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U.S. Immigration Policy on Permanent Admissions

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U.S. Immigration Policy on Permanent Admissions

Summary

When President George W. Bush announced his principles for immigration reform in January 2004, he included an increase in permanent immigration as a key component. Some commentators are speculating the President is promoting increases in the employment-based categories of permanent immigration, but the Bush Administration has not yet provided specific information on what categories of permanent admissions it advocates should be increased and by what levels. President Bush recently stated that immigration reform is a top priority of his second term and is prompting a lively debate on the issue. Bills to revise permanent admissions are being introduced, but only one has had legislative action thus far in the 109th Congress. A provision in P.L. 109-13 (H.R. 1268, the emergency FY2005 supplemental appropriation) makes up to 50,000 employment-based visas available for foreign nationals coming to work as medical professionals. Proposals to alter permanent admissions are included in several comprehensive immigration proposals (S. 1033/H.R. 2330, S. 1438, H.R. 3700, H.R. 3938, S. 1919).

Four major principles underlie U.S. policy on permanent immigration: the reunification of families, the admission of immigrants with needed skills, the protection of refugees, and the diversity of admissions by country of origin. These principles are embodied in the Immigration and Nationality Act (INA). The INA specifies a complex set of numerical limits and preference categories that give priorities for permanent immigration reflecting these principles. As defined in the INA, "immigrants" are synonymous with legal permanent residents (LPRs) and refer to foreign nationals who live lawfully and permanently in the United States.

During FY2004, a total of 946,142 aliens became LPRs in the United States. Of the total LPRs in FY2004, 65.6% entered on the basis of family ties. Additional major immigrant groups in FY2004 were employment-based preference immigrants (including spouses and children) at 16.4%, and refugees and asylees adjusting to immigrant status at 7.5%. Mexico led all countries with 175,364 aliens who became LPRs in the United States. India followed at a distant second with 70,116 LPRs. The Philippines came in third with 57,827. These three countries comprised almost one-third of all LPRs in FY2004.

There are significant backlogs due to the sheer volume of aliens eligible to immigrate to the United States. By the close of FY2004, U.S. Citizenship and Immigration Services (USCIS) reported 4.1 million immigrant petitions pending. Citizens and LPRs often wait several years for the petitions for their relatives to be processed. After USCIS processes the petitions, the relatives of U.S. citizens and LPRs then wait for a visa to become available through the numerically limited categories. The brothers and sisters of U.S. citizens are now waiting almost 12 years. Unmarried adult sons and daughters of U.S. citizens who filed petitions on April 22, 2001 are now being processed for visas. Prospective family-sponsored immigrants from the Philippines have the most substantial waiting times before a visa is scheduled to become available to them; consular officers are now considering the petitions of the brothers and sisters of U.S. citizens from the Philippines who filed 22 years ago.

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U.S. Immigration Policy on Permanent Admissions

Overview

Four major principles underlie U.S. policy on legal permanent immigration: the reunification of families, the admission of immigrants with needed skills, the protection of refugees, and the diversity of admissions by country of origin. These principles are embodied in federal law, the Immigration and Nationality Act (INA) first codified in 1952. The Immigration Amendments of 1965 replaced the national origins quota system (enacted after World War I) with per-country ceilings, and the statutory provisions regulating permanent immigration to the United States were last revised significantly by the Immigration Act of 1990.¹

The two basic types of legal aliens are *immigrants* and *nonimmigrants*. As defined in the INA, immigrants are synonymous with legal permanent residents (LPRs) and refer to foreign nationals who come to live lawfully and permanently in the United States. The other major class of legal aliens are nonimmigrants — such as tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors, or intracompany business personnel — who are admitted for a specific purpose and a temporary period of time. Nonimmigrants are required to leave the country when their visas expire, though certain classes of nonimmigrants may adjust to LPR status if they otherwise qualify.²

The conditions for the admission of immigrants are much more stringent than nonimmigrants, and many fewer immigrants than nonimmigrants are admitted. Once admitted, however, immigrants are subject to few restrictions; for example, they may accept and change employment, and may apply for U.S. citizenship through the naturalization process, generally after five years.

Petitions for immigrant (i.e., LPR) status are first filed with U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS) by the sponsoring relative or employer in the United States. If the prospective immigrant is already residing in the United States, the USCIS handles the entire

¹ Congress has significantly amended the INA numerous times since 1952. Other major laws amending the INA are the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, and Illegal Immigration Reform and Immigrant Responsibility Act of 1996. 8 U.S.C. §1101 et seq.

² Nonimmigrants are often referred to by the letter that denotes their specific provision in the statute, such as H-2A agricultural workers, F-1 foreign students, or J-1 cultural exchange visitors. CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

process, which is called “adjustment of status” because the alien is moving from a temporary category to LPR status. If the prospective LPR does not have legal residence in the United States, the petition is forwarded to the Department of State’s (DOS) Bureau of Consular Affairs in their home country after USCIS has reviewed it. The Consular Affairs officer (when the alien is coming from abroad) and USCIS adjudicator (when the alien is adjusting status in the United States) must be satisfied that the alien is entitled to the immigrant status. These reviews are intended to ensure that they are not ineligible for visas or admission under the grounds for inadmissibility spelled out in INA.³

Many LPRs are adjusting status from within the United States rather than receiving visas issued abroad by Consular Affairs.⁴ In FY2002, a total of 679,305 aliens (64%) adjusted to LPR status in the United States while only 384,427 arrived as LPRs from abroad. More than three-fourths (77%) of the employment-based immigrants, two-thirds (63%) of the immediate relatives of U.S. citizens, and only one-third (34%) of the other family-preference immigrants adjusted to LPR status within the United States.

The INA specifies that each year countries are held to a numerical limit of 7% of the worldwide level of U.S. immigrant admissions, known as per-country limits. The actual number of immigrants that may be approved from a given country, however, is not a simple percentage calculation. Immigrant admissions and adjustments to LPR status are subject to a complex set of numerical limits and preference categories that give priority for admission on the basis of family relationships, needed skills, and geographic diversity, as discussed below.⁵

Current Law and Policy

Worldwide Immigration Levels

The INA provides for a permanent annual worldwide level of 675,000 legal permanent residents (LPRs), but this level is flexible and certain categories of LPRs are permitted to exceed the limits, as described below.⁶ The permanent worldwide immigrant level consists of the following components: family-sponsored immigrants, including immediate relatives of U.S. citizens and family-sponsored preference immigrants (480,000 plus certain unused employment-based preference numbers from the prior year); employment-based preference immigrants (140,000 plus certain unused family preference numbers from the prior year); and diversity

³ These include criminal, national security, health, and indigence grounds as well as past violations of immigration law. §212(a) of INA.

⁴ For background and analysis of visa issuance and admissions policy, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

⁵ Immigrants are aliens who are admitted as LPRs or who adjust to LPR status within the United States.

