A Primer on U.S. Immigration in a Global Economy

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Appendix A: Overview of United States Immigration Law

U.S. immigration laws rest on three tenets: family reunification, protection of American labor, and protection of refugee and asylum seekers. Executive, congressional, and judicial officials consider these basic tenets in all immigration-related decisions.

Entry to the United States

All persons seeking to enter the United States must establish that they are not *inadmissible* (see below) and that they are eligible for the visa being sought.

Admissibility/Inadmissibility

Admissibility is a legal concept independent of a person's physical location. Thus a person can be physically inside the United States and considered inadmissible for immigration purposes. There are ten substantive grounds for inadmissibility (Note: Lists are not exhaustive):

Health Related Grounds i.e.

- Having a communicable disease of public health significance, such as HIV/AIDS;
- Failure to document certain vaccinations;
- Having a physical or mental disorder, whose associated behavior may pose a threat to the immigrant or others.

Criminal and Related Grounds i.e.

- Committing a crime of moral turpitude (includes murder, kidnapping, assault, rape, child abuse, incest, theft, shoplifting, blackmail, robbery, fraud, extortion, rape and bigamy).
- Trafficking in controlled substances;
- Having two or more convictions involving prison sentences of five years or more.

Security and Related Grounds i.e.

- Violating U.S. laws on espionage or sabotage or attempting to overthrow the U.S. government;
- Engaging in terrorist activities or representing a foreign terrorist organization or an organization that endorses terrorism;
- Engaging in activities that potentially have negative foreign policy consequences for the U.S.;
- Membership in the Communist Party or affiliation with any other totalitarian party;
- Having participated in Nazi persecutions or genocide.

Public Charge i.e.

- Posing a likelihood of becoming a public charge given age, health, family status, assets, and education.

Labor Certification i.e.

- Failure to obtain a required labor certification when seeking to work in the U.S. (See breakout box on labor certification.)

Illegal Entrants and Immigration Violators i.e.

- Entering the United States without being formally admitted or paroled;
- Failing to attend removal proceedings and subsequently seeking to re-enter within five years;
- Fraudulently obtaining or seeking to obtain a visa, citizenship, or otherwise gain admission to the U.S. by misrepresenting a material fact;
- Violating the terms of a visa.

Documentation Requirements i.e.

- Arriving at a port of entry without a valid immigrant visa or a valid passport;
- Arriving at a port of entry without a valid nonimmigrant visa or border crossing card or without a passport that is valid for six additional months. Nonimmigrants who are exempt under the visa waiver program do not need a visa.

Ineligible for Citizenship

- Being ineligible for citizenship, including being a draft evader.

Aliens Previously Removed and "Unlawful Presence"

- Having been ordered removed then seeking admission within five years of removal or within ten years of having departed the United States while the order of removal was outstanding;
  - Bar is reduced to 3 years for those unlawfully present in the U.S. for 180 days but less than 1 year AND voluntarily departing prior to commencement of removal proceedings.
  - Bar is five years for aliens ordered removed in proceedings initiated upon the alien's arrival in the U.S.
  - The bar is 20 years after two or more removals. Lifetime bars instated for aliens convicted of an aggravated felony, aliens unlawfully in the U.S. for more than one year, and aliens ordered removed who subsequently attempt to reenter unlawfully.

Miscellaneous i.e.

- Being a practicing polygamist;
- Retaining a child who, after the United States has granted custody to a citizen child, retains the child or withholds custody
- Aiding international child abductors, as described above, or is a relative of an abductor
- Unlawfully voting in any election in the United States.

United States Citizenship

United States law provides two ways to gain citizenship: at birth and through naturalization. *Birthright citizenship* is guaranteed by the 14th Amendment to Constitution and is conferred to any child born in the United States regardless of the citizenship of its parents.[1] Children born abroad to U.S. citizen parents are also automatically U.S. citizens. *Citizenship through naturalization* is provided for by statute in the context of the tenets of preservation of the American family and protection of American labor. There are several ways to become a naturalized citizen, for example:

- An individual of good moral character who has been a legal permanent resident for at least five years may become a naturalized citizen. The wait is three years if the person is a legal permanent resident through a U.S. citizen spouse.[2]
- A minor child who is a legal permanent resident can naturalize through a parent.

A *nonimmigrant* is a foreign national allowed to enter the United States temporarily for a specific purpose such as tourism or pursuing a course of studies. An *immigrant* is a citizen of a foreign country permitted to enter the United States as a lawful permanent resident (LPR). Lawful permanent resident *immigrants* may then seek to become United States citizens.

Procedures for Immigrants

Those applying to immigrate can do so in one of two ways: from abroad or from inside the United States. Persons applying from abroad must obtain an immigrant visa from an American consulate. This is commonly referred to as obtaining a "green card". To do so, an applicant must establish eligibility for a specific visa category both before a consular officer abroad and an officer at the border. Additionally, medical exams, fees, interviews, and in some cases, affidavits of support, are necessary to acquire an immigrant visa.[3] An immigrant visa permits its recipient to travel to the U.S. border to request entry. The visa-holder may be turned away by the inspector at the port of entry.

Those applying to immigrate from inside the United States do so by seeking "adjustment of status" in order to become legal permanent residents. The immigrant must be eligible for legal permanent resident status, must have entered the U.S. legally with a nonimmigrant visa, and honored the terms of their visa. There are a variety of bases for applying for adjustment of status, each with its own rules and requirements.

