AILA
WASHINGTON UPDATE
Volume 7, Number 11, September 25, 2003

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Bipartisan Farmworker Bill Introduced: Sets the Stage for Comprehensive Immigration Reform

Senators Larry Craig (R-ID) and Edward Kennedy (D-MA) and Representatives Chris Cannon (R-UT) and Howard Berman (D-CA) are the chief sponsors of an agricultural worker reform bill, the Agricultural Jobs, Opportunity, Benefits, and Security (AgJobs) Act, introduced on September 23, 2003 (S. 1645/H.R. 3142).

This measure reflects both an historic agreement between the representatives of farm workers and the agricultural industry, and the pressing need, for humanitarian, economic, and security reasons, to reform our immigration laws in this sector of our economy. The bill reflects difficult compromises made by both sides. As is the case with the best compromises, neither side in this historic deal got everything it wanted, but all have agreed to work together to make sure that the AgJobs Act becomes law.

This measure would create an earned adjustment program for undocumented farm workers who would be eligible to apply for temporary immigration status based on their past work experience, and could become permanent residents upon satisfying prospective work requirements. The legislation also streamlines the existing H-2A foreign agricultural worker program while preserving and enhancing key labor protections.

Once enacted, these provisions are a net plus for both workers and employers by creating a stable labor force and a useable program through which future workers can legally enter. By encouraging people to come out of the shadows and be reviewed by our government, this measure also will enhance our security by helping us know who lives and works within our borders.

The need for reform in the agricultural sector underscores the need for more comprehensive immigration reforms so vital to our broader immigration system. Such comprehensive reform is needed to fully address our economic, humanitarian and security needs. Any successful and comprehensive immigration reform package requires three components: 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.

House Passes Religious Worker Measure

The immigrant religious worker program is set to sunset on October 1. Two bills have been introduced to extend the program until 2008. The House passed H.R. 2152, introduced on May 19 by Representative Barney Frank (D-MA), by voice vote on September 17. S. 1580, introduced on September 3 by Senator Orrin Hatch (R-UT), is scheduled to be marked-up by the Senate Judiciary Committee on September 25.

L-1 Visa Bill Introduced in Senate

On September 17, Senator Saxby Chambliss (R-GA) introduced the "L-1 Visa (Intracompany Transferee) Reform Act of 2003" (S. 1635). This bill recognizes the importance of the L-1 visa to the U.S. economy and limits the program in a way that is less damaging than measures already introduced in Congress. Specifically, S. 1635 would target the L-1B visa holders and prevent them from being primarily stationed at the worksite of a third party in cases where they would not be controlled and supervised by the petitioning employer, or if their placement at the third party site was part of an arrangement to provide labor for the third party rather than in connection with their duties involving specialized knowledge specific to the petitioning employer. The bill also would reinstate the one-year work requirement for L-1 blanket petitions and require the Department of Homeland Security to maintain statistics on the L program.

S. 1635 represents the first L-1 legislation introduced in the Senate that would narrowly tailor reform to address concerns raised by recent reports of this category's misuse while still respecting the visa's primary purpose as a vehicle to expeditiously shift key personnel from international offices to U.S. affiliated operations. Senator Dodd (D-CT) has also introduced L-1/H-1B visa reform legislation. However, his bill promotes modification of such breadth that it could dramatically reduce the benefits of the L-1 visa and hurt American workers and employers.

On the House side, Representative Rosa De Lauro (D-CT), on July 10, introduced the "L-1 Non-Immigrant Reform Act" (H.R. 2702). This bill would dramatically and negatively impact the L visa program. Representative De Lauro has stated that her legislation is geared toward addressing concerns with the alleged displacement of American workers that the media recently has highlighted. However, as introduced, the bill is overreaching in its effect, would preclude very legitimate and necessary uses of the L visa, and impede this category's purpose as a vehicle to promote and protect American jobs and businesses.

The De Lauro bill uses the H-1B category as a standard for many of its reforms. Modeling the L after the H category indicates a lack of understanding of the different purposes of the two

categories. While the H visa is a vehicle through which U.S. employers can obtain new professional-level workers and bring them into the company, the L visa is a mechanism for transferring specific high-level talent, which is already present in the company, from one location to another in an expedient manner. The proposed reforms in the De Lauro bill would blur this distinction and dramatically impact this expedient transfer of talent.

Since its creation in 1970, the L-1 visa for intracompany transferees has been an essential vehicle for job creation and business investment in the U.S. Through the L-1 visa, large and small American-based companies have brought in qualified personnel from their operations abroad to the U.S. Foreign-based companies also have used this visa to invest in the U.S. economy by establishing and expanding business operations here. Any legislative modification to the L-1 visa program must be narrowly tailored to prevent abuse without needlessly restricting the positive aspects of the L visa. Such a change would maintain the efficiency of a visa category vital for U.S. companies' transfer of key international employees to the United States. And it would continue to permit the American economy and U.S. workers and employers to benefit from foreign companies' investment in the United States.

Senate Judiciary Committee Examines H-1B Program

The Senate Judiciary Committee, on September 16, held a hearing on "Examining the Importance of the H-1B Visa to the American Economy." Those testifying included representatives from Intel Corporation, Ingersoll-Rand Company, the Institute of Electrical & Electronic Engineers, and AILA Business Committee Chair Stephen Yale-Loehr. Judiciary Committee Chairman Orrin Hatch (R-UT) opened the hearing by noting his belief that "the skills brought to the United States by H-1B workers improved the job market for the entire workforce." The hearing was especially important given that the H-1B visa numerical cap is set to revert from 195,000 to 65,000 on October 1, 2003. Also scheduled to "sunset" along with the cap are the $1000 training fee, the H-1B dependant attestations, and the Department of Labor's enhanced investigative authority.

