



## AUGUST 2007 IMMIGRATION UPDATE

*Posted on August 3, 2007 by Cyrus Mehta*

### Headlines:

- **1. [DOS, USCIS Reverse Policies, Release Guidance in Response to July Visa Number Debacle](#)** - The Department of State and USCIS reversed course to resolve the dilemma of tens of thousands of skilled workers who were left out in the cold by the State Department's sudden announcement on July 2 that there would be no further employment-based green card numbers available this fiscal year.
- **2. [Federal Court Strikes Down PA Illegal Immigration Law](#)** - In a ruling viewed as a setback to similar measures in cities and states nationwide, a federal court has struck down Hazleton, Pennsylvania's "Illegal Immigration Relief Act."
- **3. [New Application and Petition Fees Went Into Effect on July 30; Rep. Lofgren Introduces Bill to Void New Fees](#)** - USCIS issued a reminder that the new fee schedule is effective as of July 30, 2007, with one exception.
- **4. [USCIS Announces Extension of Temporary Suspension of Premium Processing Service for I-140s](#)** - USCIS announced an extension of the temporary suspension of Premium Processing Service for the Immigrant Petition for Alien Worker (Form I-140).
- **5. [USCIS Rescinds Earlier Update, Allows Prepaid Mailers](#)** - USCIS is, once again, allowing the public to enclose prepaid mailers in connection with applications or petitions filed with USCIS.
- **6. [DHS Exempts Portions of IDENT System From Privacy Act](#)** - The Department of Homeland Security issued a final rule exempting portions of the Automated Biometric Identification System from certain provisions of the Privacy Act.
- **7. [FBI Warns Employers About Potential 'Spies'](#)** - The FBI advises employers to be on the lookout for suspicious people who have favorite

"disguises," including representatives of research institutes, visiting business professionals and scientists, tourists or visitors on nonimmigrant visas, diplomatic officials, false front companies, and students and educators.

- **8. [Passport Measures Relaxed in Response to Massive Backlogs](#)** - The State Department has relaxed the passport rules temporarily for North American travel.
- **9. [House Passes Liberian TPS Measure](#)** - The House has an extension of the designation of temporary protected status (TPS) for Liberia for an additional 12 months, through September 30, 2008; attention next will focus on the Senate.
- **10. [GAO Reports on Challenges in Attracting International Students and Implications for Global Competitiveness](#)** - Recent trends have raised concerns about whether the U.S. will continue to attract talented international students.

### Details...

#### **1. DOS, USCIS Reverse Policies, Release Guidance in Response to July Visa Number Debacle**

The Department of State and U.S. Citizenship and Immigration Services (USCIS) reversed themselves on July 17, 2007, to resolve the dilemma of tens of thousands of skilled workers who had been left out in the cold by the Department's sudden announcement on July 2, 2007, that there would be no further employment-based green card numbers available until October.

In response to the controversy over the sudden cut-off, USCIS and the State Department reversed themselves. "The public reaction to the July 2 announcement made it clear that the federal government's management of this process needs further review," said Emilio Gonzalez, USCIS's Director. "I am committed to working with Congress and the State Department to implement a more efficient system in line with public expectations."

The July 2 announcement resulted in much outrage among workers, employers, and their attorneys, and lawsuits were filed and threatened. Rep. Zoe Lofgren (D-Cal.), whose district includes Silicon Valley, wrote to Homeland Security Secretary Michael Chertoff asking for "all correspondence, emails, memoranda, notes, field guidance or other documentation" leading to the sudden decision. [Microsoft](#) Corporation announced on July 5 that it plans to open soon a

software development center in Vancouver, Canada, to "recruit and retain highly skilled people affected by immigration issues in the U.S." S. Somasegar, corporate vice president of Microsoft's Developer Division, noted that "Microsoft is a global company, and our greatest asset is smart, talented, highly skilled people. Our goal as a company is to attract the next generation of leading software developers from all parts of the world, and this center will be a beacon for some of that talent."

