

# IMMIGRATION LAW BASICS

## How does the United States immigration system work?

Multiple agencies are responsible for the execution of immigration laws.

- The Immigration and Naturalization Service (“INS”) was abolished in 2003.
- Department of Homeland Security
  - USCIS
  - CBP
  - ICE
  - Attorney General’s role
- Department of Justice
  - EOIR
  - Attorney General’s role
- Department of State
  - Consulates
  - Secretary of State’s role
- Department of Labor
  - Employment-related immigration

Our laws, while historically pro-immigration, have become increasingly restrictive and punitive with respect to noncitizens – even those with lawful status.

- Pro-immigration history of our country
  - **First 100 Years: 1776-1875** - Open door policy.
  - **Act to Encourage Immigration of 1864** - Made employment contracts binding in an effort to recruit foreign labor to work in factories during the Civil War. As some states sought to restrict immigration, the Supreme Court declared state laws regulating immigration unconstitutional.
- Some early immigration restrictions included:
  - **Act of March 3, 1875**: excluded convicts and prostitutes
  - **Chinese Exclusion Act of 1882**: excluded persons from China (repealed in 1943)
  - **Immigration Act of 1891**: Established the Bureau of Immigration. Provided for medical and general inspection, and excluded people based on contagious diseases, crimes involving moral turpitude and status as a pauper or polygamist
- More big changes to the laws in the early to mid 20<sup>th</sup> century:
  - **1903 Amendments**: excluded epileptics, insane persons, professional beggars, and anarchists.
  - **Immigration Act of 1907**: excluded feeble minded persons, unaccompanied children, people with TB, mental or physical defect that might affect their ability to earn a living.
  - **Immigration Act of 1924**: established a permanent national origin quota system; a ceiling of 150,000 admissions per year and a system for issuing visas abroad.
  - **Immigration and Nationality Act of 1952**: basic structure of present immigration law. Repealed Asiatic Barred Zone but established racial quotas for Asians.
  - **1965 Amendments**: eliminated racial and national origin quotas. For first time, introduced numerical limits on immigration from countries in the Western Hemisphere.
- Recent restrictive and crime-related changes
  - **Immigration Reform and Control Act of 1986**
    - Established sanctions against employers for hiring aliens not authorized to work in the US
    - Established provisions prohibiting discrimination based on citizenship or nationality
    - Established legalization programs to grant amnesty to qualified aliens
    - Established a policy for expedited deportation of persons convicted of crimes

- **Anti-Drug Abuse Act of 1986**
  - Redefined drug categories to include all controlled substances for purposes of excludability and deportability and provided that the statute would be applied retroactively.
- **Violent Crime Control and Law Enforcement Act of 1994**
  - Created protections for foreign nationals subjected to battery or extreme cruelty
- **Anti-Terrorism and Effective Death Penalty Act of 1996**
  - Established special deportation provisions for persons deemed to be terrorists
  - Allowed for deportation of nonviolent offenders prior to the completion of their sentence
  - Provided for mandatory detention of persons who are removable due to certain criminal convictions or activity
  - Redefined aggravated felony to include any crime of theft or violence for which a one-year sentence could be imposed
- **Illegal Immigration Reform and Immigrant Responsibility Act of 1996**
  - Established 3 & 10 year bars of inadmissibility
  - Established new grounds of deportation to include conviction for domestic violence, child abuse/neglect or for violating a court protective order
  - False claim to U.S. Citizenship or illegal voting
- **Trafficking Victim's Protection Act of 2000** (reauthorized in 2003, 2005 and 2008) TVPRA
  - Though the law's main intent deals with human trafficking, it also deals with children arriving in the U.S. illegally unaccompanied by an adult.
  - Children from Mexico are returned immediately, if apprehended entering the U.S. illegally. The children must be turned over to the Department of Health and Human Services.

