

**Presented:**  
41<sup>st</sup> Annual Conference on Immigration and Nationality Law

October 26 - 27, 2017  
Austin, Texas

Immigrant Visa Process at the Consulate  
for Those Who Choose It or Cannot Avoid It:  
Who They Are and How the Process Works  
with Appendices

**Nancy T. Shivers**

Author contact information:  
Nancy T. Shivers  
Shivers & Shivers  
San Antonio, Texas

[ntshivers@shiverslaw.com](mailto:ntshivers@shiverslaw.com)  
210-226-9725

## 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 \$1225 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.* Had she applied for adjustment of status, she likely would wait up to a year before obtaining approval.

\*\*Person can have his immigrant visa case processed in a low volume Consulate. E.g., Argentina versus Mexico; Singapore versus Manila. There can be considerable delays in obtaining an interview at a high volume post.

\*\*Person(s) who want to become permanent residents and who need to travel internationally with frequency. Unless the person has an H or L visa, she will not be able to travel for 2 - 4+ months after applying for permanent resident status. She can only travel after being issued an advance parole travel document. Persons who dislike being sent to Secondary Inspection because they have an advance parole travel document may prefer consul processing.

\*\*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 who live outside the United States and are beneficiaries of a family petition or an employer petition. They will have to apply for immigrant visas when in the quota. This is 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. The I212 application for permission to reapply may be required.

\*\*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 for family based immigration, 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 support 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. For employment based petitions, an I140 petition is filed by the employer or in certain limited instances by the employee. A church or religious organization files an I360 petition with the California Service Center for a minister or a religious worker. The date the petition is filed generally establishes the priority date which determines when the person named in the petition will become eligible to be issued 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 must indicate whether 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 U.S. Department of State National Visa Center (NVC) for the immigrant visa consular processing designation.

**PRACTICE POINTER:** For most preference cases, it is best to designate NVC 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, I140 or I360 approval notice. The USCIS will request the visa petition from the National Visa Center in connection with the adjustment of status application. If the petition has designated adjustment of status *and* the beneficiary is not able to adjust status, an I824 application must be filed with USCIS to notify the NVC. This delays the immigrant visa processing and also requires payment of the I824 filing fee.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Immigrant Visa Process at the Consulate for Those Who Choose It or Cannot Avoid It: Who They Are and How the Process Works with Appendices

Also available as part of the eCourse

[2017 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the 41<sup>st</sup> Annual Conference on Immigration and Nationality Law session "Can I Stay or Must I Go? Adjustment versus Consular Processing"