

9 FAM 42.55

REPORTS ON NUMBERS AND PRIORITY DATES OF APPLICATIONS ON RECORD

(CT:VISA-1875; 09-07-2012)
(Office of Origin: CA/VO/L/R)

9 FAM 42.55 RELATED STATUTORY PROVISIONS

(CT:VISA-1748; 10-21-2011)

INA 104(a), (8 U.S.C. 1104(a)), INA 201 (8 U.S.C. 1151), INA 202(b) (8 U.S.C. 1152(b)), INA 203(e) (8 U.S.C. 1153(e)), INA 222(b) (8 U.S.C. 1202(b))

INA 104(a)

The Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to (1) the powers, duties and functions of diplomatic and consular officers of the United States, except those powers, duties and functions conferred upon the consular officers relating to the granting or refusal of visas; (2) the powers, duties and functions of the Administrator; and (3) the determination of nationality of a person not in the United States. He shall establish such regulations; prescribe such forms of reports, entries and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out such provisions. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the department or independent establishment under whose jurisdiction the employee is serving, any of the powers, functions, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Department of State or of the American Foreign Service.

INA 201

(a) In general.

Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

- (1) family-sponsored immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27

UNCLASSIFIED (U)

percent of the worldwide level under such subsection for all of such fiscal year;

- (2) employment-based immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and
- (3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 203(c) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(c)) in a number not to exceed in any fiscal year the number specified in subsection (e) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

(b) Aliens Not Subject to Direct Numerical Limitations.

Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

- (1) (A) Special immigrants described in subparagraph (A) or (B) of section 101(a)(27).
- (B) Aliens who are admitted under section 207 or whose status is adjusted under section 209.
- (C) Aliens whose status is adjusted to permanent residence under section 210, or 245A.
- (D) Aliens whose removal is canceled under section 240A(a).
- (E) Aliens provided permanent resident status under section 249.
- (2) (A) (i) Immediate relatives. - For purposes of this subsection, the term "immediate relatives" means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

UNCLASSIFIED (U)

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

(c) Worldwide Level of Family-Sponsored Immigrants.

(1) (A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to –

(i) 480,000, minus

(ii) the sum of the number computed under paragraph (2) and the number computed under paragraph (4), plus

(iii) the number (if any) computed under paragraph (3).

(B) (i) For each of fiscal years 1992, 1993, and 1994, 465,000 shall be substituted for 480,000 in subparagraph (A)(i).

(ii) In no case shall the number computed under subparagraph (A) be less than 226,000.

(2) The number computed under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraphs (A) and (B) of subsection (b)(2) who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3) (A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 203(a) during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 203(b) (relating to employment-based immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(4) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1999) is the number of aliens who were paroled into the United States under section 212(d)(5) in the second preceding fiscal year-

(A) who did not depart from the United States (without advance parole) within 365 days; and

(B) who (i) did not acquire the status of aliens lawfully admitted to the United States for permanent residence in the two preceding fiscal

UNCLASSIFIED (U)

years, or (ii) acquired such status in such years under a provision of law (other than section 201(b)) which exempts such adjustment from the numerical limitation on the worldwide level of immigration under this section.

- (5) If any alien described in paragraph (4) (other than an alien described in paragraph (4)(B)(ii)) is subsequently admitted as an alien lawfully admitted for permanent residence, such alien shall not again be considered for purposes of paragraph (1).
- (d) Worldwide level of employment-based immigrants
 - (1) The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to-
 - (A) 140,000 plus
 - (B) the number computed under paragraph (2).
 - (2) (A) The number computed under this paragraph for fiscal year 1992 is zero.
 - (B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 203(b) during that fiscal year.
 - (C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 203(a) (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.
- (e) Worldwide level of diversity immigrants.- The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.
- (f) Rules for Determining Whether Certain Aliens Are Immediate Relatives
 - (1) AGE ON PETITION FILING DATE- Except as provided in paragraphs (2) and (3), for purposes of subsection (b)(2)(A)(i), a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 101(b)(1) shall be made using the age of the alien on the date on which the petition is filed with the Attorney General under section 204 to classify the alien as an immediate relative under subsection (b)(2)(A)(i).
 - (2) AGE ON PARENT'S NATURALIZATION DATE- In the case of a petition under section 204 initially filed for an alien child's classification as a family-sponsored immigrant under section 203(a)(2)(A) , based on the child's parent being lawfully admitted for permanent residence, if the petition is later converted, due to the naturalization of the parent, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i),

UNCLASSIFIED (U)

the determination described in paragraph (1) shall be made using the age of the alien on the date of the parent's naturalization.

- (3) AGE ON MARRIAGE TERMINATION DATE- In the case of a petition under section 204 initially filed for an alien's classification as a family-sponsored immigrant under section 203(a)(3) , based on the alien's being a married son or daughter of a citizen, if the petition is later converted, due to the legal termination of the alien's marriage, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) or as an unmarried son or daughter of a citizen under section 203(a)(1) , the determination described in paragraph (1) shall be made using the age of the alien on the date of the termination of the marriage.
- (4) APPLICATION TO SELF-PETITIONS- Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

INA 202(b) Rules for Chargeability

Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of a numerical level established under subsection (a)(2) when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that-

- (1) An alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year;
- (2) If an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year;
- (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; and
- (4) an alien born within any foreign state in which neither of his parents was born

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 9
Visas

and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

INA 203(e) Order of Consideration

- (1) Immigrant visas made available under subsection (a) or (b) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 101(a)(27)(D) , with the Secretary of State) as provided in section 204(a).
- (2) Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.
- (3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

INA 222(b)

Every alien applying for an immigrant visa shall present a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Secretary of State. The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof. In the event that the immigrant establishes to the satisfaction of the consular officer that any document or record required by this subsection is unobtainable, the consular officer may permit the immigrant to submit in lieu of such document or record other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. All immigrant visa applications shall be reviewed and adjudicated by a consular officer.

9 FAM 42.55 RELATED REGULATORY PROVISIONS

(CT:VISA-1875; 09-07-2012)

22 CFR 42.55

22 CFR 42.55 Reports on numbers and priority dates of applications on record.

- (a) Consular officers shall report periodically, as the Department may direct, the number and priority dates of all applicants subject to the numerical limitations prescribed in INA 201, 202, and 203 whose immigrant visa applications have

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 9
Visas

been recorded in accordance with Sec. 42.52(c).

- (b) Documentarily qualified applicants. Consular officers shall also report periodically, as the Department may direct, the number and priority dates of all applicants described in paragraph (a) of this section who have informed the consular office that they have obtained the documents required under INA 222(b), for whom the necessary clearance procedures have been completed.