

Bench Card: Overview of Types of Immigration Status

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PART I: Introduction

This bench card is designed to provide state family, juvenile, probate, civil and criminal court judges quick access information needed to help judges identify the various types of status that immigrants who appear in state court proceedings might have. It is aimed at assisting judges in recognizing the noncitizen parties before them could benefit from being referred to immigration counsel, and/or to organizations with expertise on the legal rights of immigrant victims of domestic violence, child abuse, human trafficking, sexual assault, stalking, or other crimes under immigration, family and public benefits laws.¹ It is important that both the court and litigants know how to access legally correct and up-to-date information on immigration law and to ensure that litigants and courts can learn whether and how a child's, crime victims, parent's or litigant's immigration status might affect or be affected by actions taken in the state court case.

In addition, this publication seeks to assist state courts by improving their understanding about when and which actions taken by the court might assist a noncitizen seeking legal immigration status, jeopardize a noncitizen's current immigration status, or make it easier or harder for a noncitizen to gain legal immigration status in the United States. The goal is to increase judges' awareness of how immigration law issues and immigration status does, or does not, impact or play a role in a case the court hears. This helps judges understand the immigration law consequences (good and bad) of their orders so that judges can avoid unintended consequences.

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 be aware that immigration law and the DHS policies that implement U.S. immigration laws are continuously changing, and updated information on immigration laws and policies affecting litigants who are immigrant crime victims and children is available from the National Immigrant Women's Advocacy Project (NIWAP), American University Washington College of Law on-line in the NIWAP library <http://niwaplibrary.wcl.american.edu/>. The NIWAP library contains training materials, webinars, and resources on a wide range of topics for judges and other professionals encountering immigrant victims of crime or abuse and immigrant children in their work. Judges hearing a case, writing an opinion, completing a U visa certification or a T visa declaration, having questions about a case that involves an immigrant crime victim, child, or family court litigant or seeking guidance and greater detail on immigration law matters can receive technical assistance² provided by NIWAP's team of subject matter and the National Judicial Network's team of judicial experts by calling (202) 274-4457 or sending an email to niwap@wcl.america.edu.

¹ See DIRECTORY OF PROGRAMS WITH EXPERIENCE SERVING IMMIGRANT VICTIMS

<https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims> (last visited Apr. 13, 2022) (to identify programs in the court's jurisdiction and state with expertise serving immigrant victims of crime and abuse including immigrant victims of domestic violence, child abuse, sexual assault and human trafficking).

² This technical assistance is available free of charge to judges, courts, police, and prosecutors, supported by funding from the Office on Violence Against Women and the State Justice Institute and U.S. Department of Justice funders.

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PART II: The Role of the State Court Judge

Although immigration relief is granted or denied at the federal level, state court judges often play an important role in immigration case outcomes. In certain cases Congress explicitly created a role for state court judges that is a prerequisite to an immigrant victim or an immigrant child being able to file for immigration relief they are eligible for and legally entitled to receive. Examples include:

- Predicate findings in Special Immigrant Juvenile Status cases being filed by children who have suffered abuse, abandonment or neglect;
- U visa certifications when courts make rulings in cases that include findings that domestic violence, child abuse, sexual assault, stalking, human trafficking or other crime; and
- T visa declarations which provide helpful evidence in cases of immigrant human trafficking victims.

Judges also need information about how the orders they routinely issue in state court cases can have positive or negative immigration consequences. A court can positively impact an immigration case, a litigant's immigration status options, and an immigrant victim's or child's safety by including in state court orders detailed findings of fact about:

- The existence of a marital or stepparent/stepchild relationship;
- That the immigrant is a victim of domestic violence, child/elder abuse, sexual assault, stalking, human trafficking or other crime which occurred in the state, and violates specified state criminal, domestic violence or child abuse laws;
- The details of the incidents of domestic violence, child/elder abuse, stalking, sexual assault, human trafficking and/or crime that occurred within a family or that the immigrant suffered;
- When a spouse, child, or parent has been subjected to extreme cruelty which is included in the immigration law definition of domestic violence;³
- Incidents that constitute crimes under the state's criminal laws perpetrated against the immigrant child, parent, or other litigant;⁴
- Why a it is in the best interests of a child to be placed in the custody of their non-abusive immigrant parent; and
- Abuse and extreme cruelty occurring in a marriage as part of a divorce action granting the victim custody of children and/or the family home.

Court orders and findings can also negatively impact a litigant's immigration options and/or the victim's or a child's safety. Examples include:

- How the structure of a criminal sentence or plea and findings that a protection order was violated can impact a respondent's or defendant's immigration status;
- Rulings on state court discovery motions granting discovery of information and documents regarding a victim's immigration case, the release of which is prohibited by federal Violence

³ LESLYE E. ORLOFF, BRITTANY ROBERTS AND STEFANIE GITLER, "BATTERING OR EXTREME CRUELTY": DRAWING EXAMPLES FROM CIVIL PROTECTION ORDER AND FAMILY LAW CASES, 3-4 (2015), <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2> (To offer immigration law protection without waiting for or requiring the first beating, findings of extreme cruelty are sufficient to support the approval of an abused family member's immigration case. The immigration law definition of domestic violence includes both criminal acts and extreme cruelty perpetrated against a spouse, child, stepchild, parent, or stepparent. Extreme cruelty was drawn historically from for cause divorce law, from international law definitions of domestic violence, and a growing body of research on the harms caused and dangers to victims caused by coercive control and other forms of abuse that may not be categorized under state law as criminal.)

⁴ It is important to make findings about crimes perpetrated in all types of cases a court may be adjudicating. Prosecution, conviction, or sentencing in a criminal case is not required. Documentation of the facts of the abuse suffered in state court orders issued in family, juvenile, probate, civil, and criminal cases. This provides Department of Homeland Security adjudicators with useful factual evidence about the crime victimization and abuse the immigrant suffered addressing one of the elements of proof an immigrant victim must prove to win approval of a crime or abused based immigration case.

Against Women Act (VAWA) confidentiality laws to protect victim safety and encourage victims to come forward to seek help from the courts and/or report crime victimization;

- How the timing of divorce decrees can allow spouses or children to gain or cut them off from lawful permanent residency (particularly asylees and immigrant with pending family based applications). It can also result in revocation of their visas; and
- When state court judges credit and rely upon in making decisions legally incorrect allegations about an opposing party's immigration status made by a litigant, respondent, or defendant to gain advantage in the litigation before the court.⁵

By improving judges' understanding of how state court findings, rulings, orders and sentencing impacts immigration options for crime victims, children and immigrant litigants, courts are better able to issue orders that have the impacts the court intended in the case and that avoid unintended consequences.

This bench card is a starting point building understanding of the various forms of immigration status available to immigrants in the U.S. This includes a discussion of how immigration status is grouped under immigration law into different categories: family based immigration, work based immigration, and humanitarian immigration relief. This bench card will highlight the forms of humanitarian immigration relief that most closely intersect with state court proceedings, highlighting particularly the forms of immigration relief designed to offer help to immigrant survivors of crime and abuse. Throughout the bench card we provide links to resources and further information on the topic being discussed.

PART III: Gaining Legal Immigration Status in the United States

Being granted legal immigration status gives a foreign born person legal permission to live and work in the United States. Some forms of immigration status include a path to lawful permanent residency (a green card) which is, with very limited exceptions,⁶ a mandatory prerequisite to becoming a naturalized U.S. citizen. Other forms of legal immigration status are temporary and do not include a path to lawful permanent residency or citizenship. These include many work and other temporary visas and certain forms of humanitarian protections. Examples include Deferred Action for Childhood Arrivals (DACA), and Temporary Protected Status (TPS).

Naturalized Citizen

Naturalization is a process through which a foreign born person obtains U.S. citizenship. To become a naturalized U.S. citizen, an immigrant must:⁷

- Be 18 years of age;
- Be lawfully admitted as a permanent resident (see below)
- Have resided continuously in the United States for five years (or three years if married to U.S. citizen) after being admitted as a lawful permanent resident and have been physically present in the U.S. at least half time during the five (or three) years prior to filing the application for citizenship;
- Be able to speak, read and write English;
- Know the fundamentals of U.S. history and the principles of the U.S. government;

⁵ NIWAP has developed a library of materials that help judges access legally correct information about U.S. immigration laws, regulations, policies, and practices that can be accessed at <https://niwaplibrary.wcl.american.edu/sji-njn-materials>. NIWAP also offers technical assistance to judges providing access to national experts and judicial experts who are members of the National Judicial Network. (202) 274-4457 or info@niwap.org.

⁶ For example, children born abroad to a U.S. citizen parent who had lived in the U.S. for a period of time are eligible to acquire U.S. citizenship at birth. There is also a process that allows children of U.S. citizens born abroad to acquire U.S. citizenship after birth is available to children who reside outside of the U.S. in the custody of a U.S. citizen parent, that parent had been physically present in the U.S. for the required period of time, and the child files for citizenship while they are under the age of 18. See, I AM THE CHILD OF A U.S. CITIZEN, USCIS (July 5, 2020), <https://www.uscis.gov/citizenship/learn-about-citizenship/i-am-the-child-of-a-us-citizen> (last visited Apr. 13, 2022).

