

Hon. Judge Ricardo S Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHINTAN MEHTA, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE, et al.,

Defendants.

Case No. 2:15-cv-1543-RSM

Declaration of Charles W. Oppenheim

I, Charles W. Oppenheim, make the following declaration in lieu of an affidavit, as permitted by Section 1746 of Title 28 of the United States Code. I am aware that this declaration will be filed with the United States District Court for the Western District of Washington and that it is the legal equivalent of a statement under oath.

Case No. 2:15-cv-1543-RSM

United States Department of Justice, Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Tel: 202-532-4700

- 1 1. I am employed by the U.S. Department of State as the Chief of the Immigrant Visa
2 Control and Reporting Division of the Visa Office, Bureau of Consular Affairs. In that
3 capacity, I am responsible for the administration of the complex series of annual
4 numerical limitations on immigrants which are set by the Immigration and Nationality
5 Act, and the publication of the monthly Visa Bulletin.
- 6
7 2. As part of the President's efforts to modernize the immigrant visa (IV) system, the
8 Department of Homeland Security (DHS) requested that the Department of State (State)
9 include in its monthly Visa Bulletin State's "qualifying dates," which are the previously
10 unpublished dates which the Visa Office of the Department of State uses to determine
11 when to send the Instruction Package to an IV applicant. The Instruction Package tells the
12 applicant what documents need to be prepared for the IV application. State establishes
13 qualifying dates based on estimates of where the cut-off dates are likely to be in the next
14 8 to 12 months. These estimates allow State to efficiently process IV cases worldwide to
15 ensure maximum usage of visa numbers, which by statute are numerically limited.
- 16
17 3. DHS explained to State that publishing these dates would allow DHS to use these dates at
18 least some months to accept applications for adjustment of status. This change would
19 also assist State by providing better control and consistency in determination of the
20 monthly cut-off dates for IVs by providing much needed visibility of applicant demand
21 so that we may maximize visa number use under the various annual limits. Use of this
22 process at Consular posts overseas has minimized volatility in the movement of the
23 Family-sponsored cut-off dates.
- 24
25 4. On September 9, 2015, State published the Visa Bulletin for October 2015 and included
26 both the "Application Final Action Dates" and the "Dates for Filing Visa Applications."

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1 The Application Final Action Dates were called cut-off dates in prior Visa Bulletins. The
2 Application Final Action Dates indicate which priority dates are current for the purpose
3 of issuing immigrant visas and approving applications for adjustment of status filed with
4 USCIS in a particular month consistent with the cut-off dates in prior Visa Bulletins.
5 Dates for Filing Visa Applications that were published in the September 9, 2015 Visa
6 Bulletin were the qualifying dates State had developed for internal purposes, consistent
7 with past practice.

8
9 5. Qualifying dates are established in relation to cut-off dates, which are calculated based on
10 the best information available at the time from both State Department and DHS sources.
11 Infrequently, the information underlying the estimates of cut-off dates turns out to be
12 incorrect; for example, the dates could be incorrect because many more individuals than
13 expected had applied in a given visa category, which means that the cut-off dates must
14 retrogress (move back) because demand was higher than originally estimated.
15 Historically, when State has retrogressed cut-off dates due to the availability of visas, as a
16 matter of policy, it has not retrogressed the corresponding qualifying dates.

17
18 6. State has not previously retrogressed qualifying dates, as there was no purpose served in
19 doing so, even when the cut-off dates failed to advance at the anticipated pace or they
20 retrogressed because of higher-than-expected demand. As overseas IV applicants already
21 had been advised to prepare their documents, there was little disadvantage to their being
22 prepared early, and the date provided no benefits and had no other implications since, as
23 far as I am aware, neither DHS nor any other agency utilized State's qualifying dates.

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1 7. Accordingly, the Dates for Filing Applications in the September 9, 2015 October 2015
2 Visa Bulletin, including the India and China Employment-Based Second preference (EB-
3 2) dates, were qualifying dates that were established -based upon cut-off dates that have
4 since retrogressed, but the corresponding qualifying dates had not been retrogressed, per
5 State's policy.

6
7 8. Following the publication of the October 2015 Visa Bulletin on September 9, 2015, DHS
8 requested State republish the Bulletin for October with all Dates for Filing Visa
9 Applications retrogressed to where State anticipates the Final Action Date likely to be in
10 8 to 12 months. Due to the lack of retrogression of qualifying dates, DHS had
11 determined that the dates in the Dates for Filing Visa Application charts for some
12 preference categories did not accurately reflect visa availability for DHS's purposes of
13 accepting adjustment applications consistent with section 245 of the Immigration and
14 Nationality Act (INA), 8 U.S.C. 1255.

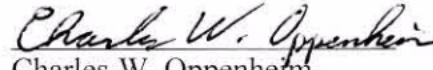
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16 9. After consultations with DHS, State published a revised Visa Bulletin for October 2015
17 on September 25, 2015 in which I retrogressed certain dates in the Dates for Filing Visa
18 Applications chart. The Dates for Filing Visa Application in the revised Bulletin are
19 where I estimated the Final Action Dates to likely be for each category in the next 8 to 12
20 months. This resulted in 6 of the categories of the Dates for Filing Visa Applications
21 being changed from the September 9 version of the Bulletin, namely Mexico Family-
22 Sponsored First Preference, Mexico Family-Sponsored Third Preference, China EB-2,
23 India EB-2, Philippines EB-3, and Philippines Other Workers.

24
25 I declare under the penalty of perjury that the foregoing is true and correct to the best of my
26 knowledge.

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1 Washington, D.C.
2 October 2, 2015
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5 Charles W. Oppenheim
6 Chief, Immigrant Visa Control and
7 Reporting Division,
8 Visa Office,
9 Bureau of Consular Affairs
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