



AILA Policy Brief: The Value of Family-Based Immigration¹

The United States has long recognized family unity as a core national value. As such, since the Immigration and Nationality Act (INA) was enacted in 1965, our immigration system has required most intending immigrants to demonstrate that they possess either close family ties to an individual in the United States or employment-based skills that are sought by a U.S.-based employer.¹ For more than half a century, our country and our communities have reaped the extensive benefits of family-based immigration policies: family immigration drives small business creation, fuels innovation, promotes integration, ensures the maintenance of strong family support systems, and strengthens our nation.²

Recent critics of the family-based immigration system have made wildly inaccurate claims that it results in massive numbers of relatives gaining immigration status through so-called “chain migration.” The term “chain migration” is a myth designed to scare the public. The reality is that family-based visas are only available to a limited group of close family members, and most of them are subjected to wait times of many years, often decades, before a visa even becomes available. The chain migration myth perpetuates falsehoods about the realities faced by families who wish to be reunited in the United States, and it feeds upon nativist claims that immigrants are taking over the country. If they become law, these efforts to restrict family-based immigration will undermine our national commitment to the family unit and to strong, economically vibrant communities.

Overview of the Family-Based Immigration System

U.S. immigration laws permit U.S. citizens and lawful permanent residents (LPRs) to sponsor close family members for immigrant visas, or permanent residence. Prospective immigrants must be either an “immediate relative” of a U.S. citizen or a qualifying family member under the family-sponsored preference system. Immediate relatives are: (1) spouses of U.S. citizens; (2) unmarried minor children (under 21 years of age) of U.S. citizens; and (3) parents of adult (21+ years) U.S. citizens.³ The family-sponsored preference system is limited to close family members of U.S. citizens or LPRs as follows:

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- **First:** Unmarried adult children of U.S. citizens;
- **Second (A):** Spouses and minor children of LPRs;
- **Second (B):** Unmarried adult children of LPRs;
- **Third:** Married adult children of U.S. citizens; and
- **Fourth:** Brothers and sisters of U.S. citizens.⁴

Cousins, uncles, aunts, grandparents, and other extended family members are **not** eligible to immigrate to the United States under the family-based immigration system.

To be admitted to the U.S. through the family-based immigration system, a U.S. citizen or LPR must petition for the family member, establish the legitimacy of the family relationship, meet certain income requirements, and submit a signed affidavit of support stating that the sponsor will be financially responsible for the family member(s). Each prospective immigrant is subjected to extensive background and security checks to screen for ineligibilities, including criminal, national security, health-related, and other inadmissibility grounds.⁵ In addition, in most cases, the prospective immigrant is required to appear for an in-person interview at a U.S. Consulate overseas or at a local U.S. Citizenship and Immigration Services (USCIS) field office prior to approval of the green card application.

It is important to note that, in order for a prospective family-based immigrant who is already in the U.S. to become a green card holder through a process known as "adjustment of status," the prospective immigrant must typically have maintained lawful status in the U.S. from the date the green card application was filed until the date that the application is approved. Prospective immigrants who have not been maintaining lawful status (e.g., those who have been unlawfully present in the U.S. or have overstayed their visa) are typically not eligible to adjust status within the U.S. to become a green card holder. In addition, those who are no longer in the U.S. who have a history of unlawful presence or visa overstays will – at a minimum – face serious hurdles in obtaining a green card through the family-based process, such as the three-and ten-year “unlawful presence” bars, which prohibit applicants from returning to the U.S. if they depart after having previously been in the country unlawfully.⁶

The Number of Family-Based Immigrants Admitted Each Year Is Limited

Congress has established a worldwide limit of 480,000 family-based visas that can be issued each fiscal year.⁷ There is no limitation on the number of visas that may be issued to immediate relatives⁸; however, the number of visas issued to immediate relatives is subtracted from the 480,000 cap on family-based immigration to determine the total number of other family-based immigrants to be admitted. To ensure that all family-based visas are not used by immediate relatives, Congress set a “floor” of at least 226,000 visas that must be allocated through the preference system.⁹ In addition to the numerical limitations on visas, the law also prohibits any single country from receiving more than 7% of the total number of visas that are issued each year.¹⁰

