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# IMMIGRATION LAW UPDATE

Volume 2, Issue 2

February 1, 2007

## Special points of interest:

- February 2007 Visa Bulletin Published: [www.state.gov](http://www.state.gov)
- USCIS implements electronic filing for change of address requests.
- DHS announces that it will not be able to implement biometric exit capability at land ports of entry as required under US-VISIT

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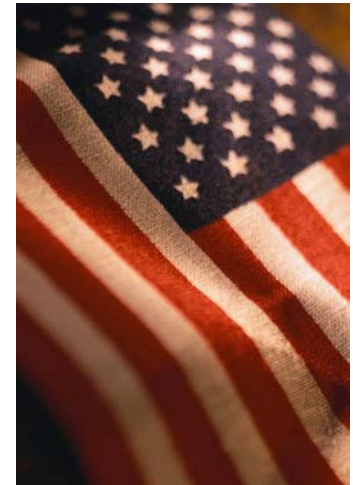
## USCIS Proposes New Fee Structure for FY 2008/2009

On January 31, 2007 US Citizenship & Immigration Services (USCIS) proposed an intention to dramatically raise the cost of application fees. The average increase of the immigration filing fees will be 66% according to the American Immigration Lawyers Association (AILA).

USCIS is defending the proposal by arguing that the fee structure is based upon a new "cost model." USCIS included activities such as informing the public, capturing biometrics, intake of information, security checks, record review, application adjudication, fraud detection and prevention and document issuance as activities which incur expenses in issuing the benefit to the applicant. This cost of these activities is then divided by the projected volume of applications by USCIS.

USCIS argues in their January 31, 2007 Press Release that

while this is an increase in the initial layout by the applicant, the "overall average, however, is reduced to 66% when taking into consideration the projected fees for an Application to Register Permanent Status or Adjust Status (I-485)." The USCIS theory seems to be based upon the need of the applicant to apply for interim documents such as renewed Employment Authorization Documents (EAD) and Travel Documents (AP) while awaiting the adjudication of the I-485. USCIS argues that the current I-485 fee is \$325 (not including the \$70 biometric fee). The average applicant will then file two EAD applications and one or two AP documents. Therefore the combined fee that an applicant now pays is \$800. USCIS concludes that the increase is only \$105 and the new structure will eliminate the need to pay for interim benefits while the application is adjudicated as they will



be included. We will keep you apprised of this proposal in subsequent issues.

**While USCIS has proposed increasing fees dramatically for FY 2008/2009 to pay for adjudication services, there was no mention of improved service.**

## USCIS Introduces Electronic Change of Address Service

On January 12, 2007, US Citizenship & Immigration Services (USCIS) launched a new online change of address service. This certainly is a welcome change that hopefully will allow applicants to keep USCIS informed of their most recent address without any processing delay. Applicants can now go to the USCIS website to change their

address at: <https://egov.immigration.gov/crisgwi/go?action=coa>.

Currently USCIS requires all non-citizens in the United States to keep USCIS informed of any change of address within 10 days of their move by completing a Form AR-11. An electronic Form AR-11 is currently available at: <https://>

[egov.immigration.gov/crisgwi/go?action=coa.cr.Residence](https://egov.immigration.gov/crisgwi/go?action=coa.cr.Residence).

This is the first phase of the online system. In May USCIS expects to launch a change of address system for naturalization applicants. Until then naturalization applicants should continue to call 1-800-375-5283 to change their address.

## BALCA Issues Decisions on “Good-Faith Recruitment Effort”

On January 10, 2007, the Board of Alien Labor Certification Appeals (BALCA) issued decisions on two cases regarding the issue of good-faith recruitment by the US employer. These cases were pre-PERM cases.

In *Matter of Ulead Systems*, 2006-INA-00019 (BALCA Jan. 10, 2007), BALCA upheld the denial of an application on behalf of a web designer where the employer only made one attempt to contact the applicant by certified mail, the re-

ceipt was signed by someone other than the potential applicant and the specific position applied for was not referenced. This decision reiterates the need of employers to conduct precise recruitment efforts. Employers should send an informative and detailed letter to the potential applicant about the position including but not limited to the position title, location of the position and a date and time of the interview.

In *Matter of Staffing Services*, 2005-INA-00062 (BALCA Jan.

10, 2007), BALCA upheld the denial of an application on behalf of a forklift driver where 32 US workers responded to the employer but where rejected. The employer stated that the US applicants were uninterested or unavailable for the position. This again reemphasizes the point that a recruitment effort should be precise and accurate. The US employer must make an effort in contacting the US applicants and where appropriate must contact the US applicants to ascertain their qualifications.



