

# WASHINGTON UPDATE

Volume 8, Number 7, May 18, 2004

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### **Bill Requiring Hospitals to Report Undocumented Patients Defeated on House Floor**

In a vote of 331 to 88, House lawmakers, on May 18, soundly defeated legislation sponsored by Representative Dana Rohrabacher (R-CA) that would have required hospitals to report undocumented immigrants seeking emergency care to the Department of Homeland Security (DHS) or lose certain federal funding (the Undocumented Alien Emergency Medical Assistance Amendments of 2004 (H.R. 3722)). Republican House leaders promised Representative Rohrabacher a House floor vote on the legislation in exchange for his support of the conference report on the Medicare legislation.

H.R. 3722 would have required health care providers to transmit to the DHS information about the patients' finances, employment, and biometric data. The bill also would have narrowed the scope of emergency health services available to undocumented persons and made inability to pay medical expenses a basis for removal from the U.S. Employers of undocumented workers whose medical expenses are reimbursed by the federal government would have been required to repay the government for those costs.

AILA strongly opposed passage of this bill because it would have jeopardized the health of both immigrants and the general public. Immigrants and their families would have been deterred from seeking needed health services, including testing and treatment for communicable diseases. Overburdened emergency health care providers would have been forced to verify the immigration status of emergency patients, and report those believed to be undocumented to immigration authorities, in conflict with patient privacy rights and the fundamental principle that they refrain from harming their patients. In addition, the bill would have imposed additional burdens on employers, including small businesses, who already are required to verify the citizenship and immigration status of workers. Moreover, the legislation would have increased the likelihood of discrimination against persons assumed to "appear foreign" because of their race, accent or other prohibited.

AILA congratulates Members of the House for defeating this irresponsible proposal.

## **Senate Judiciary Committee Declines to Expand Crime of Violence Definition**

The Senate Judiciary Committee, on May 14, marked up the Gang Prevention and Effective Deterrence Act of 2003 (S. 1735). In an important victory for advocates, the Committee voted to remove a provision in the bill that would have expanded the federal definition of a crime of violence (18 U.S.C. §16(b)) by effectively eliminating the *mens rea* element. This definitional change would have triggered a concomitant expansion of the aggravated felony definition (and all of the attendant immigration consequences) to reach a broad new class of crimes. Criminal convictions and sentences that satisfy the aggravated felony definition lead to the harshest of consequences in immigration law: mandatory detention, permanent deportation, ineligibility for asylum, ineligibility for relief under the Violence Against Women's Act, and ineligibility for any discretionary relief. Moreover, due to the absolute nature of the aggravated felony penalty structure, the severity of these consequences cannot be mitigated, indeed they are exacerbated, for long-time legal permanent residents with deep roots in the United States and U.S. citizen family members.

AILA worked closely with an array of organizations and individuals in advocating for removal of this provision from the bill. Senator Russ Feingold (D-WI) introduced the amendment to strike the provision and spoke eloquently on the problems inherent with expanding the crime of violence definition. Senator Mike DeWine (R-OH) was the only Member to cross party lines, courageously casting his vote in favor of the amendment, which carried by a 10-9 vote. AILA commends the advocates who worked tirelessly to oppose this provision and the Senators who wisely voted to strike this provision.

## **Comprehensive Immigration Reform Bill Introduced in House and Senate**

Senator Edward Kennedy (D-MA), Representatives Robert Menendez (D-NJ) and Luis Gutierrez (D-IL) and others on May 4 introduced a comprehensive immigration reform bill, the Safe, Orderly Legal Visas and Enforcement (SOLVE) Act of 2004. The SOLVE Act (S. 2381/H.R. 4262), which AILA strongly supports, includes the measures necessary for reform: earned adjustment for eligible people already living and working in the U.S.; family reunification through backlog reduction; and a new temporary worker program.

