

WASHINGTON UPDATE

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Spring Recess – An Opportunity to Meet with your Representatives and Senators

Many Senators and Representatives will be in their home states/districts for the Spring District Work Period. The House work period runs from April 5-16, and the Senate’s from April 12-16. Please contact the AILA Advocacy staff for more information.

H-2B Fix Imperative

The U.S. Bureau of Citizenship and Immigration Services announced on March 10 that it had received enough petitions to meet the annual H-2B cap and would no longer accept any new petitions for the visa program. The announcement came just six months into FY 2004 and threatens to devastate local economies that are dependant upon the extra manpower provided by foreign workers during their summer seasons.

Employers of H-2Bs are vocally lobbying Congress for an emergency fix to the H-2B cap in order to “Save the Summer.” Without these workers, summer resorts towns will be devastated, and many U.S. businesses will be unable to open their doors or retain their U.S. workforce.

In addition, a variety of industries depend upon H-2B workers to perform jobs for which no U.S. workers are available. H-2B workers are found on the rosters of minor league hockey and baseball teams. They work in the Northwest flying and repairing special helicopters designed to fight summer forest fires. They enable the U.S. fishing industry to send out summer fleets since these workers know how to properly fillet fish for foreign markets.

Many Senate and House offices have reported that employers have been contacting them about this crisis. Bipartisan legislation to provide this emergency relief is expected to be introduced shortly. We urge the Senate and House to act promptly on this measure to “Save the Summer!”

Without an immediate increase in the H-2B cap for the current fiscal year, businesses across the nation that depend upon the availability of a summer workforce will suffer dramatically. This quick fix must be followed in the next fiscal year by a more lasting solution that can be achieved only through comprehensive immigration reform.

The Bush Administration, earlier this year, signaled its concern with programs such as the H-2B, by proposing an immigration reform plan. Congress also has weighed in with several proposals, including the Immigration Reform Act of 2004, sponsored by Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD). Such long-term reform is necessary to fix our broken immigration system and create a workable immigration system that: allows foreign nationals to work here when there is evidence of a shortage of available U.S. workers; permits those individuals already here and working to obtain legal status and work authorization; and reduces the backlogs, allowing the families of workers in the U.S. to reunite.

House Immigration Subcommittee Examines US VISIT Program

The House Judiciary Committee’s Subcommittee on Immigration, Border Security and Claims held an oversight hearing on March 18 to discuss the efficacy of the US VISIT program with regard to the missions of the Department of Homeland Security (DHS). Testifying at the hearing were Robert Jacksta, Executive Director, Border Security and Facilitation, U.S. Customs and Border Protection (CBP), DHS; Robert A. Mocny, Deputy Director, US-VISIT Office, DHS; Alfonso Martinez-Fonts, Jr., Special Assistant to the Secretary for the Private Sector, DHS; and Randolph C. Hite, Director, Information Technology Architecture and Systems Issues, U.S. General Accounting Office (GAO).

Mr. Jacksta discussed the logistics of the US-VISIT program with regard to equipment set up and program implementation at the 115 airports and 14 seaports; employee training; processing times; and interagency cooperation. He opined that, “the US-VISIT process...has demonstrated its capability to enhance the security of our citizens and visitors, facilitate legitimate travel and trade, ensure the integrity of the immigration system and safeguard the personal information of visitors from theft or misuse.”

Mr. Mocny stated, “DHS deployed US-VISIT on time, on budget, and has met the mandates established by Congress, as well as the challenge by the Secretary of Homeland Security to incorporate biometrics (fingerscans) into US-VISIT ahead of schedule.” He showed a two-minute video, taken at the Hartsfield-Jackson Airport, of a visitor undergoing the fingerscan and photograph process. Mr. Mocny focused on the technologies used in the entry and exit stages of the US-VISIT program to halt would-be terrorists, maintain visa status information, and manage visa overstayers. He also mentioned the US-VISIT’s budget and some success stories of the program. Mr. Martinez-Fonts discussed the private sector’s role as “an important partner throughout the development and rollout of US-VISIT.”

Mr. Hite called the US-VISIT program “risky, both because of the type of program it is and because of the way it is being managed.” GAO materials cited several significant aspects of the US-VISIT program that “increase the risk that it will not meet its goals or its cost, schedule, and performance commitments.” Inadequate staffing, unclear employee roles and responsibilities,

problems with existing systems, and significant potential cost were but a few of the problem areas noted in Mr. Hite's testimony.

Subcommittee Chairman John Hostettler (R-IN) opened the question and answer phase of the hearing by questioning Mr. Jacksta about whether or not the US-VISIT program would have been able to stop terrorists, like those responsible for the Madrid bombing, from entering the U.S. Mr. Jacksta replied affirmatively that U.S. officials would have been able to process the relevant data while the plane was in the air, and then dispatch authorities to intercept such terrorists when they deplane. Chairman Hostettler also asked if terrorists attempting to enter the U.S. under the visa waiver program would be stopped as well. Mr. Jacksta replied that such terrorists would also be stopped when they attempted to deplane, or when they went through the questioning process in the terminal.

