

Business Immigration Weekly for February 15, 2015

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Practices: Immigration

DOS FORECASTS AVAILABILITY OF IMMIGRANT VISAS

The Department of State's (DOS) Chief of the Visa Control and Reporting Division, Charlie Oppenheim, recently shared extensive information on the future availability of immigrant visas (green cards). The DOS is the government agency that controls and tracks the annual quotas on the issuance of green cards. Each month the DOS issues the Visa Bulletin which outlines the availability of green cards for that month. A summary of Mr. Oppenheim's comments is listed below:

- EB-1 will remain current.
- EB-2 World category will remain current.
- EB-2 China advanced about five months in March 2015 from March 15, 2010 to September 1, 2010 and may see another advancement in April 2015 as Chinese nationals continue to downgrade from EB-2 to EB-3.
- EB-2 India advanced significantly in March 2015 from September 1, 2005 to January 1, 2007 and will continue to advance, although not as drastically for April 2015.
- EB-3 China remains ahead of EB-2 China at October 22, 2011 and will continue to advance to encourage EB-2 China downgrades. After a few months, the EB-3 category may require a correction and be cut off.
- EB-3 India will continue to advance slowly at one to two weeks per month.
- EB-3 Mexico will advance with the EB-3 World category.
- EB-3 Philippines may require a correction at a later point in the fiscal year if there is too much demand.
- EB-5 China may be cut off in July 2015.

Month-to-month availability of immigrant visas varies and depends on many factors. These forecasts do not guarantee future availability.

MARCH 2015 VISA BULLETIN UPDATE

The Department of State (DOS) released its March 2015 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of March. Below is a summary of the bulletin highlights:

- The EB-2 India category has advanced significantly from September 1, 2005 to January 1, 2007.
- The EB-2 China category has also advanced significantly from March 15, 2010 to September 1, 2010.
- The EB-3 India category advances slightly from December 22, 2003 to January 1, 2004.

- The EB-3 World, Mexico and Philippines categories continue to be aggressively advanced from January 1, 2014 to June 1, 2014.
- The EB-3 China category exhibits slight advancement from September 1, 2011 to October 22, 2011.

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	Sept 2012	Jan 2015	Feb 2015	Mar 2015
EB-3 World	09/01/02	03/01/06	U	10/01/06	06/01/13	01/14/14	06/01/14
EB-2 China	01/01/03	04/01/04	10/01/03	U	02/01/10	03/15/10	09/01/10
EB-3 China	10/15/01	03/22/03	U	12/15/05	03/01/11	09/01/11	10/22/11
EB-2 India	01/01/02	04/01/04	10/01/03	U	02/15/05	09/01/05	01/01/07
EB-3 India	05/01/01	11/01/01	U	10/08/02	12/15/03	12/22/03	01/01/04
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	06/01/13	01/14/14	06/01/14

DHS TAKES ANOTHER STEP TOWARD EXTENSION OF EMPLOYMENT AUTHORIZATION TO CERTAIN H-4 DEPENDENT SPOUSES

The Department of Homeland Security (DHS) took another positive step toward finalizing its proposed rule to extend employment authorization to certain H-4 dependent spouses that it had announced in May 2014. Last week, DHS forwarded this rule to the Office of Management and Budget (OMB) for review and consideration with no deadline. The OMB may take two or more months to complete their review. Once the OMB finalizes the rule, DHS will publish the final rule in the Federal Register, but until it does so it is unclear when this rule might be finalized. Further, implementation of this rule may be delayed due to other immigrant programs that were announced by President Obama as part of his executive actions, such as the extension of the Deferred Action for Childhood Arrivals (DACA) and the implementation of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).

The proposed rule would extend employment authorization to H-4 spouses if the principal H-1B nonimmigrant has either an approved Form I-140, Immigrant Petition for Alien Worker (step 2 of the permanent residence process), or has been granted an extension of their H-1B status under the American Competitiveness in the Twenty-first Century Act of 2000 (commonly referred to as AC21). Coverage would not extend to H-4 children or H-4 dependent spouses of H-2A/H-2B or H-3 nonimmigrants. An eligible H-4 dependent spouse would not automatically receive employment authorization incident to their status, but would have to apply for an Employment Authorization Document (EAD) card via the Form I-765, Application for Employment Authorization. This Form is submitted with fee to the U.S. Citizenship and Immigration Services (USCIS) and generally takes three months to process. The proposed rule does not provide a specific period of employment authorization, but instead notes that the length of the authorization would be within USCIS' discretion.

Currently, a two-year period is being proposed, however, whether the period is one or two years, the actual validity of the EAD card would not exceed the H-4 spouse's period of authorized stay as indicated on their Form I-94.