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OVERVIEW OF IMMIGRATION LAW

- I. Terms of Art
 - a. Legal meaning vs. common meaning
 - b. Examples: immigrant; visa; child

- II. Four broad bases of legal immigration
 - a. Family-based
 - b. Employment-based
 - c. Humanitarian
 - d. Other

- III. Statuses may be:
 - a. Temporary (nonimmigrant)
 - b. Permanent (immigrant)
 - c. Quasi-permanent (interim statuses, such as K, V, asylees, refugee)

- IV. Temporary (nonimmigrant) status
 - a. Most require intent to remain temporarily
 - b. Alphabet soup of nonimmigrant visa classifications
 - i. Most are employment-related, but some are family or law enforcement related
 - ii. The most commonly-seen nonimmigrant statuses are:

1. B-1 (visitor for business) and WB (visa waiver for business)
2. B-2 (visitor for pleasure) and WT (visa waiver for pleasure/tourism)
3. H-1B (specialty occupation) (subject to quota)
4. H-2B (temporary worker) (subject to quota)
5. E-1/E-2 (treaty trader/investor)
6. L-1 (intracompany transferee)
7. K-1/K-3/Vs (spouses or children of USCs or LPRs)
8. S,T,U (law enforcement)
9. F-1, J-1 (student, exchange visitors)

V. Permanent (immigrant) status

a. Family-based

i. Immediate relatives

1. spouses, minor unmarried children of USCs; parents of USCs over age 21
2. not subject to quota

ii. Preferences

1. Subject to overall quota of 226,000/year
2. No more than 7% can go to any one nationality
3. Unused numbers from one category trickle down to the next
4. Makes a big difference whether one is married or unmarried

5. Higher preference is not always an advantage—see Filipino 2A vs. Filipino 1 (though CSPA lets you opt out of the effects)

6. Categories are:

1: unmarried adult (21 & over) offspring of USCs. 23,400/year

2A: spouses and unmarried children under 21 of LPRs. 87,934/yr

2B: unmarried offspring (21 & over) of LPRs. 26,266/yr

3: married offspring (21 & over) of USCs. 23,400/yr

4: siblings of USCs over age 21. 65,000/yr

b. Employment-based

i. Labor certification for 3d (skilled workers, semi-skilled, and professionals with bachelors degrees) and some 2d preferences (advanced degree professionals and exceptional ability aliens)

ii. First preference for intracompany transferee managers/executives; outstanding researchers & professors; aliens of extraordinary ability

iii. National interest waivers of labor certification requirement

iv. Special immigrants, such as religious workers

v. Investors – Eb-5s

vi. Overall quota of 140,000 for all categories

1. Quota includes spouses and children

2. 40,040 to each preference, plus 9,940 to each of special immigrants and investors

3. No more than 5,000 within the 3d preference can go to semi-skilled workers and their families
 4. No more than 7% can go to any one nationality
 5. Propensity of categories to retrogress during course of year
- c. How preference/priority system works
- i. Place in line established by date first filing was made
 - ii. DOS counts and lets limited number through each month
 - iii. Visa bulletin shows cutoff dates

VI. Humanitarian-based

- a. Asylum (if within the U.S.) and refugee (if outside U.S.)
- i. Based on well-founded fear of persecution based on membership in political, religious or social group
 - ii. Quota for refugees
 - iii. After 1 year, can apply to adjust status to LPR
- b. Temporary Protected Status (TPS)
- i. Allows persons from designated countries to remain in U.S. and obtain work authorization and travel permission
 - ii. Based on natural disasters or civil upheaval in home country
 - iii. Renewed every 12-18 months, or not renewed
- c. Parole
- i. Allowed to come into the U.S. for specific reason, such as medical care

- ii. Legal fiction that person has not been admitted to U.S.
 - d. Special programs for special groups, such as battered spouses, Indochinese adjustment, trafficking victims, NACARA, HRIFA
- VII. Other bases of legal immigration
 - a. DV Lottery
 - i. Allows up to 55,000/yr to enter based on a lottery
 - ii. Countries whose nationals are allowed to enter lottery based on amount of immigration to U.S.—no high immigration countries
 - iii. Must complete process within same fiscal year or lose out
 - iv. Minimal education/training requirements
 - b. Occasional other programs (LIFE legalization, 9/11 victims' families, etc.)
- VIII. Obtaining the visa and status
 - a. If outside the U.S., must obtain nonimmigrant or immigrant visa from U.S. consulate
 - b. Exceptions for visa waiver visitors and Canadians
 - c. If inside the U.S. in a valid nonimmigrant status and have maintained status, may be able to change status to another nonimmigrant status or adjust status to permanent residence.
- IX. Three broad categories of illegal immigration
 - a. Entry without inspection (EWI)

- b. Overstay
- c. Material misrepresentation

X. Immigration Courts

- a. EOIR: Executive Office for Immigration Review, interprets and administers federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings.
- b. BIA: Board of Immigration Appeals, highest administrative body for interpreting and applying immigration laws, it decides appeals by conducting a "paper review" of cases.

XI. Detention and Removal

- a. DRO: Office of Detention and Removal, the primary enforcement arm within ICE for the identification, apprehension and removal of illegal aliens from the United States.
- b. Detention: The aliens (non-citizens) who are apprehended and not released from custody are placed in detention facilities.
 - 1. 8 ICE operated detention centers and 7 contract centers



BODY OF LAWS GOVERNING IMMIGRATION

1. U.S. Constitution

"Section 8. The Congress shall have power to ... establish a uniform rule of naturalization...."

2. Immigration & Nationality Act (8 U.S.C.)

U.S.C.= United States Code

3. Other immigration-related statutes

4. Regulations (C.F.R.= Code of Federal Regulations)

- a. 6 C.F.R. general DHS regulations
- b. 8 C.F.R. : DHS & EOIR immigration regulations
- c. 20 C.F.R. Parts 621, 655, 656, and 658: Labor Dept. regulations
- d. 22 C.F.R., various Parts: State Department regulations
- d. 28 C.F.R. Part O, Subpart U: EOIR organization
- e. 28 C.F.R. Part 44: DOJ Office of Special Counsel regulations
- f. 28 C.F.R. Part 68: OCAHO regulations
- g. 28 C.F.R. Part 1100: Trafficking in persons regulations
- h. 42 C.F.R. Part 34: Medical examination of aliens

5. Operating Instructions

- a. State Dept. Foreign Affairs Manual (FAM)

- b. DHS Inspectors Field Manual (IFM)
- c. DHS Adjudicators Field Manual (AFM)
- d. INS Operations Instructions (OIs) (not clear if it is still in effect)

6. **Guidance Memos**

- a. INS/USCIS field memos
- b. State Dept. cables
- c. CBP musters
- d. Labor Dept. Training and Employment Guidance Letters (TEGLs), formerly known as General Administration Letters (GALs)
- e. Labor Dept. FAQs (frequently asked questions)
- f. Individual advisory letters
- g. Standard Operating Procedures (SOPs)

7. **Federal Court Decisions**

- a. U.S. District Court
- b. U.S. Circuit Court
- c. U.S. Supreme Court

8. **Administrative Decisions**

- a. Immigration Judge decisions
- b. BIA (Board of Immigration Appeals) decisions
 - i. individual
 - ii. en banc
 - iii. summary affirmances

- c. OCAHO decisions (Office of Chief Administrative Hearing Officer, DOJ)
- d. USCIS AAO decisions (Administrative Appeals Office)
 - i. precedent decisions
 - ii. adopted decisions
 - iii. non-precedent decisions
- e. BALCA decisions (Board of Alien Labor Certification Appeals, DOL)
- f. ALJ (Administrative Law Judges), DOL
- g. ARB (Administrative Review Board, DOL)



