

CONTINUING LEGAL EDUCATION

FALL 2016

OCTOBER 20, 2016


INTRODUCTION TO EFFECTIVE IMMIGRATION CONSULTS

GENIA BLASER, ESQ. AND MARIE MARK, ESQ.



Sponsored by:


Appellate Division, First Department and the
Assigned Counsel Plan for the First Department




OCTOBER 20, 2016
GENIA BLASER, Esq.
MARIE MARK, Esq.

**INTRO TO
EFFECTIVE
IMMIGRATION
CONSULTS**

WHO ARE WE?





IMMIGRANT
DEFENSE
PROJECT



PADILLA
SUPPORT
CENTER

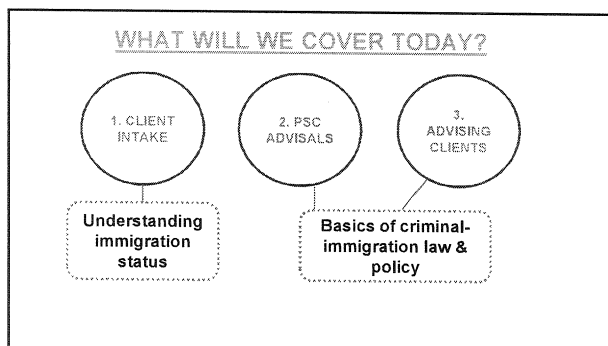
The **Padilla Support Center (PSC)** is one of six Regional Immigration Assistance Centers funded by an innovative grant from the New York State Office of Indigent Legal Services through the New York City Mayor's Office of Criminal Justice.



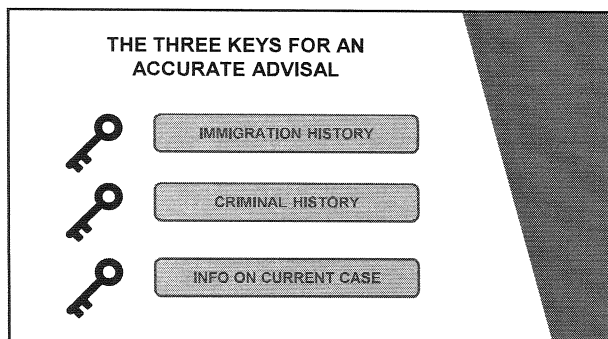
WHAT DO WE DO?

**IMMIGRANT DEFENSE PROJECT
PADILLA SUPPORT CENTER**

- Advise public defenders and appointed counsel on immigration consequences of Criminal & Family Court contacts
- Provide trainings & resources on criminal-immigration issues



**CLIENT INTAKE:
WHAT INFO
DO I NEED TO
GATHER FOR
AN ADVISAL?**



INFO ON CURRENT CASE

Info:

- ☐ Charges
- ☐ If felony, indictment status
- ☐ Possible offers
- ☐ Name of any co-D (for conflict check)
- ☐ Bail status of client
- ☐ Next court date

Documents:

- ☐ Complaint/indictment

IMPT: Refer as early in the case as possible!

CRIMINAL HISTORY

Info: All priors, INCLUDING

- ☐ Violations
- ☐ Cases dismissed/sealed
- ☐ Out-of-state convictions
- ☐ Info on any additional pending cases

Documents:

- ☐ Rap sheet
- ☐ Certificates of disposition, if no rap available

IMMIGRATION HISTORY

Info:

- ☐ Country of birth
- ☐ Info on entry to U.S. (date, imm status)
- ☐ Current imm status & date obtained
- ☐ Any past contact with imm
- ☐ Any current contact with imm

Documents:

- ☐ Copies of immigration docs (if possible)

IMMIGRATION
STATUS 101

WHO
ARE WE
TALKING
ABOUT?

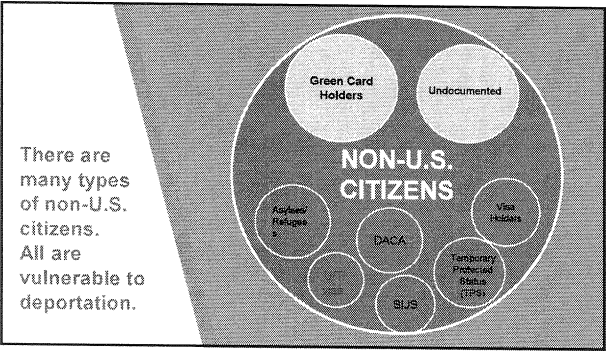
U.S.
CITIZENS

NON-U.S.
CITIZENS

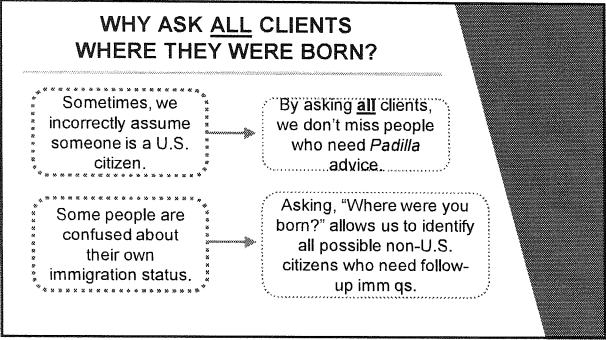
U.S. Citizens
cannot be
deported.*

U.S. CITIZENS

*... unless there was fraud in the naturalization application
and thus client could be at risk of
denaturalization/deportation.








Remember!

U.S. Citizens cannot be deported.
So, only non-USCs need *Padilla* consults.


Also: Warn non-USC clients **not** to travel internationally or submit immigration applications until they receive a *Padilla* consult!




To have enough information to get a PSC advisal, let's talk about how identify some common immigration statuses...

United States Citizens (USCs)


Ways to become a U.S. Citizen



By birth in the U.S.




Through parents
(derived or
acquired by law)



By application
(naturalization)

USCs – Birth in the U.S.



By birth in the U.S.


Question to ask: Where were you born?
(NOT, "You're a citizen, right?")

If client was born in:

- * A territory of the U.S.
- * Puerto Rico
- * Guam
- * U.S. Virgin Islands

S/he is a U.S. citizen!

USCs – Derivation/Acquisition




Through parents
(derived or
acquired by law)

If your client's parent or parents are USCs, your client may be a USC and not even know it!

This is a very complicated area of law. Determining this requires individualized analysis by an immigration lawyer.

USCs - Naturalization



Discretionary.
Must be an LPR for a period before applying.
Must prove "good moral character" (GMC).
Criminal & family contacts can bar GMC and/or affect discretion.




Questions to verify if client naturalized:

- * Did you apply to become a USC?
- * Did you take a test?
- * Did you attend an oath ceremony?

Lawful Permanent Residents

also known as:
legal permanent resident
LPR
green card holder
legal residente
tengo la residencia

Common ways to become an LPR



About LPRs

Some people come to the U.S. with a green card and some apply to become an LPR after they enter the U.S.

Can work and live lawfully in the U.S.

Can naturalize

For a *Padilla* consult, it is important to know
WHEN AND HOW
they got their green card.

Document proving LPR status

Useful information on green card:

- * A#
- * Date client became LPR ("Resident since: XX/XX/XX")

Note: LPR status does not expire even if physical card is expired.



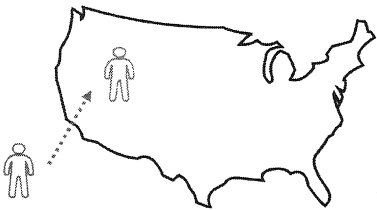
Green card

**UNDOCUMENTED
INDIVIDUALS**

also known as:
out of status
without status
entered without inspection
EWI
visa overstay
"illegal"

WHO IS UNDOCUMENTED? (Part I)

- Entered without permission from U.S. government
- Walked over the border & wasn't stopped by anyone
- Arrived by boat & wasn't stopped by anyone




Note: Some undocumented people might say they "entered without papers."

WHO IS UNDOCUMENTED? (Part II)


People who entered with valid travel documents
+
stayed beyond the length of time permitted to be in the U.S.

Example of common valid travel documents:
tourist visa
student visa
business visa



People who are undocumented can be deported at any time because they do not have lawful status.

However, Family and Criminal Court contacts can increase their chances of being detected by ICE and deported.



ABOUT UNDOCUMENTED CLIENTS

People who are undocumented may be eligible to become documented.

