

Get In The Line? What Line? The Tragic Tale of Employment Based Immigrant Visa Delays



I had a very upset client contact me this last week. He was angry . . . at the Visa Bulletin. He could not understand how, after the start of the new fiscal year, there was essentially no movement in the visa numbers. I tried to calm him by telling him that he just needed to be patient. Then I realized how patronizing that sounded. How much longer did he need to wait? He has an approved immigrant visa petition (EB-3) with an early 2005 priority date in the worldwide category. So, I decided to try to figure out when he might actually get his green card. I ask that you bear with me through this process. This is a LONG post, but one I think you will appreciate reading.

I have to warn you now, this math is a shot in the dark. I do NOT have all of the numbers of pending and approved cases in each category of employment based immigration. However, some estimate, based upon some pretty good numbers, is better than mere guesswork. Let me walk you through this analysis.

However, I first ask you to forgive me in advance, math is the reason I went to law school. Also, the USCIS simply has not released clear numbers (possibly for fear of letting folks know exactly how long their wait will actually be).

My focus for this analysis will be in the EB-2 and Eb-3 categories, since it is in those categories that our clients are most interested. There are four basic numbers we are looking for, NONE of them are easy to find. Let's discover the basic numbers we will be using:

First, how many approved I-140 cases are awaiting a visa number? According to AILA's recent liaison meeting with DOS, there are 198,186 "case ready" I-140 petitions awaiting visa issuance, in the EB-2 (52,584), EB-3 (139,737) and EW (5,865)

categories. Case ready means (as best as we understand), that as soon as the petition is current, the Adjustment will be approved or consular processing will begin. Obviously, the EB-2 numbers are only for India and China.

Second, how many pending I-140 cases are there at the Service Centers awaiting adjudication? According to the [June 2009, USCIS Production Update Report to Congress](#), USCIS had 85,970 pending I-140 cases awaiting adjudication. Unfortunately, USCIS does not break out the I-140 cases in this report between EB-2 and EB-3. These are the most recent numbers I could find.

Third, how many pending I-140 cases are at the District Offices? I have no idea! I cannot locate anywhere the numbers of cases at the local USCIS offices. No one knows. Really. There is no report that I can find where this number has been released. And, frankly, I do not believe that USCIS has an accurate count on this either (I do pray they get such a count soon).

Fourth, how many pending labor certifications are there at the DOL? This number is actually pretty sure. There are 62,100 pending labor certifications as of the September 22 [stakeholder meeting with DOL](#) (not counting pending appeals). Unfortunately, again, we do not know which of the categories (EB-2 or EB-3) the cases will fall under.

Now, it is time for the math. Assuming all pending Labor Certifications and pending I-140s are approved (yes, I know some will be denied and some are duplicates), there are at least a total of 346,256 individuals with approved or soon to be approved petitions awaiting green cards, not including their families. If we assume an average family size of 4 people (I believe this is a safe assumption), there are 1,385,024 people waiting on employment based green cards in the EB-2 and EB-3 categories.

I know the number is huge! And next we have to try to fit that number into the two separate EB categories. Unfortunately, we have two problems in doing this. The first problem we have is that we do not know how many of these I-140 cases are in the EB-2, or EB-3 categories. So, let's use a little deductive reasoning here. Using experience and best guessing based upon the division we already know about in the numbers of cases from the DOS, let's say 26% are EB-2 (360,162), and 74% are EB-3 (1,024,917).

The second problem is that we do not have a per country breakdown. (I hope the USCIS has that breakdown). How to account for this? Again, let's estimate based upon the DOS numbers, that India accounts for 70% of the EB-2 and 39% of the EB-3 numbers and that China accounts for 30% of the EB-2 and only 3% of the EB-3 numbers and the rest of the world accounts for 58% of the EB-3 numbers.

We also know the maximum numbers available in any given year for all family and employment based categories is 25,630 (with some caveats), and that there are only a total of 80,000 employment based immigrant visas in the EB-2 and EB-3 categories combined (with some flow down from other categories).

You can see we have leaped, jumped, guessed, and assumed our way to the follow conclusions:

India EB-3 wait for permanent residence for a labor certification filed today: **15.8 years**. This generous estimate comes from the fact that an estimated 399,717 Indian Nationals waiting for 25,630 visas a year. This estimate completely ignores the possible immigration of any family based immigrants which would subtract from this total and increase the wait time, and the number that would flow down from other immigrant visa categories, so the wait time is probably longer.

China EB-2 wait for permanent residence for a labor certification (or NIW) filed today: **4.1 years**. This estimate comes from the estimated 108,048 Chinese Nationals waiting for 25,630 visas a year. This estimate completely ignores the possible immigration of any family based immigrants that would subtract from this total and increase the wait time, and the number that would flow down from other immigrant visa categories.

Worldwide EB-3 wait for permanent residence for a labor certification filed today: Well, there are 594,451 people waiting in this queue. The limiting factor here will be the 80,000 annual limit on employment based immigration. Excluding per country limits and flow down from other employment based immigrant visa categories, this is at least a **8.1 year** wait.

And these waits are from when the person STARTS the green card, not when they come into the United States.

I can now tell my client a waiting date based upon, at least, some real numbers. But, I will still be wrong. The dates are not accurate, but at least it is not made up out of whole cloth. But we now all understand that we cannot look at the Visa Bulletin and actually determine how long the wait is.

The point of this whole exercise, besides telling my client how long he still might have to wait, is to point out the consequences of these numbers.

Line? What Line? These are employment based immigrants. Every single one has a job offer, an employer, and a certification that either there are no qualified, willing and able

US workers for the job, or that the individual is so good, we do not even have to test the labor market. We **need** these people. We **want** these people. How many do you think will now just give up and go home?

This delay in legal, employment based immigration is a crisis for America. If you are an intending immigrant, and your immigration option is employment based, do you have the patience to wait 15 years for your green card? Can you do better in Australia, Canada, or even back home in your home country? What is the cost to our future competitiveness of a broken legal immigration system? What is the cost to U.S. innovation?

I believe these numbers have a purpose. The purpose is immigration reform, and not just a legalization. We all know that a broken legal immigration system causes illegal immigration. We need to fix the legal immigration system now! We need to modify the process, significantly shorten the wait and increase the numbers to meet the demand. We need to not include family members in the total calculated visa numbers. And, Yes, we need to make these changes even in a struggling economy. We must maintain the great benefits that positive, focused employment based immigration has delivered to America. The reality is that Congress must act to help save the future of American innovation and economic growth. And, they must do it now.