

U.S. Department of State Announces Significant Advances in the Availability of Employment-Based Immigrant Visa Numbers

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Effective June 1, 2007, an increased number of immigrant visas will become available to foreign nationals seeking Lawful Permanent Resident Status on the basis of their U.S. employment. As a result, many applicants will have the opportunity to file Adjustment of Status (or “green card”) applications this summer.

Each year, the U.S. Department of State has only a limited amount of immigrant visa “numbers” to distribute to foreign nationals interested in becoming permanent residents of the United States on the basis of U.S. job offers. The Department of State distributes immigrant visas according to the applicant’s country of birth and according to the “preference category” of the applicant. An applicant’s “preference category” depends on the requirements of the position that is the basis for the application. An applicant must wait for an immigrant visa number to become available in his or her preference category before he or she can submit an Adjustment of Status (“green card”) application, the final stage of the process in becoming a permanent resident of the United States.

The date the employer files an application for alien labor certification (or an immigrant petition if labor certification is not required) is known as the “priority date.” Each month, the Department of State releases a Visa Bulletin that lists the priority dates for which immigrant visas are available, broken down by preference category and country of birth. Once the priority date becomes “current” an immigrant visa number can be assigned and the applicant can proceed with filing an Adjustment of Status application. For some time now, there have been backlogs in immigrant visa availability for applicants in the employment-based third preference category from all countries. In the second-preference category, there have been backlogs for applicants born in India and China.

As of June 1, 2007, applicants in the employment-based third preference category with a priority date earlier than June 1, 2005 will become eligible to file green card applications with USCIS *unless* the applicant was born in China, India or Mexico. Applicants born in those countries will be eligible to file green card applications on June 1, 2007 only if they have a priority date earlier than June 1, 2003. This is a significant advancement in the availability of immigrant visas in the employment-based third preference category.

Similar advances have been made in the employment-based second preference category where immigrant visa numbers are currently available to applicants from all countries, except China and India. For those applicants born in China, immigrant visa numbers are available in the second-preference category to those with priority dates earlier than January 1, 2006; immigrant visa numbers are available to applicants born in India with priority dates earlier than April 1, 2004.

The U.S. Department of State anticipates that increased numbers of immigrant visas *may* be available throughout the summer months, but that availability of those numbers will likely regress in the early fall. It is important to note that an immigrant visa number must be available

to an applicant on *both* the date a green card application is filed *and* on the date it is approved. Therefore, while many applicants may be able to submit their green card applications this summer, it is also possible that an application will remain pending for a prolonged period of time if immigrant visa numbers retrogress and once again become unavailable after the green card application is filed. All those who have filed green card applications are eligible to apply for employment authorization and permission to travel outside the U.S. for as long as their green card applications are pending.

McCandlish Holton is in the process of notifying and preparing green card applications for all existing clients eligible to file green card applications effective June 1, 2007. If you have any other questions about green card processing, please contact your McCandlish Holton immigration attorney.