

*Presentation of the Basics of Family
Immigration Law*

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**EVERY FAMILY IMMIGRATION
APPLICAION HAS TWO STEPS**

STEP 1

**Family Petition
(I-130)**

**The purpose of this petition is to prove to the
Immigration Service that the *petitioner* has a bona fide
relationship to the *beneficiary* and that the *petitioner* is a
USC or LPR of the United States.**

STEP 2

**Residency Application
(I-485)**

**To request lawful permanent residence and employability
within the United States**

PRIORITY LEVELS FOR FAMILY IMMIGRATION PETITIONS

| PRIORITY LEVEL | RELATIONSHIP |
|----------------------------|---|
| IMMEDIATE RELATIVES | Spouses, children (who are under 21) and parents (if USC child is over 21) of USCs |
| FIRST PREFERENCE | Non-married children of USCs (over 21) |
| SECOND PREFERENCE | 2A- Spouses and unmarried children (under 21) of LPRs 2B – Non-married children of LPRs who are over 21 years of age |
| THIRD PREFERENCE | Married children of USCs (over 21) |
| FOURTH PREFERENCE | Siblings of USCs (petitioner over 21) |

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| Fam-ily | All Charge-ability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPP-INES |
|----------------|---|----------------------------|--------------|---------------|---------------------|
| 1st | 01APR04 | 01APR04 | 01APR04 | 15AUG92 | 01DEC93 |
| 2A | 01JAN06 | 01JAN06 | 01JAN06 | 01JAN04 | 01JAN06 |
| 2B | 01DEC01 | 01DEC01 | 01DEC01 | 08JUN92 | 01JUL98 |
| 3rd | 22MAY01 | 22MAY01 | 22MAY01 | 15SEP92 | 01DEC91 |
| 4th | 01OCT99 | 01OCT99 | 01OCT99 | 22NOV95 | 01MAY87 |

Wait times are often for many years and *do not necessarily* move forward day for day.

THE “GOLDEN RULE” OF IMMIGRATION LAW:
**All immigration must occur *from outside* to inside the
United States, not from within the U.S.**



PURPOSE:

The U.S. government requires that every applicant to immigrate to the U.S. must pass through *inspection* to ensure that they are not subject to any grounds of inadmissibility.

Sec. 212. [8 U.S.C. 1182] GROUNDS OF INADMISSIBILITY

(a) Classes of Aliens Ineligible for Visas or Admission.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

- (1) Health-related grounds.**(A) In general
(B) Waiver authorized
(C) Exception from immunization requirement for adopted children 10 years of age or younger

- (2) Criminal and related grounds.**(A) Conviction of certain crimes.
(B) Multiple criminal convictions.
(C) Controlled substance traffickers.
(D) Prostitution and commercialized vice.
(E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution
(F) Waiver authorized
(G) Foreign government officials who have engaged in particularly severe violations of religious freedom

- (3) Security and related grounds.**(A) In general.
(B) Terrorist activities
(C) Foreign policy
(D) Immigrant membership in totalitarian party
(E) Participants in Nazi persecutions or genocide
(F) Association with terrorist organizations

- (4) Public charge.**(A) In general.
(B) Factors to be taken into account
(C) Family-Sponsored immigrants
(D) Certain employment-based immigrants

- (5) Labor certification and qualifications for certain immigrants.**(A) Labor certification.
(B) Unqualified physicians
(C) Uncertified foreign health-care workers.
(D) Application of grounds.

- (6) Illegal entrants and immigration violators.**(A) Aliens present without admission or parole.
(B) Failure to attend removal proceeding
(C) Misrepresentation.
(E) Smugglers.
(F) Subject of civil penalty.
(G) Student visa abusers

- (7) Documentation requirements.**(A) Immigrants
(B) Nonimmigrants.

- (8) Ineligible for citizenship.**(A) In general.
(B) Draft evaders

- (9) Aliens Previously Removed.**(A) Certain aliens previously removed.
(B) Aliens unlawfully present.
(C) Aliens unlawfully present after previous immigration violations

- (10) Miscellaneous.**(A) Practicing polygamists.
(B) Guardian required to accompany helpless alien.
(C) International child abduction.
(D) Unlawful voters.
(E) Former citizens who renounced citizenship to avoid taxation.
(F) Certain Exchange Visitors

Ground of inadmissibility for unlawful presence in the U.S.

| | MUST REMAIN ABROAD A MINIMUM OF | WAIVER POSSIBLE? | WHEN CAN WAIVER BE REQUESTED? |
|--|--|--|--------------------------------------|
| PRESENT MORE THAN 180 DAYS CONSISTENTLY | 3 years | Severe hardship to USC or LPR spouse or parent | Immediately |
| PRESENT MORE THAN A YEAR CONSISTENTLY | 10 years | Severe hardship to USC or LPR spouse or parent | Immediately |

| |
|---|
| <p>TIME THAT DOES <i>NOT</i> COUNT:</p> <ul style="list-style-type: none"> • Any time before April 1, 1997 <ul style="list-style-type: none"> • Minors (under 18) • Applicants for asylum, assuming no unlawful employment <ul style="list-style-type: none"> • Family Unity beneficiaries • Certain victims of domestic violence • People who have already filed their I-485 residency application • Up to 120 days for recipients of a grant of voluntary departure • Up to 120 days for individuals who have applied for certain extensions <ul style="list-style-type: none"> • Cuban and Nicaraguan applicants under NACARA |
|---|

“Permanent” Bars

| | REMAIN ABROAD A MINIMUM OF | WAIVER POSSIBLE? | WHEN CAN WAIVER BE FILED? |
|---|-----------------------------------|----------------------------------|---|
| SUM TOTAL OF ONE YEAR ILLEGAL PRESENCE | Permanently | Yes, via any LPR or USC relation | After minimum 10 years abroad for I-601 waiver, immediately for I-212 |
| DEPORTED AND ILLEGAL REENTRY | Permanently | Yes, via any LPR or USC relation | Same as above |

But...

There are TWO exceptions to the “golden rule” of immigration law:

ONE

Section 245(i) of the INA:

- (a) I-130 filed on or before 4/30/2001
- (b) Beneficiary pays a fine of \$1,000
- (c) Can adjust from within the U.S.

TWO

If beneficiary entered with a valid visa, went through inspection and was admitted, having an immediate relative petitioner can adjust from within the U.S.

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