

CHAPTER 9

IMMIGRATION LAW

Cecilia K. Nguyen
Uffelman & Nguyen LLP

THE ABC'S OF IMMIGRATION LAW

October 28, 2020
OSB PLF CLE "Learning the Ropes"
Cecilia K. Nguyen, Esq.
4500 SW Hall Blvd.
Beaverton, OR 97005
503.644.2146
cnguyen@beavertonlaw.com
www.BeavertonLaw.com

© 2020 Cecilia K. Nguyen

Legal Disclaimer

- The following presentation is intended for informational purposes only and should not be interpreted or construed as legal advice or opinion whatsoever.
- This presentation is intended to be a very basic overview only.
- This area of law is changing due to the impact of recent litigation, regulatory amendments, and government policy and procedural changes. Therefore, please review updated law, regulations, policies, and practices before providing any legal advice or opinion.

© 2020 Cecilia K. Nguyen

WHY IMMIGRATE?

- Reasons why people want to immigrate to the U.S.:
 - Family
 - Employment
 - Business
 - Socio-economic
 - "American Dream"
 - Humanitarian/Political
 - Avoid persecutions (refugees and asylees)
 - Escape war and/or violence
 - Involuntarily brought to USA by parents or family members

© 2020 Cecilia K. Nguyen

IMMIGRATION LAWS: WHY?

- THE GOVERNMENT'S POSITION:
 - U.S.'s sovereign right to control "aliens" seeking to enter or remain within U.S. borders:
 - To protect national interests
 - To continue the good order and well-being of the US
- Definition of "Aliens"
 - The federal immigration statutes use the term "alien" to refer to any person who is not a citizen or national of the US.
 - Term may refer to immigrants, non-immigrants, refugees or asylees, out-of-status people, people who illegally entered the U.S., and any undocumented individuals

© 2020 Cecilia K. Nguyen

IMMIGRATION LAWS: WHERE TO FIND LAWS & POLICIES?

- I.N.A. (Federal Statutes: Immigration and Nationality Act)
- C.F.R. (US Code of Federal Regulations)
- FAM (Foreign Affairs Manual)
 - <https://fam.state.gov/FAM/FAM.aspx?ID=09FAM>
- US Dept Homeland Security
- USCIS (U.S. Citizenship & Immigration Services)
- DOS (US Department of State)
- USCPB (US Customs & Border Patrol)
- US Department of Justice Executive Office of Immigration Review (EOIR)
 - Immigration Courts
 - Board of Immigration Appeals (BIA)
- US District Courts and US Circuit Courts of Appeals
- Special/private federal legislations, state laws, local laws
- International treaties

© 2020 Cecilia K. Nguyen

Government Agencies Involved

- USCIS: U.S. Citizenship & Immigration Services (formerly Immigration & Naturalization Service (INS)). USCIS is part of US Dept of Homeland Security.
- CBP: Customs & Borders Protection (agency within DHS)
- ICE: Immigration & Customs Enforcement (investigative arm of DHS)
- EOIR: Executive Office of Immigration Review (Immigration Court) (under US Dept of Justice)
- US Dept of State/National Visa Center/US Consulates
- Social Security Administration
- State governments, local law enforcements, DMVs, etc.

© 2020 Cecilia K. Nguyen

Classification: Legal

- **Nonimmigrant:** Temporarily in US for a purpose. Ex. Foreign students, visitors, business travelers, temporary workers.
- **Immigrant (Lawful Permanent Residents (LPR) or green card holders):** Granted legal status to reside permanently in US and may apply for citizenship later.
- **Conditional resident:** Granted conditional LPR status for 2-year period; must re-apply for permanent LPR status (10-year green card).
- **Refugees and asylees:** Refugees are present outside US border when applying for asylum. Asylees are already present in US border when applying for asylum.
- **Temporary Protected Status:** Granted TPS status to be in the US temporary because of armed conflicts, environmental disasters, epidemic, or other conditions preventing people from returning to home country.

© 2020 Cecilia K. Nguyen

Classification: Others

- **Illegal/undocumented:**
 - Entered the US without inspection (EWI) by an immigration officer;
 - Initially entered with valid visa, but overstayed (failed to depart);
 - Did not meet or maintain the conditions of visas and failed to depart the US;
 - Brought to US involuntarily (minors, smuggled into US, victims of human trafficking, etc.)
- **Others:** Include people who:
 - Are currently in removal/deportation proceedings in immigration court;
 - Have been ordered removed/deported; or
 - Granted withholding of removal by Immigration Court.

