NATIONAL IMMIGRATION LAW CENTER

Guide to Immigrant Eligibility for Federal Programs

Fourth Edition

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NATIONAL IMMIGRATION LAW CENTER

Founded in 1979, NILC is a national support center whose mission is to protect and promote the rights and opportunities of low-income immigrants and their family members. NILC staff specialize in immigration law, and the employment and public benefits rights of immigrants. A diverse constituency of legal aid and *pro bono* lawyers, community groups, service providers, government agency staff, and policymakers throughout the U.S. rely on NILC for technical advice, policy analysis, training, and publications. NILC maintains offices in Los Angeles and Oakland, CA, and Washington, D.C.

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Preface

Two landmark federal laws enacted in 1996 continue to have profound consequences for immigrants and their families, as well as the communities in which they live. The August 1996 welfare law ended the federal government's 60-year commitment to assist the nation's most needy and gave states new authority to follow suit. To achieve savings in the federal budget, the welfare law disproportionately targeted immigrants: 44 percent of the federal savings achieved by the law resulted from new restrictions on immigrants' eligibility for not only cash welfare payments, but a wide variety of social programs, ranging from health care, food stamps, and disability programs to adoption assistance, foster care, and child care. By creating a new dividing line between citizens and immigrants, the federal government ended another tradition that had spanned decades: lawful immigrants are no longer eligible on the same basis as citizens for the social programs funded by their tax dollars.

The immigration law enacted in September 1996 exacerbated the impact of the benefits restrictions. Immigrants face greater obstacles in reuniting with family members and in obtaining employment. Even when immigrants have retained eligibility for particular programs, many have declined to apply because of the fear that doing so will adversely affect their immigration status or that of a family member. Taken together, these restrictions have had a broad impact, since one in five children in the U.S. now live in immigrant-headed families. The Food Stamp Program alone experienced a 42 percent drop in the caseload of U.S. citizen children living with immigrant parents during the period from 1994 to 1999. This represents 800,000 children. Immigrants comprise a growing share of the low-wage workforce, and many state and local governments are finding that the federal restrictions limit their ability to effectively deliver health care, food assistance, and other support to help these families improve their lives. The public debate over the welfare law reauthorization scheduled for 2002 may provide an important forum for addressing these issues.

These larger social forces affect daily decisions: the complexity of the immigration and public benefits laws makes it difficult for those working with immigrants to give effective aid and advice. This *Guide* is designed to help answer some of the most common questions faced by advocates and social service agency staff who come into daily contact with immigrant clients. Such clients are likely to ask, "Can a person with my immigration status get help with health care, food, housing, or other family needs? If I am eligible, will receiving help affect my immigration status?" The changes wrought by the welfare and immigration laws have greatly complicated the eligibility rules, making the legal and procedural terrain faced by immigrants even more difficult to negotiate.

Bridging the gap between immigration and benefits law has long been an important goal of the National Immigration Law Center (NILC), and this *Guide* represents a distillation of the expertise NILC staff have garnered not only from research but also from the hundreds of inquiries we have been privileged to answer from advocates, service providers, and government workers seeking to better serve their immigrant clients. In preparing this fourth edition of the *Guide*, we have attempted to retain the user-friendly organizational structure of previous editions while reworking sections and adding significant new material to account for the complex changes resulting from the 1996 laws and subsequent federal and state restorations. Nineteen chapters were extensively revised and 12 new chapters added, including 4 chapters in an entirely new section on programs for children. Three tables were revised and 11 new tables added, including 6 tables with detailed information on immigrant eligibility for state replacement programs enacted to assist immigrants rendered ineligible for the major federal programs. The glossary is entirely new, and provides readers with definitions for more than 175 immigration and public benefits terms.

This edition of the *Guide* was written by NILC staff attorneys and policy analysts. Susan Drake provided overall supervision and direction for every phase of the project. Tanya Broder and Linton Joaquin served as legal editors for the *Guide* and they, along with Josh Bernstein, Braden Cancilla, Terri Villa-McDowell, and Dinah Wiley, revised or wrote all of the *Guide* chapters. In particular, Dinah Wiley wrote the new introductory chapter summarizing the 1996 changes, Linton Joaquin prepared the chapters on immigration status and sample documents, and Braden Cancilla and Terri Villa-McDowell researched and drafted chapters in areas of the law unaddressed by previous editions of the *Guide*. Tanya Broder oversaw development of the new tables on state-funded programs. These tables incorporate extensive research conducted by Tyler Moran, who also made significant research contributions to the chapters on Temporary Assistance for Needy Families and Medicaid.

Ki Kim edited the *Guide* and coordinated overall production. Becca Wilson, Susan Drake, and Gabrielle Lessard assisted with editing and Mike Muñoz with production. Special thanks are owed to graphic designer J.R. Peters, who restyled the *Guide* and gracefully designed (and patiently redesigned) the many new tables and lists contained in this edition.

This edition benefited immeasurably from the contributions of staff from 32 other organizations and government agencies, who graciously lent us their time and expertise in drafting sections or reviewing specific chapters. (The organization listed after a person's name is the agency with which the person was affiliated at the time of review.)

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Any errors contained in the text are the sole responsibility of the National Immigration Law Center. Readers who spot inaccuracies or who have suggestions for future editions of the *Guide* are encouraged to convey them to us.

Finally, we are indebted to the following foundations, whose steadfast support of NILC's work made the production of this edition of the *Guide* possible: the Ford Foundation, the Emma Lazarus Fund of the Open Society Institute, the David and Lucile Packard Foundation, the W.W. Kellogg Foundation, The *California* Endowment, the Rosenberg Foundation, and the Joyce Mertz-Gilmore Foundation.

How to Use This Guide

This *Guide* combines the basics of both immigration and public benefits law into a concise, easy-to-use format. It is designed to allow the reader to: (1) understand a person's immigration status as it relates to eligibility for public benefits; (2) determine the person's eligibility for federal programs and, where available, state-funded replacement programs; and (3) evaluate whether using benefits will jeopardize the person's immigration status or create a debt for his or her sponsor.

Overview

The opening chapter in this section provides a framework for understanding the changes that have occurred in immigrants' eligibility for federal programs since 1996. The chapter summarizes how the 1996 welfare and immigration laws restricted noncitizens' eligibility for federal programs, explains the important exceptions to those restrictions, describes the partial restorations of eligibility that have been enacted to date, and reviews current proposals for further restorations. The chapter also describes how concerns about public charge, affidavits of support, and other access barriers have deterred immigrants from seeking services even when they are eligible. Table 1 provides an overview of immigrant eligibility for the major federal programs by immigration category. Table 2 lists the states that have enacted a replacement program for at least some of the immigrants who have lost eligibility for the major federal cash, food, medical, and disability assistance programs.

Although many readers are likely to use this *Guide* simply to determine whether an immigrant is eligible for a particular program, we recommend that all readers review the material in the Overview section. The introductory chapter and the federal and state overview tables provide important context that will help readers better comprehend the rest of the book and more effectively assist clients.

Part 1 – Immigration Status

Determining an immigrant's status is the first step in assessing his or her eligibility for a particular federal program. The first two chapters in Part 1 help the reader identify a noncitizen's status for both immigration and public benefits purposes, and the third chapter provides extensive information about the most common immigration documents that a person with a particular status may possess. Although the technical immigration law term for a person who is not a citizen is "alien," this *Guide* uses the more common terms "immigrant" or "noncitizen."

The chapter on "Immigration Categories for Public Benefits Purposes" describes immigration categories that were created for public benefits eligibility purposes—categories that may be broader or narrower than the corresponding terms in immigration law. The chapter explains which immigrants are considered "qualified" and "not qualified" under the 1996 laws. To add to the confusion, the 1996 laws restricted access to some benefits even for "qualified" immigrants, and allowed some "not qualified" immigrants to retain eligibility for benefits. This chapter provides details on some of the "qualified" immigrants who are exempt from the law's restrictions, as well as the "not qualified" immigrants who remain eligible for certain public benefits. The chapter discusses abused immigrants (who may be considered "qualified" if they have petitioned for lawful permanent resident (LPR) status), Cuban/Haitian entrants, LPRs with 40 quarters of work history, and veterans, as well as other special categories, including: American Indians born abroad, victims of trafficking, persons who are "lawfully present," and immigrants who may be considered "permanently residing in the United States under color of law" or "PRUCOL."

The third chapter describes different ways of acquiring citizenship and presents lists and pictures of typical documents that demonstrate U.S. citizenship. The chapter then presents lists and pictures of the most typical documents that the Immigration and Naturalization Service (INS) issues to various categories of immigrants. The chapter concludes by explaining how lost documents can be replaced. Readers can use this section to help determine an individual's citizenship or immigration status.

PART 2 – BENEFITS ELIGIBILITY

The chapters in Part 2 describe the primary features of 22 federal programs, as well as public K-12 education, and set out the immigrant eligibility criteria for each program. The chapters cover programs for children as well as programs providing cash, food assistance, health coverage, employment, housing and shelter, education, legal services, and disaster assistance. In addition, tables in this section give immigrant eligibility information for each state that has enacted replacement programs for immigrants who lost eligibility for Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Medicaid, the State Children's Health Insurance Program (SCHIP), and food stamps.

PART 3 – ACCESS BARRIERS

Even if an immigrant is eligible for a particular federal or state program, access barriers may prevent the person from enrolling. The four chapters in this section explain when receiving government benefits may affect an immigrant's status ("Public Charge"), who can become a sponsor and the obligations that a sponsor undertakes ("Affidavits of Support"), when a sponsor's income affects an immigrant's financial eligibility for government programs ("Immigrant Sponsor Deeming"), and what happens to information that immigrants give to the government ("Confidentiality, Verification, and Reporting"). Tables in this section give the federal poverty income guidelines for 2002 and summarize the sponsor deeming rules.

GLOSSARY

The glossary defines more than 175 immigration and public benefits terms used in the *Guide*, with extensive cross-references for acronyms and "short-hand" phrases that may confuse advocates new to either of the immigration or public benefit fields.

Although every attempt has been made to ensure that the *Guide* is accurate, as with any general reference work, readers should always check relevant laws, regulations, and agency policies for the most current information.

Overview

Overview of Immigrant Eligibility for Federal Programs

The 1996 welfare and immigration laws[1] restricted access to many public benefit programs for low-income immigrants in the United States. Formerly viewed as integral to U.S. society, lawful permanent residents (LPRs) had been eligible for most safety net programs on the same basis as citizens. The 1996 welfare law created a divided society that offers a safety net and support systems for citizens but discriminates against immigrants. The 1996 immigration law made the path to legal residency longer and more difficult, increasing the probability that immigrants will be vulnerable to exploitation and unable to secure critical services or assert their rights in the workplace.

In addition to drastically restricting eligibility, the 1996 policy changes promoted a cultural and political atmosphere in which scapegoating and inequitable treatment of immigrants are acceptable. Even where immigrant eligibility for services has been preserved or restored, the 1996 policies have had a "chilling effect" on immigrant enrollment. Many immigrants are declining to enroll themselves or their children in support programs that provide critically needed health care, job training, and cash assistance.

A third important impact of the 1996 laws was the transfer to state and local government of powers traditionally held by the federal government. Among the powers newly granted to states is the authority to make certain decisions about immigrant eligibility for public benefits. The welfare law allows states to offer or deny eligibility to most immigrants for three federal programs as well as many state benefit programs. However, at least one court has found that a state's denial of benefits to lawfully present immigrants is unconstitutional, even if "authorized" by the 1996 welfare law.[2]

Contrary to initial expectations, states have been relatively generous in continuing protections for low-income immigrants. Nearly every state chose to provide benefits to immigrants wherever federal funding was available. Over half of the states are spending their own money to cover at least some of the immigrants who are ineligible for federally funded services. But most state replacement programs do not provide the same level of benefits as federal programs, and funding for many of these programs is temporary and subject to changes in the fiscal or political climate. The drain of federal resources makes it increasingly difficult for states to serve significant portions of their low-wage population, at a time when immigrants are settling in communities throughout the U.S.[3]

Immigrants pay taxes that support the programs to which they have been denied access. In response to the loss of parity brought on by the 1996 laws, immigrants have organized to an unprecedented degree, voted in record numbers after becoming naturalized citizens, and forged coalitions to advocate for restoring equal treatment. Immigrants and their allies have succeeded in reversing some of the restrictions, reflecting a growing recognition by Congress that the 1996 laws went too far, and that the voice of newcomers is an increasingly powerful one.

As the following sections will describe, immigrants are still subject to a broad range of eligibility restrictions as well as significant access barriers. This overview will outline eligibility distinctions for "qualified" versus "not qualified" immigrants, and pre-1996 entrants versus newer entrants. It will describe exceptions to the restrictions for refugees, veterans, and others. Finally, it will review access barriers and point to areas where the law is still unclear, either because the government has yet to issue regulations or court cases have yet to develop.

Immigrants in Our Communities

In recent years, the immigrant population has been growing rapidly. There was an estimated 57 percent increase in the foreign-born population from 1990 to 2000.[4] In 2000 immigrants in the U.S. numbered about 31 million.[5] Although their numbers are at a peak, the percentage of foreign-born residents in the population is still lower than it was at the turn of the century. Today, immigrants make up about 11 percent of the U.S. population[6] compared to almost 15 percent around 1890.[7]

Statistics about the proportion of immigrants in the U.S. population mask the reality that about 85 percent of immigrant families are "mixed," with at least one citizen member.[8] One in every five children in the U.S. is either an immigrant or has an immigrant parent.[9] These little-known facts underscore another reality: policies that discriminate against immigrants for the benefit of citizens often harm entire families that include both citizens and immigrants.

Such policies also hurt whole communities, since immigrants play a vital and integral role in them. Immigrants and citizens live, work, play, and attend school together. Safety net services that exclude some people inevitably become less workable for all, since programs such as health care and housing assistance benefit the entire community—not just the individual.

Most newcomers do well economically in the U.S., but many others work long hours at low-wage jobs with no health insurance or other benefits and struggle to obtain the language and employment skills they need to achieve prosperity. In 1996 more than one in four immigrants, or 27.7 percent, lived in poverty, compared to 13.4 percent of citizens.[10]

Like their citizen counterparts, low-income immigrant families are marginalized economically, and need the support of basic social services to help them move into the mainstream. As long as newcomers lack access to health care, nutrition, housing, training, and other support systems, the security of their families and communities is at great risk.

Over time, however, immigrants contribute significantly to the economy after they arrive in the U.S. Like the earnings of their citizen counterparts, the earnings of immigrant workers who have access to support systems rise as they gain skills. After 10–20 years in the U.S., immigrants become net contributors to the economy.[11] Indeed, more than 60 percent own their own homes within 20 years.[12] According to the National Academy of Sciences, immigrants contribute as much as $10 billion each year to the domestic economy.[13]

Immigrant Eligibility Restrictions

Summary of Changes Enacted by 1996 Laws

The 1996 "welfare reform" law was enacted in part to reduce the federal deficit, and 44 percent of the projected federal savings ($25 billion over five years) stemmed from the immigrant eligibility restrictions.[14] But many in Congress and the general public did not realize that lawfully present immigrants[15] (and their citizen family members) would bear the brunt of these budget cuts. Undocumented immigrants were already ineligible for most federal assistance programs.

"Qualified" and "not qualified" immigrants. In designing the new restrictions on immigrant eligibility for public benefits, the 1996 welfare law created two categories of immigrants for benefits eligibility purposes: "qualified" and "not qualified." However, contrary to what these names might suggest, the law excluded most people in *both* groups from eligibility for many benefits, with a few exceptions.

The "qualified" immigrant category is made up of:

- lawful permanent residents—LPRs (or holders of "green cards")
- refugees

- asylees
- persons granted withholding of deportation or removal
- conditional entrants
- persons granted parole by the Immigration and Naturalization Service (INS) for a period of at least one year
- Cuban/Haitian entrants
- certain abused immigrants, their children, and/or their parents

"Not qualified" immigrants include all other immigrants—undocumented immigrants as well as many immigrants who do not have green cards but nonetheless are lawfully present in the U.S.[16]

Federal and state public benefits. The law prohibits "not qualified" immigrants from enrolling in most "federal public benefit" programs;[17] they may be eligible for state and local public benefits only if a state passes a law, after August 22, 1996, providing eligibility.[18] However, there are important exceptions to these bars.

SSI and food stamps. Congress imposed its most severe restrictions in two major programs: Supplemental Security Income (SSI, the cash assistance program for seniors and persons with disabilities) and food stamps. These programs initially were barred to most "qualified" immigrants, as well as "not qualified" immigrants. Although advocacy efforts in the two years following the welfare law's passage achieved a partial restoration of these benefits, significant gaps in eligibility remained. In 2002, Congress restored food stamps to a significant portion of the immigrants who lost eligibility in 1996. These measures, scheduled to take effect by October 1, 2003, fell short of a full restoration.

New entrants. Congress further restricted eligibility for immigrant families by arbitrarily distinguishing between those who entered the U.S. before or "on or after" the date the law was enacted, August 22, 1996. In general, only those who entered the U.S. before that date could retain eligibility for certain federal programs.

Sponsors. Under the 1996 welfare and immigration laws, family members and some employers eligible to file a petition to help a person immigrate must become financial "sponsors" of the immigrant by signing a contract with the government (an "affidavit of support"). Under this affidavit, the sponsor promises to support the immigrant and repay certain benefits that the immigrant may use. Congress imposed additional eligibility restrictions on immigrants whose sponsors sign an enforceable affidavit of support.

"Federal Public Benefits" Denied to "Not Qualified" Immigrants

"Federal public benefits" denied to "not qualified" immigrants include a variety of safety net services paid for by federal funds.[19] But the welfare law's definition does not specify which programs are covered by the term, leaving that clarification to each federal benefit-granting agency.

In 1998 the Department of Health and Human Services (HHS), the most important federal benefit-granting agency, published a notice clarifying which of its programs fall under the definition.[20] The list of 31 HHS programs includes Medicaid, the State Children's Health Insurance Program (SCHIP),[21] Medicare, Temporary Assistance for Needy Families (TANF, which provides cash assistance and services to families with dependent children), Foster Care, Adoption Assistance, the Child Care and Development Fund, and the Low-Income Home Energy Assistance Program.

The HHS notice further clarifies, however, that not every benefit or service provided within these programs is a federal public benefit. For example, in some cases not all of a program's benefits or services are provided to an individual or household; they may extend, instead, to a community of people—as in the weatherization of an entire apartment building.[22]

NEW VERIFICATION RULES

When a federal agency designates a program as a federal public benefit for which "not qualified" immigrants are ineligible, then the law requires the state or local program provider agency to verify all applicants' immigration and citizenship status. But many federal agencies have still not specified which of their programs provide federal public benefits. Until they do so, state and local agencies are under no obligation to verify immigration status. Also, under an important exception contained in the 1996 immigration law, nonprofit charitable organizations are not required to "determine, verify, or otherwise require proof of eligibility of any applicant for such benefits."[23]

SSI AND FOOD STAMPS: A PARTIAL RESTORATION

The 1996 welfare law's most severe restrictions in eligibility for immigrants were imposed in the SSI and food stamp programs.[24] But in 1997 and 1998, eligibility for these two programs was restored to some groups of "qualified" immigrants. Congress was barraged with stories of the despair and suffering of seniors and immigrants with disabilities who faced losing their SSI and related Medicaid coverage. As a result, lawmakers restored SSI eligibility to both "qualified" and "not qualified" immigrants who had been receiving these benefits when the welfare law passed, to "qualified" immigrants with disabilities who were lawfully in the U.S. on that date, and to others.[25] The program, however, continues to exclude "not qualified" immigrants who were not already receiving the benefits, as well as most "qualified" immigrants who entered the country after the welfare law passed, and seniors without disabilities who were in the U.S. before that date.

In 1998 Congress restored federal food stamp eligibility to three main categories of immigrants who were already in the U.S. on August 22, 1996[26]: immigrants with disabilities, children under 18 years of age, and immigrants who were at least 65 years old on August 22, 1996. The government also restored food stamp eligibility to Hmong and Laotian tribe members and to other groups. This restoration benefited only one-fifth of those immigrants who had been cut off by the 1996 law, or about 175,000 of the total 838,000 who lost their federal food stamps.[27]

In 2002 Congress passed the Farm Security and Rural Investment Act ("Farm Bill") which, among other things, reauthorized the Food Stamp Program. The legislation restored food stamp eligibility to three additional groups of "qualified" immigrants: 1) persons who have lived in the U.S. as "qualified" immigrants for at least five years (effective April 1, 2003); 2) children regardless of their date of entry (effective October 1, 2003); and 3) persons receiving disability-related assistance regardless of their date of entry (effective October 1, 2002).[28] The Bush administration estimated that the provision affecting the first group will restore eligibility to approximately 363,000 immigrants currently barred from receiving assistance.[29]

NEW ENTRANTS AND THE FIVE-YEAR BAR

In addition to the restrictions in SSI and food stamps, the 1996 law barred most "qualified" immigrants who entered the U.S. on or after August 22, 1996, from "federal means-tested public benefits" during the five years after they secure "qualified" immigrant status.[30] Federal agencies later clarified that "federal means-tested public benefits" are SSI, food stamps, Medicaid (except for emergency care), TANF, and SCHIP."[31] States can receive federal funding for TANF, Medicaid, and SCHIP to serve immigrants who have completed this "five-year bar" period. But, as noted above, the food stamp and SSI programs impose additional restrictions. Most new entrants, for example, cannot receive these benefits until they become citizens or secure credit for 40 quarters (about ten years) of work history. Once the new food stamp rules are effective, however, this program will become the least restrictive of the federal means-tested public benefit programs, and will include additional exemptions from the five-year bar.

DEEMING

Another eligibility restriction made harsher by the welfare law is the "deeming" requirement that may be imposed by benefit-granting agencies. When an agency is determining an LPR's financial eligibility for a program, in some cases the law requires the agency to "deem" the income of the immigrant's sponsor or the sponsor's spouse as available to the immigrant. The sponsor's income is added to the immigrant's, which virtually always disqualifies the immigrant as over-income for the program.

Previously, fewer programs imposed deeming and when they did, it was applied for only three years. By contrast, the 1996 laws impose deeming for approximately 10 years after entry,[32] or longer for immigrants applying for the federal means-tested public benefits of food stamps, SSI, and SCHIP.[33]

Still unsettled is whether states have an option not to deem in the Medicaid and TANF programs for immigrants whose sponsors signed the Affidavit of Support Form I-864 (in use beginning December 19, 1997). Domestic violence survivors and immigrants who would go hungry and homeless without assistance can get benefits without deeming for at least 12 months.[34]

Exceptions to the Restrictions

Despite the sweeping nature of the new restrictions, the law created important exceptions for certain categories of immigrants and types of services.

SERVICES STILL OPEN TO ALL

The most important exception to restrictions on eligibility for health care is that regardless of immigration status, all immigrants remain eligible for Medicaid-reimbursed emergency health care.[35] In addition, all noncitizens remain eligible for public health programs providing immunizations and/or treatment of communicable disease symptoms (whether or not those symptoms are caused by such a disease). School breakfast and lunch programs also remain open to all children.[36]

Also universally available are in-kind services necessary to protect life or safety, as long as no individual income qualification is required. In January 2001, the attorney general published a final order specifying the types of benefits that meet these criteria. The attorney general's list includes child and adult protective services; programs addressing weather emergencies and homelessness; shelters, soup kitchens, and meals-on-wheels; medical, public health, and mental health services necessary to protect life or safety; disability or substance abuse services necessary to protect life or safety; and programs to protect the life or safety of workers, children and youths, or community residents.[37]

SPECIAL POPULATIONS THAT ARE EXEMPT FROM MOST RESTRICTIONS

In addition to the services described above, Congress exempted from most restrictions three special populations of immigrants:

- newly arrived refugees and others fleeing persecution
- lawful permanent residents (LPRs) with a long work history in the U.S. or whose spouse or parent has such a work history ("40 quarters exception")
- immigrants who have served or whose family members have served in the U.S. military ("veterans' exception")

Refugees and others fleeing persecution. During their first seven years in the U.S., refugees, asylees, and others who have fled persecution are exempt from many of the benefits restrictions imposed on other immigrants. They remain eligible for this exemption even if they adjust their status to lawful permanent residence.

Immigrants with long U.S. work histories. A second category of exemptions is for LPRs with a long work history in the U.S. (40 qualifying quarters or approximately 10 years), or LPRs whose spouse or parent(s)' work history, when added to theirs, totals 40 quarters.

Veterans. A third category of immigrants to whom Congress granted an exemption from restrictions comprises immigrant veterans, active duty military personnel, and their immediate families, in recognition of their sacrifice and special service to the U.S.

In 2000, Congress established a new category of noncitizens, "victims of trafficking" who, while not listed among the "qualified" immigrants, are eligible for most federal public benefits.

Victims of trafficking. Federal agencies are required to provide benefits and services to individuals who have been subjected to a "severe form of trafficking in persons" without regard to their immigration status.[38] To receive these benefits, the victim must be either under 18 years of age or certified by HHS as willing to assist in the investigation and prosecution of severe forms of trafficking in persons. In the certification, HHS confirms that the person either (a) has made a bona fide application for a T visa[39] that has not been denied, or (b) is a person whose continued presence in the U.S. is being ensured by the attorney general in order to prosecute traffickers in persons.

Overview of Immigrant Access Barriers

The 1996 policies did more than severely restrict immigrant eligibility for benefits. The new policies also left a legacy of changed norms and institutional barriers that deter eligible immigrants from applying for services. Data from Los Angeles County illustrate the scope of the problem. From January 1996 through January 1998, the two-year period surrounding the welfare law's enactment, Los Angeles County saw a 71 percent decline in monthly approvals of Medicaid and TANF applications for families headed by eligible immigrants. No change in approval rates for citizen families registered during the same period.[40]

Citizen children in immigrant families were among those most profoundly affected by these barriers. Although they remained eligible for benefits, their participation in benefit programs dropped dramatically. For example, during the period from 1994 to 1999, the food stamp caseload witnessed a 42 percent decline in the number of U.S. citizen children living with immigrant parents.[41] This represents 800,000 children.

The access barriers faced by immigrant families depend on the benefits they need, their immigration status, and the immigration status of family members. Currently, many agency workers and immigrants are confused about immigrant eligibility for certain programs. Some agencies erroneously screen for immigration status, and some immigrants refrain from applying for benefits because they mistakenly believe they are ineligible.

Many immigrants are concerned that if they apply for benefits, the INS will label them a "public charge," and will prevent them from obtaining a green card, reentering the country, and/or reuniting with relatives. Others are afraid that benefit agency personnel will ask for information about family members and report them to the INS. Immigrants whose sponsor signed an affidavit of support are worried that their sponsor may become liable to repay any benefits they receive. Some immigrants who visit benefit agencies face barriers caused by lack of language interpretation services or by eligibility workers whose confusion over the new rules leads them to erroneously turn immigrants away.

Public Charge

Immigrants have declined to apply for benefits in part because policymakers sent a message in 1996 that immigrants are welcome in the U.S. only when they are completely self-sufficient. This message has led to overly broad interpretations by government agencies of the law's restrictions on benefits. The misapplication of the public charge ground of inadmissibility, for example, contributed significantly to the chilling effect on the willingness of immigrant families to use services.

The "public charge" provision in the immigration laws allows immigration officials to deny applications for permanent residency if the authorities determine the intending immigrant is "likely to become a public charge." In determining whether an immigrant is likely to become a public charge, the INS or consular officials look at the "totality of the circumstances," including an immigrant's health, age, income, education and skills, and affidavits of support. The law on public charge did not change in 1996, and the use of programs such as Medicaid or food stamps had never weighed heavily in public charge determinations. Yet shortly after enactment of the welfare law, immigration officials and judges began to prevent immigrants from reentering the U.S. or obtaining LPR status, unlawfully demanding that they repay benefits like Medicaid, and denying green cards until the applicants withdrew from programs like the Special Supplemental Program for Women, Infants and Children (WIC).[42]

Immigrants' rights advocates organized to persuade federal agencies to clarify the limits of the laws to adjudicators, administrators, and policymakers whose overly expansive interpretations caused immigrants to refrain from seeking needed services. In May 1999, the INS issued a guidance and proposed regulation on the public charge doctrine.[43] The guidance clarifies that receipt of health care and other noncash benefits will not jeopardize the immigration status of recipients or their family members by putting them at risk of being considered a public charge.[44] Immigrants' rights advocates have been working to assure those who are worried about public charge consequences that it is safe for eligible immigrants to apply for noncash benefits. To date, most immigrants, immigration officials, and people who advise immigrants remain inadequately educated on the details and implications of this helpful policy clarification.

