

Immigration Law \approx Foodservice

The Immigrant Visa 'Traffic Jam'

by Becki L. Young

My clients are always shocked when I advise them it takes, on average, five to seven years to get a green card through employment. Based on recent dire predictions from the US Department of State regarding the availability of immigrant visa numbers (required for the issuance of green cards), even this time frame may be an optimistic estimate.

Each year the federal government issues approximately 140,000 employment based green cards in five categories:

- **First preference:** Priority Workers.
- **Second preference:** Basically, immigrants with Master's degrees or higher.
- **Third preference:** Skilled Workers, Professionals, and Other Workers - The majority of employment based cases for restaurant and foodservice workers fall in this category.
- **Fourth preference:** Religious Workers and other Special Immigrants.
- **Fifth preference:** Immigrant Investors.

When the demand is higher than the supply in any given category, the government either establishes a cutoff date (meaning that only individuals who filed their applications



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before that date may proceed), or makes the numbers "unavailable" (which means that no new cases may be submitted, and all pending cases are on hold).

In the current fiscal year the demand in all categories has been extremely high, and the waiting times are excessive, especially for nationals of India and China.

The Department of State has recently advised that: The employment-based fourth preference and fifth preference have both seen increased demand this year. In the past, unused numbers in these categories were allowed to spill over into other categories; the high demand this year means that all applicants will have a longer wait.

The employment-based first preference (EB1) category worldwide will remain current the rest of the fiscal year, but demand is high. For EB1 applicants from India and China, the government may establish a cut-off date in August or September should demand remain heavy.

For employment-based second preference (EB2) cases from India and China, the prognosis is grim. The current cut-off date is January 1, 2000, and the category may become unavailable in August or September of 2009. A significant number of EB2 cases from China and India have been reviewed by USCIS and are queued up awaiting visa numbers for approval of the adjustment of status (green card application). Each country receives an allocation of 2,800 EB2 numbers per year (plus unused numbers from other categories); because the demand for these countries far outstrips the supply, the waiting time for China and India born EB2 applicants may be many, many years.

The employment-based third preference (EB3) category worldwide is currently unavailable and will remain unavailable for the rest of this fiscal year. The Department of State currently estimates that, as of October 1, 2009 (the start of the next fiscal year), the EB3 worldwide cut-off date will be March 1, 2003. All applicants in the EB3 category should expect extended delays; for applicants from India, China, and Mexico, the wait will be even longer.

The employment based green card process involves three steps: a labor certification, an immigrant visa petition, and (for most applicants in the US) an application for adjustment of status. Foreign workers can move through the first and second steps, but cannot start the third and final step until their immigrant visa number ("priority date") becomes current.

Furthermore, if they have filed Step Three (adjustment of status) and their priority date retrogresses or becomes unavailable, their case is placed on hold and no further processing is completed until numbers become available. I have many clients in this situation, who started the process years ago and either cannot move to Step Three because their priority date is not yet current, or are stuck in limbo at Step Three waiting for the government to start processing their cases again.

When clients ask if there is any way to get their cases unstuck, unfortunately the answer is a resounding no. These limits are set by statute, and the only way to get them moving is by legislation. If you are in this situation I urge you to contact your Member of Congress, and make your frustrations heard!

See http://travel.state.gov/visa/frvi/bulletin/bulletin_4497.html for more information on priority dates and demand for immigrant visa numbers.



Becki L. Young has been working in the field of immigration law since 1995. Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, including investment banking and securities, information technology, health care, and hospitality, providing advice on work permits and related immigration issues, and is the co-editor of *Immigration Options for Essential Workers* published by the American Immigration Lawyers Association. To learn more or to schedule a personal consultation, call 202-232-0983 or e-mail becki.young@blylaw.com.

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