

**NCPA's 39th ANNUAL MEETING & SEMINAR**  
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# **Immigration Law for Paralegals**

**Staying Afloat in a Sea of Change**

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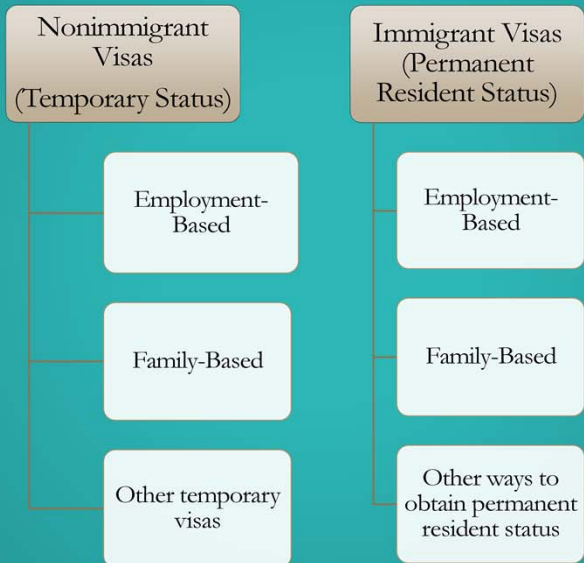


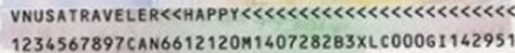
# Immigration Law for Paralegals

*Staying Afloat in a Sea of Change*

Presented by: Attorney Jessica Yañez  
NC Paralegal Association 39<sup>th</sup> Annual Seminar  
April 13, 2019

# Paths to Lawful Status





# What types of visas are available?

- B-1/B-2: Tourist/Business Visitor
  - E-1/E-2: Treaty Traders or Investors
  - F-1: Student
  - H-1B: Specialty Occupations
  - H-2A/H-2B: Temporary Workers
  - J-1: Exchange Visitor
  - K-1: Fiancée Visa
  - L-1: Intracompany Transferees
  - O-1: Extraordinary Ability
  - P: Performers and Athletes
  - R: Religious Workers
  - S: Informant
  - TN: NAFTA
  - T: Victims of Trafficking
  - U: Victims of Crime
- (See [travel.state.gov](https://travel.state.gov) for a complete list)

# Path to Lawful Permanent Resident Status

1. File Petition with U.S. Citizenship and Immigration Services Family, Employer, or “Other”, such as VAWA self-petitioners
2. If immediate relative, file for Adjustment of Status concurrently. If not immediate relative, consult Visa Bulletin and file when priority date is current.
3. Complete Biometrics Process
4. Receive temporary work/travel document
5. Respond to any additional requests for evidence
6. Complete interview
7. Receive green card (2-year v. 10-year)

# The Visa Bulletin (aka “The Line”)

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01JAN12	01JAN12	01JAN12	01NOV96	01OCT07
F2A	01NOV16	01NOV16	01NOV16	01NOV16	01NOV16
F2B	01SEP11	01SEP11	01SEP11	01JAN97	01SEP07
F3	01DEC05	01DEC05	01DEC05	01OCT95	15JUN95
F4	15NOV04	15NOV04	22JUN04	08FEB98	01MAR95

For current Visa Bulletin, see <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-april-2019.html>



# The Visa Bulletin

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	C	01JAN12	C	01JAN12	C	C	C
2nd	C	01SEP14	C	22DEC08	C	C	C
3rd	C	01JUN15	C	01MAY08	C	01JAN17	C
Other Workers	C	01MAY07	C	01MAY08	C	01JAN17	C
4th	C	C	15DEC15	C	22OCT16	C	C
Certain Religious Workers	C	C	15DEC15	C	22OCT16	C	C
5th Non-Regional Center (C5 and T5)	C	22JUL14	C	C	C	C	22JUL14
5th Regional Center (I5 and R5)	C	22JUL14	C	C	C	C	22JUL14

For current Visa Bulletin, see <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-april-2019.html>



# Obstacles to Lawful Status

- Grounds of Inadmissibility and Deportability
  - Unlawful presence
  - False claim to U.S. citizenship
  - Crime of moral turpitude
  - Public Charge
  - Substance abuse
  - Fraud/Misrepresentation
  - Aggravated Felony

## Is a Waiver Available?

- If yes, an applicant can seek adjustment of status or an immigrant visa abroad upon approval of the waiver.
- If there is no waiver available, then the applicant cannot obtain lawful status in the United States and will be subject to removal proceedings.

