Overview of the Immigration System and Laws
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The immigration system, its laws, and its regulations are complex and change frequently. What was true today may not be true tomorrow. To ensure you have current information, develop a working relationship with a local immigration expert who can answer your questions about how to help noncitizens you may encounter. Alternatively, the ASISTA Immigration Technical Assistance Project is available to provide such advice.¹

To avoid unwittingly jeopardizing those you wish to help, you should be familiar with basic immigration rules.

INS & DHS: Reorganization
Most people will be familiar with the former Immigration and Naturalization Service (INS), the government agency that until 2001 had authority over all noncitizens. After September 11, 2001, the U.S. created a new, Cabinet-level government agency, the Department of Homeland Security (DHS). DHS took over almost all of the functions of the former INS and reorganized them under three new bureaus. The new bureaus are:

- Citizenship and Immigration Services (CIS), which provides immigration-related services and benefits such as lawful permanent residence, naturalization and work authorization;
- Immigration and Customs Enforcement (ICE), which investigates and enforces federal immigration laws, customs laws, and air security laws; and
- Customs and Border Protection (CBP), which is responsible for the borders.

The Department of Justice retained control only of the immigration judges and court system (also known as the Executive Office for Immigration Review, or EOIR).

Rights of Noncitizens
In 1996, Congress passed a law making it very easy for INS/ICE to swiftly deport (now called “remove”) people from the U.S. This applies even to people who have the right to be in the U.S. Noncitizens should know they have the following rights:
- The right to speak to an attorney before answering any questions or signing any documents;
- The right to a hearing with an Immigration Judge;
- The right to have an attorney represent them at that hearing and in any interview with DHS (these are not government-paid attorneys as in criminal proceedings, however); and
- The right to request release from detention, by paying a bond if necessary.

¹ Contact questions@asistahelp.org.
All noncitizens have these rights but will not necessarily be informed of them when detained. If they fail to assert these rights they may be deported without seeing either an attorney or an immigration judge. Leaving the U.S. in this way may have serious consequences for the noncitizen’s ability to later enter or to gain legal immigration status in the U.S.

**Learning the System: Basic Immigration Concepts**

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

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

**Visa**
A visa is the document the U.S. gives to a noncitizen to come into the country. Visas for people who are in the U.S. temporarily are called nonimmigrant visas. Visas for people who plan to stay in the U.S. are immigrant visas. Most people with immigrant visas will eventually get a card that identifies their immigration status.

**Consular Officers**
Consular officers at U.S. embassies abroad grant and deny requests for immigrant and nonimmigrant visas. They are part of the U.S. Department of State. They have an enormous amount of discretion in making their decisions and no court in the U.S. may review their decisions, except in very unusual circumstances.

**Removal (Formerly Called Exclusion and Deportation)**
DHS may remove any person in the United States who is not a US citizen, using two sets of rules: the grounds of inadmissibility and the grounds of deportation. DHS uses the deportation grounds against those who entered legally but are not subject to removal (for committing crimes, for instance). DHS uses the grounds of inadmissibility against those who entered the US without permission. The grounds of inadmissibility also apply to people attempting to enter the United States or, under a legal fiction, to those within the United States seeking lawful permanent residence.

**Expedited Removal**
DHS may “remove” noncitizens encountered at the border or ports of entry if they lack documents or present inadequate or fraudulent documents. This “expedited removal” occurs without a hearing with an immigration judge or representation by counsel, and noncitizens are not generally apprised of their possible eligibility for immigration status, unless they express a fear of persecution in their homelands. The consequences of expedited removal are the same, however, as those flowing from full-fledged immigration proceedings, including barriers to gaining lawful permanent residence or other immigration status in the future.
**Immigration Proceedings**
All noncitizens inside the U.S. have the right to an immigration hearing. It is important for noncitizens arrested by DHS to assert their right to a hearing because immigration proceedings are like trials. An immigration judge presides over the hearing, a government attorney represents DHS, and the noncitizen has the right to a lawyer, although not at the government’s expense. Some rules about evidence and procedure apply in immigration proceedings. The Board of Immigration Appeals (BIA) reviews all appeals from immigration judge decisions. The federal courts have some power to review BIA decisions.

**Kinds of Immigration Status**
Although Congress created special routes to immigration status for certain battered noncitizens in the Violence Against Women Act (VAWA), there may be other ways noncitizens you encounter could gain legal immigration status in the U.S. In addition, some may already have status and not realize it. If nothing else, this section should demonstrate that the immigration system is complicated and that determining who is or is not documented or eligible for immigration status is not simple. This information will provide you with some background, but referring noncitizens to immigration experts is the best insurance that they get the information they need, though it’s important to check that the experts you find are familiar with the special routes to status for crime survivors.

Each immigration status has different requirements and benefits. This list includes only the major categories of status likely to apply to a noncitizen you encounter.