Mr. Yale-Loehr's testimony provided an overview of the H-1B program, its importance, and its usage. Mr. Yale-Loehr highlighted the following points in his testimony:

- H-1B usage is market driven as indicated by usage statistics over the past several years. Bureau of Citizenship and Immigration Services (USCIS) data indicate that H-1B petitions approved for workers in computer-related occupations fell precipitously by 61 percent from 191,400 in FY 2001 to 75,100 in FY 2002. While H-1B usage in nearly every occupation group declined between 2001 and 2002, notable exceptions included education, medicine and health, and life sciences. These occupation groups increased by 19, 14, and 7 percent, respectively.

- Constraints have already been placed on next year's visa numbers that would diminish the actual visa numbers available in fiscal year 2004 to roughly 36,200. This reduction is due to the roughly 22,000 petitions currently pending at the USCIS, which are not expected to be processed until the next fiscal year as well as the 6,800 visa numbers that the recent Free Trade Agreements carved out from the H-1B cap for foreign professionals from Chile and Singapore.

- Despite allegations to the contrary, no study has ever determined that H-1B visa holders negatively impact U.S. workers. In fact, conclusions drawn to date indicate that the magnitude of any effect the H-1B program has on wages is difficult to estimate with confidence, and that if the H-1B program has any effect on comparable U.S. workers, the

effect must be subtle because it does not appear immediately in the data.

In addition to his overview, and in response to direct congressional questioning, Mr. Yale-Loehr presented several options for Congress to consider at the appropriate time, including adjusting the cap levels to 115,000 and incorporating specific exemptions from the cap. Potential areas for exemptions from the H-1B cap include: jobs deemed to be in the public interest (if the federal government, state, or local governments or a 501(c)(3) non-profit requires an H-1B professional); jobs requiring an H-1B professional that a state economic development agency deems important due to a positive economic impact; and jobs that facilitate the retention of foreign students educated in the United States.

House Passes Motion Signaling Support for Immigrant Soldiers and Their Families

The House of Representatives, on September 23, passed a measure (by a vote of 298-118) instructing conferees on the Department of Defense (DOD) Authorization bill (H.R. 1588) to maintain language from the Senate-passed bill that would protect the naturalization benefits of surviving military family members and expedite the naturalization process for legal permanent residents serving in the U.S. armed forces. The Senate bill, championed by Senator Edward Kennedy (D-MA), mirrors the language of H.R. 1814, the Naturalization and Family Protection for Military Members Act of 2003, introduced by Representative Hilda Solis (D-CA). Supporters of these measures, AILA included, hope that the broad margin of victory for the motion to instruct will ensure that these provisions remain part of the DOD Authorization bill.

House Judiciary Committee Passes Extension of Employment Verification Pilot Program

The House Judiciary Committee, on September 24, voted 18-8 in favor of a H.R. 2359, a bill to extend and amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996's (IIRAIRA's) employment verification pilot program currently scheduled to sunset on November 30, 2003. The bill, introduced by Ken Calvert (R-CA), would extend the program through 2008. The program currently operates in six states (California, Texas, Florida, New York, Illinois, and Nebraska).

In January 2002, the Department of Justice issued a program evaluation report mandated by the IIRAIRA that was conducted by two independent private contractors. The report identified several critical flaws with the program, including failure to provide timely and accurate data due, in part, to inaccurate and outdated INS databases. However, instead of addressing these fundamental concerns, the Calvert bill actually expands the program far beyond the limited employment context and would permit states and local governments to use the confirmation system to check the immigration or citizenship status of all U.S. citizens and immigrants who come within their purview. This unwarranted expansion of the program contains no privacy protections and would exacerbate the privacy problems addressed in the evaluation report. AILA strongly opposes the expansion of this program.

Senators Hold Press Conference on DREAM Act While Immigrant Students Lobby

Senators Orrin Hatch (R-UT) and Richard Durbin (D-IL) held a press conference on September 4 to introduce S. 1545, the bipartisan "Development, Relief, and Education for Alien Minors (DREAM) Act of 2003." Terry Hartle, Senior Vice-President for Governmental Relations, American Council on Education; Gerry Maak, teacher; Fred Esplin, Director of the Government Affairs Office, University of Utah; and several immigrant students also spoke in support of S.

1545. In addition, immigrant students converged on Capitol Hill, visiting with their lawmakers to raise awareness about the obstacles they face in pursuit of higher education.

The DREAM Act would amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to again permit states to determine residency for in-state tuition purposes. The DREAM Act also would grant conditional permanent resident status to young people who came to the U.S. before the age of 16, have good moral character, have lived in the U.S. for at least five years at the time of enactment, and have graduated from high school. S. 1545 currently has a total of 28 cosponsors, including 18 Democrats and 10 Republicans. The House companion bill, the Student Adjustment Act (H.R. 1684), has 77 total cosponsors, 58 Democrats and 19 Republicans.

House Subcommittee to Hold Hearing on CLEAR Act

The House Subcommittee on Immigration, Border Security, and Claims will hold a hearing on October 1 on H.R. 2671, "Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act of 2003. Introduced by Representative Charles Norwood (R-GA) on July 9, H.R. 2671 would *require* state and local police to enforce federal civil immigration laws or lose certain critical funding. The hearing will consider this measure and "the degree to which state and local officers are now empowered to enforce the immigration laws and the need to confer additional immigration-enforcement authority on those officers." In the Senate, Senator Jeff Sessions (R-AL) has signaled his intention to introduce a companion measure. The Senate Judiciary Committee's Subcommittee on Immigration, Border Security and Citizenship scheduled a hearing on this legislation which was postponed due to Hurricane Isabelle.

AILA opposes the CLEAR Act for several reasons. It would undermine rather than enhance our safety by jeopardizing critical community-based policing initiatives, which are predicated on earning the trust and confidence of the served communities. When immigrants begin to see local police as agents of the federal government, with the power to deport them or their family members, they are less likely to come forth with tips on crimes or suspicious activity. Just last year the Justice Department attempted a similar proposal and was stopped in its tracks. Scores of police departments loudly and forcefully oppose such a policy, primarily for the dramatic and dangerous consequences it would have on crime reporting and public safety.

