



**Legal Status of Immigrants: Why Don't They Just Get in Line, and Obey the Laws,
and Become Citizens?**

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Overview of Presentation

- Overview of Fundamentals of System
- Basic Terminology and Legal Distinctions
- Visa Application and Procedures at Consular Posts: What to Expect and Potential Problems
- Legal Barriers to Lawfulness and Disincentives to Leave
- Counterproductive Measures
- Comprehensive Immigration Reform and Administrative Fixes

Overview of Fundamentals of System

3 main tenets to modern immigration law:

- Family unity – reuniting close family members
- Providing legal avenues for foreign workers to complement our work force
- Maintaining the integrity and security of our borders

The law also provides for humanitarian relief including provision for refugees and those seeking asylum.

These fundamental principles are woven throughout our immigration law patch quilt but are often at odds with one another.

Another fundamental is the numbers:

- no limits on the number of nonimmigrants admitted each year, except in certain limited categories
- significant limits for those who want to remain here more permanently
- 480,000 family based visas
- 140,000 employment based visas available each year
- no limit on the number of visas available for immediate relatives

Numbers were established almost 20 years ago and no longer reflect the needs of our country:

Basic Terminology and Legal Distinctions

Terminology is confusing as are procedures

Mere authorization of an individual foreign national's period of stay in the US is complex and involves two different agencies, DOS and USCIS



Can be physically present in the U.S. but not legally present - not recognized in law

Visa vs. Status

Visa - represents authorization by DOS to an individual to apply to enter the US; must prove eligibility for visa; stamp in passport;

Status is governed by USCIS and relates to the FN's authorization to remain in US for certain length of time to engage in certain activities; I-94 – arrival departure record – evidence of admission

Nonimmigrant vs. Immigrant – who are they

Key distinction – temporary vs. permanent and matter of intent – easy for law bidding foreign national to fall out of status or be denied if she has two intentions that are not recognized in law or appear contradictory

Immigration law sets out presumption that every foreign national applying for visa is an intending permanent resident.

“Every alien shall be presumed to be an immigrant until he establishes to a consular officer and immigration officer at the time of application for admission that he is entitled to a nonimmigrant status”

Green Card/ Green Card Holder

Evidence of lawful permanent resident status

Often used interchangeably – erroneously – as work permit.

Lawful Permanent Resident vs. Citizen

LPR are here permanently but do not have the same rights as USC

Can be deported or otherwise lose status

Subject to ex post facto laws

Cannot vote or serve on a jury

Not entitled same benefits or jobs as citizens

Must apply for citizenship (5 yr/3yr wait)

Unlawful Presence

Overstayed visa and out of status

3 year bar – 180 days

10 year bar – 365 days

Triggered only if you leave the U.S.

Visa Application and Procedures at Consular Posts:

What to Expect and Potential Problems

6 million visas issued at consular posts in 2007 and some 15 million visitors to the US.

Why can issuance be difficult?



Biases against certain nationals preclude visa issuance by consular officers; backlogs encourage would-be immigrants to fudge about relationships and circumstances

Strict rules which may be different depending on visa classification

Applicants Must Present Valid Passports & Supporting Documents

Must Prove Eligibility

Conducts Security & Name Checks – erroneous hits

Common reasons for denial

Failure to establish eligibility

- ties to home country
- sources of financial support
- credibility/issues of intent
- grounds of inadmissibility – medical, perceived or actual criminal activity or security threats, previously removed or previous unlawful presence, unlawful voters,

Current economic crisis – tremendous suspicion regarding work; even recent grads will not leave despite children, home abroad and other ties

No consular review – consular official makes decision. Period. Foreign national can reapply.

Only upon issuance of visa may FN seek admission to U.S.

Legal Barriers to Lawfulness and Disincentives to Leave

- Bars to readmission – 3/10year bars; 5 year bar as visa violator
- Violating or falling out of status - undertaking activity inconsistent with visa type; failing to timely file for an extension; failure to continuously maintain status
- Inability to adjust status to LPR

Operation of 3/10 Year Bars

Since 1996, anyone who has accumulated more than one year of unlawful presence in the U.S. is barred from re-entering the U.S. for ten years; 180 days of unlawful presence in the U.S. (but less than one year) results in the three-year bar.

Bar serves as a disincentive for eligible immigrants to become lawful permanent residents.

Example: USC petitions for undocumented husband who was not inspected when he entered the US. Husband is eligible for and is approved for an immigrant visa based their marriage. Because he was not inspected, the husband cannot obtain immigrant visa in the U.S. but has to return to home country to get visa do so. Not a big deal, right? Not for him. Because he is undocumented for more than one year, if he leaves the U.S. he would be barred from re-entering for ten years. He is stuck in Catch-22 -- eligible for a visa but unable to obtain one.



This provision serves as a disincentive for foreign nationals already subject to the bars to regularize their status even though they are eligible to do so; instead, they remain in the United States indefinitely and underground.

