
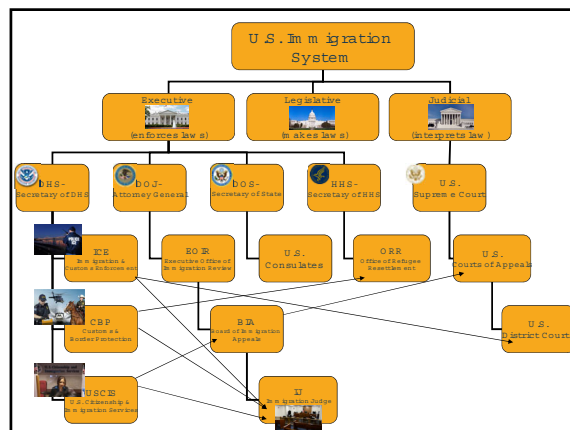




## Brief Overview of Immigration Law

Nancy Cardoza  
Rural Capacity Supervising Attorney

## The Categories of Immigration Legal Status

<p><b>U.S. Citizens</b></p> <ul style="list-style-type: none"> <li>• By birth in the U.S.</li> <li>• By acquisition</li> <li>• By naturalization</li> <li>• By derivation</li> </ul>	<p><b>Non-U.S. Citizens</b></p> <ul style="list-style-type: none"> <li>• Lawful Permanent Resident (LPR)</li> <li>• Fleeing persecution</li> <li>• Temporary permission</li> <li>• Non-immigrants</li> <li>• Undocumented</li> </ul>
--	--

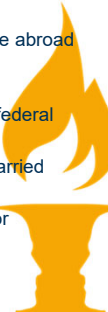
## U.S. Citizenship

- Rights and Privileges of U.S. Citizenship:
  - Right to vote in all elections
  - Right to run for elected office
  - Right to certain federal employment
  - Right to travel abroad for long periods of time
  - Benefits from the tax code
  - Right to not be deported or excluded from the U.S.
  - Can petition for a visa for sons, daughters, parents or siblings.
- How can naturalized U.S. citizenship be revoked?
  - Citizenship was procured illegally
  - Concealment of material facts or willful misrepresentation






## Lawful Permanent Residence (LPR)

- Commonly known as a "Green Card"
- Status can be obtained either at a U.S. consulate abroad or, in some cases, can be done within the U.S. ("Adjustment of Status")
- Generally, after five years in status can receive federal and/or state benefits
- LPRs can petition for spouses, children, or unmarried sons and daughters
- LPR status can be lost by either abandonment or revocation (usually due to criminal matters)



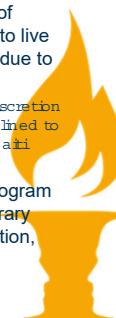
## Fleeing Persecution

- Asylum seekers and refugees
- What is the difference between the two?
- Conceptually, they are the same, but are quite distinct procedurally
  - Asylum seekers – seek protection of the U.S. *within* the borders of the U.S.
  - Refugees – seek protection and have their status conferred *outside* U.S. borders


### Temporary Permission

- **Temporary Protected Status:** allows for nationals of designated countries who are present in the U.S. to live and work in the U.S. for a limited amount of time, due to armed conflict or natural disaster.
  - The status is renewed every two years on the discretion of the State Department. Recently DoS has declined to renew for El Salvador (263,280 recipients) and Haiti (58,700 recipients)
- **DACA (Deferred Action for Childhood Arrivals):** program to allow certain undocumented immigrants temporary permission. Program ended by current administration, currently being challenged in federal court.




### Non-Immigrants

- For example, B-2 Visitor visas, certain academic visas (J, F visa), and temporary employment visas
- What matters is immigrant intent- whether a person intended to make the U.S. their permanent home when entering the country
- Non-immigrant visas can be revoked by violating the terms of the visa, such as unauthorized employment or failure to attend an academic institution.



### Undocumented

- **Two main categories of undocumented immigrants:**
  - Entered Without Inspect (EWI)
  - Visa overstays
- The avenues for future immigration relief will generally be less harsh for visa overstays because they will trigger fewer grounds of inadmissibility
- Words matter! NO human being is illegal
- Being present in the U.S. without permission is not a crime




### FOUR CATEGORIES OF IMMIGRATION Relief

(Path to Lawful Permanent Residency →)

- **Family-Based Immigration \* ♦**
  - Immediate Relatives
  - Preference Categories
- **Humanitarian Relief \***
  - Refugees, Asylees, individuals granted Withholding or relief under the Convention Against Torture
  - Relief for Victims of Crime in the U.S. (VAWA Self-Petitions, U-Visa, T-Visa)
  - Special Immigrant Juvenile Status (SIJS)
- **Employment-Based Immigration ♦**
- **Diversity Program**

\* IJC focuses on providing assistance with family reunification and humanitarian options  
♦ Public charge inadmissibility grounds applicable to family-based immigration




### Bars to Immigration: The Grounds of Inadmissibility

There are several grounds that make a person inadmissible to the United States, including:

- health-related grounds
- criminal-related grounds
- national security grounds
- public charge
- labor protection grounds
- fraud or other immigration violations
- documentation requirements
- prior removals or unlawful presence in the United States



There may be a waiver available for some of the grounds. If not, these grounds can trigger a 3 year, 10 year, or even permanent bar to be admitted to the U.S.




