



Numerical Limits on Employment-Based Immigration: Analysis of the Per-Country Ceilings

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Summary

The Immigration and Nationality Act (INA) specifies a complex set of numerical limits and preference categories that include economic priorities among the criteria for admission. The INA allocates 140,000 visas annually for employment-based legal permanent residents (LPRs), and they were 14.2% of the total 1.0 million LPRs in FY2010. The INA further specifies that each year, countries are held to a numerical limit of 7% of the worldwide level of U.S. immigrant admissions, known as per-country limits or country caps.

Even as U.S. unemployment levels remain high, some employers assert that they continue to need the “best and the brightest” workers, regardless of their country of birth, to remain competitive in a worldwide market and to keep their firms in the United States. While support for the option of increasing employment-based immigration may be dampened by economic conditions, proponents argue it is an essential ingredient for economic growth. Those opposing increases in employment-based LPRs assert that there is no compelling evidence of labor shortages and cite the rate of unemployment across various occupations and labor markets.

With this economic and political backdrop, the option of lifting the per-country caps on employment-based LPRs has become increasingly popular. Some theorize that the elimination of the per-country caps would increase the flow of high-skilled immigrants without increasing the total annual admission of employment-based LPRs. The presumption is that many high-skilled people (proponents cite those from India and China, in particular) would then move closer to the head of the line to become LPRs.

To explore this policy option, analyses of approved pending employment-based petitions are performed on two different sets of data: approved pending cases with the Department of State National Visa Center, and approved pending cases with U.S. Citizenship and Immigrant Services (USCIS). The overwhelming number of approved employment-based LPR visas pending at the National Visa Center at the close of FY2010 were those of professional and skilled workers—102,395. There were also 16,788 approved visas pending for unskilled workers. In terms of those with advanced degrees, another 6,738 visas were pending. There were also 2,961 approved visas pending in the “extraordinary” category. In terms of the USCIS data, most of the approved I-485 petitions pending are professional, skilled, and unskilled workers (114,442). There were 7,545 approved I-485 petitions pending in the “extraordinary” category and 45,573 approved I-485 petitions pending in the “advanced degree” category. The extent that these two sets of data overlap—and thus may be counting the same petitions twice—is not known, but substantial duplication is presumed to exist.

The top four countries in both the National Visa Center and USCIS data sets are (in rank order) India, the Philippines, the Peoples’ Republic of China, and Mexico. The data analyses *suggest* that the vast number of Indians are waiting to adjust status in the United States, while the vast number of Filipinos are waiting to immigrate from abroad. Those with approved pending cases from China seem to be more evenly split among new arrivals and those seeking to adjust status.

Some argue that the per-country ceilings are arbitrary and observe that employability has nothing to do with country of birth. Others maintain that the statutory per-country ceilings restrain the dominance of high-demand countries and preserve the diversity of the immigrant flows. Legislation to revise the per-country ceilings on LPRs has been introduced in the House (H.R. 3012).

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Introduction

Four major principles currently underlie U.S. policy on legal permanent immigration: the reunification of families, the admission of legal permanent residents (LPRs) with needed skills, the protection of refugees, and the diversity of admissions by country of origin.¹ These principles are embodied in federal law, the Immigration and Nationality Act (INA) first codified in 1952. The Immigration Amendments of 1965 replaced the national origins quota system (enacted after World War I) with per-country ceilings. The Immigration Act of 1990 was the last law to significantly revise the statutory provisions on employment-based permanent immigration to the United States.²

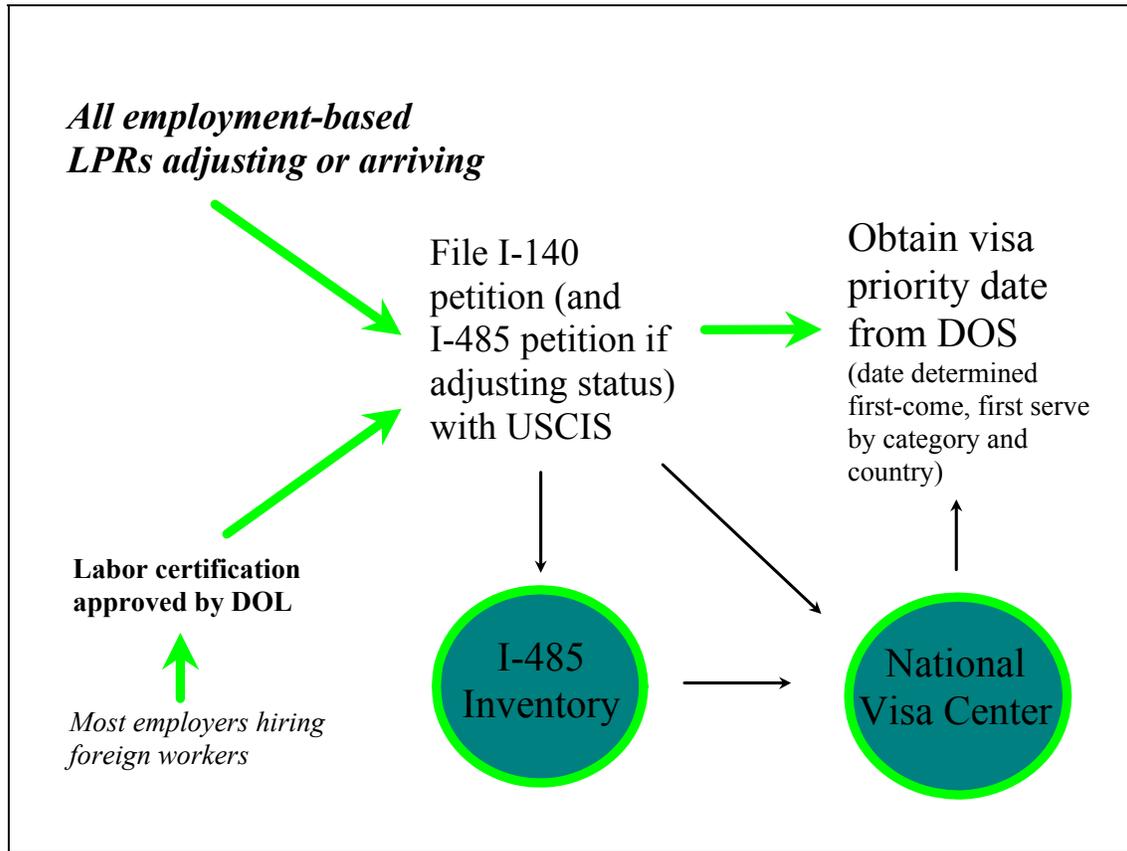
Interest in the per-country ceilings, which limit the number of employment-based LPRs coming from specific countries each year, is growing. While no one is arguing for a return to the country-of-origin quota system that was the law from 1921 to 1965, some assert that the current numerical limits on employment-based LPRs are not working in the national interest. To inform this debate, this report analyzes the impact of the per-country ceilings on the employment-based immigration process.

The Departments of State (DOS) and Homeland Security (DHS) each play key roles in administering the law and policies on the admission of aliens. Although DOS Consular Affairs is responsible for issuing visas, the U.S. Citizenship and Immigrant Services (USCIS) in DHS approves immigrant petitions. DOS is responsible for the allocation, enumeration, and assignment of all visas. In addition, the Department of Labor (DOL) is responsible for ensuring that employers seeking to hire employment-based LPRs are approved to do so. The prospective immigrant must maneuver this course through these federal departments and agencies to obtain LPR status. **Figure 1** offers a diagram on the multi-step process that prospective employment-based LPRs go through as they seek permanent residence in the United States.

¹ For a more complete discussion of legal immigration, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

² Congress has significantly amended the INA numerous times since 1952. Other major laws amending the INA are the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. 8 U.S.C. §1101 et seq.

Figure I. Employment-Based Admissions
A Multi-step Process



Source: CRS synthesis of immigration law and procedures.

Notes: For further information on labor certification, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*.

The report opens with brief explanations of the employment-based preference categories and the per-country ceilings governing annual admissions of LPRs. The focus is on the major employment-based preference categories. The report continues with a statistical analysis of the pending caseload of approved employment-based LPR petitions. The same analyses of approved pending employment-based petitions are performed on two different sets of data: approved pending cases with the DOS National Visa Center; and approved pending cases with USCIS, known by the petition number as the I-485 Inventory. The extent that these two sets of data overlap—and thus may be counting the same petitions twice—is not known, but substantial duplication is presumed to exist. The report concludes with a set of legislative options to revise per-country ceilings that are meant to serve as springboards for further discussions.

Background on Numerical Limits

The INA provides for a permanent annual worldwide level of 675,000 LPRs, but this level is flexible and certain categories of LPRs are permitted to exceed the limits.³ The permanent worldwide immigrant level consists of the following components: family-sponsored immigrants, including immediate relatives of U.S. citizens and family-sponsored preference immigrants (480,000 plus certain unused employment-based preference numbers from the prior year); employment-based preference immigrants (140,000 plus certain unused family preference numbers from the prior year); and diversity immigrants (55,000). Immediate relatives⁴ of U.S. citizens as well as refugees and asylees who are adjusting to LPR status are exempt from direct numerical limits.⁵ As a result, roughly 1 million LPRs are admitted or adjusted annually.

The INA specifies that each year countries are held to a numerical limit of 7% of the worldwide level of U.S. immigrant admissions, known as per-country limits or country caps.⁶ The actual number of immigrants that may be approved from a given country, however, is not a simple percentage calculation, as certain types of LPRs (such as immediate relatives) are exempt from the country caps.

Employment-Based Immigrants

In accordance with the INA, employment-based preference visas (and family-sponsored visas) are issued to eligible immigrants in the order in which petitions have been filed under that specific preference category for that specific country. Spouses and children of prospective LPRs are entitled to the same status, and the same order of consideration as the person qualifying as the principal LPR, if accompanying or following to join the LPR (referred to as derivative status). When visa demand exceeds the per-country limit, visas are prorated according to the preference system allocations (detailed in **Table 1**) for the oversubscribed foreign state or dependent area.

