



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!

7/9/07



AMERICAN IMMIGRATION LAW FOUNDATION

QUESTIONNAIRE FOR POTENTIAL PLAINTIFFS AMENDED 7-9-07 USCIS VISA BULLETIN/VISA AVAILABILITY LITIGATION

This document is a form, which means that you can only type in the areas within each box. Click in the boxes and start typing. If your answers are longer than the box provided, please use a separate sheet of paper. For the check boxes, click in the correct box to mark it. Thank you!

Please be sure to include a copy of the following with this questionnaire:

If you submitted your I-485 to USCIS for receipt in July, send us:

- Completed I-485 as submitted to USCIS and any cover letter sent with it
- Evidence of method and date of mailing (USPS, Fed Ex, etc)
- A list or index of attachments sent with the I-485 (if the cover letter provides the list or index, no need to send us a separate one)
- If received, any USCIS letter rejecting the adjustment application and / or any related correspondence (it is not necessary that you received a rejection notice).

If you did not or will not submit your I-485 to USCIS for receipt in July, but you are eligible to apply for adjustment of status and did not or will not submit the application only because USCIS said it would no longer accept it, send us the following:

- Completed I-485 as you would have filed it
- A list or index of the attachments you planned to send with the I-485 to demonstrate your eligibility for adjustment of status (or cover letter listing what you planned to send)

Date questionnaire is completed:

Completed by:

Attorney Contact Information:

Name

Email

Firm

Address

Telephone

Fax

Adjustment Applicant Information:

Name

Address

Phone

Email

Nationality or citizenship

Employment-based immigrant category under which the adjustment applicant applied or would have applied:

Adjustment Application Filing Information (if you did not submit the application, disregard these questions):

Date adjustment application was submitted to USCIS and method of submission:

Where was the adjustment sent? (Please note the specific DHS(USCIS) office)

USCIS rejection of the adjustment application (if you did not submit the application, disregard these questions):

Did DHS (USCIS) expressly inform the applicant or attorney, orally or in writing, why it was rejecting or returning the adjustment application?

If yes, please explain in detail:

Please send us a copy of any written notice or other correspondence from USCIS rejecting or returning the adjustment application.

Harm to adjustment applicant:

Please describe any harm that the adjustment applicant has suffered or is continuing to suffer due to the rejection or anticipated rejection of the adjustment application. Please be specific.

Please return this form and documents by email or fax to:

visabulletin@ailf.org

or fax (202) 742-5619 attn. AILF LAC

7/09/07

RETAINER AGREEMENT

THE CASE – USCIS and US DOS - “Visa bulletin / visa availability”

[PLEASE NOTE - IF YOU SUBMITTED OR WILL SUBMIT YOUR ADJUSTMENT OF STATUS APPLICATION FOR RECEIPT BY USCIS IN JUNE 2007 (IN THE “OTHER WORKER” CATEGORY ONLY) OR JULY 2007 (IN ANY EMPLOYMENT-BASED CATEGORY EXCEPT “OTHER WORKER”), paragraph I.A. below applies to you.

IF YOU DID NOT AND DO NOT PLAN TO SUBMIT YOUR ADJUSTMENT OF STATUS APPLICATION TO USCIS solely because of the issues being litigated in this lawsuit, paragraph I.B. below applies to you.

THE REMAINDER OF THE RETAINER AGREEMENT IS THE SAME FOR ALL CLIENTS.]

I.A. I am _____, the CLIENT. The U.S. Department of Homeland Security, and specifically its sub-component agency the U.S. Citizenship and Immigration Service (USCIS) has rejected or has said it will reject applications for adjustment of status (AOS) such as mine because there are insufficient visas available, even though the U.S. State Department’s Visa Bulletin issued for the month for which I tried to file my AOS application stated that such visas were or are available. My application already has been rejected (or I fear it will be rejected) by USCIS on this basis. Also, the U.S. Department of State (DOS) issued an “Update” to its Visa Bulletin on July 2, 2007. I relied on the prior Visa Bulletin(s) to prepare and submit my AOS application.

