



Immigration Task Force

ISSUE BRIEF:

Immigration 101: Path to Citizenship

Under current immigration law, there is no single path or “line” for U.S. citizenship. Instead, there are several immigrant channels that foreign nationals living abroad or in the country on a temporary visa can navigate toward permanent residence and eventual eligibility for citizenship. Before any person has the opportunity to become a U.S. citizen, they must first attain legal permanent resident (LPR) status through one of several established immigrant categories and receive a permanent resident card (commonly referred to as a “green card”).

Temporary Non-immigrants: A Popular First Step

Many foreign persons begin their path to U.S. citizenship long before they apply for LPR status. Several temporary visa categories allow non-immigrants to visit, work, or study in the United States each year for a specified length of time. The primary temporary work visas include: H-1B specialty workers, H-2A seasonal agricultural workers, H-2B seasonal non-agricultural workers, L intercompany transferees, and O individuals with extraordinary ability or achievement.¹ Each temporary visa category has its own set of requirements, and some are subject to statutory numerical limits (often called “caps”). For H-1B—one of the most popular H work visas—there is an annual numerical limit of 85,000 visas per fiscal year that, due to high demand and exceptions for certain employers, is almost always met or exceeded.² Generally, there is a three-step application process for most temporary work visas (Table 1).



Table 1. Temporary worker application process³

STEP 1*	Petitioning employer submits temporary labor certification application (LCA) to Department of Labor for certification. In an LCA, the employer attests that there are no U.S. workers available, willing, and qualified to fill the position and that the employment of the foreign worker will not adversely affect the wages or working conditions of U.S. workers.
STEP 2	Employer petitions for foreign temporary worker (Form I-129) with the United States Citizenship and Immigration Services (USCIS).
STEP 3	Prospective foreign worker applies for a visa, if available. If abroad, the foreign worker applies at a U.S. consulate. If already within the United States, in another lawful status, the individual may apply to USCIS to change their status.

**Only applies to H visas.*

Source: USCIS

PATH TO PERMANENT RESIDENCE

No available government statistics describe the frequency with which different types of temporary non-immigrants ultimately adjust to LPR status. We do know that a large majority of persons granted permanent residence through employment-based (EB) channels each year are adjustments of status—persons acquiring LPR status who are already living in the United States, usually in temporary status.⁴ In 2012, 91 percent of worker principals who received an EB green card adjusted from some temporary status within the United States (as well as 84 percent of their spouses).⁵ Some temporary visas, including H-1B and L, are considered “Dual Intent” visas, which allow non-immigrants to have immigrant intent and seek LPR status, if petitioned for. In other categories, the foreigner must prove to the government’s satisfaction that they do *not* intend to become a permanent immigrant before a temporary visa is granted. For example, foreign students and exchange visitors must meet this test.

Legal Permanent Residence

Foreign nationals outside the United States or non-immigrants in the United States can acquire a green card in one of four ways: (1) family, (2) employment, (3) refugee or asylum status, or (4) the diversity visa lottery. For the most part, these categories are subject to numerical limits. The Immigration and Nationality Act (INA) sets a total worldwide limit of 675,000 LPRs per year, this includes, EB preferences (140,000), diversity visa lottery immigrants (55,000), and family-sponsored preferences (480,000 minus the number of immediate relative immigrants, minimum 226,000) (Table 2). Family members of the principal applicant (spouses and children) are considered “derivative” applicants and are included in these caps.

Within the family category, there is no cap on the number of immediate relatives of U.S. citizens that can be granted LPR status each year. Additionally, there is also no cap on the number of refugees or asylees that can adjust their status to LPR each year. Thus, the number of persons admitted as permanent residents each year usually exceeds 675,000.

