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IMMIGRATION LAW UPDATE

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Special points of interest:

- August 2007 Visa Bulletin Published—a return to unavailability: www.state.gov
- USCIS agrees to accept adjustment applications filed under the July visa bulletin.
- Get your US Passport early—long lines await.
- New USCIS filing fees to begin on July 30, 2007.

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July 2007 Visa Bulletin Disaster Corrected

On July 2, 2007, US Citizenship & Immigration Services (“USCIS”) announced that they would reject adjustment of status applications for employment-based applicants (“EB”) who were filing their applications as allowed by the Department of State (“DOS”) July 2007 Visa Bulletin. The July Visa Bulletin had listed all categories of EB applicants as “current.” This announcement came after DOS had announced that they had revised the July Visa Bulletin due to the fact that the unused visa numbers for Fiscal Year 2007 which were available in great numbers in June (approximately 60,000 by some estimates) were suddenly requested as needed by USCIS. USCIS therefore announced their intent to reject EB applications based upon this new revised DOS July Visa Bulletin.

These announcements left many aliens and employers angry.

Many had relied on the July Visa Bulletin which had been made public for about three weeks. The American Immigration Lawyers Association (“AILA”) quickly organized a class action lawsuit to be filed against USCIS. The class consisted of employees and employers who were directly affected by this rash and unprecedented action by USCIS.

Meanwhile, Rep. Zoe Lofgren (D-Cal), Chair of the House of Representatives’ Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, put pressure on Secretary of Homeland Security Michael Chertoff and Secretary of State Condoleezza Rice in addition to sending a letter to Secretary Chertoff requesting “all correspondence, e-mails, memoranda, notes, field guidance or other documentation” relating to the July 2nd decision to revise the



Between July 17, 2007—August 17, 2007 most employment-based immigrants will have the chance to file for residency.

July Visa Bulletin and reject adjustment of status applications filed by EB applicants. At the same time Rep. Lofgren stated (continued on page 2)

Comprehensive Immigration Reform Fails in Senate

On June 28, 2007, the Senate failed to pass the motion to invoke cloture on S.I.639: the Comprehensive Immigration Reform (“CIR”) bill. The motion failed by a vote of 53 nay to 46 yea with 1 Senator not voting. As a result of this vote,, Senate Majority Leader Harry Reid (D-NV) pulled the unpopular bill from the senate floor.

At this point for CIR to go forward, it would have to be reintroduced on the senate floor by a sponsoring Senator. It seems unlikely that this will happen anytime soon. Both anti-immigration and pro-immigration camps found the CIR bill to be deeply flawed. Had this bill passed the cloture vote and eventually made its

way to the President to sign in its current form, it would not have created workable reform. The triggers alone which required the Department of Homeland Security (“DHS”) to meet certain immeasurable benchmarks, such as to certify that DHS has 100% control of the US-Mexico border, made the bill unworkable.

July Visa Bulletin Disaster Corrected *(continued)*

(continued from page 1) that USCIS “began returning visa numbers to the DOS as early as Thursday, July 5, 2007, due to their inability to review applications effectively.” It seems that USCIS was trying to avoid accepting a new batch of EB adjustment applications that they would likely have to hold for a prolonged period of time.

However, the pressure from Rep. Lofgren and AILA’s pending class action lawsuit forced USCIS to change their untenable and unprecedented deci-

sion. On July 17, 2007, USCIS announced they would accept EB adjustment applications filed under the original July 2007 Visa Bulletin which listed all of the EB categories, except the other workers category, as current. The period for filing is the same 31 days that EB applicants would have had before this fiasco. The dates for filing the EB applications are now July 17, 2007—August 17, 2007. Additionally, USCIS agreed to allow EB applicants to pay the pre-July 30, 2007 filing fees for their adjustment

of status applications. Therefore, EB applicants will pay the current USCIS filing fees for their I-485 (Adjustment of Status application), I-765 (EAD) and I-131 (Parole). However, those EB applicants whose employers have not yet filed an I-140 immigrant visa application, will have to pay the new filing fee (\$475) if filed on or after July 30, 2007. Applicants can check on line at www.uscis.gov for an FAQ posted by USCIS answering questions about the filing of applications and the filing fees.



