

Immigration for the social worker

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Immigration**

Please note:

The information contained in this presentation is intended to educate members of the public generally and is not intended to provide solutions to individual problems.

Readers are cautioned not to attempt to solve individual problems on the basis of information contained herein and are strongly advised to seek competent legal counsel.

This presentation was held in the summer of 2024 - Immigration policies and procedures change daily!

Definitions

Citizen: Fully admitted to our political and economic community.

- By geographic birth
- By acquisition at birth
- Derived through act of parent
- By application

**Immigrant: Legally come to the U.S. to live and work permanently.
(Permanent Resident, “green card” holder)**

Non-immigrant: Come to the U.S. for specific purpose, limited period of time.

Other: Live in U.S. with government permission, but are neither non-immigrants nor immigrants. – refugee/ asylum/ TPS/ NACARA/ DACA

Undocumented: Enter without inspection or by fraud, or stay has expired.



Paths to Status to the United States

Family – including as an abused spouse/child

Employment

Humanitarian - Asylees/Refugees and Special Programs

Visa Lottery

Investment

Immigration “Law”

Who can come

How they get here

Who can stay

Enforcing laws about employment against employers

How foreign nationals move from one definition to another

How do people get to the US

With authorization

- Non-Immigrant
 - petition with USCIS *
 - Embassy for visa *
 - CBP for admission
 - Ongoing applications within the US to maintain status *
- Immigrant
 - Process with Department of Labor*
 - Petition with USCIS
 - Then
 - Consular processing (application for permanent residence at Embassy)
 - OR Adjustment of Status (in the US/ adjusting to permanent residence)

***not always required**

How do people get to the US

After an interaction with DHS at the border, physically enter the US

- Sometimes Into custody
- Sometimes under an Order of supervision
- Sometimes Into removal proceedings (not always)
- Sometimes with parole

Without authorization

- Entering at a location that is not a port of entry (EWI)
- Stowing away
- Forced migration ?

Quasi

- Through a border checkpoint with no documents
- Through a port of entry with fake documents/ documents that do not belong to individual
 - N.b. big diff b/t false claim to USC
- Forced migration?

How do people get to the US

Parole

- Creates a legal fiction- physically present in the US but treated as “arriving” under the law
- Discretionary
- Humanitarian parole
- Current usage
 - Afghanistan
 - Venezuela
 - Ukraine
 - Military family

A lot of immigration law is moving people Up (we hope) the mountain

- **Citizen – Immigrant - Non-immigrant –Other – Undocumented**
- The structure of the law makes this hard
- Very few ways to self-sponsor
- Very few progressive easy/automatic paths
- Lengthy and difficult
- Draconian consequences for violations that can't be fixed or requiring 10 years out of the US to “cure”
 - Entered without inspection
 - Unlawful presence

Who are the players -

Department of State

- The agency that issues visas
- Makes determinations about who can come

Department of Labor (DOL)

- Wage and Hour Division (WHD),
- the Office of Federal Contract Compliance Programs (OFCCP),
- and the Occupational Safety and Health Administration (OSHA)
- Integral to many non-immigrant and immigrant work options
- May be a source of support if labor trafficking

Executive Office for Immigration Review

- Removal proceedings
- Within the DOJ

Who are the players - DHS

USCIS

- With just a few exceptions – sole jurisdiction to adjudicate visa petitions
- Benefit verification
- Jurisdiction over change of status and adjustment of status

ICE

- Investigations
- I-9
- Prosecutors in removal proceedings

CBP

- Inspection and admission at the border, border detention

Inadmissibility

Section 212 of the Act – essentially things that keep you out of the US

- Certain health issues
- Crimes
- fraud and false claims to citizenship
- Prior unlawful presence in the US
- Public charge
- Prior order of deportation/removal

Some grounds have waivers, some do not

Some waivers are only available in NIV context, some only in IV context

Requires overcoming about 40 grounds of “inadmissibility.” These represent qualities we do not want in our community.

Inadmissible aliens are denied admission, nonimmigrant and immigrant visas, permanent residence.

Waivers

Some of the grounds of inadmissibility and removability can be waived

Each ground has a separate rule for how to “waive”

Receiving a waiver is usually based on demonstrating hardship to a qualifying relative

Removability

Results when alien engages in conduct or acquires a characteristic we do not want in our community.

Most frequent cause: entering or remaining in the U.S. unlawfully.

Also, if convicted of certain crimes, even permanent residents may be deported.