Affidavit of Support

The 1996 laws enacted new rules that make it more difficult to immigrate to the U.S. to reunite with family members. Effective December 19, 1997, relatives (and some employers) must meet strict income requirements and must sign a long-term contract—an "affidavit of support"—promising to maintain the immigrant at 125 percent of the federal poverty level, and to repay any means-tested public benefits the immigrant may receive.[45] This provision has further deterred eligible immigrants from applying for benefits, as they do not want to expose their sponsors to government collection efforts.

Also problematic is a question on the affidavit form asking sponsors to list benefits they or members of their households have received. Because the question is unnecessary and creates the mistaken impression that benefits use will disqualify a sponsor, the INS has said it will delete this question in its forthcoming final regulations. However, as of this writing the question remains on the form, leaving immigrant communities worried that using benefits may adversely affect any plans or dreams they have of bringing family members to the U.S.

Language Policies

Many immigrants face significant linguistic and cultural barriers to obtaining benefits. With the new wave of immigration to the U.S., almost 18 percent of the population (5 years and older) now speak a language other than English at home.[46] Almost 8 percent speak English less than very

well.[47] An increasing number of limited English-proficient (LEP) immigrants cannot apply for benefits or communicate with a health care provider without language assistance.

The design and structure of the TANF program created special language access difficulties for eligible immigrants who need English classes and appropriate job training. The emphasis on job placement over income assistance disadvantages low-income immigrants who lack English language and other job skills. Advocates are urging states to take language and cultural needs into account in implementing welfare-to-work programs and to count classes in English as a Second Language (ESL) as a work activity.

In 1998 the HHS Office for Civil Rights issued a guidance regarding agencies' obligation to provide linguistic access under Title VI of the Civil Rights Act of 1964.[48] Yet many benefit-granting agencies still fail to meet this legal requirement. Responding to some of these concerns, the White House issued an executive order in August 2000,[49] asking federal agencies to prepare a plan to improve access to federal programs and activities for eligible LEP individuals. The order instructed all agencies to submit their plans to the Department of Justice (DOJ) within 120 days (by December 11, 2000). On the same day, DOJ published guidance emphasizing that agencies, programs, and services receiving federal funds must insure that LEP persons can participate effectively.[50] Failure to do so, explained DOJ, may constitute national origin discrimination prohibited by Title VI. The DOJ guidance reviews the "reasonable steps" that agencies should include in their plans for providing "meaningful access" to LEP individuals. HHS was the first agency to submit guidance for its funding recipients. The HHS guidance, which outlines the keys to compliance with Title VI, illustrates prohibited as well as promising practices, options for providing oral language assistance and translation of written documents, general standards for interpreters, and components of a model plan.[51] The HHS Office for Civil Rights, which is charged with enforcing recipients' obligations under Title VI, is also available to provide technical assistance.

After several unsuccessful attempts by individual legislators to repeal the former president's executive order, DOJ under President Bush issued a memo confirming that agencies must submit plans for complying with Title VI's requirements. Agencies that had not yet published LEP guidance were given an additional 60 days (until December 26, 2001) to submit their plans to DOJ.[52] Agencies that already have published plans are required to obtain public comment and to review their guidance for consistency with the DOJ memo. According to this memo, final agency-specific LEP guidance should have been published by February 23, 2002. Advocates will continue to monitor agencies' practices, as well as any further efforts to repeal the former president's executive order.

Verification and Reporting

New rules requiring benefit agencies to verify immigration and citizenship status[53] have been misinterpreted by some policymakers and benefits administrators as allowing benefit agency personnel to act as INS enforcers. Because some federal agencies still have not determined which of their programs provide federal public benefits requiring the verification of immigration status, many institutions are confused about their duty to screen applicants.

As a condition of eligibility, some agencies demand immigration documents or Social Security numbers (SSNs) even when applicants are not legally required to submit such information. Lack of federal clarification in the reporting and verification areas led some state and local agencies to ask unnecessary questions on application forms and even to issue unnecessary warnings to immigrants in notices on the walls of agency waiting rooms. Consequently, many immigrants and their family members feel threatened and avoid applying for services.

Verification. In 1997 DOJ issued an interim guidance for federal benefit providers to use in verifying immigration status until DOJ issues final regulations governing verification.[54] The guidance provides that benefit agencies already using DOJ's computerized Systematic Alien Verification for Entitlements (SAVE) program continue to do so. It recommends that agencies make

financial and other eligibility decisions before asking the applicant for information about his or her immigration status. The guidance also states that agencies may seek information only about the person applying for benefits, and not about his or her family members.

Questions on application forms. In September 2000, HHS and the U.S. Department of Agriculture (USDA) issued guidance recommending that states delete questions from benefits application forms that are unnecessary and that may chill participation by immigrant families.[55] The guidance confirms that only the immigration status of the applicant for benefits is relevant. It encourages states to allow family or household members who are not seeking benefits to be designated as "non-applicants" early in the application process. Similarly, under Medicaid, TANF, and food stamps, only the applicant must provide an SSN. SSNs are not required for persons seeking only emergency Medicaid. In June 2001, HHS indicated that states providing SCHIP through separate programs (rather than through Medicaid expansions) are authorized, but not obligated, to require SSNs on their SCHIP applications.[56]

Reporting to the INS. Another source of fear in immigrant communities is the occasional misapplication of a 1996 INS reporting provision that is in fact quite narrow in scope.[57] The reporting requirement applies to only three programs (SSI, public housing, and TANF) and requires the administering agency to report to the INS only persons whom the agency *knows* are not lawfully present in the U.S.[58]

In September 2000, federal agencies issued a joint guidance outlining the limited circumstances under which the reporting requirement may be triggered.[59] The guidance clarifies that only persons who are actually seeking benefits (not relatives or household members applying on their behalf) are subject to the reporting requirement. Agencies are not required to report such applicants unless there has been a formal determination, subject to administrative review, on a claim for SSI, public housing, or TANF. The conclusion of unlawful presence must also be supported by a determination by the INS or the Executive Office of Immigration Review, "such as a Final Order of Deportation."[60] Findings which do not meet this criteria (e.g., an INS response to a "SAVE" computer inquiry indicating an immigrant's status,[61] an oral or written admission by applicants, or suspicions of agency workers) are insufficient to trigger the reporting requirement. Finally, the guidance stresses that agencies are not required to make determinations about immigration status that are not necessary to determine eligibility for benefits. Similarly, agencies are not required to submit reports to the INS unless they have "knowledge" that meets the above requirements. The USDA has confirmed that this "knowledge" standard is consistent with a pre-existing reporting requirement in the Food Stamp Program.[62]

Although this guidance helps clarify agencies' obligations, advocates continue to develop strategies to prevent state and local benefit agencies from acting as INS agents.

CONFUSION REGARDING ELIGIBILITY

Confusion about eligibility rules pervades benefit agencies and immigrant communities alike. The confusion stems from the complex interaction of the immigration and welfare laws, differences in eligibility criteria for various state and federal programs, and misinformation resulting from the lack of federal regulations and guidance interpreting the laws. Consequently, many eligible immigrants have mistakenly assumed they should not visit benefit offices, and eligibility workers have mistakenly turned eligible immigrants away when they come to apply.

Proposed Changes

The legislative restorations of immigrant eligibility for SSI and food stamps achieved in 1997 and 1998 represented important victories for immigrants. Yet because they were piecemeal and partial, these remedies left unaddressed the needs of particularly vulnerable segments of the immi-

grant population. For example, the restorations failed to include indigent seniors and immigrants with disabilities whose date of entry to the U.S. falls after August 22, 1996. They also excluded seniors who were in the U.S. before that date and who, like many citizen SSI recipients, need benefits because their advanced age prevents them from working even though they do not have disabilities. The food stamp restorations achieved in 2002 were a more significant victory, but left some eligibility and access barriers in place.

The eligibility restorations achieved to date affect only a minority of those who were cut off—primarily those who were already in the U.S. on the date the welfare law was enacted, August 22, 1996. The new immigrant population entering after that date is growing by about 800,000 to one million persons per year.[63] In fact, the Urban Institute estimates that roughly one-third of the lawful permanent residents in the U.S. today entered the country on or after August 22, 1996.[64] The impact of the successful restorations therefore diminishes with the passage of time as more new entrants arrive who are not eligible for services. On the other hand, as the ranks of post-1996 newcomers grow, the public and Congress will inevitably become more aware of the suffering caused by discrimination against new entrants, and the essential unfairness of denying services to people whose tax dollars fund those services—simply on account of their date of entry. Immigrants' rights advocates and their allies will push for restored eligibility for newcomers as the next important step toward equal access to the safety net and support systems for low-wage working families.

FOOD STAMPS

The Food Stamp Program imposed the broadest restrictions on eligibility for noncitizens. A number of studies revealed that hunger within immigrant communities has increased since the welfare law's passage.[65] Hardship on families was greatest in states that have provided limited or no food replacement programs.[66] In 2002 Congress restored federal food stamps to a significant portion of the immigrants who were eligible under the rules in effect prior to August 22, 1996. "Qualified" immigrant children and persons receiving disability-related assistance will be eligible regardless of their date of entry; children will be exempt from the deeming rules. And "qualified" immigrant adults will be eligible once they have been in "qualified" status in the U.S. for at least five years. Even when the new rules are implemented, however, most immigrant adults will remain subject to a five-year bar, and may not secure benefits after that period due to deeming rules or concerns about sponsor liability.

HEALTH CARE

Among the most serious consequences of the welfare law's restrictions is the inability of many immigrants to obtain critically needed preventive health care. Removing the five-year bar on providing health care through Medicaid and SCHIP to new entrants is one of the most pressing objectives to be met in addressing this situation. Proposals that would allow states to provide federally funded Medicaid and SCHIP to lawfully present children and pregnant women, regardless of their date of entry, are pending as of this writing.[67] The proposals include a waiver from deeming requirements and sponsor liability for Medicaid or SCHIP used by children or pregnant women in these states.

Low-income immigrants with disabilities and those requiring long-term care are also desperately in need of Medicaid. Congress may consider restoring SSI to immigrant seniors who were under 65 on August 22, 1996, and restoring SSI (and related Medicaid) to new entrants who have since become blind or disabled.

Most state and local policymakers have become aware that prevention and early treatment are more cost-effective and humane than providing health care through hospital emergency rooms. Expanding access to health care is an increasing concern, and a number of state and local jurisdictions are seeking the means, such as with tobacco settlement funds, to create medical insurance programs that will serve people regardless of immigration status.

DOMESTIC VIOLENCE SURVIVORS

A particularly vulnerable group is immigrant domestic violence survivors, whose ability to free themselves from their abusers depends upon access to cash assistance, health care, and other services. These essential services enable survivors to secure a safe home for themselves and their children and to move toward economic independence. The welfare law considers certain abused immigrants to be "qualified" immigrants, but they are subject to the same restrictions on eligibility as other "qualified" immigrants. A proposal pending in Congress would ensure that "qualified" abused immigrants and their children/parents can receive services such as nutritional assistance, health care, TANF, and SSI, regardless of their date of entry to the U.S. The bill also addresses barriers such as public charge and sponsor liability for these immigrants.[68] There is also a measure which would confirm that "qualified" abused immigrants and Cuban/Haitian entrants are eligible for certain rental housing programs administered by the U.S. Department of Housing and Urban Development.[69]

Other Priorities for Reform

Unless Congress eliminates the seven-year time limit on SSI eligibility for the refugee group, many of them will become ineligible for benefits before they are able to become citizens. Government backlogs prevent many refugees from naturalizing within that time. Some refugees may never be able to become citizens; for example, some aged refugees have limitations that prevent them from learning enough English or civics to meet the naturalization requirements.

The forthcoming reauthorization of several major benefit programs provides an opportunity for Congress to revisit the immigrant eligibility restrictions. The TANF program, for example, is scheduled for reauthorization in 2002. Within this context, advocates seek to restore health care, TANF, and SSI benefits to immigrants who lost eligibility under the 1996 law. They also seek to ensure that the TANF program meets the needs of LEP recipients. Proposals include extending the time for participation in education and training programs, listing ESL as a countable work activity, and ensuring that states assess the language needs of participants in the program.

Finally, federal regulators will be urged to issue clarifications of the many complex provisions of the 1996 laws, including final regulations and/or guidance on public charge, affidavits of support, and language policies. Unless strong clarifications are issued, and then communicated effectively to government agencies and immigrant communities, the staggering under-utilization of public benefits by eligible immigrants will persist.

Conclusion

With often tragic consequences, the welfare and immigration laws of 1996 cut immigrants out of the U.S. social safety net and support systems for low-wage working families. The laws also created numerous barriers to receiving services for those who remained eligible or whose eligibility has been restored since 1996. The post-1996 restorations are important victories for an emerging political force, but the exclusionary legacy of the 1996 laws remains. Increasingly, state and local governments are finding that the immigrant restrictions severely hamper their efforts to design effective systems for income support, education, and training in their communities. The powerful demographic changes reflected in the 2000 Census highlight the need for immigrant issues to play a central role in reshaping policies to support economic mobility for the country's low-wage families.

ENDNOTES

1 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter "welfare law"), Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter "IIRIRA"), enacted as Division C of the Defense Department Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3008 (Sept. 30, 1996).

2 See *Aliessa v. Novello,* 96 N.Y.2d 418 (N.Y. Ct. App. June 5, 2001) (New York law denying state-funded medical services to a subgroup of immigrants violates the Equal Protection Clause of the U.S. and New York State Constitutions and Article 17 of the New York State Constitution).

3 During the 1990s, for example, the immigrant population in "new immigrant" states grew twice as quickly (61% vs. 31%) as the immigrant population in the 6 states that receive the greatest numbers of immigrants. Fix, Michael, Zimmermann, Wendy, and Passell, Jeffrey, *The Integration of Immigrant Families in the United States,* The Urban Institute, July 2001.

4 *Id.*, p. 8.

5 U.S. Census Bureau, *Profile of Selected Social Characteristics:* Census 2000 Supplemental Survey.

6 *Id.*

7 Fix, Passel, and Zimmermann, *The Integration of Immigrant Families in the United States,* The Urban Institute, July 2001, p. 8.

8 *Id.*, p. 15.

9 National Academy of Sciences, *From Generation to Generation: The Health and Well-Being of Children in Immigrant Families,* 1998.

10 The Urban Institute tabulations of 1997 Current Population Survey (CPS) data. The poverty rate for immigrants includes refugees, who, having fled persecution, often arrive in the U.S. without resources.

11 Chiswick, Barry, "The Effect of Americanization on the Earnings of Foreign-Born Men," *Journal of Political Economy,* October 1978, Vol. 86, pp. 897-921, cited in Stephen Moore, *A Fiscal Portrait of the Newest Americans,* National Immigration Forum and the Cato Institute, July 1998.

12 Rodriguez, Gregory, *From Newcomers to New Americans: The Successful Integration of Immigrants Into American Society,* Analysis of U.S. Census Data for National Immigration Forum, 1999.

13 National Academy of Sciences, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration,* 1997.

14 National Council of State Legislatures, Immigrant Policy Project, based on Congressional Budget Office estimates of Aug. 9, 1996, and Congressional Research Service Report 95-276EPW, cited in Carnegie Endowment for International Peace and The Urban Institute, *Research Perspectives on Migration,* Vol. 1, No. 1, Sept.–Oct. 1996.

15 Throughout this publication, the terms "immigrant" or "noncitizens" are used in lieu of the more technical immigration law term "alien."

16 Before 1996 some of these immigrants were served by benefit programs under an eligibility category called "Permanently Residing Under Color of Law" (PRUCOL). PRUCOL is not an immigration status, but a benefit eligibility category that has been interpreted differently depending on the benefit program and the region. Generally it means that the INS is aware of a person's presence but has no plans to deport or remove him or her.

17 Welfare law, sec. 401 (8 U.S.C. § 1611).

18 Welfare law, sec. 411 (8 U.S.C. §1621).

19 "Federal public benefit" is described in the 1996 federal welfare law as (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the U.S. or by appropriated funds of the U.S., and (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment, benefit, or any other similar benefit for which payments, or assistance are provided to an individual, household, or family eligibility unit by an agency of the U.S. or appropriated funds of the U.S.

20 U.S. Dept. of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), "Interpretation of 'Federal Public Benefit,'" 63 Fed. Reg. 41,658–61 (Aug. 4, 1998).

21 SCHIP (Title XXI of the Social Security Act) was created in sec. 4901 *et seq.* of the Balanced Budget Act of 1997 (hereinafter BBA), Pub. L. No. 105-33, 111 Stat. 552 (Aug. 5, 1997).

22 U.S. Dept. of Health and Human Services, Division of Energy Assistance, Office of Community Services, Memorandum from Janet M. Fox, Director, to Low Income Home Energy Assistance Program (LIHEAP) Grantees and Other Interested Parties, re. Revision-Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law (June 15, 1999).

23 IIRIRA, sec. 508 (8 U.S.C. §1642(d)).

24 Welfare law, sec. 402(a) (8 U.S.C. § 1612(a)).

25 BBA, sec. 5301 (amending 8 U.S.C. § 1612); Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Pub. L. No. 105-306, 112 Stat. 2926, sec. 2 (Oct. 28, 1998).

26 The Agriculture Research, Extension, and Education Reform Act of 1998, Pub. L. No. 105-185, 112 Stat. 523, secs. 503-510 (June 23, 1998).

27 U.S. Dept. of Agriculture, "Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185," 65 Fed. Reg. 70,133, 70,139–40 (Nov. 21, 2001).

28 Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 (May 13, 2002).

29 See Pear, Robert, "Bush Plan Seeks to Restore Benefits for Noncitizens," *New York Times* (Jan. 10, 2002); Bost, Eric, Undersecretary, U.S. Dept. of Agriculture, presentation at the Brookings Institution's Welfare Reform & Beyond Forum, "Should Legal Immigrants Receive Public Benefits?" (Feb. 28, 2002).

30 Welfare law, sec. 403 (8 U.S.C. § 1613). States were also given an option to provide or deny federal TANF and Medicaid to most "qualified" immigrants who were in the U.S. before Aug. 22, 1996, and to those who enter the U.S. on or after that date, once they have completed the federal five-year bar. Welfare law, sec. 402 (8 U.S.C. § 1612). Only one state—Wyoming—chose to deny Medicaid to immigrants who were in the country when the welfare law passed. A handful of states have yet to authorize federal TANF and/or Medicaid for "qualified" immigrants who complete the five-year bar. The first such immigrants became eligible for these federally funded services in August 2001.

31 U.S. Dept. of Health and Human Services, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), "Interpretation of 'Federal Means-Tested Public Benefit,'" 62 Fed. Reg. 45,256 (Aug. 26, 1997); U.S. Dept. of Agriculture, "Federal Means-Tested Public Benefits," 63 Fed. Reg. 36,653 (July 7, 1998). The SCHIP program, created after the passage of the 1996 welfare law, was later designated as a federal means-tested public benefit program. See Health Care Financing Administration, "The Administration's Response to Questions About the State Child Health Insurance Program," Question 19(a) (Sept. 11, 1997).

32 That is, until the immigrant has credit for 40 quarters of work history.

33 Welfare law, sec. 421 (8 U.S.C. § 1631).

34 IIRIRA sec. 552 (8 U.S.C. § 1631(e) and (f)). The domestic violence exemption can be extended for a longer period if the abuse has been recognized by the INS, a court, or an administrative law judge. The indigence exemption may be renewed for additional 12-month periods.

35 Welfare law, sec. 401(b)(1)(A) (8 U.S.C. § 1611(b)(1)(A)).

36 Welfare law, sec. 742 (8 U.S.C. § 1615).

37 U.S. Dept. of Justice, "Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation," A.G. Order No. 2353-2001, published in 66 Fed. Reg. 3,613–16 (Jan. 16, 2001).

38 The Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 § 107 (Oct. 28, 2000).

39 INA § 101(a)(15)(T).

40 Fix and Zimmermann, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County,* The Urban Institute, July 1998.

41 U.S. Dept. of Agriculture, "The Decline in Food Stamp Participation: A Report to Congress" (July 2001).

42 Schlosberg, Claudia and Wiley, Dinah, "The Impact of INS Public Charge Determinations on Immigrant Access to Health Care," National Health Law Program and National Immigration Law Center, May 22, 1998.

43 U.S. Dept. of Justice, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 Fed. Reg. 28,689–93 (May 26, 1999); see also U.S. Dept. of Justice, "Inadmissibility and Deportability on Public Charge Grounds," 64 Fed. Reg. 28,676–88 (May 26, 1999); U.S. Dept. of State, INA 212(A)(4) Public Charge: Policy Guidance, 9 FAM 40.41.

44 The use of all health care programs, except for long-term institutionalization, was declared to be irrelevant to public charge determinations.

45 Welfare law, sec. 423, amended by IIRIRA, sec. 551 (8 U.S.C. § 1183a).

46 U.S. Census Bureau, *Profile of Selected Social Characteristics: Census 2000 Supplemental Survey Summary Tables.*

47 *Id.*

48 U.S. Dept. of Health and Human Services, Office for Civil Rights, Guidance Memorandum, Title VI Prohibition Against National Origin Discrimination – Persons With Limited-English Proficiency (1998).

49 Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," 65 Fed. Reg. 50,121 (Aug. 16, 2000).

50 U.S. Dept. of Justice, Civil Rights Division, "Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency; Policy Guidance," 65 Fed. Reg. 50,123 (Aug. 16, 2000).

51 U.S. Dept. of Health and Human Services, Office for Civil Rights, "Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As it Affects Persons with Limited English Proficiency," 65 Fed. Reg. 52,762 (Aug. 30, 2000).

52 U.S. Dept. of Justice, Civil Rights Division, Memorandum from Assistant Attorney General Ralph F. Boyd, Jr. to Heads of Departments and Agencies, General Counsels and Civil Rights Directors, re. "Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency" (Oct. 26, 2001).

53 Welfare law, sec. 432, amended by IIRIRA, sec. 504 (8 U.S.C. § 1642).

54 U.S. Dept. of Justice, "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 62 Fed. Reg. 61,344–416 (Nov. 17, 1997). In August 1998, the agency issued proposed regulations which draw heavily on the interim guidance and the Systematic Alien Verification for Entitlements (SAVE) program; see U.S. Dept. of Justice, "Verification of Eligibility for Public Benefits," 63 Fed. Reg. 41,662–86 (Aug. 4, 1998). Final regulations have not yet been issued. Once the regulations become final, states will have two years to implement a conforming system for the federal programs they administer.

55 Letter and accompanying materials from U.S. Dept. of Health and Human Services and U.S. Dept. of Agriculture to State Health and Welfare Officials: "Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits," (Sept. 21, 2000).

56 U.S. Dept. of Health and Human Services, Health Care Financing Administration, Interim Final Rule, "Revisions to the Regulations Implementing the State Children's Health Insurance Program," 66 Fed. Reg. 33,810, 33,823 (June 25, 2001).

57 Welfare law, sec. 404, amended by BBA sections 5564 and 5581(a) (42 U.S.C. §§ 608(g), 611a, 1383(e), 1437y).

58 *Id.* See also H.R. Rep. 104-725, 104th Cong. 2d Sess. 382 (July 30, 1996). In other contexts, the "knowledge" requirement has been interpreted to apply only where an agency discovers that a person is "under an order of deportation." See Memorandum of Legal Services Corporation General Counsel to Legal Services Corporation Project Directors (Dec. 5, 1979) (knowledge of unlawful presence includes only instances involving an "immigrant against whom a final order of deportation is outstanding"). See also, California Dept. of Social Services Manual-FS Section 63-405.8; Ohio Dept. of Public Welfare Food Stamp Certification Handbook (Oct. 1, 1996), section 3360.

59 Social Security Administration, U.S. Dept. of Health and Human Services, U.S. Dept. of Labor, U.S. Dept. of Housing and Urban Development, and U.S. Dept. of Justice – Immigration and Naturalization Service, "Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity 'Knows' Is Not Lawfully Present in the United States," 65 Fed. Reg. 58,301 (Sept. 28, 2000).

60 *Id.*

61 "SAVE", or "Systematic Alien Verification for Entitlements" is the INS process currently used to verify eligibility for several major benefit programs. See 42 U.S.C. §1320b-7. The INS verifies an applicant's immigration status through a computer database and/or through a manual search of its records. This information is used only to verify eligibility for benefits, and cannot be used to initiate deportation or removal proceedings (with exceptions for criminal violations). See Immigration Reform and Control Act of 1986, 99 Pub. L. 603, § 21 (Nov. 6, 1986); U.S. Dept. of Justice, "Verification of Eligibility for Public Benefits," 63 Fed. Reg. 41,662, 41,672, and 41,684 (Aug. 4, 1998).

62 U.S. Dept. of Agriculture, "Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Public Law 104-193, as Amended by Public Laws 104-208, 105-33 and 105-185," 65 Fed. Reg. 70,166 (Nov. 21, 2000).

63 Fix and Zimmermann, "The Legacies of Welfare Reform's Immigrant Restrictions," in 75 *Interpreter Releases* 44, Nov. 16, 1998, p. 1581.

64 Fix and Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions*, The Urban Institute, January 2002.

65 California Food Policy Advocates, *Collaborative Study of Persons Receiving Emergency Food in Twelve California Counties*, May 1998; New York City Coalition Against Hunger, *Rationing Charity*, 1998. See also Food Research and Action Center, *Hunger in the United States*, March 1998.

66 Capps, Randy, *Hardship Among Children of Immigrants: Findings from the 1999 National Survey of America's Families*, The Urban Institute, February 2001.

67 The Immigrant Children's Health Improvement Act of 2001 (S. 582), sponsored by Sens. Bob Graham (D-FL) and John McCain (R-AZ) and (H.R. 1143), sponsored by Reps. Lincoln Diaz-Balart (R-FL) and Henry Waxman (D-CA). The ICHIA's provisions have also been incorporated into some of the pending TANF reauthorization bills. See, e.g., The Personal Responsibility and Work Opportunity Reconciliation Act Amendments of 2002 (S. 2052), sponsored by Sen. John Rockefeller (D-WV).

68 The Women Immigrants Safe Harbor Act (WISH) (H.R. 2258), sponsored by Reps. Sander Levin (D-MI),Constance Morella (R-MD), Ileana Ros-Lehtinen (R-FL), and Nancy Pelosi (D-CA).

69 The Welfare Reform and Housing Act (S. 2116). Introduced on Apr. 11, 2002.

TABLE 1

Overview of Immigrant Eligibility for Federal Programs

This table provides an overview of immigrant eligibility for the major federal public assistance programs. Some states provide assistance to immigrants who are not eligible for federally funded services.

