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Siskind's Immigration Bulletin – August 15, 2008

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1. Openers

Dear Readers:

Today marks the midway point in the Beijing Olympics and I've been glued to the to the television for much of the last week like billions of others from around the world. I've also been following closely the 30+ immigrant athletes on the US team and been blogging about each of them at my ILW.com blog at http://blogs.ilw.com/gregsiskind/. The fascinating story for me is not just the outstanding contributions these new American citizens are making to their country, but their many stories of how they became American. The perception that the US simply recruited world class athletes to jump over to play for our teams is simply not true. Several of our immigrant athletes came as refugees including US flag bearer

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Lopez Lomonge who came to this country as an orphan "Lost Boy" from Darfur and badminton competitor Howard Bach who left starvation in his home country of Vietnam to join an older sister in the US. Soccer star Freddy Adu's family came from Ghana after winning the green card lottery and others came as kids with their parents on work visas.

The fact that the US has provided an environment that has allowed these individuals to develop into top competitors tells me that this country is still getting something right in how we welcome and absorb immigrants. We can and should certainly be proud of their accomplishments.

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It's not all happy news for immigrants, however. I was appalled to read about the death of another detainee in immigration custody. The New York Times reported this week on the story of Hiu Liu Ng, a Chinese national who came to America from Hong Kong as a teenager, married an American woman and had two children in this country. Poor immigration advice apparently resulted in his being placed in deportation proceedings and in immigration custody despite his family relationships and his having no criminal record. What followed is simply shameful. Mr. Ng complained of severe pain and was ignored – no, ridiculed – by ICE medical officials. According to the Times, Mr. Ng was accused of faking his symptoms, denied a wheelchair and told he could not see an independent doctor.

Mr. Ng's pain was the result of cancer that was spreading rapidly through his body. The media in this country is focused on torture allegations in Guantanamo Bay. But how else do you characterize how Mr. Ng was treated? This is shameful and, sadly, not rare. There have been several other deaths involving similar circumstances in the last few months.

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Finally, we report this week on the shocking revelation that immigration judges hired to preside in courts around the country were screened for political loyalty before being hired. Dozens of judges were hired through this tainted process and now we are faced with the situation of having a cloud over their heads in terms of whether they were truly qualified and rightfully put in their positions. This coincides with a number of recent highly critical reports regarding the conduct of the nation's immigration judges. It seems like it will take years to restore the good name of the Executive Office for Immigration Review, the agency that presides over our immigration courts.

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In firm news, we welcome new paralegal Laura Sellers who recently graduated from Rhodes College here in Memphis.

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Finally, as always, we welcome your feedback. If you are interested in becoming a Siskind Susser client, please call our office at 901-682-6455 and request a

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consultation. We are a national immigration law firm and work on a broad range of immigration matters.

Kind regards,

Greg Siskind

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2. The ABC's of Immigration: Electronic I-9 Systems

By Greg Siskind

The short answer for most employers is almost always yes. For the past few years, employers have been eligible to file and store Forms I-9 electronically. As the national crackdown on employers of illegal immigration grows more intense and a number of vendors are now offering electronic I-9 products, employers are starting to weigh the benefits of ditching paper I-9s and going digital. This article first discusses the laws surrounding filing and then reviews why companies would want to make the switch.

Can a Form I-9 be completed electronically?

In October 2004, President Bush signed Public Law 108-390 which for the first time authorized employers to retain Employment Eligibility Verification Forms (Forms I-9) in an electronic format. In April 2005, the law took effect and employers began to manage their Forms I-9 electronically. Immigration and Customs Enforcement issued rules setting standards for using electronic I-9s in June 2006 (they are found in the Code of Federal Regulations at 8 CFR §274a.2) and the agency is actively encouraging employers to store their Forms I-9 electronically.

Why would companies want to switch to electronic I-9 systems?

There are numerous reasons why companies would prefer electronic I-9s over paper-based systems.

> Most of the major vendors use web-based systems. That means employers do not have to install software and only need Internet access and a web browser.
>
> Employees are not able to complete the Form I-9 unless the data is properly entered. Many vendors offer systems that guide workers and human resource officials through proper completion of the forms.

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Some of the systems are "intelligent" and ensure that based on answers provided in Section 1 of the Form I-9 only appropriate documents show up in Section 2.

Some systems allow for certain sections of the form that are the same from applicant to applicant to be pre-filled to save time.

The better electronic I-9 systems include help features that make it easier for human resource officials and employees to answer questions on the Form I-9.

Employers with employees at multiple sites can more easily monitor I-9 compliance at remote locations.

Reverification is automated and employers are less likely to incur liability due to an inadvertent failure to update an employee's I-9. Many systems send email reminders.

Employers can integrate the system with E-Verify or other electronic employment verification systems in order to minimize the chances that unauthorized workers end up employed.

Using an electronic I-9 system reduces the risk of identity theft from the robbery of paper I-9 records (a problem that has been occurring with more frequency of late). By law, electronic I-9s must have built in security systems to protect the privacy of employees and the integrity of the data.

Using an electronic I-9 system can make it easier to respond to ICE audits. In addition to the audit trails required by regulation, some of the systems archive communications relating to the I-9.

