



## Breaking News

December 5, 2013

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### Hopes of Immigration Reform Likely Dead for 2013

Speaker of the House John Boehner recently signalled that comprehensive immigration reform is dead for 2013. He confirmed that the House will not vote on the bill passed by the Senate a few months ago: "I'll make clear we have no intention ever of going to conference on the Senate bill." This appears to be an about-face from Boehner, who heralded the need for comprehensive immigration reform shortly after Republicans lost the 2012 presidential election and Latino voters overwhelmingly supported the Democratic ticket. Now, with the end of the House term just days away, it appears virtually impossible to pass any form of comprehensive immigration reform this year.

Sharp divisions within the party have led him to take a more tempered approach to immigration. He now rejects the idea of a comprehensive bill and insists that any legislation must be done piecemeal: "I want us to deal with this issue but I want to deal with it in a common sense step-by-step way." Many more conservative House members oppose any immigration bill that provides a path to citizenship or even legal status for the estimated 11 million undocumented workers in the U.S. This is seen as the fundamental sticking point between the two sides and

#### About Us

Ware|Gasparian has expertise in all areas of immigration law ranging from business and education to asylum and deportation. We provide comprehensive immigration-related services to clients around the world, representing corporations, educational institutions, businesses, and individual clients.

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has proven a significant hurdle to passing meaningful reform in the House.

Critics have accused House conservatives of focusing on problems with the implementation of Obamacare (the Affordable Care Act) as a means of distracting people from immigration reform. Boehner insists instead that immigration reform is too complicated to be rushed. One thing that is clear is that Boehner has no intention of pushing comprehensive immigration reform in the near future.

## **Possible Solution to Long EB Waiting List for China: Downgrade Your Case from EB2 to EB3!**

The December 2013 Visa Bulletin confirms a strange trend we have witnessed recently in some employment-based categories: it may be better to be EB3 than EB2. For nationals of China, those with EB2 priority dates have a cutoff date of November 8, 2008, while those with EB3 priority dates have a cutoff date of October 1, 2011, nearly three years later. This raises a strange question: Should you downgrade your EB2 case to EB3?

One possible solution is to file a second I-140 visa petition in the third preference category using the prior EB2 labor certification. Almost all labor certification-based EB2 cases qualify to also file under EB3, with no change to the prior labor certification. As applicants can maintain their old EB2 priority date with a new petition, they can also possibly concurrently file an I-485 application to adjust status, if their old priority date is "current" under the EB3. Dependents can file applications for adjustment of status at the same time and each family member can also thereby obtain a work card and permission to travel outside the US without a visa (advance parole).

It is important to discuss this strategy with a qualified immigration attorney as there are potential downsides, including the possibility of EB3 retrogression beyond the cutoff date of the EB2. Current Department of State predictions do not indicate a likely EB3 retrogression in the near future, however. Those who are able to file an EB3 I-140 and application to adjust status during December may remain "current" long enough for USCIS to adjudicate their applications for permanent residence (three to six months). Premium processing the I-140

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petition is not an option, since USCIS does not permit Premium Processing in cases where a copy of the original labor certification is NOT filed with the petition.

Filing the third preference petition does not conflict in any way with the second preference petition, and does not void or nullify it. Moreover, even if the EB3 retrogresses, the application for adjustment of status (I-485) can easily be paired with the petition having the better cutoff date, despite having already been filed.

## **New Guidance on Parole in Place for Military Family Members**

USCIS issued a memorandum on November 15, 2013, formalizing guidance for "parole-in-place" applications for the spouses, minor children, and parents of US citizens serving in the military, as well as those of veterans. The memo compiles guidance from several sources on the benefit and describes the background of parole in place as a longstanding but rarely used benefit for service members.

"Parole in place" is a discretionary benefit that allows some who enter the U.S. without inspection to be "admitted" after the fact and therefore become eligible for adjustment of status as the spouse, parent, or child of a U.S. citizen. Generally people who enter the U.S. without inspection are required to apply for an immigrant visa at a U.S. Consulate, and in many cases request burdensome waivers for unlawful presence if they have been in the U.S. for more than a brief period. The process is a great cause of stress and anxiety for families in part because it involves long periods of separation. Parole in Place is one way of providing stability for military members who would otherwise be preoccupied with the instability of their family members' immigration status or safety in another country.

The memorandum notes that the decision whether to grant parole in place is discretionary. Generally, the benefit is granted sparingly, but USCIS is now required to weigh heavily in favor of a grant a person's current or previous service as an active duty member of the U.S. Armed Forces or in the Selected Reserve of the Ready Reserve. Also, the fact that an applicant for parole in place is a spouse, child or parent of a US citizen service member or veteran should weigh heavily in favor of parole in place.

"Absent a criminal conviction or other serious adverse factors, parole in place would generally be an appropriate exercise of discretion for such an individual. If USCIS decides to grant parole in that situation, the parole should be authorized in one-year increments, with re-parole as appropriate."

This memo provides important clarifications to procedure in applying for this benefit and also makes it clear that the definition of service member or veteran should be read broadly. Service members' and veterans' relatives who may be affected by this memo should contact a qualified immigration attorney for advice before applying.

## **USCIS Promises Faster I-130 Processing**

In a recent announcement, USCIS acknowledged the recent trend of extended processing times for I-130 visa petition for spouses and children of US citizens. This can lead to long periods of separation between family members who have to wait outside the U.S. for the I-130 to be adjudicated before their immigrant visa can be issued abroad.

According to USCIS, in the interest of preserving family unity, the agency has taken steps to speed up processing of I-130s, including the transfer of many stand-alone petitions to its Nebraska, Texas, and California Service Centers. USCIS is currently processing I-130s filed as early as February 2013, which is an improvement from the previously posted October 2012 processing time. USCIS has set a goal for standard processing to be within five months by May 2014.

If your case was transferred, USCIS will send you a notice listing the transfer date and where your case will be processed. Your original receipt number will not change and this will not further delay the processing of your case. USCIS will take action on your case within 60 days of the transfer date listed in your notice.

If you have filed a Form I-130 and you receive a request for evidence or any other type of communication from USCIS, please read the notice carefully to ensure that you respond to the same service center that sent you the notice.

As always, if you move while your case is pending, you can change your address at [uscis.gov](http://uscis.gov) or contact the NCSC so that USCIS can notify you of any further action on your case. It is important that you notify USCIS of any change of address as soon as possible after moving.

## Attorney Speaking Engagements

Ware|Gasparian attorneys frequently present at regional and national conferences. They also have speaking engagements at various universities and corporations across the nations.

If you are interested in attending one of the presentations or inviting an attorney to speak at your business, please contact [ymata@david-ware.com](mailto:ymata@david-ware.com) to discuss possibilities.

[Here](#) are some of the upcoming engagements.

## Ware | Gasparian Has a New Website

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