



# HOORAY FOR SOLLYWOOD

Love Immigration Style



# **Admissions Criteria to the United States of America**

## **Prior governing law: United States Naturalization Law of 1790** (1 Stat. 103)

• *This law limited naturalization to immigrants who were "free white persons" of "good moral character"*

## **Current governing law: Title 8 of the US Code (The McCarran-Walter Bill of 1952, Public Law No. 82-414)**

• *Originally vetoed by President Truman before being overridden by the House (278 to 113) and the Senate (57 to 26)*

• An excerpt from President Truman's veto remarks: "Today, we are "protecting" ourselves, as we were in 1924, against being flooded by immigrants from Eastern Europe. This is fantastic. The countries of Eastern Europe have fallen under the communist yoke--they are silenced, fenced off by barbed wire and minefields--no one passes their borders but at the risk of his life. We do not need to be protected against immigrants from these countries--on the contrary we want to stretch out a helping hand, to save those who have managed to flee into Western Europe, to succor those who are brave enough to escape from barbarism, to welcome and restore them against the day when their countries will, as we hope, be free again... These are only a few examples of the absurdity, the cruelty of carrying over into this year of 1952 the isolationist limitations of our 1924 law."

## **Two paths: Permanent Residence and Naturalization**

# PERMANENT RESIDENCE REQUIREMENTS

In general, to meet the requirements for permanent residence in the United States, a person must:

1. Be eligible for one of the **immigrant categories** established in the Immigration and Nationality Act (INA)
2. Have a **qualifying immigrant petition filed and approved** for you (with a few exceptions)
3. Have an **immigrant visa immediately available**
4. Be **admissible** to the United States

## ***Immigrant Categories***

•Three immigrant categories:

1. Family Based
2. Job or Employment Based
3. Refugee or Asylum Status Based

# FAMILY BASED

- Some relatives of U.S. citizens, known as immediate relatives, *do not have to wait for a visa to become available*
- There is no limit to the number of visas that can be utilized in this category in a particular year
- Immediate relatives include:
  1. Parents of a U.S. citizen
  2. Spouses of a U.S. citizen
  3. Unmarried children under the age of 21 of a U.S. citizen

# FAMILY BASED

- The qualified relatives of a U.S. citizen or permanent resident in the remaining family-based categories *may have to wait for a visa to become available* before they can apply for permanent residency
- These categories include:
  - *First Preference*: Unmarried, adult (21 years of age or older) sons and daughters of U.S. citizens
  - *Second Preference A*: Spouses of permanent residents and the unmarried children (under the age of 21) of permanent residents
  - *Second Preference B*: Unmarried sons and daughters (21 years or age or older) of permanent residents
  - *Third Preference*: Married sons and daughters of U.S. citizens, their spouses and their minor children
  - *Fourth Preference*: Brothers and



# EMPLOYMENT BASED

- People who want to become immigrants based on employment or a job offer may apply for permanent residence or an immigrant visa abroad, when an immigrant visa number becomes available according to the following employment based preferences:
  - *First Preference*: Priority Workers, including aliens with extraordinary abilities, outstanding professors and researchers, and certain multinational executives and managers
  - *Second Preference*: Members of professions holding an advanced degree or persons of exceptional ability
  - *Third Preference*: Skilled Workers, professionals and other qualified workers
  - *Fourth Preference*: Certain special immigrants including those in religious vocations
  - *Fifth Preference*: Employment creation immigrants (investors or entrepreneurs)

# REFUGEE OR ASYLUM BASED

- If the person was admitted to the United States as a refugee or the qualifying spouse or child of a refugee, the person is required to apply for permanent residence (a green card) 1 year after their entry into the United States in this status
- If the person was granted asylum in the United States or is a qualifying spouse or child of an asylee, the person may apply for permanent residence 1 year after the grant of asylum status
- If a person is a refugee, the person is required by law to apply for a green card 1 year after being admitted to the United States in refugee status



