



August 9, 2013

PM-602-0088

Policy Memorandum

SUBJECT: Acceptance of Diversity Visa-Related I-485 Applications During the Advance Notification Period Reflected in the Visa Bulletin

Purpose

This policy memorandum (PM) provides updated guidelines to ensure uniform acceptance of applications for adjustment of status under the Diversity Visa (DV) category. The guidance contained in this PM is controlling and supersedes any prior guidance on the subject.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all U.S. Citizenship and Immigration Services (USCIS) employees.

Authorities

- Immigration and Nationality Act (INA) sections 203(c), 201(e), and 245(a)
- 8 CFR 245.1(a) and 22 CFR 42.33

Background

Section 203(c) of the INA makes available up to 55,000 permanent resident DVs annually.¹ As part of its responsibility for administering the provisions of the INA relating to the numerical limitations on immigrant visas, the U.S. Department of State (DOS), Bureau of Consular Affairs, Immigrant Visa Control and Reporting Division, publishes a Visa Bulletin that summarizes the availability of immigrant visas in all categories, including DV visas, for the following month.² Aliens who meet the basic eligibility requirements of section 203(c) may apply for random selection in an annual lottery conducted by DOS for persons from countries with low rates of immigration to the United States. If selected in the annual lottery, persons who are currently in the United States may then proceed, depending on DOS's estimate of future DV visa availability, to the second step in the DV process – submission of an application for adjustment of status.

¹ By statute, up to 5,000 of the 55,000 annually-allocated DVs can be made available for persons seeking to immigrate to the United States under the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105-100).

² DOS generally publishes the Visa Bulletin on or about the ninth day of each month.

Since, by statute, DV visas expire at the end of a given fiscal year, a DV adjustment applicant's Form I-485 (including principals and any of their derivatives) must be adjudicated and approved on or before September 30 of the relevant fiscal year.

To ensure timely notification and encourage timely filing of applications for adjustment of status, approximately 50 to 60 days in advance of actual DV visa availability, DOS, in consultation with USCIS, publishes in its monthly Visa Bulletin a separate "advance notification" of DV rank cut-off numbers. Such advance notification enables persons to file their Form I-485 applications prior to the time a DV visa becomes "immediately available." The listing of advance notification of DV availability is meant to enable a person to *file* his or her adjustment application, even though a visa is not yet available.

This advance notification therefore provides an opportunity for adjustment of status applicants to file their Form I-485 applications earlier than would otherwise be possible, thereby enabling USCIS to begin review of such applications. This in turn affords USCIS additional time to determine an applicant's eligibility for adjustment of status before the end of the fiscal year.

Policy

DOS publishes its monthly Visa Bulletin on or about the ninth day of each month. Each Visa Bulletin indicates immigrant visa availability for the upcoming month (e.g., November immigrant visa cut-off numbers are published on October 9). For DV purposes, the Visa Bulletin currently includes two monthly allocation charts which provide: (1) DV visa availability for the current Visa Bulletin month; and, (2) advance notification of DV visa availability for the following month. A person's rank number is assigned at the time he or she is notified by DOS of selection in DOS's annual lottery. Visa availability, for DV purposes, is based on a person's rank number.

When a DV rank cut-off number is listed in the availability section of the Visa Bulletin, visas will be available in that month for applicants with DV numbers ranked (in randomly selected order by region) *below* the specified cut-off number. Each DV case is assigned an individual DV rank number. The listing of the DV rank cut-off number indicates the DV rank number of the first person who is not eligible to adjust his or her status in a particular month.³ For example, the November 2012 bulletin (reproduced at page 5 of this PM) shows the rank cut-off number for Europe in November to be 7,000 and the DV rank cut-off number for Europe in December 2012 as 9,250. Therefore, when the November 2012 Visa Bulletin went into effect on November 1, any person with a rank number below 7,000 was eligible to have their adjustment of status application adjudicated to completion.

