# U.S. Family-Based Immigration Policy

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# Summary

Family reunification is a key principle underlying U.S. immigration policy. It is embodied in the Immigration and Nationality Act (INA), which specifies numerical limits for five family-based admission categories, as well as a per-country limit on total family-based admissions. The five categories include immediate relatives of U.S. citizens and four other family-based categories that vary according to individual characteristics such as the legal status of the petitioning U.S.-based relative, and the age, family relationship, and marital status of the prospective immigrant.

Of the 1.03 million foreign nationals admitted to the United States in FY2012 as lawful permanent residents (LPRs), 680,799, or 66%, were admitted on the basis of family ties. Of these family-based immigrants admitted in FY2012, 70% were admitted as immediate relatives of U.S. citizens. Many of the 1.03 million immigrants were initially admitted on a legal temporary basis and became immigrants by converting or "adjusting" their status to a lawful permanent resident. The proportion of family-based immigrants who adjusted their immigration status while residing in the United States (53%) exceeded that of family-based immigrants who had their immigration petitions processed while living abroad (47%), although such percentages varied considerably among the five family-based admission categories.

Since FY2000, increasing numbers of immediate relatives of U.S. citizens have accounted for all of the growth in family-based admissions. Between FY2000 and FY2009, immigrants who accompanied or later followed principal (qualifying) immigrants averaged 12% of all family-based admissions annually. During that period, Mexico, the Philippines, China, India, and the Dominican Republic sent the most family-based immigrants to the United States.

Each year, the number of foreign nationals petitioning for LPR status through family-sponsored preferences exceeds the supply of legal immigrant slots. As a result, a visa queue has accumulated of foreign nationals who qualify as immigrants under the INA but who must wait for a visa to immigrate to the United States. As such, the visa queue constitutes not a backlog of petitions to be processed but, rather, the number of persons approved for visas not yet available due to INA-specified numerical limits. As of November 2012, 4.3 million persons stood in the visa queue.

Every month, the Department of State (DOS) produces its *Visa Bulletin*, which lists "cut-off dates" for each of the four numerically limited family-based admissions categories. Cut-off dates indicate when petitions that are currently being processed for a numerically limited visa were initially approved. For most countries, the cut-off dates range between 2.5 years and 12 years ago. For countries that send the most immigrants, the range expands to between 2.5 and 23 years ago.

Current bipartisan interest in comprehensive immigration reform has increased scrutiny of family-based immigration and revived debate over its proportion of total lawful permanent admissions. Past or current proposals for overhauling family-based admissions have been made by numerous observers, including two congressionally mandated commissions.

Those who favor expanding the number of family-based admissions point to this sizable queue of prospective immigrants who have been approved for lawful permanent residence but must wait years separated from their U.S.-based family members until receiving a numerically limited immigrant visa. Their proposals generally emphasize expanding the numerical limits of family-based categories. Others question whether the United States has an obligation to reconstitute families of immigrants beyond their nuclear families. Corresponding proposals would eliminate

several family-based preference categories, favoring only those for the immediate relatives of U.S. citizens and lawful permanent residents. Such proposals reiterate recommendations made by earlier congressionally mandated commissions on immigration reform.

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# Overview

Current U.S. immigration policy governing lawful permanent admissions emphasizes four major principles: (1) family reunification; (2) admission of persons with needed skills; (3) refugee protection; and (4) country-of-origin diversity.[1] Family reunification, which has long been a key principle underlying U.S. immigration policy, is embodied in the Immigration and Nationality Act (INA), which specifies numerical limits for five family-based[2] admission categories. In addition, the INA also places a limit on total family-based admissions from any single country. The five categories include immediate relatives of U.S. citizens and four other family-based categories that vary according to individual characteristics such as the legal status of the petitioning U.S.-based relative, and the age, family relationship, and marital status of the prospective immigrant.[3]

Family-based immigration currently makes up two-thirds of all legal permanent immigration.[4] Each year, the number of foreign nationals petitioning for lawful permanent resident (LPR) status exceeds the total number of legal immigrants that the United States can accept each year under the INA. Consequently, a visa queue has accumulated of roughly 4.3 million persons who qualify as immigrants under the INA but who must wait for a numerically limited visa to immigrate to the United States.[5]

The current debate on comprehensive immigration reform has increased scrutiny of family-based immigration and has revived the discussion over what its proportion of total lawful permanent admissions should be. As a backdrop to this debate, this report provides an examination of *family-based immigration* policy. In doing so, it outlines a brief history of U.S. family-based immigration policies, discusses current law governing admissions, and summarizes recommendations made by previous congressionally mandated committees charged with evaluating immigration policy. It then presents descriptive figures on legal immigrants entering the United States during the past decade and reviews the sizable backlog of approved immigrant petitioners waiting for an immigrant visa. It closes by discussing selected policy issues.

[1] These principles are embodied in 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. Congress has significantly amended the INA since 1965 with (among other laws) the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Immigration Act of 1990 represented the last major revision to legal permanent immigration policy. For a brief review of immigration policy history, see archived CRS Report 91-141 EPW, *A brief history of U.S. immigration policy*, by Joyce Vialet (hereinafter referred to as "Vialet, *A brief history of U.S. immigration policy*").

[2] In this report, "family-based" is synonymous with "family-sponsored."

[3] In this report, "immigrant" is synonymous with "lawful permanent resident" or "legal permanent resident (LPR)." Immigrant refers to a foreign national admitted to the United States as a lawful permanent resident. Unless otherwise indicated, "immediate relatives" refers to immediate relatives of U.S. citizens.

[4] The other major categories of legal permanent immigration include employment-based immigration, diversity visa lottery immigrants, and refugees and asylees.

[5] *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2012*, National Visa Center, U.S. Department of State.

# Evolution of U.S. Family-Based Immigration Policy

Although U.S. immigration policy incorporated family relationships as a basis for admitting immigrants as early as the 1920s,[6] the promotion of family reunification found in current law originated with the passage of the 1952 Immigration and Nationality Act (INA, P.L. 82-414).[7] While the 1952 act largely retained the national origins quota system established in the Immigration Act of 1924,[8] it also established a hierarchy of family-based preferences that continues to govern contemporary U.S. immigration policy today, including prioritizing spouses and minor children over other relatives, and relatives of U.S. citizens over those of lawful permanent residents (LPRs).

The Immigration and Nationality Act Amendments of 1965 (P.L. 89-236), enacted during a period of broad social reform, eliminated the national origins quota system, which was widely viewed as discriminatory. It gave priority to immigrants with relatives living permanently in the United States.[9] The law distinguished between immediate relatives (spouses, children under age 21, and parents) of U.S. citizens, who were admitted without numerical restriction, and other immigrant relatives of U.S. citizens and immediate and other relatives of LPRs, who faced numerical caps.[10] It also imposed a per-country limit on family-based and employment-based immigrants that limited any single country's total for these categories to 7% of the statutory total.

In 1990, Congress passed the Immigration Act of 1990 (P.L. 101-649) that increased total immigration under an overall permeable cap.[11] The act provided for a permanent annual flexible level of 675,000 immigrants, and increased the annual statutory limit of family-based immigrants from 290,000 to the current limit of 480,000. Provisions of the 1990 act are described below in "**Current Laws Governing Overall Admissions**."

Current U.S. immigration policy still retains key elements of its landmark 1952 and 1965 reformulations. However, critics consider it inadequate to address major current immigration issues, notably, the large accumulated "visa queue" of prospective family-based immigrants with approved petitions who are waiting for a visa.[12] Given the continuity in immigration policy, earlier recommendations for revising family-based immigration policy to address such issues may still have relevance. Key proposals originated from two congressionally mandated commissions established to evaluate U.S. immigration policy: the Select Commission on Immigration and

[6] The principle of family reunification was initially enacted into law in 1921 as part of the Emergency Quota Law (P.L. 67-5), which exempted minor children of U.S. citizens from the first broad numerically limited immigration restrictions.

[7] Also known as the McCarran-Walter Act.

[8] P.L. 68-139. The national origin quota system, created by the Immigration Act of 1924, limited annual admissions from any single country to 2% of persons from that nation already living in the United States as of 1890.

[9] P.L. 89-236, also known as the Hart-Celler Act.

[10] The law provided for four broad immigrant categories: family-based immigrants, immigrants with desired occupational characteristics, refugees, and non-preference immigrants. For further elaboration, see archived CRS report, *A brief history of U.S. immigration policy*, by Joyce Vialet.

[11] "Permeable cap" refers to an immigration limit that can be exceeded in certain circumstances.

[12] See for example, Jeb Bush, Thomas F. McLarty III, and Edward Alden, *U.S. Immigration Policy*, Council on Foreign Relations, Independent Task Force Report No. 63, New York, NY, 2009; Brookings-Duke Immigration Roundtable, *Breaking the Immigration Stalemate: From Deep Disagreements to Constructive Proposals*, Washington, DC: Brookings Institution, October 2009.

Refugee Policy chaired by Theodore Hesburgh[13] and the U.S. Commission on Immigration Reform chaired by Barbara Jordan.[14] Recommendations from these prominent immigration policy assessments are discussed below in "**Findings from Earlier Congressionally Mandated Commissions.**"

# Current Laws Governing Overall Admissions

## Legal Admissions Limits

The INA enumerates a permanent annual worldwide level of 675,000 legal admissions[15] (**Table 1**). This limit, sometimes referred to as a "permeable cap," is regularly exceeded because certain LPR categories are unlimited. The permanent annual worldwide immigrant level includes (1) *family-sponsored immigrants*, which are made up of *immediate relatives of U.S. citizens* and *family preference immigrants* (480,000 plus certain unused employment-based preference numbers from the prior year); (2) *employment-based preference immigrants* (140,000 plus certain unused family preference numbers from the prior year); (3) *diversity visa lottery immigrants*[16] (55,000); and (4) *refugees*[17] and *asylees*[18] (unlimited). However, immediate relatives of U.S. citizens, as well as refugees and asylees who are adjusting status, are exempt from direct numerical limits.

The INA specifies five family-based immigration categories ranked according to the immigrant's relationship with his or her U.S.-based relative. The first category, immediate relatives of U.S. citizens, includes spouses, unmarried minor children, and parents of adult citizens.[19] Immediate relatives of U.S. citizens can become LPRs without numerical limitation, provided they meet standard eligibility criteria that are required for all immigrants.[20]

[13] Theodore Hesburgh had served as President of the University of Notre Dame, member of the U.S. Civil Rights Commission, and Chair of the Rockefeller Foundation. U.S. Select Commission on Immigration and Refugee Policy. *Final Report: U.S .Immigration Policy and the National Interest*, Washington, DC, March 1, 1981 (hereinafter referred to as "the Hesburgh Report").

[14] Barbara Jordan was the first southern black female elected to the U.S. House of Representatives, serving from 1973 to 1979. U.S. Commission on Immigration Reform, *Legal Immigration Report to Congress, Legal Immigration: Setting Priorities*, Washington, DC, 1995 (hereinafter referred to as "the Jordan Report").

[15] INA §201.

[16] The Diversity Immigrant Visa Lottery encourages legal immigration from countries other than the major sending countries of current immigrants to the United States. See CRS Report R41747, *Diversity Immigrant Visa Lottery Issues*, by Ruth Ellen Wasem.

[17] A refugee is a person fleeing his or her country because of persecution or a well-founded fear of persecution based upon race, religion, nationality, membership in a particular social group, or political opinion. See CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

[18] An asylee is a foreign national arriving or present in the United States who is able to demonstrate a well-founded fear that if returned home, they will be persecuted based upon race, religion, nationality, membership in a particular social group, or political opinion. See CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy* , by Ruth Ellen Wasem.

[19] Family-based immigration policy distinguishes between three categories of children: (1) *Minor children* which refers to unmarried children under 21 years of age; (2) *Unmarried sons and daughters* which refers to children age 21 and older; and (3) *Married sons and daughters*.

[20] Per §212(a) of the INA, these include criminal, national security, health, and indigence grounds as well as past violations of immigration law. See CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion:* (continued...)

