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Fact Sheet:

THE DIVERSITY VISA PROGRAM OF THE IMMIGRATION ACT OF 1990

Excerpted from research prepared by the NumbersUSA Education and Research Foundation.

In 1978, Congress established a commission with a mandate to "study and evaluate ... existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States."[92] The Select Commission on Immigration and Refugee Policy released its final report in August 1981.[93] In this report, the Commission suggested that U.S. immigration policy should support three goals: family reunification, economic growth balanced by protection of the U.S. labor market, and cultural diversity "consistent with national unity."[94] It was this third recommendation that eventually led to the enactment of the "diversity visa program" in the Immigration Act of 1990.[95]

The problem with the concept of diversity was that the Commission did not explain exactly what it meant. Instead, it proposed a new category of "independent immigrants" who would be selected on the basis of their potential contributions to the U.S. labor market.[96] In the congressional debates that followed, there were essentially three different concepts of diversity: 1) historians and other academics suggested that diversity involved the admission of immigrants

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[92] The Commission was established under Pub. L. No. 95-412, 92 Stat. 907 (1978).
[93] SELECT COMM. ON IMMIGRATION AND REFUGEE POLICY, 97TH CONG., 1ST SESS., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST XI (Joint Comm. Print 1981).
[94] Id. at 108.
[95] Pub. L. No. 101-649, §§ 131-162, 104 Stat. 4997-5012 (codified at 8 U.S.C.A. § 1153(c) (2000)).
[96] SELECT COMM., supra note 93, at 16, 127.

from countries that had not ever sent significant numbers of their nationals to the United States;[97] 2) some members of Congress argued that, since Latin American and Asian immigrants had come to dominate the immigration flow since the 1965 Amendments, diversity involved re opening the immigration doors to European and other "traditional" source countries;[98] and 3) various immigrant groups used the concept of diversity to lobby for the maximum number of visas to be made available to nationals of their home countries.[99]

The 1986 Immigration Reform and Control Act[100] contained the first legislative effort to reach a consensus on which concept of diversity would be applied to immigration law. This law included a temporary program under which 5,000 visas would be allocated in 1987 and 1988 to nationals of countries that were "adversely affected by the enactment of" the 1965 Amendments.[101] The program, designed by Rep. Brian Donnelly (D-Mass.), left it up to the State Department to determine which countries would qualify. The State Department thus came up with a list of the countries whose average annual rate of immigration to the United States between 1966 and 1985 was less than their average annual rate between 1953 and 1965. The list included most of Europe, North Africa, Argentina, Bermuda, Canada, Guadeloupe, Indonesia,

[97] Historian John Higham, for example, argued for a "continuing diversity in the sources of immigration" on the ground that migrants coming from diverse origins stimulate innovation. Legal Immigration Reforms: Hearings Before the Subcomm. on Immigration and Refugee Affairs of the Senate Comm. on the Judiciary, 100th Cong., 1st Sess. 3, 16 (1987) (statement of John Higham).
[98] Several Massachusetts legislators, including Sen. Edward Kennedy and Rep. Brian Donnelly, for example, advocated allocating visas to countries that were "adversely affected" by the 1965 Amendments. Walter P. Jacob, Diversity Visas: Muddled Thinking and Pork Barrel Politics, 6 GEO. IMMIGR. L.J. 297, 304-05 (1992).
[99] Id. at 298-99.
[100] Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.).
[101] Id. § 314.

Japan, Monaco and New Caledonia.[102] Since the countries of sub-Saharan Africa had sent few immigrants either immediately before or after the 1965 law, they were excluded from the program. The law specified that applications for these visas would be processed on a first-come, first-served basis and it did not restrict the total number of applications each would-be immigrant could submit. The result was that applicants who were in the United States illegally during the application period, and could rely on the U.S. mail service, had an overwhelming advantage. Some forty percent of all the visas made available under the program ended up being issued to illegal Irish immigrants who were already in the United States.[103]

In 1987, after becoming the Chairman of the Senate Subcommittee on Immigration and Refugee Affairs, Sen. Edward Kennedy (D-Mass.) introduced an immigration reform bill that contained a program that combined the recommendations of the Select Commission and the diversity provision from the 1986 law.[104] The Kennedy bill included a separate immigration category for "Independent Immigrants," with a subcategory for "Nonpreference Aliens." These Nonpreference Aliens were to be selected through the use of a points system under which applicants would be awarded points for certain attributes, including education, age, English language ability and work experience. The largest individual allocation of points, however, was to be awarded to nationals of countries "adversely affected by the enactment of" the 1965 Amendments.[105]