Ranking Member Sheila Jackson Lee (D-TX) noted that one of the important challenges of the system is how difficult it is to strike a balance when using the program to distinguish between friendly visitors and those who mean to harm U.S. citizens. Representative Jackson Lee also voiced concern about the US-VISIT program being sufficiently staffed. She asked Mr. Jacksta about any anticipated staffing and relevant cost increases, to which he responded that there are no plans now to increase the number of US-VISIT staff, but they are still reviewing the program. He said it is important to note that it is not merely about increasing the number of personnel, but also that particular attention is being paid to properly training personnel.

Representative Linda T. Sanchez (D-CA) asked Mr. Hite about the impact and possible compromise of information brought on by the integration of different databases. Mr. Hite acknowledged that it is indeed important to determine the appropriate level of integration based on the needs and requirements of the program. He advocated using a top-down approach and warned that it is not a "one-size-fits-all" solution. He added that the GAO is not currently engaged in any studies of the impact of database integration.

Representative Sanchez then asked Mr. Jacksta how the US-VISIT program could determine who is a real threat to the U.S. as opposed to who is a simple visa overstayer. Mr. Jacksta deferred to Mr. Moczny for the response, who replied with a roundabout example of a B-2 visitor adjusting to F-1 status. He explained that the system should be able to note a legitimate change of status within the U.S., but added that it is not yet at that level of full and proper information flow.

Representative Chris Cannon (R-UT) wondered if police would be able to take fingerprints of those they stop--for broken headlights, for example—and match the prints with those in the US-VISIT database. Mr. Jacksta replied that the capability exists. Representative Jeff Flake (R-AZ) asked for a clarification on the time table for implementing various stages of the US-VISIT program and reiterated his concern that US-VISIT be able to detect visa overstayers based on data collected upon a visitor's exit from the U.S.

AILA concurs with many of the concerns raised by GAO during the hearing (JOANNA CHECK) and believes that each action the DHS takes at our borders should be examined in the light of how the agency balances our enhanced security needs with the efficient flow of travel and trade (upon which our economic security, which pays for our national security, is based). As such, DHS should take the time to develop and adequately fund an entry-exit system that works. As our entry-exit system, an adequately funded US-VISIT program must enhance our security and allow the flow of people and goods to support our economy. In conclusion, while US-VISIT is still in its infancy, database studies and reports should be completed on the feasibility of every aspect of the program. The Administration and Congress should use that information to develop a

comprehensive plan that takes into account adequate funding, resources and appropriate deadlines, and determine whether the same level of security could be obtained through increased intelligence and database security checks performed outside the country. To view AILA's concerns with and recommendations for US VISIT in more detail, please review the testimony of Kathleen Walker, who represented AILA on January 28 before the House Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security (<http://www.aila.org/fileViewer.aspx?docID=12104>).

To view the complete testimony from the March 18 hearing, click on the link below:

<http://www.house.gov/judiciary/immigration.htm>

House Immigration Subcommittee Holds Oversight Hearing on FY 2005 Budget Request

The House Subcommittee on Immigration, Border Security, and Claims on March 11 held an oversight hearing on funding for immigration in the President's fiscal year (FY) 2005 budget request. Testifying at the hearing were: Dr. Demetrious G. Papademetriou, Co-director and Co-founder of the Migration Policy Institute; T.J. Bonner, National President of the National Border Patrol Council; Timothy J. Danahey, National President of the Federal Law Enforcement Officers Association; and Michael W. Cutler, Former Special Agent.

For FY 2005, the President has requested substantial budget increases for the bureaus tasked with immigration enforcement functions, with only an extremely modest appropriation proposed for the immigration benefits bureau. Under the President's request, the Bureau of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) would receive increases of \$281 million and \$257 million, respectively, for interior enforcement and border enforcement. Of that increase, \$23 million is earmarked for worksite enforcement, a proposed doubling of that program's current resources. In contrast, the FY 2005 budget request contains a mere \$58 million in additional funding for the Bureau of Citizen and Immigration Services (USCIS). From this amount, USCIS is directed to draw funds to help the agency reduce its backlog of six million applications and institute six-month processing time standards.

In their testimony, the witnesses addressed the following concerns with the budget proposal:

- Mr. Bonner noted that the President's request would eliminate 19 border patrol agent positions and would decrease border patrol funding by roughly \$18 million. The budget request would also dedicate \$64 million towards purchasing unmanned aerial vehicles and sensors for surveillance technology. Mr. Bonner stated that border patrol staffing should increase by a thousand agents per year rather than being cut.
- Mr. Danahey brought to the subcommittee's attention the fact that ICE Special Agents are still being paid on different pay scales, depending on whether they were legacy INS or Customs agents. He recommended an across-the-board increase for all legacy INS agents to help bring equality to the bureau. He also stated that 1,500-2,000 additional agents are needed to start to make an impact in interior enforcement.
- Mr. Cutler emphasized the need for additional adjudications officers and immigration inspectors so that USCIS could do a "more effective job of ensuring that applications are correctly adjudicated in a timely manner." In his testimony, Mr. Cutler noted that, with the current lack of adequate staffing, naturalization examiners are expected to process between

20-25 naturalization applications daily and adjudications officers are expected to process roughly 40 immigration benefits petitions each day.

