THE UNITED STATES IMMIGRATION SYSTEM.

(a general overview)

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SECTION ONE: A GENERAL OVERVIEW OF THE UNITED STATES IMMIGRATION SYSTEM

A. EARLY AMERICAN IMMIGRATION POLICIES

The U.S. had a free and open immigration policy until the late 1800s and had no legal guidelines. After the American Civil War, certain states began enacting their own immigration policies. This prompted the U.S. Supreme Court to decide in 1875 that immigration regulation was exclusively under the jurisdiction of the federal government. Immigration rules were enacted by the U.S. Congress in the 1880s when the country's population began to grow rapidly from abroad. This legislation included the 1882 Chinese Exclusion Act and the 1882 General Immigration Act, which included the Alien Contract Labor Act.

In accordance with the Immigration Act of 1891, all migrants requesting entrance to the United States were directly inspected, admitted, rejected, and processed by the federal government. In the last century, the federal statutory authorities developed to accommodate growing immigration from Europe after the First and Second World Wars.

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B. LEGISLATIVE HIGHLIGHTS

1892 – The procedure of immigration arrivals on Ellis Island in New York Harbor is open. It remained open to more than 12 million people in the United States until 1954.

1906 - The Basic Naturalization Act was passed.

1933 – Order 6166 establishes the Service of Immigration and Naturalization (INS). In addition, the INS works with the Ministry for Justice to pursue infractions of immigration laws, focusing on enforced investigations and deportations. The first Permanent Resident Cards are granted during this period.

- The 1940s - The INS focuses on national security and enforcement.
- 1952 - The Immigration and Nationality Act was passed by Congress. The INA recodifies all earlier immigration laws into one set of established laws.
- 1986 – Congress passes the Immigration Reform and Control Act (IRCA). This increased INS responsibility and capacity for enforcement. The INS could now implement sanctions against U.S. firms using undocumented workers, deport persons without permission to work and legalize qualified people.
- 1990 — Congress passes the 1990 Immigration Act (IMPACT 90). This Act increases the number of visas available and amended categories of preferences. Immigration visas would now be based on families, jobs, and diversity in low immigration countries.

Since 2000, the INS workforce was expanded to over 30,000 employees in 36 districts U.S. and foreign offices. Offices. They apply immigration legislation and control the admission for tourism, commercial or temporary purposes of entering foreign nationals. They provide naturalization, permanent residency, and asylum privileges. They police the U.S. border, seize and remove the foreigners who entered or exceeded their visas illegally.

In the aftermath of terrorist attacks in the United States, the new law was established in 2002. The legislation, in particular, the Homeland Security Act, has formally disbanded

the INS. The DHS replaced the INS. The DHS replaced the DHS. Three new federal agencies are headed by the Homeland Security Ministry:

1. The handling of immigration applications, applications for citizenship, Green card renewals, and replacements are chargeable for USCIS – United States Citizenship and Immigration Services.

2. CBP – Border and Customs Protection – is a border police force responsible for enforcing U.S. legislation. It covers international trade and the capture of terrorists, drug traffickers, and immigration without documents.

3. ICE - Immigration and the Enforcement of Customs - is identical to the CBP and likewise responsible for the removal by a process called the "removal" of illegal immigrants from the United States.

The U.S. State Department is in addition to the Federal Agencies. The U.S. State Department is primarily responsible for U.S. foreign policy administration and management. It carries out diplomatic ties with foreign governments and issues visas for migrants and nonimmigrants to enter the United States. The U.S. Department of State branch is the National Visa Center (NVC) for the processing of USCIS approved requests in the United States by assuring the presentation of all relevant civil documents and support affidavits prior to scheduling the interview at the U.S. Embassy.

C. CURRENT TRENDS

While the INA (Section 201) imposes an annual permanent global ceiling of 675,000 legal admissions, this restriction is sometimes referred to as permeable as it is often exceeded because there are infinite categories of Lawfully Permanent Residents. This is evident in the 2015 annual flow chart of the department of Home Security, which shows a total of 1,051,031 people who have been adapted to the status of legal permanent residents. About 65 or 650,000 of the new LPRs awarded were based on a relationship with United States citizen or Lawful Permanent Resident.

TABLE I

Visa issued at Foreign Service Points 2016-2020* Immigrants and nonimmigrants Visas

*Due to the pandemic of COVID-19, staff have been directed to halt ordinary visa services and only offer necessary emergency mission services by the end of March 2020. The impact on the provision of visa-related services for immigrants and nonimmigrants was significant. The posts could only restart restricted services post-per-post from July, under local conditions.

	2016	2017	2018	2019	2020
Immigrant Categories					
Immediate Relatives	315,352	254,430	236,526	186,584	108,292
Special Immigrants[1]	16,176	20,034	9,375	11,384	8,722
Vietnam Amerasian Immigrants	6	36	92	96	95
Family Sponsored Preference	215,498	212,155	211,641	190,938	90,435
Employment-Based Preference	25,056	23,814	27,345	28,538	14,694

Armed Forces Special Immigrants	0	0	0	0	0
Diversity Immigrants	45,664	49,067	48,578	44,882	18,288
Total	**617,752**	**559,536**	**533,557**	**462,422**	**240,526**
Nonimmigrant Categories					
Visas Issues	10,381,491	9,681,913	9,028,026	8,742,068	4,013,210
(B1/B2Border Crossing Cards)[2]	[1,106,726]	[1,073,915]	[1,032,467]	[1,106,852]	[662,536]
Total	**10,381,491**	**9,681,913**	**9,028,026**	**8,742,068**	**4,013,210**

Note: the totals on this table do not include replaced Immigrant Visas

1. The total for special immigrants includes returning residents, Iraqi and Afghan travelers, select Iraqi or Afghan people, and some U1 nonimmigrant families employed by or on behalf of the U.S. government.

2. Common visa/boundary-crossing card B1/B2 cards are issued to nationals of Mexico. The issue is included in the "Visa Issued" line in B1/B2/Border Crossing Card Issuances.

In all visa categories, there has been a substantial decline mainly due to the Covid-19 pandemic and the shut down in 2020 of many of the U.S. consulates and embassies.

