



Introduction to Immigration



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THE AGENCIES

Department of Homeland Security

- Cabinet department of the United States federal government
- Primary responsibilities of protecting the U.S. from terrorist attacks and responding to natural disasters
- On March 1, 2003 absorbed the Immigration and Naturalization Service
- It divided the enforcement and services functions into two new agencies.
- It also absorbed the border enforcement functions of the INS

USCIS

- A component of U.S. Department of Homeland Security
- Performs administrative functions formerly carried out by legacy INS, which was part of the Department of Justice
- Priorities are to promote national security, eliminate immigration case backlogs, and improve customer service
- Administration of immigration services and benefits

ICE

- Federal law enforcement agency under U.S. Department of Homeland Security
- ICE is charged with investigation and enforcement of over 400 statutes within the U.S.
- Enforcement and Removal Operations
- Deal with cyber crimes, child exploitation, Operation Shield (street gangs), terrorism

Executive Office for Immigration Review

- An office of the U.S. Department of Justice
- Responsible for adjudicating immigration cases in the U.S.
- Oversees through the Office of the Chief Immigration Judge
- The Board of Immigration Appeals is part of EOIR
- Chief function is to conduct removal proceedings

Department of State

- U.S. federal executive department responsible for the international relations of the U.S.
- Protects and Assists U.S. citizens living abroad
- Maintains Embassies and Consulates around the world
- Maintains the National Visa Center, the administrative center for United States visas

Sources of Law

INA

- The Immigration and Nationality Act, created in 1952
- Prior to INA, a variety of statutes governed immigration law but were not organized into one location
- The McCarran-Walter bill of 1952, Public Law No. 82-414, collected and codified many existing provisions and reorganized the structure of immigration law
- The “Act” is divided into titles, chapters and sections
- It is contained in the United States Code

U.S. Code

- Collection of all the laws of the United States
- Arranged into fifty subject titles by alphabetic order
- Title 8 deals with “Aliens and Nationality”
- The INA sections also have a U.S. Code citation
- The INA section is more commonly used

Code of Federal Regulations

- Title 8, Code of Federal Regulations deals with Aliens and Nationality
- General provisions of laws enacted by Congress are interpreted and implemented by regulations used by various agencies.
- The regulations apply the law to daily situations.
- First published in the Federal Register, then the Code

9th Circuit Cases

- U.S. Federal Court with appellate jurisdiction over California
- Headquartered in San Francisco
- Petitions for Review from BIA
- Mediation with OIL

AAO/BALCA

- The Administrative Appeals Office “AAO” reviews USCIS decisions
- File on Form I-290B
- File with office that made original decision
- Usually given 30 days to file or 33 if decision is mailed
- A brief may be filed
- BALCA is the Board of Alien Labor Certification Appeals

VISAS

- Categories run down the alphabet
- Basically fall into Immigrant/Nonimmigrant classifications
- Apply for some visas directly at Posts
- Some visas require a petition to be filed
- Consular Processing
- Applying within the U.S.

INADMISSIBILITY

- Found in INA §212
- List of grounds
- Can request a waiver for certain grounds of inadmissibility through a waiver made on Form I-601
- Cannot waive a false claim of U.S citizenship made after September 30, 1996.

REMOVABILITY

- Present in violation of law
- Violated conditions of nonimmigrant status
- Criminal grounds

FAMILY-BASED IMMIGRATION

Consular Processing

- An immigrant petition is filed stand-alone at USCIS
- After approval it is transferred to the NVC
- NVC preprocesses the application for immigrant visas for U.S. embassies and consulates abroad
- The NVC processes payment
- The NVC then preprocesses the Affidavit of Support, immigrant visa application, and civil documents.
- The file is transferred to the U.S. embassy or consulate.
- The consular officer interviews the applicant to determine eligibility.
- If the visa is granted, the applicant will receive the visa in his or her passport and use that to enter the U.S. as an immigrant.
- The permanent resident card arrives in the mail
- Options for visa denial

Adjustment of Status

- Process by which eligible individuals already in the U.S. can get permanent resident status without having to return to their home country to complete visa processing
- Can file the application for adjustment of status concurrently with an immigrant visa petition
- A visa number must be available
- Must be eligible to apply
- Appear at an administrative hearing
- If granted, the permanent resident card is mailed to the applicant.
- If it is denied, the decision cannot be appealed
- The underlying petition denial can be appealed
- Application can be refiled if there has been a change of circumstances
- Application can be renewed in removal proceedings

