

Handout 1.3 - The Legalities of Legal Immigration

Whether via permanent residency or guest worker visa, there are serious problems with our immigration system that leads to years of waiting.

(Sections one and two of this handout – “Visa Backlogs” and “Flawed Worker Programs” were excerpted from the UUA’s “Welcoming Our Neighbors” immigration resource.

Visa Backlogs

*The majority of immigrants who obtain a “green card”—a visa which grants lawful permanent residency—do so through **sponsorship by a family member or sponsorship by an employer who is already in the United States**. After five years as a lawful permanent resident, an immigrant can apply for U.S. citizenship. But a tremendous backlog in processing visa applications is putting families in the painful position of having to choose whether to follow the law and be separated for up to twenty years in some cases, or to break the law in order to be together.*

There are many different categories of visas for people who want to become permanent residents of the U.S. Which type of visa a person applies for is determined by their relationship to the family member already in the U.S. who is sponsoring him or her, or the type of work they are coming to the U.S. to perform.

Many visa categories have a quota or “cap,” which limits the number of people who can receive that kind of visa to enter the U.S. each year. Family reunification is the largest avenue through which individuals qualify for permanent residence. Family-based immigration is split into two major categories.

- **Immediate relatives** - This category is unlimited, and includes spouses of citizens, unmarried children under 21 of citizens, or parents of U.S. citizens who are over 21.
- **Family preference** - This category includes unmarried children over 21 of U.S. citizens (cap: 23,400); unmarried children over 21 of green card holders who are not yet citizens (114,200); married children of U.S. citizens (23,400); and siblings (65,000).

It might seem as if there are a lot of visas in the family preference category, but . . .

Due to application processing backlogs, the wait for a permanent residency visa for those who fall into the “Family Preference” category ranges from two or three years to over twenty, depending on an applicant’s sub-sub-category and country of origin.

See the flowchart in handout 1.4 to find out how long the waiting period for a permanent residency visa can be for different people trying to immigrate to the United States

Flawed Guest Worker Programs

*In addition to visas granted to immigrants coming to the U.S. to live permanently, visas are also granted to individuals coming to the U.S. to fill the temporary needs of U.S. employers. **Temporary** or **nonimmigrant** work visas are divided into categories dealing with everything from foreign athletes to academics to laborers. For the purposes of worker justice and immigration reform advocacy, two of the most important categories are H-2A and H-2B, which deal with unskilled labor. These temporary visas are valid for one year, and are renewable for two more years.*

- **H-2A** – temporary or seasonal agricultural workers.
- **H-2B** – temporary or seasonal nonagricultural workers, e.g., at a ski resort, carnival, etc.

Shortage of Unskilled Labor. The H-2B category is fraught with bureaucratic red tape that makes it time-consuming and difficult to use. The H-2B category is further limited by an annual cap of 66,000 visas, far below current demand. Furthermore, the H-2B temporary visa program is useful only for employers who can establish that their need for foreign workers is seasonal. A nonimmigrant visa category does not exist for employers who need workers for permanent or long-term jobs, for example in health care, retail, hospitality, construction, and other industries. **Permanent** immigrant visas for unskilled laborers *are* available, but that category’s low cap of 5,000 per year has created a backlog. According to U.S. Citizenship and Immigration Services, “A petitioner could expect to wait many years before being granted a visa under this category.” According to AILA, the wait for a permanent visa for unskilled work is typically over ten years long. ***As a result, it is extremely difficult for enough unskilled workers to legally enter the United States, causing employers and workers to seek ways to circumvent the system.***

Opportunities for Employer Abuse. The H-2B program is rife with exploitation and abuse. As with all guestworkers, H-2B workers suffer from an imbalance of power with their employers because their temporary, non-immigrant status ties them to particular employers and makes their ability to obtain a visa dependent on the willingness of the employer to make a request to the U.S. government. H-2B workers and U.S. workers at H-2B employers lack many of the protections afforded to workers in the H-2A program, such as . . . free housing . . . and eligibility for federally funded legal services. Many H-2B workers begin their employment indebted to recruiters, contractors, or employers who charge high fees to gain access to the jobs. Many workers finance the fee payments by taking out high interest loans or putting the deeds to their homes in the hands of a labor recruiter as collateral. Once in the US, many workers face unrealistic productivity requirements and unsafe working conditions, underpayment for their difficult and dangerous work, insufficient work, and unsuitable living conditions. ***Despite these conditions, these debt-ridden workers are reluctant to complain because their employers or contractors exercise control over them and they fear losing their job or not being rehired the following season.¹ To escape exploitation, some H2-B workers leave the employers who sponsored their visa and become undocumented workers.***

¹ Farmworker Justice. “*The H-2B Guestworker Program.*” [Www.fwjustice.org/Immigration_Labor/H-2B.htm](http://www.fwjustice.org/Immigration_Labor/H-2B.htm) (June 16, 2008).

Visa Quota Chart (from <http://www.immigralaw.com/>)

IMMIGRANT VISAS (Green Cards)	
<u>Family-based green cards</u>	226,000 (current total quota)
immediate relatives	none
family first preference	23,400 plus any unused 4th preference visas
family second preference	114,200 plus any unused 1st preference visas (and no less than 77% to 2A)
family third preference	23,400 plus any unused 2nd preference visas
family fourth preference	65,000 plus any unused 3rd preference visas
<u>Employment-based green cards</u>	140,000 (current total quota)
employment first preference	28.6% of the annual total
employment second preference	28.6% of the annual total
employment third preference	28.6% of the annual total
employment fourth preference	7.1% of the annual total
employment fifth preference (investment)	7.1% of the annual total
<u>Green Card Lottery</u>	55,000 (current total quota)
<u>Amnesty</u>	none
<u>Asylum</u>	none
<u>Refugees</u>	90,000 (current quota)
<u>Temporary Protected Status (TPS)</u>	none
<u>Special Immigrant Status</u>	10,000 (no more than 5,000 to non-clergy religious workers)
<u>Special Agricultural Worker Status</u>	none
NON-IMMIGRANT VISAS (Temporary Work/Travel Visas)	
<u>Specialty Occupation (H-1B)</u>	65,000
<u>Intracompany Transfer (Executives) (L-1)</u>	none
<u>Investment (E-2)</u>	none
<u>Temporary/Seasonal Workers (H-2B)</u>	66,000
<u>Job Training (H-3)</u>	none
<u>Student Visas (F-1, M-1)</u>	none
<u>Religious Worker Visas (R-1)</u>	none