Siskind's Immigration Bulletin – September 26, 2008

Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser, P.C., Attorneys at Law; telephone: 800-748-3819, 901-682-6455; facsimile: 800-684-1267 or 901-339-9604, e-mail: gsiskind@visalaw.com, WWW home page: http://www.visalaw.com.

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.

Editor: Greg Siskind. Associate Editor: Ken Bragdon. Contributors: Ken Bragdon.

To receive a free e-mail subscription to Siskind's Immigration Bulletin, fill out the form at http://www.visalaw.com/subscribe2.html. To unsubscribe, send your request to visalaw-unsubscribe@topica.com.

To subscribe to the free Siskind's Immigration Professional Newsletter, go to http://www.visalaw.com/sip-intro.html.

****

1. Openers
2. ABCs of Immigration: Adopting Foreign Orphans
3. Ask Visalaw.com
4. Border and Enforcement News
5. News From The Courts
6. News Bytes
7. International Roundup
8. Legislative Update
9. Notes from the Visalaw.com Blogs
10. Campaign '08
11. State Department Visa Bulletin for October 2008

_____

1. Openers

Dear Readers:

While Congress is focused on the financial crisis on Wall Street, immigration may be creeping back as a major issue.

Earlier this week, Senate Bob Menendez (D-NJ) introduced S. 3514, the Reuniting Families Act, a bill to recapture unused family and employment-based green cards which were left on the table in the years 1992 to the present. The bill would also change the per country limit of 7% to a more reasonable 10%. Indians, Chinese, Mexicans and Filipinos would benefit greatly from that provision. And the bill would expand the definition of "immediate relative" to include spouses and minor children

of permanent residents, something that will eliminate the multiyear separations that have become common for many families waiting on a quota number

S. 3514 would also make important changes to the 3 and 10 year bars for unlawful presence including raising the age when unlawful presence begins from 18 to 21. The bill would also exempt applicants from the bar if they had a current priority date on or prior to the enactment of the bill if the person is otherwise admissible. The bill would also make it easier to secure a waiver of the bars by making it only necessary to show a hardship (as opposed to an extreme hardship) and allowing a showing of a hardship to a son or daughter in addition to the current law's allowance of a showing of a hardship to a spouse or parent. Also, the federal government would be able to approve a waiver on humanitarian grounds even if there is no qualifying family relationship.

A companion bill, HR 6938, has been introduced by Rep. Honda (D-CA) in the House of Representatives.

The bill's concepts are not brand new. And up until this week, I would have thought the odds extremely remote for this bill to pass anytime soon.

But there's another bill that people are talking about and it impacts the Menendez bill. The E-Verify program (DHS' much discussed electronic employment verification system) expires in November.

E-Verify is the heart of the entire enforcement agenda for the antis and with Congress set to adjourn in the next week or so and with the distinct possibility that this will put off all legislation until next February or so when the new Congress comes in, getting E-Verify extended in the next few days is a huge deal. A five year extension has passed the House already. The Senate has done nothing yet.

So it was with great interest that I read in yesterday's CQ Today print edition that Senator Menendez is blocking the E-Verify reauthorization bill in order to force consideration of the recapture bill. The article describes Republicans as being infuriated and saying that the recapture bill is a nonstarter and demanding Senate Majority Leader Harry Reid bring up a clean E-Verify extension bill.

On the House side, interestingly, the recapture bill was set for a markup in the Judiciary Committee yesterday and Congressman Conyers abruptly adjourned the hearing after a bill barring horse slaughtering was finished yesterday. According to my sources, several members of the Committee were shocked that the markup on the recapture bill didn't happen even though Conyers is a strong backer of the measure. Strange.

That has me speculating. Is something cooking with the Democratic leadership and the Obama campaign? I think the Democrats smell blood. They know John McCain is in trouble with Hispanic voters based on recent polling data. He's polling anywhere from 10 to 20 points worse than Bush did in 2004 and the Hispanic vote partially explains why Obama finds himself ahead in places like New Mexico and Colorado, states Bush won in 2004. Erosion of support in the Hispanic community could also cost McCain Florida, a state McCain cannot lose if he has any chance of winning the election.

Several news reports are now talking about how the McCain campaign and congressional leaders have been clamping down on the anti-immigrant wing of the party. You didn't really think these folks suddenly decided they no longer care about this issue, did you?

What I don't think is a coincidence is the sudden reemergence of immigration in the presidential debate. Suddenly, Obama is blasting McCain on immigration and looking for more and more forums to make his claim that he's pro-immigration and his party's solidly behind him. And he's quick to remind Latinos that John McCain turned his back on them and denounced his own comprehensive immigration reform bill, something that Latino voters are now saying is one their top priorities.

McCain is asking Latino voters for a do-over and claiming that he was only pandering to his base. He was always pro-immigration. It's just politics, you understand.

As you might expect, this message is not selling particularly well. And Democrats know it. They also know that with the economy in free fall, most Americans are not thinking that much about immigration anymore and the issue has dropped back to its historically low rank on issues of concern to the typical voter. So Democrats can be more visibly pro-immigration without having to fear negative consequences.

You probably see where this is going. Provoking a confrontation over immigration with Republicans in the month of October can only have good results. Democrats might actually pass a bill they really want. And they score politically as well.

There's no time to bring up a massive comprehensive immigration reform bill between now and the election. Something smaller and simpler, but what? Oh wait, there's that recapture bill! And there's that must pass E-Verify bill. Now there's a great way to put immigration back on the front pages. Link the two and force Republicans to vote no on a pro-immigration bill likely to have a hugely positive impact in the Hispanic community if they want the E-Verify program to survive. If the Democrats can keep the two bills linked, Republicans who can't stomach more immigration will have to vote no on E-Verify, something they'll have trouble explaining to their constituents. And Republicans who think E-Verify is too important to die, will help deliver a win on the recapture bill.

And in the mean time, McCain will have to openly confront the angry antis in his party. Some of the hardliners in his party will call the provisions easing the unlawful presence waivers to be a "back door amnesty." If McCain goes against them, he'll be seen as a liar by the people in his party who he promised that he would not support an "amnesty" without enforcement first. And if he votes with the antis, it will be all the Hispanic community needs to hear to confirm they're right to support Obama.

Stay tuned…

*****

In firm news, I'm just back from speaking in Atlanta at the Southeastern summit of ImmigrationWorksUSA (www.immigrationworksusa.org), the national grassroots

organization of business owners working for sensible immigration solutions. I gave a report on where state legislation is headed. My friend Chuck Kuck, the current AILA president gave a rousing lunchtime address on where immigration reform is headed.

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.

