

U.S. IMMIGRATION POLICY

Policies and Laws Through History (1790 – 1950s)

The U.S. began regulating immigration soon after it won independence from Great Britain. The laws since enacted have reflected the politics and migrant flows of the times. Early legislation tended to impose limits that favored Europeans but, ultimately, dramatic changes to immigration laws opened doors to immigrants from other parts of the world. In more recent years, laws and presidential actions have been shaped by concerns about refugees, unauthorized immigration, and terrorism. For a historical timeline of early immigration policies and laws see [Selected U.S. Immigration Legislation and Executive Actions](#). For a description of more recent and current policies and laws, see the following section.

Recent Past and Current Policies and Laws (1950s through 2020)

Implementation of INA policies are carried out by executive branch agencies. The Department of Homeland Security (DHS) has primary responsibility for immigration functions through several agencies: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). The Department of State issues visas to foreign nationals overseas, and the Department of Justice operates immigration courts through its Executive Office for Immigration Review. The Department of Labor operates a foreign labor certification program to ensure that foreign workers do not displace or adversely affect working conditions of U.S. workers.

The Immigration and Nationality Act (INA) (McCarran–Walter Act). Enacted in 1952. The INA collected many provisions and reorganized the structure of immigration law. The INA has been amended several times over the years and contains many of the most important provisions of immigration law. It is the basic body of immigration law. See [Immigration and Nationality Act | USCIS](#). The INA is contained in the United States Code (U.S.C.). The U.S.C. is a collection of all the laws of the U.S. Title 8 of the U.S.C. covers “Aliens and Nationality”. See [Aliens and Nationality](#).

INA of 1965 (Hart-Celler Act). The Act abolished the National Origins Formula, which had been the basis of U.S. immigration policy since the 1920s. The act removed *de facto* discrimination against Southern and Eastern Europeans and Asians as well as other non-Western and Northern European ethnic groups from American immigration policy. In opening entry to the U.S. to immigrants other than Northwestern European and Germanic groups, the Act significantly altered immigration demographics in the U.S.

INA Amendments of 1976 and 1978. The 1976 amendments to the 1965 law included the Western Hemisphere in the preference system and the 20,000 per year visa limits. This mostly affected Mexico at the time since it was the only Western Hemisphere country that substantially exceeded 20,000 visas annually. In 1978, an amendment to the law established a worldwide limit of 290,000 visas annually. This removed the prior Eastern and Western hemisphere caps.

The Refugee Act of 1980. This Act created a general policy for admission of refugees and adopts the United Nations’ refugee definition. It removed refugees from the immigration preference system, expanding the annual admission for refugees. The removal of refugees from the immigration preference system reduced the annual visa allocation to 270,000.

Subsequent executive action and legislation for refugees included deportation relief and admission based on region or nationality. Examples include the George H.W. Bush administration's protection of Chinese nationals from deportation after Tiananmen Square protests in 1989, the Nicaraguan Adjustment and Central American Relief Act of 1997 and the Haitian Refugee Immigration Fairness Act of 1998.

Immigration Reform and Control Act of 1986 (Simpson-Mazzoli). This Act granted a pathway to permanent residency to unauthorized immigrant workers who lived in the U.S. since 1982 or worked in certain agricultural jobs. It created the H-2A visa for temporary, seasonal agricultural workers and imposed sanctions on employers who knowingly hired unauthorized workers and increases border enforcement.

In 1987, the Reagan administration decided that minor children of parents who were legalized under the 1986 law should be protected from deportation. In 1990, the George H.W. Bush administration decided that all spouses and unmarried children of people who were legalized under the 1986 law could apply for permission to remain in the country and receive work permits. This policy was formalized in the Immigration Act of 1990.

Immigration Act of 1990. This Act increased the annual immigration cap to 700,000 during fiscal years 1992-1994 followed by 675,000 as of fiscal year 1995. The Act also revised the preference categories. It allocated 480,000 family-sponsored visa, 140,000 employment-based visas, and 55,000 diversity immigrant visas (annually). The Act also created H-1B visas for highly skilled, temporary workers and H-2B visas for seasonal, non-agricultural workers and revised the grounds for exclusion and deportation, particularly those based on political and ideological grounds. The Act authorized the Attorney General to grant temporary protected status (TPS) to nationals of countries suffering from armed conflicts, natural disasters, or other extraordinary and temporary conditions. The Secretary of Homeland Security may designate a country for TPS under the same conditions.

