



## **IMMIGRATION ALERT**

### **New Delays for Some Green Card Applicants**

The United States Department of State has released its Visa Bulletin for July 2005. The “priority dates” for the employment-based third preference category for nationals of all countries have been listed as unavailable. This means that foreign nationals who have been sponsored by U.S. employers for permanent resident status whose cases were filed in the so-called EB3 or employment-based third preference category will face a longer processing time for issuance of permanent resident status. [Generally, the EB3 category applies to jobs whose minimum educational requirement is less than either (i) a masters degree or (ii) a bachelor degree plus five years of post-graduate work experience. Jobs whose minimum requirements equal or exceed that level of education are categorized generally as EB2.]

A foreign national with an approved third-preference labor certification is now prohibited from advancing to the final stages of the permanent residence process (filing an I-485 Adjustment of Status application or a consular processing immigrant visa application) until his or her priority date becomes current. As seen in the current Visa Bulletin (<http://travel.state.gov/visa/frvi/bulletincurrent.html>), the EB3 category is currently designated as “U” (Unavailable). Once green card numbers for this category become available, the Visa Bulletin will be updated to read “C” (Current) or a cut-off date will be listed. This cut-off date refers to the original filing date of the underlying Labor Certification (also known as “priority date”). Any application initially filed before the listed cut-off date is allowed to proceed to the final stages of the permanent residence process.

This Alert answers a number of questions about the retrogression of priority dates.

### **Why have the Priority Dates retrogressed?**

The Immigration and Nationality Act limits the number of green cards which can be issued in any one fiscal year. These limits are categorized by nationality and type of application. In the past several years, USCIS delays in processing I-485 Adjustment of Status applications have meant that the annual quotas for each category have not been reached. However, in light of the improved processing of I-485 applications, the quotas have been reached in the EB3 category. In January of this year, priority dates for nationals of China, India, Mexico, and the Philippines retrogressed.





### How can I track the current Priority Date?

The Department of State publishes the Visa Bulletin online each month. It is accessible at [http://travel.state.gov/visa/frvi\\_bulletincurrent.html](http://travel.state.gov/visa/frvi_bulletincurrent.html). The Visa Bulletin is published in the middle of each month and lists the following month's priority dates.

### Is it possible that Priority Dates in other categories will retrogress in the future?

This is possible. The priority dates are determined by the Department of State based on the number of approved immigrant visas (green cards) in each category during the fiscal year. If USCIS processing of I-485 applications continues to improve, priority dates may retrogress in the employment-based first- or second-preference categories. The Office of Visa Services has stated that it expects second-preference categories to remain current through FY 2005. However, in FY 2006, numbers in this EB2 category for Chinese and Indian nationals may potentially retrogress.

Seyfarth Shaw's Business Immigration Group provides periodic information alerts about noteworthy developments in the business immigration field. The information that we provide is of a general nature and should not be interpreted as legal advice applicable to a specific factual situation. If you have questions about the information contained in this Immigration Alert or would like to know more about Seyfarth Shaw's Business Immigration Group and our inbound and outbound visa processing capabilities, please visit our website, [www.immstar.com](http://www.immstar.com), or contact a member of the Business Immigration Group: Jim King ([jking@seyfarth.com](mailto:jking@seyfarth.com)) in Atlanta; Russell Swapp ([rswapp@seyfarth.com](mailto:rswapp@seyfarth.com)) or Dyann DelVecchio ([ddelvecchio@seyfarth.com](mailto:ddelvecchio@seyfarth.com)) in Boston; Ric Fischer ([rfischer@seyfarth.com](mailto:rfischer@seyfarth.com)) in Chicago; Michael Murray ([mmurray@seyfarth.com](mailto:mmurray@seyfarth.com)) in New York; or Howard Hobbs ([hhobbs@seyfarth.com](mailto:hhobbs@seyfarth.com)) in DC. If you would like to receive our Immigration Alerts, please contact Sarah Compton via e-mail at [scompton@seyfarth.com](mailto:scompton@seyfarth.com). Thank you.



Seyfarth Shaw LLP  
55 East Monroe Street  
Suite 4200  
Chicago, IL 60603  
ATTN: Client Relations  
[Seyfarth@seyfarth.com](mailto:Seyfarth@seyfarth.com)