## What are the basic categories of immigration status in the United States?

### Citizenship

- Potential means by which obtained:
  - Through birth in the United States,
  - Through acquisition/derivation (i.e., outside the US and through parent citizenship), or
  - Through naturalization (after requisite period of time as a lawful permanent resident)
- Features:
  - Citizens cannot be removed from the United States
  - Citizens can vote in all federal and state elections
  - Citizens are subject to US taxation worldwide

### Lawful Permanent Residency ("green card" holders)

- Potential means by which obtained:
  - Through certain qualified family members,
  - Through specific types of employment, or
  - Through humanitarian relief and similar laws.
- Features:
  - LPRs can reside and work permanently in the United States
  - LPRs cannot vote
  - LPRs may be removed for certain activity
  - LPRs are not required to become citizens

### **Temporary status (many types)**

- Potential means by which obtained:
  - o Through tourism (business or leisure),
  - o Through employment,
  - o Through education or exchange programs, or
  - o Through humanitarian relief and similar laws.
- Features:
  - o Foreign national is lawfully present in United States
  - o Foreign national is not permitted to vote in federal elections
  - o Foreign national may be removed for certain activity

### **No status**

- Potential means by which foreign national ended up with “no status”:
  - o His/her previously valid status expired or was terminated;
  - o He/she entered the United States without permission and has not yet obtained lawful status.
- Features:
  - o Foreign national is unlawfully present in US (but may be eligible to adjust status to LPR)
  - o Foreign national is not permitted to vote in federal elections
  - o Foreign national is subject to removal at any time

## **Can a noncitizen with lawful immigration status be deported from the United States?**

Yes. Even if one has lawful status, one may be removed from the United States for certain reasons. Examples include:

- Criminal activity
- Past immigration fraud
- Terrorism-related concerns
- Poverty
- Unlawful work
- Lawful status expired
- The foreign national has discretionary relief such as Deferred Action for Childhood Arrivals (DACA) or Temporary Protected Status (TPS), and the US Government terminates this type of relief.

## **Can a noncitizen without status obtain lawful status?**

Maybe. Generally, to obtain lawful status, a foreign national usually must have a US employer or US citizen or permanent resident family member who is willing to sponsor him/her. There may also be a way to obtain humanitarian relief if for victims of crime or abuse, or for those who fear persecution or other dangerous conditions in home country.

## **I am a noncitizen but I have a family member willing to sponsor me. Am I automatically eligible to obtain lawful status?**

No. Even with a US employer/individual sponsor, a foreign national also must be ADMISSIBLE. Many facts can render a foreign national inadmissible and therefore unable to obtain status. Examples include:

- Certain criminal activity (even without a conviction), such as drug related offenses, violent offenses, and theft or fraud
- Terrorism-related grounds
- Serious health concerns
- Lack of financial resources
- Ideological grounds (e.g., Communism)
- Unlawful work
- Past immigration violations

Depending in the facts of the case, a waiver of inadmissibility may be available.

## **I entered the United States unlawfully but I have a family member or employer who is willing to sponsor me. Can I obtain lawful status?**

Generally, no. If you entered the United States without inspection, you CANNOT obtain a lawful temporary or permanent status without first leaving the United States to obtain a lawful physical admission to the United States by the US government. However, once you leave the United States, your unlawful presence for 180 days or more will subject you to a 3 or 10 year ban from the United States.

There are some exceptions to this requirement for humanitarian purposes.

## **What happens in removal proceedings (deportation proceedings)?**

- The agency that handles removal proceedings is the Immigration Court, which is part of the Executive Office for Immigration Review.
  - Foreign nationals are issued a Notice to Appear (NTA) and assigned an A number.
  - Those with A numbers can call 1-800-898-7180 to ascertain the time and date of the next hearing.
  - DO NOT MISS OR BE LATE TO A HEARING. If you fail to appear on time, the Judge will order you removed in your absence, which generally will subject you to a ban from the United States for at least 10 years. These orders are permanent and extremely difficult to appeal or reopen.
- Some noncitizens, especially those with serious criminal histories or past immigration violations, are not eligible for a hearing before the Immigration Judge at EOIR. Instead, they are subject to Expedited Removal. These noncitizens are not entitled to a bond or to contest the proceedings.

## What is DACA?

- <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>
- Link to post-election advice from NILC @ <https://www.nilc.org/issues/daca/>