

Siskind's Immigration Bulletin – April 12, 2010

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

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1. Openers

Dear Readers:

If the prognostications are correct, we'll see a comprehensive immigration reform bill introduced in the Senate before the end of this month. Of course, the bill's imminent introduction has been predicted for months so you can take this prediction with the proper level of skepticism.

But the mere introduction of the bill doesn't mean that there is anywhere close to the level of support in Congress to pass it and despite encouraging words from the White House, it is far from clear the President is really serious about working for the bill's passage.

For both political parties, the risks of guessing wrong on strategy are significant. For Democrats, Hispanics are a key constituency and many credit a large turnout and a significant shift in support toward the party as turning a number of races in the last two election cycles. If Hispanics shift that support to the Republicans or even just stay at home, they could lose a lot of close races.

On the other hand, pushing an immigration bill is never easy when unemployment is high and many Democrats are likely worried about how a pro-immigration vote will be perceived at home.

For Republicans, the choices are also tough. If the party votes in lockstep against immigration reform, they risk a generations long alienation of Hispanic voters, much as civil rights votes in the 1960s cost Republicans the support of African-Americans, a loss that persists today. The demographics of the country are such that the GOP cannot survive as a viable national party if it writes off another major ethnic group.

The GOP also risks the long term alienation of American employers who have traditionally been attracted to the GOP's pro-business views. Xenophobic GOP members of Congress have not hesitated to launch in to attacks on businesses on the immigration issue and groups like the US Chamber of Commerce have been in the interesting position of siding with Democrats on the immigration issue.

For the GOP, the best of all worlds would be never having the immigration issue come up for a vote.

For Democrats and the President, the best scenario would be for the bill to pass especially if it passes with solid Democratic support. An energized Latino base would help to offset – probably more than offset – losses from Democratic voters who would switch parties on this issue.

But another good result would be for the bill to at least be voted on even if it fails. Democrats will get credit with Hispanics for at least trying. But another major effect of the vote would be to increase the chances of smaller immigration measures – some incredibly important – passing.

For the past few years, the Congressional Hispanic Caucus has made the strategically shrewd choice of blocking movement on all immigration bills until immigration reform gets a proper consideration. Democrats will likely not have the presidency and this large a majority in both houses of Congress for many years to come so it is understandable why the CHC is focused on pushing for action soon. If immigration reform fails, the CHC will be hard-pressed to continue this strategy and measures like the DREAM Act, AgJobs and legal immigration reform are likely to be taken up on their own.

The X Factor here is what the President will do. He's been repeating the same thing he said with health care – that Congress needs to take the lead. But we know from that recent legislative success that it was not until President Obama took on the task of serious arm-twisting did the measure's prospects improve.

I'll be covering the bill's introduction and will let readers know everything that's in the bill as I've done in the past. Stay tuned.

In this issue of the newsletter, we have an ABCs of Immigration article on the Visa Waiver Program. We've updated that article to include the recent inclusion of Greece on the list of eligible countries.

We also cover three recent Supreme Court cases that deal with immigration issues including a highly important decision mandating that criminal defense lawyers properly advise their clients on immigration consequences of various plea arrangements and verdicts.

Finally, we remind readers that our law firm handles a broad array of immigration matters for clients in all 50 states. If you are interested in scheduling an appointment with me or one of my colleagues, please call my office at 901-682-6455.

Regards,

Greg Siskind

2. The ABC'S of Immigration Law: Visa Waiver Program

Started as a pilot program in 1986 and made permanent in 2000, the Visa Waiver Program allows citizens of designated countries to enter the United States as business or tourist visitors for up to 90 days without requiring them to obtain a visa. Millions of people use the program each year. There are currently 36 countries participating in the program: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, Spain, South Korea, Sweden, Switzerland, and the United Kingdom. The applicant for entry under the Visa Waiver Program must be a citizen of the participating country, not merely a permanent resident. In the case of the United Kingdom, the person must be a British citizen, not a British overseas citizen or citizen of a Commonwealth nation.

Argentina was removed from the list of participating countries after suffering an economic collapse. Following Argentina's financial struggles, neighboring Uruguay was eliminated from the list due to concerns about the country's ability to deal with the turmoil in Argentina. In addition, Belgium citizens must present a machine-readable passport in order to be admitted to the US due to questions concerning the

integrity of its non-machine-readable passports and inadequate reporting of lost or stolen passports by the Belgian government. Portugal has received a similar warning concerning the timeliness of reporting lost or stolen passports.

