

# Visa Bulletin Changes Allow for Earlier Filing of Green Card Applications

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**PRACTICES** Immigration, Labor and Employment

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On September 9, 2015, the Department of State and U.S. Citizenship and Immigration Services (“USCIS”) announced a transformation of the way the Department of State’s visa bulletin functions. This change will allow many individuals who have been waiting in visa backlogs to file green card applications before an actual green card is available.

The change is part of President Obama’s executive actions on immigration and may allow prospective immigrant visa applicants, including those from historically backlogged countries like India and China, to receive the benefits of filing a green card application sooner than was previously possible.

## Background: The Need for Change

The Immigration and Nationality Act imposes annual limits on the number of immigrant visas (colloquially, green cards) issued worldwide and on the number allocated to each country. A visa backlog results when demand exceeds supply. In case of a backlog, a prospective immigrant’s “priority date” determines his or her place in line.

For family-sponsored immigrants, the priority date is the date the immigrant petition was filed with USCIS; for employer-sponsored immigrants, it is the earlier of the date the immigrant petition was filed and (when a labor certification is required) the date the permanent labor certification application was accepted for processing by the Department of Labor.

Each month, the Department of State issues a monthly report of the available immigrant visas called the visa bulletin. It establishes “cut-off dates” for immigrant visas. Under the old visa bulletin, an individual was not eligible to file a green card application until his or her priority date fell before the cut-off date. Many applicants, especially those from backlogged countries, faced wait times of more than 10 years.

Filing a green card application can bring major benefits to the applicant and the applicant’s family, including employment authorization for the applicant and eligible family members and protection of dependent children from aging out of their parents’ green card applications when they turn 21.

## The Change

Starting with the October 2015 visa bulletin, the Department of State is including two charts with different dates: one listing “application filing dates,” which shows when green card applications can be filed, and one listing “final action dates,” which shows when applicants can actually receive green cards.

The new version will cut the wait times for filing the green card application for prospective applicants in multiple immigrant visa categories. For example, under the October 2015 visa bulletin,

an Indian national filing under the Employment-Based 3rd Preference cannot receive a green card unless his or her priority date is before March 8, 2004, but the applicant can file the green card application (and presumably receive the attendant benefits) if his or her priority date is before July 1, 2005 - a difference of more than one year.

## Outlook

The change should go a long way toward promoting the economic growth and family unity that can be stymied by visa backlogs; however the government has not yet detailed how it will administer the new process going forward. We will be monitoring the guidance as it develops.

Employers with employees who may benefit from the new visa bulletin are encouraged to consult with immigration counsel to determine how best to take advantage of the new filing dates.

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