

**US House of Representatives
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security,
and International Law**

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**April 30, 2008
2:00 p.m.
2141 Rayburn House Office Building**

Chairman Lofgren, Ranking Member King and distinguished members of the Committee, it is a pleasure to be here this afternoon to provide an overview of the Department’s role in managing and issuing immigrant visas whose numbers are limited by law. Let me first give you a broad view of visa processing and steps that the Department has undertaken, and then I will focus on the specifics of the number allocation process for immigrant visas that is managed through our Immigrant Visa Control and Reporting Division.

The Bureau of Consular Affairs has made dramatic improvements to the visa process since 9/11 and continuously evaluates the process to identify new ways to enhance security and increase efficiency. We have mandated the use of an electronic visa application form (EVAF) and transitioned to full electronic connectivity with partner security clearance agencies. These enhancements have allowed us to improve service and security despite dramatic annual increases in the volume of visa applications. We have fully transitioned from two to ten fingerprints to ensure consistent screening of foreign nationals entering the United States.

Our transition to electronic processing also involves more effective use of “backroom” domestic operations at the National Visa Center where we manage cases, collect documents and fees from sponsors, perform initial fraud checks, and schedule appointments for a growing number of posts. These strategies

give consular officers overseas the ability to focus specifically on the task of visa adjudication that must be done abroad and permit them to make better decisions with the best possible information developed for them in advance so that interviews can be focused and targeted.

Now let me discuss immigrant visa processing more specifically. The State Department is responsible for the allocation of numerically limited immigrant visa numbers under the authority granted by section 203 of the Immigration and Nationality Act (INA). These visa numbers are allocated based on congressionally mandated preferences that assign an overall total, limits for each category and per country limits within each category.

The Immigrant Visa Control and Reporting Division's main responsibility is the administration of the complex series of annual numerical limitations on immigrant visas, subdivided by preference category and country, which are set by the INA. Where demand exists, our goal is to have the issuance level come as close as possible to 100% of the numbers available each year without exceeding the limits that Congress has established. We also want to maintain a steady flow of applications throughout the year to ensure appropriate use of government resources and to provide good customer service to applicants. Over the past three years, we have a proven record of using over 95 percent of the annual worldwide numerical limit.

The Department works closely with United States Citizenship and Immigration Service (USCIS) on data exchange to allow for maximum use of numbers under the annual limits, and in a stable, predictable manner. This is extremely important in the Employment based categories, where USCIS currently uses approximately 90 percent of all available visa numbers. Section 203(g) of the INA directs the Secretary of State to make reasonable estimates of anticipated number use in order to maximize number use under annual limits. When making such estimates it is necessary to take into consideration a number of variables based on the best information which is available when those estimates are being made. Should there be a change which could not be anticipated it can have an impact on number use. This makes the determination of the monthly cut-off date particularly difficult at the end of the fiscal year since there is little if any time to make any necessary adjustments. While we will always strive to reach our 100% goal of the numbers allocated, increasing our percentage above 95 percent is difficult given that we are statutorily barred from exceeding the annual limits.

On any given day, immigrant visas are issued at about 130 embassies and consulates overseas. Adjustments of status (which use the same numbers) are granted at about 90 - 100 domestic USCIS offices. The State Department tracks visa number usage and requests from our consular sections around the world and USCIS. On a monthly basis the Visa Office determines the number of visas which can be allocated in each visa category and to each country on a worldwide basis. The process developed for managing the numbers throughout the year requires that numbers are made available by adjusting the cutoff date for each category and each country on a monthly basis. Cutoff dates for all countries except China, India, Mexico and the Philippines are currently the same every month in every category. Because demand for numbers exceeds annual per-country numerical limits for these four countries, they have their own cutoff dates in some categories.

The monthly visa bulletin published by the Department and available on our website at www.Travel.State.Gov explains the allocation of visa numbers by dates, the laws and the per country and per category limits.

As I stated previously, our goal is to come as close as possible to the annual limit without exceeding it. The Immigrant Visa Control and Reporting Division maintains a database containing workload statistics for immigrant visas issued at Foreign Service posts worldwide, and adjustment of status cases at USCIS. We authorize numbers for USCIS applications as USCIS request them, usually on a daily basis.

