THE IMMIGRATION GAMBLE: ELIMINATING THE DIVERSITY VISA PROGRAM

MELISSA CHAPASKA *

I. INTRODUCTION

The United States of America prides itself on the notion that it is a “nation of immigrants.” 1 As such, it comes as no surprise that issues relating to immigration are consistently at the forefront of American legal discourse. Recently, businesses are beginning to demand a comprehensive immigration reform to fix, what is described, as a broken system. 2 As the debate on immigration reform evolves, differing opinions emerge regarding the policy supporting the current immigration system. 3 Many ponder whether the immigration policy of yesterday will satisfy the needs of our country in the future. 4

As John F. Kennedy opined, “[i]mmigration policy should be generous; it should be fair; it should be flexible.” 5 Given the history of America as a “melting pot” with people diverse in race, ethnicity, and cultural background, it makes logical sense that the country’s immigration policy would focus on promoting diversity. However, it is argued that the Diversity Visa Program (“DV program”), with the aim to promote diversity, is not generous, fair, or flexible to future immigrants. 6 In fact, critics of the DV program claim it causes significantly more procedural headaches than actual diversity. 7

---

* Melissa Chapaska is currently a third-year student at the Widener University School of Law. The author would like to thank the staff and editorial board of the Widener Journal of Law, Economics & Race for their hard work in editing this Note. She also wishes to thank Professor Jill Family for her guidance in the creation of this Note. The author is sincerely grateful to her parents, Ellen and Russel, and her boyfriend, Mark, for their continuing love and support. Without them, this Note would not have been possible.

1 See generally JOHN F. KENNEDY, A NATION OF IMMIGRANTS (1986).


3 Id.

4 See generally OFFICE OF MGMT. & BUDGET, STATEMENT OF ADMINISTRATION POLICY: H.R. 6429 – STEM JOBS ACT OF 2012 (2012) [hereinafter H.R. 6429] (Demonstrating the Administration’s desire to “building a 21st-century immigration system that meets the Nation’s economic and security needs through common-sense, comprehensive immigration reform.”).

5 KENNEDY, supra note 1, at 82.

6 RUTH ELLEN WASEM, CONG. RESEARCH SERV., DIVERSITY IMMIGRANT VISA LOTTERY ISSUES 9 (2011); see generally Diversity Visa Program and Its Susceptibility to Fraud and Abuse: Hearing Before the H. Subcomm.
Immigration law is a complex and controversial topic; consequently, many important aspects of immigration law fall beyond the scope of this Note. If the Legislature’s recent focus on comprehensive immigration reform is any indication of the magnitude of future reform, then the examination of the DV program, outlined in this Note, merely scratches the surface of the immigration reform debate. In fact, the DV program accounts for a relatively small portion of American immigration. The DV program receives its fair share of attention as legislators attempt to achieve immigration reform that seeks to maintain the integrity of our immigration system.

After evaluating the failures of the program, this Note proposes that the visas allocated to the DV program should be reallocated to a merit-based program that is designed to focus on a prospective immigrant’s overall characteristics and not simply their geographic location. In section I, this Note offers the background and underlying policy considerations of the program. It analyzes procedural and policy-related problems resulting from the program and addresses the arguments in favor of maintaining the program. In section II, this Note provides an overview of legislation, both past and current, with an emphasis on the merit-based point system recently proposed by the Border Security, Economic Opportunity and Immigration Modernization Act. In conclusion, this Note advocates for the elimination of the diversity visa system in favor of a merit-based point system.

II. THE DIVERSITY VISa PROGRAM: PURPOSE AND PROCEDURE

A. A Nation of Immigrants: The Purpose of the DV Program

The DV program is a component of Congress’ attempt to reform the immigration system through the Immigration Act of 1990. One of the purposes of immigration reform was to

---


“further enhance and promote diversity.” This admirable, albeit relatively vague, purpose is partially rooted in the “open society” principle. According to the “open society” principle, immigration is necessary to promote “cultural diversity and enrichment.” Congress aimed to increase diversity with the creation of the DV program by increasing the number of immigrants from countries with low rates of immigrant admission. In other words, the DV program aimed to increase immigrant diversity by allowing those who are underrepresented, in the employment and family-based preference categories, the opportunity to apply for an immigrant visa.

