



**Guide to
U.S. IMMIGRATION OPTIONS
for REFUGEES ABROAD**

INTRODUCTION

On Immigration Categories

US immigration is all about categories. Screening people to see if they fit into one of the categories can be challenging. For refugees, most naturally think about the “refugee” category. The US accepts about 80,000 refugees per year from different countries. We will discuss that process, but our main goal is to draw attention to other immigration categories that might apply to refugees in camps around the world. We also want to help refugees get good information to avoid wasting time, money, and hope on categories that will not work.

For more information or legal help, www.immigrationlawhelp.org has a list of reputable legal service agencies. To find an immigration lawyer who is a member of AILA, the main professional organization for attorneys who practice in this area, see <http://www.ailalawyer.org/>. For a list of authorized refugee resettlement agencies, see <http://www.acf.hhs.gov/programs/orr/resource/voluntary-agencies>.

As background on the US immigration system, everyone in the United States who is not a U.S. citizen needs some kind of visa to be here legally. Visas are divided into two categories: temporary and permanent. Some people may qualify for a temporary visa and not permanent residence, while others may be able to get a permanent visa, but are not eligible for any of the temporary visas. It's all about what category fits the person's situation.

TEMPORARY VISAS

Temporary visas are lettered from A-V with numerous subcategories. And the list is growing. There are visas for work, training, study, visiting, and more.

Each visa has its own time limitations, processing times, rules on how long they plan to stay in the U.S. (temporary intent) and maintaining a foreign residence, restrictions on work authorization, and rules for dependents.

PERMANENT VISAS

Permanent visas fall into four basic groups: special programs of Congress, family sponsor, employer sponsor, and asylum/refugee.

1. Special Programs

The most relevant special program for refugees is the **Diversity Lottery**, which is held every year. The goal of the program is to encourage immigration from countries that are underrepresented in the United States, based on country of birth.

Therefore, those born in over-represented countries such as Mexico, China, the Philippines and India are not eligible. But most refugees come from countries that do qualify. The lottery happens each year in October, so check the **State Department**¹ website then.



The Diversity Lottery Application is a short, free online form.

Avoid the “-.com” websites that charge money to apply. Stick with the .gov State Department registration!

To apply, the person must be at least 18 years old, and have a high school degree or 2 years of work experience. A winner still needs to go through final screening, and will need to show financial stability to bring a spouse or child.

Of the roughly 12 million entries in the Diversity Lottery last year, there were about 100,000 “winners,” of whom about 50,000 received permanent residence.

2. Family Sponsorship

US citizens and green card holders are able to sponsor certain family members for permanent residence in the US. There are various categories of family relationships that range from spouse of a US citizen (the fastest) to sibling of a US citizen (the slowest, now taking well over 10 years and getting worse).

In between there are several categories, including children and spouses of permanent residents. The specific groups, and the waiting times involved, are listed each month on the **State Department Visa Bulletin**². See below for more information about family-sponsored immigration.

3. Employer Sponsorship

An employer in the US may sponsor someone for permanent residence. In general, the employer must show the Department of Labor that it cannot find qualified U.S. workers for the position.

Usually, this is done by advertising the job in a newspaper or journal. This process is called **PERM Labor Certification**³. If qualified U.S. citizens apply, then the Labor Certification cannot be granted at that time. This is a complicated process, and should involve an attorney with experience in business immigration⁴.

4. Asylum/Refugee Status

A person can seek asylum in the United States or refugee status outside the US if she has a “well-founded fear of persecution” in her home country. Someone who gets asylum or refugee status may be able to sponsor a spouse or children to join them in the U.S., as discussed below.

Concern about economic hardship or general criminal activity is not a basis for asylum - it must be fear of persecution by the government (or a group that the government is unable or unwilling to control) on account of one's political views, race, ethnicity, social group, or religion.

IN THIS GUIDE

We will describe US immigration law based on:

- Refugee processing
- Family relationships
- “Following to join” a parent or spouse who has just emigrated to the US
- Temporary visas for medical treatment
- Humanitarian Parole
- Adoption
- Other categories

We will explain in general how these categories work, what criteria are used so local aid agencies can screen for them, and what the rough timeline and chance of success are. We will include links to reputable sources and agencies for further information.