Electronic I-9 systems can integrate with payroll and employee database systems.

Data from the electronic Form I-9 can be automatically uploaded in to E-Verify, the government's electronic employment verification system. Several electronic I-9 vendors are federally approved E-Verify Designated Agents thus allowing for them to automate the entry of an employer's data in E-Verify.

An electronic I-9 system allows for the automation of the purging of Forms I-9 for employees no longer with the employer and for whom Forms I-9 must no longer be retained.

Some of the systems contain instructions in multiple languages for employees that have difficulty understanding English.

Employers can potentially achieve cost savings by storing Forms I-9 electronically rather than using conventional filing and storage of paper copies or converting paper forms to microfilm or microfiche.

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Electronically retained I-9s are more easily searchable and, hence, often a time saver for HR personnel. The better systems produce a variety of reports that make it easier to monitor I-9 compliance.

Some of the systems also track visa and I-94 expiration dates.

Are there downsides to using an electronic I-9 system?

There are some potential problems with using a digital system. They include the following:

There are no 100% secure electronic systems (though the law requires electronic I-9 vendors and their employer customers to implement security measures).

The electronic systems do not totally stop identity theft since a person can present doctored identification and employment authorization paperwork making it appear that the employee is another person (though employers can undertake additional background checking to reduce the likelihood of problems).

The cost of a paper I-9 form is free (aside from indirect costs like storage, training, etc.). Electronic systems typically charge a flat monthly fee or a per employee fee (though the per employee costs are usually no more than a few dollars with any of the major vendors).

Most I-9s are Internet dependent. When the Internet is not available, the I-9 form may not be able to be completed (though an employer may be able to use a paper I-9 in such a case).

If an electronic I-9 vendor goes out of business, the employer could be in a bind if precautions are not in place to make it easy to retrieve the employee's data (such as having back ups on the employers own computer system).

What requirements must electronic I-9 systems meet?

The 2006 rules set standards for completing forms electronically and also for the scanning and storage of existing I-9 forms. Since the change in the law a number of software products have come on to the market allowing for the electronic filing of I-9s and there are advantages to using such a system including improving accuracy in completing forms and setting up automated systems to prompt employers to re-verify I-9s for employees with temporary work authorization.

DHS regulations require I-9s generated electronically to meet the following standards:

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The forms must be legible when seen on a computer screen, microfiche, microfilm or when printed on paper.

The name, content and order of data must not be altered from the paper version of the form.

There are reasonable controls to ensure the accuracy and reliability of the electronic generation or storage system.

There are backup systems to prevent the accidental creation, deletion or deterioration of stored Forms I-9.

The software must have an indexing system allowing for searches by any field.

There must be the ability to reproduce legible hardcopies.

The software must not be subject to any agreement that would limit or restrict access to and use of the electronic generation system by a government agency on the premises of the employer, recruiter or referrer for a fee (including personnel, hardware, software, files, indexes and software documentation).

Compression or formatting technologies may be used as long as the standards defined above are met.

There is a system to be able to identify anyone who has created, accessed, viewed, updated, or corrected an electronic Form I-9 and also to see what action was taken.

Employers that know or should reasonably have known that an action or lack of action will result in loss of electronic Form I-9 records can be held liable under IRCA.

Employers may use more than one kind of electronic I-9 system as long as each system meets the standards noted above.

Employers using an electronic I-9 system must also make available upon request descriptions of the electronic generation and storage system, the indexing system and the business process that create, modify and maintain the retained Forms I-9 and establish the authenticity and integrity of the forms, such as audit trails. The I-9 software vendor should, of course, provide such documentation to the employer, though this is not a requirement in the regulations.

There are special audit requirements for electronically stored I-9s and a discussion of those requirements is set out below in the section of this chapter discussing the regulation of government inspections.

How is an electronic Form I-9 "signed" by an employee and employer?

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DHS regulations require that electronic I-9s can be "signed" electronically through a system where the person providing the information will acknowledge that he or she has read the attestation.

The signature must be affixed to the document at the time the attestation is provided. The form must also be printed out and provided to the person providing the signature at the time the document is signed. This applies to the employee as well as the employer, recruiter or referrer for a fee.

What are the Form I-9 recordkeeping requirements for electronic I-9s?

Employers must keep I-9 Forms for all current employees though the forms of certain terminated employees can be destroyed. In the case of an audit from a government agency, the forms must be produced for inspection. The forms may be retained in either paper or electronic format as well as in microfilm or microfiche format.

Are there special storage requirements for electronic I-9s?

Yes. Forms I-9 retained in an electronic format must meet the following standards:

There are reasonable controls to ensure the integrity of the electronic storage system.
Controls are in place to prevent the unauthorized creation of, deletion of or alteration of the stored Form I-9.
There are regular inspections of the electronic data to ensure the integrity of the data.
There is a retrieval system that includes an indexing system allowing for searches on any field.
There is the ability to produce readable hardcopies.

What privacy protections are accorded workers when they complete Form I-9 electronically?

Employers with electronic I-9 systems are required to implement a records security program that ensures that only authorized personnel have access to electronic records, that such records are backed up, that employees are trained to minimize the risk of records being altered and that whenever a record is created, accessed, viewed, updated or corrected, a secure and permanent record is created establishing who accessed the record.