- Dr. Papademetriou testified that the funding allocated to USCIS is “deceptive in that in terms of appropriated funding, adjudications suffer an \$11 million cut and overall funding for the Bureau is cut by \$85 million.” Dr. Papademetriou then reasoned that since one reason for illegal immigration is the petition backlogs that keep workers from their jobs and families from reuniting, increasing funding for immigration services could simultaneously improve benefits and reduce illegal migration. Dr. Papademetriou recommended that Congress hold the bureau accountable for developing and implementing a three-year plan to reduce the benefits application processing backlog from six to one million. He also recommended that USCIS be given a dependable unchanging mission. Without the need to reprioritize its duties to administer enforcement-related tasks, such as Special Registration, the bureau could become more efficient in carrying out the benefits adjudication function, he said.

AILA long has held that direct congressional appropriations must supplement user fees to achieve an adequate AND predictable funding level. USCIS adjudications and security checks are in the national interest and such appropriations are necessary to ensure a rational and predictable funding stream. Unfunded and complicated mandates further underscore this need. The President’s proposed budget is going in the wrong direction. Furthermore, Administration spokespersons have indicated their goal of covering costs wholly with fee revenue. AILA calls on the Administration to conduct a study to determine what level of funding is necessary to adequately support USCIS’s adjudications functions, eliminate the backlog, and put this bureau on sound financial footing. Both the Administration and Congress need to step up to the plate and recognize that the current funding system is deeply flawed and needs to be changed.

To make matters worse, the Administration has proposed to increase fees. Proposing fee increases of such magnitude in a time of unprecedented backlogs and delays is difficult to justify. To view AILA’s statement about the President’s budget request and proposed fee increases please click here: <http://www.aila.org/contentViewer.aspx?bc=10,911,594,4576>

Senator Chambliss Introduces H-2A Bill; AgJobs Remains Bill of Choice

Senator Saxby Chambliss (R-GA), on March 9, introduced the Temporary Agricultural Work Reform Act of 2004 (S. 2185). As introduced, the bill would reform the process for admitting H-2A temporary agricultural workers but would make no provision for those workers who are already here contributing to the economy. Among its provisions, the legislation would replace the current labor certification process with a labor attestation process, replace the Adverse Effect Wage Rate with a prevailing wage, and create a one-time waiver to the 3, 10 and permanent bars to allow workers who have accrued over 180 days of illegal presence in the U.S. to apply for the H-2A program from their home country.

While there is agreement that the H-2A agricultural visa program is broken and in need of repair, a majority of the Senate already has endorsed the preferred reform vehicle, the Agricultural Job Opportunity, Benefits, and Security (AgJobs) Act of 2003 (S. 1645/H.R. 3142). This measure was introduced on September 23, 2003, by Representatives Chris Cannon (R-UT) and Howard Berman (D-CA), and by Senators Larry Craig (R-ID) and Edward Kennedy (D-MA). This bipartisan legislation would take a two-pronged approach to achieving a stable and legal agricultural work force. The long-term approach would streamline the H-2A guest worker program to make it more practical, secure and fair, while necessary, short-term relief is provided through the bill’s earned adjustment program. The bill thus recognizes that immigration reform

must include both a legal means by which employers can hire foreign workers in the absence of available U.S. workers and a means to legitimize the status of those immigrants already present in the U.S. who have been supporting our economy with their labor.

Although Senator Chambliss states that part of his motivation for sponsoring the legislation is to put a stop to “the wink and nod cycle contributing to hiring illegal aliens,” S. 2185 does not deal adequately with the fact that undocumented foreign workers make up roughly 50% of our nation’s agricultural workforce. In contrast, the AgJobs bill would deal with this reality by implementing a mechanism by which undocumented agricultural workers may apply first for temporary resident status based on their past work experience, and then eventually become permanent residents upon satisfying prospective work requirements.

AILA strongly supports the passage of the bipartisan AgJobs bill. This legislation is not only a plus for workers and employers, but also represents a major step towards reforming an immigration system that is out of whack with reality. The bill’s provisions would constitute a positive gain for both workers and employers by creating a stable labor force and a useable program through which future workers can legally enter.

DHS Files Brief in Favor of Domestic Violence Victim

On February 19, 2004, the Department of Homeland Security (DHS) filed a 43-page brief in support of Ms. Rodi Alvarado’s asylum claim. Her case, *Matter of R-A-*, is pending before the Attorney General. Prior to submission of the DHS brief, the Attorney General was expected to issue a precedent decision addressing whether domestic violence can serve as a valid basis for a grant of asylum. DHS, however, has urged the Attorney General to decide the case without issuing a precedent decision because DHS itself is finalizing regulations that would govern claims such as the one asserted by Ms. Alvarado. Alternatively, DHS has asked the Attorney General to postpone a decision in the case until the DHS final rule has been published.

In its thorough brief, DHS maintains that Ms. Alvarado satisfies all of the elements of a traditional asylum claim and that it is unnecessary to develop a novel legal framework or set of legal principles to resolve claims based on domestic violence. In its brief, DHS also suggests that the forthcoming regulations would call for evaluation of such claims through generally applicable asylum requirements.

