

WASHINGTON UPDATE

Volume 8, Number 11, August 19, 2004

IN THIS ISSUE...

- Coalition Lobby Day Planned for September 21 as Part of “Week of Action”
- President Signs Legislation Containing Very Narrowly Targeted H-2B Fix
- President Signs Bill to Extend Biometrics Deadline
- Effort Needed to Remove Anti-*Matricula* Language from House Appropriations Bill
- 9/11 Commission Issues Final Report
- Senate Committee Approves Bill to Authorize Funding for DHS’s Science and Technology Directorate
- DHS Expands Expedited Removal Treatment; Extends Length of Stay for BCC Holders
- Federal Aid to Hospitals Could be Premised upon Questioning of Immigrants
- Advocates Stage Week of Action in Support of Victims of Gender-Related Persecution
- Recently Introduced Legislation
- Recent Rulemaking and Other Activity in the Federal Agencies
- Media Spotlight: Members and Staff in the News
- Upcoming Hearings and Other Events
- Did You Know?

Coalition Lobby Day Planned for September 21 as Part of “Week of Action”

National and local organizations involved in last year’s Immigrant Worker Freedom Ride have joined together to create a “Week of Action” from September 20–25 that includes a September 21 Lobby Day in Washington, D.C. and other activities nationwide. These events were created to mark the one-year anniversary of the Freedom Ride and to focus Congress, before its scheduled October recess, on addressing priority immigration issues that immigrant advocates are working on around the country. These issues include three short-term and two longer-term legislative priorities of great significance to immigration advocates. The short-term agenda focuses on the passage of AgJOBS and the DREAM Act, and defeating the CLEAR Act. The longer-term agenda targets the passage of the Civil Liberties Restoration Act (CLRA) and the Safe, Orderly, Legal Visas and Enforcement (SOLVE) Act.

AILA shortly will be sending out materials detailing how AILA members can be involved in these important events. Stay tuned!

President Signs Legislation Containing Very Narrowly Targeted H-2B Fix

President Bush, on August 5, signed into law legislation containing extremely narrowly tailored H-2B relief. The 2005 Department of Defense (DOD) Appropriations Act (H.R. 4613, Pub. L. No. 108-287) includes a provision exempting fish roe processors, technicians, and supervisors from the H-2B cap.

As background, the H-2B cap was reached just six months into this fiscal year, at which point AILA joined with coalition partners in the business community to work for an increase in access to H-2B workers. Several bills were introduced, but were blocked by Senators Jon Kyl (R-AZ) and Jeff Sessions (R-AL), both of whom sought unacceptable changes in other areas of immigration in exchange for an increase in this year's H-2B numbers. Ultimately, Senator Ted Stevens (R-AK) successfully amended the DOD bill to include the narrowly targeted relief for fish roe workers.

AILA is working over the August recess to develop support for a broader fix to be included on a measure that hopefully will move through Congress in the fall. In the interim, please let lawmakers know the importance of providing additional H-2B numbers. To send letters to your Senators and Representatives urging them to support H-2B relief, go to:

http://capwiz.com/aila2/mail/oneclick_compose/?alertid=5462641

President Signs Bill to Extend Biometrics Deadline

President Bush, on August 9, signed into law legislation that amends § 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. No. 107-173) to extend for another year the deadline for: (1) installing at all U.S. ports of entry equipment and software capable of processing machine-readable, tamper-resistant entry and exit documents and passports that contain biometric identifiers; (2) Visa Waiver Program (VWP) countries to certify that they are issuing machine-readable, tamper-resistant passports that contain biometric and document authentication identifiers comporting with specified standards; and (3) VWP participants who are issued passports on or after the new deadline to present passports that comply with such requirements. The new deadline is October 26, 2005.

The Department of Homeland Security will begin enrolling VWP visitors in US-VISIT on September 30, 2004 and, beginning October 26, 2004, all passports used for travel in the Visa Waiver Program must be machine-readable passports. The legislation providing for the biometrics extension (H.R. 4417) became Pub. L. No. 108-299.

Effort Needed to Remove Anti-*Matricula* Language from House Appropriations Bill

The House Appropriations Committee, on July 22, defeated by only one vote an amendment that would have deleted from the draft FY 2005 Transportation, Treasury and Independent Agencies appropriations bill language that would prevent banks from accepting the *matricula consular* (Mexican consular identification cards) as proof of identity in opening bank accounts. The amendment, sponsored by Representative Ed Pastor (D-AZ), failed by a razor-thin vote of 26-25, with four Republicans supporting the amendment. This means that the anti-*matricula* language is still in the appropriations bill and needs to be removed. AILA supports the use of the *matricula consular* as an appropriate and useful identification document and strongly opposes any language that would restrict its use. The consular identification cards do not establish, nor are they recognized as establishing, any type of U.S. immigration status. The Mexican consular identification card will help foster, and is consistent with, our national security needs of establishing an identity and address for those living in the United States. To send a letter to your Representatives urging them to support the Mexican Consular ID cards and oppose any efforts to restrict their use, go to: http://capwiz.com/aila2/mail/oneclick_compose/?alertid=6142656

In related news, the Congressional Research Service (CRS) recently issued an updated report on consular identification cards entitled, "Consular Identification Cards: Domestic and Foreign Policy Implications, the Mexican Case, and Related Legislation." The report discusses the

evolution of the *matricula consular* and its current state of acceptance, the domestic and foreign policy implications of the *matricula*, and *matricula*-related legislation in the 108th Congress.