How does an employer who uses an electronic I-9 system respond to an ICE audit?

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Original I-9 forms must normally be provided for inspection to ICE examiners. If an employer retains Forms I-9 in an electronic format, the employer must retrieve and reproduce the specific forms requested by the inspecting officer as well as the associated audit trails showing who accessed the computer system as well as the actions performed on the system in a specified period of time. The inspecting officer must also be provided with the necessary hardware and software as well as access to personnel and documentation in order to locate, retrieve, read and reproduce the requested Form I-9 documentation and associated audit trails, reports and other related data.

Finally, an inspecting officer is permitted to request an electronic summary of all of the immigration fields on an electronically stored Form I-9.

Can a company using an electronic I-9 system batch load data to E-Verify?

Yes. DHS has a real-time batch method that requires a company develop an interface between its personal system or electronic Form I-9 system and the E-Verify database. Employers interested in more information on this including design specifications, should call ICE at 800-741-5023.

Can employers convert existing I-9s in to an electronic format?

Yes. Many employers are scanning and indexing their current I-9 Forms and storing them electronically using electronic I-9 software.

Where can I find out which companies offer electronic Form I-9 products and services?

Siskind Susser Bland maintains a list of vendors that provide electronic I-9 services. Please email Greg Siskind at gsiskind@visalaw.com for this information.

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3. Ask Visalaw.com

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

Q - My fiancé is unclear as to his status. I was told by an attorney friend that he needs his alien number to see if there is a deportation status on him. He entered the country illegally 3 years ago, registered with Immigration in Texas and then never

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attended a court date. The attorney said there is a very VERY small chance there is not a deportation status. He doesn't have his paperwork and we need to know how to get his alien number information. He does have a valid Brazilian passport that was used for ID purposes.
A - You could try filing a Freedom of Information Act request with the Executive Office of Immigration Review. This would only work if he gave immigration his correct name or remembers the name he used. Even then there is no guarantee that they will be able to pull up his file by name.
Another option may be to make a file request to the FBI. This sometimes brings up immigration documents that might have his Alien Registration Number.

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Q - In 1996, my father submitted 2 separate I-130 petitions - one for me and one for my mother. My father was a resident at the time and I was single and under 21. In 1999 I got married and was told my petition was revoked because my father was only a resident. My father recently became a U.S. Citizen and submitted a new I-130 petition for me. My petition was revoked because I got married but can I request the 1996 priority date of my mother's petition since I was also a derivative of her petition because I was under 21.
A - You cannot recapture the priority date from either of the prior petitions since you eligibility for both of them ended on the day you married.
However, either petition can be used to "grandfather" you to be eligible to adjust under the 1998 245(i) "amnesty". So that you should be able to file an application for adjustment of status when your new priority date becomes current under your new preference category, assuming you do not have any other bars of admissibility.

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Q - We are a British married couple. My American citizen sister filed for my green card and we recently were granted the immigrant visa after waiting 15 years. We were told we must arrive in America within six months.
(1) After receiving my green card can I then apply for our own blood son 30 years of age unmarried with no dependants to join us in America and also be issued with green card?
(2) If the answer to the above is yes can you give a very rough idea how long it would take for him to get a green card.
(3) Presuming that we can apply for a green card for my son will it be ok for me to leave America while the immigration process is ongoing for my son as there are a lot of loose ends that need sorting in England before finally retiring in America.
A - You can file for permanent residency for your son after arriving in the US since he is unmarried. The wait in the Family 2B category will likely be awhile – probably 7 to 10 years if I had to guess. You do need to enter the US initially within six months of your permanent residency visa being issued, but you can then return home to tie up loose ends. You need to be cautious about just how much time you take. There are no firm rules here, but the article I've written at
http://www.visalaw.com/06feb1/2feb106.html may be helpful.

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Q - I have an EB-2 employment-based adjustment of status green card case pending with the USCIS Texas Service Center. The I-140 is approved. The FBI has rejected 2 fingerprints (no official notice about the second rejection -
Just information obtained from an INFOPASS officer). What can be done while I am waiting for instructions from USCIS? Can police clearance reports be obtained without a USCIS letter?

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A - If your fingerprints come back again as rejected, USCIS is likely to request that you submit police reports/police clearance from every place you have lived and for all names you have used.

You do not need a letter from USCIS to begin getting these letters. You should ask for these police reports to be notarized where available.

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Q - I had a question regarding an approved I-130 application for an unmarried daughter over 21.

My wife's I-130 application which was put in by her mother has been approved. But when the application was put in she was not married and now she is. Her mother is a permanent resident and will be becoming an US Citizen in a couple of months. What happens to the I-130 application now? Any ideas or advice?

A - Unfortunately, in all likelihood the petition is dead. There is no green card category for married children of permanent residents and as soon as your daughter married, her petition would have become void. If the marriage had taken place after the parent became a US citizen, the petition would have survived. The likely case now is that the I-130 will need to be refiled. Talk to your immigration lawyer to be sure, of course.

