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Green Card Priority Dates

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Agenda

- Background
- Visa Bulletin
- Predictions for Rest of 2022
- Interfiling
- Predictions for 2014 & 2020 Filings
- EADs and APs
- Long Term Predictions
- New STEM guidance
- Legislation

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Priority Dates Generally

- PD is established on the date you file your Labor Certification with DOL or Form I-140 with USCIS
- The DOS issues a monthly PD Visa Bulletin which provides updated processing times based on country/EB category
- In October 2020, approximately 120,000 visas were unused in the family system due to COVID and were later allotted to employment-based applicants

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May 2022 Visa Bulletin

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	01APR19	C	01DEC14	C	C
3rd	C	01APR18	C	22JAN12	C	C
Other Workers	C	01AUG15	C	22JAN12	C	C
4th	C	C	15JUN17	C	C	C
Certain Religious Workers	C	C	15JUN17	C	C	C
5th Unreserved (C5, T5, and all others)	C	C	C	C	C	C
5th Unreserved (I5 and R5)	C	15DEC15	C	C	C	C
5th Set Aside: (Rural - 20%)	C	C	C	C	C	C
5th Set Aside: (High Unemployment - 10%)	C	C	C	C	C	C
5th Set Aside: (Infrastructure - 2%)	C	C	C	C	C	C

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May 2022 Visa Bulletin Movement

- Major leaps in Q1 visa bulletins
- The most important leaps was in EB-2
 - In February, the final action date for EB-2 India was January 1, 2013
 - In May, the final action date advanced to September 1, 2013
- EB-3
 - No such movement
 - The PD or the cut-off date remains at January 15, 2012
- EB-2 and EB-3 dates of Filing
 - If you have a PD of December 1st, 2014, you would be eligible to file for your green card application with USCIS if your cut-off date occurs before December 1, 2014
 - You would be eligible to file your adjustment application in the U.S. if your cut-off/ PD occurred before January 22, 2012

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Prediction for Rest of FY22

- Visa Bulletin- Chart B
 - Also called the dates of filing chart
 - Governments predictions on how many visas they're going to be using in each category
 - Allows you to file for your green card application earlier, with the expectation there will be a reserve of applications that they can choose and approve before the end of the FY
- Through May 2022 visa bulletin, worldwide filing dates have remained the same
 - EB-2 and EB-3 are current
- For India
 - EB-2 category for filing dates remained at December 1, 2014
 - EB-3 category remained at January 22, 2012
- Green card may not get approved if your PD is current on Chart B

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Interfiling FAQs and Request Process for those Current

- How are we advising clients who are looking to upgrade to interfiling?
 - With or without a current Priority Date
- Downgrading to an EB-3
- Currently, visas more available in EB-2 category
 - Less available in EB-3
- What if you are current in both EB-2 and EB-3?

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Predictions for 2014 PDs and Filings in 2020

- Last 2 years we had this rush of filing I-485s in October of 2020
 - Adjudication for more cases for Indian nationals stuck in the backlog
 - The pandemic shut down a lot of the consular processing which allowed family-based immigrants to use up immigrant visas numbers in their quota
- Extra family-based numbers come over into the employment-based system
 - Governments consular are back in operations and able to use many more of the family-based visas
- Spill over from family-based will be much more modest in the FY23 that starts in October 2022

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Predictions for 2014 PDs and Filings in 2020

Cont'd

- What does that mean for people who have a very late 2013 or 2014 priority date whose I-485s are pending?
 - Decisions based on oldest PD first
 - 2014 PD are going be a little later than you're late 2013 PD
 - Expect it will take one or two more FY for the government to work through that backlog
 - Fewer visas available to work with in EB-2 and EB-3 for people born in India in FY23 and beyond

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Status of EAD/AP for those who filed in 2020

- In 2020, there were significant delays with the EAD/ AP
 - Government let go contractors who are responsible for processing and producing these green cards or work authorizations and travel document cards
- Cases at Texas Service Center particularly backlogged (no action taken on EAD/AP when “downgrade” I-140s were pending)
- Approvals of EAD/AP for those who filed adjustment applications in 2020 began to accelerate in Q1 of 2022
 - Those with EB-3 priority dates (including “downgrades”) in 2013-2014 have been most likely to be approved
- For I-485s filed based on 2012 EB-2 and EB-3, more often green cards are being approved instead of EAD/AP

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Longer-term Predictions for EB-2/EB-3

- Covid delays
 - Two years of the pandemic were able to use close to 300,000 extra visas and they moved the PD from 2010 to 2014 in EB-2 and EB-3 categories.
 - That lets you have some idea of the potential supply of individuals with PD in 2015
- Under the regular system
 - As few as 25 to 35,000 visas available for the India EB-2 and EB-3 backlogs
- The longer-term prediction is those PD in 2015 and 2016 are not going to become current in any short period of time.
 - It'll take at least two years to go through the backlog that still exists before PD begin to move forward

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What Does the New EB-1 Guidance Mean for Those With Advanced STEM Degrees?

