

# OUR PRACTICE

---

## Visa Lottery

**Amazingly, the U.S. gives permanent residence to 50,000 people each year in the "diversity visa" lottery program. Designed to offset the imbalance in the origins of U.S. immigrants, the lottery program is not available to persons born in countries that have sent the most immigrants in the previous five years.**

Each year, the State Department announces the [procedures and eligible countries](#) for the lottery that has been taking place in October. We discuss below the following topics about the DV lottery:

- General Eligibility
- Determining Your "Native" Country
- Education and Work Experience Requirements
- A Race To Permanent Residence
- Registration Mechanics
- Disclosing Past Lottery Attempts
- How We Can Help

### General Eligibility

To enter the lottery, you must meet 2 requirements:

1. Be "chargeable" to an eligible country, under rules below. The only countries that are not eligible are those that sent more than 50,000 immigrants to the U.S. during the previous five years. For the registration period in 2009, the ineligible countries are BRAZIL, CANADA, CHINA (mainland-born; note: Hong Kong SAR, Macau SAR, and Taiwan are eligible), COLOMBIA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, GUATEMALA, HAITI, INDIA, JAMAICA, MEXICO, PAKISTAN, PERU, PHILIPPINES, POLAND, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM.
2. Have a high school diploma or its equivalent, or, within the past five years preceding the resulting visa application, have at least two years of work experience in an occupation that requires two years of work experience or training (see below).

### Chargeability Rules for Determining Your "Native" Country

To be "chargeable" as a "native" of a country, so that you can claim it is your basis of lottery eligibility, one or more of the following must apply:

- You were born in the country (under its present geographic boundaries).
- You are a child under 21, and one or both of your parents were born in the country. (A child may derive permanent residence from a parent's winning lottery registration, but a parent cannot obtain permanent residence through a child's winning lottery registration).
- Your spouse was born in the country. (Each spouse can apply separately to the lottery and if only one spouse is independently a "native" of a qualifying country, the other spouse can derive chargeability to that country from their spouse).
- You were born in a country where neither parent had residence at the time (in other words they were temporarily visiting or working there under orders of an employer, government, religious

denomination, or other superior authority), and one or both of your parents were born in the eligible country.

- You were born in the U.S. but never acquired or subsequently lost citizenship, and you are currently a citizen of the desired country (or, if you are "stateless," you presently reside in the desired country).

If you can be considered a native of more than one country, you should seek to determine which country provides the best odds of winning and choose that one. In some cases, an immigration lawyer may be helpful in determining which countries you can choose from, and which one to choose.

### **Education/Work Experience Requirements**

In order to be issued a visa based on a successful lottery registration, the applicant will have to prove that she has either a high school education or the equivalent-- usually a 12-year course of elementary schoolwork and secondary education comparable to a U.S. high school degree. If the applicant does not possess the necessary education, she will have to show that she has, within the five years preceding the date of interview for an immigrant visa, had two years of work experience in an occupation that requires at least 2 years of training to perform the job. To qualify, the occupation must be designated as Job Zone 4 or 5, classified in a Specific Vocational Preparation (SVP) range of 7.0 or higher, on the Department of Labor's O\*Net Online Database. The spouse and children immigrating with the applicant need not fulfill these requirements.

### **A Race to Permanent Residence**

After the filing period, which tends to begin in October, the State Department has a computer read the information received on the electronically submitted registrations, disqualify multiple entries, number the registrations, and order each registration for each region by rank at random. Because some people do not act on their registrations, more people are selected and notified than can actually receive visas. Thus, winning the lottery is not winning the game. The notice from the State Department's Kentucky Consular Center (KCC) includes the registrant's number reflecting her rank on the list, the progress of which can be tracked on the State Department's Visa Bulletin. Thus begins a somewhat controlled race for permanent residence processing!

Successful registrants usually receive notice in May or June by paper mail (not email), making the mailing address in the registration very important. Unsuccessful lottery registrants receive no notice of any kind, and they can only watch for State Department announcements that all lottery registrants have been notified in order to know for sure that they have not won the lottery.

All successful registrants must complete and return to the KCC the forms that the KCC originally sends them and pay surcharge fee in addition to all immigrant visa or adjustment of status application fees. If the registrant is or will be outside the U.S. and process for a visa at a consulate, the KCC will hold the completed forms until the registrant's rank is approached, and then begin visa processing.

If the registrant is in the U.S., it is important to determine which of the two methods of processing for permanent residence - visa processing at a consulate or [adjustment of status within the U.S., if available - will likely be the fastest to completion before all the numbers run out or the USCIS fiscal year ends \(Sept. 30\)](#). This can be quite a complex analysis of numerous factors in which advice from an immigration attorney can be critical. USCIS allows winners to file applications for adjustment of status three months prior to the month in which their visa number is current by rank.

Spouses and children (who are unmarried and under 18 at the time they are processed for permanent residence) may accompany or join the winning applicant as long as they are "acquired" before the lottery registrant's visa issuance or adjustment of status. Because of limited time to finish all processing, it is not usually wise to process family members by different means, but occasionally it is necessary, and an

immigration lawyer should be consulted. The U.S. government scrutinizes the good faith of a marriage entered into after successful lottery registration.

It is important to note that all inadmissibility grounds apply to lottery winners, including bars on reentry from periods of unlawful presence in the U.S. Waivers might be available, but an immigration lawyer should be consulted early if an inadmissibility ground may be involved. The permanent residence process before the end of the year in which the visa numbers can be given out for the lottery year involved. In some cases the U.S. government might take longer to conduct general background checks, specific fraud investigations, or waiver application processes than is available, and a successful lottery registration could be lost from the passage of time. An immigration lawyer may assist an applicant to bring a lawsuit against applicable agencies to complete the process on time or to preserve the visa number beyond the normal time limits.

Registrations must be electronically submitted through the Department of State's web site during the limited time for submission (usually about 60 days). No fee is required for registration, but there are very particular rules about the submission of the registration and digital photographs of the registrant, spouse and all children (whether or not they will seek to immigrate with the registrant).

Each registrant is limited to one registration per year. Spouses may apply separately. If it is discovered by the State Department that the registrant has mailed more than one registration (which is more easily detected with electronic filings), all registrations from that particular registrant are thrown out. In addition, visa processing forms require the applicant to certify that he did not file more than one lottery registration form, so that a visa obtained through a misrepresentation of having filed only one registration would always be subject to being taken away.

### **Disclosing Past Lottery Attempts**

Happily, unlike the old OF-156, the currently used DS-160 nonimmigrant visa application no longer even asks a question that would call for disclosure of past lottery registrations. But the consulate or USCIS inspector may ask, and honest responses should be given, usually without consequence. The State Department has stated that a past lottery registration, in and of itself, would not be the cause ordinarily for a denial of nonimmigrant visas.

### **How We Can Help**

Baker Donelson's Immigration Group helps clients determine whether they are eligible for the lottery, what country of chargeability should be used, and which family members should apply. We prepare lottery registrations for clients who prefer not to have to wade through the annual set of rules. We help lottery "winners" and their family members determine how to process for permanent residence, and we monitor the progression of clients' rank to know when to take or expect further steps. We pursue the chosen permanent residence processing for them and their qualifying family members.

### **Important Links**

- [Diversity Visa Program](#)
- [Diversity Registration](#)
- [O\\*Net Online Database](#)