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IMMIGRATION LAW UPDATE

Volume 2, Issue 9

September 2007

Special points of interest:

- USCIS slowly issues receipts for I-485 applicants
- Hope may come for illegal minors
- USCIS compelled to adjudicate adjustment application
- October Visa Bulletin moves forward for EB-1 and EB-2
- States want more H-1B visas to protect businesses

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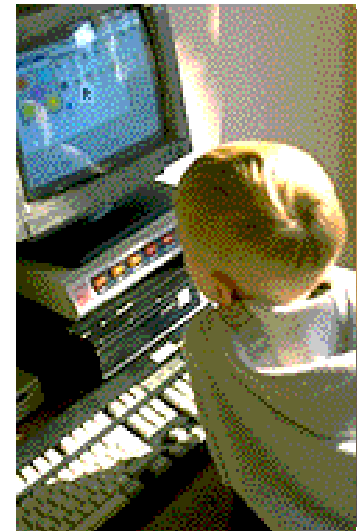
DREAM Act Introduced in the Senate

On September 21, 2007, Senator Richard Durbin (D-Ill.) introduced the latest version of the "Development, Relief and Education for Alien Minors Act of 2007" (a/k/a DREAM Act) as an amendment to the Department of Defense Appropriations bill.

The DREAM Act would create special rules for aliens who were brought to the United States as children and are now undocumented students. The DREAM Act would allow the Department of Homeland Security (DHS) to cancel and adjust the status of an illegal minor alien who is inadmissible or deportable if he/she meets certain requirements. The requirements listed under the DREAM Act include that the minor: (1) has been continuously physically present in the US for at least five years; (2) was under 16 years of age when he/she entered the United States; (3) has

been a person of good moral character—that is, no criminal records; (4) is not inadmissible or deportable under certain sections of the Immigration and Nationality Act (Act) including having been convicted of certain crimes, is a security risk to the United States, is an alien smuggler, or has been found to have abducted a child from another country; (5) has been admitted to a college or university in the US or has earned a high school diploma or a GED in the United States; and (6) has never been ordered removed, excluded or deported, unless the minor is still in the United States with the permission of DHS or other authority, received the order prior to attaining the age of 16 and is now under 30 when the DREAM Act is enacted.

A successful minor applicant will become a conditional legal resident for 6 years. The minor can then petition to DHS to remove



The DREAM Act could bring relief to thousands of undocumented minors who have hopes of attending school.

the conditions of residency by filing proof of good character and academic achievement, as well as other evidence.

US District Court Grants Writ of Mandamus for Adjustment Applicant

A District Court judge in northern California sustained an adjustment applicant's complaint for mandamus and denied the US Citizenship & Immigration Services (USCIS) motion to dismiss. The applicant had filed an adjustment of status application on October 15, 2003 with his US citizen spouse at the San Francisco USCIS office. On May

13, 2004, the applicant was interviewed with his spouse and his immigrant visa was approved. However, the applicant's adjustment application remained pending due to an incomplete FBI name check.

The applicant's mandamus complaint sought an order directing the FBI to complete the name check within 30 days and direct-

ing USCIS to adjudicate his I-485 adjustment of status application promptly upon receipt of these results. It should be noted that the applicant asked for adjudication and not approval of his I-485 application.

USCIS asked the court to dismiss the matter. However the judge instead found that while USCIS has (continued on p. 2)

“U” Visa Guidelines Published by USCIS

On September 5, 2007, US Citizenship & Immigration Services (USCIS) published a [Fact Sheet](#) that addressed the rules for the U visa. The U visa was established for nonimmigrant victims of criminal activity. The rule will grant immigrant benefits to certain victims of crimes who will assist government and law enforcement officials in investigating or prosecuting the criminal activity. There will be 10,000 U-visas available each year to victims who have suffered mental or physical abuse because of a crime and who

will assist government and law enforcement agencies in investigating the crime. The U visa will allow the holder to remain in the United States for up to four years.

In order to qualify for this visa, the victim must meet four requirements: (1) the individual must have suffered substantial physical or mental abuse as a result of being a victim of qualifying criminal activity; (2) the individual has information concerning that criminal activity; (3) the individual has been help-

ful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime; and (4) the criminal activity must have violated the laws of the United States or occurred in the United States. The U visa will be filed on form I-918 with the Vermont Service Center. The U visa holder can eventually apply for legal permanent residency after three years and will be approved if it is justified on humanitarian grounds or is in the best interest of the public.



