SUBCHAPTER II—IMMIGRATION

PART I—SELECTION SYSTEM

§ 1151. Worldwide level of immigration

(a) In general

Exclusive of aliens described in subsection (b) of this section, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family-sponsored immigrants described in section 1153(a) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(a) of this title) in a number not to exceed in any fiscal year the number specified in subsection (c) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year;

(2) employment-based immigrants described in section 1153(b) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(b) of this title), in a number not to exceed in any fiscal year the number specified in subsection (d) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

(3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 1153(c) of this title (or who are admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent under section 1153(c) of this title) in a number not to exceed in any fiscal year the number specified in subsection (e) of this section for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

(b) Aliens not subject to direct numerical limitations

Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a) of this section, are as follows:

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 1101(a)(27) of this title.

(B) Aliens who are admitted under section 1157 of this title or whose status is adjusted under section 1159 of this title.

(C) Aliens whose status is adjusted to permanent residence under section 1160 or 1255a of this title.

(D) Aliens whose removal is canceled under section 1229b(a) of this title.

(E) Aliens provided permanent resident status under section 1259 of this title.

(2)(A)(i) IMMEDIATE RELATIVES.—For purposes of this subsection, the term ''immediate relatives'' means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 1154(a)(1)(A)(ii) of this title within 2 years after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 1154(a)(1)(A) of this title remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

(ii) Aliens admitted under section 1181(a) of this title on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

(c) Worldwide level of family-sponsored immigrants

(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

(i) 480,000, minus

(ii) the sum of the number computed under paragraph (2) and the number computed under paragraph (4), plus

(iii) the number (if any) computed under paragraph (3).

(B)(i) For each of fiscal years 1992, 1993, and 1994, 465,000 shall be substituted for 480,000 in subparagraph (A)(i).

(ii) In no case shall the number computed under subparagraph (A) be less than 226,000.

(2) The number computed under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraphs (A) and (B) of subsection (b)(2) of this section who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3)(A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 1153(a) of this title during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 1153(b) of this title (relating to employment-based immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(4) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1999) is the number of aliens who were paroled into the United States under section 1182(d)(5) of this title in the second preceding fiscal year—

(A) who did not depart from the United States (without advance parole) within 365 days; and

(B) who (i) did not acquire the status of aliens lawfully admitted to the United States for permanent residence in the two preceding fiscal years, or (ii) acquired such status in such years under a provision of law (other than subsection (b) of this section) which exempts such adjustment from the numerical limitation on the worldwide level of immigration under this section.

(5) If any alien described in paragraph (4) (other than an alien described in paragraph (4)(B)(ii)) is subsequently admitted as an alien lawfully admitted for permanent residence, such alien shall not again be considered for purposes of paragraph (1).

(d) Worldwide level of employment-based immigrants

(1) The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to—

(A) 140,000, plus

(B) the number computed under paragraph (2).

(2)(A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 1153(b) of this title during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 1153(a) of this title (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(e) Worldwide level of diversity immigrants

The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.

(f) Rules for determining whether certain aliens are immediate relatives

(1) Age on petition filing date

Except as provided in paragraphs (2) and (3), for purposes of subsection (b)(2)(A)(i) of this section, a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 1101(b)(1) of this title shall be made using the age of the alien on the date on which the petition is filed with the Attorney General under section 1154 of this title to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section.

(2) Age on parent's naturalization date

In the case of a petition under section 1154 of this title initially filed for an alien child's classification as a family-sponsored immigrant under section 1153(a)(2)(A) of this title, based on the child's parent being lawfully admitted for permanent residence, if the petition is later converted, due to the naturalization of the parent, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section, the determination described in paragraph (1) shall be made using the age of the alien on the date of the parent's naturalization.

(3) Age on marriage termination date

In the case of a petition under section 1154 of this title initially filed for an alien's classification as a family-sponsored immigrant under section 1153(a)(3) of this title, based on the alien's being a married son or daughter of a citizen, if the petition is later converted, due to the legal termination of the alien's marriage, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section or as an unmarried son or daughter of a citizen under section 1153(a)(1) of this title, the determination described in paragraph (1) shall be made using the age of the alien on the date of the termination of the marriage.

