

Updates on EB-5 Visa Retrogression

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Immigration & Compliance

At a recent EB-5 industry forum, Mr. Charles Oppenheim, Chief of the Department of State (DOS) Immigrant Visa Control & Reporting Division, provided key insights on what the latest data suggests regarding the future availability of visas in the EB-5 category.

Top EB-5 Visa Users in FY2018: China, Vietnam, and India

In terms of EB-5 number use by country, although Mainland China remains the largest user of EB-5 visa numbers, the latest data indicates that the cumulative number usage by the rest of the world has surpassed total numbers used by China for the first time in recent history, with China receiving about 48 percent of the total EB-5 annual visa allocation in Fiscal Year (FY) 2018.

The next largest users are Vietnam, which reached its annual per-country cap of 7.1 percent for the first time in FY2018, and India, which showed significant growth, increasing number usage from 1.7 percent in FY2017 to 6.1 percent in FY2018.

Future Projections for Visa Bulletin Final Action Dates in the Near-Term

Based on these demand trends, Mr. Oppenheim predicts that by July 2019, but possibly earlier, India may retrogress. Mr. Oppenheim anticipates very slow movement for Mainland China, while Vietnam is likely to advance to September 2016 this fiscal year, but will likely retrogress in May or June of 2019 and begin to track with China.

Long-Term Projections for Total EB-5 Visa Wait Time

Importantly, the DOS has provided key *estimates* for the potential immigrant visa wait time by country. These estimates represent the number of years an investor can expect to wait from the time of filing the I-526 to the time an EB-5 visa becomes available. Once an EB-5 visa is available, the investor is eligible to proceed with the final step in the permanent residence process through Consular Processing, or, if the investor is in the United States, Adjustment of Status (AOS).

Potential Wait Time if I-526 Filed 10/30/2018	
Chargeability Area	Estimated Visa Wait Time
China-mainland born	14 years

Vietnam	7.2 years
India	5.7 years
South Korea	2.2 years*
Taiwan	1.7 years*
Brazil	1.5 years*

*As the current USCIS processing time for an I-526 is roughly two (2) years, there is no effective wait time between I-526 approval and visa availability.

Among other considerations, these projections may impact a child's protection under the Child Status Protection Act (CSPA), and thus their ongoing eligibility to obtain U.S. permanent residence as a derivative of the principal investor. The law limits eligibility to unmarried children under the age of 21 (and those 21 and older who qualify for CSPA protection), so a lengthy wait time in excess of the I-526 processing time may cause a child to "age out" before an EB-5 visa becomes available. Therefore, visa wait time estimates are particularly important for investors with teenage and young adult children.

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