



JUSTICE FOR
IMMIGRANTS

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IMMIGRATION BASICS

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IMMIGRATION BASICS

Who Is an Immigrant?

According to U.S. law, an immigrant is a foreign-born individual who has been admitted to reside permanently in the United States as a Lawful Permanent Resident (LPR).

How Do Immigrants Get Admitted to Permanently Reside Here?

Typically, a foreign-born individual seeking to become an LPR can do so in one of three ways:

1. Through family-sponsored immigration, a U.S. citizen can sponsor his or her foreign-born spouse, parent (if the sponsor is over the age of 21), minor and adult married and unmarried children, and brothers and sisters. A Lawful Permanent Resident can sponsor his or her spouse, minor children, and adult unmarried children. Our immigration system divides the family members eligible for sponsorship into two tiers. Immediate relatives of U.S. citizens—that is, spouses, unmarried minor children and parents, but not brothers and sisters or unmarried and married adult children—are admitted as their applications are processed.
2. Through employment-based immigration, a U.S. employer can sponsor an individual for a specific position where there is a demonstrated absence of U.S. workers.
3. By winning one of a limited number of immigrant visas available in the annual diversity visa lottery that is open to immigrants from certain countries.

Who Is a Refugee?

A refugee is a person outside of the United States who seeks protection on the grounds that he or she fears persecution in his or her homeland. To obtain refugee status, a person must prove that he or she has a “wellfounded fear of persecution” on the basis of at least one of five specifically-enumerated and internationally recognized grounds. Those grounds include the person’s race, religion, membership in a social group, political opinion, or national origin. A person who has already entered the United States, and who fears persecution if sent back to his or her country, may apply for asylum here. Once granted asylum, the person is called an “asylee.” Like a refugee, an asylum applicant must also prove that he or she has a “well-founded fear of persecution” based on the same enumerated grounds.



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Who Is an Undocumented Immigrant?

An undocumented immigrant is a person who is present in the United States without the permission of the U.S. government. Undocumented immigrants enter the U.S. either illegally, without being inspected by an immigration officer, or by using false documents, or legally, with a temporary visa, and then remain in the U.S. beyond the expiration date of the visa.

Who Is a Non-immigrant?

A non-immigrant is an individual who is permitted to enter the U.S. for a period of limited duration. Nonimmigrants include: students, tourists, temporary workers, business executives, diplomats, artists and entertainers, and reporters. Depending on where they are from and the purpose of their visit, non-immigrants may be required to apply for and obtain a visa from the U.S. government. The application process entails an interview with a U.S. consular official in the nearest U.S. consulate, who has the sole authority to grant or deny a visa. Even if granted, the visa is merely a travel document. All non-immigrants—regardless of whether they have a U.S. visa—must also pass immigration inspection upon arrival in the U.S.

Who Is a Naturalized Citizen?

Lawful Permanent Residents are eligible to apply for U.S. citizenship through a process called naturalization. To qualify for naturalization, applicants generally must reside in the U.S. for five years (three if they are married to a U.S. citizen) without having committed any serious crimes, show that they have paid their taxes and are of “good moral character,” and demonstrate a knowledge of U.S. history and government as well as an ability to understand, speak, and write ordinary English.

What’s the Difference Between a Refugee and an Asylee?

Refugees and asylees are people seeking protection in the U.S. on the grounds that they fear persecution in their homeland. A refugee applies for protection while outside the United States. An asylee differs from a refugee because the person first comes to the United States and, once here, applies for protection. Refugees generally apply in refugee camps or at designated processing sites outside their home countries. In some instances, refugees may apply for protection within their home countries, such as in the Former Soviet Union, Cuba, and Vietnam. If accepted as a refugee, the person is sent to the U.S. and receives assistance through the “refugee resettlement program.”

How Does Someone Gain Refugee Status?

