

# Suit Planned Over Visas for the Highly Skilled

**THE NEW YORK TIMES**

July 6, 2007

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A national association of immigration lawyers said yesterday that it would bring a class-action lawsuit against the federal immigration agency for refusing to accept thousands of applications for work-based permanent visas from highly skilled immigrants who were encouraged by the government to apply.

According to accounts yesterday by officials and lawyers, the immigrants were caught in a confrontation between the two federal bodies that control the immigration system, the State Department and the Citizenship and Immigration Services.

The hopes of thousands of foreigners who have been working legally in the United States were unexpectedly raised and then abruptly dashed as a result of the disagreement. They had responded last month to an announcement that permanent residency visas would be available, but on Monday learned there were none.

The immigration lawyers said the about-face by the immigration system had no precedent in at least three decades of legal practice, and said that it violated the immigration agency's regulations. The American Immigration Lawyers Association's legal action arm was preparing the lawsuit, said Crystal Williams, deputy director.

Federal officials said a misunderstanding had arisen from an effort by both agencies to reduce huge backlogs of applications for permanent residence visas, known as green cards. Immigration officials acknowledged that the effort was poorly handled.

"Was there a lack of communication between us and the State Department?" said William G. Wright, a spokesman for the immigration agency. "Certainly."

The episode started on June 12, when the State Department announced in a monthly bulletin that green cards would be available starting July 2 for applicants across the range of high-skilled categories. That was a signal to immigrants who have been working in this country on temporary visas that they would be able to apply to become permanent residents.

Thousands of immigrants rushed to obtain certified documents, assemble employer sponsorship papers, take medical examinations and dispatch their applications. Many canceled travel plans so they could be in the United States when their applications arrived on July 2, as the law required.

But on Monday, the State Department announced that no more green cards were available. Snared in the turnabout were well-educated, highly skilled, legal immigrants, many of them doctors and medical technicians, with long work experience in this country. All had obtained federal certification that no American workers were available for the jobs they hold. The episode laid bare conflicting interests between the State Department, which manages the offering of visas, and the Citizenship and Immigration Services, a branch of the Department of Homeland Security that processes the visa applications.

By law, only about 140,000 employment-based visas are available annually, so there are huge backlogs of applications.

State Department officials said their June alert that visas were available was intended to prompt the immigration agency to speed its processing so that no visas would go unused. Since 2000, a total of 182,694 work-based visas have not been given out because the immigration agency had fallen behind in processing applications, according to the 2007 report of the immigration agency's ombudsman.

"We were determined that every employment number that was available would be used," June Kunsman, the acting deputy assistant secretary of state for visa services, said yesterday.

Immigration agency officials said they were surprised by the department's action. They said they immediately advised the department that they had already finished approving enough applications to use 60,000 visas of those offered. Department officials did not revise their public notice offering visas.

"We said we already have more than enough applications and we expect to complete them in time to use the visa numbers," said Mike Aytes, director of domestic policy operations at the immigration agency.

To complete the applications in time, the immigration agency put employees to work both days last weekend at service centers in Texas and Nebraska, immigration officials said. They said that 25,000 applications were processed in the final 48 hours before Monday's deadline.

In some cases, security clearances required by the F.B.I. were not entirely completed, immigration officials said. The agency approved some applications "when we were certain the process will be completed very shortly," Mr. Aytes said.

In its bulletin on Monday, the State Department said that "unexpected action" by the immigration agency had used up all the visas for the 2007 fiscal year.

The news was crushing to Murtuza Bahrainwala, a 38-year-old occupational medicine doctor from India who works at Decatur Memorial Hospital in Illinois. After nearly 12 years working as a physician on temporary visas, Dr. Bahrainwala believed in June that

his chance for a green card had finally come. “Apply for citizenship, that’s absolutely what we want to do,” he said. Once he has a green card, his wife would also be authorized to work, and he could accept promotions and change jobs, which he cannot do with a temporary visa.

But because the application he delivered on Monday was not accepted, Dr. Bahrainwala may have to wait four or five years to apply again.

“Right from complete ecstasy, you go down to the depths of depression,” Dr. Bahrainwala said. “I have never been illegal a single day in this country.”

“Maybe I should have just crossed the Rio Grande,” he added.

Immigration lawyers said that the situation punished immigrants who were identified as highly desirable by the system and who have always gone by the book.

“They’ve played by the rules for years,” said Daryl Buffenstein, co-chairman of the global immigration practice at Paul Hastings, a law firm. “Now the government is not playing by the rules.”