Restrictive Driver’s License Bill Defeated in Maryland

The Maryland House Judiciary Committee, on March 5, defeated a bill (HB 41) which would have denied access to driver’s licenses for undocumented immigrants. Delegate Herb McMillan (R-Annapolis), author of HB 41, and other proponents of the bill, argued that issuing licenses to undocumented immigrants would threaten public safety. Delegate McMillan also offered the bill as an amendment to a transportation bill (HB 855) after HB 41 was defeated in committee. The amendment was soundly defeated by a 95-42 vote.

AILA believes that granting immigrants access to driver’s licenses will increase their incentive to seek driver’s education and insurance, thus making our roads safer. Granting these individuals access to driver’s licenses also will discourage the need to use fraudulent documents, essentially bankrupting the fraudulent document cottage industry and making us all safer from those who want to do us harm.

Lobby Day 2004 a Resounding Success

AILA's March 4 Lobby Day was a resounding success, with nearly double the number of participants from last year. Over 250 AILA members traveled to Washington to lobby their Members of Congress for positive immigration reform. Many brought clients and other guests, for a total of some 300 Lobby Day participants. Among the guests was a group of students from Arizona that lobbied in favor of the DREAM /Student Adjustment Act. The students shared their experiences and argued that denying college access to undocumented children has had a profoundly negative impact on their communities. In addition, a graduate student from YALE spoke eloquently on the subject of how the current delays in visa processing and security checks performed at consulates abroad are impacting negatively the ability of foreign-born graduate students to travel abroad for work or to visit family. She also educated members of Congress on how these delays are keeping graduate students out of the U.S. for months at a time, thereby negatively affecting their research projects as well as funding for these projects. Another group of guests included U.S. citizens whose spouses have been deported due to provisions included in misguided 1996 legislation.

Congressional staffers have been uniform in their positive response to the Lobby Day meetings, with several already contacting AILA for follow-up information. Such a response reaffirms the importance of continued advocacy efforts by AILA members in the field. To further that goal, AILA has developed a new track for its June 2004 Annual Conference entitled "Politics, Perspectives, and Practice," to be held on Saturday, June 12. We encourage all interested members to attend, including both novice and seasoned advocates. To learn more about this track, click on the link below.

<http://www.aila.org/infonet/fileViewer.aspx?docID=12050&index=6>

We'll also be looking for you on March 17, 2005, as part of AILA's 2005 Lobby Day delegation!

Club for Growth Hosts Briefing on How Republicans Can Win on the Immigration Issue

The Club for Growth hosted a forum on March 16 to discuss immigration policy and its implications for the Republican Party. Panelists who spoke at the briefing included: John Fund, Wall Street Journal; Michael Barone, U.S. News & World Report Columnist; and Ed Goetas, The Tarrance Group. Club for Growth president Stephen Moore moderated the discussion. In his prefatory remarks, Mr. Moore highlighted the political and economic importance of immigration to this country and argued forcefully that it was in the best interests of conservatives to embrace a welcoming immigration policy. The panelists discussed how to secure broad Republican support for progressive immigration policy, including the debunking myths and careful messaging.

Ed Goetas discussed polling of Republicans on immigration issues and identified some of the messages that engender support for immigration and immigrants. In particular, he noted that characterizing immigrants as hard-working, tax-paying contributors (as the President did during his January 7 speech on Immigration Reform) resonates well with the public at large and Republicans in particular. Michael Barone spoke about his book, "The New Americans," and made the case that, restrictionist claims notwithstanding, the current wave of immigrants is very similar to previous waves of immigrants. He explicitly discredited the recent article in Foreign Policy magazine by Samuel Huntington, who argues that Latinos constitute a "major potential threat" to this country's "cultural and political integrity." John Fund highlighted the importance Republicans place on the assimilation of immigrants into the country. He stressed that pro-immigration policy and messages need to emphasize assimilation rather than diversity. (He also

pointed out, however, that immigration as an electoral issue may be “fool’s gold” – people often express strong opinions on the subject but, by and large, it is not an issue that ultimately determines their vote.

Recently Introduced Legislation

The following is a brief description of newly introduced, immigration-related legislation, in reverse chronological order and by chamber. AILA will report further on these bills if and when they move through the legislative process.

House Legislation

H.R. 3992, introduced on March 17 by Representative Tom Tancredo (R-CO), would amend the National Environmental Policy Act of 1969 to require preparation of statements regarding the environmental impacts of legal and illegal immigration.

H.R. 3987, introduced on March 17 by Representative Lane Evans (R-IL), would amend the INA to provide for the automatic acquisition of citizenship by certain individuals born in Korea, Vietnam, Laos, Kampuchea, or Thailand.

H.R. 3978, the Designation of Foreign Terrorist Organizations Reform Act, introduced on March 16 by Representative Elton Gallegly (R-CA), would, among other things, amend INA § 219 to modify the provisions relating to designation of foreign terrorist organizations.

H.R. 3956, introduced on March 10 by Representative Nancy Johnson (R-CT), would designate Poland as a program country under the Visa Waiver Program of INA § 217. Representative Johnson introduced a similar House resolution on February 11 (H. Res. 525).