Earned Adjustment: The bill includes an earned adjustment for immigrants who have been in the U.S. for five or more years on the date of enactment and can demonstrate 24 months in the aggregate of employment (including self-employment) in the U.S. and payment of taxes. The principal applicant's spouse and unmarried children under 21 also would be eligible. Applicants would undergo criminal background checks and a medical examination, register with the Selective Services, and demonstrate an understanding of English and civics or be pursuing a course of study to achieve such understanding. Applicants would be able to travel and work with authorization while their application is pending. The bill also provides for administrative and judicial review for application denials. Applicants residing in the U.S. less than five years, but who are physically present on the date of the bill's introduction, also would be eligible, after a background check, for transitional status of three years, during which they would be able to work with authorization and travel abroad. After 24 months of work in the aggregate, they would be eligible to adjust their status.

Family Backlog Reductions: The bill deals with the need to reduce the backlog in family-based immigration by, among other provisions: exempting immediate relatives from counting towards the 480,000 ceiling on family-based immigrant visas and including immediate relatives of permanent residents; allocating a visa outside of the per-country caps to immigrants waiting more

than five years; recapturing unused family-based visas in any given year and applying those visas to future years without per-country limitations; reducing the income test for the affidavit of support from 125% to 100% of the poverty level; and repealing the bars to re-entry.

New “Break-the-Mold” Worker Programs: The bill focuses on future immigration by reforming the current H-2B program and creating a new H-1D program. Both programs target workers with low- and semi-skilled positions. 250,000 visas would be available for H-1D workers for a two-year program that is renewable for two additional terms (6 years total). 100,000 visas would be available for H-2B workers for a nine-month program renewable for up to 40 months. These programs would not sunset. Immediate family members would be able to accompany the H-2B and H-1D workers, but would be eligible to work only if they themselves qualify for an H-2B or H-1D or other work visa. In addition, these workers would be able to move to another H-2B or H-1D job after three months. These programs would also include a path to permanent residency so that an employer could immediately petition for a worker upon initial employment or a worker could self-petition after two years of work.

### **AgJobs Surpasses the 60-Cosponsor Mark in the Senate**

The bipartisan Agricultural Job Opportunity, Benefits, and Security (AgJobs) Act (S. 1645/H.R. 3142) has, to date, garnered 63 Senate cosponsors. This figure is significant in that it essentially renders the legislation “filibuster-proof.” With 60 or more votes, a Senate procedure known as “cloture” can be invoked with regard to a bill under consideration. Once a cloture motion is adopted, each Senator is limited to one hour of debate on the bill and on all motions and amendments affecting it. Moreover, no new amendments can be offered except by unanimous consent.

Few major bills enjoy broader support than the AgJobs Act, whose 63 cosponsors in the Senate and 108 in the House are nearly evenly divided between Democrats and Republicans. The bill also has been endorsed by over 400 organizations representing a broad range of farming, business, and other interests. The legislation, whose chief Senate sponsors are Senators Larry Craig (R-ID) and Edward Kennedy (D-MA) and chief House sponsors are Representatives Chris Cannon (R-UT) and Howard Berman (D-CA), is a landmark example of business, immigrant, agriculture, labor, civic and faith-based groups working together to fix long-standing problems with agricultural labor policy.

The AgJobs Act would reform the H-2A process so that agricultural employers unable to find American workers would be able to hire needed foreign workers. Furthermore, the legislation provides a reasonable mechanism for undocumented agricultural workers to earn legal status. These two key elements are the cornerstone for the comprehensive immigration reform for service sector workers so urgently needed to address this nation’s economic and security interests. To view AILA’s Issue Paper on AgJobs, see: <http://www.aila.org/fileViewer.aspx?docID=11993>. To view our FAQ, go to: <http://www.aila.org/fileViewer.aspx?docID=12005>.

### **H-2B Legislation Continues to Idle in Senate**

Time is growing short for Congress to provide “Save Summer” relief for H-2B employers. Disagreement in the Senate over how to modify the H-2B program continues. Two bills already have been introduced that would increase the available numbers of H-2B visas for this fiscal year: the bipartisan “Save Summer Act of 2004” (S. 2252), introduced by Senator Kennedy (D-MA) and others, and the “Summer Operations and Services (S.O.S) Relief and Reform Act” (S. 2282), introduced by Senators Hatch (R-UT) and Chambliss (R-GA). However, both Senators Kyl (R-

AZ) and Sessions (R-AL) continue to express interest in adding permanent changes to the H-2B program and trimming any proposed increase in the numbers of H-2B workers for this fiscal year. AILA believes that such dramatic reform does not belong on an emergency fix, but rather should be part of the discussion of comprehensive immigration reform. We urge Employers continue to reach out to their Members of Congress to “Save Summer.” Time is running out!

