



# BACKGROUND

*To embrace and uphold our tradition as a nation of immigrants.*

## Immigration Backlogs are Separating American Families

In our immigration law, our country has made it a priority for families to be together. In recent years, however, growing backlogs in our immigration system, along with barriers to family unification erected by laws passed in 1996, have kept families separated for many years, and in some cases have split families apart.

### Family immigration categories and per-country limits

Our family immigration system places people who want to immigrate to the U.S. into visa categories (most with numerical limits) according to the closeness of the relationship and the citizenship status of the U.S. family member.

Categories of Family Immigration, Numerical Limits, and Approximate Length of Wait for Visa				
Visa Category	Citizenship Status of U.S. Family Member	Relationship of Intending Immigrant to U.S. Family Member	Annual Numerical Limit	Length of Wait for Visas in this Category <small>(As of January 2007)</small>
Immediate Relative	U.S. Citizen	Spouse, unmarried minor child, parent	No limit	No quota limit backlog. Application processing backlog may be several months.
First Family Preference	U.S. Citizen	Unmarried adult children (21 years or older)	23,400	5 years, 8 months for most countries
Second A Family Preference	U.S. Legal Permanent Resident	Spouse, minor child	87,900	4 years, 9 months for most countries
Second B Family Preference	U.S. Legal Permanent Resident	Unmarried adult children (21 years or older)	26,300	9 years, 8 months for most countries
Third Family Preference	U.S. Citizen	Married adult children	23,400	8 years for most countries
Fourth Family Preference	U.S. Citizen	Brothers and sisters	65,000	11 years for most countries

As the table above shows, there is no numerical cap for spouses, unmarried minor children, and parents of U.S. citizens. This category is called "immediate relatives of U.S. citizens." For all other relations, however, there are strict limits on the total number in each category. All "immediate relatives" plus all of the family preference categories must fit within an overall ceiling for family-based immigration of 480,000, but this ceiling can be exceeded due to the fact that there is a "floor" of 226,000 for the family preference categories (non-immediate relatives) coupled with the fact that immediate relatives are not capped. (So, when immediate relative immigration is more than 254,000 (480,000 – 226,000), the overall ceiling is "pierced.") For many years now, there have been

no more than 226,000 visas allocated to the family preference categories because immediate relative immigration has been more than 254,000 per year. *This is the heart of the backlog problem with family preference immigration.*

In addition to these category limits, the ceiling on the number of people we allow in from any one country is approximately 25,600. This ceiling includes immigrants in the family-preference categories *and* immigrants who are coming here through the sponsorship of an employer. There are some exceptions to the per-country limits.

## **Two kinds of backlogs**

There are two kinds of backlogs. At the end of the immigration process, when an immigrant visa is available to the immigrant, there may be an *administrative* backlog due to the fact that the immigration service may not have sufficient resources to handle its workload. Delays in the process of adjudicating the permanent resident visa, or “green card,” have recently been as long as two years. These backlogs can be dealt with by giving the immigration agency more resources to handle its workload.

However, the more serious problem—often confused with the administrative problem—is the much longer backlog that has developed because *the number of visas available by law each year is less than the number of prospective immigrants getting in line to wait for a visa.* This problem cannot be solved by making the immigration agency more efficient, but will only be resolved by reforming our immigration system so that the number of visas available better meets demand.

## **Priority dates and backlogs**

An immigrant begins the process of joining his or her family member in the U.S. when the family member submits a petition to the government. The filing of that petition establishes a *priority* date, holding the immigrant's place in line. The State Department keeps tabs on whether or not there are visas available within the category and per-country limits. If there is no backlog, an immigrant visa (or “green card”) is immediately available to the immigrant, and the immigrant will receive one as soon as the government processes the application. In the application process, checks are performed to make sure the individual has no criminal history, is not a security threat, and is otherwise not inadmissible as an immigrant to the U.S.

