

## The Pass to the United States of America

---

\*Yínká Dánsàlámì

There are several ways for a person to legally migrate to the United States. In this article, I will discuss some of the ways, and identify those that can lead to the status of a permanent resident, popularly known as “green card” holder.

### VISITORS VISAS

The visitors or B visas are non-immigrant visas. Holders of this type of visas are those coming to the United States *temporarily* for pleasure (**B-2**) or business (**B-1**). The holder of a **B-2** visa may be authorized to stay in the US for a period of six months with extension of up to another 6 months while the holder of a **B-1** visa may be given the initial authorized stay of up to one year.

The **B-2** visa is generally issued to those who are coming to the US as tourists or for such other purposes such as visiting friends or relatives, health related purposes, attending or participating in conventions, participating in sports or musical festivals. A **B-2** visa may also be issued to spouses and children of those in the US armed forces, those who are accompanying **B-1** visa holders, parents of **F-1** visa holders, and those who are coming to the US for marriage.

The **B-1** visa is generally issued to those who are coming to the US to engage in commercial transactions. It is also issued to religious workers, who are paid by the church in their home country, professional athletes, those attending executive seminars, those that are serving on the board of directors of a US company, and those who are coming to participate in scientific, educational, professional, religious, or business conventions.

### O VISAS

*This visa is meant for people who possess extraordinary ability in the field of science art, craft, education, business, athletics as well as any field of “creative endeavor.”*

The **O visa** is not self sponsored which means that an employer or manager or agent in the US must file the petition on behalf of the alien. In addition, the alien must show proof that he or she has won a major international award or meets at least three of the following conditions:

1. That the alien has won prizes or received awards for excellence in his or her field.
2. That the alien is a member in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

3. That the alien has written in professional or trade publications or that there are publications about the alien relating to his or her work in the field for which certification is sought.
4. That the alien has judged the work of others in the same or in a similar field of specialization to the field for which classification is sought.
5. That there is evidence of the alien's original scientific, scholarly or other contributions of major significance in the field for which classification is sought.
6. That there is evidence of the alien's authorship of scholarly articles in the field for which classification is sought, in professional journals or major newspapers.
7. That the alien is employed in a critical or essential capacity with an organization or establishment that has a distinguished reputation.
8. That the alien has commanded and still commands a high salary for his or her services.

The **O visa** does not lead to a green card; however, an alien can have the dual intent by filling for permanent resident while on **O-1 status**.

### **F-1 Visa**

This is a non-immigrant visa for foreigners who are migrating to the US for the sole purpose of pursuing a course of study in educational institutions in the US.

To be eligible, the applicant must have gained admission to study full time in a degree program or other program recognized by the Bureau of Citizenship and Immigration Services (**BCIS**) and provide evidence of financial ability – i.e. ability to pay fees and cover the cost of room and board, as well as incidental expenses.

This visa does not lead to permanent resident status; however, the holder of an **F-1** visa may be granted work authorization for a period of up to one year after completion of his or her educational program. Further, the holder of an **F-1** visa may be able to work on-campus or with other affiliates of the school for up to 20 hours per week.

### **J-1 Visas:**

The **J-1** visa is a non-immigrant visa. The visa is intended for those coming to the United States to participate in an exchange program designed by the US Department of State. As such, the visa is usually available to trainees, foreign medical doctors, professors or research scholars and camp counselors. This visa is valid up to seven years for foreign medical students and 18 months for those in training programs.

Unlike the **F-1** student visa, spouses and children of **J-1** visa holders may be entitled to work in the U.S. However, upon completion of his or her program, the holder of a **J-1** visa must return to his or her home country for two years before adjustment to the status of permanent resident can be made. Exception may be made for foreign medical doctors who are willing to serve in remote/rural areas or where a waiver has been obtained from the home country.

This visa does not automatically lead to permanent resident status.

## **L Visa**

The **L Visa** is available to companies with an affiliate, subsidiary, branch or parent in the US. Such companies can file a petition with the **BCIS** for permission under the **L Visa** to transfer a foreign employee to work in its US office for a temporary period of up to seven years for owners, executives and managers, and up to five years for employees with specialized knowledge.

To be eligible for the **L visa**, the following three basic requirements must be satisfied:

**1. Have you been employed with the company abroad for at least one year?**

The employee to be sponsored must have worked for at least one year with the overseas company before he or she can be transferred to the US Company. The employee may be in the US prior to the filing of the petition; however, any time spent in the US will not count toward the one year outside the US requirement.

