

FACT SHEET

How the United States Immigration System Works





United States immigration law is based on the following principles: the reunification of families, admitting immigrants with skills that are valuable to the U.S. economy, humanitarian protections, and promoting diversity. This fact sheet provides basic information about how the U.S. legal immigration system is designed and functions.

The law governing U.S. immigration policy is called the Immigration and Nationality Act (INA). The INA allows the United States to grant up to 675,000 permanent immigrant visas each year across various visa categories. On top of those 675,000 visas, the INA sets no limit on the annual admission of U.S. citizens' spouses, parents, and children under the age of 21.¹ In addition, each year the president is required to consult with Congress and set an annual number of refugees to be admitted to the United States through the U.S. Refugee Admissions Program.² Finally, humanitarian protections such as asylum, Temporary Protected Status, and other programs which may permit someone to reside in the United States legally do not have numerical caps, but do have other restrictions.

Once a person is granted an immigrant visa or receives certain other eligible protections, such as asylum or refugee status, they can apply to become a lawful permanent resident (LPR). Individuals arriving on immigrant visas become LPRs when they arrive in the United States.

This factsheet explains:

- I** Family-based immigration
- II** Employment-based immigration
- III** Per country ceilings
- IV** Refugees and asylees
- V** The Diversity Visa Program
- VI** Other forms of humanitarian relief
- VII** U.S. citizenship

After residing in the United States for five years (or three years in some circumstances), LPRs are eligible to apply for U.S. citizenship. There is no requirement that an LPR apply for citizenship. LPRs are eligible to apply for nearly all jobs (i.e., jobs not legitimately restricted to U.S. citizens) and are permitted to remain in the country permanently, while still remaining subject to immigration laws.

Each year the United States also admits a variety of noncitizens on a temporary basis. Such “non-immigrant” visas are granted to everyone from tourists to foreign students to temporary workers permitted to remain in the country for varying lengths of time. While certain employment-based non-immigrant visas are subject to annual caps, other non-immigrant visas (including tourist and student visas) have no numerical limits.

I. Family-Based Immigration

Family unification is an important principle governing U.S. immigration policy. The family-based immigration system allows U.S. citizens and LPRs to enable certain family members to gain LPR status as well. Even U.S. citizens seeking to help an immediate family member already in the United States must technically petition for a visa so that their family member can become an LPR.



of new LPRs in the United States in FY 2022 were comprised of family-based immigrant visas.

Immediate Relatives

An **unlimited number of visas** are available every year for immediate relatives of U.S. citizens. Prospective immigrants in this category must meet standard eligibility criteria, and petitioners must meet certain age and financial requirements.³

Immediate relatives are:

- Spouses of U.S. citizens;
- Unmarried minor children of U.S. citizens (under 21 years old);⁴ and
- Parents of U.S. citizens (petitioner must be at least 21 years old to petition for a parent).

Non-Immediate Family Members

An **additional limited number of visas** are available every year under the family preference system for other non-immediate family members. Prospective immigrants in the family preference system must meet standard eligibility criteria, and petitioners must meet certain age and financial requirements.⁵

The family preference system includes:

- Adult children (married and unmarried) of U.S. citizens;
- Brothers and sisters of U.S. citizens (petitioner must be at least 21 years old to petition for a sibling); and
- Spouses and unmarried children (minor and adult) of LPRs.

In order to balance the overall number of immigrants arriving based on family relationships, Congress established a complicated system for calculating the available number of family preference visas for any given year. The number is determined by starting with 480,000 (the maximum number in principle allocated for all family-based immigrants) and then subtracting the number of immediate relative visas issued during the previous year and the number of people “paroled” into the United States during the previous year.⁶ The number of unused employment-based visas from the preceding year are then added to this total to establish the number of visas that are available through the family preference system.⁷ However, by law, the number of family-based visas allocated through the preference system may not be lower than 226,000.⁸ The number of visas issued to immediate relatives often exceeds 254,000 in a given year which triggers the 226,000 minimum for family preference visas. As a result, the total number of family-based visas often exceeds 480,000.⁹ In Fiscal Year (FY) 2022, family-based immigrant visas comprised 58 percent of all new LPRs in the United States.¹⁰

The family-based immigration system is summarized in Table 1.

