



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**IMPROVING THE U.S. IMMIGRATION SYSTEM:
LESSONS LEARNED FROM THE DIVERSITY VISA,
FAMILY, AND MERIT-BASED IMMIGRATION PROGRAMS**

by

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December 2020

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REPORT DOCUMENTATION PAGE			<i>Form Approved OMB No. 0704-0188</i>	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington, DC 20503.				
1. AGENCY USE ONLY (Leave blank)		2. REPORT DATE December 2020	3. REPORT TYPE AND DATES COVERED Master's thesis	
4. TITLE AND SUBTITLE IMPROVING THE U.S. IMMIGRATION SYSTEM: LESSONS LEARNED FROM THE DIVERSITY VISA, FAMILY, AND MERIT-BASED IMMIGRATION PROGRAMS			5. FUNDING NUMBERS	
6. AUTHOR(S) Vlada Bierman				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000			8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			10. SPONSORING / MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.				
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release. Distribution is unlimited.			12b. DISTRIBUTION CODE A	
13. ABSTRACT (maximum 200 words) The U.S. immigration system is the subject of an ongoing debate regarding necessary reforms to protect American national security and benefit all Americans economically. This thesis asks two questions: (1) How should the current U.S. immigration system be improved to address existing economic and national security concerns presented by legal immigration?, and (2) What elements from existing U.S. legal immigration programs, as well as from Canada's and Australia's legal immigration programs, can the United States incorporate in its revamped immigration policies? This thesis conducted a comparative analysis of the U.S. diversity immigrant visa and family-based immigration programs and existing merit-based immigration systems in Canada and Australia. The inquiry identified which of the aforementioned immigration programs have had a positive effect on their respective countries' economies, based on levels of education and unemployment rates, and which immigration policies have resulted in fewer terrorist attacks by immigrants who come to each country, via relevant noted programs. This thesis found that although the U.S. diversity immigrant and family-based immigration programs are not perfect, they serve an important purpose and can be improved. This thesis recommends, among other things, introducing points-based human capital criteria into family-based immigration and instituting a five-year review of the U.S. immigration system.				
14. SUBJECT TERMS immigration, diversity visa, family-based immigration, merit-based immigration, Canada, Australia			15. NUMBER OF PAGES 123	
			16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UU	

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IMMIGRATION PROGRAMS**

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Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL
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ABSTRACT

The U.S. immigration system is the subject of an ongoing debate regarding necessary reforms to protect American national security and benefit all Americans economically. This thesis asks two questions: (1) How should the current U.S. immigration system be improved to address existing economic and national security concerns presented by legal immigration?, and (2) What elements from existing U.S. legal immigration programs, as well as from Canada's and Australia's legal immigration programs, can the United States incorporate in its revamped immigration policies? This thesis conducted a comparative analysis of the U.S. diversity immigrant visa and family-based immigration programs and existing merit-based immigration systems in Canada and Australia. The inquiry identified which of the aforementioned immigration programs have had a positive effect on their respective countries' economies, based on levels of education and unemployment rates, and which immigration policies have resulted in fewer terrorist attacks by immigrants who come to each country, via relevant noted programs. This thesis found that although the U.S. diversity immigrant and family-based immigration programs are not perfect, they serve an important purpose and can be improved. This thesis recommends, among other things, introducing points-based human capital criteria into family-based immigration and instituting a five-year review of the U.S. immigration system.

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	PROBLEM STATEMENT	1
B.	RESEARCH QUESTIONS.....	2
C.	LITERATURE REVIEW	3
1.	Diversity Visa	3
2.	Family-Based Immigration	6
3.	Merit-Based Immigration	8
D.	RESEARCH DESIGN.....	9
E.	CHAPTER OVERVIEW	11
 II.	 DIVERSITY VISA PROGRAM.....	 13
A.	BACKGROUND	13
1.	Diversity Visa Today.....	16
2.	Eligibility Criteria.....	18
3.	Vetting Process	20
B.	NATIONAL SECURITY AND ECONOMIC CONCERNS	21
C.	COUNTERARGUMENTS TO CRITICAL VIEWS OF THE DV PROGRAM AND DISCUSSED NATIONAL SECURITY AND ECONOMIC CHALLENGES	27
D.	CONCLUSION	33
 III.	 FAMILY-BASED IMMIGRATION.....	 35
A.	AN OVERVIEW OF THE LEGAL FRAMEWORK FOR FAMILY-BASED IMMIGRATION.....	35
1.	The Current State of Family-Based Immigration.....	37
2.	Eligibility Criteria.....	39
3.	Vetting Process	41
B.	NATIONAL SECURITY AND ECONOMIC CHALLENGES	44
C.	COUNTERARGUMENTS TO CRITICAL VIEWS OF FAMILY-BASED IMMIGRATION AND DISCUSSED NATIONAL SECURITY AND ECONOMIC CHALLENGES	46
D.	CONCLUSION	53
 IV.	 CANADIAN AND AUSTRALIAN MERIT-BASED IMMIGRATION SYSTEMS.....	 55
A.	CANADA	55
1.	Canadian Points-Based and Family-Based Immigration.....	56

2.	Drawbacks and Benefits of the Canadian Immigration System	59
3.	National Security and the Canadian Immigration System	64
B.	AUSTRALIA	65
1.	Australian Points-Based and Family-Based Immigration	66
2.	Drawbacks and Benefits of the Australian Immigration System	71
3.	National Security and the Australian Immigration System	74
C.	CONCLUSION	75
V.	ANALYSIS, FINDINGS, AND RECOMMENDATIONS	77
A.	COMPARATIVE ANALYSIS.....	77
B.	FINDINGS: BARRIERS TO A MERIT-BASED IMMIGRATION SYSTEM IN THE UNITED STATES.....	80
C.	RECOMMENDATIONS.....	81
D.	CONCLUSION	85
	LIST OF REFERENCES.....	87
	INITIAL DISTRIBUTION LIST	103

LIST OF TABLES

Table 1.	Numerically Limited Family Preference Categories.	38
Table 2.	Federal Skilled Worker Program Points per Qualification.	57
Table 3.	Points per Qualification for Subclass 189, 190, and 491.	67
Table 4.	Points per Qualification for Subclass 188.	68

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LIST OF ACRONYMS AND ABBREVIATIONS

AMEP	Adult Migrant English Program
CBSA	Canada Border Services Agency
CCD	Consular Consolidated Database
CFR	Code of Federal Regulations
CIIP	Canadian Immigrant Integration Program
CLASS	Consular Lookout and Support System
CoRMS	Characteristics of Recent Migrants Survey
CRS	Comprehensive Ranking System
CSIS	Canadian Security Intelligence Service
DHS	Department of Homeland Security
DOJ	Department of Justice
DOS	Department of State
DV	diversity visa
EOI	expression of interest
FBI	Federal Bureau of Investigation
FDNS	Fraud Detection and National Security
GAO	Government Accountability Office
GO	group orientation
IAFIS	Integrated Automated Fingerprint Identification System
IDENT	Automated Biometric Identification System
INA	Immigration and Nationality Act
IRCA	Immigration Reform and Control Act of 1986
IRCC	Immigration, Refugees, and Citizenship Canada
IRPA	Immigration and Refugee Protection Act of 2001
ISIS	Islamic State of Iraq and Syria
ITA	Invitations to Apply
KST	known or suspected terrorist
LPR	legal permanent resident
NACARA	Nicaraguan and Central American Relief Act
PFC	Planning for Canada

RAISE	Reform American Immigration for Strong Employment
RCMP	Royal Canadian Mounted Police
SAO	security advisory opinion
SCV	Special Category Visa
SOF	statement of findings
TECS	Treasury Enforcement Communication System
TSC	Terrorist Screening Center
USCIS	United States Citizenship and Immigration Services
VWP	Visa Waiver Program

EXECUTIVE SUMMARY

The U.S. immigration system is the subject of an ongoing debate regarding necessary reforms to protect American national security and benefit all Americans economically.¹ For instance, critics argue for the reduction of family-based immigrants in the United States. They contend the majority of immigrants enter the United States as legal permanent residents (LPRs) based on their familial ties rather than the skills they bring to the U.S. economy. Critics also believe that the U.S. diversity visa (DV) program or green card lottery—that allows 50,000 people to immigrate to the United States on a permanent basis—should be eliminated. They argue the program is fraught with fraud and creates national security concerns, such as allowing a number of terrorists into the United States, even if statistics reveal that the number of individuals admitted through the U.S. DV program (and family-based immigration) who have engaged in terrorist acts is minimal, when compared to the total number of immigrants admitted through these programs to the United States each year.² Additionally, some critics argue that the two immigration programs financially burden the U.S. government and economy. In this context, the current administration, through the Reform American Immigration for Strong Employment (RAISE) Act, advocates refocusing the U.S. system to a merit-based immigration system similar to those implemented by Canada and Australia.³ Proponents call for an end to the DV program and a considerable reduction in family-based immigration pathways.⁴ To address those calls, this thesis asks the following questions:

¹ “What Immigration Reform Should Look Like,” Heritage Foundation, accessed December 13, 2019, <https://www.heritage.org/immigration/heritage-explains/what-immigration-reform-should-look>.

² “National Security Threats—Chain Migration and the Visa Lottery System,” White House, February 1, 2018, <https://www.whitehouse.gov/articles/national-security-threats-chain-migration-visa-lottery-system/>.

³ RAISE Act, S. 1720, 115th Cong., 1st sess., August 2, 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/1720/text>; Muzaffar Chishti and Jessica Bolter, “Merit-Based Immigration: Trump Proposal Would Dramatically Revamp Immigrant Selection Criteria, but with Modest Effects on Numbers,” Migration Policy Institute, May 30, 2019, <https://www.migrationpolicy.org/article/merit-based-immigration-trump-proposal-immigrant-selection>.

⁴ RAISE Act; Chishti and Bolter.

- How should the current U.S. immigration system be improved to address existing economic and national security concerns presented by legal immigration?
- What elements from existing U.S. legal immigration programs, as well as from Canada's and Australia's legal immigration programs, can the United States incorporate in its revamped immigration policies?

In answering these research questions, this thesis conducted a comparative analysis of select U.S. and other countries' immigration policies.⁵ Specifically, this research first reviewed and analyzed the U.S. DV and family-based immigration programs, as they are currently under consideration for revision in the most recent proposed legislation, the RAISE Act. Additionally, this thesis examined existing merit-based immigration systems in Canada and Australia. In this context, the investigation examined immigration programs in light of their economic and national security impacts in their respective countries. In terms of impact to the economy, the inquiry identified which of the aforementioned immigration programs—the U.S., Canadian, and Australian—have had a positive effect on their respective countries' economies, based on levels of education and unemployment rates. In terms of impact to national security, the investigation identified and analyzed which immigration policies have resulted in fewer terrorist attacks by immigrants who come to each country, via relevant noted programs. Ultimately, in light of proposed revisions to existing immigration legislation, this thesis—using lessons learned from the U.S., Canadian, and Australian immigration policies—provided a set of policy recommendations for U.S. policymakers to consider as they search for answers to improve the U.S. immigration system.

⁵ Eugene Bardach and Eric M. Patashnik, *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving*, 5th ed. (Los Angeles: CQ Press, 2016), 1–189; Center for Homeland Defense and Security, “Policy Analysis and Policy Options Analysis,” May 22, 2017, YouTube, video, 15:47, https://www.youtube.com/watch?time_continue=11&v=FjIoKJhdcIg&feature=emb_logo; Luciana Herman, *Tips for Writing Policy Papers: A Policy Lab Communications Workshop* (Stanford: Stanford Law School, 2013), 1–10, <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/04/White-Papers-Guidelines.pdf>.

This thesis found that although the U.S. DV and family-based immigration programs are not perfect, they serve an important purpose and can be improved. The DV program accepts immigrants who enrich and diversify the United States culturally and economically. Similarly, U.S. family-based immigrants enrich the U.S. economically, through investing in human capital, innovation, and entrepreneurship, as well as aid in immigrants' economic integration.

This thesis also found that the Canadian and Australian immigration systems have a number of benefits, including regular system re-evaluations and adjustments, highly educated immigrants, and immigrant integration services. Nonetheless, the Canadian and Australian immigration systems also have shortcomings. Both the Canadian and Australian merit-based systems lead to underemployment of highly skilled immigrants. Additionally, the Canadian merit-based system creates low-skilled labor shortages, while the Australian system promulgates de-facto means of low-skilled labor employment. Moreover, Canadian and Australian merit-based systems present several barriers when it comes to the incorporation and implementation in the United States. For instance, U.S. geography, large population, and system of governance differ from those of Canada and Australia and create barriers to implementing a merit-based system in the United States.

Based on the assessment of the U.S. DV and family-based immigration programs and merit-based systems in Canada and Australia, this thesis recommends that the United States implement the following changes to its immigration system, to improve the DV and family-based immigration programs and address the primary concerns of critics of both programs:

- raise minimum educational and experiential requirements for the DV program;
- introduce points-based human capital criteria into family-based immigration;
- institute a five-year review of the U.S. immigration system;

- investigate national security vetting immigrant programs using the model of Canada and Australia;
- implement additional measures to reduce identity fraud in the DV program; and
- reduce financial burdens associated with the DV program.

ACKNOWLEDGMENTS

First and foremost, I wish to express my sincerest appreciation and gratitude to my thesis advisors, Dr. Cristiana Matei, and Dr. Anders Strindberg. I would like to thank them for their guidance, encouragement, insightful comments, and challenging questions. Without their support and dedicated involvement, this thesis would not have been accomplished.

This thesis also could not have happened without my family. I am profoundly grateful to my husband, Will Bierman, for his love, unfailing support, and encouragement in my life and throughout the process of researching and writing this thesis. To my mother, Mila, and daughter, Lily, I am forever grateful for your love and support.

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I. INTRODUCTION

A. PROBLEM STATEMENT

The U.S. immigration system is facing an ongoing debate about how it can be reformed to protect American national security and benefit all Americans economically.¹ President Donald Trump and the RAISE Act advocate for a merit-based immigration system similar to the ones implemented by Canada and Australia.² They call for the end of the diversity immigrant visa (DV) program and a considerable reduction in family-based immigration pathways.³

However, according to some commentators, a complete overhaul of the U.S. immigration to a merit-based system will not improve U.S. immigration but may instead create additional issues.⁴ Critics of the merit-based system note that this form of immigration may not be suitable for the United States because it differs from Australia and Canada in many ways, including geography, size of the population, and system of governance.⁵ Additionally, some immigration experts argue that the DV program and family-based immigration have merit, as they diversify the U.S. population and promote

¹ “What Immigration Reform Should Look Like,” Heritage Foundation, accessed December 13, 2019, <https://www.heritage.org/immigration/heritage-explains/what-immigration-reform-should-look>.

² RAISE Act, S. 1720, 115th Cong., 1st sess., August 2, 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/1720/text>; Muzaffar Chishti and Jessica Bolter, “Merit-Based Immigration: Trump Proposal Would Dramatically Revamp Immigrant Selection Criteria, but with Modest Effects on Numbers,” Migration Policy Institute, May 30, 2019, <https://www.migrationpolicy.org/article/merit-based-immigration-trump-proposal-immigrant-selection>.

³ RAISE Act; Chishti and Bolter.

⁴ Tania Karas, “Can a ‘Merit-Based’ Immigration System Like Canada’s or Australia’s Work in the U.S.?” Public Radio International, May 17, 2019, <https://www.pri.org/stories/2019-05-17/can-merit-based-immigration-system-modeled-canada-or-australia-work-us>; Ray Marshall, “Value Added Immigration: Lessons for the United States from Canada, Australia and the United Kingdom,” *Economic Policy Institute*, 2011, <https://www.epi.org/publication/value-added-immigration/>.

⁵ Marshall; Karas.

immigrant integration, for example, but these programs need to be improved.⁶ For instance, the DV program is costly and administratively burdensome and presents fraud concerns.⁷ Similarly, family-based immigration may be too broad and taxing on U.S. economic resources.⁸

Consequently, this thesis provides recommendations for an improved immigration system, limited in scope to the DV program and family-based immigration. It will identify the aspects of the current U.S. immigration system, specifically regarding the aforementioned programs, which need to be improved, and recommend improvements in terms of national security and economic concerns. This thesis also examines and recommends aspects of the Canadian and Australian merit-based systems that can be incorporated into the improved U.S. immigration system.

B. RESEARCH QUESTIONS

- How should the current U.S. immigration system be improved to address existing economic and national security concerns presented by legal immigration?

⁶ *Diversity Visa Program: Hearing before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary*, House of Representatives, 109th Cong., 1st sess., June 15, 2005, 4–8, <https://www.govinfo.gov/content/pkg/CHRG-109hhrg21780/pdf/CHRG-109hhrg21780.pdf>; Andowah A. Newton, “Injecting Diversity into U.S. Immigration Policy: The Diversity Visa Program and the Missing Discourse on Its Impact on African Immigration to the United States,” *Cornell International Law Journal* 38, no. 3 (2005): 1049–82, <https://scholarship.law.cornell.edu/cilj/vol38/iss3/18/>; “AILA Policy Brief: The Value of Family-Based Immigration,” American Immigration Lawyers Association, January 8, 2018, <https://www.aila.org/infonet/aila-policy-brief-the-value-of-family-based-immig>.

⁷ *Diversity Visa Program and Its Susceptibility to Fraud and Abuse: Hearing before the Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary*, House of Representatives, 108th Cong., 2nd sess., 2004, 32, <https://www.govinfo.gov/content/pkg/CHRG-108hhrg93387/pdf/CHRG-108hhrg93387.pdf>; Department of State and Broadcasting Board of Governors Office, *Diversity Visa Program*, Report No. ISP-CA-03-52 (Washington, DC: Department of States, 2003), 2, <https://www.stateoig.gov/system/files/37437.pdf>.

⁸ William A. Kandel, *U.S. Family-based Immigration Policy*, CRS Report No. R43145 (Washington, DC: Congressional Research Service, 2018), 22–23.

- What elements from existing U.S. legal immigration programs, as well as from Canada's and Australia's legal immigration programs, can the United States incorporate in its revamped immigration policies?

C. LITERATURE REVIEW

The literature review addresses three areas of immigration that can be used to improve the current U.S. immigration system. The first section focuses on research and reports related to the DV program, the second discusses research on family-based immigration, and the third addresses literature on merit-based immigration systems.

1. Diversity Visa

One of the debates in the literature regarding the DV program focuses on whether the program truly diversifies the U.S. population. Some literature argues that the program is discriminatory and does not increase diversity, as it excludes certain races or ethnic groups.⁹ For instance, Jan Ting argues that the DV program purposely excludes Asian and other ethnic immigrants and “has been a transparent device to issue more visas to white immigrants.”¹⁰ Ting views the exclusion of natives of certain countries, such as China and Vietnam, from participating in the DV lottery as discriminatory and believes that it is based solely on their ethnicity.¹¹ He argues that the criteria used to exclude certain countries, because more than 50,000 people from those countries immigrated to the United States in the past five years, is arbitrary.¹² According to Ting, DVs are unfair because “they were created to offset the diversity which would otherwise result from nondiscriminatory immigration.”¹³ He argues for changing the DV program to an immigration lottery “open

⁹ H.R., *Diversity Visa Program and Its Susceptibility to Fraud and Abuse*, 3.

¹⁰ Jan C. Ting, “‘Other Than a Chinaman’: How U.S. Immigration Law Resulted from and Still Reflects a Policy of Excluding and Restricting Asian Immigration,” *Temple Political & Civil Rights Law Review* 4, no. 301 (1994–1995): 315, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/tempcr4&div=18&id=&page=>.

¹¹ Ting, 310.

¹² Ting, 309.

¹³ H.R., *Diversity Visa Program and Its Susceptibility to Fraud and Abuse*, 13.

equally to natives of every country and region of the world.”¹⁴ Similarly, Jonathan H. Wardle argues that the program combines Mexico, the Caribbean, and Central America with continental South America as one region to curtail the number of diversity visas allocated to natives of these regions to benefit prospective European immigrants.¹⁵ As does Ting, Wardle advocates for a random lottery approach that is equitable and does not look at an applicant’s country of origin, nationality, or ethnicity.¹⁶

In contrast, others argue that the DV program is not discriminatory but creates diversity. For example, Andowah A. Newton argues that the DV program enhances U.S. diversity by providing immigration opportunities to Africans who have been underrepresented in terms of immigration to the United States.¹⁷ By the same token, Anna O. Law claims that although the DV program was created primarily to benefit European immigrants, such as Irish and Italians, it has had unintended consequences by benefiting different groups of individuals, including Africans.¹⁸ However, a caveat can be made to the argument presented by Newton and Law in the existing literature. Some argue that although the DV program may be benefiting the United States by diversifying it with African immigrants, it has negative consequences for African countries. In an article by B. Ikubolajeh Logan and Kevin J. A. Thomas, and another by Rotimi Sankore, the authors indicate that the program leads to brain drain from African countries, thus hampering their development.¹⁹ In sum, differing opinions are presented as to whether the DV program truly promotes diversity in the United States, and even those who believe the program promotes diversity, suggest it leads to a number of negative unanticipated consequences for the participating countries.

¹⁴ Ting, ““Other Than a Chinaman,”” 310.

¹⁵ Jonathan H. Wardle, “The Strategic Use of Mexico to Restrict South American Access to the Diversity Visa Lottery,” *Vanderbilt Law Review* 58, no. 6 (November 2005): 1963–99.

¹⁶ Wardle, 1994.

¹⁷ Newton, “Injecting Diversity into U.S. Immigration Policy,” 1051.

¹⁸ Anna O. Law, “The Diversity Visa Lottery: A Cycle of Unintended Consequences in United States Immigration Policy,” *Journal of American Ethnic History* 21, no. 4 (2002): 3–29, JSTOR.

¹⁹ Rotimi Sankore, “Africa Killing Us Softly,” *New African*, November 2005; B. Ikubolajeh Logan and Kevin J. A. Thomas, “The U.S. Diversity Visa Programme and the Transfer of Skills from Africa,” *International Migration* 50, no. 2 (2012): 1–19, <https://doi.org/10.1111/j.1468-2435.2011.00711.x>.

Other scholars advocate eliminating the DV program altogether. Cassidy Cloninger argues that the primary goal of U.S. immigration should be reuniting families because it benefits American society socially and economically, and the DV program is inconsistent with that goal.²⁰ It creates disparities in terms of visa opportunities for family-based immigrants.²¹ Accordingly, Cloninger argues for the reallocation of 50,000 DV program visas to the family-based immigration categories.²² Although Cloninger states at the beginning of her article that she will discuss the strengths and weaknesses of the DV program, she fails to consider its advantages and focuses exclusively on its shortcomings. Melissa Chapasca also argues for reallocating 50,000 DVs but to a merit-based points system, where points are awarded based on an individual's employment-related skills or familial ties to the United States.²³ However, Chapasca fails to provide an in-depth analysis of a merit-based point system and thus does not consider its possible drawbacks for the United States. Therefore, Cloninger's and Chapasca's arguments lack a complete analysis for eliminating or replacing the DV program.

