

US IMMIGRATION CLIENT ALERT

If you have any questions about this announcement, please contact the legal professional with whom you usually work at Fragomen, Del Rey, Bernsen & Loewy, LLP.

October 1, 2007

2009 Diversity Visa Lottery is Announced

Application Period Begins on October 3, 2007

EXECUTIVE SUMMARY

The Department of State (DOS) will begin to accept applications for the 2009 Diversity Immigrant Program (DV-2009) green card lottery on Wednesday, October 3, 2007 at 12:00pm EDT (GMT -4). The application period will close on Sunday, December 2, 2007 at 12:00pm EST (GMT -5).

The Department of State (DOS) has issued application instructions for the 2009 Diversity Immigrant Program (DV-2009) green card lottery. The lottery will enable 50,000 randomly chosen people to obtain permanent residence in the United States. Applicants must have at least a high school education (or its equivalent) or two years of qualifying work experience. Applicants who are selected in the lottery will be eligible to become permanent residents during Fiscal Year (FY) 2009 (October 1, 2008 to September 30, 2009).

The application period will begin at 12:00pm EDT (GMT -4) on Wednesday, October 3, 2007 and end at 12:00pm EST (GMT -5) on Sunday, December 2, 2007. Applications not submitted during this period will not be accepted.

Background

Each year, the U.S. Diversity Immigrant Visa program makes available permanent residence visas to persons meeting certain eligibility requirements. Applicants for Diversity Visas are initially chosen through a random computer-generated lottery drawing. Visas are distributed among six geographic regions, with a greater number of visas going to regions with lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. Within each region, no one country can receive more than seven percent of the available Diversity Visas in any one year.

Ineligible Countries

For DV-2009, natives of the following countries are not eligible to apply, as they sent a total of more than 50,000 immigrants to the U.S. in the previous five years:

BRAZIL, CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, GUATEMALA, HAITI, INDIA, JAMAICA, MEXICO, PAKISTAN, PHILIPPINES, PERU, POLAND, RUSSIA, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM. Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible. The list is largely the same as last year, with the addition of Ecuador and Guatemala.

Electronic Filing

All DV filings are required to be submitted in electronic format on the DOS website (<http://www.dvlottery.state.gov/>) dedicated for this purpose; note that this website is not yet fully operational, but will be accessible during the 60-day application period. The DOS will only accept completed Electronic Diversity Visa (EDV) Entry Forms submitted during the 60-day registration period. The website will feature an application form that the applicant will complete online and send electronically to the specified DOS web address. The applicant must attach digital photographs of him/herself, and any spouse or unmarried children under 21 who will be accompanying the applicant; photographs are not required for children who are already U.S. citizens or lawful permanent residents. Lottery entrants will receive electronic confirmation upon receipt of a completed electronic entry form. Because the format is completely electronic, signatures are not required for the application.

Further instructions and eligibility requirements are provided below. Note that application procedures and requirements remain essentially unchanged since last year.

Information to Include in the Application

- A. **Full Name.** Applicant's full name, listed as last or family name, first name, middle name.
- B. **Date of Birth.** Applicant's date of birth (day/month/year).
- C. **Place of Birth.** Applicant's place of birth (city/town, district/county/province, country). If the country name has changed, enter the name of the country currently in use for the country of birth.
- D. **Gender.** Male or Female.
- E. **Country of Eligibility/Chargeability.** Applicant's native country, if different from the country of birth. (See discussion regarding chargeability below.) If claiming nativity through a spouse or parent, the applicant should indicate this.
- F. **Country of Current Residence.**
- G. **Highest Level of Education as of Date of Application.** Applicant's highest level of educational achievement. This is categorized into 10 levels, from which the applicant must choose one: 1) Primary school only; 2) High school, no degree; 3) High school degree; 4) Vocational school; 5) Some university courses; 6) University degree; 7) Some graduate level courses; 8) Master's degree; 9) Some doctorate level courses; and 10) Doctorate degree.
- H. **Spouse Information.** Name, date of birth, city/town of birth, country of birth, gender and photograph of spouse.
- I. **Children Information.** Name, date of birth, city/town of birth, country of birth, gender and photograph of children. All minor, unmarried children must be listed on the principal applicant's entry, even if the applicant is no longer legally married to the child's parent, and even if they do not wish to immigrate; however, children who are already U.S.

citizens or lawful permanent residents are not required to be listed. (Note: married children and children 21 years or older will not qualify for the Diversity Visa.) Failure to provide all of this information will disqualify the applicant.

- J. **Number of Children that are Unmarried and Under the Age of 21.** Children who are unmarried and under age 21, including legally adopted children and stepchildren, must be enumerated.
- K. **Mailing Information.** Address, City/Town, District/Country/Province/State, Postal Code/Zip Code, Country.
- L. **Telephone Number.** Optional.
- M. **E-mail Address.** Optional.
- N. **Marital Status.** Unmarried, Married, Divorced, Widowed, Legally Separated
- O. **Photographs.** Each applicant, his/her spouse, and each child will need a computer file containing his/her digital photo (image) which will be submitted on-line with the EDV Form. Individual photographs of each family member must be submitted; group or family photos are not acceptable. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

If the submitted digital images do not conform to the following specifications, the system will automatically reject the EDV Form and notify the sender.

