

Siskind's Immigration Bulletin – January 22, 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:

The last week has been a topsy-turvy one for immigration-watchers. We witnessed a horrible earthquake in Haiti that has so far killed 200,000 people and left that country in a complete shambles. After a quick, but very effective campaign, pro-immigration groups succeeded in pressuring the White House to confer Temporary Protected Status for the estimated 100,000 to 200,000 individuals in the US from Haiti who are either in a legal non-immigrant status or are illegally present. DHS also granted special humanitarian status to 53 Haitian orphans and airlifted them to the University of Pittsburgh Medical Center so that their adoption process in the US can be expedited.

We've prepared a detailed FAQ on TPS for this week's newsletter that should help those trying to get information on how this relief works. In short, it is available to people in the US who are unable to return home due to a war, disaster, etc. and whose country is designated by the Secretary of Homeland Security. The relief is available for up to 18 months and is often extended unless conditions have improved markedly in the home country. People in TPS status can work legally after getting an employment card and they can also travel back to the home country with a travel document. One of the goals of TPS for Haitians is not just to offer a safe haven for those in the US who likely no longer have homes to return to, but also to allow people to earn money that they can send home to help the country recover. That will very likely mean that TPS for Haiti will go on for much longer than 18 months.

I will be moderating a series of three telephone seminars on immigration options for Haitians that is being sponsored by ILW.com. The first of the programs is next Wednesday, January 27<sup>th</sup> and all of the profits will be going to Haitian relief charities. You can sign up for the program by going to <http://www.ilw.com/seminars/haiti.shtm> .

The other big news of the week was the Senate race in Massachusetts. Republican Scott Brown won in a surprising victory to take over the seat of Senator Ted Kennedy. While Brown is on the record as being against an "amnesty" and he receive praise from anti-immigration groups, immigration was hardly discussed in the campaign and many are still hoping he will be a moderate voice on the topic. But in the wake of the race, many people are concerned that Democrats will try and run away from dealing with the issue this year.

My one comment to this would be that if Democrats are perceived as breaking their promise to Hispanic voters, they do so at their own peril. Hispanics are the fastest growing part of the electorate and they have dramatically shifted their votes to Democrats largely on the immigration issue. If the Democrats do not "lock down" the Hispanic vote as a loyal voting bloc, they could lose out on one of the biggest opportunities of the next half century.

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In firm news, I've been named for the sixth straight years to the Top 150 Lawyers in Tennessee list as compiled by Business TN Magazine.

<http://businessstn.com/content/201001/tennessees-best-150-lawyers-2010#Greg-Siskind> .

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Finally, we would invite readers interested in becoming Siskind Susser clients to contact us. My email is [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com) and my phone number is 901-682-6455. Our firm assists clients locating anywhere in the US and we have attorneys with expertise in most areas of immigration law.

Regards,

Greg Siskind

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## 2. The ABC's of Immigration: Temporary Protected States

Temporary Protected Status is a status available to individuals who are from countries suffering from armed conflicts, disasters, or other extraordinary conditions. Until 2003, the Attorney General was empowered to determine which countries were on the TPS list. But with the 2003 absorption of the former INS into the Department of Homeland Security, that power has now passed to the Secretary of the Department. People with TPS are considered to be in legal status and can receive work authorization in the US until the situation in their home country has improved.

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### **Who can declare TPS?**

The Secretary of the Department of Homeland Security may grant foreign aliens temporary protected status, which provides the alien with an "employment authorized" endorsement for the duration of such status. The White House has the authority to recommend TPS as well.

### **Does TPS status affect an alien's immigration status or vice versa?**

If there are any removal procedures underway against aliens of a country on the TPS list, they should be frozen. Nothing authorizes the Secretary to deny TPS to an alien based on their immigration status. Furthermore, the alien, upon being granted TPS, is not required as a condition of such, to relinquish nonimmigrant or other status he may hold.

An application for TPS will have no affect on an application for asylum or any immigration benefit and vice versa and being in TPS will not improve one's chances of getting permanent residency except to the extent it will toll any period of unlawful status that might prevent one from qualifying to adjust status (see below). Nor does denial of an immigration or asylum petition have any bearing on an application for TPS unless the basis for denial of the immigration or asylum petition is something that would bar TPS (see below).

Time spent in TPS status is considered a lawful status for purposes of adjusting to permanent residence. Note that time before and after TPS is granted which are not lawful will not be treated the same way.

### **What qualifies a country for TPS?**

To qualify as a TPS nation, the Secretary of the Department of Homeland Security must assess the conditions in a country and find one of the following conditions:

- a) There is an ongoing, armed conflict within the country, and as a result of this conflict, returning to their home country would pose great risk to the personal safety of aliens who are nationals of said country.
- b) There has been an earthquake, flood, drought, epidemic, or other environmental or natural disaster in the state, resulting in "substantial," but temporary or reparable, disruption of the living conditions in the affected area.
- c) A foreign state has officially requested TPS.
- d) There are extraordinary but temporary conditions in the foreign state that prevent aliens who are nationals of that country from returning, without endangering their personal safety, UNLESS the Secretary finds that allowing aliens to remain in the US is "contrary to the national interest of the United States." (244(b)(1)(C))

For the TPS designation to take effect, the Secretary must publish notice of this designation, including the findings of their assessment of the foreign state, the date the designation takes effect, and an estimate of the number of foreign nationals from the state gaining TPS, in the Federal Register.

A list of TPS designated countries is maintained on the USCIS web site at [www.uscis.gov](http://www.uscis.gov).

### **How long does TPS remain in effect?**

Upon publication of TPS designation, the status shall remain in effect for an initial period of not less than 6 months and not more than 18 months. However, no less than 60 days before TPS is set to expire, the Secretary of DHS shall review again the conditions in the foreign state and determine whether the conditions necessary to declare TPS remain in effect. The Secretary then must publish their new findings in the Federal Register again. If the Secretary finds that the situation has ameliorated and the conditions necessary to declare TPS no longer exist, they shall publish this in the Federal Register, and TPS will be revoked no less than 60 days after such a declaration. If the Secretary finds that conditions continue to warrant TPS for a foreign state, TPS shall be extended for a period of at least 6 months, but up to 18 months, at the discretion of the Secretary.

### **Which aliens are eligible for TPS?**

Aliens who are nationals of a foreign state which has been declared TPS eligible, or aliens without nationality who last habitually resided in such a country, are eligible IF:

- a) The alien has been continuously physically present in the United States since the effective date of the most recent TPS declaration
- b) The alien has lived continuously in the United States since such a time as the Secretary of DHS may decide
- c) The alien is admissible as an immigrant  
The alien registers for TPS during a registration period of no less than 180 days.

The Secretary may waive immigration barriers when assigning TPS to foreign aliens in an effort to assure family unity, or when it is in the public's best interest. However, the Secretary may not waive the following:

- a) Aliens with drug offenses for anything other than simple possession of 30 grams or less of marijuana
- b) Aliens who took part in Nazi persecutions, or any participants in genocide
- c) Aliens that have been convicted of a felony or 2 or more misdemeanors committed since they have been in the United States or someone subject to various criminal and security related bars to asylum.

USCIS recently also specifically commented on a problem where TPS cases were denied for people who were guilty of two or more traffic infractions. In response to the Haitian earthquake, USCIS issued a memorandum stating that the if the ONLY basis for denying a case is a conviction for two or more "traffic infractions" under NY penal laws, the case should be approved. Presumably, the policy will apply to other states which might have similar rules.

### **How do you apply for TPS?**

Applicants must submit the following:

- a) Form I-821 Application for Temporary Protected Status
- b) Form I-765 Application for Employment Authorization (even if the applicant is not seeking a TPS-related Employment Authorization Document)
- c) Documents to prove identity and nationality.
- d) Documents to prove date of entry into the United States
- e) Documents to prove residence in the United States
- f) Two passport-style photographs of the applicant
- g) Filing fees

Copies of documents should be submitted along with a certified translation if the document language is not English. Note that USCIS reserves the right to request submission of original documents at a later time. Also note that the documents listed above need not be submitted with re-registration or renewal applications (though USCIS could still request additional information or documentation).

