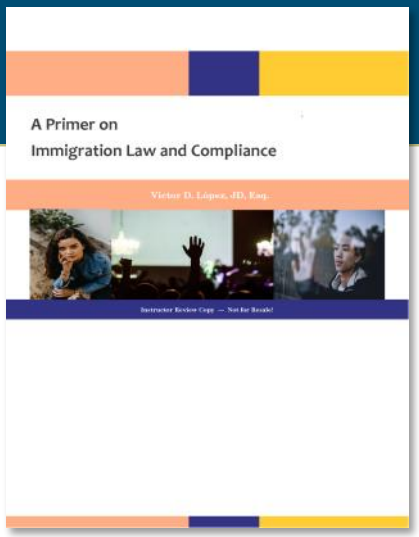
Book Information Page



Announcing:

A Primer on Immigration Law and Compliance

by Victor López, J.D., Esq.
Hofstra University

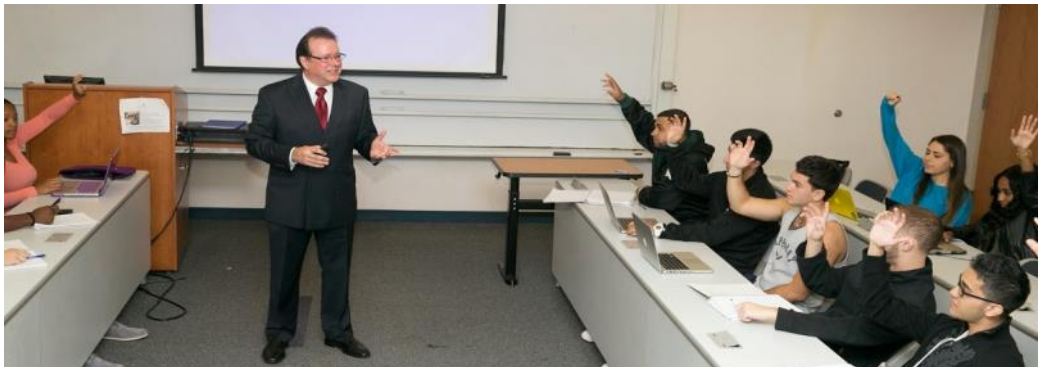
eBook: $5.95

Paperback: $12.95

- Provides a brief introduction to a complicated topic that is of great importance to employers, employees and anyone interested in visiting the U.S.
- Intended as a supplement to traditional business law and legal environment courses as well as a stand-alone resource for short credit and non-credit courses in training or certificate programs.
- Provides a brief overview of the types of immigrant and non-immigrant visas available, the eligibility requirements and process for seeking asylum or sanctuary in the U.S. and the process required of employers to verify prospective employees' authorization to work in the U.S. as part of their legal responsibility to comply with federal immigration law during the employment process.

See Detailed Table of Contents on the next page...

About the Author:



Victor D. López is the Cypres Family Distinguished Professor in Legal Studies in Business at Hofstra University's Frank G. Zarb School of Business. He holds a Juris Doctor degree from St. John's University School of Law and is a member of the New York State Bar. His professional affiliations include membership in the New York State Bar Association, the Academy of Legal Studies in Business (ALSB), the North East Academy of Legal Studies in Business (NEALSB), and he serves as a reviewer for several peer-reviewed journals. He served as president of the North East Academy of Legal Studies in Business (2011-2012) and has served as the organization's vice-president (2009-2010) and program chair of the 2011 NEALSB Academic Conference.

Professor López published several textbooks in the areas of business law and the legal environment of business that have been used in colleges and universities throughout the United States since 1993. His past publishers include Irwin/Mirror Press, McGraw Hill and Prentice Hall. In 2010, he published three revised and expanded business law/legal environment textbooks with his new publisher, Textbook Media Press, that are available in inexpensive print and electronic versions. The Third Edition of his *Business Law: An Introduction* will be available by the first quarter of 2020.

