# UNDERSTANDING U.S. IMMIGRATION AND NATIONALITY LAWS

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## CHAPTER 1

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Practiced immigration & nationality law in Austin since 1978

Appointed by Governor Ann Richards as Chair of the Governor's Advisory Committee on Immigration & Refugees

Chair of the State Bar of Texas' Committee on Laws Relating to Immigration & Nationality (1990-2005)

Chair of the Examinations Committee on Immigration for the Texas Board of Legal Specialization (1986-1995)

Served as elected Director on the Board of Governor's of the American Immigration Lawyers Association (AILA) (1990-1996)

Past Chair of the Texas-Oklahoma-New Mexico Chapter of AILA

Past Chair of AILA's national Consumer Protection Committee

Past President of the Austin Chapter, Federal Bar Association

Past Board Member of the American Immigration Council (AIC, previously AILF)

Frequent speaker at immigration & nationality law seminars

Awards:

Sam Williamson Memorial Award from AILA's Texas-Oklahoma-New Mexico Chapter for excellence in advancing the practice of immigration law

AILA's national Pro Bono Award for efforts to provide pro bono representation

Outstanding Community Service Award of the Austin Chapter of the Federal Bar Association

Texas-Oklahoma-New Mexico Chapter of AILA's Service Award for contributions to the practice of immigration law

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# UNDERSTANDING U.S. IMMIGRATION AND NATIONALITY LAWS

## I. INTRODUCTION AND IMPORTANT DEVELOPMENTS

Foreign nationals and their immigration counsel are facing more difficulties emanating from the Trump administration. Children of asylum applicants have been separated from their parents who are being detained and prosecuted for unlawful entries. Some of these children have later been reunited with their parents due to the public outcries, but they often are detained with a parent. Prosecutorial discretion has been almost eliminated; the Immigration & Customs Enforcement (ICE) agency has repeatedly stated that any foreign national within the U.S. who is out of status or undocumented is at risk of removal. Both nonimmigrant and immigrant visa applicants at U.S. consulates and embassies abroad are facing more "vetting" and should expect their cases to take longer to adjudicate. Persons within the U.S. with valid multiple entry nonimmigrant visas are discovering that their visas have been revoked due to any arrest for driving under the influence even if they have not been convicted of an offense. President Trump has issued "travel bans" to prohibit the admission into the U.S. of citizens of particular countries, and he continues to push for the construction of a wall along the length of our country's southern border. The Trump administration is seeking to hire thousands of additional employees for the Customs & Border Protection (CBP) agency and to secure more funding dedicated to immigration law enforcement. Backlogs for nearly every type of immigration and citizenship application have grown tremendously. In addition, President Trump is advocating for a nearly 50% reduction of lawful immigration and the implementation of a new "points" system to favor immigration for persons fluent in English who are well educated, hold special expertise, or will bring significant capital investments to the United States.

Immigration laws are constantly changing. Security and enforcement concerns have taken priority over timely adjudications of applications for immigration status submitted by employers for foreign national employees as well as by U.S. citizens for their relatives. This is a heavily regulated field with laws intended both to protect the United States workforce and to unify families. Congress must juggle competing interests in determining immigration policy: employers want to be able to hire skilled foreign labor, while labor unions and professional societies want to improve wages and working conditions for employees; immigrant families want to bring their relatives to the U.S., while the quota system lags ever farther behind; a global economy demands decreasing barriers, while an influx of unlawful immigration and the threat of terrorism results in tightening controls.

The U.S. Citizenship & Immigration Services (CIS) concentrates on the intent of the individual: Is he/she an intending immigrant or nonimmigrant? The wrong answer might result in a return trip to the home country. Nonimmigrant status is temporary: one may only remain in the U.S. for a limited period of time. Immigrant status, commonly called "green card" status, signifies that a person has been granted permanent resident status and may reside in the U.S. indefinitely.

These government websites provide useful information about immigration laws:

www.uscis.gov (U.S. Citizenship & Immigration Services)
www.dol.gov (U.S. Department of Labor)
www.travel.state.gov (U.S. Department of State)
www.twc.tx.us (Texas Workforce Commission)

### USCIS Expands Provisional Waiver Program

In 2013, President Obama announced the creation of the Provisional Waiver program, whereby certain immediate relatives of U.S. citizens could apply for a provisional waiver of the unlawful presence ground of inadmissibility within the United States prior to leaving for their immigrant visa interview in their home country. The applicant had to prove extreme hardship to a U.S. citizen spouse and/or parent. On July 29, 2016, the USCIS announced a final rule which expanded the current provisional waiver program to include lawful permanent resident spouses or parents as potential qualifying relatives. This final rule went into effect on August 29, 2016.

### Parole in Place (PIP)

On November 15, 2013, the USCIS released a new Policy Memorandum which spelled out the process for applying for Parole in Place (PIP). PIP may be sought for spouses, children, and parents of persons serving on active duty in the U.S. Armed Forces, in the Selected Reserve of the Ready Reserve, or who previously served in either of the two mentioned above (i.e. veterans). An I-131 application is submitted without fee to the USCIS Field Office with jurisdiction over the applicant's residence, and if granted, the applicant receives an I-94 card indicating parole in the U.S. for one year. Those applicants who would not normally be eligible to apply for adjustment of status within the United States because of their manner of entry may then solicit permanent resident status from within the United States despite an unauthorized entry. It is important to note that the applicant should not actually leave the United States

and use the PIP I-94 card to seek to return from travel abroad. The intent of PIP is to keep families together, especially the loved ones of those who fight to keep our country safe. PIP does not provide a waiver of any 212(a)(9)(C) ten year "permanent" bar.

