

ABC OF USA IMMIGRATION

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INDIAN-AMERICANS

There are more than 3 million Indian Americans in the United States of America (U.S). They form 10% of Americas Doctors. A significant percentage of Americas teachers and engineers are Indian-Americans. One-third of the engineers in Silicon Valley are Indian-Americans. Seven percent of high-tech firms in Silicon Valley are laid by Indian CEO. Indian Immigrants have founded more engineering and technology companies during 1995 to 2005, compared to Immigrants from UK, China, Taiwan and Japan, all combined. Indian-Americans are America's wealthiest ethnic group with per capita income of almost 1 lac dollars which is nearly twice the national average of America. Seventy-one percent of all Indians in America have a bachelors or high school degree. Almost forty percent of all Indians in the US have a Masters, Doctorate or other professional degree, which is 5 times the national average. Kalpana Chawla and Sunita Williams are of Indian-Americans. Hyderabad borne Manipal educated Indian American Satya Nadella is Microsoft's CEO. Indian-Americans are really shining in America.

HISTORY

Since 1492, the year when Columbus discovered America, people from all over the world have been migrating to the United States of America ("US"). Then known as the "New World", the US, in the year 1640 attracted the British, French, Germans, Dutch, Spanish and Portuguese. Within a span of 136 years, from 1640 to 1776, the population of US increased hundred fold. It was in 1789 that US adopted its Constitution and in 1798 that the Congress authorized the US President to expel dangerous aliens by enacting the Aliens Friends Act and the Aliens Enemies Act. The Naturalization Act, which provided for five-year residency requirement for US citizenship (which requirement exists even today), was introduced in 1802. The Second World War brought an upspring in US economy and migration to US increased. The Immigration and **Nationality Act ("INA")** was enacted in the year 1952. The INA has been amended several times over till date, but continues to be the law that governs immigration to the US. **Till the year 1965 Asians which included Indians too were excluded from Family Preference Categories to receive Green Cards.**

9/11

As an aftermath of September 11, 2001, USA PATRIOT ACT was enacted. It enlarged the definition of terrorism. A foreign student monetary program SEVIS was introduced. The Homeland Security Act 2002 was enacted. The Immigration and Naturalization Services (INS), more than 50 year old institution was abolished and in its place, Bureau

of Citizenship and Immigration Services is established. The Open Door Policy has been substituted by Zero Tolerance Attitude.

VISA

A US visa, which serves as an entry document, is a stamp placed on the passport by a US Consulate outside the US. VISA cannot be issued inside the US. There are two categories of US Visa: Immigrant



and Non-immigrant. Immigrant visas are meant for people who intend to remain in US permanently. Non-immigrant visas are issued to people who intend to enter US on a temporary basis.

STATUS

Status is the name for privileges, which you are given when you receive immigration benefits either as an immigrant or as a non-immigrant. With each visa a status is required to be given. But with each status a visa may not be available. A non-immigrant can travel in and out of US on a visa but not with a status. A non-immigrant status is lost as soon as the person leaves the US.

MYTH

It is a myth that visitor, business or student categories of non-immigrant US visas are easy to obtain. In fact these visas are more difficult to get compared to immigrant visas because an applicant of a non-immigrant visa is obliged to satisfy the Officer that he has a non-immigrant intention.

PRESUMPTION

As per Section 214(b) of the INA, every alien is presumed to be an immigrant until he establishes to the satisfaction of the Consular Officer, at the time when he makes an application for a non-immigrant visa at the US Consulate, and to the satisfaction of the Immigration Officer, at the time of application for

admission in US at the border posts, that he is entitled to a non-immigrant status under Section 101(a)(15) of the INA.

BURDEN

The burden is upon the applicant of a non-immigrant visa to satisfy the Consular and/or the Immigration Officer that he has no intention of permanently residing in the US and has sufficient family and financial ties, which would make him return to his home country.

PRE-CONCEIVED AND DUAL INTENT

An applicant of a non-immigrant visa if found to have a "pre-conceived intent" to permanently reside in US or a "dual intent" of doing things permissible on the category of visa which he is applying for as well as permissible on other category of visa, then such a person will be denied a non-immigrant visa. If such an intention is found or suspected and a visa has been already granted, it may be cancelled and entry into the US may be denied.

