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Immigration Update: The Government Blinked!

By Nancy-Jo Merritt and Matthew J. Martinez

Hidden in the middle of the August Visa Bulletin of the Department of State, past the employment-based visa number chart [in which every category for every country is marked "U" for "unavailable"], is section D:

JULY EMPLOYMENT-BASED VISA AVAILABILITY

After consulting with Citizenship and Immigration Services, the Visa Office advises readers that Visa Bulletin #107 (dated June 12) should be relied upon as the current July Visa Bulletin for purposes of determining Employment visa number availability, and that Visa Bulletin #108 (dated July 2) is hereby withdrawn.

Because Visa Bulletin #108 withdrew all the employment visa numbers and made each section "unavailable," much to the shock and distress of the many employment-based beneficiaries who spent the last two weeks of June celebrating and preparing to file their adjustment of status applications in July. Because USCIS began working 24 hours a day to request 60,000 visa numbers for applications waiting on their shelves, which would have used up the remaining visa numbers available under the July Visa Bulletin, the DOS felt it had to withdraw Visa Bulletin #107 and replace it with #108, which made every category unavailable.

This unexpected and unprecedented action caused lawsuits and threats of lawsuits and much frustration among the prospective July adjustment applicants, many of whom had incurred legal fees and the cost of the required medical exams. Today USCIS, following the DOS announcement of its return to the original July Visa bulletin, announced that it has reversed its July 2 announcement that it would refuse to accept adjustment of status filings during July. Instead, Secretary Chertoff advises that USCIS will keep any applications filed, and extend the filing window for a 31-day period from July 18 through August 17, 2007, in order to provide the same filing window available if the July 2 actions had not taken place. Secretary Chertoff stated: "The public reaction to this process made it clear that the federal government's management of this process needs further review."

Nearly as important as the renewed availability of visa numbers, is that applicants will be able to pay the July filing fees during the entire window period. This aspect of the announcement is especially welcome as the USCIS filing fees were to nearly double beginning August 1st.

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This means that all employment-based applicants for adjustment of status [with the exception of the “other worker” category which remains unavailable] may file their applications in reliance on the universally available #107 July Visa Bulletin through August 17th, and may also file using the July filing fee schedule. We are very pleased and will be filing all available adjustment applications during the new time period!

Please call if you have any questions about this surprising but welcome turn of events.

Nancy-Jo Merritt focuses her practice in immigration law and has nearly three decades of experience representing domestic and international companies with issues concerning foreign national employees and business immigration matters. She provides strategic counseling to clients and assists employers in developing compliance programs. She earned her B.A., (1964), M.A., (1974), and her J.D., (1978) from Arizona State University.

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