

TITLE 8 - ALIENS AND NATIONALITY
CHAPTER 12 - IMMIGRATION AND NATIONALITY
SUBCHAPTER II - IMMIGRATION
Part I - Selection System

§ 1152. Numerical limitations on individual foreign states

(a) Per country level

(1) Nondiscrimination

(A) Except as specifically provided in paragraph (2) and in sections 1101 (a)(27), 1151 (b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.

(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 1153 of this title in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

(3) Exception if additional visas available

If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas available under both subsections (a) and (b) of section 1153 of this title for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(4) Special rules for spouses and children of lawful permanent resident aliens

(A) 75 percent of 2nd preference set-aside for spouses and children not subject to per country limitation

(i) In general

Of the visa numbers made available under section 1153 (a) of this title to immigrants described in section 1153 (a)(2)(A) of this title in any fiscal year, 75 percent of the 2-A floor (as defined in clause (ii)) shall be issued without regard to the numerical limitation under paragraph (2).

(ii) "2-A floor" defined

In this paragraph, the term "2-A floor" means, for a fiscal year, 77 percent of the total number of visas made available under section 1153 (a) of this title to immigrants described in section 1153 (a)(2) of this title in the fiscal year.

(B) Treatment of remaining 25 percent for countries subject to subsection (e)

(i) In general

Of the visa numbers made available under section 1153 (a) of this title to immigrants described in section 1153 (a)(2)(A) of this title in any fiscal year, the remaining 25 percent of the 2-A floor shall be available in the case of a state or area that is subject to subsection (e) of this section only to the extent that the total number of visas issued in accordance with subparagraph (A) to natives of the foreign state or area is less than the subsection (e) ceiling (as defined in clause (ii)).

(ii) “Subsection (e) ceiling” defined

In clause (i), the term “subsection (e) ceiling” means, for a foreign state or dependent area, 77 percent of the maximum number of visas that may be made available under section 1153 (a) of this title to immigrants who are natives of the state or area under section 1153 (a)(2) of this title consistent with subsection (e) of this section.

(C) Treatment of unmarried sons and daughters in countries subject to subsection (e)

In the case of a foreign state or dependent area to which subsection (e) of this section applies, the number of immigrant visas that may be made available to natives of the state or area under section 1153 (a)(2)(B) of this title may not exceed—

(i) 23 percent of the maximum number of visas that may be made available under section 1153 (a) of this title to immigrants of the state or area described in section 1153 (a)(2) of this title consistent with subsection (e) of this section, or

(ii) the number (if any) by which the maximum number of visas that may be made available under section 1153 (a) of this title to immigrants of the state or area described in section 1153 (a)(2) of this title consistent with subsection (e) of this section exceeds the number of visas issued under section 1153 (a)(2)(A) of this title,

whichever is greater.

(D) Limiting pass down for certain countries subject to subsection (e)

In the case of a foreign state or dependent area to which subsection (e) of this section applies, if the total number of visas issued under section 1153 (a)(2) of this title exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 1153 (a)(2) of this title consistent with subsection (e) of this section (determined without regard to this paragraph), in applying paragraphs (3) and (4) of section 1153 (a) of this title under subsection (e)(2) of this section all visas shall be deemed to have been required for the classes specified in paragraphs (1) and (2) of such section.

(5) Rules for employment-based immigrants

(A) Employment-based immigrants not subject to per country limitation if additional visas available

If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 1153 (b) of this title for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

(B) Limiting fall across for certain countries subject to subsection (e) of this section

In the case of a foreign state or dependent area to which subsection (e) of this section applies, if the total number of visas issued under section 1153 (b) of this title exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 1153 (b) of this title consistent with subsection (e) of this section (determined without regard to this paragraph), in applying subsection (e) of this section all visas shall be deemed to have been required for the classes of aliens specified in section 1153 (b) of this title.

(b) Rules for chargeability

Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of a numerical level established under subsection (a)(2) of this section when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this

chapter the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that

- (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached a numerical level established under subsection (a)(2) of this section for that fiscal year;
- (2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached a numerical level established under subsection (a)(2) of this section for that fiscal year;
- (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; and
- (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) Chargeability for dependent areas

Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than an alien described in section 1151 (b) of this title, shall be chargeable for the purpose of the limitation set forth in subsection (a) of this section, to the foreign state.

(d) Changes in territory

In the case of any change in the territorial limits of foreign states, the Secretary of State shall, upon recognition of such change issue appropriate instructions to all diplomatic and consular offices.

