

Monday, July 2, 2007

GOVERNMENT SUDDENLY CLOSES VISA NUMBERS PREVENTING FILING OF ADJUSTMENT OF STATUS APPLICATIONS

With at least its second complete turnaround within the last two weeks, the Government announced today that it was declaring all employment based quotas as unavailable thus preventing the filing of adjustment of status applications by thousands of otherwise qualified applicants.

Announcements by the State Department and USCIS indicate they will reject any application received on or after July 2, 2007 and that employment based visa numbers will probably not become available until at least October 1, 2007.

The embarrassing errors and miscalculations by the government give little solace to the thousands of people who relied on the government's mistakes and had to rush to prepare their adjustment applications, take costly medicals and who thus set themselves up for serious disappointments.

BACKGROUND

When the July visa bulletin was first published around June 15, 2007, it pleasantly surprised many aliens, their employers and their attorneys who believed that such great news that all the employment based quotas were becoming

currently available must be either a governmental error or an act of God.

For most people in the EB-1 and EB-2 categories, they previously justifiably thought their high classification would mean completing their immigration in just a few months.

However, the majority of those applying for green cards, i.e., those without advanced degrees (or Chinese and Indians with advanced degrees) as recently as May, 2007 thought they probably had a five year wait before a visa number would become available to them.

Upon receiving the good news that the quota was opening on July 1, 2007, our clients and our office did everything possible to ensure they would be able to file their applications before the end of July as the Visa Bulletin indicated visa numbers would be available until July 31, 2007.

Suddenly, on July 2nd, the Government announced that a revised Visa Bulletin was being published wherein all three employment based categories were declared as being unavailable. Furthermore, they announced that numbers would not become available until at least October 1, 2007.

WHAT DOES ALL THIS MEAN?

For those already in the US with valid visas and valid work permits, besides a lot of disappointment and some otherwise unnecessary expenses, it really only means delaying the final processing of their green card applications.

For those who had valid work authorization but did not have a valid visa allowing them to travel outside the U.S., since they would not be able to apply to adjust their status, they would not be able to obtain "advance paroles" allowing them to travel outside the U.S.

For those who did not have valid temporary visas, not being able to file an adjustment of status application meant not being able to obtain employment authorization documents from the USCIS (and subsequently valid social security cards). These EAD cards would have provided many people a sense of security as they serve as valid ID's for most purposes.

SHOULD I STILL TRY TO FILE MY ADJUSTMENT OF STATUS APPLICATION?

The Government's position regarding this is clear. They say you cannot file and, if you do, the application will be rejected. The American Immigration Lawyer's Association is already talking about litigating this and some believe that people who file

and whose applications are officially rejected may be in a preferential position over those who do not file at all.

For those whose applications are ready to file today, we will be filing despite the

government's warning. For those who are in the early stages of preparation and especially those who have not yet had their medicals taken, we will be deciding on a case by case basis whether to file. We will monitor this issue

carefully and advise our clients if our position changes as matters progress.