



Memorandum

March 28, 2006

SUBJECT: Legal Immigration: Modeling the Principle Components of Permanent Admissions

FROM: Ruth Ellen Wasem
Specialist in Immigration Policy
Domestic Social Policy Division

Four major principles underlie U.S. policy on legal permanent immigration: the reunification of families, the admission of immigrants with needed skills, the protection of refugees, and the diversity of admissions by country of origin. These principles are embodied in federal law, in the Immigration and Nationality Act (INA), first codified in 1952. This memorandum focuses on two of these principles – family-sponsored and employment-based legal permanent residents (LPRs) – their admission trends over time, and increases proposed by the key legislation in the Senate.

The Senate is scheduled to consider major immigration legislation over the next few weeks.¹ The two headlining bills are S. 2454, the Securing America's Borders Act, which Senate Majority Leader Bill Frist introduced on March 16, 2006, and the Comprehensive Immigration Reform Act, which the Senate Committee on the Judiciary reported (Judiciary reported) on March 27, 2006. Title IV of S. 2454 and Title V in the Judiciary-reported bill, which are essentially equivalent, would substantially increase legal permanent immigration and would restructure the allocation of the family-sponsored and employment-based visas.

Current Law

Worldwide Levels

The INA establishes a statutory worldwide level of 675,000 annually for legal permanent residents (LPRs), but this level is flexible and certain categories of LPRs are excluded from, or permitted to exceed, the limits. This permanent worldwide immigrant level consists of the following components:

¹ For background and legislative tracking, see CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, coordinated by Andorra Bruno.

- 480,000 family-sponsored immigrants;
- 140,000 employment-based preference immigrants; and
- 55,000 diversity immigrants.

For a breakdown and definitions of the family-sponsored and employment-based preference categories, see **Appendix A**, Legal Immigration Preference System.

Immediate relatives of U.S. citizens² are not numerically limited, but their admission numbers are subtracted from the 480,000 ceiling for family-sponsored immigrants to determine the ceiling for family-sponsored preference immigrants. The INA also provides a floor of 226,000 visas for family-sponsored preferences. Unused LPR visas through the family-sponsored and employment-based preference system roll down the preference categories in a given year and, if any remain unused, roll over to the other set of preference categories the next year.³

Calculating the Annual Level of Permanent Immigration

Family-sponsored immigrants		480,000
minus	citizens' immediate relatives up to 254,000 (i.e., 480,000 minus 226,000) certain parolees	unlimited
equals	family preference immigrants	226,000 (minimum)
Employment-based immigrants		140,000
Diversity		55,000
Worldwide level		675,000
plus	citizens' immediate relatives above 254,000 refugees, asylees & others	unlimited
equals		Total Annual Immigration

Source: CRS synthesis of Immigration and Nationality Act §201.

Country Limits

Of the total number of LPR visas available worldwide in any fiscal year for family-sponsored preference immigrants and employment-based preference immigrants, not more than 7% can be allocated to a single foreign state and not more than 2% can be allocated to a dependent foreign state.⁴

Two important exceptions to the per-country ceilings have been enacted in the past decade. Foremost is an exception for certain family-sponsored immigrants. More specifically, the INA states that 75% of the visas allocated to spouses and children of LPRs (2ndA family preference) are not subject to the per-country ceiling.⁵ Prior to FY2001, employment-based preference immigrants were also held to per-country ceilings. The “American Competitiveness in the Twenty-First Century Act of 2000” (P.L. 106-313) enabled the per-country ceilings for employment-based immigrants to be surpassed for

² “Immediate relatives” are currently defined as the spouses and unmarried minor children of U.S. citizens and the parents of adult U.S. citizens.

³ INA §201.

⁴ INA § 202(a)(2).