**Table 1. Numerical Limits of the Immigration and Nationality Act**

| | | | | |
|---|---|---|---|---|
| **Family-Sponsored Immigrants** | | | | **480,000** |
| **Immediate Relatives of U.S. Citizens:** | | | **unlimited** | |
| **Family Preference Immigrants:** | | | **226,000** | |
| 1st Preference: | Unmarried sons and daughters of citizens | 23,400 | | |
| | + unused 4th Preference visas | | | |
| 2nd Preference (A): | Spouses and minor children of LPRs | 87,900 | | |
| 2nd Preference (B): | Unmarried sons and daughters of LPRs | 26,300 | | |
| | + unused 1st Preference visas | | | |
| 3rd Preference: | Married children of citizens | 23,400 | | |
| | + unused 1st and 2nd Preference visas | | | |
| 4th Preference: | Siblings of adult U.S. citizens | 65,000 | | |
| | + unused 1st, 2nd, & 3rd Preference visas | | | |
| **Employment-Based Preference Immigrants** | | | | **140,000** |
| **Diversity Visa Lottery Immigrants** | | | | **55,000** |
| **Refugees and Asylees** | | | | **Unlimited** |
| **TOTAL** | | | | **675,000** |

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

The next four family preference categories are numerically limited. The first includes unmarried adult children of U.S. citizens. The second includes two subgroups of relatives of lawful permanent residents, each subject to its own numerical limit: the first subgroup (referred to as 2A) includes spouses and unmarried minor children of LPRs, and the second subgroup (referred to as 2B) includes unmarried adult children of LPRs. The third family preference category includes adult married children of U.S. citizens, and the fourth includes siblings of adult U.S. citizens.

The annual level of family preference immigrants is determined by subtracting the number of visas issued to immediate relatives of U.S. citizens issued in the previous year and the number of aliens paroled[21] into the United States for at least a year from 480,000 (the total family-sponsored level) and adding—when available—employment preference immigrant numbers unused during the previous year.[22] Unused visa numbers in any given category roll down to the next preference category (**Table 1**).

Under the INA, the annual level of family preference immigrants may not fall below 226,000. If the number of immediate relatives of U.S. citizens admitted in the previous year happens to fall below 254,000 (the difference between 480,000 for all family-based admissions and 226,000 for family preference admissions), then family preference admissions may exceed 226,000 by that

(...continued)

*Policy and Trends*, by Ruth Ellen Wasem.

[21] "Parole" is a term in immigration law which means that the foreign national has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

[22] INA §201(c).

difference. Nevertheless, annual immediate relative admissions have exceeded 254,000 each year since FY1996, ranging from a low of 258,584 admissions in FY1999 to a high of 580,348 admissions in FY2006 (see **Table A-1**, **Table 2**, and **Table A-3** in the **Appendix** for admission data from FY2001-FY2012). As such, the annual limit of family preference admissions has remained at 226,000.

Reflecting the INA's numerical limits, actual legal immigration to the United States is dominated by family-based admissions. In FY2012, a total of 680,799 family-based immigrants made up almost two-thirds (66%) of all 1,031,631 LPR admissions (**Table A-3**). This proportion has remained relatively stable for the past decade. The 478,780 immediate relatives[23] of U.S. citizens in FY2012 represented two-thirds of all family-based admissions and close to half of all legal admissions. The proportion of all family-based admissions comprised of immediate relatives, at roughly two-thirds, has not changed since FY2001 (**Table A-3**).

**Table 2. Actual Family-Sponsored Admissions by Major Class in FY2012**

| | Number | Percent |
|---|---|---|
| **Total Family-Sponsored Immigrants** | **680,799** | **100%** |
| **Immediate relatives of U.S. citizens** | **478,780** | **70%** |
| *(A) Spouses* | *273,429* | *40%* |
| *(B) Minor children* | *81,121* | *12%* |
| *(C) Parents* | *124,230* | *18%* |
| **Family-preference immigrants** | **202,019** | **30%** |
| 1st Preference: Unmarried sons and daughters of U.S. citizens | 20,660 | 3% |
| 2nd Preference: Spouses and children of LPRs | 99,709 | 15% |
| *(A) Spouses* | *27,927* | *4%* |
| *(A) Minor children* | *59,687* | *9%* |
| *(B) Unmarried sons and daughters* | *12,095* | *2%* |
| 3rd Preference: Married sons and daughters of U.S. citizens | 21,752 | 3% |
| 4th Preference: Siblings of U.S. citizens | 59,898 | 9% |

**Source:** CRS presentation of data from *2012 Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security, Tables 6 and 7.

**Note**: Figures in italics sum up to figures in roman type immediately above them. Differences between the actual number of family preference admissions shown above and the statutorily determined number shown in **Table 1** result from category "roll-downs" (unused visas in one category rolling down to the next) and fiscal year timing differences in when visa petitions were approved versus when the immigrant appeared in the United States. For more information, see Randall Monger and James Yangkay, *U.S. Legal Permanent Residents: 2012*, Office of Immigration Statistics, Department of Homeland Security, Washington, DC, March 2013.

## Per-country Ceilings

In addition to annual numerical limits on family preference admissions, the INA limits LPR admissions from any single country to 7% of the total number of family-based and employment-

[23] Unless otherwise indicated, "immediate relatives" refers to immediate relatives of U.S. citizens.

base admissions for that year.[24] The per-country limit does not indicate that a country is entitled to the maximum number of visas each year, but only that it cannot receive more than that number. Two exemptions from this rule include all immediate relatives of U.S. citizens; and 75% of all visas allocated to second (2A) family preference admissions (spouses and children of LPRs).[25] Because the number of foreign nationals potentially eligible for a visa exceeds the annual supply of visas under current law, waiting times for available family-based visas can extend for years, particularly for persons from countries with many petitioners, such as India, China, Mexico, and the Philippines (**Table 7**). For further discussion, see "**Supply-Demand Imbalance for U.S. Lawful Permanent Residence**" and "**Assessing the Per-country Ceiling**," below.

## Laws Governing Individual Admission

### Procedures for Acquiring Lawful Permanent Residence

Becoming an LPR on the basis of a family relationship first requires that the sponsoring U.S. citizen or lawful permanent resident in the United States establish his or her relationship with the prospective LPR by filing Form I-130 *Petition for Alien Relative* with DHS's U.S. Citizenship and Immigration Services (USCIS).[26] Upon approval of the Form I-130, the prospective LPR must file a Form I-485 *Application to Register Permanent Residence or Adjust Status*. In some cases, both petitions may be filed concurrently.[27]

If the prospective LPR already resides legally in the United States, USCIS handles the entire *adjustment of status* process whereby the alien adjusts from a nonimmigrant[28] category (which had initially permitted him or her to enter the United States legally) to LPR status.[29] If the prospective LPR does not reside in the United States, USCIS must review and approve the petition before forwarding it to the Department of State's (DOS's) Bureau of Consular Affairs in the prospective immigrant's home country.

[24] INA §202(a)(2). Total admissions in this instance include only the numerically limited family preference and employment-based preference immigrants (**Table 1**). The 7% computation is applied to admissions for the sum of *all* of these family-based *and* employment-based admissions, not to admissions for individual categories, nor to admissions for just family-based or just employment-based admissions. For further discussion of the employment preference categories, see CRS Report R42048, *Numerical Limits on Employment-Based Immigration: Analysis of the Per-Country Ceilings*, by Ruth Ellen Wasem.

[25] INA §202(a)(4). Other exceptions to the per-country ceilings affect dependent foreign states (limited to 2% of annual admissions) and employment preference immigrants for oversubscribed countries if visas are available within the world-wide limit for employment preferences (P.L. 106-313).

[26] I-130 forms are first sent to a USCIS lockbox facility which does not adjudicate petitions but only determines if they meet the acceptance criteria. Petitions are then either forwarded to the appropriate field office or service center where they are assigned to immigration service officers for initial review and adjudication, or they are rejected. The adjudication of visa petitions is an administrative proceeding. As such, the petitioner bears the burden of proof to establish eligibility for the benefit sought, Matter of Brantigan, 11 I & N Dec. 45 (BIA 1966). U.S. Citizens must be at least 21 years of age when filing for a parent or siblings, INA §201 (b)(2)(A)(i).

[27] Immediate relatives and others who have a visa immediately available may be able to file concurrently, but most categories require that the prospective immigrant establish eligibility for the immigrant category first with the I-130.

[28] Nonimmigrants are admitted for a designated period of time and a specific purpose. They include a wide range of visitors, including tourists, foreign students, diplomats, and temporary workers. See CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

[29] In FY2012, approximately 53% of all LPRs adjusted their status from within the United States. See *2012: Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security, Table 6.

The DOS Consular Affairs officer, when the alien lives abroad, or USCIS adjudicator, when the alien is adjusting status within the United States, must be satisfied that the alien is entitled to LPR status. Such reviews ensure that potential immigrants are not ineligible for visas or admission under the inadmissibility grounds in the INA.[30] In both cases, if the petition is approved, DOS determines whether a visa is available for the foreign national's admission category. Available visas are issued by "priority date," the filing date of their permanent residence petition. For more information, see "**Supply-Demand Imbalance for U.S. Lawful Permanent Residence**" below.

While the INA contains multiple grounds for inadmissibility, the public charge ground (i.e., the individual cannot support him or herself financially and must rely upon the state) is particularly relevant for family-sponsored immigration. All such admissions require that U.S.-based citizens and LPRs petitioning on behalf of (or sponsoring) their alien relatives submit a legally enforceable *affidavit of support*[31] along with evidence they can support both their own family and that of the sponsored alien at an annual income no less than 125% of the federal poverty level.[32] Alternatively, sponsors may share this responsibility with one or more joint sponsors, each of whom must independently meet the income requirement. Current law also directs the federal government to include "appropriate information" regarding affidavits of support in the Systematic Alien Verification for Entitlements (SAVE) system.[33] This level of support is legally mandated for at least 10 years or until the sponsored alien becomes a U.S. citizen.[34]

## Derivative Admissions

Spouses and children who accompany or later follow *qualifying* or *principal* immigrants are referred to as *derivative* immigrants. Under current law, derivative immigrants are entitled to the same status and same order of consideration as principal immigrants they *accompany* or *follow-to-join*,[35] assuming they are not entitled to an immigrant status and the immediate issuance of a visa under another section of the INA.[36] Derivative immigrants count equally under category

[30] These include criminal, national security, health, and indigence grounds as well as past violations of immigration law. INA §212(a). See also CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

[31] An affidavit of support is a document an individual signs to accept financial responsibility for another person, usually a relative, who is coming to the United States to live permanently. The person who signs the affidavit of support becomes the sponsor of the relative (or other individual) coming to live in the United States.

[32] INA §212(a)(4). Sponsors of the affidavit of support must be at least 18 years old and reside in the United States. The income requirement for sponsors who are members of the Armed Forces is 100% of the federal poverty level.

[33] The Systematic Alien Verification for Entitlements (SAVE) system provides government agencies access to data on immigration status needed to determine noncitizen eligibility for public benefits. SAVE's statutory authority dates to the Immigration Reform and Control Act of 1986, P.L. 99-603.

[34] For additional information, see CRS Report CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

[35] A derivative immigrant *accompanies* if they receive LPR status at the same time as the principal immigrant, either by being in the personal company of the principal immigrant upon LPR admission into the United States or if they are admitted separately for LPR status within six months of the principal's entry or status adjustment. A derivative immigrant *follows-to-join* if he or she derives immigrant status and a priority date from a principal applicant after six months, as defined by the statute. There is no time limit for a follow-to-join beneficiary to seek a visa and admission. Any foreign national classified as an immediate relative of a U.S. citizen must be the direct beneficiary of an approved petition for that classification. Therefore the minor unmarried child of an foreign national approved for classification as the spouse of an immediate relative of a U.S. citizen is not eligible for derivative classification and must have a separate petition filed on his or her behalf. 22 C.F.R. 40.1.

[36] INA §203(d).

limits. For instance, the 59,898 immigrants admitted in FY2012 under the 4th family preference category (siblings of U.S. citizens) shown in **Table 2** include 14,685 spouses of qualifying immigrants, 23,863 children of qualifying immigrants, and 21,350 qualifying immigrants or actual siblings of U.S. citizens. Derivative immigrant status attaches to approval of the principal immigrant's petition and requires no separate petition.[37] In FY2012, derivative immigrants represented about 13% of all family-based admissions and 24% of all LPR admissions.[38]

## Laws Governing Child Admissions

How the INA governs child admissions depends on the child's age and marital status, as well as the legal status of the sponsoring U.S. relatives. The five family-sponsored categories described above distinguish between "minor children" under age 21, and adult "sons and daughters" age 21 and over, as well as between unmarried and married children. Within the five categories, the INA prioritizes minor over adult children, unmarried over married children, and children of U.S. citizens over children of LPRs.

