



August 8, 2007

Frequently Asked Questions - #3¹

Employment-Based Adjustment Applications Filed by Aliens Whose Priority Dates are Current under Department of State July Visa Bulletin No. 107

Q33: When filing an EB I-485 using the old fee, what version of the I-485 form do we use?

A33: The current I-485 form version dated “7/30/07 Y” should be used. The form can be found at www.uscis.gov

Q34: To ensure that the correct fee is submitted, may an applicant submit both a check for the old fee and a second check for the new fee?

A34: USCIS requires that all applications and petitions be submitted with the required filing fee or a waiver, if applicable. USCIS urges the public to exercise caution in submitting additional checks in incorrect amounts: extraneous checks may slow down the intake process and may result in an erroneous rejection of an application (as in the case where the check in the correct amount is missed) or in the inadvertent cashing of such checks, since filing fees are normally non-refundable. For additional information, the public is referred to the fee requirements announced in the Federal Register on August 1, 2007 (Temporary Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule for Certain Adjustment of Status, FR at 41888). This regulation amends the new Fee Rule, and requires that 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 and all subsequent or “renewal” applications for advance parole and employment authorization based on pending Forms I-485 filed pursuant to Visa Bulletin No. 107.

Q35: Will previous USCIS policy still apply in those instances where the original approved labor certification cannot be included in support of an I-140 petition, such as when the original has been lost or previously filed with USCIS, or when a duplicate approval must be requested?

A35: Yes. While an original labor certification must be submitted in support of certain I-140 petitions, USCIS will continue to accept duplicates of previously filed Labor certificates and, as in the instances stated above, in cases where an original labor certificate has been properly filed with USCIS.

¹ USCIS may issue future “FAQs” on this topic for the benefit of the public, should additional questions arise. Such FAQs will be dated and numbered for ease of reference.

Q36: Will USCIS accept Schedule A concurrently filed I-140 petitions and adjustment of status applications that are filed on or after August 1, 2007?

A36: As previously stated, USCIS will accept properly filed Forms I-140 filed on behalf of aliens with a priority date on or after August 1, 2007; however, pursuant to August Visa Bulletin No. 108, USCIS will reject any concurrently filed adjustment of status applications filed by aliens with a priority date on or after August 1, 2007.

Q37: Will the new I-765 filing instructions apply to Forms I-765 filed based on employment-based adjustment of status applications filed pursuant to the July Visa Bulletin No. 107, if filed between July 30, 2007 – August 17, 2007?

A37: No. The fee of \$180 for Forms I-765 and the fee of \$170 for Form I-131 will remain in effect for those aliens eligible to file an employment-based adjustment of status application pursuant to July Visa Bulletin No. 107 until August 17, 2007.

Q38: Where should an employment-based adjustment of status application be filed if the underlying I-140 petition remains pending with USCIS?

A38: Forms I-485 may be filed at either the Nebraska Service Center or the Texas Service Center in accordance with the Direct Filing Update issued June 21, 2007, regardless of where the pending I-140 was filed. Applicants should submit a copy of the I-140 receipt notice or, if the applicant does not have a receipt notice, include a brightly colored sheet of paper on top of the filing with the following notice and information:

TO THE MAILROOM: The enclosed I-485 Adjustment Application(s) should be matched with a pending I-140 Immigrant Petition for which no Receipt Notice has been received. The Immigrant Petition [type, e.g., I-140] was delivered to [Service Center] on [provide date of filing and tracking number]; Petitioner's name; Beneficiary's name; Beneficiary's date of birth; Beneficiary's country of birth.