The background of the cover is a faded, grayscale image of the Statue of Liberty, showing her face and the top of her crown. The text is overlaid on this image.

# A DEFINITIVE GUIDE TO U.S. IMMIGRATION LAW

*Visas, Citizenship, Naturalization,  
Deferred Action, and Deportation*

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GUIDING YOU THROUGH THE IMMIGRATION PROCESS



# AN INTRODUCTION TO U.S. IMMIGRATION LAW

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United States immigration law remains in constant flux. This is both a source of confidence and of worry to hopefully immigrants, to green card holders, and to anyone unsure of his or her immigration status, either inside the U.S. or out. While “comprehensive immigration reform” remains a high priority for most federal politicians, when this will come or what shape it will take is anyone’s guess. For now, there are many paths to immigration or travel in the U.S. These are short and long, straight and zig-zagging, and all marked with lettered and numbered sign-posts, confusing even to experts.

Most visitors to the U.S. come on some form of visa. The first distinction you might make is between **immigrant visas** and **non-immigrant visas**. Officially, a person would seek an immigrant visa when intending to make the U.S. his or her permanent home, and a non-immigrant visa when intending to travel or work in the U.S. and maintain a permanent home elsewhere. However, *both* types of visas could lead to **citizenship** or at least **Lawful Permanent Residency**.

*For a full list of immigrant and non-immigrant visas, visit:*

<https://travel.state.gov/content/visas/en/general/all-visa-categories.html>

You will see that there are dozens of types of visas. There are still other ways to get to the U.S. – and stay here for as long as you’d like – beyond visas. When faced with so many paths (and so many signposts), you’ll want to know which one is best for your aims and your circumstances. It would be nice to talk to someone who’d personally traveled down all those paths – filled out every possible form and tested every possible option. No one in the world fits this bill, of course: once you’re a U.S. citizen, you have that status for life, and would never need to take a second trip to the same (legal) destination.

The closest you can get to that kind of counsel would be to talk with an experienced immigration attorney. If you can find an attorney who knows all the forms and options, who's tested creative paths to citizenship, who keeps on top of changes to immigration law and policy, and who's advised hundreds of immigrants on their way to visas, green cards, work permits, and naturalization, you'll have a much better chance at getting where you want to go. With a trustworthy attorney you'll have a better chance at avoiding some hurdles, clearing others with ease, keeping down costs, and keeping your family together. After you educate yourself about U.S. immigration generally, talk to an attorney who can help plot out a course for you based on your aspirations and on the particulars of your situation.

## PERMANENT RESIDENCY: PATHS TO CITIZENSHIP

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In the United States, there are multiple ways to become a permanent resident of the country. Your options are:

- » **Green card** — If you obtain a green card, you can live and work in the United States and will be on the path to becoming a citizen. Although a green card is the precursor to becoming a permanent resident of the United States, certain restrictions are placed on you, such as the inability to vote and the threat of deportation if you are convicted of certain crimes. Some green cards last ten years, but conditional green cards last only two, and carry additional requirements.
- » **Certificate of Naturalization** — After you have your green card for five years — or three if you are married to a U.S. citizen — you can apply for a Certificate of Naturalization. Our firm assists you with the applications and the interviews that follow to make the process go smoothly. Unlike a green card, naturalized residents are afforded the right to vote and cannot be deported for a crime.
- » **Certificate of Citizenship** — A Certificate of Citizenship is given to children under the age of 18 born abroad but have parents

who are U.S. citizens. Our firm obtains the proper forms and documentation for you to get your Certificate of Citizenship, which will allow you to live permanently in the United States.

- » **Amnesty** — Amnesty allows people who entered the United States illegally to have their status adjusted so they can be on the path to citizenship. If you entered the country without inspection before 2001, you may be eligible for an amnesty exception. We determine if you meet the guidelines and help you toward permanent residency.

## >> *How do I obtain an “adjustment of status”?*

**Consular processing** once was the only means of obtaining an immigrant visa. After the Immigration and Nationality Act introduced the **Adjustment of Status for Permanent Residence**, it became a highly popular method of achieving permanent resident status after entering the United States.

If you have an approved immigrant visa petition and are currently residing in the United States, you may be eligible for an adjustment of status. If you are considering such a step, having an experienced lawyer is essential. Applying for permanent resident status (through what’s called the I-485 package) is a detailed, arduous process.

## >> *How can I obtain a green card?*

In the United States, a green card allows immigrants to live and work in the country, and it can be the first step toward permanent citizenship. The different types of green cards are:

- » **Family-based** — If you are related to a U.S. citizen, such as a spouse, parent, child or sibling, you can apply for a family-based visa, which can be upgraded to a green card after approval. To apply for a family-based green card you will need to fill out the I-130 forms.
- » **Employment-based** — When you are offered permanent employment in the United States, you can be sponsored for a

green card by your employer. Your or your employer's attorney can assist in filling out the necessary I-485 paperwork.

- » **Asylum** — When citizens of another country have a fear of persecution or violence upon returning to their homes, the United States can offer asylum status. A year after your asylum is established, you and your family can apply for a green card. An attorney can help you complete the I-589 forms.