**DOMA: Defense of Marriage Act Declared Unconstitutional**

Perhaps the most significant development in 2013 was that Section Three of the Defense of Marriage Act (DOMA) was declared unconstitutional by the U.S. Supreme Court on June 26, 2013. This meant that the federal government began to recognize the legal marriages of same-sex couples. Same-sex couples in committed relationships who were married in a state or country that recognizes such marriages can now receive a variety of federal protections, including the right to seek permanent resident status for foreign-born spouses of U.S. citizens, even if living in another state [that does not recognize same-sex marriages].

Even more significant was the Supreme Court ruling on June 26, 2015 legalizing same-sex marriages across the United States. Thirty-six states and the District of Columbia already recognized gay marriage, but this Supreme Court ruling required the remaining fourteen states to lift any bans against gay marriage that were in place.

**Deferred Action for Childhood Arrivals**

There was one very significant immigration law development in 2012. On June 15, 2012, President Obama announced that many children whose parents brought them into our country prior to age sixteen would be eligible for some immigration benefits. Deferred Action for Childhood Arrivals (DACA) provides eligible applicants a two-year Employment Authorization Document (EAD) and many of the earlier DACA recipients are now renewing their EADs for a third time. Qualified applicants must have entered the U.S. prior to age 16, have been younger than 31 on June 15, 2012, and have been continuously present in the U.S. for at least 5 years. They must have either served in the military or be enrolled in school or have graduated from high school or obtained a GED. In addition, they must not have been convicted of a felony, three misdemeanors, or any "significant misdemeanor." Driving under the influence is considered to be a significant misdemeanor. There are presently nearly 800,000 recipients of DACA.

The Trump Administration on September 5, 2017 rescinded the DACA program. No initial DACA applications are being accepted. Due to federal court litigation, DACA recipients are currently being permitted to renew both the period of deferred action and their employment authorization documents (EADs). The USCIS is not accepting any new applications for a DACA Advance Parole (travel) document.

Federal court litigation initiated by Texas and six other states is seeking to completely terminate the DACA program.

## II. IMMIGRANT STATUS: EMPLOYMENT- BASED

Generally either a close family relative or an employer must sponsor someone for immigration. The first method relies on a close tie to a U.S. citizen or permanent resident. If a foreign national does not have such a relative, he/she might qualify under one of the employment-based categories. Currently the Immigration & Nationality Act sets an annual limit of 226,000 immigrant "preference" numbers for family-based categories, and 143,949 immigrant "preference" numbers for employment-based categories. The per-country limit for preference immigrants is now 25,896.

**Employment-Based Categories**

1st Preference: Extraordinary Ability
Outstanding Professors & Researchers
Managers & Executives

2nd Preference: Advanced Degree Professionals
Exceptional Ability

3rd Preference: Professionals (Bachelors degree)
Skilled Workers (two years training)
Other Workers (unskilled)

4th Preference: Special Immigrants (religious workers)

5th Preference: Immigrant Investors

### A. First Preference

The First Preference is for "priority workers" and includes individuals of extraordinary ability, outstanding professors or researchers, and certain executives and managers of multinational corporations. Because Congress regards them as priority workers, they are exempt from Department of Labor requirements for labor certification.

1. Extraordinary ability

The first subgroup of the priority worker category is reserved for applicants with extraordinary ability in the sciences, arts, education, business, or athletics. The CIS considers "extraordinary ability" to be a level of expertise indicating that the individual is one of a few who have risen to the top of his/her field. The petitioner must demonstrate extraordinary ability through extensive documentation showing sustained national or international acclaim, and that the foreign national's achievements have been recognized by

others in the field of expertise. The regulations provide a list of criteria for guidance, which are summarized below:

- Major prizes or awards.
- Memberships in organizations that require outstanding achievement.
- Cites to or articles about the individual's work.
- Participation as a judge of the work of others.
- Evidence of original scientific, scholastic, artistic, athletic or business-related contributions.
- Authorship of scholarly articles.
- Artistic exhibitions or showcases.
- Performance in a leading or cultural role for organizations that have a distinguished reputation.
- High salary in relation to others in the field.
- Commercial success in the performing arts.
- Other comparable evidence.

2. Outstanding Professors or Researchers

The second subgroup of the priority worker category is reserved for certain professors or researchers who are internationally recognized as being outstanding in specific academic areas. The applicant must have at least three years teaching or research experience. Under certain conditions the CIS will count teaching or research experience gained while working toward an advanced degree. The individual must either be (a) in a tenure-track position teaching or conducting research at a university, or (b) in a research position with a private employer who employs at least three full-time researchers and who has achieved documented accomplishments in the academic field.

As with extraordinary ability, the petitioner must demonstrate outstanding ability through extensive documentation showing international recognition in the field. The regulations provide a list of criteria for guidance, which are similar to extraordinary ability:

- Major prizes or awards.
- Membership in organizations that require outstanding achievement.
- Cites to or articles about the individual's work.
- Participation as a judge of the work of others.
- Evidence of original scientific research.
- Authorship of scholarly articles or books

3. Multinational Executives and Managers

The third subcategory of priority workers is reserved for certain executives and managers of multinational companies. To be eligible the manager or executive must have been employed at least one of the three preceding years by the overseas parent, subsidiary, affiliate, or branch of the U.S. employer. They must have filled a position in a managerial or executive capacity for at least one year, and be coming to the U.S. to fill a position in a similar capacity.

The petitioner must document that the proper relationship exists between the two entities. In some cases a joint-venture may be acceptable to the CIS. In situations where there is less than 50% ownership, there might be equal control and veto power. The CIS definition of "managerial capacity" includes both managers of an organization and managers of a function; however, first line supervisors are not considered managers unless the employees they supervise are also professionals.

## B. Second Preference

The Second Preference category includes members of the professions holding advanced degrees, and those who have exceptional ability in the sciences, arts or business. The CIS regulations define a profession as an occupation that requires at least a Bachelor's degree to enter into the field. An employee seeking to enter in this category must obtain a labor certification from the Department of Labor unless the CIS determines that a waiver of the labor certification requirement would be in the "national interest." A labor certification certifies that the employment of the foreign worker in a particular position will not adversely affect the U.S. labor market.