B. Qualifying for a Diversity Visa

A unique aspect of the DV program is the lack of restrictions placed on diversity visa applicants. Unlike other visa programs provided by Congress, the DV program does not require that a prospective immigrant possess familial or employment ties to the United States in order to be considered eligible for a diversity visa. To qualify for a diversity visa, a prospective immigrant must meet only three requirements. First, a prospective immigrant must be a native of a low-admission foreign state. Low-admission foreign states are all countries not designated as high-admission by the Attorney General. High-admission foreign states are those that have sent more than 50,000 immigrants to the United States in the past five years. Second, in order for a prospective immigrant to be eligible for the diversity visa, the immigrant must possess at least a high school education or its equivalent. Finally, the prospective immigrant must be granted admissibility to enter the United States. Admissibility is when an immigrant is

---

14 Id. at 460.
16 Id.
17 Id. at 2.
18 Id.
19 22 C.F.R. § 42.33(a)(1).
20 Id.
21 Zonneveld, supra note 15, at 554.
22 For the DV-2013, natives of the following “high-admission” countries were not eligible to participate in the Diversity Lottery: Bangladesh, Brazil, Canada, China, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, South Korea, United Kingdom (excluding Northern Ireland), and Vietnam. Instructions for the 2013 Diversity Visa Program (DV-2013), BUREAU OF CONSULAR AFFAIRS, available at http://travel.state.gov/pdf/DV_2013_instructions.pdf.
23 22 C.F.R. § 42.33(a)(1).
24 Zonneveld, supra note 15, at 554.
An immigrant is legally permitted to enter the United States so long as he or she does not satisfy any of the ten basic inadmissibility grounds provided by the Immigration and Nationality Act. If an immigrant is found to possess grounds for inadmissibility their diversity visa application is denied.

C. Applying for a Diversity Visa

The Department of State is responsible for issuing 50,000 diversity visas each year, as prescribed by Congress. The 50,000 diversity visas are apportioned to six separate regions: Africa, Asia, Europe (not including Northern Ireland), North America (not including Mexico), Oceania, and South America (including Mexico, Central America, and the Caribbean). The number of visas assigned to each region is based on the total immigrant admissions from each region over a 5-year period, and the greatest numbers of visas are allocated to the regions with the lowest level of immigration.

The first stage of the diversity visa process is referred to as the diversity visa “lottery,” which is a procedure used to ensure that diversity visas are issued to eligible applicants randomly. There is no fee associated with an application to the diversity visa lottery. Prospective applicants may enter the lottery by electronically submitting a short petition through the State Department’s website. Computer software utilized by the State Department assigns a random number to each petition submitted and then reorders the petitions based on rank. The State Department is then responsible for selecting a number of petitions for approval from each

---


26 For instance, an immigrant may be inadmissible to the United States for health-related or security related (among other) reasons, including possible terrorist connections or past criminal history. Id.

27 Fraud Hearing, supra note 6, at 22 (Statement of Anne W. Patterson, Deputy Inspector General, U.S. Dep’t of State).

28 Originally, Congress provided for 55,000 diversity visas annually. However, in 1997, the Nicaraguan and Central American Relief Act (NACARA) devoted 5,000 of the 55,000 annual diversity visas to the NACARA program. Diversity Visa Program (DV-2013) – Selected Entrants, BUREAU OF CONSULAR AFFAIRS, available at http://travel.state.gov/visa/immigrants/types/types_5715.html.

29 8 U.S.C. § 1151(e)


31 8 U.S.C. § 1153(c)(1).


33 Instructions for the 2013 Diversity Visa Program (DV-2013), supra note 22 at 2.

34 Id. All entry forms for the diversity visa lottery must be done electronically because the State Department no longer accepts paper petitions.

35 22 C.F.R. § 42.33(c).
of the designated regions.\textsuperscript{36} The chosen participants, or the “winners” of the diversity visa lottery, earn the right to file for a diversity visa.\textsuperscript{37}

It is important to note that at this stage, the prospective immigrant has only “won” the right to apply for a diversity visa and not the right to an immigrant visa itself.\textsuperscript{38} In addition to meeting the requirements of eligibility, a prospective immigrant is responsible for paying a diversity lottery fee and undergoing an interview with a consular officer to determine their eligibility.\textsuperscript{39} Time constraints may also affect an otherwise eligible immigrant’s chance to be awarded a diversity visa.\textsuperscript{40} For example, approved petitions are valid only until midnight of the last day of the year in which the petition was approved; an approved petition not processed within this deadline expires, making the individual ineligible to receive a diversity visa.\textsuperscript{41} A prospective immigrant issued a diversity visa will gain permanent resident status in the United States.\textsuperscript{42}

III. CRITICISMS AND ARGUMENTS IN SUPPORT OF THE DIVERSITY VISa PROGRAM

A. The DV Program’s Purpose: What is Diversity?

Critics maintain that the DV program does not diversify the American population; instead, the program only diversifies the immigrant population.\textsuperscript{43} The distinction is important because it is a critical measurement of the diversity we wish to achieve through immigration, and whether the DV program serves this purpose.\textsuperscript{44} A majority of the American population self-identifies as white, whereas the immigrant population is heavily comprised of immigrants of

\textsuperscript{36} Id.

\textsuperscript{37} Applications for the diversity lottery are submitted two years before the actual visa is issued. For instance, “winners” of the 2014 visa lottery submitted their applications between October and November of 2012. Electronic Diversity Visa, BUREAU OF CONSULAR AFFAIRS, available at https://www.dvlottery.state.gov/.