Table 1. Employment-Based Immigration Preference System

Category		Numerical limit
Employment-Based Preference Immigrants		Worldwide Level 140,000
<i>1st preference</i>	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers	28.6% of worldwide limit (37,520) plus unused 4 th and 5 th preference
<i>2nd preference</i>	Members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business	28.6% of worldwide limit (37,520) plus unused 1 st preference

³ §201 of INA; 8 U.S.C. §1151.

⁴ “Immediate relatives” are defined by the INA to include the spouses and unmarried minor children of U.S. citizens, and the parents of adult U.S. citizens.

⁵ CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

⁶ Immigrants are aliens who are admitted as LPRs or who adjust to LPR status within the United States.

Category		Numerical limit
<i>3rd preference— professional & skilled</i>	Skilled shortage workers with at least two years training or experience; professionals with baccalaureate degrees	28.6% of worldwide limit (37,520) plus unused 1 st or 2 nd preference
<i>3rd preference— “other”</i>	Unskilled shortage workers	10,000 (taken from the total available for 3 rd preference)
<i>4th preference</i>	“Special immigrants,” including ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and others	7.1% of worldwide limit (9,940); religious workers limited to 5,000
<i>5th preference</i>	Employment creation investors who invest at least \$1 million (amount may vary in rural areas or areas of high unemployment) that will create at least 10 new jobs	7.1% of worldwide limit (9,940); 3,000 <i>minimum</i> reserved for investors in rural or high unemployment areas

Source: CRS summary of §§203(a), 203(b), and 204 of INA; 8 U.S.C. §1153.

Note: Employment-based allocations are further affected by §203(e) of the Nicaraguan and Central American Relief Act (NACARA), as amended by §1(e) of P.L. 105-139. This provision states that the employment 3rd preference “other worker” allocation is to be reduced by up to 5,000 annually for as long as necessary to offset adjustments under NACARA.

The INA bars the admission of any alien who seeks to enter as a 2nd (advanced degree) or 3rd (professional and skilled) preference LPR to perform skilled or unskilled labor, unless it is determined that (1) there are not sufficient U.S. workers who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the United States. The foreign labor certification program in the U.S. Department of Labor is responsible for ensuring that foreign workers do not displace or adversely affect wages or working conditions of U.S. workers.⁷

Per-Country Ceiling

As previously mentioned, the INA establishes per-country levels, or country caps, at 7% of the worldwide level.⁸ For a dependent foreign state, the per-country ceiling is 2%.⁹ The per-country level is not a “quota” set aside for individual countries, as each country in the world could not receive 7% of the overall limit. As the State Department describes it, the per-country level “is not an entitlement but a barrier against monopolization.”

In addition to being a worldwide ceiling of 7% per country, the 7% per-country ceiling applies within the family-based preference system and did apply within the employment-based preference system prior to FY2001. The American Competitiveness in the Twenty-First Century Act of 2000 (P.L. 106-313) enabled the per-country ceilings for employment-based immigrants to be surpassed for individual countries that are oversubscribed as long as visas are available within the worldwide limit for employment-based preferences. Now employment-based preference allocations may exceed the 7% per-country limit within the overall level of 140,000 annually.

⁷ For further discussion of labor certification, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem.

⁸ §202(a)(2) of the INA; 8 U.S.C. §1151.

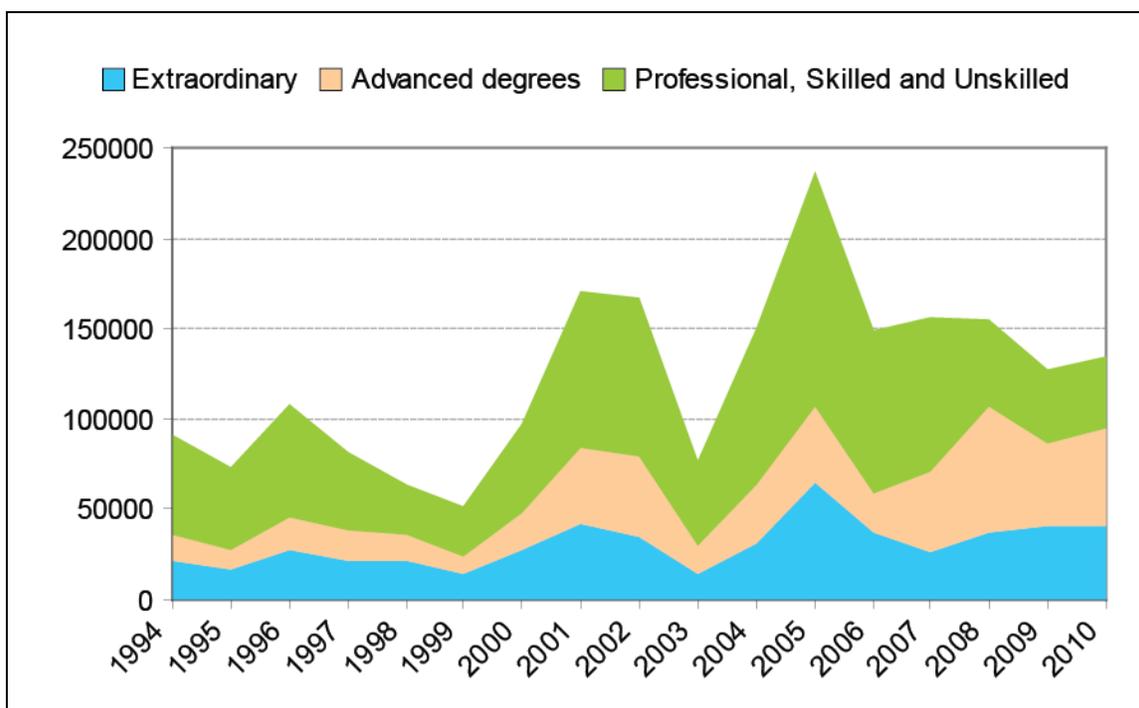
⁹ The term “dependent area” includes any colony, component, or dependent area of a foreign state. Examples are the Azores and Madeira Islands of Portugal and Macau of the People’s Republic of China.

Admission Trends

The number of employment-based LPRs notably increased in all five preference categories, from under 100,000 in FY1994 to over 250,000 in FY2005.¹⁰ Employment-based LPRs dipped to 126,874 in 2009 and rose to 148,343 in FY2010. They comprised 14.2% of the 1.0 million LPRs in FY2010. As noted in **Table 1** above, the INA allocates the bulk of the employment-based visas—almost 86%—to the 1st through 3rd preference categories.

Figure 2 presents the trends from 1994 to 2010 for the 1st (extraordinary), 2nd (advanced degrees), and 3rd (professional, skilled, and unskilled) preferences. In the earlier years, many of the visas allocated to the 1st and 2nd preferences “rolled down” to the 3rd preference. Over this period, however, the “extraordinary” LPRs have increased by 49% and the “advanced degree” LPRs have increased by 73%. The admission of 3rd preference professional, skilled, and unskilled workers has dropped by 40% from FY1994 through FY2010. Now all three employment-based preference categories typically use their full 28.6% of the 140,000 level.

Figure 2. Permanent Employment-Based Admissions for 1st, 2nd, and 3rd Preferences, 1994-2010



Source: CRS analysis of data from the DHS Office of Immigration Statistics and the former Immigration and Naturalization Service.

Notes: The 4th and 5th preferences are too small to depict. The 25,911 Chinese who adjusted under the Chinese Student Protection Act from 1994 to 1996 are not depicted even though they were counted under the “Skilled and Unskilled” category. The dip in 2003 and subsequent spike in 2004 are due in large part to

¹⁰ The Immigration Act of 1990 (P.L. 101-649) substantially rewrote employment-based preference categories and raised the numerical limits. These amendments were fully implemented by 1994.

processing delays resulting from the transfer of immigration functions to the Department of Homeland Security in 2003.

Earlier Revision of the Per-Country Cap

The year 2000 proved to be a turning point for employment-based LPR visas. The number of visas issued to employment-based LPRs never reached the 140,000 annual limit from FY1994 through FY2000, and often fell below 100,000 during those years.¹¹ By December 2000, however, India and China were oversubscribed in the advanced degree and the professional and skilled worker categories. To be “oversubscribed” means that more visa petitioners are eligible and approved for the preference category than the number allocated for that year, in that category, from that country.

As **Table 2** shows, the unskilled worker category was oversubscribed worldwide in 2000, with a priority date of May 1, 1996. That priority date meant that visas were being assigned in December 2000 for petitions filed on May 1, 1996, in that preference category. The worldwide oversubscription in the unskilled worker category resulted from the statutory limit of 10,000 annually, which had been temporarily cut to 5,000 annually. The accumulation of pending cases in the advanced degree and the professional and skilled workers categories was attributed to the per-country ceiling provision that limited the total number of visas allocated to each country to 7% of the 140,000 total. India and China were reaching their 7% ceiling, but the overall ceiling of 140,000 was not being reached. Approved professional and skilled worker petitions from India and China had priority dates of April 15, 1998, and March 8, 1997, respectively.

Table 2. Priority Dates for Employment Preference Visas for December 2000

Category	Worldwide	China	India	Mexico	Philippines
Priority workers	current	current	current	current	current
Advanced degrees/ exceptional ability	current	June 1, 1999	January 1, 2000	current	current
Skilled and professional	current	April 15, 1998	March 8, 1997	current	current
Unskilled	May 1, 1996	May 1, 1996	May 1, 1996	May 1, 1996	May 1, 1996
Special immigrants	current	current	current	current	current
Investors	current	current	current	current	current

Source: *Visa Bulletin* for December 2000.

As discussed above, the American Competitiveness in the Twenty-First Century Act of 2000 (P.L. 106-313) allowed the remainder of the unused 140,000 employment-based visas to be re-allocated to approved petitions, above the per-country ceilings.¹² After provisions of P.L. 106-313 eased the employment-based per-country limits, no countries and categories were oversubscribed in the employment-based preferences when FY2001 began.¹³

¹¹ The unused visas rolled over to the family-based preference system, as proscribed by law.

¹² The worldwide per-country ceiling that includes family-based LPRs continues to remain in place.

¹³ The emergency FY2005 supplemental appropriation (P.L. 109-13)¹³ amended P.L. 106-313 to modify the formula (continued...)