IMMIGRANT VISAS

Immigrant visas, on the basis of which Green Cards are issued after you enter US, are granted to people qualifying in 10 different ways. Each category

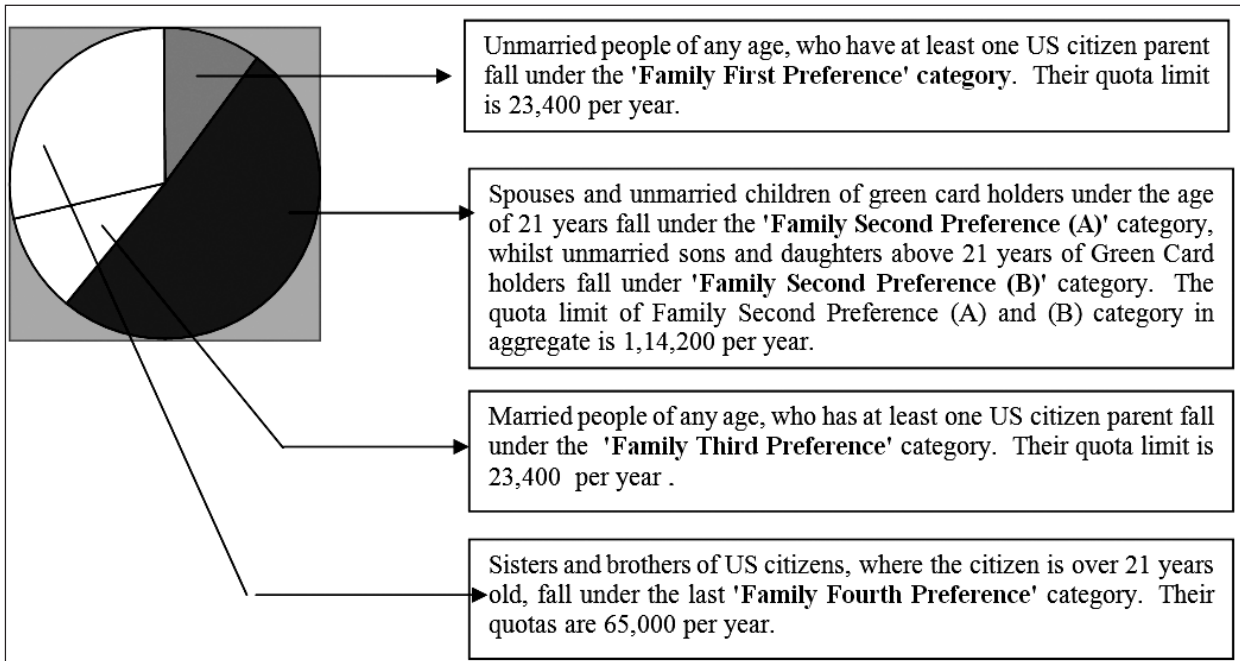
normally has a particular quota. An immigrant visa is valid for six months from the date it is issued. Under certain circumstances, a Green Card holder may apply for citizenship after five or three years of holding the Green Card.

IMMEDIATE RELATIVES:

The first amongst the ten categories is that of Immediate Relatives. There are no quota restrictions for this category. Immediate Relatives include spouses of US citizens; unmarried people under the age of 21 years who have at least one US citizen as a parent; parents of US citizens if the US children are over the age of 21 years; step children and step parents if the marriage creating the step children/step parent relationship took place before the child's 18th birthday and parents and children related through adoption if the adoption took place before the children reach the age of 16 years.

FAMILY PREFERENCE CATEGORY:

Every year 2,26,000 immigrant visas are issued to aliens on account of family relationship with US citizens or Green Card holders. This category is known as "Family Preference Category."



EMPLOYMENT PREFERENCE CATEGORY:

Immigrant visas which are granted on account of employment fall under 'Employment Preference' category. Their yearly quotas are 1,40,000.

FIRST	SECOND	THIRD	FOURTH	FIFTH
Priority workers, which include persons of extra-ordinary ability in arts, science, education, business and athletics or outstanding professionals and researchers.	Professionals with advanced degrees or exceptional abilities.	Professionals and skilled or unskilled workers	Religious workers and various miscellaneous categories of workers and other individuals.	Individual investors willing to invest one million dollars in US business or half a million dollars in economically depressed area are granted immigrant visas in this category.