Kind regards,

Greg Siskind

_____

2. The ABC's of Immigration: Adopting Foreign Orphans

What requirements that must be met for obtaining permanent residence are specific for adopted foreign orphans?

Special rules apply for obtaining permanent residence for adopted foreign orphans that do not apply in other family based immigrant categories. For these special rules to apply, the following five requirements must be met:

- The child's country of origin must permit adoptions by foreign nationals, and the prospective US citizen parents must comply with all of the rules of that country relating to adoptions;
- The child to be adopted must be under 16 years old and must either have no surviving parent or only one parent who cannot care for the child and has authorized the child's adoption and immigration;
- The adoptive parent must be a US citizen, although in the case of a married couple, who must make a joint petition, only one needs to be a US citizen. Single adoptive parents must be at least 25 years of age;
- The child must have been formally adopted in its country of origin, or the adoptive parents must have custody of the child for immigration and an adoption to be finalized in the US ; and
- A designated agency must make a favorable recommendation about the suitability of the home into which the adopted child will move.

People interested in foreign adoptions should be aware of all the rules relating to adoption in the country from which they want to adopt. These rules can vary greatly, and are often quite complex. However, trying to avoid these rules will result in the USCIS denying the orphan application. While these rules are beyond the scope of this article, the State Department website provides a great deal of helpful information on foreign adoptions at http://travel.state.gov/family.

What is an orphan?

Whether a person qualifies as an orphan depends on US law, not on the law of their home country. An orphan must be under 16, except for an orphan under 18 who is adopted with a natural sibling under 16.

A child can become an orphan in a number of ways. The death or disappearance of both parents will cause a child to be an orphan. Abandonment by both parents will also render a child an orphan. Abandonment is strictly defined in USCIS regulations. It is a willful relinquishing of all parental rights and obligations when the child is no longer in the control and possession of the parents, where the parents have not transferred those rights to another person. Releasing a child to the prospective adoptive parents is not abandonment. Desertion will also cause a child to be an orphan. Desertion occurs when the parents are not involved with the child and their whereabouts are unknown and they cannot be found.

When the child has only one surviving parent, and the parent is not able to provide adequate care, the child is considered an orphan. The mother of a child born out of wedlock and not legitimated can be considered a sole parent if the father has died, disappeared, deserted or abandoned the child. Not being able to provide adequate care means being unable to provide for the basic needs of the child in accordance with local standards.

What requirements must the adoptive parents meet?

The person seeking to adopt a foreign orphan must be a US citizen. If the person is married, the couple must file the petition jointly. However, in this case, only one of the prospective parents needs to be a US citizen. For a single person to file an orphan petition, he or she must be at least 25. Furthermore, if the single adoptive parent was under 25 at the time of a foreign adoption, the adoption will be considered invalid for immigration purposes and the child must be readopted in the US.

If the child was not adopted abroad, or if the foreign adoption was invalid, the child must be adopted in the US. For this to occur, the following requirements must be met:

- The parent, or a person or organization acting on the parent's behalf, must have legal custody of the child under the laws of the child's home country
- The parent must obtain an irrevocable release for adoption and immigration from the person or entity that last had legal custody of the child
- The parent must comply with all pre-adoption requirements of the state in which they will live with the adoptive child
- The state in which the adoptive parent and child will live must allow a re-adoption or else provide for judicial recognition of a foreign adoption that was invalid for immigration purposes.

What is included in the home study requirement?

Before an adopted child can be classified as an orphan, the parent and any other adults that will be living with the adopted child must be evaluated. This is part of the home study, which is to be conducted by an USCIS authorized organization. Each adult in the home must be interviewed at least once, and the home must be visited at least once. The home study report must detail the physical, mental, and

emotional ability of the prospective parents to properly care for the child. If the person conducting the home study feels that they are not able to render an opinion on any of these issues, they must refer the parents to a licensed professional.

Along with interviews and psychological evaluations, the home study must contain the following:

- An assessment of the prospective parent's finances
- An analysis of the suitability of the home is there is any history of substance abuse, child abuse, sexual abuse or domestic violence by anyone in the home in which the orphan will live. The examiner must search any available child abuse registry, and if no such registry is available, that fact must be noted in the report. A history of abuse will not automatically result in an unfavorable recommendation if the person shows that they have been rehabilitated.
- A discussion of any previous denial of an adoption or unfavorable home study report
- A discussion of any criminal history or arrests of any adult in the household
- A thorough description of the home in which the orphan will live
- If the orphan is handicapped or has other special needs, there must be an evaluation of the suitability of the home in light of those needs
- A summary of required pre-adoption counseling about processing and problems in international adoptions
- If the home study results in a favorable recommendation, there must be a discussion of the reasons for that recommendation

The home study must be submitted to USCIS while it is less than six months old. If there are significant changes after it has been submitted, it must be amended.

How do I go about petitioning for an adopted orphan?

There are two steps in petitioning for an adopted orphan. The first, called advance processing, examines the ability of the prospective parents to provide a suitable home for the child. The second focuses on whether the child can properly be classified as an orphan.

In the advance processing step, the prospective parents must submit evidence of at least one spouse's US citizenship, and, in the case of a single parent, that the parent is of the proper age. The advance processing application can be filed by a single parent at 24 years of age. If married, the marriage certificate must be submitted as well as evidence of the termination of any prior marriages. The home study is also submitted at this stage. The application is submitted to the local USCIS office with jurisdiction over the place where the adoptive parent lives.

If the application is approved, the parents will be notified and the application sent to either an USCIS office overseas where the child lives, or, if there is not an USCIS office, to the closest consulate that issues immigrant visas. The petition for the orphan must be filed within 18 months of the approval of the advance processing application. The orphan petition must include a copy of the advance processing application approval notice, proof of the orphan's identity and age, and evidence that they are in fact an orphan. If the child is in the US, the parent can seek to have the child classified as an orphan, and also file for adjustment of status at a local USCIS office, but only if the child has been paroled into the US. Children who are in the US in a nonimmigrant status or who are here without USCIS authorization are not

eligible to receive orphan status or to adjust status. If the child is abroad, they will receive an immigrant visa from the consulate. Once the consulate adjudicates the case, the child will be admitted as a permanent resident.

What are the visa types for orphans traveling to the United States to be adopted?

In order to bring an orphan to the U.S. with an immigrant visa, adopting parents must demonstrate to CIS that they can and will provide proper care to the child if admitted to the United States . The I-600A application allows adopting parents to demonstrate that they are financially, logistically and otherwise prepared to adopt a child internationally. The I-600A also identifies any U.S. state requirements that must be met prior to or after the adoption.