To qualify for refugee resettlement in the U.S., a person must come from a country designated by the Department of State. The person must meet the definition of a refugee by proving that she has a well-founded fear of persecution. The refugee applicant must prove that this fear is based on the possibility of persecution because of her race, religion, membership in a social group, political opinion, or national origin. In addition, a refugee must fit into one of a set of “priority” categories, which factor in degree of risk to the refugee’s life,



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membership in certain groups of special concern to the U.S., and existence of family members in the U.S. A person claiming refugee status must undergo a vigorous screening process before being resettled in the U.S. First, the person is screened by the United Nations High Commissioner for Refugees (UNHCR) to determine if she qualifies as a refugee under international law. If she qualifies, she next is screened by the U.S. embassy in the host country, which contracts with private organizations to collect personal information about refugees. The embassy will check the name of the refugee in its Consular Lookout and Support System (CLASS), which contains the names of millions of persons who have been denied visas, or who may be otherwise ineligible for entry into the U.S. If she passes that test, an officer from U.S. Citizenship and Immigration Services (USCIS) conducts a face-to-face interview and reviews the file. The refugee is then photographed and fingerprinted by the State Department. Certain refugees must receive clearance from the FBI. If no problems arise in all of this screening, the refugee proceeds to the U.S., where an inspector from the Bureau of Customs and Border Protection conducts one more interview and compares the refugee with host country U.S. embassy records. While these redundant checks ensure that no one who is not entitled to refugee status will get it, they have greatly slowed the admissions system, and hampered our ability to protect vulnerable individuals. Thousands of refugee “slots” have gone unused in recent years, even as the admission ceilings have been greatly reduced from those of the recent past. Without additional resources, the U.S. is falling short of its commitment to protect refugees.

After refugees have been in the U.S. for one year, they are eligible to become permanent residents. There is no limit to the number of refugees who may become permanent residents each year.

Family-Sponsored Immigration

Family-sponsored immigration is the way U.S. citizens and lawful permanent residents bring family members from other countries to live permanently in America. Citizens may sponsor only their spouses, children, parents (if the citizen is older than 21 years), and brothers and sisters (if the citizen is older than 21 years). LPRs may sponsor only their spouses and unmarried children. Neither citizens nor LPRs may bring in more distant family members, such as aunts, uncles, and cousins.

Our immigration system divides the family members eligible for sponsorship into two tiers. Immediate relatives of U.S. citizens—that is, spouses, unmarried minor children and parents, but not brothers and sisters or unmarried and married adult children—are admitted as their applications are processed.

Non-immigrant Visas

“Non-immigrants” are tourists, students, and other persons who come temporarily to the U.S. for pleasure, business, study, diplomacy, or other purposes on an alphabet soup of visa categories. The total number of immigrants—family-sponsored, employment-based, and diversity immigrants—is small compared to the number of people who come here for short periods of time. These non-immigrants outnumber immigrants by about 30 or 40 to 1. In fiscal year 2003, nearly 28 million persons came to this country temporarily. Of those, more than 24 million came here as tourists or business visitors.



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Visas for Tourists and Business Visitors

The vast majority of people coming to the U.S. temporarily do so for tourism or business. In most countries, these individuals must obtain a visa from a U.S. embassy or consulate. In reviewing an application for a temporary visa, U.S. immigration law requires consular officers to ensure that the applicant does not intend to stay permanently. Therefore, a visa applicant must prove that he or she plans to return on or before the time the visa expires. The applicant can do this by showing that he or she has a residence outside the U.S. and other ties that will insure he or she will return before the expiration date of the visa. In addition to proving they are not “intending immigrants,” visa applicants are fingerprinted and photographed, and information about them is checked against government databases of persons who are ineligible to enter the U.S. because of criminal activity, past visa problems, or links to terrorist groups.

