

# COUNSEL

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Paschal Nwokocha Law Offices, LLC.

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## About Counsel

*A newsletter publication of Paschal Nwokocha Law Offices, LLC, Counsel is dedicated to the needs and interests of our clients and subscribers.*

*Each issue of Counsel explores specific areas of immigration law, which may be of personal or business interest to its readers.*

*Counsel does not constitute legal advice. Readers are urged to consult an attorney before acting on any information contained in this publication.*

## Our Mission

At Paschal Nwokocha Law Offices, our mission is to provide the highest quality professional, client-driven legal services to businesses and individuals at reasonable rates.

We believe the Immigration and Nationality laws of the United States should work for our clients, *not* against them. And we employ all available tools to seek the best possible solutions on their behalf.

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## Immigration News

**Temporary Protected Status (TPS) for Nicaragua and Honduras:** On November 2, DHS extended TPS for certain nationals of Honduras and Nicaragua. To be eligible, the person must have continuously resided in the United States since December 30, 1998 and been continuously physically present in the United States since January 5, 1999

**Visa Waiver Program** - As of October 26, persons visiting the U.S. using the Visa Waiver Program were required to be in possession of Machine-Readable Passports. However, Customs and Border Protection (CBP) officers were given permission to grant a one-time exception to this requirement.

**Biometric Visa Requirement** - As of October 26, most persons applying for nonimmigrant visas abroad were required to be photographed and have their fingerprints scanned before they could be issued a visa

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## The Election and Your Immigration Status.

This recent elections may have various implications for immigrants and immigration advocates. According to Carl Shusterman, an immigration attorney, the following are the possible effects on the various aspects of the government.

## The President

Whatever else may have been decided by the 2004 elections, it is clear that immigration was not a major issue.

The candidates barely mentioned the word "immigration" in their debates, and President Bush failed to list immigration reform as one of his

priorities in his second term.

Yet President Bush's speech advocating a guest worker program on January 7, 2004 is still the official administration policy. (Visit our website for an article we wrote that comprehensively analyzed the President's proposal:) The President may have to drop the "amnesty" portion of his guest worker plan in order to gain the support of the anti-immigration segment of his party. We note that President Bush effectively killed the bipartisan "AgJobs" mini-amnesty bill during his reelection campaign, presumably so as not to offend anti-immigration legislators in his own party

## The Attorney General—

News reports indicate that Attorney General John Ashcroft will step down before the President begins his second term. Even though all three parts of the former INS were transferred from Mr. Ashcroft's Justice Department to the Department of Homeland Security in 2003, Mr. Ashcroft continues to be heavily involved in immigration policy.

Justice Department attorneys have argued for expanded governmental enforcement authority over immigrants and citizens alike.

Although the courts have rejected claims that the Executive Branch has the power to detain persons without permitting them to consult with an attorney, to apply for release on bond and to have their case decided by a neutral magistrate, Mr. Ashcroft and his attorneys continue to assert that the authority of his branch of government over immigrants is almost unlimited.

Mr. Ashcroft exercises control over the Executive Office for Immigration Review (EOIR) which includes the Board of Immigration Appeals (BIA) and the Immigration Judges (IJs). His "reform" of the

BIA in 2002 resulted in the elimination from the Board of the following members: Paul Schmidt (BIA Chairman), Gustavo Villageliu, John Guendelsberger, Cecelia Espenoza and Noel Brennan. These Board members, as well as member Lory Rosenberg who resigned before she was forced off the Board, represented the "liberal" wing of the BIA. Besides purging these members from the Board, Mr. Ashcroft set about reducing the backlog of pending appeals by permitting the massive issuance of form-letter Affirmances without Opinion (AWOs) and decisions by single Board members rather than by three-judge panels. Despite a 1996 law which eliminated judicial review of many BIA decisions, the result of Mr. Ashcroft's "reforms" has been that the Federal Appeals Courts have been inundated by appeals from adverse Board decisions.

The number of reversals of Board decisions by Federal Appeals Courts has been staggering.

For immigration advocates and civil libertarians, the departure of Mr. Ashcroft from the President's cabinet will be most welcome.

However, it remains to be seen whether Mr. Ashcroft's successor's policies will result in increased fairness to immigrants. One possible candidate for Attorney General, former New York City Mayor Rudy Giuliani, has shown sensitivity in this area. A decision by the BIA is binding on DHS and Immigration Judges throughout the country unless the Attorney General modifies or overrules the decision. With respect to the filing deadline, the appeal of an Immigration Judge's decision must be received by 30 calendar days from the date it was issued by the court.

## The Congress

Immigration policy was not a strong factor in many races for the Senate or the House of Representatives. In California,

two anti-immigration radio hosts tried to defeat two popular Congressmen, a Republican and a Democrat, because they were not considered tough enough on illegal aliens. Both Congressmen were reelected. Two important pieces of immigration legislation will be considered by the "lame duck" session of Congress later this month:

One is the extension and expansion of existing programs for J waivers for physicians practicing in medically-underserved areas.

This piece of legislation is relatively noncontroversial and is expected to be enacted into law.

