



DOS RELEASES INFO ON CUT-OFF DATE CALCULATIONS; NOVEMBER 2013 VISA BULLETIN SHOWN MOVEMENT IN CHINA 'OTHER WORKERS' CATEGORY

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The Department of State (DOS) recently released information about how it calculates visa availability cut-off dates. Separately, the Visa Office has released the latest November 2013 Visa Bulletin, which explains additional points and notes forward movement in the China employment-based third preference "Other Workers" category.

Visa availability calculations. DOS explained that each month, its Visa Office subdivides the annual preference and foreign state limitations into monthly allotments based on totals of documentarily qualified immigrant visa applicants reported at consular posts and U.S. Citizenship and Immigration Services offices, grouped by foreign state chargeability, preference category, and priority date. If there are sufficient numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered "Current." For example, if the monthly allocation target is 3,000 and there is only demand for 1,000 applicants, the category will be Current. Whenever the total of documentarily qualified applicants in a category exceeds the supply of numbers available for allotment for the particular month, the category is considered to be "oversubscribed" and a visa availability cut-off date is established. The cut-off date is the priority date of the first documentarily qualified applicant who could not be accommodated for a visa number. For example, if the monthly target is 3,000 and there is demand for 8,000 applicants, it would be necessary to establish a cut-off date so that only 3,000 numbers would be allocated. In this case, the cut-off would be the priority date of the 3,001st applicant.

The DOS noted that the FY 2013 employment annual limits were reached before the end of September, and no further allocation of numbers was possible after that time. Offices continued to process employment cases, submitted them in the normal manner, and such cases were then held in the Visa Office's "Pending Demand" file. All eligible cases were then allocated employment-based numbers on October 1, 2013, under the FY 2014 annual limits.

DOS said that the number of 1-485 adjustment of status applications already filed in the employment third preference (on which U.S. Citizenship and Immigration Services (USCIS) has not yet finalized action) for countries other than India and the Philippines exceed the numbers currently available. These filings are the result of the cut-off dates for those countries having been advanced by over three years since April. DOS said that such demand must be considered in the determination of the monthly cut-off dates to prevent any unnecessary fluctuation in those dates.

The imposition of cut-off dates for some categories/countries has limited the number of applicants who have been able to file for adjustment of status with USCIS, and such applicants would not be included in the totals, DOS noted. In addition, new applicants are constantly becoming eligible for processing in categories for which cut-off dates do not apply, or for a category other than that in which they initially filed for status. Therefore, DOS said that the totals in the Visa Bulletin charts should not be interpreted to reflect the total universe of applicant demand. These totals only represent the amount of demand taken into consideration during the determination of new dates.

Visa Bulletin. The Visa Office noted in its November 2013 Visa Bulletin that:

It is important to remember that the establishment of a monthly cut-off or "Current" status for a numerically controlled category (preference or Diversity) applies to those applicants who were reported prior to the allocation of visa numbers for that month. For example, all qualified applicants who were reported to the Visa Office in time to be included in the calculation of the September cut-offs, who had a priority date or rank-order number before the relevant September cut-off, would have been allotted visa numbers for September. There would be no expectation, however, that sufficient numbers would be available for the processing of cases which subsequently became eligible for final action during that

month. Additional numbers may be allocated outside the regular monthly cycle, but only to the extent that such numbers remain available under the applicable annual limit. The availability of additional numbers is subject to change at any time and should never be taken for granted. This is especially true late in the fiscal year when numerical allocations are often close to or at the annual limits.

When applicants fail to appear or overcome a refusal (even for reasons beyond their control) during the original month of scheduled interview, they risk not having their case processed later in the fiscal year. This is because the establishment of a monthly cut-off or "Current" status for a numerically controlled category (preference or Diversity Visa) applies to those applicants who were reported before the allocation of visa numbers for that month.

China: Rapid forward movement of the cut-off date, as a result of there being insufficient demand to use all available numbers, allowed the category to reach the Worldwide third preference cut-off date in May 2013. The continued lack of demand has allowed the "otherwise unused" numbers available under that limit to be provided for use in the China employment third preference Other Workers category. The continued addition of those numbers has allowed the cut-off date for that category to reach the China third preference date for November. This is the same action which has been possible for the Other Worker category in other "oversubscribed" countries such as India and Mexico. A sudden increase in demand for China employment third preference visas could require corrective action in the China Other Worker cut-off date at any time.

The DOS's information includes charts showing the estimated total number of visas available for each employment preference category and country for fiscal year 2014. Demand data used in the determination of the November 2013 employment preference cut-off dates are also included in the charts. The information is available

at <http://www.travel.state.gov/pdf/EmploymentDemandUsedForCutOffDates.pdf>. The latest Visa Bulletin for November 2013 is available at http://travel.state.gov/visa/bulletin/bulletin_6168.html.