\textsuperscript{39} The fee to apply for a diversity visa through the lottery program is currently $330. 22 C.F.R. § 22.1.

\textsuperscript{40} 22 C.F.R. § 42.33(d).

\textsuperscript{41} Id.

\textsuperscript{42} 8 U.S.C. §1153.

\textsuperscript{43} Newton, supra note 38, at 1057-58.

\textsuperscript{44} Id.
Hispanic and Asian origin.\textsuperscript{45} In fact, immigration is a major contributing factor in the rapid growth of the Hispanic and Asian population in America.\textsuperscript{46} Still, Hispanics and Asians remain underrepresented in the American population.\textsuperscript{47} However, if the diversity visa was intended to diversify the American population in general, it is surprising that many Hispanics and Asians do not qualify for the diversity visa due to high levels of immigration from Hispanic and Asian countries.\textsuperscript{48}

The prohibition of many Asian and Hispanic immigrants from the DV program is partially the result of Congress’ use of regions to allocate diversity visas.\textsuperscript{49} Through the use of regions, Congress appears to equate diversity with geographic location.\textsuperscript{50} Critics claim that the effects of using a region system inevitably leads to discrimination on the basis of an immigrant’s national origin.\textsuperscript{51} In order to fully understand the basis for this criticism, an important question must be addressed: why did Congress choose to use a region system to determine diversity visa eligibility?

Critics claim that the region system is proof Congress did not intend for the diversity visa to create diversity in America, but rather stifle diversity.\textsuperscript{52} Rather, Congress’ use of the region system suggests that the DV program’s real goal is to counteract increasing immigration from Asians and Hispanics by encouraging European immigration.\textsuperscript{53} For example, the region system adversely effects South America’s participation in the DV program.\textsuperscript{54} Including Mexico, Central America, and the Caribbean as part of the region of South America heavily restricts natives of

\begin{itemize}
\item \textsuperscript{46} Id.
\item \textsuperscript{47} Per the 2010 Census, Hispanics and Asians comprised 16% and 5% of the total population, respectively. Id.
\item \textsuperscript{48} Out of the immigrants receiving LPR status through the diversity visa program in the 2012 fiscal year, immigrants from the regions of Asia and South America accounted for only 13,336 and 558 LPRs, respectively, of the over 40,000 LPRs who gained status through the diversity visa program. Department of Homeland Security, Yearbook of Immigration Statistics: 2012, Table 10. Persons Obtaining Legal Permanent Resident Status by Broad Class of Admission and Region and Country of Birth: Fiscal Year 2012, U.S. DEP’T OF HOMELAND SECURITY, available at http://www.dhs.gov/yearbook-immigration-statistics-2012-legal-permanent-residents.
\item \textsuperscript{49} 8 U.S.C. § 1153(c)(1)(F).
\item \textsuperscript{50} Id.
\item \textsuperscript{52} Fraud Hearing, supra note 6, at 16. Professor Jan Ting observes “[t]he so-called diversity visas might properly be called anti-diversity visas, since they were created to offset the diversity resulting from non-discriminatory immigration.”
\item \textsuperscript{53} PETER H. SCHUCK, DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE PLACE 127 (2003).
\item \textsuperscript{54} See generally, Wardle, supra note 51.
\end{itemize}
South American countries by drastically reducing the number of available visas for South Americans.\footnote{8 U.S.C. § 1153(c)(1)(F).}

In light of Congress’ broad definition of the South American region, critics find it troubling that the law explicitly considers Northern Ireland a separate country from the United Kingdom.\footnote{Schuck, supra note 53, at 125-27.} By making this distinction, the large number of immigrants originating from the United Kingdom does not preclude Northern Ireland from participation in the DV program.\footnote{Id. at 125.} Some proponents of the DV program judge Congress’ definition of the South American region and special treatment of Northern Ireland as indicative of the ulterior motive behind the DV program – creating a “new, white, European, English-speaking, largely Irish immigration stream”\footnote{Id. at 127.} to counteract increasing Hispanic and Asian immigration.\footnote{U.S. Census Bureau, supra note 45.} For this reason, critics conclude, the DV program discriminates on the basis of an immigrant’s national origin while failing to promote diversity.\footnote{Newton, supra note 38, at 1055-56.}