Adopting parents are often encouraged to begin the overseas adoption process early by filing the I-600A before identifying a particular child to adopt. Parents who already have identified or even adopted a child may demonstrate their suitability to adopt by filing the same documentation with the I-600 petition (described below), but parents choosing this route should be aware that it may take longer and that they must file such I-600 petitions with a CIS office (not the consular officer at a U.S. Embassy or Consulate.)

If used, the I-600A *Application for Advance Processing of Orphan Petition* should be filed with the U.S. Citizenship and Immigration Services (CIS) office having jurisdiction over the adopting parents' place of residence. The following documents must be submitted with the I-600A:

Completed and signed I-600A (Application for Advance Processing of Orphan Petition);

Proof of the prospective petitioner's United States citizenship;

Proof of the marriage of the prospective petitioner and spouse, if applicable;

Proof of termination of any prior marriages of the prospective petitioner and spouse or unmarried prospective petitioner, if applicable;

A "home study" completed by the appropriate State organization with a favorable recommendation (CIS regulations include very specific instructions on the issues to be addressed in the home study, authorized providers of home studies, and the recommendations regarding suitability - for additional information see the CIS website , or 8 CFR 204.3(e).);

Filing fee (see current fee at www.uscis.gov)

In addition, the petitioner, spouse (if married) and each additional adult member of the adopting parent(s)' household must also be fingerprinted as part of the I-600A application. For adopting parents in the United States , CIS will provide information once the I-600A is filed on being fingerprinted at local CIS offices. For adopting parents residing overseas, adopting parents should contact the U.S. Embassy or

Consulate with jurisdiction over their place of residence to schedule fingerprinting prior to submitting the I-600A.

At the time they file the I-600A, the petitioner should request that CIS notify the U.S. Embassy in the country where they plan to process the case as soon as the I-600A is approved.

CIS approval notices of the I-600A often identify the type of child the prospective parents are authorized to adopt overseas. Approved I-600As are valid for 18 months. Adopting parents must file an I-600 petition for a child fitting the I-600A criteria (if any) during this validity period; if the I-600A approval has expired, parents will need to re-file the I-600A and obtain approval prior to filing the I-600. Adopting parents should also note that fingerprint clearances obtained during the I-600A process are only valid for 15 months. If the I-600 is not filed and approved during this fingerprint validity period, adopting parents should consult with the office where their fingerprints were originally taken for instructions on obtaining updated fingerprint clearances, prior to any planned travel overseas. If parents arrive overseas intending to file the I-600 petition and their fingerprint clearances are not valid, parents will be charged an additional fee for re-fingerprinting and will be required to wait several days for fingerprint clearances before their I-600 can be approved.

Note that a child in the United States who is illegally present or is in non-immigrant status is ineligible for the benefits of an orphan petition.

How can the adopted orphan be naturalized?

The Child Citizenship Act of 2000 confers automatic citizenship upon IR-3 orphans upon their admittance to the United States. IR-4 orphans must be readopted in the United States before they are automatically U.S. citizens.

---

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- My passport got a bit wet, the H1B stamp in the area of the picture has an area that of discoloration although the picture is completely recognizable. Anything I should do? I could scan and email you the stamp if you need.

A – We would suggest you obtain a new visa stamp on your next trip abroad. If the visa is damaged or appears altered in any way, you may have a difficult time re-entering the US. Unfortunately, the only way to find out for sure is to try!

In addition, if the passport has been damaged in any way, you should also obtain a new passport before applying for a new visa. I have, on many occasions, we have seen consulates refuse to endorse a visa stamp in a passport that is even slightly damaged (for example, the gold lettering on the front has faded away, a page is torn, etc).

*****

Q - Can a person file for a K-1 Fiancé Visa while awaiting divorce proceedings?

A - Unfortunately, no. The divorce must be final before filing the fiancé petition.

*****

Q - I came to the US with a Diversity Visa on August 28, 2005. I left the US for four and a half months on January 15 2006. Because of family health problems that did not allow me to come back, I came back almost seven months later on August 20th 2006. I have been here since. Do I wait until August 2010 (five years from my first arrival) or August 2011 (five years after my second arrival) to apply for citizenship? I will have completed 30 months of continuous residence.

A - There is not a clear answer. You're required to maintain continuous residence in the US for five years and long absences can break that. Absences of over a year always break that continuity. Absences of six months to a year are PRESUMED to break the continuity, but this presumption can be rebutted if you can show that it was not your intention to abandon your residency in the US. That's a subjective decision to be made be an examiner. The main risk for you is that you would have to start the naturalization process again after you get denied in a first application. That could mean a large waste of money plus the waiting time on a new application. On the other hand, you may have a good reason for your long absence and this may be enough for an examiner.

*****

Q - I filed an N-400 naturalization application last December after I had lived in the US for more than 5 years with my green card. This June, I came to China and took a job in a non-US company. Some of my friends told me that I have to be in the US for the 6 months before my case is approved. Could you please let me know if there is a such requirement? Thanks!

A - During the three months preceding the application, the person must have resided in the USCIS district where the application will be filed. Between the filing of the naturalization application and the granting of citizenship, the applicant must continue to reside in the US . This does not mean travel is forbidden, however. But one must not change their place of residence during this time and the requirement of spending half of one's time in the US continues to apply at the time of naturalization as well as the time of application. Also, an absence from the US of more than six months during this period could cause problems with showing you are continuously residing

in the US. I would makes sure you travel back to the US at least once in order to avoid being outside the country for more than six months. As always, I suggest consulting your immigration lawyer.

*****

Q - My mother got married to an American citizen and filed for her green card. She was denied so my brother who's a US citizen filed for her and she was successful. She now has a green card. She wants to file for citizenship. She's still married to her husband. ,I am told if you are married to a US citizen after 3 years you can file for citizenship is this the case. They have been married 4 years.

A - I believe your understanding is correct. If your mother has been married to a US citizen for three years and has been a permanent resident for that period of time, she should be able to benefit from the shorter residency requirement.

_____

4. Border and Enforcement News

The number of 2007-2008 federal prosecutions of undocumented immigrants with felony records has reached an all-time high in Southern California, *The Contra Costa Times* reports. During the current fiscal year, there have been 657 federal prosecutions, a 20% increase from the previous year; the final estimate is expected to rise, as there are still three months in the fiscal year. This year also marked the first time that Los Angeles County's federal prosecutors have filed more cases against undocumented immigrants with criminal records for entering the country illegally than with any other crime.