Another set of literature comes from government sources and primarily argues that the DV program generates national security concerns. Publications from the White House and Department of Homeland Security (DHS) call for the elimination of the DV program due to national security concerns.²⁴ Furthermore, the Government Accountability Office (GAO) has cited fraud and national security concerns within the DV program.²⁵ In the past,

²⁰ Cassidy Cloninger, "Employment and Diversity-Based Visas: Why Birthright Citizenship Is Not All That Is Wrong with America's Immigration System," *Campbell Law Review* 39 (Spring 2017): 413–55.

²¹ Cloninger, 418.

²² Cloninger, 440.

²³ Melissa Chapasca, "The Immigration Gamble: Eliminating the Diversity Visa Program," *Widener Journal of Law, Economics & Race* 5, no. 1 (Fall 2013): 67–84.

²⁴ "National Security Threats—Chain Migration and the Visa Lottery System," White House, February 1, 2018, <https://www.whitehouse.gov/articles/national-security-threats-chain-migration-visa-lottery-system/>; "We Need to End Unchecked Chain Migration and Eliminate the Reckless Visa Lottery to Secure the Nation and Protect the American Worker," Department of Homeland Security, February 15, 2018, <https://www.dhs.gov/news/2018/02/15/we-need-end-unchecked-chain-migration-and-eliminate-reckless-visa-lottery-secure>.

²⁵ Jess T. Ford, *Border Security: Fraud Risks Complicate State's Ability to Manage Diversity Visa Program*, GAO-07-1174 (Washington, DC: Government Accountability Office, 2007), 1–46, <https://www.gao.gov/products/GAO-07-1174>.

calls for the elimination of the DV program have generated numerous congressional hearings, which have drawn attention to its national security implications and potential for fraud, among other concerns.²⁶

The majority of the scholarly literature does not fully analyze the benefits of the diversity visa but instead focuses on its shortcomings. Additionally, scholarly literature does not fully explain or respond to the national security issues presented by the White House and DHS. Finally, the literature is lacking in terms of providing policy recommendations for how to improve the DV program.

2. Family-Based Immigration

The debate in the literature on family-based immigration centers primarily on whether the U.S. immigration system should be designed to benefit the U.S. economy rather than focus on family reunification. For instance, David C. Koelsch argues that family-based immigration does not assist the United States in terms of economic growth and calls for overhauling it by instituting various policy changes, including increasing employment-based visas and adopting merit-based point systems similar to the ones in Canada and Australia.²⁷ Although Koelsch acknowledges that the proposed policy changes may have unintended consequences, he does not thoroughly discuss or analyze them.²⁸ White House and DHS publications also argue that the current family-based immigration system does not benefit the U.S. economy.²⁹ However, the literature that argues against family-based immigration fails to address or refute arguments for family-based immigration. For instance, Harriet Duleep and Mark Regets argue that family-based

²⁶ H.R., *Diversity Visa Program*, 1–59; *Diversity Visa Program and Its Susceptibility to Fraud and Abuse; Safe for America Act: Subcommittee on Immigration Policy and Enforcement of the Committee on the Judiciary*, House of Representatives, 112th Cong., 1st sess., April 5, 2011, 1–62, <https://www.govinfo.gov/content/pkg/CHRG-112hhrg65602/pdf/CHRG-112hhrg65602.pdf>.

²⁷ Judith Gans, Elaine M. Replogle, and Daniel J. Tichenor, *Debates on U.S. Immigration* (Thousand Oaks, CA: SAGE Publications, 2012), 388–392.

²⁸ Gans, Replogle, and Tichenor, 392.

²⁹ White House, “National Security Threats”; Department of Homeland Security, “We Need to End Unchecked Chain Migration.”

immigrants are benefiting the U.S. economy through their high-earning growth.³⁰ Similarly, Carol L. Cleveland states that family-based immigrants contribute to economic growth through entrepreneurship.³¹ All in all, the literature on whether family-based immigration is economically beneficial to the United States is split.

Others argue that in addition to economic benefits, family-based immigration has further advantages. Zoya Gubernskaya and Joanna Dreby argue that family unity should be the priority of the U.S. immigration system, due to its many benefits.³² Gubernskaya and Dreby contend, “families are a buffer that aids immigrant integration, provides a social and economic safety net for new Americans, helps incorporate, and builds new businesses in the United States.”³³ Some authors state that the primary focus should be on the family. For instance, Ashley Poonia argues for reforming family-based immigration in the United States but by expanding it rather than curtailing it.³⁴ She argues for extending family-based immigration in the United States to new family groups, such as grandparents.³⁵ She states that focusing exclusively on economic outcomes leads to an unjust immigration system and devalues the importance of family.³⁶ In short, some authors argue that family-based immigration benefits the United States in a variety of ways.

Conversely, White House and DHS publications contend that family-based immigration undermines U.S. national security and has allowed terrorists and criminals to enter the United States.³⁷ Although scholarly literature addresses the economic argument

³⁰ Harriet Duleep and Mark Regets, “U.S. Immigration Policy at a Crossroads: Should the U.S. Continue Its Family-Friendly Policy?,” *International Migration Review* 48, no. 3 (2014): 823–45.

³¹ Gans, Replogle, and Tichenor, *Debates on U.S. Immigration*, 393.

³² Zoya Gubernskaya and Joanna Dreby, “U.S. Immigration Policy and the Case for Family Unity,” *Journal on Migration and Human Security* 5, no. 2 (2017): 417–39.

³³ Gubernskaya and Dreby, 426.

³⁴ Ashley Poonia, “Note: We Are All Family: Broadening the Family-Based Immigration System to Include Extended Family Members,” *University of Detroit Mercy Law Review* 93, no. 159 (Winter 2016): 159–82.

³⁵ Poonia, 159.

³⁶ Poonia, 179.

³⁷ White House, “National Security Threats”; Department of Homeland Security, “We Need to End Unchecked Chain Migration.”

presented by critics of family-based immigration, the literature does not cover the national security issues presented by the White House and DHS.

3. Merit-Based Immigration

The argument regarding merit-based immigration focuses on whether such a system is economically beneficial for immigrants and countries. Some posit that a merit-based system is economically advantageous because it attracts better-quality immigrants. George J. Borjas argues that Canadian immigrants are more skilled than U.S. immigrants are because Canadian immigrants are better educated and U.S. immigrants face lower wages than most natives do.³⁸ Borjas also argues that high-skilled immigration has a positive fiscal impact on countries because “high-skilled immigrants earn more, pay higher taxes, and require fewer services than low-skilled immigrants.”³⁹

However, the proponents of merit-based systems largely fail to acknowledge their drawbacks. Grace H. Parsons states, “As Canada, and particularly Australia, have shown, an immigration scheme which favors high-skilled applicants rather than reflecting the actual job-market needs could have subtle negative effects for both arriving workers and receiving countries.”⁴⁰ According to Parsons, skilled immigrants who enter Canada struggle to obtain the necessary accreditation to work in Canada and face underemployment, while Canada faces labor shortages in unskilled labor. In Australia, skilled immigrants are competing for unskilled jobs.⁴¹ Similarly, Arif Anwar argues that skilled Canadian immigrants face a highly competitive labor market, where their foreign

³⁸ George Borjas, *Immigration Policy, National Origin, and Immigrant Skills: A Comparison of Canada and the United States* (Cambridge, MA: National Bureau of Economic Research, 1991), 1–28, <https://doi.org/10.3386/w3691>.

³⁹ *Employment-based Permanent Immigration: Examining the Value of a Skilled-Based Point System: Hearing of the Committee on Health, Education, Labor, and Pension, Senate, 109th Cong., 2nd sess., 2006*, 13.

⁴⁰ Grace H. Parsons, “An Overview of the U.S. Immigration System and Comparison with Merit-Based Immigration Systems in Light of the Proposed Raise Act,” *Arizona Journal of International & Comparative Law Review* 35, no. 3 (2018): 497, http://arizonajournal.org/wp-content/uploads/2019/04/03_Parsons.pdf.

⁴¹ Parsons, 490.

credentials are not readily accepted.⁴² Correspondingly, Douglas S. Massey argues that admitting immigrants just because of their skills is problematic.⁴³ According to Massey, Canadian immigrants fail to integrate due to their inability to find suitable professional employment, yet both Australia and Canada face labor shortages in unskilled jobs.⁴⁴ To summarize, some authors argue that merit-based immigration has economic benefits for the countries and immigrants while other authors dispute that finding.

D. RESEARCH DESIGN

This thesis aspires to identify how existing U.S. immigration policies and programs can be strengthened or improved. To this end, it conducts a comparative analysis of select U.S. and other countries' immigration policies.⁴⁵ Specifically, this research first reviews and analyzes the U.S. DV and family-based immigration programs, as they are under consideration for revision in the most recent proposed legislation, the RAISE Act. One of the reasons this thesis studies the DV and family-based immigration programs is the arguments that these programs are vulnerable to national security concerns and serve as avenues for terrorists to enter the United States. Another contention is that these programs do not advance U.S. economic interests and should be eliminated or overhauled.

Additionally, this thesis examines merit-based immigration systems in Canada and Australia. Specifically, the Canadian family reunification program and points-based Federal Skilled Worker Program, as well as the Australian family program and points-based Skilled Independent Visa Program are examined. One reason for studying merit-based immigration systems is that the aim of the RAISE Act is to implement a comparable

⁴² Arif Anwar, "Canadian Immigration Policy: Micro and Macro Issues with the Points Based Assessment System," *Canadian Ethnic Studies* 46, no. 1 (2014): 169–79, <https://doi.org/10.1353/ces.2014.0004>.

⁴³ S., *Employment-based Permanent Immigration*, 18–21.

⁴⁴ S., 18–19.

⁴⁵ Eugene Bardach and Eric M. Patashnik, *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving*, 5th ed. (Los Angeles: CQ Press, 2016), 1–189; Center for Homeland Defense and Security, "Policy Analysis and Policy Options Analysis," May 22, 2017, YouTube, video, 15:47, https://www.youtube.com/watch?time_continue=11&v=FjIoKJhdcIg&feature=emb_logo; Luciana Herman, *Tips for Writing Policy Papers: A Policy Lab Communications Workshop* (Stanford: Stanford Law School, 2013), 1–10, <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/04/White-Papers-Guidelines.pdf>.

system in the United States. The argument is that economic and national security concerns of the United States are better served by curbing family immigration and instating a merit/points-based system in which immigrants are required to meet a specific set of criteria before being considered for admission to a country.

In this context, this investigation examines immigration programs in light of their economic and national security impacts in their respective countries. In terms of impact to the economy, the inquiry focuses on which of the aforementioned immigration programs—the U.S., Canadian, and Australian programs—have had a positive effect on their respective countries’ economy, based on levels of education and unemployment rates. In terms of impact to national security, the investigation identifies and analyzes which of the immigration policies result in fewer terrorist attacks by immigrants who come to each country via the relevant noted programs. Ultimately, in light of proposed revisions to existing immigration legislation, this thesis—using lessons learned from the U.S., Canadian, and Australian immigration policies—provides a set of policy recommendations for U.S. policymakers to consider as they search for answers to improve the U.S. immigration system.⁴⁶

This research relies on open-source, published documents. It consults primary sources, such as government reports, congressional hearings, existing proposed legislation, as well as secondary sources, such as academic journal articles, books, and news articles. No data was collected through surveys or interviews.

⁴⁶ Recommended policy changes are analyzed to account for any limitations, downsides, precursors (e.g., an act of Congress), implications, or potential unintended consequences. This thesis focuses exclusively on legal immigration and does not delve into employment-based or asylum/refugee immigration. An analysis of the entire U.S. immigration system, as well as other countries’ immigration systems in addition to Canada and Australia, would be too broad.

E. CHAPTER OVERVIEW

Chapter II provides an overview of the DV program, including its history, current status, eligibility and vetting criteria, and presents arguments and counterarguments regarding national security and economic concerns associated with the program. Chapter III discusses the U.S. family-based immigration program, including its history, current state, eligibility criteria, and vetting process, as well as addresses arguments and counterarguments in relation to national security and economic challenges correlated with the program. Chapter IV explores the Canadian and Australian immigration systems, including their points-based and family-based programs, the systems' drawbacks and advantages, and national security vetting and concerns. Chapter V concludes with analysis and recommendations.

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II. DIVERSITY VISA PROGRAM

On July 19, 2019, Ken Cuccinelli, then-acting director of the United States Citizenship and Immigration Services (USCIS), tweeted, “The diversity lottery is very dangerous, and it needs to go. Time for a more merit focused immigration system without dangerous holes like the diversity lottery.”⁴⁷ This sentiment, at the highest levels of USCIS, reflects the current prevailing mistrust of the DV program. The question is how much of a threat to national security and economic security the DV program (commonly known as the “green card lottery”) poses. This chapter provides an overview of this immigration program. First, it discusses the background of the diversity visa, including its history, current status, eligibility, and vetting criteria. Second, it addresses national security and economic challenges facing the DV program. Third, it presents counterarguments to the criticisms and described challenges of the DV program.

A. BACKGROUND

The DV program was instituted by the Immigration Act of 1990 to stimulate immigration from mainly European countries, which became underrepresented in the United States as the result of the Immigration Amendments of 1965.⁴⁸ Before 1965, U.S. immigration policies operated on the quota system, which allowed entry based on an individual’s race and national origin, favoring immigrants from European countries, and immigration from Italy and Ireland was open.⁴⁹ The Immigration Amendments of 1965

⁴⁷ USCIS Acting Director Ken Cuccinelli (@USCISCuccinelli), “The diversity lottery is very dangerous, and it needs to go. @realDonaldTrump and I both want to see it ended. Time for a more merit-focused immigration system w/o dangerous holes like the diversity lottery! Yikes,” Twitter, July 19, 2019, 2:02 p.m., <https://twitter.com/USCISCuccinelli/status/1152322796707598336>.

⁴⁸ Immigration Act of 1990, Public Law 101–649, § 131, 175 (1990), 32–35, <https://www.justice.gov/sites/default/files/eoir/legacy/2009/03/04/IMMACT1990.pdf>; David S. Weissbrodt and Laura Danielson, *Immigration Law and Procedure in a Nutshell*, 5th ed. (St. Paul: Thomson/West, 2005), 33.

⁴⁹ Becky Little, “The ‘Diversity’ Green Card Lottery Was Originally for White Immigrants,” History, updated March 7, 2019, <https://www.history.com/news/the-diversity-green-card-lottery-was-originally-for-white-immigrants>.

eliminated the quota system and allowed 20,000 immigrants per country annually.⁵⁰ Additionally, immigrants were evaluated based on certain criteria, such as established family members in the United States, certain job skills, or refugee status.⁵¹ The amendments also limited immigration from Western and Eastern Hemispheres to 120,000 and 170,000 persons per year, respectively.⁵² Consequently, in the following decades, these changes led to higher immigration rates from Asian and Latin American countries, to the detriment of European immigrants.⁵³ For example, it became harder for Irish and Italian citizens to immigrate to the United States legally.⁵⁴

In the 1980s, many Irish came to the United States and, due to Ireland's economic crisis, remained as undocumented immigrants after their tourist visas expired.⁵⁵ Irish-American groups lobbied to prevent deportations of these undocumented Irish immigrants.⁵⁶ Accordingly, Congress responded with Section 314 of the Immigration Reform and Control Act of 1986 (IRCA), or the NP-5 pilot lottery program, which benefited individuals from European countries whose ability to immigrate to the United States had been negatively affected after the amendments of 1965.⁵⁷ The NP-5 program allotted an additional 5,000 immigrant visas a year in fiscal years 1987 and 1988 to natives of 36 countries that had been adversely affected by the 1965 amendments.⁵⁸ The visas were distributed on a first-come, first-served basis to the applicants and their immediate family

⁵⁰ The Immigration and Nationality Act of 1965, Public Law 89-236, 12 (1965), 911-912, <https://www.govinfo.gov/content/pkg/STATUTE-79/pdf/STATUTE-79-Pg911.pdf>.

⁵¹ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 17.

⁵² Little, "The 'Diversity' Green Card Lottery Was Originally for White Immigrants."

⁵³ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 27; Little.

⁵⁴ Little.

⁵⁵ Priscilla Alvarez, "The Diversity Visa Program Was Created to Help Irish Immigrants," *The Atlantic*, November 1, 2017, <https://www.theatlantic.com/politics/archive/2017/11/diversity-visa-program/544646/>; Little.

⁵⁶ Little.

⁵⁷ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 27-28.

⁵⁸ Ruth Ellen Wasem, *Diversity Immigrant Visa Lottery Issues*, CRS Report No. R41747 (Washington, DC: Congressional Research Service, 2011), 1, <https://fas.org/sgp/crs/misc/R41747.pdf>.

members.⁵⁹ To be eligible for the NP-5 program, applicants had to meet only nationality, health, and moral requirements.⁶⁰ Approximately 1.4 million individuals applied for the 10,000 available visas, and 40 percent of these visas went to natives of Ireland, who submitted 200,000 of the first applications.⁶¹ Congress extended the NP-5 program by two more years and allocated 15,000 annual immigrant visas in fiscal years 1989 and 1990.⁶²

In 1988, Congress created another visa lottery program called OP-1 to increase “geographic diversity.”⁶³ The OP-1 program was open to natives of all countries but the 12 with the greatest influx of immigrants.⁶⁴ Natives of 162 countries, who used less than 25 percent of their maximum allotments in fiscal year 1988, qualified to participate in this program.⁶⁵ The program was proposed by Representative Howard L. Berman, Democrat from California, who indicated, “it was a ‘stopgap measure’ designed to balance inequities in immigration law that favor people from Asia and Latin America.”⁶⁶

The DV program was created on a permanent basis in the same vein as NP-5 and OP-1, which were temporary lottery programs, to grant preference to the natives of those countries who did not immigrate to the United States regularly.⁶⁷ From fiscal year 1992 to 1994, 40 percent of the visas were reserved for Irish immigrants.⁶⁸ Again, reserving visas

⁵⁹ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 27; Alvarez, “The Diversity Visa Program Was Created to Help Irish Immigrants.”

⁶⁰ Weissbrodt and Danielson, 27–28.

⁶¹ Marvine Howe, “Immigrants to Get Visas by Lottery,” *New York Times*, sec. U.S., March 1, 1989, <https://www.nytimes.com/1989/03/01/us/immigrants-to-get-visas-by-lottery.html>; Alvarez, “The Diversity Visa Program Was Created to Help Irish Immigrants”; Ashley Dunn, “U.S. Plans Lottery with Jackpot of Legal Residency: Immigration: Officials Brace for Deluge of Applicants for 40,000 Visas. Critics Say the Process Favors Europeans,” *Los Angeles Times*, September 6, 1991, <https://www.latimes.com/archives/la-xpm-1991-09-06-mn-1739-story.html>.

⁶² Wasem, *Diversity Immigrant Visa Lottery Issues*, 28.

⁶³ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 28; Howe, “Immigrants to Get Visas by Lottery,” 19.

⁶⁴ Howe, “Immigrants to Get Visas by Lottery”; Dunn, “U.S. Plans Lottery with Jackpot of Legal Residency.”

⁶⁵ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 28.

⁶⁶ Howe, “Immigrants to Get Visas by Lottery,” 2.

⁶⁷ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 33.

⁶⁸ Wasem, *Diversity Immigrant Visa Lottery Issues*, 14; Little, “The ‘Diversity’ Green Card Lottery Was Originally for White Immigrants.”

for the Irish was designed to help the undocumented Irish immigrants who were already in the United States.⁶⁹ By the mid-1990s, Ireland's economy had improved, and the DV program was amended to remove a preference for the Irish.⁷⁰ Although many Europeans still immigrate to the United States through this program, residents of African countries get the majority of the visas.⁷¹

1. Diversity Visa Today

The DV program allows immigrants to gain legal permanent residence or green cards in the United States.⁷² Those who gain permanent residence through the DV program, like any other LPR, have certain rights and responsibilities. They are allowed to live and work permanently in the United States, are protected by the federal, state, and local laws, and enjoy a wide spectrum of rights and freedoms.⁷³ For instance, LPRs are allowed to enter certain branches of the U.S. military and have the right to receive Medicare, Social Security, and Supplemental Security Income, if eligible.⁷⁴ Conversely, LPRs are expected to follow all U.S. laws, which require them to pay taxes and abstain from voting in elections, which are open only to U.S. citizens.⁷⁵ LPRs who disobey U.S. laws could lose their permanent residence and be ordered removed from the country.⁷⁶

Currently, the DV program is a permanent program, which allots 55,000 visas per fiscal year from eligible countries.⁷⁷ However, starting with fiscal year 1999, each year 5,000 of these visas have been temporarily apportioned to an unrelated immigration

⁶⁹ Little.

⁷⁰ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 33; Little.

⁷¹ Little.

⁷² Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 128–130; Wasem, *Diversity Immigrant Visa Lottery Issues*, 1.

⁷³ U.S. Citizenship and Immigration Services, ed., *Welcome to the United States: A Guide for New Immigrants* (Washington, DC: Department of Homeland Security, 2015), 14.

⁷⁴ U.S. Citizenship and Immigration Services, 14.

⁷⁵ U.S. Citizenship and Immigration Services, 24–25.

⁷⁶ U.S. Citizenship and Immigration Services, 24.

⁷⁷ “[USC02] 8 USC 1153: Allocation of Immigrant Visas,” Office of the Law Revision Counsel, United States Code, accessed July 24, 2019, <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1153&num=0&edition=prelim>.

program, the Nicaraguan and Central American Relief Act (NACARA), which was enacted in 1997 and stipulated the apportionment.⁷⁸ It is unclear why the annual 5,000 permanent resident visas for NACARA were reallocated from the DV program rather than other immigration programs, such as family-based or employment-based visas. Under NACARA, the 5,000 visas are made available to certain Salvadoran, Nicaraguan, Cuban, Guatemalan, and former Soviet asylum seekers, who may become legal permanent residents if they meet certain requirements.⁷⁹ Thus, only 50,000 visas are available to applicants of the DV program.⁸⁰

A computer, akin to a lottery selection, selects the winners randomly.⁸¹ Although only 50,000 visas are available, the Department of State (DOS) notifies a greater number of applicants, in the expectation that not every individual will apply or qualify for the visa; the “oversale” ensures that all 50,000 visas are issued.⁸² For instance, in fiscal year 2018, approximately 115,968 applicants were notified and allowed to apply for a visa, but only 50,000 visas were issued.⁸³ The number of total entrants in the lottery, excluding derivatives (i.e., immediate family members), has grown from year to year: 11,391,146 in fiscal year 2016, 12,437,190 in fiscal year 2017, and 14,692,258 in fiscal year 2018.⁸⁴ It is apparent from these numbers that the likelihood of selection is very slim.