On the other hand, others observe that the term “diversity” is not, by itself, an easily defined term.\footnote{Beverly Baker-Kelly, United States Immigration: A Wake Up Call!, 37 How. L.J. 283, 294 (1994) (questioning whether the focus of diversity should “be on geographical, racial, ethnic, or cultural diversity?”).} While critics argue there is an obvious correlation between race, ethnicity, and geographic location,\footnote{Newton, supra note 38, at 1056.} supporters claim that Congress’ use of the region system is not meant to be discriminatory, or that it was the least discriminatory option.\footnote{Id. at 1065.} That the region system employed by the DV program is the result of Congress’ desire to select a “politically neutral” definition of diversity by focusing on an immigrant’s geographic location and not an immigrant’s race or ethnicity.\footnote{Wardle, supra note 51, at 1986.} Furthermore, supporters argue the DV program is not intended to create overall diversity in America.\footnote{Newton, supra note 38, at 1065.} Instead, the DV program seeks to remedy the imbalance caused by the underrepresentation of certain immigrants by other immigration programs.\footnote{Id. at 1055-56.} Viewing this as the true purpose of the DV program, the program achieves this goal by providing an
immigration opportunity to immigrants who do not qualify for the other family and skill-based immigration programs.\textsuperscript{67}

Supporters claim the DV program is the “only realistic opportunity” for immigrants from certain parts of the world to immigrate to the United States.\textsuperscript{68} For example, without the diversity visa, immigration from Africa would account for only 3 percent of immigration under the family and employment-based categories.\textsuperscript{69} Supporters note the diversity visa remedied this underrepresentation of Africans in our immigration system, with immigrants from Africa receiving a large share of diversity visas.\textsuperscript{70} Based on this evidence, supporters conclude the DV program is not discriminatory, but rather serves to remedy the already existing discrimination caused by the family and employment-based visa categories.\textsuperscript{71}

\textbf{B. The Diversity Visa Program’s (Lack of) Eligibility Criteria: Who Qualifies?} 

Arguably, one of the most criticized aspects of the DV program is the dearth of eligibility criterion, in comparison to other immigrant visa programs. In order to qualify for any other immigrant visa besides the diversity visa, a prospective immigrant must have either specific familial ties to the United States or some employment-related skill.\textsuperscript{72} The policy behind the family and employment-based immigration programs is to “ensure that immigrants entering our country have a stake in continuing America’s success and have the needed skills to contribute to our Nation’s economy.”\textsuperscript{73} Recipients of diversity visas, on the other hand, often lack familial or employment ties to the United States.\textsuperscript{74} Instead, critics claim diversity visa recipients receive their visas based on geographic location and random chance, and therefore do not have the same “stake in our country’s success” as family and employment-based immigrants.\textsuperscript{75}

However, supporters of the diversity visa do not believe the program should be eliminated in its entirety, arguing that Congress’ humanitarian policy of encouraging diversity should not be disregarded.\textsuperscript{76} They argue that an elimination of the diversity visa is an

\textsuperscript{67} \textit{Id.} at 1064-65.


\textsuperscript{69} \textit{DV Elimination Hearing}, supra note 7, at 6 (Testimony of Rep. Zoe Lofgren, Member, H. Judiciary Subcomm. on Immigration Policy & Enforcement).

\textsuperscript{70} Newton, supra note 38, at 1065.

\textsuperscript{71} \textit{Id.} at 1067.

\textsuperscript{72} \textit{Id.} at 1058.

\textsuperscript{73} \textsc{Fraud Hearing}, supra note 6, at 5 (Opening Statement of Rep. Goodlatte, Member, H. Judiciary Comm.).

\textsuperscript{74} Schuck, supra note 53, at 128.

\textsuperscript{75} \textsc{H. Comm. On The Judiciary}, supra note 68, at 7; see also \textit{DV Elimination Hearing}, supra note 7, at 29 (Testimony of Rep. Goodlatte, Member, H. Judiciary Comm.).

\textsuperscript{76} \textsc{Fraud Hearing}, supra note 6, at 50 (Opening Statement of Rep. Sheila Jackson Lee, Member, Subcomm. on Immigration, Border Security, & Claims).
elimination of an important part of our country’s history – the acceptance of all sorts of immigrants, not only those with a specific set of economically favorable skills or familial ties to the United States. These supporters believe the diversity visa sends an important message to the rest of the world “that we continue to welcome immigrants from a diversity of backgrounds and nations of origin[]” a message that may be lost if the DV program is eliminated.  

### C. The Diversity Visa Process: How Does it Work?

At a Congressional hearing which examined the Diversity Visa Program, Professor Jan Ting stated that “the [diversity visa] lottery is incomprehensibly complicated, a cruel deception of the overwhelming majority of the millions of would-be immigrants who apply for it every year.” First, the 50,000 diversity visas allotted for the DV program are hardly reflective of the program’s large number of applicants. In fact, the large number of diversity visa lottery applicants combined with the small number of available visas presents little chance of actually winning the lottery. Furthermore, even the number of “winners” selected in the diversity visa lottery is not reflective of the number of visas that are ultimately awarded. This is the unfortunate result of the State Department’s policy of selecting almost twice as many lottery winners as there are available diversity visas.

The State Department acknowledges that a prospective immigrant’s failure to meet the eligibility requirements coupled with the strict time limitation may prevent an immigrant from qualifying for a diversity visa. As such, the State Department accounts for the fact that approximately half of the diversity visa lottery winners will not be eligible to receive a diversity visa. 

