

NATIONAL IMMIGRATION FORUM

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THE ABC'S OF U.S. IMMIGRATION

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:

- 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.
- 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.
- 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 "well-founded 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. Both refugees and asylees may apply to become LPRs after one year.

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. Non-immigrants 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.



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). Lawful Permanent Residents (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. In all, nearly three-quarters of regular immigration to the U.S. is family-sponsored.

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. There is no ceiling on the number of immigrant visas allotted for immediate relatives. In recent years, more than 350,000 have immigrated per year.

All other immigrants who come here through family sponsorship fall into the *"family preference system"* which, in recent years, has been capped at 226,000 visas per year.

Immigration Based on Family Relationships

CATEGORY	U.S. SPONSOR	RELATIONSHIP	VISAS ALLOCATED
Immediate Relative	U.S. Citizen	Spouses, unmarried minor children and (if the U.S. citizen is 21 years or older), parents	Not numerically limited (more than 350,000 have been issued annually in recent years)
1 st Preference	U.S. Citizen	Unmarried adult children (21 years or older)	23,400 visas/year, plus any visas left from the 4th preference
2 nd A Preference	LPR	Spouses and minor children	87,900 visas/year. Unused visas from the 1st preference may be added to the 2nd.
2 nd B Preference	LPR	Unmarried adult children (21 years or older)	26,300 visas/year
3 rd Preference	U.S. Citizen	Married adult children	23,400 visas/year, plus any left over from the 1st and 2nd preferences
4 th Preference	U.S. Citizen (21 years or older)	Brothers and sisters	65,000 visas/year, plus any left over from the previous preferences

Worldwide Ceilings and Limits on Immigrants from One Country

All "immediate relatives" plus all of the family preference categories must fit within an overall ceiling for family-based immigration of 480,000. This ceiling can be exceeded, however, due to the fact that a minimum of 226,000 visas per year are reserved for the family preference categories (non-immediate relatives), coupled with the fact that immediate relatives are not capped. In addition to these category limits, the ceiling on the number of people we allow in from any one country is approximately 25,600. This ceiling includes immigrants in the family-preference categories and immigrants who are coming here through the sponsorship of an employer. There are some exceptions to the per country limits.

Screening of Immigrants

When an immigrant inside the U.S. applies for an immigrant visa, he or she must submit information and documentation that is carefully checked by the Bureau of Citizenship and Immigration Services of the Department of Homeland Security. On the application form itself, there are questions asking about criminal activity. The immigrant must report all places of residence and employment over the past five years. Information about parents, spouse, and children are also collected on the application form. Along with the



application, an immigrant must submit photos and a copy of his or her birth certificate. He or she must appear for fingerprinting, and these fingerprints are checked against an FBI database of persons with criminal records. In some cases, police clearances must accompany the application. Finally, the immigrant must have a medical examination. Persons waiting outside the U.S. for an immigrant visa must go through a similar screening process performed by a State Department Consular Office.

When Visas are Not Available

The law requires that family preference visas be issued to eligible immigrants in the order the petitions are filed. When there are more applicants applying for visas in a preference category than there are visas available, the preference category is considered "over-subscribed." Applicants must then wait until a visa becomes available before they can immigrate to the United States. Currently, all visa categories are oversubscribed to varying lengths. For example, an LPR wishing to reunite with a spouse or minor child must wait more than four years before his or her family member can obtain a permanent immigrant visa. U.S. citizens petitioning for their siblings are waiting between 12 and 22 years, at a minimum, depending on their sibling's home country. In most cases, family members must wait outside the United States until a visa is available, and thus remain separated from their families. Typically, a foreigner with an application pending for an immigrant visa will not be allowed into the U.S. even for a visit with family members because the State Department, which issues visitor visas, may believe that the person will not leave when the visitor visa expires.



EMPLOYMENT-BASED IMMIGRATION

The employment-based immigration system allows immigrants who have skills and talents needed in the United States to be admitted to work. Currently, immigration law allots 140,000 employment-based immigrant visas annually.

How Does the System Work?

