IMMIGRATION BASICS FOR BENEFITS PURPOSES

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This session will cover:

- Identifying immigration statuses
- Reading immigration documents
- Any consequences for receiving benefits?

Note: this is not an immigration training
U.S. Immigration System

How do immigrants* come to US?

Blood  Sweat  Tears
Categories of Alien*Status

Alien = legal term for non-U.S. citizens
- LPRs or “green card” holders
- “Nonimmigrant” visa holders – many kinds
- Other lawfully present categories
- Undocumented (no status or out of status)

U.S. Citizenship

- **BIRTH:** born in U.S. & subject to its jurisdiction
- **NATURALIZATION:** becoming citizens through a process called “naturalization”
- **ACQUISITION:** born in another country to U.S. citizen parent(s)
- **DERIVATION:** through the naturalization of parents or adoption by U.S citizen parents
Documents showing U.S. citizenship

- U.S. birth certificate
- U.S. passport or card
- Certificate of naturalization
- Certificate of citizenship
- U.S. Citizen Identity Card (form I-197)

…or document the U.S. citizenship of one’s parents/grandparents to show acquired or derived citizenship

Immigrants: Legal Permanent Residents

LPR status can be based on:
- Relative/family relationship
- Employment
- Long residence in U.S.
- Country-specific laws
- Prior legal status
- Diversity lottery
- Other special laws
LPR documents may include

- Permanent resident “green” card (Form I-551)
- Alien registration green card (Form I-151) – discontinued in 1959
- Re-entry permits
- Temporary I-551 stamp in a passport (& immigrant visa)
- Immigration Judge Order

Reading sample LPR cards & documents

look for: dates & codes

(code lists linked in materials)
I-551 “Green Card”

New “Green” Card
Temporary I-551

Immigrant Classification Codes - Sources

- U.S. State Department - Foreign Affairs Manual, 9 FAM 502.1-3 (Immigrant Classification Symbols)
  https://fam.state.gov/FAM/09FAM/09FAM050201.html

- USCIS Adjudicator’s Field Manual, Appendix 23-7 (Codes for Classes of Admission)
Immigration statuses other than LPRs:

- Nonimmigrants
- Other Statuses

Nonimmigrant status

- Admitted to the U.S. for a limited period of time & for a specific purpose
  - but some offer a transition to LPR status (e.g. T or U)

- 20+ categories: some common types include
  - B-2 visitors for pleasure (*i.e.* tourists)
  - F-1 students
Other Lawful Statuses (*many!*)

- Asylees & refugees*
- Parolees (short-term or 1 year+)*
- Withholding of removal (or deportation)*
- Battered spouses & children & victims of trafficking* or qualifying crimes
- Temporary Protected Status (TPS) beneficiaries
- Deferred Enforced Departure (DED) grantees
- Deferred Action grantees & “EVD” beneficiaries
- Deferred Action for Childhood Arrivals (DACA)
- Under Order of Supervision or Stay of Removal
- LTRs under old “amnesty program
- Certain beneficiaries of “prosecutorial discretion”
  and others including applicants for a status, with or w/o work authorization

* “qualified aliens” for benefits purposes, along with “Cuban-Haitian Entrants”

Reading other immigration documents

- Look for dates
  - Date of entry/admission
  - Expiration dates
- Look for numerical codes
  (see materials for several long lists of codes)
Some immigration documents may apply to multiple statuses:

- Employment Authorization Document (EAD card)
  - (Forms I-688, I-688A, I-688B, I-776)
  - (note: codes come from 8 C.F.R. 274a.12)

- Arrival/Departure Record
  - (Form I-94)

- USCIS Notice of Action
  - (Form I-797) (e.g., relative & VAWA petitions & receipted applications in general)

And there are more…

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**Employment Authorization Document**

**EAD**

[Image of Employment Authorization Document (EAD) card]

- **Category Code**
- **Expiration Date**
I-94A Departure Record

Electronic version
http://1.usa.gov/1oN0NVw
[shortened link]
Sample I-797

Other documents include
(this is not complete list)

- Refugee Travel Document (Forms I-571)
- Parole authorization (Form I-512)
- Order granting suspension of deportation
- Order of supervision
- HHS certification letter (victims of trafficking)
- Voluntary departure notice (Form I-210)
- Immigration Judge orders & court documents
- Board of Immigration Appeals (BIA) decision
- Electronic receipts… and more…
Undocumented or Out of Status

- present in U.S. beyond expiration of time allowed
- present in violation of nonimmigrant visa
- illegal entrant - present without having been inspected by an immigration officer or thru use of false documents

Immigration Consequences of Receiving Benefits

Possible consequences of being determined a “public charge” or earning negative consideration on an immigration application are:

- (1) Denial of LPR “green card” status
- (2) Refusal of admission at border*
- (3) Removal/deportation from U.S. in limited circumstances

*returning LPRs have 180-day allowance with some exceptions
Public Charge Admission Rule

- The Public Charge admission rule means: likely to become “primarily dependent on the government for subsistence” or for financial support.