Conditional Residence

- A conditional permanent resident receives a green card valid for two years
- In order to remain a permanent resident, the CR must file a joint petition to remove the conditions on residence during the 90-day window before the card expires
- The CR and spouse must show continued bona fides of the marriage
- If the CR and spouse are divorcing or divorced, must file a waiver based on good faith marriage
- Other waivers available for battered spouses and children, extreme hardship

Fiancé(e) Visas

- The fiancé(e) K-1 nonimmigrant visa is for a foreign citizen fiancée of a U.S. citizen
- The visa permits the fiancé(e) to travel to the U.S. and marry his or her USC fiancée within 90 days of arrival
- The applicant must also apply for adjustment of status
- Must show that the petitioner and beneficiary are legally free to marry and have met within the two years preceding the filing of the petition, with limited exceptions
- Multiple entry visa
- Can bring derivatives
- Once approved, it is forwarded to the NVC for consular processing.
- After the fiancée enters and the couple marries, they must apply for adjustment of status
- The K-1 fiancé(e) must adjust through the U.S. citizen petitioner

Waivers

- May apply for a waiver of inadmissibility if you are consular processing, applying for adjustment of status, or a fiancée visa
- Apply to waive inadmissibility based on certain crimes, fraud or misrepresentation, health issues, or three and 10-year bars
- Apply on Form I-601
- Requires a showing of extreme hardship to USC or LPR qualifying relative

Preference Categories

- Visa classes
- Prioritize who gets a visa
- Priority given to immediate relatives of U.S. citizens – exempt from preference categories
- Then more attenuated relatives of U.S. citizens
- Then relatives of lawful permanent relatives
- Classes for priority workers over unskilled workers
- Visa bulletin
- Certain oversubscribed countries have visa backlogs

Child Status Protection Act

- The CSPA amended the INA by changing who qualifies as a child for immigration purposes.
- Certain beneficiaries can retain classification as a child, even if he or she has reached the age of 21.
- Will allow a child to remain an immediate relative or immigrate through an earlier priority date.
- Prior to this, children “aged out” and were ineligible for visas.
- CSPA can protect “child” status for family-based immigrants, employment-based immigrants, and some humanitarian program immigrants, such as asylees and VAWA applicants.
- If the petition is filed by a U.S. citizen parent for a child, the beneficiary’s age freezes on the date of filing.
- If the petition was filed by an LPR parent and the parent naturalizes before the beneficiary turns 21, the beneficiary’s age freezes on the date the petitioner naturalized.
- Children in preference categories must follow a formula and avail of the visa availability within one year.

Adopted Children

- Intercountry adoption
- The Hague Convention
- Established standards and safeguards to protect children.
- A prospective adoptive parent (PAP) must determine if they want to adopt a child from a Hague Convention Country.
- If so, must follow the procedure strictly.
- Must first contact an adoption service provider (ASP) and do a home study.
- File an application for advance processing of an orphan petition
- Will be matched with a child and given the social and medical history
- File an application for determination of suitability to adopt a child from a convention country.
- Immigrant visa process the child.

Orphans

- The adoption process for non-Hague countries is through an orphan petition.
- Determine that the child is an orphan
- Legally adopt in the foreign country
- Obtain two years of physical and legal custody.
- Petition as you would a minor child

Step-Parents

- Must have married before the child turned 18.
- Depending on what they are applying for, must show a bona fide relationship to the spouse (or ex-spouse) or to the child.

BUSINESS-BASED IMMIGRANT VISAS

Aliens with Extraordinary Ability

- EB-1
- An alien who has an extraordinary ability in the sciences, arts, education, business, or athletics
- Demonstrated by sustained national or international acclaim
- Recognized in the field through extensive documentation
- Must meet three out of 10 criteria or one-time achievement, such as a Pulitzer, Oscar, or Olympic medal
- No offer of employment is required.

Outstanding Researchers and Professionals

- EB-1
- Must demonstrate international recognition for outstanding achievements in a particular academic field.
- Must have at least three years experience
- Must be entering the U.S. to pursue tenure or tenure track teaching
- Must submit documentation of at least two of the 10 criteria and an offer of employment.