⁷⁸ District of Columbia Appropriations, Fiscal Year 1998, Public Law 105–100, § 201, 111 Stat. 2193 (1997), <https://www.congress.gov/105/plaws/publ100/PLAW-105publ100.pdf>; “DV 2018—Selected Entrants,” Department of State, accessed February 6, 2020, <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/dv-2018-selected-entrants.html>; Wasem, *Diversity Immigrant Visa Lottery Issues*, 1–2.

⁷⁹ Wasem, 2.

⁸⁰ Department of State, “DV 2018—Selected Entrants.”

⁸¹ Department of State, *Instructions for the 2020 Diversity Immigrant Visa Program (DV-2020)* (Washington, DC: Department of States, n.d.), 1, accessed September 1, 2019, <https://travel.state.gov/content/dam/visas/Diversity-Visa/DV-Instructions-Translations/DV-2020-Instructions-Translations/DV-2020-Instructions-English.pdf>.

⁸² Department of State, “DV 2018—Selected Entrants.”

⁸³ Department of State.

⁸⁴ Department of State, *DV AES Statistics by FSC 2016–2018* (Washington, DC: Department of State, n.d.), 6, accessed September 2, 2019, <https://travel.state.gov/content/dam/visas/Diversity-Visa/DVStatistics/DV%20AES%20statistics%20by%20FSC%202016-2018.pdf>.

2. Eligibility Criteria

Not all countries are eligible for the DV program. Each year, the DOS provides a list of ineligible countries; the ones that had more than 50,000 of its natives immigrate to the United States as legal permanent residents in the past five years.⁸⁵ For fiscal year 2020, the DOS announced the following ineligible countries:

Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.⁸⁶

Eligible countries, on the other hand, are low admission countries, which means that fewer than 50,000 of their natives have been admitted to the United States as legal permanent residents in the last five years.⁸⁷ This criterion is the sole threshold of eligibility of a given country.⁸⁸ For instance, in fiscal year 2020, Japan, Kenya, Bulgaria and all other countries, except for the ineligible countries listed previously qualified for the diversity visa. The available visas are divided into six geographic regions: Africa, Europe, Asia, South America, North America, and Oceania.⁸⁹ The natives of each eligible country receive no more than seven percent of the year's available visas.⁹⁰ Thus, the DV program distinguishes between eligible and ineligible countries.

Applicants must also meet eligibility criteria. To qualify for the DV program, an applicant must have a high school diploma or equivalent, or two years in a position that requires two years of training or experience within the last five years of the DV application.⁹¹ Furthermore, the applicant or the applicant's spouse or parent must have

⁸⁵ Department of State, *Instructions for the 2020 Diversity Immigrant Visa Program*, 1.

⁸⁶ Department of State, 1.

⁸⁷ Department of State, 1.

⁸⁸ Department of State, 1.

⁸⁹ Department of State, "DV 2018—Selected Entrants"; Office of the Law Revision Counsel, United States Code, "[USC02] 8 USC 1153: Allocation of Immigrant Visas."

⁹⁰ Department of State; Office of the Law Revision Counsel, United States Code.

⁹¹ Office of the Law Revision Counsel, United States Code; Department of State, *Instructions for the 2020 Diversity Immigrant Visa Program*, 2.

been born in a country eligible for the diversity visa.⁹² Thus, if the applicant was born in Canada, but the applicant's spouse was born in France, the applicant can claim her spouse's country of birth (France) as her country of eligibility, as long as the applicant included her spouse on her DV entry.⁹³ If the applicant was born in Canada, but her parents were born in Japan and were not residents of Canada at the time of the applicant's birth, then the applicant could claim the country of birth (Japan) of either of her parents.⁹⁴ Overall, in addition to meeting educational and experiential prerequisites, the applicants must meet country eligibility requirements.

Applicants must follow several regulations when applying for the DV lottery. First, the application process involves submitting just one free online application within a designated period, which usually occurs in October of every fiscal year and lasts for approximately 30 days.⁹⁵ Entrants who submit multiple applications per fiscal year are disqualified.⁹⁶ Second, when applying for the DV lottery, per 22 Code of Federal Regulations (CFR), Section 42.33, applicants are required to list their spouse and all unmarried children under the age of 21, unless these immediate family members are U.S. citizens or legal permanent residents.⁹⁷ Failure to list the required information on the application can lead to it being disqualified.⁹⁸ Third, besides providing their biographical and other relevant information and that of their families, applicants must also provide their digital photograph and a photograph for each qualifying family member.⁹⁹ After applying,

⁹² Department of State, 1–2.

⁹³ “U.S. Diversity Immigrant Visa Program Tutorial: Submitting an Entry,” 2015, YouTube, video, 25:06, <https://www.youtube.com/watch?v=tOQlh2dEbQ>.

⁹⁴ YouTube.

⁹⁵ Department of State, *Instructions for the 2020 Diversity Immigrant Visa Program*, 2.

⁹⁶ Department of State, 2.

⁹⁷ “22 CFR § 42.33—Diversity Immigrant,” Cornell Law School, Legal Information Institute, accessed September 29, 2020, <https://www.law.cornell.edu/cfr/text/22/42.33>; Department of State, *Instructions for the 2020 Diversity Immigrant Visa Program*, 4–5.

⁹⁸ Department of State, *Instructions for the 2021 Diversity Immigrant Visa Program (DV-2021)* (Washington, DC: Department of State, n.d.), 3, accessed September 29, 2020, <https://travel.state.gov/content/dam/visas/Diversity-Visa/DV-Instructions-Translations/DV-2021-Instructions-Translations/DV-2021-%20Instructions-English.pdf>.

⁹⁹ Department of State, *Instructions for the 2020 Diversity Immigrant Visa Program*, 3.

the applicants receive a unique confirmation number and can monitor the status of their entry online.¹⁰⁰ In sum, DV entrants must follow a number of rules to have their application entries qualify for the lottery.

3. Vetting Process

The background vetting process involves name and biometric checks, as well as an in-person interview.¹⁰¹ Consular officers at various U.S. embassies and consulates are required to obtain applicants' fingerprints at the interview.¹⁰² Subsequently, consular officers screen applicants through the Consular Consolidated Database (CCD), which contains records of visa applications, including photographs of applicants, 10-finger scans, comments by consular officers, and outcomes of any prior visa applications.¹⁰³ The CCD is also linked with other U.S. agencies' biometric databases, such as the DHS's Automated Biometric Identification System (IDENT) and Federal Bureau of Investigation's (FBI's) Integrated Automated Fingerprint Identification System (IAFIS), which contain records of fingerprint scans.¹⁰⁴

Additionally, consular officers must check the background of applicants in the Consular Lookout and Support System (CLASS) database.¹⁰⁵ Specifically, officers perform name checks on applicants.¹⁰⁶ If the applicant's name generates a hit or if the applicant's nationality or background needs additional vetting, then consular officers are required to request a security advisory opinion (SAO) from the intelligence and law enforcement agencies to conduct a further review of the applicant.¹⁰⁷

¹⁰⁰ Department of State, 3.

¹⁰¹ Ford, *Border Security*, 24.

¹⁰² Ford, 24.

¹⁰³ Ruth Ellen Wasem, *Visa Security Policy: Roles of the Departments of State and Homeland Security* CRS Report No. R41093 (Washington, DC: Congressional Research Service, 2011), 7, <https://fas.org/sgp/crs/homsec/R41093.pdf>.

¹⁰⁴ Wasem, 7.

¹⁰⁵ Ford, *Border Security*; Wasem, *Visa Security Policy*, 7.

¹⁰⁶ Wasem, 7–8.

¹⁰⁷ Ford, *Border Security*, 24; Wasem, 8.

In addition to collecting fingerprints at interviews, consular officers must determine whether the applicants meet the aforementioned eligibility requirements.¹⁰⁸ Furthermore, during the interview, consular officers determine if the principal applicant and dependents have a legitimate relationship.¹⁰⁹ In other words, through interviews, consular officers attempt to determine whether the marriage between the primary DV applicant and spouse listed on the DV application is bona fide, and whether the DV applicant is a legal parent of children listed on the application.

Moreover, the applicants have to undergo mental and physical examinations.¹¹⁰ According to the 2007 GAO report on the diversity visa program, applicants can be found ineligible for a variety of reasons, including “certain adverse medical conditions, criminal behavior, security and terrorist concerns, and other factors.”¹¹¹ These ineligibility criteria come from the grounds for inadmissibility, including “health-related grounds, criminal history, security and terrorists concerns, and public charge” concerns, listed under the Section 212(a) of the Immigration and Nationality Act (INA).¹¹² For instance, under INA Section 212(a), applicants can be found ineligible for having a communicable disease, engaging in money laundering or prostitution, or being a member of or soliciting funds for a terrorist organization.¹¹³

B. NATIONAL SECURITY AND ECONOMIC CONCERNS

The general objection by the opponents to the DV lottery comes in terms of national security issues. Critics of the DV program argue that the United States allows applicants from countries designated as state sponsors of terrorism: North Korea, Iran, Sudan, and

¹⁰⁸ Ford, *Border Security*, 10–11; Office of the Law Revision Counsel, United States Code, “[USC02] 8 USC 1153.”

¹⁰⁹ Ford, *Border Security*, 11.

¹¹⁰ Wasem, *Visa Security Policy*, 7.

¹¹¹ Ford, *Border Security*, 11.

¹¹² Wasem, *Visa Security Policy*, 7.

¹¹³ Wasem, 7.

Syria.¹¹⁴ Under Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002, individuals from these countries cannot even be issued nonimmigrant or tourist visas “unless it is determined such aliens do not pose a threat to the safety and national security of the United States.”¹¹⁵ Yet, under the DV program, individuals from these countries can be issued a legal permanent resident status or a green card.¹¹⁶ According to the DHS, 30,000 individuals from countries designated as state sponsors of terrorism entered the United States between 2007 and 2016.¹¹⁷

Critics also underscore that some immigrants who have come to the United States through the DV program have committed or attempted to commit terrorist acts.¹¹⁸ The White House cites seven individuals who entered through the DV program or as a relative of a DV winner.¹¹⁹ One of the seven individuals is Sayfullo Saipov, a national of Uzbekistan, who entered the United States in 2010 as a DV winner, and in 2017, killed eight people and injured 11 others with a truck in New York City.¹²⁰ Authorities found handwritten notes in Arabic, declaring allegiance to the Islamic State, near the truck.¹²¹

The diversity visa is also vulnerable to various fraud schemes, which potential terrorists or criminals might use that may make the background checks insufficient. The program can be exploited through identity fraud, which is prevalent in DV program countries, partially due to poor vital recordkeeping.¹²² According to a 2003 report by the DOS Office of the Inspector General, as a result of the meager control over vital records in

¹¹⁴ Department of Homeland Security, “We Need to End Unchecked Chain Migration”; “State Sponsors of Terrorism,” *United States Department of State* (blog), accessed July 10, 2019, <https://www.state.gov/state-sponsors-of-terrorism/>.

¹¹⁵ Department of State and Broadcasting Board of Governors Office, *Diversity Visa Program*, 3.

¹¹⁶ Department of State and Broadcasting Board of Governors Office, 3.

¹¹⁷ Department of Homeland Security, “We Need to End Unchecked Chain Migration.”

¹¹⁸ White House, “National Security Threats.”

¹¹⁹ White House.

¹²⁰ White House; Benjamin Mueller, William K. Rashbaum, and Al Baker, “Terror Attack Kills 8 and Injures 11 in Manhattan,” *New York Times*, sec. New York, October 31, 2017, <https://www.nytimes.com/2017/10/31/nyregion/police-shooting-lower-manhattan.html>.

¹²¹ Mueller, Rashbaum, and Baker.

¹²² Ford, *Border Security*, 5; Department of State and Broadcasting Board of Governors Office, *Diversity Visa Program*, 2.

some countries, “consular officers must assume that all travel, identity, and civil documents are unreliable.”¹²³ Therefore, it is difficult to determine whether DV applicants are filing under false identities.

Additionally, fraudulent identity documents can easily be obtained in many countries eligible for the DV program.¹²⁴ In some countries, applicants can purchase legitimate official documents, such as passports, with false identities, or false identity documents can be easily procured.¹²⁵ Consequently, according to a 2002 DOS cable cited in the GAO study, identity fraud “creates an ‘open door’ for terrorists wishing to enter the United States with legal status.”¹²⁶ Moreover, although DOS conducts security screenings of DV applicants, applicants with newly minted identities may not be detected in various U.S. government databases, which make security checks useless.¹²⁷ If a DV applicant does not have a previous record in U.S. government agency databases, which an applicant with a new false identity is unlikely to have, this applicant will not be identified as a potential national security concern.¹²⁸

Fraudulent marriages are another scheme that can be employed by terrorists.¹²⁹ DV winners who marry after the initial lottery entry are allowed to add their spouses as beneficiaries to their applications.¹³⁰ Accordingly, it is possible for terrorists to pay DV winners to engage in sham marriages and be added as spouses to the DV application.¹³¹ Although the DOS vets the spouses, terrorist spouses who do not have a record in U.S. government agency databases may not be detected as potential national security concerns.¹³² Additionally, some applicants use visa agents to complete their DV

¹²³ Department of State and Broadcasting Board of Governors Office, *Diversity Visa Program*, 2.

¹²⁴ Ford, *Border Security*, 5.

¹²⁵ Ford, 5.

¹²⁶ Ford, 5.

¹²⁷ Ford, 24.

¹²⁸ Ford, 5.

¹²⁹ Ford, 24.

¹³⁰ Ford, 4.

¹³¹ Ford, 24.

¹³² Ford, 24.

applications, and these agents are at times involved in facilitating sham DV marriages.¹³³ According to the GAO study, in some countries, “applicants engaging in sham marriages rely on backdated marriage certificates, fake supporting documentation, and staged wedding pictures,” and “the visa agents . . . coach them on how to answer questions about the relationship in the visa interview.”¹³⁴ In sum, critics of the DV program argue that it presents national security concerns as it admits individuals from states that sponsor terrorism, accepts immigrants who later commit terrorist acts, and is susceptible to fraud schemes, which can be exploited by potential terrorists.

Recently, Donald Trump has stated that the United States gets “the worst of the worst” through the DV program.¹³⁵ Critics similarly contend that the diversity visa brings in people who do not have any ties to the United States.¹³⁶ Unlike immigrants in other categories, DV immigrants typically do not have familial ties in the United States and are not coming for family reunification.¹³⁷ Additionally, DV immigrants are not coming because of an employer petitioning for them, based on their skills. In fact, critics state that the preponderance of DV applicants lack “the advanced skills to contribute to our economy.”¹³⁸ In other words, some argue the diversity visa attracts low-skilled individuals with only a high-school education, unlike highly skilled immigrants for whom employers are petitioning.

Critics of the DV program also maintain that the program is administratively and financially exacting. During the 2004 congressional hearing on the DV program, Steven A. Camarota argued that the program is “administratively burdensome” and takes critical, limited resources away from processing immigrants who apply through other immigration

¹³³ Ford, 4.

¹³⁴ Ford, 4.

¹³⁵ Michael McIntee, “Trump: Visa Lottery Immigrants ‘Worst of the Worst People,’” December 15, 2017, YouTube, video, 0:57, <https://www.youtube.com/watch?v=1TfSjuYl6Y4>.

¹³⁶ White House, “National Security Threats”; Department of Homeland Security, “We Need to End Unchecked Chain Migration.”

¹³⁷ H.R., *Diversity Visa Program*, 1–2.

¹³⁸ White House, “National Security Threats”; Department of Homeland Security, “We Need to End Unchecked Chain Migration.”

avenues, such as family-based or employment-based immigration.¹³⁹ The DV program requires processing millions of DV entries to ensure that they meet minimal eligibility requirements, such as education and employment experience. Once the pool of eligible applicants is determined and the winners chosen, additional resources have to be expended to vet and adjudicate applications of the winners who apply for legal permanent residency.¹⁴⁰ According to Camarota, “trying to weed out fraudulent lottery applications and even processing legitimate ones is a diversion for agencies that must identify terrorists among the millions seeking to come to the United States in other [immigration] categories.”¹⁴¹ Furthermore, the program creates a financial burden for the U.S. government because only the winners have to pay a fee to have their visa applications processed.¹⁴² In fiscal year 2002, the U.S. government had to pay over \$840,000 in costs not covered by the DV program fees.¹⁴³ Hence, according to the critics, the DV program is costly and consumes vital resources.

Opponents to the diversity visa also argue that it is unfair that the DV winners are able to immigrate to the United States ahead of certain family and employment-based immigrants who have been waiting years for visa availability.¹⁴⁴ According to the National Visa Center, as of November 1, 2018, 3,791,973 approved family-based and employment-based petitions were awaiting visa availability.¹⁴⁵ Family-based and employment-based visas are limited on an annual basis, and thus, not always immediately available. Generally,

¹³⁹ Diversity Visa Program and Its Susceptibility to Fraud and Abuse, Public Law 82, § Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary House of Representatives (2004), 32, <https://www.govinfo.gov/content/pkg/CHRG-108hhrg93387/pdf/CHRG-108hhrg93387.pdf>.

¹⁴⁰ H.R., *Diversity Visa Program and Its Susceptibility to Fraud and Abuse*, 32.

¹⁴¹ Diversity Visa Program and Its Susceptibility to Fraud and Abuse, 30.

¹⁴² Department of State, *Instructions for the 2020 Diversity Immigrant Visa Program*, 14.

¹⁴³ Department of State and Broadcasting Board of Governors Office, *Diversity Visa Program*, 2.

¹⁴⁴ H.R., *Diversity Visa Program*, 3.

¹⁴⁵ Department of State, *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2018* (Washington, DC: Department of State, n.d.,) 3, accessed September 2, 2019, https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2018.pdf.

226,000 family-based visas and 140,000 employment-based visas are granted annually.¹⁴⁶ Therefore, while over three million people with a family member or a job offer will have to wait years for their turn to enter the United States or become legal permanent residents, each year 50,000 DV winners will enter the United States and obtain LPR status ahead of them.

Some critics argue that the program is discriminatory and does not increase diversity, as it excludes certain races or ethnic groups.¹⁴⁷ For instance, Jan Ting argues the diversity visa purposely excludes Asian and other ethnic immigrants and “has been a transparent device to issue more visas to white immigrants.”¹⁴⁸ Ting views the exclusion of natives of certain countries, such as China and Vietnam, from participating in the DV lottery as discriminatory, believing that it is based solely on their ethnicity.¹⁴⁹ He argues that criteria used to exclude certain countries, because they have sent more than 50,000 immigrants in the past five years, is arbitrary.¹⁵⁰ According to Ting, the diversity visas are anti-diversity because “they were created to offset the diversity which would otherwise result from nondiscriminatory immigration.”¹⁵¹ He argues for changing the DV program to an immigration lottery “open equally to natives of every country and region of the world.”¹⁵² All in all, critics contend that the DV program has a number of shortcomings, as it accepts low-skilled individuals with no U.S. familial ties ahead of more deserving immigrants, strains U.S. administrative and financial resources, and discriminates against certain ethnic groups.

¹⁴⁶ “Visa Availability and Priority Dates,” U.S. Citizenship and Immigration Services, last reviewed/updated April 29, 2020, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates>.

¹⁴⁷ Diversity Visa Program and Its Susceptibility to Fraud and Abuse, Public Law 82, § Subcommittee on Immigration, Border Security, and Claims of the Committee of the Judiciary House of Representatives (2004), 12, <https://www.govinfo.gov/content/pkg/CHRG-108hhrg93387/pdf/CHRG-108hhrg93387.pdf>.

¹⁴⁸ Ting, ““Other Than a Chinaman,”” 315.

¹⁴⁹ Ting, 310.

¹⁵⁰ Ting, 309.

¹⁵¹ H.R., *Diversity Visa Program and Its Susceptibility to Fraud and Abuse*, 13.

¹⁵² Ting, ““Other Than a Chinaman,”” 310.

C. COUNTERARGUMENTS TO CRITICAL VIEWS OF THE DV PROGRAM AND DISCUSSED NATIONAL SECURITY AND ECONOMIC CHALLENGES

National security concerns exist within every immigration program. The DV program is no more susceptible to fraud and national security concerns than any other program. Experts indicate that the fraud and national security concerns presented by the DV program exist in other programs as well, such as the Visa Waiver Program (VWP) and tourist visa programs, and adequate measures can be implemented to address those concerns, rather than do away with the DV program.¹⁵³ The program already employs extensive national security vetting measures and addresses fraud concerns. In fact, “over the lifetime of this program, the Bureau of Consular Affairs used post feedback to introduce screening, interviewing and training improvements promptly as trends and technology became available.”¹⁵⁴

It is true that the DV program approves individuals from countries designated by the DOS as state sponsors of terrorism. However, in 2007, the GAO study concluded, “We found no documented evidence that DV immigrants from these [state sponsors of terrorism], or other, countries posed a terrorist or other threat.”¹⁵⁵ Moreover, individuals coming from such states are not restricted from applying through other legal permanent resident channels of immigration or categories, such as family reunification or employment-based immigration.¹⁵⁶ Far more immigrants become legal permanent residents in the United States through other immigration categories rather than through the diversity visa.¹⁵⁷ In 2017, only 4.6 percent of immigrants to the United States became LPRs through the diversity visa while over 66.4 percent became LPRs as family-sponsored immigrants, 12.2 percent through employment-based preferences, and 13 percent as

¹⁵³ H.R., *Diversity Visa Program*, 7.

¹⁵⁴ Ford, *Border Security*, 41.

¹⁵⁵ Ford, 5.

¹⁵⁶ Wasem, *Diversity Immigrant Visa Lottery Issues*, 10.

¹⁵⁷ Office of Immigration Statistics, *Annual Flow Report: Legal Permanent Residents* (Washington, DC: Department of Homeland Security, 2018), 5, https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2017.pdf.

refugees and asylees.¹⁵⁸ Also, as mentioned earlier, individuals from these designated countries can even enter the United States as tourists once it is determined they do not pose a threat to the U.S. public safety and national security.

According to a joint DHS and Department of Justice (DOJ) report, “Three in four individuals convicted of international terrorism-related charges since September 11, 2001, were foreign-born.”¹⁵⁹ According to the report, “549 individuals were convicted of international terrorism-related changes in U.S. federal courts between September 11, 2001, and December 31, 2016.”¹⁶⁰ Out of 549, “254 were not U.S. citizens; 148 were foreign-born, naturalized and received U.S. citizenship; and 147 were U.S. citizens by birth.”¹⁶¹ Between September 11, 2001 and December 31, 2015, approximately 750,000 individuals received their permanent residence through the DV program. However, only 402 foreign-born individuals were convicted of terrorism during the same period of time, and the White House was able to list only seven individuals out of those 402 who entered through the DV program.