Applicants will also be required to submit biometrics unless an applicant is under 14 years of age and not applying for an Employment Authorization Document.

### **What documents can be used to prove identity and nationality?**

Applicants may submit any of the following:

- a) Passport;
- b) Birth certificate accompanied by photo identification
- c) Any national identity document from the applicant's country or origin bearing a photo and/or fingerprint.

## **What documents can be used to prove date of entry into the United States?**

Any of the following:

- a) Passport;
- b) I-94 Arrival/Departure Record; or
- c) Employment records (e.g. paystubs, W-2 Forms, tax returns, employer letters, bank records, etc.);
- d) Rent receipts, utility bills, other receipts, letters from companies showing dates services were received;
- e) School records (letters, report cards, etc.) showing the name of the school and periods of school attendance;
- f) Hospital or medical records showing the name of the medical facility or physician and the date of the treatment or hospitalization.
- g) Attestations by churches, unions, or other organizations to your residence identifying you by name. The attestation must be signed by an official whose title is shown, show dates of membership, state the address where you resided during the membership period, include the seal of the organization, establish how the author knows the applicant and showing the origin of the information to which the writer is attesting.
- h) Additional documents may include money order receives for money sent in or out of the country, passport entries, birth certificates of children born in the United States; dated bank transactions, correspondence between the applicant and another person or organization; US Social Security card, Selective Service card; automobile license receipts, title vehicle registration, etc.; deeds, mortgages, contracts to which the applicant has been a party; tax receipts; insurance policies; receipts; letters; or any other relevant document.

## **What documents can be used to prove residence in the United States?**

- a) Employment records (e.g. paystubs, W-2 Forms, tax returns, employer letters, bank records, etc.);
- b) Rent receipts, utility bills, other receipts, letters from companies showing dates services were received;
- c) School records (letters, report cards, etc.) showing the name of the school and periods of school attendance;
- d) Hospital or medical records showing the name of the medical facility or physician and the date of the treatment or hospitalization.
- e) Attestations by churches, unions, or other organizations to your residence identifying you by name. The attestation must be signed by an official whose title is shown, show dates of membership, state the address where you resided during the membership period, include the seal of the organization, establish how the author knows the applicant and showing the origin of the information to which the writer is attesting.
- f) Additional documents may include money order receives for money sent in or out of the country, passport entries, birth certificates of children born in the United States; dated bank transactions, correspondence between the applicant and another person or organization; US Social Security card, Selective Service card; automobile license receipts, title vehicle registration, etc.; deeds, mortgages, contracts to which the applicant has

been a party; tax receipts; insurance policies; receipts; letters; or any other relevant document.

### **What if documents are not available?**

If documents are not available, an applicant can provide USCIS with an affidavit showing proof of one's unsuccessful efforts to obtain the documents explaining why one cannot obtain the documents from one's consulate and affirming that one is a national of the designated state. USCIS has the discretion to request a statement from the issuing authority certifying the document is not available. Applicants may also provide affidavits to prove date of entry and residence.

### **What is the amount of the filing fee to be submitted?**

- a) \$50 application fee for the Form I-821
- b) \$80 fee for biometric services (fingerprints, photographs, signatures, etc.)
- c) \$340 fee for Form I-765 Application for Employment Authorization Document.

Note the following: Applicants for EADs over 65 and under 14 do not need to pay the I-765 fee and those not requesting employment authorization need not pay the fee (though the I-765 form must still be submitted). Also note that children under 14 do not need to pay the biometrics fee unless they are applying for an EAD.

Any of these three fees may be waived if an applicant submits a fee waiver request in the form of a written statement explaining why the applicant is eligible for TPS and why the applicant is unable to pay the required fees.

### **Where is the application submitted?**

The filing address for the TPS package varies from nationality to nationality. Applicants should consult the Federal Register notice announcing the particular country's TPS in order to see where to file.

### **How can a person's TPS status be Withdrawn**

The Secretary may withdraw TPS if:

- a) The Alien(s) were not in fact eligible for TPS under its prescriptions
- b) The Alien has not remained continuously physically present in the United States since the date that the alien was granted TPS (with the exception of emergencies and unintentional absences).
- c) The Alien fails, without good cause, to register with the Secretary of DHS annually, as specified by the Secretary.

### **What is a person wants to travel?**

An applicant granted TPS may apply for an advance parole travel document on Form I-131. The travel document will have an expiration date no later than the period or time the applicant's country is designated for TPS. Note as well that applicants who have overstayed can face reentry bars if they leave the US.

What if an applicant's address changes after being granted TPS?

If an applicant moves, he or she must file Form AR-11 either by mail or at [www.uscis.gov](http://www.uscis.gov). Simply notifying the US Postal Service of the address change does not satisfy immigration requirements.

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### 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](mailto: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.

**Question:** I came to the US with a K-3 visa in March of 2007 and I received my green card in September 2007. I would like to apply for citizenship. I know I have to wait three years before I am eligible, but do I count the three years from when I came in to the U.S. or do I count the three years from when I received my green card?

**Answer:** In calculating the length of time that a foreign national is a permanent resident to determine eligibility, the foreign national should start counting from the day they became a permanent resident. The newest versions of the green cards have a "Residence Since" date listed, which is the date the foreign national first became a permanent resident. Start counting from that date.

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**Question:** My permanent resident mother filed an I-130 petition for me after I turned 21. I recently received a letter from the National Visa Center that a visa is now available and that I can apply for the visa. But I have been in the U.S. out of status for more than a year and I am afraid to leave the U.S. because of the 10 year bar. I came to the U.S. on an F-1 visa as a student and stayed after my program ended. Any ideas?

**Answer:** The 10 year bar applies to foreign nationals who enter the U.S. without inspection or who overstay the date listed on their I-94 and are therefore "unlawfully present" in the U.S. for at least one year (Those that are unlawfully present for 180 days can be subject to a 3 year bar). This bar takes effect when the foreign national leaves the U.S.

However, F-1 students who are given I-94 cards that list D/S (duration of status) under their expiration date do not have an expiration date to overstay. They therefore do not accrue "unlawful presence" from staying the U.S. when their program ends. They therefore should not be subject to the 10 year bar which would

be very good news for you. You could very well have to process the application at a consulate, however, due to your status violation

That being said, as the consequences of the 3 and 10 year bars are so severe, it is recommended that anyone that has been in the U.S. out of status consult with an immigration law attorney before leaving the U.S. to apply for a visa at the consular post abroad.

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**Question:** I am a naturalized U.S. citizen. I have been living in Italy for two years. Can I lose my U.S. citizenship by living outside the U.S. for too long?

**Answer:** No. Naturalized citizens have all the same rights and responsibilities as those who received their U.S. citizenship through birth. This means that you will not lose your U.S. citizenship by living in another country. Enjoy your time in Italy and know that, as long as you do not proactively renounce your citizenship, you will continue to remain a U.S. citizen even if you live the rest of your life abroad. One caution, however, is that if you have children born outside the US, they may not automatically get US citizenship if you are not residing in the US. The rules on that subject are very complicated and you should talk to an immigration lawyer if this is an issue.

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**Question:** Does a visitor on a 90 day visitor visa have to return to their country or can they go to a closer country? Can they return for another 90 days? How long would they have to stay in that country?

**Answer:** There is no requirement that a foreign national on a visitor visa or visa waiver program return to their home country. They just have to leave the U.S. before the expiration date on their I-94 entry document. They cannot get an additional 90 days, however, by merely going to Canada or Mexico without either going to another country from there before seeking to return or unless they stay 30 days or more. Otherwise, US immigration law does not consider the visitor to have actually departed the US.