2 <https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>

3 <http://www.curranberger.com/visa-info/permanent-visas/perm-labor-certification>

4 Visit <http://www.ailalawyer.org> to find a reputable immigration lawyer.

1 <http://travel.state.gov/content/visas/en/immigrate/diversity-visa/entry.html>

REFUGEE PROCESSING

The US Committee for Refugees and Immigrants (USCRI) has an excellent website with information and useful links. See www.refugees.org.

This page is an excerpt from the USCRI website, explaining the basics of the US Resettlement Program. On the next page, we include information on the P3 refugee priority program that may allow refugees in the US to put family members on a list for refugee resettlement in the US.

REFERRAL TO THE U.S. RESETTLEMENT PROGRAM (USRP)

Only refugees who have been referred by **UNHCR** (The UN Refugee Agency) or by the U.S. embassy in the country of asylum are eligible for the USRP.

Usually, a family is referred together as a single group. The Department of State's Bureau for Population, Refugees, and Migration (PRM) oversees this program. The State Department develops application criteria, refugee admission ceilings, and presents eligible cases to a division of the Department of Homeland Security (DHS), the U.S. Citizenship and Immigration Services (USCIS), for adjudication.

The State Department's **Foreign Affairs Manual** (FAM) describes the process of application for admission to the United States as a refugee in 9 FAM 203.3.⁵

ADJUDICATION

Refugees who meet the criteria for application to the USRP are interviewed by a USCIS officer. The U.S. Department of State contracts resettlement and/or nongovernmental organizations to assist refugees who may need help preparing their resettlement application forms. The USCIS officer decides whether the applicant is a refugee as defined under U.S. law.⁶

An individual's designation as a refugee by UNHCR does not guarantee admission to the USRP!

APPROVAL

Refugees whose applications for U.S. resettlement receive USCIS approval are matched with an American resettlement organization that will facilitate their resettlement to the United States. Most of these nonprofit organizations rely on professional and volunteer staff to assist refugees.

DENIAL

If rejected, the applicant has thirty days to file a motion to reconsider the denial with the nearest USCIS district office. Generally, a motion is considered only if it contains new information not available at the original interview.

P1-3 REFERRALS

The United States has three refugee processing priorities, called **P1-3 Referrals**. These types of referrals are made three ways:

1. UNHCR offices, U.S. Embassies, and designated non-governmental organizations may make P1 individual referrals;
2. the U.S. Department of State may make P2 group referrals;
3. eligible family members living in the United States may initiate a P3 family reunification case.

The US Conference of Catholic Bishops has a very good summary of the P3 process for those with relatives in the United States.⁷

THE AFFIDAVIT OF RELATIONSHIP (AOR)

Certain refugees may be eligible for resettlement in the U.S. under the P3 Family Reunification Program. Under this program, refugees of specific nationalities are eligible for reunification with family in the U.S. The list of eligible nationalities is determined each fiscal year by the President.

Anchor relatives, or family members in the U.S. may petition for their eligible refugee relatives to join them by filing an Affidavit of Relationship (AOR). Once the AOR has been processed, the refugee overseas must be determined eligible for U.S. resettlement by the Department of Homeland Security and undergo a medical screening and security clearance before being processed for resettlement in the U.S.

To file an AOR, or for more information, contact one of the agencies in the US at <http://www.acf.hhs.gov/programs/orr/resource/national-voluntary-agency-directory>.

⁵ https://fam.state.gov/searchapps/viewer?format=html&query=refugee%20admissions%20&links=REFUGE.ADMISS&url=/FAM/09FAM/09FAMO20303.html#M203_3_2

⁶ <http://www.uscis.gov/iframe/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-195.html>

⁷ <http://www.usccb.org/issues-and-action/human-life-and-dignity/migrants-refugees-and-travelers/refugee-resettlement/how-to-sponsor-a-refugee-relative.cfm>

FAMILY RELATIONSHIPS

U.S. citizens may sponsor spouses, children, parents, or siblings for permanent residence. **Legal Permanent Residents** (green card holders) may sponsor their spouses and children under age 21.

There are different wait times for each category, depending on the status of the sponsor and the type of family relationship. This section summarizes the options for immediate relatives, relatives who fit into the preference categories, and fiancés.

