

# WASHINGTON UPDATE

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## IN THIS ISSUE...

- Post-Election Update
- Lame Duck Session to Focus on Intelligence Reform Legislation—Make Your Voice Heard!
- Lame Duck Session Offers Opportunity to Increase Access to Vital H Visa Programs
- President Signs Bill to Allow Electronic Completion and Storage of I-9s
- President Signs Bill Providing Relief to Family Victimized by 9/11 Hate Crime
- Recent Rulemaking and Other Activity in the Federal Agencies
- Media Spotlight: Members and Staff in the News
- Did You Know?

### **Post-Election Update**

As is always the case in post-election Washington, much change is taking place. For instance, Attorney General John Ashcroft tendered his resignation last week, and President Bush has nominated Alberto Gonzales, current White House counsel, to fill that position. This appointment awaits Senate confirmation. Other Cabinet members are also stepping down, including Secretary of State Colin Powell, who announced his resignation on November 12, effective at the pleasure of the President. President Bush has announced his intention to name National Security Advisor Condoleezza Rice as Powell's replacement. Check future *Updates* and AILA's website ([www.aila.org](http://www.aila.org)) for the latest information on additional changes to the Bush Cabinet.

Post-election changes in Congress will also soon be apparent. Republicans and Democrats each are meeting this week to begin organizational discussions for the 109th Congress. During that meeting, each party will begin to hand out committee assignments for the upcoming Congress. We will keep you posted on that as well.

The 109th Congress will convene in January. The election leaves us with both challenges and opportunities. Restrictionists failed to defeat Members of Congress, including Representatives Cannon (R-UT), Kolbe (R-AZ), and Flake (R-AZ), who have proposed positive immigration initiatives, and are expected to work in support of these efforts in the upcoming Congress. In addition, President Bush has announced that he will be working with Congress to reform our immigration system. Challenges include supporting and expanding civil liberty and due process protections that have been weakened by post-9/11 executive actions and legislation and successfully working against measures that further dilute these important protections.

It also is important to remember that the 108th Congress has not ended! (See below for details.) Members of the 108th Congress will be meeting in lame duck session starting November 16 to deal with a range of issues, including appropriation measures to fund several federal agencies. Negotiations also are ongoing on the intelligence reform legislation, with some Members of

Congress hoping to achieve consensus and pass a measure for the President to shortly sign. Other Members of Congress are seeking remedies for the current blackout on H-1B and H-2B visas.

### **Lame Duck Session to Focus on Intelligence Reform Legislation—Make Your Voice Heard!**

Members of Congress returned to Washington on November 16 for a lame duck session, a major focus of which will be the pending intelligence reform legislation (H.R. 10/ S. 2845). The House and Senate conferees have yet to craft an agreement on many of the two bills' differing provisions, including how to reform our nation's intelligence capacity. Among the most controversial provisions are the anti-immigrant and anti-civil liberty measures that are included in the House-passed measure (H.R. 10). Although the 9/11 Commissioners asked that they be removed from the legislation, House Republican conferees and leadership are continuing to push for these provisions to be included in any final version of the legislation. Negotiations are ongoing, with some conferees pushing for an agreement and vote on a bill during the lame duck session. Thus far, the Senate conferees have held the line, resisting these ill-conceived measures that will not make us safer and have little to do with security and terrorism.

H.R. 10 includes a laundry list of provisions that will not make us safer. Several of these measures failed to move through Congress, others were not even debated in Committee. These measures would: prohibit acceptance of Consular ID cards and other forms of identification; broadly expand the expedited removal regime – a regime that in its current form serves to undermine rather than enhance national security; heighten the standard for asylum eligibility in a way that would prove an insurmountable burden for many asylum applicants; make visa revocation a ground of removal and prohibit all administrative and judicial review of the revocation decision; suspend habeas corpus for a wide range of administrative orders; expands mandatory indefinite detention; authorize removal to countries that lack a functioning government and non-consenting countries; and directly tie the issuance of driver's licenses to immigration status.