After consulting with USCIS, the Visa Office advised that Visa Bulletin #107 (dated June 12, available at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3258.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3258.html)) should be relied upon as the July Visa Bulletin for purposes of determining employment-based visa number availability, and that Visa Bulletin #108 (dated July 2) has been withdrawn. USCIS announced that it is accepting employment-based applications to adjust status (Forms I-485) filed by aliens whose priority dates are current under Visa Bulletin #107. USCIS will accept applications filed no later than August 17, 2007. Those applications may no longer be filed electronically and must be submitted to a Service Center via regular mail or courier service, USCIS said. Applications already properly filed with USCIS also will be accepted. The current fee schedule will apply to all applications filed under Visa Bulletin #107 through August 17, 2007. The new fee schedule that became effective on July 30, 2007, applies to all other applications filed on or after July 30, 2007.

USCIS also subsequently released several FAQs containing detailed guidance, discussed below.

On July 27, 2007, USCIS released a FAQ (#2) on employment-based adjustment applications filed by those whose priority dates were "Current" under Department of State July Visa Bulletin No. 107. The FAQ makes the following points:

- USCIS will permit applicants who filed adjustment applications between July 2 and July 17, 2007, but who have not yet received a USCIS-generated receipt notice, to file for Advance Parole and Employment Authorization based on proof of delivery of the I-485 application.
- The receipt date for such applications will be based on the date the applications were physically received by USCIS.
- USCIS will accept medical examinations completed abroad by physicians

authorized by the Department of State. Applicants must be physically present in the United States when filing for adjustment of status.

- An e-filed I-140 petition (that is not based on a required labor certification) filed on July 31, 2007, will receive a priority date of July 31, 2007, if the supporting documents arrive at a later date. In accordance with e-filing standard procedures, the date on which the I-140 petition is received by USCIS will be the priority date. Supporting documentation must be filed within allotted time limitations.
- A receipt notice from a courier service or overnight mailing service constitutes a "postmark" for fee determination purposes.
- For those who fell out of valid nonimmigrant status between July 2 and July 16, 2007, as a direct result of the inability to file for employment-based adjustment during that period, USCIS said it "has discretion to consider extraordinary circumstances that are beyond the alien's control and may forgive a short gap in status for such aliens."
- If an individual's pre-August 1, 2007, priority date based on an approved labor certification and approved I-140 petition is transferred to a subsequently filed I-140 petition, the later filed I-140 petition may be concurrently filed with an I-485 application between August 1, 2007, and August 17, 2007. An approved I-140 petition on behalf of a beneficiary accords the beneficiary the priority date of the approved I-140 petition for any subsequently filed I-140 petitions on his or her behalf. Therefore, as long as the initial priority date remains current under Visa Bulletin No. 107, a subsequently filed I-140 and an adjustment application may be filed until August 17, 2007.
- If an alien has a pre-August 1, 2007, priority date based on an approved labor certification and a *pending* I-140 petition, the alien may *not* be accorded the earlier priority date on a subsequently filed I-140 petition such that the later I-140 and adjustment application may be filed between August 1, 2007, and August 17, 2007. In accordance with 8 CFR 204.5(e), only an *approved* I-140 petition on behalf of a beneficiary accords the beneficiary the priority date of the approved I-140 petition for any subsequently filed I-140 petitions on his or her behalf. A priority date may only be retained for use in conjunction with a subsequently filed Form I-140 petition if the previous petition was approved and not revoked. If the first petition remains pending, then the filing date of the labor

certification submitted in support of the petition may not be used as a basis for a request to retain the priority date.