Numerical Limitation on Family-Based Visa Applications			
Visa Category	Sponsor	Relationship	Annual Numerical Limit
Immediate Relatives	U.S. Citizen	Spouse, unmarried minor child, parent	Unlimited
Family Preference Allocation			
First Preference	U.S. Citizen	Unmarried adult child	23,400 ¹¹
Second Preference A	LPR	Spouse / minor child	87,900 ¹²
Second Preference B	LPR	Unmarried adult child	26,300 ¹³
Third Preference	U.S. Citizen	Married adult child	23,400 ¹⁴
Fourth Preference	U.S. Citizen	Brother / sister	65,000 ¹⁵

Families Often Wait Years, Even Decades, to be Reunited in the United States

A common misconception about our immigration system is that family members who wish to immigrate to the U.S. can simply apply for and be issued a visa in a reasonable time. In fact, because of the numerical and per-country limits on visas, coupled with high demand, substantial backlogs have developed in most of the family-based preference categories.¹⁶ In fall 2017, approximately 4.7 million family-based applicants were waiting for visas. Department of State data from November 2017 shows more than 3.9 million applicants on the waiting list to obtain an immigrant visas in the family-sponsored preference categories.¹⁷ In addition, U.S. Citizenship and Immigration Services (USCIS) had over 800,000 family-based petitions pending as of September 2017.¹⁸

Number of Applicants on DOS Waiting List in Family-Sponsored Preference Categories¹⁹	
Visa Category	As of November 1, 2017
First Preference	288,826
Second Preference A	213,730
Second Preference B	364,353
Third Preference	735,955
Fourth Preference	2,344,992
Total	3,947,857

The annual visa quotas keep the vast majority of close family members waiting years or even decades for a green card. This is particularly true for individuals from high-demand countries such as India, China, Mexico, and the Philippines. For example, the U.S. government is currently granting green cards for brothers and sisters of U.S. citizens (F4 category) who filed applications more than 13 years ago.²⁰ If the brother or sister was born in the Philippines, the application would need to have been filed more than 23 years ago to be processed today.²¹

For unmarried adult children of lawful permanent residents (F2B category), green card applications are being processed that were filed more than 7 years ago.²² For unmarried adult children of U.S. citizens (F1 category), green card applications are being processed that were filed more than 6 years ago.²³ If the unmarried adult child was born in Mexico, the wait is even

longer in either the F1 or the F2B categories, as the U.S. government is only now granting green cards for individuals born in Mexico under those visa categories whose applications were filed more than 21 years ago.²⁴

A summary of the family-based application “priority dates” that the U.S government is currently processing based on the Department of State’s January 2018 Visa Bulletin is provided below.

Priority Dates Eligible in January 2018 to Complete Processing for a Family-Based Green Card²⁵		
Visa Category	All Countries, except China, India, Mexico and the Philippines	Oldest Priority Date currently being processed
Immediate Relatives	Immediately available	Immediately available
First Preference	March 15, 2011	May 1, 1996 (Mexico)
Second Preference A	February 1, 2016	January 1, 2016 (Mexico)
Second Preference B	December 1, 2010	August 15, 1996 (Mexico)
Third Preference	October 8, 2005	March 15, 1995 (Philippines)
Fourth Preference	June 22, 2004	September 1, 1994 (Philippines)

Importantly, the Department of State Visa Bulletin does not show how long a family member will actually wait **if they were to apply today**. The Visa Bulletin only shows which past applications are now being processed and is an inaccurate predictor of future processing times because of fluctuations in how many people apply each year or remain in the backlog.

One way to estimate approximately how long a family member may have to wait if they apply today is to compare the number of people who are currently waiting in the backlogs to the number who receive a green card each year under the quotas. For example, in November 2017, there were 2,344,993 applicants in the visa backlog for the sibling category (F4 visa).²⁶ If all of these applicants continue waiting in the backlog, it would take approximately 36 years for an applicant who applies in 2018 to receive a green card.²⁷ Further, if all sibling applicants born in Mexico continued waiting in the backlog, it could take over 150 years before an applicant applying now could receive a green card.²⁸ This calculation does not account for the number of people who could fall out of the line at some point. For example, people may give up after waiting for years in the backlog, people may immigrate to the U.S. through another available avenue, or people’s personal circumstances may change such that they may no longer be able to immigrate (i.e. illness or death).

These long, often extraordinary, wait times in the family-based preference categories, in particular the F2B and F4 visa categories, refute the “chain migration” claim that one immigrant can bring a wave of family members in rapid succession to the United States, who will then, in turn, quickly be able to bring another wave of family members to the United States. Given the overall wait times for a family-based immigrant visa, it could be many years, and in some cases even several decades, before a U.S. citizen or LPR could reunite with a family member in the United States.

