How the United States Immigration System Works

U.S. immigration law is very complex, and there is much confusion as to how it works. The Immigration and Naturalization Act (INA), the body of law governing current immigration policy, provides for an annual worldwide limit of 675,000 permanent immigrants, with certain exceptions for close family members. Congress and the President determine a separate number for refugee admissions. Immigration to the United States is based upon the following principles: the reunification of families, admitting immigrants with skills that are valuable to the U.S. economy, protecting refugees, and promoting diversity. This fact sheet provides basic information about how the U.S. legal immigration system is designed.

I. Family-Based Immigration

Family unification is an important principle governing immigration policy. The family-based immigration category allows U.S. citizens and lawful permanent residents (LPRs) to bring certain family members to the United States. There are 480,000 family-based visas available every year. Family-based immigrants are admitted to the U.S. either as *immediate relatives* of U.S. citizens or through the *family preference system*.

There is no numerical limit on visas available for immediate relatives, but petitioners must meet certain age and financial requirements. Immediate relatives are:

- spouses of U.S. citizens.
- unmarried minor children of U.S. citizens (under 21 years old).
- parents of U.S. citizens (petitioner must be at least

21 years old to petition for a parent).

There are a limited number of visas available every year under the family preference system, and petitioners must meet certain age and financial requirements. The preference system includes:

- adult children (married and unmarried) and brothers and sisters of U.S. citizens (petitioner must be at least 21 years old to petition for a sibling).
- spouses and unmarried children (minor and adult) of LPRs.

In order to balance the overall number of immigrants arriving based on family relationships, Congress established a complicated system for calculating the available number of family preference visas for any given year. The number of family preference visas is determined by subtracting from 480,000 the number of immediate relative visas issued during the previous year and the number of aliens "paroled" into the U.S. during the previous year. Any unused employment preference immigrant numbers from the preceding year are then added to this sum to establish the number of visas that remain for allocation through the preference system. By law, however, the number of family-based visas allocated through the preference system may not be lower than 226,000 Consequently, the total number of family-based visas often exceeds 480,000.

Below is a table summarizing the family-based immigration system:

Family-Based Immigration System			
Category	**U.S. Sponsor**	**Relationship**	**Numerical Limit**

Immediate Relatives (IRs)	U.S. Citizen adults	Spouses, unmarried minor children, and parents	Unlimited
Preference allocation			
1	U.S. citizen	Unmarried adult children	23,400*
2A	LPR	Spouses and minor children	87,900
2B	LPR	Unmarried adult children	26,300
3	U.S. citizen	Married adult children	23,400**
4	U.S. citizen	Brothers and Sisters	65,000***
* Plus any unused visas from the 4th preference.** Plus any unused visas from 1st and 2nd preference.***Plus any unused visas from the all other family-based preferences.			
Worldwide level of family preference allocation: 480,000 minus visas issued to IRs and parolees, plus unused employment-visas from previous fiscal year. Floor for preference categories: 226,000.			

In order to be admitted through the family preference system, a U.S. citizen or LPR sponsor must petition for an individual relative (and establish the legitimacy of the relationship), meet minimum income requirements, and sign an affidavit of support stating that they will be financially responsible for

their family member(s) upon arrival in the United States.

II. Employment-Based Immigration

Temporary Visas

The United States provides various ways for immigrants with valuable skills to come to the United States on either a permanent or a temporary basis. There are more than 20 types of visas for temporary nonimmigrant workers. These include L visas for intracompany transfers, P visas for athletes, entertainers and skilled performers, R visas for religious workers, A visas for diplomatic employees, O visas for workers of extraordinary ability, and a variety of H visas for both highly-skilled and lesser-skilled employment. Many of the temporary worker categories are for highly skilled workers, and immigrants with a temporary work visa are normally sponsored by a specific employer for a specific job offer. Many of the temporary visa categories have numerical limitations as well. The U.S. Citizenship and Immigration Services (USCIS) website contains a more complete list of temporary worker categories.

Permanent Immigration

Permanent employment-based immigration is set at a rate of 140,000 visas per year, and these are divided into 5 preferences, each subject to numerical limitations. Below is a table summarizing the employment-based preference system:

Permanent Employment-Based Preference System		
Preference Category	**Eligibility**	**Yearly Numerical Limit**

1	“Persons of extraordinary ability” in the arts, science, education, business, or athletics; outstanding professors and researchers, some multinational executives.	40,000*
2	Members of the professions holding advanced degrees, or persons of exceptional abilities in the arts, science, or business.	40,000**
3	Skilled workers with at least two years of training or experience, professionals with college degrees, or “other” workers for unskilled labor that is not temporary or seasonal.	40,000***“Other” unskilled laborers restricted to 5,000

4	Certain “special immigrants” including religious workers, employees of U.S. foreign service posts, former U.S. government employees and other classes of aliens.	10,000
5	Persons who will invest $500,000 to $1 million in a job-creating enterprise that employs at least 10 full time U.S. workers.	10,000
*Plus any unused visas from the 4th and 5th preferences.**Plus any unused visas from the 1st preference.***Plus any unused visas the 1st and 2nd preference.		
Worldwide level of employment-based immigrants: 140,000 for principal applicants and their dependents.		

Per-Country Ceilings

In addition to the numerical limits placed upon the various immigration preferences, the INA also places a limit on how many immigrants can come to the United States from any one country. Currently, no group of permanent immigrants (family-based and employment-based) from a single country can exceed 7% of the total amount of people immigrating to the United States in a single year. This is not a quota that is set aside

to ensure that certain nationalities make up 7% of immigrants, but rather a limit that is set to prevent any immigrant group from dominating immigration patterns to the United States.

III. Refugees and Asylees

Protection of Refugees, Asylees, and other Vulnerable Populations

There are several categories of legal admission available to people who are fleeing persecution or are unable to return to their homeland due to life-threatening or extraordinary conditions.

