

Brief Explanation of Retrogression

EMPLOYMENT PREFERENCE VISA AVAILABILITY

The Visa Bulletin is a monthly publication issued by the Department of State (DOS), which summarizes the availability of immigrant visa numbers during the upcoming month, based on the priority date of a case and the country of birth of the individual. The priority date establishes the cutoff date for cases eligible for issuance of an immigrant visa (Green Card). The DOS determines the cutoff date by estimating the number of visas available for issuance in the upcoming month compared to the number of requests for immigrant visas it has received. When the demand for visas exceeds the number of visas available for issuance, backlogs will occur. This is the phenomenon commonly referred to as retrogression.

WHAT CAUSES THE ESTABLISHMENT OF CUT-OFF DATES?

Section 201 of the Immigration and Nationality Act (INA) sets the annual level for Employment-based preference immigrants at 140,000. The Visa Office (VO) subdivides the annual preference and foreign state limitations specified in the INA into twelve monthly allotments. Consular officers are required to report to the VO documentarily qualified applicants for numerically limited visas while the U.S. Citizenship and Immigration Services reports applicants for adjustment of status. The totals of documentarily qualified applicants that have been reported to VO are compared each month with the numbers available for the next regular allotment and numbers are allocated to reported applicants in order of their priority dates, the oldest dates first.

If there are sufficient numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered "Current." For example, if the Employment Third preference monthly target is 5,000 and there are only 3,000 applicants, the category is considered "Current". Whenever the total of documentarily qualified applicants in a category exceeds the supply of numbers available for allotment for the particular month, the category is considered to be "oversubscribed" and a visa availability cut-off date is established. The cut-off date is the priority date of the first documentarily qualified applicant who could not be accommodated for a visa number. For example, if the Employment Third preference monthly target is 5,000 and there are 15,000 applicants, a cut-off date would be established so that only 5,000 numbers would be used, and the cut-off date would be the priority date of the 5,001st applicant.

HOW IS THE EMPLOYMENT-BASED PER-COUNTRY LIMIT CALCULATED?

Section 201 of the INA sets an annual minimum Family-sponsored preference limit of 226,000, while the worldwide annual level for Employment-based preference immigrants is at least 140,000. Section 202 sets the per-country limit for preference immigrants at 7% of the total annual Family-sponsored and Employment-based preference limits, i.e. a minimum of 25,620.

The annual per-country limitation of 7% is a cap, meaning visa issuances to any single country may not exceed this figure. This limitation is not a quota to which any particular country is entitled, however. The per-country limitation serves to avoid monopolization of virtually all the visa numbers by applicants from only a few countries.

The American Competitiveness in the Twenty-First Century Act (AC21) removed the per-country limit in any calendar quarter in which overall applicant demand for Employment-based visa numbers is less than the total of such numbers available. In recent years, the application of the rules outlined in AC21 has allowed countries such as China – mainland born, India, and the Philippines to utilize large amounts of employment numbers which would have otherwise gone unused.