Common ABBREVIATIONS

A/S	Adjustment of Status
AAO	Administrative Appeals Office [f/k/a Administrative Appeals Unit] (USCIS)
ABC	<i>American Baptist Churches v. Thornburgh</i>
AC	Associate Commissioner (Legacy INS)
AC21	American Competitiveness in the 21st Century Act
ACC	Administrative Control Court (EOIR)
ACE	Accelerated Citizen Examination
ACWIA	American Competitiveness and Workforce Improvement Act
ADD	Assistant District Director. Also, ADDE (Examinations); ADDI (Investigations); ADDM (Management)
ADIT	Alien Documentation, Identification and Telecommunications System
AEDPA	Anti-Terrorism and Effective Death Penalty Act of 1996
AFACS	A-Files Accountability and Control System
AFM	Adjudicator's Field Manual
AG	Attorney General of the United States
AMIS	Asset Management Information System
AO	Asylum Office(r)
AOS	(1) Adjustment of Status (as used by USCIS); (2) Affidavit of Support (as used by the Department of State)
APA	Administrative Procedure Act
ARC	Alien Registration Card (also called Permanent Resident Card or "Green Card")
ASC	Application Support Center
AWO	Affirmance Without Opinion
BALCA	Board of Alien Labor Certification Appeals (DOL)
BAR	Board of Appellate Review (DOS, now defunct)
BCBP	U.S. Customs and Border Protection [now, more commonly, CBP]
BCC	Border Crossing Card
BCIS	U.S. Citizenship and Immigration Services [now, more commonly, USCIS]
BEC	Backlog Elimination Center, Labor Dept. [f/k/a Backlog Reduction Center]
BIA	Board of Immigration Appeals (DOJ/EOIR)

BICE	U.S. Immigration and Customs Enforcement [now, more commonly, ICE]
BIT	Bilateral Investment Treaty
BOP	Bureau of Prisons (DOJ)
BP	Border Patrol
BRC	Backlog Reduction Center [now, Backlog Elimination Center] (DOL)
C/S or COS	Change of Status
CAT Treatment	U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	U.S. Customs and Border Protection (DHS)
CGFNS	Commission on Graduates of Foreign Nursing Schools
CIJ	Chief Immigration Judge (EOIR)
CIS	(1) U.S. Citizenship and Immigration Services [more commonly, USCIS]; (2) "Center for Immigration Studies," a restrictionist group
CJA	Criminal Justice Act
CLAIMS	Computer Linked Application Information Management System (USCIS)
CLASS	Consular Lookout and Support System (DOS)
CLN	Certificate of Loss of Nationality
CMT	Crime of Moral Turpitude [also, CIMT]
CO	Certifying Officer (DOL)
COV	Crime of Violence
CPT	Curricular Practical Training
CR	Conditional Resident
CSA	Controlled Substances Act, 21 U.S.C. §844(a)
CSC	California Service Center (USCIS)
CSPA 1992	Child Status Protection Act of 2002; also Chinese Student Protection Act of 1992
CSS	<i>Catholic Social Services v. Thornburgh</i>
D/S	Duration of Status
DD	District Director (DHS & legacy INS)
DED	Deferred Enforced Departure
DHS	Department of Homeland Security
DO	(1) District Office; (2) Deportation Officer
DOD	Department of Defense
DOE	Date of Entry
DOJ	Department of Justice

DOL	Department of Labor
DOS	Department of State
DOT	Dictionary of Occupational Titles
DSO	Designated School Official
DV	Diversity Visa Lottery Program
E/S or EOS	Extension of Status
EA	Employment Authorization
EAC	Eastern Adjudication Center [now, Vermont Service Center] (USCIS)
EAD	Employment Authorization Document
EAJA	Equal Access to Justice Act
EEV	Electronic Employment Verification (E-Verify)
ENFORCE	Enforcement Case Tracking System
EOIR	Executive Office for Immigration Review (DOJ)
ER	Expedited Removal
ETA	Employment & Training Administration (DOL)
EVD	Extended Voluntary Departure
EWI	Entry without Inspection
FAM	Foreign Affairs Manual (DOS)
FARES	Fees and Applications Receipt and Entry System
FARRA	Foreign Affairs Reform and Restructuring Act
FCCPT	Foreign Credentialing Commission on Physical Therapy
FCI	Federal Correctional Institution
FCN	Treaty of Friendship, Commerce, and Navigation
FDC	Federal Detention Center
FDI	Federal Detention Facility
FFOA	Federal First Offender Act
FGM	Female Genital Mutilation
FMG	Foreign Medical Graduate
FOIA	Freedom of Information Act
FSN	Foreign Service National (DOS)
FSO	Foreign Service Officer (DOS)
FTO	Foreign Terrorist Organization
GAL	General Administration Letter (DOL)
GEMS	General Counsel Management System
GPO	Government Printing Office
H.R.	House Report
HRIFA	Haitian Refugee Immigration Fairness Act

HSA	Homeland Security Act of 2002
IBIS	Interagency Border Inspection System
ICE	U.S. Immigration and Customs Enforcement (DHS)
ICMS	Investigations Case Management System
IDENT	Automated Fingerprint Identification System
IFM	Inspector's Field Manual
IG	Inspector General
IIO	Immigration Information Officer (USCIS)
IIRIRA	Illegal Immigration Reform & Immigrant Responsibility Act of 1996 (also
IIRAIRA)	
IJ	Immigration Judge (EOIR)
IMFA	Immigration Marriage Fraud Amendments Act of 1986
IMMACT90	Immigration Act of 1990
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
INSPASS	INS Passenger Accelerated Service System
INTCA	Immigration and Nationality Technical Corrections Act of 1994
IO	Immigration Officer
IR	Immediate Relative
IRCA	Immigration Reform and Control Act of 1986
ISD	Immigrant Services Division [now SCOPS] (USCIS)
IV	Immigrant Visa
JRAD	Judicial Recommendation Against Deportation
KCC	Kentucky Consular Center (DOS)
LAU	Legalization Appeals Unit
LAW	Lawfully Authorized or Admitted Worker
LC	Labor Certification
LCA	Labor Condition Application
LIFE	Legal Immigration and Family Equity Act of 2000
LIN	Northern Service Center [now, USCIS Nebraska Service Center] (USCIS)
LPR	Lawful Permanent Resident
MRD	Machine Readable Document
MS&D	Maintenance of Status and Departure bond
MSC	Missouri Service Center [now, National Benefits Center]
MTINA	Miscellaneous & Technical Immigration & Nationality Act Amendments of
1991	
NACARA	Nicaraguan Adjustment and Central American Relief Act

NACS	Naturalization Automated Casework System
NAFTA	North American Free Trade Agreement
NAILS	National Automated Immigration Lookout System
Natz	Naturalization
NBC	National Benefits Center (USCIS)
NBCOT	National Board for Certification of Occupational Therapists
NBCOTA	Noncitizen Benefit Clarification and Other Technical Amendments Act of
1998	
NCIC	National Crime Information Center
NIF	Notice of Intent to Fine
NIV	Nonimmigrant Visa
NIW	National Interest Waiver
NOF	Notice of Findings (DOL)
NRC	National Record Center (USCIS)
NSC	Nebraska Service Center (USCIS)
NTA	Notice to Appear
NVC	National Visa Center (DOS)
O*NET	Occupational Information Network (DOL)
O/S	Out of Status, or Overstay
OARS	Outlying Area Reporting Station
OCAHO	Office of Chief Administration Hearing Officer (EOIR)
OCIJ	Office of the Chief Immigration Judge (EOIR)
ODP	Orderly Departure Program
OES	Occupational Employment Statistics (DOL)
OI	Operations Instructions (legacy INS)
OIC	Officer-in-Charge
OIL	Office of Immigration Litigation (DOJ)
OMB	Office of Management and Budget
OOH	<i>Occupational Outlook Handbook</i> (DOL)
OPPM	Operating Policies and Procedures Memorandum (EOIR)
OPT	Optional Practical Training
OSC	Order to Show Cause
PERM	Program Electronic Review Management System (DOL)
PIMS	Petition Information Management System (DOS)
POE	Port of Entry
PRC	Permanent Resident Card (also called an Alien Registration Card or Green
Card)	