FAMILY IMMIGRATION

The principle of U.S. immigration policy is family reunification. This principle enables U.S. citizens and lawful permanent residents to apply in the United States for family members. It has a number limit for five family admission categories as well as the country-wide limit for overall family-based admissions, which is laid down in the Immigration and Nationality Act (INA)...

The category of family immigration enables U.S. citizens and LRPs to bring certain family members to the U.S. Family immigrants are accepted as immediate family members of U.S. nationals or via the preferential family system.

A. WHAT IS IMMEDIACY?

The "immediate relative" is defined under section 203 of the INA as follows: 1. U.S. citizen's spouse (including same-sex couples); or 2. U.S. citizen's unmarried boy (under 21 years of age); or 3. U.S. citizen's parent; (if that child is 21 years or older).

No numerical constraints on the number of immigrant visas given in this category are the importance of being defined as an immediate relative. Essentially, there is no waiting time for a visa, but standard USCIS and NVC request processing times still apply.

If you are the wife or kid of a direct relative of a U.S. citizen, you must qualify for a Green Card independently and submit your own request. Based on a request of the immediate relative, you may not qualify for a Green Card as the derivative Beneficiary.

B. PETITIONS FOR FAMILY PREFERENCE

Whilst only U.S. residents can submit immediate, family petitions for both U.S. citizens and lawful permanent residents are available (LPRs). These family requests are subject to annual numerical restrictions based on location and country and are as follows:

American Citizens

i. Unmarried children and girls older than 21 years;
ii. Their married children of any age; or
iii. (if the U.S. citizen is more than 21 years of age).
iv. their wife and/or
v. their unmarried children. Their children are not married (of any age). One crucial element is the lack of an automatic or immediate granting of a green or visa to the family member from the accepted family preference petition. As of the date of the initial submission with USCIS, the family petition is given a priority date and held at the National Visa Center until the priority date is achieved. The family member mostly stays in step and waits for processing till her visa number is requested. This wait may take from a year to 12 depends on the category of preference selected. In 2014 the number of families waiting on the visa line was as high as 4.2 million.

C. WHAT ARE FAMILY PREFERENCE VISA YEARLY NUMERICAL LIMITS?

Relatives immediately:

CATEGORY	US SPONSOR	RELATIONSHIP	NUMERICAL LIMIT
Immediate Relatives	US citizen	Spouses, unmarried minor children, and parents	Unlimited

Family Preference Allocations:

CATEGORY	US SPONSOR	RELATIONSHIP	NUMERICAL LIMIT
1	US citizen	Unmarried adult children	23,400*
2A	LPR	Spouses and minor children	87,900
2B	LPR	Unmarried adult children	26,300
3	US citizen	Married adult children	23,400**
4	US citizen	Brothers and sisters	65,000***

* Plus, any unused Visas from fourth preference.

** Plus, any unused Visas from first and second preference.

*** Plus, any unused Visas from all other family-based preferences.

D. HOW CAN I KNOW THE DURATION OF THE WAITING TIME FOR A VISA FOR MY FAMILY MEMBER?

An updated Visa Bulletin is published on its website every month by the U.S. State Department. This newsletter summarizes information gathered by consulates and the USCIS on the readiness to alter the status of immigrants and applicants. It stipulates the "Final Dates of Action" and the "Dates of Application" when immigrant visa applicants must be notified, and the necessary papers must be submitted to the National Visa Centre. Please refer to https://travel.state.gov/content/visas/en/law-and- Policy/bulletin.html for the latest Visa Bulletin...

E. HOW CAN I GET MY FAMILY MEMBER APPLICATIONS?

Any family member's petitions must be filed in the USA with the USCIS, even for the petitioners outside the USA, unless in the nation in which the U.S. petitioner is a resident, there is a USCIS field office. Around 24 offices are located around the world. Except in rare circumstances, U.S. embassies and consulates shall not accept I-130 regular filings.

The local offices can be found in: httpsww.uscis.gov/about-us /find-uscis-Office / immigration offices

Whether the Petitioner is a U.S. citizen or a permanent lawyer, the identical I-130 is used by both. This is the main form of a family member's request. It is very vital that you reside in the U.S. or have the intention and evidence to restore your home in the USA prior to the scheduling of interviews with an approved beneficiary.

Biographical information formulas and the relevant civil documentation (e.g., birth certificates, passport copies, LPR cards, marriage certificates, etc.) which will demonstrate the family tie to the USCIS must be supplemented with the I-130.

The USCIS currently costs $535 for each request for I-130.

It will then be addressed to the USCIS Service Center, which will supervise applications I-130 for that particular State or United States territory, depending on where your relative resides in the United States.

American citizens and families are legally acceptable to the USA, and you might also be authorized to file an I-485 application to adjust the standard to permanent residence.

F. HOW DO I HANDLE THE USCIS PROCESS NOW THAT I HAVE FILED AN I-130 FOR MY FAMILY MEMBER?

F1. Stage 1 - the request is submitted

I-130 - I-130 (Standalone - Beneficiary is outside the United States)

When the USCIS receives the application, it inserts the application in the computer database and assigns a receipt number. The USCIS will next provide a Notice of Action I-797, which will be mailed to the Petitioner within thirty days. Cases on the petition have now begun to be processed. The application could take six to ten months, depending on the Service Center where the Petitioner files the application until a decision is reached.

Visiting the USCIS processing time page at https://egov.uscis.gov/cris/processTimesDisplayinit.do is a wonderful resource to keep processing time up to date.

In addition to the U.S. Center Service, this website offers work hours for Field Offices and MSCs, the Immigrant Investor Program Office, the International Operations Office, and Immigrant Visa Fees. Otherwise, the USCIS service centers may be subject to downloads.

F2. Stage 2 – I-130 Approved Petition

After the I-130 has been established by the USCIS, it will issue an I-797 Action Notice approving the petition. At that stage, the Petitioner is notified of the transfer of the file to the National Visa Center. This transferal usually takes two to four weeks for the USCIS to complete.

F3. Stage 3 - Petition of Visas Arrives in the NVC

The National Visa Centre (NVC), located in Portsmouth, NH, is responsible for all approved visas for immigrants requiring consultation. Nonimmigrant visas are also handled, such as K-1 (Fiancé) and K-3s. This is mainly the last stop before the file is transferred to the chosen consular office for the interview with the Applicant.