1. The only case in which this does not apply is when the child's parent is an ambassador to the United States.
2. Those lacking "good moral character" include those individuals who: engaged in prostitution and commercialized vice; smuggled aliens; were convicted of an aggravated felony, or multiple criminal offenses with aggregate sentences to confinement of five years; gambled illegally; gave false testimony; and were convicted and confined to a penal institution for an aggregate period of 180 or more days. Even if somebody does not fall within the foregoing classes, they are not precluded from a finding that he or she was not of good moral character for another reason.
3. Family based visas require affidavits of support in addition to the medical exams, interviews, and fees.

Numerical Limitations to Immigrant (Permanent) Categories

There are three categories of immigrant visas with annual numerical limits set by statute. The first of these is *family sponsored preferences*, allowing a minimum of 226,000 and a maximum of 480,000 annual admissions.[4] A second category is, *employment based preferences*, allotted 140,000 admissions each year, and finally, the *diversity* category, known as the lottery, has an annual cap of 50,000 visas. Each of these three immigrant visa categories has its rules, ceilings, and country limits.[5] There are no limits on the number of *immediate relatives*[6] who can immigrate.

Family-Sponsored Immigration

Timely processing of a family-sponsored applicant's visa will vary with the applicant's age, marital status, and relation to the U.S. citizen family member. There is a "drop-down effect" priority system in these categories. For example, within so-called first preference categories, adult (over 21) unmarried sons or daughters of citizens have top priority among family sponsored immigrants.[7] Spouses and unmarried sons and daughters of legal permanent residents who are not citizens have second priority for family sponsored immigration visas.[8] The third priority goes to married sons and daughters of U.S. citizens because once someone is married he or she is no longer considered to be a "child," regardless of age. Brothers and sisters of citizens are next in the hierarchy but in order to gain status through a citizen sibling, the citizen must be at least 21 years of age or older. The wait to immigrate through a citizen sibling may be well over twenty years.

Any other type of relationship in the family categories receives second preference, which means that the applicant is furthest down on the waiting list of family-based immigration categories. For example, citizens applying for their parents must be over 21 years old so as to discourage non-citizen parents from having a child in the United States in order to subsequently be sponsored for immigration.

The State Department determines priority dates for each family-sponsored immigration category and posts the dates in a Visa Bulletin. The State Department sets priority dates based on when the initial visa petitioners file their visa petitions. Countries like Mexico and the Philippines have separate priority dates because of the large number of family-based immigration applicants each year.

Spouses Applying Through Family Sponsored Immigration

As mentioned, an alien married to a U.S. citizen is considered an immediate relative and can immigrate in a category without numerical limits. Those wishing to immigrate as the spouse of a legal permanent resident have second priority in the family-based immigration category. In order to apply as a spouse, an applicant must prove that his or her marriage was entered into in good faith and is valid, with the validity of a marriage determined by the laws in the country where the ceremony occurred. The only exception to this is same sex-marriages, which may be recognized abroad but are not considered valid marriages for immigration purposes in the United States. Marriages entered into for the purpose of gaining immigration benefits and circumvent immigration laws are not valid and a 2-year conditional status exists once the visa is granted to minimize the risks of fraud.[9] If a marriage is deemed valid at its inception, it continues to be regarded as valid for determining an applicant's immigration benefits until the marriage is legally dissolved. If during a marriage, a spouse or child was battered or subject to extreme cruelty by the U.S. citizen or legal permanent resident spouse or father, the visa applicant spouse who tries to leave the marriage may still be eligible for to immigrate.

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4. This category is known for having a "pierceable cap with a floor," since our immigration policy wants to enable family reunification.
5. Per-country numerical limitations generally permit a cap of up to seven percent of immigrants from each country annually. However, this is problematic because there are too many countries in the world to each get their seven percent share. Additionally, the per-country limitation ignores practicalities, such as the fact that inevitably, countries like Mexico will quickly meet and need to surpass the seven percent appointed to them.
6. "Immediate relatives" include spouses, children who are unmarried and under the age of 21, and parents of children who are at least 21 years of age.
7. Those unmarried children of citizens who are *under* 21 years of age are considered to be immediate relatives, and are thus not subject to the numerical and country limitations.
8. This is the only category where legal permanent residents can bring in family members. Spouses and children of legal permanent residents who are under age 21 have priority over the unmarried sons or daughters who are older than 21 years of age.
9. During immigration interviews based on marriage, the interviewer considers whether the spouses speak the same language, whether there is a large disparity in age or education, what the immigration status of the applying spouse was at the time of the marriage, and whether the couple is co-habiting.

Children Applying Through Family Sponsored Immigration

Children of U.S. citizens or legal permanent residents share the same priority status as do spouses. A "child" is defined as an unmarried person less than 21 years old. Stepchildren who were under 18 at the time of their parents' marriage are generally recognized as "children" for immigration purposes. Children born out of wedlock may also receive immigration benefits through their citizen or legal permanent resident parents, provided that the parent-child relationship is bona fide.[10] Lastly, adopted children are considered "children" for immigration purposes as long as they were under the age of 16 when adopted and have been in legal custody of and resided with the citizen or legal permanent resident parent for at least two years.[11]

Summary: Family Sponsored Immigration

U.S. Sponsor	Relationship to Sponsor	Preference #	# of Visas Per Year
U.S. Citizen	Spouses, unmarried minor children, parents of adult children	NA	No limits
U.S. Citizen	Unmarried adult children (21 years or older)	1st	23,400 visas/year
LPR	Spouses and minor children	2nd A	87,900 visas/year
LPR	Unmarried adult children	2nd B	26,300 visas/year
U.S. Citizen	Married adult children	3rd	23,400 visas/year
U.S. Citizen	Brothers and sisters	4th	65,000 visas/year

Source: American Immigration Lawyers Association, Backgrounder: Family-Based Immigration, Washington, DC, 2006.