PT	Practical Training
PTI	Pretrial Intervention Program
QDE	Qualified Designated Entity
RAW	Replenishment Agricultural Worker
RC	Regional Commissioner (Legacy INS)
RFE	Request for Evidence
RIR	Reduction in Recruitment (DOL)
RN	Registered Nurse
RO	Responsible Officer (J-1 Exchange Visitor Program)
RSC	Regional Service Center (Legacy INS)
RTD	Refugee Travel Document
RVIS	Remote Video Inspection System
S.R.	Senate Report
SA	Special Agent
SAO	Security Advisory Opinion (DOS)
SAO	Supervisory Adjudication Officer (USCIS)
SAW	Special Agricultural Worker
SC	Service Center (USCIS)
SCOPS	Service Center Operations (USCIS)
SDAO	Supervisory District Adjudications Officer (USCIS)
SENTRI	Secure Electronic Network for Travelers Rapid Inspection
SEVIS	Student & Exchange Visitor Information System
SEVP	Student & Exchange Visitor Program
SK	Specialized Knowledge (for L Visa)
SRC	Southern Regional Center [now, Texas Service Center] (USCIS)
STEM	Scientific, Technical, Engineering, Mathematics
SVP	Specific Vocational Preparation
SWA	State Workforce Agency (DOL)
TA	Trial Attorney (ICE)
TAG	Technical Assistance Guide No. 656—Labor Certifications (DOL)
TAL	Technology Alert List (DOS)
TCN	Third Country National
TEGL	Training and Employment Guidance Letter (DOL)
TN	Trade NAFTA
TPCR	Transition Period Custody Rules
TPS	Temporary Protected Status
TSA	Transportation Security Administration (DHS)

TSC	(1) Texas Service Center (USCIS), or (2) Terrorist Screening Center
TWOV	Transit Without Visa
U.S.C.C.A.N.	U.S. Code Cong. & Admin. News
UNHCR	United Nations High Commission for Refugees
UPL	Unauthorized Practice of Law
USC or U.S.C.	(1) U.S. Citizen or (2) U.S. Code
USCIS	U.S. Citizenship and Immigration Services (DHS)
USSG	U.S. Sentencing Guidelines
US-VISIT	U.S. Visitor and Immigrant Status Indicator Technology Program (DHS)
VAWA	Violence Against Women Act
VD	Voluntary Departure
VGTOF	Violent Gang or Terrorist Organization File
VO	Visa Office (DOS)
VSC	Vermont Service Center (USCIS)
VWP	Visa Waiver Program [formerly, Visa Waiver Pilot Program (VWPP)]
WAC	Western Adjudication Center [now, California Service Center] (USCIS)



Nonimmigrant and Immigrant Categories

Nonimmigrant Categories

<u>Type</u>	<u>Description</u>
A	Diplomat
B-1	Visitor for business
B-2	Visitor for pleasure
C	Transiting through the U.S. (e.g., changing planes at a U.S. airport)
D	Crewman (e.g., airline pilot or flight attendant; ship crew)
E-1	Treaty trader
E-2	Treaty investor
E-3	Australian specialty occupation
F	Student (academic or language)
G	International organization representative
H-1A	Defunct category. Previously available for registered nurses.
H-1B	Specialty occupation worker & fashion model of distinguished merit
H-1C	Registered nurse
H-2A	Agricultural worker
H-2B	Non-agricultural temporary worker

H-3	Trainee
I	Foreign media representative
J	Exchange visitor
K-1	Fiance of U.S. citizen
K-2	Spouse of U.S. citizen
L-1A	Intracompany transferee manager or executive
L-1B	Intracompany transferee specialized knowledge
M	Vocational student
N	Child of certain special immigrants
O-1	Alien of extraordinary ability in the sciences, arts, education, business or athletics
O-2	Support personnel for an O-1
P-1	Internationally recognized athlete or entertainment group
P-2	Artist or entertainer in reciprocal exchange program
P-3	Culturally unique entertainer or artist
Q-1	International cultural exchange for sharing of history, culture or traditions
Q-2	"Irish Peace Process" cultural exchange
R	Religious worker
S	Witness to a crime
T	Victim of severe trafficking in persons who is assisting law enforcement
TN	Treaty NAFTA: citizen of Canada or Mexico qualifying under NAFTA

- U Victim of abuse who is assisting law enforcement
- V Spouse or child of permanent resident who is the beneficiary of an immigrant petition filed in a specified time frame
- WB Visa waiver visitor for business
- WT Visa waiver visitor for pleasure

Immigrant Categories

<u>Type</u>	<u>Description</u>
Family Based:	
Immediate Relative	Spouse of U.S. citizen
	Parent of U.S. citizen over the age of 21
	Unmarried child under age 21 of U.S. citizen
	Widow(er) of U.S. citizen (if married for at least 2 years and petitions within 2 years of spouse's death)
FB-1	Unmarried adult (over 21) "sons and daughters" of U.S. citizen
FB-2A	Spouse or unmarried child under 21 of permanent resident
FB-2B	Unmarried adult (over 21) "sons and daughters" of permanent resident
FB-3	Married and/or adult (over 21) "sons and daughter" of U.S. citizen
FB-4	Brother or sister of U.S. citizen
Employment Based:	
EB-11	Extraordinary ability
EB-12	Outstanding researcher or professor
EB-13	Multinational manager or executive
EB-2	Member of the professions holding advanced degree Exceptional ability

(both categories can include National interest
waivers)

- EB-3 Skilled worker (in occupation requiring at least 2
years of preparation)
- Professional
- Other worker (in occupation requiring less than 2
years of Preparation)
- EB-4 Special immigrant (includes religious workers and a
number of other highly specific categories)
- EB-5 Entrepreneurial investors
- Other:**
- DV Visa lottery winners



Visa Bulletin

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VISA BULLETIN SEPTEMBER 2009

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during September. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by August 10th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date which has been announced in this bulletin.

2. The fiscal year 2009 limit for family-sponsored preference immigrants determined in accordance with Section 201 of the Immigration and Nationality Act (INA) is 226,000. The fiscal year 2009 limit for employment-based preference immigrants calculated under INA 201 is 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620 for FY-2009. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is earlier than the cut-off date listed below.)

	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
Family					
1st	15MAY03	15MAY03	15MAY03	01JAN91	22SEP93
2A	15APR05	15APR05	15APR05	22DEC02	15APR05
2B	01JUL01	01JUL01	01JUL01	15MAY92	01MAY98
3rd	15DEC00	15DEC00	15DEC00	01JUL91	22SEP91
4th	22FEB99	22FEB99	22FEB99	22SEP95	22OCT86

*NOTE: For September, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than 22DEC02. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 22DEC02 and earlier than 15APR05. (All 2A numbers provided for MEXICO are

exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
<u>Employment-based</u>					
1st	C	C	C	C	C
2nd	C	08JAN05	08JAN05	C	C
3rd	U	U	U	U	U
Other Worker	U	U	U	U	U
4th	U	U	U	U	U
Certain Religious Workers	U	U	U	U	U
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2009 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For September, immigrant numbers in the DV category are available to qualified DV-2009 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	CURRENT	Except: Egypt 22,900 Ethiopia 23,900
ASIA	CURRENT	
EUROPE	CURRENT	
NORTH AMERICA (BAHAMAS)	CURRENT	
OCEANIA	CURRENT	
SOUTH AMERICA, and the CARIBBEAN	CURRENT	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2009 program ends as of September 30, 2009. DV visas may not be issued to DV-2009 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2009 principals are only entitled to derivative DV status until September 30, 2009. DV visa availability through the very end of FY-2009 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN OCTOBER

For October, immigrant numbers in the DV category are available to qualified DV-2010 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	8,300	Except: Egypt 3,100 Ethiopia 3,900 Nigeria 5,500
ASIA	7,000	
EUROPE	9,100	
NORTH AMERICA (BAHAMAS)	2	
OCEANIA	375	
SOUTH AMERICA, and the CARIBBEAN	450	

D. EMPLOYMENT FOURTH, AND EMPLOYMENT FOURTH CERTAIN RELIGIOUS WORKER, VISA AVAILABILITY FOR SEPTEMBER

Heavy applicant demand for numbers in the Employment Fourth, and Employment Fourth Certain Religious Worker, categories has resulted in their becoming "Unavailable" for September. This "Unavailable" status will take effect immediately for August because the annual limit for those categories has been reached. Therefore, no further requests for numbers in those categories can be processed during FY-2009.

