



AMERICAN IMMIGRATION LAW FOUNDATION

USCIS VISA BULLETIN/ VISA AVAILABILITY LAWSUIT

AMENDED 7-9-07

Frequently Asked Questions about Participating in this Lawsuit

AILF is preparing a lawsuit in federal district court against the U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of State (DOS) for:

USCIS's rejection of otherwise properly filed adjustment of status applications for the alleged reason that a visa was not available, even though the Visa Bulletin from the Department of State (DOS) stated that a visa was available at the time of filing; and

DOS's failure to follow its prescribed and customary practice to issue a monthly Visa Bulletin; and

USCIS's rejection of otherwise properly filed adjustment of status applications based on DOS's "revised" "Visa Bulletin" for July 2007.

A foreign national who is otherwise eligible for adjustment of status and whose adjustment of status application has been or will be returned or rejected solely on this basis may be eligible to be a plaintiff in this lawsuit. If you are considering being a participant in this lawsuit, you may find the following frequently asked questions and answers helpful.

Q: What is AILF?

A: The American Immigration Law Foundation (AILF) is a non-profit organization dedicated to protecting the rights of immigrants and refugees and to securing fair and just application and administration of the U.S. immigration laws. In order to achieve these goals, AILF sometimes files lawsuits involving various aspects of immigration law.

Q: What is this lawsuit about?

A: We expect to file this lawsuit as a class action. It will be filed for plaintiffs who have been harmed because USCIS rejected or returned or is expected to reject or return their properly submitted adjustment of status applications. USCIS's purported reasons were that no visa was

immediately available (even though the June DOS Visa Bulletin stated that a visa was available at that time for “other workers”), and that DOS had “revised” its July 2007 Visa Bulletin.

To be eligible for adjustment to lawful permanent resident status, a foreign national must show that a visa number is “immediately available.” USCIS regulations state that the DOS Visa Bulletin is used to determine whether a visa number is immediately available. This Bulletin is published once a month and lists the visa availability dates for all categories of immigrants for the following month. Thus, for example, the July 2007 bulletin, listing visa availability dates for the entire month of July, was published in June 2007.

USCIS refused to allow “other worker” adjustment of status applications to be filed even though the DOS June 2007 Visa Bulletin stated that visa numbers were available for the immigrant category at that time. USCIS rejected these applications – and will continue to reject them -- because DOS informed it in an internal communication during June that no visa numbers remained for that category of immigrants.

On July 2, USCIS announced that it will reject adjustment applications from all other employment-based adjustment applicants based on what USCIS said was a “revised” July 2007 Visa Bulletin.

We believe both USCIS and DOS have violated the law. Through this lawsuit, we will challenge the rejection of adjustment of status applications on this basis. We will ask the court to order USCIS to accept the rejected adjustment applications and treat them as having been “filed” as of the date they originally would have been “filed” had USCIS not rejected them.

Q: What is a “plaintiff” and how do I know if I am eligible to be a “plaintiff” in this lawsuit?

A: A plaintiff is a person who files a lawsuit against someone else. We are still determining the categories of plaintiffs but an eligible plaintiff for this lawsuit may include:

[“other worker” category]

A foreign national who:

Submitted an adjustment of status application in the “other worker” category for receipt by USCIS in June 2007; and

Is otherwise eligible for adjustment of status; and

Did not receive a receipt notice, cancelled check, or notice of approval of the adjustment application.

[other employment-based categories; individuals who submitted applications]

A foreign national who:

Submitted an adjustment of status application in any employment-based category other than "other worker" for receipt by USCIS in July 2007; and

Is otherwise eligible for adjustment of status; and

Did not or has not yet received a receipt notice, cancelled check, or notice of approval of the adjustment application.

[other employment based categories; individuals who would have submitted applications "but for"]

A foreign national who:

Is otherwise statutorily eligible for adjustment of status in an employment-based category other than "other worker;" and

Would have submitted an adjustment of status application for receipt by USCIS in July 2007, but for these USCIS and DOS actions.

Q: Why should I be a plaintiff in this lawsuit?

A: In the lawsuit, we will ask the court to order USCIS to accept all properly-filed employment-based adjustment applications submitted for receipt in July 2007. We also will ask for a remedy for those people who would have filed for adjustment in July 2007 but for the government's actions that we are challenging in this lawsuit. If the court orders this relief, the plaintiffs (and the class of plaintiffs, if a class is certified – see below), will have adjustment applications on file with USCIS and may be eligible for interim benefits, including an employment authorization document, advance parole, and others.

What the lawsuit will not do is make a visa or visa number immediately available to you if none is available. If the visa numbers have in fact been used for the current fiscal year, the court does not have the authority under the law to make a new number available to you. However, if the court orders that USCIS accept your adjustment application as of the date that you originally tried to file it, you will be at an earlier place in line when visa numbers become available again. Additionally, as mentioned, you may be eligible for interim benefits while you are waiting.

