

Understanding Immigration Options Through Family Petitions



IMMIGRANT LEGAL RESOURCE CENTER
1458 HOWARD ST. | SAN FRANCISCO, CA 94103

April 15, 2020



© 2019 IMMIGRANT LEGAL RESOURCE CENTER

Agenda

1

- Obtaining Lawful Status

2

- Overview of Family-Based Immigration Options

3

- Family Petitions

4

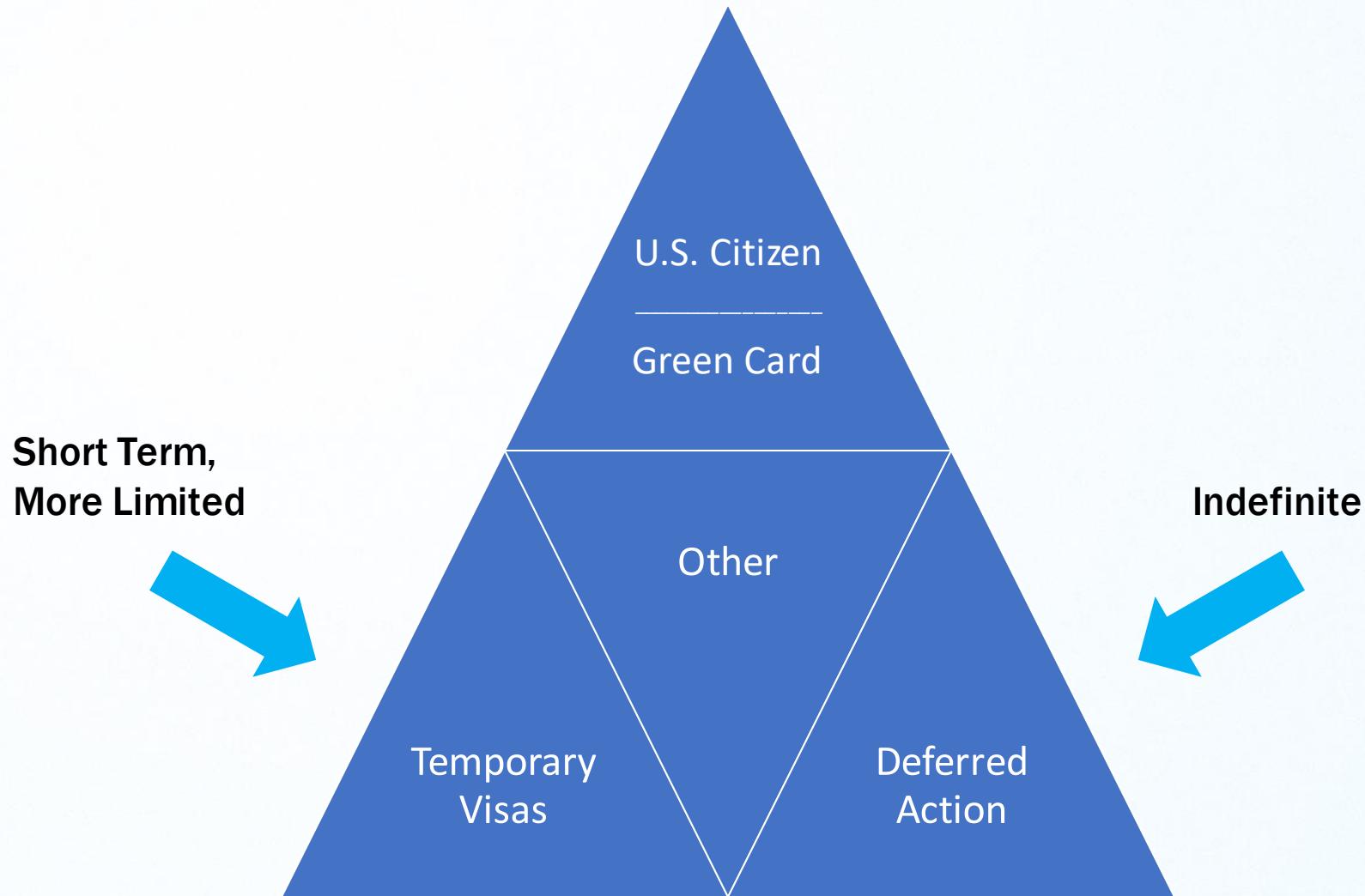
- Application Process for Family Members