In case of a non-existent immediate visa, the NVC will essentially hang on to applications until the priority date is met and visas are available in cases of the five categories of family visa preference. It might take months, or even years, as previously said. NVC is unable to accelerate the process.

If you wait for a visa, it is necessary that the NVC is notified by the Beneficiary of any change of address, attorney, Marital Status, or death, as this could influence the situation of the current application for a visa. The NVC will be contacted at NVCINQUIRY@state.gov by email. A telephone query is also available on (603) 334-0700 with live support between 7:30 and 12:00 pm Monday to Friday (EST).

F4. Stage 4 - NVC treatment

Where an I-130, a family fiancé or family beneficiary who has sufficient fortune to have a visa is the Beneficiary of the I-130, the NVC assigns a case number to the Petitioner and sends a notice via email.

A request for the designation of an Agent is one of the initial notices which the NVC is sending if you have no lawyer or legal agent. Additionally, an additional NVC notification

explains that the NVC will have to pay two sets of costs. The following are the charges: $120 for Support Affidavits and $325 for Supporting Support Fees for Immigrant Visas. You must go on to the NVC website and make a personal bank account payment for these invoices. Not accepted credit cards. If you mail the payment, it could take another four weeks for the request to be processed.

After the payments are paid, the NVC generates bar-coded cover sheets with support / I-864 and financial information for your submission of the civil documents for the immigration visa application.

F4A. CIVIL PAPERS

The sorts of civil documents required for submission are listed on the website of the U.S. Department of State. In addition, certified translations must be provided by all documents that are unwritten in English or in the official language of the nation in which you apply. A statement signed by the translator that states: The translation shall include:

- The correct translation; and
- The qualified translator shall be able to translate.

In addition, the relevant government in your nation must issue the Civil Documents. The NVC shall provide copies of these documents, and an original or certified copy shall be provided at the interview of the embassy.

1. *A Valid Passport*

A valid passport must be obtained from every intended immigrant. This passport should have an expiration of at least six months or longer. The NVC will be presented with a copy of the biographical page.

2. *Birth Certificate*

Each application shall receive an original birth certificate issued by an official birth record guardian in the nation of birth indicating the Applicant's birth date, place, and parentage based on the Applicant's original birth registration.

Important Note: The original long-form birth certificate must be submitted. The birth certificates are not acceptable for short form.

The certificate shall contain the following:

- person's birth date; and
- person's birthplace; and
- both parent names; and,

The relevant authority's note stating that an extract is from the official records.

Birth certificates not obtainable*: For example, certain birth records cannot be obtained if:

- The birth of the Applicant had never legally been registered; or
- The birth registers were destroyed; or

There will never be one issued by the competent governmental authority.

*In these circumstances, a documented statement of the reason the birth certificate of the Applicant is not accessible from the relevant government entity should be obtained. The Applicant must submit the certified declaration secondary evidence. For example:

a certificate containing the date/place of baptism and the names of the two parents (when baptism occurred shortly thereafter), or
an adoption decree for the adopted child; or

a declaration of assurance from a close relative, preferably the Applicant's mother, specifying the names of both parents and the name of the mother's maiden also date and place of birth. Note: before the officer is permitted to take oaths or affirmations, an affidavit must be executed.

3. ***Court And Prison Records***

Applicants convicted of a crime are required to receive certified copies of every Court and jail record, irrespective of whether they have subsequently received amnesty, forgiveness, or other mercy. Send your interview to the United States Embassy or Consulate. Court documents should include: Court records

- Full information on the circumstances surrounding the offense against the Applicant; and
- Settlement of the case, including the sentence or any penalty or fine imposed.

4. *Deportation Documentation*

Applicants deported or removed earlier at U.S. government expense shall have Form I-212, Re-application permission from the United States. The application form shall be issued from the United States.

5. *Marriage Certificate*

A certified copy must bear the relevant marriage seal or stamp of the issuing body to a Married Applicants.

Note: Certificates of marriage are not available in some countries. More precise information is accessible online at: https://travel.state.gov/content/visa/en/fees/reciprocity-by-country.html at the U.S. Department of State Reciprocity by nation Website.

6. Marriage Termination Documents

Applicants formerly married must receive proof to demonstrate that they have terminated EACH previous marriage. Evidence provided to the U.S. Embassy or Consulate must be in the form of original papers issued or copies certified with the relevant seal or stamp from the issuing authority such as those issued by the competent authorities, such as:

- End order for divorce; or
- certificate of death; or
- cancelation documents.

7. Military Records

A copy of their military record must be obtained by anyone who served in the military forces of any country. Send documentation at your interview to the U.S. Embassy or Consulate.

Note: There are no military records accessible from some countries. More information can be found online on the country web page of the United States Department of State Reciprocity.

8. Police Certificate

All required police certificates must be submitted to the U.S. Embassy or to the Consulate at their interview by each candidate aged 16 or older.

What is the Applicant's proposal?

Police certifications that fulfill these requirements must be submitted by the Applicant. The certificate of police must be:

- Cover the entire duration of the Applicant's presence in the region; and
- Is issued by the competent policing authority; and

- Include all detention; includes the reason(s) for the arrest(s).

9. *Petitioner Documents*

For the purposes of an IR-5 Visa as a U.S. Citizen's parent or an F4 Visa as a U.S. citizen's sibling or sister:

- obtain your Petitioner's original birth certificate or a certified copy; and
- send NVC a photocopy of the birth certificate of your Petitioner;

If, as a U.S. citizen's wife, you file for the I.R. 1, CR1, or F2A Visas and your petitioning wife have been married previously, you must:

- Get proof that your petitioning spouse has been married to EVERY prior to the marriage (Note: This proof must be an original copy of the certified copy of a final decree on legal divorce, certified death, or cancelation)
- Send a copy of the Petitioner's marriage termination paper(s)
- Bring the original Petitioner's cancelation document to NVC;

Use the Document Finder to acquire countries-specific guidance on how to obtain appropriate birth and marriage termination certificates:

https://travel.state.gov/content/visas/en/immigrate/immigrant-process/documents/Supporting documents.html.

10. *Custody Documentation*

Included in any decree concerning divorce or adoption.

