

# Immigration – A 360° Perspective

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# Key Definitions

- ▶ **Citizen:** Fully admitted to our political and economic community.
  - ▶ Birth in the United States
  - ▶ Acquisition of U.S. Citizenship (Example, birth to U.S. parents while living abroad)
  - ▶ Naturalization
    - ▶ In most cases, must first have obtained lawful permanent residency for at least 3-5 years; resided in the United States at least 6 months out of the year during that time and able to pass a required in-person Civics test and English test
  - ▶ There are misunderstandings about the relationship between U.S. Citizenship and reform programs which offer work authorization to undocumented persons, not U.S. Citizenship
- ▶ **Immigrant:** Legally come to the U.S. to live and work permanently.
- ▶ **Nonimmigrant:** Come to the U.S. for specific purpose, limited period of time.
- ▶ **Other:** Live in U.S. with government permission, but are neither non-immigrants nor immigrants.
- ▶ **Undocumented:** Enter without inspection or by fraud, or stay has expired.

# Lawful Permanent Resident

- ▶ Lawful Permanent Residency, many times referred to as a green card.
- ▶ LPR Status is normally obtained through a family-based option or a business-based option
- ▶ LPR Status through a bona-fide marriage
  - ▶ Conditional LPR Status - 2 years
- ▶ Maintenance of LPR Status
- ▶ Consequences of criminal convictions





# Lawful Permanent Residence

## ▶ What is it?

- ▶ Authorization to live and work permanently in U.S.
- ▶ Authorization to enter U.S. with “green card” and passport (no visa necessary)
- ▶ A “green card”
- ▶ Certain restrictions apply

## ▶ What is it NOT?

- ▶ Citizenship
  - ▶ Can apply for citizenship after being an LPR for a certain period (naturalization)
  - ▶ There are some additional rights/benefits only for citizens



# Who can become a permanent resident?

- ▶ Not just anyone
  - ▶ The law provides certain grounds for LPR
    - ▶ Family-based: relationship to U.S. person
    - ▶ Employment-based: benefit to a U.S. employer
    - ▶ Public policy-based: (“asylum”/“lottery”)
    - ▶ Investment
  - ▶ Total number of LPR “visas” is limited
    - ▶ Queues may develop, so depending on home country and category, it could be a long process
    - ▶ Petition approval places people in queue for the visa until their category/country allotment is available again
  - ▶ Certain people are ineligible



# Routes to Permanent Residence

- ▶ Employment-based
- ▶ Family-based
  - ▶ U.S. citizen or permanent resident spouse
  - ▶ USC or PR parent; USC child over 21; USC sibling
  - ▶ Long waits for all but spouse or child under 21 of USC or parent of USC child over 21.
- ▶ Asylum
- ▶ Diversity Visa Lottery: 50,000 visas available annually drawn from countries with low immigration rates to U.S.
- ▶ Large Investment
- ▶ Victims of Domestic Abuse
- ▶ Special Programs
- ▶ Removal Proceedings

# Nonimmigrants – The Temporary Side

- ▶ A *nonimmigrant* usually needs a valid *visa* to enter the US. A *visa* is a passport decal given by a US consulate abroad which permits the holder to present him/herself at a US port of entry for inspection and possible admission to the US. Everyone except Canadians, Bermudians, and Visa Waiver Program entrants [citizens of 38 industrialized countries] is generally required to have a valid visa for entry.
- ▶ Upon admission, the nonimmigrant's entry is registered electronically and issued an electronic I-94, which shows what the person is allowed to do in the US, and how long he/she is permitted to stay (formerly, a paper document).
- ▶ Every nonimmigrant is admitted in a particular category, which indicates what that person is allowed to do here. Categories are indicated on the I-94 card by letter and number which correspond to the Immigration and Nationality Act. For example, tourists are "B-2".

# Nonimmigrant Visa Examples

- ▶ Nonimmigrants:
  - ▶ B-1/B-2, Visitors for Business and Pleasure
  - ▶ Visa Waiver Program Visitors
  - ▶ F-1 Student Visas
  - ▶ H-2A Temporary Agricultural Work Visas
  - ▶ H-2B Temporary Non-Agricultural Work Visas
  - ▶ H-1B Specialty Occupation Visas for positions that require at least a Bachelor's Degree
  - ▶ J Visas - Interns, Exchange Visitors,
  - ▶ Other specialty visas (limited to religious workers, athletes, scholars, models, etc.)
  - ▶ K-1, Fiancée/Fiancé Visa
  - ▶ L-1, Specialty Knowledge or Managerial/Executive Transfer
  - ▶ O,P, Extraordinary ability in sciences, education, business, athletics, artists entertainers,



# Petitioning for Nonimmigrant Employees

- ▶ Most work-related nonimmigrant categories involve a petition process, before a visa or nonimmigrant status can be achieved.
- ▶ This process can be complicated, for example for H1B's it is a multi step process.
- ▶ Common Louisiana Industries who utilize temporary H2A and H2B visa options: Crawfish, rice, soybean, cattle farming; construction, landscaping, crawfish, oyster, shrimp and crab processing