Visas for Students

Over one-half million students come to the U.S. each year. A person is considered a student if he or she comes to the U.S. to enroll in coursework of 18 hours or more per week. To obtain a student visa, a person must first apply to a U.S. academic institution, be accepted, and receive an immigration form “I-20” from the school. The student must then apply for a visa at a U.S. Consulate in his or her home country. Among the things the student may need to show in the visa application process are acceptance to a U.S. school, availability of sufficient funds to cover all expenses for the entire course of study without resorting to employment in the U.S., evidence of family and/or economic ties to the home country sufficient to induce him or her to return after completing the coursework and, if required by the school, proficiency in English. Students are usually allowed to remain in the U.S. for the duration of their studies. If there is any change in the student’s status—that is, if his or her coursework drops below the minimum required, or if the student changes field of study—the school is required to report this information to the government.

The increased scrutiny of visa applications for students in recent years has led to months-long delays for some students, and a perception that the U.S. is a less-welcoming place to study. For the first time in three decades, enrollment of foreign students in U.S. colleges and universities fell in 2004. Information about foreign students is collected via the Student and Exchange Visitor Information System (SEVIS), an internet-based system which maintains immigration status information, such as admission at a port of entry, as well as personal and academic information about students, such as their course load, field of study, current address, and other information. Any change in this information must be reported to the government by the school, using SEVIS. The schools themselves must have permission to enroll foreign students. Most U.S. colleges and universities have been approved by the government to enroll foreign students. With the requisite permission, other institutions—including vocational schools, junior colleges, public high schools, and language training schools—may also enroll foreign students.

Visitors Not Required to Obtain Visas

Canadians crossing over the U.S. border are generally not required to have a visa. Citizens from the 27 participating countries in the Visa Waiver Program also are not required to obtain a visa if they are planning to



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come to the U.S. for business or pleasure for a period of 90 days or less. However, there are strict conditions under which people may come to the U.S. under the Visa Waiver Program—they must have valid, machine-readable, passports; their stay is limited to a maximum of 90 days; they must have round-trip tickets, if they arrived by air or sea; and they must have proof of financial solvency. If they do not have a machine-readable passport, they must apply for and obtain a visitor visa.

The U.S. places strict rules on the participating countries before they are admitted to the Visa Waiver Program. First, the non-immigrant visitor visa refusal rate (the rate of visa applications denied by U.S. consular officers) must be three percent or less for the previous fiscal year. Second, the participating country must offer reciprocal visa-free travel for U.S. citizens. Third, the country must have a machine readable passport program in place. Fourth, the country must be politically and economically stable. Fifth, the participating country must have effective border controls for its own borders. Sixth, law enforcement agencies in the participating country must be cooperating with their U.S. counterparts. Finally, the U.S. considers any possible security concerns that might be raised, should a country be admitted to the program.

Countries participating in the Visa Waiver Program are: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, The Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

Regardless of whether they have a visa, arriving foreigners are fingerprinted and photographed through the USVISIT program, which eventually will be deployed to become a regular part of the inspection procedure at all land, air, and sea ports of entry. Foreigners leaving the country will again have to check in with US-VISIT so that the Department of Homeland Security will have information on whether the visitor complied with the terms of his or her stay. By February 2005, the program had not been fully implemented, but procedures to collect information from foreigners exiting the U.S. were being tested at a number of airports.

Naturalization

Naturalization is the process by which eligible legal immigrants become U.S. citizens. Through the naturalization process, immigrants display a willingness to become full members of our society. The process is not an easy one. It requires that immigrants live in the U.S. for a certain number of years, learn our language, study our history and government, show that they are of “good moral character” and have not committed serious crimes and, finally, swear allegiance to the United States. Over time, most immigrants become citizens.