Table 2. Immigration Categories

CATEGORY AND NAME		NUMERICAL LIMIT
TOTAL FAMILY-SPONSORED IMMIGRANTS		480,000+
IR	Immediate relatives: spouses, unmarried minor children, or parents of U.S. citizens	Uncapped
F	Family-based immigrants	226,000 (minimum)
F1	Unmarried sons and daughters of U.S. citizens (21 and over) and their minor children	23,400
F2A	Spouses, minor children (under 21) of LPR	87,900
F2B	Unmarried sons and daughters (21 and over) of LPR	26,300
F3	Married sons and daughters of U.S. citizens	23,400
F4	Brothers and sisters of U.S. citizens	65,000
EB EMPLOYMENT-BASED IMMIGRANTS		140,000
EB1	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors or researchers with at least three years of experience; and managers and executives subject to international transfers to the United States	28.6%
EB2	Professionals holding advanced degrees (Ph.D., master's degree, or at least five years of progressive post-baccalaureate experience) or persons of exceptional ability in sciences, arts, or business	28.6%
EB3	Skilled workers, professionals, and other workers	28.6%
EB4	Certain special immigrants: ministers, religious workers, current or former U.S. government workers, etc.	7.1%
EB5	An investor who invests between \$500,000 and \$1 million in the United States that creates at least ten new full-time jobs	7.1%
DV Diversity		55,000
DV	Lottery system for individuals from countries with low rates of immigration to the United States.	50,000
DV	5,000 set aside for use under the Nicaraguan and Central American Relief Act (NACARA).	5,000
REFUGEES AND ASYLEES		UNCAPPED
Refugees are persons located outside of the United States who are persecuted or fear persecution due to race, religion, nationality, or political opinion. Asylees are persons who meet the definition of refugee but are already in the United States		

Although most immigrants come through the categories listed above, there are several other special ways to get a green card in current law. Some of these include green card programs for battered spouses or children under the Violence Against Women Act, persons born to foreign diplomats in the United States, and persons with previous military service.⁶ In 2012, about 9,000 green cards were allocated outside the categories in Table 2.⁷

LPR (GREEN CARD) APPLICATION PROCESS

Applying for LPR status is a multi-step process that can sometimes stretch for decades. While each category has its own requirements, the general requirements for permanent residence are:

- Be eligible for one of the immigrant categories established in the INA;
- Have a qualifying immigrant petition filed and approved;
- Have an immigrant visa immediately available; and
- Be admissible to the United States.

Step 1 – Immigrant Eligibility and Petition: For most green cards, a relative or employer must first petition USCIS to establish the intending immigrant’s eligibility for a preference category. Refugees, asylees, and diversity visa winners are exempt from this step.

- *Family-sponsored:* To petition for a family member, a U.S sponsor must file a Petition for Alien Relative (Form I-130) with USCIS and provide proof of citizenship or LPR status and evidence of the qualifying relationship. The I-130 filing fee is \$420.
- *Employment-based:* Employers looking to sponsor a foreign worker usually must first obtain certification from the Department of Labor that there are no U.S. workers available to fill the position and that the employment of the foreign worker will not adversely affect the wages or working conditions of U.S. workers.⁸ Once an approved certification is obtained, employers can file a Petition for Alien Worker (I-140) with USCIS. The filing fee is \$580. Foreign entrepreneurs applying under the EB5 category can file on their own behalf.

Step 2 – Visa Availability and Priority Date: Intending immigrants may not be able to immediately apply for LPR status if they are seeking visas through a capped category in which demand exceeds supply. Because a per-country limit only allows any one country to supply 7 percent of immigrants each year, there can also be significant backlogs in certain categories for countries with high immigration to the United States. For example, as of April 2014, the current backlog for persons from Mexico in the Family 1st preference category is more than 20 years long. If no visas are available, applicants are issued a priority date, which determines their place in line. (See Appendix A for more details and wait times.)

For uncapped categories (e.g., immediate relatives), there is no line for a visa and individuals present in the United States may apply for LPR status by filing an Application to Register Permanent Residence or Adjust Status (Form I-485) at the same time as Form I-130. This is known as “concurrent filing.”⁹

Step 3 – Application for Lawful Permanent Residence: Only once a petition is approved and a visa becomes available does an intending immigrant have the opportunity to apply for LPR status. If the intending immigrant is already in the United States, they apply for adjustment of status (Form I-485). If the intending immigrant is outside of the United States, they must apply for the visa at a U.S. embassy or consulate. The I-485 filing fee is \$1,070 (\$985 fee and \$85 biometric fee).

