



Long, Chang & Associates, L.L.P.

Immigration Attorneys

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IMMIGRATION ALERT

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Featured Article

U.S. CITIZENSHIP & IMMIGRATION SERVICES REVERSES POLICY IN DECIDING TO FOLLOW THE INITIAL JULY 2007 VISA BULLETIN, BUT AUGUST 17, 2007 DEADLINE IS FAST APPROACHING

July 30, 2007 - In a statement released shortly after 5:00 p.m. on Tuesday, July 17, 2007, U.S. Citizenship & Immigration Services (USCIS) has agreed to accept employment-based adjustment of status (Form I-485) applications under all employment-based immigrant visa preference categories (EB-1, EB-2, EB-3, EB-4 and EB-5), except for the EB-3 "other worker" category, in situations where the case's priority date is on or before July 30, 2007.

In doing so, USCIS agreed to honor the [initial version of the July 2007 Visa Bulletin](#) (which listed all employment-based categories, except the EB-3 "other worker" category, as current for July 2007) and has agreed to give applicants a full thirty days in which to submit these applications (July 17-August 17). (NOTE: To view the July 2007 Visa Bulletin or any other Visa Bulletin, please visit www.longchangonline.com and click on the "Visa Bulletin" button on the left-side of the home page.)

Based on this policy reversal, Form I-485 adjustment of status applications can be submitted under the initial July 2007 Visa Bulletin until August 17, 2007 so long as the priority date established by the I-140 petition is on or before July 30, 2007.

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USCIS Reverses Policy regarding July 2007 Visa Bulletin (Continued from Page 1)

In addition, USCIS will allow applicants to file the Form I-485 and related applications such as the Form I-765 (Employment Authorization Document) and Form I-131 (Advance Parole Document), if eligible, until August 17, 2007, using the pre-July 30, 2007 fee schedule. (NOTE: USCIS application fees increased dramatically on July 30, 2007). Effective July 30, 2007, the filing fee for the Form I-140 Petition is \$475.00 (up from \$195.00). All I-140 Petitions filed on or after July 30, 2007 must be accompanied by the new filing fee.

For the full text of the USCIS press release regarding this policy reversal, see <http://www.uscis.gov/files/pressrelease/VisaBulletinUpdate17Jul07.pdf>. USCIS has also issued two sets of Frequently Asked Questions (FAQs) on the July 2007 Visa Bulletin issues. The first set of FAQs can be found online at <http://www.uscis.gov/files/pressrelease/EBFAQ1.pdf>. The second set of FAQs can be found online at <http://www.uscis.gov/files/pressrelease/FAQ2.pdf>

If filing under the July 2007 Visa Bulletin, individuals should review the above-referenced FAQs and consult with a competent immigration attorney to determine eligibility. Moreover, applicants need to be sure that they are using the appropriate version of the applications being filed (as immigration forms are frequently updated by USCIS and prior versions may not be accepted), submitting the correct application filing fee and filing the application package at the correct USCIS office and mailing address. Finally, USCIS has announced new filing locations for many of its applications beginning on July 30, 2007 (the same day that the fee increase takes effect for most applications).

It is important to note that the [August 2007 Visa Bulletin](#) has been issued and that all employment-based categories are listed as "unavailable". This means four very important things:

- (1) No green card approvals will be issued during the month of August 2007 since visa numbers are unavailable beginning in August 2007. This applies to green card cases already pending and those being filed now.
- (2) Form I-485 applications will not be accepted between August 1 and August 17, 2007 unless the priority date for the case is on or before July 30, 2007.
- (3) If you are filing a Form I-485 application on or before August 17, 2007 based on the initial version of the July 2007 Visa Bulletin, you must have a priority date on or before July 30, 2007.
- (4) Visa numbers most likely will remain "unavailable" through at least September 30, 2007. Beginning October 1, 2007 (the first day of the new immigration fiscal year) visa numbers will again be allocated to the different EB categories. When the annual limit of 140,000 visas is allocated among each of the employment-based preference categories (EB-1, EB-2, EB-3, EB-4 and EB-5) on October 1, 2007, it is uncertain as to which preference categories will become current and what cutoff dates will apply in each of the categories. Therefore, even if an employment-based I-485 application is filed before August 17, 2007, it still could be several months or even years before the green card can actually be approved. How long it will take for the green card to ultimately be approved will depend on the priority date cutoff in future Visa Bulletins beginning in October 2007, the green card applicant's priority date (usually determined by the date the underlying labor certification was filed with the Department of Labor) and the applicant's country of birth (since certain countries have longer backlogs than others, most notably China and India in the employment immigration categories).

