

EB-3 RETROGRESSIONS for Selected Countries

The Department of State has announced that beginning January 1, 2005, the visa numbers in the employment-based third preference (EB-3) category (professional and skilled workers) for persons born in **India**, mainland **China** and the **Philippines** will retrogress three years.

This retrogression is a result of the combination of two factors: 1) the numerical limits the government imposes on the number of persons allowed to immigrate into the United States each year, and 2) the backlog reduction plan instituted by the CIS in order to get rid of long pending applications at the Service Centers.

Each year the government allots approximately 140,000 visas to employment-based preferences and approximately 226,000 visas to family-based preferences. Within each preference category there are also additional numerical limitations placed. One single country cannot obtain more than 7% of the total visas available for the employment-based or family-based quotas.

Therefore, when the number of green card approvals for a particular country of chargeability (usually country of birth) begins to approach the numerical limit, the Department of State updates the Visa Bulletin to show those applicants whose priority date is "current" and can obtain a green card.

For many years, due to the slowness of the CIS in adjudicating Adjustment of Status applications, all priority dates were current because the CIS did not approve enough green cards in one particular year to reach the numerical limit. When the CIS began its plan to reduce the backlog of cases pending at the Service Centers, however, it started to adjudicate green card applications more quickly and thus use up the visa numbers available in any given year.

As a result, beginning on January 1, 2005, persons from India, mainland China, or the Philippines in the EB-3 category who wish to obtain an immigrant visa cannot do so unless their priority date is January 1, 2002 or earlier. Typically, a priority date is established by the date of filing of a Labor Certification Application with the State Workforce Agency (SWA). In some cases, for those who are exempt from Labor Certification requirements such as Registered Nurses, their priority date is established by the date of filing of the I-140 Immigrant Petition.

How will this affect you? If you are an individual born in India, mainland China, or the Philippines in the EB-3 category and have already filed your I-485 Adjustment of Status Application, your case will **not** be affected. You will still be eligible for any ancillary benefits, such as an Employment Authorization Document or Advance Parole, based upon your Adjustment of Status filing.

If, however, you are an individual born in **India**, mainland **China**, or the **Philippines** in the EB-3 category and your Labor Certification Application is still pending or has been approved but you have not yet filed your Adjustment of Status application, your ability to apply for Adjustment of Status *may* be delayed. Such individuals, if their priority date is not on or before January 1, 2002, will have to wait to file their Adjustment of Status application until the Department of State announces that their priority date has become current. During that time, the individuals must be able to maintain their nonimmigrant status so as to not fall out of status.