The program was altered on October 1, 2003, as all Visa Waiver Program nationals were to be required to obtain a Machine Readable Passport or a US non-immigrant visa in order to enter the US. While the State Department had authority to grant a waiver to travelers from countries that were making progress toward providing these passports, the Department previously stated that it would not exercise this option, leaving the already shaky travel industry concerned about possible financial ramifications.

However, the Bush administration did in fact exercise this option and postponed enforcement of the Machine Readable Passport. Instead, the new regulations were enforced beginning October 2004. Administration officials decided to delay implementation of the rules by more than a year because of the chaos that could have resulted next month when travelers who were unaware of the new rules tried to enter the US with the old-style passports. Governments will be allowed to continue with the program once they provide written assurances of their commitment to ending passport fraud and to introducing machine-readable passports. The new rules will not be waived for Belgium due to security concerns already present in that country.

Under the program, the participation of designated countries must be reviewed every five years. To continue participation, the rejection rate of applications for B-1/B-2 visas for that country cannot be over three percent. Also, the country must allow US citizens to visit under the same terms as the US allows that country's citizens to enter the US on the Visa Waiver Program. When the program was made permanent in 2000, a provision was included that allowed for the immediate termination of a country in the event of an emergency such as war or economic collapse.

3. Ask Visalaw.com

In our Ask Visalaw.com section of the SIB, attorney [Ari Sauer](#) answers immigration law questions sent in by our readers. If you enjoy reading this section, we encourage you to visit Ari's blog, [The Immigration Answer Man](#), where he provides more answers to your immigration questions. You can also follow The Immigration Answer Man on [Facebook](#) and [Twitter](#).

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

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1) Question:

I have had a green card since 2000. I have not been living in the U.S. for the past couple years. Am I still eligible to apply for citizenship?

Answer:

There are several requirements that must be met before a permanent resident is eligible to be naturalized as a U.S. citizen. These include a) being a permanent resident for at least 5 years (3 years if filing as the spouse of a U.S. citizen); b) continuously maintaining permanent residence in the U.S. during that period; c) being physically present in the U.S. for at least half of that time; d) having good moral character during that 5 year period; e) having the ability to speak, read and write English; and f) being able to pass the civics exam.

If a permanent resident takes a trip outside the U.S. that lasts longer than 6 months, USCIS can question whether the person continued to maintain their permanent residence during that period. The applicant will have the opportunity to show that they maintained their permanent residence in the U.S. during the trip. If the permanent resident takes a trip outside the U.S. that lasts longer than a year, USCIS will consider this to have caused a break in the person's continuous residence. In order to be eligible for naturalization the person must show that they have maintained their continuous residence in the U.S. for at least four years and a day from the date they returned to the U.S. from that trip (2 years and a day for those applying as the spouse of a U.S. citizen). So if you have been abroad continuously for more than one year you have not been maintaining your continuous residence and if you have made trips longer than 6 months, then you would have to show that you have been maintaining your U.S. residence, which is hard to do if you have been abroad for the past couple years.

Also, if you have been abroad for the past couple years it is possible that you have been abroad more than 50% of the last 5 years, which would make ineligible to naturalize at this time even if you never made any trips longer than six months during that time.

There are some exceptions to these rules, though, so you should consult with an immigration law attorney to determine what it would take to make you eligible for naturalization.

2) Question:

I have been told that I can legally change my name as part of the application for naturalization. Is it difficult to do this and will this make my naturalization application take longer?

Answer:

Yes, as part of the naturalization application you can change your name to anything you wish. For example, if you have a long name or a name that is tough for people in the U.S. to pronounce, you can legally change your name to a nickname or to an anglicized version of your name. The process is simple. On the form there is a section that asks if you want to change your name. You just answer yes and provide the new name you want. At the interview, there will be a couple extra pages for the applicant to sign, but this doesn't add much time to the interview.

However in some jurisdictions, asking for a name change can cause some delay in getting the citizenship. This is because some naturalization swearing-in ceremonies are administrative, meaning they are performed by USCIS with the permission of the U.S. Court, and some are judicial, meaning they are performed by a U.S. Judge. An

applicant for a name change must have a judicial swearing in ceremony, as the USCIS does not have the authority to legally change a name in an administrative swearing-in ceremony. Therefore if you are applying in a jurisdiction where the swearing-in ceremonies are mostly administrative, you will have to wait to be scheduled in the next judicial swearing-in ceremony. You can determine what the practice is in your jurisdiction by asking an immigration law attorney or by visiting USCIS with an Infopass appointment.

