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Hearing on Comprehensive Immigration Reform: Government Perspectives on Immigration Statistics

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Chairman Lofgren, Ranking Member King, and distinguished members of the Committee, it is a pleasure to be here this afternoon to answer your questions and provide an overview of our immigrant visa control and reporting program operated by the U.S. Department of State.

The Department of State is responsible for administering the provisions of the Immigration and Nationality Act (INA) related to the numerical limitations on immigrant visa issuances.

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, as well as for an applicant born in the United States 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.

As established by the Immigration and Nationality Act, preference is the visa category that can be assigned 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 U.S. citizens and their spouses and minor children provided the U.S. citizen is at least 21 years of age.

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

VO 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 variables, including: past number use; estimates of future number use and return rates; and estimates of USCIS demand based on cut-off date movements. Once this consideration is completed, 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 we would need to establish a cut-off date so that only 10,000 numbers would be allocated. In this case, the cut-off 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. The cut-off dates are the 1st, 8th, 15th, and 22nd of a month, since VO 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 14th under the 8th, etc.)

VO 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 USCIS, and also published in the Visa Bulletin and online at the website 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. I am submitting the latest Visa Bulletin for the record or you can click on: Visa Bulletin for June 2007.

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

Applicants entitled to immigrant status become documentarily qualified 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" (or, theoretically ready for interview) 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 VO 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 VO 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 VO 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, VO 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 retrogress. 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 percent 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.)

The committee submitted several questions that fell outside of VO's area of work, therefore, I have provided in my written testimony today the answers only to those questions that the Department of State can answer. Thank you for this opportunity.