"Why don't they just play by the rules?"
Myths and Facts about U.S. Immigration Policy

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As communities in the South and elsewhere in the country experience a rapid growth in the undocumented immigrant population, long time residents ask, "Why don't they just play by the rules and become legal residents?" This question makes the erroneous assumption that legal permanent residence is an option available to any immigrant who wants it, and that those who are undocumented choose to break the rules in order to get ahead of the game. Many immigrants and refugees fortunate enough to obtain legal immigrant status under the extremely limited criteria provided by United States immigration law also share this misconception.

With few exceptions, legal immigration status can be obtained only through three categories: a closely related U.S. citizen or legal resident* family member; specialized profession or job skill in which there is a shortage of American workers; or humanitarian reasons, such as a fear of being persecuted in the home country. Each one of these categories has a strict set of criteria that severely limits the numbers of those eligible, and makes the process long and arduous for those who do qualify.

A U.S. citizen spouse, parent, sibling, or son or daughter over 21 can legally immigrate their relative. A legal permanent resident spouse or parent of a minor or unmarried son or daughter can also petition for their relative to immigrate. No other relatives, such as aunts or uncles, grandparents, or cousins, can submit a petition. Spouses, parents and minor children of U.S. citizens are considered immediate relatives, and other than the time it takes to process the application (which over the last few years has been considerable), they are not subjected to a waiting period. Siblings, spouses and minor children of permanent residents and children over 21, however, are not considered immediate relatives. They must therefore compete under an intricate visa preference system that in the worst case can mean a waiting period of more than 20 years.

The visa preference system allocates a specific number of family and employment visas per year. The annual number of family visas as of July 2005 was 226,000, and the number of employment visas was 140,000. No country can use more than seven percent of the visas (there are some limited exceptions to the per country limit). The visas are distributed by formula among the different family preference categories. Just over 50 percent is allocated to spouses and minor children of permanent residents, with the additional visas distributed among unmarried sons and daughters of citizens and residents, married sons and daughters of citizens, and brothers and sisters of citizens.

When there are more applicants for a category than there are visas available, the category is said to be "oversubscribed," and applicants are placed on a waiting list.

*A "legal resident," or "lawful permanent resident," is a foreign national who has been granted the right to reside in the U.S. on a permanent basis.

Because there are larger numbers of legal immigrant families from Mexico, India and the Philippines than from Switzerland and Liechtenstein, applicants from the former countries reach their visa quotas quickly, and are forced to wait for years until a visa becomes available. Currently, the Mexican spouse of a permanent resident will have to wait seven years for a visa, and a Filipino brother of a U.S. citizen will wait nearly 23 years.

The second route to legal immigration, the employment visa preference system, is also divided into categories. Well meaning employers often mistakenly believe that they can help an immigrant worker "become legal" if they petition for them. In reality, the process is more complicated. Usually, in addition to petitioning for the immigrant and providing a job offer, the employer must undergo a long and complicated process known as labor certification, in order to prove that there are no qualified citizens or permanent residents who can fill the position. Professionals with advanced degrees and at least five years of experience, persons with "exceptional ability" in the arts, sciences, and business, and other workers employed in occupations where there is a labor shortage must all undergo the labor certification process. Unless the U.S. Department of Labor issues a labor certification, an employment-based visa for the above categories will not be issued. Exceptions to labor certification are made for those who have "extraordinary ability" in the sciences, arts, education, business, or athletics, outstanding professors or researchers with three years experience, executives or managers who have worked for an affiliate of a U.S. corporation for three years, religious workers, "alien entrepreneurs," those who invest between $500,000 to $1,000,000 and create at least 10 full time jobs, and a few other limited categories.

The third, humanitarian category allows foreigners who have been persecuted in their countries of origin because of race, religion, nationality, political opinion, or belonging to a certain social group to apply for political asylum. The applicant must demonstrate that s/he has been persecuted or has a "well founded fear of persecution." Historically, the U.S. government's treatment of asylum applicants has been closely connected to its foreign policy. During the 1980s and early 1990s, when the U.S.-backed Salvadorian and Guatemalan governments' full-scale repression against its opponents forced thousands to flee to the United States, 98 percent of asylum applications from Salvadorians and Guatemalans were denied. During the same period, the vast majority of applicants from Cuba and Nicaragua, countries the U.S. government deemed hostile, were granted asylum. After years of lawsuits, many Salvadorians and Guatemalans who were denied asylum have been able to reopen their cases.

Potential applicants entering through an inspection point, such as an airport or a border-crossing checkpoint, face the possibility of "expedited removal." The officer makes an immediate on-the-spot determination as to the validity of the asylum claim and decides whether the person can apply for asylum or if he or she should be removed from the country immediately without any further consideration of the case. Whether or not they face this immediate assessment of their claim, most applicants have only one year from the time they enter the United States to claim asylum. It can be incredibly difficult for someone to flee his or her country, adapt to the United States, deal with trauma, file

an asylum application and collect the necessary evidence to support the asylum claim within the first year of arriving here. It can be even harder for someone to prove to or convince an officer that s/he has a valid claim on the spot. When people flee for their lives, they are not thinking about seeking the necessary documentation to prove their asylum claims. To make matters worse, the Real ID Act passed by Congress in May 2005 makes it even harder to receive asylum. A judge may now deny asylum based on inconsistent statements if, for example, an applicant is afraid to tell the officer first interviewing her that she was raped, but she later mentions it to the judge.

With the exception of a few special programs that benefit a small number of immigrants, and a few limited options that can be used as a defense against being deported, the family visa, employment visa, and asylum process are the only options open to the overwhelming majority of immigrants. As we have seen, each is fraught with enormous obstacles, limitations and complications. The rhetoric of immigration policy puts on a pedestal the values of family unity and freedom from oppression and tyranny; the reality of immigration policy makes a mockery of these very concepts. **Given the choice, the vast majority of immigrants would "play by the rules"--- if the rules allowed them to live with dignity, together with their families, free of hunger and fear of persecution.**