Refugees are admitted to the United States based upon an inability to return to their home countries because of a "well-founded fear of persecution" due to their race, membership in a social group, political opinion, religion, or national origin. Refugees apply for admission from outside of the United States, generally from a "transition country" that is outside their home country. The admission of refugees turns on numerous factors such as the degree of risk they face, membership in a group that is of special concern to the United States (designated yearly by the President of the United States and Congress), and whether or not they have family members in the U.S.

Each year the President, in consultation with Congress, determines the numerical ceiling for refugee admissions. The total limit is broken down into limits for each region of the world as well. After September 11, 2011, the number of refugees admitted into the United States fell drastically, but annual admissions have steadily increased as more sophisticated means of conducting security checks have been put into place.

For Fiscal Year (FY) 2013, the President set the worldwide refugee ceiling at 70,000, and the regional allocation was as follows:

Africa	12,000
East Asia	17,000
Europe and Central Asia	2,000
Latin America/Caribbean	5,000
Near East/South Asia	31,000
Unallocated Reserve	3,000
TOTAL	**70,000**

1. Persons already in the United States who were persecuted or fear persecution upon their return may apply for asylum within the United States or at a port of entry at the time they seek admission. They must petition within one year of arriving in the U.S. There is no limit on the number of individuals who may be granted asylum in a given year nor are there specific categories for determining who may seek asylum.

Refugees and asylees are eligible to become LPRs one year after admission to the United States as a refugee or one year after receiving asylum.

IV. The Diversity Visa Program

The Diversity Visa lottery was created by the Immigration Act of 1990 as a dedicated channel for immigrants from countries with low rates of immigration to the United States. Each year 55,000 visas are allocated randomly to nationals from countries that have sent less than 50,000 immigrants to the United States in the previous 5 years. Of the 55,000, up to 5,000 are made available for use under the NACARA program. This results in a reduction of the actual annual limit to 50,000.

Although originally intended to favor immigration from Ireland (during the first three years of the program at least 40 percent of the visas were exclusively allocated to Irish immigrants), the Diversity Visa program has become one of the only avenues for individuals from certain regions in the world to secure a green card.

To be eligible for a diversity visa an immigrant must have a high-school education (or its equivalent) or have, within the past five years, a minimum of two years working in a profession requiring at least two years of training or experience. A computer-generated random lottery drawing chooses selectees for diversity visas. The visas are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the U.S. over the last five years.

People from eligible countries in different continents may register for the lottery. However, because these visas are distributed on a regional basis, the program especially benefits Africans and Eastern Europeans. According to the last Visa Bulletin in FY 2014, the majority of Diversity Visas will go to aspiring immigrants from African countries. While supporters of the Diversity Visa system underscore the system's value as the only equal opportunity provider, opponents tend to emphasize the irrationality of a system that allocates immigrant visas randomly.

V. Other Forms of Humanitarian Relief

Temporary Protected Status (TPS) is granted to people who are in the United States but cannot return to their home country because of "natural disaster," "extraordinary temporary conditions," or "ongoing armed conflict." TPS is granted to a country for six, 12, or 18 months and can be extended beyond that if unsafe conditions in the country persist.

Deferred Enforced Departure (DED) provides protection from deportation for individuals whose home countries are unstable, therefore making return dangerous. Unlike TPS, which is authorized by statute, DED is at the discretion of the executive branch.

Certain individuals may be allowed to enter the U.S. through **parole**, even though he or she may not meet the definition of a refugee and may not be eligible to immigrate through other channels. Parolees may be admitted temporarily for urgent humanitarian reasons or significant public benefit.

VI. U.S. Citizenship

In order to qualify for U.S. citizenship through naturalization, an individual must have had LPR status (a green card) for at least 5 years (or 3 years if he or she obtained the green card through a U.S.-citizen spouse or through the Violence Against Women Act, VAWA). There are other exceptions for members of the U.S. military who serve in a time of war or declared hostilities. Applicants for U.S. citizenship must be at least 18 years old, demonstrate continuous residency, demonstrate "good moral character," pass English and U.S. history and civics exams, and pay an application fee, among other requirements.

Consular Processing

Similar to filing for adjustment of status, consular processing is another way to become a legal permanent resident of the US. It is the final step before a green card is issued and can be used in both employment-based and family-based immigration processes. Consular processing requires an in-

person interview at a US consulate overseas. An immigration petition (e.g. I-140) must have been approved, and a visa number must be available, before consular processing can take place.

Who Should Use Consular Processing?

- Foreign nationals who are outside the United States
- Foreign nationals who are already in the US but choose consular processing over adjustment of status

Consular Processing vs. Adjustment of Status

Whether one should choose consular processing (CP) or adjustment of status (AOS) depends on the case specifics. There are benefits and drawbacks of either approach:

- Consular processing potentially can be “faster” than adjustment of status. However, for a given case, it really can go either way. Since retrogression and security checks account for the majority of waiting time nowadays, the difference between CP and AOS is even less obvious: both processes have to go through the bottlenecks and as a result, both are slow.
- Consular processing must take place at a US consulate located at the applicant’s country of birth or last foreign residence. AOS, on the other hand, allows a person to remain in the US while the application is being processed.
- Consular processing doesn’t come with the benefit of EAD and AP, which are much needed by many AOS applicants and their derivative beneficiaries.
- Consular processing doesn’t allow 245i, a must-have for persons who have been out of status or otherwise are subject to reentry bar.

- Consular processing may incur higher costs due to travel and time needed for medical exam and immigration interview in another country.
- Consular processing is rarely denied but if it is, you are essentially out of options. A decision to reject your visa application cannot be appealed, and only under limited conditions may be reviewed by a higher ranked visa officer. On the other hand, if your i-485 is denied you may file for motion to reopen, appeal the decision, and in many case maintain your non-immigrant status such as H1B.

Most people, if eligible for both, choose to go with AOS for its many benefits. But you may find consular processing fit your particular situation better.

