

IMMIGRATION  
UPDATES  
FROM  
ROSE CARSON

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**DOS on EB-1 and EB-2 Visa Availability**

The U.S. Department of State ("DOS") has announced that the annual limit in the EB-2 category for China-mainland born and India has been reached. The State Department notified USCIS on April 11, 2012, that no further immigrant visas for those categories would be authorized. USCIS will continue to accept adjustment applications based upon cut-off dates published in the April and May Visa Bulletins. However, requests from USCIS service centers and field offices for visas in the EB-2 category chargeable to China-mainland born or India-born will be retained by DOS for authorization in FY2013, beginning on October 1, 2012.

Despite the earlier retrogression of the China and India Employment Second preference cut-off date to August 15, 2007, demand for numbers by applicants with priority dates earlier than that date remained excessive. Such demand is primarily based on cases which had originally been filed with the U.S. Citizenship and Immigration Services ("USCIS") for adjustment

of status in the Employment-Based Third preference category, and are now eligible to be upgraded to the Employment-Based Second Preference category.

The potential number of such "upgrade" demand is not known, but it was evident that the continued availability of Employment -Based Second Preference numbers for countries other than China and India was being jeopardized.

Therefore, it was necessary to make the China and India Employment-Based Second Preference category "Unavailable" in early April, and it will remain so for the remainder of FY-2012.

Immigrant visas will once again be available for China and India Employment-Based Second Preference cases beginning October 1, 2012 under the FY-2013 annual numerical limitations. Every effort will be made to return the China and India Employment Second preference cut-off date to the May 1, 2010 date which had been reached in

April 2012.

Readers should be advised that it is impossible to accurately estimate how long that may take, but current indications are that it would definitely not occur before spring 2013.

USCIS has indicated that it will continue accepting China and India Employment Second preference I-485 filings during May, based on the originally announced May cut-off date.

DOS has also stated that it may be necessary to establish a cut-off date at the end of the fiscal year for Employment-Based First Preference, and sometime during the next few months for Employment-Based Second Preference for all countries other than China and India.

Please be advised that these predictions are only estimates for what could happen during the next few months, based on applicant demand patterns experienced in recent months.

## H-1B and H-2B Quotas for Fiscal Year 2013

Employers will find the USCIS Handbook for Employers to be helpful for completing Form I-9. The handbook may be downloaded from <http://www.uscis.gov/files/form/m-274.pdf>. Please call the attorneys at Rose Carson if you have any questions.

*“Immigrant visas will once again be available for China and India Employment-Based Second Preference cases beginning October 1, 2012.”*



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As of May 18, 2012, approximately 42,000 H-1B cap-subject petitions were received for processing at the U.S. Citizenship & Immigration Services (“USCIS”) for the 2013 Fiscal Year beginning October 1, 2012. USCIS has received 16,000 H-1B petitions for aliens with advanced U.S. degrees.

H-1B cap subject petitions are limited to a maximum of 65,000 per fiscal year, with an additional 20,000 for aliens with advanced U.S. degrees.

In addition, as of May 18, 2012, USCIS received 25,722 petitions toward the 33,000 H-2B cap amount for the second half of the fiscal year. This count includes 23,548 approved and 2,174 pending petitions. H-2B cap

count information for the first half of FY2012 also is available.

For more information, please refer to the USCIS website at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4b7cdd1d5fd37210VgnVCM100000082ca60aRCRD&vgnnextchannel=3566811264a3210VgnVCM100000b92ca60aRCRD>.

## DHS Offers Free Web Seminars on E-Verify and Form I-9

Do you have questions about completing or updating Form I-9 (Employment Eligibility Verification Form)? Do you want to know more about E-Verify and how it can benefit you? Are you an existing user of E-Verify? The U.S. Department of Homeland Security (“DHS”) offers free, live webinars about these topics and many others from DHS subject matter experts.

Check out the many course offerings and upcoming schedule at: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=413628ac1dc0c210VgnVCM100000082ca60aRCRD&vgnnextchannel=413628ac1dc0c210VgnVCM10000082ca60aRCRD>.

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## PERM Labor Certification Statistics

The U.S. Department of Labor (“DOL”) has posted a PERM Fact Sheet with statistics for PERM Labor Certification case processing as of March 2012. Since the start of Fiscal Year 2012 on October 1, 2011, DOL reports a total of 28,750 PERM applications filed by U.S. employers, with a total of 20,980 applications processed to completion by DOL. Of the PERM applications which have been processed by DOL, 15,720 (54.67 %) have been certified, 3,980 (13.84 %) have been denied, and 1,280 (4.45 %) have been withdrawn. DOL confirmed an increase in the number of PERM applications being audited and/or placed in supervised recruitment. As of March 2012, DOL reported that approximately 30% of PERM applications were being audited. However, members of the American Immigration Lawyers Association are currently reporting that 80-95 % of PERM applications are being audited. DOL is taking approximately eight months to process audited PERM applications to completion and fourteen months to process requests for reconsideration.