⁷ See, USCIS, NATURALIZATION ELIGIBILITY WORKSHEET INSTRUCTIONS (Rev. Jun. 15, 2006), <https://niwaplibrary.wcl.american.edu/pubs/naturalization-eligibility-worksheet>.

- Be of good moral character;⁸ 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 residency allows an immigrant to reside and work permanently in the United States. Lawful permanent residents are commonly referred to as green card holders, although the card has not always been green. To be eligible for lawful permanent residency, the applicant must indicate an intention to reside permanently in the U.S.

The following are the major types of visas through which an immigrant can acquire lawful permanent residency:

- Family-based visas:⁹ A U.S. citizen or lawful permanent resident files a family-based visa petition to start the process that will enable their family member (spouse,¹⁰ child, parent, adult son or daughter, or sibling) to immigrate, or lawfully remain, in the United States and become a lawful permanent resident.¹¹ For the purposes of this visa, the term “child” means a person who is unmarried and under the age of 21. The term “son or daughter” means a person who once qualified as a child, but now may be over 21 or married. Under Immigration laws “children” includes “stepchildren.” If the marriage is less than two years old on the date that a spouse is granted residency, the spouse and their children receive conditional permanent residency (discussed below).
- Employment-based visas:¹² Certain types of employment-based visas include a path to lawful permanent residency for the immigrant worker granted that visa.
- Diversity-based visas:¹³ The diversity visa program makes immigrant visas available to noncitizens randomly selected in a lottery from countries with historically low immigration rates.
- Victims of Crime and/or Abuse:¹⁴ U.S. immigration laws offer protection from deportation, legal immigration status, and a path to lawful permanent residency for noncitizens who are victimized by crime or abuse perpetrated against them in the United States. Includes Violence Against Women Act

⁸ For many immigration remedies, it is necessary to show that a person has “good moral character” and has not committed certain crimes or engaged in other activities such as prostitution or illegal gambling. Good moral character is not precisely defined in the immigration laws, but Section 101(f) of the Immigration and Nationality Act lists certain acts that with limited, mostly crime victim related exceptions, preclude someone from establishing good moral character. *See*, Good Moral Character: Assessment Tool (Oct. 15, 2013) <https://niwaplibrary.wcl.american.edu/pubs/good-moral-char-tool>

⁹ U.S. DEP’T OF STATE, FAMILY IMMIGRATION, <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration.html> (last visited Apr. 13, 2022).

¹⁰ USCIS POLICY MANUAL, 1324-1325 (NOV. 23, 2021), <https://niwaplibrary.wcl.american.edu/pubs/uscis-policy-manual>. (All marriages are treated equally under U.S. immigration laws whether the marriage is between a man and a woman, two men, two women, or involve transgender individuals).

¹¹ For a complete list of family-based visas that could lead to lawful permanent residency and information on sponsorship requirements, family members who could be included and also receive visas, work authorization, benefits access and the impact of divorce *see*, RAFAELA RODRIGUES, MIKAELA RODRIGUEZ, LESLYE E. ORLOFF, ANDREA CAVAZOS CARCAMO, AND LUCIA MACIAS, IMMIGRATION STATUS: WORK AUTHORIZATION, PUBLIC BENEFITS, AND ABILITY TO SPONSOR CHILDREN (Dec. 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus>.

¹² U.S. DEP’T OF STATE, EMPLOYMENT BASED VISAS <https://travel.state.gov/content/travel/en/us-visas/immigrate/employment-based-immigrant-visas.html#overview> (last visited, Apr. 14, 2022).

¹³ U.S. DEP’T OF STATE, GREEN CARD THROUGH THE DIVERSITY IMMIGRANT VISA PROGRAM, <https://www.uscis.gov/green-card/green-card-eligibility/green-card-through-the-diversity-immigrant-visa-program> (last updated 2018).

¹⁴ U.S. DEP’T OF HOMELAND SECURITY, IMMIGRATION OPTIONS FOR VICTIMS OF CRIMES (June 30, 2010) <https://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes>.

immigration relief for victims of spouse, child and elder abuse;¹⁵ U visas for crime victims,¹⁶ T visas for human trafficking victims,¹⁷ and Special Immigrant Juvenile States for victims of child abuse, abandonment or neglect.¹⁸

- **Refugees¹⁹ and Asylees:**²⁰ Refugees and asylees are persons who have a well-founded fear of persecution due to race, religion, nationality, political opinion, or membership in a particular social group. A refugee is a person outside of the U.S. who is of special humanitarian concern to the U.S. who is not firmly resettled in another country. An asylee is someone who is physically present in the U.S. or who arrives in the United States and demonstrates a well-founded fear of persecution based on one of five protected grounds listed above. Asylum is available to persons who arrive in the U.S. whether or not they arrive at a designated port of entry.²¹

Conditional Permanent Residency²²

Conditional permanent residents are immigrant spouses and their children who applied for lawful permanent resident status based on a valid marriage to a lawful permanent resident or a citizen and on the date the application was granted the marriage was less than two years in duration. In these cases, the immigrant spouse receives two year conditional permanent residency and is required to file a petition to remove the condition and become a full lawful permanent resident 90 days before the end of the two year period after becoming a conditional permanent resident. A conditional permanent resident has all the privileges of a lawful permanent resident, except that conditional residency lasts for two years. Several factors can cause an immigrant to lose conditional permanent resident status.

- Failure to file a joint petition to remove the conditional status prior to the two-year expiration period;
- Failure to appear for the interview with spouse scheduled by DHS in connection with removal of condition;
- Adjudication and denial of the joint petition.

¹⁵ MOIRA FISHER PRED, CECILIA OLAVARRIA, JANICE KAGUYUTAN, AND ALICIA (LACY) CARRA, CHAPTER 03.3: PREPARING THE VAWA SELF-PETITION AND APPLYING FOR RESIDENCE (July 1, 2013) <https://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep>; REBECCA STORY, CECILIA OLAVARRIA AND MOIRA FISHER PRED, VAWA CANCELLATION OF REMOVAL, CHAPTER 03.4: VAWA CANCELLATION OF REMOVAL (July 1, 2013), <https://niwaplibrary.wcl.american.edu/pubs/ch3-4-vawa-cancellation-of-removal>. (If the victim was abused by their U.S. citizen or lawful permanent resident spouse, parent, or step-parent who is an employee of the U.S. government or a member of the uniformed services, victims are eligible to self-petition based upon battering or extreme cruelty that occurred outside of the U.S. 8 U.S.C. 1154(a)(1)(A)(v) and (a)(1)(B)(iv).)

¹⁶ SYLVIE SHENG, ALINA HUSAIN, ALISHA LINESWALA, BENISH ANVER, KAREN DRYHURST, LUCIA MACIAS, AND LESLYE E. ORLOFF, U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR FEDERAL, STATE AND LOCAL JUDGES, COMMISSIONERS, MAGISTRATES AND OTHER JUDICIAL OFFICERS, <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2> (last updated 2020).

¹⁷ SYLVIE SHENG, ALINA HUSAIN, ALISHA LINESWALA, BENISH ANVER, KAREN DRYHURST, LUCIA MACIAS, AND LESLYE E. ORLOFF, U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR FEDERAL, STATE AND LOCAL JUDGES, COMMISSIONERS, MAGISTRATES AND OTHER JUDICIAL OFFICERS, <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2> (last updated 2020).

¹⁸ *SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK TABLE OF CONTENTS* (2018), <https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>.

¹⁹ HEBREW IMMIGRANT AID SOCIETY, U.S. REFUGEE RESETTLEMENT SCREENING PROCESS https://www.hias.org/sites/default/files/u.s._refugee_resettlement_screening_process_0.pdf; <https://www.unhcr.org/3d4aba564.pdf> (last visited Apr. 18, 2022).

²⁰ RYAN DUNSMUIR AND HUMAN RIGHTS FIRST, HOW REFUGEES GET TO THE U.S. (2010), <https://www.unhcr.org/58599d054.pdf> (last visited Apr. 18, 2022); USCIS ASYLUM PROGRAM: INFORMATION GUIDE FOR PROSPECTIVE ASYLUM APPLICANTS, USCIS (2012), https://www.uscis.gov/sites/default/files/info-guide-for-prospective- asylum-applicants-english_0.pdf

²¹ USCIS ASYLUM PROGRAM: INFORMATION GUIDE FOR PROSPECTIVE ASYLUM APPLICANTS, USCIS (2012), https://www.uscis.gov/sites/default/files/info-guide-for-prospective- asylum-applicants-english_0.pdf

²² USCIS, INFORMATION ON THE LEGAL RIGHTS AVAILABLE TO IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE IN THE UNITED STATES AND FACTS ABOUT IMMIGRATION ON A MARRIAGE-BASED VISA (Oct. 27, 2010), <https://niwaplibrary.wcl.american.edu/pubs/marriage-based-legal-rights>.

Typically, the petition to remove the conditional status must be filed jointly with both spouses signing and filing the application form asking that conditions be removed and the immigrant spouse be granted full lawful permanent residency. However, the statute specifies four situations in which a conditional permanent resident can seek a waiver of the joint filing requirement and receive lawful permanent residency if the waiver is granted. Waivers are available for immigrants who can prove:

- That their marriage was in good faith and the parties divorced;
- That the immigrant’s removal from the United States would cause extreme hardship;
- Battered spouse waiver eligibility:²³
 - That the marriage was in good faith and the immigrant, the immigrant’s child, or the immigrant’s stepchild was battered or subjected to extreme cruelty; or
 - That the immigrant went through a marriage ceremony to a citizen “intended spouse” whom the immigrant did not know was a bigamist and the immigrant, their child, or their stepchild was battered or subjected to extreme cruelty.

