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ATTY. ROBERT REEVES & NANCY MILLER

Aliens ineligible to obtain a green card in the US

“The Ninth Circuit has ruled that three factors determine alien crewman status: (1) the nature of the employee’s duties; (2) when those duties are performed; and (3) whether any employee has a permanent connection with the ship and whether their presence facilitates the operation of the vessel.”

one country to another. The alien must be in possession of a ticket or other assurance of transportation to destination and have permission to enter the third country. The period of stay cannot exceed 29 days. If the alien is a crewman joining a ship, he will need a letter from the shipping company agreeing to pay cost of removal if necessary.

Holders of C-1 visas cannot change status to another non-immigrant category, i.e. C-1 to student or temporary worker, etc. Neither can they extend their status. C-1 crewmen are not eligible to adjust (AOS) unless a prior immigrant visa petition was filed on or before April 30, 2001 (245(i) grandfathered). C-1 crewmen are also not eligible to apply for cancellation of removal should they be placed into removal proceedings.

D visas are also known as “crewmen visas.” They are given to persons serving in any capacity required for normal operation and service on board a vessel, including trainees and those operating a concession or beauty salon on board ship. The Ninth Circuit has ruled that three factors determine alien crewman status: (1) the nature of the employee’s duties; (2) when those duties are performed; and (3) whether any employee has a permanent connection with the ship and whether their presence facilitates the operation of the vessel.

Examples of people eligible for this visa are crewmen joining their ship or airplane and businessmen passing through the United States in their travel from

As with the C-1 crewman visa, holders of this visa are given a maximum period of admission of 29 days. They are not eligible to extend or change status. They are not eligible to adjust status unless they are 245 (i) grandfathered. They are not eligible for cancellation of removal if they are placed in deportation proceedings.

An alien who is ineligible to adjust must complete their lawful permanent resident visa processing at the US Consulate in their home country. If they have been in the United States unlawfully for a period of 180 days or more, they will incur a three-year bar as soon as they leave the US. If their period of unlawful stay is one year or more, the bar they incur will last for 10 years. In order to apply for a waiver, the alien must show that their qualifying relative (USC or LPR parent or spouse only) will suffer extreme hardship if the waiver is not granted. This can be a difficult standard to meet. Therefore, when the alien leaves to consular process, he must consider the possibility of having to wait for 10 years before he can return.

In addition, an alien who misrepresented a material fact (such as their intent to enter the US to meet a ship) will need a waiver of inadmissibility for the misrepresentation. The bar for this ground of inadmissibility does not expire after 10 years. Unless

Continued on PAGE C2

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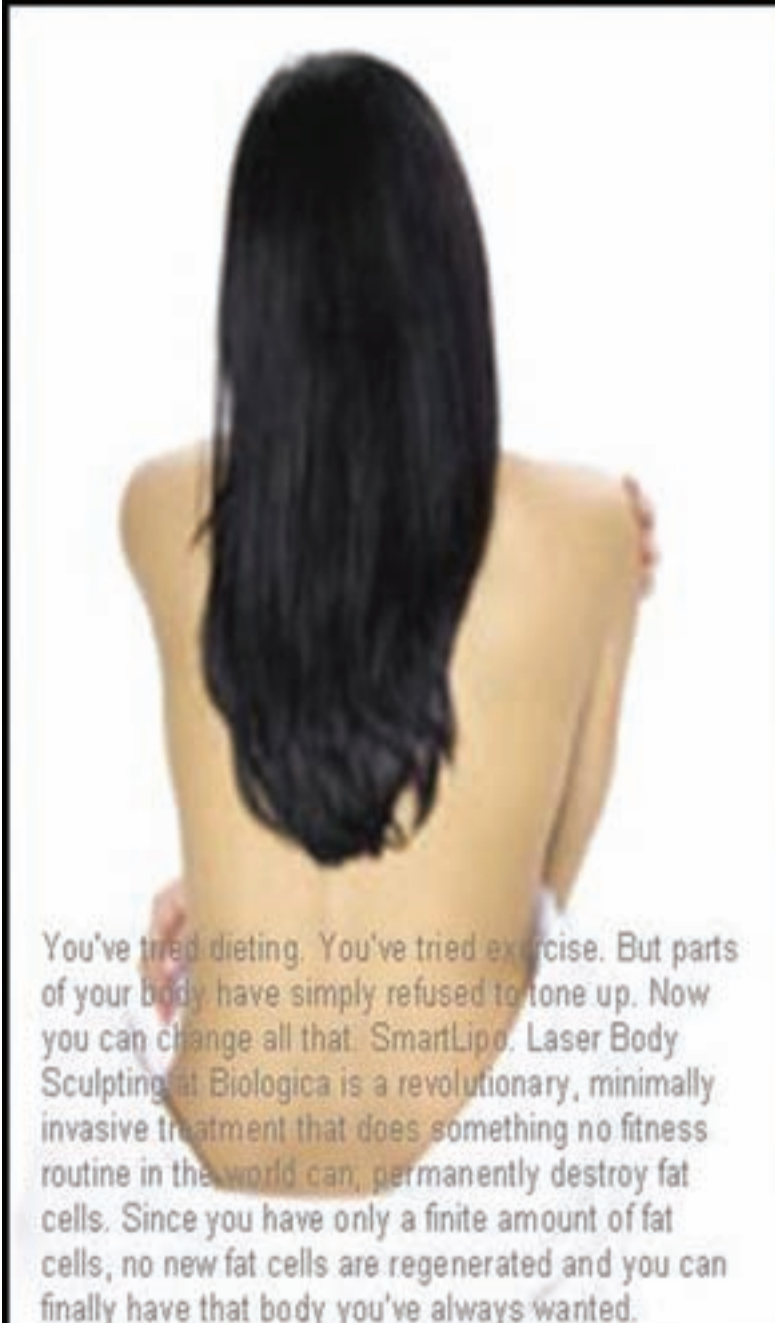
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