Finally, the little financial support promised cooperating states under this bill would derive largely from visa application fees, thereby draining resources from immigration services that are already woefully underfunded.

House Subcommittee Focuses on Totalization Agreement with Mexico

The House Judiciary Committee's Subcommittee on Immigration, Border Security, and Claims held an oversight hearing on September 11 to examine the proposed "Social Security Totalization Agreement with Mexico." Subcommittee Chairman John Hofstettler (R-IN), Subcommittee Ranking Member Sheila Jackson Lee (D-TX), and Representatives Jeff Flake (R-AZ), and Marsha Blackburn (R-TN) attended the hearing.

Among the witnesses testifying were Jo Anne B. Barnhart, Commissioner, Social Security Administration; Barbara D. Bovbjerg, Director, Education, Workforce and Income Security, U.S. General Accounting Office; Joel Mowbray, Investigative Journalist; and Ken Apfel, Former Social Security Administration Commissioner 1997-2001, Clinton Administration.

Aimed at coordinating Social Security benefits and taxes between two nations, the U.S. currently has totalization agreements with 20 countries. Ms. Barnhart stated that Congress authorized these agreements to "ensure fairness and equity by providing social insurance to those who split careers between two countries" and to "protect American workers and business involved in international trade from double taxation."

Representative Hostettler and Mr. Mowbray attacked the proposal by citing incorrect data to inflate the future cost of totalization with Mexico. They stated that, based on the total amount of the Earnings Suspense File (ESF), the cost of totalization with Mexico will be more than $345 billion over the next few decades. However, Ms. Barnhart pointed out that the $345 billion in the ESF is the amount of total wages for all workers who paid in since 1937. She stated that the actual amount of taxes paid by those workers in the ESF, and the corresponding cost of the program to the U.S., is a much lower number.

There was no indication of further actions or hearings regarding the proposed Totalization agreement with Mexico.

Treasury Decides in Favor of Consular ID Cards

After receiving 24,000 comments, 83% of which supported the use of consular ID cards, the Treasury Department has announced that it will keep in place the rules allowing banks to accept the ID cards. The September 19 decision came after the highly unusual reopening of the comment period concerning final regulations on Section 326 of the USA PATRIOT Act. These regulations allowed banks and other financial institutions to decide what documents they would accept as proof of identity before opening a bank account. The Treasury Department stated that the comment period produced no new information than had previously been considered on the security issue of the consular ID cards. This decision is a victory for organizations nationwide who understand that consular ID cards offer immigrants a safe avenue through which to enter the financial mainstream, as well as providing law enforcement officials with a reliable means to identify members of their community.

AILA supports the use of the Mexican consular identification cards as an appropriate and useful identification document.

Contracting Out Exacerbates DHS Service Delivery Problems

The Bureau of Citizenship and Immigration Services (USCIS) of the Department of Homeland Security has recently initiated a policy change that both prohibits direct telephone access to the USCIS and contracts out much of this function, and has announced plans to outsource the USCIS Immigration Information Officer (IIO) function. Past use of outsourcing immigration service functions has not led to efficiencies or cost savings because service centers have had to respond to contractors' errors in inputting data by requiring their own employees to check their work and, in many instances, re-do it. Because employees with the requisite knowledge and accountability have had to perform part of the contractors' work, a significant proportion of the anticipated savings from using contractors has been lost because direct employees have had to "shadow" that work. Such shadowing often has not reflected in the studies of cost savings from outsourcing, yet reflects a significant agency cost.

Both initiatives raise grave concerns and will negatively impact on the delivery of services. National and local organizations sent letters to the DHS objecting to these initiatives. These letters can be found on AILA's website.

The 1-800 System: It is important to restore direct telephone access to the USCIS Service Centers and discontinue the recent policy change that prohibits this access and contracts out much of this function. The prompt adjudication of applications and petitions is critical for American business, for families awaiting reunification, and, most importantly, for our national security. In doing away with direct telephone access to the Service Centers, the USCIS has exacerbated already lengthy processing delays and made it much more difficult to obtain accurate, timely information. And contracting out this function has led to problems that range from the frustrating to the tragic. Moreover, congressional offices are being forced to fill the information void, as individuals resort to contacting their elected officials with their case-processing and informational requests.

As structured, the new system does not provide a meaningful way to resolve problems. As outside contractors, the 800 number operators are unfamiliar with immigration. They are given very basic "scripts" from which to field calls, and have access only to information already provided on the USCIS website's case status inquiry system. In other words, they cannot tell callers anything more than what callers can see on-line. 800 number operators have given inaccurate information to callers (which could severely damage the foreign national's immigration status) and many people have complained that operators are rude and hung up on them.

The 800 number system is a failure. It is important to restore direct telephone access to the Service Centers so that individuals can gain the information they need and resolve case processing problems directly with a knowledgeable Immigration Information Officer (IIO).

Outsourcing the USCIS Immigration Information Officer (IIO) Function: It also is important not to outsource the USCIS Immigration Information Officer (IIO) function. To do so would raise serious issues of sufficiency of knowledge, accountability, and efficiency. Clearly, the problem-laden immigration benefits system is badly in need of change. However, outsourcing IIOs will only worsen the situation for individual applicants and ultimately affect the public accountability of USCIS. Instead, AILA has urged the USCIS to review the information function's internal structure and resource allocation, rather than take the seemingly easy, but ultimately harmful, step of outsourcing this key operation.

Because the vast majority of those who file applications with USCIS are unrepresented, most must find their own way through an astonishingly complex system, with their first, and often only, contact being the Information Officer who provides them with the appropriate forms and advice on how to navigate the process. These officers are trained in immigration, and are supported by others who provide information when needed. In contrast, in those instances in which INS/USCIS has used contractors, they have received inadequate training or, perhaps more importantly, lack substantive back-up and support. Knowledge of immigration is important—even determining what form to dispense involves understanding the person's immigration situation and what is needed to resolve the situation. This knowledge cannot be taught through lists and scripts. Officers must understand the myriad situations with which they are daily presented, and have a line of command that can help resolve the situation. People's lives depend on accurate information from government agencies, especially when immigration is involved. Using a contractor for the very function by which this information is disseminated will affect USCIS' credibility in all reaches of this society.

