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## **Introduction to Family Immigration Practice**

### **Part I**

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## FAMILY-SPONSORED IMMIGRATION

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### 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*

- Immigration and Nationality Act<sup>1</sup> (INA) §201—Immigrant selection system.
- 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, Amerasian children petitions, and surviving spouse and relative petitions
- INA §205—Revocation of approved petitions.
- INA §212—Eligibility rules for visas, includes grounds of inadmissibility and waivers, affidavit of support requirements,<sup>2</sup> exceptions,<sup>3</sup> and unlawful presence bars.<sup>4</sup>

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

<sup>2</sup> 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.

<sup>3</sup> INA §212(a)(4)(C)(ii).

- 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 (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.

### **Regulations of Legacy Immigration and Naturalization Service, now U.S. Citizenship and Immigration Services:**

- 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.<sup>5</sup>
- 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), (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), (i)—Validity of approved petitions and the automatic conversion of certain preference classifications.<sup>6</sup>
- 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 conditions, and procedures to obtain a waiver.<sup>7</sup>
- 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.

### **Regulations of the U.S. Department of State:**

- 22 CFR §40.1—Definition of terms.
- 22 CFR §42—Documentary requirements.
- 22 CFR §42, Subpart B at §§42.11, 42.12—Current immigrant visa classification symbols and the rules of chargeability.
- 22 CFR §42, Subpart C at §42.21—IR definition.

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<sup>4</sup> INA §212(a)(9)(B).

<sup>5</sup> See *Matter of Casillas*, Int. Dec. 3358 (BIA 1998) for the most recent interpretation of this regulation. See also USCIS Policy Memorandum, “DNA Evidence of Sibling Relationships for Service Centers, Domestic and International Field Offices,” AILA Doc. No. 14102940.

<sup>6</sup> See *USCIS v. Cuellar De Osorio et.al.*, 573 U.S. \_\_\_\_ (2014). See also USCIS Memorandum, “USCIS Provides Guidance on Remaining Classified as Second Preference under the CSPA,” AILA Doc. No. 04032615 (discussing overseas procedure for election).

<sup>7</sup> The issue of whether a waiver can be filed prior to the termination of the marriage has largely become a policy question at U.S. Citizenship and Immigration Services (USCIS). It is always wise to contact local practitioner to become familiar with local policy.

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