

FALL OF 2023
IMMIGRATION LAW AND PROCEDURE
MASSACHUSETTS SCHOOL OF LAW

Professor Linda A. Cristello
Law Offices of Linda A. Cristello
One Liberty Square – 7th flr
Boston, MA 02109
cristello@msslaw.edu

EXAM INSTRUCTIONS

Materials allowed to the exam : Immigration and Nationality Laws of the U.S. - Selected Statutes and the September 2023 – Visa Bulletin attached to the exam.

Questions 1 through 5 are each worth 20 points. Read the facts (do NOT assume facts) completely and analyze the situation. Detail the advice you would give to your client.

The following clients have come to you for a consultation. Use your knowledge, the Act and the September 2023 Visa Bulletin to analysis and discuss their situation. Detail the immigration process for each client and the likelihood of a favorable outcome. Spot the issues and determine which regulation[s] and form[s] that is necessary in each case. Results may not be immediate.

Abbreviations:

USC = United States citizen

LPR = lawful permanent resident

USCIS & ICE = Immigration Service – Homeland Security

QUESTION 1

Lucia from Belarus comes to your office, wishing to apply for her United States citizenship. She details to you that she received her asylum grant in Boston on January 5, 2017 and applied for and was granted her LPR on February 27, 2019. She has been residing in the United States since 2015, previous to her grant.

She has been living in Chelsea and was working as a hostess at Ciao Bella on Newbury Street until the birth of her son. She also informs you that she married Yugo, her longtime boyfriend, in Belarus on May 20, 2021 and they have a son together born in the United States on March 8, 2022. Yugo has never been in the United States. She is a “single” parent raising her son in the U.S.

She tells you that *every time* she and her son travel back to Belarus she is getting pressure from her in-laws that she has not done anything to help Yugo to enter the United States. He is anxious and has **tried** to obtain a visa before but was denied. When she returns to Belarus he is always working and does not spend that much time with her.

What advice do you give her about her prospective application for United States citizenship and the future of her husband?

- a. When can she apply for her United States citizenship?
- b. What information and documentation do you need from her?
- c. What if anything can be done **at this time** for her husband Yugo?
- d. What information and documentation do you need from him (and her) for their prospective process?

QUESTION 2

Alexia travelled to the United States from Italy with her USC aunt Trina on a valid tourist visa in summer of 2018 when she was seventeen years of age. She then was enrolled in public high school in Andover, Ma and graduated in May of 2020. At that time she was residing with aunt Trina and her family. Immediately after her graduation she applied for and was granted admission to attend Bentley University in Waltham, MA to study business administration. She applied for and was granted a change of status with the USCIS from a tourist to a fulltime student. Currently she is in her fourth year of college and expects to graduate in May of 2024. She lives in the Bentley dormitory, but unbeknownst to her Aunt, she tells you that she has been living with her USC boyfriend James at his apartment in Belmont, MA.

Alexia informs you that she has traveled back to Italy on many occasions to visit with family and friends.

It is Christmas break and she has come to your office, with James, to discuss her future after graduation. She anticipates graduating with only a 2.5 GPA and states she was never interested in school anyway – but intends to complete! With the economy being so tough, and her grades not that promising, it has been tough to locate a job in her field of education in this area. She has been on many interviews and has been offered a job as an accountant with a resort in Scottsdale, Arizona.

She is not quite sure she wants to move away from New England and leave her family and boyfriend James. However, she wants to live in the United States and is seeking advice from you on how that can be accomplished.

Before you able to give her legal advice, what documents do you need from her?

- a. What do you need to know about her immigration status? How can you find out if she maintained her lawful status since her entry in 2018?
- b. What advice can you give her about her prospective job offer and what will she have to do in order to accept that job?
- c. Are there any suggestions that can be made for a future with James?
- d. What information do you need to know about James?

QUESTION 3

John Grant is a 42 year old citizen of the United States, born in Palm Beach, Florida. John is presently employed as a Senior Partner with Whittier Trust Funds. He currently resides in Dover, MA. He was previously married (in the US) and has one 19 year old son, David and young son Michael who is 15.

John tells you that on a trip to St Maarten in September of 2020, he met Andrea. Andrea was on St. Maarten with her girlfriends for an extended vacation. Andrea is from Slovakia. When he returned home to the US, he kept thinking about her and he knew that she would be in St Marten until November 30, 2020. He then booked another trip and returned for 2-3 days to visit with her again before she returned to Slovakia.

He tells you that after she returned to Slovakia they kept in communication via e-mail and telephone calls. In February of 2021, John decided that he wanted to meet her family so he traveled to Slovakia for a two (2) week vacation. The couple stayed at the Radisson Hotel in the capital city of Bratislava. They spent their time sightseeing and getting to know each other and the city.

After his return to the US, he tells you that the relationship has progressed and he decided to plan a trip to meet in Paris. Paris was easy for her to travel to and he would be there on business. They met in January 2022.

