U.S. CHAMBER OF COMMERCE

Just The Facts

Some Key Facts about Permanent Resident ("Green Card") Status under Current U.S. Legal Immigration System

As Congress considers reforming our immigration laws, it is useful to put the current system into context for policymakers. If existing provisions are dysfunctional, what are some of the facts about the existing provisions?

This summary provides an overview about a few of the key elements underpinning our current system for granting "Lawful Permanent Resident" status (LPR or "green card" status) under the Immigration and Nationality Act (Title 8, United States Code). In particular, this summary provides some facts regarding:

Who is authorized to obtain green card status in the U.S.?
What is the current breakdown and distribution of annual green cards?
What is the history of caps and quotas in our green card system?
What is the history of an individualized labor market test for employment-based green cards?

Who can become a Lawful Permanent Resident (LPR, or green card holder) under current law?

1. Refugees (processed for resettlement outside the US) or Asylees (applies before USCIS in the US), based on well-founded fear of persecution. Numbers set annually by the President after consultation with Congress. In FY11, 168,460 new LPRs were refugees or asylees.

2. Employment Based Preference immigrants. Number set by Congress in 1990. There is a cap of 140,000 LPRs in this category. In FY11, there were 138,694 new LPRs in this group of preference (quota) immigrants, including:
   - Worker
     - EB1 – Employment Based 1st Preference – no US labor market protection tests for individuals with renown and sustained record of accomplishment in their field, or outstanding professors and researchers, or managers and executives of multinational companies assigned to run U.S. operations.
     - EB2 – Employment Based 2nd Preference – advanced degree or exceptional ability individuals, requiring compliance with US labor market protection tests with limited exceptions.
     - EB3 – Employment Based 3rd Preference – individuals who possess a Bachelors degree or two years of training or experience, with an additional but limited allocation for those working in lesser skilled occupations, all of which require compliance with US labor market protection tests.

- Special Immigrant
  - EB4 – Employment Based 4th Preference – individuals who work in a variety of special sectors, including religious workers, NATO, the Voice of America, and the US Armed Services
- Investor
  - EB5 – Employment Based 5th Preference – individuals who invest at least $500,000 (through a regional center) or $1,000,000 (if not through a designated regional center) and create jobs for at least 10 US workers
- Spouse or Minor Child (under 21) of a worker, investor or special immigrant. These dependents count toward the preference quota numbers set by Congress. Thus, less than half of the annual quota for employment-based green cards go to workers selected based on their qualifications to contribute to the American economy.

3. Family Based Preference immigrants. Number set by Congress in 1990. There is a floor of 226,000 LPRs in this category in order to give priority to family unity, which operates as a cap based on the number of "immediate relatives" annually (see number 4 below). In FY11, there were 225,891 new LPRs in this group of preference (quota) immigrants, including:
   - F1 – Adult unmarried son or daughter of a United States Citizen
   - F2A – Spouse and minor children (under 21) of a Lawful Permanent Resident
   - F2B – Adult son or daughter of a Lawful Permanent Resident
   - F3 – Married sons or daughters of a United States Citizen
   - F4 – Brothers or sisters of a United States Citizen
   - Spouse or Minor Child (under 21) of F3 or F4, Minor Child of F1. These dependents count toward the preference quota numbers set by Congress.

   When an immigrant obtains LPR status, her spouse and minor children at that time also obtain LPR. A later acquired spouse (and children) of an LPR must be sponsored later subject to a quota, as they are not part of the current definition of "immediate relative" (non quota). No other relatives of LPRs may be sponsored to come to the U.S. for permanent status. Relatives of citizens other than spouses, minor children, and parents may be sponsored if they are a sibling or adult son or daughter of a USC (or the spouse or minor child of siblings or adult sons and daughters of USCs). Nieces/nephews of USCs may immigrate if under 21 at the time of final processing and they are coming with a parent who is a sponsored sibling of a USC, and brothers-/sisters-in-law of USC may immigrate with spouse who is a sponsored sibling of a USC. Similarly, other relatives may come based on their relationship to an adult daughter/son of a USC. Grandchildren of USCs may immigrate if under 21 and with a parent who is a sponsored adult daughter/son of a USC, and sons-/daughters-in-law of USC may immigrate with spouse who is a sponsored daughter/son of a USC.