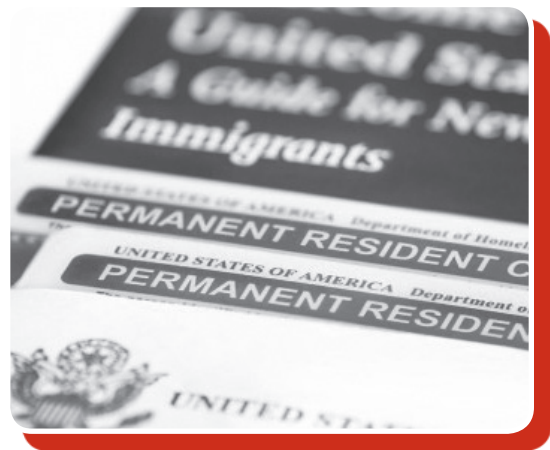
If your case meets one of these three sets of qualifications, you can apply for a green card.

## >> *Will I need my documents translated to get a green card?*

You will need to get your documents translated into English before you go to your review at the U.S. Embassy. These translations must be certified. You will need to submit the originals as well as the translations to the National Visa Center, a sort of intermediary between the USCIS and the Embassy, before you go to your Embassy review.

## >> *Can I include my spouse and children on my green card application?*

Your spouse and children can almost always be included on a green card application. You must begin, however, by applying as an individual. The applicant is the **principal beneficiary**. After your initial petition is approved, you can name your spouse and children as **derivative beneficiaries**. If they are already in the U.S., you can go through final processing together. If they are outside of the U.S., they can go through processing separately, after you've obtained your green card.



## >> *Can my father sponsor me if he isn't on my birth certificate?*

If your father is a U.S. citizen or green card holder, he can sponsor you for a green card. This is the case even if his name isn't on your birth certificate. In this situation, you might need to provide a DNA test, and evidence that you have had an emotional relationship. Cards or letters, money orders, or other forms of documented communication would count.

## >> *Can a stepparent sponsor me?*

In this case, the determining factor is when your biological parent married your stepparent. If you were under 18 when your biological parent married your stepparent, then your stepparent can sponsor your green card application – even if you're currently over 21.

## >> *Can my employer sponsor my application for a green card?*

For an employer to sponsor a foreign national for a green card, the employer would have to demonstrate inability to find a qualified U.S. worker. The employer may demonstrate this by running ads in a local paper. The employer then must demonstrate the ability to pay your wage, generally by presenting tax returns.

## >> *I'm facing gang violence in my home country. Can I apply for asylum?*

If you are facing persecution in your home country, you can apply for asylum within one year after your arrival in the U.S. You can also apply if you are directly at risk because of revolution or religious or political violence in your country, as well as persecution from a gang. If you can demonstrate changed circumstances in your home country – for example, a revolution – you may apply after being in the U.S. for one year. In any case you will need to provide documentation supporting your fears. An experienced immigration attorney can help you compile the evidence you need.

## >> *I have a green card. Can I study abroad?*

If you have a green card you can use the I-131 form to apply for a reentry permit. This will allow you to stay outside the U.S. for two years. You will have to submit proof of why you want to study abroad, and submit fingerprints **before** you obtain that permit. If you leave the U.S. without submitting your fingerprints, USCIS will deny your application for a travel permit.

## >> *I have a green card. How do I become naturalized?*

A Lawful Permanent Resident (“green card holder”) could remain a green card holder, or petition to become an American citizen. To become eligible to apply for citizenship, you must be at least 18 years old, you must have been a Lawful Permanent Resident for five years (or three if you are married to a U.S. citizen), without any significant absences (6 months or more). Additionally, you must satisfy the following:

- » Evidence of good moral character.
- » Establish knowledge of U.S. history and government.
- » Demonstrate the ability to read and write basic English.
- » Establish knowledge of and attachment to the U.S. Constitution.

When a client has an initial consultation, the attorney should gather as much information as possible in order to set forth realistic expectations. Before proceeding with a naturalization application, it is important to know if a client has been subject to any past legal problems, such as an arrest, taxation issues, or a period when the person fell out of status. An attorney can accompany the applicant to the naturalization interview, which is especially helpful if English is not a client’s strongest language. If a client cannot speak English at all, an attorney may be able to file a medical exception. If you have had a green card for 20 years and are at least 50 years old, or 15 years and are at least 55 years old, you will still have to pass the history and civics part of the citizenship test, but can take the test in your native language. A mental or physical disability might also be grounds for an exemption.

## >> *My green card is about to expire. What can I do?*

Your options depend upon the scenario and upon the type of green card you have. If you are coming up on the end of a 10-year green card, you can file for citizenship with the N-400, or file the I-90 to replace or renew your green card.

The I-90 process will take many months. If you're worried about traveling during this process, go to the Immigration Office and schedule an InfoPass appointment. If you demonstrate that you are a green card holder and that you've filed the I-90, and supply your finger prints, the Office will give you an I-551 stamp allowing you to travel.

If you have a two-year (conditional) green card, you will need to file an I-751 petition to convert your two-year to a 10-year green card.

You have three possible choices: file an N-400, an I-90, or an I-751. In any case, consult with an experienced immigration attorney to pick the right option for you, and to ensure that you have the proper documentation ready.

## >> *My spouse refuses to sign the I-751. Can I file alone?*

The **I-751** is a petition for a conditional permanent resident who obtained status through marriage to remove the conditions on his or her permanent resident status. If your spouse is abusive and refuses to file the paperwork, you can apply for a waiver of the requirement that couples jointly file. You would need to demonstrate the abuse. Acceptable documents would include:

- » Hospital records
- » Therapist records
- » Photos
- » Affidavits



You also must supply evidence that yours was a good-faith marriage. Beyond this, the documentation you need will be the same you would have needed had you been filing jointly.

