



AMERICAN IMMIGRATION LAW FOUNDATION

USCIS VISA BULLETIN/ VISA AVAILABILITY LAWSUIT

Frequently Asked Questions about Participating in this Lawsuit

AILF is considering filing a lawsuit in federal district court against the U.S. Citizenship and Immigration Services (USCIS) over its 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) states that a visa was available at the time of filing.

Any 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: This lawsuit will be filed by plaintiffs who have been harmed because USCIS rejected or returned or is expected to reject or return a properly submitted adjustment of status application for the alleged reason that no visa was immediately available even though the DOS Visa Bulletin states that a visa was available at that time.

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.

AILF has learned that USCIS has refused to allow certain adjustment of status applications to be filed even though the DOS Visa Bulletin states that visa numbers are available for the immigrant category at that time. USCIS rejected these applications because DOS informed it in an internal communication that no visa numbers remained for that category of immigrants. To date, this has happened only in the employment-based “other worker” category. We anticipate that it may happen in a number of other types of employment-based immigrant categories beginning in July 2007.

We believe USCIS violated the law when it failed to apply the visa availability dates listed in the Visa Bulletin, as required by a federal regulation, and instead rejected properly filed adjustment applications. 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 being 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]

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 receive a receipt notice, cancelled check, or notice of approval of the adjustment application.

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

A: If the lawsuit is successful, USCIS should accept your adjustment application and treat it as if it had been filed as of the date that you originally tried to file it. Because your adjustment application will then be considered to be pending before the agency, you 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 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 in the next fiscal year, October 1, 2007. 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, other efforts to resolve these problems with USCIS have not succeeded. For this reason, we believe that a lawsuit is the only remaining possible way to resolve these problems.

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 and send us the documents requested. If you do not have the Questionnaire, please send an email to visabulletin@ailf.org, and we will send it to you. You may also fax a request to AILF LAC at (202) 742-5619. Please indicate this is a question about the visa bulletin litigation.

If you have any questions that are not answered by this FAQ or the questionnaire, please send them to visabulletin@ailf.org or fax to (202) 742-65619, and we will respond. Thank you!

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