

Visa “Recapture”

There are NO unused visas to recapture! They’re long gone!

Some in Congress and the cheap-labor lobby are pushing a dramatic increase in the number of permanent, employment-based visas. The scheme proposes the “recapture” of “unused” employment-based visas from as far back as 1991. Advocates claim these visas would be added to the current numerical cap of 140,000 employment-based visas that are available each year. The State Department estimates that the visa “recapture” plan would add some 550,000 additional employment-based visas. These visas would remain available until they are all used. This proposal misleads by omitting facts.

There is no pool of “unused” visas that have accumulated over the years.

- Current law (8 U.S.C. 1151(c)(1)(A)(iii)) clearly states that any employment-based visas not used in one year are allocated to the family-sponsored categories the following year. That means there are no “unused” visas from past years to “recapture.” Advocates ignore this provision of law.
- Current law (8 U.S.C. 1151(d)(1)(B)) similarly states that any family-sponsored visas not used in one year are allocated to the employment-based categories the following year, which explains why the cap on employment-based visas—set by law at 140,000—has risen above 140,000 every year between 1999 and 2007. In fact, employment-based admissions have exceeded 155,000 in six of the last seven years, and hit an annual high of 246,878 in FY 2005.
- **Fact:** Current law ensures that all visas are used by transferring them between the two major categories of legal, permanent visas: family-based and employment-based.
- **Fact:** The only way to “recapture” 550,000 “unused” employment-based visas is to “recapture” them from the family-based category to which they were reallocated.