



IMMIGRANT VISAS

To become a permanent resident, a foreign national must apply for an immigrant visa petition, based on either an employment or familial relationship. Once the employer or family sponsor files the immigrant visa petition, the foreign national receives a priority date, which marks the place in line for a visa number. There are rare circumstances where the individual may “self-sponsor” an immigrant visa, for example based on extraordinary ability or by performing work in the national interest.

The immigration laws only allow for a designated number of “immigrant visa numbers” each year for each preference category from each country. Each month, the Department of State releases the visa numbers for the following month, designating whether there are any available immigrant visa numbers available, and if not, which priority dates are eligible to receive a visa number and apply for permanent residence that month.

In order to ensure a diverse nation, the immigration regulations provide that each country is allocated a portion of the total visa numbers available, so if there are too many individuals from one country applying under that category, their numbers will not be current, and they must wait until a visa number is available for their country and their preference category. Historically, individuals born in Mexico, the Philippines, China, and India have been subject to waiting periods for immigrant visa numbers due to a high demand for immigrant visas from these countries.

Once a visa number is available, the individual may file an application for permanent residence, either through adjustment of status from within the US, or through consular processing at a US Embassy or Consulate abroad. Individuals who are residing in the US whose visa category is “current” or where there is no wait for a visa, may file the immigrant visa petition concurrently with the adjustment of status application upon meeting the other eligibility requirements for adjustment of status.

EMPLOYMENT BASED CATEGORIES

First Preference

This category is comprised of workers of extraordinary ability, outstanding professors and researchers, and multinational executives and managers.

Second Preference

To qualify for the second preference, an individual must have an advanced degree. According to the USCIS, an “advanced degree” means any U.S. academic or professional degree or a foreign equivalent degree following a Bachelor’s degree. A Master’s or Doctorate degree qualifies as an advanced degree.

If the individual does not have an advanced degree, the USCIS will accept a Bachelor’s degree (or a foreign equivalent degree) followed by at least five years of progressively responsible post baccalaureate experience in the field.

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Third Preference

The third preference category is reserved for skilled workers, professionals, and other workers. The other workers category covers workers who are “capable of performing unskilled labor,” and who are not temporary or seasonal. Skilled workers must be capable of performing skilled labor requiring at least two years training or experience.

Fourth Preference

This visa category includes certain special immigrants, ministers, religious workers, and former U.S. government employees.

Fifth Preference

The fifth preference visa category is reserved for qualified immigrants seeking to enter the US to engage in a new commercial enterprise meeting certain investment criteria. The amount of money the individual must invest in furtherance of the commercial enterprise varies depending on which area of the country will benefit from the investment. Each investor must employ at least 10 US workers. If the investor fails to meet the conditions specified, he or she may lose permanent resident status.

FAMILY BASED IMMIGRATION CATEGORIES

Not every family member of a US resident will qualify for an immigrant visa. It is important to note that even if there is some familial relationship to either a US citizen or lawful permanent resident, but it does not fall under one of the visa categories below, the foreign national will not be able to immigrate to the US based on the relationship alone. For example, brothers and sisters of permanent residents, married children of permanent residents, or aunts and uncles of US citizens are not eligible to immigrate based on their familial relationship.

The classifications below define the necessary familial relationships for immigrating to the United States.

Immediate Relative

There are an unlimited number of visas available for those who qualify as immediate relatives of US citizens. Immediate relatives are defined as the spouse, child (under 21), or parent of a US citizen (if the US citizen is 21 years or older).

First Preference

To qualify for first preference, the individual must be the unmarried son or daughter (21 years or older) of a US citizen.

Second (2A) Preference

To qualify for 2A classification, a foreign national must be the spouse or child (under 21) of a lawful permanent resident.



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Second (2B) Preference

The 2B preference category is reserved for the unmarried son or daughter (21 or older) of a lawful permanent resident. It is important to note that if a son or daughter (21 or older) marries, he or she loses the ability to immigrate as there is no preference category available for married sons and daughters of permanent residents.

Third Preference

The third preference category is comprised of married sons or daughters (any age) of US citizens.

Fourth Preference

The fourth preference visa category is reserved for the brother or sisters of US citizens. To qualify, the US citizen who is petitioning for the relative must be at least 21 and both siblings must at some time have been the children of one common parent.