

Immigration 101

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TOPICS

- **Terminology and Overview**
- **Removal**
- **Immigration Consequences of Criminal Proceedings**
- **Nonimmigrant Visa “Alphabet Soup”**
- **I-9 Issues**
- **Family-Based Immigrant Visas**
- **Employment-Based Immigrant Visas**
- **U.S. Citizenship**

Sources of Law

- Immigration & Nationality Act (INA), codified at 8 U.S.C. 1101, *et seq.*
- Regulations located at 8 C.F.R. and 22 C.F.R.
- Federal Court Decisions and Administrative Decisions
- Internal Memoranda



Terminology

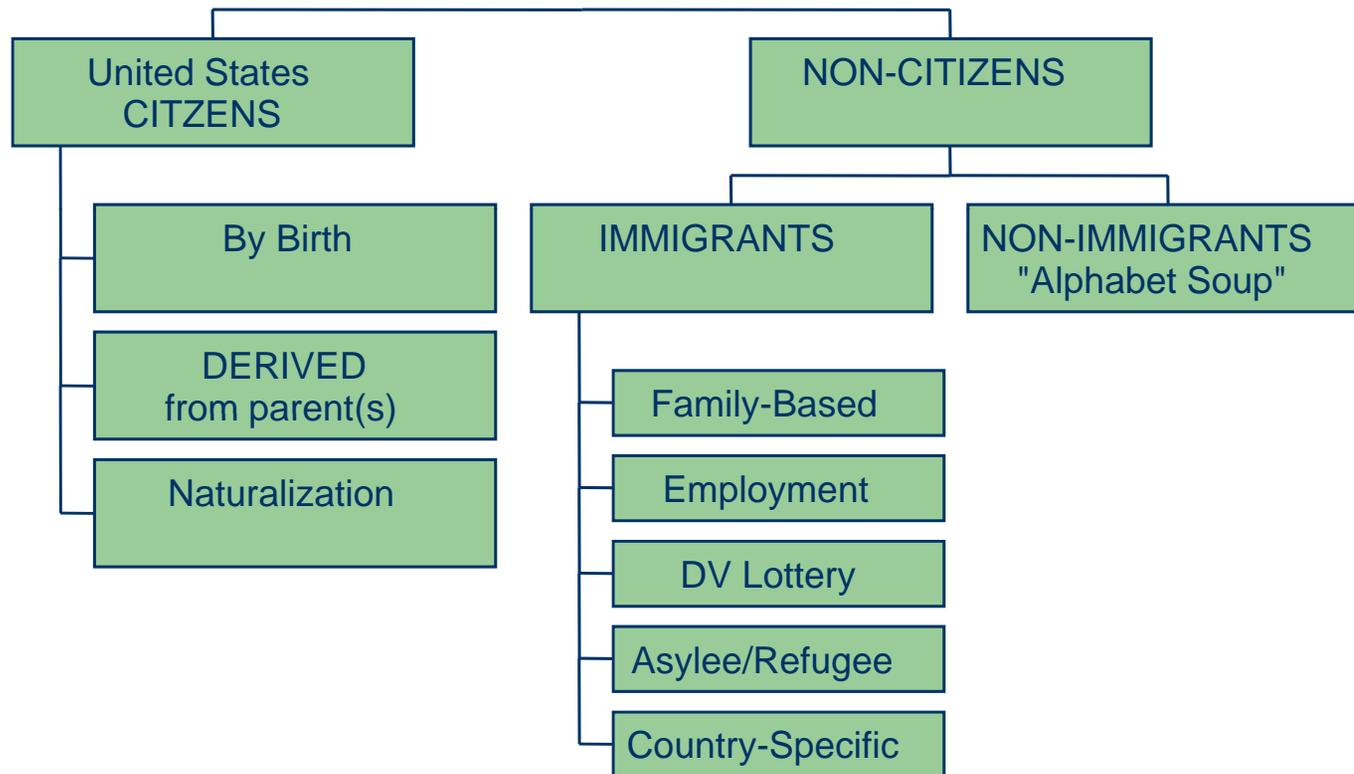
- **U.S. Department of Homeland Security (DHS)**
 - U.S. Citizenship and Immigration Services (USCIS)
 - Immigration and Customs Enforcement (ICE)
 - Customs and Border Protection (CBP)
- **U.S. Department of State (DOS)**
- **U.S. Department of Justice (DOJ)**
- **U.S. Department of Labor (DOL)**



