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## October Visa Bulletin Shows Major Movement in Employment-Based Cases; USCIS Applies Filing Date Rather Than Final Action Date to Certain Adjustment Applications

**Legal Update**

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*This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.*

On September 24, 2020, the Department of State released the October 2020 Visa Bulletin, which shows major movement in employment-based cases.

Among other things, the Filing Date for an EB-3 from India has advanced nearly five years to January 1, 2015, from February 1, 2010, while the Filing Date for an EB-1 from India advanced to September 1, 2020, from July 1, 2018. By contrast the Filing Date for EB-2 India advanced to only May 15, 2011, from August 15, 2009.

USCIS issued guidance the same day stating that the Filing Date, rather than the Final Action Date, applies to employment-based I-485 adjustment of status (AOS) applications. The Alliance of Business Immigration Lawyers (ABIL) said that in the past, USCIS has been reluctant to allow applicants to use the Filing Date, only doing so in very limited instances. The Filing Date only allows the filing of an I-485 application when permitted by the USCIS. The Final Action Date determines when lawful permanent residence is issued.

As an example, ABIL noted, since USCIS will accept I-485 filing, a new I-140 would need to be filed for an individual who, for example, wants to downgrade from EB-2 to EB-3. Since the EB-3 Filing Date has significantly overtaken the EB-2 Filing Date, a beneficiary of an approved EB-2 petition may want to re-file, or downgrade to EB-3. If the beneficiary qualified under EB-2, the beneficiary should be able to qualify for EB-3, and the appropriate "professional" or "skilled worker" category would need to be checked on the form. The individual may still rely on an old labor certification when filing the I-140 under EB-3. The I-140 can be filed concurrently with the I-485, so the I-140 need not be approved at the time the I-485 is filed with USCIS.

There is nothing in the law or regulations precluding the existence of two I-140 petitions, one under EB-2 and the other under EB-3. Still, a beneficiary who wishes to downgrade from EB-2 to EB-3 must seek legal advice.

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We recommend that AOS applicants also file applications for an employment authorization document (EAD) and advance parole (AP), to enable work and travel in the event of a disruption in the applicant's current immigration status, ability to obtain a visa or position.

## **Additional Resources**

- [When to File Your Adjustment of Status Application for Family-Sponsored or Employment-Based Preference Visas: October 2020](#)
- [State Department guidance](#)