

HYPOTHETICALS ON ADJUSTMENT, RETROGRESSION AND RETENTION OF PRIORITY DATES

Question 1

An applicant, who was born in India, filed an I-485 prior to August 17, 2007 based on a previously approved I-140 under EB-3. The priority date on the EB-3 was 3.31.04. A new labor certification, filed on 3.31.07, just got approved, and the job requires a MS degree. Can this individual file a new I-140 under EB-2 on October 1, 2007 and connect with the previously filed I-485?

Question 2

Suppose in the above fact pattern, both the EB-3 I-140 and I-485 were filed concurrently before August 17, 2007 and the I-140 is still pending. Can the applicant interfile the EB-2 I-140 on October 1 with the pending I-485?

Question 3

An applicant, who was born in India, prior to August 17, 2007, filed an EB-3 I-140 and I-485, and his wife, who was also born in India, filed her own EB-2 I-140 and I-485. Both spouses also filed as derivatives on each other's I-140. Were they permitted to "double" file in this way? What if wife's EB-2 moves faster and becomes current? Does husband need to withdraw his I-485 based on the EB-3 I-140 and ride as a derivative to wife's I-140?

Question 4

An applicant, who was born in India, prior to August 17, 2007, filed an I-485 based on a previously approved I-140 under EB-3. His wife, also India born, filed the I-485 as a derivative. Wife plans to file EB-1 I-140 shortly. Can wife interfile this new I-140 to previously filed I-485? If this is not possible, can wife file her own new I-485 if she has ceased to maintain underlying H-1B status after filing the initial I-485? If wife ineligible to file new I-485, does she have any options for processing her EB-1 I-140, if approved, up to permanent residency?

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