

Immigration – A 360° Perspective

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Key Definitions

- ▶ **Citizen:** Fully admitted to our political and economic community.
- ▶ **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.

Nonimmigrants

- ▶ 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".

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 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

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 of USC or parent of USC child over 21.
- ▶ Asylum
- ▶ Diversity Visa Lottery: **only** apply at www.travel.state.gov
- ▶ Large Investment
- ▶ Victims of Domestic Abuse
- ▶ Special Programs
- ▶ Removal Proceedings

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

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.

Unaccompanied Children (UACs) and Detained Persons

- ▶ The Office of Refugee Resettlement estimates the numbers of unaccompanied minors who entered the U.S. and were released to sponsors/relatives:
 - ▶ 2014: 1,755
 - ▶ 2015: 480
 - ▶ 2016: 973
 - ▶ 2017: 676
- ▶ Special Immigrant Juveniles: who can apply?
 - ▶ Option for Permanent Residency;
 - ▶ Current Backlog of approximately 1 year
- ▶ Detained Immigrants: Pine Prairie Correctional Center and Jena Detention Center
 - ▶ Detained Immigration Court: Oakdale, LA
 - ▶ Non-Detained Immigration Court: New Orleans, LA (Backlog of hearings approximately 2-3 years)

Dual Representation

- ▶ Prevalent in Immigration
 - ▶ marriage-based or other relative cases
 - ▶ labor certifications
 - ▶ H-1B/LCA cases
- ▶ any situation where an attorney provides services to two or more parties seeking an immigration benefit in one case

When dual representation leads to conflict,

- ▶ When one party's interests diverge in a material way from the other party's interests
- ▶ When one party shares with the lawyer information that he or she does not wish to share with the other party
- ▶ Ethical Rules to keep in mind
 - ▶ Rule 1.7 Conflicts of Interest
 - ▶ Rule 1.6 Confidentiality

the conflict must be resolved.

- ▶ Does not automatically mean withdrawal
- ▶ Consult with both clients to determine if representation can continue
- ▶ Even with informed consent, situations may arise where dual representation should not continue.
 - ▶ Withdraw from that specific case
 - ▶ continued representation of one client after the other client terminates a dual representation may be appropriate under the general rule that conflicts are construed less strictly in non-litigation contexts

Representation Issues

- ▶ In most instances attorney engages in dual representation
- ▶ Alien can have separate attorney
- ▶ Attorney who assists employer is deemed the Employer's attorney
- ▶ Alien CAN pay fees and costs for Post PERM (Labor Certification)

Can you keep a secret?

- ▶ Obligation to non-disclosing client to keep informed
- ▶ Seek consent of disclosing client to share or ask the client to disclose directly
- ▶ If you cannot achieve disclosure is a conflict created that requires withdrawal?

Best Practices?

- ▶ In reality, is there a way to avoid dual representation?
 - ▶ Both parties hire separate attorneys
- ▶ Is there a way to lessen the blow?
 - ▶ from the beginning, inform both clients that there is the potential for a conflict of interest
 - ▶ explain the potential consequences of dual representation, including the fact that a lawyer's duty of loyalty to each client requires communication of good and bad information
- ▶ a retainer agreement that
 - ▶ explains the limits of representation,
 - ▶ addresses the waiver of confidentiality in joint representation situations,
 - ▶ explains how the firm would handle potential conflicts should they arise
 - ▶ is signed by both parties in a dual representation situation

Executive Order

- ▶ President Trump Signed the First EO on 1/27/2017
- ▶ EO called for the following:
 - ▶ Suspending entry of all refugees to the United States for 120 days
 - ▶ Barring Syrian refugees indefinitely
 - ▶ Blocking entry into the United States for 90 days (from the date the Executive Order was signed) of "immigrants and nonimmigrants" who are nationals (and dual nationals traveling under the passports of) at least seven countries (currently: Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen)
 - ▶ Eliminating the interview waiver program

Revised Travel Ban

- ▶ March 6, 2017 - President Trump announced a revised EO banning travel from 6 countries (leaving out Iraq) to take effect on March 16, 2017
- ▶ Getting rid of preference for Christian Refugees
- ▶ Allows those with valid visas to enter
- ▶ Specifically excludes dual nationals, permanent residents
- ▶ Currently on hold due to an injunction ordered by federal judges in Hawaii and Maryland

Current system in place

- ▶ Requires completion of security checks for all nonimmigrant and immigrant visa applicants - “administrative processing”
- ▶ Security checks on all USCIS applications that may cause delays
- ▶ Many applicants also have a biometrics component

Sanctuary Cities

- ▶ January EO announced punishment for sanctuary cities
- ▶ Sanctuary City - Federal officials must rely on local police to help enforce federal immigration laws, but the law doesn't require local authorities to detain illegal immigrants just because their federal counterparts make a request. In fact, federal courts across the country have found complying with the requests is voluntary. Sanctuary Cities refuse to enforce and detain illegal immigrants based on immigration status.
- ▶ New Orleans is a Sanctuary City. This is in compliance with the federal consent decree and approved by DOJ.

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