

IMMIGRATION LAW OVERVIEW DETAILED OUTLINE

This is the part of the law that deals with aliens who come to the United States to stay either permanently or temporarily.

An alien who comes to stay temporarily in the United States is called a nonimmigrant alien. An alien who comes to stay permanently in the United States is called an immigrant alien.

A nonimmigrant alien may enter the United States for a limit period of time to visit for pleasure, perform business, study, work, participate in medical training, perform research, as a foreign diplomat, as an exchange alien, as a religious worker, or as a foreign media representative.

It is very important to understand the difference between a nonimmigrant visa and a nonimmigrant status. A nonimmigrant visa is the stamp in the passport that a U.S. Consular official issues to an alien. A nonimmigrant status is the status granted to an alien by an immigration officer when entering the U.S.

In order for a nonimmigrant alien to be admitted to the United States, in most cases, an alien must first obtain a visa abroad issued by a U.S. Consular official. This visa will allow the alien to enter the United States. In some cases, the alien may enter the U.S. without a visa if it is a Canadian citizen, a citizen of one of the country that participates in the waiver visa pilot program, or its parole into the country.

At the port of entry, all aliens must be inspected by an immigration officer. This officer has the power to allow the alien to enter the U.S. or to deny entry to an alien. If the alien is allowed to enter the U.S., the immigration officer will issue the alien a departure record (I-94 form). This form will show the nonimmigrant status that the alien is under and the period of time that the alien is legally authorized to remain in the U.S.

A nonimmigrant alien must be authorized by Immigration to legally work in the United States. There are special work visas, which must be approved by the USCIS (INS) (Department of Homeland Security) before a nonimmigrant visa may be issued by a U.S. Consulate abroad.

A nonimmigrant alien may enter the U.S. in one nonimmigrant classification, and, in some circumstances, Immigration may allow the alien to change or extend the nonimmigrant classification in country without having to obtain a visa abroad. There are specific regulations that must be followed in order for Immigration to grant this change or extension of nonimmigrant status.

A nonimmigrant alien may enter the U.S. under his/her own visa or it may be issued a dependent visa. In those circumstances, the dependent alien must show documentation that she/he is either married to the principal alien or is an unmarried child under the age of 21 of the principal alien.

The following list shows the different types of nonimmigrant visas, and which one may authorize an alien to work in the United States. Note that, the visas authorizing an alien to work will only allow the alien to work for the petitioner of the nonimmigrant classification.

F-1 P.T. – Student that has been granted Practical Training

J-1 Exchange Visitor : J-1 ECFMG – Eligible to receive medical training (Residency)

J-1 P.T. – Student that has been granted Practical Training

J-1 Researcher or Professor – Alien employed as a researcher or an instructor

H-1B1: Temporary Alien Worker – Specialty Occupation

L: Multinational Transferee: L-1A Multinational transferee in a Managerial or Executive Position

L-1B Specialized Knowledge Multinational transferee

O: Alien of extraordinary ability in the arts, sciences, business or education

P2: Artist or entertainer for reciprocal exchange program

P2S: Essential support personnel for P-2

TN: Professionals under the NAFTA treaty for Canada and Mexico

An alien in J-1 visa may be required to fulfill the two-year home country residency after the expiration of the status, because of governmental assistance, ECFMG medical training, or the skills list.

An alien must either comply with the two-year home country residency or obtain a waiver before she/he may change status to an H or L visa or adjust to permanent residency.

The H-1B nonimmigrant status is a temporary work permit valid for a maximum of six years, issue in three years intervals. This work authorization may be granted for a full-time or part-time job. An employer petitions an alien who has at least a U.S. bachelor's degree or its equivalent and the job requires that degree. The employer is willing to pay prevailing wages, and files a Labor Condition Application to H-1B Nonimmigrants with the Department of Labor. The H-1B program is subject to an annual quota for new petitions.

IMMIGRANTS

An alien may become an immigrant through family, business, asylum, or diversity lottery.

A U.S. Citizen may apply for his/her wife, unmarried children under 21 years of age, mother and father. These aliens are considered immediate relatives not subject to an annual quota. All other immigrants are subjects to annual quotas.

FAMILY-SPONSORED PREFERENCES; Immediate Relative,
number immediately available.

First Category: A U.S. Citizen may apply for his/her unmarried sons and daughters (21 years or older). This category may vary between 2 to 20 years for a family member to immigrate depending on the birthplace of the applicant.

Second Category: A U.S. Permanent Resident may apply for his/her spouse and children, and unmarried sons and daughters (21 years of age or older). This category is used for permanent resident aliens who got married after they were given the permanent residency. This category takes at least five (5) years for the family members to immigrate.

A. Spouses and Children.

B. Unmarried Sons and Daughters (21 years of age or older).

Third Category: A U.S. Citizen may apply for his/her married sons and daughters. This category takes at least 10 years for the family members to immigrate.

Fourth Category: A U.S. Citizen may apply for his/her brothers and sisters. This category may take 20 to 25 years for the family member to immigrate.