The prosecution increase is largely the result of the Los Angeles County Sheriff's Department stepping up efforts to crack down on undocumented immigrants. The no-nonsense sentiment echoes federal immigration enforcement efforts, as ICE, which stepped up immigration enforcement in recent years, announced that it planned to expand raid teams in Southern California to carry out door-to-door sweeps. "LA County has identified probably one of the largest number of foreign-born nationals who are placed into removal proceedings in the country," said Kelly Nantel, an ICE spokeswoman.

Immigration advocates have long been critical of the intensified efforts of ICE and local law enforcement agencies, and that this latest crackdown effort, systematic targeting of immigrants in Southern California, will come at a cost. Some have argued that the immigrant communities themselves will be effected – children afraid to attend school, reluctance to report crimes, and unfairly targeted law-abiding immigrants who could get swept up in the system. "When you say the word 'criminal,' people think about the word 'violence,' but a lot of time these are crimes of poverty," said Xiomara Corpeno, an organizer for the Coalition for Humane Immigrant Rights in Los Angeles. "We are seeing people with no criminal record getting funneled into the system for very basic traffic violations."

*****

A request to halt the construction of border fencing, filed in June by a number of El Paso municipal and environmental organizations, was struck down last week, *The El Paso Times* reports. US District Judge Frank Montalvo denied the preliminary injunction request, which accused Department of Homeland Security Secretary Michael Chertoff of waiving over three dozen laws on federal, state, local, and tribal levels, to expedite the construction of border fencing. Specifically, the request sought to prevent DHS from constructing any physical barrier along the entire US-Mexico border, until DHS agreed to comply with the laws allegedly waived by Chertoff.

Explaining his rationale, Montalvo denied the request because he felt that the plaintiffs failed to prove that border fence would cause "irreparable injury to the public," a claim made by the submitted request. Montalvo also held that DHS' actions on waivers was valid and constitutional because the US Congress passed waiver legislation that would constitutionally delegate authority to governmental agencies.

*****

A national childcare firm for immigrant laborers has accused ICE of unfairly tracking down and targeting its centers in a ramped up effort to crack down on undocumented immigration. *The Milwaukee Journal Sentinel* reports that the executive director of the National Migrant and Seasonal Head Start Association says that ICE has been engaging in surveillance of immigrants involved with Head Start, and as a result, has caused the lives of innocent immigrants to suffer.

"Since early 2007, many of our programs started to notice that Border Patrol of Immigration and Customs Enforcement vehicles were parked outside their centers, and some were following buses picking up children," said Head Start director Yvette Sanchez last week, to a board of directors at United Migrant Opportunity Services.

The accusation by Head Start has been levied against ICE for almost a year, culminating in May when the US Congressional subcommittee on Work Force Protections heard testimony from ICE officials regarding Head Start. During the testimony, ICE officials acknowledged they had numerous ICE activities near Head Start's programs in three states. "We ask that ICE enforcement and intimidation tactics near migrant and seasonal Head Start centers cease immediately," US Reps. Joe Baca (D-CA) and Luis Guitierrez (D-IL) wrote.

*****

A federal judge issued a judgment last week permanently preventing a Dallas suburb from enforcing a rule banning apartment rentals to illegal immigrants, according to *The Associated Press*. The decision by US District Judge Sam Lindsay is likely the final chapter in a two year court battle over an ordinance that would have required landlords to verify tenants' legal status. However, the judgment triggers another immigration-related rule to go into affect 15 days after the ruling, which would require prospective tenants to get a rental license from the city; the judgment struck down the clause which would require renters to first check the applicant's legal status before approving.

Opponents of the revised ordinance, which included apartment complex operators and city residents plan to challenge the new rule as well. "It is similarly

unconstitutional, it shares some problem and frankly creates others," said the group's attorney, Bill Brewer. "We would have hoped that they recognize that this is just not an area that this municipality or any or any municipality is supposed to delve into."

The judge concluded that Farmers Branch, the town who created the ordinance, didn't defer to the federal government in immigration matters. Instead, the town tried to create its own classification to determine which non-citizens could rent there. The ruling also didn't comply with the due process clause of the 14th Amendment because of its vagueness, not adequately explaining what the phrase "eligible immigration status" meant.

"In terms especially of housing, particularly is aligned with other decisions around that country that tell cities that courts find that type of ordinance crosses over into an area that the federal government has expressly deemed theirs," said Marisol Perez, a staff attorney with the Mexican American Legal Defense and Educational Fund, which also challenged the ordinance.

*****

A longtime mechanic at Los Angeles' LAX International Airport has been charged with smuggling undocumented immigrants into the US, using his job capacity to bypass security, *The Los Angeles Times* reports. Allegedly, he would lead the immigrants via alternate routes out of the terminal before they could be inspected by federal authorities. Roberta Amaya Canchola, 53, was arrested last month after a sting operation involving US Immigration and Customs Enforcement. Authorities estimate that Canchola smuggled at least 15 undocumented immigrants, including two former US deportees.

ICE is currently investigating the allegations, under the assumption that Canchola possibly could have been a single participant in a larger smuggling organization. "We don't know at this time how big it is," said Louis Rodi, a federal immigration agent at LAX. "We believe he is not the biggest player…We are targeting the larger organization."

Rodi said Canchola may have been able to exploit security holes due to ongoing construction at LAX's Bradley International Terminal. Canchola, who had been employed by LAX for almost 19 years, "knew security and he knew where the holes were on any given day," Rodi said.

_____

5. News From the Courts

***Vicente-Elias v. Mukasey*, (10th Cir. July 11, 2008)**

There is no evidence that the lives of Petitioner or his family, or those of any others in the larger Mayan community, are or have been threatened by economic circumstances. Nor is there any evidence that they face a potential loss of freedom through some form of confinement, enforced servitude, or the like. Paying work has been available at times, animal husbandry supplements income, and farming

provides food. Applying the appropriate standard from Acosta to the economic evidence, as the IJ did, we cannot say that every reasonable fact-finder would be compelled to disagree with the IJ and find the economic disadvantages shown here to be so severe as to threaten life and freedom.

Petitioners, two citizens of Guatemala, with cases involving similar facts and legal issues, sought asylum, withholding of removal and Convention Against Torture (CAT) relief. Both are of Mayan ancestry and speak the Quiche language. They claimed that this put them at an economic disadvantage in Guatemala because Spanish-speakers refused to employ them and that has resulted in their poverty.

The immigration judge found the first Petitioner to be a very credible witness and found that there was racial discrimination and discrimination due to language ability in Guatemala. The IJ also found that indigenous people do not have equal access to employment or educational opportunities. Applying the standard for economic deprivation, the IJ found that the first Petitioner had not reached the level of hardship which would qualify as persecution and denied relief. The BIA affirmed.

