



## BASICS OF FAMILY-BASED IMMIGRATION LAW

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## THE IMMIGRATION PROJECT



- The Immigration Project is a legal aid organization based in Normal, Illinois, with a satellite office in Champaign.
- We provide direct legal services for low-income immigrants residing in Central and Southern Illinois.
- We collaborate and partner with numerous community-based organizations to serve 86 counties in Central and Southern Illinois.
- We travel to meet with clients at regional locations in Bloomington, Champaign, Peoria, Kankakee, Carbondale, and Springfield.
- We also conduct phone and Skype appointments

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## TOPICS FOR TODAY:

- General Introduction into Immigration Law
- Family-based Immigration Process
  - Establishing a Relationship
  - Determining whether applicant must pursue Adjustment of Status in the U.S. or Consular Processing
  - Determining Inadmissibility
- How to Get Involved

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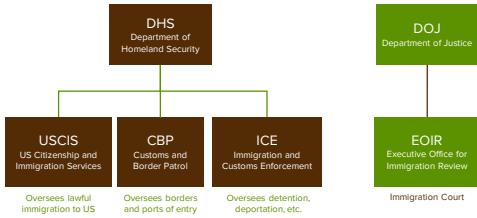
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RELEVANT GOVERNMENT AGENCIES:




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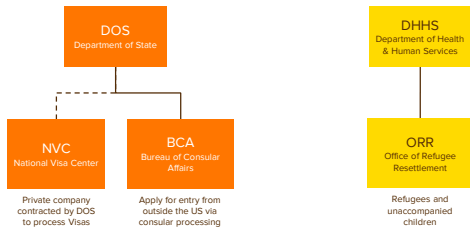
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RELEVANT GOVERNMENT AGENCIES:




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SOURCES OF LEGAL AUTHORITY:

- Immigration and Nationality Act "INA"
  - 8 CFR § 1101 – 8 CFR § 1537
- Federal Court decisions
  - Binding: Supreme Court, 7<sup>th</sup> Circuit, District Courts
  - Non-binding: Other Circuit and District Courts
- Administrative Policy:
  - Board of Immigration Appeals "BIA" decisions
    - Binding authority: published decisions
    - Non-binding authority: unpublished decisions
  - Presidential Executive Orders
  - Foreign Affairs Manual,
  - Adjudicator's Field Manual "AFM"
  - USCIS Policy Manual --- [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual)
  - Government-issued Policy Guidance and Memos
- State family law (in U.S. or country of origin)




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### OTHER RESOURCES:

- The attorneys at The Immigration Project
- Kurzban's Immigration Law Sourcebook
- American Immigration Lawyers Association "AILA"  
• [www.aila.org](http://www.aila.org)
- Immigration Advocates Network "IAN"  
• <https://www.immigrationadvocates.org>
- ASISTA  
(for cases related to abuse such as VAWA and U visas)  
• <http://www.asistahelp.org>
- Catholic Legal Immigration Network "CLINIC"  
• <https://cliniclegal.org>




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### IMMIGRATION STATUS TYPES

1. U.S. Citizen
2. Lawful Permanent Resident "LPR" = green card holder
3. Visa holder
  1. immigrant vs non-immigrant visas
4. Temporary Status
  1. Deferred Action through DACA, VAWA, U visa
  2. Temporary Protected Status "TPS"
  3. Humanitarian Parole
  4. Applicant with a pending petition of some sort such as for asylum or pending deportation case
5. No lawful status = "undocumented"
  1. Entered without a valid visa
  2. Entered with a visa




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### WAYS TO BECOME A U.S. CITIZEN

1. Born in the United States or a U.S. territory to a parent of any immigration status = "birthright citizenship"
1. Born abroad to a U.S. citizen parent
1. Child is a lawful permanent resident "LPR", living with a LPR parent, and the parent naturalizes and becomes a U.S. citizen before the child turns 18 years old