## Who is "Family"?

- **"Immediate" Relatives** include spouses and children (unmarried & under 21) of U.S. citizens, and the parents of U.S. citizens children (1st order)
- **Preference Category Relatives** must wait for a visa to become available to them
  - 1st Preference (F1)**
    - ▶ Unmarried children (1st order) of U.S. citizens
  - 2d Preference:**
    - ▶ 2A - Spouse and unmarried children (under 21) of LPR (**F2A**)
    - ▶ 2B - Unmarried children (1st order) of LPR (**F2B**)
  - 3d Preference:**
    - ▶ Married children of U.S. citizens (**F3**)
  - 4th Preference:**
    - ▶ Siblings of U.S. citizens (**F4**)

## Wait Times?

Lisa, a U.S. citizen, would like to be reunited with her brother, Alex, who is a Mexican citizen. How long will they have to wait?


## Visa Bulletin April 2019

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01DEC11	01DEC11	01DEC11	08AUG97	08APR07
F2A	01MAR17	01MAR17	01MAR17	15FEB17	01MAR17
F2B	22OCT12	22OCT12	22OCT12	01DEC97	01AUG07
F3	22SEP06	22SEP06	22SEP06	08FEB96	01JUN96
F4	01JAN06	01JAN06	15JUL04	<b>08FEB98</b>	01JUN96

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-april-2019.html>

## Wait Time Estimates

Family-sponsored	All other countries			Mexico	
F1	7.5 yrs.			49 yrs.	
F2A	3.39 yrs.			3.8 yrs.	
F2B	10.49 yrs.			119 yrs.	
F3	21.81 yrs.			106 yrs.	
F4	22.7 yrs.			<b>162 yrs.</b>	



## Humanitarian Options

## Humanitarian Relief: Asylum and Refugee Status

- Applicant must prove past persecution or a well-founded fear of future persecution on account of:
  - Race
  - Religion
  - National origin
  - Political opinion
  - Particular social group
- One of these five grounds must be a "central reason" for the persecution.

### Humanitarian Relief: Asylum and Refugee Status

#### Examples:

- Person flees El Salvador because he has been beaten and threatened with death for refusing to join MS-13.
- Person flees Togo because she does not want to take part in tribal custom of female genital mutilation.
- A Guatemalan woman flees from her abusive husband who threatens to murder her when she tries to leave him.

### Relief for Victims of Crimes: VAWA Self-Petition

The Violence Against Women Act (VAWA) has a provision for victims of domestic violence from LPR or citizen abusers to self-petition for themselves

- The crime does not have to have been reported to law enforcement
- Allows victims to seek both safety and independence from their abuser, who is not notified about the filing
- There may still be inadmissibility issues, though many of them are waived

### Relief for Victims of Crimes: U Visas

- Victim of a qualifying criminal activity;
- Suffer substantial physical or mental abuse;
- Possess information concerning the criminal activity;
- Helpful to the agency investigating or prosecuting the criminal activities; and
- Criminal activity violated the laws of the U.S. and could be prosecuted in the U.S.
- This status has a very wide waiver built into it
- Only 10,000 per year. The waitlist is very backed up and most applying for it will wait for several years
- After three years of U visa status in the U.S., can apply for Green Card.

### Relief for Victims of Crimes: T Visas

Person must meet the following five conditions:

- Victim of a severe form of trafficking;
- Physical presence in the U.S. or a point of entry due to such trafficking;
- Comply with reasonable request for assistance in the investigation or prosecution of acts of trafficking; and
- Would suffer extreme hardship if removed from the U.S.
- Admissible to the U.S. (some waivers available)

### Special Immigrant Juvenile Status (SIJ)

- Under 21
- Single
- Present in the U.S.
- Obtain a court order ("Predicate Order") stating:
  - Abused, abandoned, or neglected by one or both parents
  - Reunification with one or both parents not viable
  - Return to country of last habitual residence not in best interest of the child

### Deferred Action for Childhood Arrivals (DACA)

- Arrived in U.S. before 16 years old
- Under 31 in 2012
- Continuance presence since 2007
- Studied in the U.S.
- Good moral character: Background check (no more than 3 insignificant misdemeanor)
- DACA does NOT provide a pathway to LPR status or citizenship; it provides temporary protection from deportation, work authorization, and the ability to apply for a SSN, as well as driver's and professional licenses.

### Update on DACA

- On Sep. 5<sup>th</sup> the DACA program was rescinded by the Trump Administration.
- **DACA renewals will be accepted, based on the terms in place before it was rescinded on Sept. 5, 2017.**
- November 8, 2018 – 9<sup>th</sup> Circuit ruled that DACA renewals should continue as it could be shown that the administration wrongfully terminated the program
- June 28, 2019 - U.S. Supreme Court granted certiorari in the three Deferred Action for Childhood Arrivals (DACA) termination cases that currently are

### Diversity Visa Lottery

- 50,000 visas are made available each year and are distributed by a lottery administered by the U.S. State Department
- Visas go only to people from countries with historically low U.S. immigration
- Applicants from approved countries must be otherwise admissible, pass extensive background checks and have at least a high school education or two years experience working in a field that requires two years training



### Access Immigration Legal Services

Anyone can apply for non-profit immigration legal services by calling the Nebraska Immigration Legal Assistance Hotline (NILAH)



Call: 855-307-6730  
www.nilah.org



- ♦ NILAH can provide callers with information regarding "public charge" changes!