The Employment Fourth preference can be expected to return to a "Current" status for October, the first month of the new fiscal year. The Employment Fourth Certain Religious Workers category is currently scheduled to expire on September 30, 2009, and future availability will depend on legislative action.

G. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

<http://travel.state.gov>

From the home page, select the VISA section which contains the Visa Bulletin.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:

**Subscribe Visa-Bulletin First name/Last name
(example: Subscribe Visa-Bulletin Sally Doe)**

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address:

listserv@calist.state.gov

and in the message body type: Signoff Visa-Bulletin

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)

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July 28, 2004

Types of Immigration Court Proceedings And Removal Hearing Process

The Executive Office for Immigration Review (EOIR), an agency of the Department of Justice, oversees three components which adjudicate matters involving immigration law matters at both the trial and appellate level. Under the Office of the Chief Immigration Judge, more than 200 Immigration Judges located in 53 Immigration Courts nationwide conduct proceedings and decide individual cases. The agency includes the Board of Immigration Appeals (BIA), which hears appeals of Immigration Judge decisions, and the Office of the Chief Administrative Hearing Officer, which handles employment-related immigration matters.

This fact sheet summarizes the most common types of immigration court proceedings. These descriptions are not fully inclusive and do not encompass the many regulatory and court interpretations that may have bearing on the following information. Also, the descriptions that follow are subject to change since Congress may legislate new laws. Accordingly, the following summaries are intended only to assist the public's general understanding of the types of immigration court proceedings, and interested parties should therefore refer to controlling law and regulations for a precise and complete understanding of the topics presented.

Immigration Judges conduct removal proceedings, which account for approximately 80 percent of their caseload. Federal rules of evidence are inapplicable in Immigration Court; thus, an Immigration Judge has greater authority to receive most kinds of evidence in deciding a case. The types of proceedings an Immigration Judge may preside over are briefly discussed below.

Removal Hearings – Removal hearings are conducted to determine whether certain aliens are subject to removal from the country. Beginning April 1, 1997, the distinction between exclusion and deportation proceedings was eliminated, and aliens subject to removal from the United States were all placed in removal proceedings. Thus, the removal proceeding is now generally the sole procedure for determining whether an alien is inadmissible, deportable, or eligible for relief from removal.

The Department of Homeland Security (DHS), which absorbed the functions of the Immigration and Naturalization Service, is responsible for commencing a removal proceeding. If the DHS alleges a

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Types of Immigration Court Proceedings
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violation of immigration laws, it has the prosecutorial discretion to serve the alien with a charging document, known as a Notice to Appear, ordering the individual to appear before an Immigration Judge. The Notice to Appear is also filed with the Immigration Court having jurisdiction over the alien, and advises the alien of, among other things, the nature of the proceedings; the alleged acts that violated the law; the right to an attorney at no expense to the government; and the consequences of failing to appear at scheduled hearings.

Removal proceedings generally require an Immigration Judge to make two findings: (1) a determination of the alien's removability from the United States, and (2) thereafter deciding whether the alien is eligible for a form of relief from removal. For more information on the types of relief available to an alien, please see Forms of Relief from Removal Fact Sheet at www.usdoj.gov/eoir.

Bond Redetermination Hearings – An Immigration Judge conducts a bond redetermination hearing for aliens who are in DHS detention. The alien makes a request to the Immigration Judge to lower or eliminate the amount of the bond set by the DHS. These hearings are generally informal and are not a part of the removal proceedings. This decision can be appealed by either the alien or by DHS to the BIA.

Rescission Hearing – An Immigration Judge conducts a rescission hearing to determine whether a lawful permanent resident (LPR) should have his or her residency status rescinded because he or she was not entitled to it when it was granted.

Withholding-Only Hearing – An Immigration Judge conducts a withholding-only hearing to determine whether an alien who has been ordered removed is eligible for withholding of removal under the law or the Convention Against Torture (CAT) (see below).

Asylum-Only Hearing – An asylum-only hearing applies to an individual who is denied a removal hearing under the law. These individuals include crewmen, stowaways, Visa Waiver Pilot Program beneficiaries, and those ordered removed from the United States on security grounds. An asylum-only hearing will be used to determine whether certain aliens who are not entitled to a removal hearing but claim a well-founded fear of persecution in their home country are eligible for asylum. In normal circumstances, asylum claims are heard by Immigration Judges during the course of a removal hearing.

Credible Fear Review – If an alien seeks to enter the United States without documents, or with fraudulent documents, and expresses a fear of persecution or an intention to apply for asylum, an DHS asylum officer will conduct a credible fear interview. An alien will demonstrate a credible fear of persecution if he or she shows that he or she could establish an asylum claim, or a claim based on withholding of removal or under the CAT. If an asylum officer decides that an alien does not possess a credible fear of persecution, an Immigration Judge will review that determination. If the Immigration Judge finds that the alien has a credible fear of persecution, the alien may apply for asylum, withholding of removal, or withholding under the CAT.

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Reasonable Fear Review – If an alien who is ordered removed during an expedited removal hearing expresses a fear of returning to his or her country, he or she must be given a reasonable fear interview by an asylum officer. Similar to the credible fear assessment discussed above, the asylum officer will determine whether the alien has a reasonable fear of persecution, or torture, based on a reasonable possibility that he or she will be persecuted due to his or her race, religion, nationality, membership in a particular social group, or political opinion, or due to a reasonable possibility that he or she would be tortured in the country of removal. If the interviewing officer determines that the alien has a reasonable fear of persecution based on any of the grounds noted above, or that the alien would be tortured in the country of removal, he or she will refer the alien for a hearing before an Immigration Judge. This hearing is known as a withholding-only hearing, given that the Immigration Judge will adjudicate only the issue of withholding of removal.

Claimed Status Review – If an alien in expedited removal claims under oath to be a U.S. citizen, to have been lawfully admitted for permanent residence, to have been admitted as a refugee, or to have been granted asylum, he or she can obtain a review of that claim by an Immigration Judge when DHS determines that the alien has no such claim.

In Absentia Hearing – If an alien does not appear for a scheduled hearing, he or she may be ordered removed *in absentia* (being absent for a hearing). The Immigration Judge will order an alien removed *in absentia* if DHS can demonstrate that the alien is removable, and he or she was served with a written notice to appear for the hearing, including an appraisal of the consequences of being absent for a hearing. *In absentia* hearings are not considered a distinct type of immigration proceeding.

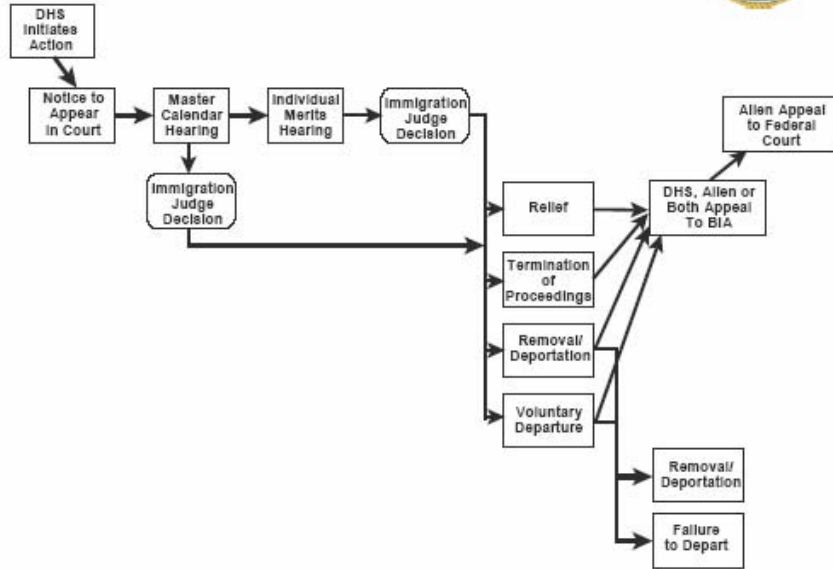
In FY 2003, Immigration Courts completed more than 295,000 matters. Of that total, more than 250,000 were removal hearings. A chart of the removal hearing process is attached.