Terminology, Part 2

- **Immigrant vs. Nonimmigrant**
- **Lawful Permanent Resident (LPR)**
- **Citizenship and Naturalization**
- **Consular Processing**
- **Adjustment of Status (AOS)**

Family Tree of U.S. Immigration



Removal Proceedings

- **Removal Proceedings**
- **Respondent**
- **Office of Chief Counsel/Asst Chief Counsel**
- **Notice to Appear (NTA)**
- **Arriving Alien – EWI – Admitted but Deportable**
- **Inadmissibility vs. Deportability**

Removal Proceedings, Part 2

- **Aggravated Felony (INA § 101(a)(43))**
- **“Crime Involving Moral Turpitude”**
- **Conviction Related to Controlled Substances**
- **Crime of Domestic Violence**
- **Weapons Offense**

Avoid Immigration Consequences in Criminal Court

101



- Know when to get your client help!
- Know the definition.
- Consider alternative crimes.
- Plead to the dope, not the pipe!
- Deferred Prosecution

ALPHABET SOUP: NONIMMIGRANT VISAS

Work-Related

- E-1/E-2: Treaty Trader/Treaty Investor.
 - Reciprocal commerce treaty
 - trader must be engaged in “substantial trade”
 - Investor must be developing/directing enterprise with substantial investment of capital
 - Indefinite period of stay
 - Spouses entitled to work authorization

ALPHABET SOUP: NONIMMIGRANT VISAS

- E-3: For Australians (Similar to H-1B)
- H-1B: “Specialty professional occupation” (or fashion models)
 - Generally, position must require college degree and foreign national must possess college degree
 - Labor Condition Application required
 - Usually six-year limit
 - Employer-specific
 - May seek lawful permanent resident status (dual intent)
 - 65,000 limit with some exceptions

ALPHABET SOUP: NONIMMIGRANT VISAS

- H-1B1: Similar to H-1B for citizens of Singapore and Chile
- H-2A/H-2B: Foreign national coming to U.S. to perform temporary service and need for services must be temporary
 - U.S. employer must demonstrate that no U.S. workers are available
 - H-2A = agricultural
 - H-2B = non-agricultural (66,000 limit)

ALPHABET SOUP: NONIMMIGRANT VISAS

- I: Representatives of foreign media (press, radio, TV, film or “information” media)
 - Must have reciprocal program for U.S. journalists
- L-1: Intra-company transfers for executives, managers and specialized knowledge employees
 - Must have worked one year of the previous 3 for the parent, branch, affiliate or subsidiary abroad
 - Dual intent permitted
 - Spouse entitled to work authorization

ALPHABET SOUP: NONIMMIGRANT VISAS

- O-1:
 - Extraordinary ability in the sciences, arts, education, business or athletics
 - Foreign national in film or television production with record of extraordinary achievement
- P: Athletes and entertainers with international recognition

ALPHABET SOUP: NONIMMIGRANT VISAS

- **R**: Religious worker – ministers, religious vocation or occupation
 - Minimum two-year membership in denomination and denomination must have nonprofit religious status in U.S.
 - Special immigrant visa also available
- **TN**: Trade NAFTA visa for Canadians and Mexicans
 - For specific listed occupations
 - One year increments, with indefinite extensions
 - No dual intent
 - Canadians apply at port of entry
 - Mexicans apply at U.S. Consulates

ALPHABET SOUP: NONIMMIGRANT VISAS

Non-Work:

- B-1: Business visitors; may not work in U.S.
- B-2: Tourists, may not work in U.S. (also for medical care, amateur athletes, some domestic personnel)

