

AILA Backgrounder Packet

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LEGAL IMMIGRATION TO THE UNITED STATES

Legal immigration is a highly regulated and tightly controlled system that serves the national interest. Through our legal immigration system, U.S. citizens and lawful permanent residents unite with close family members, and U.S. employers gain access to the specific skills necessary to strengthen the U.S. economy and remain competitive in the global economy. Through legal immigration, the U.S. also fulfills its longstanding tradition of protecting a fraction of the world's refugees. Legal immigration is good for America – citizens and immigrants alike.

Who is a legal immigrant? A legal immigrant is a foreign-born individual who has been admitted to reside in the United States as a *lawful permanent resident* (LPR). LPRs are given immigrant visas, commonly referred to as “green cards.”

Nonimmigrants are foreign-born individuals who are permitted to enter the United States for a limited period of time, and are given only temporary (nonimmigrant) visas. Examples of nonimmigrants are students, tourists, temporary workers, business executives, and diplomats.

How does someone come to the U.S. as an immigrant?

- Through **family-based immigration**, a U.S. citizen or LPR can sponsor his or her close family members for permanent residence. A *U.S. citizen* can sponsor his or her spouse, parent (if the sponsor is over 21), children, and brothers and sisters. An *LPR* can sponsor his or her spouse, minor children, and adult unmarried children. As a result of recent changes in the law, all citizens or LPRs wishing to petition for a family member must have an income at least 125% of the federal poverty level and sign a legally enforceable affidavit to support their family member.
- Through **employment-based immigration**, a U.S. employer can sponsor a foreign-born employee for permanent residence. Typically, the employer must first demonstrate to the Department of Labor that there is no qualified U.S. worker available for the job for which an immigrant visa is being sought.
- As a **refugee or asylee**, a person may gain permanent residence in the U.S. A person located outside the United States who seeks protection in the U.S. on the grounds that he or she faces persecution in his or her homeland can enter this country as a **refugee**. In order to be admitted to the U.S. as a refugee, the person must prove that he or she has a “*well-founded fear of persecution*” on the basis of at least one of the following internationally recognized grounds: *race; religion; membership in a social group; political opinion; or national origin*. Refugees generally apply for admission to the United States in refugee camps or at designated processing sites outside their home countries. In some instances, refugees may apply for protection from within their home countries (for example, Cuba, Vietnam, former Soviet Union). If accepted as a refugee, the person is sent to the U.S. and receives assistance through the “refugee resettlement program.”

A person who is already in the United States and fears persecution if sent back to his or her home country may apply for **asylum** in the U.S. Like a refugee, an asylum applicant must prove that he or she has a “well-founded” fear of persecution based on one of the five enumerated grounds listed above. Once granted asylum, the person is called an “**asylee**.” In most cases, an individual must apply for asylum within one year of arriving

in the U.S. Refugees and asylees may apply for permanent residence after one year in the U.S.

How many immigrants are admitted to the United States every year? By statute, Congress has placed a limit on the number of foreign-born individuals who are admitted to the United States annually as family-based or employment-based immigrants or as refugees.

- **Family-based immigration is limited by statute to 480,000 persons per year.** Family-based immigration is governed by a formula that imposes a cap on every family-based immigration category, with the exception of “*immediate relatives*” (spouses, minor unmarried children, and parents of U.S. citizens). The formula allows unused employment-based immigrant visas in one year to be dedicated to family-based immigration the following year, and unused family-based immigration visas in one year to be added to the cap the next year. This formula means that there are slight variations from year to year in family-based immigration. Because of the numerical cap, there are long waiting periods to obtain a visa in most of the family-based immigrant categories.

There is no numerical cap on the number of *immediate relatives* (spouses, minor unmarried children and parents of U.S. citizens) admitted annually to the U.S. as immigrants. However, the number of immediate relatives is subtracted from the 480,000 cap on family-based immigration to determine the number of other family-based immigrants to be admitted in the following year (with a floor of 226,000).