PROGRAM	"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996	"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996	"NOT QUALIFIED" IMMIGRANTS
Supplemental Security Income (SSI)	**Eligible only if:**[1] • Receiving SSI (or application pending) on Aug. 22, 1996 • Qualify as disabled and were lawfully residing in the U.S. on Aug. 22, 1996[2] • Lawful permanent resident with credit for 40 quarters of work[2,3] • Refugee, asylee, granted withholding of deportation/ removal, Cuban/Haitian entrant, Amerasian, but only *during first 7 years after getting status* • Veteran, active duty military; spouse, unremarried surviving spouse, or child[2] • Certain American Indians born abroad	**Eligible only if:**[1] • Lawful permanent resident with credit for 40 quarters of work (but must wait until 5 years after entry before applying) • Refugee, asylee, granted withholding of deportation/ removal, Cuban/Haitian entrant, Amerasian, but only *during first 7 years after getting status* • Veteran, active duty military; spouse, unremarried surviving spouse, or child[2] • Certain American Indians born abroad	**Eligible only if:** • Receiving SSI (or application pending) on Aug. 22, 1996 • Certain American Indians born abroad • Victim of trafficking
Food Stamps[4]	**Eligible only if:** Were lawfully residing in the U.S. on Aug. 22, 1996, and: • Are under 18 years old[2] • Were 65 years or older on Aug. 22, 1996[2] • Are receiving disability-related assistance[2,5] **Or:** • Lawful permanent resident with credit for 40 quarters of work • Refugee, asylee, granted withholding of deportation/ removal, Cuban/Haitian entrant, Amerasian, *but only during first 7 years after getting status* • Veteran, active duty military; spouse, unremarried surviving spouse, or child[2] • Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the US; spouse, surviving spouse, or child of tribe member[2] • Certain American Indians born abroad	**Eligible only if:** • Lawful permanent resident with credit for 40 quarters of work • Refugee, asylee, granted withholding of deportation/ removal, Cuban/Haitian entrant, Amerasian, *but only during first 7 years after getting status* • Veteran, active duty military; spouse, unremarried surviving spouse, or child[2] • Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member[2] • Certain American Indians born abroad	**Eligible only if:** • Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S., spouse, surviving spouse or child of tribe member, *who is lawfully present in the U.S.* • Certain American Indians born abroad • Victim of trafficking

table continued next page ➤

TABLE 1 *(CONTINUED)*

Overview of Immigrant Eligibility for Federal Programs

PROGRAM	"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996	"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996	"NOT QUALIFIED" IMMIGRANTS
Temporary Assistance for Needy Families (TANF)	**Eligible**[2]	**Eligible only if:** • Refugee, asylee, granted withholding of deportation/ removal, Cuban/Haitian entrant, or Amerasian immigrant[6] • Veteran, active duty military; spouse, unremarried surviving spouse, or child[2] • Have been in "qualified" immigrant status for 5 years or more[2, 6]	**Eligible only if:** • Victim of trafficking
Emergency Medicaid (includes labor and delivery)	**Eligible**	**Eligible**	**Eligible**
Full-Scope Medicaid	**Eligible**[1, 2, 7]	**Eligible only if:**[1] • Refugee, asylee, granted withholding of deportation/ removal, Cuban/Haitian entrant, or Amerasian immigrant[8] • Veteran, active duty military; spouse, unremarried surviving spouse, or child[2] • Have been in "qualified" immigrant status for 5 years or more[2, 8]	**Eligible only if:** • Were receiving SSI on Aug. 22, 1996 (in states that link Medicaid to SSI eligibility) • Certain American Indians born abroad • Victim of trafficking
State Children's Health Insurance Program (SCHIP)	**Eligible**	**Eligible only if:** • Refugee, asylee, granted withholding of deportation/ removal, Cuban/Haitian entrant, or Amerasian immigrant • Veteran, active duty military; spouse, unremarried surviving spouse, or child[2] • Have been in "qualified" immigrant status for five years or more[2]	**Eligible only if:** • Victim of trafficking
Medicare "Premium Free" Part A (hospital-ization) Part B (out-patient) can be purchased	**Eligible**	**Eligible**	**Eligible only if:** • Lawful permanent resident under IRCA general amnesty, or paroled into the U.S. for less than 1 year • Victim of trafficking • Citizens of Micronesia, the Marshall Islands, and Palau Note: For other immigrants, eligibility may depend on the date the family began receiving housing assistance, the immigration status of other household members, and the household composition. Also note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.
Premium "Buy-in" Medicare	**Eligible only if:** • Lawful permanent resident who has resided continuously in the U.S. for at least 5 years	**Eligible only if:** • Lawful permanent resident who has resided continuously in the U.S. for at least 5 years	**Not Eligible**

TABLE 1 *(CONTINUED)*

Overview of Immigrant Eligibility for Federal Programs

PROGRAM	"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996	"QUALIFIED" IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996	"NOT QUALIFIED" IMMIGRANTS
HUD Public Housing and Section 8 Programs	**Eligible except:** • Certain Cuban/Haitian entrants and "qualified" abused spouses and children Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.	**Eligible except:** • Certain Cuban/Haitian entrants and "qualified" abused spouses and children Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.	**Eligible only if:** • Temporary resident under IRCA general amnesty, or paroled into the U.S. for less than 1 year • Victim of trafficking • Citizens of Micronesia, the Marshall Islands, and Palau Note: For other immigrants, eligibility may depend on the date the family began receiving housing assistance, the immigration status of other household members, and the household composition. Also note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.
Title XX Block Grants	**Eligible**	**Eligible**	**Eligible only if:** • Victim of trafficking • Program or service funded by the block grant is exempt from the welfare law's restrictions
Social Security	**Eligible**	**Eligible**	**Eligible only if:** • Lawfully present • Were receiving assistance based on an application filed before Dec. 1, 1996 • Eligibility required by certain international agreements
Other Federal Public Benefits Subject to welfare law's restrictions	**Eligible**	**Eligible**	**Eligible only if:** • Victim of trafficking
Federal Public Benefits Exempt from welfare law's restrictions	**Eligible**	**Eligible**	**Eligible**

KEY TERMS USED IN TABLE

"Qualified" immigrants – are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also "qualified." Victims of trafficking (who are not included in the "qualified" immigrant definition) are eligible for benefits funded or administered by federal agencies, without regard to their immigration status.

"Not qualified" immigrants – include all noncitizens who do not fall under the "qualified" immigrant categories.

ENDNOTES

1 Even though they are "qualified" immigrants, Haitians who adjusted status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) who were "not qualified" immigrants on Oct. 21, 1998, cannot be considered "qualified" immigrants for SSI and Medicaid purposes prior to Oct. 2, 2003. However, nearly all immigrants eligible to adjust under HRIFA were "qualified" immigrants at the time HRIFA was enacted.

2 Eligibility may be affected by deeming: a sponsor's income/resources may be added to the immigrant's in determining eligibility. Exemptions from deeming may apply.

3 LPRs are eligible if they have worked 40 qualifying quarters in the U.S. Immigrants also get credit toward their 40 quarters for work performed (1) by parents when the immigrant was under 18; and (2) by spouse during the marriage (unless the marriage ended in divorce or annulment). No credit is given for a quarter worked after Dec. 31, 1996, if a federal means-tested public benefit (SSI, food stamps, TANF, Medicaid, or SCHIP) was received in that quarter.

4 Effective Oct. 1, 2002, "qualified" immigrants receiving disability-related assistance will be eligible, regardless of their date of entry. Effective Apr. 1, 2003, "qualified" immigrants who have lived in the U.S. for five years or more as a "qualified" immigrant will be eligible. "Refugee" categories will remain eligible even after the 7-year period expires. Effective Oct. 1, 2003, "qualified" immigrant children will be eligible, regardless of their date of entry (children will not be subject to sponsor deeming).

5 Disability-related benefits include SSI, Social Security disability, state disability or retirement pension, railroad retirement disability, veteran's disability, disability-based Medicaid, or possibly General Assistance for certain immigrants with disabilities.

6 In Idaho, Indiana, Mississippi, South Carolina, and Texas, TANF is available only to immigrants who entered the U.S. on or after Aug. 22, 1996, who are: (1) LPRs credited with 40 quarters of work; (2) veterans, active duty military (and their spouse, unremarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants during the five years after obtaining this status. Indiana provides TANF to "refugees" listed in (3) regardless of the date they obtained that status. Idaho also provides TANF to "qualified" abused immigrants who have lived in the U.S. for five years. Mississippi does not address eligibility for Cuban/Haitian entrants or Amerasian immigrants. Although Wyoming provides TANF to LPRs, persons paroled into the U.S., and "qualified" abused immigrants, regardless of their date of entry, "refugees" listed in (3) may only receive TANF during the first five years after obtaining this status.

7 In Wyoming, only LPRs with 40 quarters of work credit, abused immigrants, parolees, veterans, active duty military (and their spouse, unremarried surviving spouse, or child), refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants who entered the U.S. prior to Aug. 22, 1996, are eligible for full-scope Medicaid.

8 In Alabama, Idaho, Indiana, Mississippi, North Dakota, Ohio, Texas, Virginia, and Wyoming, full-scope Medicaid is available only to immigrants who entered the U.S. on or after Aug. 22, 1996, who are: (1) LPRs credited with 40 quarters of work; (2) veterans, active duty military (and their spouse, unremarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants during the seven years after obtaining this status. Idaho also provides Medicaid to "qualified" abused immigrants who have lived in the U.S. for five years. Wyoming provides full-scope Medicaid to "qualified" abused immigrants and persons paroled into the U.S., regardless of their date of entry. In Texas, Amerasian immigrants are eligible only during the five years after obtaining this status; Alabama, Mississippi, and North Dakota do not address eligibility for Cuban/Haitian entrants or Amerasian immigrants; and Indiana provides "full-scope" Medicaid to "refugees" listed in (3), regardless of the date they obtained that status.

TABLE 2

Overview of State-Funded Replacement Programs

This table lists the states that created programs to assist at least some of the immigrants who were rendered ineligible for federal assistance as a result of the 1996 federal welfare law. Although some states provide coverage to all immigrants who were rendered ineligible, other states cover only specific groups of immigrants. For details on which immigrants are eligible for these state-funded programs, please see the tables following the chapters on food stamps, Medicaid, SCHIP, TANF, and SSI.

STATE	STATE-FUNDED FOOD ASSISTANCE	STATE-FUNDED MEDICAL ASSISTANCE	STATE-FUNDED SCHIP PROGRAM	STATE-FUNDED TANF PROGRAM	SSI REPLACEMENT PROGRAM
California	✔	✔	✔	✔	✔
Colorado		✔			
Connecticut	✔	✔	✔	✔	
Delaware		✔			
District of Columbia		✔	✔		
Florida		✔	✔		
Georgia		✔		✔	
Hawaii		✔	✔	✔	✔
Illinois	✔	✔	✔	✔	✔
Indiana			✔		
Maine	✔	✔	✔	✔	✔
Maryland	✔	✔	✔	✔	
Massachusetts	✔	✔	✔	✔	
Michigan		✔			
Minnesota	✔	✔	✔	✔	
Missouri	✔	✔		✔	
Nebraska	✔	✔	✔	✔	✔
New Hampshire					✔
New Jersey	✔	✔	✔	✔	
New Mexico		✔	✔	✔	
New York	✔	✔	✔	✔	
Ohio	✔				
Oklahoma		✔	✔		
Oregon				✔	
Pennsylvania		✔	✔	✔	
Rhode Island	✔	✔	✔	✔	
Tennessee				✔	
Texas	✔	✔	✔		
Utah				✔	
Vermont				✔	
Virginia		✔			
Washington	✔	✔	✔	✔	
Wisconsin	✔			✔	
Wyoming		✔	✔	✔	

Part 1

Immigration Status

Immigration Status

Introduction

This part of the *Guide* is designed to help you understand immigration classifications and become familiar with the most common documents issued by the Immigration and Naturalization Service (INS). It begins with an overview of the most common ways of obtaining lawful immigration status, followed by a brief description of the various types of immigration classifications. Following a discussion of immigration categories used for public benefits purposes, this part concludes with a catalogue of common INS documents, some accompanied by instructions about how to decode the information they contain.

How Do Immigrants Obtain Lawful Immigration Status?

There are three principal ways noncitizens may enter the U.S. lawfully…

- as ***nonimmigrants***, who are admitted to the country for a temporary stay (for example, as tourists or students)
- as ***refugees,*** who are admitted to the country because they face persecution at home, and who after one year in the U.S. may apply to become lawful permanent residents (LPRs)
- as ***immigrants,*** who are admitted to reside permanently in the country (as LPRs)

The two most common ways to obtain LPR status are…

- through a family-based visa petition filed by a U.S. citizen or an LPR who is a close family member
- through an employment-based visa petition filed by an employer to immigrate a prospective employee whose job skills are needed in the U.S.

Other ways to obtain LPR status include…

- first qualifying for refugee or asylum status, then later "adjusting" to LPR status
- winning the visa lottery, for persons from certain countries, and then applying for a visa
- "self-petitioning" for an immigrant visa, as a widow or widower of a U.S. citizen, or as an abused spouse or abused child of a U.S. citizen or LPR, or the child or parent of such an abused individual
- being granted registry due to having resided in the U.S. since prior to January 1, 1972
- being granted amnesty due to having worked in agriculture in the mid-1980s or having lived in the U.S. since before January 1, 1982
- applying for "adjustment" under special laws providing permanent residence to people from particular countries or to juveniles who have been subjected to abuse, neglect, or abandonment
- applying for "adjustment" after having been granted "S," "T," or "U" nonimmigrant status under special laws for informants, victims of trafficking, or victims of certain criminal offenses
- being granted "suspension of deportation" or "cancellation of removal" by an immigration judge, or, in the case of NACARA applicants (see below), by the INS

The above list is not exhaustive, and there are other specialized ways by which some individuals can immigrate, many of which are discussed in the following pages.

Certain undocumented immigrants in the U.S. may receive provisional permission to remain in the U.S. and/or work authorization from the INS under one of the following categories:

- temporary protected status (TPS)
- Family Unity status
- deferred action status
- deferred enforced departure (DED) status
- applicant for adjustment of status
- applicant for asylum
- person granted a stay of deportation
- applicant for suspension of deportation/cancellation of removal

Description of Immigration Categories

As a framework for understanding the U.S. immigration system, this section provides a brief description of the major immigration categories:

- citizens and nationals
- lawful permanent residents
- persons fleeing persecution
- persons granted other statuses giving them permission to remain in the U.S. and receive employment authorization
- nonimmigrants
- undocumented persons who have not been granted any status by the INS

U.S. Citizens and Nationals

With the exception of the children of certain diplomats, all persons born in the United States and its territories acquire U.S. citizenship at birth. As discussed below, persons born abroad with at least one U.S. citizen parent may also acquire citizenship at birth. In addition, lawful permanent residents of the U.S., and certain U.S. military veterans can become citizens through the process known as naturalization.

Acquisition of citizenship at birth abroad. Individuals born abroad to U.S. citizen parent(s) may automatically be U.S. citizens at birth. Whether a person born abroad with at least one U.S. citizen parent became a citizen at birth depends on the law in effect at the time the person was born. Generally one parent (or in some cases, a grandparent) must have resided in the U.S. for a specific period of time prior to the person's birth. An immigrant child who has been adopted by a U.S. citizen and who has been admitted to the U.S. as an LPR may automatically acquire U.S. citizenship. Because of the complexity of the law in this area, individuals born abroad to U.S. citizen parents are often unaware that they are U.S. citizens.

Naturalization. Naturalized citizens have virtually the same rights as U.S. citizens who acquired citizenship at birth. Immigrants who have been LPRs for five years—or three years, if married to a U.S. citizen or one year for certain persons in the military and veterans—can apply to naturalize if they meet certain requirements (e.g., if they are at least 18 years of age, have good moral character, English literacy, and knowledge of civics, and they take an oath of allegiance). The English requirement does not apply to older immigrants with long residence in the United States, and the English, civics, and oath requirements may be waived for individuals whose disabilities prevent them from meeting the requirement.

Derivative citizenship. Children under 18 years of age generally cannot apply to naturalize, but they may automatically become citizens as a result of the naturalization of one or both parents (if that parent has custody of the children). This process is known as "derivative naturalization." The law governing derivative naturalization has been changed many times, and the specific requirements

differ depending upon the law in effect at the time a particular individual's parents naturalized. Because of the complexity of the law governing derivative naturalization, many individuals who in fact are U.S. citizens do not know that they derived citizenship when their parents naturalized.

Noncitizen U.S. nationals. All U.S. citizens are also nationals of the United States, but some individuals who are U.S. nationals are *not* U.S. citizens. When the U.S. acquired certain island territories, Congress provided for the inhabitants of these territories to be citizens of their own islands, and nationals of the United States. Noncitizen nationals owe permanent allegiance to the U.S., and may enter and work in the U.S. without restriction. At present, noncitizen nationals include only (1) certain citizens of American Samoa and Swains Island, and (2) residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

Lawful Permanent Residents

Individuals who lawfully immigrate to the U.S. are called lawful permanent residents (LPRs). LPRs have permission to live and work permanently in the U.S. They can travel abroad and return to the U.S., as long as they have not abandoned their U.S. residence or committed acts that would make them inadmissible under immigration law. An LPR can apply for naturalization to U.S. citizenship after living in the U.S. for five years (three years if married to a U.S. citizen, and one year for certain persons in the military and veterans).

Obtaining LPR status usually is a lengthy process requiring several steps. For example, to immigrate a family member, a relative must first file a petition for an immigrant visa, which the INS will approve if the agency is satisfied that the information in the petition is correct. But even after a petition is approved, there may be a long wait before the immigrant can take the next step. This wait can last many years because of limits on the number of visas annually available for each country and each immigration category (examples of such categories are married sons and daughters of U.S. citizens, spouses of LPRs, etc.). Visas become available to immigrants in the chronological order that petitions were filed (the filing date of the petition is known as the "priority date"). However, for one category of immigrants — "immediate relatives of U.S. citizens" — there are no numerical limits, and therefore no waiting time for a visa.

Once a visa becomes available (when the allocation of visas reaches the applicant's "priority date"), the immigrant can take the next step and apply. If the immigrant is in the U.S. and qualifies for "adjustment of status"—a procedure that allows the immigrant to get LPR status without ever leaving the U.S.—he or she may apply in the U.S. with the INS. Historically, adjustment of status was only available to individuals who were lawfully admitted to the U.S., generally as tourists or in some other nonimmigrant category. However, under section 245(i) of the Immigration and Nationality Act, individuals who entered the U.S. without undergoing INS inspection, and some other categories of noncitizens ineligible for regular adjustment also may apply for adjustment of status if an immigrant visa petition was filed on their behalf on or before April 30, 2001. Persons who are immigrating based on labor certification applications filed by their employers can also adjust under this law if the application was filed on or before April 30, 2001. To qualify under section 245(i), individuals whose petitions or applications were filed between January 15, 1998, and April 30, 2001, must also establish that they were present in the United States on December 21, 2000, the date that this law was most recently amended.

Immigrants who are not eligible for adjustment must apply for a visa with the U.S. consulate in their home country. In either case, applicants will be interviewed to determine if they qualify for LPR status. The current "priority date" for the various categories of family and employment visas can be ascertained at www.travel.state.gov/visa_bulletin.

Immigrants in the U.S. who are granted adjustment of status become LPRs when their application is approved. Immigrants who receive an immigrant visa at a consulate abroad have six months to come to the U.S. At the border (or airport or other port of entry) the INS makes the final determination regarding whether the arriving immigrant is admitted as an LPR.

Some special categories of permanent residents are listed below:

Amnesty (IRCA) legalized residents. Under the Immigration Reform and Immigrant Control Act of 1986 (IRCA), two categories of noncitizens were allowed to legalize their status: (1) "general amnesty," or legalization immigrants, who had resided unlawfully in the U.S. since prior to January 1, 1982, and (2) "special agricultural workers" (SAWs) or "section 210" immigrants, who performed agricultural work for a specified period prior to IRCA's enactment. Legalization under IRCA was a two-stage process under which applicants first applied for and obtained lawful temporary resident (LTR) status. After obtaining LTR status, general amnesty immigrants were required to apply for lawful permanent resident status. SAW applicants, on the other hand, automatically became LPRs after having LTR status for a given period of time. *Law found at* 8 U.S.C. §§ 1255a and 1160.

Amerasians. In immigration law, this term is broadly used to refer to children of U.S. citizens who were born in Korea, Vietnam, Laos, Cambodia, or Thailand who may petition to become LPRs if they prove there is "reason to believe" they were fathered by a U.S. citizen. However, throughout this *Guide*, the term "Amerasian" is used more narrowly to refer only to individuals who were granted LPR status under a special statute enacted in 1988 for Vietnamese Amerasians. To be eligible for this status, an individual either must have been born in Vietnam after January 1, 1962, and before January 1, 1976, with a U.S. citizen father, or must have been the spouse or minor child of such an individual. Persons granted LPR status under this statute are eligible for Refugee Assistance, are not subject to the "public charge" ground of inadmissibility, and are included within the "Refugee Exemption" for purposes of eligibility for certain federal benefits. *Law found at* § 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in § 101(c) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

Conditional permanent residents. A person who receives LPR status through marriage to a U.S. citizen is granted conditional permanent residence if he or she was married less than two years at the time LPR status was granted. After a person has had this status for two years, either the couple must file a joint petition with the INS to keep the immigrant spouse's LPR status, or the immigrant spouse must apply for a waiver of the joint petition requirement. *Law found at* 8 U.S.C. § 1186a.

PERSONS GRANTED STATUS BECAUSE THEY FLED PERSECUTION

Refugees. Refugees are noncitizens who, while outside the U.S. and their home country, were granted permission to enter and reside in the U.S. because they have a well-founded fear of persecution in their home country. After one year in this status, refugees can apply to become LPRs. *Law found at* 8 U.S.C. § 1157.

Conditional entrants. Before the admission of refugees was authorized by the Refugee Act of 1980, nationals of communist countries or of countries in the Middle East were admitted as "conditional entrants," a status similar to refugee status. This classification has not been used by the INS since 1980.

Asylees. People already in the U.S. who fear persecution in their home country and satisfy the requirements for refugee status can apply for asylum in the U.S. Generally individuals must apply for asylum within one year of their last entry to the U.S., although there are exceptions. A person granted asylum is an "asylee." After one year in this status, asylees can apply to obtain LPR status. *Law found at* 8 U.S.C. § 1158.

Persons granted withholding of deportation or withholding of removal. This status is similar to, but separate from, asylum for persons whose life or freedom would be threatened on return to their country. To obtain withholding, individuals must meet a higher evidentiary standard than for asylum, but if they meet this standard they *must* be granted withholding—unlike asylum, the status

is not discretionary. Persons granted withholding may be deported to a third country if one will accept them, but they cannot be returned to their home country. Unlike refugee and asylee, this status does not provide a basis for individuals to obtain LPR status. The Convention Against Torture (CAT), an international treaty that the U.S. Senate has ratified, provides a separate basis for granting withholding of deportation or removal. Individuals for whom substantial grounds exist for believing that they would be in danger of being subjected to torture on their return may apply for withholding under the CAT. Persons granted withholding may apply for and be granted employment authorization. *Law found at* 8 U.S.C. § 1231(b)(3).

Persons granted deferral of removal. Under the Convention Against Torture (CAT), the United States may not compel an individual's involuntary return to a country where there are substantial grounds for believing that the person would be in danger of being subjected to torture. Persons who are ineligible for withholding of removal but who cannot be removed to their home countries because of U.S. CAT obligations are granted "deferral of removal." They may be deported to a third country if one will accept them, and this status does not provide a basis for them to obtain LPR status. Persons granted deferral of removal may apply for and be granted employment authorization. *Law found at* § 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105-277, 112 Stat. 2681-821), and implementing regulations at 8 C.F.R. § 208.17.

PERSONS GRANTED OTHER STATUSES WITH PERMISSION TO REMAIN IN THE U.S. AND OBTAIN EMPLOYMENT AUTHORIZATION

Temporary protected status (TPS). "Temporary protected status," or TPS, is granted to people who are physically present in the U.S. and who are from certain countries designated by the U.S. attorney general as unsafe to accept their return. As of May 1, 2002, countries that have current TPS designation include Angola, Burundi, El Salvador, Honduras, Montserrat, Nicaragua, Sierra Leone, Somalia, and Sudan. A listing of the countries currently designated for TPS can be obtained from the INS website, at www.ins.gov/graphics/services/tps. Persons granted TPS are authorized to remain in the U.S. for a specific, limited period. When this period expires, the attorney general can extend it for a further specified period. Applicants for TPS must be granted employment authorization if they have filed a "prima facie" application for TPS. Prior to 1990, a similar status called "Extended Voluntary Departure" was used in the same way to provide relief to particular nationalities. *Law found at* 8 U.S.C. § 1254a.

Deferred enforced departure (DED). "Deferred enforced departure," or DED, is a status very similar to TPS. DED is given to particular nationalities by presidential proclamation or other executive action. In recent years DED status has been given to nationals of the People's Republic of China (1990), El Salvador (1994), Haiti (1997), and Liberia (1999). DED status allows eligible persons to remain lawfully in the U.S. for a limited, specified period, and to receive employment authorization.

Family Unity. "Family Unity," which replaced an earlier program known as "Family Fairness," is a status providing protection from deportation, and eligibility for employment authorization to the spouses and children of noncitizens who legalized under the Immigration Reform and Immigrant Control Act of 1986 (IRCA). To qualify for Family Unity, a person must have been the spouse or child of an amnesty immigrant as of May 5, 1988, and must have been residing in the U.S. since that date.

Due to a technicality in the law, the spouses and children of persons who legalized under the farmworker (SAW) amnesty program but who applied for legalization between May 5, 1988, and November 30, 1988, do not qualify for Family Unity. However, if they would otherwise meet the requirements for Family Unity, the INS will grant them the same benefits: permission to stay in the U.S., in renewable two-year increments, and work authorization. *Law found at* 8 U.S.C. § 1255a (note).

Enacted in December 2000, the Legal Immigration and Family Equity Act (LIFE) extends Family Unity status to the spouses and unmarried minor children of individuals eligible to become permanent residents through the "late amnesty" legalization program of that law. To qualify for LIFE

Act Family Unity, individuals must have been present and residing in the United States on December 1, 1988, and they must currently be the spouse or minor child of an individual who is eligible for adjustment under LIFE.

Parolees. Parole is a procedure by which individuals are permitted to come to the U.S. for humanitarian or public interest reasons. Some parolees enter the U.S. only for a temporary purpose, such as to receive medical treatment. Others are allowed to enter with the understanding that they will remain permanently by applying for asylum or filing a family visa petition. *Law found at* 8 U.S.C. § 1182(d)(5) (which is § 212(d)(5) of the Immigration and Nationality Act).

The following are particular categories of parolees:

Paroled as refugees. Some persons who fear persecution were "paroled" into the U.S. as refugees when the annual quota of refugees was exceeded.

Lautenberg parolees. Under special legislation, certain nationals of Laos, Cambodia, Vietnam, and the former Soviet Union are eligible to adjust to LPR status after one year of residence in the U.S. Such individuals must have applied for refugee status abroad after August 15, 1988, been denied, and instead granted parolee status. *Law found at* 8 U.S.C. § 1255 (note).

Public interest parolees. Many persons were paroled as "public interest parolees," meaning that the INS considered it to be in the public interest to allow their parole, and this was sometimes indicated by a "PIP" stamp on their Form I-94 Arrival/Departure Records.

Deferred action status. This status represents the exercise of prosecutorial discretion by the INS in favor of an immigrant who otherwise would be subject to deportation or removal proceedings. It is granted by the INS administratively for a limited number of reasons including: the age or physical condition of the immigrant (if it affects his or her ability to travel), the likelihood that another country will accept the immigrant or that he or she will qualify for some other status, the presence of "sympathetic factors," and the adverse publicity that may result from the individual's removal. Currently this status is most commonly used by the INS to grant employment authorization for individuals who have petitioned for LPR status as abused spouses or children under the Violence Against Women Act (VAWA, described below), and for people with urgent medical needs. *Law found at* INS Operations Instructions OI 242.1(a)(22).

Order of supervision. Individuals with final orders of deportation or removal whom the INS is unable to remove may be released under an order of supervision. Individuals under an order of supervision are eligible for employment authorization. *Law found at* 8 U.S.C. § 1231(a)(3).

Extended, indefinite, or humanitarian voluntary departure. Individuals granted extended voluntary departure for humanitarian or public interest reasons may have that permission renewed on an ongoing basis by the INS, and may obtain employment authorization.

Certain nonimmigrant statuses. Some categories of nonimmigrant statuses allow the status holder to work and eventually to adjust status to lawful permanent residence.

Such statuses include, for example:

K status. For the spouse, child, or fiancé(e) of a U.S. citizen.

S status. For informants providing evidence for a criminal investigation.

T status. For victims of trafficking.

