

Fundamentals of Family - Based Immigration Law

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I. The World Classification System

A. What Does It All Mean?

We start with the basic premise of family-based immigration to the United States: Family Reunification. Family reunification is the idea that if one or more family members are legally present in the U.S., then certain members of the rest of the family should have the opportunity to immigrate to the U.S. as well.

In order to further this principle, the U.S. Congress created the family-based preference system. The family-based preference system is based on the priority that each classification is given in determining when certain family members of United States Citizens (USC's) and Legal Permanent Residents (LPR's) are eligible to apply for immigrant visas to live and work in the United States.

The preference categories which go from 1st preference to 4th preference¹ establish the priority dates and numerical limitations by which family members are entitled to apply for their immigrant visas. Time frames can vary greatly depending on the applicant's country of origin. As indicated by the numbers assigned, it will normally take a person in the 4th preference category much longer to immigrate than someone in the 1st preference category. Recent backlogs have made the reality of 4th preference category somewhere in the 20-year range with the potential to take much longer, sometimes even 25 or 30 years.

Not all relatives of UCS's or LPR's are subject to the preference systems. In focusing on the principal objective of "Family Reunification," Congress established certain categories of *Immediate Relatives* (IR's) who were not supposed to be subjected to extended waiting time and delays that was inherit with the preference system. IR's are not subject to numerical limitations and as soon as the legal relationship is established, they are eligible to make application for an immigrant visa.

¹The Worldwide Classification System went from six categories which included both family based and employment-based visa to four categories for family-based immigration and a whole separate category for employment-based immigrant visas. These changes took place as part of the 1990 Immigration Act and took effect on October 1, 1991.

B. Who's Who?

Immediate Relatives: spouses and unmarried minor children of USC's; parents of USC's who are 21 years or older; and certain widows and widowers of USC's.

1st Preference: unmarried son and daughters (over 21yrs) of USC's

2nd Preference: this category is further divided into two categories -
2A - spouses and unmarried minor children of LPR's, and
2B - unmarried adult children of LPR's

3rd Preference: married sons and daughters of USC's

4th Preference: brothers and sisters (adult 21 yrs.) of USC's

C. Priority Dates

Except for IR's, all visa applicants are assigned a priority date², which is the date on which the preference petition I-130 is filed. This date is key in determining when a relative can apply for her immigrant visa. Each month the Department of State issues a "Visa Bulletin," which indicates which visas are being processed based on the current priority date and the country of the prospective applicant's origin.

Depending on the category, the priority dates can move very slowly or not at all. In recent months, we have seen a huge retrogression in the priority dates where some classifications retrogressed more than 10 years. This makes the preference system very uncertain in trying to determine how long it will take to be eligible to immigrate to the United States. *For example, in June, Isabella's date (Dec. 2, 1992) was very close to being current. In June, the visa bulletin showed that in her category they were currently processing November 22, 1992. It appeared that she would be able to apply in July. However, in July, the visa bulletin for the same category showed a retrogression back to May 1, 1990. This could mean another 4-5 year wait for Isabella.*

Priority dates can be extremely important when trying to determine if someone can adjust their status in the United States or must travel abroad to do consular processing.³ These factors can determine whether a potential applicant is subject to any of the inadmissibility grounds that are triggered by departure. More and more people are having to return

² The priority date is usually established based on the date that the application was received by the USCIS. It is not based on the date the application was approved. Priority date should be reviewed to make sure it was properly designated as the receipt date. In certain cases, priority dates can be retained or recaptured based on an earlier filed petition.

³ Section 245(i) of the INA only applies to those applications which were filed prior to April 30, 2001. There are grandfathering provisions that are very beneficial, and which should be reviewed in determining eligibility under 245(i).

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