Most employment-based adjustment of status application packages can be filed between July 17, 2007 and August 17, 2007.

New USCIS Filing Fees to Start on July 30, 2007

As previously reported here, US Citizenship & Immigration Services (“USCIS”) will raise the application filing fees dramatically on July 30, 2007. In a July 23, 2007 reminder posted at www.uscis.gov, USCIS noted that applications must be postmarked by July 29, 2007 to take advantage of the current filing fees. A postmark of July 30, 2007 with the current fee will result in the application being returned to the applicant.

The new filing fees will be a raise from the current fees on average about sixty-six percent. Those applicants who will be hardest hit are applicants for legal permanent residency (green card applicants) with a new filing fee of \$1,010.00 and naturalization applicants with a new filing fee of \$675.00.

USCIS has justified this large fee increase by asserting that they are a fee-based agency. USCIS argues that as a fee-

based agency they cannot ask Congress to appropriate funding and therefore must raise fees to reflect the actual cost to USCIS to adjudicate certain applications.

USCIS has not commented on whether the higher fees will assist in reducing the long backlogs in adjudication or otherwise improve the service provided to the customers.

“The new filing fees will be a raise from the current fees on average about sixty-six percent.”

August 2007: EB-1, EB-2 & EB-3 All “Unavailable”

The August 2007 Visa Bulletin is a depressing sight after watching the last few months of steady visa progression to “current.” The Department of State moved the EB-1, EB-2 and EB-3 visa numbers back from current to “unavailable.” This move to “unavailable” includes the China, India, Mexico and the Philippines categories. In short, there will be no dates available for any employment-based visa category in August.

This move was somewhat expected by everyone in the immigration arena after the July Visa Bulletin fiasco. This move means that all applicants, regardless of priority date, country and classification cannot file an adjustment of status application with the US Citizenship & Immigration Service (USCIS).

On the Family-Sponsored side the news continued to be depressing and less than cheerful. The entire world, as well as

China and India had the same visa numbers with some progress: F-1 is August 8, 2001; F-2A is July 22, 2002; F-2B is April 8, 1998; and F-3 October 1, 1999. F-4 varied with 1996 dates. Mexico and the Philippines lagged well behind the above dates. As always the visa bulletin can be located online: www.state.gov.



Starting August 1st, all employment-based categories will become “unavailable.” However, those filing under the July Visa bulletin will be able to file through August 17, 2007.

Notes of Interest

Here are some noteworthy items that came in over the past 30 days...

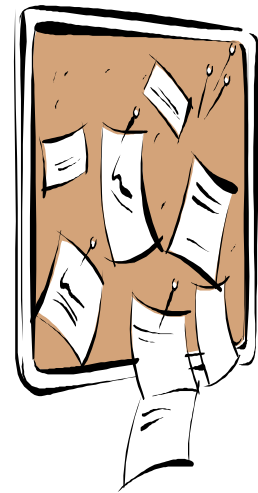
- U.S. Citizenship and Immigration Services (USCIS) has determined that, as of July 30, 2007, its service centers will only accept prepaid mailers for refugee travel documents and reentry permits given their high rate of expedited handling.
- The Buffalo News reported that officials from New York State and the Department of Homeland Security (DHS) will meet soon to begin work on a high-tech driver's license that travelers could use in lieu of a passport at U.S.-Canada

border crossings. The enhanced driver's license will probably be based on the one being developed in a Washington State pilot program. New York Governor Eliot Spitzer indicated that the state could phase in the issuance of the enhanced driver's licenses, beginning in Western New York, where he indicated that "the economy...is intensely dependent on...cross-border traffic." This news comes a little too late for New Yorkers who live on the border and have been waiting three months or more for a US Passport.

- In a Houston Chronicle editorial, former Immigration Judge (IJ) Joe Vail presents what he calls a "true

picture" of the typical undocumented worker, emphasizing that the "gun-toting, drug-smuggling" stereotype from talk radio is wrong as is the charge of amnesty made by opponents of the failed legislation. Mr. Vail expresses concern that the next chance for significant immigration reform will not occur until "2009 or 2010" and that the same "jingoism and xenophobia" will again be difficult obstacles.

- Name check delays by the FBI have resulted in dozens of federal lawsuits being filed by naturalization applicants who have been waiting years for their clearance so that they can be sworn in as US Citizens.