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Filing for a Change in Non-Immigrant Status: Eight Essential Rules to Keep in Mind

After arriving in the United States on a particular visa (whether it be B-1/B-2, F-1, E-2, H-1B or any one of the many nonimmigrant visas), a nonimmigrant may decide that he wishes to change to another nonimmigrant visa status. The process of changing from one nonimmigrant visa classification to another nonimmigrant visa classification is commonly referred to as a "Change of Status" or "COS". A change of status is governed by various immigration rules and regulations.

The statute which governs change of status requests is Section 248 of the Immigration and Nationality Act (INA). The regulations which supplement the statute and provide additional requirements for change of status requests are found at 8 CFR Section 248. Before applying for a change of status, it is critical to ensure that the nonimmigrant is eligible for a change of status under INA Section 248 and 8 CFR Section 248.

INA Section 248 specifically requires that anyone seeking to change his status must maintain his current status in order to be eligible for a change of status. This means that the nonimmigrant must comply with the terms of his current nonimmigrant status and cannot do anything to violate that status if he wants to change into another NIV status. For example, if a nonimmigrant enters on a B-1/B-2 visa, he must be abiding by the terms of that visa status (visiting for business or pleasure) at the time of filing for the change of status. If he wishes to change from B-2 to F-1, he cannot start school until the change to F-1 status is approved or else the change of status request will be denied. Maintaining the current NIV status is crucial if you wish to change to any other NIV status.

Since the law requires that you maintain your current NIV status, you may be required by USCIS to provide evidence that you are in fact maintaining that status. For example, if an F-1 student wants to change status to E-2 status, he must be able to document that he is going to school and not violating his F-1 status. Typically, we recommend that the F-1 student provide his current SEVIS I-20 and a letter from the Designated School Official (DSO) documenting his current enrollment at school when seeking to change from F-1 status to any other NIV status.

With the foregoing explanation in mind, here are the 8 general rules to keep in mind when considering a change of status:

1. In order to change from one nonimmigrant status to another nonimmigrant status, you generally must be maintaining your present nonimmigrant status. Nonimmigrants who do not maintain their current status or who have fallen out of status are typically not allowed to change their status. In my experience, nonimmigrants tend to focus more on whether or not they are eligible for the particular status which they want to change to as opposed to making sure that they are properly maintaining their current status. For instance, our office recently met with an F-1 student who wanted to change his status to E-2. He identified a business, lined up the money to purchase the business and even began preparing a business plan in anticipation of filing for a change of status from F-1 to E-2. The problem was that he had recently fallen out of status by not taking a full load of courses at his F-1 school. When he went to the school to obtain proof of his current F-2 status, the school informed him that he was no longer in F-1 status. As a result, this person was not eligible for a change of status.
2. With limited exception, the request to change status must be timely filed with the USCIS. For a change of status request to be timely filed, you must properly file the change of status request with the proper USCIS office before the current I-94 expires. F-1 student have what is

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**8 Rules for Non-Immigrant Change of Status
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commonly referred to a 60-day "grace period" (an additional 60 days from the end of their program date or the end of any USCIS-authorized Optional Practical Training (OPT)).

3. In order for a change of status to be approved, there must not be any gap between the end of your current NIV status and the start date of the new NIV status you are requesting. For example, if your current B-2 status expires on September 1, 2007, and you want to change to F-1 status beginning January 1, 2008, the change of status request will be denied due to the status gap between September 1, 2007 and January 1, 2008 (even if the request to change status is filed prior to September 1, 2007).
4. Working without authorization is a violation of nonimmigrant status and can bar a change of status request. All employment must be authorized by USCIS. If you want to change from a status which does not authorize employment to a status which does authorize employment (for example, H-1B, L-1, R-1, etc.), the change of status request must first be approved.
5. F-1s and J-1s are eligible for a change of status during the time period commonly referred to as the "grace period". The "grace period" refers to the period of time during which the F-1 or J-1 is supposed to be preparing for departure from the United States. As noted above, F-1s receive a 60-day "grace period" (a period of 60 days beyond the expiration of their current program or their employment authorization period). Additionally, J-1s receive a 30-day grace period (a period of 30 days from the expiration of their current J program). The regulations provide that this additional period of time is to prepare for departure from the United States. However, USCIS has allowed change of status requests during this period.
6. B-2 nonimmigrants cannot attend school until an F-1 change of status is approved. If a B-2 enrolls in school prior to obtaining the change of status from B-2 to F-1, the change of status request will be denied.
7. K nonimmigrants (K-1, K-2, K-3 or K-4) cannot change status. If a person enters as a K-1 fiancé and later decides that he does not want to marry the K-1 Petitioner and would rather file for a change of status, he cannot. INA Section 248 specifically bars a K nonimmigrant from changing to any other status.
8. J nonimmigrants who are subject to the 2-year home residency requirement cannot change status (or adjust status) without first obtaining a waiver of the 2-year home residency requirement. It is critical for any J-1 or J-2 nonimmigrant who wants to change status to first determine if he is subject to the 2-year home residency requirement and then to determine if he is eligible for a waiver of that requirement. For a detailed explanation