In recent years, however, the number of visas available in our family immigration system has not met the demand. Except for the spouses, children, and parents of U.S. citizens, for which there are no per-country or category ceilings, there are backlogs in *all* categories of family-based immigration. Each month, the State Department publishes a table showing the availability of immigrant visas relative to their priority dates. The “Visa Bulletin,” in which this table is published, can be found on the Web site of the State Department at:

[http://www.travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://www.travel.state.gov/visa/frvi/bulletin/bulletin_1360.html).

For example, as of January 2007, a wife, husband, or child of a U.S. Lawful Permanent Resident is only now receiving a visa if his or her priority date was earlier than March 15, 2002—that is, after a wait of *almost five years* (longer for those coming from Mexico). A U.S. citizen who petitioned for a sibling is only now being rejoined with that sister or brother after a wait of *11 years*. If that brother or sister is coming from the Philippines, the wait has been more than 22 years. For most countries,

the adult unmarried children of U.S. citizens are only now getting their visas if their U.S. citizen family member filed a petition in April 2001—a backlog of more than five years.

The current State Department projections of the backlogs may actually understate the wait an immigrant will eventually have. For reasons having to do with the ability of the government to keep up with the demand for “adjustment of status” cases, the “current” priority date may actually *go backwards* from one month to the next. For example, in May 2001, the priority date for which visas were being allocated for the category of adult children of U.S. citizens was March 1, 1999. By July of 2001, the priority date had actually *receded* to January 1, 1997.

Backlogs are so long that immigrants are often moving from one long line to a longer line as they age or get married while waiting for an immigrant visa. The minor child of a legal permanent resident, for example, may become an adult during the course of the nearly five-year wait for an immigrant visa. When that child becomes an adult, he or she gets shifted to another line, for the category of adult children of permanent residents, where the wait may be longer for that individual.

Given that we have already decided, in the structure of our immigration law, to make family unity a priority, it does not make sense to have an outdated quota system that keeps families separated for many years. If we as a nation continue to believe that it is important to keep families together, then we must reform our immigration system so that the category and per-country limits that we now have on family-based immigration meet our needs.

### **Current law regarding family unification should be updated**

The emphasis we place in our immigration law on the reunification of families makes sense in terms of helping our newcomers adapt to their new home. Family members help each other adjust to their new surroundings by pooling resources and sharing responsibilities (for example, for the care of children or elderly parents).

The inability to bring family members makes it harder for U.S. companies to attract the workers they need. Workers who do come may be less productive if forced to endure a long separation from their families. Additionally, immigrants coming to the U.S. as a result of family ties also get jobs and become valuable contributors to our economy. Finally, strong families help stabilize communities.

As the backlogs grow, an increasing number of immigrants coming to join American families are facing the choice of remaining separated for several years or keeping the family intact by entering illegally. The backlogs are also yielding consequences contrary to some of our other policy goals. For Filipinos, for example, becoming a U.S. citizen may mean a longer separation from adult children. The backlog for the adult children of Filipinos who become citizens is *longer* than the wait to bring in adult unmarried children of permanent residents. As a practical matter, reuniting with family in this case may mean postponing citizenship.

### **Comprehensive immigration reform is needed to speed the reunification of families**

Congress is now considering a much-needed comprehensive overhaul of our immigration system. In order for immigration reform to be comprehensive, it must include, as one important element, changes to the family preference system so that families might be re-united in a more timely manner. Updating our family immigration laws will reduce the pressure for family members to migrate

outside of legal channels. By creating wider legal channels for immigrants to come here, the number of people who come illegally will be reduced or eliminated.

There are a number of things Congress could do to alleviate the backlogs and their consequences.

