



## U.S. IMMIGRATION POLICY: FAMILY REUNIFICATION

By Patricia Hatch

“Family reunification has long been a cornerstone of both American law and INS practice,” notes Doris Meissner, former Commissioner of the Immigration and Naturalization Service.<sup>1</sup>

Many early immigrants to America, particularly those fleeing religious or political persecution in their homelands, migrated here as families. In subsequent centuries, a head of household often came first to “test the waters” of the new land. Prior to 1965, the timeliness of family reunification in the U.S. depended almost entirely on how long it took for this first family member to secure a job and shelter, and save funds for passage to the United States for spouse and children.

### 1965 Immigration Act

The Immigration Act of 1965 eliminated the national origin quota system that had favored immigrants from Europe to the exclusion of those from other parts of the world. That system was replaced by a “family preference” quota framework that systematized the sponsorship of relatives by legal immigrants. Since 1965, between 50 and 70 percent of U.S. immigrant visas distributed annually have been allotted to close family members of U.S. citizens and legal permanent residents. Annual ceilings do limit the number of family visas that can be awarded, both by country of origin and by preference (qualifying relationship) category.

Family immigration currently accounts for the majority of immigrant petitions filed and visas granted each year. Hence, the fairness, orderliness and timeliness of the family immigration process – or lack thereof – have major implications for the success or failure of the entire U.S. immigration policy.

Spouses and minor children of U.S. citizens, as well as parents of adult U.S. citizens, are granted visas without regard to numerical quotas (i.e., they are outside the preference category framework presented below). If all goes smoothly during the processing of paperwork and there are no administrative delays, these particular applicants may be allowed to immigrate within a year of the filing of an immigrant petition on their behalf by their U.S. citizen spouse, parent or adult child.

On the other hand, those applicants who fall under the jurisdiction of the preference category framework currently face a much longer wait. Their wait can vary depending on the relationship category and country of origin. The ranking categories and the annual numbers allotted within the complex annual family-sponsored preference limit are as follows:

- *First Preference* Unmarried adult children of U.S. citizens – 23,400 plus any numbers not required for fourth preference.

- *Second Preference* Spouses and unmarried children of lawful permanent residents (with subsidiary quotas for minor children and unmarried children 21 or over) – 114,200 plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers. (Of the overall second preference limitation, 77 percent are designated for spouses and minor children, 75 percent of whom are exempt from the per-country limit).
- *Third Preference* Married sons and daughters of U.S. citizens – 23,400 plus any numbers not required by first and second preferences.
- *Fourth Preference* Siblings of U.S. citizens – 65,000 plus any numbers not required by the first three preferences.<sup>2</sup>

### **The Application Process**

U.S. citizens or legal permanent residents initiate the sponsorship of their qualifying family member by filing an immigrant visa petition on their behalf by mail with the appropriate Service Center of the U.S. Citizenship and Immigration Service (USCIS).

Theoretically, if all required documents and fees are filed correctly with the application, the USCIS can approve the visa petition within a few months. However, long processing delays are routine because of massive backlogs, insufficient staffing and administrative snafus. In the Annual Report submitted to the United States Senate Committee on the Judiciary on June 29, 2006, the Citizenship and Immigration Service Ombudsman reported “Over one million family-based immigration petitions are pending with USCIS, leaving customers frustrated...Most of these petitions have been pending for many years and may not be adjudicated for many more years...”<sup>3</sup>

The Ombudsman notes that USCIS does not include many of these long-pending petitions as part of its backlog. Faced with increased pressure from Congress to reduce processing backlogs, USCIS has continually redefined “backlog” to exclude more and more delayed cases. Both the DHS Inspector General and the USCIS Ombudsman have expressed concern that “these definitional changes hide the true problem and need for change.”<sup>4</sup>

Finally, a U.S. citizen or legal permanent resident trying to get information about a pending application is frustrated in various ways. There is a lack of reliable information because of “limited customer access to USCIS immigration officers who have knowledge of individual cases; questionable accuracy of the information provided; insufficiently detailed information provided to answer specific inquiries; and the practice of providing minimal information to customer inquiries.”<sup>5</sup>

### **Approval Process**

Approval of a visa petition – however long that might take – is only the first step. Once the petition has been fully processed, an approval notice is issued, and the date of that notice becomes the prospective immigrant’s “priority date.”

