

Why Don't They Come Legally?

Many Americans wonder why undocumented immigrants do not come to the U.S. legally or simply “get in line.” The U.S. legal immigration system has complicated and restrictive numerical limits for only certain categories of persons. Most current undocumented immigrants are ineligible to enter legally with a green card as a lawful permanent resident (LPR). Use the following chart to explore eligibility for green cards under the current U.S. legal immigration system.

Coming to the US legally: Do you qualify?

Do you have a qualified legal family member who can petition for you?

- a spouse, parent, adult child, or sibling who is a US citizen?
- a spouse or parent who is a legal permanent resident (LPR, or green card holder)?

If so, you may qualify for a family-based visa.

yes

no

Do you have job skills and a qualified employment offer? If so, your employer may be able to petition for you to receive an employment-based visa.

yes

no

Family-based immigrants are admitted as **immediate relatives** of U.S. citizens or through the **family preference system**.

Immediate relatives: adult US citizens can apply for a visa for a:

- spouse
- unmarried child under 21
- parent

These family members are not subject to visa number availability.

Family Preference Categories (approx. 226,000 visas per year*):

- unmarried adult sons and daughters of US citizens (23,400 visas¹)
- spouses and unmarried sons and daughters of LPRs (87,900 visas)
- unmarried adult sons and daughters of LPRs. (26,300 visas)
- married sons and daughters of US citizens (23,400 visas²)
- brothers and sisters of adult US citizens (65,000 visas³)

A person can only enter the US (provided they meet other eligibility requirements) in these preference categories, subject to visa availability. The demand is higher than the number of visas available thus there are significant backlogs in all the preference categories resulting in waiting times up to 20 years before a family member can actually enter the U.S. depending on their nationality and their visa category.

There are approximately 140,000 permanent **employment-based visas** available each year.*

- Persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; multinational executives and managers (40,000 visas⁴)
- Persons holding advanced degrees or persons of exceptional abilities in the arts, sciences, or business (40,000 visas⁵)
- Skilled shortage workers with at least 2 years of training or experience, professionals with college degrees (40,000 visas⁶), and **“other workers” who are “capable of performing unskilled labor” (limited to 5,000 visas)**
- Certain ministers, religious workers, former U.S. government employees (10,000 visas)
- Persons who invest \$500,000 to \$3 million in a job-creating enterprise and employ at least 10 US workers (10,000 visas).

Do you have a well-founded fear of persecution based on your race, religion, membership in a social group, political opinion, or national origin? You may qualify as an asylee or refugee.

yes

The **US Refugee Program** provides protection to refugees by bringing those who qualify to the U.S. for resettlement; the **US Asylum Program** provides protection to qualified refugees who are already in the US or are seeking entry into the US. Each year the President sets numerical ceilings on the number of refugees admitted to the U.S., but the actual number admitted may be much lower than the ceiling. There are no limits on the number of individuals who may be granted asylum each year. Refugees and asylees are eligible for green cards after one year in the U.S. (although it may take years to receive the green card due to annual numerical limitations).

no

Diversity Visa Lottery

The annual Diversity Visa program makes 55,000 green cards available to a person who has either a high school education or its equivalent or at least 2 years experience within the last 5 years working in an occupation requiring at least 2 years of training or experience. A computer-generated random lottery drawing chooses selectees for diversity visas. The visas are distributed among 6 geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the U.S. over the last 5 years. No one country within a region may receive more than 7 percent of the available visas in any one year. Each year millions of people around the world apply, so the chances of winning a visa are low.

Eligible

Do not win green card

Win green card

Not eligible. You do not qualify for a green card in any of the usual categories. You may qualify for a temporary work visa, a student visa, or a visitor's visa that allows you to remain in the U.S. for a specified period of time. Each of these programs has its own eligibility requirements, and many are subject to numerical limitations. In some cases temporary visas may be adjusted to permanent residency status after a period of time and after one meets the necessary requirements.

Why Don't They Become U.S. Citizens?

In order to qualify for U.S. citizenship, an individual must have had legal permanent resident status (a green card) for at least 5 years (or 3 years if he obtained his green card through a U.S. citizen spouse or through the Violence Against Women Act). There are other exceptions for members of the U.S. military who serve in a time of war or declared hostilities. Applicants for U.S. citizenship must be at least 18 years old, demonstrate continuous residency, demonstrate "good moral character," pass English and U.S. history and civics exams, and pay an application fee.

In other words, individuals cannot become U.S. citizens until they obtain a green card and meet other requirements.

*The actual number of visas may vary and is determined by a complicated calculation. The annual level of family-sponsored preference immigrants is determined by subtracting the number of immediate relative visas issued in the previous year and the number of aliens paroled into the U.S. for at least a year from 480,000. Then the unused employment preference immigrant numbers are added, if available. By law, the family-sponsored preference level may not fall below 226,000. In recent years, the 480,000 level has been exceeded to maintain the 226,000 floor on family-sponsored preference visas. The Immigration and Nationality Act (INA) also establishes per country levels at 7% of the worldwide level, meaning that no country can receive more than 7% of the overall number of visas. For a complete explanation of worldwide limits, see Wasem, Ruth Ellen, "U.S. Immigration Policy on Permanent Admissions." Washington, DC: Congressional Research Service, February 18, 2004.

¹ plus any visas left over from the 4th preference

² plus any visas left over from the 1st and 2nd preference

³ plus any visas left over from the previous preferences

⁴ plus any visas left over from the 4th and 5th preferences

⁵ plus any visas left over from the 1st preference

⁶ plus any visas left over from the 1st and 2nd preferences

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