Statistics on BIA and Immigration Court matters can be found on the EOIR Web site at <http://www.usdoj.gov/eoir/statspub.htm>.

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Attachment: *EOIR Removal Proceedings Process*

EOIR Removal Proceedings Process





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Forms of Relief From Removal

The Executive Office for Immigration Review (EOIR), an agency of the Department of Justice, oversees three components which adjudicate matters involving immigration law matters at both the trial and appellate level. Under the Office of the Chief Immigration Judge, more than 200 Immigration Judges located in 53 Immigration Courts nationwide conduct proceedings and decide individual cases. The agency includes the Board of Immigration Appeals (BIA), which hears appeals of Immigration Judge decisions, and the Office of the Chief Administrative Hearing Officer, which handles employment-related immigration matters.

This fact sheet summarizes the most frequently requested forms of relief that are available to an alien who has been found to be removable. These descriptions are not fully inclusive and do not encompass the many regulatory and court interpretations that determine actual applicability of relief in an individual case. Also, the descriptions that follow are subject to change since Congress may legislate new laws. Accordingly, the following summaries are intended only to assist the public's general understanding of the types of relief from removal, and interested parties should thus refer to controlling law and regulations for a precise and complete understanding of the topics presented.

Discretionary Relief

Once an alien in proceedings is found to be removable, he or she, if eligible, may request one or more types of discretionary relief. This section describes some types of discretionary relief that are available during a hearing; administrative relief and judicial review after a hearing is completed are discussed below. The alien has the burden of proving that he or she is eligible for relief under the law, and usually that he or she deserves such relief as an exercise of discretion.

Voluntary Departure – Voluntary departure is the most common form of relief from removal and may be granted by Immigration Judges, as well as the Department of Homeland Security (DHS), which absorbed the functions of the former Immigration and Naturalization Service. Voluntary departure avoids the stigma of formal removal by allowing an otherwise removable alien to depart the

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United States at his or her own personal expense and return to his or her home country, or another country if the individual can secure an entry there. Immigration Judges will provide aliens information on the availability of this form of relief when taking pleadings. It is important to note that aliens granted voluntary departure must depart within the time specified by the Immigration Judge. Although an Immigration Judge has the discretion to set a shorter deadline, aliens granted voluntary departure prior to the completion of removal proceedings must depart within 120 days, and those granted such relief at the conclusion of removal proceedings must depart within 60 days. In addition, in order to avoid being penalized for choosing to appeal a decision rather than depart, the BIA usually will extend an earlier grant of voluntary departure for 30 days. As with other forms of discretionary relief, certain individuals will be found ineligible for voluntary departure, and those granted voluntary departure who fail to depart are subject to fines and a 10-year period of ineligibility for other forms of relief.

Cancellation of Removal – This form of discretionary relief is available to qualifying lawful permanent residents and qualifying non-permanent residents. For lawful permanent residents, cancellation of removal may be granted if the individual:

- Has been a lawful permanent resident for at least 5 years;
- Has continuously resided in the United States for at least 7 years after having been lawfully admitted; and
- Has not been convicted of an “aggravated felony,” a term that is more broadly defined within immigration law than the application of the term “felony” in non-immigration settings.

Cancellation of removal for non-permanent residents may be granted if the alien:

- Has been continuously present for at least 10 years;
- Has been a person of good moral character during that time;
- Has not been convicted of an offense that would make him or her removable; and
- Demonstrates that removal would result in exceptional and extremely unusual hardship to his or her immediate family members (limited to the alien’s spouse, parent, or child) who are either U.S. citizens or lawful permanent residents.

It is important to note that different standards are used in determining eligibility for victims of domestic violence.

Asylum – Under section 208(a) of the Immigration and Nationality Act, the Attorney General may, in his discretion, grant asylum to an alien who qualifies as a “refugee.” Generally, this requires that the asylum applicant demonstrate an inability to return to his or her home country because of past persecution or a well-founded fear of future persecution based upon his or her race, religion, nationality, membership in a particular social group, or political opinion. However, an alien may be ineligible for asylum under certain circumstances, including having failed to file an asylum application within an alien’s first year of arrival in the United States, being convicted of an aggravated felony, or having been found to be a danger to national security. Similar forms of relief are Withholding of Removal and applications under the United Nations Convention Against Torture.

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Adjustment of Status – This form of discretionary relief is available to change an alien’s status from a non-immigrant to a lawful permanent resident. Aliens who have been previously admitted into the United States can apply to DHS for adjustment of status, while aliens in removal proceedings apply before an Immigration Judge. Several conditions must be met, including that the alien is admissible for permanent residence and an immigrant visa is immediately available at the time of application. Aliens who qualify for visas allowing an adjustment of status are often petitioned for by a spouse (or another family member) or an employer. Certain individuals, including criminals and aliens who fail to appear for proceedings or fail to depart after a grant of voluntary departure, and those who were ordered removed may be ineligible for adjustment of status.

Administrative and Judicial Relief

Motions to Reopen or Reconsider – An alien may move to reopen or to reconsider a previous decision by filing a timely motion with an Immigration Judge or the BIA. The central purpose of a motion to reopen is to introduce new and additional evidence that is material and that was unavailable at the original hearing. A motion to reconsider seeks a reexamination of the decision based on alleged errors of law and facts. Unless an exception applies, a party may file only one motion to reopen and one motion to reconsider. With a few exceptions, a motion to reopen proceedings must be filed within 90 days of the final removal order, while a motion to reconsider must be filed within 30 days of the date of the final order. The filing of such motions does not suspend the execution of the removal decision unless a stay is ordered by the Immigration Judge, the BIA, DHS, or the alien seeks to reopen an *in absentia* order (a decision made when the alien was absent at the proceeding).

Stay of Removal – A stay of removal prevents DHS from executing an order of removal, deportation, or exclusion. Depending on the situation, a stay of removal may be automatic or discretionary. An alien is entitled to an automatic stay of removal during the time allowed to file an appeal (unless a waiver of the right to appeal is filed), while an appeal is pending before the BIA, or while a case is before the BIA by way of certification. Except in cases involving *in absentia* orders, filing a motion to reopen or reconsider will not stay the execution of any decision made in a case. Similarly, filing a petition for review in Federal court also does not result in an automatic stay of a removal order. Thus, a removal order can proceed unless the alien applies for and is granted a stay of execution as a discretionary form of relief by the BIA, Immigration Judge, DHS, or a Federal court. Such a stay is temporary and is often coupled with a written motion to reopen or reconsider filed with the Immigration Court, the BIA, or an appeal to a Federal Circuit Court.

Administrative Appeal – The BIA is the highest administrative body with the authority to interpret Federal immigration laws. The BIA has jurisdiction to hear appeals from decisions of Immigration Judges and certain decisions of DHS. Either an alien or DHS may appeal a decision from the Immigration Judge. In deciding cases, the BIA can dismiss or sustain the appeal, remand the case to the deciding Immigration Judge, or, in rare cases, refer the case to the Attorney General for a decision. A precedent decision by the BIA is binding on DHS and Immigration Judges throughout the country

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unless the Attorney General modifies or overrules the decision. With respect to the filing deadline, the appeal of an Immigration Judge's decision must be received by 30 calendar days from the date it was issued by the court.