In most cases, a worker must have an employer petition the Bureau of Citizenship and Immigration Services on his or her behalf. Some workers—priority workers, investors, and certain special immigrants—may petition on their own behalf. Employment-based visas are divided into the following categories:

CATEGORY	U.S. SPONSOR
1 st Preference	About 40,000 visas a year (28.6% of the employment preference total) may be issued to <i>priority workers</i> —people who have "extraordinary ability," are "outstanding professors and researchers," or are "certain multinational executives and managers." Any unused visas from the fourth and fifth preferences are added to this category.
2 nd Preference	About 40,000 visas a year (28.6% of the total, plus any visas left over from the first preference) may be issued to persons who are "members of the professions holding advanced degrees or aliens of exceptional ability."
3 rd Preference	About 40,000 visas a year (28.6% of the employment total, plus any visas left over from the first and second preferences) may be issued to <i>skilled workers, professionals, and other workers</i> . The "other workers" category covers workers who are "capable of performing unskilled labor," and who are not temporary or seasonal. Workers in this category are limited to 5,000 visas per year. <i>Skilled workers</i> must be capable of performing skilled labor requiring at least two years training or experience.
4 th Preference	About 10,000 visas a year (7.1% of the employment preference total) may be issued to certain special immigrants, including ministers, religious workers, and others.
5 th Preference	About 10,000 visas a year (7.1% of the total) may be issued to persons who will invest between \$500,000 and \$3 million in a job-creating enterprise. At least ten U.S. workers must be employed by each investor. The amount of money varies depending on which area of the country will benefit from the investment.

As with family-sponsored immigrants, employer-sponsored immigrants must submit extensive information about their identities and histories, and are screened for any past criminal activity before being issued green cards.

How are U.S. Workers Protected?

Before visas can be issued in the second and third preference categories, the employer must obtain a "labor certification" from the U.S. Department of Labor confirming that there are not sufficient U.S. workers who are able, qualified, and willing to perform the work. The Labor Department must also confirm that employment of the alien will not adversely affect the wages and working conditions of U.S. workers. When applying for a labor certification, the employer must provide notice to the union representing the employer's employees or to other workers at the site. Any member of the public may challenge an application for a labor certification by showing that sufficient U.S. workers are available to perform the work, or by demonstrating that the employer is offering wages or working conditions that adversely affect U.S. workers.

What are Temporary Workers?

In addition to visas given to those coming to the U.S. to live permanently, visas are also given to individuals coming to the U.S. to fill the *temporary* needs of U.S. employers.

One category of non-immigrant worker visa is the "H-1B" visa given to highly-skilled individuals for a renewable period of three years. Many of these workers are employed in computer-related fields. In fiscal year 2005,



there is a cap of 65,000 of these temporary visas for foreign professionals. However, up to 20,000 H-1B visas can be issued outside of this cap to graduates of U.S. universities who have earned at least a masters degree. Companies of more than 25 employees applying for H-1B temporary workers must pay a fee of \$1,500 per worker (\$750 per workers for smaller employers), most of which is used for education and training programs for U.S. workers so that they might eventually fill the labor gaps. There are also processing and “anti-fraud” fees.

Another category of visa issued to temporary non-immigrant workers is the H-2 visa. H-2A visas are issued to temporary or seasonal agricultural workers. H-2B visas are issued to temporary or seasonal workers in industries other than agriculture. (A ski resort, for example, might seek H-2B workers during ski season, if American workers are not sufficiently available.) There is an annual limit of 66,000 visas that may be issued to H-2B workers. Employers wishing to bring in workers under the H-2 visa category must demonstrate that the workers’ duties are temporary or seasonal, and that their employment will not displace American workers or adversely affect their wages.

Persons being brought to the U.S. by employers seeking to fill temporary jobs must fill out a visa application in which they must account for potential problems in their history, such as criminal activity, past visa problems, or affliction with a communicable disease. In most cases, they also must provide evidence that they are not intending to immigrate permanently to the U.S.

