

U.S.A. IMMIGRATION

COMING TO AMERICA LEGALLY!

Last updated by Prof . Isgro on September 9, 2011

CATEGORIES OF ADMISSION

- **IMMIGRANTS - 675,000 visas annually + (+refugees)**
- **NONIMMIGRANTS - unlimited visas (some exceptions)**

IMMIGRANTS

- CHARACTERISTICS - INA §§ 214(b), 203(f)
- **UNLIMITED IMMIGRANTS** – INA § 201
- **LIMITED IMMIGRANTS -- 675,000+**
 - FAMILY BASED (FB)
 - EMPLOYMENT BASED (EB)
 - DIVERSITY IMMIGRANTS (DV)
- **REFUGEES** – INA § 207(cap set annually - 80,000 in FY 2011)

ALLOCATION OF THE 675,000 IMMIGRANT VISAS

- Family-Sponsored Preference – 480,000
- Employment-Based Preference – 140,000
- Diversity Visas – 55,000

UNLIMITED IMMIGRANTS

- **NO NUMERICAL LIMITATION**
- IMMEDIATE RELATIVES
 - SPOUSE OF USC - INA § 101(a)(35)
 - UNMARRIED CHILD OF USC - INA § 101(b)
 - PARENT OF USC WHO IS 21+
- RETURNING RESIDENTS (LPR)

Family Based (Sponsored) Preferences

226,000 (minimum/floor) 480,000 (max/ceiling)

- FIRST - Unmarried sons and daughters of USC (23,400)
- SECOND - Spouses, children, and unmarried sons & daughters of LPRs (114,200)
- THIRD - Married sons and daughters of USC (23,400)
- FOURTH - Brothers & sisters of USC (65,000)

LPRs/Immigrants Flow FY2008-10

	TOTAL	New Arrivals	Adjustment
● 2010	1,042,625	476,049	566,576
● 2009	1,130,818	463,042	667,776
● <i>2008</i>	1,107,126	466,558	640,568

Who can petition for family-based visa?

- **Petitioner**
- **Beneficiary – Derivative Beneficiary**
- **USC**
- **LPR**

Family Based Immigration FY 2010

● Total Immigrants	1,042,625	100.0
● Family-sponsored immigrants	691,003	66.3
● Family-sponsored preferences	214,589	20.6
● Unmarried sons/daughters of U.S. citizens	26,998	2.6
● Spouses and children of alien residents.	92,088	8.8
● Married sons/daughters of U.S. citizens	32,817	3.1
● Siblings of U.S. citizens	62,686	6.0
● Immediate relatives of U.S. citizens	476,414	45.7
● Spouses	271,909	26.1
● Parents	116,208	11.1
● Children*	88,297	8.5

Issues re Family-Based Immigration

- **Power of Congress to draw the line**
- ***Fiallo v. Bell***

When is a visa available?

- Priority dates
- Visa Bulletin

Visa Bulletin – September 2011

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01MAY04	01MAY04	01MAY04	15MAR93	01NOV96
F2A	01DEC08	01DEC08	01DEC08	22SEP08	01DEC08
F2B	01JUL03	01JUL03	01JUL03	01NOV92	22MAR01
F3	22AUG01	22AUG01	22AUG01	22NOV92	15MAY92
F4	15APR00	15APR00	15APR00	22MAR96	08JUL88

Per Country Limit – INA § 202

- No country can get more than 7% of total number of visas
- Visas are charged against immigrant's country of birth
 - Cross-chargeability Rule (charge to spouse or parent's country of birth to avoid family separation)

Definition of “Child” INA § 101(b)(1)

- (A) child born in wedlock; if under 21, unmarried
- (B) stepchild, whether or not born out of wedlock; if marriage creating step-relationship occurs before child is 18. Unlike an adopted child, stepchild could petition for natural parent.
- (C) legitimated child (before age 18 & in custody of legitimating parent at time of legitimation)

Definition of “Child” (cont.)

- (D) out-of-wedlock = child of mother; & also father if bona fide parent-child relationship
- (E) An adopted child qualifies if:
 - Adopted before 16 + in legal custody + residing with adopting parent for at least 2 years.
- (F) orphan (under 16)
- Note: If “child” is over 21 or married, referred to as a son or daughter

Child Status Protection Act (CSPA)(2002) INA § 201(f)

- Preserves “child” status if “aging out” due to backlog in adjudication
- IR Child – Date IR visa petition filed
- Family, Employment, Diversity
 - Age of child when visa number became available or the approval date, whichever is later, and
 - Reduce than number by days visa petition has been pending
 - Child must file for LPR within 1 year of approval or availability of visa, whichever is later

Definition of “spouse”

- INA § 101(a)(35)
- What marriages are recognized under the INA?
- Validity of marriage

Marriage Issues

- *Adams v. Howerton*
- Facts –
- Issue –
- Holding -

Matter of Lovo-Lara (BIA 2005)

- **Fact:** USC married male citizen of El Salvador in N.C. The USC was born a male, but had surgery changing sex designation to female. As proof of sex, USC submitted: (1) surgeon's affidavit, (2) N.C. amended birth certificate; (3) N.C. marriage record & driver's license. CIS denied I-130 petition because petitioner & beneficiary were both born male.
- **Issue:** Whether a marriage between a postoperative male-to-female and a male is valid when the State where the marriage occurred recognizes the change in sex & considers the marriage valid?

Marriage Issues

- *Bark v. INS*
- *Dabaghian v. Civiletti*
- Sham Marriages
- Marriage Fraud Act

Marriage Issues

- **DOMA**
- **Violence Against Women**

Siblings

- Young v. Reno

NEXT CLASS

- Volunteer – CSPA VWP NAFTA
- Employment Based and Diversity Immigrants
- Nonimmigrants
- ADDITIONAL Assignments
 - Complete G-28 --- Albert Luna
 - Problems 1-4 at p. 299