(4) Application to self-petitions

Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

(June 27, 1952, ch. 477, title II, ch. 1, §201, 66 Stat. 175; Pub. L. 89–236, §1, Oct. 3, 1965, 79 Stat. 911; Pub. L. 94–571, §2, Oct. 20, 1976, 90 Stat. 2703; Pub. L. 95–412, §1, Oct. 5, 1978, 92 Stat. 907; Pub. L. 96–212, title II, §203(a), Mar. 17, 1980, 94 Stat. 106; Pub. L. 97–116, §20[(a)], Dec. 29, 1981, 95 Stat. 1621; Pub. L. 101–649, title I, §101(a), Nov. 29, 1990, 104 Stat. 4980; Pub. L. 102–232, title III, §302(a)(1), Dec. 12, 1991, 105 Stat. 1742; Pub. L. 103–322, title IV, §40701(b)(2), Sept. 13, 1994, 108 Stat. 1954; Pub. L. 103–416, title II, §219(b)(1), Oct. 25, 1994, 108 Stat. 4316; Pub. L. 104–208, div. C, title III, §308(e)(5), (g)(8)(A)(i), title VI, §§603, 671(d)(1)(A), Sept. 30, 1996, 110 Stat. 3009–620, 3009–624, 3009–690, 3009–723; Pub. L. 106–386, div. B, title V, §1507(a)(3), Oct. 28, 2000, 114 Stat. 1530; Pub. L. 107–208, §2, Aug. 6, 2002, 116 Stat. 927; Pub. L. 109–162, title VIII, §805(b)(1), Jan. 5, 2006, 119 Stat. 3056; Pub. L. 111–83, title V, §568(c)(1), Oct. 28, 2009, 123 Stat. 2186.)

AMENDMENTS

2009—Subsec. (b)(2)(A)(i). Pub. L. 111–83 struck out ''for at least 2 years at the time of the citizen's death'' before ''and was not legally separated'' in second sentence.

2006—Subsec. (f)(4). Pub. L. 109–162 added par. (4).

2002—Subsec. (f). Pub. L. 107–208 added subsec. (f).

2000—Subsec. (b)(2)(A)(i). Pub. L. 106–386 inserted at end ''For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 1154(a)(1)(A) of this title remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.''

1996—Subsec. (b)(1)(C). Pub. L. 104–208, §671(d)(1)(A), struck out '', 1161,'' after ''section 1160''.

Subsec. (b)(1)(D). Pub. L. 104–208, §308(g)(8)(A)(i), substituted ''section 1229b(a)'' for ''section 1254(a)''.

Pub. L. 104–208, §308(e)(5), substituted ''removal is canceled'' for ''deportation is suspended''.

Subsec. (c)(1)(A)(ii). Pub. L. 104–208, §603(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the number computed under paragraph (2), plus''.

Subsec. (c)(4), (5). Pub. L. 104–208, §603(2), added pars. (4) and (5).

1994—Subsec. (b)(2)(A)(i). Pub. L. 103–416 inserted ''(and each child of the alien)'' after ''death, the alien'' in second sentence.

Pub. L. 103–322 substituted ''1154(a)(1)(A)(ii)'' for ''1154(a)(1)(A)''.

1991—Subsec. (c)(3). Pub. L. 102–232, § 302(a)(1)(A), added subpars. (A) and (B), designated existing text as subpar. (C), and in subpar. (C) substituted ''The number computed under this paragraph for a subsequent fiscal year'' for ''The number computed under this paragraph for a fiscal year''.

Subsec. (d)(2). Pub. L. 102–232, § 302(a)(1)(B), added subpars. (A) and (B), designated existing text as subpar. (C), and in subpar. (C) substituted ''The number computed under this paragraph for a subsequent fiscal year'' for ''The number computed under this paragraph for a fiscal year''.

1990—Pub. L. 101–649 amended section generally, substituting provisions setting forth general and worldwide levels for family-sponsored, employment-based, and diversity immigrants, for provisions setting forth numerical limitations on total lawful admissions without breakdown as to type.

