

4-1-2009

# Lawful Permanent Residents: The Forced Bachelors and Bachelorettes of America

Gisela Alouan Ades

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

 Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

---

## Recommended Citation

Gisela Alouan Ades, *Lawful Permanent Residents: The Forced Bachelors and Bachelorettes of America*, 40 U. Miami Inter-Am. L. Rev. 521 (2009)

Available at: <http://repository.law.miami.edu/umialr/vol40/iss3/6>

# Lawful Permanent Residents: The Forced Bachelors and Bachelorettes of America

Gisela Alouan Ades\*

I.	INTRODUCTION .....	521
II.	OVERVIEW OF FAMILY-BASED IMMIGRATION .....	524
	A. <i>Categories and Numbers</i> .....	524
	B. <i>The Application Process</i> .....	526
III.	FAMILY UNIFICATION .....	526
	A. <i>Citizens and Permanent Residents</i> .....	526
	B. <i>Immigrants and Nonimmigrants</i> .....	528
IV.	LEGAL REPERCUSSIONS OF FILING AN IMMIGRANT PETITION .....	529
	A. <i>Consequences to Those Abroad</i> .....	529
	B. <i>Consequences to LPRs Residing in the United         States</i> .....	532
V.	UNDERSTANDING THE LEGAL GAP .....	533
	A. <i>Personal Experiences of Those who Suffer</i> .....	533
	B. <i>Number of Families Affected</i> .....	535
VI.	PROPOSED LEGISLATION .....	537
VII.	ANALYZING POSSIBLE SOLUTIONS TO THE CURRENT IMMIGRATION LAW .....	538
VIII.	A CROSS-CULTURAL ANALYSIS OF IMMIGRATION POLICY .....	540
	A. <i>The Canadian Model</i> .....	541
	B. <i>The Rationale Behind Advocating Family Unity</i> .	541
IX.	WHY FAMILY UNIFICATION FOR LPRs MAKES SENSE: IMMIGRATION AS TRANSITION .....	543
X.	CONCLUSION .....	544

---

\* Juris Doctor Candidate, May 2010, University of Miami School of Law; B.A., 2005, Tufts University. I would like to thank my husband, for supporting me in everything I do, and my lovely parents, for believing in me more than I believe in myself. I would also like to thank Professor Abraham and Judge Hurewitz for their guidance and advice during the writing process. This article is dedicated to all legal immigrants who have fallen in the cracks of a broken immigration system and have been forced to live apart from their families for so long. I hope to bring attention to the issue and perhaps someday relieve the plight of those who suffer away from their loved ones.

## I. INTRODUCTION

The recent focus in the immigration arena has been over the nearly twelve million<sup>1</sup> illegal immigrants who are currently residing in the United States. On one hand, pro-immigrant Americans embrace these immigrants as integral members of the country's cultural fabric and fight to protect them from unfair wage and labor conditions. They recognize the dangers illegal immigrants face as they have no legal protection, are victims of abuse and exploitation, and are marginalized from the rest of society. There has been an enduring debate over how to provide these illegal aliens with a path to legal residency.<sup>2</sup>

On the other hand, many Americans criticize the illegal immigrants for the perceived social and economic burden they bear on the country. Consequences of illegal migration, they claim, are apparent in the housing, employment, and health care systems. These Americans generally support strengthening the border patrol and reinforcing deportation procedures.<sup>3</sup>

Sadly, little energy has been spared on considering the plight of those who have immigrated legally into the United States. Many law-abiding and tax-paying permanent residents face strong difficulties within the immigration realm, and yet their concerns remain hidden in the shadows of the immigration debate. Immigrants who should be embraced for having achieved permanent residency by strictly following the immigration laws are instead neglected by the system when it comes to family unification in particular. They are often forced to live apart from their nuclear families for a long period of time until a visa is available for them. This is a stark incoherence within the immigration system, which should encourage legal migration by offering avenues to those who follow the law instead of creating barriers and making it more difficult for legal immigrants to foster family ties and achieve emotional stability as they settle into their new homeland.

This comment focuses on how lawful permanent residents (LPRs)<sup>4</sup> who choose to marry a foreign-born person after they have

---

1. Jeffrey Passel & D'Vera Cohn, *Trends in Unauthorized Immigration*, PEW HISPANIC CENTER, Oct. 2, 2008, <http://pewhispanic.org/reports/report.php?ReportID=94> (last visited Feb. 27, 2009).

2. See National Immigration Law Center, <http://www.nilc.org/> (last visited Feb. 27, 2009).

3. See NumbersUSA for Lower Immigration Levels, <http://www.numbersusa.com/content/> (last visited Feb. 27, 2009); Americans for Legal Immigration PAC, <http://www.alipac.us/> (last visited Feb. 27, 2009).

4. Legal Permanent Residents are also called green-card holders.

acquired their permanent resident status are forced to undergo at least five years of waiting in order to bring their spouse and/or minor children to the United States. Part II provides an overview of the family-based immigration process described in the Immigration and Nationality Act (INA), including characteristics of the different preference categories, the numerical quotas that apply to each, and the effects a backlogged system has on the waiting period for immigrant visas. Part III juxtaposes the process of family unification for citizens and permanent residents, as well as for immigrants and nonimmigrants. It includes an analysis of how nonimmigrants that file for adjustment of status and become permanent residents ultimately receive more benefits than LPRs that enter the United States directly with immigrant visas.

Part IV addresses the legal repercussion of filing an immigrant petition as it creates barriers for those in waiting to acquire nonimmigrant visas. Spouses and minor children are impeded from visiting their lawful permanent resident family-member in the United States, and at the same time, LPRs are forbidden from spending too much time abroad in fear of relinquishing their legal status. Part V exemplifies those who are affected by this legal gap by providing personal accounts of those who suffer as well as analyzing statistical data to estimate the number of families that are affected.

Part VI describes recent proposed legislation to address this legal gap in the immigration system and how no long-term solution has yet been reached. Part VII analyzes possible solutions to the current immigration law regarding family unification of LPRs. It describes two palliative measures that can assuage their suffering as well as one permanent way of eradicating the problem completely. Part VIII provides a cross-cultural analysis of immigration policy by comparing the American and Canadian immigration laws concerning family unity. It addresses the Canadian rationale behind advocating family unity, as well as an analysis of the societal values attributed to it.

