Siskind's Immigration Bulletin – January 21, 2009

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

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

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1. Openers

Dear Readers:

This week marks the historic inauguration of President Barack Obama. The fact that he is the first African-American to hold the highest office in the land is what most people will remember. I also will be thinking about the fact that the new President is the son of an immigrant from a developing country who spent part of his youth as an immigrant himself when he lived in Indonesia.

The new President can also give considerable credit to immigrants for his election. Polls showed that a massive shift in the Latino vote in four states with large Latino populations – New Mexico, Nevada, Colorado and Florida – may have turned those states blue in 2008.

Add two other factors and 2009 looks very good for immigration reform. First, the Democrats, clearly the more pro-immigration party, added significantly to their majorities in both Houses of Congress. Second, public opinion polls are showing a dramatic decline in anti-immigrant sentiment over the last year even as the economy has suffered. In the summer of 2007, immigration ranked the second most important issue in the eyes of the public, just after the war in Iraq. And it was not a pro-immigration wave that led to the rise of the issue. By late 2008, the issue no longer even ranked in the top 10.

Perhaps people realized they had “real” issues to worry about like the financial crisis. Or perhaps we were seeing an “Obama” effect where people suddenly are feeling a lot more tolerant as a country. Whatever the reason, it is therefore not surprising that Majority Leader Harry Reid indicating in a recent interview that immigration reform would happen quickly and would not be terribly difficult. That may be be a tad optimistic, but it certainly looks like the conditions are ripe for change.

If there is any initial indicator of how Congress will act, perhaps we saw it this past week when the House overwhelmingly voted to extend children’s health insurance under the SCHIP program to immigration kids. In the past, anti-immigrant members of Congress were vocal in opposing the bill. This time, barely a word was heard from them.

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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 consultation. We are a national immigration law firm and work on a broad range of immigration matters for clients locating across the country.

Kind regards,

Greg Siskind

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2. The ABC's of Immigration: B-1/B-2 Visas, Visa Waivers, and ESTA – What Visitors to the US Need to Know for 2009

The most common nonimmigrant visa is the B visa. It was created expressly for foreign visitors to the United States, and covers both visitors for business (B-1) and visitors for pleasure (B-2). However, it is not the only way to gain visitor entry into the US. The Visa Waiver program, which allows visitors from authorized countries entrance to the US, is another method. Beginning in January 2009, any visitor from a Visa Waiver country must complete an Electronic System for Travel Authorization form (ESTA), if they wish to travel under the Visa Waiver Program. Below, we discuss the differences between B Visas and Visa Waivers, and the conditions, advantages, and disadvantages for both.

What countries have been accepted into the Visa Waiver Program for 2008?

Following two Department of Homeland Security final rules, the Visa Waiver Program (VWP) has been expanded to include a further eight countries. From November 17, 2008, eligible citizens from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Republic of Korea, and the Slovak Republic may apply for admission to the US as a visitor under the VWP. From December 30, 2008, eligible citizens from Malta may apply for admission to the US as a visitor under the VWP. Citizens from these countries must satisfy passport requirements and the new ESTA clearance, as detailed below.

What countries are currently eligible for Visa Waiver travel?

The 35 countries whose citizens are now eligible for Visa Waiver travel are: Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

What is the Visa Waiver Program?

The VWP allows certain individuals to enter the US for business or tourism visa-free provided that certain conditions are satisfied. These conditions require that the traveler is:

- staying in the US for 90 days or less
- travelling for business, pleasure or transit only
- holding a return or onward ticket
- in possession of a compliant passport
- not inadmissible to the US

What passport requirements must a visitor from a VWP-authorized country meet?

Individuals applying for admission as a visitor to the US under the VWP must carry passports which meet certain criteria. All passports must be machine-readable. Machine-readable passports contain two lines of text and characters at the bottom of the biographic details page. Further passport requirements apply depending on the date the passport was issued/renewed. Passports issued on or after 26 October 2005 must contain a digital photograph. In addition, passports issued on or after 26 October 2006 must be e-Passports for the traveler to be eligible to enter the US under the VWP.

What is ESTA, and how does it affect visitors from countries with Visa Waivers?

The US Department of Homeland Security (DHS) has announced the new online travel system for air and sea travelers on the Visa Waiver Program (VWP). This new system, called the Electronic System for Travel Authorization (ESTA), became accessible for voluntary completion on August 1, 2008. Under the new system, travelers for business or pleasure who plan on entering the US on the VWP will be required to log on to the ESTA website and obtain a clearance for travel to the US. ESTA will become mandatory for VWP travelers on January 12, 2009.

On January 12, 2009, the date ESTA becomes mandatory, failure to complete the on-line application and obtain travel authorization may result in the traveler being denied boarding, experiencing significant delays on entry to the US or being refused admission at the port of entry. Similarly, travelers who complete an ESTA application and receive an Authorization Approved message are not guaranteed entry to the US – the approval only authorizes the traveler to board the aircraft.

Where can I submit an ESTA application?

VWP travelers may complete their ESTA application and find more information on ESTA at https://esta.cbp.dhs.gov/esta.

What information do I need to submit in my ESTA application?

Visitors to the US who are entering visa-free under the VWP will be required to visit the ESTA website and complete an on-line application. Individuals entering the US with a visa will not be required to complete an ESTA application. DHS recommends that the on-line application be completed no later than 72 hours prior to travel. The application contains questions similar to the I-94W, such as name, date of birth, duration of trip and address in the US, and whether the applicant has been convicted of a crime.

How will I know if my ESTA application has been approved?

Once a traveler completes the application, they will usually receive a response within seconds. The response will be one of the following:

1. Authorization Approved – travel authorized
2. Travel Not Authorized – applicant must apply for a visa at an Embassy or Consulate prior to travel to the US

3. Authorization Pending – traveler will need to check the ESTA website within 72 hours to receive a final response

What type of travel does ESTA allow? How long does my approved ESTA submission stay valid?

ESTA approvals will be valid multiple entries to the US for two years or until the applicant's passport expires. The applicant should log on to the website to change destination addresses and itineraries for future trips.

