

What is the "Quota Backlog" ?

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The Immigration and Nationality Act sets limits on how many green card visas may be issued each Fiscal Year (October 1 through September 30) in all visa categories. In addition, in the employment-based area where immigration is based on employment and not family relationships or investment, nationals of each country may obtain immigrant visas (i.e., a green card), in different preference categories (i.e., EB-1, EB-2, EB-3). The law further provides that no one country may have more than a specific percentage of the total number of visas available annually. If these limits are exceeded in a particular category, for a particular nationality, a waiting list is created and applicants are placed on the list according to the date of their case filing. This date is called a "Priority Date." The priority date is the single, most important, factor in any immigration case.

WHAT ARE THE DIFFERENT EMPLOYMENT-BASED PREFERENCE CATEGORIES?

Employment-Based First Preference (EB-1)

Employment-Based Second Preference (EB-2)

Employment-Based Third Preference (EB-3)

Other Workers

WHAT DOES EB-1 MEAN?

Employment-Based First Preference (EB-1) includes: (1) Persons with extraordinary ability in the sciences, arts, education, business and athletics (persons who have risen to the top of their profession); (2) Outstanding professors and researchers; and (3) Multi-national executives and managers.

WHAT DOES EB-2 MEAN?

Employment-Based Second Preference (EB-2) includes: (1) Members of professions holding advanced degrees (Master's or Ph.D.) (The position must be one that requires a Master's or Ph.D. to perform the duties – the degree held by the individual does not determine whether or not it is an EB-2, rather it is the company's job requirements. Additionally, the immigration regulations provide that a job which requires a minimum of a Bachelor's degree PLUS a five years of progressively responsible experience will be considered equivalent to a Master's level position and will qualify for EB-2.); and (2) Persons of exceptional ability in the sciences, art or business. Persons of exceptional ability are those who have a degree of expertise above that which is ordinarily expected.

WHAT DOES EB-3 MEAN?

Employment-Based Third Preference (EB-3) includes: (1) Professionals and skilled workers (bachelor's degree or two years of training). The position must require a minimum of a bachelor degree or two years of training.

WHAT DOES "OTHER WORKERS" MEAN?

Other Workers includes positions that require less than two years of experience.

WHAT IS THE “PRIORITY DATE”?

If your category is employment-based and requires a labor certification, the priority date is established on the date a labor certification is filed with the State Workforce Agency. If your category is employment-based but does not require a labor certification, then the priority date is established on the date the CIS receives the I-140 Immigrant Visa Petition. However, the priority date does not attach to your case until the I-140 has been approved.

WHY IS THE PRIORITY DATE IMPORTANT?

In order for an individual to obtain an immigrant visa, a visa number must be available to you. This is referred to as the priority date being "current." The priority date is current if there is no backlog in the category, or if the priority date is on or before the date listed as current in the State Department's monthly Visa Bulletin. This Bulletin is accessible at www.travel.state.gov. You may sign up online to have the Visa Bulletin automatically e-mailed to you by the State Department each month.

CAN I GET AHEAD ON THE QUOTA BACKLOG LIST?

There is no way to get ahead on the list, other than filing an Immigrant Visa Petition in a higher preference category, provided that the individual and/or their position meet the criteria to do so. Otherwise, the individual must wait until eligible to apply along with others on the list before proceeding with filing the last step in the green card process. The last step is accomplished by filing an application to adjust status to that of a lawful permanent resident in the U.S., or by obtaining an immigrant visa at a U.S. Consulate abroad.

WHAT IS THE DIFFERENCE BETWEEN THE VISA CATEGORY BEING “U” (UNAVAILABLE) AND “MM/DD/YY” (QUOTA BACKLOG)?

Unavailable means that there are no more visas available at all for the month. If there is a date noted (i.e. 07-01-02), it is considered to be the cut-off date, and that means that there is a “quota backlog”. Only individuals who have a priority date earlier than the cut-off date may move forward with the permanent resident process.

WHAT DOES “C” MEAN?

“Current” – this means that there is no quota backlog in this category.

WHAT DOES IT MEAN TO BE “CURRENT”?

If there is a “C” in your employment-based category on the Visa Bulletin, then there is no quota backlog and you may proceed with your I-485 adjustment application or immigrant visa application.

HOW OFTEN DO THE BACKLOGS CHANGE AND WILL THEY IMPROVE?

Each month, the State Department issues the visa bulletin, usually in the middle of the month. When the bulletin is issued, it will provide information that will take effect on the first day of the following month. (i.e., on 9-12-05, the DOS released the dates effective as of 10-1-05). Depending on the availability of immigrant visas, the priority dates in each category and for each country can change each month. However, please note that the priority dates can also stay the same. They can move very slowly or progress by several months or years. They can move forward or backward. Therefore, there is no way to anticipate what the priority date will be in a future month or when a category will become current.

VISA AVAILABILITY IS BASED ON COUNTRY. IS THAT COUNTRY OF CITIZENSHIP OR COUNTRY OF BIRTH?

Your country of birth is what determines your country of chargeability.

MY SPOUSE WAS BORN IN A DIFFERENT COUNTRY THAN I WAS. SINCE THE I-485 IS BASED ON MY EMPLOYMENT, DOES MY SPOUSE'S COUNTRY OF BIRTH HELP ME?

Your spouse's country of birth may also be used to determine chargeability. For instance, if you were born in India, but your spouse was born in France and there is a quota backlog for India, but no quota backlog for France in your preference category, you and your spouse may proceed with your immigrant process based on your spouse's country of birth.

BOTH MY WIFE AND I WERE BORN IN INDIA AND MY PRIORITY DATE IS NOT CURRENT. OUR CHILD WAS BORN IN THE UNITED KINGDOM AND THE PRIORITY DATE FOR THAT COUNTRY IS CURRENT? CAN WE USE OUR CHILD'S COUNTRY OF BIRTH FOR ELIGIBILITY?

No. You can use your spouse's country of birth for eligibility. However, your child's country of birth cannot be used.

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