⁶ §201 of INA; 8 U.S.C. §1151.

immigrants (55,000).⁷ Immediate relatives⁸ of U.S. citizens as well as refugees and asylees who are adjusting status are exempt from direct numerical limits.⁹

Table 1. Legal Immigration Preference System

Category		Numerical limit
Total Family-Sponsored Immigrants		480,000
<i>Immediate relatives</i>	Aliens who are the spouses and unmarried minor children of U.S. citizens and the parents of adult U.S. citizens	Unlimited
Family-Sponsored Preference Immigrants		Worldwide Level 226,000
<i>1st preference</i>	Unmarried sons and daughters of citizens	23,400 plus visas not required for 4 th preference
<i>2nd preference</i>	(A) Spouses and children of LPRs (B) Unmarried sons and daughters of LPRs	114,200 plus visas not required for 1 st preference
<i>3rd preference</i>	Married sons and daughters of citizens	23,400 plus visas not required for 1 st or 2 nd preference
<i>4th preference</i>	Siblings of citizens age 21 and over	65,000 plus visas not required for 1 st , 2 nd , or 3 rd preference
Employment-Based Preference Immigrants		Worldwide Level 140,000
<i>1st preference</i>	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multi-national executives and managers	28.6% of worldwide limit plus unused 4 th and 5 th preference
<i>2nd preference</i>	Members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business	28.6% of worldwide limit plus unused 1 st preference
<i>3rd preference — skilled</i>	Skilled shortage workers with at least two years training or experience, professionals with baccalaureate degrees	28.6% of worldwide limit plus unused 1 st or 2 nd preference
<i>3rd preference — “other”</i>	Unskilled shortage workers	10,000 (taken from the total available for 3 rd preference)
<i>4th preference</i>	“Special immigrants,” including ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and others	7.1% of worldwide limit; religious workers limited to 5,000
<i>5th preference</i>	Employment creation investors who invest at least \$1 million (amount may vary in rural areas or areas of high unemployment) which will create at least 10 new jobs	7.1% of worldwide limit; 3,000 <i>minimum</i> reserved for investors in rural or high unemployment areas

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

⁷ For more information, see CRS Report RS21342, *Immigration: Diversity Visa Lottery*, by Ruth Ellen Wasem and Karma Ester.

⁸ “Immediate relatives” are defined by the INA to include the spouses and unmarried minor children of U.S. citizens, and the parents of adult U.S. citizens.

⁹ CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

The annual level of family-sponsored preference immigrants is determined by subtracting the number of immediate relative visas issued in the previous year and the number of aliens paroled¹⁰ into the United States for at least a year from 480,000 (the total family-sponsored level) and — when available — adding employment preference immigrant numbers unused during the previous year. By law, the family-sponsored preference level may not fall below 226,000. In recent years, the 480,000 level has been exceeded to maintain the 226,000 floor on family-sponsored preference visas after subtraction of the immediate relative visas.

Within each family and employment preference, the INA further allocates the number of LPRs issued visas each year. As **Table 1** summarizes the legal immigration preference system, the complexity of the allocations becomes apparent. Note that in most instances unused visa numbers are allowed to roll down to the next preference category.

Employers who seek to hire prospective employment-based immigrants through the second and third preference categories also must petition the U.S. Department of Labor (DOL) on behalf of the alien. The prospective immigrant must demonstrate that he or she meets the qualifications for the particular job as well as the preference category. If DOL determines that a labor shortage exists in the occupation for which the petition is filed, labor certification will be issued. If there is not a labor shortage in the given occupation, the employer must submit evidence of extensive recruitment efforts in order to obtain certification.¹¹

Per-Country Ceilings

As stated earlier, the INA establishes per-country levels at 7% of the worldwide level.¹² For a dependent foreign state, the per-country ceiling is 2%. The per-country level is not a “quota” set aside for individual countries, as each country in the world, of course, could not receive 7% of the overall limit. As the State Department describes, the per-country level “is not an entitlement but a barrier against monopolization.”

Two important exceptions to the per-country ceilings have been enacted in the past decade. Foremost is an exception for certain family-sponsored immigrants. More specifically, the INA states that 75% of the visas allocated to spouses and children of LPRs (2ndA family preference) are not subject to the per-country ceiling.¹³ Prior to FY2001, employment-based preference immigrants were also held to per-country ceilings. The “American Competitiveness in the Twenty-First Century Act

¹⁰ “Parole” is a term in immigration law which means that the alien has been granted temporary permission to be present in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the terms of their parole expire, or if otherwise eligible, to be admitted in a lawful status.

¹¹ See CRS Report RS21520, *Labor Certification for Permanent Immigrant Admissions*, by Ruth Ellen Wasem.

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

¹³ §202(a)(4) of the INA; 8 U.S.C. §1151.

of 2000” (P.L. 106-313) enabled the per-country ceilings for employment-based immigrants to be surpassed for individual countries that are oversubscribed as long as visas are available within the worldwide limit for employment-based preferences. The impact of these revisions to the per-country ceilings is discussed later in this report.

The actual per-country ceiling varies from year to year according to the prior year’s immediate relative and parolee admissions and unused visas that roll over. In FY2003, the per-country ceiling was set at 27,827 and in FY2002 was 25,804. According to the Department of State’s Bureau of Consular Affairs, the ceiling for FY2004 was expected to be about 30,000. Processing backlogs, discussed later in this report, also inadvertently reduced the number of LPRs in FY2003. Only 705,827 people became LPRs in FY2003. USCIS was only able to process 161,579 of the potential 226,000 family-sponsored LPRs in FY2003, and thus 64,421 LPR visas rolled over to the FY2004 employment-based categories.¹⁴

Other Permanent Immigration Categories

There are several other major categories of legal permanent immigration in addition to the family-sponsored and employment-based preference categories. These classes of LPRs cover a variety of cases, ranging from aliens who win the Diversity Visa Lottery to aliens in removal (i.e., deportation) proceedings granted LPR status by an immigration judge because of exceptional and extremely unusual hardship. **Table 2** summarizes these major classes and identifies whether they are numerically limited.

Table 2. Other Major Legal Immigration Categories

Nonpreference Immigrants		Numerical Limit
<i>Asylees</i>	Aliens in the United States who have been granted asylum due to persecution or a well-founded fear of persecution and who must wait one year before petitioning for LPR status	No limits on receiving asylum, but 10,000 limit on LPR adjustments
<i>Cancellation of Removal</i>	Aliens in removal proceedings granted LPR status by an immigration judge because of exceptional and extremely unusual hardship	4,000 (with certain exceptions)
<i>Diversity Lottery</i>	Aliens from foreign nations with low admission levels; must have high school education or equivalent or minimum two years work experience in a profession requiring two years training or experience	55,000
<i>Refugees</i>	Aliens abroad who have been granted refugee status due to persecution or a well-founded fear of persecution and who must wait one year before petitioning for LPR status	Presidential Determination for refugee status, no limits on LPR adjustments
<i>Other</i>	Various classes of immigrants, such as Amerasians, parolees, and certain Central Americans, Cubans, and Haitians who are adjusting to LPR status	Dependent on specific adjustment authority

Source: CRS summary of §§ 203(a), 203(b), 204, 207, 208, and 240A of INA; 8 U.S.C. § 1153.