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4. Border and Enforcement News

Immigration and Customs Enforcement unveiled a pilot program last week that invites immigrants who currently have deportation orders to voluntarily turn themselves in to authorities, *The Associate Press* reports. Those that volunteer may be required to wear an electronic monitoring device on their ankle, and should they choose to appeal a deportation order, they could be detained. The invite lasts through the month of August, people who have ignored deportation orders can show up at ICE offices in five select cities: Santa Ana; San Diego; Phoenix, Charlotte and Chicago.

"This program addresses concerns raised by aliens, community groups, and immigration attorneys who say ICE unnecessarily disrupts families while enforcing the law," said ICE Assistant Secretary Julie L. Myers. "By participating in the Scheduled Departure Program, those who have had their day in court and have been ordered to leave the country have an opportunity to comply with the law and gain control of how their families are affected by their removal."Despite the ICE's explanation, the program has left some immigrant advocacy groups puzzled. "The program is a head scratcher, to think people are going to come forward and walk away from their life here. It shows how desperate and delusional this administration

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has gotten in dealing with illegal immigration," said Angela Kelly, director of the Immigration Policy Center of the American Immigration Law Foundation.

"This sounds like a policy straight out of a Saturday Night Live skit, not a serious proposal," said Frank Sharry, director of immigrant advocacy group America's Voice. "The idea that millions of people are going to knock on the government's door and ask to be deported is pure fantasy. This is not a solution; this is mass deportation on the cheap, and it just won't work.

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According to *The Associated Press*, a federal appeals court refused to throw out lengthy prison sentences for two jailed US Border Patrol agents convicted of shooting an unarmed undocumented immigrant and lying about it. The 5th US Circuit Court of Appeals in New Orleans held up the majority of the convictions against former agents Ignacio Ramos and Jose Alonso Compean, as well as vacated their convictions for tampering with an official proceeding. However, the three-judge panel refused to reverse all convictions that resulted in their lengthy sentences.

Ramos and Compean were convicted in 2006 and sentenced to 11 and 12 years in prison, respectively, for the February 2005 shooting of undocumented immigrant and admitted drug smuggler Osvaldo Aldrete Davila on the Texas border near El Paso. Despite the lack of evidence, both men claimed they shot at Davila in self-defense.

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A controversial arrest has raised questions about a unique immigrant enforcement policy in a Tennessee county, as well as the scope of local law enforcement authority in enforcing federal immigration laws.

The New York Times reports that Juana Villegas, an undocumented immigrant who was nine months pregnant at the time of her arrest during a routine traffic stop, gave birth shackled in custody. She was then separated from her child and husband, and was unable to nurture her newborn child. Due to her inability to properly or hygienically breastfeed her child, the newborn developed jaundice.

Villegas's arrest has focused new attention on 287G, a controversial cooperation agreement signed in April 2007 between federal immigration authorities and Davidson County, TN, that gave immigration enforcement powers to county officers. Lawyers for Villegas and immigration advocates say Mrs. Villegas's case shows that under 287G, local police can exceed their authority when they seek to act on immigration laws they are not fully trained to enforce.

"Had it not been for the 287G program, she would not have been taken down to jail," said A. Gregory Ramos, former president of the Nashville Bar Association. "It was sold as something to make the community safer by taking dangerous criminals off the streets. But it has been operated so broadly that we are getting pregnant women arrested for simple driving offenses, and we're not getting rid of the robbers and gang members."

Mrs. Villegas, who is 33, has lived in the US since 1996, and has three other children besides the newborn who are all American citizens because they were born here. She was stopped on July 3 by a Nashville police officer for "careless driving." After

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telling the officer she did not have a license, she was arrested; Villegas's lawyer says driving without a license is a misdemeanor in Tennessee that police officers generally handle with a citation, not an arrest. In custody, she gave birth two days after her arrest.

"I felt like they were treating me like a criminal," Mrs. Villegas said. After giving birth, she was not permitted to speak to her husband when he came to retrieve their newborn son from the hospital on July 7 as she returned to jail. As Mrs. Villegas left the hospital, a nurse offered her a breast pump but a sheriff's deputy said she could not take it into the jail.

Villegas' attorney, Elliott Ozment, said her client would have never been detained without the 287G cooperation agreement. "Whether this lady was documented or undocumented should not affect how she was treated in her late pregnant condition and as she was going through labor and bonding with her new baby," Mr. Ozment said.

Over 60,000 undocumented immigrants have been targeted for deportation since 2006 through 287G programs nationwide, said ICE spokesman Richard Rocha.

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5. News From the Courts

***Li v. Mukasey*, (2d Cir. June 13, 2008)**

We conclude that the challenged denial is based on an adverse credibility finding that fails to comport with subsequently announced rulings of this court. Further we conclude that remand is necessary because we cannot confidently predict that, if the agency were to follow our recent precedents, it would reach the same result.

Petitioner, a citizen of China, sought asylum, withholding of removal and Convention Against Torture (CAT) relief based on her claim that she was a director of a local Falun Gong practice station in China. She testified that she was arrested, tortured and detained for three months because of her Falun Gong activities.

