



## October Visa Bulletin - What Does It All Mean?

**By Sherry L. Neal, Esq.**

The U.S. Department of State released the October Visa Bulletin last week. On the bright side, there was some forward movement. EB3 category is now available, but the priority dates go back to 2001 and 2002, depending upon the country of birth. EB2 China moved 2.5 months forward from the current month bulletin while India priority dates moved 14 days.

Some might become disheartened by the October bulletin. Indeed, October is an important month in immigration because the government goes by a "fiscal year" in immigration processing rather than a calendar year. However, not everything with a visa quota works in the same way. For example, the H-1b non-immigrant category has a limit per fiscal year (65,000 for the regular H-1b cap and 20,000 additional H-1b's for graduates with U.S. Master's degree or higher) and all the visa numbers become available at the start of the fiscal year (filing can begin April 1st but the visas become effective October 1st). This is not so in the immigrant ("green card" aka "permanent residence" category). While the immigrant numbers (144,000 in the employment based category) become available on a fiscal year, the Department of State moves the cases in a sporadic manner (sometimes forward, sometimes backward, and sometimes stalled).

So, what do the numbers mean? As someone once said, "Never make predictions, especially about the future." Those who try to "guess" when a specific date will become current are indeed only guessing. It's been my opinion that people try to guess by misconstruing the visa numbers. For example, some look at the current availability date and subtract it from the current year to try to arrive at a guess of how long the waiting period would be for a new case. Example: 2009 minus the current date of June 1, 2002 for EB3 Philippines would mean a waiting period of seven years for a new case. This is a miscalculation: in some cases it can be an overestimate but in other cases it may be an underestimate.

Still others try to guess based upon partial information released by the agencies involved in immigration. For example, the State Department issued dire predictions in June about upcoming visa availability. Specifically, the State Department estimated approximately 25,000 EB2 India cases which have been reviewed by USCIS and queued up at the Department of State awaiting visa numbers for the "green cards" to be approved, while that category (like all other countries) has a limit of 2,800 numbers available per year plus any "left over" numbers from other categories. That data could lead to a calculation (miscalculation) of several decades to get permanent residence. Really, how many employment based applicants will be willing to wait for "decades" to get a green card?

The reason we can not accurately predict visa number availability is because so much data is "missing". Any reasonable estimate of visa availability would need to consider the following:

1. How many I-485 cases at USCIS waiting for visa numbers AND what the priority dates are for those cases?
2. How many cases are at NVC and consulate waiting for visa numbers AND their priority dates?
3. How many dependents are included in the pending petitions?
4. How many labor certifications are pending at Department of Labor AND the priority dates for those petitions?
5. How many I-140's are pending at USCIS AND the priority dates for those petitions?
6. How many cases are duplicates (foreign nationals who have multiple petitions pending, either with different employers or in different categories, with the plan to take advantage of whichever comes first)?
7. How many cases are dropping out of the system or will drop out in the future before the date becomes current -- issues such as employer no longer sponsoring the petition, employee abandoning the petition often to re-migrate back to home country or to another country, etc.?

This complete set of data is unavailable. Thus, any visa predictions are susceptible to error.

But as someone once said, "anything worth having is worth waiting for." I like to compare visa number progression to waiting in line at the grocery store. Consider that you are standing in a very long line at a grocery store with only three other lanes open. How quickly the line moves depends upon various factors such as: how many people are ahead of you in the line, how many items each person has, how many people may become frustrated by the wait and simply give up and go to another store, etc. And what happens while you wait? Most likely, you're looking at the other lane and wishing you had chosen that lane instead (perhaps wishing you had qualified for the "10 items or less" condition). And in the process, you also become frustrated that the store doesn't see fit to open more lanes to allow people to move through more quickly - that would seem the logical thing to do. But if you are patient, you do eventually get through the line. And so it is with immigrant visa processing.

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