(e) Special rules for countries at ceiling

If it is determined that the total number of immigrant visas made available under subsections (a) and (b) of section 1153 of this title to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) of this section in any fiscal year, in determining the allotment of immigrant visa numbers to natives under subsections (a) and (b) of section 1153 of this title, visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 1153 of this title) in a manner so that—

- (1) the ratio of the visa numbers made available under section 1153 (a) of this title to the visa numbers made available under section 1153 (b) of this title is equal to the ratio of the worldwide level of immigration under section 1151 (c) of this title to such level under section 1151 (d) of this title;
- (2) except as provided in subsection (a)(4) of this section, the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 1153 (a) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153 (a) of this title, and
- (3) except as provided in subsection (a)(5) of this section, the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 1153 (b) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153 (b) of this title.

Nothing in this subsection shall be construed as limiting the number of visas that may be issued to natives of a foreign state or dependent area under section 1153 (a) or 1153 (b) of this title if there is insufficient demand for visas for such natives under section 1153 (b) or 1153 (a) of this title,

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respectively, or as limiting the number of visas that may be issued under section 1153 (a)(2)(A) of this title pursuant to subsection (a)(4)(A) of this section.

(June 27, 1952, ch. 477, title II, ch. 1, § 202, 66 Stat. 176; Pub. L. 87–301, § 9, Sept. 26, 1961, 75 Stat. 654; Pub. L. 89–236, § 2, Oct. 3, 1965, 79 Stat. 911; Pub. L. 94–571, § 3, Oct. 20, 1976, 90 Stat. 2703; Pub. L. 95–412, § 2, Oct. 5, 1978, 92 Stat. 907; Pub. L. 96–212, title II, § 203(b), Mar. 17, 1980, 94 Stat. 107; Pub. L. 97–116, §§ 18(c), 20 (b), Dec. 29, 1981, 95 Stat. 1620, 1622; Pub. L. 99–603, title III, § 311(a), Nov. 6, 1986, 100 Stat. 3434; Pub. L. 99–653, § 4, Nov. 14, 1986, 100 Stat. 3655; Pub. L. 100–525, §§ 8(c), 9 (f), Oct. 24, 1988, 102 Stat. 2617, 2620; Pub. L. 101–649, title I, § 102, Nov. 29, 1990, 104 Stat. 4982; Pub. L. 102–232, title III, § 302(a)(3), Dec. 12, 1991, 105 Stat. 1742; Pub. L. 104–208, div. C, title VI, § 633, Sept. 30, 1996, 110 Stat. 3009–701; Pub. L. 106–313, title I, § 104(a), (b), Oct. 17, 2000, 114 Stat. 1252, 1253.)

References in Text

This chapter, referred to in subsec. (b), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Amendments

2000—Subsec. (a)(2). Pub. L. 106–313, § 104(b)(1), substituted “paragraphs (3), (4), and (5)” for “paragraphs (3) and (4)”.

Subsec. (a)(5). Pub. L. 106–313, § 104(a), added par. (5).

Subsec. (e)(3). Pub. L. 106–313, § 104(b)(2), substituted “except as provided in subsection (a)(5) of this section, the proportion of the visa numbers” for “the proportion of the visa numbers”.

1996—Subsec. (a)(1). Pub. L. 104–208 designated existing provisions as subpar. (A) and added subpar. (B).

1991—Subsec. (a)(4)(A). Pub. L. 102–232 struck out “minimum” before “2nd preference set-aside” in heading.

1990—Subsec. (a). Pub. L. 101–649, § 102(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in sections 1101 (a)(27), 1151 (b), and 1153 of this title: Provided, That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 1153 (a) of this title shall not exceed 20,000 in any fiscal year: And provided further, That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitations of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 1101 (a)(27) of this title or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.”

Subsec. (b). Pub. L. 101–649, § 102(2), inserted heading and substituted reference to numerical level established under subsec. (a)(2) of this section for reference to numerical limitation set forth in proviso to subsec. (a) of this section, wherever appearing.

Subsec. (c). Pub. L. 101–649, § 102(3), inserted heading and substituted “an alien described in section 1151 (b) of this title” for “a special immigrant, as defined in section 1101 (a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151 (b) of this title” and struck out “, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 5,000 in any one fiscal year” after “to the foreign state”.

Subsec. (d). Pub. L. 101–649, § 102(4), inserted heading.

Subsec. (e). Pub. L. 101–649, § 102(5), amended subsec. (e) generally, substituting provisions relating to special rules for countries at ceiling for provisions relating to availability and allocation of additional visas.