Multinational Manager or Executive

- Must have been employed outside the U.S. in the three years preceding the petition for at least one year by a firm or corporation.
- Must be seeking to enter the U.S. to continue service to that firm.
- Employment outside the U.S. must have been in a managerial or executive capacity and with the same employer.
- The petitioning employer must be a U.S. employer

Professional Talent

- P-Visa
- Alien athletes, artists and entertainers
- Allows for derivatives
- Must be internationally recognized

International Executives and Managers

- EB-2
- Advanced degree
- Exceptional ability
- National Interest Waiver
- Must meet criteria (lesser than for EB-1)
- EB-3
- Skilled Workers
- Professionals
- Unskilled Workers

THE LABOR CERTIFICATION

Overview

- A permanent labor certification is issued by the Department of Labor (DOL)
- Allows an employer to hire a foreign worker permanently in the U.S.
- Employer can submit an immigration petition to USCIS.
- The employer must obtain a certified application from the DOL's Employment and Training Administration (ETA).
- The DOL must certify to the USCIS that there are not sufficient U.S. workers available in the area of intended employment
- The employment of the alien will not adversely affect the wages and working conditions of similarly employed workers

PERM

- Program Electronic Review Management
- Established in March 2005
- Intended to reduce labor certification times to under 60 days

The I-140

- Immigrant Petition for Alien Worker
- It is the second step in the employment-based green card process
- Once the PERM Labor Certificate is approved, the employer files the I-140 Petition
- It is filed with the approved PERM, proof of qualification, and proof of continued employment.

Adjustment of Status

- If a visa number is available, the applicant can concurrently file a Form I-485 to apply for permanent residence.
- The I-485 shows that the alien is eligible for residence
- Can apply for derivatives
- Can apply for work and travel authorization
- Usually there is no interview unless there is an issue such as a shoplifting conviction or a DUI.

Investors and Employment Creation

- **EB-5 visa** provides a method of obtaining a green card for foreign nationals who invest money in the U.S.
- Must invest at least \$500,000 and create at least 10 jobs.
- Must invest in certain qualified investments or in a regional center with high unemployment rates
- The investment must be at risk
- If granted, residence is conditional and must apply to remove the conditions in two years.

Investors and Employment Creation

- **E-1 and E-2 visas** are for nationals of a country with which the U.S. maintains a treaty of commerce and navigation who is coming to the U.S. to carry on substantial trade, including trade in services or technology, principally between the U.S. and the treaty country, or to develop and direct the operations of an enterprise in which the national has invested, or is in the process of investing a substantial amount of capital.
- E-1 treaty trader visa entering the U.S. to carry on substantial trade.
- E-2 treaty investor visa allows an individual to enter the U.S. based on investment.

TEMPORARY & NONIMMIGRANT VISAS

H-1B

- Allows U.S. employers to temporarily employ foreign workers in specialty occupations.
- The foreign worker must possess a bachelor's degree or equivalent and state licensure, if required.
- Authorization is limited to employment by the sponsoring employer.
- 65,000 visas may be issued per year under this category.
- Chilean and Singaporean nationals are allowed an additional number of visas
- Up to 20,000 foreign nationals holding a master's or higher degree from U.S. universities may be exempt from the cap.
- Given in three-year increments up to a total of six years.
- After that, must remain outside of the U.S. for one year before reapplying.
- Extensions: I-40 submitted and I-140 approved.
- Dependents come in in H-4 status.
- Allows for dual intent

L-1

- Also generally valid for three years.
- Available to employees of an international company with offices in both a home country and the U.S., or who intend to open a new office in the U.S. while maintaining offices abroad.
- L-1A category is for executives and managers.
- Valid for up to seven years.
- L-1B is for workers with specialized knowledge.
- Valid for up to five years.
- After that, must stay out for one year and work for the affiliate of the U.S. company.
- Blanket L-1 visas are available to employers who hire large numbers of intracompany transferees each year.
- Allows for dual intent.
- Dependents are in L-2 status.

B-1/2

- Visa for temporary visitors for business or pleasure
- B-1 is for a temporary visitor for business
- B-2 is for a temporary visitor for pleasure
- If not specific enough, may be issued a B-1/B-2.
- Preconceived intent doctrine.

