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Insight

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SUMMARY

US immigration law establishes two systems of admissions of foreign nationals: permanent and temporary systems. Foreigners admitted legally may enter as lawful permanent residents (also called immigrants) or as temporary visitors (also called nonimmigrants). Although the law establishes a clear demarcation between temporary and permanent migration systems, in recent years that line has become increasingly blurred.

This *Insight* seeks to understand better the connections between the permanent and temporary systems and focuses on the emerging system of *transitional visas*, the most significant of which have come about in the past fifteen years. The *Insight* begins by describing the goals and structure of each system of admissions. It continues with a discussion of the relationship between the two systems. It also describes the critical gaps in data that impede a thorough understanding of the underlying realities of immigration to the United States. The *Insight* concludes by arguing that any discussion of permanent immigration in the context of comprehensive immigration reform has to consider the interconnections between temporary and permanent admission systems.

The Growing Connection Between Temporary and Permanent Immigration Systems

Jeanne Batalova

The United States has a 150-year history of regulating flows of citizens of other countries to its territory. Starting in 1906, arriving foreigners were asked whether they were coming for permanent or temporary purposes, but it was not until the Immigration Act of 1924 that specific classes of nonimmigrant admissions were established. Today foreign nationals admitted legally enter the United States either as lawful permanent residents (LPRs or immigrants) or as temporary visitors arriving for a specific purpose (called nonimmigrants).

Permanent immigration system

Goals and structure

Permanent immigration has been at the core of nation-building from its very conception. US immigration law addresses social, humanitarian, and economic goals through three broad permanent immigration streams: family reunification, employment sponsorship, and humanitarian protection (refugee and asylum adjustments). The immediate relatives of US citizens

(parents, spouses, and unmarried children under the age of 21) and certain special immigrants, such as returning residents, are not subject to annual numerical limitations. Other groups of permanent immigrants — family-preference, employment-preference, and diversity candidates — are subject to annual numerical limitations and intending immigrants often have to wait for a visa to become available (see Appendix 1).

According to US immigration law, upon meeting eligibility criteria, foreign nationals can obtain lawful permanent residence in one of two ways: 1) by applying from outside the United States and receiving an immigrant visa from the US Department of State; or 2) by adjusting to LPR status from within the United States.

The last time the US Congress made major amendments to the immigration system in any significant way was in 1990. The Immigration Act of 1990 made a number of changes in the permanent visa caps, including a slight increase in family-based preference visas, from 216,000 to 226,000, and a more than doubling of employment-based preference visas from 54,000 to 140,000 per year. The Act also created a diversity immigrant category with an annual quota of 55,000 visas to facilitate the entry of persons from countries with lower levels of immigration and set a 10,000-person annual limit on the asylees who can adjust to LPR status.

Composition of permanent immigrants

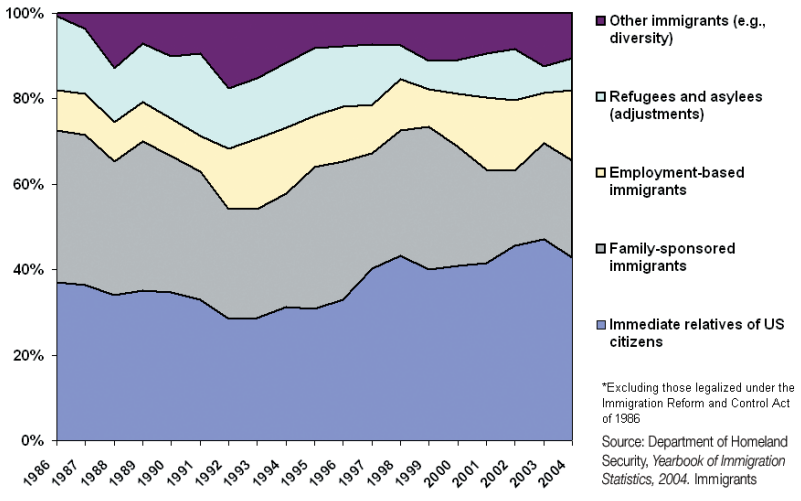
Relatives of US citizens and lawful permanent residents accounted for 66 percent of all legal permanent immigrants in 2004[1] (see Figure 1). With the exception of 1992 and 1993, family-based immigration has accounted for about two-thirds of total legal permanent immigration since the mid-1980s, while employment-preference immigrants have accounted for about 16 percent.

Temporary admissions

Goals and structure

Similar to the permanent system, the nonimmigrant system was developed to promote a variety of US political, economic, and cultural exchange goals, as well as to meet bilateral and multilateral US obligations. The nonimmi-

Figure 1. Share of selected classes of immigrants (%) in total immigration, FY 1986 to 2004*



grant system admits foreign nationals who are allowed to engage temporarily in an array of activities. These range from tourism and multiple forms of business activities, to education and artistic endeavors. The United States is one of the most profitable tourist and education destinations in the world. For example, in 2004, international tourists spent about $94 billion in the United States, and international students contributed another $12.9 billion dollars in tuition and living expenses.[2] The nonimmigrant system also allows US businesses to tap into the international labor pool and bring needed foreign workers relatively quickly on temporary worker and trainee, intracompany transferee, and a variety of treaty-based visas. In addition, student and cultural exchange visas allow limited employment in the United States, even though employment is not a primary purpose of these visas.[3] Moreover, some nonimmigrant visas have recently been used to facilitate US criminal justice and security priorities, while others (V visas) serve as interim "holding tanks" for certain relatives of US LPRs.[4]