Since 1990, he has served as a Professor of Business for 12 years at SUNY Delhi and more recently as the dean of the business division at SUNY Broome for four years prior to joining the Hofstra University faculty. He has also served as a professor and dean at other higher education institutions since 1987 and as acting chair of Accounting, Taxation and Legal Studies in Business at Hofstra University in 2016.

Table of Contents

Immigrant Visas

CHAPTER 2

Introduction

There are four basic categories of visas for foreign nationals who wish to permanently immigrate to the United States: family-based immigration, employment-based immigration, diversity-based immigration and asylum/refugee-based immigration. The first three types of immigrant visas will be covered in this chapter. The requirements and process for seeking asylum or refugee status will be covered in chapter three.

Numerical limits on immigration have existed in the U.S. since the 1920s. The Immigration Act of 1924 (also known as The Johnson-Reed Act) imposed a quota system for immigration from countries around the world to a number equal to two percent of the total number of people of each nationality in the United States based on the 1890 census. Current immigration law is based on the Immigration and Nationality Act (INA) of 1952.[21] The maximum number of family-sponsored and employment-based preference visas that can be issued today to citizens of any country in a fiscal year varies based on the total number of family-sponsored and employment-based visas available in any fiscal year.[22] Not more than seven percent of the visas may be issued to natives of any one independent country in a fiscal year, and not more than two percent of the available visas may be issued to any one independent country. The per-country limit does not guarantee that any country will receive the maximum number of visas each year; it simply limits the maximum number of visas available to each country.

Family-Based Immigrant Visas

Family-based immigrant visas are available to certain foreign nationals with relatives in the U.S. who are citizens. Some foreign nationals who are close relatives of U.S. non-citizen legal permanent residents are also eligible for family-based immigration visas as specified below. The basic application process for all family-based immigrant visas is as follows:[23]

1. The would-be immigrant submits a petition for an appropriate visa type (the re-

quirements for each visa type will be covered below);
2. If the petition is approved, the applicant then begins the National Visa Center (NVC) Processing and:
3. Uses the Consular Electronic Application Center (CEAC) Processing through which the visa application package will be submitted electronically;
4. Chooses an agent who can be the applicant, the petitioner (e.g., family member in U.S. if family-based immigration is involved or a prospective employer if employment-based immigration is involved), a family member, lawyer or anyone else the applicant names. This person will receive communications about the process;
5. Pays the required fees: Immigrant Visa Application Processing Fee; and Affidavit of Support Fee;
6. Collects and submits all required forms and documents to the NVC;
7. Completes the Application for Immigrant Visa and Alien Registration (Form DS-260)[24] in the CEAS.
8. Submits an Affidavit of Support (Form I-864[25]) where required to show the applicant is unlikely to need to rely on the U.S. government for support (e.g., that they will not require public assistance);
9. Gathers and submits copies of all required official documents (varies with visa type) and translations if the originals are not in English to the NVC;
10. Attends an interview when scheduled at a consulate or embassy.

Family-Based Immigrant Visa Types

There are 16 distinct visas available to qualified family members of U.S. citizens and lawful permanent residents (e.g., green card holders). In this section, we will take a closer look at each of these. Family-based visa types can be further subdivided into two main categories: Immediate Relative Immigrant Visas that are not subject to yearly numerical limits (available only to immediate family members of U.S. citizens), and Family Preference Immigrant Visas that cover more distant relatives than spouses, children and parents, are available to some extended family members of both U.S. citizens and legal permanent U.S. residents, and carry strict yearly numerical limits.

Immediate Relative Immigrant Visas with No Numerical Limits

IR1 and CR1 Visas

This visa type is reserved for spouses of U.S. citizens who wish to immigrate to the United States. CR1 visas are “conditional resident” visas issued when couples are married for less than ten years. Both lead to the green card (permanent residency) but the IR1 visa results in a permanent green card being issued for ten years (renewable at that time); the CR1 visa results in a conditional green card that must be renewed after two years.

