

Presented:
2014 Fundamentals of Immigration and Nationality Law
38th Annual Conference on Immigration and Nationality Law

October 15 - 17, 2014
Austin, Texas

Immigrant Visa Process at the Consulate
for Those Who Cannot Avoid It:
Who They Are and How the Process Works
with an Appendix of Examples

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Who Would Ever Apply for an Immigrant Visa at a US Consulate?

****Person who has a case pending with NVC that is complete awaiting the priority date to be reached:** She receives an immigrant visa appointment abroad getting notice a month before the actual appointment. She cannot apply for adjustment of status until the priority date is reached and would then have to wait 3 to 6 months for adjudication of the permanent resident application. She would have to pay \$1070 for the filing fee. *She has a CLEAN case and decides she will go to the Consul appointment. She likely will be back in the US by the end of the month when her priority date is reached.*

****Person applied for adjustment of status when not eligible to do so and USCIS denies and issues NTA—will not be in quota for years and has no qualifying relatives or requisite time for cancellation of removal;** takes voluntary departure and leaves without an order of removal. Will have to apply for immigrant visa abroad when in quota; may or may not need 601 waiver by that time. IF person is able to obtain a 212d5 waiver and returns legally to the US, may be able to apply for adjustment of status in future.

****Persons have never lived in or visited the United States and are beneficiaries of a family petition or an employer petition.** Will have to apply for immigrant visas when in quota. True also for individuals living outside the US who are selected for diversity visas.

****Person who was deported/removed.** This person has no choice but to consul process. Assuming he has only one illegal entry or one legal entry and overstay without a subsequent illegal entry, he may be eligible for a 601 waiver before he has been outside of the US for 10 years. If he had multiple illegal entries, then he must remain outside of the US for 10 years before he may become eligible for a waiver.

****Spouse and or children (outside the US) of an individual who adjusted status in the US or consular processed prior to them and now is a permanent resident.** The spouse and or children will be able to apply for immigrant visas under following to join.

Application for Immigrant Visa at US Consulate

How does the application for an immigrant visa get to the US Consulate?

First, the US Citizenship & Immigration Services piece.

The starting place, in most instances, is the filing of an I130 immigrant visa petition with the US Citizenship & Immigration Services (or its predecessor, US Immigration and Naturalization Service—INS). A US citizen who is 21 years of age can file a petition for a parent, sibling, or adult son or daughter (whether married or single). A US citizen can file a petition for his/her spouse or child prior to turning 21 but must consider eligibility for filing an affidavit of if under the age of 18. A permanent resident may petition for his or her spouse, child, or unmarried son or daughter over the age of 21. The date the petition is filed generally establishes the priority date which determines when the person named in the petition will become eligible to apply for an immigrant visa. There are exceptions to priority date creation, which are discussed below. The petition can be filed for a person living in the United States or abroad. The petition can indicate the beneficiary will apply for adjustment of status in the United States or for an immigrant visa at a US Consulate. Upon approval of the petition, USCIS sends the actual approved petition to its National Record Center for the adjustment of status designation or to the National Visa Center (NVC) for the immigrant visa consular processing designation.

PRACTICE POINTER: For most preference cases, it is best to designate immigrant visa processing because of the long wait before a visa will be available. If the beneficiary eventually applies for adjustment of status in the United States, the application can be filed with a copy of the I130 approval notice. The USCIS will request the visa petition from the National Visa Center. If the petition has designated adjustment of status *and* the beneficiary is not able to adjust status, the I824 application must be filed with USCIS to notify the US Department of State/National Visa Center. This delays the immigrant visa processing and also requires payment of the I824 filing fee.

The exception to the requirement of a petition filing with USCIS arises in following to join or accompanying immigrant visa applications.

Second, the US Department of State through its National Visa Center (NVC) located in New Hampshire.

Once the NVC receives the approved I130 petition from the USCIS, an immigrant visa file is created and assigned a unique case number for each

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First appeared as part of the conference materials for the
38th Annual Conference on Immigration and Nationality Law session
"Can I Stay or Must I Go? Adjustment versus Consular Processing"