same year, ICE's Criminal Alien Program created partnerships between immigration officials and jailers at nearly 4,500 detention facilities, as well as opening up a Chicago office that is responsible for screening immigrant inmates nationwide. "It's such a high priority of mine to make sure that people are not released from criminal institutions onto the street," said Myers.

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A Grand Prairie, Texas, Immigration and Customs Enforcement agent killed himself after an armed standoff with a police officer and three ICE colleagues last week, *The*

Associate Press reports. Police discovered a suitcase full of pornography, a flag with a swastika and more than a half-dozen weapons after finding ICE agent Mark Juvette dead. Juvette, 40, worked for ICE's Dallas Office of Detention and Removal. ICE officials declined to comment.

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5. News From the Courts

***Melnitsenko v. Mukasey*, (2d Cir. 2/6/08)**

Where DHS opposes a motion to reopen for adjustment of status based on an unapproved petition with respect to a marriage that takes place during removal proceedings, the BIA may not deny the motion based solely on the fact of DHS's objection under Velarde-Pacheco. If the BIA denies a motion based on the merits of DHS's objection, it must provide adequate reasoning as to why the objection calls for denial of the motion.

Petitioner entered the U.S. as a nonimmigrant and overstayed her authorized period of admission. In 2004, while traveling home to Connecticut from a weekend in Vermont with her then U.S. citizen boyfriend (now husband), Petitioner was detained and interrogated at a border patrol checkpoint. Petitioner admitted that she was a citizen of Estonia and that she had overstayed her visa. At her removal hearing, the government introduced into evidence Form I-213, "Record of Deportable/Inadmissible Alien." Petitioner moved to suppress the I-213 on the basis that the statements contained therein were "illegally obtained." Petitioner submitted an affidavit in support of her motion to suppress which stated that she was stopped by border patrol officers while driving home from Vermont, was taken into a trailer with about four or five border patrol officers and was detained for about three hours before being released. Other than admitting her name and date of birth, Petitioner refused to testify in order not to incriminate herself. Petitioner applied for no relief from removal.

The immigration judge found Petitioner's affidavit insufficient to support a finding that the border patrol acted egregiously, rejected any allegation that the checkpoint was illegal and admitted the I-213 into evidence. Moreover, based on Petitioner's admission as to her name and date of birth and the contents of the I-213, the IJ found Petitioner removable as charged. The BIA affirmed. On August 29, 2006, Petitioner filed a timely motion to reopen in order to apply for adjustment of status based on her recent marriage to her U.S. citizen boyfriend. DHS opposed the motion on the ground that Petitioner "refused to provide any argument or evidence to support her claim and refused to answer any questions" at her removal hearing. The BIA denied the motion, finding that under *Matter of Velarde-Pacheco*, 23 I&N Dec. 253 (BIA 2002) (en banc), a motion to reopen based on an unapproved petition with respect to a marriage occurring after the initiation of removal proceedings, must be denied if DHS opposes the motion.

The court first addressed Petitioner's argument that the I-213 should have been suppressed because it was obtained in violation of her Fourth Amendment rights. Under INA §287(a)(3), immigration officers have authority to search vehicles within

a "reasonable distance" from the border. "Reasonable distance" is defined as "within 100 air miles from any external boundary of the United States." 8 CFR §287.1(a)(2). Petitioner argued that the checkpoint was approximately 107 miles from the Canadian border and was therefore in excess of the 100 mile "reasonable distance' authorized by regulation. Petitioner argued that even if the checkpoint was within 100 "air miles" of the border, it did not qualify as a "functional equivalent of the border" under *United States v. Jackson*, 825 F.2d 853, 860 (5th Cir. 1987) (en banc).

In *INS v. Lopez-Mendoza,* 468 U.S. 1032, 1046 (1984), the Supreme Court held that a Fourth Amendment violation does not, by itself, require suppression of evidence in removal proceedings. However, in *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 234 (2d Cir. 2006), the court recognized that a Fourth Amendment violation may be found where (1) the alleged violations were widespread; or (2) where the alleged violation was particularly egregious. Because Petitioner did not previously raise a claim that the violations were widespread, the court focused on the egregiousness prong. Noting that Petitioner did not allege that her stop was based on race or "some other grossly improper consideration," Almeida-Amaral, 461 F.3d at 235, the court found that the actions of the border patrol agents, even assuming that the checkpoint was illegal, fell short of "egregious." Therefore, the IJ did not err in refusing to suppress the I-213 or in ordering Petitioner removed.

