



**Minsky, McCormick & Hallagan, P.C.**

*A Full-Service Law Firm Dedicated To All Aspects of U.S. Immigration & Nationality Law*

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# CLIENT UPDATE

## Allocation of Employment Based Immigrant Visas

THE U.S. STATE DEPARTMENT ISSUED THE JANUARY 2010 VISA BULLETIN and provided a more in-depth explanation of the numerical control of family and employment based immigrant visas, as well as some cut-off priority date projections for 2010. Below you will find an excerpt of the information provided by the State Department. If you wish to view the explanation in its entirety, you may access the State Department website at: [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4597.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_4597.html)

“Section 201 of the INA sets an annual minimum Family-sponsored preference limit of 226,000, while the worldwide annual level for Employment-based preference immigrants is at least 140,000. Section 202 sets the per-country limit for preference immigrants at 7% of the total annual Family-sponsored and Employment-based preference limits, i.e. a minimum of 25,620.

- The annual per-country limitation of 7% is a cap, meaning visa issuances to any single country may not exceed this figure. This limitation is not a quota to which any particular country is entitled, however. The per-country limitation serves to avoid monopolization of virtually all the visa numbers by applicants from only a few countries.

- INA Section 202(a)(5), added by the American Competitiveness Act in the 21st Century (AC21), removed the per-country limit in any calendar quarter in which overall applicant demand for Employment-based visa numbers is less than the total of such numbers available. In recent years, the application of Section 202(a)(5) has occasionally allowed countries such as China-mainland born and India to utilize large amounts of Employment First and Second preference numbers which would have otherwise gone unused.

WHY DID MOST EMPLOYMENT CUT-OFFS REMAIN UNCHANGED IN RECENT MONTHS?

Many of the categories were "unavailable" at the end of FY-2009, which resulted in excessive demand being received during October and November. Coupled with the fact that CIS Offices have been doing an excellent job of processing cases, this has had an impact on cut-off date movements. Some forward movement has begun for January as we enter the second quarter of the fiscal year.

#### WILL THERE BE ANY ADDITIONAL CUT-OFF DATES FOR FOREIGN STATES IN THE EMPLOYMENT FIRST OR SECOND PREFERENCE CATEGORIES?

At this time it is unlikely that there will be any cut-off dates in the Employment First preferences. It also appears unlikely that it will be necessary to establish a cut-off date other than those already in effect for the Second preference category. Cut-off dates apply to the China and India Second preference categories due to heavy demand, and each has the potential to become "unavailable" should demand cause the annual limit for that category to be reached.

INA Section 202(a)(5) provides that if total demand will be insufficient to use all available numbers in a particular employment preference category in a calendar quarter, then the unused numbers may be made available without regard to the annual per-country limits. For example, if it is determined that based on the level of demand being received at that time there would be otherwise unused numbers in the Employment Second preference category, then numbers could be provided to oversubscribed countries without regard to per-country limitations. Should that occur, the same cut-off date would be applied to each country, since numbers must be provided strictly in priority date order regardless of chargeability. In this instance, greater number use by one country would indicate a higher rate of demand by applicants from that country with earlier priority dates.

Should Section 202(a)(5) be applied, the rate of number use in the Employment preference category would continue to be monitored to determine whether subsequent adjustments are needed in visa availability for oversubscribed countries. This action provides the best possible assurance that all available Employment preference numbers will be used, while still ensuring that numbers remain available for applicants from all other countries that have not yet reached their per-country limit.

WHAT ARE THE PROJECTIONS FOR CUT-OFF DATE MOVEMENT IN THE EMPLOYMENT PREFERENCES FOR THE REMAINDER OF FY-2010?

Based on current indications of demand, the best case scenarios for cut-off dates which will be reached by the end of FY-2010 are as follows:

**Employment Second:**

China: July through October 2005

India: February through early March 2005

If Section 202(a)(5) were to

apply: China and India: October through December 2005

**Employment Third:**

Worldwide: April through August 2005

China: June through September 2003

India: January through February 2002

Mexico: January through June 2004

Philippines: April through August 2005

Please be advised that the above date ranges are only estimates which are subject to fluctuations in demand during the coming months. The actual future cut-off dates cannot be guaranteed, and it is possible that some annual limits could be reached prior to the end of the fiscal year.”

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