

submit written comments on or before March 10, 1995.

ADDRESSES: Written comments, with a reference to this rule to ensure proper and timely handling, may be submitted in duplicate to the Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC, 20522-0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Bureau of Consular Affairs, (202) 663-1184.

SUPPLEMENTARY INFORMATION:

General

Section 217 of Pub. L. 103-416 amends section 132 of Pub. L. 101-649 to extend the life of the provision through fiscal year 1995. Section 132 provided for the issuance of specified amounts of immigrant visas during fiscal years 1992, 1993, and 1994. This program came to be known as the AA-1 program, from the entry code used by INS to identify for statistical purposes admissions of aliens who qualified under the program. Natives of specified countries were authorized to compete for consideration during each of the three years by applying during an application period established for each of the years. The annual limitation was set at 40,000 with not less than 40%—16,000—reserved for natives of Ireland.

Section 132 was amended to modify the provision in several respects for the second and third years. Pertinent here were amendments which authorized the total of visas unused in the first or second fiscal year to be added to the total for the second or third year, as applicable, and which authorized the total reserved for natives of Ireland to be increased in the second and third years by the shortfall in usage by natives of Ireland in the preceding year.

Section 217 of Pub. L. 103-416 further extends this program but does so in a very limited way. First, the numerical limitation for fiscal year 1995 is established as solely the total of immigrant visas unused in the program during fiscal year 1994. *There is no new annual limitation of 40,000.*

Second, aliens entitled to compete for the available visas will be limited to those who are natives of countries qualified under this program who also have applied for consideration under the new Diversity Lottery provided for in section 203(c) of the Immigration and Nationality Act, as amended, and in section 42.33 of Title 22, United States Code. *There will be no new mail-in period to allow aliens to apply to*

compete for the visas available under this extension.

Finally, aliens entitled to compete for the AA-1 program numbers available during fiscal year 1995 will not have to present evidence of a firm commitment for employment in the U.S., but will be subject to the requirement established by section 203(c)(2) for applicants under the Diversity Lottery—a showing that they have at least a high school education or its equivalent or that, within the preceding five years, they have had at least two years of work experience in an occupation requiring at least two years of training or experience.

Numerical Limitation and Its Apportionment

As pointed out above, the numerical limitation for fiscal year 1995 is limited to the number of immigrant visas which were available during the previous fiscal years but not used during those years. The total unused was 1,404. Thus, during fiscal year 1995 1,404 visas will be available to natives of qualifying countries.

Now, the apportionment of that total is interesting. Section 132(c) specifies that a minimum of 40 percent of a fiscal year limitation shall be made available to natives of the foreign state which received the greatest number of visas under the program established by section 314 of the Immigration Reform and Control Act. That same section, as amended, also provides that, if usage of visas by natives of that foreign state falls short of the total available in a fiscal year, the amount of shortfall is to be added to the 40 percent minimum during the next fiscal year.

The foreign state so described was Ireland. Application of the above rules to the available numbers produces the following results—

40 percent of 1404=562 (rounded to the nearest whole number)
Visas reserved for natives of Ireland, FY 94—22,555
Visas actually used by natives of Ireland, FY 94—21,804
Shortfall for FY 94—751
Visas available for natives of Ireland, FY 95—562+751=1,313
Visas available for natives of other qualifying countries—91.

Section 217 also provides that any visas available to natives of countries other than Ireland are to be distributed among the regions established under the Diversity Lottery in proportion to the usage by region of visas under the AA-1 program during fiscal years 1992 and 1993. Regionally, the usage during the two fiscal years cited was distributed as follows:

Europe—85.93%

Asia—11.51%

South America, Mexico, Central

America, and the Caribbean—2.02%

Africa—0.54%

It will be noted that two of the six regions established for Diversity Lottery purposes are not listed above—North America and Oceania. No countries in the Oceania region qualified for participation in the AA-1 program and, thus, usage of visas by natives of countries in that region was necessarily zero.

The omission of North America has a different basis. The only two countries in the region are Canada and the Bahamas. Canada was a country which qualified for the AA-1 program in fiscal year 1993, although not in fiscal year 1992. On the other hand, Canada does not qualify for participation in the DV-1 lottery and, thus, the Bahamas is the only country in the North America Region which does qualify. The Bahamas was not, however, a country which qualified to participate in the AA-1 program. For this reason, natives of the Bahamas who applied for the DV-1 lottery could not be issued AA-1 visas under this carry-over provision. Accordingly, the Department did not take into account usage by North America in determining how to apportion the 91 visas available for natives of AA-1 countries other than Ireland.

Apportioning the 91 visas among the four regions in accordance with the percentages indicated above produces the following numbers—

Europe—78

Asia—10

South America, Mexico, Central

America, and the Caribbean—2

Africa—1

Selection of Immigrants

Small as the numbers of visas available under this provision are, the question of how to select recipients has been troublesome. Section 217 itself prohibits any separate mail-in to compete for these visas and requires that recipients be selected from among those who applied to compete for selection in the fiscal year 1995 Diversity Lottery. By the time section 217 was enacted, the mail-in period for that lottery was complete, the computer-generated random selection had been made and notifications had been sent to the winners. The Department's decision as to how to handle selection of the recipients of these visas has been heavily influenced by that fact.

First, as to non-Irish competitors for these visas, the number of registrants for