



---

# ABCs of Immigration Law and Policy

JILL D. MOORE

**T**he theme of this issue of *Popular Government* is immigration. What makes immigration to the United States possible? Under what circumstances may a noncitizen remain in the United States permanently? When and how may noncitizens become citizens? This article summarizes the nation's immigration law and policy. Also, the article and the accompanying glossary introduce readers to various categories of people potentially affected by immigration policy.

## WHAT IS AMERICA'S IMMIGRATION POLICY?

The United States often is described as a "melting pot," a term that symbolizes the nation's history of immigration. The vast majority of today's citizens are the descendants of immigrants. Since the country's earliest days, people have come to the United States seeking opportunity, freedom from persecution, or reunification with families.

National immigration policy reflects and supports these aspirations. It reserves the largest number of immigrant visas for people who come to the United States to reunite with their families, showing both a respect for these people's motivation and a preference for intact families. Another policy priority is to strengthen the U.S. workforce. Accordingly, skilled workers are permitted to immigrate when there are no qualified citizens to fill jobs. Finally, U.S. immigration policy protects some people who are subject to religious or political persecution, "ethnic cleansing," and other atrocities in their own countries.

## WHO CONTROLS IMMIGRATION?

The U.S. Constitution authorizes Congress to regulate immigration.<sup>1</sup> The federal law that governs immigration and naturalization is the Immigration and Nationality Act of 1952, as amended.<sup>2</sup> The Immigration and Naturalization Service (INS), a subdivision of the U.S. Department of Justice, enforces the law and makes rules governing its implementation.<sup>3</sup> The INS has a cen-

---

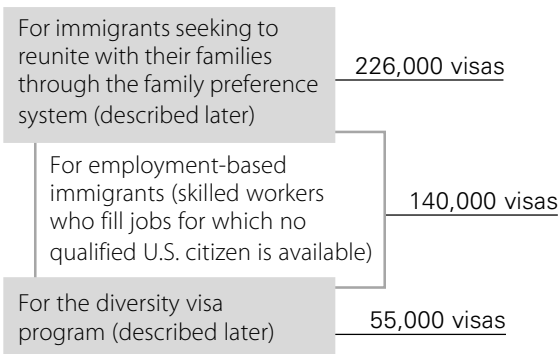
The author, an Institute of Government faculty member who specializes in public health law, frequently advises local health departments about immigrants' eligibility for benefits.

tral office in Washington, D.C., and three regional offices.<sup>4</sup> Each region is divided into districts. The district offices manage the day-to-day activities of the INS, which include processing applications for permanent residence, asylum or other special status, and naturalization; prosecuting violators of immigration laws; and managing deportations.<sup>5</sup>

### WHAT RESTRICTIONS ARE PLACED ON IMMIGRATION?

Congress restricts immigration in three main ways. First, the law defines the categories of people who may enter and remain in the country. These categories include immigrants seeking to become lawful permanent residents, refugees, and people seeking asylum, among others. The categories are described in more detail in the next section and in the glossary.

Second, a limited number of visas are available for most categories of legal immigrants. The limits for immigrants seeking to become lawful permanent residents are determined annually, according to a formula.<sup>6</sup> In federal fiscal year 1997, the following limits applied:<sup>7</sup>



The number of refugees and asylees also is subject to annual limits.<sup>8</sup> In fiscal year 1999, a maximum of 78,000 people will be permitted to seek refuge or asylum in the United States.<sup>9</sup>

Third, people who fall into one of several categories of “inadmissible aliens” are not permitted to enter the United States.<sup>10</sup> There are a number of specific statutory grounds for inadmissibility, but all are generally directed at excluding people who are believed to pose some type of threat to the public—principally a health and safety, security, or economic threat. The categories of inadmissible aliens include the following:

- People who are infected with a communicable disease of public health significance (including human immunodeficiency virus, HIV)

## GLOSSARY

**U.S. citizen.** Any person born in the United States, Puerto Rico, the U.S. Virgin Islands, or Guam; any person born outside the United States to at least one parent who is a U.S. citizen (if certain eligibility requirements are met); and any person who naturalizes—that is, any foreign-born person who becomes a U.S. citizen.

**U.S. national.** Any person who, though not a citizen, owes permanent allegiance to the United States. For example, people born in American Samoa are nationals but not citizens of the United States.

**Foreign-born person.** Any person born outside the United States to a noncitizen. This category includes both noncitizens and people who have become U.S. citizens through naturalization. Conversely, a **native-born person** is any person who is a citizen at birth.

**Noncitizen or alien.** Any person who is not a U.S. citizen.

**Immigrant.** Any noncitizen who wishes to live in the United States indefinitely.

**Lawful permanent resident (LPR).** Any immigrant with the right to live and work in the United States indefinitely. LPRs have “green cards,” which are officially known as Alien Registration Receipt Cards, Permanent Resident Cards, or Immigration and Naturalization Service form I-551’s.

