

Business Immigration Weekly for December 12, 2014

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Practices: Immigration

JANUARY 2015 VISA BULLETIN UPDATE

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

- The EB-2 India category has stalled at February 15, 2005 as predicted in our previous bulletin updates.
- The EB-2 China category has advanced one month from January 1, 2010 to February 1, 2010.
- The EB-3 India category advances two weeks from December 1, 2003 to December 15, 2003.
- The EB-3 World, Mexico and Philippines categories continue to exhibit strong advancement from November 1, 2012 to June 1, 2013.
- The EB-3 China category also continues to show significant advancement from June 1, 2010 to March 1, 2011.

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

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	May 2013	Dec 2014	Jan 2014
EB-3 World	09/01/02	03/01/06	U	10/01/06	12/01/07	11/01/12	06/01/13
EB-2 China	01/01/03	04/01/04	10/01/03	U	05/15/08	01/01/10	02/01/10
EB-3 China	10/15/01	03/22/03	U	12/15/05	12/01/07	06/01/10	03/01/11
EB-2 India	01/01/02	04/01/04	10/01/03	U	09/01/04	02/15/05	02/15/05
EB-3 India	05/01/01	11/01/01	U	10/08/02	12/22/02	12/01/03	12/15/03
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	12/01/07	11/01/12	06/01/13

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.

DOL NO LONGER ACCEPTING EMPLOYER PROVIDED WAGE SURVEYS FOR H-2B PROGRAM

As of December 8, 2014, the Department of Labor (DOL) will no longer issue prevailing wage determinations for requests made in the H-2B program where the employer is requesting a wage based on an employer provided wage survey. The DOL issued this announcement as a result of the federal court of appeals decision rendered by the Third Circuit on December 5, 2014, *Comite de Apoyo a los Trabajadores Agricolas et a. v. Solis*. The case is the latest in a long list of litigation that has surrounded the H-2B program.

The H-2B Temporary Non-Agricultural Workers program allows employers to employ nonimmigrants in non-agricultural fields where the employer has established that the need for the foreign worker's services is temporary, that there are insufficient U.S. workers that are able, available, qualified and willing to accept the H-2B position and that the hiring of a foreign worker will not adversely affect the working conditions and wages of U.S. workers. As part of the process, the employer must first obtain a temporary labor certification from the DOL which is then forwarded to the Department of Homeland Security's US Citizenship and Immigration Services (USCIS) for H-2B petition processing. As part of the temporary labor certification, in order to demonstrate no adverse effect on the working conditions and wages of U.S. workers, a prospective employer must request a prevailing wage determination from the DOL. This determination will set the minimum wage that the employer must pay the foreign workers. Where no collective bargaining agreement existed, employers were permitted to submit a private wage survey to the DOL requesting that the agency base the prevailing wage on the wage survey. Essentially, the private wage survey data was more favorable and required lower wages than the DOL's standard wage database Occupational Employment Statistics (OES). As a result of the ruling, the DOL will only issue H-2B prevailing wage determinations based on OES data (except where there is a collective bargaining agreement). For currently pending H-2B Labor Certification Applications, the DOL will notify employers of their new prevailing wage obligations.

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