The other bill concerns the proposed enactment of the recommendations of the 9/11 Commission into law. Against the opposition of President Bush, the anti-immigration wing of the Republican Party added a number of anti-immigration provisions to the House version of the bill (H.R.10). These provisions do not appear in the Senate version of the bill (S.2845). Not much has changed since then. As expected, the election took center stage and Congress, like the rest of the nation, was focused on its outcome.

Late last month, House Republicans offered another "compromise" to the Senate Conference leaders, again without input from House Democrats. It retained all of the egregious immigration provisions in Title III with the exception of the expedited removal expansion. Although they did strike that section (no doubt in deference to the White House, which wanted this section removed), House Republicans proposed an increase in immigration detention space and modified section 3032 to permit the prolonged or indefinite detention of broad categories of people who have been ordered deported. In addition, the offer also included a stingy proposal to expand the annual green card cap for asylees from 10,000 to 20,000.

This change would still not completely address the growing backlog of people who have been granted asylum and access to legal permanent residency but are subject to the arbitrary 10,000 cap.

The latest House Republican offer did not advance the ball in any serious way. In fact, wide differences still remain between the House Republicans and Senate conferees/House Democrats on Title I, which also helps explain why Title III has not been dealt with in any substantive way. Conference Committee leaders, particularly Senator Collins (R-ME) and Senator Lieberman (D-CT), are still looking for a deal. But without the added pressure of the election, Republicans face significantly less pressure to push legislation through during this session of Congress. When Congress comes back for a lame-duck session on November 16th, it will tackle a short list of must-pass legislation such as FY 05 agency appropriations, supplemental funding for the war in Iraq, and an increase in the ceiling for the national debt. While the 9/11 Conference Committee (in particular, the four leaders) continues to meet, consensus is neither guaranteed nor likely. If Congress does not complete work on the intelligence bill before adjourning for the year, the measure will expire along with all other uncompleted bills of the 108th Congress.

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### **DV-2006 Green Card Lottery, The Time to Apply is Now**

Once again, the State Department's DV-2006 Visa Lottery will be conducted online.

Natives of all countries except the following may apply for inclusion in DV-2006 Lottery:  
\* Canada, China - mainland

China (nationals of Hong Kong, Macau and Taiwan may apply)  
\* Colombia \* Dominican Republic  
\* El Salvador, Haiti, India, Jamaica  
\* Mexico, Pakistan, Philippines  
\* Russia, South Korea, United Kingdom (natives of Northern Ireland and Hong Kong are eligible, but natives of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, and the Turks and Calicos Islands are not eligible) Vietnam

Applications must be received between November 5, 2004 (noon, ET) and January 7, 2005 (noon, ET). The official State Department instructions and free, online application form can be found at [www.dvlottery.state.gov/](http://www.dvlottery.state.gov/)

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### **The Official Immigration Processing Times**

The Immigration Service (CIS) lists its processing times for immigration petitions and applications on their web site. Most immigration applications and petitions must be submitted to one of the following USCIS Service Centers: (1) Laguna Niguel, California; (2) Lincoln, Nebraska; (3) Mesquite, Texas; and (4) St. Albans, Vermont and (5) the National Benefits Center in Missouri.

These service centers periodically issue lists of their processing times for various types of petitions and applications.

Also, if you have a case pending before the Service Centers, you can check the status of your case by visiting our website at [www.Paschal-law.com](http://www.Paschal-law.com) and clicking on "Check the Status of Your Case" bar.

Warning: Processing times may appear faster on the official lists than they are in reality.



### ***Did you know?..***

- Failure to notify the Immigration Service promptly of a change of address may land one in Removal Proceeding. Using a 50-year old law, the Immigration Service is insistent that all aliens notify it of the change of address within 10 days of moving. Use **Form AR-11** from the Immigration Service to effect the address change.

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### ***Reader's Corner***

Readers are encouraged to send questions and comments to Counsel at Paschal Nwokocha Law Offices.

To subscribe to or unsubscribe from Counsel, or to receive copies of Counsel for your business, please send your request to:

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www.Paschal-Law.com***

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### Free 24-hour information on immigration law

Topic	Description
1313	Eligibility for Citizenship
1314	Applying for citizenship
1315	Dual Citizenship
1316	About student visas
1317	Maintaining your student visa
1318	About Political Asylum
1319	Applying for political asylum
1322	Employer responsibilities
1323	Labor certification
1324	Labor Certification Process
1325	Work permits
1326	Applying for a green card
1327	Employment-based green cards
1328	Family-based green cards
1329	Marriage-based green cards
1336	Immigration Status Categories
1337	About deportation & exclusion
1338	Deportation Proceedings
1334	Questions to ask about legal issues

**Step 1:** Dial 763.586.5700

**Step 2:** Enter the 4-digit code from the table above corresponding to the topic of interest.

*If you need legal services relating to immigration or other legal issues and would like to schedule a consultation...*

**Call us for an appointment**

**651.917.0020**

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*Visit us on the Web:*

**[www.Paschal-Law.com](http://www.Paschal-Law.com)**

***We solve Immigration  
Problems!***

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