ments, boundaries, or other political change, the annual quota of the newly established area, or the visas authorized to be issued shall not be less than the total of quotas in effect or visas authorized for the area immediately preceding the change, and deleted provisions which in the event of an increase in minimum quota areas above twenty in the Asia-Pacific triangle, would proportionately decrease each quota of the area so the sum of all area quotas did not exceed two thousand.

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 1988 AMENDMENT

Amendment by section 8(c) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–653 applicable to visas issued, and admissions occurring, on or after Nov. 14, 1986, see section 23(a) of Pub. L. 99–653, set out as a note under section 1101 of this title.

Section 311(b) of Pub. L. 99–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to fiscal years beginning after the date of the enactment of this Act [Nov. 6, 1986].''

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, Apr. 1, 1980, 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

For effective date of amendment by Pub. L. 89–236, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

TREATMENT OF HONG KONG UNDER PER COUNTRY LEVELS

Section 103 of Pub. L. 101–649 provided that: ''The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act [8 U.S.C. 1152(b)] shall be considered to have been granted, effective beginning with fiscal year 1991, with respect to Hong Kong as a separate foreign state, and not as a colony or other component or dependent area of another foreign state, except that the total number of immigrant visas made available to natives of Hong Kong under subsections (a) and (b) of section 203 of such Act [8 U.S.C. 1153(a), (b)] in each of fiscal years 1991, 1992, and 1993 may not exceed 10,000.''

[Section 103 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

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

The numerical limitations described in text 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

For provisions rendering inapplicable the numerical limitations contained in this section to certain aliens who had applied for adjustment to the status of permanent resident alien on or before June 1, 1978, see section 19 of Pub. L. 97–116, set out as a note under section 1151 of this title.

APPROVAL BY SECRETARY OF STATE TREATING TAIWAN (CHINA) AS SEPARATE FOREIGN STATE FOR PURPOSES OF NUMERICAL LIMITATION ON IMMIGRANT VISAS

Pub. L. 97–113, title VII, § 714, Dec. 29, 1981, 95 Stat. 1548, provided that: ''The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act [subsec. (b) of this section] shall be considered to have been granted with respect to Taiwan (China).''

§ 1153. Allocation of immigrant visas

(a) Preference allocation for family-sponsored immigrants

Aliens subject to the worldwide level specified in section 1151(c) of this title for family-sponsored immigrants shall be allotted visas as follows:

(1) Unmarried sons and daughters of citizens

Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

(2) Spouses and unmarried sons and unmarried daughters of permanent resident aliens

Qualified immigrants—

(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence,

shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

(3) Married sons and married daughters of citizens

Qualified immigrants who are the married sons or married daughters of citizens of the

United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) Brothers and sisters of citizens

Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

(b) Preference allocation for employment-based immigrants

Aliens subject to the worldwide level specified in section 1151(d) of this title for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) Priority workers

Visas shall first be made available in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability

An alien is described in this subparagraph if—

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

(B) Outstanding professors and researchers

An alien is described in this subparagraph if—

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States—

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(C) Certain multinational executives and managers

An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability

(A) In general

Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer

(i) National interest waiver

Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii) Physicians working in shortage areas or veterans facilities

(I) In general

The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if—

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

(II) Prohibition

No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State

under section 1154(b) of this title, and the Attorney General may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 1255 of this title, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in section 1101(a)(15)(J) of this title), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

(III) Statutory construction

Nothing in this subparagraph may be construed to prevent the filing of a petition with the Attorney General for classification under section 1154(a) of this title, or the filing of an application for adjustment of status under section 1255 of this title, by an alien physician described in subclause (I) prior to the date by which such alien physician has completed the service described in subclause (II).

(IV) Effective date

The requirements of this subsection do not affect waivers on behalf of alien physicians approved under subsection (b)(2)(B) of this section before the enactment date of this subsection. In the case of a physician for whom an application for a waiver was filed under subsection (b)(2)(B) of this section prior to November 1, 1998, the Attorney General shall grant a national interest waiver pursuant to subsection (b)(2)(B) of this section except that the alien is required to have worked full time as a physician for an aggregate of 3 years (not including time served in the status of an alien described in section 1101(a)(15)(J) of this title) before a visa can be issued to the alien under section 1154(b) of this title or the status of the alien is adjusted to permanent resident under section 1255 of this title.

(C) Determination of exceptional ability

In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(3) Skilled workers, professionals, and other workers

(A) In general

Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers

Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Professionals

Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

(iii) Other workers

Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(B) Limitation on other workers

Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).

(C) Labor certification required

An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 1182(a)(5)(A) of this title.

(4) Certain special immigrants

Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section 1101(a)(27) of this title (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 1101(a)(27)(C)(ii) of this title, and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 1101(a)(27)(M) of this title.

(5) Employment creation

(A) In general

Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership)—

(i) in which such alien has invested (after November 29, 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

(ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant

and the immigrant's spouse, sons, or daughters).

(B) Set-aside for targeted employment areas

(i) In general

Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area.

(ii) "Targeted employment area" defined

In this paragraph, the term ''targeted employment area'' means, at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).

(iii) "Rural area" defined

In this paragraph, the term ''rural area'' means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

(C) Amount of capital required

(i) In general

Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be $1,000,000. The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount specified under the previous sentence.

(ii) Adjustment for targeted employment areas

The Attorney General may, in the case of investment made in a targeted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than ½ of) the amount specified in clause (i).

(iii) Adjustment for high employment areas

In the case of an investment made in a part of a metropolitan statistical area that at the time of the investment—

(I) is not a targeted employment area, and

(II) is an area with an unemployment rate significantly below the national average unemployment rate,

the Attorney General may specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (i).

(D) Full-time employment defined

In this paragraph, the term ''full-time employment'' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

(6) Special rules for "K" special immigrants

(A) Not counted against numerical limitation in year involved

Subject to subparagraph (B), the number of immigrant visas made available to special immigrants under section 1101(a)(27)(K) of this title in a fiscal year shall not be subject to the numerical limitations of this subsection or of section 1152(a) of this title.

(B) Counted against numerical limitations in following year

(i) Reduction in employment-based immigrant classifications

The number of visas made available in any fiscal year under paragraphs (1), (2), and (3) shall each be reduced by ⅓ of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title.

(ii) Reduction in per country level

The number of visas made available in each fiscal year to natives of a foreign state under section 1152(a) of this title shall be reduced by the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(iii) Reduction in employment-based immigrant classifications within per country ceiling

In the case of a foreign state subject to section 1152(e) of this title in a fiscal year (and in the previous fiscal year), the number of visas made available and allocated to each of paragraphs (1) through (3) of this subsection in the fiscal year shall be reduced by ⅓ of the number of visas made available in the previous fiscal year to special immigrants described in section 1101(a)(27)(K) of this title who are natives of the foreign state.

(c) Diversity immigrants

(1) In general

Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 1151(e) of this title for diversity immigrants shall be allotted visas each fiscal year as follows:

(A) Determination of preference immigration

The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 1151(a) of this title (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 1151(b)(2) of this title.

