

THE U.S. IMMIGRATION SYSTEM

Background paper, prepared by Karen Siracusa and the Immigration Committee of the League of Women Voters of NJ, February 2011

In discussing U.S. immigration, three main issues overlap and interact with each other:

- 1) How do we want to structure our permanent resident immigration system: who and how many individuals do we want to admit to live here permanently?
- 2) How do we want to structure our temporary/visitor system, especially that part dealing with foreign workers?
- 3) How do we want to deal with the large number of unauthorized foreigners now living in the U.S.?

Approximately 307 million residents lived in this country in total in January 2009. Of these, approximately 38 million, or 12% of the overall total, were foreign born, including approximately 10.8 million, or roughly 3.5% of the overall total, who were in this country without authorization, whether because they entered illegally or because they entered legally but then overstayed their visas. *(Estimates vary not just for the number of unauthorized immigrants but for the total number of immigrants as well, depending on estimation procedures for those leaving and dying as well as for those entering. Unless otherwise noted, all numbers in this paper include adults and children, and come from the Census Bureau or the Department of Homeland Security.)*

The estimated percentage of unauthorized immigrants ranges widely around the national average. In California, the highest, it is 7% of all residents. In New Jersey it is 4%, higher than the average but not extraordinarily so.

THE DEBATE: LEGALIZATION OF UNAUTHORIZED FOREIGN NATIONALS

Legalization is the most emotionally volatile issue in the immigration debate.

PRO- LEGALIZATION. Many Americans would like to legalize the status of the undocumented foreign nationals living and working for all intents permanently in the U.S. They support some set of conditions that the undocumented must meet to become permanent lawful residents, such as documenting U.S. employment for a given period and the payment of all income taxes. Some would like the U.S. to set up an *immigration point system* that allocates aliens points based on work history, tax records, family ties, English language skills, years in the country, etc. Others suggest creating special guest worker visas for at least some of these unauthorized aliens that would eventually allow for adjustment to permanent legal status. (One such set of proposals, commonly presented at the DREAM ACT, would legalize the status of alien young adults who were brought into the U.S. by their parents when they were minors and who have lived many years in the U.S., graduate from U.S. high schools, and attend college or enlist in the military.

ANTI -LEGALIZATION: Many opponents say legalization not only rewards law breaking, but generally does so at the expense of immigrants waiting to enter the U.S. through legal channels. Most opponents fear that legalization only encourages more foreign nationals to enter the U.S. illegally in the future and generally point to the aftermath of the Reagan-era “amnesty” as justifying this fear.

To understand why we have so many unauthorized foreign-born residents in the U.S. and what parts of our immigration system are being debated, we need at least some understanding of our visa system, including non-immigrant as well as immigrant status and also per country limits.

VISAS AND IMMIGRATION STATUS

Multiple U.S. agencies govern the admission and conduct of foreign nationals in the United States, including, but not limited to, the Department of Homeland Security (DHS) and the Department of State (DOS). The DHS and DOS together determine the eligibility of, and criteria for admission for, individuals seeking to enter and remain in the United States. To lawfully enter the United States, foreign nationals must first apply for either a permanent (**immigrant status**) or temporary (**nonimmigrant status**) **visa** with the DOS at a U.S. embassy or consulate abroad. Such visas may require prior approval of petitions filed by qualifying U.S. citizen or lawful permanent resident (LPR) family members, or U.S. employers, on behalf of the foreign national visa applicants. The U.S. Citizenship and Immigration Services (USCIS), which is an agency within the DHS, evaluates the family or employer petitions, and forwards its determinations to the DOS. After the DOS issues a visa, an individual can seek entry at a U.S. port-of-entry, such as a land border or airport, and gain permission to enter after being inspected by the U.S. Customs and Border Protection agency, which also operates within the DHS. Once lawfully in the United States, foreign nationals are often able to extend or change their temporary status, or adjust their status to permanent residence, through application to the USCIS.

LEGAL NONIMMIGRANT STATUS

A person with **nonimmigrant status** is allowed only a **time-limited stay** in the U.S. for a **specific purpose**. There are more than 30 kinds of nonimmigrant status, each for a specific purpose: business, travel, academic study, temporary employment, etc.