PART IV: Family and Employment Based Immigration Process²⁴

This section discusses the two of the primary pathways to legal immigration status in the United States – family relationships and employment. Some forms of immigration relief allow for temporary residence in the U.S. Others allow immigrants to reside permanently in the U.S. by attaining lawful permanent residency. The third significant pathway to legal immigration status, humanitarian protection, will be discussed in the next two sections of this bench card.

The rulings state court judges issue in family court cases regarding marriage, divorce, parent-child relationships, paternity, and sentencing in criminal cases can have immigration consequences, both positive and negative, on children, parents, crime victims, defendants, and other litigants. Since both family-based and employment-based legal immigration status allow for sponsorship of family members for legal immigration status, legally correct information helps state court judges understand the veracity of immigration status allegations made by parties, improve the effectiveness of court orders, and avoid consequences the court does not intend. This section is designed to provide information on:

- Who can sponsor family members for lawful permanent residency;
- Which immigrant are and are not likely to be qualify for employment-based visas and can sponsor family members for visas;
- Which immigrants receive immigrant visas as soon as their application is approved;
- Which types of immigration cases have waitlists lasting how long; and
- The countries of origin whose waits for visas are longer than other countries.

Family-Sponsored Visas

²³ See the discussion below in the section on “Visas for Victims of Crime and Abuse” for more information on Battered Spouse Waivers.²⁴ See, RAFAELA RODRIGUES, MIKAELA RODRIGUEZ, LESLYE E. ORLOFF, ANDREA CAVAZOS CARCAMO, AND LUCIA MACIAS, IMMIGRATION STATUS: WORK AUTHORIZATION, PUBLIC BENEFITS, AND ABILITY TO SPONSOR CHILDREN (Dec. 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus> (last visited Apr. 18, 2022) (For a complete list of employment-based visas that could lead to lawful permanent residency and information on sponsorship requirements, family members who could be included and also receive visas, work authorization, benefits access and the impact of divorce).

²⁴ See, RAFAELA RODRIGUES, MIKAELA RODRIGUEZ, LESLYE E. ORLOFF, ANDREA CAVAZOS CARCAMO, AND LUCIA MACIAS, IMMIGRATION STATUS: WORK AUTHORIZATION, PUBLIC BENEFITS, AND ABILITY TO SPONSOR CHILDREN (Dec. 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus> (last visited Apr. 18, 2022) (For a complete list of employment-based visas that could lead to lawful permanent residency and information on sponsorship requirements, family members who could be included and also receive visas, work authorization, benefits access and the impact of divorce).

Overall, approximately 69% of new lawful permanent residency each year obtained their green cards through family-related immigration.²⁵ The following is a summary of the family visa categories and the wait times from filing to the date when a visa becomes available so that the family member can be granted lawful permanent residency.

- Immediate relatives of a U.S. Citizen, are immigrant spouses, unmarried minor children, or parents²⁶ of U.S. citizens. There are no numerical limitations and no wait times. Visas are immediately available. The immigrant spouse or minor stepchild will receive conditional permanent residency if the marriage was entered into less two years prior to the date that the visa is granted.
- Unmarried Sons or Daughters of U.S. Citizens: (Preference Level 1 – F1) Immigrants who are children of U.S. citizens who are over 21 years of age. The estimated wait times between filing the family-based visa petition and a visa becoming available in this preference level vary by country. For instance, on December 31, 2021 the estimated wait time is 7 years for China and India, 9 years for the Philippines, 22 years for Mexico, and 7 years for all other countries.²⁷
- Immigrant Spouse, Unmarried Children, or Unmarried Over 21 Year Old Sons or Daughters of Lawful Permanent Residents: (Preference Level 2) The estimated wait times for the visa at preference level 2 is divided into two subcategories, 2A (F2A) and 2B (F2B). Category 2A are spouses and minor children of permanent residents. As of the writing of this bench card availability of visas in this category for all countries is “current.” Thus, there are no wait times for visas for spouses and minor children of lawful permanent residents.²⁸ Category 2B are unmarried adult over 21 year old children of lawful permanent residents. For this subcategory, the estimated wait time is 16 years for Mexico, 10 years for the Philippines, and 8 years for China, India, and all other countries.²⁹
- Immigrant Married Son or Daughter of U.S. Citizen: (Preference Level 3 – F3). The estimated visa wait times for married over 21 year old sons and daughters of lawful permanent residents, Preference Level 3, are 24 years for Mexico, 19 years for the Philippines, and 13 years for China, India, and all other countries.³⁰
- Immigrant Brothers or Sisters of U.S. Citizens: (Preference Level 4 – F4). The estimated wait times for visa at Preference Level 4 for brothers and sisters of U.S. citizens are 24 years for Mexico, 21 years for the Philippines, 16 years for India, and 14 years for China and all other countries.³¹

Employment-Based and Other Visas

There are two types of employment-based visas available to immigrant coming to work in the United States.

- Employment-Based Immigrant Visas: are work-related visas that include a path to lawful permanent residency are initially issued for a specific period of time but are available to immigrants who are or

²⁵ JEANNE BATALOVA, MARY HANNA, AND CHRISTOPHER LEVESQUE, FREQUENTLY REQUESTED STATISTICS ON IMMIGRANTS AND IMMIGRATION IN THE UNITED STATES, The Online J. of the Migration Policy Institute (2021), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020#immig-now-historical>.

²⁶ A citizen child must be over 21 to file a family-based visa for their immigrant parent.

²⁷ U.S. DEP’T OF STATE, VISA BULL. FOR DEC. 2021, (Nov. 8, 2021), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-december-2021.html> (The estimated times were taken from this bulletin). The U.S. State Department issues a Visa Bulletin monthly listing the wait times for visas for all visa categories. The Visa Bulletin is available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

²⁸ U.S. DEP’T OF STATE, VISA BULL. FOR DEC. 2021, (Nov. 8, 2021), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-december-2021.html>.

²⁹ U.S. DEP’T OF STATE, VISA BULL. FOR DEC. 2021, (Nov. 8, 2021), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-december-2021.html>.

³⁰ U.S. DEP’T OF STATE, VISA BULL. FOR DEC. 2021, (Nov. 8, 2021), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-december-2021.html>.

³¹ U.S. DEP’T OF STATE, VISA BULL. FOR DEC. 2021, (Nov. 8, 2021), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-december-2021.html>.

may be intending to stay permanently in the United States. These workers can receive visas for spouses and children who join them in the United States.³²

- In each of the following categories a make up the majority of work-visas are issued each year:
 - Priority workers (immigrants who possess extraordinary ability, outstanding professors and researchers, or multinational executives and managers);
 - Immigrants who hold advanced degrees or possess exceptional ability in the sciences, arts or business performing jobs for which qualified workers are not available in the U.S. ; and
 - Filling Jobs Where Workers are Needed: Certain classes of immigrants performing jobs for which qualified workers are not available in the U.S:
 - Skilled workers capable of performing skilled labor requiring at least two years of experience;
 - Professional workers who work in jobs that require at least a baccalaureate degree;
 - Categories of work-visas available to smaller numbers of immigrant workers.
 - Unskilled workers who are capable of filling positions that require less than two years training or experience (does not include temporary or seasonal positions and this group has access to a smaller number of visas);³³
 - Special Immigrants: including religious workers and international organization employees; and
 - Immigrant investors who start new businesses in the U.S. that create jobs for workers in the U.S.³⁴
- Employment-Based Temporary Visas: provide legal immigration status and the ability to live and work in the United States temporarily for certain categories of workers. These work visas do not lead to lawful permanent residency. Temporary workers can bring their spouses and children on visas to the United States, but the family members' visas do not provide the right to work. Additionally, temporary workers usually must continue working for the sponsoring employer in order to maintain the right to stay in the United States legally.³⁵ Examples of temporary work visa holders that state courts are most likely to encounter in family court cases are:³⁶
 - H-1B visa holders in specialty occupations authorized for up to two three-year periods (e.g. computer related, architecture, engineering, education, physicians, health care professionals, accountants, and scientists);³⁷
 - H-2A agricultural workers authorized for up to three years.
 - L visa for workers transferring from a foreign branch of a company to a U.S. branch authorize for 5-7 years and their spouses are allowed to work in the U.S. as well;
 - O visa holders who are immigrants with extraordinary ability in the sciences, arts, business or athletics (maximum stay 3 years).

³² JULIA GELATT, EXPLAINER: HOW THE U.S. LEGAL IMMIGRATION SYSTEM WORKS (2019), <https://www.migrationpolicy.org/content/explainer-how-us-legal-immigration-system-works>.

³³ U.S. DEP'T OF STATE, EMPLOYMENT-BASED IMMIGRANT VISAS, <https://travel.state.gov/content/travel/en/us-visas/immigrate/employment-based-immigrant-visas.html#overview> (last visited Apr. 19, 2022).

³⁴ U.S. DEP'T OF STATE, EMPLOYMENT-BASED IMMIGRANT VISAS, <https://travel.state.gov/content/travel/en/us-visas/immigrate/employment-based-immigrant-visas.html#overview> (last visited Apr. 19, 2022).

