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IMMIGRATION + ADOPTION

# UNDERSTANDING THE TRUTH ABOUT LEGAL IMMIGRATION

August 13, 2024

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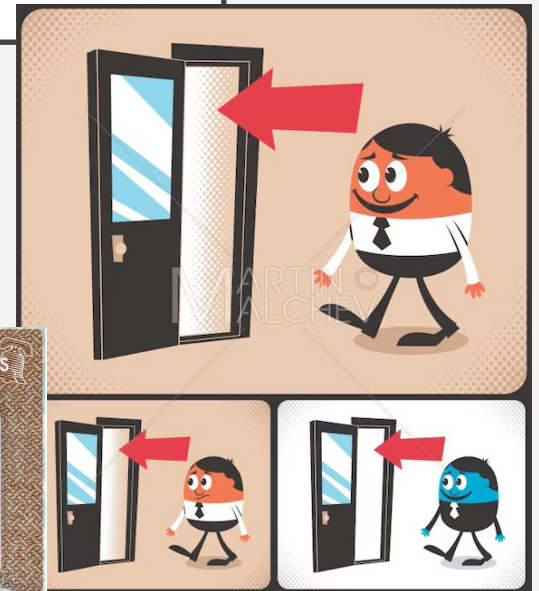
# OVERVIEW

## WHAT WE'LL COVER TODAY

- THE WHO, WHAT, HOW OF IMMIGRATION
- DETAILED OVERVIEW OF ASYLUM LAW
- OTHER FORMS OF IMMIGRATION RELIEF
- WHAT IS LAWFUL IMMIGRATION?

# HOW DOES A PERSON COME INTO THE US?

- What is the percent of people that come into the US with visa and overstay?
- What is the percent of people that come into the US unlawfully through the border?



# GOVERNMENT AGENCIES



# OPTIONS IF YOU COME INTO THE US AND ARE DETAINED

**Your A number**

**Notice to Appear**

U.S. Department of Homeland Security

**In removal proceedings under section 240 of the Immigration and Nationality Act:**

Subject ID: [REDACTED] FINE # [REDACTED] File No: [REDACTED]  
 DOB: [REDACTED] Event No: [REDACTED]

In the Matter of: [REDACTED]  
 Respondent: [REDACTED] currently residing at: [REDACTED]  
 (Number, street, city and ZIP code) (Area code and phone number)

1. You are an arriving alien.  
 2. You are an alien present in the United States who has not been admitted or paroled.  
 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:  
 1. You are not a citizen or national of the United States;  
 2. You are a native of HONDURAS and a citizen of HONDURAS;  
 3. You arrived in the United States at or near [REDACTED] on or about [REDACTED];  
 4. You were not then admitted or paroled after inspection by an Immigration Officer.

**The immigration court where your hearing will be scheduled**

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law: 212(a)(8)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.  
 Section 235(b)(1) order was vacated pursuant to:  8CFR 208.30(f)(2)  8CFR 235.3(b)(5)(v)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:  
 5701 Executive Center Drive Suite 400 Charlotte NC US 28212

(Complete Address of Immigration Court, including Room Number, if any)  
 on April 10, 2018 at 10:00 AM to show why you should not be removed from the United States based on the charge(s) set forth above.

NICHOLAS E. MUNOZ ACTING PATROL AGENT IN CHARGE  
 (Signature and Title of Issuing Officer)