- **Employment-based immigration is limited by statute to 140,000 persons per year.** In most cases, before the U.S. Citizenship and Immigration Services (USCIS) will issue an employment-based immigrant visa to a foreign-born individual, the employer first must obtain a “labor certification” from the U.S. Department of Labor confirming that there are no U.S. workers able, qualified and willing to perform the work for which the foreign-born individual is being hired. The Department of Labor also must confirm that employment of the foreign-born individual will not adversely affect the wages and working conditions of U.S. workers. The labor certification process takes an average of 2 years to complete.
- The United States accepts only a **limited number of refugees** from around the world each year. This number is determined every year by the President in consultation with Congress. The total number of annual “refugee slots” is divided among different regions of the world. For fiscal year 2004, the number of refugee admissions was set at 70,000. Regional ceilings are as follows:

Africa	25,000	Latin America/Caribbean	3,500
East Asia	6,500	Near East/South Asia	2,000
Europe & Central Asia	13,000	Unallocated Reserve	20,000

There is no limit on the number of people who can be granted asylum each year. Both refugees and asylees may apply to become LPRs after one year, but only 10,000 asylees are permitted to become LPRs in any fiscal year. No such limitation is imposed on refugees.

FAMILY-BASED IMMIGRATION

Historically, family reunification has been the principal policy underpinning U.S. immigration law. Family-based immigration, a tightly regulated system, allows for close relatives of U.S. Citizens and Legal Permanent Residents (LPRs) to rejoin their families here in America.

Family-based immigrants are admitted to the U.S. either as *immediate relatives* of U.S. citizens or through the *family preference system*.

Immediate Relatives are:

- Spouses of U.S. citizens;
- Unmarried minor children of U.S. citizens; and
- Parents of U.S. citizens.

There is no cap on the number of visas available each year for immediate relatives.

The Family Preference System allows into the U.S.:

- Adult children (unmarried and married) and brothers and sisters of U.S. citizens; and
- Spouses and unmarried children (minor and adult) of LPRs.

There are a limited number of visas available every year under the Family Preference system.

Under current immigration law, visas are allocated as follows:

The Family Preference System			
<u>U.S. Sponsor</u>	<u>Relationship</u>	<u>Preference #</u>	<u>Visa Allocated</u>
U.S. Citizen	unmarried adult children (21 yrs or older)	1 st	23,400 visas/yr ¹
LPR	spouses and minor children	2 nd A	87,900 visas/yr
LPR	unmarried adult children (21 yrs or older)	2 nd B	26,300 visas/yr
U.S. Citizen	married adult children	3 rd	23,400 visas/yr ²
U.S. Citizen	brothers and sisters	4 th	65,000 visas/yr ³

¹ Plus any visas left over from the 4th preference.

² Plus any visas left over from the 1st and 2nd preferences.

³ Plus any visas left over from the previous preferences.

BUSINESS IMMIGRATION TO THE UNITED STATES

A BASIC OVERVIEW

Current U.S. immigration law allows people who have skills and talents needed in the United States to be admitted to the United States to work on a temporary or permanent basis. This paper provides a basic overview of the current employment-based immigration system.

Nonimmigrant (Temporary) Visas for Business

- **There are more than 20 different kinds of nonimmigrant visa names and types.** Each is defined by Congress in the statute to meet a particular need of the U.S. economy. Some of these visas can be used for employment in the United States, under tightly regulated conditions.
- **These foreign nationals are allowed to enter the United States for temporary, specifically defined periods of time** and in most cases must show intent to return to their home country at the end of their temporary stay.
- **Nonimmigrants with permission to work in the United States are either sponsored by a U.S. employer based on a specific job offer and must work only for that employer, or have work permission for specific objectives.** (For example, students granted practical training in their field of study or professors and researchers working in international exchange programs.)
- **Most foreign nationals undergo *at least two* screening processes in order to come to the United States.** The State Department Consular Officer decides whether the individual's purpose in coming matches one of the approved categories, and whether the person meets all other eligibility criteria for admission (that is, they're not a criminal, have not previously committed fraud, etc.) before issuing a visa to allow the individual to come to the United States. Upon arrival, all nonimmigrants are inspected by the USCIS to reconfirm their qualification for admission, and to determine the appropriate nonimmigrant classification and authorize a specific length of stay. Some employer-sponsored nonimmigrants must have USCIS approve a petition on their behalf, based on highly defined criteria, before even applying for their visa.
- **Some work-authorized categories are limited by annual levels** (for example, H-1B professionals, and H-2B temporary or seasonal workers).

Immigrant (Permanent Resident) Visas for Business

- **There are five basic types of business immigrant visas,** ranked in order of priority of need by U.S. employers and the economy, as determined by Congress. *All categories are limited by annual levels and per-country levels.*
- **These immigrants become permanent residents** -- obtain "green cards" -- and the indefinite right to live and work in the United States, as long as they do not commit any offense that would render them deportable.
- **Business immigrants usually are sponsored by a U.S. employer based on a demonstrated need.** Some business immigrants may self-petition if they meet statutory

criteria for “extraordinary ability” in their field, or if their entry would be in the “national interest.”

