

# Business Immigration Weekly - January 10, 2014

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Practices: Immigration

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## February 2014 Visa Bulletin Update

Today, the U.S. Department of State ("DOS") released its February 2014 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of February. Below is a summary of this month's highlights:

- The EB-3 categories for World, China and Mexico continue to advance from April 1, 2012 to June 1, 2012.
- The EB-2 China category has advanced one month from December 8, 2008 to January 8, 2009.
- The EB-2 India category remains at November 15, 2004 after the prior retrogression of four years.
- The EB-3 India category remains at September 1, 2003.

### Forecasted Availability

- The DOS has indicated the following visa availability:
- EB-1 will remain current.
- EB-2: World category will remain current; China will advance three to five weeks; and India will show no further advancement.
- EB-3 China: Although the DOS had indicated a potential retrogression for the February 2014 Visa Bulletin, this category continues to advance. It is not likely to last.
- EB-3 for India will show no further advancement.

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	Jan 2014	Feb 2014
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EB-3 World	09/01/02	03/01/06	U	10/01/06	12/01/07	04/01/12	06/01/12
EB-2 China	01/01/03	04/01/04	10/01/03	U	05/15/08	12/08/08	01/08/09
EB-3 China	10/15/01	03/22/03	U	12/15/05	12/01/07	04/01/12	06/01/12
EB-2 India	01/01/02	04/01/04	10/01/03	U	09/01/04	11/15/04	11/15/04
EB-3 India	05/01/01	11/01/01	U	10/08/02	12/22/02	09/01/03	09/01/03
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	12/01/07	04/01/12	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.

### **The Affordable Care Act: How Does it Affect Foreign Workers?**

In 2010 President Obama signed the Patient Protection and Affordable Care Act ("ACA") which brought forth unprecedented reforms to the American healthcare system. Most of the focus has been placed on the shaky opening of the Health Insurance Marketplaces ("Exchanges") and how the ACA will affect Americans, but little attention has been placed on how the ACA will affect the various classes of non-U.S. citizens that reside in the United States whether legally or illegally. This article will summarize how the ACA applies to these groups.

#### **Individual Mandate**

The Individual Mandate requires that individuals have a certain level of minimum healthcare coverage, as defined in the ACA, after 2013 or otherwise face tax penalties imposed by the Internal Revenue Service (IRS). All individuals who are lawfully present in the United States must comply with the Individual Mandate with certain limited exceptions. [1] The Individual Mandate does not apply to the undocumented, which include Deferred Action for Childhood Arrivals ("DACA") applicants. Furthermore, tax penalties are not assessed when an individual does not maintain minimum healthcare coverage for less than three continuous months in one year. Thus, the Individual Mandate potentially applies to anyone lawfully present in the United States for three months or more, such as nonimmigrants entering on a B visa as tourists or business travelers, work visas, exchange visas, etc. Although an individual may be covered under the Individual Mandate, noncompliance may nonetheless be a non-issue for those who are not required to file a tax return in any given year since only by filing a tax return can a tax penalty be assessed.

#### **Eligibility for ACA Benefits: Exchanges, Premium Credits & Cost-Sharing Subsidies**

Only individuals who have a reasonable expectation of being lawfully present in the United States for an entire enrollment period will be eligible for participation in an Exchange and the Temporary High Risk Preconditions Pool and will be eligible to receive premium credits and cost-sharing subsidies. Since eligibility only requires lawful presence, this can also potentially encompass the vast majority of individuals in the United States. The initial period of enrollment for the federal Exchange runs from October 1, 2013 until March 31, 2014, and in subsequent years, will run from October through December of that year. State run Exchanges may have different enrollment periods, therefore, it is difficult to ascertain who will and will not be eligible for ACA

benefits. Eligibility for participation will be verified electronically using the Systematic Alien Verification for Entitlements (SAVE) database. As with the Individual Mandate, undocumented individuals and DACA applicants are not eligible for any benefit under the ACA. Furthermore, the ACA will not signify a change in alien eligibility requirements for coverage under the Medicaid, Medicare or the Child Health Insurance Program (CHIP) programs.

The applicability of many ACA provisions to the various classes of individuals lawfully in the United States remains unclear and it is unlikely that further guidance will be issued by the various federal agencies until specific problems arise. We will continue to provide any new information to you via our Immigration Updates.

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[1] Other exceptions apply, including those that are incarcerated or receive religious exemptions.