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October 2015 Visa Bulletin Confusion FAQ's

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Submitted by Chief Editor on Oct 8th 2015

FAQ's Updated on 21 September 2015

ANSWER:

FAQ's Updated on 21 September 2015

FAQ 1. I am on the H-1B visa and my spouse on F-1. When my Priority date is eligible is it ok to apply for I-485 for me and my wife given she is on F1 or she has to be on H4 before we can apply for i485? If it is ok to apply with her F1 status, are there any possibilities that she can have issues in the future if she wants to get back to H-4 with a ending I-485?

Answer: The law does NOT require that the spouse be on a derivative visa (like H-4 or L-2, if you are on H-1 or L-1) to file AOS through you. BUT, F-1 presents some potential issues that should be discussed with the school.

FAQ 2. My sincere thanks for your service. I had one quick question. I am on consular processing currently outside USA. My priority date is July 2010. My application is with NVC (National Visa Center). Do I need to submit my paper work for EAD, will I be eligible EAD ?

Answer: You need to wait till NVC asks for papers, and no EAD, sorry.

FAQ 3. Do you anticipate any date movement of the new date for I-485 eligibility for EB2 India? Also, are there any chances that this date will also retrogress?

Answer: I think dates are likely to move in both directions: retrogression as well as advancement.

FAQ 4. I filed for my 1-485 concurrently before I got married, now as per the new set of dates. In the October visa bulletin, I am eligible for filing Employment based visa application. Can I add my wife (who is currently on H4) to my application, after 1st Oct,15? Or do I need to wait for a notification before doing so?

Answer: Ideally, wait till receipt. You have all of October to file AOS.

FAQ 5. I have been waiting last 6 yrs and recently I booked h1b stamping interview at Hyderabad thinking that dates won't move for next few years. My priority date is Jun 2010. If I start initiating process for EAD, AD, AP how long does it take? Not sure should I go for stamping or should i wait for few months.

Answer: Your first priority must be to file and maintain the AOS. I would suggest you file AOS and plan your trip only AFTER you get AP.

FAQ's Updated on 14 September 2015

FAQ 1. My PD is December 2010. Will file for I-485 next month. My wife is travelling to India on Sept 26. Is it OK to add her while she is travelling (technically she will be in India next month). If not, she will come back March 2016. Can I file for her later and file only mine next month?

Answer: She has to be in the USA when 485 is received by USCIS.

FAQ 2. From the USCIS point it seems that this bulletin was the last action item on Obama executive order for Empl based immigration, please let us know what do you think?

Answer: I think there should be more. An explanation of promotion not being fatal to an employment-based green card, etc.

FAQ 3. My priority date is April 2013. I left the previous employer and he revoked my approved I-140 . I got copy of approved I-140 and revocation letter from USCIS . When my current company will file I -140 , will I able to retain my old priority date ?

Answer: No. The current thinking of the USCIS is that you will lose your PD. I am sorry.

FAQ 4. My Priority date is Jan2011 (EB2) and it is current now and it is with company A. Now I have moved to company B and they are in the process of filing Perm. And my previous I-140 is not withdrawn by company A. So my question is can we apply for I-485 based on company A's I-140 approval without even involving company A and then after 180 days can we use AC21 and port to company B. At this point i cant leave job at Company B since it is Fulltime. Please advice.

Answer: You must not file I-485 without a genuine job offer from the I-140 sponsoring employer.

FAQ 5. My Priority date under EB2 is June 9, 2011 with my Old Employer and my I-140 was approved on March 7, 2012 and stayed with that company till Nov 2014 and in dec 2014 moved to a new company, Can I file for I-1485, EAD and AP on October 1, 2015 and my Old

Employer is ready to give offer letter and here I see you have mentioned to Mr. Pavan that you can only apply AOS, does it mean Adjustment of Status which Includes filing of I-1485 along with EAD and AP or only I485 ?

Answer: If you are entitled to file I-485, you are ALSO entitled to file AP and EAD.

FAQ 6. Perhaps a mute point - but promised myself I will have this clarified by you. My priority date is in May 2011 - but that PERM and I140 are from previous employer. Current employer hasn't filed PERM yet (it's a non-profit org and things move slow I guess). My spouse has her PERM and i140 (priority date in 2014) from her current employer.

1) Can I use my previous employers i140 to file i485?

2) Can my wife use my PD and file for i485?

Answer: 1. Only if you have a genuine job offer letter from previous employer.

2. No.

FAQ 7. Hi, my priority date is April'2011 in EB2 and based on recent employee based priority date for EAD, my date is become current. I am going to India on October 29th. I am planning to file 485 and then leave for vacation. Will that be a problem, kindly suggest.

Answer: Travel after filing I-485 is a problem only if you do not have a valid H-1 visa stamp.

FAQ 8. Can new employer re capture OLB priority date in case old employer revoked approved I 140 ?

Answer: A revoked I-140 takes away the PD.

FAQ 9. There is I-140 EAD petition blog(regardless of any categories) is going on through out many website. Is it going to get approved this year that all approved I-140 folks are eligible for EAD? Do you have any insight on this? may be this could be scam?

Answer: That was the original plan of Obama Admin: when you file 140 (or 140 is already approved), you can file 485 without waiting for PD. But that plan has not been implemented so far.

FAQ 10. What I understand from the news on the Visa Bulletin is that we (Indians) can only file for AOS under EB2 category if the PD is before 1st July 2011. But even if the PD is before 1st July 2011, the I-485 will ONLY be processed/approved until the Priority date becomes current (which is May 2005). Am I right?

Answer: A green card will be approved only if a visa number is available. EVERYTHING you see in the visa bulletin is an estimate.

FAQ'S as of September 10, 2015

FAQ 1. My husband has his priority date Dec 2012. As per the new changes in VB , which might have progressive dates every month, Any idea how long it might take to reach to Dec 2012 ?

Answer: I am not sure if this will be repeated every month and how will the movement continue.

FAQ 2. I have been waiting last 6 yrs and recently I booked H-1B stamping interview at Hyderabad thinking that dates wont move for next few years. My priority date is Jun 2010. If I start initiating process for EAD, AP how long does it take? I am sure should I go for stamping or should I wait for few months.

Answer: Your first priority must be to file and maintain the AOS. I would suggest you file AOS and plan your trip only AFTER you get AP.

FAQ 3. I have prior approved valid I-140 with previous employers with Sep-2010 as PD and my current employer has applied LC and waiting for approval. Can I apply for EAD with the previous employer I-140.

Answer: You can only apply for AOS if the old employer, in good faith, can provide you an offer of employment.

Green Card:

[Adjustment of Status](#) [2]

[Advance Parole](#) [3]

[EAD \(AOS\)](#) [4]

[Employment Based Green Cards](#) [5]

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Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [8] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [9]

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