The bill was designed specifically to benefit Irish immigrants, as was openly

[102] HOUSE COMM. ON THE JUDICIARY, supra note 7, at 409.
[103] Jacob, supra note 98, at 305-06.
[104] S. 1611, 100th Cong., 1st Sess. (1987).
[105] Id. § 4.

acknowledged during the subcommittee hearings.[106] Rep. Brian Donnelly, the creator of the 1986 diversity program, testified during the hearings about the positive contributions Irish immigrants had made to America and that the 1965 Amendments were discriminatory in much the same way as the National Origins Quota System that preceded them. He stated that "the cumulative effect of the policy of the last 20 years has been to discriminate against many of the peoples who have traditionally made up our immigrant stock. You cannot solve the problems of discrimination by eliminating it for some and creating it for others."[107] Ironically, in light of the results of his diversity program, he went on to say that "[w]e must work to formulate a level playing field on which all peoples of the world are treated on a fair and equitable basis."[108]

The Kennedy bill did not make it into law. Instead, Congress passed the Immigration Amendments of 1988, which extended the diversity program contained in the 1986 Immigration

Reform and Control Act for another two years, but increased the number of visas available annually to 15,000 from 5,000.[109] The amendments did not, however, alter the application process, so the Irish immigrants living in the United States illegally retained their advantage. Senators Kennedy and Alan Simpson (R-Wyo.), the ranking member of the Senate Subcommittee on Immigration and Refugee Affairs, then introduced the Immigration Act of 1989,[110] which included a category of "Independent Immigrants" for would-be immigrants who could not qualify for admission under the current law because they did not have family members in the United States. This category included a subcategory of "Selected Immigrants," which

[106] See, e.g., Legal Immigration Reforms, supra note 97, at 48.
[107] Id. at 52.
[108] Id. at 53.
[109] Pub. L. No. 100-658, 102 Stat. 3908.
[110] S. 358, 101st Cong., 1st Sess. (1989).

would be allocated 55,000 visas. Selected Immigrants would be chosen through a point system much like the one in the original Kennedy bill, except that no extra points would be allocated to nationals of countries "adversely affected" by the 1965 Amendments. The provision to award points for English language ability was removed during the Judiciary Committee markup of the bill, but the rest of the bill was passed by the Senate in July 1989.

In the meantime, Irish immigrants were honing their lobbying skills.[111] Led by its hired Washington lobbyist, the Irish Immigration Reform Movement (IIRM) began working directly with Rep. Charles Schumer (D-N.Y.) and his staff to draft a diversity program that differed significantly from those considered up to that point. The Schumer proposal would have set aside 75,000 visas each year for a new category of "diversity immigrants."[112] Under this proposal, the world would be separated into "high-admission regions" and "low-admission regions," within which would be "high-admission states" and "low-admission states." High-admission states would be those from which at least 25,000 immigrants had come to the United States within the most recent five-year period. While no state would be allocated more than seven percent of available visas, the bulk of visas would go to low-admission states in low-admission regions, with a much smaller number allotted to low-admission states in high-admission regions. Any visas not used by the state to which they were allocated would go to the remaining eligible states. The regions used in the Schumer proposal were: 1) Africa; 2) Asia; 3) Europe; 4) North America, excluding Mexico; 5) Oceania; and 6) South America, Mexico, Central America and the Caribbean. The largest beneficiaries undoubtedly would be Europe and Africa, since Asia and Latin America would be high-admission regions and Oceania and North America were unlikely to send large numbers of immigrants in any case. Moreover, by lumping together

[111] Jacob, supra note 98, at 311-12.
[112] H.R. 4165, 101st Cong., 2d Sess. (1990).

countries that send vastly different numbers of immigrants, the plan seriously disadvantaged some "low-admission states" that fell into a "high-admission region." Finally, thanks to major pressure from the IIRM, Rep. Schumer agreed that Northern Ireland would be treated as a

separate state for purposes of visa allocation. Irish immigrants thus would get 14 percent of the available visas, instead of seven percent.[113]