In the second case, Petitioner offered more general testimony, stating that he left Guatemala due to poverty, that his family was poor, that there was no money and that he only attended three years of school. He admitted that no one ever harmed him in Guatemala and that on one occasion his father had been sprayed in the eye with a toxic substance for walking on the property of Ladinos and that his cousin had been poisoned. The IJ similarly denied relief and the BIA affirmed. The BIA found that the incidents described by Petitioner could not support a finding of persecution, nor did Petitioner demonstrate that the harm his family members suffered was on account of a protected ground.

On review, the Tenth Circuit noted that the BIA had recently clarified the standard for determining when economic deprivation rises to the level of persecution. The BIA acknowledged in *Matter of T-Z-*, 24 I&N Dec. 163, 170 (BIA 2007), that it had at times referred to: 1) deliberate imposition of substantial economic disadvantage, used by the Ninth Circuit in *Kovac v. INS*, 407 F.2d 102, 107 (9th Cir. 1969), and at other times to 2) economic deprivation or restrictions so severe that they constitute a threat to an individuals life or freedom, as set forth under *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), overruled on other grounds by *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). The BIA found that these two formulations are alternative, and not mutually exclusive, ways to demonstrate non-physical persecution. The BIA, however, did revise the *Kovac* formulation to require severe, not merely substantial, economic hardship. *See Matter of T-Z-*, 24 I&N Dec. at 172-73. The BIA then noted that these tests apply in different situations. The BIA indicated that the *Kovac* test supports asylum absent a threat to life or freedom if the applicant has suffered a severe loss of an existing economic/vocational advantage. In contrast, the *Acosta* threat to life or freedom test applies when the focus is on whether conditions for the applicant have or will be so impoverished as to support a finding of persecution.

The court then turned to the facts of the first Petitioner who argued that the IJ used an incorrect legal standard and, in the alternative, that under either standard the facts of his case supported a finding of persecution. The court held that the IJ clearly applied the Acosta test and that application was consistent with the BIA's subsequent decision in *Matter of T-Z-*. The court noted that Petitioner testified that 1) he left Guatemala to escape extreme poverty, 2) employment opportunities for Quiche

speakers were minimal due to discrimination, 3) work could sometimes be found, 4) school was not free so the linguistic limitation perpetuated itself, and 5) there was not enough to eat at times. The 2004 Department of State report corroborated Petitioner's claims including the statistic that 76% of the indigenous population in Guatemala lived in poverty.

The court found that there was no evidence that the lives of the first Petitioner or his family, or those of others in the larger Mayan community, are or have been threatened by economic circumstances. The court found no evidence that they faced a potential loss of freedom through confinement, enforced servitude, or the like. The court noted that paying work has been available at times, animal husbandry supplemented income, and farming provided food. The court concluded that the IJ applied the appropriate legal standard from *Acosta* and that it could not say that every reasonable fact-finder would be compelled to disagree with the IJ. In addition, the court rejected Petitioner's pattern or practice argument because it was based on long-ago atrocities of the Guatemalan civil war rather than on treatment based on a person's ethnic or linguistic group. The court also rejected Petitioner's claim based on past persecution alone because Petitioner did not testify that the civil war in Guatemala had any direct effect on him, his family or his community.

The court then turned to the case of the second Petitioner and agreed with the BIA that his testimony was insufficient to establish economic persecution and would not compel a fact-finder to resolve the matter differently than the BIA. The court found that although Petitioner's family had been subjected to ethnic slurs, such conduct, although repugnant, was not a sufficient basis to compel a finding of persecution. The court also rejected Petitioner's argument that he was entitled to humanitarian asylum based on the severity of the past harm he suffered during the civil war. The court found that because the second Petitioner limited his appeal to the denial of restriction (withholding) of removal, humanitarian asylum was an issue the court did not have jurisdiction to address.

Lastly, the court rejected the second Petitioner's substantive due process argument which claimed that the massacres of the Mayans in Guatemala sponsored by the United States should shock the conscience and, therefore, require relief. The court noted that it typically does not require exhaustion of constitutional arguments that cannot be addressed by the BIA, citing INA §242(d)(1). The court refused to accept Petitioner's argument based on the "state created danger" theory, finding that similar efforts to extend this theory to the immigration field have been squarely rejected by two other circuits. *See Enwonwu v. Gonzales*, 438 F.3d 22, 29-31 (1st Cir. 2006); *Kamara v. Att'y Gen. of the U.S.*, 420 F.3d 202, 216-18 (3d Cir. 2005). The court found those circuit decisions to be soundly reasoned and that it would follow their lead.

The petitions for review were denied.

---

6. News Bytes

This month, the US Department of State issued a press release announcing that it has achieved its goal of admitting 12,000 Iraqi refugees to the US for the 2008 fiscal year. Under the US Refugee Admissions Program, the US government had pledged to make it easier for Iraqis who aided US forces to safely relocate to the US.

Despite meeting the estimated figure for FY 2008, the US government has taken criticism over the past few years for being sluggish in the admissions process, admitting far fewer Iraqi refugees than was predetermined for any given fiscal year. It accepted 1,608 in fiscal 2007 and 202 in fiscal 2006.

Reuters reports that Ambassador James Foley, who was named in September to speed up U.S. processing of Iraqi refugees, said the U.S. government had decided to begin handling requests from Baghdad embassy employees inside Iraq soon. After a recent trip to Iraq, he said, "We came away confident that everything is in place to go forward with this process, which should commence in the next month or so."

*****

According to a year-end report from the Executive Office for Immigration Review, which oversees immigration courts, approximately 58% of individuals in immigration court were unrepresented. Unlike defendants in criminal courts, individuals in immigration court have no right to free representation. The high percentage can largely be attributed to an immigration defendant's limited resources or unfamiliarity with US legal customs.

Although an immigrant defendant who cannot afford legal representation is detrimental to his or her cause, it also places an enormous burden on the already overbooked immigration court systems. Immigration court in Los Angeles, for example, heard a record-breaking 27,200 cases last fiscal year, and increased anti-immigration enforcement will undoubtedly increase this number. "Immigration laws are extremely complex," said Immigration Judge Dana Leigh Marks, president of the national Assn. of Immigration Judges. "It's a tremendous aid to us when someone is competently represented."

To provide better odds for immigrants to obtain adequate legal representation, new efforts have launched over the past few years, with the federal government, private firms, and nonprofit organizations. Due to high legal fees, most of these efforts strive towards a more economically-minded public defender program. "Nonprofits just don't have the resources to represent everybody" said Donald Kerwin, director of the Catholic Legal Immigration Network.