IMMEDIATE RELATIVES ⁸

Visas are always available for immediate relatives of US citizens. An immediate relative is the spouse, parent, or child of a US citizen. However, a child must be unmarried and under the age of 21 to be sponsored as an immediate relative. There is no backlog in this category, although there may be processing delays.

PREFERENCE CATEGORIES ⁹

In addition to being able to sponsor immediate relatives, US citizens are also able to sponsor certain other family members as listed in the preference categories below. These categories also allow green card holders (lawful permanent residents) to sponsor certain family members.

The preference categories determine how long the family member must wait after the sponsorship application has been filed until they are able to apply for a green card (in some cases, this can be many years). See below for more information on the application process.

First Preference

A US citizen may sponsor an unmarried son or daughter 21 years of age and older for lawful permanent residence in the first preference category.

Second Preference

Lawful permanent residents may sponsor their spouses and unmarried children (under the age of 21) for permanent residence in the Second Preference 2A category. Second Preference 2B is for lawful permanent residents to sponsor their unmarried sons and daughters who are 21 years of age or older.

Third Preference

US citizens may sponsor their married sons and daughters for lawful permanent residence in the third preference category.

Fourth Preference

Adult US citizens may sponsor their brothers and sisters for lawful permanent residence in the fourth preference category.

APPLICATION PROCESS

To start, the US citizen completes and files Form I-130 at a US immigration service center. Form I-130 is

⁸ See <http://www.uscis.gov/tools/glossary/immediate-relatives> or <http://www.uscis.gov/family/family-us-citizens> for more information.

⁹ The Department of State Visa Bulletin is updated each month. It lists processing times for each preference category. See <https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>

an application form in which the US citizen provides information about herself and her relationship to the individual being sponsored. The information in the form must be supported by a range of official documents, including passports and birth or marriage certificates. These documents can be difficult to get for refugees, and there could be concerns about fraud. The US government may request DNA testing to prove a genetic relationship.¹⁰

The US citizen must also demonstrate her ability to support the foreign national financially to show the US government the individual is unlikely to need US government money. This part of the application is the most common reason for a delay or denial, so it is important to plan ahead, and find a joint financial sponsor if needed.¹¹

The waiting time for the I-130 to be adjudicated can be anywhere from 2-8 months. Once the application has been approved, immediate relatives, and individuals who have reached the front of the line in their preference category, move forward to the next stage – applying for a green card at their local US Consulate. Individuals in the preference categories are at the front of the line when the priority date on their I-130 becomes “current” under the visa bulletin (that is, the date the application was filed is listed as “current” on that month’s bulletin).¹²

At this stage, the National Visa Center will send out information to the foreign national about the documentation they require, the medical exam, and the interview at the US Consulate.¹³ The whole process could take a year or more.

THE FIANCÉ/FIANCÉE VISA (K-1) ¹⁴

The K-1 visa allows a foreign national to enter the US for 90 days for the specific purpose of marrying a U.S. citizen and filing an application for a green card. Once the application has been filed, the individual may remain in the US. This category requires financial sponsorship, a medical exam, and is almost as much work and delay as a green card application itself. If the US citizen is able to travel abroad and get married, they can avoid the K-1 process and proceed straight to the green card application stage.

JOINING A PARENT OR SPOUSE WHO HAS RECENTLY EMIGRATED TO THE US (“FOLLOWING TO JOIN”) ¹⁵

Anyone who has entered United States as a refugee within the past 2 years, or who was granted asylee status within the past 2 years, may petition for the following family members to obtain derivative refugee or asylee status:

- Spouse
- Children who were unmarried and under the age of 21 when the asylum application was filed.

¹⁰ Here is a link to see what documents are available from each country, and how to get them: <http://travel.state.gov/content/visas/en/fees/reciprocity-by-country.html>

¹¹ Frequently asked questions on the I-864 Affidavit of Support: <http://travel.state.gov/content/visas/en/immigrate/immigrant-process/documents/support/i-864-frequently-asked-questions.html>

¹² <https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>

¹³ <http://travel.state.gov/content/visas/en/immigrate/nvc.html>

¹⁴ <http://www.uscis.gov/family/family-us-citizens/fiancee-visa/fiancee-visas>

¹⁵ See <http://www.uscis.gov/family/family-refugees-asylees>, OR <http://travel.state.gov/content/visas/en/immigrate/join-refugees-and-asylees.html> OR http://www.unhcrwashington.org/sites/default/files/rs_i730.pdf

ADOPTION

Before 2008, there were two main categories of adoption; now there are three. The US State Department has created an excellent website on international adoption to help understand the changes - adoption.state.gov.