J-1/F-1

- **J-1** is for an exchange visitor.
- Includes au pairs, physicians and professors and research scholars.
- Subject to the skills list.
- Two year home residence requirement or waiver required.
- **F-1** is for students
- Usually assisted by ISOs at the educational institution.
- An I-20 is issued
- Must prove that you have the funds to study and a home abroad to return to.
- Can get work authorization if you are in extreme need.
- Usually get it while in Optional Practical Training (OPT) status.

E-2

- Allows an individual to enter and work inside of the U.S. based on an investment he or she will be controlling while in the US, usually a business.
- The visa must be renewed every other year, but it can go indefinitely.
- There must be a treaty in place between the U.S. and his or her home country.
- For new start ups, the investment must be large enough to start and operate the business.
- The investment must be at risk.
- There is no set amount.
- It cannot be a marginal business.
- Derivatives may receive E-2 status. Children age out at 21.
- Apply at embassy or consulate abroad.

HUMANITARIAN RELIEF

VAWA

- The Violence Against Women Act was signed into law by Bill Clinton in 1994 and reauthorized by Congress in 2000.
- Allows victims of domestic violence the opportunity to “self-petition” or independently seek legal immigration status in the U.S.
- Must be spouse of U.S. citizen or lawful permanent resident
- Must have lived together in the U.S.
- Must have been battered by or subjected to extreme cruelty by spouse, parent or child
- Must be a person of good moral character
- Waivers are available
- VAWA cancellation of removal is available

U/T Visas

- The **U visa** was created by the Victims of Trafficking and Violence Prevention Act, enacted in October 2000.
- Available to noncitizens who 1) have suffered substantial physical or mental abuse resulting from a wide range of criminal activity, and 2) have been helpful, are being helpful or are likely to be helpful with the investigation or prosecution of the crime.
- Provides eligible immigrants with authorized stay in the United States and employment authorization and eventual lawful permanent residence.
- The **T visa** allows certain victims of human trafficking and immediate family members to remain and work temporarily in the U.S. if they agree to assist law enforcement in testifying the perpetrators.

Humanitarian Reinstatement

- Allows for a visa petition to be reinstated if a petitioner dies.
- Immigrant visa petitions are automatically revoked if a petitioner dies and the beneficiary has not yet become a permanent resident.
- Allows for the substitution of sponsor for the Affidavit of Support.
- President Obama passed a law in October 2009 cancelling the automatic revocation of petitions upon the death of petitioner if certain requirements are met.
- If an applicant is not eligible, have to request humanitarian reinstatement and provide a substitute sponsor.

FY2010 DHS Appropriations Act

- Signed into law by President Obama on October 28, 2009.
- Allows eligible widows or widowers of U.S. citizens to qualify for permanent resident status regardless of how long the couple was married.
- The law amended the INA by removing the previous two-year marriage requirement.
- Minor unmarried children of Immediate relatives qualify.
- Spouse can be residing abroad.
- Spouse can not have remarried.
- Must still meet eligibility requirements.

Deferred Action

- Prosecutorial discretion not to pursue removal from the U.S. of a particular foreigner for a specific period.
- Not a permanent remedy.
- Does not confer any immigration status.

Humanitarian Parole

- A mechanism used sparingly to bring someone who is otherwise inadmissible into the U.S. for a temporary period of time due to a compelling emergency.
- USCIS may grant parole temporarily to anyone applying for admission based on humanitarian reasons.
- For a period of time that corresponds with the length of the emergency or humanitarian situation.
- Parolees must depart the U.S. before the expiration of parole.
- May submit a request for reparole.

Special Immigrant Juvenile Status

- A federal law that allows undocumented children in obtaining legal permanent residency.
- To qualify, a juvenile court in the U.S. must have declared the child a court dependent.
- The court must have found the child eligible for long-term foster care.
- Must not be in the child's best interest to be returned to the home country.
- The child must proceed to long-term foster care, adoption, or guardianship.
- File on Form I-360.

POLITICAL ASYLUM

Asylee/Refugee

- An alien in the U.S. or at a port of entry who is unwilling or unable to return to his or her country of nationality or seek protection of that country because of a well-founded fear of persecution.
- Persecution must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion.
- Asylees are eligible to adjust status to lawful permanent resident after one year of continuous presence in the U.S.
- Asylees are within the U.S.
- Refugees usually apply at a port of entry and apply through the U.N.
- There must usually be a special humanitarian concern to the United States.

