

III. Current Visa System

(Ed Note: The material in italics provides additional detail for interested readers.)

(Hold up list of visas)

This is a list of US visas. I intend to briefly discuss a few of them to give you an idea of how complex the system is.

There are immigration and non-immigration visas depending on whether one desires to become a US citizen or stay in the country temporarily.

There are more than 20 **non-immigration** visas including those for crew members, diplomatic employees and their households and NATO employees. Most non-immigrant admissions are tourists and business travelers. 3.3% are students or exchange visitors and their families and 4.8% are temporary workers and their families. The ability to work in this country, apply for permanent residency or renew the length of stay in the US depends upon the type of visa one has.

In order to obtain an F1 Student Visa the applicant must attend an institution recognized by the US. They can stay in US as long as they are enrolled in an institution. They may accept employment if they obtain an employment authorization document.

Under the H-2A Guest worker program and the H-2B Guest worker program employers petition the Dept. of Labor for skilled or unskilled laborers for work lasting less than a year. H2-A is for agricultural work and H-2B is for non-agricultural work. Under both programs the workers are not permitted to bring their families. Under the H2-A program workers are provided some legal protection, including housing, whereas the H2-B program does not provide any legal protection. The H2-B program allows 66,000 visas per year.

The TN NAFTA Work Visa is a temporary work visa which allows citizens of Mexico and Canada to work in professional occupations in the United States. Family members also are allowed visas and can work in the US

The Fiance K1 Visa is for US citizens who wish to bring their prospective spouse to the US with the intention of getting married. Minor children of the fiancé get a K2 visa. The US citizen applies for the visa which is issued at a US embassy or consulate abroad. The marriage must take place within 90 days of entry into US and there are no extensions. Until the person is married they are considered a non-immigrant and can apply for a green card once they are married.

Now on to Immigration Visas:

The Immigration and Naturalization Act of 1965 ended quotas and established a preference system for immigrants. Priorities are 1) family unification, 2) needed skills, 3) refugees. The Immigration Act of 1990 set annual immigration at 675,000 which includes 480,000 for family reunification, with no country exceeding 7% of this worldwide quota, 140,000 for occupational skill and job creation preferences and 50,000 for the visa lottery. The leading source countries for legal immigration are Mexico, Vietnam, the Philippines and the republics of the former Soviet Union. 75% of new immigrants reside in CA, NY, TX, FL, NJ, and IL.

50-70% of immigration visas are allotted to family members of citizens and permanent residents. Spouses and minor children of US citizens, as well as parents of adult US citizens, are granted Family visas without regard to numerical quotas. They usually are allowed to immigrate to the US within a year of application. Other family members are granted visas according to preference categories. *First Preference is Unmarried adult children of US citizens with a quota of 23,400 annually. Second Preference is spouses and unmarried children of lawful permanent residents with an annual allotment of 114,200. Third preference is married sons and daughters of US citizens with 23,400 allowed annually. The Fourth Preference category is siblings of US citizens with 65,000 visas per year.*

There is also a preference allocation for employment based immigration. First priority workers include aliens with extraordinary abilities such as in science, art, education and, athletics, outstanding professionals or researchers or certain multinational executives and managers. The number of visas for this category is not to exceed 28.6% of total employment visas. The second preference is professionals holding advance degrees or possessing exceptional abilities. The number is not to exceed 28.6% of the total. The third preference is skilled and professional workers. Again, not to exceed 28.6% of the total. Fourth is certain special immigration, not to exceed 7.1% of the total. The fifth preference is for those seeking employment to engage in or create a new commercial enterprise and is to consist of not more than 7.1% of the total.

To promote diversity, 50,000 green cards (permanent residence cards) are available each year through a Visa lottery which is handled by a computerized drawing. One can only apply for this lottery between Oct. and Dec. of each year.

Following WWII, the admission of 250,000 displaced Europeans to the US led to the Displaced Persons Act of 1948. Later laws provided for admission of persons fleeing communist countries including Cuba in the 1960's. After the fall of Vietnam in 1975, congress passed the Refugee Act of 1980 which standardized resettlement services for all refugees entering the US. Since 1975 the US has resettled approximately 2.6 million refugees with nearly 77% from Indochina or the former Soviet Union.

Refugees and asylees are individuals unable or unwilling to return to their country of nationality because of persecution or a well founded fear of persecution. *A refugee is interviewed and approved for admission while abroad and then moves to the US. A refugee is matched with an American resettlement organization and must have a medical and security screening. The refugee signs an agreement to repay the US for their travel. An asylee applies for such status within one year of entry into the US. Both refugees and asylees can apply for lawful permanent*

resident status after one year in the US. Those not approved for asylee status may be granted "withholding" status whereby they can live and work in the US but cannot get permanent residency. There is no cap for number of asylees admitted, however there is a 10,000 annual limit on asylees obtaining permanent residency. The number for refugees is determined annually and the State Dept. has currently set aside 70,000 slots for refugees world wide, of which 20,000 slots have now been allocated for Iraqis.

