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News & Types: Immigration Update

Business Immigration Weekly for February 19, 2013

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Practices: Immigration

March 2013 Visa Bulletin Update – Green Card Availability Predicted for April to June

Current Availability

The U.S. Department of State ("DOS") recently released its March 2013 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of March. This month's Visa Bulletin features the following highlights:

- The EB-2 China category continues to advance steadily advancing one month to February 15, 2008.
- Due to continued high demand, the EB-2 India category has completely stalled at September 1, 2004 and there has been no movement since October 2012 when the new fiscal year's annual quota opened.
- The EB-3 India category has advanced slightly from November 15, 2002 to November 22, 2002.
- The EB-3 World category has also shown significant advancement in one to two month increments every month and is now at May 1, 2007 from March 15, 2007 last month.

Forecasted Availability for April to June 2013

The DOS has also forecasted future immigrant visa availability for April to June 2013. The following is a quick summary:

- EB-2 India category will show no advancement and this category will most likely have to be retrogressed to contain the high demand.
- EB-1 category and EB-2 World, Mexico and Philippines category will remain current.
- EB-2 China category will continue to advance three to six weeks at a time.
- EB-3 category will advance per the following: World – four to six weeks; China – two to three months; India – two weeks; Mexico – four to six weeks; and Philippines – one week.
- EB-5 China category will remain current and will not have to be cut off as the DOS had previously stated in its December 2012 Visa Bulletin.

Comparison to Prior Months

The following is a comparison of priority date movement since the inception of the current retrogression in 2007:

	Dec 2007	Jun 2008	Aug 2009	Mar 2010	Sept 2012	Oct 2012	Mar 2013

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EB-3 World	09/01/02	03/01/06	U	12/15/02	10/01/06	10/22/06	05/01/07
EB-2 China	01/01/03	04/01/04	10/01/03	07/08/05	U	07/15/07	02/15/08
EB-3 China	10/15/01	03/22/03	U	12/15/02	12/15/05	02/06/06	01/22/07
EB-2 India	01/01/02	04/01/04	10/01/03	02/01/05	U	09/01/04	09/01/04
EB-3 India	05/01/01	11/01/01	U	07/01/01	10/08/02	10/15/02	11/22/02
EB-3 Other Workers	10/01/01	01/01/03	U	06/01/01	10/01/06	10/22/06	05/01/07

Additional information about the movement of the employment-based immigrant visa priority dates will be contained in our firm's future Immigration Updates when it becomes available.

Employers Beware – Failing to Use E-Verify Properly Could Result in Investigation

The Department of Justice's Office of Special Counsel (OSC), the agency that independently investigates and prosecutes violations of the anti-discrimination provisions of the Immigration and Nationality Act (INA), more specifically, citizenship status and national origin discrimination provisions, has revealed that it receives information, which it uses to initiate investigations, with the US Citizenship and Immigration Services (USCIS) Verification Unit that runs the E-Verify program. E-Verify is a web-based system that checks whether an employee has valid employment authorization based on information indicated on the Form I-9, Employment Eligibility Verification, with data collected and maintained by the US Department of Homeland security.

The OSC confirmed that the Verification Division refers cases to the OSC when employers (1) do not print Tentative Non-Confirmation (TNC) notices; (2) perform E-Verify checks prior hiring the employee; and (3) have a high number of employees who present List A documents. According to the OSC, employers who exhibit any of these behaviors may be assumed to be doing so for discriminatory reasons prompting an investigation by the OSC. If an employer is not legally mandated to register and use E-Verify by state or federal law, it should carefully consider whether doing so will be worth it considering that the federal government is using this information in a manner that is outside of the scope of the programs intended purpose.

Perm Statistics Released

The U.S. Department of Labor (DOL) released the most recent PERM processing information that provides a glimpse as to current trends in the first step of the green card process for employer sponsored immigrant visas. From October 1, 2012 to December 31, 2012, 37% of ETA-9089 Applications for Permanent Employment Certification were audited. This is not a significant drop from Fiscal Year 2012 where overall the DOL audited 45% of applications submitted. Furthermore, the DOL has received 29,344 applications in total, of which half remain in process, 12,123 have been certified, 1,532 have been denied and 680 have been withdrawn. These

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numbers are for the first quarter of Fiscal Year 2013 which will not necessarily be representative of future trends throughout the year.

Sec Files Complaint for Fraudulent Practices in the Eb-5 Program

The US Securities and Exchange Commission (SEC) filed a complaint against A Chicago Convention Center, LLC (ACCC), Intercontinental Trust Center of Chicago, LLC (IRCTC) and Anshoo Sethi alleging the defendants defrauded 250 investors by selling them $145 million in securities and obtaining approximately $11 million in fees for a hotel and conference center project. Sethi targeted Chinese investors promising them a path to permanent residence through the EB-5 Immigrant Investor Program. The victims believed that their investment would fund the "World's First Zero Carbon Emission Platinum LEED certified" hotel that would be located near Chicago's O'Hare Airport. The defendants allegedly submitted to the US Citizenship and Immigration Services (USCIS) materially false information in order to obtain initial approval of the Immigrant Petition for each immigrant investor. The defendants manipulated and falsified documents claiming to have franchise agreements with several major hotels, including Starwood Hotels, Intercontinental Hotel Group and Hyatt Hotels although these agreements were in fact non-existent. The defendants collected administrative fees of $41,500 per investor which they claimed would be fully reimbursable. However, the SEC found that over 90 percent of these fees totaling $10,726,466 had been misappropriated, of that $2.5 million were transferred to Sethi's personal accounts in Hong Kong. The SEC complaint requests, among other things, the freezing of the remaining assets. Unfortunately, not only will these investors not obtain permanent residence through the EB-5 program, but they might also not fully recover their investment.

Florida Has Joined the Ride Program

Florida has become the second state in the US, after Mississippi, to join the E-Verify Records and Information from DMVs (RIDE) program. Through the RIDE program, the US Citizenship and Immigration Services (USCIS) E-Verify program validates whether driver's licenses and state identifications are authentic when a driver's license or state identification is presented by an employee as a List B document for Form I-9, Employment Eligibility Verification, purposes. We can only expect further communication between governmental agencies to combat fraud and the E-Verify and the RIDE program to expand their scope in the future.

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