Insufficient Number of Visas Available

The number of visas available for workers able to meet the needs of American employers is insufficient in several visa categories. This is most notable in the category reserved for workers coming to fill jobs that don’t require high skills. Only 5,000 visas are available per year for permanent workers (a subset of the 3rd preference), and this has created a demand for the labor of undocumented immigrants. In recent years, there has been greater demand for temporary workers than the current annual cap accommodates. In Fiscal Year 2005, U.S. Citizenship and Immigration Services anticipates that before the end of the first half of the year, the 66,000 visas for seasonal or temporary visas will have been used. For skilled workers, the cap for temporary visas (H-1B) was reached on the first day of the Fiscal Year for 2005 (though Congress since revised the law to allocate an additional 20,000 visas).



REFUGEES AND ASYLEES

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 many Refugees Does the U.S. Accept?

The United States accepts a limited number of refugees each year. This number is determined by the President in consultation with Congress. In Fiscal Year 2005, for example, 50,000 refugees allocated among five regions of the world will be permitted to come to the U.S. The regions and the numbers of admissions are:

- Africa—20,000
- Europe and Central Asia—9,500
- East Asia—13,000
- Near East/South Asia—2,500
- Latin America and the Caribbean—5,000

In addition, there is an "unallocated reserve" of 20,000 (not allocated to any region). The number of refugees that the president and Congress decide to admit is a *target* number. In fact, fewer refugees may be admitted by the end of the year. In Fiscal Year 2004, less than 53,000 refugees out of the 70,000 admission ceiling had been admitted.

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, 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.

What Benefits Do Refugees Receive?

The circumstances under which refugees leave their country are different from those of other immigrants. Often they are fleeing persecution without the luxury of bringing personal possessions or preparing themselves for life in a new culture. Recognizing this fact, the federal government provides transitional resettlement assistance to newly arrived refugees.

In the first 90 days, private voluntary agencies contract with the Department of State to provide for a refugee's food, housing, employment, medical care, counseling, and other services to help the refugee make the transition to economic self-sufficiency. Certain refugees are entitled to a special program of Refugee Cash and Medical Assistance, provided by the U.S. Department of Health and Human Services and administered by the state in which the refugee resides.

While most newly arriving immigrants are barred from receiving Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and Medicaid until they become citizens (and Food Stamps for their first five years), refugees are exempt from the ban on TANF for the first five years after they gain refugee status, and from the ban on SSI and Medicaid for seven years. They are eligible for Food Stamps as well.

How Does Someone Become an Asylee?

Like a refugee, an asylum applicant must also prove that he has a "well-founded fear of persecution" based on his *race, religion, membership in a social group, political opinion, or national origin*. Once granted asylum, the person is called an "asylee."

Individuals **inside the U.S.** may apply for asylum in one of two ways. The application may be submitted "**affirmatively**" by mailing it to a USCIS Service Center. The USCIS will schedule an interview with a specially-trained asylum officer in one of eight asylum offices in the U.S. A "**defensive**" application is submitted when an asylum seeker is in removal proceedings. In defensive cases, an Immigration Judge decides the application. In either instance, the application must be submitted within one year of entry to the U.S., or the person will be found automatically ineligible. Exceptions are allowed for extraordinary circumstances. While there is no limit on the number of people who may apply for asylum, of those applicants who apply based on a claim of persecution for coercive family planning reasons, only 1,000 per year may be granted. In fiscal year 2003, more than 11,000 asylum applications were approved by USCIS asylum officers.

Like refugees, asylum seekers must, in addition to proving a well-founded fear of persecution, be screened to ensure they are not inadmissible to the U.S. for some reason, such as criminal activity. Applicants for asylum must submit fingerprints, and they are subject to a check of all appropriate records and information databases, including FBI, Department of Homeland Security, and State Department databases.

In recent years, the concept of what constitutes a **social group** that may be targeted for persecution has evolved. For example, some women seeking asylum have based their claims on domestic violence. In this case, the civil authorities of the country have been unwilling to intervene in life-threatening situations, leaving a woman totally at the mercy of her abuser unless she flees for her life. Sexual orientation has also served as the basis for successful asylum claims in some cases. In either case, it is not only direct persecution by the government that serves as the basis for an asylum claim, but also the unwillingness of the government to protect someone in a particular social group who is in serious danger.

