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WHY BECOME A U.S. CITIZEN?

Green card holders in this country receive most of the rights of U.S. citizens, and in the day-to-day life of permanent residents there are not too many differences than with their citizen counterparts. So, why bother with obtaining citizenship? Here are 10 reasons that stand out:

1. Patriotism and voting: If you are making the United States your permanent home and want to fully participate in American democracy, becoming a citizen is vital. Only U.S. citizens can vote in federal elections.

2. Retaining residency: The only way to guarantee you will always have the right to remain in the U.S. is to naturalize. Permanent residents are always at risk of losing their green cards for spending too much time outside the U.S.

3. Deportation: If one is ever convicted of a crime, and not necessarily a very serious crime, there is a risk of being deported. After becoming a citizen, with rare exceptions, you retain your citizenship even if you run into criminal problems.

4. Government benefits: Some permanent residents cannot receive the same public benefits as citizens. There has been increasing talk of making more public benefits available only to citizens. The only way to ensure that this will not be a problem is to naturalize.

5. Immigration for family members: U.S. citizens generally receive priority treatment to bring in family members. In many cases, citizens can sponsor family members without waiting on a queue for a visa to become available. Green card holders cannot sponsor parents or siblings, and the wait to bring in children and spouses is much longer than that for citizens.

6. Federal jobs: Certain types of jobs with government agencies require U.S. citizenship. This is particularly true for jobs in the energy and defense sectors.

7. Running for office: Many elected positions in this country require the officeholder to be a U.S. citizen.

8. Tax consequences: U.S. citizens and permanent residents are not always treated the same for tax purposes. This is particularly true for estate taxes.

9. Federal grants: Many federal grants are available only to U.S. citizen applicants.

10. Political contributions: While green card holders can legally donate money to campaigns if they are residing in the U.S., it is not clear whether green card holders residing abroad, even temporarily, can do so.

If you are planning to become a citizen, you need to file a naturalization application with U.S. Citizenship and Immigration Services. A booklet outlining the naturalization process can be found at www.uscis.gov/files/article/M-476.pdf.

H-2A VISAS

The H-2A visa is a nonimmigrant visa allowing foreign nationals to enter the United States to perform temporary or seasonal agricultural labor or services. Employers must satisfy two criteria to hire H-2A workers:

1. Able, willing and qualified U.S. workers are not available at the time and place needed; and

2. The employment of foreign workers will not adversely affect wages or working conditions of similarly employed U.S. workers.

To start the H-2A application process, the employer must first file two copies of form ETA-750. One copy is sent to the appropriate U.S. Department of Labor National Processing Center, and the other is sent to the state workforce agency (SWA) for the state in which the employment will take place. The application must show how the employer can meet the following conditions:

- Workers must be offered a wage equal to that of U.S. workers, which must be at least as high as the applicable Adverse Effect Wage Rate, federal or state minimum wage, or the applicable prevailing hourly wage rate, whichever is higher.

- The employer must provide free housing to all workers who are not reasonably able to return to their residences the same day. This housing must be inspected and approved by the U.S. Department of Labor.

- The employer must provide either three meals a day to each worker, or furnish free and convenient facilities for workers to prepare their own meals.

- The employer is responsible for the following different types of transportation of workers: (1) After a worker has completed 50% of the work contract period, the employer must reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work if such costs were borne by the worker; (2) The employer must provide free transportation between the employer's housing and the worksite for any worker who is provided housing;

- (3) Upon completion of the work contract, the employer must pay economic costs of a worker's subsistence and return transportation to the place of recruitment.

- The employer must provide workers' compensation insurance where it is required by state law. Where state law does not require it, the employer must provide equivalent insurance for all workers.

- The employer must furnish all tools and supplies necessary to perform the work.

- The employer must guarantee to offer each worker employment for at least three quarters of the workdays in the work contract period and any extensions.

If the application is accepted for consideration, the National Processing Center will then notify the employer in writing to begin recruitment efforts, which include:

1. The SWA refers U.S. candidates to the employer; and

2. The employer conducts independent recruitment as directed by the SWA.

Following the recruitment period, a decision is made regarding certification. The SWA subtracts the number of U.S. workers successfully referred from the total number of workers requested by the employer to calculate and certify the remaining job openings. Once the application is certified by the U.S. Department of Labor, the employer can then apply to U.S. Citizenship and Immigration Services on Form I-129.

Once issued, H-2A visas are valid for a maximum of one year. It may be possible to obtain two one-year extensions. After the alien has spent three years in the U.S. in H-2A status, the alien must leave for six months before continuing H-2A employment. Subsequent to this time, however, the alien can re-enter the U.S. in any status not based on the performance of agricultural work.

GROUNDS FOR J WAIVERS OF THE HOME RESIDENCY REQUIREMENT

Many J-1 Exchange Visitors are subject to the two-year home country residency requirement. This requirement precludes these visitors from changing to many other nonimmigrant visa categories or adjusting to permanent resident status unless they have spent two years in their home country or country of last

permanent residence upon completion of their J-1 program.

There are three categories of J-1 visa holders that are subject to the home residency requirement:

1. Those whose field of training and expertise appears on a Skills List maintained by the State Department.

2. Those who received funding either from their home government, an international organization or a U.S. government agency for the J-1 program.