4. Border and Enforcement News:

Napolitano shifts policy on border fence

Articles from both *The New York Times* and *The Christian Science Monitor* report that, in a shift from precedent, Secretary of the Department of Homeland Security Janet Napolitano, announced that DHS will spend \$50 million of stimulus money that was originally intended for the SBInet high-tech fence along the Mexican border, on "more proven and cost effective technology."

Between 2004 and 2009, over \$2.4 billion was spent on SBInet, a proposed 2000 mile border fence along the US-Mexico border, based on radar towers, ground sensors, and other technology between guard towers, rather than a physical barrier; however, less than 700 miles of the fence has been completed, and the project is years behind, millions over budget, and facing technological difficulties with the monitoring equipment.

Citing the need for both safety and cost-effectiveness, Ms. Napolitano has proposed using the \$50 million in stimulus money on more traditional technology, such as mobile surveillance, thermal imaging, body scanning units, and more radios, cameras, and computers for pursuit vehicles.

<http://www.washingtontimes.com/news/2010/mar/17/napolitano-shifts-policy-on-mexico-border-fence/>

and

<http://www.csmonitor.com/USA/2010/0317/Janet-Napolitano-halts-funding-for-virtual-border-fence>

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Recent restaurant raids show immigration agency's new strategy

The State Journal Record in Springfield, IL is reporting that federal immigration officials have charged six men from a Springfield restaurant with being illegally present, and using fake resident alien and social security cards to secure work. This represents a shift in the policy of Immigration and Customs Enforcement officials.

ICE previously focused on large scale workplace raids. Since April of 2009, they have shifted to targeting specific institutions, based on evidence and information collected. Their means of doing so has been through I-9 audits. Since the April of 2009, over 1000 I-9 audits have occurred at various workplaces, as opposed to a total of 503 in the entire previous year. These audits have raised over \$15 million in fees that resulted from fines. The shift is seen as beneficial to companies, which can avoid fines and fees if all of their paperwork is in compliance.

<http://www.sj-r.com/business/x99760089/Immigration-agency-taking-new-approach-to-workplace-enforcement>

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Acting CPB chief details alternative border tech

HSToday reports that the acting chief of the US Customs and Border Protection (CBP) has announced more detailed plans of how the \$50 million in stimulus package money that was diverted from the SBInet border fence will be spent.

David Aguilar announced that \$32 million of the \$50 million will go towards mobile surveillance systems, each with the capacity to scan 8-12 miles of the border. These systems combine surveillance radar, Doppler radar, infrared capability, and tracking capability. The rest of the money will go towards other helpful technology, including night-vision gear for border patrol officers.

<http://www.hstoday.us/content/view/12666/128/>

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5. News from the Courts:

Supreme Court to review immigration law that favors children of US mothers, over US fathers

The Associated Press and *The New York Times* report that the Supreme Court will hear arguments in a case addressing an obscure immigration law that applies only to children born outside of the US to parents, one of whom is a citizen of the US and one of whom isn't. The current law makes it easier for children whose mother is a citizen to gain citizenship themselves, over one whose father is a citizen.

For people who were born before 1986, the US Citizen father must have spent 10 years in the United States, at least five of them after the age of 14. The law for US Citizen mothers declares that the mother must only be in the US for one continuous year before the birth of her child for the child to qualify.

In 1986, the law was changed so that the citizen fathers needed only to stay in the states for five years, only two of which had to be after the age of 14. In the case of Ruben Flores-Villar, his father was American, but had Ruben at age 16, and thus was unable to qualify under the law. Flores-Villar was charged with being in the country illegally in 2006, and was denied citizenship by US Immigration officials at the time. He is claiming sex-based discrimination exists in the law. The Supreme Court is scheduled to hear *Flores-Villar v. United States*, No. 09-5801, after the US Court of Appeals for the Ninth Circuit, in San Francisco, rejected Flores-Villar's claim.

http://www.latimes.com/news/nationworld/politics/wire/sns-ap-us-supreme-court-citizenship_0,1646778.story

and

<http://www.nytimes.com/2010/03/23/us/23scotus.html>

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Minor drug cases, major trouble for immigrants

The New York Times is reporting about a case scheduled to be heard by the Supreme Court dealing with immigrants facing minor drug convictions. Under current immigration law, two misdemeanor convictions for drug related crimes is considered, for the purposes of deportation of immigrants, the equivalent of drug trafficking, an "aggravated felony" that requires expulsion of said immigrant, without the option for consideration of individual circumstances or the seriousness and nature of the misdemeanor, and without considering outside factors including education, civic contribution, and family circumstances that may cause exceptional hardship on the family.