Employment Based Immigration Preferences

In keeping with a central tenet of U.S. immigration law – protecting American labor – the vast majority of employment-based visas require a labor certification process. This is true for both immigrant (permanent) and non-immigrant (temporary) visas. The only visa categories that do not require labor certification are: workers with extraordinary ability in a field (called priority workers); certain special immigrants; investors meeting certain requirements; and those who somehow serve the national interest.

U.S. law specifies that 140,000 employment-based immigrant (permanent) visas plus any unused family preference visas from the prior year be made available annually. Employment-based visas favor skilled, over unskilled workers.[12] Failure to obtain a required labor certification is grounds for being deemed inadmissibility and precludes future application by the immigrant.

First Preference: Priority Workers

Priority workers are first in line for employment-based immigrant visas. 40,000 of the 140,000 employment-based visas are allocated to priority workers. Labor certification is not required. To be considered a priority worker, an applicant must have extraordinary ability in a specific area, be an outstanding professor or researcher, or be an executive or manager. Designation as having 'extraordinary ability' is reserved for those who are "… one of that small percentage who have risen to the very top of the field of endeavor," typically in the sciences, arts, education, business, or athletics. To meet the extraordinary ability standard, applicants must provide extensive documentation of national or international acclaimed, must seek to enter the United States in order to continue working within their

10. "Bona fide" is generously interpreted because US immigration policy aims to keep families together.
11. Adoption is generally determined by the law of the place of adoption; if it was valid in the country where it took place, it will be respected in the United States. Adopted children who gain family-based immigration status cannot petition on behalf of their biological siblings under the sibling preference.
12. If an employment-based applicant fails to acquire a labor certificate when it is required, it serves as a ground for inadmissibility, and he or she will not be able to apply.

areas of extraordinary ability, and must hold the prospect of substantial benefit to the United States.

Second Preference: Those with Advanced Degrees or Exceptional Ability
Professionals13 with advanced degrees, as well as aliens with exceptional ability, have second preference. There are 40,000 visas allotted annually to this category. The Second Preference category requires an advanced degree or a Bachelor of Arts plus five years of progressive experience, and these applicants must demonstrate a degree of expertise in the sciences, arts, or business that is significantly out of the ordinary. "Exceptional ability" is intended to be something less than extraordinary but merely having an advanced degree does not qualify. Applicants under this category typically need to obtain labor certification, but the Department of Homeland Security can provide a National Interest Waiver so that professionals deemed to be in short supply such as doctors or nurses can avoid the labor certification requirement and have an expedited application process.

Third Preference: Skilled Workers, Professionals, and Others
Individuals in the third business visa preference include skilled workers, professionals, and unskilled workers. Each year 40,000 visas are available to third preference applicants, and, without exception, labor certification is required of each applicant. Skilled workers in this category must have at least two years of training or experience and must be coming for permanent work. Professionals in this category must have a Bachelor of Arts and must be a member of their profession.14 Unskilled workers with less than two years of training or experience must also intend to work in the United States permanently. Of the 40,000 visas that are allotted to the third preference category, only 10,000 may be granted to unskilled workers.

Fourth Preference: Certain Special Immigrants
The fourth preference category allows 10,000 special immigrants to come to the United States annually without a requirement of labor certification. These special workers include religious workers representing a bona fide religion, and juveniles who have been declared dependent through a juvenile court.

Fifth Preference: Foreign Investors/Employment Creation
There are 10,000 visas available annually for foreign investors. Recently, these visas have not all been used. Labor certification is not required and this category permits investors to self-petition. To receive this visa, the foreign investor must create at least 10 jobs for people (excluding the investor and immediate family) that are citizens, legal permanent residents, or are lawfully authorized to work in the United States. The business must be a "new commercial enterprise," although a company that is bought and its operations expanded, qualifies. The foreign investor must be in the process of investing in the company at the time of application and have at least one million dollars to invest.[15] There is no requirement that the investor stay with the firm for a period of time once the visa has been obtained.

As with family-based visas for spouses, a two year conditional status exists to prevent an investment to be used to circumvent immigration laws; if fraud occurs and is discovered, immigration status of the investor would be terminated.[16]

Labor Certification
The purpose of the labor certification process is to protect the jobs of U.S. citizens, to ensure that those who receive employment-based visas are only taking jobs that Americans are not filling, and to provide labor for areas in substantial need.

Application for labor certification is done by the U.S. employer, working with the Department of Labor and the local State Workforce Agency on behalf of the applicant. A business need must be established by showing that the job requirements in question bear a relationship to the business, that the job in question is essential to the business, and that it will be performed in a reasonable manner. The applicant must

13. Members of a "profession" include, although not exclusively: architects; engineers; lawyers; physicians; surgeons; and teachers in elementary or secondary schools, colleges, academies, or seminaries.
14. Again, professionals, within the meaning of the statute, shall include, but is not limited to: architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, and academies.
15. However, if an investment is to be made in a "targeted employment area," which would be a rural or high unemployment area, the one million dollar requirement may be reduced to no less than $500,000. In high employment areas, on the other hand, the $1,000,000 requirement is strictly enforced, and no more than $3,000,000 may be invested. The attorney general determines who is responsible to pay what amount on a case by case basis.
16. Critics of this rule reject it because investors invest precisely to gain immigration benefits; they should thus not be punished for it.

establish that there are no American workers able, willing, or qualified to do the job that the immigrant seeks; that no Americans are available at the time or in the place of the application, and that wages and working conditions of American workers will not be adversely affected if the labor certification and visa are granted.