**Good-faith recruitment efforts should include a detailed road map of the recruitment effort by the employer.**

## More Trouble at the Border

On December 15, 2006, US Immigration and Customs Enforcement (ICE) announced that the Golden State Fence Company agreed to forfeit \$5 million dollars and the company's president and vice-president plead guilty to hiring unauthorized alien workers. The president of Golden State Fence Company will pay a \$200,000 dollar fine and the vice-president will pay a \$100,000 dollar fine. Both men could be sentenced to five

years in prison, an additional \$250,000 dollar fine and three years probation upon sentencing.

This story became news when it was learned that Golden State Fence Company has a US Government contract to work on the border fence between San Diego, CA and Mexico. Additionally,

ICE apparently has been investigating the Golden State

Fence Company since 1999 for hiring and retaining unauthorized alien workers. ICE states that they had been to the Golden State Fence Company on three separate occasions in 1999, 2004 and 2005. Many former workers at Golden State Fence Company were interviewed by ICE and admitted that they were unauthorized workers, that their managers knew this fact and that they were hired despite the fact that they were illegal.

**“This story became news when it was learned that Golden State Fence Company has a US Government contract to work on the border fence between San Diego, CA and Mexico.”**

## February 2007 Visa Bulletin: no major developments

The February 2007 Visa Bulletin did little to improve the outlook for green card applicants who continue to be frustrated by the excessive wait for adjudication of their applications. The Department of State failed to move the EB visa numbers ahead in most categories. The only good news was that EB-1 and EB-2 remained current. Meanwhile EB-3 continued to remain stalled at August 1, 2002. This is the third month in a row that EB-3

has not moved forward.

China, India, Mexico and the Philippines remained current in EB-1 but varied in EB-2 and EB-3. China EB-2 again failed to move from April 22, 2005 while China EB-3 also failed to move from August 1, 2002. India EB-2 remained at January 8, 2003 and India EB-3 also failed to move from May 8, 2001. Mexico and the Philippines remained current in EB-2. Mexico is at May 15, 2001 for

EB-3 while the Philippines is at August 1, 2002 for EB-3.

On the Family-Sponsored side the entire world, as well as China and India had the same visa numbers: F-1 is May 1, 2001; F-2A is March 22, 2002; F-2B is May 15, 1997; and F-3 February 1, 1999. F-4 varied with 1995/1996 dates. Mexico and the Philippines lagged well behind the above dates. As always the visa bulletin can be located online: [www.state.gov](http://www.state.gov).

**Department  
Of  
State**



**The Visa Bulletin made no progress for employment-based applicants again in February.**

## DHS Announces That it Will Not Meet US-Visit Deadline

The Department of Homeland Security (DHS) announced that it will not meet the deadline for US Visitor and Immigrant Status Indicator Technology (US-VISIT) exit capability at land ports of entry as required. US-VISIT was to be established for acceptance of biometric information upon exiting the US in the same manner as it is currently used upon arrival in the US.

DHS concluded that implementation of such a system would require major infrastruc-

ture changes including additional staff and new buildings and roadways. DHS also predicts that such a system could produce serious traffic congestion that may affect trade and commerce.

Currently US-VISIT entry procedures are operating at 116 airports, 15 seaports and in the secondary inspection areas of 154 land ports of entry. US-VISIT requires certain arriving aliens to provide a finger scan and digital photograph upon entering the US.

US-VISIT has exit procedures at 12 airports currently and 2 seaports. A complete list of US-VISIT ports is located at: [http://www.dhs.gov/xtrvlsec/programs/editorial\\_0685.shtm](http://www.dhs.gov/xtrvlsec/programs/editorial_0685.shtm).

While US-VISIT may not be operational upon exiting the US in a majority of locations, travelers should be aware of the requirement to record their exit from the United States by turning in their I-94 card prior to departure. It may also be wise to keep a copy of the I-94 in your records.



**US-VISIT will not be implemented at land ports of entry to register the departure of aliens.**

## Immigrant Visa Petition Filing Changes

The US Department of State has recently changed the procedures for the filing of an I-130 Immigrant Visa Petition for immediate relatives of US Citizens who are residing abroad.

US Citizens who are residing outside the United States and wish to file an I-130 Immigrant Visa Petition for an immediate relative must do so at the US Citizenship & Immigration Services (USCIS) office with jurisdiction over the United States

Citizen petitioner's place of residence.