Judicial Review – The Immigration and Nationality Act confers Federal courts jurisdiction over certain decisions appealed from the BIA. However, subsequent laws have substantially restricted judicial review of removal orders. An alien has 30 days from the date of a final removal decision to file a judicial appeal, which is generally filed with the Court of Appeals. The procedures and applicability of judicial review in immigration cases are complex and governed by a number of court decisions and interpretations that, in many circumstances, are not clearly resolved. For an understanding of how judicial review might apply in a specific case, qualified legal counsel should be consulted.

- EOIR -



Key Definitions and Concepts

updated by Richard A. Boswell

[*Navigating the Fundamentals of Immigration Law 1* (2008-09 ed.)]

Adjustment of Status. The process of obtaining lawful permanent resident status in the United States without having to leave the United States to do so. Adjustment of status should be distinguished from “change of status,” which generally applies to nonimmigrants moving from one nonimmigrant status to another. The adjustment of status option is unavailable to many (but not all) persons who entered the United States without inspection, or who violated status while in the United States, or on whose behalf an application for labor certification or a preference petition was not filed on or before April 30, 2001. *See* [Immigration Nationality Act \(INA\) §245](#), 8 U.S. Code (USC) §1255.

Admission. The process of allowing someone to physically and legally be permitted to be in the United States. Admission is part of the inspection process. A person may be inspected and admitted or paroled into the United States or, instead of being admitted, placed in removal proceedings or removed through expedited removal. Once a person is admitted, a number of legal rights and protections attach.

Affidavit of Support. A declaration given by a U.S. citizen or lawful permanent resident who resides in the United States and who will provide financial support to an alien who is seeking to enter the United States or adjust status.

Aggravated Felony. Any one of a number of crimes specifically defined in [INA §101\(a\)\(43\)](#), 8 USC §1101(a)(43) that may make a person deportable. Aggravated felon status creates numerous substantive and procedural disabilities with respect to, *e.g.*, asylum, inadmissibility, removal, and judicial review, set forth in [INA §§208, 212, 237–42](#), 8 USC §§1158, 1182, 1227–1252. An aggravated felon is ineligible for most forms of immigration relief from removal, and following completion of his or her criminal sentence, will likely be placed in an expeditious process for removal.

Alien. Any person who is not a citizen or a national of the United States. Only “aliens” are subject to the immigration laws. Even a person who is a lawful permanent resident is

considered an “alien” until he or she becomes a U.S. citizen and, as such, is still subject to the immigration laws—including all of the grounds for removal.

Asylum. A discretionary benefit accorded to certain persons inside the United States who are able to demonstrate that they are unable or unwilling to return to their country on account of persecution or a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. [INA §208](#), 8 USC §1158. One year after the receipt of asylum status, the asylee may apply for lawful permanent residence. *See also* refugee, [INA §101\(a\)\(42\)](#), 8 USC §1101(a)(42).

The REAL ID Act, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005), altered the standards and evidentiary burdens governing asylum applications, applications for withholding of removal, and other discretionary grants of relief from removal. It requires asylum applicants to demonstrate that one of the enumerated grounds was or will be “at least one central reason” for their persecution, and allows immigration judges to require credible asylum and withholding applicants to obtain corroborating evidence “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.” **[[Page 2]]**

Border Crossing Card (BCC). An identity card issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident of Mexico or Canada, by a consular officer or an immigration officer for the purpose of crossing the border from Canada or Mexico. [INA §101\(a\)\(6\)](#), 8 USC §1101(a)(6). The new biometric BCC is a laminated, credit-card-style document with many security features and has a validity period of 10 years. Called a “laser visa,” the card is both a BCC and a B-1/B-2 visitor’s visa. Mexican visitors to the United States, whether traveling to the border region or beyond, receive a laser visa.

Cancellation of Removal. A discretionary remedy for a lawful permanent resident who has been a permanent resident for at least five years and has resided continuously in the United States for at least seven years after having been admitted in any status and has not been convicted of an aggravated felony. Cancellation of removal is also available to persons who are not permanent residents and who have been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of their application or the date of a Notice to Appear (NTA), if the person has been of good moral character during such period, has not been convicted of certain offenses, and who establishes that removal would result in exceptional and extremely unusual hardship to the applicant’s U.S. citizen or permanent resident spouse, parent, or child. [INA §240A](#), 8 USC §1229b. Applicants can be absent from the United States for up to 180 days during the 10 years and continue to maintain their “physical presence.”

Consular Processing. The process of applying for an immigrant visa at a U.S. consular post outside the United States for prospective immigrants who are not in the United States or who are ineligible to adjust status in the United States. *See* [22 Code of Federal Regulations \(CFR\) §§40 and 42](#).

Crime of Moral Turpitude (CMT). A particularly depraved offense that rises to the level of serving as a ground for inadmissibility or removal under [INA §212\(a\)\(2\)\(A\)\(i\)\(I\)](#), 8 USC §1182(a)(2)(A)(i)(I). Defined in the Department of State’s *Foreign Affairs Manual* (FAM), 9 FAM 40.21(a) N2.2 as the following: “Statutory definitions of crimes in the United States consist of various elements, which must be met before a conviction can be supported. Some of these elements have been determined in judicial or administrative decisions to involve moral turpitude. A conviction for a statutory offense will involve moral turpitude if one or more of the elements of that offense have been determined to involve moral turpitude. The most common elements involving moral turpitude are: (1) Fraud; (2) Larceny; and (3) Intent to harm persons or thing.”

Deferred Enforced Departure (DED). A policy first instituted in 1990 and last applied in 2001 of not enforcing the deportation of certain persons because of political instability, civil unrest or natural disaster for humanitarian reasons. DED is similar to temporary protected status, in that both allow certain people, otherwise subject to removal, from actually being removed. The primary difference between the two programs is that temporary protected status is a statutorily based program while DED was a policy instituted by the President.

Department of Homeland Security (DHS). The agency into which INS was folded effective March 1, 2003. The benefits functions of the former INS transferred to the U.S. Citizenship and Immigration Services (USCIS), while the enforcement functions transferred to Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).

Deportability, Grounds of. Acts that, when proven by the government, make a person subject to deportation. The specific grounds of deportability appear in the immigration statute at [INA §237\(a\)](#), 8 USC §1227(a).

Deportation. The removal, ejectment, or transfer of a person from a country because his or her presence is deemed inconsistent with the public welfare. Prior to 1996, the term “deportation” was used to describe the ejectment of a person who had managed to gain “entry” to the United States either legally or illegally. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009, replaced the term “deportation” with “removal.” Deportation is not considered to be a form of punishment. Grounds for deportation are set out at [INA §237](#), 8 USC §1227. Lawful permanent residents are subject to removal if any of the grounds of deportability apply to them.

Derivative Citizenship. Citizenship conveyed to children through the naturalization of parents or, under certain circumstances, to foreign-born children adopted by U.S. citizen parents, provided certain conditions are met. [INA §320](#), 8 USC §1431; [8 CFR §320](#).

Diversity Lottery. The generic name given to the immigrant visa lottery program established by the Immigration Act of 1990 (IMMACT90), Pub. L. **[[Page 3]]** No. 101-649, 104 Stat. 4978, that makes available up to 55,000 immigrant visas per federal fiscal

year to persons from low-admission states and low-admission regions. 8 USC §1153, [INA §203\(c\)](#). The Diversity Immigrant Visa Lottery (DV) program is administered by the Department of State, which establishes the rules for the lottery and tracks the available visa numbers.

Dual Intent. The notion that a person could have the intention of maintaining nonimmigrant and immigrant status simultaneously. The “doctrine” of dual intent provides an exception to the general rule that a person holding a nonimmigrant status cannot also be in the application for permanent residency of an immigrant visa. The dual intent doctrine has been statutorily recognized for certain temporary workers and intra-company transferee visa holders.

