



episcopal community services of long island

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DISCLAIMER: The following information is not legal advice. It is for educational and informational purposes only. If you need legal advice, consult a licensed immigration attorney or an accredited representative from a Board of Immigration Appeals (BIA) recognized agency. An undocumented immigrant should not seek legal advice from a notario or an "immigration consultant" who is not accredited by the BIA

Immigration Law Basics and simplified (see disclaimer above)

I. Two General Categories

When people talk about "immigrants," they are usually referring to all foreigners who live in the United States. Immigration law breaks this large group of foreigners into two general categories: (1) "immigrants," or people who come to the U.S. with the intent to stay here permanently, and (2) "non-immigrants," or people who are visiting the U.S. temporarily. Because people often have a variety of reasons for coming to the U.S., categorizing a particular individual's intention as "permanent" or "temporary" can be difficult. Still, keeping these categories in mind helps in understanding U.S. immigration law and procedures.

II. Basic Procedures for Entering the U.S.

The typical method by which a non citizen gains permission to enter the United States is by applying for a visa at a United States embassy or consulate in their home country or some nearby country. A visa is permission from the United States Department of State for a non citizen to enter the U.S. This may be either a temporary, nonimmigrant visa or a permanent immigrant visa.

After obtaining a visa, a non citizen presents his or herself at the U.S. port of entry. There, an U.S. Citizenship and Immigration Services (USCIS) official inspects the individual's documents and may question the individual to determine whether they are really admissible to the U.S. and are carrying an appropriate visa.

Of course, some non citizens enter the U.S. without obtaining a visa and without presenting themselves at the border. These individuals are often referred to as having "entered without inspection" (EWI). Some of these individuals can later obtain permission to stay in the United States.

III. Visa Categories (a list of the major visa categories)

- **Immigrant visas:** visas allowing an individual to be a "permanent resident" of the United States. After five years (or in some cases three years) of being a Lawful Permanent Resident (LPR), a person may be eligible to apply for citizenship. **1. Family Based Visas:** U.S. citizens may sponsor their immediate relatives (spouse/parent*/unmarried minor children), their adult or married sons and daughters, and their siblings*. Lawful permanent residents may sponsor their spouses, minor and unmarried children.

Depending on the status of the petitioner and on the family relationship, visas may be immediately available or there may be a substantial wait for the visa. (* A person must be 21 years of age or older to sponsor this relative category.) **2. Employment Based Visas:** Employers may sponsor professional, extraordinary and exceptional workers and certain other skilled workers. **3. Diversity Visas:** The diversity visa lottery program allows 55,000 new immigrants to enter the U.S. each year.

- **Non immigrant visas:** visas allowing an individual to visit the U.S. temporarily. The major non immigrant visa categories are tourist visas, student visas, and temporary employment visas. Some individuals who enter with non-immigrant visas may eventually become permanent residents of the U.S.
- **Refugees and Asylees:** Another category of non citizens seeking to live in the United States are refugees and asylees. Generally, these individuals are people seeking protection from persecution in their home countries. They must show that they face persecution based on their political opinion, their religion, their race, their nationality, or their social group. **1. Refugees:** Under U.S. immigration law, a "refugee" is someone who is outside the U.S. and seeks protection and a place to live in the U.S. These people are processed abroad and resettled with the help of agencies in the U.S. **2. Asylees:** An asylee is someone who is already in the U.S. and seeks protection and permission to stay in the U.S. Refugees and asylees may apply for lawful permanent resident status after one year in the United States.

IV. Basic Procedures for Becoming a Lawful Permanent Resident (LPR) (the so-called "green card")

- Lawful Permanent Resident (LPR) status allows a non citizen to remain in the U.S. permanently and, under certain conditions, to eventually apply to become a U.S. citizen if he or she so chooses. LPR status is not the same as citizenship - LPRs may be deported from the U.S. and may abandon their status if they remain outside the U.S. for an extended period of time.
- A person may be able to obtain LPR status:
 1. by applying for and receiving an immigrant visa at a U.S. consulate abroad and entering with that visa, or
 2. by entering the U.S. as a nonimmigrant, as a refugee, or without permission to enter and later becoming eligible for permanent residency. Becoming a permanent resident while already in the U.S. is called "adjustment of status."

V. Removal of Non Citizens from the United States ("Deportation")

- **Removal:** The agency that handles admission and removal of non citizens in the U.S. is the USCIS (U.S. Citizenship and Immigration Services). To remove (or "deport") someone, the USCIS initiates removal proceedings by filing charges against the non-citizen with the Executive Office for Immigration Review (the Immigration Court). Recent changes to immigration law have greatly expanded the reasons a non-citizen may be removed (called "grounds for removal.")
- **Expedited Removal:** When the USCIS prevents someone from entering the U.S. at the place of entry, the person may be turned back or ordered removed by the immigration officer. Immigration law provides for "expedited removal" in many cases, which may mean that no court proceedings are available. Persons subject to expedited removal who express fear of return to their home country are detained while a determination is made as to whether they have "credible fear" of such return and therefore will be permitted to file for asylum in the U.S.
- **Detention:** Under the new law, the USCIS is detaining increasing numbers of non citizens during their removal proceedings. Since there is no USCIS detention facility in Minnesota, non-citizens are detained in county jails throughout Minnesota, Wisconsin, and the Dakotas.

VI. Becoming a U.S. Citizen ("Naturalizing")

In general, once an individual has been a permanent resident for five years (or some cases three years), he or she may "naturalize," or apply to become a U.S. citizen, by (1) passing tests on English language and American history (unless some waiver applies), (2) showing that he or she is of "good moral character," and (3) pledging allegiance to the U.S.

Naturalized citizens are full U.S. citizens, enjoying the same rights and responsibilities as persons who were born in the U.S. or who derived citizenship through their parents.