NATIONAL IMMIGRATION LAW CENTER

"Lawfully Present" Individuals Eligible Under the Affordable Care Act

Last updated August 2025

Under the Affordable Care Act of 2010 (ACA),[1] individuals who are "lawfully present" in the United States have been eligible for new affordable coverage options since January 1, 2014.[2] In July 2010, the U.S. Department of Health and Human Services (HHS) defined "lawfully present" for purposes of eligibility for the ACA's high-risk insurance pools, referred to as the Pre-Existing Condition Insurance Plans (PCIP).[3] In August 2012, the definition was revised to exclude individuals granted deferred action under the Deferred Action for Childhood Arrivals program (DACA).[4] This definition, codified at 45 C.F.R. section 152.2, generally tracked the definition used in Medicaid and the Children's Health Insurance Program (CHIP) to provide affordable coverage to low-income children and pregnant people who are lawfully residing in the U.S.[5] Under the PCIP definition, "lawfully present" individuals include not only those classified as "qualified" immigrants,[6] but several other categories of non-U.S. citizens who have permission to live and/or work in the U.S. HHS and the U.S. Department of Treasury adopted the PCIP definition of "lawfully present" in their final rules on eligibility to enroll in the state or federally-run health

---

[1] The Patient Protection and Affordable Care Act, Public Law 111–148, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act), Public Law 111–152, enacted on March 30, 2010, collectively are referred to as the Affordable Care Act.

[2] *See, e.g.,* section 1411(a)(1) of the ACA (eligibility for the health insurance "exchanges" and the related affordability tax credits).

[3] 75 FR 45014 (July 30, 2010).

[4] 77 FR 52614 (Aug. 30, 2012).

[5] *See* CMS State Health Officials letter re: Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women (July 1, 2010), at www.cms.gov/smdl/downloads /SHO10006.pdf. *See also* CMS State Health Officials letter (Aug. 28, 2012), at www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf (excluding individuals granted relief under the "Deferred Action for Childhood Arrivals" policy from eligibility).

[6] 8 U.S.C. § 1641.

insurance exchanges[7] and to apply for premium tax credits to help make health insurance affordable.[8] In May 2024, HHS revised this definition for purposes of ACA coverage and subsidies to include DACA recipients, and to clarify eligibility for certain other groups.[9] These rules, codified at 45 C.F.R. §155.20, became effective on November 1, 2024.[10] On December 9, 2024, a District Court temporarily blocked these rules in 19 states that challenged the inclusion of DACA recipients.[11] As that case was proceeding, HHS issued a new rule, excluding DACA recipients but preserving the clarifications in the prior rule.[12] The new rule becomes effective on August 25, 2025.

The immigration categories described below are considered "lawfully present" for ACA eligibility purposes.[13]

Lawful Permanent Residents and Applicants for Adjustment

Lawful Permanent Residents (LPRs)

Lawful permanent residents have permission to live and work permanently in the U.S. They may travel abroad and then 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 may apply for naturalization after living in the U.S. for five years (three years if married to a U.S. citizen, or one year for certain persons in the military and veterans). LPRs are "qualified" immigrants and are "lawfully present" in the U.S.

---

[7] 45 C.F.R. § 155.2; 77 FR 18310 (March 27, 2012).
[8] 26 C.F.R. § 1.36B-1(g); 77 FR 30377 (May 23, 2012).
[9] 89 FR 39392 (May 8, 2024).
[10] HHS did not revise the definition of lawfully present for Medicaid or CHIP eligibility purposes.
[11] Kansas v. United States, 1:24-cv-00150, (D.N.D., Dec. 9, 2024).
[12] 90 FR 27074 (June 25, 2025)(revising the lawful presence definition for ACA eligibility purposes, in 45 C.F.R. § 155.20).
[13] The Federal Reconciliation Act, Pub. L. 119-21 (July 4, 2025) restricted access to the ACA's premium tax credits for immigrants, eliminating eligibility for lawfully present immigrants earning under 100% FPL in taxable years beginning December 1, 2025, and for many immigrants earning 100% FPL or above in taxable years beginning December 1, 2026. When this restriction is implemented, only lawful permanent residents, Cuban and Haitian entrants and persons residing in the U.S. pursuant to a Compact of Free Association (COFA) will be eligible for premium tax credits. All other lawfully present immigrants will be able to enroll in *unsubsidized* coverage in the ACA health insurance marketplaces.