(B) Identification of high-admission and low-admission regions and high-admission and low-admission states

The Attorney General—

(i) shall identify—

(I) each region (each in this paragraph referred to as a ''high-admission region'') for which the total of the numbers determined under subparagraph (A) for states in the region is greater than ⅙ of the total of all such numbers, and

(II) each other region (each in this paragraph referred to as a ''low-admission region''); and

(ii) shall identify—

(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a ''high-admission state''), and

(II) each other foreign state (each such state in this paragraph referred to as a ''low-admission state'').

(C) Determination of percentage of worldwide immigration attributable to high-admission regions

The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

(D) Determination of regional populations excluding high-admission states and ratios of populations of regions within low-admission regions and high-admission regions

The Attorney General shall determine—

(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

(E) Distribution of visas

(i) No visas for natives of high-admission states

The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

(ii) For low-admission states in low-admission regions

Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of—

(I) the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(ii).

(iii) For low-admission states in high-admission regions

Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of—

(I) 100 percent minus the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(iii).

(iv) Redistribution of unused visa numbers

If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

(v) Limitation on visas for natives of a single foreign state

The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

(F) "Region" defined

Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

(i) Africa.

(ii) Asia.

(iii) Europe.

(iv) North America (other than Mexico).

(v) Oceania.

(vi) South America, Mexico, Central America, and the Caribbean.

(2) Requirement of education or work experience

An alien is not eligible for a visa under this subsection unless the alien—

(A) has at least a high school education or its equivalent, or

(B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

(3) Maintenance of information

The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.

(d) Treatment of family members

A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 1101(b)(1) of

this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of this section, be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

(e) Order of consideration

(1) Immigrant visas made available under subsection (a) or (b) of this section shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 1101(a)(27)(D) of this title, with the Secretary of State) as provided in section 1154(a) of this title.

(2) Immigrant visa numbers made available under subsection (c) of this section (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(f) Authorization for issuance

In the case of any alien claiming in his application for an immigrant visa to be described in section 1151(b)(2) of this title or in subsection (a), (b), or (c) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 1154 of this title.

(g) Lists

For purposes of carrying out the Secretary's responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a), (b), and (c) of this section and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

(h) Rules for determining whether certain aliens are children

(1) In general

For purposes of subsections (a)(2)(A) and (d) 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—

(A) the age of the alien on the date on which an immigrant visa number becomes available for such alien (or, in the case of subsection (d) of this section, the date on which an immigrant visa number became available for the alien's parent), but only if the alien has sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability; reduced by

(B) the number of days in the period during which the applicable petition described in paragraph (2) was pending.

(2) Petitions described

The petition described in this paragraph is—

(A) with respect to a relationship described in subsection (a)(2)(A) of this section, a petition filed under section 1154 of this title for classification of an alien child under subsection (a)(2)(A) of this section; or

(B) with respect to an alien child who is a derivative beneficiary under subsection (d) of this section, a petition filed under section 1154 of this title for classification of the alien's parent under subsection (a), (b), or (c) of this section.

(3) Retention of priority date

If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d) of this section, the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.

(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, § 203, 66 Stat. 178; Pub. L. 85–316, § 3, Sept. 11, 1957, 71 Stat. 639; Pub. L. 86–363, §§ 1–3, Sept. 22, 1959, 73 Stat. 644; Pub. L. 89–236, § 3, Oct. 3, 1965, 79 Stat. 912; Pub. L. 94–571, § 4, Oct. 20, 1976, 90 Stat. 2705; Pub. L. 95–412, § 3, Oct. 5, 1978, 92 Stat. 907; Pub. L. 95–417, § 1, Oct. 5, 1978, 92 Stat. 917; Pub. L. 96–212, title II, § 203(c), (i), Mar. 17, 1980, 94 Stat. 107, 108; Pub. L. 101–649, title I, §§ 111, 121(a), 131, 162(a)(1), title VI, § 603(a)(3), Nov. 29, 1990, 104 Stat. 4986, 4987, 4997, 5009, 5082; Pub. L. 102–110, § 2(b), Oct. 1, 1991, 105 Stat. 555; Pub. L. 102–232, title III, § 302(b)(2), (e)(3), Dec. 12, 1991, 105 Stat. 1743, 1745; Pub. L. 103–416, title II, §§ 212(b), 219(c), Oct. 25, 1994, 108 Stat. 4314, 4316; Pub. L. 106–95, § 5, Nov. 12, 1999, 113 Stat. 1318; Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 117], Nov. 29, 1999, 113 Stat. 1535, 1501A–21; Pub. L. 106–536, § 1(b)(1), Nov. 22, 2000, 114 Stat. 2560; Pub. L. 107–208, § 3, Aug. 6, 2002, 116 Stat. 928; Pub. L. 107–273, div. C, title I, §§ 11035, 11036(a), Nov. 2, 2002, 116 Stat. 1846; Pub. L. 109–162, title VIII, § 805(b)(2), Jan. 5, 2006, 119 Stat. 3056.)

REFERENCES IN TEXT

The enactment date of this subsection, referred to in subsec. (b)(2)(B)(ii)(IV), probably means the date of enactment of Pub. L. 106–95, which amended subsec. (b)(2)(B) of this section generally, and which was approved Nov. 12, 1999.

AMENDMENTS

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

2002—Subsec. (b)(5)(A). Pub. L. 107–273, § 11036(a)(1)(A), substituted ''enterprise (including a limited partnership)—'' for ''enterprise—'' in introductory provisions.

Subsec. (b)(5)(A)(i) to (iii). Pub. L. 107–273, § 11036(a)(1)(B), (C), redesignated cls. (ii) and (iii) as (i)

and (ii), respectively, and struck out former cl. (i) which read as follows: ''which the alien has established,''.

Subsec. (b)(5)(B)(i). Pub. L. 107–273, § 11036(a)(2), substituted ''invest in'' for ''establish''.

Subsec. (b)(5)(D). Pub. L. 107–273, § 11035, added subpar. (D).

Subsec. (h). Pub. L. 107–208 added subsec. (h).

2000—Subsec. (b)(4). Pub. L. 106–536 inserted before period at end '', and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 1101(a)(27)(M) of this title''.

1999—Subsec. (b)(2)(B). Pub. L. 106–95 and Pub. L. 106–113 amended subpar. (B) generally in substantially identical manner. Pub. L. 106–95 provided headings. Text is based on Pub. L. 106–113. Prior to amendment, text read as follows: ''The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.''

1994—Subsec. (b)(5)(B), (C). Pub. L. 103–416, § 219(c), substituted ''Targeted'' and ''targeted'' for ''Targetted'' and ''targetted'', respectively, wherever appearing in headings and text.

Subsec. (b)(6)(C). Pub. L. 103–416, § 212(b), struck out subpar. (C) which related to application of separate numerical limitations.

1991—Subsec. (b)(1). Pub. L. 102–232, § 302(b)(2)(A), substituted ''28.6 percent of such worldwide level'' for ''40,000''.

Subsec. (b)(1)(C). Pub. L. 102–232, § 302(b)(2)(B), substituted ''the alien seeks'' for ''who seeks''.

Subsec. (b)(2)(A). Pub. L. 102–232, § 302(b)(2)(A), substituted ''28.6 percent of such worldwide level'' for ''40,000''.