Specifically, there is:

- Information on the adoption process in various countries that is updated as often as possible: http://travel.state.gov/content/dam/aa/pdfs/Intercountry_Adoption_From_A_Z.pdf
- General information for adoptive parents¹, and an explanation of the US visa process: <http://travel.state.gov/content/adoptionsabroad/en/us-visa-for-your-child/immigrant-visa-process.html>

Adoption can be a wonderful option, but it is an extremely difficult immigration category. We strongly recommend not starting an international adoption without talking to a US accredited adoption agency, and an attorney familiar with international adoptions.¹⁶

Note that adoption may be expensive, but there may be a variety of ways to get financial help. The US government offers a tax credit of \$13,400 for families making under \$190,000.¹⁷ And there may be low interest loans and state tax credits in addition.¹⁸

First Category: Parent & child already living together

The first category is a child adopted under the age of 16 who has lived with the adoptive parents outside the US for two full years under a grant of legal custody. Every word in that sentence is important. The child cannot just be living with the adoptive parents with a written consent from the birth parents - there must be a legal custody or guardianship document. Further, a child cannot just be legally adopted, the child must actually live under the same roof as the adoptive parent for two years. Sometimes it is very difficult for refugees to document where they lived for periods of their lives.

When a child meets this category, the child is treated like a genetic child in any of the other categories. So an adopted child who has lived with the adoptive parents for two years abroad can be sponsored as an Immediate Relative (child of a US citizen), or Preference case (child of a permanent resident), or may Follow To Join (child of someone who got refugee or asylum status).

If there are siblings adopted together, then one can be under 18 as long as the other is under 16.

Second Category: “Orphan” adoption

The second category is called an “orphan” adoption, and can only be done if the child is from a country NOT on the Hague Convention list,¹⁹ because the countries that are producing refugees today are

¹⁶ Here is a list of agencies that work with individual clients - https://coa.my.salesforce.com/sfc/p/#30000000aAU/a/500000000Ms8/a5.7wMFAyOjpfk.Foj4HmtINBiMQ6ioyLOTz7SX_w9A. And here is a link to a select group of US adoption attorneys - http://www.adoptionattorneys.org/aaaa_directory.

¹⁷ <https://www.irs.gov/taxtopics/tc607.html>

¹⁸ <http://www.adopt.org/financing-adoption>

¹⁹ <https://travel.state.gov/content/adoptionsabroad/en/hague-convention/convention-countries.html>

not on the list.

The definition of orphan is key - and is not the simple dictionary definition of orphan. The most common reason for delay or denial is that the child does not qualify as an orphan. See <http://www.uscis.gov/tools/glossary/orphan>, which summarizes the orphan definition:

A child may be considered an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. The child of an unwed mother or surviving parent may be considered an orphan if that parent is unable to care for the child properly and has, in writing, irrevocably released the child for emigration and adoption. The child of an unwed mother may be considered an orphan, as long as the mother **does not marry** (which would result in the child having a stepfather) and as long as the child’s biological father has not legitimated the child. If the father legitimates the child or the mother marries, the mother is no longer considered a sole parent. The child of a surviving parent may also be an orphan if the surviving parent has **not married since the death of the other parent (which would result in the child’s having a stepfather or stepmother)**.

An orphan petition is filed on Form I-600. You must have an accredited US adoption agency to act as a “Primary Provider,” not just for the home study.²⁰ If the agency is not specifically helping with the I-600, we recommend an immigration attorney since the I-600 process can be quite complicated.