What if my ESTA application gets turned down, or my request for Visa Waiver Travel has been previously denied?

If you are not from a country that is on the Visa Waiver Program list, or if your returned ESTA application deemed you ineligible to qualify to travel to the United States, you are still able to apply for a B-1 or B-2 visa. The ESTA application results have no bearing on if you can receive a B Visitor Visa. ESTA is exclusively for individuals who visit the US with a passport from a Visa Waiver Country only. If you want to visit the US and are not from one of these approved countries or if you have applied for travel authorization previously and was denied, you must apply for a B Visitor Visa.

Note that if you are from a country on the Visa Waiver list and you were not approved on a past ESTA admission, you are still able to reapply to ESTA after a minimum 10-day wait.

All Canadian citizens are also exempt from getting a visa under a different law.

What if my passport indicates that I am not from a Visa Waiver country?

If a passport does not qualify for travel under the VWP or the individual is inadmissible to the US, then the individual must apply for a B-1/B-2 visa to enable them to enter the US for tourist or business purposes. Individuals who already have B-1/B-2 visas, or who posses another valid nonimmigrant visa, are not required to comply with the e-passport/digital photograph/machine-readable requirements.

Visitors admitted to the US under the VWP are not permitted to change their nonimmigrant status, except in very limited circumstances. If a traveler anticipates that a change of status petition will be submitted during their time in the US, they should apply for a B-1/B-2 visa and enter the US as a visitor pursuant to the B-1/B-2 visa.

How can I qualify for the B-1 Business Visitor Category?

The B-1 Business Visitor category is available to persons who can demonstrate that they 1) have no intention of abandoning their residence abroad and 2) they are visiting the US temporarily for business. Entry is, theoretically, granted for up to a

year, but most B-1 admissions are approved for just the period necessary to conduct business and are normally permitted to stay no longer than 3 months.

What limitations are associated with business visitors?

Business visitors are quite limited in the activities in which they are permitted to engage. B-1 visa holders must not be engaging in productive employment in the US either for a US employer or on an independent basis. Any work done in the US must be performed on behalf of a foreign employer and paid for by the foreign employer. The work should also be related to international commerce or trade. The US consular officer reviewing the case will consider several factors when deciding whether to issue a visa including 1) whether a US worker could be hired to perform the work, 2) whether the work product is predominantly created in the US, and 3) whether the work is controlled mainly by a US company. If the answer to any of these questions is "yes" then the B-1 visa is likely to be denied. An exception may be made in the “B-1 in lieu of H-1B” scenario where a worker would qualify for H-1B status except that the employer is not located in the US. But note that many consulates will not consider B-1 in lieu of H-1B filings.

The following are some activities normally considered appropriate for the B-1 visa:

- employees of a US company's foreign office coming to the US to consult with the US company
- an employee of a foreign company coming to the US to handle sales transactions and purchases and to negotiate and service contracts
- coming to the US to conduct business or market research
- coming to the US to interview for a professional position in order to gain experience to help in finding a position in one's home country
- attending business conferences, seminars, or conventions
- an investor coming to set up an investment in the US or to open a US office
- personal or domestic servants who can show they are not abandoning a residence abroad, have worked for the employer for a year and the employer is not residing in the US permanently
- airline employees who are paid in the US but an E visa is not available because no treaty exists between the US and the airline's country
- professional athletes who are not paid a salary in the US and are coming to participate in a tournament
- a member of a board of a US company coming to a board meeting

- coming to the US to handle preliminary activities in creating a business (opening bank accounts, leasing space, incorporating, etc.)

How can I qualify for the B-2 Pleasure Visitor Category?

Of the more than 20 million nonimmigrants admitted annually to the US, more than three fourths come as tourists. The appropriate visa category for a tourist is the B-2 visa (a B-2 visa actually covers tourists, visits to relatives or friends, visits for health reasons, participation in conferences, participation in incidental or short courses of study and participation in amateur arts and entertainment events). Prospective students can also obtain a B-2 visa, but they often will be denied the change to student status in the US unless they announced their intention to do so to the INS inspector at the border and/or informed the consular officer at the time of the B-2 application.

The process for obtaining the B-2 visa can be quite simple or very difficult depending on the national origin of the applicant, the age and marital status of the applicant, and the applicant's ties to the US and his/her home country.

What limitations are associated with the B-2 Pleasure Visitor Category?

Tourists are normally given a six-month visa which can be extended in some circumstances for an additional six months. Unlike some other nonimmigrant visas, application is made at a US consulate and no INS approval is necessary. Also, the applicant's spouse and children must independently qualify for the B-2.

In order to qualify for a tourist visa, an individual must meet a few broad requirements necessary to show nonimmigrant intent:

- The alien is coming to the US for a specific period of time
- The alien will not be engaging in work and will engage solely in legitimate activities relating to pleasure
- The alien will maintain a foreign residence that he or she has no intention of abandoning during the period of his or her stay in the US

For a tourist to show nonimmigrant intent and demonstrate compliance with the above tests, the key issues are financial arrangements for the trip, specificity of trip plans, ties to the alien's home country and ties to the US.

More specifically, consular officers are instructed to consider the following factors:

- whether the arrangements for defraying expenses during the visit and return passage are adequate to obviate the need for obtaining employment in order to provide the funds to return home;
- if relatives or friends are sponsoring, whether the ties between the alien and the supporter are compelling enough to make the offer credible;

- whether the alien has specific and realistic plans for the visit (not just vague and uncertain intentions) for the entire period of the contemplated visit;

- the period of time planned for the visit is consistent with the purpose of the trip and the alien has established with reasonable certainty that departure from the US will take place when the visit is over;

- the applicant's proposed length of stay is consistent with the timeframe limitation offered by the hosting relative or fried (an alien's stated intention to remain in the US for the maximum period allowable by US authorities will be looked upon negatively);

- whether the applicant can show reasonably good and permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations which indicate a strong inducement to return abroad.