9/11 Commission Issues Final Report

The National Commission on Terrorist Attacks upon the United States (“9/11 Commission”) released its final report on July 22, 2004. The report provides an account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. It also includes recommendations designed to guard against future attacks. The report contains various observations and recommendations related to immigration controls and inter-agency information sharing, a summary of which can be viewed by clicking on the following link to AILA’s Backgrounder on the subject:

<http://www.aila.org/fileViewer.aspx?docID=13657>.

To link to the report in its entirety, as well as to the Executive Summary, go to:

<http://www.aila.org/infonet/libraryViewer.aspx?docID=13636&st=9%2f11>

In related activity, the Senate Judiciary Committee, on August 19, convened a recess hearing to consider some of the recommendations set forth in the 9/11 Commission Report. Testifying before the Committee were Maureen Baginski, the FBI’s Executive Assistant Director of Intelligence; Asa Hutchinson, DHS’s Under Secretary for Border and Transportation Security; and 9/11 Commissioners Lee Hamilton and Slade Gorton.

The Committee asked the witnesses to focus on the Report’s findings and recommendations related to border security, the FBI, and the Patriot Act. Although the bulk of the hearing focused on the Report’s institutional recommendations for reforms at the FBI, creation of a National Director of Intelligence position, and establishment of a civil liberties oversight office, some pointed discussion of border security did occur. Of particular note, in an exchange with Senator Cornyn, Under Secretary Hutchinson agreed that immigration reform involving a temporary worker program would help legalize the flow of individuals along the southern border and enhance border security.

Future editions of *Update* will discuss upcoming hearings and other legislative activities related to implementation of the Commission Report.

Senate Committee Approves Bill to Authorize Funding for DHS’s Science and Technology Directorate

In other legislative news, the Senate Committee on Commerce, Science and Transportation approved a bill on July 22 that would authorize appropriations for the Homeland Security Department’s Directorate of Science and Technology and establish a program for the use of advanced technology to meet homeland security needs. The legislation, entitled the Border Infrastructure and Technology Integration Act of 2004 (S. 2295), would also: require the Department of Homeland Security (DHS) to study the technology, equipment and personnel needed to address security within the U.S. and submit a report to Congress with recommendations; authorize discretionary accounts for the Bureau of Customs and Border Protection (CBP) field offices to develop innovative inspection techniques and technologies; mandate the development of pilot programs to utilize both aerial and ground surveillance technologies to enhance U.S. border security; require DHS to develop a plan to improve coordination among federal, state and local agencies on matters relating to border security; call for the establishment of a system to monitor the border for signs of bioterror attacks; and

authorize appropriations for DHS's Directorate of Science and Technology. The bill, which was introduced by Senator John McCain (R-AZ) on April 7, now moves to the full Senate for further consideration. Representative Jim Kolbe introduced a similar bill in the House (H.R. 4141) on April 2.

DHS Expands Expedited Removal Treatment; Extends Length of Stay for BCC Holders

The Department of Homeland Security (DHS) announced, in an August 11 Federal Register notice that, effective August 11, 2004, the agency will expand its expedited removal program and—for the first time—apply it to certain noncitizens apprehended *within* the United States. (69 FR 48877, 8/11/04).

Expedited removal is a procedure that allows a DHS official to remove noncitizens summarily, without a hearing or review by an immigration judge (IJ) or the Board of Immigration Appeals (BIA). Prior to publication of this notice, the DHS (and before it, the INS) only applied expedited removal to “arriving aliens” seeking entry at a port of entry and to a limited class of individuals who arrive in the United States by sea.

Under the expanded policy, DHS officials are now authorized to place in expedited removal any noncitizen who:

- is encountered within 100 miles of the U.S./Mexico or U.S./Canada border;
- is inadmissible to the United States on certain grounds of misrepresentation or failure to have the appropriate documentation; and
- cannot establish that s/he has been continuously present in the U.S. for 14 days or longer.

The DHS's decision to apply expedited removal to individuals apprehended *within* the U.S. is unprecedented. For the first time, a noncitizen who has made a land entry into the U.S. can be removed without the procedural safeguards of a removal hearing, including the right to counsel, right to cross-examine the government's witnesses and examine the government's evidence, and significantly, the right to an impartial adjudicator. Moreover, individuals placed in expedited removal thereby lose the opportunity to apply for relief from removal other than relief based upon a fear of persecution.