Contracted personnel do not possess this knowledge. Nor, given past practice, will they be held accountable for the quality of their work. Rather, they will be held accountable only for the number of inquiries answered each day. Currently, because service center intake contractors do

not report to the service center managers, the USCIS managers are unable to direct the contractors' day-to-day work, and the contractors' managers have no immigration background. The result is that contractors are accountable to USCIS management only for production output quotas, and not for work content. Such a situation is irrational when the very essence of the job is the subject matter of the agency.

This lack of accountability has created enough problems with work that does not require immigration knowledge: opening mail and inputting initial data at the service centers, the work of the current contractors. By contrast, IIO work involves almost 100% knowledge of immigration.

Immigrant Workers Freedom Ride Underway

The Immigrant Workers Freedom Ride began on September 20 and will conclude on October 4. Modeled after the 1961 Freedom Rides of the civil rights movement, the Immigrant Workers Freedom Ride is sponsored by a coalition of labor, community, religious, student and immigrant groups. Twenty buses (two each from ten different locations taking different routes) will be traveling across the country, stopping along the way in various cities, and coming together for a small rally and lobby day on October 2, in Washington, D.C. A national call-in day to Congress and the White House also is scheduled for October 2 to reinforce to Senators, Representatives, and the Administration the Freedom Ride messages. Freedom Riders will then stop in Liberty State Park in New Jersey on October 3, and conclude with an October 4 rally in Flushing Meadows, New York.

A complete timetable and list of events for the Freedom Ride is available on AILA InfoNet at http://www.aila.org/infonet/libraryViewer.aspx?docID=11169&st=freedom+ride>

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 as they move through the legislative process.

House Legislation

H.R. 3142, the Agricultural Job Opportunity, Benefits, and Security (AgJobs) Act of 2003, introduced on September 23 by Representatives Chris Cannon (R-UT) and Howard Berman (D-CA), would create an earned adjustment program for undocumented farm workers who would be eligible to apply for temporary immigration status based on their past work experience, and could become permanent residents upon satisfying prospective work requirements. The legislation would also streamline the existing H-2A foreign agricultural worker program while preserving and enhancing key labor protections. Senators Larry Craig (R-ID) and Edward Kennedy (D-MA) introduced a companion measure in the Senate (S. 1645).

H.R. 3136, introduced on September 17 by Representative Anthony Weiner (D-NY), would amend the INA to reduce the annual income level at which a person petitioning for a family-sponsored immigrant's admission must agree to provide support in a case where a U.S. employer has agreed to employ the immigrant for a period of not less than one year after admission or where the sponsored alien is under the age of 18.

H.R. 3123, the Senior Citizenship Act of 2003, introduced on September 17 by Representative Jerrold Nadler (D-NY), would amend the INA to exempt certain elderly persons from having to

demonstrate an understanding of the English language and the history, principles, and form of government of the United States as a requirement for naturalization, and would permit certain other elderly persons to take the history and government examination in a language of their choice.

H.R. 3115, introduced on September 17 by Representative Vito Fossella (R-NY), would prevent state or local governments from using federal funds to assist prosecutors unless the state or local government provides information to the Department of Homeland Security on individuals convicted of crimes for use by the Department in identifying immigration violations by such individuals. The legislation would also expand INA § 238 to provide for the expedited removal of aliens convicted of any crime.

H.R. 3110, introduced on September 17 by Representative Henry Bonilla (R-TX), would add a new section to INA § 241(b) to specify locations where certain citizens and nationals of Mexico may be removed from the United States into Mexico.

H.R. 3106, the Removal of Terrorist Criminal Aliens Act of 2003, introduced on September 17 by Representative Lamar Smith (R-TX), would expand the list of criminal offenses that trigger expedited removal to include possession of controlled substances, firearms offenses, espionage, sabotage, treason, threats against the President, violations of the Trading With the Enemy Act, draft evasion, and certain alien smuggling crimes. The legislation would also give enforcement officials more flexibility with respect to the places to which aliens may be deported. Finally, the bill would authorize the Secretary of Homeland Security and the Attorney General to remove from the United States those individuals they have reason to believe pose a danger to national security.

H.R. 3075, the Stop Terrorist Entry Program Act of 2003, introduced on September 11 by Representative J. Gresham Barrett (R-SC), would amend the INA to bar the admission of aliens from countries determined by the Secretary of State to be state sponsors of terrorism. A waiver of this provision would be available on a discretionary basis for aliens requiring examination or treatment for an emergency medical condition, and for applicants for admission as a refugee or asylee.

H.R. 3013, introduced on September 4 by Representative Zack Wamp (R-TN), would require the Secretary of Homeland Security to conduct a public hearing before establishing or relocating any Quick Response Team that works with state and local law enforcement officers to take undocumented and criminal aliens into custody and remove them from the United States

Senate Legislation

S. 1645, the Agricultural Job Opportunity, Benefits, and Security (AgJobs) Act of 2003, introduced on September 23 by Senators Larry Craig (R-ID) and Edward Kennedy (D-MA), would create an earned adjustment program for undocumented farm workers who would be eligible to apply for temporary immigration status based on their past work experience, and could become permanent residents upon satisfying prospective work requirements. The legislation would also streamline the existing H-2A foreign agricultural worker program while preserving and enhancing key labor protections. Representatives Chris Cannon (R-UT) and Howard Berman (D-CA) introduced a companion measure in the House (H.R. 3142).

S. 1642, introduced on September 23 by Senator Patrick Leahy (D-VT), would extend the duration of the immigrant investor regional center pilot program for five additional years.

