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## What you need to know about the October 2020 Visa Bulletin

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The U.S. Department of State recently released its **October 2020 Visa Bulletin** reflecting an all-time high allocation of approximately 261,500 employment-based immigrant visas and signaling an unusually quick advancement of visa numbers in employment-based categories for the first quarter of the fiscal year. For many individuals who have waited years to file the last step of the permanent residence process, this bulletin provides welcome news.

### What is a visa bulletin?

The U.S. Department of State issues a visa bulletin every month to notify U.S. Embassies and Consulates and interested parties when immigrant visa applications for both employment and family-based categories may be filed abroad and when adjustment of status (I-485) applications may be filed domestically with the U.S. Citizenship and Immigration Services. It also sets the date when these applications are eligible to be approved.

### What is new in the October 2020 Visa Bulletin?

Because the federal government's fiscal year begins on October 1, October visa bulletins often contain substantial changes, such as an amended allocation of visas in the employment-based immigrant visa categories. However, 2020 has been a particularly unusual due to the COVID-19 pandemic and various presidential proclamations relating to immigration. Further, the USCIS's decision to accept filings based on the filing date will allow filings at a level not seen since 2007. Thus, the October 2020 Visa Bulletin reflects an unusually quick advancement of visas for employment-based categories.

### Why are the employment-based categories advancing so rapidly?

As the American Immigration Lawyers Association recently observed, "The continued impact of the pandemic and travel bans has resulted in the unprecedented situation of zero movement in October 2020 in the final action dates for the family-based preference categories. Per the October



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2020 bulletin, this is because movement in the family-based final action dates during the last six months, coupled with the suspension of routine visa processing at consular posts, have resulted in enough accumulated demand to fully utilize the numbers normally made available through the first quarter of the fiscal year.” Under the Immigration and Nationality Act Section 201(d)(1)(B), these unused family-based numbers are added to the fiscal year 2021 employment-based immigrant visa allocation, resulting in an all-time high allocation of approximately 261,500 employment-based immigrant visas.

## What can we expect in the coming months?

The October bulletin also included projections from the U.S. Department of State for the potential rate of monthly advancement through January 2021 for final action dates. Worldwide (including El Salvador, Guatemala and Honduras, Mexico, Philippines, and Vietnam), the final action dates are expected to remain current for the next few months, with rapid forward movement likely for EB-1 China and EB-1 India. Similarly, EB-2 Worldwide (including El Salvador, Guatemala and Honduras, Mexico, Philippines, and Vietnam) is expected to remain current for the next few months, with rapid forward movement (most likely at the pace of months rather than weeks) likely for EB-2 China and EB-2 India. EB-3 Worldwide, EB-3 Mexico, and EB-3 Philippines (and EB-3 Worldwide Other Workers) are also expected to be current, with rapid forward movement expected in EB-3 China and EB-3 India. Steady forward movement is anticipated for EB-3 China Other Workers. Finally, EB-4 is expected to be current for most countries, with the exception of EB-4 El Salvador, Guatemala, and Honduras, and EB-4 Mexico, which are expected to experience steady forward movement.

The following is the employment-based portion of the October 2020 Visa Bulletin:

## Final Action Dates for Employment-based Preference Cases Chart

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	C	01JUN18	C	01JUN18	C	C	C
2nd	C	01MAR16	C	01SEP09	C	C	C
3rd	C	01JUL17	C	15JAN10	C	C	C
Other Workers	C	01DEC08	C	15JAN10	C	C	C
4th	C	C	01AUG17	C	01SEP18	C	C
Certain Religious Workers	U	U	U	U	U	U	U
5th Non-Regional Center (C5 and T5)	C	15AUG15	C	C	C	C	01AUG17
5th Regional Center (I5 and R5)	U	U	U	U	U	U	U

## Dates for Filing of Employment-based Visa Applications Chart

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	01SEP20	C	01SEP20	C	C
2nd	C	01OCT16	C	15MAY11	C	C
3rd	C	01JUN18	C	01JAN15	C	C
Other Workers	C	01OCT08	C	01JAN15	C	C
4th	C	C	01FEB18	C	C	C
Certain Religious Workers	C	C	01FEB18	C	C	C
5th Non-Regional Center (C5 and T5)	C	15DEC15	C	C	C	C
5th Regional Center (I5 and R5)	C	15DEC15	C	C	C	C

### Defining and understanding key immigration terms

**Final action date:** Until the creation of the Dates for Filing Chart five years ago, the final action date was critical to determine when an applicant could file the last step of the adjustment of status application and obtain an adjudication. Under that system, an applicant's priority date only had to be on or before that cutoff date. Now, the Dates for Filing Chart may be utilized by USCIS to allow applicants to file their adjustment of status in advance of the final action date.

**Priority date:** The priority date is the date the I-140 Petition is filed or, where a labor certification application is applicable, the date the labor certification application is filed. The priority date is used to determine whether the cutoff date in the visa bulletin is applicable to an applicant.

**Cutoff date:** An applicant's priority date must be on or before the cutoff date listed under either the Final Action Dates Chart or the Dates for Filing Chart to be eligible to file an application or for an application be adjudicated. If the visa bulletin lists a "C" under a given category and country, then that visa category and country have no backlog and any eligible applicant may file abroad or in the United States.

**Filing date:** This date allows an application to be filed even though the applicant is not eligible to be issued an immigrant visa or granted an adjustment of status because the applicant's priority date is not before the final action date. Thus, since filing dates are generally later than final action dates, using the filing date generally allows an individual to become an I-485 applicant sooner. Immigrant visa applicants may always use the filing date; however, adjustment of status applicants may only use the filing date in months when it is authorized by USCIS. Information on current authorizations can be found in the **Adjustment of Status Filing Chart**.

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**Visa retrogression:** While the visa bulletin's cutoff dates usually move forward, visa retrogression occurs when a priority date is available in one month, but becomes unavailable in a subsequent month because the applicable cutoff date moved backward. In this situation, no action is taken on a pending I-485 application until the priority date becomes available again.

**Alternate chargeability:** While the applicant's country of birth is generally used to determine his or her eligibility to apply for an immigrant visa or for adjustment of status, the country of birth of the principal applicant's spouse can often be used by the applicant to determine visa eligibility as well.

Based on the projections outlined in the **October 2020 Visa Bulletin**, the U.S. Department of State anticipates rapid movement forward in fiscal year 2021 since the annual limit is at the unprecedented level of 261,500. This rapid movement will help maximize the number used within the annual limits.

We will keep you updated on any new developments. If you have any questions about this or any other business immigration law issues, please contact any of our immigration attorneys.

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