

## Understanding the Priority Date and Visa Bulletin

Almost everyone who applies for Permanent Residence (the "green card") must go through the quota system, which is essentially a very long (in some cases) waiting list before the final step of the case can be processed. This article is an explanation of how that quota system and the visa bulletin works.

Each year the U.S. Congress issues approximately 200,000 visas in each of the various categories for family relationships and employment based permanent residence. Since many of the categories have more applicants each year than there are visas available, a waiting list has been established so that there is some type of prediction as to how long a particular case may take. Each month our firm publishes the visa bulletin issued by the U.S. Department of State on our website. You can access the visa bulletin either on our website or the Department of State's website as well as various other websites.

In order to understand the visa bulletin, you must first figure out what the priority date is for your case. The priority date is how we determine where your place in line will be. For family based cases, the priority date is always the date the I-130 petition is filed with the Immigration Service. This date will be stated on the receipt notice for the I-130 petition as well as the approval notice once the petition is finally approved. For family cases it is important to note that "immediate relatives" are not subject to a quota and therefore the priority date is not important. Immediate relatives include the spouses, children and parents of U.S. citizens in certain age categories. All other family cases must wait under the category as stated on the visa bulletin.

For employment cases, the priority date will be established either by filing the I-140 petition or by filing the Labor Certification application, if that application is required for that particular category. For all third preference employment based cases, a labor certification application is required as well as for most second preference cases. First preference employment based cases do not have an underlying labor certification application requirement nor do National Interest Waivers in the second preference category. Therefore, these priority dates are established once the I-140 petition is filed.

Once you have determined what your priority date is, you then must establish the country in which you were born. This is not the country of citizenship but the country of birth. This is important because there are different waiting periods for people born in China, India, the Philippines and Mexico. People born in all other countries fall under the general or worldwide category.

Now that we know your priority date and the country of birth, we can go to the visa bulletin to try and predict how long your case will take.

Let's assume that you file the I-130 petition, the I-140 petition, or the labor certification on October 1<sup>st</sup>, 2009. This will be your priority date. If you were born in France for example, we would then go to the visa bulletin and look under the first column in the particular category for your case. If it is a family case, and your permanent resident spouse applied for you, you would look under the second preference (2A) category. If your US citizen brother applied for you then you would look under the fourth preference family based category.

Once you have determined the date which is stated on the current visa bulletin for that month, you will see that date is much sooner than your priority date. For example, the date stated on the visa bulletin may be in October of 2003. That means, since your priority date is October 2009, we can anticipate waiting approximately six years before the final step of your case can be processed.

For employment based cases, the same analysis is used. However, notice that all first preference cases are current as well as the worldwide category for most second preference cases. In these cases, there is no waiting period and the final step of the case can be processed immediately. However, for third preference employment based cases as well second preference cases for India and China, there are significant backlogs and therefore waiting periods.

It is important to note that the visa bulletin for a particular month is not the only information you will need to predict the time you will be waiting. It is best to look at the visa bulletins over a long period of time, for example over 12 months, to determine what trend is developing for that particular category. Each of the preference categories will move forwards and backwards over a short period of time, but it is generally easy to predict over a long period of time how long a particular case will take. For that reason, it is important to keep the bulletins for at least one year to see how the wait time is trending.

Finally, once the priority date becomes current, or is close to becoming current, the last step in the permanent residence process must be initiated, or if it is an employment case has already been filed with the Immigration Service, the Immigration Service will eventually get to the point where they will adjudicate that application. For those people in the United States we normally process the last step of the case as Adjustment of Status using form I-485. Once the priority date is reached, you can anticipate another 12 to 18 months before the I-485 will be approved. For individuals who are not in the U.S., once the priority date is close to being current, the National Visa Center will initiate the third and final step which will ultimately result in an interview at the US Consulate.

Do not confuse the "processing times" published by the Immigration Service with the waiting time under the quota system. Even if the Immigration Service approves the I-130, I-140 or DOL approves the labor certification in one day, we still must wait under the quota system for our priority date to become "current".