

One Minute Memo®



UPDATE: U.S. Department of State Alters Visa Bulletin System

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In accordance with President Obama's [Executive Actions on Immigration](#) proposed in November 2014, the U.S. Department of State (DOS) announced a new system for determining immigrant visa availability, establishing bifurcated "cut-off" dates within the [Visa Bulletin](#). U.S. Citizenship and Immigration Services (USCIS), in coordination with the DOS, has revised the procedures for determining visa availability for applicants waiting to file Adjustment of Status applications. According to USCIS, this revised process will enhance the DOS' ability to more accurately predict overall immigrant visa demand and determine the cut-off dates for visa issuance published in the [Visa Bulletin](#). This will help ensure that the maximum number of immigrant visas are issued annually as intended by Congress, and minimize month-to-month fluctuations in [Visa Bulletin](#) final action dates.

Application Final Action Dates

According to the new [Visa Bulletin](#) system, the "Application Final Action Date" will function in the same manner as a traditional "[priority date](#)," which, in the employment-based immigrant visa context, is the date on which the Immigrant Visa Petition is filed with U.S. Citizenship and Immigration Services (USCIS) or the PERM Labor Certification is filed with the Department of Labor (DOL). Under the current system, once an individual's "Application Final Action Date" is deemed "current," or prior to the date indicated on the DOS' [Visa Bulletin](#), the individual becomes eligible to file an Adjustment of Status (or green card) application with USCIS, which includes applications for secondary benefits, including employment authorization and travel documents. USCIS typically issues the employment and travel documents within 60 - 90 days of filing the Adjustment of Status application, with the green card issued about 7-8 months after the initial filing date, assuming the priority date remains current and there are no legal challenges to the applications.

Dates for Filing Visa Applications

The most significant change to the current system is the creation of "Dates for Filing Visa Applications," which will determine when an Immigrant Visa Application may be submitted to the National Visa Center and when Adjustment of Status applications may be *filed* with USCIS. The mere filing of an Adjustment of Status application is an important step in the green card process because it enables the individual and his/her dependent family members to apply for the critical, secondary employment and travel benefits.

According to the DOS announcement, the “Dates for Filing Visa Applications” will indicate when applicants who are applying for immigrant visas abroad may assemble and submit required documentation to the National Visa Center. According to [a concurrent announcement by USCIS](#) regarding changes to the *Visa Bulletin* system, individuals will be eligible to file Adjustment of Status applications pursuant to the “Dates for Filing Visa Applications” as currently listed on the *Visa Bulletin*. The employment-based category most significantly impacted by these announcements is EB-2 India, where the current “Application Final Action Date” is May 1, 2005 and the “Date for Filing Visa Applications” is July 1, 2011. Individuals in this category will be eligible to file Adjustment of Status applications more than four years earlier than previously authorized.

Under this new system, once the Adjustment of Status application has been filed, USCIS will adjudicate the applications for employment and travel documents and wait for the applicant’s “Application Final Action Date” to become current before adjudicating the Adjustment of Status application.

Notwithstanding the DOS and USCIS announcements, there are still several questions that need to be addressed including the ability to file concurrent I-140 Immigrant Visa Petitions and Adjustment of Status Applications when priority dates under the “Dates for Filing Visa Applications” become current, as well as the impact that this new bifurcated “cut-off” date system will have on I-140 Immigrant Visa Petition “portability.” Seyfarth Shaw LLP’s Immigration Group is closely monitoring these developments and will provide an update when more information becomes available.

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