In certain circumstances, the labor certification requirement may be waived or at least expedited. The Reduction in Recruitment (RIR) policy expedites labor certification by requiring only certain aspects of certification process for qualifying applicants. For example, the National Interest Waiver expedites the visa application process for certain scarce workers by entirely waiving the labor certification requirement. In order to qualify for the National Interest Waiver, an employer must show that the applicant will be employed in an area of "substantial intrinsic merit," that the benefit of granting admission to the applicant is national in scope, and that the United State's national interest would be adversely affected if labor certification were required.

Summary: Employment-Based Immigration
Current law allows 140,000 employment-based visas each year for immigrants, allocated to the following categories:

1st Preference	Up to 40,000 visas are allocated for priority workers, defined as people with 'extraordinary ability,' 'outstanding professors and researchers,' and 'certain multinational executives and managers.'
2nd Preference	Up to 40,000 visas per year are allocated to 'members of the professions holding advanced degrees' or people with 'exceptional ability' in their field.
3rd Preference	Up to 40,000 visas per year are allocated to skilled workers, professionals, and other workers. 'Skilled workers' must have be capable of performing skilled work and have 2 years of experience. 'Other workers' must be capable of performing unskilled labor and are not temporary or seasonal. Only 5,000 visas per year can be used for 'other workers.'
4th Preference	Up to 10,000 visas per year are allocated to certain special immigrants such as ministers, religious workers, former U.S. government employees overseas, and others.
5th Preference	Up to 10,000 visas per year are allocated to immigrants who have between $500,000 and $3 million to invest in a job-creating enterprise in the U.S. At least 10 U.S. workers must be employed by each investor, and the amount of investment can vary depending on where in the U.S. the investment is made. Failure to meet the specific terms of the visa can result in loss of permanent resident status.

Source: American Immigration Lawyers Association, Backgrounder: Family-Based Immigration, Washington, DC, 2006.

Diversity Based Immigration

From 1924 until 1965, US immigration policy favored immigrants from Northern and Western Europe. When Congress abolished this approach and replaced it with the current preference system, it sought to ensure diversity among the immigrants to the United States. As a result, a lottery system that distributes 50,000 "diversity" visas a year to the winners was established. This system breaks the world into regions and allocates the greatest number of diversity visas to countries in regions that have the fewest people seeking admission to the United States. Thus, lower admission countries like Ethiopia get more visas, and high admission countries such as Mexico, the Philippines, or India, are unlikely to receive any lottery visas.[17]

Applicants for the diversity lottery must have at least a high school education or equivalent and must, within five years of applying, have had at least two years of work experience in an occupation which requires at least two years of training or experience. There are no fees for the diversity visa program, but applicants are still subject to all grounds of ineligibility for immigrant visas as specified in the Immigration and Nationality Act.

17. Europeans and Africans benefit most. In 2003, of the 50,000, there were 22,000 given to Europeans, 19,000 for Africans, 6,5000 for Asians, 675 for Oceania, and 6 for North America (the Bahamas).

Procedures for Non-immigrants

It is generally easier to gain entry to the U.S. as a nonimmigrant. As a result, people are known to enter under nonimmigrant status with the intention of remaining permanently in the United States by applying for 'adjustment of status' once inside the country. As a result of this phenomenon, United States immigration officials are instructed to presume that all visa applicants intend to immigrate permanently regardless of the type of visa being sought. Applicants for nonimmigrant visas are required to provide plausible evidence of their intention to return to their home countries.

Non-immigrant visas allow individuals to remain in the United States, on a temporary basis, until the visa expires. Admission has to be for a specific reason such as business or pleasure, to pursue a course of studies, or to be a temporary worker. There are no numerical limits for non-immigrant visas and the application process is easier and simpler than for immigrant visas. To receive a temporary visa, non-immigrants must prove their intent to remain temporarily, they must specify their reasons for applying, and they must qualify for a non-immigrant visa category. If an applicant does not qualify for one of the non-immigrant visa categories, he or she is deemed to be an immigrant and subject to the immigrant application process. Non-immigrants have specific work restrictions that vary with the visa-category whereby they enter the country. If a non-immigrant violates the terms of his or her visa, it can be revoked and the person may be deported. The most frequent non-immigrant visa violation occurs when people remain in the country beyond their granted admissions period, either because they failed to seek an extension or because a requested extension was denied. Violating the terms of a non-immigrant visa classifies its holder as an illegal immigrant, and as of 2005, an estimated 40% of illegal immigrants in the United States became illegal in this way.

Non-immigrant visas are categorized by letters of the alphabet, and are briefly described below. Specific visa categories –F and M student visas and H temporary worker visas – are used frequently and receive more detailed discussion below.