Family-Based Immigration is Essential to Promoting Family Unity, a Foundational American Value

The United States was founded by immigrants who came to this country to make a better life for themselves and their families. Through family support, these immigrants made our country what it is today by building solid businesses and thriving communities. U.S. history is full of success stories that began through the family-based immigration system. Examples include the founder of Kingston Technology and number 87 on the Forbes 400 list, John Tu, who immigrated to the U.S. based on sponsorship by his U.S. citizen sister under the fourth preference visa category,²⁹ and Jerry Yang, the founder of Yahoo! who was brought to the U.S. as a child and raised by his extended family.³⁰ President Trump has also benefited from family-based immigration, as his mother and grandfather were foreign-born and came to the U.S. to join family members.³¹

America benefits when families are together. United families are strong families, with built in support networks that propel innovation and initiative and further America's economic and social interests. Immigrant families work hard, pay taxes, buy homes, and start businesses that generate jobs for U.S. workers. Continuing to support family-based immigration reinforces these core American values. Forcing close family members to live apart is not the American way. Instead, we must honor our commitment to families that are seeking the American Dream.

Family-Based Immigrants Contribute to America's Economic and Social Interests

Family-based immigrants make valuable contributions to the U.S. economy as well as to our local communities. They account for a significant portion of our domestic economic growth, play a role in our current and future labor force, contribute to business development and improvements to our communities, and are among the most upwardly mobile segments of the U.S. labor force.³²

Family ties facilitate the formation of immigrant communities, which, in turn, offer an environment that is ripe for business development. Case studies have found that extended immigrant families and close-knit immigrant communities facilitate the economic assimilation of new immigrants, promote investment in U.S. human capital, and encourage the development of businesses.³³ Immigrants who arrive through the family-based system are often business innovators, and immigrant families are more likely to start small-and-medium sized businesses, which contribute significantly to the economic development of local communities and create jobs for U.S. workers.³⁴ In fact, many of the leading high technology firms in the U.S. were founded by immigrants or their children.³⁵ In Silicon Valley, more than half of new companies were started by immigrants,³⁶ many of whom came to the U.S. on family-based visas.

With respect to brothers and sisters of U.S. citizens who immigrate to the United States through the family-based preference system, empirical research on the economic benefits of immigrants admitted as siblings of U.S. citizens has shown that this preference category is positively associated with immigrant self-employment.³⁷ Immigrants who are admitted as siblings of U.S. citizens tend also to have higher initial earnings than family-based immigrants in general.³⁸ Both siblings and adult children are likely to be of prime working age when they are petitioned for by their family member; 42 percent of new permanent residents in 2016 were between the ages of

25 to 44 years of age, with a median age of 32.³⁹ With an aging workforce and a higher overall median age of 37.9 years,⁴⁰ the U.S. reaps the benefits from the economic contributions of these new immigrants without having typically paid for their basic education.⁴¹ In addition, adult children and siblings who enter the United States through the family-based immigration system are not typically competing with native-born U.S. workers for the same jobs because immigrants tend to fill lower-skilled jobs in different occupations or industries than native-born workers.⁴² Finally, both adult children and siblings play a critical role in the care of aging family members, providing assistance that allows others in the family to continue working and contributing to the U.S. economy.⁴³

Calls to End “Chain Migration” Are Thinly Veiled Attacks on Our Legal Immigration System.

Recent calls by the Trump administration and a handful of members of Congress to end “chain migration” are nothing more than thinly veiled attacks on our family-based immigration system and an excuse to keep Americans separated from their family members abroad. These attacks espouse a ban on families that is no different than the reprehensible Muslim and refugee bans. Precipitation of the “chain migration” myth is part of a larger effort by the Administration, fueled by xenophobic fears, to close America’s doors to immigrants.

Dismantling our legal immigration system and making it harder for immigrants to reunite with their families will make America less appealing to everyone, including highly skilled immigrants and businesses. Forcing families apart also increases desperation, and thus, the risk of illegal immigration and visa overstays. In fact, a well-functioning family-based immigration system can reduce illegal immigration because a key motivating factor for illegal entry is eliminated.⁴⁴ Any attempts to end the family-based immigration system would be counter-productive and harmful to the U.S. economy and our local communities.