In the two cases (immediate relatives of U.S. citizens and LPRs) where it is necessary to determine if the child is a minor, age varies by sponsorship category. For children sponsored as immediate relatives, age is determined based on when the I-130 petition was filed.[39] For children sponsored under the 2nd family preference category, age is determined based on when an immigrant visa number becomes available, reduced by the amount of time (converted into years) that it took USCIS to process and approve the petition.[40]

Additionally, under current law, only adult U.S. citizen children may sponsor their foreign-born parents as immediate relatives and their foreign-born siblings as 4th family preference immigrants.[41] Foreign-born children under age 18 automatically become naturalized U.S. citizens if at least one parent is a U.S. citizen by birth or naturalization.[42] Orphans adopted abroad by U.S. citizens or prospective LPRs must have been so by age 16 (with exceptions) to acquire automatic citizenship upon arrival in the United States.[43]

[37] 8 C.F.R. 204.2(d)(4). Children of foreign nationals who are classified as immediate relatives are not eligible for immediate relative status in the same way as derivative immigrants, and must instead have separate petitions approved on their behalves.

[38] CRS analysis of data from the 2012 *Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security, Table 7.

[39] INA §201(f). For a family-based second preference beneficiary whose LPR parent naturalize and whose petition is converted to immediate relative classification, the child's age at the parent's naturalization determines the child's age.

[40] INA §203(h). Note that the Child Status Protection Act of 2000 (CSPA) only credits the amount of processing time for USCIS to approve the petition. It does not credit the amount of time that a child with an approved petition must then wait in order for a visa to become available. This processing time "credit" applies only if the child has sought to acquire LPR status within one year that a visa becomes available. Suppose, for example, that an LPR sponsors her 19 year old unmarried daughter for LPR status under the 2nd (A) family preference category, and USCIS processes and approves her visa after two years. She would receive a "credit" of two years. If a visa becomes available six years after USCIS approves her petition, her biological age of 27 (19+2+6) would be reduced by the two year USCIS processing time, and her "immigration age" becomes 25. Despite the credit, however, she must be now processed under the 2nd (B) family preference category. The CSPA does allow children in these circumstances to retain their parent's priority date under the original USCIS petition so they do not start "at the end of the line" of a new preference category.

[41] INA §201(b)(2)(A) and §203(a)(4), respectively.

[42] INA §320.

[43] INA §101(b)(1)(E).

### Conditional Resident Status

Foreign national spouses of U.S. citizens and LPRs who acquire legal status through family-based provisions of the INA must have a two-year evaluation period for marriages of short duration (under two years at the time of sponsorship). Such foreign nationals receive *conditional permanent residence status*.[44] This nonrenewable legal immigrant status, granted on the day the foreign national is admitted to the United States, is intended to help USCIS determine if such marriages are bona fide.[45] During the two-year conditional period, USCIS may terminate the foreign national's conditional status if it determines that the marriage was entered into to evade U.S. immigration laws or was terminated other than through the death of the spouse.

Within 90 days before the end of the two-year conditional period, the foreign national and his or her U.S.-based spouse must jointly petition to have the conditional status removed. If the petitioner and beneficiary fail to file the joint petition within the 90-day period, a waiver must be obtained to avoid loss of legal status. Assuming conditions in the law have been met and an interview with an appropriate immigration official uncovers no indication of marriage fraud, conditional permanent resident status converts to lawful permanent resident status.[46]

USCIS may waive the requirements noted above and remove an alien's conditional status in the following situations: (1) if the noncitizen spouse can show that he or she would suffer "extreme hardship" if deported from the United States; (2) if the conditional resident establishes that he or she entered into the marriage "in good faith," that the marriage was legally terminated, and that the noncitizen was "not at fault" in failing to meet the joint petition requirement; (3) if the conditional resident entered into the marriage in good faith but was battered or subjected to extreme cruelty by the citizen or resident spouse; or (4) if the noncitizen entered into the marriage in good faith, but the U.S. citizen or LPR spouse subsequently died.[47] In all cases, USCIS reviews the legitimacy of the marriage prior to removing or waiving the condition.

## Findings from Earlier Congressionally Mandated Commissions

On February 5, 2013, Dr. Michael Teitelbaum, commissioner and vice chair of the former U.S. Commission on Immigration Reform (Jordan Commission), testified at a hearing on the American immigration system before the House Judiciary Committee.[48] Six weeks later, on March 18, 2013, Dr. Susan Martin, former executive director of the Jordan Commission, testified at a hearing on

[44] INA §204.

[45] Conditional permanent residence status grants the same rights and responsibilities as that of LPR status, including legal status to live and work in the United States.

[46] Conditional status was not part of the original 1952 INA which granted LPR status to aliens who married U.S. citizens and LPRs. In 1986, in response to growing concerns about fraudulent marriages entered into for the sole purpose of obtaining immigration benefits, Congress established the two-year conditional permanent status requirement for foreign national spouses with the Immigration Marriage Fraud Amendments (IMFA). INA §216.

[47] 8 U.S.C. §1186a (c)(4).

[48] U.S. Congress, House Committee on the Judiciary, *America's Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration*, testimony of Michael Teitelbaum, 113th Cong., 1st sess., February 5, 2013.

comprehensive immigration reform before the Senate Judiciary Committee.[49] During their presentations, Teitelbaum and Martin both reiterated recommendations from the Jordan Commission's 1995 and 1997 reports. Their testimony, occurring 15 years after the commission completed its assessment of U.S. immigration policy, underscores the continued relevance of past congressional debates on current issues surrounding family-based immigration. The Jordan Commission had relied on findings of its predecessor, the Select Committee on Immigration and Refugee Policy chaired by Theodore Hesburgh (the Hesburgh Commission), which issued its report in 1981, over three decades ago.[50]

The Hesburgh Commission acknowledged that certain large-scale and relatively predictable demographic trends—fertility and mortality rates, for instance—could allow policy makers to formulate immigration policies around pre-determined optimal population sizes.[51] Although the United States has never had a population policy specifying an appropriate population size for the nation, the Hesburgh Commission was aware of arguments for either increasing or decreasing immigration levels because of fiscal, cultural, environmental, and economic pressures, as well as for foreign policy objectives, and national security. More recent legislative proposals have suggested both increasing and decreasing the numbers of immigrants.[52]

Family reunification was cited by both the Hesburgh and the Jordon Commissions as the primary goal of U.S. immigration policy.[53] The Jordan Commission rejected formulaic procedures for determining admissions criteria, supporting instead the existing framework that allows U.S.-based relatives to decide whom to sponsor for immigration to the United States.[54] Nonetheless, the Hesburgh Commission, noting the imbalance between the demand for lawful permanent U.S. residence and visa supply, asserted that "raising false hopes among millions with no prospect of immigration" would foster unauthorized immigration and "widespread dissatisfaction with U.S. immigration laws."[55] Both commissions considered options for reconfiguring family-based categories, typically favoring spouses and minor children over other relatives, and the relatives of U.S. citizens over those of LPRs.

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[49] U.S. Congress, Senate Committee on the Judiciary, *How Comprehensive Immigration Reform Should Address the Needs of Women and Families*, testimony of Susan F. Martin, 113th Cong., 1st sess., March 18, 2013.

[50] More recently, prominent policy organizations examining U.S. immigration policy have offered recommendations for revising U.S. immigration policy. See for example, Jeb Bush, Thomas F. McLarty III, and Edward Alden, *U.S. Immigration Policy*, Council on Foreign Relations, Independent Task Force Report No. 63, New York, NY, 2009; Brookings-Duke Immigration Roundtable, *Breaking the Immigration Stalemate: From Deep Disagreements to Constructive Proposals*, Washington, DC: Brookings Institution, October 2009; and Pia Orrenius and Madeline Zavodny, *Beside the Golden Door: U.S. Immigration Reform in a New Era of Globalization* (Washington, DC: AEI Press, 2010).

[51] Nevertheless, the Commission projected a total U.S. population of 274 million by 2050, a figure surpassed by the 2000 Census which enumerated 281 million persons.

[52] For example, the 2007 McCain-Kennedy comprehensive immigration reform bill contained provisions increasing the limit for family-sponsored immigration from 226,000 to 480,000.

[53] The Hesburgh Commission, for instance, concluded that family reunification should be the primary goal of immigration policy, citing its humanitarian character, benefits received by the United States through the stability, health, and productivity of individual family members reunited with their immediate family members, and its facilitation of newcomer adaptation and assimilation. Others have argued for prioritizing employment and skill-based admissions. See Brookings-Duke Immigration Roundtable, *Breaking the Immigration Stalemate,* and Pia Orrenius and Madeline Zavodny, *Beside the Golden Door*.

[54] U.S. Commission on Immigration Reform, p.5.

[55] U.S. Select Commission on Immigration and Refugee Policy, p. 378.

The Hesburgh Commission recommended eliminating the current 4th family preference category, siblings of U.S. citizens.[56] The Jordan Commission went farther, recommending the elimination of what are currently the 1st, 3rd, and 4th family preference categories, thereby allowing only spouses and minor children and parents of U.S. citizens (immediate relatives), and spouses and minor children of LPRs (2A preference category).[57] Justifications for these revisions included reunifying U.S. citizens and LPRs with their closest and most dependent relations; reducing unreasonably long wait times for visas; and improving the credibility of the immigration system while eliminating false expectations of easy permanent U.S. residence for more distant relatives of U.S. citizens and LPRs.

The Hesburgh Commission recommended more flexible family-based immigration numerical limits. For instance, it suggested establishing two numerical targets, one annual, and another for a longer term, such as five years. This would allow annual admissions to vary, possibly within an established range, accommodating unpredictable situations such as domestic concerns or international conditions while maintaining a long-term ceiling. Another option suggested by the Hesburgh Commission would permit borrowing between ceilings for subcategories (family, employment, refugee) to accommodate such situations.

# Profile of Legal Immigrants

## Legal Immigration Admission Trends

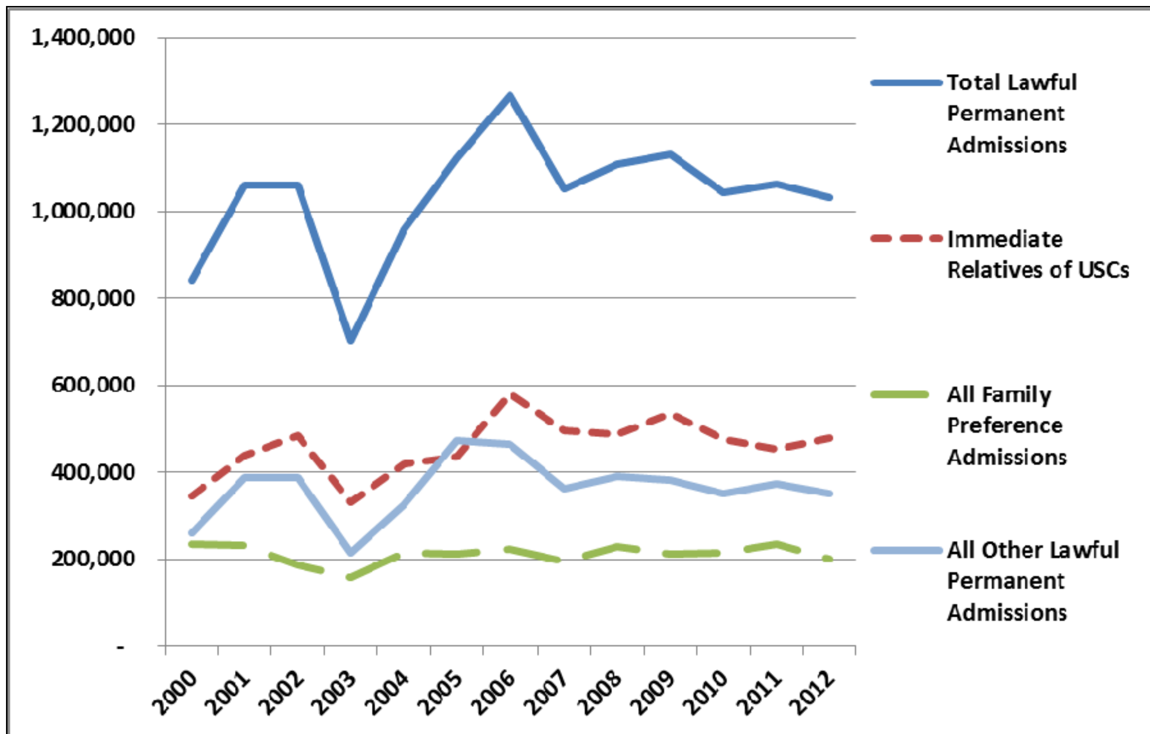
Immigration statistics for FY2000 through FY2012 reveal several trends for lawful permanent admission categories (**Figure 1**). First, admissions of total lawful permanent residents increased 23% over this period (with substantial fluctuations) from 841,002 persons in FY2000 to 1,031,631 persons in FY2012. Second, the number of immediate relatives increased from 346,350 to 478,780, the largest increase of all family-based categories. As such, they accounted for almost the entire increase in total family-based admissions over this period.[58] Third, other family-related categories saw nominal declines in admissions. Partly as a result of these mixed trends, and also as the result of increases in all other lawful permanent admissions, the proportion of family-based admissions to total lawful permanent admissions remained the same over this period (66%) with minor fluctuations (**Table A-3**).

