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Via e mail *USCISFRComment@uscis.dhs.gov*

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Subject: OMB Control Number 1615-0023 Docket ID USCIS-2009-0020
Re: Application To Register Permanent Residence or Adjust Status, Form I–485, and Adjustment of Status Under Section 245(i), Supplement A to Form I–485; Revision of a Currently Approved Collection also **Comment to Draft Guidance on** Supplement A and J to Form I-485; Revision of a Currently Approved Collection in conjunction with **"Same or Similar Occupational Classification" for purposes of §204(j) portability**
Draft PM-602-0122

I ask this question on 04/26/2016 at 12.30 form I485 and I was advise to email uscisengagement@us.dhs.gov and also send the comment through regulation as policy making person seems like first time hear this kind of issue. However this really impact the someone benefit and liberty of their life.

Our concern is regarding the I-485 based on Employee based or employment based only check one, the problem we face which the form I-485 is we had submitted the first I-485 based on employment where my wife was also filled as dependent. Later my wife I-130 was also approve and hence since both of our I-485 was pending and as per existing AFM (Adjudicator's Filed Manual) USCIS process was to consider interfiling which refer simply switching one supporting pillar with a different pillar also known as transfer or conversion commonly known as

interfiling. There is no separate form to request this interfiling hence we have request this via letter to USCIS but in our case the USCIS Immigration service Officer (ISO) who work on our case may not know about this procedure and insist us that we are not able to move our existing I-485 to family based however based on our request for AFM the service center has move my wife application to national benefit center and where due to non-knowledge about this interfiling he denied the I-485 even when she was primary file on my employment based application, If rejected our letter of request for interfiling was render we will be much more better than defending it in the court currently and facing the MTA. Also question start right their when new form I-485 specifically says that you are required to check only one option while not thinking the reality that its likely possible

that when filling I-485 for two family member who both working they have two employment I-140 file and one has to move from Primary to secondary and vice versa and required two separate form which than need to assigned two separate Alien number. Or USCIS wanted to allow multiple selections or add supplymently form to accommodate multiple filling. Existing USCIS position or officer position is that we need to submit the new I-485 based on family based case when the existing form I-485 is pending and I130 has been approved. It does not make sense on USCIS to collect the additional form where same form can be adjusted to become the permanent resident if only one time for one alien. It will also help USCIS to not to duplicate the afford in wasting unnecessary resource for doing fingerprint, back ground check etc for same person twice and same way enforcement to application file another fee for same exact application, Are USCIS will in process to amend the AFM which is working well or train the officer on how to do conversion since the form need to revise as its specifically ask for one check box.

My wife uncle file her petition back in year 1992 which make her eligible to file 245(i) under the grand fathering of the application

Stakeholder will appreciate if USCIS published all the comment required together instead of one by one and leaving the room for lawsuit to be filed since regulation published after the required comment submitted to eliminate the gap in where USCIS fail to use the discretionary authority understand Legal statue to read in conjunction with the regulation and not to used regulation over the congress statue. As Congress approve the resolution statue should be read as faithfully as possibly. USCIS is opening the door for lengthy litigation in which newly published regulation directly conflict with porting statue and make porting statue null. We understand the many huge mistake has been made in the past but USCIS should correct the all mistake by using the all the comment submitted to improve its regulation with the law. We are request all the USCIS regulation should be carefully written after review by the administrative appeal office (AAO) who received the cases and published the Precedent decision and non-precedent decision which are binding the newly publication as of that day for example matter of Ganga Mantena and Matter of Musunuru where this I-204(j) and 485j are connected together analyst the existing case law and decision that made by Judge until the day of regulation published . We have requested in the comment for 204j however we can understand not all our comment are accommodated but new regulation cannot leave existing published decision sidestep unless USCIS or government appeal that decision to higher authority for example 2nd circuit Decision to Supreme court. For publication that required process to be continued to be due process where USCIS regulation direct conflict with the porting statue. As we have submitted the comment for draft PM-602-0122 where this I-485j need to be added however USCIS can not ask for new form to be submitted for porting statue and similar AFM guideline which are not revise yet. Moving from employment category to family based category its only one form I-485 one applicant can file. In our recent decision when our family I-130 was approve while I-140 was pending we have requested to move our pending I-485 to move to I-130 since we never received any request to file the new I-485 or form has the specific category added that one form for employment category and another for I-130 when person has dual intent or both processing. Asking applicant to submit two separate form is not in USCIS best interest to double the afford and create a huddle for applicant to submit two separate application for one permanent residency status with double fee. Also if that is the case how applicant can submit EAD based on two different I-485 form one for employment and one for family base. USCIS

current position or operation are misguided and ignoring the statue and creating big hole instead of creating stable case law which can serve for next generation to used it faithfully with the dual process as exist.

