

BASIC IMMIGRATION INFORMATION

INDEX

<u>Document</u>	<u>Page</u>
Who Can File Immigrant Visa Petitions	1
How to Read the Visa Chart	2
How to Get Permanent Residence if Your Spouse Abuses You	4
Requirements for Becoming a U.S. Citizen	6
How to Document Your Presence in U.S.	8
Warning About Trying to Get a Green Card Based on Time in U.S.	9
Warning About Immigration Consultants	10
Know Your Rights	12
DREAM Act	13
Summary of AB 540 (IN CALIFORNIA ONLY)	14

WHO CAN FILE IMMIGRANT VISA PETITIONS

I. Permanent residents can file petitions for:

- A spouse
- Unmarried children

II. American citizens can file petitions for:

- A spouse
- Unmarried children
- Married children
- Parents (if the citizen is 21 years of age or older)
- Brothers and sisters (if the citizen is 21 years of age or older)

III. Visa availability (see visa chart)

- A U.S. citizen's spouse, parents, and unmarried children under 21 years of age are immediately eligible for visas. (There is no waiting list.)
- A U.S. citizen's married children, children 21 years of age or older, and siblings must wait until visas are made available in order to obtain one. (There is a waiting list.)
- A legal resident's spouse and children must wait until visas are made available in order to obtain one. (There is a waiting list.)

PRIORITY DATES FOR FAMILY IMMIGRANT VISAS (FEBRUARY, 2008)

	All Countries Except Mexico and Philippines	MEXICO	Who qualifies for priority
Family			
1st	08FEB02	01JUL92	Single Children (over 21) of citizens
2A	15MAR03	01MAY02	Spouse of Resident, Single children (under 21) of residents
2B	01JAN99	22MAR92	Single children (over 21) of residents
3rd	08MAY00	08JUL92	Married children of citizens
4th	08JUL97	01NOV94	Brothers and sisters of citizens

A U.S. CITIZEN'S (1) SPOUSE, (2) PARENTS (if the U.S. citizen son or daughter filing the immigrant visa application is 21 years of age or older), AND/ OR (3) UNMARRIED CHILDREN UNDER 21 YEARS OF AGE CAN OBTAIN AN IMMIGRANT VISA AND DO NOT FALL UNDER THE CHART.

The visa chart is divided along two axes. The horizontal axis depicts visas available by country. The vertical axis depicts which visas are currently being issued according to the type of family petition and the date in which the immigrant visa application (form I-130) was filed.

The horizontal axis consists of two sections. The left-most column indicates the type of application and the remaining columns indicate who can begin the last stage of the process of immigration to the United States (through a consulate or an adjustment of status). This depends both on the date the petitioner filed an immigrant visa application (I-130) and the country of their citizenship. Citizens from all countries except India, Mexico, and the Philippines fall in the second column, under the category "All Chargeability."

The relationship that exists between the immigrant (beneficiary) and his or her relative (the petitioner) determines the type of family application. The petitioner may be either an American Citizen or Permanent Resident. Categories 2A and 2B are for persons intending to immigrate

through a petition by a permanent resident. The remaining categories are for immigrants whose petitioning relative is an American Citizen (see reverse for definitions of these categories).

Persons intending to immigrate to the United States are required to possess an "Approval Notice" from Citizenship and Immigration Services (CIS). This form indicates the type of family petition (1st, 2A, 2B, 3rd, or 4th) that has been approved. The form also indicates the Priority Date that INS has assigned the applicant. Using these two pieces of information, immigrants can determine if it is time to proceed with the final step for immigration, the application for an immigrant visa (Green Card).

When the Priority Date indicated on the Visa Chart is the same or later than the priority date indicated in the immigrant's approval notice, the applicant may immigrate to the United States and apply for a Green Card.

Each month the Department of State publishes the Visa Chart for the following calendar month. The priority dates change to reflect the number of visas available in each category. The availability of visas can also change from month to month due to fluctuations in the demand for visas. Occasionally, demand for visas exceeds the supply available for a category and consequently the Priority Dates may be pushed back. For this reason, it is not possible to predict with certainty how long an applicant will have to wait in order to obtain his or her green card. Be sure to consult the visa chart monthly in order to be aware of the changing priority date that applies to your immigrant category. The Visa Table is available on the Internet at http://visalaw.com/visa_bulletin.html and by phone at (202) 663-1541. The direct link is http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html

QUESTIONS AND ANSWERS

Question: I am Mexican and I have two sons, one is 16 years old and the other is 22. Neither of my children is married. My husband is a Permanent Resident. He filed an application for a green card in January 1997 for my children and me. The approval notices were given a priority date of January 6, 1997. When can we begin the application process for a green card?