There is no set amount of time that the foreign national must stay outside the U.S before they are eligible to come back to the U.S. as a visitor. When the foreign national applies to reenter the U.S. the government officer will make a determination as to whether they believe that the person is coming as a visitor or whether the person is actually living here in the U.S. using the visitors visa. If the officer believes that the person is not a true visitor, they will deny entry. How long the person stayed outside the U.S. before trying to reenter will be one of a number of factors in their decision.

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**Question:** I have an application for adjustment of my status to permanent resident based upon the petition filed by my husband. My husband received the letter for the interview but we missed the interview because I was in the hospital. I called the

USCIS 1-800 number and let them know the reason I missed the interview and they said I will receive a letter in the mail.

**Answer:** If you can, you should make an appointment to visit the local office and explain your situation to an information officer. You make the appointment (called an Infopass appointment) on the USCIS website, [www.uscis.gov](http://www.uscis.gov). You must bring a letter from the hospital to show your reason for missing the interview. If you are unable to travel to the local office to make the request in person, then you should write a letter to the local office including the letter from the hospital.

You should not assume that the National Customer Service Center (the 1-800 number) has told the local office of your request. The lines of communications between the various immigration offices are weak and even if they do pass the message along to the local office, they may not send the message until after your application has been denied for failing to appear at the interview.

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#### 4. Border and Enforcement News

##### **-More illegally present immigrants apprehended off CA coast**

The Associated Press reports the U.S. Coast Guard found 24 suspected -unauthorized migrants on a small disabled boat about four miles off the San Diego coast. According to the Coast Guard, not only was the boat overloaded, which could have caused the vessel to overturn, but visibility was limited and worsening when the boat was found.

Although the nationality of the passengers was not reported, the 24 people were removed from the boat by the U.S Coast Guard with the assistance of U.S. Customs and Border Protection. Once rescued the two dozen people were placed under U.S. Customs and Border Protection custody.

[http://www.mercurynews.com/news/ci\\_14146773?nclick\\_check=1](http://www.mercurynews.com/news/ci_14146773?nclick_check=1)

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#### 5. News from the Courts

##### **-BISSOO v. ATTORNEY GENERAL OF U.S.**

##### **-Four Illegally Present Immigrants Charged with Running a Philadelphia Brothel**

##### **- Supreme Court Rules in Kucana v. Holder**

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(Posted as found at:

<http://www.leagle.com/unsecure/page.htm?shortname=infco20100114106> )

BISSOO v. ATTORNEY GENERAL OF U.S.

JAIRAJ BISSOO, Petitioner,

v.

ATTORNEY GENERAL OF THE UNITED STATES, Respondent.

No. 08-1461.

United States Court of Appeals, Third Circuit.

Submitted Pursuant to Third Circuit LAR 34.1(a) December 23, 2009.  
Opinion filed: January 14, 2010.  
Before: FUENTES, ROTH and VAN ANTWERPEN, Circuit Judges.

**NOT PRECEDENTIAL  
OPINION**

PER CURIAM.

"Petitioner Jairaj Bissoo is a native and citizen of Trinidad and Tobago, who entered the United States as a visitor in 1995. He was placed in deportation proceedings soon thereafter. He then applied for asylum, but withdrew the application when the Immigration Judge (IJ) granted him voluntary departure to France by December 15, 1996. Bissoo was still in the United States in October 1996, when he married a United States citizen whom he had met in August of that year. On November 25, 1996, his wife filed an I-130 petition for an alien relative on his behalf and an I-485 application for adjustment of status. On December 18, 1996, the INS returned the I-485 application, explaining that Bissoo had to reopen his deportation case first. Bissoo hired an attorney to file motions to reopen and to extend his time for voluntary departure in immigration court, but neither motion was filed. His wife's I-130 petition filed on his behalf was approved in 1999. Bissoo remained in the United States for eleven years.

In September 2006, Bissoo sought sua sponte reopening in immigration court, in order to clear the way for him to proceed with his application for an adjustment of status. He asserted that prior immigration counsel was ineffective for failing to pursue timely reopening and voluntary departure extension motions in 1996. Next, he claimed that he was not barred from pursuing an adjustment of status because more than five years had passed since he violated the voluntary departure order. Bissoo also alleged that erroneous advice given to him by an INS employee in Newark caused his failure to file a motion to reopen and to leave the country by December 15, 1996.

The IJ denied Bissoo's motion, finding that there was no discernible basis for granting the extraordinary remedy of sua sponte reopening. The IJ also rejected the ineffectiveness of counsel claim because Bissoo failed to comply with Matter of Lozada, 19 I. & N. Dec. 637 (BIA 1988). The BIA agreed with the IJ's denial of reopening. First, the Board dismissed Bissoo's appeal because his motion to reopen in the immigration court was untimely under 8 C.F.R. § 1003.2(c)(2). Second, like the IJ, the BIA declined to exercise its discretion to reopen removal proceedings sua sponte pursuant to 8 C.F.R. § 1003.2(a). Specifically, the Board rejected Bissoo's arguments that his eligibility for adjustment of status and the hardship to his family constituted exceptional circumstances warranting reopening. The BIA also rejected Bissoo's ineffective assistance of counsel claim as procedurally barred, and held that his claim of delay caused by an immigration officer's erroneous advice lacked evidence to support it.<sup>[1]</sup> Bissoo filed a timely petition for review.

Bissoo argues that the BIA should have equitably tolled the ninety-day filing period for filing a motion to reopen under 8 C.F.R. § 1003.2(c)(2). Specifically, he asserts that an Immigration Officer's erroneous advice led him to follow the wrong procedure, which, in turn, caused him to file an untimely motion to reopen. The Government asserts that we lack jurisdiction to consider Bissoo's argument because he failed to exhaust it before the Immigration Court or the BIA.

Our jurisdiction is limited under § 242(d)(1) of the INA to cases where the petitioner "has exhausted all administrative remedies available to the alien as of right . . ." 8 U.S.C. 1252(d)(1); *see Abdulrahman v. Ashcroft*, 330 F.3d 587, 594-95 (3d Cir. 2003). A petitioner has exhausted his administrative remedies if he raises all issues before the BIA. Under our liberal exhaustion policy, "so long as an immigration petitioner makes some effort, however insufficient, to place the Board on notice of a straightforward issue being raised on appeal, a petitioner is deemed to have exhausted [his] administrative remedies." *Joseph v. Attorney General*, 465 F.3d 123, 126 (3d Cir. 2006). The exhaustion policy, however, does "not require the BIA to guess which issues have been presented and which have not." *Bin Lin v. Attorney General*, 543 F.3d 114, 122 (3d Cir. 2008). "[W]e will not punish the BIA by interfering in the administrative process with regard to issues that the BIA did not address." *Id.*

Bissoo acknowledges that he did not specifically invoke the phrase "equitable tolling" before the BIA. He contends, however, that he raised the factual predicate for such a claim in detail, sufficient to put the BIA on notice of it. Bissoo's notice of appeal and his brief appear to be devoted solely to justifying *sua sponte* reopening, the only ground upon which the IJ rejected his motion. But the very nature of Bissoo's erroneous advice claim goes to delay, which is relevant to the timeliness issue. We need not decide whether Bissoo raised the equitable tolling claim before the BIA, however. Even if Bissoo did not, we conclude that the BIA reached the issue *sua sponte*. *Id.* at 123-24 (holding that we have jurisdiction where the BIA engages in *sua sponte* consideration of a claim). Without calling it "equitable tolling," the BIA considered the erroneous advice claim and rejected it for lack of evidentiary support. Based on the foregoing, we are satisfied that we have jurisdiction to consider Bissoo's claim.