Restrictionist groups are working this issue heavily. For instance, the Federation for American Immigration Reform (FAIR) has been urging the House Republican conferees to “stand up” for immigration security reform, by falsely alleging that the 9/11 Commission recommended these extremist measures. In fact, the 9/11 Commission Chair and Vice-Chair asked the House leadership to remove these provisions from the bill.

Please continue to contact your Senators and Representatives through Contact Congress ([http://capwiz.com/aila2/mail/oneclick\\_compose/?alertid=6540936](http://capwiz.com/aila2/mail/oneclick_compose/?alertid=6540936)) or through the Capital Switchboard (202-224-3121). Below is the full list of House and Senate conferees

#### **Senate Conferees:**

- Sen. Susan Collins (R-ME)
- Sen. George Voinovich (R-OH)
- Sen. Norm Coleman (R-MN)
- Sen. John Sununu (R-NH)
- Sen. Pat Roberts (R-KS)
- Sen. Mike DeWine (R-OH)
- Sen. Trent Lott (R-MS)
- Sen. Joseph Lieberman (D-CT)
- Sen. Carl Levin(D-MI)

- Sen. Richard Durbin (D-IL)
- Sen. John Jay Rockefeller (D-WV)
- Sen. Bob Graham (D-FL)
- Sen. Frank Lautenberg (D-NJ)

**House Conferees:**

- Rep. David Dreier (R-CA)
- Rep. Peter Hoekstra (R-MI)
- Rep. Henry Hyde (R-IL)
- Rep. Duncan Hunter (R-CA)
- Rep. Jim Sensenbrenner (R-WI)
- Rep. Robert Menendez (D-NJ)
- Rep. Jane Harman (D-CA)
- Rep. Ike Skelton (D-MO)

**Lame Duck Session Offers Opportunity to Increase Access to Vital H Visa Programs**

During the upcoming lame duck session scheduled to begin on November 16, it is important that Congress take prompt action in order to prevent U.S. employers from facing an H-1B and H-2B visa “blackout” for almost an entire year.

U.S. Citizenship and Immigration Services (USCIS) officials announced on October 1, 2004, the very first day of the new fiscal year, that the cap on visas for highly educated foreign professionals had been reached. Without access to H-1B visas, U.S. employers will be unable to hire the professionals with cutting-edge knowledge and skills—including recent graduates from top U.S. universities with advanced degrees in math and science—to develop new products, engage in groundbreaking research, create new jobs, and compete in the global marketplace.

There still are not enough U.S. students interested in pursuing advanced degrees to fill these highly specialized positions and, at the same time, the percentages of foreign nationals graduating with advanced degrees from U.S. universities is rising. If we cannot keep this U.S.-educated talent in the U.S., our competitors abroad will profit. A workable H-1B program that protects U.S. employers’ access to highly educated foreign nationals who graduate from U.S. universities with advanced degrees will keep the world’s brightest minds in the U.S. and help retain American jobs.

While employers depend on the H-1B program to access the best and brightest global talent, other U.S. employers depend on H-2B workers to fill the essential positions that help keep the doors of businesses open. The H-2B program is a vital tool that allows U.S. employers to fill workforce shortages for short-term employment where no U.S. workers are available. Reports indicate that exhaustion of the restrictive 66,000 cap on H-2B short-term workers may soon be exhausted. Without the additional manpower provided by H-2B short-term workers, many U.S. businesses would not be able to operate at full capacity or would be too short-staffed to provide quality services.

Last year, congressional efforts to provide increased access to the H-2B visa were stalled. This year, immediate legislative relief is imperative to provide U.S. employers with access to H-2B workers for this fiscal year and future years. If Congress does not act, all short-term employers

will be affected, including ski resorts in the Midwest, the timber industry in the Northeast, fish and crabbing processors in the Southeast, and tourism across the nation.