However, Rep. Schumer refused to include in his bill a program specifically targeted at legalizing the large numbers of illegal Irish immigrants in the United States, which was a major goal of IIRM. So IIRM went to House Immigration Subcommittee Chairman Rep. Bruce Morrison (D-Conn.) for help.[114] In March 1990, Rep. Morrison introduced a bill, H.R. 4300, with a different version of Rep. Schumer's diversity program. The Morrison bill would have allocated 75,000 visas per year for "Diversity Immigrants," but only for a period of three years.[115] One-third of those visas, however, were to be reserved for illegal immigrants who would have qualified for the diversity program included in the 1986 law. Much to the disappointment of the IIRM, though, Rep. Morrison refused to treat Northern Ireland as a separate state under his plan.[116]

The House Immigration Subcommittee adopted a diversity program that represented a compromise between the Schumer and Morrison proposals.[117] The approved version of H.R. 4300 included a "Diversity Transition Program," which set aside up to 25,000 visas per year for

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[113] Jacob, supra note 98, at 319.
[114] Id. at 319-20.
[115] H.R. 4300, 101st Cong., 2d Sess. (1990).
[116] Jacob, supra note 98, at 321.
[117] SUBCOMM. ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW, HOUSE COMM. ON THE JUDICIARY, 101ST CONG., 2D SESS., FAMILY UNITY AND EMPLOYMENT OPPORTUNITY IMMIGRATION ACT OF 1990 (Amendment-in-the-Nature of a Substitute to the Comm. Print, May 7, 1990).

three years for illegal immigrants who would have qualified for the 1986 diversity program. Beginning in 1994, 55,000 visas would be allocated each year to a new, permanent category of "Diversity Immigrants," as defined by the Schumer bill.

Several members of the full Judiciary Committee were openly skeptical of a "diversity" program that would mostly benefit Europeans. Rep. John Bryant (D-Tex.) questioned the value of a program that sought specifically to restore immigration from traditional source countries and argued instead that the goal of U.S. immigration policy should be to help the most needy, including refugees and those seeking asylum.[118] He characterized the Morrison bill as "a patchwork of special-interest pleadings from various nationalities."[119]

The full Committee passed H.R. 4300 in August 1990.[120] Rep. Morrison's Diversity Transition Program remained intact. Rep. Schumer's Diversity Immigrants program was retained, as well, but with an important change: a state would only be categorized as high admission if it had sent at least 50,000 (instead of the original 25,000) immigrants to the United States within the most recent five-year period. This meant that the nationals of more countries would be eligible for diversity visas. Northern Ireland, however, would still be treated as a separate state under the program.

Eight of the 12 members of the Committee who voted against the bill voiced strong dissent in the House Report. Their critique argued:

Instead of fashioning a policy for the national interest of all Americans, H.R. 4300 responds to every special interest group that has made a demand on the U.S.

[118] Dick Kirschten, A Patchwork, Not a Policy, 1990 NAT'L.J. 1, 980.
[119] More on House Legal Immigration Reform Bill, 67 INTERPRETER RELEASES 918 (1990).
[120] House Judiciary Committee Approves Legal Immigration Reform Bill, 67 INTERPRETER RELEASES 857 (1990).

immigration system...Instead of creating an underlying immigration system which is neutral as to race, religion, or national origin, H.R. 4300 grants additional visas to specific countries and regions which, the bill alleges, have been treated unfairly. This is not a rational way to create immigration policy.[121]

Hoping to get the bill passed by the full House before the close of the 101st Congress, the IIRM turned up the heat. In one day, members of the IIRM visited more than two-thirds of the offices of members of the House of Representatives.[122] Even the Irish Embassy sent staff members to lobby members of Congress.[123] Their efforts paid off. Before floor consideration of H.R. 4300, the House Rules Committee adopted rules to limit the number and subject matter of amendments to the bill; amendments to the Diversity Transition Program were among those that were precluded.[124] The bill passed the House by a vote of 231 to 192, after less than two days of debate, and with both diversity measures intact.[125]

Sen. Simpson opposed several provisions in H.R. 4300, including the Transition Diversity Program, and he had withdrawn his support of his own bill, S. 358, because it lacked an overall numerical limit on legal immigration.[126] Since the 101st Congress was close to adjournment, Sen. Simpson decided to block appointment of Senate conferees. In light of this, sponsors of the two bills agreed to hold off on the appointment of a conference committee and

[121] H.R. REP. NO. 101-723, pt. 1, at 138-39 (1990), reprinted in 1990 U.S.C.C.A.N. 6776.
[122] Jacob, supra note 98, at 327.
[123] Id. at 327-28.
[124] 136 CONG. REC. H8,632 (daily ed. Oct. 2, 1990) (statement of Rep. Lamar Smith). [125] 136 CONG. REC. H8,720-21 (1990).
[126] Jacob, supra note 98, at 331.

