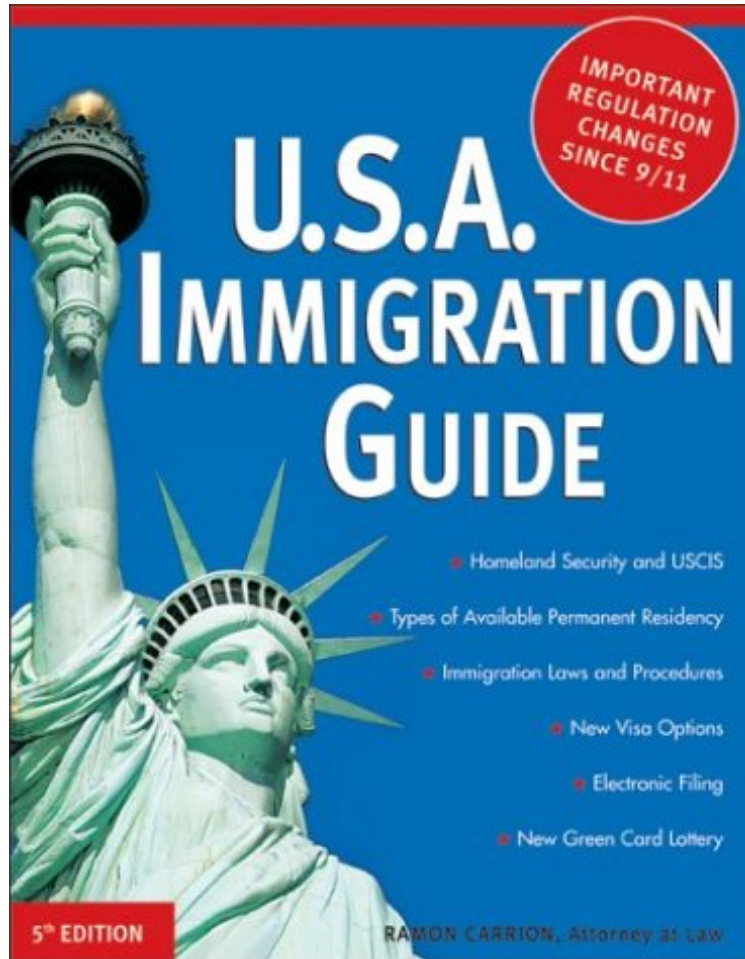


USA Immigration Guide

Ramon Carrion

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ALL YOU NEED TO KNOWGetting into the United States has always been considered fairly easy. That has all

changed. New screening processes and restrictions have made visiting the U.S. a more involved process. Whether you are an attorney looking for immigration resources, or someone subject to immigration laws, U.S.A. Immigration Guide will help. With it you will understand United States immigration laws so your application process is less complicated. It explains the many ways a person can visit and immigrate to the United States and provides the necessary information to choose the best method for your individual situation. In simple language, it explains: -U.S. immigration and visa system -Best evidence to support your application -New types of work visas -Ways to avoid losing your visa status -Devastating effects of unlawful presence -Important changes since September 11, 2001 -New security measures will affect a visitor to the United States as he or she moves through the visa process. Tough requirements for gaining permanent resident status and becoming a U.S. citizen are in place. Make sure you have all you need to know.

About the Author Ramon Carrion is a graduate of Rutgers University (NCAS) from which he graduated with honors in Political Science and Rutgers Law School. He has practiced U.S. immigration and international commercial law since 1976. He has assisted hundreds of individual and corporate clients from around the world with their U.S. immigration requirements. He has been certified by the Florida Bar as a specialist in Immigration and Nationality Law and served on the Certification Committee for Immigration and Nationality Law of the Florida Bar from 1998 through 2004. He is also a member of the American Immigration Lawyers Association (AILA) and past president of AILA's Central Florida Chapter. Mr. Carrion lives and works in the Clearwater, Florida area, where in addition to a busy law practice, he is a sought-after lecturer on related immigration, business, and foreign investment topics. Excerpt. Reprinted by permission. All rights reserved.