Process

- Apply affirmatively within one year of entry to the U.S.
- Apply defensively in removal proceedings
- File on Form I-589 with supporting documents
- Interviewed at an Asylum Office
- Must pick up interview results
- If granted, can apply for adjustment of status after one year.
- No denial – referred to Immigration Court and placed in removal proceedings.
- Must renew case before an immigration judge.
- If denied, can appeal to the BIA and then do Ninth Circuit Petition for Review.
- If granted, spouses and children can gain derivative status.

Eligibility

- Must have been persecuted or have a well-founded fear of persecution
- Based on a “nexus”
- Apply within one year of arrival to U.S.
- Must not have committed any serious non-political crimes.
- Can apply for work authorization after 150 days.

Withholding of Removal

- Withholding is a form of relief similar to asylum.
- Right to remain in U.S. and work legally.
- Cannot apply for permanent residence.
- If the person granted withholding travels out of the U.S., will not be permitted to return here.
- The standard for withholding is higher than for asylum – “more likely than not.”
- No one year filing deadline
- Usually filed at the same time as asylum.
- May allow for some criminal convictions.

Convention Against Torture ("C.A.T.")

- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Forbids return of people to their home country if there is reason to believe they will be tortured.
- Usually used when someone is ineligible for asylum or withholding, e.g., someone convicted of a "particularly serious crime."
- Can remain in the U.S. and work legally.
- Cannot apply for permanent residence.
- Must prove that it is more likely than not that one would be subjected to torture if forced to return to the native country.
- Torture must be perpetrated by the government or the government must turn a "blind eye."

RELIEF FROM REMOVAL

Detention

- Arrest
- Jail and booking
- First appearance at arraignment/filing of charges
- Conviction
- Release
- ICE Detainer and Criminal Bond
- ICE custody
- Notice to Appear
- ICE bond
- Detention facilities

Other ways Immigrants End up in Removal Proceedings

- Benefits applications denied
- Upon entry to U.S.
- Also anonymous tips
- Work/employment raids
- ICE pursuing those with prior removal orders
- ICE pursuing those with expired status

The Removal Hearing

- Master Calendar Hearing
- Individual Hearing
- Beware of *in absentia* orders

Voluntary Departure

- The departure of an alien from the U.S. without an order of removal
- Concedes removability but does not have a bar to seeking admission at a port-of-entry at any time
- Failure to depart within the time granted results in a fine and a ten-year bar to several forms of relief from deportation

Cancellation of Removal

- A form of immigration relief available to individuals who have been placed in removal proceedings.
- Recipients granted cancellation of removal are eligible for permanent residence.
- Must show you have continuously resided in the U.S. for 10 years;
- Have been a person of good moral character;
- Not subject to criminal bars;
- Establish exceptional and extremely unusual hardship to the alien's USC or LPR spouse, parent, or child.
- LPR cancellation of removal is available for LPRs with criminal convictions (except for aggravated felonies).

Applications submitted in Proceedings

- Cancellation of Removal
- Political Asylum
- Adjustment of status
- Removal of Conditional Residence
- VAWA cancellation
- 212(c) waiver of deportation
- Miscellaneous – Temporary Protected Status

CITIZENSHIP AND NATURALIZATION

Bases for Citizenship

- *Jus Soli*
- *Jus Sanguini*
- Acquired citizenship
- Derivative citizenship
- A person who does not qualify under either of *jus soli* or *jus sanguini* may seek U.S. citizenship through the process of naturalization.

Requirements for Naturalization

- Entry, residence and physical presence
- Age
- Literacy and education
- Good Moral Character
- Attachment to Constitutional Principles
- Oath of Allegiance to the United States

Application for Naturalization

- Filed on Form N-400
 - with proof of your lawful permanent residence, a filing fee, passport photos, and any necessary supporting documents
- Biometrics
- Preliminary Naturalization Interview
- Swearing-in Ceremony

Benefits of Citizenship

- Voting
- Holding Public Office
- Traveling
- Petitioning Immediate Relatives and Siblings

Responsibilities of Citizenship

- Give up prior allegiances to other countries
- Support and defend the Constitution and laws of the United States
- Swear allegiance to the United States
- Serve the United States (e.g., in military service) when required