### **President Signs Bill to Allow Electronic Completion and Storage of I-9s**

President Bush, on October 30, signed legislation that amends INA § 274A(b) to allow employers to electronically complete and store employment eligibility verification (I-9) forms. Under previous law, employers were required to retain the I-9s on paper, microfilm or microfiche, either for three years after the date of hire or for one year after employment is terminated, whichever is later. Maintaining sufficient storage space to accommodate hard copies of I-9 forms had become a significant document management challenge for many companies, especially in industries with high employee turnover rates. The new law (Pub. L. No. 108-390; H.R. 4306) permits the use of handwritten or electronic signatures in completing the I-9 forms and allow employers to store the I-9s electronically, should they choose to do so.

### **President Signs Bill Providing Relief to Family Victimized by 9/11 Hate Crime**

President Bush, on October 30, signed into law a private immigration relief bill for victims of a post 9/11 hate crime (Priv. Law No. 108-4; H.R. 867). As discussed in more detail in our last *Update*, the private law, sponsored by Representative Rush Holt (D-NJ), concerns the plight of Durreshahwar (Duri) Hasan, and her four daughters. Duri's husband Waqar, a Pakistani immigrant, was murdered four days after 9/11 in a brutal hate crime. As a result of Waqar's death, his family would have faced removal from the United States had Congress and the President not acted to permit them to remain in their adopted homeland.

Our nation must remain true to our core humanitarian principles as we confront terrorism wherever it exists. We must therefore act in every way possible to oppose retaliatory violence and revenge killings. The signing into law of H.R. 867 is a critically important statement in opposition to hate-crimes and in defense of American unity in the face of terrorist violence.

### **Recent Rulemaking and Other Activity in the Federal Agencies**

Federal agencies have issued a few new Federal Register notices in recent weeks, impacting Temporary Protected Status, the US-VISIT program, and the DV-2006 lottery. A brief summary of these items follows.

#### Department of Homeland Security

DHS Identifies the 50 Land Ports Where US-VISIT Will Be Implemented. The United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) is an integrated, automated entry-exit system that records the arrival and departure of aliens, verifies aliens' identities, and authenticates aliens' travel documents through comparison of biometric identifiers. On August 31, 2004, the Department of Homeland Security (DHS) implemented the second phase of US-VISIT by publishing an interim final rule authorizing DHS to require certain aliens to provide fingerprints, photographs or other biometric identifiers upon arrival in the United States at the 50 most trafficked land ports of entry. The interim rule also authorized DHS to identify the specific land border ports in a separate notice published in the Federal Register.

A November 9 DHS notice identifies the 50 most trafficked land ports of entry where US-VISIT will be implemented and provides an estimated date when each port will begin enrolling aliens in

US-VISIT at the secondary inspection area. Pursuant to the August 31 interim rule, all 50 ports of entry will begin enrolling aliens in US-VISIT no later than December 31, 2004.

In addition, as stated in the August 31 interim rule, the November 9 notice identifies only land ports of entry in which aliens will be enrolled in US-VISIT upon entry into the United States. DHS will announce, through a future notice in the Federal Register, the piloting of a biometric data collection program at a limited number of sites as part of US-VISIT processing upon departure from the United States. (69 FR 64964, 11/9/04, see AILA InfoNet Doc. No. 04111060).

DHS Extends Designation of Honduras Under the TPS Program. The DHS's U.S. Citizenship and Immigration Services (USCIS), on November 3, published a notice in the Federal Register extending the current designation of Honduras under the TPS program for another 18 months, until July 5, 2006. The notice also sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) to re-register for TPS. The extension of Honduras' TPS designation is effective January 5, 2005 and will remain in effect until July 5, 2006. The 60-day re-registration period begins November 3, 2004 and will remain in effect until January 3, 2005. In addition, the notice automatically extends the validity of employment authorization documents (EADs) issued under the Honduran TPS program for six months, until July 5, 2005, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended. (69 FR 64084, 11/3/04, see AILA InfoNet Doc. No. 04110463).

DHS Extends Designation of Nicaragua Under the TPS Program. The USCIS, on November 3, published a notice in the Federal Register extending the current designation of Nicaragua under the TPS program for another 18 months, until July 5, 2006. The notice also sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) to re-register for TPS. The extension of Nicaragua's TPS designation is effective January 5, 2005 and will remain in effect until July 5, 2006. The 60-day re-registration period begins November 3, 2004 and will remain in effect until January 3, 2005. In addition, the notice automatically extends the validity of EADs issued under the Nicaraguan TPS program for six months until July 5, 2005, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended. (69 FR 64088, 11/3/04, see AILA InfoNet Doc. No. 04110462).

