Minimize Your Cost by Starting the Green Card Process Early

Labor & Employment Law Update

By Jacqueline Lentini McCullough on October 13, 2023

In the immigration community, autumn brings a new-year sense of renewal. A new US government fiscal year beginning October 1 means a fresh start to the annual allocation of green cards for those looking to apply. But application backlogs which have grown for countries like mainland China and India have tempered that October optimism. A new wrinkle added to the application process this year has made it trickier.

No More than 7% of Green Cards Awarded to One Nationality

The US usually caps the number of employment-based immigrant visas at 140,000 each year, though that number can be adjusted based on unused family-based visa capacity. The total number of immigrant visas gets allocated across 5 work categories. The majority (57.2%) go to the second and third categories. The second category covers foreign nationals with advanced degrees or persons of exceptional ability. The third category includes professionals with at least a bachelor's degree and skilled workers with at least two years of experience. Skilled workers include manufacturing workers, cab drivers, hair stylists, plumbers – anyone with a specific set of skills.

For FY 2024, United States Citizenship and Immigration Services (USCIS) announced the employment-based visa limit is 165,000. That means 94,380 will go to the second and third categories, combined. It's not a big number considering how many people want to apply for green cards. Across all work categories, no more than 7 percent of green cards can go to one nationality. For FY 2024, that's a maximum of only 11,550 green cards to any one country.

Green Light to File Green Card Depends on Priority Date

A foreign national's priority date is their place in line for a green card. The priority date is the date when their employer properly files their immigrant visa petition with USCIS. If a labor certification needs to be filed with the petition, it is the date the Department of Labor (DOL) accepts the labor certification application for processing.

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The Department of State (DOS) issues a monthly bulletin showing two charts, the Dates for Filing and the Final Action Dates. Both charts refer to the applicant's priority date.

The Dates for Filing chart shows the priority dates now open for filing for each category and country/region. This chart signals that the DOS anticipates an immigrant visa number will be available soon for any applicant with a priority date before the date listed and they may submit their petition.

The Final Action Date chart shows the priority dates in each category and country/region where an immigrant visa number is now available.

Backlogs for green cards began growing well before the pandemic and worsened during it. For some countries where many seek to immigrate to the US, the wait for permission to apply has stretched to years.

As of October 2023, dates for filing for the second work category for mainland China immigrants are before January 1, 2020. For India, they are before May 15, 2012, which means some foreign nationals have been waiting for green cards for 11 years. The dates for filing for Indians in the same category in October 2022 were before May 1, 2012. Merely 2 weeks' movement in a year.

USCIS Makes Filing Dates Moving Targets

Tension between the DOS and USCIS has led USCIS to push back on the final action dates DOS puts in their monthly bulletin. USCIS announces each month which chart it is working from – the Dates for Filing or the Final Action Dates. It can change from month to month.

USCIS has recently said that if they get overwhelmed when working from the Dates for Filing, they may switch to Final Action Dates which cut off priority dates several months earlier. Or they may stop taking applications and require petitioners to wait until the next month. Those switches can come without warning. That means if you send an application to USCIS and they stop accepting applications while it is in the mail, it will become unwelcome in transit.

The uncertainty has made green card filing dates moving targets. We need to be vigilant every day to know which chart USCIS is working from and whether they are still accepting applications that month.

USCIS has said it will work from the Dates for Filing chart in October.

Long Backlogs Increase the Cost of Retaining Foreign National Employees

The long backlogs drive up the cost of helping foreign national employees become citizens. They necessitate that some foreign nationals, like those from India, reapply multiple times for H-1B work visas while they wait for the green light for their priority dates.

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L-1B visa holders don't have the ability to reapply multiple times. They get a 3-year visa and can apply once for a 2-year extension. After that, they either have their green card or leave the US.

No Short Cuts, Please Start the Immigrant Visa Process Early

Clients running low on time with foreign national employees have asked me for a green card process shortcut. Some have said "Can't we just talk to a Congressman?"

Green card shortcuts don't exist.

There is one way your company can minimize the cost and time to get employees their green cards: start early.

As you can see, the earlier the priority date – the date you file their immigrant visa petition or get the DOL to accept your labor certification application – the sooner your valued employee can apply for their green card.

Everything hinges on the priority date.

We counsel employers who know they want to hire a foreign national permanently to file their immigrant visa as early as they feel comfortable. Many clients begin this process during year three, in conjunction with the L-1B or H-1B first renewal. But if your valued employee is a foreign national from mainland China or India, we recommend starting the process in year one. The long backlogs will not shorten any time soon.

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