

CROSS-BORDER ISSUES AFFECTING IMMIGRANT FAMILIES: CONCENTRATION ON IMMIGRATION AND FAMILY LAW


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FAMILY-BASED IMMIGRATION

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP

- ▶ **“Lawful Permanent Resident”** or **“LPR”**
 - ▶ *“Status of being lawfully accorded the privilege of permanently residing in the U.S. as an immigrant.”*
 - ▶ INA § 101 (a)(20), 8 U.S.C. § 1101 (a)(20)
 - ▶ Same as “immigrant” or “green card holder”
 - ▶ **NOT** a U.S. citizen
- ▶ LPR's do not need employment authorization to work
- ▶ LPR's may generally travel in/out of the U.S. for short trips
- ▶ LPR status may be LOST, *i.e.*, LPR's can be removable

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP

- ▶ ***Who Can Immigrate Through A Family Visa Petition?***
- ▶ Immediate Relative
 - ▶ No Limit; Visa number is immediately available
- ▶ Family Preference Categories
 - ▶ Annual numeral limit; visa not immediately available

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP



▶ Immediate Relatives

- ▶ Restricted to “spouses, parents & children” of U.S. citizen

INA §§ 101 (b)(1) & 201(b)(2)(A)(i), 8 U.S.C. §§ 1101(b)(1) & 1151(b)(2)(A)(i)

- ▶ If applying for a parent, the U.S. citizen must be son or daughter (at least 21)
- ▶ If applying for a child, child must be under 21 and unmarried at the time of filing the petition

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP

▶ **Family Preference Categories**

▶ **First Preference**

- ▶ Unmarried Adult (> 21) children of U.S. citizens

▶ **Second Preference (Two Sub-Categories)**

- ▶ **2A:** Spouses and Unmarried Children of LPRs
- ▶ **2B:** Unmarried Children of LPRs

▶ **Third Preference**

- ▶ Married Children of U.S. citizens

▶ **Fourth Preference**

- ▶ Siblings of U.S. citizens

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP



▶ TWO-STEP PROCESS

▶ First, Immigrant Visa Petition (Form I-130)

This is a Petition to the U.S. Citizenship & Immigration Services (“USCIS”) to determine whether the immigrant relative is eligible for a certain family-based category.

▶ Second, Application for LPR Status

- ▶ I-485 Application to Adjust Status or
- ▶ Processing Overseas at U.S. Consulate/Embassy

This is an Application to the USCIS once you have confirmation/approval that immigrant relative fits into one of the family-based categories

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP

▶ Marriage-Based Application

- ▶ Must be a *bona fide* marriage, not solely for immigration benefit
- ▶ Must continue to be married for initial approval
- ▶ Type of lawful permanent residence based on length of marriage
 - ▶ Conditional residence, if married less than 2 years
 - ▶ Permanent residence, if married more than 2 years

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP

Overview: Filing a Concurrent Marriage Petition

- ▶ Filing I-130 Petition together with I-485 Application
- ▶ Obligation to prove you are in a valid marriage
 - ▶ ***How do you prove you are in a valid marriage?***
- ▶ Immigrant spouse generally must have clean criminal history
- ▶ US citizen spouse generally must establish he/she can financially sponsor immigrant spouse

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP

Conditional Residence

- ▶ Valid only 2 years
 - ▶ Must file joint petition to remove conditions on lawful permanent residence (Form I-751) within 90 days of 2 year anniversary of receiving LPR status
 - ▶ Alternatively, seek waiver of joint filing requirement due to:
 - ▶ Death of sponsoring spouse
 - ▶ Termination of marriage through divorce/annulment
 - ▶ Battered or subjected to extreme cruelty
 - ▶ Deportation would result in extreme hardship

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP

- **REFERENCES**

- **USCIS Website** (www.USCIS.gov)

- Laws

- <http://www.uscis.gov/laws/laws-regulations-and-guides-immigration-and-nationality-act>

- Immigration and Nationality Act

- Title 8, Code of Federal Regulations

- **Board of Immigration Appeals Website**

- http://www.justice.gov/eoir/vll/intdec/lib_indec_itnet.html

- **Case Law**

APPLICATION PROCESS FOR LAWFUL PERMANENT RESIDENCE BASED UPON FAMILY SPONSORSHIP

- EXECUTIVE ACTIONS ON IMMIGRATION

- Existing DACA (June 15, 2012)
 - Consideration of Deferred Action for Childhood Arrivals
 - Guidelines
- Recent Executive Order of November 20, 2014
 - Expansion of DACA
 - Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA")
 - Expanding the use of provisional waivers of unlawful presence to include the spouses and sons daughters of LPRs and children of U.S. citizen
 - *Texas v. United States* (February 16, 2015)



FAMILY LAW

BASICS OF FAMILY LAW

- ▶ **Jurisdiction**
- ▶ **Causes of Action for Divorce** (N.J.S.A. 2A:34-2 et. seq.)
 - ▶ No Fault Divorce
 - ▶ Fault Grounds
- ▶ **Causes of Action for Annulment** (N.J.S.A. 2A-34-1 et. seq.)