The proposed U visa regulations will allow undocumented victims of crime an avenue of relief if they cooperate with the police.

US District Court Grants Writ of Mandamus to Adjustment Applicant

(continued from p. 1) discretion over whether to grant or deny an application for adjustment of status to permanent residency (I-485), it does not have discretion over whether to adjudicate the application. Furthermore, the judge found that the regulations contemplate that USCIS will make a decision on each I-485 application and that the applicant will be informed of the decision. The court found that if it were to follow USCIS'

interpretation of the regulations, it would "amount to a grant of permission for inaction." The judge also found that since this applicant is in the United States as well, it would seem to be a national security interest to act rather than not.

The court did note that there was no allegation by USCIS that an investigation was ongoing and therefore a decision could not be withheld under that regulation as well.

The court found that 180 days, pursuant to 8 USCA §1571(b), was sufficient time to adjudicate an immigration benefit application and also that said time was the express will of Congress.

Finally, the court noted that it is the reasonableness of the delay based upon the record of the case in determining the writ of mandamus. See, [Toor v. Still](#), 2007 WL 2028407 (N.D. Cal. July 10, 2007).

“Furthermore, the judge found that the regulations contemplate that USCIS will make a decision on each I-485 application and that the applicant will be informed of the decision.”

October 2007: EB-1, EB-2 and EB-3 Numbers Available

The October 2007 Visa Bulletin progressed from last month when the Department of State moved the EB-1, EB-2 and EB-3 visa numbers back from the previous "unavailable" status. There is good news this month.

The Department of State moved the visa numbers ahead in most categories, EB-1 and EB-2 moved to "current." EB-3 remained at August 1, 2002. China, India and Mexico EB-1 moved to "current." China EB-

2 remained at January 1, 2006, while China EB-3 returned from "unavailable" to September 1, 2001. India EB-2 remained at April 1, 2004 while India EB-3 moved from "unavailable" to April 22, 2001. Mexico EB-2 moved to "current" while Mexico EB-3 moved ahead from "unavailable" to April 22, 2001.

On the Family-Sponsored side the news continued to be less than spectacular with contin-

ued slow progression. The entire world, as well as China and India had the same visa numbers with some progress: F-1 is November 8, 2001; F-2A is November 15, 2002; F-2B is August 15, 1998; and F-3 February 15, 2000. F-4 varied with 1996 & 1997 dates. Mexico and the Philippines lagged well behind the above dates. As always the visa bulletin can be located online: www.state.gov.



EB-1 and EB-2 categories went to "current" for October 2007 and was a pleasant surprise.

Notes of Interest

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

- The governors of Washington, Massachusetts, Wisconsin, California, Wyoming, Kansas, Texas, Indiana, New York, Minnesota, Colorado, Arizona and Nevada signed onto a letter to the Senate and House leadership asking them to increase the H-1B cap and to increase the quota of permanent resident visas (green cards).
- The Los Angeles Times ran a story on August 25, 2007 about the slow progress of the border fence (15 miles built) between Mexico and the US 1 year after Congress authorized the building of 700 miles of fencing with 70 miles to be completed by September 30th.
- US Citizenship & Immigration Services released 100 questions and answers for the new naturalization test which will be administered starting in October of 2008.
- Immigration & Customs Enforcement (ICE) conducted local enforcement actions in Oklahoma City, Chicago and Boston targeting violent street gang members. 65 people were arrested in Oklahoma City and 58 people were arrested in Chicago and 36 were arrested in Boston. All were alleged to have close ties to various street gangs in the three cities.



At the current building pace (15 miles per year) it will take about 47 years to complete the 700 mile border fence authorized by Congress.

July 2007 Visa Bulletin Update

US Citizenship & Immigration Services (USCIS) has begun issuing receipt notices (Notice of Action) for the large amount of I-485 Applications to Adjust Status, I-140 Immigrant Visa Applications, I-765 Employment Authorization Documents and I-131 Advance Parole Applications that were submitted under the July Visa Bulletin process.

