

UNITED STATES IMMIGRATION AND CITIZENSHIP

PROFESSOR ALLAN WERNICK'S GUIDE TO THE LAW



Essential reading and assistance for **individuals** in making applications, and **legal practitioners** who need a handy, up-to-date reference, along with **immigration agencies, libraries, universities** and **schools**.

Also follow Professor Wernick's column in the *New York Daily News* and many syndicated publications.

UNITED STATES IMMIGRATION AND CITIZENSHIP

ALLAN WERNICK'S GUIDE TO THE LAW

PROFESSOR ALLAN WERNICK, Leader in U.S. Immigration Law



HIGHLINE
— EDITIONS —

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How to Use This Guide



READ

My book has easy-to-read stories and has many examples of how people have succeeded in gaining their U.S. Immigration and Citizenship. Their stories are based on true events but the names have been changed. Others have had more difficulties, as the laws need to be strictly adhered to. All stories are indicated with this icon



LOOK

There are many possible mistakes to make. I've flagged these points with this icon.



FORMS

All the required forms are referred to in the book. Look for this icon. U.S. Government websites are also included so that you can easily reference the sites and the get the forms.



SEEK EXPERT ADVICE

This book offers many suggestions, tips and points out many exceptions; however, in all cases always seek the advice of a competent legal or para-legal advisor trained in U.S. Immigration law.

Preface

U.S. immigration law is incredibly complex and elastic. Moreover, new laws, regulations, court decisions, and agency interpretations change the law daily. That's why I regularly update my *Immigration Answers* web site, **www.allanwernick.com**. Through my web site, I keep you informed of the latest developments in immigration law and policy.

Throughout *United States Immigration and Citizenship: Allan Wernick's Guide to the Law*, I point out how important it is that you seek expert assistance if you have any doubts about your rights under U.S. immigration law. Heed that advice. Once you submit an application to the USCIS or to a U.S. consulate, it becomes part of your permanent record. This book will point you in the right direction, but you may need expert assistance to reach your goal.

Immigration law is constantly changing. In recent years, among the most important changes are the recognition by immigration laws of same-sex marriages, the efforts by President Barack Obama to grant legal status to undocumented immigrants through executive action, and the increased scrutiny of immigration and citizenship applicants. The later is the result of both the events of 9/11 and the economic crisis' having raised concern about immigrants taking jobs from U.S. workers.

When the U.S. Supreme Court found that Defense of Marriage Act unconstitutional, binational same-sex couples became eligible for the same benefits as different-sex couples. That includes the right of a U.S. citizen or permanent resident to petition for permanent residence for a same-sex spouse or a U.S. citizen to petition for a same-sex fiancé(e). The same is true for the right of the spouse of a U.S. citizen on the right to naturalize in three years instead of the usual five. No matter where the marriage takes place, in a U.S. state that allows for same-sex marriages or in a foreign country, U.S. immigration recognizes that a same-sex spouse qualifies as a "spouse" for all purposes. So, when you see the word "spouse," "husband," or "wife" in this book, the rules explained apply to both same-sex and different-sex couples.

As this book goes to press, the courts have enjoined, that is stopped, all but one of President Obama's deferred action programs for undocumented immigrants. I discuss the programs, known as DACA, expanded-DACA and DAPA in Chapter 20. The President sought to provide temporary protection from deportation and employment authorization to millions. Only his program announced on June 15, 2012 for children who came here before age sixteen is active. If and when the courts allow the program to proceed, you will be able to find information about the programs on my website.

The increased scrutiny of immigration and citizenship applications motivated by 9/11 and the economic downturn has led some to believe that our immigration laws have become more restrictive. That's not true. The most restrictive aspects of our current immigration laws come from the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. That law put into place the "unlawful presence" bar to permanent residence discussed in Chapter 5, making it difficult for millions of undocumented immigrants to get green cards. Still, no question that immigration enforcement by U.S. Immigration and Customs Enforcement has increased and U.S. Citizenship and Immigration Services decision-making has become more restrictive. Immigrants, legal and undocumented need to be extra careful in preparing immigration and citizenship applications.