© 2020 Cecilia K. Nguyen

Immigrate: Green Card Process

- **Step 1: Intending Immigrant:**
 - Is sponsored by a qualifying US citizen relative, US lawful permanent residence (person with green card), or prospective employer; and
 - Must be a beneficiary of an approved petition filed with USCIS.
 - There are exceptions that allow for self-petitions like VAWA, diversity, EB-2.
- **Step 2: After Petition is approved, Intending Immigrant must:**
 - Apply to USCIS for a green card if already here or apply for a visa through State Dept if outside US. Timing will depend on visa category/availability of visa at that time.
 - Must submit visa application (or green card application), I-864 affidavit of support, health exam, personal documents (birth certificates, marriage/marriage termination documentation, police clearance, etc.), and be interviewed.
 - If approved, USCIS will issue green card; if outside US, consulate will issue immigrant visa for intending immigrant to enter US and receive green card after arrival.

© 2020 Cecilia K. Nguyen

Immigrate Through Family: Immediate Relatives of U.S. Citizens

- **Immediate Relative Immigrant Visas (Unlimited visas available each fiscal year):** These visa types are based on a close family relationship with a United States (U.S.) citizen described as an Immediate Relative (IR).
- Categories:
 - **IR-1:** Spouse of a U.S. Citizen
 - **IR-2:** Unmarried Child Under 21 Years of Age of a U.S. Citizen
 - **IR-3:** Orphan adopted abroad by a U.S. Citizen
 - **IR-4:** Orphan to be adopted in the U.S. by a U.S. citizen
 - **IR-5:** Parent of a U.S. Citizen (must be at least 21 years old to sponsor parent)

© 2020 Cecilia K. Nguyen

Immigrate Through Family: Other Categories

- **Family Preference Immigrant Visas (limited number of visas per category/per year (quota)):**
 - **1st Preference (F1):** Unmarried sons/daughters of U.S. citizens and their minor children.
 - **2nd Preference (F2):** Spouses, minor children, and unmarried sons/daughters (age 21 and over) of lawful permanent resident (green card holders). Note: Green card holders cannot sponsor parents or married son/daughter.
 - **3rd Preference (F3):** Married sons/daughters of U.S. citizens, and their spouses and minor children.
 - **4th Preference (F4):** Brothers/sisters of U.S. citizens, and their spouses and minor children, provided the U.S. citizen is at least 21 years of age.
- **US State Department Visa Bulletins:** Published monthly and is tool to track when a visa number may become available for an application based on a priority date (assigned filing date): <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

© 2020 Cecilia K. Nguyen

Immigrant Visas (Adoptions)

- **Petition to Sponsor Immediate Relative of US Citizen:** US citizens can adopt and immigrate a child from another country. The child must be adopted before the age of 16 and must have been in the legal and physical custody of the adoptive parent(s) for at least 2 years to qualify as an "adopted child" of the US citizen.
- **I-600/I-600A/I-800/I-800A orphan petitions:** Process for US citizens to adopt orphans or qualifying children from abroad and bring them to US; The process and forms used will depend on whether the Hague Convention treaty applies or not.
- **Additional information:**
 - **State Dept Intercountry Adoption:** <https://travel.state.gov/content/travel/en/Intercountry-Adoption.html>
 - **Orphan Petition Process:** <https://www.uscis.gov/forms/explore-my-options/orphan-adoption-process>
 - **Hague Convention Process:** <https://www.uscis.gov/adoption/immigration-through-adoption/hague-process>

© 2020 Cecilia K. Nguyen

Immigrant Visas (Employment – Permanent Workers)

- ❑ **EB-1** - persons of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors or researchers; and multinational executives and managers (no labor cert required)
- ❑ **EB-2** - professionals holding advanced degrees or for persons with exceptional ability in the arts, sciences, or business (self-petition; labor cert maybe)
- ❑ **EB-3** - professionals, skilled workers, and other workers (labor cert required)
- ❑ **EB-4** - "special immigrants" (includes certain religious workers, employees of U.S. foreign service posts, retired employees of international orgs., minors who are wards of U.S. courts., and other classes) (no labor cert required)
- ❑ **EB-5** - business investors who invest \$1.8 million or \$900,000 (if the investment is made in a targeted employment area) in a new commercial enterprise that employs at least 10 full-time U.S. workers.