- **Protections for U.S. workers are built into the system.** Most business immigrant cases require Department of Labor certification that no U.S. workers are able, qualified or willing to take the position offered to the foreign national and that admitting the immigrant won't negatively impact the wages and working conditions of similarly situated U.S. workers. The only categories exempt from this requirement are those for individuals who are extraordinary or outstanding in their field or whose presence is in the “national interest.”

EMPLOYMENT-BASED IMMIGRATION

THE EMPLOYMENT PREFERENCE SYSTEM allows certain immigrants to obtain permanent residence (“green cards”) in the United States to work. Currently, immigration law allots **140,000** employment-based visas to immigrants. These employment-based visas are divided into the following categories:

FIRST PREFERENCE:

Up to **40,000** visas a year may be issued to *priority workers*. People who have “extraordinary ability,” “outstanding professors and researchers,” and “certain multinational executives and managers” fall into this category. In addition, any visas left over from the fourth and fifth preferences (see below) are added to this category.

SECOND PREFERENCE:

Up to **40,000** visas a year (plus any visas left over from the first preference) may be issued to persons who are “members of the professions holding advanced degrees or aliens of exceptional ability” in their field.

THIRD PREFERENCE:

Up to **40,000** visas a year (plus any visas left over from the first and second preferences) may be issued to *skilled workers, professionals, and other workers*. The *other workers* category covers workers who are “capable of performing unskilled labor,” and who are not temporary or seasonal. Workers in this category are limited to **5,000** visas per year. *Skilled workers* must be capable of performing skilled labor requiring at least two years training or experience.

FOURTH PREFERENCE:

Up to **10,000** visas a year may be issued to certain special immigrants, including ministers, religious workers, former U.S. government employees and others.

FIFTH PREFERENCE:

Up to **10,000** visas a year may be issued to persons who have between \$500,000 and \$3 million to invest in a job-creating enterprise in the U.S. At least 10 U.S. workers must be employed by each investor. The amount of investment needed can vary depending on which area of the country will benefit from the investment. If the investor fails to meet the conditions specified, he or she can lose permanent resident status.

NONIMMIGRANT (TEMPORARY) VISAS A BASIC PRIMER

There is a wide range of temporary visas, used for many different purposes, with validity periods ranging from a few days to several years. The USCIS must approve some in advance before being reviewed and issued by the State Department; others are only reviewed by the State Department. Visas may be granted to the principal applicant and to his or her dependents (spouse and minor children).

There is a difference between a visa and a status, although both are referred to in the same manner and with the same alphabetical designation (based on the respective section of the Immigration and Nationality Act). A visa is simply a document in the person's passport. It serves as a "ticket" to ensure that a foreign national can board the airplane to the U.S. A person's visa status is the category in which he or she is admitted to the United States and also determines the period of time he or she may remain. An individual's visa status is granted by the USCIS once the applicant arrives at the border or a port of entry, and can be changed or extended by the USCIS at one of its remote Service Centers.

The different temporary visa categories are:

- A: Diplomatic employees and their households
- B: Business visitors (B-1) or tourists (B-2)
- C: Transit visa (pass-through at an airport or seaport)
- D: Crewmember (air or sea)
- E: Treaty-Investors or Treaty-Traders (from countries where we have a treaty of commerce and investment)
- F: Students
- G: Employees of International Organizations (IMF, OPIC, OAS, International Red Cross, etc.)
- H: Temporary Workers. Can be professionals (H-1B), nurses (H-1C), agricultural workers (H-2A), temporary or seasonal workers (H-2B), or trainees (H-3)
- I: Representatives of international media
- J: Exchange visitors (educational exchange students, au pairs, graduate medical trainees, practical training students, professors and researchers, short-term scholars, camp counselors)
- K: Fiances and fiancées; spouses of U.S. citizens married abroad
- L: Intracompany transferees (executives, managers, persons with proprietary knowledge)
- M: Language and vocational students
- N: NATO employees
- O: *Extraordinary ability aliens***
- P: Athletes, entertainment groups (such as orchestras) and support personnel
- Q: Cultural exchange visitors (example: *Smithsonian Folklife Festival*)
- R: *Religious workers***
- S: Criminal informants
- T: Victims of international trafficking in persons
- U: Victims of spousal or child abuse
- V: Spouses and minor children of permanent residents who are waiting for green cards.