[56] Ibid, p. 380.

[57] U.S. Commission on Immigration Reform, p. 61.

[58] Major fluctuations in FY2001 and FY2006 occurred across all categories of legal immigrant admissions, caused primarily by a decline and subsequent rebound in immigration volume after the September 11, 2001, terrorist attacks.

**Figure 1. LPR Admissions by Admission Category, FY2000-FY2012**




**Source:** CRS presentation of data from *2009* and *2012 Yearbook of Immigration Statistics*, Table 6, Office of Immigration Statistics, Department of Homeland Security.

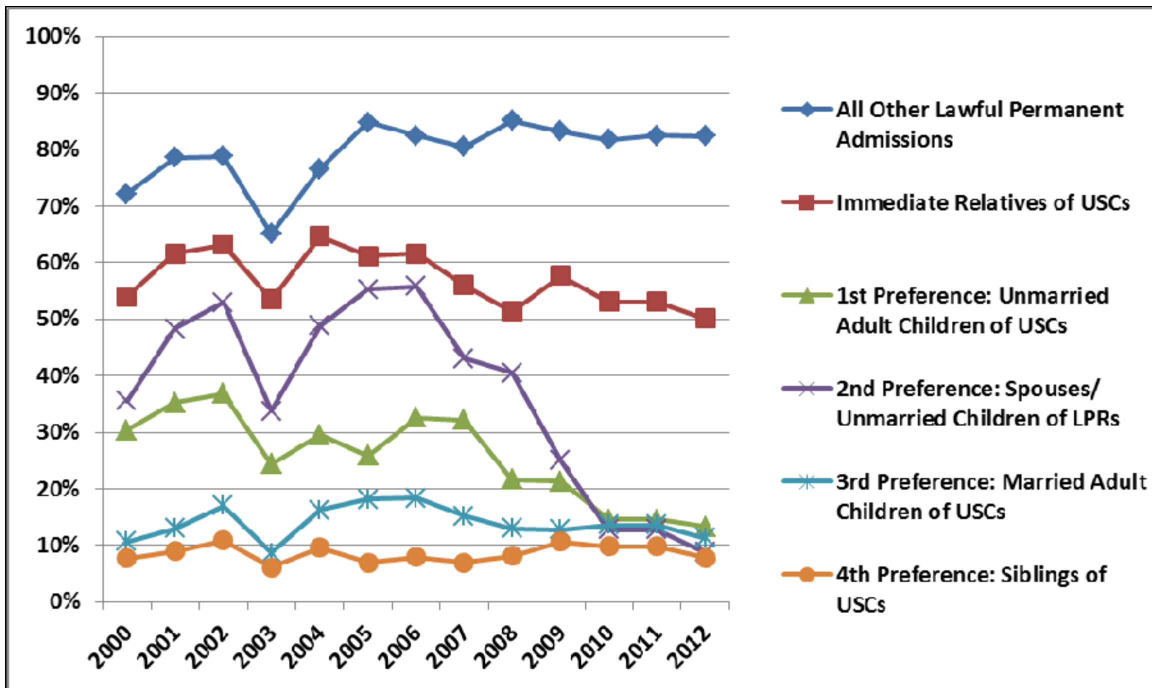
**Notes:** USC refers to U.S. citizen. All Other Lawful Permanent Admissions refer to employment-based immigrants, Diversity Visa Lottery immigrants, refugees and asylees, and other immigrants.

As noted in "**Laws Governing Individual Admission**," nonimmigrants can become LPRs either by adjusting to LPR status if they currently reside in the United States, or by petitioning for LPR status from abroad if they reside overseas. **Figure 2** presents the percentage of LPRs who adjusted status by legal admission category. As such it represents the proportion of LPRs in each class category that was already residing in the United States at the time LPR status was granted. About half of all family-based immediate relatives of U.S. citizens adjusted their status from within the United States over this period, while most family-based preference immigrants, particularly in recent years, were admitted from abroad.[59] In contrast, most non-family-based immigrants adjusted their status from within the United States.[60]

[59] CRS was unable to locate or conduct an analysis to explain the recent decline in the proportion of family preference admissions adjusting their status from within the United States.

[60] Laws for adjusting status vary depending on how the foreign national entered the United States. If a foreign national entered the United States legally, overstayed his or her visa, and then married a U.S. citizen, he or she can adjust status under INA §245(a), assuming other requirements for admissibility are met. However, if a foreign national under the same circumstances married an LPR instead of a U.S. citizen, they cannot adjust status under INA §245(a). If they wish to adjust status, they are treated by the INA like unauthorized aliens who entered illegally: they must leave the country, and are barred from re-entering for either 3 years or 10 years, depending on whether they resided in the United States illegally for 6-12 months or for more than 12 months, respectively. Persons who entered the country illegally and then petitioned for LPR status or applied for labor certification before April 2001 may be eligible to adjust status through INA §245(i). Given that this deadline is now a dozen years old, the number of unauthorized aliens for which this section currently applies is relatively small. However, beginning March 4, 2013, some immediate relatives of U.S. citizens can apply for *provisional unlawful presence waivers* before they leave the United States. The provisional (continued...)

**Figure 2. Percent of LPRs Adjusting Status, by Admission Category, FY2000-FY2012**




**Source:** CRS presentation of data from the *2009 and 2012 Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security.

**Notes:** USC refers to U.S. citizen. All Other Lawful Permanent Admissions refer to employment-based immigrants, Diversity Visa Lottery immigrants, refugees and asylees, and other immigrants.

## Demography of Family-Based Immigrants

This section examines family-based admissions by sex, principal versus derivative status, age, region of origin, and occupation. For ease of presentation and to represent what occurred over the past decade in its entirety, data were aggregated over the entire FY2000-FY2009 period.[61]

**Table 3** distinguishes principal from derivative immigrant admissions for the entire FY2000-FY2009 period. Absolute numbers of principal qualifying immigrants made up 76% of total LPR admissions and 88% (not shown) of all family-based admissions. However, differences appear by categories with 3rd and 4th preference admissions comprising greater numbers of derivative than principal admissions over this period. They contrast sharply with admissions of immediate relatives of U.S. citizens, and 1st and 2nd family preference categories, where principal admissions

(...continued)

unlawful presence waiver process allows individuals, who only need a waiver of inadmissibility for unlawful presence, to apply for it while they are living in the United States rather than from abroad. They can then leave the United States and apply for an immigrant visa to become lawful permanent resident. When they have their immigrant visa interview at a U.S. embassy or consulate abroad in order to return to the United States, they will already have the provisional unlawful presence waiver. The new process is expected to shorten the time U.S. citizens are separated from their immediate relatives while those family members are obtaining immigrant visas to become LPRs. See CRS Report R42958, *Unauthorized Aliens: Policy Options for Providing Targeted Immigration Relief*, by Andorra Bruno.

[61] Figures in this section of the report come from unpublished DHS data that extend to only FY2009.

outnumber derivative admissions. In comparison, all other (non-family) lawful permanent admissions are more evenly divided between the two immigrant types.[62]

**Table 3. Principal & Derivative Immigrants, by Admission Category, FY2000-FY2009**

(Figures represent admissions for the entire decade; proportions shown in parentheses)

| Admissions Type | Immediate Relatives of USCs | 1st Preference: Unmarried Sons & Daughters of USCs | 2nd Preference: Spouses & Unmarried Children of LPRs | 3rd Preference: Married Sons & Daughters of USCs | 4th Preference: Siblings of USCs | All Other Lawful Permanent Admissions | Total Lawful Permanent Admissions |
|---|---|---|---|---|---|---|---|
| **Principal** | 4,550,962 | 180,523 | 819,456 | 74,744 | 229,271 | 1,969,025 | 7,823,981 |
| **Derivative** | 3,090 | 68,621 | 156,148 | 170,159 | 404,660 | 1,671,195 | 2,473,873 |
| **Total** | 4,554,052 | 249,144 | 975,604 | 244,903 | 633,931 | 3,640,220 | 10,297,854 |
| | | | | | | | |
| **Principal** | 99.9% | 72.5% | 84.0% | 30.5% | 36.2% | 54.1% | 76.0% |
| **Derivative** | 0.1% | 27.5% | 16.0% | 69.5% | 63.8% | 45.9% | 24.0% |
| **Total** | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |

**Source:** CRS presentation of *unpublished* data for FY2000-FY2009, Office of Immigration Statistics (OIS), Department of Homeland Security. Because of subsequent minor adjustments, these data may differ slightly from *published* data found in the OIS Immigration Statistics Yearbook.

**Notes:** USC refers to U.S. citizen. All Other Lawful Permanent Admissions refer to employment-based immigrants, Diversity Visa Lottery immigrants, refugees and asylees.

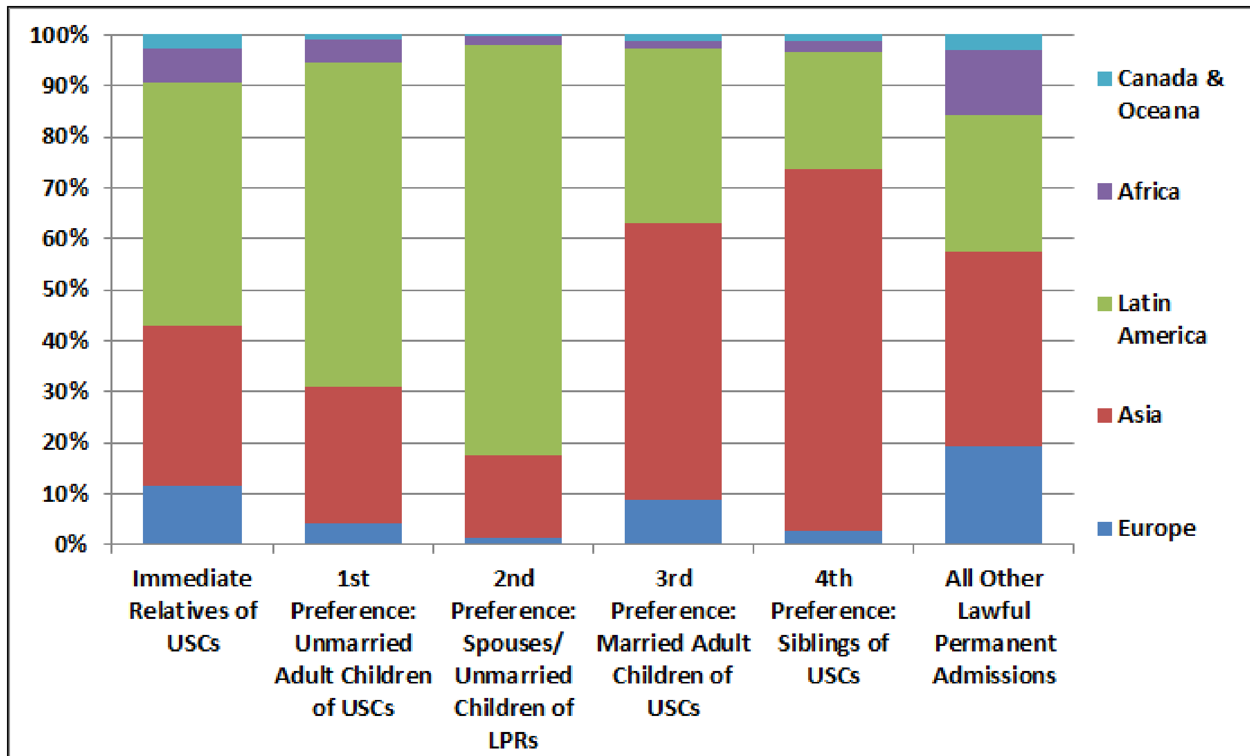
Following the Immigration and Nationality Act Amendments of 1965, immigrant country-of-origin composition shifted gradually from Europe to Asia and Latin America.[63] European immigration, which accounted for 56% of total admissions during the 1950s, made up just 13% during the 2000s. In contrast, the proportion for Asian immigration increased from 5% during the 1950s, to 34% during the 2000s. For Latin American immigration (from Mexico, Central America, and the Caribbean), it increased from 23% to 41%, respectively.[64]

[62] Although not presented above, male and female admissions are roughly equal for many legal permanent admission categories, both for principal and derivative immigrants. Females make up a higher percentage of both immediate relatives of U.S. citizens (61%) and family 2nd preference immigrants (59%). Those proportions reflect a similar gender mix among the larger principal immigrant populations in those two groups. All other legal permanent immigrants, by contrast, included principal immigrants who were more likely to be male (63%) and derivative immigrants who were more likely to be female (61%).

