

America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

THE LAW OFFICES OF WOLF W. KAUFMANN
11801 PIERCE STREET, SUITE 200
RIVERSIDE, CA 92505

(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

Seven years wait for most common Green Card?

The October visa bulletin brought long anticipated but nevertheless shocking news to the immigration community: applications for the most common “Green Card”, the EB-3 immigrant visa, have been piling up so much that there now is a backlog with a priority date in 2002 or 2001. In other words: It looks as if anyone applying for such a visa today would have to wait until 2016 or 2017 to receive it.

However, let me state one fact first: the priority date that today seems to indicate a seven year waiting period might change very soon. It can move faster, slower or remain unchanged in the next months. That means, depending on how many green cards actually are issued, the “waiting time” might suddenly be only 6 years, 5 years, or even 10 years. Nobody knows in advance how the priority date will move. Therefore all the following assumptions of a seven year waiting period might turn out to be just theoretical.

For this article, however, let us presume there really is such a long waiting period. What should you do?

The EB-3 green card is available for anyone whose prospective employer’s application successfully survived the Labor Certification process and who can show professional knowledge, is a skilled worker, or, with limits, qualifies as an “other worker.” In practice, this is the Green Card available for nurses, mechanics, pilots and almost everyone else who does not have a master’s degree or is otherwise an extraordinary person in the sense of immigration law.

This is a completely new situation for all involved in the process: employers, employees and their attorneys. It remains to be seen how employers will cope with the fact that they have to apply today for a Labor Certification and recruit for a job position which they will only be able to fill in seven years.

Applicants who still live outside the United States should attempt to qualify for another visa, either a non-

immigrant visa or for a green card of the first two categories. The most important factor in this quest will be a reevaluation of their educational and professional background. It requires close cooperation with the potential employer and an immigration attorney.

Another problem is faced by all those who already live within the United States upon a different visa and who hoped to “upgrade” their visa to a green card. While these persons might well be qualified for the green card, they also are subject to the wait. And if during this waiting period their current status expires and cannot be renewed, they will have to leave the country. Even more urgent is the situation of children of those visa holders: because once they reach the age of 21, they might “age out” as derivative beneficiaries and might never be able to qualify for the green card. In some cases the “Child Status Protection Act” helps these children to remain qualified, but not in all.

Therefore, if you intend to apply for an EB-3 Green Card, now is the time to begin careful planning of your future.

Which jobs will open the door to the United States?

This week the media brought an interesting article. It mentioned that despite an unemployment rate of 9% there still are many specialized positions unfilled. It seems that employers still have hard time filling positions for nurses, accountants, electrical engineers, software specialists, specialized health care workers such as MRI technicians, and many scientist positions.

While this is good news for some foreigners, others will find the peculiar situation that even though an employer would be willing to “sponsor” the foreigner for a green card, such a visa is not available (please read the article above). Employees with advanced degrees such as a Master’s degree, however, can receive immigrant visa and also the popular non-immigrant visa H1-b for many positions on the market. Employees without such an advanced degree but with an employer looking to fill a position they are otherwise qualified for should try to

America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

THE LAW OFFICES OF WOLF W. KAUFMANN
11801 PIERCE STREET, SUITE 200
RIVERSIDE, CA 92505

(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

reevaluate their educational and employment histories to see if they might qualify for an available visa.

One little checkmark destroys all hope

This week I had two clients whom I had to give shattering news: "There is no way you can obtain legal status in the United States." The clients were devastated, they had come into my office with great hopes, and an armful of paperwork, ready to finally embark on the way to legal residency.

Let us backpaddle a bit. What happened here? Both clients actually had been living in the country for a while because they were brought here by their parents when they were young children. The parents never had a legal status, so the children did not either. However, both clients eventually married an American citizen and finally hoped that they could now settle down, become legal, and build their life in our great nation. The news that there was no chance of making that dream come true must have been crushing.

They were so hopeful, and they were right, normally marriage to an American citizen is the best and fastest and easiest way to obtain legal permanent residency in America. Many reasons why other applicants will not be able to immigrate are forgiven when it comes to spouses of citizens. Waivers can be had for many bars to immigration. However, there is one "ground of inadmissibility" that the law will never forgive: a claim by a foreigner to be a United States Citizen.