Generally speaking, an applicant's chances for getting a visa will be improved if the planned trip is short, the itinerary is clearly listed, the applicant can easily prove he or she has the money to pay for the trip and the applicant has a job at home and can show that the time away has been approved by the employer. Retirees will have a better chance if they can show strong family and economic ties to the home country and finances to support the trip. Of course, in all cases the home country makes a big difference. The lower the visa overstay rate for nationals of a particular country, the better the chances overall that the application will be approved.

What limitations does Travel Authorization under a Visa Waiver have versus a B-1 or B-2 visa?

While being able to travel without a visa is convenient for many, it is important to be aware of a few key restrictions on people from Visa Waiver countries who are authorized to travel. First, unlike a normal B-2 visa under which a visitor would be authorized to stay for six months, Visa Waiver entrants can only stay a for a maximum of 90 days. Second, it is not possible to apply for an extension of stay or a change of status to another non-immigrant or immigrant classification. Finally, A Visa Waiver entrant will typically be unable to apply for a new visa at a US consulate in Mexico or Canada for reentry into the US.

Do I need to submit an ESTA application if I have a B-1 or B-2 visitor visa?

No. As long as a traveler's B visa remains valid, they are exempt from filing an application.

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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.

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I was married with my American girlfriend. During my marriage, we did apply for the permanent residency or green card. I have gone through the fingerprints and was issued a Social Security Number. Sometime after these were processed, we divorced. All those things were cancelled, I guess. Every time, when I am going to visit USA from Turkey to visit my sister, I am requested to apply waiver by the embassy visa section people; after applying waiver, they issue me each time a year time B1/B2 visa.

Do I have a right to be in the US based on the green card application?

Once you left the country and reentered as a visitor and not in a parole status, that effectively was the end of the adjustment of status application. In any case, the application has probably been denied already.

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If somebody become an American citizen half a year ago from naturalization, can he or she go to another country, live there and then come back after 10 years?? Will there be any problem maintaining citizenship?

Once a person obtains citizenship, they have it for the rest of their life. In extremely rare instances, people lose their citizenship, but it would typically be when they were found to have engaged in fraud to get their citizenship or were not eligible.

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If my visa R-1 expires (I will leave the US just before my visa will expire) while my form I-360 green card application will be still spending, then my Form I-360 could be approved anyway or it will be automatically rejected by USCIS?

You do not need to be in the US while an I-360 is pending. As long as the employer still has a position for you, that would be enough. You could then process at a US consulate abroad after the I-360 is approved.

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I am a UK citizen who received a penalty notice disorder last year for drunk & disorderly which I paid a fine for £80.

I have booked a holiday for America starting 21st February but recently heard if you have ever been arrested you have to apply for a visa with the US Embassy.

I contacted the US Embassy who stated I couldn't get an appointment until February 9th but the process could take up to 8 weeks which would be way past the start of my holiday.

As I didn't receive a conviction or commit moral turpitude would I have to still apply for a visa?

Also would this show up on a police certificate if I applied for one.

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For travel after January 12, 2009, you will be required to apply for advance authorization to travel to the US as a visitor on the Visa Waiver Program. This new, advanced authorization is known as ESTA. Contained in the application is a question asking whether you have ever been arrested or convicted of a crime of moral turpitude. To determine if a crime is one of moral turpitude, a variety of factors must be considered. These include the criminal statute defining the crime and the facts of the particular event leading to the conviction. For example, some crimes of assault are crimes of moral turpitude, but determining whether a specific arrest and/or conviction for assault will involve moral turpitude will depend on which level of assault was committed (simple assault, ABH, GBH). It is irrelevant that the person may have only been issued a citation and/or paid a fine.

In your case, you have stated that you were convicted of drunk and disorderly conduct, and paid a fine. Although it is unlikely, there is a possibility that the crime could be one of moral turpitude depending on the specific facts of the incident. However, you should consult with your lawyer who can advise.

Assuming that a conviction for drunk and disorderly conduct is not a crime of moral turpitude, you should be able to tick "no" to the question contained in the application. I would advise that you carry your documentation with you when you travel to the US in the event you are questioned.

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4. Border and Enforcement News

US Border Patrol hit two numeric milestones in 2008, announcing that by year's end, it had finished constructing 500 miles of fencing along the US Mexico border, as well as detained over 700,000 undocumented immigrants, *The Associated Press* reports.

The border fencing is just 170 miles shy of its completion. The Bush administration expects to have at least 600 miles complete by Jan. 20, when Barack Obama is sworn in as president, DHS Secretary Michael Chertoff said. About 160 miles have been built since August, after increased criticism was levied against the fence's construction.

Congress has set aside $2.7 billion for the fence since authorizing its construction in 2005, but there is no estimate on how much the entire construction and continued maintenance will cost. In September, Customs and Border Protection commissioner

Ralph Basham told Congress his agency needed an additional $400 million to complete the project, citing higher costs for fuel, steel, and labor. Congress approved the $400 million and the Bush administration contends that it now has enough money to finish the fence.

Of the other notable '08 figure, most—approximately 661,766—detainees were Mexicans, many who had crossed their country's 2000 mile land border with the southern United States, according to Border Patrol's Office of International Affairs. The rest—62,059—were citizens of other countries, a majority from Central America, including almost 20,000 from Honduras, 16,300 from Guatemala, and over 12,000 from El Salvador. A total of 386 detainees died, down from 398 the previous US fiscal year.

Hispanic leaders have urged president-elect Obama to issue a moratorium on immigration raids and deportations after the US Congress failed to pass the most recent version of sweeping immigration legislation in 2007. The proposed legislation would have given legal status to the estimate 12 million undocumented immigrants residing in the US.

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Beginning on January 9, the federal government has expanded their DNA sampling collection to include anyone arrested on federal charges and immigrants detained by the ICE, DHS, or US Border Patrol. Under the previous collection plan, DNA was collected exclusively from people convicted of crimes. *The Washington Times* reports that most of the new samples would be collected from any immigrant who currently enters the country without authorization, but immigrants either awaiting authorized entry into the US or detained at sea by Coast Guard would not be subjected to sampling.