I want to address a recent issue that highlights our ability to manage numbers and make quick adjustments that work to ensure the highest number usage possible for the year. Since the publication of the April 2008 Visa Bulletin we have received several inquiries about the allocation of Employment-Based Second Preference visa numbers to India and China. I want to make clear that India is not receiving all of the extra numbers. They are also available to China where the applicant's priority date was earlier than the posted cut-off date and are also available to applicants in any other country with a current priority date and for which the interview is completed and all required clearances received. These numbers are being made available because current indications are that demand from "all other countries" will not be sufficient to utilize all available Employment Second preference numbers. Such numbers will be made available, as visa numbers are always provided, in priority date order (the date petition to accord immigrant status was filed with USCIS). India does have a larger number of

older petitions pending and therefore is likely to receive a larger number of these visa numbers than China. The Department's policy of making the extra numbers available in priority date order is mandated by Section 203(e) of the INA. This allocation of numbers based on priority date means that China and India Second preference applicants will be subject to exactly the same cut-off date.

I also want to take this opportunity to review the procedures that the Department undertakes throughout the year, in light of last summer's extraordinary events connected with the issuance of the Visa Bulletin in July. The situation last summer did not disadvantage any applicants but when we discussed the subject of visa allocation last summer, I committed to you that we would make every effort to avoid a repeat of the confusion applicants experienced in July. Working closely with our USCIS partners we have improved our ability to monitor usage to avoid further problems. Our goal is to ensure that immigrants are processed in a transparent and orderly manner.

I ask that a fact sheet which I hope explains more thoroughly the work carried out in the Immigrant Visa Control and Reporting Division by its very fine staff and the May Visa Bulletin be included in the record. The Visa Bulletin is intended to provide information regarding visa availability during that specific month for applicants who have already applied for procession with the Department of State or USCIS. It is not intended to govern the filing of petitions for future processing by the Department or USCIS, nor does it guarantee the availability of visa numbers to those filing based on the newly announced cut-off date. Again, I thank you for the opportunity to testify and I am happy to take your questions.

VISA NUMBER AVAILABILITY FACT SHEET.

The Department of State is responsible for administering the provisions of the Immigration and Nationality Act (INA) relating to the numerical limitations on immigrant visa issuances. It is a process that has evolved through the years and will continue to do so as we use the best technologies to improve communication with posts, applicants and our colleagues at USCIS.

At the beginning of each month, the Visa Office (VO) receives a report from each consular post listing totals of documentarily qualified immigrant visa applicants in categories subject to numerical limitation. Cases are grouped in three different categories: 1) foreign state chargeability, 2) preference and 3) priority date.

Foreign state chargeability for visa purposes refers to the fact that an immigrant is chargeable to the numerical limitation for the foreign state or dependent area in which the immigrant's place of birth is located. Exceptions are provided for a child (unmarried and under 21 years of age) or spouse accompanying or following to join a principal to prevent the separation of family members or in a foreign state of which neither parent was a native or resident. Alternate chargeability is desirable when the visa cut-off date for the foreign state of a parent or spouse is more advantageous than that of the applicant's foreign state.

Preference is the visa category that can be assigned as established by the Immigration and Nationality Act based on relationships to U.S. citizens or legal permanent residents. Family based immigration falls under two basic categories: unlimited and limited. Preferences established by law for the limited category are:

Family First Preference (F1):

Unmarried sons and daughters of U.S. citizens and their minor children, if any.

Family Second Preference (F2): Spouses, minor children and unmarried sons and daughters of lawful permanent residents.

Family Third Preference (F3): Married sons and daughters of U.S. citizens and their spouses and minor children.

Family Fourth Preference (F4): Brothers and sisters of United States citizens and their spouses and minor children provided the U.S. citizen is at least 21 years of age.

Employment-based immigration also includes preferences; all of them are subject to a limitation.

The Priority Date is normally the date on which the petition to accord the applicant immigrant status was filed, normally with U.S. Citizenship and Immigration Service.

The Department of State Visa Office subdivides the annual preference and foreign state limitations specified by the INA into monthly allotments. The totals of documentarily qualified applicants which have been reported to VO are compared each month with the numbers available for the next regular allotment. The determination of how many numbers are available requires consideration of several of variables, including: past number use; estimates of future number use and return rates; and estimates of Citizenship and Immigration Service demand based on cut-off date movements. Once this is done, the cut-off dates are established and numbers are allocated to reported applicants in order of their priority dates, the oldest dates first.