Visa Type	Persons Eligible	Visa Type	Description
A-1	Ambassador/Diplomat & immediate family	M-1	Vocational Student
		M-2	Spouse of Vocational Student
A-2	Other Foreign Government Official		
A-3	Employee of A-1,A-2		
B-1	Visitor for Business	N-8	Parents or Children of Special Immigrants
B-2	Visitor for Pleasure	N-9	Child of Special Immigrant
C-1	Alien in Transit	NATO-1	Principal Rep. to NATO
C-2	Alien in Transit to UN Headquarters	NATO-2	Other Rep. of Member State
C-3	Foreign Government Official in	NATO-3	Official Clerical Staff
C-4	Transit	NATO-4	Official NATO Staff
	Transit Without Visa	NATO-5	Expert Other Than NATO Officials
		NATO-6	Member of Civilian Component
		NATO-7	Family of NATO-1 through NATO-6
D-1	Crewman Departing on Vessel of Arrival	O-1	Person of Extraordinary Ability
		O-2	Alien Accompanying O-1
D-2	Crewman Not Departing on Same Vessel	O-3	Spouse/Child of O-1
E-1	Treaty Trader and immediate family	P-1	Individual/Team Athlete or Entertain Grp
E-2	Treaty Investor and immediate family	P-2	Artist in a Reciprocal Exchange Program
		P-3	Artist in a Culturally Unique Program
		P-4	Spouse/Child of P-1, P-2, P-3
F-1	Academic Student	Q-1	International Cultural Exchange Visitor
F-2	Spouse of Academic Student	Q-2	Irish Peace Process Program
		Q-3	Spouse/Child of Q-2
G-1	Lead Rep to International	R-1	Religious Worker
G-2	Organization	R-2	Spouse/Child of R-1
G-3	Other Rep to International		
G-4	Organization		
G-5	Nonmember Rep to Int'l Organization		
	Int'l Organization Officer/Employee		
	Employee of G-1, G-2, G-3, G-4		

H-1B H-1C H-2A H-2B H-3 H-4	Specialty Occupations Nurses in Shortage Areas Temporary Agricultural Worker Temporary Worker (skilled/unskilled) Trainee Spouse/Child of Temporary Worker	S-5 S-6	Informant of Criminal Org. Information Informant of Terrorist Organization
I	Journalist and Foreign Media	T-1 T-2 T-3 T-4 TN TD	Victims of Severe Trafficking in Persons Spouse of T-1 Child of T-1 Parent of T-1 (if T-1 is under 21 yrs old) NAFTA Professionals (Mexico/Canada) Spouse or Child of TN
J-1 J-2	Exchange Visitor Spouse of Exchange Visitor	U-1 U-2 U-3 U-4	Victim of Certain Criminal Activity Spouse of U-1 Child of U-1 Parent of U-1 (if U-1 is under 21 yrs old)
K-1 K-2 K-3 K-4	Fiancé of U.S. Citizen Minor Child of K-1 Spouse of U.S. Citizen Minor Child of K-3	V-1 V-2 V-3	Spouse of LPR Awaiting LPR Child of LPR Awaiting LPR Derivative Child of V-1 or V-2
L-1A L-1B L-2	Executive/Managerial Intra-Co Transfer Specialized Knowledge Intra-Co Transfer Spouse or Child of L-1	TPS	Temporary Protected Status

F and M Visa Categories: Academic Students and Vocational/Non-Academic Students

To receive an F or M Category visa, an applicant must demonstrate that he or she is a full-time student and has a residence in a foreign country to which he or she intends to return after completing the course of studies. The applicant must also demonstrate that he or she has sufficient funds with which to survive while studying in the United States, fluency in English or that he or she will be participating in an English as a Second Language program in the U.S.

As long as the F-category non-immigrant is enrolled in school and continues to attend classes, he or she may remain in the United States indefinitely under this visa category. These students may not work while studying in the United States unless they can demonstrate economic need due to unforeseen circumstances such as dramatic tuition increases, medical bills or major currency devaluations. In cases of economic need, F-category students are permitted to work on campus or do practical training for pay, but the work must be part of their academic program. Students under vocational, M-category visas face greater work restrictions and can only be paid for work which gives them practical training.

H Visa Categories: Business and Entrepreneurial Nonimmigrants

There are 3 H Visa categories: the H(1) visa for people in "specialty occupations," the H(2) visa for temporary agricultural and other workers, and the H(3) visa for "trainees." The H Visa is the only non-immigrant employment visa that allows either labor certification or a labor condition application in some categories.

Labor Condition Application

Also known as either LCA or attestation, this is similar to but less extensive than full labor certification. It is required for certain non-immigrant applicants, and although employers must file an LCA with the Department of Labor, they do not have to recruit in United States, and do not need approval of the Department of Labor. They must simply attest to the Department of Labor that they will offer the prevailing wage and that such employment will not adversely affect working conditions of American workers. Additionally, employers must notify union representatives about the job in question and must offer the job at prevailing or actual wages paid to similar individuals.

Different terms and conditions apply to each type of H Visa, which are closely monitored and occasionally changed by Congress. For example, since 2000, fees paid by employers doubled in some categories and a

numerical cap of 65,000 visas over a six year period was applied to H(1)(B) and H(2)(B) applicants.[18]

H(1)(B) visas - temporary specialty occupation nonimmigrants – are for skilled temporary workers. These are granted for up to six years and applicants must prove that they have the equivalent of a United States bachelor's or higher degree in the specialty. However, unlike other business visa categories, H(1)(B) applicants need not prove domicile abroad or even intent to return to their country of origin. A portability provision exists as well, which allows previous H(1)(B) nonimmigrants to begin working for a new employer without going through the business visa process anew. The provision also provides an extension beyond the customary six year limit for special circumstances.