TABLE 1: FAMILY-BASED IMMIGRATION SYSTEM

Category	U.S. Sponsor	Relationship	Numerical Limit
Immediate relatives	U.S. citizen adults	Spouses, unmarried minor children, and parents	Unlimited
Preference Allocation			
1	U.S. citizen	Unmarried adult children	23,400*
2A	LPR	Spouses and minor children	87,900
2B	LPR	Unmarried adult children	26,300
3	U.S. citizen	Married adult children	23,400**
4	U.S. citizen	Brothers and sisters	65,000***

* Plus any unused visas from the 4th preference.

** Plus any unused visas from 1st and 2nd preference.

***Plus any unused visas from all other family-based preferences.

Worldwide level of family preference allocation: 480,000 minus visas issued to immediate relatives and parolees, plus unused employment-based visas from previous fiscal year. Floor for preference categories: 226,000.

Source: William A. Kandel, *U.S. Family-Based Immigration Policy* (Washington, DC: Congressional Research Service, February 9, 2018), 4, <https://fas.org/sqp/crs/homesec/R43145.pdf>.

FIGURE 1: FAMILY-BASED IMMIGRATION

480K

Maximum number in principle allocated for all family-based immigrants

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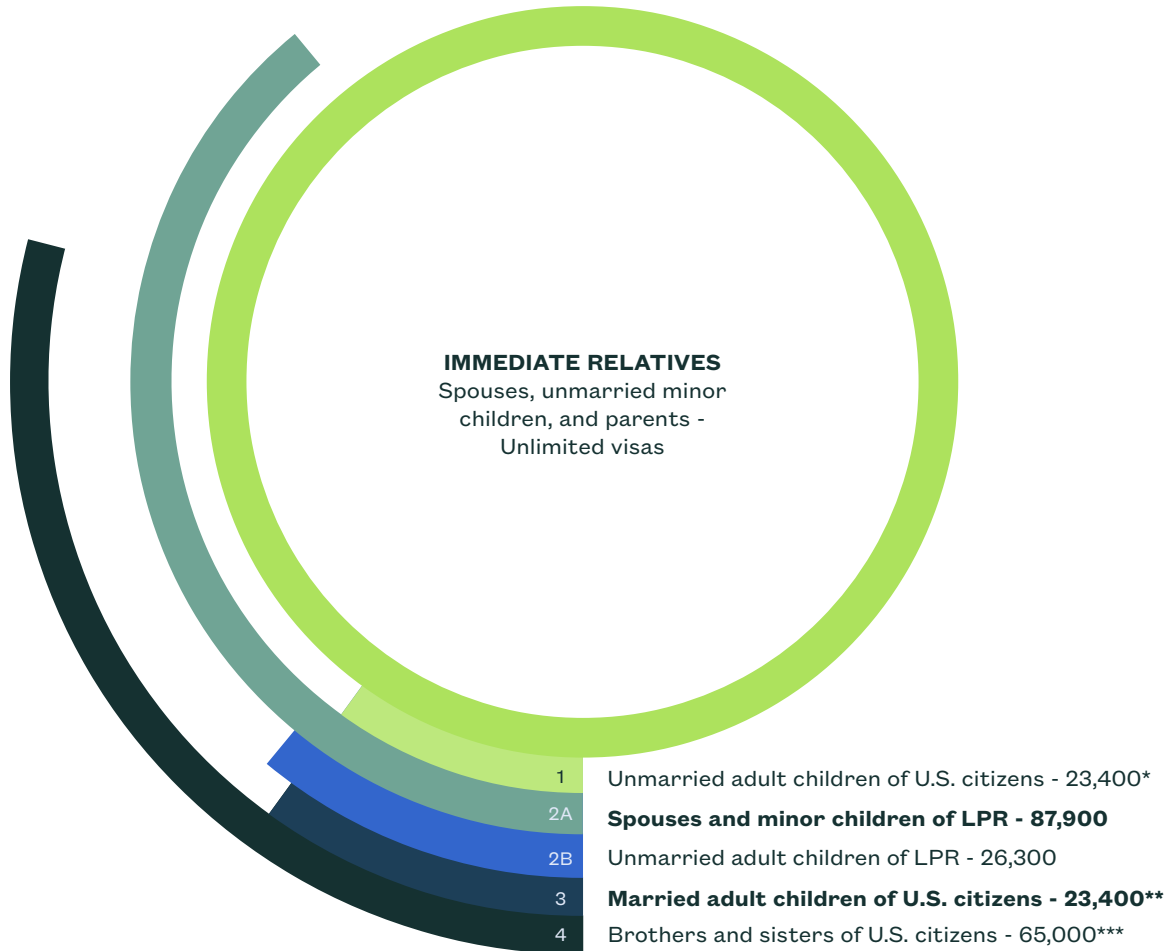
≤480K

