



HOW TO IMMIGRATE to the United States



U.S. immigration laws govern who can come to this country, how long they can stay, and the benefits and privileges they enjoy while they are here. While over 30 million people come to the U.S. each year, the vast majority are here only temporarily.¹ Less than 3% of all people coming to the U.S. each year have a status that will allow them to stay permanently.²

People coming to the U.S. generally must have a passport issued by their country of nationality and a visa issued by the United States. The government issues “non-immigrant” visas to people who want to come to the United States temporarily (such as a tourist). “Immigrant” visas, are issued to people intending to live permanently in the United States. Individuals from certain countries (known as “visa waiver countries”) do not have to obtain a visa before visiting the U.S. for up to 90 days. Visa waiver countries include most European countries, Australia, New Zealand, Brunei, Japan, Singapore, and South Korea.³

Temporary or Non-immigrant Status

People can come to the United States temporarily for many different purposes, but all forms of temporary status have specific restrictions and requirements. For example, a person admitted as a student must maintain full-time enrollment.¹² A person admitted as a temporary professional worker may work only in the position and for the employer specified in the visa petition.¹³ If the student fails to maintain their full course load or the worker takes a part-time job, they are deportable.

Some kinds of temporary status depend on the circumstances in a person’s home country. For instance, if there is a humanitarian crisis in a person’s home country that would make it dangerous for them to return, the United States may allow them to stay until the situation in their home country improves.¹⁴

Most people living temporarily in the United States cannot obtain legal permanent residency, and are expected to leave when their period of authorized stay ends.¹⁵ People who fail to leave when their status expires are part of the United States’ undocumented population; they have “overstayed” their visa. Almost half of all undocumented people came on a temporary status, but did not leave when required.¹⁶

Only two categories of non-immigrants have a path to permanent residency. Those admitted as fiancé(e)s must marry the U.S. citizen who petitioned for them within 90 days of entry and may then file an application for permanent resident status.¹⁷ Professional workers admitted temporarily may pursue immigrant visa petitions that will allow them to work permanently in the United States, but other temporary workers, such as seasonal or agricultural laborers, cannot.¹⁸

Legal Permanent Resident Status

In the last decade, around one million people became legal permanent residents of the United States each year.¹⁹ While this sounds like a large number, it is less than one half of 1% of the total U.S. population. A complicated formula determines the number of permanent resident visas available annually.

Getting legal permanent residency is a two-step process. First, an applicant must fit into certain categories or they cannot legally immigrate to the United States. Only close family members of legal permanent resident or citizens, people with job offers, refugees and asylum seekers, winners of the diversity visa lottery, and certain particularly vulnerable groups are eligible to immigrate to the United States. Second, the person must be individually admissible. Even if an individual has immediate relatives or a job offer in the United States, they may have to wait for many years to become personally admissible or may never be allowed to immigrate. Actions that can restrict a person’s ability to immigrate include: certain crimes, posing a threat to national security, fraud, and previous immigration violations.²⁰ Following are the main avenues to immigrate permanently to the United States:

Immigration By The Numbers

74,602 - refugees admitted to the U.S. (2009)⁴

1,130,818 - legal immigrants to the U.S. (2009)⁵

42,813,281 - estimated number of migrants in the U.S. at mid-year (2010)⁶

213,943,812 - estimated number of migrants worldwide at mid-year (2010)⁷

Top 5 countries of origin (2009)⁸

- Mexico (164,920)
- China (64,238)
- Philippines (60,029)
- India (57,304)
- Dominican Republic (49,414)

Top 5 countries of origin for refugees (2009)⁹

- Iraq (18,838)
- Burma (18,202)
- Bhutan (13,452)
- Iran (5,381)
- Cuba (4,800)

California - State with the most immigration (2009)¹⁰

Wyoming - State with the least immigration (2009)¹¹



I. Family

The majority of immigrants - over 60% - come to the U.S. on family-sponsored visas.²¹ Of these, two thirds are the immediate relatives of U.S. citizens, namely spouses, unmarried minor children, and parents.²² There are no quotas on the number of immediate relatives of U.S. citizens who may immigrate to the U.S. in any given year.²³

The remaining immigrants fall into different categories based on their relationship to the petitioning family member, whether that family member is a citizen or legal permanent resident (LPR), and their country of origin. Combined, these factors determine how long the person must wait for an immigrant visa to the United States. Only spouses, children, parents, or siblings of U.S. citizens and spouses or children of lawful permanent residents may immigrate to the U.S. on family-sponsored visas.