Because there is no IJ or BIA review over expedited removal decisions and only limited judicial review, a low-level immigration officer's authority to decide that an individual is removable and to order removal is virtually unchecked. The officer's decision to place the person in expedited rather than regular removal proceedings can result in the person losing substantive rights. Indeed, the policy runs the risk of sending legitimate refugees back to countries in which the threat of death is very real. There have been reports of abuse of the procedure since it was first implemented at the ports of entry and many individuals with valid legal status have been erroneously removed. The expansion of the procedure to allow summary removal of individuals already present in the United States—in essence “interior” expedited removal—provides greater opportunity for unchecked misuse of the procedure.

While it is clear to all that the current immigration system is broken, this expansion of expedited removal simply does not make us any safer. The way to control our borders is to enact real reform, including a much-needed reform of our legal entry process. To fully address our economic, humanitarian and security needs, any comprehensive reform must include: an earned legalization for undocumented immigrants living and working in the U.S.; a new worker program that would legalize future flows of essential workers; and a reduction of the backlogs in family-

based immigrant visas. Encouraging people to come out of the shadows and be reviewed by our government will enhance our security by allowing us to focus on the people who mean to do us harm rather than on those who cross our borders to fill our labor market needs. As Senator John McCain (R-AZ) has so aptly stated, “we can’t have border security without having immigration reform.”

Effective reform also will require a real commitment to reform our entire security system. For example, we need timely, effective, and accurate intelligence data, interoperable databases for the dissemination of that data, and real-time access to the data for immigration inspectors and Border Patrol agents. In addition, we need better planning and coordination for a true North American “security perimeter” to ensure that individuals who mean to do us harm are unable to make entry into Mexico or Canada, let alone the United States. And we need effective, ongoing training for Border Patrol personnel so that they can enforce our laws fairly and humanely.

Although the expansion of expedited removal took effect immediately upon publication of the Federal Register notice, the DHS is accepting comments on the notice for a 60-day period, until October 12, 2004. To view a copy of the Federal Register notice, go to:

<http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-18469.pdf>

To view a Practice Advisory on the subject prepared by the American Immigration Law Foundation, excerpts from which appear in this article, click on:

http://www.aifl.org/lac/lac_pa_081704.pdf

In a related interim rule issued August 13, the DHS amended its regulations to allow holders of border crossing cards (BCCs) and laser visas to remain in the U.S., within the border vicinity, for up to 30 days, rather than the 72 hours currently allowed, without the need for additional documentation or the issuance of an I-94 card. Currently, Mexican nationals who present a Form DSP-150, B-1/B-2 Visa and Border Crossing Card are not required to obtain a Form I-94 if their stay in the United States is less than 72 hours and they remain within 25 miles of the border (75 miles within Arizona). This interim rule extends the time limit to allow BCC holders to remain in the United States for up to 30 days without being issued a Form I-94. The geographic limitations remain unchanged. According to the DHS, “the interim rule is intended to promote commerce along the border while ensuring that sufficient safeguards are in place to prevent illegal entry into the United States.” Comments are due on or before October 12. (69 FR 50051, 8/13/04). To view a copy of the Federal Register notice, go to:

<http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-18651.pdf>

Like the newly expanded expedited removal policy discussed above, the BCC extension is analogous to a band-aid being placed on a badly broken limb, rather than curing the problem through effective reforms. Extending the length of entry for BCC holders to 30 days will not achieve the interim rule’s laudable goals of promoting border commerce and preventing illegal entry into the U.S. Rather, we need to reform our laws so that those who want to work and contribute can do so legally. Not only will such a policy promote border commerce and discourage illegal entry, it will also free up our resources so that we can focus on those who truly mean to do us harm.

Federal Aid to Hospitals Could be Premised upon Questioning of Immigrants

The Department of Health and Human Services' (HHS's) Center for Medicare & Medicaid Services (CMS), on July 22, announced its proposal to implement section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Medicare Modernization Act or MMA) (Pub. L. No. 108-173). Among other provisions, the MMA provides \$1 billion over four years to reimburse hospitals, physicians, and ambulance services for providing emergency health care to undocumented immigrants. The proposal as currently drafted would require participating health care providers to ask patients if they are a U.S. citizen, coupled with additional immigration-related questions, using a form developed by the CMS.

Nothing in section 1011 of the MMA requires the individual patient-based documentation approach being adopted in CMS's document. Indeed, the House of Representatives soundly defeated separate legislation that would have required the agency to question individual patients' immigration status. It is thus inappropriate for the agency to impose that requirement now by administrative fiat.

The purpose of § 1011 of the MMA was to provide federal reimbursement for costs associated with emergency treatment of certain classes of immigrants, including parolees, certain Mexican visitors and undocumented individuals. It was *not* to discourage such immigrants from seeking treatment. Yet, that will be the result of the administrative proposal.