Problems occur regarding the issue of refugees and asylees when local communities become overwhelmed and are unable to provide services. In some instances there is also lack of political and public backing.

There are approximately 60,000 immigrants in the US military, 2% of which are on active duty. Half of these are not US citizens and are mainly from the Philippines and Mexico. Under a 2004 Presidential order a military service person is eligible for citizenship if they 1) demonstrate good moral character, 2) speak English, and 3) demonstrate knowledge of US government and history. They also must have served honorably during one year of conflict and have had a green card or been present in the US when they enlisted. They must file for citizenship within 6 months of discharge. *(Non-citizens in the military can not become officers and can not serve for more than 8 years.)*

Children born to US citizens or born to permanent residents or undocumented immigrants in the United States are US citizens. About 1.6 million children in the US are undocumented and 3 million children of undocumented parents are citizens. Medicaid now requires proof of citizenship which can take several weeks to obtain and thus delay receiving health care. Additional problems occur when parents who are undocumented are deported and their children who are US citizens remain in the US under the care of remaining family and friends or of the state. In many states undocumented students, who are often unaware of their status or who are brought to this country at a young age by their parents, are not eligible for in state tuition.

Once an eligible immigrant enters the country they can apply for permanent residency which takes about 2 months to obtain and needs to be renewed every 10 years. This person can not vote and can be deported for a criminal offense.

An application fee for citizenship increased July 30, 2007 to \$595 plus \$80 for a required electronic finger printing. A permanent residency application and fingerprinting is now \$1010 for anyone over 14. The fee is \$600 for those under 14 applying with their parents. These increases are supposedly to cover the costs of more employees to handle the process of immigration.

To become a naturalized citizen the applicant must have a period of continuous residence and physical presence in the US. The residency time period is generally 5 years, but only 3 years for a spouse of a US citizen or members of the military. A naturalized citizen has all the rights of a born citizen, with the exception that they can not run for President. To be eligible for citizenship a person must have the ability to read, write and speak English, be of good moral character, possess knowledge of the principles of the US constitution, have a favorable disposition toward the United States and pass a US citizenship test.

The process involved to immigrate can create substantial delays. All U.S. immigrant applicants are subject to criminal and national security background checks which can lead to delays which sometimes are longer than one year. *These checks include:*

- 1. Interagency border inspection system name check. This is a multiagency database and the results are usually available immediately.*
- 2. FBI fingerprint check which can take 24 to 48 hours.*
- 3. FBI name check which can take 2 weeks to 6 months.*

Cases which are not immediately cleared are considered pending and may take several years for clearance since they are time consuming and labor intensive.

Regarding current employment based immigration – each country has a fixed and equal quota of number of visas therefore larger countries can take 4-10 years to get a green card. Plus dependents of employment based applicants count toward the annual number of visas per country.

Delays in family visas occur since there are more applications than available visas. The average wait for spouse and minor child visas can take 5 years. The wait to obtain a visa for a sibling can take up to 12 years. It takes longer to obtain family visas for immigrants from countries with more applicants like Mexico, the Philippines and India. Currently, there are over one million family based immigration petitions pending. These delays contribute to unauthorized migration when families choose illegal immigration, such as overstaying their visas, rather than waiting for legal entry.

Another delay occurs with the Visa Lottery. In 2005 alone 6.3 million applicants qualified for the 50,000 visas.

Current law changes and the increased number of applicants for permanent residence can cause waits for approval up to 31 months and business visas undergo at least a 2 year screening process.

However, according to one report, the backlog of naturalization applications to be processed have decreased by 15.3% between FY 04 and FY 05 due to higher applications processed by USCIS in FY 05.

There are several reasons a person may not be eligible for a visa, including severe health related problems. Since 1987 the US has banned non-citizens with HIV from entering the US without a special waiver, which has caused much controversy. Other health issues preventing entry into the US are any “communicable disease of public health significance”, such as TB. The US mandates a HIV test for all applicants of immigration visas and refugees. This does not apply to non-immigration visas.

Some individuals excluded from immigration are criminals, including drug traffickers, money launderers, prostitutes and those involved in other vices. Others may be omitted due to security related issues such as terrorist or foreign policy including being a Communist or a Nazi. Still others are excluded for being a public charge, having inadequate labor certification, being an illegal entrant and immigration violator, except battered wives or children, lacking documentation, having ineligible citizenship such as a draft dodger, having previously been removed or not lawfully present or being a polygamist or child abductor.

I have presented a brief summary of the visa and immigration process. As you can see it is quite complex and not easily understood.

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