



CURRENT LAW AND
THE PATH TO
CITIZENSHIP:

“THE LABYRINTH”

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WHAT PRACTICING IMMIGRATION LAW LOOKS LIKE...



AGENCIES: OVERVIEW

- Department of Homeland Security (DHS)
 - ✓ Citizenship & Immigration Services (USCIS)
 - ✓ Immigration & Customs Enforcement (ICE)
 - ERO: Enforcement & Removal Operations
 - Customs and Border Patrol (CBP)
 - OCC: Office of Chief Counsel (OCC)
- Department of Justice
 - ✓ Executive Office for Immigration Review (EOIR)
- Department of Health & Human Services (HHS)
 - ✓ Office of Refugee Resettlement (ORR)

KEY DISTINCTION

- Immigrants:

- Lawful Permanent Residents
- Refugees/Asylees
- Intent is to live and work in the United States.

- Nonimmigrants:

- Students
- Temporary workers
- Visitors
- Admitted for a specific and *temporary* purpose.

THE “WHY DON’T YOU JUST BECOME A CITIZEN” MYTH

1. You are born in the U.S.
2. You are born to a U.S. citizen parent or one of your parents became a citizen before you turned 18.
3. You are adopted by a U.S. citizen.
4. You become a naturalized citizen.
 - LPR status/green card through a family member, employment, refugee or asylee, military service is key.

UNDERSTANDING THE UNLAWFUL PRESENCE BARS

- The IIRIRA of 1996 created new and *highly punitive* grounds for the exclusion of non-citizens who are “unlawfully” present in the U.S.
 - More than 180 days, but less than 1 year = 3 year bar
 - More than a year = 10 year bar
- What happens if you come back before the 3 or 10 year bar has run it’s course? = PERMANENT BAR.

THE “WHY DON’T THEY JUST GET IN LINE?” MYTH

- THERE IS NO LINE FOR THE MAJORITY
- Immigration to the United States on a temporary or permanent basis is generally limited to three different routes:
 - Family Reunification
 - Employment
 - Humanitarian Protection
 - Each of these routes is highly regulated and subject to numerical limitations and eligibility requirements.
 - Most lack the necessary family or employment relationships and often cannot access humanitarian protection, such as refugee or asylum status.

THE “WHY DON’T THEY JUST GET IN LINE?” MYTH

- **Employment-based immigration:**

- Requires a U.S. employer to sponsor foreign worker
- Process can be expensive and complicated
- Permanent immigration options require high levels of education and professional experience, typically reserved for scientists, professors, and multinational executives;
- Permanent immigration options and temporary visas subject to quotas
- However, in the traditional industries where undocumented immigrants work, such as the construction, hospitality, and restaurant industries – a legal process, or “a line” simply doesn't exist.

THE “WHY DON’T THEY JUST GET IN LINE?” MYTH

- Lupe has been working as a nanny with the Smith Family for the past 5 years. About 6 years ago, Lupe entered the U.S. on a visitor visa and overstayed. The Smith Family absolutely adore Lupe, she is an integral part of the family. The Smith Family would like to sponsor Lupe and help her obtain LPR status. What are their options?
- Lupe recently married her boyfriend, Joe, who is a USC, What are her options?
- What if Joe is a LPR?

THE “WHY DON’T THEY JUST GET IN LINE?” MYTH

- **Family-based immigration:**

- Qualified family members in the U.S can seek permission to bring in certain eligible foreign-born family members.
- U.S. citizens can petition for their spouses, parents, children, and siblings. There are always visas available for the spouses, parents, and minor children of U.S. citizens, but for all other family categories there are annual numerical limits.
- Lawful Permanent Residents (LPRs, or “green card” holders) can petition for their spouses and unmarried children. Subject to annual numerical limits.
- In all cases, the petitioning family member in the United States must demonstrate an income level above the poverty line and must commit to support the family member they are seeking to bring to the United States. The foreign-born persons wishing to immigrate must meet eligibility requirements as well.

THE “WHY DON’T THEY JUST GET IN LINE?” MYTH

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	22JUN11	22JUN11	22JUN11	01AUG97	01FEB07
F2A	15SEP16	15SEP16	15SEP16	01SEP16	15SEP16
F2B	01JAN12	01JAN12	01JAN12	08JUN97	01JUN07
F3	08JUL06	08JUL06	08JUL06	22DEC95	22JUN95
F4	22MAR05	22MAR05	01JUN04	08FEB98	15JUN95

FAMILY-SPONSORED PREFERENCES

First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

THE “ANCHOR BABY” MYTH

Debbie is a 45-year-old citizen and national of Mexico. She entered the U.S. 25 years ago without permission and has lived in Charlottesville ever since. Debbie is a single mother to 3 USC children 1 of which has special needs, she owns a popular restaurant in town, volunteers in the community in her spare time, and has no criminal history. Debbie's oldest child just turned 21.

What are Debbie's options?

HUMANITARIAN OPTIONS

- Asylum
- U Nonimmigrant Visa
- T Nonimmigrant Visa
- Violence Against Women Act self-petitions

KEY DISTINCTION

• Refugee

- A refugee receives permission to come to the U.S. from outside of the country.
- Refugees are resettled with the help of a refugee resettlement agency.

• Asylee

- An asylee is **already in** the U.S. when s/he applies for protection.
- Asylees have to prove that they have reason to fear persecution in their home country.

ELEMENTS OF ASYLUM

Past persecution

or

Well-founded fear

On account of

Five

Protected

Grounds

- Jessica is a citizen and national of El Salvador. In El Salvador, Jessica owned a small pupuseria. She has 2 small children who were born in El Salvador. Jessica is a single mother. Over the last year, Jessica has been repeatedly terrorized by the gang that controls her village. The gang demanded that she pay a monthly tax to them for running the business or else they would kill her and the kids. When she failed to pay – they held a knife up to her toddler’s throat, put a gun to her head, and vowed to kill her and the children if she ever failed to pay again. Shortly after receiving this violent threat, Jessica fled with her two

HOW CAN YOU HELP?