Dual Nationality. The simultaneous possession of two citizenships. It results from the fact that there is no uniform rule of international law relating to the acquisition of nationality. Dual nationality can occur by birth in one country to citizens of another country, by marriage to a foreign national, and by foreign naturalization. Though dual nationality is not favored under U.S. law, and U.S. naturalization law requires renunciation of allegiance to all other sovereigns, U.S. law does not require that the country to which a naturalization applicant is renouncing his or her allegiance act in any way to withdraw or revoke the citizenship of the applicant upon his or her successful naturalization in the United States. Certain countries do not accept dual citizenship and require relinquishment of former citizenship upon naturalization to U.S. citizenship.

Employment Authorization Document (EAD). A USCIS document, Form I-688B, evidencing the right of certain aliens to accept employment while in the United States. *See* Work Permit.

Extended Voluntary Departure (EVD). A program instituted decades ago allowing persons from certain designated countries to remain in the United States temporarily for humanitarian reasons. EVD has not been offered since the creation of temporary protected status in 1990.

Exchange Visitor. A foreign national coming temporarily to the United States as a participant in a program approved by the Secretary of State for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.

Exclusion. The procedure existing prior to IIRAIRA for the ejection of persons seeking admission to the United States. The term “exclusion” under current immigration law refers to the various bases under which a person could be found to be inadmissible to the United States. The grounds for exclusion (now inadmissibility) are set out at [INA §212](#), 8 USC §1182.

Expedited Removal. A procedure, established by IIRAIRA that authorizes ICE to quickly remove certain inadmissible aliens from the United States. The authority covers aliens who are inadmissible because they have no entry documents, or because they have

used counterfeit, altered, or otherwise fraudulent or improper documents. The authority covers aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled by an immigration officer at a port of entry. ICE has the authority to order the removal, and the alien is not referred to an immigration judge except under certain circumstances after an alien makes a claim to legal status in the United States or demonstrates a credible fear of persecution if returned to his or her home country. [INA §235](#), 8 USC §1225; [8 CFR §235.3\(b\)](#).

Green Card. An expression that refers to the document carried by a lawful permanent resident, which provides proof of his or her status. The document is officially referred to as an “I-551” (Alien Registration Receipt Card or Permanent Resident Card). The card is no longer green.

Immigrant. A lawful permanent resident of the United States. Defined, in the negative, as “every alien except an alien who is within one of the ... classes of nonimmigrant aliens” under the INA. [INA §101\(a\)\(15\)](#), 8 USC §1101(a)(15). This characterization of immigrants shifts the burden to the person seeking admission to establish his or her clear eligibility. Accordingly, all aliens are, with some exceptions, generally presumed to be immigrants until they establish that they are entitled to nonimmigrant status. [INA §214\(b\)](#), 8 USC §1184(b).

Immigrant Visa. Permission obtained from a U.S. consul (abroad) to seek admission to the United States. A visa is issued subsequent to establishing eligibility for admission on a permanent basis under the Immigration and Nationality Act, as amended. An immigrant visa permits an alien to be admitted to the United States for permanent residence. It has a six-month validity period and the intending immigrant must apply for admission during this time [\[\[Page 4\]\]](#) frame. *See also* Preference Categories, Labor Certification, and Visa.

Immigration Judge. Sometimes referred to in the U.S. Code/INA and Code of Federal Regulations as “Special Inquiry Officer,” the person responsible for presiding over removal hearings. [INA §§101\(b\)\(4\), 240](#), 8 USC §§1101(b)(4), 1229a. Immigration judges are employed by the Executive Office for Immigration Review (EOIR), a division of the Department of Justice.

Inadmissibility, Grounds of. Any one of numerous grounds listed in [INA §212\(a\)](#), 8 USC §1182(a), that make a person ineligible for lawful admission into the United States.

Immigration and Naturalization Service (INS). The former name of the branch of the government with primary responsibility over administering the immigration laws. *See also* “Legacy INS.”

Inspection. The process that all persons must go through when they arrive at the border. A person is questioned and asked to present proof of his or her right to enter the country. At the end of the inspection process, a person is either admitted, removed, or paroled into the country.

Labor Certification. Certification by the Department of Labor (DOL) that there exists an insufficient number of U.S. workers who are able, willing, qualified, and available at the place of proposed employment, and that employment of the alien for whom certification is sought will not adversely affect the wages and working conditions of U.S. workers similarly employed (the employer must therefore be offering the job at the “prevailing wage” in the particular market). [INA §212\(a\)\(5\)](#), 8 USC §1182(a)(5). A labor certification doesn’t entitle the alien to admission regardless of any quota. Most aliens still must have a visa petition filed on their behalf. In December 2004, DOL issued its long-awaited PERM regulations, which, effective March 28, 2005, established a new system for filing labor certifications. 69 Fed. Reg. 77325 (Dec. 27, 2004).

Labor Condition Application (LCA). An attestation by an employer seeking to hire an H-1B nonimmigrant to four conditions of employment: (1) that the employer will pay the H-1B nonimmigrant at least the higher of the actual wage paid by the employer to others in the same occupation with similar experience and qualifications or the prevailing wage for the occupation in the geographical area of the work site; (2) that the employment of the H-1B nonimmigrant will not adversely affect the working conditions of similarly employed workers; (3) that there is not a strike, lockout, or work stoppage in the occupation for which the H-1B nonimmigrant is being hired; and (4) that notice of the prospective hiring of the H-1B nonimmigrant has been provided. [INA §212\(n\)](#), 8 USC §1182(n).

Laser Visa. *See* Border Crossing Card.

Lawful Permanent Resident (LPR). A person accorded the benefit of being able to reside in the United States on a permanent basis. Such a person may engage in employment but may not vote in U.S. elections. LPR status is the status gained by a person who is admitted to the United States with an immigrant visa or has had his or her status adjusted to permanent resident after first having been admitted as a nonimmigrant. Lawful permanent residence also may be obtained after a person has been granted asylum or was admitted to the United States as a refugee. In addition, a person who has been in the United States for more than 10 years and is able to establish the requisite degree of hardship may be granted permanent residency following the “cancellation” of his or her removal proceeding. LPR status may be taken away for the commission of certain acts that can result in deportability or inadmissibility or lost through “abandonment.” Also called legal permanent resident or green card holder.

Legacy INS. A reference to the Immigration and Naturalization Service (*e.g.*, “a legacy INS memo”) that acknowledges its status as the predecessor to the Department of Homeland Security. *See* Immigration and Naturalization Service

Legalization. A program established by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359, that permitted the grant of temporary resident status to certain aliens, who were later entitled to apply for permanent residence. [INA §245A](#), 8 USC §1255a. Also referred to as “temporary resident status” and “amnesty.”

National Security Entry Exit Registration System (NSEERS). *See* Special Registration.

Naturalization. “[T]he conferring of nationality of a state upon a person after birth.” [INA §101\(a\)\(23\)](#), 8 USC §1101(a)(23).

Nonimmigrant. A person who can establish that he or she has a residence abroad that he or she has no intention of abandoning, who is coming to the United States for a temporary period, and who fits into specifically defined categories under INA [\[\[Page 5\]\] §101\(a\)\(15\)](#), 8 USC §1101(a)(15). Some of the nonimmigrant categories include students, tourists, treaty investors, and foreign government officials. *See* Immigrant.

Nonimmigrant Visa. A document signifying that a consular officer believes that the alien to whom the visa was issued is eligible to apply for admission in a particular nonimmigrant category. However, a visa does not guarantee admission; an immigration inspector can deny entry if he or she believes that a particular alien is not eligible to be admitted in the category for which the visa was issued. The period of validity of a particular visa establishes the time frame during which the alien may present him– or herself at a U.S. port of entry. Visas may be valid for as few as 30 days or up to 10 years; visas may be limited to a single entry or may be valid for multiple entries during the period of their validity. The period of validity of a visa is not the same as the authorized period of temporary stay in the United States. The authorized period of temporary stay, which is indicated on a small white card—Form I-94, Arrival-Departure Record—stapled into the passport, may be less than the period of validity of the visa, or may be much longer than the period during which the visa itself is valid (typically when single-entry visas are valid only for a limited period of time). It is important to understand that it is always the I-94, and not the visa in the passport, that determines a nonimmigrant alien’s status and authorized period of admission. An alien is not out of status if he or she was properly admitted pursuant to a valid visa and the visa has expired, provided the person is still within the authorized period of stay indicated on Form I-94.