H.R. 3934, introduced on March 10 by Representative Anthony Weiner (D-NY), would halt the issuance of visas to citizens of Saudi Arabia until the President certifies that the Kingdom of Saudi Arabia does not discriminate in the issuance of visas on the basis of religious affiliation or heritage.

H.R. 3928, introduced on March 10 by Representative Eni Faleomavaega (D-AS), would amend title 10 of the United States Code, to allow nationals of the United States to attend military service academies and receive Reserve Officers’ Training Corps (ROTC) scholarships on the condition that the individual naturalize under INA § 325 before graduation.

H.R. 3918, the Comprehensive Immigration Fairness Reform Act of 2004, introduced on March 9 by Representative Sheila Jackson Lee (D-TX), would amend the INA to reunify families, permit earned access to permanent resident status, provide protection against unfair immigration-related employment practices, reform the diversity visa program, and provide adjustment of status for Haitians and Liberian nationals.

Senate Legislation

S. 2187, the HRIFA Improvement Act of 2004, introduced on March 10 by Senator Bob Graham (D-FL), would make various amendments to the Haitian Refugee Immigration Fairness Act of 1998.

S. 2185, the Temporary Agricultural Work Reform Act of 2004, introduced on March 9 by Senator Saxby Chambliss (R-GA), would reform the process for admitting H-2A temporary agricultural workers but would make no provision for those workers who are already here contributing to the economy. Among other things, the legislation would replace the current labor certification process with a labor attestation process, and replace the Adverse Effect Wage Rate with a prevailing wage. For additional details on this legislation, see article no. 5 in this *Update*.

Recent Rulemaking and Other Activity in the Federal Agencies

Federal agencies have issued a variety of new regulations in recent weeks, impacting everything from the processing of H-2B petitions to asylum procedures under the U.S./Canada Safe Third Country Agreement. A brief summary of these regulations follows.

Department of Homeland Security

USCIS Sets Forth Procedures for H-2B Petitions in Wake of Cap Being Reached. The Department of Homeland Security's (DHS's) Bureau of Citizenship and Immigration Services (USCIS) issued a notice on March 16 advising the public that the agency will no longer accept H-2B petitions for temporary nonimmigrant workers for the remainder of Fiscal Year (FY) 2004 now that it is clear that the demand for H-2B workers will exceed the statutory numerical limit (the cap) for the fiscal year. The notice sets forth the procedures for processing H-2B petitions now that USCIS has received enough H-2B petitions to reach the cap. As of March 10, the agency will not accept for adjudication any H-2B petition containing a request for a work start date prior to October 1, 2004, and will return such petitions to the petitioner, along with the filing fee and, if applicable, the premium processing fee. In accordance with existing regulations, such petitioners may refile those petitions with a new starting date of October 1, 2004, or later. USCIS will adjudicate all H-2B petitions received on or before March 9, in the order in which they were received. H-2B petitions filed for employment to commence on or after October 1, 2004, will be counted, if otherwise chargeable against the annual H-2B cap, against the FY 2005 numerical cap. (69 FR 12340, 3/16/04, see AILA InfoNet Doc. No. 04031615). See the H-2B article in this Update for information about the impact of the cap being reached.

DHS Eliminates Numerical Cap on Mexican TN Nonimmigrants. A March 10 DHS interim rule removes the annual numerical cap on the number of Mexican professional admissions under the North American Free Trade Agreement (NAFTA). The rule also eliminates the associated requirement of a petition for a Mexican-based NAFTA professional and the corresponding labor condition application. These changes to the regulations are consistent with the NAFTA's requirement that the annual numerical cap and petition provisions for Mexican professionals sunset by January 1, 2004. Accordingly, the interim rule took effect retroactive to January 1. Comments must be submitted by May 10. (69 FR 11287, 3/10/04, see AILA InfoNet Doc. No. 04031063).

DHS Proposes Rule that Would Implement "U.S./Canada Safe Third Country Agreement." The recent Safe Third Country agreement between the United States and Canada provides new procedures for dealing with certain categories of aliens crossing at land border ports-of-entry between the United States and Canada, or in transit from Canada or the United States, and who express a fear of persecution or torture if returned to the country of their nationality or habitual residence. The Agreement operates under the premise that the United States and Canada are safe third countries, each of which offers full procedures for nationals of other countries to seek asylum or other protection. Accordingly, subject to several specific exceptions, the Agreement provides for the United States to return such arriving aliens to Canada, the country of last

presence, to seek protection under Canadian law, rather than applying for asylum in the United States. Subject to the stated exceptions, such aliens attempting to travel from Canada to the United States, or vice versa, will be allowed to seek asylum or other protection in one country or the other, but not in both. This proposed rule would establish the authority of asylum officers to make threshold determinations concerning the applicability of the Agreement in the expedited removal context. Comments are due by May 7. (69 FR 10620, 3/8/04, see AILA InfoNet Doc. No. 04030861).