Answer: You and your sons all fall under the 'Mexico' column in the Visa Chart. Once you have located the column for Mexico, look for the box that corresponds to Mexico, 2A. You and your 16 year old are in this category, you because you are the wife of a permanent resident and your son because he is under 21 and unmarried. Remember that you and your son must wait to file your application until the Visa Chart indicates applications are being accepted with your priority date.

Your 22-year-old son falls into category 2B because he is an unmarried son of a permanent resident and over 21 years of age. He must wait until the Visa Chart indicates that green card applications are being accepted with priority dates of January 6, 1997.

HOW TO GET PERMANENT RESIDENCE IF YOUR SPOUSE ABUSES YOU

DOES YOUR SPOUSE:

- Threaten to beat you or your children or terrorize you or your children?
- Hit, punch, slap, kick, push, or hurt you or your children in any way?
- Emotionally abuse you, such as insulting you or your children at home or in public?
- Force you to have sex when you do not want to?
- Threaten to take your children away or hurt them?
- Threaten to deport you or turn you into the BICE (Bureau of Immigration Control and Enforcement)?
- Control where you go, what you can do, and whom you can see?

If your answer to any of these questions is “Yes,” you and your children may be able to receive:

- * Permission to work and live in the United States and a green card without your spouse’s help.
- * Free medical care and governmental benefits such as money and food stamps

To qualify under this program you must submit a “VAWA Application,” also called a “Violence Against Women Application.”

THE REQUIREMENTS TO QUALIFY FOR VAWA ARE:

- ▶ You must be currently living in the United States, except under special circumstances.
- ▶ At some point in time you must have lived with your spouse. It does not matter whether you lived with your spouse in or out of the United States.
- ▶ Your spouse must have abused you or your children during the marriage. You or your children probably were abused if you can answer “Yes” to any of the questions asked on the previous page.
- ▶ Your spouse must be a United States citizen or must have a green card (that is, he must be a lawful permanent resident). If he had a green card but has been deported since he abused you, or if you recently divorced him because of the abuse, you may still qualify.
- ▶ You must have gotten married in good faith, that is, because you really wanted to, rather than just to obtain a green card.

Things you must try to do:

- *Keep police, doctor, and other records of the abuse.*
- *Keep all of your immigration documents including a copy of your spouse’s immigration documents.*
- *Keep a copy of any documents that establish your residence with your spouse (e.g. bank statements; leases; children’s school records; etc.).*
- *Keep a copy of any documents that establish that you live in the United States.*
- *Keep a copy of other important legal documents (e.g. marriage license; prior divorce certificates; birth certificates; etc.).*
- *Do not submit an immigration application on your own without first speaking with a lawyer or someone at a community agency who is an expert in immigration law.*

Please call for information and assistance.

If you need help finding a battered women's shelter, contact the National Domestic Violence Hotline at 1-800-799-SAFE (7233).

REQUIREMENTS FOR BECOMING A U.S. CITIZEN THROUGH NATURALIZATION

To qualify for naturalization, you must:

1. Be at least 18 years old.
2. Be a lawful permanent resident (have a "green card") for five years.
 - *If you are married to a U.S. citizen, you may need to be a lawful permanent resident for only three years.*

 - *If you had refugee or asylee status, you do not need the full 5 years of being a permanent resident. See a naturalization expert.*
3. Have good moral character.
 - *This means, among other things, not having certain problems with the police or other authorities.*
4. Be able to speak, read and write English at a basic level.
 - *There are exceptions for older people. You do not have to know English when you apply for naturalization if:*
 - 1) *You are 55 years or older and have had a green card for 15 years, or*
 - 2) *You are 50 years or older and have had a green card for 20 years.*
5. Be able to pass a test on U.S. history and government.
7. Swear that you are loyal to the United States.

IF ANY OF THESE THINGS ARE TRUE ABOUT YOU, YOU MUST SEE AN EXPERT IN IMMIGRATION LAW BEFORE APPLYING FOR NATURALIZATION. BE HONEST AND TRY TO REMEMBER IF YOU HAD ANY PROBLEMS IN THE PAST.

