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## VISA BULLETIN FORECAST INDICATES FUTURE PROGRESS FOR EB-3 CHINA

Following publication of the [August Visa Bulletin](#) that revealed a stunning retrogression in visa availability under the Employment-based, Third (EB-3) preference category for applicants born in China, Department of State officials have provided additional information to clarify why the retrogression was so significant, and why it may not last very long.

### **Why Was the EB-3 China Retrogression So Significant?**

State Department Officials explained that the DOS originally believed there would be unused family-sponsored visa numbers available for use in the EB-3 China category. That expectation allowed for greater advances under the EB-3 China category in recent months. However, in recent weeks and months, the family-based demand far exceeded expectations, meaning there would likely be no unused family-based visa numbers available for use on the employment-based side. Another factor was that the advances in EB-3 cut-off dates earlier in the year generated significant demand, much of which came as EB-2 applicants sought to take advantage of the more advanced cut-off dates under the EB-3 category by filing so-called “downgrade” petitions under the EB-3 category. As a result, it became necessary to impose a much earlier cut-off date for the EB-3 China category in the August Visa Bulletin. Officials have indicated that the September Visa Bulletin may show only a modest advance of a few months, as the DOS manages visa allocations during the last month of the current fiscal year which ends on September 30<sup>th</sup>.

### **Will the Retrogression Last?**

Because the particular causes of the significant retrogression related predominantly to expected demand shifts under the current fiscal year, officials are able to predict that the new fiscal year, which begins on October 1<sup>st</sup>, should see the EB-3 China category return to a cut-off date in 2010 or possibly even 2011. Such progression seems realistic, as applicants who previously downgraded from EB-2 to EB-3 move forward with their cases under the now more advantageous EB-2 category. As applicants are approved for permanent residency under the EB-2 category, they will no longer pursue applications under the EB-3 category. As this artificially high demand generated by the EB-3 downgrade phenomenon slowly abates, greater stability and sustainable progression should be possible.

### **Is this an Anomaly, or Will Great Fluctuations Continue in the Future?**

As part of President Obama’s immigration executive actions, the Departments of State and Homeland Security were instructed to consult and cooperate to develop a better way of operating the monthly allocation of visa availability published each month in the Monthly Visa Bulletin. In order to alleviate some of the difficulties applicants face as a result of having to wait so long to file their Applications to Adjust Status, the Department of State has made adjustments in the progression of cut-off dates under the Monthly Visa Bulletin. Officials now appear to err on the side of significant advances in order to create filing windows wherein applicants may file their applications with U.S. Citizenship & Immigration Services (CIS), even if there is a significant chance that their applications will not be approved before the current fiscal year’s quota approaches exhaustion and future retrogression becomes necessary. While

this approach allows more applicants to file for benefits, such as Applications for Employment Authorization and Advance Parole for family members, and should also help to avoid the “aging out” of children approaching the age of 21, these aggressive advances can lead to severe retrogressions, and overall greater volatility throughout the fiscal year. The good news is that during periods of significant retrogression, family members are able to enjoy benefits that help avoid family hardship and separation.

### **What Does This Mean for EB-3 China Applicants Now?**

New EB-3 Applicants born in China who have priority dates that are current in July should file their applications before the end of the month. Filing before July 31, 2015 will allow applicants and family members to apply for important benefits such as Employment Authorization Document (EAD) cards and Advance Parole travel documents. Those with applications already pending beyond normal adjudication time frames may wish to follow up with the CIS on their applications; however, at this late date in the month, EB-3 China applicants should not expect approval in July. Rather, applicants will most likely wait for at least two more months until the EB-3 China cut-off date returns to a “normal” range in the new fiscal year.

Foster will continue to monitor immigrant visa availability and will provide additional information in future Immigration Updates<sup>®</sup> and on our firm’s website at [www.fosterglobal.com](http://www.fosterglobal.com).