Immigration Issues Handout

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

The following is a general discussion of several immigration issues. For more information, please speak to a Legal Assistance Attorney.

Information for Citizens regarding Spouses

If you are a U.S. citizen, your spouse is considered an immediate relative and is immediately eligible for an immigrant visa if your petition is approved. Generally, if your spouse is in the U.S. (through a lawful admission or parole) at the time you file the Form I-130, Petition for Alien Relative, your spouse may file a Form I-485, Application to Register Permanent Residence or to Adjust Status at the same time. For more information, your spouse should refer to How Do I Become a Lawful Permanent Resident While In the United States? (www.uscis.gov/graphics/howdoi/legpermres.htm). If he or she is outside the U.S., your spouse will need to go to the nearest U.S. consulate to apply for an immigrant visa.

A lawful permanent resident is a foreign national who has been granted the privilege of permanently living and working in the United States. If you want to become a lawful permanent resident based on the fact that you have a relative who is a citizen of the United States or a relative who is a lawful permanent resident, you must go through a multi-step process.

- First, the USCIS must approve an immigrant visa petition, I-130 Petition for Alien Relative for you. This petition is filed by your relative (sponsor) and must be accompanied by proof of your relationship to the requesting relative.
- Second, the Department of State must determine if an immigrant visa number is immediately available to you, the foreign national, even if you are already in the United States. When an immigrant visa number becomes immediately available to you, it means that you can apply to have one of the immigrant visa numbers assigned to you. You can check the status of a visa number in the Department of State's Visa Bulletin.
- Third, if you are already in the United States, you may apply to change your status to that of a lawful permanent resident after a visa number becomes available for you. If your spouse is legally inside the U.S. when your visa petition is approved and when an immigrant visa number (if required) becomes available, he or she may use the Form I-485 to apply to adjust his or her status to that of a lawful permanent resident. This is one way you can apply to secure an immigrant visa number. If you are outside the United States when an immigrant visa number becomes available for you, you must then go to the U.S. consulate servicing the area in which

you reside to complete your processing. This is the other way in which you can apply to secure an immigrant visa number.

You can get excellent additional information on this subject by going to the FAQs at the USCIS website: www.uscis.gov/graphics/howdoi/spouselive.htm.

Eligibility

To be eligible to sponsor a relative to immigrate to the United States you must meet the following criteria:

- You must be a citizen or a lawful permanent resident of the United States and be able to provide documentation proving your status.
- You must prove that you can support your relative at 125% above the mandated poverty line.
- If you are a US Citizen you may petition for the following foreign national relatives to immigrate to the United States; however you must be able to provide proof of the relationships:
    - Husband or wife;
    - Unmarried child under 21 years old;
    - Unmarried son or daughter over 21;
    - Married son or daughter of any age;
    - Brother or sister, **if you are at least 21 years old**; or
    - Parent, **if you are at least 21 years old**.

Preference Categories

The relative you wish to immigrate must obtain an immigrant visa number that is based on the preference category in which they fall.

People who want to become immigrants are classified into categories based on a preference system. The immediate relatives of U.S. citizens, who include parents, spouses and unmarried children under the age of 21, do not have to wait for an immigrant visa number to become available once the visa petition filed for them is approved by the USCIS. An immigrant visa number will be immediately available for immediate relatives of U.S. citizens. The relatives in the remaining categories must wait for an immigrant visa number to become available according to the following preferences:

- First Preference: Unmarried, adult sons and daughters of U.S. citizens. Adult means 21 years of age or older.
- Second Preference: Spouses of lawful permanent residents, their unmarried children (under twenty-one), and the unmarried sons and daughters of lawful permanent residents.
- Third Preference: Married sons and daughters of U.S. citizens.
- Fourth Preference: Brothers and sisters of adult U.S. citizens.

Once USCIS receives your visa petition, I-130, Petition for Alien Relative, it will be approved or denied. USCIS will notify the person who filed the visa petition if the visa petition is approved. USCIS will then send the approved visa petition to the Department of State's National Visa Center, where it will remain until an immigrant visa number is available. The Center will notify you, the foreign national, when the visa petition is received and again when an immigrant visa number is available. You do not need to contact the National Visa Center, unless you change your address or there is a change in your personal situation, or that of your alien relative, that may affect eligibility for an immigrant visa, such as reaching age 21, marriage, divorce, or death of a spouse.

Marrying your Foreign Fiancé in the United States

If your fiancé is not a citizen of the United States and you plan to get married in the United States, then you must file a petition with USCIS on behalf of your fiancé. After the petition is approved, your fiancé must obtain a visa issued at a U.S. Embassy or consulate abroad. The marriage must take place within 90 days of your fiancé entering the United States. If the marriage does not take place within 90 days or your fiancé marries someone other than you (the U.S. citizen filing USCIS Form I-129F - Petition for Alien Fiancé), your fiancé will be required to leave the United States. Until the marriage takes place, your fiancé is considered a nonimmigrant. A nonimmigrant is a foreign national seeking to temporarily enter the United States for a specific purpose. A fiancé may not obtain an extension of the 90-day original nonimmigrant admission.

