

Visa Example

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I-94 Example

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Federal Agencies

- Department of Homeland Security
 - USCIS – Citizenship & Immigration Service
 - ICE – Immigration & Customs Enforcement
 - CBP – Customs and Border Protection
- Department of State – Consulates & Embassies
- Department of Labor

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Unlawful Presence

- Starts on the first day the person enters without authorization
- Starts on the day status with a particular end date expires.
- Starts on the day a judge or USCIS tells you in writing that your status has expired
- No consequence until the person turns 18

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Immigration Bars

- A person is "inadmissible" (will not be allowed to enter the U.S.) for committing certain crimes, having communicable disease, or lacking financial support.
- A person can be **barred** from immigration in certain situations – either for a period of time or permanently
 - "unlawfully present" for 180 days = 3 year bar
 - "unlawfully present" for 1 year = 10 year bar
 - enter unauthorized after being deported = permanent bar
- A **waiver** of the 3 or 10 year bar is available if the person is married to a U.S. citizen or LPR (or has a USC or LPR parent) who will experience "extreme hardship" if the person cannot immigrate for that period.

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Citizenship v. Permanent Residence

- A "green card" is not the same as citizenship.
- Five years permanent residence (or three if married to a US citizen) is required for naturalization in most cases
- Naturalization requires:
 - Speaking, reading and writing English
 - Knowledge of US history and government
 - Good moral character (no "serious" crimes)

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Citizenship v. Permanent Residence (cont'd)

- Permanent residence may be lost through:
 - Being outside the US too long
 - Committing certain crimes
 - A finding of fraud in original approval process
- Permanent residents cannot vote.
- Inheritance laws are different (high income).

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Scenario I

- Maria wants to visit her cousins in the U.S. She goes to the U.S. Embassy in Mexico City and applies for a visitor visa. She is approved and the visa is valid from June 1 to September 1, 2009.
- Maria enters the U.S. showing her visa on June 30, 2009. The CBP officer gives her an I-94 card that is valid from June 30 – December 30, 2009 (Note – “visa” and “status” not the same).
- Maria does not leave December 30 and does not file an application for an extension of stay. She is “out of status” and “unlawfully present”.
- She meets Claudio, a U.S. citizen and they marry in 2009. She applies for “adjustment of status” and receives conditional residence. Two years later, they apply for “removal of condition” and she has her permanent residence (“green card”) in the U.S.

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Scenario II

- Miguel was brought to the U.S. by his mother when he was 2 years old. They “entered without inspection”.
- He was “unlawfully present” from the day he enters.
- When he is 21, he meets Natalie, a U.S. citizen, and they marry.
- He cannot adjust status. If he leaves the U.S. to get a visa, he is barred for 10 years.

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Scenario III

- Fernando wants to study in the U.S. He applies for a student visa and is approved. He enters the U.S. with an F-1 visa. The CBP officer gives him an I-94 with “duration of status” (“D/S”).
- Fernando attends school, but has problems and drops out. He gets a job and starts working.
- He is “out of status” but not “unlawfully present”
- His employer wants to sponsor him for immigration because he is such a good worker.
- He also meets Sandra, a permanent resident, and they become engaged.

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The 4 Basic Ways to Immigrate

- **Family-based** = you are sponsored by a **close family member** who is a U.S. citizen or lawful permanent resident who can prove financial ability to support you.
- **Asylee/Refugee** = you cannot return to your home country for fear of persecution based on your **national origin, ethnicity, political opinion, membership in a particular social group or religion**.
- **Diversity Lottery** = you are from a country that sends few immigrants to the U.S., you have two years of school or work, and you apply at the time designated by the Department of State and are chosen **randomly**.
- **Employment-based** = you are sponsored by an employer who has proven to the Department of Labor that there are **no qualified U.S. workers** to do the job offered and to the U.S. Citizenship & Immigration Service that you are qualified to do the job and there is a job available (the employer has the ability to pay the wage).

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Family-Based Immigration

- **Unlimited** for spouses and minor children of U.S. citizens and parent of U.S. citizens who are over 21.
- **Quotas** for all other categories:
 - Unmarried sons & daughters of U.S. citizens (24,300/year)
 - Spouses & unmarried sons & daughters of permanent residents (114,200/year)
 - Married sons & daughters of U.S. citizens (23,400/year)
 - Brothers & sisters of U.S. citizens (65,000/year)
- Total is about 480,000/year = .15% of U.S. population

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“Immediate Relative” Category

- Unauthorized employment and unlawful presence and “out of status” time waived for adjustment of status IF the person originally entered *with* inspection and has not left the U.S. since entry (triggering the bars) (*Maria v. Miguel*)
- Must prove validity of marriage. Two-year condition on marriage if married for less than two years.
- Can immigrate even if “removal” (deportation) proceedings started before marriage – but higher burden of proof.