- The version date on the new I-485 form is 7/30/07 and it has an "N" designation after it, but this does not mean that the I-485 applications arriving at the Service Center on or after July 30, 2007, must use the new I-485 form or it will be rejected at the mailroom. The "N" designation on the new version was inadvertently uploaded to the USCIS Web site and has since been removed, USCIS explained. The new and corrected I-485 application form that will be uploaded will have the "Y" designation, which means that the earlier version of the form will not be rejected.
- All applications, petitions, and notices of legal representation must be properly signed. For more information, see the Reminder Regarding Signature Requirements, available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=9453d59ae8a8e010VgnVCM1000000ecd190aRCRD&vgnnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD> .
- A visa number must be available at the time of filing for adjustment of status. Thus, if a principal applicant with a current priority date under Visa Bulletin No. 107 files for adjustment of status between July 17 and August 17, 2007, any derivative family members must either also file during this time period, or wait until immigrant visa numbers become available at a later date pursuant to the Visa Bulletin.
- The correct filing fee for a concurrently filed I-140 with an adjustment application filed between July 30, 2007, and August 17, 2007, is \$475. The new increased fee applies to Forms I-140, whether or not concurrently filed with an employment-based adjustment application, filed on or after July 30, 2007.

USCIS also released an earlier FAQ (#1) regarding the same topic. That FAQ makes the following points, among others:

- The fee of \$180 for Forms I-765 and the fee of \$170 for Form I-131 will remain in effect for those eligible to file an employment-based adjustment of status application pursuant to July Visa Bulletin No. 107. These fees will remain in effect for all such applications filed between July 17 and August 17, 2007.
- Applicants will not have the option of paying the new filing fees for

adjustment applications. USCIS has determined that those in employment-based categories filing applications pursuant to July Visa Bulletin No. 107 should be subject to the pre-July 30, 2007, fees because that fee schedule would have applied had they been allowed to file throughout the month of July.

- USCIS will not accept employment-based adjustment of status applications under July Visa Bulletin No. 107 if the priority date is August 1, 2007 or later.
- USCIS will accept adjustment applications under July Visa Bulletin No. 107 that are submitted by August 17, 2007, if the priority date is before July 31 but the certification is granted after August 1.
- USCIS will accept properly filed Forms I-140 filed on behalf of beneficiaries with a priority date on or after August 1, 2007; however, pursuant to August Visa Bulletin No. 109, USCIS will reject any concurrently filed adjustment of status applications filed by those with a priority date on or after August 1, 2007.
- USCIS will accept adjustment of applications filed pursuant to Visa Bulletin No. 107 without a completed medical examination. In such cases, USCIS will issue a request for evidence.
- Applications delivered on August 17, 2007, will be accepted but those arriving August 18, 2007, will be rejected.
- USCIS interprets AC21 §104(c) (for three-year H-1B extensions) as only applicable when a beneficiary of an approved I-140 petition is eligible to be granted lawful permanent resident status but for application of the per-country limitations. Any petitioner seeking an H-1B extension on behalf of a beneficiary pursuant to AC21 §104(c) must thus establish that at the time of filing for such extension, the beneficiary is not eligible to be granted lawful permanent resident status on account of the per-country immigrant visa limitations.
- Depending on the volume of applications received as a result of the July 17 notice reopening the filing period for employment-based adjustment applications under the July Visa Bulletin, there may be some delay in the issuance of receipt notices. Processing times will be updated on the USCIS Web site.
- USCIS advises applicants filing a Form I-485 that does not contain a copy of an I-797 receipt notice for a previously filed Form I-140 to put a "brightly colored sheet of paper" on top of the filing with the following

notice and information: "TO THE MAILROOM: The enclosed I-485 Adjustment Application(s) should be matched with a pending I-140 Immigrant Petition for which no Receipt Notice has been received. The Immigrant Petition was delivered to on ; Petitioner's name; Beneficiary's name; Beneficiary's date of birth; Beneficiary's country of birth."

For August, all employment-based preference categories are "Unavailable." The Department said it is uncertain whether any numbers will be returned and can be reallocated at a future date. Until informed otherwise, the categories will remain unavailable until October, when the new federal fiscal year begins.