5

- Getting Immigration Legal Help

Obtaining Lawful Status

Different Forms of Lawful Status

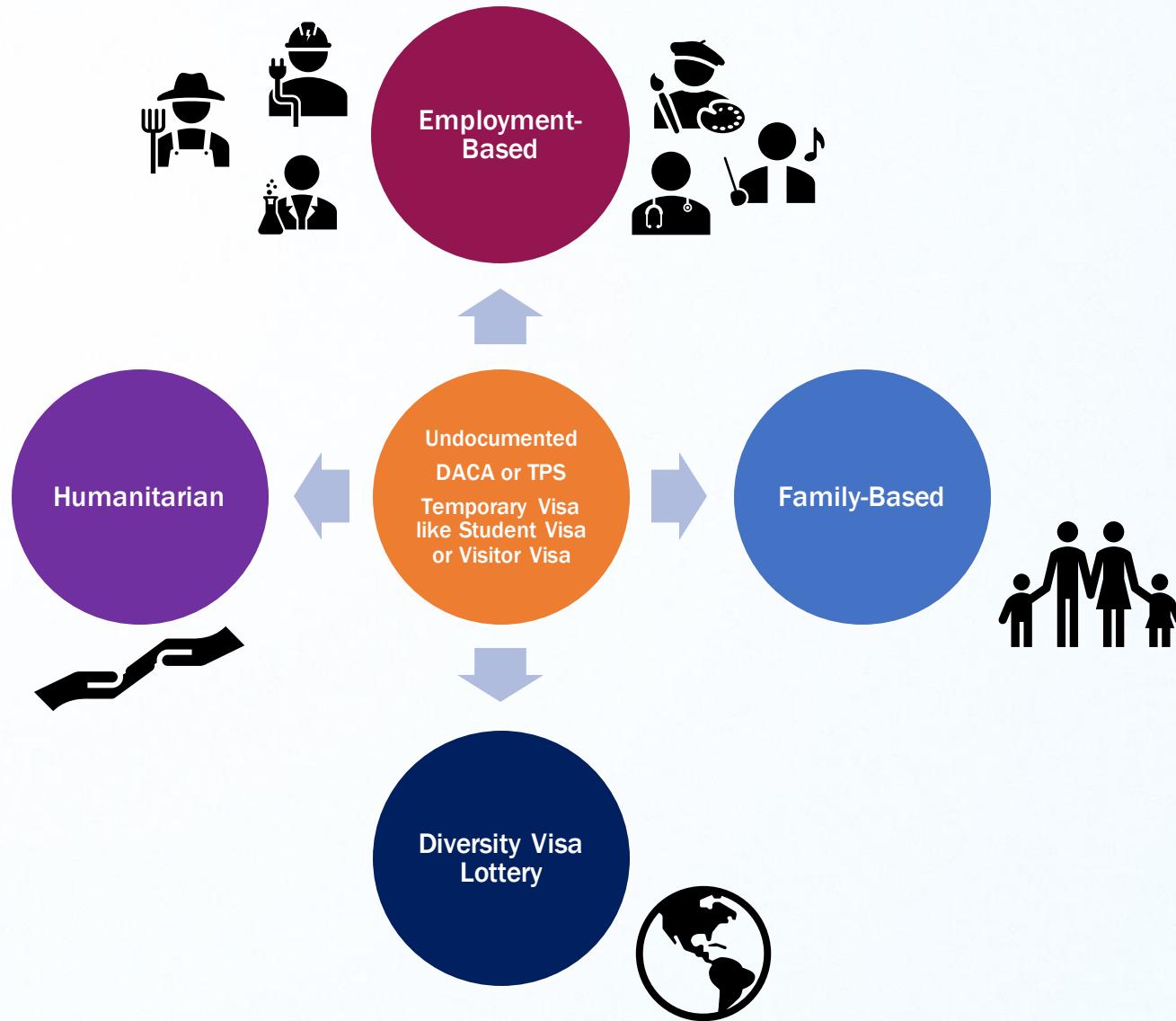


The end goal: a green card

- Lawful Permanent Residency (LPR)
- Allows a person to **live** and **work** in the United States and **travel** in the United States and abroad
- Optional additional step: apply to become a U.S. citizen (USC)