1981—Subsec. (a). Pub. L. 97–116 inserted proviso authorizing Secretary of State, to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to section 1101(a)(27)(H) of this title or section 19 of the Immigration and Nationality Amendments of 1981, exceed the annual numerical limitation in effect, to reduce to such extent the annual numerical limitation in effect for the following fiscal year.

1980—Subsec. (a). Pub. L. 96–212 inserted provisions relating to aliens admitted or granted asylums under section 1157 or 1158 of this title, struck out provisions relating to aliens entering conditionally under section 1153(a)(7) of this title, and decreased the authorized number from seventy-seven thousand to seventy-two thousand in each of the first three-quarters of any fiscal year, and from two hundred and ninety thousand to two hundred and seventy thousand in any fiscal year as the maximum number of admissions for such periods.

1978—Subsec. (a). Pub. L. 95–412 substituted provisions establishing a single worldwide annual immigration ceiling of 290,000 aliens and limiting to 77,000 the number of aliens subject to such ceiling which may be admitted in each of the first three quarters of any fiscal year for provisions establishing separate annual immigration ceilings of 170,000 aliens for the Eastern Hemisphere and 120,000 aliens for the Western Hemisphere and limiting to 45,000 the number of aliens subject to the Eastern Hemisphere ceiling and to 32,000 the number of aliens subject to the Western Hemisphere ceiling which may be admitted in the first three quarters of any fiscal year.

1976—Subsec. (a). Pub. L. 94–571, § 2(1), in amending subsec. (a) generally, designated existing provisions as cl. (1) limited to aliens born in any foreign state or dependent area located in the Eastern Hemisphere and added cl. (2).

Subsecs. (c) to (e). Pub. L. 94–571, § 2(2), struck out subsec. (c) which provided for determination of unused quota numbers, subsec. (d) which provided for an immigration pool, limitation on total numbers, and allocations therefrom, and subsec. (e) which provided for termination of immigration pool on June 30, 1968, and for carryover of admissible immigrants.

1965—Subsec. (a). Pub. L. 89–236 substituted provisions setting up a 170,000 maximum on total annual immigration and 45,000 maximum on total quarterly immigration without regard to national origins, for provisions setting an annual quota for quota areas which allowed admission of one-sixth of one per centum of portion of national population of continental United States in 1920 attributable by national origin of that quota area and setting a minimum quota of 100 for each quota area.

Subsec. (b). Pub. L. 89–236 substituted provisions defining ''immediate relatives'' for provisions calling for a determination of annual quota for each quota area by Secretaries of State and Commerce and Attorney General, and proclamation of quotas by President.

Subsec. (c). Pub. L. 89–236 substituted provisions allowing carryover through June 30, 1968, of quotas for quota areas in effect on June 30, 1965, and redistribution of unused quota numbers, for provisions which limited issuance of immigrant visas.

Subsec. (d). Pub. L. 89–236 substituted provisions creating an immigration pool and allocating its numbers without reference to the quotas to which an alien is chargeable, for provisions allowing issuance of an immigrant visa to an immigrant as a quota immigrant even though he might be a nonquota immigrant.

Subsec. (e). Pub. L. 89–236 substituted provisions terminating the immigration pool on June 30, 1968, for provisions permitting reduction of annual quotas based on national origins pursuant to Act of Congress prior to effective date of proclaimed quotas.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–83, title V, § 568(c)(2), Oct. 28, 2009, 123 Stat. 2186, provided that:

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to all applications and petitions relating to immediate relative status under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) pending on or after the date of the enactment of this Act [Oct. 28, 2009].

''(B) TRANSITION CASES.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, an alien described in clause (ii) who seeks immediate relative status pursuant to the amendment made by paragraph (1) shall file a petition under section 204(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(ii)) not later than the date that is 2 years after the date of the enactment of this Act.