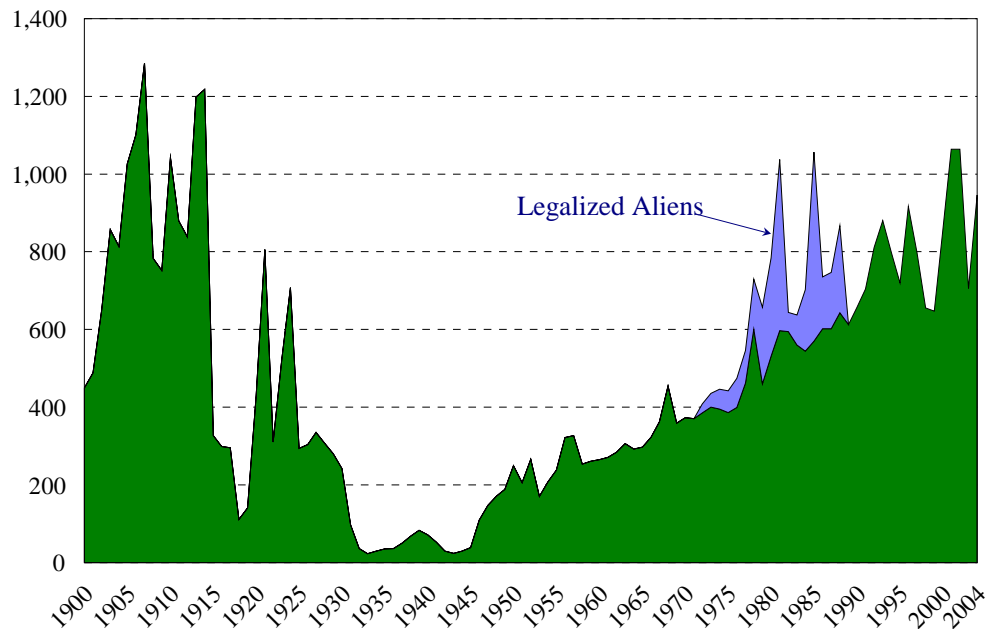
¹⁴ Telephone conversation with DOS Bureau of Consular Affairs, Feb. 13, 2004.

Admissions Trends

Immigration Patterns, 1900-2004

The annual number of LPRs admitted or adjusted in the United States rose gradually after World War II, as **Figure 1** illustrates. However, the annual admissions have not reached the peaks of the early 20th century. The DHS Office of Immigration Statistics (OIS) data present those admitted as LPRs or those adjusting to LPR status. The growth in immigration after 1980 is partly attributable to the total number of admissions under the basic system, consisting of immigrants entering through a preference system as well as immediate relatives of U.S. citizens, that was augmented considerably by legalized aliens.¹⁵ The Immigration Act of 1990 increased the ceiling on employment-based preference immigration, with the provision that unused employment visas would be made available the following year for family preference immigration. In addition, the number of refugees admitted increased from 718,000 in the period 1966-1980 to 1.6 million during the period 1981-1995, after the enactment of the Refugee Act of 1980.

Figure 1. Annual Immigration Admissions and Status Adjustments, 1900-2004



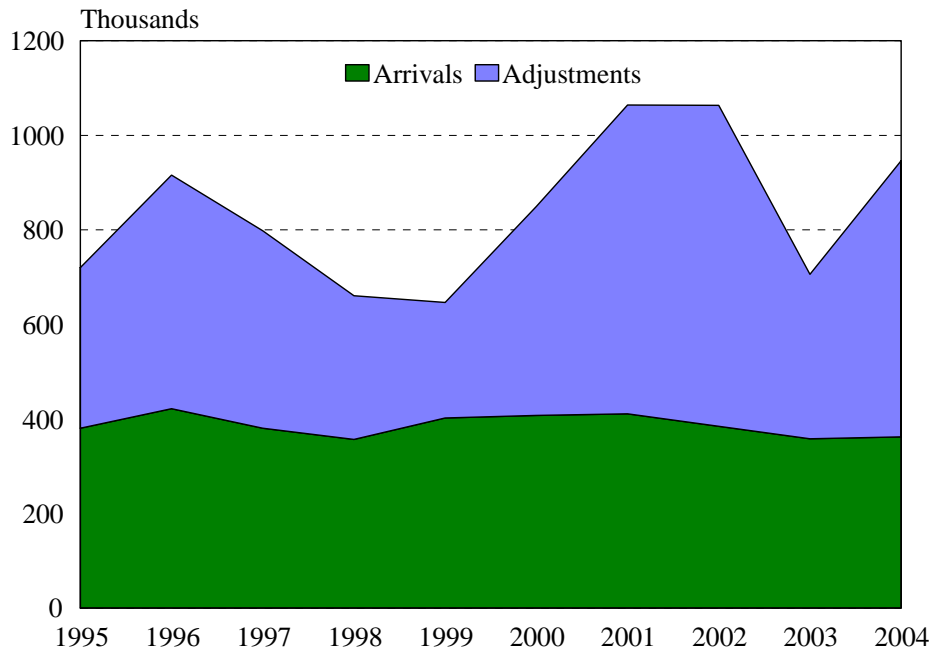
Source *Statistical Yearbook of Immigration*, U.S. Department of Homeland Security, Office of Immigration Statistics, multiple fiscal years. Aliens legalizing through the Immigration Reform and Control Act of 1986 are depicted by year of arrival.

Many LPRs are adjusting status from within the United States rather than receiving visas issued abroad by Consular Affairs before they arrive in the United

¹⁵ The Immigration Reform and Control Act of 1986 legalized several million aliens residing in the United States without authorization.

States. In the past decade the number of LPRs arriving from abroad has remained somewhat steady, hovering between a high of 421,405 in FY1996 and a low of 358,411 in FY2003. Adjustments to LPR status in the United States has fluctuated over the same period, from a low of 244,793 in FY1999 to a high of 679,305 in FY2002. As **Figure 2** shows, most of the variation in total number of aliens granted LPR status over the past decade is due to the number of adjustments processed in the United States. In FY2004, 61.7% (583,921) of all LPRs were adjusting status within the United States.

