

October 4, 2015

The Honorable John Kerry
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

The Honorable Jeh Johnson
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, D.C. 20528

Ms. Cecilia Muñoz
Assistant to the President and Director of the Domestic Policy Council
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Re: The October 2015 Visa Bulletin and Immediate Eligibility for Submission of Adjustment of Status Applications

Dear Secretary Kerry, Secretary Johnson, and Director Muñoz,

We write to express our extraordinary concern and deepest objections to the Department of State's revision to the October 2015 visa bulletin, published on September 25, 2015.

As you are by now well aware, the Department of State's eleventh hour revision to the October 2015 visa bulletin, and the Department of Homeland Security's corresponding refusal to accept adjustment of status applications based on the originally published October visa bulletin, has generated tremendous chaos, uncertainty and disappointment. Literally tens of thousands of high skilled foreign professionals with already-approved immigrant petitions and their immediate family members placed their hope and trust in the promises of the original October visa bulletin, published on September 9, 2015, regarding their eligibility to file their applications from October 1, 2015 to October 31, 2015.

For the overwhelming majority of these applicants, this was the first real sign of progress in an employment-based green card journey marred by untenable backlogs, many extending well beyond a decade. It was also a tangible step toward the fulfillment of President Obama's promise to materially improve the employment-based immigrant visa system. And for each of the hopeful applicants, the original October 2015 visa bulletin was an opportunity to finally have access to greater job mobility—including self-employment through entrepreneurship, job changes with the same employer, as well as departures to opportunities with new employers. Additionally, for these employees, adjustment of status would have meant easier return travel to the U.S. after visiting family abroad and greater certainty in the ultimate outcome of their journey to permanent residence.

All of this would have been accomplished without any acceleration of the final conferral of permanent residence for any of these applicants. The original October 2015 visa bulletin simply allowed these individuals to submit their final paperwork into the queue—a smarter approach to the intake of adjustment of status applications and the administration of immigrant visa numbers.

The rescission of the promise of “adjustment” and the concrete interim benefits associated with these applications a mere three days before the filing period commenced—and well after preparations already triggered legal fees and costs—was both heartbreaking for these immigrants and deeply troubling for all who observed the process.

The October 2015 visa bulletin also reports a corresponding 41-month retrogression for EB-2 India and a 23-month retrogression for EB-2 China, as compared to the August 2015 visa bulletin. At the outset of the federal government's fiscal year, when all 140,000 employment-based immigrant visas are available, it is puzzling to see the contraction of immigrant visa availability and further deepening of the green card backlog. This situation and its aftereffects ultimately contribute to the ever-growing impairment of our country's ability to attract and retain the best talent in the world. These issues and instability are emblematic and further evidence of the need for a broad overhaul of our broken immigration system.

The present situation is particularly disheartening because we have seen this happen before. In June 2007, under a strikingly similar set of events, the Department of State announced broader eligibility for adjustment of status application filings in the July 2007 visa bulletin under its regularly scheduled process, only to retract and revise that visa bulletin without warning on July 2, 2007. In the ensuing uproar over the impact to countless immigrants who had detrimentally relied on the originally published visa bulletin, the Department of State and the Department of Homeland Security rescinded the revision and honored the originally published visa bulletin.

We are disappointed to see a lack of interagency coordination again place thousands at risk of financial loss and impairment. As in 2007, the government should recognize that the public relied on the original Visa Bulletin and should honor those criteria for the month of October. That approach was deemed legally supportable in 2007, and is necessary to restore fairness and confidence in the predictability and credibility of the immigrant visa allocation process.

We urge you to reinstate the opportunity originally promised to this group of high skilled immigrants and whose contributions and personal investments benefit our country, and our economy, on a daily basis.

We also urge the agencies to be more transparent in how they calculate backlogs, demand and availability of immigrant visas. It is unclear at this time whether the recent structural changes to the visa bulletin process will achieve the administration's goals of maximizing green card number utilization and allowing additional immigrants to file adjustment of status applications. The current lack of transparency on the immigrant visa allocation process is a critical impediment to the integrity of the system.

Sincerely,

Microsoft Corporation
Texas Instruments Inc.
Hewlett-Packard Company
Intel Corporation
Halliburton Company
Schweitzer Engineering Laboratories, Inc.
EMC Corporation
Cisco Systems, Inc.
Oracle Corporation
Google Inc.
Caterpillar Inc.
Cummins Inc.
Ingersoll Rand Company
Fidelity Investments

Compete America
FWD.us
U.S. Chamber of Commerce
Information Technology Industry Council
National Foreign Trade Council
TechNet
Consumer Electronics Association
American Immigration Lawyers Association
Semiconductor Industry Association
Immigration Voice
Semiconductor Equipment and Materials International
CompTIA
Council for Global Immigration
The Latino Coalition
Software & Information Industry Association
Alliance of Business Immigration Lawyers
Fragomen, Del Rey, Bernsen & Loewy, LLP
Berry, Appleman and Leiden LLP
Greenberg Traurig, LLP
Foster Global
The Partnership for a New American Economy

Cc: Alejandro Mayorkas, Deputy Secretary, Department of Homeland Security
Stevan E. Bunnell, General Counsel of the U.S. Department of Homeland Security
Esther Olavarria, Senior Counselor to the Secretary, Department of Homeland Security
David Shahoulian, Deputy General Counsel, Department of Homeland Security
León Rodríguez, Director, U.S. Citizenship and Immigration Services
Ur Mendoza Jaddou, Chief Counsel, U.S. Citizenship and Immigration Services
Felicia Escobar, Special Assistant to the President for Immigration Policy