4. Immediate Relative of a US Citizen (USC). No numerical limit (non quota immigrants). In FY11, there were 338,631 spouses and minor children (under 21) + 114,527 parents = 453,158 immediate relatives of USCs.

5. Diversity visa (DV) random lottery. Number set by Congress in 1990. There are up to 55,000 visas allocated for a random lottery of individuals from regions of the world under represented in the population of recent legal immigrants, allowing people without an existing family or employer tie to immigrate. In FY11, there were 50,103 new LPRs in this category.

New Lawful Permanent Residents FY11[i]	New LPR was in US and obtained LPR status through Adjustment of Status before USCIS	New LPR processed status at American Embassy in home country through Consular Processing	LPRs FY11 by category	New LPRs in FY11 with Labor Certification from USDOL[ii]
Workers who have Extraordinary Ability (EB1)	2,118	406	2,524	0
Workers who are Outstanding Researchers or Professors (EB1)	2,453	13	2,466	0
Workers who are Managers or Executives in Multinational Companies (EB1)	5,526	149	5,675	0
Workers where Job Requires an Advanced Level of Expertise, identified by a Masters or higher, or Bachelors + 5 Years of Related, Progressively Responsible Experience (EB2)	33,055	522	33,577	30,219[iii]
Workers whose Job Requires a Bachelors degree (EB3)	6,474	225	6,699	6,699
Workers whose Job Requires 2 Years of Training or Experience (EB3)	6,417	1,073	7,490	7,490
Workers in Lesser Skilled Occupations (EB3)	860	517	1,377	1,377
Worker Sub Totals FY11	56,903	2,905	59,808	45,785[iv]
Investors (EB5 principals)	243	901	1,144	0
Special Immigrants[v] (EB4 principals)	3,293	425	3,718	0
Spouse/Minor Child of Workers, Investors, Special Immigrants (immediate family members of "employment-based" principals)	63,326	10,698	74,024	0
Refugee/Asylee[vi]	168,460	0	168,460	0
Spouse/Minor Child of USC[vii] (no quota, Immediate Relatives)	199,156	139,475	338,631	0
Spouse/Minor Child of LPR[viii] (subject to F2A quota)	9,586	83,167	92,753	0
Parents of USC[ix] (no quota, Immediate Relatives)	44,018	70,509	114,527	0
Relatives of LPRs: Over 21 Unmarried Sons/Daughters (F2B)	2,399	13,466	15,865	0
Relatives of USCs: Over 21 Unmarried Sons/Daughters; Married Sons/Daughters; Siblings of USC (F1, F3, F4)	7,170	36,379	43,549	0
Spouse/Minor Child of Relatives of USCs (immediate family members of family-based principals in F1, F3, F4)	6,151	67,573	73,724	0
Visa Lottery[x]	1,617	48,486	50,103	0[xi]
Other[xii]	17,770	7,964	25,734	0
Non-Worker Sub Totals FY11	523,189	479,043	1,002,232	0
Total New Lawful Permanent Residents FY11[xiii]	580,092	481,948	1,062,040	45,785

What is the history of quotas and caps for green card status (Lawful Permanent Resident classification)?

For about a century, Congress has analyzed immigration policy in terms of setting numerical limits on (i) immigration totals and (ii) the distribution among sending countries.

For most of the 20th century, our immigration policy was based on a national origins system. First put in place from 1921, and continued to 1965, this approach established a cap on new immigrants based on a percentage of the population at an earlier census, with an allocation of visas based on the national origin of the population as of the (earlier) census date.

U.S. immigration law based on national origin was first established in the 1921 Act (2% of 1910 census could be immigrants, allocated on basis of national origin of the 1910 census population). The National Origins Act of 1924, as a revision of a concept in the 1921 law, established a cap for immigration based on 3% of the population as of the 1890 census, with allocation of visas based on the national origin of US inhabitants based on the 1890 census (heavily Northern and Western European). The national origin system was retained, although the formula slightly revised (and ultimately including exemptions for individuals from the Western Hemisphere as non-quota immigrants) through 1965, even after the complete overhaul of U.S. immigration law in 1952.