Both visas require a couple to be legally married under the laws of the jurisdiction in which the marriage took place. The general rule applies that a marriage valid where performed is valid everywhere. However, there are some exceptions and some marriages

may not be recognized if they are forbidden under U.S. law. For example, if an individual in a country that allows bigamous marriages wants to bring two or more spouses to the U.S., only the first marriage is recognized under U.S. laws and all subsequent marriages are illegal and void as bigamous (e.g., the first spouse is subject to an IR1 or CR1 visa but all subsequent spouses legally married in the jurisdiction of origin are not).

Marriage to a U.S citizen does not guarantee that an immigrant visa will be issued to a spouse. Questions of sham marriages aside that will result in a denial of a visa (e.g., a marriage for the sole purpose of having a foreign national obtain a green card), visa applications of lawfully married spouses can be denied if the spouse is otherwise inadmissible into the Unites States (inadmissibility can result from a prior overstay of a temporary visa, as well as health, criminal and security reasons, among others[26]). Also, individuals cannot be illegally in the U.S. when applying for the visa. For example, if an illegal immigrant marries a U.S. citizen he/she will not be able to apply for a visa while illegally in the U.S. If she/he leaves the country and then applies for the visa, re-entry into the U.S. will be denied for ten years because of the illegal entry (or overstay of a temporary visa). Individuals who find themselves in this situation must consult an immigration attorney for guidance as to their options.

The time period involved in obtaining IR1 or CR1 visas can vary from country to country, but will likely take eight to ten months to complete.[27]

IR2

IR2 visas are for the unmarried adopted children of a U.S. citizen living abroad. To qualify for an IR2 visa, the child must be living abroad and qualify as an "immediate relative" of a U.S. citizen who lived abroad with the U.S. adoptive parent for at least two years. When a child under 21 of a parent who marries a U.S. citizen abroad wants to apply for an IR1 visa, the U.S. citizen can petition for the child to receive the IR2 visa only if he has adopted the child and lived with the child (and presumably the spouse) abroad for at least three years.

CR2 Visa

The unmarried children under the age of 21 of a CR1 visa applicant qualify to apply for a CR2 visa as derivative beneficiaries of the CR1 visa applicant and a "conditional relative" of the step-parent. If parent's CR1 visa application is granted, the parent will receive a provisional resident visa and a provisional Green Card, and the child will have their own CR2 visa and provisional Green Card the same as the parent to be able to accompany their parent when they join their U.S. citizen spouse.

KR3 Visa

Because the approval process for IR1 and CR1 visas can take many months, a KR3 visa is made available exclusively for spouses of U.S. citizens awaiting the visa approval process. This visa is a temporary, nonimmigrant visa that allows the spouse of a U.S. citizen to temporarily immigrate to the U.S. pending the approval or denial of the IR1 or CR1 visa. If these are denied, then the spouse must return to their country of origin. Eligible children of the spouse abroad may also apply for a KR4 visa and accompany the spouse pending the permanent visa application decision.

K1 Visa

The K1 visa is a special visa for a fiancé(e) of U.S. citizens to come to the U.S. for 90 days in order to marry the U.S. fiancé(e). Once the marriage takes place, the K1 visa holder needs to apply for a change of status and apply for a CR1 visa. Qualified children of the foreign national fiancée can also apply for a temporary K2 visa for the same 90-day period.

A petition for a K1 fiancé(e) visa must be made by the U.S. citizen on Form I-129F in the U.S. The U.S. citizen and foreign fiancée must have met in person abroad within the past two years preceding the application, but a waiver can be granted for hardship circumstances.[28]

IR3, IH3, IR4, IH4 Visas

These visa types are for adoptions by U.S. citizens of foreign children. IR3 visas are for children adopted abroad by a U.S. citizen in countries that are not under the Hague Convention. IH3 visas are for adoptions by U.S. citizens of children in Hague Convention countries. IR4 visas are for foreign children from non-Hague Convention countries to be adopted within the U.S.[29]

IR5 Visa

IR-5 visas are available to a parent of a U.S. citizen who is at least 21 years old. In addition to the age requirement, the U.S. citizen must prove that they live in the United States and are financially able to care for a parent whom they wish to bring to the country from abroad. As with other immediate relative immigrant visas, the petitioner must be the U.S. citizen. The parent-child relationship has to be established through valid documentation (e.g., a birth certificate).