Turning to Petitioner's motion to reopen, the court briefly discussed the development of policy and legislation regarding adjustment of status based on marriages that take place during removal proceedings. In *Velarde-Pacheco*, supra, the BIA held that a motion to reopen for adjustment of status in such a case may be granted as a matter of discretion where (1) the motion is timely; (2) the motion is not numerically barred; (3) the motion is not barred by *Matter of Shaar*, 21 I&N Dec. 541 (BIA 1996), or on any other procedural grounds; (4) the motion presents clear and convincing evidence of the bona fides of the marriage; and (5) the Service does not oppose the motion, or its opposition is based solely on *Matter of Arthur*, 20 I&N Dec. 475 (BIA 1992).

The court noted that it was undisputed that Petitioner satisfied the first four prongs of *Velarde-Pacheco* and that the BIA denied the motion based solely on the fifth prong-DHS's opposition to the motion. However, DHS opposed the motion on grounds unrelated to the bona fides of the marriage: Petitioner's refusal to answer any questions at her removal hearing. The court explained that the BIA "provided no explanation, let alone a 'rational' one, for why the fact of DHS's objection justified denying the motion." Moreover, *Velarde-Pacheco* itself does not provide a rational explanation for why the fact of DHS's opposition is alone sufficient to deny a motion. While the BIA acknowledged that DHS is "in a better position to ascertain whether additional factors, which may not be readily apparent, mitigate against reopening," *Velarde-Pacheco*, 23 I&N Dec. at 257, the court found that this did not justify "the imposition of a mechanism by which the DHS, an adversarial party in the proceeding, may unilaterally block a motion to reopen for any or no reason, with no effective review by the BIA." The court held that when DHS opposes a motion to reopen for adjustment of status based on a marriage that took placed during removal proceedings, the BIA may not deny the motion based solely on the fact of DHS's objection. Moreover, if the BIA denies a motion based on the merits of DHS's objection, it must provide adequate reasoning as to why the objection calls for denial of the motion in order to provide a meaningful opportunity for judicial review.

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6. News Bytes

A Canadian consultant hired by the California Republican Party (CRP) on an H-1B visa to do campaign consulting has been fired after it was revealed he was working in violation of immigration law, *The San Francisco Chronicle* reports. Christopher Matthews, a Canadian citizen, was hired last year as political director for the CRP to handle campaign operations, US Department of Labor records show. The organization applied last year for an H-1B visa on behalf of Matthews, saying he would fill the job of "political consultant."

Federal Election Commission records show that Matthews also had earned nearly $6,000 this year working for a different employer – the San Diego Republican Party. Jonathon Buettner, spokesman for the San Diego GOP said Matthews was a legal employee under a TN visa – a renewable one-year special visa for Canadian and Mexican professionals. However, officials from ICE said immigration law prohibits such dual visa arrangements. "Citizens of countries who work here on nonimmigrant visas can only use one kind at a time, and can only work for the employer who petitioned them," said Sharon Rummery, ICE spokeswoman. Violations of the terms of an H-1B visa can result in revocation of the visa, she added.

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A report released by the Migration Policy Institute released last week shows that nearly 1.4 million naturalization applications were filed in fiscal year 2007, almost twice as many as during the previous year, *Reuters* reports. The study attributes a sharp fee increase and interest in voting in the 2008 U.S. presidential election as largely contributing to the surge.

"Beyond the fee increase for naturalization applications, government experts and immigrant advocates cite other causes (including) heightened interest in the 2008 elections, citizenship campaigns by advocacy groups, and the charged political climate surrounding the immigration policy debate," the study said.

The MPI report is available online at:
http://www.migrationpolicy.org/pubs/FS21_NaturalizationBacklog_022608.pdf.

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According to the *Associated Press,* a woman being held in a Fayetteville, Arkansas, courthouse as an undocumented immigrant spent four days forgotten in an isolated holding cell at a courthouse with no food, water, or toilet, authorities and the woman said.

Adriana Torres-Flores, 38, appeared in court Thursday and pleaded not guilty to a charge of selling pirated CDs, but a judge ordered her held because she's in the country illegally, said Sheriff Tim Helder. Bailiff Jarrod Hankins put her in the cell to await transport to jail, and she was forgotten.

Because of heavy snow, few staff members were in the courthouse to hear her cries and pounding through the last weekend. Torres-Flores wasn't found until Monday morning when Hankins opened the door. She was treated at a hospital and allowed to go home. The sheriff said Hankins, a bailiff for two months, simply forgot about Torres-Flores.

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7. International Roundup

The Immigration Department of Malaysia has warned foreign workers not to abuse their working permits, *The Malay Mail* of Kuala Lampur reports. The stern warning was issued by Immigration enforcement director Datuk Ishak Mohamad last week after his officers discovered after a crackdown that many foreign workers had not followed the terms of their permits.

During a recent crackdown at Pudu market, department officers rounded up 130 foreigners, including 15 women, for committing various offences such as possessing false travel documents and overstaying. Checks revealed that some of the illegal immigrants were running businesses at the market illegally.