Employment-Based Visa Retrogression

Petitions for employment-based LPR status are first filed with USCIS in DHS by the sponsoring relative or employer in the United States, as depicted in **Figure 1**. If the prospective immigrant is already residing in the United States, the USCIS handles the entire process, which is called “adjustment of status” because the alien is moving from a temporary category to LPR status. If the prospective LPR does not have legal residence in the United States, the petition is forwarded to the DOS Bureau of Consular Affairs in their home country after USCIS has reviewed it.

Regardless of whether the LPR is adjusting status with USCIS in the United States or obtaining a visa abroad from Consular Affairs, DOS assigns the visa priority dates and allocates the visa numbers.

Several years ago, “accounting problems” between USCIS’s processing of LPR adjustments of status in the United States and Consular Affairs’ processing of LPR visas abroad became apparent. As discussed more fully below, most employment-based LPRs are adjusting from within the United States. Consular Affairs is dependent on USCIS for current processing data on which to allocate the visa numbers and calculate the employment-based visa priority dates. When the visa priority dates moved backward in time rather than forward in time, the phenomenon became known as visa retrogression. The *Visa Bulletin for September 2005* offered this explanation for visa retrogression:

The backlog reduction efforts of both Citizenship and Immigration Services, and the Department of Labor continue to result in very heavy demand for Employment-based numbers. It is anticipated that the amount of such cases will be sufficient to use all available numbers in many categories ... demand in the Employment categories is expected to be far in excess of the annual limits, and once established, cut-off date movements are likely to be slow.¹⁴

The most substantial visa retrogression occurred in July 2007. The *Visa Bulletin for July 2007* listed the visa priority dates as “current” for the employment-based preferences (except for the unskilled other worker category).¹⁵ On July 2, 2007, however, the State Department issued an *Update to July Visa Availability* that retrogressed the dates to “unavailable.” The State Department offered the following explanation: “The sudden backlog reduction efforts by Citizenship and Immigration Services Offices during the past month have resulted in the use of almost 60,000 Employment numbers.... Effective Monday July 2, 2007 there will be no further authorizations in response to requests for Employment-based preference cases.”¹⁶ Visas in the employment-based categories were unavailable until the beginning of FY2008.

(...continued)

for recapturing unused employment-based immigrant visas for employment-based immigrants “whose immigrant worker petitions were approved based on schedule A.” Occupations in which the Secretary of Labor has deemed there are insufficient U.S. workers “able, willing and qualified” to work are commonly referred to as Schedule A because of the subsection of the code where the Secretary’s authority derives. Currently, nurses and physical therapists are listed on Schedule A, as are certain aliens deemed of exceptional ability in the sciences or arts (excluding those in the performing arts).

¹⁴ U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin*, is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html.

¹⁵ U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin*, No. 107, is available at http://travel.state.gov/visa/frvi/bulletin/bulletin_3258.html.

¹⁶ U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin*, No. 108, is available at <http://travel.state.gov/> (continued...)

Employment-Based Priority Dates for November 2011

As of November 2011, the priority workers (i.e., extraordinary ability) visa category was current, as **Table 3** presents. The advanced degree visa category was current worldwide, but those seeking advanced degree visas from China and India had a November 1, 2007, priority date. Visas for professional and skilled workers had a worldwide priority date of December 22, 2005, except for those workers from China and India who have priority dates of August 22, 2004, and July 22, 2002, respectively. Worldwide unskilled workers with approved petitions as of November 15, 2005, were being issued visas, but again workers from China and India have longer waits.

Table 3. Priority Dates for Employment Preference Visas for November 2011

Category	Worldwide	China	India	Mexico	Philippines
Priority workers	current	current	current	current	current
Advanced degrees/ exceptional ability	current	Nov. 1, 2007	Nov. 1, 2007	current	current
Skilled and professional	Dec. 22, 2005	Aug. 22, 2004	July 22, 2002	Dec. 22, 2005	Dec. 22, 2005
Unskilled	Nov. 15, 2005	Apr. 22, 2003	June 15, 2002	Nov. 15, 2005	Nov. 15, 2005
Special immigrants	current	current	current	current	current
Investors	current	current	current	current	current

Source: U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin* for November 2011.

Approved Visa Petitions Pending

At the end of each fiscal year, the Department of State publishes a tabulation of approved visa petitions pending with the National Visa Center.¹⁷ These data do not constitute a backlog of petitions to be processed; rather, these data represent persons who have been approved for visas that are not yet available due to the numerical limits in the INA. As apparent from the visa retrogression discussion above, these data offer a potentially incomplete account of all prospective employment-based LPRs. While it is possible that USCIS may be holding on to some approved I-485 petitions, the National Visa Center caseload is the data that drive the priority dates published in the *Visa Bulletin* each month.¹⁸

There were 130,619 approved petitions for employment-based LPR visas pending with the National Visa Center as of November 1, 2010.¹⁹ This figure of 130,619 reflects persons registered under each respective numerical limitation (i.e., the totals represent not only principal applicants or petition beneficiaries, but their spouses and children entitled to derivative status under the

(...continued)

visa/frvi/bulletin/bulletin_3266.html.

¹⁷ See the Department of State website: http://www.travel.state.gov/visa/statistics/ivstats/ivstats_4581.html.

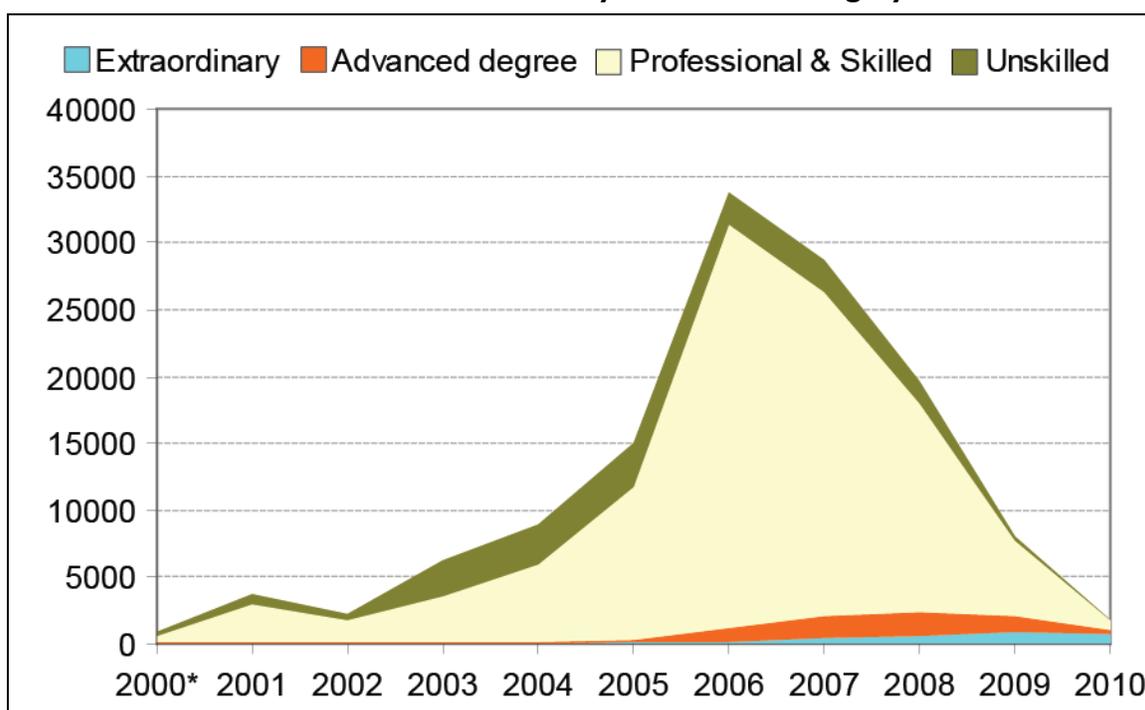
¹⁸ For further specifications of the data that DOS factors into the visa priority dates, see U.S. Department of State, Visa Office, *Monthly Determination of Employment Preference Cut-Off Dates*, October 5, 2011, <http://www.travel.state.gov/pdf/EmploymentDemandUsedForCutOffDates.pdf>.

¹⁹ U.S. Department of State, *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*.

INA). Of those approved petitions, there were 128,882 that were in the 1st through 3rd employment-based LPR preference categories.

The overwhelming number of approved employment-based LPR visas pending at the National Visa Center as of November 1, 2010, were those of 3rd preference professional and skilled workers—102,395—as shown in **Figure 3**. There were also 16,788 approved 3rd preference visas pending for unskilled workers. In terms of the 2nd preference—those with advanced degrees—another 6,738 visas were pending. There were also 2,961 approved 1st preference “extraordinary” visas pending.

Figure 3. Approved Employment-Based Visa Petitions Pending November 2010 by Date of Submission and by Preference Category



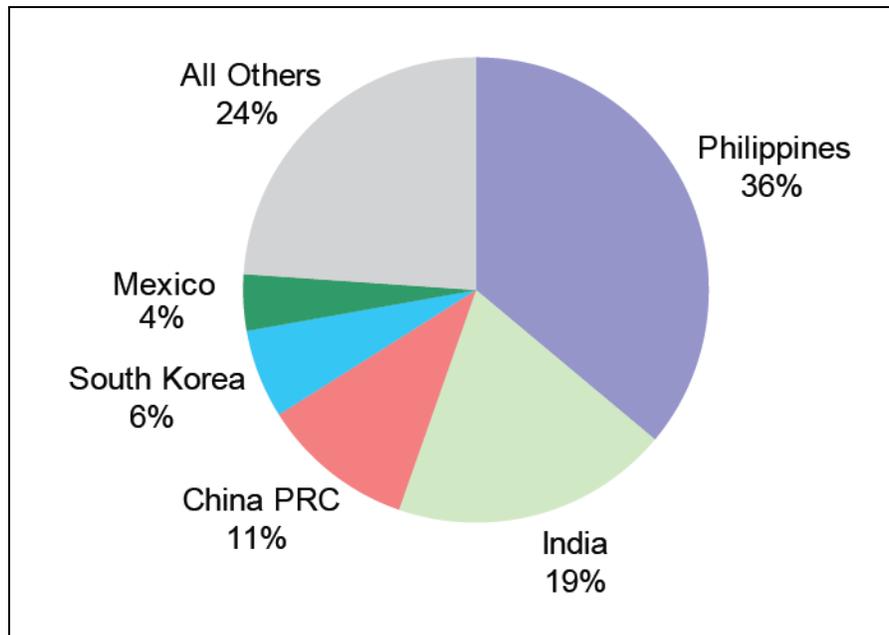
Source: CRS analysis of data from the *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*.