- EB-1 category was not impacted by that policy memo
 - It's limited to National Interest Waivers and O-1s right now
- The EB-1 category is of extraordinary ability
 - Usually requires about 8 to 10 criteria that you can choose from
 - We must show that you need 3 of those 10 criteria
 - Then show that the overall merits of the case is such that you are at the top of your heel

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What Does the New EB-1 Guidance Mean for Those With Advanced STEM Degrees?

Cont'd

- USCIS is hard on people in technology
 - They tend to see mostly people in the arts and people in the sciences
 - More likely to get a request for evidence
 - It's not impossible but again not guaranteed
- EB-1 is an option, but it's not easier because of the policy memo published in January
- You may have a very good reputation within a company within a large company, but that won't be enough for immigration to recognize it as EB-1

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Any Hope for Legislation to Fix the Backlog?

- Easier for people to stop legislation from happening than to make it happen
- There are options that would address the EB-2 and EB-3 backlog, but there's no legislation foreseen in the future
- Pressure in Congress to deal with the Dreamers, and the India EB-2 and EB-3 backlog relief is being considered again
- It continues to be worked on, but is challenging in today's Washington

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Questions?



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For Further Information



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Spring Webinar Series



AMA: An Immigration Attorney


- Thursday, May 5
- 11:00 am
- Register on [KlaskoLaw.com](https://www.klaskolaw.com)

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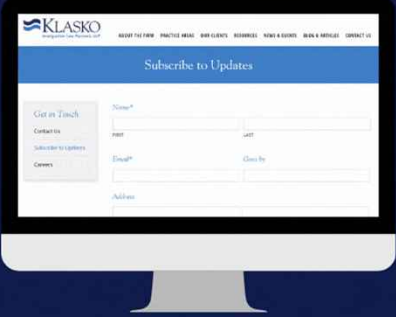

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William A. Stock
Partner


Bill Stock is a founding partner of Klasko Immigration Law Partners and has been providing immigration assistance and solutions to leading multinational corporations, universities, research institutions, hospitals, and individuals for over 25 years.

He is a past President of the American Immigration Lawyers Association (AILA). He is a member of the Board of Directors of the American Immigration Council, a national foundation working to strengthen America by honoring our immigrant history and shaping how America thinks about and acts towards immigrants and immigration.

A graduate of the University of Minnesota Law School, Bill is featured in The Best Lawyers in America, The Chambers Global Guide, Human Resources Executive magazine, Pennsylvania Super Lawyers, Who's Who in America, and other guides to prominent lawyers. In 2017, he was elected a Fellow of the American Bar Foundation.



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Andrew J. Zeltner is based in the firm's Philadelphia office. Mr. Zeltner handles a wide array of corporate immigration matters including those involving the processing of permanent resident applications (green cards) on behalf of multinational corporate and individual clients, including labor certification applications, immigrant visa petitions and adjustment of status applications.

He has significant experience providing employment-based U.S. immigration services for large corporate clients, including applications for B-1 OCS, E-1/E-2, H-1B, H-3, J-1, L-1, O-1, TN, labor certifications, multinational manager and executive immigrant petitions, outstanding researchers, extraordinary ability aliens, and national interest waivers. He has provided extensive advice to human resources professionals and corporate counsel regarding immigration compliance matters including I-9 and LCA compliance issues.

Mr. Zeltner received a Bachelor of Arts degree in Politics (cum laude) from The Catholic University of America. He earned his J.D. (cum laude) from Quinnipiac University School of Law. While in law school, Mr. Zeltner served as Opinions Editor of the Quinnipiac Probate Law Journal.

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Maria M. Mihaylova
Senior Associate

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Maria Mihaylova is a Senior Associate and works closely with both corporate and individual clients on a wide range of business and family-based immigration matters.

Maria has considerable experience processing and obtaining employment-based non-immigrant visas for professional employees, individuals of extraordinary ability and foreign entrepreneurs alike. She has successfully processed a wide range of visa matters involving H-1B, H-1B1, H-3, E-3, E-1/E-2 investor visas, L-1A/L-1B, J-1, TN, O-1, and P-1 visas.

With respect to immigrant petitions (green cards), Maria has successfully worked with multinational executives and managers, professors and researchers, and people of extraordinary and exceptional abilities alike. She has assisted married and engaged couples through their respective family-based processes. She possesses a comprehensive knowledge of the PERM Alien Labor Certification process and regularly advises and works with corporate clients to ensure regulatory compliance throughout the process.

She has successfully processed no objection J-1 waiver applications for Fulbright scholars and exchange visitors who are subject a two-year home residency requirement under the Department of State's Skills List. Maria has also gained experience with J-1 physician waivers through the US Department of Health and Human Services (HHS), the Pennsylvania Department of Health, and the Appalachian Regional Commission (ARC).

Maria received her Juris Doctor (J.D.) degree from Seton Hall University School of Law in 2012, graduating magna cum laude, Order of the Coif. In 2008, Maria also received a Bachelor of Arts degree in Social and Behavioral Sciences, summa cum laude, from Seton Hall University. She is a member of the American Immigration Lawyers Association. Maria is fluent in Bulgarian.

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