Subsec. (b)(2)(B). Pub. L. 102–232, § 302(b)(2)(D), inserted ''professions,'' after ''arts,''.

Subsec. (b)(3)(A). Pub. L. 102–232, § 302(b)(2)(A), substituted ''28.6 percent of such worldwide level'' for ''40,000''.

Subsec. (b)(4), (5)(A). Pub. L. 102–232, § 302(b)(2)(C), substituted ''7.1 percent of such worldwide level'' for ''10,000''.

Subsec. (b)(6). Pub. L. 102–110 added par. (6).

Subsec. (f). Pub. L. 102–232, § 302(e)(3), substituted ''Authorization for issuance'' for ''Presumption'' in heading, struck out at beginning ''Every immigrant shall be presumed not to be described in subsection (a) or (b) of this section, section 1101(a)(27) of this title, or section 1151(b)(2) of this title, until the immigrant establishes to the satisfaction of the consular officer and the immigration officer that the immigrant is so described.'', and substituted ''1151(b)(2) of this title or in subsection (a), (b), or (c)'' for ''1151(b)(1) of this title or in subsection (a) or (b)''.

1990—Subsec. (a). Pub. L. 101–649, § 111(2), added subsec. (a) and struck out former subsec. (a) which related to allocation of visas of aliens subject to section 1151(a) limitations.

Subsec. (a)(7). Pub. L. 101–649, § 603(a)(3), substituted ''section 1182(a)(5) of this title'' for ''section 1182(a)(14) of this title''.

Subsec. (b). Pub. L. 101–649, §§ 111(1), 121(a), added subsec. (b) and redesignated former subsec. (b) as (d).

Subsec. (c). Pub. L. 101–649, §§ 111(1), 131, added subsec. (c) and redesignated former subsec. (c) as (e).

Subsec. (d). Pub. L. 101–649, § 162(a)(1), added subsec. (d) and struck out former subsec. (d) which related to order of consideration given applications for immigrant visas.

Pub. L. 101–649, § 111(1), redesignated former subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 101–649, § 162(a)(1), added subsec. (e) and struck out former subsec. (e) which related to order of issuance of immigrant visas.

Pub. L. 101–649, § 111(1), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 101–649, § 162(a)(1), added subsec. (f) and struck out former subsec. (f) which related to presumption of nonpreference status and grant of status by consular officers.

Pub. L. 101–649, § 111(1), redesignated subsec. (d) as (f).

Subsec. (g). Pub. L. 101–649, § 162(a)(1), added subsec. (g) and struck out former subsec. (g) which related to estimates of anticipated numbers of visas to be issued, termination and reinstatement of registration of aliens, and revocation of approval of petition.

Pub. L. 101–649, § 111(1), redesignated subsec. (e) as (g).

1980—Subsec. (a). Pub. L. 96–212, § 203(c)(1)–(6), in introductory text struck out applicability to conditional entry, in par. (2) substituted ''(26)'' for ''(20)'', struck out par. (7) relating to availability of conditional entries, redesignated former par. (8) as (7) and struck out applicability to number of conditional entries and visas available under former par. (7), and redesignated former par. (9) as (8) and substituted provisions relating to applicability of pars. (1) to (7) to visas, for provisions relating to applicability of pars. (1) to (8) to conditional entries.

Subsec. (d). Pub. L. 96–212, § 203(c)(7), substituted ''preference status under paragraphs (1) through (6)'' for ''preference status under paragraphs (1) through (7)''.

Subsec. (f). Pub. L. 96–212, § 203(c)(8), struck out subsec. (f) which related to reports to Congress of refugees conditionally entering the United States.

Subsec. (g). Pub. L. 96–212, § 203(c)(8), struck out subsec. (g) which set forth provisions respecting inspection and examination of refugees after one year.

Pub. L. 96–212, § 203(i), substituted provisions relating to inspection and examination of refugees after one year for provisions relating to inspection and examination of refugees after two years.

Subsec. (h). Pub. L. 96–212, § 203(c)(8), struck out subsec. (h) which related to the retroactive readjustment of refugee status as an alien lawfully admitted for permanent residence.

1978—Subsec. (a)(1) to (7). Pub. L. 95–412 substituted ''1151(a) of this title'' for ''1151(a)(1) or (2) of this title'' wherever appearing.

Subsec. (a)(8). Pub. L. 95–417 inserted provisions requiring a valid adoption home-study prior to the granting of a nonpreference visa for children adopted abroad or coming for adoption by United States citizens and requiring that no other nonpreference visa be issued to an unmarried child under the age of 16 unless accompanying or following to join his natural parents.

1976—Subsec. (a). Pub. L. 94–571, § 4(1)–(3), substituted ''section 1151(a)(1) or (2) of this title'' for ''section 1151(a)(ii) of this title'' in pars. (1) to (7); made visas available, in par. (3), to qualified immigrants whose services in the professions, sciences, or arts are sought by an employer in the United States; and required, in par. (5), that the United States citizens be at least twenty-one years of age.

Subsec. (e). Pub. L. 94–571, § 4(4), substituted provision requiring Secretary of State to terminate the registration of an alien who fails to apply for an immigrant visa within one year following notification of the availability of such visa, including provision for reinstatement of a registration upon establishment within two years following the notification that the failure to apply was due to circumstances beyond the alien's control for prior provision for discretionary termination of the registration on a waiting list of an alien failing to evidence continued intention to apply for a visa as prescribed by regulation and inserted provision for automatic revocation of approval of a petition approved under section 1154(b) of this title upon such termination.

1965—Subsec. (a). Pub. L. 89–236 substituted provisions setting up preference priorities and percentage allocations of the total numerical limitation for the admission of qualified immigrants, consisting of unmarried sons or daughters of U.S. citizens (20 percent), husbands, wives, and unmarried sons or daughters of alien residents (20 percent plus any unused portion of class 1), members of professions, scientists, and artists (10 percent), married sons or daughters of U.S. citizens (10

percent plus any unused portions of classes 1–3), brothers or sisters of U.S. citizens (24 percent plus any unused portions of classes 1 through 4), skilled or unskilled persons capable of filling labor shortages in the United States (10 percent), refugees (6 percent), otherwise qualified immigrants (portion not used by classes 1 through 7), and allowing a spouse or child to be given the same status and order of consideration as the spouse or parent, for provisions spelling out the preferences under the quotas based on the previous national origins quota systems.

Subsec. (b). Pub. L. 89–236 substituted provisions requiring that consideration be given applications for immigrant visas in the order in which the classes of which they are members are listed in subsec. (a), for provisions allowing issuance of quota immigrant visas under the previous national origins quota system in the order of filing in the first calendar month after receipt of notice of approval for which a quota number was available.

Subsec. (c). Pub. L. 89–236 substituted provisions requiring issuance of immigrant visas pursuant to paragraphs (1) through (6) of subsection (a) of this section in the order of filing of the petitions therefor with the Attorney General, for provisions which related to issuance of quota immigrant visas in designated classes in the order of registration in each class on quota waiting lists.

Subsec. (d). Pub. L. 89–236 substituted provisions requiring each immigrant to establish his preference as claimed and prohibiting consular officers from granting status of immediate relative of a United States citizen or preference until authorized to do so, for provisions spelling out the order for consideration of applications for quota immigrant visas under the various prior classes.