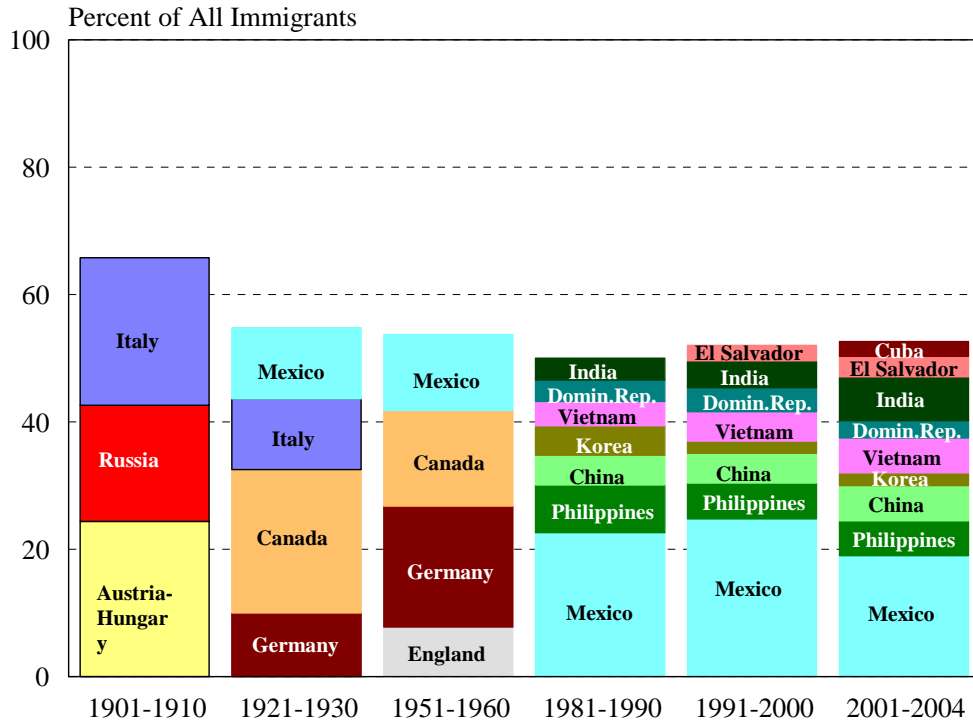
Figure 2. Legal Permanent Residents: New Arrivals and Adjustments of Status, FY1995-FY2004



Source: *Statistical Yearbook of Immigration*, U.S. Department of Homeland Security, Office of Immigration Statistics, (multiple years).

In any given period of United States history, a handful of countries have dominated the flow of immigrants, but the dominant countries have varied over time. **Figure 3** presents trends in the top immigrant-sending countries (together comprising at least 50% of the immigrants admitted) for selected decades and illustrates that immigration at the close of the 20th century is not as dominated by a few countries as it was earlier in the century. This finding suggests that the per-country ceilings established in 1965 had some effect. As **Figure 3** illustrates, immigrants from only three or four countries made up more than half of all LPRs prior to 1960. By the last two decades of the 20th century, immigrants from seven to eight countries comprised about half of all LPRs and this pattern has continued into the 21st century.

Figure 3. Top Sending Countries (Comprising More Than Half of All LPRs): Selected Periods



Source: CRS analysis of Table 2 *Statistical Yearbook of Immigration*, U.S. Department of Homeland Security, Office of Immigration Statistics, FY2004 (June 2005).

While Europe was home to the countries sending the most immigrants during the early 20th century, Mexico has been a top sending country for most of the 20th century. Other top sending countries from the Western Hemisphere are the Dominican Republic and most recently — El Salvador and Cuba. In addition, Asian countries — notably the Philippines, India, China, Korea, and Vietnam — have emerged as top sending countries today.

FY2004 Admissions

During FY2004, a total of 946,142 aliens became LPRs in the United States. The largest number of immigrants are admitted because of a family relationship with a U.S. citizen or resident immigrant, as **Figure 4** illustrates. Of the total LPRs in FY2004, 65.6% entered on the basis of family ties. Immediate relatives of U.S. citizens made up the single largest group of immigrants, as **Table 3** indicates. Family preference immigrants — the spouses and children of immigrants, the adult children of U.S. citizens, and the siblings of adult U.S. citizens — were the second largest group. Additional major immigrant groups in FY2004 were employment-based preference immigrants (including spouses and children) at 16.4%, and refugees and asylees adjusting to immigrant status at 7.5%.¹⁶

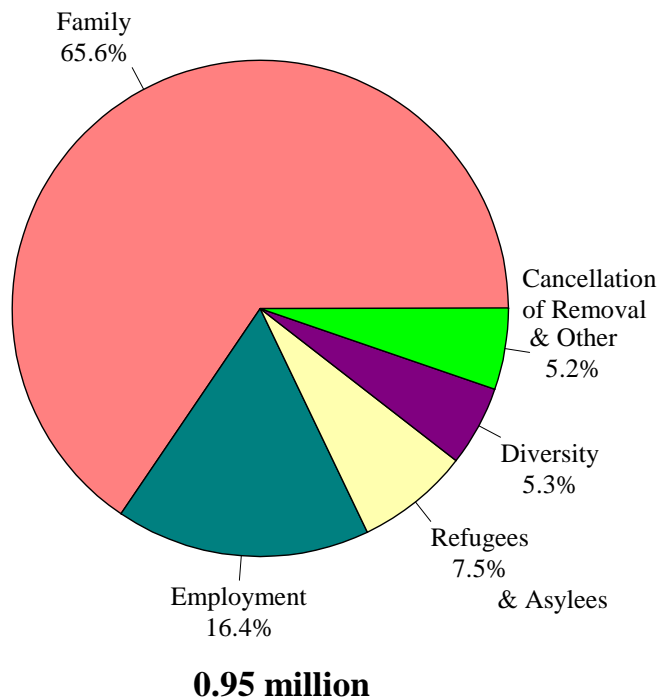
¹⁶ The largest group in the “other category” are aliens who adjusted to LPR status through (continued...)

Table 3. FY2004 Immigrants by Category

Total	946,142
Immediate relatives of citizens	406,074
Family preference	419,791
Employment preference	155,330
Refugee and asylee adjustments	71,230
Diversity	50,084
Other	49,069

Source: *Statistical Yearbook of Immigration, FY2004*, DHS Office of Immigration Statistics, June 2005.

Figure 4. Legal Immigrants by Major Category, FY2004



Source: CRS presentation of FY2004 data from the DHS Office of Immigration Statistics.

As **Figure 5** presents, Mexico led all countries with 175,364 aliens who became LPRs in FY2004. India followed at a distant second with 70,116 LPRs. The Philippines came in third with 57,827. These three countries comprise almost one-third of all LPRs in FY2004, and two exceeded the per-country ceiling for preference immigrants because they benefitted from special exceptions to the per-country

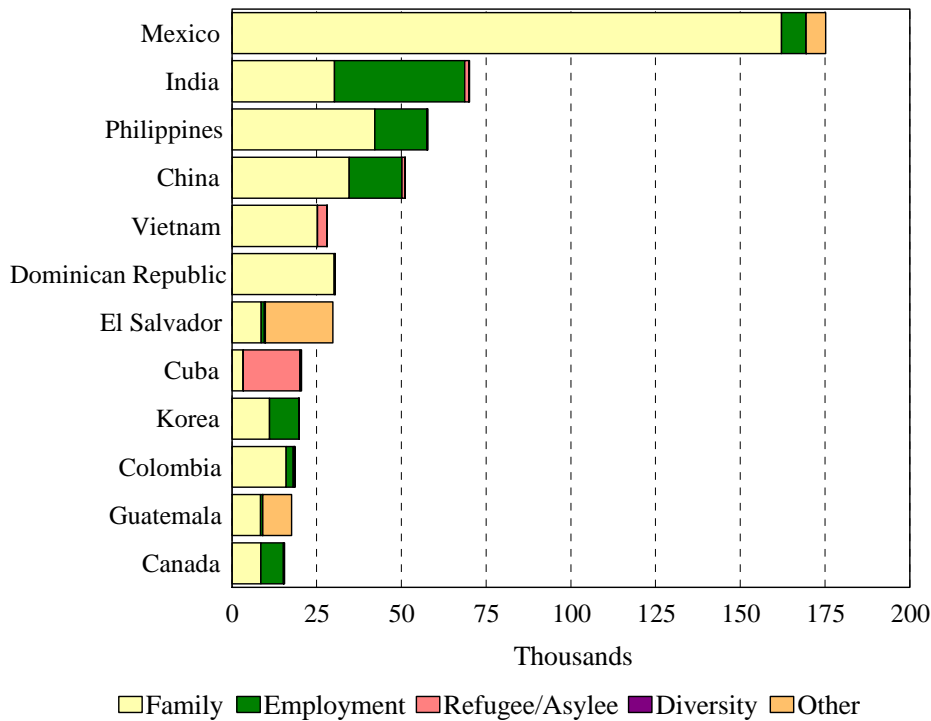
¹⁶ (...continued)

cancellation of removal and through §202 and §203 of the Nicaraguan and Central American Relief Act of 1997.