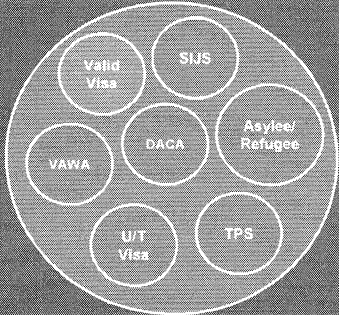
Criminal and Family Court contacts can bar eligible clients.

Refer, refer, refer!

Questions to ask if you think your client is undocumented

- When and how they entered the U.S.
- If entered on visa, when authorized period ended
- Any past contact with immigration
- Any pending applications or removal proceedings

Grey Zone:
Documented
People



Valid visa holders

Entered the U.S.
on a visa (visitor,
student, business)


+

Still within the length
of time permitted to
be in the U.S.

Visa can be revoked for
arrests alone,
leaving the client undocumented

It is helpful to find out:

- * What type of visa client has
- * When visa expires
- * Whether client an immigration lawyer



Work Permit is not a status!

A work permit is a SIGN that an individual has had contact with immigration and has applied for some form of benefit.

Pending application for a green card

Proof of grant of Asylum, TPS, DACA

Ordered deported but under an order of supervision

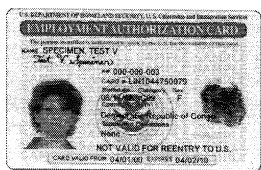
Examples of reasons a client might have a work permit

Documentation of work permit

Useful information on work permit:

- * A#
- * Category
- * Dates on the card

Category will help an immigration lawyer figure out why client has a work permit.



Employment Authorization Card

Follow-up questions to ask if client has work permit:

- * What is your immigration status?
- * How did you get your work permit?
- * Did you submit another application in connection with your work permit?
- * What application? Or why do you have a work permit?

Ask to see the work permit. Write down the category, A# and dates.

Other people in the grey zone



People Ordered Deported

also known as:
Post-Final Order
Deferral of removal

(sometimes people will
identify as undocumented)

There are a few common pathways:

An immigration
judge ordered
client deported

Client was present. Immigration
judge denied all relief.

Client was not present. May not even
know a judge ordered them
deported.

Client was present. U.S. government
decided not to deport client based on
situation in home country. Often under
an order of supervision. May have work
permit.

Questions to ask:

- * What is your immigration status? Or,
How did you get your work permit?
- * When were you ordered deported?
(How do you know this?)
- * Is your order of deportation on
appeal?
- * Do you have to check-in with
immigration?

Common documentation
Work permit

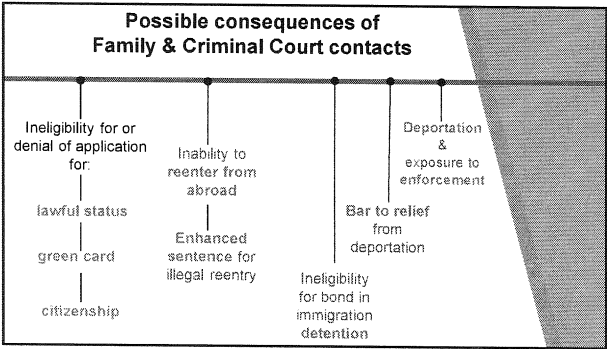
**SO WHAT
DOES THIS
MEAN IN
PRACTICE?**

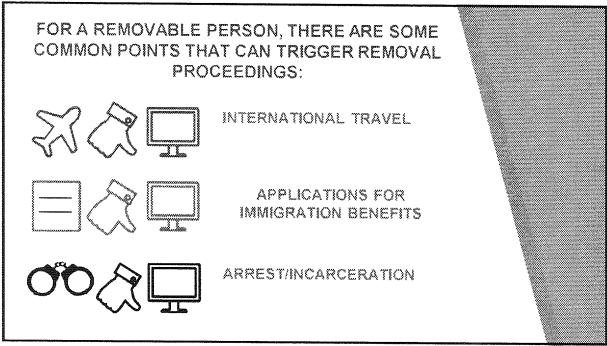
To be effective, you must first
identify all clients who are not
U.S. citizens.

Then, you must advise them
about the immigration
consequences of the current
case.

**CRIM-
IMM 101**

**Deportation is not
the only possible
consequence of
Criminal/Family
Court contacts!**







First, which types of cases trigger immigration consequences?

WHAT TYPES OF CRIMINAL COURT CONTACTS TRIGGER CONSEQUENCES?

All levels of NYS criminal cases can have consequences!

FELONIES
MISDEMEANORS
VIOLATIONS

IMMIGRATION CONSEQUENCES

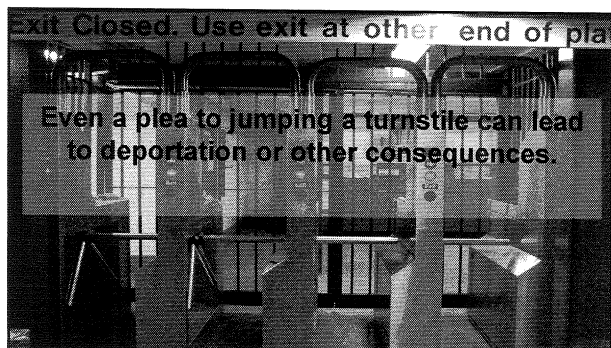
VIOLATIONS → IMMIGRATION CONSEQUENCES

For example:

PHL 229 (a common disposition in Summons Court) PL 240.26 (harassment)

PL 221.06 (unlawful possession of marijuana) even PL 240.20 (disorderly conduct) for some clients

can have consequences!



Some dispositions that are not even convictions in NY can trigger

→

IMMIGRATION
CONSEQUENCES

The INA defines “conviction” differently and more broadly than NYS does.

So, a plea is not immigration-safe just b/c it leaves the client w/o a criminal conviction.

INA § 101(a)(48)(A), 8 U.S.C. § 1101(a)(48)(A)

NY dispositions that ARE convictions for immigration purposes

- Violations
- Sealed violations
- Any type of diversion with an upfront plea
- JO
- Summons Court pleas

All of these can trigger immigration consequences!

Upfront pleas are convictions for immigration purposes?

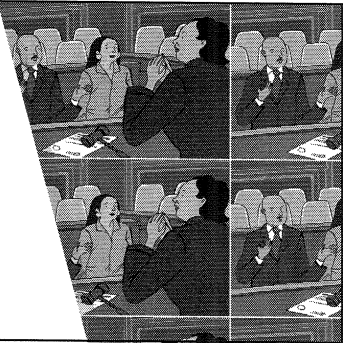
YES!

ANY upfront plea, even if it is later vacated, remains a conviction for immigration purposes.

MAKE A REFERRAL BEFORE ACCEPTING UPFRONT PLEAS!

Past criminal contacts can have immigration consequences...

even cases from years ago or ones that were dismissed.




TAKEAWAYS

Refer, even for violation offers or if the case seems minor!

Refer, even if the case involves serious charges!

Refer if your client is offered any type of diversion with an upfront plea. The first plea is what will count!

Always provide the PSC with your client's full criminal history!



So, what do I need to know about crim-imm to understand PSC advisals?

HOW THE FEDERAL GOVERNMENT DETERMINES WHO THEY THINK IS REMOVABLE:

The federal government reviews →

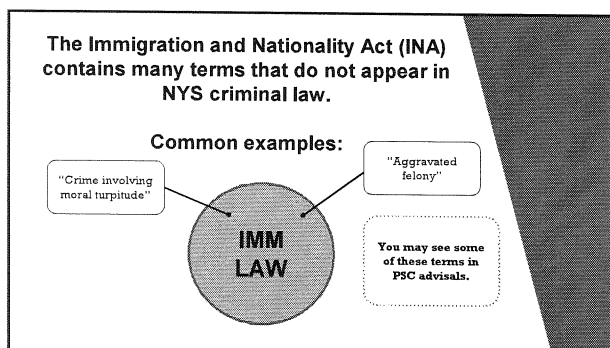
...and decides that, under immigration laws, the individual can be deported.