We have jurisdiction to review the BIA's decision to deny the motion to reopen as untimely under 8 C.F.R. § 1003.2(c)(2). We review the Board's denial of a motion to reopen as untimely for abuse of discretion. *Sevoian v. Ashcroft*, 290 F.3d 166, 170-71 (3d Cir. 2002). Under this standard, we will reverse the Board's decision only if it is arbitrary, irrational, or contrary to law. *Lu v. Ashcroft*, 259 F.3d 127, 131 (3d Cir. 2001); *see also Guo v. Ashcroft*, 386 F.3d 556, 562 (3d Cir. 2004). Here, in the absence of any indication in the record to the contrary, we conclude that the BIA's denial of Bissoo's motion to reopen as untimely because it was filed almost ten years too late was not arbitrary, irrational, or contrary to law. We hold that the BIA acted well within its discretion in denying Bissoo's equitable tolling claim.<sup>[2]</sup> According to Bissoo's affidavit, his only evidence, the immigration officer's alleged erroneous advice, was countermanded two months later, in December 1996, by the Immigration and Naturalization Service, which explained that he had to file a motion to reopen. (J.A. at 22-23, ¶¶ 8-11.) Bissoo failed to provide any evidence establishing that the immigration officer's erroneous advice caused him to miss the deadline for filing a timely motion to reopen for almost ten years. The Board's denial of Bissoo's ineffectiveness of counsel claim as procedurally barred is not arbitrary, irrational, or contrary to law. Bissoo has conceded that he failed to follow the requirements for raising such a claim pursuant to *Matter of Lozada*. (See Petitioner's Brief at 11.) We will therefore deny the petition for review. To the extent that Bissoo challenges the BIA's decision not to invoke its discretionary authority to reopen under 8 C.F.R. § 1003.2(a), we agree with the Government that we lack jurisdiction to review it. *See Calle-Vujiles v. Ashcroft*, 320 F.3d 472, 474-75 (3d Cir. 2003).

Accordingly, the Government's motion to dismiss is granted in part, and we will dismiss for lack of jurisdiction Bissoo's petition for review of the Board's decision to deny reopening as a matter of discretion pursuant to 8 C.F.R. § 1003.2(a). We will deny the petition for review as to the BIA's decision that the motion to reopen was untimely pursuant to 8 C.F.R. § 1003.2(c)(2)."

\* \* \* \* \*

The Philadelphia Inquirer reports that four illegal immigrants have been charged with running a brothel in South Philadelphia. The indictment charges Jose Claudio Corona Cotoniato, Raymond Gonzalez Salazar, Nicolas Gonzalez Salazar, and a man known as "Leonel Rubio" with conspiracy to run a prostitution ring. The brothels were located at residential areas, including 1221-A S. Seventh St. and 1314 S. Sixth St. If convicted of all charges, Cotoniato and Raymond Salazar face up to 180 years; Nicolas Salazar and Rubio, up to 145 years.

U.S. ICE agents identified and arrested 50 others believed to be in the country illegally through this investigation: 39 males from Mexico, nine males from Honduras, and two females from Mexico. They face removal proceedings in immigration court.

[http://www.philly.com/inquirer/local/20100112\\_Four\\_charged\\_with\\_running\\_South\\_Philadelphia\\_brothels.html](http://www.philly.com/inquirer/local/20100112_Four_charged_with_running_South_Philadelphia_brothels.html)

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**CASE OUTLINE  
OF  
KUCANA V. HOLDER, 558 U.S. \_\_\_\_ (2010).**

*Special by Attorney Jack Richbourg of our Memphis Office*

**Facts:** Petitioner Agron Kucana, a native and citizen of Albania, entered the United States on a business visa in 1995 and overstayed his visa. He now fears returning to his home country because of persecution on account of his political beliefs.

**Procedure:** Petitioner applied for asylum and withholding in 1996 with the USCIS. His application was denied and he was referred to the IJ for removal. The IJ ordered him removed but scheduled a hearing on his request for asylum. The petitioner did not appear for his individual hearing and was ordered removed *in absentia* by the IJ. Petitioner filed a motion to reopen immediately and offered as an excuse for not coming to the previous hearing that he overslept. The IJ denied the motion. Petitioner appealed to the BIA which in 2002 affirmed the IJ's decision. Petitioner did not appeal from the BIA's decision but did not leave the United States. In 2006, petitioner filed a second motion to reopen addressed to the BIA citing that conditions had changed for the worse in Albania. The BIA denied the motion holding that, on the contrary, things had improved in Albania and not worsened since 1997. The petitioner appealed the decision of the BIA to the Seventh Circuit which held that 8 USC 1252(a)(2)(B)(ii) bars judicial review of both administrative decisions made discretionary by statute, and also decisions made discretionary by a regulation rather than by a statute.

**Issue:** Do Courts of Appeal have jurisdiction to review decisions deemed discretionary by regulations promulgated by the Attorney General as opposed to decisions deemed discretionary by statute?

**Holding:** Courts of Appeals have jurisdiction to review decisions made discretionary by regulation. The statute in question, 8 USC 1252(a)(2)(B)(ii), states no court shall have jurisdiction to review any action of the Attorney General “the authority for which is specified under this subchapter to be in the discretion of the Attorney General, and the Attorney General has promulgated regulations found at 8 CFR 1003.2 that “[t]he decision to grant or deny a motion to reopen . . . is within the discretion of the [Board of Immigration Appeals (BIA)]. The bar to review set by Congress only applies to decisions *specified by statute* to be discretionary. The Attorney General cannot by drafting a regulation deny the Courts their long-standing right of review. This is because review provides safeguards, there is no specific Congressional intent to deny jurisdiction by regulation, and to do so would violate the separation of powers by allowing the Attorney General to insulate himself from judicial review by simply declaring his own decisions discretionary.

To view the full decision of the court, visit:

<http://www.supremecourtus.gov/opinions/09pdf/08-911.pdf>

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## 6. New Bytes

- Report touts legalization as economic stimulus
- NYC mayor vows fight for amnesty
- Catholic Bishops press for amnesty
- Iraqi collaborator denied U.S. permanent residency
- Visa revocation procedures enabled Christmas Bomber plot
- Feds implement new online visa application program-India
- NJ in-state tuition bill fails
- Church, activists plan to airlift Haitian orphans
- NY senator opposes NYC detention center shutdown
- Secretary Napolitano Announces Streamlined Citizenship Application Process for Members of the Military
- NY senator, FL pols call for TPS extension to Haitians
- US officials preparing for potential wave of Haitian immigration

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## Report touts legalization as economic stimulus

CNN is reporting on a joint study that advocates for legalization of unauthorized immigrants because of the policy's unrivaled economic benefits. The report titled 'Raising the Floor for American Workers, The Economic Benefits of Comprehensive Immigration Reform' was published by the Center for American Progress and the American Immigration Council. The study concludes that legislation that both targets legalization of the more than 11 million unauthorized migrants in the United States and also creates flexible legal limits on future immigration would lead to a raise in wages, an increase in consumption, the creation jobs and an increase in tax revenue.

The study considers the economic benefits of the deportation of all undocumented workers against the creation of temporary worker programs, and the legalization of the current undocumented population. In comparison to deportation and a temporary worker program, legalization would contribute the most to the United States economy, according to the report. While the study estimates that

legalization of the current undocumented population would equal to at least \$1.5 trillion in added U.S. gross domestic product over a 10-year period, it also estimated that a worker program would lead to a gain of only \$792 billion and deportation would lead to a loss of \$2.6 trillion in gross domestic product over 10 years. The authors argue that the 3 million people granted legalization through the 1986 Immigration Reform and Control Act (IRCA) were able to gain access to better jobs and education. However, the study also argues that after this policy was enacted immigration reform passed as enforcement-only policy, which the report points to as the continues a cycle of unauthorized migration and low wages. In addition, the study finds that enforcement—only immigration policies have not decreased the number of unauthorized migrants flowing into the United States plus these policies are extremely costly.

<http://edition.cnn.com/2010/POLITICS/01/07/immigration.economy/>

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### **NYC mayor vows fight for legalization**

The Asian Journal reports that during his third inaugural address, New York Mayor, Michael Bloomberg, announced his plan to focus on immigration policy during his upcoming term. He emphasized that he will work with President Obama and federal politicians to change the country's immigration policies.

