

FREE CONSULTATION


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Disclaimer

- Unauthorized Practice of Law
 - Issue Spotting
 - Every topic we discuss will be a generalization. There are ALWAYS exceptions.
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Overview of Immigration System

“Preference” System

	Short Term (Non-Immigrant)	Long Term (Permanent Residency)
Family-Based	Fiancé	Family-Based Preference System
Employment- Based	H, L, O, P, TN, etc.	Employment-Based Preference System

Outliers

	Short Term	Long Term
Humanitarian	TPS, Parole, etc.	Asylum, Refugee
Public Interest	B, F, J,	Diversity

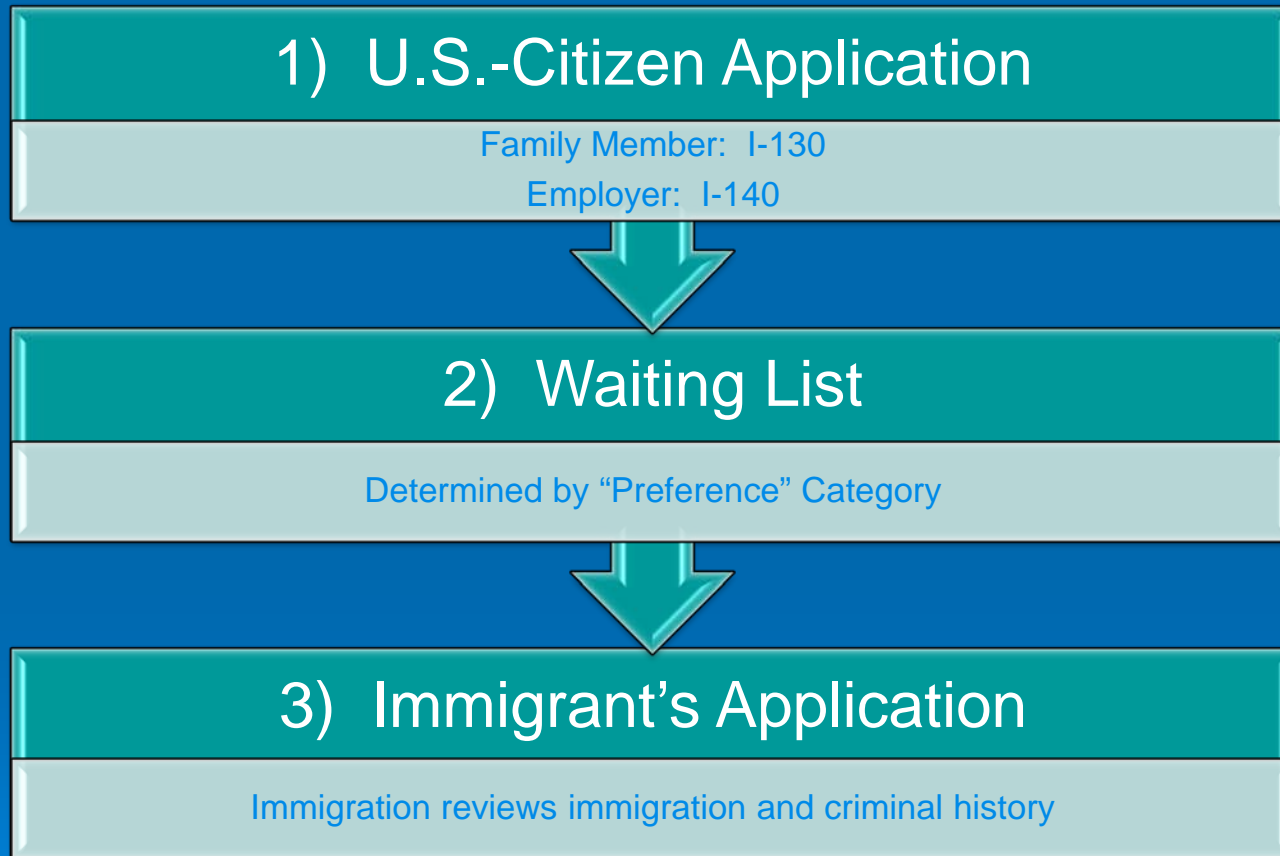
Family-Based “Preferences”

- US-Citizen can petition for:
 - Spouse
 - Child (under 21 years old)
 - Parent
 - Son / Daughter (over 21 years old)
 - Sibling
- Permanent Resident can petition for:
 - Spouse
 - Child (under 21 years old)
 - Unmarried Son / Daughter (over 21 years old)

Employment-Based “Preferences”

- Priority Workers (EB-1)
 - Extraordinary Ability
 - Outstanding Professor / Researcher
 - Multi-National Executive / Manager
- Members of the Professions (EB-2)
 - Advanced Degree (MA)
 - Special Handling
 - Exceptional Ability
 - National Interest Waiver
- Skilled Workers (EB-3)
 - Professionals (BA)
 - Skilled Worker (2 yrs exp)
 - Other Workers
- Special Immigrant (EB-4) : Special Immigrant Juvenile / Religious Workers
- Employment Creation (EB-5)

“Preference” Process



“Routes”

Outside the US:

- Consular Processing
- Department of State

Inside the US:

- Change of Status: →
Another Non-Immigrant
status
- Adjustment of Status: →
Residency status
- US Citizenship &
Immigration Services
(USCIS)

Admissability

- Checked any time that a non-citizen applies for a new status
- § 212
 - Immigration History
 - Out of Status
 - Unlawful Presence
 - Prior stati (e.g. 212(e))
 - Criminal History
- “Route” determines whose interpretation applies (DOS v. USCIS)

Status Violation

What does Immigration do when international students / scholars violate their status?