1. Advanced Degree

This subcategory requires the professional to have at least a Master's degree or equivalent. An advanced degree means any degree higher than a Baccalaureate degree. The CIS will also consider an applicant who has a Baccalaureate degree plus five years of progressive experience in the profession to be equivalent to a Master's degree. Note that to require five years of experience in a job offer for purposes of labor certification may conflict with minimum job standards set by the Department of Labor. For this reason it may not always be possible to include an individual's full experience to meet the advanced degree category.

2. Exceptional Ability

This subcategory is reserved for those who have "exceptional ability" in the sciences, arts or business, and who will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. The CIS is looking for a level of expertise significantly above that ordinarily encountered in the field. It is lower than the "extraordinary ability" standard, and has different guidelines:

- Degree relating to area of exceptional ability.
- Ten years of experience.
- Professional license.
- High salary in relation to others in the field.
- Membership in professional associations.

- Recognition for achievements and significant contributions.
- Other comparable evidence.

### C. Third Preference

The Third Preference category includes professionals who hold a Baccalaureate degree (or foreign degree equivalency); skilled workers capable of performing a job requiring at least two years of training or experience; and "other workers," who are defined as those who work in positions requiring less than two years of training or experience. Visas are equally available to professionals and skilled workers under this category. Congress has limited the quota for "other workers" to only 10,000 per year. All employees seeking to enter in the Third Preference category must obtain a labor certification from the Department of Labor.

### D. Fourth Preference

The Fourth Preference category is for Special Immigrants, which primarily includes ministers and religious workers. To be eligible, the applicant must have been a member of a religious denomination that has had a bona fide non-profit religious organization in the U.S. for at least the two years immediately preceding the application. The applicant must be entering the United States to work (1) as a minister of religion, (2) for the organization in a religious capacity, or (3) for the organization or a related tax-exempt entity in another professional capacity. The applicant must have been carrying on such work as a minister, professional or other worker for at least two years preceding the application. The applicant must have at least a Baccalaureate degree to qualify as a religious professional. A combination of experience and education may not be substituted for a Baccalaureate degree.

### E. Fifth Preference

The Fifth Preference category is for foreign investors. It allows conditional residency for a person who invests $ 1 million (or under certain circumstances $500,000) in a new commercial enterprise that employs ten full-time U.S. workers. The investor must directly manage the business or at least be involved through policy formation. A "new commercial enterprise" includes creating a new business, purchasing a business and reorganizing it, or expanding an existing business by forty percent. The investment might be in cash or cash equivalents, equipment, inventory, or other tangible property. Indebtedness secured by the assets of the entrepreneur might also be considered part of the investment.

## III. LABOR CERTIFICATION

For most employees, labor certification will be a prerequisite for obtaining employment-based permanent residence. The Immigration & Nationality Act requires that most foreign nationals who seek to enter the U.S. to perform skilled or unskilled labor are not admissible unless the U.S. Secretary of Labor certifies that there are not sufficient U.S. workers available for the position, and that employment of the foreign national will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The labor certification program for the permanent employment of aliens in the U.S. is administered by the Dept. of Labor's Employment & Training Administration (www.doleta.gov).

**How does it work?**

The labor certification process involves a test of the labor market to ensure that the employer is not overlooking minimally qualified U.S. workers for the position. The employer must perform certain recruitment steps, evaluate each applicant's background, and determine whether any are qualified for the position. Upon conclusion of the recruitment activities, the employer must prepare a recruitment report and file an Application for Permanent Employment Certification (ETA Form 9089) with one of the ETA's National Processing Centers. In order to ensure that U.S. workers will not be adversely affected by the foreign worker's employment, the employer must offer a salary that meets at least the "prevailing wage" as determined by the U.S. Department of Labor. Employers may also submit private surveys for consideration, but there are stringent criteria governing how the survey was conducted, its sampling size, and how the median or mean wage was calculated.

**Who must be considered?**

The employer must consider any U.S. workers who apply for the position, but does not need to consider non-U.S. workers (e.g., F-1 students and H-1B temporary workers). The employer must determine the minimum job requirements for education and experience, but may not tailor these job requirements to the foreign worker's background or include unduly restrictive job requirements or duties in the job description. The ETA's Certifying Officer will utilize the O*NET (www.onetcenter.org) to evaluate and determine if the employer's stated job requirements and duties are normal to the occupation involved. The O*NET is based upon the Standard Occupational Classification (SOC) system used by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.

As a general rule, the employer may not include as a requirement any experience which the foreign worker has gained in the same or similar position with the firm, nor require knowledge or skills that could only be obtained in-house with the firm's products or services. Any special requirements, such as a foreign language, must be thoroughly documented as business necessity. This labor market test is structured to determine if there are any *minimally qualified* candidates available for the position—it is not relevant to the Certifying Officer that the incumbent foreign worker is the best qualified of the candidates. U.S. candidates may be rejected for only lawful job-related reasons, i.e., they do not meet the stated minimum education/experience requirements, or it is clear from their backgrounds that they would not be able to perform the job duties. The Certifying Officer will consider an applicant qualified if he/she could learn the necessary job skills within a reasonable period of on-the-job training.

**What must be done under PERM?**

PERM stands for Program Electronic Review Management system. After conducting the required recruitment and evaluating the candidates, the employer will usually submit electronically the ETA9089 application to the National Processing Center. On the application the employer will attest to the job requirements, the recruitment steps, the prevailing wage, and that no qualified candidates could be found. The application should be reviewed within sixty days and a determination made to either conduct an audit or to certify the employer's application. If an audit is required, then the employer must submit the ads, postings, resumes, and recruitment report to the Certifying Officer within thirty days. The Certifying Officer will conduct random audits to ensure the integrity of the program.