- At this point, family category sponsors sign an Affidavit of Support, demonstrating that he or she has the financial means to support the intending immigrant to ensure that the immigrant does not become a public charge.¹⁰ For EB and other immigrants, they must demonstrate financial means sufficient to meet the same public charge standard.
- Intending immigrant applicants also submit to a medical examination, along with any necessary vaccinations, and provide biometrics for security checks to prove they are admissible. Grounds of inadmissibility include past criminal or terrorist activities, immigration law violations (including past unlawful presence), and communicable health problems. Finally, the immigrant may interview with a USCIS adjudicator or consular officer.

LPRs have authorization to live and work in the United States on a permanent basis. However, green card holders generally do not have the right to vote, run for federal office, or receive certain government benefits during the first five years. Immigrants in LPR status may lose or abandon their status if they commit criminal acts, move to another country permanently, remain outside of the country for more than one year, or fail to file income-tax returns while living outside of the United States.¹¹

Naturalization

The final step on the path to citizenship is naturalization, the process by which all foreign-born persons apply for U.S. citizenship after fulfilling the INA's requirements.¹² In order to apply for naturalization, an applicant must have LPR status for at least five years, meet specific eligibility requirements regarding age, residency and physical presence, and language, and must attend a naturalization interview where civics and language knowledge are tested (Table 3). Eligible persons must file an Application for Naturalization (N-400) with USCIS and pay a \$680 fee. Foreign-born citizens who are naturalized enjoy the same benefits and rights that native-born citizens are entitled to, such as the right to vote (Table 4).

Table 3. General Requirements for naturalization¹³

Green card: Be a green card holder (LPR) for at least five years.

Age: Be 18 or older.

Residence: Reside in the state of application for at least three months. Reside continuously in the United States from the date of application up to the time of naturalization.

Physical presence: Be physically present in the United States for at least 30 months out of the preceding five years.

Language: Be able to read, write, and speak English.

Civics: Pass a citizenship test to demonstrate knowledge and an understanding of U.S. history and civics. Demonstrate attachment to the principles of the U.S. Constitution.

Character: Be a person of good moral character (see text box).

Oath: Take the oath of citizenship and swear allegiance to the United States.

Fee: Pay application fee of \$680 (\$595 filing fee and an \$85 biometric fee).

Source: USCIS

Table 4. Rights and privileges of U.S. citizenship¹⁴

Vote in federal elections

Travel with a U.S. passport and obtain assistance from a U.S. embassy while abroad

Sponsor others for citizenship, including parents, siblings, and children

Run for federal office

Serve on a jury

Become eligible for federal and certain law enforcement jobs

Obtain certain state and federal benefits not available to non-citizens

Sources: USCIS; USA.gov

SPECIAL PATHS TO CITIZENSHIP IN CURRENT LAW

Existing law contains a few expedited paths to citizenship. These include paths for spouses of U.S. citizens, military members and their spouses, and adopted children of U.S. citizens.

- *Spouses of U.S. citizens.* Spouses of U.S. citizens must meet most of the general requirements with the following exceptions: Spouses can apply for naturalization after three years as a permanent resident if that time was spent living in marital union with the U.S. citizen spouse. They must be physically present in the United States for at least 18 months out of the three years.
- *Military members (during peacetime).* Members of the U.S. armed forces can be granted citizenship if they have served in the military for at least one year (or have been honorably discharged in previous six months) and had LPR status on the day of the naturalization interview.
- *Military members (during hostilities).* Members of the U.S. armed forces of any age who serve for any amount of time during designated periods of hostilities (or who have been honorably discharged) are eligible for naturalization, even after one day. Periods of hostility:

- April 6, 1917, to November 11, 1918
 - September 1, 1939, to December 31, 1946
 - June 25, 1950, to July 1, 1955
 - February 28, 1961, to October 15, 1978
 - August 2, 1990, to April 11, 1991
 - September 11, 2001, until the present
- *Spouses of military members:* To be eligible to naturalize, individuals must be the spouse of a U.S. citizen military member deployed abroad. Spouses only have to be present in the United States on the day of naturalization and must intend to join their spouse abroad after naturalizing. However, they must declare intent to live in the United States immediately after the deployment period.
 - *Adopted children.* Adopted children under 18 years can become a citizen if one of the parents is a U.S. citizen and if the child lives in the legal and physical custody of a U.S. citizen parent. The child must also have been admitted as a permanent resident or as an orphan adoptee with a special visa.

