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Welcome to the T&R Newsletter

February 2022

This month we discuss upgrading to EB-1 and EB-2 and how to request interfiling for a pending application to adjust status, EB-5 update as well as our shareholder Elizabeth Quinn leading Trow & Rahal's March webinar.

USCIS encourages upgrades to EB-1 and EB-2

If eligible, the United States Citizenship and Immigration Services (USCIS) is encouraging foreign nationals to transfer the underlying basis of their applications to adjust status to the employment first (EB-1) or employment second (EB-2) preference categories due to an "exceptionally high number" of employment-based green cards available through the end of the government fiscal year.

- **Employment First Preference:** Persons of Extraordinary Ability, Outstanding Researchers and Professors, and Multinational Managers.
- **Employment Second Preference:** Advanced Degree Professionals or Persons with Exceptional Ability (including National Interest Waivers).

The reasons for the additional numbers for the EB-1 and EB-2 preferences are left over family - sponsored visa numbers from Fiscal year 2021 and unused EB-5 (fifth employment preference) numbers. Due to statutory requirements, these numbers must first be used by the EB-1 and EB-2 categories and cannot roll down to the employment third (EB-3) preference.

The USCIS will prioritize the filing of these "upgrades" to EB-1 or EB-2 as they want to use the available numbers before the end of this government fiscal year (September 30, 2022).

USCIS POSTS GUIDANCE ON HOW TO REQUESTS UPGRADES TO EB-2 or EB-1

The USCIS has provided guidance on how to upgrade an underlying immigrant visa petition (Form I-140) that is the basis of a pending application to adjust status to permanent resident (Form I-485) adjustment of status (AOS) application (form I-485). This process, more commonly referred to as *interfiling*, is the method I-485 applicants use to "upgrade" or "downgrade" between the various immigrant visa categories (e.g., EB-3 to EB-2).

Who might upgrade by interfiling? Anyone who filed an AOS between October - December 2020 with an I-140 for employment third (EB-3) preference category might now want to upgrade back up to EB-2 if they had a prior EB-2 I-140 approval or still have a pending I-140. Also, anyone who has a pending AOS who might be eligible to file a new I-140 for EB-1 Extraordinary Ability or EB-2 National Interest Waiver based upon recent policies by the USCIS that may make these categories more readily available to people with advanced STEM degrees.

Who is eligible to interfile? Below are the requirements to be eligible to request to transfer the basis of the AOS to a different employment-based immigrant category based on another Form I-140:

- Person has continuously maintained eligibility to adjust status to permanent resident;
- The AOS based on the initial Form I-140 is still pending;
- The person is eligible for the new employment preference category; and
- An immigrant visa is immediately available in the new category (i.e. priority date is current).

If all the above are met, the USCIS may, in its discretion, grant a transfer request to a new employment-based preference category.

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- **A Form I-485 Supplement J**, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j) ("Supplement J"), is required with a written request to transfer the basis of the I-485. **NOTE:** If it is a request to transfer the underlying basis to a form I-140 that remains pending, then a Supplement J is not required.

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- If filing a new Form I-140 and concurrent filing of the I-485 would be permissible, then a request to transfer the underlying basis of the pending Form I-485 is possible. The I-140 must be filed with a signed letter requesting the transfer and have a coversheet with "REQUEST FOR TRANSFER OF PENDING FORM I-485 [receipt number] TO ENCLOSED PETITION.

Where to file a request to interfile? The USCIS has created a new filing location to receipt in the transfer requests accompanied by a Supplement J through September 30, 2022.

NOTE #1: All transfer requests sent to the new address before March 4, 2022 will be processed even if not accompanied by Supplement J.

NOTE #2: All employment-based transfer request that do not include a Supplement J should be submitted in writing to the USCIS office with jurisdiction over the pending I-485. This would include transfer requests to an I-140 that remains pending.

NOTE #3: Transfer requests accompanying a newly filed Form I-140 should not be sent to the "new" address or to the USCIS office with jurisdiction over the I-485, but instead should be sent to the normal filing location for the Form I-140.

Employers should identify any foreign nationals who can take advantage of upgrading back up to EB-2 or if they are able to interfile based upon a new I-140 for EB-1 or EB-2. T&R will also be contacting clients if they are now eligible to upgrade by interfiling a new I-140.

EB-5 REGIONAL CENTER PROGRAM

Congress has passed another short-term continuing resolution to fund the government until March 11, 2022, that does not include a temporary EB-5 regional center program reauthorization. The EB-5 regional center program lapsed in July 1, 2021. Without a reauthorization of the EB-5 regional center program, the only EB-5 option is through a direct investment that requires 10 direct jobs per investor. There is currently a push to have all investors with pending regional center cases to complete their process without future stoppages. We will continue to provide updates on the EB-5 regional center program reauthorization.

MARCH 2022 VISA BULLETIN

The USCIS allows **Dates of Filing** to be used for employment preference categories for March 2022. [See visa bulletin by clicking here.](#)

Dates of Filing:

- EB-1 remains current for all countries;
- EB-2 remains current except China and India which remain the same in March at 1 September 2013 (India) and 1 March 2019 (China);
- EB-3 remains current for all countries except China and India which remain the same at 1 April 2018 (China) and 22 January 2012 (India).

Final Action Dates:

- EB-1 remains current for all countries;
- EB-2 is current except for China (remains at 1 March 2019) and India (moves forward 4 months from 1 January 2013 to 1 May 2013);
- EB-3 remains current for all countries except India and China which show no forward movement (China at 22 March 2018 and India at 15 January 2012).

TROW & RAHAL WEBINARS –

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Please join Trow & Rahal's monthly webinar from 2:00 pm – 3:00 pm EST on the third Friday (usually) of each month. The format of these webinars will include a brief update of any changes in immigration policies, as well as an overview of one important immigration issue or visa category.

March Webinar [Are You Eligible to Upgrade to EB-1 or EB-2?](#) Please join T&R for its March 2022 webinar on the 18th at 2:00 pm EST. It will feature T&R shareholder, Elizabeth Quinn and her review of the new STEM policies that make it easier for advanced degree STEM graduates to qualify for O-1, EB-1 (Person of Extraordinary Ability), and EB-2 National Interest Waivers.

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