Under PERM, the employer will post a notice on-site for ten consecutive business days, and conduct six recruitment steps. These steps will involve the following:

(1) Job ad in Sunday newspaper classifieds,
(2) Second job ad in Sunday paper or in an appropriate professional journal, and
(3) Job order with the state workforce agency for thirty days.

The employer must select three additional recruitment steps from these alternatives:

a) Job Fairs
b) Employer's Web Site
c) Job Search Web Site (other than employer's)
d) On-Campus Recruiting
e) Trade or Professional Organizations
f) Private Employment Firms
g) Employee Referral Program with Incentives
h) Campus Placement Offices
i) Local and Ethnic Newspapers
j) Radio and Television Ads

The ad or posting must contain the company name, direct applicants to report or send resumes to the employer, provide enough detail to adequately apprise the potential applicants of the job opportunity, and indicate the area of employment if not apparent from the employer's address. Upon conclusion of the recruitment steps, the employer will review the resumes, conduct any interviews necessary to better ascertain a candidate's qualifications, and prepare a recruitment report summarizing the results. The recruitment report will describe the recruitment steps undertaken and the results achieved, the number of hires (if any) and the number of applicants rejected (categorized by the lawful job related reasons for such rejections). In the event of an audit, the Certifying Officer may request the U.S. workers' resumes or applications (sorted by the reasons the workers were rejected).

An approved labor certification is valid only for the specific job opportunity and for the area of intended employment stated on the application. The labor certification can no longer be used if it is not filed within 180 days of approval with an employer petition (I-140) submitted to the US CIS. The ETA may revoke a labor certification if they discover that there has been fraud or willful misrepresentation in the process.

## IV. NONIMMIGRANT STATUS

Nonimmigrants may remain in the U.S. for only a temporary period of time and are restricted to the activity consistent with their visas. Nonimmigrants are expected to depart the U.S. by the expiration date on their I-94 entry/departure cards unless they have filed for an extension. There can be serious legal consequences for anyone who overstays his/her authorized period of admission. The following is a description of some of the commonly used employment or business-related visas:

### A. F-1 Student

An F-1 student is usually granted "Duration of Status" which is the period required to complete the program of study, plus any authorized period of practical training. Students are expected to maintain a full-time course load. Eligibility to work includes part-time employment on-campus (full time during break periods). Off-campus employment based on economic hardship can be authorized by the CIS if a student can verify that the hardship is based on unforeseen circumstances. Both hardship authorization

and practical training are available only after a student has been enrolled full-time for a consecutive nine-month period.

There are two types of practical training: curricular and optional. Curricular practical training (CPT) may be authorized by a Designated School Official (DSO) during the student's course of study, and may include internships, cooperative education programs, work/study programs, or practicums. The employment training offered must be integral to the student's curriculum. Optional practical training (OPT) is authorized by the CIS upon completion of the student's studies. This employment should relate to the student's major area of study. One important caveat: if the F-1 student has used twelve or more months of full-time curricular practical training, then he/she will normally be ineligible for optional practical training after graduation. Most science, technology, engineering or math (STEM) graduates are eligible to seek a two year extension of OPT if the employer joins the E-Verify program and has an appropriate training and supervision plan.

F-1 students, M-1 vocational students, and J-1 exchange visitors are closely monitored by educational institutions and the CIS under the Student and Exchange Visitors Information System (SEVIS) mandated by the U.S.A. Patriot Act.

**B. J-1 Exchange Visitor**

The J-1 category includes certain students as well as visiting scholars, corporate trainees, professors, research assistants, and other field specialists. The J-1 program is administered by the U.S. Department of State. As with F-1 students above, J-1 students may be eligible for incidental on-campus employment if their school is also their program sponsor. For students on another sponsor's program, that sponsor would need to authorize any on-campus employment. The Responsible Officer (RO) can authorize off-campus employment based on hardship or academic training. The academic training is available during or after the student's academic program for a maximum of 18 months based on an employment offer in the field of study. Bona fide post-doctoral positions allow up to 36 months of academic training. Many (but not all) exchange visitors are obligated to a two-year foreign residence in their home country prior to seeking an H-1B specialty worker or immigrant status in the U.S. Sometimes waivers of this requirement are not granted even if the foreign national marries a U.S. citizen and has U.S. citizen children.

**C. B-1 Business Visitor**

The B-1 visa is intended for business trips to the U.S. to conduct business on behalf of a foreign employer. The B-1 visitor may not be employed to work for a U.S. employer. Permitted B-1 activities include business meetings, conferences or seminars, contract negotiations, consultations, litigation, sales calls, plant tours, market research, contract or warranty follow-up, and formal classroom training (but not on-the-job training). Tourists are eligible to seek B-2 visitor visas.

**D. Visa Waiver Program**

The visa waiver program may be used for the same purposes as a B-1 business visitor or B-2 tourist visa. This program waives the requirement to first obtain a visa at a U.S. consulate. Instead, the visitor may fly to the U.S. and apply at an inspection point for entry into the U.S. The immigration inspector will make an immediate decision and there is virtually no appeal of a negative decision. This program is only for visitors from certain countries where there has been traditionally low fraud. Entry will be authorized for ninety days, and no extensions or changes of nonimmigrant status are allowed (except for "immediate relatives" of U.S. citizens who might be eligible to seek immigrant status).

**E. TN Status**

The TN category arose from the North American Free Trade Agreement (NAFTA). Individuals from Canada or Mexico must qualify under one of the occupations listed in the treaty. Some of the professions listed include engineers, architects, accountants, economists, computer systems analysts, foresters, graphic designers, mathematicians, research assistants, and scientific technicians/technologists. A Canadian may apply at an international airport or border post for TN status; however, Mexicans must first obtain a visa from a U.S. consulate. TN status is approved for up to three years, and may be extended by the CIS.

