

Changes in Adjustment and Consular Processing Under the October 2015 Visa Bulletin

This article summarizes the recent changes to the Department of State (“DOS”) Visa Bulletin and how they affect technology consulting employers and their foreign employees.

I. Background

Under the limits established under Sections 201 and 202 of the Immigration and Nationality Act (“INA”), only a limited number of employment-based immigrant visas (aka “green cards”) can be issued per year in various preference categories, such as EB-1, EB-2, etc. The INA also established per country levels for the distribution of visas. The practical effect of this system is that applicants from high-demand countries like India, China, Philippines and Mexico must wait longer than others before an immigrant visa will be available to them. Similarly, applicants from lower-preference categories like EB-3 will typically face longer wait times than higher preference categories because of the relatively increased demand for visas under lower-preference categories.

The DOS uses a “priority date” system to determine when applicants are eligible for immigrant visas. An applicant’s priority date is the earlier of (a) the date that an immigrant petition was filed, or (b) a labor certification was filed (if applicable) on the applicant’s behalf. The applicant’s “priority date” fixes his/her place in the visa queue – cases with earlier priority dates are processed first.

Every month, the Department of State publishes a Visa Bulletin which establishes which priority dates qualify for an immigrant visa (or adjustment of status to permanent resident) in that particular month, based on preference category and country of origin. **As always, an immigrant visa can only be issued (or a Form I-485 adjustment application can only be approved) when a visa number is available under the priority date system.**

II. The New Visa Bulletin Format

Previously, the Visa Bulletin only listed the visa availability date, which is the date that the government can actually issue a green card because a visa number is available. Under the [October 2015 Visa Bulletin](#), the visa availability date is now listed as the “Application Final Action Date.”

In an effort to spur pre-processing of I-485 applications and consular visa applications, the Visa Bulletin now lists a “Date for Filing Visa Applications,” which is earlier than the “Application Final Action Date.” Pre-processing is advantageous as it reduces I-485 processing times and allows the DOS to better manage demand for visa numbers.

A. Consular Processing

For consular processing cases, the “Date for Filing Visa Applications” indicates when the National Visa Center will contact the applicant to begin pre-processing of the immigrant visa

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application. Pre-processing involves paying application fees, filing the DS-260 form online, and submitting identity documents. It should be noted that even before the October 2015 Visa Bulletin, the DOS utilized “Dates for Filing Visa Applications” to determine which cases to pre-process. These dates were computed based on the agency’s forecasts of visa progression. Cases that were expected to have a visa available in the near future were selected for pre-processing. **This system continues as before.** The only change is that the “Date for Filing Visa Applications” is now being publicized in the monthly Visa Bulletins, whereas before it was utilized internally.

B. Adjustment of Status

The “Date for Filing Visa Applications” has greater significance for those who will apply for a green card from within the USA, based on a Form I-485 adjustment of status application. Previously, USCIS only permitted prospective I-485 applicants to apply when (what is now) the applicant’s “Application Final Action Date” was current under the Visa Bulletin. As before, a prospective immigrant can continue to file a Form I-485 if his/her “Application Final Action Date” is current under the Visa Bulletin. That much has not changed.

However, in certain months, a prospective immigrant can now *also* file a Form I-485 if his/her “Date for Filing Visa Applications” is current under the Visa Bulletin. USCIS will designate such months on a month-to-month basis, and such designation will be reported in the Visa Bulletin. [USCIS has indicated](#) that for the month of October 2015, the “Date for Filing Visa Applications” can be used to determine I-485 filing eligibility. It is unclear at this time whether November 2015 will also be so-designated. However, the agencies have indicated that the “Date for Filing Visa Applications” will not have the gross variability of cut-off dates that plagued earlier Visa Bulletins. Also it seems quite likely that October 2015 is not an exception, and that the “Date for Filing Visa Applications” will apply for adjustment applications in future months as well.

The practical significance of this change is that many more people will be able to apply for adjustment of status, and concurrently file for employment authorization and travel documents (EAD/AP). In short, the new system greatly benefits sponsored aliens by reducing the amount of time before they can apply for adjustment and procure an EAD/AP. The recent expansion of work authorization to H-4 spouses has also had the effect of creating new opportunities for open-market employment for aliens. A sponsoring employer must be cognizant of these effects and have its employees sign for-term employment contracts if it desires or expects such employees to remain with the company for a certain period of time.

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