

# Mobility: immigration alert

September 2022

## United States

### October 2022 Visa Bulletin Reflects Substantial Retrogression in the Employment-Based Second Preference Category for Indian-born Green Card Applicants

#### Executive summary

On 7 September 2022, the U.S. Department of State (DOS) released the [October Visa Bulletin](#), which revealed that the employment-based second preference category (EB-2) final action date for applicants born in India will *retrogress* from 1 December 2014 to 1 April 2012. This change will be effective on 1 October, the commencement of the Federal government's new fiscal year (FY). The India EB-2 filing date cut-off will also experience substantial retrogression from 1 January 2015 to 1 May 2012.

DOS advised that heavy applicant demand for India EB-2 immigrant visa numbers, coupled with significantly lower availability of numbers in that category for FY 2023, required this corrective action "to keep use within the maximum allowed under the FY-2023 annual limits."

#### Background and analysis

The *Immigration and Nationality Act* establishes a worldwide level of 140,000 employment-based (EB) immigrant visas that may be granted each FY. It also provides that any family-based (FB) visa numbers that are unused during a given FY may be added to the 140,000 EB green card limit the following FY.

As a result of the COVID-19 pandemic and consequent closures of U.S. Embassies and Consulates around the world, nearly all 140,000 FB visa numbers were unused during FY 2021. This resulted in an overall annual EB limit that was twice as high as usual for FY 2022.

U.S. Citizenship and Immigration Services (USCIS) and DOS undertook various measures throughout FY 2022 to maximize the use of this unprecedented number of EB immigrant visas. These measures included significantly advancing the dates in the Visa Bulletin to permit the filing and adjudication of sufficient immigrant visa and I-485 adjustment of status applications in addition to publishing several communications throughout the year notifying the public that USCIS lacked sufficient inventory in the EB-1 and EB-2 categories. Consequently, heavy applicant demand developed during FY 2022, especially in the India EB-2 category.

These efforts led to USCIS and DOS using all available visa numbers for both the EB-1 and EB-2 categories as of 6 September, which means that no more I-485 or immigrant visa applications can be approved in those categories this FY, ending on 30 September 2022. Unfortunately, these efforts also resulted in the need to retrogress the India EB-2 category, which has the effect of making visas available to a smaller population of applicants and thereby ensures that visa use remains within the statutory limits.

#### What this means

Beginning 1 October, Indian-born applicants in the EB-2 category are only eligible to be granted an immigrant visa if their priority date is earlier than 1 April 2012, and only eligible to submit an I-485 green card application to USCIS if their priority date is earlier than 1 May 2012.



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We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

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