

Week 5 Study Guide

5.1 Family Sponsored Petitions

- Family Sponsored Petitions allow a petitioner (a U.S. citizen or a lawful permanent resident) to sponsor some family members to immigrate to the U.S.
- Immediate relatives is a term used in the INA to mean certain relatives of U.S. citizens (not LPRs).
 - Immediate relatives include
 - Spouses
 - Children under 21 and unmarried, including
 - Those who became a U.S. citizen's stepchildren before they turned 18
 - Those adopted by a U.S. citizen before age 16
 - The parents of citizens when the citizen is over 21
- Consular processing is the process someone has to go through to get a visa from a U.S. embassy or consulate abroad.

5.2 Preference Categories

- Some family members of U.S. citizens and lawful permanent residents can become lawful permanent residents based on categories of family relationships called "Preference Categories"
- There are four preference categories for family sponsored petitions
 - First Preference (F1)
 - Unmarried children of U.S. citizens who are over age 21.
 - Second Preference (F2) (this category is divided into two subcategories)
 - F2A: Spouses and unmarried children of lawful permanent residents (LPR) who are under age 21.
 - F2B: Unmarried children of lawful permanent residents (LPR) who are over age 21.
 - Third Preference (F3)
 - Married children of U.S. citizens.
 - Fourth Preference (F4)
 - Brothers and sisters of U.S. citizens.
- Yearly caps on the number of people from each preference category that can immigrate to the U.S. each year cause preference category applications to have different wait times
 - Current wait times can be viewed on the Department of State's Visa Bulletin
 - Categories with a "C" indicate that the waitlist is "current" and that petitions submitted now are being processed immediately.

- When the application of an individual immigrating through one of the preference categories is approved, the individual's spouse and unmarried children under 21) can come to the U.S. with them as "derivative beneficiaries."
- There is no waiting period for immediate relatives of U.S. citizens.
- There are no derivative beneficiaries for immediate relatives of U.S. citizens.

Resources and References

- [More information about preference categories on the USCIS website](#)
- [Department of State's Visa Bulletin](#)

5.3 VAWA

- VAWA refers to a piece of legislation called The Violence Against Women Act (VAWA).
- Under VAWA, immigration applicants whose legal status in the U.S. is based on the sponsorship of an abusive family member can self-petition for a visa, instead of relying on the abusive family member.
 - This allows individuals to leave abusive relationships without worrying about the effect on their immigration status in the U.S.
- VAWA self-petitions are not restricted to women nor to marital relationships. VAWA self-petitions can be made by male and female applicants as well as victims of parent-child abuse.

Resources and References

- [More information about VAWA visas on the USCIS website](#)
- [More information about abuse and immigration law](#)

5.4 Requirements for AOS

- Section 245 of the INA waives the requirement that an individual must be outside of the U.S. to apply for lawful permanent residence.
 - It allows individuals who are inside the U.S. and who are eligible to adjust their status to lawful permanent resident status while still inside the United States.
- The five requirements for an Adjustment of Status are that the individual must:
 - Have been inspected and admitted.
 - Be admissible.
 - Be eligible for lawful permanent residence.
 - Have a visa immediately available.
 - Not be barred.
- AOS applicants can apply for work permits.

Resources and References

- [More information about work permits on the USCIS website](#)

5.5 Inspection & Admission and Admissibility

- The INA defines admission as “the lawful entry of the [individual] into the U.S. after inspection and authorization by an immigration officer.”
 - Before an immigration officer authorizes someone to enter the U.S. she or he inspects that person’s paperwork.
- "Correct paperwork" could include the following:
 - Passport
 - Almost all entrants must have a passport
 - Visa
 - Permission to arrive at the border
 - Could be an immigrant or nonimmigrant visa
 - Border Crossing Cards
 - Nonimmigrant visas that some Mexican citizens can get to cross the border frequently.
 - The Visa Waiver Program
 - A program that enables most citizens or nationals of participating countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa.
- Parole is a process that allows some individuals to enter the U.S. even if they don’t have the correct paperwork.
 - It mostly applies to people with severe medical needs or other humanitarian-related reasons for entering the U.S.
- Inadmissibility grounds usually only apply to those who have not been inspected and admitted to the U.S., but there is an exception for individuals who apply for adjustment of status.
 - Applicants for adjustment of status are subject to inadmissibility grounds *even though they have previously been admitted to the U.S.*

5.6 LPR Eligible and Visa Available

- Being eligible for Lawful Permanent Residence means a person meets all of the requirements for an immigrant visa.
 - In NOMAS clinics, this usually means they are eligible for family-sponsored visas.
- A visa is always immediately available to an immediate relative of a U.S. citizen (see lesson 5.1)
- For other family members in the preference categories, a visa is immediately available when
 - the date on the visa bulletin matches the receipt date for the family sponsored petition
 - or the preference category says “C” (see lesson 5.2)

5.7 Bars to AOS

- The three bars to adjustment of status are:
 - Employed Without Authorization
 - Individuals cannot adjust status if they have been employed in the U.S. without work authorization.
 - Unlawful Presence
 - Individuals cannot adjust status if they have been present in the U.S. without legal immigration status.
 - Visa Waiver Program (see lesson 5.5)
 - Individuals cannot adjust status if they have been admitted to the U.S. under the Visa Waiver Program.
- There is an exception to the three bars for immediate relatives of United States citizens (see lesson 5.1). They can still adjust status even if they would otherwise be barred by one or more of the bars to AOS.
- USCIS Form I-485 must be completed for adjustment of status petitions.

Resources and References

- [USCIS Form I-485](#)
- [More information about USCIS Form I-485](#)