

Introduction to Immigration Law

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The Basics Of IMMIGRATION LAW

Basic terminology

Alien

"The term "alien" means any person not a citizen or national of the United States." INA §101(a)(33)

Child

"The term "child" means an unmarried person under twenty-one years of age." INA §101(b)

Lawful Permanent Resident

"The term "immigrant" means every alien except an alien who is within one of the ... classes of nonimmigrant aliens" INA § 101(15)

Notice to Appear

Document issued by Immigration and Customs Enforcement or US Citizenship and Immigration Services initiating removal (immigration court) proceedings.



Basic terminology

Admission

"the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." INA §101(a)(13)

Unlawful Presence

"present in the US after the expiration of the period of [authorized] stay ... or present in the US without being admitted or paroled.." INA §212(a)(9)(B)

Removal

Removal v. Deportation v. Exclusion

Adjustment of Status

With some exceptions, anyone inspected and admitted to the US can adjust their status to Lawful Permanent Resident INA §245(a).



Basic terminology

Aggravated Felony

List of specific crimes enumerated in the INA (NOTE: state definitions/categorizations are NOT dispositive) INA §101(a)(43)

Crime Involving Moral Turpitude

Crimes generally requiring a depraved *mens rea*. (NOTE: A complex legal analysis is required to determine whether a crime is a CIMT).

Grounds of Inadmissibility

Circumstances in which a person will not be allowed to enter the United States. INA §212

Grounds of Deportability

Circumstances in which a person will be deported (removed) from the United States. INA §237

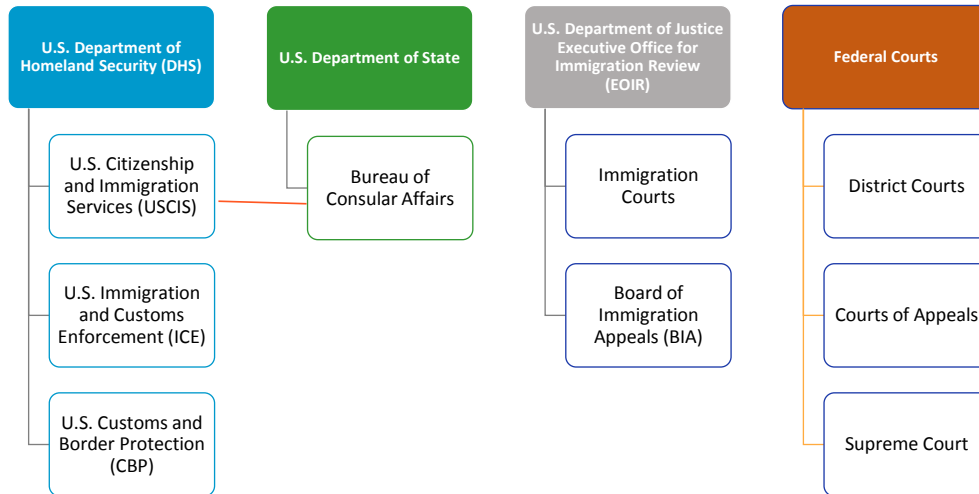


Sources of Immigration Law

- US Constitution
 - Immigration & Nationality Act
 - 8 Code of Federal Regulations (8 CFR)
- Case law:
 - Administrative Appeals Office (AAO) Decisions
 - Board of Immigration Appeals (BIA) Decisions
 - Federal Court Decisions (Sup Ct., Circuit Cts., District Cts.)
- Agency Policy Memoranda & Guidance
 - USCIS, ICE, CBP memoranda
 - USCIS Adjudicator's Field Manual (AFM)
 - DOS Foreign Affairs Manual (FAM)



WHO ENFORCES IMMIGRATION LAW?



Immigrant experience – Entry

BY WATER



MODE OF ENTRY:

With visa

CONSEQUENCES:

Able to extend stay or change status in U.S. (*Few exceptions exist*)

BY LAND



Without seeing immigration official

NOT able to get status while in U.S. (*Few exceptions exist*)