There is rampant fear in the immigrant community—both documented and undocumented—of the “immigration authorities.” The fear by undocumented immigrants is clearly one of removal. Many documented immigrants express a similar fear. As the result of administrative actions in the past three years, even the documented fear their own detention and removal, as they have watched people who believed themselves to be present legally be detained, brought under removal proceedings and, in some cases, actually removed. There is no trust of government in this community—only fear.

So, when a health care provider begins questioning patients over their immigration status—no matter at what stage of the treatment—word will spread rapidly in the community. The result will be that immigrants will not seek emergency care. This will have a direct impact on the people intended to benefit from this legislation of discouraging them from obtaining treatment. It also will have a detrimental impact on public health overall, as immigrants will avoid treatment for viruses and other communicable diseases, and will limit the ability of public health officials to effectively monitor the spread of disease.

An alternative to this proposal is essential. A “proxy”-based approach developed by the National Association of Public Hospitals and Health Systems is one viable alternative. One version of that approach would look at the ratio of emergency Medicaid to full-scope Medicaid patients served by a provider and apply that ratio to the providers' overall uncompensated care costs. Another approach would involve sampling. Taking information from a percentage of patients, not associating that information with the names of the patients from whom it is taken, and providing the patients with assurances that they will not be identified to authorities, would promote the ends meant to be achieved here without the disastrous consequences that the proposed approach would entail.

As for the process that HHS has employed with respect to the development of its implementation proposal, AILA does not believe the agency has conducted an appropriate notice and comment period. Like many other organizations involved with the immigrant community, AILA only

learned about this document last week. We suspect that there are other affected communities who still have no idea that this radical proposal has been put forth.

The CMS document indicates that the statute provides no authorization for rulemaking. While AILA did not have time, given HHS's deadline for comments, to research the Administrative Procedure Act (APA) sufficiently, we would suggest that HHS do so. The APA may not only authorize but require rulemaking for such a substantive rule.

In any event, the Paperwork Reduction Act requires appropriate publication of the information collection instrument. While HHS indicates in this document its eventual intent to provide notification of the instrument, it makes clear that it will do so in a largely peremptory manner, with little opportunity for meaningful comment. Thus, the CMS document, floated only to a select few, appears to be the only meaningful opportunity that will be offered for comment on the instrument. AILA urges HHS to publish both this rule and the instrument, and seek comment on both, in a meaningful way.

Advocates Stage Week of Action in Support of Victims of Gender-Related Persecution

During the week of August 16, immigrants' rights advocates around the country are holding a week of action in support of Rodi Alvarado's asylum application. Rodi Alvarado is a Guatemalan woman who was persecuted at the hands of her abusive husband with the Guatemalan government refusing to protect her. Ms. Alvarado's case has been pending for nearly ten years and the immigrants' rights community is urging Attorney General John Ashcroft to immediately make a decision to grant her asylum. Such a decision in favor of Ms. Alvarado will help ensure that women who flee from trafficking, domestic violence, honor-killing and other gender-related abuses continue to have the opportunity to receive asylum in the United States.

Send a letter to the President and Attorney General Ashcroft and urge them to act NOW and make a final decision in favor of Rodi Alvarado, thereby ensuring that women and girls who flee gender-related persecution can receive safe haven in this country. To send a letter, go to: http://capwiz.com/aila2/mail/oneclick_compose/?alertid=5347311

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. 4942, the Material Support to Terrorism Prohibition Enhancement Act of 2004, introduced on July 22 by Representative Mark Green (R-WI), would, among other provisions, amend the INA to render inadmissible and/or deportable aliens who have received military-type training from any organization designated as a terrorist organization under INA § 212(a)(3)(B)(i).

H.R. 4929, introduced on July 22 by Representative Donna M. Christian-Christensen (D-VI), would require the Secretary of Homeland Security to establish at least one Border Patrol unit for the U.S. Virgin Islands no later than September 30, 2005.

H.R. 4885, the Comprehensive Immigration Fairness Act, introduced on July 21 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 Haitian and Liberian nationals.

H.R. 4873, the Active Duty Naturalization Accommodation Act of 2004, introduced on July 20 by Representative Gregory Meeks (D-NY), would amend the INA to provide for flexibility in the naturalization process for aliens in active duty service in the Armed Forces abroad.

Senate Legislation

S. 2715, the International Student and Scholar Access Act of 2004, introduced on July 21 by Senator Norm Coleman (R-MN), seeks to improve access to graduate schools in the U.S. for international students and scholars. The bill contains a number of congressional findings on the importance of international students and exchange visitors to the United States' foreign policy, educational and economic interests, as well as on the negative effect recent visa delays have had on this population. The bill then calls for the development of a national strategy for enhancing international student access to the U.S. as well as reforms to the SEVIS fee process. The legislation also would require the President to institute guidelines for inter-agency review of international student and exchange visitor visa applications requiring security clearances, and would remove the presumption of immigrant intent as to F and J nonimmigrants.