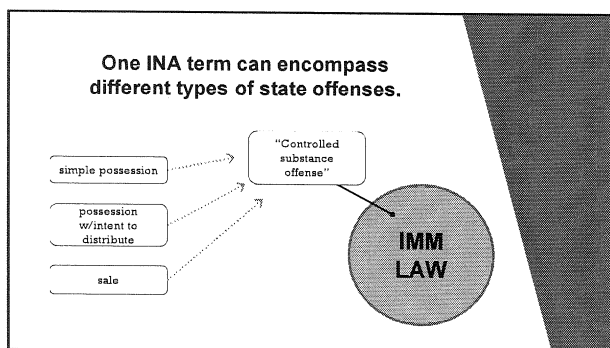
Whether that person actually ends up in removal proceedings depends on

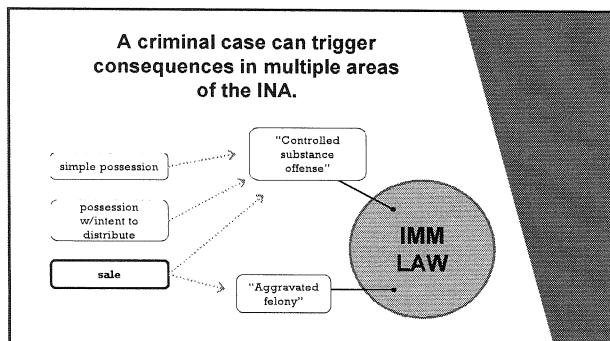
Immigration laws that define who is removable

+

The federal government's priorities about which removable people to pursue for deportation (constantly changing)







On top of that, it is not just a conviction that can trigger consequences.

Certain aspects of a criminal case can trigger

IMMIGRATION CONSEQUENCES

For example:

Admissions

Conduct

Indictment

Subsection of statute

Punishment/sentence

This may be why a PSC lawyer is so particular about certain aspects of your case (e.g. knowing specific subsection, suggesting allocations or avoiding a specific # of days in jail).

These can also be used to mitigate immigration consequences.

NYS LAW

IMM LAW




The definitions of these INA terms and which NYS criminal laws, if any, fall under them are the subject of constant litigation.

We can help advise you!

Individual analysis is required for every case.

There is no one-size-fits-all advisal. The same disposition can trigger different consequences depending on your client's individual circumstances.

Example: NYS A-misdemeanor → "Crime involving moral turpitude" (CIMT)

	Imm history	Crim history	Consequence?
	Entered as LPR in 2000.	None.	Plea does <u>not</u> make clt deportable.
	Entered as LPR in 2014.	None.	Plea makes clt deportable.
	Entered as LPR in 2000.	Prior plea to same thing.	Plea makes clt deportable.

Note: While plea may not make deportable as a CIMT, it may have other imm consequences!

TAKEAWAYS

One case can trigger multiple immigration consequences.

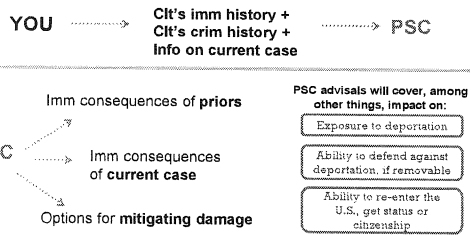
PSC will help identify non-conviction triggers (e.g. admissions, etc.) & try to use them to mitigate consequences.

PSC experts can advise about the constantly evolving interpretations of the law.

The analysis for each client is a unique interplay between that individual's imm/crim history and the current charges/offers.

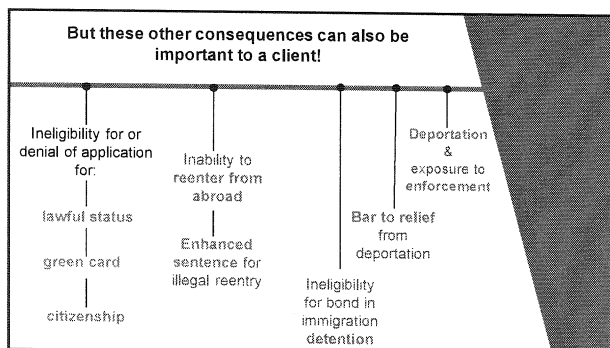
What types of immigration consequences will I need to discuss with clients based on PSC advisals?

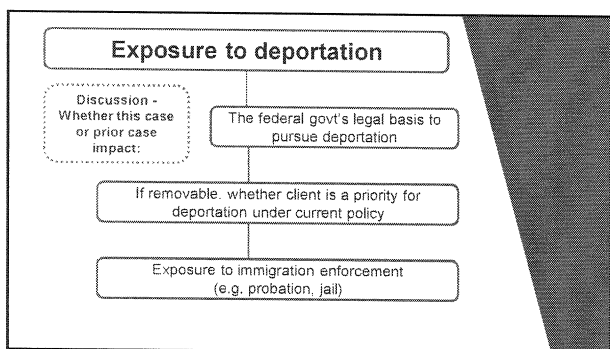
QUICK REVIEW OF PSC ADVISALS



First, it is important to understand your client's priorities.





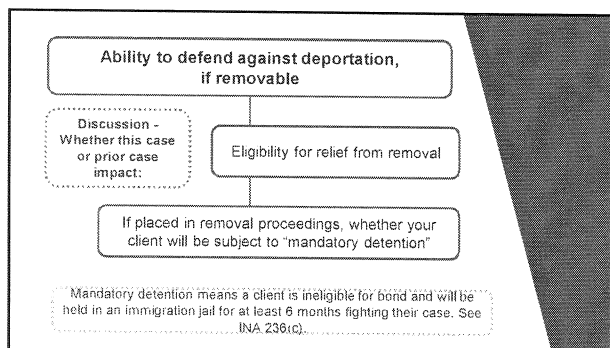


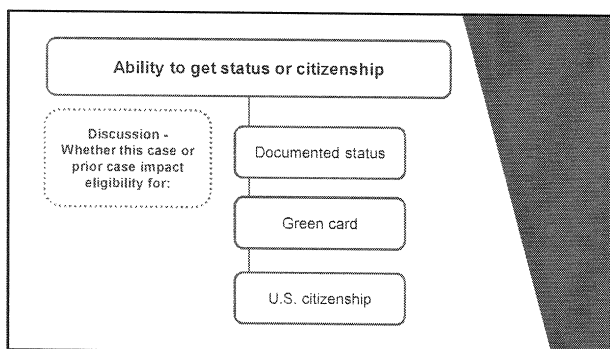
Ability to defend against deportation, if removable

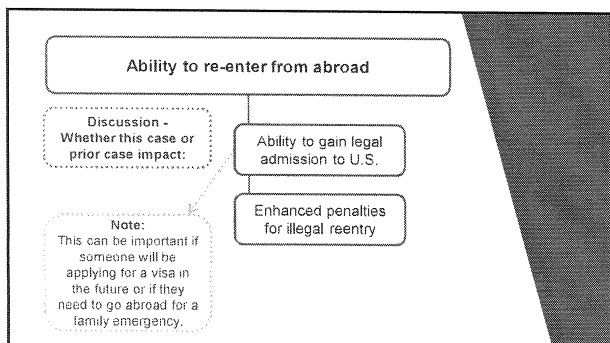
There are different forms of "relief" from removal available to certain people under the INA.

Some are like pardons where an immigration judge weighs everything in a person's life. Some are based on your client's individual circumstances – for example, whether they fear returning to their country of birth.

Criminal cases can bar eligibility and impact discretionary decisions to grant relief.







OTHER ISSUES


Additionally, we advise on how your case impacts any pending applications or removal proceedings!

HOW TO REFER

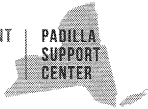
- ✓ Refer as early as possible.
- ✓ Gather as much information as you can (see Guide for Referral questions).
- ✓ If your client doesn't know specific information about immigration status, criminal history, or family history – we can still work with you.

212-725-6422
www.immdefense.org/psc

THANK YOU!

