2017 Employment and Diversity-Based Visas: Why Birthright Citizenship Is Not All That Is Wrong With America's Immigration System

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Employment and Diversity-Based Visas: Why Birthright Citizenship Is Not All That Is Wrong With America’s Immigration System

As the American immigration system presently operates, various incongruities exist for those seeking to permanently immigrate to the United States. Requirements and processing times differ greatly depending on an individual’s home country and the type of relationship the individual has with a U.S. sponsor (e.g., familial vs. employment based). For example, as of December 2016, the most recent application under review for brothers and sisters of U.S. citizens from the Philippines is from May 22, 1993, while the EB-5’s employment-based visa processing date for investors from the Philippines is listed as “Current.” Consider the hypotheticals of Maria Guinto and Maricris Llamador Gunigundo:

Maria Guinto is a 32-year-old woman from the Philippines. Her only brother, Erik Lumaban, is a United States citizen. Erik is the only family that Maria has left, as her parents were killed in a car accident when she and Erik were both very young and neither of her parents had any brothers or sisters. Thus, Maria wishes to join her brother and his wife in the United States and to become a U.S. citizen herself. To do so, Maria must prove that she has a qualifying family relationship. In this case, the fact that Maria is the sister of a U.S. citizen places her in the fourth family-sponsored preference. As such, Maria will wait over twenty years for her turn to obtain a legal immigrant visa. This does not include the time it will take U.S. Citizenship and Immigration Services (USCIS) to process her application, which can be up to sixteen months, or longer, depending on the volume of applications.

On the other hand, Maricris Llamador Gunigundo, a wealthy Filipino investor, has made his fortune by constructing and operating high-end hotels in and around the Philippines. Maricris is an avid traveler and frequently travels to the United States on vacation. However, Maricris is unhappy with the amount of time it takes for him to obtain visitor visas to the United States and with the lines he must stand in when entering the country. Thus, Maricris decided that he would like to obtain an American green card to enter and exit the United States more easily. He then decided that he is willing to invest the required $1 million in a new commercial enterprise in the United States. This investment will qualify Maricris for the fifth employment-based category, or an EB-5 visa. As such, USCIS will
review Maricris’s application immediately, though he may experience some wait time for USCIS to actually process his application. This hypothetical illustrates just one of many discrepancies that exist in the American immigration system today and highlights the unfair advantages that the very wealthy are provided over those seeking to join their families here in the United States. As such, the United States should alter its immigration system by reallocating the EB-5 employment-based visas and all diversity lottery visas to the family-sponsored category in order to increase the number of visas granted to family members of lawful permanent residents and U.S. citizens each year.
INTRODUCTION

During the second Republican (“GOP”) primary debate on September 16, 2015, Senator and Presidential Candidate Marco Rubio outlined his views on immigration reform, stating: “[America needs] to modernize our legal immigration system so you come to America on the basis of what you can contribute economically, not whether or not simply you have a relative
The Senator’s comment also rings true with many other Americans. Generally thought to be based on ability and achievement, for a great majority of immigrants the “American Dream” provides a chance to create a better life for their children and families. However, for many immigrant families, achieving the American Dream can quickly become a lost effort due to the negative effects of family separation and having to choose between country and family.

With limited exceptions, America’s current immigration system annually accepts 675,000 permanent immigrants worldwide. Immigration to the United States is prioritized based upon the principles of reunifying families and “admitting immigrants with skills that are valuable to the U.S. economy, protecting refugees, and promoting diversity.” Noticeably, the “[p]reference allocation for family-sponsored immigrants” is the first category of immigrant visas discussed in the Immigration and Naturalization Act (“INA”) Section 203. This is important because family reunification has been, and should remain, at the heart of America’s immigration system. Family-based visas seek to accomplish the goal of reunification. However, with visa opportunities available that hinder that policy, such as the “immigrant investor” visas (EB-5) and diversity lottery

2. JAMES TRUSLOW ADAMS, THE EPIC OF AMERICA 404 (1931) (describing the American Dream as “that dream of a land in which life should be better and richer and fuller for everyone, with opportunity for each according to ability or achievement.”).
5. IMMIGRATION POLICY CTR., AM. IMMIGRATION COUNCIL, HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS 1 (2016) [hereinafter HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS], https://www.americanimmigrationcouncil.org/sites/default/files/research/how_the_united_states_immigration_system_works.pdf [https://perma.cc/8G7B-53P9].
6. Id.; see also U.S. Citizenship and Immigration Services Fee Schedule, 81 Fed. Reg. 73,292, 73,296 (Oct. 24, 2016) (to be codified at 8 C.F.R. pts. 103, 204, and 205) (stating USCIS “understands the importance of facilitating family reunification”).
visas, it is hard to see how our current immigration system is advancing that goal.

Today, America’s immigration system allows for five specific types of immigration: (1) family-based immigration; (2) employment-based immigration; (3) diversity immigration; (4) refugee and asylee immigration; and (5) other forms of humanitarian relief. However, this Comment will discuss only family-based immigration, a single type of employment-based immigration (EB-5), and diversity immigration.

In 2015, the number of persons who obtained lawful permanent resident (“LPR”) status via the family-sponsored preferences totaled 213,910; the number of persons who obtained LPR status via the employment-based preferences totaled 144,047; and the number of persons who obtained LPR status via the diversity lottery system totaled 47,934. While these numbers may suggest the success of the family-sponsored LPR program, serious deficiencies remain. Among those waiting for their application to become “current” in order to gain entry to the United States

9. See AM. IMMIGRATION COUNCIL, THE EB-5 VISA PROGRAM: WHAT IT IS AND HOW IT WORKS 1 (2016) [hereinafter THE EB-5 VISA PROGRAM: WHAT IT IS AND HOW IT WORKS], https://www.americanimmigrationcouncil.org/sites/default/files/research/eb-5_visa_program_-_what_it_is_and_how_it_works.pdf [https://perma.cc/MA86-NEPU] (explaining that there are 10,000 EB-5 visas available of the 675,000 total visas available each fiscal year); see also IMMIGRATION POLICY CTR., AM. IMMIGRATION COUNCIL, DIVERSITY VISA SYSTEM: A FACT SHEET 1 (Apr. 4, 2011) [hereinafter DIVERSITY VISA SYSTEM: A FACT SHEET], https://www.americanimmigrationcouncil.org/sites/default/files/research/Diversity_Visa_System_Fact_Sheet_040411.pdf [https://perma.cc/77JZ-JK4H] (explaining that there are 50,000 diversity visas available of the 675,000 total visas available each fiscal year).

10. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, supra note 5.

11. All statistical data in this Comment has been updated as of December 29, 2016, unless otherwise noted.


14. When an application becomes “current,” the priority date in which the foreign national’s petition for a visa to the United States was filed meets the most recent qualifying date and can continue to be processed. Family-Based Immigrant Visas, BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, http://travel.state.gov/content/visas/en/immigrate/
are 310,884 unmarried sons or daughters of United States citizens, 700,212 spouses and children or unmarried sons and daughters of current LPRs, 781,810 married sons or daughters of United States citizens, and 2,466,667 brothers and sisters of adult United States citizens. As of November 2016, many of these family members’ applications are backlogged from February 2015 and even as far as December 2003. Given these and other problems, immigration remains a hot-button issue, with many Americans contending the immigration system needs an upgrade.

This Comment discusses the immigration system of the United States and the need to (1) eliminate the EB-5, employment-based visa category, and (2) dispose of the diversity lottery in order to limit the disparity of visa opportunities for family-based immigration applicants. Part I of this Comment provides a brief history and a general explanation of America’s immigration system and how certain current visa systems operate. Part I also includes more in-depth information on the family-based, employment-based, and diversity visas. Part II of this Comment provides an overview of the strengths and weaknesses of the employment-based and diversity-based visa programs, and why the number of family-sponsored visas should be increased. Part III addresses the counterarguments to increasing family-sponsored visas, including concerns about the ability of family-sponsored immigrants to provide for themselves without family/family-preference.html#1 [https://perma.cc/93PD-QJPW] [hereinafter Family-Based Immigrant Visas].


16. Visa Bulletin: Immigrant Numbers for December 2016, supra note 15. See infra Section II.B (discussing the way these numbers fit into America’s overall immigration scheme and what each means).

government support and the opportunity for family-sponsored immigrants to change America’s culture. Ultimately, this Comment concludes that while there are possible disadvantages to increasing the number of family-sponsored visas, the benefits greatly outweigh any costs associated with doing so. As such, the United States should alter its immigration system by reallocating the EB-5 employment-based visas and all diversity lottery visas to the family-sponsored category to increase the number of visas granted to family members of LPRs and U.S. citizens each year.

I. HISTORY AND EXPLANATION OF AMERICA’S IMMIGRATION SYSTEM

America’s current immigration system is a tangled and complicated mess of policy and statutes. This Part provides a brief introduction to America’s immigration system. Section I.A provides a basic overview of America’s immigration system and its history. Section I.B provides a more in-depth explanation of the family-sponsored, employment-based, and diversity lottery visa categories.