ceilings. Mexico did so as a result of the provision in INA that allows 75% of family second preference (i.e., spouses and children of LPRs) to exceed the per-country ceiling, while India exceeded the ceiling through the exception to the employment-based per-country limits.

The top 12 immigrant-sending countries depicted in **Figure 5** accounted for 57% of all LPRs in FY2004. The top 50 immigrant-sending countries contributed 88% of all LPRs in FY2004. **Appendix A** provides detailed data on the top 50 immigrant-sending countries by major category of legal immigration.

Figure 5. Top Twelve Immigrant-Sending Countries, FY2004



Source: CRS presentation of FY2004 data from the DHS Office of Immigration Statistics

Backlogs and Waiting Times

Visa Processing Dates

According to the INA, family-sponsored and employment-based preference visas are issued to eligible immigrants in the order in which a petition has been filed. Spouses and children of prospective LPRs are entitled to the same status, and the same order of consideration as the person qualifying as principal LPR, if accompanying or following to join (referred to as derivative status). When visa demand exceeds the per-country limit, visas are prorated according to the preference system allocations (detailed in **Table 1**) for the oversubscribed foreign state or dependent area. These provisions apply at present to the following countries

oversubscribed in the family-sponsored categories: China, Mexico, the Philippines, and India.

Table 4. Priority Dates for Family Preference Visas

Category	Worldwide	China	India	Mexico	Philippines
Unmarried sons and daughters of citizens	Apr. 22, 2001	Apr. 22, 2001	Apr. 22, 2001	Oct. 15, 1994	Oct. 15, 1990
Spouses and children of LPRs	Nov. 1, 2001	Nov. 1, 2001	Nov. 1, 2001	Oct 1, 2001	Nov. 1, 2001
Unmarried sons and daughters of LPRs	Apr. 22, 1996	Apr. 22, 1996	Apr. 22, 1996	Dec. 1, 1991	Apr. 22, 1996
Married sons and daughters of citizens	Apr. 15, 1998	Apr. 15, 1998	Apr. 15, 1998	Jan. 1, 1993	Nov. 8, 1990
Siblings of citizens age 21 and over	Feb. 1, 1994	Feb. 1, 1994	Aug. 1, 1993	Feb. 1, 1991	May 1, 1983

Source: U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin for October 2005*.

As **Table 4** evidences, relatives of U.S. citizens and LPRs are waiting in backlogs for a visa to become available, with the brothers and sisters of U.S. citizens now waiting almost 12 years. “Priority date” means that unmarried adult sons and daughters of U.S. citizens who filed petitions on April 22, 2001 are now being processed for visas. Married adult sons and daughters of U.S. citizens who filed petitions seven years ago (April 15, 1998) are now being processed for visas. Prospective family-sponsored immigrants from the Philippines have the most substantial waiting times before a visa is scheduled to become available to them; consular officers are now considering the petitions of the brothers and sisters of U.S. citizens from the Philippines who filed 22 years ago.

Due to P.L. 106-313’s easing of the employment-based per-country limits, few countries and categories are currently oversubscribed in the employment-based preferences. As **Table 5** presents, however, some employment-based visa categories are once again unavailable. The Department of State’s *Visa Bulletin for July 2005*, offered the following explanation: “The Employment Third and Third Other Worker categories have reached their annual limits and no further FY2005 allocations are possible for the period July through September. With the start of the new fiscal year in October, numbers will once again become available in these categories.”¹⁷ The *Visa Bulletin for September 2005* offered further information: “The backlog reduction efforts of both Citizenship and Immigration Services, and the Department of Labor continue to result in very heavy demand for Employment-based numbers. It is anticipated that the amount of such cases will be sufficient to use all available

¹⁷ The archived copies of the U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin*, is available at [http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html].

numbers in many categories....demand in the Employment categories is expected to be far in excess of the annual limits, and once established, cut-off date movements are likely to be slow.”¹⁸

Now that the *Visa Bulletin for October 2005* is available, it is evident that third preference visas (professional, skilled and unskilled) are oversubscribed on a worldwide level. The countries that are particularly effected by the oversubscription of the employment-based preference categories are China and India.

Table 5. Priority Dates for Employment Preference Visas

Category	Worldwide	China	India	Mexico	Philippines
Priority workers	current	Jan. 1, 2000	aug. 1, 2002	current	current
Advanced degrees/exceptional ability	current	May 1, 2000	Nov. 1, 1999	current	current
Skilled and professional	Mar. 1, 2001	May 1, 2000	Jan. 1998	Jan. 2001	Mar. 1, 2001
Unskilled	Oct. 1, 2000	Oct. 1, 2000	Oct. 1, 2000	Oct. 1, 2000	Oct. 1, 2000
Schedule A ^a	current	current	current	current	current
Special immigrants	current	current	current	current	current
Investors	current	current	current	current	current

Source: U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin for October 2005*.

a. Schedule A refers to §502 of Division B, Title V of P.L. 109-13, which makes up to 50,000 permanent employment-based visas available for foreign nationals coming to work as nurses.

Petition Processing Backlogs

Distinct from the visa priority dates that result from the various numerical limits in the law, there are significant backlogs due to the sheer volume of aliens eligible to immigrate to the United States. As of December 31, 2003, USCIS reported 5.3 million immigrant petitions pending.¹⁹ USCIS decreased the number of immigrant petitions pending by 24% by the end of FY2004, but still had 4.1 million petitions pending.²⁰ The processing dates for immediate relative, family preference, and employment-based LPR petitions are presented in **Appendix B** for each of the four USCIS Regional Service Centers.

Even though there are no numerical limits on the admission of aliens who are immediate relatives of U.S. citizens, such citizens petitioning for their relatives are waiting at least a year and in some parts of the country, more than two years for the

¹⁸ The U.S. Department of State, Bureau of Consular Affairs, *Visa Bulletin*, is available at [http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html].

¹⁹ According to USCIS, other immigration-related petitions, such as applications for work authorizations or change of nonimmigrant status, filed bring the total cases pending to over 6 million. Telephone conversation with USCIS Congressional Affairs, Feb. 12, 2004.

