

Model Answer

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1)

===== Start of Answer #1 (611 words) =====

Question 1.

Should Eloise apply for a fiance visa?

Eloise does not qualify for a fiance because Matias is a LPR, not a US citizen.

yes

What are Eloise's options if she would like to apply for permanent residence status?

Can Eloise apply for adjustment of status in the U.S.? At the U.S. consulate in France?

Can her children be included in the petition?

As Matias is already an LPR, if they do marry he can petition on behalf of Eloise as a second preference category, the spouse of an LPR. Under INA 203(d), Eloise's children would receive derivative status and would receive the same priority date as her. They are both under the age of 21 and are presumably unmarried. Based on the current Visa Bulletin the priority dates for F2As is 12/15/13, meaning that if they marry and begin the process immediately, Eloise will not have a current priority date for approximately 1 year and 10 months. Because of this, Eloise could not apply for adjustment of status to LPR here in the US. To do so she not only has to be admissible as an immigrant, but she also must have a current priority date, which she does not have. Matias could file the petition now, but she would have to return home and go through the consulate in France to be approved for the visa. Because of the priority date, the visa will not be issued until 6/17. As discussed below, there is a quicker option.

Good

Is Matias eligible for naturalization? How will this affect the petition for Eloise?

Matias has only been an LPR for for about 4 years and 2 months. This means he is not yet eligible to naturalize. He must have LPR status for five years. If he waits 10 months he can apply. He will have to show that he has resided in the US for 5 years, and that

he has been physically present for half of the time. He has to show that he has had good moral character for those 5 years. His DUI conviction will not preclude this finding. It will also not make him inadmissible. He will have maintained continuous lawful presence. He will have to reside in the area where he applies for three months prior to applying and must be physically present from the time he applies until his citizenship is granted. He would be eligible to apply around 6/16. The process will take a few months.

*Good except his DUI will impact a good moral character finding*

This would have a good effect on gaining LPR status for Eloise. As the spouse of a citizen, she does not have to worry about the quotas and could immediately be processed for LPR status. Her children will also receive the same benefit as the step-children of a citizen since the marriage will occur before they are 18. Even though some time will pass, her children will still be under the age of 21 and will qualify as children of a US citizen. This is the best option provided that Matias and Eloise can survive some time apart. And as discussed below, Matias can certainly come and visit. This route will get Eloise LPR status about 8 or 9 months sooner than the route discussed above.

Should Matias move to France?

LPR status can be abandoned. If Matias moves to France to be with Eloise, he will lose his LPR status and could not petition on behalf of Eloise. He would also lose his chance at citizenship. He can certainly go and visit her, but must be careful. He cannot be gone for more than 90 days at a time or for more than 180 days in the aggregate.

*Good*

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End of Answer #1  
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2)

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Start of Answer #2 (436 words)  
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Question 2.

Where the Swiss workers in compliance with the terms of their H-2B visas?

H-2B visas are granted for specific work of a temporary nature for which qualified US workers are not available. The installation of the highly specialized router equipment clearly qualified. It is likely that the Swiss workers had special knowledge of the requirements and the use of the equipment that US worker would not have. Although Acme is not required to get a Labor Certification, they did have to attest that they satisfied the requirements. However, the visas were approved for that specific job. The construction work they decided to undertake is not of the same nature. It is temporary only in the sense that the work will only need to be done once. And this is likely the kind of work that any competent carpenter could handle. By taking on the job themselves, they are displacing US workers that are available to do it. The disgruntled worker was right to complain and the two Swiss workers are not in compliance with their visas. ✓

What are Jeremy's options to continue his relationship with Sophie?

One question that is not clear is if Jeremy is one of the two workers who are in violation of his H2B visa.

Under the H2B visa that Jeremy has now, he will have to return home after he is done with the job he was permitted to do. If in that time he and Sophie decide to get engaged, it will be very helpful that Sophie is a citizen. She will be able to apply for a fiance visa on his behalf. They meet the requirement of having met within two years prior to applying. However, they will have to marry within 90 days of getting the visa. Jeremy can apply for adjustment of status since his presence in the US is lawful and the visa he is requesting is immediately available. Once they do marry, Sophie can immediately apply on his behalf for LPR status. Again, because she is a citizen, there would be no wait time. This also means that Jeremy could apply for adjustment of status (provided he is not 1 of the 2 workers in violation): he is admissible and the visa they are applying for is immediately available. Because the marriage will be within 2 years of his gaining LPR status, they will be under conditions subsequent to prove that the marriage is not a sham. 90 days before their second anniversary they will have to petition to have the conditions removed and will then both need to appear for an

Failure to maintain status is waived for spouses of USC as long as they had a legal entry.

Yes they must file an I-751 to remove the conditions of LPR status - 90 days prior to the expiration of conditions LPR status.

interview.

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===== End of Answer #2 =====

3)

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===== Start of Answer #3 (249 words) =====

Question 3.

May Alicia petition for Daniel to become a legal permanent resident? What immigration violations will he be charged with and may he apply for a waiver?

Daniel was only 8 years old when he and his family presented false visas so he will not be inadmissible based on this issue. ✓

However, he is subject to a 10 year bar. Daniel has almost 20 years of unlawful presence in the US and unfortunately, has departed. This triggers the 10 year bar for unlawful presence of over 1 year followed by a departure. Assuming he and Alicia do marry, they will still be faced with him being inadmissible until he departs for 10 years. They can apply for the extreme hardship to a US citizen waiver, however, nothing in the facts suggest there would be such a hardship. ✓

*Also the permanent bar due to his unlawful re-entry after more than 1 yr of unlawful status in the US*

Can Daniel apply for a student visa?

The same bar discussed above would preclude Daniel from receiving any visa. ✓

A work permit?

Daniel can apply for deferred action under DACA. The last time he entered to US he was still under the age of 15. He meets the timing requirements in that he was been in the US since 6/15/2007 and was here when DACA was announced on 6/15/2012. He graduated from high school and has no criminal convictions. Finally, he is still under the age of 30. He is exactly the type of person this program was implemented for. He would ✓

receive deferred action and would be permitted to work.

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===== End of Answer #3 =====

**END OF EXAM**