A. America’s Immigration System: An Overview

The INA is the comprehensive body of law governing America’s immigration policy. Congress created the INA in 1952 to help organize all of the previously enacted immigration statutes in the United States. Introduced as the McCarran-Walter Act of 1952, this bill compiled all of the immigration laws in Title 8 of the United States Code. Not only did the INA centralize America’s immigration laws, but it also provided for “a major revision of the existing immigration and nationality laws.” The 1952 INA was the predecessor of the current United States visa selection.

19. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, supra note 5, at 1.
It provided a quota system of four major categories, with 50% allotted “to aliens with high education or exceptional abilities” and the other three categories “divided among specified relatives of U.S. citizens and permanent resident aliens.” This system placed a high priority on national origin as the determining factor for immigrant admission. In 1965, Congress again made notable changes to America’s immigration system by amending the 1952 INA. The 1965 amendments repealed the national origins quota system and substituted a system focused on distributing immigrant visas via a seven-category preference system. The next major adjustment to the INA occurred in 1990. The Immigration Act of 1990 included provisions that increased skilled labor positions.

A Department of Homeland Security (DHS) Customs and Border Protection (CBP) officer authorizes immigrant admission to the United States. Upon arriving in the United States, a visa “allows [an individual] to travel to the port-of-entry and request permission to enter the United States.” A CBP officer authorizes admission of all non-US citizens at the port-of-entry. That CBP officer will also determine how long an individual may remain in the U.S. on any particular visit. Upon entry, “how long you can stay and the immigration classification you are given is shown as a recorded date ... on your admission stamp or paper Form I-94.

24. Id.
25. Id.
26. See id.
27. Id.
28. This preference system places priority on reunification of families, needed skills, and refugees. Id.
29. Prior to 1990, the issue of illegal immigration was addressed in the Immigration Reform and Control Act (IRCA) of 1986. Id. This was an important change in how America dealt with illegal immigration but is outside the scope of this Comment.
33. Id.
34. Id.
35. Id.
Arrival/Departure Record." Additionally, "[i]f you want to stay longer than the date authorized, you must request permission from DHS."§

Generally speaking, to obtain admission to the United States on a family-based immigrant visa, the individual’s relative, who is a United States citizen residing in the United States, must file a Petition for Alien Relative (I-130) with USCIS, a subsection of DHS. The filing date of the petition is critical because it is considered the applicant’s “priority date.” After USCIS approves the I-130, USCIS sends it to the National Visa Center (NVC) where it is assigned a case number. NVC then holds the petition until “an applicant’s priority date meets the most recent qualifying date.”

In order to proceed, an applicant must then consult the Visa Bulletin, which “indicates when statutorily limited visas are available for issuance to prospective immigrants based on their individual priority date.”

36. Id.
37. Id.
38. Family-Based Immigrant Visas, supra note 14. Further, if the United States citizen is filing for a sibling or parent, he or she must be age twenty-one or older. Id.
40. Family-Based Immigrant Visas, supra note 14.
41. Id. “Priority date” is the date that determines a person’s turn to apply for an immigrant visa. In family immigration, the priority date is the date when the petition was filed at a DHS office or submitted to a U.S. Embassy or Consulate abroad. In employment immigration, the priority date may be the date the labor certification application was received by the Department of Labor (DOL).
42. Family-Based Immigrant Visas, supra note 14. The NVC gives each immigrant petition a case number. This number has three letters followed by ten digits (numbers). The three letters are an abbreviation for the overseas embassy or consulate that will process the immigrant visa case . . . .

The digits tell us exactly when NVC created the case. For example a case with the number MNL2001747003 would be a case assigned to the U.S. Embassy in Manila. 2001 is the year in which NVC received the case from USCIS (formerly INS). The petition was received at the NVC on September 1st, which is the 247th day of the year, so 747 represents the ordinal date (247) plus 500. The 003 shows that it was the third case created for Manila on that day.

43. Family-Based Immigrant Visas, supra note 14.
differently, the Visa Bulletin system provides a way to calculate the available number of visas for the individual preference categories of both the family and employment-based visas each year.\textsuperscript{45} These categories are further divided into preference categories subject to the Visa Bulletin.\textsuperscript{46} For example, family-sponsored immigration is broken into four preference categories: (1) unmarried sons and daughters of U.S. citizens; (2) spouses and children of LPRs and unmarried sons and daughters of LPRs; (3) married sons and daughters of U.S. citizens; and (4) brothers and sisters of U.S. citizens (if petitioner is twenty-one years or older).\textsuperscript{47} Each preference category is assigned a priority date\textsuperscript{48} based on the type and preference of the visa applied for.\textsuperscript{49} These priority dates then help determine when an oversubscribed category is cut off\textsuperscript{50} from processing until more visas of that type become available.\textsuperscript{51} The U.S. Department of State describes this process as follows:

Whenever the number of qualified applicants for a category exceeds the available immigrant visas, there will be an immigration wait. In this situation, the available immigrant visas will be issued in the chronological order in which the petitions were filed using their priority date. The filing date of a petition becomes what is called the applicant’s priority date. Immigrant visas cannot be issued until an applicant’s priority date is reached. In certain categories with many approved petitions compared to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{45} How the United States Immigration System Works, supra note 5, at 1–3.
\item Diversity visas are not subject to the Visa Bulletin in the same way the family-sponsored and employment-based categories are. Instead, they are awarded on a lottery system. Diversity Visa System: A Fact Sheet, supra note 9.
\item Id.
\item The Visa Bulletin is published each month by the U.S. Department of State Bureau of Consular Affairs and its priority dates are subject to change accordingly. Visa Bulletin, Bureau of Consular Affairs, U.S. Dep’t of State, http://travel.state.gov/content/visas/en/law-and-policy/bulletin.html [https://perma.cc/J6EQ-D7N7].
\item How the United States Immigration System Works, supra note 5, at 1–3.
\item The date for “cut off” is defined as
[i]the date that determines whether a preference immigrant visa applicant can be scheduled for an immigrant visa interview in any given month. When “C” (meaning Current) is listed instead of a specific date, that means all priority dates are eligible for processing. The cut-off date is the priority date of the first applicant who could not be scheduled for a visa interview for a given month. Applicants with a priority date earlier than the cut-off date can be scheduled. However, if your priority date is on or later than the cut-off date, you will need to wait until your priority date is reached (becomes current).
\item U.S. Visas: Glossary, supra note 32.
\end{itemize}
\end{footnotesize}
available visas, there may be a waiting period of several years, or more, before a priority date is reached.\(^5\)

Once an applicant’s priority date is current, the Application to Register Permanent Residence or Adjust Status\(^5\) must be filed and is used to apply to adjust\(^5\) to LPR status.\(^6\)

The process for obtaining admission to the United States with an employment-sponsored visa is similar to that for a family-based visa, with some exceptions. For an employment-based visa, an “applicant’s prospective employer or agent must first obtain a labor certification\(^6\) approval from the Department of Labor.”\(^7\) The employer must then file an Immigrant Petition for Alien Worker\(^8\) with USCIS according to the applicable employment-based preference category.\(^9\) USCIS will then either accept or deny the petition; if approved, the petition will be sent to the NVC and assigned a case number.\(^10\) Similar to the family-based process for obtaining an immigrant visa, the applicant must then wait for

\(^{52}\) *Family-Based Immigrant Visas*, supra note 14.


\(^{54}\) Adjustment of status refers to the process where an eligible applicant shifts from nonimmigrant to immigrant (LPR) status while maintaining his or her presence in the United States. See generally U.S. Visas: Glossary, supra note 32.


\(^{56}\) Labor certification is the initial stage of the process by which certain foreign workers get permission to work in the United States. The employer is responsible for getting the labor certification from the Department of Labor. In general, the process works to make sure that the work of foreign workers in the United States will not adversely affect job opportunities, wages and working conditions of U.S. workers. U.S. Visas: Glossary, supra note 32.


\(^{58}\) To access Form I-140, which is the employment-based version of the I-130, refer to: U.S. Citizenship & Immigration Servs., Dep’t of Homeland Sec., Form I-140, Immigrant Petition for Alien Worker, http://www.uscis.gov/sites/default/files/files/form/i-140.pdf [https://perma.cc/FQX4-6PJ6].

\(^{59}\) Employment-Based Immigrant Visa, supra note 57.

\(^{60}\) Id.
their priority date to meet “the most recent qualifying date,” taking into consideration the Visa Bulletin, as described above.\textsuperscript{61}

Severe discrepancies exist among processing dates depending on an individual’s preference category and home country. For example, the most current priority date\textsuperscript{62} for a family-sponsored visa is February 22, 2015\textsuperscript{63} for spouses and children of LPRs, not including those from Mexico, while the most recent application being reviewed for brothers and sisters of U.S. citizens from the Philippines is from May 22, 1993.\textsuperscript{64} On the other hand, the EB-5’s employment-based visa processing date is listed as “Current” as of December 2016, with the exception of those from China, which has a current processing date of March 22, 2014.\textsuperscript{65} This means that anyone, except those from China, currently wishing to have their application processed for an EB-5 visa may do so immediately while spouses, children, and siblings of both LPRs and citizens could have to wait another year at best, and at most roughly another twenty-five years.

While America’s immigration system can be confusing as a whole, navigating the individual visas can be even more challenging. The family-sponsored, employment-based, and diversity visa programs discussed in this Comment are discussed in the next section.