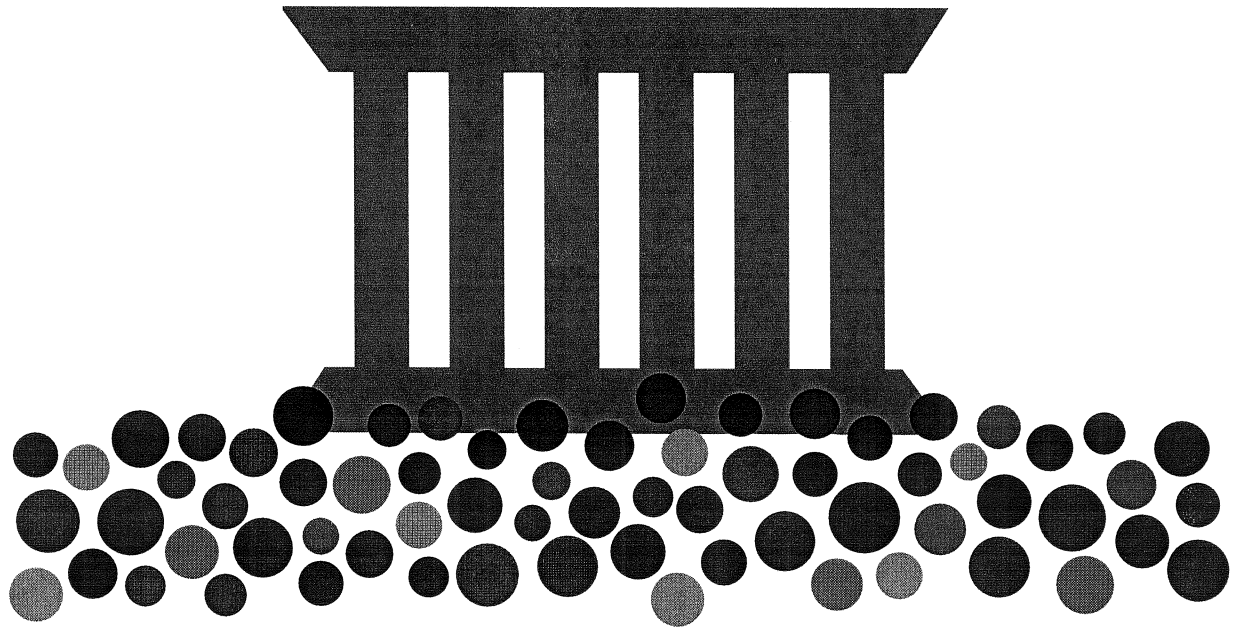


IMMIGRANT
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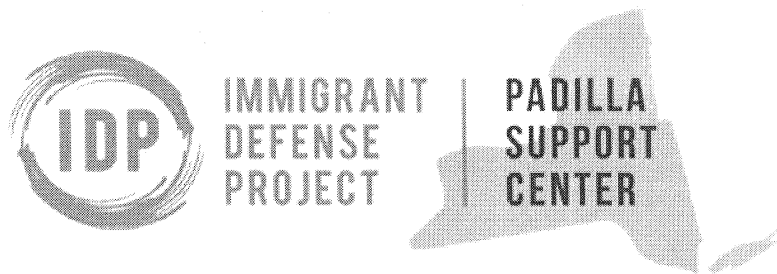
Presentation: © Immigrant Defense Project, 2016
Illustrations: Bishakh Som, www.archicomix.com



IMMIGRATION STATUS GUIDE FOR ASSIGNED COUNSEL

This quick-reference guide is designed to help appointed counsel in NYC Criminal Court and Family Court interview clients and identify common immigration statuses for the purposes of receiving accurate legal consults from the Padilla Support Center.

This guide is not exhaustive. It is for informational purposes only and is not a substitute for individualized legal advice.



Immigrant Defense Project | Padilla Support Center
212-725-6422 | immdefense.org/psc

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Illustrations by Bishakh Som, www.archicomix.com

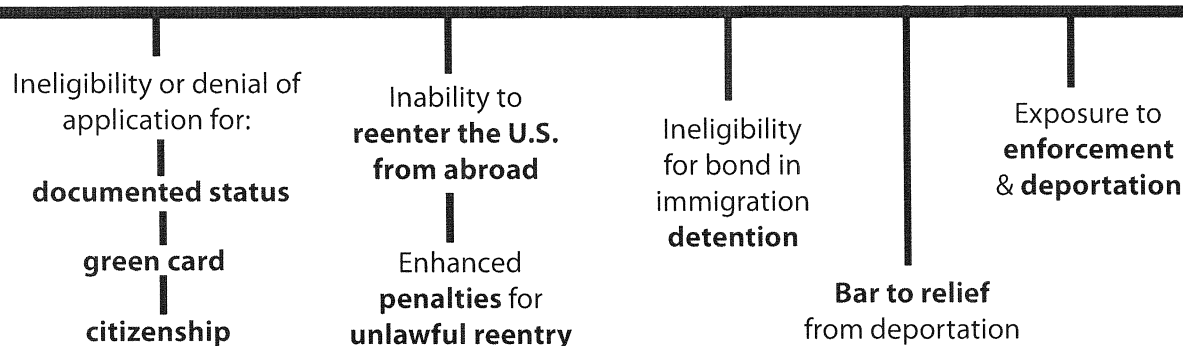
INTRODUCTION: USING THIS GUIDE

Contact with the Criminal & Family Court systems can lead to a broad range of adverse immigration consequences -- including deportation -- for both documented and undocumented people. These consequences are not always immediately obvious and can impact clients years after the resolution of a case. Moreover, even a pending Criminal or Family Court case can impact clients who are not U.S. citizens.

It is crucial to seek expert immigration advice early in a case so that you can try to mitigate these potentially devastating consequences and your client can make informed choices prior to the outcome of the case.

Moreover, **Criminal Court defenders**, in 2010, the U.S. Supreme Court held that **it is your constitutional duty** to provide affirmative, accurate and individualized advice about the immigration consequences of criminal charges prior to any plea. See *Padilla v. Kentucky*, 559 U.S. 356 (2010).

The broad spectrum of immigration consequences that can flow from Criminal & Family Court contacts



The foundation of an accurate immigration consult

In order to get an accurate consult, it is important to gather the following information unique to your client:



This guide will help you identify common immigration statuses so that you can have a productive conversation with clients and gather the most accurate information possible. On the next page, we detail some of the **fundamental questions** to ask clients about their immigration histories. Throughout the guide, we provide **follow-up questions** you may ask clients to verify their immigration status. Additionally, the appendices lay out definitions for common **immigration terms/abbreviations** and depict common **immigration documents**.

WHEN YOU FIRST MEET CLIENTS

First, ask **EVERY** client:

Where were you born?



Note: Discussing immigration status can be sensitive. Some people are afraid to talk about it. Some don't fully understand it. Make clear to clients that you work for THEM, not the federal government.

It is important to ask this of **ALL** clients -- not just ones who you think are not U.S. citizens (USCs). Many non-USCs speak English fluently without an "accent," and some came to the U.S. at such a young age that *they* might mistakenly think they are USCs. Asking, "**where were you born?**" will help you identify immigrant clients of all backgrounds.

NEXT, determine if your client is a U.S. citizen (USC). If your client was born outside of the U.S. and is not a USC, a Criminal or Family Court case can have adverse immigration consequences, including deportation.

If the client is not a USC, gather the following information for a legal consult:

- Where were you born?
- What is your date of birth?
- What is your current immigration status? Since when [date]?
- When did you come to the U.S. [date]?
- How did you enter the U.S.? In what status? (e.g. green card, visa, undocumented)
- Do you have an immigration number (A number)? If so, what is it?
- Have you had past contact with immigration?
- Do you have any pending immigration applications? If so, what and where are you in the process?
- Is there a deportation case against you?
- Immigration status of mother/father; legal spouse/partner; children

Photocopy any documentation client has of immigration status.

Refer as early in the case as possible. Submit a request for advice by webform (preferred) at immdefense.org/psc or by phone at 212-725-6422. We will contact you to complete intake within 2 business days.

U.S. Citizens (USCs)

Common ways to become a USC:

By birth in the United States

Your client is a USC if born in:

- a territory of the U.S.
- **Puerto Rico**
- Guam
- U.S. Virgin Islands

8 USC 1401(a)&(b), 1402, 1404-7, 1408

Documentation

- U.S. Passport
- Birth certificate
- Certificate of Citizenship
- Certificate of Naturalization

Acquired or derived through USC parent(s)

A client may have acquired citizenship if born abroad to USC parent(s). 8 USC 1401, 1403, 1409

A client may have derived citizenship if parent(s) became naturalized citizen(s) when client was under 18.
8 USC 1431

These areas of law are very complicated. Determining this requires individualized analysis by an immigration lawyer!