They discussed a future trip for her to the U.S. to visit but he tells you that Andrea had applied for a visitor's visa at the U.S. Consulate. However, because she is not working, they did not issue her a visitor visa and therefore is unable to travel to the U.S.

They have talked about their future and how they could be together and start a life. Not sure of their future, they did toss around the possibility of marriage.

John's family, nor his two sons, have met Andrea. Because he has so many family members in the U.S. he wants them to meet her and "possibly" start their married life in the U.S. if that is going to be an option.

He comes to you for advice on how she would be able to legally enter the U.S. He would like to plan a reception for Andrea to meet his family in Palm Beach, Florida and needs to know what is to be done to accomplish this.

- a. What is your advice on how to proceed with getting Andrea into the US?
What are their options?
- b. Depending on your choice where will the initial petitions be processed?
- c. What documents do you need from both of them?
- d. What can be expected after that?

QUESTION 4

You have received a phone call from Carleton Michel. He has informed you that his son, Omar, has been arrested and detained by Immigration and Customs Enforcement (ICE) officers. He is presently being held at the Plymouth County House of Correction, Plymouth, MA.

Carleton and his family are from Trinidad. Carleton informs you that his entire family, consisting of his spouse and four (4) children, are all naturalized USC except Omar who is only a LPR.

He tells you that his son, Omar is single with no children. He lives with a roommate in Allston, MA.

He tells you the facts, as he knows it: Omar entered the US with his immigrant visa in 2003, when he was 15 years old. He has always resided in MA. He has completed high school from Boston Latin, a prestigious high school in Boston. He continued to college where he graduated, with honors, from University of Massachusetts in Amherst in 2011. Omar has held various jobs after college and is presently employed at Fidelity Investments.

Last Thursday, Omar was with colleagues at a nightclub in Chinatown. The group got rowdy after the closing of the club and he and three other colleagues were arrested for Disorderly Conduct. The group was taken to the Boston Police Department in Roxbury to be "booked". The other gentleman received their criminal complaints and left the department that night. Unfortunately, Omar was *held over night* and the next day was picked up by the ICE officers. He was processed by the ICE officers and is being housed at Plymouth House of corrections.

Carleton, the father, comes to tell you that he does not know why his son is being held by the immigration authorities his son is a LPR for over twenty (20) years.

HE NEEDS INFORMATION AND LEGAL ASSISTANCE.

You contacted ICE office in Burlington, MA and found out that he is being held for a prior drug possession offense that occurred in 2010, while he was in college. The officer is able to inform you that the incident arose out of the North Hampton District Court and he pled guilty and received 6 months probation. He is being charged under section

237(a)(2)(B) of the Act and the ICE officer will be forwarding the Notice to Appear to the Court.

Carleton – had no idea that his son was ever arrested in 2010. You have asked for retainer and stated that you will go the House of Corrections and interview his son Omar.

He is now before the Immigration Court for removal proceedings.

- a. What do you need to know about Omar's criminal past?
What can be done to obtain information for him?
- b. Based upon all the information that you received (and speculating at this point) what relief, in light of the drug possession offense, does he have to apply for before the Court, to defend his status in the U.S.?
 - a. What "time line" are you trying to figure out?
- c. What documentation /evidence will you need the family to gather?
- d. Is there a citizenship application for him in the future?

QUESTION 5

Fundamental definitions and procedural distinctions encompass U.S. immigration laws; we discussed several of them in detail during the semester, including the following:

- DEFINE:**
- 1) Give the section of law according to US immigration laws;
 - 2) **EXPLAIN WHY** each word or phrase given is important; and
 - 3) Give an example for each

- A. Step-Child
- B. Nonimmigrant
- C. Conviction
- D. Good Moral Character



**United States Department of State
Bureau of Consular Affairs**

VISA BULLETIN

Number 81 Volume X

Washington, D.C.

IMMIGRANT NUMBERS FOR SEPTEMBER 2023

A. STATUTORY NUMBERS FOR PREFERENCE IMMIGRANT VISAS

This bulletin summarizes the availability of immigrant numbers during September for "Final Action Dates" and "Dates for Filing Applications," indicating when immigrant visa applicants should be notified to assemble and submit required documentation to the National Visa Center.

Unless otherwise indicated on the U.S. Citizenship and Immigration Services (USCIS) website at www.uscis.gov/visabulletininfo, individuals seeking to file applications for adjustment of status with USCIS must use the "Final Action Dates" charts below for determining when they can file such applications. When USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants for such visas, USCIS will state on its website that applicants may instead use the "Dates for Filing Visa Applications" charts in this Bulletin.

1. Procedures for determining dates. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; USCIS reports applicants for adjustment of status. Allocations in the charts below were made, to the extent possible, in chronological order of reported priority dates, for demand received by August 4th. If all reported demand could not be satisfied, the category or foreign state in which demand was excessive was deemed oversubscribed. The final action date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. If it becomes necessary during the monthly allocation process to retrogress a final action date, supplemental requests for numbers will be honored only if the priority date falls within the new final action date announced in this bulletin. If at any time an annual limit were reached, it would be necessary to immediately make the preference category "unavailable", and no further requests for numbers would be honored.

