

Presented:

2011 Conference on Immigration and Nationality Law

October 19-21, 2011
Austin, Texas

Family-Sponsored Immigration

Presented by:

Janet B. Beck
University of Houston Law Center
Houston, TX

FAMILY-SPONSORED IMMIGRATION

*updated by Olsi Vrapì**

INTRODUCTION

Family reunification has long been an important concept in immigration law. However, helping clients immigrate based on a family relationship can be difficult and complex. Detailed attention to definitions, deadlines, and the interplay of numerous provisions is more important now than ever.

This article is meant to provide an overview of the immigrant selection system for family-based immigration, the relationships qualifying for family sponsorship, and the application and adjudication process. Some strategic considerations are also included.

Certain concepts now critical to family-sponsored immigration, such as the benefits under the Child Status Protection Act (CSPA), unlawful presence, the public charge provisions (and the related affidavit of support), and removal of conditions for conditional permanent residents are covered in more detail in other articles, but will be mentioned here to show their relationship with family-based applications. Adjustment of status and consular processing are also discussed in detail elsewhere, but will be mentioned as strategic considerations.

AUTHORITIES

Statutory

- INA¹ §201—Immigrant selection system.

Updated from *Navigating the Fundamentals of Immigration Law* 307 (2010–11 Ed.). Copyright © 2010, American Immigration Lawyers Association (AILA), available from AILA Publications, 1-800-982-2839, www.ailapubs.org/.

Articles do not necessarily reflect the views of the American Immigration Lawyers Association.

* **Olsi Vrapì** is a partner at Noble & Vrapì P.A. with offices in Albuquerque and Santa Fe, NM. He is the chair of the Publications Committee and is a member of the Annual Conference Committee. Mr. Vrapì is a frequent speaker at various AILA conferences and events. He is also an adjunct professor of law at the University of New Mexico.

Note: An 8 Code of Federal Regulations (CFR) cite with a bracketed “1” (e.g., §[1]274a.1) indicates a section duplicated in both the Department of Homeland Security’s (DHS) Chapter I (§274a.1) and Executive Office for Immigration Review (EOIR) Chapter V (§1274a.1).

- INA §202—Numerical limitations, distribution of visa numbers for spouses and children of lawful permanent residents (LPRs), and rules of chargeability for unmarried sons and daughters.
- INA §203—Family-based preferences and order of consideration.
- INA §204—Procedure for granting immigration status, self-petitions for battered spouses and children, and Amerasian children petitions.
- INA §205—Revocation of approved petitions.
- INA §212—Eligibility rules for visas, includes grounds of inadmissibility and waivers, affidavit of support requirements,² exceptions,³ and unlawful presence bars.⁴
- INA §213A—Affidavit of support requirements.
- INA §216—Conditional permanent resident status for certain alien spouses and sons and daughters.
- INA §237(a)(1)(G)—Deportability for marriage fraud.
- INA §245—Adjustment of status eligibility.
- Child Status Protection Act of 2002 (CSPA), Pub. L. No. 107-208, 116 Stat. 297 (Aug. 6, 2002).
- Section 586(c) of Department of Homeland Security Appropriations Act, Pub. L. No. 111-83, 123 Stat. 4142, 4186 (Oct. 28, 2009).

Relevant Regulations

Although not exhaustive, this list highlights regulations pertaining to family-based immigration.

¹ Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at 8 USC §§1101 *et seq.*).

² See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Div. C of the Omnibus Appropriations Act of 1996 (H.R. 3610), Pub. L. No. 104-208, 110 Stat. 3009; INA §213A.

³ INA §212(a)(4)(C)(ii).

⁴ INA §212(a)(9)(B).