### **Senate Committee Approves PROMISE Act**

The Senate Judiciary Committee approved a bill on May 13 that would render aliens ineligible to receive visas and exclude aliens from admission into the United States for nonpayment of child support. The legislation, the Parental Responsibility Obligations Met through Immigration System Enforcement (PROMISE) Act (S. 1609), would also authorize immigration officers to serve legal process on certain arriving aliens in connection with child support cases or actions to establish paternity. The Secretary of Homeland Security would have the discretion to parole into the United States any alien deemed inadmissible under the bill if: the Secretary places him or her into removal proceedings; the alien demonstrates that such parole is essential to the fulfillment of child support obligations; the alien demonstrates that he or she is authorized for, and has, employment in the U.S.; and he or she is not otherwise inadmissible. Senator Orrin Hatch (R-UT) introduced the legislation on September 11, 2003. The legislation, which the Committee approved on a voice vote, now moves to the Senate floor for further consideration.

### **DOL Publishes Notice on Earliest Filing Date for FY 2005 H-2B Labor Certifications**

The Department of Labor’s (DOL’s) Employment and Training Administration (ETA) published a notice in the May 13 Federal Register discussing application procedures for the processing of H-2B applications for fiscal year (FY) 2005, given that the FY 2004 cap of 66,000 has been reached. The notice states that any employer who desires to employ an H-2B worker with a start date of need on or after October 1, 2004 (the first day of FY 2005), must file a new ETA 750, Part A, Application for Alien Employment, with a new test of the labor market, on or after June 1, 2004. This procedure applies to those employers who have not been able to use a currently approved labor certification due to the H-2B program cap being reached for FY 2004. According to the notice, this action is necessary as the availability of U.S. workers fluctuates over short periods of time and an adequate test of the labor market must be made prior to the approval of a labor certification. Current DOL policy requires employers to file their H-2B application no more than 120 days before the worker is needed thus ensuring the labor market test is reasonably current. For example, employers who filed applications with DOL after March 10, 2004, and were not approved by the USCIS due to the program cap being reached, will need to file new applications with the DOL no earlier than June 1, 2004, if the employer has a date of need no earlier than October 1, 2004. These applications will be handled according to current ETA policy and must include a current test of the U.S. labor market. (69 FR 26623, 5/13/04, see AILA InfoNet Doc. No. 04051463).

### **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. 4360, the Furthering Education and Research through Mantis Improvements (FERMI) Act, introduced on May 17 by Representative Michael Capuano (D-MA), seeks to preserve the preeminence of the United States in scientific research by improving the Visas Mantis security check program through a reduction of processing times and improvement in efficiency under such program.

H.R. 4360, the Country of Origin Healthcare Accountability Act, introduced on May 13 by Representative Jo Ann Davis (R-VA), would provide for continuing federal reimbursement of emergency health services furnished to undocumented aliens through foreign aid funds. The bill contains a congressional finding that: "American citizens should not be forced to pay for the treatment of illegal aliens, particularly when many Americans already struggle to pay their own medical expenses. Consequently, the cost of treatment of illegal aliens should be borne as a reduction in assistance provided to foreign countries."

H.R. 4306, introduced on May 6 by Representative Chris Cannon (R-UT), would amend INA § 274A to allow for electronic signatures on employment eligibility attestation forms and the retention of electronic versions of same in lieu of paper copies.

H.R. 4262, the Safe, Orderly Legal Visas and Enforcement (SOLVE) Act of 2004, introduced on May 4 by Representatives Luis Gutierrez (D-IL) and Robert Menendez (D-NJ), would provide a comprehensive overhaul of our immigration laws via: an earned adjustment program; a new "break-the-mold" worker program; family backlog reduction; and enhanced national security measures. Senator Edward Kennedy (D-MA) introduced the Senate companion bill (S. 2381). For additional details on this important bill, see the first article in this *Update*. To view AILA's materials on the SOLVE Act, go to:  
<http://www.aila.org/infonet/contentViewer.aspx?bc=106,2612,5511>

## Senate Legislation

S. 2381, the Safe, Orderly Legal Visas and Enforcement (SOLVE) Act of 2004, introduced on May 4 by Senator Edward Kennedy (D-MA), would provide a comprehensive overhaul of our immigration laws via: an earned adjustment program; a new "break-the-mold" worker program; family backlog reduction; and enhanced national security measures. As noted above, this is the Senate companion bill to H.R. 4262.

