



EMAIL BULLETIN

**SENATE COMMITTEE CLEARS PROPOSED LEGISLATION
“RECAPTURING” UNUSED IMMIGRANT VISA NUMBERS FROM PREVIOUS
FISCAL YEARS**

10 November 2005

After recent efforts of the Senate Judiciary Committee in connection with the budget reconciliation process, the Senate’s Budget Reconciliation Bill passed out of committee with provisions which would provide partial relief for the growing backlog in immigrant visa availability in the form of “recaptured” immigrant visas from previous fiscal years.

Recapture of Unused Numbers from Past Fiscal Years

According to U.S. Department of State estimates, approximately 90,000 to 100,000 employment-based immigrant visas were unused in recent fiscal years, as CIS productivity in adjudications lagged significantly behind overall immigrant visa availability. As reported in previous Tindall & Foster Email Bulletins, CIS efforts to reduce backlogs and adjudicate applications for permanent residency more rapidly have led to recent increases in visa availability backlogs.

Exemption of Dependents from the Count under the Quota System

While these backlogs are expected to continue, a recapture of up to 90,000 unused employment-based numbers from previous years could provide immediate relief in the near term to offset the recent and dramatic retrogression in visa availability. However, the most significant and long-term relief would be afforded by an additional provision of the Senate plan which would exempt dependent spouses and children from being counted under the quota system. As with the H-1B quota, only principal applicants would count under the immigrant visa quota system.

Early Filing of I-485 Application to Adjust Status (“Green Card” Application)

Finally, a third provision of the Senate plan would permit qualified applicants to file their I-485 Applications to Adjust Status to Lawful Permanent Resident (“green card” applications) prior to the availability of an immigrant visa number under the quota system. While their applications could not be approved until visa numbers are available,

the ability to file applications in advance of availability affords significant advantages to the applicants, including the ability for dependent H-4 spouses to apply for employment authorization.

Tindall & Foster will continue to monitor proposed and pending legislation affecting immigrant visa availability and will provide updates via Email Bulletins and on the Tindall & Foster web site. Legislative activity affecting immigration is updated daily by the American Immigration Lawyer's Association and can be accessed at <http://www.tindallfoster.com>.