Parole. Permission granted by DHS that allows a person to physically enter the United States yet still be considered to have not legally entered the country. Parole is a legal fiction. A person paroled into the United States is treated in a legal sense as if he or she were still at the border’s edge seeking permission to enter. *See* 8 USC §1182(d)(5), [INA §212\(d\)\(5\)](#). While parolees are not afforded any legal rights or benefits greater than other applicants for admission, they are provided with legal documents that permit their presence in the United States. Examples include parole for humanitarian or family unification purposes, and parole to proceed with the process of adjustment of status that would otherwise be considered to have been abandoned.

PERM (Program Electronic Review Management System). A new system, effective March 28, 2005, for filing labor certifications. PERM uses automated computer systems to scan attestation forms filed by employers regarding their compliance with all regulatory requirements. [20 CFR §§655](#) and [656](#).

Preference Categories. Immigrant visas are allocated on the basis of an annual quota. In order to qualify for admission, the intending immigrant must show that: (1) he or she is married to a lawful permanent resident or is the unmarried son or daughter of a lawful permanent resident; or (2) he or she is the son, daughter, or sibling of a U.S. citizen (irrespective of marital status); or (3) his or her employer has obtained a labor certification for eventual employment in the United States. Whether the person meets the quota restriction will depend on his or her relationship as described above with a U.S. citizen or lawful permanent resident, or whether the employment is of a skilled or unskilled nature.

Preinspection. Complete immigration inspection of airport passengers before departure from a foreign country. No further immigration inspection is required upon arrival in the United States other than submission of Form I-94 for nonimmigrant aliens. *See* [INA §235A](#), 8 USC §1225a.

Priority Date. The date on which a person submitted documentation establishing prima facie eligibility for an immigrant visa. For family-based immigrants, a person's priority date is the date on which he or she filed the family-based preference petition. [8 CFR §204.1\(c\)](#). If the alien relative has a priority date on or before the date listed in the Visa Bulletin, then he or she is currently eligible for an immigrant visa. For employment-based cases, it is the date of the filing of the labor certification application or, if no labor certification is required, the date the immigrant visa petition is filed. [8 CFR §204.5\(d\)](#).

Quotas. There are annual numerical restrictions on many forms of immigration status. Certain nonimmigrant visa categories are restricted to a set number of persons who may be admitted in any given fiscal year. Similarly, the number of persons who may be granted permanent residency is also restricted each fiscal year and allocated between family and employment immigrant categories under a quota system. In allocating visas under the quota system, strict attention is paid to the immigrant category, as well as to making sure that persons are issued visas in the order in which they applied and that no more than 25,620 (7 percent of the total) are issued to nationals of any one country in a given fiscal year. *See* Preference Categories. **[[Page 6]]**

Reduction in Recruitment (RIR). An alternative method of labor certification under the system in place before March 28, 2005. Since that time, RIR and conventional labor certification were completely revamped by the DOL's PERM rules.

Refugee. A person outside of the United States who is unable or unwilling to return to his or her country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. [INA §101\(a\)\(42\)](#), 8 USC §1101(a)(42). Refugee admission to the United States is based on annual allocations as established between the executive and legislative branches. A refugee, once admitted, may apply in one year for permanent resident status. *See also* Asylum.

Removal. The procedure used to eject persons who are seeking admission, as well as those who have been admitted to the United States. Prior to enactment of IIRAIRA in 1996, the terms “deportation” and “exclusion” were used.

Service Centers. Five offices established to handle the filing, data entry, and adjudication of certain applications for immigration services and benefits. The applications are mailed to USCIS service centers; service centers are not staffed to receive walk-in applications or questions.

SEVIS (Student and Exchange Visitor Information System). An Internet-based software application to track and monitor nonimmigrant students and exchange visitors and their dependents.

Special Registration. A program, officially known as the National Security Entry Exit Registration System (NSEERS) initiated in 2002 following the 9/11 attacks. The program required the registration of persons from certain specified countries who were in the United States. A person who failed to “register” under the program would later, if discovered be treated as having failed to maintain status. The program first designated Iran, Iraq, Libya, Sudan and Syria and was later expanded to Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates and Yemen and then finally applied to those from Pakistan and Saudi Arabia. While special registration has been criticized it has survived legal attack.

Temporary Protected Status (TPS). A status providing residence and employment authorization to nationals of foreign states for a period of not less than six months, nor more than 18 months, when such states have been appropriately designated by the government because of extraordinary and temporary political or physical conditions in such state(s). TPS was established by Congress in 1990. See [INA §244](#), 8 USC §1254a; [8 CFR §§244.2](#), [1244.2](#).

Unlawful Presence. Presence in the United States after the expiration of the authorized period of stay, or presence in the United States without having been admitted or paroled. The period of authorized stay, which is usually noted on Forms I-94 or I-94W, must end on a date certain. Thus, Canadians admitted without being issued an I-94, and F, J, and M students and exchange visitors admitted for “duration of status” who overstay, do not accrue unlawful presence until and unless an immigration judge or DHS official finds such person to be out-of-status. Violation of status (*e.g.*, the F-1 student who works without authorization) does not constitute unlawful presence. Depending on the period of unlawful presence, a person may be barred from re-admission for a period of three– or ten-years. See [INA §212\(a\)\(9\)\(B\)](#), 8 USC §1182(a)(9)(B).

US-VISIT (U.S. Visitor and Immigrant Status Indicator Technology Program). A program designed by the DHS to collect and share information on foreign nationals traveling to the United States. This system allows the U.S. government to record the entry and exit of non–U.S. citizens and verify the identity of travelers coming in and out of the United States.

Visa. An official endorsement, obtained from a U.S. consul (abroad), certifying that the bearer has been examined and is permitted to proceed for purposes of seeking admission to the United States at a designated port of entry. There are both immigrant and nonimmigrant visas. A visa does not grant the bearer the right to enter the United States; it merely allows one to seek admission at a port of entry.

Visa Waiver Program (VWP). A program under which nationals of countries with which the United States has certain agreements can enter the United States for up to 90 days as visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate. No extension or change of status is permitted. It was a pilot program (Visa Waiver Pilot Program or VWPP) until October 30, 2000, when it became a permanent program.

Voluntary Departure. A procedure granting permission for a removable alien to leave the United States voluntarily. There is a limit of 120 days for pre-hearing voluntary departure or 60 days for post- **[[Page 7]]** hearing voluntary departure. [INA §240B](#), 8 USC §1229c.

Waivers. Certain grounds of inadmissibility, as well as the two-year home-country physical presence requirement for an exchange visitor, can be waived under certain circumstances. These waivers remove an impediment to obtaining a visa or status. Also, USCIS can grant a waiver of labor certification and job offer to professionals with advanced degrees and aliens of exceptional ability if in the national interest.

Withholding of Removal. A remedy available to persons able to establish that their lives or freedom would be threatened if deported to their home country on account of race, religion, nationality, membership in a particular social group, or political opinion. [INA §241\(b\)\(3\)](#), 8 USC §1231(b)(3). Withholding of removal does not confer on persons a right to stay in the United States, as they may be removed to any country willing to accept them. Also known as “restriction on removal.”

Work Permit. There is no single document in U.S. immigration law that is a “work permit.” Citizens, nationals, and lawful permanent residents of the United States are automatically authorized to be employed in the United States. Certain nonimmigrant visa categories include, as an incident of their status, employment authorization in the United States, either with or without limitation to a particular employer or after application and approval from USCIS for authorization to be employed. Virtually all employment authorization for nonimmigrants or undocumented aliens (where authorized) is limited as to time, and most such authorization is limited as to nature of employer and employment. Other aliens physically present in the United States may have the right to apply for an Employment Authorization Document.