**Qualified alien.** A designation created by the 1996 Welfare Reform Act to signify those aliens who may be eligible for certain public benefits. This category is discussed further in “Immigrants’ Access to Public Benefits: Who Remains Eligible for What?,” page 22 in this issue.

**Nonimmigrant.** Any noncitizen present in the United States temporarily, such as a student who has a temporary visa.

**Illegal or undocumented immigrant or alien.** Any person present in the United States without legal status. This category includes people who entered the United States illegally and people who entered legally but stayed beyond their authorized time or violated the terms of their visa.

**Hispanic.** Any person who indicates his or her origin as Central or South American, Cuban, Mexican, Puerto Rican, or some other Hispanic origin. A person of Hispanic origin may be of any race and may be a U.S. citizen or a noncitizen.<sup>1</sup> **Latino** is not as broad a term as Hispanic. People who indicate their origin as Mexican or Central or South American (but not a country outside the Americas, such as Spain) may refer to themselves as Latinos and also may prefer that term to Hispanic.

### NOTES

1. This is the definition used by the U.S. Census Bureau. See *Current Population Survey (CPS)—Definitions and Explanations*, available at <http://www.census.gov/population/www/cps/cpsdef.html>.



- People with a criminal history
- People who are considered likely to become a “public charge”—that is, to become dependent on public benefits
- People whose initial entry into the United States was unlawful
- People with a history of involvement in terrorist activity

#### WHO IS A CITIZEN? WHO IS NOT?

People become citizens of the United States in one of three ways: by being born in the United States, by being the child of a citizen, or by “naturalizing” (that is, by successfully applying to become a citizen).

Anyone who is born in the United States, Puerto Rico, the U.S. Virgin Islands, or Guam automatically becomes a citizen at birth.<sup>11</sup> Anyone who is born outside the United States to a parent who is a U.S. citizen is usually a citizen at birth, provided that the citizen parent has met certain residency requirements.<sup>12</sup>

Some immigrants are eligible to become citizens of the United States through naturalization. To naturalize, a person must be eighteen years of age or older, a lawful permanent resident of the United States for five years (three years if the person has been married to a U.S. citizen for at least three years), and of good moral character.<sup>13</sup> The person also must demonstrate a basic understanding of the English language and the fundamentals of U.S. government and history.<sup>14</sup> The law makes no distinction between naturalized citizens and citizens by birth; the same rights and privileges apply to each.

Anyone who is not a citizen is considered an alien.<sup>15</sup> For convenience, aliens may be grouped into three categories: nonimmigrants, legal immigrants, and illegal or undocumented immigrants.

Nonimmigrants are noncitizens who are permitted to enter the United States

for a specific purpose and a limited time. These include tourists, students, and those who have business in the United States.

There are a number of categories of legal immigrants. Lawful permanent residents (LPRs), or holders of “green cards” (which are actually white, blue, or pink),<sup>16</sup> constitute the largest group. They may live and work permanently in the United States and travel into and out of the country (with some restrictions). However, they may not vote, and they are ineligible for many benefits that are available to citizens.

Several categories describe noncitizens who are allowed to enter and remain in the United States for humanitarian reasons. “Refugees” are legal immigrants who have been subjected to, or have a well-founded fear of, persecution based on their race, religion, nationality, political opinion, or membership in a particular social group.<sup>17</sup> Refugees apply for admission to the United States before coming here. “Asylees” (people granted asylum) have the same history or fear of persecution as refugees but already are in the United States when they apply for permission to stay.<sup>18</sup> Refugees and asylees make up the second largest group of legal immigrants. “Persons granted withholding of deportation” are people who ordinarily would be deported, but the U.S. attorney general has determined that they would be subject to persecution if they were required to return to their home countries.

Some people are legal immigrants by virtue of being “paroled” into the United States by the U.S. attorney general, who has discretion to admit individuals or groups in certain circumstances. Parole is for a limited period and is usually granted for humanitarian reasons or because it serves a particular public interest.<sup>19</sup>

Finally, Congress has from time to time permitted the members of certain ethnic groups or the nationals of designated countries to apply for legal immigrant status. For example, Amerasians—children fathered by a U.S. citizen but born in certain Asian countries during times of U.S. military involvement—and nationals of Cuba and Haiti have been permitted to immigrate to the United States.

People who are in the United States without legal permission are usually called “illegal” or “undocumented” immigrants. The majority of illegal immigrants enter the United States lawfully—perhaps on a tourist visa—but remain in the country after their visas have expired. Other categories of illegal immigrants are people who fraudulently obtained their visas or violated the terms of the visa (for example, by working

without authorization), and people who entered the country without inspection (that is, they evaded immigration authorities when they crossed the border).