11. See the Finder for your country's Department of State webpage

F4B. AFFIDAVIT OF SUPPORT

Please visit the Document Finder website to your nation for further documentation which the U.S. embassy in your countries could require: https://travel.state.gov/content/visas/en/immigrate/immigrant-process/documents/Support.html.

In addition to the Civil Proof, an I-864 Affidavit with financial supporting documentation shall be submitted

The Support Affidavit serves two purposes: firstly, it gives the U.S. government evidence that you have to suffice financial resources to sustain the intended relative immigrant; secondly, it creates a contract entre the sponsor and the U.S. government stating that the U.S. government can claim reimbursement if the relative receives government benefits, e.g., welfare, Medicaid, food stamps, This requirement is implemented until the recipient He worked at least ten years, became an American citizen, renounced or died.

The individual must be:

- A U.S. citizenship, national or permanent resident; and
- Age 18 or older; and
- Home in the U.S., including or possessed of U.S. territory. (This criterion can be met by proving the establishment of the abode by an individual at or before the date of admission or change of status of the major intended immigrant.)

Every primary Petitioner who submits an I-130, I-129F, I-140, or I-600 is required to provide a Support Affidavit that complies with the minimal income standards laid down in the Guidelines on Poverty I-864P. I-864P is published on the basis of data obtained every year from the U.S. Department of Health and Human Services.

The 2024 Poverty Guidelines for all states except Alaska & Hawaii:

HOUSEHOLD SIZE	125% OF HHS POVERTY GUIDELINES
2	$21,775
3	$27,450
4	$33,125
5	$38,880
6	$44,475
7	$50,150
8	$55,825

The sponsor or joint sponsor must demonstrate its current ability to pay by providing copies of existing paychecks, annual earnings, and job letters. They are also required, together with the adjusted taxable income they disclose for a further two years, to file their most current U.S. tax return.

Even if the sponsor has insufficient income and uses the Joint Sponsor to meet the I-864 requirement, they are still needed to submit a Support Affidavit. Furthermore, U.S. tax returns have been filed.

Inadequate Income Alternative

If a Sponsor has no sufficient income to meet those criteria, the alternative use of "significant assets" will fulfill the criterion. The sponsors, the household members who signed I-864A, and the Primary Sponsored Immigrant may own cash to check or save accounts, shares or bonds, and immovables. The assets shall have a total value of to meet the "substantial" criteria A. 1X — The gap between a sponsor's household income and the minimum orphan immigrant incomes requirement; B. 3X — the disparity between a

sponsor's household income and a U.S. citizen's spouse or child's minimum income requirements.

C. 5X — a differential for all other beneficiaries between the sponsor's home revenue and the minimum revenue requirement.

F4C. COMPLETE THE DS-260

The Department of State DS-260 Immigrant Visa application is finalized as the final component in the NVC processing. A link to this online application form will be provided in the NVC alerts, which drive you to the website. It takes approximately two to three hours and can be saved in the process so that you can log in at your leisure. This form requests biographical data and inquiries concerning any previous criminal convictions list of possible other crimes and offenses that the Beneficiary could exclude from entry into the United States is a U.S. expulsion. All of these difficulties have been truthfully addressed. Once the DS-260 is finished, the receipt shall be produced and signed for the interview online.

These items will be examined for final approval once finished and submitted to the NVC. This process normally takes 8 to 12 weeks, and an announcement will be sent that the case is processed and the interview is set.

F5. STAGE 5 – THE EMBASSY INTERVIEW

The actual interview is the final stage of the processing. The NVC will email the Petitioner, recipient, and legal representation with the interview notification. The date and time are normally notified for six weeks. It is vital to maintain this interview date as trying to change it could lead to a major delay in rescheduling.

F5a. Pre-Interview

Read the interview note attentively since the special guidelines of each U.S. embassy or Consulate may be unique in this given country. You'll need to go to the Web pages of the

people interviewed in Rio de Janeiro: https://travel.state.gov/content/dam/visas/iv-dv-support/RDJ percent 20% 20% 20% 20% 20% Janeiro.pdf

This web page encourages the Beneficiary to register for an online Visa Appointment Service online so that the Embassy or Consulate can assist in the scheduling of the interviews and return the passport with the visa after an interview.

Secondly, a mandatory medical examination will also be required. It is important that this examination is scheduled as soon as the interview notice is received. The above-noted webpage provides a list of specially designated physicians that have been authorized to conduct medical examinations for the U.S. Embassy or Consulate. Failure to use an unauthorized physician will result in delay or denial of the visa. Examination costs are currently $180.00, plus additional expenses for any necessary vaccinations. The Beneficiary will be given a sealed envelope with the exam results to be taken to the interview. Do not open the sealed envelope.

Third, it is important to review the pre-interview checklist. It will provide a complete list of all documentation that will need to be presented at the interview. It is important to bring the original or certified copy of each document that has been submitted to the NVC and USCIS to the interview along with one copy. Also, if the petition is based upon a spousal relationship, also bring all evidence of the bona fide marriage (e.g., photos, legal documents, joint assets, joint liabilities, and notarized letters from friends and family members).

F5B. INTERVIEW DAY

Arrive timely and dress appropriately. Business casual is sufficient. If everything goes well, your visa will be approved, and your passport returned to you within a week or two; if the documentation is lacking, you will receive a letter asking the consular officer to submit the missing documentation. If eligibility or admissibility is otherwise a problem,

it could lead to an instant denying or an administrative review which could take at least 60 days.

Assuming the visa has been granted, you will also be given a sealed envelope containing documents that will be given to U.S. immigration officials upon entry into the United States. Do not open this sealed envelope.

You should plan your travel to the United States before the expiration date of your visa, which coincides with the date of expiration of the medical examination. The visa cannot be extended, and all fees are non-refundable. Also, all family members immigrating with the primary Beneficiary must also travel together.

F6. STAGE 6 – ARRIVAL IN THE UNITED STATES

Upon arrival in the United States, the approved Beneficiary will present their visa and the sealed envelope to the immigration officials. These officials will open the envelope, review the documentation, and then place a stamp into the passport indicating entry with permanent residence status and the category of admission.

In order to be able to receive the Green Card, the accepted Beneficiary shall also pay an immigrant fee of $220,00 before arrival in the USA or after arrival in the United States. Welcome to America's the United States!