³⁵ JULIA GELATT, EXPLAINER: HOW THE U.S. LEGAL IMMIGRATION SYSTEM WORKS (2019), <https://www.migrationpolicy.org/content/explainer-how-us-legal-immigration-system-works>.

³⁶ JULIA GELATT, EXPLAINER: HOW THE U.S. LEGAL IMMIGRATION SYSTEM WORKS (2019), <https://www.migrationpolicy.org/content/explainer-how-us-legal-immigration-system-works>.

³⁷ USCIS, CHARACTERISTICS OF H-1B SPECIALTY OCCUPATION WORKERS FISCAL YEAR 2017 ANNUAL REPORT TO CONGRESS OCTOBER 1, 2016 – SEPTEMBER 30, 2017, 16 (2018), https://www.uscis.gov/sites/default/files/document/foia/Characteristics_of_H-1B_Specialty_Occupation_Workers_FY17.pdf.

PART V: Humanitarian Based³⁸

The humanitarian forms of immigration relief are an important part of the U.S. legal immigration system. The purposes and goals of humanitarian immigration relief are closely aligned with the goals that state courts are familiar with under state domestic violence, child and elder abuse, family and criminal laws to: offer protection to victims, support healing, promote safety for victims, children and families, hold offenders accountable, improve community safety, and foster trust in the courts, the justice system and other government agencies. Research among immigrant survivors of domestic violence, child abuse, and sexual assault has found that the humanitarian visa programs for crime victims discussed below play a significant and important role in transforming the lives of crime victims and their children promoting resilience, stability, and integration the social fabric of our communities.³⁹

A: Visas for Victims of Crime and Abuse⁴⁰

Family Based

- *Violence Against Women Act (VAWA) Self-Petition*.⁴¹ Immigration law allows provides immigration relief for several categories of immigrants who are battered or subjected to extreme cruelty⁴² by their U.S. citizen or lawful permanent resident family members may file a self-petition to become eligible for lawful permanent residency on their own behalf without their abuser’s knowledge or cooperation. Self-petitioning is available the following family members who have been battered or subjected to extreme cruelty:
 - Spouses and former spouses abused by U.S. citizens and lawful permanent residents who file applications while still married or within 2 years of divorce;
 - “Intended spouses” who had a marriage ceremony with a U.S. citizen or lawful permanent resident whom the battered immigrant did not know was a bigamist;
 - Spouses, former spouses, and intended spouses whose children or step-children have been battered or subjected to extreme cruelty by the immigrant’s citizen or lawful permanent resident parent spouse or former spouse;
 - Children and step-children abused by the child’s citizen or lawful permanent resident parent or step-parent.⁴³

³⁸ PROTECTIONS FOR IMMIGRANT VICTIMS, DHS, <https://niwaplibrary.wcl.american.edu/pubs/infographic-on-protections-for-immigrant-victims> (last visited Apr. 19, 2022).

³⁹ See LESLYE E. ORLOFF, HALEY IESHA MAGWOOD, YASMIN CAMPOS-MENDEZ, AND GISELLE A. HASS (TRANSFORMING LIVES: HOW THE VAWA SELF-PETITION AND THE U VISA CHANGE THE LIVES OF VICTIMS AND THEIR CHILDREN AFTER WORK AUTHORIZATION AND LEGAL IMMIGRATION STATUS (2021), <https://niwaplibrary.wcl.american.edu/transforming-lives-study-21>.

⁴⁰ For greater detail on each of the immigration remedies for immigrant victims of crime and abuse see LESLYE E. ORLOFF, BENISH ANVER, AND ABIGAIL WHITMORE BENCH CARD ON IMMIGRATION RELIEF FOR BATTERED SPOUSES, ABUSED CHILDREN AND IMMIGRANT CRIME VICTIMS (2021), <https://niwaplibrary.wcl.american.edu/pubs/bench-card-on-immigration-relief-for-crime-victims>.

⁴¹ For more detail see LESLYE E. ORLOFF AND BENISH ANVER, FAMILY COURT BENCH CARD ON IMMIGRATION RIGHTS OF BATTERED IMMIGRANT SPOUSES, CHILDREN, AND CRIME VICTIMS (Oct. 11, 2013)

⁴² For the definition of battering or extreme cruelty see LESLYE E. ORLOFF, BENISH ANVER, AND ABIGAIL WHITMORE BENCH CARD ON IMMIGRATION RELIEF FOR BATTERED SPOUSES, ABUSED CHILDREN AND IMMIGRANT CRIME VICTIMS (2021), <https://niwaplibrary.wcl.american.edu/pubs/bench-card-on-immigration-relief-for-crime-victims>; LESLYE ORLOFF, BRITTANY ROBERTS AND STEFANIE GITLER, “BATTERING AND EXTREME CRUELTY”: DRAWING EXAMPLES FROM CIVIL PROTECTION ORDER AND FAMILY LAW CASES (2015) available <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>.; and VAWA SELF-PETITION: PROTECTIONS FOR IMMIGRANT SURVIVORS OF DOMESTIC AND SEXUAL ABUSE BY ABUSIVE SPOUSES AND PARENTS (Webinar – April 22, 2020, with Q & A Answers) <https://niwaplibrary.wcl.american.edu/2020-vawa-self-petition-webinar>.

⁴³ See *Arguijo v. USCIS, et al.*, 99 F.3d 736 (7th Cir. 2021) (finding that, for VAWA purposes, “stepchild” status survives divorce).

- Parents abused by the citizen or lawful permanent resident over 21 year old children or stepchildren (step-child must have been under 18 at the time of the marriage creating the step-child relationship). To be granted a VAWA self-petition the applicant must also prove good moral character,⁴⁴ residence at some point in time with the abuser, and if a spouse or stepchild that the marriage or intended marriage was in good faith.⁴⁵
- VAWA Cancellation of Removal Or Suspension Or Deportation:⁴⁶ Under VAWA, two forms of relief are available to immigrant victims of child or spouse abuse who are placed in immigration court removal/deportation proceedings. These are VAWA cancellation of removal⁴⁷ and VAWA suspension of deportation.⁴⁸ Only an immigration judge can grant a battered immigrant's application for cancellation of removal or suspension of deportation. If the application is granted the victim receives lawful permanent residency.⁴⁹ Applicants must prove battering or extreme cruelty,⁵⁰ the immigration status of and their relationship to the perpetrator. The family relationships covered are:
 - Spouse: An immigrant who has been battered or subjected to extreme cruelty by a spouse, former spouse (based upon a same sex or heterosexual marriage), or intended spouse (VAWA cancellation only) who is or was a U.S. citizen or lawful permanent resident;
 - Child: An immigrant child or step-child⁵¹ (through a same sex or heterosexual marriage) who is or was battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident parent or step-parent;
 - Parent of Abused Child: An immigrant who is the non-abusive parent of a child who is or was subjected to domestic violence or extreme cruelty by the child's other parent who is a U.S. citizen or lawful permanent resident parent. The immigrant does not need to have been either abused or married to the child's abusive citizen or lawful permanent resident abusive parent.⁵²

⁴⁴DHS is not limited by the criminal court record in domestic violence and stalking cases when the battered immigrant was not the primary perpetrator of abuse in the relationship if DHS determines that the battered immigrant was acting in self-defense, when the crime the battered immigrant was arrested for, was convicted of or plead guilty to did not cause serious bodily injury and was connected to the battering or extreme cruelty or contrary to best practices the state court issued a ruling against the victim for violating a protection order issued to protect the battered immigrant. INA § 237(a)(7) (domestic violence victim waiver); For details on good moral character and inadmissibility for VAWA self-petitioners *see* LESLYE E. ORLOFF, COMPARING VAWA SUSPENSION OF DEPORTATION, VAWA CANCELLATION OF REMOVAL, VAWA NICARAGUAN AND CENTRAL AMERICAN RELIEF ACT (NACARA), AND VAWA SELF-PETITIONING (2021), <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>; CTR. FOR POL'Y STUDIES ET AL., GOOD MORAL CHARACTER (Oct. 15, 2013), <https://niwaplibrary.wcl.american.edu/pubs/good-moral-char-tool>.

⁴⁵ *See* LESLYE E. ORLOFF ET AL., GOOD FAITH MARRIAGE IN VAWA SELF-PETITIONING CASES (Feb. 17, 2013), <https://niwaplibrary.wcl.american.edu/pubs/good-faith-marriage-va-wa>.

⁴⁶ For more detail see Leslye E. Orloff and Benish Anver, Family Court Bench Card on Immigration Rights of Battered Immigrant Spouses, Children, and Crime Victims (Oct. 11, 2013)

⁴⁷ INA § 240A(b)(4); 8 U.S.C. § 1229b(b)(4).

⁴⁸ INA § 244 (a)(3) (as in effect on March 31, 1997). Suspension of deportation is only applicable to battered immigrants who had been placed in deportation proceedings prior to March 31, 1997.

