

Business Immigration Weekly for the Week of May 13, 2013

5/20/2013

Practices: Immigration

EMPLOYERS USING ELECTRONIC HR SOFTWARE FOR FORM I-9 COMPLETION BEWARE

The Immigration Customs Enforcement Homeland Securities Investigation Worksite Enforcement Unit has clarified that Section 1 of the Employment Eligibility Verification, Form I-9, must always be completed by the employee. This means that Forms I-9 that pre-populate Section 1 using human resources software are not prepared correctly and therefore may be subject to fines associated with paper violations. This includes instances where the employee has provided the information that is then pre-populated or whether the preparer/translator section of the Form I-9 is also completed. This appears to be a significant shift in ICE policy and we will continue to monitor and provide updates on the situation.

REVISED FORM I-9 MUST BE USED FOR ALL NEW HIRES AND REVERIFICATIONS

As of May 7, 2013, all prior versions of the Form I-9, Employment Eligibility Verification, are no longer valid. In March, the U.S. Citizenship and Immigration Services (USCIS) released the new version of the Employment Eligibility Verification Form I-9. Employers are required to complete the Form I-9 to verify an employee's employment authorization with information and documents provided by the employee. The new and current version of the form is a two-page electronically fillable document with a revised format that should provide an employer with additional guidance in completing the form. Additionally, the revised Form I-9 now has fields for the employee's foreign passport, telephone and email addresses. The revised and current Form I-9 does not have to be completed for current employees, only for new hires and to reverify an existing employee's employment authorization. The instructions to the revised and current Form I-9 also show an updated Document Chart listing the types of documents that an employee can provide to demonstrate employment authorization. The USCIS has also issued a revised M-274, Handbook for Employers, Guidance for Completing Form I-9, which we encourage all employers to review. The revised version of the Form I-9 as well as the revised M-274, are available at the USCIS website at www.uscis.gov.

June 2013 Visa Bulletin Update

Current Availability

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

- The EB-2 China category continues to advance steadily advancing one month to June 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 which was progressing in one-month increments has only advanced two weeks to January 8, 2003.
- The EB-3 World category has also shown significant advancement of ten months from December 1, 2007 to September 1, 2008.

Forecasted Availability to June 2013

The DOS has indicated the following visa availability:

- 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 has advanced significantly which is indicative that it will most likely stall or retrogress as more individuals file and obtain permanent residence.

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	May 2013	June 2013
EB-3 World	09/01/02	03/01/06	U	12/15/02	10/01/06	12/01/07	09/01/08
EB-2 China	01/01/03	04/01/04	10/01/03	07/08/05	U	05/15/08	06/15/08
EB-3 China	10/15/01	03/22/03	U	12/15/02	12/15/05	12/01/07	09/01/08
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	12/22/02	01/08/03
EB-3 Other Workers	10/01/01	01/01/03	U	06/01/01	10/01/06	12/01/07	09/01/08

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

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