Immediate relative visas issued during the previous year and the number of people “paroled” into the United States during the previous year

=

of visas available

through the family preference system. By law, the number of family-based visas allocated through the preference system may not be lower than 226,000.



**Plus any unused visas from the 4th preference.*

*** Plus any unused visas from 1st and 2nd preference.*

****Plus any unused visas from all other family-based preferences.*

226K

is the minimum for family preference visas per year. As a result, **the total number of family-based visas often exceeds 480,000.**

In order to be admitted through the family-based immigration system, a U.S. citizen or LPR sponsor must petition for an individual relative, establish the legitimacy of the relationship, meet minimum income requirements, and sign an affidavit of support stating that the sponsor will be financially responsible for the family member(s) upon arrival in the United States or adjustment to LPR status within the United States.¹¹ The individual relative must also meet certain eligibility requirements that include submitting to a medical exam and obtaining required vaccinations (including a COVID-19 vaccination¹²), an analysis of any immigration or criminal history, as well as demonstrating that they will not become primarily dependent on the government for subsistence.¹³

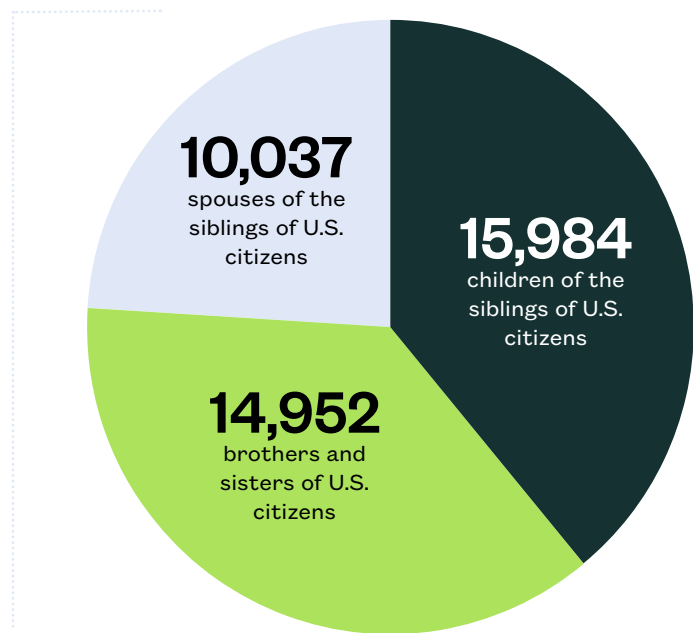
The spouses and children who accompany or follow the principal immigrant (the one sponsored by the U.S. citizen or LPR under the family-preference category) are referred to as derivative immigrants. Derivative immigrants also count toward the numerical caps for the categories in Table 1. That means that many of the visa slots allotted for members of these categories are often actually used by the spouses and children of the members. For example, in FY 2022, 40,973 people were admitted in the category “brothers and sisters” of U.S. citizens, but only 14,952 of them were actual brothers or sisters of U.S. citizens. The rest were spouses (10,037) and children (15,984) of the siblings of U.S. citizens.¹⁴

40,973

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14,952

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II. Employment-Based Immigration

The United States provides various ways for immigrants with valuable skills to come to the country on either a temporary or a permanent basis.