Section 237 of the Act

Similar grounds but not the same as 212

Relief from Removal

- There are some applications for “status” in the US that can only be made in removal proceedings
 - Cancellation of Removal
 - Based on hardship to certain relatives
 - Withholding of Removal and protection under the Convention Against Torture

Family

- US citizens can petition for spouse, kids, parents, and siblings
- LPR can petition for spouse and unmarried children
- The first “step” is a visa petition.
- Victims of domestic violence may be able to self-petition
- Children that have been abused abandoned and neglected may be able to self petition.

Family

- If in the US and meet the requirements of the law, the foreign national adjusts status to permanent residence.
- If outside the US, or does not meet the requirements, applies for residence at the US Embassy.
- May need a waiver for grounds of inadmissibility.
- But for spouse/parents/kids of US citizens immigration law divides immigrants up by preference and country.
 - The higher the place in line, the shorter the wait.

Employment

- Three Steps: labor certification – I-140 visa petition – adjustment or consular processing
- Can sometimes waive the labor certification
- Some individuals can waive the employer requirement based on merit
- May need waivers of grounds of inadmissibility

DACA

- Obama “created” DACA in 2012 – very narrow, low hanging fruit
- Immediate litigation
- Trump “ended” DACA
- Immediate litigation
- Bided “restarted” DACA
- Immediate litigation
- Current stance – individuals who applied for DACA before Trump can continue to renew

TPS

- A safe haven for nationals of a country that has been designated by DHS as unsafe for return
- Country can be designated because of
 - Armed conflict
 - Environmental disaster
 - Extraordinary and Temporary Conditions that prevent a safe return
- Individuals granted TPS: can obtain work authorization, are not removable from the US, may be granted travel authorization, and cannot be detained solely on the basis of immigration status.
- TPS is not permanent residence or citizenship and by itself does not lead to permanent residence or citizenship.

TPS

- Long held TPS – Honduras, El Salvador, Nicaragua
 - Originally designated in the late 90s
 - Trump “terminated”
 - Litigation
- TPS does not automatically cure immigration violations prior to holding TPS
- Current policy and litigation, however, seem to be headed towards ease

Refugee and Asylum

- Both: Fear of persecution because of race, religion, national origin, social group or political opinion.
- Asylees: Apply and are granted status after arrival in US
- Refugees: Granted status abroad and admitted as such.

Refugee

- Apply outside the US
- Must be of humanitarian concern to the US
- Must meet the definition of refugee
- Must be admissible to the US
- No resettlement
- USRAP establishes processing priorities
 - P-1: those referred by UNHCR
 - P-2: special concern
 - P-3: family reunification

Asylum

- Well Founded Fear
- Of Persecution
- On Account of (“Nexus”)-
 - Race, Religion, Nationality, Political Opinion, Membership In A Particular Social Group (Or Imputed Grounds)
 - Government Is Persecutor Or Cannot Control Persecutor

Asylum

- Long delays
- Shifting law
 - Particular Social Group
 - Violence against vulnerable groups

U visa and T visa

- U – status for individuals who have been a victim of a serious crime
- T – status for individuals who have been a victim of trafficking

Waiting

- A lot of immigration law is waiting
- Severe backlogs at USCIS for asylum
- Severe backlogs in immigration court

*Enter: The integral role
of the social worker*

Hardship

- For waivers of inadmissibility and defenses from deportation and hardship is a significant factor in several other benefits
- Hinges on the qualifying relative; rarely directly about hardship to the foreign national
- Extreme and exceptionally unusual hardship
 - Highest standard
 - For non-lawful permanent resident cancellation
 - To USC or LPR spouse, parent, or child
- Extreme hardship
 - For other cancellations, most waivers
 - Who counts as a qualifying relative depends on the category
- Hardship
 - Some benefits don't require a showing, but hardship can be a positive factor such as a stay of removal or other benefits

Exceptional and extremely unusual hardship

- qualifying relative would suffer hardship that is substantially beyond that which would ordinarily be expected to result from the person's deportation, but need not show that such hardship would be "unconscionable."
- The adjudicator must consider
 - the family ties to the United States and abroad,
 - the age of the applicant at the time of entry and at the time of the application,
 - length of residence abroad,
 - the political and economic conditions in the country of return,
 - the applicant's involvement in and position in their community in the United States,
 - prospects for lawful immigration in the future,
 - and the age, health, and circumstances of a qualifying U.S. citizen relative.
- Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether exceptional and extremely unusual hardship exists.
- Sometimes have to look at both separation and relocation

