



An Introduction to Federal Immigration Law for North Carolina Government Officials

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Immigration affects state and local governments across many areas—from education to employment, from health care to law enforcement. This bulletin is designed to provide state and local officials with an introduction to immigration law, policy, and procedures. It also aims to provide a broad picture of noncitizens in North Carolina. It briefly covers the following topics:

- general information about the size and the composition of North Carolina’s noncitizen population;
- the source of immigration law and issues that are regulated by immigration law;
- the federal agencies responsible for enforcing and administering immigration law;
- a description of categories of noncitizens;
- the routes for a person to acquire lawful permanent resident status;
- the process by which noncitizens become naturalized citizens;
- grounds and procedures for deportation;
- agreements between local law enforcement agencies and federal authorities allowing local officers to perform immigration enforcement functions.

Immigration Trends in North Carolina

In recent years, population growth driven by immigration has transformed the racial and ethnic composition of the state and the region. Today, the foreign-born population in North Carolina is estimated at 630,000, constituting, according to the U.S. Census Bureau, roughly 7 percent of the total state population.¹ Although newcomers to the state have included substantial numbers of people from Latin America (60%) and Asia (20%), foreign-born people in North Carolina come from

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1. U.S. Census Bureau, *2007 American Community Survey* (Washington, D.C.: U.S. Census Bureau, 2008), factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2007_1YR_G00_S0501&-ds_name=ACS_2007_1YR_G00_-CONTEXT=st&-tree_id=307&-redoLog=false&-geo_id=04000US37&-format=&-_lang=en.

more than forty-five countries throughout the world and speak more than 150 languages. More than a quarter of foreign-born people in North Carolina have become naturalized citizens.

Source of Immigration Law and Enforcement

The federal government is exclusively authorized to regulate immigration. The federal law that governs immigration is the Immigration and Nationality Act.² It establishes the basic structure of U.S. immigration law, including who may enter the United States and under what terms and conditions they may remain here. It also determines the process for foreign nationals, or noncitizens, to become U.S. citizens.

Agencies That Enforce Federal Immigration Laws

In 2002, the Homeland Security Act abolished the Immigration and Naturalization Service (INS) and created the U.S. Department of Homeland Security (DHS). The regulation and enforcement of immigration laws were placed under three new bureaus of DHS:

- **U.S. Customs and Border Protection (CBP)** patrols the U.S. borders and regulates the admission of people and goods into the United States.
- **U.S. Immigration and Customs Enforcement (ICE)** conducts investigations, prosecutions, detention, and deportation of noncitizens.
- **U.S. Citizenship and Immigration Services (USCIS)** provides various immigration services, such as processing applications for lawful permanent residence, asylum, and naturalization.

While the Department of Homeland Security is primarily responsible for enforcing federal immigration laws, other federal agencies help administer immigration laws. The U.S. Department of State conducts visa processing outside of the United States. The U.S. attorney general retains authority with respect to questions of law, and the U.S. Department of Justice continues to oversee the trial-level immigration courts, the Board of Immigration Appeals (an administrative appeals court), and the Office of Immigration Litigation, which represents federal agencies in civil litigation relating to immigration matters. The U.S. Department of Labor plays a role in employment-based immigration by confirming that there are not sufficient U.S. workers who are able, qualified, and willing to perform various jobs.

Noncitizens by Category of Immigration

Immigration law divides noncitizens into a variety of categories, each with its own eligibility criteria. The rights and privileges of noncitizens vary with their category of immigration. For example, some noncitizens come to the United States with permission to remain here permanently while

2. 8 U.S.C. § 1101 *et seq.*

others are permitted only a short stay. Some noncitizens are authorized to work in the United States while others are not. This bulletin groups noncitizens into four broad categories:

- lawful permanent residents,
- refugees and asylees,
- nonimmigrants, and
- unauthorized immigrants.

This is not an exhaustive list, but it covers the noncitizens that public officials are most likely to encounter in North Carolina. The first three categories describe noncitizens that have been granted permanent or temporary admission to the United States. These categories reflect three principles that have historically guided U.S. immigration policy—family reunification, provision of needed workers, and protection of people fleeing persecution. The last category—unauthorized immigrants—describes noncitizens who are in the United States without permission.

Lawful Permanent Residents

A lawful permanent resident (LPR) is a noncitizen who has been admitted to reside permanently in the United States. LPRs are often referred to as holders of “green cards,” which document their permanent resident status. They may work in the United States and generally travel in and out of the country. However, LPRs may not vote and are not eligible for many benefits that are available to citizens. Acquiring LPR status is a critical preliminary step to becoming a U.S. citizen. An LPR may apply to become a U.S. citizen after meeting certain requirements, including a residency requirement for a minimum number of years.