⁴⁹ *See generally* REBECCA STORY, CECILIA OLAVARRIA, AND MOIRA FISHER PRED, VAWA CANCELLATION OF REMOVAL 2, IN BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS (2013), <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/articles/3.4-VAWA-Cancellation-2010-MANUAL-BB.pdf/view>

⁵⁰ INA § 240A(b)(2)(A)(i); 8 U.S.C. § 1229b(b)(2)(A)(i). LESLYE ORLOFF, BRITTANY ROBERTS AND STEFANIE GITLER, "BATTERING AND EXTREME CRUELTY: DRAWING EXAMPLES FROM CIVIL PROTECTION ORDER AND FAMILY LAW CASES" (Feb. 11, 2013) <https://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2>

⁵¹ INA § 101(b)(1); 8 U.S.C. § 1101(b)(1) defines "child" as under age 21 and includes natural, adopted and stepchildren. A person who is now over the age of 21 yet who was abused before age 21 can also file. *See Arguijo v. USCIS*, et al., 99 F.3d 736 (7th Cir. 2021) (finding that, for VAWA purposes, "stepchild" status survives divorce).

⁵²The abusive parent need not be the natural parent of the abused child and may be a step-parent. Further, the parent of an abused child may file for VAWA cancellation whether or not she was ever married to the child's abusive parent. *See also* 61 Fed. Reg. 13061 (March 26, 1996).

A VAWA cancellation and suspension applicants must also prove good moral character,⁵³ continued presence in the United States for three years,⁵⁴ extreme hardship,⁵⁵ and good faith marriage.⁵⁶

• Battered Spouse Waiver:⁵⁷ When a spouse (same sex or heterosexual) has filed a family-based visa petition for an immigrant spouse and the couple is married for less than two years, on the couple's interview date with the Department of Homeland Security or the date that US Citizenship and Immigration Services (USCIS) approves the application the immigrant spouse will be granted 2-year conditional residence, rather than full lawful permanent residency. The immigrant and the citizen or lawful permanent resident spouse are required to file a joint petition 90 days before the end of the two-year conditional residency asking DHS to grant the immigrant spouse full lawful permanent residency. If the joint application is not filed, conditional residency ends and the immigrant spouse loses legal immigration status. An immigrant spouse (and in certain circumstances, an immigrant child) who has been battered or subjected to extreme cruelty by a citizen or lawful permanent resident spouse can apply for a "battered spouse (or child) waiver" of the joint filing requirement. Battered immigrants can apply for this waiver before or after their conditional residency ends.⁵⁸ They are not required to wait two years, and can file confidentially, without the knowledge, consent, or assistance of the abusive spouse.⁵⁹ Proof required for a Battered Spouse Waiver:

- Conditional residence: has been granted by DHS to the abused immigrant spouse and abused immigrant spouse's child (step-child of the abusive spouse);
- Good Faith Marriage:⁶⁰ That the marriage that is the basis for conditional residence was a good faith marriage;
- Battering or Extreme Cruelty: During the marriage, the immigrant spouse or child was battered or subjected to extreme cruelty by the citizen or lawful permanent resident spouse or step-parent;
- Bigamy: It is not a bar if a marriage ceremony was performed, and victim did not know about intended spouse's bigamy.

• Employment Authorization For Abused Spouses of Certain Visa Holders:⁶¹ As discussed in PART IV, many immigrants granted employment visas are able to sponsor their spouses and children for visas allowing the family to live together in the U.S. The visas provided to spouses of most temporary workers do provide legal work authorization for the spouse. VAWA gave provides legal work authorization to immigrant

⁵³ See INA § 101(f); 8 U.S.C. § 1101(f). For more on good moral character and inadmissibility for VAWA cancellation of removal and suspension of deportation cases see <https://niwaplibrary.wcl.american.edu/pubs/suspension-cancellation-nacara-self-petition-chart-4-28-20>.

⁵⁴ INA § 240A(b)(2)(B); 8 U.S.C. § 1229b(b)(2)(B).

⁵⁵ INA § 240A(b)(2)(A)(v); 8 U.S.C. § 1229b(b)(2)(A)(v); 244(a)(3) (as in effect on March 31, 2013). For a detailed list of extreme hardship factors in VAWA cases see 8 C.F.R. §§ 1240.20(c) and 1240.58(c); LESLYE E. ORLOFF AND BRITTANY ROBERTS, EXTREME HARDSHIP IN VAWA CANCELLATION OF REMOVAL AND VAWA SUSPENSION OF DEPORTATION CASES (Nov. 26, 2012), <https://niwaplibrary.wcl.american.edu/pubs/hardship-vawa-cancellation-removal-suspension>; and BATTERED SPOUSE WAIVER: IMMIGRATION RELIEF AVAILABLE FOR ABUSED IMMIGRANT SPOUSES OF U.S. CITIZENS, Battered Spouse Waiver (BSW) Webinar and Training Materials (November 18, 2021) <https://niwaplibrary.wcl.american.edu/bsw-training-materials>.

⁵⁶ See LESLYE E. ORLOFF ET AL., GOOD FAITH MARRIAGE IN VAWA SELF-PETITIONING CASES (Feb. 17, 2013), <https://niwaplibrary.wcl.american.edu/pubs/good-faith-marriage-vawa>.

⁵⁷ For more detail see LESLYE E. ORLOFF AND BENISH ANVER, FAMILY COURT BENCH CARD ON IMMIGRATION RIGHTS OF BATTERED IMMIGRANT SPOUSES, CHILDREN, AND CRIME VICTIMS (Oct. 11, 2013),

⁵⁸ 8 C.F.R. § 216.5(e)(3)(ii).

⁵⁹ 8 U.S.C. § 1367(a)(2); INA 101(a)(51).

⁶⁰ See LESLYE E. ORLOFF ET AL., GOOD FAITH MARRIAGE IN VAWA SELF-PETITIONING CASES (Feb. 17, 2013), <https://niwaplibrary.wcl.american.edu/pubs/good-faith-marriage-vawa>.

⁶¹ SPOUSES BATTERED OR SUBJECTED TO EXTREME CRUELTY BY A, E (3), H OR G VISA HOLDERS ARE ELIGIBLE TO APPLY FOR WORK AUTHORIZATION, NIWAP (Feb. 14, 2017), <https://niwaplibrary.wcl.american.edu/work-authorization-abused-visa-holder-spouses> (issuance of work authorization gives the victim time and needed economic support so that the battered immigrant spouse can file a U visa application and ultimately gain continued access to work authorization and a path to legal status through the U visa program.) See discussion of U visa eligibility below.

spouses battered or subjected to extreme cruelty by their work-visa holder spouses. Work authorization lasts for two years and may be renewed. When there is a connection between the abuse and domestic violence abused immigrant visa holder spouses have up to two years to file their applications for initial or renewal of work authorization.⁶² Abused immigrant spouses of the following work visa holders qualify for these protections:⁶³

- A-visas: spouses of diplomats and government officials;
 - E(3)-visas: spouses of Australian specialty occupation workers;
 - G-visas: employees of foreign governments and international organizations;
 - H-visas: workers in specialty occupations (e.g. computer related, architecture, engineering, education, physicians, health care professionals, accountants, and scientists), temporary workers agricultural and non-agricultural, and special exchange visitors.
- *Special Immigrant Juvenile Status (SIJS)*:⁶⁴ provides humanitarian immigration relief to unmarried immigrant children who have been abuse, abandoned, or neglected by at least one (or both) of their parents. The abuse, abandonment or neglect could have taken place in the U.S. or abroad in the child's or parent's home country. Immigrant children whose SIJS applications are approved are eligible to apply for lawful permanent residency. In order to qualify for SIJS, the minor immigrant must:
 - Be in the United States⁶⁵
 - Be unmarried⁶⁶
 - Submit a state court order containing detailed state court findings addressing issues required by the SIJS statute⁶⁷ that was issued by a court with state court (e.g., family, juvenile, probate) that has jurisdiction over the care, custody, placement, or dependency of the child⁶⁸ when the immigrant child was under the age of majority as defined by state law (generally 18-21 depending on the state's legal definition of "child").⁶⁹ The court order must include the following findings that the court:
 - Issued a court order awarding custody to, placing the child in the custody or care of an individual, an agency, or a department, or declaring the child dependent on juvenile court.⁷⁰
 - Applied state laws on best interests of the child and made a finding that it is not in the best interests of the immigrant child to be returned to the child's country of nationality or last residence;⁷¹ and

⁶² POLICY MEMORANDUM ON ELIGIBILITY FOR EMPLOYMENT AUTHORIZATION FOR BATTERED SPOUSES OF CERTAIN NONIMMIGRANTS: REVISIONS TO THE ADJUDICATOR'S FIELD MANUAL (AFM); REVISION OF CHAPTER 30.13 (AFM UPDATE AD16-01), PM-602-0130, USCIS 6 (Mar. 8, 2016), <https://niwaplibrary.wcl.american.edu/pubs/h-visa-765-2> (describing renewal eligibility requirements).

⁶³ INA § 106; 8 U.S.C. §1105a.

⁶⁴ For detailed information for state court judges on SIJS findings see LESLYE E. ORLOFF & RAFAELA RODRIGUES, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS (2018), <https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>.

⁶⁵ INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c)(3).

⁶⁶ 8 C.F.R. § 204.11(c)(2).

⁶⁷ See INA § 101(a)(27)(J); 8 U.S.C. 1101(a)(27)(J) (defining Special Immigrant Juveniles).

⁶⁸ 8 C.F.R. § 204.11(c)(3); 8 C.F.R. § 204.11(a).

