

OVERVIEW OF TYPES OF IMMIGRATION STATUS

This bench card is designed to provide quick access for state criminal, family, and juvenile court judges to help them identify the various types of status that immigrants in state court might have. It is aimed at assisting judges in recognizing non-citizen parties before them who might need the advice of immigration counsel or other sources of assistance as to how their immigration status might affect or be affected by actions in their state court case. In addition, it is aimed at assisting state court judges in recognizing how their actions might jeopardize a non-citizen's immigration status.

This bench card is not meant to be an in-depth treatise on immigration law or intended to provide definitive answers regarding immigration rights. Judges using the bench card should also be aware that immigration law is constantly changing, and electronic statutory materials on which the bench cards are based may not be up to date.

NATURALIZED CITIZEN

To become a naturalized U.S. citizen, an alien must:

- Be 18 years of age;
- Be lawfully admitted for permanent residence (see below);
- Have resided continuously in the United States for five years (or three years if married to a U.S. citizen) after being admitted for LPR status and been physically present in the U.S. at least half time during the five years prior to filing the application for citizenship;
- Be of good moral character; and
- Support the Constitution and be disposed to the good order and happiness of the U.S.

LAWFUL PERMANENT RESIDENT (LPR)

A grant of lawful permanent resident (LPR) status allows an alien to reside and work permanently in the United States. LPRs are also known as green card holders, although the card has not always been green. To be eligible for LPR status, the applicant must indicate an intention to reside permanently in the U.S.

The following are the major underlying visa petition categories through which an alien can acquire lawful permanent status.

- Family-based visas: unmarried sons or daughters of citizens; spouses and children of LPRs; unmarried sons or daughters (not a child) of LPRs; married sons or daughters of citizens; brothers or sisters of citizens.

- Employment-based visas: (1) priority workers (aliens who possess extraordinary ability, professors or researchers, multinational executives); (2) aliens who hold advanced degrees or possess exceptional ability; (3) certain classes of skilled workers, professionals, or other workers who perform jobs for which qualified workers are not available in the U.S.
- Diversity-based visas: as determined by the Attorney General.

An alien can also acquire lawful permanent resident status through other means, such as by adjusting status from that of a refugee, asylee, VAWA self-petitioner, T visa, U visa, or special immigrant.

To be eligible for LPR status, the applicant must meet the criteria for admissibility, whether entering on a permanent visa or adjusting status

Lawful permanent residents can be subject to removal for engaging in a wide variety of illegal activity, as specified in Federal Immigration Law.

CONDITIONAL PERMANENT RESIDENT

Conditional permanent residents include alien spouses and their children who applied for lawful permanent resident status based on a qualifying marriage to a LPR or a citizen. The conditional status expires on the second anniversary of obtaining conditional status unless the alien and his or her spouse have jointly applied for lawful permanent resident status prior to that time.

The following can cause loss of conditional permanent resident status.

- Failure to file a joint petition to remove the conditional status prior to the two-year expiration period or to appear for the requisite interview.
- Affirmative termination prior to the expiration of the two-year period.
- Adjudication and denial of the joint petition.
- The marriage is found to be fraudulent.
- Divorce, unless a waiver is available under law for hardship reasons under 1186a(c)(4), including as a battered spouse, or the conditional resident can show that the marriage was bona fide even if short. See also VAWA Self-Petitioner.

SUMMARY OF FAMILY-SPONSORED VISAS

Overall, about 80% of all legal immigration into the U.S., is through some type of family visa. The following is a summary of family visa categories.

Immediate relatives of a U.S. Citizen, including an alien spouse, unmarried minor child, or parent if citizen is 21 or older, are not subject to numerical limitation. The alien spouse or minor child will be a conditional immigrant if marriage is entered into less than 24 months prior to the date that the visa is obtained.

The following family-sponsored visas are subject to numerical limitations and are given the following orders of preference.

Preference Level 1. U.S. Citizen's alien unmarried son or daughter not a child.

Preference level 2. Lawful permanent resident's alien spouse, unmarried child, or unmarried son or daughter who is not a child.

Preference Level 3. U.S. citizen's alien married son or daughter.

Preference level 4. U.S. citizen's alien brother or sister.

A lawful permanent resident's alien spouse or unmarried minor child not otherwise entitled to a visa is entitled to the same status as the petitioning lawful permanent resident if accompanying or following to join the spouse or parent.