**F. H-1B Specialty Worker**

The H-1B category is for workers in specialty occupations, which means an occupation that normally requires attainment of at least a Bachelor's degree. Generally one must have a degree in the specialty to qualify, or the degree equivalent. Positions in education, engineering, accounting, finance, and research are normally considered professional. For nontraditional professions, the CIS will look to the complexity or uniqueness of the job duties, and whether a degree requirement is common to the industry.

An employer must file a Labor Condition Application (LCA) with the U.S. Department of Labor (DOL) attesting that the hiring of H-1B workers will not adversely affect the wages and working conditions of other U.S. workers in the same position at that location. The employer must determine the "prevailing" wage for the region, and attest that the wage offered to

the foreign national is the higher of the "actual" and of the "prevailing" wage. Notice must be posted on-site, and an LCA file maintained for public inspection.

There is a numerical limit on the number of H-1Bs issued each year. The employer must plan well in advance of hiring an H-1B nonimmigrant worker because the annual allotment of H-1B numbers is used up soon after applications are accepted for the upcoming fiscal year. The H-1B petition can be approved for three years, and extended for an additional three years for a maximum stay in the U.S. of six years. Section 11030 of the 21st Century Department of Justice Appropriation & Authorization Act allows an H-1B employee to obtain extensions beyond the traditional six-year limit if an alien labor certification has been pending for over one year. If a PERM labor certification has been obtained and an employer's I-140 immigrant petition approved, an H-1B worker who has used up the traditional six-year limit could seek a three year extension if no immigrant visa numbers are available. A person with an H-1B might be "portable" to a new employer once a LCA is filed with the DOL and a petition filed with the CIS. An additional $1410 fee can be paid to the CIS for "premium processing" so that the CIS will adjudicate an H-1B (or L-1) petition within 15 days (or at least issue a request for more evidence needed to promptly adjudicate such a petition).

### G. L-1 Intracompany Transferee

The L-1 category allows multinational corporations to temporarily transfer certain employees to their U.S. facilities. The threshold requirement is that the employee has worked for the company for at least one year (in the last three) prior to transferring to the United States.

An L-1 petitioner must document that a qualifying relationship exists between the U.S. company and its foreign parent, subsidiary, affiliate or branch. The general rule is that one company must have effective control of the other. The CIS will consider joint ventures or situations where there is less than majority ownership but effective control of the other, such as by veto power.

There are two types of L-1s: the L-1A for managers and executives, and the L-1B for those who have "specialized knowledge" of the company's product or an advanced level of knowledge of processes and procedures of the company. The CIS definition of managerial capacity includes management of an organization or management of a function of the company. This category does not include front line supervisors unless the employees they supervise are other professionals.

Usually an L-1 petition may be initially approved for three years, and extended in two-year increments. An L-1A manager/executive may normally stay a maximum of seven years in the U.S.; an L-1B "specialized knowledge" professional may stay a maximum of five years.

The usual procedure is to file an individual L-1 petition with the CIS. For larger companies with many transferees each year, there is an option to file for a blanket L-1 petition approval. Upon approval of a blanket petition, individual petitions no longer need be filed with the CIS, thus cutting processing times. CIS processing times for individual L-1 petitions can be several months. An additional $1410 fee can be paid to the CIS for "premium processing" so that the CIS will adjudicate an L-1 (or H-1B) petition within 15 days (or at least issue a request for more evidence needed to promptly adjudicate such a petition).

### H. O-1 Extraordinary Ability

The O-1 category is for aliens with extraordinary ability in the sciences, arts, education, business, or athletics. Generally extraordinary ability means a level of expertise indicating that the individual is one of a small percentage who has risen to the top of his/her field. The CIS guidelines for proving "extraordinary ability" under this category are virtually the same as those for the First Preference "extraordinary ability" petitions:

- Major prizes or awards.
- Membership in organizations which require outstanding achievement.
- Cites to or articles about the individual's work.
- Participation as a judge of the work of others.
- Evidence of original scientific, scholarly, or business-related contributions.
- Authorship of scholarly articles.
- Employment in a critical or essential capacity for an organization or establishment that has a distinguished reputation.
- High salary in relation to others in the field.

*Criteria for artists:*

- Perform services as a lead/starring participant in a production or event with a distinguished reputation.
- National or international recognition for achievements.
- Commercial or critically acclaimed success.
- Significant recognition from critics, experts, or government agencies.
- High salary in relation to others in the field.

### I. E-2 Treaty Investor & E-1 Treaty Trader

Nationals of over forty countries with an appropriate treaty might qualify for a nonimmigrant treaty trader or treaty investor visa. A treaty trader

normally is involved with an exchange of goods or services between his/her country and the United States. A treaty investor must invest a "substantial" amount of capital into a business enterprise that he/she will personally develop and direct. The treaty investor must place the funds at risk, have other resources, and not merely invest a marginal amount of capital into the business for the purpose of earning a living for the investor and his/her family. The amount of the investment is not defined but rather depends on the nature of the enterprise.

### J. Other Types of Employment-Based Nonimmigrant Visas

There are many other types of employment related nonimmigrant visas for qualified foreign nationals who will be employed in particular positions. These categories include but are not limited to: A visas for diplomats and their dependents, D visas for crewmen, H-2A visas for seasonal agricultural workers, H-2B visas for temporary skilled or unskilled laborers, I visas for international media representatives, M visas for vocational students, P visas for athletes and group entertainers, Q visas for participants in international cultural exchange programs, and R visas for certain religious workers.

## V. DEVELOPMENTS AFFECTING EMPLOYMENT-BASED CASES

### A. Department of Homeland Security

The Homeland Security Act of 2002 (Pub. L. No. 107-296, 116 Stat. 2135) moved both immigration enforcement and adjudication services from the now defunct Immigration & Naturalization Service into a new Department of Homeland Security. Security and enforcement concerns continue to take priority over timely adjudications of applications for immigration benefits submitted by employers for foreign national employees and by U.S. citizens and residents for their relatives.