We wrote specifically about connection where 204j regulation submitted, as USCIS wanted to handle the I485j form but USCIS wanted beneficiary to wait for USCIS to issue RFE to beneficiary. Now process initiate when the applicant change the job and submit the paper work for change of job which can be conform by using of verify or record to update the existing file. In case this request has not send since there is no mandate to submit the 204j so I-485 will be denied without issue RFE to beneficiary. And applicant will not be able to submit I-485j as per instruction that RFE required in order to submit the new I-485J. So our suggestion is applicant should allow submitting the I-485j anytime when job change occurs within 30days as part of I-485 record update like address change. Also in case this is not allowed then RFE should be mandate to office when I-140 denied or revoked before denied the I-485.

15 Years in making the rules after statue wrote 15 year ago APA:

More than 15 years, Not sure what USCIS took so long to write this regulation as APA required this to be completed in timely fashion and now USCIS wanted to supersede the all the memo and as many judge notice USCIS still not following up to the speed on the cases that already made decision again the government process. Please review all the decision and new rule making should have included all judge's opinion as best possible in favor of employee and employer since as noted many of statue congress wrote has many error on pointing the regulation. Now IS USCIS review all the cases that already decided to be revisit and assigned the priority based on 204j rule since rule was supposed to used after 204j release. Also as per note the porting are very low instead of 100% to the best interest of employee, employer and government.

Many time USCIS representative publicly advise they will draft regulation but can't make it in time.

STATUS 204J Master Key in drafting regulation: interpret best possible to improve employment not adversely impact since statue itself is wrong in many way as many court finding but can be interpret better so less lawsuite and less impact to employment which create the income to government in tax. If denied it will file unemployment still they will file new application or appeal anyway**.**

The USCIS's current position conflicts with and nullifies the porting statute," Musunuru's attorney, Kristine Michel, told the Seventh Circuit, referencing the American Competitiveness in the 21st Century Act.

The actual verbiage in INA 204(j) for the benefit of readers is as follows:

A petition under subsection (a)(1)(D) [redesignated as (a)(1)(F)] for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed

While Congress had contemplated a delay of 180 days as being intolerable, the delays can be far worse. For instance, one can file an I-485 application when the priority date becomes current, and then it may retrogress, resulting in the I-485 application remaining pending for years. A case in point is when applicants filed I-485 adjustment applications under the July 2007 visa bulletin, when it was current, and many under the India employment –based third preference are still pending after the dates retrogressed the following month in August 2007

Specifically, section 204(j) provides that the approval of a Form I-140 petition shall remain valid when an applicant changes jobs or employers, if:

• A Form I-485, Application to Adjust Status, on the basis of an employment-based immigrant visa petition has been filed and remained unadjudicated for 180 days or more; and

• The new job is in the same or a similar occupational classification as the job for which the petition was filed.

RL: Statue was not interpreted in our case since our case was prime example of this unadjudicated I- 140 for 985 days while received renew EAD 3 times and office decision was 204j if applicable will apply but 140 was denied not sure how come possible to apply 204j that need to consider first as application was pending at 180 days since when actually decision made after 1000 days pass employer

already replace and old employer was not in business and as always never going to reply since they don't have employee anymore. While also employee or new employer was never notified and given the chance to continue appeal. NOID supposed to send to employee before denied I485 but did not send notice at all and not allow to appeal I-485 is not process its directly terminating process.

