

Immigration Weekly for the Week of April 7, 2014

4/14/2014

Practices: Immigration

MAY 2014 VISA BULLETIN UPDATE

The U.S. Department of State ("DOS") released its May 2014 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of May. Below is a summary of this month's highlights:

- The EB-3 categories for World, China and Mexico have ceased advancing and remain at October 1, 2012.
- The EB-2 China category has continued its slow advancement from March 8, 2009 to April 15, 2009.
- The EB-2 India category remains at November 15, 2004 after the prior retrogression of four years months ago.
- The EB-3 India category has advanced from September 15, 2003 to October 1, 2003.

Forecasted Availability

In late 2013, the DOS indicated the following visa availability through the rest of this fiscal year:

- EB-1: will remain current.
- EB-2: World category will remain current; China will advance three to five weeks; and India will show no further advancement.
- EB-3 China: The DOS had indicated a potential retrogression for the February 2014 Visa Bulletin. This month the category has stalled at October 1, 2012 and is the first indication of the possibility of a future retrogression.
- EB-3 India: will show no further advancement.

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	Jan 2014	Apr 2014	Jun 2014
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EB-3 World	09/01/02	03/01/06	U	10/01/06	04/01/12	10/01/12	10/01/12
EB-2 China	01/01/03	04/01/04	10/01/03	U	12/08/08	03/08/09	04/15/09
EB-3 China	10/15/01	03/22/03	U	12/15/05	04/01/12	10/12/12	10/01/12
EB-2 India	01/01/02	04/01/04	10/01/03	U	11/15/04	11/15/04	11/15/04
EB-3 India	05/01/01	11/01/01	U	10/08/02	09/01/03	09/15/03	10/01/03
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	04/01/12	10/01/12	10/01/12

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.

DEPARTMENT OF LABOR RELEASES LATEST PERMANENT LABOR CERTIFICATION STATISTICS

The Department of Labor (DOL) recently issued its statistics for the second quarter of fiscal year 2014 (January to March 2014) for the Permanent Labor Certification Program. The DOL received 15,474 applications, certified 17,129 (almost double from last quarter), denied 1,605 and had 936 applications withdrawn. In evaluating the DOL trends from fiscal year 2012 to the present the denial rate continues to hover at around 10% and the appeals rate has more than doubled from fiscal year 2012 from 3% to 9%. Audit rates have decreased from 45% at the end of fiscal year 2012 to 27% for this second quarter. 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 (this last field replaced Healthcare Practitioners). The states that list the most work sites in decreasing order are: California, Washington, Texas, New York and New Jersey. The Professional, Scientific and Technical Services remains the top industry, followed by Information, Manufacturing, Educational Services and Finance and Insurance.

H-1B CAP FOR FISCAL YEAR 2014 REACHED AND RANDOM LOTTERY COMPLETED

The US Citizenship and Immigration Services (USCIS) has announced that, as expected, the H-1B cap for fiscal year 2015 was reached within the first week that petitions were accepted. The USCIS received 172,500 petitions, more than the statutory cap of 65,000 visas for the regular quota and the additional 20,000 allotted for individuals who earned a U.S. Master's degree or higher. When the USCIS receives too many petitions for the limited number of visas available per fiscal year, it conducts a random, computer-generated lottery to choose which petitions it will accept and process.

As of Thursday, April 10th, the USCIS began sending email notifications to H-1B employers for H-1B cases that were selected in the lottery and that requested premium processing. Premium processing is an upgraded process under which the USCIS will conduct an initial review within 15 days in return for an additional fee of \$1,225. We expect that H-1B employers that did not opt for premium processing will begin receiving I-797

receipt notices, indicating acceptance of their petition in the statutory cap, or their unprocessed petitions, indicating rejection of their petition, in the next several weeks.

Last year's cap was also reached within the first week, but the total number of petitions received was less at 124,000. We can expect that as the economy improves, the H-1B cap will continue to be met within the first week the cap opens which is on April 1st of every year for a start date of H-1B status for the beneficiary of the petition on October 1st. Due to the limited availability of H-1B visas per year, employers are reminded of the importance of advance planning for beneficiaries that may be subject to the H-1B cap and to contact us in January or February of every year to discuss H-1B sponsorship and any alternatives.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS EMPLOYMENT AUTHORIZATION RENEWAL PROCESS

The USCIS has recently released information on how individuals who received Deferred Action for Childhood Arrivals (DACA) benefits would be able to apply for an extension of the period of deferred action for an additional two years. Although it does not confer lawful status, DACA is a discretionary measure that grants eligible undocumented individuals who entered the United States as children protection from removal actions and the ability to apply for employment authorization. DACA was intended to protect children who through no fault of their own were brought to and raised in the United States, but remain on the fringes of society due to their lack of lawful status, in light of the failure of Congress to pass comprehensive immigration reform.

As part of the renewal process, the USCIS will issue a new Form, I-821D, Consideration of Deferred Action for Childhood in late May, which applicants will submit with the Form I-765, Application for Employment Authorization, and the Form I-765W, Worksheet. Applicants are warned against filing the current version of the Form I-821D as this will result in a rejection of the application. The USCIS has also indicated that applicants' renewal of deferred action and employment authorization will be processed before the current deferred action and employment authorization documents will expire.

For Form I-9 purposes, employers are reminded that they should monitor the expiration of those employees whose employment authorization will expire and make a timely request to the employee to provide a new document evidencing a new period of employment authorization. This is most easily done by providing the employee with the most recent version of the Form I-9 Instructions which includes the List of Acceptable Documents. Employers must re-verify employment authorization before the employee's current authorization expires. Please contact us if you have any questions regarding the Form I-9, the employment eligibility verification process or the DACA renewal process.