

Business Immigration Reporter

Vol. 1 - Issue 9

September 2015

ALERT Revised Adjustment of Status Procedures ALERT

When the President announced immigration executive action in November 2014, the focus was mostly on legalizing millions of undocumented immigrants and most paid little or no attention to the remainder of the announcement, which included "modernizing and streamlining our legal immigration system for the 21st century.

One of these goals is now coming to fruition with the beginning of fiscal year 2016, on October 1, 2015. Specifically, Immigration and Citizenship Services (USCIS) in collaboration with the Department of State (DOS) is revising the procedures for determining visa availability for applicants who are subject to visa quota numbers, when they can file for their adjustment of status application when becoming permanent residents. This will apply to both family and employment based immigrant applicants.

Starting with October 2015, the DOS Visa Bulletin will post two rather than one chart per visa preference category:

- **Application Final Action Dates** (dates when immigrant visas – greencards – may finally be issued); and
- **Dates for Filing Applications** (earliest dates when applicants may apply for adjustment of status)

This will allow thousands of applicants, whose priority dates are not current, apply for adjustment of status beginning October 1, 2015. An application for adjustment of status will yield employment authorization and in appropriate cases international travel authorization.

You can find the October 2015 Visa Bulletin [HERE](#) and see for yourself that some categories have advanced by years with respect to the filing of adjustment of status applications. There is no question that this



Christian G.A. Zeller, Esq.



Consultations/Inquiries

**CORPORATE OFFICE
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813-221-1366

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streamlining measure will greatly benefit and assist petitioner employers and beneficiary employees make plans for the future.

This is a very important processing change in our immigration laws. Contact your immigration attorney for guidance and opinion how this will impact your business.

USCIS Discontinues Legacy e-Filing System

In an effort to comply with its own security standards, USCIS is abandoning its legacy e-filing system and will replace it with the Electronic Immigration System. The last day for filing under the old system was August 30, 2015.

After this date you must use paper forms for the following:

- **I-131, Application for Travel Document**
- **I-140, Immigrant Petition for Alien Worker**
- **I-765, Application for Employment Authorization**
- **I-821, Application for Temporary Protected Status**
- **I-907, Application for Premium Processing Service**

You need not take any action if you have a case pending under the old system prior to August 30. The new system will be faster, more secure, and easier to use, but beware, the forms removed from the old system will not be immediately available in the new system. Stay tuned for updates.

I-9 Compliance: What Constitutes an Independent Contractor?

The Office of the Chief Administrative Hearing Officer (OCAHO) dismissed a complaint against an employer when it held "when an individual provides labor or services only to a third party, and the putative employer has no power to fire the individual, to set the individual's work schedule or working conditions, to assign work, or to supervise the individual, there simply are not sufficient indicia to establish an employment relationship between the individual and the putative employer.

Branch Offices

Immigration Help Center
Tampa, Florida
813-888-6700

[MAP](#)

Orlando, Florida
407-857-1300

[MAP](#)

Albuquerque, New Mexico
505-266-8739

[MAP](#)

El Paso, Texas
915-533-6699

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Here, a sole proprietor in New Orleans who operates a cleaning service was served with a Notice of Inspection by ICE. The business man produced no I-9's, claiming that the six individuals working at his business were at all times independent contractors, and not employees for whom he would be required to maintain Forms I-9. ICE disagreed, issued a Notice of Intent to Fine, and the business proprietor demanded a hearing before OCAHO.

In its decision, OCAHO went through the effort to define the standard of review and it reiterated, as it has in other cases previously, what factors must be considered when determining whether someone is an independent contractor:

"In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the factors relevant to this inquiry are the skill required; the source of instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the firing party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party."

USCIS Launches myE-Verify® in Spanish and Case Tracker and Case History

The new Spanish language myE-Verify® is, as its English counterpart, equipped with the following services:

- **myE-Verify accounts** – Employees and job seekers in the U.S. can set up free and secure personal accounts to manage the use of their information in E-Verify and Self Check.
- **Self Lock** – myE-Verify account holders can lock their Social Security numbers in E-Verify to prevent others from using their identities in E-Verify.
- **Self Check** – Individuals can confirm their own employment eligibility by checking databases that E-Verify queries.
- **Resource Center** – This section of the myE-Verify site contains information in multimedia formats to educate employees about the

rights and the responsibilities of employers in the eligibility verification process.

The new services are:

- **Case History – myE-Verify account holders can generate a report to see when their data was used in E-Verify.**
- **Case Tracker – Individuals can track the status of their E-Verify cas using the case verification number. While Case History does require users to create an account, Case Tracker does not.**

To learn more about myE-Verify® go [HERE](#).

You can find past editions of the Business Immigration Reporter [HERE](#)

MANEY | GORDON

101 E. Kennedy Blvd., Suite 3170
Tampa, Florida 33602

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