

Business Immigration Weekly for April 17, 2015

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Practices: Immigration

MAY 2015 VISA BULLETIN UPDATE

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

- The EB-2 India category continues to experience significant advancement from September 1, 2007 to April 15, 2008.
- The EB-2 China category also continues to advanced significantly from April 1, 2011 to June 1, 2012.
- The EB-3 India category advances only a few days from January 8, 2004 to January 15, 2004.
- The EB-3 World and Mexico categories continue to be aggressively advanced from October 1, 2014 to January 1, 2015.
- The EB-3 Philippines category for the first time this fiscal year experiences a significant retrogression from October 1, 2014 to July 1, 2007. The DOS has indicated that this is needed to contain the use of this category for this fiscal year.
- The EB-3 China category sees further advancement from January 1, 2011 to May 1, 2011.
- The EB-5 China category is cut-off at May 1, 2013. The DOS has indicated that it is possible that this category will see no further advancement this fiscal year and may even need to be retrogressed further.

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	Apr 2015	May 2015
EB-3 World	09/01/02	03/01/06	U	10/01/06	06/01/13	10/01/14	01/01/15
EB-2 China	01/01/03	04/01/04	10/01/03	U	02/01/10	04/01/11	01/01/12
EB-3 China	10/15/01	03/22/03	U	12/15/05	03/01/11	01/01/11	05/01/11
EB-2 India	01/01/02	04/01/04	10/01/03	U	02/15/05	09/01/07	04/15/08

EB-3 India	05/01/01	11/01/01	U	10/08/02	12/15/03	01/08/04	01/15/04
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	06/01/13	10/01/14	01/01/15

H-1B QUOTA PREMIUM PROCESSING UPDATE

As of today, April 14th, the U.S. Citizenship and Immigration Services (USCIS) began sending email notifications to H-1B employers for premium processing cases that were selected in the H-1B statutory cap lottery. The USCIS had previously announced that it will not begin processing premium processing petitions until May April 27, 2015. Therefore, the 15-day clock will begin on April 27, 2015. Premium processing is an upgraded process under which the USCIS will conduct an initial review of the petition within 15 calendar days in return for an additional fee of \$1,225. We expect that H-1B employers that did not opt for premium processing will begin receiving I-797 receipt notices, indicating acceptance of their petition in the statutory cap, or their unprocessed petitions, indicating rejection of their petition, at the end of April/beginning of May similarly to last year.

MY E-VERIFY EXPANDED TO ENTIRE NATION

In a continued effort to expand the use of E-Verify, the US Citizenship and Immigration Services (USCIS) launched a new website last year called myE-Verify that allows employees to verify their own employment authorization. The website allows employees to set up their own personal accounts free of charge with E-Verify which will then enable them to "Self Lock" their Social Security Numbers in the E-Verify system to prevent identity theft. Accessibility was first available to individuals in Arizona, Idaho, Colorado, Mississippi, Virginia and the District of Columbia and then was expanded to an additional 16 states in January 2015. This week, the USCIS has expanded myE-Verify to the entire United States. The website can be accessed at: <http://www.uscis.gov/mye-verify> and employees can go to "Self Check" to access worker's rights information via the "Employee Rights Toolkit".

UPDATE ON DACA, EXPANDED DACA AND DAPA

The U.S. Court of Appeals for the Fifth Circuit handed down important actions on two separate cases affecting the Deferred Action for Childhood Arrivals (DACA) program put into place in 2012 and the new programs, expanded DACA and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) which were to be implemented this year, but were stalled by litigation. The first case, *Crane v. Johnson*, challenged the initial DACA program that was instituted in 2012. The Fifth Circuit dismissed the case brought by the State of Mississippi and Immigration Customs Enforcement officers. Therefore, at least for now the initial 2012 DACA program is still in place and eligible individuals may continue to seek extensions of this benefit. At this point, it is uncertain whether the case will be appealed.

The second case, *Texas v. United States*, challenged the expansion of the DACA program and the new DAPA program. The Department of Justice had appealed the injunction and this week, the Fifth Circuit refused to lift the injunction. Therefore, the case will continue to be litigated with the injunction in place.

DEPARTMENT OF LABOR RELEASES LATEST PERMANENT LABOR CERTIFICATION STATISTICS

The Department of Labor (DOL) recently issued its statistics for the Permanent Labor Certification Program for Fiscal Year 2015. The DOL has received a total of 42,189 PERM applications, certified 36,373 and denied 2,363. Additionally, employers withdrew a total of 2,196 applications. In evaluating DOL trends from Fiscal Year 2013 to the present, the denial rate has decreased to its current 6% from a little under 11% and the appeals rate has decreased from 10% to its current 9%. Audit rates have increased slightly from 27% to the present 31%.

The majority of PERM applications continue to be filed in the Computer and Mathematical fields followed by the following fields: Architecture and Engineering, Management, Business and Financial Operations, and Education, Training and Library. Most PERM applications are filed for worksites or headquarters located in California, Texas, New Jersey, New York and Washington. The Professional, Scientific and Technical Services remains the top industry, followed by Manufacturing, Information, Finance and Insurance, and Educational Services. The top visa classifications are H-1B, L-1, F-1 and TN. The countries with the highest application rates are India, China, South Korea, Canada and Mexico. Lastly, the majority of PERM applications are filed for positions requiring at least an advanced degree (52%).

SENATORS REQUEST INVESTIGATION INTO H-1B PROGRAM

This week a coalition of Democratic and Republican Senators: Dick Durbin (D-IL), Jeff Sessions (R-AL), Richard Blumenthal (D-CT), Chuck Grassley (R-IA), Sherrod Brown (D-OH), David Vitter (R-LA), Claire McCaskill (D-MO), Bill Cassidy (R-LA), Bernard Sanders (I-VT) and James Inhofe (R-OK) requested that the Department of Justice, Department of Homeland Security and the Department of Labor investigate Southern California Edison and its alleged use of the H-1B program to displace U.S. workers. The senators argue that several publicly traded companies have recently laid off U.S. workers and replaced these positions with H-1B workers, that the U.S. workers were asked to train the H-1B workers and that this is all occurring primarily in the information technology sector. The senators requested that an investigation be made into the following:

1. Did the U.S. companies that laid off the U.S. workers unlawfully discriminate against U.S. citizens?
2. Do the H-1B petitions filed by the H-1B employers accurately reflect the work conditions, worksite, pay, etc. of the H-1B workers? This would include the Labor Condition Application certified by the Department of Labor and the H-1B petition approved by the United States Citizenship and Immigration Services.
3. Did the H-1B employers engage in fraud or misrepresentation?
4. Do the H-1B employers have a valid employer-employee relationship with their employees?
5. In addition to the H-1B program, are these companies also using the L-1B, Intracompany Transferree program, to engage in unlawful practices?