

# Visa Bulletin for April 2010

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## **A. STATUTORY NUMBERS**

1. This bulletin summarizes the availability of immigrant numbers during **April**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by March **9th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date which has been announced in this bulletin.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

### **FAMILY-SPONSORED PREFERENCES**

**First:** Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

**Third:** Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth:** Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

**EMPLOYMENT-BASED PREFERENCES**

**First:** Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

**Second:** Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

**Third:** Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

**Fourth:** Certain Special Immigrants: 7.1% of the worldwide level.

**Fifth:** Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Family	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	08JUL04	08JUL04	08JUL04	15OCT92	01MAR94
2A	01JUN06	01JUN06	01JUN06	01JAN05	01JUN06
2B	01MAR02	01MAR02	01MAR02	15JUN92	15SEP98
3rd	22MAY01	22MAY01	22MAY01	15OCT92	01MAR92
4th	01MAR00	01MAR00	01MAR00	08DEC95	08SEP87

\*NOTE: For April, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN05. 2A numbers

**SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JAN05 and earlier than 01JUN06. (All 2A

numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	22AUG05	01FEB05	C	C
3rd	01FEB03	01FEB03	08SEP01	01JUL02	01FEB03
Other Workers	01JUN01	01JUN01	01JUN01	01JUN01	01JUN01
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
5th Pilot Programs	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

**B. DIVERSITY IMMIGRANT (DV) CATEGORY**

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2010 annual limit being reduced to 50,000.** DV visas are divided among

six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **April**, immigrant numbers in the DV category are available to qualified DV-2010 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	31,700	Except: Egypt: 20,800 Ethiopia: 19,300 Nigeria: 14,600
ASIA	13,600	
EUROPE	26,300	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	1,000	
SOUTH AMERICA, and the CARIBBEAN	1,000	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2010 program ends as of September 30, 2010. DV visas may not be issued to DV-2010 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2010 principals are only entitled to derivative DV status until September 30, 2010. DV visa availability through the very end of FY-2010 cannot be taken for granted. Numbers could be exhausted prior to September 30.

**C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN MAY**

For **May**, immigrant numbers in the DV category are available to qualified DV-2010 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	

<b>AFRICA</b>	39,200	Except: Egypt: 23,600 Ethiopia: 22,500 Nigeria: 16,200
<b>ASIA</b>	16,400	
<b>EUROPE</b>	29,250	
<b>NORTH AMERICA (BAHAMAS)</b>	4	
<b>OCEANIA</b>	1,100	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	1,200	

**D. BACKGROUND INFORMATION ON FREQUENTLY MISUNDERSTOOD POINTS**

Applicants entitled to immigrant status become documentarily qualified at their own initiative and convenience. By no means has every applicant with a priority date earlier than a prevailing cut-off date been processed for final visa action. On the contrary, a significant amount of demand is received each month for applicants who have priority dates which are significantly earlier than the applicable cut-off dates. In addition, fluctuations in demand can cause cut-off date movement to slow, stop, or even retrogress. Retrogression is particularly possible near the end of the fiscal year as visa issuance approaches the annual limitations.

**Per-country limit:** The annual per-country limitation of 7% is a cap which visa issuances to any single country may not exceed. Applicants compete for visas primarily on a worldwide basis. The country limitation serves to avoid monopolization of virtually all the annual limitation by applicants from only a few countries. This limitation is not a quota to which any particular country is entitled, however.

**Applicability of Section 202(a)(5):** INA Section 202(a)(5), added by the American Competitiveness in the 21st Century Act, removed the per-country limit on Employment-based immigrants in any calendar quarter in which applicant demand for numbers in one or more Employment-based preferences is less than the total of such numbers available. In recent years, the application of Section 202(a)(5) has allowed countries such as China – mainland born and India to utilize large amounts of Employment First and Second preference numbers which would have otherwise gone unused. Such numbers are provided strictly in priority date order without regard to the foreign state chargeability, and the same cut-off date applies to any country benefiting from this provision.

**Applicability of Section 202(e):** When visa demand by documentarily qualified applicants from a particular country exceeds the amount of numbers available under the annual numerical limitation, that country is considered to be oversubscribed. Oversubscription may require the establishment of an earlier cut-off date than that which applies to a particular visa category on a worldwide basis. The prorating of numbers for an oversubscribed country follows the same percentages specified for the division of the worldwide annual limitation among the preferences. (Note that visa availability cut-off dates for oversubscribed areas may not be later than worldwide cut-off dates, if any, for the respective preferences.)

Furthermore, Section 202(a)(2) reads, “2) Per country levels for family-sponsored and

employment-based immigrants. Subject to paragraphs (3), (4), and (5), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 203 in any fiscal year may not exceed seven percent (in the case of a single foreign state) or two percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year." The seven percent per-country limit specified in INA 202(a)(2) is considered to be for both Family-sponsored and Employment-based numbers combined.

Allocation of visa numbers under Section 202(e) is accomplished as follows:

1. If based on historical patterns or current demand it appears that during a fiscal year number use by aliens chargeable to a particular country will exceed the per-country numerical limit for both the Family and Employment preferences combined, that country would be considered oversubscribed. Both the Family and Employment preferences would be subject to the prorating provisions of INA 202(e)(1).
2. Sometimes during a fiscal year it may become apparent that because of a lack of demand in the Family preferences, number use by aliens chargeable to an oversubscribed country will be well within the per-country numerical limit. In such case the excess Family numbers would be made available to the Employment preferences subject to the prorating provisions of INA 202(e)(1). Each of the first three Employment categories would receive 28.6% of the excess numbers, and each of the Fourth and Fifth preference categories 7.1%. (Fall-across would likewise apply if an oversubscribed country lacked sufficient demand in the Employment preferences but had excess demand in the Family preferences.)

If a foreign state other than an oversubscribed country has little Family preference demand but considerable Employment preference demand, the otherwise unused Family numbers fall across to Employment (and vice versa) for purposes of that foreign state's annual numerical limit. For example, in FY-2009 South Korea used a grand total of 15,899 Family and Employment preference numbers, of which 1,688 were Family numbers and 14,211 were Employment numbers. This grand total was well within the FY-2009 per-country numerical limit of 25,620 Family and Employment numbers combined, so South Korea was not oversubscribed. The unused Family numbers were distributed within the Employment categories, allowing South Korea to be considerably over the 9,800 Employment limit which would have been in effect had it been an oversubscribed country.

## E. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

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From the home page, select the VISA section which contains the Visa Bulletin.

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