Note: There were 128,882 total cases in the 1st through 3rd preference categories. *Some pre-date 2000.

Most of the 3rd preference cases pending were approved several years ago. The 1st and 2nd preference approved cases pending are more recent. **Figure 3** presents the 128,882 approved employment-based visa petitions pending as of November 1, 2010, by date of submission and by preference category for the 1st through 3rd preference categories. That there are approved cases pending that pre-date the visa priority dates listed in the *Visa Bulletin* (pre-2003) poses a mystery because they have not gotten their visas. Are these individuals dealing with circumstances that have changed since their visas were approved (e.g., new job)? Have they qualified for an LPR visa in another category (e.g., married a U.S. citizen)? Or, have they changed their mind about immigrating to the United States?

The sharp decline in approved cases after 2007 is reportedly due to the visa retrogression that year. Cases do not appear to be coming forward. Although the economic recession in the United States has no doubt affected the number of employers petitioning for foreign workers, some immigration officials and practitioners maintain that many petitions filed after 2007 are not yet appearing in the approved caseload.²⁰

Figure 4. Approved 1st through 3rd Employment-Based Visa Petitions Pending November 2010 by Top Countries



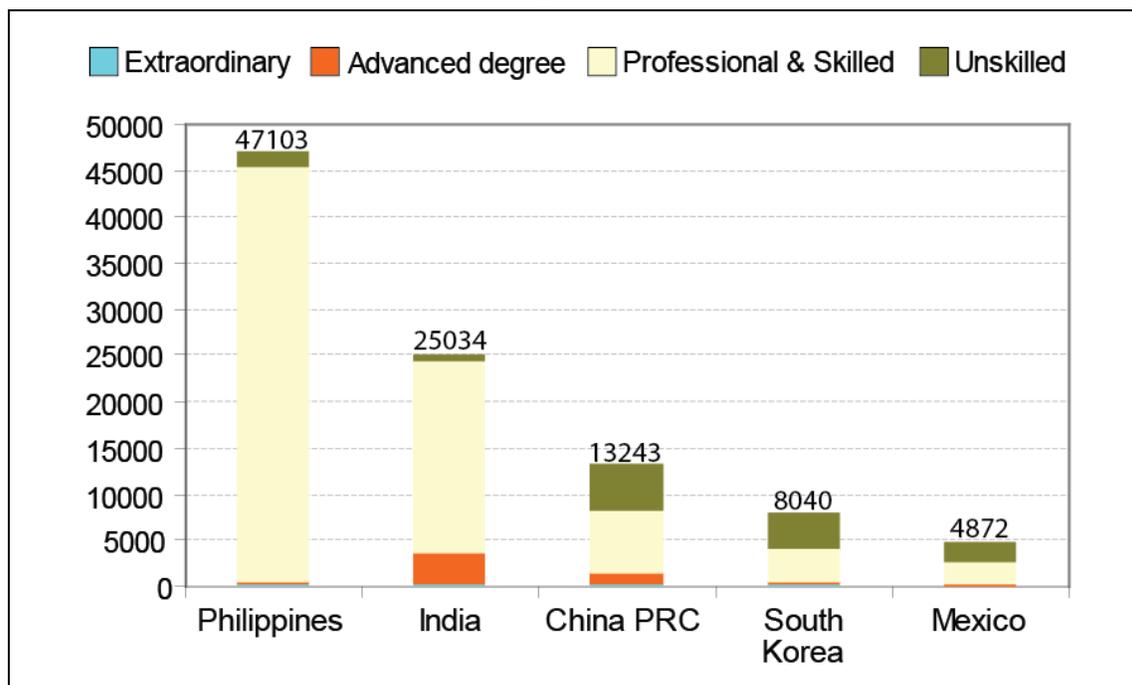
Source: CRS analysis of data from the *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*.

Note: There were 128,882 total cases.

As **Figure 4** makes clear, the Philippines leads as the source country for most of the approved petitions pending for 1st through 3rd preference employment-based LPR visas. Over a third—36%—of the approved pending cases are from the Philippines (47,103). India follows at 19% or 25,172. The Peoples’ Republic of China is third at 11% or 14,012. South Korea and Mexico round out the top five source countries with 6% and 4%, respectively, of the approved pending visas.

²⁰ Meeting of CRS immigration analysts with DHS and DOS immigration statisticians, August 4, 2011.

Figure 5. Employment-based Visa Petitions Pending November 2010 by Preference and Top Countries



Source: CRS analysis of data from the *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*.

Note: There were 99,337 total cases.

The Philippine approved visas pending are overwhelmingly in the 3rd preference professional and skilled worker category, as **Figure 5** illustrates. The 3rd preference professional and skilled worker category also dominates for India; however, India has a noteworthy portion of approved pending visas in the 2nd preference category for those with advanced degrees.

This analysis of the approved employment-based LPR visas pending at the National Visa Center in November 1, 2010, indicates that the caseload varies by source country and by preference category. It also reveals that while the Philippines is the largest source country of approved employment-based visas, India makes up a noteworthy portion of the approved pending visas across all three employment-based preference categories.²¹

New Arrivals Versus Adjustments of Status

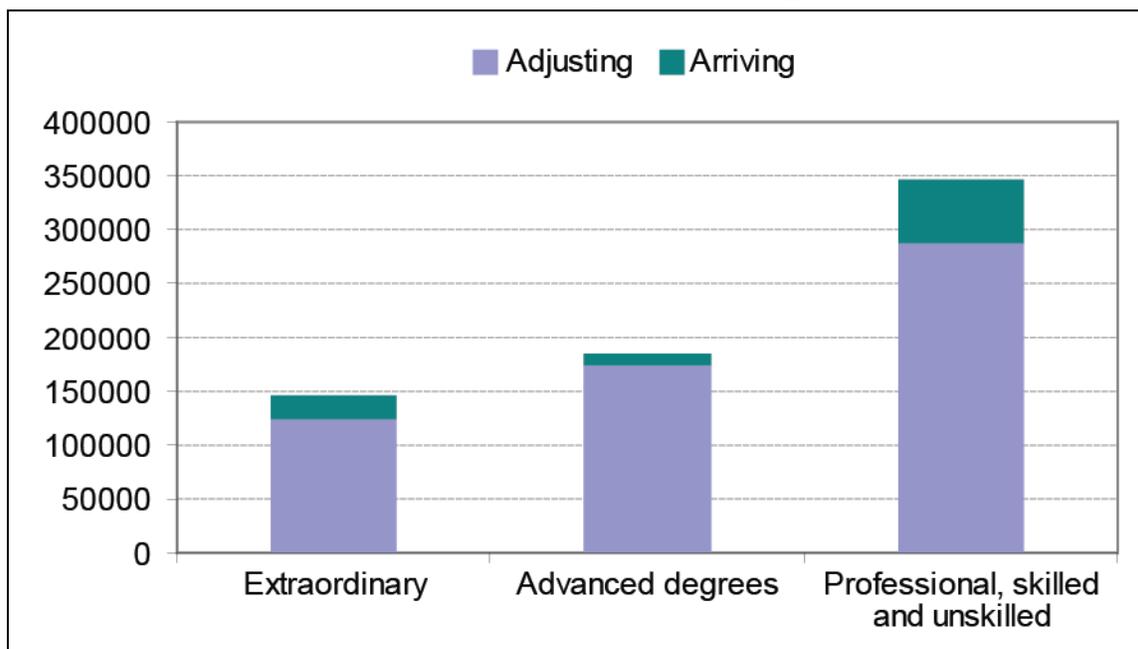
Most foreign nationals who become LPRs are already living in the United States. Typically, over 90% of 140,000 employment-based LPRs annually are adjusting to LPR status rather than newly arriving from abroad. As **Figure 6** shows, most 1st and 2nd preference employment-based LPRs over the past decade were adjusting from within the United States, typically as nonimmigrants.²²

²¹ For further analysis by country and preference category, see **Appendix A**.

²² Nonimmigrants are admitted for a specific purpose and a temporary period of time—such as tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors, or intracompany business personnel. (continued...)

In comparison to the 1st and 2nd preferences, the 3rd preference employment-based LPRs were more likely to be arriving from abroad—60,013 did so from FY2000-FY2009. Nonetheless, “arrivals” comprised only 17.3% of all 3rd preference employment-based LPRs.²³

Figure 6. Newly Arriving and Adjusting Employment-Based Principals
FY2000-FY2009 Totals by Preference Category



Source: CRS analysis of data from the DHS Office of Immigration Statistics.

The implications of this difference—whether the LPR is “arriving” or “adjusting”—are significant. Specifically, the Department of State’s National Visa Center caseload of approved pending petitions may understate the actual number of approved cases if USCIS does not forward “adjusting” LPR petitions to the National Visa Center in advance of reaching the visa priority date. As previously mentioned, the visa retrogression resulted from problems in forwarding approved petitions to the National Visa Center in a timely manner. Reportedly, USCIS now forwards all approved petitions to the National Visa Center, with the notable exception of those who would clearly be adjusting status within the United States. It remains unclear exactly how this policy actually operates in practice.²⁴

(...continued)

Nonimmigrants are often referred to by the letter that denotes their specific provision in the statute, such as H-2A agricultural workers, F-1 foreign students, or J-1 cultural exchange visitors.

