The Immigration Act of 1990

By Reuben S. Seguritan
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The Immigration Act of 1990 is said to have the most comprehensive revision to US immigration in 66 years, covering almost every area of immigration law. Much of the focus of the new law is the changes in the preference system as well as numerical limits governing permanent legal immigration.

The new law, dubbed as IA90, cuts through much of the maze of the legal regulations compressing the implications to three basic systems: family-sponsored, employment-related and diversity-based.

For the beginning of the fiscal year 1992 which would be start in October, the new law takes effect putting a total cap on the three systems to 700,000 visas to aliens from all over the world. The total will be allotted as follows: 465,000 visas for family-sponsored immigrants; 140,000 for employment-based immigrants; and a total of 195,000 for "diversity aliens".

From the fiscal year 1995, the cap on immigrants will decrease to 675,000 only on all three category systems.

Family Sponsored Immigration

This family-based system was given an annual cap of 520,000 visas divided accordingly as follows: 465,000 to immediate relatives of US citizens and family-sponsored ties as outlined in four preference categories and 55,000 to petitions by spouses and children of newly legalized aliens.

There is no numerical limit to the immediate relatives of US citizens who can immigrate. However, to prevent pushing out petitions by the family-sponsored preference immigrants into the borderline numerical limit by the unrestricted petitions by immediate relatives, the law specifies that the family preference visas cannot drop below 226,000 a year.

The four family-sponsored preference categories are as follows:

A) First preference: 23,400 visas for adult unmarried children of US citizens. The new quota is a substantial reduction from the old law's 54,000 visas for the first preference. Record shows, however, that there were only 13,259 people who immigrated FY 1989. Even with the sharp decline in the visas allocated, petitioners in the waiting list of this category are not likely to be affected.

B). Second Preference: This category will receive 114,200 visas a year plus any leftover from unused visas from the family first category. The new law divides this category into 2 parts: The "Family 2A" for spouses and minor children of permanent residents, and "Family 2B" for unmarried sons and daughters of permanent resident aliens.

Seventy-seven percent of the total quota for this category will be reserved for the 2A, that's about 88,000 visas. The Philippines, Mexico and the Dominican Republic should benefit from this increase of the quota, from 70,200 up to the new law's quota of 114,200, that it is predicted that in time these 3 countries will catch up with the worldwide priority date (the current date for processing pending visas).

There were reportedly 420,000 backlogged cases in this category, almost half are natives from Mexico, the Philippines, and the Dominican Republic. Normally, it takes a three years waiting time for natives from other countries to finally immigrate into the US. For these countries, however, there is no less than 7 to 15 years before pending petitions can move up into the current status.

Since the annual family cap will rise to 480,000 in FY 1994, and since immigrant petitions in the first category has always been less than its quota and is therefore likely to remain current, the extra visas will be made available to the family second preference.

This can only be possible however if immediate relatives in the previous fiscal year totalled less than 254,000.

C). Third Preference: The 1990 law allocates 23,400 visas annually for married sons and daughters of US citizens plus any unused visas from the 1st and 2nd categories.

Under the old law, married sons and daughters of US citizens were categorized under the fourth preference. Both the fourth and fifth preference of the old law were moved up, the fourth preference of the old moving to the third, and the fifth to the fourth. (Both the 3rd and 6th preference of the old law were employment-based and in the new law, removed from the preference system.

The new quota of 23,000 is reduction from the old law's 27,000 visas in this category. A high of 26,975 people in this category (4th preference under the old law) immigrated to the US in FY 1989 that more backlog is likely to occur in this category the next fiscal year under the new law.

D). Fourth Preference: 65,000 visas will be made available annually for brothers and sisters of adult US citizens plus any unused visas from the first, second and third categories. The number only adds 200 more from the 64,800 quota under the old law. Visa petitions for brothers and sisters of adult US citizens was categorized in the fifth preference under the old law.

There are reportedly 1.4 million people in the waiting list of this category. With the meager increase in quota, people who submitted their petitions today would have a long wait of no less than 30 years.

Beginning in FY 1995, visas made available for family-sponsored immigrants will increase from 465,000 to 480,000 annually and the special three year visa program for spouses and children of legalized aliens end.

The new law expands the definition of "immediate relatives" which until then only included minor children, spouses and parents of US citizens over the age of 21. Widows and widowers who have been married to a US citizen for at least two years before their spouses died can now be defined as immediate relative. It will end, however, when they remarry.