---

77 DV Elimination Hearing, supra note 7, at 128 (Testimony of Resident Commissioner Pedro Pierluisi, Member, H. Judiciary Subcomm. on Immigration Policy & Enforcement).

78 Id.

79 Fraud Hearing, supra note 6, at 12 (Statement of Professor Jan Ting, Temple University James E. Beasley School of Law).


81 While the specific odds of winning depends on the number of available visas allotted to and the number of applicants in the applicant’s country of origin, generally speaking, applicants have less than a 1% chance of actually winning the diversity lottery. Id.

82 Almost half of those selected in the diversity visa lottery will not actually receive a diversity visa. Smirnov v. Clinton, 806 F. Supp. 2d 1, 5 (D.D.C. 2011).

83 H. COMM. ON THE JUDICIARY, supra note 68, at 3 (“About 45 percent of the selectees fail to meet the minimum educational or work experience or training requirements, fail to supply the required medical information, or fail to complete the additional required paperwork either completely or on time.”).

84 Instructions for the 2013 Diversity Visa Program (DV-2013), supra note 22.
visa, by selecting twice as many winners as there are available visas. Many lottery winners that are eligible for a diversity visa and file timely applications are denied the chance to immigrate due to the State Department’s “first-come, first-served” policy. In this sense, diversity visa lottery winners are similar to “recipients of large envelopes from organizations like Publishers Clearinghouse [who] announce[] in huge letters that the person is ALREADY A WINNER, but contains a disclaimer buried in the middle of the packet that explains that the only thing that has been won is a chance at the big prize.” Unfortunately, many diversity lottery winners do not fully grasp the ambiguity of their visa, resulting in wasted time, money, and hope in preparation for the uncertain chance that they will be able to immigrate to the U.S. It is important to note the State Department makes no guarantees that a diversity visa lottery winner will receive a diversity visa. Furthermore, the diversity visa lottery provides opportunities to a diverse group of applicants who do not otherwise qualify for other immigration programs.

D. The DV Program’s Susceptibility for Fraud: Is it Credible?

One procedural criticism of the DV program is that it is susceptible to fraud and harms the credibility of our immigration system. For instance, despite the State Department’s requirement that each applicant may only submit one entry to the lottery program, critics claim that it is typical for applicants to submit more than one entry. By submitting multiple entries, sometimes under false aliases, prospective immigrants seek to increase their chance of selection in the lottery.

In addition to fraud on the part of the applicants, the DV program is also susceptible to fraudulent activity on the part of third parties. Both the State Department and the Federal

85 In fact, processing delays outside of the prospective immigrant’s control may prohibit their ability to receive a diversity visa. Monger, supra note 9 (“The number of new Diversity LPRs decreased significantly from 2011 to 2012, possibly as a result of a slight delay in releasing the selection results and the implementation of a new Entrant Status Check procedure by the Department of State, which required applicants to retrieve their selection status online.”). Id.
88 Smirnov, 806 F. Supp. 2d at 7. (Acknowledging that some diversity lottery winners had taken significant actions upon learning that they had been selected in the diversity visa lottery, such as quitting their jobs and selling land, to prepare for their immigration to the United States.)
89 Diversity Visa Program (DV-2013) – Selected Entrants, supra note 28.
90 See generally Fraud Hearing, supra note 6; see also DV Elimination Hearing, supra note 7.
91 Fraud Hearing, supra note 6, at 33 (statement of Dr. Steven A. Camarota, Ph.D., Director of Research, Ctr. for Immigration Studies).
92 Id.
Trade Commission warn prospective diversity visa applicants about the existence of these scams.94 While diversity visa scams arise in a variety of forms,95 the common thread is the extortion of money from unknowing diversity visa applicants.96 Critics of the DV program claim that these third party scams are the result of the complicated lottery system, which is confusing for foreign applicants.97

Supporters of the program do not deny the existence of fraud.98 However, supporters argue fraud alone is not a compelling reason to abandon the DV program.99 Instead, some claim the program’s issues with fraud can be remedied through the implementation of additional safeguards to prevent abuse of the diversity visa lottery system.100 In fact, the State Department already took steps towards combating diversity visa fraud by conducting more extensive background checks and warning prospective applicants about the existence of fraudulent programs.101

Some put forth the argument that the diversity visa’s susceptibility to fraud extends far past multiple entries and Internet scams.102 Following the terrorist attacks on September 11, 2001, critics began to question whether terrorists could take advantage of the DV program to enter the United States.103 The first concern raised by critics is that the program is open to countries that are known state-sponsors of terrorism, such as Pakistan.104 Furthermore, critics cite to known cases of immigrants with connections to terrorism gaining permanent residency in the United States through the DV program.105 In 2004, the Deputy Inspector General for the Department of State acknowledged that the DV program “contains significant vulnerabilities to