**US Citizenship**
Anyone born in the United States, its territories and certain possessions (Puerto Rico, Guam and the Virgin Islands, for instance) are US citizens. This includes people born of undocumented parents. 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 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.

**Naturalization**
Only certain noncitizens, primarily those who have had lawful permanent residence for at least three years, are eligible to become US citizens. Those who seek to naturalize must demonstrate good moral character and pass several tests, notably English
proficiency and knowledge of the Constitution and US political system. There are some limited exceptions to these naturalization requirements.

**Lawful Permanent Residence**
Lawful permanent residents are noncitizens that make the U.S. their home, have authorization to work in the U.S. and have the most stable immigration status. They may serve in the U.S. military but they cannot vote in federal elections (or other elections unless authorized by statute). They must follow certain guidelines when they travel or stay outside the U.S., and DHS may still remove them for certain reasons. After five years (and in some cases, three years), lawful permanent residents may become citizens (“naturalize”) by taking a test and fulfilling other requirements. Lawful permanent residents should have Permanent Resident Cards, often called “green cards.” Lawful permanent residents may file petitions for lawful permanent residence for their spouses and unmarried children. Anyone with a Permanent Resident Card can work legally in the United States.

**Conditional Residence**
Noncitizens who apply for lawful permanent resident status based on marriage to a U.S. citizen or lawful permanent resident are called “conditional residents” if they have been married for less than two years when they obtained lawful permanent residence. To keep their lawful permanent residence status, conditional residents must file a “joint” petition with their spouses two years after the first petition is granted. Conditional residents have all the rights of lawful permanent residents.

In some cases, a conditional resident may have to file the joint petition by herself. To do this, she must check the box on the joint petition form asking for a waiver. DHS may grant waivers to conditional residents who are divorced from their spouses, who would suffer extreme hardship without it, or who are abused by their spouses.

**Battered Spouses, Children of US Citizens and Lawful Permanent Residents and Parents of US Citizens**
In the 1994 Violence Against Women Act (VAWA) Congress created two ways certain immigrant survivors of domestic violence can gain status without their abusers’ help. Those who can show they were battered or subjected to extreme cruelty by a US citizen or lawful permanent resident spouse or parent may petition on their own. In 2005, Congress added parents of abusive US citizens to this special class of “self-petitioners.” Those who are or have been the spouses or children of abusive US citizens or lawful permanent residents, and parents whose child has been abused by its US citizen or lawful permanent resident parent are eligible for a special “cancellation of removal.”

VAWA applicants can get permission to work (“work authorization”), can receive certain federal public benefits that many noncitizens can’t get, and eventually may become lawful permanent residents.

*Resource F* contains more information on these special routes to status.

**Abandoned, Neglected and Abused Children**
Some children whose parents have abandoned, neglected, or abused them may be able to get lawful permanent residence through Special Immigrant Juvenile Status (SIJS). They will need findings from a family court to qualify for immigration status; see Handout 5 for more information on SIJS.

**Nicaraguan, Cuban, and Haitian Adjustment to Lawful Permanent Residence (NACARA and HRIFA)**

In 1997 Congress passed the Nicaraguan Adjustment and Central American Relief Act (NACARA). NACARA allows some categories of Nicaraguans and Cubans to apply for lawful permanent residence. In October 1998 Congress also created a new route to status for thousands of Haitians who fled political upheaval in their country years ago (HRIFA).

Nicaraguans and Cubans who entered the United States before December 1, 1995 could gain lawful permanent residence if they applied before April 1, 2000. Haitians who applied by that date qualified for lawful permanent residence if they had applied for asylum or been "paroled" into the United States before December 31, 1995. In VAWA 2000, Congress added special provisions for spouses and children abused by NACARA, Cuban/Haitian, and HRIFA applicants.

**Parolees**

Parole is a mechanism by which DHS allows noncitizens into the United States for specific purposes, such as attending a hearing. It may also use parole to bring in the children or spouses of VAWA, U and T visa applicants. Noncitizens paroled into the United States for a year or more are eligible for some public benefits not available to other parolees.

**Cancellation of Removal**

There are several forms of cancellation of removal, including one designed specifically for certain victims of domestic violence. Those who are not domestic violence survivors may seek ten-year cancellation of removal if they show they have been continuously present in the U.S. for ten years, that removing them will cause “exceptional and extremely unusual hardship” to a U.S. citizen or lawful permanent resident spouse, child or parent, and that they have good moral character. A special form of cancellation for certain abused noncitizens also is available, and is described in Handout 8. When a judge grants cancellation of removal, the applicant also receives lawful permanent residence.

**Voluntary Departure and Deferred Action**

DHS and immigration judges may grant “voluntary departure” to noncitizens they could remove from the United States. Noncitizens with voluntary departure must leave by the date stamped on the notice or face stiff fines and penalties, including bars to becoming lawful permanent residents. The 1996 immigration law limited voluntary departure grants to four months.