4. Individual over 18 years old has been an LPR for 3 or 5 years and goes through naturalization process

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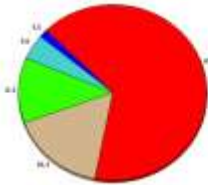
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WAYS TO BECOME A LAWFUL PERMANENT RESIDENT



- 1. Family-based petition
- 1. Employment-based petition
- 1. Refugees and Asylees
- 1. Diversity lottery program
- 1. Other categories including humanitarian relief: U visa, SIJS, relief in removal

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FOUR STEP ANALYSIS FOR FAMILY-BASED LPR PETITIONS

(1)	(2)	(3)	(3)
Is there a qualifying family relationship?	Is a visa available now or will a visa be available in the future?	Is the immigrant eligible for adjustment of status or consular processing?	At the time of the adjustment or consular processing, will the immigrant be admissible to the United States?

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STEP 1 – IS THERE A QUALIFYING RELATIONSHIP?



- **Immediate Relatives (IR):** Spouses, Unmarried children under 21, and parents of U.S. citizens
- **First: (F1)** Unmarried sons and daughters of U.S. citizens
- **Second:** LPR family members
  - (F2A) Spouses and children (under 21 years old) of Permanent Residents
  - (F2B) Unmarried sons and daughters (21 years old or older) of Permanent Residents
- **Third: (F3)** Married sons and daughters of U.S. citizens
- **Fourth: (F4)** Brothers and sisters of U.S. Citizens
- For relevant definitions, see INA § 101

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### WHO ARE LEFT OUT OF THE FAMILY CATEGORIES?

- Brothers and sisters of Lawful Permanent Residents
- Married sons and daughters of Lawful Permanent Residents
- Grandchildren, grandparents, nieces, nephews, aunts, uncles, friends
- U.S. Citizens must be 21 years old to apply for their family members




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### STEP 2 – IS A VISA AVAILABLE?

Immediate relative categories : no wait

Everyone else: Visa Bulletin maintained by the Department of State  
<https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01JAN13	01JAN13	01JAN13	01AUG96	22JUN08
F2A	C	C	C	C	C
F2B	01JUN14	01JUN14	01JUN14	01JUL98	01AUG08
F3	01SEP07	01SEP07	01SEP07	01DEC95	01FEB96
F4	01NOV06	01NOV06	22SEP04	01JAN97	01JUL98

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### STEP 3 – ADJUSTMENT OF STATUS OR CONSULAR PROCESSING?

#### Adjustment of Status

- USCIS
  - Policy: USCIS policy manuals
- Interview in the U.S.
- Must demonstrate eligibility for adjustment, requirements vary based on adjustment category

#### Consular Processing

- Department of State
  - Policy: Foreign Affairs Manual "FAM"
- Interview at U.S. consulate abroad
- Default for individuals who cannot adjust in U.S.
- BE CAREFUL!  
For individuals in the U.S., leaving for a consular interview may trigger new grounds of inadmissibility

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### STEP 3 – ADJUSTMENT OF STATUS OR CONSULAR PROCESSING?



- INA § 245(a)
  - Approved family petition + visa available + inspected and **admitted** or paroled into the US
    - BUT INA § 245(c) bars 245(a) adjustment for **preference category** applicants who have ever:
      - accepted unauthorized employment OR
      - failed to maintain continuously a lawful status
- OR
- Approved self-petition under the Violence Against Women Act (VAWA)

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### STEP 3 – ADJUSTMENT OF STATUS OR CONSULAR PROCESSING?

- INA § 245(g)
  - Alien had an I-130 Family Petition or I-140 Labor Certification filed on or before 4/30/2001
  - If the petition was filed between 1/14/1998 - 4/30/2001, alien must have been physically present in the U.S. on 12/21/2000
- Must pay extra \$1,000 fine




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### STEP 3 – ADJUSTMENT OF STATUS OR CONSULAR PROCESSING?

