

Because of these bars, immigration law says that a worker who has been here illegally for more than a year should not qualify for an H-2A visa. If the worker lies about being in the U.S., he can face charges of fraud.

### **Other Work Visas:**

Other work visas in the United States are very specialized, usually for jobs that require a lot of education, training, and experience. It is impossible for farmworkers to obtain other types of work visas, and it is very difficult for other low-wage workers, like factory workers, to obtain other types of work visas.

Generally, the employer needs to prove to the government that the worker/applicant is the only person who can do the specific job, and that there is nobody else available who is a citizen or legal resident who is capable of doing the job.

Sometimes the government determines that there is a shortage of people who are qualified to do the job (nurses, for example), so the government makes more visas available for persons in these jobs.

### **Section “245i”:**

If a person is here in the U.S. and undocumented, it will be very difficult to get a work visa, even if he has the qualifications that are necessary for a specific job. You might have heard of “Section 245i.” This law permitted persons living in the United States and

who entered the U.S. without a visa to adjust their immigration status by paying \$1,000 dollars if they qualified for a visa. This law ended April 30, 2001. Any petition filed before that day receives the benefit of the law, so people are still benefiting from that law if they filed their application on time.

Unfortunately, people who entered the U.S. without a visa and who filed their petition after April of 2001 cannot legalize their status in the United States. The person has to return to his home country to process the paperwork. The problem is that if he leaves the U.S. for his visa interview, he faces the same bars that were discussed previously in the “H-2A Program” section.

### **How to get Legal Advice:**

Farmworker Legal Services is not funded to help people with applications for work visas. Because the applicants in those cases are employers and companies themselves, we are not able to help them and they must find their own attorneys for assistance. A lot of paperwork is involved and it is not as simple as just signing a form for someone.

People interested in work visas should look in the telephone book under “Attorneys-immigration”, or use the American Immigration Lawyers Association referral service at: <http://www.aialawyer.com>

## Can My Employer Legalize My Immigration Status?

### ***Information for Farmworkers***

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This brochure will focus on work visas that are available for low-income immigrants. This information is provided as a service to farmworkers who may have these questions for themselves or family members. Before you submit any immigration petition, it is important to consult with an immigration lawyer.

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There are generally three ways to obtain legal residency in the United States:

1. Through a family member who is a U.S. citizen or a Legal Permanent Resident
2. As a refugee or asylee or other humanitarian visa program
3. Through your employer

### **The Bad News:**

In the past there have been several opportunities to legalize immigration status through farm work, but all of these programs have ended. The possibilities to receive a work visa through farm work are very slim.

It is important to know about the programs that were offered in the past, and the small possibilities that exist now. Also, it is a good idea to know about changes in immigration laws, in case there are opportunities to legalize your status.

### **The Amnesty Programs of the 1980's:**

In 1986, Congress passed a law that benefited many farmworkers. They had to prove either that they had worked in farm work for a certain number of days, or that they had lived in the U.S. since before 1982. If they proved either, they could obtain temporary residence and then later become a Legal Permanent Resident. Most farmworkers who legalized through these programs became Legal Permanent Residents in 1990, and many are still trying to legalize their families. The deadlines for these programs passed over 10 years ago. During the amnesty program, the Immigration and Naturalization Service (INS) made many errors by denying thousands of

immigrants' applications. After the deadline for the amnesty application passed, many people were left out because of those errors. These people filed lawsuits in court. Finally, in 2000 Congress passed a program, called "Late Amnesty," that gave another opportunity to the people who participated in the lawsuits. The deadline to apply under the Late Amnesty was June 4, 2003.

In Congress and in communities around the country, there have been discussions about the possibility of a new amnesty. Congress has not passed any new proposals.

### **The Myth of Legalizing by "Time":**

You may have also have heard people talk about legalizing based on the amount of time that you have lived in the U.S. There is much confusion associated with this issue. The truth is that the only way to file an application based on your years living in the U.S. is if you have lived here since before 1972.

There is also a defense against deportation for the people who have been in the U.S for more than 10 years. But this defense has requirements. First, you have to be in deportation proceedings. Second, you have to prove that family members who are residents or citizens are going to suffer "exceptional and extremely unusual hardship" if you are deported. A person in deportation proceedings should consult with an immigration attorney, or an expert in deportation before signing any document or admitting to anything.

### **H-2A Program:**

The H-2A program permits U.S employers to hire farmworkers from other countries. But this is not a way to legalize your status. People who come to the U.S. under the H-2A program can only work for the employer that hired them for that season. When the season is over, or when the workers are fired or laid-off, they must return to their home country. The worker's visa is only valid for less than a year, and he has no right to extend his visa himself. The worker has to depend on the employer to apply again for the worker the following year. The worker does not have any right to bring his family to the U.S. It is impossible for an H-2A worker to permanently legalize his immigration status through the H-2A program.

People who want to work through the H-2A program have to apply for a visa in their home country, and have to go through an interview by the American Consulate.

Since 1996, a person who leaves the U.S. for any reason, even for a visa interview, after living here without a visa for at least 6 months is barred from coming back to the U.S.

A person who has been here illegally for at least 6 months is barred for 3 years from returning to the United States once they leave. A person who has been here illegally for more than one year is barred for 10 years from returning to the U.S. once they leave. Waivers are available, but they are difficult to get.