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THE IMMIGRATION EDGE

U.S. Government Immigration Authorities’ Visa Number Rescission Bamboozles Employers and Their Foreign Employees 7/06/07

On June 13, 2007, the Department of State gave foreign workers and their family members who were waiting in line for green cards the opportunity to take a significant step toward completing their U.S. permanent residence process. The State Department announced that, after years of backlogs, visa numbers for the foreign nationals would be available effective Sunday, July 1, 2007. In the last weeks of June, the foreign nationals and their employers scrambled to gather the necessary paperwork to file as soon after July 1 as possible. On Monday, July 2, 2007, the State Department pulled the rug out from under them, announcing that the visa numbers would not be available until at least October 1, 2007. As a consequence, the Department of Homeland Security announced it may reject applications it receives between July and October.

Who does this affect?

This reversal affects foreign nationals in employment-based classifications applying for U.S. permanent resident status and “green cards.” It does not affect family-based classifications or petitions for temporary or nonimmigrant status.

What is the typical process for issuing immigrant visa numbers?

The State Department has the authority to control the number of immigrant visas available for people seeking U.S. permanent resident status. There are 140,000 employment-based visas for each fiscal year. Each month, the State Department assesses how many visas have been used, projects how many will be left through the year and determines the coming month’s allotment. Visa numbers are made available based on priority date cutoffs associated with the date an employer filed an immigration-related application or petition for a foreign worker. The State Department issues a Visa Bulletin in the middle of each month to announce its projections and cutoff dates for the upcoming month.

Applicants in the U.S. may file their immigrant visa applications directly with the Department of Homeland Security agency, U.S. Citizenship & Immigration Services (USCIS). When USCIS receives an application with a current priority date, it requests a visa number for the case from the State Department.

Due to high demand for foreign workers, there had been long backlogs for visa numbers in employment-based classifications. For example, according to the [Visa Bulletin](http://www.travel.state.gov/visa/frvi/bulletin/bulletin_3236.html) (http://www.travel.state.gov/visa/frvi/bulletin/bulletin_3236.html) for June 1, 2007, professionals from the Philippines were backlogged 12 years, to cases filed before January 1, 1985, and professionals from India and China, to cases filed before May 15, 1999.

Why did the State Department make the June 15 announcement to make the employment-based visa classes current?

According to the Visa Bulletin for July 2007, USCIS application processing had slowed to the extent the State Department was concerned that not all the annual visa numbers available would be used within the year, that is, before September 30, 2007: “All Employment Preference categories except for Third ‘Other Workers’ have been made ‘Current’ for July. This has been done in an effort to generate increased demand by [U.S.] Citizenship and Immigration Services (CIS) for adjustment of status cases, and to maximize number use under the annual numerical limit.” The State Department [Visa Bulletin](http://www.travel.state.gov/visa/frvi/bulletin/bulletin_3258.html) (http://www.travel.state.gov/visa/frvi/bulletin/bulletin_3258.html) released June 13, 2007, brought all these cases current, effectively eliminating backlogs and opening floodgates for applications to be filed.

Why did the State Department change its mind?

A few weeks later, on Monday, July 2, 2007, the State Department issued an [announcement](http://www.travel.state.gov/visa/frvi/bulletin/bulletin_3266.html) (http://www.travel.state.gov/visa/frvi/bulletin/bulletin_3266.html) indicating that, effective immediately, instead of virtually all of the employment-based immigration categories becoming current, none would be current. The stated reason was that USCIS had speeded up processing to the extent that 60,000 visa numbers had been used in June 2007, and, as a consequence, all the numbers would be used by year's end. Therefore, no employment-based visa numbers would be available before October 1, 2007.

USCIS followed suit, announcing that, effective July 2, 2007, it would [reject](http://www.uscis.gov/files/pressrelease/VisaBulletin2Jul07.pdf) (<http://www.uscis.gov/files/pressrelease/VisaBulletin2Jul07.pdf>) applications whose priority dates are not current. While USCIS implied it would reject all employment-based applications for adjustment of status received after July 1, 2007, the announcement did not specifically state that it would reject them all.

What actions are available to employers and their foreign employees now?

It is never certain what priority dates will be current from month to month, and retrogression may develop at any time. It is impossible to predict at this point what categories and priority dates may be current October 1, 2007. The only likely prediction is that the August Visa Bulletin will show that visa numbers are “unavailable” for all employment-based classifications.

In the meantime, employers and their foreign workers may still plan to file the applications in the month of July, although USCIS may reject them or simply hold the applications and not process them.

Some employers and applicants are considering legal action to seek remedies for the resources expended. The basis for such legal action could be the lack of government authority to reject or fail to process applications when the current Visa Bulletin states that the employment-based classifications are current.

Employers and their foreign workers and family members, in many instances, are likely to have options for remaining and working in the United States while waiting for the dust to settle on this development. Anyone with doubts about immigration status, expiration dates or options for proceeding, should consult qualified legal counsel.

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