

**AUG 13 2007**

*Assistant Secretary for Legislative Affairs*

**U.S. Department of Homeland Security**  
Washington, DC 20528



**Homeland  
Security**

The Honorable Zoe Lofgren  
Chairwoman  
Subcommittee on Immigration, Citizenship,  
Refugees, Border Security and International Law  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairwoman Lofgren:

Thank you for your letters of July 2 and July 9, 2007, regarding the initial decision of the Department of Homeland Security (DHS) to reject certain employment-based adjustment of status applications based on the Department of State's (DOS) July 2, 2007, Visa Bulletin (No.108), which stated that there would be no further employment-based immigrant visa number authorizations this fiscal year. On July 17, 2007, DOS withdrew Visa Bulletin (No.108).

After consulting with the DOS, DHS announced on July 17, 2007, that it would immediately accept employment-based applications to adjust status filed by applicants whose priority dates are current under the June 12, 2007, Visa Bulletin (No.107).

U.S. Citizenship and Immigration Services (USCIS) will accept these applications for a period of 31 days (through August 17, 2007). Applications properly filed with USCIS between July 2, 2007 and July 16, 2007, will be accepted. USCIS will apply the pre-July 30, 2007, fee schedule to applications filed pursuant to Visa Bulletin (No.107). These actions, taken subsequent to your initial inquiry, resolve the issues you raised in your letter dated July 2, 2007.

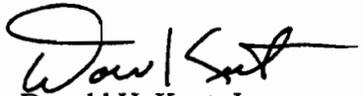
On July 9, 2007, you requested additional information and documentation regarding the initial decision of DHS to reject certain employment-based adjustment of status applications. Because the Government has implemented changes that are intended to return applicants to their original position, senior USCIS officials are available to brief you or your staff and answer any questions regarding the visa allocation process.

DHS remains committed to working closely with you and other members of Congress to reform the Nations immigration laws and to improve its legal immigration system.

The Honorable Zoe Lofgren  
Page 2 of 2

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Kent", with a stylized flourish extending to the right.

Donald H. Kent, Jr.  
Assistant Secretary  
Office of Legislative Affairs

(b)(5), (b)(6)



**U.S. House of Representatives**  
**Committee on the Judiciary**

**Washington, DC 20515-6216**  
**One Hundred Tenth Congress**

July 2, 2007

The Honorable Michael Chertoff  
Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Chertoff:

I am writing with regard to a time sensitive matter. It has been brought to my attention that you are considering the rejection of adjustment of status applications for several employment-based immigration preference categories, despite the fact that the published July Visa Bulletin shows that visas for these categories are available. I am concerned that such action may violate the law and could threaten the integrity of our immigration system. In addition, such an act may cause the Department of Homeland Security to incur substantial litigation costs.

As you know, pursuant to your own regulations, "[i]f the applicant [for adjustment of status] is a preference alien, the current Department of State Bureau of Consular Affairs Visa Bulletin will be consulted to determine whether an immigrant visa is immediately available." 8 CFR 245.1(g). Thus, when the Visa Bulletin shows that visas for most preference categories are available for applicants with priority dates on or before the listed priority date, your Department must accept those adjustment of status applications for adjudication.

I understand that you are considering the return of applications for adjustment of status as early as today despite the fact that the published July Visa Bulletin would allow for their acceptance. As you may know, thousands of businesses have acted in reliance upon the July Visa Bulletin and 8 CFR 245.1(g), just as they have done in previous months for several years now. I have been told that many U.S. businesses have taken the necessary steps to prepare and file applications for adjustment of status, including thousands of dollars of expenses to engage counsel, flights for employees to quickly obtain necessary documents and medical exams for the applications, cancellation of business and holiday travel, changes in family plans to ensure families are in the proper location, etc. Moreover, some have already submitted such applications for receipt today, July 2, 2007, in reliance upon the law and precedent. Changing course now could result in the loss of thousands of dollars already expended by businesses and individuals, and more importantly, threaten the integrity and predictability of our immigration system.

Moreover, I am very concerned that you may choose to reject adjustment of status applications while the Visa Bulletin shows that immigrant visas are available. Such an action may spawn litigation that I understand many are considering and preparing to undertake.

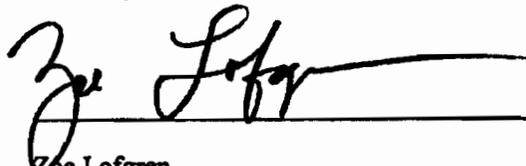
As you know, I have raised concern over the recent decision to raise immigration application fees by, on average, over 80%. One of the justifications provided for such a large increase was litigation costs.

While some costs of litigation are certainly justified in defense of the Government, I would have serious concern over litigation to defend the Department of Homeland Security from a decision to reject applications of adjustment of status in light of the existing regulations and the July Visa Bulletin showing most employment-based visas as available.

*Before* you take any action to reject adjustment of status applications, I would greatly appreciate a timely response to this letter and a meeting to discuss the matter. In your response, I would like an explanation of the reasons you are considering for taking action contrary to 8 CFR 245.1(g), years of precedent, and the potential for litigation which could cost the Department a substantial amount it cannot spare for litigation at this time.

Thank you for your timely consideration of this very important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Zoe Lofgren", written over a horizontal line.

Zoe Lofgren  
Chairwoman  
Subcommittee on Immigration, Citizenship,  
Refugees, Border Security, & International Law

cc: Secretary Condoleezza Rice, U.S. Department of State

**U.S. House of Representatives**  
**Committee on the Judiciary**

**Washington, DC 20515-6216**  
**One Hundred Tenth Congress**

July 2, 2007

The Honorable Condoleezza Rice  
Secretary  
U.S. Department of State  
2201 C Street, NW  
Washington, DC 20451

Dear Secretary Rice:

I am writing with regard to a time sensitive matter. It has been brought to my attention that the Department of State may revise its July Visa Bulletin published on June 13, 2007, to reflect a retrogression or unavailability of immigrant visas in several employment-based immigration categories. I am concerned about the effect such unprecedented action will have on the predictability and reliability of our legal immigration system and on those who rely upon it.

As you know, pursuant to your authority to control the numerical limitations of visas as described in 22 CFR 42.51, each month your Department issues a Visa Bulletin that is consulted by hundreds of thousands of U.S. businesses seeking immigrant visas to determine whether an immigrant visa is immediately available for their employees.

