
UNDERSTANDING UNITED STATES IMMIGRATION AND NATIONALITY LAWS: WHAT EVERY LAWYER SHOULD KNOW ABOUT IMMIGRATION

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This seminar is based on a presentation
and written materials compiled by:

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- Board certified, Immigration & Nationality Law
- Texas Board of Legal Specialization
- Practicing immigration and nationality law in Austin since 1978
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WHAT WE WILL COVER IN THIS PRESENTATION

- Four categories of people involved
- Employer-sponsored immigration
- Family-sponsored immigration
- Immigrant (permanent) v. nonimmigrant (temporary)
- Developments affecting immigration

FOUR CATEGORIES OF PEOPLE



1. UNDOCUMENTED OR OUT OF STATUS:

Over half have overstayed their visas.



2. CITIZENS

- Native born
- Derivatives
- Naturalized



3. NONIMMIGRANTS

An alphabet soup of categories.



4. IMMIGRANTS

Lawful permanent residents (green card status).



DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)



APPLICANTS FOR FAMILY AND EMPLOYER-SPONSORED IMMIGRATION

- Visa waiting lists are inordinately backlogged
- Priority dates do not advance at a steady rate



EMPLOYMENT-BASED CATEGORIES

- **1st Preference:**
 - Extraordinary Ability
 - Outstanding Professors and Researchers
 - Managers and Executives
- **2nd Preference:**
 - Advanced Degree Professionals
 - Exceptional Ability
- **3rd Preference:**
 - Professionals (Bachelor's degree)
 - Skilled Workers (two years training)
 - Other Workers (unskilled)
- **4th Preference:**
 - Special Immigrants (religious workers)
- **5th Preference:**
 - Immigrant Investors

LABOR CERTIFICATION

The Immigration and Nationality Act requires that most foreign nationals who seek to enter the US to perform skilled or unskilled labor are not admissible unless:

- the US Secretary of Labor certifies that there are not sufficient US workers available for the position, and
- employment of the foreign national will not adversely affect the wages and working conditions of similarly employed US workers.

The employer determines the minimum job requirements for education and experience, but may not tailor these job requirements to the foreign worker's background or include unduly restrictive job requirements or duties in the job description. Certifying officer uses O*NET to evaluate.

NONIMMIGRANT STATUS

- Nonimmigrants may remain in the US for only a temporary period of time and are restricted to the activity consistent with their visas.
- Nonimmigrants are expected to depart the US by the expiration date on their I-94 entry/departure cards unless they have filed for an extension. There can be serious legal consequences for anyone who overstays his/her authorized period of admission.

Commonly used employment or business-related visas:

F-1 Student; J-1 Exchange Visitor; B-1 Business Visitor; Visa Waiver; TN Status; H-1B Specialty Worker; L-1 Transferees; O-1 Extraordinary Ability; E-1 or E-2 Treaty Investor

"OUT OF STATUS"

Person can be out of status but not unlawfully present!



"UNLAWFUL PRESENCE"

- 180 days = 3 year bar
- 365 days = 10 year bar

Bars are only triggered by departure from the US.

PROVISIONAL WAIVERS

- “Extreme hardship” to qualifying relative
- US citizen children are NOT qualifying relatives
- Consular processing still required



PAROLE IN PLACE

- Immigration benefits for relatives of active duty and former members of our US military forces
- Does not cure the so-called “Unlawful Presence” bar



REPEAL OF DOMA

- Immigration benefits for same-sex couples with lawfully recognized marriage



LOVE AND MARRIAGE

- Never marry for purpose of obtaining immigration status for a foreign national...
- Immigration can be a secondary motive for a bona fide marriage



"HEY BUDDY, CAN YOU SPARE A JOB?"

- Employers should not offer positions to foreign nationals as an accommodation for a friend or relative
- CIS and DOL search for fraud



YOU'RE HERE TO WORK?

- Business visitors should not seek to enter the US to “work”



FAMILY-BASED IMMIGRATION CATEGORIES

- **Immediate Relatives**
 - Spouse, parent, child of citizens
- **1st Preference:**
 - Unmarried sons and daughters
- **2nd Preference:**
 - Spouses and children (under 21) of permanent residents, or unmarried sons and daughters (over age 21) of permanent residents
- **3rd Preference:**
 - Married sons and daughters of US citizens (over age 21)
- **4th Preference:**
 - Brothers and sisters of US citizens (over age 21)

BIG CHANGES AFOOT

- Foreign nationals and immigration counsel are facing more difficulties emanating from the Trump administration. Prosecutorial discretion has been almost eliminated.
- Immigration and Customs Enforcement (ICE) has repeatedly stated that any foreign national who is out of status or undocumented is at risk of removal.
- Both nonimmigrant and immigrant visa applicants at US consulates and embassies abroad are facing more “vetting” and should expect their cases to take longer to adjudicate.

BIG PROBLEMS, TOO

- Travel bans
- Constantly changing laws
- Visas being revoked for DWI arrests (not yet tried)
- Trump advocates 50% reduction in lawful immigration
- Trump continues to push "The Wall"
- Implementation of "points" system favoring educated English speakers
- Security a priority over timely adjudication
- Employers stymied—Congress in gridlock

HELPFUL WEBSITES

These government websites provide useful information about immigration laws:

www.uscis.gov	(U.S. Citizenship and Immigration Services)
www.dol.gov	(U.S. Department of Labor)
www.travel.state.gov	(U.S. Department of State)

Plus, potentially your home state's labor department: e.g.,
www.twc.tx.us (Texas Workforce Commission)

CONCLUSION

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made our complex immigration system even more restrictive for aspiring immigrants. In 2003, the legacy Immigration and Naturalization Service (INS) was absorbed by the Dept. of Homeland Security. This reorganization, as well as concentration on security issues, resulted in even longer delays for families seeking to reunite and for employers seeking to obtain temporary as well as permanent employment for needed foreign national personnel. Despite these concerns, there have been a few changes that benefit employers and their foreign national employees as well as US residents and citizens sponsoring their relatives.

COMPREHENSIVE IMMIGRATION REFORM (CIR)