The Department of Homeland Security includes three distinct immigration agencies. Customs and Border Protection (CBP) focuses on the movement of goods and people across our borders. Immigration and Customs Enforcement (ICE) focuses on the interior enforcement of immigration and customs laws. Citizenship and Immigration Services (CIS) is responsible for adjudications of visa petitions and applications for naturalization, asylum, or refugee status. The immigration courts remain under the Executive Office for Immigration Review of the U.S. Department of Justice.

### B. Employment Authorization for Dependent Spouses

Legislation now allows E-2 spouses of treaty traders and treaty investors, as well as L-2 spouses of L-1 intracompany transferees, to work and obtain employment authorization documentation from the CIS. In addition, the final rule allowing employment authorization for certain H-4 dependent spouses was implemented on May 26, 2015; however, the current administration is seeking to terminate H-4 employment authorizations.

### C. Premium Processing

An additional $1410 fee can be paid to the CIS for "premium processing" so that the CIS will adjudicate an H-1B, O-1, L-1, or certain other types of nonimmigrant petitions within 15 days (or at least issue a request for more evidence needed to promptly adjudicate such a petition). In 2017, premium processing for H-1B petitions was temporarily suspended due to increased workloads from the H-1B numerical “cap-subject’” petitions.

Premium processing is available for most employer I-140 Immigrant Petitions for Alien Worker. Presently the CIS will not accept premium processing for multinational manager or for national interest waiver petitions.

### D. Extensions of H-1B Nonimmigrant Status

Section 11030 of the 21st Century Department of Justice Appropriation & Authorization Act allows an H-1B nonimmigrant employee to obtain extensions beyond the normal maximum time limits if an alien labor certification has been pending for over one year or if an I-140 petition was approved and visa numbers are unavailable.

### E. Monitoring of International Students

F-1 academic students, M-1 vocational students, and J-1 exchange visitors are closely monitored by educational institutions and the CIS under the Student and Exchange Visitors Information System (SEVIS) mandated by the U.S.A. Patriot Act.

### F. Protecting Immigration Benefits for Children

The Child Status Protection Act amended the Immigration & Nationality Act on August 6, 2002. Children of foreign nationals seeking U.S. permanent resident status previously lost the opportunity to immigrate with their parents if they reached age twenty-one while waiting for the CIS to adjudicate pending immigration applications. Fairly complicated rules essentially require the CIS and U.S. consular officers to establish such a child’s age as the date of filing and not the date of adjudication of the application for permanent resident status.

### G. Address Change Notification Requirements

The CIS requires all foreign nationals, including permanent residents, to report any change in address within ten days of moving. Failure to provide notification is a misdemeanor offense that could result in a fine and/or sentence. If the failure to provide notice is found to be willful, the alien could be removable from the U.S. The form to use for an address change is the AR-11 which is available in the Immigration Forms tab on the CIS website at: http://www.uscis.gov

### H. Additional Security Clearances

Due to the terrorist attacks of 9/11, and to enhanced computer technology, many additional security checks must be completed before the CIS or U.S. consular officials will approve nonimmigrant visas, immigrant status, or naturalization for U.S. citizenship. Employers have seen and will probably continue to see longer delays before foreign national workers and their dependents will be able to enter the U.S. or obtain extensions of status. Congress passed the Enhanced Border Security and Visa Entry Reform Act of 2002, which included a new security system known as CHIMERA. Many other laws seek to coordinate security clearances between the CIA, FBI, CIS, CBP, ICE, Department of State, and other agencies. The move of all immigration functions into the Department of Homeland Security sought to coordinate these new security clearances; however, applications and petitions for employment authorization and other benefits continue to be delayed.

### I. Employer or Job Changes While Immigration Applications Pending

Downturns in the economy trigger new problems for employers as well as foreign national employees. The U.S. Department of Labor issued requirements relating to applications for permanent alien labor certifications in situations when the employer has laid off workers during the prior six months as well as when there have been layoffs in a particular industry. If the employer has terminated workers, the employer must provide documentation about the number of workers laid off in the particular occupation and provide lawful, job related reasons that any laid off workers were rejected for the position for which certification is sought. Laid off foreign national employees often must scramble to change to another nonimmigrant immigration status, if eligible, or seek to take advantage of the H-1B portability provisions. A useful change allows an intending immigrant whose adjustment of status application has been on file for over 180 days to transfer to a "same or similar" position with another employer without abandoning the pending immigration applications if the employer's I-140 petition has been approved. A more recent provision allows an H-1B worker a 60-day grace period to find an appropriate new employer, seek a change of status, or leave the U.S.

## VI. FAMILY BASED IMMIGRANT STATUS

The immediate relatives of U.S. citizens do not come under the quota system, so immigrant visas are always available. "Immediate relatives" are defined as spouses of U.S. citizens, parents of U.S. citizens over the age of 21, and unmarried children (under the age of 21) of U.S. citizens. Note that the spouse of a U.S. citizen will only be granted "conditional" permanent resident status for an initial two years if the couple has been married less than two years at the time of adjudication. The CIS will want to verify at the end of this period that no fraud was involved. Recently, the backlogs for the CIS to adjudicate a jointly filed petition to remove the two-year condition on status have increased to around 18 months! A waiver could be sought if the couple has divorced. Waivers could also be sought if the U.S. citizen died, based upon extreme hardship, or if the foreign national was battered or subjected to extreme cruelty.

If not an immediate relative, an applicant must show a relationship under one of the family-based categories listed below:

**Family-Based Categories**

1st Preference: Unmarried sons and daughters (age 21 or older) of U.S. citizens.

2nd Preference: Spouses and children (under 21) of permanent residents, or unmarried sons and daughters (over age 21) of permanent residents.