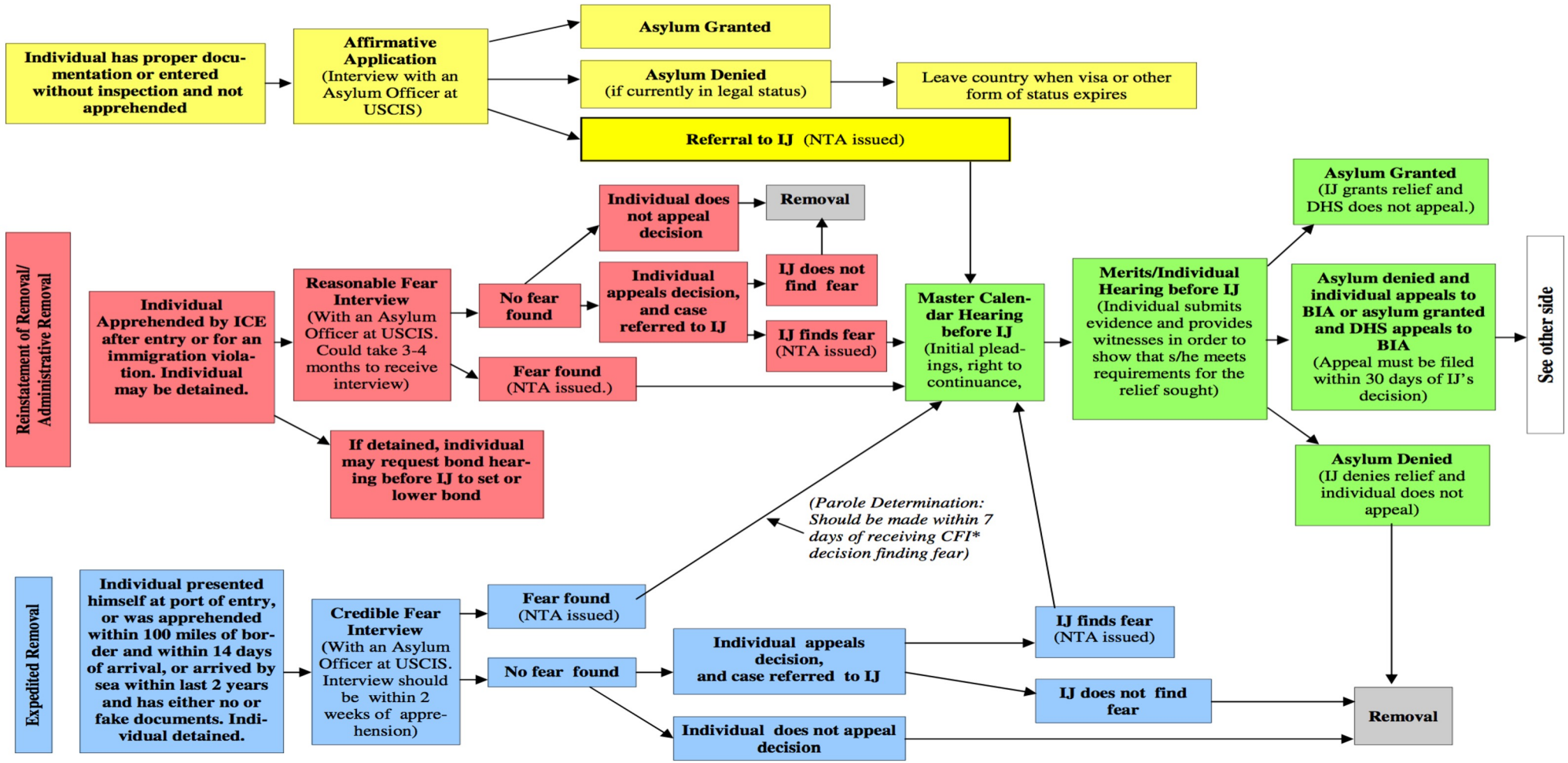
Date: April 10, 2018 Mckinney, Texas (City and State)

See reverse for important information Form I-862 (Rev. 08/01/07) N



- \* USCIS: U.S. Citizenship and Immigration Services
- \* IJ: Immigration Judge
- \* CFI: Credible Fear Interview
- \* ICE: Immigration and Customs Enforcement
- \* NTA: Notice to Appear Document
- \* BIA: Board of Immigration Appeals
- \* DHS: Department of Homeland Security

### Overview of Asylum Processes



## WHO IS AN ASYLEE?

- An asylee is a person who meets the definition of refugee under INA §101(a)(42), but who is either physically present in the U.S. or is at a land border or port of entry of the U.S. at the time he or she seeks refuge



## HOW DO YOU APPLY FOR ASYLUM?

- Affirmative Applications:
  - When a person enters the US lawfully
  - File with USCIS
  - When NTA not served with Court
- Will have asylum interview, if win then can apply for residency. If lose, then put into proceedings
- Caveat for UACs
- Defensive applications:
  - When put into proceedings, the application is filed with the Court
- Both processes require the application be filed within 1 year of entering the US UNLESS exception applies





## WHAT DO YOU HAVE TO SHOW TO WIN ASYLUM?

- (1) Persecution/ “Well Founded Fear” of Persecution
- (2) “On account of” (Nexus)
- (3) Protected Ground
  - Race
  - Religion
  - Nationality
  - Political Opinion
  - Membership in a Particular Social Group
- (4) Government is persecutor or cannot/will not control persecutors
  - Knowledge, capability, and inclination



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## ONE YEAR DEADLINE

- If USCIS has not received the application within one year of the applicant's arrival, the mailing date may be considered the filing date if the applicant has "clear and convincing evidence of mailing the application within the 1-year period.
- Changed Circumstances—Notwithstanding the one-year deadline to file for asylum, the AG may consider an untimely application if the applicant can demonstrate to the satisfaction of the AG "the existence of chance circumstances which materially affect the applicant's eligibility for asylum."



