

**Law Library Of Congress Global Legal Monitor: Immigration And
Nationality Law
October/November 2006 – Issue 5 G.L.M. 2006**

By Rubens Medina, Law Librarian of Congress

The *Global Legal Monitor*, an electronic publication of the Law Library of Congress, is intended for those who have an interest in legal developments from around the world. Globalization is a fact with far-reaching implications including an increasing number of international transactions. The Immigration and Nationality law section has been excerpted for this Feature Article.

Immigration and Nationality Law

BRAZIL – Accord with Argentina on Residency Rights Ratified

On August 29, 2006, the Brazilian Ministries of External Affairs and Justice published a governmental decree, *Portaria Interministerial de 28 de Agosto de 2006*, in the OFFICIAL GAZETTE, ratifying an accord signed between Brazil and Argentina. The accord had previously been approved by the Brazilian Congress through Legislative Decree No. 210 of May 20, 2004, which grants to both Brazilians and Argentineans the same civil, social, cultural, and economic rights as the citizens of the country in which they live. In practice, Brazilians and Argentineans now have the right to live and work in each other's countries. Argentina ratified the accord in April 2006.

Legal residency is required and can be established by presenting the passport or ID card and a police report from the country of origin to the consulate or immigration service of the other country. The official in charge will then issue a provisory residency authorization, valid for two years, which may become a permanent authorization after that period. Individuals who enter the country in a clandestine fashion will have to return to their country of origin in order to have the right to establish legal residency in the country of destination.

Free transit of citizens is part of article 1 of the MERCOSUR Agreement and now that Brazil and Argentina have opened their doors to each other in conformity with that provision, according to Mariano Jordan, Argentinean Consul in Brasília. He further observed that the main objective of the bilateral accord is to legalize the situation of illegal immigrants in both countries and, except for legal problems that may apply to an individual, residency now cannot be denied. (*Brasileiros e Argentinos Com os Mesmos Direitos*, GLOBO ONLINE, Aug. 30, 2006.) (Eduardo Soares)

CZECH REPUBLIC – Illegal Immigrants' Children Banned from School

The legislation governing education in the Czech Republic does not permit the children of illegal immigrants to attend school. According to the Organization for Help for Refugees and the Advisory Centre for Refugees, two advocacy groups, a 2005 law permits schools to require potential students to prove that they are in the country legally. The two groups argue that this rule violates the children's right to education and contradicts international conventions that the Czech Republic has signed. Before the current law came into force, elementary schools had been able to accept children without immigration documents. Since January 2005, only foreigners with permits for permanent residency or short-term or long-term visas, as well as those seeking asylum or temporary protection, are permitted to send their children to school. (*Illegal Immigrants' Children Can't Attend Czech Schools*, CTK (Prague), Aug. 29, 2006, Open Source Center No. EUP20060829950072.) (Constance A. Johnson)



EUROPEAN UNION – Incompatibility of Switzerland’s New Asylum Rules with EU Standards

Switzerland, a non-EU Member, is expected in the near future to join, along with the ten newest EU Members, the Schengen border-free zone. In doing so, Switzerland will be bound by EU norms and standards regarding visas, asylum, and immigration. Consequently, Switzerland must bring some of its domestic legislation in line with EU rules in these areas, particularly those rules that require fingerprinting of asylum seekers, so that their personal data can be inserted in the EU-wide database on such persons. However, Switzerland’s recently adopted requirement that all asylum seekers present documents within forty-eight hours of making a claim or else be sent home prompted a negative reaction from the European Commission. The Commission clearly stated that the rule is incompatible with EU norms as well as international rules that bind the EU and its Members. (*European Commission Says New Swiss Rules Violate EU Norms*, AFP (Paris), Sept. 6, 2006, Open Source Center No. EUP20060925102001.) (See also above, under “Switzerland – Immigration.”)

(Theresa Papademetriou)

KOREA, SOUTH – No Passports for Prostitutes

The Ministry of Gender Equality and Family announced its plan to amend laws for gender equality and the maintenance of public morals on September 20, 2006. Among the measures proposed is that the government confiscate the passports of persons who have committed prostitution abroad. (*Kankokujin ni yoru kaigaide no baishun, tekihatsu ji ni ha ryoken bosshu mo [Prostitution by Koreans abroad, confiscation of the passport planned]*, CHOSUN NEWSPAPER, Sept. 21, 2006.)

