

THE IMMIGRATION ACT OF 1990

Summary prepared by Malcolm Collier
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BACKGROUND

The Immigration Act of 1990 followed a decade of considerable debate in Congress regarding immigration. This debate followed from changes in the demographics of immigration and from increased illegal entries in the 1970s and 1980s. The major demographic change was a relative decline in immigration from Europe and an increase in immigration from Asia and Latin America, accompanied by an increase in absolute numbers of immigrants.

Collectively, these factors generated calls for changes in existing immigration laws to address illegal immigration and to make changes in the demographic character of legal immigration. Legislation affecting illegal immigration was passed in 1986 but debate continued on legal immigration. Various changes were suggested, many intended to limit immigration from Asia and Latin America and return to the "traditional" emphasis on immigration from Europe although this goal was rarely explicitly stated in public. Instead, legislators talked about the need to obtain a "better class" of immigrations, of the need to maintain "traditional" American cultural roots. Proposals were made to eliminate or limit some family preferences or even to replace the the existing family based preferences with a system in which points toward entry would be earned by skills, education, relatives in the U.S., and other attributes, most especially the ability to read and write English, all of which would probably have served to favor immigration from western Europe.

Charges were made that the Immigration Reform Act of 1965 "discriminated" against immigration from Europe. Actually, when originally passed, the 1965 Act still favored immigration from Europe because it placed so much emphasis on family relationships as a basis for entry. This was recognized at the time and was one of the reasons the 1965 Act was able to obtain broad political backing. However, international political and economic forces canceled out this original preference for Europe. Those nations in Europe that allowed emigration, which excludes the nations of Eastern Europe, experienced relatively stable political and economic times during the period from 1965 onward with the result that there was little demand for immigration to the United States. European immigration remained relatively low, so over time the pool of people in Europe with relatives capable of sponsoring them for immigration declined and the favored status of Europeans implicit in the 1965 Act was eliminated.

At the same time the political and economic circumstances in Asia and Latin America were generally unstable, leading many to seek entry to the United States. Those who able to immigrate after 1965 could subsequently sponsor their relatives when they achieved citizenship, who in turn might sponsor their relatives, creating a growing chain of immigration. Consequently, by the 1980s the vast majority of immigrants were from Asia and Latin America and the emphasis on family relationships as basis for entry could indeed be said to be a barrier for immigration from nations whose citizens had not participated significantly in immigration during the 1970s and 1980s.

THE 1990 ACT

None of the changes proposed during the 1980s passed the Congress, in significant degree because of successful lobbying efforts by Latino/Hispanic and Asian American groups. In 1990 new legislation was proposed which attempted to address the issue of immigration access beyond the family preferences without attacking the basis for entry of most Asian and Latin American applicants.

The resulting **Immigration Act of 1990** became law on Nov. 29, 1990. It amended the prior Immigration and Nationality Act by adding several new basis for entry, expanding the non-family preferences, while maintaining family as the single most available basis for entry. The new law limits the total number of immigrants each year to 700,000 (this figure did not include refugee and some others, and allowed some flexibility for change) In contrast to the 1965 Act, immediate family (non-preference) entrants now count toward this cap, instead of being unlimited.

Under the new law, immigration visas were allocated as follow:

465,000 for family based immigrants (including immediate family, non-preference entrants);

55,000 for the spouses and children of aliens legalized under amnesty programs for illegal immigrations;

140,000 for employment-based immigrants;

40,000 for nationals from "adversely affected" countries.

In FY 1995 the number drops to a minimum of 675,000, distributed as follows:

480,000 for family immigrants;

140,000 for employment based immigrants;

55,000 for "diversity immigrants"

The new law revised the preference system, creating a three track structure of family, employment, and diversity based preferences.

NEW FAMILY PREFERENCE SYSTEM

The 1990 act retains family based visas as the numerically largest number of entrants but made some changes including new yearly limits for family preference entrants:

For fiscal years 1992-94: 465,000 less the number of "immediate relatives" (immediate relatives are spouses, parents, and unmarried children under 21) admitted the previous fiscal year, plus any numbers unused by the employment-based preference system. The number of family sponsored visas cannot fall below 226,000 (10,000 visas higher than under the prior act) during this period. If visa availability falls below this number, the shortage is to be made up from the next category below.

During this time, another 55,000 visas will be made available to spouses and children of aliens legalized under the Immigration Reform and Control Act (IRCA) of 1986.

Fiscal year 1995 and after 480,000 less the number of "immediate relatives" (non preference family entrants) admitted during the previous fiscal year, plus any unused spaces from employment based preferences. The number may not drop below a 226,000. If it does, then the total cap can be exceeded.

First preference: Unmarried sons and daughters of US. citizens: 23,400 visas and any unused visas from the 4th preference.

Second preference: Spouses and unmarried children of Lawful Permanent Residents (LPRs): 114,200 visas, plus unused visas available beyond the minimum of 226,000 family preference visas, plus any unused visas from the previous preference.