U status. For victims or witnesses of specified crimes.

V status. For spouses and children of LPRs whose visa petitions have been pending for at least three years.

Law found at 8 U.S.C. § 1101(a)(15)(K), (S), (T), (U), and (V).

APPLICANTS FOR IMMIGRATION STATUS ELIGIBLE FOR EMPLOYMENT AUTHORIZATION

Some individuals who have not yet been granted an immigration status but who have applied for a status are eligible for employment authorization and permitted to remain in the U.S. while their applications are pending. (See page 88 for a listing of the different statuses for which the INS issues employment authorization.)

Applicants for adjustment of status to lawful permanent residency. In some cases, individuals whose relatives have petitioned to immigrate them (or in some cases, who are petitioning for themselves) can become LPRs without having to travel abroad for an interview at a U.S. consulate. This process is called "adjustment of status." In addition, on occasion Congress has enacted special laws allowing individuals from particular countries or in particular circumstances to apply for adjustment of status without having a relative or employer petition for them, and in some cases without having entered the U.S. with inspection. *Law found at* 8 U.S.C. § 1255.

Some of these special circumstances are listed below:

Registry applicants. Individuals who have resided continuously in the U.S. since January 1, 1972, and who meet the requirements of LPR status may adjust their status by applying for "registry." *Law found at* 8 U.S.C. § 1259.

Adjustment under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA). This law permits Nicaraguan and Cuban nationals to file for adjustment of status if they have been continuously present in the U.S. since December 1, 1995. If their spouses or minor children are also Nicaraguan or Cuban, they may adjust as well, regardless of how long they have been in the U.S. Eligible individuals must have applied for adjustment before April 1, 2000.

Adjustment under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). This law permits Haitian nationals to file for adjustment of status if they were residing in the U.S. prior to December 31, 1995, and had applied for asylum or were paroled into the U.S. prior to that date. Eligible Haitians must have applied for adjustment before April 1, 2000. Dependents are also eligible and can apply for adjustment even after April 1, 2000.

Special Immigrant Juvenile adjustment. Individuals who are declared dependent on the juvenile court and who are eligible for long-term foster care may apply for adjustment of status, when a court or agency determines that return to their country of origin is not in their best interest. *Law found at* 8 U.S.C. § 1101(a)(27)(J).

Lautenberg adjustment. As noted previously, nationals of Laos, Cambodia, Vietnam, and the former Soviet Union who were "paroled" into the U.S. after they were denied refugee status are eligible to adjust to LPR status after one year of residence in the U.S. *Law found at* 8 U.S.C. § 1255 (note).

Adjustment under the Cuban Adjustment Act. Nationals of Cuba who were admitted or "paroled" into the U.S. after January 1, 1959, and who have been physically present in the U.S. for at least one year are eligible to adjust to LPR status. *Law found at* 8 U.S.C. § 1255 (note).

Adjustment from certain nonimmigrant statuses. Certain categories of nonimmigrant statuses allow the individual to apply for adjustment to LPR status after he or she has had the nonimmigrant status for a period of time. Such statuses include K status (for the spouse, child, or fiancée of a U.S. citizen), S status (for informants providing evidence for a criminal investigation), T status (for victims of trafficking), U status (for victims or witnesses of specified crimes who are cooperating with law enforcement), and V status (for spouses and children of LPRs whose visa petitions have been pending for at least three years). *Law found at* 8 U.S.C. § 1101(a)(15)(K), (S), (T), (U), and (V).

Adjustment for Indochinese parolees. A law enacted in November 2000 allows natives or citizens of Vietnam, Laos, and Cambodia who were inspected and paroled into the United States prior to October 1, 1997, to adjust to LPR status. *Law found at* § 586 of the Foreigh Operations, Export Financing and Related Programs Appropriations Act, Public Law No. 106-429.

Self-petitions of abused spouses and children. Under the Violence Against Women Act (VAWA), abused spouses and children of U.S. citizens and LPRs are allowed to self-petition for LPR status if they can show that they meet certain requirements, and are victims of extreme psychological or physical abuse. VAWA self-petitioners may apply for adjustment of status. *Law found at* 8 U.S.C. §§ 1154, 1255.

Self-petitions of widows and widowers of U.S. citizens. The spouse of a U.S. citizen who has died may self-petition for an immigrant visa and immigrate as the immediate relative of a citizen, provided that he or she files the petition within two years of the spouse's death and has not remarried. The spouse's minor, unmarried children are also eligible to immigrate. *Law found at* 8 U.S.C. § 1151(b)(2)(A)(i).

Diversity visa lottery. Individuals from countries determined to have unusually low numbers of immigrants are eligible to enter an annual "visa lottery." Lottery winners must then apply for an immigrant visa, either at a consulate abroad or, if they are eligible, by means of adjustment of status. *Law found at* 8 U.S.C. § 1151.

"Late Amnesty" or legalization under the LIFE Act. The LIFE Act provides for the adjustment of status of individuals who filed written claims for class membership in one of three class action lawsuits that challenged INS implementation of the 1986 legalization program: *Catholic Social Services, Inc. v Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993); *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. (1993), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993). To adjust under LIFE, individuals must show, among other things, that they were continuously physically present in the United States during the period between November 6, 1986, and May 4, 1988, and that they applied for class membership before October 1, 2000.

Applicants for asylum. As noted previously, individuals with a well-founded fear of persecution in their home country may apply for asylum. Persons in deportation or removal proceedings may request asylum from the immigration judge as a defense to removal; individuals who are not in proceedings may apply affirmatively with the INS. Generally individuals must apply for asylum within one year of entry into the U.S., although there are exceptions to this restriction. Asylum applicants become eligible to apply for employment authorization if their asylum applications remain pending for more than five months. *Law found at* 8 U.S.C. § 1158.

Non-LPR applicants for cancellation of removal or suspension of deportation. Individuals in removal proceedings who establish that they have been continuously present in the U.S. for at least ten years, that they have good moral character, and that their removal would cause "exceptional and extremely unusual hardship" to a U.S. citizen or LPR parent, spouse, or child may apply for the discretionary relief of cancellation of removal. For non-LPRs who are in deportation rather than removal proceedings, suspension of deportation is available. Applicants for suspension must establish seven years of continuous physical presence in the U.S. and good moral character, and demonstrate that their deportation would cause extreme hardship to themselves, or to a parent, spouse, or child. Persons granted cancellation or suspension become LPRs. Applicants for cancellation of removal and suspension of deportation are eligible for employment authorization. *Law found at* former 8 U.S.C. § 1254 (1996); 8 U.S.C. § 1229b(b).

There are also some special categories of suspension or cancellation applicants:

NACARA suspension and cancellation applicants. The Nicaraguan Adjustment and Central American Relief Act (NACARA) established unique standards for suspension and cancellation applications filed by eligible nationals of El Salvador, Guatemala, and countries of the former Soviet bloc, and their spouses and children. Eligible individuals also may obtain this relief from the INS, even if they have never been in deportation proceedings.

Abused spouses and children applying for suspension or cancellation. In addition to the self-petition process discussed in the previous section about adjustment of status, the Violence Against Women Act (VAWA) also established a special form of suspension of deportation relief. A similar special form of cancellation of removal was subsequently created by Congress. Accordingly, an immigrant adult or child abused in the U.S. by a U.S. citizen or LPR, or the child or parent of such an abused individual, may apply for suspension or cancellation of removal under different standards. These individuals need only establish three years of continuous physical presence in the U.S.

Applicants for temporary protected status (TPS). Individuals who are nationals of countries that have been designated for temporary protected status by the attorney general may apply for TPS. Applicants who file a prima facie application for TPS may be granted employment authorization. *Law found at* 8 U.S.C. § 1254a.

NONIMMIGRANTS

Nonimmigrant categories. Noncitizens who are allowed to enter the U.S. for a specific purpose and for a limited period of time are classified as nonimmigrants. Examples of nonimmigrants include tourists, students, and visitors on business. Most nonimmigrants are required to show they intend to maintain their residence abroad. Nonimmigrants who violate the terms of their status—for example, by overstaying a tourist visa or working without permission—may lose their nonimmigrant status and be considered undocumented. Some categories of nonimmigrants, such as temporary workers and students, are permitted to work under certain specific restrictions. *Law found at* 8 U.S.C. § 1101(a)(15).

Citizens of Micronesia, the Marshall Islands, and Palau. Citizens of the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau have special rights under Compacts of Free Association signed by the United States. Although they are technically nonimmigrants, they are allowed to enter, reside, and work in the United States.

UNDOCUMENTED IMMIGRANTS WITHOUT INS PERMISSION TO REMAIN IN THE U.S.

There are two main ways for a noncitizen to be considered "undocumented." The first way is to enter the U.S. by avoiding inspection at the border, without being admitted or "paroled" by an INS officer. The second way is to enter the U.S. with a lawful status and subsequently lose that status. Nonimmigrants who overstay the period of time for which they are admitted, or otherwise violate the terms of their nonimmigrant visas become undocumented. LPRs may lose their status and become undocumented after a final adjudication in deportation or removal proceedings, most commonly resulting from their having committed a deportable offense. Undocumented immigrants risk being removed from the U.S. However, they may be eligible to obtain temporary or permanent lawful status by applying for one of the forms of relief discussed above.

Immigration Categories for Public Benefits Purposes

In enacting laws governing immigrant eligibility for public benefits, Congress created eligibility categories that do not always correspond to the immigration categories discussed in the preceding chapter on Immigration Status. Categories such as "qualified" immigrants, "not qualified" immigrants, and "permanently residing in the United States under color of law," or "PRUCOL," are not immigration statuses, but rather benefit eligibility categories that encompass numerous immigration statuses. Some terms, such as "Cuban/Haitian entrant," have narrower meanings when used with respect to immigration status than when used with respect to eligibility for public benefits.

The first section of this chapter discusses the "qualified/not qualified" immigrant distinction and describes abused immigrants, who can be considered "qualified" immigrants for public benefit purposes if they have petitioned for lawful permanent resident (LPR) status. The next section describes the three major categories of "qualified" immigrants who are exempt from many of the welfare law's restrictions: LPRs with 40 quarters of work history, refugees, and veterans. Finally, the last section describes the major categories of "not qualified" immigrants who are nevertheless eligible for certain public benefits: victims of trafficking, American Indians born outside the U.S., persons who are lawfully present, and persons who are PRUCOL.

"Qualified" and "Not Qualified" Immigrants

As explained in the Overview chapter, the 1996 welfare law divides immigrants into two categories—"qualified" and "not qualified"—for public benefits purposes. Under federal law, all immigrants are either "qualified" immigrants or "not qualified" immigrants. Persons with the following immigration statuses are considered "qualified" immigrants:

- lawful permanent residents—LPRs[1]
- refugees
- asylees
- persons granted withholding of deportation or removal
- conditional entrants
- persons granted parole by the Immigration and Naturalization Service (INS) for a period of at least one year
- Cuban/Haitian entrants
- certain abused immigrants

All other immigrants are "not qualified" immigrants, including many who are lawfully in the U.S. as well as those who are undocumented. *Law found* at 8 U.S.C. § 1641.

The fact that an individual is considered a "qualified" immigrant, however, means only that she or he falls within this category—it does not necessarily mean that she or he is eligible for a particular benefit. When the 1996 welfare law created the "qualified" immigrant category, the law severely restricted most "qualified" immigrants' eligibility for the major federal "means-tested" public benefit programs. With important exceptions (which are discussed in the next section), most "qualified" immigrants were barred from Supplemental Security Income (SSI) and food stamps whether they had lived in the U.S. for many years before the 1996 law passed or whether they came after 1996. "Qualified" immigrants who came to the U.S. on or after August 22, 1996, were also barred from federally funded Temporary Assistance for Needy Families (TANF), full-scope Medicaid, and the State Children's Health Insurance Program (SCHIP) during their first five years in "qualified"

status in the United States. In 1997 and 1998, Congress restored SSI and food stamps to some immigrants who were in the United States when the 1996 law passed. In 2002 Congress restored food stamps to a significant number of immigrants who entered the U.S. after the welfare law's passage. In addition, a number of states established state replacement programs to cover at least some of the immigrants who lost eligibility for federal programs. Most "qualified" immigrants are eligible for other federal benefit programs as well as state and local programs regardless of when they entered the United States. Immigrant eligibility for benefits is discussed in greater detail in the Overview chapter and in the specific benefit program chapters elsewhere in the *Guide*.

ABUSED IMMIGRANTS

Immigrants who have been battered or subjected to extreme cruelty by a spouse or parent may be considered "qualified" immigrants for purposes of receiving public assistance before they obtain LPR status, if they have filed a petition showing they are prima facie eligible for LPR status. The phrase "battered or subjected to extreme cruelty" includes being the victim of any act or threatened act of violence, including any forceful detention, which results in physical or mental injury. Psychological or sexual abuse or exploitation, including intimidation, threats, rape, or forced prostitution are considered acts of violence. Other abusive actions may also be acts of violence. Acts, or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. For the sake of brevity, the term "abused" is used throughout the *Guide* to replace the term "battered or subjected to extreme cruelty."

Victims of abuse can be treated as "qualified" immigrants for benefits purposes as soon as their petition for LPR status is found to establish prima facie eligibility, if they meet all of the other requirements. To be considered "qualified," such an immigrant must:

- be abused or be the child or parent of an abused individual;
- be able to show a substantial connection between the violence and the need for benefits;
- have a pending or approved petition for a family-based immigrant visa, self-petition for an immigrant visa, or application for cancellation of removal/suspension of deportation—if not yet approved, the petition or application must also be found to establish prima facie eligibility; *and*
- not currently be living with the abuser.

Each of these requirements is discussed below.

Categories of family relationships. To be a "qualified" immigrant, a victim of abuse must fall into one of the following categories:

Victim of abuse. An immigrant who has been abused by a parent, spouse, or member of the spouse's or parent's family living in the same household.

Child of an abused parent. A child whose parent has been abused by the parent's spouse or a member of the spouse's family living in the same household. In this situation, the child need not have been abused.

Parent of an abused child. An immigrant whose child was abused by the immigrant's spouse or parent, or by a member of the spouse's or parent's family living in the same household. In this situation, the immigrant need not have been abused. The immigrant cannot have participated in abusing the child.

Substantial connection requirement. For an immigrant to be considered "qualified," there must be a substantial connection between the abuse and the need for benefits. Among other things, a substantial connection exists where benefits are needed:

- to become self-sufficient;
- to escape the abuser and/or the community in which the abuser lives, or to ensure the applicant's safety;
- because of lost financial support due to separation from the abuser;

- for medical attention, mental health counseling, or because of a disability that resulted from the abuse;
- to alleviate nutritional risk or needs resulting from the abuse or following separation from the abuser;
- because of lost housing or income, or because fear of the abuser jeopardizes the applicant's ability to care for her or his children; *or*
- to replace medical coverage available to the applicant when she or he was living with the abuser.

Application or petition for LPR status. To be a "qualified" immigrant, the abused person must have a pending or approved application or petition that sets forth a prima facie case for being granted status as an LPR. In this context, "prima facie" means that, on its face, the document appears to establish eligibility for the relief sought. The documents listed below qualify as petitions or applications for LPR status:

Petition for a family-based immigrant visa. To obtain LPR status for her or his spouse and certain offspring, a U.S. citizen or LPR may file an immigrant visa petition—Form I-130. Only a visa petition filed for an abused immigrant based on one of the following relationships can establish "qualified" immigrant status: husband or wife of U.S. citizen or LPR, unmarried child under age 21 of U.S. citizen or LPR, or unmarried son or daughter age 21 or older of LPR.

Self-petition to obtain LPR status filed as a result of abuse, by the spouse or child of a U.S. citizen or LPR. A spouse or unmarried child under age 21 of a U.S. citizen or LPR who is abused by her or his U.S. citizen or LPR spouse or parent may file a self-petition—Form I-360—to obtain LPR status without the knowledge or consent of her or his abusive spouse or parent. Also, a parent whose child is abused by the parent's U.S. citizen or LPR spouse may self-petition, even if the parent has not been abused. This process allows the self-petitioner to become an LPR without having to depend on her or his abusers in order to do so. After a person has filed the I-360, the INS generally issues a Notice of Action finding prima facie eligibility (Form I-797) pending final approval of the petition. Once the INS approves the petition, a Notice of Action indicating the approval (Form I-797 or I-797C) is issued.

Persons who erroneously believed they were validly married, or who divorced because of abuse within the past two years, also may be able to self-petition.

Self-petition to obtain LPR status as a widow/er (and the widow/er's children) of a deceased U.S. citizen. An unremarried widow/er of a U.S. citizen who was married to the citizen for at least two years may file a self-petition—Form I-360—to become an LPR. The self-petition has to be filed within two years of the citizen's death. The widow/er's unmarried children under age 21 also may file.

Application for cancellation of removal/suspension of deportation filed as a victim of domestic violence. An immigrant who has been continuously present in the U.S. for three years and meets other requirements may apply for cancellation of removal/suspension of deportation (Form EOIR-42B or EOIR-40) before an immigration judge if she or he has been abused by a U.S. citizen or LPR spouse or parent. Also, an immigrant whose child has been abused by the child's U.S. citizen or LPR parent may apply for cancellation of removal/suspension of deportation, even if the immigrant has not been abused and is not married to the child's other parent. A successful application results in LPR status and stops the immigrant's deportation from the U.S.

Cancellation of removal is a defense to removal that allows immigrants to become LPRs if they are in removal proceedings and eligible for this relief. Suspension of deportation is a similar defense for immigrants who are in deportation proceedings. For abused immigrants, eligibility requirements for cancellation of removal or suspension of deportation are similar. Cancellation of removal/suspension of deportation is not limited to immigrants who are abused. However, only applications filed on the basis of abuse make immigrants eligible to be "qualified" immigrants. Cancellation of removal or suspension of deportation based on abuse can only be obtained by appearing before an immigration judge. Immigrants who apply for and are

refused either of these remedies may be removed from the U.S. For this reason, immigrants should consult with an attorney or other competent representative before seeking either of these remedies.

Victim must live apart from abuser. Without access to resources or to a support system, abused immigrants who are financially dependent on their abusers may be unable or hesitant to leave them. However, to be a "qualified" immigrant, the immigrant cannot be currently living with the abuser. Accordingly, applications for public benefits should be preliminarily processed to inform victims of the resources that would be available to them if they choose to leave the abuser. If a victim chooses to leave the abusive situation, the service provider should focus on ensuring that final processing occurs as promptly as possible.

The law governing abused immigrants and "qualified" immigrant status is found at:
8 U.S.C. § 1641(c) (Treatment of Certain Battered Aliens as Qualified Aliens); Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344, 61,366–61,409 (Nov. 17, 1997); Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits, 62 Fed. Reg. 65,285 (Dec. 11, 1997).

"Qualified" Immigrants Exempt from Certain Welfare Law Restrictions

Congress exempted three major categories of immigrants from many of the welfare law's restrictions: LPRs with 40 quarters of work history, refugees, and veterans. Immigrants meeting one of these exemptions who were in the U.S. when the law passed in August 1996 retained eligibility for SSI, food stamps, federally funded TANF, Medicaid, and SCHIP. If they enter on or after August 22, 1996, refugees and veterans are eligible for the major federal programs, although the refugee exemption for SSI lasts only during the first seven years after the status is obtained. LPRs with 40 quarters of work credit who enter the United States on or after August 22, 1996, are eligible for food stamps but must wait until five years after entry to apply for SSI and to qualify for federally funded TANF, Medicaid, and SCHIP. Some immigrants who are ineligible for federal benefit programs may be eligible for state replacement programs. Eligibility rules for the "exempt" categories are discussed in greater detail in the specific benefit program chapters elsewhere in the *Guide*.

LPRs with Credit for 40 Quarters' Work History

Income from self-employment or wages earned by a worker in the U.S. are reported to the Social Security Administration (SSA), which then credits the worker with "qualifying quarters" based on the amount of her or his earnings. LPRs with 40 qualifying quarters are entitled to the following advantages:

- They receive an exemption from immigrant restrictions in various programs, including SSI and food stamps. See the individual programs to determine if this exemption applies.
- They are exempt from immigrant sponsor deeming if a sponsor completed a Form I-864 Affidavit of Support on their behalf.
- Their sponsors are not liable under the Form I-864 Affidavit of Support.

The following discussion of how "qualifying quarters" may be credited to LPRs applies only to exemption and "immigrant sponsor deeming" purposes, and not for purposes of qualifying for Social Security benefits.

How qualifying quarters are credited. Qualifying quarters may be credited to workers based on the amount of their earnings. However, additional qualifying quarters may be credited for work done by an individual's spouse or parent(s), as described below. Workers may be credited with a maximum of four qualifying quarters each year based on their own earnings.

Credit for quarters worked by parents. An LPR may also be credited with any qualifying quarter earned by each of her or his parents while the LPR was under 18 years of age, including quarters worked by the parents before her or his birth.

Credit for quarters worked by spouse during marriage. A married individual may also be credited with any qualifying quarter earned by her or his spouse during the marriage. (SSA considers workers "married," even if they were not wed in civil proceedings, if they "hold themselves out to the community" as married.) A widow or widower retains credit for all qualifying quarters earned during the marriage by the now deceased spouse. Upon divorce, any quarters earned by the spouse during marriage are lost. However, if the divorce occurs after a person has been credited with 40 quarters and determined eligible for a benefit, SSA will not subtract qualifying quarters earned by the spouse.

Credit for work performed that does not count towards Social Security. Qualifying quarters may be credited to a worker even though the earnings do not count for purposes of Social Security eligibility. For example, immigrants may count work performed for certain federal, state, and local civilian employers, for certain agricultural and domestic services employers, as well as work performed before 1935, the year the Social Security Act was enacted. In some circumstances, employees who worked abroad for certain U.S.-based corporations also can count these earnings.

Certain quarters do not count. An immigrant cannot get credit for work performed in a quarter falling after December 31, 1996, if she or he or the worker whose earnings are being claimed received Medicaid, SSI, food stamps, TANF, or SCHIP during that quarter.

Qualifying quarters *may* be earned by a worker who worked without a valid Social Security number or employment authorization. However, the worker should consult an attorney before seeking credit for such quarters. If earnings were not properly reported, the worker may face civil or criminal penalties and adverse immigration and/or tax consequences.

How qualifying quarters are calculated for work performed since 1978 and agricultural work performed before 1978. Qualifying quarters are determined based on the total amount of a worker's earnings each year, without regard to the months in which the work was performed (i.e., with sufficient earnings, all four quarters could be credited based on income earned in a single quarter). All earnings from wage work, self-employment, and agricultural labor follow this rule. The amount of earnings needed to earn a qualifying quarter changes each year.

See the table on the following page for a summary of the earnings needed since 1978 to receive qualifying quarters.

How qualifying quarters are calculated for non-agricultural work performed before 1978. Each calendar year is divided into four calendar quarters (January 1–March 31, April 1–June 30, July 1–September 30, October 1–December 31). For wage work, one qualifying quarter is added for each calendar quarter in which an individual was paid $50 or more in wages (including agricultural wages for 1951–1954). For wages earned through self-employment, four qualifying quarters are added for each taxable year in which an individual's net earnings from self-employment were $400 or more.

See the table on the following page for a summary of the earnings needed to receive qualifying quarters.

How to find out whether quarters have been credited by SSA. A worker may obtain records of her or his own qualifying quarters by contacting the local SSA office; information about a spouse's or parent(s)' qualifying quarters can be obtained with their permission. Welfare officers may obtain records from SSA about a worker's qualifying quarters or about those of a worker's

TABLE 3

Earnings Needed to Receive Credit for "40 Quarters" of Work History

1978 – Present		
CALENDAR YEAR	AMOUNT NEEDED TO RECEIVE ONE QUARTER OF CREDIT	AMOUNT NEEDED TO RECEIVE FOUR QUARTERS OF CREDIT
1978	$250	$1,000
1979	$260	$1,040
1980	$290	$1,160
1981	$310	$1,240
1982	$340	$1,360
1983	$370	$1,480
1984	$390	$1,560
1985	$410	$1,640
1986	$440	$1,760
1987	$460	$1,840
1988	$470	$1,880
1989	$500	$2,000
1990	$520	$2,080
1991	$540	$2,160
1992	$570	$2,280
1993	$590	$2,360
1994	$620	$2,480
1995	$630	$2,520
1996	$640	$2,560
1997	$670	$2,680
1998	$700	$2,800
1999	$740	$2,960
2000	$780	$3,120
2001	$830	$3,320

Years Prior to 1978		
TYPE OF EARNINGS	AMOUNT NEEDED TO RECEIVE ONE QUARTER OF CREDIT	AMOUNT NEEDED TO RECEIVE FOUR QUARTERS OF CREDIT
Non-Agricultural Wages	$50	$200
Agricultural Wages 1951-54	$50	$200
Agricultural Wages 1955-77	$100	$400
Net Self-Employed Earnings	—	$400

spouse and/or parents, even if the latter are unavailable or uncooperative. An individual who worked without having her or his quarters accurately recorded due to, for example, clerical errors or employer oversight may ask SSA to correct the earnings record.

A qualifying quarter not credited by SSA may still count—each benefit-granting agency makes the final decision about whether a quarter not credited by SSA counts towards the 40 quarters exemption.

Amount of earnings needed to receive Social Security qualified quarters. Follow the steps below to determine if an LPR meets the 40 quarters exemption:

1. Determine the amount of the LPR's creditable earnings and the time periods of employment.
   - Use the preceding table to determine if the LPR has at least forty qualifying quarters. As described above, obtain corroboration of the qualifying quarters from SSA. If the LPR does not have 40 qualifying quarters, go to step 2.
2. Determine the amount, if any, of each of the LPR's parents' periods of creditable earnings and their periods of employment before the LPR's 18th birthday.
   - Use the preceding table to determine which, if any, of each parent's qualifying quarters were earned before the LPR's 18th birthday. This amount represents each parent's creditable qualifying quarters.
   - Add up all of the parents' creditable qualifying quarters.
   - Add this sum to all quarters earned by the LPR (step 1). If the total is 40 or more, obtain corroboration from SSA. If not, go to step 3.
3. If the LPR is married or widowed, determine the amount of the LPR's spouse's or widow's earnings in the U.S. (or in creditable employment outside the U.S.) and the time periods of employment during the marriage.
   - Use the preceding table to determine the spouse or widow's qualifying quarters earned during the marriage. This amount is the spouse or widow's creditable qualifying quarters.
   - Add the spouse or widow's creditable qualifying quarters to those earned by the LPR and those creditable from the LPR's parents (step 2). If all qualifying quarters total at least 40, obtain corroboration from SSA. If the total is below 40, the LPR is not yet eligible for the 40 quarters exemption.

The law governing 40 qualifying quarters is found at:
Social Security Act, title II, 42 U.S.C. §§ 401, *et seq.*; 20 C.F.R. §§ 404.140, *et seq.*; Program Operations Manual System (POMS) SI.00502.135 (LPRs with 40 qualifying quarters of earnings), 8 U.S.C. § 1183a (requirements for sponsor's affidavit of support); 8 U.S.C. § 1612 (limited eligibility of "qualified" immigrants for certain federal programs); 8 U.S.C. § 1631 (federal attribution of sponsor's income and resources to LPR); 8 U.S.C. § 1645 (qualifying quarters); 8 C.F.R. §§ 213a.1, *et seq.* (affidavits of support on behalf of immigrants).

REFUGEES

The 1996 welfare law and subsequent amendments exempt refugees and certain other categories of immigrants from many of the law's restrictions. Even if they enter the United States on or after August 22, 1996, refugees are eligible for the major federal programs, although the refugee exemption for SSI lasts only during the first seven years after the status is obtained. This exemption extends to the following immigrant categories:

- refugees
- asylees
- persons granted withholding of deportation or removal
- Amerasians
- Cuban/Haitian entrants

The first four of these categories are discussed in the preceding chapter on Immigration Status. The last category is discussed below, because the definition of "Cuban/Haitian entrant" for benefits purposes is broader than the immigration law use of the term.