²⁰ DHS Office of Immigration Statistics. For USCIS workload statistics, see [<http://uscis.gov/graphics/shared/aboutus/statistics/Workload.htm>].

paperwork to be processed. Citizens and LPRs petitioning for relatives under the family preferences are often waiting several years for the petitions to be processed. **Appendix B** is illustrative, but not comprehensive because some immigration petitions may be filed at USCIS District offices and at the National Benefits Center.

Aliens with LPR petitions cannot visit the United States. Since the INA presumes that all aliens seeking admission to the United States are coming to live permanently, nonimmigrants must demonstrate that they are coming for a temporary period or they will be denied a visa. Aliens with LPR petitions pending are clearly intending to live in the United States permanently and thus are denied nonimmigrant visas to come temporarily.²¹

Current Issues and Legislation

Legislation in 108th Congress

Legislation reforming permanent immigration came from a variety of divergent perspectives in the 108th Congress. The sheer complexity of the current set of provisions makes revising the law on permanent immigration a daunting task. This discussion focuses only on those bills that would have revised the permanent immigration categories and the numerical limits as defined in §201-§203 of the INA.²²

On January 21, 2004, Senators Chuck Hagel and Thomas Daschle introduced legislation (S. 2010) that would, if enacted, potentially yield significant increases in legal permanent admissions. The Immigration Reform Act of 2004 (S. 2010), would have among other provisions: no longer deduct immediate relatives from the overall family-sponsored numerical limits; treat spouses and minor children of LPRs the same as immediate relatives of U.S. citizens (exempt from numerical limits); and reallocate the 226,000 family preference numbers to the remaining family preference categories. In addition, many aliens who would have benefited from S. 2010's proposed temporary worker provisions would be able to adjust to LPR status outside the numerical limits of the per country ceiling and the worldwide levels.

Several bills that would offer more targeted revisions to permanent immigration were offered in the House. Representative Robert Andrews introduced H.R. 539, which would have exempted spouses of LPRs from the family preference limits and thus treated them similar to immediate relatives of U.S. citizens. Representative Richard Gephardt likewise included a provision that would have treated spouses of LPRs outside of the numerical limits in his "Earned Legalization and Family Unity

²¹ §214(b) of INA. Only the H-1 workers, L intracompany transfers, and V family members are exempted from the requirement that they prove that they are not coming to live permanently.

²² For discussion of other major immigration legislation, see CRS Report RL32169, *Immigration Legislation and Issues in the 108th Congress*, coordinated by Andorra Bruno. Other CRS reports on the reform of other immigration provisions are available at [<http://www.crs.gov/products/browse/is-immigration.shtml>].

Act” (H.R. 3271). Representative Jerrold Nadler introduced legislation (H.R. 832) that would have amended the INA to add “permanent partners” after “spouses” and thus would have enabled aliens defined as permanent partners to become LPRs through the family-based immigration categories as well as to become derivative relatives of qualifying immigrants.

Legislation that would have reduced legal permanent immigration was introduced early in the 108th Congress by Representative Thomas Tancredo. The “Mass Immigration Reduction Act” (H.R. 946) would have zeroed out family sponsored immigrants (except children and spouses of U.S. citizens), employment-based immigrants (except certain priority workers) and diversity lottery immigrants through FY2008. It also would have set a numerical limit of 25,000 on refugee admissions and asylum adjustments. Representative J. Gresham Barrett introduced an extensive revision of immigration law (H.R. 3522) that also included a significant scaling back of permanent immigration.

Issues in the 109th Congress

President Bush’s Immigration Reform Proposal. When President George W. Bush announced his principles for immigration reform in January 2004, he included an increase in permanent legal immigration as a key component. The fact sheet that accompanied his remarks referred to a “reasonable increase in the annual limit of legal immigrants.”²³ When the President spoke, he characterized his policy recommendation as follows:

The citizenship line, however, is too long, and our current limits on legal immigration are too low. My administration will work with the Congress to increase the annual number of green cards that can lead to citizenship. Those willing to take the difficult path of citizenship — the path of work, and patience, and assimilation — should be welcome in America, like generations of immigrants before them.²⁴

Some commentators are speculating the President is promoting increases in the employment-based categories of permanent immigration, but the Bush Administration has not yet provided specific information on what categories of legal permanent admissions it advocates should be increased. Details on the level of increases the Administration is seeking also have not been provided.

The President featured his immigration reform proposal in the 2004 State of the Union address, and it has sparked a lively debate. Most of the attention has focused on the new temporary worker component of his proposal and whether the overall proposal constitutes an “amnesty” for aliens living in the United States without legal authorization.

²³ The White House, *Fact Sheet: Fair and Secure Immigration Reform*, Jan. 7, 2004. Available at [<http://www.whitehouse.gov/news/releases/2004/01/20040107-1.html>].

²⁴ President George W. Bush, “Remarks by the President on Immigration Policy,” Jan. 7, 2004. Available at [<http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>].

President Bush recently stated that immigration reform is a top priority and is sparking a lively debate on the issue. In an interview with the *Washington Times*, the President responded to a question about where immigration reform ranks in his second term agenda by saying, “I think it’s high. I think it’s a big issue.” The President posited that the current situation is a “bureaucratic nightmare” that must be solved.²⁵

Recaptured Visa Numbers for Nurses. Section 502 of Division B, Title V of P.L. 109-13 (H.R. 1268, the emergency FY2005 supplemental appropriation) amends the American Competitiveness in the Twenty-first Century Act of 2000 (P.L. 106-313) to modify the formula for recapturing unused employment-based immigrant visas for employment-based immigrants “whose immigrant worker petitions were approved based on schedule A.” In other words, it makes up to 50,000 permanent employment-based visas available for foreign nationals coming to work as nurses. This provision was added to H.R. 1268 as an amendment in the Senate and was accepted by the conferees.

Recaptured Employment-Based Visa Numbers. On October 20, 2005, the Senate Committee on the Judiciary approved compromise language that would, among other things, recapture up to 90,000 employment-based visas that had not been issued in prior years (when the statutory ceiling of 140,000 visas was not met). An additional fee of \$500 would be charged to obtain these recaptured visas. This language was forwarded to the Senate Budget Committee for inclusion in the budget reconciliation legislation.

Secure America and Orderly Immigration Act (S. 1033/H.R. 2330). On May 12, 2005, a bipartisan group of Senators and Congressmen²⁶ introduced an expansive immigration bill known as the Secure America and Orderly Immigration Act (S. 1033/H.R. 2330). Among other things, these bills would make significant revisions to the permanent legal admissions sections of INA.²⁷ Specifically Title VI of the legislation would:

- remove immediate relatives of U.S. citizens from the calculation of the 480,000 annual cap on family-based visas for LPR status, thereby providing additional visas to the family preference categories;
- lower the income requirements for sponsoring a family member for LPR status from 125% of the federal poverty guidelines to 100%;
- recapture for future allocations those LPR visas that were unused due to processing delays from FY2001 through FY2005;

²⁵ *Washington Times*, Jan. 12, 2005.

²⁶ In the Senate, the co-sponsors are Senators John McCain, Ted Kennedy, Sam Brownback, Ken Salazar, Lindsey Graham and Joe Lieberman. In the House, the co-sponsors are lead by Representatives Jim Kolbe, Jeff Flake and Luis Gutierrez.

