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Immigration News Update

February 18, 2010

Welcome to Immigration News Update, your resource for the latest developments in U.S. immigration laws, procedures, and breaking news. Immigration News Update is published bi-monthly by Bashyam Spiro, a firm committed solely to the practice of Immigration and Nationality Law. To further explore what is happening in immigration across our nation and the world follow us on [Twitter](#) and [Facebook](#).

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Bashyam Spiro LLP handles U.S. immigration cases in all 50 states and around the world. We are located at The Summit Building, 4101 Lake Boone Trail, Suite 200, Raleigh, North Carolina 27607. Telephone: 919-833-0840. Web Site: www.bashyamspiro.com.

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Webinar on March 17 - How to Obtain U.S. Citizenship



Would you like to become a United States citizen, but don't know where to turn or where to begin the process?

Bashyam Spiro's Senior Counsel, [Ame Coats](#), will explain the immigration requirements, process, and processing times in this free webinar on naturalization. She will also be available to answer your questions.

Sign up today! To register, please click [here](#).

Title: How to Become a U.S. Citizen Through Naturalization

Date: Wednesday, March 17, 2010

Time: 12 pm – 1 pm

Employment Immigration: How Section 245(K) Can Help Even if You Violate Your Status

You are an employment-based immigration applicant who wants to get a "green card", you read the title of this article, and you wonder why this attorney is using boring legal-speak. Well, there's a reason. Section 245 (K) of the [Immigration and Nationality Act \(INA\)](#) is an important provision that can help you adjust status to permanent resident even if you've violated your immigration status in the past.

So what does 'adjust status' really mean?

Adjusting status is a method by which an intending immigrant can get a green card while remaining in the United States. [Form I-485 Application to Adjust Status](#) (“I-485”) is the last step of the U.S. employment-based permanent residency process, and it can be filed if you have an approved I-140, a current priority date, and are legally present in the United States. Once the I-485 is approved, you are a U.S. permanent resident, and the USCIS mails you a green card.

But not everyone is eligible to file an I-485 application, nor can everyone be approved for one. One legal bar, or impediment, to this step in the process is having violated your status. There is one exemption to that bar, and it is a little known provision known as INA Section 245(K).

Enacted in 1997, Section 245(K) allows foreign nationals who have violated their status by *less than an aggregate of 180 days following admission*, and who are physically present in the United States, to file for adjustment of status (if you are otherwise eligible to do so). Some examples of status violations, which are addressed in Section 245(K), refer to persons who have:

- Failed to maintain, continuously, a lawful status;
- Engaged in unlawful employment; and/or
- Otherwise violated the terms and conditions of his/her admission.

Section 245(K) applies *only* to aliens in one of the employment-based preference categories. It does not apply to family-based preference immigrants, diversity visa adjustment applicants, asylum or refugee adjustment applicants or adjustment applicants under the employment-based fifth preference (EB-5) investment category. Only aliens in the following preference categories are eligible to take advantage of Section 245(K) if you otherwise meet the conditions mentioned above:

- Employment-Based First Preference (EB-1) – All priority workers.
- Employment-Based Second Preference (EB-2) – Professionals with advanced degrees or aliens of extraordinary ability (National Interest Waiver).
- Employment-Based Third Preference (EB-3) – Skilled workers, professionals or other workers.
- Employment-Based Fourth Preference (EB-4) – Religious workers (only).

The section also applies to spouses and children of eligible aliens.

The following is a simple example that shows how Section 245(K) can help you.

Example:

You are a Canadian national in H-1B status, and your family has H4 visas. Your employer is sponsoring you for permanent residency, and you just found out that your I-140 has been approved. Your priority date is current, so your immigration attorney says you can now file I-485 adjustment applications for yourself, your wife, and your two children. However, your wife was employed for 3 months when she first arrived in the U.S., because she didn't know she was not allowed to work. She has therefore violated her H4 non-immigrant status. You are very concerned that she is ineligible to adjust status to permanent resident, because of her unauthorized employment. Your knowledgeable immigration attorney assures you it's going to be okay – your wife is protected under Section 245(K) because she has violated her status *by less than 180 days*. You breathe a sigh of relief and file those I-485s!