There are more than seventy classes of nonimmigrant admissions, including tourists, business visitors, students, H-1B specialty occupation workers, religious workers, intracompany transferees, diplomats, representatives of international organizations, and others (see Appendix 2).[5] Nonimmigrants are restricted to the activity for which their visa was issued.[6] For example, a person admitted as a tourist is not allowed to work or study unless he leaves the United States and reenters on a work or student visa. Although there is no overall cap on how many nonimmigrants can be admitted to the United States per year, Congress set a numerical limit for some categories of nonimmigrants. For example, there is an annual limit of 65,000 H-1B specialty occupation visas (for first-time applicants) and an annual cap of 66,000 H-2B seasonal nonagricultural worker visas (see Appendix 2).

Composition of nonimmigrant flows

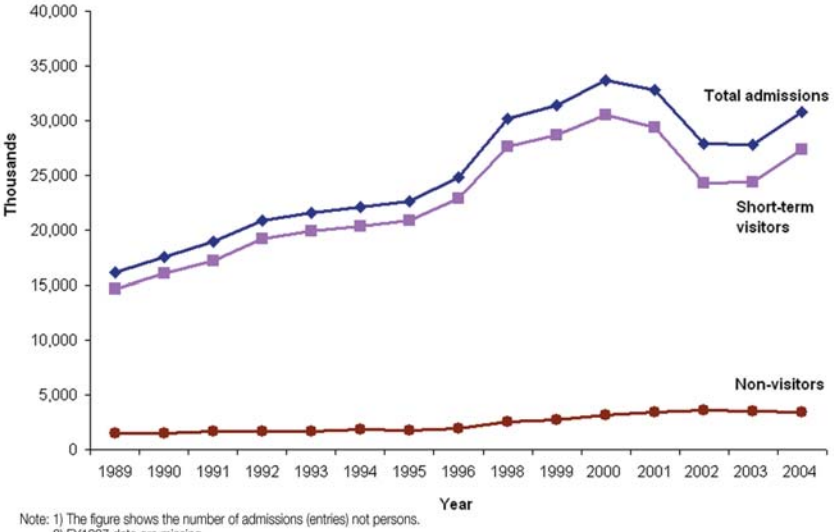
There has been a steady increase in total admission of nonimmigrants to the United States from 16.1 million entries in 1989 to 30.8 million in 2004.[7] (Note that nonimmigrant admission numbers refer to the number of entries, not persons.) Following the terrorist attacks of September 11, 2001, the admissions took a sharp dip, but the upward trend resumed in 2003 (see Figure 2).

The overwhelming majority of all nonimmigrant admissions are tourists (B-2 visa) and visitors for business (B-1 visa).[8] Therefore, admissions of B visa short-term visitors drive the fluctuation in the total number of temporary admissions in the United States. Its share — around 90 percent — has been stable over time.

Other classes of nonimmigrant admissions also increased from 1989 to 2004 (although not enough to affect the overall share of the B visa category). Work-related nonimmigrants (temporary workers, intracompany transferees, and exchange visitors), students, and their families constitute the overwhelming majority of these (non-B visa) admissions (see Figure 3).

While some nonimmigrant visas are truly temporary in the length of stay permitted under the law, others are clearly issued for mid-term and long-term residence in the United States. In fact, many of these nonimmigrants would be considered long-term "immigrants" according to the current United Nations definition.

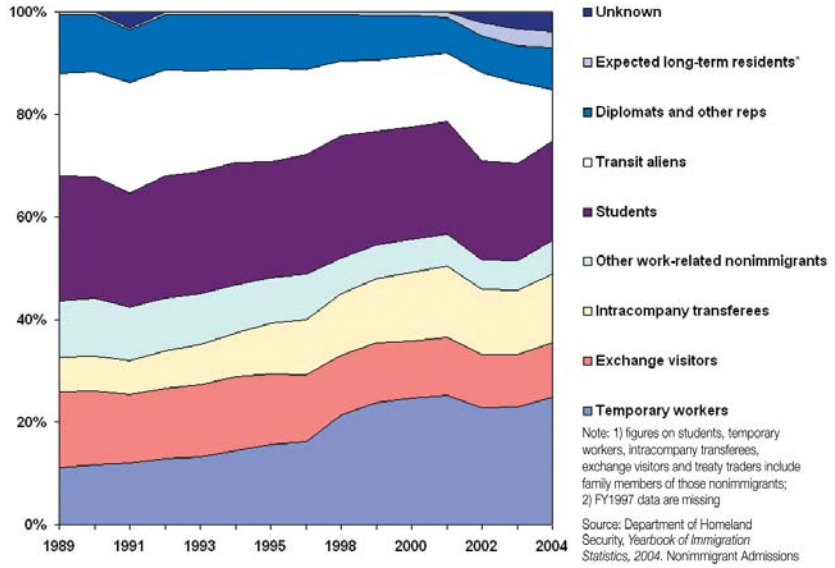
Figure 2. Nonimmigrant admissions to the United States, FY 1989 to 2004



Note: 1) The figure shows the number of admissions (entries) not persons.
2) FY1997 data are missing

Source: Department of Homeland Security, *Yearbook of Immigration Statistics, 2004*. Nonimmigrant Admissions