The Justice Department instituted the policy with the approval of Congress in a December 2005 reauthorization of the Violence Against Women Act. "We know from past experience that collecting DNA at arrest or deportation will prevent rapes and murders that would otherwise be committed," said Sen. Jon Kyl [R-AZ], sponsor of the legislation.

The American Civil Liberties Union has criticized the expansion, arguing that the policy unfairly punished people who might never be convicted of crimes. They cite that most immigrant arrestees are later found not guilty and have their cases dismissed. The ACLU says the government could also use immigrant DNA beyond its intended scope, analyzing samples for ancestry and medical diagnoses, both of which are supposed to be protected under the Fourth Amendment. Law enforcement agencies sometimes use their database matches to track down family members whose DNA is similar to crime-scene genetic material in the hope they will name the suspect, the ACLU claims.

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A Houston-based company was ordered to pay a $21 million settlement to avoid criminal prosecution for hiring undocumented immigrants, *The Houston Chronicle* reports. The settlement, brought against IFCO Systems North America, the largest pallet manufacturing company in the US, is the largest fine ever issued to a company who knowingly hired undocumented immigrants. Prosecutors who handled the case

against IFCO said it "severely punishes" the company, which was caught with over 1,100 undocumented immigrants on its payroll in spring 2006.
The settlement sends a "powerful message that ICE will investigate and bring justice to companies which hire illegal workers," said John P. Torres, a top ICE official.

The government began investigating IFCO following a tip from ICE in February 2005 that undocumented immigrants at an IFCO plant in Albany were ripping up their W-2 forms. On April 19, 2006, ICE agents arrested 1,187 undocumented immigrants at over 40 IFCO locations nationwide. The federal government's analysis of payroll information IFCO submitted to the IRS and the Social Security Administration suggest that from 2003 through April 2006, as many as 6,000 undocumented immigrants were employed at IFCO plants, according to prosecutors.

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A former US Border Patrol agent was sentenced in federal court this month to serve more than seven years in prison for his role in a cocaine smuggling conspiracy. According to *The Monitor* of Texas. Reynaldo Zuniga, 34 of Harlingen, Tex., pleaded guilty in September to using his official vehicle to drive drug traffickers past areas where they were most likely to be caught. Zuniga told investigators he accepted $1,200 to make the drive between the banks of the Rio Grande and a Hidalgo Whataburger at least five times before his June 6 arrest, according to court documents. Zuniga, the fifth Border patrol agent to face criminal charges in 2008, resigned his position soon after his arrest. In addition to a prison term of seven years and three months, US District Judge Ricardo H. Hinojosa imposed a three-year supervised release sentence on the former agent.

Two Mexican nationals indicted with Zuniga were also sentenced concurrently with Zuniga's sentence. Jose Luis Arteaga, A Reynosa smuggler caught on hidden camera accepting a ride from Zuniga, was sentenced to three years and 10 months in federal prison. Luis Alfredo Cruz, who picked up Arteaga from the Whataburger where Zuniga left him, received a prison term of one year and six months.

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The Miami Herald reports that last week, ICE officers arrested 110 immigration fugitives and violators during a five-day sweep last week in Miami-Dade, Broward and Palm Beach counties and the Orlando and Tampa areas.

Officers arrested 81 fugitives who went into hiding after being ordered to leave the country and 29 other immigration violators. The operation netted 47 arrests in Miami-Dade, 30 in Broward, 15 in Palm Beach, 11 in Tampa and seven in Orlando.

Of those arrested, authorities said, 24 had criminal records that included aggravated assault, battery, drug possession, trespassing, disorderly conduct, resisting an officer with violence, sexual battery, Social Security fraud, burglary, carrying a concealed firearm, larceny, grand theft and lewd and lascivious assault on a child.

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A resolution may be near for a lawsuit filed in a Tucson federal court in May in which two US Border Patrol agents claimed the agency illegally retaliated against them for whistle-blowing. According to *The Sierra Vista Herald* of Arizona, Juan Curbelo and

William Leafstone Jr. claimed officials unlawfully suspended them because they publicly disclosed the practice of “shotgunning” traffic, or stopping vehicles without reasonable suspicion.

Attorneys for the defendants, Border Patrol Chief David Aguilar and Tuscon Sector Chief Patrol Agent Robert Gilbert, have requested that the February 2 hearing be dismissed under the premise that the US District Court does not have jurisdiction over the matter. The plaintiffs’ attorneys responded to the motion to dismiss that the US District Court has jurisdiction to hear claims of constitutional violations.

According to the lawsuit complaint, Border Patrol officials arrested Curbelo’s ex-wife in New Mexico in December of 2006 and charged her with possession of marijuana with the intent to distribute. Agent Curbelo later obtained the incident report. He and Leafstone believed it contained inconsistencies that were an effort to cover up a lack of reasonable suspicion for stopping the vehicle. Leafstone testified on behalf of Curbelo’s ex-wife at a suppression hearing in a court in New Mexico in August 2007 regarding the practice of shotgunning. A judge determined the traffic stop was not supported by evidence of reasonable suspicion. Afterwards, Gilbert reprimanded and demoted Curbelo and Leafstone because they had “divulged sensitive Border Patrol information,” according to the complaint.

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5. News From the Courts

***Toufighi v. Mukasey*, (9th Cir. Aug. 18, 2008)**

Petitioner's motion to reopen to apply for adjustment of status was rightly rejected because it was barred by the usual ninety-day deadline under 8 CFR §1003.2(c)(2) and INA §240(c)(7)(C)(I). The BIA did not err as a matter of law when it concluded that Petitioner failed to establish that he would be persecuted for being a Christian. We find that we lack jurisdiction to review the IJ's original determination because Petitioner's opportunity to appeal that decision lapsed ninety days after the BIA's order. The BIA reasonably interpreted the IJ's decision as an express rejection of Petitioner's claim to have converted to Christianity.

Petitioner, a citizen of Iran, sought as asylum, withholding of removal and Convention Against Torture (CAT) relief claiming that he had converted from Islam to Christianity and that he feared he would be persecuted upon return to Iran for committing apostasy. In support of his claim, Petitioner submitted several unauthenticated official documents translated from Farsi, and two letters from a Christian pastor attesting to his conversion.