Hopefully, my book will help you with that task.

A handwritten signature in black ink that reads "Allan Wernick". The signature is written in a cursive, flowing style.

Allan Wernick, Esq.

Director, CUNY Citizenship Now!

Professor, Baruch College

About the Author

Photography: Andre Beckles



Professor Allan Wernick is a widely-noted authority and advocate on United States citizenship and immigration law. He serves as Director of CUNY Citizenship Now!, City University of New York-CUNY's free citizenship and immigration service project. He is professor at Baruch College, CUNY and has taught as a visiting professor in Chicana/o Studies at UCLA and California State University at Dominguez Hills. His informative columns on immigration law appear twice weekly in the *New York Daily News* and are syndicated by King Features Syndicate. He has served on the national Board of Directors of the American Immigration Lawyers Association (AILA), as Chair of the Immigration Committee of the Association of the Bar of the City of New York, and as President of the New York Chapter of AILA. He received his Bachelor's degree in Political Science from Stanford University and his J.D. from Loyola University in Los Angeles.



Prof. Wernick is renowned for his ability to clearly explain U.S. citizenship and immigration law to anyone interested in learning about this highly complex field. His more than twenty years of writing about immigration law issues in the *New York Daily News* and more recently for King Features Syndicate, have honed his ability to translate the complexity into easy-to-understand simple language. Over his career he has counseled thousands of immigrants, helping them down the path to permanent residence and citizenship. Immigrants, students, even lawyers have found his keen analysis and insights useful.

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Introduction

United States Immigration and Citizenship: Allan Wernick's Guide

Tom and Mary's Story

Tom was worried and upset—his wife, Mary, had just moved out. She had sponsored him for a green card, and his interview with the United States Citizenship and Immigration Services (USCIS) was just two weeks away. Tom was sure that because Mary left, his chances of staying in the United States had ended. Mary still loved Tom, and she hoped that he could get his immigration papers. But she felt their marriage wouldn't last, and she refused to live with him another day.

If Tom had read this book, he'd know that unless his wife withdraws his visa petition, he could still get his immigrant visa. He'd also know what documents to bring to his USCIS interview to help him win his case. Tom's story is typical of the thousands sent to me by readers of my weekly immigration law column published in the *New York Daily News* and my syndicated column for King Features Syndicate. Tom's story teaches you something about U.S. immigration law that you may not have known: Your husband or wife can help you get a green card even if you are separated.

Here are some other things you may not have known:

- Some permanent residents can become U.S. citizens without being able to speak, read, or write the English language.
- If you are married to a U.S. citizen, you can become a naturalized citizen after three years from the time you first became a lawful immigrant. If you have a college degree and an employer wants to sponsor you, you can get a temporary work status for up to six years—in certain circumstances, even longer. You can get this status even if you are less qualified than a U.S. worker who wants the job.
- If you are a U.S. citizen, you can bring your fiancé or fiancée to the United States by filing a K-1 Fiancé Petition.
- If you are a naturalized U.S. citizen, your children may have automatically become U.S. citizens when you did.
- Minor legal infractions such as traffic tickets and disorderly conduct usually won't keep you from becoming a naturalized citizen.

- Most applicants for asylum end up in removal proceedings (formerly called deportation proceedings).
- Sometimes you don't have to give up your native citizenship to become a U.S. citizen.
- An employer can sponsor you even if you are in the United States without papers.
- USCIS rules allow foreign students to work.
- Both men and women can petition to bring their out-of-wedlock children to the United States.

Who Needs This Book?