## **Upcoming Hearings and Other Events**

**May 20, Thursday:** 9:30 a.m., 226 Dirksen Senate Office Building. The Senate Judiciary Committee (Chairman Hatch, R-Utah) will mark up pending legislation and vote on pending nominations. Agenda: S 1933 - Enhancing Federal Obscenity Reporting and Copyright Enforcement Act of 2003; S 1635 - L-1 Visa (Intracompany Transferee) Reform Act of 2003; S 1129 - Unaccompanied Alien Child Protection Act of 2003; S 1735 - Gang Prevention and Effective Deterrence Act of 2003; S 2013 - Satellite Home Viewer Extension Act of 2004; and S J Res 23 - Continuity of Congress. Nominations: Henry W. Saad to be a U.S. Circuit judge for the 6th Circuit. Contact: Artim, Bruce - Republican Chief Counsel and Staff Director at 202-224-5225.

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

*The San Jose Mercury News* quoted **Carolyn Choi** (Santa Clara), **David Sheen** (Northern California), and **Beverly Byrd** (Northern California) in a May 12 question and answer article about immigration. **Boyd Campbell** (Atlanta) was quoted in a May 11 *Associated Press* article about Alabama revising its immigrant driver's licensing rules to include a broader range of acceptable documents. **David Strand** (Northern California) was quoted in a May 11 *San Francisco Chronicle* article about anti-immigrant activist, Yeh Ling-Ling, who was a former employee. **Carl Shusterman** (Southern California) was quoted in the May edition of *Advisor for Medical and Professional Staff Services* about the DHS certification process for foreign health workers. **Margaret Wong** (Ohio) was featured in a May 12 *Associated Press* article about the benefits of rising early for work. **David Nachman** (New York) is a featured panelist in May for the program *Lawscape on Cablevision of Oakland and Bergen* about immigration and nationality law in a post-9/11 world.

**Jeanne Maltz** (San Diego) was quoted in a May 11 *Copley News Service* article about a 20-year-old undocumented immigrant, who has lived in the U.S. since he was a young boy, and now faces deportation to Japan, a country he doesn't remember. **Herbert Igbanugo** (Minnesota/Dakotas) was featured in a May 11 *St. Paul Pioneer Press* article about his clients, who have lived in the U.S. for over 17 years and now face deportation. **Joren Lyons** (Northern California) was quoted in a May 11 *Tri-Valley Herald* article about the Cuevas family participating in a rally in support of the DREAM Act.

*The Seattle Post-Intelligencer* quoted **Robert Gibbs** (Washington State) and **Chris Strawn** (Washington State) in a May 10 article about a South Korean immigrant who has filed a class action lawsuit in U.S. District Court because he applied for citizenship but was denied based on "lack of good moral character." The lack of good moral character finding was based on a 1999 incident in which the immigrant had collected too many oysters one day and was fined \$153 by the Washington State of Fish and Wildlife. **Joanna Carson** (National) was quoted in a May 10 *Christian Science Monitor* article about the need to temporarily raise the H-2B cap. **Susan Cho Figenshau** (Missouri/Kansas) and **Arthur Carr** (Missouri/Kansas) were quoted in a May 10 *St. Louis Post-Dispatch* article about the need for H-2B visas. **Phil Berns** (New England) was quoted in a May 10 *Connecticut Law Tribune* article about the rude and abusive behavior DMV workers display when serving immigrants. **John Estrella** (National) was quoted in a May edition article of *Congress Daily* about the DREAM Act.