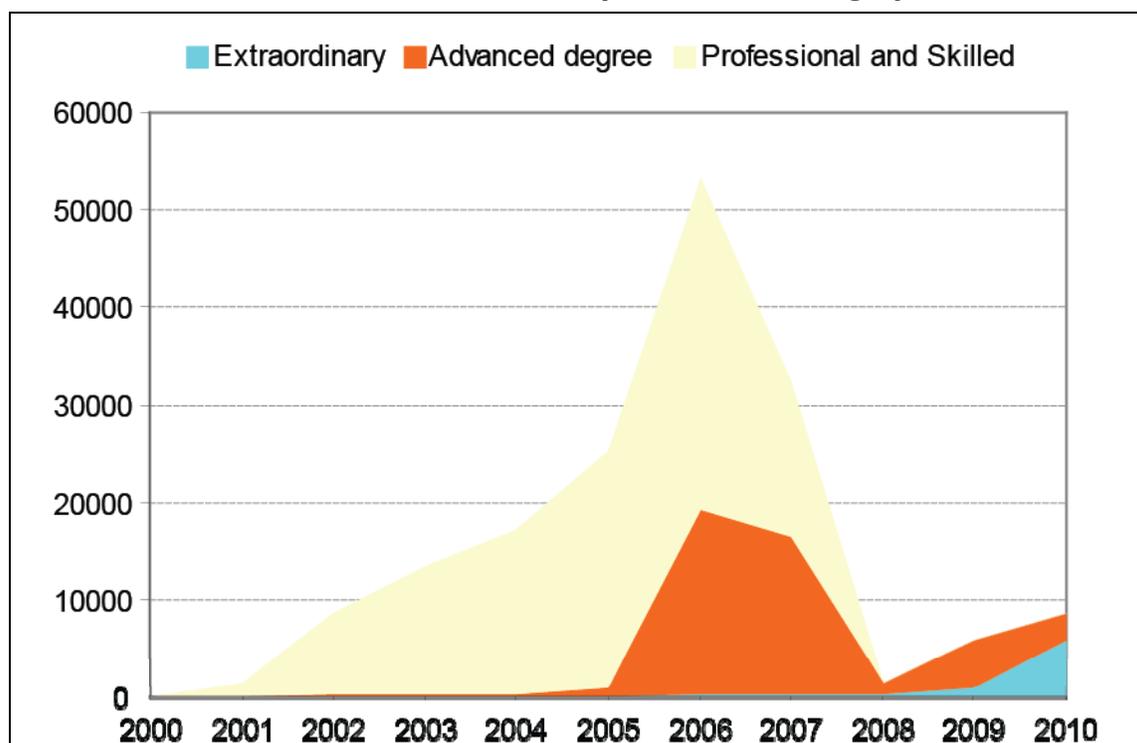
²³ For further analysis on nonimmigrant pathways to permanent residence, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem, pp. 27-30.

²⁴ Meeting of CRS immigration analysts with DHS and DOS immigration statisticians, August 4, 2011.

Approved I-485 Petitions Pending

The USCIS maintains a system of approved employment-based I-485 petitions (i.e., the Application to Register Permanent Residence or Adjust Status) that are pending, which provides another source of data on the number of approved employment-based LPRs. Known as the I-485 Inventory, these data are available by preference category and by top countries. These I-485 data include the employment-based petitioners who plan to adjust status within the United States. The prospective employment-based LPRs who would be new arrivals from abroad are not included in the I-485 Inventory, because they would not need to file I-485 petitions. Although most of these I-485 petitions would presumably be forwarded to the National Visa Center, not all of them necessarily are. *The extent to which these employment-based petitions are also reflected in the National Visa Center data on approved petitions is not known.*²⁵

Figure 7. Approved Employment-Based I-485 Petitions Pending January 2011 by Date of Submission and by Preference Category



Source: USCIS I-485 Inventory of pending cases, as of January 5, 2011.

Note: There were 167,610 cases.

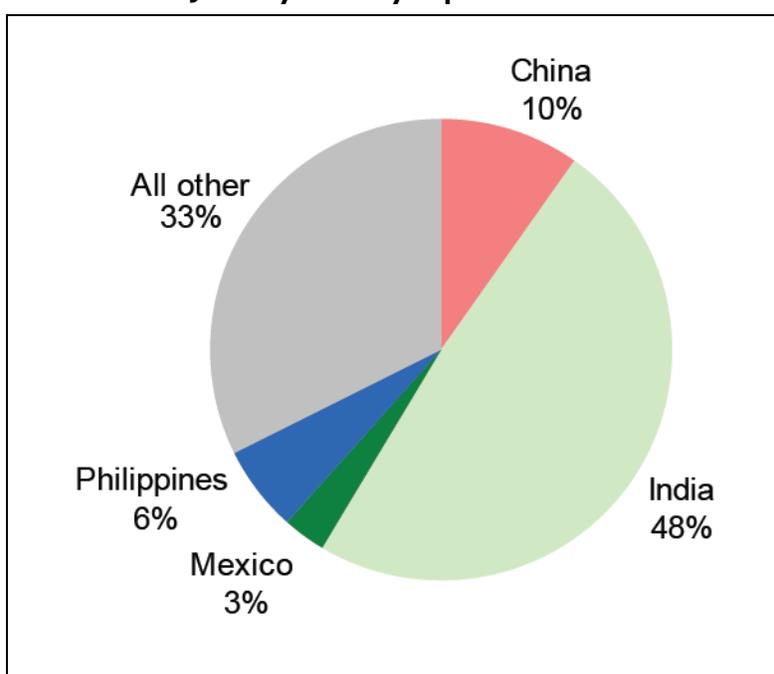
Much like **Figure 3** depicting approved visa petitions pending with the National Visa Center, **Figure 7** indicates that most of the approved I-485 petitions pending as of January 5, 2011, are 3rd preference (114,442) and that their I-485 petitions were approved several years ago. There are 7,545 approved I-485 petitions pending in the 1st preference category and 45,573 approved I-485 petitions pending in the 2nd preference category. Similarly to the approved visa petitions with the

²⁵ Meeting of CRS immigration analysts with DHS and DOS immigration statisticians, August 4, 2011.

National Visa Center, the 1st and 2nd preference approved I-485 petitions pending were filed more recently. The I-485 approvals pending in the USCIS Inventory, however, are meaningfully larger in the 1st and 2nd preference categories than the approved visas pending in the 1st and 2nd preference categories at the National Visa Center.

As noted earlier, the sharp decline in approved cases after 2007 is likely due to the visa retrogression. Interestingly, it appears that only the “extraordinary” and the “advanced degree” categories are accumulating approved pending I-485 petitions in the USCIS Inventory. The lack of 3rd preference I-485 petitions in the Inventory suggests that USCIS has not been approving many since the 2007 visa retrogression pushed back the visa priority dates.²⁶

Figure 8. Approved 1st through 3rd Employment-Based I-485 Petitions Pending January 2011 by Top Countries



Source: USCIS I-485 Inventory of pending cases, as of January 5, 2011.

Note: There were 167,610 cases.

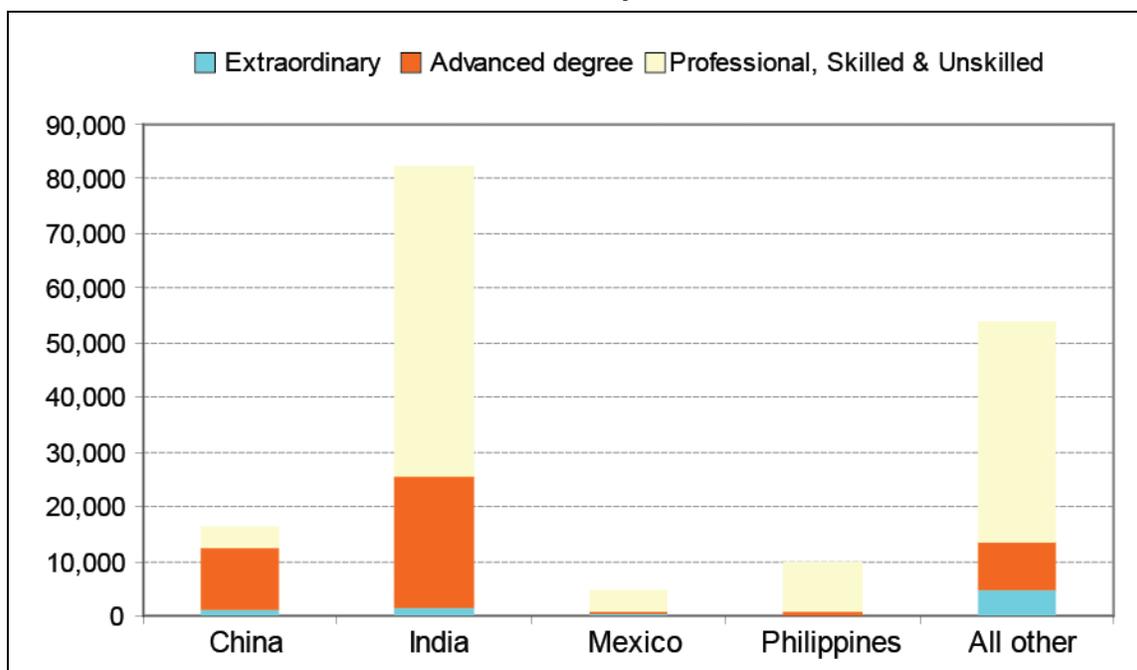
With 82,411 approved I-485 petitions pending, India leads as the top source country with almost half—48%—of the approved I-485 petitions pending. The Peoples’ Republic of China is a distant second with 10% or 16,598. The Philippines (9,997) makes up 6%, and Mexico (4,924) has 3%, as **Figure 8** presents.

India dominates in the 2nd “advanced degree” and 3rd “professional, skilled, and unskilled worker” categories of approved I-485 petitions pending. **Figure 9** illustrates that again the Peoples’

²⁶ Presumably there are a steady stream of petitions that have been filed since 2007 that await processing, though the numbers may have declined as a result of the economic recession that began in December 2007.

Republic of China is a distant second, though China does make up a noteworthy number of approved I-485 petitions pending for persons with advanced degrees.²⁷

Figure 9. Approved Employment-Based I-485 Petitions Pending January 2011 by Preference and Top Countries



Source: USCIS I-485 Inventory of pending cases, as of January 5, 2011.

Note: There were 113,930 cases.

Comparative Summation

Figure 10 and **Table 4** provide a comparative set of perspectives from which the effects that the per-country limits on legal immigration have on the oversubscribed countries may be assessed. Each depicts the pending caseload of approved employment-based LPR petitions in the 1st through 3rd preference categories for both the National Visa Center’s approved visa pending and the USCIS’s I-485 Inventory of approved petitions. **Figure 10** shows the data by top source country, and **Table 4** presents the data by visa category.