You need this book if:

- You are in the United States and want to stay.
- You are abroad and want to know how to come legally to the United States.
- You are lost in the complexity of U.S. immigration law or want to get legal status.
- You want to become a U.S. citizen.
- You are an employer, teacher, politician, or journalist who needs to know how our immigration system works.

Wernick's Guide to U.S. Immigration and Citizenship makes immigration law understandable. After answering hundreds of readers' questions, training hundreds of immigration law paralegals, and counseling immigrants for more than 30 years, I know what you need to know. If you want to make sense out of the U.S. immigration system, you need this book.

.gov

Getting Help with Your Immigration Problem

You have a lot at stake when you apply for legal immigration status or U.S. citizenship. Try to get some expert advice for your immigration problem before you submit papers to the INS. If you can't afford a lawyer, don't despair. Most people get visas without anyone's help. Others get advice from not-for-profit organizations, VOLAGS (voluntary agencies) or CBOs (Community Based Organizations that provide low-cost or free services to immigrants. The best tool for finding a VOLAG near you is **ImmigrationLawHelp.org**. There you can find an organization near you that handles your type of immigration case.



If I Read This Book, Do I Still Need a Lawyer?

If you can afford a lawyer to help you with your immigration problem, hire one. The USCIS is sometimes a difficult agency to deal with. Having an experienced immigration lawyer on your side may make a difference. Even if your case is easy, having a lawyer can help you relax as you go through the immigration process. If you decide to hire a lawyer, find one experienced in immigration and naturalization law. The best way to find a lawyer you'll be happy with is to follow the recommendation of a friend who is satisfied with his or her lawyer. Or, try the American Bar Association referral webpage, <http://apps.americanbar.org/legalservices/lris/directory/> or call your local bar association. Often they can refer you to an immigration lawyer who will charge you only a nominal amount for an initial consultation.

Getting Help from a Not-for-Profit Agency

Many not-for-profit agencies provide excellent immigration counseling services. Most agencies charge a nominal fee, but some provide free services. Some immigration counselors and paralegals employed by not-for-profit agencies are accredited by the Board of Immigration Appeals (BIA) to practice immigration law. You can find a list of agencies recognized to represent you in immigration court on the Internet at justice.gov/eoir. Search for “recognized agencies.”

Representing Yourself

Most people represent themselves when they apply for legal immigration status. While it's best to have someone knowledgeable about immigration and citizenship law, if you can't get help, at least make sure that you read the USCIS form instructions carefully. **USCIS.gov**, the USCIS website is constantly improving. I find it a useful resource.

The USCIS will send you forms for no charge if you call **800-870-3676**. You can also get the forms at the USCIS Web site, **uscis.gov**. Send completed forms and documents to the USCIS by certified mail with return receipt requested, and keep copies for your records.

Who's Who Under U.S. Immigration Law

Let's start our study of what immigration law can do for you by looking at how the law classifies people. I've included some stories to help you understand how the U.S. immigration system works. You'll find similar stories throughout the book.

U.S. immigration law divides all of us into two groups: U.S. citizens and aliens. The term “alien” includes permanent residents (green card holders), asylees, refugees, nonimmigrants, parolees, and undocumented immigrants. I try to avoid using the term “alien” in my writing and speaking, because it connotes strange beings from outer space. I prefer “foreign national.” Our immigration laws however, still call foreign nationals “aliens.”

U.S. Citizens

Whether natural born or naturalized, all U.S. citizens have the same rights except one: Only a natural born U.S. citizen can become president or vice president of the United States. Naturalized citizens may work in federal jobs, vote, and hold public office.

The government can't deport (remove) you for something you do after you become a U.S. citizen. However, the government can denaturalize a U.S. citizen who committed a fraud in becoming a citizen. Then the government can deport the denaturalized former citizen. You can also lose your U.S. citizenship by committing an act of expatriation. An example of an act of expatriation is joining a foreign government. You can renounce your U.S. citizenship. Renunciation takes place when you voluntarily, knowingly, and willfully give up your U.S. citizenship.