BARRIERS AND INCENTIVES TO NATURALIZATION

Naturalization requirements and benefits create both barriers and incentives to naturalization. The language, civics, physical presence, and cost requirements, for example, tend to be barriers, while gaining the right to vote and other rights and benefits can influence an immigrant's decision to naturalize.

A 2012 nationwide survey of Hispanic immigrants conducted by the Pew Hispanic Center shed some light on the influence of some of these requirements and benefits. Overall, the survey found an overwhelming desire to naturalize among all immigrants who have not yet done so. About 93 percent said they would naturalize if they could (96 percent among green card holders and 92 percent among those who say they are neither LPRs nor U.S. citizens). However, among those who had not chosen to naturalize, the most popular reasons were language and personal barriers (26 percent), a disinterest or non-desire to try (26 percent), and financial and administrative barriers (18 percent). Of the 26 percent who cited personal barriers, 65 percent highlighted the language requirement as the principal barrier, and 23 percent said the citizenship test is too difficult. Among those who identified administrative barriers, an overwhelming majority said the cost of the naturalization application is too high (94 percent).¹⁵

Those who chose to naturalize cited obtaining civil and legal rights (18 percent), access to more benefits and opportunities (16 percent), and family-related reasons (15 percent) as their main incentive. Among the 18 percent who credited gaining additional civil and legal rights, 72 percent specifically cited the right to vote. Among those who cited access to more benefits, holding a U.S. passport and increased ease of travel internationally was the most commonly mentioned benefit.¹⁶

UNAUTHORIZED IMMIGRANTS AND THE PATH TO CITIZENSHIP

Unauthorized immigrants are foreign-born persons in the United States who entered illegally or who were lawfully admitted but overstayed their period of admission.¹⁷ Unauthorized aliens have no legal right to live or work in the United States. Aside from certain relief exceptions, they are also ineligible for visas and considered inadmissible for violating immigration law under the INA.¹⁸ Foreigners with a known history of unlawful presence face strict bars to re-entry, even if they would otherwise qualify for a legal immigration status. The INA states that any immigrant who maintains unlawful presence in the country for more than 180 days but less than one year is barred from re-entering the United States for three years; if the immigrant is in the country illegally for more than one year, they face a ten-year bar.

The recent past has seen several attempts to provide unauthorized immigrants a path to LPR status and, for individuals who subsequently choose to apply, citizenship. The Immigration Reform and Control Act of 1986 (IRCA) created the first mass legalization program in the United States. Unauthorized immigrants who met eligibility requirements were granted temporary status, which in turn immediately allowed them to apply for LPR status. Of the estimated three to five million unauthorized immigrants in the country in 1986, 2.7 million became LPRs under IRCA. As of 2009, the Department of Homeland Security estimates that 40 percent (1.1 million) of IRCA permanent residents have naturalized.¹⁹

Most recently, the U.S. Senate passed a comprehensive immigration reform bill, the Border Security, Economic Opportunity, and Immigration Modernization Act (S.744) in 2013. Among many provisions, S.744 proposes a legalization program that provides unauthorized immigrants a path to legal status ("Registered Provisional Immigrant," or RPI), a ten-year path to permanent residence, followed by a three-year path to citizenship, if they meet eligibility requirements along the way (Table 5).

Defining Good Moral Character. A person applying for naturalization must demonstrate that he or she has been and continues to be a person of good moral character during the statutory period (the previous three or five years in LPR status). The INA describes certain types of criminal conduct that can trigger either permanent or conditional (or temporary) bars to establishing good moral conduct for naturalization. Applicants convicted of murder or aggravated felonies at any time are permanently barred from establishing good moral character for naturalization and can be subject to removal. Conditional bars are triggered by offenses during the statutory period. Some of these offenses include:

- Conviction of one or more crimes involving moral turpitude (includes crimes against a person, property, or the government with criminal intent or recklessness, such as statutory rape, theft, forgery, spousal or child abuse, and fraud)
- Convicted of two or more offenses for which the total sentence imposed was five years or more
- Controlled-substance violation
- Incarceration for 180 days
- False testimony under oath
- Prostitution
- Smuggling of persons
- Polygamy
- Illegal gambling
- Habitual drunkard
- Failure to support dependents
- Adultery
- Failure to complete any probation, parole, or suspended sentence
- Terrorist acts
- Persecution of anyone because of race, religion, national origin, or political or social affiliation

Table 5. Path to legal status, permanent residence, and citizenship in S.744

UNAUTHORIZED → REGISTERED PROVISIONAL IMMIGRANT (RPI)

Triggers for Adjustment to RPI Status: DHS submits a comprehensive southern border-security and border-fencing strategy.