Regulations of legacy Immigration and Naturalization Service (INS) and U.S. Citizenship and Naturalization Services (USCIS):

- 8 CFR §103—Delegation of authority over immigration, general filing requirements, incorporating printed form instructions, and motions to reopen and/or reconsider decisions.
- 8 CFR §204—Procedures for filing immigrant petitions.
- 8 CFR §204.1—Substantive basis for immediate relative (IR) and family-based immigrant petitions, and general evidentiary and documentation requirements.
- 8 CFR §204.2—Elements to be proven and the documentation to be submitted to establish each type of family relationship. Note the specific regulation at §204.2(a)(1)(iii) on marriage during removal proceedings.⁵
- 8 CFR §§204.2(a)(3), (b)(3), (c)(3), and (e)(3)—Location where the petition is forwarded upon approval.
- 8 CFR §§204.2(c) and (e)—Requirements for self-petitioning aliens who are battered spouses or children of U.S. citizens or LPR spouses/parents.
- 8 CFR §§204.2(h) and (i)—Validity of approved petitions and the automatic conversion of certain preference classifications.⁶
- 8 CFR §[1]205—Revocation of approved petitions.
- 8 CFR §213a—Affidavit of support requirements.
- 8 CFR §[1]216—Conditional permanent resident definition, requirements to remove the condition, and procedures to obtain a waiver.
- 8 CFR §[1]245—Eligibility for adjustment of status. Note that regulations relating to adjustment of status pursuant to INA §245(i) are found at 8 CFR §[1]245.10.

⁵ See *Matter of Casillas*, Int. Dec. 3358 (BIA 1998) for the most recent interpretation of this regulation.

⁶ See also Child Status Protection Act (CSPA) sec. 6 and Immigration and Naturalization Service (INS) Memorandum, “The Child Status Protection Act—Memorandum No. 2” (Feb. 14, 2003), published on AILA InfoNet at Doc. No. 03031040 (posted Mar. 10, 2003) (regarding election to not have the petition converted). See also USCIS Memorandum, “USCIS Provides Guidance on Remaining Classified as Second Preference under the CSPA” (Mar. 23, 2004), published on AILA InfoNet at Doc. No. 04032615 (posted Mar. 26, 2004) (discussing overseas procedure for election).

Regulations of the Department of State (DOS):

- 22 CFR §40.1—Definition of terms.
- 22 CFR §42—Documentary requirements.
- 22 CFR §42, Subpart B at §§42.11 and 42.12—Current immigrant visa classification symbols and the rules of chargeability.
- 22 CFR §42, Subpart C at §42.21—Immediate relative definition.
- 22 CFR §42, Subpart D at §42.31—Family-based preferences.
- 22 CFR §42, Subpart E at §§42.41, 42.42, and 42.43—Approved petition requirement, its effect, and the suspension or termination of action in petition cases.
- 22 CFR §42, Subpart F at §§42.51–42.55—Immigrant selection system, procedure for allocation of visa numbers, order of consideration, and the reporting requirements on visa numbers and priority dates.

Guidelines

Foreign Affairs Manual of the Department of State—9 *Foreign Affairs Manual* (FAM), Notes to 22 CFR §42, contains definitions of qualifying relationships in the area of family-based immigration and include an explanation of the concept of “following-to-join.”⁷ These notes should be consulted as guidelines regarding immigrant visas including relative petitions and the implementation of the immigrant selection system. 9 FAM Appendix C should be consulted to ascertain the availability or unavailability of foreign documents and records required to prove eligibility as immediate relatives under INA §201(b)(2)(A)(i) and as preference immigrants under INA §203(a).⁸

USCIS Adjudicator’s Field Manual (AFM) (Formerly *INS Examinations Handbook*)—Part II, chapter 21 of the AFM describes in detail for examiners both procedures and legacy INS/USCIS interpretation of the law relating to proof of family relationship and entitlement to family-based immigration benefits.⁹

⁷ 9 FAM 42.42 N7.

⁸ See also INA §203(d).

⁹ See www.uscis.gov, then “Laws”, then “Immigration Handbooks, Manuals and Policy Guidance.”

Also available as part of the eCourse

[Family-Sponsored Immigration; Navigating the Complexities of Marriage Cases; plus Immigration Issues Involving Minors](#)

First appeared as part of the conference materials for the
35th Annual Immigration and Nationality Law session
"Family-Sponsored Immigration"