''(ii) ALIENS DESCRIBED.—An alien is described in this clause if—

''(I) the alien's United States citizen spouse died before the date of the enactment of this Act;

''(II) the alien and the citizen spouse were married for less than 2 years at the time of the citizen spouse's death; and

''(III) the alien has not remarried.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–208, § 8, Aug. 6, 2002, 116 Stat. 930, provided that: ''The amendments made by this Act [amending this section and sections 1153, 1154, 1157, and 1158 of this title] shall take effect on the date of the enactment of this Act [Aug. 6, 2002] and shall apply to any alien who is a derivative beneficiary or any other beneficiary of—

''(1) a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) approved before such date but only if a final determination has not been made on the beneficiary's application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition;

''(2) a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) pending on or after such date; or

''(3) an application pending before the Department of Justice or the Department of State on or after such date.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(e)(5), (g)(8)(A)(i) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

Pub. L. 103–322, title IV, §40701(d), Sept. 13, 1994, 108 Stat. 1955, provided that: ''The amendments made by this section [amending this section and section 1154 of this title] shall take effect January 1, 1995.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–212 effective, except as otherwise provided, Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96–212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–571 effective on first day of first month which begins more than sixty days after Oct. 20, 1976, see section 10 of Pub. L. 94–571, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–236, §20, Oct. 3, 1965, 79 Stat. 920, provided that: ''This Act [amending this section and sections 1101, 1152 to 1156, 1181, 1182, 1201, 1202, 1204, 1251, 1253, 1254, 1255, 1259, 1322, and 1351 of this title, repealing section 1157 of this title, and enacting provisions set out as a note under this section] shall become effective on the first day of the first month after the expiration of thirty days following the date of its enactment [Oct. 3, 1965] except as provided herein.''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

EXTENSION OF POSTHUMOUS BENEFITS TO SURVIVING SPOUSES, CHILDREN, AND PARENTS

Pub. L. 108–136, div. A, title XVII, §1703(a)–(e), Nov. 24, 2003, 117 Stat. 1693, provided that:

''(a) TREATMENT AS IMMEDIATE RELATIVES.—

''(1) SPOUSES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act [8 U.S.C. 1154(a)(1)(A)(ii)] within 2 years after such date and only until the date the alien remarries. For purposes of such section 204(a)(1)(A)(ii), an alien granted relief under the preceding sentence shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

''(2) CHILDREN.—

''(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

''(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act [8 U.S.C. 1101 et seq.], such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

''(3) PARENTS.—

''(A) IN GENERAL.—In the case of an alien who was the parent of a citizen of the United States at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

''(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

''(C) EXCEPTION.—Notwithstanding section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), for purposes of this paragraph, a citizen described in subparagraph (A) does not have to be 21 years of age for a parent to benefit under this paragraph.

''(b) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, CHILDREN, AND PARENTS.—

''(1) IN GENERAL.—Notwithstanding subsections (a) and (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), any alien who was the spouse, child, or parent of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in paragraph (2)(B), may have such application adjudicated as if such death had not occurred.

''(2) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

''(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

''(B) died as a result of injury or disease incurred in or aggravated by combat; and

''(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1).

''(c) SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

''(1) TREATMENT AS IMMEDIATE RELATIVES.—

''(A) IN GENERAL.—A spouse or child of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien, shall be considered (if the spouse or child has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for immediate relative status under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). Such spouse or child shall be eligible for deferred action, advance parole, and work authorization.

''(B) PETITIONS.—An alien spouse or child described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act [8 U.S.C. 1101 et seq.], such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

''(2) SELF-PETITIONS.—Any spouse or child of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant may file a petition for such classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) with the Secretary of Homeland Security, but only if the spouse or child files a petition within 2 years after such date. Such spouse or child shall be eligible for deferred action, advance parole, and work authorization.

''(3) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

''(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

''(B) died as a result of injury or disease incurred in or aggravated by combat; and

''(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1).

''(d) PARENTS OF LAWFUL PERMANENT RESIDENT ALIENS.—

''(1) SELF-PETITIONS.—Any parent of an alien described in paragraph (2) may file a petition for classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), but only if the parent files a petition within 2 years after such date. For purposes of such Act [8 U.S.C. 1101 et seq.], such petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)). Such parent shall be eligible for deferred action, advance parole, and work authorization.

