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Pitfalls for recent arrivals

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Under the Immigration and Nationality Act, an alien who entered the United States lawfully may adjust his status to that of a permanent resident, without having to leave the country. In many instances in the past, aliens who had come here on visitor's visas were able to obtain their green cards even if, prior to that time, they had overstayed, and had been working without employment authorization.

This is no longer the case as the new amendments to the immigration law are in effect. Since January 1, 1977 any alien who has continued in or accepted unauthorized employment prior to filing an application for adjustment of status (1-485) becomes ineligible to adjust his status to that of a permanent resident.

Exception to the above rule applies only to the children, spouses and parents of U.S. citizens. In the case of parents, such citizens must be at least 21 years of age.

In the past, the unauthorized employment of an alien was merely one of many factors which were considered by the Immigration Service in adjudicating matters involving adjustment of status. Standing by itself, such illegal work did not justify denial of a green card.

Under the new law, anyone who intends to obtain his green card while here, but who has no authorization to work or whose non-immigrant visa does not permit him to work, should have stopped working on December 31, 1976. He may resume working without losing his eligibility when he files his Form I-485, that is, when his visa number becomes available.

This situation works hard especially for natives of countries with long waiting period, like the Philippines. A Filipino doctor, for example, with a priority date of September 1972 and who does not have an employment authorization should have quit working last December 31, 1976 until, possibly, 1980 when he would be eligible to file his I-485 application. If he continues to work, he will have to leave the U.S. to get his green card.

A lot of questions have been raised as to who are affected and as to what constitutes unauthorized employment. For instance: If an alien quit his job on December 31, 1976 with the understanding that he would resume working on January 11, 1977 after he has filed his Form I-485, will this be construed as continuing an unauthorized employment?

A more pertinent question affecting Filipinos refer to the professionals or persons of exceptional skills whose third preference visa petitions were approved prior to July 31, 1972. Under an immigration policy, they were granted indefinite voluntary departure if visa numbers were not immediately available. It was argued that their continued stay here worked to the country's economic advantage. Many Filipinos benefited from this policy. A lot of doctors, for example, have been engaged in private practice without green cards or non-immigrant visas. Assuming that they work prior to filing their I-485 applications, will they jeopardize their eligibility under the amended provision for adjustment of status?

The safest course of action under the present circumstances is to stop working. But is this realistic?