At the asylum hearing, the immigration judge refused to consider the two unauthenticated documents, finding that Petitioner had been given sufficient time to properly authenticate them. The letters from the pastor were admitted, but discounted by the IJ, because they were not from the pastor of Petitioner's home church and the pastor was not their to testify. The IJ found Petitioner's testimony was generally credible, but stated that he had "very deep concern as to the genuineness of [Petitioner's] conversion." The IJ noted that Petitioner knew very

little about the Bible and could not name the 12 apostles. The IJ found that his conversion was "basically a vehicle for him to apply for political asylum in the United States." The IJ concluded that Petitioner had not established past persecution or a well-founded fear of persecution. The IJ also found that Petitioner had not met his burden for withholding of removal or CAT relief, but granted him voluntary departure. Petitioner filed a timely appeal with the BIA, but failed to file a brief and, as a result, his appeal was dismissed by the BIA under 8 CFR §1003.1(d)(2)(i)(E). The BIA's dismissal also advised Petitioner that he had 30 days to voluntarily depart the United States and the consequences of the failure to depart.

Petitioner did not depart the United States. Instead, over one year later he filed a motion to reopen to adjust his status based on his recent marriage to a United States citizen. In the alternative, Petitioner also based his motion on changed conditions in Iran. The BIA denied the motion finding that Petitioner was ineligible to adjust status because he had failed to voluntarily depart. The BIA also found that the motion was barred as untimely under 8 CFR §1003.2(c)(2). The BIA denied the motion based on changed circumstances in Iran because it was not supported by evidence that Petitioner would be directly affected by the changes. The BIA found that, to the extent any of the new information related to the persecution of Christians in Iran, Petitioner had already failed to establish that he would be affected.

On review, the Ninth Circuit held that it need not determine whether Petitioner was ineligible for adjustment due to his failure to depart. The court held that the BIA rightly rejected the motion to reopen for adjustment as time barred because it was not filed within ninety days.

The court also held that the BIA did not err as a matter of law when it concluded that Petitioner failed to establish that he would be persecuted for being Christian. The court found that the IJ had rejected Petitioner's assertion that he had converted to Christianity. The court then found that it lacked jurisdiction to review the IJ's original determination because Petitioner's opportunity to appeal that determination lapsed ninety days after the BIA's final order from the original appeal.

The court also rejected Petitioner's contention that the IJ found him credible, but found that he could avoid persecution by practicing his faith in hiding in Iran. The court found that the BIA's interpretation of the IJ's words was reasonable and that the IJ did make an express adverse credibility determination.

The court also held that it did not have jurisdiction to review the IJ's conclusions at the asylum hearing, but only had jurisdiction to review the BIA's denial of the motion to reopen. The court rejected Petitioner's argument that the court had jurisdiction to review the IJ's conclusions because the BIA rested its decision on the IJ's conclusions of fact. The court distinguished Petitioner's case from *Ma v. Ashcroft*, 361 F.3d 553 (9th Cir. 2004) because *Ma* involved a motion to reconsider, not a motion to reopen.

The court held that the BIA did not abuse its discretion in denying Petitioner's motion to reopen. The court reasoned that because the IJ found the conversion was not genuine, and that apostasy would not be imputed to Petitioner, the BIA did not abuse its discretion in concluding that the evidence of changed conditions was not material to his claim and that he failed to establish a prima facie case for asylum. In conclusion, the court held that the BIA did not err in failing to consider other possible bases for reopening, such as Petitioner's association with the United States,

his pro-American opinion, and that his new wife and children are United States citizens. The court found that the BIA is not required to search the record and tease out claims and that the BIA did not act unreasonably in not addressing such claims.

The petition for review was denied.

One judge, Berzon, dissented. The dissent opined that the BIA misunderstood what the IJ actually said about Petitioner's conversion and then failed to consider whether the conditions in Iran have changed for apostates. The dissent stated that the question for asylum purposes is not what Petitioner believed in his heart of hearts, but whether he would be perceived as having renounced Islam. The dissent concluded by stating that the majority reached an "unjust" result.

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6. News Bytes

The percentage of Hispanic immigrants who are either working or looking for work in the US has declined for the first time since 2003, according to a recent Pew Hispanic Center Study. *The Washington Post* reports that the center, which published the report, said the findings are a testament to the nature and depth of the recession, which is rooted in slumping housing values, as many Hispanic immigrants found work in construction in the boom years.

“The recession has widened and deepened, and, driven by construction, it has certainly seemed to put Latino immigrants in a state of transition,” said Rakesh Kochhar, and economist with Pew and author of the study. “The question is: What is the next thing to emerge? Are we now going to see a return back home?”

Specifically, the percentage of Hispanic immigrants who were either employed or actively looking for a job at the end of the third quarter was 71.3 percent, compared with 72.4 percent a year ago. The number of Hispanic immigrants in the labor force increased 150,000 from the third quarter of 2007 to the third quarter of 2008. But that growth was much smaller than the growth in the working-age population of Hispanic immigrants. Overall, there are 17.1 million foreign born Hispanics in the working-age population.

The decrease was sharpest among immigrants from Mexico, who make up more than two-thirds of the US Hispanic immigrant population. The share of Mexican-born immigrants in the US workforce declined to 70.7 percent from 72.7 percent, according to the study.

The Pew Hispanic Center’s report can be found at http://pewhispanic.org/reports/report.php?ReportID=99.

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The USCIS has announced that beginning January 31, all US citizens returning to the US by land or sea from Canada, Mexico, or the Caribbean must carry a document that shows their citizenship, according to *The Seattle Times*. Those who don’t have a passport must carry a birth certificate plus government-issued photo ID, such as a driver’s license or school ID for young students, to show at border inspection stations. The new rule effects all vehicle and train travelers, cruise and ferry passengers, and private boaters.

US travelers who don't have proof of citizenship—either a birth certificate or passport—will face secondary screening and delays at border stations while their citizenship is checked, said US Customs and Border Protection spokesman Mike Milne. Non-US citizens who live in the US should carry proof of legal residency and their citizenship documents. Canadians trying to enter the US without proof of their citizenship could be turned away.