²⁷ For an analysis of other major elements of these bills, see CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno.

- increase the annual limit on employment-based LPR visa categories from 140,000 to 290,000 visas; and
- raise the current per-country limit on LPR visas from an allocation of 7% of the total preference allocation to 10% of the total preference allocation (which would be 480,000 for family-based and 290,000 for employment-based under this bill).

Comprehensive Enforcement and Immigration Reform Act of 2005.

The Comprehensive Enforcement and Immigration Reform Act of 2005 (S. 1438), introduced by Senators John Cornyn and Jon Kyl on July 20, 2005, has provisions that would restructure the allocation of employment-based visas for LPRs. Among the various proposals, Title X of this legislation would make the following specific changes to the INA provisions on permanent admissions:

- reduce the allocation of visas to persons of “extraordinary” and “exceptional” abilities and persons having advanced professional degrees (i.e., first and second preferences);
- increase the number of visas to unskilled workers from a statutory cap of 10,000 annually to a level of 36% of the 140,000 ceiling for employment-based admissions (plus any other unused employment-based visas);
- eliminate the category of diversity visas; and
- recapture for future allocations those employment-based visa numbers that were unused from FY2001 through FY2005.

Immigration Accountability Act of 2005. As part of a package of four immigration reform bills, Senator Chuck Hagel has introduced the Immigration Accountability Act of 2005 (S. 1919), which would provide for “earned adjustment of status” for certain unauthorized aliens who meet specified conditions and would expand legal immigration. In terms of permanent legal admissions, S. 1919 would among other provisions:

- no longer deduct immediate relatives from the overall family-sponsored numerical limits of 480,000;
- treat spouses and minor children of LPRs the same as immediate relatives of U.S. citizens (i.e., exempt from numerical limits); and
- reallocate the 226,000 family preference numbers to the remaining family preference categories.

The Hagel immigration reform proposal also includes legislation revising the temporary worker programs, border security efforts, and employment verification.

Enforcement First Immigration Reform Act of 2005. Title VI of the Enforcement First Immigration Reform Act of 2005 (H.R. 3938), introduced by Representative J.D. Hayworth, focuses on revising permanent admissions. H.R. 3938 would increase employment-based admissions and decrease family-based admissions. More specifically, it would:

- increased the worldwide ceiling for employment-based admissions by 120,000 to 260,000 annually;

- within the employment-based third preference category, double unskilled admission from 10,000 to 20,000;
- eliminate the family-based fourth preference category (i.e., adult sibling of U.S. citizens); and
- eliminate the diversity visa category.

H.R. 3938 also has two provisions aimed at legal immigration from Mexico: §604 would place a three-year moratorium on permanent family-preference (not counting immediate relatives of U.S. citizens) and employment-based admissions from Mexico; and §605 would amend the INA to limit family-based immigration from Mexico to 50,000 annually.

Reducing Immigration to a Genuinely Healthy Total (RIGHT) Act of 2005. On September 8, 2005, Representative Thomas Tancredo introduced the “Reducing Immigration to a Genuinely Healthy Total (RIGHT) Act of 2005” (H.R. 3700), which would substantially overhaul permanent admissions to the United States. Among other provisions, H.R. 3700 would:

- reduce the worldwide level of employment-based immigrants from 140,000 to 5,200 annually;
- limit the 5,200 employment-based visas to persons of “extraordinary” and “exceptional” abilities and persons having advanced professional degrees (i.e., first and second preferences);
- eliminate the family preference visa categories; and
- eliminate the category of diversity visas.

Other Immigration Reduction Legislation. Representative J. Gresham Barrett has introduced an extensive revision of immigration law (H.R. 1912) that also includes a significant scaling back of permanent immigration. This legislation is comparable to legislation he introduced in the 108th Congress.

Permanent Partners. Representative Jerrold Nadler has introduced legislation (H.R. 3006) that would amend the INA to add “permanent partners” after “spouses” and thus would enable aliens defined as permanent partners to become LPRs through the family-based immigration categories as well as to become derivative relatives of qualifying immigrants. This bill is comparable to legislation he introduced previously.

Petition Processing and Adjudication Funding. USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits largely through monies generated by the Examinations Fee Account.²⁸ The Administration increased the fees charged to U.S. citizens and legal permanent residents petitioning to bring family or employees into the United States and to foreign nationals in the United States seeking immigration benefits.²⁹ In

²⁸ §286 of the Immigration and Nationality Act. 8 U.S.C. §1356.

²⁹ For example, the I-130 petition for family members went from \$130 to \$185, the I-140 petition for LPR workers went from \$135 to \$190, the I-485 petition to adjust status went (continued...)

FY2004, 86% of USCIS funding came from the Examinations Fee Account. In FY2005, USCIS has budget authority for \$1.571 billion from the Examinations Fee Account.³⁰ Congress provided a direct appropriation of \$60 million in FY2005 to reduce the backlog of applications and to strive for a six-month processing standard for all applications by FY2006.³¹

The Administration sought \$1.81 billion for USCIS for FY2006. This figure would have been an additional \$79 million for FY2006, a 5% increase over FY2005. For direct appropriations, the Administration requested \$80 million — a cut of \$80 million from FY2005 and a cut of \$155 million from the \$235 million Congress appropriated in FY2004. A decrease of 26% in backlog reduction and customer service activities was proposed for FY2006. The House-passed bill making FY2006 appropriations for the Department of Homeland Security (H.R. 2360) would have provided an increase of \$40 million above the President's request for a total of \$120 million, which would have been \$40 million less than FY2005. The Senate-reported version of H.R. 2360 would have provided \$80 million for USCIS in direct appropriations, recommending \$40 million less than provided in H.R. 2360 as passed by the House, and \$80 million less than enacted in FY2005.

On September 29, 2005, the conference committee approved and filed the conference report (H.Rept. 109-241) to H.R. 2360. The conferees recommend a total of \$1,889 million for USCIS, of which 94% comes from fees. The remaining 6% is a direct appropriation of \$115 million, which includes \$80 million for backlog reduction initiatives as well as \$35 million to support the information technology transformation effort and to convert immigration records into a digital format. The FY2006 appropriations amount is a decrease of 28% from the \$160 million appropriated in FY2005. As a result of a 10% increase in revenue budgeted from fees, the FY2006 total is 6% greater than the FY2005 total. The President signed H.R. 2360 as P.L. 109-90 on October 18, 2005.

Many in Congress have expressed concern and frustration about the backlogs and pending caseload, and Congress has already enacted statutory requirements for backlog elimination.³² USCIS Director Eduardo Aguirre acknowledged the challenges his agency faces in testimony before the House Judiciary Subcommittee on Immigration, Border Security and Claims last year.

We fully realize that the increased funding requested in the budget alone will not enable us to realize our goals. We must fundamentally change the way we conduct our business. We are aggressively working to modernize our systems

²⁹ (...continued)

from \$255 to \$315, and the N-400 petition to naturalize as a citizen went from \$260 to \$320. *Federal Register*, vol. 69, no. 22, Feb. 3, 2004, pp. 5088-5093.