---

94 Id.
95 Some third party scams involve charging an applicant money to apply for the diversity visa, or to increase their odds at winning. Others involve fraudulent messages claiming an immigrant has won a diversity visa, and requesting a fee for its issuance. Diversity Visa Lottery Scams, supra note 93.
96 Id.
97 Fraud Hearing, supra note 6, at 17 (statement of Professor Jan Ting, Temple University James E. Beasley School of Law).
98 H. COMM. ON THE JUDICIARY, supra note 68, at 34.
99 Id.
100 One additional safeguard implemented in 2004 is the digital collection of fingerprints, allowing consular officers to identify fraudulent applicants, criminals, and terrorists. Fraud Hearing, supra note 6, at 24 (statement of Anne W. Patterson, Deputy Inspector General, U.S. Dep’t of State).
101 H. COMM. ON THE JUDICIARY, supra note 68, at 63.
102 Id. at 6.
103 See generally Fraud Hearing, supra note 6.
104 Id. at 3.
105 For example, Hesham Hedayet, an Egyptian immigrant who entered the United States as the spouse of a diversity visa holder, was responsible for an attack in Los Angeles in 2002. Id. at 2.
national security as hostile intelligence officers, criminals, and terrorists attempt to use it to enter the United States as permanent residents.”

For this reason, the Deputy Inspector General suggested that Congress bar state-sponsors of terrorism from participation in the diversity lottery. Despite this recommendation, state-sponsors of terrorism are still eligible to participate in the diversity visa lottery.

Supporters note that diversity visa recipients are subject to the same level of review and scrutiny as other immigrant visa recipients. They argue all diversity recipients are subject to background checks and are screened by consular officers to ensure they are not barred from receiving a diversity visa based on any of the inadmissibility grounds, which include membership in a terrorist organization. Additionally, in 2007 the United States Governmental Accountability Office reported the DV program did not pose any real threat to national security. Supporters note that the DV program’s threat to national security is overstated because only four of the 800,000 immigrants who have entered the United States through the DV program had a connection to terrorism.

IV. EXPLORING OTHER OPTIONS: PROPOSED LEGISLATION TO END THE DIVERSITY VISA PROGRAM

In spite of protest from supporters for reform of the DV program, most proposed legislation related to the DV program seeks to end the program in its entirety. For example, in 2005, the House of Representatives passed the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (“Immigration Control Act of 2005”). The stated purpose of this Act was to “strengthen enforcement of the immigration laws [and] to enhance border

106 Id. at 10 (Statement of Anne W. Patterson, Deputy Inspector General, U.S. Dep’t of State).
107 Id.
108 Over 6,000 immigrants from Iran, a well-known state-sponsor of terrorism, won the 2013 diversity visa lottery. Diversity Visa Program (DV-2013) – Selected Entrants, supra note 28 at 3.
109 H. COMM. ON THE JUDICIARY, supra note 68, at 25.
110 Id.
112 DV Elimination Hearing, supra note 7, at 128 (Testimony of Resident Commissioner Pedro Pierluisi).
114 H.R. 4437.
security.” Considering this purpose in the context of the noted fraud and national security concerns about the DV program, it is no surprise that the Immigration Control Act of 2005 included a provision to eliminate the DV program in its entirety. While the Immigration Control Act of 2005 managed to pass the House of Representatives, it failed to pass the Senate.

Soon after the Immigration Control Act of 2005, the DV program again faced elimination. In 2007, the House passed the Consolidated Appropriations Act of 2008, which included a provision to cease funding the DV program. While this bill was ultimately signed into law, amendments to the bill resulted in reduced funding for the DV program for one fiscal year and not the original proposal of total elimination of funding. As a result, the DV program survived yet another legislative attack.

In 2009 there was another attempt to abolish the DV program through the introduction of the Security and Fairness Enhancement for America Act (“SAFE for America Act”). Similar to the argument used to advance support of the Immigration Control Act of 2005, supporters of the SAFE for America Act justified the elimination of the Diversity Visa by citing fraud and national security concerns. However, the SAFE for America Act failed to pass the House in 2011.