S. 2704, the Immigrant Children's Health Improvement Act of 2004, introduced on July 22 by Senator Bob Graham (D-FL), would amend titles XIX and XXI of the Social Security Act to provide states with the option to cover certain legal immigrants under the Medicaid and State Children's Health Insurance Programs (SCHIP). This bill is identical to legislation Senator Graham introduced on July 19 (S. 2685).

S. 2679, the Tools to Fight Terrorism Act of 2004 (TFTA), introduced on July 16 by Senator Jon Kyl (R-AZ), is being promoted as "a bill to strengthen anti-terrorism investigative tools, promote information-sharing, and punish terrorist offenses." The bill, however, bears a strong resemblance to draft legislation that was leaked last year and that created a furor among civil libertarians. That bill, dubbed the PATRIOT Act II by its many critics, ultimately was never introduced. Several sections of the TFTA also mirror provisions included in a House bill entitled the Anti-Terrorism Intelligence Tools Improvement Act of 2003 (H.R. 3179). Among their disturbing immigration-related provisions, both bills would authorize the use of Foreign Intelligence Surveillance Act (FISA) surveillance and search information in civil immigration proceedings without even disclosing the fact that the individual had been targeted under FISA. This constitutionally dubious measure would allow the use of secret information in a manner that goes beyond even the current authority for using secret evidence in immigration proceedings.

S. Con. Res. 133, a concurrent resolution introduced on July 22 by Senator Sam Brownback (R-KS), would declare that the atrocities taking place in Darfur, Sudan are genocide and calls on the Bush Administration to impose targeted means such as visa bans and freezing of assets against the Sudanese officials and other military commanders who are responsible for the crimes. The Senate approved the resolution by unanimous consent, also on July 22.

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 expansion of expedited removal to the lifting of the one-year limitation on employment authorization documents. A brief summary of these regulations follows.

Department of Homeland Security

DHS Interim Rule Extends to 30 Days the Time Limitation for Mexican BCC Holders. An August 13 Department of Homeland Security (DHS) interim rule amended the Department's regulations to extend the period of time certain Mexican nationals may remain in the United States without obtaining additional immigration documentation. Currently, Mexican nationals who present a Form DSP-150, B-1/B-2 Visa and Border Crossing Card (BCC) are not required to obtain a Form I-94 if their stay in the United States is less than 72 hours and they remain within 25 miles of the border (75 miles within Arizona). The interim rule extended the time limit to allow BCC holders to remain in the United States for up to 30 days without being issued a Form I-94. The geographic limitations remain unchanged. The interim rule took effect upon publication. Written comments must be submitted on or before October 12. (69 FR 50051, 8/13/04, see AILA InfoNet Doc. No. 04081364).

CBP Publishes Notice of Expansion of Expedited Removal Treatment. The Bureau of Customs and Border Protection (CBP), on August 11, published a notice in the Federal Register authorizing the DHS, effective 8/11/04, to use expedited removal procedures with foreign nationals who are determined to be inadmissible under INA §§ 212(a)(6)(C) or (7) who are present in the U.S. without having been admitted or paroled following inspection by an immigration officer at a designated port of entry, who are encountered by an immigration officer within 100 air miles of the U.S. international land border, and who have not established to the satisfaction of an immigration officer that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter. Comments are due on or before October 12. (69 FR 48877, 8/11/04, see AILA InfoNet Doc. No. 04081062).

DHS Publishes Notice Extending TPS Designation for Somalia until 9/17/05. The DHS, on August 6, published a notice extending the Secretary of Homeland Security's designation of Somalia under the temporary protected status (TPS) program for an additional 12 months, until September 17, 2005. The notice also set forth the procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. The 60-day re-registration period runs from 8/6/04 to 10/5/04. (69 FR 47937, 8/6/04, see AILA InfoNet Doc. No. 04080665).

DHS Adds 13 New Sites for US-VISIT Exit Pilot Programs. Effective August 3, the DHS expanded to 15 the sites in which it is testing various methods of obtaining biometric identifiers and other information from foreign nationals departing the U.S. As background, 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 January 5, 2004, DHS implemented the first phase of US-VISIT, authorizing DHS to require certain aliens to provide fingerprints, photographs, or other biometric identifiers upon arrival in or departure from the United States at air and sea ports of entry. The January 5 interim final rule also authorized the Secretary of Homeland Security to establish pilot programs at up to 15 air or sea ports of entry, to be identified by notice in the Federal Register, through which DHS may require certain aliens who depart from a designated air or sea port of entry to provide specified biometric identifiers and other evidence at the time of departure. A January 5 Federal Register notice identified one air and one sea port of entry designated for US-VISIT inspection at the time of alien departure to initiate the US-VISIT exit pilot program. The current notice informs the public of the implementation of US-VISIT exit pilot programs at an additional 13 air or sea ports

and provides a complete listing of the 15 air and sea ports where US-VISIT exit pilot programs are in operation. The notice also introduces new data collection processes and describes the process under which the exit pilot programs will be evaluated by DHS. (69 FR 46556, 8/3/04, see AILA InfoNet Doc. No. 04080361).