If you are a U.S. citizen, you may petition to bring to the United States as permanent residents your husband or wife; your children of any age, both married and single; and your parents. For more information on how to become a U.S. citizen, see section 2.

Permanent Residents (Green Card Holders)

Permanent residents are sometimes called green card holders, lawful permanent residents, and lawful immigrants. Permanent residents can travel freely into and out of the United States. However, if you are out of the United States for more than six continuous months, the government may question whether you have given up your residence. (See “Maintaining Your Permanent Residence,” in chapter 1.)

Unlike U.S. citizens (including naturalized citizens), permanent residents can't vote in national, congressional, or state elections. In a few places permanent residents and undocumented immigrants can vote in community and school board elections.

Permanent residents qualify to work in most jobs. However, many federal and some state and local government jobs, such as police officer and firefighter, are reserved for U.S. citizens. Permanent residents may also be excluded from working for private employers, if the work is to be done under a U.S. government contract.

If you are a permanent resident, you can bring to the United States as permanent residents your husband or wife and unmarried sons and daughters. To learn how you can become a permanent resident, see section 1.

The USCIS gives a permanent resident a permanent resident card, formerly called an alien registration card. This card is also known as a green card. The permanent resident card is a plastic-covered card that shows that its legitimate holder is a permanent resident of the United States. The cards issued today are just like the first permanent resident card issued. The name stuck.

Nonimmigrants

Nonimmigrants are foreign nationals who come to the United States temporarily for a limited purpose (see section III). Pierre's and Ying's stories provide examples of how a person goes from being a nonimmigrant to a permanent resident and then a U.S. citizen.

Pierre's Story



Pierre came to visit the United States from France as a nonimmigrant visitor. He had only been in the United States for one month when he met Melanie, a U.S. citizen. They fell madly in love and decided to marry. Melanie then petitioned for Pierre to get an immigrant visa.

About three months after they filed his papers, the USCIS gave Pierre work authorization and he began working. A few months later, a USCIS officer interviewed him for his immigrant visa and Pierre became a permanent Resident.

Three years later, he was naturalized as a U.S. citizen. He qualified after only three years, instead of the normal five years, because he was still married to and living with his U.S. citizen wife.

Ying's Story

Ying came to the United States from China to study finance. She entered the United States using an F-1 nonimmigrant student visa. She successfully completed her master's program, so the USCIS gave her one-year of practical training work authorization. She immediately got a job with one of the largest financial institutions, Big Money, Inc., in Chicago. After six months on the job, the company offered Ying a permanent position. In order to keep her in legal working status while her permanent visa papers were processed, Big Money Inc. sponsored Ying for a temporary professional worker status called H-1B. Two months later, the USCIS approved a change of Ying's status from F-1 student to H-1B worker, valid for three years.

While Ying was in H-1B status, Big Money Inc. sponsored her for a permanent visa in the position of deputy director of their Asian Investment Department. Ying became a permanent resident and five years after that became a U.S. citizen. Once she became a citizen, Ying petitioned to bring her mother and father to the United States.

Asylees and Refugees

Asylees have a well-founded fear of being persecuted in their home country because of their race, religion, nationality, political opinions, or membership in a particular social group. They apply to the USCIS for asylum either after they enter the United States or while trying to enter the United States. Refugees are also people afraid of persecution if they return home, but who got refugee status before they came to the United States. For more on refugees and asylees, see section IV.

Lisa's story provides an example of a successful asylum applicant.



Lisa's Story

Lisa was running away from a country in turmoil. Her brother had been killed for his opposition to the government, and Lisa was sure that she was next on the government's list. She took what she could fit in a suitcase and using a phony passport, came to the United States. She left behind her husband and infant daughter. She was lucky to have gotten away.

Within a week after her arrival, she contacted an immigrants' rights organization, which advised her to apply for political asylum.