''(2) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

''(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

''(B) died as a result of injury or disease incurred in or aggravated by combat; and

''(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440–1).

''(e) WAIVER OF GROUND FOR INADMISSIBILITY.—In determining the admissibility of any alien accorded an immigration benefit under this section for purposes of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], the ground for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.''

[Section 1703 of Pub. L. 108–136, set out above, effective as if enacted on Sept. 11, 2001, see section 1705(a) of Pub. L. 108–136, set out as an Effective Date of 2003 Amendment note under section 1439 of this title.]

TEMPORARY REDUCTION IN DIVERSITY VISAS

Pub. L. 105–100, title II, § 203(d), Nov. 19, 1997, 111 Stat. 2199, as amended by Pub. L. 105–139, § 1(d), Dec. 2, 1997, 111 Stat. 2644, provided that:

''(1) Beginning in fiscal year 1999, subject to paragraph (2), the number of visas available for a fiscal year under section 201(e) of the Immigration and Nationality Act [8 U.S.C. 1151(e)] shall be reduced by 5,000 from the number of visas otherwise available under that section for such fiscal year.

''(2) In no case shall the reduction under paragraph (1) for a fiscal year exceed the amount by which—

''(A) one-half of the total number of individuals described in subclauses (I), (II), (III), and (IV) of section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208, set out as a note under section 1101 of this title] who have adjusted their status to that of aliens lawfully admitted for permanent residence under the Nicaraguan Adjustment and Central American Relief Act [title II of Pub. L. 105–100, see Short Title of 1997 Amendments note set out under section 1101 of this title] as of the end of the previous fiscal year; exceeds

''(B) the total of the reductions in available visas under this subsection for all previous fiscal years.''

TRANSITION RELATING TO DEATH OF CITIZEN SPOUSE

Pub. L. 101–649, title I, § 101(c), as added by Pub. L. 102–232, title III, § 302(a)(2), Dec. 12, 1991, 105 Stat. 1742, provided that: ''In applying the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act [8 U.S.C. 1151(b)(2)(A)(i)] (as amended by subsection (a)) in the case of a [sic] alien whose citizen spouse died before the date of the enactment of this Act [Nov. 29, 1990], notwithstanding the deadline specified in such sentence the alien spouse may file the classification petition referred to in such sentence within 2 years after the date of the enactment of this Act.''

INAPPLICABILITY OF NUMERICAL LIMITATIONS FOR CERTAIN ALIENS RESIDING IN THE UNITED STATES VIRGIN ISLANDS

The numerical limitations described in subsec. (a) of this section not to apply in the case of certain aliens residing in the Virgin Islands seeking adjustment of their status to permanent resident alien status, and such adjustment of status not to result in any reduction in the number of aliens who may acquire the status of aliens lawfully admitted to the United States for permanent residence under this chapter, see section 2(c)(1) of Pub. L. 97–271, set out as a note under section 1255 of this title.

EXEMPTION FROM NUMERICAL LIMITATIONS FOR CERTAIN ALIENS WHO APPLIED FOR ADJUSTMENT TO STATUS OF PERMANENT RESIDENT ALIENS ON OR BEFORE JUNE 1, 1978

Pub. L. 97–116, § 19, Dec. 29, 1981, 95 Stat. 1621, provided that: ''The numerical limitations contained in sections 201 and 202 of the Immigration and Nationality Act [sections 1151 and 1152 of this title] shall not apply to any alien who is present in the United States and who, on or before June 1, 1978—

''(1) qualified as a nonpreference immigrant under section 203(a)(8) of such Act [section 1153(a)(8) of this title] (as in effect on June 1, 1978);

''(2) was determined to be exempt from the labor certification requirement of section 212(a)(14) of such Act [former section 1182(a)(14) of this title] because the alien had actually invested, before such date, capital in an enterprise in the United States of which the alien became a principal manager and which employed a person or persons (other than the spouse or children of the alien) who are citizens of the United States or aliens lawfully admitted for permanent residence; and

''(3) applied for adjustment of status to that of an alien lawfully admitted for permanent residence.''