Agricultural temporary workers who come to the United States under the H(2)(A) visa must file a labor certification application with the Department of Labor showing that there are no workers able, willing, qualified, and available at the time and place needed to perform the labor or services involved in the petition. They must establish, through the labor certification, that the employment of the immigrant will not adversely affect the wages and working conditions of United States workers similarly employed. Even if the visa applicant meets all of the requirements of the labor certification, the employer must also have a petition approved by the Bureau of Customs and Immigration Services before the worker may obtain a visa for entry. Additionally, employers must be able to provide standard housing and wages, meals or cooking facilities, transport to and from work, and workers' compensation insurance.[19]

The H(2)(B) visa holders are temporary workers who work in seasonal non-agricultural low-skilled jobs such as landscaping and resorts open on a seasonal basis. Like the H(2)(A) agricultural workers, they must go through the labor certification process, however, they only need prove that their employer applied, not that the labor certification was approved.[20] Although both the H(1) and H(2) visas are temporary, "temporary" for H(2) visas means for a year or less while H(1) visas are good for 6 years. Additionally, H(2) visas may only be for a "one-time occurrence, a seasonal need, a peak load need, or an intermittent need."[21] H(3) visa holders, the "trainees," may only get trained while in the United States under their visa, and may thus not do any productive employment.

Refugee and Asylum Seekers

Refugee and asylum seekers may gain refuge in the United States and eventually become legal permanent residents. A refugee is someone living outside his or her native country who is unable or unwilling to return to their country of origin, either because of persecution or a well-founded fear of persecution on account of race; religion; nationality; membership in a particular social group; or political opinion. Refugee applications are processed overseas, and the President annually determines, in consultation with Congress, how many refugees may be granted status. A refugee must apply for legal permanent residence after one year as a refugee in the United States, and must be physically present in the United States for that year. For fiscal year 2005, refugee admission was set at 70,000. Regional ceilings were set as follows:[22]

Africa	20,000	Latin America/Caribbean	5,000
East Asia	13,000	Near East/South Asia	2,500
Europe & Central Asia	9,500	Unallocated Reserve	20,000

Asylees are similar to refugees, except that they are physically present inside the United States or at a port of entry when they apply for asylum. Asylees are not required to apply for legal permanent residence within a year of admission, and asylum seekers need not have resettled in a foreign country. Individuals may apply for asylum "affirmatively" with an asylum office of the Department of Homeland Security, or they may apply "defensively" with an immigration judge while in removal proceedings. Like refugees, asylum seekers may apply to become legal permanent residents after one year of being granted asylum. There is no quota for asylum seekers, however, the Customs and Immigration Service notifies asylum applicants of an especially long delay due to high numbers of applications.

18. However, in 2000, through the American Competitiveness in the 21st Century Act (a.k.a. AC21), Congress extended the cap from 65,000 to 195,000, with the extension sun-setting in 2004.
19. The Bracero program instituted by the United States from 1942 until around 1964 is a good example of the H(2)(A) visa and its holders.
20. This differs from the immigrant visas, where the business visa applicants must prove that their labor certification applications were actually approved by the Department of Labor.
21. 8 CFR § 214.2(h)(6)(ii)
22. American Immigration Lawyers Association, *AILA Backgrounder: Legal Immigration to the united States,* Washington DC, 2006.

Other Avenues to Legal Permanent Residence Status

There are miscellaneous other avenues for obtaining legal permanent residence in the United States. For example:

- Adjustment of status. (See below)
- Special legislation has been passed to benefit specific Cubans, Nicaraguans, and Haitians.
- A private bill may, rarely, be enacted on behalf of a person to become a legal permanent resident.
- Those present in the United States since January 1, 1972, may be eligible for "registry" provisions, which permit obtaining lawful permanent residence even if in the U.S. illegally. Over time, fewer and fewer people are eligible for this path to legal permanent residence.
- Those already in removal proceedings can seek to obtain cancellation of removal, allowing the immigrant to obtain legal permanent resident status. Obtaining LPR status through cancellation of removal is difficult because the immigrant must meet requirements such presence in the U.S. for at least 10 years, good moral character, and having a qualifying relative. 'Good moral character' can be defined narrowly or broadly at the discretion of the immigration judge.[23]
- Special immigrant juvenile visas are provided for abused, abandoned, or neglected children who meet certain criteria.
- Victims of sexual, violent, or other specific crimes who cooperate with law enforcement may adjust status if they have three years of non-immigrant status and a U-Visa.

Adjustment of Status

A nonimmigrant who is legally in the country can seek to become an immigrant – a legal permanent resident – without having to leave the country through a procedural provision called 'adjustment of status.' While not automatically granted, successful adjustment of status requires that the person:

- Meet admissibility requirements;
- Have entered the United States legally;
- Meet the criteria for qualifying for one of the immigrant categories;
- Not have violated the terms of his or her nonimmigrant visa.

Remaining Indefinitely Without Becoming a Legal Permanent Resident

There are two forms of protection available to aliens under U.S. obligations as signatory to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Called Article 3 protections, these allow an immigrant either to remain in the U.S. indefinitely without legal permanent resident status or to be removed to a third country where he or she would not be tortured.

- Withholding of removal is given to individuals whose life or liberty is in danger or who would likely be subject to torture upon return to their home country. Full "withholding of removal" is granted to most who are covered by the Convention or relevant U.S. law.
- Deferral of removal is available to aliens who are likely to face torture but who are ineligible for withholding of removal such as criminals, terrorists and other security threats. The regulations allow keeping those who receive deferral of removal status indefinitely in custody for national security reasons.