2. The fiscal year 2023 limit for family-sponsored preference immigrants determined in accordance with Section 201 of the Immigration and Nationality Act (INA) is 226,000. The fiscal year 2023 limit for employment-based preference immigrants calculated under INA 201 is 197,091. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 29,616 for FY-2023. The dependent area limit is set at 2%, or 8,462.

3. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition on behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

4. Section 203(a) of the INA prescribes preference classes for allotment of Family-sponsored immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit.

B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

<u>Family-Sponsored</u>	All Charge-ability Areas Except Those Listed	CHINA-	INDIA	MEXICO	PHILIPPINES
		mainland born			
F1	01JAN15	01JAN15	01JAN15	22APR01	01MAR12
F2A	01JAN18	01JAN18	01JAN18	01SEP16	01JAN18
F2B	22SEP15	22SEP15	22SEP15	01AUG01	22OCT11
F3	08JAN09	08JAN09	08JAN09	15JAN98	08JUN02
F4	22APR07	22APR07	15SEP05	01AUG00	22AUG02

For September, F2A numbers EXEMPT from per-country limit are authorized for issuance to applicants from all countries with priority dates earlier than 01SEP16. F2A numbers SUBJECT to per-country limit are authorized for issuance to applicants chargeable to all countries EXCEPT MEXICO, with priority dates beginning 01SEP16 and earlier than 01JAN18. All F2A numbers provided for MEXICO are exempt from the per-country limit.

B. DATES FOR FILING FAMILY-SPONSORED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart below may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file applications, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 4.A.) this month for filing applications for adjustment of status with USCIS.

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01SEP17	01SEP17	01SEP17	01APR05	22APR15
F2A	01SEP23	01SEP23	01SEP23	01SEP23	01SEP23
F2B	01JAN17	01JAN17	01JAN17	01AUG04	01OCT13
F3	01MAR10	01MAR10	01MAR10	15JUN01	08NOV03
F4	01MAR08	01MAR08	22FEB06	15APR01	22APR04

5. Section 203(b) of the INA prescribes preference classes for allotment of Employment-based immigrant visas as follows:

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, of which not more than 10,000 may be provided to "*Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, of which 32% are reserved as follows: 20% reserved for qualified immigrants who invest in a rural area; 10% reserved for qualified immigrants who invest in a high unemployment area; and 2% reserved for qualified immigrants who invest in infrastructure projects. The remaining 68% are unreserved and are allotted for all other qualified immigrants.

A. FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

	All Charge- ability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES
<u>Employment- Based</u>					
1st	01AUG23	01FEB22	01JAN12	01AUG23	01AUG23
2nd	01JUL22	08JUL19	01JAN11	01JUL22	01JUL22
3rd	01MAY20	01SEP19	01JAN09	01MAY20	01MAY20
Other Workers	01MAY20	01SEP15	01JAN09	01MAY20	01MAY20
4th	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18
Certain Religious Workers	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18
5th Unreserved (including C5, T5, I5, R5)	C	08SEP15	01APR17	C	C
5th Set Asides:					
Rural (20%)	C	C	C	C	C
High Unemployment (10%)	C	C	C	C	C
Infra- structure (2%)	C	C	C	C	C

*Employment Third Preference Other Workers Category: Section 203(e) of the Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW final action date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002. For Fiscal Year 2023 this reduction will be limited to approximately 167.

B. DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart may assemble and submit required documents to the Department of State’s National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated “current,” all applicants in the relevant category may file, regardless of priority date.

The “C” listing indicates that the category is current, and that applications may be filed regardless of the applicant’s priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 5.A.) this month for filing applications for adjustment of status with USCIS.

Employment- Based	All Charge-ability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01JUN22	01JUN22	C	C
2nd	01DEC22	08OCT19	01MAY12	01DEC22	01DEC22
3rd	01MAY23	01NOV19	01AUG12	01MAY23	01MAY23
Other Workers	01JUN20	01JAN16	01AUG12	01JUN20	01JUN20
4th	01OCT18	01OCT18	01OCT18	01OCT18	01OCT18
Certain Religious Workers	01OCT18	01OCT18	01OCT18	01OCT18	01OCT18
5 th Unreserved (including C5, T5, I5, and R5)	C	01JAN16	08DEC19	C	C

(Chart B. DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS continued from previous page)

Employment- Based	All Charge-ability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
5 th Set Aside: (Rural – 20%)	C	C	C	C	C
5 th Set Aside: (High Unemployment – 10%)	C	C	C	C	C
5 th Set Aside: (Infrastructure – 2%)	C	C	C	C	C