On June 13, your Department announced in its Visa Bulletin for July 2007 that all employment-based categories (except for the "Other Workers" category) for immigrant visas will be "current," meaning that U.S. businesses going through the lengthy and backlogged immigrant visa or "green card" process can, throughout July, file adjustment of status applications. Your regulations at 22 CFR 42.51 allow them to rely on and use such information. Historically, they have relied on such information knowing that when they prepare and file such applications, they will be accepted and adjudicated.

I have been told, however, that your Department is seriously considering a revision of the July Bulletin as early as today or tomorrow that would retrogress the visas available in various employment categories. This unprecedented action would result in the termination of thousands of applications by U.S. businesses who have prepared and are ready to file applications on behalf of their employees pursuant to the June 13<sup>th</sup> publication of your Department's July Visa Bulletin.

It is my understanding that such a revision, coming in the same month in which the bulletin is issued, would be contrary to years of practice in which revisions or adjustments to the availability of immigrant visa numbers are made in the following month of before the beginning of the month, not in the same month individuals and businesses have begun preparing and submitting applications for adjustment of status. I am concerned that the extraordinary action of revising a bulletin mid-month may be taken without serious consideration of the effect on precedence, stability in immigration law, and predictability for those who rely upon the Visa Bulletin.

Furthermore, it is my understanding that thousands of businesses have acted in reliance upon the July Visa Bulletin, just as they have done with previous Bulletins. I have been told that, based upon the July Visa Bulletin, many businesses have taken the necessary steps to prepare for the submission of applications for adjustment of status, including thousands of dollars of legal expenses, flights for employees to quickly obtain necessary documents and medical exams for the applications, cancellation of business and holiday travel, changes in family plans to ensure families are in the proper location, etc.

*Before* any decision is made to revise the July Visa Bulletin, I would greatly appreciate a timely response to this letter and a meeting to discuss the matter. In your response, I would like an explanation of the reason you chose to issue a visa bulletin listing most employment-based immigrant visas as current, when just a few weeks later—after thousands of employers and employees have acted in reliance upon the bulletin, but before applications could be submitted based upon the bulletin—you are now considering a change of course. I would also appreciate an explanation of whether and in what ways you have considered the serious ramifications of such action upon the integrity, stability, and predictability of our immigration law.

Thank you for your timely consideration of this very important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Zoe Lofgren", written over a horizontal line.

Zoe Lofgren  
Chairwoman  
Subcommittee on Immigration, Citizenship,  
Refugees, Border Security, & International Law

cc: Secretary Michael Chertoff, U.S. Department of Homeland Security

**U.S. House of Representatives**  
**Committee on the Judiciary**

Washington, DC 20515-6216  
One Hundred Tenth Congress

July 9, 2007

The Honorable Michael Chertoff  
Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Chertoff:

On July 2, 2007, the Department of State (DOS) issued an "Update to July Visa Availability," which the Department of Homeland Security (DHS) apparently relied on to suspend its acceptance of adjustment of status applications based on employment-based immigrant petitions. DOS and DHS acted on these matters despite my request that the agencies provide the Subcommittee with certain information before taking such actions.

At no point since my letter to you dated July 2, 2007, have I received any information in writing from the Department. Given this failure, I am now requesting that you provide to me, within three days of the date of this letter, the following information:

1. All correspondence, e-mails, memoranda, notes, field guidance or other documentation relating to the issuance of or the Department of Homeland Security's actions regarding the July Visa Bulletin, which made all employment-based immigrant visa categories (except the "other worker" category) current. The term "Department of Homeland Security" includes DHS or any component thereof.
2. All e-mails, correspondence, memoranda, notes, field guidance or other documentation relating to the issuance of or the Department of Homeland Security's actions regarding the "Update to July Visa Availability" issued on July 2, 2007. The term "Department of Homeland Security" includes DHS or any component thereof.
3. All correspondence, e-mails, memoranda, notes, field guidance or other documentation between the Department of Homeland Security, the Department of State, the Department of Justice and/or the Federal Bureau of Investigation relating to the availability of visa numbers for the month of July 2007, the issuance of or the Department of Homeland Security's actions regarding the "Update to July Visa Availability" issued on July 2,

2007, the processing of security or name checks in connection with visa number requests through the end of FY 2007, and/or the determination to suspend or reject the acceptance of adjustment of status applications. The terms "Department of Homeland Security," "Department of State," "Department of Justice" and "Federal Bureau of Investigation" include DHS, DOS, DOJ, FBI or any components of those agencies.

4. A detailed description of any existing or proposed understanding, arrangement and/or agreement between DHS (or any component thereof, including, but not limited to, U.S. Citizenship and Immigration Services) and the FBI (or any component thereof) relating to name checks or other security checks conducted with respect to immigration applications or petitions.
5. A detailed description of how DHS and/or the FBI expect the processes for such name or security checks to change through the end of FY 2007, and, in particular, within the month of July 2007.
6. A detailed description, including, but not limited to, a statistical tallying, of all employment-based immigration cases, petitions, applications or other files for which DHS (or any component thereof, including, but not limited to USCIS) requested a visa number between May 2007 and July 2, 2007, inclusive, for which any name or security check was pending, uncompleted or otherwise awaiting action on a security or name check. (Hereinafter, such cases will be referred to as cases for which visa numbers were "pre-requested.")
7. The specific legal authority on which DHS (or any component thereof, including, but not limited to, USCIS) relied to "pre-request" visa numbers for cases, applications, petitions or other files for which security or name checks were pending, uncompleted or otherwise awaiting action. The response to this question shall include copies of the specific legal authority, including statutory provisions, regulations, field manuals, policy memoranda, policy guidance or other documentation relied upon, as well as the date or dates on which such authority was last revised or issued, the substance of any revision and the original text that was revised.
8. Any and all correspondence, e-mails, memoranda, field guidance, notes or other documentation discussing or referencing the agency's decision to "pre-request" visa numbers for which security or name checks were pending, uncompleted or otherwise awaiting action.
9. Any and all field guidance, e-mails, correspondence, memoranda, notes or other documentation discussing or referencing the agency's plans, policies or other proposed or expected actions in the event security or name checks for cases, applications, petitions or other files for which the agency "pre-requested" visa numbers are not or do not get completed during July 2007

or the remainder of FY 2007, including, but not limited to, whether the agency has proposed or intends to return, or has discussed returning, visa numbers for such cases to DOS.