While there is no numerical restriction on petitions for immediate relatives, the total number of petitions is subtracted from the family preference visa petitions for the following fiscal year. The remaining visas will then be distributed accordingly to the four family preference system.

The number of visa petitions by immediate relatives normally cannot exceed 239,000 in order that the "floor" quota number for the preference categories can still be distributed. However, if it does exceed, the spillover will be counted among the 55,000 "transition" visa numbers for the following fiscal year. This special provision runs only for three years and will end in FY 1994. Filipinos may be able to benefit from this "transitional" visas.

Employment-Based Immigration

Much of increase in the total immigrant visa was partly due to the rise in the quota for visas based on job skills. Congress realized that the US could be more at an advantage by admitting more skillful immigrants thus tripling the number of the old quota. In the past, less than 10 per cent of the total immigrant quota became immigrants based on their job skills.

While it removed the employment-based nature of the old third and sixth preference, employment-based immigration rules were altogether redrawn and under the new law, categorized into five groups. From the old quota of 54,000, employment-based quota sharply increased to 140,000.

The first group in this employment based system to which 40,000 visas will be reserved are the "priority workers" with extraordinary ability, including outstanding professors and researchers, and certain executives and managers of multinational corporations. Extraordinary ability is proved through documentation consisting of publications in respected journals, reviews of his contributions to his profession and statements of recognition of his expertise by prominent organizations. Prizes, awards, or receipts of box office or record sales are some of the proofs required to establish recognition of his expertise. Admission to this category is reserved for that small percentage of individuals who have excelled in their chosen field of work. Such individuals can apply on their own without the sponsorship of a US company.

Outstanding professors or researchers are those with at least three experience in teaching or research and "recognized internationally". It isn't quite clear how qualified persons can provide documentation to prove this. In any case, only their employers can file petitions for them. Executives and managers under this subcategory must be coming to the US in a managerial or executive capacity.

The second group with another 40,000 visas consists of members of the professions holding advance degrees and aliens of "exceptional ability". A job offer and a labor certification from the Department of labor are required to persons in this category. The new law defines "advanced degree" as a bachelor's degree with "at least five years progressive experience in the profession". The possession of certificates, diploma or award is not sufficient unless he can demonstrate special competence in his calling, whether in the arts, sciences or business.

The third group includes skilled workers, aliens who hold baccalaureate degrees and who are members of the professions, and unskilled workers. A total of 40,000 visas will be reserved for this set, but only 10,000 will be allocated to unskilled workers. Unskilled workers are defined by those having less than two years experience or training. This third category requires a job offer from a US employer and a labor certification.

This third group could experience a major backlog because most of the pending 3rd and 6th preference will be carried over to this group.

The fourth set with 10,000 visas available be reserved for "special immigrants" among others, ministers and other religious workers. The last group also with 10,000 visas will be reserved for aliens with $500,000 to $3 million to invest in an enterprise that will generate employment for at least 10 US workers. 3,000 of the 10,000 total in this group are reserved for special areas marked by high unemployment.

Beginning October 1, 1991, the current third and sixth preferences will be reclassified under the new employment-based categories. Those who have applied for third and sixth preference petitions previously will have to have to file new petitions between October 1, 1991 and October 1, 1993 to be reclassified under the new law. The priority dates, however, will be retained provided they do file by October 1, 1993. If a third or 6th preference is still pending by October 1, 1991, the applicant most probably will have to file a new petition and start all over.

Diversity-Based Immigrants

Beginning FY 1995, 5,500 visas will be allotted annually to spouses and children of natives of countries with fewer immigrants in the US. In addition to these 55,000 visas, an additional 40,000 will be made available to nationals of adversely-affected countries, specifically natives of Ireland who are already in the US.

Per Country Limit

The IA90 sets the visa limit per country at 7 per cent of the total preference limits on family and employment -based petitions. If the total limit on family preference system is 226,000, and employment-based preference system is 140,000, giving a total of 366,000, seven percent of this total will be 25,620. Thus 25,620 visas will be reserved per country annually, up from the old limit of 20,000 per country annually.

The Philippines will be entitled to about 25,000 visas yearly up by 5,000 under the old law.

In addition, the law provides for an additional 2 per cent allowance on the family and employment-based preference limits specifically for colonies and specified dependent areas. These are not the diversity-based countries. In other words, an additional 2 per cent of visas will be allowed on top of the preference limits. That works out to a minimum of 7,320. Spouses and children of permanent residents from Mexico and the Philippines will particularly benefit from this provision, causing a reasonable decline in the backlog of second preference visa petitions pending from the two countries.