Another approach that many organizations, ranging from governmental (Executive Office of Immigration Review) to corporate (Microsoft Corp.) to celebrities (actress Angelina Jolie), have taken is assuring that at least all unaccompanied immigrant children are represented in immigration court.

*****

Last week, the American Civil Liberties Union accused the public school districts of New Jersey of inquiring the immigration status of nearly 20% as they register for school, *The Fort Mill Times* of New Jersey reports. If true, the actions violate both state and US Supreme Court rulings.

To obtain these results, ACLU staff and volunteers have posed as family or friends of students and call or visit every school district in the state to find out about their student registration policies. Of the 515 instances, 139 said they had to fill out a form that asked for immigration status. According to an article from *The Press of Atlantic City*, many of the school's that did check for immigration status did so through requesting a Social Security number.

A statement from a New Jersey Education Department spokeswoman echoed the same concerns about the ACLU's findings, expressing that any school that is caught violating any laws concerning immigration run the risk of punitive actions, including a reduction or loss of state financial aid. ACLU Executive Director Deborah Jacobs said that they will continue to conduct the survey, but were pleased the Department of Education issued a strong statement condemning it.

*****

The recent economic slump in the US has taken a heavy toll on the US' Hispanic Immigrant communities, with two separate reports finding that immigrant laborers are seeing job loss and decrease in work hours, according to *The Washington Post*. An analysis released last month by Audrey Singer at the Brookings Institute, Hispanics make up a disproportionate number of workers who hold part-time jobs but want full time work; although they represent 14% of America's workforce, 33% of Hispanics had their jobs shift from full-time to part-time. The report, using Labor Department, reveals that Hispanics tend to work in industries that have been the most susceptible to decrease in hours: 26% of all construction jobs had decreased hours, 15% of retail jobs, 11.5% of service jobs. Singer estimates that the service industry is the largest sector that employs Hispanics; according to 2006 Census, about 33% of the US service is Hispanic.

The Pew Hispanic Center released the results of a report that shows that the Hispanic community in particular has been negatively affected by the economic slump. The Pew Report focused on the effects of job cuts of day-to-day life in the Hispanic community; of 50 Hispanics who most recently sought foreclosure counseling from the Latino Economic Development Corporation, nearly half cited a reduction in income as their need for help. "For those who have full-time employment, their hours are being cut. For those who have part-time employment, they are being let go," said Wendy Alvarenga, senior housing counselor for the group. "It's affecting their mortgage payments because they are not making what they were once making."

_____

7. International Roundup

BBC News reports that EU ministers have agreed on a sweeping new EU immigration pact, aimed at curbing undocumented migration while easing conditions for highly-skilled workers. The pact, set to be approved by EU leaders next month, will make it harder for member states to grant mass amnesties for migrant workers. It will also introduce an EU 'blue card' scheme to attract workers in demand, such as engineers and nurses.

The new European pact on immigration and asylum warns that the EU does not have the resources to decently receive all the migrants hoping to find a better life in Europe.

The French Immigration Minister Brice Hortefeux, who chaired the meeting, said the pact would ensure Europe “is neither a bunker nor a sieve.”

The pact, which has political rather than legal force, urges member states not to offer mass amnesties to undocumented immigrants, as done in the past by Spain and Italy, and to ensure that foreigners without papers are removed.

Regarding the Blue Card, there is still disagreement about which qualifications are to be included and how much the migrants should earn. But what is clear is that they will not be able to move across Europe as easily as originally planned and that is bound to raise doubts about how useful the Blue Card will turn out to be.

*****

The push to lure skilled workers to Australia and the increase in foreign students have raised migration into the country to a record high, *The Age* of Melbourne reports.
Australian Bureau of Statistics figures reveal that net overseas migration to Australia boosted the population by almost 200,000 in the year to March, outstripping births in contributing to population growth. With the Federal Government adding to the migration intake in this year's budget, demographers predict the numbers will swell.

The population of Australia reached 21.3 million at the end of March, and 59% of that growth was due to net overseas migration — that is, the difference between overseas arrivals and departures. Peter McDonald, head of demographics at the Australian National University, said much of the rise was due to long-term temporary migration. This mainly comprises foreign students, temporary skilled workers who are here on 457 visas, and people on working holidays.

Monash University demographer Bob Birrell said migration was contributing more to population growth than births, and the trend was yet to peak. “There's also a significant delay in the return of those temporary migrants,' he said. 'We're getting a surge of people coming here, but it takes some time before they finish their stay and return home.”

Dr Birrell said the increasing population was adding pressure to the housing market, which was already under strain because of a reduction in the construction of units and houses. It was also increasing demand for hospital services and public transport and adding cars on roads.

A spokesman for Immigration and Citizenship Minister Chris Evans said this reflected the strong growth in the number of foreign students and temporary skilled migrant workers coming to Australia. In 2007-08, more than 278,000 student visas and 110,570 457 visas were granted. Acting state Treasurer Tim Holding said Victoria had recorded its highest population growth in 37 years. This year's budget included $4.4 billion in new infrastructure investment, including for hospitals, schools and roads.

*****

The government of The Philippines will offer a special visa for foreign investors with ventures that can directly generate employment. The “Jobs Generation visa will provide foreign businessmen a semi-indefinite stay, Immigration Commissioner

Marcelino C. Libanan told *BusinessWorld*.

Mr. Libanan, however, did not elaborate on the nature and quality of employment and as to what sector should be prioritized for jobs generation. The Immigration chief said any foreign businessman could apply for the visa provided there is no violation of trade and labor laws. Foreigners are currently entitled to a visa provided they put in a substantial amount of investment.

The National Statistics Office reported last week that the unemployment rate eased to 2.75 million in July, slightly down from 2.82 million year-on-year. Issues of jobs-skills mismatch continue to affect the labor market as the country's industries complain of talent lack for their requirements.

---

8. Legislative Update

The next time the US census is taken in 2010, it could exclude a significant number of US residents, if a recently proposed amendment were to be approved. *The Associated Press* reports that an amendment introduced last year by Rep. Candice Miller [R-MI], could see an increase in Republican support for the current Congressional calendar, as conservatives have taken an increasingly hard-line approach to undocumented immigration.

Miller, when introducing the amendment, argued that states with a large number of undocumented immigrants are gaining unfair representation in the House. She claims that if this amendment had been enacted before the 2000 census, California would have six fewer House seats, and New York, Florida, and Texas, would have one fewer seat. Miller claims the amendment would have an opposite effect in states with fewer undocumented residents, with a seat increase in Kentucky, Pennsylvania, Wisconsin, and Miller's own state of Michigan.