Subsec. (e). Pub. L. 89–236 substituted provisions authorizing Secretary of State to make estimates of anticipated members of visas issued and to terminate the waiting-list registration of any registrant failing to evidence a continued intention to apply for a visa, for provisions establishing a presumption of quota status for immigrants and requiring the immigrant to establish any claim to a preference.

Subsecs. (f) to (h). Pub. L. 89–236 added subsecs. (f) to (h).

1959—Subsec. (a)(2). Pub. L. 86–363, § 1, accorded adult unmarried sons or daughters of United States citizens second preference in the allocation of immigrant visas within quotas.

Subsec. (a)(3). Pub. L. 86–363, § 2, substituted ''unmarried sons or daughters'' for ''children''.

Subsec. (a)(4). Pub. L. 86–363, § 3, substituted ''married sons or married daughters'' for ''sons, or daughters'', increased percentage limitation from 25 to 50 per centum, and made preference available to spouses and children of qualified quota immigrants if accompanying them.

1957—Subsec. (a)(1). Pub. L. 85–316 substituted ''or following to join him'' for ''him''.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–273, div. C, title I, § 11036(c), Nov. 2, 2002, 116 Stat. 1847, provided that: ''The amendments made by this section [amending this section and section 1186b of this title] shall take effect on the date of the enactment of this Act [Nov. 2, 2002] and shall apply to aliens having any of the following petitions pending on or after the date of the enactment of this Act:

''(1) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

''(2) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien's permanent resident status.''

Amendment by Pub. L. 107–208 effective Aug. 6, 2002, and applicable to certain beneficiary aliens, see section 8 of Pub. L. 107–208, set out as a note under section 1151 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–536, § 1(b)(2), Nov. 22, 2000, 114 Stat. 2561, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to visas made available in any fiscal year beginning on or after October 1, 2000.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 219(c) of 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.

EFFECTIVE DATE OF 1991 AMENDMENTS

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.

Amendment by Pub. L. 102–110 effective 60 days after Oct. 1, 1991, see section 2(d) of Pub. L. 102–110, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by sections 111, 121(a), 131, 162(a)(1) of Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, with general transition provisions, see section 161(a), (c) of Pub. L. 101–649, set out as a note under section 1101 of this title.

Amendment by section 603(a)(3) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 203(c) of Pub. L. 96–212 effective, except as otherwise provided, Apr. 1, 1980, and amendment by section 203(i) of Pub. L. 96–212 effective immediately before Apr. 1, 1980, 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

For effective date of amendment by Pub. L. 89–236, see section 20 of Pub. L. 89–236, set out as a note under section 1151 of this title.

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.

GAO STUDY

Pub. L. 108–156, § 5, Dec. 3, 2003, 117 Stat. 1945, as amended by Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, provided that:

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Dec. 3, 2003], the Government Accountability Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

''(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

''(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

''(2) the country of origin of the immigrant investors;

''(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

''(4) the number of immigrant investors that have sought to become citizens of the United States;

''(5) the types of commercial enterprises that the immigrant investors have established; and

''(6) the types and number of jobs created by the immigrant investors.''

RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS

Pub. L. 106–313, title I, § 106(d), Oct. 17, 2000, 114 Stat. 1254, as amended by Pub. L. 109–13, div. B, title V, § 502, May 11, 2005, 119 Stat. 322, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, the number of employment-based visas (as defined in paragraph (3)) made available for a fiscal year (beginning with fiscal year 2001) shall be increased by the number described in paragraph (2). Visas made available under this subsection shall only be available in a fiscal year to employment-based immigrants under paragraph (1), (2), or (3) of section 203(b) of the Immigration and Nationality Act [8 U.S.C. 1153(b)] and any such visa that is made available due to the difference between the number of employment-based visas that were made available in fiscal year 2001, 2002, 2003, or 2004 and the number of such visas that were actually used in such fiscal year shall be available only to employment-based immigrants (and their family members accompanying or following to join under section 203(d) of such Act (8 U.S.C. 1153(d))) whose immigrant worker petitions were approved based on schedule A, as defined in section 656.5 of title 20, Code of Federal Regulations, as promulgated by the Secretary of Labor.

''(2) NUMBER AVAILABLE.—

''(A) IN GENERAL.—Subject to subparagraph (B), the number described in this paragraph is the difference between the number of employment-based visas that were made available in fiscal years 1999 through 2004 and the number of such visas that were actually used in such fiscal years.

''(B)(i) REDUCTION.—The number described in subparagraph (A) shall be reduced, for each fiscal year after fiscal year 2001, by the cumulative number of immigrant visas actually used under paragraph (1) for previous fiscal years.

''(ii) MAXIMUM.—The total number of visas made available under paragraph (1) from unused visas from the fiscal years 2001 through 2004 may not exceed 50,000.

''(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the application of section 201(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1151(c)(3)(C)).

''(3) EMPLOYMENT-BASED VISAS DEFINED.—For purposes of this subsection, the term 'employment-based visa' means an immigrant visa which is issued pursuant to the numerical limitation under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)).''

TEMPORARY REDUCTION IN WORKERS' VISAS

Pub. L. 105–100, title II, § 203(e), Nov. 19, 1997, 111 Stat. 2199, as amended by Pub. L. 105–139, § 1(e), Dec. 2, 1997, 111 Stat. 2645, provided that:

''(1) Beginning in the fiscal year following the fiscal year in which a visa has been made available under section 203(b)(3)(A)(iii) of the Immigration and Nationality Act [8 U.S.C. 1153(b)(3)(A)(iii)] for all aliens who are the beneficiary of a petition approved under section 204 of such Act [8 U.S.C. 1154] as of the date of the enactment of this Act [Nov. 19, 1997] for classification under section 203(b)(3)(A)(iii) of such Act, subject to paragraph (2), visas available under section 203(b)(3)(A)(iii) of that Act 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) the number computed under subsection (d)(2)(A) [section 203(d)(2)(A) of Pub. L. 105–100, 8 U.S.C. 1151 note]; exceeds

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

DIVERSITY IMMIGRANT LOTTERY FEE

Pub. L. 104–208, div. C, title VI, § 636, Sept. 30, 1996, 110 Stat. 3009–703, provided that: ''The Secretary of State may establish a fee to be paid by each applicant for an immigrant visa described in section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)]. Such fee may be set at a level that will ensure recovery of the cost to the Department of State of allocating visas under such section, including the cost of processing all applications thereunder. All fees collected under this section shall be used for providing consular services. All fees collected under this section shall be deposited as an offsetting collection to any Department of State appropriation and shall remain available for obligations until expended. The provisions of the Act of August 18, 1856 (11 Stat. 58; 22 U.S.C. 4212–4214), concerning accounting for consular fees, shall not apply to fees collected under this section.''