Illegal Immigration Reform and Immigrant Responsibility Act. Enacted in 1996. This Act increased enforcement at the border and in the interior; it included mandates to build fences at the highest incidence areas of the Southwest border. The Act also established or revised measures for worksite enforcement, to remove criminal and other deportable aliens, and to tighten admissions eligibility requirements. It expanded restrictions laid out in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act on access to means-tested public assistance programs for new legal permanent residents and unauthorized immigrants.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (U.S. Patriot Act). [Note: This Act included many domestic surveillance and law enforcement components besides changes to immigration law.] This Act made it easier for law enforcement and immigration authorities to detain and deport immigrants suspected of being connected to terrorism and placed greater scrutiny on foreign students.

Enhanced Border Security and Visa Entry Reform Act. Enacted in 2002. Requires an electronic data system be used to make available information relevant to admissions and removability of immigrants; mandates implementation of a visa entry-exit data system (which becomes US-VISIT).

Homeland Security Act. Enacted in 2002. In the wake of 9/11, the Homeland Security Act transfers nearly all the functions of the U.S. Immigration and Naturalization Service (INS) to the new DHS, which includes CBP, ICE, and USCIS.

H-1B Visa Reform Act. Enacted in 2004. Changed the H-1B filing procedures for FY 2005 and for future fiscal years. The Act also made 20,000 new H-1B visas available for foreign workers with a master's or higher-level degree from a U.S. academic institution.

Recent Executive Orders or Actions and Proclamations (2012 – 2021)

An Executive Order is an official directive from the U.S. president to federal agencies that often have much the same power of a law. Throughout history, executive orders have been one way that the power of the president and the executive branch of government has expanded. With an Executive Order, the President instructs the government how to work within the parameters already set by Congress and the Constitution. In effect, this allows the president to push through policy changes without going through Congress.

Executive Orders have been controversial, recently, especially the ones that deal with immigration. In general, these Executive Orders (or Actions) have expanded immigration eligibility or increased or reduced non-immigrant and immigration visa ceilings.

The following immigration-related Executive Orders have had the most impact or visibility.

Deferred Action for Childhood Arrivals (DACA). 2012. Young adults (ages 15 to 30) brought to the U.S. illegally as children can apply for temporary deportation relief and a two-year work permit.

Deferred Action for Parents of Americans and Lawful Permanent Residents and DACA Program Expanded. 2014. Allows unauthorized immigrant parents who have lived in the U.S. at least five years and have children who are U.S. citizens or legal permanent residents to apply for deportation relief and a three-year work permit. Also expands eligibility for DACA to any unauthorized immigrant who entered the U.S. illegally as a child.

Executive Order 13940 of August 3, 2020, Aligning Federal Contracting and Hiring Practices with the Interests of American Workers. This order focuses on a review of federal contracting and subcontracting practices: “Within 45 days of the date of this order, the Secretaries of Labor and Homeland Security shall take action, as appropriate and consistent with applicable law, to protect U.S. workers from any adverse effects on wages and working conditions caused by the employment of H-1B visa holders at job sites (including third-party job sites), including measures to ensure that all employers of H-1B visa holders, including secondary employers ...”

Executive Order 13936 of July 14, 2020, The President’s Executive Order on Hong Kong Normalization. This order communicated the “policy of the United States to suspend or eliminate different and preferential treatment for Hong Kong to the extent permitted by law and in the national security, foreign policy, and economic interest of the United States.”

Proclamation 9983 of January 31, 2020. Placed visa and entry restrictions on travelers from six additional countries: Eritrea, Kyrgyzstan, Myanmar, Nigeria, Sudan, and Tanzania.

Proclamation 9945 of October 4, 2019, Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System. Applicants for immigrant visas had to show to the satisfaction of a consular officer, before an immigrant visa is issued, that either:

They will be covered by approved health insurance, within 30 days of entry into the United States, OR they possess the financial resources to pay for reasonably foreseeable medical costs.