- Primarily dependent means:
  - getting certain public CA$H assistance for income maintenance
  - being institutionalized at government expense for long-term care

*Admission = permission to enter the U.S. An admission test is performed @ border & when seeking to obtain LPR or “green card” status even after one has physically entered.

When does rule NOT apply?

Does NOT apply to these LPR or green card applications:
- By refugees & asylees
- For Registry, Suspension & Cancellation of Removal
- By Special Immigrant Juveniles
- In special adjustment of status cases (HRIFA, NACARA, Cuban Adjustment Act, Lautenberg, battered spouses/children of USC/LPRs, & U visa beneficiaries, T visa beneficiaries)

Does NOT apply to applicants for:
- TPS & DED
- Deferred Action (including “DACA”), EVD, or Family Unity
- Refugee, asylum or withholding status
- U and T visas

Does not apply to “Special rule” victims, incl. VAWA self-petitioners

AND: DOES NOT apply in naturalization (for U.S. citizenship)
When the rule does apply:

- Public Charge Admission rule DOES apply:
  - when seeking LPR or green card status based on a family relationship
  - to other adjustment of status applications not described previously, unless waived/waivable

- BUT the rule requires a *totality of circumstances* test:
  age, health, family status, resources, financial status, education & skills – plus, 1 or more Affidavits of Support are required in certain family cases

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Current USCIS (DHS) Policy Treats Non-Cash Benefits ≠ Public Charge

- WIC
- Head Start
- Mass Health
- Health Safety Net
- Connector Care/ Premium tax credits
- Child Care Vouchers
- Food Stamps
- School Lunch or Breakfast
- Public Health Services
- Fuel Assistance
- Housing Benefits
- Emergency Disaster Relief
“Public charge” admission test differences

- Effective Jan. 2018 DOS consular officers abroad may consider noncash benefits received by intending immigrant & any benefits received by dependent family members but only in the totality of circumstances in determining likelihood of resort to public cash assistance or long term institutional care.
- The test remains prospective & benefits receipt may be overcome by showing current/prospective income/assets/resources above 125% poverty.
- Other differences in consular cases now include less weight given to Affidavit of Support in those family cases where required.
- Effect of new DOS policy still uncertain: contact MLRI if families report unexpected public charge problems via consular processing.

Affidavits of Support

- Required for most family-based permanent residence cases to which public charge admission rule applies.
- Sponsoring relative must sign & agree to support the intending immigrant at 125% above poverty & without receipt of a “means-tested” benefit - additional joint sponsor(s) allowed when income is too low.
- Sponsor’s affidavit is binding until the immigrant naturalizes or can be credited with 40 quarters of work, or loses LPR status & departs.

* = SSI, TANF, Medicaid, CHIP, SNAP
Benefits considered earned are excluded from public charge:

- Unemployment
- Veterans benefits
- OASDI (old age survivors’ disability insurance)
- U.S. government pensions

Under both USCIS & DOS policies

Proposed DHS public charge rule

- If finalized, will make major changes to public charge admission rule in the future
- Steps before rule changes can be implemented:
  - must review & provide reasoned response to comments & publish that with final rule in Fed. Reg.
    - Over 250,000 comments filed by Dec 2018 deadline!
- Legal challenges may further delay rule implementation
Key changes – proposed rule

- Proposes to allow currently excluded non-cash benefits received after effective date of final rule to be considered for public charge admission: Medicaid, SNAP, Federal public housing & section 8; Medicare drug plan subsidy
- Proposes that Affidavit of Support not considered sufficient on its own to overcome public charge
- Proposes to make it much harder to overcome public charge without an income, resources or assets over 250% of poverty or ability to post a minimum $10,000 bond
- Proposes to prevent change or extension of nonimmigrant status if receiving or likely to receive benefits

Key Take-Aways

- No changes in USCIS rules; existing rules still apply
- Final rule published may be different from proposed rule
- Any new changes will take time
- Some benefits used now could help an immigrant improve ability to meet public charge test later on
- Immigrants in consular processing but not represented may be referred to legal services clinics for consults
Public benefits receipt & discretionary applications

- In some cases, the public charge admission rule does not apply but the immigration status application is discretionary & officials may consider “public charge” type factors along with other discretionary factors.

- Receipt of benefits should generally not be determinative but the applicant may require more legal advocacy (see referral list link.)

Removal Based on Public Charge

- Very rare!
- Requires receipt of cash benefits or institutionalization within 5 years of entry for causes existing before admission.
- Government must:
  1. Have legal right to repayment
  2. Demand repayment
  3. Get judgment or order & fail to collect
Other Resources

www.nilc.org (get FREE updates of NILC Guide charts!)

www.uscis.gov (for government forms & information)

Protecting Immigrant Families:

JOIN to be kept up to date on public charge developments:
http://protectingimmigrantfamilies.us16.list-manage.com/subscribe?u=3ea07e067c43a4abfd60b1669&id=237b0d3893

To find immigration legal services providers in Massachusetts consult the list linked in the materials