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A recently conducted poll has suggested that there exists widespread support for the renewal of the State Children's Health Insurance Program (SCHIP) and for coverage of legal immigrant children, according to *The Congressional Quarterly*. The poll, commissioned by child advocacy group First Focus, found public support for SCHIP renewal at 82 percent. The poll also found 67 percent favored eliminated the current five-year waiting period for legal immigrant children. SCHIP is not available to legal immigrants during their first five years in the country, except for those residing in states that use state funds to cover qualified legal immigrants.

"The findings announced today confirmed what we knew over a year ago," Senate Majority Leader Harry Reid [D-NV], said in a statement. "Americans support providing children with health care coverage and they understand the importance of removing the five-year waiting period. In 2007, House Democrats dropped provisions that included eliminating the five-year waiting period from a compromise bill to renew and expand SCHIP after House Republicans charged the provisions would provide insurance coverage to undocumented immigrants.

"In the debate of 2007, Republicans used the coverage of legal immigrant children against expanding the children's health insurance program, said Christopher Spina, spokesperson for First Focus. "We clearly now see a mandate among the American people." Spina called the poll, with 1,200 respondents conducted in November "credibly accurate."

The results of the First Focus poll are available at their website.

This week, the House voted overwhelmingly to expand SCHIP coverage. The Senate will take up the measure next and if it passes, President-elect Obama is expected to sign the bill.

*****

US Citizenship and Immigration Services announced that it has delayed the rollout of its new electronic immigrant indexing system, *The Federal Times* announced. The current immigration system in place by USCIS, a paper-based system, was intended to be replaced later this year. The agency awarded a five-year, $500 million contract to IBM last month. Shortly after the contract, Accenture decided to protest the bid.

The Government Accountability Office said they would hear Accenture's protest, and intends to make a final decision on the protest by March. "The protest is still very basic. They haven't really fleshed it out to any degree," said Michael Aytes, acting deputy director at CIS. "While it's in protest, we're going to use the time to develop our requirements. The final contractor, whoever it may be, will develop a system that lets adjudicators make immigration decisions electronically, instead of paper.

*****

Five trade groups have filed a lawsuit against the Department of Homeland Security in an attempt to block a new requirement that federal contractors check the immigration status of their employees using the department's E-Verify system, *The Federal Times* reports. In documents filed in the US District Court for Maryland on Dec. 23, the groups ask the court to halt the Jan. 15 implementation of the rule and to declare the rule invalid. The groups argue the requirement, in a June executive order, is contrary to the statute authorizing E-Verify.

The law states that DHS "may not require any person or other entity to participate" in the program, according to court documents. It would require federal contractors and subcontractors to verify the employment eligibility of all new hires regardless of whether those employees will perform work on a federal contract. Existing employees assigned to government work must also be re-verified using the system.

The five groups who filed the case are the US Chamber of Commerce, Associated Builders and Contractors, the Society for Human Resource Management, the American Council on International Personnel and the HR Policy Association. They claim the rule is vague and will force companies to verify all employees on E-Verify to avoid potential suspension and debarment. In addition to facing financial and time burdens, companies could be vulnerable to lawsuits by employees who feel they've been discriminated against, the plaintiffs say.

DHS has now delayed until late February the roll out of the rule.

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Jose Oswaldo Sucuzhanay, a Ecuadorian who ten years ago left his country in search for the American dream in Brooklyn, was laid to rest in his native hometown of Cuenca last week, his life cut short by a hate crime, New York's *The Daily News* reports.

Sucuzhanay, 31, was walking arm-in-arm through Bushwick, NY, with his brother on Dec. 7 when he was attacked by three men spewing anti-gay and ant-Latino venom. Sucuzhanay, heading home later that night, was smashed with a bottle, beaten with a baseball bat, and kicked by his assailants. Five days later, he was dead. Police were still hunting for his killers as Sucuzhanay was laid to rest.

Jose became a success in America, working his way from waiter to real estate broker and co-owner of a Bushwick realty company. "He wasn't just a successful man, but also a man with a sense of solidarity," said Jose Astudillo, an official at the National Secretariat of the Immigration in Cuenca. "As he achieved success, he shared it with others." Jose sent hundreds of dollars a month back to his mother, who took care of his son and mentally handicapped daughter. The children's mother, Amada Rivera, was living with Jose in Brooklyn when he was murdered.

Sucuzhanay's funeral procession was attended by hundreds of relatives, friends, and activists. The crowd walked with the body in a procession from the airport to his funeral home, holding candles and chanting "Yes to peace" and "No to racism."

One attendee, Maria Algilar, didn't know Jose, but came because her husband, sister and brother-in-law lived in the area where Sucuzhanay was murdered. "They are worried, and are hoping they catch the gang that did this," she said. "A person's race shouldn't matter." Other attendees were family members of Marcelo Lucero, another Ecuadoran immigrant murdered by a group of Long Island teenagers just four weeks before Jose's death. "It's the same thing that happened to us," said New York City resident Isabel Lucero, sister of Marcelo. "We know how the family feels."

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7. Siskind's Legislative Update

The content in Legislative Update is crossposted from Greg Siskind's blogs, and follows the federal and state laws, regulations, and legislative proposals that impact the lives of immigrants. Click on any of the articles' links for similar stories.

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HOUSE EASILY PASSES BILL EXTENDING HEALTH INSURANCE TO IMMIGRANT KIDS

A few days ago I said this would be an indicator of whether we might see a more immigration-friendly GOP in the new Congress. Yesterday, the House passed by a 2 to 1 margin the SCHIP children's health insurance bill. A key provision in the bill changes the law to allow all legal immigrant children to access the program. To date, only children who have been permanent residents for five years can use the program. An estimated 4,000,000 new children will have access to health care and many of them are the immigrant kids previously excluded. Democrats voted overwhelmingly for the bill - 249 to 2. Republicans voted 137 to 40 against. The fact that the bill passed easily is important. And the fact that Republicans didn't make a big deal out of the immigration provisions in the bill is also noteworthy.

