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## GREEN AGONY

by Attorney Sheela Murthy

The US govt's flip-flop frustrates thousands of Indians who have filed for permanent residence, says Sheela Murthy.

Thousands of Indian nationals are feeling frustrated, disappointed and cheated because they will not be able to file the last stage of their papers for the US green card during July 2007. This was caused by the US government's flip-flop in no longer accepting filings from those wishing to file their I-485 papers for the last stage of the green card.

The problem really started with what many immigrants considered a stroke of luck for them. The US Department of State (DOS) issued the July 2007 visa bulletin in mid-June 2007 showing that most employment based applicants for the green card would be eligible to file their I-485s during July 2007. This unexpected development in the forward movement of immigrant visa numbers by the DOS created a big stir among the immigrant community, who finally saw this as the golden opportunity to file for the last stage of their papers. Mysteriously, violating their own long standing policy and procedure in issuing only monthly visa bulletins, the DOS issued a "revised" visa bulletin on July 2, 2007, the very first day that cases could be filed with the USCIS under the July 2007 visa bulletin. Based on the "revised" bulletin, the US Citizenship and Immigration Services (USCIS) stated that they will reject every I-485 filing effective immediately. This was a rude shock and a reversal of the DOS position in issuing visa bulletins only once each month for many decades.

The government's rationale in changing its position is based on the following argument; The US cannot allow more than 140,000 employment based applicants in each fiscal year. The USCIS fiscal year starts on October 1 of each year. The DOS calculated that apparently 60,000 immigrant visa numbers were available and not used until June 2007. The USCIS seems to have completed processing 60,000 applicants within one month when they normally cannot process even 10,000 cases each month. Accordingly, the DOS cannot allow any new immigrant visas to be issued if the annual quota was exhausted miraculously within a month. There are questions of how the visa numbers could have been exhausted at such an alarming speed.

By way of background on the immigrations process and the implication of the change in the government's position, it will help to understand the significance of this last stage of filing. Filing the Form I-485 is the last stage in the long and arduous journey towards obtaining the US green card. This stage is also referred to as the 'adjustment of status' where the person is eligible to adjust status from a nonimmigrant to that of an immigrant, from within the US. So their terms I-485 and adjustment of status are often used interchangeably in the parlance of US immigration lawyers. After a person has filed the I-485, the USCIS will issue an employment card for the principal person and all eligible family members. This provides a great deal of freedom for the person to work in other jobs legally and for the spouse and older children to take up any employment. It also allows the principal person to be able to change jobs or employers if the I-485 is filed and pending for over 180 days, so there are substantive legal rights that are afforded in filing the I-485. One of the frustrating issues for H1Bs is that the spouse on H4 cannot work in the US except in a possible pure volunteer type of organization like the Red Cross or the Salvation Army. So from a

crescendo of expectations, people saw their hopes being dashed, literally overnight, on the morning of Monday, July 2.

It is reasonable for people to depend on their government not to play fast and loose based on past precedent for decades. Believing in late June that they would finally file their I-485s, many people changed their travel plans, scheduled appointments with the civil surgeon to undertake medical tests to be eligible to file the I-485, hired law firms to file the I-485 papers and most of them spent substantial time, effort and money to file the I-485 papers.

Immigration experts believe that the government slamming the door on thousand of applicants deprives them of the life, liberty or property without due process of law. Hence there is the talk of a potential class action lawsuit against the US government for accountability and to require consistency and transparency in their dealings with the general taxpaying public. It's still not clear how this saga will conclude but it just seems unfair, in a democracy and in a country that prides itself on its openness for the government to play fast and loose with people's lives and aspirations. And it's just the tip of the iceberg.

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