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June 2024 - T&R Immigration Newsletter

In this month's newsletter, T&R provides updates and information about relief programs, July Visa Bulletin and PERM Processing times.

WHITE HOUSE ANNOUNCES TWO RELIEF PROGRAMS

On June 18, 2024, the White House issued a proclamation announcing two immigration relief programs:

1. A pathway to permanent resident (green card) status for undocumented spouses of U.S. citizens who have been in the United States for 10 years.

This program provides relief to undocumented spouses of U.S. citizens who were not inspected upon entry into the United States. They will be eligible for *Parole in Place* for a period of three years during which they can file an application to adjust status to permanent resident without departing the United States. Parole in Place will be available, on a discretionary basis, for spouses of U.S. citizens who were not admitted or inspected upon entry to the United States, have been continuously present in the United States for 10 years as of June 17, 2024, and who are otherwise admissible to the United States. It is expected that this will become available later this summer.

2. A program to ease the transition for Dreamers – including DACA recipients - to H-1B or other work status if they graduate from a U.S. university and have a job offer.

Details for this program were not released but we expect more information shortly.

The mechanisms of these programs have not yet been announced and details will be published in the Federal Register.

T&R will provide updates when this happens.

JULY 2024 VISA BULLETIN

The July Visa Bulletin was released last week and USCIS announced use of the Dates of Filing chart for employment-based cases. The significant changes for the July visa bulletin for employment date cases (Dates of Filing) are:

EB-1 (extraordinary people, outstanding researchers and multinational managers): India moves forward by 10 months, 1 week from April 1, 2021, to February 8, 2022. There was no movement in the rest of the EB-1 for China, Philippines, Mexico or all other countries.

EB-2 (Exceptional ability, National Interest Waiver, Advanced Degree holders): There is no change for China. India, Mexico, Philippines and all other countries move forward 1 month and 7 days. India moves from May 15, 2022, to June 12, 2022; and Mexico, Philippines and all other countries move from February 15, 2023, to March 22, 2023.

EB-3 (Skilled workers, Professionals or Other Workers): There was no change except India moved forward three weeks from September 15, 2012, to October 1, 2012. NOTE: Given the demand for this category, the notes of the July visa bulletin indicate that it will either further retrogress or become “unavailable” in August.

EB-4 (Special Immigrants including Religious Workers, Members of International Organizations, etc.): All countries move forward 2 months from December 1, 2020, to February 1, 2021.

EB-5 (Immigrant Investor): There is no change for any country; India remains backlogged to April 1, 2022, and China remains backlogged to January 1, 2017.

Below is the chart for July employment based Final Action dates:

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01NOV22	01FEB22	C	C
2nd	15MAR23	01MAR20	15JUN12	15MAR23	15MAR23
3rd	01DEC21	01SEP20	22SEP12	01DEC21	01DEC21
Other Workers	01JAN21	01JAN17	22SEP12	01JAN21	01MAY20
4th	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
Certain Religious Workers	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
5th Unreserved (including C5, T5, I5, R5)	C	15DEC15	01DEC20	C	C
5th Set Aside: Rural (20%)	C	C	C	C	C
5th Set Aside: High Unemployment (10%)	C	C	C	C	C
5th Set Aside: Infrastructure (2%)	C	C	C	C	C

LONG PERM PROCESSING TIMES – START CASES EARLY

Employers should consider starting labor certification (PERM) applications for employees much sooner than they have in the past due to the long processing times at the U.S. Department of Labor (DOL) as well as the retrogression in priority dates in employment third preference (EB-3). PERM is the first of three steps in obtaining permanent resident (green card) status.

The goal is to file the first step in the green card process – usually the PERM application – before an employee reaches the fifth year in H-1B status. If the PERM application (Form 9089) is filed with the DOL before an employee reaches their fifth year in H-1B status, they can obtain extensions of H-1B status beyond the maximum of six years. The PERM application must be filed 365 days before reaching the sixth year in H-1B status.

Current processing times make it necessary to start the PERM process at least two years before a person reaches their fifth year in H-1B status. DOL processing times as of June 1, 2024, were:

- **13-14 months** to review Form 9089 (PERM application) once filed. DOL is starting to review PERM applications filed in May 2023 or earlier. We did have one PERM application that took 16 months for approval!
- **6-7 months** for a prevailing wage determination that uses OES wages; 13-14 months for a prevailing wage determination that uses non-OES wages. DOL is reviewing prevailing wage requests filed in December 2023 (OES wages) and April 2023 (non-OES wages).
- **18 months** to review the response to an audit if issued on a PERM application.

The employer must first have a DOL prevailing wage determination before it can file the PERM application with the DOL.

The total DOL processing times to get a PERM application approval is at minimum 20 months if use an OES wage and up to 30 months if use an alternative survey (not OES wage). These timelines do not even include the time to prepare the application (1-2 months) or to do recruitment (2-3 months). If there is an audit on the PERM application, add an additional 18 months before a final decision is made.

T&R recommends that employers review their internal policies for when they start PERM applications and adjust them to accommodate the long processing times. Employers should also look to possible alternatives to labor certification as a

path to a green card including National Interest Waivers (NIW), Persons of Extraordinary Ability, Outstanding Researchers or Professors, and other categories for employees who stand out in their field.

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