# Louisiana Industries and the Non-Immigrant Community

- ▶ H-2A: Temporary Agricultural Visa Option
  - ▶ Limited to 10-months
  - ▶ Must advertise first to potential U.S. applicants
  - ▶ Highly regulated, audited, etc. by the Department of Labor and Wage and Hour Division
- ▶ H-2B: Temporary Non-Agricultural Visa Option
  - ▶ Many industries rely on this temporary, unskilled work visa option; also limited to 10 months
  - ▶ Employer most commonly must show a peakload/seasonal need
  - ▶ Limited visa numbers - 66,000 for the country and many industries who rely on the visa program are left with no employees and no options

# Business: H-1B - a LOOK INTO THE NUMBERS

- ▶ Person in specialty occupation or fashion model “of distinguished merit and ability”
- ▶ Numerical Cap - 65,000 visas available for this category per year plus an additional 20,000 for those with Masters Degrees+
  - ▶ 65,000 minus free trade visas for Chile and Singapore resulting actually in 58,200 visas available.
- ▶ H-1B program has become a random lottery selection
- ▶ 200,000+ applicants in 2015
- ▶ One of the only visa options for STEM majors currently in the U.S. as foreign students

# Business: H-2B for Unskilled Workers

- ▶ 66,000 cap for the country
- ▶ Cap is divided into two periods following the Fiscal Year: April and October
- ▶ Hourly wages set by Parish/County
- ▶ Employer must demonstrate a temporary need that fits into one of the following categories:
  - ▶ Seasonal
  - ▶ Peakload
  - ▶ Intermittent
  - ▶ One-Time Occurrence

# Business: H-2A for Agricultural Workers

- ▶ An agricultural employer
- ▶ Agricultural Labor: on a farm in connection with: soil; raising/harvesting any agri/horticultural commodity incl. livestock, bees, poultry, fur-bearing animals, wildlife
- ▶ Statewide minimum wage currently set at \$11.33/hour for Louisiana
- ▶ Position open and available to U.S. applicants
- ▶ Free housing, approved by Dept. of Labor
- ▶ Transportation and subsistence payments
- ▶ Guarantee of work for 3/4ths contract period



# Employment Based Immigration

- ▶ Generally must have full time permanent job offer at time person becomes permanent resident. Only exceptions, National Interest Waiver, Alien of Extraordinary Ability.
- ▶ First step is generally labor certification (LC). Only NIW, Extraordinary Ability, Outstanding Professor/Researcher, Aliens of Exceptional Ability, Nurses, PT's can avoid LC.
- ▶ LC requires employer to test the labor market, prove it can't find US workers, through highly structured recruitment process.
- ▶ It may be difficult or impossible for an employer to resolve someone's status if the person is already out of status or is undocumented

# Employment-Based PR--Steps

## 1. Labor certification

- ▶ Employer advertises position to “test the labor market”
  - ▶ Several forms of advertisement required
- ▶ Employer files application through PERM system (online)
- ▶ DOL approves, denies, or audits
- ▶ Employer must pay attorney’s fees and ad costs.

## 2. Employer files immigrant petition (I-140) with USCIS

## 3. Employee files Adjustment of Status Application (AOS) (I-485) with USCIS

- ▶ Must have current “priority date” on Visa Bulletin to file
  - ▶ Some categories/countries backlogged, queues of several years
- ▶ If “current,” may file petition and application together (“concurrent filing”)
- ▶ Can apply for EAD and advance parole “travel document” with adjustment application
- ▶ Spouse and unmarried minor children can file AOS at same time.

# A Look at Permanent Residency Through Employment

- ▶ The “PERM” or “EB” program
  - ▶ Different categories based on qualifications and skills
- ▶ Employer may request a labor certification for a permanent position
- ▶ Must first advertise to U.S. applicants
- ▶ REALITIES of BACKLOGS:
  - ▶ For a potential employee for Mexico, the wait is at least 2-3 years before that employee may begin work
  - ▶ Other countries, the wait is much longer



# Family Based Visa Bulletin

- ▶ F1: Unmarried Sons and Daughters of US Citizens
- ▶ F2A: Spouses and Children of Permanent Residents
- ▶ F2B: Unmarried Sons and Daughters of Permanent Residents
- ▶ F3: Married Sons and Daughters of US Citizens
- ▶ F4: Brothers and Sisters of Adult US Citizens

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01JUL12	01JUL12	01JUL12	01AUG96	22FEB08
F2A	C	C	C	C	C
F2B	01JAN14	01JAN14	01JAN14	01JUN98	01APR08
F3	22JUN07	22JUN07	22JUN07	01DEC95	01OCT97
F4	01OCT06	01OCT06	15SEP04	01JAN97	01MAY98

