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UNITED STATES IMMIGRATION LAW SUMMARY

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I. VISAS, PASSPORTS, AND CITIZENSHIP

- A. Only US citizens are entitled to U.S. passports.
 - 1. Some citizens acquire citizenship at birth.
 - 2. Others apply for citizenship after a period of permanent residence.
- B. Most non-citizens have a passport from the country of citizenship.
- C. Most non-citizens must have an appropriate visa to enter the U.S.
 - 1. Permanent residents have a Permanent Resident Card (I-551) or an immigrant visa (also called "green" card).
 - 2. Nonimmigrants have the appropriate temporary, **nonimmigrant visa** unless the visa requirement is waived.
 - a. A U.S. visa is a sticker affixed to a page in the passport.
 - b. Most Canadians do not have to have U.S. visas.
- D. All non-citizens must have the appropriate **visa status** to remain in the U.S.
 - a. Evidence of immigrant visa or permanent resident status is Form **I-551** or a temporary stamp.
 - b. Evidence of nonimmigrant status is on **Form I-94**.

II. SELECTED NONIMMIGRANT VISA CLASSES: THE ALPHABET SOUP

- A. **Employer-specific nonimmigrant classes, all employers can use**
 - 1. **E-3** Australian specialty occupation (degree required)(no limit)
 - 2. **H** Temporary Workers
 - a. **H-1B1** specialty occupation (degree required)(up to 6 years)
 - b. **H-2A/H-2B** seasonal, temporary, agricultural (length varies)
 - c. **H-3** trainee (18 months)
 - 3. **L** Intracompany transferee (executive, manager, specialized)(7 or 5 years)
 - 4. **O** Extraordinary ability (unlimited)
 - 5. **P** Artists, entertainers, athletes (varies)
 - 6. **Q** International cultural exchange (18 months)
 - 7. **TN** Treaty NAFTA professionals for Canadian, Mexican, Chilean, Singaporean
- B. **Employer-specific nonimmigrant classes, special employer required**
 - 1. **A** Diplomat (arranged through foreign embassy)(unlimited)
 - 2. **D** Crew member (arranged by employer)(very limited stay in US)
 - 3. **E-1/2** Treaty investor, trader or employee of same nationality (treaty)(unlimited)
 - 4. **G** International organization employee (arranged by employer)(unlimited)
 - 5. **I** International media representative (arranged by employer)(unlimited)
 - 6. **J** Exchange visitors in various categories (requires sponsor)(varies)
 - a. Professor or researcher (3 years + 6 months)(soon to be 5 years)
 - b. Short-term scholar (6 months)
 - c. Summer work-travel (short-term)
 - d. Secondary or elementary teachers (3 years)
 - e. Au Pairs (12 months)
 - f. International and government visitors (govt.use only)
 - g. Trainee (18 months)
 - 7.. **R** Religious worker working for religious organization (5 years)

- C. **Students: employment authorization limited and must be pre-approved**
1. **F** College, university, English language, post-doc (for duration of program)
 2. **J** Exchange visitor (for duration of program)
 3. **M** Technical or vocational school (1 year, renewable)
- D. **Other nonimmigrant classes who can work for any employer**
1. Asylees, refugees (do not need Employment Authorization Card)
 2. Extended voluntary departure, humanitarian parole, deferred action, withholding of removal, temporary protected status (will have EAD)
 3. **K**: U.S. citizen fiancé, step child, or spouse (will have EAD).
 4. **V**: Spouse of child of U.S. permanent resident (will have EAD).
- E. **B** Visitors for business or pleasure: honoraria and/or expenses in limited circumstances.

II. IMMIGRANT (PERMANENT RESIDENT) VISA CATEGORIES

- A. Family-based classes (465,00+ per year)(§213A affidavit required)(FB)
1. Immediate relatives of citizens: spouses, parents, children (no limit)
 2. Family preference categories (226,000 minimum)(backlogs in all categories)
 - a. 1st: unmarried sons and daughters of US citizens.
 - b. 2nd: spouses and children of permanent residence.
 - c. 3rd: married sons and daughters of US citizens.
 - d. 4th: siblings of US citizens.
- B. Employment-based classes (140,000 per year)(EB)(backlogs in some categories)
1. 1st preference: Priority workers (40,000 per year)
 - a. Extraordinary ability (similar to O nonimmigrant)
 - b. Outstanding professors and researchers
 - c. Multinational executives and managers (similar to L nonimmigrant)
 2. 2nd preference: (40,000 per year)
 - a. Exceptional ability in arts, science, business
 - b. Professionals with advanced degrees (master's degree or higher)
 3. 3rd preference: (40,000 per year)
 - a. Skilled workers (job requires min. 2 years experience/training)
 - b. Professionals with bachelor's degree or equivalent
 - c. Other workers (10,000 limit)
 4. 4th preference: special immigrants, including religious workers.
 5. 5th preference: employment-creating entrepreneurs (\$1 mill. + 10 jobs)
- C. Diversity (lottery)(50,000 per year)(application on www.travel.state.gov)(DV)
- D. Miscellaneous
1. Refugee and asylee, after one year.
 2. Cancellation of removal (10 years + extreme and unusual hardship)
 3. Registry (here since 1/1/1972)
 4. Special, one-time programs and special immigrants

III. NUMERICAL LIMITS AND VISA NUMBER BACKLOGS

- A. All immigrant categories and certain nonimmigrant categories have numerical limitations.
- B. Also limits to number of immigrants from any one country per year.
- C. Calculated each month by computer at Department of State (Visa Bulletin) or USCIS.

IV. PROCESS TO OBTAIN PERMANENT RESIDENCE

- A. Preliminary requirement: relationship, job offer, luck, religious calling, wealth, special
- B. Labor certification for EB 2nd preference (with one exception) and 3rd preference
- C. Petition to USCIS for family and employment based categories to classify correctly
- D. Application for permanent residence or immigrant visa:
 1. In U.S. (adjustment of status)
 2. At U.S. consulate abroad (immigrant visa)
- E. Impediments: health, crime, immigration violations, security, public charge, no labor cert.
- F. Some waivers available for those otherwise ineligible as inadmissible.