Conclusion

Critics of the family-based immigration system should look past the rhetoric to the realities of the family-based immigration system and the clear benefits that it provides to the United States. The truth is that family-based immigration system only allows close family members to be sponsored by a U.S. citizen or LPR relative, there are a limited number of visas available each year, and it can take many years, even decades, for a sponsored relative to obtain a green card through this system. Beyond these systematic limitations that discredit the commonly used “chain” terminology, the benefits of family-based immigrants cannot be disregarded. Family-based immigration is a cornerstone of American history and promotes family unity and innovation, which are key American values. Immigrants sponsored by family members contribute to American economic growth and development, facilitate assimilation, and fill critical roles in society, such as caretakers and low-skilled workers. Inaccuracies perpetuated by critics are simply thinly veiled attacks on the legal immigration system, which, if given credibility, will only serve to harm families and the U.S. economy.

¹ See INA §201(a).

² See American Immigration Council, “The Advantages of Family-Based Immigration” (March 14, 2013), available at <https://www.americanimmigrationcouncil.org/research/advantages-family-based-immigration>.

³ See INA §201(b)(2)(A)(i).

⁴ See INA §203(a).

⁵ See INA §212(a).

⁶ See INA §212(a)(9)(B). For a discussion of the three- and ten-year unlawful presence bars, see American Immigration Council, “The Three- and Ten-Year Bars” (October 28, 2016), available at <https://www.americanimmigrationcouncil.org/research/three-and-ten-year-bars>.

⁷ INA §201(c)(1)(A)(i). In addition, unused employment-based visas from the prior year can be allocated to the family-based preference system, though practically speaking, as a result of the backlog of employment-based visas, this allocation does not occur.

⁸ INA §201(b).

⁹ INA §201(c)(1)(B)(ii).

¹⁰ INA §202(a)(2). Exemptions from this rule include all immediate relatives of U.S. citizens and 75% of all visas allocated to second (2A) family preference admissions (spouses and children of LPRs).

¹¹ INA §203(a)(1), plus any visas left over from the fourth preference.

¹² INA §203(a)(2)(A), plus any visas left over from the first preference.

¹³ INA §203(a)(2)(B), plus any visas left over from the first preference.

¹⁴ INA §203(a)(3), plus any visas left over from the first and second preferences.

¹⁵ INA §203(a)(4), plus any visas left over from the previous preferences.

¹⁶ Each family-based petition is assigned a priority date based on the date of filing the Form I-130, Petition for Alien Relative. Visa issuance within each family-based preference category is possible only if the applicant’s priority date falls within the applicable dates listed in the Visa Bulletin that is issued each month by the Department of State. Family-based visa applicants compete for visa numbers within their respective family-based preference categories on a worldwide basis according to their priority date. In addition, a per-country limit of 7% places a limitation on the total number of visas which may be issued in a single year to applicants from any one country.

¹⁷ U.S. Department of State, Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2017, available at https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2017.pdf. (note that all figures reflect persons registered under each respective numerical limitation, i.e., the totals represent not only principal applicants or petition beneficiaries, but their spouses and children entitled to derivative status under INA 203(d)).

¹⁸ U.S. Citizenship and Immigration Services, Data Set: Form I-130 Petition for Alien Relative, available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Family-Based/I130_performancedata_fy2017_qtr4.pdf.

¹⁹ U.S. Department of State, *supra* note 17.

²⁰ U.S. Department of State – Bureau of Consular Affairs, Visa Bulletin for January 2018, available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2018/visa-bulletin-for-january-2018.html> (indicating that in January 2018 the U.S. government is issuing green cards for visa applicants under the family-based F4 category who have a priority date on or before June 22, 2004 for all countries, except China, India, Mexico, and the Philippines).

²¹ *Id.* (indicating that in January 2018 the U.S. government is issuing green cards for visa applicants born in the Philippines under the family-based F4 category who a priority date on or before September 1, 1994).

²² *Id.* (indicating that in January 2018, the U.S. government is issuing green cards for visa applicants under the family-based F2B category who have a priority date on or before December 1, 2010 for all countries, except China, India, Mexico, and the Philippines).

²³ *Id.* (indicating that in January 2018, the U.S. government is issuing green cards for visa applicants under the family-based F1 category who have a priority date on or before March 15, 2011 for all countries, except China, India, Mexico, and the Philippines).

²⁴ *Id.* (indicating that in January 2018, the U.S. government is issuing green cards for visa applicants born in Mexico under the family-based F1 category who have a priority date on or before May 1, 1996 and under the family-based F2B category who have a priority date on or before August 15, 1996).

²⁵ *Id.*

²⁶ U.S. Department of State, *supra* note 17.

