



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

September 28, 2015

The Honorable John Kerry
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

The Honorable Jeh Johnson
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Cecilia Muñoz
Assistant to the President and
Director of the Domestic Policy Council
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Changes to the October Visa Bulletin Dates for Filing Permanent Resident Applications

Dear Secretary Kerry, Secretary Johnson, and Director Muñoz:

On behalf of the more than 14,000 members of the American Immigration Lawyers Association (AILA), and impacted stakeholders, we write to express our extreme disappointment in the actions the Administration took this past Friday, September 25, 2015, in rolling back the qualifying dates that allow eligible individuals to file their applications for permanent residence, and ask that the dates published in the September 9, 2015 Visa Bulletin be immediately restored.

The changes to the October 2015 Visa Bulletin were made without warning and have impacted thousands of individuals who have been patiently waiting in the long visa backlogs for years. These people relied on the original October Visa Bulletin that was published on September 9, and took affirmative steps towards preparing their applications with the expectation of filing in the coming days. Since Friday's announcement, we have heard from dozens of distressed individuals and families who put their lives on hold and spent thousands of dollars preparing to file their permanent residence applications only to learn that the opportunity to file has been extinguished.

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The actions taken this past Friday demonstrate gross error and a lack of communication within the government. Moreover, they undermine public confidence in the ability of this Administration to implement the reforms the President announced on November 20, 2014, which AILA and many stakeholders have supported and championed. We urge you to act swiftly to remedy the situation.

The Revised Visa Bulletin has Severe Consequences for the Employment- and Family-Based Categories.

On November 20, 2014, President Obama announced a series of executive actions on immigration including plans to modernize the visa system. As part of the “visa modernization” proposals, Secretary Johnson issued a memorandum directing U.S. Citizenship and Immigration Services (USCIS) to work with the Department of State to “improve the system for determining when immigrant visas are available to applicants during the fiscal year.”¹ In response to this directive, on September 9, 2015, DHS and the Department of State published the October Visa Bulletin in a revised format and announced new procedures for determining the timing to file permanent residence applications.² In short, USCIS will monitor visa numbers each month, and if it determines that enough visas are available for a particular month, will permit individuals whose immigrant petitions have qualifying priority dates to file their applications for permanent residence in accordance with an earlier “Filing Date” chart. Applications will be finalized and approved only when the individual’s “priority date” is current under the “Final Action Date” chart.

On September 25, the Department of State published a new Visa Bulletin for October with revised “Filing Dates” for five visa categories: Employment-Based (EB) second preference India, EB-2 China, EB-3 Philippines, and the family-based first and third preference categories for Mexico.³ The impact of the revised dates is to reduce significantly the number of applicants in the affected categories who will be able to file for adjustment of status. For example, on September 9, EB-2 applicants from India were informed that they could file their applications on October 1, 2015 if they had a priority date that was earlier than July 1, 2011. On September 25, it was announced that only those with priority dates earlier than July 1, 2009 could apply. An informal survey of our members indicates that this two-year difference has eliminated eligibility for not just some, but the *vast majority* of EB-2 India and EB-2 China beneficiaries who would have been eligible to file under the September 9, 2015 Bulletin.⁴

The Departments of State and Homeland Security Must Fully Restore the “Filing Dates” Published in the Initial October Visa Bulletin on September 9, 2015.

Based on the anecdotal information already provided by AILA members, it appears that in an excess of caution, the Administration may have gone too far in rolling back the “Filing Dates” on

¹ Memorandum from DHS Secretary Johnson, “Policies Supporting U.S. High-Skilled Businesses and Workers,” (Nov. 20, 2014), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf.

² October Visa Bulletin, Issued September 9, 2015, available at: <http://www.aila.org/infonet/visa-bulletin-october-2015>.

³ October Visa Bulletin, Revised September 25, 2015, <http://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-october-2015.html>

⁴ Several members reported that the number of eligible applications fell by up to 90%.