# Removal Proceedings

1. Notice to Appear
2. Master Calendar Hearing Date
3. Individual Hearing
4. Decision
5. Lawful status OR Voluntary Departure OR Final Order of Removal
6. Appeal to the Board of Immigration Appeals
7. Petition for Review to Federal Court of Appeals

# U.S. Citizenship

A person may be a U.S. citizen by:

- 1) Birth in the United States
- 2) Birth abroad to one or more U.S. citizen parent(s) (Derivative citizenship)
- 3) Naturalization
  - Three years if LPR status based on marriage to U.S. citizen
  - Five years for everyone else
  - Expedited naturalization based on military service

# Humanitarian Forms of Relief

Violence Against Women Act (VAWA)

Special Immigrant Juvenile Status

T Visas for Victims of Human Trafficking

U Visas for Victims of Certain Crimes

Deferred Action for Childhood Arrivals (DACA)

Temporary Protected Association (TPS)

# How does immigration law affect your practice?

- Real estate
- Family Law
- Criminal Defense and District Attorneys
- Tax Law

Are you asking the right questions? Do you know where to refer your clients for assistance with their immigration matters?



# Questions?

I'm happy to help!

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## **Immigration Law for Paralegals**

### ***Staying Afloat in a Sea of Change***

#### **I. Introduction**

In the fast-paced world of the law, paralegals are the guiding force that keep things running. In nearly every practice area, paralegals and attorneys are now working more frequently with clients who were not born in the United States. While immigration law can seem daunting to those who do not work in the field, a basic understanding of how our immigration system works will empower paralegals to provide much-needed support to both clients and attorneys, resulting in better outcomes for all involved. This presentation will provide an overview of the United States immigration laws, guidance for paralegals working with immigrants, and resources for how to stay informed in this ever-changing field of law.

#### **II. The Basics**

The easiest way to think about our immigration system is that there are multiple paths to obtain lawful status in the United States. Some paths are based on a person's employment, some are based on a person's family members, and other paths allow a person to apply for lawful status on his or her own. For many people, however, there is no path to lawful status at all due to the way that our immigration system is structured. Understanding these paths to lawful status will help paralegals and attorneys better understand their clients who are immigrants and how their legal needs may vary from those of U.S. citizens.

##### **i. Non-immigrant and Immigrant Visas**

Those who wish to come to the United States temporarily will seek "nonimmigrant" visas at the U.S. Embassy abroad. "Nonimmigrant" means temporary. If approved, the applicant will receive a visa stamped in his or her passport that allows entry to the United States for a specific amount of time. A tourist or visitor visa is an example of a nonimmigrant visa. Also, those who are coming to the United States to work temporarily or study are nonimmigrants.

"Immigrant" visas refer to those who are going to immigrate to the United States permanently. Individuals who are abroad process their immigrant visas at

the U.S. Embassy in the country where they reside. Upon entry, they receive their Lawful Permanent Resident cards, commonly referred to as “green cards” in the mail. There are so many types of visas that they are often referred to as “alphabet soup.” For a complete list of nonimmigrant and immigrant visas, see the U.S. Department of State website at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html>.

## **ii. Applying for Lawful Status in the United States**

Those who are residing in the United States apply for lawful status with an agency known as U.S. Citizenship and Immigration Services. Each type of lawful status begins with a petition. For example, an individual can file a petition on behalf of his or her family member, an employer can file a petition on behalf of an employee, and in some cases, a person can file a petition on his or her own behalf.

The petitions are numerous, and each have very specific instructions. Failure to comply with these instructions can result in rejections, lengthy requests for evidence, and ultimately denials. A simple mistake can lead to severe consequences for families and companies who are navigating the immigration system. For a complete list of the different forms required to apply for lawful status in the United States, see the USCIS website at <https://www.uscis.gov/forms>.

It can take months or years for the petition to be adjudicated, and approval of the petition is only the first step in the path to lawful status. After the petition is approved, individuals must apply for adjustment of status. For “immediate relatives”, including spouses, parents, and children of U.S. citizens, there is no wait and they can apply for adjustment of status concurrently with the petition. For others, they must wait for their priority date to become current. The priority date is the date that the petition is received by USCIS. Depending on which category applies, the wait can take up to more than 20 years! The U.S. Department of State publishes a Visa Bulletin every month to confirm the dates that they are processing. There are charts for both employment-based and family-based cases that can be accessed on the Department of State website at. See <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

The process for applying for permanent residency includes a biometrics appointment, where applicants have their photograph and fingerprints taken in order for background checks to be processed, a medical exam performed by an authorized civil surgeon, and, in the family-based categories, an affidavit of

support signed by a U.S. citizen or Lawful Permanent Resident confirming that the applicant will not become a public charge. The supporting evidence will vary depending on which type of case is filed and must be complete before the case will be scheduled for an interview at a local USCIS office. During the interview, an officer reviews all forms and supporting evidence prior to issuing a decision.