ALPHABET SOUP: NONIMMIGRANT VISAS

- **F-1: Student visa**
 - Full-time study at an approved academic institution
 - Must be registered in SEVIS
 - Some work options available – during (CPT) and after (OPT) graduation
- **H-3: For training in any field in a formal training program**
 - Often multi-national management trainees
 - Not for “regular” workers, training can’t be available in home country
 - 2 year limit and no change of status (65,000 per year)

ALPHABET SOUP: NONIMMIGRANT VISAS

- J-1: “Exchange visitors” - students, researchers, scholars, medical school residents, professors, international visitors, camp counselors, au pairs
 - U. S. Department of State approved programs with varying requirements
 - Often have two-year home residency requirement
- M-1: Vocational students – non-academic institutions
 - No work authorization

ALPHABET SOUP: NONIMMIGRANT VISAS

- **K-1**: Fiancé(e) of U.S. citizen entering U.S. to marry U.S. citizen within 90 days (minor children = K-2)
- **K-3**: For spouses of U.S. citizens who are outside U.S. but who have had an I-130 immigrant visa petition filed on their behalf by U.S. citizen
 - Provides admission while I-130 is pending (minor children = K-4).
 - Eligible for work and travel permits

ALPHABET SOUP: NONIMMIGRANT VISAS

- Q: International cultural exchange program
 - Program must be in a school, museum, business or similar establishment
 - Emphasis on cultural component 15 month limit
- S: “Snitch visas”
 - For individuals with important and reliable information regarding a criminal organization or enterprise to supply to state or federal law enforcement agents
 - 250 per year
 - Chance to apply for permanent residency

ALPHABET SOUP: NONIMMIGRANT VISAS

- T: For victims of severe trafficking (sex trafficking, forced servitude)
 - Offered to victims who offer to assist prosecutors or are under age 18 and would suffer “extreme hardship involving unusual and severe harm upon removal”
 - May seek lawful permanent resident status
- U: Victims of violent crimes (including domestic violence) who have suffered “substantial physical or mental abuse as a result”
 - Victim must cooperate with federal, state or local law enforcement official
 - 10,000 per year
 - May seek lawful permanent resident status

Basic I-9 Concept

❖ Keep in
mind two
goals:

- To make sure employers only hire people who are authorized to work in the US (screen out unauthorized workers).
- To make sure employers do not discriminate against people based upon foreign origin (name, appearance, accent) when hiring.

PENALTIES

- **Knowingly hiring or continuing to employ an unauthorized worker:**
 - **1st Offense**: \$275-\$2,200 per alien
 - **2nd Offense**: \$2,200-\$5,500 per alien
 - **3rd or Later Offense**: \$3,300-\$5,500 per alien
 - **Additional criminal penalties for “pattern and practice”**

PENALTIES

- **Discrimination on the basis of national origin or citizenship status:**
 - **1st Offense**: \$275-\$2,200 per individual
 - **2nd Offense**: \$2,200-\$5,500 per individual
 - **3rd or Later Offense**: \$3,300-\$11,000 per individual
 - **Additional remedies include back pay, injunctive relief and attorney's fees**



PENALTIES

- **Paperwork violations: failing to properly complete I-9s or overdocumentation (for requesting too many documents):**
 - **\$110-\$1,100 per individual**

PENALTIES

- Document fraud for knowingly accepting a forged document:
 - 1st Offense: \$275-\$2,200
 - Later Offenses: \$2,200-\$5,500
 - Additional potential criminal penalties

Basic Four Step Process for Completing I-9 Forms

- Employee completes §1 by the end of the first day of employment
- By the end of the third day of employment, employer reviews employee's documents to verify "ID and work authorization" and completes §2
- If employee's work authorization expires, put expiration date in tickler system
- Reverify before work authorization expires on §3

DHS NO-MATCH “SAFE HARBOR”

- **New “Safe Harbor” regulation takes effect September 14, 2007 for all employers (on hold).**
- **Regulation provides required steps to take upon receipt of no-match letter.**