At her asylum hearing, Petitioner's testimony regarding her arrest conflicted with her asylum application. When asked to explain the inconsistency, Petitioner insisted that the information was contained in her asylum application. When asked about the organizational structure of Falun Gong, Petitioner testified that there was no headquarters and that she held an unpaid position as a station director. With the consent of the parties, the immigration judge consulted a Falun Gong website that stated that Falun Gong had no leader and no paid staff. In support of her application, Petitioner submitted copies of the warrants authorizing her arrest and the search of her home and a second arrest warrant issued after she had fled China.

The IJ denied all applications for relief finding that Petitioner had not credibly testified to past persecution or her fear of future persecution. The IJ's denial was based on the following six factors: 1) inconsistencies between Petitioner's application and testimony, 2) failure to adduce reasonably available corroborating evidence, 3) Petitioner's halting and hesitating demeanor, 4) the vagueness of her testimony, 5)

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inconsistencies between her description of the Falun Gong's organization and the website information accessed at the hearing, and 6) the lack of authentication for the official documents submitted by Petitioner. On appeal to the BIA, Petitioner's counsel challenged only three of these findings: 1) the vagueness of Petitioner's testimony, 2) the contradictory website information, and 3) the lack of authentication. The BIA summarily rejected these arguments and affirmed the IJ.

On review, the Second Circuit criticized Petitioner's counsel, noting that his brief to the court repeated word for word his brief to the BIA and failed to cite a single decision by the Second Circuit. The court cautioned Petitioner's counsel that future inadequate submissions would be grounds for a formal reprimand. The court noted, as well, that the brief before it failed to challenge three significant findings by the IJ and that challenges to these findings are both unexhausted and waived.

On the issue of Petitioner's vague testimony, the court noted that its precedent holds that a finding of testimonial vagueness cannot, without more, support an adverse credibility determination unless government counsel or the IJ first attempt to solicit more detail from the applicant, *citing Ming Shi Xue v. BIA*, 439 F.3d 111, 122-23 (2d Cir. 2006) and *Jin Chen v. U.S. Dep't of Justice*, 426 F.3d 104, 114 (2d Cir. 2005). The court found that requiring IJs to solicit additional details before rejecting their testimony as incredible on vagueness grounds serves a useful prophylactic purpose by protecting against arbitrary differences in the detail required by different IJs who hear thousands of applications for relief, *citing Ming Shi Xue*, 439 F.3d at 124. The court held that because this rule on vagueness findings was announced only after the IJs challenged finding in this case, it was not surprising that the IJ did not attempt to solicit more details from Petitioner. Nevertheless, the court found that the IJ committed error by relying on vagueness in making the adverse credibility finding.

The court also held that the IJ's conclusion that Petitioner's testimony was contradicted by background evidence from a website was not supported by the record. The court noted that Petitioner stated that her position with Falun Gong was unpaid and that her testimony was consistent with the website that said the work of Falun Gong is done by volunteers. The website also suggested according to the court, that although there is no leader of the whole organization, there did appear to be some leadership structure, based on the 1999 arrests of "four top organizers."

The court found that the IJ committed legal error by concluding that the warrants submitted by Petitioner were entitled to "no weight" because they were not authenticated pursuant to the regulations. The court assumed that the IJ was referring to 8 CFR §287.6(b)(1). The court noted that in a recent decision, it held that an IJ may not dismiss evidence based merely on the applicant's failure to authenticate it pursuant to 8 CFR §287.6(b)(1), *citing Cao He Lin v. U.S. Dep't of Justice*, 428 F.3d 391, 405 (2d Cir. 2005). The court noted that this rule derives from its recognition that asylum applicant cannot always reasonably be expected to have an authenticated document from an alleged persecutor and that, therefore, the authentication regulation is not the exclusive means of authenticating records before an IJ, *citing Qin Wen Zheng v. Gonzales*, 500 F.3d 143, 148 (2d Cir. 2007). The court did hold, however, that an IJ has discretion to determine authenticity of documents by reference to a totality of the evidence, including any adverse finding regarding the applicant's credibility. *Id*. at 147. The court expressed no views on whether the documentary evidence at issue in this case was reliable, but concluded that it was

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error for the IJ to give it no weight at all based on lack of authentication under 8 CFR §287.6(b)(1).

The court remanded this case because it could not confidently predict what credibility determination the agency would make on remand if it followed the court's recent precedents. The petition for review was granted.

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6. News Bytes

Louisiana is the latest state to reject REAL ID, a federal identification card program intended as an anti-terror and anti-undocumented immigration measure, under criticism that the Act is subject to high costs and possible privacy risks, *The Associated Press* reports.

The Louisiana legislation, by Rep. Brett Geymann, blocks compliance with the federal REAL ID Act, and orders the state Department of Public Safety "to report to the governor any attempt by agencies or agents of the US Department of Homeland Security" who seek compliance. The measure easily passed the state legislature, and Gov Bobby Jindal signed it into law in July.

DHS officials have warned that states who fail to comply with the REAL ID Act face the risk of their residents unable to use their driver's licenses to board airplanes. "If they do not follow the letter of the law…then their citizens will see real consequences," DHS spokeswoman Laura Keehner said in response to the Louisiana bill.