During his speech Bloomberg drew a parallel between immigrants and a prosperous economy. The Mayor likened the immigrant community of New York City with the entrepreneur spirit responsible for bolstering the City's economy. The Mayor pledged that his third term would be dedicating to boosting the City's economy by supporting the small businesses, which are often owned by immigrants. Thus, the Mayor promised to help the economy by working to change the immigration policies that affect the entrepreneurs of New York City.

<http://www.asianjournal.com/datetime-usa/15-datetime-usa/4152-bloomberg-vows-to-fight-for-immigration-reform.html>

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### **Catholic Bishops press for legalization**

CNS News reports that the U.S. Conference of Catholic Bishops (USCCB) is advocating for immigration reform to be passed in 2010. The USCCB is supporting the Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (H.R. 4321), which was introduced in the House of Representatives December 15, 2009. The USCCB believes the proposed bill highlights the importance of a humane approach to reforming the current immigration system.

In an effort to call the attention of lawmakers nationwide to immigration reform, the Church has begun prayer vigils across the country along with a postcard campaign. During the campaign, parishioners are asked to send postcards to their congressmen urging for comprehensive immigration reform this year. The postcards are part of a larger campaign-- 'Justice for Immigrants'-- that provides other resources for parishioners to support immigration reform.

CNS reports that while the Church's efforts are supported by the Church elders, many parishioners do not agree with the Church sponsored call to push immigration reform. During the last months of 2009, a poll conducted by Zogby International showed that about 60 percent of the Catholic respondents disagree with the Church's position on illegal immigration. However, the USCCB does not take the poll's result as conclusive because of what they cite as biased methodology on the part of Zogby International. However, the USCCB does recognize that individual parishioners may take issue with the Church's pro-immigrant stance. Yet, the Catholic officials say that they will take any disagreement as an opportunity to explain the Church's view.

<http://www.cnsnews.com/news/article/59466>

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### **Iraqi collaborator denied U.S. permanent residency**

The *New York Times* reports that an interpreter for the United States Army in Iraq-- Ahmed Alrais—who fled Iraq with his family after his life had been threatened for working with the Army - has been denied an application to become a permanent resident of the United States. Since he could not find a job in the United States due to the recession and he did not have a green card, Alrais decided to return to work as an interpreter for the U.S Army in Iraq.

Federal officials at United States Citizenship and Immigration Services (USCIS) refuse to accept the time Alraishas has been working at a United States military base in Iraq for the time necessary for Permanent Resident applicants to live in the United States. Therefore, his application was denied on the basis that Alrais has not lived in the United States long enough to be considered for a green card.

The *Times* cites Alrais's situation as a paradox, where not only a person who is aiding the U.S military in Iraq during a time of war is denied permanent residency, but also that the time spent in the United States would probably mean a year as an unemployed refugee.

<http://www.nytimes.com/2010/01/08/us/08cncfamily.html>

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### **Visa revocation procedures enabled Christmas Bomber plot**

The Washington Times reports that airplane bomb suspect Umar Farouk Abdulmutalla was allowed to keep his American visa due to miscommunication among federal agencies. In a speech in response to the failed bomb attempt, President Obama said that the failure to catch the bomber was not a lack of intelligence information, but, rather, gaps in agency communication. Although different agencies had information about Abdulmutalla, the pieces of information each agency had were not enough on their own to link him with an airline bombing plot.

Although the State Department has full authority to cancel visas without permission from other agencies, it did not have the information to cancel the visa. While intelligence agencies were aware of the potential threat Abdulmutalla posed to the United States, these agencies did not have the power to rescind the visa. Thus, President Obama not only recognized that interagency problems exist, but also declared that his administration is examining how to better share information.

One of the first steps in breaching the information gap, President Obama stated, will be for United States embassies and consulates around the world to include current visa information along with their warnings of individuals with terrorist ties.

<http://www.washingtontimes.com/news/2010/jan/11/interagency-gaps-let-bomb-suspect-retain-visa/>

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### **Feds implement new online visa application program-India**

The Press Trust of India is reporting that an online visa application will be available in early February for those citizens of India wishing to apply for a United States nonimmigrant visa.

The United States embassy in India made the announcement in hopes that the paperless application will make the visa application process more efficient. Instead of only finding an electronic copy of the visa application form, those wishing to apply for a U.S non-immigrant visa will be able to also submit the application via the Internet.

[http://www.ptinews.com/news/465067\\_New-online-US-visa-application-process-from-Feb-1](http://www.ptinews.com/news/465067_New-online-US-visa-application-process-from-Feb-1)

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### **NJ in-state tuition bill fails**

The *Philadelphia Inquirer* reports that proposed legislation to allow illegally present immigrants to pay in-state tuition failed in the New Jersey legislature. A vote on the bill was canceled, which has postponed a vote on the bill indefinitely.

Proponents of the bill believed that the bill could provide the possibility of higher education to those children who did not choose to enter the United States illegally. However, opponents' main concern lay in the economic repercussions. Those who opposed in-state tuition for New Jersey Colleges and Universities were wary of the impact of the measure during a time of economic trouble.

Newly elected Governor, Christopher J. Christie, has also expressed disdain for the measure. Voting on the measure is unlikely. Pro-immigrant groups are now focusing on convincing Governor Christie of the merits of the proposal and waiting for the passage of a similar federal bill.

<http://www.philly.com/philly/news/breaking/81177907.html>

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### **Church, activists plan to airlift Haitian orphans**

The *Miami Herald* is reporting that Catholic Charities and other South Florida immigrant rights organizations are working on a program to relocate thousands of orphaned Haitian children to the United States in response to the earthquake that ravaged Haiti early in January.

The program will attempt to emulate Operation Pedro Pan. During that 1960s program, Cuban children were airlifted and placed with family members or orphanages in the United States in response to the Castro regime. The Cuban children who were part of Operation Pedro Pan, however, were reunited with their parents once the parents found a way out of Cuba.

Catholic Charities officials say they temporary shelter available for the orphaned Haitian children. Therefore, they are urging the Obama administration to help the non-profit organizations with providing humanitarian visas for the children.

<http://www.miamiherald.com/news/breaking-news/story/1425090.htm>

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### **NY senator opposes NYC detention center shutdown**

The *New York Times* reports that New York Democratic Senator Charles E. Schumer, Chairman of the Senate Immigration Subcommittee, is requesting the Department of Homeland Security to continue immigration detention operations at the Varick Federal Detention Facility in Manhattan. A decision to close immigration detention operations at the Manhattan facility would transfer 300 detainees to a county jail seven miles away in New Jersey.

Immigration and Enforcement officials estimate that housing detainees in the New Jersey jail would equal half the cost of what it is currently at the Varick Facility. Officials also cite that the transfer will allow national detention standards to be met. However, Senator Schumer along with immigrant rights advocates and Civil Liberties lawyers believe that the transfer would cause great obstacles to the due process rights of the detainees. The seven mile distance from the city to the Hudson County Correctional Center in Kearny, N.J. is cited as the major challenge in not only having family visits, but also in providing pro-bono legal counsel. Thus, Senator Schumer declared that the cost-benefit analysis that Immigration and Enforcement officials are counting only measures a portion of the costs and not the significant costs to detainees.

<http://www.nytimes.com/2010/01/16/nyregion/16ice.html>

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### **Secretary Napolitano Announces Streamlined Citizenship Application Process for Members of the Military**

Department of Homeland Security (DHS) Secretary Janet Napolitano announced the publication of a rule formalizing DHS' longstanding policy to expedite and streamline the citizenship process for people serving in America's armed forces.

"The foundation of our national security is the patriotic service and extraordinary sacrifices made by the men and women of our armed forces," said Secretary Napolitano. "Expediting the citizenship process for service members reflects our commitment to honoring those who come from all over the world to serve our country and become its newest citizens."