Can I Switch Between Consular Processing and Adjustment of Status?

Yes. If you initially selected AOS on your immigration petition, you can file form I-824 to switch to CP. If you specified CP, you may file i-485 to start adjustment of status, and notify the consulate and the National Visa Center of your decision to switch. You don’t need form I-824 to switch from consular processing to adjustment of status.

What is the Procedure for Consular Processing?

1. When your employer or family member **submits an immigrant petition** (Form I-140 or I-130) on your behalf, they need to fill out Section 4, Processing Information, to indicate that you will be applying for an immigrant visa at an American Embassy or Consulate.

2. After approving the immigrant petition, the USCIS sends an approval notice along with the petition to the **National Visa Center (NVC)**, located in Portsmouth, New Hampshire.

3. The NVC uses an internal system to "estimate" when a visa number might be available to you, which is adjusted every month based on the visa bulletin. When your turns comes, the NVC will mail you a bill first, upon receipt of the fees, an instruction packet that also includes necessary forms.

4. You and your family members should complete the forms and return them along with all supporting documents to NVC.

5. The NVC will assign a case number to your application, scan your documents into a database, and store your case in a "waiting list" based on your priority date, country of birth, and other information. By now, everything should be ready and can proceed immediately once your priority date becomes current.

6. When **an immigrant visa number becomes available**, NVC will request allocation of visa numbers for you and forward your application to the American Embassy or Consulate designated on Form I-140 or I-130.

7. The consulate will **review your application** and either revoke it if errors are found, or schedule an interview appointment for you and any family members.

8. Before attending the interview, you must undergo a **medical examination**. Instructions on how to obtain a medical exam and details about qualified physicians (DOS approved) are included in the appointment notice.

9. You and your dependents must **attend the interview**, bringing passports and any original documents required by the consulate. A consular officer may ask questions about your employment history, your prior visits to the US, your H1 or F1 details, your finances (especially income from US source),

etc., during the interview.

10. If all goes well, your consular processing case will be approved and you will be **issued an immigrant visa**. You may enter the US and become a permanent resident any time during your visa's validity period, typically six months from the date of issuance.

11. When entering the U.S., hand the unopened "Visa Packet," which was given to you when your immigrant visa was approved, to the CBP officer at the port of entry. After admission, you should expect to **receive your green card in the mail** within 30 days. If not, you should contact USCIS customer service or make an infopass appointment to check the status of your green card.

U.S. Immigration Forms

Frequently Used USCIS Forms

All USCIS forms (formerly INS forms) are FREE of charge on the official USCIS.gov website (linked from the table below). If you visit any website and are asked to pay a fee for downloading or using an immigration form, be very careful! Also forms obtained from non-official web sites may be outdated, and using such old forms may result in your application or petition being delayed or even denied.

My advice: Always download immigration forms directly from official U.S. government websites (sites ending with the ".gov" suffix).

Form Number	Form Title
AR-11	Change of Address
G-28	Notice of Entry of Appearance as Attorney or Representative
G-325	Biographic Information
G-325A	Biographic Information
G-639	Freedom of Information Act/Privacy Act Request
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document
I-129	Petition for a Nonimmigrant Worker
I-129F	Petition for Alien Fiance (Fiancee)
I-130	Petition for Alien Relative
I-131	Application for Travel Document
I-134	Affidavit of Support
I-140	Immigrant Petition for Alien Worker
I-290B	Notice of Appeal or Motion
I-485	Application To Register Permanent Residence or Adjust Status
I-485 Supp. A	Supplement A to Form I-485
I-526	Immigrant Petition by Alien Entrepreneur
I-539	Application To Extend/Change Nonimmigrant Status
I-693	Medical Examination of Aliens Seeking Adjustment of Status

I-694	Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603)
I-730	Refugee/Asylee Relative Petition
I-751	Petition to Remove the Conditions of Residence
I-765	Application for Employment Authorization
I-864	Affidavit of Support Under Section 213A of the Act
I-9	Employment Eligibility Verification
I-90	Application to Replace Permanent Residence Card
I-907	Request for Premium Processing Service
I-914	Application for T Nonimmigrant Status
N-400	Application for Naturalization
N-470	Application to Preserve Residence for Naturalization Purposes
N-600	Application for Certificate of Citizenship

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

I-485 Adjustment of Status

Form I-485, Application to Register Permanent Residence or Adjust Status, is used by a person in the United States to adjust his or her nonimmigrant status to that of a permanent resident. It is the final step of a long journey to green card.

How Long Does It Take to Receive Approval for My I-485 Application?

It varies dramatically from case to case, and from center to center. It also depends on your petition category (EB2 vs. EB3, for example). The bottleneck in I-485 processing used to be background checks, especially FBI name check. It was impossible to predict how long the background investigation would last. In some cases, it could take several years. However, the situation has improved since mid-2008. USCIS claims that as of March 2009, all FBI name check cases pending more than six months have been cleared. In fact, the FBI is completing over 99% name check requests within 30 days.

Along with the good news on background checks, however, visa retrogression has significantly worsened. You must have an

immigrant visa number available to you before your I-485 can be approved, which means your priority date (PD) has to be earlier than the cut-off dates established in the visa bulletin for your immigration category. If you have cleared all security checks, and your PD is current, and your I-485 received date (RD) is within USCIS processing window, you can probably expect an approval from a few months to one year.

How Do I Check the Status of My I-485 Adjustment of Status Application?

- I-485 Tracker: Know your position in the green card line
- Check USCIS case status online, by phone/email, or in person
- Contact USCIS and other U.S. government agencies

What Documents Do I Need to Submit in My I-485 Application Package?

Please refer to the Employment-Based **I-485 Documents Checklist** further down in this article.