Under the National Origins Act of 1924, for example, immigrants from Central and South America and Africa were not banned, but they only got the meager percentage based on census distribution. Asian immigrants could not naturalize and thus were effectively banned. U.S. immigration law provided that an individual cannot be admitted as a lawful permanent resident if she is not eligible for naturalization (and this continues in our immigration law today as well). The ban on naturalization for Asians was lifted in 1952.

President Truman vetoed the Immigration and Nationality Act (the base law we have amended ever since, the 1952 McCarran-Walter Act) because it continued the National Origin Formula, but Congress voted to override the veto, thus passing the INA in 1952.

In signing the 1965 Act amending the INA into law, President Johnson said "This [old] system violates the basic principle of American democracy, the principle that values and rewards each man on the basis of his merit as a man. It has been un-American in the highest sense, because it has been untrue to the faith that brought thousands to these shores even before we were a country."

Since 1965 we have had a system where every country has equal access to whatever immigrant quotas are set, with the per country cap being identical for every sending country. When there is an enormous disparity in demand among sending countries, however, maintaining an equal per country cap can result in much longer waits for certain nationalities. In establishing the parameters of the current F2 (Family Based 2nd Preference), Congress acted to identify formulas for admission such that certain subsets of these new lawful permanent residents are not subject to per country caps in order to avoid inordinate backlogs based solely on country of birth.

In the global economy of the 21st century, it has become apparent that when we select immigrants based on their skill sets we may want Congress to consider lifting the per country caps altogether. Many believe that country of birth need not be a key factor for immigrants who are admitted solely

because of their skill qualifications and contribution to the economy, and instead a first come, first served process among similar skill levels might better the serve the country.

Moreover, it may be time to reassess which immigrants are included in the legal immigration total. Many believe Congress should revise and modernize the preference system of quotas, including consideration as to whether to realign which legal immigrants are welcomed without regard to their number. The total annual immigrant quota during the period 1924-1927 was 164,667 each year. This quota was arrived at by calculating .03 of the 1890 census population of the U.S. The per country caps were based on the national origin distribution of the U.S. population in 1890. This same basic structure continued until 1965. In 2012, the U.S. welcomes new legal immigrants (some capped with quotas in a preference system; some uncapped with no quotas, although uncapped priority immigrants are currently limited to immediate relatives of U.S. citizens) totaling about .0034 of our current population. Canada admits new legal immigrants annually equating to about .0075 of total population, while Australia's annual legal immigration pool is about .0056 of population.

1924-1927 National Origin Formula

Northwest Europe and Scandinavia		*Eastern and Southern Europe*		*Other Countries*	
Country	Quota	Country	Quota	Country	Quota
Germany	51,227	Poland	5,982	Africa (other than Egypt)	1,100
Great Britain and Northern Ireland	34,007	Italy	3,845	Armenia	124
Irish Free State (Ireland)	28,567	Czechoslovakia	3,073	Australia	121
Sweden	9,561	Russia	2,248	Palestine	100
Norway	6,453	Yugoslavia	671	Syria	100
France	3,954	Romania	603	Turkey	100
Denmark	2,789	Portugal	503	Egypt	100
Switzerland	2,081	Hungary	473	New Zealand & Pacific Islands	100
Netherlands	1,648	Lithuania	344	All others	1,900
Austria	785	Latvia	142		
Belgium	512	Spain	131		
Finland	471	Estonia	124		
Free City of Danzig	228	Albania	100		
Iceland	100	Bulgaria	100		
Luxembourg	100	Greece	100		
Total (Number)	142,483	Total (Number)	18,439	Total (Number)	3,745
Total (%)	86.5	Total (%)	11.2	Total (%)	2.3

What is the history of an individualized labor market protection test as a prerequisite to obtaining LPR (green card) status for employment-based immigrants?

The current Labor Certification requirement for green cards comes from the 1965 amendments to the INA. In 1965, Senator Ted Kennedy (D-MA) led an effort to abolish the national origin quotas. As part of the negotiations for the immigration bill, amendments were made to create for the first time an affirmative Labor Certification obligation. Under the 1952 Act, immigrants could not obtain green cards "if DOL certified there is a negative impact to US labor market" (and DOL rarely acted). The 1965 amendments expanded access to immigration but changed the word "if" to "unless," establishing that immigrants can't enter "unless DOL certifies there is not a negative impact to US labor market." This same, individualized certification obligation continues today for most immigrants entering as workers (about 77% of workers are subject to a Labor Certification, although this represents only a small portion of total new immigrants annually (less than 5%) - see the chart above).

