CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

ADJUSTMENT OF STATUS INTERVIEW AFTER DECADES

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by
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Charles Oppenheim of the Department of State Visa Office has advised AILA that the EB-2 India preference, which has already retrogressed to January 1, 2000, may become unavailable in August or September 2009. There are already 25,000 approvable EB-2 India cases awaiting visa numbers. Like other countries, India has a limit of 2,800 EB-2 numbers available per year plus any fall down from the EB-4, EB-5 and EB-1 visa numbers. Unfortunately, the EB-4 and EB-5 are seeing a surge in demand from what has historically been the trend, and thus there will be no fall down into the EB-2. Even the EB-1 is seeing high demand at present, and while current for India and China in July 2009, **http://tinylink.com/?hqaeZawBCX,** the State Department will establish cut off dates in the EB-1 for these countries in August or September should demand still be heavy.

Thus the prognosis for EB-2 India, along with EB-2 China, is grim, according to Oppenheim and the waits will need to Tbe measured in years, even decades.У Also, the EB-3 for India remains grim. At present, EB-3 is unavailable, but the State Department will establish a cut off date for the worldwide EB-3 of March 1, 2003 by October 1, 2009. India will have a cut off date of November 1, 2001 and ChinaXs date will be March 1, 2003.

This writer has not yet been able to comprehend the math, but if it is likely to take decades for permanent residency to materialize, it means anywhere from 10 year to 90 years. Jeff Gorsky of the State Department Visa Office told the India interest group luncheon at the AILA Annual Conference in Las Vegas on June 5, 2009 that the EB-2 wait could be at least 40 years and the EB-3 wait a

few decades longer. LetXs hope that our State Department mandarins are wrong on the math. Regardless, even a 10 year plus wait for an EB-2 or EB-3 applicant would be very problematic. How can an employer possibly keep a job offer open for so long? It would be cruel to deprive the potential immigrant of job mobility, such as promotions or even job flexibility with new employers. Moreover, the technology described in the job description may well get obsolete over the years and decades.

But assuming in the extreme case that it takes a few decades, say 40 years, letXs contemplate a scenario where one of our firmXs clients requires representation at the Adjustment of Status interview in 2049 Here is how the conversation might flow between yours truly and a client 40 years later:

CDM: Where have you been all these years? I see that your adjustment interview is scheduled two weeks from today, on June 30, 2049.

Client: I was so happy when my date became current during the July 2007 Visa Bulletin period, and you tracked me down to file my adjustment application. I lost hope after Mr. Oppenheim in 2009 stated that it would take decades for EB-2s and EB-3s born in India to get green cards.

CDM: July 2007 was the last time immigration lawyers ever enjoyed a financial bonanza. Since then, it has been downhill for us.

Client: I am sorry I lost contact with you all these decades. Glad to know that you are still alive.

CDM: Same here! I see that you were sponsored as an Automobile Engineer by Ford to develop fuel efficient hybrid engines. The automobile was banished from the face of the earth sometime in 2020. Ford and all the automobile companies went out off business, which is why the planet was saved from the brink of disaster. Your occupation no longer exists today. What kind of work are you doing?

Client: I am still involved as a part time consultant in designing solar powered aerial vehicles. It is true that I do not work with the internal combustion engine any longer. Can I make a portability argument under INA 204(j), which allows one to continue with the green card if working in the same or similar occupation? Most of the designing and programming is done by robots, but I am still involved in the designing of nano robotic circuitry, and these robots in turn design and develop the aerial vehicle technology. Even this is a rarified

field as we live in the age of maximum mass transit and the bicycle.

CDM: We will try, although none of the automobile or related programming technologies described in your labor certification exist today. The USCIS has neither kept up with changes in technology nor the real world, and may still refer to some ancient OOH handbook to determine whether you are working in the same or similar occupation. You may have a better shot if you are employed by one of these vintage automobile clubs whose members are still nostalgic for the automobile. Of course, they are hard to find and must obtain a license to manufacture and ply their automobiles in very restricted amusement parks where they still maintain roads.

Client: IXll try, but my adjustment interview is only 2 weeks away. What about my son? He is 60 today.

CDM: Your son filed his adjustment application, before he turned 21. He is still considered a child under the Child Status Protection Act even though he is 60! Did your son ever have any children of his own?

Client: No.

CDM: If he had a child born in the country, his US citizen child upon turning 21 could have sponsored him for a green card much sooner. Then your son could have become a citizen and sponsored you too for a green card much sooner. But that is not the case here, or else your adjustment application would have become as obsolete as an automobile engineer.

Client: Mr. Mehta, I know you still have the creative and fighting spirit in you even in your twilight years. I am retaining your services to ensure that I am adjusted to permanent residency next week under INA 204(j). I have waited 40 years for this day and I know you will make it happen for me.

CDM: LetXs hope so. Or else we will sue the USCIS. We still do not have any standards for what constitutes a same or similar occupation under 204(j) since the enactment of AC21 in 2000.

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