© 2020 Cecilia K. Nguyen

IMMIGRANT VISAS (Other Pathways to Green Card)

- ❑ K-1 fiancé/fiancée visa (US petitioner only)
- ❑ VAWA (Violence Against Women Act) petition (self-petition)
- ❑ Asylees and Refugees (self-petition)
- ❑ U and T Visas (victims of crimes or human trafficking; temporary visas leading to ability to apply for green cards after conditions are met)
- ❑ Special Immigrant Juvenile
- ❑ Religious workers (R-1)
- ❑ Diversity Visa (lottery)
- ❑ Temporary work visas that may lead to green card sponsorship by employers
- ❑ Visas created by treaties, special legislations, or private legislations

© 2020 Cecilia K. Nguyen

Financial Obligation of a Sponsor

- ❑ To prevent the intending immigrant from become a public charge, the US government requires a sponsor to sign an I-864 Affidavit of Support. This is a contract in which the sponsor promises to be financially responsible for the intending immigrant until:
 - ❑ Immigrant becomes US citizen or loses LPR status and departs US;
 - ❑ Death of the immigrant or death of the sponsor;
 - ❑ The immigrant earns 40 quarters of social security earnings;
 - ❑ New affidavit support by another sponsor
- ❑ Joint sponsors are permitted to sign I-864s to help the petitioning sponsor.
- ❑ Exceptions when I-864 may not be required like in self-petition cases where no sponsors are needed.

© 2020 Cecilia K. Nguyen

Financial Obligation of a Sponsor

- Prior sponsorships are cumulative: If a sponsor previously signed an I-864 for an immigrant, that immigrant may be counted in the sponsor's household for determining ability to sponsor future intending immigrants.
- **Non-immigrant Cases:**
 - No visa granted if there is no assurance of ability to pay for travels, accommodations, health insurance coverage, etc.
 - Sponsor may be required to complete an I-134 Affidavit of Support form.
 - Some health care providers may require that a sponsor sign a contract to pay for health services for a non-immigrant like a tourist who is temporarily in the US and seeking treatment.

© 2020 Cecilia K. Nguyen

Public Charge Rule Change/ Affidavit of Self-Sufficiency

- **I-485/I-944:** Stricter "totality of the circumstances" public charge rules went into effect 02/24/20 (for green card based on family and employer petitions)
 - **"Public Charge"** defined (new): "A person who "receives one or more public benefit... for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months)."
 - Which benefit counted: cash assistance, SNAP or food stamps, housing assistance, Medicaid (with exceptions)
 - **Form I-485:** Questions about receipt of public benefits
 - **New form I-944 Affidavit of Self-Sufficiency requirement**
 - Questions about income, public benefits, credit reports/scores, health, health insurance coverage, assets, debts, education, skills, language proficiency, etc.
- **Litigation against the new public charge rules not successful. Right Now:**
 - I-485 submitted before 10/13/20 without I-944 form and supporting evidence will be subject to a request for evidence. I-485 submitted on or after 10/13/20 will be rejected if failed to include I-944 and supporting evidence.
 - See: <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

© 2020 Cecilia K. Nguyen

LAWFUL PERMANENT RESIDENT STATUS (What does that mean?)

- **Benefits of Lawful Permanent Residence:**
 - Permitted to live and work in the USA indefinitely but do not have same rights as citizens (ex. voting, serving as jurors, financial aid or jobs where US citizenship status is required, etc.)
 - US Citizenship: eligible to apply 3 years (if spouse of US citizen) or 5 years (all others) after becoming LPR (may apply 90 days before anniversary).
- **Possible Ways to Lose LPR status:**
 - May lose LPR status due to absence from US for more than 180 days, abandonment of residency, left while in removal proceedings, illegal activity while outside US, criminal activity, or entered US without inspection. Possible Remedy: Re-entry permit or SB-1 Returning Alien application.
 - Can be found to be "inadmissible" upon inspection by CBP at the border when LPR is re-entering the US and denied entry or sent to deferral inspection for further review.
 - Ordered deported or removed because no relief found in removal procedure.
 - Granted conditional status but was unable to get the conditional status removed or failed to meet requirements of conditional status

© 2020 Cecilia K. Nguyen

NON-IMMIGRANT VISAS

- **Non-Immigrant Visas:** Different kinds of visas issued to non-residents allowing entry into US for a specified purpose, for a short/limited duration, with intent to return to his/her home country after the duration of stay expires. Must demonstrate intent to return to home country for visa to be granted.
 - Examples: student visas, visitor visas, temporary worker visas, etc.
- **Visa Waiver Program**
 - Citizens of countries with US treaties do not need to apply for a visa before entering the US; may apply to only certain types of non-immigrant visas.
- Non-Visa Waiver countries' residents must apply for non-immigrant visas and be issued the visas before they are permitted to enter US temporarily for the intended purpose(s).

