



## IMMIGRATION

# Bedrock of Legal US Immigration Leaves Millions Waiting for Years

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Julie Hirsch, a Florida resident, has lived in the U.S. since 1987.

“I came with a student visa,” she said of her time studying in New York. Her family moved to the United States from China a decade after the Cultural Revolution, a period of violent upheaval in which an estimated 2 million people died.

“[We] are survivors, you know,” she said.

Hirsch said her father, Joseph Ying Cheng, worked with the U.S. Navy during the early 1940s and through his military connections later brought his family to the United States.

“Basically, [one of his Navy friends] convinced him to come to the United States. ... My father came in 1980. After that, he brought us here,” she said.

Hirsch told VOA that after her father became a U.S. citizen, he sponsored his two unmarried adult children. But a third child, the oldest, was married and decided to stay in Shanghai, China.

“My older brother was a businessman. He did not want to come here. He only wanted to visit,” she said.

But in 2005, Hirsch said her father applied to sponsor her older brother, Dejian Cheng, anyway, through the family-based immigration avenues available under U.S. immigration law.

“‘You have to be with your brother and sister,’ my father told him,” Hirsch said.

That began a nearly 20-year immigration journey.

## Family-based process

Through the Immigration and Nationality Act (INA) of 1965, Congress established the family immigration procedures we know today. With the law, Congress created a preference system that allows U.S. citizens to sponsor immediate relatives, including spouses, unmarried minor children and parents, to immigrate immediately to the U.S. without any numerical limits.

### Family sponsorship

*U.S. citizens and green card holders can apply to sponsor certain family members living abroad:*

- A U.S. citizen can sponsor through the first preference (F1) any unmarried sons and daughters who are 21 years or older.
- A lawful permanent resident, also known as a green card holder, can sponsor through the second preference (F2A) spouses and unmarried children under 21 years old. Those over 21, but unmarried, fall under the F2B category.
- Then a third preference (F3) for married sons and daughters of U.S. citizens.
- Followed by the last category, or fourth preference (F4), which is limited to brothers and sisters of U.S. citizens.
- The U.S. citizen, or green card holder, must be older than 21 to petition a qualifying family member.

According to the U.S. Department of Homeland Security, family-based immigration accounts for more than 65% of the country's annual legal immigration.

But Congress also created categories and caps, meaning that family members of U.S. citizens and lawful permanent residents who are not immediate relatives are sponsored through a system known as family preference. There are five categories, each with a cap.

The process begins when a U.S. citizen or lawful permanent resident files a petition to sponsor a family member, limited to adult children and siblings.

“After the case is filed, approved, and the visa becomes available, it goes to the National Visa Center. ... They contact the petitioner and the beneficiary telling them [what] they need to move forward with the consular process,” Bruno D'Britto, an immigration lawyer in New Hampshire, told VOA.

David Bier, associate director of immigration policy at the libertarian Cato Institute, explained that though Congress makes 226,000 immigrant visas available annually, they are not only capped into categories, they're further broken down into "different types of families, family members, and then within that, you have the country caps."

The 226,000 is "an overall cap for all the categories ... and then you have the country caps on top of it," Bier said.

The annual cap for family sponsorship has not increased since 1992. According to Bier's latest research, "as a result of the numerical limits" and the backlogs those limits have created, "nearly 1.6 million family-sponsored immigrants will die before they have the chance to immigrate to the United States legally."

Applicants from countries subject to per-country limits such as China, India and Mexico have some of the worst backlogs. For example, first-preference immigrants — unmarried adult children of U.S. citizens — from Mexico who started the process more than 22 years ago are just now able to get green cards, according to an FWD.us analysis of data from the U.S. State Department.

Overall, the backlog in the family sponsorship program has grown from 3.3 million in 1992 to about 7 million in 2022, Bier said. Of that number, he said, 3 million are trying to get a petition approved for a family member and about 4 million have a petition approved but can't get a green card because of the caps.

U.S. lawmakers have not allowed a visa cap adjustment since 1992, he said.

"The situation is so extreme that it really would take a pretty major overhaul. It's not [just] a matter of minor tweaks to make the family-sponsored system workable. Again, it's going to take some pretty ambitious legislators to change the status quo," he said.

### **Hirsch's family**

For Hirsch's family, the process has been ongoing for almost 20 years.

In 2005, her brother's petition was approved. In 2013, Hirsch's father died and Hirsch took over her brother's immigration case. In 2016, her brother's immigrant visa became available, according to the National Visa Center, but the process didn't move forward because of legal missteps.

Tsui H. Yee, a New York-based immigration lawyer, said that “generally speaking, if the person being sponsored has other family members that can kind of step in the shoes of the sponsor who passed away, then they can request immigration to continue the case and issue the green card.”

In 2018, the family requested that the case be reinstated on humanitarian grounds, according to documents Hirsch sent to VOA. It’s unclear where the case stands today.

VOA contacted U.S. Citizenship and Immigration Services and the State Department, but officials said they did not comment on individual cases.

Hirsch has not seen her brother for almost a decade. If she were to file a new petition, it would take at least another 12 years.

“My brother will then be almost 90 years old,” she said.