



**EB-2 INDIA VISA AVAILABILITY RETROGRESSES ANOTHER FOUR YEARS; EB-3
ADVANCES FOR CHINA, MEXICO, AND WORLD**

The U.S. Department of State has published the Monthly Visa Bulletin for December 2013, reporting immigrant visa availability under the annual per-country quota system. Under the December Bulletin, visa availability retrogressed significantly under the Employment-based, Second Preference (EB-2) category for persons born in India, from a current cut-off date of June 15, 2008 to a new cut-off date of November 15, 2004. The EB-3 and Other Worker categories also retrogressed slightly for persons born in India from September 22, 2003 to September 1, 2003, while progressing a full year for those born in China and all other countries (except the Philippines) from October 1, 2010 to October 1, 2011. The cut-off date for the Philippines advanced only a few weeks from December 16, 2006 to January 8, 2007.

EB-2 India

For most of Fiscal Year 2013, from October 2012 through July 2013, the EB-2 category for India maintained an established cut-off date of September 1, 2004. In August 2013, near the end of the fiscal year, the Department of State advanced the cut-off date significantly in order to ensure that all visa numbers would be used for the fiscal year. The cut-off date again advanced in September 2013, before holding steady at June 15, 2008 in the October and November 2013 Visa Bulletins.

In order to ensure that immigrant visas do not become completely unavailable under the EB-2 India category during this current Fiscal Year, the Department of State has determined that an earlier cut-off date is again required. The EB-2 category for India has now retrogressed to a new cut-off date of November 15, 2004. For the month of November 2013, EB-2 Indian-born applicants with a priority date earlier than June 15, 2008, are eligible to file Applications to Adjust Status with U.S. Citizenship & Immigration Services (CIS), or to have pending applications approved or immigrant visas issued abroad.

Beginning December 1, 2013, applicants must have a priority date earlier than November 15, 2004, in order to be eligible to file Applications to Adjust Status or having pending applications approved or immigrant visas issued abroad. Because of the significant retrogression, applicants who are currently eligible to apply in November should immediately contact their FosterQuan immigration attorneys for assistance in preparing and filing a timely application. While applications cannot be approved until a visa number once again becomes available, applicants will want to take advantage of the benefits afforded applicants for adjustment of status. Applicants with pending Applications to Adjust Status are eligible, along with their dependent family members, for Employment Authorization Documents (EAD cards) and Advance Parole travel documents.

Priority Dates & Country of Chargeability

An applicant's priority date is normally the date that a PERM Application for Labor Certification, or an Immigrant Visa Petition if Labor Certification is not required for the category, was filed for his or her current permanent residency process. However, it is often possible to retain the priority date established in an earlier permanent residency process, even if that process was begun by a different employer. In many cases, so long as an I-140 Immigrant Visa Petition was approved under the previous process, the priority date of the previous process should be retained and can be applied under a second permanent residency process for a new employer.

A person's country of birth will be the country of chargeability under the Visa Bulletin. This means that, ordinarily applicants born in India must be counted under the per-country limitation for India. Certain exceptions exist, however, when an applicant's spouse was born in a different country and will also be immigrating to the U.S. In such cases, it is often possible to take advantage of the spouse's country of birth to file an Application to Adjust Status earlier than would otherwise be possible. This is called cross-chargeability.

For further information on retaining an earlier priority date, or exploring the possibility of cross-chargeability, contact your FosterQuan immigration attorney.

EB-3 Advances for China, Mexico, & World

Immigrant Visa Availability under the EB-3 and Other Worker categories advanced significantly for almost all countries of birth under the December Bulletin. China, Mexico, and all other countries of chargeability other than India and the Philippines advanced one full year to a new cut-off date of October 1, 2011. Beginning December 1, 2013, applicants with a priority date earlier than October 1, 2011, will be eligible to file Applications to Adjust Status, or having pending applications approved or immigrant visas issued abroad.

EB-2 Backlogs Blamed on "Upgrade Filings"

For the past few years, we have seen significant backlogs grow under the EB-2 category for persons born in India, while seeing some advances under the EB-3 category for persons born in other countries. The significant, continuing backlogs under the EB-2 category is largely due to the practice of "upgrading" permanent residency processes from the EB-3 to the EB-2 category. Over time, while an EB-3 applicant awaits his or her priority date for filing an EB-3 Application to Adjust Status, the applicant is often promoted into a higher position, one that qualifies for the EB-2 category. In such cases, employers pursue a new permanent residency process to file for the individual's new position. This practice, multiplied over thousands of applicants who originally started their permanent residency process under the EB-3 category, amounts to significant numbers added to the EB-2 demand. Unless immigrant quotas are increased or other remedial measures are taken, this practice may be expected to continue as applicants advance through the natural course of their careers.

Some individuals who qualify for EB-2 filings may also qualify for EB-3 filings. Applicants who have EB-2 priority dates that would be considered current under the EB-3 category should contact their FosterQuan immigration attorney to discuss whether there may be potential alternative strategies for filing an Application to Adjust Status.

As additional information becomes available concerning visa availability, FosterQuan will make additional updates available via [our firm's website](#) and in future Immigration Update[®] email bulletins.