#### Special Categories:

- INA § 245(h) - Special Immigrant Juvenile Status
- INA § 245(j) - S visa holders -- "snitch" visa
- INA § 245(l) - T visa holders -- trafficking
- INA § 245(m) - U visa holders -- victims of crime who have helped investigators




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STEP 4 – WILL THE ALIEN BE ADMISSIBLE?

- Grounds of Inadmissibility - INA § 212:
  - Note - several grounds have an exception for U visa or VAWA cases
  - Health INA § 212(a)(1):
    - communicable disease of public health significance
    - physical or mental disorder and behavior or history of behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or
    - to be a drug abuser or addict
    - failure to have required vaccinations



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STEP 4 – WILL THE ALIEN BE ADMISSIBLE?

- Criminal Grounds - INA § 212(a)(2):
- WARNING**
- Definition of Conviction: INA § 101(A)(48)(a)
    - The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
      - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
      - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.



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STEP 4 – WILL THE ALIEN BE ADMISSIBLE?

- Criminal Grounds - INA § 212(a)(2) - conviction for any of the following:
  - one crime involving moral turpitude "CIMT"
    - Exceptions: juvenile offense exception & petty offense exception
  - any drug-related offense
  - two or more offenses of any type with aggregate sentence imposed of 5+ years
  - controlled substance traffickers (+ family members)
  - prostitution - soliciting or engaging
  - human trafficking (+ family members)
  - money laundering
  - misc. provisions



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STEP 4 – WILL THE ALIEN BE ADMISSIBLE?

Public Charge Ground - INA § 212(a)(4):



- “In general.- Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.”
- Some types of applications aren't subject to public charge grounds (VAWA self-petitioners)
- See new policy memo -
  - <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>
  - <https://www.uscis.gov/legal-resources/final-rule-public-charge-ground-inadmissibility>

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STEP 4 – WILL THE ALIEN BE ADMISSIBLE?

Immigration Violations - INA § 212(a)(6):

- present in the U.S. without being admitted or paroled
- failure to attend removal proceedings
- intentional willful misrepresentation for an immigration benefit (possible waiver)



- false claim to U.S. citizenship for an immigration benefit
  - likely includes I-9 form
  - no waiver

- smuggling
  - expansive definition
  - includes family
  - limited waiver




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STEP 4 – WILL THE ALIEN BE ADMISSIBLE?

Immigration Violations - INA § 212(a)(9):

- Alien previously removed - 5, 10, or 20 year bars
- Unlawful presence bar INA § 212(a)(9)(B)(i)
  - 180 days to less than a year of unlawful presence + departure from U.S. = 3 year bar
  - a year or more of unlawful presence + departure from U.S. = 10 year bar
  - unlawful presence starts to accrue on or after 4/1/1997
  - minor exception - unlawful presence before age 18 doesn't count for this bar
  - MUST depart from U.S. to trigger the bar
  - waiver available to those who can show extreme hardship to qualifying relative (LPR or USC spouse or parent)

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STEP 4 – WILL THE ALIEN BE ADMISSIBLE?

- Immigration Violations - INA § 212(a)(9):
  - “Permanent” bar INA 212(a)(9)(C)
    - aggregate of more than 1 year unlawful presence + entry or attempted entry without being admitted = permanent bar
    - unlawful presence starts to accrue on or after 4/1/1997
    - there is no minor exception
  - waiver available to those who stay outside the U.S. for 10 years *and then* can show eligibility for the waiver



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STEP 4 – WILL THE ALIEN BE ADMISSIBLE?

- Security Grounds - INA § 212(a)(3):
  - intent to engage in any unlawful activity
  - terrorism
  - membership in totalitarian party
  - Nazi participation
  - genocide participation
  - recruitment of child soldiers
- Miscellaneous - INA § 212(a)(10):
  - polygamy
  - international child abduction
  - unlawful voting



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SAMPLE CASE - JOSE AND NATALIE

Jose was born in Mexico. He came to the United States on a visa in 1996 and overstayed the visa.

