

GMS Flash Alert



Immigration Edition

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United States - January 2021 Visa Bulletin Published

On December 23, 2020, the U.S. Department of State (DOS) released the January 2021 "Visa Bulletin."¹ On the same day, 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*, in January according to the Visa Bulletin's "Final Action Dates" chart.² January will be the first month this fiscal year in which USCIS will not honor the "Dates for Filing" chart for employment-based immigrant visa applicants.

WHY THIS MATTERS

A number of 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. USCIS' recent confirmation that it will apply the Final Action Dates chart next month will significantly impact prospective immigrants born in India and the People's Republic of China ("China"), as many will not be eligible to file an Adjustment of Status application in January 2021.

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 which 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.

KPMG NOTE

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, Certain Immigration Programs Extended by New Legislation

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 advance by five (5) months to September 1, 2019. All other countries remain current.
- EB-2: All countries of chargeability remain current, except for China and India. China advances by one (1) month to June 1, 2016 and India moves forward one (1) week to October 8, 2009.
- EB-3 Professionals and Skilled Workers: The cut-off date for China advances by approximately six (6) weeks to December 15, 2017, and the cut-off date for India moves ahead one (1) week to March 22, 2010. All other countries remain current.
- EB-3 Other Workers: All countries are current, except for China and India. China advances (2) weeks to March 1, 2009, while India advances by one (1) week to March 22, 2010.
- EB-4: All countries of chargeability remain current, except Mexico, El Salvador, Guatemala, and Honduras. Mexico is subject to a cut-off date of December 1, 2018, while a cut-off date of March 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 advances by two (2) weeks to September 15, 2017. All other countries remain current.

The EB-4 Non-Minister Religious Worker and EB-5 Regional Center programs were set to expire this month. On December 27, 2020, President Trump signed the *Consolidated Appropriations Act, 2021*,⁴ thus funding the Department of Homeland Security, the Department of Labor, the Department of State, and other federal agencies to the end of FY 2021. Certain immigration programs that were set to expire this month will be extended on account of the new legislation. Specifically, the EB-4 Non-Minister Religious Worker immigrant visa program will be extended to September 30, 2021, and the EB-5 Regional Center immigrant visa program will be extended to June 30, 2021.

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 webpage for the current Visa Bulletin at: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-january-2021.html> .
- 2 See the "Adjustment of Status Filing Charts from the Visa Bulletin" page on the USCIS website: <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin> .
- 3 See the U.S. Department of State website on the Visa Bulletin at: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> .
- 4 See the text of H.R.133 - Consolidated Appropriations Act, 2021 at: <https://www.congress.gov/bill/116th-congress/house-bill/133/text> .
- 5 For our prior coverage of the December 2020 Visa Bulletin, read GMS [*Flash Alert 2020-471*](#) (November 25, 2020).

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