Moreover, out of seven individuals listed by the White House as terrorists who entered through the DV program, three came to the United States as children and became radicalized in the United States: Imran Mandhai, Ali Shukri Amin, and Syed Haris Ahmed.¹⁶² Mandhai entered the United States from Pakistan at the age of 15, as a derivative on his parents’ DV application.¹⁶³ In 2002, he pleaded guilty “to conspiring to bomb a National Guard Armory and electrical power substations near Miami.”¹⁶⁴ Mandhai appears to have become radicalized while in the United States, as “the local police and other law

¹⁵⁸ Office of Immigration Statistics, *Annual Flow Report*, 5.

¹⁵⁹ White House, “National Security Threats.”

¹⁶⁰ Department of Homeland Security, Department of Justice, *Executive Order 13780, “Protecting the Nation from Foreign Terrorist Entry into the United States Initial Section 11 Report* (Washington, DC: Department of Homeland Security, Department of Justice, 2018), 2, <https://www.dhs.gov/sites/default/files/publications/Executive%20Order%2013780%20Section%2011%20Report%20-%20Final.pdf>.

¹⁶¹ Department of Homeland Security, Department of Justice, 2.

¹⁶² White House, “National Security Threats.”

¹⁶³ White House.

¹⁶⁴ White House.

enforcement officials said Mr. Mandhai became disenchanted with American life and was attracted to militant Islamic politics soon after he arrived in the United States in April 1998.”¹⁶⁵ Amin entered the United States in 1999 from Sudan, as a derivative on the DV application of one of his parents.¹⁶⁶ At the time, Amin was around two years old.¹⁶⁷ He pleaded guilty to providing material support to the Islamic State of Iraq and Syria (ISIS) and radicalized in the United States using the Internet and social media.¹⁶⁸ Ahmed also entered the United States as a child on a DV application.¹⁶⁹ At the time of his conviction in 2009, for conspiring to provide material support to terrorists, he was 25 years old, and he entered the United States in mid-90s.¹⁷⁰ He also became radicalized through online forums.¹⁷¹ According to the DOJ, “At trial, the government presented evidence that...Ahmed...and [his] co-conspirator used the Internet to develop relationships and maintain contact...with other supporters of violent jihad in the United States, Canada, the United Kingdom, Pakistan, and elsewhere.”¹⁷²

Two other individuals the White House lists as examples of terrorists who became permanent legal residents in the United States through the immigration lottery programs, Hesham Mohamed Ali Hedayet and Mousa Mohamed Abu Marzook, came to the United States prior to 9/11.¹⁷³ Hedayet, a native of Egypt, arrived in the United States in 1992 and

¹⁶⁵ Judith Miller, “A Nation Challenged: The Dragnet; Pakistani Plotted to Bomb Florida Power Plants, Officials Say,” *New York Times*, sec. U.S., 1, March 26, 2002, <https://www.nytimes.com/2002/03/26/us/nation-challenged-dragnet-pakistani-plotted-bomb-florida-power-plants-officials.html>.

¹⁶⁶ White House, “National Security Threats.”

¹⁶⁷ Yasmeen Abutaleb and Kristina Cooke, “A U.S. Teen’s Turn to Radicalism, and the Safety Net That Failed,” Reuters, accessed July 16, 2019, <http://www.reuters.com/investigates/special-report/usa-extremists-teen/>.

¹⁶⁸ “Virginia Teen Pleads Guilty to Providing Material Support to ISIL,” Department of Justice, June 11, 2015, <https://www.justice.gov/opa/pr/virginia-teen-pleads-guilty-providing-material-support-isil>.

¹⁶⁹ “Terrorism Defendants Sentenced in Atlanta,” Department of Justice—Office of Public Affairs, December 14, 2009.

¹⁷⁰ Department of Justice.

¹⁷¹ Department of Justice.

¹⁷² Department of Justice.

¹⁷³ White House, “National Security Threats”; David Sterman and Albert Ford, “The Visa Lottery Is Not behind the Terrorist Threat,” *New America* (blog), November 20, 2017, <https://www.newamerica.org/international-security/blog/visa-lottery-not-behind-terrorist-threat/>.

received his LPR status through his wife, who “won” the DV program in 1997.¹⁷⁴ Hedayet fatally shot two people and wounded three others at the Los Angeles International Airport in 2002.¹⁷⁵ Marzook, a Hamas leader, arrived in the United States in the 1980s and received his LPR status in 1990 through a “predecessor program to the visa lottery.”¹⁷⁶ Marzook has not been convicted in the United States, as he was deported to Jordan in 1997.¹⁷⁷ However, Marzook has been indicted by the United States in 2004 on racketeering charges.¹⁷⁸ These individuals came to the United States in the 1990s, prior to the events of 9/11 “when there was far less attention to the threat posed by jihadist terrorism.”¹⁷⁹ The vetting process was not as advanced prior to 9/11, and thus failed to identify these individuals as national security threats.

As mentioned earlier, Saipov also traveled to the United States through the DV program.¹⁸⁰ However, he appears to have been radicalized in the United States.¹⁸¹ According to Governor of New York, Andrew Cuomo, Saipov was radicalized domestically.¹⁸² Another Uzbekistan national listed as an example by the White House, Abdurasaul Hasanovich Juraboev, received his diversity visa in 2011, and “pleaded guilty to conspiring to support ISIS.”¹⁸³ It appears that Juraboev may have also been radicalized online in the United States, as he “spent endless hours online...and became enamored of

¹⁷⁴ White House.

¹⁷⁵ White House.

¹⁷⁶ White House; Sterman and Ford, “The Visa Lottery Is Not behind the Terrorist Threat”; Steven Greenhouse, “U.S. Detains Arab Tied to Militants,” *New York Times*, sec. World, A1, July 28, 1995, <https://www.nytimes.com/1995/07/28/world/us-detains-arab-tied-to-militants.html>.

¹⁷⁷ Erica Pearson, “Marzook, Mousa Mohammed Abu (1951–),” in *The SAGE Encyclopedia of Terrorism*, ed. Gus Martin (Thousand Oaks, CA: SAGE Publications, 2011), 377, <http://dx.doi.org/10.4135/9781412980173.n255>.

¹⁷⁸ Pearson, 377.

¹⁷⁹ White House, “National Security Threats”; Sterman and Ford, “The Visa Lottery Is Not behind the Terrorist Threat,” 2.

¹⁸⁰ White House.

¹⁸¹ “Cuomo: Terror Suspect Radicalized Domestically,” November 1, 2017, CNN, video, 01:49, <https://www.cnn.com/videos/us/2017/11/01/andrew-cuomo-interview-terror-attack-newday.cnn>.

¹⁸² CNN.

¹⁸³ White House, “National Security Threats.”

the Islamic State, according to the government.”¹⁸⁴ A vetting process would not have detected these individuals as threats to national security, because they were radicalized in the United States rather than in their home countries.

Immigration experts argue that the concerns regarding low-skilled individuals entering the United States through the DV program are not entirely well-founded. Indeed, according to the Migration Policy Institute, in 2016, 50 percent of the DV immigrants had a college degree or higher, compared to 32 percent of the U.S. population as a whole.¹⁸⁵ Additionally, according to a study published in 2012 in the *International Migration* journal, only certain Africans, such as those in professional occupations, are likely to be able to participate in the DV program after a lottery win, as the process of turning a win into an actual DV can be too expensive for high school graduates.¹⁸⁶ Moreover, DV immigrants were more likely to report having managerial and professional positions as opposed to LPRs in general. In fiscal year 2018, approximately 23 percent of DV applicants reported holding managerial and professional occupations versus 10 percent of the 1,096,611 LPRs.¹⁸⁷ Finally, in 2018, the unemployment rate for the DV immigrants was 3.8 percent, only 0.3 points higher than the unemployment rate for all foreign-born persons in the United States.¹⁸⁸ Thus, characterizing DV immigrants as low-skilled is inaccurate, as they appear to be highly employable, with at least half having college degrees and almost a quarter holding professional positions.

¹⁸⁴ Marc Santora and Nate Schweber, “In Brooklyn, Eager to Join ISIS Only His Mother Would Return His Passport,” *New York Times*, sec. New York, 4, February 26, 2015, <https://www.nytimes.com/2015/02/27/nyregion/isis-plot-brooklyn-men.html>.

¹⁸⁵ Julia Gelatt, “The Diversity Visa Program Holds Lessons for Future Legal Immigration Reform,” Migration Policy Institute, February 8, 2018, <https://www.migrationpolicy.org/news/diversity-visa-program-holds-lessons-future-legal-immigration-reform>.

¹⁸⁶ Logan and Thomas, “The U.S. Diversity Visa Programme and the Transfer of Skills from Africa,” 14.

¹⁸⁷ “Table 9. Persons Obtaining Lawful Permanent Resident Status by Broad Class of Admission and Selected Demographic Characteristics: Fiscal Year 2018,” Department of Homeland Security, December 23, 2019, <https://www.dhs.gov/immigration-statistics/yearbook/2018/table9>.

¹⁸⁸ Department of Labor, *Foreign-Born Workers: Labor Force Characteristics—2019* (Washington, DC: Bureau of Labor Statistics, 2020), 1; Department of Homeland Security, “Table 9.”

Similarly, the argument that the DV immigration program is financially burdensome does not appear substantiated. Although \$840,000 in program costs were not covered by the fees in fiscal year 2002, in March 2005, the DOS was able to raise the processing fee for DV winners from \$100 to \$375 to cover all program costs.¹⁸⁹ Additionally, considering that the DOS total budget request for fiscal year 2002 was \$8.2 billion, it is arguable that \$840,000 costs of the DV program presented a considerable financial burden.¹⁹⁰

Also, immigration analysts explain that the DV program serves an important purpose in enhancing the United States' diversity. Ting's argument that the diversity visa purposely excludes and discriminates against Asian immigrants does not appear to be supported by evidence. He bases his argument on the fact that historically the United States engaged in exclusionary policies against Asian immigrants (i.e., Chinese Exclusion Act). However, diversity does not come at the expense of other ethnic groups, including Asian immigrants, because they are already immigrating to the United States in large numbers through other immigration avenues, such as family-based, employment-based, or humanitarian.

The DV program promotes diversity and does not discriminate by providing opportunities to natives of countries who are not immigrating in large numbers through employment or family-based immigration. Consequently, the DV program has created an immigration avenue for the nationals of African, Eastern European, and former Soviet Union countries.¹⁹¹ In terms of African countries, Andowah A. Newton contends that the DV program "extends new immigration opportunities to Africans who have been disproportionately excluded from and underrepresented in the immigration system, and thereby slightly reduces the gross underrepresentation of Africans in the immigration system."¹⁹² Thus, in fiscal year 2017, 19,211 persons from Africa obtained LPR status

¹⁸⁹ H.R., *Diversity Visa Program*, 13.

¹⁹⁰ Department of State, *The Budget in Brief—Fiscal Year 2002* (Washington, DC: Department of State, 2002), 6, <https://2009-2017.state.gov/documents/organization/2155.pdf>.

¹⁹¹ H.R., *Diversity Visa Program*, 5; Newton, "Injecting Diversity into U.S. Immigration Policy."

¹⁹² Newton, "Injecting Diversity into U.S. Immigration Policy," 1068.

through the DV program.¹⁹³ Moreover, the DV program helped diversify the U.S. population by allowing many natives of Eastern Europe and the former Soviet Union to immigrate to the United States, who were not able to immigrate freely to the United States during the Cold War.¹⁹⁴ For instance, in fiscal year 2017, 4,721 persons from Eastern Europe and 12,805 from the former Soviet Union obtained LPR status through the DV program.¹⁹⁵ In sum, the DV program honors the U.S. tradition of accepting enterprising immigrants striving to better their lives, and who, in turn, enrich and diversify the United States culturally and economically.

D. CONCLUSION

Although the DV program presents certain national security and other concerns, the program should not be eliminated, but the concerns of critics should be addressed. Even if the program accepts applicants from countries considered state sponsors of terrorism, it does not accept a greater number of immigrants from those countries than other immigration programs. Although the program has accepted individuals who later engaged or conspired to engage in terrorist acts, these individuals were radicalized in the United States. Furthermore, the program adds significant value to U.S. society by diversifying its population with natives of countries who have not immigrated to the United States extensively. Nonetheless, the program could benefit from further improvements, and the United States needs to identify and implement ways to minimize the potential threats posed by the program and to reap more benefits from the program.

¹⁹³ Department of State, *Table VII Immigrant Number Use for Visa Issuances and Adjustments of Status in the Diversity Immigrant Category: Fiscal Years 2008–2017* (Washington, DC: Department of State, n.d.), 2, accessed September 2, 2019, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableVII.pdf>.

¹⁹⁴ H.R., *Diversity Visa Program*, 5.

¹⁹⁵ Department of State, *Table VII Immigrant Number Use for Visa Issuances*, 3–4.

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III. FAMILY-BASED IMMIGRATION

An ongoing debate has arisen about reforming the U.S. immigration system even at the highest levels of government. On September 17, 2017, President Donald Trump tweeted, “CHAIN MIGRATION cannot be part of any legislation on Immigration!”¹⁹⁶ The White House and DHS argue that the majority of immigrants enter the United States as LPRs based on their familial ties rather than the skills they bring to the U.S. economy. They go on to assert family-based immigration undermines national security. The question is how much of a threat to national security and economic security family-based immigration presents. This chapter discusses the U.S. family-based immigration program. First, it provides an overview of the legal framework for family-based immigration, including its history, current state, eligibility criteria, and vetting process. Second, it addresses national security and economic challenges facing the family-based immigrant program. Third, it presents counterarguments to criticisms and described challenges of the family-based program.

A. AN OVERVIEW OF THE LEGAL FRAMEWORK FOR FAMILY-BASED IMMIGRATION

The Immigration and Nationality Act of 1952 was the first law to institute family reunification.¹⁹⁷ Although the Act of 1952, also known as the McCarran-Walter Act, did not abolish the national origins quota, it created a system of preferences for family reunification.¹⁹⁸ The Act’s four-preference system prioritized employment-based immigrants with high education or exceptional abilities followed by family-based

¹⁹⁶ Donald J. Trump (@realDonaldTrump), “Chain migration cannot be allowed to be part of any legislation on immigration!,” Twitter, September 15, 2017, 6:00 a.m., <https://twitter.com/realDonaldTrump/status/908676979561570304>.

¹⁹⁷ Immigration and Nationality Act of 1952, Public Law 82–414 (1952), <https://www.hsdl.org/c/tl/immigration-nationality-act/>.

¹⁹⁸ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 15–16; “The Immigration and Nationality Act of 1952 (The McCarran-Walter Act),” Office of the Historian, accessed July 23, 2020, <https://history.state.gov/milestones/1945-1952/immigration-act>; Kandel, *U.S. Family-based Immigration Policy*, 2. The national origins quota system allowed entry based on an individual’s race and national origin, favoring immigrants from European countries.

immigrants.¹⁹⁹ In terms of family reunification, the system prioritized spouses and minor children over other relatives, as well as relatives of U.S. citizens over relatives of LPRs.²⁰⁰

The INA of 1965, also known as the Hart-Celler Act, abolished the national origins quota system.²⁰¹ Additionally, the INA of 1965 changed the aforementioned four-preference system to a seven-preference system for family and employment-based immigrants. In the seven-preference system, the priority shifted from employment-based immigrants to family reunification.²⁰² As such, the immediate relatives of U.S. citizens—spouses, minor children, and parents—were no longer subject to numerical quotas or restrictions.²⁰³ For relatives subject to numerical limitations, first preference was granted to unmarried adult children of U.S. citizens, and the second preference to spouses and unmarried children of LPRs.²⁰⁴ The fourth and fifth preferences were given to other relatives, married children of U.S. citizens and siblings of U.S. citizens over 21 years of age.²⁰⁵ The third and sixth preferences were reserved for employment-based immigrants.²⁰⁶ Moreover, by amending the national origins quota, the INA of 1965 restricted immigration from the Eastern Hemisphere, as a way of immigration control, to an annual limit of 20,000 immigrants per country, with an overall annual limit of 170,000 based on the aforementioned seven-preference categories.²⁰⁷ Similarly, effective July 1, 1968, the law limited immigration from the Western Hemisphere to 120,000 annually, without per-country ceilings or seven-preference categories.²⁰⁸

¹⁹⁹ Joyce Viallet, *A Brief History of U.S. Immigration Policy*, CRS Report No. 80-223 PEW (Washington, DC: Congressional Research Service, 1980), 21.

²⁰⁰ Viallet, 25.

²⁰¹ The Immigration and Nationality Act of 1965.

²⁰² Viallet, *A Brief History of U.S. Immigration Policy*, 25.

²⁰³ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 17; Kandel, *U.S. Family-based Immigration Policy*, 2–3.

²⁰⁴ Weissbrodt and Danielson, 17.

²⁰⁵ “Appendix A: Preference Systems: 1952 and 1965 Immigration Acts,” Wiley Online Library, 167–168, accessed November 7, 2020, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.2050-411X.1992.tb00648.x>; Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 17.

²⁰⁶ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 17.

²⁰⁷ Viallet, *A Brief History of U.S. Immigration Policy*, 25.

²⁰⁸ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 17.

The Immigration Act of 1990 raised the overall numerical limitation on immigration to 700,000 per year for three years, and subsequently, to 675,000 per year.²⁰⁹ As a result, the statutory limit of family-based immigration was raised from an initial annual limit of 290,000 to 480,000 per year for two years and then to 465,000 per year.²¹⁰ Although the Act of 1990 raised the annual cap on family-based immigration, ostensibly reinforcing the commitment of U.S. immigration policy to family unity, it did not significantly increase the total number of family-sponsored immigrants.²¹¹ The reason for this lack of significant increase is that immediate relatives of U.S. citizens, still not subject to caps, were now subtracted from the total allocation of family-sponsored immigrants.²¹² However, the Act of 1990 ensured admission for at least 226,000 other relatives of U.S. citizens and LPRs.²¹³ In sum, family-based immigration was initially introduced by the INA of 1952, prioritized by the INA of 1965, and further reinforced by the Immigration Act of 1990. The next section provides additional details on the current legal immigration limits of family-based immigration and preference categories.

1. The Current State of Family-Based Immigration

Family-based immigration is divided into two major categories.²¹⁴ The first category consists of immediate relatives of U.S. citizens, spouses, minor unmarried children, and parents of adult U.S. citizens.²¹⁵ This category is not subject to numerical limitations, and in fiscal year 2017, 516,508 immediate relatives of U.S. citizens were granted LPR status while in fiscal year 2018, 478,961 immediate relatives became LPRs.²¹⁶ The second category includes other relatives of U.S. citizens and LPRs, consisting of four

²⁰⁹ Weissbrodt and Danielson, 120.

²¹⁰ Weissbrodt and Danielson, 30.

²¹¹ Weissbrodt and Danielson, 30.

²¹² Weissbrodt and Danielson, 30.

²¹³ Weissbrodt and Danielson, 30.

²¹⁴ Poonia, “Note,” 159.

²¹⁵ Poonia.

²¹⁶ “Table 6. Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission: Fiscal Years 2016 to 2018,” Department of Homeland Security, December 19, 2019, <https://www.dhs.gov/immigration-statistics/yearbook/2018/table6>.

preference categories—unmarried children of U.S. citizens, spouses and minor children of LPRs, unmarried children of LPRs, and married children of U.S. citizens—numerically limited to 226,000 annually.²¹⁷ The breakdown of the four-preference categories, including the types of relatives and their respective allowed numbers per year, is displayed in Table 1.²¹⁸

Table 1. Numerically Limited Family Preference Categories.²¹⁹

Family Preference Categories	Family Members	Numbers
First Preference	Unmarried children of U.S. citizens <u>plus</u> unused visas from the Fourth Preference	23,400
Second Preference (A)	Spouses and minor children of LPRs	87,900
Second Preference (B)	Unmarried children of LPRs <u>plus</u> unused visas from the First Preference	26,300
Third Preference	Married children of U.S. citizens <u>plus</u> unused visas from the First and Second Preferences	23,400
Fourth Preference	Siblings of adult U.S. citizens <u>plus</u> unused visas from First, Second, and Third Preferences	65,000

In addition to the aforementioned numerical caps, the INA also sets an annual seven percent limit per country of the total family-based and employment-based preference

²¹⁷ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 122–123.

²¹⁸ Weissbrodt and Danielson, 123; “Immigration and Nationality Act,” U.S. Citizenship and Immigration Services, July 10, 2019, <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>; “Green Card for Family Preference Immigrants,” U.S. Citizenship and Immigration Services, June 16, 2020, <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-family-preference-immigrants>; Kandel, *U.S. Family-based Immigration Policy*, 4.

²¹⁹ Adapted from Weissbrodt and Danielson, 123; Kandel, 4.

visas.²²⁰ Immediate relatives of U.S. citizens are exempt from the seven percent cap.²²¹ Due to country limitations, the wait times for family-based visas can be extensive, especially for countries with many family-sponsored immigrants, such as India, China, Mexico, and the Philippines.²²²

2. Eligibility Criteria

Obtaining permanent residence based on a family relationship is a two-step process. First, a U.S. citizen or lawful permanent resident must petition on behalf of a prospective immigrant by filing Form I-130, the Petition for Alien Relative, with USCIS. Form I-130 is used for immediate relatives, as well as those in preference categories.²²³ It initiates the process of establishing the legitimacy of the claimed relationship.²²⁴ The filing of the petition or its approval does not grant benefits to a prospective immigrant, but “serves only to present for review the legal and factual validity of the claimed relationship.”²²⁵

Second, once the I-130 petition is approved, the prospective immigrant can file an application to obtain legal permanent residence, Form I-485, the Application to Register Permanent Residence or Adjust Status.²²⁶ For immediate relatives, the I-130 petition and I-485 application can be filed concurrently.²²⁷ Eligible relatives in the four-preference categories must wait for a visa number to become available, unless it is immediately available, before filing the I-485 application.²²⁸ When the number of petitions exceeds the annual visas available, a “visa queue” is created, which is “not a backlog of petitions to be

²²⁰ Julia Gelatt, “Explainer: How the U.S. Legal Immigration System Works,” Migration Policy Institute, 6, April 26, 2019, <https://www.migrationpolicy.org/content/explainer-how-us-legal-immigration-system-works>.

²²¹ Kandel, *U.S. Family-based Immigration Policy*, 5.

²²² Kandel, 6.

²²³ Laura L. Lichter, “The Nuts and Bolts of Family-Based Immigration (Part 1),” *Practical Lawyer; Philadelphia* 52, no. 6 (December 2006): 33–48; Kandel, *U.S. Family-based Immigration Policy*, 6.