Applicants for Adjustment to LPR Status
Individuals whose relatives or employers have petitioned for them to immigrate (or, in some cases, who are petitioning for themselves) may be able to adjust to LPR status in the U.S. Generally, the qualifying relative (e.g., a U.S. citizen spouse, parent, adult child, or sibling, or an LPR spouse or parent) or employer must first file a petition for an immigrant visa on behalf of the intending immigrant. After the visa petition is approved, there may be a long waiting period before an eligible noncitizen may apply to adjust his or her status. There is no waiting period for "immediate relatives" (spouse, parent, or children) of U.S. citizens or for some employment categories. Individuals who have applied for adjustment to LPR status are "lawfully present."

Persons Fleeing 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. due to persecution or a well-founded fear of persecution in their home country. Refugees are "qualified" immigrants and are "lawfully present" in the U.S.

Conditional Entrants
Before "refugee" status was established in U.S. law by the Refugee Act of 1980, nationals of communist countries or of certain countries in the Middle East were admitted as "conditional entrants," a status similar to refugee status. This classification has not been used since 1980. Conditional entrants are "qualified" immigrants and are "lawfully present" in the U.S.

Asylees
People already in the U.S. due to persecution or a well-founded fear of persecution in their home country and satisfy the requirements for refugee status may apply for asylum in the U.S. With some exceptions, to qualify for asylum, individuals must apply within one year of their last entry to the U.S. A person granted asylum is an "asylee." After one year in this status, asylees may

apply to obtain LPR status. Asylees are "qualified" immigrants and are "lawfully present" in the U.S.

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 if they return to their home country. To obtain "withholding," individuals must meet a higher evidentiary standard than for asylum. 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 may not be returned to their home country. Unlike refugee and asylum status, this status does not provide a path for individuals to obtain LPR status. Persons granted withholding of deportation or removal are "qualified" immigrants and are "lawfully present" in the U.S.

Granted Withholding of Deportation/Removal under the Convention Against Torture (CAT)
The Convention Against Torture, an international treaty that the U.S. Senate has ratified and the federal government has implemented, provides a separate basis for granting withholding of deportation or removal. People who have substantial grounds for believing that, if they were returned to their home country, they would be in danger of being subjected to torture may request withholding under the CAT. People granted withholding of deportation or removal under the CAT are "lawfully present" in the U.S.

Some applicants for relief under the CAT are granted a *deferral* of removal instead. Individuals granted deferral of removal may be released under an "order of supervision" and may obtain authorization to work on that basis. (See "Order of Supervision," below) If they obtain a work authorization document, these people would be considered "lawfully present" in the U.S.

Applicants for Asylum or Withholding of Deportation/Removal
Applicants for asylum or withholding of deportation/removal (including withholding of deportation/removal under the CAT) who are 14 years or older are considered "lawfully present" for ACA eligibility purposes if they have been

granted employment authorization. Applicants for asylum or withholding of deportation/removal who are under 14 years of age are considered “lawfully present” for ACA purposes, without a waiting period.

Other Humanitarian Immigrants

Cuban and Haitian Entrants

For health care eligibility purposes, this category includes nationals of Cuba or Haiti who (1) were paroled into the U.S., regardless of whether the parole document states “Cuban/Haitian entrant;” or (2) have a pending exclusion or deportation case, or applied for asylum, provided that they are not subject to a final order of deportation or exclusion. Cuban and Haitian entrants are “qualified” immigrants and are “lawfully present” in the U.S.

Paroled into the U.S.

Individuals paroled into the U.S. are permitted to enter the country for humanitarian or public interest reasons. Some parolees are allowed to enter the U.S. temporarily, e.g., to receive medical treatment. Others are permitted to enter with the understanding that they will remain permanently by applying for asylum or filing a family visa petition. Persons paroled into the U.S. are “lawfully present” — and those whose parole is expected to last at least one year are also “qualified” immigrants.