10. Any and all correspondence, e-mails, memoranda, notes or other documentation between DHS (including any component thereof, including, but not limited to, USCIS) and DOS regarding the availability of visa numbers for June 2007, July 2007, or any remaining month of FY 2007, including, but not limited to, the anticipated numbers available during such months, the expected or anticipated usage of or requests for such numbers and/or the update, revision, restatement or alteration of the July Visa Bulletin.
11. Any and all records or other documentation (with a summary for ease of analysis) regarding historic patterns of overtime ordered for work on weekends, including specifically the weekend leading up to July 2, 2007, and the reasons in each case that prompted the overtime, for the past three years.
12. Any and all records or other documentation (with a summary for ease of analysis) regarding historic patterns of adjudication of adjustment of status cases, including a breakout for adjustment of status cases based on employment-based immigrant petitions, on a monthly basis for the past three years.
13. Any and all records, analyses, spreadsheets, related e-mails, memoranda, correspondence or other documentation evaluating the potential financial effects to DHS (or any component thereof, including, but not limited to USCIS) if adjustment of status cases eligible for filing under the initial July 2007 Visa Bulletin were filed before, on or after July 30, 2007.

Thank you for your immediate consideration of this very important matter.

Sincerely,

  
\_\_\_\_\_  
Zoe Lofgren  
Chairwoman  
Subcommittee on Immigration, Citizenship,  
Refugees, Border Security & International Law

cc: Secretary Condoleezza Rice, U.S. Department of State

**CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA**  
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**RANDEL K. JOHNSON**  
VICE PRESIDENT  
LABOR, IMMIGRATION &  
EMPLOYEE BENEFITS

**ANGELO I. AMADOR**  
DIRECTOR  
IMMIGRATION POLICY

July 2, 2007

Stewart A. Baker  
Under Secretary for Policy  
US Department of Homeland Security  
Washington, DC  
Fax: (202) 282-9598

Henrietta Holsman Fore  
Under Secretary for Management  
US Department of State  
Washington, DC  
Fax: (202) 216-3455

**Re: Visa Bulletin, Number 108, Volume IX: Update on July Visa Availability**

Dear Under Secretary Baker and Under Secretary Fore:

On behalf of the U.S. Chamber of Commerce ("Chamber"), the world's largest business federation, representing more than 3 million businesses of every size, sector, and region, we write to urge the continued acceptance of applications for adjustment of status by employment-based ("EB") candidates.

Today, the Department of State issued a "Visa Bulletin" with an "Update on July Visa Availability" indicating that the employment-based ("EB") immigrant visa pool is unavailable as of July 2, 2007. However, the Visa Bulletin of June 15, 2007, made all "EB" skilled categories available through July. The Visa Bulletin is to be issued once a month and this "update" comes thirteen days before the next monthly Visa Bulletin was expected.<sup>1</sup> Today's actions could have a detrimental effect on employers and employees that relied on the Visa Bulletin of June 15, 2007, and invested time and money in preparing to file, given that the Visa Bulletin is by regulation the means for determining whether a filing can be made. Significantly, this update, now deemed to curtail the acceptance by U.S. Citizenship & Immigration Services ("USCIS") of applications, may run afoul of the clear 15-day notice requirements of the longstanding practices of the Department of State.

Candidates prepared their applications for adjustment of status in good faith. Many arranged to have their applications filed on July 2, 2007. Some are on the cusp of filing (due to the need for original signatures, required medical documents, or other key eligibility documents). The State Department Visa Bulletin is being interpreted to cut off the right to file EB applications for skilled categories, creating a significant inequity to these candidates, who have relied on the Visa Bulletin of June 15, 2007. In addition, there

<sup>1</sup> See 9 FAM 42.41 N10.3-3. Given this regulatory treatment and the Department's established practice of publishing the Visa Bulletin on a monthly basis only, the current Visa Bulletin of June 15, 2007, should remain valid for at least 30 days.

Update on July Visa Availability  
July 2, 2007  
Page 2 of 2

is a substantial question as to whether the lack of 15-day notice to the candidate pool would violate the Administrative Procedure Act.

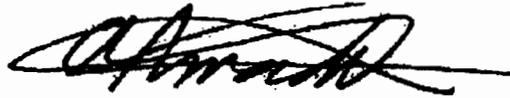
The Chamber urges U.S. Citizenship & Immigration Services ("USCIS") to continue to allow acceptance of applications for adjustment of status by EB candidates until this issue is clarified or at least until July 15, 2007, when the new monthly Visa Bulletin is due. It does not need to approve them, but it should accept them. Just being able to file and having a pending, but not yet approved, application would allow the candidates to travel more freely on business, obtain work authorization for family members, effectuate job transfers and relocations, and, sometimes, many ancillary benefits such as being able to obtain drivers licenses, mortgages and in-state tuition. Further, people on certain visas like intra-company transferees (L-1 visa holders) cannot extend their visa status beyond a fixed expiration date. Therefore, because of the green card backlog, if they cannot file an adjustment of status application, they cannot stay and work in the US.

We look forward to working with your offices to address this critical issue.

Sincerely,



Randel K. Johnson  
Vice President  
Labor, Immigration and Employee Benefits



Angelo I. Amador  
Director  
Immigration Policy

Cc: Alfonso Martinez-Fonts, Jr., Assistant Secretary for the Private Sector Office  
US Department of Homeland Security, Fax: (202) 282-9207

Ambassador Maura Ann Harty, Assistant Secretary for Consular Affairs  
US Department of State, Fax: (202) 647-0341

Emilio T. Gonzalez, Director of USCIS  
Jonathan R. Scharfen, Deputy Director of USCIS  
US Department of Homeland Security, Fax: (202) 272-1134

Prakash I. Khatri, Ombudsman for USCIS  
US Department of Homeland Security, Prakash.khatri@dhs.gov

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July 10, 2007

The Honorable Michael Chertoff  
United States Department of Homeland Security  
Nebraska Avenue Center, N.W.  
Washington, D.C. 20528

Dear Secretary Chertoff :

I am writing to request your review of a very troubling decision by the Departments of State and Homeland Security in connection with the July Visa Bulletin issued by the Department of State.