USCIS's announcement is available at

<http://www.uscis.gov/files/pressrelease/VisaBulletinUpdate17Jul07.pdf> . The

August Visa Bulletin is available at

[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3269.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3269.html) . FAQ #2 is available

at <http://www.uscis.gov/files/pressrelease/FAQ2.pdf> . FAQ #1 is available at

<http://www.uscis.gov/files/pressrelease/EBFAQ1.pdf> . Information on fees is

available at [http://www.uscis.gov/files/pressrelease/Update\\_eFiling073007.pdf](http://www.uscis.gov/files/pressrelease/Update_eFiling073007.pdf).

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## **2. Federal Court Strikes Down PA Illegal Immigration Law**

In a ruling viewed as a setback to similar measures in cities and states nationwide, a federal court has struck down Hazleton, Pennsylvania's "Illegal Immigration Relief Act," a 2006 law that fined landlords who rented to undocumented persons and revoked the business permits of employers who hired them. About a third of Hazleton's estimated 21,100 to 30,000 residents are from Central America, up from about five percent in 2000, and up to a quarter of those may be undocumented, according to some estimates.

Ruling that the local law is preempted by federal immigration law, U.S. District Judge James M. Munley noted that "allowing states or local governments to legislate with regard to the employment of unauthorized aliens would interfere with congressional objectives." Judge Munley further opined that "even if federal law did not conflict with Hazleton's measures, the City could not enact an ordinance that violates rights the Constitution guarantees to every person in the United States, whether legal resident or not. The genius of our Constitution is that it provides rights even to those who evoke the least sympathy from the general public." He noted that "whatever frustrations officials of the city of

Hazleton may feel about the present state of federal immigration enforcement, the nature of the political system in the United States prohibits the city from enacting ordinances that disrupt a carefully drawn federal statutory scheme."

The ruling was welcomed by immigrant advocates and the U.S. Chamber of Commerce. "Today's decision sends an unmistakable message to local officials across the nation that these types of ordinances are a waste of taxpayers' money, anathema to American values and a violation of the Constitution," said Omar Jadwat of the ACLU Immigrants' Rights Project. The U.S. Chamber of Commerce's National Chamber Litigation Center released a statement noting that "state and local governments have no business setting national immigrant policy." The fight is not over yet, however. Bob Dane, a spokesman for the Federation for American Immigration Reform, said, "We are planning to join with the mayor and appeal" the ruling in the U.S. Court of Appeals for the Third Circuit.

The National Conference of State Legislatures estimated that in just the first four months of 2007, states have introduced more than 1,100 bills and resolutions related to immigration. The total last year was 570 bills. In June, Colorado's Supreme Court ruled that Colorado's controversial measure to prevent undocumented persons from receiving some government services violated a state constitutional requirement that initiatives address a single subject. Immigration is expected to continue to factor in elections in that state. Meanwhile, Georgia and Arizona are requiring employers to participate in the Basic Pilot work authorization verification program. Beaufort County, South Carolina, plans a mass audit of businesses' immigration records.

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### **3. New Application and Petition Fees Went Into Effect on July 30; Rep. Lofgren Introduces Bill to Void New Fees**

U.S. Citizenship and Immigration Services (USCIS) issued a reminder that, with the exception noted below, the new fee schedule is effective as of July 30, 2007. Applications or petitions postmarked or otherwise filed on or after that date must include the new fees. The exception is that the fee schedule in place before July 30 will apply to "I-765 and I-131 applications based on employment-based adjustment of status applications filed pursuant to Visa Bulletin #107" through August 17, 2007. Those applications may no longer be electronically filed and must be submitted to a Service Center via regular mail

or courier service, USCIS said.

USCIS also recently posted and then withdrew an announcement that it would take offline for maintenance its e-filing system and posted the new I-485 application form to reflect higher fees, despite the dispensation to file at the old fee through August 17.