B. The Family-Sponsored, Employment-Based, and Diversity Visa Programs

The family-sponsored, employment-based, and diversity visa programs, though similar in many aspects, can vary widely in practice. This Section provides a more in-depth explanation of the family-sponsored, employment-based, and diversity lottery visa categories, specifically the qualifications and requirements necessary for each.

1. Family-Sponsored Visa Program

The family-sponsored preference category, like every other immigrant visa category, has certain requirements that must be fulfilled in order for

\textsuperscript{61} Id.
\textsuperscript{62} As a reminder, these dates represent an applicant’s priority date, and “immigrant visas cannot be issued until an applicant’s priority date,” or processing date, is reached. See Family-Based Immigrant Visas, supra note 14.
\textsuperscript{63} Visa Bulletin: Immigrant Numbers for December 2016, supra note 15, at 2. This was the most current date as of the writing of this Comment. See infra Appendix A for the Family-Sponsored Visa Bulletin from December 2016.
\textsuperscript{64} Id.
\textsuperscript{65} Id. at 4. See infra Appendix B for the Employment-Based Visa Bulletin from December 2016.
one to become eligible to apply. For example, “a U.S. citizen or LPR sponsor must petition for an individual relative...[.] meet minimum income requirements, and sign an affidavit of support stating that the sponsor will be financially responsible for the family member(s) upon arrival in the United States.” In total, there are 480,000 family-based visas available every year, though the number of visas issued often exceeds the number available. In order to determine how many of the 480,000 family-based visas may be allotted to the preference categories, the U.S. Department of State subtracts the number of immediate relative visas from the 480,000 available and distributes the remaining visas throughout the family preference categories. The total distributed throughout the remaining categories may not, by law, be less than 226,000. Any unused employment-visas from the previous fiscal year may also be used as additional family-preference visas.

There are two ways by which family members of United States citizens or LPRs may bring certain family members to the United States as a means of legal immigration. First, in certain circumstances,
family-based immigrants may be admitted as immediate relatives.\textsuperscript{76} Second, individuals may immigrate through the family preference system.\textsuperscript{77} The family preference system is broken into four distinct categories.\textsuperscript{78} The first category, F1, includes unmarried sons or daughters of U.S. citizens and their minor children.\textsuperscript{79} The second category, F2, includes spouses, minor children and unmarried sons and daughters, age twenty-one or older, of LPRs.\textsuperscript{80} The third category, F3, includes married sons and daughters of U.S. citizens and their spouses and minor children.\textsuperscript{81} Lastly, the fourth category, F4, includes brothers and sisters of U.S. citizens, and their spouses and minor children (as long as the petitioner is at least twenty-one years old).\textsuperscript{82} The number of visas applicable to each category includes: F1 (23,400);\textsuperscript{83} F2 (114,200);\textsuperscript{84} F3 (23,400);\textsuperscript{85} and F4 (65,000).\textsuperscript{86} Here, it is important to note that only a spouse, parent,\textsuperscript{87} son or daughter (twenty-one years or older), or brother or sister may petition for a foreign relative to apply for immigration to the United States.\textsuperscript{88} This means “[g]randparents, aunts, uncles, in-laws, and cousins cannot sponsor a relative for immigration,”\textsuperscript{89} contrary to what many Americans believe.


\textsuperscript{77} How the United States Immigration System Works, supra note 5, at 1.

\textsuperscript{78} Family-Based Immigrant Visas, supra note 14.

\textsuperscript{79} Id.

\textsuperscript{80} Id.

\textsuperscript{81} Id.

\textsuperscript{82} Id.


\textsuperscript{84} Id. § 1153(a)(2).

\textsuperscript{85} Id. § 1153(a)(3).

\textsuperscript{86} Id. §1153(a)(4).

\textsuperscript{87} See id. § 1101(b)(2) for the immigration definition of “parent.”

\textsuperscript{88} Family-Based Immigrant Visas, supra note 14.

\textsuperscript{89} Id.
2. Employment-Based Visa Program

The employment-based visa program gives foreign immigrants an opportunity to become permanent residents of the United States via an employer.90 Approximately 140,000 employment-based visas are available each year.91 The five preference categories for employment-based immigrant admission include: first preference EB-1 (priority workers), second preference EB-2 (professionals holding advanced degrees and persons of exceptional ability), third preference EB-3 (skilled workers, professionals, and unskilled workers (other workers)), fourth preference EB-4 (certain special immigrants), and fifth preference EB-5 (immigrant investors).92

The EB-1 preference category is further broken into subcategories, which include aliens with extraordinary ability, outstanding professors and researchers, and multinational executives or managers.93 Aliens with extraordinary ability include foreign nationals who demonstrate “extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim. [The] achievements must be recognized in [his or her] field through extensive documentation.”94 Similarly, an outstanding professor or researcher

must demonstrate international recognition for . . . outstanding achievements in a particular academic field . . . [h]ave at least 3 years[‘] experience in teaching or research in that academic area . . . [and] must be entering the United States in order to pursue tenure or tenure track teaching or comparable research position at a university or other institution of higher education.95

USCIS designates particular evidence that aliens with extraordinary ability and outstanding professors and researchers must provide to prove they qualify for the status they claim.96 Lastly, a multinational manager or executive

90. Employment-Based Immigrant Visa, supra note 57.
91. Id.
94. Id.
95. Id.
96. Id.
must have been employed outside the United States in the 3 years preceding the petition for at least 1 year by a firm or corporation and ... must be seeking to enter the United States to continue service to that firm or organization. ... [One’s] employment must have been outside the United States in a managerial or executive capacity and with the same employer, an affiliate, or a subsidiary of the employer.97

The EB-2 preference category includes aliens with advanced degrees, those with exceptional ability, or aliens seeking a national interest waiver.98 In order to qualify for the EB-2, an alien with an advanced degree must apply for a job that “require[s] an advanced degree and [the alien] must possess such a degree or its equivalent (a baccalaureate degree plus 5 years progressive work experience in the field).”99 An alien claiming exceptional ability must show exceptional ability in sciences, arts, or business.100 Aliens requesting a national interest waiver “are requesting that the Labor Certification be waived because it is in the interest of the United States.”101 Similar to the EB-1, those aliens seeking an EB-2 must provide certain evidence proving the status they wish to claim.102

The EB-3 includes aliens who are professionals, skilled workers, and unskilled workers.103 Professionals must establish that they hold a U.S. baccalaureate degree or its foreign degree equivalent, and that this type of

97. Id.
99. Id.
100. Id. Exceptional ability means “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” Id.
101. Id.; see also National Interest Waiver, U.S. CITIZENSHIP & IMMIGRATION SERVS., Dep’t of Homeland Sec., https://www.uscis.gov/eir/visa-guide/eb-2-employment-based-second-preference/national-interest-waiver [https://perma.cc/SMA4-GBP7] (explaining that “when deciding whether to grant a waiver of the labor certification requirement, USCIS looks at all of the evidence to see whether the national benefits [the alien] offer[s] are so great that they outweigh the national interests inherent in the labor certification process,” and that the “purpose of the labor certification process is to protect the national interests of the United States by ensuring that the wages and working conditions of U.S. workers employed in the same field would not be adversely affected.”).
degree is normally required for entry into their occupation. Further, professionals “must be performing work for which qualified workers are not available in the United States.” Skilled workers must show at least two years of either job experience or training and, like professionals, must show they are “performing work for which qualified workers are not available in the United States.” On the other hand, unskilled workers “must be capable, at the time the petition is filed . . . of performing unskilled labor (requiring less than [two] years training or experience), that is not of a temporary or seasonal nature, for which qualified workers are not available in the United States.” Every subcategory in the EB-3 requires labor certification and “a permanent, full-time job offer.”

The EB-4 preference category consists of “special immigrants.” Special immigrants currently include: religious workers, broadcasters, Iraqi and Afghan translators, Iraqi and Afghan nationals who have assisted the U.S., International Organization employees, physicians, Armed Forces members, Panama Canal Zone employees, NATO-6 employees, and their family members. The special immigrants in the EB-4 category have two options when petitioning for an immigrant visa: (1) an employer can file a Petition for Amerasian, Widow(er), or Special Immigrant, or (2) the special immigrant may self-petition as an employee.