- Update the immigrant quota system: Our immigrant quota system has not been updated in a decade and a half, despite increased demand. There are several ways that Congress could reform the system. “Immediate relatives” could be exempted from the family-sponsored immigrant cap. The definition of immediate relative might be expanded to include the spouses and minor children of legal permanent residents. (Additionally, the children of immediate relatives could also be included in the definition of immediate relative.) This would free up visas in the limited family preference system so they could be re-allocated to the remaining categories of family-sponsored immigrants. With these extra visas, there would be much progress in reducing the long backlog now experienced by these categories of immigrants.
- Place a cap on the backlog: Congress could provide for waivers to the per-country and world-wide numerical limits to family reunification that would be triggered when an immigrant’s wait exceeded a period of time—five years, for example. Any eligible family-sponsored immigrant who had waited five years or more would be given a visa whether or not that year’s quotas had been reached.
- Re-allocate unused visas from the prior year: Even though there is more demand for visas than there are available visas, it sometimes happens (usually, because of processing delays or security screening) that some of the visas that should be allocated in a given year are not allocated. Congress could change the law so that when that happens, the unused visas are made available the following year, outside of the per country limits.
- Protect immigrant eligibility from delays: Congress could clarify that someone does not become ineligible for an immigrant visa because, while waiting for a visa to become available or during processing delays, he or she enters a different age category or gets married. This would solve the problem some immigrants now have of getting shuffled from one backlog to another.
- Increase administrative resources: The administrative costs of processing immigrant applications are covered by fees immigrants pay with their applications. However, Congress has mandated that the immigration service also use these fees to cover the costs of processes and infrastructure unrelated to the immigrant’s application. Congress should allocate resources to the immigration agency so that the revenue from application fees are put to work processing applications in a timely manner, and are not diverted to cover the cost of unrelated functions. Otherwise, an increase in the availability of visas to solve the problem caused by the backlog in the quota system will only result in frustrating backlogs in the processing of applications. These can be avoided if the administration of our immigration system has sufficient resources to run smoothly.

### **Comprehensive reform must include the removal of barriers to family re-unification**

In recent years, in a failed effort to stop illegal immigration by passing harsh laws aimed at legal and undocumented immigrants, Congress has erected legal barriers that, unless they are removed, will keep families apart. Comprehensive reform, if it is to meaningfully speed family unification, must include the removal of these barriers.

- Congress should remove the bar to re-entry that places immigrants in a catch 22: Certain people who are in the U.S. without permission, but who have qualified and are on the verge of gaining immigration status, are required to leave the country to pick up their immigrant visas in their home countries. However, a 1996 law prohibits anyone who leaves the country after having been here a minimum of six months without permission from re-entering the country for three years—regardless of whether they have qualified for an immigrant visa through family or employer sponsorship. Those here for twelve months or more are prohibited from re-entering the country for ten years. There is even a permanent bar to re-entry for certain immigrants who have been here illegally. These immigrants face the choice of a very long separation from their family or remaining in the U.S. with no status and forgoing the immigrant visa for which they have qualified.

These prohibitions on re-entry into the U.S.—the three- and ten-year bars (and the permanent bar)—should be repealed. The main effect is to hold the threat of splitting apart families, and so family members who may be here unlawfully don't risk opportunities to become legal. The bars to re-entry have so far been ineffective in deterring people from coming here illegally. Repealing the bars would allow intending immigrants to go through the normal screening processes that other immigrants must go through when applying for permanent residence in the U.S.

- Reduce income requirements that close off opportunities for some hardworking, but low-paid Americans to reunite with family members: In 1996, a new provision was added to the immigration law requiring all citizens or legal permanent residents wishing to petition for a family member must earn at least 125% of the federal poverty level and sign a legally enforceable *affidavit of support* promising to support the immigrant financially. While this requirement was added to the law to ensure that immigrants will be provided for by family members and will not become a "public charge," for some hardworking but low paid Americans, it shuts off an opportunity to reunite with close family members. For example, immigrants in certain occupations, if they earn the median income for that occupation, might earn less than 125% of the federal poverty level for their family size. Though they may be hard working, these Americans may lose the chance to reunite with close family members because of the new income requirements. The income requirement should be lowered, so that hardworking but low-paid workers are not penalized and kept from reuniting with family members simply because they do not earn enough in their jobs.

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