Essential Information about the Visa System Excerpted from USA Immigration Guide by Ramon Carrion 2004

Every time foreigners come to the border of the United States seeking entry, even if only for a holiday visit, they confront the formidable immigration regimen of the United States. The term immigration (in the context of this book) means every entry or attempted entry into the territory of the United States. The immigration system of the United States is the product of unique historical and political forces that produce some seemingly incongruous policies. Immigration has created a procedural system that is so complex and obscure that it almost creates the opportunity for a foreign person to unintentionally violate the law and then provides almost no methodology for a foreign person to correct the violation. It is a system that requires the foreign person to know in advance of any filing or application what the applicable law is, since the immigration system often does not provide an applicant an opportunity to modify his or her approach in order to comply with the law. For this reason, it is imperative that foreign persons and their advisors understand the special meaning given to many terms that are routinely used in business and in normal conversation.

Historical Context The United States was founded by immigrants, that is, by people who were not originally from the nation. History reveals that during the first 150 years, the motivating force for immigration to the United States was privation and persecution abroad. People came to the United States to escape negative forces in their home countries. They came to this country fully expecting to experience personal sacrifice in exchange for political, economic, and religious freedom. Until the end of the 19th Century there was basically no control or limitation on immigration to the United States. However, since 1882, a series of general immigration statutes have been enacted in response to the type and numbers of people who had previously entered. From that year forward, the United States embarked on a series of restrictions on immigration. Thus, specific national origins quotas were imposed from time to time that were ethnically and racially discriminatory. Quantitative restrictions were introduced into the immigration regimen in 1921 with the passage of the first quota system applicable to designated nationalities. Immigration has come to the United States in waves of specific nationalities to escape adverse conditions such as drought, famine, depression, religious persecution, etc. in their countries of origin. While that is still the case today for many persons, many others now seek to come to the United States for temporary periods of time in order to accomplish specific business, cultural, or other personal goals. These include education, tourism, business investments, and entrepreneurial exploitation. While the deprivation of the crowded steamship has been replaced by the comfort of the jet airliner, the administrative problem at the immigration counter has not changed very much.

Legal Context The Constitution of the United States, the organic document that established the unique political existence of this nation, is almost silent on the entire question of immigration. There is only a fleeting mention of this subject in that document. It does not contain a political or philosophical articulation of a policy or system of immigration. In very concise language, the Constitution simply authorizes the U.S. Congress to make the laws concerning immigration. There is no statement of policy or principle manifested in the Constitution concerning the subject of immigration.

McCarran-Walter Act The McCarran-Walter Act molded the basic structure of the immigration law as we know it today. With its passage in 1952, a new phenomenon began to emerge. The U.S. immigration system began to partake of a more democratic character as the law attempted to apply admissions policies without direct regard to national and racial origins. The last trace of racial or ethnic discrimination was removed with the abolition of the separate quota for Western Hemisphere aliens in 1978.

Immigration Act When the McCarran-Walter Act was repealed by the Immigration Act of 1990, the immigration policy of the U.S. again experienced some substantive changes. As a result of the Act, the law now emphasizes the policy of attracting immigrants who possess desirable occupational skills or economic resources. The law still provides for the unification of families and close relatives of

U.S. citizens and, to a lesser extent, of permanent residents. The law, now for the first time, established a category for the issuance of permanent visas to investors who establish or invest in new job creating enterprises. There have also been some substantial changes with respect to the issuance of temporary visas to the United States. One reality is constant and indisputable: there is a higher demand for visas, permanent and temporary, to the United States than there is supply and/or perceived need. With this general background, let us look more closely at the United States visa system.

