



IT'S ALL ABOUT NUMBERS: INDIA & CHINA EB-2 CATEGORY UNAVAILABLE; H-1B VISAS RUNNING OUT

Posted on May 18, 2012 by Cyrus Mehta

In May, as predicted, the India and China priority dates in the employment-based second preference (EB-2) green card category retrogressed dramatically, from May 1, 2010, to August 15, 2007. The EB-2 category is for people with advanced degrees or who have exceptional ability. The Department of State's Visa Office has announced that this category is now "Unavailable" for both India and China and will remain so for the remainder of fiscal year 2012.

If an I-485 Application for Adjustment of Status was filed while the person's priority date was current, it will remain pending until the priority date is current again. Because the I-485 will remain pending, the applicant can continue to apply for interim benefits, such as work authorization and advance parole, while the priority date is unavailable.

The Visa Office includes the following information in the [June Visa Bulletin](#):

Despite the retrogression of the China and India Employment Second preference cut-off date to August 15, 2007, demand for numbers by applicants with priority dates earlier than that date remained excessive. Such demand is primarily based on cases which had originally been filed with the U.S. Citizenship and Immigration Services (USCIS) for adjustment of status in the Employment Third preference category, and are now eligible to be upgraded to Employment Second preference status. The potential amount of such TupgradeY demand is not currently being reported, but it was evident that the continued availability of Employment Second preference numbers for countries other than China and India was being jeopardized. Therefore, it was necessary to make the China and India Employment Second preference category TUnavailableY in early

April, and it will remain so for the remainder of FY 2012.

Numbers will once again be available for China and India Employment Second preference cases beginning October 1, 2012 under the FY-2013 annual numerical limitations. Every effort will be made to return the China and India Employment Second preference cut-off date to the May 1, 2010 date which had been reached in April 2012. Readers should be advised that it is impossible to accurately estimate how long that may take, but current indications are that it would definitely not occur before spring 2013.

USCIS has indicated that it will continue accepting China and India Employment Second preference I-485 filings during May, based on the originally announced May cut-off date.

On a related note, many Indian degrees have recently been downgraded from a MasterXs level to a BachelorXs level by Electronic Database for Global Education (TEDGEY) administered by the American Association of Collegiate Registrars and Admissions Officers. For instance, EDGE has now confirmed that a post-graduate diploma from the prestigious Indian Institute of Management, India, is equivalent to a US BachelorXs degree and no longer to a US MasterXs degree which was the case for several years. All other post-graduate diploma programs from Indian business schools are also equivalent to a US BachelorXs level degree only. Such downgrades could make it more challenging for I-140 petitions to be filed under the EB-2 rather than EB-3 category.

With respect to H-1B visas under the FY 2013 cap, as of May 11, 2012, approximately 36,700 H-1B regular cap subject cases were received by the USCIS. In addition, USCIS received 14,800 H-1B cases towards the advanced degree cap. This means there are only 28,300 left under the regular 65,000 H-1B cap and only 5,200 towards the advanced degree cap for the FY 2013.

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