

Business Immigration Weekly for May 23, 2014

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Practices: Immigration

Department of Homeland Security Proposes Important Changes to H-1B1 and E-3 Nonimmigrant Categories

The Department of Homeland Security (DHS) proposed important changes to the nonimmigrant specialty occupations of H-1B1 for Chile and Singapore nationals and E-3 for Australians which grants continued employment authorization during the pendency of an extension of stay thus providing additional flexibility to these nonimmigrants and their employers. The Notice of Proposed Rulemaking was published in the May 12th Federal Register and opens a comment period for sixty days through July 11th. During this period, DHS will accept any comments and arguments for and against the proposed rule. The Notice of Proposed Rulemaking does not mean that this rule will eventually become law, but only that the DHS is proposing to do so.

In addition to incorporating the H-1B1 and E-3 nonimmigrant categories into the regulations that cover the majority of the nonimmigrant classifications, the proposed rule would allow H-1B1 and E-3 to remain employed for a period of 240 days after expiration of their authorized period of stay as indicated on their Form I-94 while a timely extension of stay has been filed by their employers with the U.S. Citizenship and Immigration Services (USCIS). This automatic extension of employment authorization is already granted to other nonimmigrant classifications, such as E-1, E-2, H-1B, L-1A/B and TN. Currently, employers who sponsor H-1B1 and E-3 nonimmigrants must file the extension of stay with sufficient time to ensure that the USCIS approves the petition prior to the nonimmigrant's expiration date, otherwise, the individual must stop working until a decision has been reached. Since the USCIS' processing times are always fluctuating this situation adds an extra layer of uncertainty and complexity to the hiring of H-1B1 and E-3 employees that employers would appreciate if they could avoid. We welcome the DHS' proactive approach of incorporating the H-1B1 and E-3 categories into the laws that govern the more common visas.

June 2014 Visa Bulletin Update

The U.S. Department of State ("DOS") released its June 2014 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of June. In this month, we saw many important changes:

- The EB-3 China category has retrogressed from October 1, 2012 to October 1, 2006 after several months of aggressive advancement. We had initially forecasted that this retrogression would happen in the February Visa Bulletin. This is a reminder of the extreme uncertainty with predicting the movement of the

priority dates. The Other Workers category for China retrogressed significantly from October 1, 2012 to January 1, 2003.

- The EB-3 categories for the World and Mexico also retrogressed from October 1, 2012 to April 1, 2011.
- The EB-2 China and India categories continue to advance modestly from April 15, 2009 to May 22, 2009 for China and October 1, 2003 to October 15, 2003 for India.
- The EB-2 India category remains at November 15, 2004 after the prior retrogression of four years in 2013. We do not anticipate any further advancement before the beginning of the next fiscal year.
- The EB-3 Philippines category also advanced from November 1, 2007 to January 1, 2008.

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	Mar 2014	Mar 2014	June 2014
EB-3 World	09/01/02	03/01/06	U	10/01/06	09/01/12	10/01/12	04/01/11
EB-2 China	01/01/03	04/01/04	10/01/03	U	02/15/09	03/08/09	05/22/09
EB-3 China	10/15/01	03/22/03	U	12/15/05	09/01/12	10/12/12	10/01/06
EB-2 India	01/01/02	04/01/04	10/01/03	U	11/15/04	11/15/04	11/15/04
EB-3 India	05/01/01	11/01/01	U	10/08/02	09/15/03	09/15/03	10/15/03
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	09/01/12	10/01/12	04/01/11

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.

2015 DIVERSITY VISA LOTTERY PROGRAM WINNERS CHOSEN AND ALL APPLICANTS ARE REMINDED TO CHECK WHETHER THEY WERE SELECTED ON THE DOS WEBSITE

The Department of State (DOS) has posted the winners of the Diversity Visa Lottery Program for fiscal year 2015 on their website at: [https://www.dvlottery.state.gov/ESC/\(S\(351x3hodbu55nwa1kod251qu\)\)/default.aspx](https://www.dvlottery.state.gov/ESC/(S(351x3hodbu55nwa1kod251qu))/default.aspx).

Applicants are reminded that the DOS **will not** notify winners, but that the applicants must go to this link using the confirmation number that they received at the time they submitted their application to determine whether they were chosen. If an applicant has lost their confirmation number, they will not be able to check the case status website and will have to apply for the next year's program. The case status check website is available from May 1, 2014 through June 30, 2015. **The DOS has indicated that on May 1, 2014, the first day that the case status website went live, they experienced technical difficulties resulting in the wrong information being disclosed to applicants. Therefore, applicants who checked on whether they were selected on May 1, 2014 are instructed to return to the case status website to re-check whether they were selected.**

If an applicant was chosen, the case status website will provide further instructions on how to complete the immigrant visa application. Fiscal year 2015 selectees must complete the application process via the DS-260, Immigrant Visa Electronic Application through the Consular Electronic Application Center (CEAC) in contrast with applicants from prior years who had to complete two paper forms, the DS-230 and the DSP-122.

Applicants processing under the Visa Lottery Program for fiscal year 2014 will continue to use the paper forms DS-230 and DSP-122. Furthermore, the DOS has indicated that selectees should not use the CEAC Status Check website during the time that their form DS-230 is being processed by the KCC since the status check functionality is not available yet. They will receive an error message that their case number is not found.

Current law allows for 50,000 immigrant visas "green cards" to be granted annually to foreign nationals that meet certain requirements from countries that have low rates of immigration to the United States. The DOS chose the winners from around 9.3 million eligible entries from applicants that registered during a one-month period that ran from October 1, 2013 through November 2, 2013. Individuals that were selected are reminded that they must act immediately to complete the process since applicants who do not complete the process by September 30, 2015 will not be able to obtain their green card through the program.