Who May File I-485:

- A person with an underlying immigrant petition (I-130, I-140), or will file along with an immigrant petition concurrently, and a visa number is available (this group include most family-based and employment-based applicants);
- A spouse or child (derivative) of a principal applicant who files I-485;
- A K-1 fiance(e) of a US citizen or a K-2 dependent (I-130 not required);
- A K-3 spouse of a US citizen or a K-4 dependent (I-130

required);
- A foreign investor with an underlying Form I-526;
- A person with an underlying Form I-360 (pending, approved, or concurrently filed, depending on categories);
- A person in asylum or refugee status;
- A Cuban native or citizen;
- A person qualified for “Registry” provision (living in US since before 1/1/1972);

Who is Not Eligible for Adjustment of Status:

(Except for Categories with Special Rules Such As 245(i), Asylum, etc.)

- A person not admitted or paroled following inspection by an immigration officer;
- A person’s authorized stay expired before filing i-485;
- A person with unauthorized employment;
- A nonimmigrant who failed to maintain status (exceptions apply);
- A crewman or a person entered in transit without a visa;
- A J-1 visitor without a foreign residence waiver;
- A K-1 fiance(e) who didn’t marry the US citizen petitioner;
- A visitor under the Visa Waiver Program, unless applied as an immediate relative of an US citizen;

Also see an important Memo from Donald Neufeld on 245(k). Exemptions to the 245(c)(2), (c)(7) and (c)(8) Bars to Adjustment for Certain Employment-Based Adjustment of Status Applicants.

Download (PDF, Unknown)

What is a LUD?

A LUD stands for Last Updated Date, referring to the last date USCIS took an action on your case. You may find LUD's for your I-485, or any other case you filed with the USCIS and have received a receipt number, using the online case status checking system. LUD is not an official term, but is frequently used by internet users.

What does My USCIS Case Number Mean?

USCIS assigns a 13-character case number (receipt number) to each application, for example: SRC 06 012 54321. A case number is structured like this: AAA-XX-YYY-Z-MMMM:

AAA:	The service center or office that received your case.
	SRC – Texas Service Center (TSC, formerly Southern Regional Center) **LIN** – Nebraska Service Center (NSC, Lincoln, NE) **WAC** – California Service Center (CSC, formerly Western Adjudication Center) **EAC** – Vermont Service Center (VSC, formerly Eastern Adjudication Center) **MSC** – Missouri Service Center (MSC, transitioned to NBC) **NBC** – National Benefits Center (NBC, for N-400, I-90 and other cases)

XX:	The fiscal year of USCIS, from October 1 to September 30. Cases filed from 10/01/2006 to 09/30/2007 will have xx = 07
YYY:	The working day of the fiscal year when your case is received. 10/01 = 001
Z:	This digit is part of a serial number but may have certain meanings for USCIS internal use.
MMMM:	A serial number assigned to your case based on the number of cases received, starting from 0001

Is an Interview Required?

Employment-based I-485 cases are often adjudicated without interviews. But if your case is complicated such as involving prior arrests, you may be asked to go through an interview before your I-485 can be approved. USCIS will forward your case to a local office under such conditions. Marriage-based applicants are usually required to attend USCIS interviews.

What is a RFE?

RFE stands for Request For Evidence. USCIS will send you a RFE when they need more information from you, such as missing or incomplete documents in your application. It doesn’t mean your case will be denied or approved soon, although after long delays in security checks, a RFE may be a good sign that your case is moving again.

It is very important to respond to a RFE before the deadline. On June 18, 2007, new Flexible Response Times for RFE and NOID (Notice of Intent to Deny) took effect and they are now considerably shorter than the standard 3-month timeframe. So it is more important than ever to respond to a RFE/NOID before

the deadline.

RFE and NOID Flexible Response Times

Circumstance	Standard Timeframe (calendar days)
To submit initial evidence that the form requires the applicant or petitioner to file	30
To submit evidence that Form I-539 (extension of stay or change in status) requires	30
To submit evidence available in the United States regardless of form type	42
To submit evidence available from overseas sources regardless of form type	84

Should I Apply for EAD and AP while Filing I-485?

EAD and AP are not necessary for certain applicants, but for many people, it is highly recommended that they apply for EAD and AP at the same time they file I-485.

Should I Maintain my Nonimmigrant Status after Filing I-485?

It depends on what nonimmigrant status you are in. Generally speaking, you are under lawful “adjustment of status (AOS)” once you’ve filed I-485. If you also obtained EAD and AP, you will be able to work and travel without the need for a visa.

But if you are in a visa status that allows “dual intent,” such as H-1B and L1, it makes sense to keep your nonimmigrant status while your AOS is pending. This way if your AOS application is denied, you don’t risk falling out of status right away and will have more time to seek solutions. However, renewing H-1B or other non-immigrant status can be expensive and time consuming, so many employers or applicants themselves are unwilling to do so once I-485 has been filed.

What is “Authorized Stay?”

Certain people with accrued unlawful presence in the United States may still be eligible to apply for Adjustment of Status (under 245(i), for example). Such applicants, with properly filed and pending I-485, are considered “present in the US under a period of stay authorized by the attorney general.” There are other cases, such as change of nonimmigrant status and refugee/asylee applications, where an applicant may be considered in such “authorized stay” status by the DHS. Note that “authorized stay” does not mean the alien is in “lawful status,” but during “authorized stay” an alien would not accrue “unlawful presence.”

Does a Speeding Ticket Need to be Reported during I-485 Application?

No, if it is just a traffic violation and the only penalty is a fine of less than $500 and/or points on your driver’s license. A parking ticket doesn’t need to be reported either. However, if the violation was drug or alcohol related (DUI), or otherwise an arrest was made during the incident, you must report it on your I-485 application.

Properly declaring and documenting any criminal history is critical for an I-485 application. If you were ever arrested or detained by any law enforcement officer for any reason, be

prepared to provide supporting documents during the immigration process even if no charges were ever filed against you, you were never convicted or your arrest/conviction was vacated, sealed, or otherwise legally removed from your record. For this reason it is best to consult a qualified immigration professional to make sure you are handling your application properly.