DHS also may give “deferred action” to people they could remove. There is a special deferred action system for VAWA self-petitioners. Otherwise, deferred action is rarely
granted. Those who do receive deferred action, however, don’t have to leave the United States by any particular date and don’t face fines and bars to status for failing to leave.

Since deferred action and voluntary departure are discretionary grants of status, DHS may revoke them any time. People granted deferred action may request work authorization and may be eligible for some public benefits.

**Nonimmigrants**
Nonimmigrants have their permanent home or residence in another country. There are many kinds of non-immigrants, including visitors for business or pleasure, foreign students, and temporary workers and trainees. In 2000, Congress created several new kinds of non-immigrant categories, which some victims of violence may wish to use. These include special visas for people who have had to wait a long time to get lawful permanent residence and visas for certain victims of human trafficking or other crimes. People in these special categories may eventually gain lawful permanent residence, even though this seems contrary to the normal assumptions about nonimmigrants.

Some nonimmigrants are allowed to work with DHS permission, including the categories created in 2000. Some also may be able to get public benefits. Many nonimmigrants may bring in their spouses and children (“derivatives”), but their status is entirely dependent on maintaining the relationship with the primary nonimmigrant. In 2005 Congress added abused derivatives, spouses and children, of some nonimmigrants to the list of noncitizens who may obtain work authorization.

Nonimmigrants who stay longer than originally permitted without an extension from DHS become undocumented. Even before the dates on their visas expire, DHS may deport nonimmigrants if they work without permission or violate other conditions on their visas.

**New U & T Visas: Victims of Crimes and of Trafficking**
The Victims of Trafficking and Violence Prevention Act of 2000 created the new U and T visas. The U visa is for victims of designated crimes. The T visa is for those who have been subjected to sex or labor trafficking. Both lead to lawful permanent residence and have waivers of most inadmissibility grounds. The T visa provides eligible immigrants with access to public benefits and employment authorization. The U visa provides eligible immigrants with authorized stay in the United States and employment authorization. Since Congress frequently updates and expands these laws, we suggest you consult the ASISTA website at [www.asistahelp.org](http://www.asistahelp.org).

**The Diversity Program or “Lottery”**
Periodically, Congress creates special temporary programs that grant lawful permanent residence to people from certain countries. Those who get status this way are chosen by a lottery.
Asylum, Refugee Status, Withholding of Removal and the Convention against Torture

Asylum and refugee status are for those who show that they have a “well founded fear” of persecution in their homelands based on race, religion, nationality, political opinion or membership in a social group. Refugees applied for and got asylum before they came to the United States. Those who apply for asylum once they are in the United States are asylum applicants. If they get asylum, they become asylees. Some asylum applicants are granted “withholding of removal” (formerly withholding of deportation) instead of asylum. People who can't qualify for asylum or withholding of removal may ask for protection under the Convention against Torture (CAT).

Asylees and refugees can apply for lawful permanent residence after a year, but there is a limit on the number of asylees who can obtain lawful permanent residence each year. It may, therefore, take many years for the government to issue lawful permanent residence to asylees. Those granted withholding of removal or CAT protection are not eligible for lawful permanent residence.

Refugees, asylees and people granted withholding of removal are eligible for all public benefits (at least for five years) and can get work authorization. Asylum applicants are not eligible for many public benefits but may request work authorization 150 days after they file for asylum. Noncitizens granted CAT protection can get work authorization and public benefits, but only if the immigration judge decides DHS may not permanently detain them.

Temporary Protected Status (TPS)
The United States may grant this status for a limited period of time to nationals of certain countries in turmoil. TPS has been granted to nationals of Haiti, Burundi, El Salvador, Honduras, Liberia, Montserrat, Nicaragua, Sierra Leone, Somalia, and Sudan, although the list of countries changes frequently. Once the designated period of protection ends, DHS sends TPS recipients a notice that they must appear in immigration court. At this point, they must either leave the United States or apply for another immigration status.

Registry
Registry allows people who have been in the United States for a very long time, since 1972, to gain lawful permanent residence. One great advantage of registry is that most of the grounds of inadmissibility do not apply.

Gaining Legal Immigration Status

Each immigration status has different requirements. The system for getting an immigration status is very complicated and applying for any status is risky. This section will describe various routes to lawful permanent residence. Most people want to become lawful permanent residents (get a “green card”) because this status provides the most security short of citizenship. Lawful permanent residence is hard to lose, unless someone commits a crime, and lawful permanent residents can work. Most
lawful permanent residents can become citizens after five years. Up until that time, however, DHS can remove them or keep them from coming back into the United States.

People can become lawful permanent residents in many ways: through a relationship with a family member, through employment, through the “lottery,” or through another special program. Applying for lawful permanent residence through an employer is very complicated; applying for status through the lottery is very easy but most applicants don’t win. Getting lawful permanent residence through a relative can be a very lengthy process, depending on which relative “sponsors” (applies for) the noncitizen.

For more on getting lawful permanent residence through family members, see Resource E.