Part IX presents a philosophical inquiry of the role of LPRs in American society. It calls for a change to the way LPRs are treated when they immigrate to the United States and suggests that perhaps law professor Hiroshi Motomura's view of "immigration as transition"<sup>5</sup> may be a more effective approach to an integrated society. Lastly, Part X concludes with an appeal for pro-

---

5. HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 9 (2006).

immigrant and anti-immigrant groups alike to embrace the cause of the suffering of lawful permanent residents in regards to family unity. It suggests that legal migration should be encouraged by rewarding LPRs for following the law, by elevating their rights and status, including their ability to unite with their nuclear family members.

## II. OVERVIEW OF FAMILY-BASED IMMIGRATION

### A. *Categories and Numbers*

The process of acquiring lawful permanent resident status in the United States through family-sponsored immigration is elaborate and time-consuming. To obtain immigrant<sup>6</sup> status, the alien must qualify under one of two main categories: (1) "Immediate relatives" of U.S. citizens under INA § 201(b)(2)(A), which includes unmarried children, spouses, and parents of children who are at least twenty-one years old;<sup>7</sup> or (2) "Preference" immigrants under INA § 203(a), which includes (i) spouses and children of lawful permanent residents, (ii) married and unmarried adult sons and daughters of U.S. citizens, and (iii) brothers and sisters of U.S. citizens.<sup>8</sup>

Immediate relatives of U.S. citizens take priority over any preference relatives. Once the visa petition is approved by the USCIS, immediate relatives do not have to wait for an immigrant visa to become available because the category has no numerical limits.<sup>9</sup> They can apply for an immigrant visa as soon as eligibility for the classification is established.

In contrast, the family-sponsored preference categories are subject to annual numerical ceilings.<sup>10</sup> The first preference provides 23,400 admissions annually for unmarried sons and daughters of U.S. citizens who are older than twenty-one.<sup>11</sup> The second

---

6. Immigrants, as the name suggests, come to the United States to take up permanent residence. In contrast, nonimmigrants enter for a specific purpose to be accomplished during a temporary stay. See THOMAS ALEXANDER ALEINIKOFF, DAVID A. MARTIN, HIROSHI MOTOMURA, & MARYELLEN FULLERTON, *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 296 (6th ed. 2008).

7. Immigration and Nationality Act § 201(b)(2)(A)(i) (2008) [hereinafter INA.]; 8 U.S.C. § 1151 (2006).

8. I.N.A. § 203(a) (2008).

9. I.N.A. § 201(b); 8 U.S.C. § 1151 (2006).

10. ALEINIKOFF ET AL., *supra* note 6, at 301.

11. I.N.A. § 203(a)(1) (2008); 8 U.S.C. § 1153 (2006). This category only includes unmarried sons and daughters who are twenty-one years old or over. Minor children are considered immediate relatives of U.S. citizens.

preference allows for 114,200 annual admissions for spouses, minor children, and unmarried sons and daughters of lawful permanent resident aliens.<sup>12</sup> The third preference provides 23,400 admissions for married sons and daughters of U.S. citizens.<sup>13</sup> Lastly, the fourth preference provides 65,000 admissions each year for brothers and sisters of U.S. citizens.<sup>14</sup>

The second preference is known as the F2A category and is the focus of this article. Within this group, no less than 77% of the visas are allocated to spouses and minor children.<sup>15</sup> Although there are four different preference categories, it is important to note that the second preference is the only category that relates to families of LPRs. In addition, it is also the only category that pertains to nuclear family members such as spouses and minor children. The other categories are reserved for adult relatives of U.S. citizens.

Family immigration is limited by a 480,000 cap on family-sponsored visas, including those of immediate relatives. Family preference immigrants receive the number of visas that remain after all immediate relative visas are issued, plus any employment-based visas that are unused for that given year. INA § 201(c) guarantees a floor for the family-sponsored preference categories of a minimum of 226,000 available admission spaces every year.<sup>16</sup> Despite the fact that there are hundreds of thousands of individuals on the waiting lists to use these admission spaces, there is no guarantee that all available admissions, even within the statutorily mandated floor of 226,000, will be used.<sup>17</sup> This is due to processing and adjudicating delays within the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS). The unused numbers in one year are added to the total for the following year, but they are not placed in the same preference category.<sup>18</sup> In addition, the per-country ceilings established under INA § 202 further limit the calculation of annual admissions. This provision applies when demand for visas from a country are particularly high, and it forces people from China, India, Mexico, and the

---

12. I.N.A. § 203(a)(2) (2008); 8 U.S.C. § 1153 (2006).

13. I.N.A. § 203(a)(3) (2008); 8 U.S.C. § 1153 (2006).

14. I.N.A. § 203(a)(4) (2008); 8 U.S.C. § 1153 (2006).

15. I.N.A. § 203(a)(2) (2008); 8 U.S.C. § 1153 (2006).

16. I.N.A. § 201(c)(1)(B)(ii) (2008); 8 U.S.C. § 1151 (2006).

17. ALEINIKOFF ET AL., *supra* note 6, at 307-08.

18. *Id.* at 308.

Philippines to endure even longer waiting periods to obtain a family-based immigrant visa.

### *B. The Application Process*

The process of sponsoring a family member begins by the LPR filing a visa petition (Form I-130)<sup>19</sup> on behalf of the beneficiary with USCIS, a sub-agency within DHS. The filing date of the visa petition establishes a priority date for the beneficiary, which marks the person's place on the waiting list.<sup>20</sup> Once the petition is approved, it remains at the Department of State's National Visa Center until an immigrant visa number is available. The currency of pending petitions is published on a monthly basis in the Department of State's Visa Bulletin. Although the Visa Bulletin indicates an approximate wait time, it is neither a prediction nor a guarantee of availability for a particular category.<sup>21</sup> Categories may remain stagnant for months, move forward a few days each month, or even regress, depending on the number of applications and the rate at which they are processed.<sup>22</sup> When the priority date is the same as that prescribed by the bulletin, the date is said to be current, meaning a visa is available for that person.

## III. FAMILY UNIFICATION

### *A. Citizens and Permanent Residents*

The immigration law allows spouses and minor children of both U.S. citizens and LPRs to apply for permanent residence. However, the paths they take to get there are very different. Spouses and minor children of U.S. citizens are not subject to numerical quotas or delays in visa availability; they are subject only to administrative delays.<sup>23</sup> If an American citizen marries a foreigner outside the United States, the spouse and spouse's minor child can come to the United States on a nonimmigrant (K-3 and K-4) visa and wait in the country while they file for adjustment of status to that of permanent resident. Similarly, an American citizen may file a K-1 nonimmigrant visa on behalf of a foreign fiancé(e) that would allow the fiancé(e) to travel to the

---

19. See Immigration and Naturalization Service Form I-130, Petition for Alien Relative; 8 C.F.R. § 204.2 (2008).

20. See 22 C.F.R. § 42.53(a) (2008); 9 FAM 42.53 N.1.

21. Laura A. Lichter, *Nuts and Bolts of Family-Based Immigration*, SN039 ALI-ABA 229 (May 8-9, 2008).

22. *Id.*

23. 8 U.S.C. § 1151(b)(2)(A)(i) (2006).

