



Why Don't They Just Get in Line? There Is No Line for Many Unauthorized Immigrants

Many Americans wonder why all immigrants do not just come to the United States legally or simply “get in line” if they are living here unauthorized. These suggestions miss the point: There is no line available for current unauthorized immigrants and the “regular channels” are largely not available to prospective immigrants who end up entering the country through unauthorized channels. Even though most unauthorized immigrants have lived in the United States for nearly 15 years,¹ many could live out the rest of their lives without any opportunity to become legal residents of their adopted home.

No “line” is available for the vast majority of unauthorized immigrants.

Immigration to the United States on a temporary or permanent basis is generally limited to three different routes: employment, family reunification, or humanitarian protection.² Each of these possibilities is highly regulated and subject to numerical limitations and eligibility requirements. As a result, most unauthorized immigrants do not have the necessary family or employment relationships and often cannot access humanitarian protection, such as refugee or asylum status. This means that no matter how long they have been in the United States, most unauthorized immigrants have no path to legal status. Even if they pay their taxes, work hard, and contribute to their communities, the only way they could “get in line” is if Congress created a new path to legal status.

Many unauthorized immigrants are barred from obtaining legal status while inside the United States.

Unauthorized immigrants who entered the United States without being legally admitted and inspected are generally not eligible to obtain green cards while still inside the country. Even if there is a visa available, they are barred from “adjusting status” and getting a green card without leaving the country because of how they entered the United States.³

Leaving the country to obtain a visa can have significant negative consequences as well. Any person who has been out of status for more than six months is barred from any legal immigration status for three years—or 10 years if the person has been out of status for more than a year.⁴ Although waivers to these bars exist, they are difficult to obtain. This means that even where a visa is available, many unauthorized immigrants must risk 10 years away from their families before being allowed to reenter.

Family-based immigration is limited to certain close family relationships and is numerically restricted.

Most people who legally immigrate to the United States come through family-based visas. Qualified family members in the United States can seek permission to bring in certain eligible foreign-born family members. U.S. citizens can petition for their spouses, parents (if they are 21 or older), children, and siblings.⁵ Lawful Permanent Residents (LPRs, or “green card” holders) can petition for their spouses and unmarried children.⁶ There are always visas available for the spouses, parents, and minor children of U.S. citizens, but for all other family categories there are annual numerical limits. In all cases, the petitioning family member in the United States must demonstrate an income level above the poverty line and must commit to support the family member they are seeking to bring to the United States. The foreign-born persons wishing to immigrate must meet eligibility requirements as well.⁷ This means that a family-based visa is unavailable to any unauthorized immigrant who doesn't have a qualified relative or who fails to meet those eligibility requirements.

Employment-based immigration requires a U.S. employer to request specific foreign workers.

To come to the United States for employment purposes—either temporarily or permanently—foreign workers must generally have a job already lined up with an eligible employer who will sponsor them.⁸ An employer can request permission to bring in specific qualified foreign workers, but only if they meet the requirements (such as job skills and education level) and if the employer cannot find qualified U.S. workers to take the job first. Most of the qualifying professions for permanent immigration require high levels of education and professional experience, such as scientists, professors, and multinational executives.⁹ There are a limited number of temporary visas for highly skilled or internationally recognized workers, and temporary, seasonal visas for agricultural workers and certain other “less-skilled” workers.¹⁰ In most of these cases, an employer must petition for the worker.

Very few unauthorized immigrants are eligible for employment-based visas, and competition for these visas is fierce. This means that for all but a lucky few, these visas are unavailable to unauthorized immigrants regardless of their skill or desire to work legally.

Most people fleeing their home countries cannot access humanitarian protection.

Each year, the United States sets a numerical limit on how many refugees will be admitted for humanitarian reasons.¹¹ To be admitted as refugees, individuals must be screened by multiple international and U.S. agencies and prove that they have a “well-founded fear of persecution based on race, religion, membership in a particular social group, political opinion, or national origin.”¹² Asylum seekers are individuals already in the United States who fear returning to their home countries, and they must prove they meet the definition of a refugee. An immigrant does not qualify as a refugee or an asylee because of poverty or difficult economic conditions in their home country. Most unauthorized immigrants are ineligible for asylum because the law generally requires someone to file for asylum within one year of entering the United States. There are other more limited forms of temporary humanitarian protection available, but these are rare.¹³

Even those who can get in line are subject to long backlogs and waits.

