

Mobility: immigration alert

September 2022

United States

October 2022 Visa Bulletin Reflects Substantial Retrogression in the Employment-Based Second Preference Category for Indian-born Green Card Applicants

Executive summary

On 7 September 2022, the U.S. Department of State (DOS) released the [October Visa Bulletin](#), which revealed that the employment-based second preference category (EB-2) final action date for applicants born in India will *retrogress* from 1 December 2014 to 1 April 2012. This change will be effective on 1 October, the commencement of the Federal government's new fiscal year (FY). The India EB-2 filing date cut-off will also experience substantial retrogression from 1 January 2015 to 1 May 2012.

DOS advised that heavy applicant demand for India EB-2 immigrant visa numbers, coupled with significantly lower availability of numbers in that category for FY 2023, required this corrective action "to keep use within the maximum allowed under the FY-2023 annual limits."

Background and analysis

The *Immigration and Nationality Act* establishes a worldwide level of 140,000 employment-based (EB) immigrant visas that may be granted each FY. It also provides that any family-based (FB) visa numbers that are unused during a given FY may be added to the 140,000 EB green card limit the following FY.

As a result of the COVID-19 pandemic and consequent closures of U.S. Embassies and Consulates around the world, nearly all 140,000 FB visa numbers were unused during FY 2021. This resulted in an overall annual EB limit that was twice as high as usual for FY 2022.

U.S. Citizenship and Immigration Services (USCIS) and DOS undertook various measures throughout FY 2022 to maximize the use of this unprecedented number of EB immigrant visas. These measures included significantly advancing the dates in the Visa Bulletin to permit the filing and adjudication of sufficient immigrant visa and I-485 adjustment of status applications in addition to publishing several communications throughout the year notifying the public that USCIS lacked sufficient inventory in the EB-1 and EB-2 categories. Consequently, heavy applicant demand developed during FY 2022, especially in the India EB-2 category.

These efforts led to USCIS and DOS using all available visa numbers for both the EB-1 and EB-2 categories as of 6 September, which means that no more I-485 or immigrant visa applications can be approved in those categories this FY, ending on 30 September 2022. Unfortunately, these efforts also resulted in the need to retrogress the India EB-2 category, which has the effect of making visas available to a smaller population of applicants and thereby ensures that visa use remains within the statutory limits.

What this means

Beginning 1 October, Indian-born applicants in the EB-2 category are only eligible to be granted an immigrant visa if their priority date is earlier than 1 April 2012, and only eligible to submit an I-485 green card application to USCIS if their priority date is earlier than 1 May 2012.



EY Law LLP

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

For more information, please visit ey.com/ca.

Follow us on Twitter @EYCanada.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. EY Law LLP has no association or relationship with Ernst & Young LLP in the US, or any of its members. Ernst & Young LLP in the US does not practice law, nor does it provide immigration or legal services. For more information, please visit EYLaw.ca.

© 2022 EY Law LLP.

All Rights Reserved.

A member firm of Ernst & Young Global Limited.

EYG no. 007841-22Gbl

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

ey.com/en_ca

George Reis, Managing Partner
+1 416 943 2535
george.reis@ca.ey.com

Batia Stein, Partner
+1 416 943 3593
batia.j.stein@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Marwah Serag, Partner
+1 416 943 2944
marwah.serag@ca.ey.com

Authored by:
Jessica Marks, Senior Manager
+1 416 943 3229
jessica.marks@ca.ey.com

Alex Israel, Partner
+1 416 943 2698
alex.d.israel@ca.ey.com

Christopher Gordon, Partner
+1 416 943 2544
christopher.d.gordon@ca.ey.com

Jonathan Leebosh, Partner
+1 604 899 3560
jonathan.e.leebosh@ca.ey.com