Am I Allowed to Change Jobs with a Pending I-485?

Yes. If your adjustment of status case has been pending more than 180 days, and you have an approved I-140, you are permitted to change employers under AC-21.

How Long Does It Take to Receive Green Card After I-485 Approval?

The USCIS has been very quick nowadays to produce and mail out green cards once they approve the applications. Many people reported receiving their cards within one to two weeks, after “Card Production Ordered” confirmation. So in most cases it is no longer necessary to have your passport stamped as evidence that you have become a permanent resident.

Do I Still Need H1B, EAD, or AP After I485 Approval?

No. Your green card authorizes you to permanently live and work in the United States. You may also use your green card to return to the US after trips that last less than one year. If you plan to reside outside the US for one year or more, you need to apply for an reentry permit before your departure.

Do I Need a New Social Security Card After I-485 Approval?

You can apply for a **Corrected Social Security Card** that will remove the restriction on work authorization. Your SSN number remains the same.

Can I Get a Green Card without Filing I-485?

Yes, you may go through Consular Processing which requires a trip to a US embassy or consulate abroad. This is also the typical route for people who are outside the United States but wish to apply for green card from a foreign country. If successful, you will receive an immigrant visa and enter the U.S. as a permanent resident.

Checklist of forms and supporting documents for I-485

- Form I-485 (type or print in black ink, answer all questions, use N/A or “none” when necessary, and don’t forget to sign it!);
- Form I-485A, Supplement A, if filed under 245(i);
- Fee payment checks;
- Form G-325A, Biographic Information Sheet, for applicants between 14 and 79 years of age;
- Approval notice for I-140, Immigrant Petition for Alien Worker;
- Form I-693, Medical Examination, signed and sealed by a designated physician;
- Form G-28, if you have an attorney representing your

case;

- Form I-765, Application for Employment Authorization (EAD), optional but recommended;
- Form I-131, Application for Travel Document (Advance Parole – AP), optional but recommended;
- Form I-864, Affidavit of Support, if applicable;
- Passport photos, 2″x2″ full face color frontal view on a white or off-white background (although USCIS now uses your photos taken during fingerprint appointment);
- Birth certificate, or other records of your birth (for example, notarized birth documents for Chinese nationals);
- Passport pages with non-immigrant visas (some immigration lawyers ask for copies of all pages, just to be safe);
- Arrest and criminal history. Even if no charges were filed, or all charges were dismissed, or any conviction was vacated, sealed, expunged or otherwise removed from your record, they still need to be reported and accompanied with certified documents and court orders. Consult an immigration attorney if you are not sure whether a particular incident was considered an arrest;
- Form I-134, Affidavit of Support, if you file as a derivative, (this is different from I-864);
- Employment verification letter from sponsoring employer, on a company letterhead, stating your salary, position and the job is still available;
- Tax returns for the previous two years;
- W-2 forms for the previous two years;
- Recent pay stubs;
- Degree certificates;
- All previous EAD’s including student practical training;
- All I-94 cards used to enter the US;
- All I-20 and I-797 forms, required by some law firms;

If I-485 is filed concurrently with I-140, add:

- Form I-140 or receipt of a pending I-140;
- A labor certification or request for a national interest waiver;
- Supporting cover letter from employer;
- Employment verification letters from previous jobs;
- Other evidence that you meet LC requirements;
- Evidence that the employer has the ability to pay the wage.

Note 1: This is not an exclusive list, rather it is for references only. Each case is unique, and each law firm may have different requirements.

Note 2: Unless specifically stated that original documents are required, legible photocopies should be used for all supporting documents.

Note 3: Any document containing foreign language shall be accompanied by a full English language translation which the translator has certified as complete and accurate. The translator must also certify he or she is competent to translate from the foreign language into English.

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

California top court says red light camera photos are evidence

Red light machines are not human, and therefore their images can't be hearsay.

The California Supreme Court upheld the admissibility of images taken from red light cameras as evidence of traffic violations in the Golden State.

The unanimous decision in the case, known as *The People of California v. Goldsmith*, marks the end of a five-year-old legal odyssey. Fines issued as the result of a red light camera in California are by far the highest nationwide ($436 in this case)—typically they're in the $100 range in the rest of the country.

The decision (PDF) comes amid a flurry of challenges to the red light cameras before other state high courts: the Louisiana Supreme Court recently declined to hear such a case, letting stand a lower court ruling that challenged cameras in New Orleans. The Illinois Supreme Court heard oral arguments against such cameras in Chicago in May 2014. A decision in a similar case currently before the Ohio Supreme Court is expected before the end of the year.

What's more, some 26 states have already banned the cameras outright or do not have them at all, including Maine, Kentucky, Arkansas, Massachusetts, and many Midwestern states.

The California case involved a woman named Carmen Goldsmith, who was driving a BMW through Inglewood, a Los Angeles suburb, when she ran a red light. She instantly became one of countless people nationwide ticketed by a red light camera. The California woman challenged her citation in a trial court, where she was found guilty and fined $436. She appealed and lost, and then appealed to the state's highest court.

She based her argument in part on the fact that courts had previously overturned two other red light camera cases in Southern California. In those, appellate courts agreed that a testifying officer had no personal knowledge of how the automated data was collected or whether the camera was working properly at the time. So the evidence of traffic violations was thrown out.

In its 23-page decision, California's top court countered Goldsmith's primary argument that the images produced by the automated traffic enforcement system (ATES) were not admissible.

> *Here the ATES evidence was offered to show what occurred at a particular intersection in Inglewood on a particular date and time when the traffic signal at the intersection was in its red phase. The ATES evidence was offered as substantive proof of defendant's violation, not as demonstrative evidence supporting the testimony of a percipient witness to her alleged violation. We have long approved the substantive use of photographs as essentially a "silent witness" to the content of the photographs.*

Goldsmith's attorneys argued that the evidence against her was hearsay, specifically calling out Redflex, a large red light camera contractor that operates the Inglewood cameras, among

others across California.

