

Bad News Concerning Employment-Based Immigrant Visa Availability

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The American Immigration Lawyers Association reported on June 11th that they received the following information concerning the availability of visa numbers:

- The surge in usage of the employment-based fourth and fifth preference numbers is significant beyond those specific categories themselves because, historically, there have been substantial unused numbers in these categories which have been used to meet demand for visas in the employment-based first and second preference categories, allowing the China and India cut-off dates to advance further than would be possible if those categories are limited to only their annual limits. This means EB2 immigrants from China and India could have an even longer wait to obtain green cards.
- The EB1 category worldwide will remain current the rest of the fiscal year but demand is high.
- The EB1 categories for India and China will be current during the month of July 2009, but could require the establishment of a cut-off date in August or September should EB1 demand remain heavy. As noted above, China and India have previously benefited from the excess EB1 numbers for all other countries because excess visa numbers from other countries "fall across" the EB1 category to India and China. The high demand from other countries this year means there are fewer numbers to "fall across" to India and China.
- EB2 India. The prognosis is grim. For July 2009, the cut-off date is January 1, 2000, and the category may become unavailable in August or September of 2009. There are currently approximately 25,000 EB2 India cases which have been reviewed by USCIS and queued up at the Department of State awaiting visa numbers for the "green cards" to be approved. Like all other countries, India has a limit of 2,800 EB2 numbers available per year plus any "fall across" and "fall down" numbers from EB4, EB5 and EB1 visa numbers. Therefore, without legislative relief, the waiting time for Indian EB2 applicants may be measured in years, even decades.
- EB2 China. The prognosis is equally grim. As of July 2009, the cut-off date will be January 1, 2000 and the category may become unavailable in August or September of 2009. There are a significant amount of EB2 China cases which have been reviewed by USCIS and queued up at the Department of State awaiting visa numbers for approval of the adjustment of status. Like all other countries, China has a limit of 2,800 EB2 numbers available per year plus any "fall across" and "fall down" from EB4, EB5 and EB1 visa numbers. Therefore, without legislative relief, the waiting time for China born EB2 applicants may also be many years.
- EB3 Worldwide will be unavailable the remainder of this fiscal year. As the Department of Labor cleared its long backlog of Alien Labor Certification cases, there were tens of thousands of I-485 applications with priority dates in 2004 and earlier years which were processed by USCIS this year. The Department of State currently estimates that, as of October 1, 2009, the EB3 worldwide cut-off date will be March 1, 2003. There will be extended delays in this category.
- EB3 visas for India, China and Mexico applicants will be unavailable for the remainder of the fiscal year. It is estimated, based on current demand for visa numbers that as of October 1, 2009, the following cut-off dates could be established: China will be March 1, 2003; India will be November 1, 2001; and Mexico will be March 1, 2003. These estimates are based on "current demand" in the first 7 ½ months of FY2009, and a lot could change between now and early September when October dates are established.
- There are approximately 25,000 EB2 and 25,000 EB3 applicants currently queued at the Department of State awaiting visa numbers.