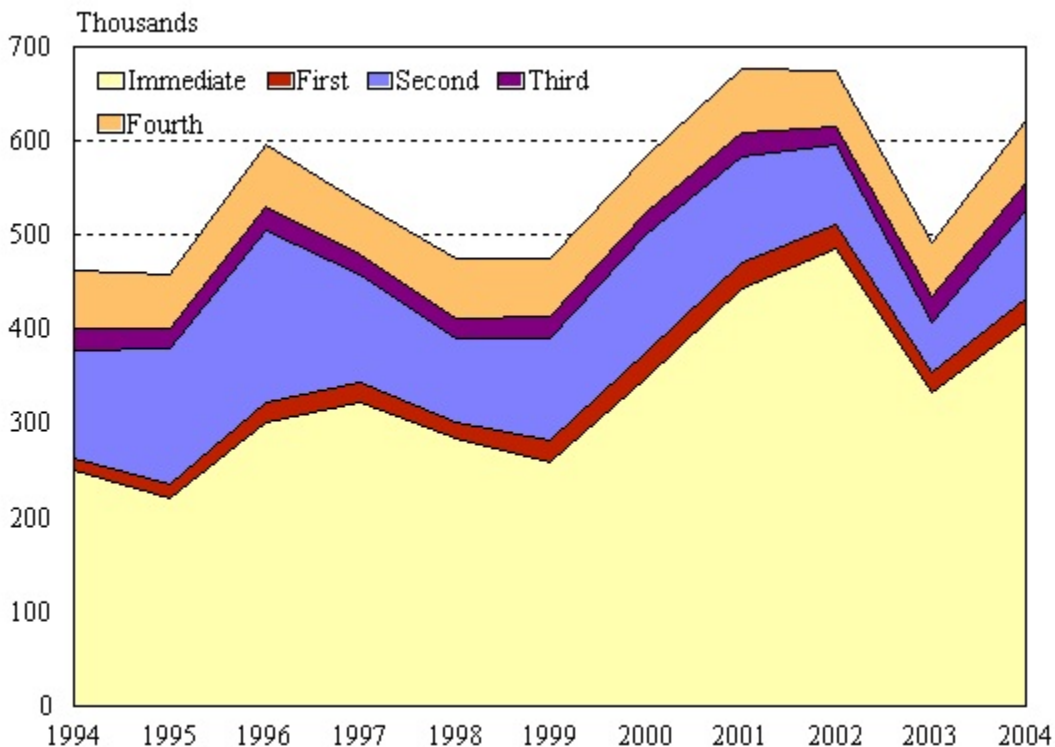
⁵ § 202(a)(4) of the INA; 8 U.S.C. § 1151.

individual countries that are oversubscribed so long as visas are available within the worldwide limit for employment-based preferences.

Allocation of Immigrant Visas

Family-Based. As previously stated, immediate relatives are not numerically limited, but their admission numbers are subtracted from the 480,000 ceiling for family-based immigrants to determine the ceiling for family-sponsored preference immigrants.⁶ The first preference category is unmarried sons and daughters of citizens, which is limited to 23,400 plus visas not required for fourth preference. The spouses and minor children of LPRs are admitted under the second family-sponsored preference category (subcategory A) and the unmarried adult children of LPRs are admitted under the second family-sponsored preference category (subcategory B). There is an annual limit on the second preference category of 114,200. The third preference category of the family-sponsored system is married sons and daughters of citizens, which is limited to 23,400 plus visas not required for first or second preferences. The fourth family-sponsored preference category is the siblings of citizens age 21 and over, which is limited to 65,000 plus visas not required for the other family-sponsored preference categories.⁷

Figure 1. Family-Sponsored Legal Permanent Residents, FY1994-FY2004



Source CRS analysis of data from the DHS Office of Immigration Statistics and the former INS.

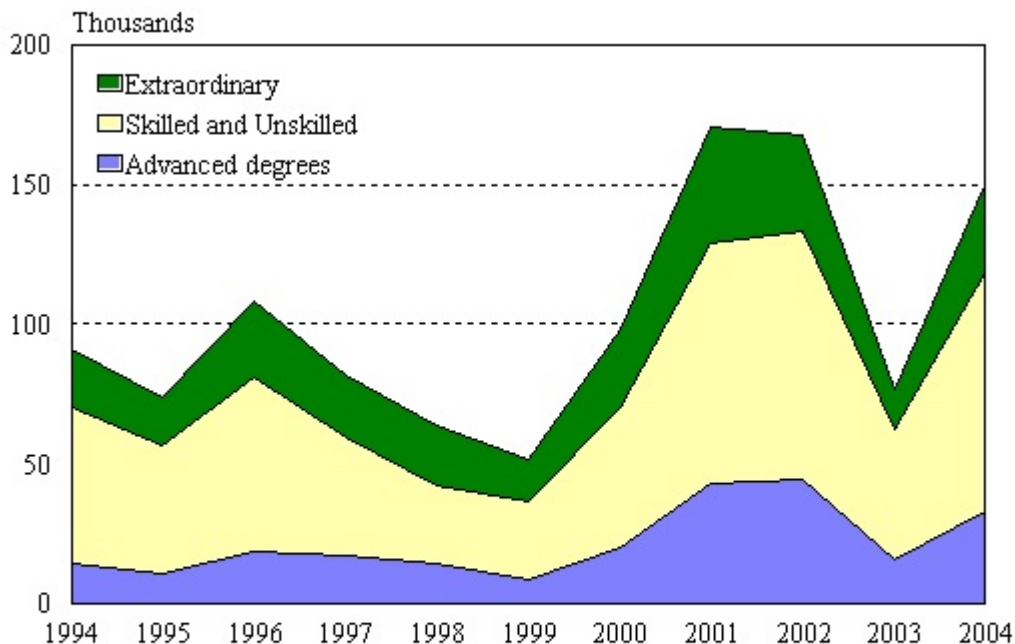
⁶ INA §201(b), (c).