# Real Life Scenario

- ▶ Claire, a U.S. Citizen, meets Tom, a Mexican National, while traveling in Mexico. Tom proposes to Claire. Claire, upon her return to the U.S. petitions for Tom to enter as on a fiancée visa so they may marry within 90 days of his entry.
- ▶ Tom then qualifies to apply for permanent residency based on his marriage to a U.S. Citizen, and he receives his green card after they pass their marriage based interview.
- ▶ Tom decides he wants his children to live in the U.S with himself and Claire
- ▶ One child is 15 years old
- ▶ One child is 20 years old and single
- ▶ One child is 21 and married

# Real Life Scenario - Change in Plans

- ▶ The 20 year old child is now 30 and has fallen in love.
- ▶ Her wedding abroad is planned for next month. Her dad, Tom, has remained an LPR

# Other Areas of Protection

- ▶ VAWA - The Violence Against Women Act
- ▶ T Visa - Victims of Trafficking
- ▶ U Visa - Victims of certain enumerated crimes + family members + witnesses

# FAMILY OPTIONS (CONTINUED)

- ▶ Those who enter without lawful status (EWI)
- ▶ An undocumented person may be someone who arrived with no documentation or has overstayed his or her previous allotted visa stays
- ▶ An undocumented person currently residing in the United States:
  - If in the United States for up to 6 months, then in order to obtain a visa (through family or an employer), you must leave the United States to process through a U.S. Consulate abroad, but you will then be barred from receiving the visa/returning to the U.S. for 3 years
  - If in the United States for over 1 year, then upon departure from the United States (to obtain a visa), the person is barred from returning to the U.S. for 10 years

# Waiver Available for Qualifying Relatives

## Marriage to a U.S. Citizen

The U.S. Citizen spouse can file a petition for the foreign alien spouse, but must request a WAIVER of the 3/10 year bar by proving EXTREME HARDSHIP to the U.S. Citizen spouse and other qualifying relatives

Hardship on qualifying U.S. Citizen:

- Medical issues

- Assimilation into U.S.

- Language skills

# DACA - a Temporary Solution for Children Currently before SCOTUS

- ▶ DACA - Deferred Action for Childhood Arrivals - qualifying aliens can then apply to USCIS and receive a 2-year (renewable) work permit
- ▶ A status that is not a status
  - ▶ Have arrived in the U.S. when they were under the age of sixteen
  - ▶ Have continuously resided in the U.S. for at least five years prior to June 15, 2012 and have been present in the U.S. on June 15, 2012
  - ▶ Currently be in school, have graduated from high school, have a GED, or be an honorably discharged veteran of the U.S. Coast Guard or the U.S. Armed Forces
  - ▶ Not have been convicted of a felony offense, a "significant misdemeanor offense," three or more non-significant misdemeanors, or otherwise pose a threat to national security or public safety
  - ▶ Have been under thirty-one years old on June 15, 2012
  - ▶ College for DACA kids - ongoing litigation

# EOIR – Executive Office of Immigration Review

## The Immigration Court System

- ▶ If an alien is placed in “removal proceedings” for being undocumented or for violating their status, or, for commission of certain enumerated crimes, they will receive a Notice to Appear (NTA) in immigration court
- ▶ One major option exists: **Cancellation of Removal**



# EOIR - Cancellation of Removal for LPR

- ▶ Lawful Permanent Resident
- ▶ An option available to an LPR in removal proceedings is to request Cancellation of Removal

INA§ 240A(a); 8 USC §1229b(a); 8 CFR § §1240.11(a), 1240.20

- ▶ To Qualify:
  - ▶ Must have been lawfully admitted for permanent residence for at least 5 years
  - ▶ Has resided in the U.S. continuously for 7 years after having been admitted in any status
  - ▶ Has not been convicted of an aggravated felony

# EOIR – Cancellation of Removal for Non-LPR

- ▶ Must have been physically present in the U.S. for a continuous period of not less than 10 years immediately preceding date of application
- ▶ Has been a person of good moral character for 10 years
- ▶ Has not been convicted of an offense under INA § §212(a), 237(a)(2) or 237(a)(3)
  - ▶ The alien can establish that removal would result in exceptional and extremely unusual hardship to USC or LPR spouse, parent or child
    - ▶ Definition of child does not include son/daughter who is 21 or over
    - ▶ A step-parent is a qualifying relative for hardship purposes if relationship was acquired before the age of 18

# Political Asylum

- ▶ A refugee is defined as any person outside his or her country of nationality (or in the case of a person having no nationality, his or her last habitual residence) who, because of a “well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion,” is unable or unwilling to return to that country, and is unable or unwilling to avail him- or herself of the protection of that country
- ▶ Upon arrival, a foreign national seeking political asylum as a refugee from his/her own country, must be given a Credible Fear Interview
- ▶ The officer will grant a positive or negative result after the interview and issue a Notice to Appear in Court
- ▶ Normally, many refugees are then eligible to be released with a reasonable bond or upon their own recognizance

# Asylee Groups

- ▶ Race,
- ▶ Religion,
- ▶ Nationality,
- ▶ Membership in a particular social group
- ▶ Political opinion

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