Figure 3. Share of selected classes of admissions (%) in total non-visitor admissions, FY 1989 to 2004



Note: 1) figures on students, temporary workers, intracompany transferees, exchange visitors and treaty traders include family members of those nonimmigrants;
2) FY1997 data are missing

Source: Department of Homeland Security, *Yearbook of Immigration Statistics, 2004*. Nonimmigrant Admissions

Length of stay

Temporary visas also differ in the length of time nonimmigrants are permitted to spend in the country per visit. The length of stay varies substantially by the class of admission: from the couple of hours that aliens on a C-4 visa may need to transit through an airport to catch their next flight, to the number of years that F-1 students take to finish their studies at US colleges and universities, to K-1 fiancés(ees) who come to the United States to marry US citizens and reside in the country (see Appendix 2). In other words, while some nonimmigrant visas are truly temporary in the length of stay permitted under the law, others are clearly issued for mid-term and long-term residence in the United States. In fact, many of these nonimmigrants would be considered long-term "immigrants" according to the current United Nations definition.[9]

Flexibility of the temporary nonimmigrant system

Unlike the permanent immigration system, which almost seems to be set in stone, amendments to the temporary system are much easier to make. For example, in response to US employers' claims of skilled labor shortages during the high-tech boom of the late 1990s, Congress substantially increased the number of H-1B temporary worker visas — from 65,000 to 195,000 visas for 2001, 2002, and 2003 — by passing only one act.[10] Another example is the creation of V visas. In order to address the severe backlogs in the availability of family-based visas for LPRs, Congress passed the Legal Immigration Family Equity (LIFE) Act, which provided a new visa to allow immediate family of LPRs who have been waiting more than three years for a green card to reunite and obtain work authorization. The most recent change was the enactment of the E-3 visa. It was created in the spring of 2005 to provide Australian citizens access to temporary employment as part of meeting US-Australia bilateral obligations. These few examples illustrate the responsiveness of the temporary system in addressing the needs and interests of various political and economic actors.

Nowhere is this flexibility more apparent than in the area of labor markets. American employers have increasingly come to rely on the temporary migration system to gain access to the foreign workers they need because it is a faster, more efficient route with more predictable outcomes than the permanent system. This is why, for example, the H-1B visa program has become the main gateway for bringing professionals into the United States.

Two main factors explain why many employers choose to bring foreign employees to the United States on a temporary visa rather than wait for approval of a worker's permanent visa. The first is the long delays in processing applications for permanent residence for employment-based immigrants at the US Department of Labor. Currently, it takes more than a year to process a labor certification application, which is a mandatory step in sponsoring most foreign workers for an employment-based immigrant visa. The second has to do with the low numbers of employment-sponsored permanent visas available and country limits on the total number of visas. In other words, even when all necessary documents are processed, a foreign national may have to wait a long time for an employment-based permanent visa num-

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ber to become available. This is especially relevant for nationals from certain countries such as China, India, or the Philippines. To employers who need quick access to workers, a wait of two to three years is not a viable option.

Interconnections between the temporary and permanent admission systems

A close interrelation between the two admissions systems has evolved over time as the temporary system was modified to compensate for the lack of flexibility of the permanent system. However, the lack of adequate data about nonimmigrants adjusting to LPR status inhibits the development of informed policy and the evaluation of the workings of both temporary and permanent systems.

Transitional visas

According to the Immigration and Nationality Act (INA), Section 214(b), most foreign nationals seeking to enter the United States under a nonimmigrant visa must demonstrate that they do not intend to abandon their countries of origin and remain permanently in the United States. Consular officers in US embassies overseas have to presume that the applicants for temporary visas are intending to become permanent immigrants. The burden is on applicants to convince the consular officer that their stay in the United States will be temporary.

Although the law attempts to keep the temporary and permanent visa systems separate, in practice, an expanding number of visas act as transmission belts, allowing people who are initially temporary visitors to become permanent residents.

However, in an increasing number of such admission categories, the requirement of not intending to stay in the United States permanently is waived, and nonimmigrant visa holders may apply to adjust their status to LPR even without leaving the United States.[11] For example, the Immigration Act of 1990 allowed dual intent for three groups of temporary workers — H-1B specialty occupation workers, L-1 intracompany transferees, and O-1 temporary workers with extraordinary abilities/achievements — thus making these visas a "natural funnel into permanent immigration."[12]

Similarly, more recent amendments to the INA exempt certain additional classes of nonimmigrant applicants from having to prove their intention to return to their countries of origin. These include V1-V3 visa holders (certain close family members of LPRs), K1-K2 (fiancés(ées)) of US citizens and their minor children), K3-K4 (alien spouses and alien children of US citizens), T1-T4 (victims of severe forms of trafficking), and U1-U3 (victims of certain criminal activity). Therefore, although the law attempts to keep the temporary and permanent visa systems separate, in practice, an expanding number of visas act as transmission belts, allowing people who are initially temporary visitors to become permanent residents.

Predominance of status adjusters in the total LPR numbers

In 2004, about one million persons were admitted as lawful permanent residents to the United States. Thirty-eight percent of them did so directly from overseas. More than 61 percent, or 583,921 persons, were already in the United States and adjusted their status to LPR. The total number of new LPRs fluctuated substantially over the last fifteen years, primarily due to processing delays for adjustments of status and backlogs at Immigration Services (see Figure 4).[13] The fluctuation in the total number of immigrants admitted every

year is thus driven, for the most part, by fluctuations in the numbers of status adjusters. As Figure 4 indicates, although the number of adjustments has varied greatly between 1986 and 2004, the number of new arrivals has remained relatively stable at about 400,000 per year. The trend toward adjustment of status as the dominant route to permanent immigration has developed over time and illustrates yet again the strong relationship between permanent and temporary migration.