Temporary Visa Classifications

Temporary employment-based visa classifications permit employers to hire and petition for foreign nationals for specific jobs for limited periods. Most temporary workers must work for the employer that petitioned for them and have limited ability to change jobs.¹⁵

There are more than 20 types of visas for temporary nonimmigrant workers. These include L-1 visas for intracompany transfers; various P visas for athletes, entertainers, and skilled performers; R-1 visas for religious workers; various A visas for diplomatic employees; O-1 visas for workers of extraordinary ability; and various H visas for both highly skilled and lesser-skilled workers.

The visa classifications vary in terms of their eligibility requirements, duration, whether they permit workers to bring dependents, and other factors. In most cases, these workers must leave the United States if their status expires or if their employment is terminated. It may be possible, depending on the type of job and the foreign national's qualifications, for an employer to sponsor the worker for permanent employment. A foreign national does not have to be working for the employer in order to be sponsored. However, depending on the permanent immigration category sought and the foreign national's current nonimmigrant category, he or she may be able to complete the steps to become an LPR while continuing to live and work in the United States.



Permanent Immigration

The overall numerical limit for permanent employment-based immigrants is 140,000 per year.¹⁶ This number includes the immigrants plus their eligible spouses and minor unmarried children, meaning the actual number of employment-based immigrants is less than 140,000 each year.¹⁷ Any unused family preference immigrant numbers from the preceding year are added to this cap to establish the number of visas that are available for allocation through the employment-based system.¹⁸ The total number of available visas is then divided into five preference categories.¹⁹ For some categories, the sponsoring employer must first test the U.S. labor market under terms and conditions established by the Department of Labor (DOL), and the Secretary of Labor must certify that the petitioner's application meets certain requirements before the sponsor may file a petition with U.S. Citizenship and Immigration Services (USCIS). For some categories, the sponsor's first step is to file a petition with USCIS or the foreign national may self-petition. The final step is the foreign national's application for an immigrant visa at a U.S. embassy or consulate abroad or an application to adjust status to LPR if in lawful status in the United States. For consular processing, the immigrant visa application cannot be filed until after USCIS approves the immigrant petition. For adjustment of status, the time to file the application depends on whether a visa number is considered to be immediately available.²⁰

The employment-based visa categories are summarized in Table 2.

TABLE 2: PERMANENT EMPLOYMENT-BASED PREFERENCE SYSTEM

Preference Category	Eligibility	Yearly Numerical Limit
1	"Persons of extraordinary ability" in the arts, science, education, business, or athletics; outstanding professors and researchers, multinational executives and managers.	40,040*
2	Members of the professions holding advanced degrees, or persons of exceptional ability in the arts, science, or business.	40,040**
3	Skilled workers with at least two years of training or experience, professionals with college degrees, or "other" workers for unskilled labor that is not temporary or seasonal.	40,040***
4	Certain "special immigrants" including religious workers, employees of U.S. foreign service posts, former U.S. government employees and other classes of foreign nationals.	Plus "Other" unskilled laborers, restricted to 10,000
5	Persons who will invest at least the minimum amount required or a lower minimum for certain types of investments, and remain invested for at least two years, in a job-creating enterprise that employs at least 10 full time U.S. workers. The minimum dollar amounts have been adjusted at specified intervals.	9,940

*Plus any unused visas from the 4th and 5th preferences.

**Plus any unused visas from the 1st preference.

***Plus any unused visas from the 1st and 2nd preferences.

Worldwide level of employment-based immigrants: 140,000 for principal applicants and their dependents.