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Last month, the US Centers for Disease Control released the results of a multiyear study on tuberculosis infections in the United States. Though as a whole, the number of tuberculosis cases in the US has dropped 45% between 1996 and 2006, the CDC says that 57% of all reported TB cases in America are among those foreign-born, with a 5% increase between 1996 and 2006.

"What we found in the study is that, for example, over half of all cases of TB among foreign-born persons occur among just 20% of the overall foreign-born population," said CDC Tuberculosis Elimination Division head Kevin Cain. "That includes mainly persons who are born in Southeast Asia, sub-Saharan Africa and South Asia."

Though Cain says it's impossible to test all 37 million foreign-born individuals currently living in the US, the data would help officials make better use of TB control resources. "If programs can try to focus on the highest risk groups and can reach out to the populations that need this testing and treatment the most, then they'll have a greater chance of preventing as many cases as possible for the number of tests that they are able to do," he said.

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Phoenix, AZ, Mayor Phil Gordon has come under fire from advocates for tougher immigration enforcement, with some attempting a recall effort against him, *The Associated Press* reports. Gordon, whose two-term mayoral tenure has focused heavily on downtown development and public transportation efforts, received criticism last year for a policy that ordered police officers to hold off on asking questions about people's citizenship, except for people suspected of committing a serious felony. The policy has since been changed to let officers ask all criminal suspects about their immigration status; Gordon touted that the policy change resulted with the federal government's efforts to confront undocumented immigration.

The recall effort against Gordon is an all-volunteer campaign, including members of the Minuteman movement, says recount organizer Anna Gaines. According to her, the effort was launched because undocumented immigrants are committing crimes in Phoenix, and that Mayor Gordon isn't doing enough to fix the problem. "We have to remove him before he causes any more damage to this city," said Gaines, a native Mexican who came to the US legally and became a US citizen.

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Approximately 600 foreign guest workers employed by Zirkle Fruit in 2007 will be entitled to $170 each under the terms of a court settlement announced last week, *The Yakima Herald Republic* of Washington state reports. Selah, WA-based Zirkle fired nine Mexican farm workers last year for allegedly failing to meet productivity requirements. The terminated men, part of a workforce of 600, had been brought to the US on H-2A visas as part of a federal program that allows American farmers to hire foreigners if vital farm worker spots can't be filled domestically.

The terminated workers sued Zirkle in January, alleging that the company failed to adequately disclose production standards in the labor contract, which is approved by the US Department of Labor. The workers' claim was based on federal minimum wage law and recent court rulings that found that if net wages in the first week of work fall below the federal wage, employers must compensate for the difference.

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7. International Roundup

United Nation refugee agency UNHCR has criticized Sweden's decision to deport Afghan refugees to Kabul even if they have no social or family ties in Stockholm, Sweden's *The Local* reports. The criticism comes after the Swedish Migration Court of Appeal earlier this summer allowed a man who originated from a very unstable part of the country to be deported to Kabul.

'It is not reasonable to believe that somebody will survive on their own in Kabul,' said Hans ten Feld, head of the UNHCR in the Nordic and Baltic regions. The UN body has expressed its opinions on the matter in a letter to the court.

Hans ten Feld lists a number of difficulties that may be faced by refugees who are sent to Kabul.

'Suicide bombings primarily affect civilians. Also, people who have been in the West

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are kidnapped in order to extort money from their families. Anybody who does not have a family to protect them will find it very difficult to survive in Afghanistan,' he told news agency TT.

Migration Minister Tobias Billström was reluctant to comment on the migration court's ruling but said he believed the Swedish system generally worked well.

'The UNHCR's analysis is based on the general security situation in a particular area. But since we in Sweden try each individual case, we ensure that we are not sending back anybody who is under threat,' he said.

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According to Australia's *The Voice of America News*, real estate experts warn Australia faces an acute shortage of affordable housing as immigration reaches record levels. There are estimates that Australia needs to build an extra 40,000 new homes a year simply to cope with current demand.

Australia opens its doors to about 300,000 new migrants next year as part of a plan to address a chronic lack of workers. That means the country will see its highest immigration flow in more than 60 years.

In demand are accountants, engineers, computer professionals, health care workers and many workers in skilled trades, such as construction workers. Such an influx of new migrants puts pressure on Australian society and has helped create a housing crisis as demand for inexpensive accommodation in major cities outweighs supply.

Demographer Bernard Salt says Australia is struggling to cope with the expanded immigration program.

'During calendar 2007 the Australian continent added 332,000 people,' Salt said. 'Never before in our history have we added that number of people to our population base. 330,000 people per year is a rate and pace that we're not really comfortable with. We're used to growing at the 220, 230,000 per year. Our systems, our infrastructure, our culture can cope with that. We're un-used to traveling at this pace.'

Thousands of Australians find it hard to buy or rent affordable homes, a problem exacerbated by decade-high interest rates, increasing land prices and taxes.

The government recently began a program to add 50-thousand rental properties for low-income earners to the market. Real estate experts, however, say it will take at least four years before such measures help make housing more affordable. They say an average wage earner in Australia will struggle to buy an apartment or house in a country where housing inflation has been rampant in recent years, although does show some signs of easing.

The rental market, however, remains strong; a shortage of properties led to double-digit rent increases in the past year.