Immigration Judge Found to Have Jurisdiction Over I-140 Portability

The US Court of Appeals for the Sixth Circuit has ruled that Immigration Judges (IJ) have jurisdiction to determine portability of I-140 Immigrant Visa Petitions for alien employees who are in removal (deportation) proceedings. In *Matovski v. Gonzales*, 2007 WL 1713306 (6th Cir. June 15, 2007), the court found that there was no formal or informal regulation authorizing an Immigration Judge to refuse to implement the portability stat-

ute at 8 USC §1154(j).

Prior to this decision, the Department of Homeland Security (DHS) had argued that only they had the authority to determine portability issues. The result of this DHS position was that alien employees who found themselves in removal (deportation) proceedings, were unable to adjust status if they had changed jobs (ported) to a same or similar employment as allowed under 8 USC §

1154 (j).

Hopefully, this decision will be followed in other circuits as well or that DHS will adopt the finding of the Sixth Circuit. Until that time, only the IJ's who happen to sit in the Sixth Circuit will be able to determine the portability of I-140 Immigrant Visa Petitions for alien employees who are in removal (deportation) proceedings.

"There was no formal or informal regulation authorizing an Immigration Judge to refuse to implement the portability statute..."

US Passport Office Struggles to Keep Up with Demand

The House and Senate have passed similar bills to help the Department of State (DOS) clear the enormous back log of passport applications. A provision of one bill will allow the rehiring of retired employees in a way that will not affect their retirement benefits. The two versions will need to be reconciled before a final version can be submitted to President Bush for his signature.

The Senate passed its version

of the bill on June 29, 2007, while the House passed its version on July 16, 2007. According to reports, the discussion of the bill on the House floor allowed some Representatives ample time to scold DOS leadership for poor planning, praise the adjudicators who were working extended hours to process the large amount of US Passport applications, and reflect on the enormous number of calls from their constituents seeking help

with passport adjudications, many of whom have been waiting far longer than the 10 to 12 weeks promised on the DOS web site.

Rep. Donald Manzullo (R-Ill.) took the opportunity to say "I told you so," stating that in 2005 he predicted the current "train wreck." He said that his office had assisted nearly 500 people already this calendar year after having helped only a total of 51 in 2006.



US Passport issuance is lagging well beyond the 10-12 week service noted by the Department of State. Travelers are advised to file well ahead of their travel plans.

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Links of Interest:

www.state.gov
www.uscis.gov
www.foreignlaborcert.doleta.gov
<http://pds.pbis.doleta.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 American Immigration Lawyers Association and on the Executive Board for the New England Chapter of the American Immigration Lawyers Association. Attorney Maiona can be reached at 617-695-2220 x103 or by email at mjm2@gis.net.

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Filing Your EB Adjustment Application under the July Visa Bulletin

With the sudden change by US Citizenship & Immigration Services (USCIS) to accept applications for adjustment of status under the previous July 2007 Visa Bulletin came many questions. The questions are both in regard to the new filing period of July 17—August 17, 2007 as well as the new filing fees which come online on July 30, 2007.

It is assumed with the mass volume of adjustment of status applications that USCIS is set to receive that there will be a focus on rejecting improperly filed application packages. With this in mind, EB adjustment applicants should look to the two FAQs ("Frequently Asked Questions") posted by USCIS on their website on July 23, 2007 and July 27, 2007 respectively. These FAQs give



some valuable information and insight into how USCIS will respond to certain situations that may arise during the course of filing and adjudica-

Review the Frequently Asked Questions (FAQ) memos from USCIS posted at www.uscis.gov regarding the July Visa Bulletin filings.

tion.

For example, the July 23rd FAQ states at Question 2 that "USCIS will reject any filings submitted with incorrect filing fees." Usually, this is not an issue as most applicants can ascertain the correct fees. However, when combined with a fee change on July 30th, the likelihood of error expands. The biggest area of concern is with concurrently filed I-140/485 applications. While USCIS has stated that the I-485 application package fees will remain the same during the July 17—August 17 filing period (485/765 & 131), the I-140 fee will be the new fee of \$475 on or after July 30th. The old fee would result in the whole package being rejected: be careful!