S. 1635, the L-1 Visa (Intracompany Transferee) Reform Act of 2003, introduced on September 17 by Senator Saxby Chambliss (R-GA), would: amend INA § 214(c)(2) to prohibit an L-1B visa holder from being primarily stationed at the worksite of another employer in certain cases; reinstate the one-year work requirement for blanket applicants; and mandate the collection of L-1 program statistical data. For additional details on this legislation, see article number 3 in this Update.

S. 1628, introduced on September 17 by Senator Lamar Alexander (R-TN), would prescribe the Oath of Renunciation and Allegiance for purposes of INA § 337(a).

S. 1609, the Parental Responsibility Obligations Met through Immigration System Enforcement (PROMISE) Act of 2003, introduced on September 11 by Senator Orrin Hatch (R-UT), would render aliens ineligible to receive visas and exclude aliens from admission into the United States for nonpayment of child support. The legislation would also authorize immigration officers to serve legal process in child support cases on certain arriving aliens.

S. 1580, the Religious Workers Act of 2003, introduced on September 3 by Senator Orrin Hatch (R-UT), would amend the INA to extend the Religious Workers Program for an additional five years. The program is scheduled to sunset on September 30, 2003. A similar measure (H.R. 2152) was approved by the House on September 17.

S. 1479, introduced on July 29 by Senator Charles Schumer (D-NY), would amend and extend the Irish Peace Process and Cultural Training Program Act of 1998.

S. 1461, the Border Security and Immigration Improvement Act of 2003, introduced on July 25 by Senator John McCain (R-AZ), would, among other things, establish a program authorizing undocumented workers who entered and were working in the U.S. before August 1, 2003, to adjust their status to a new nonimmigrant visa classification, H-4B. The spouse and children of an H-4B worker who satisfied all but the employment requirements would be eligible for derivative status. In addition to an application fee, individuals eligible to normalize their status under this program would be subject to a steep penalty payment ($1,500). The bill would also create a new temporary worker visa category (H-4A). The worker's employer would initiate the process by filing a petition on the individual's behalf. The petition filing fee would be $1,000 for companies employing more than 500 workers and $500 for companies with fewer employees. Before hiring an H-4A worker, the employer would be required to recruit U.S. workers (citizens and immigrants) exclusively for at least fourteen days through a computerized "job registry" to be established by the Department of Labor. Thereafter, the employer would be obligated to confirm the identity and employment authorization of a foreign worker through an electronic employment eligibility confirmation system. For a previous report on S. 1461, see 7 *Washington Update* Number 10 (Aug. 11, 2003) at page 6.

S. 1455, the International Marriage Broker Regulation Act of 2003, introduced on July 25 by Senator Maria Cantwell (D-WA), would regulate international marriage broker activity in the United States by, among other things, proscribing U.S. citizens or lawful permanent residents from filing more than one application for a "K" fiancé(e) visa per year and making certain changes to the consular processing of fiancé(e) visa applications.

S. 1452, the USA Jobs Protection Act of 2003, introduced on July 24 by Senator Christopher Dodd (D-CT), would alter substantially the L and H-1B visa programs. The legislation would require labor attestations that include lay-off protections for U.S. workers and a prohibition on the

outsourcing of L-1 visa holders. In addition, petitions for an L-1B visa would require an additional application stating that the employer had taken good faith steps to recruit U.S. workers for the position. The proposed legislation would also increase the work experience requirement with the foreign employer from one year to two years and would cut the duration of stay for L visa holders (including permissible extensions) by two years. (Many of these requirements were also included in L visa legislation recently introduced by Representatives John Mica (R-FL) (H.R. 2154) and Rosa De Lauro (D-CT) (H.R. 2702). With regard to the H-1B visa program, the bill would treat all H-1B employers as "H-1B dependant" employers and would attempt to limit the placement of H-1B workers at third party sites for six months before or after the lay-off of a U.S. worker. For a previous report on S. 1452, see 7 *Washington Update* Number 10 (Aug. 11, 2003) at page 4.

S. 1336, introduced on June 25 by Senator Sam Brownback (R-KS), would allow North Koreans to apply for refugee and asylum status.

Agencies Issue a Variety of New Regulations

Federal agencies have issued a variety of new regulations in recent weeks, impacting everything from the Diversity Visa Program to health care worker certifications. A brief summary of these regulations follows.

Department of Homeland Security

The Bureau of Customs and Border Protection (CBP), on August 28, published a Final Rule amending the title and structure of Title 19 of the Code of Federal Regulations (CFR) to reflect changes caused by the creation of the Department of Homeland Security and the consequent governmental reorganization. The amendments also specify the signatures that indicate the exercise of authority for documents that appear in 19 CFR Chapter I. In addition, the new rule adds and reserves for future use a chapter under which the Bureau of Immigration and Customs Enforcement (ICE) may issue regulations. (68 FR 51867, 8/28/03, see AILA InfoNet Doc. No. 03082947).

The Bureau of Citizenship and Immigration Services (USCIS) published a notice on August 26 allowing an additional 30-day period for public comment on its information collection under review for the Application to Preserve Residence for Naturalization (form N-470). The information collection was previously published in the Federal Register on June 4, at 68 FR 33510, allowing for a 60-day public comment period, but no comments were received. (68 FR 51296, 08/26/03, see AILA InfoNet Doc. No. 03082742).

The Department of Homeland Security (DHS) published an interim rule on August 7 that suspends immediately the Transit Without Visa (TWOV) program and the International-to-International (ITI) program while the Secretaries of Homeland Security and State evaluate the security risks involved in these programs over the next 60 days. The TWOV and ITI programs allow an alien to be transported in-transit through the United States to another foreign country without first obtaining a nonimmigrant visa from the Department of State overseas, provided the carrier has entered into an Immediate and Continuous Transit Agreement, pursuant to INA § 233(c). According to the rule's preamble, the "recent receipt of credible intelligence concerning a threat specific to the TWOV program and additional increased threats of activities against the interests and the security of the United States, has led to the decision to suspend this program." (68 FR 46926, 8/7/03, see AILA InfoNet Doc. No. 03080721).