## WHO MAY BECOME A LAWFUL PERMANENT RESIDENT?

The INS grants LPR status primarily to immigrants who come to the United States to join their families, to work, or to escape persecution. It also grants the status to a small number of immigrants who participate in the “diversity visa” program—a lottery designed to encourage immigration from countries in “low-admission regions” (that is, areas that have not contributed large numbers of immigrants in the recent past).<sup>20</sup>

United States citizens may petition for LPR status for their noncitizen spouses, children, parents, and siblings. Immigrants who are LPRs may petition for LPR status for their spouses and unmarried children. “Immediate” relatives of U.S. citizens—spouses, unmarried minor children, and parents—have first preference, and an unlimited number of visas are available for this category.<sup>21</sup> A “family preference” system provides a limited number of visas for others whose petition for LPR status is based on family relationships.<sup>22</sup>

Employment-based immigrants may obtain LPR status, provided that they perform skilled work and can show that no equally qualified citizen or current LPR is available to do the work.<sup>23</sup> Refugees and asylees may apply to become LPRs after they have been in the United States for one year.

Congress occasionally permits other categories of people to become LPRs. For example, people who can document that they have lived in the United States continuously since January 1, 1972, may apply for LPR status, as may people who are eligible for particular amnesty programs.

An LPR may apply to become a citizen after residing in the United States as an LPR for a time—usually five years (but only three years for spouses of citizens).

## NOTES

1. U.S. Const. art. I, § 8, cl. 4.
2. Immigration and Nationality Act of 1952, 8 U.S.C. §§ 1101–1537.
3. The rules are contained in Title 8 of the Code of Federal Regulations.
4. North Carolina is in the eastern region, which has its headquarters in Burlington, Vermont. The central region

has its headquarters in Dallas, and the western region, in Laguna Niguel, California.

5. The district office serving North Carolina is located in Atlanta. It maintains a “suboffice” in Charlotte, which provides some of the services of a district office.

6. 8 U.S.C. § 1151.

7. U.S. Department of Justice, Immigration and Naturalization Service, *Legal Immigration, Fiscal Year 1997* (Jan. 1999), 6–7 (available at [http://www.ins.usdoj.gov/public\\_affairs/news\\_releases/Legal.pdf](http://www.ins.usdoj.gov/public_affairs/news_releases/Legal.pdf)).

8. The president determines this number each year, in consultation with Congress. 8 U.S.C. § 1157.

9. U.S. Department of Justice, Immigration and Naturalization Service, *Fact Sheet: U.S. Asylum and Refugee Policy* (Oct. 29, 1998) (available at [http://www.ins.usdoj.gov/public\\_affairs/news\\_releases/asylum.htm](http://www.ins.usdoj.gov/public_affairs/news_releases/asylum.htm)).

10. 8 U.S.C. § 1182.

11. 8 U.S.C. §§ 1401(a), 1401(b), 1402, 1406, 1407. People who are born in the “outlying possessions” of the United States—American Samoa and Swains Island—are considered nationals but not citizens of the United States. 8 U.S.C. § 1408. A “national” is a person who, though not a citizen, owes permanent allegiance to the United States. 8 U.S.C. § 1101(a)(22).

12. 8 U.S.C. §§ 1401(c), 1401(d), 1401(e), 1401(g). If the person was born out of wedlock to a U.S. citizen father and a noncitizen mother, a blood relationship with the father must be established, and other requirements must be met. 8 U.S.C. § 1409.

13. 8 U.S.C. § 1427. The person also must have been physically present in the United States for designated periods, 8 U.S.C. § 1427, and must take an oath of allegiance to the United States, 8 U.S.C. § 1448.

14. 8 U.S.C. § 1423. There are exceptions to the English-language requirement for people with certain disabilities and for certain older people who are long-term lawful permanent residents.

15. Many people consider the term “alien” to be offensive and less accurate than “noncitizen” or “immigrant.” It is used in this article because the federal immigration law uses it.

16. The cards—also known as Alien Registration Receipt Cards, Permanent Resident Cards, or I-551 forms—were green in the past, and the name has stuck. In 1998 the INS began issuing a counterfeit-resistant green card that looks like a credit card. The new cards include security features and an optical memory stripe. They will eventually replace the old laminated-paper green cards.

17. 8 U.S.C. § 1101(a)(42).

18. 8 U.S.C. § 1158.

19. 8 U.S.C. § 1182(d)(5)(A).

20. 8 U.S.C. § 1151(a).

21. 8 U.S.C. § 1151(b)(2).

22. 8 U.S.C. § 1153(a).

23. The law sets forth a detailed system for allocating employment-based visas, giving preference to certain types of workers—principally professionals, people with exceptional abilities, and skilled laborers. 8 U.S.C. § 1153(b).