I.B. I am _____, the CLIENT. I am eligible to apply for adjustment of status. The U.S. Department of Homeland Security, and specifically its sub-component agency the U.S. Citizenship and Immigration Service (USCIS) has said it will reject applications for adjustment of status (AOS) such as mine because there are insufficient visas available, even though the U.S. State Department’s Visa Bulletin issued for July stated that such visas are available. I fully expect that if I submit (or would have submitted) my AOS application for receipt in July, USCIS will reject it or would have rejected it on this basis. I would have submitted my application for adjustment of status for receipt by USCIS during July 2007 but for this statement by USCIS.

Also, the U.S. Department of State (DOS) issued an “Update” to its Visa Bulletin on July 2, 2007. Based on the July 2007 Visa Bulletin issued in June 2007, I believed that visas would be available in July 2007 and relied on the prior Visa Bulletin to prepare my AOS application.

I.C. I understand that the American Immigration Law Foundation (AILF) has agreed to file a class action lawsuit in U.S. District Court against the USCIS and DOS to attempt to

rectify these problems. I wish to be included as a named plaintiff in this suit, representing others in like circumstances. I understand that legal representation by AILF is specifically conditioned upon the terms of this agreement.

REPRESENTATION

2. AILF and attorneys with whom AILF may be co-counsel in this case (hereafter AILF) have agreed to represent me only for the purposes of the following stage of the following lawsuit:

Lawsuit against U.S. CIS for refusing to accept my adjustment of status application; and U.S. DOS for its change in policy and practice regarding the Visa Bulletin.

3. By signing this Retainer Agreement, I agree to participate in this litigation as a plaintiff and class representative, and to appoint AILF as my attorney in this litigation. I understand that AILF agrees to represent me ONLY in connection with this lawsuit and to perform services that AILF may determine to be proper to pursue this lawsuit, but that this Retainer Agreement does not apply to any other services. I acknowledge that AILF also will represent other individuals who are being injured by the USCIS and DOS on the same grounds, and consent to the joint representation. I understand that the services of AILF in connection with this lawsuit supplement, but do not replace, the services of my other attorney or representative (if applicable).

4. I understand that litigation is uncertain by nature and that AILF cannot guarantee the results of the litigation. Also, if AILF believes that the subject of the suit has been adequately resolved before this lawsuit is filed, I understand that AILF may not file the suit, even if my own AOS application has not been accepted, or my case otherwise has not been resolved to my satisfaction.

5. I agree that if AILF determines that I am not an appropriate plaintiff or class representative, it may proceed with this lawsuit without including me as a named plaintiff.

COSTS AND ATTORNEY FEES

6. I understand that AILF will not charge me any fees or any expenses for AILF's legal services in connection with the lawsuit. AILF also will pay all expenses reasonably necessary for the lawsuit, with **one possible exception**. I may be responsible for my own travel and lodging expenses in the unlikely event that I should need to attend a hearing or deposition.

7. If the resolution of this matter results in a recovery of attorneys' fees and/or expenses, AILF or other co-counsel shall be entitled to reimbursement from this recovery of all attorneys' fees and/or expenses that it advanced on my behalf. I hereby assign all such fees to AILF, and agree that all fees and costs recovered in this case may be paid directly to AILF or another law firm it designates. If the defendants agree to pay such

fees and expenses as part of a settlement agreement or consent decree, I agree that such fees and expenses will also belong to AILF.

8. I have been informed that the Equal Access to Justice Act (EAJA), and other statutes and the Federal Rules of Civil Procedure may allow AILF to apply for an award of attorneys' fees and expenses if we prevail in this lawsuit. I agree that AILF may claim and collect fees and expenses awarded by the court(s).

