

## A Hot and Hotter Summer for Immigration

By Robert S. Whitehill

This has been the immigration summer not from the beach, but from a much hotter place.

In June, we celebrated that employment-based immigration visas in first, second, and third preference categories were current and that permanent residence was finally within reach for people who had been waiting patiently, or not so patiently, for years for this. There was a Green Card rush, a flurry of activity to have the documents prepared and filed as early as possible in July and before the filing fees doubled on July 30.

Then July came, and on the second of the month, the Department of State withdrew the *Visa Bulletin* that had caused the celebration and announced that *no* visas would be available in July and probably none would be available until October. Happiness turned to heartbreak and anger.

That lasted until July 17, when the State and Homeland Security departments reversed themselves (that's about as close as the government comes to an apology), reinstating the July *Visa Bulletin* for the balance of July and until August 17. So many of our clients were back to sprinting to file their applications for permanent residency (I-485s).

In the meantime, Congress failed to pass Comprehensive Immigration Reform. Several states (Arizona, Colorado, and Tennessee, for example) have passed strict employment authorization compliance laws. Many municipalities had passed anti-immigrant ordinances, and Hazleton, Pennsylvania's ordinance was struck down, failing to pass the U.S. District Court's constitutional muster. That legal battle is just beginning.

The I-485 sprint is now over. It has been reported that the number of applications filed with USCIS in July is about six times the approximate 50,000 during an average month. (*New York Times*, Aug. 18, 2007)

Recently, I learned something new about the battle that is being fought over immigration reform. I was on a radio talk show with KDKA's Kevin Miller. I heard a lot of anger, some ugly, about immigration. The host and the callers, almost uniformly, want to round up the "illegals" and deport them as soon as possible. They view everyone who has an immigration infraction as "illegal." All illegals are perceived as being on welfare or are gang members or criminals, all of them are rotten, all 20 million (an exaggerated figure they use) are ruining the country for "us." According to my radio call-ins, "us" are native born citizens; we have rights and illegals have none; we pay taxes and they don't. We were going to take the law into our own hands, if the government won't enforce the law... The banter got even worse than that.

The immigration debate rages this long hot season, with no end in sight even as the summer cools into autumn.



Pittsburgh lawyer Robert S. Whitehill chairs the *Immigration Practice* at Fox Rothschild, a law firm with offices in seven states. If you have any questions about the information contained in *Legally Speaking*, or any legal matter, please contact him at 412.394.5595 or [rwhitehill@foxrothschild.com](mailto:rwhitehill@foxrothschild.com).

## Expedited Adjudication in Emergent Circumstances

By Polina A. Zuccolotto

The biggest frustrations individuals currently face when dealing with the U.S. immigration system are long waits, case backlogs, and other delays. The heightened security concerns since 9/11 have led to additional required background checks for immigration applicants. These backlogs and

additional checks result in long wait times for applicants.

Although in most cases patience is always required and long wait times are frequently inevitable, there are several ways to ensure that the applicant's case is expedited in emergent situations.

**Contact USCIS Service Center** - Generally, United States Citizenship and Immigration Services (USCIS) will grant requests to expedite cases only under very limited circumstances. When the immigration benefit is urgently needed in a time frame that is less than the normal processing time, the USCIS Service Center will consider requests for expeditious handling.

Requests for expedited adjudication should not be used in routine situations. The criteria for expediting applications include extreme emergencies, such as life and death crises, USCIS error, severe financial loss to company or individual, and other humanitarian situations. Under most other circumstances, requests to expedite will not be considered and may even delay processing.

**Contact Local Immigration Office** - Another way to expedite adjudication of your case is to contact your local immigration office. For example, the local office will expedite processing an I-131 application for a travel document under emergency conditions, such as death in the applicant's immediate family. Even if an I-131 application was previously filed with the Service Center, the I-131 form may be submitted in person, with fee and supporting documents, for adjudication at the local immigration office. The local office will evaluate each request and decide whether the individual circumstances merit expedited handling. If the decision is favorable, the travel document may be issued within one or two business days.

Unlike a travel document, an employment authorization document (EAD) may not be expedited by contacting a local immigration office. However, if contacted, the local office will submit an inquiry to the Service Center, which may expedite adjudication of the EAD.

**Contact Congressional Office** - If you filed for naturalization or a green card, and your application has been pending for more than the estimated processing time; if you tried calling the USCIS, but cannot get through; or if your case is stuck in background checks, contact your local congressional office for assistance. While these offices cannot force

an agency to act in your favor, they can intervene to facilitate the processes and encourage an agency to give your case consideration. Nonetheless, do not contact more than one office. This may cause confusion in keeping track of inquiries submitted to immigration and responses provided to more than one office.