BY AIR

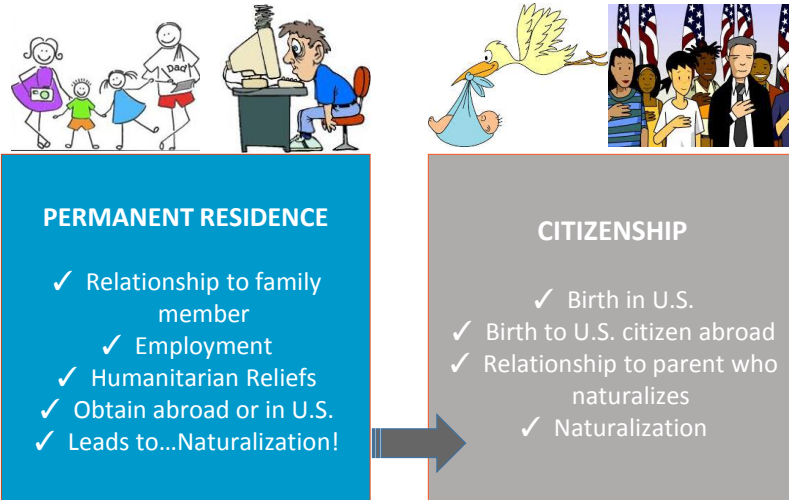


With false documents

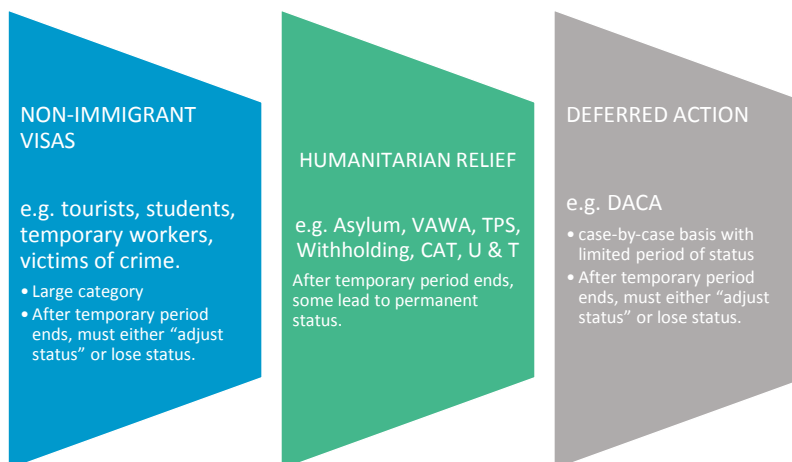
Sometimes able to get status while in U.S.



Immigrant experience – permanent Status



Immigrant Experience – Temporary statuses



NO DIRECT PATH TO PERMANENT RESIDENT STATUS

- Tourists
- Students
- Temporary Protected Status (TPS)
- Employment visa, if not sponsored by employer
- Undocumented individuals
- Deferred Action for Childhood Arrivals (DACA)



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Family Based IMMIGRATION LAW



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Family Based Sponsorship



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Family Based Sponsorship

Immediate Relatives

INA § 201(b)(2)(A)(i)

- Spouses
- Children (unmarried and under 21)
- Parents (of USC who is at least 21)



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Family Based Sponsorship

Immediate Relatives

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- Spouses
- Children (unmarried and under 21)
- Parents (of USC who is at least 21)

Preferences

INA§203(a)

- 1: unmarried sons and daughters of USC
- 2A: Spouse + children of LPR
- 2B: unmarried son & daughter of LPR
- 3: married son & daughter of USC
- 4: siblings of USC

Refugee/Asylee Reunification

Refugee/Asylee Reunification

<u>Eligible Relatives</u>	<u>Considerations</u>
<ul style="list-style-type: none"> -Spouses -Children (unmarried and under 21 <i>when Petitioner first applied for refugee or asylum status</i>) 	<ul style="list-style-type: none"> -Petitioner must be refugee, asylee, or LPR to petition for <i>derivative</i> family member -Must be filed within 2 year of arrival as refugee or approval as asylee (some exceptions) -Relationship must exist <i>before</i> entering US as refugee or being granted asylum status

Steps To Becoming A Lawful Permanent Resident

Adjustment of Status: 245(a)

- INA § 245(a) enables non-citizen “who was inspected and admitted or paroled into the United States” to be adjusted to “an alien lawfully admitted for permanent residence if (1) the alien makes an application for such an adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible . . . for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.”
- Consular Processing: when adjustment is not possible



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Step One: Must be *admissible*

To apply for admission, one must not be *inadmissible* (applies to physical admission at port of entry AND strictly legal admission such as adjustment of status)

- Multiple grounds of Inadmissibility:
 - Health-Related (INA § 212(a)(1))
 - Criminal-Related (INA § 212(a)(2))
 - Security-Related (INA § 212(a)(3))
 - Public Charge (INA § 212(a)(4))
 - Labor Certification-Related (INA § 212(a)(5))
 - Illegal Entrants, Immigration Violations, Lack of Documents, or Previously Removed (INA § 212(a)(6); § 212(a)(7); § 212(a)(9))
- Certain grounds may be waived; different set of grounds apply to *deportability*



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Inadmissibility: Unlawful Presence

3/10 Year Bars [INA § 212(a)(9)(B)]

- Any alien unlawfully present in the U.S. for a period of more than 180 days but less than 1 year, who voluntarily departs U.S. prior to the start of removal proceedings, is inadmissible for 3 years from the date of departure or removal.
- Any alien unlawfully present in U.S. for a period of 1 year or more, who departs the U.S., is inadmissible for 10 years.
- Can apply for waiver abroad if spouse or parents are LPRs or USC's. Provisional waiver if spouse or parents are USC's.



