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October Visa Bulletin Significantly Shortens Green Card Waiting Periods

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Yesterday, the USCIS announced that potentially thousands of immigrant workers could move forward with the last step in the green card process, effectively accelerating the waiting period for many individuals in the middle of obtaining a green card. Because Congress only permits 140,000 employer-sponsored green cards to be issued each year and no country can use more than 7% of the total green cards, many immigrants have typically waited 2-15 years to obtain a green card. The Department of State issues a monthly Visa Bulletin to inform immigrants of the current green card backlog, and this month's Visa Bulletin indicated significant movement, particularly for Indian and Chinese citizens in the Employment-based 1st and 3rd categories.

EMPLOYMENT-BASED	ALL CHARGEABILITY AREAS EXCEPT THOSE LISTED	CHINA-MAINLAND BORN	EL SALVADOR GUATEMALA HONDURAS	INDIA	N
1 ST	C	01SEP20	C	01SEP20	C
2 ND	C	01OCT16	C	15MAY11	C
3 RD	C	01JUN18	C	01JAN15	C

Why did it occur?

October represents the first month of the fiscal year, and any unused visas from the prior fiscal year trickle down to the various immigrant visa categories. In the latest October 2020 Visa Bulletin, the Department of State noted that there was 261,000 immigrant visas, a historically high number to be distributed at the beginning of this fiscal year. As an acknowledgement of increased immigrant visas to be distributed, the US Citizenship and Immigration Agency also shifted from using the Final Action Dates to the Filing Dates in the Visa Bulletin. The Final Action Dates indicate when the visas may finally be issued and approved, whereas the Filing Dates indicate the earliest dates when applicants may be able to apply.

Which immigrant employees are impacted?

Immigrant employees who may be impacted include those who have: 1) an approved PERM Labor Certification and approved I-140 Petition for Alien Worker with your company and 2) a Priority Date earlier than the corresponding Visa Bulletin date above. The Priority Date is determined by the filing date of the PERM Labor Certification, except in instances where a PERM process is not required. Those individuals who have a “current” Priority Date are permitted to file the I-485 Application for Adjustment of Status, which is the last step in the green card process. For example, an Indian citizen who is in a BS degreed role (EB-3) with a Priority Date in 2013, is now “current” based upon the October 2020 visa bulletin, and may proceed forward in filing the I-485 Application for Adjustment of Status.

Currently, the USCIS is taking 18 months to adjudicate I-485 Applications for Adjustment of Status. While the USCIS is willing to accept I-485 Applications, some immigrant workers may potentially still be waiting several additional years for the approval of the I-485, which is represented by the Final Action Date Chart within the Visa Bulletin.

A word of caution: the filing window may change with November's Visa Bulletin, so if you have an immigrant employee who is ready to proceed with the I-485 process, it is critical to contact an attorney soon and prepare to move quickly.