## >> *Can I replace a lost Certificate of Naturalization?*

You might be in this position if you're a U.S. citizen trying to sponsor a family member. Rest easy: you can replace a Certificate of Naturalization, though the process may take up to a year. You will need to submit an N-565 form.

## >> *How can I obtain amnesty for being in the country without a visa?*

If you have entered without examination or your visa has expired, there is a chance that you may be eligible for **245(i)** status. This was a temporary provision of the **1965 Immigration and Nationality Act** that allowed foreign nationals who entered the country illegally, had been out of status, or worked without authorization to apply for adjustment of status without being required to leave the country to do so.

Before it was ultimately rescinded, President Clinton briefly brought back the 245(i) exception for the months of January through April 2001. However, one provision permits "grandfathered" immigrants (i.e. beneficiaries of visa petitions and labor certification applications filed by April 30, 2001) to file section 245(i) adjustment applications. Another provision allows certain employment-based immigrants to file for adjustment of status under the normal procedures set forth in section 245(a), despite periods of unlawful presence in the United States.

If you applied for a visa between January and April of 2001, you would have been protected and may still be able to adjust your status now.

## >> *I've been in the U.S. unlawfully but my spouse is a citizen. Will that affect my application for residency or citizenship?*

“Unlawful presence” is time spent in the U.S. unlawfully – as, for example, on an expired visa, or after originally entering the U.S. by unlawful means. “Unlawful presence” can seriously affect your opportunities to return to the U.S. if you leave. If you’ve been in the U.S. unlawfully for six months to one year, you may be barred from reentering the U.S. for three years. If you’ve been in the U.S. unlawfully for more than one year, you may be barred from reentering the U.S. for 10 years. In either case, the bar is only triggered when you *leave* the U.S.

Luckily, if you are an immediate relative of a U.S. citizen, the I-601 and I-601A waivers can help. These acknowledge that removal would cause undue hardship, and are for that reason called “Hardship Waivers.” **Note: this this means hardship to the U.S. citizen** (not the undocumented spouse). Hardship can be medical, psychological, or financial. You can apply for the I-601A without even leaving the U.S.

### Required Documents for I-601

#### ***To Show Hardship to you, your U.S. Citizen Spouse:***

- » Notarized affidavit from USC spouse.
- » Notarized affidavit from you.
- » Photos of family (birthday parties, holidays, pets, babies, etc.).

#### ***Evidence of Status and Relationship:***

- » Evidence of your relationship to your spouse: birth records, marriage certificates, etc.
- » Evidence of your spouse’s immigration status: copy of naturalization certificates, birth certificates, green cards, and passports.

***Evidence of Medical Hardship:***

- » Original Doctor's letter regarding **ANY medical, emotional, mental/physical incapacity/condition** of your spouse (or a close relative in your spouse's care) **and the treatment** involved. The doctor's letter must include nature of condition (chronic or acute, or long or short term), ongoing treatment needed, specialized treatment needed, duration of treatment, and availability and quality of treatment abroad (if known).
- » Copy of medical and hospital records of your spouse (or a close relative in your spouse's care).

***Evidence of Financial Hardship:***

- » Letters or documents showing financial contributions to your family.
- » Proof of paying (provide copies):
  - Rent/mortgage—if you do not have a lease/mortgage.
  - Utility bills.
  - Child support to any children (including from previous relationships).
  - Childcare.
  - Alimony/Pension (including previous relationships).
  - Groceries.
  - Education related expenses: private school, tutors, school books and supplies, transportation.
  - Vehicle titles and insurance policy.
  - Medical bills, hospital bills, prescription bills, health insurance bills.

***Proof of Income:***

- » If you are employed, an original letter from your current employer. It should include information regarding the nature/duration of your employment, and your earnings.

- » Copy of documents regarding ownership of property, business, assets, stock, etc.
- » Original Letter of Employment for spouse. It should include information regarding the nature and duration of employment, and hours and earnings.

### ***Evidence of Emotional Hardship:***

- » Original Psychological evaluation of USC spouse stating how your spouse would be affected by your departure. Ask an immigration attorney for a recommendation.

### ***Evidence of Education:***

- » Copy of School Records of you, your spouse, and your children that include:
  - Grades.
  - Participation in any Special Needs Program.
  - Participation in Advanced Placement Program.
  - Letters/Documents confirming participation in sports, and extracurricular programs.

### ***Evidence of Hardship if spouse relocates to foreign country:***

- » Newspaper articles/documents regarding violence, war, natural disasters, living conditions, etc.

### ***To Show Good Moral Character***

- » 2- 3 Notarized Affidavits of witnesses attesting to your good moral character. These must come from U.S. Citizens/Legal Permanent Residents: family members, friends, coworkers, landlord and priest/pastor.
- » Letters/documents showing participation and volunteer work in your community. For example: any help that you have given to neighbors, such as yard work, rides, etc.

- » Original letters of recommendation from past employers.
- » Original letters of recommendation from religious organizations you belong to.
- » Original police clearance letters from every city where you have lived since age 15.
- » Copy of driving record (if applicable).
- » Copy of tax records (evidence that you have paid taxes for every year you have worked) (Including: IRS Letter 1722 (call 1.800.829.1040 and ask the agent to fax the form to you).
- » Copy of school records (college or vocational or English language training, etc.).
- » If you have ever been arrested:
  - Original certified disposition for every arrest (if applicable)
  - Copy of certificates of completion of rehabilitation programs (AA, NA, Life Skills, domestic violence, driving under the influence, or controlled substance).
  - Original letter to probation/parole officer.