Data considerations

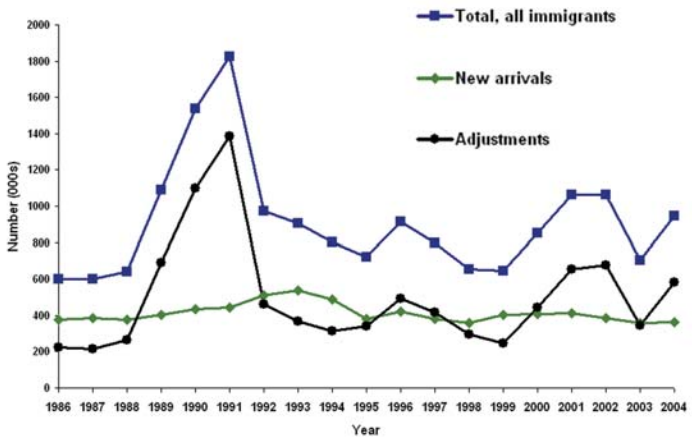
Given the high proportion of status adjusters (former nonimmigrants) in total permanent admissions, what can available immigration data say about the types of status adjusters and their rates of adjustment?

According to the most recently available data, about one-quarter of new LPRs who were status adjusters are former tourists (see Table 1).[14] The next largest group of status adjusters is comprised of refugees and parolees whose share varied from 42 percent in 1994 to 5 percent in 1999. The share of persons who entered the United States without inspection (unauthorized) and adjusted to permanent residence also varied from 28 percent in 1997 to less than 1 percent in 2001.[15] While the share of new LPRs who were temporary workers (or their family members) was about 10 percent before 1998, it has been increasing since then. Students and intracompany transferees together with their families made up less than 10 percent of all status adjusters in 2002.

Because of inadequate and incomplete data, it is not possible to calculate the proportion of temporary nonimmigrants that make the transition from temporary visas to LPR status. There are a few indirect estimates suggesting that as of 1994, as many as 38 percent of H-visa workers and over 21 percent of L entrants adjusted to LPR status.[16] Estimates for the late 1990s suggest that about half of H-1B workers eventually adjusted to LPR status although it is not clear how long it took them to do so.[17]

Some nonimmigrants also switch from one temporary visa to another before they adjust to LPR status. In one estimate in 1996, about one-fifth of the foreign students moved from F visas either directly, or indirectly through H-1B visas, to permanent status.[18] A more recent estimate suggests that about 7 percent of students adjust directly from an F visa either through

Figure 4. Immigrants admitted to the United States (in thousands), FY 1986 to 2004



Source: Department of Homeland Security, *Yearbook of Immigration Statistics, 2004*. Immigrants.

Table 1. Lawful permanent resident (LPR) status adjusters by previous nonimmigrant status (%), FY 1994 to 2002

Fiscal year	Of all immigrants whose status was known										
	With known prior status	% visitors for business	% tourists	% students	% temp workers	% exchange visitors	% fiances	% intracompany transferees	% refugees/ parolees	% entered without inspection	% other visitors
2002	389,342	1.6	23.6	4.8	22.4	-	4.8	3.9	25.9	10.9	2.1
2001	332,343	2.2	28.5	6.6	25.6	-	5.2	4.9	25.3	0.7	0.9
2000	234,128	2.9	29.4	6.9	19.0	1.2	5.1	5.3	16.2	13.9	-
1999	102,521	2.3	37.7	6.8	15.8	1.4	4.0	6.3	4.7	21.1	-
1998	150,380	1.5	27.0	5.3	14.5	1.4	2.0	6.0	16.0	26.2	-
1997	366,061	1.1	25.6	4.4	7.6	1.2	1.7	2.7	27.7	28.0	-
1996	439,245	1.2	26.1	4.5	8.2	1.2	1.7	2.7	26.7	27.7	-
1995	310,077	1.3	26.9	5.8	8.7	1.2	2.1	2.4	36.2	15.3	-
1994	293,753	1.4	25.4	10.1	10.3	2.5	2.7	2.9	42.2	2.6	-

Note: The following groups include spouses and children: students, temporary workers, exchange visitors, and intracomany transferees. Fiancé(ee)s include children.
Source: Department of Homeland Security, *Yearbook of Immigration Statistics*, various years.

employment sponsorship or marriage to a US citizen, while another 7 to 8 percent adjust via H visas.[19]

As this brief overview of available data indicates, the lack of high-quality data limits sound analysis of how many and what types of nonimmigrants become permanent immigrants, and how long it takes them to do so.

Conclusion

With the removal of the dual intent prohibition from an increasing number of temporary visas, a new system of admission has emerged that is neither nonimmigrant (temporary) nor immigrant (permanent). Rather is it a system of transitional (temporary-to-permanent) visas that allows visa holders to demonstrate their ability to be successful in the labor market and allows their employers to be assured that the visa holders are valuable to them and to the broader economy. This new system also reflects another reality, namely, the dissatisfaction of most economic actors with a permanent immigration system that fails to respond to robust and growing demand for foreign workers.