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Pub. L. 95–412, § 4, Oct. 5, 1978, 92 Stat. 907, as amended by Pub. L. 96–132, § 23, Nov. 30, 1979, 93 Stat. 1051, provided for the establishment of a Select Commission on Immigration and Refugee Policy to study and evaluate existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States, to make such administrative and legislative recommendations to the President and Congress as appropriate, and to submit a final report no later than Mar. 1, 1981, at which time it ceased to exist although it was authorized to function for up to 60 days thereafter to wind up its affairs.

SELECT COMMISSION ON WESTERN HEMISPHERE IMMIGRATION

Pub. L. 89–236, § 21(a)–(d), (f)–(h), Oct. 3, 1965, 79 Stat. 920, 921, established a Select Commission on Western Hemisphere Immigration to study the operation of the immigration laws of the United States as they pertain to Western Hemisphere nations, with emphasis on the adequacy of such laws from the standpoint of fairness and the impact of such laws on employment and working conditions within the United States, and to make a final report to the President on or before Jan. 15, 1968, and terminate not later than 60 days after filing the final report.

TERMINATION OF QUOTA DEDUCTIONS

Pub. L. 85–316, § 10, Sept. 11, 1957, 71 Stat. 642, provided that the quota deductions required under the provisions of former subsec. (e) of this section, the Displaced Persons Act of 1948, the act of June 30, 1950, and the act of April 9, 1952, were terminated effective July 1, 1957.

§ 1151a. Repealed. Pub. L. 94–571, § 7(g), Oct. 20, 1976, 90 Stat. 2706

Section, Pub. L. 89–236, § 21(e), Oct. 3, 1965, 79 Stat. 921, limited total number of special immigrants under section 1101(a)(27)(A) of this title, less certain exclusions, to 120,000 for fiscal years beginning July 1, 1968, or later.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first month which begins more than 60 days after Oct. 20, 1976, see section 10 of Pub. L. 94–571, set out as an Effective Date of 1976 Amendment note under section 1101 of this title.

§ 1152. Numerical limitations on individual foreign states

(a) Per country level

(1) Nondiscrimination

(A) Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.

(2) Per country levels for family-sponsored and employment-based immigrants

Subject to paragraphs (3), (4), and (5), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 1153 of this title in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

(3) Exception if additional visas available

If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas available under both subsections (a) and (b) of section 1153 of this title for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(4) Special rules for spouses and children of lawful permanent resident aliens

(A) 75 percent of 2nd preference set-aside for spouses and children not subject to per country limitation

(i) In general

Of the visa numbers made available under section 1153(a) of this title to immigrants described in section 1153(a)(2)(A) of this title in any fiscal year, 75 percent of the 2–A floor (as defined in clause (ii)) shall be issued without regard to the numerical limitation under paragraph (2).

(ii) "2–A floor" defined

In this paragraph, the term ''2–A floor'' means, for a fiscal year, 77 percent of the total number of visas made available under section 1153(a) of this title to immigrants described in section 1153(a)(2) of this title in the fiscal year.

(B) Treatment of remaining 25 percent for countries subject to subsection (e)

(i) In general

Of the visa numbers made available under section 1153(a) of this title to immigrants described in section 1153(a)(2)(A) of this title in any fiscal year, the remaining 25 percent of the 2–A floor shall be available in the case of a state or area that is subject to subsection (e) of this section only to the extent that the total number of visas issued in accordance with subparagraph (A) to natives of the foreign state or area is less than the subsection (e) ceiling (as defined in clause (ii)).

(ii) "Subsection (e) ceiling" defined

In clause (i), the term ''subsection (e) ceiling'' means, for a foreign state or dependent area, 77 percent of the maximum number of visas that may be made available under section 1153(a) of this title to immigrants who are natives of the state or area under section 1153(a)(2) of this title consistent with subsection (e) of this section.

(C) Treatment of unmarried sons and daughters in countries subject to subsection (e)

In the case of a foreign state or dependent area to which subsection (e) of this section