B. DIVERSITY IMMIGRANT (DV) CATEGORY FOR THE MONTH OF SEPTEMBER

Section 203(c) of the INA provides up to 55,000 immigrant visas each fiscal year to permit additional immigration opportunities for persons from countries with low admissions during the previous five years. The NACARA stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually allocated diversity visas will be made available for use under the NACARA program. This will result in reduction of the DV-2023 annual limit to approximately 54,833. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For September, immigrant numbers in the DV category are available to qualified DV-2023 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately		
AFRICA	Current	Except: Algeria	45,000
		Egypt	43,200
		Morocco	63,400
ASIA	21,000	Except: Iran	16,000
		Nepal	21,000
EUROPE	32,000	Except: Russia	32,000
		Uzbekistan	17,000
NORTH AMERICA (BAHAMAS)	Current		
OCEANIA	2,500		
SOUTH AMERICA, and the CARIBBEAN	3,150		

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2023 program ends as of September 30, 2023. DV visas may not be issued to DV-2023 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2023 principals are only entitled to derivative DV status until September 30, 2023. DV visa availability through the very end of FY-2023 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN OCTOBER

For October, immigrant numbers in the DV category are available to qualified DV-2024 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately		
AFRICA	10,000	Except: Algeria	7,500
		Egypt	5,500
		Morocco	5,600
ASIA	2,000	Except: Iran	1,750
		Nepal	1,300
EUROPE	4,500	Except: Russia	4,400
		Uzbekistan	1,250
NORTH AMERICA (BAHAMAS)	2		
OCEANIA	225		
SOUTH AMERICA, and the CARIBBEAN	375		

D. DIVERSITY VISA LOTTERY 2024 (DV-2024) RESULTS

The Kentucky Consular Center in Williamsburg, Kentucky has registered and notified the selectees who are eligible to participate in the DV-2024 Diversity Visa (DV) program. Random selection of DV participants was conducted under the terms of section 203(c) of the Immigration and Nationality Act, which makes up to *55,000 permanent resident visas available annually to persons from countries with low rates of immigration to the United States. Approximately 143,000 prospective applicants (i.e., selectees and their spouses and children) have been registered, can confirm their selection, and may be eligible to make an application for an immigrant visa. Since selection is random and blind to the number of family members who might immigrate with the selectee, and it is likely that some of the selectees will not complete their cases or will be found ineligible for a visa, this larger figure should ensure that all DV-2024 numbers can be used during fiscal year 2024 (FY24: October 1, 2023, until September 30, 2024).

Entrants registered for the DV-2024 program were selected at random from 22,185,619 qualified entries received during the 35-day application period that ran from noon, Eastern Daylight Time on Wednesday, October 5, 2022, until noon, Eastern Standard Time on Tuesday, November 8, 2022. The visas will be apportioned among the six geographic regions to ensure a maximum of seven percent are issued to persons chargeable to any single country. During the visa interview, principal applicants must provide proof of a high school education or its equivalent, or two years of work experience in an occupation that requires at least two years of training or experience within the past five years. Those selected will need to act on their immigrant visa applications quickly. Applicants should follow the instructions in their notification letter and must fully complete all required steps.

Selectees who are physically present with legal status in the United States may apply to adjust their status by first contacting the U.S. Citizenship and Immigration Services for information on the requirements and procedures. Once the total *55,000 visa numbers have been used, the program for fiscal year 2024 will end. Selectees who do not receive visas or status by September 30, 2024, will derive no further benefit from their DV-2024 registration. Similarly, spouses and children accompanying or following to join DV-2024 principal applicants are only entitled to derivative DV status until September 30, 2024.

Dates for the DV-2025 program registration period will be widely publicized in the coming months. Those interested in entering the DV-2025 program should check the Department of State's Diversity Visa web page in the coming months.

*The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulated that up to 5,000 of the 55,000 annually-allocated diversity visas be made available for use under the NACARA program. This will result in reduction of the DV-2024 annual limit to approximately 54,850.

The following is the statistical breakdown by foreign state of chargeability of those registered for the DV-2024 program:

<u>AFRICA</u>		
ALGERIA 5,142	ERITREA 211	MOZAMBIQUE 7
ANGOLA 582	ESWATINI 2	NAMIBIA 10
BENIN 1,002	ETHIOPIA 3,034	NIGER 93
BOTSWANA 16	GABON 86	RWANDA 1,604
BURKINA FASO 191	GAMBIA, THE 156	SENEGAL 504
BURUNDI 876	GHANA 2,088	SIERRA LEONE 735
CABO VERDE 15	GUINEA 1,362	SOMALIA 2,383