USCIS Publishes Interim Rule Lifting the One-Year Limitation on EADs. A July 30 U.S. Citizenship and Immigration Services (USCIS) interim rule amended the Department's regulations governing issuance of employment authorization documents (EADs) to lift the one-year limitation and establish USCIS discretion to modify EAD validity periods. For individuals granted asylum by EOIR, USCIS will issue initial EADs with validity periods of up to five years. Comments must be submitted on or before September 28. (69 FR 45555, 7/30/04, see AILA InfoNet Doc. No. 04072962). (See also correction notice to interim rule: 69 FR 47763, 8/6/04, see AILA InfoNet Doc. No. 04080666).

DHS Publishes Notice on Status for F/J Students Affected by the H-1B Cap. A July 23 DHS notice supplemented an earlier February 25 notice that informed the public of the procedures the agency would follow as the result of the fiscal year 2004 H-1B cap having been reached. The July 23 notice informed the public that, as part of those H-1B cap procedures, the Secretary of Homeland Security will exercise his authority to extend the status of certain F and J nonimmigrant students if DHS received from their prospective employer a timely filed request for change of nonimmigrant status to that of an H-1B nonimmigrant by July 30, 2004, and the employment start date on the petition is no later than October 1, 2004. (69 FR 7/23/04, see AILA InfoNet Doc. No. 04072264).

DHS Publishes Limited Extension of Deadline for Health Care Worker Certificate Requirement. A July 22 DHS interim rule extended for another year the deadline by which certain health care workers from Canada and Mexico must obtain health care worker certifications. The rule applies only to affected health care workers who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. The rule took effect on July 26 and comments are due by September 20. (69 FR 43729, 7/22/04, see AILA InfoNet Doc. No. 04072263).

ICE and EOIR Publish Joint Notice on Countries to Which Foreign Nationals May be Removed. In a July 19 joint notice of proposed rulemaking, the DHS and DOJ propose to amend their respective regulations to specify that acceptance by a country is not required for removal to that country, and that a "country" does not require the existence or functionality of a government. The rule also addresses the countries to which one may be removed, including alternative or additional countries. (69 FR 42901, 7/19/04, see AILA InfoNet Doc. No. 04071962).

Department of State

DOS Redesignates Communist Party of the Philippines Under INA § 219(a). The Department of State (DOS) redesignated the Communist Party of the Philippines, also known as the CPP, also known as the New People's Army, also known as the NPA, also known as the CPP/NPA, as a terrorist organization pursuant to INA § 219(a), effective August 8. (69 FR 48269, 8/9/04, see AILA InfoNet Doc. No. 04081164).

DOS Final Rule Eliminates Crew List Visas. A July 21 DOS final rule eliminated crew list visas for security reasons. Each crewmember entering the United States is now required to complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and

background checks. The rule took effect upon publication. (69 FR 43515, 7/21/04, see AILA InfoNet Doc. No. 04080465).

DOS Designates the Continuity Irish Republican Army Under INA § 219(a). The DOS designated the Continuity Irish Republican Army (CIRA), also known as Continuity Army Council, also known as Republican Sinn Fein, as a terrorist organization, pursuant to INA § 219(a), effective July 13. (69 FR 42076, 7/13/04; Amended 69 FR 42236, 7/14/04, see AILA InfoNet Doc. No. 04072364).

DOS Publishes Notice of Proposed Consular Fee Changes; Diversity Cases to Increase Substantially. A July 19 DOS rule proposes adjustments in current fees for consular services, with the adjusted fees to take effect on October 1, 2004. The DOS's rule includes nine proposed fee changes, of which seven are increases and two are decreases of existing fees. The Diversity Visa Lottery surcharge for immigrant visa applications would take the biggest hit, increasing from \$100 to \$375. (69 FR 42913, 7/19/04, see AILA InfoNet Doc. No. 04071963).

Department of Justice

Interim Rule Amends EOIR Regulations for Conformity and Clarity. A July 28 interim rule amended regulations relating to the Executive Office for Immigration Review (EOIR) to conform with certain regulatory changes made by the DHS for consistency and clarity. The rule made no substantive changes in the Department of Justice (DOJ) regulations, but made appropriate revisions to the definitions and fee provisions and the regulations relating to issuance of notices to appear and subpoenas in the EOIR regulations, in order to avoid confusing and unnecessary duplication of provisions already set forth in the DHS regulations. Finally, the rule made a necessary technical change to an existing regulation. (69 FR 44903, 7/28/04, see AILA InfoNet Doc. No. 04072865).