The Naturalization Process

Eligibility: An applicant for citizenship must be at least 18 years of age, and must have resided continuously in the U.S. as a Legal Permanent Resident for at least five years prior to filing. Permanent residents who have been married to a U.S. citizen for three years are eligible to apply for citizenship. There are special expedited provisions for immigrants serving in the armed forces during a designated period of armed conflict. Children



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who are adopted from another country automatically have U.S. citizenship conferred to them as long as one or both parents are U.S. citizens, the child is under 18, and the child is legally residing in the U.S. with the U.S. citizen parent or parents. Immigrants must be of “good moral character,” usually determined by checking with the FBI for any record of a criminal background. A person must also demonstrate an ability to speak, read, and write ordinary English and have a general understanding of U.S. government and history. Long-time older permanent residents are exempt from the English requirement if they are 50 years or older and have been living in the U.S. for at least 20 years, or if they are 55 years or older and have been living in the U.S. for at least 15 years. These immigrants must still demonstrate knowledge of U.S. history and government, but they may do so in their native language. Certain persons with disabilities are exempt from the requirement to demonstrate knowledge of U.S. history and government.

Interview: After submitting an application and fee to U.S. Citizenship and Immigration Services (USCIS), an appointment is made with the applicant to take his or her fingerprints, which are checked by the FBI. An interview is then scheduled with the applicant, during which an immigration examiner reviews the application and determines if the applicant meets the requirements for U.S. citizenship. To demonstrate English proficiency and knowledge of U.S. history and government, the applicant must be prepared to answer several history and civics questions. They may also be asked to read a sentence or brief passage from a USCIS textbook, and to write a sentence dictated by the examiner.

Oath and Swearing-In: Approved candidates for citizenship must take an Oath of Renunciation and Allegiance, giving up foreign allegiances and titles and swearing to support and defend the Constitution and laws of the U.S. If the person has a severe disability preventing him or her from understanding, or communicating an understanding of, the meaning of the Oath, the person may obtain a waiver of the Oath requirement. The final step in the naturalization process is the swearing-in ceremony, which can take place before a judge or in an administrative ceremony.

What Public Benefits Do Immigrants and Refugees Receive?

- Determining whether or not an immigrant qualifies for public benefits is a complicated matter. Eligibility for benefits depends on a number of factors, among them:
- her immigration status;
- whether or not she entered the U.S. before or after the 1996 welfare reform law was enacted (August 22, 1996);
- length of residence in the U.S.;
- her income and resources and the income and resources of the family member who sponsored her;
- work history;
- whether she is a child or adult;
- her state of residence; and
- the various other eligibility requirements of the particular benefits program.

Most benefits programs are open only to long-term, lawful immigrants. A small number of programs (such as school lunch programs and emergency medical services) are open to all people in need. For federal



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means-tested public benefits, newly-arrived legal immigrants generally are:

1. barred for their first five years in the U.S.; and
2. subject thereafter to a process called “deeming” where the income and resources of the U.S. citizen or

Lawful Permanent Resident sponsor of the immigrant are added to the immigrant’s own income to determine whether the immigrant is poor enough to qualify for the benefit under the program’s financial guidelines. Deeming continues until the new immigrant either becomes a citizen or works 40 “qualifying quarters” (at least 10 years). The work of a spouse (or of a parent in the case of a child under 18) also counts towards the 40 quarters.

After becoming naturalized citizens, or working for 40 quarters, legal immigrants are generally eligible for federal and state programs provided they meet the general program criteria.

Shouldn’t Family Sponsors Be Responsible for the Immigrant’s Care?

They are. U.S. citizens or Lawful Permanent Residents wishing to sponsor an immigrant relative for admission to the U.S. must earn enough (125% of the poverty level for the family size, including the immigrant) to demonstrate that they are financially capable of supporting the immigrant so that the immigrant does not need to rely on public benefits. They also must sign a legally-enforceable affidavit of support. This document makes the sponsor liable for the immigrant’s use of means-tested benefits until the arriving immigrant obtains citizenship or works 40 “qualifying quarters” (at least 10 years) without using means-tested services.

Are Undocumented Immigrants Entitled to Any Federal Government Services?

While immigrants who are not here legally are ineligible for nearly all federal benefits, they are still eligible for certain very basic kinds of assistance, including: emergency Medicaid, immunizations, testing and treatment for the symptoms of communicable diseases, short-term non-cash disaster relief, school lunches and breakfasts, and certain other programs essential to public health and safety.