



# GMS Flash Alert

## Immigration Edition

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# United States - October 2022 Visa Bulletin and USCIS Declaration

The U.S. Department of State (DOS) has released the October 2022 *Visa Bulletin*.<sup>1</sup> U.S. Citizenship and Immigration Services (USCIS) has also confirmed that it will accept employment-based Forms I-485, *Applications to Register Permanent Residence or Adjust Status*, in October under the Dates of Filing chart of the *Visa Bulletin*.<sup>2</sup>

Prior to the release of the October 2022 *Visa Bulletin*, the USCIS official responsible for overseeing policy for employment-based adjustment of status and coordinating on visa policy with the DOS, Mr. Andrew Parker, signed a declaration providing updates and predictions related to the monthly *Visa Bulletin*.<sup>3</sup> The court-ordered declaration pertains to a pending class action lawsuit filed against USCIS earlier this year for its failure to use more than 66,000 employment-based immigrant visas before they became unavailable at the end of fiscal year (FY) 2021.<sup>4</sup>

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## WHY THIS MATTERS

Each month, the DOS releases a *Visa Bulletin* indicating the availability of statutorily limited visas for prospective immigrants.<sup>5</sup> The cut-off dates reflected in the *Visa Bulletin*, coupled with the USCIS confirmation of which chart will apply, dictate eligibility to file a Form I-485 application in each month. In addition, the Final Action Dates chart in the applicable *Visa Bulletin* determines whether a pending Form I-485 or immigrant visa application may be approved.

As a new allocation of 140,000 employment-based immigrant visas for FY 2023 and approximately 60,000 unused family-based immigrant visas become available on October 1, 2022, next month's *Visa Bulletin* was eagerly anticipated. Many were disappointed that the *Visa Bulletin* reflects significant retrogression for EB-2 India and little advancement in the cut-off dates for other employment-based categories.

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## Details of Declaration

The declaration by Mr. Andrew Park confirmed that USCIS and DOS intend to use all of the 281,507 available immigrant visas by the end of FY 2022.

- There are no remaining immigrant visas in the EB-1 and EB-2 available for FY 2022;
- Immigrant visas in the EB-3 category ceased to be available on September, 9, 2022;
- Before the end of FY 2022, DOS will make immigrant visas in the EB-4 category unavailable for further issuance or adjustment of status approval; and
- The agencies are working diligently to use the remaining EB-5 immigrant visas and expect to use all of the remaining numbers by September 30, 2022, aside from those in the newly-created EB-5 reserved sub-categories, which carry over to the next fiscal year.

## Employment-Based Preference Category Final Action Date Cut-Offs

The Final Action Dates for next month are as follows:

EB-1: All countries of chargeability will remain current.

EB-2: All countries of chargeability except the People's Republic of China ("China") and India will remain current. China's cut-off date will advance to June 8, 2019, while India's cut-off date will retrogress to April 1, 2012.

EB-3 Professional and Skilled Workers: All countries of chargeability except China and India remain current. China's cut-off date will advance to June 15, 2018. India's cut-off date will advance to April 1, 2012, matching the cut-off for EB-2 India.

EB-3 Other Workers: All countries of chargeability except China and India will have a cut-off date of June 1, 2020. China's cut-off date will move to September 1, 2012, and India's cut-off date will be April 1, 2012.

EB-4: All countries, except El Salvador, Guatemala, Honduras, and Mexico, will remain current. The cut-off date for El Salvador, Guatemala and Honduras will be March 15, 2018, and Mexico's cut-off date will advance to September 15, 2020.

Note that the non-minister special immigrant program under the EB-4 category was extended through September 30, 2022. If Congress does not extend the program by this date, immigrant visas for impacted religious workers in the EB-4 category will be unavailable.

EB-5: Final Action Date will be current for all set aside sub-categories (i.e., rural, high unemployment, and infrastructure), regardless of the country of chargeability. The Final Action Date will also be current in unreserved sub-categories – including C5, T5, I5, and R5 – for all countries, except for China and India. The EB-5 China cut-off for intending immigrants in an unreserved sub-category will retrogress to March 22, 2015, while India's cut-off date for those in an EB-5 unreserved sub-category will retrogress to November 8, 2019.

## Employment-Based Preference Category Dates for Filing Cut-Offs

The October 2022 Dates for Filing are listed below.

EB-1: All countries of chargeability will remain current.

EB-2: All countries of chargeability except China and India will remain current. China's cut-off date will be July 8, 2019, and India's cut-off date will be May 1, 2012.

EB-3 Professional and Skilled Workers: All countries of chargeability except China and India will be current. China's cut-off date will be July 15, 2018, and India's cut-off date will be July 1, 2012.

EB-3 Other Workers: All countries of chargeability except China and India will have a cut-off date of September 8, 2022. China's cut-off date will be November 1, 2015, and India's cut-off date will be July 1, 2012.

EB-4: All countries, except El Salvador, Guatemala, Honduras, and Mexico, will remain current. The cut-off date for El Salvador, Guatemala and Honduras will be April 15, 2018, and Mexico's cut-off date will be October 15, 2020.

EB-5: Final Action Date will be current for all set aside sub-categories (i.e., rural, high unemployment, and infrastructure), regardless of the country of chargeability. The Final Action Date will also be current in unreserved sub-categories – including C5, T5, I5, and R5 – for all countries, except for China and India. The EB-5 China cut-off for intending immigrants in an unreserved sub-category will be January 1, 2016, while India's cut-off date for those in an EB-5 unreserved sub-category will be December 8, 2019.

## I-485 Applications Filed in FY 2022 After Annual Allocation Is Used

Historically, USCIS has continued to accept I-485 applications filed in accordance with cut-off dates under the current month's *Visa Bulletin*, even if immigrant visas in the relevant preference category are no longer available. These applications have been held in abeyance until immigrant visas become available again, typically at the start of the new fiscal year. As of the date of this publication, USCIS has not issued a statement advising of a change in policy related to I-485 applications submitted after immigrant visas cease to be available.

### FOOTNOTES:

- 1 U.S. Department of State [Visa Bulletin For October 2022](#).
- 2 See the "[Adjustment of Status Filing Charts from the Visa Bulletin](#)" page on the USCIS website.
- 3 [Declaration of Andrew Parker \(September 6, 2022\) in \*Madhavan v. Jaddou\* \(2:22-cv-933-TSZ\)](#).
- 4 [Madhavan v. Jaddou, C22-933 TSZ \(July 8, 2022\)](#).
- 5 For our prior coverage of the August 2022 *Visa Bulletin*, read [GMS Flash Alert 2022-139](#), July 19, 2022.

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## Contact us

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