

Appendix B

Various Determinations of Numerical Limits on Immigrants Required Under the Terms of the Immigration and Nationality Act

Determination of the Family Preference Numerical Limit for FY–2005

Terms of the Immigration and Nationality Act:

INA 201(c) specifies that the worldwide level of family-sponsored preference immigrants for a fiscal year is equal to:

480,000,	
minus	the number of immigrants described in subparagraphs (A) and (B) of INA 201(b)(2) who, in the previous fiscal year, were issued immigrant visas or who otherwise acquired lawful permanent resident status, ¹
minus	the number of aliens described in INA 201(c)(4), ²
plus	employment preference immigrant numbers that were unused during the previous fiscal year.

Under INA 201, however, the family-sponsored preference limitation for any fiscal year may not be less than 226,000.

Immediate Relative Immigrant Totals for FY–2004:

Immigrant visa workload reports received by the Department of State from consular posts worldwide show that during FY–2004 a total of 151,724 immediate relative (IR) visas were issued. This total is subject to a net reduction of 13, however, to take account of issued visas returned unused to consular offices and thus "recaptured" under INA 206.

Figures on adjustments of status at local offices of U.S. Citizenship and Immigration Services (USCIS) compiled and provided by the Department of Homeland Security indicate that a total of 269,964 immigrants were granted lawful permanent residence at USCIS offices in the United States during FY–2004 in the categories for spouses, children, and parents of U.S. citizens; this figure includes persons who acquired permanent residence after having been admitted in nonimmigrant "K" status. Another 8 children accompanying immediate relative parents were admitted under INA 211(a).

USCIS admission figures record 707 children accorded permanent resident status after birth abroad to a permanent resident of the United States.

Employment Preference Number Use for FY–2004:

The employment-based preference limit for FY–2004 was 204,422. A total of 157,107 of these numbers were used for FY–2004 visa issuances or USCIS adjustments of status and, as required by INA 203(b)(6), an additional 3 were applied to special immigrants who were issued visas or adjusted status during FY–2003 under INA 101(a)(27)(K) [certain U.S. armed forces personnel]. Another 9 were charged for children admitted under INA 211(a) accompanying parents with employment preference visas. There were 2 employment preference visas returned unused to consular offices. Total unused numbers: $204,422 - (157,107 + 9) - 3 + 2 = 47,305$.

Calculation of FY–2005 Family-Sponsored Preference Limitation:

Immediate relative visa issuances during FY–2004:	151,724
(minus net total of "recaptured" FY–2004 IR visas:	– 13)
Immediate relative adjustments of status by USCIS:	+ 269,964
Children admitted after birth to immediate relative visa holders:	+ 8
Children admitted after birth abroad to lawful permanent residents:	+ <u>707</u>
Immediate Relative etc. Total:	422,390

FY–2005 Worldwide Family-Sponsored Level figure:	480,000
minus IR etc. total calculated above:	–422,390
minus aliens paroled into the United States under Section 212(d)(5) in the second preceding fiscal year (FY–2003):	– 10,000 ²
plus unused FY–2004 employment pref. numbers:	<u>+ 47,305</u>
Total	94,915

Since under the law the family-sponsored preference limitation for any fiscal year may not be less than 226,000, the limit for FY–2005 is fixed at: **226,000**

Determination of the Employment Preference Numerical Limit for FY–2005

Terms of the Immigration and Nationality Act:

INA 201(d) specifies that the worldwide level of employment-based preference immigrants for a fiscal year is equal to:

140,000
plus family preference immigrant numbers that were unused during the previous fiscal year.

Family Preference Number Use for FY–2004:

The family-sponsored preference limit for FY–2004 was 226,000. A total of 217,565 numbers were used for visa issuances or USCIS adjustments of status. Another 18 were charged for children admitted under INA 211(a) accompanying parents with family preference visas. There were also 32 family preference visas returned unused to consular offices; the numbers assigned to these issuances were thus "recaptured" under INA 206 and could be reallocated. Total unused numbers: $226,000 - (217,565 + 18) + 32 = 8,449$.

Calculation of FY–2005 Employment-Based Preference Limitation:

Worldwide Employment-Based Level figure:	140,000
plus unused FY–2004 family preference numbers:	<u>+ 8,449</u>
Total:	148,449

For FY–2005, the employment-based preference limit is fixed at: **148,449**

(In accordance with INA 203(b)(6), the 13 special immigrants who were issued visas or adjusted status during FY–2004 under INA 101(a)(27)(K) [certain U.S. armed forces personnel] will be charged against the FY–2005 employment preference limit; the first preference will be reduced by 5, and each of the second and third preferences will be reduced by 4.)

Determination of Per-Country Limitations for FY–2005

Terms of the Immigration and Nationality Act:

INA 202(a) specifies that the per-country level of family plus employment preference immigrants in any fiscal year may not exceed:

For a foreign state: 7% of the total number of family and employment visas for that fiscal year; and
For a dependent area: 2% of the total number of family and employment visas for that fiscal year.

Calculation of FY–2005 Per-Country Limits:

Worldwide Family-Sponsored FY–2005 limit:	226,000
Worldwide Employment-Based FY–2005 limit:	+ <u>148,449</u>
Total:	374,449
Foreign state limit for FY–2005 (7% of 374,449):	26,211
Dependent area limit for FY–2004 (2% of 374,449):	7,489

In accordance with Section 2(d) of the Chinese Student Protection Act of 1992 (Pub. L. 102–404), the CHINA–mainland born limit for FY–2005 is reduced by 1,000 to 25,211 to compensate for earlier issuances under that legislation. (See also Appendix C.)

Under the terms of INA 203(b)(6), FY–2005 per-country limits must be reduced to compensate for the special immigrants who were issued visas or adjusted status during FY–2004 under INA 101(a)(27)(K) [certain U.S. armed forces personnel]. The following FY–2005 per-country limits will be reduced by the amount specified to compensate for such immigrants: Colombia 2; Japan 3; and Philippines 8. Since the Philippines chargeability is subject to the prorating provisions of INA 202(e), the reduction in that per-country limit will be accomplished under the law as follows: Each of the employment first and second preferences will be reduced by 3, and the third preference will be reduced by 2.

Under the terms of Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (NACARA) of 1997 (Pub. L. 105–100 enacted November 19, 1997), as amended by Section 1(e) of the Nicaraguan Adjustment and Central American Relief Act–Technical Corrections (Pub. L. 105–139 enacted December 2, 1997), the 10,000 Employment Third Preference Other Worker (EW) numbers available for FY–2005 are reduced by 5,000 to offset adjustments under the NACARA program. (See Appendix E.)

¹ The immigrants described in these subparagraphs are 1) immediate relatives, i.e., spouses, children and parents of U.S. citizens, 2) children admitted under INA 211(a) on the basis of prior issuance of an immigrant visa to their accompanying parent who is such immediate relative, and 3) children born to a lawful permanent resident during a temporary visit abroad.

² At the time the numerical limits were set, information on the exact number of parolees was not available. The Department of Homeland Security estimated that the parolee total would be in excess of 10,000, and that figure has been used in the determination of the FY–2005 limit.