CHILD CUSTODY



- ▶ **Legal Custody v. Residential Custody**

- ▶ **Removing children from the State of NJ**

- ▶ Children cannot be removed from the State of NJ without the other parent's consent or by Court order.
- ▶ The Court's lengthy criteria. See, Baures v. Lewis, 167 N.J. 91 (2001)
- ▶ Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) of 2004, N.J.S.A. 2A:34-53– The child's home state has jurisdiction.
- ▶ Parental Kidnapping Prevention Act 28 USCA § 1738A – similar to the UCCJEA but adds a parent/child locator provision, etc.
- ▶ Hague Convention – US and 50 other countries entered an agreement whereby a civil mechanism is in place to return a child to its home country after an abduction. (Go to www.travel.state.gov. for a list of countries & copy of actual application)

DOMESTIC VIOLENCE AND IMMIGRATION RIGHTS

- ▶ Prevention of Domestic Violence Act, N.J.S.A. 2C:25-18 defines domestic violence.
- ▶ When an act of domestic violence is reported, the victim may apply for a Temporary Restraining Order and then a Final Restraining Order
- ▶ If a Final Restraining Order is granted, it means the Court found a criminal act occurred and the defendant has a criminal record that may result in serious immigration consequences

DOMESTIC VIOLENCE AND IMMIGRATION RIGHTS

A victim of domestic violence has certain immigration rights under the Violence Against Women Act of 1994 (VAWA) (42 U.S.C. §13701 et seq).

- ▶ Self-petition for permanent residence: Form I-360 then, if approved Form I-485
- ▶ Cancellation of removal: Form I-881
- ▶ U- nonimmigrant status: Form I-918
- ▶ Removal of conditional status: Form I-751

In all cases, there must be PROOF of domestic violence, i.e. divorce judgment, criminal proceedings, pictures, medical records, judgments, etc.

ASSETS ABROAD: JURISDICTIONAL ISSUE

▶ **Jurisdiction over the parties**

- ▶ N.J.S.A. 2A:34-8 – The Court only has personal jurisdiction which extends to property, tangible and intangible, located in New Jersey.
- ▶ If the parties include foreign assets in their divorce proceedings, then the Court has jurisdiction over the parties as to the assets.

▶ **Hague Convention**

- ▶ The Hague Convention on the Recognition of Divorces and Legal Separations does not deal with matrimonial property in a divorce.
- ▶ The Hague Conference concluded a separate convention that allows spouses in a marriage to decide which jurisdiction's laws will apply to their property. This has not been signed on by or ratified by the U.S.
- ▶ Whether by settlement or after trial, divorce judgments that refer to assets abroad must be recognized in the country where the assets are located.



CROSS-BORDER ISSUES: FOCUS ON PORTUGAL

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DUAL CITIZENSHIP



PORTUGUESE CITIZENSHIP: ELIGIBILITY

Eligible?

Yes

Children

Possibly

Marriage

Grandchild

Adoption

**Special
Cases**

No

**Great
grandchild**

PORTUGUESE CITIZENSHIP: BENEFITS

- ▶ Portuguese Citizenship confers EU citizenship
- ▶ Protected legal rights (e.g., property, probate)
- ▶ Access to public education
- ▶ Access to public healthcare
- ▶ Economic benefits
- ▶ Ease of travel
- ▶ *Saudade!*

PRACTICAL CONSIDERATIONS



- Enforcement of US Divorce Decrees
- Reporting changes in marital status
- Post-mortem requirements

REFERENCES

- ▶ **Portuguese Nationality Law** - Law no. 37/81, of 03 October 1981 available at http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=614&tabela=leis
- ▶ **Civil Registry Code** – approved by Decree-Law no. 131/95, of 06 June 1995 available at http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=682A0220C&nid=682&tabela=leis&pagina=1&ficha=1&nversao=
- ▶ **Stamp Duty Code** – approved by Decree-Law no. 287/2003 available at http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/selo/index_selo.htm



QUESTIONS?

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