



DOS REPORTS ON EMPLOYMENT-BASED VISA DEMAND; FIRST PREFERENCE EXTREMELY LOW

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The Department of State's Visa Bulletin for May 2011 notes that demand in the employment first preference is extremely low compared with that of recent years. Absent an immediate and dramatic increase in demand, this category is expected to remain "Current" for all countries. It also appears unlikely, the Bulletin says, that a second preference cut-off date will be imposed for any countries other than China and India, where demand is extremely high. Based on current indications of demand, the best-case scenarios for cut-off date movement each month during the coming months are as follows:

Employment Second: Demand by applicants who are "upgrading" their status from employment third to employment second preference is very high, but the exact amount is not known. Such upgrades are in addition to the known demand already reported. The Bulletin said this makes it difficult to predict ultimate demand based on forward movement of the China and India cut-off dates. Although thousands of "otherwise unused" numbers will be available for potential use without regard to the China and India employment second preference per-country annual limits, it is not known how the upgrades will ultimately affect the cut-offs for those two countries.

China: An advance in the priority date of zero to three weeks is expected through July. No August or September estimate is possible at this time.

India: An advance in the priority date of one or more weeks, possibly followed by additional movement if demand remains stable. No August or September estimate is possible at this time.

Employment Third:

Worldwide: An advance in the priority date of three to six weeks may occur.

China: An advance in the priority date of one to three weeks may occur.

India: An advance in the priority date of zero to two weeks is likely.

Mexico: Continued forward movement is expected; no specific projections at this time.

Philippines: An advance in the priority date of three to six weeks is likely.

The Bulletin notes that the above ranges are estimates based on current demand patterns, and are subject to fluctuations during the coming months. "The cut-off dates for upcoming months cannot be guaranteed, and no assumptions should be made until the formal dates are announced," the Bulletin warned.

Allocation of "Otherwise Unused" Numbers:

INA § 202(a)(5) provides that if total demand in a calendar quarter will be insufficient to use all available numbers in an employment preference, the unused numbers may be made available without regard to the annual per-country limits. Based on current levels of demand, the Bulletin for May 2011 states that there will be otherwise unused numbers in the employment first and second preferences. Such numbers may be allocated without regard to per-country limits, once a country has reached its preference annual limit. Since under INA § 203(e) such numbers must be provided strictly in priority date order regardless of chargeability, greater number use by one country would indicate greater demand by applicants from that country with earlier priority dates. Based on the amount and priority dates of pending demand and year-to-date number use, a different cut-off date could be applied to each oversubscribed country for the purpose of assuring that the maximum amount of available numbers will be used. The Bulletin noted that a cut-off date imposed to control the use of "otherwise unused" numbers could be earlier than the cut-off date established to control number use under a quarterly or per-country annual limit. For example, at present the India employment second preference cut-off date governs the use of numbers under § 202(a)(5) because India has reached its employment second annual limit. The China employment second preference cut-off date governs number use under the quarterly limit

because China has not yet reached its employment second annual limit.

The rate of number use under § 202(a)(5) is continually monitored to determine whether subsequent adjustments are needed in visa availability for the oversubscribed countries. The Bulletin said that this helps assure that all available employment preference numbers will be used and that numbers also remain available for applicants from all other countries that have not yet reached their per-country limits.

As noted above, the number of applicants who may be upgrading their status from employment third to employment second preference is unknown. As a result, the cut-off date that governs use of § 202(a)(5) numbers has been advanced more rapidly than normal, in an attempt to ascertain the amount of upgrade demand in the pipeline while at the same time administering the available numbers. "This action risks a surge in demand that could adversely impact the cut-off date later in the fiscal year," the Bulletin warned, adding that it also limits the possibility that potential demand would not materialize and the annual limit would not be reached due to lack of cut-off date movement.

The Visa Bulletin for May 2011 is available at http://www.travel.state.gov/visa/bulletin/bulletin_5424.html.