(Sayuri Umeda)

NEPAL – Citizenship Bill Approved by Cabinet

Nepal’s Council of Ministers approved a bill on September 6, 2006, to amend the Citizenship Act. The amendments reportedly are largely aimed at facilitating the acquisition of Nepali citizenship for persons who have had difficulty in obtaining it heretofore. Under the bill, citizenship will be accorded to those who had been residing in Nepal up to the second week of April 1990 and to those who have any written evidence of being a Nepali. The bill would enable the descendants born before 1990 of either a father or mother who is a Nepali citizen to have the opportunity to acquire citizenship. It also provides for persons who registered their names in the last national census to acquire citizenship. In addition, the bill adds some provisions to punish the illegal acquisition of citizenship. (*Citizenship Bill Passed*, LEGAL NEWS FROM NEPAL, Sept. 7, 2006.) According to Minister for Industry, Commerce and Supplies, Hridayesh Tripathi, the parliament would immediately nullify articles 8 and 9 of the present Constitution that hinder passage of the bill, and the bill will allow citizenship by birth and by naturalization. (*Citizenship Bill Will Get House Approval: Tripathi*, THE RISING NEPAL, Sept. 8, 2006.)

The government decision may benefit in particular some three to four million people in the Terai region of Nepal, which spans the whole southern part of the country from east to west



and is described as its breadbasket. Terai districts are reported to be “on the brink of an upheaval,” a situation due not only to in-fighting between different Maoist factions in the region but also to identity politics and the sense of discrimination felt by Madhesis, people of Indian origin who have resided in the Terai for decades. (*And Now Ethnic Separatism*, INTER PRESS SERVICE NEWS AGENCY, Aug. 21, 2006.)

(Wendy Zeldin)

PORTUGAL – Biometric Passport

On August 28, 2006, Portugal’s President, Anibal Cavaco Silva, received the first new Portuguese biometric passport, which conforms to new European standards, is machine-readable, and carries a micro-chip containing the holder’s personal data, digital photo, and fingerprints. Interior Minister Antonio Costa was quoted as saying that the new passport is more difficult to forge than the old one, and Cavaco Silva told the press during the ceremony in Lisbon where he was presented his new passport that the new biometric passport was a contribution to national and international security. ([IOL: Portugal Moves to Biometric Passports](#), IOL, Aug. 29, 2006.)

(Eduardo Soares)

SWITZERLAND – Reforms of Immigration and Asylum Law

On September 24, 2006, an overwhelming majority of Swiss voters approved by referendum stringent reforms of immigration and asylum law (*Klares Ja zu Ausländer-Vorlagen*, NZZ Online, Sept. 24, 2006), thereby adopting an Act on Aliens of December 16, 2005 (AMTLICHE SAMMLUNG DES BUNDESRECHTS [AS] 7365 (2005)) and an Amending Act to the Act on Asylum (Asylgesetz Änderung, Dec. 16, 2005, AS 7425, amending Asylgesetz, June 26, 1998, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS No. 142.31). Both acts were approved by close to seventy percent of the vote, with an overall voter participation of close to fifty percent.

The new Act on Aliens restricts the immigration of aliens from non-European Union countries to highly skilled workers and combats illegal entry and sojourn of aliens through increased criminal sanctions that apply to the alien, his employer, and anyone who aids and abets violations of immigration law. The Reform of the Asylum Act aims to ensure that asylum petitioners to whom asylum is not granted leave Switzerland. Among the newly enacted measures is the permissibility of searches and seizures of asylum petitioners to prevent them from concealing passports, drugs, and weapons. In addition, the reform law provides that asylum petitioners will be sent home unless they present a passport or other valid identification within forty-eight hours of entering Switzerland. This new requirement is directed against asylum petitioners who destroy their papers to make the searches of the claim more difficult, but will not be applied under excusable circumstances. (*Tilting at Windmills*, THE ECONOMIST, Sept. 30, 2006, LEXIS/NEXIS, NEWS Library, ZETING file.)

The new Swiss standards are among the toughest in Europe and they are incompatible with European Union laws, as was explained by Frisco Roscam Abbing, press speaker for the



European Commission (*Abstimmung*, DIE PRESSE, Sept. 25, 2006, LEXIS/NEXIS, NEWS Library, ZETING file). However, Mr. Abbing stated that the European Commission would not comment on the Swiss referendum because Switzerland, as a non-European Union country, is free to follow its own asylum policy. Although Switzerland soon will be a member of the Schengen/Dublin agreement that requires some coordination of the technical rules applicable in asylum proceedings, adherence to the overall European Union standards for asylum proceedings is not relevant for the observance of the Schengen/Dublin agreement. (*Eidg. Abstimmung – Asylgesetz Kein Harmonisierungsdruck aus Brüssel*, SDA – BASISDIENST DEUTSCH, Sept. 25, 2006, LEXIS/NEXIS, NEWS Library, ZETING file). (See also below, under “Recent Developments in the European Union.”)
(Edith Palmer)