If your fiancé intends to live and work permanently in the United States, your fiancé should apply to become a permanent resident after your marriage. (If your fiancé does not intend to become a permanent resident after your marriage, your fiancé/new spouse must leave the country within the 90-day original nonimmigrant admission.) For more information, please see How Do I Become a Legal Permanent Resident While in the United States? (www.uscis.gov/graphics/howdoi/legpermres.htm). Please note your fiancé will initially receive *conditional* permanent residence status for two years. Conditional permanent residency is granted when the marriage creating the relationship is less than two years old at the time of adjustment to permanent residence status. For more information, please see How Do I Remove the Conditions on Permanent Residence Based on Marriage? (www.uscis.gov/graphics/howdoi/remcond.htm).

Please note: Your fiancé may enter the United States only one time with a fiancé visa. If your fiancé leaves the country before you are married, your fiancé may not be allowed back into the United States without a new visa.

Special Rules for marriages less than two years old

A lawful permanent resident is given the privilege of living and working in the United States permanently. Your permanent residence status will be *conditional* if it is based on a marriage that was less than two years old *on the day* you were given permanent residence. You are given conditional resident status on the day you are lawfully admitted to the United States on an immigrant visa or receive adjustment of status. Your permanent resident status is conditional, because you must prove that you did not get married to evade the immigration laws of the United States. To remove these conditions, both spouses will need to fill out an I-751.

- You and your spouse must apply together to remove the conditions on your residence. You should apply during the 90 days before your second anniversary as a conditional resident. The expiration date on your alien registration card (commonly know as green card) is also the date of your second anniversary as a conditional resident. If you do not apply to remove the

conditions in time, you could lose your conditional resident status and be removed from the country.

- If you are no longer married to your spouse, or if you have been battered or abused by your spouse, you can apply to waive the joint filing requirement. In such cases, you may apply to remove the conditions on your permanent residence any time after you become a conditional resident, but before you are removed from the country.

- If your child received conditional resident status within 90 days of when you did, then your child may be included in *your* application to remove the conditions on permanent residence. Your child must file a separate application if your child received conditional resident status more than 90 days after you did.

You can find more information at the USCIC website: www.uscis.gov/graphics/howdoi/remcond.htm

VISAS

This section is intended to give you a brief overview of visas and to point you to more information.

If you're a citizen of a foreign country, in most cases you'll need a visa to enter the United States.

A visa doesn't permit entry to the U.S., however. A visa simply indicates that your application has been reviewed by a U.S. consular officer at an American embassy or consulate, and that the officer has determined you're eligible to enter the country for a specific purpose. Consular affairs are the responsibility of the U.S. Department of State.

A visa allows you to travel to the United States as far as the port of entry (airport or land border crossing) and ask the immigration officer to allow you to enter the country. Only the immigration officer has the authority to permit you to enter the United States. He or she decides how long you can stay for any particular visit. Immigration matters are the responsibility of the U.S. Department of Homeland Security.

There are two categories of U.S. visas: immigrant and nonimmigrant.

Immigrant visas are for people who intend to live permanently in the U.S. Nonimmigrant visas are for people with permanent residence outside the U.S. but who wish to be in the U.S. on a temporary basis – for tourism, medical treatment, business, temporary work or study.

In general, in order to be eligible to apply for an immigrant visa, a foreign citizen must be sponsored by a U.S. citizen relative or by a prospective employer. Unlike most other immigrant categories, Immediate Relatives are not subject to numerical limits under immigration law. For an overview of the types of immigrant visas available under immigration law, please see Immigrant Visa Classifications on the USCIS Website (www.uscis.gov/graphics/services/imm_visas.htm). Major immigrant categories are:

- Immediate Relatives
- Special Immigrants
- Family-sponsored
- Employer-sponsored

Consulate Contact Information

The contact information for the American Consulate in Frankfurt is:

Gießener Str. 30
60435 Frankfurt am Main
Federal Republic of Germany
Telephone: (069) 7535-0
Fax: (069) 7535-2277

For more information and times that certain services are offered, access their website at http://frankfurt.usconsulate.gov/frankfurt/contact.html

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References:

General Information

U.S. Bureau of Citizenship and Immigration Services website - www.uscis.gov

U.S. State Dept. website - http://travel.state.gov/visa/visa_1750.html

Information for Non-citizen Spouses.

U.S CIS websites

www.uscis.gov/graphics/howdoi/spouselive.htm

www.uscis.gov/graphics/services/residency/family.htm

U.S. State Dept website- http://travel.state.gov/visa/immigrants/types/types_1315.html

Visa Information

U.S. Visa Information - www.unitedstatesvisas.gov/whatis/index.html

U.S. CIS websites

www.uscis.gov/graphics/faqsgen.htm#visa

www.uscis.gov/graphics/services/imm_visas.htm (Immigrant Visa Classifications)

8 USC § 1101 et seq.

8 CFR 1.1 et seq.