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Trow & Rahal Immigration Newsletter

September 2023

Welcome to our September newsletter! In this month's newsletter we review the highly anticipated October visa bulletin and the immigration consequences of a government shutdown.

OCTOBER VISA BULLETIN RELEASED

October 1 starts the beginning of the new government fiscal year and the October visa bulletin was highly anticipated with the expectation that we would see large advances in the employment based (EB-1, EB-2 and EB-3) categories. Unfortunately, we did not see this. But there is some good news with EB-1 current for worldwide (except India and China), and EB-2 and EB-3 advancing significantly for India but less so for China.

The USCIS announced that they will use **Dates of Filing** chart for October. It is expected that this will continue throughout a good part of the first half of the fiscal year and then we might see it go to Final Action Dates around June as we did last year. Here is a summary:

EB-1: Current for "All Chargeability Areas Except those Listed" meaning all countries except for India and China. India advances by 5 years to January 1, 2017, and China advances only 2 weeks to February 15, 2022.

EB-2: All Chargeability Areas advance by 19 months to January 1, 2023; India advances by 1 year to January 1, 2012, and China advances almost 3 months to October 1, 2019.

EB-3: All Chargeability Areas advance by 19 months to February 1, 2023; India advances 3 years to May 1, 2012, and China advances by 4 months to January 1, 2020.

NOTE: Final Action Dates, EB-4 "Certain Religious Workers" becomes unavailable

(designated by “U”) in October meaning that there are no numbers available for this category. The reason for this is that the program sunsets on September 30, 2023. Congress needs to reauthorize this.

PREDICTIONS: Predictions for this upcoming year include that we will see only minimal movement of possibly 1 to 3 weeks per month for India and China in the EB-1, EB-2 and EB-3 categories. This is predicted as the U.S. Department of State wants to avoid the number of retrogressions seen in the 2022/2023 government fiscal year which included one in the EB-1 category, 2 in the EB-2 category and 3 in the EB-3 category for Final Action Dates. EB-2 is not expected to become current soon.

You can find the complete Department of State October visa bulletin [here](#). The USCIS now has its own page on its website for “Adjustment of Status Filing Charts from the Visa Bulletin” which you can find [here](#).

IMMIGRATION CONSEQUENCES OF A GOVERNMENT SHUTDOWN

All predictions seem to indicate that there will be a government shutdown on October 1 because Congress is unable to pass legislation to fund the agencies of the U.S. government. When there is no funding legislation or short-term spending measure, federal agencies stop all non-essential work and will not send paychecks to government employees. What does a government shutdown mean for immigration cases?

U.S. Citizenship and Immigration Services (USCIS): USCIS is a fee-based agency and therefore continues to operate when there is a government shutdown, but processing times will likely get longer due to a reduction in staff.

U.S. Department of Labor (DOL): The DOL is not a fee-based agency and therefore operations tend to come to a halt during a government shutdown. It is expected that immigration functions related to processing of prevailing wage requests; labor condition applications (LCAs) for H-1B, H-1B1 and E-3 petitions; and labor certification applications (PERM) will be suspended during an upcoming government shutdown. If this happens, the already lengthy processing times for these types of applications, especially PWR and PERM applications, will increase from their current processing times of 8-10 months each.

The American Immigration Lawyers Association (AILA) notes on its alert that it reached out to the Office of Foreign Labor Certification (OFLC) regarding the possible shutdown and OFLC confirmed that it will have to disable the FLAG system and not accept any applications (LCA or PERM) during this period.

U.S. Department of States (DOS): DOS is partially fee-based by visa applications and related fees, which in the past have continued visa application processing and U.S.

citizenship services at U.S. Consulates and embassies abroad. However, it is possible that nonemergency services could be suspended meaning that employment based visas would not be issued and pending visa appointments could be cancelled. We will monitor this and provide updates if and when they become available.

Immigration and Customs Enforcement (ICE): ICE will likely continue to operate. This means that the SEVIS system for foreign students will still function during a government shutdown.

Customs and Border Protection (CBP): CBP at the ports of entry will continue to operate, but potentially with fewer staff leading to potentially longer waits at airports to enter the United States.

E-Verify: It is likely that E-Verify will not operate during a government shutdown. However, employers will still be responsible for completing I-9 verification.

Other programs: As indicated above, the religious worker program sunsets on September 30th and will be unavailable until it is reauthorized by Congress. The same is true for the Conrad 30 waiver program for J-1 physicians.

In sum, the most significant impact of a government shutdown on employers and foreign nationals would be:

1. LCAs for H-1B, H-1B1 and E-3 petitions would not be processed. Anyone filing one of these types of cases should work with their attorney to get the LCA filed as soon as possible.
2. PWRs and PERM applications will not be processed, thereby increasing the already lengthy processing times when they do begin to process them again.
3. Applications for visas at U.S. consulates could become unavailable or slow down significantly.
4. The inability for employers to meet deadlines imposed by E-Verify because it would be suspended.

T&R will provide updates and further clarification if a government shutdown occurs.

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