By application (naturalization)

- Must be LPR for a period of years before applying. 8 USC 1429
- Must prove "good moral character" (GMC). 8 USC 1101(f), 8 CFR 316.10
- Approval is discretionary.
- May be barred or denied b/c of Family or Criminal Court contacts.
8 USC 1421-1458

Questions to verify naturalization:

- Did you apply to become a USC?
- Did you take a test?
- Did you attend an oath ceremony?

U.S. Citizens cannot be deported.*

Anyone who is not a USC can be deported.

Beware: some people may incorrectly believe they are USCs — particularly those who came to the U.S. as children. Always ask follow-up questions to verify!

*except if there was fraud in the naturalization application, then client could be at risk of denaturalization & deportation.

Lawful Permanent Residents (LPRs)

also known as:
legal permanent resident
green card holder
legal
residente
tengo la residencia

LPRs have been lawfully admitted to the U.S. and given permission to live and work permanently. 8 USC 1101(a)(20)

After 3-5 years, LPRs can apply to naturalize (i.e. become U.S. citizens). Military service members may be eligible for expedited citizenship.

Common ways to become an LPR:

Family member
petitions

Employer petitions

Humanitarian relief
leading to a green card
(VAWA, SIJS, U, asylee/
refugee)

Step 1: Petitioner submits petition (e.g. Form I-130/I-140).

Step 2: Once initial petition approved, immigrant applies for green card, submitting fingerprints and going through an interview.

→ Some people enter the U.S. for the first time with a green card.

→ Others apply to become LPRs after living in the U.S. for a period of time. This is often called "adjustment of status."

Questions to Verify:

When did you get your green card? (on green card -- Resident since: XX/XX/XX)

How did you get your green card?

- Family petition (e.g. parent, spouse, child, sibling)?
- Employer petition?
- Got it because of other documented status?

A number (8- or 9-digit # on the green card)

Documentation

- Green card (even if expired)
- Stamp in passport or I-94 Arrival/Departure Card, stating "temporary evidence of lawful admission for permanent residence"
- Receipt from application, aka I-797, Notice of Action (write down filing date & receipt #)

Note: LPR status does not terminate just because physical green card has expired.

Undocumented People

People who are undocumented do not have authorization from the federal government to be in the U.S. and can be deported for this reason alone. 8 USC 1182(a)(9)(B)

However, some undocumented people may be eligible to avoid deportation and become documented.

also known as:
out of status
without status
entered without inspection
EWI
entered without papers
visa overstay

—“illegal”—

Who is undocumented?

Entered without Inspection (EWI)

People who **entered without permission** from the federal government
8 USC 1182(a)(6)(A)

For example:

Walked over land border or arrived by boat + wasn't stopped by immigration officers

Some clients describe it as “entered without papers.”

Visa Overstay

People who entered on **valid travel documents** but **overstayed** the period of time in which they were authorized to be present
8 USC 1202(g)

Example of common valid travel documents:
tourist visa
student visa
business visa

Documentation

Stamp in passport or I-94
Arrival/Departure Record, stating “admitted-until” date or D/S (duration of stay)

BEWARE: Some people will say they have a **10-year visa**. This does not authorize them to be in the U.S. for 10 years continuously. It only authorizes them to take multiple trips over the course of 10 years for designated periods of stay. Check documentation to see if/when their latest stay expired.

Questions to Verify:

When and how did you enter the U.S.?

Have you ever had contact with immigration authorities?

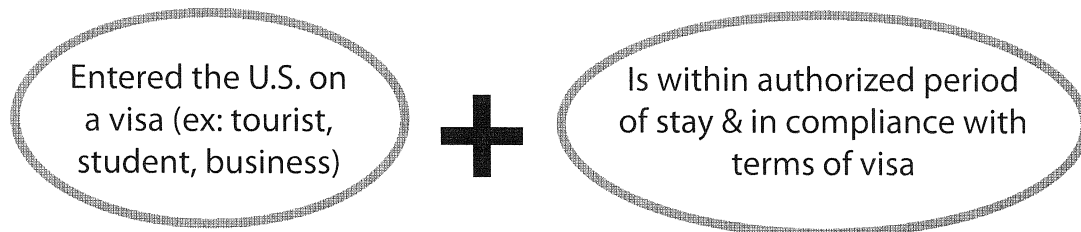
- Contact with officers when entering?
- Ever applied for a visa or documented status?
- Seeing an immigration judge?

If entered on a visa, how long were you authorized to stay?

Grey Zone: Documented People

Valid Visa Holders

A valid visa holder has been admitted to the U.S. for a finite period of time after which the person must renew the visa, apply for a different status, or leave the country. 8 USC 1201(c)



An arrest can interfere with a client's ability to comply with the terms of his or her visa (ex: student visa holder missing classes while incarcerated).

In addition, an arrest alone can lead the federal government to revoke a valid visa, leaving the person undocumented. 8 USC 1201(i)

Documentation

Stamp in passport or I-94 Arrival/Departure Record, stating "admitted-until" date or D/S (duration of stay)

Questions to Verify:

What type of visa do you have? (ex: tourist, student, business)

When does your authorized stay end [date]?

Do you have an immigration lawyer? If yes, get contact information.

WORK PERMIT IS NOT A STATUS!

When you ask about immigration status, some clients might respond, "I have a work permit." A work permit is merely a SIGN that an individual has had contact with immigration and has applied for some form of benefit.

Reasons someone might have a work permit:

- Pending application for a green card, asylum, etc.
- Proof of grant of asylum, TPS, DACA
- Ordered deported but under an order of supervision

The category code on the EAD will help an immigration lawyer figure out why a client has a work permit.

Documentation

Work permit (aka Employment Authorization Document aka EAD)

Information to verify:

- **Why do you have a work permit?**
- **Did you submit an application in connection with your work permit?**
- **A# on EAD (8- or 9-digits)**
- **Category code on EAD**
- **Dates on EAD**

Grey Zone: Documented People

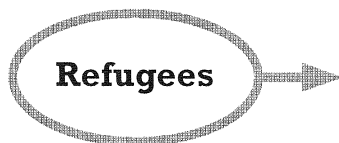
For the following individuals, we describe them “documented” because immigration authorities are aware that they are present in the United States and have granted them a “benefit” under immigration law.

Some forms of relief below provide a pathway to a green card (and ultimately U.S. citizenship); some do not and are only a temporary agreement by the federal government not to seek physical removal.

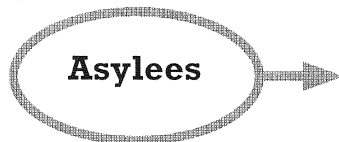
Some people are granted documented status because of
conditions in their home country.

Refugees/Asylees

Refugees/asylees have been granted protection in the U.S. because they have been persecuted or fear persecution in their home country because of race, religion, nationality, political opinion, or membership in a particular social group. 8 USC 1157, 1158



People apply for refugee status from outside of the U.S.
8 USC 1101(a)(42) for definition of refugee



- Meet the definition of refugee + apply for asylum from inside the U.S.
- Often enter the U.S. without documentation or in some other status before applying for asylum

Both refugee & asylee status provide a **pathway to a green card** after a year. 8 USC 1159(a)(1), (b)
Refugees and asylees can work in the U.S.

Documentation

- Category on work permit
- I-94 Arrival/Departure Card, with stamp stating asylum granted or admission under section 207 of the INA
- Refugees may have a document stating that they have been “admitted as a refugee pursuant to section 207 of the INA.”
- Asylees may have a document from USCIS or DOJ stating they have been granted asylum
- Order of Immigration Judge granting asylum

Note: A work permit does not necessarily mean the client has been granted asylum. People can receive work authorization merely for APPLYING.

Grey Zone: Documented People

Temporary Protected Status (TPS)

TPS is granted to people from designated countries where **conditions temporarily prevent them from returning safely** (ex: environmental disasters, armed conflict, epidemics). 8 USC 1254a

How people get TPS:

Countries are designated for a limited period of time. Applicants must have resided continuously in the U.S. since their home country's designation date and must apply within the specified registration period. 8 USC 1254a(c) People who are undocumented may be able to become documented if they meet all eligibility criteria for TPS.

TPS must be renewed every 18 months.

Important information about TPS:

TPS is a temporary designation that allows people to live and work in the United States. However, it is **NOT** a pathway to a green card or any other immigration status.