On June 12 the Department of State announced in its Visa Bulletin for July 2007 that all employment-based categories for immigrant visas will be "current." This important announcement meant that thousands of highly skilled workers on temporary work visas could "file for adjustment of status" and apply for permanent green cards throughout the month of July. For many of the country's most innovative companies, this action was welcomed. Being able to transition our employees working under a temporary visa to permanent residency in a timely manner is critical to ensuring America's companies can hire and retain the very best and brightest talent from around the globe.

However, DHS and the State Department unexpectedly reversed course on Monday July 2, 2007, when the State Department issued an "update" memorandum indicating that due to backlog reduction efforts by the U.S. Citizenship and Immigration Services Office, *"there will be no further authorizations in response to requests for Employment-based preference cases."* That same day, U.S. Citizenship and Immigration Services (USCIS) issued an announcement that it would reject applications to adjust status (Form I-485) filed by aliens whose priority dates are not current under the subsequent State Department communication. **This inexplicable and unprecedented reversal will create immense hardship for tens of thousands of highly skilled workers and their families living in the United States – many of whom were educated in this country – including nearly 4,000 Microsoft employees and their families. And it will have a significant negative impact on U.S. companies that rely on highly skilled workers from the U.S. and abroad to drive the kind of innovation that is essential to continued competitiveness in the global economy.**

For nearly three decades, employers nationwide have based key business decisions based on the Visa Bulletin. The bulletin is by regulation the means for determining whether an adjustment of status filing can be made for an employee. As a result, the June 12 Visa Bulletin set in motion an enormous amount of activity on the part of thousands of highly-skilled workers, at significant personal and professional costs to both themselves and their families, to ensure compliance with the requirements surrounding the I-485 adjustment filing process. We understand that it is common for the State Department to notify your Department that visa numbers have in fact been used, and therefore that no more visas numbers can be requested for *final bestowal of permanent residence* until more visa numbers are available. That said, it is unprecedented for USCIS to stop accepting applications to adjust status on the basis of such a communication, outside the context of the Visa Bulletin that has by regulation and for so many years established which green card applicants can make this crucial step forward in the process. The USCIS'

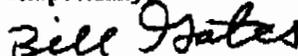
statement that it will unequivocally reject these I-485 filings – despite the publicly-released June 12 Visa Bulletin for July, the regulation indicating that it is the Visa Bulletin that determines who in the green card backlog can file the all-important adjustment of status application, and many uninterrupted years of practice under that regulation – will prove devastating to these employees and thus very harmful to the businesses of many of our nation's leading companies.

Individuals filing employment-based applications for adjustment of status are workers whom employers have decided to retain and sponsor for green cards because of their education, skills, and overall ability to contribute to their business' goals. By law, these employees provide knowledge and experience that cannot be found within the domestic workforce, and companies have already invested tens of thousands of dollars in the recruiting, hiring, and training of each of these critical employees. Businesses have invested a great deal more over the past weeks in reliance on the June 12 Visa Bulletin, going to extraordinary steps, at great cost, to prepare and complete adjustment applications by the end of July. The employees themselves have also gone to tremendous lengths, incurring personal costs and inconvenience. Business trips and family vacations have been cancelled. In some cases, employees and their families have had to return from abroad. In yet other cases, relocation and promotion plans were made on the assumption that adjustment applications would be filed. In the most serious cases, by denying employees the ability to file for adjustment of status in July, the State Department's reversal of the June bulletin jeopardizes the status for the employees and/or their families.

Microsoft and employers nationwide have undertaken these significant measures in reliance on the U.S. Government's public announcement that these visa categories were current. We and our employees had no reason to act otherwise. This unprecedented departure serves only to exacerbate concerns about the ability of U.S. based companies to innovate here in the U.S. rather than in countries with greater transparency and predictability in their immigration laws and policies. And it will almost certainly make it more difficult for companies like Microsoft to attract the kind of extraordinarily skilled people that our country should be aggressively seeking to recruit and retain.

I urge your Department to reconsider this decision and to accept all employment-based adjustment applications that are filed in July based on the Visa Bulletin issued on June 12, 2007. A decision not to accept these applications would severely harm many of our leading companies and limit their ability to retain employees whose skills and talents are critical to their continued growth as well as economic and job growth in the United States.