## *>> Will prior arrests affect my application for citizenship?*

Traffic violations will not make you ineligible for citizenship. Other minor violations or misdemeanors – for example, shoplifting – will probably not affect your application. Arrests and convictions for more serious offenses – like assault, sexual assault, or a drug crime – will negatively affect your application. You must be sure to have copies of all dispositions from prior arrests and bring these to your consultation with an immigration attorney.

## *>> Will I lose my U.S. citizenship or green card if I relocate to another country?*

One of the terrific benefits of U.S. citizenship is that you will not lose it if you reside in another country, no matter how long.

This isn't the case for green cards, which do have a residency requirement. Without special permission, if a green card holder outside the U.S. for 12 months or longer risks losing his or her green card. Even after six months outside of the U.S. a green card holder will face more intense scrutiny at the border or in the airport coming back.

## NON-IMMIGRANT VISAS

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In the United States, a non-immigrant visa is required for anyone who wishes to stay in the country on a temporary basis, including for work, tourism, and medical reasons. A non-immigrant visa does not grant you permanent residency in the country, nor does it give you the right to vote or acquire a new job, but it does grant you a temporary stay in the United States. While the process can be simple for some, non-immigrant visas can give rise to many complications.

### >> *Who can apply for a non-immigrant visa?*

The regulations pertaining to non-immigrant visas are strict, and the United States is careful to grant them only to individuals and families who fall within the guidelines. To ensure that you receive a visa, you must be visiting the United States for one of the following reasons:

- » Career (includes business owners, athletes and entertainers)
- » Medical care
- » Tourism
- » Family (includes children, spouses, and fiancé(e)s of current U.S. citizens)
- » Foreign exchange program
- » Education

### >> *Can I apply for a visa while still in my home country?*

Consular processing allows foreign nationals to apply for visas while still in their home country. This is best handled with an experienced immigration lawyer in

the U.S., working closely with a liaison (usually a family member or employer) already in the country.

Submitting a petition via consular processing presents its own challenges because we are no longer dealing with United States Customs and Immigrations Services. Instead, we are working with the Department of State. Access to files can be limited and backlogs are common. Nevertheless, an attorney can ensure that the government has the requisite information to process your petition without unnecessary delays.



## >> *How can I obtain a student visa?*

If you wish to study in the United States but are not a citizen, you can obtain a student visa that will allow you to pursue an education in the country legally. This visa does not grant you permanent residency, but it can lead to eventual citizenship down the road if you request a status change. Student visas are generally granted

to individuals studying at a college or university and will not expire until his or her time as a student is up. Once you have been accepted to a school that has been approved by the Student Exchange and Visitor Program, you can come to an experienced U.S. immigration attorney for help with the process. It will help to have a liaison who is already here in the country, usually a school official or family member. An interview will also be mandatory for applicants between 14 and 79.

## >> *What is the difference between a Visa Waiver and a B Tourist visa?*

The best way to enter the U.S. depends on what you plan to do here, and on how long you want to stay.

## Visa Waiver

Currently about 40 countries in the world participate in the Visa Waiver program. This allows tourists to come to the U.S. with nothing more than a passport and a round-trip ticket, without visiting the Embassy to apply for a visa. These last 90 days and cannot be extended or converted into a different type of visa. The only exception would be if you married a U.S. citizen during those 90 days. You might, then, be able to stay and interview for a green card.

## B Tourist Visa

If you know you want to stay in the U.S. longer than 90 days, you will need a B visa. To obtain a B-1 (business) or B-2 (tourist) Visa, you need to go to the U.S. Embassy in your home country and apply, submitting your “plan” – no matter if your intent is to celebrate a holiday or family occasion, travel across the country, etc. You also need to prove temporary, rather than permanent intent to travel to the U.S., and prove that you have permanent ties in your home country. This can be difficult for the young or the elderly, who might not have a job or many family members in their home country. However, once in the U.S., you can seek an I-94 authorization to stay in the U.S. for up to six months. Also, if you have a B visa you can attempt to convert it to an H-1 professional visa or F-1 student visa.

## >> *I've been the victim of domestic abuse. Can I apply for a U visa?*

USCIS reserves **U visas** (10,000 per year) for victims of crime, especially violent crime. Many applicants have suffered domestic abuse, kidnapping, prostitution, involuntary servitude, labor fraud, or sexual assault. If you have been a victim you may apply for a U visa, on the condition that you work with law enforcement by completing a I-918 form, usually available at your police department.



Because the U visa is reserved for victims, it depends on documentation from the police. This means that if you've been a victim, you must have contacted the police. Without documentation of the crime, the police will not sign off on your I-918 form.

Police may refuse to sign the I-918 form. This is entirely at their discretion. You may have other options, though. If your case has traveled through the courts, a prosecutor or judge may sign your form. If you're not sure how to get a completed I-918 form, an immigration lawyer may have the expertise and the resources to help you.

The U visa comes with a work permit valid for three years. With a work permit you may obtain a Social Security Number and a driver's license. After three years you may apply for an adjustment of status, which could lead to a green card.

## BUSINESS-BASED SPONSORSHIP AND WORKING IN THE U.S.

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An attorney can help with business-based sponsorship or immigration from both angles, helping businesses or even American families protect and keep immigrant employees, and helping professionals to obtain the proper documentation to conduct business in the U.S.

Whether you are an investor or an artist, an executive or an entertainer, a scientist or an activist, you will need to apply for the appropriate visa if you wish to conduct business in the U.S.