The U.S. restricts how many people can receive family-sponsored visas in a given year. The current cap is 226,000 and allows no more than 7% of available visas to be issued to citizens of a single country.²⁴ Over time, the overall family immigration cap and the individual country cap have resulted in long backlogs for people from certain countries who are trying to join their families in the United States.

The following table shows the wait times for different categories of family-based immigrant visas for applicants from different parts of the world.²⁵ In November 2010, U.S. Customs and Immigration Services was processing only those applications submitted before the following dates:

Family Preference Category	All Countries except those listed	Mexico	Philippines
Spouses, children under 21, parents (citizens)	N/A	N/A	N/A
Unmarried adult children (citizens)	February 15, 2006	December 22, 1992	April 1, 1997
Spouses and children under 21 (LPR)	June 1, 2010	March 1, 2010	June 1, 2010
Unmarried adult children (LPR)	June 1, 2005	June 22, 1992	September 1, 2002
Married children (citizens)	June 1, 2002	October 22, 1992	March 1, 1995
Siblings (citizens)	January 1, 2002	December 15, 1995	April 1, 1991

According to the chart, the married daughter of a U.S. citizen from Mexico who applied for a visa 18 years ago would only now be having her application processed.

2. Employment

People can also immigrate to the U.S. on employer-sponsored visas. On average, 15% of immigrants in the past decade came to the U.S. through an employer.²⁶ As with family-sponsored visas, prospective immigrants are divided into preference groups based on various factors: their skills and qualifications, the type of job they are filling, and their country of origin.

- **First preference:** people with extraordinary ability (such as an Oscar or Olympic medal); outstanding professors or academics; executives of multinational companies.
- **Second preference:** people with advanced degrees or equivalent experience; people with exceptional ability.
- **Third preference:** skilled workers with at least two years experience; professionals with bachelor's degrees; unskilled workers (up to 5,000 per year).
- **Fourth preference:** religious workers; employees of international organizations; certain people who worked for the U.S. government abroad.
- **Fifth preference:** investors who invest at least \$1 million in a business and create 10 new jobs for U.S. workers, not including themselves and their family members.²⁷

The U.S. government caps the total number of employer-sponsored visas allowed in a year at 140,000 and also limits each country to 7% of the total.²⁸ As part of the application process for an employer-sponsored visa, the employer usually must prove that they could not find a U.S. worker for the job by getting a labor certification from the Department of Labor.²⁹

How to Immigrate to the United States



The following table shows the wait times for different categories of employer-sponsored visas for applicants from different parts of the world.³⁰ In November 2010, U.S. Customs and Immigration Services was processing only those applications submitted before the following dates:

Employment Preference Category	All Countries except those listed	Mexico	India	China
First preference	no wait	no wait	no wait	no wait
Second preference	no wait	no wait	May 8, 2006	June 1, 2006
Third preference	January 22, 2005	May 1, 2001	January 22, 2002	November 22, 2003
Unskilled workers	April 1, 2003	May 1, 2001	January 22, 2002	April 1, 2003
Fourth preference	no wait	no wait	no wait	no wait
Fifth preference	no wait	no wait	no wait	no wait

3. Refugees and Asylum Seekers

Refugees and asylum seekers are people who are fleeing persecution in their own country. On average, 12% of immigrants in the past decade were either refugees or asylum seekers.³¹ The U.S. extends protection to them as a reflection of its commitment to political and religious liberty and racial tolerance. The difference between refugees and asylum seekers is that refugees apply for their status while they are still outside the United States, and asylum seekers apply once they are in the United States. Both refugees and asylum seekers must prove that they fear persecution in their home country, such as torture, imprisonment, or physical abuse, on the basis of one of the following:

