

Basic Overview of Immigration Law:  
Paths to Obtaining Legal Status in the United States

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The Most Common Paths to Obtaining Lawful Permanent Immigration Status in the US:

1. Family-based immigration
2. Employment-based immigration
3. Diversity Lottery
4. Self-petitions
5. Asylum & protection under the UN Convention Against Torture
6. Non-immigrant visas for victims of crimes and trafficking
7. Registry
8. Amnesty
9. Country-specific programs: HRIFA, NACARA, Cuban Refugee Adjustment Act, etc.
10. Cancellation of Removal.

## **Family-based immigration**

- Immediate Relatives: parents, spouses\*, and unmarried children under 21 of US citizens.

- Preference Categories:

- 1<sup>st</sup>: unmarried sons & daughters of US citizens;
- 2<sup>nd</sup>: A) spouses and children of legal permanent residents (LPRs);  
B) unmarried sons and daughters of LPRs;
- 3<sup>rd</sup>: married sons & daughters of US citizens;
- 4<sup>th</sup>: siblings of US citizens.

*\*Conditional residence due to concern with marriage fraud.*

## **Employment-based immigration**

1<sup>st</sup>: Persons of extraordinary ability in their professional field; outstanding professors and researchers.

- Persons of extraordinary ability in sciences, arts, education, business, or athletics do not need an employer sponsor.

2<sup>nd</sup>: Members of the professions holding advanced degrees, or persons of exceptional ability in the sciences, arts or business.

3<sup>rd</sup>: Professionals with baccalaureate degrees, skilled workers, and other workers.

5<sup>th</sup>: Investors who establish a new commercial enterprise in the Us that employs at least 10 US workers and who invest a minimum \$1 million in this business.

## **Diversity Lottery**

55,000 annual visas for persons from countries that originate few immigrants to the US.

- High school education or its equivalent, or
- Within the last 5 years, 2 years of work experience in an occupation requiring at least 2 years of training or experience.

## **Self-petitions**

Include:

- Special Immigrant Juveniles who have been declared dependent on a juvenile court and have been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment.
- Widows/widowers of US citizens;
- Amerasians;
- Battered or abused spouses and children of US citizens or LPRs:
  - Presently married to an abusive US citizen or LPR, or divorced within last 2 years due to battery/abuse;
  - Marriage was entered into in good faith;
  - Battered or subjected to extreme cruelty by the USC/LPR spouse during the marriage;
  - Good moral character.

## Asylum

Must prove past persecution or future persecution because of race, religion, nationality, political opinion, or membership in a particular social group (sharing a "common, immutable characteristic").

- Coercive population control.
- Bars, including:
  - One-year bar, except for changed or exceptional circumstances.
  - Persecutor bar;
  - Terrorist bar;
  - Conviction of a particularly serious crime;
  - Committed a serious nonpolitical crime outside the US;
  - Firm resettlement in another country.

## Withholding and Deferral of Removal under the UN Convention Against Torture

The Convention prohibits the return of a person to another state where "there are substantial grounds for believing that he would be in danger of being subjected to torture."

- Torture: any act by which severe pain or suffering, physical or mental, is intentionally inflicted on a person for an illicit purpose (ex. obtaining information or a confession, punishment for a victim's or another's act, intimidation, coercion, or any discriminatory purpose).
- Acquiescence by Government Officials: the act must be done 'by or at the instigation or or with the consent or acquiescence of a public official or other person acting in an official capacity."

## **Non-immigrant visas for victims of crimes and trafficking**

- 10,000 annual U visas for victims of certain crimes including rape, torture, domestic violence, sexual assault, female genital mutilation, peonage, involuntary servitude, blackmail, extortion, manslaughter, murder, felonious assault, etc., who;
  - Suffer substantial physical and mental abuse as a result of the crime;
  - Have information on the crime; and
  - Are helpful or likely to be helpful to law enforcement officials in investigating or prosecuting the crime (certification needed).
- 5,000 annual T visas for certain victims who:
  - Have been subjected to severe trafficking (force, fraud, or coercion used for sex trafficking and/or involuntary servitude, peonage, debt bondage, or slavery);
  - Have assisted law enforcement in the investigation or prosecution of such trafficking; and
  - Would suffer extreme hardship involving unusual and severe harm upon removal from the US.

## Registry

Available to those who:

- Entered the US before 1/1/72;
- Continuously resided in the US since that time;
- Has good moral character; and
- Is not ineligible for US citizenship.