3rd Preference: Married sons and daughters of U.S. citizens (over age 21).

4th Preference: Brothers and sisters of U.S. citizens (over age 21).

### A. First Preference

The First Preference category is reserved for the adult children of U.S. citizens, i.e., those children who are now over the age of 21 and therefore traditionally fell out of the "immediate relative" definition. The adult child must be unmarried. As with all the family-based categories, there is typically a backlog since there are more applicants than visas available under the annual allocations. Currently applicants from most countries have waited over seven years for a visa number to become available in this category. Applicants from certain countries have faced an even longer backlog: nearly twelve years for nationals of the

Philippines. Visa numbers in this category for Mexican nationals are only available if they registered prior to August 1, 1997. Unless Congress increases the annual limit of 226,000 immigrant visas for family-based categories, it seems likely these backlogs will continue to increase. The Child Status Protection Act (CSPA) allows some children to still be considered under the Second Preference category even if they turned age twenty-one before their cases were completed.

### B. Second Preference

The Second Preference category is split into two subcategories: 2A is reserved for the spouses and unmarried children (under the age of 21) of permanent residents, and 2B is reserved for unmarried children age 21 or over. There is always a backlog. The waiting period for most 2A applicants has recently been a little over two years, and nearly seven years for 2B applicants. The backlogs are even longer for 2B applicants from Mexico and the Philippines.

Note that this category is reserved for petitioners who have lawful permanent resident ("green card") status. After a certain period of time (usually three to five years) a permanent resident has the option to seek naturalization, i.e., become a U.S. citizen. In some cases it may be in the interest of the permanent resident to seek citizenship in order to petition for certain relatives and avoid the long delays in the Second Preference category.

### C. Third Preference

The Third Preference category is reserved for the married sons and daughters of U.S. citizens, regardless of age. The backlog for most Third Preference applicants is now over twelve years; however, for applicants from Mexico and the Philippines, it has been about twenty-three years.

### D. Fourth Preference

The Fourth Preference category is reserved for brothers and sisters of U.S. citizens. Note that a U.S. citizen must be at least age 21 to petition for siblings. This category also has significant backlogs. Currently applicants from most countries have been waiting thirteen and a half years; however, for the Philippines the wait has been over twenty-three years. In other words, a U.S. citizen originally from the Philippines who filed petitions for brothers and sisters on or before September 1, 1995 would only now be able to immigrate his/her siblings born in the Philippines. Mexicans in this category have been waiting nearly twenty-one years. Once permanent residents obtain U.S. citizenship, they sometimes petition for other family members. Since so many people have obtained their citizenship during the intervening years, it is expected that the backlogs in this category will continue to grow and reach thirty years or longer.

## VII. CONCLUSION

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made our complex immigration system even more restrictive for aspiring immigrants. In 2003, the legacy Immigration & Naturalization Service (INS) was absorbed by the Department of Homeland Security. This complete reorganization as well as the concentration on security issues has resulted in longer delays for families seeking to reunite and for employers seeking to obtain temporary as well as permanent employment for needed foreign national personnel.

# VISA BULLETIN FOR JANUARY 2019

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## A. STATUTORY NUMBERS

This bulletin summarizes the availability of immigrant numbers during January for: "Final Action Dates" and "Dates for Filing Applications," indicating when immigrant visa applicants should be notified to assemble and submit required documentation to the National Visa Center.

Unless otherwise indicated on the U.S. Citizenship and Immigration Services (USCIS) website at www.uscis.gov/visabulletininfo, individuals seeking to file applications for adjustment of status with USCIS in the Department of Homeland Security must use the "Final Action Dates" charts below for determining when they can file such applications. When USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants for such visas, USCIS will state on its website that applicants may instead use the "Dates for Filing Visa Applications" charts in this Bulletin.

1. Procedures for determining dates. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; USCIS reports applicants for adjustment of status. Allocations in the charts below were made, to the extent possible, in chronological order of reported priority dates, for demand received by December 11th. If not all demand could be satisfied, the category or foreign state in which demand was excessive was deemed oversubscribed. The final action date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. If it becomes necessary during the monthly allocation process to retrogress a final action date, supplemental requests for numbers will be honored only if the priority date falls within the new final action date announced in this bulletin. If at any time an annual limit were reached, it would be necessary to immediately make the preference category "unavailable", and no further requests for numbers would be honored.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when

visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, EL SALVADOR, GUATEMALA, HONDURAS, INDIA, MEXICO, PHILIPPINES, and VIETNAM.

4. Section 203(a) of the INA prescribes preference classes for allotment of Family-sponsored immigrant visas as follows:

**FAMILY-SPONSORED PREFERENCES**

**First**: (**F1**) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

**Second**: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

A. (**F2A**) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. (**F2B**) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

**Third**: (**F3**) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth**: (**F4**) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

**FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES**

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

| Family-Sponsored | All Chargeability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
|---|---|---|---|---|---|
| F1 | 22AUG11 | 22AUG11 | 22AUG11 | 01AUG97 | 01MAR07 |
| F2A | 08NOV16 | 08NOV16 | 08NOV16 | 15OCT16 | 08NOV16 |
| F2B | 15MAR12 | 15MAR12 | 15MAR12 | 08JUN97 | 22JUN07 |
| F3 | 15AUG06 | 15AUG06 | 15AUG06 | 22DEC95 | 22JUL95 |
| F4 | 22MAY05 | 22MAY05 | 15JUN04 | 08FEB98 | 01SEP95 |

*NOTE: For January, F2A numbers EXEMPT from per-country limit are authorized for issuance to applicants from all countries with priority dates earlier than 15OCT16. F2A numbers SUBJECT to per-country limit are authorized for issuance to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 15OCT16 and earlier than 08NOV16. All F2A numbers provided for MEXICO are exempt from the per-country limit.