²²⁴ Lichter, 37.

²²⁵ Lichter, 41.

²²⁶ Kandel, *U.S. Family-Based Immigration Policy*, 6.

²²⁷ Lichter, “The Nuts and Bolts of Family-Based Immigration (Part 1),” 37.

²²⁸ Kandel, *U.S. Family-based Immigration Policy*, 6; U.S. Citizenship and Immigration Services, “Visa Availability and Priority Dates.”

processed but, rather, the number of persons approved for visas that are not yet available due to the numerical limits enumerated in the INA.”²²⁹

The DOS is responsible for allocating visas.²³⁰ Visas are allocated based on a prospective immigrant’s preference category, country of chargeability—which is usually the country of birth—and priority date.²³¹ The priority date for family-based immigrants is the date the I-130 was properly filed, and it determines the prospective immigrant’s place in the visa queue.²³² Once the priority date becomes available or current, immigrants may file the I-485 application.²³³ The DOS publishes a Visa Bulletin on a monthly basis, where someone can determine whether a visa is available based on the family preference category, country of birth, and priority date.²³⁴

For immigrants residing in the United States legally, the two-step process is handled by the USCIS.²³⁵ For those immigrants who are overseas, the USCIS reviews and adjudicates Form I-130, while the DOS is responsible for adjudicating Form I-485.²³⁶ As mentioned previously, in both cases, if the I-130 form is approved, the DOS determines visa availability for the four-preference categories.²³⁷

The I-130 petition involves completing an application, which asks for the petitioner’s and beneficiary’s biographic information, address history, employment history, marital history, and other information.²³⁸ In addition, the form requires proof of identity for both the petitioner and beneficiary, as well as proof of the claimed

²²⁹ Kandel, 13.

²³⁰ U.S. Citizenship and Immigration Services, “Visa Availability and Priority Dates.”

²³¹ U.S. Citizenship and Immigration Services.

²³² U.S. Citizenship and Immigration Services.

²³³ U.S. Citizenship and Immigration Services.

²³⁴ U.S. Citizenship and Immigration Services.

²³⁵ Kandel, *U.S. Family-based Immigration Policy*, 6.

²³⁶ Kandel, 6.

²³⁷ Kandel, 6.

²³⁸ “I-130, Petition for Alien Relative,” U.S. Citizenship and Immigration Services, September 22, 2020, <https://www.uscis.gov/i-130>.

relationship.²³⁹ The required evidence of the relationship depends on the nature of the claimed relationship.²⁴⁰ For instance, spousal petitions require proof that any prior marriages have been terminated.²⁴¹

If the I-130 petition is approved, the petitioner's responsibilities do not end. Once family-sponsored immigrants apply for adjustment of status, they are required to submit an affidavit of support, signed by the petitioner or sponsor to ensure that they will not become public charges once in the United States.²⁴² By signing Form I-864, the Affidavit of Support, the petitioner agrees to support the immigrant financially for 10 years, or until the immigrant becomes a naturalized citizen.²⁴³ The petitioner or sponsor must reside in the United States and meet a minimum income level per Federal Poverty Guidelines.²⁴⁴ If the petitioner's income does not meet the Federal Poverty Guidelines, a proof of value of assets can be submitted to make up the difference.²⁴⁵ Additionally, if the petitioner's income is insufficient, it is necessary to find a co-sponsor with adequate income.²⁴⁶ Finally, in addition to the aforementioned requirements, a beneficiary has to be vetted to determine eligibility and admissibility, as discussed in the following section.

3. Vetting Process

The USCIS screens every immigrant and nonimmigrant benefit application to determine an applicant's eligibility or admissibility. Consequently, USCIS conducts background checks to check potential LPRs for national security and public safety

²³⁹ Lichter, "The Nuts and Bolts of Family-Based Immigration (Part 1)," 42.

²⁴⁰ Lichter, 42.

²⁴¹ Laura L. Lichter, "The Nuts and Bolts of Family-Based Immigration (Part 2)," *Practical Lawyer*; *Philadelphia* 53, no. 1 (February 2007): 39–51.

²⁴² Lichter, 49.

²⁴³ Lichter, 49.

²⁴⁴ "I-864 Affidavit of Support (FAQs)," U.S. Department of State—Bureau of Consular Affairs, accessed July 25, 2020, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition/i-864-affidavit-faqs.html#aos7>.

²⁴⁵ U.S. Department of State—Bureau of Consular Affairs.

²⁴⁶ Weissbrodt and Danielson, *Immigration Law and Procedure in a Nutshell*, 141–142; U.S. Department of State—Bureau of Consular Affairs.

concerns.²⁴⁷ The USCIS runs an alien's name in TECS, formerly known as the Treasury Enforcement Communication System, which includes information from the Terrorist Screening Center's (TSC) watch list of known or suspected terrorists (KSTs).²⁴⁸ Additionally, the USCIS conducts fingerprint checks, which are reviewed by the FBI to determine whether an applicant has a criminal record, which may lead to being ineligible for the LPR status.²⁴⁹ Per the USCIS's request, the FBI also conducts an applicant's name check against its databases to detect any national security or public safety investigations concerning the applicant.²⁵⁰ If any of the aforementioned checks present a potential national security concern, then the USCIS withholds adjudication until the concern is resolved with the relevant law enforcement or intelligence agency.²⁵¹

Moreover, I-130 petitions and I-485 applications suspected of fraud are referred to the USCIS Fraud Detection and National Security (FDNS) Directorate for an investigation.²⁵² FDNS officers are located in every USCIS service center, field office, and asylum office.²⁵³ At the completion of the investigation, FDNS officers return the results of the investigation to adjudicators.²⁵⁴ The results of the investigation are summarized in a statement of findings (SOF), as either fraud found, fraud not found, or inconclusive.²⁵⁵ The adjudicators consider the SOF when rendering a decision on the application.²⁵⁶

²⁴⁷ Government Accountability Office, *Immigration Benefits: Actions Needed to Address Vulnerabilities in Process for Granting Permanent Residency*, GAO-09-55 (Washington, DC: Government Accountability Office, 2008), 2, <https://www.gao.gov/products/GAO-09-55>.

²⁴⁸ Government Accountability Office, 2.

²⁴⁹ Government Accountability Office, 2.

²⁵⁰ Government Accountability Office, 2.

²⁵¹ Government Accountability Office, 15.

²⁵² Office of Inspector General, *U.S. Citizenship and Immigration Services' Tracking and Monitoring of Potentially Fraudulent Petitions and Applications for Family-Based Immigration Benefits* (Washington, DC: Department of Homeland Security, 2013), 2, https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-97_Jun13.pdf.

²⁵³ Office of Inspector General, 2.

²⁵⁴ Office of Inspector General, 3.

²⁵⁵ Office of Inspector General, 3.

²⁵⁶ Office of Inspector General, 3.

For the immigrants located overseas, DOS consular officers conduct interviews on approved I-130 petitions to determine the applicant's eligibility for legal permanent residency.²⁵⁷ The petitions suspected or confirmed to be fraudulent are returned to a USCIS service center, which adjudicated them, and subsequently, are referred to FDNS.²⁵⁸ Ultimately, the USCIS decides whether to reaffirm or revoke petitions suspected of fraud.²⁵⁹ If a petition is reaffirmed, the USCIS returns the petition to the DOS with an explanation.²⁶⁰ If a petition is revoked, then the DOS is no longer authorized to issue a visa.²⁶¹

In addition to conducting background checks, the USCIS must also determine that the applicant is not inadmissible on health-related grounds.²⁶² Thus, applicants, who are in the United States, are required to be medically examined by a USCIS-designated civil surgeon in the United States.²⁶³ The civil surgeon records the examination results on Form I-693, the Report of Medical Examination and Vaccination Record, which is reviewed by an adjudicator for proper completion, validity, and health-related admissibility.²⁶⁴

Moreover, the USCIS interviews applicants for adjustment of status. Through in-person interviews, the USCIS verifies information on the application, allows applicants to make changes to the application, and resolves incomplete answers or unanswered questions.²⁶⁵ The interview enables the USCIS to determine the applicant's eligibility.²⁶⁶ For family-based applications, the USCIS requires the I-130 petitioner to appear at the

²⁵⁷ Office of Inspector General, 3.

²⁵⁸ Office of Inspector General, 3.

²⁵⁹ Office of Inspector General, 3.

²⁶⁰ Office of Inspector General, 3.

²⁶¹ Office of Inspector General, 3.

²⁶² "Policy Manual: Chapter 6—Adjudicative Review," United States Citizenship and Immigration Services, April 16, 2020, <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-6>.

²⁶³ United States Citizenship and Immigration Services.

²⁶⁴ United States Citizenship and Immigration Services.

²⁶⁵ "Policy Manual: Chapter 5—Interview Guidelines," United States Citizenship and Immigration Services, April 15, 2019, <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-5>.

²⁶⁶ United States Citizenship and Immigration Services.

interview with the adjustment of status applicant.²⁶⁷ The USCIS waives interviews for certain adjustment of status applicants.²⁶⁸ For instance, the USCIS may waive interviews for parents of U.S. citizens or clearly ineligible applicants.²⁶⁹ All in all, applications are reviewed for fraud, and applicants are interviewed to determine their eligibility and undergo background checks for national security, public safety, and health-related concerns.

B. NATIONAL SECURITY AND ECONOMIC CHALLENGES

Critics characterize family-based immigration as “chain migration,” which is defined as “the process by which foreign nationals permanently resettle within the U.S. and subsequently bring over their foreign relatives, who in turn petition to bring over their relatives, until entire extended families are resettled within the country.”²⁷⁰ Ultimately, chain migration can lead to a considerably high number of immigrants in the United States having an extremely attenuated connection to the original immigrant.²⁷¹ The following example illustrates the concept:

Assume one foreign-born married couple, both naturalized, each with two siblings who are also married and each new nuclear family having three children. The foreign-born married couple may petition for the admission of their siblings. Each has a spouse and three children who come with their parents. Each spouse is a potential source for more immigration, and so it goes. It is possible that no less than 84 persons would become eligible for visas in a relatively short period of time.²⁷²

Critics contend that chain migration jeopardizes national security. According to the White House, it “undermines national security, by failing to establish merit-based criteria

²⁶⁷ United States Citizenship and Immigration Services.

²⁶⁸ United States Citizenship and Immigration Services.

²⁶⁹ United States Citizenship and Immigration Services.

²⁷⁰ “It’s Time to End Chain Migration,” White House, 1, December 15, 2017, <https://www.whitehouse.gov/articles/time-end-chain-migration/>.

²⁷¹ Department of Homeland Security, “We Need to End Unchecked Chain Migration.”

²⁷² U.S. Congress, *U.S. Immigration Policy and the National Interest: The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy with Supplemental Views by Commissioners* (Washington, DC: U.S. Congress, 1981), 335, <https://files.eric.ed.gov/fulltext/ED211612.pdf>.

for evaluating entrants into the United States...[such as] their likelihood of assimilation into our society.”²⁷³ Most importantly, chain migration allows terrorists to enter the United States based on their attenuated familial ties.²⁷⁴ The White House identifies eight immigrants who entered the United States through the family-based program and have committed or attempted to commit terrorist acts.²⁷⁵ One of the eight individuals is Akayed Ullah, a national of Bangladesh, who entered the United States with his parents in 2011, at the age of 21, as a child of a sibling of a U.S. citizen. In December 2017, Ullah detonated a bomb near the New York Port Authority Bus Terminal in New York City. Ullah was seriously injured in the blast, and at least one bystander was wounded with shrapnel.²⁷⁶ According to the police, during an interrogation, Ullah indicated that he had committed the act for ISIS.²⁷⁷

Critics also emphasize that chain migration negatively affects the U.S. economy because it does not promote economic growth. As such, family-based immigration brings individuals because of family ties rather than their ability to contribute to the U.S. economy. According to the DHS, family-based immigration causes legal low-skilled migration, and in turn, lowers wages and job opportunities for low-skilled U.S. workers, with especially negative effects on African-American and Hispanic workers.²⁷⁸ The reason for these lower wages and reduced job opportunities is competition between low-skilled family-based immigrants and low-skilled U.S. natives for the same jobs.

Moreover, low-skilled immigrants admitted through family-based immigration are less educated and have higher unemployment rates.²⁷⁹ Meanwhile, higher-skilled immigrants are more likely to be better educated, earn higher salaries, and pay higher taxes

²⁷³ White House, “It’s Time to End Chain Migration,” 1; White House, “National Security Threats.”

²⁷⁴ White House, “National Security Threats.”

²⁷⁵ White House.

²⁷⁶ Benjamin Weiser and Emily Palmer, “Akayed Ullah Guilty of ISIS-Inspired Bombing near Times Square,” *New York Times*, sec. New York, November 6, 2018, <https://www.nytimes.com/2018/11/06/nyregion/port-authority-bombing-verdict.html>.

²⁷⁷ Weiser and Palmer.

²⁷⁸ Department of Homeland Security, “We Need to End Unchecked Chain Migration.”

²⁷⁹ Kandel, *U.S. Family-based Immigration Policy*, 23.

than low-skilled immigrants.²⁸⁰ Therefore, higher-skilled immigrants are more likely to contribute to the country's economic growth by adding more to tax revenues.²⁸¹ Additionally, they are less likely to rely on government taxpayer-funded assistance than low-skilled immigrants, and detract from tax revenues.²⁸² For example, according to David C. Koelsch, "A computer programmer with an advanced degree earns five times what a cashier at Dunkin' Donuts earns, and is thus less likely to require government assistance to make ends meet. The computer programmer also pays nearly eight times in taxes what the cashier pays."²⁸³ In sum, critics characterize family-based immigration as chain migration, arguing it undermines national security by allowing terrorists into the country and diminishes economic growth by admitting low-skilled immigrants.

C. COUNTERARGUMENTS TO CRITICAL VIEWS OF FAMILY-BASED IMMIGRATION AND DISCUSSED NATIONAL SECURITY AND ECONOMIC CHALLENGES

Family-based immigration is no more susceptible to national security concerns than any other program. As discussed earlier, family-based immigration already employs extensive national security vetting measures. Out of literally millions of family-based immigrants admitted to the United States, the White House identified only eight who were accused or convicted of terrorist activities. According to the CATO Institute, "From 1975 through 2015, 54 foreign-born terrorists were LPRs—an average of 1.32 terrorists per year. Over the 41-year period, more than 35 million LPRs were allowed in, meaning that just 0.00016 percent of LPRs were actual terrorists. In other words, one terrorist entered for every 644,990 nonterrorist legal permanent residents."²⁸⁴ The figures of the CATO Institute include LPRs from all immigrant categories, not just family-based immigrants.²⁸⁵

²⁸⁰ Gans, Replogle, and Tichenor, *Debates on U.S. Immigration*, 388.

²⁸¹ Gans, Replogle, and Tichenor, 388.

²⁸² Gans, Replogle, and Tichenor, 388.

²⁸³ Gans, Replogle, and Tichenor, 388.

²⁸⁴ Alex Nowrasteh, "Terrorism and Immigration: A Risk Analysis," *Policy Analysis*, no. 798, 11, September 13, 2016, <https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis>.

²⁸⁵ Nowrasteh, 11.

Significantly, out of the eight individuals listed by the White House, two appear to have been radicalized *after* they were admitted to the United States. Two came to the United States as children—Zoobia Shahnaz and Mohamad Saeed Kodaimati—and became radicalized later.²⁸⁶ Shahnaz immigrated from Pakistan in 2000, at the age of 10, with her parents, and was admitted to the United States as a child of a U.S. citizen sibling.²⁸⁷ On November 26, 2018, Shahnaz, at the time a 27-year-old naturalized U.S. citizen, pleaded guilty to providing material support to a foreign terrorist organization, ISIS.²⁸⁸ In 2016, she volunteered with the Syrian American Medical Society and provided medical assistance to Syrian refugees in the Zataari Refugee Camp in Jordan, where ISIS was influential at the time.²⁸⁹ According to a letter by her attorneys, “This experience was the gateway factor that led to her decision to join ISIS.”²⁹⁰

Similarly, Kodaimati, a national of Syria, immigrated to the United States in 2001, when he was approximately 10 years old, as a family member of an LPR.²⁹¹ He became a naturalized citizen in 2008. It appears that Kodaimati was radicalized in or after 2012, when he traveled from the United States to Istanbul, Turkey and spent time in Syria and Turkey

²⁸⁶ White House, “National Security Threats.”

²⁸⁷ “What Are the Green Card Category Codes?,” U.S. Immigration, accessed July 25, 2020, <https://www.usimmigration.org/faq/what-are-the-green-card-category-codes>; Chase Jennings (@SpoxDHS), “Breaking: My statement on immigration backgrounds of recent terror-related suspects,” Twitter, December 27, 2017, 4:12 p.m., <https://twitter.com/SpoxDHS/status/944722331737485314>; Steve Zissou, *USA v. Zoobia Shahnaz*, 17 CR 690 (JS) *Defense Sentencing Letter* (Bayside, NY: Steve Zissou & Associates, 2020), 1, <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Zoobia%20Shahnaz%20Defense%20Sentencing%20Memo.pdf>.

²⁸⁸ “Long Island Woman Pleads Guilty to Providing Material Support to ISIS,” Department of Justice, November 26, 2018, <https://www.justice.gov/usao-edny/pr/long-island-woman-pleads-guilty-providing-material-support-isis>.

²⁸⁹ United States Attorney, Eastern District of New York, *United States v. Zoobia Shahnaz*, *Government Sentencing Letter* (Brooklyn, NY: Department of Justice, 2020), 4, <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Zoobia%20Shahnaz%20Govt%20Sentencing%20Letter.pdf>.

²⁹⁰ Zissou, *USA v. Zoobia Shahnaz*, 2.

²⁹¹ Department of Homeland Security, Department of Justice, *Executive Order 13780*, 4.

until his return to the United States in March 2015.²⁹² Kodaimaiti pleaded guilty in October 2015 for making false statements to FBI and DOS agents regarding his involvement in international terrorism.²⁹³ These individuals thus were radicalized after they were admitted as LPRs rather than before. In any event, the current vetting process would not have detected these two individuals as threats to national security, even if they were radicalized prior to entering the United States, because they entered as children at the age of 10, and immigration background checks are conducted on applicants over the age of 14.²⁹⁴

Three other individuals the White House lists as examples of terrorists became permanent legal residents in the United States through family-based immigration prior to the events of 9/11: Uzair Paracha, Mufid Elfghee, and Khaleel Ahmed.²⁹⁵ As explained in the previous chapter, the national security vetting of prospective immigrants prior to the events of 9/11, “when there was far less attention to the threat posed by jihadist terrorism,” was not as thorough as it is today.²⁹⁶ Paracha, a Pakistani national, was admitted to the United States in 1980, as a family member of an LPR, and in 2003, provided material support to al Qaeda.²⁹⁷ Paracha was admitted as an LPR prior to his first birthday and “shuttled between Karachi and New York.”²⁹⁸ Elfghee, a national of Yemen, was admitted to the United States in 1997, at the age of 13, as a family member of a naturalized U.S.

²⁹² “San Diego Man Arrested and Charged with Making False Statements in an International Terrorism Investigation,” Department of Justice—Office of Public Affairs, April 23, 2015, <https://www.justice.gov/opa/pr/san-diego-man-arrested-and-charged-making-false-statements-international-terrorism>; Morgan M. Minor, “(Un)Convinced To Kill” (master’s thesis, Naval Postgraduate School, 2018), 46–47, <https://calhoun.nps.edu/handle/10945/60436>.

²⁹³ Dana Littlefield, “Syrian Gets 8 Years for Lying to U.S. Officials about His Ties to Terrorism,” *Los Angeles Times*, sec. California, March 15, 2016, <https://www.latimes.com/local/california/la-me-0315-san-diego-terrorism-20160315-story.html>.

²⁹⁴ Donald Hawkins, *Privacy Impact Assessment for the Immigration Benefits Background Check Systems* (Washington, DC: Department of Homeland Security, 2010), 2–4.

²⁹⁵ White House, “National Security Threats.”

²⁹⁶ Sterman and Ford, “The Visa Lottery Is Not behind the Terrorist Threat,” 2.

²⁹⁷ Department of Homeland Security and Department of Justice, *Executive Order 13780*, 6.

²⁹⁸ David Rohde, “Pakistani Detainee Enjoyed Deep U.S. Roots (Published 2003),” *New York Times*, sec. World, 1, August 18, 2003, <https://www.nytimes.com/2003/08/18/world/pakistani-detainee-enjoyed-deep-us-roots.html>.

citizen.²⁹⁹ From December 2013 through May 2014, Elfghee was attempting to recruit two individuals to travel to Syria to fight on behalf of ISIS.³⁰⁰ Ahmed, a national of India, entered the United States in 1998 as a family member of a naturalized U.S. citizen.³⁰¹ He conspired to provide material support to terrorists, beginning in 2004 until his arrest in 2007.³⁰² In addition, to less stringent vetting prior to 9/11, Paracha and Elfghee were under the age of 14 when they were admitted as LPRs and would not have undergone background checks. Additionally, in March 2020, charges against Paracha were dropped, in exchange for his agreement to abandon his LPR status and voluntarily depart the United States.³⁰³ Moreover, according to federal prosecutors, Ahmed, who entered the United States at 17 years of age, radicalized while living in the United States.³⁰⁴

As mentioned earlier, Ullah also entered the United States through family-based immigration. Ullah appears to also have been radicalized in the United States. According to the DOJ:

Ullah’s radicalization began no later than approximately 2014. Ullah viewed pro-ISIS materials online, including a video instructing, in substance, that if supporters of ISIS were unable to travel overseas to join ISIS, they should carry out attacks in their homelands. He began researching how to build IEDs [improvised explosive devices] on the Internet approximately one year prior to the attack.³⁰⁵

Similarly, another individual, Mahmoud Amin Mohamed Elhassan, may have been radicalized in the United States. Elhassan, a Sudanese national, was admitted to the United

²⁹⁹ “Inside the Mufid Elfgeeh Investigation,” Federal Bureau of Investigation, accessed October 9, 2020, <https://www.fbi.gov/news/stories/inside-the-mufid-elfgeeh-investigation>; Department of Homeland Security and Department of Justice, “Executive Order 13780 Section 11 Report.”

³⁰⁰ Department of Homeland Security and Department of Justice, *Executive Order 13780*, 6.

³⁰¹ Department of Homeland Security and Department of Justice, 5.

³⁰² Department of Homeland Security and Department of Justice, 5.

³⁰³ Benjamin Weiser, “Once-Accused Al Qaeda Sympathizer Goes Home,” *New York Times*, sec. New York, March 16, 2020, <https://www.nytimes.com/2020/03/16/nyregion/uzair-paracha-al-qaeda.html>.