Replacement of Employee/ Employer: I-140J , I485 J supplement forms Matter of Ganga Montena

USCIS need to work on process which streamline the 204j portability provision by required employee and employer to submit the I-140 J and I485J as supplement requirement when employee change the job same like H1b employee change the location of the job utilizing the e-verify which need to be enforce at the time of employment verification at the time of new job and USCIS should substitute the new employer or make self-employment based on old I485j (New 204j supplement form with fee's)or I140J(New supplement 204j form with fee's) submission however at the same time USCIS need to keep 204j as is required only 140 and 485 pending 180 days pass as per statue. USCIS should stop illegal practice of revoking the old labor certificate and old I-140 based on employer request or USCIS own investigation until USCIS comeup with solid process to remedy the situation. As per current process USCIS is revoking Labor certificate which is part of department of labor juriduction since USCIS does not have knowledge about labor related. The regulation USCIS are using is only useful for outside of USA where USCIS lack the support for other countries for investigation or address does not located.

1. Sample AC21 claim letter

Please see my other posts in this thread on other how to-s about this letter...

Date: Today

From
Wannabe Immigrant
I485 Receipt SLW 03 XXXXX
A# 00000000
1 Main Lane
Anycity SS 00000

To
BCIS- summa service center
PO Box xxxx
SomeTown XX 11000

Dear Sir/Madam
RE: SFW 000000 , A#, Wannabe Immigrant, I485 under AC21

I had been working for companyA from StartDate using H1B visa (latest H1 receipt SFW). companyA applied for labor certification for the job of LCJobName on veryOldDate. The OCC code of the Job was 030.062.010 per the Onet classification (SOC: 15-1030) for a salary of $verylowAmount per annum. The responsibilities of LCJobName included Analyzing business and engineering data processing problems, designing and implementing a solution and test the developed systems.This Labor Certification was approved on aVeryLongTime. Based on this approval an application for immigrant visa (I140) was made on aLittleTimeLater. This application was approved on aLongAgo. I applied to adjust my status to permanent resident status on aFunDate. My Employment authorization document was approved on areallyFunDate.

According to the memo dated June 29 2001 on the American competitiveness in the Twenty First Centrury Act and related legislation, from the Office of the Executive Associate commissioner of Legacy INS, change of employment is permitted in cases of lengthy adjustment adjudication. That memo lists two preconditions for eligibility to change jobs- I485 is pending unadjudicated for 180 days or more and the new job is in the similar occupational classification as the job for which the certification was initially made in section 106(c).

I joined companyB at mycurrentHome on 180DayDate (approx. xxx days from the receipt date of I485) as a newJobName for a salary of $highAmount per annum. The job responsibilities include Analyze business and engineering data procesing problems, design,implement and test the developed systems. Please find attached a letter from companyB regarding the employment offer, Job title , job description and salary.

Pursuant to the guidelines of the memo cited above and my eligibility based on the fact that my I485 application has been pending unadjudicated for more than 180 days and the new job is in the similar occupational classification (SOC code 15-1051), I request that BCIS continue processing my I485 application. I also request that my I485 application be approved based on the provisions of the American Competitiveness of 21st century signed as law on October 17, 2000 and adjudicate favorably.

I would be glad to provide any additional information required by you.

Yours Truly

Wannabe Immigrant

Enclosures
1. Copy of LC approval
2. Copy of I140 Approval
3. Copy of I485 receipt
4. Employment Offer/Support letter from companyB
5. Copy of the employment authorization

http://www.law.com/sites/articles/2016/01/04/circuit-worker-employer-must-be-notified-on-immigrant-status/#ixzz3wlj0rKR5

RL: Portability letter was send exactly using this format with attestation by new employer continue the process with submission of new I-140 but center did not allow to accept the supplicate form since no process exist to supplement the employer. Also no reply received for advice the letter received or simple yes or no decision , even NOID was not send to I-485 , direct I-485 denied and then we have file appeal each time denied.