Cuban/Haitian entrants. These individuals are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status, and who are eligible for refugee assistance and many other public benefits. This category consists of persons in either of the following two subcategories:

- All Cubans or Haitians who were paroled as a "Cuban/Haitian entrant" or granted parole by the INS on any other basis, except for individuals who were paroled solely for criminal prosecution or to testify in an official proceeding. This subcategory also includes all individuals granted "any other special status" established by immigration law for nationals of Cuba or Haiti. § 501(e) Refugee Education Assistance Act of 1980.
- All Cubans and Haitians who were paroled for criminal prosecution or to testify in an official proceeding, or who are in exclusion or deportation proceedings, or who have applied for asylum with the INS. However, individuals cannot be included in this subcategory if they are subject to final, nonappealable orders of deportation or exclusion.

The first subcategory includes, in addition to persons granted parole, Cubans granted adjustment to LPR status under the Cuban Adjustment Act or under NACARA. It also generally includes Haitians granted adjustment under HRIFA. One limitation is that section 902(i) of HRIFA provides that individuals who were not "qualified" immigrants on the law's October 21, 1998 enactment date do not become "qualified" immigrants for purposes of SSI and Medicaid eligibility until October 2, 2003. However, nearly all Haitians eligible to adjust under HRIFA were "qualified" immigrants at the time of the law's enactment, either because they were paroled into the United States, had been granted deferred enforced departure, or had applied for asylum. The only Haitians eligible for adjustment under HRIFA who were not "qualified" immigrants on October 21, 1998, were Haitians who were never paroled and who either (1) had received a final deportation or exclusion order, or (2) qualify for HRIFA adjustment as orphans.

The law concerning Cuban/Haitian entrants and their eligibility for benefits is found at: § 501(e) of the Refugee Education Assistance Act of 1980, Pub. L. No. 96-422 (Oct. 10, 1980) (defining "Cuban/Haitian entrant" for benefits purposes); and 8 U.S.C. § 1612 (limited eligibility of "qualified" immigrants for certain federal programs). Relevant regulations are found at 8 C.F.R. § 212.5(g) (defining parole "in the special status for nationals of Cuba or Haiti").

VETERANS

"Qualified" immigrants who are veterans or on active military duty, and families of these individuals, may be eligible for most benefit programs under the "veteran exemption." See the individual programs to determine if the "veteran exemption" applies in those programs.

A "qualified" immigrant meets the "veteran exemption" if she or he is residing in a state and:

- is on active duty in the U.S. armed forces;
- has received honorable discharge not on account of immigration status, and has fulfilled the minimum active duty requirement; *or*
- is the spouse, unremarried widow or widower, or unmarried dependent child of a veteran or active duty service member.

The terms used in the "veteran exemption" are outlined below.

"Active duty in the U.S. armed forces." This means current, full-time service in the Army, Navy, Air Force, Marine Corps, or Coast Guard.

"Veteran." This is a person who fulfilled the minimum active duty requirements in the U.S. armed forces (see below), and was discharged or released with an honorable discharge not on account of immigration status. The designation includes people who died while serving in active

duty in the U.S. armed forces. For purposes of determining eligibility of a surviving spouse, "veterans" also includes persons who died after discharge from the U.S. armed forces. (Filipino war veterans who fought under U.S. command during World War II are also considered veterans.)

"Discharge based on immigration status." This is a discharge granted to noncitizen service members because they requested it on the basis that noncitizens are not subject to U.S. military service. It is also a discharge based on a finding that the enlistment violated regulations restricting enlistments by noncitizens.

"Minimum active duty." This is completed by veterans if they serve either the full period for which they were ordered to active duty, or 24 months of continuous active duty, whichever is less. There is no minimum active duty service requirement for enlistments prior to September 7, 1980.

"Spouse of a veteran or active duty service member." These persons are eligible for the "veteran exemption" if the couple has been determined husband and wife under state law, or has been determined husband and wife under section 216(h)(1) of the Social Security Act. The couple is also eligible for the exemption if they are "holding themselves out to the community" as husband and wife.

"Child of a veteran or active duty service member." These persons are eligible for the "veteran exemption" if they are the biological or legally adopted child of an active duty member of the U.S. armed forces or an honorably discharged (not on account of immigration status) veteran, or the biological or legally adopted child of her or his spouse. The child must also be unmarried, dependent on the veteran/active duty member, and under 18 years of age (or under 22 if a student regularly attending school.)

Also included in this category are children of a deceased veteran if they were dependent upon the veteran at the time of the veteran's death. A disabled child over 18 also qualifies for the exemption if, before her or his 18th birthday, the child was disabled and dependent on the veteran or active duty member.

"Unremarried surviving spouse of a veteran or active duty member." These persons are eligible for the "veteran exemption" if they are unremarried and were married to the veteran or active duty service member for at least one year. The unremarried widow/er is also eligible if she or he had a child with the veteran or active duty service member. And, in situations where the veteran's or active duty member's death was due to an injury or disease incurred or aggravated during military service, and the marriage existed within 15 years after the period of service in which the injury or disease occurred, the surviving spouse is eligible for the exemption.

The law governing the "veteran exemption" is found at:
8 U.S.C. §§ 1601, *et seq.*, 38 U.S.C. §§ 101, *et seq.*, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344, 61,413–61,414, Social Security Administration, Program Operations Manual System SI. 00502.140.

"Not Qualified" Immigrants Eligible for Certain Public Benefits

The following categories of noncitizens include "not qualified" immigrants, who nonetheless are eligible for certain public benefits. Victims of trafficking are eligible for all major federal benefit programs. Certain American Indians born abroad are eligible for various benefits including SSI, Medicaid, and food stamps. The categories for "lawfully present" and "permanently residing under color of law" (PRUCOL) immigrants encompass immigrants with many different immigration statuses. Immigrants must be "lawfully present" to receive Social Security benefits. Before the implementation of the 1996 welfare law, PRUCOL immigrants were eligible for several major fed-

eral benefits programs, including SSI, Medicaid, and Aid to Families with Dependent Children (AFDC). The category is now used for purposes of Unemployment Insurance and for some state benefit programs.

VICTIMS OF TRAFFICKING

Individuals who have been subjected to "a severe form of trafficking in persons" are referred to as "victims of trafficking" throughout this *Guide* (for a description of the kinds of abuses encompassed within this definition, see the Glossary entry "severe form of trafficking in persons"). Under the Victims of Trafficking and Violence Protection Act of 2000, federal agencies are required to provide benefits and services to victims of trafficking without regard to their immigration status, provided that the victim is either:

- under 18 years of age; *or*
- a person who has been certified by the U.S. Department of Health and Human Services secretary to be willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons, and who either:
  (a) has made a bona fide application for a T visa (under INA section 101(a)(15)(T)) that has not been denied; *or*
  (b) is a person whose continued presence in the U.S. is being ensured by the attorney general in order to effectuate the prosecution of traffickers in persons.

Under these provisions, victims of trafficking who have been certified or who are under 18 years of age are eligible for nearly all major federal benefit programs.

In addition, state programs that are funded or administered by federal agencies and federal programs whose funding is limited by appropriations must provide benefits to victims of trafficking "to the same extent" as to refugees. Thus, for example, victims of trafficking, like refugees, are eligible to receive Refugee Cash Assistance for an eight-month period.

The law concerning victims of trafficking is found at:
§ 107 of the Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000); 8 U.S.C. § 1101(a)(15)(T) (concerning "T" nonimmigrant status).

AMERICAN INDIANS BORN OUTSIDE THE UNITED STATES

All American Indians born in the United States are U.S. citizens. American Indians born outside the United States are eligible for SSI, Medicaid, and food stamps without regard to immigration status restrictions if they are members of a federally recognized Indian tribe, or if they were born in Canada.

The law concerning American Indians born outside the United States is found at:
8 U.S.C. § 1612(a)(2)(G) (eligibility for SSI, Medicaid and food stamps); 8 U.S.C. § 1359 (Canadian Indians not subject to immigration restrictions); and 25 U.S.C. § 450b(e) (regarding federally recognized Indian tribes).

LAWFULLY PRESENT

In common usage, the term "lawfully present" refers to any noncitizen presently permitted to remain in the United States. However, for purposes of Title II Social Security benefits, the attorney general has adopted a narrower definition of "lawfully present." While the attorney general expressly provided that this definition is "only" for purposes of Title II Social Security benefits, benefits agencies also use this definition in determining whether immigrants were "lawfully present"

in the United States for SSI and food stamps purposes.[2] Under the Social Security definition, the following individuals who are not U.S. citizens or nationals are considered to be lawfully present in the United States:

- "qualified" immigrants
- lawful temporary residents
- persons granted Family Unity status
- persons granted temporary protected status (TPS)
- persons granted deferred enforced departure (DED)
- persons granted parole for a period of less than one year, except for persons paroled for deferred inspection, exclusion proceedings under INA section 236(a), or for prosecution pursuant to 8 C.F.R. section 212.5(b)(3)
- persons granted deferred action status
- spouses and children of U.S. citizens who are beneficiaries of approved visa petitions and who have filed applications for adjustment of status
- applicants for asylum, withholding of deportation or removal, or withholding under the Convention Against Torture, who have been granted employment authorization, or who are under 14 years of age and have had their applications pending for at least 180 days
- nonimmigrants who have not violated the terms of their status

The regulation defining "lawfully present" for purposes of Title II Social Security benefits is at: 8 C.F.R. § 103.12.

PERMANENTLY RESIDING UNDER COLOR OF LAW – PRUCOL

Individuals are considered to be "permanently residing under color of law," or PRUCOL, if their presence in the U.S. is known to the INS, and the INS does not intend to deport them. PRUCOL is neither an immigration status nor an immigration law term, but a public benefit eligibility category.

Prior to August 22, 1996, immigrants who were considered PRUCOL were eligible for a number of federal programs, including Medicaid, SSI, and Aid to Families with Dependent Children (AFDC). The term is now used for Unemployment Insurance purposes and also by a number of states in determining eligibility for state-funded programs. Benefit programs that use this term may have regulations or handbooks defining specific categories of immigrants who are considered to be PRUCOL. The term also has been defined in decisions of federal and state courts, and the number and types of statuses that may be considered PRUCOL vary from state to state, and benefit program to benefit program.

Noncitizens who are PRUCOL may include, but are not limited to:

- refugees, asylees, and persons granted withholding of deportation or removal
- parolees and Cuban/Haitian entrants
- conditional entrants
- lawful temporary residents under the amnesty programs
- persons granted deferred action status
- persons granted deferred enforced departure (DED)
- persons granted Family Unity
- applicants for adjustment of status who are immediate relatives of U.S. citizens
- persons under an order of supervision
- persons granted stays of deportation or removal
- noncitizens who have continuously resided in the U.S. since before January 1, 1972
- certain battered immigrants, children of battered spouses, parents of battered children
- citizens of Micronesia, the Marshall Islands, or Palau
- persons granted K, S, U, or V status
- victims of trafficking
- persons eligible to self-petition as special immigrant juveniles
- persons granted voluntary departure

- persons granted relief under the Convention Against Torture
- any other noncitizens who can show that they are residing in the U.S. with INS knowledge and permission, and that the INS does not presently contemplate enforcing their departure

Other immigrants may be considered PRUCOL, depending upon the rules of a particular state or benefit program.

Case law concerning PRUCOL is found at:
Holley v. Lavine, 553 F.2d 845 (2d Cir. 1977), *cert. denied*, 435 U.S. 947 (1978); *Berger v. Heckler*, 771 F.2d 1556 (2d Cir. 1985); *Dept. of Health and Rehabilitative Services v. Solis*, 580 So.2d 146 (1991).

PRUCOL provisions in federal law are found at:
For AFDC, 45 C.F.R. § 233.50.
For SSI, 42 U.S.C. § 1382c(a)(1)(B) and 20 C.F.R. § 416.1618.
For Medicaid, 42 U.S.C. § 1396b(v) and 42 C.F.R. § 435.408.
For Unemployment Insurance, 26 U.S.C. § 3304(a)(14)(A).

ENDNOTES

1 Immigrants who become LPRs by adjusting their status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) who were not "qualified" immigrants on HRIFA's enactment date of Oct. 21, 1998, do not become "qualified" immigrants for purposes of SSI and Medicaid eligibility until Oct. 2, 2003. They become "qualified" immigrants for all other federal programs as soon as they are granted LPR status. However, nearly all immigrants eligible to adjust under HRIFA were "qualified" immigrants at the time HRIFA was enacted.

2 Arguably a broader definition should be used for purposes of these benefits. For example, the provision of the Social Security definition that requires asylum applicants to have employment authorization may reflect the earned nature of Title II benefits, but this requirement has no relevance for other benefits purposes.

Immigration Documents

Introduction

Identifying an immigrant's status to determine whether he or she is eligible for benefits is not simply a matter of asking the immigrant for a particular document. Immigrants with similar documents might have different immigration statuses and therefore be eligible for different benefits.

To make an accurate determination, you must be able to read the document to discover what it says about the person's immigration status, then match that information to the immigrant eligibility rules described in Part 2 of this *Guide*.

The documents shown in this section are examples to be used for educational purposes only. Since documents issued by the Immigration and Naturalization Service (INS) frequently change, the documents and codes presented here are not exhaustive. If you are trying to compare a document to those shown in this *Guide*, and you find that it is not here or that it contains codes different from those listed here, do not assume that the document you are trying to compare is invalid. Instead, consult an immigration law expert for advice about how to proceed.

Most noncitizens who come into contact with the INS are given an "alien" (or "A") number. To keep track of an individual's immigration file, the INS uses this number, along with the person's name and date of birth. Most immigration documents include a reference to the individual's "A" number. In some cases, an individual may have more than one "A" number, as a result of multiple contacts with the INS.

List of Documents by Document Number

NUMBER	NAME	PAGE
I-94	Arrival/Departure Record	76
	Key to I-94	76
I-134	Affidavit of Support (traditional version)	92
I-151	Resident Alien Card	66
	Key to I-551 and I-151 Cards	67
I-181	Memorandum of Creation of Record of Lawful Permanent Residence	74
I-185	Canadian Border Crossing Card	86
I-186	Mexican Border Crossing Card	86
I-179	U.S. Citizen I.D. Card	57
I-197	U.S. Citizen I.D. Card	57
I-210	Voluntary Departure	81
I-221S	Order to Show Cause	95
I-327	Reentry Permit	71
I-444	Mexican Border Visitors Permit	86
I-512	Parole Authorization	82
I-551	Permanent Resident Card	64
	Key to I-551 and I-151 Cards	67
I-551	Stamp in Foreign Passport	66
I-571	Refugee Travel Document	78
I-586	Mexican Border Crossing Card	86
I-688	Temporary Resident Card under the 1986 Amnesty Program	75
I-688A	Employment Authorization for Applicants under the 1986 Amnesty Program	89
I-688B	Employment Authorization Document (EAD)	88
I-766	Employment Authorization Document (EAD)	87
	Key to Employment Authorization Cards	88
I-797	Notice of Action	83
I-862	Notice to Appear	94
I-864	Affidavit of Support (enforceable version)	91
N-550	Certificate of Naturalization	56
N-560	Certificate of Citizenship	57
N-561	Certificate of Citizenship	57
N-570	Certificate of Naturalization	56
B-1/B-2 Visa/BCC	Mexican or Canadian Nonimmigrant Visa/Border Crossing Card	86
–	Decision Granting Asylum	79
–	HHS Certification Letter	85
–	Order Granting Suspension of Deportation	72
–	Order Granting Cancellation of Removal	73

List of Documents by Status

CITIZENSHIP DOCUMENTS

NUMBER	NAME	PAGE
I-179	U.S. Citizen I.D. Card	57
I-197	U.S. Citizen I.D. Card	57
N-550	Certificate of Naturalization	56
N-560	Certificate of Citizenship	57
N-561	Certificate of Citizenship	57
N-570	Certificate of Naturalization	56

DOCUMENTS RELATING TO LPR STATUS

I-151	Resident Alien Card	66
	Key to I-551 and I-151 Cards	67
I-181	Memorandum of Creation of Record of Lawful Permanent Residence	74
I-327	Reentry Permit	71
I-551	Permanent Resident Card	64
	Key to I-551 and I-151 Cards	67
I-551	Stamp in Foreign Passport	66
–	Order Granting Suspension of Deportation	72
–	Order Granting Cancellation of Removal	73

DOCUMENTS RELATING TO OTHER IMMIGRATION STATUSES

I-94	Arrival/Departure Record	76
	Key to I-94	76
I-185	Canadian Border Crossing Card	86
I-186	Mexican Border Crossing Card	86
I-210	Voluntary Departure	81
I-444	Mexican Border Visitors Permit	86
I-512	Parole Authorization	82
I-571	Refugee Travel Document	78
I-586	Mexican Border Crossing Card	86
I-688	Temporary Resident Card under the 1986 Amnesty Program	75
I-797	Notice of Action	83
B-1/B-2 Visa/BCC	Mexican or Canadian Nonimmigrant Visa/Border Crossing Card	86
–	Decision Granting Asylum	79
–	HHS Certification Letter	85

DOCUMENTS RELATING TO EMPLOYMENT AUTHORIZATION AND INDICATING IMMIGRATION STATUS

I-688A	Employment Authorization for Applicants under the 1986 Amnesty Program	89
I-688B	Employment Authorization Document (EAD)	88
I-766	Employment Authorization Document (EAD)	87
	Key to Employment Authorization Cards	88

OTHER COMMON IMMIGRATION FORMS

I-134	Affidavit of Support (traditional version)	92
I-221S	Order to Show Cause	95
I-862	Notice to Appear	94
I-864	Affidavit of Support (enforceable version)	91

Documents Relating to Citizenship Status

U.S. CITIZENS AND NATIONALS

Citizenship through birth in the United States or naturalization. With the exception of the children of certain diplomats, all persons born in the United States and its territories acquire U.S. citizenship at birth. As discussed below, persons born abroad with at least one U.S. citizen parent may also acquire citizenship at birth. In addition, lawful permanent residents (LPRs) of the U.S. and certain U.S. military veterans can become citizens through the process known as naturalization.

Collective naturalization. Individuals born in certain territories became U.S. citizens collectively through grants of citizenship made by the United States.

Acquisition of citizenship through birth abroad. Individuals born abroad to U.S. citizen parent(s) may automatically be U.S. citizens at birth. Whether a person born abroad with at least one U.S. citizen parent became a citizen at birth depends on the law in effect at the time the person was born. Generally one parent (or in some cases, a grandparent) must have resided in the U.S. for a specific period of time prior to the person's birth. An immigrant child who has been adopted by a U.S. citizen and who has been admitted to the U.S. as an LPR may automatically acquire U.S. citizenship. Because of the complexity of the law in this area, individuals born abroad to U.S. citizen parents are often unaware that they are U.S. citizens.

Derivative naturalization. Children under 18 years of age generally cannot apply to naturalize, but they may automatically become citizens as a result of the naturalization of their parents (or just one parent, if that parent has custody of the children). This process is known as "derivative naturalization." The law governing derivative naturalization has been changed many times, and the specific requirements differ depending upon the law in effect at the time a particular individual's parents naturalized. Because of the complexity of the law governing derivative naturalization, many individuals who in fact are U.S. citizens do not know that they derived citizenship when their parents naturalized.

Noncitizen U.S. nationals. All U.S. citizens are also nationals of the United States, but some individuals who are U.S. nationals are *not* U.S. citizens. When the U.S. acquired certain island territories, Congress provided for the inhabitants of these territories to be citizens of their own islands, and nationals of the United States. Noncitizen nationals owe permanent allegiance to the U.S., and may enter and work in the U.S. without restriction. At present, noncitizen nationals include only (1) certain citizens of American Samoa and Swains Island, and (2) residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

TABLE 4

Typical Documents Indicating Citizenship

Primary evidence of U.S. citizenship (most common documents that by themselves evidence citizenship)	• a birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after Jan. 13, 1941), Guam, the U.S. Virgin Islands (on or after Jan. 17, 1917), or the Northern Mariana Islands (on or after Nov. 4, 1986), unless the person was born to foreign diplomats residing in the U.S. (note: persons born in Puerto Rico, the U.S. Virgin Islands, or the Northern Mariana Islands before these territories became part of the U.S. may be citizens through collective naturalization, as explained below); • a U.S. passport; • INS Forms I-179 (U.S. Citizen ID Card), I-197 (Citizen ID Card), N-560 (Certificate of Citizenship), I-872 (American Indian Card, for members of the Texas Band of Kickapoo), I-873 (Northern Marianas Card, for U.S. citizens from the Commonwealth of the Northern Marianas), N-561 (Certificate of Citizenship), N-550 (Certificate of Naturalization), and N-570 (Certificate of Naturalization); • Consular Forms FS-240 (Report of Birth Abroad), FS-545 (Certificate of Report of Birth), and DS-1350 (Certification of Report of Birth); • Northern Mariana Identification Card (issued before Nov. 3, 1986, then replaced by the I-873); • statement of consular official certifying that individual derived citizenship upon naturalization of his or her parent; *and* • American Indian Card with classification KIC (identifying the bearer as a member of the Texas band of Kickapoo Indians; the current version is the I-872).
Secondary evidence of U.S. citizenship (other evidence that establishes citizenship)	• a religious record showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after Jan. 13, 1941), Guam, the U.S. Virgin Islands (on or after Jan. 17, 1917), or the Northern Mariana Islands (on or after Nov. 4, 1986), unless the person was born to foreign diplomats residing in the U.S. The record must have been recorded within three months after the birth and show that the birth occurred within the jurisdiction and the date of birth or the individual's age at the time the record was made. • evidence of civil service employment by the U.S. government before June 1, 1976; • early school records (preferably from the individual's first school) showing the date of admission to the school, the individual's date and place of birth, and the name(s) and place(s) of birth of the parent(s); • census record showing name, U.S. citizenship or a U.S. place of birth, and date of birth or age of applicant; • adoption finalization papers showing the child's name and place of birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after Jan. 13, 1941), Guam, the U.S. Virgin Islands (on or after Jan. 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in the U.S.), or, where the adoption is not finalized and the state or other jurisdiction will not release a birth certificate prior to final adoption, a statement from a state-approved adoption agency showing the child's name and place of birth in one of the above-listed jurisdictions (in this case the statement must indicate that an original birth certificate is the source of the information); *and* • any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship.
Documents evidencing collective naturalization	*persons from Puerto Rico* • evidence of birth in Puerto Rico on or after Apr. 11, 1899, and the individual's statement that he or she was residing in the U.S., a U.S. possession, or Puerto Rico, on Jan. 13, 1941; *and* • evidence that the individual was a Puerto Rican citizen and his or her statement that he or she was residing in Puerto Rico on Mar. 1, 1917, and that he or she did not take an oath of allegiance to Spain. *persons from U.S. Virgin Islands* • evidence of the individual's birth in the U.S. Virgin Islands, and his or her statement that he or she was residing in the U.S., a U.S. possession, or the U.S. Virgin Islands on Feb. 25, 1927; • the individual's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on Jan. 17, 1917, and residence in the U.S., a U.S. possession, or the U.S. Virgin Islands on Feb. 25, 1927, and indicating that he or she did not make a declaration to maintain Danish citizenship; *and* • evidence of birth in the U.S. Virgin Islands and the individual's statement indicating residence in the U.S., a U.S. possession, or territory or the Canal Zone on June 28, 1932.

TABLE 4 *(CONTINUED)*

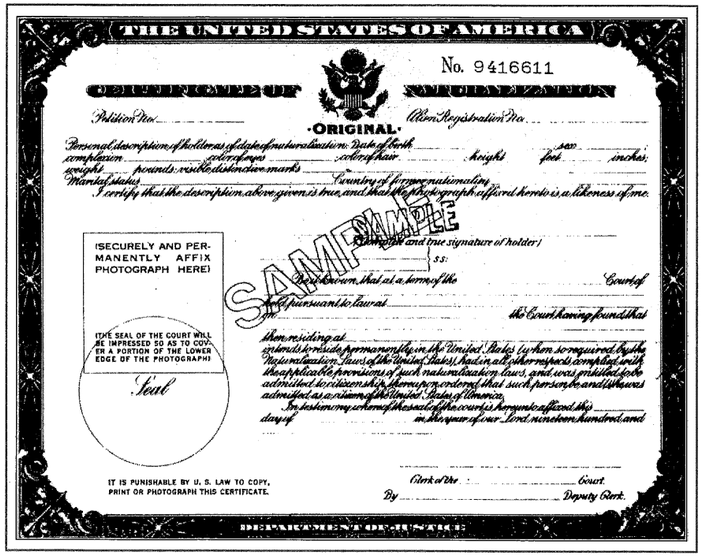
Typical Documents Indicating Citizenship

Documents evidencing collective naturalization (continued)	*persons from Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI))* • evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on Nov. 3, 1986 (NMI local time), and the individual's statement that he or she did not owe allegiance to a foreign state on Nov. 4, 1986; • evidence of TTPI citizenship, continuous residence in the NMI since before Nov. 3, 1981 (NMI local time), voter registration prior to Jan. 1, 1975, and the individual's statement that he or she did not owe allegiance to a foreign state on Nov. 4, 1986; *and* • evidence of continuous domicile in the NMI since before Jan. 1, 1974, and the individual's statement that he or she did not owe allegiance to a foreign state on Nov. 4, 1986 (note: individuals who entered the NMI as nonimmigrants and lived in the NMI since Jan. 1, 1974, do not meet the continuous domicile requirement and therefore are not U.S. citizens).
Documents evidencing citizenship through birth abroad	• evidence that both of the individual's parents were U.S. citizens, and that at least one parent resided in the U.S. or an outlying possession prior to the individual's birth; • evidence that one parent is a U.S. citizen and the other a U.S. noncitizen national, and that the U.S. citizen parent resided in the U.S. or a U.S. possession for a period of at least one year prior to the individual's birth; • for individuals born out of wedlock abroad to a U.S. citizen mother, evidence of the U.S. citizenship of the mother and, for births on or before Dec. 24, 1952, evidence that the mother had resided in the U.S. or a U.S. possession for a period of at least one year before the individual's birth; • for individuals born in the Canal Zone, a birth certificate showing birth on or after Feb. 26, 1904, and before Oct. 1, 1979, and evidence that one parent was a U.S. citizen at the time of the individual's birth; • for individuals born in the Republic of Panama, a birth certificate showing birth on or after Feb. 26, 1904, and before Oct. 1, 1979, and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor in title; *and* • for other situations where an individual was born abroad to one U.S. citizen parent and one noncitizen parent, the determination of whether the individual is a U.S. citizen depends upon the law that was in effect at the time the individual was born. Generally the U.S. citizen parent (or in some cases, a grandparent) must have resided in the United States for a specific period of time prior to the person's birth. Persons in this situation should consult an immigration attorney to determine whether they are citizens.
Documents evidencing U.S. citizenship through marriage	• for women who married U.S. citizens prior to Sept. 22, 1922, evidence that the marriage took place prior to this date and that the husband is a U.S. citizen; *and* • women whose husbands were noncitizens who naturalized prior to Sept. 22, 1922, automatically acquired naturalized citizenship. If the marriage terminated, the woman maintained her U.S. citizenship if she was residing in the U.S. at that time and continued to reside in the U.S.
Documents evidencing acquistion of U.S. citizenship through derivative naturalization	Evidence that one or both parents of a child naturalized, and that the child obtained LPR status, before the child's 18th birthday. Note that the specific requirements for derivative citizenship depend upon the law in effect at the time that the last of these requirements was met.
Documents evidencing status as noncitizen national	• a birth certificate or any other document showing birth in American Samoa or Swain's Island; *and* • a birth certificate or any other document showing birth in the Northern Mariana Islands prior to Nov. 4, 1986, and the individual's statement that he or she elected to become a noncitizen U.S. national rather than a U.S. citizen on that date.

Sample Citizenship Documents

N-550, N-570 — CERTIFICATES OF NATURALIZATION

These documents are issued to persons who become U.S. citizens through the naturalization process. The N-550 is the original certificate of naturalization issued by a court. The N-570 is a replacement certificate issued by the INS when the original is lost or destroyed.