Family Preference Immigrant Visas with Numerical Limits

F1 Visa

F1 visas (family first priority) are available to the unmarried sons and daughters of U.S. citizens, and their minor children, if any (no age limitation). F1 visas as of this writing have a limit of 23,400 visas per fiscal year.

For all family priority visas (F1, F2, F3 and F4) once the numerical limit is reached, applicants are placed on an "immigration wait" and will have a priority based on their application date for visas issued in future years within their category. The result is that family priority applicants can have waiting periods of several years before they are issued a visa. In the past, some family-based priority visas had waiting lists of up to ten years.

F2 Visa

F2 visas (family second priority) are available to the spouses, minor children, and unmarried sons and daughters (age 21 and over) of Legal Permanent Residents (e.g., green card holders). A minimum of seventy-seven percent of all visas available for this category are earmarked to the spouses and children; the remainder is allocated to unmarried sons and daughters. The maximum number of these visas as of this writing is 114,200 per fiscal year.

F3 Visa

F3 Visas (family third priority) are available to the married sons and daughters of U.S. citizens, and their spouses and minor children without age restriction. The maximum number of these visas that can be issued in any fiscal year is 23,500 as of this writing.

F4 Visa

F4 visas (family fourth priority) are available to the brothers and sisters of U.S. citizens, and their spouses and minor children, provided the U.S. citizens are at least 21 years of age. The fiscal year numerical limit for these visas is 65,000 as of this writing.

Diversity Visa Program

DV Visa

DV visas are available under the Diversity Visa Program Section 203(c) of the Immigration and Nationality Act (INA) which provides for a class of immigrants known as "diversity immigrants." These immigrants must come from countries with historically low rates of immigration to the United States. A limited number of diversity visas are available each fiscal year distributed among six geographic regions, with no single country receiving more than seven percent of the total available DV visas in any one year. For fiscal year 2020 50,000 diversity visas were available. Natives of the following countries were ineligible to apply for DV visas in 2020 because more than 50,000 immigrants from these countries immigrated to the U.S. in the past five years: Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.[30]

Employment-Based Immigration

There are five basic visas for employment-based immigration: E1, E2, E3, E4 and E5. These are classified based on the preference they provide for individuals with special skills that U.S. employers need and cannot adequately find among the current U.S. workforce (e.g., E1 in employment first preference, E2 is employment second preference and so on).

The total number of employment-related immigration visas for every fiscal year (October 1 - September 30) is approximately 140,000. [31] Employment-based visas are intended for the benefit of U.S. employers to be able to hire qualified workers of exceptional talent or workers with needed training and skills that are not available in the U.S. workforce for employers to hire. In creating these special visas, special measures were put in place in an effort to prevent qualified U.S. workers from being displaced by foreign workers who may be willing to work for lower wages than their U.S. counterparts. Consequently, as a general rule these types of visas workers are not able to apply for the visa but must be sponsored by employers who can file a petition on their behalf only after obtaining a labor certification from the U.S Department of Labor (DOL) as part of the process.[32] The DOL certification must show that there are insufficient available, qualified, and willing U.S. workers to fill the position being offered at the prevailing wage, and

that hiring a foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers. Once the DOL certification is obtained, the employer must file Form I-140 (Immigrant Petition for Alien Workers) with U.S. Citizenship and Immigration Services (USCIS).[33]

E1 Visa

The first priority in employment-based immigration is reserved for individuals with extraordinary ability in the sciences, arts, education, business, or athletics. This is a visa type that is available only to persons with national or international reputations that place them among the best in their fields. Extensive documentation is required of E1 visa applicants that shows sustained national or international acclaim and recognition in their fields of expertise. Applicants in this category don't need actual employment offers as a prerequisite for applying for an E1 visa as long as they can show they intend entering the U.S. to continue work in the fields in which they have extraordinary ability. Unlike other employment-based visa applicants, these applicants can file their own Immigrant Petitions for Alien Worker, Form I-140, with the USCIS.