When unauthorized immigrants *do* have qualifying relatives that would permit them to obtain a visa, they may still not be able to take advantage of that process for years. The demand from both family members and workers who want to immigrate to the United States is typically higher than the number of slots available each year. In addition, there is a maximum number of employment-based and family-sponsored preference visas that can be issued to citizens of any one country in a single fiscal year.¹⁴ Only immediate relatives of U.S. citizens (parents, children under 21, and spouses) are not subject to a numerical limit. No country can receive more than seven percent of the visas available for the year.¹⁵ This results in significant backlogs for most family members and some workers hoping to enter the United States legally, with some immigrants from certain countries waiting decades.

People from countries with high levels of immigration to the United States—Mexico, China, India, and the Philippines—generally have the longest waiting times for immigrant visas. For example, both married and unmarried adult children of U.S. citizens from Mexico and Filipino siblings of U.S. citizens must wait more than over 20 years for a visa to become available.¹⁶

There is a limited lottery for certain countries.

If a person who wishes to immigrate to the United States does not qualify under the family, employment, or humanitarian systems, there may be one more legal path. The annual Diversity Visa program makes 55,000 green cards available to persons from countries with low rates of immigration to the United States. People from Mexico, China, the Philippines, India, and other countries with higher levels of immigration to the United States are not eligible.¹⁷ To qualify, applicants must have a high school education and two years of job experience. Since millions of people around the world apply each year, the chances of obtaining a visa through the lottery are extremely low.¹⁸

Conclusion

Unauthorized immigrants who want to regularize their status in this country cannot just “get in line.” Although there are some lines, many aspiring lawful permanent residents are not eligible to be in any of them. Even if an unauthorized immigrant does meet the formal requirements to immigrate, the wait can be very long if she or he is applying from countries that are currently oversubscribed.

Endnotes

1. Jeffrey S. Passel and D'Vera Cohn, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade* (Washington, DC: Pew Research Center, updated November 27, 2018), <https://www.pewresearch.org/hispanic/2018/11/27/u-s-unauthorized-immigrant-total-dips-to-lowest-level-in-a-decade/>.
2. American Immigration Council, *How the U.S. Immigration System Works: A Fact Sheet* (Washington, DC: updated August 2019), <https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works>.
3. 8 U.S.C. § 1255(c).
4. American Immigration Council, *The Three- and Ten-Year Bars* (Washington, DC: updated October 28, 2016), <https://www.americanimmigrationcouncil.org/research/three-and-ten-year-bars>.
5. U.S. Citizenship and Immigration Services, "Green Card Through Family," updated June 20, 2018, <https://www.uscis.gov/green-card/green-card-through-family>.
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7. American Immigration Council, *How the U.S. Immigration System Works: A Fact Sheet* (Washington, DC: updated August 2019), <https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works>.
8. U.S. Citizenship and Immigration Services, "Working in the U.S.," updated June 14, 2017, <https://www.uscis.gov/working-united-states/working-us>.
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10. U.S. Citizenship and Immigration Services, "Temporary (Nonimmigrant) Workers," updated September 7, 2011, <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers>.
11. Andorra Bruno, *Refugee Admissions and Resettlement Policy*, CRS Report No. RL31269 (Washington, DC: Congressional Research Service, February 18, 2015), <https://www.fas.org/sgp/crs/misc/RL31269.pdf>.
12. 8 U.S.C. §§1101 *et seq.* P.L. 96-212, March 17, 1980. This definition conforms with the definition used in the United Nations Convention and Protocol relating to the status of refugees.
13. American Immigration Council, *How the U.S. Immigration System Works: A Fact Sheet* (Washington, DC: updated August 2019), <https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works>.
14. William A. Kandel, *A Primer on U.S. Immigration Policy*, CRS Report No. R45020 (Washington, DC: Congressional Research Service, June 22, 2018), p. 2, <https://fas.org/sgp/crs/homesecc/R45020.pdf>.
15. INA § 202(a)(2), 8 U.S.C. § 1152(a)(2). There are exceptions to this limit, mainly in the area of family-based immigration.
16. U.S. Department of State, "Visa Bulletin for September 2019," August 9, 2019, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-september-2019.html>.
17. U.S. Citizenship and Immigration Services, "Green Card Through the Diversity Immigrant Visa Program," updated January 11, 2019, <https://www.uscis.gov/green-card/other-ways-get-green-card/green-card-through-diversity-immigration-visa-program/green-card-through-diversity-immigrant-visa-program>.
18. Ibid.