

The ABC's of Immigration: Understanding the State Department Visa Bulletin

by Gregory Siskind

With the establishment of cutoff dates in the EB-3 green card category for the [first] time in several years, the State Department Visa Bulletin is in the news. This summary will help you understand how to read the bulletin and what different parts of it mean.

What is the State Department Visa Bulletin and where can I find it?

The United States Department of State, through the Bureau of Consular Affairs, publishes the monthly "Visa Bulletin." The Visa Bulletin lists the availability of "immigrant numbers" during the month of publication, and is intended as a guide for consular officials, attorneys and others who would like to know if visas are immediately available for individuals in particular categories. We make the Visa Bulletin on our website as soon as we have the information, and include it in the next issue of our newsletter. It is also available from several other sources, include the State Department's website.

Why is the State Department Visa Bulletin necessary?

Section 201 of the Immigration and Nationality Act establishes limits on family and employment based immigration. There is no limit on the number of spouses and minor children of US citizens, but there is an annual limit on the other categories of family based immigrants of just under 500,000. The limit for employment-based immigration is 140,000. Section 202 of the Immigration and Nationality Act states that the total number of visas that may be issued ("charged") to specific countries may not exceed seven percent of the total number of family or employment based immigration on a worldwide basis. It is this limit on the number of visas that may be received by a country's nationals that creates the backlogs for some countries.

Under the AC21 Act, if the total number of visas available in the five employment-based green card categories is more than the number of applications submitted, then requirements that prevent countries from having more than 7% of the allotment of employment-based green cards will not apply. That way, immigrant visas will not go unused if there are applications pending that would otherwise be subject to the per country limit.

The Visa Bulletin indicates the availability of visas for family and employment-based preference categories, and separately lists countries that may have exceeded their allocation of visas. Countries that have exceeded their allocation of visas are "oversubscribed" and individuals from those countries must wait before a visa can be issued.

What does it mean if a category is "current"?

If a Category is "Current" then visas are immediately available for issuance by the consulate, and tables on the Visa Bulletin indicate this fact with a "C" under the appropriate chargeability area. If a category is oversubscribed, tables on the Visa Bulletin indicate this fact with a date, such as 15MAR94 under the appropriate chargeability area. When a category is oversubscribed, only individuals with a "priority date" earlier than the one listed on the Visa Bulletin may be issued visas. The priority date is the date on which the USCIS received the application, either an I-130 application for an alien relative or an I-140 application for an immigrant worker.

What does a priority date mean?

A priority date is assigned when an individual, who is qualified for the category of immigration they request, files a complete application. Individuals whose priority date is after the one listed in the tables must wait until their priority date is included in a table published in the monthly Visa Bulletin. Contrary to what one might believe, priority dates do not necessarily advance one month at a time, and depend upon the number of applications filed around the time of an individual's application. A surge in applications for a particular chargeability area at the time of filing could lead to priority dates advancing only one week per month. Similarly, a sharp drop in applications for a particular chargeability area when the application was filed might result in priority dates that advance two months at a time.

What is the difference between all the family-based categories on the State Department Visa Bulletin?

Family based immigration is divided into four preference categories and "immediate relatives" of United States citizens. Immediate relatives of United States citizens are parents, children under 21 and spouses. This category is not subject to any limits, and visas are always immediately available to those within it. The first family preference is for unmarried (whether single, widowed, or divorced) children over 21 of United States citizens and is presently backlogged more than 18 months for all countries. Backlogs for Mexico and the Philippines are particularly long (just over 6 years and just over 12 years). The family 2A preference is for spouses and unmarried children under 21 of permanent residents, and presently has a backlog of about four years. The family 2B preference is for unmarried children over 21 of permanent residents, and presently has about a seven-year backlog. The third family preference is for married children (any age) of United States citizens and currently faces about a four-year backlog for most countries, again with longer backlogs for Mexico and the Philippines. The fourth and final family preference is for brothers and sisters of United States citizens (over 21), and currently has about an eleven-year backlog for all countries, except the Philippines, which faces a wait of over 21 years.

What is the difference between all the employment-based categories on the State Department Visa Bulletin?

Employment based immigration is divided into five preference categories. The first preference category is for "priority workers" such as outstanding professors and researchers, aliens of extraordinary ability and multinational executives and managers. This category is presently current for all countries. The second preference category is for members of the professions holding advanced (post graduate) degrees, aliens of exceptional ability, and others whose immigration is in the "national interest." This category is presently current for all countries except China and India (China is backlogged about 18 months and India about nine months). The third preference covers skilled workers, professionals and other workers. Within this category, skilled workers and professionals are presently current for most countries, except China and India (two and one-half years and three and one-half years respectively). However, the category of "other workers" faces a backlog of about five years for all countries. The fourth preference is for

"special immigrants" and includes certain US Government employees, religious workers, foreign medical graduates, employees of international organizations, juveniles, members of the U.S. Armed Forces, and limited number of other individuals. This category is presently current for all countries. The fifth and final preference category is for "entrepreneurs," commonly known as immigrant investor visas. The investment typically required is \$1,000,000, and requires the creation of at least ten new full-time jobs in the U.S. for individuals other than the investor's spouse or children. This category is presently current for all countries.

Gregory Siskind (gsiskind@visalaw.com) is a partner in the law firm of Siskind, Susser, Haas and Devine (www.visalaw.com), which has offices in the United States and around the world. He is an active member of the American Immigration Lawyers Association (AILA). He is a member of the American Bar Association (ABA), where he currently serves as Chairman of the Law Practice Management Publishing Board and on the Governing Council of the Law Practice Management Section. He was one of the first lawyers in the country (and the very first immigration lawyer) to set up a website for his practice and he was the first attorney in the world to distribute a firm newsletter via e-mail listserv. He is a co-author of *The J Visa Guidebook* published by LexisNexis Matthew Bender, and the author of *The Lawyer's Guide to Marketing on the Internet*, published by the ABA. He graduated magna cum laude from Vanderbilt University and received his law degree from the University of Chicago.