⁷ INA §203(a).

As evident in **Figure 1**, increases in the number of immediate relatives have driven the overall growth in family-based immigration. FY2003 appears to be an aberrant year for LPR data, largely because of significant petition processing delays as the U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security was being established.

Employment-based. Visas for employment-based immigrants are allocated as follows: up to 28.6% to “priority workers” (persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multi-national executives and managers); up to 28.6% to professionals holding advanced degrees or certain persons of exceptional ability in the sciences, arts, or business; up to 28.6% to skilled shortage workers with two years training or experience, certain professionals, and unskilled shortage workers (limited to 10,000); up to 7.1% to certain special immigrants (including religious ministers and certain overseas U.S. government employees); and up to 7.1% to employment creation investors; all categories include derivative immediate relatives of the qualifying LPRs, who are counted against the numerical limit on that category.⁸ The fourth and fifth preferences are too small to depict in **Figure 2**.

Figure 2. Employment-Based Legal Permanent Residents, FY1994-FY2004



Source: CRS analysis of data from the DHS Office of Immigration Statistics and the former INS.

Note: The 25,911 Chinese who adjusted under the Chinese Student Protection Act from 1994 to 1996 are not depicted even though they were counted under the "Skilled and Unskilled" category.

Over the past ten years, the numbers of aliens entering as shortage (skilled and unskilled) workers as well as workers with advanced degrees, have increased. As with the

⁸ INA §203(b).

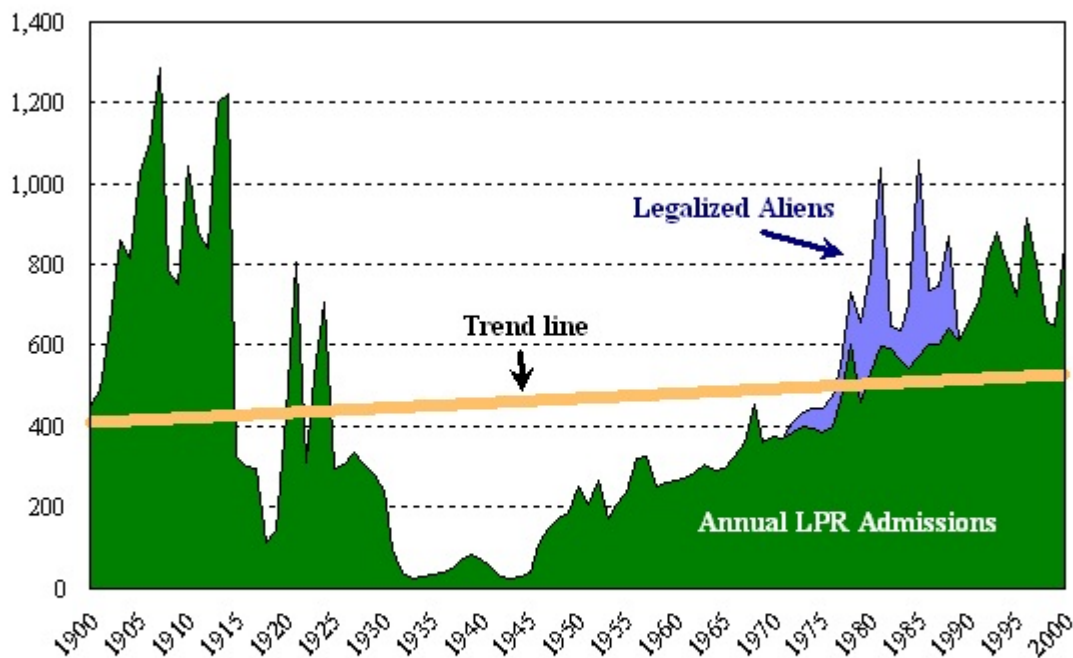
family-based LPRs, however, employment-based LPRs fell sharply in FY2003 as petitioners encountered significant processing delays.