This interpretation of the law has been rejected by 4 of the judicial circuits, including New York, but has been upheld most notably by the 5th Circuit, which oversees Texas and Louisiana, where a majority of these type of cases are heard. The government's Board of Immigration Appeals rejects that interpretation of the law as well, but says it is bound by it, when deciding cases from the circuits where it prevails, including the Fifth Circuit in Louisiana and Texas, and the Seventh Circuit, in Wisconsin, Illinois, and Indiana.

The Supreme Court will hear the case of Carachuri-Rosendo v. Holder, dealing with a longtime resident of Texas who was ordered to be deported to Texas for possession of marijuana and possession of a tablet of Xanax, an anti-anxiety drug, illegal without a prescription.

<http://www.nytimes.com/2010/03/31/nyregion/31drug.html?hp>

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Supreme Court: Attorney gave immigrant bad advice

MSNBC's *First Read* reports that the Supreme Court ruled on the case of Padilla v. Kentucky, Wednesday March 31st. In a 7-2 decision, the Court sided with the non-citizen immigrant Jose Padilla, ruling that his lawyer's advice in a drug trafficking case was so misinformed that it violated his right to a fair trial.

When faced with trafficking charges in Kentucky, Mr. Padilla's lawyer advised him to enter a guilty plea in return for a reduced prison sentence. The lawyer further advised that the guilty plea would not affect Mr. Padilla's immigration status, as he had been a legal permanent resident for 40 years. The lawyer was incorrect, and Mr. Padilla was put into deportation hearings.

The Supreme Court ruled that defense attorneys must not only advise non-citizen clients of the legal punishments that would arise from guilty pleas, but also of the immigration consequences, including the possibility of deportation, which is clearly spelled out in cases such as Mr. Padilla's. The terms of the immigration law, in Mr. Padilla's case, were "succinct, clear, and explicit."

While seven justices shared in the majority opinion, Chief Justice Roberts and Justice Alito issued a dissenting opinion saying that they felt lawyers should only be required to advise a defendant that a guilty plea can affect their immigration status and to consult an immigration attorney for the specific consequences.

<http://firstread.msnbc.msn.com/archive/2010/03/31/2253363.aspx>

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6. News Bytes:

New immigrants avoiding big cities, study finds

The Christian Science Monitor reports that, based on census data from 2000 and 2005, US immigrant populations are spreading out, and not settling in the 'gateway,' large cities such as San Francisco, New York, Los Angeles, and Chicago. Rather, immigrants are choosing to settle in smaller metropolitan areas, including Detroit, Minneapolis, Colorado Springs, and El Paso. Between 2000 and 2005, these mid-sized areas saw an increase of 27% in new immigrant population, while the 'gateways' saw a 6% decline in the same period.

Several theories aim to explain this shift. Some say that immigrants are drawn to these areas because of the lower cost of living, and lesser amount of immigration officials in these areas, compared to the larger cities. The economy has come into play as well. Many of these cities, with less population, have more low income job openings, which the immigrants fill, compared to New York or other large cities, where there is an abundance of labor.

Whatever the reason, experts warn not to read too much into the numbers yet, as the information could change after processing the results of the 2010 census in the near future.

<http://www.csmonitor.com/USA/Society/2010/0315/New-immigrants-avoiding-big-cities-study-finds>

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Recession, immigration spur more families to live together

The Wall Street Journal is reporting that due to economic factors and shifting demographics as a result of immigration, there is an increase in multi-generational households in the US. Currently, 16% of Americans live in a household with at least two adult generations in the house. That represents an increase of 4% since 1980.

This runs counter to the trend up until that point. From 1940-1980, there was a 13% decrease in the number of Americans living in multi-generational homes. Experts speculate that the current increase has two causes: the harsh economic climate and an increase in immigration.

Asian and Hispanic immigrants are more likely to live in a multi-generational home, according to the study. Also, with the economy in the state it is in and with more young people waiting until later to get married, many young professionals are finding it more attractive to move back into their childhood homes for the time being.