Not surprisingly, the proposed amendment has met resistance from immigration advocates, as well as the Census Bureau itself. "Our mandate is to count all residents regardless of legal status," said Mark Tolbert, bureau spokesman. The US census has not ever contained questions regarding legal status.

Hispanic advocacy organizations La Raza, as well as the National Hispanic Leadership Agenda (NHLA), have both expressed concern with the increasing Republican support on the amendment, and what stance presidential candidate John McCain would take on the issue; McCain had been a staunch supporter of comprehensive immigration reform, supporting legislation that was largely at odds with his own party's policy platforms. La Raza's Cecilia Munoz says that McCain, who "has a great track record" on immigration issues, is being undercut by his own party's positions, and that the bill "manages to be both unconstitutional and insulting," Munoz said.

*****

This week, the American Civil Liberties Union has filed a lawsuit against Rhode Island Gov. Don Carcieri for requiring private businesses to check the immigration status of any hires, *The Associated Press* reports. In March, Carcieri signed a bill into law

which would make it mandatory for any company in the state to use E-Verify, the federal database created to confirm Social Security numbers.

The suit also accuses Carcieri, in his capacity as a state governor, of acting outside the limits of the US Constitution. They argue that he has no authority as a governor to make this rule mandatory for all businesses. Furthermore, the suit also alleges that Carcieri's law violates interstate purchasing laws.

When he signed the bill into law, Carcieri argued that he had to sign it into law to prevent any further influx of undocumented immigration. A spokesperson for Carcieri has yet to comment on the lawsuit.

*****

Members of the Oklahoma government, who passed a tough, state-wide employment immigration bill into law earlier this year, are now asking that a ruling on the law be overturned. According to *The Associated Press*, supporters of the law hope that the 10th Circuit Court of Appeals will throw out a previous ruling, which blocked some provisions regarding employers and contractors. The appeal was filed last week by Oklahoma's Attorney General Drew Edmondson, a supporter of the law.

US District Judge Robin Cauthron, who blocked the law's key provisions, held that it was unconstitutional to punish employers with penalties for not using a federal online verification system to determine a hire's legal status. Oklahom9a's assistant AG Dan Weitman argues that the state had every right to enact a law to protect taxpayers from undocumented immigrants, adding that great care was added when writing the bill so it would not interfere with federal law.

Cauthron ruled after a suit was filed by the US Chamber of Commerce, arguing that the state law cannot legally bind certain people to use a mandatory verification system. Though the state law took effect last November, the employer provisions were delayed until July 1. Cauthron did not block every provision; transporting, harboring, or prohibiting undocumented immigrants from receiving tax-supported services is still enforceable.

_____

9. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- House of Representatives Planning to Leave to Campaign without Extending Key Programs
- A Request to Readers in NJ, Nevada, New Mexico, and Colorado
- America's Voice Takes on CIS' Dumb "Immigrants Cause Global Warming" Study
- Could Election Year Politics Help Recapture Bill's Chances?
- SEVIS Fees for F, J and M Students Going Up
- Seven Firms Face Debarment from Federal Contracts
- Obama Lays Out Immigration Positions

- House Judiciary Committee Still Not Able to Move Immigrant Visa Recapture Bill or Nurses Bill
- Immigration No Longer the Gift that Keeps Giving for Anti-Immigrant Republicans
- Can Immigrants Help Address the Financial Meltdown?
- Menendez Introduces Recapture Bill in Senate
- The Dumbest Immigration Bill of the Year
- New Ad Hits McCain on Immigration
- Latino Voters Growing Angrier
- Border Patrol Threatening to Revoke Citizenship of Americans
- Did McCain Mix Up Spanish Prime Minister with South American Dictator?
- ICE Accused of Targeting Day Care Centers
- Antis Oppose Immigration Benefits for American Soldiers
- Obama Ad Criticized for Equating Limbaugh and McCain
- Department of Labor: Uh, Never Mind

The SSB Employer Immigration Compliance Blog

- Small Towns Worried about Impact of Raids on Meat and Poultry Plants
- Judge Issues Verdict in Rhode Island
- Prosecutions Against Rhode Island Janitors Proceeding
- Chattanooga Employers Increasingly Using E-Verify
- *Washington Post*: Laurel, MS Raid Shows New ICE Strategy
- Poll: Iowans Unhappy with Postville Raid
- Breaking News: 9th Circuit Upholds Arizona Sanctions Law
- 51 Workers Arrested at Palm Springs, California Bakery
- ICE Signs up 37 Employers for IMAGE Program
- Washington Considering Referendum on Employer Sanctions

Visalaw International Blog

- Canada: Sergio R. Karas Quoted in Toronto Star Article
- Canada: Sergio R. Karas Attends “Give a Day” Event
- Excellent Economic Summary
- Canada: Campaign Promises Target Immigration
- Canada: Election Set for October 14, 2008
- Slow Justice for Bogus Chinese Refugees
- Canada: West More Fertile Ground for Immigrants

Visalaw Healthcare Immigration Blog

- Hospitals to Lose Funding for Caring for Immigrants
- Coalition Publishes Ethics Code for Recruiting Foreign Nurses
- House Judiciary Committee Passes Nurse Visa Bill
- Ombudsman Hears Concerns Regarding Nurse Visa Crisis

Visalaw Fashion, Sports, & Entertainment

- LPGA to Require Players to Learn English
- Immigrants Contribution to Olympics Noted

_____

10. Campaign '08

Despite increased pressure from conservatives for Republican presidential nominee John McCain to abandon support of his outline for comprehensive immigration reform, some immigration policy experts, and McCain himself, are suggesting that he could once again support the failed reform bill if he were to be elected, *Roll Call* reports. The comments made by the senator at La Raza's annual convention last month showed promise for reform. "I remain committed to fair, practical and comprehensive immigration reform, I mean it. I think I have earned that trust," said McCain at the convention.

McCain, along with Sen. Edward Kennedy (D-MA), introduced a bipartisan effort in the Senate last year to pass comprehensive immigration reform after an unsuccessful 2006 attempt. Their plan called for increased border security, a guest-worker program and a 'pathway' to citizenship for undocumented immigrants in the US; the bill was ultimately unsuccessful. Conservative republicans were furious with McCain for supporting the plan, which they viewed as offering amnesty to undocumented immigrant workers.

Since the start of his presidential campaign, McCain adopted a subdued approach to immigration, walking a fine line between appeasing his party's conservative base while courting Latino voters and trying to keep his promise to find a reasonable way to deal with the estimated 11 million undocumented immigrants living in the US.