Much of today's permanent visa system, in fact, admits immigrants who have "learned the ropes" while on nonimmigrant visas. By the time these people seek to become LPRs, they have been exposed to American society, have local academic credentials and experience, and possess valuable language skills and access to crucial social networks. Therefore, any discussion of permanent immigration in the context of comprehensive immigration reform must consider the characteristics and evolution of the temporary nonimmigrant system. Moreover, the government's lack of high-quality data hinders understanding of the realities of immigration, thereby undermining the foundation of solid policymaking. As the calls for fixing the "broken system" increase, poor data quality must be addressed.

APPENDIX 1: Elements of the US permanent immigration system

This appendix describes the basic elements of the permanent immigration system. There is an overall limit on the number of immigrants admitted every year, within which certain categories of immigrants are not subject to numeric limitation and others are.

Classes not subject to numerical limitation

These categories include:

- Immediate relatives of US citizens;
- Certain surviving spouses of deceased US citizens, and their children;
- Certain children born to lawful permanent residents temporarily abroad;
- Refugees (there are limits on arrivals but not adjustments of status); and
- Others (including returning residents, asylees, certain former US citizens, and certain parolees).

Numerically limited classes

Classes of admission	Who qualifies	Numerical limitation
Preference classes		
FAMILY PREFERENCES:		226,000 *
First preference	US citizens' unmarried sons and daughters aged 21 and older	23,400 plus visas not required for 4th preference
Second preference	(A) Spouses and children of lawful permanent residents (LPRs) (B) Unmarried adult sons and daughters of LPRs	114,200 plus visas not required for 1st preference
Third preference	Married adult sons and daughters of US citizens	23,400 plus visas not required for 1st or 2nd preference
Fourth preference	Adult siblings of US citizens	65,000 plus visas not required for 1st, 2nd, or 3rd preference
EMPLOYMENT PREFERENCES:		140,000
First preference	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers	28.6% of worldwide limit plus unused 4th and 5th preference
Second preference	Members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business	28.6% of worldwide limit plus unused 1st preference
Third preference	Skilled shortage workers with at least two years training or experience, professionals with Bachelor's degrees Unskilled shortage workers	28.6% of worldwide limit plus unused 1st or 2nd preference 5,000 ** (taken from the total available for 3rd preference)
Fourth preference	Special immigrants (includes religious workers, certain doctors, certain employees/retirees of the US Government abroad, etc.)	7.1% of worldwide limit, of which religious workers are limited to 5,000
Fifth preference	Employment creation investors who invest at least $1 million (amount may vary in rural areas or areas of high unemployment) which will create at least 10 new jobs	7.1% of worldwide limit; 3,000 *minimum* reserved for investors in rural or high unemployment areas
Non-preference classes		
DIVERSITY IMMIGRANTS (Green card lottery winners)	Designed to provide immigration opportunities for aliens from countries from which immigration levels are low relative to the level from other countries	55,000

* The overall limit for relatives is 480,000, from which the previous year's total of relatives of US citizens and other groups of immigrants not subject to numerical limitation are deducted to determine the level of family-based preference immigration. However, a figure of 226,000 was established as a minimum for family-based preference immigration.

** Under statute, the limit is 10,000, but 5,000 are taken away temporarily by the Nicaraguan Adjustment and Central American Relief Act (NACARA) until all NACARA applicants are processed.

Source: US Department of State, Appendix A. Provisions of the Law and Numerical Limitations on Immigrant Visas. Available at http://travel.state.gov/pdf/FY2001%20app%20A.pdf.
Also, see US Department of Homeland Security, *Yearbook of Immigration Statistics, 2004.*

APPENDIX 2: Class of admission, time limits, and visa caps associated with each nonimmigrant visa