Eligibility Requirements for RPI Status:

- Physically present in the United States on or before December 31, 2011
- Maintained continuous presence up until the date of application
- Settled any assessed federal tax liability
- Passed background checks
- Was not convicted of a felony or three or more misdemeanors
- FEE: Pay an application processing fee and a \$1,000 penalty
- FAMILY: Spouse and child of an RPI would also be eligible
 - *Also Eligible:* Individuals apprehended before the application period, in removal proceedings, or ordered removed
 - *NOT Eligible:* Individuals who departed the United States while subject to an order of exclusion, deportation, removal, or voluntary departure; waived if the individual is a spouse, child, or parent of a U.S. citizen or LPR

Length of RPI Status and Renewal Requirements:

- RPI status lasts for an initial six-year period
- It may be extended for an additional six years if the RPI immigrant:
 - Was regularly employed (could not be unemployed for 60-plus+ days); exceptions made for full-time enrollment in school, maternity leave, medical leave, physical or mental disabilities, children under 21, and extreme hardship
 - Has satisfied all applicable federal tax liability

Benefits in RPI Status: RPIs will not be eligible for federal means-tested public benefits such as Medicaid, food stamps, and benefits under the Affordable Care Act, but are granted work authorization and ability to travel abroad and return.

RPI STATUS → LEGAL PERMANENT RESIDENT (LPR)

Triggers before anyone can adjust to LPR status*:

- Border-security strategy must be deployed and substantially operational
- Fencing strategy must be substantially completed (total of 700 miles of pedestrian fencing)
- Mandatory employment verification for all employers
- Electronic exit system at air and sea ports of entry
- Clearing of green card backlog for applicants who had filed before legalization was enacted
- Number of Border Patrol agents doubled along the southern border (up to at least 38,405)

*To avoid leaving immigrants in permanent probationary status, all but the last trigger may be waived if probationary immigrants have been in RPI status for at least ten years or if legal action delays implementation.

Individual immigrants who want to adjust from RPI to LPR must:

- Have RPI status for at least ten years;
- Have maintained continuous physical presence, absent for not more than 180 days in a year;
- Have settled any assessed federal tax liability;
- Provide evidence that they were not unemployed for 60-plus days;
 - If the immigrant cannot show continuous employment, he or she must demonstrate income or resources not less than 125 percent of the poverty level. There are exemptions to the employment requirement for full-time enrollment in school, maternity leave, medical leave, physical or mental disabilities, children under 21, and extreme hardship.
- Demonstrate knowledge of English and civics;
- Pass additional security clearances/background checks; and
- FEE: Pay an application processing fee and a \$1,000 penalty.

Back of the Line: Immigrants with RPI status may not adjust to LPR until the existing backlog of family and EB visa applications is cleared.

LEGAL PERMANENT RESIDENT (LPR) → U.S. CITIZEN

S.744 allows all persons in LPR status to apply for citizenship after three years if they had been lawfully present in the United States and work-authorized for not less than ten years before adjusting to LPR status. They also must have been physically present for periods totaling at least 50 percent of the three-year LPR period and reside in the state of application for at least three months.

Unauthorized individuals brought to the United States as children (under 16)—commonly referred to as DREAMers—and agricultural workers have a shorter path to citizenship under S.744. DREAMers would be able to apply for LPR status after five years in RPI status and could immediately apply for citizenship. Unauthorized agricultural workers can apply for an eight-year temporary “blue card” status if they have worked in the United States for at least 100 days in the two-year period ending December 31, 2012. Agricultural workers can apply for LPR after at least five years in blue card status.