Lastly, only investors and entrepreneurs may qualify for an EB-5 visa. Arguably the most controversial type of employment-based visa,


104. Id.
105. Id.
106. Id.
107. Id.
108. Id.
109. Permanent Workers, supra note 92.
this Comment proposes it should be cut. The EB-5 preference category is also known as the Immigrant Investor Program.\footnote{114} This type of immigrant visa allows foreign investors, subject to certain criteria, to apply for green cards within the United States.\footnote{115} Congress created the EB-5 Immigrant Investor Program in 1990 to stimulate the United States’ economy.\footnote{116} The program, administered by USCIS, creates new jobs and invites foreign investors to invest a minimum of $500,000 venture capital in “targeted employment areas”\footnote{117} or $1 million generally.\footnote{118} This program requires that all investors invest in new commercial enterprises.\footnote{119} A new commercial enterprise is a “commercial enterprise”\footnote{120} established after November 29, 1990, or, if established on or before November 29, 1990, a commercial enterprise that is (1) “[p]urchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or (2) [e]xpanded through the investment so that at least a 40-percent increase in the net worth or number of employees occurs.”\footnote{121} An important aspect of the EB-5 program is that it requires the creation or preservation of “full-time positions for at least 10 qualifying employees.”\footnote{122}

Currently, Congress allows 140,000 visas through the employment-based visa program each year.\footnote{123} Of that total, the EB-1, EB-2, and EB-3 categories “shall first be made available in a number not to

\footnote{114}{Id.}
\footnote{115}{Immigration and Naturalization Act (INA), 8 U.S.C. § 1153(b)(5) (Supp. III 2012).}
\footnote{117}{A targeted employment area is “an area that, at the time of the investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.” Id. A rural area is “any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more according to the most recent decennial census of the United States.” Id.}
\footnote{118}{Id.}
\footnote{119}{Id.}
\footnote{120}{A commercial enterprise is defined as “any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to: [a] sole proprietorship[,] [p]artnership (whether limited or general)[,] [h]olding company[,] [j]oint venture[,] [c]orporation[,] [b]usiness trust, or [o]ther entity, which may be publicly or privately owned.” Id. A commercial enterprise does not include “noncommercial activity such as owning and operating a personal residence.” Id.}
\footnote{121}{Id.}
\footnote{122}{Id.}
\footnote{123}{How the United States Immigration System Works, supra note 5, at 4.}
exceed 28.6 percent of such worldwide level.”124 Further, visas in the EB-4 and EB-5 categories “shall be made available, in a number not to exceed 7.1 percent of such worldwide level.”125 Accordingly, the EB-1 has a yearly numerical limit of 40,000, plus any unused visas from the EB-4 and EB-5 preference categories.126 The EB-2 has a yearly numerical limit of 40,000, plus any unused visas from the EB-1 preference category.127 The EB-3 has a yearly numerical limit of 40,000, plus any unused visas from the EB-1 and EB-2 preference categories (however, unskilled laborers are restricted to 5,000).128 Lastly, the EB-4 has a yearly limit of 10,000, as does the EB-5.129 The INA also further limits how many foreign nationals from each country may immigrate to the United States under any one category.130 As such, a single country may not “exceed seven percent of the total amount of people immigrating to the United States in a single fiscal year.”131

3. Diversity Lottery Visa Program

The Immigration Act of 1990 created the diversity lottery visa system, which allows legal immigration from countries with low rates of immigration to the United States.132 Diversity lottery visa holders are typically from countries within Africa, Asia, and Eastern Europe that have “fewer than 50,000 total immigrant admissions over the preceding five years,”133 but no one single country is permitted to receive more than 7% of

124. Immigration and Naturalization Act (INA), 8 U.S.C. § 1153(b)(1) (Supp. III 2012); see §§ 1153(b)(2)(A), (b)(3)(A). The “worldwide level” refers to the 675,000 legal permanent immigrant visas that the INA provides may be given out each year. NAT’L COUNCIL OF LA RAZA, BASIC FACTS ON IMMIGRATION 2 (2004), http://www.lawhelp.org/files/7C92C43F-9283-A7EO-5931-E57134E903FB/attachments/B2DAF111-BDB8-656B-F313-C5E6ECD70F65/300391file_BasicFacts_on_immigration_final[1].pdf [https://perma.cc/GG5R-AXYW]. This number is then further divided amongst the visa categories subject to the worldwide level; for example, the family-based visa category is allotted 480,000 of that 675,000. Id.
125. 8 U.S.C. § 1153(b)(4); see also § 1153(b)(5)(A).
126. HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS, supra note 5, at 4–5.
127. Id.
128. Id.
129. Id.
130. Id. at 5.
131. Id.
132. DIVERSITY VISA SYSTEM: A FACT SHEET, supra note 9, at 1; RUTH ELLEN WASEM & KARMA ESTER, CONG. RESEARCH SERV., RS21342, IMMIGRATION: DIVERSITY VISA LOTTERY 1 (2004).
133. DIVERSITY VISA SYSTEM: A FACT SHEET, supra note 9, at 1–2.
the diversity visas available in that year.134 This system provides an available route to legal immigration for those who do not have family or employment opportunities that would otherwise allow for immigration to the United States.135 Today, the diversity ceiling is set at 50,000 visas.136 Each principal visa recipient is also allowed to obtain visas for his or her spouse and children.137 This particular category of immigrant visa consists of about 4% of all LPR admissions annually.138

In order to apply for the diversity lottery, applicants must (1) be a native (or married to a native) of one of the qualifying countries, (2) “have a high school education or its equivalent, or [two] years’ experience in an occupation which requires at least [two] years of training or experience, and [(3)] be admissible under the Immigration and Nationality Act (INA).”139 Applications are completed online, and winners are chosen via a random computerized selection.140 Those who are chosen are notified by the State Department and then have a limited period of time to complete and file the required paperwork, showing they are still eligible for admissibility to the United States as LPRs.141

Once the Department of State notifies the diversity lottery winner that their application was selected, the process by which the winner receives a visa depends on where the foreign national resides.142 For example, a lottery winner living outside the United States will immigrate via consular processing, where the U.S. embassy in the lottery winner’s home country

135. DIVERSITY VISA SYSTEM: A FACT SHEET, supra note 9, at 1.
137. DIVERSITY VISA SYSTEM: A FACT SHEET, supra note 9, at 1. For example, in 2015, the United States awarded diversity lottery visas to 24,374 principals (new arrivals), 10,723 spouses (new arrivals), and 11,569 children (new arrivals). 2015 YEARBOOK OF IMMIGRATION STATISTICS, supra note 13, at 23.
138. DIVERSITY VISA SYSTEM: A FACT SHEET, supra note 9, at 1.
139. Id.
140. Id.
141. Id.; WASEM & ESTER, supra note 132, at 5.
will issue the immigrant visa.\textsuperscript{143} Other lottery winners, who are legally residing in the United States either through a nonimmigrant visa or through other legal means, must apply to USCIS at the time of their notification in order to adjust status.\textsuperscript{144} Adjustment of status in this case requires a foreign national to show (1) he or she was chosen to receive a diversity visa through the diversity lottery, (2) there is an immigrant visa immediately available upon filing the Application to Register Permanent Resident or Adjust Status,\textsuperscript{145} and (3) admissibility to the United States.\textsuperscript{146} In order to determine if a visa is available, the lottery winner is subject to the most recent Visa Bulletin, but not in the same way family-sponsored and employment-based immigrant visas are subject to the Visa Bulletin.\textsuperscript{147} The Diversity Lottery’s Visa Bulletin\textsuperscript{148} is divided into two sections: B and C.\textsuperscript{149} Section B provides the visa availability for the current month, while Section C provides the visa availability for the subsequent month, both of which are divided into Diversity Immigrant categories by region (e.g., Africa, Asia, Europe, etc.).\textsuperscript{150}

The chart in Section B demonstrates the number of Diversity lottery visas allotted for each particular region for the current month.\textsuperscript{151} These numbers are important because “[w]hen the cut-off is met, visas will be available in that month for the applicants with Diversity Immigrant lottery rank numbers below the specified cut-off numbers for their geographic areas.”\textsuperscript{152} Section C, on the other hand, contains a chart that shows the following month’s cut-off, or the “advance notification of Diversity Immigrant visa availability.”\textsuperscript{153} This means that anyone with a rank

\begin{itemize}
\item \textsuperscript{144} Green Card Through the Diversity Immigrant Visa Program, supra note 142.
\item \textsuperscript{145} Id.
\item \textsuperscript{146} Id. Admissibility is controlled by Immigration and Naturalization Act (INA), 8 U.S.C. § 1182(a) (Supp. III 2012). Aliens deemed inadmissible under this statute are “ineligible to receive visas and ineligible to be admitted to the United States.” Id. Requirements may include, but are not limited to, an alien’s health, criminal history, association with terrorist organizations, previous removal from the United States, or accrual of unlawful presence. Id.
\item \textsuperscript{147} See Green Card Through the Diversity Immigrant Visa Program, supra note 142.
\item \textsuperscript{148} See infra Appendix C.
\item \textsuperscript{149} Id.
\item \textsuperscript{150} Id.; see also Visa Bulletin: Immigrant Numbers for December 2016, supra note 15, at 6.
\item \textsuperscript{151} Green Card Through the Diversity Immigrant Visa Program, supra note 142.
\item \textsuperscript{152} Id.
\item \textsuperscript{153} Id.
\end{itemize}
number that is lower than the cut-off number provided in Section C’s chart is eligible to file for adjustment of status.\textsuperscript{154} Not only does this allow lottery winners the opportunity to file for adjustment of status up to seven weeks before a visa number can be set aside, it also gives USCIS more time to decide whether an individual is eligible for adjustment of status before the fiscal year ends.\textsuperscript{155} It is important to note that an adjustment application for an individual hoping to adjust through the diversity lottery system cannot be adjudicated until a visa can be set aside for that particular individual.\textsuperscript{156}

In comparing the total numbers allotted to each of the family-based, employment-based, and diversity visas above, it is noticeable that the majority of visas are already allotted to the family-based visa category.\textsuperscript{157} Yet, there are still millions of husbands, wives, children, brothers, and sisters waiting to be reunited with their family members here in the United States.\textsuperscript{158} However, instead of uniting those families, America’s current immigration system allows 10,000 visas per year to go to foreign nationals that can afford the $500,000 or $1 million EB-5 visa, and 50,000 visas to those who are lucky enough to be chosen in the diversity-based visa program.\textsuperscript{159} Congress can better accomplish its goal of family reunification by redistributing visas from the employment-based and diversity lottery visa categories to the family-based preference category.