"According to their working permits, they were in the country to work in specific fields. But they were found running stalls at the market," said Ishak. "We are still investigating what their employers have been doing. We may charge them in court,' he added.

All the foreigners who were detained, aged between 20 and 40 years, would be sent to the Semenyih Immigration depot. Ishak said that even if the workers had entered the country legally, they would be considered illegal immigrants once they abused their working permits.

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Plans to fingerprint passengers at the UK's Heathrow's Airport been challenged by a UK's data protection watchdog group, according to *The Scotsman* of UK. The Information Commissioner's Office has warned airport operator British Airports Authority (BAA) that the security measure may breach the country's Data Protection Act.

The fingerprinting plan will affect all domestic passengers using a special airport terminal, officially opened by Queen Elizabeth earlier this month, as well as international passengers transferring onto internal flights. Prints will be taken when passengers first go through security, and then checked at the gate, ensuring that the individual boarding the plane is the same person who first checked in. Without a security measure of this type, it might be possible for a terrorist to arrive at Heathrow on a transit flight, then exchange boarding passes with a colleague in the departure lounge and join a domestic flight to enter the UK without being checked by immigration authorities.

The Information Commissioners' Office has raised concerns over why BAA wants to use fingerprinting at Heathrow, when other UK airports like Gatwick and Manchester rely on photographs to ensure security at their common departure lounges. In a

statement, BAA said: "When BAA announced plans for common departure lounges, the Border and Immigration Agency was keen on a reliable biometric element to border control. Fingerprinting was selected as the most robust method by BAA, the BIA and other Government departments.

'The data is encrypted immediately and is destroyed within 24 hours of use, in accordance with the Data Protection Act. It does not include personal details nor is it cross-referenced with any other database."

The Home Office said that BAA was required to ensure that arrangements at Terminal 5 did not breach border security, but that there was no requirement for this to involve fingerprinting. "Our concern is that the UK border is secure and we won't allow BAA to have a common departure lounge unless they ensure the border is secure," said a spokesman. "They presented us with this plan, which we are happy secures the border. The design of the plan is a matter for BAA."

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8. Legislative Update

The Indiana House of Representatives is expected to vote soon on a Senate bill that seeks to crack down on businesses that hire undocumented immigrants, *The Indianapolis Star* reports. The language of the bill contains most of the language of a previous bill passed by the state Senate in January, but failed to pass in the house after Democrats decided not to consider changes pushed by Republicans, who wanted the bill to also deny benefits to undocumented immigrants.

The current proposed immigration bill gives businesses three 'strikes' before they could lose their licenses for employing undocumented immigrants and sets up a system for state and local police to enforce federal immigration laws. Two changes from the old, stalled bill were made: language was removed that would have made it to illegal to harbor, transport, or conceal an undocumented immigrant; and the Indiana State Police would be compelled to enter into an enforcement agreement with the ICE. House Republicans wanted to further amend the bill to include provisions that would deny social services to undocumented immigrants—language similar to an Indiana House bill defeated 74-19 two years ago.

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People who wished to express their concern over Kansas' anticipated usage of the E-Verify system got their chance to be heard last week, when the state's House Federal and State Affairs Committee held public hearings, according to *The Associated Press*. E-Verify is a federal database designed to check whether a person has legal status to work, and imposes penalties on employers who knowingly hire undocumented immigrants.

Kara Lineweber of El Centro, a Kansas City Hispanic advocacy group, said the state last year spent $1 million to audit public benefits and found only one undocumented immigrant. "In a time when our state is facing budget constraints, we must ask ourselves, is this really an issue and how will we fiscally justify further legislation on this after spending a million dollars to find one immigrant?" Lineweber said.

Carlos Gomez, president of the Hispanic Chamber of Commerce of Greater Kansas City, said the economies of several Kansas towns are tied to the immigration

population, especially those with large packing plants like Dodge City, Garden City and Emporia. "Government has the responsibility to give tools before it punishes or penalizes and there is no state or federal support to help employers to hire workers legally, Gomez said. "There is no justification for this legislation unless you want to send the message that Hispanics aren't welcomed in Kansas."

Amy Blankenbiller, Kansas Chamber president, said her group is part of a coalition of 36 business and agricultural groups opposed to mandatory E-Verify. "It's wrong to turn Kansas employers into policemen," she said. "The business community will fight the penalties on business." Allie Devine of the Kansas Livestock Association, a coalition member, called the legislation a "death penalty" for Kansas businesses.