The policy conforms to the National Defense Authorization Act of 2004, reducing the time requirements for naturalization from three years to one year for military service applicants. Service members who have served honorably in an active-duty status or in the Selected Reserve of the Ready Reserve for any time since Sept. 11, 2001, can file for immediate citizenship.

The rule also eliminates the requirement that members of the military file biographic information forms (Form G-325B) with their naturalization applications—removing administrative redundancy and increasing efficiency of the process.

For more information on USCIS and its programs available to the military, visit <http://www.uscis.gov/military>.

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## 7. Washington Watch

### **NY senator, FL pols call for TPS extension to Haitians**

Politico reports that soon after the deadly earthquake experienced in Haiti, New York Senator Kirsten Gillibrand petitioned President Barack Obama to grant temporary protected status to Haitians living in United States. The junior Senator is urging President Obama to respond quickly by at least preventing Haitian citizens already in the United States from being deported to a ravaged country.

This call to domestic action is supported by previous responses by the United States government in the wake of other natural disasters in the Americas. In 1999, Honduran and Nicaraguan nationals were granted Temporary Protected Status in response to the devastating Hurricane Mitch, while in 2001 El Salvadorian citizens were granted the same status following several deadly earthquakes.

Senator Gillibrand also argues that the halt in Haitian deportation would allow Haitians in the US to earn money to send back home to help rebuild their country.

<http://www.politico.com/news/stories/0110/31451.html>

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### **US officials preparing for potential wave of Haitian immigration**

Fox News is reporting that the Department of Homeland Security is preparing in case that there is a mass exodus from Haiti to the United States following this month's deadly earthquake. Although the U.S Coast Guard has not reported any people fleeing to the United States since the earthquake, the Department of Homeland Security is evaluating options to respond to a large emigration wave from Haiti.

In recent decades, a large number of Haitians have tried to flee the country's poverty and political unrest. However, the boats of those trying to enter the United States illegally are intercepted. In the past, Haitian refugee claimants have been taken to the U.S base in Guantanamo Bay, Cuba to be processed. In Cuba they were pre-screened for refugee status in the United States. In recent years only a fraction of those intercepted at sea have been granted refugee status.

One of the options being heavily studied by Homeland Security involves the Migrant Operation Center at Guantanamo Bay. The Center could serve as a half-way point to screen those Haitians seeking asylum. The Center can be expanded to accommodate as many as 400 people at a time. However, this option will not be used unless a mass exodus occurs.

Aside from preparing for hypothetical situation, the United States government is putting most of its efforts in providing aid and relief to Haiti in the hope that improving the situation in Haiti so fewer people will feel compelled to leave.

<http://www.foxnews.com/politics/2010/01/14/preparing-potential-new-wave-haitians-fleeing-north/>

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## 8. Notes from Visalaw.com Blogs

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

- [ANTIS HOPING FOR GOP WIN IN MASSACHUSETTS](#)
- [DHS CONFERS PAROLE STATUS ON CERTAIN HAITIAN ORPHANS](#)
- [TPS FAQ FOR HAITIANS](#)
- [STEVE KING WANTS TO DEPORT HAITIANS](#)
- [MIAMI'S KROME DETENTION CENTER BRACING FOR HAITIAN INFLUX](#)
- [IF YOU LIKE BIG GOVERNMENT, YOU'LL FIT RIGHT IN WITH THE ANTIS](#)
- [CBP OFFICERS TARGETING INDIAN H-1B ENTRANTS](#)
- [TPS GRANTED FOR HAITIANS](#)
- [CYNTHIA RYAN, RIP](#)
- [CLINTON HINTS THAT WHITE HOUSE WILL GRANT HAITIANS LEGAL STATUS](#)
- [CATHOLIC CHURCH, WHITE HOUSE PLANNING TO AIRLIFT ORPHANS FROM HAITI](#)
- [LA RAZA CALLS FOR TPS FOR HAITIANS](#)
- [ANTI-IMMIGRATION LEADER ADMITS TPS FOR HAITIANS IS NEEDED](#)
- [NEW STUDIES REINFORCE NOTION THAT CIR WILL HELP ECONOMY](#)
- [SIGN ONLINE PETITION TO GRANT TPS FOR HAITIANS](#)
- [JOE WILSON STILL LYING ABOUT BEING AN IMMIGRATION LAWYER](#)
- [NATION'S FAITH-BASED IMMIGRATION AGENCIES URGES TPS FOR HAITIANS](#)
- [SENATOR GILLIBRAND URGES OBAMA TO ADD HAITI TO TPS COUNTRY LIST](#)
- [HAITIAN DEPORTATIONS HALTED](#)
- [NAPOLITANO'S INITIAL STATEMENT ON HAITI DOESN'T ADDRESS TPS](#)
- [AILA LEADERS CALL FOR HAITIAN TPS](#)
- [HAITI TPS COMING?](#)
- [SOCIAL SECURITY ADMINISTRATION FAILS TO E-VERIFY 19% OF ITS OWN EMPLOYEES](#)
- [MCCAIN: WHY WOULD I WANT TO BE THE LEADER OF A PARTY OF SUCH A\\*\\*HOLES?](#)
- [NY TIMES: OFFICIALS HID TRUTH OF DETAINEE DEATHS](#)
- [UNDERSTANDING IMMIGRATION BY GOING TO THE SOURCE](#)
- [REPORT: IMMIGRATION REFORM COULD ADD \\$1.5 TRILLION TO GDP OVER TEN YEARS](#)
- [CONSUMER ELECTRONIC ASSOCIATION WARNS AGAINST RESTRICTING THE MOVEMENT OF GLOBAL TALENT](#)
- [MAYOR BLOOMBERG PLEDGES TO BECOME NATIONAL LEADER PROMOTING IMMIGRATION REFORM](#)
- [HISPANIC CONGRESSMEN THREATEN TO BRING DOWN HEALTH CARE REFORM IF IMMIGRATION IGNORED](#)
- [THE TREK](#)
- [ICE AGENTS POSING AS MORMON MISSIONARIES TO ARREST IMMIGRANTS?](#)

- [CHRISTMAS PLANE BOMBER CASE RAISES CONCERNS REGARDING VISITOR SCREENING](#)
- [AFRICAN-AMERICANS AND IMMIGRATION REFORM](#)
- [SCAMWATCH: CALIFORNIA PASTOR ACCUSED OF STUDENT VISA FRAUD](#)
- [NURSE SHORTAGE GROWING DIRE WHILE BLACKOUT ON VISAS CONTINUES](#)
- [IMMIGRANT ENFORCEMENT THROUGH THE ROOF](#)
- [H-1B CAP HIT FOR YEAR](#)
- [THE THIRD LEG](#)
- [THE SISKIND SUMMARY: A SECTION BY SECTION REVIEW OF THE GUTIERREZ IMMIGRATION REFORM BILL](#)
- [TEXT OF HR 4321 - THE GUTIERREZ COMPREHENSIVE IMMIGRATION REFORM BILL](#)
- [CERTAIN ASYLUM APPLICANTS WILL NO LONGER BE DETAINED](#)
- [GUTIERREZ IMMIGRATION REFORM BILL INTRODUCED](#)
- [FUGITIVE WORKED AT ATLANTA USCIS OFFICE](#)
- [YOU WANT TO CREATE JOBS IN THE US? HOW DARE YOU!](#)
- [NAFSA REPORT: MAKE SURE CIR DOESN'T LEAVE OUT NEEDED STUDENT VISA REFORMS](#)
- [ANOTHER CHARITY BARS KIDS OF IMMIGRANTS FROM GETTING CHRISTMAS PRESENTS](#)
- [IMMIGRATION DETENTIONS SKYROCKET](#)
- [GUTIERREZ TO INTRODUCE REFORM BILL NEXT WEEK](#)
- [IMMIGRANT HIGH SCHOOL NAMED NATION'S BEST PUBLIC SCHOOL](#)
- [HOUSE COMMITTEE HOLDS HEARING ON DETENTION STANDARDS](#)
- [BUCHANAN SEEKING TO FILL DOBBS' VOID](#)
- [SKILLED WORKERS TO BE ADDRESSED IN IMMIGRATION REFORM BILL](#)
- [ENVIRONMENTAL GROUP: BORDER WALL COULD HURT ENDANGERED SPECIES](#)
- [CENSUS ANALYSIS SHOWS IMMIGRANTS CONTINUE TO ACHIEVE AT HIGH RATE](#)
- [SCAMWATCH: VISA FRAUD SCHEME BROKEN UP IN BRAZIL](#)
- [SUPREME COURT DECISION USES TERM "UNDOCUMENTED IMMIGRANT" FOR FIRST TIME](#)
- [FRANKEN GRILLS NAPOLITANO ON IMPRISONMENT OF ASYLUM-SEEKERS](#)
- [ANTI-IMMIGRANT WASHINGTON TIMES LAYING OFF 40% OF STAFF](#)
- [REPORT URGES LIBERALIZING H-1B QUOTAS, BUT ALSO TOUGHER ENFORCEMENT OF RULES](#)