ELIGIBILITY FOR VISAS FOR POLISH APPLICANTS FOR 1995 DIVERSITY IMMIGRANT PROGRAM

Pub. L. 104–208, div. C, title VI, § 637, Sept. 30, 1996, 110 Stat. 3009–704, provided that:

''(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, shall include among the aliens selected for diversity immigrant visas for fiscal year 1997 pursuant to section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)] any alien who, on or before September 30, 1995—

''(1) was selected as a diversity immigrant under such section for fiscal year 1995;

''(2) applied for adjustment of status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of such Act [8 U.S.C. 1255] during fiscal year 1995, and whose application, and any associated fees, were accepted by the Attorney General, in accordance with applicable regulations;

''(3) was not determined by the Attorney General to be excludable under section 212 of such Act [8 U.S.C. 1182] or ineligible under section 203(c)(2) of such Act [8 U.S.C. 1153(c)(2)]; and

''(4) did not become an alien lawfully admitted for permanent residence during fiscal year 1995.

''(b) PRIORITY.—The aliens selected under subsection (a) shall be considered to have been selected for diversity immigrant visas for fiscal year 1997 prior to any alien selected under any other provision of law.

''(c) REDUCTION OF IMMIGRANT VISA NUMBER.—For purposes of applying the numerical limitations in sections 201 and 203(c) of the Immigration and Nationality Act [8 U.S.C. 1151, 1153(c)], aliens selected under subsection (a) who are granted an immigrant visa shall be treated as aliens granted a visa under section 203(c) of such Act.''

SOVIET SCIENTISTS IMMIGRATION

Pub. L. 107–228, div. B, title XIII, § 1304(d), Sept. 30, 2002, 116 Stat. 1437, provided that: ''The Attorney General shall consult with the Secretary, the Secretary of Defense, the Secretary of Energy, and the heads of other appropriate agencies of the United States regarding—

''(1) previous experience in implementing the Soviet Scientists Immigration Act of 1992 [Pub. L. 102–509 set out below]; and

''(2) any changes that those officials would recommend in the regulations prescribed under that Act.''

[For definition of ''Secretary'' as used in section 1304(d) of Pub. L. 107–228, set out above, see section 3 of Pub. L. 107–228, set out as a note under section 2651 of Title 22, Foreign Relations and Intercourse.]

Pub. L. 102–509, Oct. 24, 1992, 106 Stat. 3316, as amended by Pub. L. 107–228, div. B, title XIII, § 1304(a)–(c), Sept. 30, 2002, 116 Stat. 1436, 1437, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Soviet Scientists Immigration Act of 1992'.

''SEC. 2. DEFINITIONS.

''For purposes of this Act—

''(1) the term 'Baltic states' means the sovereign nations of Latvia, Lithuania, and Estonia;

''(2) the term 'independent states of the former Soviet Union' means the sovereign nations of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and

''(3) the term 'eligible independent states and Baltic scientists' means aliens—

''(A) who are nationals of any of the independent states of the former Soviet Union or the Baltic states; and

''(B) who are scientists or engineers who have expertise in nuclear, chemical, biological or other high technology fields or who are working on nuclear, chemical, biological or other high-technology defense projects, as defined by the Attorney General.

''SEC. 3. WAIVER OF JOB OFFER REQUIREMENT.

''The requirement in section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)) that an alien's services in the sciences, arts, or business be sought by an employer in the United States shall not apply to any eligible independent states or Baltic scientist who is applying for admission to the United States for permanent residence in accordance with that section.

''SEC. 4. CLASSIFICATION OF INDEPENDENT STATES SCIENTISTS AS HAVING EXCEPTIONAL ABILITY.

''(a) IN GENERAL.—The Attorney General shall designate a class of eligible independent states and Baltic scientists, based on their level of expertise, as aliens who possess 'exceptional ability in the sciences', for purposes of section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)), whether or not such scientists possess advanced degrees. A scientist is not eligible for designation under this subsection if the scientist has previously been granted the status of an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

''(b) REGULATIONS.—The Attorney General shall prescribe regulations to carry out subsection (a).

''(c) LIMITATION.—Not more than 950 eligible independent states and Baltic scientists (excluding spouses and children if accompanying or following to join) within the class designated under subsection (a) may be allotted visas under section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)).

''(d) DURATION OF AUTHORITY.—The authority under subsection (a) shall be in effect during the following periods:

''(1) The period beginning on the date of the enactment of this Act [Oct. 24, 1992] and ending 4 years after such date.

''(2) The period beginning on the date of the enactment of the Security Assistance Act of 2002 [Sept. 30, 2002] and ending 4 years after such date.''

PILOT IMMIGRATION PROGRAM

Pub. L. 110–329, div. A, §144, Sept. 30, 2008, 122 Stat. 3581, as amended by Pub. L. 111–8, div. J, §101, Mar. 11, 2009, 123 Stat. 988, provided that: ''The requirement set forth in section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 [Pub. L. 102–395] (8 U.S.C. 1153 note) shall continue through September 30, 2009.''

Pub. L. 102–395, title VI, §610, Oct. 6, 1992, 106 Stat. 1874, as amended by Pub. L. 105–119, title I, §116(a), Nov. 26, 1997, 111 Stat. 2467; Pub. L. 106–396, §402, Oct. 30, 2000, 114 Stat. 1647; Pub. L. 107–273, div. C, title I, §11037(a), Nov. 2, 2002, 116 Stat. 1847; Pub. L. 108–156, §4, Dec. 3, 2003, 117 Stat. 1945; Pub. L. 111–83, title V, §548, Oct. 28, 2009, 123 Stat. 2177, provided that:

''(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Secretary of Homeland Security, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States, designated by the Secretary of Homeland Security on the basis of a general proposal, for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. A regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones. The establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from aliens, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have.

''(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Secretary of Homeland Security, shall set aside 3,000 visas annually until September 30, 2012 to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act [8 U.S.C. 1153(b)(5)] and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], to accompany or follow to join such aliens.

''(c) In determining compliance with section 203(b)(5)(A)(iii)[(ii)] of the Immigration and Nationality Act [8 U.S.C. 1153(b)(5)(A)(iii)[(ii)]], and notwithstanding the requirements of 8 CFR 204.6, the Secretary of Homeland Security shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment resulting from the pilot program.

''(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.''

[Pub. L. 107–273, div. C, title I, §11037(b), Nov. 2, 2002, 116 Stat. 1848, provided that: ''The amendments made by this section [amending section 610 of Pub. L. 102–395, set out above] shall take effect on the date of the enactment of this Act [Nov. 2, 2002] and shall apply to—

''(1) any proposal for a regional center pending before the Attorney General (whether for an initial decision or on appeal) on or after the date of the enactment of this Act; and

''(2) any of the following petitions, if filed on or after the date of the enactment of this Act:

''(A) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)).

''(B) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien's permanent resident status.'']

[Section 116(b) of Pub. L. 105–119 provided that: ''The amendment made by subsection (a)(2) [amending section 610 of Pub. L. 102–395, set out above] shall be deemed to have become effective on October 6, 1992.'']

TRANSITION FOR SPOUSES AND MINOR CHILDREN OF LEGALIZED ALIENS

Section 112 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(b)(1), Dec. 12, 1991, 105 Stat. 1743, provided that:

''(a) ADDITIONAL VISA NUMBERS.—

''(1) IN GENERAL.—In addition to any immigrant visas otherwise available, immigrant visa numbers shall be available in each of fiscal years 1992, 1993, and 1994 for spouses and children of eligible, legalized aliens (as defined in subsection (c)) in a number equal to 55,000 minus the number (if any) computed under paragraph (2) for the fiscal year.