United States embassies and consulates abroad are no longer allowed to accept I-130 petitions, although they will continue to provide guidance to United States Citizen petitioners. USCIS is now solely responsible for the processing and approval of immigrant visa petitions. Therefore, the US Department of State advises that United States Citizens with

a U.S. address should submit their I-130 at the USCIS office responsible for their place of residence.

This procedural change may result in a processing delay for an applicant who's I-130 Immigrant Visa Petition has already been filed with a United States embassy or consulate abroad. The US Department of State will be posting additional information about this change on their website at: [www.state.gov](http://www.state.gov)

***“United States embassies and consulates abroad are no longer allowed to accept I-130 petitions, although they will continue to provide guidance to United States Citizen petitioners.”***

## DHS Announces Launch of Traveler Redress Inquiry Program

On January 17, 2007 the Department of Homeland Security (DHS) announced its plan to launch DHS Traveler Redress Inquiry Program (DHS-TRIP) on February 20, 2007. The purpose of DHS-TRIP is to provide a central point to address traveler concerns about “watch list” misidentification issues, as well as situations where travelers believe they have been unfairly or incorrectly delayed at the port of entry, denied the right to board

a flight, or sent to secondary inspection on a regular basis.

Individuals will be able to file an inquiry with DHS-TRIP if they have been repeatedly referred to additional screening and request that any erroneous information in their file be corrected. Presumably, this will require that the individual know what the error is which causes them to be referred to secondary inspection. The problem is that this information

may not be known by the individual. Once an inquiry is received by DHS-TRIP, it will be forwarded to the appropriate agency to review and determine a solution. DHS will release more information after the program is launched on how individuals will be able to access information collected through the DHS-TRIP system.

When more information becomes available, it will be printed here.



**Individuals who experience frequent inspection and security problems when entering the United States or boarding a plane will now hopefully have an outlet with DHS-TRIP.**

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**Links of interest:**

[www.state.gov](http://www.state.gov)

[www.uscis.gov](http://www.uscis.gov)

<http://>

[www.foreignlaborcert.doleta.gov/](http://www.foreignlaborcert.doleta.gov/)

<http://pds.pbis.doleta.gov>

<http://usembassy.state.gov>

<http://www.sss.gov>

[http://  
maiona.lawoffice.com](http://maiona.lawoffice.com)

  
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Attorney Maiona has been the keynote speaker at seminars for the Employment Management Association of New England and Sterling Education Services, as well as private recruiting firms on the topic of business immigration law. Attorney Maiona is a contributing author to the Massachusetts Continuing Legal Education's two volume treatise: *Immigration Practice Manual*. Attorney Maiona received his B.A. cum laude from Boston College and his J.D. from Suffolk University Law School. Attorney Maiona is a member of the New England chapter of the American Immigration Lawyers Association. Attorney Maiona can be reached at 617-695-2220 or by email at [mjm2@gis.net](mailto:mjm2@gis.net).

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## Employment-Based Adjustment of Status: 180 Days is a Must Under AC21

The US District Court in Washington, D.C. recently reminded employers and applicants alike the need to follow the regulations regarding portability precisely. AC21 is clear that an employee must remain with the sponsoring employer for at least 180 days after filing the I-485 residency application.

In *Mawalla v. Chertoff*, the employer had filed an I-140 immigrant visa petition for the employee—plaintiff on May 15, 2002. US Citizenship & Immigration Services (USCIS) approved the I-140 on October 31, 2002. On April 20, 2004 the employee filed his I-485 application to adjust status. On September 17, 2004 the employer sent a letter to USCIS requesting a withdrawal of the I-140 as the employee no longer was employed there.



**The American Competitiveness in the Twenty-First Century Act of 2000 (AC21) is a valuable tool if used correctly.**

Subsequently, USCIS revoked the I-140 and denied the I-485.

The US District Court found that there was no dispute that the employee was no longer working with the employer as of September 17, 2004, or 141

days after filing the I-485 application. As such, the application for adjustment of status was properly denied.

The lesson is that the portability provision of §204(j) of the INA (added by AC21), as well as the USCIS policy memorandum are clear that the employee must remain with the petitioning employer for at least 180 days after filing the I-485 application before changing positions. Failure to abide by this rule is obviously catastrophic to the employee who has waited months, if not years, to get to the point of filing the I-485 application.

Remember the date of employment change and not the date of final denial by USCIS, controls the stop date for the 180-day count.