NOID Mandatory for all 204j portability to I485 employee:

Lexmark International Inc. v. Static Control Components, Matter of Neto, *Herrera v. USCIS* , *Kurupati v. USCIS Matter of Al Wazzan*, Matter of CHAWATHE, *Matter of Perez Vargas, Sung v. Keisler, Matovski v. Gonzales, Smethurst v. Gonzales, Ahmad-Mushtaq v. Mukasey, Patel v. USCIS , Ramirez v. Reich, Gladysz v. Donovan, Matter of Sano, Firstland v, U.S.A.,*

As noted in matter of Ganga Montena and Matter of Musunuru where employee and employer has requested change and USCIS has revoke the approve petition or denied the petition even employee has change the employer few years ago without notified the employee or new employer since old employer who submitted original application has interest to abuse the employee or who longer not working and company out of business and who no longer have any interest on reply of NOID , now NOID is must needed to send to all parties including attorney for employer and employee since they are the one who will reply to USCIS with upto date information to continue the matter in best interest for all parties. USCIS should consider this for extreme case only where USCIS see the government at the risk of terrorist or abuse the INS as many law firm are found to be fraud. But again not

beneficiary who made the fraud since they might not know what employer or attorney is doing that for purpose of making money easily.

RL: we dont received any NOID for I-140 or I-485 even move to new employer or selfemployed. So how the process remain due process as required in Supreme Court decision of

NO REVOKING unless National security as stake: Matter of Musunuru,

USCIS should review all the existing old cases and allow everyone to porting from old employer to new employer if the statue permits. So no one left behind since they have the information about the employer and employee simple send the later who they suspected have change the job since e-verify record will provide this information to USCIS regular base.

The USCIS's current position conflicts with and nullifies the porting statute," Musunuru's attorney, Kristine Michel, told the Seventh Circuit, referencing the American Competitiveness in the 21st Century Act.

As USCIS current position is no revocation which is perfect but even if revocation happened priority date are permitted how come that possible since the petition which was approve deem invalidated and how can the associate visa number that was allocated to revoked can be reused without reopen the case and reauthorized same petition if USCIS will make process to reopen and reapprove the petition as it was approve before than it will make legal otherwise its illegal to use the priority date since the statue say that approve not revocation meaning revoke petition should approve first. USCIS should stay away with labor invalidation since that is also not USCIS issue they should create communication channel same like visa number authorization to keep labor with labor department including SOC validation since ISO simply lack the knowledge about the code and labor expertise support to provide this decision since the C.F.R. 8 656.3 (d), after issuance, labor certifications are subject to invalidation by DHS or by consul of department of state upon a determination, made in accordance with those agencies procedure or by a court , of fraud or willful misrepresentation of a material fact involving the labor certification application.
According to 20 C.F.R. 8 656.31 (d) if a court, the DHS, the department of state determines that there was fraud or willful misrepresentation involving a labor certification application, the application shall be deems invalidated, processing shall be terminated, a notice of termination and the reason therefore shall be sent

by the certifying officer to the employer, and a copy of the notification shall be sent by the certifying officer to the alien, and to the department of labor's office of inspector general. Reference see Matter of Brantigan 11 I&N Dec. 493 (BIA 1966)

RL: if law follow correctly we should receive a notice of revoke the benefit or advisory , not attorney or us received any copy hence invalidation was not occurs and may not follow properly if you have copy please forward to us to conform it

http://blog.cyrusmehta.com/2015/10/dont-you-dare-yank-my-precious-i-140-petition-without-telling-me.html

CASES to be review:

2nd circuit in the Matter of Ganga Mantena

Srinivasa Musunuru v. Loretta E. Lynch 7th circuit court ORAL argument

Lexmark International Inc. v. Static Control Components, Matter of Neto, *Herrera v. USCIS* , *Kurupati v. USCIS Matter of Al Wazzan,* Matter of CHAWATHE, *Matter of Perez Vargas, Sung v. Keisler, Matovski v. Gonzales, Smethurst v. Gonzales, Ahmad-Mushtaq v. Mukasey, Patel v. USCIS* , *Ramirez v. Reich*, *Gladysz v. Donovan, Firstland v, U.S.A., Ramirez v. Reich*, *Gladysz v. Donovan, Matter of Sano, Firstland v, U.S.A., Ghaley v. INS, Taneja v. INS, Mehanna v. USCIS, Ayanbadejo v. Chertoff, Matter of Tawfik, Green v. Napolitano, Matter of Estime, Matter of Arias,*

KEY LANGUAGE:

Specifically, section 204(j) provides that the approval of a Form I-140 petition shall remain valid when an applicant changes jobs or employers, if:

• A Form I-485, Application to Adjust Status, on the basis of an employment-based immigrant visa petition4 has been filed and remained unadjudicated for 180 days or more; and

• The new job is in the same or a similar occupational classification as the job for which the petition was filed.