''(2) OFFSET.—The number computed under this paragraph for a fiscal year is the number (if any) by which—

''(A) the sum of the number of aliens described in subparagraphs (A) and (B) of section 201(b)(2) of the Immigration and Nationality Act [8 U.S.C. 1151(b)(2)] (or, for fiscal year 1992, section 201(b) of such Act) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year, exceeds

''(B) 239,000.

''(b) ORDER.—Visa numbers under this section shall be made available in the order in which a petition, in behalf of each such immigrant for classification under section 203(a)(2) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(2)], is filed with the Attorney General under section 204 of such Act [8 U.S.C. 1154].

''(c) LEGALIZED ALIEN DEFINED.—In this section, the term 'legalized alien' means an alien lawfully admitted for permanent residence who was provided—

''(1) temporary or permanent residence status under section 210 of the Immigration and Nationality Act [8 U.S.C. 1160],

''(2) temporary or permanent residence status under section 245A of the Immigration and Nationality Act [8 U.S.C. 1255a], or

''(3) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out as a note under section 1255a of this title].

''(d) DEFINITIONS.—The definitions in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section.''

TRANSITION FOR EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG

Section 124 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, § 302(b)(5), Dec. 12, 1991, 105 Stat. 1743, provided that:

''(a) ADDITIONAL VISA NUMBERS.—

''(1) TREATMENT OF PRINCIPALS.—In the case of any alien described in paragraph (3) (or paragraph (2) as the spouse or child of such an alien) with respect to whom a classification petition has been filed and approved under subsection (b), there shall be made available, in addition to the immigrant visas otherwise available in each of fiscal years 1991 through 1993 and without regard to section 202(a) of the Immigration and Nationality Act [8 U.S.C. 1152(a)], up to 12,000 additional immigrant visas. If the full number of such visas are not made available in fiscal year 1991 or 1992, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year.

''(2) DERIVATIVE RELATIVES.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E)]) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, the alien's spouse or parent.

''(3) EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG.—An alien is described in this paragraph if the alien—

''(A) is a resident of Hong Kong and is employed in Hong Kong except for temporary absences at the request of the employer and has been employed in Hong Kong for at least 12 consecutive months as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, by a business entity which (i) is owned and organized in the United States (or is the subsidiary or affiliate of a business owned and organized in the United States), (ii) employs at least 100 employees in the United States and at least 50 employees outside the United States, and (iii) has a gross annual income of at least $50,000,000, and

''(B) has an offer of employment from such business entity in the United States as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, which offer (i) is effective from the time of filing the petition for classification under this section through and including the time of entry into the United States and (ii) provides for salary and benefits comparable to the salary and benefits provided to others with similar responsibilities and experience within the same company.

''(b) PETITIONS.—Any employer desiring and intending to employ within the United States an alien described in subsection (a)(3) may file a petition with the Attorney General for such classification. No visa may be issued under subsection (a)(1) until such a petition has been approved.

''(c) ALLOCATION.—Visa numbers made available under subsection (a) shall be made available in the order which petitions under subsection (b) are filed with the Attorney General.

''(d) DEFINITIONS.—In this section:

''(1) EXECUTIVE CAPACITY.—The term 'executive capacity' has the meaning given such term in section 101(a)(44)(B) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(44)(B)], as added by section 123 of this Act.

''(2) MANAGERIAL CAPACITY.—The term 'managerial capacity' has the meaning given such term in section 101(a)(44)(A) of the Immigration and Nationality Act, as added by section 123 of this Act.

''(3) OFFICER.—The term 'officer' means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or associate trust officer, the controller, any assistant controller, or any other officer of the entity customarily performing functions similar to those performed by any of the above officers.

''(4) SPECIALIZED KNOWLEDGE.—The term 'specialized knowledge' has the meaning given such term in section 214(c)(2)(B) of the Immigration and Nationality Act [8 U.S.C. 1184(c)(2)(B)], as amended by section 206(b)(2) of this Act.

''(5) SUPERVISOR.—The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.''

[Section 124 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out

as an Effective Date of 1990 Amendment note under section 1101 of this title.]

DIVERSITY TRANSITION FOR ALIENS WHO ARE NATIVES OF CERTAIN ADVERSELY AFFECTED FOREIGN STATES

Section 217(b) of Pub. L. 103–416 provided that:

''(1) ELIGIBILITY.—For the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a) [amending section 132 of Pub. L. 101–649, set out below], applications for natives of diversity transition countries submitted for fiscal year 1995 for diversity immigrants under section 203(c) of the Immigration and Nationality Act [8 U.S.C. 1153(c)] shall be considered applications for visas made available for fiscal year 1995 for the diversity transition program under section 132 of the Immigration Act of 1990 [section 132 of Pub. L. 101–649]. No application period for the fiscal year 1995 diversity transition program shall be established and no new applications may be accepted for visas made available under such program for fiscal year 1995. Applications for visas in excess of the minimum available to natives of the country specified in section 132(c) of the Immigration Act of 1990 shall be selected for qualified applicants within the several regions defined in section 203(c)(1)(F) of the Immigration and Nationality Act in proportion to the region's share of visas issued in the diversity transition program during fiscal years 1992 and 1993.

''(2) NOTIFICATION.—Not later than 180 days after the date of enactment of this Act [Oct. 25, 1994], notification of the extension of the diversity transition program for fiscal year 1995 and the provision of visa numbers shall be made to each eligible applicant under paragraph (1).

''(3) REQUIREMENTS.—Notwithstanding any other provision of law, for the purpose of carrying out the extension of the diversity transition program under the amendments made by subsection (a), the requirement of section 132(b)(2) of the Immigration Act of 1990 shall not apply to applicants under such extension and the requirement of section 203(c)(2) of the Immigration and Nationality Act shall apply to such applicants.''

Section 132 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §302(b)(6), Dec. 12, 1991, 105 Stat. 1743; Pub. L. 103–416, title II, §217(a), Oct. 25, 1994, 108 Stat. 4315, provided that:

''(a) IN GENERAL.—Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152], there shall be made available to qualified immigrants described in subsection (b) (or in subsection (d) as the spouse or child of such an alien) 40,000 immigrant visas in each of fiscal years 1992, 1993, and 1994 and in fiscal year 1995 a number of immigrant visas equal to the number of such visas provided (but not made available) under this section in previous fiscal years. If the full number of such visas are not made available in fiscal year 1992 or 1993, the shortfall shall be added to the number of such visas to be made available under this section in the succeeding fiscal year.

''(b) QUALIFIED ALIEN DESCRIBED.—An alien described in this subsection is an alien who—

''(1) is a native of a foreign state that was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986 [Pub. L. 99–603, set out below],

''(2) has a firm commitment for employment in the United States for a period of at least 1 year (beginning on the date of admission under this section), and

''(3) except as provided in subsection (c), is admissible as an immigrant.