The I-600 orphan petition is very much worth considering for a refugee child who has a US citizen in the United States who wants to adopt. This could include, for example, a US citizen who wants to adopt an orphaned niece or nephew, or a Syrian-American family who wants to adopt an orphaned refugee from Syria. If the child is in a Muslim country now (such as a refugee camp in Jordan), then there is an extra step because Muslim Sharia law does not have adoptions. The child would get guardianship in a Muslim court, and then be adopted in the US.²¹

Third Category: Hague Convention adoption

The third type of international adoption is a Hague Convention adoption.²² As explained above, almost no countries that send refugees are members of the Hague Convention, so it is most likely that a Hague adoption will not apply. However, this category trumps the other two, so it is very important for your agency to screen whether the Hague Convention applies.

For example, if a Syrian child has been living in Greece for several years, then the legal question is whether the child is considered a “habitual resident” of Greece (a Hague country) or Syria (a non-Hague country). That legal analysis is extremely difficult and should be done by an accredited agency or immigration attorney. Only COA accredited agencies can handle Hague adoptions, and they must be involved from the very beginning - don’t even think of starting an adoption process without con-

²⁰ See <http://www.rainbowkids.com/adoption-stories/the-importance-of-choosing-a-primary-provider-first-when-adopting-internationally-962>. Here is a list of agencies that may be able to be the Primary Provider for a child not in their system - https://coa.my.salesforce.com/sfc/p/#30000000aAU/a/500000000Ms8/a5.7wMFAyOjpfk.Foj4HmtINBiMQ6ioyLOTz7SX_w9A.

²¹ <http://travel.state.gov/content/adoptionsabroad/en/adoption-process/faqs/islamic-sharia%20law.html>

²² See <http://travel.state.gov/content/adoptionsabroad/en/hague-convention/understanding-the-hague-convention.html>, and a guide for adoptive parents at http://travel.state.gov/content/dam/aa/pdfs/PAP_Guide_1.pdf.

²³ <http://coanet.org/accreditation/who-is-accredited/who-is-accredited-search/>

Many refugees may be in need of specialized medical care not available in the camps, but getting a US visa for medical treatment can be very difficult.

The greatest challenge is showing that the US government will not ultimately pay for any of the treatment. This can happen if family or friends in the US sponsor the medical care financially, or if a hospital agrees to donate care.²⁴

Keep in mind that a medical visa is temporary - if the US consular officer working on the case decides that the refugee will stay in the US long term, then the visa may be denied even if all the work has been done to plan out the treatment.

²⁴ The US Embassy in Haiti has a very good webpage on this, with a checklist of documents needed. <http://haiti.usembassy.gov/which-visa-medical-treatment.html>

HUMANITARIAN PAROLE (HP)

This is a special permission to come to the US even if none of the other categories fit.²⁵ It is tempting to try this by making a personal argument about bringing a family together, or the conditions in the refugee camp, or the long delays in some other categories. HP can be a powerful tool, but it is extremely difficult to get. It can also take 3-4 months for a decision. HP is worth considering if there are no other options, but usually only as a last resort. As the Embassy websites explain:

“Humanitarian parole is an extraordinary measure, sparingly used to bring an otherwise inadmissible alien into the United States for a temporary period of time due to a very compelling emergency.”

²⁵ <http://www.uscis.gov/humanitarian/humanitarian-parole/questions-answers-humanitarian-parole>

Refugees are eligible for any category of US immigration, with temporary visas lettered from A to V, and the basic categories of permanent residence. We have presented the most common categories we see that apply to refugees in camps around the world.

However, we have seen young refugees apply to college in the US, get scholarships and obtain an F-1 student visa. We have seen people take advantage of business treaties to come to the US to work for a company owned by people from their country (we have such treaties with Kosovo, Congo and Honduras for example, but not with Syria²⁶). We have seen people be sponsored for permanent residence through a job in the US (usually from people who already knew the refugee).

These cases are relatively rare, but if there is a refugee who seems to have a potential connection with the United States, be sure to get good information before pursuing this.

Remember, www.immigrationlawhelp.org is a list of reputable legal service agencies. And www.ailalawyer.org is a link to find an immigration lawyer who is a member of AILA, the main professional organization.

²⁶ <http://travel.state.gov/content/visas/en/fees/treaty.html>

CONTENT BY:

CURRAN & BERGER LLP
NORTHAMPTON, MA
CURRANBERGER.COM
(413) 584-3232

GOSS IMMIGRATION
BOSTON, MA
GOSSIMMIGRATION.COM
(617) 357-9300

