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How new visa numbers affect Filipinos

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Under the Immigration and Nationality Act Amendments of 1976, whenever the 20,000 immigrant visa number maximum limitation is reached in any fiscal year for any country, a new system of visa allocation for the next fiscal year will take effect.

This simply means in the case of the Philippines, for example, that effective October 1, 1977, visa numbers will no longer be available only for the first, second and third preference categories, as is presently the case, but also to the other preferences, namely, fourth, fifth, sixth, seventh, and even possibly the non-preference category.

Under the present law, each country of the Eastern Hemisphere (which includes the Philippines) has the possibility of receiving a maximum of 20,000 visa numbers per year. It is further provided that the total visa numbers allocated for all countries of the Eastern Hemisphere shall not exceed 170,000 per year with a quarterly limit of 45,000 or about 15,000 a month. It should be noted, at the outset, that visa numbers for each country are allocated in accordance with certain maximum percentages for the various preference categories. These percentage limitations for each preference category are based on the 170,000 maximum limitation for the Eastern Hemisphere and 120,000 for the Western Hemisphere.

Before we explain the operation of the percentage limitations for Eastern Hemisphere countries like the Philippines, let us look at the various preference categories and how many visa numbers are available to each.

First Preference: Unmarried sons or daughters of U.S. citizens over 21 years of age are entitled to a maximum of 20% of 170,000 or 34,000.

Second Preference: Spouses and unmarried sons and daughters of aliens lawfully admitted to permanent residence are entitled to a maximum of 20% of the 170,000 or 34,000 visa numbers, plus any visa numbers not required by the first preference.

Third Preference: Members of the professions or persons of exceptional ability in the arts or sciences are allowed 10% of the 170,000 or 17,000 visa numbers.

Fourth Preference: Married sons or daughters of U.S. citizens are entitled to a maximum of 10% or 17,000 visa numbers, plus any numbers not required

by the first three preferences.

Fifth Preference: Brothers and sisters of U.S. citizens are entitled to a maximum of 24% or 40,800 visa numbers, plus any numbers not required by the first four preferences.

Six Preference: Skilled and unskilled workers, not of a temporary or seasonal nature for which a shortage of employable and willing persons exists, in the United States are entitled to a maximum of 10% or 17,000 visa numbers.

Seventh Preference: Refugees are allowed a maximum of 6% or 10,200 visa numbers.

Non-Preference: Whatever visa numbers are not required under the first through seventh preference are made available to other qualified immigrants under this category. This category can be used by aliens who have obtained labor certifications, those who wish to retire here, those who have invested at least \$40,000 in an American business (and meet certain other requirements), and those who otherwise do not intend to be gainfully employed here.

The above enumeration is a representation of what may be described as the "potential distribution" of the 170,000 immigrant visa numbers available. It is characterized as potential because the actual distribution does not precisely reflect the percentages indicated, although the limit is always adhered to. For instance, let us contrast the total potential distribution of the 170,000 visa numbers worldwide (Figure 1) to the actual distribution for fiscal year 1975 (Figure 2):

| 1st Preference | 2nd Preference | 3rd Preference | 4th Preference | 5th Preference |
|------------------------------------|----------------------|-----------------------------------|----------------------|---|
| 20% or 34,000 | 20% + or 34,000 + | 10% or 17,000 | 10% + or 17,000 + | 24% + or 40,800 + |
| 6th Preference 10% or 17,000 | | 7th Preference 6% or 10,200 | | Non-Preference any remaining visa numbers |

Figure 1. Total Potential Distribution (170,000)

| 1st Preference | 2nd Preference | 3rd Preference | 4th Preference |
|--------------------|--------------------|-------------------|------------------|
| 5% 886 | 26.3% or 44,698 | 9.9% or 16,382 | 2.2% or 3,853 |
| 5th Preference | 6th Preference | 7th Preference | Non-Preference |
| 29.1% or 49,623 | 8.1% or 13,651 | 6.0% or 10,198 | 27,955 |

Figure 2. Actual Distribution (139,791)

The seven preferences used a total of 139,692 immigrant visa numbers. Non-preference applicants were issued 27,955 visa numbers from the approximately 30,000 available after preference demand had been satisfied.

The above illustrations explain the general worldwide allocations, potentially and actually, of the 170,000 visa numbers. Let us now examine how the 20,000 visa numbers for each country, like the Philippines, are used up.

It must be emphasized that immigrant visa numbers are allocated on a "first qualified, first-served" basis. An applicant relative is qualified for preference status if he has an approved petition. His priority date is determined by the filing date of the approved petition. For non-preference applicants, it might be the filing date of the labor certification.