CAMEROON 3,485	GUINEA-BISSAU 21	SOUTH AFRICA 199
CENTRAL AFRICAN REPUBLIC 30	KENYA 3,760	SOUTH SUDAN 59
CHAD 490	LIBERIA 2,208	SUDAN 5,435
COMOROS 10	LIBYA 257	TANZANIA 348
CONGO, DEMOCRATIC REPUBLIC OF THE 2,580	MADAGASCAR 25	TOGO 2,105
CONGO, REPUBLIC OF THE 660	MALAWI 42	TUNISIA 221
COTE D'IVOIRE 672	MALI 119	UGANDA 1,515
DJIBOUTI 333	MAURITANIA 274	ZAMBIA 85
EGYPT 5,509	MAURITIUS 4	ZIMBABWE 216
EQUATORIAL GUINEA 19	MOROCCO 4,250	
<u>ASIA</u>		
AFGHANISTAN 4,536	JORDAN 1,188	QATAR 74
BAHRAIN 8	KUWAIT 162	SAUDI ARABIA 619
BHUTAN 347	LAOS 27	SINGAPORE 6
BURMA 1,667	LEBANON 214	SRI LANKA 2,622
CAMBODIA 340	MALAYSIA 32	SYRIA 692
INDONESIA 104	MALDIVES 1	TAIWAN 279
IRAN 5,077	MONGOLIA 300	THAILAND 467
IRAQ 1,348	NEPAL 3,863	UNITED ARAB EMIRATES 211
ISRAEL 71	OMAN 20	YEMEN 3,485
JAPAN 200		
<u>EUROPE</u>		
ALBANIA 2,667	GERMANY 466	NORTH MACEDONIA 258
ANDORRA 2	GREECE 66	NORTHERN IRELAND 1
ARMENIA 3,869	HUNGARY 102	NORWAY 9
AUSTRIA 34	ICELAND 5	POLAND 497
AZERBAIJAN 2,046	IRELAND 18	PORTUGAL 39
BELARUS 2,418	ITALY 256	Macau 4
BELGIUM 35	KAZAKHSTAN 2,728	ROMANIA 267
BOSNIA AND HERZEGOVINA 31	KOSOVO 463	RUSSIA 5,514
BULGARIA 142	KYRGYZSTAN 4,464	SERBIA 186
CROATIA 30	LATVIA 97	SLOVAKIA 33
CYPRUS 25	LITHUANIA 106	SLOVENIA 2
CZECH REPUBLIC 46	MALTA 1	SPAIN 137
DENMARK 16	MOLDOVA 950	SWEDEN 31
ESTONIA 33	MONACO 1	SWITZERLAND 30
FINLAND 29	MONTENEGRO 21	TAJIKISTAN 3,580
FRANCE 327	NETHERLANDS 39	TURKEY 3,684
French Polynesia 1	Aruba 1	TURKMENISTAN 1,313
New Caledonia 4	Curacao 1	UKRAINE 4,286
GEORGIA 3,194	Sint Maarten 1	UZBEKISTAN 5,555
<u>NORTH AMERICA</u>		
BAHAMAS, THE 15		
<u>OCEANIA</u>		
AUSTRALIA 795	NAURU 32	SAMOA 9
Christmas Island 1	NEW ZEALAND 256	SOLOMON ISLANDS 22
Cocos Keeling Islands 48	Cook Islands 69	TONGA 246
FEDERATED STATES OF	PAPUA NEW GUINEA 15	TUVALU 11

MICRONESIA 1		
FIJI 2,936	REPUBLIC OF PALAU 4	VANUATU 29
KIRABATI 21		
<u>SOUTH AMERICA</u>		
ANTIGUA AND BARBUDA 1	CUBA 3,081	PARAGUAY 9
ARGENTINA 127	DOMINICA 6	PERU 742
BARBADOS 4	ECUADOR 814	SAINT LUCIA 4
BELIZE 5	GUATEMALA 146	SAINT VINCENT AND THE GRENADINES 2
BOLIVIA 85	GUYANA 9	TRINIDAD AND TOBAGO 37
CHILE 51	NICARAGUA 117	URUGUAY 14
COSTA RICA 68	PANAMA 17	

Natives of the following countries were not eligible to participate in DV-2024: Bangladesh, Brazil, Canada, China (including Hong Kong SAR), Colombia, Dominican Republic, El Salvador, Haiti, Honduras, India, Jamaica, Mexico, Nigeria, Pakistan, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, Venezuela, and Vietnam.

E. AVAILABILITY OF EMPLOYMENT-BASED VISAS DURING SEPTEMBER

Employment-based number use by both USCIS and Department of State has been steady during the fiscal year. As a result, most employment-based preference category limits and/or the overall employment-based preference limit for FY 2023 are expected to be reached during September. If at any time an annual limit were reached, it would be necessary to immediately make the preference category "unavailable", and no further requests for numbers would be honored.

F. DETERMINATION OF THE NUMERICAL LIMITS ON IMMIGRANTS REQUIRED UNDER THE TERMS OF THE IMMIGRATION AND NATIONALITY ACT (INA)

The State Department is required to make the determination of the worldwide numerical limitations, as outlined in Section 201(c) and (d) of the INA, on an annual basis. These calculations are based in part on data provided by U.S. Citizen and Immigration Services (USCIS) regarding the number of immediate relative adjustments in the preceding year and the number of aliens paroled into the United States under Section 212(d)(5) in the second preceding year. Without this information, it is impossible to make an official determination of the annual limits. To avoid delays in processing while waiting for the USCIS data, the Visa Office (VO) bases allocations on reasonable estimates of the anticipated amount of visa numbers to be available under the annual limits, in accordance with Section 203(g) of the INA. On August 2nd, USCIS provided the required data to the VO.