Department of Justice

EOIR Proposed Rule Would Specify IJ Authority Under the “U.S./Canada Safe Third Country Agreement.” As more fully described in the DHS rule, above, the recent Safe Third Country agreement between the United States and Canada provides new procedures for dealing with certain categories of aliens crossing at land border ports-of-entry between the United States and Canada, or in transit from Canada or the United States, and who express a fear of persecution or torture if returned to the country of their nationality or habitual residence. This proposed rule provides that immigration judges (IJs) will not review the threshold factual determinations by asylum officers that an alien does not satisfy any of the exceptions under the Agreement. However, for any alien who the asylum officer determines is not barred by the Agreement, the existing credible fear process under INA § 235(b) remains unchanged, including the right to seek review by an IJ. Finally, this rule provides authority for an IJ to apply the Agreement with respect to aliens whom DHS has chosen to place in removal proceedings under section 240 of the Act. Comments are due by May 7. (69 FR 10627, 3/8/04, see AILA InfoNet Doc. No. 04030862).

Department of State

Interim Final Rule Eliminates Crew List Visas. A March 18 State Department interim final rule made final on an interim basis the Department’s December 13, 2002 proposed regulations regarding the elimination of crew list visas. The explanatory information to the rule notes that the Department is eliminating the crew list visa for security reasons. By eliminating the crew list visa, the rule’s preamble states, the Department will ensure that each crewmember entering the United States will be required to complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks. Additionally, the preamble explains, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. No. 107-173) requires that all visas issued after October 26, 2004 have a biometric indicator. This means crew list visas would necessarily be eliminated by that date. The interim final rule takes effect on June 16, with comments due by May 17. The remaining 30 days until implementation will provide the Department time to evaluate and review public comments received and determine if any additional steps, including a possible extension of an additional 90 days, needs to be taken to ameliorate effects on the shipping industry. (69 FR 12797, 3/18/04, see AILA InfoNet Doc. No. 04031913).

DOS Removes Restriction on Use of U.S. Passports for Travel to Libya. In a March 8 Federal Register notice, the State Department announced the removal of the restriction on the use of U.S. passports for travel to, in, or through Libya. (69 FR 10806, 3/8/04, see AILA InfoNet Doc. No. 04030863).

Department of Labor

DOL Announces AEWRs for 2004. The Department of Labor's Employment and Training Administration has announced state-by-state 2004 adverse effect wage rates (AEWRs) for employers seeking H-2A nonimmigrant workers for temporary or seasonal agricultural labor or services. Employers must pay the highest of the AEWR, the applicable prevailing hourly wage rate, or the legal federal or state minimum wage rate. The notice took effect upon publication on March 3. (69 FR 10806, 3/3/04, see AILA InfoNet Doc. No. 04030864).

Executive Action

President Authorizes Use of Up to \$20 Million in ERMA Funds. In Presidential Determination No. 2004-24 of February 25, the President determined that up to \$20 million should be made available from the U.S. Emergency Refugee and Migration Assistance (ERMA) Fund to address unexpected, urgent refugee needs in the West Bank and Gaza. (69 FR 10806, 3/3/04, see AILA InfoNet Doc. No. 04030865).

MEDIA SPOTLIGHT: Members and Staff in the News

Glenda Bunce (Carolinas) was quoted in a March 18 *The State* article about her client, a 15 year old high school student who has lived in the U.S. for 13 years, who faces deportation because she is an undocumented minor. *The Lexington Herald Leader* quoted **Judy Golub** (National) in a March 18 article about an undocumented immigrant, scheduled to be deported to China, who faces the break up of his family.

The Houston Chronicle quoted **Charles Foster** (Texas) in a March 15 article about how visa delays disrupt important cultural arts performances. **Jorge Rivera** (Southern Florida) was quoted in a March 14 *Miami Herald* article about the U.S. initiative "Endgame" in which federal officials are actively rounding up and deporting visa overstayers. **Stephen Yale-Loehr** (Upstate New York) was quoted in a March 15 *National Journal's Technology Daily* article about the H-1B cap.

The Boston Globe quoted **Gerry Rovner** (New England) in a March 14 question and answer column about obtaining a work visa as a pharmacy technician. **Eugenio "Gene" Hernandez** (Southern Florida) was profiled in the March 14 *Miami Herald's* Neighbors feature section. **Mark Koestler** (New York) was featured in a March 14 question and answer *Newsday* article about obtaining U.S. permanent residency status.

The Los Angeles Times quoted **Victor Nieblas** (Southern California) in a March 13 article about the scams resulting from President Bush's proposal to create a temporary guest worker program. *Newsday* featured **Michael Wildes** (New York) in a March 12 article about his help with a family's request for a stay of deportation based on the huge backlog of visa applications. The family's congenitally deaf daughter needs a cochlear implant—a high-tech device, not available in their native Bangladesh, that allows the deaf to hear and learn to speak.

Timothy Payne (Chicago), **Kathleen Moccio** (Minnesota/Dakotas), **Paul Zulkie** (Chicago), and **Andy Prazuch** (AILF) were quoted in a March 12 *Chicago Daily Law Bulletin* article about the second annual Chicago Immigrant Achievement Awards. **Miryam Antunez de Mayolo** (Iowa/Nebraska) was featured in the *Quad City Times* on March 10, 11, and 12 in a series of articles about her client, a high school track coach, who was awaiting deportation to Uganda when USCIS determined his marriage was a valid one, allowing him to apply for permanent

resident status. **Miryam** was also quoted in a March 11 *Des Moines Register* article about the same case.

