



Introduction to Family- Based Immigration

Week One

Meet Your Trainers

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Course Outline

- **September 4-11:** Family-Based Immigration: How it Works, Who's Covered, Nuts and Bolts of Petition Process
- **September 11-18:** Retention of Priority Dates, Derivative Beneficiaries, CSPA
- **September 18-25:** Immigrating Through Marriage, Surviving Relatives
- **September 25-October 2:** Public Charge, Affidavit of Support
- **October 2-9:** Adjustment of Status
- **October 9-16:** Consular Processing, Family Immigration Review



How Course Works

Course Content:

- Reading
- Quizzes
- Exercises
- Question Corner
- Webinars

Course Completion

- Attend all webinars or view recordings
- Complete all quizzes

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What We'll Be Talking About in this Session

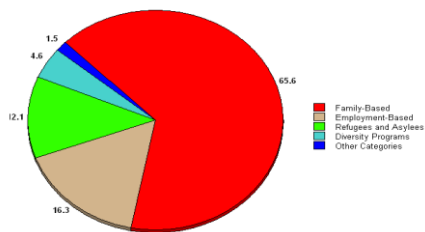
- Sources of Family Immigration Law
- Federal Agencies Involved in Process
- Immediate Relatives, Preference System and Visa Bulletin
- Establishing the Relationship
- I-130 Relative Petitions

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How Important is Family-Based Immigration?

Routes to LPR Status



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Sources of Family-Based Immigration Law

- Immigration and Nationality Act
 - §§ 201, 202, 203, 204, 101 (b)
- 8 Code of Federal Regulations §§ 204, 205
- Adjudicator's Field Manual
 - Chapters 20, 21
- USCIS (former INS) policy memoranda
- BIA, Circuit Court, Supreme Court cases
- 22 Code of Federal Regulations § 42
- Foreign Affairs Manual, Vol. 9

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Who's in Charge?

- Dept of **H**omeland **S**ecurity
 - **USCIS** (benefits inside US)
 - **USICE** (enforcement inside US)
 - **USCBP** (enforcement at border)
- Dept of State – at consulates
- Dept of Justice – EOIR
 - Immigration Courts
 - **Board of Immigration Appeals**

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Overview of Family-Based Process

- Two-part process:
 - U.S. citizen (USC) or LPR files petition to establish his/her own USC or LPR status and relationship to family member seeking to immigrate
 - Family member – intending immigrant – files application for residency

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Who Can Immigrate through Family-Based Immigration?

- USCs can petition for spouse, parents, child, sons and daughters (married and unmarried), and siblings
- LPRs can petition for spouse, child, and unmarried sons and daughters

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How Long Does it Take?

- Spouses and children of USCs, and parents of adult USCs, can generally immigrate “quickly” – other than processing delays that can take several months. These relationships are called **“immediate relatives.”**
- Other relatives of USCs and relatives of LPRs must wait longer periods because of quotas on number of people who can immigrate in these **“preference categories”**

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Preference Categories

- 1st: Adult sons and daughters of USCs
- 2A: Spouses and children of LPRs
- 2B: Adult unmarried sons and daughters of LPRs
- 3rd: Married sons and daughters of USCs
- 4th: Siblings of USCs

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Preference Categories: Wait for Priority Date

- Family members waiting to immigrate in “preference” categories need to check monthly Visa Bulletin to determine if **priority date is current**
- Department of State Visa Bulletin
 - Used to determine availability of immigrant visas each month
 - Need to know country of chargeability, preference category, and priority date
 - Only applicant/beneficiary with a priority date earlier than the cut-off date allocated a visa number

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State Dept. Visa Bulletin

SEPTEMBER 2014

	ALL	CHINA	INDIA	MEX	PHIL
1 st	01MAY07	01MAY07	01MAY07	01JUN94	01AUG04
2A	08JAN13	08JAN13	01JAN13	22APR12	01JAN13
2B	01SEP07	01SEP07	01SEP07	15MAY94	01DEC03
3 rd	15NOV03	15NOV03	15NOV03	15OCT93	22MAY93
4 th	01JAN02	01JAN02	01JAN02	22JAN97	15MAR91

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A Closer Look at Family Relationships

- SPOUSE
 - Marriage must be legally valid where it took place
 - Not entered into solely to gain an immigration benefit
 - Not against U.S. public policy
- CHILD – look to definition of “child” in INA § 101(b)
- PARENT
 - Also look to definition of child
 - Includes stepparent, adoptive parent
- BROTHER/SISTER – one parent in common

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INA §101(b) Definition of Child

- Under 21, unmarried, and one of the following:
 - Child born in wedlock
 - Stepchild if under 18 at time of marriage (in or out of wedlock)
 - Child born out of wedlock if mom is petitioner
 - Child born out of wedlock if dad is petitioner, and
 - Legitimated child before child turned 18; or
 - Established bona fide parent/child relationship before child married or turned 21

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Stepchild Relationship

- Elements of stepchild relationship
 - Valid marriage of parent and stepparent
 - No adoption required
- Illegitimate child of natural parent may be stepchild
- Relationship may survive divorce or death of natural parent

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Parent/Child Relationship?

