

***Presentation of the Basics of Family
Immigration Law***

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**EVERY FAMILY IMMIGRATION
APPLICAION HAS TWO STEPS**

STEP 1

**Family Petition
(I-130)**

**The purpose of this petition is to prove to the
Immigration Service that the *petitioner* has a bona fide
relationship to the *beneficiary* and that the *petitioner* is a
USC or LPR of the United States.**

STEP 2

**Residency Application
(I-485 or DS-260)**

**To request lawful permanent residence and employability
within the United States**

PRIORITY LEVELS FOR FAMILY IMMIGRATION PETITIONS

PRIORITY LEVEL	RELATIONSHIP
IMMEDIATE RELATIVES	Spouses, children (who are under 21) and parents (if USC child is over 21) of USCs
FIRST PREFERENCE	Non-married children of USCs (over 21)
SECOND PREFERENCE	2A- Spouses and unmarried children (under 21) of LPRs 2B – Non-married children of LPRs who are over 21 years of age
THIRD PREFERENCE	Married children of USCs (over 21)
FOURTH PREFERENCE	Siblings of USCs

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Family-Sponsored	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	15FEB06	15FEB06	15FEB06	22JUL93	15OCT98
F2A	22NOV10	22NOV10	22NOV10	15NOV10	22NOV10
F2B	01MAR05	01MAR05	01MAR05	15JAN93	08JUN02
F3	15JUL02	15JUL02	15JUL02	15MAR93	15SEP92
F4	22APR01	22APR01	22APR01	15AUG96	15JUL89

Wait times are often for many years and *do not necessarily* move forward day for day.

THE “GOLDEN RULE” OF IMMIGRATION LAW:
All immigration must occur *from outside* to inside the
United States, not from within the U.S.



PURPOSE: The U.S. government requires that every applicant to immigrate to the U.S. must pass through *inspection* to ensure that they are not subject to any *grounds of inadmissibility*.

Sec. 212. [8 U.S.C. 1182] GROUNDS OF INADMISSIBILITY

(a) Classes of Aliens Ineligible for Visas or Admission.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.(A) In general

- (B) Waiver authorized
- (C) Exception from immunization requirement for adopted children 10 years of age or younger

(2) Criminal and related grounds.(A) Conviction of certain crimes.

- (B) Multiple criminal convictions.
- (C) Controlled substance traffickers.
- (D) Prostitution and commercialized vice.
- (E) Certain aliens involved in serious criminal activity who have asserted immunity from prosecution
- (F) Waiver authorized
- (G) Foreign government officials who have engaged in particularly severe violations of religious freedom

(3) Security and related grounds.(A) In general.

- (B) Terrorist activities
- (C) Foreign policy
- (D) Immigrant membership in totalitarian party
- (E) Participants in Nazi persecutions or genocide
- (F) Association with terrorist organizations

(4) Public charge.(A) In general.

- (B) Factors to be taken into account
- (C) Family-Sponsored immigrants
- (D) Certain employment-based immigrants

(5) Labor certification and qualifications for certain immigrants.(A) Labor certification.

- (B) Unqualified physicians
- (C) Uncertified foreign health-care workers.
- (D) Application of grounds.

(6) Illegal entrants and immigration violators.(A) Aliens present without admission or parole.

- (B) Failure to attend removal proceeding
- (C) Misrepresentation.
- (E) Smugglers.
- (F) Subject of civil penalty.
- (G) Student visa abusers

(7) Documentation requirements.(A) Immigrants

- (B) Nonimmigrants.

(8) Ineligible for citizenship.(A) In general.

- (B) Draft evaders

(9) Aliens Previously Removed.(A) Certain aliens previously removed.

- (B) Aliens unlawfully present.
- (C) Aliens unlawfully present after previous immigration violations

(10) Miscellaneous.(A) Practicing polygamists.

- (B) Guardian required to accompany helpless alien.
- (C) International child abduction.
- (D) Unlawful voters.
- (E) Former citizens who renounced citizenship to avoid taxation.
- (F) Certain Exchange Visitors

GROUNDINGS OF INADMISSIBILITY FOR IMMIGRATION ISSUES

UNLAWFUL PRESENCE	BAR	WAIVER?
180 days	3 years	I-601 by showing severe hardship to U.S. citizen or LPR parent or spouse
One year	10 years	I-601 by showing severe hardship to U.S. citizen or LPR parent or spouse
Deportation	5 years	I-212 at showing rehabilitation and hardship

TIME THAT DOES *NOT* COUNT:

<ul style="list-style-type: none"> • Any time before April 1, 1997 <ul style="list-style-type: none"> • Minors (under 18) • Applicants for asylum, assuming no unlawful employment <ul style="list-style-type: none"> • Family Unity beneficiaries • Certain victims of domestic violence • People who have already filed their I-485 residency application <ul style="list-style-type: none"> • Up to 120 day for recipients of a grant of voluntary departure • Up to 120 days for individuals who have applied for certain extensions <ul style="list-style-type: none"> • Cuban and Nicaraguan applicants under NACARA

PERMANENT BARS

UNLAWFUL PRESENCE	BAR	WAIVER?
One year or more unlawful presence after April 1, 1997, departing and returning unlawfully	Permanent	Not until after remaining ten years abroad
Deportation and unlawful reentry	Permanent	Not until after remaining ten years abroad

But...

**There are TWO exceptions to the “golden rule”
of immigration law:**

ONE

Section 245(i) of the INA:

- (a) I-130 filed on or before 4/30/2001**
- (b) Present in US since December/2000**
- (c) Beneficiary pays a fine of \$1,000**
- (d) Can adjust status from within the U.S.**

TWO

If beneficiary entered with a valid visa, went through inspection and was admitted, having an immediate relative petitioner can adjust from within the U.S., even if he/she overstayed their visa time/permission

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