As illustrated above, the elimination of the DV program is not a novel legislative idea. However, recent legislation aiming to abolish the DV program has gone through an evolution. Unlike the bills discussed above, recent legislation focuses less on disposing the diversity visa

---

115 *Id.*

116 *Id.*

117 The elimination of the diversity visa program was one of many controversial areas addressed by the Immigration Control Act of 2005; therefore, the elimination of the diversity visa may not have been a significant reason for the Act’s failure to pass the Senate. *Id.*


119 *Id.*


123 H. COMM. ON THE JUDICIARY, supra note 68, at 3.


system due to its failings, and more on creating a positive economic impact by increasing the number of visas available for immigrants holding advanced degrees.\textsuperscript{126}

For example, the STEM Jobs Act of 2012 sought to eliminate the DV program in order to provide more visas to immigrants with advanced degrees in science, technology, engineering, and mathematics.\textsuperscript{127} While the STEM Jobs Act of 2012 passed the House, the Act did not survive in the Senate.\textsuperscript{128}

Soon after the death of the STEM Jobs Act of 2012, the Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas Act (\textquotedblleft SKILLS Visa Act\textquotedblright) was formulated.\textsuperscript{129} The SKILLS Visa Act would have eliminated the DV program in order to increase the number of visas available for investors, entrepreneurs, and immigrants with advanced degrees.\textsuperscript{130} Although supporters praised the SKILLS Visa Act for providing benefit to the economy, opposition to the SKILLS Visa Act remained focused on the Act\textquotesingle s attempt to dispose of the DV program.\textsuperscript{131} As with bill proposed before it, the SKILLS Visa Act managed to pass the House of Representatives, but did not survive the Senate.\textsuperscript{132}

The most recent attempt to dispose of the DV program is found in the Senate\textquotesingle s Border Security, Economic Opportunity and Immigration Modernization Act of 2013 (\textquotedblleft Immigration Modernization Act\textquotedblright).\textsuperscript{133} Unlike the STEM Jobs Act discussed above, which was condemned as a \textquoteleft\textquoteleft narrowly tailored proposal\textquoteright\textquoteright by the Obama Administration,\textsuperscript{134} the Immigration Modernization Act is comprehensive in nature and addresses numerous areas of immigration law.\textsuperscript{135} If the Immigration Modernization Act becomes law, the DV program will be repealed in its entirety and diversity visas will no longer be issued after 2015.\textsuperscript{136} The 50,000 visas allocated to the DV

\textsuperscript{126} See STEM Jobs Act of 2012, H.R. 6429, 112\textsuperscript{th} Cong. (2012); see also SKILLS Visa Act, H.R. 2131, 113th Cong. (2013).
\textsuperscript{127} H.R. 6429, supra note 4.
\textsuperscript{129} H.R. 2131, supra note 113.
\textsuperscript{130} Id.
\textsuperscript{133} Border Security, Economic Opportunity and Immigration Modernization Act of 2013, supra note 113.
\textsuperscript{134} OFFICE OF MGMT. & BUDGET, supra note 4.
\textsuperscript{135} S. 744, supra note 113.
\textsuperscript{136} Id. at § 2303.
program would be reallocated to a merit-based point system (“Point System”).\textsuperscript{137} This particular Point System would award 120,000 to 250,000 visas per year on the basis of points awarded for each immigrant’s individual characteristics.\textsuperscript{138} A large number of points are awarded to immigrants who possess specific employment-related skills or familial ties to the United States.\textsuperscript{139} For example, out of one hundred points, an immigrant may receive up to fifteen points for holding an advanced degree, up to twenty points for employment experience, and up to ten points for certain familial relationships.\textsuperscript{140}

However, the Point System also accounts for factors beyond familial ties and employment-related skills.\textsuperscript{141} While the Immigration Modernization Act repeals the terms of the diversity visa, the Act retains the diversity status concept by allocating five points to natives of low-admission countries, out of a possible one hundred or eighty-five points, depending on which tier the applicant falls under.\textsuperscript{142} During the formulation of this Note, the Immigration Modernization Act has passed the Senate and is currently awaiting a decision from the House.\textsuperscript{143}

V. PROPOSED SOLUTIONS

This Note does not seek to minimize the fact that some prospective immigrants from certain countries would be adversely affected by the elimination of the DV program.\textsuperscript{144} What it does suggest, however, is that a merit-based program that emphasizes an immigrant’s individual characteristics would better serve the economic and social goals of our immigration system rather than a system that relies merely on a combination of an immigrant’s geographic location and chance.

The DV program should be eliminated for a number of reasons. First, while the DV program may remedy the underrepresentation of those from certain countries, it does not justify

\begin{itemize}
\item \textsuperscript{137} \textit{Id.} at § 2301.
\item \textsuperscript{138} \textit{Id.}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{140} \textit{Id.}
\item \textsuperscript{141} Other factors include an immigrant’s civic involvement, age, and English proficiency. \textit{Id.}
\item \textsuperscript{142} The merits-based points system is a two-tier system. The first tier is for “highly skilled immigrants,” which awards points on a one hundred-point scale. The second tier is for “less skilled immigrants” and awards points on an eighty-five-point scale. Immigrants in either tier are eligible to receive five points if they are natives of a low-admission country. \textit{Id.}
\item \textsuperscript{143} Bowman, \textit{supra} note 8.
\item \textsuperscript{144} Newton, \textit{supra} note 38, at 1059-66.
\end{itemize}
the program’s use of a region system to discriminate against other immigrants based on their national origin.\(^\text{145}\) Furthermore, the program does not provide immigrants from underrepresented countries a likely chance at immigration, in light of the nearly impossible odds that a diversity visa applicant will be awarded a visa.\(^\text{146}\) Relatedly, the DV program’s highly criticized random lottery system frustrates normal immigration criteria by awarding visas based solely on chance.\(^\text{147}\) The DV program’s complexity makes it susceptible to fraud and poses a threat to national security, thereby harming the credibility of our entire immigration system.\(^\text{148}\) Finally, the DV program fails its stated purpose, with no evidence that it significantly increased racial or ethnic diversity in the American population.\(^\text{149}\)

