

GOOD NEWS FOR EMPLOYERS AS MORE EMPLOYEES ARE ELIGIBLE TO FILE FOR EMPLOYMENT-BASED GREEN CARD APPLICATIONS IN OCTOBER

Insights
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Because Congress limits how many green cards can be issued annually, the Department of State (DOS) releases a visa bulletin every month establishing the cut-off dates per preference category and country for the upcoming month. And when it comes to the most recent announcement regarding October's information, employers will be pleased – as we'll see an increase in the number of workers who will be eligible to apply for green card status. What do you need to know about this latest development?

Brief Overview of Visa Bulletin

The visa bulletin specifically publishes two charts: 1) Final Action Dates and 2) Dates for Filing. The cut-off dates on the visa bulletin serve as the front of the green card line. Depending on the chart, individuals that have a priority date that is earlier than the cut-off date listed on the chart for their preference category and country can submit their green card applications. As there are more green card applications exceeding the annual limit, employers often experience backlogs impacting applicants from certain countries.

The Final Action Dates chart reflects which priority dates are current, or in other words, when green card applications are ready for adjudication by the government. The Dates for Filing Chart represents when an applicant can file for an immigrant visa abroad or file the last step of the green card application in the U.S. The latter process requires filing Form I-485 Adjustment of Status application. When it comes to filing the I-485 application, however, USCIS gets the final

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say in which one of these charts controls. Once the DOS issues the visa bulletin, USCIS announces on its website which chart to use to determine filing.

What is Happening in October?

October 2021 is a month that brings good news to many employers and foreign national employees. For this month, USCIS has announced to use the Dates for Filing chart in determining whether employment-based I-485 applications can be filed with USCIS. The use of the Dates for Filing chart is a change from previous months where USCIS required using the Final Action Dates chart.

Using the Dates for Filing chart means that it opens up eligibility for more foreign national employees to file for the last step of the green card process. This is good news as I-485 applications are generally filed together with separate work and travel authorization documents (EAD/AP) which could mean saving costs on the need for filing visa extensions and renewals for the foreign national employee in the long run. With longer backlogs especially for nationals born in India and China, this will be welcome news for foreign national employees as well.

More specifically, the Dates for Filing chart reflects some movement for EB-2 and EB-3 (India and China) which will open up eligibility for filing I-485 applications. Specifically, all countries under EB-1 will remain current. Notably, EB-2 India will advance 7+ months to July 8, 2012. EB-3 India will retrogress by 2+ months to January 8, 2014, while EB-3 China will retrogress by 5+ months to January 15, 2019.

Notably, October's visa bulletin also included predictions for potential movements for employment-based immigrant visa availability. Starting as early as November 2021, the DOS warns there could be a possible retrogression under the Final Action Dates for EB-3 China and India, along with imposing a worldwide final action cutoff date under the EB-3 category. The DOS' predictions for possible retrogression for India, China, and all other countries would negatively impact eligibility for filing I-485 applications for many.

While retrogressions have been common for countries with long back-logs such as India and China, the possible imposing of Final Action Dates for all other countries is rare, as most other countries have generally remained current. In the past, when a final action date has been imposed on

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other countries, the negative impact was still limited or practically nonexistent because of how small the gap between the final action date and the current date is.

What Should Employers Do?

With the slight advancements in priority dates in October, along with the possible retrogression that may happen in November, employers should quickly assess which of their employees may be eligible to file the last step of the green card process. You should work with immigration counsel so that I-485 applications can be timely prepared and filed with USCIS during this possibly short window frame in October.

As we are never able to accurately predict the next visa bulletin, it is a good idea to prepare the documents needed for the green card applications as soon as possible, so that the applications can be quickly filed once the visa bulletin shows a visa is available.

We will monitor these developments and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions about preparing the I-485 applications, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Immigration Practice Group](#).