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YOUR IMMIGRATION SOLUTION

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Aliens ineligible to obtain a green card in the US

IN an ideal situation, an alien who enters the United States on a non-immigrant visa, has a current immigrant visa petition and lawfully maintains that status can obtain a green card through adjustment of status (AOS) and not have to leave the United States to complete the process. However, situations are not always ideal. The type of visa one uses to enter the United States may limit or preclude AOS. It may also prevent one from being eligible for certain forms of relief from removal (deportation). This article will discuss C and D visas. Next week, we will discuss J and K visas and the effect of entering without inspection.

C visas are also known as transit visas. There are three different subcategories: C-1, C-2, and C-3. The most common of these is the C-1. (C-2 and C-3 visas are for UN transits and foreign representatives, respectively, and will not be discussed in this article). The C-1 category is for aliens in immediate and continuous transit through the US. "Immediate" is defined as reasonably expeditious departure in normal course of travel. There are no unreasonable layover privileges. Moreover, it is solely for the purpose of accomplishing the transit from one vessel to another. If the alien wishes to visit friends or family or attend a seminar during the course of their stay, they should apply for a different type of visa.

Examples of people eligible for this visa are crewmen joining their ship or airplane and businessmen passing through the United States in their travel from one country to another. The alien must be in possession of a ticket or other assurance of transportation to destination and have permission to enter the third country. The period of stay cannot exceed 29 days. If the alien is a crewman joining a ship, he will need a letter from the shipping company agreeing to pay cost of removal if necessary.

Holders of C-1 visas cannot change status to another non-immigrant category, i.e. C-1 to student or temporary worker, etc. Neither can they extend their status. C-1 crewmen are not eligible to adjust (AOS) unless a prior immigrant visa petition was filed on or before April 30, 2001 (245(i) grandfathered). C-1 crewmen are also not eligible to apply for cancellation of removal should they be placed into removal proceedings.

D visas are also known as "crewmen visas." They are given to persons serving in any capa-city required for normal operation and service on board a vessel, including trainees and those operating a concession or beauty salon on board ship. The Ninth Circuit has ruled that three factors determine alien crewman status: (1) the nature of the employee's duties; (2) when those duties are performed; and (3) whether any employee has a permanent connection with the ship and whether their presence facilitates the operation of the vessel.

As with the C-1 crewman visa, holders of this visa are given a maximum period of admission of 29 days. They are not eligible to extend or change status. They are not eligible to adjust status unless they are 245 (i) grandfathered. They are not eligible for cancellation of removal if they are placed in deportation proceedings.

An alien who is ineligible to adjust must complete their lawful permanent resident visa processing at the US Consulate in their home country. If they have been in the United States unlawfully for a period of 180 days or more, they will incur a three-year bar as soon as they leave the US. If their period of unlawful stay is one year or more, the bar they incur will last for 10 years. In order to apply for a waiver, the alien must show that their qualifying relative (USC or LPR parent or spouse only) will suffer extreme hardship if the waiver is not granted. This can be a difficult standard to meet. Therefore, when the alien leaves to consular process, he must consider the possibility of having to wait for 10 years before he can return.

In addition, an alien who misrepresented a material fact (such as their intent to enter the US to meet a ship) will need a waiver of inadmissibility for the misrepresentation. The bar for this ground of inadmissibility does not expire after 10 years. Unless a waiver is granted, the bar is for life. The qualifying relatives for this waiver are also USC or LPR parents or spouse. Children are not qualifying relatives for this purpose. Here, again, the standard is extreme hardship, and it is judged with the same degree of harshness as the unlawful presence waiver.

The type of visa one uses to enter the United States can severely impact their ability to become permanent residents of the United States. For that reason, it is important to know the ultimate ramifications of the visa one is applying for.

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