The foregoing are 8 general rules to keep in mind when planning on changing status from one nonimmigrant visa classification to another. Obviously, there are many other factors to keep in mind if you are considering a change of status. The key is to plan any change of status carefully and make sure that you are permitted to change from your current status to the new status you are seeking. Proper planning with an experienced immigration lawyer is recommended.

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About Us

Long, Chang & Associates, L.L.P. is a full-service immigration law firm concentrating in the areas of employment-based and family-based immigration law. Our law firm has successfully represented individuals and employers through the immigration process with the Immigration and Naturalization Service (INS), Bureau of Citizenship and Immigration Services (BCIS), United States Citizenship and Immigration Service (USCIS) and at U.S. consulates and embassies in order to obtain both non-immigrant (temporary) visas and immigrant (permanent) visas on behalf of individuals or employees.

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Kristen Aekyung Chang is a founding partner of Long, Chang & Associates, L.L.P. She practices exclusively in immigration law and is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar.

Born in Seoul, South Korea, Ms. Chang attended the University of North Carolina at Chapel Hill where she received a Bachelor of Arts degree in Psychology. While achieving academic success at the undergraduate level, Ms. Chang devoted much of her time to volunteerism. She served as the Chairperson on the Planning Committee for the University's Bicentennial Class celebration and served as a Research Assistant in the University's Psychology Department where she performed valuable research in the area of cognitive memory. Ms. Chang also volunteered in the school's International Department as an English language assistant for international students and faculty members and at a local psychiatric hospital. In addition to her numerous public-service efforts during her undergraduate career at the University of North Carolina at Chapel Hill, Ms. Chang studied abroad at the prestigious London School of Economics where she achieved the top academic ranking in International Business Strategy and Human Resource Management.

Ms. Chang received her J.D. (law) degree from the Wake Forest University School of Law. During law school, Ms. Chang was selected as a member of the Law School's Moot Court Board based on her performance in the school's trial court competition. She was one of three members on the school's nationally-recognized and award-winning National Moot Court Evidence Team. During law school, Ms. Chang studied Labor and Employment Law at the law school's summer program in Italy.

Following law school, Ms. Chang opened her own immigration law practice in Greensboro, North Carolina, and subsequently joined Mr. Long in founding Long, Chang & Associates. As a naturalized citizen of the United States, Ms. Chang understands the immigration practice not just as an immigration lawyer but as an immigrant herself who has gone through the immigration process. Based on her personal experiences, Ms. Chang has a remarkable way of relating with her clients and perceiving their anxieties and concerns.

* * * * *



David J. Long founded Long, Chang & Associates, L.L.P. in 1998. He has been recognized by the North Carolina State Bar as a Board-Certified Specialist in Immigration Law. Mr. Long is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar. Mr. Long serves as a Mentor for other immigration attorneys through AILA.

Prior to founding Long, Chang & Associates, L.L.P., Mr. Long worked as an attorney with the law firm of Kilpatrick Stockton in Winston-Salem, North Carolina. Mr. Long practices in the areas of immigration law, corporate law and real estate.

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Born in Philadelphia, Pennsylvania, Mr. Long attended the University of North Carolina at Chapel Hill where he studied in the Honors Program and received a Bachelor of Arts degree in Political Science. In addition, Mr. Long studied the Korean Language at Duke University for a semester while attending UNC-CH. Mr. Long graduated magna cum laude and in the top 1% of his class.

Mr. Long graduated with highest honors and received his J.D. (law) degree from the Wake Forest University School of Law. During law school, Mr. Long was selected as a member of the Law Review based on his academic standing. He was one of three members on the school's nationally-recognized Gabrielli Family Law Moot Court Team. Mr. Long also studied Labor and Employment Law at the law school's summer program in Italy. Following law school, Mr. Long worked as an attorney in the commercial real estate department of Kilpatrick Stockton LLP in Winston-Salem, NC, one of largest law firms in the United States. After two years of working at a large law firm, Mr. Long desired the opportunity to assist clients on a more personal basis. As a result, he joined Ms. Chang in forming Long, Chang & Associates, L.L.P. Most recently, Mr. Long served as an adjunct faculty member at Handong International Law School in Pohang, South Korea where he taught U.S. Immigration and Naturalization Law.

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