Doris Meissner, senior fellow with the Migration Policy Institute, said that GOP opposition has forced McCain to downplay a progressive stance to an immigration overhaul, but notes that his current border-security intensive plan still contains many of the same goals of his bipartisan plan. "Anybody that's watched this believes he's still committed to comprehensive reform, but he has changes his emphasis and sequence and how he would get there," she said. "McCain says he's gotten the message from the public that there needs to be control of borders first, then once you establish control, turn the attention to the other issues."

*****

Although both Republican John McCain and Democrat Barack Obama may differ on a number of policy issues, both presidential candidates agree when it comes to allowing more skilled foreign workers in the US under H-1B visas, *The Phoenix Business Journal* reports.

McCain expressed interest in eliminating the cap completely eliminate the cap, echoing the tech industry's call for a market-based system to bring in foreign workers many say are needed to fill scientific, engineering and high-tech jobs. "Sen. McCain continues to be a strong supporter of H1-B expansion, but mere expansion is not enough. Reforms should eliminate the artificial limits and allow a level of visas appropriate for market conditions," said McCain campaign spokeswoman Ivette Barajas.

Obama supports a temporary increase in H-1Bs. He also favors allowing more legal immigration into the US and making it easier for foreign students who attend college in the US to stay and work after they graduate.

H-1B visas, which are for highly skilled foreign workers, are sought after by US technology and engineering companies who would otherwise be largely unable to a number of their company's positions. Top H-1B sponsors include Microsoft, Intel, Yahoo, Hewlett-Packard, IBM, and Oracle. Last year, the federal government received 163,000 petitions for the allotted 85,000 H-1B visas.

*****

Republican Vice Presidential candidate Sarah Palin has devoted the majority of her sparse public interactions touting her experience in energy, the economy, and conservative moral values, but the unique demographics of Alaska likely means that John McCain's running-mate has little to no experience regarding immigration policy, *Bloomberg News* reports. Alaska, whose population of 670,000 is smaller than that of all but three states, has very few manufacturing and labor jobs. The state's economy, which relies almost entirely on natural resources and tourism, combined with the geographical distance from other countries, both make argument that the number of Alaska's undocumented immigrant population is low; the 2000 Census estimated only 5,000 undocumented immigrants resided in Alaska.

UPI recently interviewed Mara Kimmel, a political science professor at the University of Alaska at Anchorage who specializes in immigration issues. "She's never made any statements. I don't recall really any positions that she's taken," said Kimmel.

Arturo Vargas, executive director of the National Association of Latino Elected and Appointed Officials Educational Fund, said his group was working to discern Palin's views on immigration. "I do not know. That's one of the issues we are trying to figure out," he said.

The only real national exposure on Palin's stance on immigration came at a recent GOP press conference, when US Treasurer Rosario Marin was asked directly about Palin's position on the issue. Marin instead referred to John McCain's former policies: "I think that one of the things we will see (is) that … we know exactly where John McCain is," Marin said.

———————————————————————————

11. State Department Visa Bulletin for October 2008

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **October**. 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 **September 9th** 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.The fiscal year 2008 limit for family-sponsored preference immigrants determined in accordance with Section 201 of the Immigration and Nationality Act (INA) is 226,000. The fiscal year 2008 limit for employment-based immigrants calculated under INA 201 is 162,704. 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., 27,209. The dependent area limit is set at 2%, or 7,774.

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	15APR02	15APR02	15APR02	08SEP92	01APR93
2A	01JAN04	01JAN04	01JAN04	01MAY01	01JAN04
2B	15DEC99	15DEC99	15DEC99	22APR92	08MAY97
3rd	22JUN00	22JUN00	22JUN00	15SEP92	01MAY91
4th	22OCT97	01MAY97	22MAY97	15JAN95	08MAR86

***NOTE:** For October, 2A numbers **EXEMPT from per-country limit** will be unavailable because the annual limit for such visas have been reached. This will only impact the processing of Mexico F2A applicants.

	All Chargeability Areas Except Those Listed	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
Employment-Based					
1st	C	C	C	C	C
2nd	C	01APR04	01APR03	C	C
3rd	01JAN03	01JAN03	01JAN03	01JAN03	01JAN03
Other Workers	C	C	C	C	C
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-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 **October**, 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	6,900	Except: Egypt: 3,100 Ethiopia

		3,600 Nigeria 3,350
ASIA	2,900	
EUROPE	6,600	
NORTH AMERICA (BAHAMAS)	2	
OCEANIA	200	
SOUTH AMERICA, and the CARIBBEAN	375	

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-2008 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 NOVEMBER

For **November,** 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	12,500	Except: Egypt 5,900 Ethiopia 6,300 Nigeria 6,000
ASIA	5,300	
EUROPE	11,000	
NORTH AMERICA (BAHAMAS)	3	
OCEANIA	325	
SOUTH AMERICA,	550	

and the CARIBBEAN		

D. MEXICO F2A VISA AVAILABILITY FOR OCTOBER

Heavy demand for numbers in the Mexico F2A category has required the establishment of a cut-off date which is earlier than that which applied in June (after which they became “unavailable” for the remainder of FY-2008). The Mexico F2A cut-off date for October will be 01MAY01. Forward movement during the first quarter of the new fiscal year is likely to be limited.

E. EMPLOYMENT VISA AVAILABILITY

Item E of the May 2008 Visa Bulletin (number 118, volume VIII) indicated that many Employment cut-off dates had been advancing very rapidly, based on indications that the Citizenship and Immigration Services (CIS) would need to review a significantly larger pool of applicants than there were numbers available in order to maximize number use under the FY-2008 annual limits. That item also indicated that if the CIS projections proved to be incorrect, it would be necessary to adjust the cut-off dates during the final quarter of FY-2008. The CIS estimates have proven to be very high resulting in: 1) the “unavailability” of all Employment Third preference categories beginning in July, 2) the “unavailability” of numbers for China and India Employment Second preference adjustment of status cases during September, and 3) the establishment of many October Employment cut-off dates which are earlier than those which applied during FY-2008.

Little if any forward movement of the cut-off dates in most Employment categories is likely until the extent of the CIS backlog of old priority dates can be determined. It is estimated that the FY-2009 Employment-based annual limit will be very close to the 140,000 minimum.

F. DIVERSITY VISA LOTTERY PROGRAM REGISTRATION PERIOD

The Diversity Visa (DV) lottery will open for DV-2010 entries on October 2, 2008 (noon, EST) and end on December 1, 2008 (noon, EST) Applicants may access the electronic Diversity Visa entry form at www.dvlottery.state.gov during the registration period. Instructions and additional information will be available at this site by mid September.

For DV-2010, Russia has been added back to the list of eligible countries. Kosovo was also added to the list of eligible countries. No countries have been removed from the list of eligible countries for DV-2010 program.

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