TABLE 2: PERMANENT EMPLOYMENT-BASED PREFERENCE SYSTEM

Preference Category	
<p style="text-align: center; font-size: 2em;">1</p> <p>“Persons of extraordinary ability” in the arts, science, education, business, or athletics; outstanding professors and researchers, multinational executives and managers.</p> <p style="text-align: center;"><i>Limit = 40,040*</i></p>	<p><i>In FY 2022, immigrants admitted through the employment preferences made up 26.5% of all new LPRs in the United States.²²</i></p>
<p style="text-align: center; font-size: 2em;">2</p> <p>Members of the professions holding advanced degrees, or persons of exceptional ability in the arts, science, or business.</p> <p style="text-align: center;"><i>Limit = 40,040**</i></p>	
<p style="text-align: center; font-size: 2em;">3</p> <p>Skilled workers with at least two years of training or experience, professionals with college degrees, or “other” workers for unskilled labor that is not temporary or seasonal.</p> <p style="text-align: center;"><i>Limit = 40,040*** Plus “Other” unskilled laborers, restricted to 10,000</i></p>	<p>Certain “special immigrants” including religious workers, employees of U.S. foreign service posts, former U.S. government employees and other classes of aliens.</p> <p style="text-align: center;"><i>Limit = 9,940</i></p>
<p style="text-align: center; font-size: 2em;">4</p>	<p>Persons who will invest at least the minimum amount required or a lower minimum for certain types of investments, and remain invested for at least two years, in a job-creating enterprise that employs at least 10 full time U.S. workers. The minimum dollar amounts have been adjusted at specified intervals.</p>
<p style="text-align: center; font-size: 2em;">5</p>	<p style="text-align: center;"><i>Limit = 9,940</i></p>

III. Per-Country Ceilings

In addition to the numerical limits placed on the various immigration preference categories, the INA also places a limit on how many immigrants can come to the United States from any one country. Currently, no group of permanent immigrants (family-based and employment-based combined) from a single country can exceed seven percent of the total number of people immigrating to the United States in a single fiscal year.²³ This is not a quota to ensure that certain nationalities make up seven percent of immigrants, but rather a limit that is set to prevent any immigrant group from dominating immigration flows to the United States.

IV. Refugees and Asylees

Refugees are admitted to the United States based upon an inability to return to their home countries because of a “well-founded fear of persecution” due to their race, membership in a particular social group, political opinion, religion, or national origin.²⁴ Refugees apply for admission from outside of the United States, often from a “transition country” that is outside their home country. The admission of refugees turns on numerous factors, such as the degree of risk they face, membership in a group that is of special concern to the United States (designated yearly by the president and Congress), and whether or not they have family members in the United States.

Each year, the president, in consultation with Congress, determines the numerical ceiling for refugee admissions.²⁵ The overall cap is broken down into limits for each region of the world. After September 11, 2001, the number of refugees admitted into the United States fell drastically. After the Bush administration put new security checks in place, annual refugee admissions returned to their previous levels and rose during the Obama administration. During the Trump administration, the refugee ceiling fell sharply, from 110,000 in FY 2017 to 45,000 in FY 2018 and 30,000 in FY 2019.²⁶ For FY 2020, the ceiling was set at an all-time low of 18,000—although only 11,814 were actually admitted (the lowest number of admitted refugees since the system was created in 1980.)²⁷ The FY 2021 ceiling was set at 15,000 by the Trump administration, but was subsequently raised to 62,500 by the Biden administration.²⁸ The Biden administration set the admission ceiling to 125,000 people for FY 2022 through FY 2024.²⁹ Additionally, the Biden administration created a new Priority 2 category for certain Iraqi, Afghan, and Syrian refugees.



Hem Rai, refugee from Bhutan turned restaurant entrepreneur in Akron, Ohio. *Maddie McGarvey*

The 125,000 allotted admissions for FY 2024 were divided by region per the following flexible allocations, which can also be further divided up by individual country.

TABLE 3: PRESIDENTIAL DETERMINATION ON REFUGEE ADMISSIONS, FY 2024

Region	Eligibility
Africa	30,000 - 50,000
East Asia	10,000 - 20,000
Europe and Central Asia	2,000 - 3,000
Latin America/Caribbean	35,000 - 50,000
Near East/South Asia	30,000 - 45,000
Unallocated Reserve	0
TOTAL	125,000

During the Trump administration, the refugee ceiling fell sharply, from 110,000 in FY 2017 to 45,000 in FY 2018 and 30,000 in FY 2019.