[63] See *The U.S. Foreign-Born Population*, Table 1 and Figure 2. The largest share of Latin American immigrants to the United States originates from Mexico and the Dominican Republic; the largest share of Asian immigrants originates from China, India, and the Philippines.

[64] Computed by CRS with data from the *2012 Yearbook of Immigration Statistics*, Department of Homeland Security, Office of Immigration Statistics, Table 2.

**Figure 3. Region of Birth by Admission Category, FY2000-FY2009**




**Source:** CRS presentation of unpublished data for FY2000-FY2009, Office of Immigration Statistics, Department of Homeland Security.

**Notes:** USC refers to U.S. citizen. All Other Lawful Permanent Admissions refer to employment-based immigrants, Diversity Visa Lottery immigrants, refugees and asylees, and other immigrants. Latin America includes Mexico, Central America, the Caribbean and South America. Oceana refers to Australia and New Zealand.

**Figure 3** presents admissions by birth region for all family-based category and all other LPR admissions from FY2000 to FY2009. Although dominated by Latin America and Asia, a greater proportion of immigrants admitted as immediate relatives of U.S. citizens during this period originated from other regions in the world compared to immigrants admitted under other family-based categories. Immigrants admitted under the 1st and 2nd family preference categories originated mainly from Latin America, while those admitted under the 3rd and 4th preference category originated primarily from Asia. All other LPR admissions were distributed more evenly across geographic regions than immigrants admitted under any of the family-based categories.

Immigrant age composition is a demographic measure that has potential fiscal impacts.[65] **Table 4** displays the age distribution for immigrants admitted under each family-based admission category and for all other LPRs, from FY2000 to FY2009. Adults in the prime 25-44 working-age group dominate the 1st family-sponsored preference category as well as the all other lawful permanent admissions category. Immigrants age 65 and above make up a greater proportion among immediate relatives of U.S. citizens than among all other LPR categories, because that

[65] For example, children tend to be net recipients of major publicly funded services such as public education, while those of prime working age contribute taxes across the span of their working careers. For more examples and discussion on how age affects the use of publicly funded services and tax contributions over immigrants' lifetimes, see archived CRS Report R42053, *Fiscal Impacts of the Foreign-Born Population*, by William A. Kandel.

admission category is the only one that permits sponsorship of parents for LPR status. The 4th preference category, siblings of U.S. citizens, has a relatively greater share of the next-to-oldest, 45-64 age group and the highest median age, due in part to the extensive waiting times required for such persons to immigrate. In contrast, immigrants in the 2nd preference category (spouses and unmarried children of LPRs), which includes minors, have the largest proportion of children under age 18 and the lowest median age.

**Table 4. Age Distribution and Median Age of Immigrants by Class of Admission, FY2000-FY2009**

| Age Range | Immediate Relatives of USCs | 1st Preference: Unmarried Sons & Daughters of USCs | 2nd Preference: Spouses & Unmarried Children of LPRs | 3rd Preference: Married Sons & Daughters of USCs | 4th Preference: Siblings of USCs | All Other Lawful Permanent Admissions | Total Lawful Permanent Admissions |
|---|---|---|---|---|---|---|---|
| **0-17** | 16% | 22% | 37% | 32% | 26% | 20% | 26% |
| **18-24** | 14% | 14% | 17% | 11% | 13% | 11% | 13% |
| **25-44** | 43% | 56% | 38% | 37% | 22% | 53% | 41% |
| **45-64** | 17% | 8% | 8% | 19% | 37% | 14% | 17% |
| **65+** | 9% | 0% | 0% | 0% | 3% | 2% | 2% |
| **Total** | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** | **100%** |
| **Median Age** | 31 | 28 | 21 | 30 | 39 | 32 | 31 |

**Source:** CRS presentation of unpublished data for FY2000-FY2009, Office of Immigration Statistics, Department of Homeland Security.

**Notes**: USC refers to U.S. citizen. All Other Lawful Permanent Admissions refer to employment-based immigrants, Diversity Visa Lottery immigrants, refugees and asylees, and other immigrants. Admissions from all categories include varying numbers of derivative immigrants, made up largely of children.

The subject of immigrant skills arises frequently in discussions of U.S. immigration policy. While DHS collects occupational information from newly admitted immigrants, many do not report an occupation, limiting comparisons of skills across admission categories. **Table 5**, which displays the broad occupational status of immigrants admitted between FY2000 and FY2009, indicates that 31% of all lawful permanent admissions during this period (10.3 million) did not report their occupation.[66] Despite this shortcoming, these data suggest that a relatively smaller proportion of spouses and children of U.S. citizens are employed; that all immigrant categories include large proportions of children enrolled in school and college; and that the United States admits few retirees.

[66] CRS analyzed the 31% of the cases in the unpublished Office of Immigration Statistics dataset that had missing occupation data by examining frequency distributions of the following variables: country of birth, age, gender, class of admission, year of LPR status, marital status, and occupation reported at time of naturalization. No systematic biases for unreported occupation were evident from such distributions.

**Table 5. Occupational Status of Immigrants by Admission Category, FY2000-FY2009**

Percent of all admissions between FY2000 and FY2009

| Employment Status | Immediate Relatives of USCs | 1st Preference: Unmarried Sons & Daughters of USCs | 2nd Preference: Spouses & Unmarried Children of LPRs | 3rd Preference: Married Sons & Daughters of USCs | 4th Preference: Siblings of USCs | All Other Lawful Permanent Admissions | Total Lawful Permanent Admissions |
|---|---|---|---|---|---|---|---|
| **Employed** | 16% | 31% | 17% | 32% | 33% | 34% | 24% |
| **Unemployed** | 10% | 6% | 4% | 4% | 5% | 3% | 6% |
| **Military** | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| **Homemaker** | 17% | 4% | 14% | 12% | 15% | 7% | 13% |
| **Student** | 20% | 32% | 42% | 40% | 36% | 26% | 26% |
| **Retiree** | 1% | 0% | 0% | 0% | 0% | 0% | 1% |
| **Unreported** | 37% | 27% | 24% | 13% | 11% | 30% | 31% |
| **Total** | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

**Source:** CRS presentation of unpublished data for FY2000-FY2009, Office of Immigration Statistics, Department of Homeland Security.

**Notes:** USC refers to U.S. citizen. All Other Lawful Permanent Admissions refer to employment-based admissions, Diversity Visa Lottery immigrants, refugees and asylees, and other immigrants. Occupational status is based on occupation data collected by DHS during the LPR petition process. For admissions of immigrants who are newly arriving (excluding employment-based principal immigrants), occupation refers to the most recent occupation before entering the United States. For admissions of immigrants who are adjusting status (excluding employment-based principal immigrants), occupation refers to the most recent occupation in the United States. (Note that most nonimmigrants, except temporary workers, are ineligible to work in the United States prior to LPR approval. See CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.)

# Potential Legislative and Policy Issues

Current policy may want to address a number of potential issues, including the supply-demand imbalance for U.S. lawful permanent residence, the per-country ceiling for family-based admissions, limitations on visiting U.S. relatives, the impetus to violate U.S. immigration laws, aging out of certain legal status categories, the marriage timing of immigrant children, and how immigration law treats same-sex partnerships.

## Supply-Demand Imbalance for U.S. Lawful Permanent Residence

Each year, the number of foreign nationals petitioning for LPR status through family-sponsored preferences exceeds the number of immigrants that can be admitted to the United States according to current law (see **Table 1**). Consequently, a “visa queue” or waiting list has accumulated of persons who qualify as immigrants under the INA but who must wait for a visa to receive lawful permanent status. As such, the visa queue constitutes not a backlog of petitions to be processed but, rather, the number of persons approved for visas that are not yet available due to the numerical limits enumerated in the INA.

**Table 6. Visa Queue of Prospective Family-Preference Immigrants with Approved Applications, for Selected Countries, as of November 1, 2012**

| Country | Total Family Preference Prospective Immigrants | 1st Preference: Unmarried Sons & Daughters of USCs | 2nd (A) Preference: Spouses and Minor Children of LPRs | 2nd (B) Preference: Unmarried Sons and Daughters of LPRs | 3rd Preference: Married Sons & Daughters of USCs | 4th Preference: Siblings of USCs |
|---|---|---|---|---|---|---|
| Mexico | **1,311,960** | 93,431 | 88,054 | 201,225 | 183,113 | 746,137 |
| Philippines | **423,449** | 23,723 | 9,615 | 50,099 | 151,491 | 188,521 |
| India | **306,789** | 2,262[1] | 2,946[1] | 5,648[1] | 65,134 | 230,799 |
| Vietnam | **267,067** | 7,140 | n.s. | 8,765 | 72,227 | 174,841 |
| China | **226,921** | 3,303[1] | 4,148[1] | 15,701 | 32,712 | 171,057 |
| Dominican Republic | **169,359** | 21,670 | 25,053 | 56,223 | 16,016 | 50,397 |
| Bangladesh | **161,731** | n.s. | n.s. | n.s. | n.s. | 150,747 |
| Pakistan | **n.s.** | n.s. | n.s. | n.s. | 16,752 | 91,286 |
| Haiti | **n.s.** | 16,119 | 11,715 | 22,845 | n.s. | 44,433 |
| Cuba | **n.s.** | 7,677 | 13,801 | 15,715 | 22,606 | n.s. |
| El Salvador | **n.s.** | 8,307 | n.s. | 15,563 | n.s. | n.s. |
| Jamaica | **n.s.** | 18,689 | n.s. | 7,153 | 14,564 | n.s. |
| **Worldwide Totals** | **4,299,635** | **288,705** | **220,313** | **486,597** | **830,906** | **2,473,114** |

**Source:** *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2012*, National Visa Center, U.S. Department of State, except for figures annotated with "1" which are unpublished figures provided by the National Visa Center.

**Notes:** USC refers to U.S. citizen. Figures include both principal applicants and any spouses and children entitled to derivative status. China refers to mainland-born. Because the National Visa Center (NVC) Annual Report lists the top countries for each category, some countries that appear as a top country in the visa queue for one admissions category may not appear as a top country in another. In such cases, ***n.s.*** indicates the figure was not shown separately in the NVC report for the country and preference category in question. Because these numbers are missing, figures in columns and rows containing n.s. designations will not sum to the totals shown.

The most recent data available indicate that the visa queue of numerically limited family-preference immigration petitions as of November 1, 2012, stood at 4.3 million applications (**Table 6**), a 4% decline over the prior year's queue of 4.5 million.[67] Within this population, queue size correlates inversely with preference category. For example, pending petitions filed under the (highest) 1st preference category (288,705) represent just 7% of the total queue while those filed under the (lowest) 4th preference category (2,473,114) make up 58% of the queue.

[67] U.S. Department of State, National Visa Center, *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2012*. Note that this figure represents only those visa applications held by the State Department. Data on visa applications in various stages of processing by USCIS prior to being given to the State Department for visa allocation are not available. However, testimony suggests a sizable quantity of petitions in addition to the visa queue shown in **Table 6**. See for instance U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Separation of Nuclear Families under U.S. Immigration Law*, testimony of Mr. Randall Emery and Mr. Demetrios Papademetriou, 113th Cong., 1st sess., March 14, 2013.

Waiting periods vary significantly depending on preference category priority and comprise both a statutory and a processing waiting period.[68] Statutory waiting times typically account for most of the waiting period. As noted, while U.S. immigration policy grants unlimited admission to immediate relatives of U.S. citizens, it limits annual admissions under the four family-sponsored preference categories to 226,000. The number of admissions is also subject to the 7% per-country ceiling discussed above, which, for "over-subscribed" countries with relatively large numbers of LPR status petitions such as Mexico and China, increases visa waiting times substantially.

The *Visa Bulletin*, a monthly update published online by DOS, illustrates how the visa queue translates into waiting times for immigrants (**Table 7**).[69] DOS issues the numerically limited visas for family-sponsored preference categories according to computed *cut-off dates*. DOS adjusts these cut-off dates each month based on several variables, such as the number of visas used to that point, the projected demand for visas, and the number of visas remaining under the annual numerical limit for that country and/or preference category.[70] Filing dates for qualified applicants are referred to as *priority dates*. Applicants with priority dates earlier than the *cut-off dates* in the *Visa Bulletin* are currently being processed.

All family-preference category visas were oversubscribed as of July 1, 2013. **Table 7** indicates, for example, that LPR petitions filed under the 1st family preference category on June 1, 2006, were being processed seven years later for most countries. Countries that send many immigrants to the United States, such as China, India, Mexico, and the Philippines, currently have above-average waiting times. For instance, LPR petitions for unmarried Filipino children of U.S. citizens (1st preference), that had been filed on or before July 1, 2000, were being processed on July 1, 2013, exactly 13 years later.