''(c) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making immigrant visas provided under subsection (a) available strictly in a random order among those who qualify during the application period for each fiscal year established by the Secretary of State, except that at least 40 percent of the number of such visas in each fiscal year shall be made available to natives of the foreign state the natives of which received the greatest number of visas issued under section 314 of the Immigration Reform and Control Act [of 1986] (or to aliens described in subsection (d) who are the spouses or children of such natives) and except that if more than one application is submitted for any fiscal year (beginning with fiscal year 1993) with respect to any alien all such applications submitted with respect to the alien and fiscal year shall be voided. If the minimum number of such visas are not made available in fiscal year 1992, 1993, or 1994 to such natives, the shortfall shall be added to the number of such visas to be made available under this section to such natives in the succeeding fiscal year. In applying this section, natives of Northern Ireland shall be deemed to be natives of Ireland.

''(d) DERIVATIVE STATUS FOR SPOUSES AND CHILDREN.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)(A), (B), (C), (D), (E)]) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, his spouse or parent.

''(e) WAIVERS OF GROUNDS OF EXCLUSION.—In determining the admissibility of an alien provided a visa number under this section, the Attorney General shall waive the ground of exclusion specified in paragraph (6)(C) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)], unless the Attorney General finds that such a waiver is not in the national interest. In addition, the provisions of section 212(e) of such Act shall not apply so as to prevent an individual's application for a visa or admission under this section.

''(f) APPLICATION FEE.—The Secretary of State shall require payment of a reasonable fee for the filing of an application under this section in order to cover the costs of processing applications under this section.''

[Section 302(b)(6)(C) of Pub. L. 102–232 provided that the amendment made by that section to section 132(b)(1) of Pub. L. 101–649, set out above, is effective after fiscal year 1992.]

[Section 302(b)(6)(D)(i) of Pub. L. 102–232 provided that the amendment made by that section to section 132(c) of Pub. L. 101–649, set out above, is effective beginning with fiscal year 1993.]

ONE-YEAR DIVERSITY TRANSITION FOR ALIENS WHO HAVE BEEN NOTIFIED OF AVAILABILITY OF NP–5 VISAS

Section 133 of Pub. L. 101–649 provided that, notwithstanding numerical limitations in sections 1151 and 1152 of this title, there were to be made available in fiscal year 1991, immigrant visa numbers for qualified immigrants who were notified by Secretary of State before May 1, 1990, of their selection for issuance of visa under section 314 of Pub. L. 99–603, formerly set out as a note below, and were qualified for issuance of such visa but for numerical and fiscal year limitations on issuance of such visas, former section 1182(a)(19) of this title or section 1182(e) of this title, or fact that immigrant was a national, but not a native, of foreign state described in section 314 of Pub. L. 99–603.

TRANSITION FOR DISPLACED TIBETANS

Section 134 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §302(b)(7), Dec. 12, 1991, 105 Stat. 1744, provided that, notwithstanding numerical limitations in sections 1151 and 1152 of this title, there were to be made available to qualified displaced Tibetans who were natives of Tibet and had been continuously residing in India or Nepal since Nov. 29, 1990, 1,000 immigrant visas in the 3-fiscal-year period beginning with fiscal year 1991.

EXPEDITED ISSUANCE OF LEBANESE SECOND AND FIFTH PREFERENCE VISAS

Section 155 of Pub. L. 101–649, as amended by Pub. L. 102–232, title III, §302(d)(5), Dec. 12, 1991, 105 Stat. 1745, provided that:

''(a) IN GENERAL.—In the issuance of immigrant visas to certain Lebanese immigrants described in subsection (b) in fiscal years 1991 and 1992 and notwithstanding section 203(c) (or section 203(e), in the case of fiscal year 1992) of the Immigration and Nationality Act [8 U.S.C. 1153(c), (e)] (to the extent inconsistent with this section), the Secretary of State shall provide that immigrant visas which would otherwise be made available in the fiscal year shall be made available as early as possible in the fiscal year.

''(b) LEBANESE IMMIGRANTS COVERED.—Lebanese immigrants described in this subsection are aliens who—

''(1) are natives of Lebanon,

''(2) are not firmly resettled in any foreign country outside Lebanon, and

''(3) as of the date of the enactment of this Act [Nov. 29, 1990], are the beneficiaries of a petition approved to accord status under section 203(a)(2) or 203(a)(5) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(2), (5)] (as in effect as of the date of the enactment of this Act),

or who are the spouse or child of such an alien if accompanying or following to join the alien.''

[Section 155 of Pub. L. 101–649 effective Nov. 29, 1990, and (unless otherwise provided) applicable to fiscal year 1991, see section 161(b) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 of this title.]

ORDER OF CONSIDERATION

Section 162(a)(2) of Pub. L. 101–649 provided that: ''Nothing in this Act [see Tables for classification] may be construed as continuing the availability of visas under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1153(a)(7)], as in effect before the date of enactment of this Act [Nov. 29, 1990].''

MAKING VISAS AVAILABLE TO IMMIGRANTS FROM UNDERREPRESENTED COUNTRIES TO ENHANCE DIVERSITY IN IMMIGRATION

Pub. L. 100–658, § 3, Nov. 15, 1988, 102 Stat. 3908, provided that, notwithstanding numerical limitations in section 1151(a) of this title, but subject to numerical limitations in section 1152 of this title, there were to be made available to qualified immigrants who were natives of underrepresented countries, 10,000 visa numbers in each of fiscal years 1990 and 1991.

MAKING VISAS AVAILABLE TO NONPREFERENCE IMMIGRANTS

Pub. L. 99–603, title III, § 314, Nov. 6, 1986, 100 Stat. 3439, as amended by Pub. L. 100–658, § 2(a), Nov. 15, 1988, 102 Stat. 3908, provided that, notwithstanding numerical limitations in section 1151(a) of this title, but subject to numerical limitations in section 1152 of this title, there were to be made available to qualified immigrants described in section 1153(a)(7) of this title, 5,000 visa numbers in each of fiscal years 1987 and 1988 and 15,000 visa numbers in each of fiscal years 1989 and 1990.

REFERENCES TO CONDITIONAL ENTRY REQUIREMENTS OF SUBSECTION (a)(7) OF THIS SECTION IN OTHER FEDERAL LAWS

Section 203(h) of Pub. L. 96–212 provided that: ''Any reference in any law (other than the Immigration and Nationality Act [this chapter] or this Act [see Short Title of 1980 Amendment note set out under section 1101 of this title]) in effect on April 1, 1980, to section 203(a)(7) of the Immigration and Nationality Act [subsec. (a)(7) of this section] shall be deemed to be a reference to such section as in effect before such date and to sections 207 and 208 of the Immigration and Nationality Act [sections 1157 and 1158 of this title].''

RETROACTIVE ADJUSTMENT OF REFUGEE STATUS

For adjustment of the status of refugees paroled into the United States pursuant to section 1182(d)(5) of this title, see section 5 of Pub. L. 95–412, set out as a note under section 1182 of this title.

ENTITLEMENT TO PREFERENTIAL STATUS

Section 9 of Pub. L. 94–571 provided that:

''(a) The amendments made by this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title] shall not operate to effect the entitlement to immigrant status or the order of consideration for issuance of an immigrant visa of an alien entitled to a preference status, under section 203(a) of the Immigration and Nationality Act [subsec. (a) of this section] as in effect on the day before the effective date of this Act [see Effective Date of 1976 Amendment note set out under section 1101 of this title], on the basis of a petition filed with the Attorney General prior to such effective date.