G. I-130 Filing for a Family Member in the United States

If the family member is in the United States and can immediately qualify for a Visa, such as the spouse, minor child, or parent of a U.S. citizen, then an I-130 and I-485 Application to Register for Permanent Residence or Adjust status can be filed simultaneously. The applications will be sent to the appropriate USCIS Service Centre and will then be forwarded to the local USCIS Office for interview scheduling.

All eligibility requirements, including the I-864 Support Affidavit, remain identical.

SECTION TWO: INVESTMENT IN THE UNITED STATES AS A PATH TOWARD PERMANENT RESIDENCY

This next segment of the presentation discusses the options an investor has that would allow them to reside in the United States during the term of their business operations and the specific investments that would qualify the investor to receive Permanent Resident status.

A. The E Visa - Treaty Trader and Treaty Investor

This is one of the most accessible Visas to business investors, as it is always available without numerical restrictions. It is available to all types of business enterprises and does not have the high investment capital requirements of other Investor Visas. It could be issued for a maximum five-year term depending on the country. Upon initial entry to the United States, the E visa holder will be granted two years. This visa can be permanently renewed until the commercial enterprise is viable every two years by filing the appropriate extension.1.

E-1 TREATY TRADER

An E-1 Treaty Trader is essentially a Non-immigrant Visa that allows foreign entrepreneurs from treaty nations to enter the United States and participate in substantial trade.

a. Qualifications

1. **You Are A National Of A Country With Which The United States Maintains A Treaty Of Commerce And Navigation;**

- There are close to 140 countries that maintain a treaty of commerce and navigation with the United States. For a full list, visit https://travel.state.gov/content/visas/en/fees/treaty.html at the website of the U.S. State Ministry. Regrettably, this treaty is not signed by Brazil.
- But, if the Applicant holds dual citizenship and one of the two countries is a member of the treaty, they can use that nationality to qualify for an E Visa.
- The Treaty National will also have to own 51% of the business.
- A complete list can be found on the U.S. Department of State's website at: https://travel.state.gov/content/visas/en/fees/treaty.html. Unfortunately, Brazil is not a signatory to this pact.

2. *You Carry On Substantial Trade; And,*

- The U.S. Foreign Affairs Manual (FAM) 9 FAM 402.9 -5 details three requirements to constitute a trade. These are: there must be an exchange, the trade must be international, and the trade must involve qualifying activities.
- Exchange - 9 FAM 402.9 -5 (B) - must be actual and meaningful of qualifying goods, sums of money, or services. Note: "Services" has been interpreted to include international banking, insurance, transportation, tourism, and communications. Essentially, any service item commonly traded in international commerce would qualify.
- Substantial - 9 FAM 402.9 -5 (C) - is defined as being in a continuous flow that should involve numerous transactions over time. The primary focus is on the volume of trade. Of importance is that smaller businessmen should not be excluded if they demonstrate patterns of transactions of value. Numerous transactions with small value may meet the component of a continuing course of

international trade. If sufficient income is met to support the treaty trade, his family should be considered favorably.

3. You Carry On Principal Trade Between The United States And The Treaty Country That Qualified The Treaty Trader For E-1 Classification.

- At least 50% of the total volume of the trade conducted by the Treaty Trader must be between the United States and the treaty country of the alien's nationality.
- Prior to submitting an application for an E-1 visa, trade must exist between the United States and the treaty country.

b. Benefits

- ❖ You can work legally in the United States for a U.S. company where more than 50% of the business trades between the United States and your home country.
- ❖ Travel freely out and in the United States.
- ❖ Stay in the United States on a prolonged basis with unlimited two-year extensions as long as you maintain E-1 qualifications.
- ❖ Bring your dependents to the United States (unmarried children under the age of 21 and your spouse).
- ❖ Your spouse can also obtain work authorization in the United States.
- ❖ Can change Visa category to another investment category or possibly an immediate relative.

c. Negatives

Cannot apply for Permanent Residency based on the length of time being an E Visa holder. Applicants represent that it is their intent to return to their home country upon the expiration of their business venture.

2. E-2 TREATY INVESTOR

This E-2 Investor Visa allows companies, managers, and employees to remain for long periods in the USA in order to supervise their investment or company.

a. The same nationality and treaty requirements exist for E-2 Treaty Investors as E-1 Treaty Traders.

1. The Treaty Investor must also own 50% of the business enterprise.

b. The Applicant has actually invested or is in the process of investing.

- The Applicant must provide evidence of control of the capital assets, including the funds invested.
- Non-profits do not qualify.
- The funds must be at risk in the event of a partial or total loss to qualify as an "investment."
- Personal funds, or funding secured with risk of loss of Applicant's personal assets, can be qualified as investment funds.
- To be "in the process of investing," the funds or assets must be committed, and the funds must be real and irrevocable. An investment would qualify even if the contract states the business is subject to the issuance of the visa, and the funds are held in escrow.
- There must be more than just the planning of the business to qualify. Steps include securing a lease for business premises and purchasing equipment for the business enterprise.

- ❖ The investment of the immigrant must be a genuine running company. With the speculative or unstinting investment, the applicants will not qualify. Investment is not regarded to be unbundled cash on a bank account or similar security.
- ❖ Investment activities cover the purchase of a new company, which must make considerable investments in order to secure the company's successful operation and be proportional to overall investment.

c. The commercial enterprise must be real and active.

- The enterprise must produce some service or commodity.

d. The investment must be substantial.

- ❖ The investment should amount to more than half the company's overall value. For a new company, the investment amount should be adequate to guarantee the successful operation of the company. Using capital investment and ownership percentage, the USCIS will decide if the investment fulfills the "substantial" criteria.
- ❖ When a low-cost company exists, the percentage of ownership requirements is increased. In these instances, the capital investment and ownership of a high-cost firm must be greater than the percentage of the investment; this means making sure the investment is considerable.
- ❖ The investment is more than just a marginal one. The investment should be able to provide substantial revenue. It should exceed the amount in providing the investor and his family with daily living expenses. The economic impact on the United States also needs to be significant.
- ❖ The E-2 Visa for the Investor does not demand any particular amount of staff, but it is also not marginal. Two or three employees are usually enough to fulfill this level.

e. The Applicant will direct and develop the enterprise.

