

Summer Slow Down: For the First Time in Memory, the Quota Reserved for the Most Desired Immigrant Applicants Retrogresses for Natives of India and China!

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The Department of State published its August 2016 Visa Bulletin and it has a few impactful surprises. This is not good news for companies and foreign nationals. Indian and Chinese foreign nationals, as usual, are the hardest hit. Specifically, the historically open First Preference Employment Based Category (EB-1) retrogressed to January 1, 2010 for Indian and Chinese nationals. We can't recall the last time the EB-1 category was not current.

This is astonishing when you consider that the EB-1 group represents some of the most talented foreign nationals that are immigrating to the US. Specifically, the EB-1 category includes:

- Individuals of Extraordinary Ability – to qualify the individual must be able to demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim.
- Outstanding Researchers – to qualify the individual must demonstrate international recognition for his/her outstanding achievements in a particular academic field. The individual must have at least 3 years' experience in teaching or research in that academic area and must be in the United States in order to pursue research in the field.
- Multinational Managers/Executives – to qualify the individual must have been employed as a manager or executive outside the United States in the 3 years preceding the petition for at least 1 year by a parent, affiliate or subsidiary of a U.S. company where they will serve in the U.S. in a managerial or executive capacity.

There are additional delays for other nationalities and categories as well see: [here](#). The most common employment based visa categories, beyond EB-1, are Second (EB-2) and Third (EB-3) preference. EB-2 is applicable for jobs that require an advanced degree or equivalent as a minimum, exceptional ability in the arts, sciences or business, and National Interest Waivers for individuals whose work is in the national interest. The EB-3 classification is for skilled workers, professionals and unskilled workers.

Chinese nationals are being treated the same this August, whether first, second or third preference. All three categories have a January 1, 2010 priority date. For Indian nationals, EB-1 is still the best category, but with the January 1, 2010 priority date – the news is not good! The EB-2 and EB-3 categories have a priority date of November 2004. Can you imagine waiting more than twelve years to complete a process once started?

Notably, the EB-2 “all other” category retrogressed to February 1, 2014 which is worse than the third preference category at March 15, 2016. So, EB-3 all other is better than EB-2! We haven’t see this type of movement in the “all other” category for a significant period of time.

What this Visa Bulletin represents is a “shutting off” of the flow of immigrant visas being issued for what is expected to be the remainder of the fiscal year. Fiscal Year 2017 starts on October 1, 2016 and new visa numbers will be available. In the August Visa Bulletin, the Department of State indicates that the EB-1 category will be opening back up in October. Assuming the State Departments calculations are generally on target, we should see movement in October or later in the fall that will resemble the dates where we left off in July 2016.

The Visa Bulletin and lack of visa numbers for skilled workers continues to be a daunting problem for employers and foreign nationals alike. The system for foreign nationals who want to “follow the rules” has broken down. Further, there is no relief, or comprehensive immigration reform, in sight. Expect more whiplash inducing movement in the future.

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