



EMAIL BULLETIN

**CIS BACKLOG REDUCTION EFFORTS CREATE SECONDARY BACKLOGS
IN IMMIGRANT VISA AVAILABILITY**

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Immigration to the United States is numerically limited each year according to statutory limitations per country of origin and immigrant category. When the number of applicants for permanent residency exceeds the per-country and per-category numerical limitations, visa availability is backlogged for foreign nationals from the countries and in the categories for which the quota has been reached. These backlogs create a "queue" in which an individual's place in line is determined by his or her "priority date." In employment-based immigration, the priority date is the date on which an Application for Alien Employment Certification or an Immigrant Visa Petition is filed on the beneficiary's behalf.

For several years now, priority dates have not been of great concern for employment-based cases due to statutory provisions enacted in 2000, which made unused numbers for low-demand countries (e.g. Iceland) available to satisfy demand from high-demand countries (e.g. India). This overflow enabled satisfaction of the demand each year for each employment-based immigrant category and for each country of origin. As a result, all employment-based priority dates were "current," meaning that applicants could apply for permanent residency, either at a U.S. Consulate abroad or through "Adjustment of Status" (I-485 Application) in the United States upon meeting all other statutory requirements for their particular immigrant category.

What has changed? Immigrant numbers under the quota system are assigned and, therefore, "used" at the time an individual is approved for permanent residency. Because the Citizenship & Immigration Service (CIS) has lengthy backlogs of applications and has had limited resources devoted to clearing these backlogs, the CIS consistently adjudicated fewer applications and assigned fewer numbers than the overall quota system permitted over the past few years. In recent months, however, the CIS has redoubled its efforts to address and eliminate backlogs of pending applications. In doing so, the CIS has assigned far more numbers than in previous years, resulting in approvals exceeding the quotas. As a result, in some immigrant categories visa availability is now backlogged.

The monthly U.S. Department of State "Visa Bulletin" reports on the availability of immigrant visa numbers. For the month of May 2005, the Visa Bulletin reports a backlog for the Employment-based, Third Preference category (job generally requires a Bachelors Degree or its equivalent or a skilled worker) for Indian, Chinese, and Philippine

nationals. Individuals who have priority dates of June 1, 2002 or earlier are eligible to apply and be approved for permanent residency so long as all other criteria for eligibility are met. The "Other Worker" category (unskilled or semi-skilled labor) is backlogged for all countries, with a priority date of July 1, 2001.

As the CIS continues its efforts at backlog reduction, and as changes in the labor certification process speed the path to Application for Adjustment of Status (the "green card application"), it is anticipated that other immigrant categories will become backlogged as demand for these categories exceeds supply under the quota system.

The Department of State has recently projected oversubscription of the Employment-based Second Preference (EB-2) category for Indian and Chinese nationals during the upcoming Fiscal Year. The EB-2 category is for individuals whose positions require a Masters or higher degree. The Department of State also warns of the possibility that the Employment-based First Preference (EB-1) category for Indian and Chinese nationals could become backlogged in the coming year. The EB-1 category includes Aliens of Extraordinary Ability, Outstanding Researchers and Professors, and Multi-national Managers or Executives.

For more information on pursuing permanent residency under any of the employment-based categories and for a case-specific analysis and strategy development in connection with priority date backlogs and other timing issues, please contact your Tindall & Foster immigration attorney.