

Appendix B

Various Determinations of Numerical Limits on Immigrants Required Under the Terms of the Immigration and Nationality Act

Determination of the Family Preference Numerical Limit for FY–2002

Terms of the Immigration and Nationality Act:

INA 201(c) specifies that the worldwide level of family-sponsored preference immigrants for a fiscal year is equal to:

480,000,	
minus	the number of immigrants described in subparagraphs (A) and (B) of INA 201(b)(2) who, in the previous fiscal year, were issued immigrant visas or who otherwise acquired lawful permanent resident status, ¹
minus	the number of aliens described in INA 201(c)(4), ²
plus	employment preference immigrant numbers that were unused during the previous fiscal year.

Under INA 201, however, the family-sponsored preference limitation for any fiscal year may not be less than 226,000.

Immediate Relative Immigrant Totals for FY–2001:

Immigrant visa workload reports received by the Department of State from consular posts worldwide show that during FY–2001 a total of 172,087 immediate relative (IR) visas were issued. This total is subject to a net reduction of 24, however, to take account of issued visas returned unused to consular offices and thus "recaptured" under INA 206.

Figures on adjustments of status at local offices of the Immigration and Naturalization Service compiled and provided by INS Headquarters indicate that a total of 273,981 immigrants were granted lawful permanent residence at INS offices in the United States during FY–2001 in the categories for spouses, children, and parents of U.S. citizens; this figure includes persons who acquired permanent residence after having been admitted in nonimmigrant "K" (fiancé(e)) status. Another 6 children accompanying immediate relative parents were admitted under INA 211(a).

INS admission figures record 929 children accorded permanent resident status after birth abroad to a permanent resident of the United States.

Employment Preference Number Use for FY–2001:

The employment-based preference limit for FY–2001 was 192,074. A total of 186,536 of these numbers were used for FY–2001 visa issuances or INS adjustments of status and, as required by INA 203(b)(6), an additional 30 were applied to special immigrants who were issued visas or adjusted status during FY–2000 under INA 101(a)(27)(K) [certain U.S. armed forces personnel]. Another 2 were charged for children admitted under INA 211(a) accompanying parents with employment preference visas. There were also 5 employment preference visas returned unused to consular offices; the numbers assigned to these issuances were thus "recaptured" under INA 206. Total unused numbers: $192,074 - (186,536 + 2) - 30 + 5 = 5,511$.

Calculation of FY–2002 Family-Sponsored Preference Limitation:

Immediate relative visa issuances during FY–2001:	172,087
(minus net total of "recaptured" FY–2001 IR visas:	– 24)
Immediate relative adjustments of status by INS:	+ 273,981
Children admitted after birth to immediate relative visa holders:	+ 6
Children admitted after birth abroad to lawful permanent residents:	+ <u>929</u>
Immediate Relative etc. Total:	446,979

FY–2002 Worldwide Family-Sponsored Level figure:	480,000
minus IR etc. total calculated above:	–446,979
minus aliens paroled into the United States under Section 212(d)(5) in the second preceding fiscal year (FY–2000):	– n/a ²
plus unused FY–2001 employment pref. numbers:	+ <u>5,511</u>
Total	<u>38,532</u>

Since under the law the family-sponsored preference limitation for any fiscal year may not be less than 226,000, the limit for FY–2002 is fixed at: **226,000**

Determination of the Employment Preference Numerical Limit for FY–2002

Terms of the Immigration and Nationality Act:

INA 201(d) specifies that the worldwide level of employment-based preference immigrants for a fiscal year is equal to:

140,000
plus family preference immigrant numbers that were unused during the previous fiscal year.

Family Preference Number Use for FY–2001:

The family-sponsored preference limit for FY–2001 was 226,000. A total of 223,384 numbers were used for visa issuances or INS adjustments of status. Another 14 were charged for children admitted under INA 211(a) accompanying parents with family preference visas. There were also 30 family preference visas returned unused to consular offices; the numbers assigned to these issuances were thus "recaptured" under INA 206 and could be reallocated. Total unused numbers: $226,000 - (223,384 + 14) + 30 = 2,632$.

Calculation of FY–2002 Employment-Based Preference Limitation:

Worldwide Employment-Based Level figure:	140,000
plus unused FY–2001 family preference numbers:	+ <u>2,632</u>
Total:	<u>142,632</u>

For FY–2002, the employment-based preference limit is fixed at: **142,632**

(In accordance with INA 203(b)(6), the 46 special immigrants who were issued visas or adjusted status during FY–2001 under INA 101(a)(27)(K) [certain U.S. armed forces personnel] will be charged against the FY–2002 employment preference limit; the first preference will be reduced by 16, and each of the second and third preferences will be reduced by 15.)

Determination of Per-Country Limitations for FY–2002

Terms of the Immigration and Nationality Act:

INA 202(a) specifies that the per-country level of family plus employment preference immigrants in any fiscal year may not exceed:

For a foreign state: 7% of the total number of family and employment visas for that fiscal year; and
For a dependent area: 2% of the total number of family and employment visas for that fiscal year.

Calculation of FY–2002 Per-Country Limits:

Worldwide Family-Sponsored FY–2002 limit:	226,000
Worldwide Employment-Based FY–2002 limit:	+ <u>142,632</u>
Total:	368,632
Foreign state limit for FY–2002 (7% of 368,632):	25,804
Dependent area limit for FY–2002 (2% of 368,632):	7,373

In accordance with Section 2(d) of the Chinese Student Protection Act of 1992 (Pub. L. 102–404), the CHINA–mainland born limit for FY–2002 is reduced by 1,000 to 24,804 to compensate for earlier issuances under that legislation. [See also Appendix C.]

Under the terms of INA 203(b)(6), FY–2002 per-country limits must be reduced to compensate for the special immigrants who were issued visas or adjusted status during FY–2001 under INA 101(a)(27)(K) [certain U.S. armed forces personnel]. The following FY–2002 per-country limits will be reduced by the amount specified to compensate for such immigrants: Japan 1; and Philippines 45. Since the Philippines chargeability is subject to the prorating provisions of INA 202(e), the reduction in that per-country limit will be accomplished under the law as follows: Each of the employment first, second, and third preferences will be reduced by 15.

Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (NACARA) of 1997 (Pub. L. 105–100 enacted November 19, 1997), as amended by Section 1(e) of the Nicaraguan Adjustment and Central American Relief Act–Technical Corrections (Pub. L. 105–139 enacted December 2, 1997), 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 FY–2001, the reduction in the EW annual limit began in FY–2002. (See Appendix E.)

¹ The immigrants described in these subparagraphs are 1) immediate relatives, i.e., spouses, children and parents of U.S. citizens, 2) children admitted under INA 211(a) on the basis of prior issuance of an immigrant visa to their accompanying parent who is such immediate relative, and 3) children born to a lawful permanent resident during a temporary visit abroad.

² At the time the numerical limits were set, a memorandum from the Immigration and Naturalization Service advised that information on the exact number of parolees was not available. These data would not have had any effect on the determination of the FY–2002 limit, however.