



Published on *US Immigration Lawyer, Law Offices of Rajiv S. Khanna, PC, Rajiv S. Khanna* (<https://www.immigration.com>)

Visa Bulletin - May 2011

Visa Bulletin - May 2011 ^[1]

Submitted by Editor on Apr 11th 2011

*Number 32
Volume IX
Washington, D.C.*

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **May**. 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 April **8th** 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. 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.

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

FAMILY-SPONSORED PREFERENCES

First: (F1) 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. **(F2A)** Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. **(F2B)** Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) 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.

*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.

5. On the charts 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-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01MAY04	01MAY04	01MAY04	01MAR93	15JUL95
F2A	08JUN07	08JUN07	08JUN07	01JAN07	08JUN07
F2B	15APR03	15APR03	15APR03	01AUG92	01MAR00
F3	01MAY01	01MAY01	01MAY01	15NOV92	15FEB92
F4	08MAR00	22JAN00	08MAR00	15FEB96	08APR88

*NOTE: For May, F2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01JAN07. F2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01JAN07 and earlier than 08JUN07. (All F2A numbers provided for MEXICO are exempt from the per-country limit; there are no F2A 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	01AUG06	01JUL06	C	C
3rd	22AUG05	15APR04	15APR02	08SEP04	22AUG05
Other Workers	08SEP03	22APR03	15APR02	08SEP03	08SEP03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C

5th Targeted Employment Areas/ Regional Centers and Private 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.

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-2011 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 **May**, immigrant numbers in the DV category are available to qualified DV-2011 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	42,000	Except: Egypt 31,200 Ethiopia 26,200 Nigeria 15,450
ASIA	23,500	
EUROPE	27,800	
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,175	
SOUTH AMERICA, and the CARIBBEAN	1,150	

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

For **June**, immigrant numbers in the DV category are available to qualified DV-2011 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	49,300	Except: Egypt 34,300 Ethiopia 28,525 Nigeria 17,150
ASIA	28,600	
EUROPE	29,450	Except: Uzbekistan 27,800
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,300	
SOUTH AMERICA, and the CARIBBEAN	1,300	

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-2011 program ends as of September 30, 2011. DV visas may not be issued to DV-2011 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2011 principals are only entitled to derivative DV status until September 30, 2011. DV visa availability through the very end of FY-2011 cannot be taken for granted. Numbers could be exhausted prior to September 30.

D. VISA AVAILABILITY DURING THE COMING MONTHS

Family-sponsored: The extremely high level of demand during the first few months of FY-2011 resulted in the retrogression of most worldwide cut-off dates in January or February. While most of these cut-offs have begun to advance slowly, heavy demand in the Family First preference has caused a further retrogression for May. At this time it is not possible to predict the rate of forward movement, but some movement is anticipated in most categories for the remainder of the fiscal year.

Employment-based: At this time the amount of demand being received in the Employment First preference is extremely low compared with that of recent years. Absent an immediate and dramatic increase in demand, this category will remain "Current" for all countries. It also appears unlikely that a Second preference cut-off date will be imposed for any countries other than China and India, where demand is extremely high. Based on current indications of demand, the best case scenarios for cut-off date movement each month during the coming months are as follows:

Employment Second: Demand by applicants who are "upgrading" their status from Employment Third to Employment Second preference is very high, but the exact amount is not known. Such "upgrades" are in addition to the known demand already reported, and make it very difficult to predict ultimate demand based on forward movement of the China and India cut-off dates. While thousands of "otherwise unused" numbers will be available for

potential use without regard to the China and India Employment Second preference per-country annual limits, it is not known how the ?upgrades? will ultimately impact the cut-offs for those two countries. (The allocation of ?otherwise unused? numbers is discussed below.)

China: none to three weeks expected through July. No August or September estimate is possible at this time.

India: One or more weeks, possibly followed by additional movement if demand remains stable. No August or September estimate is possible at this time.

Employment Third:

Worldwide: three to six weeks

China: one to three weeks

India: none to two weeks

Mexico: although continued forward movement is expected, no specific projections are possible at this time.

Philippines: three to six weeks

Please be advised that the above ranges are estimates based upon the current demand patterns, and are subject to fluctuations during the coming months. The cut-off dates for upcoming months cannot be guaranteed, and no assumptions should be made until the formal dates are announced.

Allocation of ?otherwise unused? numbers in accordance with Immigration and Nationality Act (INA) Section 202(a)(5)

INA Section 202(a)(5) provides that if total demand in a calendar quarter will be insufficient to use all available numbers in an Employment preference, then the unused numbers may be made available without regard to the annual per-country limits. Based on current levels of demand, there will be otherwise unused numbers in the Employment First and Second preferences. Such numbers may be allocated without regard to per-country limits, once a country has reached its preference annual limit. Since under INA Section 203(e) such numbers must be provided strictly in priority date order regardless of chargeability, greater number use by one country would indicate greater demand by applicants from that country with earlier priority dates. Based on amount and priority dates of pending demand and year-to-date number use, a different cut-off date could be applied to each oversubscribed country, for the purpose of assuring that the maximum amount of available numbers will be used. Note that a cut-off date imposed to control the use of ?otherwise unused? numbers could be earlier than the cut-off date established to control number use under a quarterly or per-country annual limit. For example, at present the India Employment Second preference cut-off date governs the use of numbers under Section 202(a)(5), India having reached its Employment Second annual limit; the China Employment Second preference cut-off date governs number use under the quarterly limit, since China has not yet reached its Employment Second annual limit.

The rate of number use under Section 202(a)(5) is continually monitored to determine whether subsequent adjustments are needed in visa availability for the oversubscribed countries. This helps assure that all available Employment preference numbers will be used, while insuring that numbers also remain available for applicants from all other countries that have not yet reached their per-country limit.

As mentioned earlier, the number of applicants who may be upgrading their status from Employment Third to Employment Second preference is unknown. As a result, the cut-off date which governs use of Section 202(a)(5) numbers has been advanced more rapidly than normal, in an attempt to ascertain the amount of upgrade demand in the pipeline while at the same time administering use of the available numbers. This action risks a surge in demand that could adversely impact the cut-off date later in the fiscal year. However, it also limits the possibility that potential demand would not materialize and the annual limit would not be reached due to lack of cut-off date movement.

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:

<http://travel.state.gov> [2]

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

To be **placed on** the Department of State's E-mail subscription list for the Visa Bulletin, please send an E-mail to the following E-mail address:

listserv@calist.state.gov[3]

and in the message body type:

Subscribe Visa-Bulletin *First name/Last name*
(example: *Subscribe Visa-Bulletin Sally Doe*)

To be **removed from** the Department of State's E-mail subscription list for the Visa Bulletin, **send an e-mail message to the following E-mail address:**

listserv@calist.state.gov[3]

and in the message body type: **Signoff Visa-Bulletin**

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

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV[4]

(This address cannot be used to subscribe to the Visa Bulletin.)

Department of State Publication 9514
CAVO: April 8, 2011

Source URL (retrieved on 26 May 2018 - 12:46): <https://www.immigration.com/visa-bulletin/visa-bulletin-may-2011>

Links:

- [1] <https://www.immigration.com/visa-bulletin/visa-bulletin-may-2011>
- [2] <http://travel.state.gov/>
- [3] <mailto:listserv@calist.state.gov>
- [4] <mailto:VISABULLETIN@STATE.GOV>