# VISA AVAILABILITY

- A visa is always available for immediate relatives of U.S. citizens.
- If the person is in a family or employment based preference category, visa availability is determined by:
  1. The person's priority date
  2. The preference category the person is immigrating under
  3. The country the visa will be charged to (usually your country of citizenship)
- The Department of State is the government agency that controls visa numbers
- The annual limits for visa numbers are established by Congress and can be referenced in the Immigration and Nationality Act (INA)

# VISA AVAILABILITY

- First, a priority date will be assigned to the person based on their immigrant petition filing date (the date that the petition is properly filed with USCIS) or, in certain employment-based cases, the date the application for a labor certification was accepted by the Department of Labor
- This date, along with the person's country of nationality and preference category, determines if or how long a person will have to wait for a visa to be immediately available
- When a visa is available, the person may file an Application to Register Permanent Residence or Adjust Status (if the person is in the United States) or apply for an immigrant visa abroad (consular processing)

# CITIZENSHIP REQUIREMENTS

## □ **Ways to Qualify for Naturalization**

- The person has been a permanent resident for at least 5 years and meet all other eligibility requirements
- The person has been a permanent resident for 3 years or more and meet all eligibility requirements to file as a spouse of a U.S. citizen
- The person has qualifying service in the U.S. armed forces and meets all other eligibility requirements
- A person's child may qualify for naturalization if the parent is a U.S. citizen, the child was born outside the U.S., the child is currently residing outside the U.S., and all other eligibility requirements are met

# CITIZENSHIP REQUIREMENTS

- **Generally**, to be eligible for naturalization a person must:
  - Be age 18 or older;
  - Be a permanent resident for a certain amount of time (usually 5 years or 3 years, depending on how the person obtained status);
  - Be a person of good moral character;
  - Have a basic knowledge of U.S. government (this can be excepted to due to permanent physical or mental impairment);
  - Have a period of continuous residence and physical presence in the United States; and
  - Be able to read, write, and speak basic English (There are exceptions to this rule for someone who at the time of filing: (1) is 55 years old and has been a permanent resident for at least 15 years; (2) is 50 years old and has been a permanent resident for at least 20 years; or (3) has a permanent physical or mental impairment that makes the individual unable to fulfill these requirements)

# IMMIGRANT CHILDREN

Historically, Oregon has had higher numbers of children in foster care than most other states.

## 1. Wardship/Fostercare issues for immigrant children

- A. Placement in culturally appropriate foster homes (language, religion, culture)
- B. Separation from siblings and extended family members
- C. The basics – appropriate food, clothing, etc
- D. Visitation with their parents and the parents' ability to understand how to access.

# IMMIGRANT CHILDREN

## 2. Cultural Competency in understanding our child welfare system

- A. Parents from other cultures and countries are used to different standards or no state enforced standards
- B. Court interpreters may not speak their dialect or may be from a different caste, class, or ethnic group
- C. The services DHS typically provides to ameliorate the problems don't work for immigrant families due to cost, language and transportation barrier, gender barriers, etc.

# IMMIGRANT CHILDREN

## 3. The Law

- A. ORS 418.925 – Refugee children. The Refugee Act provides for a heightened standard of review by the court if DHS wants to take wardship
- B. DHS administrative rules versus clear law – placement with relatives, home certification



# IMMIGRANT CHILDREN

## Anecdotal Stories

9 year old girl from Somalia separated from family and placed with white foster parents

- Court interpreter from Somali Somali versus Somali Bantu
- Parents didn't understand physical discipline versus physical abuse
- Foster parents didn't speak the language and lived far away from siblings and extended family
- Father needed permission from community elders to contradict Mother on any parenting decisions – failure to protect

# IMMIGRANT CHILDREN

## Anecdotal Stories

17 year old boy from Mexico who came to the U.S. to work with an uncle was abandoned and wanted to go to school.