The DHS, on August 7, published an interim rule amending the agency's regulations governing the processing of applications and petitions relating to the immigration of alien orphans. The amendment to the rule establishes that the Director of the USCIS may, at his or her discretion, extend the validity period for a decision approving an Application for Advanced Processing of Orphan Petition (Form I-600A), either in an individual case or for any case within a designated class of cases, because of delays in completing the adoption process due to public health concerns relating to the incidence of Severe Acute Respiratory Syndrome (SARS). The rule notes that on May 15, 2003, the China Center for Adoption Affairs (CCAA) of the Peoples Republic of China (PRC) suspended its processing of international adoptions because of the SARS outbreak. While this suspension was in force, prospective adoptive parents were unable to complete the adoption process in the PRC. The CCAA lifted the suspension on June 24, 2003. This amendment will permit the USCIS to more readily accommodate prospective adoptive parents who have been unable to comply with the requirement to file a Petition to Classify Orphan as an Immediate Relative (Form I-600) within 18 months of the Form I-600A approval date. (68 FR 46925, 8/7/03, see AILA InfoNet Doc. No. 03080718).

A July 25 DHS final rule amends the agency's regulations to provide that organizations previously authorized to issue health care worker certifications will continue to be permitted to issue certifications for a temporary period of time, and to set up procedures for authorizing organizations to issue the certificates, including an appeals process in the event that requests for authorization are denied. In addition, the rule adds the requirement that all nonimmigrants coming to the United States for the primary purpose of performing labor as health care workers, including those seeking a change of nonimmigrant status, be required to submit a health care worker certification. The rule took effect on September 23. (68 FR 43901, 7/25/03, see AILA InfoNet Doc. No. 03072542). NOTE: Several days after this rule's publication, the DHS announced that it will exercise its discretion to waive the certification requirement for certain nonimmigrant health care workers for a period of one year after the date of this final rule (i.e., for one year from July 25). The admission, extension of stay, or change of status may not be longer than one year, and the certification must be obtained within that time. See AILA InfoNet Doc. No. 03072913.

Department of State

The State Department, on September 15, published proposed regulations to implement the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). The Convention and the IAA require that adoption service providers be accredited or approved to provide adoption services for intercountry adoptions involving two countries party to the Convention. These proposed rules establish procedures that the Department will use to designate accrediting entities for the purpose of evaluating agencies and persons and determining if they may be granted accreditation or approval. The proposed rules also contain procedures and standards to accredit agencies and approve persons to provide adoption services in Convention cases. Comments are due by November 14. (68 FR 54064, 9/15/03, see AILA InfoNet Doc. No. 03091540).

The State Department, on September 15, published proposed rules for the preservation of records by the Department and by the DHS, as required by the Hague Convention and the IAA. The Convention records will be maintained for 75 years. Comments are due by November 14. (68 FR 54119, 9/15/03, see AILA InfoNet Doc. No. 03091541).

The State Department published its DV-2005 Diversity Visa Lottery registration instructions in the August 27 edition of the Federal Register. Entries must be submitted electronically between Saturday, November 1, 2003, and Tuesday, December 30, 2003. Applicants may access the electronic Diversity Visa entry form at <www.dvlottery.state.gov> during the 60-day registration period beginning November 1. Paper entries will not be accepted. (68 FR 51627, 8/27/03, see AILA InfoNet Doc. No. 03082743).

On August 18, the State Department adopted as final an interim rule published in the Federal Register on March 7, 2002, amending the regulation pertaining to Automatic Visa Revalidation, which was effective on April 1, 2002. The interim rule limited eligibility for automatic revalidation of visas in two respects: first, automatic revalidation is no longer available to persons who choose to apply for a new visa while traveling temporarily to an area covered by the automatic revalidation privilege; and second, it is no longer available to nationals of countries that are state sponsors of terrorism, regardless of whether such nationals apply for a new visa while outside the United States or not. According to the State Department, the addition of "applying for a visa while abroad" as a bar against automatic revalidation was undertaken to protect against the possibility that the visa applicant will be found ineligible but will have returned to the United States using the automatic revalidation privilege while the visa application was pending. The bar against nationals of states that have been found to sponsor terrorism was added for the additional reason that such nationals have become subject to heightened standards of review before visa issuance. The rule took effect upon publication. (68 FR 49351, 08/18/03, see AILA InfoNet Doc. No. 03081844).

A State Department interim rule dated August 18 changed the manner in which aliens may apply for the Diversity Visa Program from a standard mail-in system, to an entirely electronic system that will utilize a specifically designated Internet website. The rule also makes minor technical and editorial changes to the existing rule "for the purpose of greater clarity, uniformity and precision." The rule's preamble states that the Department is implementing the new electronic system in order to make the process less prone to fraud, improve efficiency in the diversity visa petition process and significantly reduce the cost to the Government of the process. The rule took effect on August 18 and comments are due on or before October 17. (68 FR 49353, 08/18/03, see AILA InfoNet Doc. No. 03081843).

The State Department published a final rule on August 12, amending its regulations to add two new nonimmigrant symbols to the nonimmigrant classification table. The amendments are necessary to implement the recently enacted "Border Commuter Student Act of 2002," signed by the President on November 2, 2002. That legislation created two new nonimmigrant visa classifications (F3 and M3) for citizens and residents of Mexico or Canada who seek to commute into the United States for the purpose of attending an approved F or M school. The rule adds these new classifications to the Department's regulatory list of nonimmigrant visa classifications. The rule became effective on August 11. (68 FR 47460, 8/11/03, see AILA InfoNet Doc. No. 03081210).

The State Department published an interim rule on August 7 on the suspension of the TWOV and ITI programs. For additional details, see the above discussion on the companion rule from the DHS. (68 FR 46948, 8/7/03, see AILA InfoNet Doc. No. 03080719).

In a July 21 Federal Register Notice, the State Department revoked the restriction on the use of U.S. passports for travel to, in, or through Iraq. This revocation became effective upon signature on July 14. (68 FR 43246, 7/21/03, see AILA InfoNet Doc. No. 03072146).