There are subdivisions within the category: a) A minimum of 77% of the visas allocated to the category go to spouses and minor children of Legal Permanent Residents (LPRs); b) 75% are issued without regard to per country limits, these are to be distributed in the order in which the petitions were filed; c) a maximum of 23% of the category goes to the unmarried sons and daughters of LPRs. This last group of visas will subject to per country ceilings.

Third preference: Married sons and daughters of U.S. citizens; 23,400 visas plus unused visas from all earlier preferences.

Fourth preference - brothers and sisters of U.S. citizens: 65,000 plus unused visas from all earlier preferences. (note: this is the old 5th preference.)

EMPLOYMENT BASED IMMIGRANTS

A total of 140,000 spaces are reserved, plus (starting in 1994) any unused numbers from the family sponsored categories. The employment based visas would be distributed as follows:

First preference: Priority Workers - 28.6% of the employment based category; limit; 40,040 visas in 1992 plus any unused visas from the fourth and fifth employment based preferences ("investors" and "special immigrants.") The preference has subdivisions: a) Persons of extraordinary ability, demonstrated by sustained national or international acclaim in the sciences, arts, education, business, and athletics - a U.S. employer is not required; b) Outstanding individuals, internationally recognized and with at least 3 years of experience, professors and researchers seeking to enter in senior positions - a U.S. employer is required; c) Executives and managers of multinationals - with one year of prior service in the firm during the preceding 3 years and a U.S. employer.

Second preference: a) Professionals with advanced degrees and aliens of exceptional ability - 28.6% of the employment based limit; 40,040 visas in 1992 plus any unused "priority worker" visas. A U.S. employer and Department of Labor certification are required but the requirements can be waived by the Attorney General; b) Members of professions with advanced degrees or exceptional ability in the sciences, arts, or business, however possession of a degree, certificate, or license is not necessarily sufficient evidence of exceptional ability.

Third preference: Skilled workers, professionals, and "other" workers - 40,000 visas plus any unused visas from the 2 previous categories. Requires a U.S. employer and labor certification. Skilled workers must be in an occupation that requires at least 2 years training or experience. Professionals need a Bachelor's degree. "Other" workers refers to unskilled workers. Their numbers are limited to no more than 10,000 visas per year.

Fourth preference: Special immigrants - 7.1 percent of the employment based limit; 9,040 visas in 1992. This category includes: a) Ministers of religion and persons working for religious organizations for at least 2 years; b) Foreign medical graduates; c) Employees of the U.S. government abroad including certain employees of the U.S. mission in Hong Kong who file for admission before Jan. 1, 2002; d) Retired employees of international organizations, etc.

Fifth preference: 7.1% of the employment based limit: a) 9,040 employment creation (investor) visas in 1992; b) 7,000 spaces for investors of \$1 million in urban areas; and c) 3,000 for investors of at least \$500,000 in rural or high - unemployment areas. The Attorney General may increase the required investment amounts up to \$3 million for high employment areas. The investment must create employment for at least 10 U.S. workers.

DIVERSITY ENTRANTS

The new law created a **totally new category** of immigrants, labeled "diversity" immigrants, intended to make immigration somewhat easier for applicants from nations who had not sent many immigrants in recent years. It was particularly intended to provide for entry from Europe but also benefits African nations and a number of countries in Asia, most notably Indonesia. The specific provisions:

For 1992-94: 40,000 spaces each year for entrants from "adversely" affected nations, with 40% of these spaces reserved for Ireland. (This 40% set aside for Ireland was created in response to the large number of illegal immigrants from Ireland and the claim that immigration from Ireland was particularly difficult under the 1965 act. Politically, the clause assured the support of Senators Kennedy and Moynihan.)

For 1995 and thereafter 55,000 spaces per year for entrants from "adversely" affected nations.

Adversely affected nations were defined as being those that had sent fewer than 50,000 immigrants to the U.S. during the preceding five years. Applicants under this category are selected by an annual lottery, the first time the U.S. has used this system for immigration.

Conclusion and comment

The act has a variety of other details and provisions, but the information above summarizes the major characteristics of the law. The overall impact of the law did not result in any reduction of immigration but, together with changes in rules for sponsoring relative in 1996 as well as larger economic/political factors, has led to a decline in immigration by poorer immigrants and some diversification in terms of origins of immigrants.

The 1990 legislation did not address the concerns of those who wished to limit immigration and only partially satisfied those who were unhappy with high numbers of immigrants from Asia and Latin America, which have continued under the new law. Consequently, throughout the 1990s and after 2000 there has been continued pressure from anti-immigrant groups to amend the laws to significantly reduce number of immigrants allowed each year and to eliminate many of the family preferences. Counter pressures from those more favorable to immigrants, including strong advocacy by Asian American and Latino communities, has produced something of a political stalemate on this issue. Current debate is especially focused in illegal immigrants with equal polarization and stalemate.

References

Public Law 101-649, S. 358

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