N-550

N-570

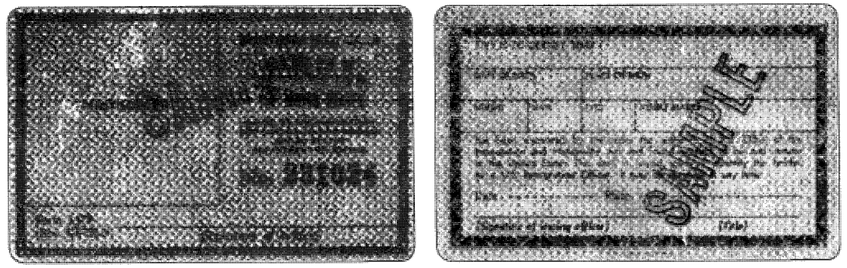
N-560, N-561 — CERTIFICATES OF CITIZENSHIP

A certificate of citizenship can be obtained by U.S. citizens born abroad who acquired citizenship at birth through a U.S. citizen parent. It can also be obtained by citizens who derived citizenship when their parents naturalized, and by those adopted by U.S. citizens. The N-561 is a replacement certificate.

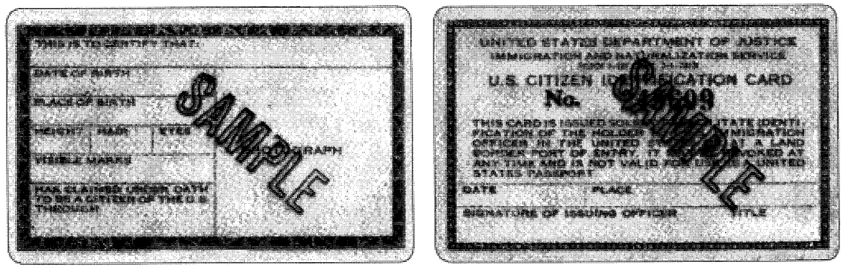
N-560

I-179, I-197 — U.S. CITIZEN I.D. CARDS

These two identification documents were once issued to U.S. citizens; the INS no longer uses them. Cards previously issued to U.S. citizens remain valid indefinitely.



I-179 — front and back



I-197 — front and back

Documents Relating to Immigration Status

TABLE 5

Typical Documents Used by Categories of "Qualified" Immigrants

Listed below are typical documents most commonly used to show "qualified" immigrant status. Note that the list is not exhaustive; other documents not listed here may also be used for this purpose. Lists of samples of documents displayed in the *Guide* can be found on pages 48–49.

IMMIGRATION CATEGORIES	TYPICAL DOCUMENTS
Lawful permanent residents (LPRs)	• "green card" (Form I-551; earlier versions are the I-151, AR-2 and AR-3); • reentry permit (I-327); • foreign passport stamped to show temporary evidence of LPR or "I-551" status; • Memorandum of Creation of Lawful Permanent Residence with approval stamp (I-181); • order issued by the INS, an immigration judge, the Board of Immigration Appeals (BIA), or a federal court granting registry, suspension of deportation, cancellation of removal, or adjustment of status; *or* • any verification from the INS or other authoritative document.
Refugees	• Form I-94 Arrival/Departure Record or passport stamped "refugee" or "§ 207"; • Form I-688B or I-766 Employment Authorization Document (EAD) coded 274a.12(a)(3) or A3; • refugee travel document (I-571); *or* • any verification from the INS or other authoritative document. NOTE: If adjusted to LPR status, I-551 may be coded R8-6, RE-6, RE-7, RE-8, or RE-9.
Asylees	• Form I-94 or passport stamped "asylee" or "§ 208"; • order granting asylum issued by the INS, an immigration judge, the Board of Immigration Appeals (BIA), or a federal court; • Form I-688B or I-766 EAD coded 274a.12(a)(5) or A5; • refugee travel document (I-571); *or* • any verification from the INS or other authoritative document. NOTE: If adjusted to LPR status, I-551 may be coded AS-6, AS-7, or AS-8.
Persons granted withholding of deportation or removal	• Form I-94 or passport stamped "§ 243(h)" or "§ 241(b)(3)"; • order granting withholding of deportation or removal issued by the INS, an immigration judge, the BIA, or a federal court; • Form I-688B or I-766 EAD coded 274a.12(a)(10) or A10; • refugee travel document (I-571); *or* • any verification from the INS or other authoritative document.
Amerasian LPRs (NOTE: only certain Vietnamese Amerasians qualify for the "Refugee Exemption" and the codes listed here pertain to these Amerasians)	• Form I-551; • temporary I-551 stamp in passport; • Form I-94; *or* • any verification from the INS or other authoritative document. NOTE: any of the above documents should have one of the following codes: AM-1, AM-2, AM-3, AM-6, AM-7, AM-8.
Cuban/Haitian entrants	• Form I-94 with a stamp indicating "Cuban/Haitian entrant" (this may be rare, as it has not been used since 1980) or any other notation indicating "parole," any documents indicating pending exclusion or deportation proceedings; • any documents indicating a pending asylum application, including a receipt from an INS Asylum Office indicating filing of Form I-589 application for asylum; • Form I-688B or I-766 EAD coded 274a.12(c)(8) or C8; *or* • any verification from the INS or other authoritative document. NOTE: Individuals who have adjusted to LPR status may have I-551 cards coded CH-6, CU-6, CU-7. In addition, Cubans or Haitians with the codes LB-2, LB-6, or LB-7 may also qualify – these codes were used for individuals granted LPR status under any of the 1986 legalization provisions including Cuban/Haitian entrants.

table continued next page ➤

TABLE 5 *(CONTINUED)*

Typical Documents Used by Categories of "Qualified" Immigrants

Listed below are typical documents most commonly used to show "qualified" immigrant status. Note that the list is not exhaustive; other documents not listed here may also be used for this purpose. Lists of samples of documents displayed in the *Guide* can be found on pages 48–49.

IMMIGRATION CATEGORIES	TYPICAL DOCUMENTS
Parolees (NOTE: to be "qualified," immigrants must have been paroled for at least one year; includes persons paroled "in the public interest," Lautenberg parolees, and others)	• Form I-94 indicating "parole" or "PIP" or "212(d)(5)," or other language indicating parole status; • Form I-688B or I-766 EAD coded 274a.12(a)(4), 274a.12(c)(11), A4, or C11; *or* • any verification from the INS or other authoritative document. NOTE: If subsequently adjusted to LPR status, may have I-551 cards (for Lautenberg parolees, these may be coded LA).
Conditional entrants (not used since 1980)	• Form I-94 or other document indicating status as "conditional entrant," "Seventh Preference," § 203(a)(7), or P7; *or* • any verification from the INS or other authoritative document.
Abused spouses or children, parents of abused children, or children of abused spouses (must have a pending petition for an immigrant visa, either filed by a spouse or a self-petition under the VAWA, or an application for suspension of deportation or cancellation of removal. The petition or application must either be approved or, if not yet approved, must present a prima facie case)	• receipt or other proof of filing I-130 (visa petition) under immediate relative (IR) or 2nd family preference (P-2) showing status as a spouse; • Form I-360 (application to qualify as abused spouse or child under the VAWA); • Form I-797 Notice of Action referencing pending I-130 or I-360 or finding establishment of a prima facie case; • receipt or other proof of filing I-485 application for adjustment of status on basis of an immediate relative or family 2nd preference petition or VAWA application; • any documents indicating a pending suspension of deportation or cancellation of removal case, including a receipt from an immigration court indicating filing of Form EOIR-40 (application for suspension of deportation) or EOIR-42 (application for cancellation of removal); • Form I-688B or I-766 EAD coded 274a.12(a)(10) or A10 (applicant for suspension of deportation) or 274a.12(c)(14) or C14 (individual granted deferred action status); *or* • any verification from the INS or other authoritative document.

TABLE 6

Typical Documents Used by Other Categories of Immigrants

Listed below are typical documents most commonly used by other categories of immigrants to show their status. Note that the list is not exhaustive; other documents not listed here may also be used to show these statuses. Lists of samples of documents displayed in the *Guide* can be found on pages 48–49.

IMMIGRATION CATEGORIES	TYPICAL DOCUMENTS
Lawful temporary residents	• Form I-688 Temporary Resident Card; • Form I-688A Employment Authorization Document (EAD); • Form I-688B or I-766 EAD coded 274a.12(a)(2) or A2; *or* • any verification from the INS or other authoritative document.
Persons granted temporary protected status (TPS)	• Form I-688B or I-766 EAD coded 274a.12(a)(12) or A12; *or* • any verification from the INS or other authoritative document.
Persons granted deferred enforced departure (DED)	• Form I-688B or I-766 EAD coded 274a.12(a)(11) or A11; *or* • any verification from the INS or other authoritative document.
Persons granted Family Unity	• Form I-797 Notice of Action showing approval of I-817 Application for Family Unity; • Form I-688B or I-766 EAD coded 274a.12(a)(13) or A13; *or* • any verification from the INS or other authoritative document.
Parolees for a period less than one year	• Form I-94 indicating "parole" or "212(d)(5)," or other language indicating parole status; • Form I-688B or I-766 EAD coded 274a.12(a)(4), 274a.12(c)(11), A4, or C11; *or* • any verification from the INS or other authoritative document.
Persons granted deferred action status	• Form I-797 Notice of Action or other form showing approval of deferred action status; • Form I-688B or I-766 EAD coded 274a.12(c)(14) or C14; *or* • any verification from the INS or other authoritative document.
Persons under an order of supervision	• Notice or form showing release under order of supervision; • Form I-688B or I-766 EAD coded 274a.12(c)(18) or C18; *or* • any verification from the INS or other authoritative document.
Persons granted extended voluntary departure	• Notice or form showing grant of extended voluntary departure; • Form I-688B or I-766 EAD coded 274a.12(a)(11) or A11; *or* • any verification from the INS or other authoritative document.
Applicants for registry	• Receipt or notice showing filing Form I-485 Application to Register Permanent Resident or Adjust Status; • Form I-688B or I-766 EAD coded 274a.12(c)(16) or C16; *or* • any verification from the INS or other authoritative document.
Applicants for adjustment of status to LPR status	• Receipt or notice showing filing Form I-485 Application to Register Permanent Resident or Adjust Status; • Form I-688B or I-766 EAD coded 274a.12(c)(9) or C9; *or* • any verification from the INS or other authoritative document.
Applicants for asylum	• Receipt or notice showing filing Form I-~~485~~ 589 Application for Asylum and Withholding; • Form I-688B or I-766 EAD coded 274a.12(c)(8) or C8; *or* • any verification from the INS or other authoritative document.
Applicants for suspension of deportation or cancellation of removal	• Receipt or notice showing filing Form EOIR-40 (Application for Suspension of Deportation), EOIR-42 (Application for Cancellation of Removal), or I-881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal); • Form I-688B or I-766 EAD coded 274a.12(c)(10) or C10; *or* • any verification from the INS or other authoritative document.
Applicants for temporary protected status (TPS)	• Receipt or notice showing filing Form I-821 (Application for Temporary Protected Status); • Form I-688B or I-766 EAD coded 274a.12(c)(19) or C19; *or* • any verification from the INS or other authoritative document.
Nonimmigrants	• Form I-94 Arrival/Departure Record or passport containing nonimmigrant visa; • Form I-688B or I-766 EAD or other INS document indicating nonimmigrant status; *or* • any verification from the INS or other authoritative document.

Sample Documents Relating to Lawful Permanent Resident Status

The most common INS document used to prove lawful permanent resident (LPR) status is the "Permanent Resident Card" or "green card." The Form I-551 is the current version of this document. Versions of the card issued prior to the I-551 include Forms I-151, AR-2, and AR-3. These cards contain codes that indicate how the immigrant obtained LPR status, and generally include the date when the immigrant obtained the status. This section includes a key to many of these codes.

It often takes many months for individuals who are admitted as LPRs, or who adjust to LPR status, to actually receive a green card, and there are a variety of other documents that show LPR status. These include an "I-551" stamp in a foreign passport, a temporary I-551 card, an I-94 (Arrival/Departure Record) referencing I-551 status, an I-181 (Memorandum of Creation of Record of Lawful Permanent Residence), an I-327 (Reentry Permit), or an order of the INS, an immigration judge, the Board of Immigration Appeals, or a federal court granting suspension of deportation, cancellation of removal, or adjustment of status.

I-551 — PERMANENT RESIDENT CARD

This card—various versions of which have been issued since 1978—is proof of LPR status. Now known as the "Permanent Resident Card," this card was previously known as the "Resident Alien Card" or "Alien Registration Receipt Card." These cards are also commonly referred to as "green cards," even though recent versions of these cards are multi-colored. Until 1989, these cards had no expiration date, but cards now being issued expire ten years after the date of issue. At the end of the ten years, the LPR does not lose his or her status, but must simply renew the card. Conditional permanent residents are issued cards that are coded "CR" and expire after two years. All I-551 cards include codes showing how the individual obtained LPR status—whether through work skills, as the relative of a U.S. citizen or permanent resident, through the visa lottery, as a refugee or asylee, or otherwise. For a listing of some of these codes, see page 67. The cards also indicate the date on which the individual is considered to have obtained permanent resident status. This is often different from the date the person "entered" the U.S.

I-551 (current version, 1997 – front and back)

I-551 — PERMANENT RESIDENT CARD *(CONTINUED)*

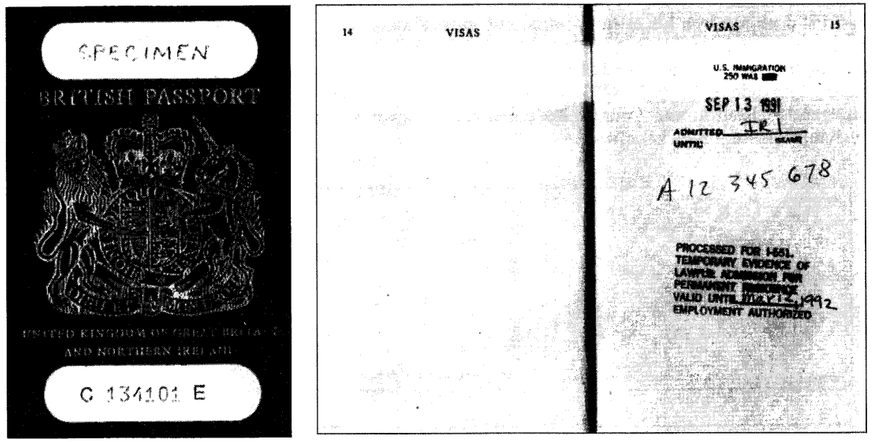
I-551 (older version, 1992 – front and back)

I-551 (older version, 1977 – front and back)

I-551 (older version – conditional resident)

I-551 — STAMP IN FOREIGN PASSPORT

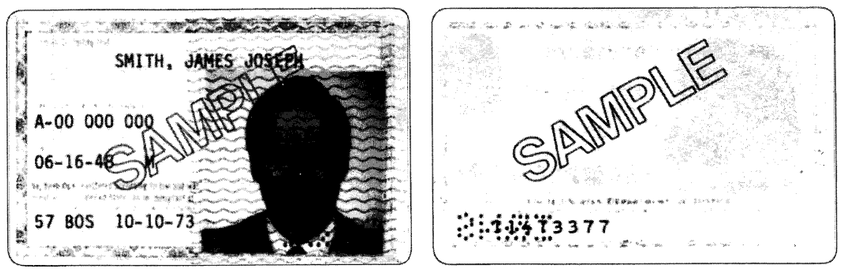
When an immigrant is first admitted to the U.S. as an LPR, his or her passport is stamped with temporary proof of LPR status. This stamp, which has an expiration date, may also be placed on the immigrant's I-94 form (see page 76). The stamp may be renewed as necessary up until the time the immigrant receives an I-551 Permanent Resident Card.



I-551 Stamp in Foreign Passport

I-151 — RESIDENT ALIEN CARD

The I-151 is a version of the "green card" that was issued before 1978 as proof of LPR status. Over the years the INS issued several versions of the I-151 card. Although these cards bear no expiration date, the INS decided to discontinue their use and issued regulations providing for their "expiration" as of March 20, 1996. If a person has an "expired" I-151, this does not mean that he or she has lost LPR status; it means only that the I-151 is no longer considered proof of the person's LPR status when he or she applies for a job or attempts to reenter the U.S. Individuals who still have the I-151 should apply for the I-551. Persons who have applied for the I-551 card to replace an earlier version, but who have yet to receive it, may have a receipt from the INS or some other document that serves as proof of their LPR status.



I-151 (front and back)

KEY TO I-551 AND I-151 CARDS ("GREEN CARDS")

The codes on a green card indicate how an LPR immigrated to the U.S. This information can be useful, for example, in determining whether an individual immigrated through a family member, as a refugee, or through some other means. As noted below, the code also often indicates whether the immigrant became an LPR through processing at a consulate abroad or through adjustment of status in the U.S. *NOTE: This list is not comprehensive, even as to codes currently in use, and many codes that were used in the past are not included here. Anyone with a green card is an LPR, and a "qualified" immigrant, regardless of the particular code on the card.*

IMMEDIATE RELATIVE CODES

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
	CF-1, CF-2	Spouse and minor step-child of U.S. citizen who was admitted as a fiancé(e), and is subject to 2-year conditional residency
CR-1, CR-2	CR-6, CR-7	Spouse and step-child of a U.S. citizen subject to 2-year conditional residency
	IF-1, IF-2	Spouse and minor step-child of a U.S. citizen who was admitted as a fiancé(e)
IR-1	IR-6	Spouse of a U.S. citizen
IR-2	IR-7	Child of a U.S. citizen
IR-3, IR-4	IR-8, IR-9	Orphan adopted or to be adopted by a U.S. citizen
IR-5	IR-0	Parent of a U.S. citizen
IW-1, IW-2	IW-6, IW-7	Widow or widower and child of a U.S. citizen
	MR-0, MR-6, MR-7	Parent, spouse, or child of a U.S. citizen, presumed to be LPR, from the Northern Marianas
	Z4-3	Immediate relative of a U.S. citizen or special immigrant granted LPR status through private bill

FAMILY-BASED IMMIGRANTS – 1ST FAMILY PREFERENCE

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
F1-1	F1-6	Unmarried son or daughter of a U.S. citizen
F1-2	F1-7	Child of F1-1 or F1-6
P1-1	P1-6	Unmarried son or daughter of a U.S. citizen (pre-1991)
P1-2	P1-7	Child of P1-1 or P1-6

FAMILY-BASED IMMIGRANTS – 2ND FAMILY PREFERENCE

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
C2-1, C2-2	C2-6, C2-7	Spouse and step-child of an LPR subject to 2-year conditional residency
C2-3	C2-8	Child of C2-1, 2, 6, or 7
C2-4	C2-9	Unmarried son or daughter who is step-child of an LPR and subject to 2-year conditional residency
C2-5	C2-0	Child of C2-4 or C2-9
CX-1, CX-2	CX-6, CX-7	Spouse and step-child of an LPR subject to 2-year conditional residency
CX-3	CX-8	Child of CX-1, 2, 6, or 7
F2-1	F2-6	Spouse of LPR
F2-2	F2-7	Child of LPR
F2-3	F2-8	Child of F2-1 or F2-6
F2-4	F2-9	Unmarried son or daughter of LPR

key continued next page ➤

KEY TO I-551 AND I-151 CARDS *(CONTINUED)*

FAMILY-BASED IMMIGRANTS – 2ND FAMILY PREFERENCE *(CONTINUED)*

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
F2-5	F2-0	Child of F2-4 or F2-9
FX-1	FX-6	Spouse of LPR
FX-2	FX-7	Child of LPR
FX-3	FX-8	Child of FX-1, 2, 6, or 7
P2-1	P2-6	Spouse of LPR (pre-1991)
P2-2	P2-7	Child of LPR
P2-3	P2-8	Child of P2-1, 2, 6, or 7

FAMILY-BASED IMMIGRANTS – 3RD FAMILY PREFERENCE

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
C3-1	C3-6	Married son or daughter of U.S. citizen subject to 2-year conditional residency
C3-2, C3-3	C3-7, C3-8	Spouse or child of C3-1 or C3-6 subject to 2-year conditional residency
F3-1	F3-6	Married son or daughter of U.S. citizen
F3-2, F3-3	F3-7, F3-8	Spouse or child of F3-1 or F3-6
P4-1	P4-6	Married son or daughter of U.S. citizen
P4-2, P4-3	P4-7, P4-8	Spouse or child of P4-1 or P4-6

FAMILY-BASED IMMIGRANTS – 4TH FAMILY PREFERENCE

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
F4-1	F4-6	Brother or sister of U.S. citizen
F4-2, F4-3	F4-7, F4-8	Spouse or child of F4-1 or F4-2
P5-1	P5-6	Brother or sister of U.S. citizen (pre-1991)
P5-2, P5-3	P5-7, P5-8	Spouse or child of P5-1 or P5-2

VAWA SELF-PETITIONERS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
B1-1	B1-6	Self-petition unmarried son or daughter of a U.S. citizen
B1-2	B1-7	Child of B1-1 or B1-6
B2-1	B2-6	Self-petition spouse of an LPR
B2-3	B2-8	Child of B2-1 or B2-6
B2-4	B2-9	Self-petition unmarried son or daughter of an LPR
B2-5	B2-0	Child of B2-4 or B2-9
B3-1	B3-6	Self-petition married son or daughter of a U.S. citizen
B3-2, B3-3	B3-3, B3-8	Spouse or child of B3-1 or B3-6
BX-1	BX-6	Self-petition spouse of an LPR
BX-2	BX-7	Self-petition child of an LPR
BX-3	B2-8	Child of BX-1, 2, 6, or 7
IB-1	IB-6	Self-petition spouse of a U.S. citizen
IB-2	IB-7	Self-petition child of a U.S. citizen
IB-3	IB-8	Child of IB-1 or IB-6

KEY TO I-551 AND I-151 CARDS *(CONTINUED)*

LEGALIZATION IMMIGRANTS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
CB-1, CB-2	CB-6, CB-7	Spouse or child of LPR legalized under INA §§ 210, 245A, or the Cuban/Haitian Adj. Act
LB-1, LB-2	LB-6, LB-7	Spouse or child of LPR legalized under INA §§ 210, 245A, or the Cuban/Haitian Adj. Act
	S1-6, S2-6	Special agricultural workers (SAWs)
	W1-6, W2-6, W3-6	Legalized under INA § 245A

EMPLOYMENT-BASED IMMIGRANTS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
C5-1, C5-2, C5-3	C5-6, C5-7, C5-8	Investors in U.S. business and dependents
E1-1, E1-2, E1-3, E1-4, E1-5	E1-6, E1-7, E1-8, E1-9, E1-0	Priority workers with outstanding or extraordinary abilities, and dependents
E2-1, E2-2, E2-3	E2-6, E2-7, E2-8	Professionals with advanced degrees or exceptional abilities, and dependents
E3-1, E3-2, E3-3, E3-5	E3-6, E3-7, E3-8, E3-9, E3-0	Professionals/skilled workers and dependents
E5-1, E5-2, E5-3	E5-6, E5-7, E5-8	Employment creation immigrants and dependents
EW-3, EW-4, EW-5	EW-8, EW-9, EW-0	Other (nonskilled workers and dependents)
	NP-8, NP-9	Investor and dependent, pre-June 1, 1978
I5-1, I5-2, I5-3	I5-6, I5-7, I5-8	Investor pilot program principals and dependents, conditional
P3-1, P3-2, P3-3	P3-6, P3-7, P3-8	Professional/skilled worker and dependents, pre-1991
P6-1, P6-2, P6-3	P6-6, P6-7, P6-8	Unskilled workers and dependents, pre-1991
R5-1, R5-2, R5-3	R5-6, R5-7, R5-8	Investor pilot program principals and dependents, nontargeted (conditional)
T5-1, T5-2, T5-3	T5-6, T5-7, T5-8	Investors in targeted areas and dependents (conditional)

SPECIAL IMMIGRANTS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
SA-1, SA-2, SA-3	SA-6, SA-7, SA-8	Western Hemisphere immigrants (discontinued)
SC-1, SC-2	SC-6, SC-7	Former U.S. citizens
SD-1, SD-2, SD-3	SD-6, SD-7, SD-8	Minister and dependents
SE-1, SE-2, SE-3	SE-6, SE-7, SE-8	Employees or former employees and dependents of U.S. government abroad
SF-1, SF-2, SG-1, SG-2, SH-1, SH-2	SF-6, SF-7 SG-6, SG-7 SH-6, SH-7	Employees or former employees and dependents of the Panama Canal Co., Canal Zone Government, or U.S. government in Panama Canal Zone
SK-1, SK-2, SK-3, SK-4	SK-6, SK-7, SK-8, SK-9	Employees or former employees and dependents or surviving spouses who worked for international organizations
SL-1	SL-6	Juvenile court dependent
SM-1, SM-2, SM-3, SM-4, SM-5	SM-6, SM-7, SM-8, SM-9, SM-0	Immigrants and their dependents recruited or enlisted to serve in U.S. armed forces
SF-1, SR-2, SR-3	SR-6, SR-7, SR-8	Religious workers and dependents

key continued next page ➤

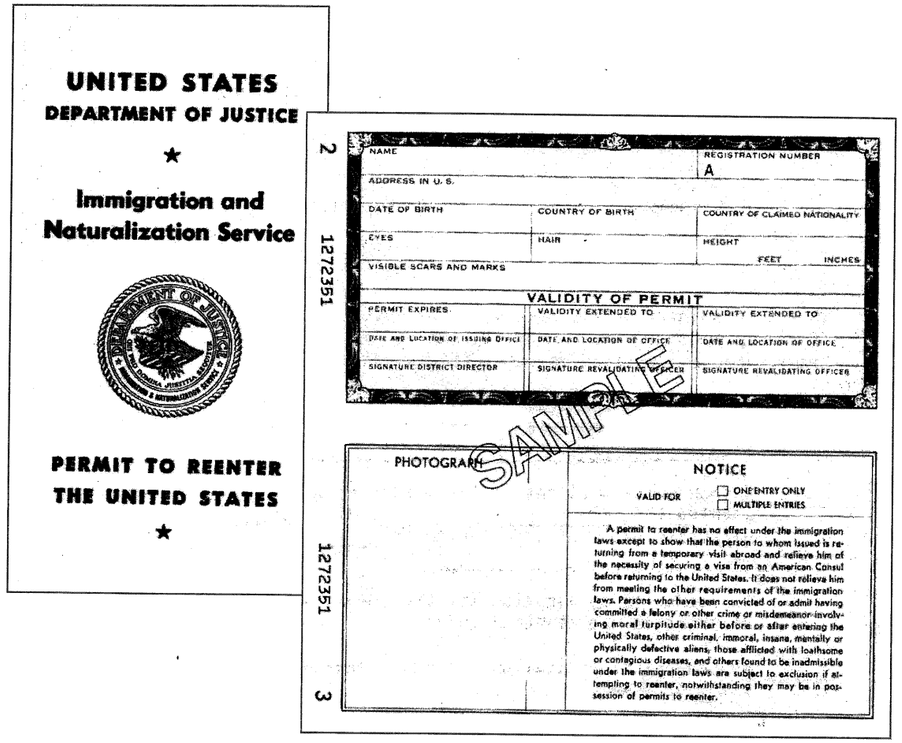
KEY TO I-551 AND I-151 CARDS *(CONTINUED)*

OTHER IMMIGRANTS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
AA-1, AA-2, AA-3	AA-6, AA-7, AA-8	Diversity visa lottery winners and dependents, 1991-1994
A1-1, A1-2, A3-1, A3-2, A3-3	A1-6, A1-7, A3-6, A3-7, A3-8	Amerasians and family members from Cambodia, Korea, Laos, Thailand, or Vietnam
AM-1, AM-2, AM-3	AM-6, AM-7, AM-8	Vietnamese Amerasians and family members
AR-1	AR-6	Amerasian child of U.S. citizen born in Cambodia, Korea, Laos, Thailand, or Vietnam
	AS-6, AS-7, AS-8	Asylee principal, spouse, and child
	CH-6, CN-P, CU-6, CU-7	Cuban/Haitian entrant; Cuban Adjustment Act
	DS-1	Individual born under diplomatic status in U.S.
DT-1, DT-2, DT-3	DT-6, DT-7, DT-8	Displaced Tibetans and dependents
DV-1, DV-2, DV-3	DV-6, DV-7, DV-8	Diversity visa lottery winners and dependents
	EC-6, EC-7, EC-8	Adjustment under Chinese Student Protection Act
ES-1	ES-6	Soviet scientist
HK-1, HK-2, HK-3	HK-6, HK-7, HK-8	Employees and dependents of certain U.S. businesses operating in Hong Kong
	IC-6, IC-7	Indochinese refugee
	LA-6	Certain parolees from the Soviet Union, Cambodia, Laos, or Vietnam who were denied refugee status and paroled – Lautenberg adjustment
NA-3		Child born during temporary visit abroad of a mother who is an LPR or national of the U.S.
	NC-6, NC-7, NC-8, NC-9	Persons granted adjustment under Nicaraguan Adjustment and Central American Relief Act, spouses, children under 21, and unmarried sons and daughters 21 and over
	R8-6	Refugee paroled into U.S. prior to Apr. 1, 1980
	RE-6, RE-7, RE-8, RE-9	Refugees and their dependents
	RN-6, RN-7	Former H-1 nurses and dependents
S1-3		American Indian born in Canada
SE-H	SE-K	Employee of U.S. Mission in Hong Kong
SJ-2	SJ-6, SJ-7	Foreign medical school graduate and dependents
	XB-3	Presumed to have been admitted as LPR under 8 C.F.R. § 101.1
XE-3, XF-3, XN-3, XR-3		Child born subsequent to issuance of visa to LPR parent.
	Y6-4	Refugee (prior to July 1, 1953)
	Z0-3, Z3-3, Z6-6	Adjusted to LPR status through registry
	Z1-3, Z5-6	Granted suspension of deportation
	Z-2	Generic code for adjustment
	Z4-3	Beneficiary of a private bill
	Z8-3	Foreign official immediate relative of U.S. citizen or special immigrant

I-327 — REENTRY PERMIT

This document is given to an LPR who will be traveling outside of the U.S. for an extended period of time. It is issued to the LPR prior to departure to facilitate reentry into the U.S.