On the other hand, one group of asylum seekers has been treated especially harshly—Haitians. In violation of international refugee law, the United States Coast guard has blockaded Haiti, making it nearly impossible for people fleeing persecution to seek protection from the U.S. The few who do make it to our shores are put in detention, and despite the well-reported political violence in their country, the percentage of Haitian asylum seekers who are granted asylum is low.

Like refugees, asylees may apply for permanent resident status after one year. Unlike refugees, a maximum of 10,000 asylees each year are allowed to become permanent residents. Reform of the asylum system in 1995



resulted in a streamlined process that has resulted in more timely decisions. Since the reforms were instituted, more than 10,000 persons each year have been granted asylum. This fact, coupled with the annual adjustment of status limit, has created a backlog of applications for permanent residence. There are now tens of thousands of applications in the backlog. It is estimated that someone granted asylum today will have to wait more than 15 years before becoming a permanent resident (and then another five years before gaining eligibility for citizenship).

Individuals seeking to apply for asylum upon arriving at a U.S. airport or other port of entry are subject to a procedure called **expedited removal**. If an asylum seeker arrives with false or no documents, he must establish a fear of persecution in an on-the-spot interview before an immigration officer, or face immediate deportation. An immigration judge may review a negative decision within seven days. In 2002, the former INS expanded expedited removal to cover all persons arriving or having arrived by sea, if an immigration officer had not admitted them. Even persons living and working in this country for up to two years (and perhaps longer) will be subject to this treatment if they arrived by sea without being inspected by an immigration officer. The use of expedited removal was again expanded in August 2004. The Department of Homeland Security announced it would apply expedited removal to non-citizens who are encountered within 100 miles of the Mexican or Canadian borders, and who have been in the U.S. 14 days or less. (Citizens of Mexico and Canada are not subject to these procedures.)

This expansion of expedited removal means that Border Patrol agents will be making important legal decisions regarding whether or not an individual is a refugee fleeing persecution if the individual is caught in this 100-mile area. Such important decisions should only be made by trained asylum officers or immigration judges. Some members of Congress favor further expansion of expedited removal, and legislation to make it more difficult for an individual to prove a fear of persecution is pending.

In February 2005, the United States Commission on International Religious Freedom released the results of its study on expedited removal and found "serious—but not insurmountable—problems" with the process as it is being implemented. Despite the fact that flaws in the process have been identified in previous studies by other groups, the Commission noted that "Expedited Removal has been expanded twice in recent years, without first addressing the flaws in the system which undermine the protections for asylum seekers."



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. Other categories of non-immigrants coming to the U.S. in 2003 included:

CATEGORIES	DESCRIPTION	NUMBER OF PEOPLE
Students	F and M visas	625,000
Exchange visitors	Participating in programs approved by the Secretary of State such as teaching, research, and consulting, J visas	322,000
Temporary workers and trainees	Registered nurses, seasonal agricultural workers, internationally recognized athletes, information technology workers, entertainers, and others, H, O, P, Q, and R visas	591,000
Foreign government officials	Including families and A visas	138,000
Intra-company transferees	Those employed by international companies and come to the U.S. temporarily for the same employer as managers or executives, or who have specialized knowledge, L visas	298,000

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.

Mexicans who qualify for a visa to visit the U.S. may obtain a Border Crossing Card with special security features, good for 10 years.

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 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 US-VISIT 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.



OTHER IMMIGRATION CATEGORIES

Family-sponsored and employment-based immigration, refugee resettlement, and asylum are the chief avenues by which foreign-born persons come to reside permanently in the U.S. However, there are other ways by which people can immigrate to the U.S. or are allowed to stay here temporarily for extended periods of time in a sort of refugee-like status. The Diversity Visa Lottery program and Temporary Protected Status are two ways in which people from other countries come to the U.S. or stay here for varying lengths of time.