The Department of State has determined the Family and Employment preference numerical limits for FY-2023 in accordance with the terms of Section 201 of the INA. These numerical limitations for FY-2023 are as follows:

Worldwide Family-Sponsored preference limit:	226,000
Worldwide Employment-Based preference limit:	197,091

Under INA Section 202(a), the per-country limit is fixed at 7% of the family and employment annual limits. For FY-2023 the per-country limit is 29,616. The dependent area annual limit is 2%, or 8,462.

G. FOR THE LATEST INFORMATION ON VISA PROCESSING AT U.S. EMBASSIES AND CONSULATES,
PLEASE VISIT THE BUREAU OF CONSULAR AFFAIRS WEBSITE AT TRAVEL.STATE.GOV

Department of State Publication 9514

CA/VO: August 4, 2023

FALL 2022
IMMIGRATION LAW AND PROCEDURE
MASSACHUSETTS SCHOOL OF LAW

Professor Linda A. Cristello
Law Office of Linda A. Cristello
One Liberty Square – Ste 230
Boston, MA 02109
(617) 742-0040
lcristello@crstellolaw.com

FINAL EXAM

This is a two-hour exam consisting of four essays and multiple answer questions. Each question will be worth 20 points. This is an open book (Immigration and Nationality Law, statutes, regulations and forms) and you may consult with the Visa Bulletin for August 2022

Read the question and **spot the facts/issues** as WRITTEN on the exam. REMEMBER: Not every consultation will conclude in a favorable result. It is the advice and possible resolution you are giving to the client.

LPR = Lawful Permanent Resident
CR = Conditional Resident
IR = Immediate Relative
USC = United States Citizen

Question 1

On September 1, 2007 Juan of Lawrence, MA is a 58-year-old native and citizen of Guatemala, obtained his lawful permanent resident status through an employment based petition. He is married to Luz since 2012 and has three minor children. His wife and children are all native and citizens of Guatemala and all reside in Guatemala. They have never entered the United States. He visits them frequently. (He has never had any problems CBP upon his returns).

Juan has limited English skills and only completed the fifth grade in Guatemala.

On November 12, 2013 he committed an assault and battery with a dangerous weapon, against a patron of a local bar. He was convicted in West Roxbury District Court, 5 months later. He pled Guilty and received a six-month house of correction sentence, suspended for one year. He has never served physical time in jail. In 2017, he was pulled over for a traffic violation and paid a fine in Dorchester District Court due to an uninsured insurance violation.

Since his entry into the United States has resided in Florida, New York and presently in Massachusetts since June of this year. He has been gainfully employed.

Juan now wishes to pursue his United States citizenship and bring his family to the United States.

- a. Is Juan eligible for citizenship?
- b. What are the documents do you need to obtain from Juan?
- c. What advice would you give him about his family? (wait period Juan as LPR vs USC)

QUESTION 2

For purposes of this question, *all nonimmigrant visas are readily available*.

Samoel, a native and citizen of Brazil lawfully entered the US as a F-1 student to attend Merrimack College. In January of 2022 he graduated with a BS in business administration. (early graduation)

Since February 15, 2022, he received his practical training and has been employed with Tripoli Bakery as a manager. His practical training will expire in two (2) months!!! He *wishes to continue* with his job and his employer is willing to assist with any necessary paperwork to maintain his lawful status in the US.

- a. What would you advise to do for him immediately *to maintain his lawful* status?
- b. Which visa (if any) will you be discussing with him?
- c. What information/documentation do you need from Samoel and Tripoli's?
- d. What is the *long term goal* for Samoel *to seek permanent* residence in the US?

QUESTION 3

Roma and her present husband Joe had been dating since the beginning of 2017. They began to live together in 2019. One year later they married on New Year's Eve in 2020. They had a grand wedding where both immediate families attended, along with approximately 200 guests of family and friends.

After filing all the marital paperwork with her husband Joe and both having a personal interview at the Lawrence Field Office of USICS Roma was granted *conditional resident status on since June 6, 2021*.

They both love the sport of soccer and have traveled extensively together following their favorite teams. They take many vacations to visit family and friends both in the US and abroad. Roma has a well-paying professional job and together they bought their home early in 2020 (before their marriage). Roma is required to spend long hours at her job and is an adjunct professor at the community college. Joe, on the other hand, only works part time and stops working in the

summer to play golf. He has been arrested on several occasions for drinking in public, driving while under the influence and disorderly conduct. He does not maintain the home and waits for Roma to cook, clean and pay the bills.