1988—Subsec. (b). Pub. L. 100–525, § 8(c), amended Pub. L. 99–653, § 4. See 1986 Amendment note below.

Subsec. (c). Pub. L. 100–525, § 9(f)(1), substituted “subsection (a)” for “section 202 (a)” in original, which for purposes of codification had been translated as “subsection (a) of this section”.

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Subsec. (e). Pub. L. 100–525, § 9(f)(2), substituted “this section” for “section 202” in original, which for purposes of codification had been translated as “this section”.

1986—Subsec. (b). Pub. L. 99–653, as amended by Pub. L. 100–525, § 8(c), amended subsec. (b) generally, substituting “outlying possessions, shall” for “outlying possessions shall”, in cl. (1) substituting “when accompanied by or following to join his alien” for “when accompanied by his alien”, “charged to the foreign state of either parent” for “charged to the same foreign state as the accompanying parent or of either accompanying parent”, “from the parent” for “from the accompanying parent”, “and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached the numerical” for “and if the foreign state to which such parent has been or would be chargeable has not exceeded the numerical”, in cl. (2) substituting “of his spouse” for “of his accompanying spouse”, “of the spouse he is accompanying or following to join” for “of the accompanying spouse”, “and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached the numerical” for “and if the foreign state to which such spouse has been or would be chargeable has not exceeded the numerical”, and in cl. (3) substituting “subject, or, if” for “subject, or if” and “country, in” for “country then in”.

Subsec. (c). Pub. L. 99–603, § 311(a)(1), substituted “5,000” for “six hundred”.

Subsec. (e). Pub. L. 99–603, § 311(a)(2), substituted “5,000” for “600” in provisions preceding par. (1).

1981—Subsec. (a). Pub. L. 97–116, § 20(b), inserted proviso authorizing Secretary of State, to the extent that in a particular fiscal year the number of natives who are issued visas or who otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to section 1101 (a)(27)(H) of this title and section 19 of the Immigration and Nationality Amendments of 1981, exceed the annual numerical limitation in effect for such year, to reduce to such extent the numerical limitation in effect for the natives of the same foreign state for the following fiscal year.

Subsec. (b). Pub. L. 97–116, § 18(c), inserted “and” before “(4)”.

1980—Subsec. (a). Pub. L. 96–212, § 203(b)(1), (2), substituted “through (7)” for “through (8)”, and struck out “and the number of conditional entries” after “visas”.

Subsec. (e). Pub. L. 96–212, § 203(b)(3)–(7), in introductory text struck out provisions relating to applicability to conditional entries, in par. (2) substituted “(26)” for “(20)”, struck out par. (7) relating to availability of conditional entries, and redesignated par. (8) as (7) and substituted “through (6)” for “through (7)”.

1978—Subsec. (c). Pub. L. 95–412 substituted “limitation set forth in subsection (a) of this section, to the foreign state,” for “limitations set forth in section 1151 (a) and subsection (a) of this section, to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively,” and “six hundred” for “600”.

1976—Subsec. (a). Pub. L. 94–571, § 3(1), struck out last proviso which read: “Provided further, That the foregoing proviso shall not operate to reduce the number of immigrants who may be admitted under the quota of any quota area before June 30, 1968”.

Subsec. (c). Pub. L. 94–571, § 3(2), in revising provisions, substituted “overseas from the foreign state, other than a special immigrant, as defined in section 1101 (a)(27) of this title, or an immediate relative of a United States citizen, as defined in section 1151 (b) of this title, shall be chargeable for the purpose of the limitations set forth in section 1151 (a) of this title and subsection (a) of this section, to the hemisphere in which such colony or other component or dependent area is located, and to the foreign state, respectively, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed 600 in any one fiscal year” for “unless a special immigrant as provided in section 1101 (a)(27) of this title or an immediate relative of a United States citizen as specified in section 1151 (b) of this title, shall be chargeable, for the purpose of limitation set forth in subsection (a) of this section, to the foreign state, except that the number of persons born in any such colony or other component or dependent area overseas from the foreign state chargeable to the foreign state in any one fiscal year shall not exceed 1 per centum of the maximum number of immigrant visas available to such foreign state”.

Subsec. (e). Pub. L. 94–571, § 3(3), added subsec. (e).

1965—Subsec. (a). Pub. L. 89–236 substituted provisions prohibiting preferences or priorities or discrimination in the issuance of an immigrant visa because of race, sex, nationality, place of birth, or place of residence, setting a limit of 20,000 per year on the total number of entries available to natives of any single foreign state, and prohibiting the 20,000 limitation from reducing the number of immigrants under the quota of any quota area before June 30, 1968, for provisions calling for the charging of immigrants, with certain exceptions, to the annual quota of the quota area of his birth.