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8. Legislative Update

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Last week, the US Congress passed a five-year extension of the controversial E-Verify, an immigration enforcement program which employers use to check the legal status of new workers. The renewal effort was led by Rep. Gabrielle Giffords (R-AZ), although just three months ago she said the program was "disastrous" in its current state.

According to *The Arizona Star*, Giffords renewal was in part to address Arizona's employer sanctions law, which requires employers to use E-Verify; there have been reports of numerous problems with E-Verify usage, the most significant problem being its inability to perfectly match each name with the proper social security number, which has led to some false arrests for legal US citizens. One key component to Giffords' E-Verify renewal is for DHS to provide timely reimbursements to the Social Security Administration, the agency that provides E-Verify data to employers.

"I respectfully remind you that if Congress does nothing or simply extends E-Verify without much-needed reform, it will be disastrous," Giffords said to the House Ways and Means Committee. According to an aide to Giffords, the renewal of E-Verify must be accompanied by a number of improvements and reducing the life of the renewable law to five years as opposed to ten. The bill easily passed with bipartisan support—407 votes out of 435.

The renewal has put the future role, and current impact, of E-Verify in Arizona, up in the air. Though it is currently a voluntary program on the federal level, Arizona is currently the only state where its usage is mandatory. A November state ballot initiative will ask voters to ease the restrictions in that law, providing immunity to firms that either use E-Verify or simply comply with existing federal laws about checking the identity of new workers. Giffords hopes the changes to E-Verify will fix what she views as problem areas for her state: "The E-Verify system, coupled with the draconian sanctions under Arizona law have business praying for relief from the federal government.

Anne Seiden, spokeswoman for the Arizona Chamber of Commerce and Industry, said that although the business community sees problems with E-Verify, she notes that "the use is only going to increase. Right now, we would be most interested in just making sure that the door is left open so that E-Verify can be adjusted and modified."

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A bill to provide 3,000 immigrant visas to Tibetans was introduced in the US House last week, *Phayul.com* reports. US Representatives George Miller (D-CA) and Jim Sensenbrenner (R-WI) introduced the Tibetan Refugee Assistance Act to provide visas to long-staying Tibetan refugees in India and Nepal; the Act intends to provide visa support to qualified Tibetans over a three-year period.

The Act stems from Congressmen Miller and Sensenbrenner's March visit to Dharamsala, India, as part of the 10-member Congressional delegation to explore methods of support for the Tibetan people. The trip included a meeting with exiled

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Tibetan leader the Dalai Lama, who expressed concern for the worsening situation in Tibet following the recent spike in persecution from China. Following the visit, members of a bipartisan congressional delegation introduced a bill which calls on China to cease the crackdown and release political prisoners; the Tibetan Refugee Act followed two months later.

This is not the first time Washington has tried its hand at aiding Tibetan refugees. In 2006, Washington had, as part of a refugee resettlement initiative, arranged to offer a home in the US to 5,000 Tibetan refugees from Nepal. However, the offer never materialized because the Nepalese government did not respond, possibly due to pressure from China.

"The Tibetans face severe persecution under the Chinese government and must be recognized by the United States for refugee assistance," said Rep. Miller. "Our legislation represents one small but very significant step that the Congress can take to help the Tibetan people."

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9. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

Conveyor Belt Justice
Nastia Gets the Gold!
Where are All Those US Farm Workers, Mr. Dobbs?
Greenspan: H-1B Visas Could Help with Crisis in Home Market
Center for Immigration Studies: Immigrants Cause Global Warming
USCIS Genealogy Service Now Ready
"Faking" Detainee Dies in Horrible Pain in ICE Custody
Judge Dismisses Challenge to Opt Rule
Note to DHS: If You Want Employers to Follow the Law, How About You Do The Same?
Democrats Draft Immigration Sections of Party Platform
Somehow I Don't Think the Audience Will Care…
The Fragomen Litigation Pleadings
Fragomen to DOL: Tell it to The Judge
Judge Deals Blow in Citizenship Class Action Cases
China Denies Visas to Politically Vocal Former Olympians
Being Hispanic in South Carolina
The Culture of No

The SSB Employer Immigration Compliance Blog

42 Workers Arrested at Raid at Washington's Dulles Airport
Defense Contractor Raided in North Carolina
ICE Conducts Raid at Little Rock Manufacturing Facility
Conservative Group Pushes Supreme Court on RICO Case

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Kansas Legislators Pessimistic on Sanctions Bills' Prospects
Nebraska Lawmaker Warns on Sanctions Bill
California Growers Worry over E-Verify Executive Order
Reno McDonalds Franchisee Enters Plea Deal
Raids Update
Coalition Pushes for Limited Extension of E-Verify Program

Visalaw International Blog

Canada: Changes to Skilled Worker Category Unveiled
EU Blue Card to Come?
Canada: Refugee Gang Operating in Airports Busted
Labor Electoral Victory Will Bring Changes to Australian Immigration Policy
Canada : Sergio R. Karas Meets New Ontario Attorney General
2008 Revolution in UK Immigration Law
Canada Urged to Fight Human Smuggling