### H-1 Visa

H-1 workers are foreign professionals with specialized knowledge in a particular industry or discipline. They must have at least a four-year degree or equivalent training for this visa. USCIS considers three years of professional experience equivalent to one year of higher education, in this situation. If you have not completed a four-year (Bachelor's-equivalent)

degree, you may need to complete an educational evaluation, usually about six pages.

### **L-1 Visa**

An L-1 visa is for intra-company transfers of skilled employees, including managers, executives, and their support staff. Unlike the H-1 visa, the applicant does not have to have completed a four-year degree. The only qualification is that the transfer must clearly benefit the U.S. economy. Candidates must have worked at the foreign company for one year, and there must be a clear and important relationship between both companies (as when one is a parent company, or if both are subsidiaries of the same parent or holding company).

### **E Visa**

An E visa is for a trader or an investor who enters the United States (under the provisions of a treaty agreement) to create a particular business or to direct the operations of an existing business or enterprise.

### **O Visa**

This visa is for artists and sports figures. Prima ballerinas, foreign athletes, and international entertainers enter the U.S. under an O visa.

### **R Visa**

The R visa is for religious workers.

### **TN Visa**

A TN visa is similar to an H1, but applies to professionals from Canada and Mexico covered under NAFTA (North American Free Trade Agreement). Obtaining this visa is an expedited process that can often occur right at the border.

Remember, these visas are *not* green cards. They are non-immigrant, short-term visas. You only obtain legal permanent residence after you adjust your

status. However, they allow the visa holder to reside in the United States for a set number of years, and may be renewed while the visa holder is in the country.

### >> *How do I get an H-1 visa?*

The H-1 visa category is used by U.S. employers for the temporary employment of foreign nationals in professional positions requiring specific educational and professional credentials. The foreign national must possess the minimum requirements for performance of the duties of the position and the position itself must qualify as a “specialty occupation,” i.e., one that minimally requires possession of a four-year university degree or equivalent. Furthermore, the employer must be able to demonstrate that alien’s salary can be paid as of the year of filing with DOL (i.e., business tax return, financial statement, business bank statements).



The initial period of stay granted to the alien admitted to the U.S. is governed by the time required by the employer, up to a maximum of three years. Extensions of stay may be obtained, but the alien cannot be continuously employed in H-1 status for more than six years.

### >> *How do I get an L-1 visa?*

The United States L-1 visa is a non-immigrant visa that allows companies operating both in the US and abroad to transfer certain classes of employee from its foreign operations to the USA operations for up to seven years. The employee must have worked for a subsidiary, parent, affiliate or branch office of your U.S. company outside of the U.S. for at least one year out the last three years.

The following is a listing of documentation/information required by to commence the preparation and filing of an I-129L Petition for Nonimmigrant Worker (Corporate Transferee Visa).

### Alien's personal documents including:

- » Completed Personal Analysis Questionnaire.
- » Copies of passport and I-94.
- » Copies of academic credentials, i.e., diploma, degrees, transcripts and if necessary, educational equivalency evaluation (with certified translations if applicable).
- » Copies of marriage certificate and birth certificates of spouse or children and advice on if we are to include family members (there will be an additional fee for inclusion of family members) (with certified translations if applicable).
- » Copy of alien's resume, which must include the details of his/her professional experience for the past five years.

### Employer documents including:

- » Completed Employer Questionnaire.
- » Job title and five to seven sentence job description, highlighting key names and duties, monetary value of major projects or clients, salary, location where work will be performed (worksite).
- » Contact person name, address, telephone, and fax numbers.
- » Documentation of the Parent/Subsidiary Relationship between U.S. Company and Parent/Affiliate abroad.
- » Articles of incorporation, partnership agreements, or other forms of business organization for the U.S. affiliate
- » Two (2) Organizational Charts reflecting the following:
  - a. Applicant's position in the company *prior* to proposed transfer (insert the titles of both supervisors and individuals/ departments supervised).

- b. Applicant's proposed position *after* the transfer (insert the titles of both supervisors and individuals/departments supervised).

## >> *How long does the labor certification process take?*

If you own or run a business, and you wish to sponsor a foreign worker, an immigration attorney can help expedite the labor certification process. Program Electronic Review Management, also known as PERM, is the first part of the labor certification process. Before PERM, stage one of the labor certification process could take up to four years, and was completed entirely by mail. The government introduced the PERM program a year and a half ago. As of now, after you register via computer, stage one only takes six to 10 months.

Ironically, this has caused backlog in stage two. After you receive your certification, you must apply for your employee's I-140 immigrant visa petition. Although you can progress quickly onto an adjustment of status appointment, there is an adjustment of status backlog. For sponsorship cases, the visas being granted in December 2006 were applied for in 2002 for skilled workers and 2001 for unskilled workers.

The labor certification process takes time and skill. Although an attorney's help is not required by law, an experienced immigration lawyer can outline all your options, and help you to select the best one.

## >> *How do I get a work permit?*

To apply for a work permit, or **employment authorization document** (EAD), you must demonstrate need for the permit. You will file an I-765. You may need to provide the following:

1. Personal affidavit detailing need for basic or commercial driver's license.
2. Personal affidavit detailing need for Social Security Number.
3. Personal affidavit detailing need for working papers.

4. Job offer letter from potential employer, indicating need for Social Security Number for hiring.
5. Proof of need for requirement of Social Security Number to obtain health insurance.
6. Proof of need for requirement of Social Security Number to open a bank account and carry out banking transactions.