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9. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- Could Lack of H-1B Visas Topple New York's Status as Global Leader?
- Foreign EB-5 Investors Injecting Life in to Troubled Real Estate Industry
- Arizona Principal Fights for Her Students
- County Can't Use RICO to Sue Employers for Hiring Illegally Present Workers
- Yes, We Have no Tomatoes to Sell
- Karen Weinstock's H-1B Book is Published
- Happy Ending in Virginia Tuition Case
- Iraqi Translator Denied Green Card Based on Kurdish Party Membership
- Sanctuary Cities for Criminals
- *Wall Street Journal*: More Visas, More Jobs
- USCIS to Conduct Naturalization Interviews on Nights and Weekends
- Summary of Proposed No-Match Rule
- *Times* Reports on USCIS "Sex for Green Cards" Scandal
- My H-1B Cap FAQ
- Breaking News: State Department Confirms Illegal Search of Obama Passport File
- Senators Demand Answers on Naturalization Delays
- Another H-1B Bill Introduced
- USCIS Announces Key H-1B Cap Process

The SSB Employer Immigration Compliance Blog

- South Carolina Bill Criticized for not Being Harsh Enough
- Long Island Employer Sanctions Bill Tabled
- Indiana Bill Defeated
- Massachusetts Republican Introduces Employer Sanctions Bill
- Idaho Employer Sanctions Bill Defeated
- Tennessee Considers Bill to Make It Crime to Work Illegally
- County Can't Use RICO to Sue Employers for Hiring Illegally Present Workers
- No-Match Economic Impact Analysis Released
- Kansas Likely to Vote on Employer Sanctions Bill this Week

- OSC Confirms It Will Not Pursue Companies for Discrimination That Comply with No-Match Rule
- Employer Sanctions Bill Not Likely to Pass in Kentucky
- Reminder: New DHS Employer Sanctions Fines Go Into Effect This Week
- Union Sues Company for Suppressing Wages by Hiring Illegal Workers
- Barbour Signs Mississippi Sanctions Bill into Law
- Utah Governor Signs Employer Sanctions Law
- Nebraska Employer Sanctions Bill Advances
- Alabama Senate Committee Holds Hearings on Sanctions Bill

Visalaw International Blog

- 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

- *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

- *New York Times*: Soccer's Immigrant History Explored
- Immigration Crackdown Quiets Soccer Fields in DC Suburbs
- British Author Horsley Denied Entry into US
- Cuban Soccer Players Defect
- Dominican Baseball Players Barred from US for Role in Marriage Fraud Scheme
- Twin's Lariano Gets Visa
- H-2B Crisis Hits Sports and Entertainment Companies

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. U.N. Critical of U.S. Approach to Detention, Protection of Rights, of Immigrants

The United States has failed to uphold its international obligations to protect the human right of migrants, subjecting too many to prolonged detention in substandard facilities while depriving them of an adequate appeals process and labor protections, United Nations investigator Jorge Bustamante said last week. *The Los Angeles Times* reports that this marks the first time the international committee has made a public criticism of the U.S. treatment of its estimates 37.5 million undocumented immigrants.

Bustamante took particular aim at what he criticized as the "overuse" of detention for immigrants. Noting that the annual detainee population has tripled in nine years to 230,000 he called on the United States to eliminate mandatory detention for certain migrants and instead expand the use of alternatives, such as electronic ankle bracelets. He also urged that immigrants be given the right to legal counsel, more impartial hearings and improved holding facilities, particularly for women and children. "The United States lacks a clear, consistent, long-term strategy to improve respect for the human rights of migrants," said his report," which was presented last week to the U.N Human Rights Council in Geneva. Bustamante serves as the organizations special rapporteur on the human right of migrants.

In response to the findings, the U.S. delegation issued a statement which called the report disappointing. The report "focuses only on a narrow slice of the migrant population in the United States and makes no effort to recognize notable, positive aspects of U.S. migration policy," the statements said. "This results in an incomplete and biased picture of the human rights of migrants." The delegation said that the U.S. had one of the world's most generous immigration policies and offered more than 11 million migrants green cards, citizenship, asylum, refugee resettlement and temporary protected status between 2000 and 2006.

In his three-week fact-finding mission in Los Angeles last May, Bustamante said he was concerned about "rising anti-immigrant sentiment in the United States" and took testimony about worker abuse, government raids, family separations and other issue. In his report, he wrote that xenophobia and racism towards immigrants has worsened since the Sept. 11 attacks, with a particularly devastating effect on

children, Afro-Caribbean migrants, and those perceived to be Muslim or ethnic South Asians and Middle Easterners.

Human rights activists have hailed the report as an important and independent voice that brings public attention to problems faced by immigrants. "The U.S. touts the importance of human rights abroad, but rhetoric doesn't match the reality at home," said Chandra Bhatnagar of the ACLU's New York office. "All we are asking to do is bring human rights home."

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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**

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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.)