

AILA Family Case Examples

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The Story of Nadine



(Nadine and her brother, New Year's 2013)

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Nadine, originally from Trinidad, came to the U.S. on a student visa in August 1988. She completed a graduate degree and was sponsored for an H-1B visa and later, a green card by a corporation. She became a permanent resident in 1993, worked, and paid taxes. In 1998, Nadine made a commitment to the United States, took the oath of allegiance, and became a naturalized citizen.

Once Nadine became a U.S. citizen, she filed a petition for her mother. While the case for her mother was quickly processed, Nadine's mother decided not to immigrate to the U.S. Nadine's mother was later diagnosed with breast cancer and died in 2007.

In February 2006, Nadine filed a sibling petition (I-130) for her youngest brother, who was 23 years old at the time. Though their dad was deceased and their mother was fighting cancer, Nadine's brother was a determined university student. Nadine was working long hours in the U.S. and trying to provide support to her brother and her mother from afar. The family determined that it would be best for Nadine and her brother to be together. The approval for the I-130 petition was received from USCIS on December 7, 2009. The case was sent to the U.S. State Department for visa processing on December 10, 2009. As of April 2013, green cards are available to brothers and sisters of U.S. citizens who began the process in April of 2001, five years before Nadine began the process for her brother. To date, a visa has not been made available and, during the

almost decade-long wait, Nadine's brother finished a bachelor's degree. At age 30, he is currently residing in Barbados, where he attended college and remained after graduation.

Nadine and her brother are very close, and given the age difference between them, Nadine has always helped to take care of him. Once she settled in the U.S., Nadine would visit her family every year. She called her family weekly and wrote to her brother frequently. Each school year, she bought him a new supply of clothes, books, and educational toys. When Nadine's brother was 12 years old, he traveled to the U.S. to spend Christmas with her. The following year, he spent the summer with his sister. He has made many visits to the U.S. since that time, and when Nadine received her PhD, he was there for the ceremonies. In the past six years, Nadine and her brother have buried their mother, grandmother, and stepfather –it has been a difficult time for them to be apart. Nadine's brother last visited for Christmas in December of 2012. They maintain weekly contact through phone calls, Skype, or Facebook.

The Story of Lauren

Lauren, a British citizen, 21 years old, came to the U.S. when she was 4 years old. Her grandparents had immigrated to the U.S. earlier in 1983 to farm. After an accident where Lauren's grandmother had a stroke and lost her leg, her parents, Ian and Allison, brought their family to the U.S. in 1995. The parents arrived on an E-2 visa to manage a motel and restaurant.

Lauren's grandparents became U.S. citizens, and in September 2003, her grandmother filed a petition for Lauren's mom as an adult married child of a U.S. citizen (Family Third category). Lauren was a derivative on that petition. Because of the wait on the Family Third (F3) category, the family is still waiting for visas to be available that would allow them to become lawful permanent residents. From March 2013 to April 2013, the F3 category will only inch forward one week from July 15, 2002 to July 22, 2002. At that rate, it may take 5 more years for their priority date to come current.

Lauren's parents' E-2 visa status does not provide a path to permanent residency. And when Lauren turned 21, she was no longer covered under her parents' current nonimmigrant visa – and was left without a status. Furthermore, she may soon "age-out" of the F3 family-based petition filed in 2003, her eligibility for which the Child Status Protection Act is only extending past age 21 to the extent of the number of days the petition was pending. If the family's priority date does not come current before that calculation runs out, Lauren ages out and loses her eligibility. Lauren was granted deferred action in 2012, allowing her to stay in the U.S. temporarily, and is currently pursuing dance in New York.

Outside of the extraordinary relief of deferred action there are little options for Lauren to remain with her family. If Lauren ages out, she does not keep her place in line with a different petition due to the lack of permanent priority dates for family based cases. When her mother gets her own permanent resident status, she could file a new petition for Lauren as the adult child of a permanent resident (2B). And Lauren will have to start her wait over again. The wait in that category means that Lauren could wait another decade or longer to get her green card.

The Story of N

N is the daughter of M and J, from Thailand. After immigrating to the US in the 1990's based on M's skill as a traditional Thai chef, M and J opened their own Thai restaurant. In 2002, they filed a petition for their adult daughter, N, to immigrate and join them. N was over the age of 21 when M and J immigrated initially, and therefore, could not accompany them to the U.S. for M's job.

By the time the petition on N's behalf was approved in 2005, the "priority date" in the category for an unmarried daughter of a lawful permanent resident was backlogged to 1995. M and J considered naturalizing, but between the demands of running their own restaurant and the high cost of the application fees, did not do so until 2010.

In 2009, however, N decided to get married. As a married daughter of permanent residents, her parent's immigrant petitions became immediately void, and she lost her place in the immigrant visa quota backlog, losing 5 years of priority.

M and J have now become US citizens and have re-filed immigrant petitions for their married daughter, but their priority date of January 2013 is in a category that is backlogged to July of 2002, meaning that it will be at least a decade or more before their daughter can join them.

The Story of Sudhir

Sudhir, 44 years old, is an Indian national. When Mohan, Sudhir's mother, was pregnant with him, she developed eclampsia, resulting in a reduced level of oxygen to Sudhir during the pregnancy. Sudhir's development was slow; he was slow to walk and to learn, and only went to the third or fourth grade in school. He is developmentally disabled, with an IQ of 40. Sudhir has always lived with his parents who have cared for him as if he were a young child. Sudhir is a friendly, docile, and curious person with a strong sense of imagination. He also loves to play.

Sudhir and his elderly parents, Raj and Mohan, entered the U.S. in lawful nonimmigrant status in May 2012. Sudhir has two siblings in the U.S. His brother, Dinesh, arrived in the U.S. in 1995 on a J-1 visa and has been in the U.S. for about 17 years. He is a lawful permanent resident, has filed for citizenship, and his naturalization interview has been scheduled for March 2013. His sister, Anjali, arrived in the U.S. in 1998 on an H-1B and has been here for about 14 years. She is a U.S. citizen. Both Dinesh and Anjali are married to U.S. citizens – Anjali has two children. Both are physicians living in the Chicago area.

Anjali has filed a family petition for their elderly parents, Raj and Mohan, and for her brother Sudhir. Raj and Mohan's age and poor health make it vital that they have the support of their children, Dinesh and Anjali. As the parents of a U.S. citizen, there are visa numbers immediately available for them. Raj and Mohan have both applied for permanent residency, and it is likely that they will have their green cards soon. However, because of the long wait in the family-based immigration system for siblings, it will take approximately twelve years before Sudhir will be able to obtain permanent residency based on his sister's petition.

It is simply impossible for Sudhir to wait twelve years outside of the U.S. without his family. He requires assistance with everyday tasks of life, including shaving, bathing, and dressing. Sudhir requires constant care and cannot be on his own for even one day, much less twelve years. He cannot live on his own, and would be subject to physical abuse and exploitation in his home country because of his disability. Raj and Mohan's own poor health prevents their return to India, and in addition, the family has no relatives in India who can help care for Sudhir.