

# Business Immigration Weekly for July 29, 2013

7/29/2013

Practices: Immigration

## **AUGUST 2013 VISA BULLETIN UPDATE**

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

In a surprising turn of events, the EB-2 India category has advanced almost four years to January 1, 2008. We do not believe that this category will advance any further.

The following categories: EB-3 World, EB-2 and EB-3 China, EB-3 India and EB-3 Mexico have seen no advancement from the July Visa Bulletin.

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	June 2013	Aug 2013
EB-3 World	09/01/02	03/01/06	U	10/01/06	12/01/07	09/01/08	01/01/09
EB-2 China	01/01/03	04/01/04	10/01/03	U	05/15/08	06/15/08	08/08/09
EB-3 China	10/15/01	03/22/03	U	12/15/05	12/01/07	09/01/08	01/01/09
EB-2 India	01/01/02	04/01/04	10/01/03	U	09/01/04	09/01/04	01/01/08
EB-3 India	05/01/01	11/01/01	U	10/08/02	12/22/02	01/08/03	01/22/03
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	12/01/07	09/01/08	01/01/09

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.

## **USCIS ANNOUNCES NEW E-VERIFY REQUIREMENT FOR EMPLOYERS**

As of July 1, 2013, all employers currently using the E-Verify program must enter an employee's email address into the E-Verify program when the employee provides the email on the Employment Eligibility Verification, Form I-9. Earlier this year, the U.S. Citizenship and Immigration Services ("USCIS")

revised the Form I-9 to include a space in Section 1 for an employee to voluntarily provide his or her email address. If an employee voluntarily provides his or her email address, the employer must input this information into the E-Verify program. This new addition will allow an employee to receive by email a Tentative Nonconfirmation ("TNC"). This new obligation on the part of the employer does relieve the employer of providing the TNC to the employee and does not affect an employee's rights to contest the TNC. Employers are reminded that participation in the E-Verify program remains voluntary with the exception of federal contracts, certain state contracts and applicable state and local laws.

### **MACY'S STORES SETTLE WITH THE DEPARTMENT OF JUSTICE AFTER A FINDING OF UNFAIR DOCUMENTARY PRACTICES IN THE FORM I-9, EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS**

Several Macy's stores' affiliates in Florida and Puerto Rico settled with the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel ("Office of Special Counsel") after a finding that Macy's had committed unfair documentary practices in the re-verification of employees for purposes of Form I-9, Employer Eligibility Verification. Macy's was assessed \$175,000 in civil fines and \$100,000 in damages. Additionally, the Office of Special Counsel instituted a three year period during which Macy's would have to find and reach out to all affected individuals and offer to re-verify them. Macy's also agreed to provide employees with training, to not discriminate in the future and to modify its electronic Employment Eligibility Verification process to allow employees to complete Section 1 of the Form I-9. Furthermore, during the reported period, the Office of Special Counsel will continue to provide oversight to Macy's and every six months will check Section 3 of the Form I-9 to ensure proper completion.

### **USCIS ISSUES INITIAL GUIDANCE ON IMMIGRANT VISA PETITIONS FILED FOR SAME SEX SPOUSES IN LIGHT OF REPEAL OF DEFENSE OF MARRIAGE ACT**

The USCIS has indicated that it will begin to accept and will not automatically deny a Petition for Alien Relative, Form I-130, if it is filed on behalf of a same sex spouse. Although this is a triumph for same sex advocates, many states in the United States do not recognize same sex marriage and for this reason many questions remain as to how the USCIS will adjudicate Forms I-130 that are filed by a same sex couple who were married in a jurisdiction that recognizes same sex marriage but who are residents of a jurisdiction that does not recognize same sex marriage. Additionally, issues may arise as to the types of documents a same sex couple can submit to demonstrate that they in a bona fide marriage since the types of documentary evidence may not have been available and open to a same sex couple in certain jurisdictions.