Routes to Lawful Permanent Resident Status

Immigration law gives priority for LPR status to relatives of U.S. citizens and LPRs and to persons with job skills deemed useful to the United States. LPR status is also granted to refugees and asylees (discussed next) and to noncitizens selected in the “diversity visa program,” a lottery designed to encourage immigration from countries with relatively low levels of immigration to the United States.³ Congress occasionally permits other categories of people to become LPRs as well.

In keeping with the objective of family reunification, U.S. citizens and LPRs may sponsor certain family members for LPR status. An annual cap is placed on the number of individuals admitted as LPRs through such family-based immigration. Citizens may sponsor their spouses, children, parents, and siblings, and LPRs may sponsor only their spouses and unmarried children. Family members eligible to be sponsored are divided into two tiers. Immediate relatives of U.S. citizens—that is, spouses, unmarried minor children, and parents—have first preference and are admitted without a numerical cap. All other family members are grouped into the “family preference” system, which is subject to the annual cap.

A limited number of noncitizens may obtain LPR status each year through employment. Employment-based applicants must meet various qualifications, and many applications require a sponsoring employer and a demonstrated absence of qualified U.S. workers (as certified by the U.S. Department of Labor). Most noncitizens who obtain LPR status through employment-based immigration are highly educated or highly trained workers. Because there is an annual cap on both family- and employment-based immigration, many noncitizens go through long waiting periods before their applications are approved.

3. 8 U.S.C. § 1153(c).

In 2006, roughly 19,000 noncitizens in North Carolina were granted lawful permanent resident status.⁴ Mexico, India, and China had the largest numbers of nationals obtaining LPR status in the state, mirroring the national trend.

Refugees and Asylees

Each year thousands of people who fear or face persecution in their home countries seek asylum or refugee status in the United States. Refugees and asylees are admitted to the United States based on a well-founded fear of persecution in their country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion.⁵ The difference between refugees and asylum seekers is one of location. Refugees apply for and are granted such status in the country of origin before coming to the United States, whereas asylees apply for and obtain such status after arriving in the United States. Both refugees and asylees are allowed to work in the United States. Refugees and asylees can apply to become lawful permanent residents after residing in the United States for one year.⁶ Refugees from Southeast Asia, Central and West Africa, Eastern Europe, and the former Soviet Union have settled in North Carolina over several years. Around 4,300 refugees settled in North Carolina between 2005 and 2007.⁷ The number of asylees residing in North Carolina is not readily available.

Nonimmigrants

In addition to those noncitizens who are admitted on a permanent basis, many noncitizens are admitted to the United States for a limited time and for specific purposes, such as tourism, business, study, diplomacy, journalism, or temporary employment. Federal law classifies them as “non-immigrants.” Only certain nonimmigrants are authorized to work, and none are eligible for U.S. citizenship through naturalization.

In 2006, North Carolina was the state of destination for roughly 235,000 nonimmigrants, including tourists, business travelers, students, and temporary workers (both high-tech workers and seasonal agricultural workers).⁸

Unauthorized Immigrants

Unauthorized immigrants are noncitizens present in the United States without permission from the federal government. Unauthorized immigrants include those who entered the United States unlawfully (without authorization at the border or through the use of forged documents) and

4. U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2006*, Supplemental Table 1, Legal Permanent Resident Flow by State of Residence and Region and Country of Birth: Fiscal Year 2006 (Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2007), www.dhs.gov/ximgt/statistics/publications/LPR06.shtm.

5. 8 U.S.C. § 1101(a)(42).

6. 8 U.S.C. § 1159(a)&(b).

7. Kelly J. Jefferys and Daniel C. Martin, *Annual Flow Report, Refugees and Asylees: 2007* (Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2008), www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2007.pdf.

8. U.S. Department of Homeland Security, *Annual Flow Report, Temporary Admissions of Nonimmigrants to the United States: 2006* (Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2007), www.dhs.gov/xlibrary/assets/statistics/publications/NI_FR_2006_508_final.pdf.

individuals who entered the United States lawfully on a temporary basis but remained past their authorized period of stay. Members of this population are also commonly referred to as illegal or undocumented immigrants. While it is difficult to measure the unauthorized population, some analysts have estimated that North Carolina was home to 300,000 unauthorized immigrants in 2004.⁹

Other Categories of Immigration

In addition to the major categories discussed above, other immigration categories allow a non-citizen to remain in the United States temporarily, such as parole and deferred action status. Of these less common categories, the primary one that public officials in North Carolina may encounter is Temporary Protected Status (TPS).

TPS provides temporary protection to noncitizens from designated countries. The U.S. Department of Homeland Security may designate a country for TPS if nationals of that country who are currently in the United States are unable to safely return to their home country because of ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions.¹⁰ A country's designation for TPS is for a limited period but may be renewed by the federal government. TPS beneficiaries may remain and work in the United States until the designation period expires. Countries currently designated for TPS are Burundi, El Salvador, Honduras, Nicaragua, Somalia, and Sudan. For the most current listing of countries, check the website of U.S. Citizenship and Immigration Services (USCIS) at www.uscis.gov.