Respectfully,



Bill Gates  
Chairman

cc: The Honorable Condoleezza Rice, U.S. Secretary of State

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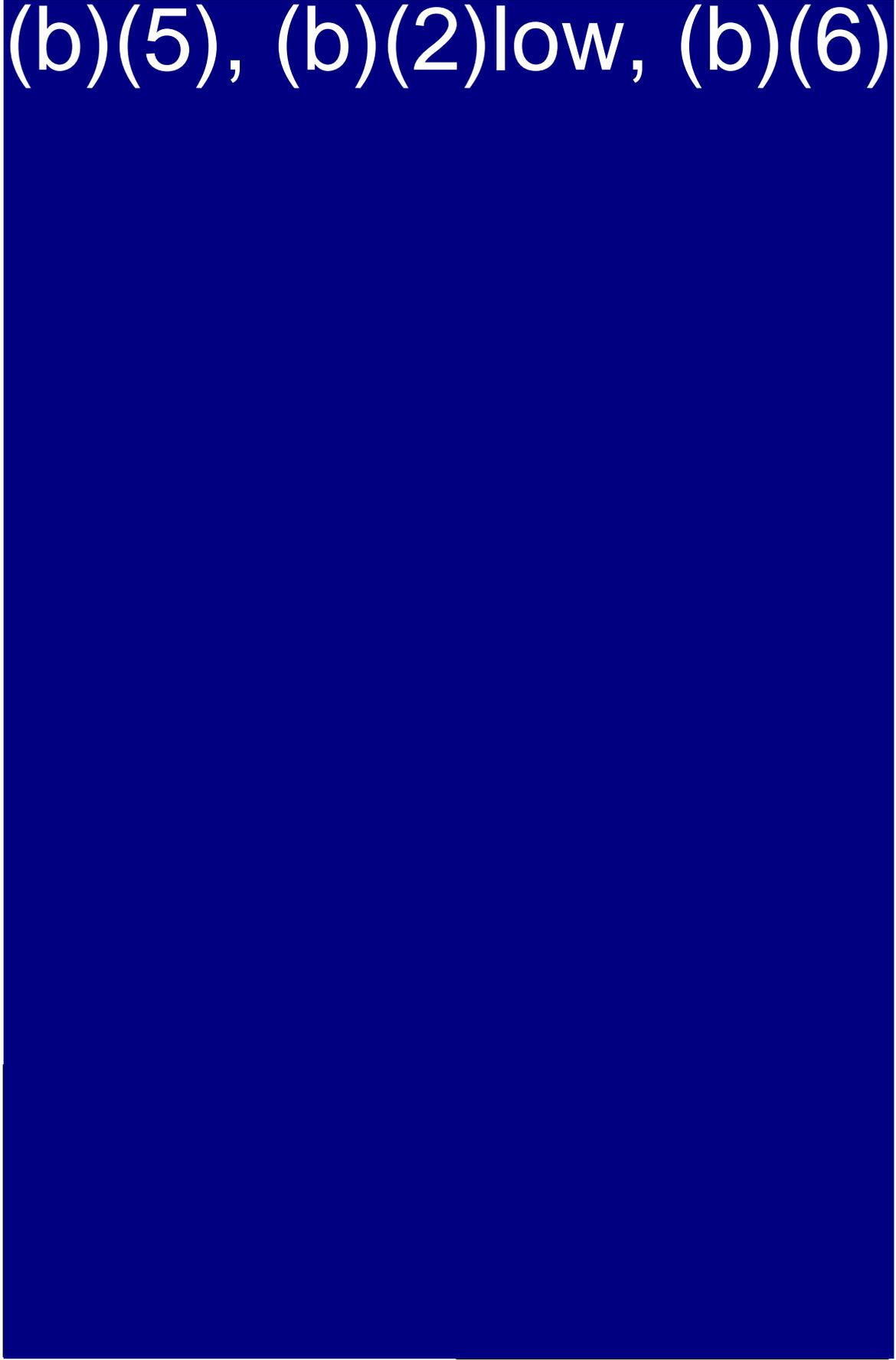
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**BILLING CODE: 4410-10**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Citizenship and Immigration Services**

**8 CFR Part 103**

**CIS No. 2415-07**

**Docket No. USCIS-2007-0039**

**RIN 1615-AB60**

**Temporary Adjustment of the Immigration and Naturalization Benefit Application  
and Petition Fee Schedule for Certain Adjustment of Status and Related  
Applications**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule temporarily amends the applicable fees for employment-based Forms I-485, "Application to Register Permanent Residence or Adjust Status," and applications for derivative benefits associated with such Forms I-485 filed pursuant to the Department of State's July Visa Bulletin No. 107, dated June 12, 2007. The fees for all other petitions and applications administered by U.S. Citizenship and Immigration Services will continue in force as effective on July 30, 2007. This rule will be effective only from July 30, 2007 through August 17, 2007.

**EFFECTIVE DATE:** This rule is effective July 30, 2007, at 12:02 AM EST.

**FOR FURTHER INFORMATION CONTACT:** Efen Hernandez III, Business and Trade Services, Service Center Operations (Business and Trade Services), U.S.

Citizenship and Immigration Services, Department of Homeland Security, 111  
Massachusetts Avenue, Suite 3000, Washington, DC 20001, telephone (202) 272-8400.

**SUPPLEMENTARY INFORMATION:**

**I. Background.**

1. USCIS Fee Schedule.

On May 30, 2007, USCIS published the final rule, effective July 30, 2007, "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," amending 8 CFR part 103 to prescribe new fees to fund the cost of processing applications and petitions for immigration and naturalization benefits and services, and USCIS' associated operating costs pursuant to section 286(m) of the Immigration and Nationality Act (INA), 8 U.S.C. 1356(m). 72 FR 29851. That rule provides that applications that are submitted to USCIS with the incorrect fee will be rejected. For the reasons described below, USCIS, through this rule, is amending the fees again on a temporary basis for certain applications. This rule will become effective immediately after the final fee rule published on May 30, 2007, and makes only temporary modifications to that rule to respond to the events described below. The rule provides limited relief for specific applicants from the final fee rule published on May 30, 2007. The effect of this rule is limited to those applications filed before August 18, 2007. For applications filed on or after August 18, 2007, the fees set forth in the final rule published on May 30, 2007, will be required. USCIS will remove this regulation by another rule to be published in **Federal Register** on or about August 17, 2007, to be effective August 18, 2007.

2. Visa Availability - Summary.

The INA establishes formulas and numerical limits for regulating persons immigrating to the United States for permanent residence, to include defining the employment-based immigrant visa classifications. INA sec. 201 et seq., 8 U.S.C. 1151 et seq. The INA provides an annual world-wide numerical limit on the number of aliens who may immigrate to the United States, as well as an annual per-country numerical limit on the number of aliens who may emigrate from a particular country. INA sections 201(d) and 202(a)(2), 8 U.S.C. 1151(d) and 1152(a)(2). In addition, the INA allocates the total number of world-wide visas among five employment-based categories or preferences. INA sec. 203(b), 8 U.S.C. 1153(b). Taken together, the total number of visas, the country from which an alien emigrates, and the allocation of visas among the preference categories, determines whether a particular alien may immigrate to the United States at a certain date.

The Department of State (DOS) determines the availability of immigrant visa numbers. See INA sections 203(e) and (g), 8 U.S.C. 1153(e) and (g). DOS also controls individual allocation of employment-based immigrant visas. 22 CFR 42.32. DOS publishes a “Visa Bulletin” each month which summarizes the availability of immigrant visa numbers.

The INA provides that the Secretary of Homeland Security may approve an application to adjust status if an immigrant visa is immediately available at the time the application is filed. See INA sec. 245(a)(3), 8 U.S.C. 1255(a)(3). Pursuant to Department of Homeland Security regulations, an immigrant visa is considered available, and an adjustment of status application can be filed and processed, if the applicant has a

priority date earlier than the date shown in the current DOS Visa Bulletin. 8 CFR 245.1(g)(1).