Meanwhile, Rep. Zoe Lofgren (D-Cal.) introduced a bill on July 30, 2007, to void the increases in immigration fees. The bill, which would reinstate the previous fee structure, states that USCIS has failed to reduce application backlogs and has suffered from a lack of transparency and effective management. "Our immigration services need to move into the 21 st century," Rep. Lofgren said. "But USCIS has consistently failed to explain or justify the amounts and distributions of this new fee increase. While I agree that USCIS needs to modernize its existing infrastructure and procedures, they must do so in a transparent and open manner. After repeated requests over several months, USCIS has yet to provide Congress with a detailed plan for its infrastructure modernization efforts. Our immigration system should be both effective and fair; sacrificing one to achieve the other should not be an option."

The new fee schedule that became effective on July 30, 2007, applies to all other applications filed on or after July 30, 2007. Some of the fee increases are as follows:

The Application for Naturalization (Form N-400) along with biometrics was \$400. It has now been increased to \$675 along with the biometrics fee. The Petition for Alien Relative (Form I-130) was formally \$190. It has now gone up to \$355.

Overall, application and petition fees have increased, on average, about 66 percent. The new fee schedule is available at

<http://www.uscis.gov/files/natedocuments/FinalUSCISFeeSchedule052907.pdf>

. Information on the exception under Visa Bulletin #107 is available at

<http://www.uscis.gov/files/pressrelease/VisaBulletinUpdate17Jul07.pdf> and

[http://www.uscis.gov/files/pressrelease/Update\\_eFiling073007.pdf](http://www.uscis.gov/files/pressrelease/Update_eFiling073007.pdf) . Rep.

Lofgren's press release announcing the new bill is available at

<http://lofgren.house.gov/PRArticle.aspx?NewsID=1819> .

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#### **4. USCIS Announces Extension of Temporary Suspension of Premium**

## **Processing Service for I-140s**

U.S. Citizenship and Immigration Services (USCIS) announced on July 24, 2007, an extension of the temporary suspension of Premium Processing Service for the Immigrant Petition for Alien Worker (Form I-140). USCIS anticipates that the volume of I-140 petitions filed that request Premium Process Service will continue to exceed the agency's capacity to provide the service according to the program guidelines. Premium Processing Service guarantees that within 15 calendar days of receipt of a petition, USCIS will issue an approval or denial notice, a notice of intent to deny, or a request for evidence, or will open an investigation for fraud or misrepresentation.

The suspension will continue until further notice, USCIS said.

The notice is available at

[http://www.uscis.gov/files/pressrelease/PremProcl140\\_072407.pdf](http://www.uscis.gov/files/pressrelease/PremProcl140_072407.pdf) .

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## **5. USCIS Rescinds Earlier Update, Allows Prepaid Mailers**

On July 27, 2007, U.S. Citizenship and Immigration Services (USCIS) retracted a July 23 update regarding the discontinuance of prepaid mailers for issuing notices and documents. Before the July 23rd announcement, USCIS allowed the public to enclose prepaid mailers in connection with applications or petitions filed with USCIS. A prepaid mailer is essentially a self-addressed envelope, where postage is paid by the addressee, that USCIS may use for mailing a document to the petitioner/applicant or authorized representative. USCIS said it "is aware that the July 23rd announcement caused anxiety for several of its customers and USCIS is committed to finding an alternative that will allow the public the continued convenience of using prepaid mailers while not unduly impacting its operations." Thus, USCIS is reinstating the practice of allowing prepaid mailers as an alternate method of delivering notices and documents to the public.

USCIS noted that prepaid mailers are not required. If an applicant/petitioner nonetheless wishes to submit one, it should meet the following criteria: Express and Priority mail (including FedEx, DHL, or UPS) with appropriate postage, with a prepaid shipping label on the package, already paid by the person who sends it; e.g., FedEx's "Expanded Billable Stamp" or DHL's "Easy Return Label," among others.