⁶⁹ See U.S. CITIZENSHIP & IMMIGRATION SERV., 6 USCIS-PM J.2, USCIS POLICY MANUAL (2021), <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

⁷⁰ LESLYE E. ORLOFF, CHAPTER II: DETAILS ABOUT SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) FINDINGS, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-3 (2017), <https://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings>.

⁷¹ MEAGHAN FITZPATRICK AND LESLYE E. ORLOFF, CHAPTER V-6, QUICK REFERENCE GUIDE, SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN DEPENDENCY PROCEEDINGS 2-3 (Dec. 18, 2017), <https://niwaplibrary.wcl.american.edu/pubs/chapter-v-6-dependency-quick-reference>.

- Made a finding that reunification with one or both of the immigrant child's parents is not viable due to abuse, abandonment, or neglect, or similar harm⁷² from which children are protected under state law;⁷³
- Be under age 21 when the SIJS application is filed with USCIS.⁷⁴

The court may place the child with the non-abusive parent and enter findings that reunification with the abusive parent is not viable due to abuse, battering, abandonment or neglect. However, reunification of the child with the parent who perpetrated the abuse, battery, abandonment or neglect, will lead to the denial or revocation of special immigrant juvenile status. Delinquency is not considered a criminal conviction under immigration law and is generally not a bar to SIJS.⁷⁵

Non-Family Based

- *T Visa for Victims of Human Trafficking*:⁷⁶ The T visa provides legal immigration status and a path to lawful permanent residency to a victim of a severe form of trafficking, who is present in the United States on account of trafficking, and who complies with reasonable requests to assist in the investigation or prosecution of sex or labor trafficking.⁷⁷ The T visa is available for individuals who have been the victims of human trafficking and meet the following requirements:⁷⁸
 - The immigrant is the victim of a severe form of human trafficking.⁷⁹
 - Labor trafficking: In order to constitute a “severe form of trafficking” in persons, three elements must be present in cases involving labor or services.
 - The Process through which the labor is attained was by recruiting, harboring, transporting, providing, or obtaining a person for labor;
 - The Means: the means used to procure the labor included force, fraud, or coercion; and

⁷² RAFAELA RODRIGUES AND LESLYE E. ORLOFF, CHAPTER III: ABUSE ABANDONMENT OR NEGLECT: THE ROLE OF STATE LAW DEFINITIONS IN SPECIAL IMMIGRANT JUVENILE STATUS, FINDINGS SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-5 (Dec. 19, 2017), <https://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect> (apply state law to facts of abuse occurring in abroad, in the child’s home country, or in the United States).

⁷³ RAFAELA RODRIGUES AND LESLYE E. ORLOFF, CHAPTER III: ABUSE ABANDONMENT OR NEGLECT: THE ROLE OF STATE LAW DEFINITIONS IN SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 6-7 (Dec. 19, 2017) <https://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect>.

⁷⁴ 8 C.F.R. § 204.11(c)(1).

⁷⁵ See, LESLYE E. ORLOFF, SPECIAL IMMIGRANT JUVENILES (SIJS): INADMISSIBILITY FACTORS THAT DO AND DO NOT APPLY TO SIJS CASES (June 12, 2021), <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-factors-sijs>; LIMAYLI HUGUET ET AL., COMPARING INADMISSIBILITY WAIVERS AVAILABLE TO IMMIGRANT VICTIMS IN VAWA SELF-PETITIONING, U VISA, T VISA AND SPECIAL IMMIGRANT JUVENILE STATUS CASES (Jan. 28, 2021), <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>.

⁷⁶ For more detail see LESLYE E. ORLOFF, BENISH ANVER, AND ABIGAIL WHITMORE BENCH CARD ON IMMIGRATION RELIEF FOR BATTERED SPOUSES, ABUSED CHILDREN AND IMMIGRANT CRIME VICTIMS (2021), <https://niwaplibrary.wcl.american.edu/pubs/bench-card-on-immigration-relief-for-crime-victims>. See also, Sylvie Sheng et al., U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR FEDERAL, STATE AND LOCAL JUDGES, COMMISSIONERS, MAGISTRATES AND OTHER JUDICIAL OFFICERS (2020), <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2>.

⁷⁷ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386 (2000). See also INA § 101(a)(15)(T)(i); 8 U.S.C. § 1101(a)(15)(T)(i); 8 C.F.R. § 214.11(b).

⁷⁸ 8 C.F.R. § 214.11(a).

⁷⁹ 22 U.S.C. § 7102(8) (The term severe forms of trafficking means “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt, bondage, or slavery.”)

- The End: the labor has to be procured for a certain end purpose: involuntary servitude,⁸⁰ peonage, debt bondage,⁸¹ or slavery.
- Sex trafficking: Victims of a “severe form of trafficking” must prove
 - The End: A commercial sex act; and
 - The Means: that was induced by force, fraud, or coercion.
 - Under 18 year old sex trafficking victims are only required to prove the commercial sex and are not required to prove the means.
- Physical presence: The victim must be physically present in the United States on account of trafficking;⁸²
- Extreme hardship: The victim must prove that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States;
- Cooperation:⁸³ The victim is under 18 years of age and is not required to cooperate; or the victim meets one of the following conditions:
 - The victim has cooperated and is willing to cooperate with reasonable requests for assistance by federal, state, or local law enforcement in investigating or prosecuting crimes related to human trafficking; or
 - The victim is exempt from failing to cooperate with reasonable requests for assistance by law enforcement or prosecutors investigating or prosecuting the trafficker because of physical or psychological trauma.⁸⁴

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 they are of good moral character, and has been continuously in the U.S. for three years or less if the trafficking investigation or prosecution has been completed.

- Continued Presence for Victims of Human Trafficking:⁸⁵ Continued presence is a temporary immigration status that federal law enforcement, prosecution, and other government officials can request on behalf of immigrants identified as victims of human trafficking who are potential witnesses in an investigation or prosecution.⁸⁶ It allows a victim of human trafficking to continue to remain present and to work in the United States for two-year increments of time during an investigation, prosecution, or civil court action against the trafficker.⁸⁷ Cooperation with law enforcement is not required for an immigrant to

⁸⁰ 22 U.S.C. § 7102(8)

⁸¹ 22 U.S.C. § 7102(7)

⁸² 8 CFR §214.11(g)(4) (2016).

⁸³ See DEP’T OF HOMELAND SEC., T VISA LAW ENFORCEMENT RESOURCE GUIDE (2021), <https://niwaplibrary.wcl.american.edu/pubs/t-visa-resource-guide>.

⁸⁴ INA § 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb); 8 CFR 214.11(b)(3)(ii).

⁸⁵ Federal law enforcement or prosecution officials or Federal government agency staff (e.g., Equal Employment Opportunity Commission (EEOC) or U.S. Department of Labor) file continued presence applications for trafficking victims that they or state and local law enforcement, prosecutors, or judges have identified. See USCIS CTR. FOR COUNTERING HUMAN TRAFFICKING, CONTINUED PRESENCE RESOURCE GUIDE FOR SUBMITTING LAW ENFORCEMENT AGENCIES AND CIVIL ATTORNEYS (2021), <https://niwaplibrary.wcl.american.edu/pubs/continued-presence-resource-guide-2021>

⁸⁶ Federal law enforcement or prosecution officials or Federal government agency staff (e.g., Equal Employment Opportunity Commission (EEOC) or U.S. Department of Labor) file continued presence applications for trafficking victims that they or state and local law enforcement, prosecutors, or judges have identified. See DHS CTR. FOR COUNTERING HUMAN TRAFFICKING, CONTINUED PRESENCE RESOURCE GUIDE FOR SUBMITTING LAW ENFORCEMENT AGENCIES AND CIVIL ATTORNEYS, USCIS (2021), <https://niwaplibrary.wcl.american.edu/pubs/continued-presence-resource-guide-2021>.

⁸⁷ INA § 214(o)(7)(B)(i); 8 U.S.C. § 1184 (o)(7)(B)(i).

receive continued presence and it can be granted whether or not a case against the trafficker is filed or prosecuted.⁸⁸ A continued presence applicant must prove:⁸⁹

- Trafficking Victimization: The identified individual must be a victim of a severe form of human trafficking; and
 - Witness: A potential witness in an investigation or prosecution of the trafficker.
 - Continued presence application must be submitted by a federal agency on the victim's behalf. Agencies authorized to submit applications include: DHS (Homeland Security Investigations I HIS); DOJ (FBI, US Attorneys' Offices, Civil Rights Division, and Criminal Section); U.S. Marshals Service, U.S. Department of Labor; and the Equal Employment Opportunity Commission. State and local government officials will need to request that one of these federal agencies files the continued presence application on the immigrant human trafficking victim's behalf.
 - Family members able to apply to join a continued presence recipient are:⁹⁰
 - Under 21 year old trafficking victim: Spouse, child, parent, or unmarried (under 18) sibling under the age of 21;
 - Adult trafficking victim: Spouse or under 21 year old child; and
 - All continued presence recipients: Parents, children, or siblings in danger due to the immigrant's escape from trafficking or cooperation with law enforcement.
-
- U Visas for Victims of Crime:⁹¹ The U-visa is available to noncitizens who are victims of criminal activity.⁹² Domestic violence, sexual assault, stalking, human trafficking, child abuse and other family violence cases make up approximately 75% of U visa applications annually. The U visa is a form of humanitarian relief designed to encourage noncitizen crime victims to report crime and seek protection from the courts. To qualify for a U visa an immigrant victim of criminal activity must prove:
 - Victim of Criminal Activity: The immigrant must be a victim of one of the following statutorily listed criminal activities:
 - Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking, 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; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes or any similar activity in violation of federal, state, or local criminal law.
 - Both direct victims and, in limited instances, indirect victims can apply.

