

# “Alphabet Aerobics”: An Exercise in United States Immigrant Visa Categories

---

Generally, prospective immigrants to the United States may immigrate in one of the following ways:

- Family-based petitions
- Employment / Investment-based Petitions
- Asylum
- Diversity Visa (“Green Card Lottery”)

With certain exceptions, preference category immigrants to the U.S. are subject to annual quotas that limit the number of immigrants each fiscal year by preference category and by country of chargeability. This essentially creates a “first-come, first-served” queue for admission as an immigrant, with the date of filing a particular petition (known as a “Priority Date”) determining eligibility. Each month, the U.S. Department of State issues its “Visa Bulletin” which establishes which Priority Dates may immigrate to the U.S. – akin to determining who is at the front of the line. The wait times are based on overall demand for a particular preference category and by country of birth if a particular country is oversubscribed to that category.

In addition to the principal immigrant (e.g. the individual sponsored by his/her employer), qualifying family members may receive “derivative” Green Cards. To qualify, the derivative immigrant must be the spouse of the principal or an unmarried child of the principal under the age of 21. Certain exceptions may apply if a petition was filed before the child’s 21<sup>st</sup> birthday and was pending.

With extremely limited exceptions, the relationship between the principal immigrant and the derivative must have been in existence at the time the principal received permanent residency. For example, if an employment-based immigrant married a foreign national after admission as an immigrant, the spouse would not obtain a Green Card based on the underlying petition benefitting the principal immigrant. The spouse would need an alternative route to residency. However, a couple in an existing marriage need not necessarily immigrate at the same time; the spouse of the principal immigrant could delay immigration and file for a “following to join” visa.

Below, we discuss the provisions of each.

## Family-based Immigrant Visa Categories

### Immediate Relative of U.S. Citizen

Key Points:

- Includes
  - Spouses of U.S. Citizens
  - Minor Children of U.S. Citizens (unmarried and under 21)
  - Parents of U.S. Citizens (petitioner must be at least 21 years old)
- Never subject to any annual quotas – Green Cards always available after adjudication
- Special provisions exist for spouses of deceased U.S. citizens
- Only category where no derivative visas available, separate petitions must be filed (example: If a U.S. Citizen files for her husband and stepdaughter, two petitions must be filed)

Reference:

- INA §101(b)(1)

## **Family-based Preference Categories**

### Key Points:

- Includes
  - First-Preference: Sons and daughters of U.S. citizens who are unmarried, adult, and aged 21 or older
  - Second Preference
    - 2A: Spouses and unmarried minor children of Lawful Permanent Residents
    - 2B: Unmarried adult children of lawful permanent residents
  - Third Preference: Married adult children of U.S. Citizens
  - Fourth Preference: Brothers and sisters of U.S. Citizens
- Subject to annual quotas – some may be very lengthy (e.g. FB-4)
- Per-country limits generally affect natives of Mexico and Philippines

### Reference:

- INA §203(a)

## **Employment-based Immigrant Visa Categories**

### EB-1A Extraordinary Ability

#### Key Points:

- Immigrant analogue to O-1 nonimmigrant extraordinary ability visa, but much higher standard to meet
- Immigrant must be recognized as being at the very top of his or her field and be coming to the U.S. to work in that field
- Evidence requires receipt of major international award, or meeting at least three out of 10 regulatory criteria
- Can self-petition

#### Reference:

- INA §203(b)(1)(A); 8 C.F.R. §204.5(h); Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010).

### EB-2 National Interest Waiver

#### Key Points:

- Unlike other types of EB-2 visas discussed below, NIWs may self-petition and do not need PERM labor market test
- Types of evidence similar to EB-1A, but lower standard to meet
- Must show advanced degree (or equivalent) or exceptional ability
- Additional showing that the immigrant:
  - Has an endeavor of substantial merit and national importance;
  - Is well-positioned to advance the endeavor; and
  - On balance, beneficial to U.S. to bypass usual EB-2 requirement of a job offer and PERM labor market test.