Some employment-related caps on the number of temporary worker visas, but no overall cap, and no cap on the number of temporary agricultural workers: Most temporary visas are granted with no overall cap, for instance for student or tourist purposes, or intra-company transfers. Two major employment categories, however, as well as several more minor categories are limited. A third, thought by many to be limited by number of visas, is instead limited only by the ease with which the visa process can be carried out:

1. A maximum of roughly 85,000 visas per year are granted for specialty occupations, most of which require higher education or an advanced degree (H-1B visas). Major shortages in these areas in the past have led Congress to increase the maximum as it felt necessary. It went as high as 195,000 per year in 2007. Many of these temporary workers are employed in technology.
2. A maximum of roughly 66,000 temporary or seasonal NON-agricultural workers (H-2B visas), which maximum went as high as nearly 130,000 in 2007. Many of these workers are in landscaping and hospitality.
3. Temporary/seasonal agriculture visas (H-2A) are NOT limited at this time, but as in other areas the burden of proof is on the employer to show that the work is temporary or seasonal, that a labor shortage exists, and that foreign workers will not “adversely affect wages and working conditions of similarly employed U.S. workers.” (U.S. Citizenship and Immigration Services). These requirements and others are being streamlined.

THE DEBATE: TEMPORARY GUEST WORKERS

INCREASE TEMPORARY WORKERS. Various business interests and immigration analysts argue that labor shortages in some areas of the U.S. economy could be solved by **increasing** the supply of temporary foreign workers. Business has lobbied to lift the ceilings on not only highly skilled foreign workers (H-1B visas for instance), but also unskilled temporary foreign workers (H-2A, H-2B). Related arguments point to the large number of unauthorized foreign workers in the U.S., particularly from Latin America, as resulting from a high

demand for unskilled labor that is met neither by the American labor market nor by the current visa system.

MINIMIZE TEMPORARY WORKERS. Others oppose increases in temporary workers, arguing that there is no compelling proof of labor shortages and point to our high rate of unemployment. Opponents assert that significantly larger temporary foreign workers programs (especially during an economic recession) will have a negative impact on the compensation and working conditions of U.S. workers.

BOTH GROUPS note that temporary foreign workers along with unauthorized immigrants are subject to job-related abuse and exploitation.

LAWFUL PERMANENT RESIDENT STATUS (GREEN CARDS)

A person with **immigrant status** can **permanently** reside and work in the U.S. This foreign national is known as a **LPR** – a lawful permanent resident. The U.S. government will issue a **green card** to the LPR that verifies this status. Later, if they choose, LPRs can become U.S. citizens through the naturalization process.

The U.S. grants immigrant status for **family reunification**. **Two thirds** of all new green cards in any one fiscal year are granted to foreign nationals because of their close family relationships with either a U.S. citizen or an LPR.

U.S. Lawful Permanent Residents in 2009 - 1,130,818 persons became LPRs http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2009.pdf		<u>Minimum # of green cards available/year</u>	<u>Maximum # of green cards available/year</u>
	% of total LPRs granted green cards in 2009		
Family reunification (including: (IR: immediate relatives of U.S. citizens) (other family-sponsored categories)	66% (40%) (26%)	NA 226,000	Unlimited 480,000
Employment	13%	140,000	NA
For humanitarian reasons (refugees, asylees)	16%	<i>Unused visas one year may be added to those available in the following</i>	
Diversity lottery (for applicants from countries with few recent immigrants)	4%		

IR visas (whether new or adjusted status) granted one year reduce the number of other family sponsored visas in the following year, but may not reduce that number below the minimum shown.

IMMIGRANT STATUS: FAMILY REUNIFICATION

A foreign national can apply to become an LPR based on a qualifying family relationship with a U.S. citizen or LPR. The sponsoring U.S. citizen or LPR must demonstrate sufficient income and assets to support the intending immigrant when in the U.S. There are two kinds of family sponsored immigration (together these are referred to as family-sponsored immigrants.)

Immediate Relative (IR) A spouse, child (unmarried & under 21), or parent (citizen sponsoring a parent must be at least 21) of a U.S. citizen can be granted a green card. There are **NO numeric limits** (no per country limits and no overall total limits) on the number of visas issued to immediate relatives in any fiscal year. In 2009, about 40% of all new LPR's were immediate relatives of U.S. citizens.

Immediate Relative visas, however, do count against the total number of the following year's other family sponsored visas. For the last several years IR visas have generally reduced the number of other family sponsored visas from the maximum to the minimum available (226,000).

Non-Immediate Relatives. (The Family Sponsored Preference System) Various types of non-immediate relatives of U.S. citizens and of legal permanent residents can be granted a green card. The set of family categories and rankings governing this process is known as the *Family Sponsored Preference System*.

Family Preference System Limits After the overall limit on family preference visas is set, there are also limits on the number of visas that can be issued within in any preference category. And finally, there are limits on the percentage of visas that can be allotted to any one country in a given year.

The chart below summarizes the Family Preference system that supplements the immediate relative category. The limits vary month to month and year to year.