**Jose Monge** (Carolinas) was quoted in a May 9 *The State* article about Muslims who feel targeted by the U.S. government in the wake of 9/11. **Gary Singh** (Hawaii), **Ron Oldenburg** (Hawaii), and **Marshall Fitz** (National) were quoted in a May 9 *Honolulu Star-Bulletin* article about a 41-year-old Indian national who has been detained for 2 ½ years, and had his detention and order of deportation overturned by the U.S. District Court for the Ninth Circuit. **Dagmar Butte** (Oregon) was quoted in a May 8 *Seattle Times* article about a local attorney who has been detained in the wake of the Madrid bombings because investigators matched his fingerprints to some fingerprints found at the bombing scene.

*Congressional Quarterly* quoted **Greg Boos** (Washington State) in a May 7 article about an internal memo indicating that the three DHS agencies now responsible for guarding the nation's borders and tracking immigrants are not well-coordinated. **Stephen Yale-Loehr** (Upstate New York) was quoted in a May 6 *National Journal's Technology Daily* article about the controversy surrounding outsourcing and the negative impact it has on the H-1B visa program. **Mario Ramos** (Mid-South) was quoted in a May 6 *Associated Press* article about a local politician using

derogatory words to describe Latinos. **Mario** was also quoted a May 5 *Tennessean* article about the same subject. **Jodi Goodwin** (Texas) was quoted in a May 5 *San Antonio Express-News* article about the new comprehensive immigration reform bill, the SOLVE Act, recently introduced by the Democrats. **Judy Golub** (National) was quoted in a May 5 *Fresno Bee* article about the AgJobs Bill receiving its 60th cosponsor.

**Guadalupe Ruiz** (Texas) and **David Leopold** (Ohio) were quoted in a May 5 *St. Louis Post-Dispatch* article about Ms. Ruiz's client who is being detained pending a decision on whether he is a citizen based on his parents' prior naturalization. **Antonio Lopez** (Texas) was quoted in a May 5 *Houston Chronicle* article about the repatriation of U.S. citizens of Mexican ancestry to Mexico during the Depression. **Nassim Arzani** (Southern California) was quoted in a May 5 *Press Enterprise* article about his client who faces deportation due to an aggravated felony. **Diana Moreland** (Central Florida) and **Richard Reinhart** (Central Florida) were featured in a May 5 *Bradenton Herald* article about Ms. Moreland's candidacy for the 12th Judicial Circuit.

*The Associated Press* quoted **Kim Salinas** (Colorado) in a May 4 article about her client, Edgar Chocoy, a teenager who was deported to Guatemala after pleading that he would be killed by gangs. He was found shot to death 17 days after his deportation. **David Leopold** (Ohio) was quoted in a May 4 *St. Louis Post-Dispatch* article about the increased use of minor legal violations as "aggravated felonies." **Boyd Campbell** (Atlanta) was interviewed by WAPI-AM Talk Radio on May 4 about a suit brought by 8 immigrants who claim Alabama's license rules wrongly exclude hundreds of people living legally in the state. **Mahsa Khanbabai** (New England) was interviewed on May 4 by *News Channel 40* in Springfield, MA about the recently introduced SOLVE Act.

**Lawrence Fabacher** (Mid-South) was quoted in a May 3 *Newhouse News Service* article about the political climate that proponents of immigration bills face. **Carlina Tapia-Ruano** (Chicago) was featured in a May 3 *Pantagraph (Bloomington, IL)* article about her role as commencement speaker for Illinois Wesleyan University's graduation. **Crystal Williams** (National) was quoted in a May 2 *Los Angeles Times* article about InfoPass, the new internet scheduling system at USCIS. **George Bruno** (New England) was quoted in a May 2 *Boston Globe* article about the hardships seasonal employers will face in the wake of the H-2B cap. **Jennifer Oltarsch** (New York) was quoted in a May 2 *Commercial Appeal* article about her Canadian citizen client who is being prevented from returning to the U.S. because when he was 17 years old he stole some bread. His newborn son, a U.S. citizen, needs special medical care due to birth defects. **Ben Bruner** (Atlanta) and **Boyd Campbell** (Atlanta) were quoted in a May 2 *Huntsville Times* article about a suit brought by 8 immigrants who claim Alabama's license rules wrongly exclude hundreds of people living legally in the state.