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

- DALLAS SUBURB CONSIDERING E-VERIFY MANDATE
- WASHINGTON STATE TREE FRUIT COMPANY FIRES WORKERS FOLLOWING ICE AUDIT
- HERNANDO, COUNTY FL COMMISSIONER CALLS FOR E-VERIFY MANDATE
- E-VERIFY IT COMPANY ACQUIRED
- HAWAII MANAGERS ACQUITTED OF IMMIGRATION VIOLATIONS
- NEW EMPLOYER COMPLIANCE RULES COMING IN 2010
- PILGRIM'S PRIDE AGREES TO PAY IMMIGRATION FINE
- 1400 BEAUFORT, SC BUSINESSES AUDITED FOR IMMIGRATION COMPLIANCE
- LANCASTER, CA MANDATES E-VERIFY FOR TOWN'S EMPLOYERS
- GEORGIA PUBLIC EMPLOYER E-VERIFY RULE TAKES FORCE JANUARY 1ST

- FREDERICK COUNTY, MD COMMISSION APPROVES CONTRACTOR RULE
- WOMAN IMPRISONED IN EMPLOYER SANCTIONS CASE
- FIRST EMPLOYER SANCTIONED UNDER ARIZONA LAW
- AIR FORCE CONTRACTOR ACCUSED OF HIRING UNAUTHORIZED WORKERS
- MINNESOTA STATE AUDITOR TO EXAMINE ELECTRONIC I-9 SAFEGUARDS
- LOOKOUT SERVICES FIRES BACK AT MINNESOTA RADIO REPORTER
- HOUSTON SEAFOOD RESTAURANTS RAIDED BY ICE
- GEORGIA CONTRACTOR ACCUSES COMPETITOR OF HIRING WORKERS ILLEGALLY
- MINNESOTA STATE OFFICIALS WARN EMPLOYEES AFTER POTENTIAL SECURITY BREACH
- E-VERIFY TO ALLOW WORKERS TO DO SELF-CHECKS
- NY TIMES EDITORIAL: STATE AND LOCAL IMMIGRATION LAWS ARE COUNTERPRODUCTIVE
- FREDERICK, MD CONSIDERING E-VERIFY MANDATE FOR CONTRACTORS
- TANCREDO FILES E-VERIFY BALLOT MEASURE IN COLORADO
- NEW ADDRESS FOR RESOLVING E-VERIFY PHOTO ISSUES
- TARGET WORKERS QUIT IN RESPONSE TO INTERNAL AUDIT
- PENNSYLVANIA LAWMAKERS CONSIDERING E-VERIFY MANDATE
- MISSISSIPPI MANAGER PLEADS GUILTY
- CALIFORNIA FARMERS ALARMED BY COMPLIANCE AUDITS
- DETROIT FIRM FINED \$40,000 FOR I-9 VIOLATIONS
- DARTMOUTH COLLEGE FINED FOR I-9 VIOLATIONS
- NEW SECURITY FEATURE FOR E-VERIFY PHOTO TOOL COMING SOON
- AGRIPROCESSOR EMPLOYEES TO BE RELEASED AND DEPORTED

#### [Visalaw Healthcare Immigration Blog](#)

- NURSE SHORTAGE GROWING DIRE WHILE BLACKOUT ON VISAS CONTINUES
- IMMIGRANTS LOSE SUIT TO KEEP GRADY HOSPITAL RENAL CLINIC OPEN
- PHYSICIAN SHORTAGE LIKELY TO WORSEN AS A RESULT OF THE HEALTH CARE BILL
- H-1C NURSE VISA PROGRAM ABOUT TO SUNSET
- NEW REPORT INDICATES FOREIGN HEALTH CARE WORKERS PLAYING CRITICAL ROLE IN US

#### [Visalaw Investor Immigration Blog](#)

- EB-5 INVESTORS IN SD REGIONAL CENTER SUE DAIRY FARM
- ILLINOIS SPORTS COMPLEX SEEKING EB-5 INVESTORS
- CHINESE INVESTOR SEEKING EB-5 GREEN CARDS
- MPI: RECESSION BREATHES NEW LIFE IN TO EB-5 PROGRAM
- NEW ORLEANS REGIONAL CENTER TO INVEST IN NEW HOTEL PROJECT
- VERMONT HOPING KOREAN BIOTECH FIRM LEVERAGES EB-5 PROGRAM
- MISSISSIPPI HYBRID CAR PLANT PLANNING ON USING EB-5 TO HELP WITH FUNDING

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

- REUTERS: HARSH IMMIGRATION POLICIES AFFECTING LATIN MUSIC SALES
- ARENA WARNS THAT FOREIGN SOCCER TEAMS POSE THREAT
- USCIS ISSUES NEW MEMO ON PETITIONS MADE BY AGENTS

- ROYALS RECRUITING CUBAN PITCHER
- CUBAN ARTISTS GETTING WELCOME FROM US GOVERNMENT

#### [Visalaw International Blog](#)

- [CANADA: SERGIO R. KARAS TO CO-CHAIR BAR ASSOCIATION SESSION](#)
- [BORDER SEARCHES A CONSTANT REMINDER OF THE LIMITS OF PRIVACY](#)
- [The Canadian Press: Ottawa announces changes to protect foreign caregivers from abuse](#)
- [VLI'S DUTCH FIRM INTERVIEWED FOR ARTICLE ON DOING BUSINESS IN THE NETHERLANDS](#)
- [VLI'S GERMAN FIRM FEATURED IN ARTICLE ON DOING BUSINESS IN EUROPE](#)
- [CANADA: SERGIO R. KARAS QUOTED IN FRONT PAGE STORY](#)

#### [The Immigration Law Firm Management Blog](#)

- LENOVO MORPHS NOTEBOOK AND TABLET
- HOW TO "HACK" MORE SCREENS FOR YOUR IPHONE APPS
- TAKE HANDWRITTEN NOTES ON YOUR IPHONE
- STOP REBOOTS AFTER AUTOMATIC UPDATES

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#### 9. State Department Visa Bulletin: January 2010

### VISA BULLETIN FOR JANUARY 2010

#### A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **January**. 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 December **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 which has been announced in this bulletin.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the

total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

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

#### **FAMILY-SPONSORED PREFERENCES**

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

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

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

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

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

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

#### **EMPLOYMENT-BASED PREFERENCES**

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

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

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

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

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

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating

provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

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

<b>Fam-ily</b>	<b>All Charge-ability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPP-INES</b>
1st	01APR04	01APR04	01APR04	15AUG92	01DEC93
2A	01JAN06	01JAN06	01JAN06	01JAN04	01JAN06
2B	01DEC01	01DEC01	01DEC01	08JUN92	01JUL98
3rd	22MAY01	22MAY01	22MAY01	15SEP92	01DEC91
4th	01OCT99	01OCT99	01OCT99	22NOV95	01MAY87