The rank cut-off number listed in the advance notification section indicates the DV rank cut-off numbers for the specific month covered by the advance notification. Anyone with a rank number below the listed rank cut-off number in the Visa Bulletin may file an adjustment of status

³ The cut-off number (the number which is ready for processing when it becomes available on the Visa Bulletin) serves the same purpose as a priority date for the processing of Family-sponsored or Employment-based Immigrant Visa cases.

application. For example, in the November 2012 Visa Bulletin, shown on page 5 of this PM, the advance notification DV rank cut-off number for Europe in December 2012 is listed as being 9,250. Therefore, immediately upon release of the November 2012 Visa Bulletin (i.e., on or about October 9, 2012), any person who could be charged to Europe who had a rank cut-off number below 9,250 was eligible to file an application for adjustment of status, even though the adjustment application could not be adjudicated to completion prior to December 1, 2012.⁴

As of January 11, 2012, the USCIS Case Resolution Unit at the Lockbox reviews every DV-related Form I-485 for visa availability at the time of filing by verifying that the applicant's rank number is lower than the advance notification cut-off number posted in the most recently published DOS monthly Visa Bulletin. The Immigration Services Officer (ISO) will confirm at time of final adjudication of the Form I-485 adjustment application (i.e., when all required processing has been completed) that the DV rank cut-off number is lower than the applicable rank cut-off number posted in the DOS's current Visa Bulletin. As a last step, the ISO must also confirm that a DV visa number is actually available, before he or she may approve the adjustment application by submitting an electronic request for the DV visa within IVAMSWEB.

An explanation of the use of the attached DV Selection Letter on page 7 of this PM is described below:

Identify the applicant's "DV rank number." It is located immediately below the last line of the fourth paragraph and above the bar code at the bottom of the page. The DV "rank number" in the sample Selection Letter is 2012EU000XXXX.

- The first four characters of the "Case Number" identify the "Fiscal Year" in which the applicant must file. Note: A DV number is valid only for the fiscal year indicated.
- The second two characters designate the "Region" on the DOS Visa Bulletin from which the applicant is competing. On the sample Selection Letter, this case is charged to Europe.
- The remaining digits identify the applicant's "rank number" and are used in conjunction with the Visa Bulletins to identify when an applicant is eligible to file his or her application.

Implementation

To ensure that USCIS uniformly processes all DV Form I-485 applications, a review of DOS's advance notification of DV visa availability section in the Visa Bulletin is required at the time of filing. The "Receive Date" of the adjustment application (the date the application is received at the Lockbox) will dictate whether the application has been timely filed. As soon as a Visa Bulletin is published with advance notification of DV visa availability, then an individual with a rank cut-off number that is lower than that specified in the advance notification section may file for adjustment and the application will be considered as timely filed. In addition, an ISO must review the current month's Visa Bulletin at the time of final adjudication to confirm that the applicant's DV visa rank cut-off number is lower than that specified in that month's Visa

⁴ The date of publication of the Visa Bulletin can be found at the bottom of the last page of each Visa Bulletin.

Bulletin (not the advance notification section), and if so, will request allocation of a visa number through IVAMSWEB.

If, for example, an ISO is reviewing a case filed on November 15, 2012, a review of the latest published Visa Bulletin (i.e., the December 2012 Visa Bulletin, which was published on November 7, 2012) would be required to confirm that the adjustment application was not prematurely filed. As long as the applicant's DV rank number fell below the January rank cut-off numbers listed in the advance notification section of the December Visa Bulletin, the individual is eligible to file as of November 7 and the DV visa will be deemed, for purposes of eligibility to file under 8 CFR 245.1(a), to have been available at the time of filing the Form I-485 adjustment application.

The above guidelines regarding acceptance of filings based on "advance notification" do not apply to adjustment applications for DV visas valid for the current fiscal year which are filed in September because such applications **must be adjudicated** before the end of the fiscal year (September 30) in order for the individual to be eligible to adjust status under that year's DV program. On the other hand, these guidelines do apply to adjustment applications that are filed on the basis of advance notification in the prior year's September Visa Bulletin for the next fiscal year's DV numbers. For example, the September 2013 Visa Bulletin will contain advance notification of FY 2014 DV rank cut-off numbers for October 2013. Persons having a rank cut-off number below that listed in the advance notification will be eligible to file their FY 2014 DV application immediately upon publication of the September 2013 Visa Bulletin (i.e., on or about August 9, 2013).