**Table 7. *Visa Bulletin* Cut-Off Dates for Family-Based Petitions, July 2013**

(LPR petition filing dates for which immigration visas are available as of July 1, 2013)

| Family Preference Category | China | India | Mexico | Philippines | All Other Nations |
|---|---|---|---|---|---|
| 1st: Unmarried adult children of USCs | 6/1/2006 | 6/1/2006 | 8/22/1993 | 7/1/2000 | 6/1/2006 |
| 2nd (A): Spouses and children of LPRs | 10/8/2011 | 10/8/2011 | 9/1/2011 | 10/8/2011 | 10/8/2011 |
| 2nd (B): Unmarried adult children of LPRs | 11/1/2005 | 11/1/2005 | 11/1/1993 | 12/22/2002 | 11/1/2005 |
| 3rd: Married adult children of USCs | 10/1/2002 | 10/1/2002 | 4/22/1993 | 11/22/1992 | 10/1/2002 |
| 4th: Siblings of USCs | 5/22/2001 | 5/22/2001 | 9/22/1996 | 12/15/1989 | 5/22/2001 |

**Source:** U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin* for July 2013.

**Notes:** USC refers to U.S. citizen. China refers to mainland-born.

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[68] For more on agency processing, see archived CRS Report RL34040, *U.S. Citizenship and Immigration Services' Immigration Fees and Adjudication Costs: Proposed Adjustments and Historical Context*, by William A. Kandel.

[69] The *Visa Bulletin*, updated each month, can be accessed at http://travel.state.gov/visa/bulletin/bulletin_1360.html.

[70] National Visa Center, U.S. Department of State, *The Operation of the Immigrant Numerical Control System*, Washington, DC.

The *Visa Bulletin* does not indicate how long current petitioners must wait to receive a visa, only how long they can expect to wait if current processing conditions continue into the future. However, visa processing rates vary for a variety of reasons, and changes in processing conditions can lead to visa *retrogression,* where dates are pushed back and petitioners have to wait longer, or visa *progression,* where dates advance forward and petitions are processed sooner. Visa retrogression occurs when more people apply for a visa in a particular category or country than there are visas available for that month. In contrast, visa progression occurs when fewer people apply.[71] As each fiscal year closes (on September 30th), priority data progression or retrogression may occur to keep visa issuances within annual numerical limitations.[72] Substantial increases in the rate at which family-based LPR petitions have been filed over the past two decades have extended actual waiting times for the most recent petitioners.[73] Hence, while many interpret the cut-off dates as a rough estimate of waiting times to receive a visa, this interpretation may not be accurate for some categories.

While the waiting queue for visas reflects the excess of demand to immigrate permanently to the United States over the supply of statutorily determined slots, it is criticized for keeping families separated for what many view as excessive periods of time and for prompting actual and potential petitioners to subvert U.S. immigration policy through unauthorized or illegitimate means (see "**Impetus to Violate Immigration Laws**" below). Several proposals addressing the visa queue and their criticisms are discussed below in "**Findings from Earlier Congressionally Mandated Commissions**."

## Assessing the Per-country Ceiling

As stated earlier, the INA establishes a per-country ceiling limiting total legal immigration from any single country for family-preference and employment-sponsored preference admissions to 7% of the worldwide immigration level to the United States. Exceptions to this rule include the admission of all immediate relatives of U.S. citizens and 75% of all visas allocated to 2nd (A) preference category of spouses and children of LPRs.

The per-country ceiling especially restrains immigrant admissions from countries with large numbers of LPR petitioners, such as Mexico, the Philippines, India, and China. Petitioners from these countries experience longer average waiting times to receive a visa (**Table 7**).

Proponents of the per-country ceiling assert that U.S. immigration policy has been more equitable and less discriminatory in terms of country of origin following passage of the Immigration Amendments of 1965. That act and its subsequent amendments, which ended the country-of-origin quota system favoring European immigrants, imposed worldwide and per-country limits on Western Hemisphere immigrants. Proponents also note the two major INA exceptions to the per-

[71] For instance, some persons who filed for LPR status under one provision of immigration law may obtain such status through another provision, thereby invalidating their initial petition. In other cases, petitioners may lose interest or change their plans, abandoning their petitions. Both of these situations would reduce the queue of persons waiting for visas and contribute to visa progression.

[72] National Visa Center, U.S. Department of State, *The Operation of the Immigrant Numerical Control System*, Washington, DC.

[73] For further discussion, see Stuart Anderson, *Waiting and More Waiting: America's Family and Employment-Based Immigration System*, National Foundation for American Policy, NFAP Policy Brief, Arlington, VA, October 2011.

country ceilings—immediate relatives of U.S. citizens and 75% of 2nd (A) preference immigrants—that benefit oversubscribed countries such as Mexico, India, and China.[74]

Immigration reform advocates argue that family reunification should be prioritized over per-country ceilings, and cite the visa queue faced by prospective family-based LPRs from India, China, Mexico, and the Philippines. They assert that the current per-country ceilings are arbitrary and should be increased to enable families from all countries to reunite.[75]

## Limitations on Visiting U.S. Relatives

Because U.S. immigration law presumes that all aliens seeking temporary admission to the United States wish to live here permanently, tourists and other temporary visitors must demonstrate their intent to return to their home countries.[76] Consequently, aliens with pending LPR petitions (who intend to live permanently in the United States) as well as foreign nationals with U.S. citizen and LPR relatives, who wish to either tour the United States or visit their U.S.-based relatives, are often denied nonimmigrant visas to visit.[77] The presumption of intention to immigrate is stated explicitly in Section 214(b) of the INA, and is the most common basis for rejecting nonimmigrant visa applicants.[78] As an example, an unmarried adult Filipina daughter of U.S. citizen parents wishing to visit them on a tourist visa would likely face challenges to demonstrate that she possessed sufficient ties to the Philippines to prevent her from staying in the United States. If denied a tourist visa, and having no occupational options available through employment-based admissions, her only other alternative would be to apply for LPR status under the 1st family sponsored preference category, which, based on the cut-off dates shown in the latest *Visa Bulletin*, would take, at a minimum, 14 years. During this period, she would be unable to visit her parents in the United States.

## Impetus to Violate Immigration Laws

As noted, many foreign nationals with approved petitions to reside legally and permanently in the United States face extensive waiting times for obtaining a visa. Given the corresponding family separation that such wait times cause, some aliens who might otherwise abide by U.S. immigration laws may choose to either violate the terms of their temporary visas by "overstaying" in the United States or enter the United States without inspection (i.e., illegally).[79] However, the number of unauthorized aliens who reside in the United States specifically because

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[74] See also CRS Report R42048, *Numerical Limits on Employment-Based Immigration: Analysis of the Per-Country Ceilings*, by Ruth Ellen Wasem.

[75] National Immigration Forum, *Immigration Backlogs are Separating American Families*, Backgrounder, Washington, DC, August 2012.

[76] INA §214(b). Exceptions to this requirement include H-1 visa workers, L visa intra-company transfers, and V visa family members. See CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

[77] CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem, p. 7.

[78] See CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

[79] See CRS Report RS22446, *Nonimmigrant Overstays: Brief Synthesis of the Issue*, by Ruth Ellen Wasem; and Philip L. Martin and Elizabeth Midgely, *Immigration: Shaping and Reshaping America*, Population Reference Bureau, 2006.

their attempts to acquire LPR status within a reasonable period did not succeed is unknown.[80] It is also not known how many unauthorized aliens have petitions pending and are therefore part of the 4.3 million family-based visa queue.[81]

## Aging Out of Legal Status Categories

"Aging out" refers to the change in eligibility for a foreign national to receive an immigration benefit because of changes in their age. It typically applies to children. In the case of family-based admissions, it is particularly noticeable because of the different treatment of minor children of U.S. citizens versus minor children of LPRs. Minor children of U.S. citizens are protected from aging out by the Child Status Protection Act of 2002 (P.L. 107-208), which provided them with durable status protection.[82] In contrast, if minor children of LPRs who are sponsored under the 2(A) family preference category (see **Table 1**) turn 21 after a petition for lawful permanent residence has been filed on their behalf (but before they receive LPR status), they automatically "age out" of the 2(A) category and must be sponsored for admission under the 2(B) category.[83] This occurs because children of LPRs do not possess the same durable status protection of immediate relative children of U.S. citizens. The net result of this 2(A) to 2(B) shift upon aging out is a substantially longer waiting time to obtain LPR status. The *Visa Bulletin* (**Table 7**) indicates that reclassification of 2(A) to 2(B) petitions currently extends the visa cut-off date and any attendant family separation by roughly 6 to 18 years.[84] (See also "**Laws Governing Child Admissions**" above.)

## Marriage Timing of Immigrant Children

Differential treatment for unmarried children under the 1st family preference category and married children under 3rd family preference categories may motivate potential LPR petitioners to delay marriage in order to receive more favorable immigration treatment under the INA. The INA prioritizes the former family preference category over the latter, a ranking that translates into a difference in visa cut-off dates of between one and four years, depending on the country of emigration (**Table 7**). This difference results because unmarried children of U.S. citizens do not retain a durable marital status when they apply for LPR status under the 1st family preference category. Hence, the need to remain in the 1st family preference category may motivate such petitioners to postpone marriage until their visas become available.

[80] Estimates do exist of the relationship between authorized entry and unauthorized residence. For instance, the Pew Hispanic Center estimated in 2006 that 45% of the total unauthorized population initially entered the United States legally. Pew Hispanic Center, *Modes of Entry of the Unauthorized Migrant Population*, Fact Sheet, May 22, 2006. The 45% figure is comparable to previous estimates noted in the Pew Fact Sheet.

[81] Claire Bergeron, *Going to the Back of the Line: A Primer on Lines, Visa Categories, and Wait Times*, Migration Policy Institute, Issue Brief No. 1, Washington, DC, March 2013, p. 7.

[82] Durable status protection applies to minor children of U.S. citizens. It means that, for immigration purposes, age is recorded as of the date an immigration petition was filed. This age then remains in effect (or "freezes") regardless of the length of time needed to obtain lawful permanent residence.

[83] The Child Status Protection Act of 2002 (P.L. 107-208) addressed this circumstance for minor children of U.S. citizens but not for minor children of lawful permanent residents.

[84] Petitioners must also incur additional costs to file a new I-130 *Petition for Alien Relative* (currently $420). As noted above, visa cut-off dates from the State Department's monthly *Visa Bulletin* do not indicate expected waiting times, but rather, the filing dates of petitions that are currently being processed for a visa.

## Same-Sex Partners

The question of whether gay and lesbian U.S. citizens should be able to sponsor foreign-born permanent partners for LPR status has garnered increased attention. While the INA does not affirmatively define the terms "spouse,"[85] "wife," or "husband," the 1996 Defense of Marriage Act (DOMA) declares that the terms "marriage" and "spouse," as used in federal enactments,[86] exclude same-sex marriage.[87] Advocates of revising the INA to include same-sex permanent partners contended that current policies were "cruel and unequal."[88] Supporters of the restrictions countered that expanding immigration law to recognize same-sex partnerships for purposes of immigration benefits would increase opportunities for fraud because such relationships are not legally recognized in many jurisdictions.[89] Others supporting current restrictions opposed same-sex partnerships generally and argue against exemptions under immigration law. However, the issue shifted with the June 26, 2013, Supreme Court decision in *United States v. Windsor*, which struck down DOMA's provision defining "marriage" and "spouse" for federal purposes. DHS subsequently approved the first immigrant visa for the same-sex spouse of a U.S. citizen, and Secretary of Homeland Security Janet Napolitano directed USCIS to "review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse."[90]

# Broader Immigration Questions

The following section discusses a set of broad immigration policy questions that have been raised by both of the congressionally mandated commissions and other observers.

## Family Reunification versus Family Reconstitution

As noted above, the INA allows LPRs and U.S. citizens to sponsor spouses and unmarried children. U.S. citizens, in addition, may sponsor parents, married adult children, and siblings.

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[85] INA §101(a)(35) provides that for immigration purposes, a person who was married through a ceremony where one or both parties were not present is not considered a "spouse" until such time as the marriage has been consummated.

[86] Federal enactments refer to "any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States." P.L. 104-199, §3.

[87] P.L. 104-199. For further discussion, see CRS Legal Sidebar WSLG543, Updated: Treatment of Same-Sex Spouses under Federal Immigration Law, by Kate M. Manuel and Michael John Garcia.

[88] U.S. Congress, Senate Committee on the Judiciary, *The Uniting American Families Act: Addressing Inequality in Federal Immigration Law*, Statement of Christopher Nugent on behalf of the American Bar Association, 111th Cong., 1st sess., June 3, 2009.