United States to conclude a valid marriage with a citizen within ninety days of entry.<sup>24</sup> After marriage, the citizen spouse may file for adjustment of status to that of permanent resident. The child of a fiancé(e) may also receive a derivative K-2 visa that allows the child to accompany the parent to the United States and complete the immigration process in the country. The K-3 visa for spouses, K-1 visa for fiancé(e)s, and K-4 and K-2 visas for derivative minor children allow the applicants to enter the United States in nonimmigrant status even though they may have a pending immigrant petition filed on their behalf.

In contrast, there is no visa category that allows the spouses and minor children of LPRs to enter the United States in nonimmigrant status and wait beside their spouse or parent while their immigrant petitions are being processed. Needless to say, there exists no visa that allows fiancé(e)s of LPRs to travel to the United States to conclude their marriage. Unlike the privileges afforded to spouses and fiancé(e)s of American citizens, having an immigrant petition filed on their behalf does not give spouses of LPRs any legal status. Instead, they are required to wait outside the country until their immigrant visa becomes available.

The U.S. Department of State Visa Bulletin for January 2009 states that the priority date for the second preference (spouses and children of lawful permanent residents) is May 2004.<sup>25</sup> Those who applied on or before May 2004 are currently assigned a visa number. Thus, the current wait is at least four years and eight months for permanent residents to be able to reunite with their nuclear families in the United States. As of July 15, 2004, USCIS changed its policy and no longer adjudicates pending I-130 petitions. Instead, the petition is only reviewed *after* a visa number becomes available.<sup>26</sup> This new procedure leads to additional processing delays and more frustration for the families of LPRs.<sup>27</sup> The process takes at least five full years to be completed.

This scenario is even dimmer for spouses and minor children who come from countries with high demand for immigrant visas. The per-country ceilings limit the admissions of family members

---

24. 8 U.S.C. § 1101(a)(15)(K) (2006).

25. BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, VISA BULLETIN FOR JANUARY 2009, [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4406.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_4406.html).

26. Press Release, U.S. Citizenship and Immigration Services, Notice to all Customers with a Pending I-130 Petition (July 15, 2004), [http://www.uscis.gov/files/pressrelease/I\\_130\\_07\\_01\\_04.pdf](http://www.uscis.gov/files/pressrelease/I_130_07_01_04.pdf).

27. Jan H. Brown, *Temporal Trends in Family Immigration*, 1446 PLL/Corp 265, 272-73 (2004).



from high demand countries, which significantly increases their waiting period. The U.S. Department of State Visa Bulletin for January 2009 states that the priority date for second preference relatives from Mexico is August 2001.<sup>28</sup> Those who applied on or before August 2001 are currently being given a visa number, after waiting for seven years and five months to be reunited with their nuclear family.

Lawful permanent residents may apply to become citizens of the United States through naturalization after achieving five years of permanent residence. More precisely, an applicant may apply once he has maintained continuous residence in the United States for four years and nine months.<sup>29</sup> Given the extremely lengthy process of sponsoring family members as an LPR, some choose to naturalize first, and then petition for their spouse or minor child under the immediate relatives category as a U.S. citizen. If naturalization usually takes an estimated eight months, one might query whether the LPR's ability to bring in their families by waiting for at least five years under the preference category is a privilege at all?

### *B. Immigrants and Nonimmigrants*

Amongst all types of immigrant and nonimmigrant categories, lawful permanent residents who marry a foreigner face the harshest family unification scenario. Family members of nonimmigrants, such as H-1B specialty workers, L-1 intra-company transfers, or F-1 students are not subject to numerical limits. They receive dependent nonimmigrant visas as derivative beneficiaries at the same time that the visa is granted for the applicant himself. If the marriage occurs after the principal has received his visa, the alien spouse and minor children can still "follow to join" the applicant and will receive derivative visas, such as the H-4, L-2, and F-2. Although these are nonimmigrant visas, they allow for immediate family unification.

Certain nonimmigrant visas such as the H-1B and L-1 allow the principal workers and their immediate family to adjust from nonimmigrant status to immigrant status. Under INA § 245, the status of an alien who is inspected and admitted or paroled into the United States may be adjusted by the Attorney General to

---

28. BUREAU OF CONSULAR AFFAIRS, *supra* note 25.

29. I.N.A. § 334(a); 8 U.S.C. § 1445 (2000) (stating that "the application for naturalization may be filed up to three months before the date the applicant would first otherwise meet such continuous residence requirement").

that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available at the time the application is filed.<sup>30</sup> Thus, H-1B specialty workers may file for an immigrant petition and subsequently adjust their status. Once the adjustment is approved, the principal and the derivative family members will receive permanent residence at the same time. The ability to apply for adjustment of status has given nonimmigrants a substantial benefit in their ability to become permanent residents. As nonimmigrants, they are allowed to bring in their spouses and children with derivative visas and eventually, when immigrant visas become available, the family can adjust their status all at once.

Similarly, employment-based and family-based immigrant visas also contain provisions to avoid separating nuclear families. Under section 203(d) of the INA, spouses and children of those admitted under a family-preference or employment-based category are entitled to the same status as the principal beneficiary if they accompany or follow to join the spouse or parent.<sup>31</sup> Thus, if one is already married before applying to become a LPR, one is able to bring his spouse and minor children immediately with him.

The gap in the immigration system lies for those who get married after they become permanent residents, for the statute is limited to spouses and children whose relationship existed at the time the permanent resident secured his or her status. Thus, spouses who get married after their green card is approved do not qualify for this benefit. Instead, they are forced to endure the agony of a long-distance relationship during the first five years of marriage.