⁸⁸ DHS CTR. FOR COUNTERING HUMAN TRAFFICKING, CONTINUED PRESENCE RESOURCE GUIDE FOR SUBMITTING LAW ENFORCEMENT AGENCIES AND CIVIL ATTORNEYS, USCIS (2021), <https://niwaplibrary.wcl.american.edu/pubs/continued-presence-resource-guide-2021>.

⁸⁹ See DHS CTR. FOR COUNTERING HUMAN TRAFFICKING, CONTINUED PRESENCE RESOURCE GUIDE FOR SUBMITTING LAW ENFORCEMENT AGENCIES AND CIVIL ATTORNEYS, USCIS (2021), <https://niwaplibrary.wcl.american.edu/pubs/continued-presence-resource-guide-2021>.

⁹⁰ DHS CTR. FOR COUNTERING HUMAN TRAFFICKING, CONTINUED PRESENCE RESOURCE GUIDE FOR SUBMITTING LAW ENFORCEMENT AGENCIES AND CIVIL ATTORNEYS, USCIS (2021), <https://niwaplibrary.wcl.american.edu/pubs/continued-presence-resource-guide-2021>.

⁹¹ For more detail see LESLYE E. ORLOFF, BENISH ANVER, AND ABIGAIL WHITMORE BENCH CARD ON IMMIGRATION RELIEF FOR BATTERED SPOUSES, ABUSED CHILDREN AND IMMIGRANT CRIME VICTIMS (2021), <https://niwaplibrary.wcl.american.edu/pubs/bench-card-on-immigration-relief-for-crime-victims>. See also, SYLVIE SHENG ALINA HUSAIN, ALISHA LINESWALA, BENISH ANVER, KAREN DRYHURST, LUCIA MACIAS, AND LESLYE E. ORLOFF, U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR FEDERAL, STATE AND LOCAL JUDGES, COMMISSIONERS, MAGISTRATES AND OTHER JUDICIAL OFFICERS (2020), <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2>.

⁹² Any immigrant who is a victim of a U visa criminal activity including those who are documented (e.g., work, student, and diplomatic visa holders, children with Deferred Action for Childhood Arrivals (DACA)) and who are undocumented are eligible to apply for U visa protections.

- Information: The immigrant has information about the criminal activity;⁹³
- Helpfulness: The immigrant has been, is being, or is likely to be helpful in detection, investigation, prosecution, conviction or sentencing related to the criminal activity;⁹⁴
- Criminal Activity Occurred in the U.S. or violated U.S. law;
- Certification Requirement:⁹⁵ The immigrant must obtain a certification from a state, local or federal, judge, prosecutor, law enforcement officer, child/adult protective services official, state or federal labor law agency, EEOC, FBI or other government agencies with criminal, civil or administrative authority involved in detecting, investigating, prosecuting, convicting, or sentencing individuals involved in criminal activities. Certifications attest to the criminal activity, that immigrant is the victim, helpfulness, and that the criminal activity occurred in the U.S.⁹⁶
- The Immigrant Applicant for a U Visa Must Additionally Prove:
 - Substantial Harm: The immigrant suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
 - Admissibility to the U.S.: The U visa application includes a full criminal and immigration history background check on each applicant. Victims with criminal histories or other grounds of inadmissibility applying for a U-Visa must obtain a waiver of inadmissibility that DHS has the discretion to issue.⁹⁷

U visa applicants will receive formal protection from deportation and work authorization between 1-5 years after filing, however receipt of the U visa will take years on a waitlist. After three years as a U visa holder, victims qualify to apply for lawful permanent residency which requires proof that the victim did not unreasonably refuse to provide assistance reasonably requested by government officials and that their continued presence in the U.S. is justified for humanitarian or family unity reasons or that it is in the national or public interest.

- Protections for Victims and Witnesses:⁹⁸ For over two decades since 2000 the Department of Homeland Security has implemented immigration enforcement policies directing its immigration enforcement officers

⁹³ For children under 16 years old, that his/her parent, guardian, or “next friend” information about the criminal activity.

⁹⁴ If the victim is under 16 years old, that the victim’s parent, guardian, or “next friend” has been helpful, is being helpful, or is likely to be helpful.

⁹⁵ Certifying officials include, but are not limited to, federal, state or local police, sheriffs, prosecutors, judges, magistrates, adult or child protective services; the U.S. Department of Labor, Equal Employment Opportunity Commission, the U.S. Department of Homeland Security, or state labor investigation boards.

⁹⁶ SYLVIE SHENG ALINA HUSAIN, ALISHA LINESWALA, BENISH ANVER, KAREN DRYHURST, LUCIA MACIAS, AND LESLYE E. ORLOFF, U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR FEDERAL, STATE AND LOCAL JUDGES, COMMISSIONERS, MAGISTRATES AND OTHER JUDICIAL OFFICERS (2020), <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2>; LESLYE E. ORLOFF, BENISH ANVER, SYLVIE SHENG, ROCIO MOLINA, PRADINE SAINTFORT, AND ALINA HUSAIN., U VISA CERTIFICATION AND T VISA DECLARATION TOOLKIT FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS (2021), <https://niwaplibrary.wcl.american.edu/pubs/u-t-visa-toolkit-law-enforcement-prosecutor>; LESLYE ORLOFF, ROCIO MOLINA, MARIA JOSE FLETCHER, LINDA DAWSON, CAROLYN S. RONIS, ADITI KUMAR, TOOLKIT FOR ADULT PROTECTIVE SERVICES’ USE OF THE U VISA (2014), <https://niwaplibrary.wcl.american.edu/pubs/aps-u-visa-toolkit>.

⁹⁷ For a full list of inadmissibility grounds waivable in U visa cases *see* LIMAYLI HUGUET ET AL., COMPARING INADMISSIBILITY WAIVERS AVAILABLE TO IMMIGRANT VICTIMS IN VAWA SELF-PETITIONING, U VISA, T VISA AND SPECIAL IMMIGRANT JUVENILE STATUS CASES (2021), <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-vawa-t-u-sijs>.

⁹⁸ ICE DIRECTIVE 11005.3: USING A VICTIM-CENTERED APPROACH WITH NONCITIZEN CRIME VICTIMS (Aug. 10, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-victim-centered-directive-11005-3>; ICE CONFIRMS CONTINUED EFFECTIVENESS OF VICTIM WITNESS PROTECTIONS (Apr. 19, 2019), <https://niwaplibrary.wcl.american.edu/pubs/ice-confirmation-of-continued-effect-victim-witness-memo>; ICE DIRECTIVE NO. 10076.1, PROSECUTORIAL DISCRETION: CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS, MEMORANDUM FROM JOHN MORTON, DIRECTOR, DHS TO ALL FIELD OFFICE DIRECTORS, ALL SPECIAL AGENTS IN CHARGE AND ALL CHIEF COUNSEL (June 17, 2011), <https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>; VAWA 2005 AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT AND 8 U.S.C. § 1367, MEMORANDUM FROM WILLIAM I. HOWARD,

and immigration trial attorneys to exercise prosecutorial discretion not to enforce immigration laws against immigrant victims of crime and abuse. These policies offer protection to both documented and undocumented victims and witnesses and apply in addition to and whether or not an immigrant victim files for one of the victim based forms of immigration relief described in this bench card. Immigration and Customs Enforcement in 2021 in discussing these policies confirmed that:

“The duty to protect and assist noncitizen crime victims is enshrined in, among other laws, the Violence Against Women Act (VAWA), the Trafficking Victims Protection Act (TVPA), and their respective reauthorizations. Congress created victim-based immigration benefits to encourage noncitizen victims to seek assistance and report crimes committed against them despite their undocumented status. When victims have access to humanitarian protection, regardless of their immigration status, and can feel safe in coming forward, it strengthens the ability of local, state, and federal law enforcement agencies, including ICE, to detect, investigate, and prosecute crimes.”

The victim and witness protections under U.S. immigration policies require immigration enforcement officials and immigration trial attorneys to ---

“[E]xercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice... To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to:

- victims of domestic violence, human trafficking, or other serious crimes;
- witnesses involved in pending criminal investigations or prosecutions;
- plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaging in a protected activity related to civil or other rights... who may be in a non-frivolous dispute with an employer, landlord, or contractor.”⁹⁹

B. Other Forms of Humanitarian Immigration Relief

Refugee Status: Refugees are people who have fled war, violence, conflict or persecution and have crossed an international border seeking safety in another country.¹⁰⁰ The number of refugees admitted to the U.S. is set by the President in consultation with Congress at the beginning of each fiscal year.¹⁰¹ Priorities for refugee admission include:¹⁰²

PRINCIPAL LEGAL ADVISOR, TO ALL OPL CHIEF COUNSEL (Feb. 1, 2007), <https://niwaplibrary.wcl.american.edu/pubs/iceopla-vawa-confidentiality-2007-foia>; MEMORANDUM FROM JULIE L. MYERS, ASSISTANT SECRETARY OF ICE, PROSECUTORIAL AND CUSTODY DISCRETION (Nov. 7, 2007); EXERCISING PROSECUTORIAL DISCRETION MEMORANDUM FROM DORIS MEISSNER, COMM’R, IMMIGR. AND NATURALIZATION SERV. TO REG’ DIR., DISTRICT DIR, CHIEF PATROL AGENTS AND REG’L AND DISTRICT COUNS. (Nov. 17, 2000), <https://niwaplibrary.wcl.american.edu/pubs/exercising-prosecutorial-discretion>.