Article 3 protection is different from asylum. Those claiming asylum must establish a "well-founded" fear of persecution based on race, religion, nationality, membership in a social group, or political opinion. Article 3 requires that the fear of torture be "more likely than not" – a higher standard than the "well founded fear" of asylum law – and may require that the fear be based on one of the five grounds specified under asylum law.[24] For a more detailed description of Article 3 Protections and U.S. obligations under UN Treaties, refer to <www.vkblaw.com/law/deferral.htm>.

Removal from the United States

Removal proceedings are initiated when authorities seek to require an alien to leave the United States. Immigrants as well as nonimmigrants can be removed based either on grounds of inadmissibility (See

23. Battered spouses or children of abusive legal permanent residents or citizens only need to establish three years of presence in the United States, but they must also demonstrate that they have good moral character.
24. Vikram Bardrinath, "Deferral of Removal: Convention Against Torture," http://www.vkblaw.com/law/deferral.htm

break-out box on inadmissibility.) or on grounds of deportation. Naturalized citizens can be deported if they are first de-naturalized.

Temporary Protected Status

Temporary Protected Status (TPS) is established by order of the Secretary of Homeland Security, legislation, or executive order, in the face of emergency circumstances such as a natural disaster or civil war. It provides temporary immigration status to eligible nationals of designated countries and is in effect for a minimum of 6 months and a maximum of 18 months. Those who receive TPS may obtain work authorization. Ending of temporary protective status occurs when the Secretary reviews conditions in the country in question, and determines which gave rise to the need for protective status still exist. If the conditions no longer exist, the Secretary will terminate the temporary status designation and those holding temporary protective status must return to their countries of origin.[25]

Parole

Parole into the United States is granted temporarily for urgent humanitarian reasons or for significant public benefit. It has been used to allow large groups of refugees, such as after the Hungarian revolution and the Cuban Crisis, to be paroled into the United States. Parole decisions are made by the Secretary of the Department of Homeland Security, at the Secretary's discretion on a case-by-case basis. Parole may not be used to avoid normal immigration processes, and it is considered an extraordinary measure to be used only sparingly. Parole may be limited to a definite period of time and purpose, but it may also be extended indefinitely.[26]

Grounds for Deportation

Because deportation is not considered a punishment under U.S. immigration law, deportation proceedings can be initiated retroactively for conduct that was legal when it occurred but subsequently became illegal. Further, there is no statute of limitations for deportation proceedings. There are currently six general grounds for deportation:

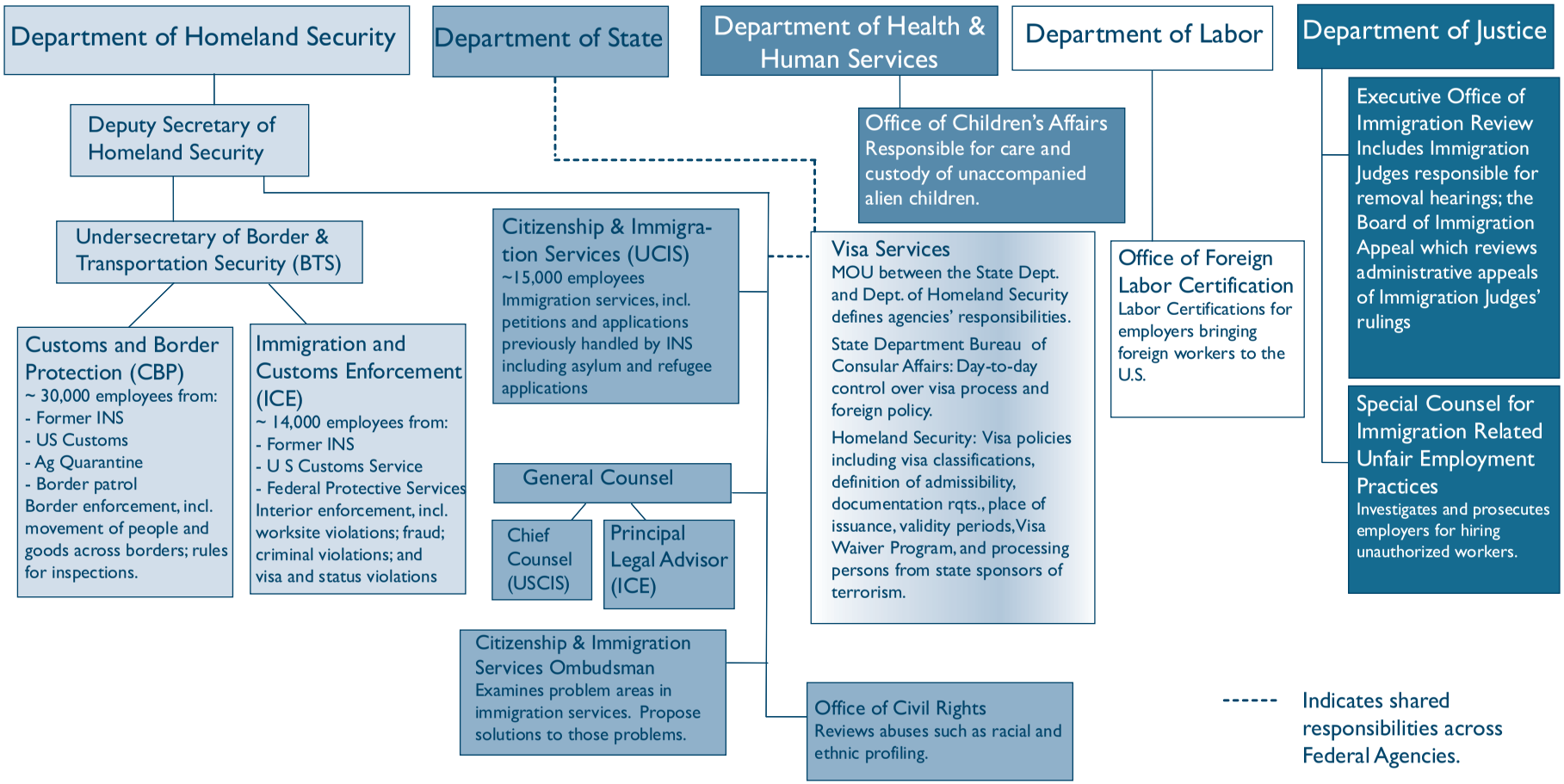
- Being deemed inadmissible;
- Conviction of a crime of moral turpitude;
- Failure to register a change of address or use of false documents;
- Violations of security and related grounds such as engaging in terrorist activities or engaging in conduct with serious foreign policy consequences;
- Becoming a public charge within 5 years of admission to the United States;
- Voting in violation of Federal, State, or local law.