EB-5

In 1990 US Government created a special Investor's Visa called 'EB-5 Basic Program'. In 1993 it created 'EB-5 Pilot Program'. Under the Pilot Program if a foreigner invest \$ 9,00,000 or \$ 1,800,000 in a recognized Regional Center for 5 years the investor his/her spouse and his unmarried children below the age of 21 years are granted conditional Green Card. The Regional Center has



to create 10 jobs per investor in their Business which could be direct / indirect or induced. The investment should be made for 5 years. The Conditional Green Card upon fulfilling the terms can be made permanent and the investor and his family also has the option to apply for USA Citizenship by Naturalisation. The Regional Center returns the investment with whatever profits or losses it has made to the Investor after 5 years. If the Regional Center carries on Business in backward area or Targeted Employment Area the amount of investment is \$ 9,00,000 In addition to this, the investor is required to pay US \$ 70,000 by way of Administrative Fees to the Regional Center. The Regional Center's Attorney also charge about US \$ 25,000 towards their professional fees and US \$ 3750 is required to be paid towards filing fees. The Indian Advocate who conducts Due Diligence is also required to be paid his fees. These fees are non refundable. The procedure is that the Investor first selects the Regional Center after carrying out Due Diligence through an experienced Advocate. Then the investment is made by transferring the funds to the Escrow Account of the Regional Center in USA. The Regional Center's Attorney then within about 4 weeks files a Petition for Immigrant Visa for the Investor. It normally takes 24-36 months to process and approve this Petition. Thereafter the Investor has to apply alongwith his family for Immigrant Visa at the American Consulate in his country and on receipt of the same upon entering they are granted 2 years Conditional Green Card which can be made permanent on making application after 21 months and satisfying the authority that investment is not withdrawn, 10 jobs are created and other conditions are fulfilled. Thus from the time the investment is made with in 12-15 months the investor and his family receives a Green Card. This is the fastest route to receive a Green Card.

GREEN CARD LOTTERY:

Every year 55,000 immigrant visas are granted through Green Card lotteries. Indians are excluded from participating in this lottery system, which is known as 'Diversity Visa'. But if a person residing in India, is born outside India, in a country which is eligible to participate in the Green Card lottery, that person though residing in India may be eligible to participate in the green card lottery. An Indian married to a person born in a country which is eligible to participate in the Green Card lottery can also participate in this lottery.

PEOPLE IN SPECIAL SITUATIONS:

Occasionally US Govt. passes laws making green cards available to people in special situations.

REFUGEES/POLITICAL ASYLEES AND OTHERS:

Green Card is also granted under Refugees and Political Asylees categories, Temporary Protected Status category, Amnesty category and Special Agricultural Workers category.

GREEN CARD FOR ILLEGAL RESIDENTS:

People who are illegally in the US for more than 10 years, if their spouses or children, who are US citizens, would face extraordinary and exceptionally unusual hardships on account of deportation may be granted Green Card under the category of long term residence and other special cases.

LIMITATIONS OF GREEN CARD HOLDER:

A Green Card holder must have his actual place of residence in the US. A Green Card cannot be used just for work and travel purpose. A Green Card holder cannot remain outside US for more than 364 days at a time. Under the 1996 Immigration Act, a green card holder leaving the US for six months or more is subject to forfeiture of his lawful permanent status. If he commits a crime or participates in a politically subversive activities, then too his Green Card can be taken away and he can be deported. He is liable to be called for military service and he must pay US tax on his worldwide income because a Green Card holder is regarded as a US resident.

NON-IMMIGRANT VISAS

The classification of different categories of non-immigrant visas runs from 'A' to 'V'.

VISITOR AND BUSINESS VISA: (B-1/B-2)

The most availed of non-Immigrant Visas are Visitors Visas (B-2). They are granted to people intending to enter US temporarily as visitors/tourists. To qualify for a B-2 visa, an applicant is required to show his genuine 'visitor intention', availability of sufficient funds to cover to and fro travel, lodging and boarding expenses in US and strong family and financial ties in his home country to make him return. The requirements of a Business Visa (B-1) are almost the same. These two categories of non-immigrant visas are available for a maximum period of six months. In certain exceptional cases, an alien can have this period extended for further six months. However, it is advisable not to do so.