#### IV. LEGAL REPERCUSSIONS OF FILING AN IMMIGRANT PETITION

##### A. *Consequences to Those Abroad*

Filing an immigrant petition on behalf of a spouse or child initially appears to be an innocuous procedure that will yield fruits after half a decade. However, any step towards lawful per-

---

30. I.N.A. § 245(a); 8 U.S.C. § 1255 (2006).

31. I.N.A. § 203(d); 8 U.S.C. § 1153 (2006).

manent residence can make an application for a nonimmigrant visa difficult or impossible. Spouses and minor children of LPRs are not only unprivileged for not having an immigrant visa that allows them to remain in the United States, they are also bound by the legal repercussions of having an immigrant petition filed on their behalf.

A family-based immigrant petition indicates immigrant intent. Most applicants for nonimmigrant visas such as the B-1 visitor visa and F-1 student visa face a heavy burden of establishing that they are entitled to nonimmigrant status. However, every foreign national is classified as an intending immigrant. This presumption of immigrant intent arises from INA § 214(b), which states in part: "Every alien (other than a nonimmigrant described in subparagraph (H)(i) or (L) of Section 101(a)(15)) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15)."<sup>32</sup> In order to be eligible for a nonimmigrant visa, the applicant must overcome this legal presumption.<sup>33</sup>

The law recognizes the doctrine of dual intent, referring to an alien having an intention to immigrate at some time in the future while properly maintaining a nonimmigrant status in the present. INA § 214(b) clearly exempts H-1 and L nonimmigrants from the presumption of immigrant intent. In addition, the code of federal regulations clearly states that neither the approval of a labor certification nor the filing of an immigrant preference petition for the alien will themselves result in the denial of an H-1B (priority worker), L (corporate transferee), O (extraordinary ability), P (artist or entertainer) or R (religious worker) nonimmigrant petition.<sup>34</sup> The Code does not make the same explicit caveat to other nonimmigrant visas. Under a textual interpretation analysis, where "Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."<sup>35</sup> The doctrine of dual intent for other nonimmigrant visas is not recognized in the Code of Federal Regulations or in the Immigration and Nationality Act, and is not

---

32. I.N.A. § 214(b); 8 U.S.C. § 1184(b) (2006).

33. *Id.*; see also 22 C.F.R. § 41.11(b) (2008).

34. 8 C.F.R. § 214.2(h)(16)(i) (2008).

35. *Russello v. United States*, 464 U.S. 16, 23 (1983).

to be implied from its silence. Besides the exceptions enumerated above, all other nonimmigrant visa applicants can be denied a visa to enter into the United States if the consular officer reasonably believes they have an intent to remain permanently in the United States at the time when they apply for their nonimmigrant visa.

The U.S. Department of State Foreign Affairs Manual defines the factors in determining entitlement to temporary visitor classification:

a. In determining whether visa applicants are entitled to temporary visitor classification, you (the consular officer) must assess whether the applicants:

- (1) Have a residence in a foreign country, which they do not intend to abandon;
- (2) Intend to enter the United States for a period of specifically limited duration; and
- (3) Seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure.

b. If an applicant for a B1/B2 visa fails to meet one or more of the above criteria, you must refuse the applicant under section 214(b) of the INA.<sup>36</sup>

B-1 visitor visas are frequently denied because the applicant has not shown to the satisfaction of the consular officer that these requirements have been met. The key requirement from this list is having a residence that the applicant does not intend to abandon.<sup>37</sup> Once an immigrant petition has been filed by a LPR, spouses have difficulty in showing a lack of intention of abandoning their foreign residence while attempting to enter the United States where their spouse resides. It is difficult to meet this burden of proof and it typically leads to disqualification of the applicant.

Thus, it is very difficult for the spouses and minor children of LPRs to successfully apply for a visitor's visa to travel to the United States while their immigrant petition is pending. The reality is that most are forced to wait outside the country for the approval of an immigrant petition that would permit the family to be reunified.

---

36. 9 FAM 41.31 N1.

37. This requirement is also explicitly laid out for F-1 student applicants.

*B. Consequences to LPRs Residing in the United States*

Lawful permanent residents also have difficulties visiting their family members in their country of origin given that they are required to spend most of their time in the United States. LPRs who return after a continuous absence of more than 180 days are treated as "applicants for admission".<sup>38</sup> In order to qualify as a returning permanent resident, an LPR must have acquired lawful permanent resident status, must have retained that status from the time it was acquired, and be returning to an unrelinquished lawful permanent residence after "a temporary visit abroad."<sup>39</sup> The term "temporary" varies depending upon the facts and circumstances of each particular case. It cannot be defined in terms of elapsed time alone.<sup>40</sup> The intent of the alien, when it can be determined, will control.<sup>41</sup>

In *Matter of Kane*, the Board of Immigration Appeals (BIA) described some of the elements to be examined when considering a returning permanent resident: the traveler should normally have a definite reason for proceeding abroad temporarily, the visit abroad should be expected to terminate within a period relatively short, and the traveler must intend to return to the United States as a place of employment or business or as an actual home.<sup>42</sup> In *Matter of Quijencio*, the BIA also considered the location of the alien's family ties, business affiliations or property holdings as an aid in determining the alien's intent.<sup>43</sup> An alien's desire alone to retain his status as a permanent resident is not sufficient; rather, his actions must support his professed intent.<sup>44</sup> If an immigration officer at a port of entry challenges his admissibility by making an allegation of abandonment or relinquishment of status, the LPR may be detained and placed in removal proceedings.

---

38. I.N.A. § 101(a)(13)(C)(ii) (2008).

39. I.N.A. § 101(a)(27)(A); 8 C.F.R. § 211.1(d) (2008); *see also* *Matter of Huang*, 19 I&N Dec. 749, 753 (1988) (quoting *Santos v. INS*, 421 F.2d 1303, 1305 (9th Cir. 1970)).

40. *United States ex re Polymeric v. Trudell*, 49 F.2d 730, 732 (2d Cir. 1931).

41. *Matter of Kane*, 15 I&N Dec. 258, 262 (BIA 1975); *see also* *United States ex rel Alther v. McCandless*, 46 F.2d 288, 262-63 (3d Cir. 1931).

42. *Matter of Kane*, 15 I&N Dec., at 258.

43. *Matter of Quijencio*, 15 I&N Dec. 95 (BIA 1974); *see also* *Hana v. Gonzales*, 400 F.3d 472, 476 (6th Cir. 2005) (suggesting that "[w]hile it is certainly proper to consider factors such as the location of the alien's family, property, and job, and of course the length of the alien's trip(s) abroad we should be careful not to focus on these factors to the exclusion of other evidence in the record demonstrating the alien's intent with regard to maintaining her LPR status.").

44. *Matter of Huang*, 19 I. & N. Dec. 749, 753 (B.I.A. 1988).