\textbf{II. WHY THE NUMBER OF FAMILY-SPONSORED VISAS SHOULD BE INCREASED: A PLEA TO CONGRESS}

The employment-based and diversity lottery visa systems are burdens to family reunification because Congress could reallocate the visas currently allotted to the employment-based and diversity categories to family-based visas. There are several problems with the EB-5 and diversity lottery systems. When weighed against the benefits of the family-sponsored system, it becomes clear that Congress should eliminate these problematic systems, and free up 60,000 visas for the family

\begin{itemize}
  \item \textsuperscript{154} Id.
  \item \textsuperscript{155} Id.
  \item \textsuperscript{156} Id.
  \item \textsuperscript{157} There are 480,000 visas available in the family-based category, 140,000 visas available in the employment-based category, and 50,000 visas available in the diversity visa category. \textit{How the United States Immigration System Works}, \textit{supra} note 5, at 2–6.
  \item \textsuperscript{158} Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2016, \textit{supra} note 15, at 2.
  \item \textsuperscript{159} See discussion infra Sections I.B.2–3.
\end{itemize}
members of immigrants. This Part begins by addressing the weaknesses and strengths of the EB-5 and diversity lottery systems before delving into an analysis of why the family-sponsored system should receive more visas.

A. Employment-Based and Diversity Lottery Visas: Why Changes Must Be Made

In the past few decades, American lawmakers placed a higher focus on employment-based visas and appear to have forgotten the importance of family reunification.\textsuperscript{160} In fact, Congress has placed such high emphasis on skills-based visas that foreign nationals can now seemingly “purchase” visas via the EB-5 employment-based preference category. These visas may inevitably lead to citizenship in the United States; therefore, immigrants may effectively purchase citizenship.\textsuperscript{161} Additionally, America’s diversity lottery is an arbitrary and random aspect of our immigration system that is subject to few applicant requirements. Both of these methods of distributing American visas should be eliminated.

1. Controversy with the EB-5 Visa

The EB-5 visa category allows foreign nationals to effectively purchase American green cards.\textsuperscript{162} University of Chicago Law School professor Eric Posner labeled this program as a “scam.”\textsuperscript{163} Texas Congressman John Bryant referred to this program as “sell[ing] our [American] birthright” and questioned our “self-respect as a nation.”\textsuperscript{164} This program is essentially allowing wealthy foreign nationals “to cut the

\textsuperscript{160.} For example, in a July 2015 report, the Obama Administration made suggestions on how to streamline America’s immigration system, all of which included ways to positively impact employment-based visas. The report did not propose any changes to the family-based visa processes. \textit{WHITE HOUSE, MODERNIZING \& STREAMLINING OUR LEGAL IMMIGRATION SYSTEM FOR THE 21ST CENTURY} 29–30 (July 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/final_visa_modernization_report1.pdf [https://perma.cc/7WRY-GWAN].


\textsuperscript{162.} See Rajan, \textit{supra} note 161; see also \textit{EB-5 Immigrant Investor Program}, \textit{supra} note 113 (explaining that under the EB-5 program, those immigrants that are granted an EB-5 visa are eligible to apply for a green card (lawful permanent residence)).

\textsuperscript{163.} Rajan, \textit{supra} note 161.

visa line ahead of others who have waited for years” by buying their citizenship.165 Further, many foreign nationals in search of an EB-5 visa “buy the visa as a security cover for their families and themselves if they were to ever be forced to leave their country, or prefer to have their sons and daughters ultimately settle down in the US.”166

In addition, the EB-5 program is fraught with fraud and corruption.167 Because an investor’s concern with the minimum $500,000 investment is often minimal compared to the desire for a green card from the United States, a particularly high risk of fraud exists within the EB-5 program.168 Over one hundred complaints were filed with the Securities and Exchange Commission (SEC) between January 2013 and January 2015 regarding possible securities fraud within the EB-5 visa program.169 One such case began in February 2013.170 The SEC charged Anshoo Sethi, a regional center171 operator in Chicago, for fraud when he allegedly cheated “$11 million in administrative fees from over 250 investors” after convincing


166. Rajan, supra note 161.


them to invest in his hotel project that was invalid due to improper building permits. More recently, in April of 2016, the SEC charged Ariel Quiros and William Stenger with fraud when they allegedly “made false statements and omitted key information while raising more than $350 million from investors [under the EB-5 Immigrant Investor Program] to construct ski resort facilities and a biomedical research facility in Vermont.” Similarly, in June of 2016, the SEC charged Charles C. Liu and Xin “Lisa” Wang, a husband and wife pair, with fraud when they misused roughly two-thirds of the $27 million “they raised from investors for the purpose of building and operating a new cancer treatment center that would use proton beam radiation to help oncology patients in Southern California.”

However, supporters of the EB-5 program would argue that advantages do exist. In theory, this program brings in billions of dollars to the U.S. economy and helps create tens of thousands of jobs in the United States. Further, much of that capital is directed to underserved areas in desperate need of investment. Unfortunately, there is very little data to confirm these claims, and “[a]nalysis of available data strongly suggest that the failure rate has been very high, and that the economic

175. See, e.g., The EB-5 Visa Program: What It Is and How It Works, supra note 9.
176. Id.
benefits provided by the EB-5 program have been negligible, at best.”\textsuperscript{179} Further, a 2005 Government Accountability Office report, which evaluated the execution of the program from 1992 to 2004, found that “after 12 years the EB-5 program had only led to $1 billion (instead of the predicted $48 billion) in investments and there was no reliable accounting of jobs created.”\textsuperscript{180} Thus, due to the unfairness, fraud, corruption, and lack of success of the EB-5 program, it should be eliminated in favor of programs promoting family reunification.

2. \textit{Problems with the Diversity Lottery System}

The diversity lottery system is a chance-based system granting American green cards on the luck of the draw. Critics of the diversity lottery point out a major problem in the way in which this system is organized, because recipients of this visa may “not have the same ‘stake in our country’s success’ as family and employment-based immigrants.”\textsuperscript{181} Not only is this system completely arbitrary in that “winners” are not chosen due to familial ties or a particular skill set needed in the United States, the diversity system actually hinders what it claims to provide: diversity.\textsuperscript{182} As explained above, Congress organized the diversity lottery system based on geographical region and prohibits foreign nationals from certain countries from applying.\textsuperscript{183} For example, natives from Bangladesh, Nigeria, Peru, Canada, China, the United Kingdom, and Brazil, among others, are not eligible to apply for the diversity lottery program because an excess of 50,000 natives from these countries have immigrated to the United States in the past five years.\textsuperscript{184} Therefore, many critics of this


\textsuperscript{180}. Id.; see also 2015 \textit{Yearbook of Immigration Statistics}, supra note 13, at 18 (showing that the first year the maximum number of visas were actually approved was 2014, and that from 2006 to 2013, the largest number of EB-5 visas approved in any single year did not exceed 8,600).


\textsuperscript{183}. Id.

\textsuperscript{184}. Id.
program claim that it “does not diversify the American population; instead, the program only diversifies the immigrant population.” This is important to note in considering whether the diversity lottery is doing what it claims to do.

Further, just as with the EB-5 visa, the diversity lottery system is rampant with fraud. Both the Department of State and USCIS provide warnings on their websites to caution against the fraudulent means scammers are using to steal money from diversity lottery applicants. For example, the Federal Trade Commission has received hundreds of reports from diversity lottery applicants who received emails, phone calls, or letters from scammers informing them that they had “won” the lottery and requiring them to remit payment via wire transfer. This, however, is a scam as the only way an applicant can check his status is through the Department of State’s website. Other scammers may try to charge applicants money in exchange for assisting with the application or promise to increase one’s chances of being selected. These are also scams as there is no application fee for entering the diversity lottery, and drawing for the lottery is both computerized and random. On the other hand, some applicants actually defraud the system itself “by submitting multiple entries, sometimes under false aliases, . . . seek[ing] to increase their

185. Chapaska, supra note 181, at 71.
186. Id.
190. Mendez, supra note 189.
192. Id.; Mendez, supra note 189.
chance of selection in the lottery."\textsuperscript{193} If the applicant is selected under one
such alias, he or she “must then obtain and use fraudulent documents to
support the visa application.”\textsuperscript{194} Thus, considering the lack of diversity this
program actually provides and the amount of fraud involved, Congress
should eliminate the diversity lottery system and reallocate its 50,000 visas
to promote family reunification in the family-sponsored visa categories.