In all cases, the ISO must review the current month's Visa Bulletin to ensure that there is a DV visa available at time of final adjudication. The Form I-485 cannot be approved until the applicant's DV rank number falls below that listed in the current Visa Bulletin. Therefore, at the time of final adjudication, the ISO must only review the DV applicant's rank cut-off number for the month during which final adjudication takes place, not the rank cut-off number listed in the current Visa Bulletin's separate "advance notification" table or the month in which the Form I-485 adjustment application was originally filed. As a last step, the ISO must then confirm that a DV visa number is actually available at the time of final adjudication by submitting an electronic request for the DV visa within IVAMSWEB.

In the Visa Bulletin example below, immigrant visa numbers in the DV category are available to qualified DV-2013 applicants chargeable to all regions/eligible countries. When a rank cut-off number is shown, visas are available only for applicants with DV regional lottery cut-off numbers ranked **BELOW** the specified allocation cut-off number:

Visa Bulletin Example: DIVERSITY IMMIGRANT (DV) CATEGORY (NOVEMBER)

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	13,900	Except: Egypt 6,600 Ethiopia 9,100 Nigeria 8,500
ASIA	2,350	
EUROPE	7,000	
NORTH AMERICA (BAHAMAS)	2	
OCEANIA	400	
S. AMERICA, and the CARIBBEAN	500	

DIVERSITY IMMIGRANT (DV) CATEGORY: (ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN DECEMBER)

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	15,500	Except: Egypt 8,300 Ethiopia 14,800 Nigeria 10,000
ASIA	2,700	
EUROPE	9,250	
NORTH AMERICA (BAHAMAS)	2	
OCEANIA	500	
SOUTH AMERICA, and the CARIBBEAN	700	

In reviewing the November Visa Bulletin shown in the chart above, an applicant from Europe with a rank number of 2013EU00009249 would be **eligible to file** Form I-485 during November (or as soon as the November Visa Bulletin is published) because the last five digits of his or her rank number are lower than December's advance notification rank cut-off number for Europe. This applicant would not be able to adjust status until December, because his or her rank number is higher than the rank cut-off number listed in the Visa Bulletin for November. A second applicant from Europe with a rank number of 2013EU00009250 would **not be eligible** to file

because the last five digits of his or her rank number are the same as the rank cut-off number in the separate “advance notification” table provided in the above Visa Bulletin. The second applicant will need to check his or her rank cut-off number the following month (i.e., the December Visa Bulletin) to determine whether he or she will be eligible to file an adjustment application at that time.

It is extremely important that every office carefully monitor its DV adjustment case load and strive to adjudicate each DV adjustment application to completion before the end of the relevant fiscal year.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Field Operations Directorate.

Attachment

Selection Letter

Selection Letter



Electronic Diversity Visa

Entrant Status Check

Help |



May 01, 2012

United States Department of State
Kentucky Consular Center
3505 North Highway 25W
Williamsburg, KY 40769
U.S.A



Name
Address

Dear [Name],

You are among those randomly selected for further processing in the Diversity Immigrant Visa Program for the fiscal year 2013 (October 1, 2012 to September 30, 2013). Selection does not guarantee that you will receive a visa because the number of applicants selected is greater than the number of visas available. Please retain this letter and take it with you to your visa interview.

Approximately 100,000 individuals were registered for further processing. Therefore, it is most important that you carefully follow instructions to increase your chances of possible visa issuance. You must visit the Department of State website at <http://www.dvselected.state.gov> where you will find instructions for completing the required processing steps.

Please be advised that your case may not be scheduled for an interview appointment until a visa number is available. You will only be contacted by the Kentucky Consular Center when a visa appointment is scheduled.

If it should be necessary to contact the Kentucky Consular Center, you must always refer to your name and case number as they appear below. Your case number should be clearly written in the upper right hand corner of all documents and correspondence sent to the Kentucky Consular Center.

Case Number: 2012EU000XXXX
Principal Applicant Name: [REDACTED]
Preference Category: DV DIVERSITY
Foreign State Chargeability: [REDACTED]
Post: [REDACTED]

The Kentucky Consular Center telephone number is 606-526-7500 (7:30am until 4:00pm EST), or send E-mail inquiry to KCCDV@state.gov

Name
Address

2012EU000XXXX