## DATES FOR FILING FAMILY-SPONSORED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart below may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file applications, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 4.A.) this month for filing applications for adjustment of status with USCIS.

| Family-Sponsored | All Chargeability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
|---|---|---|---|---|---|
| F1 | 08MAR12 | 08MAR12 | 08MAR12 | 22AUG99 | 15FEB08 |
| F2A | 01DEC17 | 01DEC17 | 01DEC17 | 01DEC17 | 01DEC17 |
| F2B | 22MAR14 | 22MAR14 | 22MAR14 | 08SEP97 | 15DEC07 |
| F3 | 08JAN07 | 08JAN07 | 08JAN07 | 01MAY00 | 01JUN97 |
| F4 | 15MAY06 | 15MAY06 | 01JAN05 | 08OCT98 | 22APR97 |

5. Section 203(b) of the INA prescribes preference classes for allotment of Employment-based immigrant visas as follows:

**EMPLOYMENT-BASED PREFERENCES**

**First**: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

**Second**: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

**Third**: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "*Other Workers".

**Fourth**: Certain Special Immigrants: 7.1% of the worldwide level.

**Fifth**: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of Pub. L. 102-395.

**FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES**

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are

authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

| **Employment-based** | **All Chargeability Areas Except Those Listed** | **CHINA-mainland born** | **EL SALVADOR GUATEMALA HONDURAS** | **INDIA** | **MEXICO** | **PHILIPPINES** | **VIETNAM** |
|---|---|---|---|---|---|---|---|
| 1st | 01OCT17 | 15DEC16 | 01OCT17 | 15DEC16 | 01OCT17 | 01OCT17 | 01OCT17 |
| 2nd | C | 01AUG15 | C | 01APR09 | C | C | C |
| 3rd | C | 08JUN15 | C | 01MAR09 | C | 22JUN17 | C |
| Other Workers | C | 01JUL07 | C | 01MAR09 | C | 22JUN17 | C |
| 4th | C | C | 22FEB16 | C | 15APR17 | C | C |
| Certain Religious Workers | U | U | U | U | U | U | U |
| 5th Non-Regional Center (C5 and T5) | C | 01SEP14 | C | C | C | C | 01JUN16 |
| 5th Regional Center (I5 and R5) | U | U | U | U | U | U | U |

*Employment Third Preference Other Workers Category: Section 203(e) of the Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

## DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier

than the application date in the chart may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 5.A.) this month for filing applications for adjustment of status with USCIS.

| **Employment-based** | **All Chargeability Areas Except Those Listed** | **CHINA-mainland born** | **EL SALVADOR GUATEMALA HONDURAS** | **INDIA** | **MEXICO** | **PHILIPPINES** |
|---|---|---|---|---|---|---|
| 1st | 01JUN18 | 01OCT17 | 01JUN18 | 01OCT17 | 01JUN18 | 01JUN18 |
| 2nd | C | 08SEP15 | C | 22MAY09 | C | C |
| 3rd | C | 01JAN16 | C | 01APR10 | C | 01AUG17 |
| Other Workers | C | 01JUN08 | C | 01APR10 | C | 01AUG17 |
| 4th | C | C | 01MAY16 | C | C | C |
| Certain Religious Workers | C | C | 01MAY16 | C | C | C |
| 5th Non-Regional Center (C5 and T5) | C | 01OCT14 | C | C | C | C |
| 5th Regional Center (I5 and R5) | C | 01OCT14 | C | C | C | C |

6. The Department of State has a recorded message with the Final Action date information which can be heard at: (202) 485-7699. This recording is updated on or about the tenth of each month with information on final action dates for the following month.

## SCHEDULED EXPIRATION OF TWO EMPLOYMENT VISA CATEGORIES

Employment Fourth Preference Certain Religious Workers (SR):

Pursuant to the continuing resolution, signed on December 7, 2018, the non-minister special immigrant program expires on December 21, 2018. No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight December 20, 2018. Visas issued prior to this date will only be issued with a validity date of December 20, 2018, and all individuals seeking admission as a non-minister special immigrant must be admitted (repeat, admitted) into the U.S. no later than midnight December 20, 2018.

The final action date for this category has been listed as "Unavailable" for January. If there is legislative action extending this category for FY-2019, the final action date would immediately become "Current" for January for all countries except El Salvador, Guatemala, and Honduras which would be subject to a February 22, 2016 final action date, and for Mexico which would be subject to an April 15, 2017 final action date.

Employment Fifth Preference Categories (I5 and R5):

The continuing resolution signed on December 7, 2018 extended this immigrant investor pilot program until December 21, 2018. The I5 and R5 visas may be issued until close of business on December 21, 2018, and may be issued for the full validity period. No I5 or R5 visas may be issued overseas, or final action taken on adjustment of status cases, after December 21, 2018.

The final action dates for the I5 and R5 categories have been listed as "Unavailable" for January. If there is legislative action extending them for FY-2019, the final action dates would immediately become "Current" for January for all countries except China-mainland born, which would be subject to a September 1, 2014 final action date and Vietnam, which would be subject to a June 1, 2016 final action date.

## ANNUAL REPORT OF IMMIGRANT VISA APPLICANTS IN THE FAMILY-SPONSORED AND EMPLOYMENT-BASED PREFERENCES REGISTERED AT THE NATIONAL VISA CENTER AS OF NOVEMBER 1, 2018

The National Visa Center has provided the totals of applicants who are registered in the various numerically-limited immigrant categories for processing at overseas posts. This information is available on the Consular Affairs www.travel.state.gov website. The direct link to the item is:

https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2018.pdf

## OBTAINING THE MONTHLY VISA BULLETIN

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The Department of State also has available a recorded message with visa final action dates which can be heard at: **(202) 485-7699**. The recording is normally updated on/about the 10th of each month with information on final action dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

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(This address cannot be used to subscribe to the Visa Bulletin.)

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