## PERSECUTION

- Includes threats to life, confinement, torture, and economic restrictions so severe that they constitute a real threat to life or freedom.
- In 4<sup>th</sup> circuit threat of death is sufficient
- A person may also qualify for asylum if he or she has a well-founded fear of future persecution. INA §101(a)(42) [8 USC §1101(a)(42). A person need not have actually suffered persecution in the past to qualify for asylum.



## WHAT IS A WELL-FOUNDED FEAR?

- Persecution must be a “reasonable probability”
- Has **objective** and **subjective** components
  - Applicant must have subjective fear
  - Fear must be reasonable or “well founded”
- “Ten percent” probability
  - INS v. Cardoza-Fonseca, 480 U.S. 421 at 431.



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## PROTECTED GROUNDS: RACE, RELIGION, NATIONALITY, POLITICAL OPINION, AND PSG

- **Race:** broadly defined
- **Religion** – real or imputed
- **Nationality**
  - Includes but is not limited to citizenship
  - May include ethnic or linguistic group
  - May coincide with race in some cases
- **Political opinion:** can be actual or imputed
- **Particular social groups:**
  - Immutable, particular, and socially distinct
  - Examples: Honduran Women, Immediate Family membership



## NEXUS- “ON ACCOUNT OF”

- Applicant must demonstrate that the persecution is “on account of” one of the 5 enumerated grounds of race, religion, national origin, political opinion, or membership in a particular social group. See *INS v. Elias-Zacarias*, 502 U.S. 478 (1992)
- In mixed-motive cases an applicant is required to establish that race, religion, nationality, membership in a particular social group, or political opinion “**was or will be at least one central reason for persecuting the applicant.**” INA §208(b)(1)(B)(i).



RELOCATION;  
GOVT NOT WILLING/ABLE;  
NO CHANGED  
CIRCUMSTANCES

- Relocation: once you show past persecution, there is a presumption that internal relocation cannot happen
- Government is unable/unwilling to help
  - The BIA has held in *Matter of S-A-*, 22 I & N. Dec 1328, 1333 (BIA 2000) that an asylum applicant does not have to seek help from the police where it would be futile, unproductive, or potentially dangerous
- Circumstances have not changed



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## BARS TO ASYLUM AND DISCRETIONARY ELEMENT

- Persecution of Others, Particularly Serious Crime, Serious Nonpolitical Crime, Danger to U.S. Security, Terrorism-Related Inadmissibility Grounds
- Firm Resettlement—The applicant has been firmly resettled in another country prior to arriving in the U.S.
- Element of Discretion





## WHAT IS ASYLUM NOT?

- War alone in another country is not sufficient
- General criminal activity in an area
  - Gangs/delinquent groups in an area but no contact with Respondent
- Man asked to pay war tax
- Walking down the street and hearing gun shots
- Someone calling and asking where a family member is or vague threats
- Getting robbed (on its own)
- Poverty/bad country conditions
- No work/not being able to find a job



# WHAT IS THE DIFFERENCE BETWEEN AN ASYLEE AND REFUGEE?



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## REFUGEE VS. ASYLEE

- The primary difference between a refugee and an asylee is that a **refugee is granted refugee status while still outside the United States**; an **asylum seeker is granted asylee status after entering the country or while seeking admission at a port of entry.**



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## EXPEDITED REMOVAL PROCEEDINGS

- Enter the U.S. without documentation and without using the CBP app and are caught by immigration officials, you can then be placed into Expedited Removal Proceedings
- If entering with any documentation, you are presumed to be ineligible for asylum unless:
  - immigrant had authorization/an appointment/had no ability to access the appointment system OR sought asylum in the countries through which they traveled to the USA
    - If the presumption applies, they can rebut the presumption by showing an acute medical emergency, an imminent threat of rape/kidnapping/murder/torture, OR is a victim of a "severe form" of human trafficking.
- If presumed ineligible for asylum, then officer must enter a **NEGATIVE CREDIBLE FEAR FINDING**



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## EXPEDITED REMOVAL PROCEEDINGS CONT.

