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Immigration Attorneys

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IMMIGRATION ALERT

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Featured Article

THE JULY 2007 VISA BULLETIN NIGHTMARE

In mid-June 2007 (almost two weeks before July), the Department of State, in accordance with long-standing tradition, released the [Visa Bulletin for July 2007](#). For years, the Department of State has published the Visa Bulletin in the middle of the month for the next month. This advance notice of visa availability typically allows foreign nationals to prepare the necessary paperwork and obtain required documentation (such as medical exams) so that they are prepared to file during the month in which a visa number is available to them.

The July 2007 Visa Bulletin publishes, among other items, the availability of immigrant visas in the employment-based immigration preference categories (EB-1, EB-2, EB-3, EB-4 and EB-5). Much to the immigration community's surprise, the July 2007 Visa Bulletin initially showed that the first three employment-based immigrant visa categories were all "Current", meaning that there was no backlog or cutoff date in any of these categories. In other words, according to the July 2007 Visa Bulletin issued by the Department of State in mid-June 2007, an immigrant visa number would be immediately available to a foreign national with an approved Form I-140 Petition, regardless of the country in which he or she was born and regardless of the priority date associated with the Form I-140 petition.

On Monday, July 2, 2007 (the first business day of July), the Department of State issued an [update to its previously-published Visa Bulletin for July 2007](#). This "update" made all employment-based immigrant visa numbers unavailable, meaning that no more green cards would be available for not only the month of July 2007, but also for the remainder of the immigration fiscal year (i.e., until the start of the new immigration fiscal year on October 1, 2007). The Department of State's decision to

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July 2007 Visa Bulletin Nightmare (Continued from Page 1)

update its previously-published Visa Bulletin was unprecedented and greeted with tremendous outrage in the immigrant community. Based on this updated Visa Bulletin, the United States Citizenship and Immigration Services (USCIS) announced mid-day on July 2 that it would not accept any employment-based I-485 green card applications. Those foreign nationals who just a few weeks earlier thought they would be able to file for their green card (and obtain much-needed employment-authorization documents) now had to face the reality that it could be several more months if not years before they could be able to file those applications.

As expected, the Department of State's decision to update the Visa Bulletin and the USCIS's resulting decision not to accept employment-based green card applications has led to much confusion and many questions:

- **Why did the original July 2007 Visa Bulletin show all the employment-based immigrant visa categories (except for EB-3 "Other Workers") as current?** In the original version of the July 2007 Visa Bulletin (published in mid-June), the Department of State indicated that it wanted to be sure that it could issue all of the 140,000 available green cards allotted for the immigration fiscal year (October 1, 2006 to September 30, 2007). It did not want to be in a situation where it got to the end of the immigration year (September 30, 2007) and all of the green cards authorized by Congress to be issued had not been issued. In an effort to ensure that all available green cards would be issued, the Department of State made all EB categories current for July 2007, except for EB-3 Other Workers.
- **Why did the Department of State issue an update to its July 2007 Visa Bulletin?** After publishing the Visa Bulletin in mid-June, the USCIS offices in the United States apparently began requesting immigrant visa numbers at an unprecedented rate. An immigrant visa number is to be requested from the Department of State when a green card application is approved. During the first 8 months of fiscal year 2007, approximately 68,000 immigrant visa numbers had been requested by USCIS. Yet, during the month of June, approximately 60,000 visa numbers had been requested. This surge in immigrant visa number requests apparently was not expected by the Department of State when it published the original Visa Bulletin in mid-June. There were reports and rumors that USCIS offices here in the United States were working over the weekend prior to July 2, 2007 and were requesting immigrant visa numbers for all of its pending employment-based cases on its shelves. Some people have theorized that USCIS wanted to preclude a large surge in I-485 filings in July prior to the substantial fee increase which kicks in on July 30, 2007. Whatever the reason, one is left to wonder how USCIS could request 60,000 immigrant visa numbers (meaning USCIS had 60,000 green card applications ready to approve) in one month when only 68,000 had been requested in the previous 8 months!
- **What will happen if my employment-based green card application is filed now?** According to a [USCIS update dated July 2, 2007](#), USCIS is rejecting all employment-based I-485 applications received in July 2007.
- **If USCIS won't accept my employment-based green card application now, when will USCIS accept it?** The update issued by the Department of State indicated that all employment-based immigrant visa numbers have been used for the rest of the immigration year (until September 30, 2007). A new batch of immigrant visa numbers will be available on October 1, 2007 (the start of the next immigration fiscal year). The Department of State will likely issue a Visa Bulletin for October 2007 in mid-September. This does not necessarily mean that all employment-based immigrant visa categories will be "current" in October 2007. We will have to wait and see if there are any cutoff dates in any of the EB categories.