In the case of *Singh v. Reno*, Singh was a citizen of India who obtained lawful permanent resident status as a special agricultural worker.<sup>45</sup> He spent one third of his time in the United States, spending the rest of the year abroad with his wife and young child waiting for the INS to grant a visa petition that would allow them to join him in the United States. The court held that these visits did not qualify as “temporary” and that by joining his family abroad, Singh abandoned his permanent residency in the United States. The court reasoned, “Singh’s decision to spend most of his time abroad is evidence of his lack of ties to the United States.”<sup>46</sup>

*Singh* spurred a strong dissent by Circuit Judge Reinhardt, who recognized that Singh’s family had good reason not to spend too much time in the United States while awaiting approval of their immigrant visa petition: to prevent abuse of status. Judge Reinhardt argued, “The majority severely penalizes Singh for attempting to fulfill his responsibilities as a father and husband during the time when his family was not yet permitted to join him in the United States, and it ultimately uses his clearly manifested desire to be with his family as clear, unequivocal, and convincing evidence that he lacked the intent to live here with them.”<sup>47</sup> Although the inherent discrepancy in immigration law concerning the intent of immigrants who choose to live in the United States but wish to visit their families in another country while they await for an immigrant visa is apparent in the legislation and has been noted in case law such as *Singh*, there is no clear regulatory policy to address the concerns of those constrained by the situation.

## V. UNDERSTANDING THE LEGAL GAP

### A. *Personal Experiences of Those who Suffer*

Sumathi Athluri, a software engineer from Hyderabad, moved to the United States on an H-1B specialty worker visa in 1999 and subsequently became a permanent resident in February 2002. During one of her trips home, she met Jeevan Kumar, a physician who worked on a World Health Organization project to eradicate polio in India. The couple was married in India on August 2002, and three months after their marriage, Sumathi needed to return

---

45. *Singh v. Reno*, 113 F.3d 1512 (9th Cir. 1997).

46. *Id.* at 1515. *But see* *Hana v. Gonzales*, 400 F.3d 472 (6th Cir. 2005).

47. *Singh*, 113 F.3d, at 1516.

to the United States. Upon her arrival, she immediately filed an I-130 Form, hoping to be reunited with her husband. Sumathi was unaware that the process would take at least five years. In the meantime, her husband was barred from entering the United States on a tourist visa, even for a brief visit. What troubled her the most is that had she gotten married first, and then applied for her green card, her husband would have been able to move to the United States right away. By becoming a permanent resident, anyone she married outside the United States would be forced to bear the five or more years of waiting period.

"I came here legally," says Sumathi. "I'm making a contribution. I pay my taxes. I've never been a burden to the government. My husband is a doctor whose work on polio is saving lives. Why must we be separated like this? U.S. immigration law is destroying my family life. I live alone, eat alone, sleep alone, cry alone, and suffer alone . . . . The only thing that keeps me going is my husband's photograph sitting next to me."<sup>48</sup>

Similarly, Feng Jiang was admitted from China as a permanent resident in an employment-based admission category.<sup>49</sup> He works as a researcher at a cancer institute, speaks English fluently, and is very active in his community in suburban Seattle.<sup>50</sup> Feng recently married a woman from Singapore who wants to join him in the United States. Had they been married before he was admitted, they could have immigrated together. But because he met her after he became a permanent resident, they now must face a long wait. Given that Feng has been a LPR for three years, Feng will likely get faster results if he naturalizes first and then petitions for his spouse as an immediate relative of a U.S. citizen.<sup>51</sup>

Sumathi and Feng are amongst an estimated 1.5 million legal immigrants in the United States who have been waiting as long as seven years to bring husbands, wives, and minor children to live with them in the United States.<sup>52</sup> Most of these victims are highly skilled professionals who acquired permanent residence through legal means, and who eventually become naturalized U.S. citi-

---

48. Jeff Jacoby, *Families Pay Price of Faulty Policies*, THE BOSTON GLOBE, Apr. 12, 2006, available at <http://www.jeffjacob.com/234/families-pay-price-of-faulty-policies>.

49. MOTOMURA, *supra* note 5, at 157.

50. *Id.*

51. *Id.* at 158.

52. Julia Preston, *As Law is Renegotiated, Immigrant Families Are on Edge*, N.Y. TIMES, May 24, 2007, available at <http://www.nytimes.com/2007/05/24/us/24family.html>.

zens.<sup>53</sup> Why are they forced to give up on marriage? Does forcing lawful permanent residents to remain single or survive a long-distance relationship during the crucial years of integration when the resident is establishing himself in a new country a public policy that should be enforced? Why should they be forced to choose between separation from their spouses and their new life as a legal immigrant in the United States? The lack of rational answers to these questions is stunning, for it shows how some lawful permanent residents suffer for being caught in the bureaucratic labyrinths of the immigration system.

### *B. Number of Families Affected*

While the problem affects the most intimate and personal lives of permanent residents during a period when they most need stability to assimilate into their new lives in the United States, the number of people affected is not so high as to concern policy makers about the implications of allowing permanent residents the right to marry and cohabit with their nuclear families. It is not so easy to estimate the numbers in this category, but an analysis of immigration statistics help us approximate a figure. In the 2007 fiscal year, a total of 1,052,415 persons obtained lawful permanent resident status through a variety of different categories, including family-sponsored preferences, employment-based preferences, immediate relatives of U.S. citizens, diversity visas, asylees, amongst many others. From this total, 387,252 were single and 50,318 were either divorced or widowed.<sup>54</sup> Thus, a total of 437,570 LPRs who immigrated in 2007 are affected by being limited in their ability to marry a foreigner during the first five years of living in the United States. It is difficult to estimate the number of LPRs who eventually choose to marry foreign-born spouses. Within that group, it is also difficult to determine how many marry without knowing about the legal consequences; how many are informed of the intricacies of immigration law and choose to postpone marriage for five years while having their spouse and children visit on nonimmigrant visas in the meantime; and how many choose to risk the lives and status of their nuclear family by

---

53. See, e.g., Beth LaMontagne, *U.S. Immigration Laws Force Husband and Wife Apart*, PORTSMOUTH HERALD, Mar. 6, 2006, available at <http://archive.seacoastonline.com/news/03062006/maine/91146.htm>.

