

Family Based Immigration

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Family Based Immigration

- Family reunification has historically been a key principle underlying U.S. immigration policy.
- Family-based immigration currently makes up two-thirds of all legal permanent immigration. Of the 1,183,505 foreign nationals admitted to the United States in FY2016 as lawful permanent residents (LPRs), 804,793, or 68%, were admitted on the basis of family ties. Of the family-based immigrants admitted in FY2016, 70% were admitted as **immediate relatives** of U.S. citizens. <https://fas.org/sqp/crs/homesec/R43145.pdf>
- The immigration of “immediate relatives” of a United States citizen (USC) is not subject to any annual visa numerical limits. Immediate relatives are defined as: (1) spouses and minor (under twenty-one years of age), unmarried children of a USC; (2) parents of USCs who are “at least 21 years of age”; and (3) widows, widowers, and children of deceased USCs. <https://www.loc.gov/law/help/family-reunification/us.php>

Adopted Children and Step Children

- Adopted Child: An adopted child qualifies as long as the adoption was finalized before the child's 16th birthday. The adoptive parents must have legal custody of the child for two years before or after the adoption. The child must reside with the adoptive parents for two years before or after the adoption.
- Step-Children: A step-child qualifies as a child, if the marriage occurred before the step-child's 18th birthday.

Same Sex Couples

- Following the June 2013 SCOTUS decision in *United States v. Windsor*, 570 U.S. 744, holding that Section Three of the Defense of Marriage Act was unconstitutional, the Obama administration directed USCIS to review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse.
- Same-sex spouses of U.S. citizens and Lawful Permanent Residents (LPRs), along with their minor children, are now eligible for the same immigration benefits as opposite-sex spouses. Consular officers at U.S. Embassies and Consulates will adjudicate their immigrant visa applications upon receipt of an approved I-130 from USCIS.
- Same-sex fiancé(e)s are eligible to apply for a fiancé(e) (K) visa. As long as all other immigration requirements are met, a same-sex engagement may allow one's fiancé(e) to enter the United States for the purpose of marriage.

How to Get an Immigrant Visa

- Becoming an LPR on the basis of a family relationship first requires that the petitioning or sponsoring U.S. citizen or lawful permanent resident in the United States establish his or her relationship with the prospective LPR.
- To do this, the USC relative must first file an I-130 Petition for Alien Relative with U.S. Citizenship and Immigration Services (USCIS).
- *Please see sample I-130 in your course materials.*

Form I-130

- The I-130 Petition for Alien Relative establishes the bona fide nature of the relationship, which is demonstrated by evidence of the same. Evidence commonly used to establish a bona fide relationship includes: birth certificates, marriage certificates, photographs, bank statements, tax returns, or any other evidence that can show, by a preponderance of the evidence, that the relationship is bona fide.

Two Tracks for Getting a Green Card

- Track One: Adjustment of Status
 - The prospective LPR (foreign national being sponsored) is residing lawfully in the United States at the time the I-130 is approved.
 - The prospective LPR must file a Form I-485 Application to Register Permanent Residence or Adjust Status with U.S. Citizenship and Immigration Services, which adjudicates the entire “adjustment of status” process whereby the foreign national “adjusts” from a nonimmigrant category (which had initially permitted him or her to enter the United States legally) to that of Lawful Permanent Resident.

Two Tracks for Getting a Green Card

- Track Two: Consular Processing
- If the prospective LPR is residing abroad in his or her home country or some third country, then, when the I-130 is approved, the immigrant visa process is conducted by the Department of State's Bureau of Consular Affairs in the prospective immigrant's home country.

So many relatives, not enough visas

- Immediate relatives of U.S. citizens, (spouses, unmarried minor children, and parents of adult U.S. citizens), are not subject to numerical limitations.
- Visas for all other family categories are subject to numerical limits base on a complex calculation set by Congress.
- This results in often long delays as relatives abroad with an approved I-130 await the availability of a visa.

Country Limitations

- In addition to annual numerical limits on family preference immigrants, the INA limits LPRs from any single country to 7% of the total annual limit of family preference immigrants. There are two exceptions to this rule: immediate relatives of U.S. citizens, and 75% of all visas allocated to second (2A) family preference immigrants (spouses and children of LPRs).

<https://fas.org/sgp/crs/homesec/R43145.pdf>

- Because the number of foreign nationals potentially eligible for a visa exceeds the annual visa limit under current law, waiting times for available family-based visas can extend for years, particularly for persons from countries with many petitioners, such as India, China, Mexico, and the Philippines.