Subsec. (b). Pub. L. 89–236 substituted provisions calling for treatment of each independent country, self-governing dominion, mandated territory, and trusteeship territory as a separate foreign state for purposes of determining the numerical limitation imposed on each foreign state, and chargeability of immigrants to the country of their birth except

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where such chargeability would cause the family unit to be divided, for provisions setting up the Asia-Pacific triangle and providing for the special treatment of quota chargeability thereunder on the basis of racial ancestry.

Subsec. (c). Pub. L. 89–236 substituted provisions making immigrants born in colonies or other component or dependent areas of a foreign state chargeable to the foreign state and placing a limitation on the number of such immigrants of 1 per centum of the maximum number of visas available to the foreign state, for provisions making immigrants born in colonies for which no specific quota are set chargeable to the governing country and placing a limit of 100 on such immigrants from each governing country each year, with special application to the Asia-Pacific triangle.

Subsec. (d). Pub. L. 89–236 substituted provisions requiring Secretary of State, upon a change in the territorial limits of foreign states, to issue appropriate instructions to all diplomatic and consular offices, for provisions that the terms of an immigration quota for a quota area do not constitute recognition of the transfer of territory or of a government not recognized by the United States.

Subsec. (e). Pub. L. 89–236 repealed subsec. (e) which allowed revision of quotas.

1961—Subsec. (e). Pub. L. 87–301 provided that if an area undergoes a change of administrative arrangements, boundaries, or other political change, the annual quota of the newly established area, or the visas authorized to be issued shall not be less than the total of quotas in effect or visas authorized for the area immediately preceding the change, and deleted provisions which in the event of an increase in minimum quota areas above twenty in the Asia-Pacific triangle, would proportionately decrease each quota of the area so the sum of all area quotas did not exceed two thousand.

Effective Date of 1991 Amendment

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Effective Date of 1988 Amendment

Amendment by section 8(c) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

Effective Date of 1986 Amendments

Amendment by Pub. L. 99–653 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99–653, set out as a note under section 1101 of this title.

Section 311(b) of Pub. L. 99–603 provided that: “The amendments made by subsection (a) [amending this section] shall apply to fiscal years beginning after the date of the enactment of this Act [Nov. 6, 1986].”

Effective Date of 1981 Amendment

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

Effective Date of 1976 Amendment

Amendment by Pub. L. 94–571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94–571, set out as a note under section 1101 of this title.

Effective Date of 1965 Amendment

For effective date of amendment by Pub. L. 89–236, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

Treatment of Hong Kong Under Per Country Levels

Section 103 of Pub. L. 101–649 provided that: “The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act [8 U.S.C. 1152 (b)] shall be considered to have been granted, effective beginning with fiscal year 1991, with respect to Hong Kong as a separate foreign state, and not as a colony or other component or dependent area of another foreign state, except that the total number of immigrant visas made available to natives of Hong Kong under subsections (a) and (b) of section 203 of such Act [8 U.S.C. 1153 (a), (b)] in each of fiscal years 1991, 1992, and 1993 may not exceed 10,000.”

[Section 103 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

Inapplicability of Numerical Limitations for Certain Aliens Residing in the United States Virgin Islands

The numerical limitations described in text not to apply in the case of certain aliens residing in the Virgin Islands seeking adjustment of their status to permanent resident alien status, and such adjustment of status not to result in any reduction in the number of aliens who may acquire the status of aliens lawfully admitted to the United States for permanent residence under this chapter, see section 2(c)(1) of Pub. L. 97–271, set out as a note under section 1255 of this title.

Exemption From Numerical Limitations for Certain Aliens Who Applied for Adjustment to Status of Permanent Resident Aliens on or Before June 1, 1978

For provisions rendering inapplicable the numerical limitations contained in this section to certain aliens who had applied for adjustment to the status of permanent resident alien on or before June 1, 1978, see section 19 of Pub. L. 97–116, set out as a note under section 1151 of this title.

Approval by Secretary of State Treating Taiwan (China) as Separate Foreign State for Purposes of Numerical Limitation on Immigrant Visas

Pub. L. 97–113, title VII, § 714, Dec. 29, 1981, 95 Stat. 1548, provided that: “The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act [subsec. (b) of this section] shall be considered to have been granted with respect to Taiwan (China).”