Asylum is available to persons already in the United States or arriving at a port of entry who are seeking protection based on the same five protected grounds upon which refugees rely.³⁰ There is no limit on the number of individuals who may apply for and be granted asylum each year, nor are there specific categories for determining who may seek asylum. In FY 2022, 36,615 individuals were granted asylum, as the system continued to recover from closures and disruptions during the COVID-19 pandemic.³¹

Refugees and asylees are eligible to become LPRs one year after admission to the United States as a refugee or one year after receiving asylum.³²

V. The Diversity Visa Program

The Diversity Visa Program was created by the Immigration Act of 1990 as a dedicated channel for immigrants from countries with low rates of immigration to the United States. Each year, 55,000 visas are allocated randomly through a computer-generated lottery to nationals from countries that have sent fewer than 50,000 immigrants to the United States in the previous five years.³³ Of the 55,000, up to 5,000 are made available for use under the Nicaraguan Adjustment and Central American Relief Act program, created in 1997 to provide relief to certain asylum seekers who applied for asylum before a specific date. This results in a reduction of the actual annual diversity visa limit to 50,000.³⁴ The program was originally intended to favor immigration from Ireland (during the first three years of the program at least 40 percent of the visas were exclusively allocated to Irish immigrants).³⁵ Diversity visas are now distributed on a regional basis and benefit Africans and Eastern Europeans in particular.³⁶

To be eligible for a diversity visa, potential applicants from qualifying countries must have a high school education (or its equivalent) or have, within the past five years, a minimum of two years working in a profession requiring at least two years of training or experience. Spouses and minor unmarried children of the principal applicant may also enter as derivatives.³⁷

Immigration bans implemented by the Trump administration effectively shut down the Diversity Visa Program in 2020 and left roughly 43,000 of that year's lottery winners without their visas.³⁸ Those 2020 lottery winners who did not receive visas by the end of the fiscal year lost their chance to immigrate to the United States, prompting some of them to file lawsuits against the federal government in an effort to obtain their visas.³⁹ Although the Biden administration subsequently lifted the immigration bans, the Diversity Visa Program has resumed at a very slow pace.

Diversity visas are now distributed on a regional basis and benefit Africans and Eastern Europeans in particular.



VI. Other Forms of Humanitarian Relief Which Permit Individuals to Enter or Remain in the United States Temporarily Without Visas

Temporary Protected Status (TPS) is granted to people who are in the United States but cannot return to their home country because of “natural disaster,” “extraordinary temporary conditions,” or “ongoing armed conflict” from specifically designated countries or regions within a country.⁴⁰ TPS is granted to individuals from a country for six, twelve, or eighteen months and can be extended beyond that if unsafe conditions in the country persist, and if the people meet the entry and residency requirements set for that particular TPS designation.⁴¹ TPS does not necessarily lead to LPR status or confer any other immigration status.

Deferred Enforced Departure (DED) provides protection from deportation for individuals whose home countries are unstable, therefore making return dangerous.⁴² Unlike TPS, which is authorized by statute, DED is at the discretion of the executive branch. DED does not necessarily lead to LPR status or confer any other immigration status.

Deferred Action for Childhood Arrivals (DACA) is a program established in 2012 which permits certain individuals who were brought to the United States while under the age of 16 and who have resided continuously in the United States since June 15, 2007, to remain in the United States and work lawfully for at least two years, so long as they have no significant criminal record and have graduated high school or college or received a degree equivalent.⁴³ It does not confer any path to permanent legal status and requires renewal every two years. While there have been multiple challenges to DACA in the federal courts, as of the date of publication, the program is still in place.

Humanitarian parole is a longstanding executive authority which allows certain individuals to enter the United States, even though they may not meet the definition of a refugee and may not be eligible to immigrate through other channels. Parolees may be admitted temporarily for urgent humanitarian reasons or significant public benefit.⁴⁴ Since humanitarian parole was first created in 1952, presidents of both parties have used the authority extensively. From 2020 through 2024, the Biden administration created several sponsorship-based parole programs, including the Uniting for Ukraine program to admit Ukrainians fleeing war,⁴⁵ and a parole program for Cubans, Haitians, Nicaraguans, and Venezuelans seeking to temporarily reside in the United States.⁴⁶

Individuals who enter the country through humanitarian parole are not on a path to permanent status. If a person granted parole wishes to remain in the country long-term, they must generally apply for and obtain a different immigration status. Those granted parole may generally apply for work authorization for the duration of their parole.