³⁰ P.L. 108-334, conference report to accompany H.R. 4567, H.Rept. 108-774.

³¹ The President's Budget request for FY2002 proposed a five-year, \$500 million initiative to reduce the processing time for all petitions to six months. Congress provided \$100 in budget authority (\$80 direct appropriations and \$20 million from fees) for backlog reduction in FY2002. P.L. 107-77, conference report to accompany H.R. 2500, H.Rept. 107-278.

³² For example, see §§451-461 of the Homeland Security Act of 2002 (P.L. 107-296).

and increase our capacity through the reengineering of processes, the development and implementation of new information technology systems, and the development of mechanisms to interact with customers in a more forward-reaching manner.³³

The 109th Congress is expected to closely oversee progress in backlog reduction and improvements in petition processing.

³³ U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, *Hearing on Backlog Reduction Plan for Immigration Applications*, June 17, 2004.

Appendix A. Top Fifty Sending Countries in FY2004 by Category of LPR

Country of Birth	Total	Family Sponsored Preferences	Employment-Based Preferences	Immediate Relatives	Refugee and Asylee	Diversity Programs	Cancel of Removal	Other
Mexico	175,364	62,463	7,225	99,718	D	D	3,357	2,467
India	70,116	13,307	38,443	16,942	1,181	90	21	132
Philippines	57,827	17,406	15,497	24,708	35	11	71	99
China, People's Republic	51,156	13,658	15,583	20,947	876	76	3	13
Vietnam	31,514	14,890	D	10,338	2,831	D	D	3,246
Dominican Republic	30,492	18,099	212	12,087	32	8	14	40
El Salvador	29,795	3,744	996	4,874	263	—	19,791	127
Cuba	20,488	2,340	34	976	16,678	298	5	157
Korea	19,766	2,474	8,662	8,602	D	12	D	12
Colombia	18,678	3,011	2,166	12,945	375	9	63	109
Guatemala	17,999	2,317	585	6,169	D	D	8,410	126
Canada	15,567	742	6,694	7,785	17	56	D	271
United Kingdom	14,915	679	6,437	7,566	D	152	D	75
Jamaica	14,414	5,211	662	8,496	D	D	14	25
Poland	14,250	3,746	2,187	5,350	31	2,850	30	56
Haiti	13,998	5,400	122	5,520	536	—	12	2,408
Ukraine	13,655	200	767	3,061	4,980	2,975	8	1,664
Russia	13,358	175	1,994	6,710	2,571	1,097	15	796
Pakistan	12,086	3,629	2,591	5,330	419	9	32	76
Peru	11,781	2,355	1,119	7,062	323	795	48	79
Bosnia-Herzegovina	10,552	15	38	401	10,060	35	—	3
Brazil	10,504	308	3,605	6,362	26	129	24	50
Iran	10,434	2,062	745	3,275	3,966	349	8	29
Nigeria	9,374	925	685	4,549	188	2,959	22	46
Taiwan	8,961	3,163	2,295	2,865	D	613	D	19
Ecuador	8,611	1,928	1,153	5,057	33	328	55	57
Ethiopia	8,237	347	D	1,760	1,522	4,517	D	5
Bangladesh	8,061	2,099	963	2,981	198	1,756	28	36
Japan	7,694	144	2,176	4,834	5	513	—	22
Germany	7,099	150	1,931	3,951	568	464	5	30

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Country of Birth	Total	Family Sponsored Preferences	Employment-Based Preferences	Immediate Relatives	Refugee and Asylee	Diversity Programs	Cancel of Removal	Other
Guyana	6,329	3,957	203	2,146	D	9	D	6
Venezuela	6,220	431	1,498	3,917	214	127	12	21
Egypt	5,522	886	556	2,099	313	1,643	7	18
Honduras	5,505	1,662	424	3,068	93	10	207	41
Trinidad and Tobago	5,384	1,689	589	3,034	D	31	D	34
Ghana	5,328	553	222	3,216	D	1,152	D	35
Kenya	5,323	154	362	1,651	406	2,730	5	15
Argentina	4,805	232	1,402	2,906	120	121	5	19
Romania	4,557	295	780	2,216	79	1,145	32	10
Thailand	4,314	418	565	2,957	246	D	D	41
Bulgaria	4,194	110	475	1,172	65	2,342	19	11
Israel	4,160	264	1,322	2,293	13	249	4	15
Morocco	4,128	110	222	1,530	3	2,251	—	12
Nicaragua	4,000	453	56	1,289	137	10	17	2,038
Hong Kong	3,951	2,386	744	710	22	78	—	11
Somalia	3,929	21	D	191	3,640	69	D	1
Turkey	3,833	158	719	1,836	25	1,084	5	6
Lebanon	3,811	1,230	527	1,875	134	25	7	13
France	3,595	132	1,387	1,890	D	160	D	14
Cambodia	3,534	864	D	2,262	91	65	D	212
Top fifty total	829,168	202,992	137,620	353,479	53,315	33,402	32,356	14,848

Source: CRS analysis of data from the U.S. Department of Homeland Security, *FY2004 Statistical Yearbook of Immigration*, 2005.

Note: “D” means that data disclosure standards are not met; “ — ” represents zero.

Appendix B. Processing Dates for Immigrant Petitions

Immigrant Category	Regional Service Centers			
	California	Nebraska	Texas	Vermont
Immediate relatives	Feb. 28, 2005	Oct. 3, 2003	Feb. 28, 2005	Apr. 30, 2005
Unmarried sons and daughters of citizens	Dec. 19, 2002	Jun. 22, 2001	May 7, 2001	Jan. 15, 2002
Spouses and children of LPRs	Dec. 22, 2004	Apr. 13, 2001	Mar. 1, 2001	Jan. 15, 2002
Unmarried sons and daughters of LPRs	Dec. 30, 2004	Apr. 13, 2001	Jan. 4, 1999	Apr. 30, 2001
Married sons and daughters of citizens	Apr. 9, 2001	Apr. 13, 2001	May 7, 2001	Feb. 26, 2000
Siblings of citizens age 21 and over	Dec. 30, 2000	Apr. 13, 2001	Sept. 1, 1999	Sep. 24, 1999
Priority workers — extraordinary	Apr. 4, 2005	Jan. 1, 2004	Dec. 13, 2004	Feb. 5, 2005
Priority workers — outstanding	Apr. 4, 2005	Dec. 1, 2003	Dec. 13, 2004	Feb. 5, 2005
Priority workers — executives	Apr. 4, 2005	Apr. 1, 2004	Dec. 13, 2004	Nov. 18, 2004
Persons with advanced degrees or exceptional abilities	Apr. 1, 2005	Dec. 1, 2004	Mar. 24, 2005	Feb. 12, 2005
Skilled workers (at least two years experience) or professionals (B.A.)	Apr. 1, 2005	Dec. 1, 2003	Mar. 29, 2005	Mar. 19, 2005
Unskilled shortage workers	Apr. 1, 2005	Apr. 1, 2004	Mar. 29, 2005	Mar. 19, 2005

Source: CRS presentation of USCIS information dated June 21, 2005; available at [<https://egov.immigration.gov/cris/jsps/index.jsp>].