''(b) An alien chargeable to the numerical limitation contained in section 21(e) of the Act of October 3, 1965 (79 Stat. 921) [which provided that unless legislation inconsistent therewith was enacted on or before June 30, 1968, the number of special immigrants within the meaning of section 1101(a)(27)(A) of this title, exclusive of special immigrants who were immediate relatives of United States citizens as described in section 1151(b) of this title, should not, in the fiscal year beginning July 1, 1968, or in any fiscal year thereafter, exceed a total of 120,000] who established a priority date at a consular office on the basis of entitlement to immigrant status under statutory or regulatory provisions in existence on the day before the effective date of this Act [see Effective Date of 1976 Amendment note under section 1101 of this title] shall be deemed to be entitled to immigrant status under section 203(a)(8) of the Immigration and Nationality Act [subsec. (a)(8) of this section] and shall be accorded the priority date previously established by him. Nothing in this section shall be construed to preclude the acquisition by such an alien of a preference status under section 203(a) of the Immigration and Nationality Act [subsec. (a) of this section], as amended by section 4 of this Act. Any petition filed by, or in behalf of, such an alien to accord him a preference status under section 203(a) [subsec. (a) of this section] shall, upon approval, be deemed to have been filed as of the priority date previously established by such alien. The numerical limitation to which such an alien shall be chargeable shall be determined as provided in sections 201 and 202 of the Immigration and Nationality Act [sections 1151 and 1152 of this title], as amended by this Act [see Short Title of 1976 Amendment note set out under section 1101 of this title].''

NONQUOTA IMMIGRANT STATUS OF CERTAIN RELATIVES OF UNITED STATES CITIZENS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO JANUARY 1, 1962

Pub. L. 87–885, § 1, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien relatives of United States citizens registered on a consular waiting list under priority date earlier than March 31, 1954, and eligible for a quota immigrant status on a basis of a petition filed with the Attorney General prior to January 1, 1962, and the spouse and children of such alien, be held to be nonquota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99–653, § 11, Nov. 14, 1986, 100 Stat. 3657, as amended by Pub. L. 100–525, § 8(j)(1), Oct. 24, 1988, 102 Stat. 2617, eff. Nov. 14, 1986.

NONQUOTA IMMIGRANT STATUS OF SKILLED SPECIALISTS; ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS FILED PRIOR TO APRIL 1, 1962

Pub. L. 87–885, § 2, Oct. 24, 1962, 76 Stat. 1247, which provided that certain alien skilled specialists eligible for a quota immigrant status on the basis of a petition filed with the Attorney General prior to April 1, 1962, be held to be nonquota immigrants and be issued nonquota immigrant visas, was repealed by Pub. L. 99–653, § 11, Nov. 14, 1986, 100 Stat. 3657, as amended by Pub. L. 100–525, § 8(j)(1), Oct. 24, 1988, 102 Stat. 2617, eff. Nov. 14, 1986.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS TO CERTAIN ELIGIBLE ORPHANS

Pub. L. 87–301, §25, Sept. 26, 1961, 75 Stat. 657, as amended by Pub. L. 99–653, §11, Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100–525, §8(j)(2), Oct. 24, 1988, 102 Stat. 2617, provided that: ''At any time prior to the expiration of the one hundred and eightieth day immediately following the enactment of this Act [Sept. 26, 1961] a special nonquota immigrant visa may be issued to an eligible orphan as defined in section 4 of the Act of September 11, 1957, as amended (8 U.S.C. 1205; 71 Stat. 639, 73 Stat. 490, 74 Stat. 505), if a visa petition filed in behalf of such eligible orphan was (A) approved by the Attorney General prior to September 30, 1961, or (B) pending before the Attorney General prior to September 30, 1961, and the Attorney General approves such petition.''

[Section 23(c) of Pub. L. 99–653, as added by Pub. L. 100–525, §8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: ''The amendments made by section 11 [amending section 25 of Pub. L. 87–301 set out above and repealing sections 1 and 2 of Pub. L. 87–885] take effect on November 14, 1986.'']

ADOPTED SONS OR ADOPTED DAUGHTERS, PREFERENCE STATUS

Section 5(c) of Pub. L. 86–363 provided that aliens granted a preference pursuant to petitions approved by the Attorney General on the ground that they were the adopted sons or adopted daughters of United States citizens were to remain in that status notwithstanding the provisions of section 1 of Pub. L. 86–363, unless they acquired a different immigrant status pursuant to a petition approved by the Attorney General.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1958

Section 12A of Pub. L. 85–316, as added by section 2 of Pub. L. 85–700, Aug. 21, 1958, 72 Stat. 699, providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1958, shall be held to be nonquota immigrants and issued visas, was repealed by Pub. L. 87–301, §24(a)(6), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 12A of Pub. L. 85–316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.

ISSUANCE OF NONQUOTA IMMIGRANT VISAS ON BASIS OF PETITIONS APPROVED PRIOR TO JULY 1, 1957

Section 12 of Pub. L. 85–316 providing that aliens eligible for quota immigrant status on basis of a petition approved prior to July 1, 1957, shall be held to be nonquota immigrants, and if otherwise admissible, be issued visas, was repealed by Pub. L. 87–301, §24(a)(5), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 12 of Pub. L. 85–316 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.

SPECIAL NONQUOTA IMMIGRANT VISAS FOR REFUGEES

Section 6 of Pub. L. 86–363 authorizing issuance of nonquota immigrant visas to aliens eligible to enter for permanent residence if the alien was the beneficiary of a visa petition approved by the Attorney General, and such petition was filed by a person admitted under former section 1971 et seq., of Title 50, Appendix, was repealed by Pub. L. 87–301, §24(a)(7), Sept. 26, 1961, 75 Stat. 657.

Repeal of section 6 of Pub. L. 86–363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.

NONQUOTA IMMIGRANT STATUS OF SPOUSES AND CHILDREN OF CERTAIN ALIENS

Section 4 of Pub. L. 86–363 providing that an alien registered on a consular waiting list was eligible for quota immigrant status on basis of a petition approved prior to Jan. 1, 1959, along with the spouse and children of such alien, was repealed by Pub. L. 87–301, §24(a)(7), Sept. 26, 1961.

Repeal of section 4 of Pub. L. 86–363 effective upon expiration of the one hundred and eightieth day immediately following Sept. 26, 1961, see section 24(b) of Pub. L. 87–301, set out as a note under former section 1255a of this title.

§1154. Procedure for granting immigrant status

(a) Petitioning procedure

(1)(A)(i) Except as provided in clause (viii), any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 1153(a) of this title or to an immediate relative status under section 1151(b)(2)(A)(i) of this title may file a petition with the Attorney General for such classification.

(ii) An alien spouse described in the second sentence of section 1151(b)(2)(A)(i) of this title also may file a petition with the Attorney General under this subparagraph for classification of the alien (and the alien's children) under such section.

(iii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this chapter to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 1151(b)(2)(A)(i) of this title or who would have been so classi-