- Attorney filed a Petition for Wardship on behalf of boy, attorney representing the state disagreed, DHS did not take a position.
- Boy wanted to attend high school and then college and could remain a ward until 21. He wanted to access foster care, help with becoming a citizen, independent living assistance, etc.
- Parents participated by phone from Mexico and couldn't understand the process – how to explain the issue when there isn't a common understanding of it.

# A HISTORICAL PERSPECTIVE

Not like the brazen giant of Greek fame,  
With conquering limbs astride from land to land;  
Here at our sea-washed, sunset gates shall stand  
A mighty woman with a torch, whose flame  
Is the imprisoned lightning, and her name  
Mother of Exiles. From her beacon-hand  
Glow world-wide welcome; her mild eyes command  
The air-bridged harbor that twin cities frame.  
"Keep, ancient lands, your storied pomp!" cries she  
With silent lips. "Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore.  
Send these, the homeless, tempest-tost to me,  
I lift my lamp beside the golden door!"

# A HISTORICAL PERSPECTIVE

- . . but not unless they are “a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years.” **Naturalization Act of 1790 (Amended in 1795 to increase residence period to 5 years)**
- . . . but not “natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards.” **Alien and Sedition Acts of 1798 (Restriction to males eliminated in 1918; codified as 50 USC §§21–24)**
- . . . but not “Chinese laborers,” including “skilled and unskilled laborers and Chinese employed in mining,” and “no State court or court of United States shall admit Chinese to citizenship.” **Chinese Exclusion Act (1882; repealed 1943)**

# A HISTORICAL PERSPECTIVE

- . . . but not “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge.” **Immigration Act of 1891**
- . . . but not “idiots, insane persons, epileptics, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with a loathsome or with a dangerous contagious disease; persons who have been convicted of a felony or other crime or misdemeanor involving moral turpitude; polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials; prostitutes, and persons who procure or attempt to bring in prostitutes or women for the purpose of prostitution.” **Immigration Act (1903 amendment)**

# A HISTORICAL PERSPECTIVE

- . . . but not “idiots, imbeciles, feeble-minded persons, epileptics, insane persons . . . . persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living.” **Immigration Act of 1907**
- . . . but not “persons of constitutional psychopathic inferiority . . . . persons who are natives of Islands not possessed by the United States adjacent to the Continent of Asia, situate south of the twentieth parallel latitude north west . . . or who are natives of any country, province, or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east . . . .” **Immigration Act of 1917 (Asiatic Barred Zone Act; repealed 1952)**
- . . . but not more than “3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910.” **Quota Act of 1921**

# A HISTORICAL PERSPECTIVE

- The Immigration and Nationality Act (1952) was codified under Title 8 of the United States Code, and has been amended numerous times, including:
- 1965 - Eliminated racial and national origin quotas and established quotas for Western (120,000) and Eastern (170,000) Hemispheres and established a 20,000 cap per fiscal year on each Eastern Hemisphere country.
- 1976 - Applied 20,000 per country limit to Western Hemisphere.
- 1978 - Eliminated hemispheric quota system and established worldwide quota of 290,000 visas.
- 1980 (Refugee Act) - Reduced worldwide quota to 270,000, authorized the admission of an additional 50,000 refugees and allowed 5,000 eligible asylees per year to adjust status to lawful permanent resident.



# A HISTORICAL PERSPECTIVE

- 1986 (Immigration Reform and Control Act) - Established legalization programs to grant amnesty and residency to certain unauthorized aliens.
- 1990 - Altered preference system by establishing categories of employment-based immigration, created immigrant investor category for investment of at least \$1,000,000 (\$500,000 in targeted areas) and established visa lottery program.
- 2013 (Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. § 2101 et seq. (2013)) – Would create registered provisional immigrant status for undocumented aliens physically present since December 31, 2011, with lawful permanent resident status after 10 years if certain border security milestones are reached and employment and family immigration backlogs are cleared.