As is true of all employment-based visas, the unmarried children under age 21 and spouses (including same-sex spouses) of applicants can apply for their own visas to accompany or join the primary applicant and need to go through the same application process, pay all required fees,[34] submit themselves to the required medical examinations and provide the documentation required by USCIS of all immigrant visa applicants.

E2 Visa

The E2 visa is a second preference employment-based immigrant visa reserved for professionals with advanced degrees and individuals with exceptional abilities. Employers of these applicants must generally have a labor certification approved by the Department of Labor (DOL). A job offer is required and the U.S. employer, not the employee, must file an I-140 Immigrant Petition for Alien Worker form on behalf of the applicant. Employers must bear the cost of the application fees and labor certification requirements filed with the DOL, with the exception of those who qualify for a National Interest Waiver who can file Form I140 on their own. To qualify for a National Interest Waiver (NIW) exception, an applicant would have to show that they are engaged in work or research of substantial merit with national importance. The research or work involved must have the potential to significantly benefit the U.S. such as scientific discoveries, business methods, medical research or other endeavors that can have a significant beneficial national impact.

There are two distinct classifications within this category:

1. Professionals holding an advanced degree (beyond a baccalaureate degree), or a baccalaureate degree and at least five years progressive experience in the profession; and
2. Persons with exceptional ability in the sciences, arts, or business. Exceptional ability can be defined as possessing expertise significantly higher than ordinarily found in in others of similar skills in the sciences, arts, or business.

E3 Visa

The third preference in employment-based immigration (E3 visa) is reserved for

skilled workers, professionals and other workers (unskilled workers). 8 CFR § 204.5(I)(2) defines each class of workers as follows:

- Skilled worker means an alien who is capable, at the time of petitioning for this classification, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision.
- Professional means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.
- Other worker [unskilled workers] means a qualified alien who is capable, at the time of petitioning for this classification, of performing unskilled labor

As is the case with the E2 visas, employers of E3 visa workers must generally have a labor certification approved by the Department of Labor (DOL). A job offer is required and the U.S. employer, not the employee, must file an I-140 Immigrant Petition for Alien Worker form on behalf of the applicant.

E4 Visa

The fourth preference (E4 visa) in employment-based visas is reserved for a catch-all category of various special immigrants as defined under Immigration and Nationality Act (INA) Section 1101(a)(27)(A)-(M) that include:

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may . . . apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who-

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States-

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination; [(II)-(III) omitted] and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the two-year period described in clause (i);

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E) an immigrant, and his accompanying spouse and children, who is or has been an

employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602(a)(1) of title 22) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force [October 1, 1979], has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who-

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978,

(iv) and has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I) (i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half

of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States-

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(ii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that-

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating-

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) six years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlist-

ed to incur a total active duty service obligation of at least 12 years, and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause-

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO–6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998

(M) subject to the numerical limitations of section 1153(b)(4) of this title, an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant's accompanying spouse and children.

Special immigrants receive 7.1 percent of the yearly world-wide limit of employment-based immigration visas. E4 visa applicants must be the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant, Form I-360,[35] with the exception of Certain Employees or Former Employees of the U.S. Government Abroad.[36] Labor certification is not required for any of the special immigrant subgroups listed above.

Immigrant Investors

E5 Visa

E5 visas are immigrant investor visas awarded to foreign individuals who want to immigrate to the United States and are willing to make the required capital investments to qualify for this visa and obtain a green card. Although listed as an employment-based immigrant visa, its purpose is not to provide a job for the investor-immigrant but rather to attract immigrants who will be able to provide employment for other U.S. residents in addition to themselves. Up to 7.1 percent of all world-wide employment-based visas each year are reserved for E5 investor-immigrants.

To qualify for an E5 visa, an investor must be able to invest a minimum of $1,000,000 (or $500,000 in rural areas or areas with high unemployment) and must, within two years, be able to employ a minimum of ten workers legally permitted to work in the U.S. (e.g., citizens or legal residents). The investor himself/herself and the investor's spouse and children do not count towards the 10-worker minimum employment requirement (e.g., must be ten workers other than the investor or his immediate family).

