NATIONAL IMMIGRATION FORUM

*Practical Solutions for Immigrants and for America*

# BACKGROUNDER

## Immigration Backlogs are Separating American Families

In our immigration law, our country has made it a priority for families to be together. In recent years, however, growing backlogs in our immigration system, along with barriers to family unification erected by laws passed in 1996, have kept families separated for many years, and in some cases have split families apart.

### Family immigration categories and per-country limits

Our family immigration system places people who want to immigrate to the U.S. into visa categories (most with numerical limits) according to the closeness of the relationship and the citizenship status of the U.S. family member.

| **Categories of Family Immigration, Numerical Limits, and Approximate Length of Wait for Visa (as of August 2012)** | | | | |
|---|---|---|---|---|
| **Visa Category** | **Citizenship Status of U.S. Family Member** | **Relationship of Intending Immigrant to U.S. Family Member** | **Annual Numerical Limit** | **Length of Wait for Visas in this Category** |
| **Immediate Relative** | U.S. Citizen | Spouse, unmarried minor child, parent | No limit | No quota limit backlog. Application processing backlog may be several months. |
| **First Family Preference** | U.S. Citizen | Unmarried adult children (21 years or older) | 23,400 | 7 years for most countries |
| **Second A Family Preference** | U.S. Legal Permanent Resident | Spouse, minor child | 87,900 | 2 years, 5 months for most countries |
| **Second B Family Preference** | U.S. Legal Permanent Resident | Unmarried adult children (21 years or older) | 26,300 | 8 years, 1 month for most countries |
| **Third Family Preference** | U.S. Citizen | Married adult children | 23,400 | 10 years, 3 months for most countries |
| **Fourth Family Preference** | U.S. Citizen | Brothers and sisters | 65,000 | 11 years, six months for most countries |

As the table above shows, there is no numerical cap for spouses, unmarried minor children, and parents of U.S. citizens. This category is called "immediate relatives of U.S. citizens." For all other relations, however, there are strict limits on the total number in each category. All "immediate relatives" plus all of the family preference categories must fit within an overall ceiling for family-based immigration of 480,000. This ceiling can be exceeded due to the fact that there is a "floor" of 226,000 for the family preference categories (non-immediate relatives) coupled with the fact that immediate relatives are not capped. (So, when immediate relative immigration is more than 254,000 (480,000 – 226,000), the overall ceiling is "pierced.") For many years now, there have been no more than 226,000 visas allocated to the family preference categories because immediate relative immigration has been more than 254,000 per year. *This is the heart of the backlog problem with family preference immigration*.

In addition to these category limits, the ceiling on the number of people we allow in from any one country is approximately 25,600. This ceiling includes immigrants in the family-preference categories *and* immigrants who are coming here through the sponsorship of an employer. There are some exceptions to the per-country limits, including an exemption from per-country limits for three-quarters of the visas allocated to the spouses and children of legal permanent residents (the family 2A preference).

**Two kinds of backlogs**

There are two kinds of backlogs. At the end of the immigration process, when an immigrant visa is available to the immigrant, there may be an *administrative* backlog due to the fact that the immigration agency may not have sufficient resources to handle its workload. These backlogs can be dealt with by giving the immigration agency more resources to handle its workload.

The more serious problem—often confused with the administrative problem—is the much longer backlog that has developed because *the number of visas available by law each year is less than the number of prospective immigrants getting in line to wait for a visa*. This problem cannot be solved by making the immigration agency more efficient, but will only be resolved by reforming our immigration system so that the number of visas available better meets demand.

**Priority dates and backlogs**

An immigrant begins the process of joining his or her family member in the U.S. when the family member submits a petition to the government. The filing of that petition establishes a *priority date*, holding the immigrant's place in line. The State Department keeps tabs on whether or not there are visas available within the category and per-country limits. If there is no backlog, an immigrant visa (or "green card") is immediately available to the immigrant, and the immigrant will receive one as soon as the government processes the application. In the application process, checks are performed to make sure the individual has no criminal history, is not a security threat, and is otherwise not inadmissible as an immigrant to the U.S.

In recent years, however, the number of visas available in our family immigration system has not met the demand. Except for the spouses, children, and parents of U.S. citizens, for which there

are no per-country or category ceilings, there are backlogs in *all* of the preference categories of family-based immigration.

The State Department reports annually on the number of individuals waiting for an immigrant visa. As of November 2011 (the most recent report available), there were more than 300,000 wives, husbands and minor children of legal permanent residents waiting for immigrant visas. Compared to the number of visas available each year, the category of siblings of U.S. citizens has the largest backlog. There were more than 2.5 *million* siblings waiting for the 65,000 visas available each year.

How do these numbers translate into the length of time an immigrant must wait for a visa? Each month, the State Department publishes a Visa Bulletin showing the availability of immigrant visas relative to their priority dates. As of August 2012, the wives, husbands and minor children of legal permanent residents were only now receiving a visa if their priority date was earlier than March 15, 2010—that is, after a wait of *almost two and a half years*. A U.S. citizen who petitioned for a sibling is only now being rejoined with that sister or brother after a wait of *11 years and six months*.