³⁰⁴ David J. Bier, “Extreme Vetting of Immigrants: Estimating Terrorism Vetting Failures,” *Cato Institute, Policy Analysis*, no. 838, April 17, 2018, <https://www.cato.org/publications/policy-analysis/extreme-vetting-immigrants-estimating-terrorism-vetting-failures#endnote-169>.

³⁰⁵ “Akayed Ullah Convicted for Detonation of a Bomb in New York City,” Department of Justice, 2, November 6, 2018, <https://www.justice.gov/opa/pr/akayed-ullah-convicted-detonation-bomb-new-york-city>.

States in 2012, as a family member of an LPR.³⁰⁶ He attempted to provide material support to ISIS by trying to join the terrorist organization and lied to the FBI.³⁰⁷ It is unclear when Elhassan became radicalized, but it is possible that his radicalization took place in the United States. According to his sentencing memorandum, “The defendant was radicalized towards violent jihad either before he arrived in the United States or shortly after arriving in the United States.”³⁰⁸ A vetting process would not have detected these individuals as threats to national security, because they appear to have been radicalized in the United States, rather than in their home countries.

One of the individuals listed by the White House, Ahmed Amin El-Mofty, does not seem to have been inspired by international terrorist groups. It is unclear how or when El-Mofty entered the United States. According to the White House, “an Egyptian national, entered the United States through a distant relative (chain migration) and became a United States citizen after arriving.”³⁰⁹ On December 22, 2017, El-Mofty opened fire on police officers in Harrisburg, Pennsylvania, and was killed in the process.³¹⁰ Although the White House categorized El-Mofty’s acts as terrorism, no evidence tied him to terrorist groups.³¹¹ El-Mofty’s family members indicated that he was depressed due to personal problems, including money issues and the lack of contact with his family.³¹² In sum, out of millions of family-based immigrants, the White House was able to identify eight individuals who

³⁰⁶ Department of Homeland Security and Department of Justice, *Executive Order 13780*, 3.

³⁰⁷ “Virginia Man Sentenced to 11 Years in Prison for Attempting to Provide Material Support to Isil,” Department of Justice, February 24, 2017.

³⁰⁸ Dana J. Boente and Dennis M. Fitzpatrick, *United States of America v. Mahmoud Amin Mohamed Elhassan: United States’ Memorandum in Aid of Sentencing* (Alexandria, VA: U.S. District Court for the Eastern District of Virginia, 2017), 5, https://www.investigativeproject.org/documents/case_docs/3247.pdf.

³⁰⁹ White House, “National Security Threats,” 3.

³¹⁰ Jeremy Roebuck, “Was Harrisburg Shooting Spree a Terror Attack?,” *Philadelphia Inquirer*, December 26, 2017, <https://www.inquirer.com/philly/news/pennsylvania/was-harrisburg-shooting-spree-terror-attack-investigation-20171226.html>.

³¹¹ Matt Miller, “Harrisburg Gunman Ahmed El-Mofty Had No Known Links to Terror Groups,” *Penn Live*, December 28, 2017, https://www.pennlive.com/news/2017/12/harrisburg_gunman_ahmed_el-mof.html.

³¹² Matt Miller, “Harrisburg Gunman Ahmed El-Mofty Was Depressed, Had Money, Family Issues before Shooting Spree,” *Penn Live*, January 5, 2019, https://www.pennlive.com/news/2017/12/harrisburg_gunman_ahmed_el-mof_1.html.

have committed terrorist acts, but the evidence suggests most, if not all, of these individuals were radicalized after they had been admitted into the United States as LPRs.

The proponents of family-based immigration decry the term chain migration and argue that the reality is far different from the negative narrative. In reality, family-based visas are available only to a limited number of close relatives, many of whom have to wait for years or decades to be reunited due to the visa queue.³¹³ The following illustrative example is used to debunk the myth of chain migration:

In 2007, an immigrant who arrived 6 years before and has now become a U.S. citizen decides to sponsor a sibling for immigration. With an 11-year wait (or 12 to 20 years for certain countries), that means 17 years would pass between the arrival of the first and second immigrant. If the second immigrant takes 6 years to become a citizen and then sponsors an unmarried adult child, it would take an additional 6 to 15 years for that immigrant to arrive...the time between the arrival of the first immigrant and the third immigrant would be between 29 and 47 years, depending on the country of origin.³¹⁴

Furthermore, according to the CATO Institute, many family-based immigrants are educated.³¹⁵ For instance, approximately half of family-based immigrants who arrived in 2015 were college educated.³¹⁶ In addition, “family-sponsored immigrants were 62 percent more likely than U.S.-born natives to have graduated college. At the same time, they are no more likely to have dropped out of high school than natives.”³¹⁷

Additionally, although in fiscal year 2018—the most recent year these statistics were available—family-based immigrants reported a 12 percent unemployment rate and only 6.36 percent of family-based immigrants reported holding managerial and professional occupations, family-based immigrants are more likely to invest in human

³¹³ American Immigration Lawyers Association, “AILA Policy Brief.”

³¹⁴ Role of Family-Based Immigration in the U.S. Immigration System, Public Law 110–26, § Committee on the Judiciary (2007), 38, <https://www.govinfo.gov/content/pkg/CHRG-110hhrg35242/pdf/CHRG-110hhrg35242.pdf>.

³¹⁵ David J. Bier, “Family & Diversity Immigrants Are Far Better Educated than U.S.-Born Americans,” *Cato Institute* (blog), January 25, 2018, <https://www.cato.org/blog/family-diversity-immigrants-are-far-better-educated-us-born-americans>.

³¹⁶ Bier.

³¹⁷ Bier.

capital, which then leads to a better economy.³¹⁸ Thus, family-based immigrants pursue academic and vocational training, which is evidenced by the fact that their initial earnings are low but their earnings growth is high.³¹⁹ The immigrants' investment into human capital does not only benefit them but also the U.S. economy.³²⁰ When the economic demand shifts requiring new skills, family-based immigrants will be more likely to pursue the new opportunities than high-skilled immigrants or natives.³²¹ Family-based immigrants are more adaptable to the changing skills needs of the U.S. economy, thus adding more flexibility to it.³²²

Along the same lines, family-based immigrants also play an important role in innovation. Family-based immigrants' lack of transferable skills and their willingness and ability to gain new skills may lead to new businesses or "new directions in existing businesses."³²³ Thus, "an entrepreneur in an area or time period with such immigrants will have a relative advantage in launching an innovation."³²⁴ Additionally, family-based immigrants are likely to become entrepreneurs themselves, and thus, contribute to the U.S. economic growth through job creation for U.S. workers.³²⁵

Furthermore, as the United States lacks dedicated immigrant integration services, family-based immigrants receive integration support from their relatives in the United States, in terms of housing, transportation, and other important services.³²⁶ U.S. family members and ethnic enclaves also assist family-based immigrants with finding employment opportunities or becoming entrepreneurs.³²⁷ Thus, U.S.-based relatives help

³¹⁸ Department of Homeland Security, "Table 9."

³¹⁹ Role of Family-Based Immigration in the U.S. Immigration System, 13.

³²⁰ Role of Family-Based Immigration in the U.S. Immigration System, 13.

³²¹ Role of Family-Based Immigration in the U.S. Immigration System, 13.

³²² Role of Family-Based Immigration in the U.S. Immigration System, 13.

³²³ Role of Family-Based Immigration in the U.S. Immigration System, 15.

³²⁴ Role of Family-Based Immigration in the U.S. Immigration System, 16.

³²⁵ American Immigration Lawyers Association, "AILA Policy Brief."

³²⁶ Gubernskaya and Dreby, "U.S. Immigration Policy and the Case for Family Unity," 424.

³²⁷ "The Advantages of Family-based Immigration," American Immigration Council, March 14, 2013, <https://www.americanimmigrationcouncil.org/research/advantages-family-based-immigration>.

family-based immigrants assimilate economically.³²⁸ Overall, family-based immigrants contribute to the economic growth through investing in human capital, innovation, and entrepreneurship, as well as aiding in immigrants' economic assimilation.

D. CONCLUSION

Critics argue family-based immigration poses national security and economic threats to the United States. Although the family-based immigration program has accepted individuals who later engaged in terrorism, most of these individuals were radicalized after being admitted to the United States and the threat to national security has been exaggerated. Moreover, critics of family-based immigration argue that family-based immigrants are low skilled and less educated, and thus, do not contribute significantly to the U.S. economic growth. However, the critics fail to recognize that family-based immigrants are more likely to invest in human capital, become entrepreneurs, and play an important role in innovation, which greatly adds to the country's economic growth. Nonetheless, family-based immigration could be improved, and the United States could identify additional ways to derive economic benefits from the program.

³²⁸ American Immigration Council.

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IV. CANADIAN AND AUSTRALIAN MERIT-BASED IMMIGRATION SYSTEMS

The United States could learn how a merit-based system succeeds or fails in practice by exploring and analyzing the Canadian and Australian immigration systems. Australia and Canada lend themselves well to the comparison for a variety of reasons. Like the United States, both countries are advanced industrialized democracies. As in the United States, immigration has been historically significant in Canada and Australia.³²⁹ Moreover, Australia and Canada were two of the first countries to adopt merit-based immigration systems.³³⁰ Additionally, over time, Australia changed its immigration system from primarily family-based to merit-based, which is what is being proposed by the RAISE Act when it comes to the U.S. immigration system.³³¹ This chapter provides an overview of Canadian and Australian immigration systems. First, it discusses the Canadian immigration system, including its points-based system, family-based immigration, the system's drawbacks and advantages, and national security vetting and concerns. Second, it addresses the Australian immigration system in the same manner.

A. CANADA

Immigration to Canada is facilitated by Immigration, Refugees, and Citizenship Canada (IRCC), and is primarily regulated by the Immigration and Refugee Protection Act of 2001 (IRPA).³³² In 1967, Canada introduced the world's first merit-based immigration system, which involved assigning points to skilled applicants based on various criteria.³³³ Canada implemented the new system to shift the selection focus away from national

³²⁹ Marshall, "Value Added Immigration."

³³⁰ Parsons, "An Overview of the U.S. Immigration System and Comparison with Merit-Based Immigration Systems," 472–473.

³³¹ Parsons, 473.

³³² "Immigration, Refugees and Citizenship Canada," Government of Canada, March 24, 2020, <https://www.canada.ca/en/immigration-refugees-citizenship.html>; Tariq Ahmad, "Points-Based Immigration Systems: Canada," Law Library of Congress, March 2013, <https://www.loc.gov/law/help/points-based-immigration/2013-canada.php>.

³³³ "What's the Point?," *The Economist*, July 7, 2016, <https://www.economist.com/international/2016/07/07/whats-the-point>.

origin.³³⁴ Since its inception, Canada's points-based system has changed in terms of how points are assigned, with the latest significant change being the introduction of the Express Entry system in 2015.³³⁵

As in the United States, Canada allocates permanent residence visas to three broad categories of immigrants: economic, family, and humanitarian.³³⁶ Family and humanitarian groups of immigrants are not assessed based on points, while specific subcategories of the economic immigrants are assigned points to determine their eligibility and admission.³³⁷ The three economic points-based immigration programs are the Federal Skilled Worker Program, Federal Skilled Trades Program, and Canadian Experience Class.³³⁸

1. Canadian Points-Based and Family-Based Immigration

The points-based process is managed by the Express Entry system, an online two-step process, which was introduced in 2015.³³⁹ First, potential immigrants submit an initial application wherein they express their interest in immigrating to Canada and complete an online profile, which includes personal details, passport or travel document information, language test results, education credentials, and if they have them, provincial nominations and pending job offers.³⁴⁰ Subsequently, their profiles are electronically screened to

³³⁴ Mireille Paquet, "Canada's Merit-Based Immigration System Is No 'Magic Bullet,'" *The Conversation*, accessed May 8, 2020, <http://theconversation.com/canadas-merit-based-immigration-system-is-no-magic-bullet-90923>.

³³⁵ Tariq Ahmad, "Points-Based and Family Immigration: Canada," Law Library of Congress, January 2020, <https://www.loc.gov/law/help/points-based-immigration/canada.php>.

³³⁶ "Understanding Canada's Immigration System," Government of Canada, Immigration, Refugees and Citizenship Canada, February 9, 2018, <https://www.canada.ca/en/immigration-refugees-citizenship/campaigns/irregular-border-crossings-asylum/understanding-the-system.html>.

³³⁷ Ahmad, "Points-Based and Family Immigration: Canada."

³³⁸ Ahmad.

³³⁹ "Express Entry Year-End Report 2018," Government of Canada, Immigration, Refugees and Citizenship Canada, July 12, 2019, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/express-entry-year-end-report-2018.html>.

³⁴⁰ "Submit an Express Entry Profile: Online Form," Government of Canada, Immigration and Citizenship, January 1, 2015, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/submit-profile.html>; "Documents for Express Entry," Government of Canada, Immigration and Citizenship, June 26, 2018, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/documents.html>.

determine if they are eligible for any of the aforementioned programs.³⁴¹ Second, the applications of qualified individuals are placed into a candidate pool and are assigned a Comprehensive Ranking System (CRS) score.³⁴²

The Federal Skilled Worker Program, however, which is a permanent immigration avenue for skilled workers with foreign work experience, has its own points-based system for eligibility determination.³⁴³ The points are assigned based on age, work experience, a valid job offer, language skills, education, and adaptability to Canada.³⁴⁴ Applicants to the Federal Skilled Worker Program need to obtain a minimum of 67 points out of 100, before being accepted into the Express Entry pool and assigned a CRS score.³⁴⁵ The maximum number of points for each qualification is displayed in Table 2.

Table 2. Federal Skilled Worker Program Points per Qualification.³⁴⁶

Qualifications	Federal Skilled Worker Program Points
Age	12
Language Skills	28
Work Experience	15
Arranged Employment in Canada	10
Education	25
Adaptability	10

³⁴¹ Government of Canada, Immigration, Refugees and Citizenship Canada, “Express Entry Year-End Report 2018.”

³⁴² Government of Canada, Immigration, Refugees and Citizenship Canada.

³⁴³ Ahmad, “Points-Based and Family Immigration: Canada.”

³⁴⁴ Ahmad.

³⁴⁵ “Eligibility to Apply as a Federal Skilled Worker (Express Entry),” Government of Canada, Immigration and Citizenship, accessed May 10, 2020, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/federal-skilled-workers.html#works>.

³⁴⁶ Adapted from “Six Selection Factors—Federal Skilled Worker Program (Express Entry),” Government of Canada, Immigration, Refugees and Citizenship, March 31, 2007, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/federal-skilled-workers/six-selection-factors-federal-skilled-workers.html>.

The maximum CRS score that an applicant can receive is 1,200, with 600 points allocated to human capital skills, such as age, education, official language proficiency, and work experience.³⁴⁷ The other 600 points are distributed among factors, such as having a job offer, a sibling who is a Canadian citizen or permanent resident, or post-secondary education in Canada.³⁴⁸ Subsequently, eligible applicants are issued Invitations to Apply (ITA) for visas through bi-weekly invitation rounds.³⁴⁹ During every round, the Canadian government “specifies the number of invitations issued, the rank required to be invited to apply, and the CRS cut-off score (the score of the lowest-ranked candidate invited) for permanent residence.”³⁵⁰

The aforementioned economic-based immigration programs, including the Federal Skilled Worker Program, allow candidates to include certain family members in the application.³⁵¹ Upon approval of the application, family members included in the application become permanent residents.³⁵² Specifically, as a principal applicant, the candidate can include dependents, such as a spouse or common law partner, dependent children under 22 years old, spouse’s or common-law partner’s dependent child, and a dependent child of a dependent child.³⁵³ The dependents must arrive with the principal applicants or after them but not before them.³⁵⁴ Additionally, many Canadian permanent residency programs, including the Federal Skilled Worker Program, require the principal applicant to demonstrate the ability to support his dependents financially.³⁵⁵ Parents, grandparents, siblings, uncles or aunts, nieces or nephews, and other relatives cannot be

³⁴⁷ Ahmad, “Points-Based and Family Immigration: Canada.”

³⁴⁸ Ahmad.

³⁴⁹ Government of Canada, Immigration, Refugees and Citizenship Canada, “Express Entry Year-End Report 2018.”

³⁵⁰ Ahmad, “Points-Based and Family Immigration: Canada.”

³⁵¹ Ahmad.

³⁵² Ahmad.

³⁵³ Ahmad; “Which Family Members Can Come with Me to Canada When I Immigrate?” Government of Canada, Immigration and Citizenship, November 7, 2012, <https://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=343&top=14>.

³⁵⁴ Government of Canada, Immigration and Citizenship.

³⁵⁵ Ahmad, “Points-Based and Family Immigration: Canada.”

included in the application.³⁵⁶ Nonetheless, once applicants immigrate to Canada, they may be able to sponsor the aforementioned relatives under the family sponsorship program.³⁵⁷

The IRCC sets annual targets and ranges for total immigration and immigration by category.³⁵⁸ Thus, in 2020, Canada projects to admit 341,000 immigrants, in total.³⁵⁹ The family reunification range is projected to be from 84,500 to 96,000, and the range for federal economic, provincial, and territorial nominees is projected to increase from 161,000 to 187,400.³⁶⁰ In sum, the Canadian economic-based immigration is a complex system that relies on points, administered through an online platform, Express Entry, to determine an applicant's eligibility, and it allows candidates to include their immediate family members in the application.

2. Drawbacks and Benefits of the Canadian Immigration System

The Canadian merit-based system has several drawbacks. For instance, skilled immigrants who enter Canada struggle to obtain the necessary accreditation to work in Canada.³⁶¹ Many skilled immigrants do not have job offers when they are granted permanent residence.³⁶² In the first half of 2017, 90 percent of Express Entry candidates who received an ITA did not have a job offer.³⁶³ They face a highly competitive labor market, where their foreign credentials are not readily accepted.³⁶⁴ In Canada, provincial governments issue medicine and law licenses, and each province has its own licensing

³⁵⁶ Ahmad.

³⁵⁷ Ahmad.

³⁵⁸ "2019 Annual Report to Parliament on Immigration," Government of Canada, Immigration, Refugees and Citizenship Canada, April 8, 2020, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2019.html>.

³⁵⁹ Government of Canada, Immigration, Refugees and Citizenship Canada.

³⁶⁰ Government of Canada, Immigration, Refugees and Citizenship Canada.

³⁶¹ Parsons, "An Overview of the U.S. Immigration System and Comparison with Merit-Based Immigration Systems," 490.

³⁶² Stephen Smith, Noah Turner, and Eman Katem, "No Job Offer? No Problem, New Express Entry Report Confirms," *CIC News*, January 4, 2018, <https://www.cicnews.com/2018/01/no-job-offer-no-problem-new-express-entry-report-confirms-0110038.html>.

³⁶³ Smith, Turner, and Katem.

³⁶⁴ Anwar, "Canadian Immigration Policy," 169–79.

requirements.³⁶⁵ Before being able to practice law, medicine, or other professions in a Canadian province, foreign-trained professionals may need to acquire additional training or pass examinations based on the determination and discretion of Canadian professional licensing organizations.³⁶⁶ Thus, skilled immigrants in Canada face underemployment.³⁶⁷ For instance, in Canada, 60 percent of male skilled immigrants have jobs below their educational level.³⁶⁸ Further, employers in Canada may not value education or experience that the skilled immigrants obtained overseas, which results in even more underemployment.³⁶⁹ In sum, many immigrants to Canada fail to integrate due to their inability to find suitable professional employment.³⁷⁰

Applicants are selected based on hard skills, such as education credentials and work experience, rather than soft skills, such as communication and leadership ability.³⁷¹ Hard skills and soft skills are not always interconnected.³⁷² As Daniel Hiebert noted, “The capacity to acquire knowledge is not necessarily the same as the ability to mobilize and transfer knowledge.”³⁷³ Points-based systems cannot necessarily account for soft skills, which employers want, in addition to hard skills.³⁷⁴ Employers are also likely looking for individuals who are “attuned to the cultural norms and expectations of local workplaces,” which cannot be measured by selection systems, such as Express Entry.³⁷⁵

³⁶⁵ Ahmad, “Points-Based Immigration Systems.”

³⁶⁶ Ahmad.

³⁶⁷ Ahmad.

³⁶⁸ Marcel Vander Wier, “Underemployment Challenges Persist for Immigrants,” *Canadian HR Reporter*, January 21, 2019, <https://www.hrreporter.com/focus-areas/recruitment-and-staffing/underemployment-challenges-persist-for-immigrants/283533>.

³⁶⁹ Ahmad, “Points-Based Immigration Systems.”

³⁷⁰ S., *Employment-based Permanent Immigration*.

³⁷¹ Massimiliano Tani, “Using a Point System for Selecting Immigrants,” *IZA World of Labor*, 2014, <https://doi.org/10.15185/izawol.24>.

³⁷² Tani.

³⁷³ Daniel Hiebert, *The Canadian Express Entry System for Selecting Economic Immigrants: Progress and Persistent Challenges* (Washington, DC: Migration Policy Institute, 2019), 10, <https://www.migrationpolicy.org/research/canadian-express-entry-system-selecting-economic-immigrants>.

³⁷⁴ Hiebert, 9–10.

³⁷⁵ Hiebert, 10.

Additionally, the Canadian points-based system presumes that the economy only desires highly skilled workers. However, Canada faces labor shortages in low-skilled and unskilled jobs.³⁷⁶ For instance, in some Canadian provinces, the labor shortages are particularly critical due to the aging workforce.³⁷⁷ Canada also has the Temporary Foreign Worker Program to recruit low-skilled workers to address market demands.³⁷⁸ However, employers contend that the program is “onerous and time-consuming” as “they must prove they have [first] offered the jobs to Canadians and there can be a considerable lag between the moment they need workers and when they actually arrive.”³⁷⁹ Thus, admitting immigrants just because of their high skills is problematic.³⁸⁰

Notwithstanding these negatives, the Canadian merit-based immigration system also has positive aspects. In terms of benefits, Canada re-evaluates its immigration system every five years.³⁸¹ Although these regular reviews of the Canadian immigration system may be costly, they are also beneficial. For instance, Canadian reforms in 2016 reduced the number of points potential immigrants can receive for having job offers, which led to less gender disparity and allowed some applicants to be selected who would not have otherwise been selected.³⁸² The transparency of a points-based system is also beneficial. Potential immigrants can review the requirements and determine whether they can attain them.³⁸³ The criteria are clear and objective and ensure “procedural certainty” for prospective immigrants.³⁸⁴

³⁷⁶ S., *Employment-based Permanent Immigration*.

³⁷⁷ Sara Schaefer Munoz, “Canada’s Immigration System Leaves Some Employers Wanting,” *Wall Street Journal*, March 27, 2018, Proquest.

³⁷⁸ Schaefer Munoz.

³⁷⁹ Schaefer Munoz.