© 2020 Cecilia K. Nguyen

NON-IMMIGRANT VISAS (examples of temporary workers)

- E-1 /E-2: treaty traders, treaty investors, and qualified employees
- H1-B: workers
- H-1C: registered nurses working in a health professional shortage area
- H-2A: temporary or seasonal agricultural workers
- H-2B: temporary non-agricultural workers
- H-3: Trainees other than medical or academic
- L: intracompany transferees in managerial, executive, or specialized knowledge positions
- O: Persons with extraordinary ability in sciences, arts, education, business, or athletics and motion picture or TV production.
- P: athletes, entertainers, artists
- R: Religious workers
- TN: NAFTA (North American Free Trade Agreement) – temporary professionals from Mexico and Canada.
- More categories; some categories allow for spouse/children

© 2020 Cecilia K. Nguyen

Removal/Deportation (procedure)

- "Removal Procedure" (Immigration Court Proceedings)
 - Procedure used to determine if person is "inadmissible" (if seeking to enter US) or "removable" (if already in the US).
 - Procedure also determines if person is eligible for other reliefs
 - Asylum, Voluntary Departure, Stays, Deferrals, Cancellation of Removal, Adjustment of Status, Review of certain USCIS decisions, or Self-Removal
 - Generally no relief if convicted of "aggravated" felonies or certain crimes of moral turpitude
 - Possible outcome: ordered removed/deported, granted withholding of removal status, other reliefs granted, case dismissed for procedural reasons, etc. Decisions are generally appealable to the BIA.
 - Increase in summary deportation process used by ICE: expedited removal, reinstatement of removal, and stipulated removal.

© 2020 Cecilia K. Nguyen

Removal and Deportation (continued)

- A person is placed in removal procedure upon referral to ICE by USCIS or CBP. USCIS/ICE will issue the charging document (Notice to Appear (NTA)) to initiate prosecution in immigration court.
 - Green Card Denied: If a person's green card is denied by USCIS, it would refer the case to ICE to place the person in removal proceedings and an NTA may be issued at the same time.
 - Referred by USCIS after grounds for removal is discovered during the naturalization for citizenship application process.
 - ICE Hold: If there is an ICE Hold on the person while being held in local jail, person will be transferred over to ICE detention after criminal case is resolved.
 - Apprehended by ICE/CBP and taken into custody.

© 2020 Cecilia K. Nguyen

Grounds of Inadmissibility under INA § 212a

- 212(a)(1) Health-related grounds
- 212(a)(2) Crimes-related grounds
- 212(a)(3) Security-related grounds
- 212(a)(4) Public charge
- 212(a)(5) Labor certification
- 212(a)(6) Fraud & misrep, false claim, smuggling, other immigration violations
- 212(a)(7) Documentation requirements
- 212(a)(8) Miscellaneous (draft evaders, others)
- 212(a)(9) Prior removal, unlawful presence, permanent bar
- 212(a)(10) More miscellaneous (polygamy, international child abduction)

© 2020 Cecilia K. Nguyen

Bars from Re-Entry to USA

- INA §§ 212(a)(9)(B)(i)(I) & (II): 3 & 10 year bars
 - unlawful presence (in a single stay) for
 - more than 180 days or less than a year, or
 - more than a year, followed by a departure from the U.S.
- INA § 212(a)(9)(C)(i)(I): permanent bar
 - Re-entry without inspection after having accrued one year or more (in the aggregate) of unlawful presence in the U.S.

© 2020 Cecilia K. Nguyen

Grounds for Removal/Deportation (Not exhaustive list)

- Criminal conviction or offense (including crimes of moral turpitude)
- Inadmissible at the time of entry or failed to meet condition of status/admission
- Marriage fraud
- LPR or conditional LPR status was terminated
- Visa revoked or status/condition of visa violated
- Failure to register/falsification of documents
- Falsely claiming US citizenship to obtain a benefit
- National Security
- Public charge within 5 years of entry
- Unlawful voters
- Smuggler of other alien
- More categories

© 2020 Cecilia K. Nguyen

Possible Relief for Illegal/ Undocumented Persons

- Possible pathways for illegal/undocumented persons who are physically present in the USA to obtain either temporary or permanent legal status:
 - Immigration through sponsorship by qualifying family members/employer:**
 - May have to be interviewed at US consulate outside US border if person entered USA without inspection; this step may/may not be smooth depending on grant of unlawful presence waiver (complicated process);
 - May qualify for 245(i) exception if beneficiary of petition filed on/before 4/30/01;
 - Self-Petitions:** Asylum, VAWA, U and T Visas, Special Immigrant Juveniles, etc.
 - Deferred Actions for Childhood Arrivals (DACA):** Effective 06/15/2012, certain persons who came to USA as children may request deferred action for a period of two years, subject to renewal, and would then be eligible for work authorization.
 - Relief in Removal Proceedings (Relief granted in Immigration Court)**
 - Special and Private Legislations**

