



EB-3 BECOMES UNAVAILABLE IN MAY 2009

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by

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The State Department's Visa Bulletin for May 2009, available at http://travel.state.gov/visa/frvi/bulletin/bulletin_4454.html, indicates that the Employment-Based 3rd Preference (EB-3) for all countries will become unavailable on May 1, 2009. Similarly, the Unskilled "Other Worker" category within EB-3 will also become unavailable on May 1, 2009.

Therefore, those who are beneficiaries of approved labor certifications in the EB-3 category - professional or skilled worker - should file adjustment of status applications (Form I-485), if eligible, if they have priority dates of March 1, 2003 or earlier on or before April 30, 2009. The priority date is established on the day the application for labor certification was filed with the Department of Labor. Those with approved labor certifications who were born in India, and cannot charge to another country (by virtue of being married to a spouse who was born outside India), are only eligible to apply for adjustment of status if their priority date is November 1, 2001 or earlier. The Visa Bulletin for April 2009, which reflects current cut-off dates, is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_4438.html. Beneficiaries of approved labor certifications in the "Other Worker" EB-3 should apply for adjustment of status if they have priority dates of March 1, 2001 or earlier. It is possible to file a concurrent application with the employer's I-140 petition, Immigrant Petition for Alien Worker. Filing an adjustment application may also result in the freezing of the age of a derivative child who will soon turn 21 under the Child Status Protection Act, even if there is unavailability or retrogression in numbers on or after May 1, 2009.

The State Department, in its explanation for the unavailability of numbers in

EB-3, provides the following explanation:

"The cut-off dates for the Employment Third and Third preference "Other Worker" categories were held and then retrogressed in an effort to bring demand within the average monthly usage targets and the overall annual numerical limits. Despite these efforts, the amount of demand received from Citizenship and Immigration Services Offices for adjustment of status cases with priority dates that were significantly earlier than the established cut-off dates remained extremely high. As a result, these annual limits have been reached and both categories have become "Unavailable."

Visa availability in these categories will resume in October, the first month of the new fiscal year."

The slow movement in EB-3, as well as in the Employment-Based Second Preference (EB-2) for China and India, have resulted in an endless wait for people who are in the pipeline for permanent residency. Even if the cut-off dates re-appear on October 1, 2009, the EB-3 has become unattractive and unviable since the cut-off dates already retrogressed from May 1, 2005 (per the January 2009 Visa Bulletin) to March 1, 2003 (per the April 2009 Visa Bulletin). India is even more hopeless with the cut-off date being stuck in late 2001 for several years.

Earlier this week, it was reported that two large labor unions, AFL-CIO and Change to Win, have arrived at a consensus for comprehensive immigration reform (CIR), which would allow the over 12 million undocumented in the US to legalize their status. We strongly urge any CIR measure to also include relief for people who have been waiting patiently in line for permanent residency. Also, the venomous attacks by these labor groups, who otherwise support CIR, against the H-1B and L visa programs puzzles this writer. Most of the beneficiaries in the EB-2 and EB-3 are in H-1B status (and some in L-1B status) and they and their employers have taken pains to ensure timely extensions of their visa statuses so that they are in full compliance with the law. There is absolutely no justification for one who has been sponsored by an employer through the arduous labor certification process to wait until infinity for the green card.

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