Countries designated for TPS, as of February 2016:

- El Salvador
- Guinea
- Haiti
- Honduras
- Liberia
- Nepal
- Nicaragua
- Sierra Leone
- Somalia
- Sudan
- South Sudan
- Syria
- Yemen

Documentation

- Category on work permit
- Receipt from application aka I-797, Notice of Action

Some people become documented because they have been the **victims** of certain types of **crime, domestic violence or trafficking**.

Violence Against Women Act (VAWA)

VAWA is a form of relief for survivors of **domestic violence**. It allows an abused spouse or child of a USC or LPR or a parent of a USC to self-petition for LPR status. 8 USC 1154(a)(1)

VAWA is available to both men and women. People who are undocumented may become documented if otherwise eligible for VAWA protection.

VAWA allows someone to live and work in the United States. It is a **pathway to a green card**.^{*} 8 USC 1255(a), (c)

^{*} Step one is getting an approved VAWA self-petition. Only then can the person apply for LPR status (although not everyone with an approved VAWA self-petition is immediately eligible for a green card).

Documentation

- Category on work permit
- Receipt from application aka I-797, Notice of Action

Grey Zone: Documented People

U Visa

U visas provide documentation to people who have been **victims of crime** in the United States.
8 USC 1101(a)(15)(U)

General eligibility (all 3 required):

- Victim of certain type of crime
- Suffered harm
- Was helpful to law enforcement (& law enforcement certifies this)

Documentation

- Category on work permit
- Receipt from application aka I-797, Notice of Action

Note: the work permit for U visa recipients lasts for 4 years & can be renewed

A U visa is valid for up to four years (but may be extended). U visa recipients can live and work in the U.S. People who are undocumented may be able to become documented if they qualify for a U visa.

- It is a pathway to a green card. After three years of having a U visa, a person can apply to become an LPR. 8 USC 1255(m)

T Visa

T visas provide documentation to people who have been **victims of human trafficking** (ex: trafficked into sweatshops, sex industry, domestic servitude, agricultural labor, etc.).
8 USC 1101(a)(15)(T)

General eligibility (all 4 required):

- Physically in U.S. on account of trafficking
- Suffered severe form of trafficking
- Cooperated with law enforcement (if 18 or older)
- Will suffer extreme hardship if deported
8 CFR 214.11

Documentation

- Category on work permit
- Receipt from application aka I-797, Notice of Action

Note: the work permit for T visa recipients lasts for 4 years & can be renewed

A T visa is valid for up to four years (but may be extended). T visa recipients can live and work in the U.S. People who are undocumented may be able to become documented if they qualify for a T visa.

It is a **pathway to a green card**. Generally, after three years of having a T visa, a person can apply to become an LPR.

8 USC 1255(l)

Grey Zone: Documented People

Some individuals become documented because of humanitarian relief available by Executive Action to **young people**.

Deferred Action for Childhood Arrivals (DACA)

DACA provides “deferred action” to immigrants who were **brought to the U.S. when under 16 years of age** and who meet other eligibility requirements. “Deferred action” means the government has exercised its discretion and chosen not to deport someone who legally can be removed.

also known as:
the DREAM Act (Development, Relief, and Education for Alien Minors)
DREAMers

Important information about DACA:

DACA provides temporary relief from deportation. It may be revoked at any time. DACA is not a lawful immigration status. It is **NOT a pathway to a green card** or any other immigration status.

DACA lasts for 2 years after which it must be renewed.
DACA does allow for employment authorization.
uscis.gov/childhoodarrivals

Documentation

- Category on work permit
- Receipt from application aka I-797, Notice of Action

Special Immigrant Juvenile Status (SIJS)

SIJS is a classification that allows foreign born **children** in the U.S. who were **abused, abandoned or neglected by a parent** to live and work in the United States. 8 USC 1101(a)(27)(J)

SIJS is an **immediate pathway** to lawful permanent resident status. Approval of a SIJS petition makes a person immediately eligible to apply for a green card. However, people generally submit the SIJS and **green card** applications together. 8 USC 1255(a), (h)

Tip: People who have received SIJS have gotten required findings of fact from a court about their status as an abused, abandoned or neglected child. This may have happened in Family Court or Surrogate's Court.

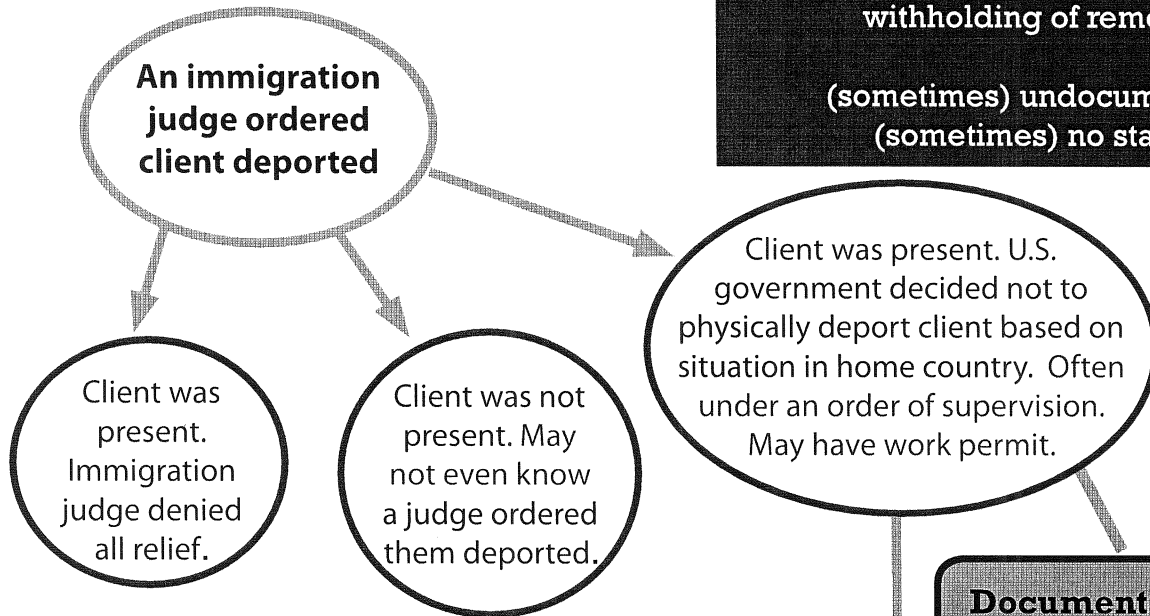
Documentation

- Category on work permit
- Receipt from application aka I-797, Notice of Action

People Ordered Deported

People who have orders of removal have been ordered to be deported by an Immigration Judge. Some people with orders of removal have been physically deported; some have not.

Common ways this happens:



also known as:
post-final order (PFO)
ordered removed
in absentia order
deferral of removal
Convention Against Torture (CAT)
withholding of removal

(sometimes) undocumented
(sometimes) no status

Important to know about people who have been ordered deported:

Depending on why they were ordered deported, they can be physically deported at any time. They do not have a right to see an immigration judge if taken into immigration custody for removal. 8 USC 1231(a)(5)

Some people who have been ordered deported may have a way to reopen their previous case and avoid deportation. Consult with an expert!

Questions to Verify:

What is your current status? (Beware: they may say "no status." Ask follow-up qs.)

When were you ordered deported? How do you know this?

Why do you have a work permit?

Is your order of deportation on appeal?

Do you have to report to immigration?

Documentation

- Category on work permit
- Order of supervision
- Decision from Immigration Judge

Why might the government decide not to physically deport this person?

- Country of citizenship will not issue travel documents for client to return
- Client granted relief under Convention Against Torture (CAT) or "withholding of removal" where ordered deported but person fears torture or persecution in country of citizenship

Guide to Common Terms/Abbreviations

Alien number (A# number): A unique eight- or nine-digit number assigned by the Department of Homeland Security to people who are not U.S. citizens. This number is found on all immigration documents, including greencards, receipt notices, and ICE documents. Not all immigrant clients will have an A#.

Adjustment of status (AOS): The procedure for getting a green card and becoming an LPR while inside the United States, as opposed to “consular processing,” which is applying for a green card from abroad. AOS is available only to immigrants who fit certain eligibility criteria. The process includes fingerprinting for a criminal record and order of protection review as well as an in-person interview.

Alien: The term used in the Immigration and Nationality Act (INA) to describe people who are not U.S. citizens.