VII. U.S. Citizenship

In order to qualify for U.S. citizenship through naturalization, an individual must have had LPR status (a green card) for at least five years (or three years if the green card was obtained through a U.S. citizen spouse or through the Violence Against Women Act, VAWA). There are other exceptions including, but not limited to, members of the U.S. military who serve in a time of war or declared hostilities.⁴⁷ Applicants for U.S. citizenship must be at least 18 years old, demonstrate continuous residency, demonstrate “good moral character,” pass English and U.S. history and civics exams (with certain exceptions), and pay an application fee, among other requirements.⁴⁸

Conclusion

The U.S. immigration system is a complex network of visas, humanitarian relief, pathways to permanent residency and citizenship, as well as temporary status for people facing specific crises in their home country.



ENDNOTES

- 1** This number results from adding the family-based annual limit, the employment-based annual limit, and the diversity program annual limit. See Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, March 13, 2012), 3, <https://www.fas.org/sgp/crs/homesec/RL32235.pdf>.
- 2** American Immigration Council, *An Overview of U.S. Refugee Law and Policy* (Washington, DC: July 9, 2021), <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>.
- 3** INA §212(a) and INA §212(a)(4). See also William A. Kandel, *U.S. Family-Based Immigration Policy* (Washington, DC: Congressional Research Service, February 9, 2018), 3, 6-7, <https://fas.org/sgp/crs/homesec/R43145.pdf>.
- 4** Visa numbers are also available for children adopted by U.S. citizens. See U.S. Department of State, “Intercountry Adoption,” last accessed April 30, 2024, <https://travel.state.gov/content/adoptionsabroad/en.html>.
- 5** INA §212(a) and INA §212(a)(4). See also William A. Kandel, *U.S. Family-Based Immigration Policy* (Washington, DC: Congressional Research Service, February 9, 2018), 3, 6-7, <https://fas.org/sgp/crs/homesec/R43145.pdf>.
- 6** INA §201(c).
- 7** Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, March 13, 2012), 2, <https://www.fas.org/sgp/crs/homesec/RL32235.pdf>.
- 8** INA §201(c)(1)(B)(ii).
- 9** Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, March 13, 2012), 3-4, <https://www.fas.org/sgp/crs/homesec/RL32235.pdf>.
- 10** U.S. Department of Homeland Security, 2022 Yearbook of Immigration Statistics, “Table 6. Persons Obtaining Lawful Permanent Resident Status by Type and Major Class of Admission, Fiscal Years 2013-2022,” November 2023, https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf.
- 11** U.S. Citizenship and Immigration Services, “Green Card Processes and Procedures,” last updated October 19, 2022, <https://www.uscis.gov/green-card/green-card-processes-and-procedures>. An affidavit of support is a document an individual must sign to accept financial responsibility for another person who is coming to the U.S. to live permanently. Sponsors of the affidavit of support must be at least 18 years old, be a U.S. citizen or lawful permanent resident, and reside in the U.S. and provide evidence showing that their annual income is no less than 125 percent of the federal poverty level. See U.S. Citizenship and Immigration Services, “Affidavit of Support,” last updated March 19, 2021, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-support>.
- 12** Centers for Disease Control and Prevention, “Overview of Vaccination Technical Instructions,” last reviewed April 19, 2024, <https://www.cdc.gov/immigrantrefugee-health/panel-physicians/vaccinations.html>.
- 13** U.S. Citizenship and Immigration Services, “Green Card Processes and Procedures,” last updated October 19, 2022, <https://www.uscis.gov/green-card/green-card-processes-and-procedures>.
- 14** U.S. Department of Homeland Security, 2022 Yearbook of Immigration Statistics, “Table 7. Persons Obtaining Lawful Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2022,” November 2023, https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf.