### 3. The July Visa Bulletin.

On June 12, 2007, DOS published July Visa Bulletin No. 107. This Visa Bulletin indicated that all visas were current and immediately available for most employment-based categories. On July 2, 2007, DOS published Visa Bulletin No. 108, announcing that there would be no further visa number authorizations for employment-based applications. USCIS announced on that day that it would not accept any additional employment-based adjustment of status applications.

### 4. USCIS July 17, 2007 Announcement.

After consulting with USCIS, DOS advised USCIS that July Visa Bulletin No. 107 should be relied upon for purposes of determining whether employment-based immigrant visa numbers are currently available. DOS has withdrawn Visa Bulletin No. 108. Consequently, USCIS announced that, beginning July 17, 2007, and ending at the close of business on August 17, 2007, it will accept employment-based Forms I-485 filed by aliens whose priority dates are current under Visa Bulletin No. 107. See "USCIS Announces Revised Processing Procedures for Adjustment of Status Applications" at <http://www.uscis.gov/files/pressrelease/VisaBulletinUpdate17Jul07.pdf>. Visa Bulletin No. 107 is available at the DOS Web site at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3258.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3258.html) or may be obtained by calling the Information contact listed in this rule. Applicable derivative benefit applications are Form I-765, "Application for Employment Authorization," and Form I-131, "Application for Travel Document," eligibility for which are based on the Form I-485 filing.

### 5. Changes Made by this Rule.

Because of the mid-month change to the Visa Bulletin, USCIS has determined that aliens in employment-based categories filing applications pursuant to Visa Bulletin No. 107 should not be required to pay filing fees based on the fee schedule that becomes effective July 30, 2007. Therefore, as a result of this rule, aliens who file an employment-based Form I-485 and any related Forms I-765 and I-131, pursuant to Visa Bulletin No. 107, through August 17, 2007, must include the filing fees in effect prior to July 30, 2007. The new fee schedule becomes effective on July 30, 2007, for all other immigration and naturalization applications and petitions and on August 18, 2007, for Forms I-485 filed pursuant to Visa Bulletin No. 107 and to all subsequent or "renewal" applications for advance parole and employment authorization based on pending Forms I-485 filed pursuant to Visa Bulletin No. 107.

This rule does not affect the increase in fees, pursuant to the final fee schedule, set to take effect on July 30, 2007, for Form I-140, "Immigrant Petition for Alien Worker." Therefore, aliens who file Form I-140 concurrently with Form I-485 based on Visa Bulletin No. 107 between July 30, 2007, and August 17, 2007, must provide the post-July 30, 2007, fee for the Form I-140 and the pre-July 30, 2007, fee for Form I-485. See 8 CFR 245.2(a)(2)(i)(C) (concurrent filing provisions). The current fee for Form I-485 is \$325. Therefore, under this rule, the application fee for an employment-based Form I-485 filed between July 17 and August 17, 2007, pursuant to Visa Bulletin No. 107 is \$325. In another rulemaking to be published on or about August 17, 2007, USCIS will separately terminate the effect of this rule, as of August 18, 2007 the fees will be as prescribed by the final rule of May 30, 2007, or \$930 for Form I-485.

Similarly, this rule amends the effective date of the increase in the Biometric Services Fee that must accompany Forms I-485 or Forms I-131 or I-765 that are based on a pending I-485, submitted pursuant to Visa Bulletin No. 107 between July 30, 2007 and August 17, 2007. As of July 30, 2007, the fee for biometric services is \$80 for all other benefits for which biometrics must be provided.

This rule also provides that applicants filing Forms I-131 and I-765 in conjunction with a pending employment-based Form I-485 submitted pursuant to Visa Bulletin No. 107, must include the pre-July 30, 2007, fees for these applications with their filings: \$170 for Form I-131 and \$180 for Form I-765. Moreover, all Forms I-131 or I-765 filed as of August 18, 2007, while adjudication of their Forms I-485 is pending must be accompanied by the new application fee. USCIS will not charge a fee for all other Forms I-131 and I-765 when either is filed by an applicant who has paid the new Form I-485 application fee because the new fee schedule "bundles" the fees for current and subsequent Forms I-131 and I-765 filed while the applicant awaits adjudication of Form I-485.

## **II. Rulemaking Requirements.**

This rule relates to internal agency management, procedure, and practice and is temporary in nature. 5 U.S.C. 553(b)(A). This rule does not alter substantive criteria by which USCIS will approve or deny applications or determine eligibility for any immigration benefit, but relieves certain requirements for a definite period of time for specific applications. As a result, DHS is not required to provide the public with notice of a proposed rule and the opportunity to submit comments on the subject matter of this rule. DHS finds that good cause exists for adopting this final rule, without prior notice

and public comment because the urgency of adopting this rule make prior notice and comment impractical and contrary to the public interest. 5 U.S.C. 553(b)(B).

This rule relates to internal agency management, and, therefore, is exempt from the provisions of Executive Order Nos. 12630, 12988, 13045, 13132, 13175, 13211, and 13272. Further, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and is therefore exempt from the provisions of that Act. In addition, this rule is not subject to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. Ch. 17A, 25, or the E-Government Act of 2002, 44 U.S.C. 3501, note.

DHS finds that good cause exists for promulgating this rule without delaying the effective date of the rule because the rule relieves a requirement of existing regulations, must be adopted with an immediate effective date, and is temporary in nature. 5 U.S.C. 553(d)(1).

This rule does not affect any information collections, reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### **List of Subjects in 8 CFR Part 103**

Administrative practice and procedures; Authority delegations (government agencies); Freedom of Information; Privacy; Reporting and recordkeeping requirements; and Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

#### **PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7 is amended by revising the entries “For capturing biometric information” and the entries for “Form I-131”, “Form I-485”, and “Form I-765” in paragraph (b)(1) read as follows:

**§ 103.7 Fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

\* \* \* \* \*

For capturing biometric information (Biometric Fee). A service fee of \$80 will be charged for any individual who is required to have biometric information captured in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States; provided that:

(1) Extension for intercountry adoptions: If applicable, no biometric service fee is charged when a written request for an extension of the approval period is received by USCIS prior to the expiration date of approval indicated on the Form I-171H if a Form I-600 has not yet been submitted in connection with an approved Form I-600A. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Form I-600, then a complete application and fee must be submitted for a subsequent application.