54. DEPARTMENT OF HOMELAND SECURITY, 2007 YEARBOOK OF IMMIGRATION STATISTICS tbl. 8, available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2007/ois\\_2007\\_yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2007/ois_2007_yearbook.pdf).



encouraging them to enter and remain in the United States through illegal means, such as entering without inspection or overstaying a tourist visa.<sup>55</sup>

One can estimate the number of LPRs who choose to endure the painful but legal route of petitioning for their spouse under the second preference category by looking at recent immigration data. The 2007 Yearbook of Immigration Statistics shows that in 2007, 86,151 people obtained lawful permanent resident status under the second-preference category.<sup>56</sup> From this total, 37,046 adjusted their status, meaning they were already legally in the United States with a nonimmigrant visa when they adjusted to LPR status.<sup>57</sup> The remaining 49,105 were new arrivals.<sup>58</sup> If one subtracts 9,871 unmarried sons and daughters who are older than twenty-one, there is a net of 39,234 spouses and minor children who were waiting to be reunited with their spouses and parents for at least five years. If one uses the same procedure for the previous years, there were a total of 38,743 in 2006,<sup>59</sup> 34,670 in 2005,<sup>60</sup> and 35,209 in 2004<sup>61</sup> of new arriving spouses and minor children. Thus, the average number of spouses and minor children who acquired LPR status through their spouse or parent between 2004 and 2007 was 36,964.

In contrast, the statistics for those who obtained permanent residence as immediate relatives of U.S. citizens is substantially higher. The difference between the number of spouses who enter as new arrivals and those that adjust status while inside the country (which was juxtaposed above in the case of LPRs) is irrelevant for purposes of family unity of citizens, given the spouses of citizens are able to join them almost immediately in the United States by means of the K-1 and K-3 nonimmigrant visa. The total number of spouses who became LPRs by marrying American citi-

---

55. See David A. Martin, Migration Policy Institute Policy Brief, *Twilight Statuses: A Closer Examination of the Unauthorized Population*, June 2005, available at [http://www.migrationpolicy.org/pubs/MPI\\_PB\\_6.05.pdf](http://www.migrationpolicy.org/pubs/MPI_PB_6.05.pdf).

56. 2007 YEARBOOK OF IMMIGRATION STATISTICS, *supra* note 54, at tbl. 7.

57. *Id.*

58. *Id.*

59. DEPARTMENT OF HOMELAND SECURITY, 2006 YEARBOOK OF IMMIGRATION STATISTICS tbl. 7, available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/ois\\_2006\\_yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2006/ois_2006_yearbook.pdf).

60. DEPARTMENT OF HOMELAND SECURITY, 2005 YEARBOOK OF IMMIGRATION STATISTICS tbl. 7, available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/ois\\_2005\\_yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/ois_2005_yearbook.pdf).

61. DEPARTMENT OF HOMELAND SECURITY, 2004 YEARBOOK OF IMMIGRATION STATISTICS tbl. 7, available at [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2004/ois\\_2004\\_yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2004/ois_2004_yearbook.pdf).

zens (without counting minor children) was 274,358 in 2007. The average number of spouses who received LPR status through the immediate relatives category between 2004 and 2007 was 281,384.

If one compares the numbers of spouses that adjust through the immediate relatives category to those who adjust as spouses of LPRs, the later number is comparatively minimal. This statistical data shows that the number of nuclear families that undergo this long separation period is not so high as to cause concern for policy-makers. Legislative change could easily bring progress towards the unification of the nuclear family of permanent residents without overburdening the system.

## VI. PROPOSED LEGISLATION

The current delay in visa processing was not adopted as a deliberate policy, but instead developed due to increasing demand for visas and the lack of amendments in the law to accommodate for more admission spaces. Under section 203(e) of the INA, family-sponsored preference visas are issued to eligible immigrants in the order in which the petition was filed with USCIS.<sup>62</sup> Pending applications may not be adjudicated when visa numbers have been exhausted for the particular preference category. Backlogs continue to exacerbate as the demand for available visas exceeds the annual limit. Although the total number of applicants and the fees charged for immigrant petitions have increased significantly throughout the years, the quota on family-based immigration has remained stagnant since the Immigration Act of 1990.

Congress has responded somewhat slowly to the problem of family unification for permanent residents. In late 2000, Congress passed the Legal Immigration Family Equity Act (LIFE Act). The Act served to unite family members by expanding the K visa that was formerly limited to fiancé(e)s of U.S. citizens to also include spouses and accompanying children. This allowed citizens to reunite with their families in the United States while they wait for the adjustment of status procedure to be completed.

The LIFE Act also created the V visa that gave spouses and minor children of LPRs a special nonimmigrant status that would allow them to remain in the country legally until a visa became available for them. This V visa applied only to those visa petitions filed before December 21, 2000 and only after the person had

---

62. 8 U.S.C. § 1153(e) (2008).

waited a minimum of three years since filing the petition. Although this measure was important to address the backlogs and hardships of that time, its impact is very limited today. Very few immigrants now qualify for this type of visa. Bills were introduced in Congress to renew the V visa by amending the statute to include petitions filed before January 1, 2011 and by reducing the required waiting period from three years to six months.<sup>63</sup> These bills attracted only a few cosponsors and saw no committee action.<sup>64</sup>

In May 2007, Senators Hillary Rodham Clinton (D-NY), Chuck Hagel (R-NE), and Robert Menendez (D-NJ) introduced an amendment to the Border Security and Immigration Reform Act of 2007 aimed at reclassifying the spouses and minor children of lawful permanent residents as immediate relatives, which would exempt them from the visa caps. After a motion to waive the Budget Act with respect to the amendment was rejected in Senate, the amendment was ruled out of order by the chair.<sup>65</sup>

Such reclassification has continued to be pushed by immigrant rights advocates in new bills. Most recently, Senator Robert Menendez introduced the Reuniting Families Act on September 2008. The Bill, S. 3514, if enacted, would: recapture immigrant visas that were available to family and employment categories but were unused due to administrative delays; reclassify spouses and minor children of lawful permanent residents as immediate relatives; and augment per-country limits for the family category from 7% to 10%.<sup>66</sup> The Bill was read twice and referred to the House Committee on the Judiciary, but it was never passed.<sup>67</sup>

Today, methods of uniting families of LPRs remain obsolete. As a new session in Congress begins, there is hope that members will reintroduce these bills in an attempt to tackle the problem and create a long-lasting solution to the agony of lawful permanent residents.