# A HISTORICAL PERSPECTIVE

- ❑ **Frozen River (2008)**
- ❑ **The Visitor (2008)**
- ❑ **Forging a Nation (2007)**
- ❑ **The Kite Runner (2007)**
- ❑ **Miss Universe 1929 (2007)**
- ❑ **Never Forever (2007)**
- ❑ **Sentenced Home (2007)**
- ❑ **A Slim Peace (2007)**
- ❑ **Under the Same Moon (2007)**
- ❑ **Divided We Fall: Americans in the Aftermath (2006)**
- ❑ **In Between Days (2006)**
- ❑ **The Namesake (2006)**
- ❑ **Sweet Land (2006)**
- ❑ **Crossing Arizona (2005)**

# A HISTORICAL PERSPECTIVE

- **Eve and the Fire Horse (2005)**
- **Everything is Illuminated (2005)**
- **Game 6 (2005)**
- **The Keeper: The Legend of Omar Khayyam (2005)**
- **Missing in America (2005)**
- **Night of Henna (2005)**
- **Quinceañera (2005)**
- **Real Women Have Curves (2005)**
- **Romántico (2005)**
- **Saving Face (2005)**
- **Sueño (2005)**
- **The Three Burials of Melquiades Estrada (2005)**

# SAME SEX & IMMIGRATION BOLLYWOOD'S FIRST GAY KISS

From “Dunno Y ... Na Jaane Kyun”



# SAME SEX MARRIAGE & IMMIGRATION

S. 744 Subtitle F SEC. 2601. "The Uniting American Families Act of 2013".

"To provide for comprehensive immigration reform and for other purposes. "

SEC. 2602. DEFINITIONS OF PERMANENT PARTNER AND PERMANENT PARTNERSHIP.

The term 'permanent partner' means an individual 18 years of age or older who—

(A) is in a committed, intimate relationship with another individual 18 years of age or older in which both individuals intend a lifelong commitment;

(B) is financially interdependent with that other individual;

(C) is not married to, or in a permanent partnership with, any individual other than that other individual;

(D) is unable to contract with that other individual a marriage cognizable under this Act; and

(E) is not a first, second, or third degree blood relation of that other individual.

# SAME SEX MARRIAGE & IMMIGRATION

## □ SEC. 2603. WORLDWIDE LEVEL OF IMMIGRATION.

Section 201(b)(2) (8 U.S.C. 1151(b)(2)), as amended

3 by section 2305(a), is further amended

(1) in subparagraph (B)— (A) in clause (i), by inserting “permanent partner,” after “spouse,”; and (B) in clauses (ii), (iii), and (iv), by striking “or spouse” each place it appears and inserting “, spouse, or permanent partner”;

(2) in subparagraph (C)— (A) by striking “spouse or” and inserting “spouse, permanent partner, or”; and (B) by inserting “or permanent partner” after “alien spouse” each place such term appears; and

(3) in subparagraph (D), by striking “spouse or” and inserting “spouse, permanent partner, or”.

# SAME SEX MARRIAGE & IMMIGRATION

## □ SEC. 2604. NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.

(a) PER COUNTRY LEVELS.—Section 202(a)(4) (8 U.S.C. 1152(a)(4)) is amended— (1) in the paragraph heading, by inserting “, PERMANENT PARTNERS,” after “SPOUSES”; and

(2) in the heading of subparagraph (A), as redesignated by section 2305(d)(4)(A)(ii), by striking “AND DAUGHTERS” and inserting “WITHOUT PERMANENT PARTNERS AND UNMARRIED DAUGHTERS WITHOUT PERMANENT PARTNERS”.