*“USCIS has cited the AACRAO EDGE as its primary reference source for evaluating foreign education.”*

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## Is EB-2 an Option under the AACRAO EDGE Database?

The U.S. Citizenship & Immigration Services (“USCIS”) has recently denied a substantial number of I-140 Immigrant Visa Petitions in the Employment-Based Second Preference category. USCIS has cited the AACRAO (American Association of Collegiate Registrars and Admissions Officers) EDGE (Electronic Database for Global Education) as its primary reference source for evaluating foreign education.

If a beneficiary of an I-140 Immigrant Visa Petition lacks a Master’s degree equivalency or a Bachelor’s degree equivalency to a degree awarded by an accredited institution of

higher education in the United States under the AACRAO EDGE, the I-140 Petition is likely to be denied for the beneficiary’s lack of qualification. The issue often arises in the context of a foreign national who possesses a bachelor’s degree awarded after completion of a three year academic program rather than a four year program, which is the norm in the United States.

With the potentially seven to twelve year long wait for an immigrant visa in the Employment-Based Third Preference category for natives of India and China, potential immigrants are seeking ways to qualify for EB-2, including attending master’s degree programs

part-time while working full-time in order to immigrate more quickly.

Individuals who may not meet the standard for EB-2 classification under AACRAO EDGE should seek the counsel of a qualified immigration attorney in order to coordinate on a strategy to immigrate sooner after considering all of the available legal options.



## Employment of Foreign Nationals Course at UCSC Extension

The University of California, Santa Cruz Silicon Valley Extension Program is offering a course taught by Rose Carson LLP Partner Ron Rose on "Employment of Foreign Nationals: Employer Immigration Processing".

This course may be eligible for HRCI -- PHR, SPHR and GPHR general recertification credit.

The hands-on course is scheduled for August 11, 2012 at the Santa Clara UCSC Extension campus. The curriculum is for corporate HR or legal professionals who handle visa processing and/or immigration-related legal-compliance issues and for immigration coordinators who manage the services provided by outside immigration counsel.

Topics Include: 1) Nonimmigrant work-visa

processing, including H-1B, L-1, TN, O, J-1 and F-1 practical training; 2) Immigrant visa processing, including labor certifications, petitions, adjustment of status, outstanding researchers; 3) Maintaining immigration-compliance files and conducting self-audits of I-9 records, LCA private and public inspection files; 4) Integrating immigration processing with the recruitment, relocation, tax and payroll departments of your company and post 9/11/01 INS reporting requirements; 5) Systems for real-time queries, searches and audit capabilities to ensure on-going immigration compliance and metrics to measure time and cost of processing immigration applications; 6) Review of comparative costs of various immigration processing models, using in-house personnel and/or outside counsel services; and, 7)

Explanation of how corporations can reduce annual costs of immigration processing by utilizing technology and/or emerging business practices.

Register online at:

<http://course.ucsc-extension.edu/modules/shop/index.html?action=section&OfferingID=1531691&SectionID=5271284>

### Members of Firm:

Ronald R. Rose, Esq.  
Helga M. Carson, Esq.  
Sherman Kaplan, Esq.  
Carolyn Choi, Esq.  
Dina J. White, Esq.  
Karen Y. Chow-Gregory, Esq.

Northern California Office:  
ROSE CARSON KAPLAN  
CHOI & WHITE LLP  
445 Sherman Avenue, Suite T  
Palo Alto, CA 94306  
Tel: 650-617-8888

Southern California Office:  
ROSE CARSON KAPLAN  
CHOI & WHITE LLP  
4299 MacArthur Blvd., Suite  
202  
Newport Beach, CA 92660  
Tel: 949-475-4330  
Fax: 949-475-2945

[www.rosecarson.com](http://www.rosecarson.com)



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Rose Carson Kaplan Choi & White LLP is a full service Corporate Immigration Law Firm dedicated to the practice of business immigration law. With extensive experience with corporate compliance and strategic planning, we offer legal counseling and services to both corporations and individuals.

With over 130 years of combined experience, Rose Carson Kaplan Choi & White LLP offers comprehensive immigration services and strategic counseling, primarily to high technology companies and entertainment clients, including Fortune 500 companies, technology start-ups, and world-renowned entertainers and artists. We also have extensive government agency practice with the legacy Immigration and Naturalization Service, United States Department of Labor, United States Department of State, State Workforce Agencies, and United States Consulates and Embassies worldwide. Our practice areas also include biotechnology, healthcare, financial services, creative design services, and education.

We work closely with the human resources, legal, and recruiting staff of our client companies to ensure that both the employer and the employee receive the best possible immigration representation. We also utilize state-of-the-art immigration compliance and processing technologies in order to provide our clients with the highest level of service.

Rose Carson Kaplan Choi & White LLP is dedicated to providing personalized attention, expert assistance, and rapid response to our clients.