If there are sufficient numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered "Current". For example: If the monthly allocation target is 10,000 and we only have 5,000 applicants the category can be "Current".

Whenever the total of documentarily qualified applicants in a category exceeds the supply of numbers available for allotment for the particular month, the category is considered to be "oversubscribed" and a visa availability cut-off date is established. The cut-off date is the priority date of the first documentarily qualified applicant who could not be accommodated for a visa number. For example, if the monthly target is 10,000 and we have 25,000 applicants, then the goal would be to establish a cut-off date so that only 10,000 numbers would be allocated. In this case, the cut-off in the ideal world would be the priority date of the 10,001st applicant.

Only persons with a priority date earlier than a cut-off date are entitled to allotment of a visa number. Possible cut-off dates are the 1st, 8th, 15th, and

22nd of any given month, since the Visa Office groups demand for numbers under these dates. (Priority dates of the first through seventh of a month are grouped under the 1st, the eighth through the fourteenth under the 8th, etc.)

The Visa Office attempts to establish the cut-off dates for the following month on or about the 8th of each month. The dates are immediately transmitted to consular posts abroad and the U.S. Citizenship and Immigration Services (USCIS), and also published in the Visa Bulletin and online at the Bureau of Consular Affairs Web site (www.travel.state.gov). Visa allotments for use during that month are transmitted to consular posts. USCIS requests visa allotments for adjustment of status cases only when all other case processing has been completed.

BACKGROUND INFORMATION ON THE SYSTEM AND CLARIFICATION OF SOME FREQUENTLY MISUNDERSTOOD POINTS:

Applicants entitled to immigrant status become “documentarily qualified” to apply for an immigrant visa (meaning they have all their documents necessary for a visa interview and, if approved, for issuance) at their own initiative and convenience. By no means has every applicant with a priority date earlier than a prevailing cut-off date been processed for final visa action. On the contrary, visa allotments are made only on the basis of the total applicants reported documentarily qualified each month. Demand for visa numbers can fluctuate from one month to another, with the inevitable impact on cut-off dates.

If an applicant is reported documentarily qualified but allocation of a visa number is not possible because of a visa availability cut-off date, the demand is recorded at the Visa Office and an allocation is made as soon as the applicable cut-off date advances beyond the applicant's priority date. There is no need for such applicant to be reported a second time.

Visa numbers are always allotted for all documentarily qualified applicants with a priority date before the relevant cut-off date, as long as the case had been reported to the Visa Office in time to be included in the monthly calculation of visa availability. Failure of visa number receipt by the overseas processing office could mean that the request was not dispatched in time to reach the Visa Office for the monthly allocation cycle, or that information on the request was incomplete or inaccurate (e.g., incorrect priority date).

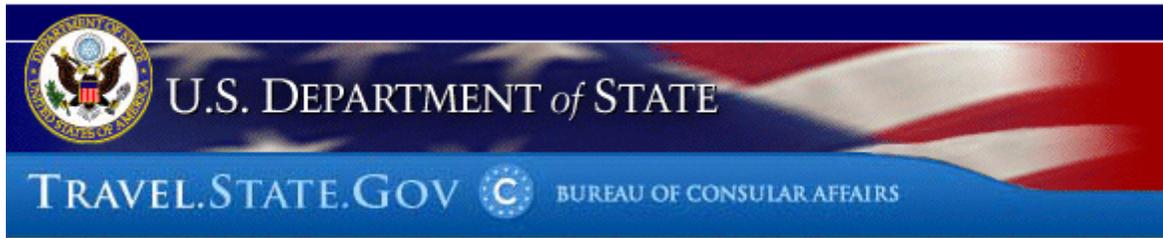
Allocations to Foreign Service posts outside the regular monthly cycle are possible in emergency or exceptional cases, but only at the request of the office processing the case. Note that should retrogression of a cut-off date be announced, the Visa Office can honor extraordinary requests for additional numbers only if the applicant's priority date is earlier than the retrogressed cut-off date.