B. Importance of Family Reunification: Why America Must Reform Its
Immigration System

Congress needs to reevaluate the American immigration system by
refocusing on family reunification.\textsuperscript{195} The family has rightfully been
described as “the nucleus of civilization and the basic social unit of
society” and “the linchpin of society, both economically and socially.”\textsuperscript{196}
Thus, family reunification is important for many reasons. Three in
particular guide the argument for the reevaluation of America’s current
immigration system: (1) the central role families play in incorporating new
immigrants socially; (2) the economic contribution family-sponsored visa
holders make to American society;\textsuperscript{197} and (3) the impact family
reunification could have on decreasing illegal immigration to the United
States.\textsuperscript{198} This Section will discuss these reasons in turn.

\textsuperscript{193} Chapaska, supra, note 181, at 76; see also Diversity Visa Program and Its
Susceptibility to Fraud and Abuse: Hearing Before the Subcomm. on Immigration Border
Dr. Steven A. Camarota, Ph.D., Director of Research, Center for Immigration Studies).

\textsuperscript{194} Diversity Visa Program and Its Susceptibility to Fraud and Abuse, supra note 193,
at 2.

\textsuperscript{195} Immigration Backlogs Are Separating American Families, NAT’L IMMIGRATION
FORUM (July 26, 2012), https://immigrationforum.org/blog/immigration-backlogs-are-
separating-american-families/ [https://perma.cc/KTP2-AVKE]; Family Reunification
site/c.7oJILSPwFJSG/h.8452641/k.1633/Family_reunification_and_employment_visas.htm
[https://perma.cc/92KR-KB8X]; see generally PATRICIA HATCH, LEAGUE OF WOMEN
files/ImmigrationStudy_FamilyReunification_Hatch.pdf [https://perma.cc/H6HY-3E4C];
see generally IMMIGRATION POLICY CTR., AM. IMMIGRATION COUNCIL, THE ADVANTAGES OF
FAMILY-BASED IMMIGRATION 1 (Mar. 2013) [hereinafter THE ADVANTAGES OF FAMILY-
BASED IMMIGRATION], https://www.americanimmigrationcouncil.org/sites/default/files/
research/fact_sheet_on_family_immigration_0.pdf [https://perma.cc/T73H-TVPP].

\textsuperscript{196} William Bennett, Stronger Families, Stronger Societies, N.Y. TIMES (Apr. 24, 2012,
6:43 PM), http://www.nytimes.com/roomfordebate/2012/04/24/are-family-values-outdated/
stronger-families-stronger-societies [https://perma.cc/TCJ2-6XRQ].

\textsuperscript{197} THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, supra note 195, at 1–2.

\textsuperscript{198} See HATCH, supra note 195, at 4.
1. Families’ Central Role in the Societal Incorporation of New Immigrants

The assimilation of new immigrants into our society relies heavily on family and communities. Families “help each other adjust to their new surroundings by pooling resources and sharing responsibilities.” Families and the communities they create “operate as sources of critical resources for newcomers, including opportunities for employment, access to credit, and different kinds of support.” Different kinds of support could include health care, childcare, and elder care. Family members who provide household care and are not employed in the traditional sense “have a major impact on individual and public well-being, as well as on the human development potential of [a] country.” These “readily available” resources give new immigrants a means of support until they can obtain employment or create their own business venture. During a 2013 hearing on the separation of nuclear families under U.S. Immigration Law, the American Jewish Committee gave the following congressional testimony:

Allowing immigrant families to more easily reunite with their loved ones strengthens our economy and promotes a strong social fabric in our communities. Promoting family unity incentivizes integration and economic development, as families provide strong foundations for learning English, purchasing a home, pursuing job opportunities, starting a business, preparing children for college, and strengthening the foundation of our communities. When families are together, the money they earn fuels the U.S. economy through taxes, investments, and the purchasing of goods and services. Because of the strong economic and social value of family unity, enhancement of the family immigrant visa category must be a priority of immigration reform.

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199. The Advantages of Family-Based Immigration, supra note 195, at 1.
201. The Advantages of Family-Based Immigration, supra note 195, at 1.
202. Id. at 2–3.
204. The Advantages of Family-Based Immigration, supra note 195, at 1.
By having additional family members to take care of the home, children, and elderly, other family members who are employed in the traditional sense can continue to support the family as a whole and ultimately contribute to the economy.\(^{206}\)

Additionally, family structure directly affects the American economy. Studies show that both parents contributing to household income, as opposed to only one parent making an income, reduces poverty rates.\(^{207}\) Growing up with both parents is also associated with higher levels of educational and occupational achievement.\(^{208}\) Further, children in two parent households also grow up with less cognitive, emotional, and social problems as “[d]ual-parent households often maintain higher standards of living, therefore providing more effective parenting skills with less stressful life circumstances.”\(^{209}\) Therefore, it is important that Congress allow both parents of immigrant children to immigrate to or remain in the United States in order to maintain stable households. This allows children to stay in school and ultimately contribute to America’s economy.

Thus, family reunification directly affects both the American society and economy. For immigrants who left family behind, a change in the number of family-sponsored visas could mean bringing their family to America, thereby supplementing their support system.\(^{210}\) Similarly, those families who are in the United States with a parent (or other family member) waiting to obtain LPR status via consular processing outside of the United States would directly benefit from family reunification in the creation of a more stable home environment.\(^{211}\) Thus, by reallocating employment-based and diversity lottery visas to family-sponsored categories, a higher rate of family reunification would be possible.

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\(^{206}\) **The Advantages of Family-Based Immigration**, supra note 195, at 3.

\(^{207}\) Households with two parents that are able to contribute to the family income are less susceptible to fall into financial hardship as households with only one parent able to contribute financially. Melinda Kedro, *Data on Single Parent vs. Dual Parent Households*, The Bump, [http://living.thebump.com/data-single-parent-vs-dual-parent-households-15860.html](http://living.thebump.com/data-single-parent-vs-dual-parent-households-15860.html) [https://perma.cc/5DBQ-TZ7D].


\(^{209}\) Kedro, supra note 207.

\(^{210}\) **The Advantages of Family-Based Immigration**, supra note 195, at 1–2.

\(^{211}\) Id.
2. The Family-Based Versus Employment-Based Visa Holder Contributions

Family-based visa holders contribute to America’s economy and eventually tend to earn more than employment-based visa holders. However, there is a commonly held misconception that family-sponsored visa holders will not be able to support themselves upon arriving in the United States and will instead be doomed to become a “public charge.”

The idea is “[s]ince immigrants admitted under an occupation preference already have skills valued by a U.S. employer, it seems likely that their human capital is more readily transferable to the U.S. labor market than kinship-admitted immigrants.”

However, while many employment-based visa holders have a pre-determined manner in which they will support themselves, “[t]he initial differences in earnings between family-based and employment-based immigrants tend to narrow dramatically over time[,]” allowing new family-sponsored immigrants to “become the most upwardly mobile of American workers.” This upward mobility will benefit not only the immigrants themselves but also the economy at large.

Additionally, communities created by immigrant families positively contribute to America’s economy through the development of big business. Businesses owned by immigrant families are becoming a critical piece in the puzzle to the “revitalization and job growth in nearly every major metropolis, from New York and Miami to Chicago and Los Angeles.”

212. Id. at 2.
213. Public charge “refers to becoming dependent upon the government for the expenses of living (food, shelter, clothing, etc.).” U.S. Visas: Glossary, supra note 32.
216. THE ADVANTAGES OF FAMILY-BASED IMMIGRATION, supra note 195, at 1 (noting that “[t]his is explained by their high rates of post-immigration human capital investment.”). “Human capital investment activities include learning English, pursuing various forms of informal and formal U.S. schooling and training, and becoming knowledgeable about U.S.-specific institutions, production methods, and technical terms.” Duleep & Dowhan, supra note 215, at 33.
218. Id. at 1–2.
Evidence shows “extended immigrant families and close-knit immigrant communities ease the economic assimilation of new immigrants and promote investment in U.S. human capital as well as the formation of businesses.”\(^\text{219}\) Between 1995 and 2005, immigrants founded, or assisted in founding, 25% of high tech companies.\(^\text{220}\) As of 2013, “40% of the largest U.S. companies [were] founded by immigrants or their children.”\(^\text{221}\) In a 2013 survey by the National Venture Capital Association, 13% of the immigrant founders in the survey were family-sponsored visa holders including companies such as Google, eBay, Intel, and Yahoo!\(^\text{222}\)

Lastly, families who are permitted to come to the U.S. and maintain their family unit via family-sponsored visas help keep money within the American economy.\(^\text{223}\) It is not uncommon for immigrants to send money home to help provide for family members they left behind in their home countries.\(^\text{224}\) However, if Congress permitted those family members to enter the U.S. via family-sponsored visas, money that would otherwise be sent abroad can instead be invested domestically.\(^\text{225}\) In 2013 alone, an


\(^{220}\) The Advantages of Family-Based Immigration, supra note 195, at 1 (quoting Harriet Orcutt Duleep & Mark C. Regets, Family Unification, Siblings, and Skills, in IMMIGRANTS AND IMMIGRATION POLICY: INDIVIDUAL SKILLS, FAMILY TIES, AND GROUP IDENTITIES 219, 238 (Harriet Orcutt Duleep & Phanindra V. Wunnava eds., 1996)).


\(^{222}\) Id.


\(^{224}\) Asian American Justice Center, supra note 219, at 2.