The question of hearsay is an important one: American law does not recognize secondary witnesses—people who say that someone else told them something—to establish admissible evidence.

But the court was clear: machine-created evidence is not hearsay.

> *The ATES-generated photographs and video introduced here as substantive evidence of defendant's infraction are not statements of a person as defined by the Evidence Code. (§§ 175, 225.) Therefore, they do not constitute hearsay as statutorily defined. (§ 1200, subd. (a).) Because the computer controlling the ATES digital camera automatically generates and imprints data information on the photographic image, there is similarly no statement being made by a person regarding the data information so recorded. Simply put, —[t]he Evidence Code does not contemplate that a machine can make a statement.*

Goldsmith's attorneys also argued that, because the Redflex technician in charge of preparing evidence didn't show up at her trial, the images could not be admitted. What's more, Goldsmith's attorneys said that she had the constitutional right to face her accuser. In this case, her accuser is a machine.

She also challenged the character of Redflex, which has a prior record of falsifying speed camera documents (PDF) in Arizona.

The court didn't bite on that argument, either.

> *It would be pure conjecture to conclude that all evidence generated by Redflex ATES technology and handled by Redflex employees for Inglewood is suspect because of the actions of a single errant notary public in a different state regarding*

> *a different type of technology and documentation. We have denied defendant's request for judicial notice and reject her argument that the involvement of Redflex in this case requires a different constitutional conclusion.*

If All These Countries Are So Outraged By Revelations Of US Spying On Them, Why Aren't They Offering Snowden Asylum?

Glenn Greenwald makes some really good points in a Guardian column (one of his last) discussing the reactions to the latest revelations about the NSA surveillance on citizens and (mainly) top politicians in other countries. The key one being, if these countries are really so outraged by these revelations, shouldn't they be offering Ed Snowden asylum, since they appear to be admitting that these revelations are important?

> *All of these governments keep saying how newsworthy these revelations are, how profound are the violations they expose, how happy they are to learn of all this, how devoted they are to reform. If that's true, why are they allowing the person who enabled all these disclosures – Edward Snowden – to be targeted for persecution by the US government for the "crime" of blowing the whistle on all of this?*
>
> *If the German and French governments – and the German and French people – are so pleased to learn of how their privacy*

> *is being systematically assaulted by a foreign power over which they exert no influence, shouldn't they be offering asylum to the person who exposed it all, rather than ignoring or rejecting his pleas to have his basic political rights protected, and thus leaving him vulnerable to being imprisoned for decades by the US government?*

Of course, when put in the context of how it's really just about cutting off the power of American hypocrisy, this situation makes more sense, even as it highlights the hypocrisy of those other countries.

The reality is that none of these leaders expressing outrage are *actually* shocked by this. Everyone knew this was going on. They're reacting this way because it's all part of the theater, in which they have to act shocked and to condemn the US, but it's really just about the information being revealed. When looked at under that light, of course they have no interest in offering Snowden asylum. He's the one who created the "shock" by revealing this information which all those officials almost certainly knew about, while pretending not to.

German Government Tries To Censor Publication Of Its List Of Censored Websites

For anybody living in the United States the story I am telling here must be strange. I am from Germany, born and grew up there. This story is not strange for me at all. I left Germany

20 years ago because of bullshit like that. Germany is not a democracy, it is an indirect democracy. This is a system where the government decides what the will of the people is. Often the Government does not ask at all the populous what they want or think.

A few weeks ago, an anonymous internet user was able to acquire and subsequently extract a website blacklist used by Germany's Federal Department of Media Harmful to Young Children (Bundesprüfstelle für jugendgefährdende Medien [BPjM]). This un-hashed list was posted to the user's Neocities blog, along with some analysis of the blacklist's contents and a rundown on the minimal protective efforts used for the list.

The actual blacklist is much more extensive than what's published here. In fact, as is noted in the post, a majority of the list is publicly viewable.

> *The censorship list ("index") is split into various sublists:*
>
> *Sublist A: Works that are harmful to young people*
> *Sublist B: Works whose distribution is prohibited under the Strafgesetzbuch (German Criminal Code) (in the opinion of the BPjM)*
> *Sublist E: Entries prior to April 1, 2003*
> *Sublist C: All indexed virtual works harmful to young people whose distribution is prohibited under Article 4 of the Jugendmedienschutz-Staatsvertrag*
> *Sublist D: All indexed virtual works, which potentially have content whose distribution is prohibited under the Strafgesetzbuch.*
>
> *The sublists A, B and E contain about 3000 movies, 400 games, 900 printed works and 400 audio recordings. That sublists are quarterly published in the magazine "BPjM-aktuell" which can be read in any major library in Germany.*

Sublists C and D are what's been withheld from the public, even as these URLs are distributed once a month to software and hardware companies. As of the time of the posting, there were more than 3,000 URLs on the blacklist.

The leaker spotted some unusual things in the list of banned URLs. To begin with, it appears that there's very little effort being made to keep the blacklist current.

> *On only about 50-60% of the domains on the list the questionable content is still accessible: About 10% of the domains are not registered at all, another 10% are parked domains, and about 20% don't provide any content at all (either no DNS A record, no webserver on port 80 or a redirect to another domain).*

Beyond that, the government body building the list seems to be suffering from technical ineptitude, resulting in supposedly blocked sites not being blocked at all.

> *The domain "homo.com" offers a wildcard domain which echoes anything that is entered as a subdomain on the website, eg. visiting "Fritz.homo.com" results in a webpage "Haha, Fritz is gay!". On the BPjM list there is a entryirgend.ein.name.homo.com – the German "Irgend ein Name" stands for "any name". Contrary to the belief of the BPjM public servants this doesn't work as a wildcard – just this specific domain will be blocked…*
>
> *several URLs with a wrong trailing slash:*
>
> *Death.html/*
> *welcome.htm/*
> *free/index.html/*
> *freecontent.html/*
>
> *A URL path with a trailing slash means that the part before the slash is a directory and not a file. The examples above*

> *are filenames. The entries on the list with the trailing slash are invalid and return a 404 file not found error. The correct URLs without the trailing slashes won't match the hash and are not blocked. Explanation here…*

As is inevitable when entities pursue bulk website blocking, non-offending content is part of the collateral damage.