³⁸⁰ S., *Employment-based Permanent Immigration*.

³⁸¹ Parsons, “An Overview of the U.S. Immigration System and Comparison with Merit-Based Immigration Systems,” 495.

³⁸² Parsons, 495.

³⁸³ Demetrios G. Papademetriou and Kate Hooper, *Competing Approaches to Selecting Economic Immigrants: Points-Based vs. Demand-Driven Systems* (Washington, DC: Migration Policy Institute, 2019), 8–9, <https://www.migrationpolicy.org/research/selecting-economic-immigrants-points-based-demand-driven-systems>.

³⁸⁴ Papademetriou and Hooper, 8.

Merit-based immigration systems attract “better quality immigration candidates” and lead to better economic outcomes.³⁸⁵ High-skilled immigrants are more likely “to push outward the frontier of knowledge,” pay higher taxes, and receive fewer public services.³⁸⁶ In Canada, “As of the 2016 Census, 4 in 10 immigrants aged 25 to 64 had a bachelor’s degree or higher. In comparison, just under one-quarter of the Canadian-born population aged 25 to 64 had a bachelor’s degree or higher...Recent immigrants were even more likely to have a master’s or doctorate degree, with 16.7% of them holding these graduate degrees in 2016.”³⁸⁷ Moreover, in 2017, the unemployment rate for immigrants, aged 25 to 54, in Canada went down to 6.4 percent, while the unemployment rate for Canadian-born individuals during the same year was five percent.³⁸⁸

Another benefit of the Canadian merit-based immigration system is immigrant integration services available to economic and family class immigrants. Planning for Canada, (PFC), formerly known as the Canadian Immigrant Integration Program (CIIP), helps new immigrants in terms of preparing to move to Canada, obtaining employment, and settling in to their new home environment.³⁸⁹ The PFC program consists of three steps.³⁹⁰ The first step, group orientation (GO), is a day-long session that familiarizes newcomers with the Canadian system of government, culture, employment, housing, education, and other topics.³⁹¹ The second step involves a 60- to 90-minute personalized session where a PFC facilitator assists newcomers with creating an action plan for

³⁸⁵ Tani, “Using a Point System for Selecting Immigrants.”

³⁸⁶ Priscilla Alvarez, “Is a ‘Merit-Based’ Immigration System a Good Idea?,” *The Atlantic*, March 11, 2017, <https://www.theatlantic.com/politics/archive/2017/03/trump-cotton-perdue-merit-based-immigration-system/518985/>.

³⁸⁷ “Education in Canada: Key Results from the 2016 Census,” Statistics Canada, 6, November 29, 2017, <https://www150.statcan.gc.ca/n1/en/daily-quotidien/171129/dq171129a-eng.pdf?st=H6mxlrB7>.

³⁸⁸ Lahouria Yssad and Andrew Fields, “The Canadian Immigrant Labour Market: Recent Trends from 2006 to 2017,” Statistics Canada, December 24, 2018, <https://www150.statcan.gc.ca/n1/pub/71-606-x/71-606-x2018001-eng.htm>.

³⁸⁹ “Planning for Canada,” Government of Canada, accessed October 4, 2020, <https://www.planningforcanada.ca/>.

³⁹⁰ Government of Canada.

³⁹¹ Government of Canada.

settlement and employment prior to their departure to Canada.³⁹² The third step consists of linking newcomers to advisors from Canadian organizations, who provide further assistance by answering various questions regarding settlement, including employment and professional licensing requirements.³⁹³ The advisors' role also includes providing career advice and employer referrals.³⁹⁴

In terms of public opinion on immigration, according to the IRCC, in 2019, Canadians were overall pro-immigration when it came to economic classes of immigrants rather than refugee or family classes.³⁹⁵ They viewed immigration in terms of costs and benefits and were concerned about the integration of new immigrants.³⁹⁶ However, according to some news reports, public opinion in Canada is hardening when it comes to immigration, and it is becoming a polarizing topic.³⁹⁷ Recent polls indicate that Canadians view illegal immigration as a significant problem, and a shift against immigrants, including refugees, has occurred.³⁹⁸ Overall, Canada's merit-based immigration system has certain detriments, such as underemployment and low-skilled labor shortages, but it also has advantages, including regular system re-evaluations, highly educated immigrants, and an immigrant integration program.

³⁹² Government of Canada.

³⁹³ Government of Canada.

³⁹⁴ Government of Canada.

³⁹⁵ "IRCC Minister Transition Binder 2019: IRCC—Public Opinion Research on Canadians' Attitudes towards Immigration," Government of Canada, Immigration, Refugees and Citizenship Canada, June 11, 2020, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/transition-binders/minister-2019/por.html>.

³⁹⁶ Government of Canada Immigration, Refugees and Citizenship.

³⁹⁷ Marc Montgomery, "Canadians' Attitudes Hardening against Immigrants, Refugees," Radio Canada International, July 3, 2019, <https://www.rcinet.ca/en/2019/07/03/canadians-attitudes-hardening-against-immigrants-refugees/>.

³⁹⁸ Montgomery.

3. National Security and the Canadian Immigration System

Canada employs immigration security vetting processes for public safety and national security concerns to screen individuals seeking to immigrate to Canada. The federal bodies, Canada Border Services Agency (CBSA), IRCC, and Canadian Security Intelligence Service (CSIS), are responsible for administering background checks on individuals 18 years of age or older.³⁹⁹ The individuals must be in compliance with national security requirements detailed in the Immigration and Refugee Protection Act.⁴⁰⁰ The IRCC adjudicates applications for immigration benefits, such as permanent residence and citizenship, while the CSIS and CBSA advise the IRCC on whether the applicants present security concerns.⁴⁰¹ The CBSA also works with foreign and Canadian law enforcement agencies, including the Royal Canadian Mounted Police (RCMP).⁴⁰² The Minister of Immigration, Refugees and Citizenship, previously Minister of Citizenship and Immigration, issues danger opinions against potential immigrants, who are believed to be a national security or public safety threat to Canada.⁴⁰³ Danger opinions allow the CSBA to remove individuals who present a danger to Canada.⁴⁰⁴

³⁹⁹ “Security Screening for Immigration and Citizenship Applications,” Government of Canada, Canadian Security Intelligence Service, May 15, 2018, <https://www.canada.ca/en/security-intelligence-service/services/security-screening-for-immigration-and-citizenship-applications.html>.

⁴⁰⁰ “2018 Public Report on the Terrorism Threat to Canada,” Public Safety Canada, December 21, 2018, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/pblc-rprt-trrrsm-thrt-cnd-2018/index-en.aspx#s35>.

⁴⁰¹ Government of Canada, Canadian Security Intelligence Service, “Security Screening for Immigration and Citizenship Applications.”

⁴⁰² “Security Screening,” Canada Border Services Agency, January 26, 2007, <https://www.cbsa-asfc.gc.ca/security-securite/screen-verific-eng.html>.

⁴⁰³ Canada Border Services Agency.

⁴⁰⁴ Canada Border Services Agency.

Despite its security vetting mechanisms, Canada has had a number of immigrants involved in terrorist or foreign fighter activities. Alex Wilner and Irfan Yar identified 95 Canadians “who have, or are suspected of having, radicalized, mobilized, and/or participated in Islamist terrorist activity between 2006 and 2017.”⁴⁰⁵ Out of those 95 individuals, 28 immigrated to Canada as minors.⁴⁰⁶ It can be assumed that those who immigrated as children and teenagers did so as family or humanitarian immigrants.

B. AUSTRALIA

Australia’s Immigration and Citizenship Program facilitates immigration to Australia under the auspices of the Department of Home Affairs, and is administered by the Migration Act of 1958 and Migration Regulations of 1994.⁴⁰⁷ Australia implemented its merit-based immigration system in 1979, and like Canada, Australia moved away from an immigration selection system based on an individual’s race.⁴⁰⁸

Permanent immigration to Australia consists of two main components, the Migration Program and the Humanitarian Program.⁴⁰⁹ The Migration Program, which involves merit-based immigration, is further divided into three streams: a Skilled program, a Family program, and a Special Eligibility program.⁴¹⁰ The points-based system applies to the Skilled program, which is divided into additional immigration streams and visa subclasses.⁴¹¹ The points-based visa subclasses of the Skilled program include the following:

⁴⁰⁵ Alex Wilner and Irfan Yar, “Canadian Terrorists by the Numbers: An Assessment of Canadians Joining and Supporting Terrorist Groups,” Analysis & Policy Observatory, April 9, 2019, <https://apo.org.au/node/232841>.

⁴⁰⁶ Wilner and Yar.

⁴⁰⁷ Kelly Buchanan, “Points-based and Family Immigration: Australia,” Law Library of Congress, January 2020, <https://www.loc.gov/law/help/points-based-immigration/australia.php>; Department of Home Affairs, *The Administration of the Immigration and Citizenship Program*, 5th ed. (Australian Government: Department of Home Affairs, 2020), <https://immi.homeaffairs.gov.au/programs-subsite/files/administration-immigration-program.pdf>.

⁴⁰⁸ Parsons, “An Overview of the U.S. Immigration System and Comparison with Merit-Based Immigration Systems,” 490.

⁴⁰⁹ Buchanan, “Points-based and Family Immigration: Australia.”

⁴¹⁰ Buchanan.

⁴¹¹ Buchanan.

- Business Innovation and Investment (Provisional) Visa (subclass 188);
- Skilled Independent Visa (subclass 189);
- Skilled Nominated Visa (subclass 190); and
- Skilled Work Regional (Provisional) Visa (subclass 491).⁴¹²

1. Australian Points-Based and Family-Based Immigration

Australia's points-based process is similar to Canada's. Instead of Canada's Express Entry, Australia has SkillSelect, a system where applicants can complete an expression of interest (EOI) online.⁴¹³ An EOI involves providing the following information: personal details, desired profession, education, employment experience, English language proficiency, and a skill assessment based on the desired occupation.⁴¹⁴ To be eligible to enter the EOI pool, an applicant must score 65 points.⁴¹⁵ The maximum number of points per qualification for Subclass 189, 190, and 491 is displayed in Table 3. The maximum number of points per qualification for Subclass 188 is displayed in Table 4.

⁴¹² Buchanan.

⁴¹³ Buchanan.

⁴¹⁴ "SkillSelect," Australian Visa Bureau, accessed May 10, 2020, <https://www.visabureau.com/australia/visas-and-immigration/skilled-migration/skillselect>.

⁴¹⁵ Buchanan, "Points-based and Family Immigration: Australia."

Table 3. Points per Qualification for Subclass 189, 190, and 491.⁴¹⁶

Qualifications	Maximum Points for Subclass 189, 190, and 491 Visas
Age	30
English Language Ability	20
Skilled Employment outside Australia	15
Skilled Employment in Australia	20
Combination of Skilled Employment outside and in Australia	20
Australian Professional Year	5
Education	20
Specialist Education	10
Australian Study	5
Credentialed Community Language	5
Study in Designated Regional Area	5
Designated Regional Area Nomination/Sponsorship	15
State or Territory Nomination	5
Partner Skills	10

⁴¹⁶ Adapted from “Points Table for Skilled Independent Visa (Subclass 189),” Australian Government, Department of Home Affairs, Immigration and Citizenship, accessed October 5, 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-independent-189/points-table>; “Points Table for Skilled Nominated Visa (Subclass 190),” Australian Government, Department of Home Affairs, Immigration and Citizenship, accessed October 5, 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-nominated-190/points-table>; “Points Table for Skilled Work Regional (Provisional) Visa (Subclass 491),” Australian Government, Department of Home Affairs, Immigration and Citizenship, accessed October 5, 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-work-regional-provisional-491/points-table>.

Table 4. Points per Qualification for Subclass 188.⁴¹⁷

Qualifications	Maximum Points for Subclass 188 Visa
Age	30
Language Skills	10
Work Experience	10
Business Experience—Business Innovation Stream Only	15
Investor Experience—Investor Stream Only	15
Financial Assets	35
Business Turnover	35
Business Innovation	15
Special Endorsement	10

The EOI applicants who choose the visa categories that require a state or territory nomination must pick a state or territory themselves or choose to be nominated by a state or territory.⁴¹⁸ Once a relevant state or territory government agency selects an applicant, using their own state or territory criteria, the applicant will be invited to apply for the relevant visa.⁴¹⁹ The Business Innovation and Investment Visa applicants also have to be nominated by a state or a territory prior to receiving an invitation to apply for the visa.⁴²⁰

Skilled Independent and Skilled Work Regional (Provisional) Visa applicants, on the other hand, receive automatic SkillSelect invitations to apply for a visa based on their EOI score.⁴²¹ The EOI applicants for these visas can apply with a score of 65 to enter the EOI pool, but that score is not enough to be invited to apply for a visa.⁴²² Each month

⁴¹⁷ Adapted from “Points Table for Business Innovation and Investment (Provisional) Visa (Subclass 188),” Australian Government, Department of Home Affairs, Immigration and Citizenship, accessed October 5, 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/business-innovation-and-investment-188/points-table>.

⁴¹⁸ Buchanan, “Points-based and Family Immigration: Australia.”

⁴¹⁹ Buchanan.

⁴²⁰ Buchanan.

⁴²¹ “Invitation Rounds,” Australian Government, Department of Home Affairs, Immigration and Citizenship, accessed May 15, 2020, <https://immi.homeaffairs.gov.au/visas/working-in-australia/skillselect/invitation-rounds>.

⁴²² Buchanan, “Points-based and Family Immigration: Australia.”

SkillSelect indicates the minimum point threshold required to get a visa invitation, which serves as an indicator for the future EOI applicants.⁴²³ For instance, the minimum points score for both visas in April 2020 was 95.⁴²⁴ After the applicants receive an invitation, they must apply within 60 days from the day of the invitation.⁴²⁵ In addition to eligibility requirements, such as English language requirements, visa applicants must also meet health and character requirements and must sign an Australian values statement.⁴²⁶

As in Canada, skilled program immigrants are permitted to include their family members in the application.⁴²⁷ Additionally, Australian citizens, permanent residents, or eligible New Zealand citizens can sponsor family-based immigrants.⁴²⁸ Based on various agreements, since the 1920s, New Zealanders and Australians have been able to migrate freely between the two countries.⁴²⁹ Since 1994, New Zealanders have been required to hold a temporary Special Category Visa (SCV), issued upon arrival, to visit, live, work, and study in Australia.⁴³⁰ Those New Zealanders who have obtained their SCV prior to February 26, 2001, may sponsor their family members for permanent residence without having permanent visas in Australia.⁴³¹ Other New Zealand SCV holders must obtain

⁴²³ Australian Government, Department of Home Affairs, Immigration and Citizenship, “Invitation Rounds.”

⁴²⁴ “SkillSelect Invitation Round—11 April 2020,” Australian Visa Bureau, accessed May 10, 2020, <https://www.visabureau.com/news/skillselect-invitation-round-11-april-2020>.

⁴²⁵ Buchanan, “Points-based and Family Immigration: Australia.”

⁴²⁶ Australian Government, Department of Home Affairs, Immigration and Citizenship, “Invitation Rounds.”

⁴²⁷ Buchanan, “Points-based and Family Immigration: Australia.”

⁴²⁸ Gareth Larsen, “Family Migration to Australia,” Parliamentary Library Research Paper Series, Parliament of Australia, December 23, 2013, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/FamilyMigration.

⁴²⁹ Harriet Spinks and Michael Klapdor, “New Zealanders in Australia: A Quick Guide,” Parliamentary Library Research Paper Series, Parliament of Australia, August 29, 2016, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/NZAust.

⁴³⁰ Spinks and Klapdor.

⁴³¹ Spinks and Klapdor.

permanent visas prior to sponsoring their family members for permanent residence.⁴³² Australian family-based immigrants fall into the following four main categories:

- partner—spouse, fiancé, same-sex partner, domestic partner;
- child—dependent child, stepchild, orphan relative, adopted child;
- parent; and
- other family—elderly dependent relative, remaining relative, and caregiver.⁴³³

Family-based immigrants must also meet health and character requirements.⁴³⁴ Those immigrants who are assessed to likely burden Australia's public benefits system may require declarations of support and deferred access to welfare benefits.⁴³⁵ In terms of the Parent category, parents qualify only if more children permanently reside in Australia rather than in other countries.⁴³⁶ Additionally, the Partner category sponsors are limited in terms of the number of applications they can file and the time periods between applications.⁴³⁷

Australia's Immigration and Citizenship Program sets annual limits for total immigration and immigration by category. Thus, for 2019–2020, Australia's limit is set at 160,000 in total.⁴³⁸ The Skill stream is capped at 108,862, the Family stream at 47,732, with an additional estimated 3,350 places for children not subject to a cap, and the Special Eligibility stream, which includes those in special circumstances, at 236.⁴³⁹ In sum, like

⁴³² Spinks and Klapdor.

⁴³³ Larsen, "Family Migration to Australia," 2.

⁴³⁴ Larsen, 2.

⁴³⁵ Larsen, 2.

⁴³⁶ Larsen, 2–3.

⁴³⁷ Larsen, 2.

⁴³⁸ "Migration Program Planning Levels," Australian Government, Department of Home Affairs, Immigration and Citizenship, December 5, 2019, <https://immi.homeaffairs.gov.au/what-we-do/migration-program-planning-levels>.

⁴³⁹ Australian Government, Department of Home Affairs, Immigration and Citizenship.

Canadian economic-based immigration, the Australian system relies on points and is equally complex. It is administered through an online platform, SkillSelect, and allows applicants to include their immediate family members in the application.

2. Drawbacks and Benefits of the Australian Immigration System

As with the Canadian merit-based system, the Australian system has similar drawbacks. In Australia, skilled immigrants are also often underemployed.⁴⁴⁰ According to the research study conducted by the Bankwest Curtin Economics Centre, “Only 60 per cent of migrants from a non-English-speaking background are working in well-matched jobs.”⁴⁴¹ These migrants are often underemployed because their international credentials are not recognized in Australia, and experience acquired in their home countries is not easily transferrable to the Australian context.⁴⁴² These immigrants also face discrimination and lack strong networks and local knowledge.⁴⁴³ The language barrier can further intensify the aforementioned reasons for underemployment.⁴⁴⁴

Like Canada, Australia is also in need of low-skilled labor, especially in nursing and care occupations, as its population ages.⁴⁴⁵ However, Australia’s merit-based system has limited immigration avenues for low-skilled workers, because the low-skilled sector has stayed mostly unregulated in Australia.⁴⁴⁶ Many low-skilled migrant workers are employed through de facto avenues.⁴⁴⁷ For instance, the Post-Study Graduate visa allows international students who have completed their studies to stay in Australia for up to four

⁴⁴⁰ Parsons, “An Overview of the U.S. Immigration System and Comparison with Merit-Based Immigration Systems,” 492–493.

⁴⁴¹ Michael Dockery et al., “Finding a Place to Call Home: Immigration in Australia,” Focus on the States Series, Bankwest Curtin Economics Centre, November 2019, <https://bcec.edu.au/publications/finding-a-place-to-call-home/>.

⁴⁴² Dockery et al.

⁴⁴³ Dockery et al.

⁴⁴⁴ Dockery et al.

⁴⁴⁵ Anna Boucher and Amy Davidson, *The Evolution of the Australian System for Selecting Economic Immigrants* (Washington, DC: Migration Policy Institute, 2019), 12, <https://www.migrationpolicy.org/research/evolution-australian-system-selecting-economic-immigrants>.

⁴⁴⁶ Boucher and Davidson, 12.

⁴⁴⁷ Boucher and Davidson, 12.

years and to work a limited number of hours per week.⁴⁴⁸ The holders of the Post-Study Graduate visas often work in low-skilled jobs in the hospitality or service industries.⁴⁴⁹ The holders of the Working Holiday Maker Visa have also worked in low-skilled tourism and agricultural jobs.⁴⁵⁰ The Working Holiday Maker Visa is for individuals under 30 to work and travel in Australia.⁴⁵¹ However, the holders of the Working Holiday Maker Visa are not required to work, and the purpose of this visa is cultural exchange.⁴⁵² The employment of low-skilled labor in Australia through de facto means leads to various forms of exploitation, such as an underpayment, verbal abuse, and ethnic discrimination.⁴⁵³

As the Canadian merit-based immigration system, the Australian system also has similar positive aspects. Like the Canadian system, the Australian immigration system has been adjusted multiple times over the years. In the last 10 years, several changes were made due to concerns regarding the overwhelming number of applications from former international students.⁴⁵⁴ The system had become more of an immigration pathway for international students, rather than the intended method for serving Australia's economic needs.⁴⁵⁵ The changes involved limiting the number of acceptable occupations in line with labor market needs, reducing points assigned for education and experience in Australia and increasing points for education and English language ability, and instituting the SkillSelect system.⁴⁵⁶

As in Canada, Australia attracts highly educated immigrants. According to the November 2019 Characteristics of Recent Migrants Survey (CoRMS), 69 percent of recent

⁴⁴⁸ Boucher and Davidson, 14.

⁴⁴⁹ Boucher and Davidson, 14.

⁴⁵⁰ Boucher and Davidson, 14.

⁴⁵¹ Boucher and Davidson, 13–14.

⁴⁵² Boucher and Davidson, 14.

⁴⁵³ Boucher and Davidson, 14–15.

⁴⁵⁴ Boucher and Davidson, 1.

⁴⁵⁵ Boucher and Davidson, 7.

⁴⁵⁶ Boucher and Davidson, 7–8.

immigrants to Australia held a postgraduate degree.⁴⁵⁷ In terms of skilled visa holders, 86 percent held a postgraduate degree prior to arrival in Australia.⁴⁵⁸ Furthermore, as of November 2019, unemployment rates for recent immigrants and temporary visa holders were 5.9 percent, as opposed to 4.7 percent for the Australian-born population.⁴⁵⁹ Permanent visa holders had an unemployment rate of 9.2 percent.⁴⁶⁰ Among skilled visa holders, 57 percent held two or more jobs since arrival, and 47 percent held professional jobs.⁴⁶¹

Similar to Canada, another benefit of the Australian system is immigrant integration services. Unlike in Canada, however, most services, such as on arrival and post arrival, are only available to immigrants in the humanitarian program.⁴⁶² Some services, such as English language assistance, are also available to family and skilled migrant streams.⁴⁶³ The Adult Migrant English Program (AMEP) offers up to 510 hours of English language tuition within the first five years of arriving in Australia or obtaining a visa.⁴⁶⁴ Moreover, Subclass 189, 190 and 491 visa holders are eligible for the Free Translating Service for two years since their visa grant or access to the service.⁴⁶⁵ Only up to 10 of certain documents, such as education and employment documents, are eligible to be translated.⁴⁶⁶

⁴⁵⁷ “Characteristics of Recent Migrants, November 2019,” Australian Bureau of Statistics, December 6, 2020, <https://www.abs.gov.au/statistics/people/people-and-communities/characteristics-recent-migrants/latest-release>.