Various ways to get a green card



Road to Lawful Status

Undocumented

Immigration
Option

Eventual LPR

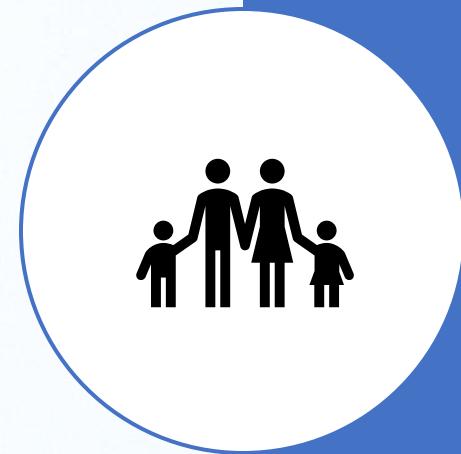
Overview of Family-Based Immigration Options

Applying for a green card through a family petition

Family-Based

When a family member with immigration status petitions for a relative

1. Person who wants to petition is a **Lawful Permanent Resident or United States Citizen**
AND
2. They have the required **family relationship** with the relative they want to help immigrate



Family Relationships & Immigration

Spouse

- Includes same-sex married couples

Parent/Child

- Can include step-parent/child and adopted child

Siblings

- Only siblings of U.S. citizens

Immigrating through Family: A Two-Step Process

Step 1: USC/LPR files petition for relative



Step 2: Relative files application to
immigrate

Adjustment of Status:
USCIS

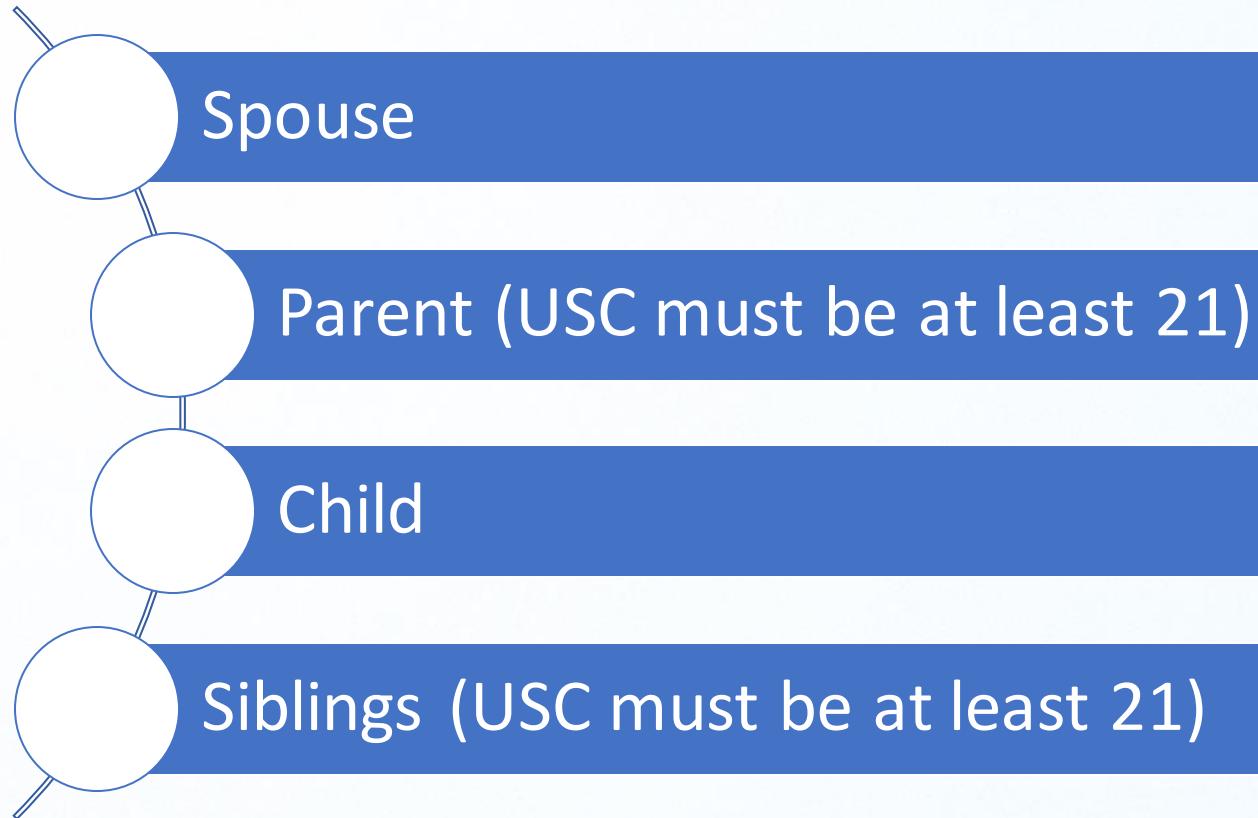


Consular Processing:
Department of State

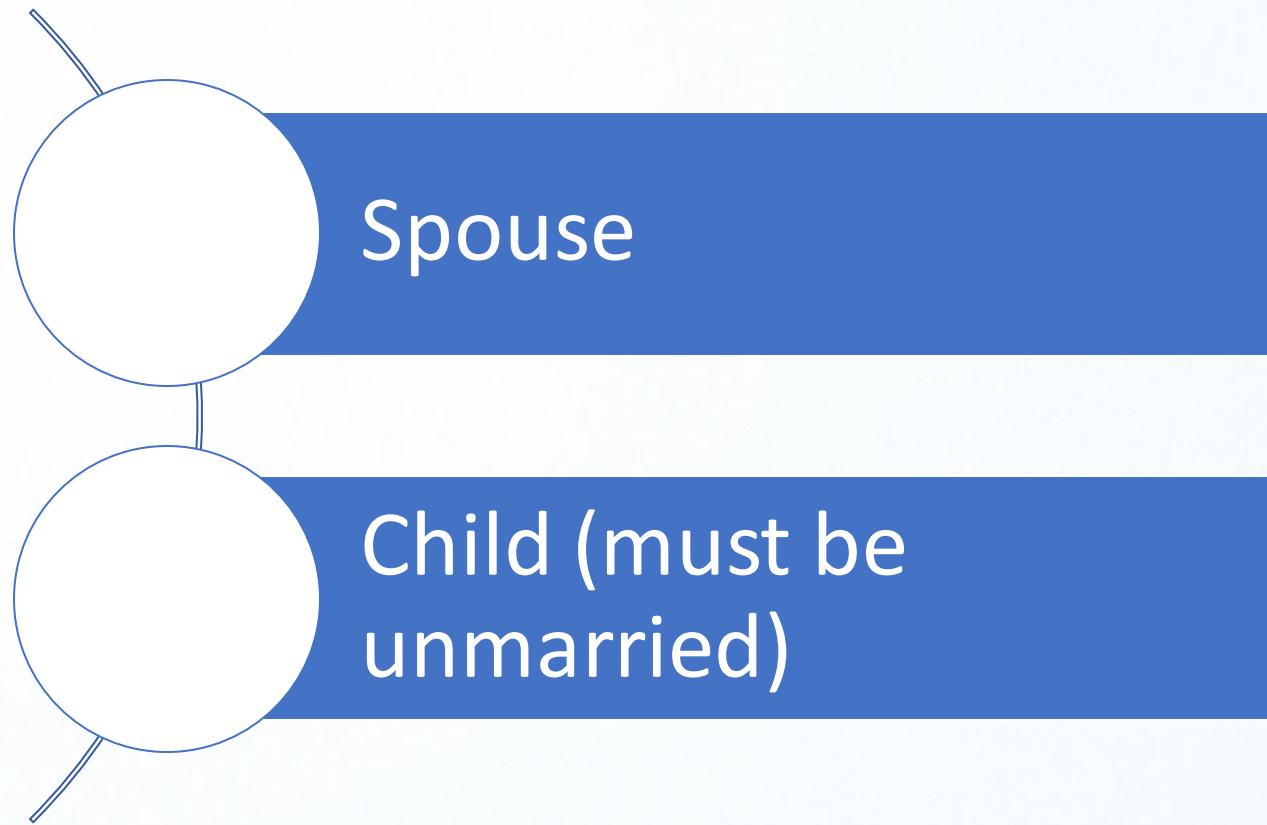


Family Petitions

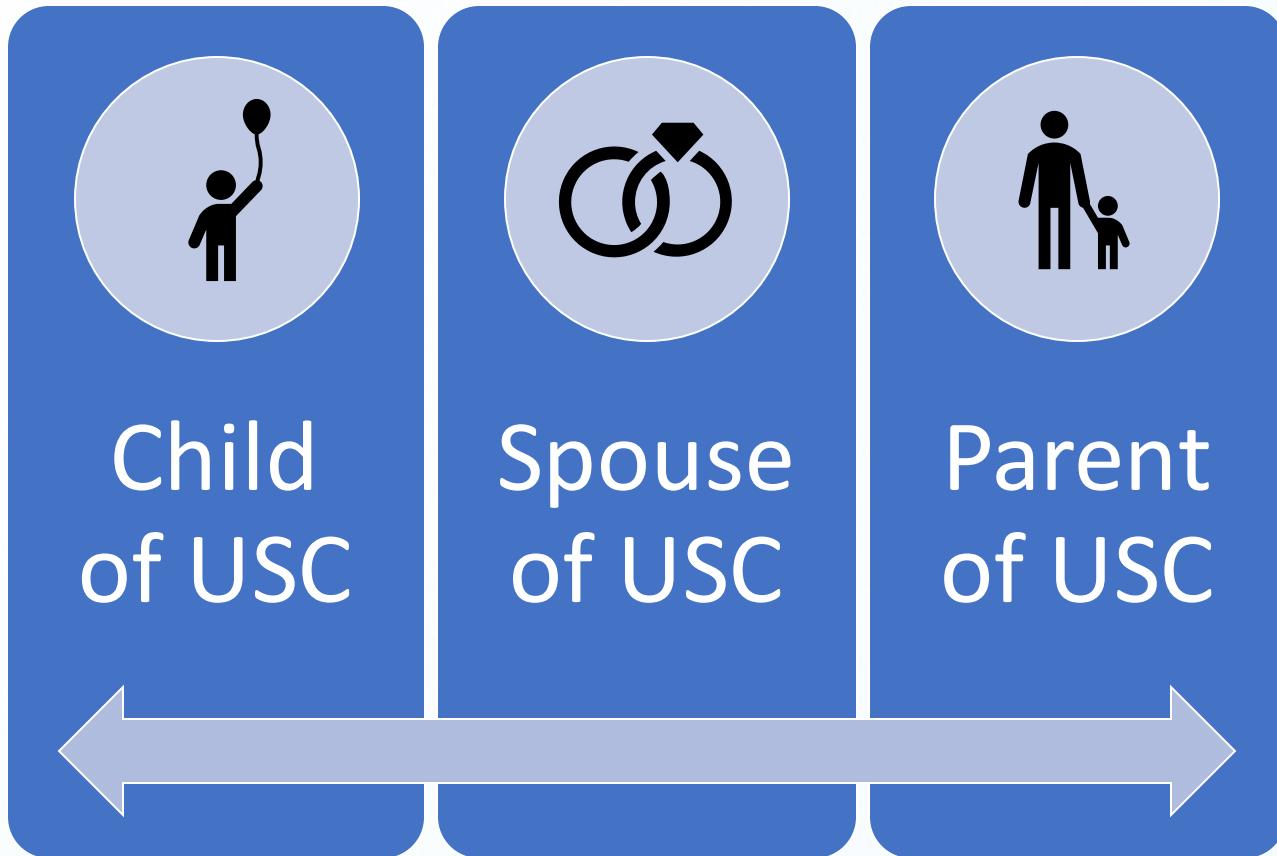
Who a U.S. citizen can petition for:



Who a Green Card holder can petition for:



“Immediate Relatives”



Examples

Izzy is 19 years old and is undocumented. Her father, who had a green card for many years, recently became a U.S. citizen. **Izzy is an immediate relative.**

Charles is from France. He recently married a U.S. citizen. **Charles is an immediate relative.**

Daniela is a U.S citizen (she was born in the U.S.) and she just turned 21. Her parents do not have any immigration status. **Daniela's parents are immediate relatives.**

So what's the significance of being an Immediate Relative?

- There's no wait-list before they can apply to immigrate (just the time it takes to process application)
- BUT keep in mind this is a two-step process
 - Even if someone has an immediate relative petition (step 1), that doesn't mean they have a straightforward path at step 2...

“Preference Categories”

- Other relatives: non-immediate relatives, sometimes the wait-list is 20 years or longer!

