

## **December 2010 priority dates**

Written by MICHAEL J. GURFINKEL, ESQ.

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### **IMMIGRATION CORNER**



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In recent months, it was unbelievable and almost “miraculous” how the priority dates in some family based categories moved forward by several years.

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In fact, the priority date in the F-2B category was practically moving forward 1 year per month!

Thousands of people who were patiently waiting their turn in line for their immigrant visas suddenly found that their priority date was “current.”

It seemed these developments were too good to be true.

Well, after massive forward movement, many of the priority dates will now be retrogressing (or moving backwards) in December 2010.

For example, the F-2B category (single adult child of green card parent) will retrogress from September 1, 2002 to March 1, 2000, meaning that it will go backwards by almost 2 1/2 years. The F-3 priority date (married children of U.S. citizens) will retrogress from March 1, 1995 to July 1, 1992. And the F-4 category (brother/sister of U.S. citizen) will retrogress from April 1, 1991 to January 1, 1988.

What this means is that if your priority date was “current” in November 2010, but will retrogress in December 2010, you would not be eligible for a visa or for adjustment of status until your priority date again becomes current.

With the upcoming priority date retrogression, here are some tips and advice:

1. If you are eligible for adjustment of status in November 2010, make sure to get it filed before the December retrogression. This is because once you filed for adjustment of status (when your priority date is still current), you are basically “in the door.” While you would not be eligible for a green card until your priority date again becomes current, at least you will be getting work authorization, and would be able to renew that work authorization each year until the priority date again becomes current.

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2. If you have a child who may “age out” (turn 21), but may be eligible for age-out benefits under the Child Status Protection Act (CSPA), it is important that the child “seek to acquire” his or her visa within one year of availability. This is done by filing the child’s adjustment of status (Form I-485), Form I-824, or DS-230. It is important that this be done before retrogression, so that the child’s age would be “locked in” at being under 21. The reason is that according to USCIS memos, if the child’s adjustment is not filed while the priority date is current, and then the priority date later retrogresses, you would have to calculate the child’s age when the priority date again becomes current. If the child is still considered under 21 at the present time (based on CSPA’s mathematical calculation), the child may not be considered under 21 the next time the priority date becomes current.

With retrogression, it becomes all the more complicated for people to protect themselves and their children’s eligibility for visas or green cards. That is why it is important that you seek the advice of a reputable attorney, who can properly guide you — before priority date retrogression.