\(^{226}\) Asian American Justice Center, supra note 219, at 2.
estimated $53.8 billion in remittances were sent to Spanish-speaking Latin American countries.\textsuperscript{227} Of those remittances, nearly all of the $22 billion to Mexico came from the United States.\textsuperscript{228}

3. \textit{Reducing Illegal Immigration Rates}

Legal family reunification will help decrease the illegal immigration rates currently encouraged by America’s immigration system.\textsuperscript{229} Family reunification needs to be made a higher priority in America’s immigration system. The huge delay in processing times illustrates this need because “[e]ach year that the current family preference and country quotas remain in place, the backlogs increase, and the waits for families to reunite grow longer, testing the patience of everyone involved.”\textsuperscript{230}

Upon review of the December 2016 Visa Bulletin, visa processing for unmarried sons and daughters of U.S. citizens (F1) from Mexico may now occur for those who hold a priority date earlier than April 15, 1995.\textsuperscript{231} Visa processing for married sons and daughters of U.S. citizens (F3) from the Philippines may now occur for those who hold a priority date earlier than August 15, 1994.\textsuperscript{232} Visa processing for spouses and children of LPRs (F2A) for all countries may now occur for those who hold a priority date earlier than February 22, 2015.\textsuperscript{233} These numbers illustrate the extremely long wait period—over twenty years—for some applicants and the discrepancy in wait time between the different preference categories. As if these numbers are not discouraging enough, the waiting periods for each category often do not advance in real time.\textsuperscript{234} For example, upon review of the November 2016 Visa Bulletin, the processing date for unmarried sons and daughters of U.S. citizens from Mexico was April 8, 1995.\textsuperscript{235} Thus,

\begin{itemize}
\item \textsuperscript{227} D’Vern Cohn, Ana Gonzalez-Barrena, & Danielle Cuddington, \textit{Remittance Trends}, PEW RES. CTR.: HISP. TRENDS (Nov. 14, 2013), http://www.pewhispanic.org/2013/11/14/2-remittance-trends/ [https://perma.cc/RQY5-H4B7].
\item \textsuperscript{228} Id.
\item \textsuperscript{229} See Hatch, supra note 195, at 4.
\item \textsuperscript{230} Id. at 3.
\item \textsuperscript{231} Visa Bulletin: Immigrant Numbers for December 2016, supra note 15, at 2.
\item \textsuperscript{232} Id.
\item \textsuperscript{233} Id. The one exception in this category is Mexico. Any spouse or child of an LPR with a priority date of February 15, 2015 from Mexico may have his or her visa processed. Id.
\item \textsuperscript{234} Hatch, supra note 195, at 3.
\end{itemize}
one month later the processing date had only advanced seven days. Additionally, the processing date for married sons and daughters of U.S. citizens from the Philippines was August 8, 1994, and one month later that date had also only advanced seven days.236 Lastly, the processing date for spouses and children of LPRs for all countries was January 22, 2015.237

In comparing the Visa Bulletin from November 2016 to December 2016, within a span of only one month, the only category that has advanced in real time is that for spouses and children of LPRs.238 Even more alarming is the fact that some processing times have advanced as little as one week for other categories.239 With such little advancement in processing times, it could be twenty years before married sons and daughters of U.S. citizens from the Philippines can legally join their family members in the United States.240 The Independent Task Force on Immigration and America’s Future deems these waiting periods “inhumane,” stating that “such waits mean that a large portion of such individuals’ productive working years that make immigration a good investment will have passed by the time many ever arrive in the United States.”241

Further, many relatives of U.S. citizens and LPRs who wish to someday obtain an immigrant visa do not qualify for non-immigrant visas “on the grounds that they are ‘intending immigrants’ and likely to overstay their visas. Thus, all legal channels for the family to reunite in the U.S. within a reasonable period of time are effectively blocked.”242

As a result, many family members search for another way to enter the United States, often via an illegal entry.243 In 2014, there were an estimated 11.1 million illegal immigrants in the United States.244 Also in

237. Visa Bulletin: Immigrant Numbers for December 2016, supra note 15, at 2. Again, with the exception of Mexico which has a priority date of January 8, 2015 for this visa category. Id.
240. Hatch, supra note 195, at 3.
241. Id. (quoting Meissner, Et. Al., Migration Policy Inst., Immigration and America’s Future: A New Chapter 22 (Sept. 2006)).
242. Id. at 4.
243. Id.
244. Jens Manuel Krogstad, Jeffrey S. Passel & D’Vera Cohn, 5 Facts About Illegal Immigration in the U.S., Pew Res. Ctr. (Nov. 3, 2016), http://www.pewresearch.org/fact-
2014, Immigration and Customs Enforcement (ICE) conducted a total of 315,943 removals, 213,719 of which were individuals attempting to enter the United States unlawfully. 245 On top of that, there are a considerable number of individuals that illegally enter the U.S. undetected. Arguably, there is a direct correlation between the separation of families as a result of America’s inefficient family-based visa system and illegal immigration. 246 Family reunification can play an important role in curbing illegal entry into the United States and an overhaul of America’s immigration system is needed to help do so. Thus, because of the central role families play in incorporating new immigrants socially, the economic contribution family-sponsored visa holders make to American society, and the impact family reunification could have on decreasing illegal immigration to the United States, family-sponsored visas should take priority over alternative, problematic immigration programs.

III. FAMILY V. ECONOMY: POTENTIAL COUNTERARGUMENTS TO INCREASING FAMILY-SPONSORED VISAS

While family reunification has always been, and must continue to be, a cornerstone of the American immigration system, many Americans and critics of our current immigration system do not believe that the number of family-sponsored visas should be increased. 247 Opponents of this idea believe immigrants who are granted a visa will bring additional family members with them, thereby creating other substantial problems for America’s economy, culture, and overall wellbeing. 248 For example, many Americans believe that increasing family-sponsored visas will cause job
opportunities for native-born Americans to dwindle.\textsuperscript{249} Adherents of this idea believe an increase in immigrants will lead to an increase in the amount of foreign-born workers “taking” American jobs.\textsuperscript{250} This idea, known as the “Lump of Labor,” posits that there is only so much work to go around and if a foreign-born immigrant takes a job, he or she is ultimately taking that job from someone else (arguably, a native-born American).\textsuperscript{251} While it is true that as of November 2014, “1.5 million fewer native-born Americans [were] working than in November 2007, [and] 2 million more immigrants (legal and illegal) were working,”\textsuperscript{252} it is important to note that unemployment rates for both foreign-born and native-born workers ages sixteen and older have been roughly the same from 2000 to 2014.\textsuperscript{253} Often times the unemployment rates for native-born Americans and immigrants are separated by only a fraction of a point.\textsuperscript{254} For example, in 2014, the unemployment rate for native-born workers was 5.6%, while the employment rate for foreign-born workers was 5.3%.\textsuperscript{255} Thus, the fears held by many are not founded in fact.

Further, while there is the possibility that immigrants, whether legal or illegal, take jobs that could have gone to native-born workers, immigrants also help create jobs.\textsuperscript{256} Immigrants undoubtedly increase the overall size of America’s population but in doing so, also help to increase the size of America’s economy.\textsuperscript{257} According to David Card, an economist at the University of California, Berkley, “[i]mmigrants bring long-term benefits at no measurable short-term cost.”\textsuperscript{258} Additionally, studies show

\begin{itemize}
  \item \textsuperscript{249} See id.
  \item \textsuperscript{250} See id.
  \item \textsuperscript{254} Id.
  \item \textsuperscript{255} Id.
  \item \textsuperscript{256} Tim Worstall, Of Course Immigrants Take Jobs From People; But They Also Create Them For Others, FORBES (Apr. 4, 2015, 9:07 AM), http://www.forbes.com/sites/timworstall/2015/04/04/of-course-immigrants-take-jobs-from-people-but-they-also-create-them-for-others/#2715e4857af0b63a8122e1534 [https://perma.cc/N7DV-DVPE].
  \item \textsuperscript{257} Davidson, supra note 251.
  \item \textsuperscript{258} Id.
\end{itemize}
immigrants and native-born American workers with the same level of education tend to complement, not compete with, each other for employment. 259 This is because many immigrants “have limited English language or technical skills,” and are therefore seeking out jobs that many native-born Americans are not. 260

Another argument against increasing the number of immigrant visas is that immigrants are taking advantage of America’s public benefits. 261 However, most legal immigrants are not eligible to receive federal Medicaid, food stamps, Temporary Assistance to Needy Families, or Supplemental Security Income during their first five years in the United States. 262 Further, studies show that even when eligible for public benefits, low-income immigrants use public benefits at a lower rate than low-income native-born Americans. 263 As a result, the cost of public benefits to native-born Americans is significantly higher than the cost of public benefits to non-citizen immigrants (e.g., family-sponsored LPRs). 264 For example, in 2011, over 25% of native-born Americans in poverty received Medicaid, while only 20% of non-citizens received Medicaid, and 33% of native-born Americans received food stamp benefits, while 29% of non-citizens received the same benefit. 265 Overall, studies show that when


260. For example, a 2013 survey showed that the top ten occupations for immigrant workers without high school diplomas were as follows: maids and housekeepers, cooks, miscellaneous agricultural workers, construction laborers, janitors and building cleaners, grounds maintenance workers, drivers/sales workers and truck drivers, laborers and freight, stock and material movers, carpenters, and cashiers. On the other hand, the top ten occupations for native workers without high school diplomas included: cashiers, drivers/sales workers and truck drivers, janitors and building cleaners, cooks, laborers and freight, stock and material movers, construction laborers, maids and housekeepers, grounds and maintenance workers, waiters and waitresses, nursing, and psychiatric and home-health workers. Id.