Spouses and
children of
LPRs

Adult/married
children of
USCs

Siblings of
USCs

- Divided into categories based on type of relationship:

First
Preference

Second
Preference

Third
Preference

Fourth
Preference

- Wait-list determined by relationship and where the person is from

Example

Sandra's father, who is an LPR, filed a petition for her to immigrate yesterday, April 14, 2020. Sandra is from Mexico. She is 22 years old and single.

Sandra's wait to immigrate will be about 22 years!

And if she gets married while she's waiting, she will lose the possibility of immigrating through this family petition. (But maybe she'll have another option, like through her spouse.)

This month, Immigration is deciding family petitions in this type of scenario that were filed in December 1998.

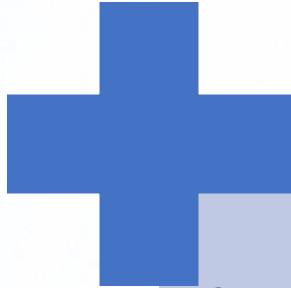
Example

Maria's husband, who is an LPR, just filed a family petition for her. Maria is from the Philippines.

This month, there is no wait-list for people in Maria's situation so she will have not have to wait.

Next month, though, it is possible that the wait-lists will change so she should file right away if she can!

Pros & Cons of Different Types of Family Petitions



Immediate relatives:

No wait!

Preference beneficiaries:

Can include others (spouses and children) on same petition

Immediate relatives:

Every person needs their own petition

Preference beneficiaries:

Very long wait-lists for some categories

A Note on Marriage Petitions (Where Spouse Files the Petition)

- Held to higher scrutiny
- In addition to proving the legal relationship (marriage certificate), the couple must prove that it's a **real marriage**, where both people **intend to establish a life together**, not a “green card marriage”
- As long as **at the start** they planned to share a life together, it won't be considered a sham marriage if things don't work out and they later end up divorcing
- Immigration officers will look at things like whether they have **joint finances**, live at the **same address**, have **children together**, etc.