I-327 (cover and inside)

ORDER GRANTING SUSPENSION OF DEPORTATION

An individual in deportation proceedings which commenced prior to April 1, 1997, can be granted suspension of deportation and LPR status if he or she has been in the U.S. at least seven years (three years for certain abused spouses and children) and can prove good moral character and extreme hardship if he or she were deported. The relief and status may be granted by an immigration judge, the Board of Immigration Appeals, or a federal court. In NACARA cases, an INS Asylum Office may also grant suspension of deportation. The documents used to grant suspension of deportations vary. An example is shown below.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
Los Angeles, California

In the Matter of: File:A 29-259-000

MARIA GUADALUPE

Respondent — In Deportation Proceedings

SUMMARY OF THE ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 10/23/97.
If the proceedings should be appealed, the Oral Decision and Order will be transcribed and will become the official decision in this matter.

____ Respondent's application for voluntary departure was denied and he/she was ordered deported to _____ or _____.

____ Respondent's application for voluntary departure was granted to _____, with an alternate order of deportation to _____, or _____.

____ Respondent's application for asylum/withholding of deportation was granted/denied.

__X__ Respondent's application for suspension of deportation was granted/~~denied~~.

____ Respondent's application for section 212(c) waiver was granted/denied.

____ Respondent's application for _____ was granted/denied.

__X__ Proceedings were terminated.

____ Other: _____

__Y__ Service/Respondent waived appeal.

____ Service/Respondent reserved appeal until _____.

ORDER: It is ordered that if no appeal is filed, the decision is to be implemented by the District Director of the Immigration & Naturalization Service.

10/23/97
Date

NATHAN W. GORDON
Immigration Judge

Order Granting Suspension of Deportation

ORDER GRANTING CANCELLATION OF REMOVAL

An individual in removal proceedings which began on or after April 1, 1997, can be granted cancellation of removal and LPR status if he or she has been in the U.S. at least ten years (three years for certain abused spouses and children) and can prove good moral character and exceptional and extremely unusual hardship to qualifying family members (or to themselves, in NACARA and abused immigrant cases) should he or she be removed. The relief may be granted by an immigration judge, the Board of Immigration Appeals, a federal court, or, in NACARA cases, by an INS Asylum Office. The documents used to grant cancellation of removal vary. An example is shown below.

U.S. DEPARTMENT OF JUSTICE
Executive Office for Immigration Review
Office of the Immigration Judge

In the Matter of: Case No.: A _____

_____ Docket: LOS ANGELES
RENOVA I

RESPONDENT — IN ~~DEPORTATION~~ PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 11-12-99.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed, the Oral Decision will become the official decision in this matter.

☐ The respondent was ordered deported to _____.

☐ Respondent's application for voluntary departure was denied and respondent was ordered deported to _____ or in the alternative to _____.

☐ Respondent's application for voluntary departure was granted until _____, with an alternate order of deportation to _____ or _____.

☐ Respondent's application for asylum was ( )granted ( )denied ( )withdrawn ( )other.

☐ Respondent's application for withholding of deportation was ( )granted ( )denied ( )withdrawn ( )other.

☒ Respondent's application for ~~suspension of deportation~~ CANCELLATION OF REMOVAL was (X)granted ( )denied ( )withdrawn ( )other.

☐ Respondent's application for waiver under Section _____ of the Immigration and Nationality Act was ( )granted ( )denied ( )withdrawn ( )other.

☐ Respondent's application for _____ was ( )granted ( )denied ( )withdrawn ( )other.

☒ Proceedings were terminated.

☐ The application for adjustment of status under Section (216) (216A) (245) (249) was ( )granted ( )denied ( )withdrawn ( )other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

☐ Respondent's status was rescinded under Section 246.

☐ Other _____

☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

Immigration Judge

Date: _____

Appeal: RESERVED/~~WAIVED~~ (A.I.I.B) TO 12-13-99

Form EOIR - 37
REV. - JUNE 93

Order Granting Cancellation of Removal

I-181 — MEMORANDUM OF CREATION OF RECORD OF LAWFUL PERMANENT RESIDENCE

This document is issued at the time that the INS approves an application for adjustment of status. It establishes that the individual has been granted LPR status.

U.S. DEPARTMENT OF JUSTI[redacted]
Immigration and Naturalization Service

Memorandum o[redacted]on of Record of Lawful Permanent Residence

Place: LOS
File No.: A [redacted]

Status as a lawful permanent resident of the United States is accorded:

Name In Care Of Street Address Apt. No. City, State, Zip

Sex 1 [X] Male 2 [ ] Female | Date of Birth (Month/Day/Year): 2K

City of Birth | Country of Birth: 2K

Country of Nationality | Country of Last Residence

Marital Status: 1 [ ] Single 2 [X] Married 3 [ ] Widowed 4 [ ] Divorced 5 [ ] Separated
Occupation: LAB
N/I Class at time of Adj.: B2
Year Adm. to U.S. or Year of Change to Present N/I Class (whichever most recent): 1982

Priority Date (Month/Day/Year): OK
Preference (if any): FAM2
Country to Which Chargeable (if any)

Section 212 (a)(14) Labor Certification: 1 [ ] Applicable-Submitted 3 [X] Not Applicable
Mother's First Name | Father's First Name

Last NIV Issued at (U.S. Consulate Post) | Date of Issuance of Last NIV | Number of Last NIV | Classification of Last NIV: B2

Under the following provision of law
[ ] Public Law 95-412
[ ] Public Law 96-212
[ ] Private Law No. ____ of the ___ Congress ___ Session
[ ] Sec. 209 (a) of the I & N Act
[ ] Sec. 209 (b) of the I & N Act
[ ] Sec. 244 ( ) ( ) of the I & N Act
[X] Sec. 245 of the I & N Act
[ ] Sec. 249 of the I & N Act
[ ] Sec. 1 of the Act of 11/2/66
[ ] Sec. 13 of the Act of 9/11/57
[ ] Sec. 214 (d) of the I & N Act
[ ] Other law (Specify)

As of 02-03-99 (Month/Day/Year) at LOS (Port of Entry for Permanent Residence)
Class of admission (Insert Symbol): F26 2K

REMARKS: AD/3/24/97 B119 SH/H

RECOMMENDED BY (Immigration Officer): [signature] (Date) 2/3/99
Dis. Adj. Off.

DATE OF ACTION: DD
APPROVED INS DISTRICT DIRECTOR
FEB 03 1999
DISTRICT: Recommended: LOS 134

FOR USE BY VISA CONTROL OFFICE

Date
Foreign State
Preference Category: FAM2 vlc
Number
Month of Issuance
Signed
(Visa Office, Dept. of State)

CC: Page 2 Master Index copy sent on 08/15/96
CC: Page 3 ADIT and Statistical report copy sent on

Form I - 181 (Rev. 3-1-83)N

1. FILE COPY

I-181 – Memorandum of Creation of Record of Lawful Permanent Residence

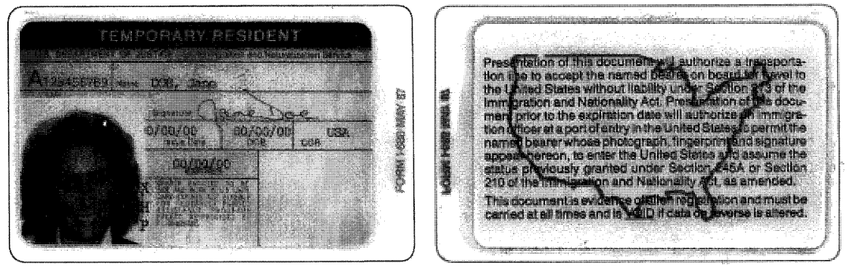
Sample Documents Relating to Other Immigration Statuses

There is a wide variety of documents that individuals may have to indicate their immigration status. Most individuals who are admitted to the United States are given Form I-94 (Arrival/Departure Record) with a reference or code indicating their immigration status. Some other documents are used only with respect to particular statuses; for example, asylees and persons granted withholding of deportation or removal may have a notice issued by the INS, or an order issued by an immigration judge, the Board of Immigration Appeals, or a federal court, indicating their status.

Employment authorization documents, which are discussed in the next section of this chapter, also provide an indication of a person's immigration status.

I-688 — TEMPORARY RESIDENT CARD UNDER THE 1986 AMNESTY PROGRAM

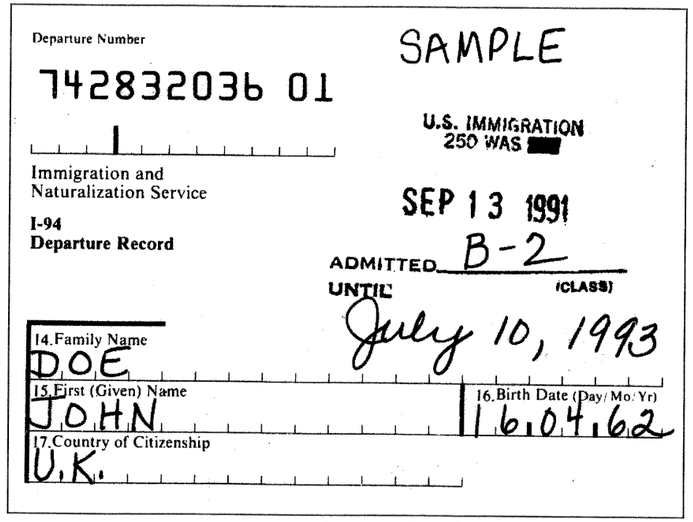
Immigrants who legalized their status under the Immigration Reform and Control Act of 1986 (IRCA) were first granted temporary resident status. The temporary resident card has a green stripe on the top. The expiration date on the front of the card is extended by stickers placed on the back. The immigrant may still be in lawful status, even if the I-688 or sticker has expired. The card will be marked at the bottom center with the numbers "245A" or "210" to indicate whether the person legalized under the general amnesty (INA § 245A) program or the farmworker (SAW or INA § 210) program.



I-688 – Temporary Resident Card (front and back)

I-94 ARRIVAL/DEPARTURE RECORD

The I-94 is a 3″x 5″ card which is issued to almost all noncitizens upon entry to the U.S. It is also issued to individuals who entered the country without inspection and subsequently have contact with the INS. The card is stamped or handwritten with a notation that indicates the individual's immigration category or the section of the law under which the person is granted admission or parole. The words "Employment Authorized" may also be stamped onto the card. Noncitizens with I-94s include LPRs, persons fleeing persecution, persons with permission to remain in the U.S. based on a pending application, persons in deportation or removal proceedings, nonimmigrants, and undocumented persons whose period of admission or parole has expired.


Departure Number
SAMPLE
74283203601
U.S. IMMIGRATION
250 WAS [redacted]
Immigration and
Naturalization Service
SEP 13 1991
I-94
Departure Record
ADMITTED B-2
UNTIL (CLASS)
July 10, 1993
14.Family Name
DOE
15.First (Given) Name
JOHN
16.Birth Date (Day/Mo/Yr)
10,04,62
17.Country of Citizenship
U.K.

I-94 Arrival/Departure Record

KEY TO I-94

Codes on the I-94 indicate the provision of law related to the individual's status. What follows is a list of codes most commonly found on the I-94.

PERSONS FLEEING PERSECUTION

CODE	MEANING
203(a)(7)	Conditional entrant
207 or REFUG	Refugee
208	Asylum
243(h) or 241(b)(3)	Withholding of deportation or removal
AM 1, 2, 3	Amerasian

KEY TO I-94 *(CONTINUED)*

PERSONS GRANTED PERMISSION TO REMAIN IN THE U.S.

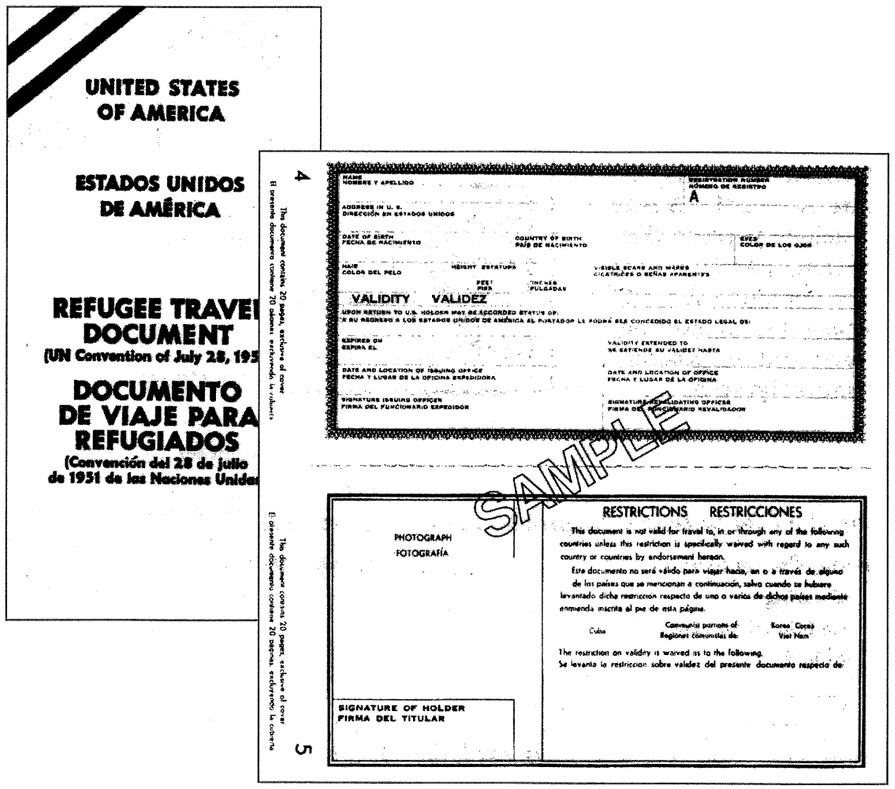
CODE	MEANING
106	Granted indefinite stay of deportation
242(b)	Granted voluntary departure
212(d)(5)	Parolee

NONIMMIGRANTS

CODE	MEANING
A-1, -2, -3	Foreign government official, dependents, and employees
B-1	Visitor for business
B-2	Visitor for pleasure (tourist)
C-1, -2, -3	Aliens in transit
D	Crewmember of ship or aircraft
E-1, -2	Treaty trader and investor and dependents
F-1, -2	Foreign student and dependents
G-1, -2, -3, -4, -5	Representative of international organization, dependents, and employees
H-1A	Registered nurse
H-1B	Alien in specialty occupation
H-2A	Temporary agricultural worker
H-2B	Temporary worker
H-3	Trainee
H-4	Spouse or child of "H" worker (see categories above) or trainee
I	Foreign information media representative and dependents
J-1, -2	Exchange visitor and dependents
K-1, -2	Fiancé(e) of U.S. citizen and children
L-1, -2	Intracompany transferee and dependents
M-1, -2	Vocational/nonacademic student and dependents
N-8, -9	Parent of special immigrant and children
NATO-1 through -7	Representatives of NATO, dependents, and employees
O-1, -2, -3, -4	Persons with extraordinary ability in the sciences, arts, education, business, and athletics, and dependents
P-1, -2, -3	Artists, entertainers, and athletes who are performing, teaching, or on an exchange program
Q	Cultural exchange
R-1, -2	Religious workers and dependents
S5, -6, -7	Alien supplying information relating to crime or terrorism, and qualified family members
TWOV	Transit without a visa
TC	Canadian citizen seeking temporary entry pursuant to Free Trade Agreement
TN, -D	NAFTA professional and dependents
WB	Visitor for business admitted under visa waiver pilot program
WT	Visitor admitted under visa waiver pilot program

I-571 — REFUGEE TRAVEL DOCUMENT

The refugee travel document is issued to refugees and asylees in the U.S. who want to travel abroad, and to lawful permanent residents who adjusted to LPR status after having received refugee or asylee status. The document is used like a passport to enter other countries and return to the U.S.



I-571 — Refugee Travel Document

DECISION GRANTING ASYLUM

Both the INS Asylum Offices and the judges of the Executive Office of Immigration Review, where deportation, exclusion, and removal cases are heard, can grant asylum to an individual fleeing persecution. Below are examples of documents issued to immigrants granted asylum. Not all are the same. The Board of Immigration Appeals and federal courts also may issue orders granting asylum.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
Los Angeles, California

File No: A 70 400 000

In the Matter of

Fulgencio F.

Respondent

IN DEPORTATION PROCEEDINGS

Order of the
Immigration Judge

This matter having been initiated by the Immigration & Naturalization Service upon the filing of an Order to Show Cause, and the Respondent having been found to be subject to deportation on the charge(s) set forth therein; and the Respondent having made application for relief from deportation under Sections 208(a) and 243(h) of the Immigration and Nationality Act; and a hearing having been held on said applications, and the Court being fully informed of the facts, and having made an oral decision at the conclusion of the hearing setting forth the basis upon which the Respondent is found QUALIFIED for the relief sought; therefore, upon this order being final,

IT IS ORDERED that the Respondent's application for relief from deportation under Sections 208(a) ~~and 243(h)~~ of the Immigration and Nationality Act be and is hereby GRANTED, and,

IT IS FURTHER ORDERED that deportation proceedings against the Respondent ~~be TERMINATED~~.

Appeal: (Waived) Reserved

Date: 3-27-91

ROY J. DANIEL
Immigration Judge

A copy of this Order has been served upon the Respondent and the Immigration Service.

Decision Granting Asylum

DECISION GRANTING ASYLUM *(CONTINUED)*

U.S. Department of Justice

Immigration and Naturalization Service

District Director

300 North Los Angeles Street
Los Angeles, CA. 90012

FEB 02 1990

Dear ;

This refers to your Request for Asylum in the United States.

I have concluded, upon consultation with the Burearu of Human Rights and Humanitarian Affairs, Department of State, that you have established a well-founded fear of persecution upon return to your homeland. Therefore, in accordance with section 208(a) of the Immigration and Nationality Act, your request for Asylum in the United States is granted as of FEB 02 1990.

Your asylum status may be terminated if it is subsequently determined you are no longer a refugee within the meaning of section 101(a)(42)(A) of the Immigration and Nationality Act, or that you pose a danger to the community or to the security of the United States.

You are authorized to ~~remain in the United States until~~ FEB 01 1991 at which time you must arrange to be interviewed to determine your continuing eligibility for asylum. Employment is authorized during this period. If you plan to depart the United States, it will be necessary for you to obtain prior permission to return.

You may apply for permanent residence under section 209(b) of the Immigration and Nationality Act upon being physically present in the United States for at least one year after asylum was granted.

Please keep this office informed of any change in your address.

Sincerely,

Robert M. Moschorak,
Acting District Director

Decision Granting Asylum

I-210 — VOLUNTARY DEPARTURE

"Voluntary departure" is a status that allows an individual to remain in the U.S. for either a specific or an indefinite period of time. The period of time given for voluntary departure varies. Voluntary departure can be granted by the INS before deportation or removal proceedings have begun, or by an immigration judge during such proceedings.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
300 NORTH LOS ANGELES STREET
LOS ANGELES CALIFORNIA 90012

PLEASE REFER TO THIS FILE NUMBER
A

Please note the below checked action which has been taken in your case. Date: NOVEMBER 12, 1991

☐ You have violated the terms of your admission as a nonimmigrant. Consequently, permission previously granted you to remain in the United States is rescinded. You are required to depart from the United States at your own expense on or before _____

☐ In accordance with a decision made in your case you are required to depart from the United States at your own expense on or before _____

☒ Your request for an extension of time in which to depart from the United States has been GRANTED********** You are required to depart on or before MAY 12, 1992**********

You must notify this office, Room No. 7621, on or before MAY 12, 1992********** of the arrangements you have made to effect your departure, including the date, place, and manner.

Failure to depart on or before the specified date may result in the withdrawal of voluntary departure and action being taken to effect your deportation.

HAND DELIVERED TO RESPONDENTS ATTY. FAMILY FAIRNESS

If there is a bond outstanding in your case, you are warned that to expedite cancellation of the bond and return of the collateral posted, you must make advance arrangements with this office to have your departure witnessed by an officer of this Service.

USE THE ENCLOSED SELF-ADDRESSED CARD TO NOTIFY THIS OFFICE REGARDING DEPARTURE ARRANGEMENTS. POSTAGE IS NOT REQUIRED. At the time of your departure, do not fail to surrender Form I-94, ARRIVAL-DEPARTURE RECORD, in accordance with instructions on that form.

Very truly yours,

DISTRICT DIRECTOR

FOR IMMIGRATION AND NATURALIZATION USE ONLY

Departed:

Port _____ Date _____ ☐ I-94 stamped ☐ I-530 submitted
To _____ Via _____ ☐ I-181 prepared ☐ I-156 prepared

FORM I-210
(Rev. 6-12-89) Y

ATTORNEY'S COPY

I-210 — Voluntary Departure

I-512 — PAROLE AUTHORIZATION

Individuals who are not eligible for a visa or for refugee status can be "paroled" into the U.S. for emergent or compelling reasons in the public interest. There are special parole procedures for Cubans paroled into the U.S. after the Mariel boatlift. Immigrants in the U.S. who have applied for LPR or another immigration status and who need to take short trips abroad while their applications are pending can apply for advance parole. If this is granted, they will be issued a document before leaving the country that will allow them to reenter the U.S. after their trip aboard.

Persons granted parole status are issued an I-94 or an I-512 marked with a section of 8 CFR § 212.5 indicating why they were granted parole.

U.S. Department of Justice
Immigration and Naturalization Service
300 N. Los Angeles St., Los Angeles CA 90012

AUTHORIZATION FOR PAROLE OF AN ALIEN INTO THE UNITED STATES

Name of Alien (First) (Middle) (Last) | Date: March 13, 1992

File Number: A

Date of Birth (Month) (Day) (Year) | Place of Birth (City or town) (State or province) (Country)

U.S. Address (Apt. number and/or in care of) (Number and street) (City or town) (State) (ZIP Code)

Presentation of the attached duplicate of this document will authorize a transportation line to accept the named bearer on board for travel to the United States without liability under section 273 of the Immigration and Nationality Act for bringing an alien who does not have a visa.

Presentation of the original of this document prior to May 12, 1992 will authorize an immigration officer at a port of entry in the United States to permit the named bearer, whose photograph appears hereon, to enter the United States:

☐ as an alien paroled pursuant to section 212(d)(5) of the Immigration and Nationality Act.

☐

Remarks: If your request for Asylum in the United States is denied, you will be subject to exclusion proceedings under Section 236 of the Immigration and Nationality Act. Your asylum request may be presumed to be abandoned if you return to the country of claimed persecution unless you are able to establish compelling reasons for having done so. To be paroled in to the United States until May 12, 1992.
Advance parole authorized by the undesigned.

Los Angeles, CA
(Signature of Immigration Officer) (Authorizing Office)
Robert M. Moschorak, District Director

ARRIVAL STAMP

Form I-512 (Rev. 10-1-82) Y

TO ALIEN

I-512 — Parole Authorization

I-797 — NOTICE OF ACTION

This form is used by the INS to notify applicants and petitioners for immigration benefits that the agency has taken some kind of action in the case. For example, the form is used to notify individuals who have filed a petition for an immigrant visa on behalf of a relative that the petition has been approved. As in the example below, it is also used to notify abused immigrants who have filed a self-petition under the Violence Against Women Act (VAWA) that their self-petitions have been found to establish a prima facie case. As in the example on the next page, the form is also used to notify applicants for Family Unity that they have been granted Family Unity status.

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA

Receipt Number EAC0		Case Type: I-360 PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT
Receipt Date December 15, 2000	Priority Date	Petitioner
Notice Date December 22, 2000	Page 1	A-File Number A

C/O LEGAL AID FDN OF LOS ANGELES
5228 E WHITTIER BLVD
LOS ANGELES CA 90022

Section: Self-Petitioning Spouse of U.S.C. or L.P.R.

ESTABLISHMENT OF PRIMA FACIE CASE

The above petition has been reviewed and found to establish a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act.

THIS NOTICE MAY BE USED TO ASSIST YOU IN RECEIVING PUBLIC BENEFITS.

THIS PRIMA FACIE DETERMINATION IS VALID FOR A PERIOD OF 150 DAYS FROM THE NOTICE DATE SHOWN ABOVE, AND EXPIRES ON THE DATE INDICATED AT THE BOTTOM OF THE PAGE.

We will send you a written notice as soon as we make a decision on this case. It is expected that a final decision will be made in this case before the end of 150 days. In a few cases, the adjudication may not be completed in this time frame. If this period is coming to a close and you need an extension of this prima facie determination in order to continue receiving public benefits, please submit a written request for extension at least 15 days prior to expiration.

A COPY OF THIS NOTICE MUST ACCOMPANY ANY REQUEST FOR AN EXTENSION OF THIS DETERMINATION.

PLEASE NOTE: ESTABLISHING A PRIMA FACIE CASE FOR CLASSIFICATION UNDER THE SELF-PETITIONING PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT DOES NOT NECESSARILY MEAN THAT YOUR PETITION WILL BE APPROVED.

****

EXPIRATION DATE: May 22, 2001

****

You will be notified separately about any other applications or petitions you filed. Save this notice. Please enclose a copy of it if you write to us about this case, or if you file another application based on this decision. Our address is:

IMMIGRATION AND NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
ST. ALBANS, VT 05479-0001

Form I-797 (Rev. 09/07/00)N

I-797 — Notice of Action (finding establishment of prima facie case)

I-797 — NOTICE OF ACTION *(CONTINUED)*

U. S. Department of Justice:
Immigration and Naturalization Service — Notice of Action

Applicant/Petitioner A #	Application/Petition I817 APPLICATION FOR VOLUNTARY DEPARTURE UNDER FAMILY UNITY PROGRAM
Receipt # WAC-	Applicant/Petitioner
Notice Date April 14, 1992 — Page 1 of 1	Beneficiary A9

Approval Notice
Valid from 04/14/92 to 04/13/94

Notice also sent to:
None

The above application for voluntary departure under the Family Unity Program has been approved. The period of voluntary departure is shown above. The applicant should make a copy of this notice for his or her records and carry this original and present it when required to demonstrate immigration status. If the applicant loses this notice, he or she should file Form I-824 to apply for a duplicate.

