



JULY 2007 VISA BULLETIN - "CURRENT"

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by

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"Current," may be a regular word to some, but to thousands of foreign nationals the word holds significant meaning. It means that they are finally permitted to apply for adjustment of status in the United States. Applications can be submitted as of July 1, 2007 and through July 31, 2007.

> The latest State Department visa bulletin for July 2007,

[http://travel.state.gov/visa/frvi/](http://travel.state.gov/visa/frvi/bulletin/bulletin_3258.html)

[bulletin/bulletin_3258.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3258.html), Indicates that all Employment Preference categories except Other Workers (which is marked U for unavailable) have been made "Current." This has been done in an effort to generate increased demand by US Citizenship and Immigration Services (USCIS) for adjustment of status cases, and to maximize number use under the annual numerical limit. Thus, under "current," no matter when the priority date was established (which is when the labor certification was filed), eligible applicants can file applications for adjustment of status (Form I-485). However, all readers should be alert to the possibility that not all Employment preferences will remain current for the remainder of the fiscal year. Should the rate of demand for numbers be very heavy in the coming months, it could become necessary to retrogress some cut-off dates for September, most likely for China-mainland born and India, but also possibly for Mexico and Philippines. Severe cut-off date retrogressions are likely to occur early in FY-2008.

> As applications are permitted to be filed between July 1, 2007 and July 31, 2007, there is no need to file on the first available date. Of course, to be eligible to file for adjustment of status, one must also either have an approved immigrant visa petition (Form I-140) or be eligible to file an I-140 petition (since

an I-140 and I-485 can be filed concurrently). In the Employment-based Second and Third preferences, this usually means that the labor certification should have first been approved by the Department of Labor. It is essential that applications are inclusive of all necessary documents when submitted to the USCIS. Complete applications must include:

1. Proof that status in the US has been maintained (unless eligible under Section 245(i));
2. Birth certificates (when the original birth certificate is not available, refer to the Foreign Affairs Manual (FAM) for instructions regarding substitute identity documentation). In cases where birth certificates from the authorities are unavailable or contain insufficient information regarding the birth or the parents, a sworn affidavit executed by either parents, if living, or other close relatives older than the applicant, may be submitted along with school leaving certificates also indicating date of birth;
3. Passport photos;
4. Medicals by a medical professional listed on the USCIS's list of medical professionals;
5. Federal income tax returns and earning records to establish that the applicant will not become a public charge; and
6. Employment letter from the sponsor of the I-140 petition.

The USCIS will first adjudicate the applications that were affected by the earlier retrogression, specifically the applications that were filed prior to October 1, 2005. Retrogression is likely to happen again, and the priority dates will be moved several years behind and the applications that are currently being filed will continue to remain pending until they are approved and the applicant is granted lawful permanent residence (green card). The application can only be approved if the priority date is current, and the USCIS takes up to a year to process and approve an I-485. If an applicant is subject to security or background checks, it can take even longer.

Nonetheless, there are a number of benefits and rights that emanate to the applicant in connection with filing the I-485. Please note that an applicant is not eligible for any of these benefits if he/she consular processing over adjustment of status. Also, opting for consular processing is very risky as retrogression is bound to occur, and then the applicant will neither be able to process the green card at the US Consulate or obtain the benefits of adjustment of status.

Employment Authorization and Advance Parole

At the time of filing the I-485, the applicant may also file Form I-765 to obtain employment authorization (EAD) as well as Form I-131 to obtain Advance Parole (AP) travel permission. Eligibility for these benefits also extends to the applicant's spouse and minor children.

I-485 Portability

It is important to note that the offer of employment at the time of filing the Employment-based I-140 petition and the I-485 must be bona fide, which means that at the time of the filing, the employer must have had the intent to employ the beneficiary and the beneficiary must have intended to undertake employment, upon adjustment. While an applicant must still have intent to work for the employer, after 180 days one is permitted to "port" to a new employer. Section 204(j) of the Immigration and Nationality Act (INA) preserves the validity of the underlying employment-based petition or labor certification if the I-485 application is pending for 180 days or more and the non-citizen applicant changes jobs or employers in the same or similar occupation. The importance of preserving eligibility for I-485 Portability will hinge on the foreign national's degree of job satisfaction, career prospects, and the perceived long-term strength of the company (e.g., whether it is ripe for acquisition, bankruptcy, dissolution, or other changes that could make I-485 Portability a "life-saver" for the beneficiary). If, for example, the beneficiary could potentially face termination in the future, the company is likely to be acquired, or the company's current fortunes portend an uncertain future, it generally makes sense to file the I-485 at the earliest possible opportunity, thus triggering the ticking of the 6-month portability "clock." Absent a retrogression, if the USCIS fails to process the I-485 within 180 days and the applicant secures a generically similar employment opportunity, then he/she may still obtain the green card in spite of a job change. This kind of "safety net" is not available to applicants who pursue Consular Processing.

Even if the processing queue should retrogress, the filing of an I-485 during a month when the applicant's Priority Date is "current" permits him/her to continue to apply for and obtain benefits such as EAD and AP.

Since the USCIS is not likely to approve the cases filed in July 2007, the "current" dates are likely to last for one or two months, unless the I-485s from the pre-October 1, 2005 filings are quickly approved. Once visa numbers are used up, it

is clear that the demand will outstrip the supply of visas and we are surely going to experience yet another backlog of many years.

EB-3 Other Worker Visa Availability Update: The State Department has advised that the EB-3 Other Worker category has been exhausted. USCIS has informed the Texas Service Center and the Nebraska Service Center to reject EB-3 Other Worker adjustment applications even though the June Visa Bulletin shows visa availability.

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