Those who are approved receive a ten-year Lawful Permanent Resident Card. Individuals who adjust status through a U.S. citizen spouse who have been married for less than two years at the time of the interview will receive a conditional resident card that is valid for two years. Prior to its expiration, the conditional resident and U.S. citizen will have to file an I-751 Petition for the conditions to be removed, at which time the ten- year permanent resident card will be issued.

Due to a recent policy change, individuals whose cases are denied will be issued a Notice to Appear, which means that they are placed in removal (deportation) proceedings. This makes the stakes very high, as one misstep can lead to removal from the United States. For additional information on the Notice to Appear policy that went into effect in 2018, see <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>.

### **iii. Grounds of Inadmissibility, Deportability, and Waivers**

The process of attaining lawful status in the United States is long, arduous, and expensive. There are numerous grounds of inadmissibility that must be taken into consideration. If an applicant is inadmissible, that means that he or she is not eligible for lawful status. There are many grounds of inadmissibility, some of the most common being unlawful presence, entry to the United States without inspection and admission, public charge, false claims to U.S. citizenship, and criminal grounds. See INA §212. Grounds of inadmissibility are taken into consideration when someone is applying for lawful status.

For some grounds of inadmissibility, there are waivers available. For example, an individual who has unlawful presence may seek a waiver by establishing extreme hardship to a qualifying relative, which includes a U.S. citizen or Lawful Permanent Resident spouse or parent. If the waiver is approved, the applicant can become a permanent resident. There are different types of waivers and procedures depending on whether an applicant is applying for a nonimmigrant visa or immigrant visa. For other grounds of inadmissibility, such as making a false claim to U.S. citizenship, there is no waiver available.

If one already has lawful status, then he or she is subject to grounds of deportability. While the grounds of inadmissibility and deportability are similar, the grounds of deportability are under a different statute. See INA §237. As with grounds of inadmissibility, there are also waivers available for certain grounds of deportability. Other grounds result in removal from the United States for life, with no chance of ever returning.

The grounds of inadmissibility and deportability are complex and require careful analysis to ensure that individuals apply for the appropriate form of relief. Oftentimes individuals and companies are unaware that these grounds apply, and the results in filing incorrectly are quite severe, including years of separation from family members and loss of valuable employees.

#### **iv. Citizenship and Naturalization**

For those who are successful in becoming permanent residents, they can remain permanent residents and renew their residency cards every ten years. Many decide to pursue U.S. citizenship as there are additional benefits to becoming a U.S. citizen.

After five years as a permanent resident, individuals can apply for naturalization to become a U.S. citizen. See INA §316. Those who obtain their residency through marriage can apply for naturalization within three years. See INA §319. There are special provisions in the law that allow for expedited naturalization for those who have served in the U.S. military. See INA §329.

Children who are born abroad to one or both U.S. citizen parents are derivative citizens and can apply for proof of citizenship at their local U.S. Embassy or with USCIS if residing in the United States. The derivative citizenship laws have changed throughout the years and the Immigrant Legal Resource Center has excellent charts that help determine whether an individual derived U.S. citizenship from a parent. See <https://www.ilrc.org/acquisition-derivation-quick-reference-charts>.

#### **v. Humanitarian Forms of Relief**

In addition to the family-based and employment-based paths to lawful status in the United States, there are numerous laws designed to provide

humanitarian relief to vulnerable populations. For example, refugee and asylum are forms of protection for those who have been persecuted in their country of origin or fear being persecuted if returned to their country of origin, on account of their race, religion, nationality, political opinion, or membership in a particular social group. See INA §208. While many seek asylum in the United States due to harsh conditions in their home countries, many asylum cases are denied due to the numerous requirements and often contradictory laws.

There are also U Visas for victims of certain crimes who assist authorities with the investigation of the crime. See 8 CFR §214.14(b)(1). T visas are designated for victims of human trafficking. See 8 CFR §214.11(b). Both U and T visas are limited to 10,000 and 5,000 per year respectively, which has resulted in a tremendous backlog in the U visa category.

