

Introduction to Immigration Law Practice

Week Three



Today's Webinar

- Family-Based Immigration
- Review of Exercises
- U Status and VAWA

2



FAMILY-BASED IMMIGRATION: WHAT IS IT ABOUT?

- Family reunification



- USCs and LPRs can apply for certain relatives to get chance to gain lawful permanent residency

3



Overview of Family-Based Process

- Two-part process:
 - 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

4



WHO PETITIONS FOR WHOM?

• US Citizens

- Spouse
- Child
- Parent
- Adult unmarried son/daughter
- Adult married son/daughter
- Sibling

• LPRs

- Spouse
- Child
- Adult unmarried son/daughter



Family-Based Immigration Vocabulary

- LPR Luis Zapata comes to see you with his wife Maria Colon, who wants to become a permanent resident.
- Who starts process?
- Can Maria start process on her own?
- Who is the petitioner? Who is the beneficiary?

6



HOW LONG DOES IT TAKE?

• Immediate Relative

Spouse of USC
Child of USC
Parent of adult USC

• Preference Categories

- 1st: Adult unmarried son or daughter of USC
- 2A: Spouse of LPR
Unmarried child of LPR
- 2B: Adult unmarried son or daughter of LPR
- 3rd: Married adult son or daughter of USC
- 4th: Sibling of adult USC



Preference Categories: Wait for PRD

- 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 numbers 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

8



State Dept. Visa Bulletin: June 2014

	All	China	India	Mexico	Philippines
F1	22MAR07	22MAR07	22MAR07	15DEC93	01JUN02
F2A	01MAY12	01MAY12	01MAY12	15MAR11	01MAY12
F2B	01APR07	01APR07	01APR07	01AUG93	15JUL03
F3	01OCT03	01OCT03	01OCT03	22JUL93	08MAR93
F4	15DEC01	15DEC01	15DEC01	08DEC96	15NOV90

9



WHAT'S JULIO'S PLACE IN LINE?

- USC Marta filed relative petition for her married son Julio, a native of Costa Rica by sending it FedEx, next day delivery on March 28, 2010.
 - What is Julio's priority date?
 - Which category is he in?
 - Can Julio immigrate now?
 - How long will Julio have to wait before he applies for to a permanent resident?

10



Review of Visa Bulletin Exercise Is A Visa Available?

1. Leon was born in Scotland and is the beneficiary of a third preference petition filed on April 14, 2003.
2. Jamie was born in the India. He is the beneficiary of a fourth preference visa petition filed on April 1, 2002.
3. Sonia was born in China and is the beneficiary of a second preference visa petition filed by her husband on September 15, 2013
4. Trina was born in Mexico and is the beneficiary of a second preference (2B) petition filed by her father on December 1, 1998
5. Jesse was born in the Philippines and is the beneficiary of a first reference visa petition filed by his father on September 21, 2000.

11



WHO IS A "SPOUSE"?

- There are requirements for marriage to be valid for immigration purposes



- Not sham marriage
- Legality of marriage

12



WHO IS A "CHILD"?

- INA Section 101(b) defines "child" for immigration purposes
- Unmarried under 21
- Includes:
 - Step-children
 - Children born out of wedlock
 - Adopted children



What Happens When Life Happens to Your Clients ?

Such as:

- Beneficiary marries
- Petitioner and beneficiary divorce
- Petitioner naturalizes
- Beneficiary or petitioner dies
- Beneficiary turns 21

14



AUTOMATIC CONVERSION OF VISA CATEGORIES

- child of USC **marries** (IR→F-3)
- son/daughter of USC **marries** (F-1→F-3)
- child/son/daughter of USC **divorces** (F-3→IR, F-3 → F-1)
- petitioner **naturalizes**, child under 21 (F-2A→IR)
- petitioner **naturalizes**, child over 21(F-2B→F-1)
- No separate petition required
- Retain original priority date

15



“Life Goes On” in Action

- LPR Esmeralda files a petition for her husband. What category is that? What if Esmeralda naturalizes while the petition is pending? What happens if Esmeralda and her husband divorce?
- USC Louis files a petition for his 25-year-old daughter Gina. What category is that? What happens if Gina gets married? What happens if she later divorces?
- LPR Vanessa files a petition for her 25 year old unmarried son, Lino. What category is that? What happens if Lino marries? What if Vanessa naturalizes before Lino marries?

16



RIDING ALONG: DERIVATIVE BENEFICIARIES

- Unmarried children (under 21) of principal beneficiary
- AND/OR
- Spouse of principal beneficiary
 - No separate I-130 needed (or possible)



17



WHO CAN BE A DERIVATIVE?

- If LPR Carl files an I-130 for his wife or son, who can be a derivative beneficiary?
- If USC Maura files an I-130 for her husband or son, who can be a derivative beneficiary?