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Family Waiting Lines (5/2009)

Family	All Areas Except Those Listed	CHINA	INDIA	MEXICO	PHILIPPINES
1st – unmarried sons & daughters of US citizens	08NOV02	08NOV02	08NOV02	08OCT92	01SEP93
2A- spouses & minor children of residents	15DEC04	15DEC04	15DEC04	15MAY02	15DEC04
2B – unmarried sons & daughters of residents	01FEB01	01FEB01	01FEB01	01MAY92	01APR98
3 rd – married sons & daughters of US citizens	08OCT00	08OCT00	08OCT00	22OCT92	01JUL91
4 th – brothers & sisters of US citizens	15AUG98	15AUG98	15AUG98	22MAY95	01AUG86

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Employment-Based Immigration

- Total of 140,000/year (including dependents) = .046% of total population and about .097% of the working population.
- Categories based on skills & education required to do the job:
 - **Priority Workers** = international managers, outstanding researchers, extraordinary ability aliens (28.6% of total/year)
 - **Advanced Degree Holders** = job requires a master’s degree or equivalent (28.6% of total/year)
 - **Skilled Workers** = job requires less than a master’s degree (28.6% of total/year) BUT if the job requires less than 2 years experience or education only 5,000 visas/year (“other workers”)
 - **Religious Workers & Ministers** = with proof of 2 years religious work in same denomination (7.1% of total/year)
 - **Employment Creation/Investors** = investing \$1 million and creating 10 jobs (7.1% of total/year)

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Employment Waiting Lines (5/2009)*

Employment-Based	All Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1 st	C	C	C	C	C
2 nd	C	15FEB05	01JAN00	C	C
3 rd	(01MAR03)	(01MAR03)	(01NOV01)	(01MAR03)	(01MAR03)
Other Workers	(01MAR01)	(01MAR01)	(01MAR01)	(01MAR01)	(01MAR01)
4 th	C	C	C	C	C
5 th	C	C	C	C	C

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Department of State Website

- <http://travel.state.gov>
- Updated monthly
- Lots of info about the visa application process
- *Note on previous slide – the dates in parenthesis are the last dates when visas were available. They are now “unavailable” until October 1, 2009 as they ran out for the fiscal year.

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Non-Immigrant Categories

- None for family members except fiance(e)s, who can enter temporarily to marry and then apply for immigration. Being in the waiting line does not allow you to enter the U.S., and can make it harder to do so.
- Some for employment-based applicants, but they are focused on **high-skill applicants or seasonal workers**. Seasonal non-agricultural workers are capped at 66,000/year and run out quickly each year.
- Even for high-skill applicants, the most common category (H-1B) is capped at 65,000/year (+ 20,000 for those with U.S. master’s degrees). **These ran out on the first day of the application period before 2009.**

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Most Common Non-immigrant Visas

- B-1/B-2 - visitor (no work allowed)
- F-1 - student (only available for full-time studies and work allowed only if part of studies, on-campus work or an internship)
- J-1 - exchange visitor/intern (18/12 month limit)
- H-1B - professional worker (six year limit) - 65,000 + 20,000 (Master's degree) new ones/year
- Singapore and Chile trade agreements - not numerically limited
- H-2A - unskilled seasonal worker - agriculture (less than one year)
- H-2B - unskilled seasonal worker - non-agriculture (less than one year) (66,000/year)
- L-1 - intracompany transferee (5/7 year limit depending on type)
- O-1 - extraordinary ability (must be top of the field of expertise)
- P - performer or athlete (proof of national or international acclaim)
- Q - cultural exchange (public demonstration required - "Disney" visa)
- TN - NAFTA Schedule 2 - Mexico & Canada only, mostly professionals
- E-3 - Australia (like H-1B) - no numerical limits
- E-1 & E-2 - Substantial trade and investment
- K-1 - fiancé(e) (must marry sponsor within 90 days) (K-2 for children)
- K-3 - spouse temporary visa (K-4 for children)

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Employer Perspective

- Often a point of contention and misunderstood.
- Federal law requires I-9 to be completed: Documents must appear "genuine" and "relate to the person presenting them". Fake documents abound and are hard to detect.
- Also prohibited from discriminating by requiring more or different documents.
- Administrative fines can be imposed
- Criminal penalties are becoming more common
 - "Harboring"
 - Knowing hire of 10 or more in 12-month period

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Employer perspective (cont'd)

- All worker protection laws apply despite legal status of workers (although some remedies limited in *Hoffman Plastics* case).
- Many states have also passed laws requiring additional verifications, such as e-Verify.
- E-Verify does not catch use of "stolen" IDs and does not provide immunity from raids.
- A raid will devastate a business even if no criminal penalties imposed.

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Let's make a reasonable line to get into

- The answer is clear: They don't get in line because there is no reasonable line to get into.
- The ability to integrate into US society and culture is also tied to legal status.
- Although it will not solve every problem, the pre-condition to making progress in integration is creating a more workable legal system.
- This will only happen if people who understand and care make their voices heard.

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