

Visa Bulletin

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VISA BULLETIN FOR JANUARY 2010

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **January**. 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 December **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.)

Fam-ily	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPP-INES
1st	01APR04	01APR04	01APR04	15AUG92	01DEC93
2A	01JAN06	01JAN06	01JAN06	01JAN04	01JAN06
2B	01DEC01	01DEC01	01DEC01	08JUN92	01JUL98
3rd	22MAY01	22MAY01	22MAY01	15SEP92	01DEC91
4th	01OCT99	01OCT99	01OCT99	22NOV95	01MAY87

*NOTE: For January, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN04. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JAN04 and earlier than 01JAN06. (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.)

	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIP-PINES
Employment - Based					
1st	C	C	C	C	C
2nd	C	01MAY05	22JAN05	C	C
3rd	01AUG02	01AUG02	22JUN01	01JUL02	01AUG02
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 **January**, 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	23,400	Except: Egypt: 12,300 Ethiopia: 12,475 Nigeria: 12,900
ASIA	9,475	
EUROPE	19,750	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	775	
SOUTH AMERICA, and the CARIBBEAN	925	

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 FEBRUAY

For **February**, 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	27,500	Except: Egypt: 15,600 Ethiopia: 14,700 Nigeria: 14,000
ASIA	10,550	
EUROPE	22,400	
NORTH AMERICA (BAHAMAS)	4	
OCEANIA	870	
SOUTH AMERICA, and the CARIBBEAN	950	

D. EXPLANATION OF THE NUMERICAL CONTROL SYSTEM AND CUT-DATE PROJECTIONS

WHAT CAUSES THE ESTABLISHMENT OF CUT-OFF DATES?

The Visa Office (VO) subdivides the annual preference and foreign state limitations specified in the Immigration and Nationality Act (INA) into twelve monthly allotments. The totals of documentarily qualified applicants that have been

reported to VO are compared each month with the numbers available for the next regular allotment and numbers are allocated to reported applicants in order of their priority dates, the oldest dates first.

- If there are sufficient numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered "Current." For example, if the Employment Third preference monthly target is 3,000 and there are only 1,000 applicants, the category is considered "Current."

- Whenever the total of documentarily qualified applicants in a category exceeds the supply of numbers available for allotment for the particular month, the category is considered to be "oversubscribed" and a visa availability cut-off date is established. The cut-off date is the priority date of the first documentarily qualified applicant who could not be accommodated for a visa number. For example, if the Employment Third preference monthly target is 3,000 and there are 8,000 applicants, a cut-off date would be established so that only 3,000 numbers would be used, and the cut-off date would be the priority date of the 3,001st applicant.

Applicants entitled to immigrant status become qualified at their own initiative and convenience and upon the completion of various processing requirements. Therefore, it is extremely important to remember that 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, visa allotments are made only on the basis of the total applicants reported qualified each month, and consideration of other variables. Demand for visa numbers can fluctuate from one month to another, with an inevitable impact on cut-off dates.

HOW IS THE PER-COUNTRY LIMIT CALCULATED?

Section 201 of the INA sets an annual minimum Family-sponsored preference limit of 226,000, while the worldwide annual level for Employment-based preference immigrants is at least 140,000. Section 202 sets the per-country limit for preference immigrants at 7% of the total annual Family-sponsored and Employment-based preference limits, i.e. a minimum of 25,620.

- The annual per-country limitation of 7% is a cap, meaning visa issuances to any single country may not exceed this figure. This limitation is not a quota to which any particular country is entitled, however. The per-country limitation serves to avoid monopolization of virtually all the visa numbers by applicants from only a few countries.

- INA Section 202(a)(5), added by the American Competitiveness Act in the 21st Century (AC21), removed the per-country limit in any calendar quarter in which overall applicant demand for Employment-based visa numbers is less than the total of such numbers available. In recent years, the application of Section 202(a)(5) has occasionally 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.

WHAT ARE THE PROJECTIONS FOR CUT-OFF DATE MOVEMENT IN THE FAMILY PREFERENCES?

Cut-off date movement in most categories continues to be greater than might ordinarily be expected, and this is anticipated to continue for at least the next few months. This is because fewer applicants are proceeding with final action on their cases at consular posts abroad, and the volume of CIS adjustment cases remains low. Once large numbers of applicants begin to have their cases brought to final action, cut-off date movements will necessarily slow or stop. Moreover, in some categories cut-off date retrogression is a possibility. Therefore, readers should be aware that the recent rate of cut-off date advances will not continue indefinitely, but it is not possible to say at present how soon they will end.

WHY DID MOST EMPLOYMENT CUT-OFFS REMAIN UNCHANGED IN RECENT MONTHS?

Many of the categories were "unavailable" at the end of FY-2009, which resulted in excessive demand being received during October and November. Coupled with the fact that CIS Offices have been doing an excellent job of processing cases, this has had an impact on cut-off date movements. Some forward movement has begun for January as we enter the second quarter of the fiscal year.

WILL THERE BE ANY ADDITIONAL CUT-OFF DATES FOR FOREIGN STATES IN THE EMPLOYMENT FIRST OR SECOND PREFERENCE CATEGORIES?

At this time it is unlikely that there will be any cut-off dates in the Employment First preferences. It also appears unlikely that it will be necessary to establish a cut-off date other than those already in effect for the Second preference category. Cut-off dates apply to the China and India Second preference categories due to heavy demand, and each has the potential to become "unavailable" should demand cause the annual limit for that category to be reached.

INA Section 202(a)(5) provides that if total demand will be insufficient to use all available numbers in a particular employment preference category in a calendar quarter, then the unused numbers may be made available without

regard to the annual per-country limits. For example, if it is determined that based on the level of demand being received at that time there would be otherwise unused numbers in the Employment Second preference category, then numbers could be provided to oversubscribed countries without regard to per-country limitations. Should that occur, the same cut-off date would be applied to each country, since numbers must be provided strictly in priority date order regardless of chargeability. In this instance, greater number use by one country would indicate a higher rate of demand by applicants from that country with earlier priority dates.

Should Section 202(a)(5) be applied, the rate of number use in the Employment preference category would continue to be monitored to determine whether subsequent adjustments are needed in visa availability for oversubscribed countries. This action provides the best possible assurance that all available Employment preference numbers will be used, while still ensuring that numbers remain available for applicants from all other countries that have not yet reached their per-country limit.

WHAT ARE THE PROJECTIONS FOR CUT-OFF DATE MOVEMENT IN THE EMPLOYMENT PREFERENCES FOR THE REMAINDER OF FY-2010?

Based on current indications of demand, the best case scenarios for cut-off dates which will be reached by the end of FY-2010 are as follows:

Employment Second:

China: July through October 2005

India: February through early March 2005

If Section 202(a)(5) were to apply:

China and India: October through December 2005

Employment Third:

Worldwide: April through August 2005

China: June through September 2003

India: January through February 2002

Mexico: January through June 2004

Philippines: April through August 2005

Please be advised that the above date ranges are only estimates which are subject to fluctuations in demand during the coming months. The actual future cut-off dates cannot be guaranteed, and it is possible that some annual limits could be reached prior to the end of the fiscal year.

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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