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Who Can Adjust Status?

	Immediate Relative	Preference Category	Additional Steps
EWI	No	No	Will need a waiver before being able to return to the US.
Paroled into the United States	Yes	Yes*	
Unlawful Presence	Yes	No	Will need a waiver of 3/10 year bar before returning to the US.
Unauthorized Employment	Yes	No	May need waiver to return to the US.
Fraudulent Entry	Yes	Yes*	Will need a waiver
Prior Removal Order	Maybe	Maybe	May need to vacate order and/or waiver to return to the US.

*Can adjust so long as there are no other issues (e.g. unlawful presence, prior removal order, etc.)



Grandfathering Under INA § 245(i)

- The 245(i) benefit is “alien based” and follows the beneficiary, not the application.
 - The petition/application upon which adjustment is based does NOT have to be the same petition/application that secured the § 245(i) benefit.
 - Denial, withdrawal, or revocation of an approved qualifying immigrant visa petition or labor certification, that was properly filed on or before April 30, 2001, and that was approvable when filed, will not preclude its grandfathered alien (and family members) from seeking adjustment of status under § 245(i) on the basis of another approved visa petition, a diversity visa, or any other ground for adjustment. 8 CFR § 245.10(i)



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Step Two: Have immigrant visa available

Department of Homeland Security U.S. Citizenship and Immigration Services		I-797, Notice of Action	
THE UNITED STATES OF AMERICA			
RECEIPT NUMBER [REDACTED]	CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN	PETITIONER [REDACTED]	
RECEIPT DATE September 25, 2000	PRIORITY DATE September 19, 2000	BENEFICIARY [REDACTED]	
NOTICE DATE February 5, 2009	PAGE 1 of 1	Notice Type: Approval Notice Section: Sister or brother of U.S. Citizen, 203(a)(4) INA	
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> Receipt Date </div> <div style="border: 1px solid black; padding: 5px; display: inline-block; margin-left: 20px;"> Priority Date </div>		<div style="border: 1px solid black; padding: 5px; display: inline-block;"> Category/Preference </div>	
<p>The above petition has been approved. We have sent the original visa petition to the Department Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate.</p>			





Visa Bulletin for February, 2018

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	15MAR11	15MAR11	15MAR11	01JUL96	01AUG05
F2A	01MAR16	01MAR16	01MAR16	01FEB16	01MAR16
F2B	15JAN11	15JAN11	15JAN11	08SEP96	22JUL06
F3	15NOV05	15NOV05	15NOV05	22JUN95	15MAR95
F4	22JUL04	22JUL04	08JAN04	08NOV97	01OCT94



Waivers/Provisional Waivers

- Certain grounds of inadmissibility can be waived.
 - Must show hardship to USC/LPR spouse or parents. NOT CHILDREN.
 - Must file when applying for immigrant visa (at time of AOS *or* consular processing).
 - File on Form I-601
- Provisional waivers: allows *certain* immigrants who cannot AOS to apply for waiver before leaving the US.
 - Only for immediate relatives who have unlawful presence (i.e. who entered EWI).
 - All regular waiver requirements apply.
 - File on Form I-601A *after* I-130 approved.



Conditional Residence

Marriages < 2 years old at time of grant:

- Joint Petition to remove condition due within 90 days prior to expiration of CR
- Some waivers to 2 year joint filing requirements
 - ✧ Battered Spouse Waiver
 - ✧ Termination of Good Faith Marriage
 - ✧ Extreme Hardship



Humanitarian Relief



Asylum, Withholding, CAT

Protection from Persecution

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Basic Eligibility for Asylum

A person *may* be granted asylum if they:

- Are a refugee
- Filed for asylum within one year of arrival in the US
- Are not subject to statutory bars

INA § 208

A REFUGEE is...