Employment-based Visa Backlogs Interfere with Integration; Results in Violation of or Falling Out of Status

- individuals who are lawfully residing and working in the United States as NIVs
- Highly-skilled and educated foreign nationals from around the world, especially from India and China, must wait at least four and perhaps six or even ten years to complete the processing of their “green card” application.
- Long delays because of visa number unavailability – can translate into fear of leaving job or leaving job without first obtaining visa approval from USCIS
- Consequence of falling out of status – can’t adjust status in the US; may accrue unlawful presence; may encounter further delays in petitioning for spouse and children

Grounds of Inadmissibility

- 33 grounds of inadmissibility that ban a foreign national from adjusting status to that of a lawful permanent resident and later applying for citizenship.
- discretionary waivers are available for certain grounds and for certain individuals who have close U.S. citizen or LPR family members,
- vast majority of individuals have no recourse despite a myriad of compelling equities that may weigh heavily in the person’s favor.
- No statute of limitation for offenses for admissibility purposes – regardless of whether offense took place years ago or whether offense was committed unwittingly.
- False claims to citizenship -- intending immigrant is inadmissible and barred adjustment of status permanently and removable if individual made false claims to U.S. citizenship; no waivers even for the spouse or children of U.S. citizens or LPR
- Waivers available for NIV – means FN may not be able to regularize status.

Ex Post Facto Operation of Certain Provisions

- Turn otherwise eligible immigrants into “aggravated felons” and make these individuals deportable
- LPR pleaded guilty to an offense that was classified as a misdemeanor but after 1996 was elevated to an aggravated felony,
- LPR now must obtain a waiver to avoid deportation, if he or she is eligible – needs certain qualifying familial relationships -- and can afford it;
- may remain under radar screen and avoids naturalization as well as otherwise activity participating in American society.
- Ex post facto operation of law perceived as inherently unfair.

Example, Purple Heart medaled war hero who previously fell on hard times, bounced a check, and was convicted as an aggravated felon, cannot become a lawful permanent resident even if the U.S. Army seeks to sponsor him for service in a classified mission. No waiver is available.



Mandatory Detention

- law mandates detention for vast number of individuals; does not provide for hearing to determine whether the individual is dangerous, likely to abscond, or poses a security risk. Rapists and murderers have more rights.
- Many in ICE custody simply give up: sign away right to a hearing or accept prehearing voluntary departure.
- Once deported or “voluntarily” departed, some try to reenter illegally to rejoin their families, facing the very dangerous conditions on border and a heightened chance of arrest, prosecution, and re-incarceration.
- Less restrictive methods of monitoring the individual’s movement and behavior, such as bond and ankle bracelets, largely unavailable do so.
- physical and psychological harm caused to spouses and children; children often experience depression; spouses have their homes foreclosed, and families become homeless because a key “breadwinner” is now unable to work.
- Circumstances do not create conditions for integration or affinity with American legal system.
- Detention of this sort creates perception of law and judicial system as being patently unfair, unjust.

Family Immigration

- long waits for LPRs to petition for their relatives keeps families separated -- unmarried sons/daughters of LPRs -- 8 yrs; 11 Philippines; 17 years Mexico
- unmarried sons and daughters of USC – 6 yrs; more than 15 years if from Mexico and Philippines
- brothers and sisters of LPRs wait decades – 10 years to 23 yr. Philippines

Separation creates uncertainty.

Counterproductive Measures

§287(g) agreements – gives state and local police authority to enforce immigration laws; about 80 agreements in force

- practical implication: is that immigrants fear reporting crimes, domestic violence and see police as threat not as helpers
- §287(g) provisions run antithetical to community policing programs that rely on the community interaction and support for its success

REAL ID (2005) - set standards for state issued driver’s licenses and ID documents. Applicants must show proof of lawful status to obtain license or ID.

Maryland

- Effective 6/1/2009, all new applicants for a MD driver's license or identification card now required to provide verifiable social security number (SSN) and demonstrate proof of lawful presence in US in addition to residency and identity requirements



- Those who currently hold a valid MD driver's license or identification card but cannot provide proof that they are in US legally are allowed to renew license or identification card until 6/30/2015
- New ID cards that meet initial requirements established by DHS – 1/1/2010.

Comprehensive Immigration Reform and Administrative Fixes

Necessary components of reform include:

- improving the economic situation of all workers in the United States
- legalizing the status of undocumented immigrants working and living in the United States through registration program
- reforming visa programs to keep families together, protecting workers' rights, and ensuring that future immigration is regulated and controlled rather than illegal and chaotic;
- implementing smart, effective enforcement measures targeted at the worst violators of immigration and labor laws;
- prioritizing immigrant integration into our communities and country
- respecting the due process rights of all in the United States.

Administrative fixes:

- Detention policy
- Widow's penalty
- Dream Act
- Workplace enforcement/raids – go after bad actors