

# Immigration Basics

## Definitions

**Noncitizen** - any person in the U.S. who is not a U.S. citizen, whether the person has legal immigration documents or not

**US Citizen** - Anyone born in the United States, its territories and certain possessions (Puerto Rico, Guam and the Virgin Islands, for instance) are US citizens. Children of US citizens who are born while their parents are in another country also may be US citizens. Everyone else must “naturalize” to become a citizen, usually after a required period of lawful permanent residence.

US citizens cannot be removed unless a federal court takes away their citizenship because they obtained citizenship by fraud or other illegal means. Citizens don't need DHS authorization to work and may file petitions for lawful permanent residence for their spouses, parents, sons and daughters (both married and unmarried), and brothers and sisters. Citizens are eligible for all federal, state, and local public benefits, whether they were born in the United States or otherwise obtained citizenship. Most US citizens will either have a birth certificate showing they were born in the United States or a certificate of naturalization.

**Immigrant (Lawful Permanent Residents (green cards))** - A foreign-born individual who has been admitted to reside permanently in the United States as a Lawful Permanent Resident

**Nonimmigrants** – Noncitizens who have their permanent home or residence in another country.

**Undocumented** - Generally, are noncitizens who either entered the U.S. without U.S. government's permission or whose legal immigration documents have expired since they entered

**Naturalization** – Process of becoming U.S. Citizen. Only certain noncitizens, primarily those who have had lawful permanent residence for at least three years, are eligible to become US citizens.

**Removal (Formerly Called Exclusion and Deportation)** - DHS may remove any person in the United States who is not a US citizen

**Visa** - the document the U.S. gives to a noncitizen to come into the country.

**Inadmissibility** – the term for a group of acts that may bar persons from obtaining status or lawful entry into the U.S.

**Removal Proceedings** – Proceeding to determine removability

- All noncitizens inside the U.S. have the right to an immigration hearing
- Proceedings are like trials
- Immigration judge preside
- Govt. attorney
- Right to attorney, but not at govt. expense

## Source of Laws (Hierarchy)

U.S. Constitution

Immigration & Nationality Act (Congress)  
Cases (Judicial Branch)  
Regulations (Executive Branch)  
BIA Administrative Decisions (Executive Branch)  
Agency Policies and Guidance (Executive Branch)

## Key Players

### **DHS (Department of Homeland Security)**

CIS: Citizenship and Immigration Services

- Administrative applications for “benefits”

ICE: Immigration and Customs Enforcement

- Detaining and removing those inside US

CBP: Customs and Border Protection

- Airports, border, 100 miles inside border

### **DOJ (Department of Justice)**

EOIR (Executive Office of Imm. Review)

- BIA (Board of Immigration Appeals)
- Immigration Court

Office of Immigration Litigation

**DOS (Department of State)(Executive Branch)**

**DOL (Department of Labor) )(Executive Branch)**

**U.S. Federal Courts of Appeal (Judicial Branch)**

## Rights of Detained Noncitizens

- **Speak to an unappointed attorney**
- **Hearing with Immigration Judge**
- **Unappointed attorney at hearing and interview**
- **Request release from detention**

### **Two-Step Process of Getting GreenCard**

Getting permission to live in the United States legally is a two-step process:

**Step One** -- You must show you have a qualifying relationship, such as a family member (family sponsorship), employer or that you are under a special group such as: a victim of trafficking, crime or domestic violence; being a refugee; seeking political asylum; or diversity lottery.

Many people who are undocumented often have a qualifying relationship and are able to get an approval for this step.

**Family Sponsorship** – You must have a qualifying relative who is willing to sponsor you. The qualifying relative, who is an adult U.S. citizen, can sponsor their spouse, parent, child or sibling. A Lawful Permanent Resident can sponsor their spouse and unmarried children.

**Employment-based immigration** – Immigration law allows about 140,000 employment visas to be admitted to the United States to work. Most of these immigrants are highly skilled professionals. A worker usually needs an employer to petition on his or her behalf. Some workers – priority workers, investors, and certain special immigrants may petition on their own.

**Step Two** – You must meet the requirements to get a green card. Some of these requirements mean that you must not have:

- Committed certain immigration violations
- Committed certain crimes
- Certain contagious diseases

These are just a few of the requirements. There are many more. There are a few exceptions to the requirements, but they may be difficult and risky prove. You should consult with an experienced immigration attorney or BIA accredited advocate when you have questions about your immigration status.

Many people have immigration violations, such as entering the United States without permission. People, who came to the United States without permission, usually cannot apply for a green card in the United States. They must go to their home country to apply.

Depending on how long they have been in the United States unlawfully, they may not be allowed back into the United States for several years once they leave, even if they have a qualifying relationship.

Disabled or sick - Sadly, having a disability or illness does NOT make you eligible for lawful residency. In fact, it may be a problem when USCIS (the immigration agency) looks to see if you are likely to become a “public charge.” A “public charge” is someone who depends on the government for public cash assistance or other government benefits.

## Primary Path to LPR Status

- Family-based Immigration
- Employment-based Immigration
- Refugee/Asylee
- Special Legislation
- Diversity Lottery
- Other highly specialized visas
- Religious workers, investors, individuals with extraordinary abilities, etc.

Special Options  
Special Immigrant Juveniles  
Conditional Residence Waiver  
VAWA Self-petitioning & Cancellation  
U & T Visas  
Self-petitioning for parents of US citizens

## Immigration Enforcement

- Only enough resources to remove 400,000 people per year (438,000 removed in 2013)
- Removal Priorities
  1. Threats to national security, border security, and public safety
  2. Misdemeanants and new immigration violators
  3. Those who have been issued a final order of removal<sup>2</sup> on or after January 1, 2014
- Prosecutorial Discretion and Deferred Action Status for Childhood Arrivals (DACA)

### **DACA – Deferred Action for Childhood Arrivals**

- Came to the US before reaching 16th birthday
- Has continuously resided in the US since June 15, 2007 **(1/1/10)**, up to the present time
- Physically present in US on 6/15/12 **(11/20/14)** and time of filing
- ~~Was under the age of 31 as of June 15, 2012~~
- Entered without inspection before June 15, 2012 **(11/20/14)**, or his/her lawful immigration status expired as of June 15, 2012 **(11/20/14)**
- Is in school, has graduated, has GED or has been honorably discharged from the military

### **DAPA – Deferred Action for Parental Accountability**

- Parent of USC or LPR child born before 11/20/2014
- Person has continuously resided in the United States since 1/1/2010, up to the present time
- Person was physically present in US on 11/20/2014 and at the time of filing
- Person entered without inspection before 11/20/2014, or his/her lawful immigration status expired as of 11/20/2014