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- ²⁷ This number was calculated as follows: 2,344,993 [total number on F4 visa category Department of State (DOS) waiting list as of November 2017] / 65,000 [annual numerical limitation for F4 visa category] = 36.08 years. This only includes those in the F4 category on the DOS waiting list (*see supra* note 17); cases pending at USCIS are not counted in this number. For more information on this method of calculation, *see* Marti Jones, “Cien Años de Espera: The Long Delay for Immigrant Visas,” *Voices*, American Immigration Lawyers Association, Vol. 1, Issue 5 (September/October 2011), *available at* www.aila.org/File/DownloadEmbeddedFile/31334.
- ²⁸ This number was calculated as follows: 733,139 [number on F4 Mexico DOS waiting list as of November 2017, *see supra* note 17] / (65,000*.07) [7 percent of the annual numerical limitation for F4 category, which is the per country cap] = 161.13 years. This only includes those in the F4 category on the DOS waiting list; cases pending at USCIS were not included in this number.
- ²⁹ Stuart Anderson, “Family Immigration Led to John Tu’s Billion Dollar Company,” (December 19, 2017), *Forbes*, <https://www.forbes.com/sites/stuartanderson/2017/12/19/family-immigration-led-to-john-tus-billion-dollar-company/#6b9f4eb765c1>.
- ³⁰ Erin Blakemore, “These Iconic Figures of American History Were All Immigrants,” (November 12, 2015), *TIME*, <http://time.com/4108606/history-american-immigrants/>.
- ³¹ Roque Planas, “Trump Benefited From the ‘Chain Migration’ he Blamed for Attempted New York Terror Attack,” (December 25, 2017), *Huffington Post*, https://www.huffingtonpost.com/entry/how-chain-migration-enriched-donald-trumps-life_us_5a32a81ee4b00dbbcb5ba69a.
- ³² American Immigration Council, “The Advantages of Family-Based Immigration” (March 14, 2013), *available at* <https://www.americanimmigrationcouncil.org/research/advantages-family-based-immigration>.
- ³³ Harriet Orcut Duleep and Market Regets, “Family Unification, Siblings and Skills,” in Harriet Duleep and Phanindra Wunnava, eds., *Immigrants and Immigration Policy: Individual Skills, Family Ties, and Group Identities* (1996).
- ³⁴ Chad Moutray, 2009, *Looking Ahead: Opportunities and Challenges for Entrepreneurship and Small Business Owners*, 31 *W. New Eng. L. Rev.* 763, *available at* <http://digitalcommons.law.wne.edu/lawreview/vol31/iss3/10>.
- ³⁵ Ian Hathaway, “Almost half of Fortune 500 companies were founded by American Immigrants or their children,” (December 4, 2017), *Brookings*, *available at* <https://www.brookings.edu/blog/the-avenue/2017/12/04/almost-half-of-fortune-500-companies-were-founded-by-american-immigrants-or-their-children/>.
- ³⁶ Darrell M. West, “Creating a ‘Brain Gain’ for U.S. Employers, The Role of Immigration,” *Brookings Policy Brief No. 178* (January 12, 2011), *available at* <https://www.brookings.edu/research/creating-a-brain-gain-for-u-s-employers-the-role-of-immigration/>.
- ³⁷ American Immigration Council, *supra* note 32.
- ³⁸ American Immigration Council, *supra* note 32.
- ³⁹ Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report on U.S. Lawful Permanent Residents* (December 2017), *available at* https://www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2016.pdf. (Note that in 2016, 24.2 percent of LPRs were between the age of 25-34 years and 18.1 percent of LPRs were between the age of 35-44 and these percentages were the highest of all the age ranges. These percentages are consistent with past years).
- ⁴⁰ U.S. Census Bureau, “The Nation’s Older Population is Still Growing, Census Bureau Reports,” (June 22, 2017), *available at* <https://census.gov/newsroom/press-releases/2017/cb17-100.html>.
- ⁴¹ Asian American Justice Center, “The Importance of Adult Children and Sibling Immigration,” *available at* <http://oldwww.advancingequality.org/attachments/wysiwyg/7/AdultChildrenSiblingTalkingPoints.pdf>.
- ⁴² U.S. Chamber of Commerce, “Immigration Myths and Facts” (October 24, 2013), *available at* https://www.uschamber.com/sites/default/files/legacy/reports/Immigration_MythsFacts.pdf.
- ⁴³ Asian American Justice Center, *supra* note 41.
- ⁴⁴ American Immigration Council, “Family Immigration: Repairing our Broken Immigration System,” (January 15, 2010), *available at* <https://www.americanimmigrationcouncil.org/research/family-immigration-repairing-our-broken-immigration-system>.