The USCIS granted Lisa asylum. She could then bring her husband and child to the United States, regardless of whether or not they had independent claims for asylum. One year after the USCIS granted Lisa asylum, she and her family applied for permanent residence. They qualified for permanent residence because Lisa had been an asylee for one year.

Undocumented Immigrants

We use the term "undocumented immigrants" for foreign nationals living in the United States who haven't yet established the legal right to be here. This includes people who entered the United States by evading inspection at the border as well as people who entered with fraudulent documents. It also includes people such as tourists who entered with a valid nonimmigrant visa but who have overstayed the time allowed them by the INS.

Parolees

Parolees are foreign nationals who the CBP lets into the United States, though at the time they apply to enter they don't qualify as either nonimmigrants or permanent residents. Parolee status is often used to let people into the United States for humanitarian reasons or in emergencies.



If you are in the United States with an application pending for permanent residence, you can sometimes get advanced parole. That's advance permission from the USCIS to be paroled back into the United States after travel abroad. (For more on advance parole, see chapter 6.) In rare situations, you can get parolee status if you have an urgent need to come to the United States. Most often this humanitarian parole is granted to people needing emergency medical care or to keep families united. **To apply for humanitarian parole, write to the USCIS Parole Branch at U.S. Immigration & Naturalization Service, Office of International Affairs, Attn: Parole Branch, 425 I Street, NW, Washington, DC 20536.**

The USCIS most often grants parolee status where it has some question as to a foreign national's admissibility as an immigrant, nonimmigrant, or asylee. An example is the thousands of Cubans who landed in Key West, Florida, in the early 1980s.

Section 1

Getting a Green Card

Maria and Andrew's Story

"Tomorrow is your green card interview, Maria. Don't forget to put our wedding pictures in your purse," said Andrew.

"Don't worry. I made sure to pack everything. Even this photo where you are dancing with my mother," Maria said laughingly.

Andrew is a permanent resident who received his green card when his employer, a U.S. corporation, sponsored him. Andrew and Maria were childhood sweethearts. When Andrew learned that Maria had come to the United States to study, he called her and they rekindled their romance. They married after just a few months. After their marriage, Maria continued her studies and maintained her student status.

Andrew petitioned for Maria based on his status as a permanent resident. Because of the long wait in the category for the spouse of a permanent resident, Maria couldn't get her green card right away. The USCIS approved the petition immediately, but because of the long waiting list for the spouses of permanent residents, Maria had to wait until she got to the front of the line in her visa category.

It took several years, but eventually Maria was able to become a permanent resident and then a U.S. citizen. Once she became a United States citizen, she then filed separate petitions for green cards for her mother and younger brother.

Getting an immigrant visa (a permanent resident card commonly called a green card) is the goal of millions of people in the United States and around the world. In this section, I explain the immigrant visa process.

In chapter 1, I give an overview of the ways that you might qualify for an immigrant visa. In chapters 2 and 3, I give you details on the two main green card categories: Family-Based permanent residence and Employment-Based permanent residence. In chapter 4, I explain who is eligible for the green card lottery and how you can enter. In chapter 5, I review the bars to permanent residence (problems that could prevent you from becoming a permanent resident).

Finally, in chapter 6, I explain the procedures for preparing your immigrant visa application, offering tips on how to prepare for the all-important interview where, in most cases, the final decision to grant or deny you permanent residence will be made.

Chapter 1 - Who Can Get a Green Card?

Most people get immigrant visas (green cards) because they are related to a U.S. citizen or permanent resident. The next largest group gets immigrant visas because they have a needed job skill or ability. Then there's a smaller group that gets immigrant visas in special ways, including a lottery, residence in the United States ten years or longer, through Congressional action, because they are crime or trafficking victims and children under twenty-one with a juvenile court protection order. I expand on the family-based, employment-based, and lottery categories in chapters 2, 3, and 4.