REQUIRED RESPONSE TO NO-MATCH LETTER

- 1) **Verify within 30 days whether the discrepancy is due to employer clerical error**
- 2) **Request that affected employee(s) confirm the accuracy of employer's records**
- 3) **Require employee(s) to resolve the discrepancy with Social Security Administration within 90 days of receipt of letter**

REQUIRED RESPONSE TO NO-MATCH LETTER

- 4) If one of these steps resolves the issue, provide correct information to Social Security Administration
- 5) If discrepancy not resolved within 90 days, attempt to re-verify work authorization within 3 days by properly completing a new I-9 without using questionable number and with a photo identification document
- 6) If this is not possible, terminate employee or face sanctions from ICE

ACCORDING TO DHS:

Employers who follow the requirements precisely will be afforded a “safe harbor” and should not face sanctions from ICE.

and

Employers should not have liability to employees terminated as a result of the process.

The actual result is unknown at this time.



Handling an ICE Investigation

- Ask for 3 days notice
- Be cooperative
- Determine what ICE is investigating
- Review the I-9 forms with counsel during the 3-day notice period
- Don't provide more information than required
- Pay attention to potential aggravating and mitigating factors before the audit

IMMIGRANT VISAS

- Lawful Permanent Resident (LPR)
 - “Green Card”
- Ability to Live & Work in U.S.
on a Permanent Basis



What An Immigrant Visa Is Not:

- **Compare to Non-Immigrant Visas**
- **Compare to U.S. Citizenship**



Avenues to Acquiring Permanent Resident Status

- Family-Based
- Employment-Based / Labor Certification
- Diversity Visa Lottery
- Registry
- County-Specific Legislation

Family-Based Green Cards

- Key Concepts:

- Close Family Relationship Required
- Petition-Based Process
- Problem of Illegal Entry
- 3-Year & 10-Year Bars for Unlawful Presence
- Extensive Backlogs for Many Categories

Family-Based Green Cards

- **Immediate Relatives:**
 - **Spouse of U.S. Citizen**
 - **Parent of U.S. Citizen**
 - **Unmarried Child (under age 21) of U.S. Citizen**
 - **Adopted child**
 - **Step-child**

Family-Based Green Cards

Family-Based Preferences:

- 1st Preference
 - Unmarried Sons & Daughters of U.S. Citizen
- 2A Preference
 - Spouse of Lawful Permanent Resident (LPR)
 - Unmarried Child Under Age 21 of LPR
- 2B Preference
 - Unmarried Sons & Daughters Over Age 21 of U.S. Citizen



Family-Based Green Cards

- 3rd Preference
 - Married Sons & Daughters of U.S. Citizen
- 4th Preference
 - Brothers & Sisters of U.S. Citizen

Family-Based Green Cards

Extensive Backlogs for Family-Based Preferences

- OCTOBER 2007 VISA BULLETIN
- **FAMILY-BASED PREFERENCES**

FAMILY	All Chargeability Areas Except Those Listed	CHINA – mainland born	INDIA	MEXICO	PHILIPPINES
1 ST	08NOV01	08NOV01	08NOV01	01MAY92	15JUNE92
2A	15NOV02	15NOV02	15NOV02	01MAY02	15NOV02
2B	15AUG98	15AUG98	15AUG98	15MAR92	08DEC96
3 RD	15FEB00	15FEB00	15FEB00	01MAY92	22FEB91
4 TH	15APR97	15AUG96	08MAY96	22JUL94	08JUL85

Employment-Based Green Cards

- OCTOBER 2007 VISA BULLETIN
- **EMPLOYMENT-BASED PREFERENCES**

Employment-Based	All Chargeability Areas Except Those Listed	CHINA – mainland born	INDIA	MEXICO	PHILIPPINES
1 ST	C	C	C	C	C
2 nd	C	01JAN06	01APR4	C	C
3 rd ^d	01AUG02	01SEP01	22APR01	22APR01	01AUG02
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4 th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5 th	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C