The notice is available at

<http://www.uscis.gov/files/pressrelease/RescindMailerUpdate072707.pdf> .

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## **6. DHS Exempts Portions of IDENT System From Privacy Act**

The Department of Homeland Security issued a final rule on July 16, 2007, that exempts portions of the Automated Biometric Identification System (IDENT) system of records from certain provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. IDENT is the primary repository of biometric information held by the DHS in connection with the enforcement of civil and criminal laws, including immigration law; related investigations, inquiries, and proceedings; and national security and intelligence activities.

Specifically, the DHS said the exemptions are required to preclude the subjects of these activities from frustrating related processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and of immigration and border management and law enforcement personnel; to ensure the agency's ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension, the DHS said, noting that "the exemptions are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived."

The final rule is available at

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-13576.pdf> .

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## **7. FBI Warns Employers About Potential 'Spies'**

The Federal Bureau of Investigation recently released a controversial warning about potential spies. In the notice, the FBI advises employers to be on the

lookout for suspicious people who have favorite "disguises," including representatives of research institutes; visiting business professionals and scientists "who want to tour your state-of-the-art plants and operations worldwide"; tourists or visitors on nonimmigrant visas; diplomatic officials; false front companies; and students and educators. The notice warns about hypothetical scenarios such as: "You hire a foreign-born engineer who has been educated in this country. Over a 10-15 year period, she rises to mid-level management. Then, she returns to her home country - where she gets paid by that government to set up a business that competes with yours."

According to news reports and blog entries, Indian students, among others, are not pleased by the FBI's broad-brush characterization. Kaushik Biswas, a student, noted that " student applying for an F-1 visa at a U.S. consulate is expected to return to his country and not stay back . If he even hints at staying back permanently, the consular officer rejects the visa application summarily. So the U.S. government fully expects that these highly skilled, educated, trained people will one day return to their homeland to share that knowledge. Add to that the state of immigration laws in this country that discourage skilled people from migrating here in any case. H-1Bs have now become a lottery, and the average wait time for an MS to get a green card is 6-12 years. So why does the fact of people returning to their home countries come as a shock to FBI?" A researcher employed by an American company, "Camille," noted that "usinesses and institutes already know how to protect themselves without FBI help. As for the lady 'who returns to her home country', isn't it a touch paranoid to model Asian-born R&D executives as spies just because their home-country governments have decided to engage in venture capitalism?"

The FBI's notice is available at

<http://www.fbi.gov/page2/july07/spying070907.htm> .

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## **8. Passport Measures Relaxed in Response to Massive Backlogs**

Over the past several months, many U.S. travelers have encountered substantial delays in obtaining passports as a result of new rules imposing passport requirements for North American travel, for national security reasons. Some have missed important trips as a result. In response, the State Department has relaxed the rules temporarily. Assistant Secretary of State Maura Harty, who oversees passports for U.S. citizens, recently acknowledged

the problem: "Over the past several months, many travelers who applied for a passport did not receive their document in time for their planned travel. I deeply regret that. I accept complete responsibility for this."

A Department statement noted that "e are aware that some travelers have not been able to obtain passports because of longer processing times caused by record-setting demand. Accordingly, we're allowing flexibility because we are hearing about more cases of Americans missing flights. As a service organization dedicated to helping Americans, we cannot let this happen."

U.S. citizens traveling to Canada, Mexico, the Caribbean and Bermuda who have applied for but not yet received passports can temporarily enter and depart from the U.S. by air with a government-issued photo identification and Department of State official proof of application for a passport through Sept. 30, 2007. U.S. citizens who take advantage of this accommodation will need to present the official proof of passport application to air carriers and to Customs and Border Protection (CBP) officers at air ports of entry. Such individuals may be subject to secondary inspection.

Travelers who have not applied for passports should plan 10 to 12 weeks for standard passport processing and two to three weeks for expedited processing, the Department said.