Extreme Hardship

- requires a showing that the qualifying relative will suffer more than normal consequences of deportation
- Totality of the facts
 - the presence of lawful permanent resident or United States citizen family ties to this country;
 - the qualifying relative's family ties outside the United States;
 - the conditions in the country or countries to which the qualifying relative would relocate;
 - the financial impact of departure from this country;
 - and, finally, significant conditions of health, particularly when tied to the unavailability of suitable medical care in the country to which the qualifying relative would relocate.
 - Other significant factors –
 - qualifying relative previously granted Iraqi or Afghan special immigrant status, T nonimmigrant status, or asylum or refugee status; (
 - disabilities of qualifying relatives or related family members;
 - qualifying relative's military service; and
 - Department of State travel warnings.

Hardship tips in general

- Even though we don't look at hardship to the foreign national, we can look at how the hardship impacts the qualifying relative
- Adjudicators need hardship spelled out. i.e. can't just say "depressed", have to explain why depression is debilitating
- Loss of good stuff can be hardship – for example, a kid in gifted programs is just as much hardship as special needs
- Establishing that conditions have existed in the past is always helpful
- Everything is hardship – career, socio-cultural, language and race barriers, etc.

Domestic Violence

- Spouses and children of US citizen and permanent residents can self-petition if victims of domestic violence
- Domestic violence situations can sometimes provide U or T status
- Domestic violence can be part of an asylum claim
- Adjudicators often need an education on the cycles of domestic violence or connect the dots on how certain behaviors are abuse

Confirmation of trauma

- Applications based on hardship, persecution, domestic violence, crimes sometimes require a showing of the impact of trauma
- Adjudicators need explanations on how trauma impacts an individual
- Sometimes need explanation of how trauma impacts memory, ability to tell a narrative, ability to testify
- In some cases, an adjudicator may accept a detailed assessment/report in lieu of testimony.

Credibility assessment

- Often, narratives are horrific or so far removed from US culture that it can be difficult for an adjudicator to believe the narrative.
- Sometimes, claims from a region of the world are numerous and similar. Adjudicators want an indicator that “THIS” person is telling the “TRUTH”.

Risk assessment or rehabilitation

- Adam Walsh Act prevents USC/LPR from petitioning for spouse/kids when there are certain convictions
 - USCIS has great discretion
 - Standard is “No Risk”
- Waivers for criminal behavior often have a requirement of showing rehabilitation
- When grounds of inadmissibility/removability are related to alcohol or drugs (or there is an indication of past use) then rehabilitation comes into play

Educating the adjudicator

- Lots of adjudicators come from military or law enforcement background
- Impact of trauma on memory and presentation
- Impact of literacy on memory
- Impact of overall culture
- Impact of socio/economic issues
- Impact of gender issues/ inequities

Waiting lines and backlogs

- But for spouse/parents/kids of US citizens immigration law divides immigrants up by preference and country.
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Employment waits

Employment-based	Chargeability Areas Except Those Listed	mainland born	SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	01FEB22	C	01FEB22	C	C
2nd	01NOV22	08JUN19	01NOV22	08OCT11	01NOV22	01NOV22
3rd	C	01AUG18	C	15JUN12	C	C
Other Workers	01JAN20	22DEC13	01JAN20	15JUN12	01JAN20	01JAN20
4th	22JUN22	22JUN22	15MAR18	22JUN22	15SEP20	22JUN22
Certain Religious Workers	22JUN22	22JUN22	15MAR18	22JUN22	15SEP20	22JUN22
5th Unreserved (including C5,	C	22MAR15	C	08NOV19	C	C

Family waits

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01DEC14	01DEC14	01DEC14	01APR01	01MAR12
F2A	C	C	C	C	C
F2B	22SEP15	22SEP15	22SEP15	01JUN01	22OCT11
F3	22NOV08	22NOV08	22NOV08	01NOV97	08JUN02
F4	22MAR07	22MAR07	15SEP05	01AUG00	22AUG02

Resources

- <https://massappleseed.org/wp-content/uploads/2018/02/Protecting-Assets-Child-Custody-In-The-Face-Of-Deportation-English-1.pdf>
- <https://asistahelp.org/resource-library/working-with-survivors-at-risk/>
- <https://niwaplibrary.wcl.american.edu/>

Q&A