Arrival-Departure Record/Card (Form I-94/I-94A): A white card placed in a non-USC’s passport when he or she enters the United States. Post-2013, the physical cards are not issued but the record is available online. I-94 cards are also issued with the approval of certain applications for an immigration benefit. The card indicates the immigration status under which the individual was admitted into the US, and, if applicable, how long they are authorized to stay in the US -- either with a specific date, or with a notation such as D/S (Duration of Status).

Asylees: People granted an immigration benefit (**asylum**) because they fear returning to their country of origin based on past or future persecution due to race, religion, nationality, political opinion, or membership in a particular social group. (see pg. 9)

B-1/B-2 non-immigrant visa: Tourist or visitor visa. Although the visa may be for a period of years, the authorized period of stay for each visit to the U.S. typically is shorter and indicated on the I-94. (see pg. 8)

BIA: Board of Immigration Appeals, the administrative court that decides appeals of decisions from Immigration Judges.

CAT: Convention Against Torture, an international treaty that provides an immigration benefit allowing individuals to remain in the U.S. if they can prove they would likely face torture upon removal to their home country. NOTE: recipients of CAT have an order of deportation that has been withheld. (see pg. 13)

CBP: Customs and Border Patrol. CBP is the agency within DHS that polices the U.S. borders and ports of entry. CBP refers people for deportation and also facilitates the removal of individuals from the U.S.

Consular processing: The procedure for getting a green card and becoming an LPR for individuals who apply from abroad. It includes fingerprinting for a criminal record and order of protection review as well as an in-person interview at an overseas U.S. embassy or consulate.

Consulate: An office of the U.S. Department of State (DOS) located overseas and affiliated with a U.S. embassy. Consulates process temporary visa applications and some green card applications.

DACA: Deferred Action for Childhood Arrivals, an immigration benefit for children brought to the U.S. when they were under 16 (see pg. 12)

DAPA: Deferred Action for Parental Accountability. DAPA is a deferred action program (like DACA but for parents of USCs and LPRs) that was introduced in 2014. It is currently the subject of ongoing litigation and not yet available to otherwise eligible individuals, but may be in the future.

Guide to Common Terms/Abbreviations

Deferred Action: A form of prosecutorial discretion, typically based on humanitarian reasons, where DHS will agree not to remove an individual from the U.S. for a set period of time. It is determined on a case-by-case basis and does not provide long-term lawful immigration status.

DHS: Department of Homeland Security. DHS replaced the Immigration and Nationality Service (INS) in 2003 and is the umbrella agency for CBP, ICE, and USCIS.

EAD: Employment Authorization Document, also known as a “work permit.” An EAD is a card issued by USCIS on Form I-765 as proof that certain individuals are authorized to work in the US. The card contains a category code that indicates how the individual obtained work authorization.

EOIR: Executive Office of Immigration Review, which houses the immigration courts.

F-1 non-immigrant visa: Student visa, provided to an individual who has been admitted to the U.S. as a full-time student at an accredited academic institution or language training program.

Green card: Card (Form I-551) provided to LPRs as proof of permanent resident status. Although older ones have no expiration date, the majority are valid for ten years. LPR status does not terminate upon expiration of the physical card.

H-1B non-immigrant visa: A visa designed to allow U.S. employers to recruit & employ foreign professionals in specialty occupations within the U.S. for a specified period of time.

I-94: See Arrival-Departure Record/Card.

I-130: Petition for Alien Relative. An I-130 is the form that a USC or LPR uses to establish the necessary legal relationship to a relative who wishes to become an LPR. Once approved, the immigrating relative then applies for a green card.

I-485: Petition to Register Permanent Residence or Adjust Status. An I-485 is the form used by an immigrant to adjust status to become an LPR. This is the second step in adjustment of status.

I-797: Notice of Action form USCIS uses to communicate with applicants or confer an immigration benefit. I-797s can indicate approval or rejection of a petition or application; receipt of payments; transfer of files; requests for evidence or fingerprints; interview and re-scheduled appointments; and information about re-opening cases.

ICE: Immigration & Customs Enforcement. ICE locates, arrests and detains removable people for deportation.

IJ: Immigration Judge. IJs preside over EOIR removal proceedings (immigration hearings/trials).

Immigration benefit: An application for an “immigration benefit” is a request to “confer, certify, change, adjust, or extend any status granted under the Immigration and Nationality Act.” See 8 USCS 1572.

INA: Immigration and Nationality Act. The immigration laws of the U.S. are contained within the INA, which can be cross-referenced with the U.S. Code at Title 8.

INS: Immigration and Naturalization Service, which was abolished in 2003. Its functions are now performed by three agencies within DHS – CBP, ICE and USCIS.

Guide to Common Terms/Abbreviations

LPRs: Lawful Permanent Residents, also known green card holders, can live and work permanently in the U.S. but also can be deported. (see pg. 6)

Naturalization: The affirmative process by which an LPR applies for and becomes a USC. The process includes fingerprinting for a criminal record and order of protection review; an in-person interview; and an oath ceremony.

Non-immigrant visa (NIV): See Visa.

Refugees: People who apply from outside of the U.S. and are granted an immigration benefit because of persecution or a well-founded fear of persecution in their country of origin due to race, religion, nationality, political opinion, or membership in a particular social group. (see pg. 9)

SIJS: Special Immigrant Juvenile Status, an immigration benefit for young people who were abused, abandoned or neglected by a parent. (see pg. 12)

Tourist visa: See B-1/B-2 non-immigrant visa.

TPS: Temporary Protected Status, an immigration benefit granted temporarily to individuals from designated countries where conditions -- such as a natural disaster or ongoing armed conflict -- prevent a national's safe return (see pg. X)

T visa: An immigration benefit for victims of human trafficking (see pg. 11)

USCIS: United States Citizenship & Immigration Services. USCIS processes and adjudicates affirmative applications for immigration benefits. USCIS refers removable people to ICE for deportation.

U visa: An immigration benefit for victims of certain types of crimes (see pg. 11)

VAWA: The Violence Against Womens Act grants benefits for victims of domestic violence (see pg. 10)

Visitor visa: See B-1/B-2 non-immigrant visa.

Visa: A visa allows an individual to seek entry into the U.S. on either a temporary or a permanent basis. A "non-immigrant visa" (NIV) allows an individual to come to the U.S. for a limited period of time and for a specific purpose, not to live in the U.S. permanently. Non-immigrant visas have certain classifications (e.g. student (F), visitor (B), temporary worker (H)). The Department of State (DOS) adjudicates visa applications submitted abroad. DHS and CBP officers determine admission into, length of stay and conditions of stay in, the U.S. at a port of entry. The terms of admission appear on the Arrival/Departure Record (I-94 white or I-94W green) and in his or her passport.

Withholding of removal: A form of immigration relief that allows a person to remain in the United States to avoid persecution in their country of origin. NOTE: people who have withholding of removal have orders of deportation; the physical deportation is withheld. (see pg. 13)

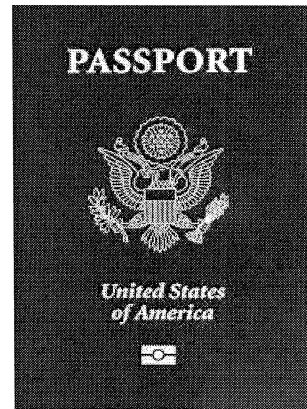
Photo Guide to Common Documentation

Proof of U.S. citizenship

U.S. Birth Certificate

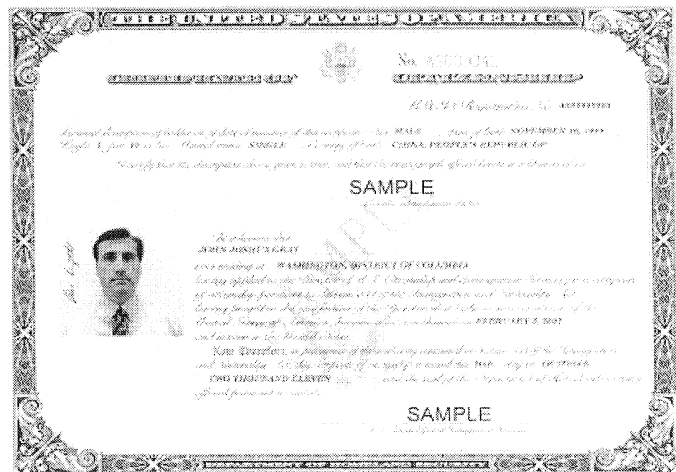
CERTIFICATE OF LIVE BIRTH					DEPARTMENT	
FILE NUMBER					61	
Type or print)	1b. Middle Name			1c. Last Name		
BARACK	HUSSEIN			OBAMA, II		
his Birth	4. If Twin or Triplets, Was Child Born			5a. Month	Day	Year
<input type="checkbox"/> Twin <input type="checkbox"/> Triplet	1st	2nd	3rd	August	4	1961
Town or Rural Location					6b. Island	
Honolulu					Oahu	
Institution (If not in hospital or institution, give street address)					6d. Is Place of Birth Inside City or If not, give judicial district	
Maternity & Gynecological Hospital					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Other: City, Town or Rural Location					7a. County and State	
Honolulu					Honolulu	
5. Kalaniana'ole Highway					7c. Is Residence Inside City or Town If not, give judicial district	
Oahu					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
7d. Is Residence on					7e. Is Residence on	
HUSSEIN					Obama	
9. Race of Father					9. Race of Mother	
African					African	
10b. Kind of Occupation					10c. Kind of Occupation	
Birthplace (Island, State or Foreign Country) U.S. - Usual Occupation					10d. Kind of Occupation	