Temporary Protected Status (TPS)

Temporary Protected Status is granted to individuals physically present in the U.S. who are from countries designated by the secretary of the U.S. Department of Homeland Security as unsafe to accept their return. A listing of the countries currently designated for TPS can be obtained from the U.S. Citizenship and Immigration Services (USCIS) website. Persons granted TPS are authorized to remain in the U.S. for a specific, limited period. When this period expires, the DHS secretary may extend it for another specified period. Applicants for TPS must be granted employment authorization if they have filed a “prima facie” application for TPS. Persons granted TPS, and applicants for TPS who have been granted employment authorization, are “lawfully present.”

Deferred Enforced Departure (DED)
Deferred enforced departure is a status very similar to TPS. DED is granted to noncitizens from particular countries by presidential proclamation or other executive action. DED status was granted, for example, to nationals of the People's Republic of China (1990), El Salvador (1994), Haiti (1997), Liberia (1999), Hong Kong (2021) and Venezuela (2021). DED status allows eligible persons to remain lawfully in the U.S. for a limited, specified period and to receive employment authorization. Persons granted DED are "lawfully present."

Deferred Action
Immigration officials may exercise prosecutorial discretion in favor of a noncitizen who otherwise would be subject to deportation or removal proceedings. Deferred action is granted by USCIS administratively for a limited number of reasons, including the age or physical condition of the person (if it affects the person's ability to travel), the likelihood that another country will accept the person or that the individual will qualify for some other status, the presence of "sympathetic factors," and the adverse publicity that may result from the individual's removal from the U.S. This relief most commonly has been used by USCIS to grant employment authorization to 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. With the exception of the individuals described below, persons granted deferred action are considered "lawfully present."

On August 15, 2012, deferred action became available to immigrant youth who came to the U.S. as children, had lived in the country since June 15, 2007, and met certain other criteria under the Deferred Action for Childhood Arrivals (DACA) policy. On August 30, 2012, the Centers for Medicare and Medicaid Services (CMS) issued an interim final rule excluding individuals granted DACA from the “lawfully present” definition, for purposes of PCIP eligibility.[14] This policy, in effect, excludes this subgroup from eligibility for the health insurance exchanges and the premium tax credits. Individuals granted deferred action based on other administrative policies remain eligible as “lawfully present.”

Under a rule that became effective in November 2024, DACA recipients were considered “lawfully present” for ACA purposes.[15] As of August 25, 2025, however, DACA recipients will not be considered “lawfully present” and will not be eligible to enroll in health insurance exchanges or Basic Health Programs or to qualify for premium tax credits.[16]

Special Immigrant Juveniles (SIJs)
Classification as a Special Immigrant Juvenile is available to individuals under age 21 who have been declared dependent upon a state court or placed by a state court into the custody of an individual or entity or state agency, after a determination by the court that reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis, and when a court or agency determines that return to their country of origin is not in their best interest. Children who have petitioned for SIJ classification by filing a Form I-360 with USCIS are “lawfully present.” In May 2024, HHS clarified that this category includes children and youth with an approved petition for SIJ classification.

[14] 77 FR 52614 (Aug. 30, 2012). CMS issued similar guidance, excluding individuals granted DACA from eligibility for Medicaid and CHIP under the state option to cover “lawfully residing” children and pregnant women. CMS State Health Officials letter (Aug. 28, 2012), www.medicaid.gov/Federal-Policy-Guidance/downloads/ SHO-12-002.pdf. Those granted deferred action based on other administrative policies remain eligible for Medicaid and CHIP under the state option.
[15] 89 FR 39392 (May 8, 2024)(adding 45 C.F.R. §155.20). In December 2024, a District Court judge temporarily blocked this rule in 19 states. Kansas v. United States, 1:24-cv-00150, (D.N.D., Dec. 9, 2024).
[16] 90 FR 27074 (June 25, 2025)(revising the lawful presence definition in 45 C.F.R. § 155.20).

NATIONAL IMMIGRATION LAW CENTER

Survivors of Domestic Violence, Trafficking, and Other Serious Crimes

Domestic Violence Survivors
Battered spouses and children may be "qualified" immigrants and "lawfully present" if they have an approved (1) self-petition for an immigrant visa filed under the Violence Against Women Act (VAWA) or a prima facie determination on a VAWA self-petition, (2) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (3) application for cancellation of removal/ suspension of deportation under VAWA. The parent and/or child of a battered spouse or child are also "qualified" and "lawfully present."