(b) RULES FOR CHARGEABILITY.—Section 202(b)(2)(8 U.S.C. 1152(b)(2)) is amended— (1) by striking “his spouse” and inserting “his or her spouse or permanent partner”;

(2) by striking “such spouse” each place it appears and inserting “such spouse or permanent partner”; and

(3) by inserting “or permanent partners” after “husband and wife”



# SAME SEX MARRIAGE & IMMIGRATION

- SEC. 2614. DEPORTABLE ALIENS. Section 237(a)(1) (8 U.S.C. 1227(a)(1)) is amended—

“(F) PERMANENT PARTNERSHIP FRAUD.— An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if— “(i) the alien obtains any admission to the United States with an immigrant visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years before such admission and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are no longer fulfilled, unless the alien establishes to the satisfaction of the Secretary of Homeland Security that such permanent partnership was not contracted for the purpose of evading any provision of the immigration laws;

# IMMIGRATION CRIMES

□ 18 USC Sec. 1546 01/03/2012 PART I - CRIMES

## CHAPTER 75 - PASSPORTS AND VISAS

Sec. 1546. Fraud and misuse of visas, permits, and other documents

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document... or utters, uses, attempts to use, possesses, or receives any such document knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained;

# IMMIGRATION CRIME

- Sec. 1546(a). continued:

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

# IMMIGRATION CRIME

- Sec. 1546(a). continued:

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# IMMIGRATION CRIME

- Sec. 1546(a). continued:

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact -

# IMMIGRATION CRIME

## □ Sec. 1546(a). continued:

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

# IMMIGRATION CRIME

□ Sec. 1546(b) Whoever uses -

(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an identification document knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.



# IMMIGRATION CRIME

## □ 8 USC Sec. 1325 CHAPTER 12 - IMMIGRATION AND NATIONALITY

Part VIII - General Penalty Provisions Sec. 1325. Improper entry by alien

(a) Improper time or place; avoidance of examination or inspection;  
misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

# IMMIGRATION CRIME

- 8 USC Sec. 1325(b) Improper time or place; civil penalties

Any alien who is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty of -

- (1) at least \$50 and not more than \$250 for each such entry (or attempted entry); or

- (2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection.

Civil penalties under this subsection are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed.

# IMMIGRATION CRIME

- 8 USC Sec. 1325 (c) Marriage fraud:

Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

8 USC Sec. 1325 (d) Immigration-related entrepreneurship fraud:  
Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, or both.

# DUE PROCESS & DEFENSES

IMMIGRANTS ARE PERSONS!

*Yick Wo v. Hopkins* (1886)

nor shall any State deprive any **person** of  
life, liberty, or property without due  
process of law;

nor deny to any person within its  
jurisdiction the equal protection of the  
laws 14<sup>TH</sup> AMENDMENT

# DUE PROCESS & DEFENSES

Constitution Blind to Citizenship

*Wong Wing v. U.S.* (1896)

Extends to 5<sup>th</sup> and 6<sup>th</sup> Amendments

# DUE PROCESS & DEFENSES

## EQUAL PROTECTION FOR EDUCATOIN

*Plyler v. Doe* (1982)

- Strikes down Texas law prohibiting enrollment of **illegal aliens** in public school.
- Equal Protection Clause: No State shall 'deny to any person within its jurisdiction the equal protection of the laws.'
- "Whatever his status under the immigration laws, an alien is a 'person' in any ordinary sense of that term..."

# DUE PROCESS & DEFENSES

## Assistance of Competent Counsel

*Padilla v. Kentucky* (2010)

Padilla pleads guilty to selling pot.

Lawyer fails:

to advise as to immigration consequences of conviction

told him “no worries” since Padilla in US for 40 years

*Strickland v. Washington*(1984) – 6<sup>th</sup> Amendment

1. Did rep fall below an objective standard of reasonableness?
2. Is there a reasonable probability, that but for counsel’s unprofessional errors, the result of the proceeding would have been different?

# CRIMES RESULTING IN REMOVAL

1. Controlled Substance Offenses
2. Crimes Involving Moral Turpitude
3. Multiple Moral Turpitude Convictions
4. Aggravated Felonies
5. Firearm and Destructive Device Convictions
6. Espionage, Sabotage, Treason, and Other Crimes
7. Crimes of Domestic Violence , Stalking, Child Abuse , Child Abandonment, or Neglect
8. Failure to Register as a Sex Offender
9. Violating a Protective Order
10. High Speed Flight From an Immigration Checkpoint
11. Failure to Register or Falsification of Documents