In general, the immigrant who applies for a visa must provide a supervisor or executive capacity to the company which has the skills necessary for the functioning of the business. In other words, the foreign person should be an important staff member or own at least 50% of the company.

f. Additional Considerations

- E-1 and E-2 Visa applications are available for premium processing with the USCIS for an additional fee of $1,225.00 US. The USCIS can adjudicate the application within 15 calendar days.
- An E-2 spouse can receive employment authorization, and minor children can attend public schools.
- In general, applicants for the E-2 Investor Visa must apply at the U.S. Embassy Consulate with jurisdiction over their permanent place of residence. Applicants may apply from within the United States but must return to their home country to get a Visa for travel outside the United States.
- Spouses and unmarried children under the age of 21 may be granted derivative E Visas to accompany the original Visa holder, regardless of nationality. The spouse of an E visa holder may apply to the Department of Homeland Security for work authorization; however, dependents are not permitted to work in the United States.
- Visa holders can change Nonimmigrant Status or file for Adjustment if qualified.

a. Example 1: Mr. and Mrs. Doe enter the United States with a minor son on an E Visa. The son later marries a U.S. citizen and obtains U.S. Permanent Residency. After obtaining U.S. Permanent residency, the son, who is now over 21 years of age, applies for U.S. citizenship. After obtaining his U.S. citizenship, he can now apply for his parents, Mr. and Mrs. Doe, who can file their I-485 and adjust their Status to Permanent Resident.

b. Example 2: Mr. and Mrs. Doe enter the United States on an E-2 Visa. Their business is extremely successful and generates ten employees, plus they reinvest their profits in the business to meet the capital threshold for an EB-5 Visa. They can convert to an EB-5 and attain a Permanent Residency.

B. The EB-5 Visa - U.S. Permanent Residency with a Capital Investment of U.S. $500,000/$1,000,000

According to the official program U.S. Citizenship and Immigration Services (USCIS), the Immigrant Investor Program, as it is formally called, was formed by Congress to boost the U.S. economy through job creation and capital investment from foreign investors in 1990. For investors with US$500,000.00 to US$1,000,000.00, in less than three years' time, they could be able to complete U.S. Permanent Residency in the United States. In this category, every year, there are 10,000 visas. For the investor, there are two monetary possibilities. The investment needed is the U.S. $500,000.00 for persons who are prepared to invest in a "target job field" identified by the USCIS. A 'tailored work zone' is an area where the unemployment rate is at least 150 percent of the national average at the time of the investment. This can also cover a rural area outside a metropolitan statistical area (as determined by the management and budget bureau) or outside the borders of any city or metropolis that, according to the decennial census, has a population of 20,000 or more. People are also free to search for a "TEA" designation if the USCIS is not already specified. The needed amount of investment will be at least $1.000,000.00 US for any investments outside a defined zone of the 'TEA.'

Besides monetary investment, a minimum of 10 full-time employees need also be created for the company. They may be U.S. citizens, permanent U.S. residents, asylums, or refugees, but not family members. They may be U.S. citizens. The USCIS checks if the company maintains these ten employees until the whole Green Card.5 Visa program is finished- The eligible investment must either be made to a new profit-making company

created after 29 November 1990 or, if it is formed before that date, to a restructured or extended profit-making operation. Non-profit or passive investment activities are generally not eligible for permanent resident status under the visa program EB-5. Investing funds in a troubling business that has sustained a net loss of at least 20% (20%) of the net value of the business before the loss can also be decided by foreign investors. In such a circumstance, the motivation is given by foreign investors to protect the current ten full-time jobs rather than to directly create such a number of positions.

The investor's next consideration is whether they want to participate in their investment directly or indirectly. If you create a company alone, you must employ a competent business planner to develop and support submissions to the USCIS. Expected to pay for these aid services at least $7,000.00 to $10,000.00 USD. Moreover, the EB-5 investor is fully involved in the supervision of the company and its personnel. Those who do not want to be personally involved in the investment might invest in the regional investment centers designated for USCIS EB-5. These centers, which include "TEA" programs, offer a variety of projects in which cash can be invested and help to provide documents to the USCIS. There are benefits to investing in a project within a USCIS-approved Regional Centre. Some of these advantages include the ability to pool investment funds with foreign and domestic investors' funds to achieve overall greater financial stability for a specific project, the ability to receive credit for direct and indirect jobs only in the regional hub, and the ability to benefit from a reduced investment sum o Typically regional centers levy administrative charges in excess of investments in anywhere from $30,000-50,000. The charge for lawyers is also expected to vary between US$20,000 and US$30,000 plus a filing fee. An attorney cannot choose or advise a particular investment project because the investor is responsible for conducting its own trust study. The investor must exercise caution while selecting a sound project, as the entire investment amount could be lost, or the firm may fail to meet the required employment or profitability criteria, resulting in failure to obtain permanent residency. When a client has decided on a suitable investment, the attorney assists with the preparation of USCIS petitions. Within six months, the investor receives a conditional

Green Card with a two-year validity period. Prior to the end of the two years, evidence proving the ten employees' continuous employment and the financial soundness of the investment is reviewed all the conditions are fulfilled, the investor and his wife will be granted permanent residency in the U.S., together with any unwedded children under the age of 21. All employees in the United States will be able to work. Five years after gaining a permanent residency, you can seek U.S. citizenship.

1. Considerations

"Lawful Funds" - The investor must demonstrate that the investment capital was obtained legally. Tax returns, property sales data, and business records can all be used to demonstrate that the capital was obtained legally. A gift or a loan is a legal source of funds as long as the money gifted or loaned was legal.

C. The L-1 A Visa - The Transfer of a Manager or Executive to the United States

The L Visa category authorizes the temporary transfer of a foreign national to the United States as a Manager or an Executive (L-1A) or a Specialized Knowledge Professional (L-1B) to continue with an office of the same employer. It can be a parent, branch, subsidiary, or affiliate. Spouses are granted the ability to also file for work authorization, and unmarried children are also granted L-2 status. Only the L-1A Manager or Executive transferee will have the eligibility to file for a Green Card application, while the L-1B will have to go through the additional requirement of a labor certification process. The focus of this discussion will be oriented toward the L-1A Manager or Executive transferee.