Most employment-based applicants with approved labor cer-

tifications or PERM applications found themselves eligible to file for an immigrant visa and green card package from the stretch of July 17, 2007 through August 17, 2007 thanks in part to threatened litigation by the American Immigration Lawyers Association (AILA) and their litigation counterpart the American Immigration Law Foundation (AILF). USCIS was naturally inundated with application packages. This office has received receipt notices for

some applications filed in July with periphery benefits of Employment Authorization Documents (EAD) and Advance Parole (AP) being issued for the early July (July 2nd) cases.

The coming months should result in a number of receipt notices being issued on these cases. Applicants may receive receipt notices from various Service Centers as the Service Centers have split the load to accelerate processing.

“The coming months should result in a number of receipt notices being issued on these cases.”

WHTI Passport Exception Set to Expire

The Department of Homeland Security (DHS) issued a press release on September 4, 2007 reminding travelers that the temporary exception to the Western Hemisphere Travel Initiative (WHTI) that allowed US citizens to travel within the Western Hemisphere with a Department of State (DOS) Passport Office application receipt will come to an end at midnight September 30, 2007. Those US citizens who departed the United States before

September 30, 2007 with the DOS Passport Office application receipt will be allowed to re-enter the United States with the receipt.

Effective October 1, 2007, WHTI requires that all US citizens traveling to Canada, Mexico, the Caribbean, or Bermuda enter or re-enter the United States with a valid US passport or other WHTI-compliant documentation. This other documentation includes:

Alien Registration Card, Form I-551, Legal Permanent Residents will continue to be able to use their Alien Registration Card (Form I-551); **Merchant Mariner Document (MMD)** or “z-card” issued by the U.S. Coast Guard that will be acceptable for use under WHTI by U.S. citizen merchant mariners traveling on official business; **NEXUS Air card**; and **U.S. Military Traveling on Orders**.



As of October 1, 2007 US Citizens will need to have a United States passport to re-enter the US regardless of where they are returning from.

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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 Matthew@maionalawoffice.com

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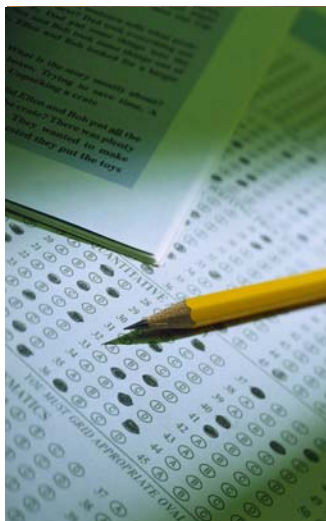
Attorney Ward received her B.A. from Assumption College and her J.D. from Suffolk University Law School. Attorney Ward is a member of the New England chapter of the American Immigration Lawyers Association. Attorney Ward can be reached at 617-695-2220 x105 or by email at Sara@maionalawoffice.com

A Reminder to All Adjustment Applicants

On September 6, 2007, the First Circuit of Appeals issued the decision of Mejia-Orellana v. Gonzales. This decision is a good reminder to applicants the importance of accurately and honestly completing applications as the failure to do so can haunt applicants years later.

The applicant in the above case entered the US without inspection in 1983. In 1985 he was arrested and convicted of possession of more than 20 grams of marijuana. In 1991 the applicant was granted adjustment of status based upon his marriage to a US citizen.

In 2002 upon return from a trip to Canada the applicant did not present his green card and he was paroled into the US to report to US Customs and Border Protection with his green card. During the de-



Immigration forms should be completed carefully and correctly.

ferred inspection the applicant presented his green card and disclosed his arrest in 1985 as

well as a 1993 marijuana arrest: he was then detained and referred to the Immigration Judge. The applicant applied for cancellation of removal and/or a waiver before the Judge. During court proceedings it was learned that he lied on his I-485 and never disclosed his arrest. The Immigration Judge denied the applicants request for cancellation of removal and the Board of Immigration Appeals agreed and ordered his removal to Honduras.

Now the First Circuit has agreed as well; finding that because the applicant had failed to disclose his 1985 arrest on his application for adjustment of status, he had not been "lawfully admitted for permanent residence" and was therefore ineligible for cancellation of removal.