

HOW TAX ISSUES CAN AFFECT YOUR IMMIGRATION CASE



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Now that tax season has come and gone, many people feel a sense of relief. The post-April 15 tax deadline is a good time to see how tax issues can affect your immigration case. There are so many ways that tax issues affect a case. In this article, I will focus on five main ways:

1. **I-485 Adjustment of Status Cases:** At the time of filing an I-485 adjustment of status case with the United States Citizenship and Immigration Services (“USCIS”), the Petitioner needs to complete an Affidavit of Support which includes a copy of the Petitioner’s most recent federal income tax return. Note that USCIS now only requires the most recent tax return. In the past, USCIS required the prior 3 years of tax returns. The Petitioner’s tax return must evidence a certain level of income in order to be able to sponsor the Beneficiary. The required level of income is determine in accordance with the Petitioner’s household size and is set by the federal government’s poverty guidelines. The 2006 federal poverty guidelines were recently introduced and can be view on our firm’s website at www.longchangonline.com. At the time of the adjustment of status interview, the Petitioner must take the most recent federal income tax return with W-2 and 1099 forms (along with a current letter of employment. This means that if you filed your adjustment of status case using 2004 tax returns, you must be sure to take 2005 tax returns with you. As a practical matter, be sure that your 2005 income (as reported on your federal income tax return meets the required income level or else a Joint Sponsor may be needed. Also, be sure to make a copy for your records since USCIS will keep your tax return in its file.
2. **Extension of Status Cases:** A foreign national in a non-immigrant work visa status (such as R-1, H-1B, E-2, L-1, etc.) may be requested to show the he or she has maintained his or her non-immigrant work visa status by providing copies of prior tax returns at the time an extension of status is requested. A foreign national will need to show the he is making the required wage based on the previously-approved immigration case.
3. **Labor Certification Cases:** In labor certification cases, the employer who filed the labor certification must be able to prove that it has the “ability to pay” the wage set forth in the labor certification application from the date that the labor certification application is filed with the Department of Labor up through the date that the labor certification beneficiary obtains permanent resident status. USCIS

will often look at the employer's tax returns for each year that the case is pending. As a result, if the labor certification case has been pending for multiple years, then the employer must provide multiple years of tax returns with the I-140 petition. One of the best ways of showing that the employer has the ability to pay the beneficiary is to show that the employer's net income on the employer's tax returns for each year in question exceeds the wage being offered in the labor certification case. A foreign national being sponsored by an employer should consider checking with the employer each year to make sure that the employer can demonstrate the ability to pay the required wage or else there is the chance that the entire labor certification case could be lost.

4. **Religious Visa Cases:** Among the many criteria that have to be proven in an I-360 special immigrant religious worker case, the foreign national must document that he or she has worked in the religious denomination for the immediately preceding two-year period. The best type of evidence (if the work was done in the United States) is to provide tax returns and W-2 forms proving this 2-year work experience requirement.
5. **Proposed Guest Worker Legislation:** In all of the guest worker programs that are being discussed in Congress presently, the undocumented worker must show that he or she has paid their back taxes. As a result, undocumented workers should be advised to maintain copies of their tax returns to prove that they have paid their prior taxes. For our most recent article discussing the current guest worker proposals in Congress, please visit the "Newsflash" section of our website at www.longchangoonline.com.

Once your taxes are filed, be sure to keep a copy for your records. If you need copies of prior years, you can request a tax transcript from the Internal Revenue Service (such a request typically takes 10-15 business days to process). When needed for any of the immigration cases or purposes described above, you typically will need to provide a full copy of the federal income tax return, along with copies of all W-2 Forms and 1099 Forms.

Be sure to review your taxes to make sure they were properly filed and to ensure that you are filing them properly so that there is no future surprise in your immigration case.

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