



ADJUSTMENT OF STATUS FILING ADVISORY

Posted on June 29, 2007 by Cyrus Mehta

On July 1, 2007, the Visa Numbers in the Employment-based Second and Third Preferences will become current. The USCIS Service Centers in Nebraska and Texas will be deluged with Adjustment of Status (Form I-485) applications. This advisory is in continuation of [July 2007 VISA BULLETIN - "CURRENT."](#)

An update on AILA Infonet expresses concern that the USCIS may start rejecting I-485 filings before July 31, 2007 even though, historically, applicants have had the benefit of the whole month to file before the State Department announces retrogression for the following month. In fact, the cut-off date for the "Other Worker" was October 1, 2001 in the June 2007 Visa Bulletin. Yet, the USCIS began rejecting I-485 filings under the Other Worker category with priority dates of October 1, 2001 or earlier when the agency was informed by the State Department that the visa allocation for this category had been exhausted on June 5, 2007. AILA believes that the rejection policy is contrary to the regulation at 8 CFR §245.1(g)(1), and has urged USCIS to reverse its policy, which it has refused to do so. In any event, June 2007 is almost over, and even if USCIS reverses its erroneous policy later in July, would it still be able to accept I-485 applications that were due in June 2007? In July 2007, the Other Worker category becomes Unavailable.

Regarding the "Current" dates in July 2007, the AILA Update indicates that USCIS has approximately 40,000 visas remaining in all employment-based categories for 2007, and that USCIS already has far more than that number of I-485 applications in the backlog queue ready for approval. Remember that there was a similar deluge of I-485 filings prior to the earlier retrogression of October 1, 2005. If these have already been pre-approved, they will exhaust the supply of existing immigrant visas and there is a likelihood that USCIS may start rejecting I-485 filings before the month of July is over. AILA has not yet predicted the exact date in July when this will happen.

Despite the rush to file, one cannot underscore the importance of filing complete I-485 applications. If the I-485 does not contain the medical examination report, it will get rejected as the document is considered "initial evidence." The same applies to birth certificates, marriage certificates and other essential documents. It is also important to file with the correct filing fees for the I-485 (\$325 + \$70 for the biometrics fee). The accompanying I-765 application for temporary employment authorization is \$180 and the I-131 application for Advance Parole is \$180.

It is also important to make full and truthful disclosure of any unauthorized unemployment on the Form G-325A. Some may have worked after their F-1 OPT had expired and others may have been involved in self-employment home businesses. The fact that an applicant has worked without authorization for short periods of time should not render him or her ineligible to file for Adjustment of Status. Section 245(k) of the Immigration and Nationality Act protects status violations up to 180 days from the last lawful admission into the United States. For example, if an applicant worked without authorization between October and December 2006, and then left the United States and entered on January 1, 2007 in H-1B status, so long as this individual has not violated status for more than 180 days since January 1, 2007, he or she would still be eligible to file the I-485. For those with longer periods of status violations, Section 245(i) may also render them eligible to file an I-485. To be eligible under Section 245(i), the applicant must have been the beneficiary of a labor certification or employment or family-based immigrant visa petition (Form I-140 or Form I-130) prior to April 30, 2001. If the filing was between January 15, 1998 and April 30, 2001, he or she must also establish physical presence in the US as of December 21, 2000. If one is filing under Section 245(i), the I-485 must be accompanied by Supplement A and an additional penalty fee of \$1,000.

Finally, it is also important to disclose criminal arrests and convictions, however minor. Of course, those who have a criminal record must seek the advise of an attorney prior to filing the I-485. While not all minor arrests or convictions will lead to inadmissibility, some may and it is important to find out whether the applicant is eligible for a waiver.

If one is filing an I-140 concurrently with the I-485, note that the USCIS announced on June 28, 2007 that it was temporarily suspending premium processing for 30 days from July 2, 2007 due to the heavy rush in applications.

RECENT UPDATE

AILA reports that it has been hearing from multiple sources that, on Monday or Tuesday of next week, State Department plans to issue a revised Visa Bulletin for July 2007. This revised Bulletin would retrogress some or all of the employment-based categories, very likely to the point of unavailable. Reports from AILA members about unusual levels and types of activities by USCIS indicate a particular push to adjudicate employment-based adjustments currently in the pipeline so as to exhaust visa numbers for fiscal year 2007.

LATEST ALERT

The U.S. Department of State (DOS) has announced that effective Monday, July 2, 2007, there will be no further authorizations in response to requests for Employment-Based preference cases. All numbers available to those categories under the FY 2007 annual numerical limitation have been made unavailable. Employment preference numbers will once again be available to these chargeability areas beginning October 1, 2007, under the FY 2008 numerical limitation.

What this means, is that the USCIS will not accept any more adjustment of status applications received on or after July 2, 2007. It remains to be seen whether an impending law suite by the American Immigration Law Foundation will result in an injunction, and thus still allow filings for eligible applicants. We will provide a further commentary when we get more pertinent information.

SHOULD I STILL FILE AN I-485?

Below is the latest from AILA:

USCIS announced this afternoon that, effective today, it is rejecting all employment-based adjustment of status applications where the priority date is not current under the revised visa bulletin. See InfoNet Document No. 07070265: <http://www.aila.org/content/default.aspx?docid=22805> USCIS Service Center Operations has advised AILA liaison that it will be rejecting ALL employment-based adjustment of status applications received beginning today.

So, Do I Keep Filing?

Many members have asked whether they should keep filing employment-based adjustment applications in light of today's announcement by the Department of State that there will be no further authorizations of visa numbers for

employment preferences and the announcement by USCIS referenced above. This is, of course, a decision each applicant must make and each attorney must advise in his or her best judgment. However, following are some factors to keep in mind:

AILF's Legal Action Center is preparing to litigate. Plaintiffs and class members whose applications were rejected or returned would have the strongest legal claims and have the strongest claims to benefit from a favorable result.

Some case law indicates that where an applicant or their attorney did not apply or permitted the agency to "front desk" an application (turned the applicant away without evidence they had applied) those beneficiaries were not eligible for the remedies ordered by the court.