Individuals who wish to immigrate as an immigrant investor need to file a petition with USCIS on Form I-526 – Immigrant Petition by Alien Entrepreneur.[37] The required application fee as of this writing is $3,675.

Hypothetical Cases for Chapter Two

1. Hans, a German national, has a sister in the United States who is a U.S. citizen. Mohammed, a Sudan national, has a brother in the U.S. who is a legal resident and a first cousin who is a U.S. citizen. Melissa has a son born in the U.S. who is 18 years of age and living in the U.S., and she is a Venezuelan national. All three would like to immigrate to the U.S.

A. Does Hans qualify for a family preference visa? If so, which one?

B. Which family preference visa, if any, should Mohammed apply for? If he does not qualify for a family preference visa, what other options might he have to legally immigrate?

C. Does Melissa qualify for a family-preference visa?

2. Helen, a Greek national, is an aeronautical engineer with highly specialized skills and ten years of experience working on jet engine design, testing and evaluation. Her husband, Alesandro, is an airplane mechanic with twenty years in the industry and highly specialized training. Helen has an M.S. in aeronautical engineering from a Greek university and Alesandro has the equivalent of a U.S. high school diploma and various non-academic certificates and certifications relating to his field. They would like to immigrate to the U.S. Neither has any relatives living in the U.S. Answer the following questions based on these facts.

A. What employment-related immigration visas does Helen likely qualify for?

B. Assuming the same facts, what visa, if any, is she likely to qualify for if she only has a baccalaureate degree in engineering but not an M.S. degree?

C. What visa/visas can Alesandro qualify for?

3. Adeel is a national of a country that permits polygamy, as does Adeel's religion. He is legally married to three women and qualifies for an E1 visa as a professional of extraordinary ability. He has been offered employment by a U.S. firm and would like to immigrate to the U.S.

A. Will his three wives be able to obtain immigrant visas as the spouses of an E1 Visa holder? Explain fully.

B. Regardless of your answer to the last question, do you believe that bigamous or polygamous marriages valid where performed should be recognized in the U.S. and that all spouses should qualify to immigrate to the U.S.? You may base your arguments on sound legal reasoning as well as on ethical and sociological considerations.

Ethics and the Law

U.S. immigration law presents two primary means of entering the U.S. on a permanent basis: family-based and employment-based immigration. Diversity-based visas and Refugee/Asylum are also a possible means of legal immigration, but the numbers of

both of these are relatively small in relation to the number of family-based and employment-based visas granted every year.

Only visas for immediate relatives of U.S. citizens are exempt from numerical limits (IR, CR and K Visas). Other family-based visas (F1-F4 Visas) are subject to numerical limits every year and, when these are exhausted, individuals are placed on a waiting list for the following year ahead of other applicants. This can result in individuals having to wait many years (upwards of a decade for some F Visa types) before being able to immigrate. Employment-based visas also have numerical limits.

The ability of U.S. citizens (and, to a lesser extent, non-citizen legal residents) to bring their family members from abroad is often referred to as "chain migration" where legal immigration is largely limited to close relatives of persons already legally in the U.S. People in other countries who wish to immigrate here but don't have qualifying close relatives in the U.S. that allow them to apply for family-based visas are largely excluded from immigrating unless they can qualify for employment-based visas. Diversity visas are available for individuals who live in countries with traditionally low immigration to the U.S., but these are very limited and the chance of an individual who lives in a country that qualified for the Diversity Visa Program who participates in what is commonly referred to as the "diversity visa lottery" is very small.

Arguably, chain migration and employment-based immigration encourages illegal immigration by individuals who cannot qualify for family-based immigration or employment-based immigration, or who may qualify but are unwilling to wait for years for the chance to immigrate legally. This can increase illegal immigration, which in turns makes it less likely that the number or types of legal immigration visas will be increased. Do you believe the current system to be fair? If so, why? If not, what changes would you suggest be considered for improving the fairness of our immigration system?