

SCOTT LEGAL, P.C.

Immigration and Business Law
40 Worth Street, Floor 10
New York, NY 10013

TELEPHONE: (212) 223-2964
www.legalservicesincorporated.com
info@legalservicesincorporated.com

Immigration 101: A Basic Overview of Immigration Law in the U.S.

Many of our clients have asked us for a brief overview of how immigration laws work in the United States and this article is a summary of what we tell them. First though, it is important to point out that Immigration laws are complicated and this article certainly will not provide you with enough information to file an immigration petition. The purpose is for a brief overview of the Immigration laws so that prospective applicants can ask their trained immigration lawyer relevant questions. To get more detail on any of these topics, let Scott Legal Services, P.C. be your guide. Click here for more information: www.legalservicesincorporated.com Here is a general overview.

The Basic Structure of the Two Types of Immigration Visas: Temporary Visas & Permanent Visas

Generally speaking there are two types of Visas. The first is a temporary Visa and the second is a Permanent Visa. This is an extremely important distinction in immigration law and your first step in immigration law should be to think of these two broad categories. A temporary Visa is otherwise known as a non-immigrant Visa and this simply means that your INTENT is to return to your home country after a period of time in the United States. Examples of temporary Visas are as follows: TN Visa, L Visa, O Visa, B Visa, K Visa, E-1 & E-2 Visa, & F-1 Visa. These temporary Visas do not lead to a green card and you must leave the U.S. when the Visa is no longer valid.

A permanent Visa is also called an Immigrant Visa and is the same as a green card. The green card can ultimately lead to citizenship and can at times take years to obtain. The permanent Visas are generally broken down into five further categories 1) employment based, 2) family based 3) Visa Lottery, 4) Large Investment (Starting a Business & this category is really combined with employment based Visas) and 5) Asylum. These Visas are Visas where your INTENT is to stay in the United States.

The concept of intent is an extremely important concept in immigration law and will often dictate which type of Visa you are eligible for and your related options. First, we will take a look at the temporary Visas.

What is a Temporary Visa and How Do I Get One?

A temporary Visa is also called a non-immigrant Visa. The “non” is the term the government uses to say that you are not really an “Immigrant” in the sense that your stay is not permanent. Accordingly, a green card or permanent Visa is referred to as an Immigrant Visa. Each temporary Visa has eligibility criteria and in order to get one you will have to file a Visa petition and show that you meet the criteria. For example, if you want to get an F-1 Visa (a student Visa), you must show that you are going to go to an institution recognized by the U.S. government and show that you have the funds to go to school. Similarly, if you want to get a TN Visa (Trade National Visa for Canadians & Mexicans) you must demonstrate that you have the required educational background and profession and that you meet all of the other criteria outlined in the Statute. The main reasons that people get a non-immigrant Visa are as follows:

- Work Permit (For Example, TN Visa & L Visa)
- For Academic Study (For Example F-1 Visa)
- To start a business (For Example, E-2 Visa)
- Tourism or Business Travel (For Example, B1 & B2 Visa)
- Marriage (For Example, K Visa)

For all temporary Visas, generally speaking you must also demonstrate that you plan to return to your home country once the Visa is no longer valid. For some Visas the government will require that you show ties to your home country (for example own a home) and for others a letter indicating you plan to return home is sufficient. Also, most of these Visas mandate that your intent is temporary so there are potentially negative consequences to applying for a green card while you are on a temporary Visa. (This aspect is more complicated and you should ask the question of what the consequences will be if you apply for a green card while on a temporary Visa). While these Visas are temporary, some can be renewed indefinitely.

One last point is that there are some Visas where you may have a “dual intent.” For example, an H-1B Visa while still a non-immigrant Visa, allows the holder to apply for a green card because it has been designated as a dual intent Visa.

What is a Green Card and How Do I Get One?

A permanent Visa is the same as a green card or permanent resident card. This is the Visa category that leads to citizenship and this of course makes it more difficult to get. As mentioned above, there are five ways to get a green card and if you do not fall into one of these categories you will only be eligible for a temporary Visa. While there are five categories, the two key categories are Family based and Employment based green cards.

Family based green cards are based on the idea that the U.S. government supports the idea of family unification and allows citizens and green card holders to bring their family to the U.S. to join them. Citizens have an easier time bringing family members over and the more immediate the family member is, the easier it is for the Citizen or green card holder to sponsor. For example, the wife of a U.S. citizen can get their spouse a green card within a one-year period. Conversely, the brother or sister of a green card holder may have to wait for well over 10 years to sponsor the sibling.

Employment based green cards are further broken down into 5 sub categories. These are EB-1, EB-2, EB-3, EB-4 & EB-5. Generally speaking the employment based green cards have been set up to allow people to get green cards when they have a unique specialization and when a job awarded to someone who is not American would not take a job away from an American. For example, for many of these categories employers must go through an extensive labor certification process where they must prove that they were not able to find a U.S. citizen to take the job that they are hiring for. Like the family based green cards, some of these categories take years to obtain the green card because of quotas. Also, each category has defined criteria you must meet in order to be eligible. You should also note that the wait times are dependent on the country you are applying from and each country has a quota assigned to them.

Another area worth mentioning that falls within employment based green cards is the EB-5 category which is often referred to as the million dollar Visa. This Visa allows an investor to start or buy a company and invest \$1,000,000 to obtain a green card. The investor must create 10 jobs for U.S. citizens and is an excellent option for those who have the money. You can find out more about this Visa by clicking <http://legalservicesincorporated.com/the-million-dollar-green-card-eb-5-investor-visa-demystified/>.

The process of obtaining a green card is complicated and will be examined further in a future article.

What Would Make Me Ineligibility For a Visa?

The topic of ineligibility is complicated and you should know that there are many things that one could do that would make them ineligible for ANY Visa. For example, if you have committed a serious crime or stayed in the U.S. without a Visa you may be ineligible. For each area of ineligibility there is often a waiver and waivers are even more complicated than the ineligibility criteria. Suffice it to say though that whenever you apply for a Visa you must first look to see whether or not you are ineligible for some reason. For example, I have had many clients who are parents who have been in the U.S. without lawful status come to me and ask, “my son just turned 21 so can he sponsor me for a green card now?” Regrettably, the answer is no, as even though a 21 year-old son can normally quickly sponsor a parent for a green card, the parent in

(212) 223-2964

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this case is ineligible because he/she has been in the country for years without a Visa. The first step for this parent would be to see if there was a waiver that was available to them.

Do You Need A Lawyer?

Given the importance of an Immigration application and the consequence of completing your petition incorrectly, you should get an experienced Immigration lawyer. Scott Legal Services, P.C. has often taken over cases where people thought they could file their petition on their own and have made errors which have jeopardized their status in the U.S.. Also, Immigration is a tricky area and there are many things a good lawyer can point out to you that may ultimately save you far more than you will ever pay the lawyer. Contact Scott Legal Services, P.C., www.legalservicesincorporated.com today and let us help you with your Immigration needs. You can also call us at 212-223-2964 or email us at iscott@legalservicesincorporated.com.