[89] U.S. Congress, Senate Committee on the Judiciary, The Uniting American Families Act: Addressing Inequality in Federal Immigration Law, Statement of Jessica Vaughan of the Center for Immigration Studies, 111th Cong., 1st sess., June 3, 2009.

[90] Secretary of Homeland Security Janet Napolitano, Statement on Implementation of the Supreme Court Ruling on the Defense of Marriage Act, July 2, 2013. See also Julia Preston, Gay Married Man in Florida Is Approved for Green Card, *N.Y. Times*, June 30, 2013; and D'Vera Cohn, *Supreme Court's ruling on same-sex marriage will likely impact immigration, too*, Pew Research Center, June 26, 2013. DHS is accepting petitions from same-sex couples regardless of whether the state in which they reside recognizes same-sex marriage. See http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act. This is arguably in keeping with prior practices by DHS and the former INS, which have historically looked to the law of the place where the marriage occurred, and not where the couple currently resides, in determining whether marriages are valid for immigration purposes.

The INA, however, does not permit either U.S. citizens or LPRs to sponsor other relatives such as grandparents, cousins, aunts, and uncles.

Supporters of current law argue that parents and children should be considered immediate family members regardless of their age or marital status.[91] They contend that siblings are considered immediate relatives in many cultures.[92] A central argument for expanding family-based immigration is to reduce the current visa queue of 4.3 million persons with approved immigration petitions who must wait years to receive a visa to immigrate. As highlighted by *Visa Bulletin* priority dates, family separation can last for years or even decades, which some contend keeps thousands of families and individual lives and careers suspended and causes emotional and psychological distress.[93]

However, advocates of fewer immigrant admissions take issue with the extent of broadening family reunification.[94] They argue that the United States has neither the responsibility nor obligation to effectively reconstitute immigrants' families beyond immediate relatives.[95] They assert that U.S. immigration policy is currently among the most generous in the world and would continue to be so even if legal immigration were substantially curtailed.[96] While they accept that family reunification is an important goal, they argue that the United States has neither the responsibility nor obligation to accept immigrants' relatives beyond the nuclear family. Those favoring limiting family-based preference admissions to just immediate family members (i.e., spouses and minor unmarried children) note that such a limitation was recommended by the Jordan Commission. They contend current polices have resulted in an extensive visa queue that in many cases places more distant relatives ahead of nuclear family members.[97]

## Family Reunification versus Economic Priorities

Some observers fault U.S. immigration policy for operating largely irrespective of current economic and labor market conditions.[98] Because current family-based immigration provisions do

[91] U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Hearing on the Role of Family-Based Immigration in the U.S. Immigration System*, Testimony of Bill Ong Hing, 110th Cong., 1st sess., May 8, 2007, pp. 23-35.

[92] Ibid.

[93] U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Separation of Nuclear Families under U.S. Immigration Law*, testimony of Mr. Randall Emery, 113th Cong., 1st sess., March 14, 2013; Daniel Huang, *A Devastating Wait: Family Unity and the Immigration Backlogs*, Asian Pacific American Legal Center of Southern California, 2008; and Catholic Legal Immigration Network, Inc, *The Impact of Our Immigration Laws and Policies on U.S. Families*, 1999.

[94] U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Role of Family-based Immigration in the U.S. Immigration System*, testimony of Representative Steve King, 110th Cong., 1st sess., May 8, 2007. See also William Buchanan, *Myths of Family Reunification*, The Social Contract Press, Fall 1996.

[95] Ibid.

[96] U.S. Congress, House Committee on the Judiciary, America's Immigration System: *Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration*, testimony of Representatives Robert Goodlatte and Lamar Smith, 113th Cong., 1st sess., February 5, 2013.

[97] U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Hearing on the Role of Family-Based Immigration in the U.S. Immigration System*, Responses to post-hearing questions from Representative Phil Gingrey, 110th Cong., 1st sess., May 8, 2007, p. 133.

[98] George J. Borjas, *Heaven's Door: Immigration Policy and the American Economy*, Princeton University Press, 1999 (hereinafter cited as Borjas, *"Heaven's Door"*).

not require minimum education or skill requirements, they arguably do not yield optimal labor market benefits for the United States.[99] Critics of family-based immigration also contend that current policies foster relatively greater demand for taxpayer-funded social services[100] by admitting relatively less-educated persons who frequently work in lower-paid occupations or who have higher unemployment rates.[101]

Although critics argue that family-based immigration policies do not adjust for changing labor market requirements in specific industries and for specific occupations, others cite evidence of their positive impact on long-term employment needs. Studies suggest that while employment-based immigrants serve short-term labor market needs, family-based immigrants serve such needs more effectively over the long term.[102] A related argument posits that the skill mix of immigrants entering the United States under the current immigration system matches the skill distribution required of the future workforce more accurately than some suggest.[103] For example, between 2000 and 2010, the foreign-born population contributed almost all the growth in the prime 25 to 55 working age population.[104] The foreign born also work in occupations with above-average expected growth.[105] Some cite these trends to argue that current immigration policies admit people whose occupational and sectoral employment profiles match projected demands of the U.S. economy.

Proponents of family-based immigration also argue that family reunification in the United States helps immigrants contribute more to their communities and the U.S. economy through improved productivity, health, and emotional support.[106] Similarly, proponents of the 4th family preference

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[99] Ibid. Persons without a high school diploma currently make up almost one-third of all foreign born ages 25 and older, compared to 11% for the native-born of the same age bracket, which critics of current policies cite as evidence of labor market competition with the least advantaged native workers. See *The U.S. Foreign-Born Population*, by William A. Kandel.

[100] Borjas, *Heaven's Door*, Ch.6. For a review of recent research, see archived CRS Report R42053, *Fiscal Impacts of the Foreign-Born Population*, by William A. Kandel.

[101] U.S. Department of Labor, Bureau of Labor Statistics, "Foreign-born Workers: Labor Force Characteristics—2011," press release, May 24, 2012.

[102] These analyses suggest that while employment-based immigrants experience similar earnings and earnings growth as native workers, they are relatively less likely to obtain substantial additional training and education, given that they received visas for skills already acquired. By contrast, family-based immigrants, who are more likely to accommodate new opportunities by acquiring education and changing occupations, experience greater earnings growth from an initially lower level. See U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Hearing on the Role of Family-Based Immigration in the U.S. Immigration System*, Testimony of Harriet Duleep, 110th Cong., 1st sess., May 8, 2007, pp. 12-22; and Guillermina Jasso and Mark R. Rosenzweig, "Do Immigrants Screened for Skills Do Better than Family Reunification Immigrants?," *International Migration Review*, vol. 29, no. 1 (Spring 1995), pp. 85-111; Harriet Orcutt Duleep and Daniel J. Dowhan, "Insights from Longitudinal Data on the Earnings Growth of U.S. Foreign-born Men," *Demography*, vol. 39, no. 3 (August 2002), pp. 485-506.

[103] See U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Hearing on the Role of Family-Based Immigration in the U.S. Immigration System*, Testimony of Bill Ong Hing, 110th Cong., 1st sess., May 8, 2007, pp. 28-32; and B. Lindsay Lowell, Julia Gelatt, and Jeanne Batalova, *Immigrants and Labor Force Trends: The Future, Past, and Present*, Migration Policy Institute, Washington, DC, July 2006.

[104] *The U.S. Foreign-Born Population*, p. 14.

[105] U.S. Department of Labor, Bureau of Labor Statistics, *Projections Overview*, Occupational Outlook Handbook, 2012-13 Edition, Washington, DC, March 29, 2012.

[106] U.S. Select Commission on Immigration and Refugee Policy, p.357; U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Hearing on the Role of Family-Based Immigration in the U.S. Immigration System*, Testimony of Representative John Conyers Jr., (continued...)

siblings category, which the Jordan Commission recommended eliminating, argue that immigrant siblings are often involved with entrepreneurial enterprises and family businesses, a traditional immigrant pathway to economic mobility and a source for economic revitalization in disadvantaged urban and rural areas.[107]

## Chain Migration

"Chain migration" refers to a process by which family-based immigration creates self-perpetuating and expanding migration flows, as foreign nationals who obtain lawful permanent resident status and citizenship then sponsor other relatives under the same family-based immigration provisions under which they themselves were sponsored. As noted, while admissions under the four family preference categories face numerical limits as well as a per-country ceiling, immediate relatives of U.S. citizens are admitted without numerical restriction of either type. Some have likened the potential for immigrant population growth under current policy to a genealogical table, where a new "link" of an immigrant chain is formed each time an admitted immigrant sponsors a new family-related immigrant who then may do the same for another new immigrant.[108] Critics of family-based immigration policy argue that such processes could potentially generate hundreds of new immigrants from a single LPR admission.[109] Reverend Hesburgh, chair of the U.S. Select Commission on Immigration and Refugee Policy, offered the following illustration in 1981:

> Assume one foreign-born married couple, both naturalized, each with two siblings who are also married and each new nuclear family having three children. The foreign-born married couple may petition for the admission of their siblings. Each has a spouse and three children who come with their parents. Each spouse is a potential source for more immigration, and so it goes. It is possible that no less than 84 persons would become eligible for visas in a relatively short period of time.[110]

Although family-based immigration could hypothetically generate sizeable impacts, empirical studies of actual "immigrant multipliers"[111] estimate more modest effects.[112] Several factors limit

(...continued)

110th Cong., 1st sess., May 8, 2007, p.6-7. For mostly qualitative assessments of the costs and benefits to immigrants of family separation and family reunification, see Daniel Huang, *A Devastating Wait: Family Unity and the Immigration Backlogs*, Asian Pacific American Legal Center of Southern California, 2008 and Catholic Legal Immigration Network, Inc, *The Impact of Our Immigration Laws and Policies on U.S. Families*, 1999.

[107] U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Hearing on the Role of Family-Based Immigration in the U.S. Immigration System*, Testimony of Stuart Anderson, National Foundation for American Policy, 110th Cong., 1st sess., May 8, 2007.

[108] Guillermina Jasso and Mark R. Rosenzweig, "Family Reunification and the Immigration Multiplier: U.S. Immigration Law, Origin-Country Conditions, and the Reproduction of Immigrants," *Demography*, vol. 23, no. 3 (August 1986), pp. 291-311 (hereinafter cited as "Jasso and Rosenzweig, 1986").

[109] NumbersUSA, *Chain Migration Under Current U.S. Law; The Potential Impact of a Single Immigrant Admission*, Arlington, VA, 2009.

[110] Theodore M. Hesburgh, *Supplemental statement, Final Report: U.S. Immigration Policy and the National Interest*, U.S. Select Commission on Immigration and Refugee Policy, Washington, DC, 1981, pp. 335-341.

[111] Jasso and Rosenzweig, 1986, define the immigration multiplier as "the number of future immigrants who come to the United States as the result of the admission of one current immigrant," who "is not him or herself sponsored for a family reunification visa by a previous immigrant." See also Bin Yu, *Chain Migration Explained: The Power of the Immigration Multiplier* (New York: LFB Scholarly Publishing LLC, 2008), p. 7 (hereinafter referred to as "Yu, 2008").

[112] Jasso and Rosenzweig, 1986, whose analysis is considered a pioneering theoretical calculation, estimated an (continued...)

the impact of chain migration. First, with the exception of the 2nd family preference category, family-sponsored admissions require that sponsoring immigrants possess U.S. citizenship. However, recent studies indicate that many LPRs who are eligible to become U.S. citizens choose not to do so.[113] Second, not all persons eligible to immigrate to the United States wish to do so. Both decisions—to naturalize for U.S.-based LPRs and to emigrate for relatives overseas—are affected by an array of individual characteristics and macro-level conditions in both the United States and the origin country. Consequently, estimates of multipliers are likely to vary substantially by country and period considered. Finally, as discussed above, long wait times for visas pose an impediment for many immigrants sponsoring relatives under the family-preference categories.[114]

# Conclusion

Family reunification is a fundamental principal underlying U.S. immigration policy. The nation's immigration policies are unique in the world with respect to the sheer quantity of persons admitted for lawful permanent residence, their subsequent eligibility for U.S. citizenship, and the ability of U.S. citizens to sponsor other family members for lawful permanent residence.[115] Family-sponsored immigration currently accounts for two-thirds of all lawful permanent resident admissions each year. Two-thirds of family-sponsored admissions are made up of the unlimited category of immediate relatives of U.S. citizens.