- Race
- Nationality
- Political opinion
- Religion
- Membership in a particular social group³²

Examples of social groups protected under U.S. law:³³

- Women in cases of domestic violence
- Lesbian, gay, bisexual, or transgender individuals
- Clan members
- HIV+ individuals

In a refugee or asylum case, the burden of proof is on the applicant, who must be able to provide objective evidence or credible testimony to support their claim.³⁴

Not everyone who suffers persecution in other countries is eligible for refugee status. The U.S. only accepts refugees who have either been referred to the U.S. by the UN High Commissioner for Refugees (UNHCR) or when the person is a member of a designated group or from a designated country. In 2011, for instance, the U.S. will accept applications from Burmese minorities living in Thailand or Malaysia, among others. People who belong to these groups still have to prove that they individually qualify as a refugee because of a fear of persecution on one of the five grounds previously mentioned. The U.S. caps the number of refugees it will accept annually. For 2011, the U.S. will resettle a maximum of 80,000 refugees.³⁵

People who are not from one of the designated groups or countries and who cannot get a referral from the UNHCR can only receive protection if they travel to the U.S. and claim asylum once they arrive. Asylum seekers can either make an affirmative asylum claim by filing a form within a year of arriving in the U.S. or they can make a defensive asylum claim once they have been placed in deportation proceedings. Anyone in the U.S. can claim asylum whether they are here legally or not.³⁶

4. Diversity Visa

A small number of immigrants, on average 4% each year, receive their permanent residency through the diversity visa lottery.³⁷ The diversity visa lottery distributes 50,000 visas to applicants from countries that do not send many immigrants to the United States. Applicants must have a high school education or two years of work experience. People from high admission countries such as Canada, Mexico, Brazil, China, India, the Philippines, and South Korea are not eligible to participate in the lottery.³⁸

5. Vulnerable Groups

U.S. immigration laws offer special protections to certain groups of people, such as victims of domestic violence, trafficking, or crime; abandoned and neglected children; and people with special or long-term ties to the United States. A very small number of people each year can immigrate under these laws.³⁹



Citizenship

The U.S. government confers citizenship on three groups of people:

- People born in the United States
- People born to U.S. citizen parents abroad
- People who naturalize (or whose parents naturalize before they turn 18)⁴⁰

To become a naturalized citizen, an individual must usually be a legal permanent resident first for at least five years, residing in the U.S. for half of that time. Naturalization requires passing an interview (in English), an English test, and a civics test, undergoing a background check, and taking an Oath of Allegiance.⁴¹ Naturalized citizens are entitled to all the same rights and privileges of a citizen at birth, except that they may not become President of the United States.⁴²

Undocumented Immigrants

U.S. immigration laws provide a limited number of ways for people to immigrate permanently to the United States and limited numbers of visas for those who do qualify. The pathways to immigrate do not match the demand for timely family reunification, for workers to fill economic needs, and for protection from persecution. As a result, some people choose to come to the U.S. without a visa or to overstay a temporary visa once they arrive and are known as undocumented or illegal immigrants.⁴³ In 2009, the estimated undocumented population of the U.S. was 11.1 million, or 3.6% of the total population.⁴⁴

Enforcement and Deportation

Any person who is not a U.S. citizen can be detained and removed if they are found to have violated immigration laws. Undocumented people may be arrested and deported at any time if found by immigration officials. Refugees, permanent residents, and people on temporary visas all may be deported or refused permission to re-enter the U.S. if they violate the conditions of their visas. An estimated 1,012,734 family members have been separated by deportation between 1997 and 2007.⁴⁵

Immigration Enforcement

The U.S. immigration enforcement system is an enormous operation. In fiscal year 2009, Immigration and Customs Enforcement (ICE) completed 387,790 deportations.⁴⁶ Increasingly, ICE cooperates with state and local law enforcement through both formal programs and informal arrangements, leading to growing numbers of people being detained or deported. In addition, Customs and Border Protection (CBP) apprehended over 556,000 people between ports of entry, and encountered over 224,000 inadmissible non-citizens at the ports of entry.⁴⁷