- Out of Status
- Unlawful Presence
- Terms of Art

Out of Status

- During the Time I-94 is valid
- Failure to fulfill all requirements of status
 - Course-load requirements
 - Work restrictions
- Consequences
 - Ineligible to Change or Adjust status
(Must Consular Process)
 - Any visa previously issued is “automatically” cancelled
 - Removable (“Deportable”)

Unlawful Presence

- After the I-94 expires (gross generalization)
- Failure to leave the U.S. at the end of legal stay
 - Date-certain I-94 (e.g. H-1b, B-1)
 - End-date of I-94
 - Duration of Status “D/S” (e.g. F, J)
 - USCIS determines a person’s stay is no longer authorized
(e.g. date of denial of Change of Status application)
 - Immigration Judge determines a person’s stay is no longer authorized

Unlawful Presence

➤ Consequences

- 0-179 days: Same as Out of Status
- 180 days to 1 year (-1 day): 3-year bar:
Cannot legally return to the US (on ANY visa type) for 3 years
- 1 year + : 10-year bar:
Cannot legally return to the US (on ANY visa type) for 3 years
- 1 year + Re-Entering the US without legal status : Permanent Bar
Cannot EVER legally return to the US (on ANY visa type)

Criminal Record

How does marriage to a U.S. citizen affect international students'/scholars' status?

- When will Immigration “notice”
- “One Big Hot Mess”
- The Process

Criminal Convictions

When Triggered

- Change / Adjust Status
- Visa application
- Enter the US
- ICE decides to arrest
- Removable (“deportable”)

Who Determines

- USCIS
- DOS
- CBP
- ICE
- EOIR

One Big Hot Mess

➤ Types of legal authority

- Immigration Agency (depending on type of application filed)
- Administrative Court (depending on type of application filed)
- State Court (depending on type of crime committed)
- Circuit Court (depending on where live in US)
- Person processing the Case



INA

Criminal

Waiver

One Big Hot Mess

➤ Types of Crimes

- Crime Involving Moral Turpitude
- Aggravated Felony
- Combinations of convictions

➤ Level of Punishment



Criminal Process

➤ Getting Noticed by ICE

- Low Hanging Fruit / Resource Allocation

1) Criminal Case

- Arrested
- Arraigned: enter plea
- Bond / detention determination
- Trial / Plea agreement
- Sentencing
- Serve sentence

2) Immigration Case

Immigration Case

- Arrested (by ICE)
- Arraigned: enter plea
- Bond / detention determination
- Trial / Plea agreement
- Serve Sentence (“deportation”)

Marriage to U.S. Citizen

How does marriage to a U.S. citizen affect international students'/scholars' status?

➤ Immigrant Intent

- Dual intent: H & L (arguably O, E, & K)
No impact
- Non-Immigrant Intent Required: All others
(e.g. F, J)

Immigrant Intent

➤ Consequences

- Travelling Outside the U.S.: Inadvisable
 - Non-Immigrant visa: Potential Denial
 - Most likely told to file spouse petition and wait for spouse visa (8-12 months)
 - Entry at Port of Entry: Potential Denial
 - Most likely told to file spouse petition and wait for spouse visa (8-12 months)
- Change of Status in U.S.: Potential Denial
- Arrest by ICE: Highly Unlikely
(Low Hanging Fruit)

Eligibility for Residency

- Once legally married
 - May be eligible to Adjust Status in U.S.
- Continuity of Studies
 - Eligible to study while Adjustment application pending
 - Not required to take full course-load while Adjustment application pending

Eligibility for Residency

➤ Continuity of Work Authorization

- H-1B: As long as maintain H-1B approved employment, no gap in work eligibility
- Other Stati: May be a gap (of approximately 3 months) in work eligibility

When to Refer

If students / scholars do need an immigration attorney, what should they look for?

➤ Student / Scholar

- Personal immigration status issues
- ?s about filing for permanent residency
- ? about overstays, unauthorized employment
- ?s about consulting and/or accepting payments from non-school sources

When to Refer

➤ Institution

- DOL requirements for Special Handling
- Labor certifications for professional positions
- Unclear laws and regulations (e.g. H-1B extensions beyond the 6th year)
- Untimely filed petitions
- Requests from evidence
- DOL audits

Attorney??

- AILA Membership
- Bar Membership (and bar history)
- % of Practice
- Word of Mouth
- Referral Sources
 - AILA Referral engine
 - Bar Referral engine

Consultation

- Possible solutions
- Basic outline of process
- Fees
- Terms of contract



Maximizing Your Relationships

How can an international office maximize its relationship with immigration attorneys?

- Presentations
- Collegial collaboration
- Prices for students / scholars