ENDNOTES

- 15** Some nonimmigrant visa classifications permit foreign workers to work in the United States without an employer having first filed a petition on the foreign worker's behalf. These include such nonimmigrant classifications as E-1, E-2, E-3, and TN. U.S. Citizenship and Immigration Services, "Temporary (Nonimmigrant) Workers," last updated January 11, 2022, <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers>.
- 16** INA §201(d); U.S. Department of State, "Employment-Based Immigrant Visa," last accessed April 30, 2024, <https://travel.state.gov/content/travel/en/us-visas/immigrate/employment-based-immigrant-visas.html>.
- 17** U.S. Department of Homeland Security, *2019 Yearbook of Immigration Statistics*, "Table 7. Persons Obtaining Lawful Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2019," last updated November 27, 2023, <https://www.dhs.gov/immigration-statistics/yearbook/2019/table7>.
- 18** Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions* (Washington, DC: Congressional Research Service, March 13, 2012), 2, <https://www.fas.org/sgp/crs/homesecc/RL32235.pdf>.
- 19** *Ibid.*, 4.
- 20** U.S. Citizenship and Immigration Services, "Green Card Processes and Procedures," last updated October 19, 2022, <https://www.uscis.gov/green-card/green-card-processes-and-procedures>. Whether a visa is immediately available is determined by the foreign national's "priority date." When labor certification is required, the foreign national's "priority date" is the date that the sponsor filed the application with DOL. But the "priority date" does not "attach," as to the foreign national's ability to receive an immigrant visa number, unless DOL issues the labor certification and USCIS approves the immigrant petition. If no labor certification is required, the "priority date" is the date USCIS accepted the immigrant petition for filing, but USCIS petition approval is required for the date to "attach." If the "priority date" that would attach upon agency approval is current when the immigrant petition is being filed, then the foreign national, and derivatives if applicable, in lawful status in the United States, may file their adjustment applications at that time. If the annual and per country limits result in too few visas available for the demand, then a backlog occurs and the "priority date" gives the foreign national a place in the backlog queue. When the "priority date" is reached, then the foreign national (and derivatives, if applicable) may file an application to adjust status if lawfully in the United States and if the immigrant petition is pending or has been approved. If the immigrant petition is not approved (or in some situations, was not approvable when filed), then the priority date will not "attach" and USCIS also will deny the adjustment applications.
- 21** The standard amount is a minimum investment of \$1,050,000. 8 U.S.C. § 1153(b)(5)(C)(i). The minimum is \$800,000 for an investment in a "targeted employment area" or an "infrastructure project." 8 U.S.C. § 1153(b)(5)(C)(ii). These minimums were first applied to immigrant investor petitions filed on March 15, 2022, which is the date the EB-5 Reform and Integrity Act of 2022 became law. Div. BB of the Consolidated Appropriations Act of 2022, Pub. L. 117-103, 136 Stat. 49, 1070 (Mar. 15, 2022), Congress established automatic adjustments to these minimums every five years beginning January 1, 2027, and specified how the adjustments are to be calculated. 8 U.S.C. § 1153(b)(5)(C)(iii). Congress also gave the DHS Secretary the authority to raise the minimum investment to triple the standard amount for investments in a "high employment area," which will be subject to the same automatic adjustment as the standard amount. 8 U.S.C. § 1153(b)(5)(C)(iv).

ENDNOTES

- 22** Ryan Baugh, Annual Flow Report: U.S. Lawful Permanent Residents: 2022 (Washington, DC: U.S. Department of Homeland Security, Office of Immigration Statistics, November 2023), 6, https://www.dhs.gov/sites/default/files/2024-02/2023_0818_plcy_lawful_permanent_residents_fy2022_0.pdf.
- 23** INA §202(a)(2). There are exceptions to this limit, mainly in the area of family-based immigration. For example, 75 percent of the second family preference immigrants are exempt from the per-country limit. See William A. Kandel, *U.S. Family-Based Immigration Policy* (Washington, DC: Congressional Research Service, February 9, 2018), 5-6, <https://fas.org/sgp/crs/homesec/R43145.pdf>.
- 24** 8 U.S.C. §§1101 et seq. P.L. 96-212, March 17, 1980. This definition conforms with the definition used in the United Nations Convention and Protocol relating to the status of refugees.
- 25** INA §207(a).
- 26** Andorra Bruno, *Refugee Admissions and Resettlement Policy* (Washington, DC: Congressional Research Service, December 18, 2018), 2, <https://fas.org/sgp/crs/misc/RL31269.pdf>.
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