The data presented in **Table 4** make clear that the bulk of the approved pending cases—whether they be in the I-485 Inventory or the National Visa Center—are 3rd preference cases and that both totals are similar in size. In terms of the 1st and 2nd preference approved pending cases, the I-485 Inventory holds many more than the National Visa Center. These patterns are consistent with the earlier analysis of “new arrivals” and “adjustments” showing that most 1st and 2nd preference employment-based LPRs over the past decade were adjusting status.

²⁷ For further analysis by country and preference category, see **Appendix A**.

Table 4. Employment-Based Pending Cases as of November 2010

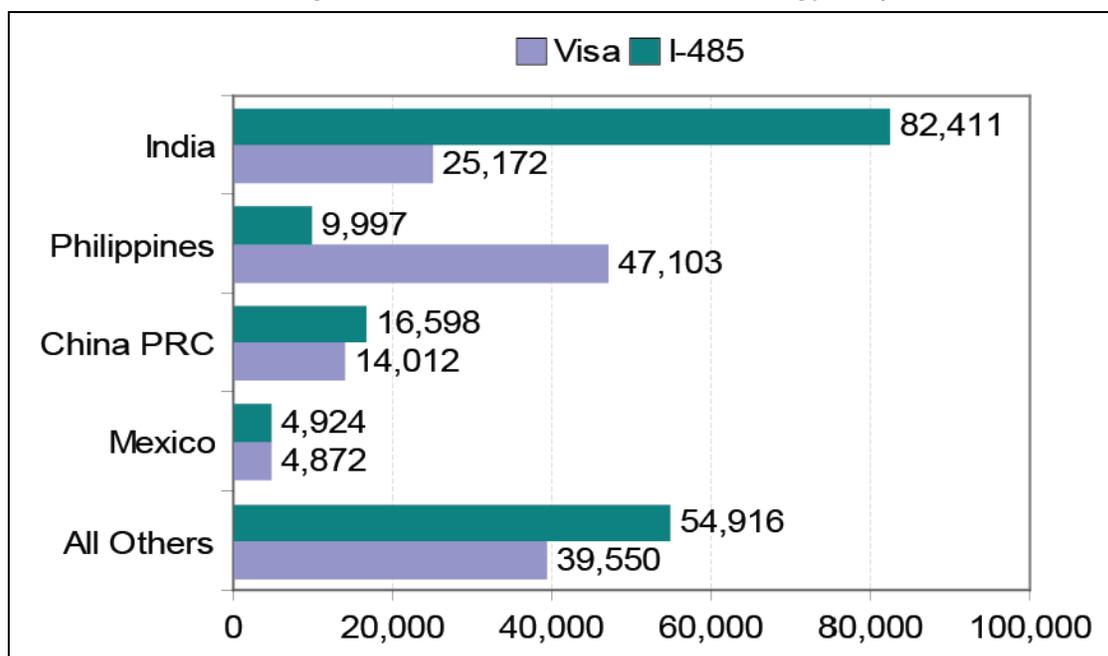
Category		Approved Petitions Pending	
Worldwide Level 140,000		NVC Visa	I-485 Inventory
1 st preference	28.6% of worldwide limit plus unused 4 th and 5 th preference	2,961	7,595
2 nd preference	28.6% of worldwide limit plus unused 1 st preference	6,738	45,573
3 rd preference—professional, skilled & unskilled	28.6% of worldwide limit plus unused 1 st or 2 nd preference (10,000 limit on unskilled)	119,183 (Unskilled: 16,788)	115,561 (Unskilled: 919)
4 th preference	7.1% of worldwide limit; religious workers limited to 5,000	554	294
5 th preference	7.1% of worldwide limit	NA	23

Source: CRS analysis of data from the *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*; and USCIS I-485 Inventory of pending cases, as of January 5, 2011.

Note: These are not unduplicated counts, but the extent that these data overlap is not known.

Figure 10. Top Countries with Approved Visa or I-485 Petitions Pending

Visas Pending November 2010 and I-485 Petitions Pending January 2011



Source: CRS analysis of data from the *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*; and USCIS I-485 Inventory of pending cases, as of January 5, 2011.

Note: These are not unduplicated counts, but the extent that these data overlap is not known.

The data in **Figure 10**, along with the previous analyses, *suggest* that the vast number of Indians are waiting to adjust status in the United States, while the vast number of Filipinos are waiting to immigrate from abroad. Those with approved pending cases from the Peoples' Republic of China seem to be more evenly split among those who might be adjustments and those who might be new arrivals. It is also evident that policy options aimed at advancing approved cases from India and China would also bear on approved cases pending from the Philippines.

Legislative and Policy Issues

Economic indicators confirm that the economy went into a recession at the close of 2007.²⁸ Although some economic indicators suggest that modest growth has resumed, unemployment remains high and is projected to remain so for some time.²⁹ Even as U.S. unemployment levels remain high, some employers assert that they continue to need the “best and the brightest” workers, regardless of their country of birth, to remain competitive in a worldwide market and to keep their firms in the United States. While support for the option of increasing employment-based immigration may be dampened by economic conditions, proponents argue it is an essential ingredient for economic growth.³⁰ Those opposing increases in employment-based LPRs in particular assert that there is no compelling evidence of labor shortages and cite the rate of unemployment across various occupations and labor markets.³¹ They argue that recruiting foreign workers while unemployment levels remain high would have a deleterious effect on salaries, compensation, and working conditions of U.S. workers.³²

Although no hearings have been held expressly on the per-country ceilings, the House Committee on the Judiciary Subcommittee on Immigration Policy and Enforcement has held two hearings in which the issue has arisen—one on the use of high-skilled foreign temporary professional workers and another on retention of foreign students with graduate degrees in the sciences.³³ The Senate Committee on the Judiciary Subcommittee on Immigration, Refugees and Border Security also held a hearing in the 112th Congress focused on employment-based immigration.³⁴

²⁸ The National Bureau of Economic Research (NBER) declared the U.S. economy went into a recession in December 2007.

²⁹ CRS Report R41006, *Unemployment: Issues and Policies*, by Jane G. Gravelle, Thomas L. Hungerford, and Marc Labonte.

³⁰ Many of the comprehensive immigration reform bills of the 2000s would have increased the total number of employment-based immigrants. Some would have revised the employment-based preference categories. A merit-based point system was also considered. For further background, see Appendix D in CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

³¹ For further discussion, see U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *STEM the Tide: Should America Try to Prevent an Exodus of Foreign Graduates of U.S. Universities with Advanced Science Degrees?*, 112th Cong., 1st sess., October 5, 2011; and CRS Report R40080, *Job Loss and Infrastructure Job Creation Spending During the Recession*, by Linda Levine.

³² For further discussion, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem; and CRS Report 95-408, *Immigration: The Effects on Low-Skilled and High-Skilled Native-Born Workers*, by Linda Levine.

³³ U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers*, 112th Cong., 1st sess., March 31, 2011; and U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *STEM the Tide: Should America Try to Prevent an Exodus of Foreign Graduates of U.S. Universities with Advanced Science Degrees?*, 112th Cong., 1st sess., October 5, 2011.

³⁴ U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security, (continued...)

Legislation to revise the per-country ceilings on LPRs to the United States has been introduced in the House (H.R. 3012). This bill focuses on economic immigration, as its title “Fairness for High-Skilled Immigrants Act” suggests, by eliminating country-specific numerical restrictions on permanent employment-based admissions.³⁵

Options to Lift the Per-Country Limits³⁶

With this economic and political backdrop, the option of lifting the per-country caps on employment-based LPRs has gained attention. Some theorize that the elimination of the per-country caps would increase the flow of high-skilled immigrants without increasing the total annual admission of employment-based LPRs.³⁷ The presumption is that many high-skilled people (proponents cite those from India and China, in particular) would then move closer to the head of the line to become LPRs.³⁸

The legislative options might include

- a targeted lifting of the country caps on the top two preference categories of priority workers and those who are deemed exceptional, extraordinary, or outstanding individuals;
- a categorical lifting of the country caps on all employment-based preference categories, up to the 140,000 worldwide ceiling on employment-based LPRs; or
- a complete lifting of the country caps on all employment-based preference categories as well as excluding employment-based LPRs from the calculation of the family-based and worldwide per-country ceilings.

Statistical Projections Elusive

It is not possible to statistically project the effects of revising the per-country limits for several reasons. Foremost, it is not known how many approved petitions may be counted in both the National Visa Center data and the USCIS I-485 Inventory. Is the total number of approved employment-based petitions closer to 150,000 because many cases are counted in both systems? Or, is the number of approved cases closer to 300,000 because the duplication across the two systems is small?

(...continued)

The Economic Imperative for Enacting Immigration Reform, 112th Cong., 1st sess., July 26, 2011.

³⁵ H.R. 3012 would also raise the country cap on family-based immigration from 7% to 15% over a four-year period.

³⁶ While this report is expressly focused on the per-country ceilings in the INA, revising the country caps are just one of many ways to foster high-skilled immigration to the United States. See **Appendix C** for a brief summary of selected alternatives.

³⁷ U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers*, 112th Cong., 1st sess., March 31, 2011; and U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *STEM the Tide: Should America Try to Prevent an Exodus of Foreign Graduates of U.S. Universities with Advanced Science Degrees?*, 112th Cong., 1st sess., October 5, 2011.

³⁸ Stuart Anderson, *Waiting and More Waiting: America's Family and Employment-Based Immigration System*, National Foundation for American Policy, October 4, 2011.

Secondly, we do not know the full effect that the 2007 visa retrogression has had on the processing of employment-based visas. More precisely, if the visa priority dates meaningfully advanced, would a substantial number of post-2007 petitions be approved and advance to the pending caseload? How many petitions are in the pipeline?

It is quite likely that additional people would seek employment-based LPR visas if the wait times were shorter. Employers as well as prospective foreign workers may be more likely to file petitions if the delays were shortened. In other words, the reduction in the number of approved cases pending might be short-lived.

Finally, if the per-country ceilings were eliminated for employment-based LPRs without any other revisions to permanent legal immigration, it would likely have “ripple” effects on family-based immigration as well as other potential employment-based LPRs.

