

Business Immigration Weekly for September 19, 2014

9/19/2014

By Esther Contreras

DEPARTMENT OF LABOR RELEASES LATEST PERMANENT LABOR CERTIFICATION STATISTICS

The Department of Labor (DOL) recently issued its statistics for the fourth quarter of fiscal year 2014 through August 31, 2014 for the Permanent Labor Certification Program. So far, the DOL received 14,314 applications, certified 10,253, denied 861 and had 666 applications withdrawn. In evaluating the DOL trends from fiscal year 2012 to the present the denial rate is currently at 8% from around 11% at the beginning of the fiscal year and the appeals rate has almost tripled doubled from fiscal year 2012 from 3% to its current 9%. Audit rates have decreased from 45% at the end of fiscal year 2012, but are on the rise at 29% currently from 25% for the first quarter of Fiscal Year 2014. Fiscal year 2012 was the last year in which the DOL issued any statistics on the amount of applications in supervised recruitment.

The majority of PERM applications continue to be filed in the Computer and Mathematical fields followed by the following fields: Architecture and Engineering, Management, Business and Financial Operations, and Education, Training and Library. The states that list the most work sites in decreasing order are: California, Texas, New York, New Jersey and Washington. The Professional, Scientific and Technical Services remains the top industry, followed by Manufacturing, Information, Educational Services and Finance and Insurance. The top visa classifications are H-1B, L-1, F-1 and TN. The countries with the highest application rates are India, China, Canada, South Korea and Philippines.

CBP DESIGNATES 14 PORTS OF ENTRY FOR OPTIMIZED TN AND L-1 PROCESSING

The US Customs and Border Protection (CBP) has designated 14 ports of entry where it plans to optimize the processing of Canadian TN NAFTA Professionals and L-1 Intracompany Transferees. The goal is to process these admissions more efficiently. Canadian TN and L-1 nonimmigrants are visa-exempt and can apply in either of these classifications directly at a Class A port of entry or at a Preclearance/Preflight facility. TN and L-1 nonimmigrants can continue to apply for admission at other qualifying ports of entry and are not limited to these designated ports. The designated ports for optimized processing are: Lester B. Pearson International Airport, Trudeau International Airport, Vancouver International Airport, Calgary International Airport, Highgate Springs Ports of Entry, Derby Line Port of Entry, Alexandria Bay Port of Entry, Peace Bridge Port of Entry, Rainbow Bridge Port of entry, Champlain Port of Entry, Detroit Canada Tunnel Port of Entry, Detroit Ambassador Bridge Port of Entry, Blaine Peace Arch Port of Entry, and Sweetgrass Port of Entry. The exact locations of each of these designated ports of entry and days and hours of operation can be found at:

<http://www.cbp.gov/travel/international-visitors/canada-mexico-travel/traveling-tn-or-l-1-visa-canada>

OCTOBER 2014 VISA BULLETIN UPDATE

Current Availability

The Department of State (DOS) released its October 2014 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of October. Below is a summary of the bulletin highlights:

- The EB-2 India category has stalled at May 1, 2009 after a significant advancement from January 22, 2009 in the August bulletin. In this month's bulletin, the DOS predicts that this category will have to be retrogressed, as early as November, to accommodate increased subscription.
- The EB-2 China category advances slightly from October 8, 2009 to November 15, 2009.
- The EB-3 India category advances only a few days from November 8, 2003 to November 15, 2003.
- The EB-3 World, Mexico and Philippines categories advanced significantly from April 1, 2011 to October 1, 2011.
- The EB-3 China category shows significant advancement from November 1, 2008 to April 1, 2009.

Please note that month-to-month availability of immigrant visas varies and depends on many factors. These forecasts do not guarantee future availability.

Comparison to Prior Months

The following is a comparison of priority date movement since the inception of the current retrogression in 2007:

	Dec 2007	Jun 2008	Aug 2009	Sept 2012	May 2013	Sept 2014	Oct 2014
EB-3 World	09/01/02	03/01/06	U	10/01/06	12/01/07	04/01/11	10/01/11
EB-2 China	01/01/03	04/01/04	10/01/03	U	05/15/08	10/08/09	11/15/09
EB-3 China	10/15/01	03/22/03	U	12/15/05	12/01/07	11/01/08	04/01/09
EB-2 India	01/01/02	04/01/04	10/01/03	U	09/01/04	05/01/09	05/01/09
EB-3 India	05/01/01	11/01/01	U	10/08/02	12/22/02	11/08/03	11/15/03
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	12/01/07	04/01/11	10/01/11

Additional information about the movement of the employment-based immigrant visa priority dates will be contained in our firm's future Immigration Updates when it becomes available.

DOS SHEDS LIGHT ON FUTURE AVAILABILITY OF IMMIGRANT VISAS

The DOS' Chief of the Visa Control and Reporting Division, Charlie Oppenheim, recently shared extensive information on the future availability of immigrant visas (green cards). The DOS is the government agency that controls and tracks the annual quotas on the issuance of green cards. Each month the DOS issues the Visa Bulletin which outlines the availability of green cards for that month. A summary of Mr. Oppenheim's comments is listed below:

1) **EB-2 India** – Mr. Oppenheim predicts that this category will retrogress as early as November 2014. This is due to the increased demand for green cards in this category as Indian nationals upgrade their EB-3 petitions to EB-2. As of October 2014, the category is set at May 1, 2009. Currently, there are no more green cards available in the EB-2 India category for the remainder of Fiscal Year 2014. Although technically the category is "unavailable" the US Citizenship and Immigration Services (USCIS) can continue to accept Forms I-485, Applications to Register Permanent Residence or Adjust Status for individuals with priority dates prior to May 1, 2009. These Forms I-485 will be held until additional green cards become available on October 1, 2014 with the start of the new fiscal year.

2) **EB-5 China** - As noted in our August 28th Update, similarly to the EB-2 India category, the EB-5 China category is also currently "unavailable." What is notable is that this is the first time that the annual cap of 10,000 has been met in the 24 years that the category was created. The DOS has indicated that the USCIS will continue to accept and process Forms I-485 holding them until October 1, 2014 with the start of the new fiscal year. Mr. Oppenheim also stressed the potential need to cut-off the EB-5 China category during the FY2015 as early as May 2015 due to the continued increase in demand.

3) **Philippines** - The demand for the employment based categories for Philippines continues to decrease. Currently, the EB-3 and "Other Worker" categories have priority dates of October 1, 2011. The DOS is trying to spur demand in this category, but has been unsuccessful. Mr. Oppenheim predicts that this category will continue to advance until there is more demand, but it may have to be cut-off if demand increases.

Weekly Immigration Updates are provided under the Legal Update link of the Immigration Group Section of our firm's website at www.masudafunai.com.