EMPLOYMENT-BASED PREFERENCES

First Category: This category is distributed into three different classes of Priority Workers.

EB-1A: Extraordinary Alien.

EB-1B: Outstanding researcher or professor.

EB-1C: Executive or Manager Intra-Company Transferee.

An extraordinary alien may petition to the USCIS (INS) for himself/herself if he/she qualifies under the EB-1A criteria.

A university or a research company may petition to the USCIS (INS) for an alien if he/she qualifies under the EB-1B criteria. This category requires the alien to work for the petitioner when he/she receives his/her permanent residency status.

A U.S. Company, having a company overseas, may petition to the USCIS (INS) for an executive or manager who has worked for the overseas company for a year and is coming to work in an executive or managerial position.

Second Category: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability. This category requires the approval of an application for alien employment certification, best known, as labor certification. It also requires an approval of an immigrant petition filed with the USCIS (INS). This application is filed with the Department of Labor having jurisdiction over the place of employment. It certifies that there are no minimal qualified U.S. workers to fill the position. The USCIS (INS) certifies that the alien qualifies to fill the position. This category requires the alien to work for the petitioner when he/she receives his/her permanent residency status.

If an alien's work is deemed to be in the National Interest of the United States, the alien may petition to the INS for himself/herself if he qualifies under the criteria.

Third Category: Skilled Workers, Professionals, and Other Workers.

This category requires the approval of an application for alien employment certification, best known, as labor certification. It also requires an approval of an immigrant petition filed with the USCIS (INS). This application is filed with the Department of Labor having jurisdiction over the place of employment. It certifies that there are no minimal qualified U.S. workers to fill the position. The USCIS (INS) certifies that the alien qualifies to fill the position. This category requires the alien to work for the petitioner when he/she receives his/her permanent residency status.

Fourth Category: A church must petition USCIS (INS) for a Minister, Pastor, Rabbi, etc. to work for that church in a ministerial position and must comply with special regulations.

Fifth Category: This category was created to bring investment into the U.S. and create new jobs. A minimum investment for a rural area is \$500,000.00 and the creation of ten new jobs for U.S. workers.

Each fiscal year, from October to September, new numbers are counted towards the annual immigrant quotas. Each country has certain amount of visas available to be issue according to each category. At this time

we have the World Quota, China, India, Mexico and the Philippines. China, India, Mexico and the Philippines have been separated from the world quota because there are too many applicants born in those countries and they oversubscribe their country quota. If an applicant is born in either of those countries their waiting period for becoming a U.S. permanent resident may be much longer than the world quota. When an immigrant petition, for family based or employment based that does not require an application for labor certification, is filed with the INS, the date of receipt becomes the priority date for that case. When an application for labor certification is filed with the local employment office, the date of receipt becomes the priority date for that case. This priority date is extremely important, especially for applicants born in China, India, Mexico and the Philippines. An applicant can only apply and obtain his/her permanent resident when the availability date for a particular month for their category has passed at least one day after his/her priority date. The State Department is in charge of deciding what the availability dates are for each month for each category according to the country of birth. By law, the USCIS (INS) or the U.S. Consuls may not issue permanent resident beyond the annual quotas. An alien may also become a U.S. permanent resident after a year of being granted asylum. There are only 1,000 immigrant visas issue

under this category. There are other aliens that according to special legislation like some Nicaraguans, Haitians, Cubans, Chinese, and others, who may become permanent residents if they qualify under the law and as long as they apply during the periods specify in that law. There is also an immigrant lottery but not all countries are eligible to participate in this lottery. There is a specific period set by the State Department in which individuals may send their information to a specific address to be entered in this lottery. The State Department chooses the winners and notifies each applicant. The applicant, and his immediate family members, must become permanent residents in the following fiscal year or they loose their opportunity. There are only 55,000 immigrant visas issue under this category.

CITIZENSHIP

U.S. citizenship is granted to any individual born in the United States, derive from a U.S. Citizen parent, by adoption after being granted U.S. permanent residency, and in some circumstances, derive from a U.S. Citizen grandparent.

Other aliens may apply for Citizenship on the basis of the following eligibility:

1. An applicant has been a permanent resident of the U.S. for at least five years.

2. An applicant has been a permanent resident of the U.S. for at least three years and has been married to a U.S. Citizen for those three years.
3. An applicant is a permanent resident child of a U.S. citizen parent.
4. An applicant is applying on the basis of qualifying military service in the Armed Forces of the U.S.
5. Other narrowly-defined groups of aliens. Recently new legislation allows children of certain immigrants or US Citizen's to become US Citizens automatically. This category must be look closely for eligibility.

An applicant for citizenship must demonstrate that during the required period of residence, has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. It must pass the English proficiency test and the Naturalization test. The Naturalization test includes basic knowledge of U.S. history and U.S. Government.

Although it sounds simple to apply for naturalization, now-a-days an applicant must be sure that it qualifies under all categories, especially if he/she has ever been arrested, convicted or sited. Not only may an applicant be denied U.S. Citizenship, but he/she may also be deported.