instead to conduct informal negotiations.[127] Once the negotiators had reached an agreement that Sen. Simpson could live with, a conference committee was appointed. Within a four-day period, the conferees met, agreed and issued a report, and both the House and the Senate approved the final report.[128]

As passed, the Immigration Act of 1990[129] included a Diversity Transition program that would allocate 40,000 visas per year in 1992, 1993 and 1994 to nationals of "adversely affected" countries, as defined by the 1986 diversity program. In lieu of a specific program to legalize illegal Irish immigrants living in the United States, the IIRM settled for a provision in the Diversity Transition program that would guarantee Irish nationals at least 40 percent of the 40,000 visas made available each year. Instead of referring specifically to a set-aside for Ireland, however, the law allotted at least 40 percent of the Diversity Transition visas to "the foreign state the natives of which received the greatest number of visas issued under section 314 of the Immigration Reform and Control Act."[130]

The Diversity Immigrants program would be allocated 55,000 visas per year on a permanent basis beginning in 1995. The countries that would be eligible for diversity visas would be determined as prescribed by H.R. 4300 as passed by the House. The point system in S. 358 was eliminated, and instead, beneficiaries would have to show that they had the equivalent of a high school education or at least two years of job training or experience.

The new law also retained the 1986 program's first-come, first-served system for

[127] Id.
[128] Id. at 334.
[129] Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 U.S.C.).
[130] H.R. REP. NO. 955, 101st Cong., 2d Sess. 24 (1990), reprinted in 1990 U.S.C.C.A.N. 6784.

processing applications, though it set aside the 40 percent of the visas that were to go to Irish applicants during the first three years. It also failed to set a limit on the number of applications each would-be beneficiary could submit. The result of this system in 1992 was that, while the State Department (which processed the applications) expected to receive five million entries for the 40,000 available visas, in fact it received almost 19 million applications.[131] The State Department estimated that each applicant submitted an average of 10 applications, though some people claimed to have sent more than 1,000.[132] About three-quarters of the beneficiaries of the program in 1992 gave U.S. mailing addresses, suggesting that they were already living in the United States illegally.[133]

How successful has the 1990 Immigration Act's diversity program been at bringing "diversity" to the United States? The top five nationalities to benefit from the Diversity Transition program between 1992 and 1994 were: Poles (41,585); Irish (37,946); British (8,977); Japanese (6,416); and Indonesians (2,557).[134] The top five nationalities to benefit from the permanent Diversity Immigrant program between 1995 and 1996 (the only years for which detailed statistics are available) were: former Soviets (10,947); Poles (8,283); Nigerians (6,485); Ethiopians (6,374); and Bangladeshis (5,569).[135] Between 1820 (the first year for which official immigration statistics were recorded) and 1996, the top five immigrant sending countries were:
Germany (7.1 million); Mexico (5.5 million); Italy (5.4 million); Great Britain (5.2 million); and

[131] Center for Immigration Studies, The Visa Lottery: Increasing Immigration with a Spin O' the Wheel, SCOPE, No. 10, 8 (1992).
[132] Id.
[133] Id. at 9.
[134] STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, 1992, 1993, 1994.
[135] STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, 1995, 1996.

Ireland (4.8 million).[136]

The table below shows the distribution by region of the beneficiaries of both the 1990 act's diversity programs and of all immigrants represented in official INS statistics. It seems fairly clear that the Diversity Transition program did not increase diversity in the immigrant flow. The permanent diversity program did a somewhat better job in that African immigrants received 30 percent of available visas, while they have accounted for only 0.8 percent of all immigrants to

the United States since 1820. The fact that the almost 46 percent of available diversity visas go to Europeans, who represent over 60 percent of all immigrants raises serious questions about the benefits of the program, though. It seems doubtful that the lukewarm results of the program justify the fact that it discriminates on the basis of national origin, especially considering the fact that the Immigration and Nationality Act specifically prohibits such discrimination.[137]

Region	Diversity Transition Winners (1992-94)	Diversity Immigrant Recipients (1995-96)	All Immigrants (1820- 1996)
Europe	93,421	48,675	38,017,793
Asia	9,643	17,205	7,894,571
Africa	725	31,847	532,213
Oceania	227	1,576	240,948
North America (excluding Mexico)	2,461	1,796	4,423,066
Mexico, Central and South America and the Caribbean	1,958	4,956	11,763,988

[136] Id.
[137] INA, supra note 52.