Class of admission	Name	Initial stay	Numerical limitations on the number of annual petitions	Extension	Maximum stay
TRANSIT ALIENS					
C-1*	Aliens in transit	Up to 29 days	-	No	Up to 29 days
C-2	Aliens in transit to the United Nations	Duration of status	-	N/A	Duration of status
C-3	Foreign government officials and families in transit	Up to 29 days	-	No	Up to 29 days
C-4	Transit without a visa	Up to 8 hours or next available flight	-	No	Up to 8 hours or next available flight
SHORT-TERM VISITORS					
B-1	Visitor for business	Variable, up to 1 year	-	Yes	Up to 6 months per extension. No maximum number of extensions
B-2	Visitor for pleasure	Standard admission is not more than 6 months, May be admitted for longer period, not exceeding 1 year, in special circumstances	-	Yes	Up to 6 months per extension. No maximum number of extensions
BE WB WT	Bering Strait Agreement entrants Waiver for business Waiver for tourist	90 days	-	No	90 days
GB GT	Temporary visitors for business in Guam Temporary visitors for pleasure in Guam	15 days	-	No	15 days
STUDENTS AND TEMPORARY WORKERS					
E-1 E-2	Treaty traders, spouses, children Treaty investors, spouses, children	Variable, up to 2 years	-	Yes	Up to 2 years per extension. No maximum number of extensions, with some exceptions.
E-3	Treaty aliens in specialty occupations (for Australian citizens only)**	Variable, up to 2 years	10,500 (for principal applicants)	Yes	Up to 2 years per extension. No maximum number of extensions.
F-1 F-2 J-1 J-2	Students -- academic institutions Spouses and children of F-1 Exchange visitors Spouses and children of J-1	Duration of status	-	N/A	Duration of status
M-1 M-2	Students -- nonacademic institutions Spouses and children of M-1	Variable, up to 1 year	-	Yes	Up to 1 year per extension. No maximum number of extensions.
H-1A	Registered Nurses	Variable, up to 3 years	The H-1A program ended in 1995	Yes	Up to 3 years per extension. Total stay limited to 5 years, with some exceptions.
H-1B	Temporary workers in specialty occupations	Variable, up to 3 years	65,000 (first time applications; no limit on extensions)***	Yes	Up to 3 years per extension. Total stay limited to 6 years, with further unlimited 1-year extensions for those who have adjustment of status applications pending
H-1C	Nurses in shortage areas	Variable, up to 3 years	The H-1C program ended in September 2004	Yes	Total stay limited to 3 years
H-2A H-2B	Temporary agricultural workers Temporary workers (skilled/unskilled)	Variable, up to 1 year (same as validity of labor certification)	- 66,000 (on H-2B)	Yes	Up to 1 year per extension. Total uninterrupted stay resulting from extensions limited to 3 years.
H-3	Industrial trainees	Special education training, up to 18 months; other trainee, up to 2 years	-	Yes	Special education trainee, total stay limited to 18 months. Other trainee, total stay limited to 2 years.
H-4	**Spouses and children of H workers**	Same as principal	-	Yes	Same as principal
I-1	Journalist and foreign media	Duration of employment	-	N/A	Duration of employment
L-1 L-2	Executive/managerial and specialized knowledge intracompany transferees Spouses and children of L-1	Variable, up to 3 years	-	Yes	Up to 2 years per extension. Those with specialized knowledge limited to 1 extension. Total limitation is 7 years for managers and executives and 5 years for those with specialized knowledge.
O-1 O-2 O-3	Temporary workers with extraordinary ability/achievement Temporary workers accompanying and assisting in performance of O-1 workers Spouses and children of O-1 and O-2	Variable, up to 3 years	-	Yes	Up to 1 year per extension. No maximum number of extensions.

P-1 P-2 P-3	Temporary workers - internationally recognized athletes or entertainers Temporary workers - artists or entertainers (reciprocal exchange programs) Temporary workers - artists or entertainers (culturally unique programs)	Athletic and entertainment groups, up to 1 year. Individual athletes, up to 5 years.	-	Yes	Athletic and entertainment groups, up to 1 year per extension, with some exceptions. Individual athletes, up to 5 years per extension, total stay limited to 10 years.
P-4	Spouses and children of P-1,P-2,P-3	Same as principal	-	Yes	Same as principal
Q-1	International Cultural Exchange Visitor	Variable, up to 15 months	-	Yes	Total stay limited to 15 months
Q-2 Q-3	Irish Peace Process Cultural and Training Program aliens Spouses and children of Q-2	Variable, up to 3 years	-	Yes	Total stay limited to 3 years
R-1 R-2	Religious workers Spouses and children of R-1	Variable, up to 3 years	-	Yes	Up to 2 years per extension. Total stay limited to 5 years.
TN TD	North American Free Trade Agreement (NAFTA) professional workers Spouses and children of TN	Variable, up to 1 year	-	Yes	Up to 1 year per extension. No maximum number of extensions.
DIPLOMATS, OTHER FOREIGN GOVERNMENT REPRESENTATIVES, AND EMPLOYEES OF INTERNATIONAL ORGANIZATIONS					
A-1 A-2 G-1 G-2 G-3 G-4 N-1 to N-6	Ambassadors, public ministers, career diplomatic or consular officers and spouses and children Other foreign government officials or employees, and spouses and children Principals of recognized foreign governments Other representatives of recognized foreign governments Representatives of unrecognized foreign governments International organization officers and employees North Atlantic Treaty Organization (NATO) aliens	Duration of status	-	N/A	Duration of status
A-3 G-5 N-7	Employee of A-1 Employee of A-2 Spouses and children of N1-6	Variable, up to 3 years	-	Yes	Up to 2 years per extension. No maximum number of extensions.
EXPECTED LONG-TERM RESIDENTS					
K-1 K-2	Fiancés(ees) of a US citizen Minor children of K-1	90 days	-	No	90 days to marry and apply to adjust status
K-3 K-4 V-1 to V-3	Alien spouse of a US citizen Alien child of a US citizen Spouse or child of a lawful permanent resident who has been waiting three years or more for an immigrant visa (and dependent children)	Variable, up to 2 years	-	Yes (with restrictions)	Up to 2 years per extension. No maximum stay.
N-8 N-9	Parents of international organization special immigrants Children of N-8	Variable, up to 3 years	-	Yes	Up to 3 years per extension. No maximum stay.
T-1 to T-4	Victims of severe forms of trafficking in persons, spouse of T-1, child of T-1, parent of T-1 (if T-1 is under 21 years old)	3 years	5,000 (T-1 visas for principals only; no limit for dependents).	No	Victims of severe forms of trafficking may apply for permanent resident status 90 days before expiration of their 3-year admission period.
U-1 to U-4	Victim of certain criminal activites, spouse of U-1, child of U-1, parent of U-1 (if U-1 is under 21 years old)	Regulations not yet published.	-	-	-

Note: *C-1 suspended as of August 23, 2003

**Modeled after H-1B visa with some elements of E treaty visa (see INA Section, Section 101(a)(15)(E)(iii))

***Of the 65,000 visas, 6,800 are set aside for the H-1B1 program under terms of the US-Chile (1,400 visas) and US-Singapore (5,400 visas) Free Trade Agreements. Nonprofit organizations and institutes of higher education are exempt from the cap. Beginning May 2005, 20,000 more H-1B visas became available for foreign students who completed a graduate program in American universities.