STUDENT VISA: (F-1/M-1)

Foreign students intending to study in a US university/college/school in a full time vocational or a short duration non-vocational course can do so after obtaining an F-1/M-1 Student Visa. A recognized university/college/school must admit the student and issue Computer generated SEVIS mode Form I-20. The student is required to show that he has a bonafide student intention and adequate funds to meet with the expenses of tuition, college fees and lodging and boarding expenses. The student should be proficient in English language and should not have an intention to work in the US.

OTHER CATEGORIES:

- A US company which is a branch, wholly or partly owned subsidiary, joint venture or affiliate of a foreign company, can invite a person working full time for a period of 12 months during last 3 years as a Manager, Executive or person with specialized knowledge in the said foreign company, to work in that US company as an intra-company transferee on L-1 visa. The Business of the US Company and that of Foreign Company need not be the same. There is no requirement of investing any minimum capital.

- It is possible for a US entity to invite a foreigner to work with them in US in certain circumstances. A specialty occupation job requiring the services of a graduate can be offered to a foreigner without obtaining labour certification. People who qualify for such jobs are granted H-1B visas.

◆ A special category of H-3 visa is available for trainees.

◆ Exchange Visitors coming to the US to study, work or train as a member of exchange program officially recognized by the US Information Agency are granted J-1 visa.

◆ Fiancés of US citizens coming to the US for the purpose of getting married are granted K-1 visa.

◆ Persons of extraordinary ability in sciences, arts, education, business or athletics are granted O-1 visa.

◆ Internationally recognized athletes and entertainers are entitled to enter US on P-1 visa.

◆ Artists and entertainers coming to the US to give culturally unique performance in a group are granted P-3 visas.

◆ Ministers of recognized religion are allowed to enter US and work on R-1 visa.

The duration for each of these categories of visas are different and each of them has special requirements and conditions attached to them.

REPRESENTATIVE OF MEDIA

Bonafide representatives of the foreign press coming to US to work solely in that capacity are

granted 'I' Visa. You may be eligible for the I visa, if you represent a foreign information media outlet (press, radio, film, or other foreign information media); and are coming to the United States to engage solely in this profession; and have a home office in a foreign country. Occupations under this category include reporters, film crews, editors, and similar occupations. Any spouse and children under the age of 21 may accompany or follow to join an I nonimmigrant. Admission as an I nonimmigrant is generally authorized for the duration of status, and no application for extension of stay is required to be filed as long as the media representative continues working for the same employer in the same information medium.

CHANGE / ADJUSTMENT OF STATUS

The US laws make it permissible for a person to enter US on a particular category of US non-immigrant visa and then whilst in US in certain circumstances, change his status to another category of non-immigrant visa. It is also permissible to adjust status from non-immigrant to immigrant. However it is always advisable not to do so, since if the status is changed from one category to another, the person doing so, when he leaves US and thereafter desires to re-enter US, is obliged to go to US Consulate of his own country and apply for that category of visa to which he has changed his status. At that time, the Consular Officers view such a person with suspicion. In the case of adjustment of status, if such an application is not allowed, the applicant also runs the risk of illegally overstaying in USA.

OVERSTAY

If a person overstays in US for 180 days, he is debarred from entering US on any category of visa for 3 years. If the illegal stay is for more than one year, the period for which he is debarred is 10 years.

WAIVERS:

Under certain circumstances, a person becomes inadmissible in the US. In some of such cases, US Immigration Laws provide for granting waiver.

CONCLUSION

US Immigration Laws are complex. At times one finds that they are also strange and its provisions are contrary to each other. It is therefore advisable and in the interest of a visa applicant that before applying for any category of Immigrant or Non-immigrant US Visa, prior legal guidance from a competent Immigration Advocate is received.

DISCLAIMER

Information provided in this leaflet should not be treated as Legal Advice.



To Know more about **USA VISA** Watch us in
'Immigration Ki Duniya' web series on
'YouTube'

They will assist you in
fulfilling your American Dreams.