If the applicant wishes to apply for an employment authorization document to demonstrate employment authorization, he or she must file Form I-765 with the local INS office. Check block (a) (13) as the basis of eligibility. A copy of this approval must be filed with that application. The applicant must also file credible evidence with the application to establish identity.

ADDITIONAL INFORMATION

Travel: Voluntary departure does not authorize travel outside the U.S. If an emergency requires travel outside the U.S., file an application for advance permission to travel, on Form I-131, with the local INS office.

Renewal: To renew voluntary departure status, the applicant must file on Form I-817. The application must be filed before the date voluntary departure expires, shown above.

Change of address: Use Form I-697A to notify this office of any change of address.

You will be notified separately about any other applications or petitions you filed. Save this notice. Please enclose a copy of it if you write to us about this case, or if you file another application based on this decision. Our address is:

IMMIGRATION & NATURALIZATION SERVICE Tel:
WESTERN SERVICE CENTER
P. O. BOX 30111
LAGUNA NIGUEL CA 92607-0111

Form I-797 (8/03/90) Y — Please see additional information on the back.

I-797 – Notice of Action (granting Family Unity)

HHS CERTIFICATION LETTER

The U.S. Department of Health and Human Services uses this letter to certify that an individual is a victim of a severe form of trafficking, for purposes of qualifying for federal benefits and services. In order to receive an HHS certification, adult victims must have applied for T nonimmigrant status; victims who are children under 18 years of age are not required to do so. This sample is an older version of the form; as of November 6, 2001, certification letters no longer contain an expiration date.

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

HHS Tracking Number
55555555555

Ms. Susie Doe
c/o Jim Thomas, Refugee Social Worker
Smith County Community Service Office
123 Main St.
Bellevue, WA 55555-5555

CERTIFICATION LETTER

Dear Ms. Doe:

This letter confirms that you have been certified by the Department of Health and Human Services (HHS) pursuant to section 107(b) of the Trafficking Victims Protection Act of 2000. Your certification date is _____. This certification is valid for eight months from the date of this letter. The expiration date is _____.

With this certification, you are eligible for benefits and services under any Federal or State program or activity funded or administered by any Federal agency to the same extent as an individual who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act, provided you meet other eligibility criteria. This certification does not confer immigration status.

You should present this letter when you apply for benefits or services. Benefit-issuing agencies should call the trafficking verification line at (202) 401-5510 to verify the validity of this document and to inform HHS of the benefits for which you have applied.

Sincerely,

Carmel Clay-Thompson
Acting Director
Office of Refugee Resettlement

HHS Certification Letter

B-1/B-2 VISA/BCC

This card is both a nonimmigrant visa and a border crossing card, allowing the bearer to visit areas within 25 miles of the U.S. border for visits lasting up to 72 hours. It is issued to citizens of Mexico or Canada.

B-1/B-2 Border Crossing Card

I-586 — MEXICAN BORDER CROSSING CARD

This is the version of the Mexican border crossing card that was used prior to the 1999 development of the B-1/B-2 Visa/BCC. It is no longer issued.

I-586 – Mexican Border Crossing Card

I-186 — MEXICAN BORDER CROSSING CARD

The I-186 is an older version of the Mexican border crossing card, which allows eligible citizens of Mexico to enter the U.S. for short trips. It is no longer issued.

I-444 — MEXICAN BORDER VISITORS PERMIT

This document was issued to Mexican nationals to allow them to visit five specific U.S. states: Arizona, California, Nevada, New Mexico, or Texas. The visit was limited to under 30 days' duration and to within 25 miles of the U.S.-Mexico border.

I-185 — CANADIAN BORDER CROSSING CARD

Eligible Canadian citizens and British subjects residing in Canada may be issued border crossing cards to allow them to travel to the U.S. A person who enters the U.S. using a border crossing card does not have permission to reside in the U.S. for more than six months at a time. The card is valid indefinitely.

Sample Documents Relating to Employment Authorization and Indicating Immigration Status

A variety of documents indicate that an individual is authorized to work in the United States. U.S. citizens, U.S. nationals, lawful permanent residents, lawful temporary residents, refugees, and asylees are automatically authorized to be employed in the U.S. by virtue of their status, and documents evidencing these statuses establish their employment authorization. Other noncitizens must receive permission to work—i.e., employment authorization—from the INS. The INS issues documentation of employment authorization in a variety of forms, including "Employment Authorization Documents" (EADs—Forms I-688B or I-766) and an "employment authorized" stamp on Form I-94, "Arrival Departure Record." EADs contain codes that indicate the individual's immigration status, and a key to these codes is included in this section.

Employers are required to verify the employment authorization of individuals they hire, and Form I-9 is used for this purpose. The documents that may be used to verify employment authorization on the I-9 form are listed on page 90.

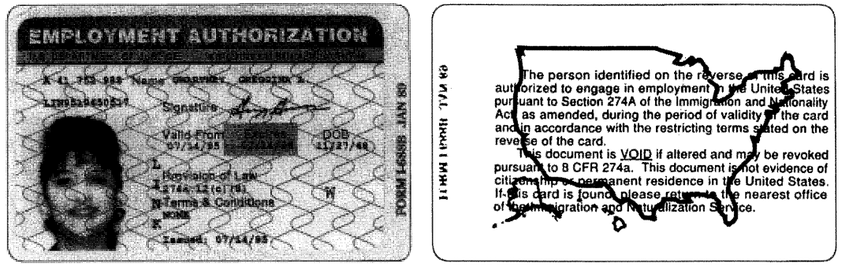
I-766 — EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)

This document is one of several that indicate an immigrant has been granted permission to work in the U.S. Codes on the front of the card indicate the person's immigration status by referencing the subsection of the regulation authorizing employment — 8 CFR § 274a.12. For example, an asylum applicant would be issued a card with the code "(c)(8)," which refers to 8 CFR § 274a.12(c)(8).

I-766 – Employment Authorization Document (EAD) (front and back)

I-688B — EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)

This document is an earlier version of the Employment Authorization Document for immigrants who have been granted permission to work in the U.S. As with the I-766, there are codes on the front of the card that indicate the person's immigration status and refer to the section of the regulation authorizing employment. For example, an asylum applicant would be issued a card containing the code "274a.12(c)(8)."



I-688B — Employment Authorization Document (EAD) (front and back)

KEY TO EMPLOYMENT AUTHORIZATION DOCUMENTS (EADS)

The entry for "Category" or "Provision of Law" on the front of the EAD indicates the subsection of 8 CFR § 274a.12 under which the person was granted work authorization. The following list of codes and categories is not exhaustive. The complete list is found at 8 C.F.R. § 274a.12.

CODE	MEANING
(a)(3)	Refugee
(a)(4)	Paroled as refugee
(a)(5)	Granted asylum
(a)(6)	Fiancé(e) of U.S. citizen or dependent of fiancé(e)
(a)(7)	Parent or child of an individual granted LPR status as a special immigrant due to employment by an international organization
(a)(8)	Citizen of the Federated States of Micronesia or the Marshall Islands
(a)(10)	Granted withholding of deportation or removal
(a)(11)	Granted extended voluntary departure
(a)(12)	Granted temporary protected status (TPS)
(a)(13)	Granted voluntary departure under Family Unity
(a)(14)	Granted Family Unity under the LIFE Act
(a)(15)	Granted V nonimmigrant status
(a)(16)	Granted T nonimmigrant status
(c)(1)	Dependent of foreign government official
(c)(2)	E-1 nonimmigrant
(c)(3)(i)-(iii)	Foreign students
(c)(4)	Dependent of employee of international organization
(c)(5)	Dependent of exchange visitor
(c)(6)	Foreign student seeking employment for practical training
(c)(7)	Dependent of NATO employee
(c)(8)	Asylum applicant

KEY TO EMPLOYMENT AUTHORIZATION DOCUMENTS (EADS) *(CONTINUED)*

CODE	MEANING
(c)(9)	Applicant for adjustment to lawful permanent resident status
(c)(10)	Applicant for suspension of deportation or cancellation of removal
(c)(11)	Paroled for emergent or public interest reasons
(c)(12)	Granted Family Unity benefits
(c)(14)	Granted deferred action
(c)(16)	Applicant for registry (resided in U.S. since before January 1, 1972)
(c)(17)(i)	Employee of business visitor
(c)(17)(ii)	Employee of U.S. citizen living abroad on visit to U.S.
(c)(17)(iii)	Employee of foreign airline
(c)(18)	Under order of supervision
(c)(19)	Applicant for temporary protected status (TPS)
(c)(20)	Applicant for Special Agricultural Worker legalization (INA § 210)
(c)(21)	Nonimmigrant witness or informant and dependents (S status)
(c)(22)	Applicant for legalization under INA § 245A
(c)(24)	Applicant for adjustment under the LIFE Act Legalization Program
(c)(25)	Immediate family member of T status nonimmigrant

I-688A — EMPLOYMENT AUTHORIZATION FOR AMNESTY APPLICANTS

Applicants under the 1986 amnesty program of IRCA are allowed to work while their applications are being processed. They receive the I-688A employment authorization card. The INS extends the expiration date on the front of the card by placing an extension sticker on the back. The card will be marked at the bottom center with the numbers "245A" or "210" to indicate whether the person legalized under the general amnesty (245A) program or the farmworker (SAW or 210) program.

I-688A — Employment Authorization for Legalization Applicants (front and back)

DOCUMENTS THAT VERIFY EMPLOYMENT ELIGIBILITY WITH AN EMPLOYER

Immigration law requires that employers verify the employment eligibility of all newly hired workers, whether they are U.S. citizens or noncitizens. In order to document their compliance with this requirement, employers must use the INS I-9 "Employment Eligibility Verification" form. In order to complete the I-9 form, the employer must view documents to verify both the employee's identity and his or her eligibility to work. The form lists the categories of documents that may be used to

satisfy this requirement. Certain documents, contained in "List A" on the I-9 form, may be used to establish both identity and employment eligibility. Alternatively, a worker may present one document from "List B" to establish identity, and another document from "List C" to establish employment eligibility. The worker may choose any acceptable document to meet this requirement, and employers are prohibited from specifying which document(s) they will accept from an employee. The documents that may be used to satisfy the I-9 form's requirements are listed in the following table.[1]

TABLE 7

List of Acceptable Work Documents

Workers can choose:

***One* paper –** **One from List A** – to establish both identify and eligibility to work
or
***Two* papers –** **One from List B** – to establish identity
and
One from List C – to establish eligibility

LIST "A" DOCUMENTS – ESTABLISH IDENTITY *AND* EMPLOYMENT ELIGIBILITY

1. U.S. passport (unexpired or expired)
2. Unexpired foreign passport, with I-551 stamp or attached INS Form I-94 indicating unexpired employment authorization
3. Alien Registration Receipt Card with photograph (INS Form I-551)
4. Unexpired Temporary Resident Card (INS Form I-688)
5. Unexpired Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688A, I-688B, I-766[2])
6. Certificate of U.S. Citizenship (INS Form N-560 or N-561)*
7. Certificate of Naturalization (INS Form N-550 or N-570)*
8. Unexpired Reentry Permit (INS Form I-327)*
9. Unexpired Refugee Travel Document (INS Form I-571)*

LIST "B" DOCUMENTS – ESTABLISH IDENTITY

1. Driver's license or ID card issued by a state or outlying possession of the U.S., provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
2. ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
3. School ID card with a photograph
4. Voter's registration card
5. Military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card
11. Clinic, doctor, or hospital record
12. Daycare or nursery school record

LIST "C" DOCUMENTS – ESTABLISH EMPLOYMENT ELIGIBILITY

1. U.S. Social Security card issued by the Social Security Administration (other than a card stating it is not valid for employment)
2. Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350)
3. Original or certified copy of a birth certificate issued by a state, county, or municipal authority or outlying possession of the U.S. bearing an official seal
4. Native American tribal document
5. U.S. Citizen ID Card (INS Form I-197)
6. Card for use of Resident Citizen in the U.S. (INS Form I-179)
7. Unexpired Employment Authorization Document issued by the INS (other than those listed under List A)

1 Congress amended the law in 1996 to reduce the number of documents that may be used to complete the I-9 form. However, as of this writing the INS had not finalized regulations to implement this change. Until a final regulation is issued, employers may accept any of the documents listed above. Once a new INS rule is in place, the documents marked with an asterisk (*) above will no longer be accepted.

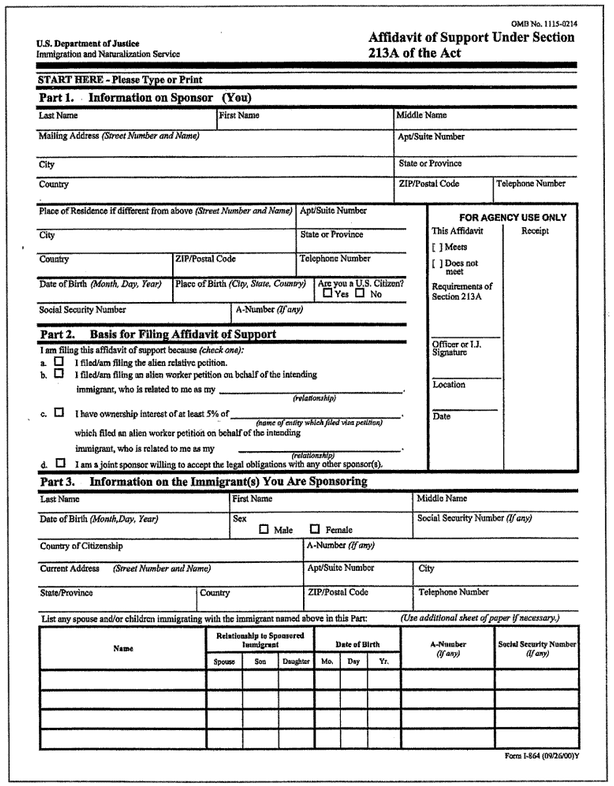
2 The INS last revised the I-9 form in 1991, before the agency began issuing Form I-766 Employment Authorization Documents (EADs). The I-766 EAD may be used as a List A document.

Other Common Immigration Forms

The following documents are samples of common immigration forms that are referenced in this *Guide*. They include the "enforceable" Affidavit of Support (Form I-864), the "traditional" Affidavit of Support (Form I-134), the Notice to Appear (Form I-862) that initiates removal proceedings, and the Order to Show Cause (Form I-221S) used to initiate deportation proceedings.

I-864 – AFFIDAVIT OF SUPPORT (ENFORCEABLE VERSION)

Most individuals who are immigrating based on petitions filed by their family members, and some individuals immigrating based on employment if a family member is an owner of the business, and who applied for an immigrant visa after December 19, 1997, must submit Form I-864, the Affidavit of Support. This form is an enforceable contract by means of which the immigrant's "sponsor" promises to financially assist the immigrant and to ensure that he or she (and any accompanying family members) will be maintained at an income of at least 125 percent of federal poverty guidelines. See page175 for federal poverty guidelines issued for 2002. The relative petitioner must be a sponsor, and if he or she does not have sufficient resources, a joint sponsor also can be obtained. See page 171 for a discussion of the Affidavit of Support requirement. Whether an immigrant has a sponsor is relevant for public benefit eligibility because the sponsor's income may be "deemed" to be available to the immigrant under certain circumstances. See page 177 for a discussion of sponsor deeming.



OMB No. 1115-0214

U.S. Department of Justice
Immigration and Naturalization Service

Affidavit of Support Under Section 213A of the Act

START HERE - Please Type or Print

Part 1. Information on Sponsor (You)

Last Name | First Name | Middle Name
Mailing Address *(Street Number and Name)* | Apt/Suite Number
City | State or Province
Country | ZIP/Postal Code | Telephone Number
Place of Residence if different from above *(Street Number and Name)* | Apt/Suite Number
City | State or Province
Country | ZIP/Postal Code | Telephone Number
Date of Birth *(Month, Day, Year)* | Place of Birth *(City, State, Country)* | Are you a U.S. Citizen? ☐ Yes ☐ No
Social Security Number | A-Number *(If any)*

FOR AGENCY USE ONLY
This Affidavit [ ] Meets [ ] Does not meet Requirements of Section 213A | Receipt
Officer or I.J. Signature
Location
Date

Part 2. Basis for Filing Affidavit of Support

I am filing this affidavit of support because *(check one)*:
a. ☐ I filed/am filing the alien relative petition.
b. ☐ I filed/am filing an alien worker petition on behalf of the intending immigrant, who is related to me as my _____ *(relationship)*.
c. ☐ I have ownership interest of at least 5% of _____ *(name of entity which filed visa petition)* which filed an alien worker petition on behalf of the intending immigrant, who is related to me as my _____ *(relationship)*.
d. ☐ I am a joint sponsor willing to accept the legal obligations with any other sponsor(s).

Part 3. Information on the Immigrant(s) You Are Sponsoring

Last Name | First Name | Middle Name
Date of Birth *(Month,Day, Year)* | Sex ☐ Male ☐ Female | Social Security Number *(If any)*
Country of Citizenship | A-Number *(If any)*
Current Address *(Street Number and Name)* | Apt/Suite Number | City
State/Province | Country | ZIP/Postal Code | Telephone Number

List any spouse and/or children immigrating with the immigrant named above in this Part: *(Use additional sheet of paper if necessary.)*

Name	Relationship to Sponsored Immigrant: Spouse	Son	Daughter	Date of Birth: Mo.	Day	Yr.	A-Number *(If any)*	Social Security Number *(If any)*

Form I-864 (09/26/00)Y

I-864 – Affidavit of Support (enforceable version)

I-134 — AFFIDAVIT OF SUPPORT (TRADITIONAL VERSION)

Individuals who are applying for LPR status and who are not subject to the requirement that they have the new, enforceable Affidavit of Support (I-864) may still submit the traditional Affidavit of Support form (I-134) in order to help show that they are not likely to become a "public charge." These forms are also used by family immigrants who applied for an immigrant visa prior to December 19, 1997. See page 167 for a discussion of the public charge ground of inadmissibility, and page 171 for a discussion of Affidavits of Support. Although this form has generally been held not to be enforceable against the sponsor, it may cause the sponsor's income to be "deemed" to be available to the immigrant if he or she applies for certain benefits within three years of entry to the United States. See page 177 for a discussion of sponsor deeming.

U.S. Department of Justice
Immigration and Naturalization Service

Affidavit of Support

(ANSWER ALL ITEMS: FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK.)

I, _____ (Name), residing at _____ (Street and Number)

_____ (City) (State) (ZIP Code if in U.S.) (Country)

BEING DULY SWORN DEPOSE AND SAY:

1. I was born on _____ (Date) at _____ (City) (Country)

If you are ***not*** a native born United States citizen, answer the following as appropriate:

a. If a United States citizen through naturalization, give certificate of naturalization number _____

b. If a United States citizen through parent(s) or marriage, give citizen certificate number _____

c. If United States citizenship was derived by some other method, attach a statement of explanation.

d. If lawfully admitted permanent resident of the United States, give "A" number _____

2. That I am _____ years of age and have resided in the United States since (date) _____

3. That this affidavit is executed in behalf of the following person:

Name	Sex	Age

Citizen of--(Country)	Marital Status	Relationship to Deponent

Presently resides at--(Street and Number) (City) (State) (Country)

Name of spouse and children accompanying or following to join person:

Spouse	Sex	Age	Child	Sex	Age
Child	Sex	Age	Child	Sex	Age
Child	Sex	Age	Child	Sex	Age

4. That this affidavit is made by me for the purpose of assuring the United States Government that the person(s) named in item 3 will not become a public charge in the United States.

5. That I am willing and able to receive, maintain and support the person(s) named in item 3. That I am ready and willing to deposit a bond, if necessary, to guarantee that such person(s) will not become a public charge during his or her stay in the United States, or to guarantee that the above named will maintain his or her nonimmigrant status if admitted temporarily and will depart prior to the expiration of his or her authorized stay in the United States.

6. That I understand this affidavit will be binding upon me for a period of three (3) years after entry of the person(s) named in item 3 and that the information and documentation provided by me may be made available to the Secretary of Health and Human Services and the Secretary of Agriculture, who may make it available to a public assistance agency.

7. That I am employed as, or engaged in the business of _____ (Type of Business) with _____ (Name of Concern)

at _____ (Street and Number) (City) (State) (Zip Code)

I derive an annual income of *(if self-employed, I have attached a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief. See instruction for nature of evidence of net worth to be submitted.)* $ _____

I have on deposit in savings banks in the United States $ _____

I have other personal property, the reasonable value of which is $ _____

Form I-134(Rev.12-1-84) Y

I-134 — Affidavit of Support (traditional version, front)

I-134 — AFFIDAVIT OF SUPPORT (TRADITIONAL VERSION) *(CONTINUED)*

I have stocks and bonds with the following market value, as indicated on the attached list which I certify to be true and correct to the best of my knowledge and belief $ _____

I have life insurance in the sum of $ _____

With a cash surrender value of $ _____

I own real estate valued at $ _____

With mortgage or other encumbrances thereon amounting to $ _____

Which is located at _____ (Street and Number) (City) (State) (Zip Code)

8. That the following persons are dependent upon me for support: *(Place an "X"* in the appropriate column to indicate whether the person named is ***wholly*** or ***partially*** dependent upon you for support.)

Name of Person	Wholly Dependent	Partially Dependent	Age	Relationship to Me

9. That I have previously submitted affidavit(s) of support for the following person(s). If none, state *"None"*

Name Date submitted

10. That I have submitted visa petition(s) to the Immigration and Naturalization Service on behalf of the following person(s). If none, state none.

Name Relationship Date submitted

11. ***(Complete this block only if the person named in item 3 will be in the United States temporarily.)***
That I ☐ do intend ☐ do not intend, to make specific contributions to the support of the person named in item 3. *(If you check "do intend", indicate the exact nature and duration of the contributions. For example, if you intend to furnish room and board, state for how long and, if money, state the amount in United States dollars and state whether it is to be given in a lump sum, weekly, or monthly, or for how long.)*

OATH OR AFFIRMATION OF DEPONENT

I acknowledge at that I have read Part III of the instructions, Sponsor and Alien Liability, and am aware of my responsibilities as an immigrant sponsor under the Social Security Act, as amended, and the Food Stamp Act, as amended.

I swear (affirm) that I know the contents of this affidavit signed by me and the statements are true and correct.

Signature of deponent _____

Subscribed and sworn to (affirmed) before me this _____ ***day of*** _____, ***19*** _____

at _____. ***My commission expires on*** _____

Signature of Officer Administering Oath _____ ***Title*** _____

If affidavit prepared by other than deponent, please complete the following: I declare that this document was prepared by me at the request of the deponent and is based on all information of which I have knowledge.

Meredith Brown — One Stop Immigration and Education Center
3600 Whittier Blvd., Los Angeles, CA 90023

(Signature) *(Address)* *(Date)*

I-134 — Affidavit of Support (traditional version, back)

I-862 — NOTICE TO APPEAR

A Notice to Appear (NTA) is a document that begins formal removal proceedings. An individual who has been issued an NTA can be taken into INS custody or released either on his or her own recognizance or after posting a bond. Information regarding the terms of release will be attached to the NTA. Individuals released from INS custody must attend their removal hearings or they will be ordered removed and deported. Below is page one of an NTA (a two-page document).

U.S. Department of Justice
Immigration and Naturalization Service — **Notice to Appear**

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A

In Matter of:

Respondent: ANDRADE currently residing at:

(Number, street, city, state, and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☒ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:
1) You are not a citizen or national of the United States;
2) You are a native of MEXICO and a citizen of MEXICO;
3) You entered the United States at or near SAN YSIDRO, CA on or about May 1, 1981;
4) You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
Section 212 (a) (6) (A)(i) of the Immigration and Nationality Act (Act), as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
300 N LOS ANGELES ST, ROOM 2001, LOS ANGELES, CA 90012-0000
(Complete Address of Immigration Court, Including Room Number, if any)

on (Date) at (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

(Signature and Title of Issuing Officer)

Date: APR 29 1997

ANAHEIM, CA
(City and State)

See reverse for important information

Form I-862(Rev. 4-1-97)

I-862 — Notice to Appear (front)

I-221S — ORDER TO SHOW CAUSE

An Order to Show Cause (OSC) is the document that was used by the INS to begin formal deportation proceedings prior to April 1, 1997. Individuals placed in proceedings on or after that date are issued a Notice to Appear (NTA), Form I-862, instead of an OSC. Below is page one of an OSC (a five-page document).

U.S. Department of Justice
Immigration and Naturalization Service — Order to Show Cause and Notice of Hearing

ORDER TO SHOW CAUSE AND NOTICE OF HEARING
(ORDEN DE PRESENTAR MOTIVOS JUSTIFICANTES Y AVISO DE AUDIENCIA)

In Deportation Proceedings under section 242 of the Immigration and Nationality Act.
(En los trámites de deportación a tenor de la sección 242 de la Ley de Inmigración y Nacionalidad.)

United States of America:
(Estados Unidos de América:)

File No. A71
(No. de registro)

Dated July 10, 1992
(Fechada)

In the matter of: Mr. Delgado
(En el asunto de)

Address: c/o U. S. Immigration and Naturalization Service
(Dirección) Service Processing Center
2001 Seaside Avenue
San Pedro, California 90731

(Respondent) *(Demandado)*

Telephone No. (Area Code)
(No. de teléfono y código de área)

Upon inquiry conducted by the Immigration and Naturalization Service, it is alleged that:
(Según las indagaciones realizadas por el Servicio de Inmigración y Naturalización, se alega que:)

1) You are not a citizen or national of the United States;
(Ud. no es ciudadano o nacional de los Estados Unidos)

2) You are a native of Mexico (Mexico) and a citizen of Mexico (Mexico);
(Ud. es nativo de) *(y ciudadano de)*

3) You entered the United States ~~XXXX~~near San Ysidro, California on or about an unknown date in October, 1991 (San Ysidro, California) (una fecha desconocida en octubre de 1991)
(Ud. entró a los Estados Unidos ~~XXXX~~ cerca de) *(el día o hacia esa fecha)*

4) You were not then inspected by an Immigration Officer;
(Ud. no fue inspeccionado entonces por un funcionario de inmigracion)

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I-221S — Order to Show Cause

Replacement of Lost Immigration Documents

Before sending an immigrant to the INS to apply for a replacement of a lost immigration document, be sure that he or she has a lawful immigration status. You may need help from an immigration law expert to make this determination.

The Executive Office for Immigration Review, the agency that administers the immigration courts, has a toll-free number that provides case status information to immigrants who have pending deportation, exclusion, or removal cases.

Under the Freedom of Information Act, an immigrant can get a copy of his or her INS file by mailing a request including his or her name, date of birth, and "A" number to the local INS office where the file is located (with the phrase "Attention FOIA/Privacy Unit" written on the envelope below the INS office address). The INS has a form for this purpose, Form I-639. With the immigrant's written permission on the form, you can submit the FOIA request to the INS so that the file documents will be sent to you at your address.

If you are sure that an immigrant has lawful status, he or she should apply immediately for a replacement document, since the INS is usually slow to issue new documents.

To apply for a replacement resident alien card, or "green card," lawful permanent residents (LPRs) must complete and file Form I-90. Local INS districts may also place a temporary stamp in an immigrant's passport indicating that the immigrant is a permanent resident; local INS offices may also issue other temporary evidence of permanent residence status or "I-551 status."

To apply for a replacement Employment Authorization Document, Form I-766 (also known as an "EAD"), the immigrant must complete and file an I-765 application form.

Replacements for the I-94 form (Arrival/Departure Record), which is the document issued to almost all noncitizens upon their entry into the U.S., may be obtained at a local INS office.

For some benefits programs, a receipt showing that the immigrant applied for a replacement document evidencing LPR status is sufficient proof to receive benefits. Also, some programs are required to accept the "best available evidence" or help the applicant obtain needed documents (for example, by paying relevant fees).