The Immigrant Visa Control Branch of the State Department allocates visa numbers as soon as it has tabulated and collated information on the worldwide visa demand by preference category, by priority date, and by foreign state chargeability.

It first allocates numbers against the first preference demand using 170,000 as its basis for computing the percentage limit. Thus, as shown above, there are 34,000 visa numbers available or 20% of 170,000. To insure an even flow of visa numbers throughout each calendar quarter, the Visa Office restricts the worldwide monthly allotment to around 15,000 or 2,000 for each foreign state. The actual demand for first preference visa numbers is below the limit of 34,000 a year. (Figure 2 above, for instance, there were only 886 actually issued in 1975 out of the total of 34,000). Suppose there is a monthly demand of only 100 in the first preference category. These numbers would be charged against the corresponding foreign state.

The Visa Office will then "serve" the second preference applicants. Second preference is allocated 20% or 34,000 a year plus any numbers not used by the first preference category. Thus, using the figure, 100 monthly, as used by the first preference, there are 2900 visa numbers to fall down to the second preference which gives the second preference a total of 5,900 a month.

The third preference class is allocated 10% or 1500 numbers per month. This preference cannot receive the unused numbers from the first and second preferences. These 1500 numbers are given to those with the earliest petition priority (filing) dates and if there are third preference applicants that cannot be served within the 1500 a month, a cut-off date is established. The cut-off date is the priority date of the first applicant who cannot be issued a visa number.

Whenever the 2,000 a month or 20,000 a year limitation is reached in the higher preferences for a state like the Philippines numbers are not available for applicants in the lower preferences or the non preference category.

Let us illustrate this rule in the case of the Philippines. For the fiscal year 1975, there were 293 visas issued to first preference applicants, 11,448 to second preference applicants and 8,283 to third preference applicants. (See Figure 3)

| 1st Preference | 2nd Preference | 3rd Preference | 4th Preference |
|----------------|----------------|----------------|----------------|
| 293 | 11,448 | 8,283 | None |
| 5th Preference | 6th Preference | 7th Preference | Non-Preference |
| None | None | None | None |

Figure 3. Actual Distribution To Filipinos (20,024)

These added up to 20,024 (Visa Numbers assigned but not used are recaptured and are used again for the issuance of other visas. Therefore, the total volume of adjustments of status within the United States, conditional entries and visas issued may exceed the specified numerical limitation). This means that the 20,000 numbers were used up by the first, second and third preferences. Therefore, in the case of the Philippines, no visa numbers were available to the lower preferences.

At this point certain rules need to be stressed in order to explain why the Philippines uses a relatively great percentage of the numbers available on a worldwide basis and why it has a cut-off date for the third preference category.

Let's take the case of the third preference. According to the percentage limitation, 10% of 17,000 visa numbers are available on a worldwide basis. And yet the Philippines got 8,283 in 1975 or almost 50% of the 17,000. This is so because the law provides that visa numbers are made available first in the order of the preference classes and within the preference classes in the order of their priority dates. Many Filipinos have filed their third preference petitions ahead of natives of other states. Under this rule, it is even possible for Filipinos to get all the 17,000 numbers available worldwide to third preference applicants. It is also theoretically possible for visa numbers to be available only to first preference applicants from the Philippines since the 20,000 state limitation is within the 34,000 worldwide ceiling.

VISA ALLOCATION STARTING OCT. 1977

This will no longer be the case under the new system of pro rata allocation which becomes effective on October 1, 1977. On that date, when in the preceding fiscal year a country has used up the maximum number of visas, the percentage limit will be computed, no longer on the basis of the worldwide Eastern Hemisphere limitation of 170,000, but on the basis of the maximum per country limitation of 20,000. The potential distribution for that country would then look like this:

| 1st Preference | 2nd Preference | 3rd Preference | 4th Preference |
|--------------------|--------------------|----------------|--------------------------|
| 20% or 4000 | 20% + or 4000 + | 10% or 2000 | 10% + or 2000 + |
| 5th Preference | 6th Preference | 7th Preference | Non Preference |
| 24% + or 4800 + | 10% or 2000 | 6% or 1200 | VISA NUMBERS NOT USED |

Figure 4. Potential Distribution Under The Pro Rata Allocation System Of The New Law

The first, second and third preferences will be entitled to a maximum of only 10,000. The other 10,000 (plus the visa "fall down" in appropriate cases) will be allocated pro rata among the lower preferences. This will produce very significant differences in the recent pattern of Filipino immigration to the United States.