## >> *How do I get a Social Security card?*

You need a Social Security card for many reasons. A Social Security Number is:

1. Necessary to open a bank account and carry out banking transactions.
2. Necessary for enrollment in state school lunch programs.
3. Required to obtain car insurance.
4. Required for certain educational or personal loans.
5. Required for miscellaneous legal transactions.

You can get a Social Security card once you've obtained your work permit. Just take that permit down to the Social Security office, and the process should take about a month.

## >> *I've filed for an adjustment of status. Can I work before the process is complete?*

Usually you will be issued a work permit 60 days after filing for an adjustment of status. You can take your work permit to the Social Security Office to get a Social Security Number, and take both your work permit and SSN to the DMV and get a driver's license.

## >> *I'm seeking an adjustment of status but don't intend to work in the U.S. Do I have to apply for a work permit, too?*

Sometimes a non-citizen will marry a U.S. citizen and apply for a green card without any intention to work in the U.S. He or she might plan to be a stay-at-home parent, for example. It's probably still a good idea to apply for a work permit, however, and to file this along with the rest of the adjustment paperwork. The work permit is an excellent form of photo identification, and it's a great way of getting a Social Security Number during your adjustment process, instead of waiting for your final green card approval. That Social Security Number also allows you to get a driver's license, and insurance. You might also later change your mind and decide to seek work. If you file after you secure your green card, you'll pay a filing fee, but if you apply for a working permit during the adjustment process, there is no fee.

## KEEPING FAMILIES TOGETHER

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Green cards, citizenship, and lawful residency depend on so many factors, and these factors sometimes divide families. No matter where in the world you are or what your immigration status might be, an experienced immigration attorney can help reunite you with your family.

## >> *How long do I have to wait for a family based visa?*

Many citizens and legal permanent residents seek family based visas to reunite with their loved ones and continue their lives together in the United States. Obtaining a visa can be an arduous and complicated process, but having an experienced attorney on your side can prevent a host of problems and delays.

That depends on a couple of factors, including your citizenship status, and your relationship to the relative you seek to sponsor. The processing time for U.S. citizens petitioning for relatives is commonly shorter than the time legal permanent residents face when doing the same. Also, spouses, parents, and

unmarried children under the age of twenty-one are generally accorded a shorter processing time than siblings and married children.

The State Department also publishes Visa Bulletin every month. It rates the backlog according to country, relationship, and citizenship status of the petitioning relative. This chart is a reliable predictor of the processing time, once all the paperwork and interviews are complete.

### *>> Will it be easier to bring my family to the U.S. if I become a citizen?*

Once you have obtained legal permanent resident status, you can petition to bring your relatives to the United States. This includes your spouse, children (minor or adult, single or married), and siblings. However, the wait may be long. Even for a spouse, you could wait as long as two or three years before your spouse's visa takes effect. If you obtain your U.S. citizenship, a petition for your spouse, parent, or unmarried minor child may be processed without any waiting. Spouses and minor children can take four to six months, while married children cases can take up to seven years, and sibling sponsorships can take up to ten years. So, don't wait. If you've obtained citizenship and are interested in securing visas or green cards for your family members in the future, contact an experienced immigration attorney and start the process right away.

### *>> If I have a green card, can I sponsor a new spouse after a divorce?*

If you got a green card through marriage, there is a five-year freeze on your ability to sponsor a subsequent spouse. You can request that USCIS lift this restriction, but you would have to provide evidence that your marriage was in good-faith. Generally, this means producing birth certificates of children born into the marriage. You might also secure a waiver if the spouse who sponsored you is deceased. If you did not have children and the divorced spouse who sponsored you is alive, you will have to wait five years before sponsoring a new spouse for a green card.



## >> *Can I apply to be a lawful permanent resident if I'm married to a U.S. citizen?*

If you are married to a U.S. citizen you may apply for an adjustment of status to become a lawful permanent resident (LPR) without having to leave the country and apply for an immigrant visa. You must:

- » Have evidence that you entered the U.S. lawfully (e.g. a stamped passport).
- » Demonstrate that your spouse is a U.S. citizen (not a green card holder).
- » Demonstrate that yours is a legitimate marriage based in love (bring photo albums, evidence of shared address and bank accounts, birth certificates of any children, etc.).
- » Demonstrate that you have a job and will not be a burden on the state.

If you are living abroad you must interview at the U.S. Embassy in your country. If you are living in the U.S. but not allowed to interview here, you will have to travel to your home country and interview at the Embassy there.

## >> *My fiancé(e) is a U.S. citizen, but I am not. Can I come to the U.S. to be married?*

If your fiancé(e) is a U.S. citizen but you are not, you may apply for a **K-1 visa** (the "fiancé(e) visa") to travel to the U.S. and marry your fiancé(e) within 90 days of arrival. You will apply for adjustment of status to a permanent resident (LPR) with the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS). Because a fiancé(e) visa permits the holder to immigrate to the U.S. and marry a U.S. citizen shortly after arrival in the United States, the fiancé(e) must meet some of the requirements of an immigrant visa. Eligible children of K-1 visa applicants receive K-2 visas.

