

## **IMMIGRATION UPDATE: AUGUST 2005**

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by

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### **USCIS Provides Update on H-1B Cap Count**

On August 2, 2005, the United States Citizenship and Immigration Services (USCIS) provided an update on the current cap count for the H-1B non-immigrant visa.

As readers of [www.longchangoonline.com](http://www.longchangoonline.com) are aware, the U.S. immigration system provides only a limited number of H-1B visas for any particular year. For the current fiscal year (October 1, 2004 to September 30, 2005) there are no new H-1B visas available. For next fiscal year (October 1, 2005 to September 30, 2006) a total of only 65,000 H-1B visas are available. Based on the following figures released by USCIS, these H-1B visas are being used up quickly, and any employer who wants to sponsor an individual for an H-1B visa must act quickly.

The latest information from USCIS is as of July 31, 2005:

1. The H-1B cap of 65,000 is reduced to 58,200 since 6,800 H-1B visas have been set aside for individuals from Chile and Singapore under separate legislation.
2. 21,252 H-1B cases which count towards the H-1B cap have been approved for the upcoming fiscal year, which runs from October 1, 2005 to September 30, 2006.

There are 27,788 H-1B cases pending. If all of these cases are approved, there would be 49,040 cases which would count against the H-1B cap. Since the H-1B cap for next fiscal year is 58,200 (as noted above), that means there are only approximately 9,160 H-1B visas available for the next fiscal year (October 1, 2005 to September 30, 2006).

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### **Employment-Based Visas Still Unavailable For Third Preference (EB-3) Cases**

As previously reported on [www.longchangoonline.com](http://www.longchangoonline.com), employment-based visas for the third preference category (EB-3) became unavailable beginning July 1, 2005 and will remain unavailable until at least October 1, 2005. The EB-3 category covers the skilled

worker category (those jobs requiring at least 2 years of experience or a college degree) and the unskilled worker category (jobs requiring less than 2 years of work experience and no college degree).

At our office, we have received many questions from individuals and employers who are affected by this visa unavailability. Some of the common questions are as follows:

- “I have an I-485 green card application which is pending right now. What will happen to my green card application?” ANSWER: If your I-485 green card application has already been filed and is pending (meaning that the EB-3 category became “unavailable” AFTER your green card application was filed and accepted by USCIS), then your application will remain pending until visa numbers become available. Once visa numbers become available again in the next fiscal year (which begins October 1, 2005), your application will resume being processed (assuming your priority date is earlier than any cutoff date listed in the Visa Bulletin). So long as your application is pending and you file a Form I-765, you can continue to receive employment authorization.
- “I just received an approved labor certification from the Department of Labor and my case is in the EB-3 category. What can I file for right now?” ANSWER: While the EB-3 category is “unavailable”, you and your employer cannot do concurrent filing of form I-140 and Form I-485. Your employer can file the Form I-140 only. As the beneficiary of an approved labor certification in the EB-3 category, you cannot file a Form I-485 (green card application) or a Form I-765 (application for employment authorization). Once visa numbers become available again beginning in October 2005, you will have to check your priority date to determine if you are eligible to file the Form I-485. If visa numbers become available in October 2005 but there is a cutoff date in the EB-3 category, your priority date has to be earlier than any cutoff date listed in the Department of State’s Visa Bulletin.

Many individuals have expressed their frustration with the immigration system based on the EB-3 problem and we share that frustration as well. What we need is comprehensive immigration reform, especially in the employment-based immigration system. While Congress attempted to fix part of the problem when it passed PERM (the new labor certification system) in hopes of speeding up the labor certification process, it is clear that PERM alone is not a solution. In fact, in many ways it is part of the problem. What has happened is that with PERM speeding up the approval of labor certification cases in general, there has been an increased demand for green cards based on these approved PERM labor certifications. The resulting demand for green cards has caused all of the green cards to be used up and, as a result, those individuals who have approved labor certifications in the EB-3 category now must wait before they can file for the green card. As PERM becomes more popular, this problem will only worsen. With increased labor certification approvals, the demand for employment-based visas will continue to exceed the number of visas that can be give out in any one year. In fact, the Department of State has indicated that it is possible in the next couple of months that other employment-based

categories will become unavailable. The only way to fix this problem is for Congress to pass a law which increases the number of green cards which can be given out in a particular year.

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### **Fingerprinting Appointments in Charlotte, North Carolina**

Many individuals with pending I-485 (green card) or N-400 (naturalization) applications on file with the USCIS have been receiving fingerprinting appointments in recent weeks. The Application Support Center in Charlotte, North Carolina (which processes all fingerprinting appointments for North Carolina cases) has been open for extended hours in order to reduce the fingerprinting backlog. That office will be open for the next several months from 7:00 a.m. to 10:00 p.m. in order to fingerprint approximately 390 people per day. Many of these appointments will take place as late as 10:00 p.m.

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