THAILAND – Stricter Visa-Free Regulations

Before the recent military coup, the Thai Government announced new visa-free regulations for tourists. The measures announced on September 15, 2006, scheduled to take effect on October 1, limit foreign visitors to a maximum ninety-day visa-free stay every six months. According to Immigration Bureau Chief, Lt. Gen. Suwat Thamrongrisakul, the regulations are aimed at preventing the foreigners from committing crimes or creating social problems. Under the previous system, foreign tourists from about forty countries that have good relations with Thailand could enter the country visa-free and be granted thirty-day visas that could be extended twice. They were able to extend their stay, sometimes for months or years, by traveling to neighboring countries and then returning to Thailand on another thirty-day entry stamp. An increasing number of tourists reportedly stayed in the country for extended periods without paying the requisite taxes, which also helped them to avoid close scrutiny by authorities in Thailand and in their home countries.

Under the new system, those foreigners who enter Thailand will still be allowed to stay for thirty days, as before, but the total length of stay without a visa cannot exceed ninety-days in any six-month period. Tourists who wish to stay longer during such a period will apparently have to obtain a visa from a Thai Embassy or Consulate authorized to issue visas. (*Thailand Imposes New Visa Regulations for Tourists to Curb Social Problems, Crime*, THAI NEWS AGENCY, Sept. 16, 2006, Open Source Center No. SEP20060916042004; Jim Pollard, [Big Impact Expected from Tougher Visa-Free Entry Rules](#), THE NATION, Sept. 16, 2006; [Change to Thailand's Visa Rules.](#))
(Wendy Zeldin)

UNITED STATES – Secure Fence Act Signed Into Law

On October 26, legislation authorizing, among other measures, the construction of hundreds of miles of fences along the southern border of the United States was signed into law. The purpose of the legislation is to enable the Secretary of Homeland Security to “achieve and maintain operational control over the entire international land and maritime borders of the United States.” Operational control is defined as meaning the prevention of all unlawful entries into the



United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

The Act instructs the Secretary to conduct systematic surveillance, utilizing such tools as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras; it also authorizes physical infrastructure enhancements, such as additional checkpoints, all weather access roads, and vehicle barriers. Particular geographic areas are specified for fence construction, and some areas are prioritized, in amendments to Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ([Public Law 104-208](#); 8 U.S.C. 1103 note). The Act requires the Secretary to submit an annual report to Congress detailing progress in achieving the aims of the legislation.

The Act also requires the Secretary to conduct two studies: first, regarding the necessity, feasibility, and economic impact of a “state-of-the-art infrastructure security system along the northern international land and maritime border of the United States,” and second, regarding the authority and capability of Customs and Border Protection personnel to stop fleeing vehicles which have entered the United States illegally. Reports detailing the results of these studies are to be submitted to Congress.

The Act does not provide funding for these activities, although Title II of the appropriations act funding the Department of Homeland Security, [Public Law 109-295](#), provided approximately \$1.2 billion for “for customs and border protection fencing, infrastructure, and technology.” ([Secure Fence Act of 2006](#), Public Law 109-397, 120 Stat. 2638 (2006).) (Gary Robinson)

VIETNAM – Decree on Expulsion of Foreigners

Vietnam’s newly issued Decree No. 97/2006/ND-CP of September 15, 2006, governs the expulsion of foreigners who violate Vietnamese law or regulations. It covers the violations carrying the penalty of expulsion, procedures for detention and expulsion, the rights of persons subject to expulsion, and the duties and responsibilities of administrative agencies. The Decree stipulates that foreigners who intentionally or unintentionally break the law are subject to expulsion from Vietnam in accordance with regulations on penalties for administrative violations. It further provides that, where international treaties that Vietnam has signed or acceded to have stipulations differing from those in the Decree, the treaty provisions will apply. Foreigners who have committed crimes for which they are expelled based on a court decision will not be subject to the Decree.

The Decree takes effect fifteen days after its publication in the OFFICIAL GAZETTE. Foreigners will also continue to be subject to the penalty of expulsion under Decree No 54/2001/ND-CP guiding the execution of the expulsion penalty (36 OFFICIAL GAZETTE 13-16 (Sept. 30, 2001)). ([New Decree Governs Expulsion of Foreigners](#), VIET NAM NEWS, Sept. 25, 2006; [Decree on Expelling Law-Breakers Issued](#), COMMUNIST PARTY OF VIETNAM ONLINE



NEWSPAPER, Sept. 19, 2006; [Decree Guiding the Execution of Expulsion Penalty](#) (No. 54/2001/ND-CP), NATLEX No. VNM-2001-R-60187, Aug. 23, 2001.)
(Wendy Zeldin)