3. Those who entered the United States to receive graduate medical education or training.

Waivers of the home residency requirement are available in a few situations:

Fulfilling the requirement would result in exceptional hardship to a U.S. citizen or permanent resident alien spouse or child.

In order to demonstrate exceptional hardship to a U.S. citizen or permanent resident spouse or child, the J-1 might try and document medical hardship, or persecution of the U.S. citizen or permanent resident if they go to the J-1's home country, as well as other unusual hardships. Lesser hardships such as spousal separation, separation from children and language problems by themselves are not enough to prove hardship. Rather, the totality of hardship must be measured. A greater degree of hardship must be found in cases involving foreign medical graduates or those receiving U.S. government funding. Also, the hardship must arise both upon a separation of family members and if the family is together in the J-1's home country.

Fulfilling the requirement will result in persecution to the alien on the basis of race, religion or political opinion.

The criteria for a persecution-based waiver are similar to asylum claims; however, the burden of proof in a persecution-based waiver claim is higher than for an asylum claim. Consequently, most people pursue asylum applications rather than a J-1 waiver based on persecution. Furthermore, asylum claims usually lead to permanent residency status while this is often not true for a J-1 waiver. One instance where a persecution-based waiver may be favored is when an asylum claim is unavailable due to the applicant's waiting longer than a year after entering to apply.

The alien's home country government indicates no objection to the alien's remaining in the U.S.

Waivers may be granted if a J-1 visa holder obtains a "no objection" letter from the exchange visitor's country of nationality or last permanent residence. The "no objection" letter is a formal statement from the home country to the State Department. Most embassies or consulates in the U.S. have officials designated to handle these statements. Note: A "no objection" letter cannot be the basis for a waiver when the exchange visitor came to the U.S. to receive graduate medical education or training.

An interested government agency recommends the waiver as being in the national interest.

A statement from a U.S. government agency to the State Department that the granting of a waiver would be in the public interest can also be the basis for a waiver. This is usually available if the agency employs the J-1, but an agency may request a waiver even if it does not employ that individual. Physicians may receive waivers through a state's Conrad 30 program wherein each state is able to recommend the waiver for 30 physicians when the physician agrees to practice for three years in one of the state's medically underserved areas.

K-3/K-4 VISAS

The spouse and children of a U.S. citizen may be admitted to the United States as K-3 and K-4 nonimmigrants in order to complete their process for legal permanent resident (LPR) status. One of the principal benefits of K-3 and K-4 visas is that immediate families will be unified several months faster than if they were pursuing a typical immediate relative immigrant petition.

To be eligible for a K-3 nonimmigrant visa, the applicant must meet the following requirements:

1. Be the spouse of a U.S. citizen;

2. Have a pending relative petition by filing the Form I-130 with U.S. Citizenship and Immigration Services (USCIS);

3. Intend to enter the U.S. to await completion of the LPR process; and

4. Have an approved Form I-129F, Petition for Alien FiancÉ(e). This form is forwarded by USCIS to the U.S. consulate where the spouse will apply for the visa. The consulate specified on the Form I-129F must be either:

- The consulate in the country where the marriage took place, if the marriage occurred outside the U.S.; or
- The consulate with jurisdiction over the current residence of the alien spouse, if the marriage occurred in the U.S.

K-4 nonimmigrants are derivative beneficiaries of the K-3 nonimmigrant. To be eligible for a K-4, the applicant must be:

1. Unmarried;

2. Under 21 years of age; and

3. The child of the principal K-3 visa applicant or holder.

Separate Form I-130s and 1-129Fs are not required for the K-4 applicant. However, in order to ensure there are no problems during the adjustment of status process, it is recommended that the children's I-130 be filed with the K-3 applicant's I-130.

A U.S. citizen attempting to secure a K-3 visa for a spouse and/or a K-4 visa for child(ren) must submit Form I-130 to the USCIS Service Center with jurisdiction over the citizen's place of residence. Citizens living outside the U.S. must submit Form I-130 to the USCIS Service Center with jurisdiction over the citizen's last

place of residence in the U.S. Once the Service Center has received Form I-130, the citizen will receive a copy of Form I-797, Notice of Action, acknowledging receipt of Form I-130 by the USCIS. Finally, the citizen must file Form I-129F, accompanied by a copy of the I-130 receipt notice, with USCIS at P.O. Box 7218, Chicago, IL 60680-7218.

Obtaining the K visa and traveling to the U.S. does not complete the LPR application process. Upon entering the U.S., each K-3/K-4 nonimmigrant must file Form I-485, Application to Register Permanent Resident or Adjust Status with USCIS. This application can only be submitted after the spouse's Form I-130 has been approved. If a Form I-130 has not already been completed for each of the K-4 children, the children must file a Form I-130 with their Form I-485.

These visas are no longer valid 30 days after one of the following:

- Denial of the I-130;
- Denial of Adjustment of Status;
- A final divorce of the marriage;
- A K-4 nonimmigrant turning 21 years old or marrying;
- Approval of permanent residence for the K-3; or
- The expiration of two years without a request for an extension of stay.