(2) Pursuant to Visa Bulletin No. 107: The Biometric Services Fee that must accompany Forms I-485, or Forms I-131 or I-765 that are based on a pending I-485, that are submitted pursuant to U.S. Department of State Visa Bulletin No. 107, and filed with USCIS on or after July 30, 2007, and on or before August 17, 2007, is \$70.

\* \* \* \* \*

Form I-131. For filing an application for travel document—\$305. However, the fee for Form I-131 that is submitted pursuant to U.S. Department of State Visa Bulletin No. 107 based on a pending I-485, and filed with USCIS on or after July 30, 2007, and on or before August 17, 2007, is \$170.

\* \* \* \* \*

Form I-485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—\$930 for an applicant fourteen years of age or older; \$600 for an applicant under the age of fourteen years when submitted concurrently for adjudication with the Form I-485 of a parent and the applicant is seeking to adjust status as a derivative of the parent, based on a relationship to the same individual who provides the basis for the parent's adjustment of status, or under the same legal authority as the parent; no fee for an applicant filing as a refugee under section 209(a) of the Act; provided that no additional fee will be charged for a request for travel document (advance parole) or employment authorization filed by an applicant who has paid the Form I-485 application fee, regardless of whether the Form I-131 or Form I-765 is required to be filed by such applicant to receive these benefits. However, for aliens who file an employment-based Form I-485 pursuant to Visa Bulletin No. 107, and filed with USCIS on or after July 30, 2007, and on or before August 17, 2007, the fee is \$325, plus a fee of

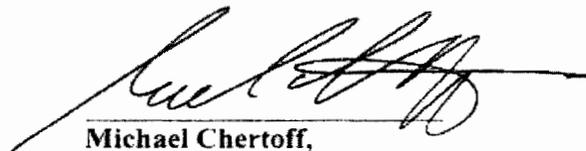
\$170 will be charged for a request for travel document (advance parole) and \$180 to request employment authorization for an applicant who has paid the Form I-485 application fee, regardless of whether the Form I-131 or Form I-765 is required to be filed by such applicants to receive these benefits.

\* \* \* \* \*

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—\$340. However, the fee for a Form I-765 that is submitted pursuant to U.S. Department of State Visa Bulletin No. 107 based on a pending I-485, and filed with USCIS on or after July 30, 2007, and on or before August 17, 2007, is \$180.

\* \* \* \* \*

7/27/2007  
Dated:

  
\_\_\_\_\_  
**Michael Chertoff,**  
Secretary.

**BILLING CODE 4410-10**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Citizenship and Immigration Services**

**8 CFR Part 103**

**CIS No. 2417-07**

**Docket No. USCIS-2007-0040**

**RIN 1615-AB61**

**Removal of Temporary Adjustment of the Immigration and Naturalization Benefit**

**Application and Petition Fee Schedule**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Final rule.

**SUMMARY:** This document amends the fee schedule for petitions and applications for immigration and naturalization benefits administered by U.S. Citizenship and Immigration Services. This rule re-adjusts the fees for Forms I-485, "Application to Register Permanent Residence or Adjust Status," and applications for derivative benefits associated with Forms I-485. This rule removes the temporary adjustment of fees promulgated in previously and permits the application of the fees as were originally published in the final rule of May 30, 2007, that became effective on July 30, 2007.

**EFFECTIVE DATE:** This rule is effective August 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** Efren Hernandez III, Business and Trade Services, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, Suite 3000, Washington, DC 20529 telephone (202) 272-8400.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background.**

On May 30, 2007, USCIS published the final rule, effective July 30, 2007, "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," amending 8 CFR part 103 to prescribe new fees to fund the cost of processing applications and petitions for immigration and naturalization benefits and services, and USCIS' associated operating costs pursuant to section 286(m) of the Immigration and Nationality Act (INA), 8 U.S.C. 1356(m). 72 FR 29851. Then USCIS subsequently announced on July 17, 2007 that, beginning on as of that date and ending at the close of business on August 17, 2007, it will accept employment-based Forms I-485 filed by aliens whose priority dates are current under the Department of State's Visa Bulletin No. 107. Also, USCIS decided that aliens in employment-based categories filing applications pursuant to Visa Bulletin No. 107 should not be required to pay filing fees based on the fee schedule that was to become effective July 30, 2007, but, instead should be allowed to pay the fees that existed prior to July 30, 2007. This rule provides that the fee schedule that became effective for all immigration and naturalization petitions and applications as of July 30, will now apply for Forms I-485 filed pursuant to Visa Bulletin No. 107 and to all subsequent or "renewal" applications for advance parole and employment authorization based on pending Forms I-485 filed pursuant to Visa Bulletin No. 107. Applications that are submitted with the incorrect fee will be rejected.

Similarly, this rule amends the Biometric Services Fee that must accompany Forms I-485, or Forms I-131 or I-765 that are based on a pending I-485, that are

submitted pursuant to Visa Bulletin No. 107 to set it at \$80 as it is for all other benefits for which biometrics must be provided.

## **II. Informal Rulemaking Requirements.**

This rule relates to internal agency management, procedure, and practice and is temporary in nature. 5 U.S.C. 553(b)(A). This rule does not alter substantive criteria by which USCIS will approve or deny applications or determine eligibility for any immigration benefit, but relieves certain requirements for a definite period of time for specific applications. As a result, DHS is not required to provide the public with notice of a proposed rule and the opportunity to submit comments on the subject matter of this rule. DHS finds that good cause exists for adopting this final rule, without prior notice and public comment because the urgency of adopting this rule make prior notice and comment impractical and contrary to the public interest. 5 U.S.C. 553(b)(B).

This rule relates to internal agency management, and, therefore, is exempt from the provisions of Executive Order Nos. 12630, 12866, 12988, 13045, 13132, 13175, 13211, and 13272. Further, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and is therefore exempt from the provisions of that Act. In addition, this rule is not subject to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. Ch. 17A, 25, or the E-Government Act of 2002, 44 U.S.C. 3501, note.

DHS finds that good cause exists for promulgating this rule without delaying the effective date of the rule because the rule terminates a relief from a requirement of existing regulations that are adopted simultaneously with this rule. This rule must be adopted with an effective date commensurate with the adoption of the rule granting the

relief from the requirements. 5 U.S.C. 553(d)(1). This rule is promulgated only in conjunction with the temporary relief from requirements in the rule previously published elsewhere in the **Federal Register**.