Survivors of Trafficking and Their Derivative Beneficiaries
Immigrant survivors of a severe form of trafficking in persons who are certified by (or, if a minor, receive an eligibility letter from) HHS's Office of Refugee Resettlement (ORR) or Office of Trafficking in Persons (OTIP) are eligible for federal benefits, such as Medicaid and CHIP, to the same extent as refugees in every state.[17]. To be certified for federal benefits, an individual must have submitted a bona fide application for a T visa (also called T nonimmigrant status) or have been granted "Continued Presence." Trafficking survivors with a T visa or a bona fide determination on a T visa application are "qualified" immigrants and are "lawfully present" in the U.S.

U Visa Holders
U visas (also called U nonimmigrant status) are available to victims of certain qualifying crimes who possess information concerning this criminal activity; have been helpful, are being helpful, or are likely to be helpful to law enforcement in the detection, investigation, or prosecution of this criminal activity; and suffered "substantial physical or mental abuse" as a result of the victimization.[18] . U visa holders, as individuals with a valid nonimmigrant status, are "lawfully present" in the U.S.

[17] Severe forms of trafficking in persons is defined at 22 U.S.C. § 7102(11).
[18] Qualifying crimes are listed at 8 U.S.C. § 1101(a)(15)(U)(iii).

Persons with Valid Nonimmigrant Status

Nonimmigrant Visa Holders
Nonimmigrant visa holders include tourists, students, and visitors on business, as well as individuals who are permitted to live and work in the U.S. indefinitely. Nonimmigrants may have a status granted under 8 U.S.C. section 1101(a)(15)(A) through (V) or by a treaty (such as the one described below). Some categories of nonimmigrant statuses allow the status holder to work and eventually to adjust to lawful permanent residence. 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. Nonimmigrants are considered "lawfully present."

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 U.S. They are nonimmigrants who are allowed to enter, reside, and work in the U.S. indefinitely; are considered "qualified" immigrants; and are "lawfully present" in the U.S.

Employment authorized nonimmigrants in "compelling circumstances"
Nonimmigrants who are the beneficiaries of approved employment-based immigrant visa petitions and their qualifying spouse and children, are stuck in the ever-growing backlogs for immigrant visas, and face "compelling circumstances," may be provided temporary employment authorization under category(c)(35) (for principal beneficiaries of approved Form I-140s) or (c)(36) (for qualifying dependent spouses and children). Nonimmigrants with employment authorization under 8 CFR 274a.12(c)(35) or (c)(36) are considered "lawfully present."

Longtime Residents
The "lawfully present" category also includes individuals who have been in the U.S. for a long period of time and who are completing the process of securing

lawful permanent residence or who cannot be returned to their home country and are therefore likely to remain in the U.S.

Lawful Temporary Residents and Applicants for Legalization under IRCA

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 had 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 certain period. Lawful temporary residents are "lawfully present." Applicants for legalization who are granted work authorization are also "lawfully present."

Legalization under the LIFE Act

The Legal Immigration and Family Equity (LIFE) Act, enacted in 2000, provides for the adjustment of status of individuals who filed written claims for class membership in one of three class action lawsuits that challenged the former Immigration and Naturalization Service's implementation of the 1986 (IRCA) 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 U.S. during the period between November 6, 1986, and May 4, 1988, and that they applied for class membership before October 1, 2000. Applicants for adjustment under LIFE who have been granted employment authorization are "lawfully present."

Family Unity

Family Unity status provides protection from deportation/removal and eligibility for employment authorization to the spouses and children of noncitizens who legalized under 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. In December 2000, the LIFE Act also extended 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 U.S. on December 1, 1988, and must currently be the spouse or minor child of an individual who is eligible for adjustment under LIFE. All persons granted Family Unity status are "lawfully present."

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 individuals in deportation rather than removal proceedings, suspension of deportation is available. Applicants for suspension must establish that they have 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. Applicants for cancellation of removal and suspension of deportation who are granted employment authorization are "lawfully present."

Order of Supervision

Individuals with final orders of deportation or removal whom the immigration authorities are unable to remove may be released under an order of supervision. Individuals under an order of supervision are eligible for employment authorization. Persons under an order of supervision who have employment authorization are "lawfully present."

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." Applicants for registry who have been granted employment authorization on this basis are "lawfully present."