Employment-Based Green Cards

Key Concepts:

- **Employer Required in Most Cases**
- **Petition-Based Process**
- **Labor Certification**
- **Problem of Illegal Entry**
- **Extensive Backlogs for Many Categories**

Employment-Based Green

The Labor Certification Process

- Offer of Full-Time, Permanent Employment Required
- Employer Must Advertise the Job
 - Minimum education, training and work experience requirements
- Employer Must Demonstrate Non-Availability of U.S. Workers for the Job Position Being Offered
 - Applicants can only be rejected for lawful, job-related reasons
 - Employer must show good faith recruitment efforts
- The Role of the Department of Labor



EB-1

(Employment-Based 1st Preference):

- **Persons of Extraordinary Ability**
- **Outstanding Researchers and Professors**
- **Multinational Managers and Executives**



EB-2

(Employment-Based 2nd Preference)

- **Professionals Holding Advanced Degrees**
- **Persons of Exceptional Ability**



EB-3

(Employment-Based 3rd Preference)

- **Professionals**
- **Skilled Workers**
- **Other Workers**

EB-4

(Employment-Based 4th Preference)

- **Special Immigrant Religious Worker**
- **Other Special Immigrants**



EB-5

(Employment Based 5th Preference)

- **Employment Creation Investors**



Employment-Based Green Cards

**Extensive Backlogs for Most
Employment-Based Preferences**

FEBRUARY 2007 VISA BULLETIN

EMPLOYMENT-BASED PREFERENCES



Other Green Card Avenues:

- **Diversity Visa (DV) Lottery**
- **Registry**
- **Country-Specific Legislation**



U.S. CITIZENSHIP

- Proof of U.S. Citizenship:
 - U.S. Birth Certificate
 - U.S. Passport
 - Certificate of Naturalization
 - Certificate of Citizenship

U.S. CITIZENSHIP

Main Avenues to Acquire U.S. Citizenship:

- Birth in the United States
- Acquisition at Time of Birth Outside the United States
- Derivative Citizenship
- Naturalization

U.S. CITIZENSHIP

Birth in the United States:

- 14th Amendment: “all persons born or naturalized in the United States . . . are citizens of the United States”
- INA Section 301(a) and (b)

U.S. CITIZENSHIP

Acquisition at Time of Birth

Outside the United States:

- Birth outside of the United States to 2 U.S. Citizen parents
- Certain births outside of the United to 1 U.S. Citizen parent and 1 non-U.S. Citizen parent
 - Transmission Requirements Must Be Met
 - Law at time of birth applies
 - Current Law = if, prior to the birth, USC parent was physically present in the U.S. for 5 years and 2 of those years were after the age of 14 (transmission)

U.S. CITIZENSHIP

Derivative Citizenship:

- Child Citizenship Act of 2000
- [INA Sec. 320(a)]
- Applies to natural children, adopted children but not step-children
- Eligibility Requirements:
 - USC parent
 - LPR child under 18
 - Residing in U.S. in the legal and physical custody of the USC parent
- Obtaining Proof:
 - U.S. Passport
 - Certificate of Citizenship

U.S. CITIZENSHIP

Naturalization:

- **Eligibility Requirements**
 - **Lawful Permanent Resident**
 - **18 years of age**
 - **Continuous Residence**
 - **General Rule = 5 years**
 - **Exception = 3 years if married to U.S. Citizen**
 - **Good Moral Character**

U.S. CITIZENSHIP

Naturalization:

- No Aggravated Felony Convictions
- Physical Presence (1/2 of continuous residence period)
- Resident of State for 3 months prior to filing
- Application (Form N-400)
- Testing
 - U.S. History/Civics
 - English language

U.S. CITIZENSHIP

Benefits/Advantages of U.S. Citizenship:

- Patriotism
- Permanency (compare to Lawful Permanent Resident Status)
- Voting
- Sponsor Relatives
- Public Benefits
- Taxes (marital deduction)