## VII. ANALYZING POSSIBLE SOLUTIONS TO THE CURRENT IMMIGRATION LAW

One possible solution to enable unification of nuclear families of permanent residents is to renew the V visa, allowing spouses

---

63. H.R. 3701, 108th Cong. (2004); H.R. 1823, 109th Cong. (2005).

64. H.R. 3701, 108th Cong. (2004); H.R. 1823, 109th Cong. (2005).

65. S. 1348, 110th Cong. S. Amendment 1150 (2007).

66. S. 3514, 110th Cong. (2008)

67. S. 3514, 110th Cong. (2008)

and minor children to wait for their immigrant visa in the United States alongside their LPR family member. In addition, the three-year pending requirement could be eliminated, enabling LPRs to be united upon marriage. U.S. citizens have a similar visa for their immediate relatives who are waiting for their papers to be processed. Although the immigration process for immediate relatives is significantly faster and usually only takes about four months, the K visa allows U.S. citizens to bring their fiancé(e)s, spouses, as well as the spouse's minor children to the United States as nonimmigrants and apply for immigrant status while in the country, thus eliminating the possibility of *any* period of separation between them.

A second palliative solution would be to allow spouses and minor children who have I-130 petitions filed on their behalf to qualify for nonimmigrant visas such as visitor and student visas. The main challenge behind this proposal concerns the underlying premise in immigration law that every alien is assumed to have immigrant intent and that the applicants for nonimmigrant visas are required to show they have a foreign residence which they have no intention of abandoning.<sup>68</sup> However, the law recognizes a dual intent provision, where a foreigner may have an intention to immigrate at some time in the future while properly maintaining a nonimmigrant status in the present. Persons with H-1B, O-1, L-1, and K visas are viewed as having dual intent for the purpose of entering the U.S. Immigration laws could accommodate an additional dual-intent provision for those petitioners who wish to enter the country as a nonimmigrant while having pending immigrant petitions filed on their behalf. Immigrant petitions belong to the petitioner, the lawful permanent resident who lives in the United States. It does not grant the beneficiary any immediate rights but only the option of applying for permanent residence once the priority date becomes current. Thus, consular officers could be instructed to take special cognizance of the fact that an approved immigrant visa petition does not lead to unfavorable consideration of an applicant for a nonimmigrant visa because it is not an indication of immediate immigrant intent.

Although this modification would help, it would only be a temporary solution to alleviate the suffering of those away, and would not solve the problem in the long run. The B-1 visa would only allow the family of permanent residents to visit for a short time,

---

68. I.N.A. §§ 101(a)(15)(B), (F); 8 U.S.C. § 1101 (2008).

given these visas generally allow for a maximum of 90 day stay per visit.<sup>69</sup> Similarly, not all spouses are eligible for student visas or would like to pursue this option when they marry their spouse. Forcing family members into nonimmigrant visa types that do not specifically address their concerns will eventually bring forth frustration, lack of a regulated policy, and incentives for fraud.

Lastly, a permanent way to resolve the issue while demonstrating support for legal migration and encouraging such a process would be to reclassify spouses of LPRs as immediate relatives by eliminating any quotas on their admissions. The numerical analysis presented above has shown that the numbers of family members involved is not so great as to burden the system. If Congress is nonetheless concerned that annual legal admissions would rise, they could provide for numerical reductions in other preference categories. The family-based fourth preference for brothers and sisters of U.S. citizens could be considered for reduction or elimination, given they involve adult siblings who have nuclear families of their own, and who have less urgency of reuniting with their extended families.<sup>70</sup>

### VIII. A CROSS-CULTURAL ANALYSIS OF IMMIGRATION POLICY

When countries of immigration compete for particularly desirable immigrants, the generosity of their family migration benefits plays a role in the immigrants' settlement decision. The prospect of moving to a new country while accompanied by immediate relatives makes lawful immigration more attractive in the long run.<sup>71</sup> Some countries attempt to limit family migration to those family members they consider beneficial to society, including those who are educated and who speak the native language. Similarly, setting up sponsorship requirements restricts undesired family members who are unable to provide for themselves. While both Canada and the United States require contractual agreements with the sponsoring spouse, who must be able to provide for the beneficiary, spouses of permanent residents are able to join their

---

69. 8 U.S.C. § 1184 (a)(1) (2008).

70. *E.g.*, MICHELE WUCKER, LOCKOUT - WHY AMERICA KEEPS GETTING IMMIGRATION WRONG WHEN OUR PROSPERITY DEPENDS ON GETTING IT RIGHT 236 (2006) ("By reducing adult family preference categories, we could slash the application backlog for spouses and dependent children, who should be the priority of family reunification anyway.").

71. Arshil Kabani, *Separation Anxiety: Uniting Families of Lawful Permanent Residents*, 10 SCHOLAR 169, 201-02 (2008).

spouses immediately in Canada, while the United States forces them to go through an unconscionable waiting period that does nothing to keep out the undesired migrants.

### A. *The Canadian Model*

While the United States has become increasingly rigorous in regards to its immigration laws, Canada is known for welcoming immigrants. Reuniting families is an important concern in Canada's immigration policy.<sup>72</sup> Under the Family Class category, a Canadian citizen or permanent resident can sponsor a spouse by signing a contractual agreement with the Canadian government stating that the sponsor will provide for financial support and basic requirements the spouse will need in order to live in Canada.<sup>73</sup> This includes supporting the beneficiary financially by providing food, shelter, clothing, and ensuring that the intending immigrant will not access social assistance or the public health care system.<sup>74</sup>

As of February 2005, spouses of Canadian citizens and Canadian permanent residents, regardless of their status, are allowed to remain in Canada while their immigration application is being considered.<sup>75</sup> The Minister of Citizenship and Immigration, Joe Volpe, announced, "this change addresses real concerns about the hardships that some couples would experience if they had to be separated during the application process."<sup>76</sup>

### B. *The Rationale Behind Advocating Family Unity*

This immigration model based on family unification reflects the notion that it is advantageous for countries to admit close family members of migrants. Keeping family members apart for a significant amount of time can lead to instability and lower productivity for the permanent residents who are waiting for family unification. The consequences of separation for these young families are very serious as the time apart can take some of the

---

72. See generally *Sponsoring Your Family*, Citizenship and Immigration Canada, <http://www.cic.gc.ca/english/immigrate/sponsor/index.asp> (last visited Feb. 27, 2009).

73. *Id.*

74. *Id.*

75. *Good News for Spouses and Common-law Partners*, CITIZENSHIP AND IMMIGRATION CANADA, Feb. 19, 2005, available at <http://www.canadaimmigrationnews.com/canadaimmigrationnews/viewnews.aspx?newsId=3029>.