For now, let's begin our search to find out if you can become a permanent resident by summarizing the categories of immigrant visa eligibility.

Family-Based Visas

You may qualify for a Family-Based green card if you are the Immediate Relative of a U.S. citizen (a category for which there is no limit to the number of immigrant visas issued each year) or if you are in a Family-Based Preference group for which there is a limit, or quota, of 226,000 immigrants per year divided among four preferences.

Immigration laws define family relationships in a special way. An example is the term "child," which includes not only children born to a married couple but also certain adopted children, stepchildren, and children born out of wedlock. Details on these family relationships can be found in chapter 2.

The Immediate Relative of a U.S. citizen category includes the following:

- Spouse of a U.S. citizen.
- Unmarried child (under age 21) of a U.S. citizen.
- Parent of a U.S. citizen if the citizen is age 21 or older.
- Spouse of a deceased U.S. citizen.

As discussed in Chapter 2, some relatives, other than the spouse of a U.S. citizen, can get a visa despite the death of the petitioning relative. Note that the immigration law uses the term "child" for children under twenty-one years old and "sons and daughters" for children of any age.

The Family-Based Preferences

- **First Family-Based Preference**
Adult unmarried sons and daughters (age twenty-one or older) of U.S. citizens.
- **Second Family-Based Preference A**
Spouse and unmarried children (under age twenty-one) of permanent residents.
- **Second Family-Based Preference B**
Unmarried sons and daughters (of any age) of permanent residents.
- **Third Family-Based Preference (formerly Fourth Preference)**
Married children of U.S. citizens.
- **Fourth Relative Preference (formerly Fifth Preference)**
Brothers and sisters of U.S. citizens if the U.S. citizen is age twenty-one or older.

Permanent Residence Based on Work, Talent, Investment

U.S. immigration laws recognize the value of immigrant labor to U.S. global competitiveness and job creation. Thus, you may be able to get a green card if you have unique education and skills, outstanding talent, or even willingness to work at a particularly unappealing job. You may also qualify for a green card by investing in a business. Permanent Resident visas in this category are referred to as Employment-Based visas.

There is a limit of 140,000 visas annually for all Employment-Based immigrants, but that doesn't always mean a long wait. How fast you can get an Employment-Based immigrant visa depends on your preference category as well as on how many people are applying for Employment-Based green cards from your native country. Following I list the Employment-Based Preferences. I also provide details for qualifying under these preferences in chapter 3.

The Employment-Based Preferences

- **First Employment-Based Preference**
Priority Workers, Workers with extraordinary abilities, outstanding professors and researchers, and multinational executives and managers.
- **Second Employment-Based Preference**
Members of professions holding advanced degrees or workers of exceptional ability.
- **Third Employment-Based Preference**
Skilled workers, professionals, and other workers.
- **Fourth Employment-Based Preference**
Special Immigrants, including certain religious workers, former U.S. government employees, Panama Canal employees, and certain foreign-language broadcasters working for Radio Free Europe or Radio Free Asia.
- **Fifth Employment-Based Preference**
Employment creation (investor).

Other People Who Can Get Immigrant Visas

Even if you do not qualify in one of the relative or employment categories, you may still be able to get an immigrant visa through one of the following classifications:

1. Derivative Beneficiaries

A beneficiary is a person for whom a Family-Based or Employment-Based immigrant visa petition has been filed. A derivative beneficiary is the spouse or unmarried child under twenty-one of that person. The term "derivative" is used because your right to an immigrant visa derives, or comes from your spouse or parent, who is the primary beneficiary.

Under the derivative beneficiary rule, if you're coming to the United States under one of the Family - or Employment-Based Preferences, you can bring your spouse and unmarried children under age twenty-one with you. Your spouse and your children don't need to have separate petitions filed for them. Your spouse and children can even follow you to the United States after you've arrived, provided that you were married to your spouse and your children were born *before* you received your immigrant visa.