Family Based Preference System	
Preference	Fiscal Year Limits as of August 2010
1st Preference (F1) -Unmarried adult sons and daughters (and their minor children) of U.S. citizens	23,400
2nd Preference (F2) -Spouses, minor children, and unmarried sons and daughters (age 21 and over) of LPRs.	114,200
3rd Preference (F3) -Married sons and daughters of U.S. citizens, and their spouses and children.	23,400,
4th Preference - Brothers and sisters of U.S. citizens, and their spouses and minor children, provided the U.S. citizens are at least 21 years of age	65,000

Per country limits require that no more than 7% of the total available family preference visa numbers be given to any one country in any one fiscal year. When the numeric limit has been met for any given family preference category combined with the per country limits, no more visa numbers will be given for that category/country for the rest of the fiscal year, although priority is determined by when a visa is first applied for, whether or not a visa number is actually assigned.

Waiting lists and per country limits. The demand for family sponsored preference based visas by residents of a few countries generally far exceeds the available supply for particular countries. This results in very long waits for LPR status for many potential immigrants, even though those waits have been reduced in the last several years. As of August 2010, Mexicans seeking visas must have applied by 1992 or 1993, that is 17 to 18 years ago, for all family preferences except for spouses and minor children. Filipinos have similar waits. Waits also reach up to fifteen years for some categories for India and up to eight years for the Dominican Republic and China.

IMMIGRANT STATUS: EMPLOYMENT BASED

Under certain conditions, employers can sponsor a foreign national to receive a green card.

Employment Preference System In addition to total limits and per country limits, there is a five-part employment preference system that categorizes the conditions for employment based immigration. As with temporary employment visas, the number of visas granted per year depends in part on the state of the U.S. economy and in part on the particular preference class.

Employment Based Preference System	
Preference	Fiscal Year Limits as of August 2010
1st preference (EB1) Priority Worker category: aliens of extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers	40,000
2nd preference (EB2) Members of the professions holding advanced degrees (higher than bachelor's degree) or aliens of exceptional ability	40,000
3rd preference (EB3) Skilled workers, professionals, and other workers Note: 10,000 of these visas are reserved for the "unskilled other workers" subcategory – defined as work requiring less than 2 years training or experience, and not of a temporary or seasonal nature	40,000
4th preference (EB4) Special immigrants (ministers, religious workers and others)	10,000
5th preference (EB5) Persons investing \$1 million (in some cases \$500,000) in a job-creating enterprise in the U.S. that employs at least 10 U.S. workers per investor	10,000

THE DEBATES: HOW MANY GREEN CARDS? FAMILY VS. EMPLOYMENT AS MAIN BASIS FOR GRANTING?

FAVORING INCREASED IMMIGRATION OVERALL

Some favor increased immigration because the world is now on the move, not just to the U.S. but to many different countries. Others favor it because they believe the U.S. should honor its own history of immigration and benefit from the diversity that frequently accompanies immigration.

FAVORING EMPHASIS ON FAMILY REUNIFICATION

Some favor a substantial increase in legal immigration to meet a growing demand from families for visas for family members. Proponents of family-based migration are troubled by significant backlogs in family based immigration due to the very large number of aliens eligible to immigrate. Citizens and LPRs can wait many years for their relatives to be admitted on immigrant visas. Family reunification advocates also believe that basing admission on family ties makes the U.S. stronger and guarantees more success for the immigrants.

FAVORING EMPHASIS ON EMPLOYMENT

Various groups want a significant shift in emphasis from family-based to the employment-based immigration and/or a substantial increase in legal immigration based on employment. Despite U.S. unemployment rates, some employers and business people feel that the global economy demands U.S. stay as competitive as possible by recruiting the best in the world and that robust employment immigration is a key to economic growth.

FAVORING FEWER IMMIGRANTS (WHETHER FAMILY OR EMPLOYMENT BASED)

There are those who would prefer to significantly decrease the number of green cards granted each year for both family and employment. They may argue to limit family-based LPRs to the immediate relatives of U.S. citizens; and/or to limit employment-based visas to the most exceptional or outstanding individuals.

Waiting Lists As with family preference visas, employment visas are issued based on the chronological order in which the petitions were filed together with the parallel limit of 7% of employment visas that may

be granted to a single country. In certain categories, there may be a waiting period of several years before a visa is available for an applicant, especially for applicants from China and India.

Note that temporary, non-immigrant visas are NOT included under immigrant caps, although individuals who come on such visas may apply to adjust their status to immigrant. If successful, they are then counted against the immigrant employment or family reunification caps.