You will need certain documents to make a successful I-129F application for a K-1 visa. (Supporting documentation should include those items that span

the time from when you first met until the time of filing the I-129F. In other words, INS will be looking for evidence that you have had ongoing contact with each other and possess a present intent to marry.) These include:

- a. Three Photographs (one of each, passport style).
- b. Copy of document evidencing Petitioner's U.S. citizenship (birth/naturalization certificate).
- c. Copy of birth certificate (with certified translation) of fiancé(e) and any child(ren).
- d. Documentation evidencing termination of prior marriage(s) of either party.
- e. Affidavit by Petitioner highlighting progression of relationship (i.e. how/when you met, specifics of courtship, meeting one another's relatives, common values/lifestyles), decision to marry.
- f. Any other documents you consider relevant to establish that the plans to marry are based on love, and the desire to live together as husband and wife and not to circumvent immigration laws, including the following:
  - Photographs of time spent together (with each other and with friends and family members).
  - Correspondence – personal letters, cards, e-mails sent to/from each other.
  - Plane ticket or receipts from trips visiting each other.
  - Receipts from vacations spent together.
  - Phone bills – highlighting calls to each other.
  - Money wires to each other.
  - Emails to each other.

You cannot come to the U.S. to marry a someone you have never met in person, nor someone you have not seen in person in over two years. Skyping, etc., does not count.

At the time of the consular interview, the Petitioner will be required to submit evidence of financial ability to support Fiancé(e): job letter, bank letter, tax return(s).

### >> *How can I prove my child is a U.S. citizen if he or she was born abroad?*

You can apply for a Consular Report of Birth Abroad. This is proof of identification and citizenship, but isn't a travel document – it can't replace a passport, for example. However, you can apply for a passport for your child in the same visit to the embassy. The consul or embassy will give you one original. Hang on to this – it won't be easy to get a replacement.

### >> *If my abusive spouse is sponsoring my visa or green card application, will I lose my chance to stay in the U.S. if I leave that person?*

The **Violence Against Women Act** could help in this situation. Singed in 1994 and reauthorized with expanded terms in 2013, VAWA includes a provision allowing victims of domestic violence (women *or men*) to apply for U visas. The applicant must have had a bona fide marriage to a U.S. citizen or a green card holder, must have suffered physical or emotional abuse, and must have been cohabitating with the abuser. The applicant may file even after divorce from the abuser, so long as he or she files within two years of the divorce.

Under VAWA, a victim of abuse could file an I-360 petition for a green card, a form of self-sponsorship. There's a significant requirement of documentation (dealing with the conditions above), but USCIS usually approves these petitions within six months.

Also, VAWA may extend beyond spousal relationships. In at least one case, a mother of a U.S. citizen whose schizophrenia caused him to be abusive did successfully petition for a green card under VAWA.

### *>> Will a criminal history affect someone's ability to sponsor me?*

A U.S. citizen's criminal history will not affect his or her ability to sponsor someone for a green card, unless a court convicted the person of a crime that falls under **Megan's Law**. Megan's Law is a federal policy requiring authorities to make certain information about sex offenders publicly known. A registered sex offender cannot sponsor a green card application unless that individual has undergone rehabilitation and can offer evidence that he or she will not harm the party seeking sponsorship. This decision is entirely at the discretion of immigration officials. If this concerns you, seek counsel from an experienced immigration attorney, and perhaps a criminal defense attorney.

### *>> I have an immigration hearing and might be deported, but I have U.S.-born children. Do I have any options?*

It's unwise to generalize about cases like these – too many factors could determine the outcome. However, if you have been in the U.S. for at least 10 years and have U.S.-born children, especially children who are not babies, and who have been integrated into the school system and the culture; if you have no criminal record and have evidence of good character; you may be able to apply for **cancellation of removal**. You will go to a trial – ideally with an attorney. Be prepared to document all of the above, as well as the extraordinary hardship your U.S. citizen relatives would face if you were deported.

### *>> My minor relative was detained at the border. What's going to happen?*

You might be worried about a younger relative or friend facing deportation. More and more, young people attempt to cross the border into the U.S. on their

own or with groups, without guardians. They are detained and released, but sometimes receive notification of a hearing.

Because of the **Special Immigrant Juvenile Program**, these children might not be deported, but could instead apply for a work permit and a green card. They must be under 21, unmarried, and abandoned or neglected (according to a local Family Court order), and in some cases attending school. Under these conditions, a young person might adjust his or her status in the U.S through an I-360 petition.

## DEPORTATION / REMOVAL

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Deportation is a serious issue that can tear apart families and ruin lives. An experienced firm can help build a defense to prove that you should be allowed to remain in the United States with your loved ones.

In the United States, there are numerous reasons an individual or family would face deportation, including:

- » Gaining residency in the United States through fraud.
- » Being convicted of certain crimes, such as drugs, assault, or DUI.
- » Failing to notify U.S. Citizenship and Immigration Services of any address or status change.
- » Having an expired visa.
- » Illegal entry into the United States.
- » Posing a terroristic threat.

If you were charged with any of the above infractions, you will be given a Notice to Appear (NTA) from the Department of Homeland Security and will have to appear before a judge. Your attorneys will look at all of the evidence against you and fight for your rights in court against unjustified deportation. Your attorneys can demonstrate to the court that:

- » You are of commendable moral character.

- » You have been living in the United States continuously without incident for at least 10 years, or at least five if you have a green card.
- » You didn't commit the crime in question.
- » Any deportation would have an irrevocable effect on your family.

## DACA AND DAPA: DEFERRED ACTION



On June 15, 2012, President Barack Obama signed an executive order called the Deferred Action on Childhood Arrivals Act (DACA), which grants individuals brought illegally to the United States as children the ability to seek employment authorization for two years without the threat of deportation.