⁹⁹ ICE DIRECTIVE NO. 10076.1, PROSECUTORIAL DISCRETION: CERTAIN VICTIMS, WITNESSES, AND PLAINTIFFS, MEMORANDUM FROM JOHN MORTON, DIRECTOR, DHS TO ALL FIELD OFFICE DIRECTORS, ALL SPECIAL AGENTS IN CHARGE AND ALL CHIEF COUNSEL (June 17, 2011), <https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-june-17-2011-prosecutorial-discretion-for-victims>

¹⁰⁰ What is a refugee?, UNHCR, <https://www.unhcr.org/en-us/what-is-a-refugee.html> (last visited Apr. 20, 2022).

¹⁰¹ See generally, KIRA MONIN, JEANNE BATALOVA, AND TIANJIAN LAI, REFUGEES AND ASYLEES IN THE UNITED STATES, MIGRATION POLICY INSTITUTE 2 (May 13, 2021), https://www.migrationpolicy.org/article/refugees-and-asylees-united-states-2021?gclid=CjwKCAiA24SPBhB0EiwAjBgkhovX-I8HDGM0AZz-v9NQkQPEbxITS-tx6XzzaPBZM8X64ktWobtQHBoCnPEQAvD_BwE.

¹⁰² KIRA MONIN, JEANNE BATALOVA, AND TIANJIAN LAI, REFUGEES AND ASYLEES IN THE UNITED STATES, MIGRATION POLICY INSTITUTE 4 (May 13, 2021), <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states-2021?gclid=CjwKCAiA24SPBhB0EiwAjBgkhovX-I8HDGM0AZz-v9NQkQPEbxITS->

- Persons referred by the U.N. high Commissioner for Refugees, the U.S. embassies, the U.S. Department of State or certain Nongovernmental Organizations;
- Groups of special humanitarian concern to the United States;
- Reunification with family members including other refugees residing in the U.S.

Under U.S. immigration laws a refugee is a person located outside of the United States:¹⁰³

- Who 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 their country of origin or last permanent residence;
- Not firmly resettled in another country;
- Who is not a security risk, perpetrator of persecution, or an individual has not committed certain categories of crimes;¹⁰⁴ and
- Who is admissible to the U.S. or is granted a waiver of inadmissibility.¹⁰⁵

Asylum Status: Asylum is humanitarian immigration relief given to individuals physically present in the United States or at a U.S. port of entry who meet the requirements for “refugee” status listed above.¹⁰⁶ In general, asylum seekers must file within one year of first entering the U.S. If an asylum seeker’s application is not approved by DHS, the applicant will automatically be referred to immigration enforcement authorities and placed in removal proceedings where they will have the opportunity to renew their asylum application before an immigration judge.¹⁰⁷

Persons granted refugee and asylum status in the United States receive a wide range of resettlement services and assistance¹⁰⁸ and broad access to federal and state funded public benefits.¹⁰⁹ Both refugees and asylees can obtain refugee or asylum status for their spouse and their unmarried children who were under the age of 21 when the immigrant applied for asylum or refugee status.¹¹⁰ Applications for spouses and children must be filed together with or within two years after refugee or asylees case is approved.¹¹¹ Refugees must apply for lawful permanent residency after they have been in the United State with refugee status for at least one year.¹¹² Asylees are eligible to apply for lawful permanent residency one year after they are granted asylum,

tx6XzzaPBZM8X64ktWobtQHBoCnPEQAvD_BwE (Refugees under consideration for resettlement are intensively vetted with multiple security screenings and background checks which is a process that typically takes 18-24 months).

¹⁰³ REFUGEES, USCIS, <https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees>.

¹⁰⁴ Refugee and asylum will be denied when DHS suspects a person is a controlled substance trafficker or other select security-related grounds limited to terrorist activities, foreign policy concerns, and participants in NAZI persecution, genocide, or the commission of any act of torture or extrajudicial killing. For further details on these bars, *see* INA § 212(a)(2)(C); INA § 212(a)(3)(A), (B), (C), (E).

¹⁰⁵ *See generally*, USCIS Form I-602, Application for Waiver of Inadmissibility Grounds, Instructions (July 31, 2022), <https://www.uscis.gov/sites/default/files/document/forms/i-602instr.pdf>.

¹⁰⁶ *See generally*, KIRA MONIN, JEANNE BATALOVA, AND TIANJIAN LAI, REFUGEES AND ASYLEES IN THE UNITED STATES, MIGRATION POLICY INSTITUTE 4 (May 13, 2021), https://www.migrationpolicy.org/article/refugees-and-asylees-united-states-2021?gclid=CjwKCAiA24SPBhB0EiwAjBgkhovX-I8HDGM0AZz-v9NQkQPEbxITS-tx6XzzaPBZM8X64ktWobtQHBoCnPEQAvD_BwE.

¹⁰⁷ LESLYE E. ORLOFF, REBECCA STORY, JOANNE LIN, CAROLE ANGEL, DEBORAH BIRNBAUM, AND RACHEL NYAKOTEY, GLOSSARY OF TERMS, 2 (2017) <https://niwaplibrary.wcl.american.edu/pubs/appendix-z-glossary>.

¹⁰⁸ *See generally*, RESETTLEMENT SERVICES, HHS OFFICE OF REFUGEE RESETTLEMENT, <https://www.acf.hhs.gov/orr/programs/refugees>

¹⁰⁹ For state-by-state information on access to federal and state funded public benefits for refugees and asylees *see*, NIWAP, All States Public Benefits Charts and Map (2021), <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

¹¹⁰ FAMILY OF REFUGEES AND ASYLEES, USCIS (last updated Sept. 24, 2017), <https://www.uscis.gov/family/family-of-refugees-and-asylees>.

¹¹¹ FAMILY OF REFUGEES AND ASYLEES, USCIS (last updated Sept. 24, 2017), <https://www.uscis.gov/family/family-of-refugees-and-asylees>.

¹¹² GREEN CARD FOR REFUGEES, USCIS (last updated June 26, 2017), <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-refugees>.

but the law does not require asylees to apply.¹¹³ There is an important difference between refugees and asylees in the way that divorce impacts immigrants who gained refugee or asylum status as a spouse. For spouses of asylees who have not already been granted lawful permanent residency, divorce precludes the asylee spouse from applying for and being granted lawful permanent residency.¹¹⁴

- Deferred Action For Childhood Arrivals (DACA):¹¹⁵ offers protection from deportation, work authorization, driver's licenses and social security numbers to undocumented immigrants who came to the United States as children. DACA is granted initially for 2 years and is renewable. DACA does not provide a path to lawful permanent residency. For this reason it is important to screen DACA eligible immigrants for other forms of immigration relief including the crime and abuse related forms of relief discussed in this Bench Card that include pathways to lawful permanent residence and citizenship. To apply for DACA, an immigrant must meet the following requirements. The DACA applicant:¹¹⁶
 - Was under the age of 31 as of June 15, 2012;
 - Came to the United States before reaching their 16th birthday;
 - Has continuously resided in the United States since June 15, 2007, up to the present time;
 - Was physically present in the United States on June 15, 2012 and at the time of making their request for consideration of deferred action under DACA;
 - Had no lawful immigration status on June 15, 2012¹¹⁷
 - Is currently in school, has graduated, or obtained a certificate of completion from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
 - Has not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.¹¹⁸

¹¹³ GREEN CARD FOR ASYLEES, USCIS (July 10, 2017), <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-asylees>

¹¹⁴ See generally, RAFAELA RODRIGUES, ZACHARY PEREZ AND LESLYE E. ORLOFF, DIVORCE AND IMMIGRATION STATUS BENCH CARD (2021), <https://niwaplibrary.wcl.american.edu/pubs/divorce-bench-card>.

¹¹⁵ See generally, CARSON OSBERG, ROCIO MOLINA, LESLYE ORLOFF, AND MEAGHAN FITZPATRICK, DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA); HOW IT IS HELPFUL FOR IMMIGRANT CRIME AND VIOLENCE SURVIVORS? (2014) <https://niwaplibrary.wcl.american.edu/pubs/imm-qref-dacaforvictims-11-24-14>.

¹¹⁶ CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA), USCIS (last updated Apr. 12, 2022), <https://www.uscis.gov/DACA>.

¹¹⁷ CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA), USCIS (last updated Apr. 12, 2022), <https://www.uscis.gov/DACA>

(Applicant had unlawful status due to entering without inspection before June 15, 2012 or had lawful immigration status expired on or before June 15, 2012).

¹¹⁸ Consideration of Deferred Action for Childhood Arrivals (DACA), USCIS (last updated Apr. 12, 2022), <https://www.uscis.gov/DACA#nationalsecurity>.