

Visa Retrogression for Eb-2 Immigrant Visa Category (India and China)

March 26, 2012

The Chief of Immigrant Visa Control & Reporting for the United States Department of State has indicated that the May Visa Bulletin will retrogress. Specifically, the priority date cutoff for the EB-2 immigrant visa category for mainland-China born and Indian nationals will return to August 15, 2007. This category is reserved for members of the professions holding advanced degrees or persons of exceptional ability. The almost 3-year retrogression is occurring after the quota jumped forward dramatically, over the last several months. All of this movement is an attempt by the State Department to calibrate the flow of applications, so that the quota for this fiscal year is fully utilized. It is too early to predict movement for the remainder of the fiscal year, which ends on September 30, 2012.

Any cases with a priority date that is current in the April 2012 Visa Bulletin can still file their I-485 Applications until May 1, and, if already pending at USCIS, can continue to be approved. However, any Indian and Chinese EB-2 cases pending on May 1, with a priority date after August 15, 2007, cannot be adjudicated until the priority date becomes current again.

During this period of retrogression, pending I-485 cases will be processed up to the point of adjudication, so that they will be ready in October or earlier, if they are needed at the end of this fiscal year to assure utilization of the full employment-based permanent resident visa allocation.

What Is the Significance of These Quota Retrogressions and Quota Backlogs?

Only a limited number of immigrant visa numbers are available to qualified individuals for permanent residence (the so-called "green card") in each of the family-based and employment-based categories. The Immigration and Nationality Act sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. In addition, there is a per-country limit for the preference categories set at 7% of the total annual family-sponsored and employment-based preference limits, totaling 25,620.

The State Department publishes a visa bulletin on a monthly basis, which announces what the cutoff dates are for each of the preference categories. (The visa bulletin can be accessed at the Department of State Web site <http://travel.state.gov> and instructions are provided at the end of the bulletin to obtain an email subscription of the visa bulletin.)

What Is The Significance of the Cutoff Dates?

Even if an application for labor certification is approved and an I-140 petition is filed and/or approved, an applicant for a green card cannot file the final application (Form I-485) unless the quota is current for his/her priority date. One's priority date is established by the date that the first application leading to permanent residence has been filed with the proper authority (either the application for labor certification, or in cases where labor certifications are not required, the petition with the United States Citizenship & Immigration Services).