Supporters argue that the DV program’s problems can be fixed, but that is unlikely given the magnitude of problems and the current state of our struggling immigration system.\(^\text{150}\) This is especially true when options exist that better reflect the immigration system’s social and economic goals. Therefore, the DV program should be eliminated and its visas reallocated through a merit based system.

One proposal involves reallocating diversity visas to investors, entrepreneurs, and immigrants holding advanced degrees (“highly-skilled immigrants”).\(^\text{151}\) This concept was applied in the STEM Jobs Act of 2012 and the SKILLS Visa Act.\(^\text{152}\) Supporters of eliminating the diversity visa, in favor of highly skilled immigrants, argue that the DV program does not stimulate the economy because recipients tend to be less educated and hold fewer job prospects.\(^\text{153}\) Highly skilled immigrants, on the other hand, tend to be well educated and help stimulate the economy by increasing America’s ability to compete in the global market.\(^\text{154}\) While this solution may be economically beneficial, many question the social benefit of

---

\(^{145}\) Id. at 1056-57.

\(^{146}\) DV Elimination Hearing, supra note 7, at 29 (Testimony of Rep. Goodlatte, Member, H. Judiciary Comm.).

\(^{147}\) Id.

\(^{148}\) H. COMM. ON THE JUDICIARY, supra note 68, at 4 (Statement of Anne W. Patterson, Deputy Inspector General, U.S. Dep’t of State).

\(^{149}\) Newton, supra note 38, at 1058.

\(^{150}\) H. COMM. ON THE JUDICIARY, supra note 68, at 24.

\(^{151}\) See Peter H. Schuck & John E. Tyler, Making the Case for Changing U.S. Policy Regarding Highly Skilled Immigrants, 38 FORDHAM URB. L.J. 327 (2010).


\(^{153}\) Schuck & Tyler, supra note 151, at 360.

\(^{154}\) Id.
sacrificing the humanitarian-based DV program for an immigration program that is solely based on an immigrant’s “value.”

Another solution is to eliminate the DV program so that the 50,000 visas allocated to the DV program can be used to create more available visas for a Point System, as proposed by the Immigration Modernization Act. Reallocating diversity visas to a Point System is a reasonable solution for a number of reasons. A Point System is more fair and flexible than other proposed options, and would reallocate diversity visas to only those immigrants who possess advanced degrees or skills. Unlike the previously proposed STEM and SKILL Acts, a Point System would not completely disregard the humanitarian purpose served by providing visas to diversity applicants. In fact, the Point System proposed by the Immigration Modernization Act would still serve to encourage immigration from low-admission countries by allocating points for an immigrant’s diversity status. While some criticize the Immigration Modernization Act’s Point System for allocating only a few points for an immigrant’s diversity status, the point system is flexible, allowing for more points to be allocated for different characteristics as deemed necessary. Furthermore, the merit-based program’s selection process would be fair; issuing visas based on the timing of an immigrant’s application and their specific characteristics and not by random selection. Finally, unlike the piecemeal approach made by the STEM and SKILL Acts, a merit-based system would be a large step toward actual, comprehensive immigration reform.

---


156 Assuming the remaining 5,000 visas would still be used for the NACARA program. Diversity Visa Program (DV-2013) – Selected Entrants, supra note 28.

157 S.744, supra note 113.

158 Compare H.R. 2131, supra note 113, with S.744, supra note 113.

159 H.R. 2131, supra note 113; H.R. 6429, supra note 4.

160 S. 744, supra note 113.

161 Id.


163 S. 744, supra note 113.

164 Id.

165 Schreiber, supra note 155.
VI. CONCLUSION

Ultimately, the DV program should be eliminated; however, the policy of promoting diversity through immigration should not be abandoned. Instead, diversity visas should be reallocated to a merit-based points system, similar to the system proposed by the Immigration Modernization Act.\textsuperscript{166} While the Point System proposed by the Immigration Modernization Act is far from perfect, it is a step in the right direction toward achieving effective immigration reform.\textsuperscript{167} Implemented correctly, a merit-based selection process can succeed where the DV program has failed, by strengthening the credibility of our immigration system and promoting diversity in America fairly.

\textsuperscript{166} THE IMMIGRATION POLICY CTR., supra note 162.

\textsuperscript{167} Id.