Department of Health and Human Services

The Department of Health and Human Services' (HHS's) Office of Refugee Resettlement, on August 8, published a notice of availability of funds for technical assistance in seven categories of programs that assist refugees and one grant for services for asylees. (68 FR 47348, 8/8/03, see AILA InfoNet Doc. No. 03081212).

The HHS's Office of Refugee Resettlement, on July 21, published a notice of allocations to States of FY 2003 funds for refugee social services under the Refugee Resettlement Program. (68 FR 43142, 7/21/03, see AILA InfoNet Doc. No. 03072145).

Temporary Protected Status

By notice in the Federal Register, the DHS has extended for another 12 months the temporary protected status (TPS) designations for Sudan and Burundi, while terminating the designation for Sierra Leone. The designations for Sudan and Burundi have been extended until November 2, 2004, with the re-registration period for both countries running from September 3 to November 3, 2003. The termination of Sierra Leone's designation is effective May 3, 2004, six months from the end of the current extension. Nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra Leone designation or redesignation will automatically retain their temporary protected status and have their current Employment Authorization Documents (EADs) extended until the termination date.

To view the notice covering Sudan, see: 68 FR 52410, 9/3/03, AILA InfoNet Doc. No. 03090341. To view Burundi's notice, see: 68 FR 52405, 9/3/03, AILA InfoNet Doc. No. 03090343. To view the notice terminating Sierra Leone's designation, see: 68 FR 52407, 9/3/03, AILA InfoNet Doc. No. 03090342).

MEDIA SPOTLIGHT: Members and Staff in the News

Members and Staff in the News

The Las Vegas Sun featured **Peter Ashman** (Nevada) in a September 23 article about Las Vegas educators' efforts to educate Latino students and their parents about immigration. **Edward Shulman** (New Jersey), **Anayancy Housman** (New Jersey)**, Regis Fernandez** (New Jersey), **Robert Frank** (New Jersey) and **Marshall Fitz** (National) were quoted in a September 22 New Jersey Law Journal article about the docket changes in the Newark federal immigration court.

Angelo Paparelli (Northern California) and **Don Unger** (Northern California) were quoted in a September 22 *Monterey County Herald* article about the immigration status of Arnold Schwarzenegger. *Reuters News Service* quoted **Cyrus Mehta** (New York), **Ann Pinchak** (Texas), and **Brenda Oliver** (Washington) in a September 22 article about lowering the H-1B cap.

Alejandro Solorio (Missouri/Kansas) was featured in a September 22 article in the *Kansas City Star* about the upcoming Immigrant Workers Freedom Ride. The *Tennesseean* quoted **James Chesser** (Mid-South) in a September 21 article about Kurdish refugees and the difficulties they face when employers seek verification of their educational backgrounds. **Emilia Banuelos** (Arizona) was quoted in a September 20 column in the *Arizona Republic* in which a proposal for issuing driver's licenses in Arizona was discussed.

Ron Russell (Mid-South) was quoted in a September 19 *Courier-Journal* article about the effects of the PATRIOT Act on immigrants and noncitizens. **Paul Parsons** (Texas) was quoted in a September 18 *Austin American-Statesman* article about the barriers that immigrants face becoming U.S. citizens. *The Greenwich Times* quoted **William Manning** (Connecticut) in a September 17 article about Citizenship Day.

Steven Yale-Loehr (Upstate New York) was quoted in a *Cox News Service* article on September 17 about his recent testimony on H-1B visas before the Senate Committee on the Judiciary. **Mr. Yale-Loehr** was also quoted in a September 17 article in the *Washington Internet Daily* about his testimony.

Jeanne Butterfield (National) was quoted in a September 17 *New York Times* article about the new USCIS pilot program implemented in Connecticut to detain immigration violators. **Daniel Marcus** (Connecticut) and **Marshall Fitz** (National) were quoted in a September 16 *Associated Press* article on the same topic.

The Associated Press quoted **Judy Golub** (National) in a September 15 article about the proposed legislation that would allow local law enforcement to enforce immigration laws. **Steven Mukamal** (New York), **Donald Ungar** (Northern California) and **Crystal Williams** (National) were quoted in a September 15 *San Jose Mercury News* article about the possibility that Arnold Schwarzenegger may have violated the terms of his first visa.

Alan Gordon (Carolinas) was featured in a September 14 *Charlotte Observer* article about a local ceremony to honor contributions to Charlotte's Latin American community. *The Hawaii Advertiser* published a commentary written by **John Robert Egan** (Hawaii) on September 14, commemorating Citizenship Day and recognizing the importance of becoming a citizen. *Newsday* quoted **Judy Golub** (National) in a September 13 article about the contracting out of Immigration Information Officers' jobs.

The El Paso Times featured **Carlos Spector** (Texas) in a September 12 article about his client, Zhang Boli, who was a major figure in the 1989 Tiananmen Square uprising and who is testifying on behalf of another asylum seeker from China. **Sin Yen Ling** (New York) was quoted in a September 12 *Associated Press* article about his client who has been detained on immigration violations for over 16 months.

John Gard (Chicago) was quoted in a September 11 *Miami New Times* article about the failure of INS to detain Mohammed Atta, the September 11th terrorist ringleader, when he tried to enter the U.S. on a tourist visa to attend school. *The Atlantic County News* quoted **John Geraghty** (New Jersey) in a September 11 article about the opening of a casino bearing the likeness of Fidel Castro.

Ben Johnson (AILF) was quoted in a September 8 *Fort Wayne Journal-Gazette* article about the Center for Immigration Studies' "report" about the increasing number of immigrants to the U.S. who are Mexican. *The Journal News* quoted **Rolando Velasquez** (Upstate New York) in a September 8 article about his client, a visa lottery winner, who has been detained for deportation because he took a photo of himself near the Hudson reservoir and also shared an apartment with an immigrant who overstayed his visa.