(...continued)

immigration multiplier ranging between 1.16 and 1.4. See Yu (2008). Others have produced more recent estimates ranging from 0.5 to 18. See Fred Arnold, Benjamin V. Carino, and James T. Fawcett, et al., "Estimating the Immigration Multiplier: An Analysis of Recent Korean and Filipino Immigration to the United States," *International Migration Review*, vol. 23, no. 4 (Winter 1989), pp. 813-838; D. M. Reimers, *Still the Golden Door: The Third World Comes to America (2nd ed.)* (New York: Columbia University Press, 1992); and Yu, 2008, p. 223. Recent work by Carr and Tienda estimate multipliers ranging from 0.96 to 5.31 across all cohorts of immigrants. See Stacie Carr and Marta Tienda, "Multiplying Diversity: Family Unification Migration and the Reginal Origins of Late Age Migration, 1981-2009 ," Paper presented at the annual meeting of the Population Association of America, New Orleans, LA, April 11, 2013. One example estimated that four decades would transpire between the time a U.S. citizen petitioned for their married adult Mexican daughter, the daughter successfully emigrated to the United States and naturalized, and the daughter's husband's brother successfully immigrated to the United States. See Stuart Anderson, "The Myth of Chain Migration," *Forbes*, October 16, 2011.

[113] DHS estimates that 8.5 million of the estimated 13.1 LPRs living in the United States as of January 1, 2011, were eligible to naturalize (and had not done so as of that date). Nancy Rytina, *Estimates of the Legal Permanent Resident Population in 2011*, Department of Homeland Security, Office of Immigration Statistics, Population Estimates, Washington, DC, July 2012. For a discussion of naturalization among the Hispanic population, see Paul Taylor, Ana Gonzalez-Barrera, and Jeffrey S. Passel, et al., *An Awakened Giant: The Hispanic Electorate Is Likely to Double by 2030*, Pew Research Hispanic Center, Washington, DC, November 14, 2012, p. 10. Naturalization rates are affected disproportionately by relatively low rates among Mexican immigrants. See Ana Gonzalez-Barrera, Mark Hugo Lopez, and Jeffrey Passel, et al., *The Path Not Taken*, Pew Research Hispanic Center, Washington, DC, February 4, 2013.

[114] Analysts who estimate immigrant multipliers face an array of methodological challenges including how to define "immigration multiplier." See J. M. Goering, "The Explosiveness of Chain Migration - Research and Policy Issues: Introduction and Overview," *International Migration Review*, vol. 23, no. 4 (1989), pp. 797-812 and Bin Yu, *Chain Migration Explained: The Power of the Immigration Multiplier* (New York: LFB Scholarly Publishing LLC, 2008), Introduction. For a cautionary note, see Michael S. Teitelbaum, "Skeptical Noises About the Immigration Multiplier," *International Migration Review*, vol. 23, no. 4 (Winter 1989), pp. 893-899.

[115] Jeb Bush, Thomas F. McLarty III, and Edward Alden, *U.S. Immigration Policy*, Council on Foreign Relations, Independent Task Force Report No. 63, New York, NY, 2009, pp.1-12.

The increase in lawful permanent admissions since 1980 has produced a sizeable queue of prospective immigrants sponsored by their U.S.-based citizen and LPR relatives. As of November 2012, that queue, measured by the State Department, amounted to 4.3 million persons with approved petitions to immigrate under the numerically limited family preference categories who were waiting for a visa to become available. Most are waiting overseas separated from their U.S.-based relatives and unable to visit the United States.

The shift in immigrant country-of-origin composition since the Immigration and Nationality Act Amendments of 1965 is reflected in the visa queue. The five countries with the greatest numbers of persons in the queue—Mexico, the Philippines, India, Vietnam, and China—accounted for almost 60% of the total (**Table 6**). The 3rd preference (adult married children of U.S. citizens) and 4th preference (siblings of U.S. citizens) categories accounted for 77% of the total. The former is dominated by persons from Latin America, while the latter is dominated by persons from Asia.

The extensive queue and associated lengthy wait times to receive a visa and the related family separation remain among the most prominent and contentious issues within family-based immigration policy. The monthly *Visa Bulletin*, produced by the State Department, illustrates how the visa queue of 4.3 million persons translates into waiting times for immigrants. Each month, the State Department calculates cut-off dates for different family-sponsored categories. These dates signify that persons who filed their petitions before those dates are currently being processed for a visa. Cut-off dates range from 2.5 years for spouses and minor children of LPRs to over two decades for other family preference category applicants from oversubscribed countries. As such current U.S. family-based immigration policy has produced a set of circumstances that some have characterized as promising more than can be expected in a reasonable period of time.[116]

Legislative options to address selected stand-alone policy issues—children of LPRs who "age out" of status, treatment of same-sex partners, inability of foreign nationals to visit the United States if they have U.S.-based relatives or pending immigration petitions, and family separation resulting from long visa waits—have been debated by scholars and policy makers.

The broader policy question, in the context of the current immigration reform discussion, may be whether and how to address overall levels of legal immigration. Options at this level can be characterized as expanding, contracting, or revising family-based immigration. Such options revolve around classifying family categories as numerically limited or unlimited; decreasing or increasing current numerical limits; expanding or reducing the number of family preference categories; revising priorities among the different family-based categories; and using different selection procedures and criteria for admitting lawful permanent residents.

[116] U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *The Separation of Nuclear Families under U.S. Immigration Law*, testimony of Demetrios G. Papademetriou, 113th Cong., 1st sess., March 14, 2013.

# Appendix.

**Table A-1. Annual Number of Lawful Permanent Admissions by Major Class, FY2001-FY2012**

| | FY2001 | FY2002 | FY2003 | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | FY2009 | FY2010 | FY2011 | FY2012 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Immediate relatives** | 439,972 | 483,676 | 331,286 | 417,815 | 436,115 | 580,348 | 494,920 | 488,483 | 535,554 | 476,414 | 453,158 | 478,780 |
| *Spouses* | *268,294* | *293,219* | *183,796* | *252,193* | *259,144* | *339,843* | *274,358* | *265,671* | *317,129* | *271,909* | *258,320* | *273,429* |
| *Children* | *91,275* | *96,941* | *77,948* | *88,088* | *94,858* | *120,064* | *103,828* | *101,342* | *98,270* | *88,297* | *80,311* | *81,121* |
| *Parents* | *80,403* | *93,516* | *69,542* | *77,534* | *82,113* | *120,441* | *116,734* | *121,470* | *120,155* | *116,208* | *114,527* | *124,230* |
| **Family-based immigrants** | 231,699 | 186,880 | 158,796 | 214,355 | 212,970 | 222,229 | 194,900 | 227,761 | 211,859 | 214,589 | 234,931 | 202,019 |
| *Unmarried child., USCs sons/daughters of USCs* | *27,003* | *23,517* | *21,471* | *26,380* | *24,729* | *25,432* | *22,858* | *26,173* | *23,965* | *26,998* | *27,299* | *20,660* |
| *Spouses & unmarried children of LPRs* | *112,015* | *84,785* | *53,195* | *93,609* | *100,139* | *112,051* | *86,151* | *103,456* | *98,567* | *92,088* | *108,618* | *99,709* |
| *Married sons/daughters of USCs* | *24,830* | *21,041* | *27,287* | *28,695* | *22,953* | *21,491* | *20,611* | *29,273* | *25,930* | *32,817* | *27,704* | *21,752* |
| *Siblings of USCs* | *67,851* | *57,537* | *56,843* | *65,671* | *65,149* | *63,255* | *65,280* | *68,859* | *63,397* | *62,686* | *71,310* | *59,898* |
| **Non-family-based immigrants** | 387,231 | 388,800 | 213,460 | 325,713 | 473,172 | 463,552 | 362,595 | 390,882 | 383,405 | 351,622 | 373,951 | 350,832 |
| *Employment-based immigrants* | *178,702* | *173,814* | *81,727* | *155,330* | *246,877* | *159,081* | *162,176* | *166,511* | *144,034* | *148,343* | *139,339* | *143,998* |
| *Diversity Visa Lottery immigrants* | *41,989* | *42,820* | *46,335* | *50,084* | *46,234* | *44,471* | *42,127* | *41,761* | *47,879* | *49,763* | *50,103* | *40,320* |

| | FY2001 | FY2002 | FY2003 | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | FY2009 | FY2010 | FY2011 | FY2012 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| *Refugees, asylees, and parolees* | *113,330* | *131,816* | *48,960* | *78,351* | *150,677* | *221,023* | *138,124* | *167,564* | *179,753* | *137,883* | *169,607* | *151,372* |
| *All other immigrants* | *53,210* | *40,350* | *36,438* | *41,948* | *29,384* | *38,977* | *20,168* | *15,046* | *11,739* | *15,633* | *14,902* | *15,142* |
| **Total, all immigrants** | 1,058,902 | 1,059,356 | 703,542 | 957,883 | 1,122,257 | 1,266,129 | 1,052,415 | 1,107,126 | 1,130,818 | 1,042,625 | 1,062,040 | 1,031,631 |

**Source:** CRS presentation of data from *2001* through *2012 Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security.

**Notes:** Figures in italics sum up to figures in roman type immediately above them. USC signifies U.S. citizen.

## Table A-2. Annual Lawful Permanent Admissions by Major Class, FY2001-FY2012

(Percent of total admissions)

| | FY2001 | FY2002 | FY2003 | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | FY2009 | FY2010 | FY2011 | FY2012 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Immediate relatives** | 42% | 46% | 47% | 44% | 39% | 46% | 47% | 44% | 47% | 46% | 43% | 46% |
| *Spouses* | *25%* | *28%* | *26%* | *26%* | *23%* | *27%* | *26%* | *24%* | *28%* | *26%* | *24%* | *27%* |
| *Children* | *9%* | *9%* | *11%* | *9%* | *8%* | *9%* | *10%* | *9%* | *9%* | *8%* | *8%* | *8%* |
| *Parents* | *8%* | *9%* | *10%* | *8%* | *7%* | *10%* | *11%* | *11%* | *11%* | *11%* | *11%* | *12%* |
| **Family-based immigrants** | 22% | 18% | 23% | 22% | 19% | 18% | 19% | 21% | 19% | 21% | 22% | 20% |
| *Unmarried child., USCs sons/daughters of USCs* | *3%* | *2%* | *3%* | *3%* | *2%* | *2%* | *2%* | *2%* | *2%* | *3%* | *3%* | *2%* |
| *Spouses & unmarried children of LPRs* | *11%* | *8%* | *8%* | *10%* | *9%* | *9%* | *8%* | *9%* | *9%* | *9%* | *10%* | *10%* |
| *Married sons/daughters of USCs* | *2%* | *2%* | *4%* | *3%* | *2%* | *2%* | *2%* | *3%* | *2%* | *3%* | *3%* | *2%* |
| *Siblings of USCs* | *6%* | *5%* | *8%* | *7%* | *6%* | *5%* | *6%* | *6%* | *6%* | *6%* | *7%* | *6%* |
| **Non-family-based immigrants** | 37% | 37% | 30% | 34% | 42% | 37% | 34% | 35% | 34% | 34% | 35% | 34% |
| *Employment-based immigrants* | *17%* | *16%* | *12%* | *16%* | *22%* | *13%* | *15%* | *15%* | *13%* | *14%* | *13%* | *14%* |
| *Diversity Visa Lottery immigrants* | *4%* | *4%* | *7%* | *5%* | *4%* | *4%* | *4%* | *4%* | *4%* | *5%* | *5%* | *4%* |
| *Refugees, asylees, and parolees* | *11%* | *12%* | *7%* | *8%* | *13%* | *17%* | *13%* | *15%* | *16%* | *13%* | *16%* | *15%* |
| *All other immigrants* | *5%* | *4%* | *5%* | *4%* | *3%* | *3%* | *2%* | *1%* | *1%* | *1%* | *1%* | *1%* |
| **Total, all immigrants** | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

**Source:** CRS presentation of data from *2001* through *2012 Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security.

**Notes:** Figures in italics sum up to figures in bold immediately above them. Percentages may not sum completely due to rounding. USC signifies U.S. citizen.

## Table A-3. Key Proportions for Annual Lawful permanent Admissions, FY2001-FY2012

| | FY2001 | FY2002 | FY2003 | FY2004 | FY2005 | FY2006 | FY2007 | FY2008 | FY2009 | FY2010 | FY2011 | FY2012 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Percent of total lawful permanent admissions comprised of family-based admissions | 63% | 63% | 70% | 66% | 58% | 63% | 66% | 65% | 66% | 66% | 65% | 66% |
| Percent of total lawful permanent admissions comprised of immediate relatives of U.S. citizens | 42% | 46% | 47% | 44% | 39% | 46% | 47% | 44% | 47% | 46% | 43% | 46% |
| Percent of total family-based admissions comprised of immediate relatives of U.S. citizens | 66% | 72% | 68% | 66% | 67% | 72% | 72% | 68% | 72% | 69% | 66% | 70% |

**Source:** CRS presentation of data from *2001* through *2012 Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security.

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