**2. Is the company abroad for which you work related to the US Company in the correct way?**

The US company and the company abroad must be related either as branch offices of the same corporation, affiliates or parent/subsidiary of the other. There is no complicated formula for calculating when this relationship began. For instance, someone on a **B-1** business visa may come to the US for the sole purpose of setting up the new office of a foreign-based company. Once the company is fully set up and operational, the alien may be transferred to the newly set up office by his or her foreign employer, thereby qualifying for an **L visa**.

**3. Are you coming to the US as an owner, executive, manager, or as an employee with specialized knowledge?**

A specialized knowledge employee is someone who is employed primarily for his or her ability to carry a key process or function, which is important to the company's operations.

Spouses of **L-1** visa holders are entitled to work authorization and it is easier for them to obtain permanent resident status.

## **K VISA.**

Prior to the **Legal Immigration Family Equity Act (LIFE Act)**, the **K visa** status was only available to fiancé (e) s of U.S. citizens. After the passage of the **LIFE Act**, the benefits have been expanded to include the spouse of a U.S. citizen who is waiting abroad for an immigrant visa. The spouse's unmarried children under 21 years of age,

regardless of whether they are the children of the petitioner (the US citizen), are eligible as derivative beneficiaries.

The **K visa** is a nonimmigrant visa that allows a US citizen's spouse and children to enter the US without waiting for an immigrant visa interview abroad. Upon entering the US, the **K visa** holder will be eligible to apply for work authorization while awaiting the interview for adjustment of status to a permanent resident after filing Form-I-485.

To be eligible for a **K visa**, 1&2 or all of the following requirements must be satisfied:

1. You must be a spouse of a US citizen
2. There must be a pending 1-130 relative petition filed on your behalf
3. Your US citizen husband or wife must submit form I-129F fiancé (e) petition

Although the applicant must still appear before the US consulate abroad for an interview date, the waiting period for the **K visa** is much shorter than that for an immigrant visa.

## **V VISA**

The **V visa** is another benefit created under the **LIFE Act**. Prior to its enactment, the beneficiary of a relative petition filed by a permanent resident cannot migrate to the US or work in the US if the beneficiary is the US. The beneficiary must wait for his or her priority date. The waiting period can take several years. In the meantime, the beneficiary cannot join his or her spouse in the US and if in the US, he or she is not eligible for work authorization.

The **V visa** has changed the burden and hardship created by this waiting period. Under the law, a permanent resident may petition for his or her spouse to live and work in the US while waiting his or her priority date to adjust to lawful permanent resident.

Indeed, the **V visa** is available to those who are already in the US as well as those who are still abroad or their home country. As such, you may apply for **V visa** while in the US or at a US consulate abroad.

To be eligible for **V visa**, you must meet the following requirements:

1. You must be the spouse or unmarried child (under 21 yrs) of a permanent resident.
2. Your spouse or parent must have filed a relative petition on your behalf.
3. The petition must have been filed on or before December 21, 2000.
4. You must have been waiting for at least three years since a relative petition was filed on your behalf.

The **V visa** is a nonimmigrant visa; however, you may use it to travel outside the US without obtaining advance parole. I strongly suggest against using the **V visa** to travel outside the US if you have overstayed your status because it may trigger the 3 or 10 years

bar to admission. In other words, if you are in the US unlawfully for more than 180 days before you obtain your **V visa** and you decided to travel outside the US, while you may be re-admitted to the US, you may be unable to adjust to lawful permanent resident status.

## **YOU MAY GET ANOTHER BITE AT LATE AMNESTY**

Yes, the so-called late amnesty lawsuits of **CSS and LULAC** are finally reaching their conclusions in favor of the class members. These lawsuits, even though they shared the same requirements with the late amnesty under the **LIFE Act**, are separate and apart from the **LIFE Act**. Hence, you can approach your legalization using both avenues.