Although they have been together for 5 years, this is not the life Roma envisioned. They have *been separated* since October 2022.

Roma is in your office to discuss the possibility of filing for a divorce and the effect it would have on her immigration status and future citizenship application.

- a. What is your advice, based upon her present immigration status?
- b. What process must she pursue so as not to lose her lawful status?
- c. How will her decision of filing for divorce affect her immigration status?
- d. What documentation will you need from her?
- e. Will she be able to apply for United States citizenship, and if so, when?

MULTIPLE CHOICES: (4 points each)

1. At a consultation held today, Raul, a naturalized United States citizen born in Philippines wishes to petition for his 2 adult, married brothers to immigrate to the United States from Philippines. How long, if available, is the approximate waiting period:

- a. 6 years
- b. 19 years (2 points)
- c. 18 years

How long for the wives of his brothers to immigrate?

- a. 6 years
- b. 18 years (2 points)
- c. Have to wait for the husband to obtain LPR status, then he can petition for them

2. The only possible exception one might claim when applying for naturalization is the following:

- a. Applicant must prove good moral character
- b. Applicant must demonstrate physical presence in the United States for at least half the residency required, whether it be 5 years or 3 years
- c. Applicant must demonstrate an understanding of the English language

3. A high school graduate from Ireland entered the United States on November 13, 2022 and was admitted on a visa waiver. He was granted 90 days to remain in the United States. He now wishes to change his visa status in the United States and attend college next semester. You advise him:
- a. He will need to obtain a completed and approved form I-20A-B issued by a designated school and return to his native country to apply for his student visa
 - b. In that he is currently in a valid visa status, you can complete form I-539, Applicant to Extend or Change Nonimmigrant Status, obtain an approved form I-20A-B and supporting documentation, and submit to the Service Center in the United States having jurisdiction over his residence.
 - c. He will need to obtain financial support and evidence that he will not be employed before submitting his change of status to the Service.
4. Malik, an educated engineer from Pakistan, enter the United States on a B-2 visitor visa, on July 4, 2022. Today he has been offered a fulltime *temporary* position with Computer-Rule, Inc. as a software engineer. To accept this position, you tell him he will be required to:
- a. Demonstrate he has a U.S. equivalent of a Bachelors degree or higher
 - b. Demonstrate his admission period granted by the INS is still valid
 - c. He must relinquish his foreign residence
 - d. all of the above
 - e. A and B
5. LPR client tells you he obtained his permanent resident status through an **employment-based** petition, in January of 2012. He *wishes to travel* back to Colombia; however, he recalls being convicted on three separate occasions for criminal offenses that involved crimes of moral turpitude. All convictions were received between the years 2018-2020. You advise him:
- a. Not to travel, he may be inadmissible back to the U.S.
 - b. Immediately, without further wait, apply for citizenship before he travels outside the US.
 - b. He will not have a problem because all three (3) convictions occurred more than 5 years after his grant of LPR.

FALL OF 2021
IMMIGRATION LAW AND PROCEDURE
MASSACHUSETTS SCHOOL OF LAW

Professor Linda A. Cristello
Law Offices of Linda A. Cristello
1 Liberty Square, Ste 230
Boston, MA 02109
(617) 742-0040

Questions 1 through 3 are each worth 20 points. Each multiple choice will be worth 5 points. Read the facts completely and analyze the situation. Detail the advice you would give to your client. To help understand the fact pattern, please read the questions being asked at the bottom of each questions.

You are able to use the September 2021 Visa Bulletin handed out in class as reference in your answers, if required. You may also use the Immigration and Nationality Laws of the United States book as assistance.

USC = United States Citizen

LPR = Lawful Permanent Resident

1. On September 1, 2005, Juan, a 58-year-old native and citizen of Guatemala, obtained his lawful permanent resident status. He currently resides in Somerville, MA.

He is married to Luz since 2010 and has three minor children. His wife and children are all natives and citizens of Guatemala and reside in Guatemala. They have never entered the United States. He visits them on a yearly basis.

Juan has limited English skills and only completed the fifth grade in Guatemala.

On November 12, 2011, he was convicted for assault and battery with a dangerous weapon (against a passenger in his taxi) in Dorchester District Court. He received a six-month house of correction sentence, suspended for one year. He has never served physical time in jail. In December of 2019, he was pulled over for a traffic violation and paid a fine in Dorchester District Court due to an uninsured insurance violation.

Since his entry into the United States Juan has resided in Florida, New York, and presently in Massachusetts since June of 2010. He has been gainfully employed and now wishes to pursue his United States citizenship and bring his family to the United States.

- a. What are your initial inquiries?
- b. What documents would you need from him to review?
- c. Is he eligible for citizenship? EXPLAIN
- d. What advice would you give him about his family?

