

EMPLOYMENT-BASED IMMIGRATION



Pennsylvania Immigration and Citizenship Coalition

Why Do People Come to the U.S.?

2

- Family Relationships
- Employment Opportunities
- Fleeing Violence or Persecution

Who is Authorized to Work in the U.S.?

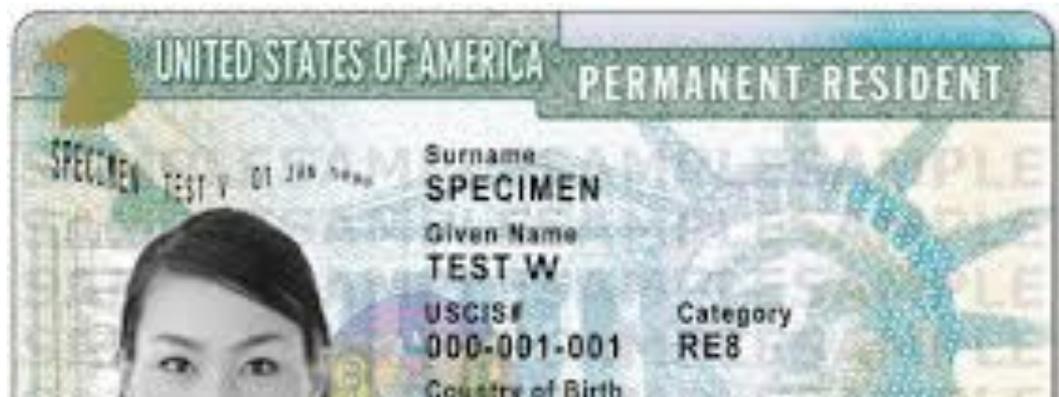
3

- U.S. Citizens
- Legal Permanent Residents
- Non-Citizens with Work Authorization
 - ▣ H-Visas (temporary workers)
 - ▣ DACA (2-year permit)
 - ▣ And others

Pathway To Citizenship

4

- The first step to citizenship is becoming a Legal Permanent Resident (LPR)
- People with LPR status or a “green card” have some, but not all, of the rights and benefits of U.S. citizens
- They are ultimately not guaranteed protection from deportation



How to Gain LPR Status

5

- Family Relationships
 - ▣ Cap of 480,000 per year
 - ▣ Preference categories with priority dates
- Employment
 - ▣ Approximately 140,000 per year
 - ▣ Preference categories with priority dates
- Humanitarian
 - ▣ Asylum & Refugee
 - ▣ U and T status (crime, trafficking victims)
- Diversity (Green Card) lottery

Employment-Based Immigration

6

- Approx. 140,000 employment-based immigrant visas available every fiscal year
 - ▣ This includes the immigrants plus eligible spouses and minor children
- The prospective employer must first obtain a labor certification approval from the US Department of Labor
- 5 preference categories based on level of skill and experience
- Spouses and minor unmarried children younger than 21 years may apply for immigrant visas with the applicant

Obtaining a Labor Certification

7

- Employer applies to DOL's Employment and Training Administration (ETA)
- In general, the DOL works to ensure that the admission of foreign workers will not adversely affect job opportunities, wages, and working conditions of US workers
 - ▣ If approved, employer has 180 days to submit immigration (form I-140) application to USCIS
 - ▣ Generally DOL does not charge, but USCIS charges \$700 filing fee

First Preference Category

8

- Priority workers (28% of available visas)
 - ▣ Labor certification is not required
- There are 3 sub-groups within this category:
 - ▣ Persons with extraordinary ability in the sciences, arts, education, business, or athletics
 - Most meet 3 out of 10 listed criteria for “extraordinary ability”
 - ▣ Internationally recognized outstanding professors and researchers
 - ▣ Certain multinational managers or executive

Second Preference Category

9

- There are 2 subgroups (28% of visas):
 - ▣ Professionals holding an advanced degree or bachelor's + at least 5 years progressive experience
 - ▣ Persons with exceptional ability in the sciences, arts, or business
 - “Means a degree of experience significantly above that encountered in the sciences, arts, or business.”
 - Must meet 3 of 7 criteria for “exceptional ability”
 - ▣ Must generally have a labor certification by DOL

Third Preference Category

10

- “Skilled workers,” “professionals,” and “other workers” (28% of all visas)
 - ▣ Requires an approved labor certification
 - ▣ Permanent, full-time job offer required
- There are 3 subgroups
 - ▣ “Skilled workers”: jobs requires min. 2 years training
 - ▣ “Professionals”: job requires a bachelor’s degree
 - ▣ “Other workers”: unskilled job requires less than 2 years training or experience

Fourth Preference Category

11

- Certain special immigrants (receive 7% of available visas)
 - ▣ Labor certification is NOT required
- Many subgroups within this category:
 - ▣ These include ministers of religion, broadcasters in the US, former employees of the US government abroad

Fifth Preference Category

12

- Immigrant investors (7% of available visas)
 - ▣ Must Invest (without borrowing)
 - at least \$1,000,000 or
 - half a million in a rural area or high unemployed area
 - ▣ The investment must create full-time jobs for at least 10 US citizens within 2 years
 - ▣ 10,000 visas per year
- Congress created this preference category in 1990 to stimulate the US economy through job creation and capital investment by foreign investors

Wait Times

13

- Cap of 140,000 employment visas per year
 - ▣ No more than 7% of total immigrant visas may be issued to any one country
- Priority date is the date the employer submits the application for labor certification to DOL
- After employer submits a visa petition to USCIS, the agency will take 4 months-3 years to issue a decision.
- After USCIS approves, need to wait for your priority date to become current, which may take several years

Barriers to Sponsorship

14

- Expensive
 - ▣ Filing fees and legal costs
- Cumbersome
 - ▣ Requires extra effort on the company's part to collect data, work with a lawyer and the government, and manage timing
- Attitude
 - ▣ Unnecessary to hire foreign workers
 - ▣ Recruiter doesn't understand the process
 - ▣ Fears that workers won't stay long enough

15

Non-Immigrant Work Authorization

Temporary Work Visas

16

There are more than 20 types of visas for temporary employment

H-Visas are the most common and well known nonimmigrant employment visa

- H-1B for “specialty occupations” (65,000 + 20,000 per year)
 - Admitted for up to 3 years; may be extended for a total 6 years
 - Awarded on a lottery basis
- H-2A: Temporary agricultural workers from designated countries (No annual limit)
 - Admitted for period of approved employment
 - May be renewed twice for a total of 3 years
- H-2B: “Seasonal” non-agricultural temporary workers (66,000 per year)
 - Admitted for a period of up to one year; may be renewed twice for a total of up to three years
- These categories allow spouses and children under 21 to also enter on H-4 visas
 - ONLY H-1B spouses are permitted to work
- Must leave the United States if employment is terminated

Undocumented Workers

17

- DACA
 - ▣ [temporary for young people, ended as of Sept. 5, 2017]
- Work Visas
 - ▣ Generally must return to home country for visa processing
 - Leaving the US would trigger the 3 or 10-year bar from returning
 - Some may qualify for a discretionary waiver from the bars
 - ▣ LIFE Act may allow them to adjust in the US
- Work without authorization

Resources

18

- [“Employment-Based Visa Categories in the United States,”](#) American Immigration Council
- [“The Facts on Immigration Today: 2017 Edition,”](#) Center for American Progress
- [“How the United States Immigration System Works,”](#) American Immigration Council
- [“Working in the US,”](#) USCIS



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