Under the Violence Against Women Act (VAWA), an individual that is subjected to extreme cruelty, such as domestic violence, by a U.S. citizen or Lawful Permanent Spouse can file a self-petition, and, if approved, become a permanent resident. VAWA provisions also apply to parents and children of U.S. citizens and permanent residents. See Violence Against Women Act of 1994, Pub. L. No. 103-322

There are also laws to protect children who have been abused, abandoned or neglected. The Special Immigrant Juvenile Status involves state custody proceedings to establish that the child has been abused, abandoned or neglected and that it is not in the child's best interest to return to his or her country of origin. This form of relief is also subject to numerical limitations. See 8 CFR §204.11.

Recently, policy changes relating to Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) have resulted in increased litigation. These forms of relief meant to protect individuals who were brought to the United States as children and those who are from countries experiencing war and natural disasters. The fate of hundreds of thousands of individuals is yet to be determined when it comes to DACA and TPS. The National Immigration Law Center provides an excellent summary of the details surrounding DACA litigation See <https://www.nilc.org/issues/daca/daca-litigation-timeline/>. The Catholic Legal Immigration Network, Inc. (CLINIC) provides up-to-date information regarding TPS litigation. See <https://cliniclegal.org/resources/challenges-tps-terminations>.

## **vi. Removal Proceedings**

Individuals who are inadmissible or deportable are subject to removal from the United States. Removal proceedings begin with a Notice to Appear which informs the individual of the statute under which he or she is being charged as inadmissible or deportable. Some individuals are detained and must seek bond to be released from the immigration detention center. The individual is then scheduled for a Master Calendar hearing in federal immigration court to admit or deny the charges. If the individual is eligible for relief, the Immigration Judge will schedule future hearings. If relief is granted, removal proceedings will be terminated. If relief is not granted, the individual can take voluntary departure, or the Immigration Judge will issue an order of removal. If the individual is ordered removed, he or she can then appeal to the Board of Immigration Appeals, the Federal Court of Appeals, and ultimately the Supreme Court. Removal proceedings last for years and are extremely complex.

### **III. The Paralegal's Role in Assisting Clients Who Are Immigrants**

Paralegals who work in nearly every field benefit from having a basic understanding of immigration law. It is important to note that even immigration attorneys do not practice in every area of immigration law, as the field is simply too complex for one attorney to practice in every area. Many attorneys focus exclusively on employment-based immigration, while others focus exclusively on humanitarian cases, family-based immigration, waivers, or removal defense.

For those who do not work in immigration law, it is important to ask clients if they are U.S. citizens. If not, do not be afraid to ask what type of lawful status (if any) a client holds. For example, an individual faced with a DUI may stand to lose his DACA status and will be subject to removal. An individual who is a Lawful Permanent Resident may be subject to different tax laws in the United States and his or her home country. An undocumented parent may be afraid to proceed with a custody or domestic violence hearing if he or she is afraid of encountering immigration officers. These are just a few examples of how documented and undocumented immigrants may face different legal challenges. The paralegal's role is to ascertain the client's status, notify the supervising attorney to determine how the immigration status may affect the client's other legal matters, and then refer the client to an experienced immigration attorney for further assistance.

### **IV. Resources Available to Paralegals**



There are numerous resources available to those who wish to learn more about immigration law. The American Immigration Lawyers Association is a national organization with local chapters, including the Carolinas Chapter for North and South Carolina. Paralegals can be members and if their supervising attorney is a member, paralegals can have access to AILA resources as well. See [www.aila.org](http://www.aila.org).

Other valuable resources include the American Immigration Council, which provides updates in immigration law as well as fact sheets that help explain specific topics within the field. See <https://www.ilrc.org/acquisition-derivation-quick-reference-charts>. The Immigrant Legal Resource Center also provides in-depth information, policy updates, and online training in immigration law. See <https://www.ilrc.org/>. ASISTA is a national organization dedicated to helping immigrant survivors of violence. They provide resources for T and U Visas, as well as VAWA cases. See <https://asistahelp.org/>.

Finally, the North Carolina State Bar has a directory of immigration attorneys throughout the state who are Board Certified Specialists who are always willing to help. See <https://www.nclawspecialists.gov/for-the-public/find-a-board-certified-specialist/results/?id=1108>

While this is not an exhaustive list of available resources, this provides an excellent starting point for paralegals who want to learn more about the exciting and ever-changing field of immigration law.

## **V. Summary**

Learning immigration law is much like learning a new language. It can seem difficult and hard to understand, but over time issues relating to immigration will begin to become more familiar.

Paralegals are invaluable members of every law firm and by gaining this insight into immigration law, paralegals will know the right questions to ask, will be able to spot issues that may affect the firm's clients, and will know where to refer clients when they need additional assistance with their immigration matters.