VAWA SELF-PETITIONER

Immigration law provides that an alien married to a citizen or LPR or a child of the alien may self-petition for LPR status without the cooperation of the citizen or LPR spouse or parent if:

- The spouse or child has been battered or subjected to extreme cruelty by citizen or lawful permanent resident spouse;
- The act or threatened act was one of extreme cruelty, including physical violence, sexual abuse, forced detention, or psychological abuse against the petitioner or petitioner's child by the spouse during the marriage;
- The marriage is legal and in good faith;
- The petitioner is not the primary perpetrator of the violence; and
- The petitioner is of good moral character.

SPECIAL IMMIGRANT JUVENILE (SIJ) STATUS

A person under the age of 21 may apply for Special Immigrant Juvenile status if he or she meets the following conditions:

- There is a finding by a court in the United States with juvenile jurisdiction that: (1) the juvenile is dependent on the court or placed in the custody of an agency or department of a state or an individual or entity appointed by the state or a juvenile court located in the United States; and (2) reunification of the juvenile with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law; and
- There is an administrative or judicial finding that it would not be in the best interest of the juvenile to be returned to the juvenile's or parent's previous country of nationality or country of last habitual residence.

The dependency case must not have been filed as a sham solely to obtain special immigrant juvenile status.

The dependency court must retain jurisdiction until the juvenile is granted SIJ status, subject to exceptions for age related cases and certain other circumstances.

REFUGEE/ASYLEE

The following are the basic conditions for refugee/asylee status.

- The individual has a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion if returned to the home country or country of last permanent residence.
- The individual is not a security risk or perpetrator of persecution.
- The individual has not committed certain categories of crimes.

A person in the United States must generally apply for asylum within one year of admission.

Once admitted the alien will be allowed to stay in the U.S. as long as expulsion from the U.S. would put them at a safety risk, unless he or she meets one of the grounds for loss of status listed below.

- The individual is able to safely return to the home country or move to another country.

- The individual no longer meets the requirements of eligibility.
- The individual has participated in persecution.
- The individual presents a security risk.
- The individual has been convicted of a serious crime, including conviction of an aggravated felony.

A spouse or child of an alien admitted as a refugee/asylee is admissible if “accompanying or following to join” the refugee/asylee.

- The spouse or child cannot precede the refugee/asylee.

An alien granted refugee/asylee status may apply for LPR status after one year.

- The alien must be admissible, or
- The Attorney General may waive the grounds for inadmissibility, with some exceptions, for humanitarian purposes or to preserve family unity.

NON-IMMIGRANT TEMPORARY VISAS

The law provides for a variety of categories of aliens that are eligible for visas to legally enter the United States on a temporary basis for a limited period of time. These visa holders are classified as non-immigrants under Federal immigration law. Eligible aliens include vacationers, students, certain classes of temporary workers, and a variety of specialized categories. The authorized length of stay is specified in the visa. The alien may have to take certain actions to maintain the status.

VICTIM OF TRAFFICKING IN PERSONS

The T visa is a non-immigrant visa available for individuals who have been the victims of trafficking in persons if the person:

- Is or has been the victim of a severe form of trafficking of persons;
- Is physically present in the United States or its territories as a result of the trafficking;
- Is complying with any reasonable request for assistance in the investigation or prosecution of traffickers, or is unable to comply with such request due to physical or psychological trauma, or is under 18 years of age; and
- Would suffer extreme hardship involving unusual and severe harm upon removal.

Under the Trafficking Victims Protection Act, a person under the age of 18 who is induced to perform a commercial sex act is considered a victim of severe trafficking.

The T Visa also allows certain family members accompanying or following to join the victim to enter as well, including parents if the victim is under the age of 21.

The maximum length of stay under the T visa status is four years unless extended. The holder of a T visa is eligible to apply for lawful permanent resident status if he or she is of good moral character, and has been continuously in the U.S. for three years.

CRIME VICTIM OR WITNESS

The U visa is a non-immigrant visa available to individuals who are in the U.S. as undocumented aliens but meet the following requirements

- The individual has suffered severe physical or mental abuse as a result of being a victim of criminal activity.
- The individual has been, is being, or is likely to be of help to a Federal, state, or local investigation of the criminal activity causing the abuse.
- The individual has certification from a Federal, state, or local judge, prosecutor, law enforcement officer, or other justice system official involved in prosecuting the criminal activity that he or she has been, is being, or is likely to be of help to a Federal, state, or local investigation of the criminal activity causing the abuse.

The rights of the U visa holder include the following.

- The maximum length of the U visa is four years unless extended.
- The U visa holder may apply for any other immigration benefit or status for which he or she is eligible.
- The holder of a U visa is eligible to apply for lawful permanent resident status with three years of continuous residence.

The U visa applies to the following specified list of crimes: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crime.