18



WHEN A CHILD TURNS 21

CHILD STATUS PROTECTION ACT (CSPA)

Core concepts:

- Turning 21 doesn't always mean you stop being a "child" under immigration law
- Once an immediate relative, always an immediate relative
- 2A and derivative children may also retain "child" status after turning 21

19



CSPA IN A NUTSHELL: IRs

- Child of USC remains immediate relative if under 21 when I-130 filed
 - Amy, a USC, petitions for her son Ben when he is age 20 and 9 months. Since I-130 filed before Ben is 21, he remains a "child" even if the petition is approved after he turns 21.
- Child of USC remains immediate relative if under 21 when parent naturalizes (2A => IR)
 - Marco, a LPR, petitions for his daughter Maria when she is 17 years old. Marco naturalizes when Maria is 20 years old. Maria remains a "child," even if she immigrates after age 21.

20



CSPA IN A NUTSHELL: 2As AND DERIVATIVES

- Child of LPR stays in 2A category if under 21, according to "adjusted age" on date visa becomes current in 2A
- Adjusted age = biological age minus time I-130 was pending with CIS
- One year to file for LPR status
- Same for derivative children who turn 21

21



FIGURING OUT “ADJUSTED AGE”

- 22-year-old Nina from Italy is beneficiary of petition filed by LPR mother 6 years ago. I-130 pending 18 months before approval. Priority date became current in 2A this month, when Nina turned 22.
- Nina’s “adjusted age” under CSPA is 20 years and 6 months (22 minus 18 months)
- She can retain 2A classification if she seeks visa w/in one year of PRD being current

22



CPSA AND DERIVATIVES – SAME FORMULA!

- Lynn filed a fourth preference petition for her sister eleven years ago, and it is just now current. Unfortunately, her sister’s child turned 21 three months ago. Is there any additional information you would want to know before advising them?

23



VAWA and U Status

- Survivors of domestic violence
- Victims of certain serious crimes

24



U STATUS: SUMMARY OF REQUIREMENTS

- Victim of **qualifying crime**
- Substantial physical or mental abuse resulting from crime
- Possess information about crime
- **Help in investigation and/or prosecution**
 - **Law enforcement certification required**
- Admissible

25



Qualifying Crimes

- | | |
|--|---|
| <ul style="list-style-type: none">• Rape• Torture• Trafficking• Incest• Domestic violence• Sexual Assault• Abusive Sexual Contact• FGM• Prostitution• Sexual Exploitation• Being Held Hostage• Peonage• Involuntary Servitude• Slave Trade• Kidnapping | <ul style="list-style-type: none">• Abduction• False Imprisonment]• Blackmail• Extortion• Manslaughter• Murder• Felonious Assault• Witness Tampering• Obstruction of Justice• Perjury• Stalking• Fraud in foreign labor contracting• Attempt, conspiracy, or Solicitation to commit any of the above mentioned crimes• Any similar activity in violation of federal, state or local criminal law |
|--|---|



Benefits of U Visa

- Nonimmigrant status in U.S. for up to 4 years, and may be extended
- Employment authorization
- Derivative benefits for spouse, child, sibling under age 18
- Possibility of adjusting status to LPR after 3 years of U status.

27



Violence Against Women Act: VAWA

- Offshoot of family-based immigration
- Options for family members abused by LPR/USC
- “Self-petitioning”
- Women, children, men

28



Spouse Self-Petitioning

- Abusive spouse is USC or LPR
- Relationship to abuser: marriage or “intended marriage”
- Marriage entered into in good faith
- Battery or extreme cruelty by USC or LPR spouse during marriage
- Good moral character
- Past or present residence with spouse

29



Child Self-Petitioning

- Applicant is “child”*** (unmarried and under 21)
of
- USC or LPR
 - USC or LPR parent battered child or subjected child to extreme cruelty
 - Good moral character (presumed if under 14)
 - Abused child of USC or LPR may self-petition up to age 25 if able to establish that abuse is “one central reason” for delay in filing
 - Past or present residence with abuser parent

30



SELF-PETITIONING IN ACTION

- Peggy, from Ireland, is the abused spouse of LPR Ken. Ken told Peggy he filed papers for her but she has never seen anything, and he threatens to stop the process and get her deported if she ever leaves him. As the abused spouse of an LPR, Peggy can file a petition on her own behalf, without Ken's participation or support. If Peggy's self-petition is approved, she will be able to legally work and remain in the U.S. while she waits to be eligible to file for permanent residence.

31



VAWA vs. U Visa

VAWA:

- No cert needed; no law enforcement contact needed
- Limited to DV offense
- Abuse by USC or LPR spouse, parent, adult son, daughter
- Inadmissibility may prevent adjustment

U Status:

- Ineligible w/o law enforcement cert
- Covers many offenses
- Relationship to/ Status of perpetrator irrelevant
- Derivatives includes parents, sibs, spouses, children
- Most inadmissibility grounds may be waived

32



What's Up For Week Four

- Topic: Overview of Becoming an LPR
 - Adjust of Status
 - Consular Processing
- Reading
- Quiz
- Exercise

33



Questions?



twitter.com/cliniclegal

8757 Georgia Avenue
Suite 850
Silver Spring, MD 20910
(301) 565-4824
national@cliniclegal.org



facebook.com/cliniclegal


