



AFTER THE OCTOBER 2012 VISA BULLETIN, A DECADE LONG WAIT UNDER THE FAMILY FOURTH PREFERENCE IS A PIECE OF CAKE

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By [Cyrus D. Mehta](#)

I write this blog with some sarcasm. The family fourth preference (F-4), which allows US citizens to sponsor their siblings for a green card, is horrendously backlogged. It takes over 10 years for a brother or sister of a US citizen to obtain a green card. If the sibling was born in the Philippines, the wait could well be over 25 years. So, why is it a piece of cake?

After the State Department released its [Visa Bulletin for October 2012](#), the F-4 at least for the worldwide category appears to be more advantageous in terms of waiting time than say the employment-based third preference (EB-3) for India, which is applicable to jobs that require bachelor's degrees or at least two years of training or experience. The EB-3 for India is so backlogged that it could take a US employer [70 years](#) before the Indian worker it sponsors gets a green card.

What was also disappointing with the October 2012 Visa Bulletin was that the employment-based second preference (EB-2), after being unavailable all summer, emerged in October with a cutoff date of September 1, 2004. This means that employers who filed labor certifications on behalf of foreign national workers with advanced degrees on or before September 1, 2004, can apply for their green cards today. This does not bode too well because in April 2012 the cutoff date for the India EB-2 was May 1, 2010. It should have emerged in October at the same cut off level, not back at September 1, 2004. Perhaps, the reason for this giant leap back in time is because many in the EB-3 with priority dates going back to 2004 and earlier are upgrading into the EB-2.

Noted immigration attorney [Carl Shusterman](#) has quite correctly called the October 2012 Visa Bulletin a disaster.

But jokes aside, the F-4 is actually a good hedge against the broken legal immigration system in the United States. If you have a brother or sister with kids who are 6 or 7 today, file the I-130 petition and then forget about it. Treat it like a long term stock in a new startup that will increase in value in the years to come. By the time the green card comes through for your sibling, his or her kids would be 17 and 18, old enough to start college in the US as green card holders rather than on an F-1 student visa. Note that spouses and children can derivatively get their green cards with the principal beneficiary. If these kids were born in India, think of the benefit this would give them after they graduate from college and get a coveted job in the US – and let's hope by then that the US economy would have turned around through some breakthrough technology that would result in an abundance of jobs! Assuming that the EB-3 was as backlogged in 2023 as it is today, because Congress continued to remain in permanent gridlock, those kids would have to wait about 70 years to get their green card under the EB-3. Instead, the F-4 that you filed with a great deal of foresight today would benefit your nephews and nieces by the time they come of age and are ready to pursue their hopes and dreams in the USA.

What if the kids are no longer children by the time your sibling gets the green card under the F-4? What if they have already turned 21 or more as a child is one who is under 21 under the Immigration and Nationality Act? These are all good and relevant concerns. Fortunately, some of these kids may be able to freeze their age under the Child Status Protection Act. If the child is 23 years old at the time the date on the I-130 petition becomes current, then under INA § 203(h)(1) it is possible to subtract from that age the time that the I-130 petition took to get approved from the time it was filed. For example, if the USCIS took two and a half years to approve the I-130 petition from the date it was filed, then you can subtract 2.5 years from the child's age, and if the age is reduced so that it falls below 21, then the child can still immigrate with the parent. Thus, it is actually to your advantage if the I-130 petition takes a long time to get approved as that much more time can then get subtracted from the age of a child who may have turned over 21 on the date of visa availability. Fortunately, the [processing time at the Vermont Service Center](#) for an F-4 today is just short of 2 years. Processing times will be longer if the USCIS issues a request for more evidence before approving the I-130 petition. So don't get too anxious if the I-130 under the F-4 does not get approved so quickly. This time will prove to be precious to reduce the age of a child who is over 21 a decade or more from today, when the visa becomes available under the F-4.

If we had a better immigration system, I would not waste time extolling the so called virtues of the F-4. But when so many preference categories have gone out of whack – 70 years for the India EB-3 and the EB-2 seems to also be going the same way– then we must grasp at straws and the F-4 is certainly one until Congress is able to bring sensible reforms to our immigration system.