9. Sometimes defendants offer to settle a case on the condition that the plaintiff(s) give up their right to receive attorneys' fees and/or costs. I understand that AILF's ability to represent people like me in this and future cases is dependent upon its recovery of costs and attorneys' fees for the work AILF performs. I therefore agree to assist AILF in obtaining full recovery of all costs and attorneys' fees as part of any settlement or disposition of the case. Should I accept any settlement of this case that requires me to waive the defendant's (or defendants') payment of fees and/or costs, I will be responsible for paying AILF's attorneys' fees and/or costs incurred in connection with this lawsuit that are not paid by the defendants. I will not be responsible for any of AILF's attorneys' fees or costs if I do not agree to such a waiver.

10. I understand that if this suit is not successful, the court may order the plaintiffs to pay the costs incurred by the opposing party's attorneys' fees and expenses. I also understand that if the court finds that the case was frivolous, unreasonable, groundless, vexatious, not reasonably based in law and/or fact, or pursued in bad faith, it may order me to pay the opposing party's or parties' costs and attorneys' fees. In the event of such an order, AILF agrees to pay the entire amount of the opponent's fees and costs awarded, **with one exception**. I alone will be responsible for such an award if I misrepresent facts to my immigration attorney or representative or to AILF and the court award is based upon facts found to be substantially and materially different than I have stated them.

TERMINATION OF REPRESENTATION

11. I understand that in the event AILF and its attorneys determine in their professional legal judgment that the lawsuit or other matter should be dismissed, settled, or otherwise disposed of, and I do not agree or consent to such resolution, AILF reserves the right to withdraw as counsel in this matter, subject to court approval. Grounds for such termination include, but are not limited to: (a) the suit becomes clearly frivolous, unreasonable or groundless; (b) the facts of the case are materially and significantly different than I stated them; or (c) the representation of my interests requires taking a position in opposition to AILF's mission. In the event that AILF withdraws, AILF will make reasonable efforts to obtain substitute counsel, but withdrawal is not dependent on finding substitute counsel.

12. I am free at any time to discharge AILF from representing me, subject to court approval. However, if I choose to discharge AILF and its attorneys, AILF is under no obligation to find a replacement counsel. Any continued AILF involvement in the case will be determined after consideration of all circumstances as they exist at the time. If I

discharge AILF, I will remain responsible for the payment of any attorney's fees or costs charged against me according to this Agreement.

CLIENT'S RESPONSIBILITIES

13. I agree to respond to all communications from AILF immediately when received. I agree to appear in court if and when required. I agree to notify AILF promptly of any change in my contact information, in the status of my AOS application, in my immigration status, or in any legal proceedings.

14. I agree to cooperate with AILF and to provide AILF complete and truthful information and documentation necessary and proper to the lawsuit. I understand that I alone will be responsible for any fees and expenses awarded to opposing parties if such an award is based upon any misrepresentations that I have made to AILF or my attorney or representative.

CONFIDENTIALITY

15. I understand that lawsuits are public information, and are available as a public court document. I realize that many courts now have lawsuits and other documents available electronically, accessible via the internet. I understand that there also may be other individual and organizational plaintiffs participating in this case. I also understand that AILF and its attorneys may consult and associate with other immigration counsel, AILF's affiliated bar association, the American Immigration Lawyers' Association (AILA) and its staff, as well as with experts who may assist AILF in litigating this case. I therefore authorize AILF to discuss any information with the other plaintiffs, AILA and its staff, and/or experts who may assist AILF in this lawsuit.

PUBLICITY

16. I authorize AILF to publicize the case in any manner AILF deems to be in my best interest and in the interest of educating the public about immigrants' rights or immigration law. I agree not to make statements to the news media except by arrangement and approval of AILF. Unless otherwise authorized, AILF will make any such news announcements on my behalf in this case.

FUTURE REPRESENTATION

17. I acknowledged that AILF has no obligation to represent me or to secure representation for me, in any subsequent stage of this litigation or in any proceedings, or in any legal matter that I may have.

18. I have read and received a complete copy of this Retainer Agreement today, _____, 2007, understand all the terms, and agree to them.

CLIENT

ATTORNEY (on behalf of AILF)