Not all numbers allocated are actually used for visa issuance; some are returned to VO and are reincorporated into the pool of numbers available for later allocation during the fiscal year. The rate of return of unused numbers may fluctuate from month to month, just as demand may fluctuate. Lower

returns mean fewer numbers available for subsequent reallocation. Fluctuations can cause cut-off date movement to slow, stop, or even regress. Retrogression is particularly possible near the end of the fiscal year as visa issuance approaches the annual limitations.

Per-country limit: The annual per-country limitation of 7% is a cap, which visa issuances to any single country may not exceed. Applicants compete for visas primarily on a worldwide basis. The country limitation serves to avoid monopolization of virtually all the annual limitation by applicants from only a few countries. This limitation is not a quota to which any particular country is entitled, however. A portion of the numbers provided to the Family Second preference category is exempt from this per-country cap. The American Competitiveness in the Twenty-First Century Act (AC21) removed the per-country limit in any calendar quarter in which overall applicant demand for Employment-based visa numbers is less than the total of such numbers available.

Applicability of Section 202(e): When visa demand by documentarily qualified applicants from a particular country exceeds the amount of numbers available under the annual numerical limitation, that country is considered to be oversubscribed. Oversubscription may require the establishment of a cut-off date which is earlier than that which applies to a particular visa category on a worldwide basis. The prorating of numbers for an oversubscribed country follows the same percentages specified for the division of the worldwide annual limitation among the preferences. (Note that visa availability cut-off dates for oversubscribed areas may not be later than worldwide cut-off dates, if any, for the respective preferences.)



Visa Bulletin

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VISA BULLETIN FOR MAY 2008

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **May**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by April **8th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent

Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers

are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Fam-ily	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPP-INES
1st	08MAR02	08MAR02	08MAR02	08JUL92	15MAR93
2A	08JUN03	08JUN03	08JUN03	01MAY02	08JUN03
2B	01JUN99	01JUN99	01JUN99	01APR92	15FEB97
3rd	08JUN00	08JUN00	08JUN00	22JUL92	01APR91
4th	08AUG97	15JAN97	01JAN97	15DEC94	08MAR86

***NOTE:** For May, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01MAY02. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01MAY02 and earlier than 08JUN03. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIP-PINES
Employ-ment -Based					
1st	C	C	C	C	C

2nd	C	01JAN04	01JAN04	C	C
3rd	01MAR06	22MAR03	01NOV01	01JUL02	01MAR06
Other Workers	01JAN03	01JAN03	01JAN03	01JAN03	01JAN03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2008 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **May**, immigrant numbers in the DV category are available to qualified DV-2008 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	26,700	Except: Egypt: 20,500 Ethiopia: 16,000 Nigeria: 11,600
ASIA	10,500	
EUROPE	23,500	
NORTH AMERICA (BAHAMAS)	12	

OCEANIA	1,400	
SOUTH AMERICA, and the CARIBBEAN	1,550	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2008 program ends as of September 30, 2008. DV visas may not be issued to DV-2008 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2008 principals are only entitled to derivative DV status until September 30, 2008. DV visa availability through the very end of FY-2008 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN JUNE

For **June**, immigrant numbers in the DV category are available to qualified DV-2008 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	32,000	Except: Egypt: 22,000 Ethiopia: 17,750

		Nigeria: 13,000
ASIA	11,900	
EUROPE	26,000	
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,500	
SOUTH AMERICA, and the CARIBBEAN	1,700	

D. MEXICO F2A VISA AVAILABILITY DURING THE COMING MONTHS

Continued heavy demand in the Mexico F2A category may require the retrogression of this cut-off date to hold number use within the annual numerical limit. Such action could occur as early as June.

E. EMPLOYMENT VISA AVAILABILITY

Many of the Employment cut-off dates have continued to advance more rapidly than might ordinarily be expected. This is a result of consultations with U.S. Citizenship and Immigration Services (USCIS) regarding their pending demand, which is currently using approximately 90% of all Employment numbers. USCIS has indicated that they would prefer to review a substantial number of cases at this time to ensure that number use in the various categories can be maximized. Should USCIS projections of the resulting number use prove to be incorrect it may be necessary to adjust the cut-off dates during the final quarter of FY-2008.

F. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

<http://travel.state.gov>

From the home page, select the VISA section which contains the Visa Bulletin.

To be **placed on** the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

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Subscribe Visa-Bulletin *First name/Last name*
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and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)

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