#### Department of State

DOS Announces DV-2006 Application Procedures. The Department of State (DOS), in a November 9 Federal Register notice, issued instructions for the 2006 Diversity Immigrant Visa Program (DV-2006). Entries for the DV-2006 lottery must be submitted electronically between noon (EST) on Friday, November 5, 2004 and noon (EST) on Friday, January 7, 2005. Applicants may access the electronic Diversity Visa entry form at <http://www.dvlottery.state.gov> during the registration period beginning noon November 5, 2004. Paper entries will not be accepted. The DOS strongly encourages applicants not to wait until the last week of the registration period to enter, as heavy demand may result in delays. No entries will be accepted after noon (EST) on January 7, 2005. (69 FR 65012, 11/9/04, see AILA InfoNet Doc. No. 04111061).

## **MEDIA SPOTLIGHT: Members and Staff in the News**

*The Honolulu Advertiser* quoted **Gary Singh** (Hawaii) in a November 15 article about USCIS' new appointment system, InfoPass. **Stephen Bander** (Southern Florida) was quoted in a November 15 *Miami Herald* article about new businesses founded by immigrants.

**David Sperling** (New York) was quoted in a November 14 *New York Times* article about abuse that undocumented immigrants face at work and in daily life. **Allan Wernick** (New York) was featured in a November 14 *Daily News* article about his leadership of "Citizenship Now," a hugely successful call-in service that offered free immigration advice to thousands of immigrants.

**John Pratt** (Southern Florida) was quoted in a November 14 *Miami Herald* article about his client who died while in DHS custody. **Margaret Wong** (Ohio) and **Robert Whitehill** (Pittsburgh) were quoted in a November 14 *Pittsburgh Tribune Review* article about a couple whose adoption of their son and subsequent overseas trip resulted in their son's detention and denial of entry into the U.S. **Carole Mesrobian** (Santa Clara) and **Mary Jane Weaver** (Northern California) were quoted in a November 14 *San Jose Mercury News* question and answer article about immigration.

**Charles Foster** (Texas) was quoted in a November 13 *Associated Press* article about a statue to be erected in honor of former President George H.W. Bush. **Wafa Abdin** (Texas) was quoted in a November 13 *Houston Chronicle* article about the passing of Palestinian President Yasser Arafat. *The Arizona Republic* quoted **Emilia Banuelos** (Arizona) in a November 12 article about the passage of Arizona's Proposition 200. **Kirsten Schlenger** (Northern California) was quoted in a November 12 *San Jose Mercury News* article about a reception to honor Bay area gay and lesbian immigrants. **Angelo Paparelli** (Southern California) was quoted in a November 11 *Orange County Register* article about President Bush's nomination of White House Counsel Alberto Gonzales to replace retiring Attorney General John Ashcroft.

*The Miami Herald* quoted **Jeanne Butterfield** (National) in a November 10 article about prospects for comprehensive immigration reform with the new Bush Administration. **Ira Kurzban** (Southern Florida) was quoted in a November 10 *New York Times* article about the Supreme Court ruling that a conviction for driving under the influence of alcohol will not subject a legal permanent resident to automatic deportation. **Lory Rosenberg** (Washington, DC) was quoted in a November 10 *Sun-Sentinel* article on the same topic.

*The Hartford Courant* quoted **Michael Boyle** (New England) in a November 9 article about the investigation by State police and Homeland Security officers of several Department of Motor Vehicles employees suspected of illegally selling driver's licenses. **Dennis Muchnicki** (Ohio) was featured in a November 9 *The Lantern – Ohio State University* article about his presentation on various human aspects of immigration law to Ohio State University law students.