Diversity Visas

In 1990, Congress established an annual diversity visa lottery program to set aside a certain number of immigrant visas for people from countries that send relatively few immigrants to the U.S. The program has worked to prevent all of our immigrant visas from being awarded to persons from just a handful of countries. Those lucky enough to win a diversity visa are permitted to come to the U.S. to reside permanently, even if they do not already have close relatives in the U.S. to sponsor them.

This lottery program is much simpler than other immigration programs. The State Department designates which countries' residents are eligible to enter the lottery. Currently, the State Department has *excluded* residents from the 16 countries that sent the highest number of immigrants in the past five years—*Canada, China* (mainland-born, but not Hong Kong and Macau), *Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, United Kingdom* (and its dependent territories, except Northern Ireland), and *Vietnam*. Residents from eligible countries must either have a high school education or its equivalent or, within the past five years, have two years of work experience in an occupation that requires at least two years of training or experience. During a designated period of time, applicants must fill out a form on the State Department's Web site, giving their name, address, some biographical information, and information about their spouse and children (if any). They must also submit a digital photo with their application. Only one lottery entry per person per year is allowed. Entries are randomly selected by the State Department. Those selected are reviewed to ensure they meet the criteria mentioned above, and are screened against FBI, State Department, and other government databases to ensure that there is no reason—such as a criminal record—that they would not be eligible for an immigrant visa. 50,000 diversity visas are awarded each year.

Temporary Protected Status

Temporary Protected Status (TPS) is sometimes granted to nationals of countries in crisis who are presently in the U.S. The Secretary of the Department of Homeland Security (DHS) may designate a country for TPS if the people from that country who are currently in the U.S. would face "on-going armed conflict," natural disaster, or "extraordinary temporary conditions" that would place them in danger if they were to be returned to their home country. People are granted TPS if they can prove they are from a designated country and that they were present in the U.S. on or before the date the DHS Secretary made the designation. A country's designation for Temporary Protected Status may last for 6, 12, or 18 months. Persons with TPS will not be deported, and may live and work legally in the U.S. until the designated period expires. TPS can be renewed if the Secretary of DHS determines that unsafe conditions in the country persist. As of January 2005, nationals of eight designated countries were protected by TPS. Those countries were: *Burundi, El Salvador, Honduras, Liberia, Montserrat, Nicaragua, Somalia, and Sudan*.

Deferred Enforced Departure (DED)

Similar to Temporary Protected Status, this is a humanitarian designation to delay the deportation of groups of individuals who would otherwise be placed in danger should they be deported to countries where there is instability for political or other reasons. DED is designated by the President, and is generally granted to nationals of a country for 12 or 18 months. During this time, persons are allowed to work in the U.S. if they obtain employment authorization, for which a fee is charged. First used in 1990, DED has been used only five times thus far.

Parole

In certain cases, the government will allow an individual to enter the country, even though he or she may not appear to meet the conditions for gaining admission to the U.S. through regular immigration or refugee channels. Such persons may be admitted for urgent humanitarian reasons or significant public benefit.



Parolees are not formally admitted to the U.S., and are not eligible for the benefits received by refugees. Individuals, on a case-by-case basis, receive parole for a temporary period of time, although some may eventually become eligible to adjust to permanent resident status while they are in the U.S. In the early 1990's, several thousand Southeast Asians were paroled into the U.S.



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 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.

Rights and Responsibilities of New Citizens

When an immigrant becomes a citizen, he or she acquires new rights and responsibilities. These include the right to:

- Vote, hold elected office, and sit on a jury;
- Apply for and hold certain government and private jobs requiring a security clearance;
- Bring spouses, minor unmarried children, and parents to the U.S. without long waits;
- Travel abroad for unrestricted periods of time; and
- Access restricted federal programs.



IMMIGRANTS AND PUBLIC BENEFITS

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 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?

Very few. 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.

For detailed information about particular immigrants' eligibility for particular public benefits programs, visit the Web site of the National Immigration Law Center at <http://www.nilc.org>.