> *[T]he complete sell list of leading online music database Discogs. Probably at one point in time there was a listing of a music album which is forbidden in Germany – this was enough to block access to the "eBay of music" for years…*

> *[A]ccording to archive.org the domain facegoo.com is since at least 3 years not an porn website anymore. Now it is the website of an iPhone App for fun picture manipulation. The startup has no chance to be listed in German search engine results at all…*

This is on top of strange and very arbitrary blockages, like a listing for the videogame Dead Island at amazon.co.uk and a few offending YouTube accounts whose account pages are blocked, but not the offending videos themselves.

Beyond that, the list covers a wide variety of offensive-to-the-German-government (and in some cases, offensive to nearly everyone) content, including "normal porn, animal porn, child/teen porn, violence, suicide, nazi or anorexia." Notably, the Wikipedia page quoted in this post points out that BPjM is an anomaly in the "free" world.

> *Germany is the only western democracy with an organization like the BPjM… **The rationales for earlier decisions to add works to the index are, in retrospect, incomprehensible reactions to moral panics**.*

With its secret list exposed, the German government has gone

after Neocities in a belated attempt to keep its no-longer-secret list secret. Neocities has complied, but not without protest.

> *An anti-censorship activist, concerned citizen and security researcher has proved that the hashes are very easily reversible, and published the disclosure, including a plain-text list of the censored sites on a Neocities page. Now the German government is pressuring Neocities to take the site down, and are claiming we were breaking German (and possibly US) law by hosting a copy of the list of sites that they distribute.*

The letter from KJM (Commission for the Protection of Minors in the Media) makes some rather odd statements.

> *Two lists (containing URLs) were published on one of your blogs, namely https://bpjmleak.neocities.org/. The list of URLs contains child sexual abuse material (CSAM), animal pornography, nazi propaganda, minors in poses involving unnatural sexual emphasis and content inciting hatred, just to name a few. All of the URLs are illegal under German law. Since CSAM is also illegal under US law, we are of the opinion that this site violates the laws applying to your service and also violates your terms of conditions.*

More properly stated, the *websites* contain the offensive material, not the URLs themselves. And, as was pointed out by the person researching the list, much of what's in the list is out of date (i.e., the URL no longer contains the illegal content, domain is expired, etc.) or is ineptly targeted (typos, invalid URLs, etc.), which means the list isn't nearly as useful as the government believes.

And, if the statement about violating two countries' laws wasn't (theoretically) frightening enough, KJM goes on to claim that posting this content violates Neocities own mission

statement. (No. Really.)

> *The KJM sees that neocities values anonymity and states to be uncensored. But the KJM thinks that https://bpjmleak.neocities.org/ is not what your service is intentionally for as your website states: "But our goal is clear: to enable you to harness the creativity, beauty, and power of creating your own web site. To rebuild the web we lost to monotony, and make it fun again."*

The statement is truly wondrous in its inanity, approaching the level of non sequitur. At no point does the mission statement encourage the stripping of anonymity or encourage censorship. Neocities is a platform for website construction, something KJM believes is somehow contrary to sticking up for its users and their content. Leave it to a government agency to craft one of the emptiest paragraphs to ever grace an official takedown request.

The biggest issue is the list itself, the one the government wants to keep out of the hands of the public, as Neocities points out.

> *There is apparently no legal way to challenge the list. It is decided by fiat in secret by a German government agency, and there is little or zero recourse for those falsely condemned.*

By keeping it secret – ostensibly to prevent the public from accessing illegal content – website owners are kept in the dark about the German government's censorious efforts. This sort of power is dangerous without accountability. The list is outdated and composed carelessly. Sites like Discogs are blocked off while true offenders remain uncensored because the "for the children" agency can't be bothered to ensure its slash marks are properly used or that the URL is free of typos.

Neocities has discussed this unofficially with the EFF but, as the post notes, the legal implications of this leaked list are still very murky. As a precaution the list has been removed. (It survives, for now, at the Internet Archive.) And, if given notification that the posting of the list does not violate US law, the BPjM blacklist will be reposted. Either way, Neocities states that it will not punish the end user in any way and that his/her access to the site will remain intact.

The ultimate stupidity of this debacle is the fact that the German government thinks it can undo what's been done. By acting in this fashion, it's only drawn more attention to the list it wants to remain a secret. Worse, it's drawn more attention to the blog post highlighting the many failures of the list itself. It's one thing to want to prevent access to clearly illegal material. It's quite another to slap together a list composed of dead sites, mistyped URLs and a variety of bizarre blockings based on "incomprehensible reactions to moral panics."

I-601 (Unlawful Presence) Waivers

Beginning March 4, 2013, certain immigrant visa applicants who are spouses, children and parents of U.S. citizens (immediate relatives) can apply for provisional unlawful presence waivers before they leave the United States. The provisional unlawful presence waiver process allows individuals, who only need a waiver of inadmissibility for unlawful presence, to apply for a waiver in the United States and before they depart for their immigrant visa interviews at a U.S. embassy or consulate

abroad.

What is an I-601A Waiver?

The spouses, sons and daughters of U.S. citizens who have accrued more than 180 days of "unlawful presence" in the United States, and have to leave the country as part of the legal immigration process, are barred from returning to their families for as long as 3 or 10 years. But they might be eligible to receive a "waiver" to allow them to return to their families by providing evidence that their U.S. citizen family member would face "extreme hardship" as a result of the separation. The way to get that waiver is to file, with supporting evidence, a Form I-601A.