Simple Models of Legal Permanent Immigrant

Twentieth Century

Immigration was at its highest levels at the beginning of the century. It dropped after the 1924 Immigration Act imposed quotas, and fell further during the Great Depression and World War II. The annual number of LPRs admitted or adjusted in the United States rose gradually after World War II, as **Figure 3** illustrates. The Immigration Amendments of 1965 replaced the national origins quota system (enacted after World War I) with per-country ceilings, and the statutory provisions regulating permanent immigration to the United States were last revised significantly by the Immigration Act of 1990.⁹

Figure 3. Immigration Trends over the Twentieth Century



Source *Statistical Yearbook of Immigration*, U.S. Department of Homeland Security, Office of Immigration Statistics, multiple fiscal years. Aliens legalizing through the Immigration Reform and Control Act of 1986 are depicted by year of arrival.

The growth in immigration after 1965 is partly attributable to the total number of admissions under the basic system, consisting of immigrants entering through a preference

⁹ Congress has significantly amended the INA numerous times since 1952. Other major laws amending the INA are the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, and Illegal Immigration Reform and Immigrant Responsibility Act of 1996. 8 U.S.C. §1101 et seq.

system as well as immediate relatives of U.S. citizens, that was augmented considerably by legalized aliens.¹⁰ The Immigration Act of 1990 increased the ceiling on employment-based preference immigration, with the provision that unused employment visas would be made available the following year for family preference immigration. In addition, the number of refugees admitted increased from 718,000 in the 1966-1980 period to 1.6 million during the 1981-1995 period, after the enactment of the Refugee Act of 1980.

The simplest method of modeling legal immigration trends is a linear model based upon actual LPR admissions.¹¹ The trend line in **Figure 3** represents the "best fit" over the century. It illustrates a very gradual growth in legal permanent immigration to the United States.¹²

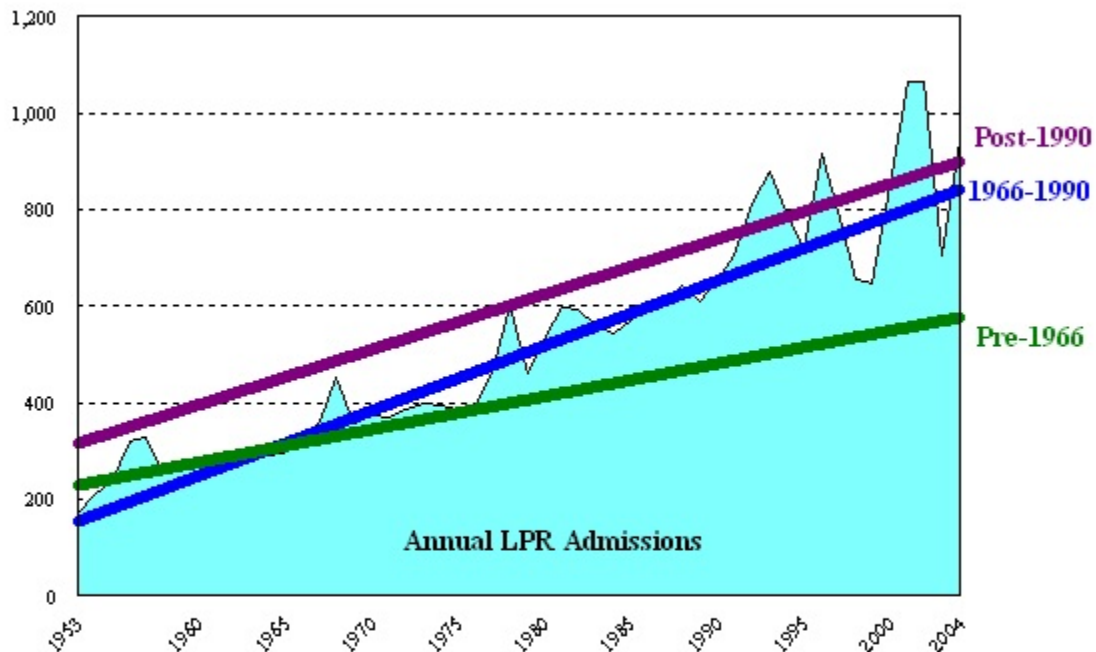
Post-1952 Models Based on Three Scenarios