At the time, though, that the affirmative Labor Certification obligation was attached, Sen. Ted Kennedy said "It was not our intention, or that of the AFL-CIO, that all intending immigrants must undergo an employment analysis of great detail that could be time consuming and disruptive to the normal flow of immigration. We know that the Department of Labor maintains statistics on occupations, skills, and labor in short supply in this country. Naturally, then, any applicant for admission who falls within the categories should not have to wait for a detailed study by the Labor Department before his certificate is issued… [W]e would expect the Secretary of Labor to devise workable rules by which he could carry out his responsibilities under the law without unduly interrupting or delaying immigration to this country. The function of the Secretary is to increase the quality of immigration, not to diminish it below levels authorized by law." 111 Cong. Rec. 24227 (Sept 17, 1965).

Sen. John Tower (R-TX) said "Frankly, I see nothing but a tremendous bureaucratic nightmare in attempting to put these provisions into effect… [T]he enactment of these provisions would, in my opinion, [place] an impossible burden upon the Labor Department if it is to administer them effectively. Imagine, if we will, the involved decisions that would have to be in applying these restrictions to thousands upon thousands of prospective immigrants each year. In my opinion, the provisions are utterly unworkable and give every indication of being inserted in the bill merely to provide an answer to those who would raise questions concerning the bill's effects on our labor market." 111 Cong. Rec. 24739 (Sept 22, 1965).

When the bill was considered in the House, Rep. Dick Ichord (D-MO) said "[T]the labor clearance clause is not a workable provision… Can you picture the Department of Labor deciding whether or not an applicant plumber from Bolivia will displace any workers in Buffalo? … This provision directs the Labor Secretary to do the impossible." 111 Cong. Rec. H21572 (Aug 24, 1965).

Today, we have a Labor Certification process that requires that employers navigate a complex DOL system. The premise of the system is that every job in America is assigned a specific vocational preparation (SVP). Employers document that the minimum qualifications for jobs being filled by immigrants match the SVP identified by DOL and then show there is not a negative impact to the

labor market by offering the position on an indefinite basis to a foreign national. SVP is divided into 9 categories by DOL http://www.onetonline.org/help/online/svp :

1. Short demonstration only
2. Anything beyond short demonstration up to and including 1 month
3. Over 1 month up to and including 3 months
4. Over 3 months up to and including 6 months
5. Over 6 months up to and including 1 year
6. Over 1 year up to and including 2 years
7. Over 2 years up to and including 4 years
8. Over 4 years up to and including 10 years
9. Over 10 years

It used to be that DOL divided the job market into 12,000 different job classifications in a Dictionary of Occupational Titles, but now DOL relates the SVP levels to 1,222 broader job classifications (http://www.onetcenter.org/dl_files/SVP.pdf).

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[i] Table prepared by U.S. Chamber of Commerce to summarize the breakdown of new Lawful Permanent Residents (LPRs) regarding workers, skill sets and labor market protections under current law. The table summarizes data on those who obtained LPR status (or "green card" status) in FY11 (10/1/2010 to 9/30/2011), the most recent year for which full data is publicly available. See DHS Yearbook of Immigration Statistics, Table 7 http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf.

[ii] In establishing the current Labor Certification system, USDOL stated that adjudication would occur within 45 to 60 days of filing (69 FR 77326 12/27/2004). However, employers have found processing times to be lengthy, some times stretching well over a year for regular processing (excluding requests for appeal or reconsideration). Data released by USDOL most recently indicates processing times of 9 months for audited cases (45% of cases) and 4 months for regular analyst review (47% of cases).