Immigration Agencies

Responsibility for administering the U.S. immigration system resides in five different agencies. The principal agency is the Department of Homeland Security, but important functions are also carried out in the State Department, the Department of Labor, the Department of Justice, and the Department of Health and Human Services. These functions are described in the following flow chart.

25. ecipients of temporary protected status in the past include Nicaraguans and Hondurans who suffered from the aftermath of Hurricane Mitch.
26. Only those persons who are outside of United States territory may request humanitarian parole.

Immigration Functions Across Federal Agencies:



Appendix B: Documents Proving Authorization to Work

All job applicants, including U.S. citizens, must present *either* a document from List A *or* a document from each of Lists B and C.

List A: *Documents establishing BOTH identity and employment eligibility*	OR	List B *Documents establishing identity*	AND	List C *Documents establishing employment eligibility*
1. U.S. Passport (unexpired or expired)	1.	Driver's license or ID issued by a state or outlying possession of the US containing a photo or info such as name, date of birth, gender, height, eye color and address	1.	U.S. social security card issued by the Social Security Admin. (other than a card stating it is not valid for employment)
2. Certificate of U.S. Citizenship (Form N-560 or N-561)	2.	ID card issued by federal, state or local government agencies or entities that contains a photo or info such as name, date of birth, gender, height, eye color and address	2.	Certification of Birth Abroad issued by the Department of State (FormFS-545 or Form DS-1350)
3. Certificate of Naturalization (Form N-550 or N-570)	3.	School ID card with a photograph	3.	Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. Unexpired foreign passport, with I-551 stamp or attached Form I-94 indicating unexpired employment authorization	4.	Voter's registration card	4.	Native American tribal document
5. Permanent Resident Card or Alien Registration Receipt Card with photograph (Form I-151 or I-551)	5.	U.S. Military card or draft record	5.	U.S. Citizen ID Card (Form I-197)
6. Unexpired Temporary Resident Card (Form I-688)	6.	Military dependent's ID card	6.	ID Card for use of Resident Citizen in the United States (Form I-179)
7. Unexpired Employment Authorization Card (Form I-688A)	7.	U.S. Coast Guard Merchant Mariner Card	7.	Unexpired employment authorization document issued by DHS (other than those listed under List A)
8. Unexpired Reentry Permit (Form I-327)	8.	Native American tribal document		
9. Unexpired Refugee Travel Document (Form 1-571)	9.	Driver's license issued by a Canadian government authority		
10. Unexpired Employment Authorization Document issued by DHS that contains a photograph (Form I-688B)	10.	For persons under age 18 unable to present a document listed above: School record or report card		
	11.	Clinic, doctor or hospital record		
	12.	Day-care or nursery school record		

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Appendix C: Definition of Unfair Immigration Related Employment Practices

The following text is from the U.S. Department of Justice website:

http://www.usdoj.gov/crt/osc/htm/Webtypes2005.htm

The Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") investigates the following types of discriminatory conduct under the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b:

- Citizenship or immigration status discrimination with respect to hiring, firing, and recruitment or referral for a fee by employers with four or more employees. Employers may not treat individuals differently because they are, or are not, U.S. citizens or work authorized immigrants. U.S. citizens, many permanent residents, temporary residents, asylees and refugees are protected from citizenship status discrimination.
- National origin discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with more than three and fewer than 15 employees. Employers may not treat individuals differently because of their place of birth, country of origin, ancestry, native language, accent, or because they are perceived as looking or sounding "foreign." All U.S. citizens, lawful permanent residents, and work authorized immigrants are protected from national origin discrimination. The Equal Employment Opportunity Commission has jurisdiction over employers with 15 or more employees.
- Unfair documentary practices related to verifying the employment eligibility of employees. Employers may not request more or different documents than are required to verify employment eligibility, reject reasonably genuine-looking documents, or specify certain documents over others with the purpose or intent of discriminating on the basis of citizenship status or national origin. U.S. citizens and all work authorized immigrants are protected from document abuse.
- Retaliation. Individuals who file charges with OSC, who cooperate with an OSC investigation, who contest action that may constitute unfair documentary practices or discrimination based upon citizenship or immigration status, or national origin, or who assert their rights under the INA's anti-discrimination provision are protected from retaliation.

For a Department of Justice Guide to Fair Employment under the Immigration and Naturalization Act, see http://www.usdoj.gov/crt/osc/pdf/en_guide.pdf