

U.S. DEPARTMENT OF STATE (DOS) ANNOUNCES FURTHER RETROGRESSION OF IMMIGRANT VISA AVAILABILITY FOR EMPLOYMENT-BASED CATEGORIES

EB-1 and EB-2 Categories Retrogress for Indian and Chinese Nationalities

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As reported in previous Tindall & Foster Email Bulletins, recent backlog reduction efforts at U.S. Citizenship & Immigration Services have led to a greater number of permanent residency approvals in the past nine months. This increase in approvals has led to an increase in demand for immigrant visa numbers, which are limited each Fiscal Year by statute. Limitations are based on immigrant category and country of origin. For further explanation and details on immigrant visa availability under the employment-based priority system, please visit the Tindall & Foster, P.C. web site at <http://www.tindallfoster.com/bulletins/04202005pt5.html>.

Continuing Backlogs in EB-3 Immigrant Visa Availability

As a result of the increased demand for immigrant visa numbers based on CIS approvals, the Employment-based, Third Preference (EB-3) Category, which is the primary category for moving professionals to Permanent Residency, retrogressed and became temporarily unavailable for citizens of all countries beginning July 1, 2005. On October 1, 2005, the EB-3 category will reopen for filing Applications to Adjust Status on behalf of those individuals who are not from India or China who have priority dates (i.e., labor certification filing dates) on or before March 1, 2001. EB-3 applicants from China may file applications if their priority date falls on or before May 1, 2000. EB-3 applicants from India may file applications if their priority date falls on or before January 1, 1998. The EB-3 category is the employment-based category encompassing those positions which typically require a Bachelors Degree or its equivalent, or a skilled worker.

EB-1 and EB-2 Retrogression for Chinese & Indian Nationals

In addition to the continuing backlogs in visa availability for the EB-3 category, the Employment-based, First and Second (EB-1 and EB-2) categories have now retrogressed for citizens of China and India. The EB-1 category encompasses petitions for Aliens of Extraordinary Ability, Multinational Managers or Executives, and Outstanding Researchers and Professors. The EB-2 category encompasses petitions for Advanced Degree Aliens or Aliens of Exceptional Ability, whether or not labor certification is required.

Beginning October 1, 2005, in order for a Chinese citizen to file an Application to Adjust Status ("green card" application), or to apply for an immigrant visa through consular processing, under the EB-1 category, his or her priority date (date of I-140 Immigrant Visa Petition filing) must fall on or before January 1, 2000. Chinese citizens seeking to apply during the month of October under the EB-2 category must have a priority date which falls on or before May 1, 2000.

Beginning October 1, 2005, in order for an Indian citizen to file an Application to Adjust Status, or to apply for an immigrant visa through consular processing, under the EB-1 category, his or her priority date (date of I-140 Immigrant Visa Petition filing) must fall on or before August 1, 2002. Indian citizens seeking to apply during the month of October under the EB-2 category must have a priority date which falls on or before November 1, 1999.

Narrow Window of Opportunity for Some Applicants

The Department of State issues the Monthly Visa Bulletin approximately two-three weeks in advance of the effective date. Therefore, applicants for Adjustment of Status to Lawful Permanent Resident under categories subject to retrogression in October have advance notice of upcoming retrogression and are encouraged to file Applications to Adjust Status before retrogression occurs in the EB-1 and EB-2 categories. The upcoming retrogression leaves a narrow, two-week window of opportunity for eligible applicants to apply for permanent residency before retrogression occurs, triggering an indefinite period of time during which immigrant visa numbers will be temporarily backlogged or unavailable. The window of opportunity will temporarily close for Chinese and Indian applicants on October 1, 2005.

In order to file an Application to Adjust Status on behalf of an affected individual in the EB-1 category, in the EB-2 category with an approved Application for Alien Employment Certification or a request for a National Interest Waiver, or in the EB-3 category with an approved Application for Alien Employment Certification, please contact your Tindall & Foster immigration attorney. Because it is necessary to gather a significant amount of personal documentation, it is necessary to begin case preparation immediately. Therefore, employers with personnel affected by the upcoming retrogression in the availability of immigrant visa numbers should contact their Tindall & Foster immigration attorney immediately for additional information on case initiation and filing prior to October 1, 2005.

Tindall & Foster will continue to monitor developments in the area of immigrant visa availability and will provide updates via future Email Bulletins and on our web site at http://www.tindallfoster.com/resources_bulletin.html as new information becomes available.