

The University of Texas School of Law  
October 21 – 23, 2020

IMMIGRATION AND NATIONALITY LAW CONFERENCE

## **Understanding United States Immigration and Nationality Laws**

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## **UNDERSTANDING UNITED STATES IMMIGRATION AND NATIONALITY LAWS**

### **I. IMPORTANT DEVELOPMENTS**

On October 2, 2020, the United States Citizenship & Immigration Services (USCIS) increased most all fees for applications and petitions. A few of the application fees decreased slightly, and there is a \$10 reduction for some applications if submitted online. The most significant increase was for a naturalization application which now costs \$475 more than previously. The old application fee (with the required biometrics fee) was \$725 while the new total is \$1,200.

Foreign nationals and their immigration counsel have been facing far more difficulties emanating from the Trump administration. Asylum applicants are frequently forced to remain in Mexico while awaiting U.S. hearings. Children and parents seeking asylum have been detained and frequently separated. Prosecutorial discretion has been almost eliminated; the Immigration & Customs Enforcement (ICE) agency has repeatedly stated that any foreign national within the U.S. who is out of status or undocumented is at risk of removal. Both nonimmigrant and immigrant visa applicants at U.S. consulates and embassies abroad are facing more “vetting” and their cases take longer to adjudicate. Presidential Proclamations have even temporarily blocked H-1B, L-1, J and other nonimmigrant visas applications at U.S. consulates abroad. Persons within the U.S. with valid multiple entry nonimmigrant visas are discovering that their visas have been revoked due to any arrest for driving under the influence even if they have not been convicted of an offense. President Trump has issued “travel bans” to prohibit the admission into the U.S. of citizens of particular countries, and he continues to push for the

construction of a wall along our country’s southern border. The Trump administration has hired thousands of additional employees for the Customs & Border Protection (CBP) agency who are assigned to immigration law enforcement. Backlogs for nearly every type of immigration and citizenship application have grown tremendously. Much of this is due to the USCIS issuing time consuming, inappropriate Requests for Further Evidence (RFEs), not giving deference to previous approvals, and needlessly conducting individual interviews for categories that were previously adjudicated without interviews. In addition, President Trump is advocating for a nearly 50% reduction of lawful immigration and the implementation of a new “points” system to favor immigration for persons fluent in English who are well educated, hold special expertise, or will bring significant capital investments to the United States. The Trump administration has vastly expanded the definition of an aspiring immigrant who might possibly become a “public charge.” Refugee admissions have been dramatically slashed over the past four years. This administration has repeatedly tried to eliminate the Deferred Action for Childhood Arrivals (DACA) program for children raised in our country.

Immigration laws and policies are constantly changing. Security and enforcement concerns have taken priority over timely adjudications of applications for immigration status submitted by employers for foreign national employees as well as by U.S. citizens for their relatives. This is a heavily regulated field with laws intended both to protect the United States workforce and to unify families. Congress must juggle competing interests in determining immigration policy: employers want to be able to hire skilled foreign labor, while labor unions and professional societies want to improve wages and working conditions for employees; immigrant families want to bring their relatives to the

U.S., while the quota system lags ever farther behind; and a global economy demands decreasing barriers, while an influx of unlawful immigration and the threat of terrorism results in tightening controls.

The U.S. Citizenship & Immigration Services (USCIS) concentrates on the intent of the individual: Is he/she an intending immigrant or nonimmigrant? The wrong answer might result in a return trip to the home country. Nonimmigrant status is temporary: one may only remain in the U.S. for a limited period of time. Immigrant status, commonly called "green card" status, signifies that a person has been granted permanent resident status and may reside in the U.S. indefinitely.

These government websites provide useful information about immigration laws:

[www.uscis.gov](http://www.uscis.gov) (U.S. Citizenship & Immigration Services)

[www.dol.gov](http://www.dol.gov) (U.S. Department of Labor)

[www.travel.state.gov](http://www.travel.state.gov) (U.S. Department of State)

### **USCIS Expanded Provisional Waiver Program**

In 2013, President Obama announced the creation of the Provisional Waiver program, whereby certain immediate relatives of U.S. citizens could apply for a provisional waiver of the unlawful presence ground of inadmissibility within the United States prior to leaving for their immigrant visa interview in their home country. The applicant had to prove extreme hardship to a U.S. citizen spouse and/or parent. On July 29, 2016 the USCIS announced a final rule which expanded the provisional waiver program to include lawful permanent resident spouses or parents as potential qualifying relatives. This final rule went into effect on August 29, 2016.

### **Parole in Place (PIP)**

On November 15, 2013, the USCIS released a new Policy Memorandum which spelled out the process for applying for Parole in Place (PIP). PIP may be sought for spouses, children, and parents of persons serving on active duty in the U.S. Armed Forces, in the Selected Reserve of the Ready Reserve, or who previously served in either of the two mentioned above (i.e. veterans). An I-131 application is submitted without fee to the USCIS Field Office with jurisdiction over the applicant's residence, and if granted, the applicant receives an I-94 card indicating parole in the U.S. for one year. Those applicants who would not normally be eligible to apply for adjustment of status within the United States because of their manner of entry may then solicit permanent resident status from within the United States despite an unauthorized entry. It is important to note that the applicant should not actually leave the United States and use the PIP I-94 card to seek to return from travel abroad. The intent of PIP is to keep families together, especially the loved ones of those who fight to keep our country safe. PIP does not provide a waiver of any 212(a)(9)(C) ten year "permanent" bar. The Trump administration attempted to eliminate PIP but so far has met with strong enough opposition that the program remains in place.

### **DOMA: Defense of Marriage Act Declared Unconstitutional**

On June 26, 2013, Section Three of the Defense of Marriage Act (DOMA) was declared unconstitutional by the U.S. Supreme Court. This meant that the federal government began to recognize the legal marriages of same-sex couples. Same-sex couples in committed relationships who are married in a country that recognizes such marriages can receive a variety of federal protections, including the right to seek permanent resident status for foreign-born spouses of U.S. citizens.

Even more significant was the Supreme Court ruling on June 26, 2015 legalizing same-sex marriages across the United States. Thirty-six states and the District of Columbia already recognized gay marriage, but this Supreme Court ruling required the remaining fourteen states to

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First appeared as part of the conference materials for the  
2020 Fundamentals of Immigration and Nationality Law session  
"Understanding United States Immigration and Nationality Laws"