## Amnesty

- Old program, no longer available, that allowed individuals to apply for a green card if they entered the US before 1/1/82 and thereafter resided in the US continuously in unlawful status. The deadline to apply under the amnesty program was 5/4/88.
- CSS, LULAC, Zambrano class actions – filed by those who claimed they unsuccessfully tried to apply under the amnesty program and were discouraged from doing so.
- LIFE Act of 2000 – provided the members of the 3 class actions lawsuits the opportunity to apply for permanent residence if they could prove that:
  - Before 10/1/00 he/she filed a written claim for class membership in one of the lawsuits;
  - The person entered before 1/1/82 and thereafter resided in the US continuously in unlawful status;
  - Person was continuously physically present in the US from 11/6/86 to 5/4/88;
  - He/she has no felony convictions or convictions of 3 or more misdemeanors; and
  - He/she meets basic citizenship requirements.

### **Country-specific programs**

- **NACARA** (Nicaraguan Adjustment and Central American Relief Act)
  - Cuban and Nicaraguan nationals who entered the US before 12/1/95 could apply for permanent residence before 4/1/00.
  - Nationals of El Salvador, Guatemala, and the Former Union and Warsaw Pact countries can apply for *suspension of deportation* if:
    - El Salvador: entered before 9/19/90 and registered for ABC benefits or TPS before 10/31/91, or applied for asylum before 4/1/90.
    - Guatemala: entered before 10/1/90 and registered for ABC benefits before 10/31/91, or applied for asylum before 4/1/90.
    - Former Soviet Union/Warsaw Pact: entered before 12/31/90 and applied for asylum before 12/31/91.
  - Eligibility for suspension of deportation: a) residence in US for at least 7 years; b) good moral character; and c) deportation would result in extreme hardship to the applicant and/or his/her US citizen or LPR spouse, parent or child.
- **HRIFA** (Haitian Refugee Immigration Fairness Act) – permitted Haitian nationals who have been present in the US since 12/31/95 and either a) filed for asylum or were paroled into the US before 12/31/95, or b) was an abandoned or orphaned child on 12/31/95 to apply for permanent residence before 3/31/00.
- **Cuban Refugee Adjustment Act** – any national of Cuba or immediate relative of a Cuban national can apply for permanent residence 1 year after he/she is inspected, admitted or paroled into the US.

### **Cancellation of Removal for Non-permanent Residents**

Only available to those already in removal proceedings, who can prove:

- Physical presence in the US for continuous period of 10 years (3 years for battered spouses and children of US citizens or LPRs);
- Good moral character for the 10 year period; and
- Removal would result in “exceptional and extremely unusual hardship” to the applicant’s USC or LPR spouse, parent or child (or, in the case of a battered spouse or child, “extreme hardship” to the applicant or the applicant’s child or parent).

## What Can Prevent Someone from Obtaining Legal Status?

### I. Grounds of Inadmissibility

- Health-related grounds, including diseases of public health significance and drug users and addicts.
- Criminal-related grounds, including crimes involving moral turpitude, controlled-substance offenses.
- Security-related grounds, including terrorism, communist party membership, and participation in genocide.
- Public charge ground – persons likely to become dependent on public benefits.
- Immigration-related grounds, including presence in US without admission or parole, fraud/willful misrepresentation to obtain immigration benefits, false claims to US citizenship.
- Those previously removed and those who depart after periods of unlawful presence in the US.
- Miscellaneous grounds, including practicing polygamists, unlawful voters, and those who renounce citizenship to avoid taxation.

**NB.** Some – not all – grounds of inadmissibility can be waived. Some waivers require a showing of “extreme hardship” to a US citizen or LPR parent or spouse.

## **What Can Prevent Someone from Obtaining Legal Status?**

### **II. Inability to Adjust Status**

#### **Eligibility to Adjust Status in the US:**

- Admitted or paroled, except VAWA self-petitioners and special immigrant juveniles;
- No unlawful employment, except immediate relatives, VAWA self-petitioners;
- Not out of status and did not violate the terms of any non-immigrant visa, except immediate relatives, self-petitioners;
- If seeking adjustment based on employment visa, must be in lawful nonimmigrant status at the time of filing;
- An immigrant visa must be immediately available;
- Must be admissible and merit a favorable exercise of discretion.

#### **Section 245(i) of the Immigration and Nationality Act:**

- 1994 law: those ineligible to adjust status can pay a \$1,000 penalty to be able to adjust if an employer filed a labor certification application, or a US citizen/LPR family member filed an immigrant visa petition on their behalf before 1/14/98.
- LIFE Act: extends section 245(i) to 4/30/01, but must prove presence in US on 12/21/00.
- Benefits those who a) entered without inspection; b) are out of status; c) worked without authorization.