Even criminal convictions can be forgiven, and applicants with a criminal past will be admitted as new permanent residents, but if you even only once claimed to be a citizen to any official or for any gain under the immigration laws, you will be kept out of the country forever.

In some cases this law surely makes sense. A foreigner who would claim citizenship and attempt to vote, for example, would skew the electoral process. It would not

be fair to the citizens if anyone could walk in and vote and thereby determine the political future of the nation. The law punishes this kind of voter fraud severely. But my clients had never done that.

What they had done was to illegally work in the United States. That in itself surely is a violation of our laws and might rightfully be sanctioned. But they did not get punished for working here. Actually, as a spouse of an American citizen, they would have been forgiven their illegal work. The problem was that they made a tiny checkmark on an official form that would come back to haunt them.

Every employer is mandated by law to verify any employee's authorization to work. Employers use an USCIS form called I-9. On this form, the employee has to state if she is a US citizen, a US national or a legal permanent or work authorized resident in the United States. My clients marked the little box next to "U.S. citizen." That doomed them.

Jurists actually argue if making this little checkmark on the I-9 form is what the law considers "a false claim to citizenship to gain a benefit under the laws" but the tendency is that the Courts hold, that it is.

The consequences are drastic: any alien who ever even once made such a claim will be held inadmissible forever, and there is no waiver available. In other words: she will never legally be permitted to live in the United States. Ever.

Hardly anyone who is presented with an I-9 form by their employer thinks or knows about these consequences.

In dramatic testimony before Congress lately one citizen demonstrated what this meant for her life: she is a soldier who served our country in combat abroad. She married an alien who in the past had marked this little box and forgotten about it soon after. They had a child together. But when they tried to legalize the husband's status, the government found out and barred him from ever entering the country. The family is shattered. The child is handicapped and needs medical assistance not easily available in Mexico. The citizen wife now faces

America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

THE LAW OFFICES OF WOLF W. KAUFMANN
11801 PIERCE STREET, SUITE 200
RIVERSIDE, CA 92505

(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

the dilemma: give up everything she has here, her profession, health care, her roots, and move to Mexico or leave her husband there alone.

Everyone should be warned: making a false claim to citizenship on an I-9 form will drastically end all your immigration dreams.

Will you be there forever?

In April I was involved in a car accident on our notoriously dangerous freeways. It was a frightening experience, even though I escaped unhurt from the wreck. The airbags, safety belts and other bells and whistles had done their job and protected me, even though my car was totaled.

A few weeks later, a good friend of mine called suddenly and asked if she could come over. She just had been in a similar wreck and was still shaking, needing someone to hold on to. Both of us are parents of small children.

To top it, in the same week in my neighborhood there was a devastating accident, where a family of 5 were involved in the wreck: both parents died, the three children survived.

All this made me think: "what if?" What if I had not survived? Would my wife know how to handle this situation? Would she be able to arrange "things" so that the family life could go on? And "what if" both of us would die in an accident? Who would take care of the children? Who would be able to do so? Who would be allowed to do so?

As we are both immigrants, our families live in Europe. Would they be able to come and "take over?" How about our friends here, in and out of state?

As you can imagine, such a situation confronts you suddenly with a lot of legal questions. Can a foreign relative simply come to the United States and take care of the child? Can your friends? How do you deal with your property, how do you make sure, your family will be supported in this time of trial? And to top it all, you don't even need to die to be in such a difficult situation: "what if" you survived the accident, but are incapacitated, are in a coma, are in hospital unable to make decisions?

To my amazement I noticed that virtually none of my friends and acquaintances ever had thought about this and not one was prepared. So I set out to change this.

No matter if you are an immigrant or not, be prepared: You should have legal documents giving your spouse and loved ones the power to make decisions for you when you cannot. You should provide for the day when you will no longer be here and state who you want to take care of your children. You should make arrangements that secure your family's income and assets. Talk with us about a package of documents that will cover these emergencies.

Think of it as another safety feature, just like your airbags.

Find out more on our website:

http://www.wolfklaw.com/html/planning_for_emergencies.html

The Law Offices of Wolf W. Kaufmann provide personal counseling and representation in immigration law matters.

As a member of AILA Wolf W. Kaufmann networks with the most experienced immigration attorneys in the nation.

We appreciate your business and the best compliment you can make is to refer us to your friends and acquaintances. We can serve clients all over the world.

www.wolfklaw.com