September 25, 2015, and that the filing volume feared will not materialize. Restoring the original dates will permit those who have expended resources in advance of filing to proceed with their applications, and will provide DHS and State the data on visa demand that both departments need and that the new system, with the original dates, would be able to provide.

The Administration Should Immediately Provide Meaningful Information to the Public.

So far, little information has been given to the public to justify or explain the change in the October Visa Bulletin, other than to say, “[f]ollowing consultations with the Department of Homeland Security (DHS), the Dates for Filing Applications for some categories ... have been adjusted to better reflect a timeframe justifying immediate action in the application process.”⁵ Shortly after the September 9 release of the first October Visa Bulletin, USCIS announced that it would be holding a stakeholder teleconference to discuss the newly announced procedures. On September 14, 2015, the teleconference was abruptly cancelled.

It is critical that USCIS and the Department of State take affirmative steps to begin to restore public trust by holding a stakeholder engagement and providing meaningful information. This engagement should address not only on the reason for the change, but also expectations moving forward. For example, what information came to light that led USCIS to believe there would not be enough immigrant visa numbers available to honor the “Filing Dates” listed in the September 9, 2015 Bulletin? If filing volume in the month of October is low, can we expect to see the “Filing Dates” advance significantly over the next few months? In addition, AILA submitted a number of critical questions to USCIS about the implementation and administration of the new process that remain relevant, and unfortunately, also remain unanswered.

The Administration Must Fully Implement the Reforms Announced on November 20, 2014.

As the one year anniversary of President Obama’s Immigration Accountability Executive Actions approaches, the Administration has not yet delivered on the majority of its promises, including:

1. A proposed rule to strengthen and expand the STEM Optional Practical Training program;
2. Clarification on the standard by which an EB-2 national interest waiver can be granted “with the aim of promoting its greater use for the benefit of the U.S. economy”;
3. A proposed rule to alleviate the uncertainty surrounding the term “same or similar” for purposes of AC21 permanent portability;
4. A proposed rule to provide parole status for inventors, researchers, and entrepreneurs;
5. A proposed rule to modernize the PERM permanent labor certification program;
6. A final rule expanding the provisional waiver program;
7. Guidance on the definition of “extreme hardship” and criteria by which a presumption of extreme hardship may apply;

⁵ October Visa Bulletin, Revised September 25, 2015, <http://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-october-2015.html>; USCIS Alert: DOS Publishes Updated Visa Bulletin for October 2015, <http://www.uscis.gov/news/dos-publishes-updated-visa-bulletin-october-2015>.

8. Guidance to USCIS, CBP, and ICE on the treatment of those returning to the United States on advance parole; and
9. An expansion of parole-in-place and deferred action for the family of members and veterans of the U.S Armed Forces.

This most recent disappointment only reinforces the fact that the Administration must redouble its efforts to make good on its promises to make the immigration system as fair and as just as possible in the absence of congressional action. The public deserves more and deserves better than what our government has delivered thus far.

Sincerely,



Victor D. Nieblas Pradis
AILA President



Robert P. Deasy
Acting AILA Executive Director

cc: Alejandro Mayorkas, Deputy Secretary, Department of Homeland Security
Esther Olavarria, Senior Counselor to the Secretary, Department of Homeland Security
Serena Hoy, Senior Counselor to the Deputy Secretary, Department of Homeland Security
Mary Giovagnoli, Deputy Assistant Secretary for Immigration Policy, Department of Homeland Security
David Shahoulian, Deputy General Counsel, Department of Homeland Security
León Rodríguez, Director, U.S. Citizenship and Immigration Services
Ur Mendoza Jaddou, Chief Counsel, U.S. Citizenship and Immigration Services
Juliet Choi, Chief of Staff, U.S. Citizenship and Immigration Services
Felicia Escobar, Special Assistant to the President for Immigration Policy