It is important to remember that expedited processing is done at the discretion of the reviewing USCIS officer, based upon the evidence provided by the applicant. There can be no guarantees regardless of the circumstances presented. Therefore, the nature of the emergency, and preparation and presentation of the evidence are the keys to have the application expedited. Fox Rothschild's lawyers will make sure that information and supporting documentation provided to USCIS meet the specific requirements.

As members of the American Immigration Lawyers Association (AILA), Fox Rothschild has access to liaisons who work directly with USCIS service centers. Our firm also works with congressional representatives to expedite client applications when necessary. As the last resort, we will file a Mandamus action in the federal court. The purpose of a Mandamus action is to compel immigration to take an action in the case. This, in many instances, has proven to be successful in expediting adjudication of the cases on behalf of our clients.



*Polina A. Zuccolotto is an associate in the Pittsburgh office of Fox Rothschild, focusing her practice on immigration issues. Contact her at 412.391.6423 or at [pzuccolotto@foxrothschild.com](mailto:pzuccolotto@foxrothschild.com).*

---

## The Changing Face of the Religious Worker Visa Program

By Cynthia J. Yializis

By the end of 2007, the U.S. Citizenship and Immigration Services (USCIS) is expected to finalize new regulations that will significantly change the face of the Religious Worker Visa Program (RWVP). The stated purpose of the proposal is to protect the integrity of the RWVP by eliminating opportunities for fraud. In 2005, a review of 220 pending and completed petitions filed over a six-month period

revealed a fraud rate of almost 33 percent. Forty-four percent of fraudulent cases revealed petitions filed by nonexistent organizations, while 54 percent revealed material misrepresentations in the submitted documentation.

The proposed regulations aim to eradicate this pattern of vulnerability within the RWVP by limiting the scope of qualifications for religious organizations and by increasing USCIS’ authority to monitor compliance. Some of the more significant proposed changes that religious organizations should be aware of include the following:

- All petitioning organizations will be required to hold tax exempt status as a religious organization under §503(c)(3) of the Internal Revenue Code. Consequently, all organizations petitioning for a religious worker visa will be required to submit a current, valid determination letter from the IRS.
- Religious organizations will have to file an I-129 petition in the U.S. for all nonimmigrant and immigrant religious workers. This requirement will impose an additional burden on nonimmigrant religious workers seeking to enter the U.S., who under current regulations need only apply for a visa at a U.S. consulate or port of entry. It will also create an additional financial hardship for petitioning religious organizations, particularly in light of the increased filing fees USCIS implemented on July 30, 2007.
- A ban will be imposed on self-petitioners seeking the special classification as immigrant ministers and religious workers. Only nonprofit religious organizations will be permitted to petition for these individuals. Non-religious organizations that regularly employ immigrant ministers, such

as hospitals and prisons, will be prohibited from petitioning.

- USCIS will have the authority to conduct on-site inspections of organizations seeking to employ nonimmigrant or special immigrant religious workers, in order to ensure that lawful status is maintained. This new rule does not propose a set criteria for initiating inspections, nor does it have a defined limit on how expansive said inspections may be.
- Nonimmigrant religious workers will be granted an initial period of stay of only one year, with two potential extensions of two years each. Each extension request will require a new petition and new evidence in the form of tax returns and wage transmittal statements *in addition* to the religious worker’s tax returns for any period spent in the U.S. prior to his or her status as a religious worker.

The goal of eradicating fraud in the RWVP is certainly admirable if the alternative is eradicating the program altogether – surely a feasible outcome in light of the country’s ever-growing trepidation over national security. However, there is no question that legitimate religious organizations in the U.S. are going to be penalized with more fees and onerous evidentiary requirements.



*Cynthia J. Yializis is an associate in the Pittsburgh office of Fox Rothschild, focusing her practice on immigration issues. Contact her at 412.394.5349 or at [cyializis@foxrothschild.com](mailto:cyializis@foxrothschild.com).*

### Immigration Practice Group

*Robert S. Whitehill, Esq. ....	412.394.5595 .....	rwhitehill@foxrothschild.com
Alka Bahal, Esq. ....	973.994.7800 .....	abahal@foxrothschild.com
A. Robert Degen, Esq. ....	215.299.2085 .....	adegen@foxrothschild.com
Deanna L. Forbush, Esq. ....	702.262.6899 .....	dforbush@foxrothschild.com
Min S. Suh, Esq. ....	215.299.2801 .....	msuh@foxrothschild.com
Beatrice S. Williams, Esq. ....	973.994.7803 .....	bswilliams@foxrothschild.com
Cynthia J. Yializis, Esq. ....	412.394.5349 .....	cyializis@foxrothschild.com
Polina A. Zuccolotto, Esq. ....	412.391.6423 .....	pzuccolotto@foxrothschild.com

\* Chair

IF YOU WOULD LIKE TO RECEIVE THIS NEWSLETTER ELECTRONICALLY, PLEASE EMAIL [MARKETING@FOXROTHSCHILD.COM](mailto:MARKETING@FOXROTHSCHILD.COM).