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OVERVIEW OF LEGAL IMMIGRATION TO THE UNITED STATES

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There are four main ways in which foreign-born individuals can come to the United States legally: as a family-based immigrant, sponsored by a close family member; as an employment-based immigrant, sponsored by a U.S. employer or by investing in the U.S.; as a refugee, fleeing persecution in his or her homeland; or through a diversity immigration lottery program.

Legal immigration is a highly regulated and tightly controlled system that allows a limited number of close family members and much-needed employees to come to the United States each year. Within the employment-based system, certain religious workers and investors can also obtain permanent residence. Through legal immigration, the U.S. also fulfills its longstanding tradition of protecting a tiny fraction of the world's refugees.

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*.”

Non-immigrants are foreign-born individuals who are permitted to enter the United States for a limited period of time, and are given only temporary (non-immigrant) visas. Examples of non-immigrants are students, tourists, temporary workers, business executives, and diplomats. **(See Appendix A)**. Some temporary visas serve as a bridge for the foreign national who is in the process of obtaining LPR status.

There are other groups of non-citizens who may neither be LPRs or non-immigrants but they *are authorized to remain in the United States* and are not considered to be unlawfully present. These include recipients

of deferred action through the Deferred Action for Childhood Arrivals (DACA) program and people granted Temporary Protected Status.

How does someone come to the U.S. as an immigrant? A foreign-born individual can become a lawful permanent resident in one of the four main ways:

- 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), minor and adult children, and brothers and sisters. An *LPR* can sponsor his or her spouse, minor children, and adult unmarried children. In most cases, citizens or LPRs wishing to petition for a family member must earn at least 125% of the poverty level and sign a legally enforceable affidavit of support to that effect.
- 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, but labor certification is not required for all of the employment-based categories, and even if required, can be waived.
- 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, a 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 (e.g. 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. Once granted asylum, the person is called an “**asylee**.” Like a refugee, an asylee must prove that he or she has a “well-founded” fear or persecution based on one of the five enumerated grounds listed above.

- To qualify for the **diversity visa lottery**, individuals must have a high school education or its equivalent, or within five years preceding the application, have had at least two years of experience in an occupation requiring at least two years of training or experience. Applicants for the lottery can electronically file only one application every year during a designated period.

How many immigrants are admitted to the United States every year? Legal immigration to the United States is a tightly controlled, highly regulated system. There is 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). **(See Appendix B).** The formula allows unused employment-based immigration 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 immigration categories.
- **Employment-based immigration is limited by statute to 140,000 persons per year. (See Appendix C).** In most cases, before the United States Citizenship and Immigration Service (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 an insufficient number of 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 the U.S. workers. Under certain circumstances, the job offer requirement as well as the labor certification can be waived if the foreign-born individual can demonstrate that he or she is working in the national interest of the United States. There are other categories that do not require labor certification, such as persons of extraordinary ability, outstanding professors/researchers and multinational executives or managers. (See Overview of Employment-based Immigration). Also, certain investors who invest \$1 million (this amount is relaxed to \$500,000 in either rural or high unemployment

areas, known as Targeted Employment Areas (TEA)) and create 10 jobs can also obtain permanent residence.

- 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” are divided among different regions of the world.
- No more than 50,000 **diversity** visas can be issued each year.
- Although these are the main categories, there are many other provisions that allow an individual to obtain lawful permanent residence. For example, a person who is in removal proceedings can seek cancellation of removal upon demonstrating, among other things, 10 years of physical presence prior to the notice to appear before an Immigration Judge, good moral character for this period, and that his or her removal would result in exceptional and extremely unusual hardship to the individual’s citizen or permanent resident child, spouse or parent. Victims of certain crimes, including trafficking crimes, who have received visas, can ultimately apply for permanent residence in the US.

Appendix A

NONIMMIGRANT VISA CATEGORIES

| | |
|-----------|--|
| A | Diplomats |
| B | Visitors (business/pleasure) |
| C | Transit |
| D | Crew members |
| E | Treaty traders/investors |
| F | Academic students |
| G | Representatives or employees at International Organizations |
| H-1B | Temporary professional workers |
| H-2A/H-2B | Agricultural or non-agricultural temporary workers |
| H-3 | Trainees |
| I | Journalists/media |
| J | Exchange visitors |
| K-1/K-3 | Fiancés/fiancées of US citizens or spouses of US Citizens waiting for the green card |

| | |
|------|--|
| L-1A | Intra-company transferees who are executives or managers |
| L-1B | Intra-company transferees who are specialized knowledge workers |
| N | Parents or children of special immigrants |
| O | Persons of extraordinary ability |
| P | Athletes, artists or entertainers |
| Q | International Cultural exchange visitors |
| R | Religious workers |
| S | Federal witnesses |
| T | Trafficking of persons victims |
| TN | NAFTA professionals (Mexico and Canada) |
| U | Certain crime victims |
| V | Certain spouses/children of green card holders waiting for green cards |

Appendix B

FAMILY-BASED IMMIGRATION

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 every 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 years or older) | 1 st Preference | 23,400 visas/year, plus any visas left from the 4 th preference |
| LPR | spouses and minor children | 2 nd Preference | 87,900 visas/year |
| LPR | unmarried adult children (21 years or older) | 2 nd Preference | 26,300 visas/year |
| U.S. Citizen | married adult children | 3 rd Preference | 23,400 visas/year, plus any left over from the 1 st and 2 nd preferences |
| U.S. Citizen | brothers and sisters | 4 th Preference | 65,000 visas/year, plus any left over from the previous preferences |

Appendix C

EMPLOYMENT-BASED IMMIGRATION

THE EMPLOYMENT PREFERENCE SYSTEM allows immigrants who have skills and talents in the United States to be admitted 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” or who are “outstanding professors and researchers” or “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 (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.” This category usually requires “labor certification” unless the

individual can establish that he or she is going to work in the national interest of the United States.

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. These categories always require a “labor certification.”

FOURTH PREFERENCE:

Up to **10,000** visas a year may be issued to certain special immigrants, including ministers, religious workers 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 money can vary depending on which area of the country will benefit from the investment. If the investor alien fails to meet the conditions specified, he or she can lose permanent resident status.