Source: US Department of Homeland Security

The table was adapted from Grieco, E. 2005. *Length of Visit of Nonimmigrants Departing the United States in 2003*, Appendix 1. Available on October 10, 2005 at http://uscis.gov/graphics/shared/statistics/publications/LengthVstNonim2003.pdf.

APPENDIX 3: Differences in counting nonimmigrants

There are two ways of counting nonimmigrants:

1. In the DHS Office of Immigration Statistics (OIS) figures, nonimmigrant admissions are recorded for each arrival. A nonimmigrant may travel on the same (or different) visa back and forth between the United States and another country within the same year. Every time this person enters the United States, the entry is recorded and added to the total number of admissions for that fiscal year. Therefore, the count of admissions exceeds the number of individuals arriving.

The number of individuals who entered the United States on a temporary visa just one time in 2004 totals 22.6 million; 3.2 million individuals entered the country more than once.[20]

2. The US Department of State (DOS) counts how many and what type of visas are issued to foreign nationals in overseas consulates and embassies every fiscal year. The number of nonimmigrants arriving in the United States does not match the number of nonimmigrant visas issued by overseas consulates in the same fiscal year. There are a number of reasons for this difference. First, not all foreign nationals need a visa to enter the United States. Nationals of twenty-seven countries that are part of the Visa Waiver Program (e.g., the UK, Ireland, France, Germany, Japan, etc.) can travel to the United States without a visa if they come for a period of less than ninety days as tourists or business travelers. Second, most nonimmigrant visas are valid for several years and an unlimited number of entries. And third, some people may choose not to travel to the United States even if they obtain a visa, or they may choose to travel in a subsequent year. In 2004, DOS issued 5,049,083 nonimmigrant visas.[21]

The different methods of counting nonimmigrants reflect administrative differences between agencies that issue foreign nationals temporary visas (Department of State) and screen them at the port of entry (Department of Homeland Security). But it introduces confusion about who is counted and how many arrive in the country at any given point in time.

APPENDIX 4: Increasing data problems in reporting prior status of certain lawful permanent residents

Although it is not clear why the percent of unreported/missing cases increased from 12 percent in 1997 to 50 percent in 1998, most likely it has to do with data processing. Such a dramatic increase in missing data coincided with the transfer of immigration data processing to a new system in 1998. Data specialists think that because previous (nonimmigrant) status is not one of the fields required to adjudicate an application, some service centers stopped keying it into the database. It is possible for processing centers to restore this important piece of information: the adjudicated (past) applications can be matched by a unique identifier and the new applications (present) can be entered with all information in them. Unfortunately, the Office of Immigration Statistics, the only source of immigration data, has little leverage in how the data are collected and processed.

Total lawful permanent residents, status adjusters, and percent of status adjusters with unknown/not reported prior status: FY 1994 to 2002

Fiscal year	Total number of LPRs	Status adjusters	
		Total	% Unknown/not reported/other
2002	1,063,732	679,305	42.7
2001	1,064,318	653,259	49.1
2000	849,807	442,405	47.1
1999	646,568	244,793	58.1
1998	654,451	303,440	50.4
1997	798,378	417,659	12.4
1996	915,900	494,495	11.2
1995	720,461	340,170	8.8
1994	804,416	313,987	6.4

Source: Immigration and Naturalization Services (INS), *2002 Yearbook of Immigration Statistics,* 2003.

ENDNOTES

1 All years for immigration statistics refer to fiscal years unless otherwise indicated.

2 Travel Industry Association of America, www.tia.org; and Stephen Yale-Loehr, Demetrios Papademetriou, and Betsy Cooper, *Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era.* (Washington, DC: Migration Policy Institute, 2005), http://www.migrationpolicy.org/pubs/visa_report.pdf.

3 Demetrios Papademetriou and Kevin O'Neil, "Efficient Practices for the Selection of Economic Migrants" (Brussels, Belgium: European Commission, DG Employment and Social Affairs, 2004), http://europa.eu.int/comm/employment_social/employment_analysis/docs/select_econ_migr1.pdf.

4 The Legal Immigration Family Equity (LIFE) Act and its amendments established the V visa category that allows certain spouses or children of an LPR to live and work in the United States in a nonimmigrant category. The spouse or child can remain in the country until they are able to apply for lawful permanent residence status or for an immigrant visa, instead of having to wait outside the United States as the law previously required. This visa category is available only for those who have been waiting for at least three years for their petitions to be approved or for immigrant visas to become available.

5 The letter in the visa name refers to the paragraph in the Immigration and Nationality Act (INA). For example, an F-1 foreign student visa refers to paragraph F(i) in the INA, which describes the purpose and eligibility requirement for this visa.

6 Appendix 3 explains how the Departments of Homeland Security and State — the federal agencies that have most nonimmigrant-related responsibilities — collect and record information on foreign nationals with temporary visas.