U.S. Passport – issued by U.S. Dept. of State



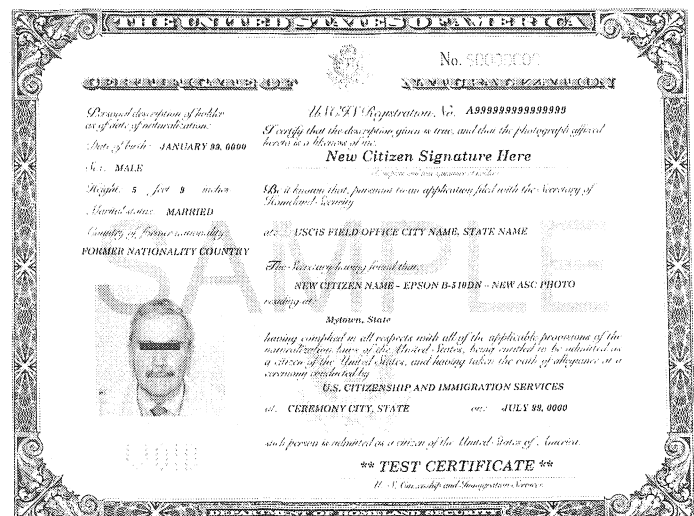
Form N-560/N-561

Certificate of Citizenship – issued to a person born outside of the U.S. who derived or acquired U.S. citizenship through a U.S. citizen parent



Form N-550/N-570

Certificate of Naturalization – issued to a person who became a U.S. citizen after 18 years of age through the naturalization process (Form N-550/N-570)



Form I-551 - Permanent Resident Card (Green Card)

RESIDENT ALIEN

U.S. Citizenship and Immigration Services

[REDACTED]

A [REDACTED]

HOU ICE

RESIDENT ALIEN
 U.S. Department of Homeland Security U.S. Customs and Border Service

CHOW, LAI PING

NAME

07 10 50
 DOB

A028256001
 ALIEN # (MEX)

07 17 01
 EXP

CHRG: 02 PRIOR

SAMPLE CARD

[illegible]

PERMANENT RESIDENT CARD

NAME CRITTENDEN LEE W.



INS # 022-345-679

Birthdate Category
10/02/48 P28 Sex M

Country of Birth
Canada

CANADIAN PRRES 11/01/94

Resident Since 11/01/97

C1USA0223456791EAC9730053465<<
4910040M9411014CAN<<<<<<<9
CRITTENDEN<<LEE<W<<<<<<<<<<<<

UNITED STATES OF AMERICA
PERMANENT RESIDENT

SPECIMEN TEST V 01 JAN 1920

Surname
SPECIMEN

Given Name
TEST V

USCIS#
000-000-001

Country of Birth
Utopia

Date of Birth
01 JAN 1920

Card Expires:
08/21/07

Resident Since:
08/21/07

Category
RE8

Sex
F

Test V. Specimen

L-551
Rev. 03-16-99

00000001

SPECIMEN
TEST V

DOB: 01/01/20 EXPIRATION DATE: 08/27/10
CARD# SRC0000000000
AA 000 000-001

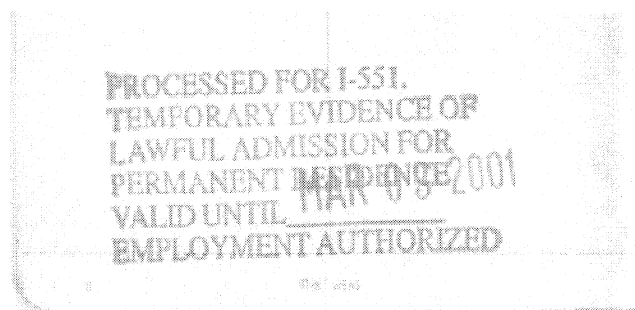
Specimen

If found, drop in any US Mailbox. USPS: Mail to USCIS, PO Box #2521, Lincoln, NE 68501-2521

C1USA0000000001SRC0000000001<<
2001012F0708214UTP<<<<<<<<<<6
SPECIMEN<<TEST<VOID<<<<<<<<<

www.immdefense.org

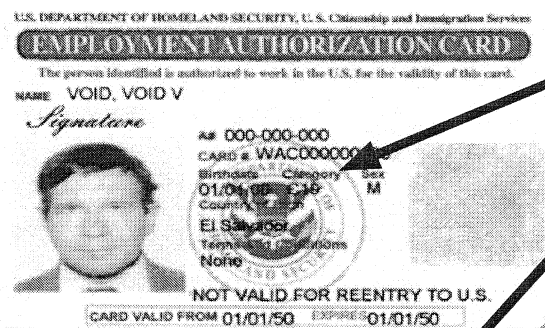
Foreign passport with visa & I-551 stamp indicating “temporary evidence of lawful admission for permanent residence”



Sample I-551 stamp

Temporary I-551 printed notation will also appear on machine-readable immigrant visas

**Issued prior to
October 25, 2011**



Note: Category code

**Issued October
25, 2011 - Present**

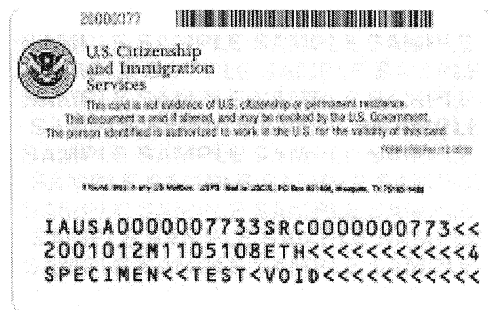
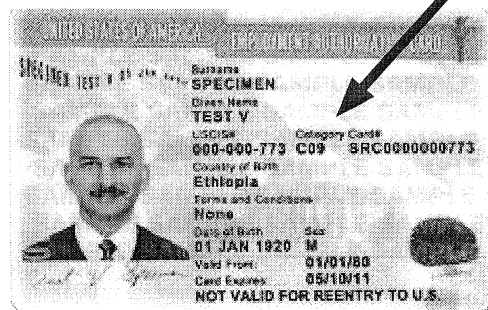


Photo Guide to Common Documentation

Form I-94/I-94W - Arrival/Departure Record or Card

Departure Number OMB No. 1651-0111

626633123 12

I-94
Departure Record

14 Family Name
SAMPLE

15 First (Given) Name
JANE

16 Birth Date (Day/Mo/Yr)
23 03 68

17 Country of Citizenship
NEW ZEALAND

See Other Side

CBP Form I-94 (10/04)
STAPLE HERE

ADMITTED
ATL
JUN 25 2006
Class L-1
Until April 23, 2009

Note: Admitted until date

Form I-797 - Notice of Action (Receipt Notice)

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797, Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER [REDACTED]		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANC(E), OR ORPHAN
RECEIPT DATE September 25, 2000	PRIORITY DATE September 19, 2000	PETITIONER [REDACTED]
NOTICE DATE February 5, 2009	PAGE 1 of 1	BENEFICIARY [REDACTED]
[REDACTED]		Notice Type: Approval Notice Section: Sister or brother of U.S. Citizen, 203(a)(4) INA