2. Roberto, a native and citizen of Italy entered the United States in 2014 with a F-1 student visa to attend Cambridge Rindge and Latin High. He completed his high school education in June of 2018 and received acceptance to Suffolk University. He commenced his college career in the fall of 2018, where he continues to study Business Administration. Every year during all of his school breaks he returns home to Rome to visit with his mother and siblings. As an astute student, he has begun to send out resumes for future jobs. He has received a job offer from Hertz Rental Corporation to be an accounts manager for the Logan Airport central office.

He tells you that for the past three years he has been dating a fellow classmate, Anna Maria, presently in her sophomore year at Suffolk. Anna Maria is also an Italian native in the United States lawfully under the F-1 status.

Today, December 14, 2021, Roberto and Anna Maria have come to your office to inquire as to his options/availabilities to accept this employment. Also, he prospectively wishes to obtain his lawful permanent residence and remain in the US.

Both his parents and all siblings reside in Italy and have never had any legal status in the US.

1. What procedures(s) would you advise Roberto about his future immigration process, if any in the US?
 2. What documents do you require of him?
 3. Is there any “beneficial” future for Anna Maria thru Roberto?
 4. Advice for Anna Maria on her own? (Can she help Roberto?)
3. Today December 14, 2021, Marizon Rocha, a 39-year-old native and citizen of Costa Rica comes into your office and tells you the following. He has been in the United States since June 29, 2008, when he entered the United States for holiday on a tourist visa to attend a party thrown by his soccer buddies in Chicago. When he sobered up on July 4, 2009, he decided he loved America and decided to stay. Much to your surprise he has never left the United States, nor has filed any applications before with the US immigration service.

For the past thirteen years, Marizon has been hanging around with the international soccer crowd, in Chicago and Boston, finding work as a coach for local high school teams and working as a painter to earn spare cash. He has two USC children, a son, Sam, born on July 4, 2011 and a daughter, Amor, born on February 14, 2012 with multiple sclerosis. His children have always resided with him since birth. He is financially and emotionally responsible for them. Their

mother is a soccer “groupie” whose whereabouts are unknown for the past four years. He has NEVER been married

Marizon briefly discussed with you that he remembers being arrested for possession of marijuana, during a soccer celebration in 2010. He recalls being caught with two “joints” in his pocket. He only paid a fine of \$200.00 and the case was dismissed.

For the past three years, Marizon has been living with Sandra De Los Santos from Honduras, who received her lawful permanent resident through her mother in February of 2017 and has helped with his children. She has never been married.

Last week ICE raided a local soccer hang out for the international teams and Marizon was arrested for his unlawful presence. On December 4, 2021 Marizon was served with a Notice to Appear in Immigration Court on January 12, 2022 at 8:30 a.m. at the Boston Immigration Court, JFK Fed Bldg., Rm 325, Boston, MA 02203.

What information do you need from him?

What options, if any, does he have before the Immigration Court?

What applications, petitions, defenses, waivers, are available?

Is there anything Sandra can do to help?

MULTIPLE CHOICE:

4. A LPR of seven (7) years is eligible to apply for U.S. Citizenship, all of the following are requirements except:
 - a. Completed his/her probation for a misdemeanor assault and battery in 2020
 - b. Must reside in the state where you are applying for at least 2 months
 - c. Must be able to read and write the English language

5. How old does a LPR have to be to apply for their foreign national parents?
 - a. 18
 - b. 21
 - c. Neither

6. A “fast food cook” from China had applied for a Labor Certification in June of 2020. He received his approval from the Department of Labor today. How long does he have to wait to apply for his LPR status?
 - a. Not eligible because of job category
 - b. A little over one year
 - c. A little over ten years

7. Which one of the following qualifies under the INA as a child?
- A child who was adopted at the age of 17
 - A son at the age of 22
 - A stepchild born in Syria- who was 16 ½ when the mother married her USC husband
8. Raul, a 25 year old naturalized United States citizen born in Mexico, wishes to petition for his 2 adult and married brothers to immigrate to the United States from Mexico. How long, if available, is the approximate waiting period:
- 21 years
 - 23 years
 - None, they are immediate relative
9. A high school graduate from Ireland entered the United States and was admitted on a visa waiver on November 10, 2021. He was granted 90 days to remain in the United States. He now wishes to change his status in the United States and attend college. You advise him:
- He will need to obtain a completed and approved form I-20A-B issued by a designated school and return to his native country to obtain his student visa
 - Complete form I-539, Application to extend or change nonimmigrant status, along with the approved form I-20A-B and supporting documentation, and submit to the USCIS Center having jurisdiction over his residence
 - He will need to find employment in order to assist in paying for the financial requirement of his student fiancés
10. USC married his Canadian fiancé last month in Montreal, Canada who has twin, unmarried 17-year-old handicap sons. USC seeks to petition for his new wife and step children. How long, approximately, is the waiting period for a visa to become available for his newly formed extended family into the United States?
- 5 years
 - 12 years
 - No waiting periods
11. Which of the following does not qualify as an immediate relative under the visa allocation system:
- Spouses of LPR
 - Minor children of USC
 - Elderly parent of USC