

Priority Dates and Revised Procedures

What Is A Priority Date?

A priority date is the date an application is initially filed in the green card process. For a person filing under an employment-based green card, this is the date the PERM Labor Certification is filed with the Department of Labor (DOL). For persons filing an employment-based green card under a category exempt from Labor Certification, this date is established when the I-140 petition is filed. For family-based cases, this is the date the I-130 is filed. The US Department of State (DOS) issues a monthly Visa Bulletin which lists the priority dates for each category.

For employment-based cases, a foreign national's application is classified into one of five categories. These categories are described in more detail on the Clark Hill website, and include:

- [EB-1](#) Extraordinary Ability, Outstanding Researchers and Professors, and Intracompany Managers and Executives
- [EB-2](#) National Interest Petitions; PERM Labor Certifications where the position requires a Master's Degree or a Bachelor's Degree and five years of experience (not just that the applicant has the qualifications); and Persons of Exceptional Ability
- [EB-3](#) All other PERM Labor Certification cases
- [EB-4](#) Religious workers
- [EB-5](#) Persons who own a business, have invested the required capital, and create US jobs

Why Does A Priority Date Matter?

All green card applications (excluding applications for spouses, children, and parents of US citizens) are numerically limited. In the family-based category, for example, priority dates matter when a US green card holder marries a foreign national and applies for a green card for him/her (this scenario does not apply to persons who are married before they receive a green card). Waiting times for that classification, called family-based 2A (FB-2A), can be over three years.

In all green card applications, a priority date must be "current" or available to file for the final stage of the green card process, usually through a process called Adjustment of Status (AOS). The process for whether a priority date is current to file for AOS has recently changed, as described below. An application for AOS allows interim US work and international travel authorization, and accordingly, the timing and ability to file for this final step are important. If an AOS application had been filed while the priority date is current, then the case can remain pending, and work and travel authorization extensions can be filed. An alternate method is through an interview at a US Consulate outside the US. However, in either process, the green card cannot be approved until the **priority date is current**.

Except for EB-4 and EB-5 cases, the higher a person is in the employment-based category, the more likely there will be a visa available. Accordingly, EB-1 cases receive the most visas and any unused numbers are then available for EB-2 cases. EB-2 cases have fewer numbers, with unused numbers available for EB-3 cases. In short, imagine a long waiting line – the closer you are to the front of the line (EB-1), the less likely you will experience delays in securing a green card. However, if there are visas available, EB-1, EB-2 and EB-3 cases are generally processed at the same speed by the government agencies.

How Do I Know If My Priority Date Is Current Under the New Procedures?

The DOS and USCIS have announced revised procedures for individuals waiting to file for AOS. As of October 2015, two charts per visa preference category are posted in the monthly DOS Visa Bulletin, the Application Final Action Dates (dates when visas may finally be issued) and Dates for Filing Applications (earliest dates when applicants may be able to apply).

The dates for filing applications should allow for individuals to file AOS applications sooner, and those individuals' AOS applications will remain pending until their priority date becomes current on the Application Final Action Date chart, at which point processing will continue and green cards should be issued.

Where Do I Fall on the Priority Charts?

Most foreign nationals fall under the worldwide limit. A few countries (India, Peoples Republic of China, Mexico, and the Philippines) are listed separately and are not part of the worldwide limit due to each country's higher than



Immigration Law Leaders

James E. Morrison
+12025728670
jmorrison@clarkhill.com

Michael P. Nowlan
+13139658666
mnowlan@clarkhill.com

Immigration Law Director

George T. Brandon
+12134175124
gbrandon@clarkhill.com

Immigration Law Areas of Practice

3 and 10 Year Bars to Entry
Adjustment Portability
Commuter Green Cards
EB-5 Immigrant Investor Program
Green Cards
I-9 Audits & Compliance
I-94 Information
My Case Status
Our Philosophy
Temporary Visas
U.S. Citizenship

normal applications for US green cards. The date shown on the Visa Bulletin charts must be: (A) current (as indicated by a "C" in the box) for the EB category, or (B) show a date that is the same or older than the foreign national's priority date, before the final stage of green card process can begin.

For example: if a Canadian citizen's EB-3 Labor Certification was filed April 1, 2014, and the priority date is now March 1, 2014, on the Dates for Filing Applications Chart, then he/she cannot file for AOS at this time; a citizen of India, with an EB-2 priority date of May 1, 2011, can apply for AOS now that the Date for Filing Applications Chart lists a date of July 1, 2011. However, if Application Final Action Dates Chart lists a priority date of April 1, 1995, the individual's AOS application will remain pending until their priority date is current for the Application Final Action Chart. These are just examples, as these dates fluctuate often.

Which Country Do I Watch?

Priority dates depend on the preference category and the country in which the foreign national was born. Due to the large usage of green card numbers, the priority dates applicants from listed countries are behind those for the rest of the world. Green card applicants are "charged" to the country of their birth when a visa is used - not the country of citizenship. However, it is possible to "cross-charge" to a spouse's country of birth. For example, a person born in India who is married to a person born in Canada can cross-charge to Canada for the priority date, rather than India. This can save time, when available.

Retrogression

This is defined as "the act or process of deteriorating or declining." We have seen a significant retrogression, or decline, in visa availability at various times.

Why Does Retrogression Occur?

There are more green cards desired than the US has available. This shortage of numbers, along with several outside factors, can produce longer processing times. The only solution is for Congress to pass legislation that would provide additional immigrant visas.

How Does This Impact Me?

For Human Resources professionals this may mean further delays in green card processing for foreign national employees when a priority date is not current. This can also lead to increased costs for immigration processing, and in the worst-case scenario, it may mean that a foreign national is not eligible to continue working in the US. For foreign nationals going through the process, delays are never good. Delays may hold up the ability of a spouse to work in the US, delay international trips, lead to a loss of US status, and/or only add to anxiety.

Retrogression And H-1B Extensions

H-1B visas are generally renewable for up to six years. In light of the delays in the immigrant visa process, there are two avenues to extend H-1B status past the sixth year. The H-1B may be extended for one year at a time, indefinitely, if the PERM Labor Certification or alien worker petition (I-140) has been pending for 365 days or more. H-1Bs can be extended three years at a time, beyond the six-year limit, if the second stage (I-140 Immigrant Worker Petition) of the green card process has been approved, but the priority date is not current. These same status extension options do not apply to L-1 or other visa holders. For more on these temporary visa categories, see our website.