Job flexibility for long delayed applicants for adjustment of status to permanent residence. – A petition under subsection (a)(1)(D)10 for an individual whose application for adjustment of status pursuant to section 245 has been filed and remains unadjudicated for 180 days or more shall remain valid with

respect to a new job if the individual changes jobs or employers
if the job is in the same or a similar occupational classification
as the job for which the petition was filed.

USCIS read this regulation in conjunction with 8 C.F.R. § 103.3(a)(1)(iii)(B) and concluded
that no notice of its intent to revoke was required to be served on the beneficiary. The latter regulation states that a beneficiary of a visa petition is not an "affected party," which it defines as "a person or entity with legal standing in a proceeding." *Id*.8 This interpretation predates and has been superseded by 8 U.S.C. § 1154(j), which gives beneficiaries an interest in visa petitions.
The conclusion that a beneficiary is not an "affected party" cannot stand for several reasons. First, the concept that a beneficiary does not have "legal standing"

in a visa petition proceeding conflicts with the Supreme Court's recent clarification of the standard for "statutory standing." *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388, 1390 (2014) (explaining that the

In enacting this provision, Congress did not change the Secretary's authority to revoke the approval of an immigrant visa petition "at any time, for what he deems to be good and sufficient cause," as provided in 8 U.S.C. § 1155. *See* American Competitiveness in the Twenty-First Century Act ("AC21"), Title 1, § 106, Pub. L. 106-313 (Oct. 17, 2000) enacting § 1154(j)). But Congress did alter the relationship of the "porting" employee to the immigrant visa petition. Congress gave a beneficiary who "ported" to a new employer an interest in the continued validity of the petition separate and apart from the original petitioning employer.

USCIS is thwarting the "porting" process that Congress established by failing to provide notice of and an opportunity to participate in the revocation proceedings. The "affected party" regulatory definition upon which USCIS relies was promulgated more than ten years before Congress enacted § 1154(j), *see* 55 Fed. Reg. 20767.

ADJUDICATE the I-485, I140 within 180 days:

USCIS should try to adjudicate the case within the 180 days since most company record are available in D&B also in google search with getting the Tax data from the IRS , social security record or financial record of the company if company paid the salary which is most cases if future request just check the profit of the company or asset of the company to pay the required wage this is congress intension not sure

what cause USCIS not to complete in this time since now a day the processing time match the 90days for most centers.

USCIS, DOS Visa availability:

Progressing or forward looking never should go back dates.

DOS fail to published the visa bulletin which forward looking dates many countries visa date are retrogated many year back and forth look the record for last 15 years DOS made Visa Fiasco where USCIS is litigating two big class Visa bulletin 2007 and Visa bulletin 2015 same repeated error occurs again after congress step in for 2007 and no congress hearing for 2015 leaving around 50000 cases pending which has created back logged for INDIA, CHINA , Philippine and Mexico from 10 to 30 years and no solution to this simple visa bulletin which USCIS should has approximate number to keep the flow come up and should not lose any single visa number as recording thousands of visa number went unused as yearend quota's expire October. As the histories USCIS does not work well with DHS to find the available visa and used the entire visa not leave any single one behind all visas should be used one month before the close date.

EAD rule 90 days :

Employment authorization is mandate from the congress, USCIS should keep the EAD separate if the employee has the I485 pending EAD should goes smooth and keep the other EAD separate then easy one only like EAD based on DAPA, DACA, Asylum etc where thousands or millions of application may have come in near feature which can impact the exiting employee who are working on the system which are paying tax and already verify during first approval. The creating new rule automatic approval will be troublesome since the unauthorized employment document also revise as it will create the conflict with existing statue and create unemployment or denied thousands of application since if employment or original petition denied in error will make him ineligible for the I485 since rescue allow only 180 days maximum for employment. Also in many case USCIS denied I-140 together with I-485 but USCIS should wait for I-140 denied if response or appeal received during the 33 days than no denied necessary in case of USCIS error or missing document which received in appeal , when denied I-485 if the person already have the EAD issue for three year or 1 years not sure when

USCIS will issue notice since person has the employment authorization which is valid but original petition is denied is denied which is based the benefit claim also notice to appear does not necessary needed bat the beginning since this create lot of unnecessary government attorney USCIS resources and tax payer fund for issue that can be handle with simple process which is solid. Why don't USCIS create the automated system that will approve the application within 90 days if application are for renew make digital flow automatic just wait for final confirmation by officer for easy renewal. Make tuff case separate like FBI search.

