

BUSINESS IMMIGRATION ALERT

A complimentary service of the McCandlish Holton Immigration Practice Group

Department of State Forecasts Longer Waits for Employment Green Cards, Especially for Indian and Chinese Applicants

Introduction

The Department of State (DOS) Visa Office has recently offered its predictions for the availability of immigrant visa (“green card”) numbers for the remainder of Fiscal Year 2009 (October 1, 2008 through September 30, 2009) and future years. Each fiscal year, the U.S. government can issue 140,000 employment-based “green cards.” It is estimated that all 140,000 employment-based immigrant visa numbers will be used this fiscal year. Increasingly lengthy delays are likely in Fiscal Year 2010 in both the employment-based second preference (EB-2) and employment-based third preference (EB-3) categories, particularly for individuals born in China and India. The employment-based first preference category (EB-1) may also experience delays in green card availability for those born in India and China before the end of this fiscal year and into next year. This is partly because many Chinese and Indian nationals are pursuing EB-1 cases because of lengthy delays in EB-2 and EB-3 categories.

Background

Each year, the DOS may distribute a maximum of 140,000 immigrant visa “numbers” to foreign nationals interested in becoming permanent residents of the United States based offers of employment here. The DOS distributes numbers according to the applicant’s country of birth and the employment-based “preference category” of the applicant. An applicant must wait for an immigrant visa number to become available in his or her preference category before he or she may apply or be approved for Lawful Permanent Resident status. The EB-3 preference category applies to most skilled workers and professionals seeking to immigrate on the basis of a job offer in the United States that requires a bachelor’s degree, or at least 2 years of experience. The EB-2 category applies to those with U.S. job offers for a position requiring a master’s degree or higher, and to those who will perform work in the U.S. national interest. The EB-1 category is reserved for multinational executives and managers, outstanding researchers or professors, and person of extraordinary ability in the arts, sciences, business, education or athletics.

The date the employer or alien files an application for alien labor certification (or an immigrant petition if labor certification is not required) is known as the “priority date.” Each month, the DOS releases a Visa Bulletin that lists the priority dates for which immigrant visas are available broken down by preference category and country of nationality. Once the priority date of an alien labor certification or immigrant petition becomes “current”, an immigrant visa number can be assigned and the applicant’s green card application can proceed. There are currently approximately 25,000 EB-2 and 25,000 EB-3 applicants for whom green card applications have been filed but cannot yet be approved due to lack of immigrant visa.

Forecast

The DOS has offered the following specific predictions with regard to each employment-based preference category. DOS cautions that these estimates are based on current demand and are subject to change.

- The EB-3 category will remain unavailable to applicants from all countries for the remainder of this fiscal year. The DOS currently estimates that, as of October 1, 2009, immigrant visas will be

available to EB-3 applicants with priority dates earlier than March 1, 2003, except those applicants born in India, for whom the priority date cut-off will be November 1, 2001.

- In the EB-2 category, immigrant visa numbers are currently available to applicants born in all countries except India and China (for whom numbers are only available to those with priority dates prior to January 1, 2000). Due to increased demand, EB-2 numbers for Indian and Chinese nationals may become unavailable entirely in August or September of 2009. DOS warns that, without Congressional legislation to increase the number of immigrant visas available, Chinese and Indian applicants may be forced to wait for years and years (possibly decades) before their green card applications can be approved.
- In the EB-1 category, immigrant visa numbers will remain available to workers born in all countries through the end of the current fiscal year, with the possible exception of Chinese and Indian nationals, for whom a cut-off date may be established in August or September 2009, depending on increased demand.

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