- He has worked with a fake LPR card but has never been caught. He has never said he was a U.S. citizen.
- He has never had any problems with immigration or with the police.
- He hasn't left since he came in 1996.

He married Natalie in 2017. Natalie is a U.S. citizen.

Can Jose possibly have Natalie help him get a green card?



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### FAMILY PETITION STEPS

- 1. Is there a qualifying family relationship?
- 1. Is a visa available now or is there a wait?
- 1. Is the immigrant eligible for adjustment of status or consular processing?
- 1. At the time of the adjustment or consular processing, will the immigrant be admissible to the U.S.?

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### EXAMPLE STEPS OF AN ADJUSTMENT OF STATUS PETITION FOR A SPOUSE

- Step 1 (file with USCIS)
  - I-130 - Petition for Alien Relative
  - I-130A - Supplemental Info for Spouse
  - wait for visa to be available ----
- Step 2 (file with USCIS)
  - I-485 - Adjustment of Status
  - I-864 - Affidavit of Support
  - Optional benefits you can apply for while AOS is pending: I-765 - Work Authorization, I-131 Advance Parole
  - Interview in USCIS office
- For immediate relative - could file all together in "One Step" Adjustment of Status
- See [www.uscis.gov/forms](http://www.uscis.gov/forms) for forms and instructions
- Include Form G-28 = notice of entry of appearance for each form if individual is represented.

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### SAMPLE CASE - JOHN AND NANCY

John was born in Mexico. He came to the United States EWI in 1996 hasn't left since.

- He has worked with a fake LPR card but has never been caught. He has never said he was a U.S. citizen.
- He has never had any problems with immigration or with the police.
- He has no prior petitions filed for him before.
- He hasn't left since he came in 1996.

He married Nancy in 2017. Nancy is a U.S. citizen.

Can John possibly have Nancy help him get a green card?

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### FAMILY PETITION STEPS

- 1. Is there a qualifying family relationship?
- 1. Is a visa available now or is there a wait?
- 1. Is the immigrant eligible for adjustment of status or consular processing?
- 1. At the time of the adjustment or consular processing, will the immigrant be admissible to the U.S.?




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### EXAMPLE STEPS OF A CONSULAR PROCESSING PETITION FOR A SPOUSE

- Step 1 (file with USCIS)
  - I-130 - Petition for Alien Relative
  - I-130A - Supplemental Info for Spouse
  - wait for visa to be available ----
- Step 2 (file with NVC)
  - DS-260
  - I-864 - Affidavit of Support
  - Interview in consulate
  - Enter on immigrant visa
  - pay immigrant fee for printing of green card

If unlawful presence waiver needed, file I-601A between steps




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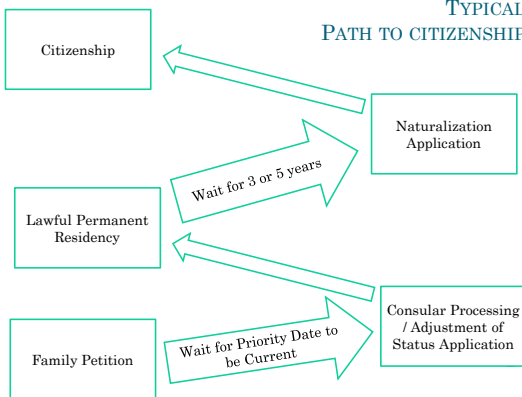
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### TYPICAL PATH TO CITIZENSHIP




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**PRO BONO PROGRAM AT THE IMMIGRATION PROJECT:**

- What Pro Bonos Do:
  - Legal screenings and application processing at citizenship workshops and in-house clinics
    - Next workshop in Bloomington: Oct 25th
  - Prepare family-based or humanitarian filings under the direction and mentorship of our Pro Bono Coordinator
  
- No immigration experience needed!
  
- For more information, contact
  - Danielle DeWinter  
ddewinter@immigrationproject.org  
(309) 829-8703 ext 103




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