The current projections of the backlogs that appear in the Visa Bulletin may actually understate the wait an immigrant will eventually experience. For reasons having to do with the ability of the government to predict how many visas will actually be used in a given month—including visas used in "adjustment of status" cases, the priority date for a given category may actually *go backwards* from one month to the next. For example, in January 2011 the priority date for which visas were being allocated for the category of siblings of U.S. citizens was January 1, 2002. By February 2011, the priority date had actually *receded* to January 1, 2000.

Given that we have already decided, in the structure of our immigration law, to make family unity a priority, it does not make sense to have an outdated quota system that keeps families separated for many years. If we as a nation continue to believe that it is important to keep families together, then we must reform our immigration system so that the category and per-country limits that we now have on family-based immigration meet our needs.

**Current law regarding family unification should be updated**

The emphasis we place in our immigration law on the reunification of families makes sense in terms of helping our newcomers adapt to their new home. Family members help each other adjust to their new surroundings by pooling resources and sharing responsibilities (for example, caring for children or elderly parents).

The inability to bring family members makes it harder for U.S. companies to attract the workers they need. Workers who do come may be less productive if forced to endure a long separation from their families. Additionally, immigrants coming to the U.S. as a result of family ties also get jobs and become valuable contributors to our economy. Finally, strong families help stabilize communities.

As the backlogs grow, more families are facing the choice of remaining separated for several years or keeping the family intact by having some members enter illegally. The backlogs are also

yielding consequences contrary to some of our other policy goals. For Filipinos, for example, becoming a U.S. citizen may mean a longer separation from adult children. The backlog for the adult children of Filipinos who become citizens is *longer* than the wait to bring in adult unmarried children of permanent residents. As a practical matter, reuniting with family in this case may mean postponing citizenship.

**Immigration reform is needed to speed the reunification of families**

Changes to the family preference system are needed so that families might be re-united in a timelier manner. Updating our family immigration laws will reduce the pressure for family members to migrate outside of legal channels. By creating wider legal channels for immigrants to come here, the number of people who come illegally will be reduced or eliminated.

There are a number of things Congress could do to alleviate the backlogs and their consequences.

- Update the immigrant quota system: Our immigrant quota system has not been updated in more than two decades, despite increased demand. There are several ways that Congress could reform the system. "Immediate relatives" could be exempted from the family-sponsored immigrant cap 480,000, so that the cap would apply only to preference immigrants. The definition of immediate relative might be expanded to include the spouses and minor children of legal permanent residents. This would free up visas in the limited family preference system so they could be re-allocated to the remaining categories of family-sponsored immigrants.

- Place a cap on the wait time: Congress could provide for waivers to the per-country and world-wide numerical limits to family reunification that would be triggered when an immigrant's wait exceeded a period of time—five years, for example. Any eligible family-sponsored immigrant who had waited five years or more would be given a visa whether or not that year's quotas had been reached.

- Re-allocate unused visas from prior years: Even though there is more demand for visas than there are available visas, it sometimes happens (usually, because of processing delays or security screening) that some of the visas that should be allocated in a given year are not allocated. If not allocated, the visas are not used. Congress could change the law so that when processing delays result in unused visas, those unused visas are made available the following year, outside of the current year's per country or quota limits. Going back and re-capturing unused visas would have a significant impact on backlogs. According to the U.S. Citizenship and Immigration Services Ombudsman, between 1992 and 2009 there were nearly 242,000 visas in the family preference system that went unused.

**Immigration reform must include the removal of barriers to family re-unification**

In addition to inadequate visa quotas that keep families apart for many years, there are legal barriers within the immigration law that have had the unintended consequence of more years of separation for family members. To meaningfully unite families, these barriers must be removed.

- Congress should eliminate or reform the bar to re-entry that places immigrants in a catch 22: Certain people who are in the U.S. without permission, but who have qualified and are on the verge of gaining immigration status, are required to leave the country to pick up their immigrant visas in their home countries. However, a 1996 law prohibits anyone who leaves the country after having been here a minimum of six months without permission from re-entering the country for three years—regardless of whether they have qualified for an immigrant visa through family or employer sponsorship. Those here for twelve months or more are prohibited from re-entering the country for ten years. There is even a permanent bar to re-entry for certain immigrants who have been here illegally. These immigrants face the choice of a very long separation from their family or remaining in the U.S. with no status and forgoing the immigrant visa for which they have qualified.

  These prohibitions on re-entry into the U.S.—the three- and ten-year bars (and the permanent bar)—should be reformed. Currently a waiver for the bar to re-entry is available only to an individual who can show that a U.S. citizen or lawful permanent resident spouse, child, or parent would suffer "extreme hardship" if the individual were to be forced to remain outside of the U.S. for a long period of time.

  Even if an individual qualifies for the waiver, the application process itself may result in a long period of separation. Currently, this waiver is obtained at a consular post abroad and may take up to a year for a decision to be made. In April 2012, the Obama Administration proposed a new waiver process that will allow applicants for these waivers to remain in the U.S. while their application is adjudicated. This would cut down on the amount of time families are separated while waiting for the waiver to be processed. However, the onerous "extreme hardship" standard must still be met to qualify for the waiver.

  The new process proposed by the Obama Administration is a start, but the bars to re-entry should still ultimately be repealed. They have so far been ineffective in deterring people from coming here illegally. Repealing the bars would allow intending immigrants to go through the normal screening processes that other immigrants must go through when applying for permanent residence in the U.S. At the very least, a waiver should be more easily obtained for individuals who otherwise qualify for an immigrant visa.