Last year, USC Jean married Ivan, a citizen of Russia, who entered the U.S. with a student visa in 2010. Before coming to the U.S., Ivan had a son, Boris, with his former girlfriend. Boris lives with this mother in Moscow. Jean is petitioning for Ivan. Can she also petition for Boris?

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Adopted children

Statute with three separate categories for adopted children:

(a) adopted child meeting certain age, and legal and physical custody requirements:
INA § 101(b)(1)(E)

(b) orphans – more narrow categories of children who may be included:
INA § 101(b)(1)(F)

(c) children covered by the Hague Convention: INA § 101(b)(1)(G)

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Adopted Child – Non-Hague

- Age limit
 - Child under 16 and unmarried at time of adoption
 - Adopted natural sibling can be under 18
- Two years legal custody and residence
 - Two years can come before or after adoption
 - Two years can be before or after child turns 16
 - Exception for child who was battered or subject to extreme cruelty

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Orphan – Non-Hague

- Not subject to Hague Convention
- Petitioning parent must be USC
- If married, no minimum age; if single, must be 25.
- Petitioner's spouse need not be USC (but must be in lawful immigration status if living in US).
- Orphan definition
 - Parent(s) dead, disappeared, abandoned, deserted, lost or separated from child
 - Sole or surviving parent unable to provide for child's basic needs and irrevocably releases child for emigration and adoption
 - Orphan must be unmarried and < 16 at time of filing (< 18 for biological siblings)

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HAGUE ADOPTION CONVENTION: WHAT DOES IT DO?

- Mandates specific procedures to follow if adopting child on or after April 1, 2008 from country that is signatory
- Where Hague rules apply, MUST utilize these special procedures – can't proceed with an I-130 or an orphan petition if applicable
- Approx 89 countries are now signatories – Hague convention rules apply if child is "habitual resident" of such a country

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Can You Establish a Family Relationship?

Last year USC Lucy married Brian, a citizen of Ireland. Brian is now an LPR. Brian has a 12-year-old son, Patrick, living in Dublin with his grandparents. Brian and Patrick's mother were never married. Brian would like to bring Patrick to the U.S. What advice do you have for Brian?

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Can You Establish a Family Relationship?

LPR Oscar has a 15-year-old daughter, Rosa, and a 20-year-old son, Hector, both living in Honduras. Rosa and Hector have different mothers. Oscar was never married to Hector's mother but was married to Rosa's mother when she was born. Can Oscar file relative petitions for them?



Can You Establish a Family Relationship?

Jean Claude, age 14, came to the United States from Haiti on a B-2 visa in February of 2010 to stay with his aunt Marie, a U.S. citizen. Both of Jean Claude's parents died in Haiti in the earthquake. Marie has been Jean Claude's legal guardian since June of 2010. She is interested in adopting him and wants to file a relative petition for him. How would you advise Marie and Jean Claude?

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Can You Establish a Family Relationship?

USC Isabella, age 30, would like to petition for her mother, Simonetta, and Simonetta's husband, Silvio, both citizens of Italy. Simonetta and Silvio have been married for 10 years. Can Isabella petition for Simonetta and Silvio?

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I-130 Petitions: What are they for?

- Proving that **petitioner** is a U.S. citizen or lawful permanent resident
- Establishing relationship between **petitioner** and **beneficiary**
- For beneficiaries in the preference categories, date of filing establishes the crucial **priority date**

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Questions on the I-130

- Fillable form on www.uscis.gov
- Part A: The relationship
- Part B: Information about petitioner
- Part C: Information about the beneficiary
- Part D: Other petitions
- Part E: Signature of petitioner
- Part F: Signature of preparer of I-130

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Supporting Documents

- Proof of petitioner's USC or LPR status
- Proof of family relationship (e.g., birth certificate, marriage certificate)
- If spouse case, G-325A and photos of petitioner and beneficiary
- Proof of termination of prior marriage (if applicable)
- Primary Documents: government issued, contemporaneous with event are most credible
 - if unavailable, "secondary" documents
- Translation of foreign language docs with certificate of translation

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Approvable I-130?

Jill, a USC, fell in love with Xavier, an undocumented drug dealer from Panama, now serving a 10-year sentence in federal prison in Michigan. If Jill and Xavier marry, can Jill file a visa petition for Xavier?

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What Does an I-130 Approval Get You?

Rosario comes to your office with the Notice of Approval from the I-130 her LPR father filed for her two years ago. She came to the U.S. on a B-1/B-2 visitor visa three years ago and never left. She wants to know:

- When does she get the card with her picture on it?
- Can she go visit her mother in Ecuador?
- Should she carry this notice around in case she gets stopped by an immigration officer?

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Villegas Family Exercise

1. Can Louisa petition for Jorge? If so, what is the category?
2. What does Louisa need to establish?
3. Is a visa currently available for the category? How do you know?
4. Can Louisa petition for Jorge's children, Nina and Jaime?
5. How many petitions does she need to file?
6. How many petitions can she file?
7. What is the relationship between Louisa and Jorge's children, Nina and Jaime?

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Next Steps for You

- **Reading:**
Excerpts from CLINIC Family Manual
8 CFR § 204.2
- **Quiz**
- **For Overachievers Only:**
Calculate CSPA age of derivative children
- **Question Corner:**
Post your questions

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E-Learning: Week 1

HAVE FUN!
SEE YOU NEXT WEEK!



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Questions?



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