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United States Immigration Laws: An Overview

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UNDERSTANDING U.S. IMMIGRATION & NATIONALITY LAWS

I. INTRODUCTION

The threat of terrorism triggered Congressional and administrative actions that have dramatically changed United States immigration laws. The most significant change arose from the Homeland Security Act of 2002 that transferred immigration enforcement and adjudication services functions from the now defunct Immigration & Naturalization Service into the Department of Homeland Security. Security and enforcement concerns have taken priority over timely adjudications of applications for immigration status submitted by employers for foreign national employees as well as by U.S. citizens for their relatives.

Immigration laws are constantly changing. This is a heavily regulated field with laws intended both to protect the United States workforce and to unify families. Congress must juggle competing interests in determining immigration policy: employers want to be able to hire skilled foreign labor, while labor unions and professional societies want to improve wages and working conditions for employees; immigrant families want to bring their relatives to the U.S., while the quota system lags ever farther behind; a global economy demands decreasing barriers, while an influx of unlawful immigration and the threat of terrorism results in tightening controls.

As of October 1, 2015, immigrant visa applicants within the U.S. and otherwise eligible to apply for adjustment of status are allowed to submit their cases as early as one year before their "priority dates" are listed as available on the monthly Visa Bulletin (See page 12). This includes applicants in the preference categories for both family based as well as employer sponsored immigration. These applicants may simultaneously apply for a temporary work and foreign travel permit, too.

USCIS Expands Provisional Waiver Program

In 2013, President Obama announced the creation of the Provisional Waiver program, whereby certain immediate relatives of U.S. citizens could apply for a provisional waiver of the unlawful presence ground of inadmissibility within the United States prior to leaving for their immigrant visa interview in their home country. The applicant had to prove extreme hardship to a U.S. citizen spouse and/or parent. On July 29, 2016, the USCIS announced a final rule which expands the current provisional waiver program to include lawful permanent resident spouses or parents as potential qualifying relatives. This final rule went into effect on August 29, 2016.

President Obama's Executive Action of 2014

On November 20 and 21, 2014, President Obama announced a series of executive actions designed to serve as the first steps toward immigration reform of our outdated, broken immigration system. Among the ten measures are an expansion of the current DACA (Deferred Action for Childhood Arrivals) program, a similarly-designed program called DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents) for the parents of U.S. citizens or legal permanent residents, an expansion of the eligibility of persons applying for a Provisional Waiver to include the spouses and sons and daughters of lawful permanent residents and the sons and daughters of U.S. citizens, and various measures related to those applying for employment-based visas or permanent resident status via an employer.

Unfortunately, on February 16, 2015, a federal court in Texas issued an injunction which has suspended the implementation of the DAPA program as well as the Expanded DACA program indefinitely. Fortunately, this injunction does not affect the original DACA program (mentioned on the next page).

Parole in Place (PIP)

On November 15, 2013, the USCIS released a new Policy Memorandum which spelled out the process for applying for Parole in Place (PIP). PIP may be sought for spouses, children, and parents of persons serving on active duty in the U.S. Armed Forces, in the Selected Reserve of the Ready Reserve, or who previously served in either of the two mentioned above (i.e. veterans). An I-131 application is submitted without fee to the USCIS Field Office with jurisdiction over the applicant's residence, and if granted, the applicant receives an I-94 card indicating parole in the U.S. for one year. Those applicants who would not normally be eligible to apply for adjustment of status within the United States because of their manner of entry may then solicit permanent resident status from within the United States despite unauthorized entries. It is important to note that the applicant should not actually leave the United States and use the PIP I-94 card to seek to return from travel abroad. The intent of PIP is to keep families together, especially the loved ones of those who fight to keep our country safe.

DOMA: Defense of Marriage Act Declared Unconstitutional

Perhaps the most significant development in 2013 was that Section Three of the Defense of Marriage Act (DOMA) was declared unconstitutional

by the U.S. Supreme Court on June 26, 2013. This meant that the federal government had to recognize the legal marriages of same-sex couples. Same-sex couples in committed relationships who were married in a state or country that recognizes such marriages can now receive a variety of federal protections, including the right to seek permanent resident status for foreign-born spouses of U.S. citizens, even if living in another state [that does not recognize same-sex marriages].

Even more significant was the Supreme Court ruling on June 26, 2015 legalizing same-sex marriages across the United States. Thirty-six states and the District of Columbia already recognized gay marriage, but this Supreme Court ruling required the remaining fourteen states to lift any bans against gay marriage that were in place.

Deferred Action for Childhood Arrivals

There was one very significant immigration law development in 2012. On June 15, 2012, President Obama announced that many children whose parents brought them into our country prior to age sixteen would be eligible for some immigration benefits. Deferred Action for Childhood Arrivals (DACA) provides eligible applicants a two year Employment Authorization Document (EAD) and some of the earliest DACA recipients are now renewing their EADs for a second time. Qualified applicants must have entered the U.S. prior to age 16, have been younger than 31 on June 15, 2012, and have been continuously present in the U.S. for at least 5 years. They must have either served in the military or be enrolled in school or have graduated from high school or obtained a GED. In addition, they must not have been convicted of a felony, three misdemeanors, or any "significant misdemeanor." Driving under the influence is considered to be a significant misdemeanor. As of March 2016, the USCIS indicated they had received a total of 819,512 initial requests for DACA relief and 539,008 requests for renewal of DACA status.

Prosecutorial Discretion

The Obama Administration has been exercising "prosecutorial discretion" to terminate or not initiate removal proceedings against certain foreign nationals who have not been convicted of a significant criminal offense and who are not a terrorist threat or national security risk to our country.

The U.S. Citizenship & Immigration Services (CIS) concentrates on the intent of the individual: Is he/she an intending immigrant or nonimmigrant? The wrong answer might result in a return trip to the home country. Nonimmigrant status is temporary: one may only remain in the U.S. for a limited period of time. Immigrant status, commonly called "green card" status, signifies that a person has been granted permanent resident status and may reside in the U.S. indefinitely.

These government websites provide useful information about immigration laws:

www.uscis.gov (U.S. Citizenship & Immigration Services)
www.dol.gov (U.S. Department of Labor)
www.travel.state.gov (U.S. Department of State)
www.twc.tx.us (Texas Workforce Commission)

II. IMMIGRANT STATUS: EMPLOYMENT-BASED

Generally either a close family relative or an employer must sponsor someone for immigration. The first method relies on a close tie to a U.S. citizen or permanent resident. If a foreign national does not have such a relative, he/she might qualify under one of the employment-based categories. Currently the Immigration & Nationality Act sets an annual limit of 226,000 immigrant "preference" numbers for family-based categories, and 143,949 immigrant "preference" numbers for employment-based categories. The per-country limit for preference immigrants is now 25,896.

Employment-Based Categories

1st Preference:	Extraordinary Ability Outstanding Professors & Researchers Managers & Executives
2nd Preference:	Advanced Degree Professionals Exceptional Ability
3rd Preference:	Professionals (Bachelors degree) Skilled Workers (two years training) Other Workers (unskilled)
4th Preference:	Special Immigrants (religious workers)
5th Preference:	Immigrant Investors

A. First Preference

The First Preference is for "priority workers" and includes individuals of extraordinary ability, outstanding professors or researchers, and certain executives and managers of multinational

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