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Employment-Based Second Preference (EB-2) Cut-off Dates for China and India Projected to Retrogress Significantly in May or June 2012

In the coming months we will see more limitations on the number of green card or immigrant visa numbers available for individuals from India and China. The U.S. Department of State (DOS) expects the EB-2 category for India and China (mainland born) to be so backlogged that by May or June 2012 the cut-off dates on the Visa Bulletin will roll back to August 2007. This projection is directly from Charles Oppenheim, Chief of the Visa Control and Reporting Division at DOS, who spoke on upcoming green card visa number availability at the American Immigration Lawyers Association (AILA) Midwest Regional Conference in Chicago on March 16, 2012. Mr. Oppenheim is responsible for deciding the monthly cut-off dates on the Visa Bulletin, the monthly announcement of immigrant visa availability by DOS.

While we anticipated retrogression in the EB-2 cut-off dates for India and China in previous alerts, we wish to notify you that it is critical for any qualified individual with a current priority date to submit an adjustment of status (I-485) application to U.S. Citizenship and Immigration Services (USCIS) as soon as possible. Mr. Oppenheim stated that he will likely retrogress EB-2 numbers for India and China as early as May 2012 to approximately August 2007. *This represents an almost three-year retrogression in EB-2 cut-off dates for India and China.* Additionally, Mr. Oppenheim confirmed that all Employment-Based First Preference (EB-1) visas available in the current Fiscal Year 2012 will be used this year, resulting in no distribution or “spill-down” of additional or unused visa numbers into the EB-2 category. In previous years unused EB-1 numbers had been reallocated into the EB-2 category, increasing the overall number of green cards available to people from India and China in those years.

This development is the result of a recent increase in demand for immigrant visa numbers, along with strict per-country limitations on the allocation of those numbers. The constant increase in demand for green cards by EB-2 immigrants from China and India greatly exceeds the annual supply of available employment-based immigrant visa numbers for natives of these two countries. Since January 2012, USCIS has accepted and approved a higher number of adjustment of status applications filed by individuals in the EB-2 category from India or China. In the past few months, there also has been a spike in the number of qualified applicants in the EB-1 category filing applications for green cards. As a result, EB-2 visa numbers for India and China are predicted to be in short supply for the remainder of Fiscal Year 2012. This retrogression could also continue into next year.

What does this news mean for prospective EB-2 immigrants from China and India?

Individuals in the EB-2 category from India or China with priority dates before May 1, 2010 should apply for adjustment of status while there are available visa numbers. The [Visa Bulletin for April 2012](#) shows no advancement of priority date cut-offs in the EB-2 category for India and China. The cut-off date has remained May 1, 2010 for EB-2 immigrants from China and India for the past two

months. We strongly recommend that eligible individuals ensure that their applications for adjustment of status, along with the adjustment applications of their dependent family members, reach USCIS well before April 30, 2012. Applicants for adjustment of status are eligible to apply for important benefits, including employment authorization and travel permission known as "advance parole." These benefits can, in certain instances, eliminate the need for the extension of a nonimmigrant visa, or provide a spouse with eligibility for employment before permanent residence is secured.

The projected retrogression in EB-2 visa number cut-off dates also impacts applications for adjustment of status that will be pending with USCIS. An application for adjustment of status may be approved only if an immigrant visa number is available, as reflected in the Visa Bulletin. USCIS may not accept or approve an adjustment of status application for an individual whose priority date is not current in the Visa Bulletin. Therefore, in the event that EB-2 visa numbers for India and China slide back to August 2007 as predicted, individuals with pending adjustment of status applications could be waiting several years longer than they originally expected to receive lawful permanent residence status. We will alert you of the latest news on this front as developments unfold in the coming months.

What to expect in the coming months

Later this summer, immigrant visa numbers could become altogether unavailable for prospective EB-2 immigrants from India and China. A new influx of immigrant visa numbers becomes available on October 1, 2012, when Fiscal Year 2013 begins for USCIS and DOS. At the start of the new fiscal year in October, we might see advancements in the Visa Bulletin for the EB-2 India and China categories. But until that time, we anticipate retrogression in historically backlogged or oversubscribed categories (e.g., Employment-Based Third Preference) in addition to further retrogression in EB-2 cut-off dates for India and China.

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