*The New York Daily News* quoted **Allan Wernick** (New York) in a May 1 article about "Citizenship Now," a joint project by the Daily News and the City University of New York to provide free legal advice over the phone for 5 days. The project generated over 22,000 calls on the first day. **John Estrella** (National) was quoted in a May 1 *El Día* article about the DREAM Act. **Martha Garza** (Texas) was quoted in an April 30 *Houston Chronicle* article about increased immigration fees. **Allan Wernick** (New York) was quoted in an April 30 *New York Daily News* article about the "Citizenship Now" project. **George Bruno** (New England) was quoted in an April 30 *Boston Globe* article about the negative impact the H-2B cap will have on seasonal employers.

*The Sun News* featured **Stephen Yale-Loehr** (Upstate New York) in an April 29 article about a three-day symposium sponsored by Cornell University entitled "Liberty and Justice for All."

**Karen Denise Bradley** (Ohio) was quoted in an April 29 *Dayton Daily News* article about a local public school aide fraudulently filling out immigration papers for some Filipinos and promising to hire them as teachers. **Boyd Campbell** (Atlanta) was interviewed on April 30 by WYDE-FM radio about a federal lawsuit filed in Montgomery by a number of Alabama plaintiffs denied driver's licenses.

**Andrew Fair** (New York) and **Allan Wernick** (New York) were quoted in an April 28 *New York Daily News* article about the "Citizenship Now" project. **Judy Golub** (National) was quoted in an April 28 *Journal News* article about the effect increased immigration fees have on immigrants. **Lynette Parker** (Santa Clara) was quoted in an April 28 *San Jose Mercury News* article about increased immigration fees. **Natalie Sullivan** (Atlanta) was quoted in an April 28 *Atlanta Journal-Constitution* article about Operation Compliance.

*The Associated Press* quoted **Bart Chavez** (Iowa/Nebraska) in an April 27 article about the increased immigration fees. **Bart** was also quoted in an April 27 *Omaha World Herald* article about the same subject. **Marshall Fitz** (National) was quoted in an April 27 *Associated Press* article about an Amish man who has been deported to Canada for refusing to have his photo taken due to his religious beliefs.

**William Velie** (Texas) was quoted in an April 26 *Associated Press* article about the decline in international graduate student enrollment. **Susan Fortino-Brown** (Chicago) and **Charles Roth** (Chicago) were quoted in an April 26 *Chicago Daily Law Bulletin* article about a proposed bill in Illinois which would forbid *notarios* from advertising themselves as legal advisers or giving legal advice, and would cap the service fees for helping immigrants with their paperwork. **Boyd Campbell** (Atlanta) was quoted in an April 26 *Associated Press* article about a suit brought by 8 immigrants who claim Alabama's license rules wrongly exclude hundreds of people living legally in the state. **Carl Krueger** (New England) was quoted in an April 26 *Providence Journal* article about the negative impact of the increased immigration fees on immigrants. **Gary Yerman** (New York) and **Crystal Williams** (National) were quoted in an April 26 *Los Angeles Times* article about Operation Compliance.

**Mario Ramos** (Mid-South) was quoted in an April 25 *Tennessean* article about the contributions that immigrants bring to the U.S. and the need for comprehensive immigration reform. **Robert Remes** (Washington, DC) and **Ofelia Calderon** (Washington, DC) were quoted in an April 25 *Richmond Times-Dispatch* article about the impact minor legal infractions have on an immigrant's status. **Tammy Fox-Isicoff** (Southern Florida) had an op-ed published in the April 23 *Miami Herald* about increased immigration fees and why they will not improve service.

**Dan Kowalski** (Texas) and **Carl Shusterman** (Southern California) were quoted in an April 7 *Sacramento Bee* article about the tremendous backlogs at DHS that family members face when trying to reunite. **Blake Chisam** (Atlanta) had an op-ed published in the April 5 edition of *DSNRetailing Today* about the need for comprehensive immigration reform. **Eileen Scofield** (Atlanta) was quoted in a February 21 *Charlotte Observer* article about President Bush's immigration proposal.

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



### **Did You Know?**

The 1907 Expatriation Act declared that an American woman who married a foreign national would lose her U.S. citizenship.

-- Digital History ([http://www.digitalhistory.uh.edu/historyonline/immigration\\_chron.cfm](http://www.digitalhistory.uh.edu/historyonline/immigration_chron.cfm))

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