#### Reference:

- INA §203(b)(2)(B); 8 C.F.R. §204.5(k); Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016)

### EB-1B Outstanding Researcher or Professor

#### Key Points:

- Petitioner must be institution of higher education or comparable private employer (e.g. pharmaceutical company performing scientific research)
- No self-petitions available
- Position must be tenure-track or comparable in private industry
- Beneficiary must have at least 3 years' experience in teaching or research
- Must meet at least two out of six regulatory criteria

#### Reference:

- INA §203(b)(1)(B); 8 C.F.R. §204.5(i)

### EB-1C Multinational Manager or Executive

#### Key Points:

- Immigrant analogue to L-1A visa, but cannot be used if position abroad was only specialized knowledge
- Have been employed abroad for one year in the previous three years before entry into the U.S. by the parent, subsidiary, or affiliate of the U.S. employer / petitioner
  - The key qualifications are that the entity abroad and the petitioner need to have common control, usually evidenced by >50% common ownership
- The employment abroad was in a managerial or executive capacity
- The qualifying foreign entity must continue to be doing business and have the requisite qualifying relationship with the U.S. petitioner at the time the immigrant petition is filed
- The intended position with the U.S. employer must be in a managerial or executive capacity
- The U.S. employer must have been doing business for at least one year and have the ability to pay the immigrant's salary

#### Reference:

- INA §203(b)(1)(C); 8 C.F.R. §204.5(j)

### EB-2 Members of Professions Holding Advanced Degrees or Exceptional Ability

#### Key Points:

- Requires employer to file petition and bona-fide employer-employee relationship
- Job offer requires
  - Advanced degree in field;
  - Bachelor's degree plus 5 years of progressive work experience; or
  - Proof of meeting criteria for "exceptional ability"
- Requires PERM labor market test through Department of Labor, evidencing no minimally qualified available U.S. workers
  - Exceptions exist for certain professions and colleges/universities
  - Employer must show ability to pay prevailing wage
- Significant backlogs for immigrants born in China or India

#### Reference:

- INA §203(b)(2)(B); 8 C.F.R. §204.5(k)

### EB-3 Skilled Workers, Professionals, and Other Workers

#### Key Points:

- Similar to EB-2 with regard to PERM labor market tests, prevailing wage, and bona fide job offer
- Education / Experience
  - Skilled Workers = 2 years of job experience
  - Professionals = bachelor's degree
  - Unskilled workers = less than 2 years' training or experience; have separate quota
- Severe backlogs for immigrants born in India (all) and China (Other Workers)

#### Reference:

- INA §203(b)(3); 8 C.F.R. 204.5(l)

### EB-4 Special Immigrants

#### Key Points:

- Umbrella category for variety of classifications
- Most common are religious ministers / workers, and special immigrant juveniles – these categories may self-petition

#### Reference:

- INA §203(b)(4); 8 C.F.R. 204.5(m) (religious workers)

## EB-5 Employment Creation

### Key Points:

- Through qualifying investment, create 10 full-time jobs for U.S. workers
- Investment must be “at-risk”
- Minimum investment amount is USD \$1 million of capital; halved to \$500,000 if made in “Targeted Employment Area”
- Regional Center Program
  - Niche industry where investors can utilize indirect job creation
  - Investors are generally in limited roles in new commercial enterprise; aggregated funds used to leverage larger job creation
  - Often, EB-5 funds deployed in well-known projects as part of capital stack
  - Subject to Congressional reauthorization
- Conditional Permanent Residency
  - Initial Green Card valid for only 2 years
  - Within 90 days of expiration must make additional filing to show investment sustained and jobs created

### Reference:

- INA §§ 203(b)(5); 216A; 8 C.F.R. §§ 204.6; 216.6.

## **Asylum / Refugee**

### Key Point:

- Individuals facing persecution or have a well-founded fear of persecution based on their race, religion, nationality, and/or membership in a particular social group or political opinion

### Reference:

- INA §208(a)

## **Diversity Visa (a.k.a “Green Card Lottery”)**

### Key Points:

- Approximately 50,000 Green Cards randomly awarded to qualified visa applicants selected from a pool of filings each year
- Applicant must be born in “low admission states,” that is, a country from where annual immigration to the United States is comparatively low
- Apply online in October-November
- Minimum qualifications of principal immigrant:
  - High School graduate; or
  - Within 5 years of making the application, at least 2 years of work experience in an occupation that requires at least 2 years’ training or experience
- The odds of selection are relatively low, generally less than 1% worldwide
  - An applicant’s specific chances may vary significantly based on his/her region of origin, however, the chances of selection are generally too low for one to confidently plan to use the program as a viable immigration option
  - Nonetheless, the DV lottery has proven to be life changing for thousands of winners each year

### Reference:

- INA §203(c); 22 C.F.R §42.33