

## Federal Court Judge Quashes Challenge to Revised Visa Bulletin Dates

Article By:

Sean G. Hanagan

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A U.S. District Court in Seattle has ruled that the U.S. Department of State's Visa Bulletin which governs how immigrant visas subject to numerical limitations are allocated, and indicates when intending immigrants may apply for the last stage of the permanent visa process is not a final agency action or decision and, therefore, cannot be challenged in court. While it is estimated that 20,000 or more individuals relied upon the published dates to initiate filings prior to the roll-back, Chief Judge Ricardo S. Martinez determined that the court lacked jurisdiction because the bulletin does not constitute a final action under the Administrative Procedure Act (APA), but instead merely sets out "informative" data.

In September 2015, the U.S. Department of State rolled back certain dates for immigrants who initially appeared to be eligible to file the final stage of their work-based permanent visa applications based on the October visa bulletin, which had been published two weeks earlier. The move adversely affected thousands of Chinese and Indian immigrants in the EB-2 category – people who hold advanced degrees or have exceptional ability, by 16 months and two years respectively.

Later that month a group of affected immigrants initially sought a temporary restraining order in the U.S. District Court for the Western District of Washington against the Department of State's change which would have compelled the government to accept adjustment of status applications from those individuals who would have been eligible to submit applications based on the originally published visa bulletin (*Chintan Mehta et al. v. U.S. Department of State et al.*, No. 2:15-cv-01543). The group claimed to have invested significant time and money in medical examinations and legal fees in readying their applications based on the originally published eligibility dates.

The federal court denied the request, stating the petitioners did not meet critical requirements for such an order, and that the visa bulletin is not a final agency action. The court said the revision merely "clarified an erroneous prior statement," and, in falling short of substantially altering the rights of the plaintiffs, the claim lacked a likelihood of success under the APA. The judge seemingly nailed the coffin shut on the petitioners' argument by noting that the revision serves the public interest as it corrected a statement that was contrary to statutory authority, and that the plaintiffs failed to show a due process violation, irreparable harm, or a violation of public interest.

The plaintiffs thereafter sought to create a class action lawsuit composed of individuals who would

have great difficulty pursuing individual lawsuits. The Department of State and Homeland Security urged the federal court in Washington to dismiss the class action, arguing successfully that the court lacked jurisdiction.

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