The periods discussed above offer three scenarios to compare, which **Figure 4** presents. The first scenario models the period from passage of the Immigration and Naturalization Act of 1952 through the enactment of the Immigration Amendments of 1965. It is represented by the "Pre-1966" trend line and estimates legal immigration according to actual admissions from 1953 through 1965. The second scenario estimates legal immigration according to actual admissions from 1966 through 1990, when Congress enacted the Immigration Act of 1990. The third scenario, represented by the "Post-1990" trend line, estimates legal immigration according to actual admissions from 1991 through 2004.

¹⁰ The Immigration Reform and Control Act (IRCA) of 1986 legalized several million aliens residing in the United States without authorization. IRCA's major legalization program provided legal status for otherwise eligible aliens who had resided continuously in the United States in an unlawful status since before January 1, 1982. They were required to apply during a 12-month period beginning May 5, 1987. IRCA also provided legal status for otherwise eligible aliens who had worked at least 90 days in seasonal agriculture in the United States during the year ending May 1, 1986. They were required to apply during an 18-month period beginning June 1, 1987 and ending November 30, 1988.

¹¹ The DHS Office of Immigration Statistics (OIS) data comprise those admitted as LPRs or those adjusting to LPR status.

¹² The trend line models at start point of approximately 400,000 in 1900 and an end point of approximately 500,000 in 2000.

Figure 4. Three Scenarios of Legal Permanent Immigration, 1953-2004

Source: *Statistical Yearbook of Immigration*, U.S. Department of Homeland Security, Office of Immigration Statistics, multiple fiscal years. Aliens legalizing through the Immigration Reform and Control Act of 1986 are not depicted.

As **Figure 4** illustrates, three different trends result from the three scenarios.

- "Pre-1966" trend line projects a substantially lower rate of growth than what actually occurred from 1953 to 2004.
- "1966-1990" trend line most closely approximates the actual admissions over the entire 1950-2004 period.
- "Post-1990" trend line yields the highest rate of growth.

Obviously, if the start point of a scenario would have been during the 1930s or 1940s, the trend line would have exhibited a steeper upward slope.

Elements of Senate Proposal

Title IV of S. 2454, the Securing America's Borders Act, which Senate Majority Leader Bill Frist introduced on March 16, 2006, as well as Title V in the Comprehensive Immigration Reform Act that the Senate Committee on the Judiciary reported, would substantially increase legal immigration and would restructure the allocation of these visas. The particular titles in S. 2454 and the Judiciary-reported bill are essentially equivalent. The bills would no longer deduct immediate relatives of U.S. citizens from the overall family-sponsored numerical limit of 480,000. This section would increase the annual number of employment-based LPRs from 140,000 to 290,000. It also would no longer count the derivative family members of employment-based LPRs as part of the numerical ceiling.

The bills would further increase overall levels of immigration by reclaiming family and employment-based LPR visas that had rolled over to the other preference system when the annual ceilings were not met, FY2001-FY2005. For example, the Consular Affairs Visa Office data indicate that an estimated 64,424 available family-sponsored visas were not processed by U.S. Citizenship and Immigrant Services in FY2003 and rolled over to the FY2004 employment-based categories. That same year approximately 88,512 employment-based visas were not processed and rolled over to the FY2004 family-sponsored categories.¹³

Title IV of S. 2454 and Title V of the Judiciary-reported bill would raise the current per-country limit on LPR visas from an allocation of 7% of the total preference allocation to 10% of the total preference allocation (which would be 480,000 for family-based and 290,000 for employment-based under this bill). Coupled with the proposed increases in the worldwide ceilings, these provisions would ease the visa wait times that oversubscribed countries (i.e., China, India, Mexico, and the Philippines) currently have by substantially increasing their share of the overall ceiling.¹⁴

Modeling Family-sponsored LPRs. These two bills would result in an overall increase in available visas for family members, as immediate relatives are no longer deducted from the 480,000 ceiling. In recent years, the 480,000 ceiling has been exceeded to maintain the 226,000 floor on family-sponsored preference visas after subtraction of the immediate relative visas. Title IV of S. 2454 and Title V of the Judiciary-reported bill would reallocate family-sponsored immigrants, notably by increasing the numerical limits on immediate relatives of LPRs from 114,200 (plus visas not used by first preference) to 240,000 annually. Although the bills would decrease the proportion of visas to adult children of U.S. citizens (married and unmarried), the actual numbers for these categories might increase because the family-sponsored worldwide ceiling would be increased.