1. DUAL INTENT

Although INA 214(b) generally requires the intending alien on a Non-immigrant Visa to maintain their residence in their home country with the intent to return home upon the

expiration of their Non-immigrant Visa, the L Visa Applicant is excluded from this requirement.

According to 9 FAM 412-15, an alien may enter the United States lawfully as a Non-immigrant under the L classification and leave willingly at the end of his or her permitted stay while concurrently legitimately attempting to become a Permanent Resident of the United States. As a result, determining an Applicant's eligibility for an L Visa must not be based on whether they intend to stay temporarily or permanently. As a result, dual intent is permissible.

2. PROCESS FROM L-1A TO PERMANENT RESIDENT

When admitted to the United States as an L-1A Manager or Executive, the Visa holder can consider filing for Permanent Residency through an EB-1C application. The EB-1C is an employment-based immigration petition designed specifically for multinational Executives and Managers and must be sponsored by the U.S. employer. The greatest benefit from this type of application is that there is no labor certification requirement. There are currently 40,000 Visas available annually and include additional categories ranging from the arts, business, education, and science.

If the EB-1C application is approved, the L-1A and his eligible dependents can file for Adjustment of Status to full U.S. Permanent Residency.

3. CERTIFICATIONS

Individual Petitions (FAM 402.12-4(A)) (CT: VISA-322; 04-07-2017)

Individual petition instances, the following aspects must be considered when determining eligibility for L-1 classification:

a. The Petitioner is the same company, corporation, or other legal entity, or its parent, branch, affiliate, or subsidiary, for whom the Beneficiary worked abroad (see 9 FAM 402.12-9 below).[1]

1. Qualifying Organization: A qualifying organization is a firm, corporation, or other legal entity in the United States or abroad that:

- Has one of the qualifying relationships listed in the definitions of parent, branch, affiliate, or subsidiary;
- Is or will be doing business as an employer in the United States and at least one other country, directly or through a parent, branch, affiliate, or subsidiary, for the duration of the alien's stay in the United States as an intracompany transferee (international trade is not necessary); and
- Otherwise complies with the INA 101(a)(15) standards (L).

2. Parent: A firm, corporation, or other legal organization that has subsidiaries is referred to as a "parent." A parent is any commercial firm that has subsidiaries. Even if it has an ultimate parent, a subsidiary can own other subsidiaries and be a parent.

3. Branch: A branch is a division or office of the same organization that is located in a different place. A branch is any such office or operating division that is not established as a separate company organization.

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1 a. **(U)** INA 101(a)(15)(L) does not require the beneficiary of an L petition to be coming for employment at a pre-existing, U.S.-based office of the employer. An individual petition may be approved for a beneficiary who is otherwise classifiable under INA 101(a)(15)(L) and who is coming to establish an office (i.e., commence business) in the United States for the petitioner. An applicant in a managerial, executive, or specialized knowledge capacity may come to open or be employed in a new office on an individual L visa.

b. **(U)** "New office" means an organization, which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

4. Subsidiary: A "subsidiary " is a company, corporation, or other legal entity that a parent owns, either directly or indirectly:

- owns more than half of the entity and controls it; or
- Owns half of the entity and controls it; or
- 50% of a 50-50 joint venture, with equal control and veto power over the business; or
- Owns less than half of the entity yet controls it.

5. Only two legal organizations can own and control a 50-50 joint venture; all other joint venture combinations do not qualify as a subsidiary. A contractual joint venture does not meet the definition of a subsidiary. Because the remaining stock is broadly distributed among minor stockholders, a parent may possess less than half of the business but retain control; for example,

6. Affiliate: The term "affiliate" refers to:

- One of two subsidiaries controlled and owned by the same parent or individual; or
- One of two legal entities belonging to the same group and being managed by each person, each with almost the same portion of each company;
- In the case of a partnership formed in the United States to provide accounting services as well as managerial and/or consulting services and that markets its accounting services under an internationally recognized name pursuant to an agreement with a worldwide coordinating organization owned, and controlled Members accounting firms must be regarded as an affiliate of the U.S. Partnership if they place their accounting services on the market with the same internationally recognized name in accordance with the agreement reached with a worldwide coordination organization of which the U.S. Partnership is also a member.

b. ***The Beneficiary shall be a manager, manager, or expert knowledge professionals and shall be directed to managers or executives or to specialist knowledge-related positions (see 9 FAM 402.12-14 below).***[2]

1 Managerial Capacity: "Managerial capacity" refers to a position inside an organization in which the individual is primarily responsible for:

- Is in charge of the organization or a department, subdivision, function, or component of the organization;
- Manages an essential function inside the organization, or a department or subdivision of the organization, or supervises and oversees the work of other supervisory, professional, or management workers;
- If any employee or other employees are directly monitored, he or she has the right to recruit and dismiss or recommend those, as well as other personnel actions (such as promotion and leave authorization). If no other employees are directly monitored, functions at a senior level within the organizational structure or in relation to the function managed; and
- d. Has authority over the day-to-day operations of the activity or function for which the employee is responsible. Unless the employees oversaw are professionals, a first-line supervisor is not considered to be functioning in a management capacity just by virtue of his or her supervisory obligations.

2. Executive Capacity: "Executive capacity" refers to a position inside a company in which the employee is primarily responsible for:

- Is in charge of the organization's administration or a main component or function of the organization;

[2] When an applicant was initially admitted in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by DHS in an amended, new, or extended petition at the time that the change occurred or based on a new Blanket L I-129S petition adjudication.

- ❖ Establishes the organization's, component's, or function's goals and policies;
- ❖ Has broad discretionary decision-making authority; and
- ❖ Only receives general supervision or guidance from higher-level executives, the board of directors, or the organization's owners.

c. There is an employer-employee relationship between the Petitioner and the recipient (see 9 FAM 402.12-4 below).[3]

1. The right of control is the important element in assessing the existence of an "employer-employee" relationship; that is, the right of the employer to order and control the employee in the performance of his or her work. Possession of the authority to engage or discharge is solid proof of the existence of an employer-employee relationship.
2. The source of the Beneficiary's income and benefits while in the United States (i.e., whether the Beneficiary is paid by the United States or a foreign subsidiary of the petitioning firm) is not relevant in determining L status eligibility. Furthermore, the employer-employee relationship covers situations in which the Beneficiary is not paid directly by the Petitioner, and such a beneficiary is not prevented from establishing L classification eligibility.
3. A beneficiary who is hired directly by a foreign company in the United States and is not controlled by (and hence has no employment relationship with) the foreign company's office in the United States does not qualify as an intracompany transferees beneficiary coming to the United States to work as the top executive of the company's U.S. branch would merely need to demonstrate that she or he receives general supervision or direction from higher-level executives, the board of directors, or the organization's owners.