261. TACKLING THE TOUGHEST QUESTIONS ON IMMIGRATION REFORM, supra note 247, at 7.


264. Id.

265. Id. at 2–3.
low-income foreign-born immigrants receive public benefits, “the average value of benefits per recipient is almost always lower than for the native-born.” Finally, all four family-sponsored preference categories require an affidavit of support. An affidavit of support is not only legally enforceable but must remain in effect for ten years or until the visa holder becomes a U.S. citizen, thereby reducing the likelihood immigrants will need to seek assistance from the state.

A third argument, and potentially the most troubling to opponents of increasing the number of family-based visas, is “chain migration.” Chain migration “refers to a process by which family-based immigration creates self-perpetuating and expanding migration flows, as foreign nationals who obtain lawful permanent resident status and citizenship then sponsor other relatives under the same family-based immigration provisions under which they themselves were sponsored.” Opponents argue single family-sponsored LPR admission has the potential to produce hundreds of new immigrants. However, America’s current immigration system requires a U.S. citizen to file the petition for family-sponsored visas (with the exception of the F2 category) and studies show that many LPRs eligible to apply for citizenship elect not to do so. An estimated 13.3 million LPRs were living in the United States as of January 2012—8.8 million of which were eligible to apply for U.S. citizenship—yet only 757,434 persons were naturalized in 2012. Thus, it is unlikely that the

266. Id. at 7.
270. Id. at 23–24.
271. As discussed above, this category is for spouses, minor children, and unmarried sons and daughters (age twenty-one or older) of LPRs. Visa Bulletin: Immigrant Numbers for December 2016, supra note 15.
272. KANDEL, supra note 269, at 24.
idea of chain migration will lead to a large influx of family-sponsored visa holders in the United States.275

Lastly, opponents posit that increased immigration negatively impacts the environment due to issues such as urban sprawl and high resource consumption.276 For example, opponents attribute population growth to critical water shortages that have affected some areas of the United States.277 Opponents also argue that immigrants dramatically increase their carbon footprint by becoming “greater consumers and polluters” once they arrive in the United States, thereby negatively affecting our environment.278 While urban sprawl and dwindling resources are very real problems in America, and should be addressed sooner rather than later, there is very little evidence suggesting that these problems are the result of increased immigration.279 A scientific study by the U.S. Commission on Immigration Reform found “there exists very little direct causal analysis of relationships

275. Similarly, opponents argue that immigrants that have entered the United States illegally are encouraged to marry and have children on American soil in the hopes that their child may one day petition for them on a family-sponsored visa. However, the family-sponsored preference categories currently do not include the option to petition for one’s parent, even as an American citizen. Immigrant Numbers for January 2016, Visa Bulletin (Bureau of Consular Affairs, U.S. Dep’t of State), Jan. 2016, at 2 [hereinafter Visa Bulletin: Immigrant Numbers for January 2016], https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_january2016.pdf [https://perma.cc/4TSA-C9BY]. While U.S. citizen children may petition for their parents as an immediate relative if the U.S. citizen child is over the age of twenty-one, that argument is not at issue in this Comment. Green Card for an Immediate Relative of a U.S. Citizen, supra note 76.


among population, immigration and environment in the United States.\textsuperscript{280}
Thus, while there are arguably downsides to increasing the number of family-sponsored visas available, the arguments on which many opponents often rely pale in comparison to the benefits of doing so.

CONCLUSION

The United States should alter its immigration system by reallocating the EB-5 employment-based visas and all diversity lottery visas to the family-sponsored category in order to increase the amount of visas granted to family members of LPRs and U.S. citizens each year. This would increase family reunification and in turn improve America’s society, advance the economy, and help curb illegal immigration. Congress therefore needs to reevaluate the American immigration system, most specifically how the numbers of visas between the five types of visa applications are allotted, and even more precisely, to permanently reassign EB-5 visa and diversity lottery numbers to the family-based immigration category.

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## APPENDIX A: FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES (DECEMBER 2016)\(^{281}\)

<table>
<thead>
<tr>
<th>Family Sponsored</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>China (Mainland Born)</th>
<th>India</th>
<th>Mexico</th>
<th>Philippines</th>
</tr>
</thead>
<tbody>
<tr>
<td>F1</td>
<td>01DEC09</td>
<td>01DEC09</td>
<td>01DEC09</td>
<td>15APR95</td>
<td>15SEP05</td>
</tr>
<tr>
<td>F2A</td>
<td>22FEB15</td>
<td>22FEB15</td>
<td>22FEB15</td>
<td>15FEB15</td>
<td>22FEB15</td>
</tr>
<tr>
<td>F2B</td>
<td>08MAY10</td>
<td>08MAY10</td>
<td>08MAY10</td>
<td>15OCT95</td>
<td>01MAR06</td>
</tr>
<tr>
<td>F3</td>
<td>15FEB05</td>
<td>15FEB05</td>
<td>15FEB05</td>
<td>08DEC94</td>
<td>15AUG94</td>
</tr>
<tr>
<td>F4</td>
<td>22DEC03</td>
<td>01OCT03</td>
<td>01APR03</td>
<td>15MAY97</td>
<td>22MAY93</td>
</tr>
</tbody>
</table>

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281. On the chart, the left column indicates the preference category within the family-based visa program. The top row indicates the country from which an applicant comes from. The listing of any date indicates that the class is oversubscribed, while a “C” means current. *Visa Bulletin: Immigrant Numbers for December 2016, supra note 15, at 3.*
APPENDIX B: FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES (DECEMBER 2016)  

<table>
<thead>
<tr>
<th>Employment Based</th>
<th>All Chargeability Areas Except Those Listed</th>
<th>China (Mainland Born)</th>
<th>El Salvador Guatemala Honduras</th>
<th>India</th>
<th>Mexico</th>
<th>Philippines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>2nd</td>
<td>C</td>
<td>22 SEP 2012</td>
<td>C</td>
<td>01 FEB 2008</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>3rd</td>
<td>01 JUL 2016</td>
<td>01 JUL 2016</td>
<td>01 JUL 2016</td>
<td>15 MAR 2005</td>
<td>01 JUL 2016</td>
<td>01 JUN 2011</td>
</tr>
<tr>
<td>Other Workers</td>
<td>01 JUL 2016</td>
<td>01 NOV 2005</td>
<td>01 JUL 2016</td>
<td>15 MAR 2005</td>
<td>01 JUL 2016</td>
<td>01 JUN 2011</td>
</tr>
<tr>
<td>4th</td>
<td>C</td>
<td>C</td>
<td>15 JUL 2015</td>
<td>C</td>
<td>15 JUL 2015</td>
<td>C</td>
</tr>
<tr>
<td>Certain Religious Workers</td>
<td>C</td>
<td>C</td>
<td>15 JUL 2015</td>
<td>C</td>
<td>15 JUL 2015</td>
<td>C</td>
</tr>
<tr>
<td>5th Non-Regional Center (C5 and T5)</td>
<td>C</td>
<td>22 MAR 2014</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>5th Regional Center (I5 and R5)</td>
<td>C</td>
<td>22 MAR 2014</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
</tbody>
</table>

282. On the chart, the left column indicates the preference category within the employment-based visa program. The top row indicates the country from which an applicant comes from. The listing of any date indicates that the class is oversubscribed, while a “C” means current. Id. at 5.
### APPENDIX C: THE DIVERSITY IMMIGRANT (DV) CATEGORY FOR THE MONTH OF DECEMBER (DECEMBER 2016)

<table>
<thead>
<tr>
<th>Region</th>
<th>All DV Chargeability Areas Except Those Listed Separately</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>20,400</td>
</tr>
<tr>
<td></td>
<td>Except:</td>
</tr>
<tr>
<td></td>
<td>Egypt: 8,700</td>
</tr>
<tr>
<td></td>
<td>Ethiopia: 9,000</td>
</tr>
<tr>
<td>Asia</td>
<td>3,500</td>
</tr>
<tr>
<td></td>
<td>Except:</td>
</tr>
<tr>
<td></td>
<td>Iran: 3,200</td>
</tr>
<tr>
<td></td>
<td>Nepal: 2,200</td>
</tr>
<tr>
<td>Europe</td>
<td>14,000</td>
</tr>
<tr>
<td>North America (Bahamas)</td>
<td>5</td>
</tr>
<tr>
<td>Oceania</td>
<td>525</td>
</tr>
<tr>
<td>South America, and the Caribbean</td>
<td>650</td>
</tr>
</tbody>
</table>

283. For any given month, immigrant numbers in the diversity lottery category are available to qualified diversity lottery applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with diversity lottery regional rank numbers below the specified allocation cut-off number. *Id.* at 6.