John Lawit (Texas) was quoted in a March 11 *Albuquerque Journal* article about DHS's one year anniversary and the tremendous backlogs that have grown during that year. *The Journal Record* featured **Michael Brooks-Jiminez** (Texas) in a March 11 article about an upcoming event on ethnic diversity in which he is a featured panelist. **Joanne Haag** (Santa Clara) was featured in a March 11 *Monterey County Herald* article about an upcoming event on immigration in which she is to be a panelist. *The Star Tribune* featured **Virgil Wiebe** (Minnesota/Dakotas) in a March 11 article about a client who alleges she was enslaved for nearly 4 years by a relative and now faces deportation for overstaying a visitor's visa.

Lorna Rogers Burgess (Utah) was featured in a March 10 *Park Record* article and a February 24 *Salt Lake Tribune* article about the AILA publication "Travel for Work and Business: Application, Admission and Reentry after 9/11" for which she served as editor-in-chief. *The Dallas Morning News* quoted **Paul Zoltan** (Texas) in a March 10 article about police department payments to informants who may be undocumented immigrants. **Lawrence Fabacher** (Mid-South) was quoted in a March 10 *Times-Picayune* article about his client who has acute leukemia and just got a better chance at survival this week after U.S. immigration officials reversed their position and gave his sister in the Philippines permission to enter the United States to donate stem cells that could cure his disease.

Robert Cohen (Ohio) was interviewed by NBC affiliate, Channel 4, WCMH on March 10 about a Somali asylee in removal proceedings. **Cheryl Little** (Southern Florida) had an op-ed published in the March 9 edition of the *Miami Herald* about the Haitian crisis and the Bush Administration's implementation of an unprecedented set of policies designed to prevent and deter the arrival of Haitian refugees.

Jo Anne Adlerstein (New Jersey) had an op-ed published in the March 8 edition of *Newsday* urging the Bush Administration to do more to help Haitian refugees. **Paul Zulkie** (Chicago) was quoted in a March 8 *Washington Post* article about how H-1B visa limits have hurt urban schools that seek to fill critical teacher shortages. *The Washington Times* quoted **Carlo Jean-Joseph** (Southern Florida) in a March 8 article about leaders of South Florida's Haitian community who met behind closed doors and denounced some members of the Congressional Black Caucus for their ties to departed Haitian President Jean-Bertrand Aristide.

Paul Zoltan (Texas) was quoted in a March 5 *Dallas Morning News* article about his client who is seeking asylum here in the United States after his life was threatened due to his work as a civilian contractor for the State Department to fight the war on drugs in Colombia. The *Dallas Morning News* quoted **Kathleen Campbell Walker** (Texas) in a March 5 article about monitoring fraudulent claims that arise out of scam artists in the wake of President Bush's immigration reform proposal. **Rito Corrales** (Southern California) was quoted in a March 5 *Orange County Register* article about U.S. VISIT. **Miryam Antunez de Mayolo** (Iowa/Nebraska) was quoted in a *Quad City Times* article about her client who spent more than 20 hours in shackles and chains as federal immigration authorities took him on a five-state trip that began in Iowa and ended in Alabama.

Irina Plumlee (Texas) was quoted in a March 3 *Dallas Morning News* article about the H-1B cap. **Dale Warner** (Santa Clara) was featured in a March 3 *San Jose Mercury News* article about the San Jose City Council District 10 candidates. **Vard Johnson** (Iowa/Nebraska) and **Shelley Schrader** (Iowa/Nebraska) were quoted in a March 2 *Omaha World Herald* article about the

heavy-handed, sometimes unfair approach local immigration agents have taken on individual deportation cases. **Cary Pham** (Santa Clara) was featured in a March 2 question and answer article in the *San Jose Mercury News* about immigration.

Paul Soreff (Washington) and **Carol Edward** (Washington) were quoted in a February 27 *Seattle Times* article about an immigration attorney who changed his residence to Chile, leaving behind 400 clients with unresolved cases.

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).

Immigration Works! From the Grassroots

Lori Torgerson Chesser (Iowa/Nebraska) currently serves as co-chair of the Iowa Project for the Center for New Community—a Chicago-based grassroots organization that is a faith-based, rural-urban initiative whose mission is to revitalize communities for genuine social, economic and political democracy. In that capacity, she and others with the Iowa Project obtained a grant from the Ford Foundation in which they were able to hire a full-time coordinator in Iowa and had an advisory board of about 20 influential people from business, education, and faith-based organizations.

In addition, the Iowa Project was able to develop a strong network of interested people and groups throughout Iowa that participated in pro-immigrant advocacy training and message training. This group also tracks anti-immigrant press and ads and tries to diffuse these negative messages through positive media, interviews, and Letters to the Editor.

In an example of what they accomplished, Lori writes:

There was an effort close to the [Iowa] Caucuses to have anti-immigrant ads by a FAIR-related group. As compared to last cycle when about 22 TV stations ran it, this time only 9 did. We contacted and met with those who did and 5 of the 9 said they would not run them again. One station in Des Moines came out publicly against the ads and was contacted by many other TV stations across the country asking how to say no. So we hope it had national impact. Lou Dobbs picked up on this also and had some shows on it I guess.