**Ira Kurzban** (Southern Florida) was quoted in a November 6 *Sun-Sentinel* article about the White House decision to grant stays of deportation to a narrow group of Haitians. **Rebecca Sigmund** (Atlanta) was quoted in a November *Corporate Legal Times* article about the bureaucracy of DHS putting some U.S. companies in a vulnerable position by keeping out needed foreign workers.

**Lisa Brenman** (Carolinas) was featured in a November 4 *Chapel Hill Herald* article about a local seminar that will help local business owners face the challenges and opportunities that come with the expansion of the Hispanic presence. **Marshall Whitehead** (Arizona) was quoted in a

November 4 *Phoenix New Times* article about Arizona's ballot initiative, Proposition 200. **Sergio Karas** (Canada) was quoted in a November 4 *The Globe and Mail* article about disaffected Americans' interest in immigrating to Canada following the November 2 elections.

**Simon Azar-Farr** (Texas) was quoted in a November 3 *San Antonio Express News* article about a case involving a former San Antonio, Texas resident who was deported over allegations of marriage fraud, after which the Board of Immigration Appeals ordered the Department of Homeland Security to review new evidence that would exonerate him. **Tammy Fox-Isicoff** (Southern Florida) was quoted in a November 1 *Miami Herald* question and answer article about immigration. **Brent Renison** (Washington State) was quoted in a November 1 *Seattle Times* article about a Peruvian immigrant, married to a U.S. citizen for less than two years, who faces deportation after her husband's suicide. **Marshall Fitz** (National) was quoted in a November 3 *Tiempos del Mundo* article about what Latino immigrants would like from their future president regarding immigration.

**Nancy Shivers** (Texas) and **Simon Azar-Farr** (Texas) were quoted in an October 31 *San Antonio Express-News* article about the H-2A visa program. **Indu Liladhar-Hathi** (Santa Clara), **Helen Hui** (Northern California) and **Michelle Gee** (Santa Clara) were quoted in an October 31 *San Jose Mercury News* question and answer article about immigration. **Samuel Hyman** (Canada) was quoted in an October 30 *Seattle Times* article about a U.S. citizen who was denied re-entry to Canada because she does not have Canadian residency (although she did not know it at the time).

**Matthew Bernstein** (Chicago) was featured in an October 29 *Chicago Daily Law Bulletin* article about the opening of a new immigration law clinic at Chicago-Kent College of Law that he will direct. **Mazen Sukkar** (South Florida) was quoted in an October 27 *Miami Herald* article about U.S. Immigration and Customs Enforcement's initiative to peruse databases for signs of immigration law violators who may pose a danger to U.S. security.

*The New York Sun* quoted an **American Immigration Lawyers Association** press release in an October 27 article about the 9/11 Commission Recommendations Implementation Act (H.R. 10). **Jeanne Butterfield** (National) was quoted in an October 26 *Christian Science Monitor* article about President Bush and Senator Kerry's positions on immigration reform. **Emilia Banuelos** (Arizona) was quoted in an October 26 *New York Times* article about Arizona's ballot initiative, Proposition 200. **Tammy Fox-Isicoff** (Southern Florida) was quoted in an October 26 *Miami Herald* question and answer article about immigration. **Raul Godinez** (Southern California) was quoted in an October 25 *Daily News of Los Angeles* article about whether a federal judge would exclude evidence in an illegal smuggling case because officers entered a drop house without a warrant. **Dan Griswold** (Texas) had an op-ed published in the October 24 edition of the *Arizona Republic* calling for immigration reform.

Note: Please submit all articles, letters-to-the-editor, etc. for inclusion in "Members in the News" to Julia Hendrix of the AILA Advocacy Department ([jhendrix@aila.org](mailto:jhendrix@aila.org)).

## **Did You Know?**

“The migration issue, of course, is an important one for all Mexicans and Americans. In our meetings, we reaffirmed President Bush’s plan to work with our new Congress on developing a temporary worker program to match willing foreign workers with willing U.S. employers. The President is committed to making this a high priority in his second term.”

-- Secretary of State Colin L. Powell, Remarks With Foreign Minister of Mexico, Luis Ernesto Derbez, at a Joint Press Availability, Mexico City, Mexico, November 9, 2004

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