Family-Based Immigration
Basic Information and Frequently Asked Questions

Immigration law determines who may enter the country, how long they may stay and when they must leave. Before 1965, the U.S. legal immigration system was based on country quotas favoring immigrants from Western Europe. In 1965, this quota system was replaced with categorical preferences for relatives of U.S. Citizens and Lawful Permanent Residents and for immigrants with job skills that were deemed useful to the United States.

Within family-based immigration, there are two broad subcategories:

1. Immediate relatives of U.S. citizens (spouses, children under age 21 and parents)
2. Other relatives of U.S. citizens as well as relatives of legal permanent U.S. residents

Visas are distributed based on the relationship between a U.S. citizen or a U.S. Lawful Permanent Resident and the family member seeking admission to the United States. The table below shows the visa categories, the number of visas allocated to each of these categories and the estimated length of time a family member must wait before receiving visa.

Categories of Family Immigration, Numerical Limits, and Approximate Length of Wait for Visa					
Visa Category	**Citizenship Status of Family Member in the U.S.**	**Relationship Between U.S. Family Member and the Individual Seeking Admission to the U.S.**	**Annual Numerical Limit**	**Length of Wait for Visas for Most Countries (Figures from the February 2018 State Department Visa Bulletin)**	**Longest Wait for Visas (Figures from the February 2018 State Department Visa Bulletin)**
Immediate Relative	U.S. Citizen	spouse, unmarried minor child, parent	unlimited	Application processing time for most field offices is between 4 and 5 months	Application processing time for most field offices is between 4 and 5 months
First Family Preference	U.S. Citizen	unmarried adult children	23,400	6 years, 9 months	21 years, 6 months
Second A Family Preference	U.S. Lawful Permanent Resident	spouse, minor child	87,934	2 years, 1 month	2 years, 1 month
Second B Family Preference	U.S. Lawful Permanent Resident	unmarried adult children	26,266	7 years, 1 month	21 years, 8 months
Third Family Preference	U.S. Citizen	married adult children	23,400	12 years, 10 months	22 years, 4 months
Fourth Family Preference	U.S. Citizen	brothers and sisters	65,000	13 years, 3 months	23 years, 8 months

National Headquarters: 700 Light Street, Baltimore, Maryland 21230 · 410-230-2700 · fax: 410-230-2890
Advocacy Office: 122 C Street NW, Suite 125, Washington, D.C. 20001 · 202-783-7509 · fax: 202-783-7502

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Q: What is the overall number of family-based visas allocated per year?

A: The total number of family-based visas allocated per year is 480,000. This is called the worldwide cap.

Q: Who qualifies as an "immediate relative?"

A: An immediate relative is an unmarried minor child, spouse, or parent of a United States citizen. U.S. immigration laws define a minor child as being under the age of 21 and unmarried. In the case of a parent petitioning for a child, the child must be under the age of 21 and in the case of a child sponsoring a parent, the child must be 21 or older. In recent years, fewer than 240,000 immediate relatives have immigrated per year. This is the most common way to enter the United States through the legal immigration system. Brothers, sisters, married minor children and both married and unmarried adult children do not qualify for immediate relative status.

Q: What numerical limits are placed on the number of immediate relatives entering the United States per year?

A: There are no specific numerical limits placed on immediate relatives entering the United States per year. However, they are subject to the worldwide cap of family-based immigrants. Immediate relatives are admitted as soon as the government can process their visa. This can take anywhere between a few months and one year from the date the application is received.

Q: How do other family-based immigrants (non-immediate relatives) enter the United States?

A: All other family-based immigrants enter the United States through the "family preference system." This structure divides immigrants into categories based on their relationship to a family member in the United States and processes their applications according to these preferences. The categories are as follows:
1st Preference - Unmarried adult children of a US citizen
2nd A Preference - Spouse or minor children of a Lawful Permanent Resident
2nd B Preference - Unmarried adult children of a Lawful Permanent Resident
3rd Preference - Married adult children of a US citizen
4th Family Preference - Brothers and sisters of an adult US citizen

Q: Are these types of immigrants subject to numerical limitations?

A: Yes, each category of the family preference system is subject to an annual numerical limit (see table above). All immediate relative petitions plus the number of all the family preference category petitions must not exceed the world wide cap of 480,000 family-based visas.

Q: Are these types of visas numerically limited by the country of the applicant?

A: Yes. There are per country limits in addition to the category limits on family preference visas. Any one country cannot receive more than seven percent of the total admissions in the capped categories which totals approximately 25,600 visas. This number includes immigrants in both the family and employment-based categories. There are some, but few, exceptions to these per country limits. With the exception of Mexico,

China, India and the Philippines, most nations do not come near the seven percent figure. Countries that exceed the country cap are given different priority dates for processing and, as a result, their backlogs are even longer.

Q: What is a priority date and how does it affect a visa application?

A: The filing of a petition establishes the priority date. Priority dates determine a beneficiary's (applicant's) "place in line" relative to other beneficiaries in the same category and nationality for visa allocation. By statute, there are formulas and limits on the annual number of family-based preference visas. The Department of State allocates these visas to people residing overseas by estimating how many immigrant visas will be available and publishes the results in a monthly visa bulletin. If the number of visas available in a category exceeds demand for them, the visa bulletin will indicate that the category is "current." If the demand for visas exceeds what is available in a certain category, the visa bulletin will indicate a cutoff date and the issuance of visas in that month is restricted to applicants whose priority dates are earlier than the cutoff date. Petitioners whose priority dates are after the published date must wait until the Department of State advances the posted date to obtain a visa. (Note that priority dates operate within both the family-based and employment-based visa systems. However, these systems are wholly separate, parallel processes.)

Q: How is the number of family preference visas determined if it is dependent upon the number of (unlimited) immediate relatives?

A: Within family-based visas there is a floor and a ceiling. The floor within the family-based visas applies to the sponsorship visas and is 226,000. This number of visas <u>must</u> be given annually for visas in the family preference categories, excluding immediate relatives, which are not subject to specific numerical limitations. The overall ceiling of family-based visas is 480,000. When there are more than 254,000 immediate relative petitions in a given year (480,000 minus 226,000), the number of family sponsorship visas is affected and the worldwide cap is pierced. Because the immediate relative visas are not subject to any direct numerical limitations and are granted on a relatively quick basis, the floor for the family sponsorship visas is not reached when the number of immediate relative petitions exceeds 254,000. This creates a backlog as there are more petitions than visas.

Q: Why is there such a lengthy backlog of visas?

A: First, the number of visas available by law each year is less than the number of prospective immigrants getting in line to wait for a visa. This type of backlog can exceed twenty years for some family members. In some cases, the backlogs are so long that immigrants often move from one preference category to another as they age or get married. Secondly, per-country caps prohibit any one country from using more than 7% of the visas in the family and employment-based preference categories. (There are a few exceptions to these per country limits.) Mexico, China, India and the Philippines regularly reach or exceed this country cap. These countries are given different priority dates for processing and, as a result, their backlogs are even longer. Lastly, there are delayed communications or miscommunications between United States Citizenship and Immigration Services (USCIS) and the Department of State, insufficient resources and staff, and other inadequacies within USCIS. Administrative delays in the process of adjudicating the permanent resident visa, or "green card," have recently been as long as two years.

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