Visalaw Health Blog

VA Medical Centers Must Use Tougher Prevailing Wage System
Las Vegas Sun Report Suggests Nevada Health Department Ignored Abuse of J-1 Doctors
Hospitals Deporting Illegally Present Patients
Nevada Issues Report In Wake of Newspaper J-1 Doctor Investigation
House Marks Up Nursing Visa Bill
California Program Retrains Immigrant Nurses to Work in US
HHS Pulls New HPSA Reg

Visalaw Fashion, Sports, & Entertainment

Not all Celebrate America's Immigrant Olympians
China Denies Visas to Politically Vocal Former Olympians
SF Sport Teams Seek to Cultivate Immigrant Fan Base
Liberian Asylum Applicant Hopes to Play Collegiate Soccer
AP Reports on Foreign-Born US Olympians
Foreign Athletes to Take Center Stage on US Team in Beijing
33 Immigrants to Represent US at Olympics
Will This Post Get My Passport File Pulled?

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10. Campaign '08

Last week, Barack Obama's campaign released details regarding the Democratic presidential candidate's stance on universal healthcare. According to *The Phoenix Business Journal*, Obama's campaign said his universal health plans do not extend to undocumented immigrants. The position taken by the Obama campaign runs counter to a number of Democratic congressional members, who want to see

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universal insurance programs, if enacted, to include coverage for undocumented immigrants.

Some Democrat legislators, and liberal groups, like the Progressive Democrats of America, want the concept included in the Democratic Party platform for the 2008 elections, and also favor federal legislation of the goal.

As it currently stands, Obama's health plans entails a mix of government and private sector programs aimed at covering the uninsured while Arizona Republican John McCain prefers more consumer-driven plans and tax credits to help with health insurance costs.

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Despite a heavy advertising push towards the Latino community, John McCain is winning only 23 percent of the Hispanic vote compared with 66 percent for Barack Obama, according to a large poll released last week by the Pew Hispanic Center. Of significance to this election, compared to the 2004 Pew poll results, is that Hispanics are breaking for Democrats from 2-to-1 in 2004 to nearly 3-to-1 today.

"That number should be very, very sobering for the McCain campaign," said Tony Fabrizio, the pollster for Republican nominee Bob Dole. "The bottom line: Despite all of this positioning he's taken on immigration, it's shielded him with nothing with Hispanics and it's another point of distrust with Republicans."

The Pew data comes on the heels of months of McCain advertising on Hispanic television and radio in Florida, Colorado, New Mexico, and Nevada. "You have to understand in a way that the Republican [brand] is damaged among Hispanics," said Hessy Fernandez, McCain's spokeswoman for Hispanic media. "But at the end of the day it's the contrast between Sen. McCain and Sen. Obama."

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11. Some Immigration Judges Hired Unlawfully by DOJ, Probe Finds

A government probe has revealed that the preferential hiring scandal that plagued the US Department of Justice during the Bush administration has had its effects felt in the hiring practices of immigration judges as well. According to *The Salt Lake Tribune*, the DOJ Inspector General and the Office of Professional Responsibility released a joint report accusing unfair hiring practices by the Attorney General's office when hiring judges who preside over immigrant court.

Specifically, the report focuses on Kyle Sampson, a top official at the US Department of Justice. The report claims that Sampson unlawfully evaluated applicants for jobs and immigration judge positions based on their politics and ideology. Sampson, who was chief of staff under former Attorney General Alberto Gonzales, "violated department policy and federal law, and committed conduct, by considering political or ideological affiliations when hiring immigration judges," according to the probe.

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According to the report, when Sampson moved from the White House to the Justice Department in spring 2004, he changed the way immigration judges were hired. "in the sense that the names were solicited from the…White House offices that were involved in political hiring, [we] were only considering essentially Republican lawyers for appointment," he is quoted in the report as saying.

Sampson, who resigned his post in March 2007 amid the DOJ hiring scandal, defended his hires, claiming that immigration judges were political appointees, whose partisan allegiances could be considered. This contrasts the probe findings, which states that "even if Sampson was confused or mistaken in his interpretation of the rules that applied to [immigration judges] hiring, we do not believe that would excuse his actions…which were carried out over a lengthy period of time and were not based on formal advice from anyone, systematically violated federal law and department policy and constituted misconduct."

Not surprisingly, the report has caught the attention of Capitol Hill lawmakers, both criticism and support of Sampson's immigration judge hires. "The report reveals that the 'principal source' for politically vetted candidates considered for important positions as immigration judges was the White House," said Senate Judiciary Committee Chairman Patrick Leahy (D-VT).

Sen. Edward Kennedy (D-MA) said of the report's findings: "I'm particularly appalled by the report's disclosure that politics also corrupted the hiring process for immigration judges. Immigration judges make life-altering, and even life-saving, decisions on behalf of thousands of immigrants and refugees every year. Hiring people based on their political affiliation instead of their immigration expertise is illegal and inexcusable."

Sampson cannot be punished by the DOJ since he no longer works there, nor does the report recommend any criminal investigation. Attorney General Michael Mukasey, who took over after Gonzales' resignation, said he was "disturbed" by the report's findings and said he has made it clear such conduct will not be allowed in the department.