Because the number of applicants in each preference category annually far exceeds available quotas, a cumulative backlog has grown to mind-boggling proportions in each category. By 1997, the last year for which reliable figures were found, backlogs totaled an estimated 3,535,430 cases of approved family-based petitions, including 1,252,270 spouses and minor children of legal permanent residents.<sup>6</sup>

Each month the State Department posts on its Web site an updated Visa Bulletin, showing, for each applicant category, the “priority date” for which visa numbers currently are available.<sup>7</sup> For example, the February 2007 visa availability chart for the second family preference category – spouses and minor children of legal permanent residents – shows that visa processing can now occur for those who hold a priority date earlier than March 22, 2002, for applicants from most countries, or earlier than May 15, 2000, for Mexicans.

Checking a single month’s bulletin, legal permanent residents would get the impression that it is likely to be at least 5 years before their spouses or minor children can be visa processed to legally join them in the U.S. or more than 7 years for those from Mexico. However, comparing the February visa availability chart dates to the January chart dates reveals a more accurate and discouraging estimate of the length of the waiting period. In a month’s time, the priority date for second preference (spouses and minor children of legal permanent residents) has advanced only one week, not one month. At that pace, it could take as long as 20 years for the spouses and minor children of legal permanent residents to legally join them in the United States. For Mexicans the wait is even longer; the priority date failed to advance even a single day in the same month. Each year that the current family preference and country quotas remain in place, the backlogs increase, and the waits for families to reunite grow longer, testing the patience of everyone involved.

While separated, many legal permanent residents send money regularly to family members at home, in addition to paying their own living costs in the U.S. Furthermore, maintaining family ties from a distance is expensive. There are high telephone expenses, while family emergencies may require costly flights to the homeland and possibly even job loss. Children who were infants at the time the permanent resident emigrated may become teen-agers before visas become available, or worse yet, “age out,” no longer qualifying as minor children. Such children then enter a different family category – adult children of legal permanent residents – that is even more backlogged. As noted in the recent report from the Independent Task Force on Immigration and America’s Future (co-chaired by Spencer Abraham and Lee Hamilton), “In addition to being inhumane, such waits mean that a large portion of such individuals’ productive working years that make immigration a good investment will have passed by the time many ever arrive in the United States.”<sup>8</sup>

Faced with family separations that range from 5 to 20 years or more (and longer yet for siblings of U.S. citizens), some “anchor relatives” attempt to obtain non-immigrant visitor’s visas or student visas for their family members, only to find that consular officials routinely deny non-immigrant visas to immediate family members of legal permanent residents, on the grounds that they are “intending immigrants” and likely to overstay their visas. Thus all legal channels for the family to reunite in the U.S. within a reasonable period of time are effectively blocked.

The Independent Task Force on Immigration and America’s Future further reports: “The system’s multiple shortcomings have led to a loss of integrity in legal immigration processes. These shortcomings contribute to unauthorized migration when families choose illegal immigration rather than waiting unreasonable periods for legal entry.”<sup>9</sup> Statistics support this task force observation. A significant percentage of the estimated 11 million unauthorized immigrants in the U.S. are spouses and minor children of legal permanent residents who have been approved for family-based visas but are caught in the years-long preference category logjam.

Those unauthorized immigrants who do join their “anchor” relatives in the U.S. illegally eventually learn that they may have effectively abandoned any chance of ever becoming legal permanent residents. When their priority date becomes current, they are required to travel to the American consulate overseas for visa processing. As soon as it becomes apparent to consular officials that these individuals were in the U.S. “out of status” for one year or more, they are prohibited by law from re-entering the U.S. for ten years. The visas that had become available for them are then awarded to others with no bar to entry. Now they are once again separated from their legal permanent resident, “anchor,” relatives, and no closer to obtaining “green cards” than they were a decade or more earlier.