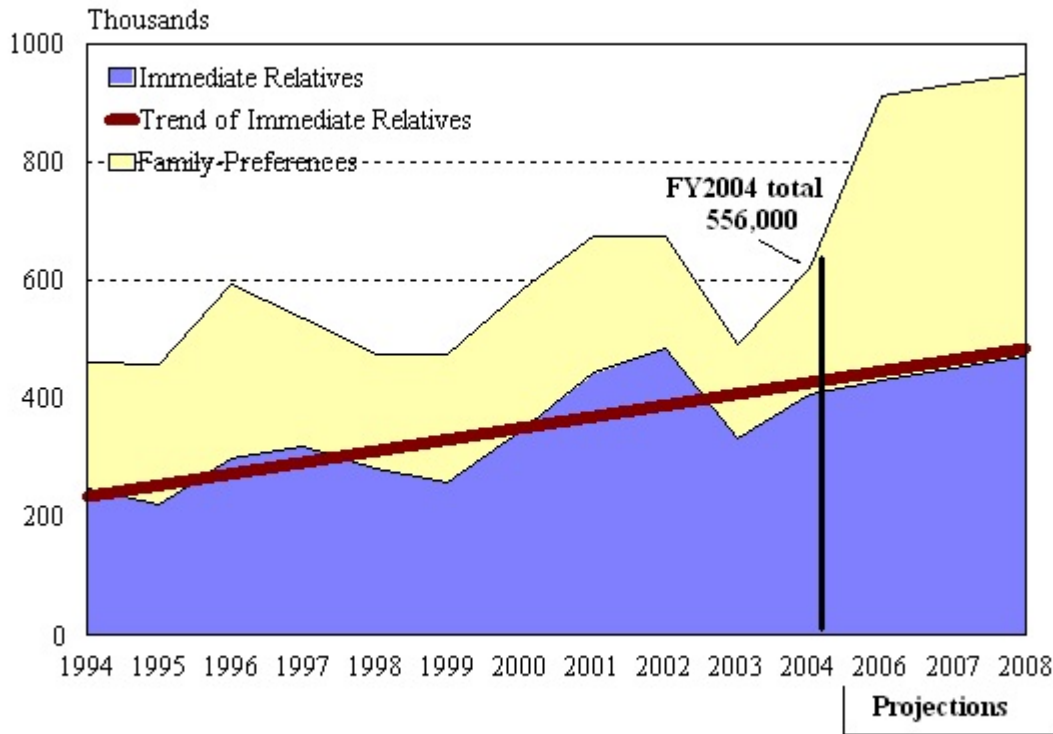
Assuming that the trend in the number of immediate relatives of U.S. citizens continues at the same upward rate, the projected number of immediate relatives would be approximately 470,000 in 2008. Assuming that the demand for the numerically-limited family preferences continues at the same level, the full 480,000 would be allocated. If these assumptions hold, the United States would likely be admitting or adjusting an estimated 950,000 family-sponsored LPRs by 2008, as projected in **Figure 5**.

¹³ Data provided in telephone conversation with U.S. Department of State Bureau of Consular Affairs Visa Office, March 28, 2006.

¹⁴ For an analysis of per-country limits and actual admissions by country, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

Figure 5. Projections of Family-Sponsored LPRs under S. 2454 and the Judiciary-Reported Bill

Assuming "Demand" for Visas and Immediate Relatives Continue at Current Rates:



