

Check-in with DOS's Charlie Oppenheim: October 16, 2017

Employment-Based Preference Categories

EB-1 China, EB-1 India, and EB-2 and EB-3 Worldwide. As previously reported, all of these categories are expected to remain current for the foreseeable future.

EB-2 India. Consistent with Charlie's predictions, **EB-2 India** will advance by less than one month for November to October 8, 2008.

EB-3 India. The final action date for **EB-3 India** will hold steady at October 15, 2006, for November, and Charlie is confident that this date will continue to hold in December.

EB-2 China and EB-3 China. Demand in these two categories is creeping along as expected. Charlie is interested in watching how the new USCIS interview requirement will impact demand in these categories and the downgrade phenomenon that has occurred for the past few years. In November, **EB-2 China** advances by less than one month to June 15, 2013, and **EB-3 China** advances by one month to February 1, 2014.

EB-3 Philippines. The final action date for **EB-3 Philippines** advances one and a half months to April 1, 2016, in November, consistent with Charlie's predictions.

EB-5 China. The final action date for **EB-5 China** advances approximately one week to July 1, 2014, in November, consistent with Charlie's projections.

EB-4. All EB-4 subcategories will remain the same in November with the exception of **EB-4 Mexico**, which will advance one month to April 1, 2016. Compared to the beginning of the last fiscal year, where Mexico, El Salvador, Guatemala, and Honduras were almost at their annual limits, the demand is starting out more slowly in these categories this year. Charlie expects to continue to advance **EB-4 Mexico** slowly, but he cautions members to not be surprised if the final action date for **EB-4 Mexico** rejoins that of **EB-4 El Salvador, Guatemala, and Honduras** later this fiscal year.

Charlie noted that in FY2017, Special Immigrant Juvenile (SIJ) applicants used over 50% of the annual limit for the EB-4 category, or more than 5,100 visa numbers. Of this number, El Salvador, Guatemala, and Honduras used over 1,100 visa numbers each.

Family-Based Categories. Movement in the family-based categories for November is consistent with Charlie's predictions, with the final action dates of most categories either remaining the same or advancing modestly by about one month. **FB-1** and **FB-2B Philippines** demand is starting to materialize. In particular, members should expect a correction to **FB-1** in the December Visa Bulletin. Demand in **FB-4 India** is lower than expected, which might allow Charlie to advance the final action date in this category more quickly than previously anticipated.

MEMBER QUESTION #1: When does USCIS request and allocate a visa number to an individual case?

ANSWER #1: Per the agreed upon policy, USCIS will only request an immigrant visa number once all required processing is 100% complete, including conducting any required interview, receipt of a complete medical exam, all required clearances, etc.

MEMBER QUESTION #2: Could you please confirm that a visa number that gets allocated to each applicant who has successfully passed the interview should be preserved for that applicant unless the applicant becomes ineligible for permanent residence?

ANSWER #2: With regard to USCIS, though this is relatively rare, there are occasions in which USCIS requests a number, but before the adjustment of status application is fully processed, subsequent derogatory information comes to the officer's attention which impacts eligibility.

As another example, USCIS recently sent RFEs out on numerous EB-3 India cases which had been pre-adjudicated in anticipation that the final action date for this category would advance during August and September. Visa numbers were provided for those cases with the expectation that the applicants would respond to the RFEs in time to be approved before the end of the fiscal year. Unfortunately, hundreds of individuals did not respond in a timely manner, and USCIS determined that it would be unable to complete adjudication of those cases prior to September 30, 2017. Those cases were returned to "pending demand" status, and the visa numbers for those cases became available to other cases within FY 2017. USCIS was provided with a new number for each case once the requested evidence was received and successfully processed. As a result of new visa number requests for several hundred of these cases, the final action date for EB-3 India is not currently advancing.

For consular processing cases, a visa number is allocated to a consular post for use during the month in which the visa applicant is originally scheduled for a visa interview. If the visa is not used during that month (i.e. the case is placed in administrative processing), the number is returned to the Visa Office at the end of the month.

MEMBER QUESTION #3: In last month's column, Charlie talked about avoiding a "drastic" retrogression of EB-3 China. Does this mean there is no hope of forward movement?

ANSWER #3: The reason that the final action date for EB-3 China was not advanced as much as might be suggested by the current rate of demand is because EB-3 China is likely to be hit with significant downgrade demand in the coming months. This is a pattern that has repeated itself over the past few years. Charlie intentionally did not advance the EB-3 China final action date too quickly in order to avoid a drastic retrogression later in the fiscal year. However, later this year, members can expect some additional forward movement in the EB-3 China category.

Questions for Charlie? Please send your questions to sreguerin@fragomen.com for inclusion in next month's "Check-in with Charlie" column.