

Question 1 (one hour)

Eloise is a citizen of France. She entered the U.S. on the Visa Waiver Program on June 1, 2015 to visit family friends. Shortly after arriving in the U.S., Eloise met Matias, a citizen of Chile. It was love at first sight. They started dating and Matias proposed to Eloise on July 15, 2015. Matias became a legal permanent resident of the U.S. on June 1, 2011. Matias hasn't had any criminal issues except a DUI on January 1, 2012. Eloise has two children who are French citizens, Beau (17 years) and Alice (15 years). Beau and Alice have never entered the U.S. Eloise and Matias have come to your office for a consultation. Please refer to the attached August 2015 Visa Bulletin in formulating your answer to this question.

- Should Eloise apply for a fiancé visa?
- What are Eloise's options if she would like to apply for permanent resident status? Please explain the process and wait times. Can Eloise apply for adjustment of status in the U.S.? At the U.S. consulate in France?
- Can Eloise's children be included in her petition?
- Matias is thinking of applying for naturalization. Is Matias eligible? How will this affect his petition for Eloise?
- Matias is considering moving to France if the process will take too long. How will this affect Eloise's petition for permanent resident status?

Visa Bulletin For August 2015

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during August. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; U.S. Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible, in chronological order of reported priority dates, for demand received by July 10th. If not all demand could be satisfied, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. If it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off 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. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. 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., 25,620. The dependent area limit is set at 2%, or 7,320.

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 in 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.

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 available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01NOV07	01NOV07	01NOV07	15NOV94	15MAR00
F2A	15DEC13	15DEC13	15DEC13	01NOV13	15DEC13
F2B	15NOV08	15NOV08	15NOV08	08APR95	22MAY04
F3	08APR04	08APR04	08APR04	22APR94	22AUG93
F4	01DEC02	01DEC02	01DEC02	01MAR97	15JAN92

*NOTE: For August, F2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 01NOV13. F2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 01NOV13 and earlier than 15DEC13. (All F2A numbers provided for MEXICO are exempt from the per-country limit; there are no F2A numbers for MEXICO subject to per-country limit.)

Question 2 (thirty minutes)

Acme Corporation, a U.S. enterprise, decided to purchase a highly specialized router made by a Swiss Company, Emmentaler. The router was purchased by Acme for \$900,000. Acme applied for H-2B visas for three Swiss workers employed by Emmentaler to enter the U.S. temporarily to install the router and train the engineers at Acme to use it. It was estimated this would take 3 weeks. The visa was approved and the workers were each granted 3 months by the immigration officer at the port of entry. When the Swiss workers arrived, they realized the router would not fit in the equipment room. Two of the Swiss workers had a background in construction work and offered to enlarge the room by removing one of the interior walls to create more space. The workers estimated this would take an additional 2-3 weeks, still within the time allotted on their visas. Acme agreed and the Swiss workers began construction. A disgruntled worker at Acme decided to call in an anonymous tip to Immigration and Customs Enforcement (ICE). Meanwhile, one of the Swiss workers, Jeremy, became involved in an inter-office romance with a woman who worked as a graphic designer at Acme, Sophie. Sophie is a U.S. Citizen.

- Were the Swiss workers in compliance with the terms of their H-2B visas?
- Jeremy is interested in remaining in the U.S. to continue his relationship with Sophie. What are his options?

Question 3 (thirty minutes)

Daniel was born on August 1, 1995 in Mexico. Daniel entered the U.S. without inspection with his family on January 1, 2000 by walking across the border through the desert. They were not detained by immigration when entering the U.S. Daniel and his family returned to Mexico once in March, 2003 when his grandmother died. They spent 4 weeks in Mexico, and returned to the U.S. by entering without inspection. They entered by presenting false visas to an immigration officer at the border. The officer did not notice the visas were fake, and Daniel's family was admitted to the U.S. Daniel has been dating his high school sweetheart, Alicia, for the last 3 years and they would like to get married. Alicia is a U.S. citizen. Daniel has no criminal record. Daniel has been working at a car wash since high school graduation. He would like to enroll in college, and is considering proposing to Alicia.

- May Alicia petition for Daniel to become a legal permanent resident? What immigration violations will he be charged with and may he apply for a waiver?
- Can Daniel apply for a student visa? A work permit?