Summary of Arguments in Debate

Some observe that the per-country ceilings are arbitrary and argue that country caps should not be applied to employment-based preference categories. They maintain that employability has nothing to do with country of birth and that U.S. employers are not allowed to discriminate based on nationality or country of origin. They further opine that it is discriminatory to have laws that limit the number of employment-based LPRs according to country of origin.³⁹

Proponents of per-country ceilings maintain that the statutory per-country ceilings restrain the dominance of high-demand countries and preserve the diversity of the immigrant flows. The Immigration Amendments of 1965 ended the country-of-origin quota system that overwhelmingly favored European immigrants, and subsequent amendments to the INA included immigrants from Western Hemisphere countries within the worldwide and per-country limits. Supporters of current law maintain that U.S. immigration policy has been more equitable and less discriminatory in terms of country of origin as a result of these reforms, because the INA puts country of origin on an equal playing field.

³⁹ Immigration Voice, “The Per-Country Rationing of Green Cards that Exacerbates the Delays,” press release, undated, http://immigrationvoice.org/index.php?option=com_content&task=view&id=5&Itemid=47.

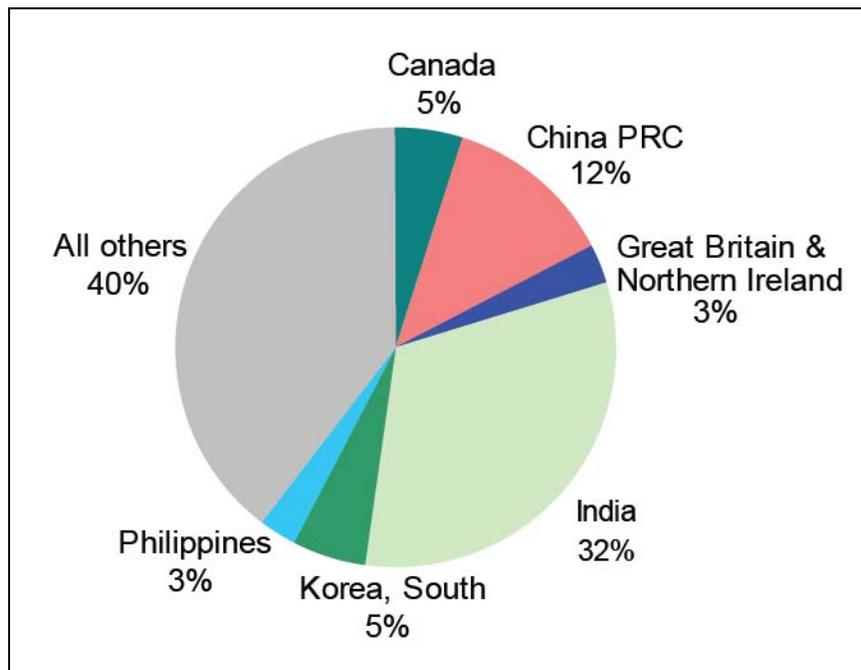
Appendix A. Further Breakdowns of Employment-Based Cases Pending by Top Countries

Further analysis that compares the distributions of extraordinary and advanced degree categories with the professional, skilled, and unskilled worker categories reveals additional differences among the top countries. Even more striking, however, are the country differences between those approved visa petitions pending with the National Visa Center and those approved I-485 petitions pending with the USCIS.

Approved Visa Petitions Pending

The number of approved 1st and 2nd preference visas pending is small in contrast to the 3rd preference category. **Figure A-1** presents the top country data for just the “extraordinary” and the “advanced degree” categories. India makes up almost a third (32%) of the 9,699 approved visas pending. The Peoples’ Republic of China is second with 12%. Canada and South Korea are the source countries for 5% each. Great Britain (including Northern Ireland) and the Philippines each comprise 3% of the 1st and 2nd preference approved visas pending.

Figure A-1. Approved Extraordinary and Advanced Degree Visa Petitions Pending November 2010 by Top Countries



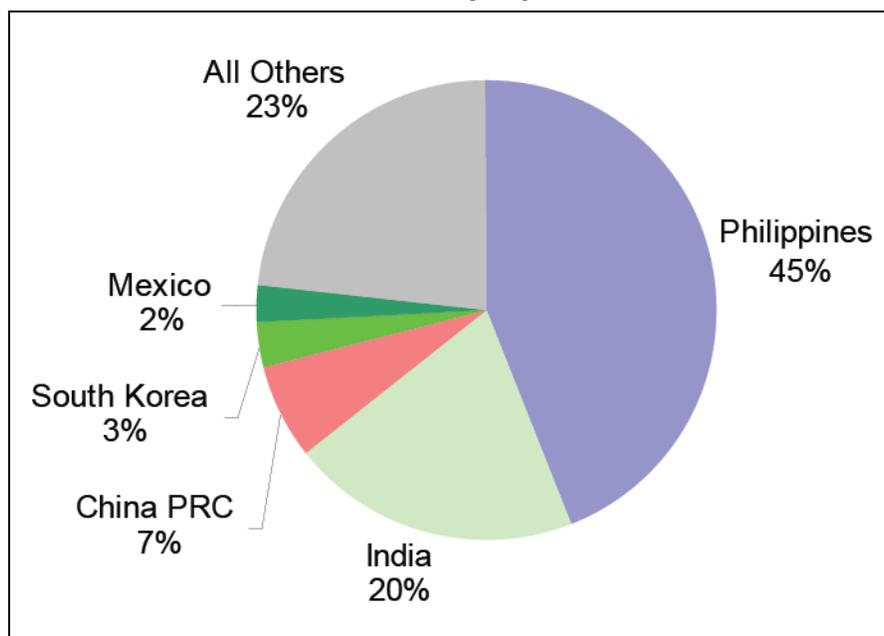
Source: CRS analysis of data from the *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*.

Note: There were 9,699 total cases.

As indicated previously, most of the approved employment-based visas are 3rd preference professional and skilled workers, and as shown in **Figure A-2**, the Philippines leads with 45% of the 102,395 visas pending. India is the source country for 20% of the approved 3rd preference

professional and skilled worker visas pending. The Peoples' Republic of China, South Korea, and Mexico contribute 7%, 3%, and 2% respectively to the approved pending visas for professional and skilled workers.

Figure A-2. Approved Professional and Skilled Worker Visa Petitions Pending November 2010 by Top Countries



Source: CRS analysis of data from the *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*.

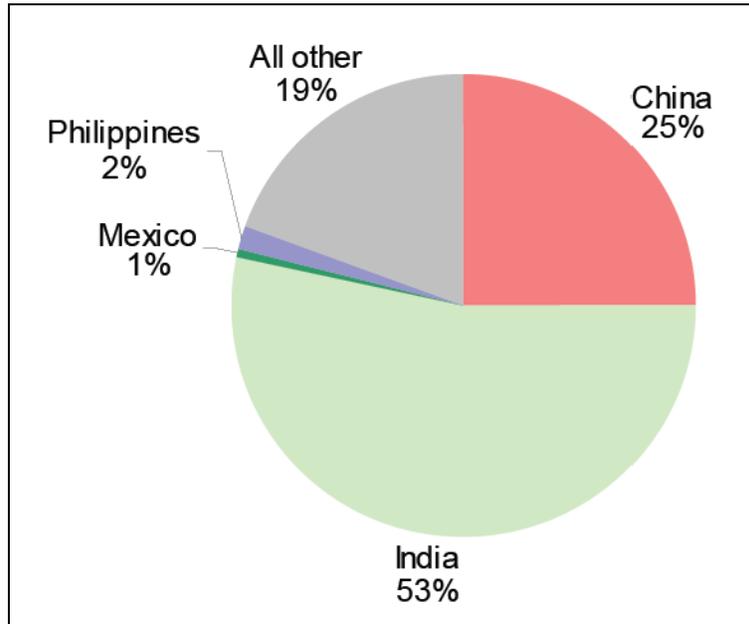
Note: There were 102,395 total cases.

Approved I-485 Petitions Pending

Figure A-3 teases out the portion of approved I-485 petitions pending from China in the “extraordinary” and the “advanced degree” categories and shows that 25% of those are from the Peoples’ Republic of China. Once again, however, India dominates the I-485 Inventory, comprising over half (53%) of the approved 1st and 2nd preference categories.

As shown in **Figure A-4**, India also leads as the top source country for 3rd preference professional, skilled, and unskilled workers with approved I-485 petitions pending. Again, India makes up about half—49%—of the category. The Philippines is a distant second with 8% of the approved I-485 3rd preference petitions pending.

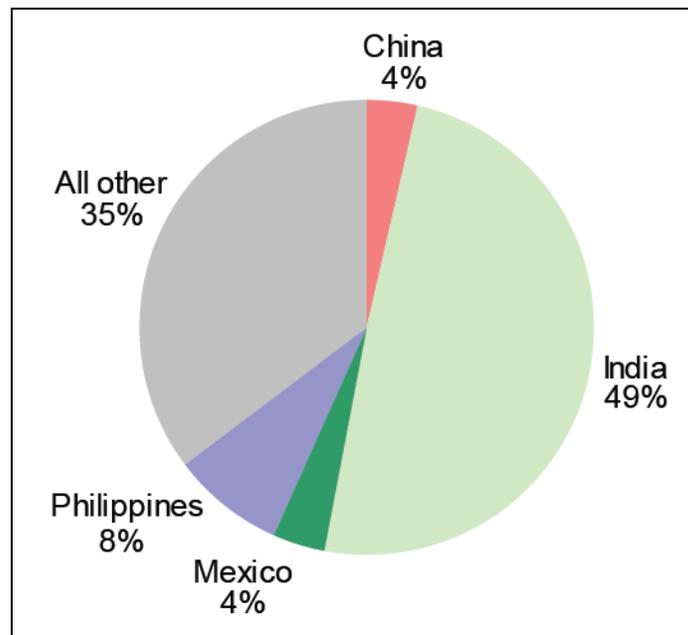
Figure A-3. Approved Extraordinary and Advanced Degree I-485 Petitions Pending January 2011 by Top Countries



Source: USCIS I-485 Inventory of pending cases, as of January 5, 2011.

Note: There were 53,168 cases.

Figure A-4. Approved Professional, Skilled, and Unskilled Worker I-485 Petitions Pending January 2011 by Top Countries



Source: USCIS I-485 Inventory of pending cases, as of January 5, 2011.

Note: There were 114,442 cases.