- If officer enters a **NEGATIVE** credible fear finding, then the asylum officer then must determine whether the individual can establish a reasonable possibility of persecution/torture (i.e. withholding reasonable fear standard).
- Immigrant can request Immigration Judge to review the officer's finding, but Immigration Judge will apply the same process and standard
- Cannot appeal the Judge's decision



## EXECUTIVE ORDER ON JUNE 4, 2024

- The rule makes three key changes to current processing under Title 8 immigration authorities during periods of high border encounters:
  - First, noncitizens who cross the southern border unlawfully or without authorization will generally be ineligible for asylum, absent exceptionally compelling circumstances and unless they are excepted by the Proclamation.
  - Second, noncitizens who cross the southern border and are processed for expedited removal while the limitation is in effect will only be referred for a credible fear screening with an Asylum Officer if they manifest or express a fear of return to their country or country of removal, a fear of persecution or torture, or an intention to apply for asylum.
  - Third, the U.S. will continue to adhere to its international obligations and commitments by screening individuals who manifest a fear as noted above and do not qualify for an exception to the Rule for withholding of removal and Convention Against Torture protections at a reasonable probability of persecution or torture standard – a new, substantially higher standard than is currently applied under the Circumvention of Lawful Pathways rule.



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## EXECUTIVE ORDER ON JUNE 4, 2024

- Specifically, these measures are in effect until 14 calendar days after there has been a 7-consecutive-calendar-day average of less than 1,500 encounters between the ports of entry. The measures would again go into effect, or continue, as appropriate, when there has been a 7-consecutive-calendar-day average of 2,500 encounters or more.



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## EXECUTIVE ORDER ON JUNE 4, 2024

- During periods of high encounters, the Proclamation will apply across the southern border. Lawful permanent residents, unaccompanied children, victims of a severe form of trafficking, and other noncitizens with a valid visa or other lawful permission to enter the United States are excepted from the Proclamation.
- In addition, the suspension and limitation on entry and rule will not apply to noncitizens who use a Secretary-approved process—such as the CBP One mobile app—to enter the United States at a port of entry in a safe and orderly manner or pursue another lawful pathway.
- Noncitizens who cross the southern border and who are not excepted from the Proclamation will be ineligible for asylum unless exceptionally compelling circumstances exist, including if the noncitizen demonstrates that they or a member of their family with whom they are traveling:
  - faced an acute medical emergency;
  - faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or satisfied the definition of “victim of a severe form of trafficking in persons” currently provided in 8 CFR 214.11.





## OTHER FEAR-BASED REMEDIES

- Withholding of Removal
- Protection under the Convention Against Torture



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## HOW TO APPLY FOR WITHHOLDING OF REMOVAL?

- Every asylum application is automatically also an application for withholding of removal
- Where someone with a prior removal order who fears persecution is encountered by ICE or CBP, he or she is not eligible for full removal proceedings in immigration court, but the individual may seek withholding of removal.
  - Have a “reasonable fear interview” and put into withholding only proceedings



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## WHAT HAPPENS WHEN AN UNACCOMPANIED MINOR IS STOPPED AT THE BORDER?

1. Once a minor is designated as a UAC, they can be held by Customs and Border Patrol (CBP) for 72 hours
2. They are then transferred to the Office of Refugee Resettlement (ORR), where they are held until they can find a suitable sponsor
  1. If they cannot find a sponsor, they will remain in ORR custody until they can apply for another remedy or have an Immigration Court Hearing



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# OFFICE OF REFUGEE RESETTLEMENT

Ages 15-17 comprise the majority of unaccompanied minors.

## Age

Age breakdown of unaccompanied alien children by fiscal year (October 1 – September 30)

AGE	FY2018	FY2017	FY2016	FY2015	FY2014	FY2013	FY2012
0-12	15%	17%	18%	17%	21%	14%	11%
13-14	12%	13%	14%	14%	16%	13%	11%
15-16	37%	37%	37%	38%	36%	40%	39%
17	35%	32%	31%	30%	27%	34%	38%



**OFFICE OF  
REFUGEE  
RESETTLEMENT**

The top three countries of origin shifted from FY2017, with the highest percentage of children in FY2018 coming from Guatemala, followed by Honduras and El Salvador.