[3] (3) **(U)** The petitioner and beneficiary have the requisite employer-employee relationship

d. The Petitioner expects to keep conducting business in the United States and at least one other country (see 9 FAM 402.12-4 below).[4]

1. A qualifying organization under INA 101(a)(15)(L) must be doing business as an employer in the United States and at least one other country for the period of the intracompany transferee's stay in the United States (international trade is not necessary). (For personnel going to open or work in a new office in the United States, see 9 FAM 402.12-11.) Firm representatives and liaison offices that provide services in the United States, even if the services are to a corporation situated outside the United States, are considered to be "doing business," and aliens who perform such services may be eligible for L-1 status.
2. "Doing enterprise" involves the provision of goods and services by a qualifying organization regularly, systemically, and continuously, and does not include the mere presence in the United States or overseas of an agent or an office of a qualifying organization.

e. The Beneficiary has had one year of prior continuous qualifying experience within the previous three years (see 9 FAM 402.12-4 below).

1. INA 101(a)(15)(L) requires the recipient of a transferred petition, for one full year in the three years preceding the recipient's application for admission into the United States, to labor continuously for that recipient or an associate, or a subsidiary thereof.
2. Full-Time Employment: Although not explicitly stated in the INA or regulations, INA 101(a)(15)(L) envisions that the Beneficiary's qualifying experience with the

[4] (4) (**U)** The petitioner will continue to do business in the United States and at least one other country

(5) (**U)** The beneficiary meets the requirement of having had one year of prior continuous qualifying experience within the previous three years

Petitioner must have been continuous full-time employment, rather than continuous part-time employment. Several years of part-time work totaling one year cannot be considered meeting the criterion.

3. Full-time services shared among linked enterprises, each of which employs the employee on a part-time basis, constitute full-time employment if the total time reaches or exceeds the hours of a full-time position.
4. Employment Abroad: The Beneficiary's one year of qualifying experience with the Petitioner must have taken place entirely outside of the United States. Time spent in the United States working for the petitioning firm does not qualify.

f. If the recipient is opening or working in a new office, the standards outlined in 9 FAM 402.12-11 are met.

1. The following proof shall be provided by the Petitioner seeking L status for a manager or executive who moves or works in a new office:

- The acquisition of adequate physical space to the new office;
- that the Beneficiary has been employed for one continuous year in the three years preceding the submission of the application in a managerial or managerial capacity and that the proposed employment involves executive or managerial authorities for the new operation; and
- That the anticipated U.S. operation will support an executive or managerial post within one year of the petition's approval.

2. While in the beginning phases of a firm, it is expected that the manager or manager in a new office will be engaged more than normal in daily operations, he or she must be empowered to hire employees and be able to decide on the objectives and management of the organization.

4. EVIDENCE OF L-1A PETITION EVIDENCE

A. U.s. company or installation

- Certificates of stock showing that the parent company holds a majority share.
- Copy of the lease for the premises
- Initial investment proof for a bank statement or wire transfer
- Reports of audited accounts
- Return Form 1120 of Corporate Tax Revenue (if any)
- Quarterly Report of the Employer Form 941 (if any)
- Description of business enterprise with organization,
- business contracts, invoices, freight bills, loan letters, etc.
- Bank statements
- letterhead of the corporation

b. Foreign Company (Parent)

- Business license
- Article of incorporation
- Income tax filings for the three years under review
- Reports on the accounting of the three years under review
- Organizational structure, the total number of staff, transferred job
- Brochure for companies and/or product introductions
- business transactions documents (contractual contracts, lading bills, credit letters
- bank statements or transaction records
- corporate logo, name, and address letterhead

c. Executive Transferee or Managerial

- Abstract

- Diploma
- Declarations of Payment
- Revenue tax records
- organizational charts showing your current position
- Supervisors, colleagues, and others letters of reference
- Description of your managerial or executive duties
- letter of employment verification from a foreign company
- resolution or transfer-verification appointing documents
- Any further documents were indicating the ability of the transferee to perform business on an executive level.

5. BLANKET L PETITIONS

In addition to the regular L 1 criteria, Blanket L imposes additional obligations on organizations.

The following three prerequisites for eligibility for Blanket l must be met by companies: Companies

1. Every subsidiary, branch, or affiliation of the firm is engaged in trade or services;
2. The company has a United States office, which has been operating for a minimum of one year in the United States; and,
3. An employer shall have, in the United States or abroad, at least three branches, affiliates, or subsidiaries.

In addition, the United States and foreign organizations must satisfy at least one of the following criteria:

- The U.S. company and its qualifying affiliates have received approval on at least ten petitions for L-1 Managers, Executives, and/or Specialized Knowledge Professionals during the previous year;

- ❖ The U.S. company and its U.S. subsidiaries and affiliates combined have annual sales of more than $25 million; or,
- ❖ The U.S. company employs at least 1,000 people in the United States.

6. DURATION OF STAY

The USCIS will grant a maximum initial stay of one year for transferred individuals arriving in America to set up a new office. An initial maximum stay of three years will be permitted to all other competent staff. Applications for extensions for stays of up to two years can be made for all L-1A employees in increments of up to a maximum of seven years.

7. APPLICATION PROCESS

The requisite applications are filed by the employer with the USCIS between two and six (2-6) months from when the transfer is needed. Regular processing is two to five (2-5) months. Premium processing is available to receive an adjudication within 15 calendar days. Once approved, the Applicant will schedule an I-160 interview for a Nonimmigrant Visa with the U.S. Embassy or Consulate.

CONCLUSION

The presenter was aimed at educating the participant on the U.S. Immigration System; providing an overview of the application procedure, and discussing some of the choices for visas accessible through financial investment to live and work in the U.S. Please feel

free to contact us and arrange an official consultation to clarify your qualifications and needs if you wish to discuss other possible visa choices.

- ***End*** -