Those who choose not to leave the U.S. to attempt to visa process because of the risk of not being allowed to return “...become part of a growing underground of permanently undocumented persons who are subject to exploitation and abuse.”<sup>10</sup>

What about those prospective immigrants who have waited for years in their homelands to join relatives in the U.S.? When a visa finally becomes available, the anchor relative must submit updated proof of wages and savings sufficient to support the sponsored family members - as well as any stateside nuclear family members - at 125 percent of the federal poverty level. Sponsors whose incomes are low or moderate (even some working two jobs) may not be able to satisfy this requirement. Savings – if any – may have been depleted by supporting two households for many years. If unable to meet the financial requirement, these sponsors must seek additional persons willing to provide this financial guarantee and submit detailed information on their income and assets to the government, or they lose the opportunity to bring their family members to the U.S. regardless of the years of waiting. If they cannot satisfy the financial evidence requirements within the parameters of the processing period, the visas are forfeited, and they must begin the entire sponsorship process all over again.

## **Family Reunification in Jeopardy**

Forcing families to immigrate separately rather than as a family unit because the petitioner does not earn enough to sponsor the whole family at once is an unintended consequence of these financial requirements that repeatedly fragment families.<sup>11</sup> These requirements inevitably place major strains on families already fragile from years of separation. Many of them face a choice between family reunification and the future they have begun to establish in the U.S.

Clearly, the current family reunification system is not working well for many legal permanent residents and their immediate family members. Furthermore, the lack of a reasonably timely family reunification option within the legal system is contributing to the breakdown of the integrity of the U.S. immigration system.

At a time when over half of the new workers entering the U.S. workforce are immigrants, “our nation’s well-being is inextricably bound to the health of its millions of immigrant families. Yet, our immigration laws and policies...too often divide, impoverish and keep immigrant families unsettled.”<sup>12</sup>

## **In Search of a Solution**

What is the solution? Some have suggested eliminating the family preference categories for everyone except the spouses and minor children of citizens and permanent residents, and reallocating to these nuclear family members the visas currently designated for adult sons and daughters and the siblings of U. S. citizens. If this choice were to be implemented, ideally, there would be a transition period with some provision to “grandfather” those relatives who have already waited many years in the categories about to be discontinued.

On the other hand, many advocates of immigrant family unity have proposed placing the spouses and children of permanent residents, like the spouses and children of U.S. citizens, outside the preference quotas, so that they can rejoin their anchor relatives as soon as possible. Either proposal would require dramatic changes to the existing immigration laws. Other possible solutions, suggested by separated families themselves, can be found at [www.unitefamilies.org](http://www.unitefamilies.org)

Comprehensive immigration reform that allows a more timely reunion of the families of legal permanent residents must be accompanied by funding for additional staffing of USCIS immigrant petition processing centers and visa processors at State Department consular offices, or de facto family reunion backlogs will exist long after quota backlogs have been removed, and the integrity of the legal channels for family immigration will remain seriously compromised

Any reform of immigration policy that ignores the powerful “pull” of family reunification and offers no resolution for the increasingly unreasonable backlogs will be as unsuccessful as the current policy. There are no easy fixes for our family-based

immigration system. However, unless our nation finds the political courage to come to grips with the short- and long-term implications of our current untenable policy, tens of thousands of families desperate to be together rather than face interminable separation are likely to continue resorting to unauthorized immigration.

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<sup>1</sup> DeYoung, "U.S. Orders Return of Cuban Boy," *The Washington Post*, January 6, 2000, p. A11

<sup>2</sup> *State Department Visa Bulletin*, February 2007; see [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3111.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3111.html)

<sup>3</sup> *Citizenship and Immigration Services Ombudsman Annual Report 2006 to United States Senate Committee on the Judiciary*, June 29, 2006, p. iii

<sup>4</sup> *CIS Ombudsman Report 2006*, p. 9

<sup>5</sup> *CIS Ombudsman Report 2006*, p. iv

<sup>6</sup> U.S. Department of State, Bureau of Consular Affairs, "Immigrant Visa Waiting List in the Family-sponsored and Employment-based Preferences as of January 1997," March 1997

<sup>7</sup> [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3143.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3143.html)

<sup>8</sup> *Immigration and America's Future: A New Chapter*, 2006, Migration Policy Institute, p. 22

<sup>9</sup> *Immigration and America's Future*, p. 24

<sup>10</sup> *Placing Immigrants at Risk: The Impact of Our Laws and Policies on American Families*, Catholic Legal Immigration Network, 2000, p. 19

<sup>11</sup> *Placing Immigrants at Risk*, p.11

<sup>12</sup> *Placing Immigrants at Risk*, p. 1