Appendix B. Family-Based Admissions and Caseload

There is also considerable interest in the pending caseload of family-based petitions, which is much larger than the employment-based caseload. The Fairness for High-Skilled Immigrants Act (H.R. 3012) is among the bills that would raise the per-country cap on family-based immigration. H.R. 3012 would raise the ceilings from 7% to 15% over several years.

The largest number of LPR visas are allocated to foreign nationals with a family relationship with a U.S. citizen or legal resident, as **Table B-1** details. Of the 1 million LPRs in FY2010, 66.3% entered on the basis of family ties and 45.7% were the immediate relatives of U.S. citizens.

Table B-1. Family-Based Immigration Preference System

Category		Numerical limit
Total Family-Sponsored Immigrants		480,000
<i>Immediate relatives</i>	Aliens who are the spouses and unmarried minor children of U.S. citizens and the parents of adult U.S. citizens	Unlimited
Family-Sponsored Preference Immigrants		Worldwide Level 226,000
<i>1st preference</i>	Unmarried sons and daughters of citizens	23,400 plus visas not required for 4 th preference
<i>2nd preference</i>	(A) Spouses and children of LPRs (B) Unmarried sons and daughters of LPRs	114,200 plus visas not required for 1 st preference
<i>3rd preference</i>	Married sons and daughters of citizens	23,400 plus visas not required for 1 st or 2 nd preference
<i>4th preference</i>	Siblings of citizens age 21 and over	65,000 plus visas not required for 1 st , 2 nd , or 3 rd preference

Source: CRS summary of §§203(a), 203(b), and 204 of INA; 8 U.S.C. §1153.

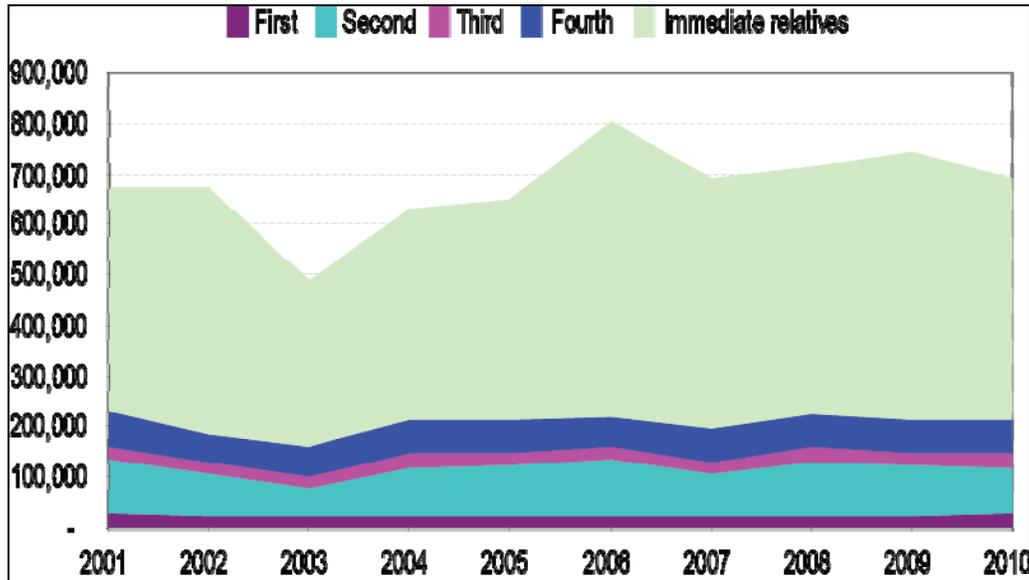
Immediate relatives of U.S. citizens made up the single largest group of immigrants, as **Table B-1** indicates. The spouses and children of LPRs were the second-largest group.

Figure B-2 presents approved petitions for the 4.6 million family-based LPR visas pending with the National Visa Center at the end of FY2010, by date of submission.⁴⁰ Over half (55%) of all approved family petitions pending were 5th preference (i.e., brothers and sisters of U.S. citizens). Almost an equal number of approved family petitions pending were 2nd and 3rd preferences, 20% and 19%, respectively.

Mexico is the top sending country for all approved family petitions pending, with 29.5%, followed in a distant second by the Philippines with 11.4% (**Figure B-3**)

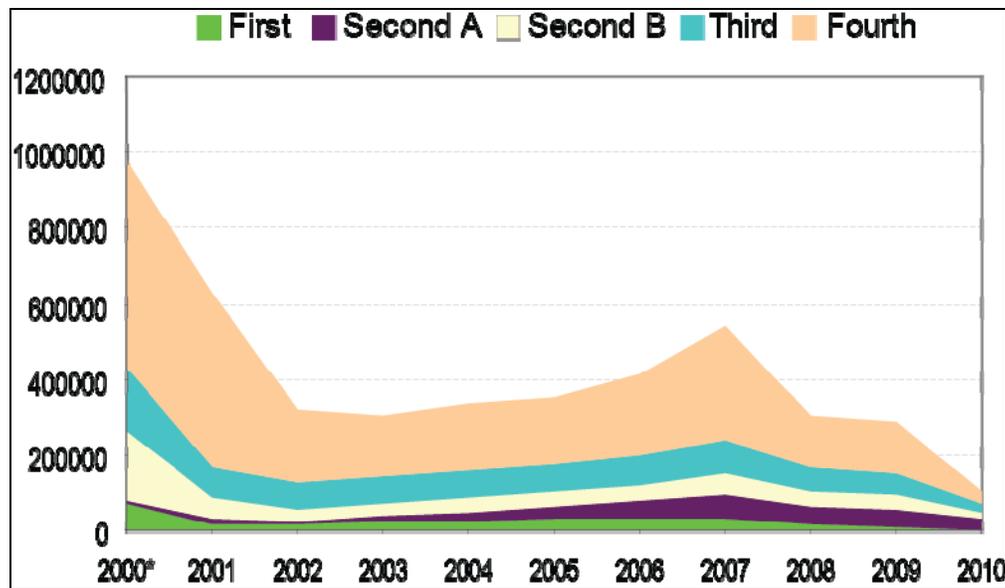
⁴⁰ U.S. Department of State, *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*.

Figure B-1. Family-Based Admissions, 2001-2010



Source: CRS analysis of data from the DHS Office of Immigration Statistics.

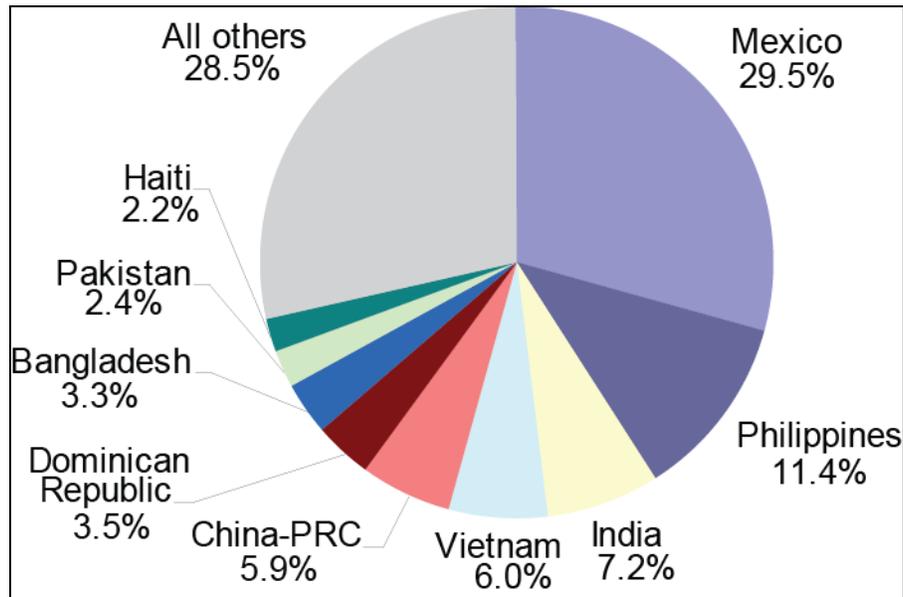
Figure B-2. Approved Family-Based Visa Petitions Pending November 2010 by Date of Submission and by Preference Category



Source: CRS analysis of data from the Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010.

Notes: 2000* include cases pending prior to 2000. There were 4.6 million family-based cases pending.

Figure B-3. Approved Family-Based Visa Petitions Pending January 2011 by Top Countries



Source: CRS analysis of data from the *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2010*.

Note: There were 4.6 million family-based cases pending.

Appendix C. Possible Alternatives to Revising the Country Caps

While this report is expressly focused on the per-country ceilings in the INA, revising the country caps is just one of many ways to foster high-skilled immigration to the United States. Several possible alternatives are listed below.⁴¹

Reallocate the Employment-Based Preferences

If the objective is to increase the number of the highest-skilled immigrants without raising the worldwide level, then reallocating additional visas to the 1st and 2nd preference categories is another option. For an example, see Section 301(b) of S. 1258, which places much of the high-priority “extraordinary” immigrants outside the numerical limits. In doing so, it would increase the flow of employment-based immigrants. This alternative, however, would not address the sheer number of approved LPR petitions from China, India, Mexico, and the Philippines. Many advanced-degree workers and all professional and skilled workers who have approved petitions have employers who have already been certified to hire them and have offered jobs to them.

Reallocate the Diversity Visas

Some have observed that the 50,000 diversity visas would be better used for high-skilled immigrants.⁴² For example, H.R. 43 would eliminate the diversity visa lottery and reallocate its 55,000 visas to foreign nationals who graduated from U.S. universities with degrees in the sciences or medicine and who have job offers.

Permit Selected Nonimmigrants to Adjust to LPR Status Outside the Numerical Limits

Another alternative would be establishing an employment-based LPR category for foreign students who have obtained a graduate degree at the level of master’s or higher in a science, technology, engineering, or mathematics (STEM) field from a U.S. institution. One example is H.R. 2161, the Immigration Driving Entrepreneurship in America (IDEA) Act of 2011, which would enable U.S.-educated recipients of advanced degrees in STEM fields to become LPRs if they have a job offer and meet other conditions specified in the bill.

⁴¹ For further discussion, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

⁴² The diversity visas are allocated to natives of countries from which immigrant admissions were lower than a grand total of 50,000 over the preceding five years. CRS Report R41747, *Diversity Immigrant Visa Lottery Issues*, by Ruth Ellen Wasem.

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