

United States Immigration Law and Practice



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ATTORNEYS AT LAW

Immigration Authority

- Immigration and Nationality Act - Immigration Act of 1865
- Code of Federal Regulations Section 8 – Aliens and Nationality
- Executive Office of Immigration Review (EOIR)
- Board of Immigration Appeals

- Additional Sources:
 - Adjudicators Field Manual
 - Foreign Affairs Manual
 - Form Instructions

Immigration Agencies



- Department of Homeland Security
 - United States Citizenship and Immigration Services (USCIS)
 - Grants Immigration Status
 - Immigration and Customs Enforcement (ICE)
 - Enforces Immigration
 - Customs and Border Protection (CBP)

Immigration Agencies



- State Department
 - National Visa Center
 - Processes Visas after approval by USCIS
 - Embassies and Consulates
 - Interview applicants and other visa services

Quotas

Family Immigration

- 480,000 available. Less the number of immediate visas issued
- Minimum of 226,000 available for preference category relatives

Employment Immigration

- 140,000 available plus unused numbers from the family preferences
- No more than 7 percent of the total visas can be used by the nationals of one country

Family Based Immigration

- Immediate Relatives – Parents, Spouses, and Children of U.S. Citizens
- Preference System: Numerical Limitations:
 - First Preference – Unmarried children – over age 21 - of U.S. Citizens
 - Second Preference – Spouses and children of Legal Permanent Residents
 - Third Preference – Married children of U.S. Citizens
 - Fourth Preference – Brothers and sisters of U.S. Citizens

Visa Bulletin – September 2017

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01MAY10	01MAY10	01MAY10	01FEB96	01JAN07
F2A	01OCT15	01OCT15	01OCT15	22SEP15	01OCT15
F2B	01NOV10	01NOV10	01NOV10	01JUL96	01JAN07
F3	08JUL05	08JUL05	08JUL05	08APR95	15FEB95
F4	01JAN02	01JAN02	01JAN02	15SEP97	01JUN94

Employment Based Non-Immigrant Visas

- Skilled Workers – H-1B
- Unskilled Workers – H-2
- Intracompany Transferees and New Offices – L1
- Treaty Traders – E1
- Treaty Investors – E2
- Persons with Extraordinary Ability – O1

Employment Based Immigrant Visas

- EB-1: Persons of Extraordinary Ability, Outstanding Professors and Researchers, Multinational Executives or Managers
- EB-2: Members of Professions Holding Advanced Degrees
- EB-3: Skilled Worker's, Professionals, and "other workers"
- EB-4: Special Immigrants – Religious Workers and other enumerated categories
- EB-5: Entrepreneur and Investor Visa

Diversity Visa

- Created to allow for immigration from countries that are underrepresented through traditional immigration avenues
- 55,000 Annual Visas Available
- Alien applies through the diversity visa “lottery”
- Must have an equivalent of high school education or experience in a field that requires at least two years of training

Fleeing Persecution

A person outside his or her country of nationality who is unable or unwilling to return there because of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

Refugee

- Person is outside the U.S.
- Program is administered through the United Nations

Asylum

- Person is in the United States or at a border
- Must file application for asylum within one year of entering the U.S.

Immigration and the Criminal Client

- Consequences of Conviction for Immigration clients
 - Deportation
 - Inadmissibility
- Only certain convictions
 - Crimes Involving Moral Turpitude
 - Aggravated Felonies
 - Multiple criminal convictions
 - Controlled Substances

Criminal Convictions

Crimes Involving Moral Turpitude

- No Real Definition
- [a] crime involving the willful commission of a base or depraved act is a crime involving moral turpitude, whether or not the statute requires proof of evil intent.”
- Look to the statute and case law

Aggravated Felony

- Term of Art defined in INA §101(a)(43)
- That section also enumerates about 20 different offenses that are Aggravated Felonies

Other Criminal Convictions

- **Controlled Substances**

- Any conviction for a controlled substance is grounds for removal and inadmissibility
 - Exempted is a single conviction of marijuana possession of less than 30 grams

- **Firearms offenses**

- **Domestic Violence**

Current Trends

- Slow processing times
- Requests for Evidence
- Denials
- ICE holders
- Held without bond
- DACA