

## USCIS Has Used Nearly All Available Employment-Based Immigrant Visas for FY2022

On September 6, 2022, U.S. Citizenship and Immigration Services (USCIS) filed a Court Declaration indicating that the agency has used nearly all available employment-based (EB) immigrant visas for this fiscal year (ending September 30, 2022) and will have exhausted the supply of 281,507 employment-based immigrant visas by the end of the month. This is a significant accomplishment for the agency because it approved approximately twice the annual allocation of employment-based immigrant visas in fiscal year 2022 (FY22). **USCIS stated in the declaration that “as of September 6, 2022, there are no visas remaining for applicants from any country of chargeability in EB1 (employment-based first-preference) or EB2” (employment-based second-preference).** USCIS also notes that they expect retrogression in EB-2 India due to high demand.

Under the Immigration and Nationality Act (INA) § 203(b), 8 U.S.C. 1153(b), Congress divides the overall EB annual limit between the five employment-based categories based on fixed percentages. EB1, EB2, and EB3 each receive 28.6% of the overall limit, and EB-4 and EB-5 each receive 7.1% of the overall limit. However, Congress also created statutory provisions in INA § 203(b), 8 U.S.C. 1153(b), which allow immigrant visas not required in a particular EB category to be made available in another EB category. These are colloquially referred to as the “fall up/fall down” provisions. During FY2022, the fall up/fall down provisions resulted in additional visas being made available in the EB-2 category for advanced-degree professionals.

Despite FY2022 EB-1 and EB-2 (and likely EB-3) visa numbers being used before the end of the month and any announcement from the Department of State that visas are unavailable, USCIS will continue accepting adjustment of status applications in accordance with September 2022 Visa Bulletin. **However, USCIS will not be able to approve any additional cases once visa numbers are no longer available. The outstanding cases will remain pending and be retrogressed until visas become available for the applicable priority date in FY2023.** USCIS overestimated the number of applications required to meet the cap to ensure they used all available visas. While this will be very disappointing for many employees awaiting an immigrant visa, these individuals will still be eligible for work authorization, travel authorization, portability, and other benefits that come with filing an adjustment of status application.

We will continue to monitor any updates relating to the availability of Immigrant Visas from USCIS.



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