Although FAIR or related entities spent about \$250,000 just in TV placements, they did not get traction here.

In addition to their media efforts, members of the Iowa Project also focused on policy. They introduced a resolution in the caucuses to have a pro-immigration plank introduced in both the Republican and Democratic platforms at the State conventions. It was introduced and passed in more than 300 precincts state-wide. They are also committed to working on an Iowa DREAM Act and, through their efforts, it just passed out of the Education Committee in the Iowa House of Representatives. Finally, the Iowa Project has reached out to business groups by doing pro-immigration presentations. As a result of the presentations, the Association of Business and Industry included a pro-immigration plank in their platform, and some of the very biggest and most influential businesses and their leaders have been involved or given donations.

Well done, Lori!

Let us know what you are doing in the grassroots! Please contact Julia Hendrix at Jhendrix@aila.org or 202-216-2404.

Upcoming Hearings and Other Events

March 23, Tuesday: 9:30 a.m., 419 Dirksen Senate Office Building. The Senate Foreign Relations Committee will hold a Full Committee Hearing titled “U.S. and Mexico: Immigration Policy and the Bilateral Relationship.” Witnesses Scheduled: Panel: Sen. Chuck Hagel (R-NE); Sen. John McCain (R-Ariz.); Sen. Larry E. Craig (R-ID); and Sen. Richard J. Durbin (D-IL). Panel: Roger Noriega, Assistant Secretary of State, Bureau of Western Hemisphere Affairs; C. Stewart Verdery, Assistant Secretary of Homeland Security, Office of Policy and Planning, Border and Transportation Security, DHS; and Eduardo Aguirre, Dir., BCIS, DHS. Panel: Stephen E. Flynn, Council on Foreign Relations; Demetrios G. Papadimitriou, Co-director, Migration Policy Institute; and Arturo A. Valenzuela, Director, Center for Latin American Studies, Georgetown University. Contact: 202-224-4651.

March 24, Wednesday: 10 a.m., 2141 Rayburn House Office Building. The House Immigration Subcommittee will hold an oversight hearing entitled, “How Would Millions of Guest workers Impact Working Americans and Americans Seeking Employment?” Witnesses are: Mark Krikorian, Center for Immigration Studies, Frank Morris, (retired) Dean, Morgan State University, Roy Beck, Numbers USA, and Muzaffar Chishti, Migration Policy Institute. Contact: 202-225-5727.

March 25, Thursday: 10 a.m., 2359 Rayburn House Office Building. The Homeland Security Subcommittee of the House Appropriations Committee will hold hearings on fiscal year 2005 appropriations for programs under its jurisdiction. Agenda: Bureau of Customs and Border Protection. Witnesses: Robert Bonner, Commissioner, BCBP. Contact: Michelle Mrdeza - Majority Staff Director at 202-225-5834.

March 25, Thursday: 2:00 p.m., 2359 Rayburn House Office Building. The Homeland Security Subcommittee of the House Appropriations Committee will hold hearings on fiscal year 2005 appropriations for programs under its jurisdiction. Agenda: Bureau of Citizenship and Immigration Services. Witnesses: Eduardo Aguirre, Dir., BCBP. Contact: Michelle Mrdeza - Majority Staff Director at 202-225-5834.

March 25, Thursday: 2:00 p.m., 2141 Rayburn House Office Building. The Crime, Terrorism and Homeland Security Subcommittee (Chairman Coble, R-NC) of House Judiciary Committee and the Intelligence and Counterterrorism Subcommittee (Chairman Gibbons, R-NV) of the Select Homeland Security Committee will hold a hearing titled “Progress in Consolidating Terrorist Watchlists: The Terrorist Screening Center.” Contact: 202-225-3926; 202-226-8417.

Correction Notice

In our last *Update* (Vol. 8, No. 3 of March 3, 2004), we reported on the introduction of a House Resolution sponsored by Representative Nancy Johnson (R-CT) that urges the Secretary of Homeland Security and the Secretary of State to designate Poland under the Visa Waiver Program if that country satisfies the requirements of INA § 217(c)(2) relating to the nonimmigrant visa refusal rates required for participation in the program. We listed the Resolution number as H. Res. 535. The correct number is H. Res. 525. We regret any inconvenience this error may have caused.

Did You Know?

“In the globalized world of science and scholarship, knowledge knows no borders. And the US, with the most successful academic system in the world, benefits from attracting the best and brightest from other countries. Some of this talent remains in the US after completing academic degrees. For example, graduates from China and India - which send the largest numbers of students to the US - stay in the US and contribute greatly to universities and the economy. And even though most foreign graduates do return to their home countries, many maintain their relationship with the US.

To maintain their quality and influence, American universities must continue to attract top-quality students and scholars from abroad. The sign of scientific power, quite literally, is the attractiveness of the university to people from around the world.

If growing security and immigration barriers are allowed to remain, the US will inevitably see a decline in both the quality and the influence of its universities - and this will have lasting implications for the economy, for science and research, and for America's global role.”

--excerpted from an op-ed by Philip G. Altbach, the Monan Professor of Higher Education, Boston College, published in the *Christian Science Monitor*, March 16, 2004

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