

Significant Advances in Green Card Cutoff Dates for EB-2 India and EB-2 China

September 26, 2011

The Department of State (DOS) has published the Visa Bulletin for October 2011, announcing that the cutoff dates for the EB-2 India and EB-2 China categories will advance by 60 days to July 15, 2007, as of October 1, 2011.

1. Why is this advancement in cutoff dates significant?

This is significant because this is the first time that the large volume of applications filed during the anomalous eight-week period in 2007 has become eligible for approval. In July 2007, the DOS eliminated all cutoff dates from all employment-based (EB) categories, with the result that all foreign nationals seeking EB permanent residence were permitted to file applications for adjustment of status (AOS). This brief window of opportunity lasted approximately eight weeks. Many of these applicants with approved EB immigrant petitions had been waiting for several years for the cutoff dates to advance. While foreign nationals could file AOS applications during this time, these applications could not be approved once this window had closed and cutoff dates had retrogressed. As of October 1, 2011, cutoff dates for the EB-2 India and EB-2 China categories will advance through July 15, 2007, allowing United States Citizenship and Immigration Services (USCIS) to approve the green card applications for foreign nationals in these categories with priority dates of July 15, 2007 or earlier.

2. Will applicants for AOS in other EB categories be affected by this advancement in priority dates?

No. Although all applicants in the EB-3 category from all countries, including India and China, could file green card applications during the summer of 2007, only EB-2 India and EB-2 China applicants with priority dates of July 15, 2007 or earlier will be eligible for approval. Cutoff dates for the other EB cases have advanced since the summer of 2007 filings. This Alert addresses only the significant advancement in EB-2 India and in EB-2 China cutoff dates.

3. Do foreign nationals or employers need to take any action as a result of this advancement in cutoff dates?

No. USCIS preadjudicates green card applications held in abeyance due to cutoff date retrogression and will retrieve these applications for final processing automatically, with no further action required on the part of green card applicants or employers. See Question No. 8 below regarding principal applicants who got married while the AOS application was pending.

4. How long will it take for USCIS to approve these applications?

USCIS normally makes a final decision on such applications within 60 days of the priority date becoming current. However, in light of the large volume of applications filed during the summer of 2007, it would be reasonable to expect a longer period to complete final processing.

5. Is it possible for the cutoff dates to retrogress once again as of November 1, 2011 or thereafter?

Yes. The advancement in cutoff dates means that these applicants will be current during the month of October 2011 only. The DOS could announce in the November 2011 Visa Bulletin, published in mid-October, or in

subsequent Visa Bulletins that cutoff dates have retrogressed, causing further delay in the final processing of these applications.

6. Will USCIS accept requests to expedite these applications to ensure approval before any possible retrogression?

No. USCIS will not accept requests to expedite these applications.

7. Will USCIS issue Requests for Evidence (RFEs) on these applications?

USCIS has the authority to issue an RFE prior to the final processing of these applications. It is not expected that USCIS will issue routine RFEs, such as a request for updated biometrics or medical exam. Such RFEs are possible, however.

8. Since filing my green card application (Form I-485), I have gotten married. May I now file a green card application for my spouse?

Yes. You and your spouse share the same priority date. Your spouse is now eligible to file for permanent residence during the month of October 2011. Your spouse may remain eligible to file his or her green card application after October 2011, depending on the movement of the cutoff dates. You will know if your spouse remains eligible to file his or her green card application when the November 2011 Visa Bulletin is published in mid-October. In the middle of every month, the DOS publishes the Visa Bulletin announcing the cutoff dates in effect for the following month.

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