In addition to overseeing deportation proceedings, ICE operates the largest detention program in the United States, with a total of 378,582 non-citizens from 221 countries in custody or supervised by ICE in fiscal year 2008.⁴⁸ Many people, including arriving asylum seekers⁴⁹ and non-citizens convicted of certain crimes⁵⁰ face mandatory detention without a hearing by a court. People in detention may spend weeks or months in jail while they wait for their hearing or pursue an appeal.

Removal from the United States

In general, people accused of being in the United States in violation of immigration laws have a right to a hearing in front of an immigration judge. At the hearing, the judge decides whether there is sufficient evidence that the person is in the U.S. without permission or in violation of their immigration status. The judge also decides whether there is any defense the person can raise that will allow them to remain in the United States. While U.S. law provides that people in removal proceedings have “the privilege of being represented,” representation must be “at no expense to the Government.”⁵¹ In approximately 57% of all completed removal cases in 2008, the accused immigrants did not have a lawyer.⁵²

United States immigration laws are strict. Undocumented people facing removal have few options to prevent deportation. An undocumented person who has lived in the U.S. for at least ten years, has “good moral character,” and whose deportation would result in *exceptional and extremely unusual* hardship to their U.S. citizen or lawful permanent resident children or spouse may apply for a waiver of deportation.⁵³ Victims of crimes, human trafficking, persecution, or domestic violence who are in removal proceedings generally may ask the judge for protection.

Any alien who is convicted of an “aggravated felony” must be deported regardless of how long they have lived in the U.S. or what impact their deportation may have on their family. Over fifty crimes are considered “aggravated felonies.”⁵⁴ Aliens convicted of other crimes are deportable, although long-term permanent residents may ask a judge to allow them to stay based on their length of residence, hardship to their families, and evidence that they have rehabilitated.⁵⁵

People removed from the United States are barred from returning for at least ten years; those removed because of an aggravated felony conviction are permanently barred from returning to the United States.

ENDNOTES: How to Immigrate to the United States



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- 50 Section 236(c) of the INA mandates detention of any alien who is inadmissible by reason of having committed any offense covered in § 212(a)(2); is deportable by reason of having committed any offense covered in INA § 273(a)(2)(A)(ii), (A)(iii), (B), (C), or (D); is deportable under INA § 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year; or is inadmissible under INA § 212(a)(3)(B) or deportable under INA § 237(a)(4)(B) when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.
- 51 INA § 292. See also, *Reforming the Immigration System*, American Bar Association Commission on Immigration (Washington DC: February 2010), http://new.abanet.org/Immigration/PublicDocuments/aba_complete_full_report.pdf, pg 40 (noting that while courts may apply a case-by-case approach to determining whether the assistance of counsel would be necessary to provide fundamental fairness, under the U.S. Constitution's Fifth Amendment due process guarantee, appointment of counsel has been denied in every published case).
- 52 *Reforming the Immigration System*, pg 39.
- 53 See INA § 240A(b).
- 54 See INA § 101(a)(43). The term "aggravated felony" was statutorily defined by Congress in 1988 and included only three crimes: murder, controlled substance or drug trafficking, and weapons trafficking. In 1990, Congress amended the definition to include 17 categories of offenses, including crimes of violence for which the term of imprisonment was at least five years. In 1994, Congress again amended the definition of aggravated felony, adding twenty new offenses to include money laundering, child pornography, prostitution, and theft offenses where the term of imprisonment was five years or more. In 1996, Congress expanded the definition of aggravated felony again to include more than fifty offenses and reduced the imposed term of imprisonment for many crimes from five years to one year.
- 55 See INA § 240A(a)(3) (stating that the Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien has been lawfully admitted for permanent residence for not less than 5 years, has resided in the United States continuously for 7 years after having been admitted in any status, and has not been convicted an any aggravated felony).