There are some interesting and favorable differences between legalization under **LIFE Act** and legalization under the proposed settlement of the lawsuits that you should be aware of. First, the **LIFE Act** pertains to adjustment of status to those who applied for work authorization under **LULAC, CSS or Zambrano** while the lawsuits pertain to amnesty under the 1986 amnesty law. Second, obtaining court review of illegal **BCIS** policies or practices or appeal is very difficult. There are some people who were interviewed over a year ago by the then **INS** who are still waiting for decisions on their applications. Under the proposed settlements of the lawsuits, class members will have recourse to any illegal **BCIS** policies and practices. Indeed, before your application can be denied, the **BCIS** must give you notice of intent to deny explaining what is missing in your application and afford you opportunity to submit additional evidence. If your application is ultimately denied, you have the right to seek a review by, and/or appeal to a body known as **Special Master**. More importantly, the cost of the appeal will no longer be borne solely by you. It will be shared equally with the **BCIS**. Knowing fully well that the government will share the cost of review or appeal of a denial, there is tendency that **BCIS** will resolve any ambiguity in favor of the applicant.

In addition, under the proposed settlement of the lawsuits, no application can be denied on the basis that the applicant failed to provide hard evidence to show that he or she has resided in the US continuously between a period that dates **before 1982 to May 4, 1988**. The proposed settlement stated: "In evaluating the sufficiency of applicant's proof of residence, defendants [**BCIS**] shall take into account the passage of time and the attendant difficulties in obtaining corroborative documentation of unlawful residence." Hence, affidavits attesting to applicants continuous residence from before 1982 to May 4, 1988 should suffice.

It is expected that the court and the parties to the lawsuits will approve the proposed settlements. **BCIS** should be accepting applications from class members within 60 days after it has given notice to the public of the Settlement.

For more information on the proposed settlement and what you need to apply, you can visit [www.centerforhumanrights.org](http://www.centerforhumanrights.org).

## **CAN YOU BE STRIPPED OF YOUR “GREEN CARD” SHORT OF A CRIMINAL CONVICTION?**

Recently, a US Court of Appeals said yes. In the case of *Zeba Moin, et al, v. John Ashcroft*, the U.S. Court of Appeal for the 5<sup>th</sup> Circuit held that an alien whose total stay in the US was less than seven months since she was granted permanent resident status four and a half years ago was deemed to have abandoned her legal permanent resident status.

In that case, the appellant was admitted into the US as a permanent resident. Two months after her admission, she left the US for her home country. For the next four and a half years, she made several trips between the US and her country for a total stay of six months. In 1996 while she was returning to the US with her son to process his admission to the US, an Immigration and Naturalization Service Inspector denied her admission to the US on the grounds that she has abandoned her status as a “green card” holder. Both the immigration judge and Board of Immigration Appeals (BIA) agreed with the INS Inspector and ordered that the appellant be deported from the US.

The case was appealed to the U.S. Court of Appeal for the fifth circuit. The Appellant argued that her trips were temporary and that none of her trips exceeded two years. Further, the appellant argued that she had always intended to reside permanently in the US.

The Court opined that “temporary visits’ are not defined in terms of elapsed time alone” while a reentry permit issued by the INS does not guarantee that an alien will be found admissible upon returning to the US. The Court further held that while an appellant may ultimately want to reside permanently in the US, her actions did not show that she has present intent to reside permanently in the US.

This case should serve as a warning to those who stay more than six months during one visit abroad.

## **DO I STAND A BETTER CHANCE OF WINNING A VISA LOTTERY IF I PAY A CONSULTANT OR “EXPERT”?**

No. Only God or good luck can help you in your lottery application. Under no circumstances should you pay anyone for this service.

## **CAN YOUR NATURALIZATION BE REVOKED?**

The US Court of Appeals, Ninth Circuit said yes.

In the case of *United States v. Arleno Inocencio*, the Court held that revocation of naturalization is mandatory under Title 18 of the United States Codes section 1451 (e) for conviction of naturalization fraud related offenses.

Here, the appellant was found guilty of naturalization fraud in 1996 and sentenced to three years probation. At the time of his sentence, neither the government nor the court saw it fit to revoke his naturalization. Six years later, after the appellant had been discharged from probation, the government moved for an order to revoke appellant's naturalization because of his conviction for naturalization fraud. The appellant objected to the government's motion on the ground that the case was already closed.

The Court of Appeals disagreed. The court opined that revocation is a simple ministerial task and the court has power to correct its ministerial mistake, especially since the statute provides in pertinent part that "When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of the law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of such person to be canceled...."

As can be seen above, naturalization can be "yanked" anytime for naturalization's fraud convictions.

Please note that this article and the information contained therein are only intended to provide general information. They are not intended to create any attorney-client relationship.

---

\* Yínká Dánsàlámì is a legal practitioner in New York City.