© 2020 Cecilia K. Nguyen

Employers I-9 and E-verify

- U.S. law requires companies to employ only individuals who may legally work in US (either U.S. citizens, LPRs, or foreign citizens who have the necessary authorization)
- I-9 Forms:** All US employers must complete a form for each employee working in US:
 - Have completed I-9 for each person on payroll. On form, employee attests to his/her employment authorization & present acceptable documents of identity & employment authorization. Employer must examine documents for eligibility & record on I-9s;
 - Retain/store I-9s for 3 yrs after hire date or 1 yr after employment is terminated, whichever is later; and
 - Make the I-9s available for inspection if requested by U.S. government officials from DHS, DOL, DOJ. Forms are not filed with USCIS or other agencies.
 - E-Verify:** An Internet-based system that enables employers to confirm a person's eligibility to be employed. E-Verify is voluntary under Federal law BUT some states and local governments have passed law mandating that all or certain employers must use E-Verify.

© 2020 Cecilia K. Nguyen

Social Security Administration: Requirements for SSN

- **How do I get a number and card?** Complete an application for a Social Security Card and show original documents or certified copies to prove U.S. citizenship or immigration status, age, and identity.
- **Proof of Citizenship or Immigration Status:** U.S. birth certificate, U.S. consular report of birth, U.S. passport, Certificate of Naturalization or Certificate of Citizenship. If not US Citizen, then SSA will ask for proof of immigration status (or eligibility for a social security card):
 - Form I-551 (includes immigrant visas with foreign passports);
 - I-94 with unexpired foreign passport; or
 - Work permit card from Dep't of Homeland Security (EAD)
 - International students must present further documentation.
- **Proof of Age:** Birth certificate, passport or other documents to prove age.
- **Proof of Identity:**
 - U.S. driver's license, U.S. state-issued I.D. card, or U.S. passport. If none, then: foreign passport, employee ID card, school ID card, health insurance card, U.S. military ID card, adoption decree, life insurance policy, or marriage document (only in name change situations).

© 2020 Cecilia K. Nguyen

Oregon DMV Documentation Required

- Oregon began issuing REAL ID compliant DL/ID cards on July 6, 2020 to comply with federal mandate. Oregon was granted an extension so can continue to use ODL/ID cards to board commercial aircraft until 10/01/2021.
- To receive an Oregon REAL ID, applicants must provide acceptable proof of U.S. citizenship or lawful presence in the US, current full legal name, identity and date of birth, and SSN in addition to the other requirements for obtaining a DL, permit, or ID card.
- Non-REAL ID cards (standard DL/permits/ID cards):
 - All applicants can opt to apply for a standard driver license, permit, or ID card;
 - Oregon HB 2015 scheduled to go into effect 01/01/2021: Allows non-residents to show certain documents of identity/presence but do not require proof of legal status to obtain a standard license, permit or ID cards;
 - See DMV webpage on HB 2015:
<https://www.oregon.gov/odot/DMV/Pages/HB2015.aspx>

© 2020 Cecilia K. Nguyen

FREEDOM OF INFORMATION ACT (FOIA)

- Primary tool for requesting documents from the US government in immigration cases.
- Must know which agency may possess the documents and direct the FOIA request to the right place, in the right manner, and with the right authorizing signatures.
- Risks: Government can use the fact of a FOIA request to track the alien or to prove foreign citizenship based on the information provided by the requesting person in the request.

© 2020 Cecilia K. Nguyen

Health Care/Immigration Reforms

- Health Care-related:
 - Federal law generally bars illegal/undocumented persons from being covered by Medicaid
 - Exceptions: emergency treatment, children < 21, pregnant women
 - "Emergency Medicaid": Hospitals must provide emergency treatment; get reimbursed by state-federal health programs in which Medicaid pays the hospital for emergency treatment
 - Unclear how many patients are "illegal" vs. low income
- Comprehensive Immigration Reforms: Attempted by Congress with no success to date.

© 2020 Cecilia K. Nguyen

Legal Disclaimer

This presentation was intended for informational purposes only and should not be interpreted or construed as legal advice or opinion whatsoever.

U.S. Immigration & Citizenship laws are changing due to the impact of recent litigation, regulatory amendments, and policy and procedural changes. Please review laws, regulations, policies, and practices before providing any legal advice.

THANK YOU.
CECILIA K. NGUYEN, ESQ.

© 2020 Cecilia K. Nguyen