This rule does not affect any information collections, reporting or recordkeeping requirements under the Paperwork Reduction Act.

**List of Subjects in 8 CFR Part 103**

Administrative practice and procedures; Authority delegations (government agencies); Freedom of Information; Privacy; Reporting and recordkeeping requirements; and Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 et seq.); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7 is amended by revising the entries for “For capturing biometric information” and the entries for “Form I-131”, “Form I-485”, and “Form I-765” in paragraph (b)(1), read as follows:

**§ 103.7 Fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

\* \* \* \* \*

For capturing biometric information (Biometric Fee). A service fee of \$80 will be charged for any individual who is required to have biometric information captured in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States; provided that: Extension for intercountry adoptions: If applicable, no biometric service fee is charged when a written request for an extension of the approval period is received by USCIS prior to the expiration date of approval indicated on the Form I-171H if a Form I-600 has not yet been submitted in connection with an approved Form I-600A. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Form I-600, then a complete application and fee must be submitted for a subsequent application.

\* \* \* \* \*

Form I-131. For filing an application for travel document—\$305.

\* \* \* \* \*

Form I-485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—\$930 for an applicant fourteen years of age or older; \$600 for an applicant under the age of fourteen years when submitted concurrently for adjudication with the Form I-485 of a parent and the applicant is seeking to adjust status as a derivative of the parent, based on a relationship to the same individual who provides the basis for the parent's adjustment of status, or under the same legal authority as the parent; no fee for an applicant filing as a refugee under section 209(a) of the Act; provided that no additional fee will be charged for a request for travel document (advance

parole) or employment authorization filed by an applicant who has paid the Form I-485 application fee, regardless of whether the Form I-131 or Form I-765 is required to be filed by such applicant to receive these benefits.

\*\*\*\*\*

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—\$340.

\*\*\*\*\*

7/27/2007  
Dated:

  
**Michael Chertoff,**  
Secretary.

AUG 17 2007

Assistant Secretary for Legislative Affairs  
U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

The Honorable Charles Schumer  
United States Senate  
Washington, DC 20510

Dear Senator Schumer:

On behalf of Secretary Chertoff, thank you for your letter regarding the initial decision of the Department of Homeland Security (DHS) to reject certain employment-based adjustment of status applications based on the Department of State's (DOS) July 2, 2007, Visa Bulletin (No.108), which stated that there would be no further employment-based immigrant visa number authorizations this fiscal year. On July 17, 2007, DOS withdrew Visa Bulletin (No.108).

After consulting with the DOS, DHS announced on July 17, 2007, that it would immediately accept employment-based applications to adjust status filed by applicants whose priority dates are current under the June 12, 2007 Visa Bulletin (No.107).

U.S. Citizenship and Immigration Services (USCIS) will accept these applications for a period of 31 days (through August 17, 2007). Applications properly filed with USCIS between July 2, 2007 and July 16, 2007, will be accepted. These actions, taken subsequent to your initial inquiry, resolve the issues you raised in your letter.

DHS remains committed to working closely with you and other members of Congress to reform the Nations immigration laws and improve the legal immigration system.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in black ink that reads "Don Kent".

Donald H. Kent, Jr.  
Assistant Secretary  
Office of Legislative Affairs

CHARLES E. SCHUMER  
NEW YORK

44A

705187

COMMITTEES:  
BANKING  
JUDICIARY  
RULES  
FINANCE

**United States Senate**  
WASHINGTON, DC 20510

July 10, 2007

The Honorable Michael Chertoff  
Secretary  
United States Department of Homeland Security  
2201 C Street, NW  
Washington, DC 20528

RECEIVED BY DHS EXEC SEC  
2007 JUL 31 PM 2:28

Dear Secretary Chertoff:

I write to express my very serious concerns with the recent news that the Department of Citizenship and Immigration Services will not accept any new applications for adjustment of status until October 1, 2007.

On June 13, 2007, the State Department, pursuant to regulations, issued its monthly visa bulletin. In it, the Department announced that most employment-based categories for immigrant visas would be "current." This meant that U.S. businesses intending to sponsor workers for green cards could, throughout July, file applications for adjustment of status. In addition, as you know, 8 C.F.R. § 245.1(g) provides that DHS must consult the State Department's visa bulletin to determine whether an immigrant visa is immediately available. As such, when a visa bulletin shows that visas will be available, your Department must accept those applications for adjudication.

It now appears that, in contravention of the June 13 visa bulletin and after tens of thousands of people had prepared to take an important step toward citizenship, you will not accept applications for adjustment of status until October of this year. A number of these important workers may now have to leave the United States for years before being able to apply again.

A DHS spokesperson was quoted in the New York Times on July 6, 2007, stating that a "lack of communication" between the Departments of State and Homeland Security led to the confusion over visas over the past month. When our nation's prosperity and thousands of people's livelihoods are at issue, this is unacceptable.

I am particularly concerned about the effect this week's action will have on critical sectors of our economy; many of the workers who will suffer are highly skilled individuals with long work history in the United States. A skilled, legal workforce plays an integral role in the success and stability of the economy. We need to be confident that the government is capable of processing this flow of critical workers. Your Department's recent actions have left many wondering if this is possible – particularly in light of recent reports that nearly a quarter of the top positions at DHS remain unfilled.

I therefore ask for an immediate response to this letter. First, I ask that DHS issue a notice that it will continue to accept applications for adjustment of status filed between now and October. In the event that DHS argues, as it apparently has, that it has no legal authority to accept applications, I ask for documentation or an explanation of the legal basis for such an argument.

Second, I ask that DHS commit as many resources as practicable to the processing of pending application for adjustment of status. To that end, I ask that DHS move to hire additional staff and fill all relevant vacancies.

Finally, I ask that, in your response, you describe in detail the communications between the Departments of Homeland Security and State that deal with DHS's decision not to accept further applications for adjustment of status. I also ask that you clarify the suggestion that a "lack of communication" between the Departments led to the reversal.

I look forward to your reply.

Sincerely,

A handwritten signature in black ink that reads "Chuck Schumer". The signature is written in a cursive, slightly slanted style.

Charles E. Schumer  
United States Senator

cc: Condoleeza Rice, Secretary of State

(b)(5), (b)(6)