<https://fas.org/sgp/crs/homesec/R43145.pdf>

Visa Bulletin

September 2018

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08APR11	08APR11	08APR11	01AUG97	15NOV06
F2A	22JUL16	22JUL16	22JUL16	01JUL16	22JUL16
F2B	01NOV11	01NOV11	01NOV11	22APR97	22APR07
F3	01MAY06	01MAY06	01MAY06	22DEC95	01JUN95
F4	08JAN05	08JAN05	08APR04	15JAN98	01JUN95

Visa Bulletin Definitions

- First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.
- Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers.
 - A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit.
 - B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.
- Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.
- Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

Fiancé(e)s

A separate process exists for sponsoring a fiancé(e) for a green card.

- The U.S. citizen must first file a Form I-129F with USCIS, if approved, then the sponsored fiancée applies for a K-1 visa at a U.S. consulate abroad.
- The K-1 visa permits the foreign-citizen fiancé(e) to travel to the United States. The couple must marry within 90 days of arrival.
- The foreign-citizen then must apply for adjustment of status to a permanent resident (LPR) with the USCIS. Eligible children of K-1 visa applicants receive K-2 visas.
- K-1 and K-2 nonimmigrant status automatically expires after 90 days and cannot be extended. Failure to marry within the 90 day period means the foreign national is in violation of the terms of the K-1 or K-2 visa which can result in removal (deportation).

Affidavit of Support

- The Form I-864 Affidavit of Support is required for most family-based immigrants to show that they have adequate means of financial support and are not likely to become a public charge.
- The affidavit is a contract between a sponsor and the U.S. Government. The USC sponsor must show that he/she has enough income and/or assets to maintain the intending immigrants and the rest of one's household at 125 percent of the Federal Poverty Guidelines.
- “[e]xecution of an affidavit of support . . . creates a contract between the sponsor and the U.S. Government for the benefit of the sponsored immigrant, and of any Federal, State, or local government agency or private entity that administers any means-tested public benefits program.” 8 C.F.R. § 213a.2(d) (2013). This means that federal, state, local, and even private agencies can go after the sponsor for reimbursement in the event that they provide means-tested public benefits to the immigrant spouse.

Affidavit of Support

- The sponsor's obligation under the I-864 lasts until the immigrant: (1) becomes a citizen; (2) can be credited with 10 years of work; (3) is no longer a permanent resident and leaves the U.S.; (4) is granted adjustment of status in deportation proceedings using a different sponsor; or (5) dies. Until one of these events occurs the sponsor is required to provide support if needed.
- The obligations of support under the I-864 are enforceable in court, they do not cease in the event of divorce, and they cannot be waived in a pre-nuptial agreement.

Joint Sponsor(s)

- Petitioners who cannot meet income requirements have two choices: 1) find a “joint sponsor” who will agree to also financially support the visa applicant, or 2) use the income of a household member to meet the Poverty Guidelines. These additional financial sponsors also have to submit an Affidavit of Support, proof of their income, and proof of their legal status in the United States. Remember: Even if a petitioner finds a joint sponsor or uses the income of a household member to financially sponsor a visa applicant, that petitioner must still submit an Affidavit of Support.

Poverty Guidelines

For the 48 Contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands:

Sponsor's Household Size	100% of HHS Poverty Guidelines*	125% of HHS Poverty Guidelines*
	<i>For sponsors on active duty in the U.S. armed forces who are petitioning for their spouse or child</i>	<i>For all other sponsors</i>
2	\$16,460	\$20,575
3	\$20,780	\$25,975
4	\$25,100	\$31,375
5	\$29,420	\$36,775
6	\$33,740	\$42,175
7	\$38,060	\$47,575
8	\$42,380	\$52,975
	Add \$4,320 for each additional person	Add \$5,400 for each additional person

- Alaska and Hawaii available at: <https://www.uscis.gov/i-864p>

Means Tested Public Benefits

- **Federal Means-Tested Public Benefits:** Food stamps, Medicaid, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), and the State Child Health Insurance Program (SCHIP).
- **State Means-Tested Public Benefits:** Determined on a state by state basis

The following federal and state programs are not included as means-tested benefits:

- Emergency Medicaid;
- Short-term, non-cash emergency relief;
- Services provided under the National School Lunch and Child Nutrition Acts;
- Immunizations and testing and treatment for communicable diseases;
- Student assistance under the Higher Education Act and the Public Health Service Act;
- Certain forms of foster-care or adoption assistance under the Social Security Act;
- Head Start programs;
- Means-tested programs under the Elementary and Secondary Education Act; and
- Job Training Partnership Act programs.