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July 2007 Visa Bulletin Nightmare

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- **Will USCIS accept my employer's Form I-140 Petition on my behalf even if it won't accept my green card application?** Yes. A Form I-140 Petition can be filed at any time, assuming there is an approved labor certification if the EB category requires an approved labor certification before filing an I-140 Petition. [Premium processing of I-140 Petitions has been suspended by USCIS for the month of July.](#) Regular processing is still available. Since EB categories are now deemed "unavailable", USCIS will not accept concurrently-filed I-485 applications at this time (only I-140 Petitions).
- **Can I at least get a work permit even if my green card application will not be accepted by USCIS?** In order to be able to file an I-765 application for an employment authorization document, you must have a pending I-485 green card application. Therefore, if your I-485 application has not been accepted for processing, you will not be able to receive an EAD.
- **What will happen to my kids who will turn 21?** If you have children who will be turning 21 and therefore might "age out", you should consult with an attorney to discuss whether your children might benefit under the Child Status Protection Act. Depending on the specific facts of your case, your children might be able to "lock in" their age for immigration purposes at an age under 21 even if their biological age is over 21.
- **I already filed my employment-based green card application and it is still pending – what will happen to it?** If you have a pending I-485 application, it will remain pending until such time as a visa number becomes available in your preference category. When the October 2007 Visa Bulletin is issued, you should determine if a visa number is available in your case based on your priority date.
- **Where can I find the Visa Bulletin online?** Our firm's website has a link to the Visa Bulletin. It can be found at www.longchangonline.com.

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Congresswoman Demands Answers in the July 2007 Visa Debacle

July 11, 2007: Rep. Zoe Lofgren (D-San Jose, CA), a former immigration attorney and Chairwoman of the U.S. House of Representatives Subcommittee on Immigration, Citizenship, Refugees, Border Security & International Law, demanded information from the Secretary of Homeland Security (Michael Chertoff) with respect to the circumstances surrounding the issuance of the updated July 2007 Visa Bulletin and the U.S. Citizenship and Immigration Services (USCIS) decision to reject all employment-based adjustment of status applications filed under the original July 2007 Visa Bulletin.

In a [letter dated July 11, 2007](#), Rep. Lofgren demanded that Secretary Chertoff release (within 3 days of her letter) all correspondence and documentation relating to the Department of Homeland Security's and U.S. Citizenship and Immigration Services's role in the July 2007 Visa Bulletin fiasco. Rep. Lofgren's demand letter comes at a time when more questions than answers are coming to light in what is being labeled as "VisaGate". Specifically, it is becoming more and more apparent that visa numbers were being requested by USCIS officials on Sunday, July 1 and early Monday, July 2 (even though the Visa Bulletin update indicated that visa numbers were not available for the entire month of July), and that visa numbers

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were actually being returned to the Department of State as early as Thursday, July 5. Rep. Lofgren's letter even intimated that USCIS was pre-requesting visa numbers (requesting visa numbers before required security checks were completed and thus before cases actually were approvable.

For Long, Chang & Associates, LLP's recent article summarizing the July 2007 Visa Bulletin, click [here](#) or visit www.longchangonline.com.

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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.



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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.

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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