Deferred action is up to a prosecutor's discretion – it amounts to a choice to defer action to remove an individual from the country. Deferred action does not confer lawful status upon an individual. In addition, although an alien granted deferred action will not be considered to be "accruing unlawful presence" in the United States during the period deferred action is in effect, deferred action does not absolve individuals of any previous or subsequent periods of unlawful presence.

Under existing regulations, an individual who has been granted deferred action is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate "an economic necessity for employment." Deferred action can be terminated at any time at the agency's discretion or renewed by the agency.

It's important to know the requirements for deferred action eligibility before you apply.

### AGE ELIGIBILITY

Applicant must be 15-30. (Marriage or children do not disqualify)

an applicant.)

*\* Documentation includes: copy of birth certificate and copy of passport.*

### **ENTRANCE TO U.S.**

Applicant must have entered before the age of 16.

*\* Documentation includes: financial records, medical records, school records, employment records, & military records.*

### **PHYSICAL PRESENCE IN THE U.S. ON JUNE 15, 2012**

Applicant must have been physically present in the U.S. on June 15, 2012.

*\* Documentation includes: correspondence received, school attendance record, verification of job attendance by human resources personnel or office manager, proof of banking transaction, credit card/ATM receipts, medical records, school records, military records, and employment records.*

### **PHYSICAL PRESENCE IN THE U.S. SINCE JUNE 15, 2007**

Applicant must have been present in the U.S. for five years as of June 15, 2012.

*\* Documentation includes: financial records, medical records, school records, employment records, & military records.*

### **CONTINUOUS RESIDENCE IN U.S.**

Applicant must have maintained continuous residence in U.S. (only brief, innocent departures).

*\* Documentation includes copy of passport reflecting all entry and departure stamps.*

### **CRIMINAL PROBLEMS**

Applicant must not have been convicted of a felony, one serious misdemeanor, or three or more minor crimes not arising out of same incident.

*\* A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.*

*\* A significant misdemeanor is a federal, state, or local criminal offense punishable by no more than one year of imprisonment or even no imprisonment that involves: violence,*

*threats, or assault, including domestic violence; sexual abuse or exploitation; burglary, larceny, or fraud; driving under the influence of alcohol or drugs; obstruction of justice or bribery; unlawful flight from arrest, prosecution, or the scene of an accident; unlawful possession or use of a firearm; drug distribution or trafficking; or unlawful possession of drugs.*

### **ACADEMIC REQUIREMENTS**

Applicant must be currently enrolled in school, graduated high school, or possess a GED (General Educational Diploma).

*\* Documentation includes: diplomas, report cards, school transcripts, and GED certificates.*

### **MILITARY SERVICE**

If an applicant served in the military, the applicant must have been honorably discharged from the Armed Forces or Coast Guard.

*\* Documentation includes: report of separation forms, military personnel records, and military health records.*

When deciding if you are eligible for deferred action and ought to apply, it's of the utmost importance that you discuss your case with a trustworthy immigration attorney and avoid "notario publicos" and other fraudsters.

## *>> Does this policy apply to those subject to a final order of removal?*

Yes. An individual subject to a final order of removal who can demonstrate that he or she meets the eligibility criteria can request a review of his or her case and receive deferred action for a period of two years, subject to renewal. All cases will be considered on an individualized basis.

Individuals who believe they can demonstrate that they satisfy the eligibility criteria and are about to be removed should immediately contact either the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, seven days a week) or the ICE Office of the Public Advocate through the Office's hotline at 1-888-351-4024 (staffed 9 a.m. – 5 p.m., Monday – Friday) or by e-mail at [EROPublicAdvocate@ice.dhs.gov](mailto:EROPublicAdvocate@ice.dhs.gov).



## >> *What is the status of DAPA?*

President Obama announced DAPA, or Deferred Action for Parents of Americans and Lawful Permanent Residents, as an expansion of the DACA policies in November of 2014. It would have exempted parents of LPRs from deportation and granted temporary work permits. However, several states sued, claiming that DAPA was unconstitutional. A District Court issued an injunction effectively freezing DAPA in November 2015. The Supreme Court was deadlocked as of November 2016, setting no precedent and leaving the injunction in place.

## >> *Can a deferred action recipient with a valid work permit apply for a travel permit?*

Plenty of people who've received deferred action and are living in the U.S. with a valid work permit want to leave temporarily. A person might be interested in studying abroad, traveling for business, or visiting a relative. Many, though, worry that if they leave they might not be able to come back.

If you have a valid work permit, you can apply for a travel permit with the I-131 form. You will need to supply proof of your reason for wanting to travel. Education, business, and humanitarian reasons (including visiting sick relatives or attending a funeral) are the only acceptable ones under current policy.

## >> *I'm eligible for deferred action and also in a serious relationship with a U.S. citizen. Can I apply for deferred action and then later apply for an immigrant visa or green card?*

As long as a person has two legitimate paths to immigration, and there has been no instance of fraud in either case, a person may pursue both paths simultaneously or consecutively.

## >> *What happens if my application is denied? Will I get arrested?*

You will not automatically be arrested or deported if USCIS denies your request for deferred action – USCIS will only issue you a letter of denial. If you are guilty of serious crimes, however, USCIS will probably report you to ICE.

You may not “appeal” a USCIS decision on deferred action, but you may request a “review” if you think you were denied because of an administrative error like the ones listed here:

<https://my.uscis.gov/helpcenter/article/can-i-appeal-uscis-determination-on-my-daca-request>