

U.S. DEPARTMENT OF STATE PUBLISHES FEBRUARY 2009 VISA BULLETIN ANNOUNCING CHANGES IN IMMIGRANT VISA AVAILABILITY FOR CERTAIN IMMIGRANT PREFERENCE CLASSIFICATIONS

Each month the U.S. Department of State (DOS) 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 a Labor Certification Application was filed on his or her behalf, determines the applicant’s place in line for an immigrant visa number. In order to apply or be approved for Adjustment of Status, an Applicant’s priority date must be earlier than the cut-off date for his or her employment-based category on the current Visa Bulletin.

In the February Visa Bulletin, the U.S. DOS reports a six-month advance over January 2009 levels of immigrant visa availability under the Employment-Based, Second (EB-2) Preference category for Applicants born in China and India. Additionally, availability under the EB-3 Preference category advances by approximately 4 months for Applicants born in China and just over four months for Applicants born in Mexico.

Visa availability under the EB-3 “Other Worker” sub-category retrogresses in February for Applicants born in China, India, and Mexico, and remains the same for Applicants born in all other countries.

Beginning February 1, 2009, EB-2 and EB-3 Applicants may file Applications for Adjustment of Status, and such applications already pending may continue to final adjudication, if the Applicant’s priority date is earlier than the following published dates:

Preference Category	Country of Birth	Priority Date Before:
EB-2	India	January 1, 2004
EB-2	China	January 1, 2005
EB-3	India	October 15, 2001
EB-3	China	October 1, 2002
EB-3	Mexico	April 1, 2003
EB-3	All Other Countries	May 1, 2005
Other Workers	India	October 15, 2001
Other Workers	China	October 1, 2002
Other Workers	Mexico	October 15, 2001
Other Workers	All Countries	March 15, 2003

Applicants in the Employment-Based, First (EB-1) Preference category currently face no backlog in immigrant visa availability.

Generally, a prospective Applicant's own country of birth determines his or her "area of chargeability" and thus impacts availability of an immigrant visa; however, in some cases, an Applicant's spouse's country of birth can be used to determine the area of chargeability and can enable a prospective Applicant to file an Application to Adjust Status sooner. For Applicants with spouses born in a country for which the Applicant's priority date would be considered current, it may be possible to proceed with preparation and filing of an Application to Adjust Status immediately.

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 Foster Quan immigration attorney. Your Foster Quan immigration attorneys 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, we will continue to monitor changes in immigrant visa availability and will make further information available in future Immigration Updates©.