

Check-in with DOS's Charlie Oppenheim: May 19, 2017

Employment-Based Preference Categories. Increased demand across the employment based preferences, including **EB-4** and **EB-5**, has significantly decreased the “otherwise unused numbers” which have traditionally trickled up to **EB-1** and potentially down to **EB-2**. For example, in FY 2016, Special Immigrant Juvenile cases used more than 50% of the entire **EB-4** annual limit, thus preventing many of those 5,200 numbers to potentially become available for use by **EB-1** applicants. This, together with high **EB-1 Worldwide** demand, has contributed to a situation where **EB-1 India** and **EB-1 China** now have a final action cut-off date, and in which **EB-2 China** and **EB-2 India** number usage is restricted to their annual limits. This is creating significant pressure on these categories that is not likely to abate in the foreseeable future.

In 2014, **EB-2 India** used approximately 23,500 numbers due to the slightly higher employment annual limit and the infusion of otherwise unused numbers from other categories. By contrast, **EB-2 India** number use will be subject to its annual limit of 2,803 numbers in FY 2017. As demand across employment based preference categories continues to grow, and absent reform, members can expect to see continued pressure on China and India in the **EB-1** and **EB-2** categories.

EB-1 China and EB-1 India. As predicted, a final action date of January 1, 2012 is being imposed for **EB-1 China** and **EB-1 India** which have already used almost half of the entire **EB-1 Worldwide** limit for this fiscal year. This date is expected to hold through the remainder of this fiscal year. It is hoped that the final action date for **EB-1 China** and **EB-1 India** will return to current on October 1, as it did last year, but Charlie will continue to monitor demand in these categories over the summer months. **EB-1 Worldwide** is expected to remain current through this fiscal year and into the next.

EB-2 Worldwide. For several months, Charlie has observed high **EB-2** number usage, and is now certain that a final action cut-off date will be imposed for **EB-2 Worldwide** by August, and possibly in July. Charlie hopes that the date imposed will not be too drastic, and will determine that date based upon the remaining numbers and the monthly demand trend. In the worst case scenario, the date will remain the same through the end of the fiscal year but depending on demand, it is possible that the date could advance slightly in September. Charlie is confident that this period of retrogression will be brief, and that the category will again become current on October 1.

EB-2 India. Demand for **EB-2 India** continues to be strong, in large part due to **EB-3** upgrades. As noted above, the supply of visas in this category is limited to the per country limit. Although **EB-2 India** will advance slightly in June, Charlie no longer believes this category will recover to last year's final action date. Charlie hopes to hold the existing final action date through the remainder of the fiscal year but will be watching this category closely.

EB-2 China and EB-3 China. **EB-2 China** will advance less than one month to March 1, 2013 in June, and **EB-3 China's** final action date of October 1, 2014 continues to hold steady in June. Charlie expects **EB-2 China** to continue to advance slowly and notes that it is on track to hit the per country limit. In addition, **EB-3** downgrade volume has started to materialize in large numbers. Charlie hopes to hold the **EB-3 China** final action date as long as possible, but retrogression of this category cannot be ruled out. Since Charlie lacks visibility into downgrade demand until a visa number is requested, members should continue to watch this category closely.

EB-3 Worldwide. **EB-3 Worldwide** will advance by one month to April 15, 2017 in June, making this category effectively current. Charlie expects this category to continue to advance.

EB-3 India. In June, **EB-3 India** will leap forward from March 25, 2005 to May 15, 2005. Since **EB-3 Worldwide** and **Mexico** demand is low, those otherwise unused numbers will continue to advance the final action date for **EB-3 India** in July and August. Charlie has already predicted that the July final action date for **EB-3 India** will advance to October 15, 2005, as he announced during a May 18, 2017 meeting with AILA in Washington, D.C.

EB-5 China. **EB-5 China** will advance by one week to June 8, 2014 in June. Charlie expects slow forward movement in this category.

FB-4. As noted last month, **FB-4 Worldwide** is the family-based preference category that members should watch closely. Although the final action date will remain the same in June, Charlie hopes to advance this category this fiscal year.

FB-4 Worldwide continues to advance, as the majority of beneficiaries are not responding to the NVC “Agent of Choice” letters. Only 40% of 120,000 **FB-4 Worldwide** beneficiaries who had been sent “Agent of Choice” letters no later than April 2016 have responded to those letters, and of those, only 15% provided sufficient information for an interview to be scheduled. Had they responded in a timely manner, all of those applicants could have been scheduled for interview no later than April 2017. Charlie reminds members that timely response to the Agent of Choice letters is helpful to ensuring that case advances to completion as quickly as possible.

Special Immigrants. **EB-4 India** will be subject to a final action date in July. That date will track the final action date for El Salvador, Guatemala, Honduras and Mexico. At last week’s FBA conference in Denver, Charlie announced that the July EB-4 date for those five countries will be August 15, 2015.

The Visa Bulletin notes that the **SQ** category for certain Afghanis will remain current, following approval of an additional 2,500 visas. The **SQ** category for Iraqis remains current, however, the application filing deadline was September 30, 2014. The **SI** category is unavailable.

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