A person who:

- Is **outside their country** of nationality/habitual residence and...
- Is **unable or unwilling** to avail themselves of the protection of that country because...
- Of **persecution** or a **well-founded fear** of persecution based on one of **five grounds**:

- Race, Ethnicity Religion, Political Opinion, Particular Social Group

INA § 101(a)(42)(A)



Reasons to Deny Asylum:

- Fear is not based on a protected ground
- Late Filing/No Exception to 1 year deadline
 - ✧ Changed Circumstances
 - ✧ Exceptional Circumstances
- Statutory Bars
 - ✧ Aggravated Felony
 - ✧ Persecutor of others
 - ✧ Terrorism Related Inadmissibility Grounds (TRIG)
 - ✧ Material Support of Terrorist Organization

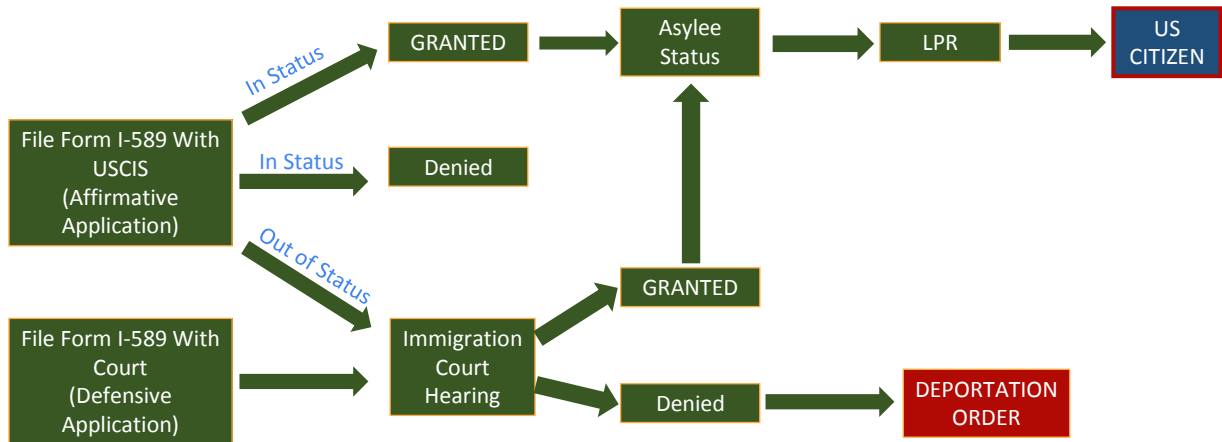


REMEMBER:

Burden to prove eligibility is on the Applicant (and their representative).



The Life Cycle of an Asylum Application



Alternatives to Asylum



Alternatives to Asylum

WITHHOLDING OF REMOVAL

INA § 241(b)(3)

- Persecution is more likely than not.
- No deadline to apply.
- Removal order withheld to particular country
- Does not lead to LPR or any other status
- Allows for EAD indefinitely
- Use form I-589



Alternatives to Asylum

WITHHOLDING OF REMOVAL

INA § 241(b)(3)

- Persecution is more likely than not.
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- Removal order withheld to particular country
- Does not lead to LPR or any other status
- Allows for EAD indefinitely
- Use form I-589

WITHHOLDING OF REMOVAL

Convention Against Torture

- TORTURE is more likely than not.
- No deadline to apply.
- Removal order withheld to particular country
- Does not lead to LPR or any other status
- Allows for EAD indefinitely
- Use form I-589



Other Humanitarian Relief

➤ T Nonimmigrant Visa

- Trafficking Victims Protection Act (TVPA) (2000)
- “Allows victims of severe forms of trafficking to live, receive services and work legally in the United States for up to four years
- Path to green card after 3 years if continue to comply w/investigation

➤ U Nonimmigrant Visa

- Enacted in 2000
- Protection for victims of certain qualifying crimes in the US, provided victim is helpful to law enforcement agency (requires certification by agency)
- Path to green card after 3 years of residence



Other Humanitarian Relief

➤ Humanitarian Parole

➤ Parole in Place

➤ Temporary Protected Status

➤ Deferred Enforcement of Departure

➤ Deferred Action

➤ Prosecutorial Discretion

➤ DACA

➤ Special Immigrant Juvenile Status

➤ Violence Against Women Act (VAWA)

- Self-petition, cancellation, waiver of joint-filing requirement, U visa



Other Humanitarian Relief

DACA: Relief to immigrants who:

- Arrived to the U.S. before the age of 16;
- Are 15 years or older (some exceptions)
- Enrolled in or have diploma from educational program;
- Born on or after 6/16/81;
- Continuously living in the US since 6/15/2007;
- Physically present in the US on 6/15/2012 & at time of request;
- No status as of 11/20/2014



Removability



Grounds of Removability

- Listed in INA §237
- For expelling aliens who are in the United States and have been admitted to the U.S.
- Six general classes of deportable aliens.



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Selected Grounds of Deportation

- Inadmissible at time of entry or adjustment [INA § 237(a)(1)(A)]
- Present in violation of law [INA § 237(a)(1)(B)]
- Violated nonimmigrant status [INA § 237(a)(1)(C)]
- Person who becomes a public charge within five years of entry, from causes not affirmatively shown to have arisen since entry [INA § 237(a)(5)]



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