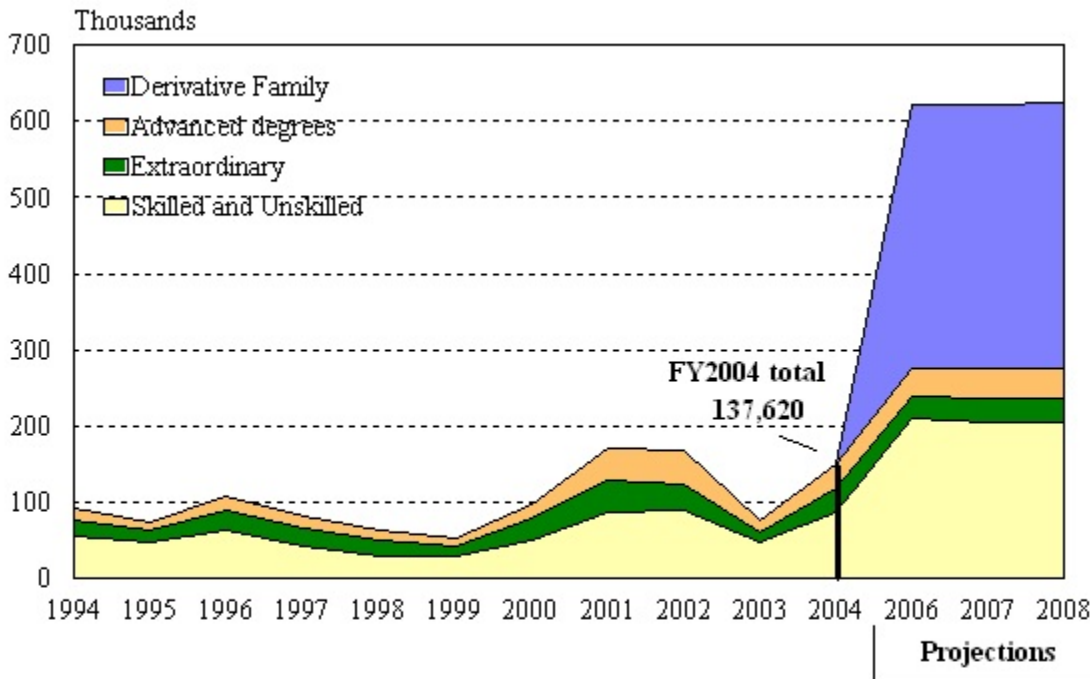
Source: CRS analysis of data from the DHS Office of Immigration Statistics and the former INS.

Modeling Employment-based LPRs. Title IV of S. 2454 and Title V of the Judiciary-reported bill would reallocate employment-based visas as follows: up to 15% to “priority workers,” which are also referred to as *extraordinary*; up to 15% to professionals holding advanced degrees and certain persons of exceptional ability; up to 35% to skilled shortage workers with two years training or experience and certain professionals; up to 5% to employment creation investors; and up to 30% to unskilled shortage workers. Employment-based visas for certain special immigrants would no longer be numerically limited.

Exemptions from the numerical limits on employment-based visas would also be established for derivative immediate relatives of employment-based LPRs. By more than doubling the ceiling and by exempting derivative family members from the ceiling, these visa numbers would rise dramatically. If you assume that each employment-based LPR is accompanied by 1.2 family members (as is currently the ratio), then an estimated 348,000 additional LPRs could be admitted along with the 290,000 numerically limited employment-based LPRs, as projected in **Figure 6**.

Figure 6. Projections of Employment-Based LPRs under S. 2454 and the Judiciary-Reported Bill

Assuming "Demand" for Visas and Derivative Family Continue at Current Rates



Note: Future 4th preference special immigrants have too many unknown factors to estimate.

Source: CRS analysis of data from the DHS Office of Immigration Statistics and the former INS.

These two bills would shift the allocation of visas from persons of “extraordinary” and “exceptional” abilities and persons having advanced professional degrees (i.e., first and second preferences), toward visas for unskilled workers. As a result, unskilled workers would increase from 10,000 to 87,000 – plus any unused visas that would roll down from the other employment-based preference categories. Whether this shift affects the age distribution and family-size of the prospective LPR population is beyond the analytic scope of this memorandum.

Caveats

The analysis in this memorandum simply projects the family-sponsored LPRs and most of the employment-based LPRs over the short term, assuming current trends, if Title IV of S. 2454 or Title V of the Judiciary-reported bill are enacted. There are a variety of cautions to heed when projecting future flows of immigrants to the United States. The four caveats discussed below are illustrative of the measurement problems and limitations of these estimates.

Fourth Preference Employment-Based. Employment-based visas for fourth preference (i.e., special immigrants) would no longer be numerically limited and would be broadened to include a proposed F-4 foreign student adjustment to LPR status. The most recent estimate for foreign students who adjust to LPR status is about 14%-15% under

current law.¹⁵ There are too many unknown factors to estimate how many of the over half a million foreign students in the United States would qualify under this provision and would opt to become LPRs outside of the numerical limits.¹⁶

Recaptured Visas. The bills would "recapture" visa numbers from FY2001 through FY2005 in those cases when the family-based and employment-based ceilings were not reached and those LPR visas rolled over to the other preference system. According to the Consular Affairs Visa Office, approximately 110,902 family-sponsored visas and 141,381 employment-based visas were not used in the specific years they were initially allocated from FY2001 through FY2005.¹⁷ However, these totals include visas that rolled-over from the other preference system in the prior year and are not an unduplicated count. Also, Title V of P.L. 109-13 recaptured up to 50,000 permanent employment-based visas available for foreign nationals coming to work as nurses.¹⁸ At this time, the actual number of visas available for "recapture" hinges on how these issues are resolved.