Automatically increase validation of **240 days** is against the law and it will allow someone file the renewal but his application deem to be denied but he can claim the authorization again this is best for H1 B but not necessary for permanent application since its permanent so it need to be complete in 90 days as temporary vs permanent.

ISO Training, Rule update, Injuction notices:

This all should be release weekly by publication division small letter or email should be enough to alert ISO.

Child Status Protection Act, 8 U.S.C. §1153(h)(3)Injunction, DACA, DAPA other big cases :

Whenever court has injunction ISO are not train well on the update information since USCIS lack continuous training for ISO in their operation or person who are responsible to update the policy memo or revise process and procedure based on court finding or court opinion or lack of knowledge in understand to interpret which directly reason for many huge cost litigation to USCIS. As noted for two case which was huge impact one was child protection statue when supreme court consider Maria Garcia all pending application should stay pending without release of decision and then decide the case as advise but our case was decided in the same period . Also same way USCIS recent DACA employment authorization that issue to 3000 even if court injunction was in place then USCIS has wasted resources to go to home and get the EAD that was issue instead of stop same or next day. Investigation report still not release so not sure what was cause of it.

USCIS fee's change after July 2007 required APA:

Due to fee's structure change USCIS has raise fee for I-485 from $395 to $1010 which is 300% increase without authorization from congress or release APA since original process that USCIS manage has three form I-485 ($395), I-765 ($170), I-131 ($180) during the announcement language was not clear and it created backlashed from congress due to revision of published Visa bulletin that employment priority date are current for all the countries which never happened in the history and thousands of application rejected just due to simple fee's confusion which fee's are applicable old fee's vs new fee's between July 30 2007 to Aug 17 2007. Legally as per bulletin new fee's are applicable even these application extension was approved by congress until Aug 17 2007. At the same time officer was rejecting the cases when application file with new fee's. Since USCIS ISO was only accepting old fee's while public was guided to file with new fee. If application file with old fee's rule was such that every year employment authorization or advance Parole need to renew and applicant need to pay $170 and $180. While for new fee there is no recurring fee after pay onetime $1010 (paid off in two year meaning 2 times renew). If some smart PMO look at the situation and conclude that USCIS lost the revenue opportunity since every year they have to process the EAD and AP without fee's so how the USCIS function which is fee's base organization. While on the other hand applicant who stuck or lock in for many years backlogged need to pay the annual fees todays after 9 years pass thousands of application still paying the fee's while other new applicant don't have to pay recurring fee's at the same time USCIS break their balance sheet due to process new application without fee's and hence not required completed this application(only can file 120 days prior) on timely (90 days) since it's not paid service anymore violating the FTC and equal opportunity since other than backlogged country they are big line for some country and no line for small country with lower population or lower applicant while quota's for all country are same. Since all employees are same limit quota for H1B applicant but not apply same for permanent resident applicant since this based on employment and not based on which country employee or required talent or brain come from.

Not sure why Government Accountability Office (GAO) never acknowledges the USCIS error made during the fee's revision review where after July 30 2007 new

fees are application supposed to follow APA since it was rule change which impacted millions of application process during the small windows of 18 days.

RL: Our application was rejected 7 times for old fee's vs new fee's and finally we send both fee's and ask center to select the correct checks and return non used check back to us and finally it was process with needed fee's and they selected us old fee's so we have pay each year for renew which cost us thousands of dollar in USCIS fee's and attorney fee's to fix simple payment acceptance solution , USCIS should do online processing to pay the fee's first online and just send the receipt in the application submit package since its easier thing to do online give an option to select the form and pay like cart and create BAR code for payment which can help USCIS get money faster and refund fee's if application rejected most cases USCIS does not return the fee's which will streamline the application faster.

Federal Rules of Appellate Procedure Form 6. Certificate of Compliance with Rule 32(a)

CC:

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