These things don't necessarily mean you can't apply for naturalization, but you should talk to an expert before you apply so you'll know whether you have a problem, and how you can best explain the problem to the Immigration Service.

Check the appropriate box if you have had any of the following problems:

- You made trips out of the U.S. for more than six (6) months.
- You moved to another country since getting your green card
- You are in deportation or removal proceedings – or – you have been deported
- You haven't filed your federal income taxes
- You haven't supported your children
- You are male and did not register for the Selective Service between the ages of 18 and 26
- You are on probation or parole for a criminal conviction
- You have contradictory information on your application
- You lied or committed fraud to get your green card or you weren't originally eligible for your green card when you got it.
- You have been arrested or convicted of a crime or you have committed a crime
- You lied or committed fraud to receive or to continue to receive public benefits
- You helped someone enter the U.S. illegally, even if it was a relative
- You ever claimed to be a U.S. citizen but weren't
- You have been charged with committing domestic violence, child abuse, or child neglect
- You have voted illegally in the U.S.
- You have made a living by illegal gambling
- You have been involved in prostitution
- You have been a habitual drunkard, a drug abuser or a drug addict

**IF YOU CHECKED ANY OF THE ABOVE BOXES,
YOU MUST CONSULT WITH AN IMMIGRATION EXPERT!**

HOW TO DOCUMENT YOUR STAY

THERE IS NO AMNESTY PROGRAM!

It is possible that in a few years, the United States Congress will approve a program to normalize the immigration status ('legalization' or 'amnesty') of persons who are currently living and/or working in this country without immigration papers.

IT IS IMPORTANT TO POINT OUT THAT THERE IS CURRENTLY NO REGULARIZATION PROGRAM.

Nevertheless, we recommend that persons that reside or work in the United States without immigration papers begin to document their stay in this country so that in the event there is a regularization (legalization or amnesty), they are prepared to demonstrate the length of their stay. It is very likely that any regularization will require applicants to prove they have been residing in this country for a certain period of time, as was also the case during the 1986 Amnesty.

Additionally, it is likely that other requirements of the amnesty will include demonstrating that one worked and paid taxes in this country. For this reason, we recommend that you keep proof of income from employment and to pay income taxes. In order to pay taxes, you can request an Individual Taxpayer Identification Number from the Internal Revenue Service (IRS).

Remember that **THERE IS STILL NO AMNESTY PROGRAM**, but it is worth the effort to be prepared by collecting the necessary documents now.

We recommend that you start a file with some of the following documents which will help to demonstrate the length of your stay in this country. The person intending to apply for a possible future amnesty should have at least one dated document with their name on it for every three-month period they reside in the United States. If possible, each family member should have a separate file.

Examples of documents:

- Rent receipts for an apartment
- A copy of a rental agreement for an apartment
- A receipt for a rental deposit
- A real estate title
- Mortgage payment receipts
- Telephone bills
- Utility (gas, water, electricity) bills
- Income tax returns with W2 forms
- Paycheck stub or other proof of payment
- Dated letters from your employer (for example, regarding medical insurance)
- Report cards from schools
- Awards and certificates from educational institutions
- High school diplomas
- Medical records
- Receipts from Remittances

REMEMBER:

**THERE IS NO
AMNESTY PROGRAM**

WARNING ABOUT APPLYING FOR A GREEN CARD
“ARREGLAR POR EL TIEMPO”
(Documentation for the Time Being)

Some notary publics, immigration consultants and lawyers, assure undocumented persons that they can obtain work authorizations and green cards because they have lived in the country for ten years or more.

Many people refer to this as “documentation for the time being.” However, this is incorrect. These people are mistakenly referring to cancellations of removal and **CAN ONLY BE GRANTED BY A JUDGE DURING A DEPORTATION HEARING.**

This law provides a remedy only to those persons who are in removal proceedings. It is very difficult to obtain relief from removal through cancellation of removal, largely due to the need to demonstrate more than just the ten-year residency requirement. This form of relief against deportation only applies to persons who have a spouse, child, or parent who is a citizen or permanent resident. In order to obtain a cancellation of removal in this manner, one must prove that the citizen or resident family member would suffer "exceptional and extremely unusual hardship" if deportation goes forward. Because this last requirement is so difficult to demonstrate, most cases are denied.

BE CAREFUL: BE SURE YOU KNOW WHAT YOU ARE SIGNING!

