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## **Employment Visa Processing To Be Suspended as Visa Numbers Run Out**

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Bad news is coming in quick succession for Filipinos and other foreign workers who intend to enter the US via employment-based immigration.

Just when things couldn't possibly get worse for them, the Department of State announced in its July 2005 Visa Bulletin that visa numbers in the employment-based third preference (EB-3) and "other worker" categories will no longer be available for all countries for the rest of fiscal year 2005.

### PROCESSING STOPS JULY 1

This means the Department of State would have to suspend immigrant visa processing for these categories starting July 1.

Those who are eligible to file for adjustment of status should file their I-140 and I-485 application before that date in order to avail of the benefits of adjustment, including work authorization.

The backlog reduction efforts of the Immigration Service have triggered the depletion of the visa number allocation for 2005 so that even if the numbers will become available for the succeeding fiscal year, retrogression would likely be imposed.

The EB-3 category refers to skilled workers and professionals like teachers, accountants, engineers and computer programmers. The "other worker" category refers to general houseworkers, home attendants, adult companions, and other unskilled workers.

Although visa numbers will become available by the start of fiscal year 2006 in October, there is no assurance these would sufficiently meet the demand. The Department of State said it would be difficult to estimate possible cut-off dates for the processing of employment visa applications.

### EB-3 RETROGRESSION

Last January, the Department of State retrogressed to January 1, 2002 all immigrant visa applications under the employment-based third preference (EB-3) category for China, India and the Philippines. For thousands of Filipino professionals, including registered nurses (RNs) and physical therapists (PTs) who fell under EB-3, this meant a delay of about three years in the processing of their visa applications.

### "OTHER WORKER" RETROGRESSION

Last March, the Department of State retrogressed to July 1, 2001 the immigrant visa applications under the "other worker" category for all countries, including the Philippines. This cut-off date had been pushed further back this month to January 1, 1999 causing a potential six-year delay in the processing of these visa applications.

The visa numbers for this category had remained current as of February 2005.

Retrogression is extremely frustrating. Until recently, labor certification alone, which is generally the first step in employment-based immigration, took

some four to five years to complete. And just when beneficiaries began preparing their immigrant visa application or adjustment of status application on the basis of their I-140 and approved labor certifications, they find out that there are no visa numbers available.

#### SCHEDULE A JOBS

The only foreign workers who are spared the adverse effects of retrogression for now are the Schedule A occupations, which include RNs and PTs.

Schedule A workers, their spouses and children will benefit from the recapture of 50,000 unused immigrant visas provided under a rider to the Tsunami Relief Act signed last month by President George W. Bush.

The rider specifically allocated the additional 50,000 visas for RNs and PTs from all countries, including China, India and the Philippines. A Department of State spokesperson informed the American Immigration Lawyers Association that the additional 50,000 visas will help, possibly most of the Philippine visa applications.

The Department of State has coordinated with the National Visa Center in identifying Schedule A applicants. These applicants will first be eligible for a visa number under the traditional 3<sup>rd</sup> preference cut-off date. Then, they will also be eligible under the new additional 50,000 cut-off date, thus giving them two chances at becoming eligible each month.

It cannot be determined, however, if the additional 50,000 visas could cover the existing and anticipated demand for EB-3 visas.