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PRACTICE POINTERS AND OVERVIEW OF FAMILY-BASED IMMIGRATION AND REMOVAL WORK

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PRACTICE POINTERS AND OVERVIEW OF FAMILY-BASED IMMIGRATION AND REMOVAL WORK

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I. Fundamentals and Practice Pointers in Family-Based Immigrant Visas

A. Become familiar with the different family-based immigrant visa categories, and who may file immigrant visa petitions for what family members (Forms I-130):

1. Immediate Relative visas, where there is no limit to the number of visas per year and the visas are immediately available without a need to wait, which includes:
   a. spouses and unmarried children (under 21) of U.S. citizens, and
   b. parents of U.S. citizens
   c. the above may include stepparents and stepchildren if relationship begins before child turns 18; and

2. The preference categories, in which the visas are limited per year and are not necessarily immediately available, including:
   a. First Preference (unmarried sons and daughters of U.S. citizens);
   b. Second Preference "A" (spouses and unmarried children under 21 of lawful permanent residents and Second Preference "B" (unmarried sons and daughters of lawful permanent residents);
   c. Third Preference (married sons and daughters of U.S citizens); and
   d. Fourth Preference (siblings of U.S. citizens)
   e. *See generally,* Immigration and Nationality Act (INA) §§ 201-204, and 8 C.F.R. § 204
   f. The above may also include stepparents and stepchildren if the relationship begins before the child turns 18)

B. Learn the definitions of "child," "parent," "son or daughter," "sibling," and the nuances, such as whether born in wedlock, whether an adoption (under the Hague or otherwise), etc. (*See* INA,§§ 101(b)(1), 101(b)(2), 203(a)(4), 203(a)(1), (3), and become familiar with the Child Status Protection Act of 2002 (CSPA)[1])

C. Become familiar with the Department of State's (DOS) Visa Bulletin, which provides visa availability for the preference category cases. Issued every month by the Department of State, it includes an overview of the family-based preference categories, and shows when immigrant visas are available by category for "final action" (whether the visas are ready to be issued by the DOS) or "dates for filing" (whether the paperwork may be filed with the DOS for consular processing of the case). Also, one may check the link to USCIS to see whether USCIS will accept the "dates for filing" for filing of adjustment of status cases with USCIS. October 2020's visa bulletin is available at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-october-2020.html

[1] Pub. L. No. 107-208, 116 Stat. 297 (Aug. 6, 2002)

D. Learn about self-petitions for immigrant visas for abused spouses of U.S. citizens and lawful permanent residents under the Violence Against Women Act (VAWA) (this could be an all-day training in itself, but be aware that this is a type of family-based petition (*See* INA § 204)

E. Study the various sections of inadmissibility in § 212 of the INA as well as the various immigrant visa waivers of inadmissibility available in the INA in §§ 212(g) (for medical grounds of inadmissibility), 212(h) (for criminal grounds of inadmissibility), 212(i) (for fraud or misrepresentation), and the waiver of the 10-year bar in § 212(a)(9)(B). Learn who are the requisite qualifying family members and requirements for each waiver.

   1. Note there is a "petty offense" exception to being inadmissible for a crime involving moral turpitude (CIMT), for only one offense, which would excuse inadmissibility, but not deportability. (*See* § 212(a)(2)(A)(ii)(II))
      a. One would fit the exception "if the maximum penalty possible for the crime of which the alien was convicted…did not exceed imprisonment of one year and, if the alien were convicted of such crime [and] the alien was not sentenced to a term of imprisonment in excess of 6 months…." (*Id*., and *see* the definition of "term of imprisonment" in the immigration law, § 101(a)(48))
      b. Note that a criminal offense that would fit the petty offense exception could still render someone deportable under § 237(a)(2)(A)(i)(I).

F. Be aware of the sections of inadmissibility for which there are generally no waivers or only extremely limited exceptions, such as for:

   1. making a false claim to citizenship in § 212(a)(6)(C)(ii) of the INA (no waiver available if made on or after September 30, 1996), and the exception is limited to an individual who entered the United States before they were 16, truly believed they were U.S. citizens, and whose mother and father are both U.S. citizens; or

   2. how the "permanent" 10-year bar at § 212(a)(9)C) is triggered, either by entering (or attempting to enter) without permission after triggering the 10-year bar, or by entering (or attempting to enter) without permission after deportation or removal

   3. Note that for purposes of the "permanent" 10-year bar, an individual must live outside of the United States for 10 years before they can even apply for Permission to Reapply for Admission on Form I-212, unless they are an abused spouse whose illegal reentry after deportation or removal was related to the abuse.(*See* § 212(a)(9)(C))

   4. There is no waiver of inadmissibility available for individuals for whom the government has "reason to believe" they are money launderers or drug traffickers; note no conviction is required for these §s. (*See* INA §§ 212(a)(2)(I) and 212(a)(2)(C)(i).

Title search: Practice Pointers and Overview of Family-Based Immigration and Removal Work

Also available as part of the eCourse
2020 Fundamentals of Immigration and Nationality Law eConference

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2020 Fundamentals of Immigration and Nationality Law session
"Crumbling Foundation of Immigration Law – Effects of Restrictive Anti-Immigration Policies On Your Practice"