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EFFECTIVE DATE OF E-VERIFY FEDERAL CONTRACTOR RULE BEING PUSHED BACK

The Bush Administration has announced that they are postponing the implementation date of the E-Verify mandate for federal contractors until February 20, 2009 after negotiations with various parties to a lawsuit challenging the new law. Here is the US Chamber's press release.

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PLACEHOLDER COMPREHENSIVE IMMIGRATION REFORM BILL INTRODUCED IN SENATE

Senate Bill 9 has been introduced by Harry Reid and has not much more than a title at this point - The Stronger Economy, Stronger Borders Act of 2009. The bill's stated purpose:

A bill to strengthen the United States economy, provide for more effective border and employment enforcement, and for other purposes.

The fact that the bill has been introduced is the important thing. It shows

immigration reform is a priority for the new Senate. This may be an indicator that immigration reform is going to be taken up quickly rather than pushed off until 2010 or later.

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ARKANSAS CONSIDERING SANCTIONS LAW

Representative Bill Sample, Republican of Hot Springs, has proposed a bill that would create a harboring law similar to Oklahoma's and would require public employers to use the E-Verify system.

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INDIANA LAWMAKER TO RE-INTRODUCE SANCTIONS BILL

WIBC-FM reports that Senator Mike Delph will re-introduce his employer sanctions bill in this legislative session.

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MISSOURI SANCTIONS LAW NOW IN EFFECT

State and local government agencies must use E-Verify as of January 1st. Contractors with those agencies also must use the system if they have contracts worth more than $,000, receive state loans or tax benefits or who have been found to have previously hired illegally present immigrants. And firms that violate immigration law face the threat of having their business licenses revoked.

AP POLL INDICATES NEBRASKA LAWMAKERS POISED TO SUPPORT SANCTIONS LAW

The AP reports on a survey of legislators in the state and most are indicating their support for a bill which mandate use of E-Verify for the state's employers.

But employers in the state are pushing back.

In the mean time, the bill has now been introduced.

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OKLAHOMANS WATCHING THE COURTS FOR RULING ON SANCTIONS LAW

The 10th Circuit is still considering a case challenging the constitutionality of Oklahoma's employer sanctions law and officials in the state are growing anxious.

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UTAH GOVERNOR DOUBTS LAW WILL TAKE EFFECT IN JULY

Utah Governor Jon Huntsman Jr. has told a radio station that the decline in the number of illegally present immigrants in the country due to the recession has reduced the need to implement SB81, the state's new employer sanctions law. Huntsman also warned his fellow Republicans:

'Before we rush headlong into anything, first of all listen very carefully to what the federal government is going to do.' Huntsman said, adding that one reason national Republicans took a beating in the 2008 elections is because they lost the Hispanic vote by 2-to-1 to Democratic candidates, and the 'critical' tone of Republicans on immigration was a big factor in those numbers.

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SOUTH CAROLINA BUSINESS OWNERS WORRY ABOUT NEW LAW
The Times and Democrat in Orangeburg, South Carolina discusses fears business owners in the state have regarding the new employer sanctions law in that state.

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NEBRASKA AND WYOMING LEGISLATORS PUSHING EMPLOYER SANCTIONS BILLS
Nebraska's unicameral legislature is considering Legislative Bill 34, a bill that mandates all employers begin using E-Verify in 2010 and also calls for the revocation of business licenses for employers knowingly employing unauthorized workers.

Wyoming House Bill 103 is somewhat broader. It has a harboring statute like the Oklahoma and Utah laws. E-Verify would be mandated for all employers and will be phased in over three years starting with state and local agency employees as well as employers contracting with those agencies, then large employers and eventually the smaller ones as well.

The bill also imposes fines on employers knowingly hiring unauthorized workers, something that seems an obvious violation of IRCA which only permits states to use their license laws in enforcing immigration rules (and even that is debatable).

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8. Notes from the Visalaw.com Blogs

Greg Siskind's Blog on ILW.com

- Breaking News: Lofgren Selected to Chair House Ethics Committee
- Get Well, Senator Kennedy
- Mexican Official Denounces Commuting of Border Patrol Agents
- Tooting My Own Horn
- Lindsay Graham: Republicans Ready to be a Partner on Immigration
- A New Day
- Investigation Uncovers History of Sex Assaults at Texas Detention Center
- The Plight of the Disabled Detainee
- Bush Pardons Border Patrol Agents
- Investigators Slam Detention Center over Death of Detainee
- Napolitano Says Goal is to Fix Broken Immigration System
- Keeping Us Safe
- House Easily Passes Bill Extending Health Insurance to Immigrant Kids

- Treasury Secretary Designee Has Illegal Nanny Problem
- February 2009 Visa Bulletin Out
- First Immigration Test for Republicans in New Congress
- Heroes among Us
- Sunstein Tapped for Regulatory Czar
- ESTA System for Foreign Visitors not Ready to Go
- Effective Date of E-Verify Federal Contractor Rule Being Pushed Back
- Placeholder Comprehensive Immigration Reform Bill Introduced in Senate
- The Old McCain is Back!
- 100,000 and Counting
- Bush's Attorney General Ends Deportation Defense of Incompetent Legal Representation
- America's Worst Sheriff
- New Evidence Immigrants Leaving Country

The SSB Employer Immigration Compliance Blog

- Arkansas Considering Sanctions Law
- Indiana Lawmaker to Reintroduce Sanctions Bill
- South Carolina Labor Department Educating Employers on New Law
- Missouri Sanctions Law Now in Effect
- AP Poll Indicates Nebraska Lawmakers Poised to Support Sanctions Law
- Oklahoma Watching the Courts for Ruling on Sanctions Law
- Supply, Meet Demand
- New South Carolina Law Taking Effect
- Utah Governor Doubts Law Will Take Effect
- South Carolina Business Owners Worry about New Law
- Kentucky Restaurant Owner Sentenced to Eight Months for IRCA Violation
- Nebraska and Wyoming Legislators Pushing Employer Sanctions Bills