NEED IMMIGRATION HELP?

WATCH OUT FOR IMMIGRATION SCAMS!

Be careful when getting someone to help you with your immigration papers. Don't be fooled by false promises. You could lose your money *and* be removed or deported from the United States.



WATCH OUT if someone says:

- ❖ We can get you a work permit right away.
- ❖ We offer no risk immigration.
- ❖ We can get U.S. visas for you and your family in a few weeks.
- ❖ We know people at CIS and can get your papers done quickly.

THESE ARE LIES!

THINGS YOU CAN DO TO PROTECT YOURSELF:

- ❖ *Never* sign any blank application papers.
- ❖ *Never* sign any paper or immigration form that you do not fully understand. (Get someone you trust to translate it for you.)
- ❖ *Always* demand a written contract for any immigration services when you are not working with a recognized agency.
- ❖ *Do not* sign a contract that you don't understand.
- ❖ *Watch out* for anyone who wants you to pay immediately.
- ❖ *Always* get copies of the papers prepared for you.
- ❖ *Never* let anyone keep your original documents (example: birth certificates, marriage certificates).
- ❖ *Get* a receipt for any money you pay. (Make sure it has the amount paid, the date paid, your name, and the name of the person or business that you paid.)
- ❖ *Never* work with someone who will not answer your questions.





KNOW YOUR RIGHTS!

Anyone offering immigration help must follow certain laws. These are some of the most important ones:

- ❖ A person who says he/she is a lawyer must have a license from the State Bar of any state. You can ask to see his/her license and write down the number, and you can call the State Bar where he/she is licensed to find out if the license is valid.
- ❖ A person who does immigration papers but is not a lawyer is called an immigration consultant.

He/she must obey these laws:

1. Give you a written contract that:
 - ◆ is in your own language
 - ◆ says you can cancel for any reason within 72 hours
 - ◆ says how much money you have to pay
 - ◆ says what kind of application the person will file for you
2. Pay a \$50,000 bond to the Secretary of State and give you proof of the bond.
3. Have a big sign in his/her office saying he/she is not an attorney and showing that the bond has been paid.
4. Never pretend to be a lawyer.
5. Never say he/she has special influence with CIS.
6. Never file any document for you without going over it with you and explaining it to you.
7. Never keep your original documents and refuse to return them unless you pay.
8. Never tell you to lie on an application.

What to do if someone has cheated you:

- ❖ If the person cheating you is a lawyer, call the State Bar where he is licensed. In California, that number is: (800) 843-9053
- ❖ If the person cheating you is not a lawyer, you can call:
 - Attorney General's Hotline (Office of Immigration Assistance): (888) 587-0557
 - And your city's police dept. *or* District Attorney's Office (If you live in Alameda County, you can call: 1-877-288-2882).

Where to Go for Immigration Help:

Bar Association of San Francisco:

International Institute:

Asian Pacific Islander Legal Outreach

American Immigration Lawyers Association

Minority Assistance Services

Catholic Charities:

Community Legal Services in E. Palo Alto

(415) 989-1616 (for referral to immigration attorney)

San Francisco: (415) 538-8100;

Oakland: (510) 451-2846

Redwood City: (650) 780-7530

San Francisco: (415) 567-6255

1-800-954-0254

San Francisco: (415) 552-5466

San Jose: (408) 944-0362

E. Palo Alto (650) 326 6440

KNOW YOUR RIGHTS!

What are my constitutional rights?

The Right to Advocate for Change

The Right to Remain Silent

The Right to be Free from “Unreasonable Searches and Seizures”

What if the police or law enforcement agents come to question me?

1. Beyond giving your name and address, you are not obligated to talk to the police, FBI, BICE, or any other law enforcement agent or investigator.
2. You do not have to let police or other law enforcement agents into your home or office unless they have a search warrant. Request to see the warrant! Without an official search warrant issued by the court, you should not be afraid to say that you want to consult an attorney before speaking to authorities. However, do not try to physically interfere with the police or agents, even if the search is illegal, or you will likely be arrested.
3. If the police show you a valid search warrant ask if you are allowed to watch the search and if so, watch and take notes including names, badge numbers, and from what agency the officer comes. Have friends act as witnesses and give this information to your lawyer.
4. If the police stop you on the street, ask why you are being detained and, if you are not under arrest, walk away freely.
5. Anything you say to the police, FBI, BICE, or any other law enforcement agency or investigator can be used against you. Avoid having a conversation with a police officer or law enforcement agent and do not respond to his or her accusations.
6. If you are nervous and cannot speak, tell the agent to contact your attorney. He or she must stop asking you questions the moment you announce your desire to have him or her consult your attorney.

