

To our clients and friends:

MINTZ LEVIN

When You Need More...

IMMIGRATION
ALERT

JULY 13, 2007

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Follow-Up: Employment-Based Visa Numbers

On July 2, 2007 we reported to our clients that the U.S. Department of State (DOS) announced that all employment-based immigrant visas for fiscal year 2007 had been used and that no more I-485 Applications to Adjust Status to Permanent Residency would be accepted for filing or adjudicated until October 1st, the beginning of fiscal year 2008. *See Immigration Alert (July 2, 2007).*

This Alert is to let clients know that while U.S. Citizenship and Immigration Services (USCIS) has rejected and returned a few I-485 applications that arrived on July 2nd and after, it appears that for the most part they are holding on to the applications without acknowledging “receipt” of the same. USCIS has not explained its rationale for holding these applications but it may be that it is holding them pending forthcoming news that immigrant visa numbers are in fact available.

In light of the fact that very few applications have been returned, there may be some potential benefit to filing I-485 applications now: there is a possibility that DOS will change its mind about the availability of immigrant visas; or perhaps litigation being prepared now by reputable national organizations may benefit those who did in fact attempt to file an I-485 application during the month of July, more than those who did not.

We will be moving forward to file I-485 applications, for those clients who request us to do so, with the understanding that:

- We do not know if the applications will in fact be given receipts as accepted for filing. If not given a receipt, we do not know if there will be any benefit from the filing of the application;
- We encourage all applicants to file with their medical examinations. We do not know if USCIS will enforce its announcement last week that all I-485 applications must be

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accompanied by the required medical examination report. Prior to this announcement it was well known that in the vast majority of cases USCIS would not reject an application missing the medical exam at the time of filing. Clients should know that if they choose to file with a medical exam and the filing is then rejected, the medical exam may not still be valid when the client is finally able to file the I-485 (medical exams will be “stale” if they are not filed with USCIS within one year of the date of the exam). It will be costly to do the medical exam again. If applicants choose to file without the medical exam, that is their prerogative, but everyone must understand the risk that USCIS has said the application will be rejected.

- It is very unlikely that any application filed after July 31st will be accepted for filing.
- Filing fees will be increasing significantly on July 30th. Applications that are “postmarked or otherwise filed on or after July 30” are subject to the higher fee. For the form I-485, the filing fees (including the biometric fee) will increase from \$395 to \$1,010. Note that the \$1,010 fee includes the fees for an employment authorization document and advance parole travel document while the I-485 is pending, should these be needed.

We will continue to keep our clients informed of all information regarding this matter as it becomes available.

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If you would like more information on any immigration matter, please contact your immigration attorney at Mintz Levin or go to www.mintz.com.

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