

Business Immigration Weekly for the Week of October 10, 2014

10/10/2014

NOVEMBER 2014 VISA BULLETIN UPDATE

The Department of State (DOS) released its November 2014 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of November. Below is a summary of the bulletin highlights:

- The EB-2 India category has retrogressed four years from May 1, 2009 to February 15, 2005 as predicted in the October bulletin.
- The EB-2 China category continues to advance slowly from November 15, 2009 to December 8, 2009.
- The EB-3 India category advances only a few days from November 15, 2003 to November 22, 2003.
- The EB-3 World, Mexico and Philippines categories advance from October 1, 2011 to June 1, 2012.
- The EB-3 China category shows significant advancement from April 1, 2009 to January 1, 2010.

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	Oct 2014	Nov 2014
EB-3 World	09/01/02	03/01/06	U	10/01/06	12/01/07	10/01/11	06/01/12
EB-2 China	01/01/03	04/01/04	10/01/03	U	05/15/08	11/15/09	12/08/09
EB-3 China	10/15/01	03/22/03	U	12/15/05	12/01/07	04/01/09	01/10/10
EB-2 India	01/01/02	04/01/04	10/01/03	U	09/01/04	05/01/09	02/15/05

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

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.

ICE RELEASES DRAFT OF POLICY GUIDANCE ON PATHWAY PROGRAMS

Last week, the Student and Exchange Visitor Program ("SEVP") under U.S. Immigration and Customs Enforcement issued draft of policy guidance on Pathway Programs for F-1 students. SEVP is requesting the public provide comments on this draft policy guidance until November 10, 2014. These programs would allow foreign students that cannot meet degree program admission requirements to participate in a bridge program or a bridged degree program. As part of this proposed guidance, SEVP would certify these types of programs as long as they meet certain requirements, namely that they contain non-remedial courses, meet certain additional requirements if there is an English as a Second Language (ESL) component, the educational institution must have stated admission standards for the program, the student meets these admission standards before the Form I-20 can be issued, and the educational institution must have a policy on the length of the program and how the student's academic progress will be defined.

The draft policy guidance can be accessed at: <https://studyinthestates.dhs.gov/sites/default/files/PG%201210-03%20Pathway%20Programs.pdf>

Additionally, a draft fact sheet on Bridge Programs can be accessed here:

<https://studyinthestates.dhs.gov/sites/default/files/Bridge%20Programs%20Fact%20Sheet.pdf>

The draft fact sheet on Bridged Degree Programs can be accessed here:

<https://studyinthestates.dhs.gov/sites/default/files/Bridged%20Degree%20Programs%20Fact%20Sheet.pdf>

DEPARTMENT OF STATE ISSUES FINAL REGULATIONS FOR J-1 PROGRAM

The DOS issued a final rule amending the regulations governing the J-1 Exchange Visitor Program that will take effect on January 5, 2015. These changes were initially proposed in 2009 and are the first significant change to the regulations for the J-1 program since 1993. The full text of the final rule can be accessed at: http://j1visa.state.gov/wp-content/uploads/2014/10/Subpart-A-Federal-Register-publication-8893_PublishedFR_10-6-2014.pdf

In summary, the rules modify five major components of the program: filing requirements for initial designated sponsors and those seeking renewals, requires private sector sponsors to provide management reviews in a specific format, enhances the rules applicable to the Student and Exchange Visitor Information System (SEVIS) database, replaces the information previously collected in Appendices A through D with the Forms DS-3036, DS-3037 and DS-3097, updates the health and accident insurance costs to reflect increases in these types of costs since 1993 (these provisions will not be effective until May 15, 2015), modifies the definitions of various terms used throughout the rules, includes specific language providing discretionary decision-making powers to the Assistant Secretary for Educational and Cultural Affairs with respect to the waiving or modification of the rules for programs under agreements between the United States and foreign governments and requires the Department to provide notice for such waivers or modifications, and revises the text of the regulations in an effort to make it clearer and more concise.

Certain provisions are not being modified with this rulemaking that had been included in the proposed changes to the regulations in 2009. These include requiring designated sponsors and applicants for this designation to obtain and submit Dun & Bradstreet reports, having sponsor site visits at the discretion of the DOS, and the proposed requirement that designated sponsors obtain information from Employment Authorization Documents (EADs) for a principal alien's accompanying spouse and/or dependents.

Furthermore, the DOS also states that the next generation of the SEVIS (commonly known as SEVIS II) database, which has not yet been released, will have no impact on these new rules and that before it is released, the DOS will issue proposed rules to allow the public to comment.

MY E-VERIFY SITE LAUNCHED BY USCIS

In a continued effort to expand the use of E-Verify, the US Citizenship and Immigration Services launched a new website called myE-Verify, which can be accessed here: <http://www.uscis.gov/mye-verify> . The goal of the website is to allow employees to verify their own employment authorization via "Self Check" and to access

worker's rights information via the "Employee Rights Toolkit". The website allows employees to set up their own personal accounts with E-Verify which will then enable them to "Self Lock" their Social Security Numbers in the E-Verify system to prevent identity theft. The ability to set up an E-Verify account and Self Lock feature will first be available to individuals in Arizona, Idaho, Colorado, Mississippi, Virginia and the District of Columbia.