Illegal Immigration Reform and Immigrant Responsibility Act In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) was signed into law. This law, while designed to stem the flow of illegal immigration to the United States, also harbored some mean-spirited provisions that can be dangerous to both U.S. citizens and foreign persons alike. This law contains certain retroactive provisions that render persons deportable, who in some cases, have been long-term, biding citizens of the United States. It also makes deportable dependents such as spouses and children of foreign persons who may have inadvertently exceeded or violated their status.

Visa System The United States federal government has jurisdiction over all visa and immigration matters. The individual state and local governments have only a limited role in this field, such as the initial processing of labor certification applications. As an illustration of this point, I would emphasize that the quality and strength of the alien's connection with state and local governmental and business institutions are of very limited help in qualifying for a long-term visa. This elementary fact is very often overlooked by foreign persons who do not understand the nature of the federal system of government in the United States. In fact, the programs and policies of a state concerning a particular subject can be different from those of the federal government on the same subject. Unfortunately, if the subject matter in question is one that the Constitution of the United States assigns to the federal government, then the federal law takes precedence over the state law. This is the reality with matters concerning United States immigration policy. Failure to fulfill the detailed requirements of the United States visa system can often result in a denial or delay in the issuance of a visa petition, even if the local or state authorities welcome individuals and their investments. In short, neither the U.S. Citizenship and Immigration Services (USCIS), nor the U.S. consul abroad, depends upon the recommendations of the local or state government or of the local Chambers of Commerce, community service organizations, etc. The alien entering the United States must comply with the formal requirements of a federal bureaucratic system that is largely insulated from outside interests.

U.S. Consulates Abroad Outside of the United States, aliens deal almost exclusively with the United States consulate or embassy in their home country. The U.S. consul has, within the confines of the law, almost complete discretion as to whom and under what circumstances a visa to the United States will be granted. Furthermore, there is no appeal from a denial of a visa by the U.S. consul other than for interpretations of law. This means that an alien should have a complete understanding of the law and should be thoroughly prepared and documented to comply with the law before the alien first approaches the U.S. consul on any visa question. The U.S. Department of State, acting through its U.S. consulates abroad, does not view itself as a counseling agency for individuals who seek to immigrate to the United States. **NOTE:** Read this paragraph again and accept it as a fundamental principal in dealing with the host country United States consulate with respect to visa matters. In addition, the local U.S. consul abroad probably has an in-depth understanding of political and economic conditions of that country. It is able to apply that knowledge and experience in adjudicating the intentions and motivations of individual applications of host country citizens who seek visas to the United States.

United States Citizenship and Immigration Services An alien who is already in the United States and who seeks an immigration benefit will deal with the U.S. Citizenship and Immigration Services (USCIS). This agency is a bureau within the Department of Homeland Security and operates through various regional and subregional offices throughout the United States. A list of the current offices can be found on the website of the USCIS at <http://uscis.gov>. Once aliens are already in the United States, they enjoy slightly more procedural rights than would be the case if they were outside the United States. Certain visa petitions such as the Form I-129 (used for the L-1 Visa) must be filed within the United States at a regional office of the USCIS. Other visa petitions, such as for the B-1 Visa, must be filed abroad at the local U.S. consulate. Some visa applications may be filed either in the United States or the U.S. consulate abroad. Often the choice of where to file a petition can be either a strategic or tactical decision depending upon many factors, including the prevailing and often divergent attitudes of these two U.S. agencies. There are four Regional Service Centers within the United States to which individual petitions are sent for adjudication. There is a trend toward centralizing this approach to ensure uniformity and efficiency. As a result of this trend, it is clear that the USCIS is developing a cadre of officers who are knowledgeable about current business practices as well as current legal and social trends in the United States. This is often lacking in certain U.S. consular posts abroad since often the adjudicating officers have received little training and are rotated frequently. The regional service centers are essentially think tanks, to which access from the public, including even immigration attorneys, is limited. The philosophy of utilizing these regional service centers is to ensure that visa petitions will be adjudicated in an objective manner. Regardless of how foreign persons may have entered the United States, after their entry they are under the jurisdiction of the USCIS.