Naturalization

Naturalization is the process by which eligible lawful permanent residents (LPRs) become U.S. citizens. To naturalize, a person must be at least eighteen years of age, have resided in the United States as an LPR for five years (only three years if the person has been married to a U.S. citizen for at least three years), and be of good moral character.¹¹ The person also must demonstrate a basic knowledge of the English language and of U.S. history and government. In addition to these requirements, the individual must take an oath of allegiance to the United States, pledging to support and defend the Constitution and the laws of the United States. When individuals become naturalized citizens, they enjoy essentially the same rights and privileges as native-born U.S. citizens.

There are special expedited naturalization provisions for noncitizens who have served in the armed forces during a designated period of armed conflict. Eligible LPRs under eighteen years of age automatically derive citizenship when a parent is naturalized.¹²

9. Jeffrey S. Passel, *Estimates of the Size and Characteristics of the Undocumented Population* (Washington, D.C.: Pew Hispanic Center, 2005).

10. 8 U.S.C. § 1254a.

11. 8 U.S.C. § 1427.

12. The child must be in the legal and physical custody of the naturalizing parent. 8 U.S.C. § 1431.

Removal of Noncitizens

Removal is the deportation of a noncitizen from the United States. No matter how long a noncitizen has resided in the United States, he or she can be removed if he or she is ineligible for admission to the United States, has violated the terms of his or her particular immigration status, or has violated certain laws after having been admitted to the United States.¹³ A naturalized citizen cannot be removed (unless the naturalization was obtained through some type of misrepresentation).

Grounds for Removal

Specifically, noncitizens can be removed because of certain criminal convictions.¹⁴ Other common grounds for removal include entering the United States without inspection and authorization or through the use of fraudulent documents, aiding the unlawful entry of another noncitizen, engaging in marriage fraud to gain admission to the United States, participating in an activity that threatens U.S. national security, voting unlawfully, and falsely claiming U.S. citizenship.¹⁵

Removal of Persons in Jail

U.S. Immigration and Customs Enforcement (ICE) is responsible for the detention and removal of noncitizens who are in violation of U.S. immigration laws. One of the agency's priorities is removing noncitizens in jails and prisons. State and local law enforcement agencies are authorized to assist in the removal of noncitizens if they have entered into a specific agreement with ICE under Section 287(g) of the Immigration and Nationality Act.¹⁶ In North Carolina, the city of Durham and the counties of Alamance, Cabarrus, Cumberland, Gaston, Henderson, Mecklenburg, and Wake have entered into such agreements. Deputized officers in these jurisdictions now check the immigration status of every foreign-born person arrested and start the removal process of noncitizens who are not authorized to be present in the United States. ICE and cooperating law enforcement agents generally identify such individuals for removal through questioning and the use of various federal databases. An immigration hold, also known as a detainer, is generally placed on a noncitizen deemed to be in the U.S. without authorization. Once the person is no longer incarcerated in the criminal case, he or she is transferred to ICE custody for the initiation of removal proceedings.

Removal Proceedings

Once removal proceedings have begun, ICE has broad discretion to detain the noncitizen. Some noncitizens are eligible for immigration bond, but many noncitizens with criminal convictions are not eligible for release on bond and are therefore detained pending the completion of removal proceedings.

13. 8 U.S.C. §§ 1182, 1227.

14. A criminal conviction can also result in adverse immigration consequences other than removal. A conviction can disqualify a person from legalizing his or her status, from becoming a U.S. citizen, from obtaining a grant of asylum, and from raising various defenses against removal. For more information about the immigration consequences of a criminal conviction in North Carolina, see Sejal Zota and John Rubin, *Immigration Consequences of a Criminal Conviction in North Carolina* (Chapel Hill, N.C.: UNC School of Government, 2008), shopping.netsuite.com/s.nl/c.433425/it.A/id.1229/.f?sc=7&category=4101.

15. See 8 U.S.C. §§ 1182, 1227.

16. 8 U.S.C. § 1357(g).

There are various procedures involved in removing noncitizens. Many noncitizens have a hearing in immigration court, which is an adversarial proceeding before a federal administrative immigration judge. The judge determines whether the noncitizen can be removed on the asserted grounds and, if so, whether the individual is eligible for and should be granted permission to remain in the United States (this is called “relief from removal”). An individual placed into removal proceedings has a right to an attorney but at his or her own expense. An individual also has a right to appeal.

Previously, there was no immigration court in North Carolina. Removal proceedings for noncitizens in North Carolina generally occurred in Atlanta, Georgia. A new immigration court has been established in Charlotte, and it began hearing cases on November 4, 2008. Removal proceedings for some noncitizens serving prison sentences take place at Central Prison in Raleigh.

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