76. *Id.*

“gloss off of a marriage.”<sup>77</sup> Some marriages fall apart as couples must live separately for many years in a long-distance relationship. Children spend a significant portion of their youth growing up without one of their parents, causing them to have difficulties forming secure attachment bonds with others.<sup>78</sup> Breadwinners are overextended trying to provide for two households.<sup>79</sup> Some of those who are forced to go through long separation periods give up and move back to their home countries or countries who have family-friendlier immigration laws.

In contrast, unified family structures facilitate the integration process and enable the migrant to establish himself more quickly in his new homeland. Research shows that family unification contributes to the reduction of crime and tends to increase the economic productivity of the migrant.<sup>80</sup> In addition, the presence of family members reduces the amount of remittances sent abroad.<sup>81</sup> When nuclear families are together, permanent residents are more likely to spend their money in their new home country, spending on consumption and investment in the local economy.<sup>82</sup> This pattern shows that allowing for family migration should not be seen as a mere exercise of state generosity, but rather a crucial aspect of stabilizing migrant populations.<sup>83</sup>

Canada’s hospitable family-oriented immigration policy is also based on the idea that admitting family members helps prevent undocumented migration.<sup>84</sup> The delay in reunifying close family members compels many spouses to join the undocumented population in an attempt to live together with their spouse. Speedy family unification can help prevent, or at least decrease,

---

77. Jan H. Brown, *Temporal Trends in Family Immigration*, 1446 *PLI/Corp* 265, 269 (2004).

78. See Victoria B. Mitrani, Daniel A. Santisteban & Joan A. Muir, *Addressing Immigration-Related Separations in Hispanic Families with a Behavior-Problem Adolescent*, 74 *AM. J. ORTHOPSYCHIATRY* 219, 220 (2004) (discussing family intervention strategies for Latinos who have experienced separation from their families for immigration reasons).

79. Asian Pacific American Legal Center, *A Devastating Wait: Family Unity and the Immigration Backlogs*, (2008), available at <http://www.apalc.org/pdffiles/Immigration%20v14.pdf>.

80. Nora V. Demleitner, *How Much do Western Democracies Value Family and Marriage?: Immigration Law’s Conflicted Answers*, 32 *HOFSTRA L. REV.* 273, 285 (2003).

81. *Id.* at 285.

82. *Id.*

83. Kabani, *supra* note 71, at 201.

84. *Id.*

large-scale undocumented migration.<sup>85</sup>

### IX. WHY FAMILY UNIFICATION FOR LPRs MAKES SENSE: IMMIGRATION AS TRANSITION

Perhaps the differences in treatment between the nuclear families of citizens and of lawful permanent residents can best be explained by exploring the philosophical approach to the position LPRs hold in American society today. The influential scholar and law professor Hiroshi Motomura identified a promising approach to immigration in his book *Americans in Waiting*. In analyzing the history and patterns of immigration to the United States, Motomura argues for the revival of the concept of immigration as transition that was once central to American immigration law-making. From 1795 through 1952, a declaration of intent was a prerequisite for naturalization.<sup>86</sup> Noncitizens who filed a declaration were elevated to a favored status, where they could enjoy several rights including the right to vote, diplomatic protection, and eligibility for grants of land under the Homestead Act of 1862.<sup>87</sup> The McCarran-Walter Act of 1952 made the declaration of intent optional. Since then, such a status has no legal consequence to immigrants and the idea of treating immigrants as future citizens has faded.<sup>88</sup>

Motomura endeavors to revive the concept of "immigration as transition" and solidify the view of permanent residence as a step towards naturalization. He proposes to treat new lawful immigrants like U.S. citizens until they fulfill the five-year residency requirement to be eligible to apply for citizenship.<sup>89</sup> This means that new lawful immigrants would be allowed to sponsor close relatives for immigration, vote during elections, and be eligible for public benefits, just like citizens.<sup>90</sup> The only exception to this preferred status is that they could be subject to deportation.<sup>91</sup> These new lawful immigrants would be treated as Americans in waiting, conferring on them a presumed equality.<sup>92</sup> Treating them with generosity would help them take full advantage of the opportunity

---

85. Demleitner, *supra* note 80, at 295.

86. MOTOMURA, *supra* note 5, at 8.

87. *Id.*

88. *Id.* at 136.

89. *Id.* at 13.

90. *Id.* at 160.

91. *Id.* at 13.

92. *Id.* at 9.



to integrate into American society.<sup>93</sup> If the new lawful immigrants choose not to naturalize as soon as they are eligible, they would lose that better treatment. Motomura believes the fundamental goal is to send a clear message of welcome and make the most of the pre-naturalization years as an integration period.<sup>94</sup> By affording intending citizens more opportunities to become socially, politically, and civically involved, the result would be a more integrated and inclusive nation to the benefit of American society as a whole.

## X. CONCLUSION

The United States is a country built by immigrants. Yet, its laws are pulling immigrant families apart, particularly those of lawful permanent residents. Applicants for the other family-sponsored preference categories, such as married sons and daughters and siblings of U.S. citizens face similar backlogs and restrictions. However, these categories encompasses adults who are either single or have a nuclear family of their own. With respect to nuclear family unification, no other category among the family-preference immigrants and in fact amongst all nonimmigrant categories faces such a harsh separation as lawful permanent residents.

Enforcing a policy where spouses and minor children are kept apart from their permanent resident relative for at least five years is unrealistic and should be changed immediately. First of all, it undermines the efforts of those high-skilled professionals who have acquired their permanent residence through legal avenues. Such a policy prevents family unification at a crucial time when permanent residents are in the process of assimilating into their new homeland. In addition, enforcing barriers that prevent the spouses and minor children from visiting their loved ones, even for a brief visit, is an open invitation for fraud. By failing to provide a legal alternative to these families who have been separated for years, the immigration system has created an environment that encourages the families of immigrants to ignore immigration laws. It compels hundreds of people to choose marriage over legality by joining the class of millions of undocumented illegal aliens residing in the United States today. Most importantly, such a policy

---

93. *Id.* at 13.

94. *Id.* at 163.

tears down the value of family unity that the immigration system proclaims it instills.

This article shows the perverse side of a broken immigration system, and the hardships endured by those who fall in the cracks of the immigration laws. Dismantling nuclear families by separating husbands, wives, and minor children should not be the consequence of a serious immigration policy. This infringement on the fundamental right of family unity should be cause for concern and a call to action for pro-immigrants and anti-immigrants alike. Only by protecting the rights and privileges of lawful residents will legal migration be encouraged and worthwhile for those in waiting.