Visalaw Fashion, Sports, & Entertainment

- Fresno Hockey Players Face Uncertain Immigration Future
- Music Critics at USCIS Nearly Wreck Star's US Recital
- Is India the Next Baseball Hotspot?
- Paving the Way for Latino NFL Officials
- Soprano Will Skip US Trip Due to Visa Headaches
- BALCA Denies Labor Certification Holding Singer Position not Full-Time
- Cuban Soccer Players Defect

Visalaw International Blog

- Canada: Sergio R. Karas Quoted in *The Lawyers Weekly*
- Canada: Sergio R. Karas Quoted in Today's *National Post* Story
- Canada: Immigration Priority List Announced
- Bombing Suspect Arrested in Canada
- Malaysia's "Most Wanted" Seeks to Stay in Canada

Visalaw Healthcare Immigration Blog

- Cuban Doctors Face Challenges in Resettling in US
- Poll Shows Public Support for Extending S-CHIP to Legal Immigrant Kids
- Armed Forces to Recruit Foreign Doctors and Nurses
- The Immigrant Healthcare Dilemma
- DOS Issues Final Healthcare Worker Rule

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9. State Department Visa Bulletin for February 2009

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **February**. 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 **January 9th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits.

Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act 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.)

Family	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES

1st	08JUL02	08JUL02	08JUL02	08OCT92	15JUL93
2A	01JUN04	01JUN04	01JUN04	22SEP01	01JUN04
2B	08MAY00	08MAY00	08MAY00	01MAY92	15OCT97
3rd	01AUG00	01AUG00	01AUG00	08OCT92	01JUN91
4th	15FEB98	22SEP97	15JAN98	22MAR95	01MAY86

***NOTE:** For February, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 22SEP01. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 22SEP01 and earlier than 01JUN04. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Chargeability Areas Except Those Listed	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
Employment-Based					
1st	C	C	C	C	C
2nd	C	01JAN05	01JAN04	C	C
3rd	01MAY05	01OCT02	15OCT01	01APR02	01MAY05
Other Workers	15MAR03	01OCT02	15OCT01	15OCT01	15MAR03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105 - 139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the

10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States . The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2009 annual limit being reduced to 50,000**. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **February**, immigrant numbers in the DV category are available to qualified DV-2009 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off this is filler space right herenumber is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	23,300	Except: Egypt: 13,300 Ethiopia 11,650 Nigeria 9,500
ASIA	11,000	Except: Bangladesh 9,550
EUROPE	17,100	
NORTH AMERICA (BAHAMAS)	5	
OCEANIA	575	
SOUTH AMERICA,	800	

and the CARIBBEAN		

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2009 program ends as of September 30, 2009. DV visas may not be issued to DV-2009 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2008 principals are only entitled to derivative DV status until September 30, 2009. DV visa availability through the very end of FY-2009 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN MARCH

For **March,** immigrant numbers in the DV category are available to qualified DV-2008 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	26,800	Except: Egypt 16,000 Ethiopia 13,800 Nigeria 9,900
ASIA	13,200	Except: Bangladesh 10,850
EUROPE	19,800	
NORTH AMERICA (BAHAMAS)	6	
OCEANIA	675	
SOUTH AMERICA, and the CARIBBEAN	850	

D. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

http://travel.state.gov

From the home page, select the VISA section which contains the Visa Bulletin.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:
Subscribe Visa-Bulletin *First name/Last name*
(example: Subscribe Visa-Bulletin Sally Doe)

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address :

listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

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10. Federal Judges Delaying Swearing-in of New Citizens, Report Finds

Federal judges in some parts of the US are delaying the swearing-in of new citizens, with the intent of courts keeping millions of dollars of naturalization fees paid my immigrants, according to a new USCIS report and immigration analysis. *The Washington Post* reports that USCIS ombudsman Michael Dougherty's 13-page report details numerous instances of delays. In one court, a federal judges delay caused nearly 2,000 people to not receive the oath in time to register for November's general election.

The report adds new fuel to the history of complaints that citizenship applicants face long waits, poor service, and uneven treatment from US immigration courts depending on which office handles their application. USCIS has made improvements in clearing applicant backlogs since summer 2007, including working with the FBI to speed up background checks, but the new report still suggests that a more improved system is vital.

The findings are atypical of most citizenship procedures, Dougherty notes, as "federal courts are very responsive" to USCIS requests for naturalization processes. However, the report finds that in some instances, "court officials denied USCIS the opportunity to naturalize persons in time to vote in the recent general elections" and "otherwise engaged in conduct inconsistent with the letter or the spirit" of the nation's immigration law.

Citing one specific example, the report state that immigration officials asked a US district judge this summer to schedule more ceremonies or to allow the agency to administer the oath itself to new citizens, but the request was denied. A USCIS district director was told the court had already "done more than its share" in swearing in new citizens, according to the report. Dougherty did not name the judge, except to say that the situation arose in New York, Los Angeles, Chicago or Detroit, the four US cities where courts retain exclusive jurisdiction over naturalization cases. "Courts that choose to assert exclusive authority to naturalize new citizens should also embrace a customer service ethic that recognizes the singular importance of oath ceremonies," Dougherty said via a DHS press release.

The report noted that courts receive approximately $14.09 per oath administered, and that USCIS allocated $8.7 million last year for this purpose. But the report added that USCIS officials "are very reliant on the cooperation of court officials' to meet naturalization goals, citing their 'substantial power' and a 'lack of parity'" with immigration officials. Prakash Khatri, who was Dougherty's predecessor until 2008, said fee revenue is an incentive for judges to perform oath ceremonies themselves instead of allowing the agency to handle them. "In many areas of the country, the judiciary has held USCIS hostage for a court fee that these jurisdictions are not giving up," Khatri said. "People wait for months after their naturalization applications are approved, only to find that the delay is a direct result of judges not scheduling naturalization ceremonies."

Dougherty recommended that the agency and the courts work together to set rules for how each side handles oath ceremonies "to ensure a consistent customer service ethic that safeguards the significance of the event for new citizens."