⁴⁵⁸ Australian Bureau of Statistics.

⁴⁵⁹ Australian Bureau of Statistics.

⁴⁶⁰ Australian Bureau of Statistics.

⁴⁶¹ Australian Bureau of Statistics.

⁴⁶² Joint Standing Committee on Migration, *No One Teaches You to Become an Australian: Report of the Inquiry into Migrant Settlement Outcomes* (Canberra, ACT: Department of the Senate, 2017), 10, <https://nla.gov.au/nla.obj-2825341844>.

⁴⁶³ Joint Standing Committee on Migration, 10.

⁴⁶⁴ Adult Migrant English Program, *English Classes for Eligible Migrants and Humanitarian Entrants in Australia* (Australian Government: Department of Education and Training, n.d.), 1, accessed October 5, 2020, <https://ames.edu.au/wp-content/uploads/2016/09/AMEP-Factsheet-Program-Information.pdf>.

⁴⁶⁵ “About This Service,” Free Translating Service, Department of Social Services, accessed October 5, 2020, <https://translating.homeaffairs.gov.au/en/about-this-service/>.

⁴⁶⁶ Free Translating Service, Department of Social Services.

In terms of public opinion on immigration, different studies and polls present different results.⁴⁶⁷ For instance, in a recent poll, more than two-thirds of Australians were not in favor of population growth in their country.⁴⁶⁸ Other polls indicated that the majority of Australians view immigration as beneficial to the Australian economy.⁴⁶⁹ Overall, Australia's merit-based immigration system, like Canada's, has certain disadvantages, such as underemployment and de facto means of low-skilled labor employment, but it also has benefits, including system adjustments, highly educated immigrants, and some degree of immigrant integration services.

3. National Security and the Australian Immigration System

As was mentioned earlier, individuals attempting to receive permanent residence or citizenship in Australia must pass the character test requirements described in section 501 of the Migration Act of 1958.⁴⁷⁰ The individuals who may not pass the character test include those with a substantial criminal record, as well as those who have had an unfavorable security assessment issued by the Australian Security Intelligence Organization.⁴⁷¹ Individuals who do not pass the character test may have their visa refused or canceled by the Department of Home Affairs.⁴⁷² The decision regarding visa cancellation or refusal due to a failed character test may be issued by the Minister of Home

⁴⁶⁷ "Australian Attitudes to Immigration: A Love-Hate Relationship," *The New Daily*, March 15, 2019, <https://thenewdaily.com.au/sponsored/2019/03/15/australian-attitudes-immigration/>; Helen Davidson, "Almost Half of Australians Believe Immigration Should Be Reduced, Poll Finds," *The Guardian*, sec. World News, May 2, 2019, <https://www.theguardian.com/world/2019/may/02/almost-half-of-australians-believe-immigration-should-be-reduced-poll-finds>.

⁴⁶⁸ Damien Cave and Isabella Kwai, "Why Has Australia Fallen Out of Love with Immigration?," *New York Times*, sec. World, April 22, 2019, <https://www.nytimes.com/2019/04/22/world/australia/immigration.html>.

⁴⁶⁹ *The New Daily*, "Australian Attitudes to Immigration: A Love-Hate Relationship."

⁴⁷⁰ "Character Requirements for Visas," Australian Government, Department of Home Affairs, Immigration and Citizenship, last updated September 7, 2020, <https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/character>.

⁴⁷¹ Australian Government, Department of Home Affairs, Immigration and Citizenship.

⁴⁷² "The Character Test Explained," Australia—Administrative Appeals Tribunal, accessed October 5, 2020, <https://www.aat.gov.au/about-the-aat/learn-more/the-character-test-explained>.

Affairs, the Minister for Immigration Citizenship and Multicultural Affairs, or their delegates.⁴⁷³

Despite the character test requirements, like Canada, Australia has had a number of immigrants involved in terrorist or foreign fighter activities. Rodger Shanahan identified 183 Australians, who have either been charged with terrorism offences or joined radical Islamist terrorist organizations, from 2012 to 2020.⁴⁷⁴ Out of 183 whose places of birth were known, 95 were born in Australia, while 43 were born overseas and considered first generation Australians.⁴⁷⁵ According to Shanahan, Australian privacy laws restrict access to information regarding the type of visa immigrants used to enter Australia.⁴⁷⁶

C. CONCLUSION

The merit-based systems of Canada and Australia have been touted as examples the United States should follow when reforming its immigration system. Canadian and Australian immigration systems establish a potential immigrant's eligibility for permanent residence through the ability to score an essential number of points as prescribed by the respective country's merit-based immigration system. Canada and Australia have a two-step point scoring system. Canada's Express Entry system involves the submission of an initial application to determine if an applicant meets the minimum requirements to enter a pool of candidates. Subsequently, the candidates are assigned a score according to a Comprehensive Ranking System, and eligible applicants are invited to apply for a visa. Similarly, Australia's SkillSelect system requires that an applicant obtain a minimum score to enter a pool of candidates. Once in the pool, the candidates, depending on the visa type, may be required to reach another threshold to get a visa invitation. Both countries also

⁴⁷³ Australia—Administrative Appeals Tribunal.

⁴⁷⁴ Rodger Shanahan, "Typology of Terror—The Backgrounds of Australian Jihadis," Lowy Institute, November 21, 2019, <https://www.lowyinstitute.org/publications/typology-terror-background-australian-jihadis>.

⁴⁷⁵ Stephen Hutchings, "Typology of Terror," Lowy Institute, June 22, 2020, <https://interactives.lowyinstitute.org/features/typology-of-terror/backgrounds>.

⁴⁷⁶ Shanahan, "Typology of Terror."

allow for family-based immigration, and merit-based candidates may include certain family members in their applications.

Merit-based immigration systems of both countries have drawbacks, such as underemployment of highly skilled immigrants and a shortage or de facto means of employment of low-skilled laborers. On the other hand, Canadian and Australian systems present several beneficial elements. Merit-based systems of Canada and Australia are nimble and attract higher-skilled immigrants. Finally, despite both countries' testing or vetting their immigrants for public safety or national security concerns, they have a number of former immigrants who have engaged in terrorist acts or have been charged with terrorist offences.

V. ANALYSIS, FINDINGS, AND RECOMMENDATIONS

The previous chapters examined the U.S. diversity visa and family-based immigration programs, as well as Canadian and Australian merit-based immigration. The chapters also discussed these programs in light of their economic and national security impacts. This chapter provides a comparative analysis of the three case studies, and summarizes the findings of the aforementioned programs, in terms of national security and economic effects. This chapter also recommends a number of changes that the United States can implement in its immigration system, to address perceived shortcomings.

A. COMPARATIVE ANALYSIS

The immigration programs of three countries—the United States, Canada, and Australia—reveal common strengths in relation to national security. The United States’ DV and family-based immigration programs have extensive pre-approval vetting processes in place. Likewise, Canada and Australia vet immigrants for national security and public safety concerns prior to any grant. Despite these processes, all three countries still experience national security concerns, inasmuch as they have admitted individuals who later engaged or attempted to engage in terrorist acts. However, variances occur in terms of the numbers admitted by each country. For instance, according to the Macdonald-Laurier Institute, from 2006 to 2017, 28 Canadians who immigrated to Canada were directly involved in Islamist terrorist or foreign fighter activities.⁴⁷⁷ In Australia, according to the Lowy Institute, from 2012 to 2020, 43 foreign-born Australians were involved in Islamist terrorist or foreign fighter activities.⁴⁷⁸ The available numbers for Canada and Australia only included specifically Islamist terrorist-related activities. U.S. numbers vary depending on the report. According to the CATO institute, from 1975 to 2015, 54 foreign-born legal permanent residents were convicted of planning or committing a terrorist attack in the United States. However, according to the joint DOJ and DHS report, from 2001 to

⁴⁷⁷ Wilner and Yar, “Canadian Terrorists by the Numbers.”

⁴⁷⁸ Shanahan, “Typology of Terror.”

2016, 402 foreign-born individuals, including non-U.S. citizens and naturalized U.S. citizens, were convicted of terrorism-related charges in the U.S. federal courts.⁴⁷⁹

In comparison to Canada and Australia, the numbers in the United States appear higher. However, these numbers pale in comparison to the thousands of immigrants who have become U.S. legal permanent residents annually through the DV and family-based immigration programs. Moreover, the numbers in the joint DOJ and DHS report include individuals who committed offenses within the United States and abroad and were convicted on charges relating directly to international terrorism or on charges where an investigation had a link to international terrorism.⁴⁸⁰ Thus, the numbers from the DOJ and DHS report were derived using a broad definition, arguably inflating the volume, by including individuals whose investigations identified links of any type to international terrorism, even if the ultimate charges did not include any terrorism-related offenses.⁴⁸¹ In sum, while all three countries were unable to identify and preclude lawful entry to a small percentage of immigrants who engaged in terrorist acts, it is problematic to try to assess and rank the success or failure of each country's national security vetting efforts, as the definitions used in identifying purported terrorists are not similar.

The three countries also share strengths in regards to the economic impact of their immigration programs. For instance, all three countries appear to attract high percentages of educated immigrants. In 2016, 50 percent of the immigrants admitted to the United States through the DV program held a college degree or higher, and approximately one-half of family-based immigrants who arrived in 2014 were college educated.⁴⁸² Likewise, as of 2016, 40 percent of immigrants to Canada aged 25 to 64 had a bachelor's degree or higher.⁴⁸³ Similarly, as of 2019, 69 percent of recent immigrants to Australia held a

⁴⁷⁹ Nowrasteh, "Terrorism and Immigration"; Department of Homeland Security and Department of Justice, "Executive Order 13780 Section 11 Report."

⁴⁸⁰ Department of Homeland Security and Department of Justice.

⁴⁸¹ Department of Homeland Security and Department of Justice.

⁴⁸² Bier, "Family & Diversity Immigrants Are Far Better Educated than U.S.-Born Americans"; Gelatt, "The Diversity Visa Program Holds Lessons for Future Legal Immigration Reform."

⁴⁸³ Statistics Canada, "Education in Canada: Key Results from the 2016 Census."

postgraduate degree, including a bachelor's degree, an advanced diploma, or a certificate level qualification.⁴⁸⁴

Another strength among the three countries involves relatively low unemployment rates. In 2018, the unemployment rate for the U.S. DV immigrants was only 3.8 percent.⁴⁸⁵ The unemployment rate for immigrants in Canada, aged 25 to 54, in 2017, was at 6.4 percent, while the unemployment rate of permanent visa holders in Australia, in 2019, was 9.2 percent.⁴⁸⁶ However, the unemployment rate for the U.S. family-based immigrants diverged from the other programs and was concerning, as in fiscal year 2018, family-based immigrants reported a 12 percent unemployment rate.

The Canadian and Australian immigration systems have additional strengths in that they have regular system re-evaluations—that result in adjustments to their immigration programs—and immigrant integration services, which the U.S. immigration system lacks. Conversely, the U.S. immigration system has its own unique strengths. For one, the DV program accepts immigrants who enrich and diversify the United States culturally, who otherwise would have no avenue for immigration to the United States. Also, the U.S. family-based immigrants enrich the U.S. economically, through investing in human capital, innovation, and entrepreneurship, as well as aid in immigrants' economic integration.

When it comes to weaknesses, critics contend the DV program attracts low-skilled individuals, and creates financial burdens. Similarly, critics argue that U.S. family-based immigration diminishes the growth of the U.S. economy by admitting low-skilled immigrants. The Canadian and Australian immigration systems appear to have the opposite shortcomings. Both the Canadian and Australian merit-based systems lead to the underemployment of highly skilled immigrants. Additionally, the Canadian merit-based system creates low-skilled labor shortages, while the Australian system promulgates de-facto means of low-skilled labor employment.

⁴⁸⁴ Australian Bureau of Statistics, "Characteristics of Recent Migrants, November 2019."

⁴⁸⁵ Department of Homeland Security, "Table 9. Persons Obtaining Lawful Permanent Resident Status by Broad Class of Admission and Selected Demographic Characteristics."

⁴⁸⁶ Australian Bureau of Statistics, "Characteristics of Recent Migrants, November 2019"; Yssad and Fields, "The Canadian Immigrant Labour Market."

Overall, although the education rate for DV and family-based immigrants in the United States is at 50 percent and does not greatly differ from the rates in Australia and Canada, improvements can still be made. Moreover, while the unemployment rate of DV immigrants is lower than that of immigrants in Canada and Australia, the unemployment rate of U.S. family-based immigrants is higher than that of immigrants in Canada and Australia and needs to be addressed. While the United States can implement recommendations based on lessons learned from the Canadian and Australian immigration policies, it is important to acknowledge the barriers to the implementation of a merit-based system in the United States, as addressed in the next section.

B. FINDINGS: BARRIERS TO A MERIT-BASED IMMIGRATION SYSTEM IN THE UNITED STATES

In line with the comparative analysis, this thesis finds that several barriers block the implementation of merit-based systems in the United States. Merit-based systems require constant adjustments in points determination and administration, due to fluctuating labor market needs. Canada and Australia have institutionalized responsive systems that can make regular policy adjustments to their points-based systems.⁴⁸⁷ The immigration authorities in both countries have considerable discretion to adjust immigration to labor market conditions.⁴⁸⁸ Both countries have parliamentary systems of government that allow for such flexibility.⁴⁸⁹ The United States, on the other hand, has no such similar fluidity and would need to pass new regulations through the Senate and Congress, as the Executive branch does not have a similar discretion or leeway to adjust immigration policies.⁴⁹⁰ Immigration visa caps are set by statute and cannot be modified by the Executive branch without the Legislative branch's approval.⁴⁹¹

⁴⁸⁷ Karas, "Can a 'Merit-Based' Immigration System"; Marshall, "Value Added Immigration."

⁴⁸⁸ Marshall; Karas.

⁴⁸⁹ Marshall.

⁴⁹⁰ Karas, "Can a 'Merit-Based' Immigration System."

⁴⁹¹ Karas.

Additionally, the population of the United States is much greater than those of Canada and Australia; over nine times that of Canada and 14 times that of Australia.⁴⁹² Consequently, the management of immigration is more challenging.⁴⁹³ Furthermore, Canada and Australia are not faced with the same issues facing the United States in terms of immigration, such as a large undocumented population.⁴⁹⁴ The United States shares a border with Mexico, an underdeveloped country, and “Mexicans alone represent 6 million of the 11 million unauthorized immigrants.”⁴⁹⁵ This majority percentage of a large volume of undocumented immigrants in the United States demonstrates the unique challenges faced at present by the United States in maintaining a well-functioning legal immigration system, while at the same time, contending with unlawful immigration through its porous southern border. Canada, though also having a lengthy and porous southern border, has the United States, a wealthy country, as its southern neighbor. Australia is surrounded by water, and is, thus, much harder to reach than the United States.⁴⁹⁶ In sum, the U.S. form of government and geographical location present barriers in terms of implementing a merit-based immigration system. Nevertheless, the current U.S. immigration system would benefit from improvements.

C. RECOMMENDATIONS

Based on the assessment of the U.S. DV and family-based immigration programs and merit-based systems in Canada and Australia, this thesis recommends that the United States implement the following changes to its immigration system to improve the DV and family-based immigration programs and address the primary concerns of critics of both programs.

⁴⁹² “Country Comparison: Population—The World Factbook,” Central Intelligence Agency, accessed May 21, 2020, <https://www.cia.gov/library/publications/the-world-factbook/fields/335rank.html>.

⁴⁹³ Marshall, “Value Added Immigration.”

⁴⁹⁴ Marshall; Karas, “Can a ‘Merit-Based’ Immigration System.”

⁴⁹⁵ Marc R. Rosenblum and Ariel G. Ruiz Soto, “An Analysis of Unauthorized Immigrants in the United States by Country and Region of Birth,” August 17, 2015, <https://www.migrationpolicy.org/research/analysis-unauthorized-immigrants-united-states-country-and-region-birth>; Marshall, “Value Added Immigration.”

⁴⁹⁶ Marshall.

- Raise minimum educational and experiential requirements for the DV program

To qualify for the DV program, an applicant must have a high school diploma or equivalent, or two years in a position that requires two years of training or experience within the last five years of the DV application.⁴⁹⁷ Although 50 percent of the DV applicants have more than a high school diploma, some critics still argue that DV immigrants do not add as much value to the United States, due to their lack of advanced skills.⁴⁹⁸ To address this concern, the eligibility requirements for the DV program should be raised to attract more highly skilled immigrants. The United States need not rank DV program applicants based on points, but it could require a college degree, two years of work experience in managerial, professional, or technical fields, and English language ability for 25,000 of the 50,000 DV applicants.

To implement this recommendation, Section 203(c) of the INA, which stipulates federal requirements for DV applicants, would have to be amended through an Act of Congress. If the INA were amended, the United States would have to develop an English proficiency test and administer it. Another option is to contract an organization that already has such tests, and can deliver them. To cover the costs of such testing, the United States could require the applicants to pay the testing fees. Additionally, the DOS, the agency that manages the DV program, would need to develop new standard operating procedures and train staff in adjudicating DV applications based on the new eligibility requirements.

- Introduce points-based human capital criteria into family-based immigration

Under the current U.S. family-based immigration system, spouses, unmarried minor children, unmarried and married adult children, parents, and siblings of a U.S. citizen or LPR may immigrate to the United States.⁴⁹⁹ Potential immigrants are required to

⁴⁹⁷ U.S. Department of State, “Instructions for the 2020 Diversity Immigrant Visa Program (DV-2020).”

⁴⁹⁸ Gelatt, “The Diversity Visa Program Holds Lessons for Future Legal Immigration Reform.”

⁴⁹⁹ Kandel, *U.S. Family-based Immigration Policy*, 3–4.

demonstrate a bona fide relationship with a U.S. citizen or an LPR, but they are not required to show any human capital factors.⁵⁰⁰ The United States could develop a points-based system, like the one in Canada or Australia, but apply it to family-based immigrants, such as siblings and married and unmarried adult children. Immediate family members, such as minor children, spouses, and parents of U.S. citizens and LPRs, would be excluded from a points-based system. The points would be assigned, based on age, level of education, official language proficiency, or work experience. The use of human capital factors in the context of family-based immigration would allow the United States to attract immigrants who would add to U.S. economic prosperity.

To implement this recommendation, Section 203(a) of the INA, which stipulates allocation of visas for family-sponsored immigrants, would need to be amended through an act of Congress. Just as with DV eligibility requirements, federal law also stipulates family-based immigration requirements. The language proficiency testing and costs could be addressed in the same way as outlined previously in the DV program recommendation. Additionally, the United States would have to create an Express Entry or SkillSelect system to manage a points-based system for the family immigration program. The DOS and USCIS, two agencies responsible for administering family-based immigration, would need to develop new standard operating procedures and train their staff in how to adjudicate immigration applications based on the new eligibility requirements.

- Institute a five-year review of the U.S. immigration system

Although the United States does not have a points-based system like Canada and Australia, it still should evaluate its policies on a regular basis to make certain that its immigration system is meeting U.S. economic and national security needs. Thus, like Canada, the United States could have its immigration system re-evaluated and adjusted every five years. The re-evaluation of the system would fall on government agencies, such as the USCIS and DOS. Once the system is re-evaluated, the recommendations for changes could be provided to Congress for approval. As with the aforementioned recommendations,

⁵⁰⁰ Kandel, 6.

this recommendation would require immigration reform through amendments to the INA or a new Act of Congress. In addition, it would require substantial funding to conduct evaluations every five years.

- Investigate national security vetting immigrant programs using the model of Canada and Australia

This thesis recommends that the U.S. government, specifically the USCIS and DOS, investigate the Canadian and Australian national security vetting strategies, which are unavailable through open-source research. Based on the investigations, the United States may consider adopting applicable aspects of the best vetting practices of Canada or Australia, or both. The investigations will require U.S. funding and the cooperation of the Canadian and Australian governments.

- Implement additional measures to reduce identity fraud in the DV program

The DOS should establish better working relationships with local governments when it comes to detecting immigration fraud. These types of relationships allow for better screening of identity documents, and for detecting fraud. The limitation to this recommendation is corruption among foreign government officials.⁵⁰¹ At some consular posts, DV applicants have purchased authentic documents with false information from their countries' corrupt government officials.⁵⁰² Thus, it might be difficult to establish working relationships with corrupt and self-interested government officials.

- Reduce financial burdens associated with the DV program

DV processing fees are collected only from the DV winners.⁵⁰³ As stated previously, the U.S. government had to pay \$840,000 program costs in fiscal year 2002 for costs not covered by the collected fees.⁵⁰⁴ Some of the costs arose from the fraud concerns

⁵⁰¹ Ford, *Border Security*, 20–21.

⁵⁰² Ford, 20–21.

⁵⁰³ U.S. Department of State, “Instructions for the 2020 Diversity Immigrant Visa Program (DV-2020).”

⁵⁰⁴ Department of State and Broadcasting Board of Governors Office, *Diversity Visa Program*, 2.

presented by the program.⁵⁰⁵ Some embassies and consulates lack adequate personnel or resources to investigate fraud concerns thoroughly.⁵⁰⁶ Many costs of processing diversity visas can be covered if the government were to charge even a nominal fee, such as \$10 for every DV application. The additional revenue generated by these fees can lead to more extensive national security and fraud screenings. For instance, more DOS fraud managers can be stationed overseas to conduct investigations and review documents. Section 636 of Public Law 104-208 allows the government to collect a fee for a DV visa and sets it at a level where the DOS recovers costs associated with processing these visas.⁵⁰⁷ However, additional advisory legislation may be needed to extend the fee collection to all program applicants. Moreover, in March 2005, the DOS was able to raise the processing fee for DV winners from \$100 to \$375 to cover all program costs.⁵⁰⁸ Nonetheless, exploring a practical way to collect a fee from all DV applicants can benefit the DV program even further.

D. CONCLUSION

Although the DV and family-based programs present certain national security and economic concerns, the DV program should not be eliminated and family-based immigration should not be substantially reduced. Both programs add significant value to U.S. society by diversifying its population and enriching the United States economically. Nonetheless, the U.S. DV and family-based immigration programs could benefit from further improvements. The United States needs to identify and implement ways to minimize the potential national security and economic challenges posed by the programs. The United States could also find ways to reap more benefits from both programs. The improvements to the DV and family-based immigration in terms of national security and economic concerns are worthy of further study.

⁵⁰⁵ Ford, *Border Security*, 30.

⁵⁰⁶ Ford, 6, 30.

⁵⁰⁷ Omnibus Consolidated Appropriations Act, 1997, Public Law 104-208, 750, 1996, 704, <https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>.

⁵⁰⁸ H.R., *Diversity Visa Program*, 13.

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