7 In 2004, there were about 179 million nonimmigrants admitted to the United States, of whom 148 million (83 percent) were exempt from completing the I-94 arrival/departure form at the port of entry. These nonimmigrants are from two groups: Canadians who travel to the United States for business or pleasure, and Mexicans who possess a nonresident alien Border Crossing Card (i.e., laser visa). DHS only reports the characteristics of I-94 nonimmigrants, who accounted for 30.8 million temporary admissions in 2004.

8 Nonimmigrant data gathered by the Department of Homeland Security (DHS) counts admissions, not individuals. This means that if the same person entered the United States three times under the same or different visa within the same (fiscal) year, he or she would be counted three times.

9 The United Nations defines a long-term migrant as a person who moves to a country other than that of his or her usual residence for a period of at least a year (twelve months), so that the country of destination effectively becomes his or her new country of usual residence. From the perspective of the country of departure, the person will be a long-term emigrant and from that of the country of arrival, the person will be a long-term immigrant. United Nations, "Recommendations on Statistics of International Migration (Revision 1)." United Nations, Statistical Papers Series M, No. 58, Rev. 1, (New York, NY, 1998), http://unstats.un.org/unsd/publication/SeriesM/SeriesM_58rev1E.pdf.

10 For more information see Deborah W. Meyers, *Temporary Worker Programs: A Patchwork Policy Response*, MPI *Insight* Prepared for the Independent Task Force on Immigration and America's Future (Washington, DC: Migration Policy Institute, January, 2006), http://www.migrationpolicy.org/ITFIAF/Insight-7-Meyers.pdf.

11 For example, a person comes to the United States as a student and while on a student visa, marries a US citizen. Her spouse can petition US Citizenship and Immigration Services on her behalf to adjust her status to lawful permanent residence. Family reunification would be the basis for her adjustment. Under certain circumstances, illegally residing foreigners can also adjust to LPR status. Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104-208), a person who is unlawfully present in the United States for more than 180 days but less than one year is inadmissible for three years, and a person who is unlawfully present for more than one year is inadmissible for ten years. Therefore, if such a person becomes eligible for admission as an immigrant and comes forward to apply while still unlawfully present, he or she is still considered inadmissible for a period of time depending on the duration of unlawful residence. That means that such a person has to leave the United States for three or ten years before he or she can apply for lawful permanent residence. However, at various times in the past, Congress has authorized exemptions to these provisions. For instance, under Section 245(i) of the INA, persons who would be otherwise eligible for LPR status when a visa becomes available may have petitions filed on their behalf even though they were unlawfully present. It is also possible to transition from illegal to a quasi-legal status such as temporary protected status (TPS) and then be admitted as an immigrant, although one would have to qualify as immigrant through one of the regular channels; TPS does not lead directly to any other status. Finally, Congress has also passed laws retroactively allowing special categories of people who have been in the United States illegally to adjust their status if they meet certain criteria. In all such cases, the "illegal presence" prohibitions were waived. The Nicaraguan Adjustment and Central American Relief Act (NACARA) is but one such example.

12 Papademetriou and O'Neil, "Efficient Practices," 18.

13 Immigration services were conducted by the Immigration and Naturalization Service (INS) prior to 2003, and are now conducted by US Citizenship and Immigration Services (USCIS) under the Department of Homeland Security.

14 Due to data quality concerns, the Office of Immigration Statistics (OIS) stopped publishing data on status adjusters by previous status from 2003 on. As Appendix 4 shows, about 50 percent of the data were missing in the five years before 2002.

15 From 1995 to 2000, unauthorized immigrants were able to adjust to LPR according to the INA Section 245(i).

16 See David S. North, "Some Thoughts on Nonimmigrant Student and Worker Programs," in *Foreign Temporary Workers in America: Policies That Benefit the U.S. Economy*, edited by B. Lindsay Lowell (Westport, CT: Quorum Books, 1999) 57-94.

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21 This number includes the combination of B1/B2 and Border Crossing Cards (n=740,616). US Department of State, "Visa Office Report: Classes of Nonimmigrants Issued Visas," 2005, http://travel.state.gov/pdf/visa_office_report_table_xvi.pdf.

Additional Readings

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About the Author

Jeanne Batalova

Jeanne Batalova is a Policy Analyst at the Migration Policy Institute, where she focuses on the impacts of immigrants on social structures and labor markets; integration of immigrant children and elderly immigrants; and the policies and practices regulating immigration of highly skilled workers and foreign students. She is also Data Manager for the *Migration Information Source*, a one-stop, web-based migration resource for journalists, policymakers, opinion shapers and researchers.

Before joining MPI, Dr. Batalova was working on her dissertation regarding the economic impact of highly skilled immigrants in the United States. It will be published in 2006 as a monograph titled *Skilled Immigrant and Native Workers in the United States: The Economic Competition Debate and Beyond*. Recently, she co-authored a study on children with limited English proficiency and their academic literacy outcomes (with MPI's Julie Murray and Michael Fix) and a study on characteristics of elderly immigrants in the United States (with UCI's Judith Treas).

She received her PhD in Sociology from the University of California - Irvine, MBA from Roosevelt University, and BA in Economics from the Academy of Economic Studies, Chisinau, Moldova.

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MIGRATION POLICY INSTITUTE

1400 16th Street NW
Suite 300
Washington, DC 20036

202 266 1940
202 266 1900 (fax)

www.migrationpolicy.org
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