[iii] USCIS does not make public the number of LPRs who obtain status based on National Interest Waivers in its Yearbook of Immigration Statistics. National Interest Waivers are granted to non-citizen physicians who agree to work in underserved areas (about 30 per state) as well as other non-citizens in any field making exceptional contributions. Job creation is not codified by law as the basis of a National Interest Waiver and is not recognized as the basis of a National Interest Waiver under USCIS controlling precedent. Individuals granted National Interest Waivers do not need a sponsoring employer and do not need to complete the Labor Certification. Based on the number of physicians selected annually (up to 1,500 annually) and anecdotal data on the extent that National Interest Waiver petitions for non-physicians are successful, it is estimated that no more than 10% of advanced degree LPRs receive National Interest Waivers including physicians in underserved areas.

[iv] In FY11, about 4.3% of new LPRs were subject to Labor Certification. Individuals obtaining LPR as workers must document their qualifications to work and participate in the U.S. economy, and in addition most (77%) are required to have an employer obtain a Labor Certification, even though most (95%) are already in the U.S. lawfully working for the sponsoring employer (Adjustment of Status can only be granted to those lawfully present). Non-worker LPRs are not asked to document their training, experience, employment, or intent to work or start a business in the U.S. (except for visa lottery principals).

[v] Special Immigrants include religious clergy, abandoned juveniles, and certain current, former or retired employees of NATO, US Armed Services, and Voice of America.

[vi] Refugees (113,045) are principally made up of Cubans (28,138) and other individuals resettled to the United States by processing outside the US (34,645) and their family members (47,071). Asylees (55,415 including dependents) are individuals fleeing persecution who request protection in the US through USCIS. Refugees and Asylees are eligible to apply to adjust status to LPR in the US after being found to have a well-founded fear of persecution and residing in the US for one year.

[vii] A child, under 21, or a spouse of a United States Citizen (USC) is considered an Immediate Relative under the Immigration and Nationality Act, entitled to LPR status upon application by USC over age 21, without a quota for visa availability. When a USC marries a non-citizen or becomes a parent to a non-citizen, such as orphans or adopted children or step-children, the USC can sponsor his new Immediate Relative for LPR status.

[viii] Spouse and minor children of LPRs who are later acquired (the marriage or birth (or step child relationship) established after principal obtains LPR status, or were abroad when the LPR obtained green card status through legalization programs) do not qualify for "Immediate Relative" status and instead are subjected to a quota necessitating a wait of several years to be issued LPR status. There is a backlog in this preference category since demand outstrips visa allocation for these immediate family members. If an LPR marries a non-citizen or becomes a parent to a non-citizen, such as orphans or adopted children or step-children, the LPR may wait many years for his immediate family to obtain LPR status, often without any other lawful temporary status available for such family members.

[ix] The parents of a USC are Immediate Relatives not subject to a quota. Until an LPR becomes a naturalized USC he cannot sponsor parents, married sons and daughters (or their spouses and minor children), or siblings (or their spouses and minor children).

[x] Since FY99 5,000 each year from the visa lottery have been used to cover green cards issued under the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted in 1997. Annually, 5,000 of the visa lottery numbers go to cover green cards given to Central Americans fleeing civil strife in the mid-1990s (along with 5,000 from the pool of green cards for individuals filling lesser skilled jobs that do not require at least 2 years of training or experience, so called "other workers") as a sort of reverse mortgage. FY99 to FY18 = 19 years = 5,000 from visa lottery + 5,000 from other workers to "pay off" the 191,727 green cards given under NACARA in the mid-1990s.

[xi] There is no Labor Certification for visa lottery immigrants, but the principal in each family must document completion of 12 years of primary and secondary education equivalent to a US high school degree or two years of recent employment in an occupation that requires at least two years of training or experience. See Visa Lottery Instructions (at p.9-10) http://travel.state.gov/pdf/DV_2013_instructions.pdf. In FY11, 28,099 principals won the visa lottery.

[xii] Special statutory benefits exist for dozens of different categories of immigrants not part of the preference system, not refugees or asylees, and not Immediate Relatives, for the following, among others: children born abroad while LPR is temporarily abroad, individuals in specified circumstances from Haiti, Central America, Indochina, Tibet, Vietnam, or former Soviet bloc countries, and individuals eligible for protection under the Violence Against Women Act. In addition, some data is withheld publicly, in order limit disclosure (including certain categories of refugees or asylees).

[xiii] In FY11, 5.6% of new LPRs were workers who obtained LPR status based on their skills (59,808 LPRs).