Presidential Proclamation 9645 of September 24, 2017, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats. Placed visa and entry restrictions on travelers from three more countries and eliminated any automatic expiration date for the bans. The new country-specific travel ban is

valid indefinitely, although federal agencies will be required to assess the ban every 180 days and recommend whether to continue it.

Executive Order 13802 of June 21, 2017, (Amendment of Executive Order 13597, Establishing Visa and Foreign Visitor Processing Goals and the Task Force on Travel and Competitiveness). Deleted the requirement to “ensure that 80 percent of nonimmigrant visa applicants are interviewed within 3 weeks of receipt of application.”

Executive Order 13788 of April 18, 2017, Buy American and Hire American. Mandated immediate enforcement of existing domestic preference purchasing laws and promoted new policies to protect U.S. workers and the proper functioning of the H-1B visa program.

Executive Order 13780 of March 6, 2017, Protecting the Nation from Foreign Terrorist Entry into the United States. Placed limits on travel to the U.S. by nationals of several countries and barred entry for all refugees who did not possess either a visa or valid travel documents.

Executive Order 13768 of January 25, 2017, Enhancing Public Safety in the Interior of the United States. “... ‘sanctuary jurisdictions’ including sanctuary cities that refused to comply with immigration enforcement measures would not be ‘to receive Federal grants, except as deemed necessary for law enforcement purposes’ by the U.S. Attorney General or Secretary of Homeland Security”.

Executive Order 13767 of January 25, 2017, Border Security and Immigration Enforcement Improvements. Directed that a wall be built along the Mexican U.S. border.

Proclamation 10209 of May 14, 2021, Revoking Proclamation 9945. Proclamation 9945 required applicants for immigrant visas to prove that either they would be covered by approved health insurance within 30 days of entry into the United States, or that they possessed the financial resources to pay for reasonably foreseeable medical costs.

Proclamation 10149 of February 24, 2021, Revoking Proclamation 10014. Proclamation 10014 and the proclamations that extended it had suspended and limited entry into the United States of many classes of immigrants.

Executive Order 14011 of February 2, 2021, Establishment of Interagency Task Force on the Reunification of Families. Establish a Task Force to reunite children separated from their families at the United States-Mexico border.

Executive Order 14012 of February 2, 2021, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans. The White House Domestic Policy Council will coordinate the Federal Government’s efforts to welcome and support immigrants, including refugees, and to catalyze State and local integration and inclusion efforts. The Secretary of State, the Attorney General, and the Secretary of Homeland Security shall review existing regulations, orders, etc. that may be inconsistent with the Administration’s immigration policies.

Executive Order 14005 of January 2021, Ensuring the Future Is Made in All of America by All of America's Workers. Revoked Executive Order 13788, replacing it with a policy to maximize the use of goods, products, and materials produced in, and services offered in, the U.S.

Proclamation 10141 of January 20, 2021, Ending Discriminatory Bans on Entry to The United States. Revoked Executive Order 13780 (and related Executive Orders or Proclamations).

Memorandum for the Attorney General and the Secretary of Homeland Security of January 20, 2021, Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA). Directed the Secretary of Homeland Security, in consultation with the Attorney General, to ‘take all actions he deems appropriate, consistent with applicable law, to preserve and fortify DACA.’

Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation. January 20, 2021. Executive Order 13992 of January 20, 2021. Revoked Executive Orders 13771, 13777, 13875, 13891, 13892, and 13893.

Executive Order 13993 of January 20, 2021, Revision of Civil Immigration Enforcement Policies and Priorities. Rescinded Executive Order 13768. Reset the policies and practices for enforcing civil immigration laws to align enforcement with the Biden administrations values and priorities.

Proposed Policies and Laws [Note: Titles of policies and laws directly affecting Irish immigration are highlighted in green.]

E-3 Visas, Pathway to Irish Citizenship

The E-3 classification applies only to nationals of Australia. The E-3 visa was created by an Act of the United States Congress because of the Australia–United States Free Trade Agreement (AUSFTA), although it is not formally a part of the AUSFTA; it was signed into law on May 11, 2005. You must be coming to the U. S. solely to perform services in a specialty occupation. The specialty occupation requires theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor’s or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation in the U. S.