**Country of Origin**

COUNTRY OF ORIGIN	FY2018	FY2017	FY2016	FY2015	FY2014	FY2013	FY2012
HONDURAS	26%	23%	21%	17%	34%	30%	27%
GUATEMALA	54%	45%	40%	45%	32%	37%	34%
EL SALVADOR	12%	27%	34%	29%	29%	26%	27%
MEXICO	3%	<3%	3%	6%	<2%	3%	8%
ALL OTHER COUNTRIES	<5%	3%	2%	3%	<3%	5%	4%



## OTHER IMMIGRATION REMEDIES

- Family/Marriage Based Cases
- Special Immigrant Juveniles
- U Visas
- T Visas
- Violence Against Women Act (VAWA)
- DACA
- TPS
- Cancellation of Removal



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## ASYLUM VS. TPS

- The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. USCIS may grant TPS to eligible nationals of certain countries (or parts of countries), who are already in the United States. Eligible individuals without nationality who last resided in the designated country may also be granted TPS.
- TPS is a temporary benefit that does not lead to lawful permanent resident status or give any other immigration status.



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## TPS REQUIREMENTS

- Be a national of a country designated for TPS,
- File during the open initial registration or re-registration period, or you meet the requirements for late initial filing during any extension of your country's TPS designation (Late initial filers see 'Filing Late' section below);
- Have been continuously physically present (CPP) in the United States since **the effective date of the most recent designation date** of your country; and
- Have been continuously residing (CR) in the United States since the date specified for your country



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## COMPLEX LEGAL IMMIGRATION SYSTEM

There are only two basic  
methods of legal entry:  
family and employment

- Only citizens and legal permanent residents can confer permanent residency (green card) on family members
- Only certain family members qualify (siblings, spouses, children)
- Only parents, children and spouse of **US Citizens** may immigrate without waiting in the proverbial immigration “line”
- Processing time is about 18-24 months for a normal, uncomplicated case



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## WAITING FOR FAMILY VISAS

- **First (F1):** Unmarried Sons and Daughters of Citizens over 21
- **Second (F2A and F2B):** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents (A) Spouses and Children; (B) Unmarried Sons and Daughters (21 years of age or older)
- **Third (F3):** Married Sons and Daughters of Citizens
- **Fourth (F4):** Brothers and Sisters of Adult Citizens



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COMPLEX LEGAL  
IMMIGRATION SYSTEM

AUGUST 2024  
VISA BULLETIN FAMILY BASED

<b>Family-Sponsored</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
F1	22OCT15	22OCT15	22OCT15	08MAY02	01MAR12
F2A	15NOV21	15NOV21	15NOV21	01FEB21	15NOV21
F2B	01MAY16	01MAY16	01MAY16	15JUL04	22OCT11
F3	01APR10	01APR10	01APR10	01MAR00	08SEP02
F4	01AUG07	01AUG07	22JAN06	08FEB01	01FEB04



## WAITING FOR EMPLOYMENT BASED VISAS

- Employment based visas require specialized degrees, skills or knowledge
- Company must be willing to pay for attorney and filing fees
- Narrow options to work initially (time consuming and expensive)  
examples include:
  - H1B lottery
  - F1 Student Visa
  - J Visa
  - O Visa
  - L Visas for Executive or Managers
  - Religious Worker Visas



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## WAITING FOR EMPLOYMENT BASED VISAS

- PERM process for existing employee with a specialized degree (EB-2):
- Step 1:
  - Prevailing Wage: 6-8 months
  - Advertising: 90 days
  - ETA9089: 387 days for analyst review, 487 days if an audit
- Step 2: I-140 Petition, 9 months if not premium processed
- Step 3: I-485 Green Card Application, filed after priority date is reached and then processing time is 40.5 more months once filed.



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# COMPLEX LEGAL IMMIGRATION SYSTEM

AUGUST 2024  
VISA BULLETIN EMPLOYMENT BASED

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01NOV22	01FEB22	C	C
2nd	15MAR23	01MAR20	15JUL12	15MAR23	15MAR23
3rd	01DEC21	01SEP20	22OCT12	01DEC21	01DEC21
Other Workers	01JAN21	01JAN17	22OCT12	01JAN21	01MAY20
4th	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
Certain Religious Workers	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21

## HOW CAN YOU BE INVOLVED?

- Donate to organizations supporting immigrants
- Vote and Speak to your Representatives
- Engage in Productive Dialogue about the facts about Immigration
- Timely filings are crucial. Refer immigrants to an immigration attorney for consultation.
- Contact an immigration attorney for any criminal proceedings before the final hearing.



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QUESTIONS?



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