Department of Labor

DOL Publishes Backlog Reduction Plan. A July 21 Department of Labor (DOL) interim final rule amended the regulations governing labor certification applications for permanent employment to allow the National Certifying Officer to transfer to a centralized ETA processing center(s) applications now awaiting processing by State Workforce Agencies (SWAs) or ETA Regional Offices. The interim final rule does not affect the pending proposal to streamline procedures for permanent labor certification under 20 CFR part 656, which was published in the Federal Register of May 6, 2002, and which is expected to be finalized in 2004. The interim final rule affects only applications filed under existing regulations, while the streamlined certification regulation will govern processing of new applications filed after that regulation takes effect. The rule is effective August 20. (69 FR 43715, 7/21/04, see AILA InfoNet Doc. No. 04072062).

Department of Health and Human Services

ORR Announces New Grant Opportunity for Identification and Counseling of Human Trafficking Victims. The Administration for Children and Families (ACF) of the Department of Health and Human Services' (HHS') Office of Refugee Resettlement (ORR) announced a new grant program under its Trafficking in Persons Program for projects to expand existing outreach activities to identify and counsel victims of a severe form of human trafficking, as defined by the Trafficking Victims Protection Act of 2000 (Pub. L. No. 106-386). Anticipating total program funding for fiscal year 2005 to be \$1 million, with 15 awards and a \$150,000 cap per project period, the notice provides detailed instructions for grant applications. The closing time and date for receipt

of applications is 4:30 p.m. EST on September 28. (69 FR 45829, 7/30/04, see AILA InfoNet Doc. No. 04073063).

MEDIA SPOTLIGHT: Members and Staff in the News

Carl Shusterman (Southern California) was quoted in an August 15 *Ventura County Star* article about his clients who face a 10-year bar. **Jacqueline Baronian** (New York) was featured in an August 15 *Newsday* question and answer article about immigration. **Victor Nieblas** (Southern California) was quoted in an August 13 *Los Angeles Times* article about immigrant rights groups that demanded the cancellation of “*Gana La Verde*,” a reality-based show that promises undocumented immigrants the chance to legalize their status. **Raul Godinez** (Southern California) and **Victor** were quoted in an August 13 *Associated Press* article on the same topic.

Alison Brown (Missouri/Kansas) was quoted in an August 13 *Omaha World Herald* article about DHS’s new expedited removal process. **George N. Miller** (Carolinas) was quoted in an August 13 *Charlotte Observer* article about his client, a Pakistani man arrested on immigration charges after he was spotted videotaping Charlotte skyscrapers. **Boyd Campbell** (Atlanta) was quoted in an August 13 *Associated Press* article about continued sweeps of undocumented immigrants in Alabama by local police.

Jeanne Butterfield (National) was a guest on *CNN’s Lou Dobbs Tonight* show in which Mr. Dobbs interviewed her about DHS’s new expedited removal policy. **Lawrence Fabacher** (Mid-South) was quoted in an August 11 *Times-Picayune* article about his client who received humanitarian parole to treat his cancer. **Judy Golub** (National) was quoted in an August 11 *Denver Post* article about DHS’s new expedited removal policy.

The Los Angeles Times featured **Robert Berke** (Southern California) in an August 10 article about *notarios*. **Angela Bean** (Northern California), **Lynette Kwok** (Northern California) and **Marshall Fitz** (National) were quoted in an August 10 *The Recorder* article, also about *notarios*. **David A. Harston** (Colorado) and **Brad Hendrick** (Colorado) were quoted in an August 10 *Rocky Mountain News* article about the option for immigrants who face deportation to use electronic monitors instead of being placed in detention. **Chellis Neal Gonzalez** (Texas) was quoted in an August 9 *San Antonio Express News* article about his client whose son died in Iraq while her husband was deported to Mexico. **Timothy Wheelwright** (Utah) and **Steven Lawrence** (Utah) were quoted in an August 8 *Associated Press* article about the new teleconferencing method for immigration cases.

The Associated Press quoted **Marshall Fitz** (National) in an August 7 article about a recent decision by the U.S. Court of Appeals for the Third Circuit that calls on Congress to reform the system that has been forcing them to base decisions in immigration cases on “grossly out-of-date” information about world affairs. **Kathleen Campbell Walker** (Texas) was quoted in an August 6 *CQ Homeland Security* article about a DHS pilot program that would allow pedestrians who frequently cross the U.S.-Mexico border to avoid time-consuming security checks if they first pass background checks. **Kathleen** was also a featured guest on the August 11 broadcast of *CNN’s Scarborough Country*, hosted by Pat Buchanan, in which they discussed the newly expanded expedited removal policy.

Maria Stephenson (Mid-South) was quoted in an August 5 *Washington Times* article about Wal-Mart’s negotiations for a settlement with the federal government over its hiring of undocumented workers.