- All digital photographs (new and scanned) must be in the Joint Photographic Experts Group (JPEG) format with a maximum file size of sixty-two thousand five hundred (62,500) bytes. Color photographs are preferred.
- The person photographed must be in front of a neutral, light-colored background and looking directly at the camera. The head should not be tilted up, down, or to the side. The head should cover about 50% of the photo. Hats and other head coverings are not permitted except for religious beliefs, but in no case may the religious head covering obscure any portion of the face. Dark glasses are not permitted.
- New digital images must have a resolution of 320 pixels wide by 240 pixels high and must have a color depth of 24-bit color. Color photographs in 24-bit color depth are preferred to black and white or grayscale pictures in 24-bit color depth.
- If a photographic print is scanned, the print must be 2 inches by 2 inches (50mm x 50mm) square. Furthermore, the image must be scanned at a resolution of 150 dots per inch (dpi) with an image resolution of 300 by 300 pixels. Scanned color, black and white or grayscale photographs must be scanned in True Color or 24-bit color mode. Monochrome images (2-bit color depth), 8-bit color or 8-bit grayscale will not be accepted.

Fees and Multiple Applications

No fee is required with a Diversity Visa Lottery application. **Multiple applications are not permitted. Receipt of more than one application for an individual will disqualify that individual from registration.**

Additional Information About Family Members

Information about an applicant's spouse and unmarried children under the age of 21 (except for those children who are already U.S. citizens or lawful permanent residents) must be included in the application, or the application will be disqualified. As mentioned above, the application must include each family member's full name, gender, date of birth and place of birth. Spouses

and/or children acquired after submission of the application are eligible for derivative visas. Neither the spouse nor the child(ren) have to be born in the applicant's native country. Parents of applicants are not eligible for inclusion on an application. Husbands and wives may each submit an application if each meets the eligibility requirements.

Chargeability

The applicant must be a native of a qualifying country in order to be eligible for a diversity visa. A "native" is defined as an individual born within a particular country and also includes someone entitled to be "charged" to that country under alternative provisions of the immigration laws. The country of citizenship is not the determinative factor. However, if a person was born in an ineligible country but his or her spouse was born in an eligible country, such a person can claim the spouse's country of birth as the country of nativity, provided that the spouse is eligible for a derivative diversity visa and the husband and wife enter the United States together on the visas. Also, if a person was born in an ineligible country but neither of his or her parents was born or was a resident there at the time of the birth (i.e., the parents were visiting temporarily or were stationed there in connection with a business or profession), such a person may be able to claim one of the parent's countries of birth as the country of nativity.

Selection Procedures

In previous years, between six and seven million people have applied for the lottery annually. There are 50,000 DV visas available for Fiscal Year 2009 but more than that number of individuals are expected to be selected. Because it is possible that some of the first 50,000 persons who are selected will not pursue their cases to visa issuance, selecting a larger number of entries should ensure use of all DV-2009 numbers, but it also risks some selected persons being left out. All applicants who are selected will be informed promptly of their place on the list. Each month visas will be issued, visa number availability permitting, to those applicants who are ready for issuance during that month. Once all of the FY 2009 visas have been issued, the program for that year will end. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Being chosen randomly in the entry selection process does not automatically guarantee that one will receive a visa.

This process is purely random and there is no way to increase one's chances of being selected. Persons who file multiple applications will be eliminated. Successful applicants will likely be notified by mail between May 2008 and July 2008. Each winner will be given a numerical ranking within the appropriate geographical region. Unsuccessful applicants will not be notified. All registered applicants will be informed of the necessary steps to meet the requirements for formally applying for an immigrant visa. There is no fee for the initial application. Successful applicants will be required to pay a fee later, during adjustment of status or visa processing.

DV-2009 visas will be issued between October 1, 2008 and September 30, 2009. Being selected by the computer is only the first step in obtaining a green card. Winners must either file an application for adjustment of status or start the process of obtaining an immigrant visa at a U.S. Consulate overseas.

Visa Eligibility

All registered applicants must have a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education, or two years of work experience within the five years preceding the date of the application, in an occupation that requires at least two years of training or experience to perform.

The U.S. Department of Labor O*Net Online database will be used as a reference point in defining required training and experience. No documentation should be submitted with the DV application. However, the education/work experience must be documented at the time of the visa interview.

Applicants are subject to medical, criminal and other grounds of ineligibility as specified in the law. In addition, security measures may significantly increase the scrutiny required and the time necessary to process applications from natives of certain countries, particularly those countries identified as state sponsors of terrorism.

Impact on Nonimmigrant Visa Eligibility

The State Department has opined that the fact that an individual has entered a visa lottery may be taken into account by a consular officer to determine whether or not the applicant has the intent to immigrate to the United States. Diversity Visa Lottery registration in and of itself, however, would not ordinarily be sufficient cause to deny a nonimmigrant visa application. If an applicant “wins” the lottery and is registered as a winner, this may demonstrate a higher level of immigrant intent and could foreclose certain nonimmigrant visa options. Caution is advised, therefore, if a potential applicant believes that entering the lottery would adversely affect the future ability to obtain a nonimmigrant visa. Note that the doctrine of “dual intent” is recognized by statute in cases of H-1B and L-1 nonimmigrants, so individuals applying for visas in these classifications should not be affected. Please contact the legal professional with whom you usually work at Fragomen, Del Rey, Bernsen & Loewy if you are concerned about the impact that entering the DV lottery might have on your present or future immigration status.

Further Information

You should not need assistance to submit an electronic application because the website will provide comprehensive step-by-step instructions. Of course, if you have any questions regarding the visa lottery program for FY2009, please contact one of our offices. Applicants overseas may contact the nearest U.S. embassy or consulate for instructions on the DV lottery. Diversity visa information is also available in the Visa Bulletin on the Internet at <http://travel.state.gov/> or via the Consular Affairs automated fax at (202) 647-3000 (code 1103). Calls to the automated fax service must be made from a fax machine using the receiver or voice option of the caller’s fax equipment.

If you have questions about this alert, please contact the legal professional with whom you regularly work at Fragomen, Del Rey, Bernsen & Loewy, LLP.

Copyright © 2007 by Fragomen, Del Rey, Bernsen & Loewy, LLP