

Q&As following Special Immigrant Juvenile Stakeholder Briefing –
Changes to the Visa Bulletins 4th Preference Category
March 29, 2023

End SIJ Backlogs Stakeholder Follow up Questions

Q1. For SIJS recipients with pending adjustment applications who have received an RFE for a medical exam but as of April 1 no longer have a current priority date, how should they respond to the RFE? As you know, it may take years for their cases to be adjudicated and it is likely that their medical exam will expire during the wait time. We would like to urge USCIS to issue clear guidance that for SIJS-based adjustment of status cases subject to retrogression as of April 1, they do not need to respond to the RFE with a medical exam and the case will not be denied based for failure to respond to the RFE. A new RFE should be issued when the case is closer to being adjudicated. It would be helpful for USCIS to provide guidance on this issue ASAP as a number of impacted SIJS recipients are coming up on RFE response deadlines.

A1. USCIS recognizes that an immigration medical examination may expire prior to a visa becoming current because more than 2 years have elapsed since the civil surgeon signed the Form I-693. Thus, USCIS has issued guidance to adjudicators that they should not deny for failure to respond to an RFE that solely requests a Form I-693 if the visa regressed after issuance of the RFE or during the period to respond to the RFE. USCIS will issue a new RFE for the Form I-693 when a visa becomes current.

Q2. For SIJ recipients whose priority dates retrogressed on April 1, what steps will USCIS take to ensure that they are promptly considered for deferred action? We would urge USCIS to issue a deferred action decision as soon as possible for these cases.

A2. USCIS is working to ensure all SIJ-classified noncitizens newly eligible for consideration of deferred action as a result of the visa retrogression receive a timely decision on deferred action soon.

Q3. We understand that the 7% per country cap was mistakenly applied to the EB-4 category. Was the same mistake also made in the other EB categories? Can you explain how the INA 202(e) on provision on pro-rating works? Many practitioners, including those in our coalition, would appreciate a better understanding of how DOS applies the 202(e) provision, and how it interacts with 202(a)(5)(a). During last week's meeting, Andrew Parker mentioned a webinar that had been created on this topic and it seemed there would be verification of whether this webinar was public/shareable. We would be grateful for any webinar or other public stakeholder information session DOS and USCIS might offer on this topic.

A3. The U.S. Department of State's (DOS) Visa Bulletin for April 2023 available at: <https://travel.state.gov/content/travel/en/legal/visa-lawo/visa-bulletin/2023/visa-bulletin-for-april-2023.html> contains information regarding statutory numbers for preference immigrant visas. DOS also published a federal register notice (FRN) on March 28, 2023, explaining certain changes to the Final Action Dates and Dates for Filing for the Employment-Based Fourth Preference Immigrant Visa Category. You can access the FRN here: <https://www.govinfo.gov/content/pkg/FR-2023-03-28/pdf/2023-06252.pdf>. Regarding the webinar, we consulted with CISOMB and neither agency recorded the webinar at the time, so

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unfortunately, we cannot share a recording. We appreciate this suggestion as a topic for a future engagement.

ADDITIONAL ANSWERS TO LIVE QUESTIONS ASKED DURING MEETING

Q1. Will SIJ-classified noncitizens impacted by the visa retrogression get deferred action consideration after April 1st since a visa is no longer available to them?

A1. USCIS has been and will continue to consider deferred action for all SIJ-classified noncitizens who became newly eligible for consideration as a result of the April Visa Bulletin retrogression. USCIS will also continue to consider deferred action for all those SIJs who become newly eligible in any future retrogressions.

Q2. You may not realize the harm to SIJ-classified noncitizens from the Northern Central American countries that not making this correction with the Visa Bulletin earlier has had. If this had been fixed before October 2022, they would not have to wait another year.

A2. We estimate that few additional applicants from the Northern Triangle Countries would have been eligible to apply in FY 2023 even if the correction had been made in October 2022, given the recent history of the Visa Bulletin and USCIS' pending EB-4 inventory. Specifically, USCIS already had a large inventory of adjustment of status applications at the beginning of the fiscal year for whom visas were unavailable (after a retrogression in March 2022). It is unlikely that the dates in the Visa Bulletin would have exceeded that previous high-water mark even if DOS had made the correction at that time for this reason.

Q3. Can you discuss impact on oversubscribed countries, India and Mexico?

A3. At the moment, applicants from India and Mexico are subject to the same Final Action Dates as applicants from all other countries. The available visas will generally be allocated in priority date order, which means that, with a few exceptions, the visas will for the moment generally be allocated to applicants from El Salvador, Guatemala, and Honduras.

Q4. Why did ROW retrogress so dramatically from 2022 to 2018?

A4. The Final Action Date for EB-4 in the April Visa Bulletin was based on the pending inventory at both agencies and the remaining visas for FY 2023 as well as processing estimates. The date retrogressed for ROW because applicants from El Salvador, Guatemala, and Honduras are included in ROW, and they have older priority dates.

Q5. Will there be fewer visas available to Northern Triangle due to this change?

A5. No, as discussed during the engagement this will increase the number of EB-4 visas allocated to applicants from El Salvador, Guatemala, and Honduras in both the short and long term.