

Bordeau Immigration Law, LLC

9303 W. 75th Street, Suite 210
Overland Park, Kansas 66204
913-432-9994

IMMIGRANT VISA AVAILABILITY-- MAY 2021

The US government limits the number of immigrant visas for individuals seeking permanent residency in the United States, which has led to waiting lists for many individuals, particularly for individuals born India or China. While people from many other areas of the world are typically *not* affected, waiting lists can occur at any time. Individuals from all countries are at most risk of waiting lists developing toward the end of the government's fiscal year, particularly where a large volume of cases have been approved that year. Note that an immigrant visa is essentially the same thing as a “green card” or “permanent residency” card. It is important that individuals in the permanent residency process understand the problems that have arisen in the context of waiting lists for permanent residency, as explained below.

The US government limits the number of employment-based immigrant visas (i.e. green cards) to approximately 140,000 in any year (the government's *fiscal year* runs from 10/1 to 9/30). The 140,000 immigrant visas* are divided between the various employment-based preference categories (i.e. EB-1, EB-2, EB-3 [the preference categories are discussed in greater detail below]). In addition, within the overall allocation, there is also a per country limit of 25,620--which means that if more than 25,620 individuals apply from any one country, the per-country limit is reached. Therefore, from time-to-time, the demand for immigrant visas/green cards can exceed the supply, on a per-country basis, in a particular preference category and/or on a worldwide basis. When the demand for immigrant visas exceeds the supply, immigrant visas are not immediately available and a problem called “visa retrogression” occurs. In periods of visa retrogression, even when there is an approved labor certification and/or an approved I-140 immigrant visa petition, the individual essentially has to wait “in line” for his or her turn to file the last step of the permanent residency case, known as the I-485, or, if the I-485 is already on file when visa retrogression occurs, the individual will have to wait “in line” for the case to be approved. An individual's place in line is determined by the priority date of the permanent residency petition. The priority date is the date the labor certification is filed (or, for those cases not requiring labor certification, the date of the filing of the I-140 petition).

There are two charts in the Visa Bulletin. The I-485 permanent residency petition cannot be approved unless the priority date is **before** the date listed on the Final Action chart below. The I-485 may be filed earlier, if permitted by the USCIS, as indicated by the Dates for Filing on the second chart below. Filing the I-485 allows individuals and their derivative family members to file I-485 adjustment of status applications and gain the benefits of the I-485 filing, including AC21 portability and the opportunity to request Employment Authorization Documents and Advance Parole. Please visit <https://www.uscis.gov/visabulletininfo> to determine which chart should be used for the current visa bulletin.

MAY 2021 - Final Action Dates (priority date required for I-485 approval):

Category	Worldwide	China (PRC)	El Salvador Guatemala Honduras	India	Mexico	Philippines	Vietnam
EB-1	Current	Current	Current	Current	Current	Current	Current
2nd	Current	01DEC16	Current	01AUG10	Current	Current	Current
3rd	Current	15MAY18	Current	01FEB11	Current	Current	Current
Other Workers	Current	01AUG09	Current	01FEB11	Current	Current	Current

MAY 2021: Dates for Filing (priority date required for I-485 filing):

Category	Worldwide	China (PRC)	El Salvador Guatemala Honduras	India	Mexico	Philippines
EB-1	Current	Current	Current	Current	Current	Current
2nd	Current	01JUL17	Current	15MAY11	Current	Current
3rd	Current	01SEP18	Current	01JAN14	Current	Current
Other Workers	Current	01NOV09	Current	01JAN14	Current	Current

If an individual is born in a country with visa retrogression but married to someone from a country with no wait, then the case can be “charged” to the country where the spouse was born. This is called “cross-chargeability”. So, for example, if an individual was born in China but married to someone from Taiwan or Hong Kong (which the US government counts separately from China), then the I-485 can be filed for both the husband and wife as long as there is no visa retrogression for Taiwan or Hong Kong.

We carefully track the Visa Bulletin on a month-to-month basis to see how quickly priority dates move forward. At the moment, it is very difficult to provide an accurate or predictable timeline as to how quickly the visa retrogression problem will improve. It is not possible to know at this point how quickly we will see change with visa availability in any category. In addition, the State Department and USCIS do not issue many comments on this question; however, the State Department publishes the “Visa Bulletin” every month with information about visa availability for the following month. Please see the bottom of this page for a link to the current Visa Bulletin.

Please note that the Visa Bulletin dates are controlled by one person (Charlie Oppenheim) at the Department of State. Because it is not possible to know for sure how many immigrant visa petitions (i.e. I-140's) will eventually lead to immigrant visas (because individuals may change jobs and re-file or the employer might withdraw the job offer), predicting immigrant visa demand isn't an exact science. However, the May Visa Bulletin indicates rapid movement forward during FY2021.

BIL: MAY 2021: Visa Bulletin Information

[MAY 2021 Visa Bulletin Link](#)