Section 245(K) is an important provision to keep in mind for any employment-based adjustment application who has violated their status in this manner. It's frightening and stressful once you realize you or a family member has violated their status, but act quickly, consult your immigration attorney, and **make sure the violation is for less than 180 days**. You will still be eligible to file your I-485 Adjustment of Status application, and realize your dreams of becoming a Permanent Resident of the United States.

March 2010 Visa Bulletin

The U.S. Department of State released its March 2010 Visa Bulletin. To view the Visa Bulletin, please click [here](#).

Here's what happened in March:

Employment-Based Category Two (EB-2):

- India - advanced 1 week
- China - advanced 1 1/2 months

Employment-Based Category Three (EB-3)

- All Other Chargeability Areas - advanced 2 1/2 months
- China - advanced 2 1/2 months
- India - advanced 1 week
- Philippines - advanced 2 1/2 months

There obviously was not much forward movement from the February Visa Bulletin. We will keep you updated at www.bashyamspiro.com as additional information becomes available.

Check Out Our Educational Immigration Videos on YouTube

Our law firm created a [YouTube](#) page where we will post all of our instructional immigration videos. Right now, you can see a video on Temporary Protected Status for Haitian nationals, and a video where our staff and clients describe the immigration process and our law firm. We will be uploading more exciting immigration videos in the coming weeks!

To access our [YouTube](#) page and view our immigration videos, please click [here](#) or click the [YouTube](#) icon on our home page.

A-B-C's and 1-2-3's of Immigration



[Blog post](#) by Esther Oh, Senior Immigration Paralegal, Bashyam Spiro LLP

When I became a immigration paralegal over 10 years ago, I didn't realize re-learning the way that I think of my ABC's, acronyms and numbers would be part of the job description.

No longer do I think, "B for Banana." Instead, it is "B" is for Visitor's Status,

“F” is for Student Status, “H” is for a worker status, “L” is for an intra-company transferee and my alphabet letters have now changed to correlate with the different immigration statuses and forms that must be filed with the immigration service. Oh, and those letters are then followed by distinct numbers that make all of the difference when it comes to properly filing any visa petition.

No more TGIF – “Thank Goodness It’s Friday” acronyms, now it is remembering the proper acronyms for the administrative agencies linked to the immigration process...and even those acronyms continuously change.

I remember when the “immigration service” was referred to as the Immigration and Naturalization Service (INS), which then changed to Citizenship & Immigration Services (CIS) and then once again changed the name they are now known as, the US Citizenship & Immigration Service (USCIS).

If you’re involved in the immigration process in any way, often it’s good to keep track of these changes and familiarize yourself with these [acronyms and abbreviations](#). The immigration world is always evolving and if you are like me and you work in or with the immigration service in some way, you have to continuously learn to speak their ever-changing language.

CBP Reminds Visa Waiver Travelers to Complete Online Authorization Form

U.S. Customs and Border Protection (CBP) issued a reminder to U.S.-bound travelers from Visa Waiver Program (VWP) countries of the ESTA requirement. ESTA is an electronic travel authorization that all citizens of VWP countries must obtain prior to boarding a carrier to travel by air or sea to the United States under the VWP. The requirement does not affect U.S. citizens returning from overseas or citizens of VWP countries traveling on a valid U.S. visa.

Beginning January 20, 2010, CBP will initiate a 60-day transition to enforced ESTA compliance for air carriers; VWP travelers without an approved ESTA may not be allowed to board a U.S.-bound plane. ESTA applications may be submitted at any time prior to travel, and once approved, generally will be valid for up to two years or until the applicant’s passport expires, whichever comes first. Authorizations are valid for multiple entries into the U.S. The Department of Homeland Security

recommends that ESTA applications be submitted as soon as an applicant begins making travel plans.

VWP travelers are required to log onto the ESTA Web site and complete an online application. The web-based system prompts applicants to answer basic biographic and eligibility questions typically requested on a paper I-94W form. ESTA is expected to completely replace the paper I-94W in the coming months. A third party, such as a relative, a friend, or a travel agent, may submit an application on behalf of a VWP traveler.

You can access the ESTA web site by clicking [here](#). We will provide updates on [our website](#) as they become available.

HELPFUL LINKS

To access some helpful immigration related web sites, please click [here](#).

To schedule a consultation, please send an email info@bashyamspiro.com or click [here](#).

To learn more about Bashyam Spiro LLP, please visit www.bashyamspiro.com.

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4101 Lake Boone Trail, Suite 200 | Raleigh, NC 27607



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