The E-3 program is governed by the labor certification standards that apply to H-1B and H-1B1 programs. The E-3 visa classification is limited to 10,500 nationals of Australia. The period of employment is up to a maximum of two years. Renewals beyond the two-year period for the E-3 visa will require the filing of a new Labor Condition Application.

In March 2022, U.S. Senator Pat Toomey (R-Pa.) and Senate Majority Whip Dick Durbin (D-IL) proposed legislation (S. 3869) to add Ireland to the E-3 visa program. The Bill would allow Irish nationals annual access to any unused E-3 visas from the previous fiscal year. In exchange, Ireland intends to provide Americans expanded access to work visas in Ireland. Immigration reform advocates have maintained if the measure is passed by Congress it could see up to 5,000 people annually obtain US visas. This legislation was first proposed (and passed by the House of Representatives) in 2020 but died in the Senate without a vote (Senator Tom Cotton (R-AR) placed a hold on the Bill). An identical companion Bill led by Congressman Richard Neal (D-MA) passed the House of Representatives last Congress.

Taoiseach (Prime Minister) of Ireland, Micheál Martin, said the Government wanted to see the development of new legal mechanisms to facilitate the two-way exchange of people between Ireland and the U.S. Former Fine Gael (“Irish Race”) Teachta Dála [or member of the lower house of the Irish Parliament], John Deasy and former Senator Billy Lawless (Irish Parliament) have been lobbying in Washington to revise the E3 visas scheme.

Recently, legislation (H.R. 8761) to add Ireland to the E-3 non-immigrant visa program was (re) introduced by Congressman Richard E. Neal and Congressman Mike Kelly (R-PA) in the U.S. House of Representatives on August 30, 2022.

The next steps are passage of the legislation by the House and Senate, respectively and – one hopes – enactment of the final law by President Biden. There is not a timeline for this process, currently.

Ireland-USA Diaspora Retiring to Ireland Program

In 2018, the Irish Parliament announced the Ireland-USA Diaspora Retiring to Ireland Program that would have offered residency visas to Americans aged between 55 and 75. The U.S. person must show a demonstrable connection to Ireland either through ancestry, through involvement with Irish community activities, or by means of frequent travel and visits to the island. There are also income and other stipulations. This program was originally offered as a quid pro quo for the E3 Visa Bill; however, it is possible that the program could be approved as a ‘stand-alone’.

H.R. 6637, Dignity for Immigrants while Guarding our Nation to Ignite and Deliver the American Dream DIGNIDAD (Dignity) Act. This bill would give undocumented immigrants certain legal protections and, eventually, a possible path to citizenship. It would also ramp up efforts to secure the southern U.S. border.

H.R. 1603, Farm Workforce Modernization Act (FWMA). The FWMA has been passed by the House twice and aims to modernize the H-2A temporary agricultural visa program. The current food production workforce recruitment system in the U.S. is believed by many to have led to higher food prices, particularly for dairy, meat, and vegetables.

H.R. 3648 (S. 4567), Equal Access to Green cards for Legal Employment (EAGLE) Act of 2022. This bill modifies requirements related to employment-based visas and addresses related issues. For example, this bill (1) increases the per-country cap on family-based immigrant visas from 7% of the total number of such visas available that year to 15%; (2) eliminates the 7% cap for employment-based immigrant visas; and (3) removes an offset that reduced the number of visas for individuals from China. The annual cap for visas for the unmarried children of citizens is increased and the formula for calculating the cap for the unmarried children of residents is revised.

H.R. 4521 (S. 1260). COMPETES Act of 2022. This bill addresses U.S. technology and communications, foreign relations and national security, domestic manufacturing, education, trade, and other matters. For example, this bill would create an immigrant startup visa and also an exemption from annual green card limits and backlogs for foreign nationals with a Ph.D. in STEM (science, technology, engineering and math) fields.

H.R. 1177 (S. 348). U.S. Citizenship Act. This bill would create an eight-year pathway to citizenship for many undocumented immigrants currently living in the U.S. It would also expand the use of screening technologies to bolster border security and aid Central America. The bill would further limit presidential authority to issue immigration bans based on religion and has provisions to expand access to Diversity Visas and refugee admissions.