FY2003 Data Anomaly. After the September 11, 2001, terrorists attacks and the establishment of the Department of Homeland Security in 2002, the former Immigration and Naturalization Service and the newly created U.S. Citizenship and Immigration Services fell far behind in processing LPR petitions, leading to the unused visa numbers cited above. By December 31, 2003, USCIS reported 5.3 million LPR petitions pending.¹⁹ Thus, the FY2003 admissions numbers may be skewing the trend lines downward because those data understate actual demand and eligibility for that year.

Push-Pull Factors. Immigration to the United States – in actuality – is not a simple trend line that shifts only when policymakers revise the allocations, as the earlier **Figure 3** makes clear. As noted previously, immigration to the United States plummeted in the middle of the Twentieth Century largely as a result of factors brought on by the Great Depression and World War II. There are a variety of "push-pull" factors that drive immigration. Push factors from the immigrant-sending countries include such circumstances as civil wars and political unrest, economic deprivation and limited job opportunities, and catastrophic natural disasters. Pull factors in the United States include such features as strong employment conditions, reunion with family, and quality of life considerations. A corollary factor is the extent that aliens may be able to migrate to other "desirable" countries that offer circumstances and opportunities comparable to the United States.

¹⁵ B. Lindsay Lowell, "Foreign Student Adjustment to Permanent Status in the United States," Presentation at the International Metropolis Conference, 2005.

¹⁶ There are currently 599,617 foreign students in the United States. CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*, by Alison Siskin.

¹⁷ Data provided in telephone conversation with U.S. Department of State Bureau of Consular Affairs Visa Office, March 28, 2006.

¹⁸ For a fuller analysis of permanent admissions to the United States and related legislation, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*.

¹⁹ According to USCIS, other immigration-related petitions, such as applications for work authorizations or change of nonimmigrant status that were filed, bring the total cases pending to over 6 million. Telephone conversation with USCIS Congressional Affairs, Feb. 12, 2004.

Appendix A. Legal Immigration Preference System

Category		Numerical Limit
Total Family-Sponsored Immigrants		480,000
<i>Immediate relatives</i>	Aliens who are the spouses and unmarried minor children of U.S. citizens and the parents of adult U.S. citizens	Unlimited
Family-sponsored Preference Immigrants		Worldwide Level 226,000
<i>1st preference</i>	Unmarried sons and daughters of citizens	23,400 plus visas not required for 4 th preference
<i>2nd preference</i>	(A) Spouses and children of LPRs (B) Unmarried sons and daughters of LPRs	114,200 plus visas not required for 1 st preference
<i>3rd preference</i>	Married sons and daughters of citizens	23,400 plus visas not required for 1 st or 2 nd preference
<i>4th preference</i>	Siblings of citizens age 21 and over	65,000 plus visas not required for 1 st , 2 nd , or 3 rd preference
Employment-Based Preference Immigrants		Worldwide Level 140,000
<i>1st preference</i>	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multi-national executives and managers	28.6% of worldwide limit plus unused 4 th and 5 th preference
<i>2nd preference</i>	Members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business	28.6% of worldwide limit plus unused 1 st preference
<i>3rd preference — skilled</i>	Skilled shortage workers with at least two years training or experience, professionals with baccalaureate degrees	28.6% of worldwide limit plus unused 1 st or 2 nd preference
<i>3rd preference — “other”</i>	Unskilled shortage workers	10,000 (taken from the total available for 3 rd preference)
<i>4th preference</i>	“Special immigrants,” including ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and others	7.1% of worldwide limit; religious workers limited to 5,000
<i>5th preference</i>	Employment creation investors who invest at least \$1 million (amount may vary in rural areas or areas of high unemployment) which will create at least 10 new jobs	7.1% of worldwide limit; 3,000 <i>minimum</i> reserved for investors in rural or high unemployment areas

Source: CRS summary of §§ 203(a), 203(b), and 204 of INA; 8 U.S.C. § 1153; excerpted from CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*.