What if I am not a citizen?

1. You do not have to reveal your immigration status or answer any questions.
2. Foreign nationals arrested in the United States have the right to call their consulate or to have the police contact their consulate about their arrest. (Non-citizens who are victims of domestic violence must speak to an expert in both immigration law and domestic abuse law.)
3. Do not speak to the BICE, even over the telephone, before speaking to an immigration attorney.
4. Every non-citizen, independent of their immigrant status, has the following rights:
 - a) The right to speak to an attorney before answering or signing anything;
 - b) The right to a hearing before an immigration judge;
 - c) The right to have an attorney at the hearing and at any interview with the immigration service (however, non-citizens do not have a right to a government-paid attorney);
 - d) The right to ask for release from detention by paying a bond.

***SPEAK TO AN IMMIGRATION ATTORNEY BEFORE LEAVING THE UNITED STATES ***

DREAM Act

Legalization for Students – as of October 16, 2006

With comprehensive immigration reform legislation not being considered until next year, DREAM Act proponents are working to reintroduce the bill in the next session of Congress that begins next year. They are considering modifying the bill to include expanding the number of pathways through which people can become permanent residents to include vocationally oriented programs such as the Job Corps, Department of Labor-certified apprenticeships, and selected non-degree programs offered by proprietary post-secondary schools. These programs could help meet the US labor force's needs for non-college educated but technically trained labor. The following are some of the main provisions of the pending DREAM Act bills in the session of Congress which will end at the end of 2006.

Who is eligible?

Those who would qualify under this act include undocumented immigrants who meet ALL of the following criteria:

- Graduated from a United States high school by the time they apply for relief.
- Must have lived continuously in the United States for a minimum of 5 years, on the date of the DREAM Act enactment.
- Can demonstrate good moral character and do not have a criminal record.
- Must be at least 12 years old on date of enactment of the DREAM Act and must be under 25 years old at the time they apply for relief.
- Attended a college or university for two years, or served in the U, S, military for two years.

What are the benefits for those who qualify?

- Lawful permanent resident status (a green card)
- Access to federal financial aid
- States will be permitted to allow eligible students to obtain resident tuition status

Why is this necessary?

The DREAM Act would address the immigration status and educational barriers confronted by U.S.-raised children of undocumented immigrants.

- Currently, there are 2.7 million immigrant children in U.S. schools grade K-12 and of those 1 million are undocumented immigrants.
- Every year 50-65,000 students graduate from American high schools, but face limited prospects for continuing their education because they were originally brought to the United States by parents lacking immigration status. Among these students are valedictorians, honors students and student leaders.
- Many students are prevented from attending college because they cannot afford out-of-state tuition and do not qualify for Pell grants or student loans. In addition, without a lawful permanent resident “green card” students are not eligible for many scholarships, in-state tuition, federal loans, or grants.

What you can do to support the DREAM Act:

- Join immigrant organizing groups
- Sign and distribute petitions
- Urge your elected officials to support the DREAM Act
- **You may also contact El Comité de Padres Unidos at dream@ilrc.org to become involved in the campaign.**

SUMMARY OF AB 540

Tuition exemption for nonresidents to attend public colleges and universities in California

- Exempts all students, including undocumented students, from paying nonresident tuition in California public colleges and universities.

Any student, except those with nonimmigrant visas, who satisfy the requirements of Sec. 68130.5 of the Education Code, will be exempted from paying nonresident tuition in California's community colleges and state universities.

Requirements:

1. The student attended a high school in California for three or more years
2. The student graduated from high school or acquired a GED
3. If the student is undocumented, he or she must file an affidavit with the institution of higher education stating that he/she has or will file an application to legalize his/her immigration status as soon as he/she is eligible. All student information obtained is confidential.

For more information:

- **Community Colleges in California:** Contact the Admissions Office at the community college you wish to attend.
- **California State University:** Contact the Admissions Office at the campus you wish you to attend.
- **University of California:** Contact the Admissions Office where you would like to attend.

For more information on this law's application:

- SIREN's immigrant assistance line (408) 286-1698
- MALDEF (213) 629-2512

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