\*NOTE: For January, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN04. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JAN04 and earlier than 01JAN06. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	<b>All Charge-ability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIP-PINES</b>
<b>Employ-ment - Based</b>					
1st	C	C	C	C	C
2nd	C	01MAY05	22JAN05	C	C
3rd	01AUG02	01AUG02	22JUN01	01JUL02	01AUG02
Other Workers	01JUN01	01JUN01	01JUN01	01JUN01	01JUN01
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
5th Pilot Programs	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-2010 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 **January**, immigrant numbers in the DV category are available to qualified DV-2010 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
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	<b>Separately</b>	
<b>AFRICA</b>	23,400	Except: Egypt: 12,300 Ethiopia: 12,475 Nigeria: 12,900
<b>ASIA</b>	9,475	
<b>EUROPE</b>	19,750	
<b>NORTH AMERICA (BAHAMAS)</b>	4	
<b>OCEANIA</b>	775	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	925	

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-2010 program ends as of September 30, 2010. DV visas may not be issued to DV-2010 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2010 principals are only entitled to derivative DV status until September 30, 2010. DV visa availability through the very end of FY-2010 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 FEBRUAY**

For **February**, immigrant numbers in the DV category are available to qualified DV-2010 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:

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>	
<b>AFRICA</b>	27,500	Except: Egypt: 15,600 Ethiopia: 14,700 Nigeria: 14,000
<b>ASIA</b>	10,550	
<b>EUROPE</b>	22,400	

<b>NORTH AMERICA (BAHAMAS)</b>	4	
<b>OCEANIA</b>	870	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	950	

#### **D. EXPLANATION OF THE NUMERICAL CONTROL SYSTEM AND CUT-DATE PROJECTIONS**

##### **WHAT CAUSES THE ESTABLISHMENT OF CUT-OFF DATES?**

The Visa Office (VO) subdivides the annual preference and foreign state limitations specified in the Immigration and Nationality Act (INA) into twelve monthly allotments. The totals of documentarily qualified applicants that have been reported to VO are compared each month with the numbers available for the next regular allotment and numbers are allocated to reported applicants in order of their priority dates, the oldest dates first.

- If there are sufficient numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered "Current." For example, if the Employment Third preference monthly target is 3,000 and there are only 1,000 applicants, the category is considered "Current."

- Whenever the total of documentarily qualified applicants in a category exceeds the supply of numbers available for allotment for the particular month, the category is considered to be "oversubscribed" and a visa availability cut-off date is established. The cut-off date is the priority date of the first documentarily qualified applicant who could not be accommodated for a visa number. For example, if the Employment Third preference monthly target is 3,000 and there are 8,000 applicants, a cut-off date would be established so that only 3,000 numbers would be used, and the cut-off date would be the priority date of the 3,001st applicant.

Applicants entitled to immigrant status become qualified at their own initiative and convenience and upon the completion of various processing requirements. Therefore, it is extremely important to remember that by no means has every applicant with a priority date earlier than a prevailing cut-off date been processed for final visa action. On the contrary, visa allotments are made only on the basis of the total applicants reported qualified each month, and consideration of other variables. Demand for visa numbers can fluctuate from one month to another, with an inevitable impact on cut-off dates.

##### **HOW IS THE PER-COUNTRY LIMIT CALCULATED?**

Section 201 of the INA sets an annual minimum Family-sponsored preference limit of 226,000, while the worldwide annual level for Employment-based preference immigrants is at least 140,000. Section 202 sets the per-country limit for preference immigrants at 7% of the total annual Family-sponsored and Employment-based preference limits, i.e. a minimum of 25,620.

- The annual per-country limitation of 7% is a cap, meaning visa issuances to any single country may not exceed this figure. This limitation is not a quota to which any particular country is entitled, however. The per-country limitation serves to avoid monopolization of virtually all the visa numbers by applicants from only a few countries.

- INA Section 202(a)(5), added by the American Competitiveness Act in the 21st Century (AC21), removed the per-country limit in any calendar quarter in which overall applicant demand for Employment-based visa numbers is less than the total of such numbers available. In recent years, the application of Section 202(a)(5) has occasionally allowed countries such as China-mainland born and India to utilize large amounts of Employment First and Second preference numbers which would have otherwise gone unused.

### **WHAT ARE THE PROJECTIONS FOR CUT-OFF DATE MOVEMENT IN THE FAMILY PREFERENCES?**

Cut-off date movement in most categories continues to be greater than might ordinarily be expected, and this is anticipated to continue for at least the next few months. This is because fewer applicants are proceeding with final action on their cases at consular posts abroad, and the volume of CIS adjustment cases remains low. Once large numbers of applicants begin to have their cases brought to final action, cut-off date movements will necessarily slow or stop. Moreover, in some categories cut-off date retrogression is a possibility. Therefore, readers should be aware that the recent rate of cut-off date advances will not continue indefinitely, but it is not possible to say at present how soon they will end.

### **WHY DID MOST EMPLOYMENT CUT-OFFS REMAIN UNCHANGED IN RECENT MONTHS?**

Many of the categories were "unavailable" at the end of FY-2009, which resulted in excessive demand being received during October and November. Coupled with the fact that CIS Offices have been doing an excellent job of processing cases, this has had an impact on cut-off date movements. Some forward movement has begun for January as we enter the second quarter of the fiscal year.

### **WILL THERE BE ANY ADDITIONAL CUT-OFF DATES FOR FOREIGN STATES IN THE EMPLOYMENT FIRST OR SECOND PREFERENCE CATEGORIES?**

At this time it is unlikely that there will be any cut-off dates in the Employment First preferences. It also appears unlikely that it will be necessary to establish a cut-off date other than those already in effect for the Second preference category. Cut-off dates apply to the China and India Second preference categories due to heavy demand, and each has the potential to become "unavailable" should demand cause the annual limit for that category to be reached.

INA Section 202(a)(5) provides that if total demand will be insufficient to use all available numbers in a particular employment preference category in a calendar quarter, then the unused numbers may be made available without regard to the annual per-country limits. For example, if it is determined that based on the level of demand being received at that time there would be otherwise unused numbers in the Employment Second preference category, then numbers could be provided to

oversubscribed countries without regard to per-country limitations. Should that occur, the same cut-off date would be applied to each country, since numbers must be provided strictly in priority date order regardless of chargeability. In this instance, greater number use by one country would indicate a higher rate of demand by applicants from that country with earlier priority dates.

Should Section 202(a)(5) be applied, the rate of number use in the Employment preference category would continue to be monitored to determine whether subsequent adjustments are needed in visa availability for oversubscribed countries. This action provides the best possible assurance that all available Employment preference numbers will be used, while still ensuring that numbers remain available for applicants from all other countries that have not yet reached their per-country limit.

### **WHAT ARE THE PROJECTIONS FOR CUT-OFF DATE MOVEMENT IN THE EMPLOYMENT PREFERENCES FOR THE REMAINDER OF FY-2010?**

Based on current indications of demand, the best case scenarios for cut-off dates which will be reached by the end of FY-2010 are as follows:

#### **Employment Second:**

China: July through October 2005

India: February through early March 2005

If Section 202(a)(5) were to apply:

China and India: October through December 2005

#### **Employment Third:**

Worldwide: April through August 2005

China: June through September 2003

India: January through February 2002

Mexico: January through June 2004

Philippines: April through August 2005

Please be advised that the above date ranges are only estimates which are subject to fluctuations in demand during the coming months. The actual future cut-off dates cannot be guaranteed, and it is possible that some annual limits could be reached prior to the end of the fiscal year.

### **E. 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:

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**listserv@calist.state.gov**

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Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address: **VISABULLETIN@STATE.GOV**