Application Process for Family Member

Immigrating through Family: A Two-Step Process

Step 1: USC/LPR files petition for relative



Step 2: Relative files application to immigrate

Adjustment of Status:
USCIS



Consular Processing:
Department of State

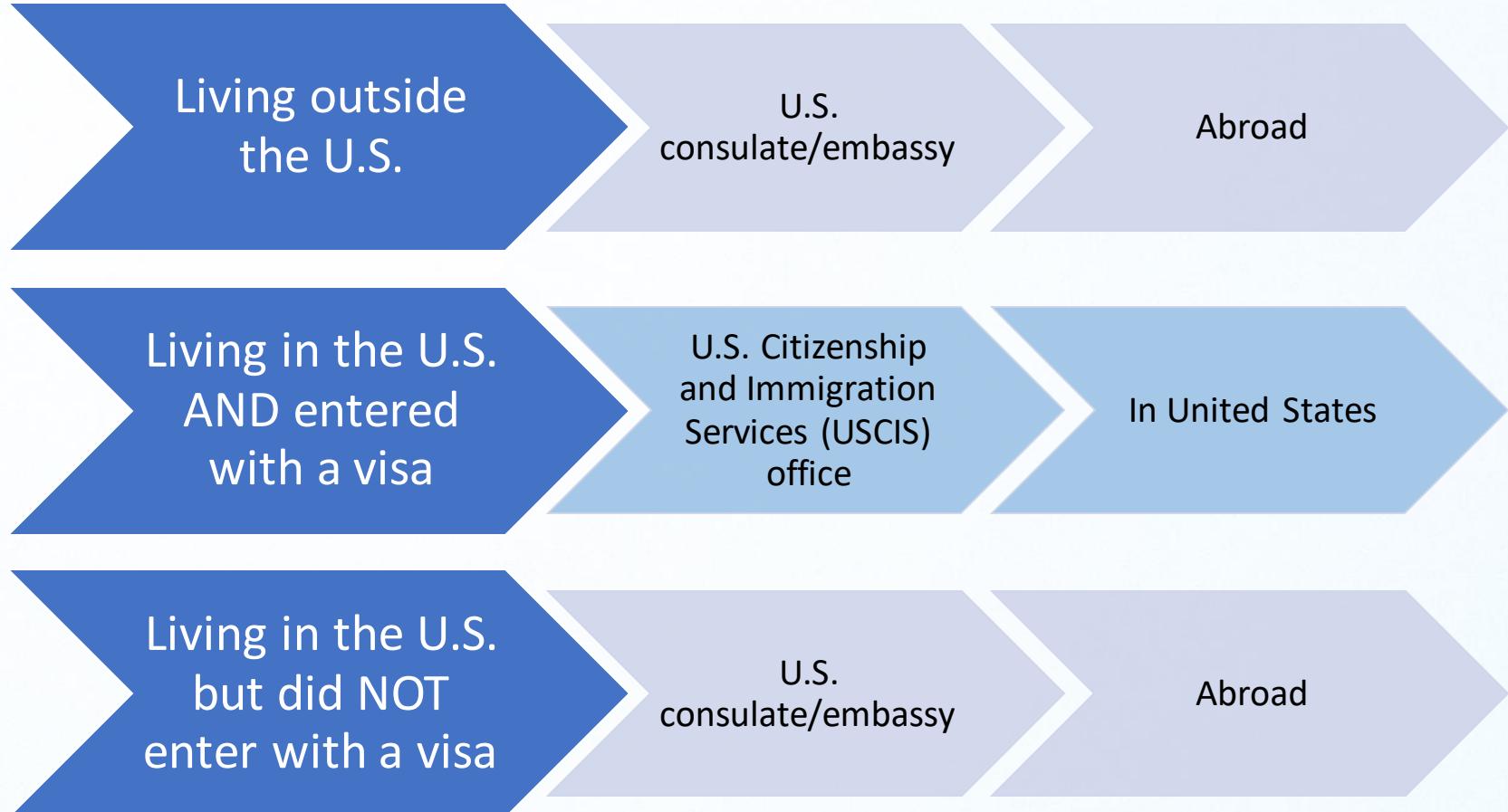


Applying to Immigrate

Main requirements to apply for green card through family petition:

- Have an **approved family petition**
- Be at the **front of the line** (i.e. immediate relative, or waited long enough that now at top of the list)
- **No disqualifications** (crimes, unlawful presence, other immigration violations, etc.)
- Most will have an **interview** with an immigration officer

Where the green card interview will be...



Applying to Immigrate: Other Considerations

- Older petitions filed before April 30, 2001
- Traveled on Advance Parole
- TPS holders in California
- Manner of entry—waved through, visas

Getting Immigration Legal Help

Issues to Watch Out For

- The family member who can file a petition for you is using their power to exercise control over you
- The relative who would be immigrating through the family petition may have been ordered deported or removed before

Other Issues

- The family member who would like to immigrate
 - Has been living in the U.S. without status
 - Has criminal convictions
 - Came to the U.S. illegally—they may have to leave as part of applying to immigrate and possibly have other problems

Other Issues, cont'd

- Many people have a family member who can file a petition for them, but beyond the long wait-list, they're also facing other issues that may prevent them from getting a green card
 - For some of these problems (but not all of them) a person can ask for a waiver or “pardon”
 - BUT not everyone qualifies to ask for a waiver/pardon because one of the requirements is having a USC or LPR spouse or parent—kids don’t count

Why get a legal consultation?

- Even if you met with an immigration attorney before, it can be a good idea to get a second opinion
- Things may have changed, in your life or in the law, that have also changed your options
- Immigration law is complex!



Find Free or Low-Cost Immigration Legal Assistance

- National legal directory by zip code of nonprofits providing immigration legal services:
 - https://www.immigrationadvocates.org/nonprofit/legal_directory/
- Selected list of CA immigration legal service providers:
 - <http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>
- Local and campus resources!

Watch Out for Fraud!

Seek help from a trustworthy source

- Only an attorney or accredited representative can give you legal advice
- A legal service provider should:
 - ✓ Provide a contract and receipts for payments
 - ✓ Explain the process and answer questions
 - ✓ Follow the rules

Questions & Discussion

THANK YOU!



IMMIGRANT LEGAL RESOURCE CENTER
1458 HOWARD ST. | SAN FRANCISCO, CA 94103

© 2019 IMMIGRANT LEGAL RESOURCE CENTER



TEACHING, INTERPRETING, AND CHANGING LAW SINCE 1979

