



GMS Flash Alert

Immigration Edition

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United States - December 2020 Visa Bulletin

On November 20, 2020, the U.S. Department of State (DOS) released the December 2020 Visa Bulletin.¹ On November 23, 2020, U.S. Citizenship and Immigration Services (USCIS) announced that it will accept all employment-based Forms I-485, *Applications to Register Permanent Residence or Adjust Status*, according to the Visa Bulletin's "Dates for Filing" next month.²

The employment-based priority date cut-offs listed in the December 2020 Visa Bulletin advanced modestly for many backlogged categories; however, the priority date cut-off in the December 2020 "Dates for Filing" chart for the EB-3 India category fell back one (1) full year.

WHY THIS MATTERS

Many intending employment-based immigrants subject to significant wait times have recently been eligible to file an I-485 application as a result of the forward movement in the priority date cut-offs listed in the "Dates for Filing" chart that USCIS began honoring on October 1, 2020.

The recent announcement by USCIS that it will continue to apply the "Dates for Filing" chart for employment-based applicants is beneficial, but a full year retrogression of the priority date cut-off for EB-3 India means that those in this category with a priority date on or after January 1, 2014, will be ineligible to file Form I-485 next month.

Background

The DOS releases a Visa Bulletin each month to confirm the availability of statutorily limited visas for prospective immigrants. The Visa Bulletin confirms immigrant visa availability based on country of chargeability, preference category, and priority date.³ "Priority date" is the date on which an application for permanent labor certification was filed with the Department of Labor or, if an individual is being sponsored for employment-based permanent residence in a category that does not require labor certification, the date that a Form I-140, *Immigrant Petition for Alien Worker*, was received by USCIS.

The priority date cut-offs reflected in the Visa Bulletin and USCIS' confirmation of which date chart will apply dictate eligibility to file a Form I-485 in a given month. In order to be eligible to submit a Form I-485, an intending immigrant must have a priority date that is earlier than the applicable cut-off date listed in whichever chart USCIS is honoring from the monthly Visa Bulletin that is currently in effect.

Even if USCIS confirms that the "Dates for Filing" chart will be applied during a particular month to determine eligibility to file a Form I-485, the "Final Action Dates" chart determines who is eligible to have a Form I-485 adjudicated by USCIS. In other words, simply submitting a Form I-485 does not mean that it will be promptly processed by USCIS, since the "Dates for Filing" chart cut-offs govern the timeframe within which an I-485 applicant will be granted permanent resident status.

Employment-Based Preference Categories

The priority date cut-offs under the "Dates for Filing" chart for employment-based immigrant visas in December 2020 are below:

- EB-1: Cut-off dates for India and the People's Republic of China ("China") moved forward by two (2) months to November 1, 2020. All other countries remain current.
- EB-2: The cut-off date applicable to India is still May 15, 2011, and China's cut-off date remains at October 1, 2016. All other countries remain current.
- EB-3 Professionals and Skilled Workers: India's cut-off date retrogressed by one (1) full year to January 1, 2014, while China's cut-off date is still June 1, 2018. All other countries remain current.
- EB-3 Other workers: As with EB-3 Professionals and Skilled Workers, India's cut-off date retrogressed one full year to January 1, 2014, while China's cut-off date is still May 1, 2009. All other countries remain current.
- EB-4: The cut-off date for El Salvador, Guatemala, and Honduras advanced three (3) months to May 1, 2018, while all other countries will remain current.
- EB-5: The cut-off date for China will remain at December 15, 2015. All other countries will still be current.

The "Final Action" priority date cut-offs for employment-based immigrant visas next month are as follows:

- EB-1: Cut-off dates for China and India advanced by four (4) months to April 1, 2019. All other countries remain current.
- EB-2: All countries of chargeability remain current, except for China and India. China advanced by nine (9) *days* to May 1, 2016, and India moved forward nine (9) *days* to October 1, 2009.
- EB-3 Professionals and Skilled Workers: The cut-off date for China advanced one (1) month to November 1, 2017, and the cut-off date for India moved ahead 14 *days* to March 15, 2010. All other countries remain current.
- EB-3 Other Workers: All countries are current, except for China and India. China advanced approximately six (6) weeks to February 15, 2009, while India advanced by fourteen (14) *days* to March 15, 2010.
- EB-4: All countries of chargeability remain current, except Mexico, El Salvador, Guatemala, and Honduras. Mexico is now subject to a cut-off date of November 22, 2018, while a new cut-off date of February 1, 2018 applies to El Salvador, Guatemala, and Honduras.
- EB-5: The cut-off date for China remains at August 15, 2015, while the cut-off date for Vietnam advanced by 15 *days* to September 1, 2017. All other countries remain current.

The EB-4 Non-Minister Religious Worker and EB-5 Regional Center programs are only available through to December 11, 2020. Unless Congress authorizes these programs to continue beyond this date, immigrant visas in the EB-4 Non-Minister Religious Worker and EB-5 Regional Center subcategories will become unavailable. The EB-5 Non-Regional Center program will not be affected.

KPMG NOTE

KPMG LLP Law in Canada monitors the U.S. State Department’s Visa Bulletins closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 See, U.S. Department of State [website](#).
- 2 See the “[Adjustment of Status Filing Charts from the Visa Bulletin](#)” page on the USCIS website.
- 3 For our prior coverage of the November 2020 Visa Bulletin, see *GMS [Flash Alert 2020-443](#)* (2 November 2020).
- 4 See, U.S. Department of State [website](#).

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Contact us

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