The current I-601A process

Prior to March 2013, U.S. citizens who petition for their spouses and children to become legal immigrants to the United States must first petition for a visa, and in some circumstances—if the spouse or child has accrued more than 180 days of unlawful presence in the U.S.—that spouse or child must then also apply for a "waiver of grounds of inadmissibility" (by filing a Form I-601 which was in effect prior to March 2013) in order to have his or her visa application processed. Applicants can only file for a waiver after having been determined "inadmissible" by the U.S. consular officer and must wait abroad for a decision. This caused a lengthy separation for families.

Under the current policy which became effective in March 2013, the spouse or child would be able to apply for a waiver with USCIS within the United States and receive a provisional decision on that waiver before departing the U.S. for consular processing of their immigrant visa applications. After the provisional waiver is granted and if the Department of State finds the individual otherwise eligible for the immigrant visa, the consular officer would then issue the visa, allowing

the individual to immigrate to the U.S.

The policy objective of this process change is to alleviate extreme hardship suffered by U.S. citizens when their immediate family members are abroad for a long time. The focus on U.S. citizens and their immediate relatives is consistent with Congress' prioritization in the immigration laws of family unification. This change meets the goals of both improving efficiency and reducing the length of time that American families are unnecessarily separated.

How does the process work?

The immediate relative of a U.S. Citizen (spouse or child) would apply for a visa, and as part of that process would file a Form I-601A waiver. USCIS would grant a provisional waiver before the applicant departs the U.S. for consular processing of their immigrant visa applications. The provisional waiver would not take effect until the individual departs from the United States and triggers the covered ground of inadmissibility.

These provisional waivers would benefit only those individuals who are inadmissible based solely on having accrued a period of unlawful presence and who can demonstrate extreme hardship to their U.S. citizen relative. All individuals affected by this streamlined process would still need to meet all legal requirements for admission to the United States, including the requirement that they process their visa application at a U.S. consulate abroad.

Individuals who are denied the provisional waivers would be subject to USCIS guidance and law enforcement priorities for issuing Notices to Appear (NTA). For example, convicted criminals, public safety threats, and those suspected of fraud will receive NTAs.

Who would be eligible for a provisional waiver?

Spouses and children of a U.S. citizen (1) who are seeking lawful permanent residence through an immigrant visa, (2) who are inadmissible based on unlawful presence in the United States for more than 180 days, and (3) who meet the existing extreme hardship standard.

(Some aliens do not accrue unlawful presence if they fall into certain categories. For example, children under the age of 18 do not accrue unlawful presence, nor do victims of crime and aliens with pending asylum applications. Therefore the people in these groups do not need to apply for waivers.)

People who are not eligible for a provisional waiver would continue to follow the previous agency processes for filing waiver requests (Form I-601) after a determination of inadmissibility is made by a U.S. consular officer overseas.

I-601A Provisional Waivers: The need for an experienced Immigration Consultant

While you can theoretically file a Form I-601A yourself, the applications for such waivers are extremely complicated and doing them incorrectly could mean family members could face separations for as long as 10 years. Prospective applicants are therefore *strongly advised* to hire an experienced Immigration Consultant to help them navigate the tricky and cumbersome waiver application process.

I-601A Waivers: What I can do for you

As an Immigration Consultant with years of immigration experience, including the filing of numerous I-601A waivers, you can count on me to:

– Advise you as to eligibility for a waiver based on extreme hardship
– Prepare and file the Form I-601A waiver application on your behalf
– Gather and organize the evidence needed to support your

waiver application
– Deal with the submission of the waiver application to USCIS, the Immigration Court or the applicable U.S. Consulate abroad

Contact me for a free in-office consultation regarding I-601A waivers.

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

Deportations of Children Detained in Inhuman Conditions Continue

The Los Angeles Times reported on August 21 that almost 300 women and children were recently deported from immigration detention centers at Artesia, New Mexico and Karnes, Kansas and sent back to Central American countries from which they had fled to escape from gang violence and other intolerable conditions.

Because the children were with their mothers (presumably) they were not protected by the TVPRA, referred to my other recent posts. That statute protects only unaccompanied children from summary deportation without a formal immigration court hearing.

But I have yet to find a law which permits or contemplates the inhuman conditions that both mothers and children are now facing while they are detained by ICE.

The LA Times describes these conditions as follows:

“Aside from having to contend with a few cases of chicken pox, the facility [at Artesia] and other similar centers have been plagued by other difficulties. For instance, the Department of Homeland Security’s inspector general report has cited various other problems – inadequate amounts of food, inconsistent temperatures and unsanitary conditions – at various immigration holding facilities for children.

Also, immigration officials have been accused of not allowing the children due process as the U.S. speeds up the processing of thousands of single parents with children who have fled Central America and entered the US.”

In a previous post, I quoted an extract from the dissenting opinion of Justice Field in the US Supreme Court case of Fong Yue Ting v. US 149 U.S. 698 (1893) a barbaric relic from the days of the Chinese exclusion laws which, without too much exaggeration, could be described as bearing the same relationship to immigration law that Dred Scott v. Sandford 60 U.S. 393 (1857) has to civil rights law.

Except that the Fong case, unlike Dred Scott, is still cited as authority today to justify arbitrary actions of the federal government toward minorities in our society.

In a previous post, I cited Justice Field’s dissenting statement in Fong that cruelty and inhumanity have no place in

the enforcement of the laws of the United States. He was referring, of course, specifically to the immigration laws.

That statement was made more than 120 years ago. The time is long overdue to put it into practice now.

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

Cops more likely to kill you than Terrorists

The next time you hear some whining coward (by that, I mean the majority of the American public) apologizing for the loss of our civil liberties in the name of “safety” from “terrorism,” remind them of this fact: You are eight times more likely to be killed by a cop than by a terrorist. (source)

It is a little more nuanced than that, but the point is well taken.

Download (PDF, Unknown)