Newsday featured **Mark Koestler** (New York) in a September 7 question and answer article on immigration. **Carlina Tapia-Ruano** (Chicago) was quoted in a September 4 article in the *Chicago Daily Law Bulletin* about the backlog of visa lottery winners.

Univision featured **José Pertierra** (Washington, DC) in a September 3 interview about how to find an attorney in the post-September 11th era. **Cheryl Little** (Southern Florida) was quoted in a September 3 article in the *Sacramento Bee* about the detention of undocumented minors. **Judith Wood** (Northern California) was quoted in a September 3 *Los Angeles Times* article about her client who sought asylum from China due to repeated forced abortions.

Peter Ashman (Nevada) was quoted in a September 2 *Las Vegas Sun* article about the opening of a legal clinic for immigrants at the University of Nevada, Las Vegas. *The Greenville News* featured **Knox White** (Carolinas) in a September 2 article about his run for Mayor of Greenville, SC. **Mario Ramos** (Mid-South) and **Charla Haas** (Mid-South) were both quoted in an extensive *Tennessee Business Review* article on September 2 about the continuing problems in Tennessee with "notarios."

Larry Behar (Southern Florida) wrote a commentary in the September 1 edition of the *Sun-Sentinel* about H-1B and L-1 visas. **Karen Musalo** (Northern California) was featured in the September issue of *Marie Claire* in a story about her client who is seeking asylum from Guatemala due to repeated domestic violence

Michael Said (Iowa) was quoted in an August 28 *Des Moines Register* article about his client who is married to a U.S. citizen and is in federal court to avoid deportation. *The Business Review* featured **Michele Santucci** (New York) in an August 27 article about her recently released manual published by the New York State Bar. **Ann Benson** (Washington State) was featured in an August 27 *Democracy Now* article about a debate she participated in with the Deputy Director for Detention and Removal Operations of BICE, David Venturella.

Megan O'Connor (New York) was featured in an August 26 *BusinessWeek* article about the Northeast Blackout. **Nora Milner** (San Diego) and **Tifany Markee** (San Diego) were featured in successive *Pawtucket Times* articles on August 26 and 27 about their client, Danny Sigui, who is facing deportation because he was a witness for a murder trial when the prosecutors disclosed his undocumented status to DHS.

Dale Schwartz (Atlanta) was quoted in an August 25 *Associated Press* article about traditional gateway states for immigrants. *The Associated Press* quoted **Cheryl Little** (Southern Florida) in an August 25 article about charges being dropped against a Haitian asylum seeker who used false papers to enter the country. **Margaret Wong** (Ohio) and **Richard Herman** (Ohio) were featured in an August 25 article in the *Cleveland Plain Dealer* about immigrants to Ohio more likely to hold college degrees.

The Washington Times quoted **Greg Siskind** (Mid-South) in an August 24 article about no-match letters. **Banafsheh Akhlaghi** (Northern California) was featured in an August 22 article in the *Contra Costa Times* about her practice as an immigration attorney representing mostly Muslim and Middle-Eastern clients in the post-September 11th era. The *Herald News* quoted **Sohail Mohammed** (New Jersey) in an August 22 article about a Palestinian man who has been detained for over a year pending his deportation.

Carl Shusterman (Southern California) was quoted in an *Associated Press* article on August 20. The article, about the online applications for the visa lottery, received international coverage. Newspapers such as the *Washington Post*, *USA Today*, *The Australian*, *Newsday, Philadelphia Inquirer, The Times of India,* and many, many others carried the article. Well done!

Gene McNary (Missouri) was quoted in an August 20 article in the *St. Louis Post-Dispatch* about his client, who was a victim of an immigration scam and is scheduled to be deported based upon the fraudulent documents submitted by the scam perpetrator. *The Argus* featured **Banafsheh Akhlaghi** (Northern California) in an August 20 article about her client who faces deportation because a former attorney had filed the wrong visa extension.

The Virginian Pilot featured **Satnam Singh** (Washington, DC) in an August 18 article about the PATRIOT Act. **Susan McDonald** (Southern Florida) was featured in an August 18 article in the *Florida Sun-Sentinel* about her new position as liaison to the South Florida Young Lawyers division chapter.

Marshall Fitz (National) was quoted by an August 16 *Milwaukee Journal-Sentinel* article about SEVIS and the growing frustration of foreign students trying to obtain visas to study in the U.S. **Andy Wizner** (New England) was interviewed on August 15 by *New England Cable News* about L-1 and H-1B visas. **Michael Bander** (Southern Florida) and **Tammy Fox-Isicoff** (Southern Florida) were featured in an August 15 *Miami Herald* article about the plan to privatize the jobs of Immigration Information Officers.

The *Austin American-Statesman* quoted **Jim O'Malley** (New York) in an August 12 article about his client, a 61-year-old LPR grandmother, who was denied re-entry into the U.S. because she did not know she should have applied for Advance Parole – she is currently living with her mother in Shannon, Ireland.

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).

Did You Know?

"GAO…identified 10 factors…affecting US-VISIT and concluded that the program is a very risky endeavor. Some risk factors are inherent to the program, such as its mission criticality, its size and complexity, and its enormous potential costs. Others, however, arise from the program's relatively immature state of governance and management. For example, although the program has government-wide scope, an accountable governance structure to direct and oversee the program that reflects this scope is not yet established. In addition, a US-VISIT program management capability has yet to be established, important aspects defining the program's operating environment are not decided, facility needs are unclear and challenging, and the mission value to be derived from the program's initial operating capability is unknown. Because of the risk factors, GAO concluded that it is uncertain that US-VISIT will be able to measurably and appreciably achieve DHS's stated goals for the program. Further, DHS's near-term investment in the program is at risk of not delivering promised capabilities on time and within budget and not producing mission value commensurate with investment costs."

--*excerpted from*: "Homeland Security: Risks Facing Key Border and Transportation Security Program Need to Be Addressed," U.S. General Accounting Office (GAO-03-1083), September 23, 2003

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