<http://blogs.wsj.com/economics/2010/03/18/recession-immigration-spur-more-families-to-live-together/>

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7. Washington Watch:

Groups mobilize to pressure lawmakers to act on immigration reform

The Los Angeles Times reports that, with frustration building at the slow pace of the promised immigration reform, immigrant advocates are stepping up a series of “pressure tactics” to effect quicker action. Tens of thousands of people were expected at a pro-immigrant rally in Washington in late March.

In other actions, nine Latino organizations announced plans to publish the first ever series of score cards for Congressional immigration votes. Furthermore, advocates have started a “texting” campaign, whereby people can text to a certain number (see original article for the number) and contribute \$5 towards immigration reform, and simultaneously forward a message to Speaker of the House Nancy Pelosi, endorsing immigration reform. A final tactic being invoked is use of a “tacos for reform” program, where 40 restaurants and taco stands in the LA area will sponsor coupons for 10% off purchases, and donate \$1 for each coupon they receive.

The Obama administration has reiterated its support for reform, and Senators Charles Schumer (D-NY) and Lindsey Graham (R- SC) have been working together towards a bipartisan bill.

<http://www.latimes.com/news/local/la-me-latino18-2010mar18,0,203431.story>

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8. Notes from Visalaw.com Blogs

[Greg Siskind's Blog on ILW.com](#)

- [GRAHAM'S TANTRUM: THE VIDEO](#)
- [GRAHAM: IMMIGRATION REFORM DEAD IN THE SENATE](#)
- [ON THE HILL](#)
- [THE REVERSE BRAIN DRAIN](#)
- [SON OF THE YEAR!](#)
- [GRAHAM BACKTRACKS ON THREAT TO WALK AWAY FROM IMMIGRATION REFORM](#)
- [THE NEXT EINSTEIN](#)
- [200,000 MARCH FOR COMPREHENSIVE IMMIGRATION REFORM](#)
- [WILL USCIS SABOTAGE THE NEW HEALTH CARE BILL?](#)
- [THE IMMIGRANT DIVIDEND](#)
- [THE MEHTA-ENDELMAN PLAN](#)
- [WILL ANTIS SEND THE NEXT BIG THING TO ASIA?](#)
- [\\$285 BILLION](#)
- [POLL: IMMIGRATION CRUCIAL ISSUE TO MOST HISPANIC VOTERS](#)
- [PRESIDENT PRAISES SCHUMER-GRAHAM FRAMEWORK](#)
- [SCHUMER AND GRAHAM INTRODUCE CIR TO THE PUBLIC](#)
- [TEA PARTY LEADER CRITICIZES ANTI-IMMIGRATION REPUBLICANS](#)
- [SPAT BETWEEN AFL-CIO AND US CHAMBER REGARDING CIR GOES PUBLIC](#)

[The SSB I-9, E-Verify, & Employer Immigration Compliance Blog](#)

- USCIS POSTS E-VERIFY CIVIL RIGHTS TRAINING VIDEOS
- I-9 AUDIT LEADS TO STOCK PLUNGE AT AMERICAN APPAREL
- OKLAHOMA SEEKING REVERSAL OF 10TH CIRCUIT CASE
- SANCTIONS BILL GETS SHELVED IN ARIZONA

- USCIS ANNOUNCES MEASURES DESIGNED TO ENHANCE E-VERIFY
- MARYLAND CONSIDERING CONTRACTOR RULE
- VIRGINIA PASSES BILL REQUIRING E-VERIFY USE BY STATE AGENCIES

[Visalaw Healthcare Immigration Blog](#)

- WILL USCIS SABOTAGE THE NEW HEALTH CARE BILL?
- AAO: NURSE INSTRUCTORS PART OF SCHEDULE A
- LAS VEGAS PHYSICIAN PRACTICES UNDER DHS INVESTIGATION FOR J-1 VIOLATIONS

[Visalaw Investor Immigration Blog](#)

- START UP VISA SEEN AS HELPING SW FLORIDA

[Visalaw Fashion, Sports, & Entertainment Blog](#)

- NY TIMES: USCIS WAR ON ARTISTS WREAKING HAVOC IN MUSIC INDUSTRY
- USCIS DENIES EB-1 FOR SOVIET OLYMPIC MEDALIST

[Visalaw International Blog](#)

- CANADA: QUEBEC LAW TARGETS MUSLIM VEIL
- CANADA: CONCERN OVER CHILD MARRIAGES RISING

[The Immigration Law Firm Management Blog](#)

- LENOVO MORPHS NOTEBOOK AND TABLET
-