Appendix A: Number of Persons Waiting for a Green Card and Wait Times as of June 2014.

The date that USCIS accepts a petition or labor certification for an immigrant visa is considered the “priority date,” which determines the intending immigrant’s place in line for a visa. The U.S. Department of State issues a monthly Visa Bulletin that allows individuals to check their place in line. If demand is less than supply in a given category and country of birth, then the visas are considered “current,” and a visa is available. If supply cannot meet demand for any category or country of birth, then the category is deemed “oversubscribed,” and the State Department will impose a cut-off date. Only individuals with priority dates earlier than the cut-off date listed for each category and country will have an available visa. The National Visa Center (NVC) will issue applicants a visa number once one is available.²⁰

According to the latest information available from the State Department, there are an estimated 4.3 million persons waiting for a green card. These estimates do not include applications for adjustment of status which are pending at USCIS offices, only petitions that the State Department has received. In June of 2013, COB estimated that there could be as many as 6 million persons waiting for a green card.²¹

Table A-1. Number of persons waiting for green card and wait times

CATEGORY	NUMBER	WAIT TIME				
		All Others	China	India	Mexico	Philippines
Family-sponsored						
F1	279,693	7 Years	7 Years	7 Years	20+ Years	12 Years
F2A	238,417	<1 Year	<1 Year	<1 Year	2 Years	<1 year
F2B	467,642	7 Years	7 Years	7 Years	21 Years	11 Years
F3	804,242	10+ Years	10+ Years	10+ Years	21 Years	21 Years
F4	2,420,977	12+ Years	12+ Years	12+ Years	17+ Years	23+ Years
Total	4,210,971					
Employment-based						
EB1	2,691	Current	Current	Current	Current	Current
EB2	15,866	Current	5 Years	9+ Years	Current	Current
EB3	87,937	3 Years	7+Year	10+ Years	3 Years	6+ Years
EB4	362	Current	Current	Current	Current	Current
EB5	4,748	Current	Current	Current	Current	Current
Total	111,604					
GRAND TOTAL	4,322,575					

Sources: Wait times according to DOS Visa Bulletin (June 2014); Number of persons according to DOS Annual Report (November 2013)

Table A-2. Number of persons waiting for a green card by country of origin

IMMIGRANT WAITING LIST BY COUNTRY	NUMBER OF PERSONS WAITING
Mexico	1,312,198
Philippines	436,639
India	326,921
Vietnam	255,475
China	239,182
Dominican Republic	175,313
Bangladesh	162,655
Pakistan	111,799
Haiti	109,489
Cuba	105,744
El Salvador	71,833
Jamaica	55,576
South Korea	55,220
Peru	51,028
Colombia	50,979
All Others	802,524
Worldwide Total	4,322,575

Sources: DOS Annual Report (November 2013)

Endnotes

- ¹ This list does not include several visitor, student, or other temporary work visas, including: E Treaty Traders and Investors, TN NAFTA Professionals, P Athletes or Entertainers, R Religious Workers, and Q Cultural Exchange Workers. See USCIS for a complete list of temporary visas. Available at: <http://www.uscis.gov/working-united-states/temporary-workers/temporary-nonimmigrant-workers>.
- ² Read more about H-1B visas at: <http://bipartisanpolicy.org/blog/immigration/2014/04/01/h-1b-visa-cap-expected-be-hit-within-days>.
- ³ USCIS, H-1B Specialty Occupations. Available at: <http://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf>.
- ⁴ Randall Monger and James Yankey (2013) "U.S. Legal Permanent Residents: 2012." Department of Homeland Security. Available at: https://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf.
- ⁵ Calculated from Department of Homeland Security's *Yearbook of Immigration Statistics 2012*. Legal Permanent Residents: Table 7. Available at: <https://www.dhs.gov/yearbook-immigration-statistics>.
- ⁶ For a complete list of special green card programs, see USCIS: <http://www.uscis.gov/green-card/other-ways-get-green-card>.
- ⁷ Department of Homeland Security, *Yearbook of Immigration Statistics 2012*, Table 6.
- ⁸ Department of Labor, Permanent Labor Certification. Available at: <http://www.foreignlaborcert.doleta.gov/perm.cfm>.
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