Paul Zulkie (Chicago) was quoted in an August 5 *Morning News* article about the \$10 million fine to settle a federal probe into Wal-Mart's use of cleaning contractors who hired undocumented immigrants. **Raquel Fonte** (Southern California) was quoted in an August 5 *Los Angeles Times* article about CBP officers searching for undocumented immigrants at Los Angeles International Airport. **Judy London** (Southern California) and **Carl Shusterman** (Southern California) were quoted in an August 4 *Los Angeles Times* article about a Spanish-language show that airs nightly on KRCA-TV Channel 62 in Los Angeles that promises undocumented immigrants the chance to win a "green card" if they win the reality-based TV show.

Jessica Dominguez (Southern California) was quoted in an August 2 *Los Angeles Times* article about a small group of immigration lawyers that has begun showing up during police raids. *The Washington Times* quoted **Kamal Nawash** (Washington, DC) in an August 2 article about extremist teaching in a local Washington, DC mosque that he fears will lead to terrorism. **Kathleen Campbell Walker** (Texas) was featured in an August 1 *El Paso Times* article about how the US-VISIT program and its potentially detrimental effects on the North American Free Trade Agreement.

Paul Parsons (Texas) was quoted in an August 1 *Austin American Statesman* article about the economic, emotional, and legal hardships to spouses and children of U.S. citizens caused by the ten-year immigration bars. **Brent W. Renison** (Oregon), **Alan Freedman** (Washington, DC), and **Bart Stroupe** (Washington State) were featured in a July 31 article about their clients who face deportation after their U.S. citizen spouses died within two years of their marriages. **Daryl Buffenstein** (Atlanta) and **Bo Cooper** (Washington, DC) were quoted in a July 29 *Atlanta Journal-Constitution* article about the effect visa delays and denials are having on business in the U.S. **Elizabeth Stern** (Washington, DC) was quoted in a July 29 *Atlanta Journal-Constitution* article about visa and security hassles, which include the fingerprinting and photographing of foreign visitors upon arrival, that have caused alarm around the world.

Emilia Banuelos (Arizona) was quoted in a July 25 *Arizona Republic* article about rumors of immigration sweeps causing fears within the immigrant communities. *The Baltimore Sun* quoted **Joanna Carson Hedvall** (National) in a July 25 article about the difficulties that seasonal employers face in the wake of the H-2B cap. **Marisol Zequeira Burke** (Southern Florida) and **Aileen Josephs** (Southern Florida) were quoted in a July 25 *Palm Beach Post* article about a Mayan teenager who was charged with the murder of her premature baby and who subsequently will serve probation for child neglect. **Amy Reinhorn** (Northern California) and **Rosario Maria Hernandez** (Northern California) were quoted in a July 25 *San Jose Mercury News* article about a pilot program that offers the option of using electronic monitoring instead of detention to immigrants who face a deportation hearing.

Deborah Notkin (New York) was quoted in a July 24 *Journal News* article about a Spanish national, married to a U.S. citizen, who was refused re-entry because her travel documents had expired. **Msgr. James Kelly** (New York) was featured in a July 23 *New York Times* article about the robbery at his church and the injuries he sustained in the struggle with the robber. **David Leopold** (Ohio) and **Randall Caudle** (Northern California) were quoted in a July 22 *CQ Homeland Security* article about ensuring immigrants understand their rights in the wake of the second round of terrorism-related interrogations by the FBI. **Marshall Fitz** (National) was quoted in a July 20 *Washington Times* article about Operation Compliance. **Judy Golub** (National) and **Marshall Fitz** (National) were quoted in a July 19 *St. Petersburg Times* article about the CLEAR Act.

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).

Upcoming Hearings and Other Events

August 23, Monday: 10 AM, 2128 Rayburn House Office Building. The House Financial Services Committee has scheduled a hearing on the recommendations of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission. The committee is expected to focus on issues of money laundering and terrorist financing.

August 23, Monday: 10 AM, 2141 Rayburn House Office Building. The Judiciary Subcommittee on Crime, Terrorism, and Homeland Security (Howard Coble, Chairman) will hold an Oversight Hearing on the Recommendations of the 9/11 Commission.

Did You Know?

“Power struggles for authority and responsibility, however well-motivated, cannot be allowed to doom needed reforms.”

--Senate Governmental Affairs Committee Chairwoman, Susan Collins (R-ME), trying to head off turf battles that might prevent or delay implementing recommendations made by the 9/11 Commission.

CONTRIBUTORS

Judith Golub, Senior Director of Advocacy and Public Affairs
Marshall Fitz, Associate Director of Advocacy
Danielle Polen, Legislative Counsel
Joanna Carson, Business Immigration Associate
John Estrella, Senior Policy Associate
Julia Roane Hendrix, Media Relations Associate
Rossana Lo, Advocacy Assistant

American Immigration Lawyers Association

918 F Street, N.W.
Washington, D.C. 20004
202-216-2403

47AU4010