

How to Handle Philippine 3rd Preference Cases

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The US Citizenship and Immigration Services (USCIS) issued guidelines last week for the adjudication of adjustment of status applications (I-485) and immigrant petitions for foreign worker (I-140) in light of the retrogression of the employment-based third preference for the Philippines, China and India effective January 2005.

According to the USCIS, Form I-485s that were physically received in the appropriate service office on or before December 30, 2004 are called pipeline cases. They will be held in abeyance until a visa number is available and shall be considered pending during this period.

The applicants in pipeline cases will be eligible for interim benefits such as employment authorization and advance parole to travel abroad.

The applicants may also move to a new but similar job if their applications have been pending for more than 180 days.

I-485s that were filed after the regression of the visa numbers shall be rejected. The I-140 forms, however, if filed concurrently with the I-485 together with a separate fee will be accepted.

To ensure that families are not separated from each other, an applicant for adjustment of status may be charged to a country other than her place of birth under the alternate chargeability rule. This is an exception to the rule that an applicant's visa number is charged to the quota of his country of origin. The applicant may be "charged" to the country of her spouse.

The I-485 and the I-140 concurrently filed may then be accepted and processed in the normal course, provided that the beneficiary who will accompany or travel with the applicant is unaffected by the visa regression.

The January 2005 Visa Bulletin published by the Department of State confirmed

earlier reports that the third preference employment-based visa numbers for the Philippines, India and China will regress to January 1, 2002.

The practical effect of the retrogression is the delay that Filipino nurses and other skilled workers will experience in obtaining their visas in order to come to the US for employment.

Until recently, all employment-based visa categories have been "Current" for all countries as a result of the American Competitiveness in the 21st Century Act and changes in processing procedures.

The USCIS said that in its effort to reduce the backlogs by the end of Fiscal Year 2006, visa numbers have been allocated at a faster rate. As a result, visa allocation limits had to be imposed.