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IMMIGRANT VISA AVAILABILITY ADVANCES SIGNIFICANTLY FOR MOST APPLICANTS IN THE EMPLOYMENT-BASED, THIRD (EB-3) PREFERENCE CATEGORY

Each month the U.S. Department of State publishes the Monthly Visa Bulletin, reporting current immigrant visa availability under the annual quota system for U.S. immigration. Visa availability is expressed in terms of “cut-off” dates for each category. An employment-based applicant’s “priority date,” most often the date an Application for Permanent Employment Certification was filed on his or her behalf, determines the applicant’s place in line for an immigrant visa number.

When an applicant’s priority date is earlier than the published cut-off date for his or her immigrant visa category on the current month’s Bulletin, his or her priority date is said to be “current.” An applicant’s priority date must be current in order to file an Application to Adjust Status (“green card” application). Additionally, the priority date must be current for the CIS to approve an Application once it has been filed. Retrogression of visa availability between the date of filing an Application and the time the CIS reaches the Application for adjudication can significantly delay an applicant’s approval for U.S. permanent residency.

When the U.S. Department of State published the Monthly Visa Bulletin for February 2008, the Bulletin reflected complete unavailability of immigrant visas under the Employment-Based, Second (EB-2) Preference Category for persons born in India. Unfortunately visas remain unavailable under this sub-category for the Month of March, and visas could remain unavailable under this category for the remainder of this Fiscal Year. Because visa numbers must be available at the time of adjudication of an Application as well as at the time of filing, the unavailability of immigrant visa numbers under this category has brought a temporary halt to permanent residency approvals for EB-2 Indian-born applicants.

Visa availability under the Employment-Based, Third Preference (EB-3) category for Indian-born applicants will advance slightly in March, with a priority date cut-off of August 1, 2001. Similarly, visa availability under the EB-3 category will advance slightly for persons born in Mexico, with a priority date cut-off of May 1, 2001.

Immigrant visa availability in some Employment-Based Immigrant Visa Categories will advance more significantly in March. Availability under the EB-2 category for Chinese-born applicants will advance almost one year, from January 1, 2003 to December 1, 2003. Availability under the EB-3 category for Chinese-born applicants will advance more than one year, to December 1, 2002.

Visa availability will advance even more significantly in the month of March for the EB-3 category for persons born in countries other than India, China, and Mexico. For all

other EB-3 applicants, the priority date cut-off will advance from November 1, 2002 to January 1, 2005.

The “Other Worker” category remains significantly retrogressed, the priority date cut-off for the month of March will advance to three months, to January 1, 2002.

Visas remain available under all other employment-based categories, including EB-1 for all applicants, EB-2 for applicants born in countries other than China and India, EB-4 for all applicants, and EB-5 for all applicants.

For more information on any of these employment-based classifications, or to initiate the permanent residency process and establish a priority date for a foreign national employee, contact your Tindall & Foster immigration attorney. Your Tindall & Foster attorney will be able to assist you by developing a case-specific strategy for pursuit of permanent residency under an appropriate employment-based category for your company’s employees. As always, Tindall & Foster, P.C. will continue to monitor changes in immigrant visa availability and will make future updates available via the and in future Email Bulletins.