Q: What is likely to happen because of the suit?

A: Lawsuits are uncertain by nature. We cannot predict the exact outcome. However, we believe we have strong claims and that this lawsuit will be successful.

Q: Do I have to have applied for adjustment of status to be a plaintiff in this lawsuit?

A: No. There will be several different groups of plaintiffs in this lawsuit. Please see above Q & A regarding "What is a "plaintiff" and how do I know if I am eligible to be a "plaintiff" in this lawsuit?"

Q: Will the different groups of plaintiffs be treated differently in the lawsuit?

A: It is possible that the court (or the government if the case is settled out of court) may require different things for the classes or treat the classes differently. For example, the people who did not submit an application might have to prove they would have submitted an application, “but for” the USCIS and DOS actions and decisions we challenge in the lawsuit.

Q: Is there a cut-off date for applying? Do I have to have sent in my adjustment application by a certain date?

A: At this time, our understanding is that USCIS will reject any employment-based adjustment application submitted for receipt any time on or after July 2, 2007 through July 31. At this time, it does not matter – for USCIS or for the lawsuit -- when you submit or submitted your adjustment application for receipt in July. That situation may change, however, if USCIS or DOS takes some further action.

Q: Is it necessary that USCIS already returned my application or sent me a rejection notice for me to be a plaintiff?

A: No. USCIS has announced that it will reject these applications. Based on USCIS’s prior response times, however, it may be a long time before you receive a notice of rejection or have your application returned. We do not need you to have the rejection notice in hand.

Q: If I’m not a “named” plaintiff, that is, named in the lawsuit, can I still be part of the case?

A: We expect that the lawsuit will be filed in the name of certain individuals, representing a class of similarly situated people. We plan to ask the judge to “certify” a class. If the judge certifies a class, everyone meeting the class description will benefit. We expect the class description will be very similar to the plaintiffs descriptions above.

Q: When will be lawsuit be filed?

A: No date is set yet but as soon as possible.

Q: Will being a plaintiff in this lawsuit hurt my chances for permanent residence?

A: If an individual is otherwise legally entitled to have an application granted, the government cannot lawfully deny that application on the basis that the person is participating or participated in a lawsuit. If we believed the government was taking such action, we would complain to the lawyers representing the government and to the judge handling the case. In our experience, this retaliation has not happened.

Please be aware, though, that USCIS is likely to examine plaintiffs’ adjustment of status applications more closely than it otherwise might. It may ask the plaintiffs questions and ask for additional information about their adjustment applications or immigration status. See below regarding “discovery.”

Q: How much time must plaintiffs spend on this lawsuit?

A: Plaintiffs will have to provide us with the information and documentation we need in order to prepare the lawsuit. AILF will do most of the work in the lawsuit on paper. Depending on how the case proceeds, the government and its attorneys may want to ask the plaintiffs some questions about their case, either through written questions and answers or in person. This is called “discovery.” One type of discovery is a “deposition,” which is an interview where parties are asked questions about their cases.

Depositions are possible but not common in this type of case. In the event that discovery and/or depositions were required, an AILF attorney or an attorney working with us would assist plaintiffs to comply with any discovery requests, and would appear with plaintiffs at any deposition at no charge (see below). At a later stage, a plaintiff may be required to be present at a hearing or a trial and possibly be asked to testify about their particular case, but this is quite rare.

Q: Will it cost me anything to be a plaintiff in this lawsuit?

A: AILF and any co-counsel will not charge any attorney’s fees for representing individuals in this lawsuit. AILF and any co-counsel also will pay the costs and expenses associated with the lawsuit, such as filing fees, copying, long distance calls, travel expenses for AILF attorneys and staff, depositions, transcripts, etc. In the unlikely event that an individual should be required to be present at a deposition, hearing or a trial, we may ask that he/she pay their own travel and lodging expenses, if any. Those expenses would be reimbursed if the lawsuit is successful and we recover costs.

Q: Will anyone know that I am a plaintiff in this lawsuit?

A: Lawsuits are public information, and are available as a public court document. Many courts now have lawsuits and other documents available electronically, accessible via the internet. Also, USCIS will, of course, know the identity of the plaintiffs. We also will discuss plaintiffs’ cases with any other lawyers working with us on the lawsuit. It also is possible that the media – newspapers, radio, or TV reporters – will see the court documents and decide to do a story on the lawsuit.

Q: What should I do if I am eligible and interested in being a plaintiff in the lawsuit?

A: Please quickly submit the Questionnaire for Potential Plaintiffs, send us the documents requested, and review and sign the Retainer Agreement. If you do not have the Questionnaire or Retainer Agreement, please send an email to visabulletin@ailf.org, and we will send them to you.

If you have any questions that are not answered by this FAQ or the questionnaire, please send them to visabulletin@ailf.org and we will respond asap. Thank you!

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