

UNIT ONE
OVERVIEW OF IMMIGRATION AND THE LAW

This unit covers an introduction to basic concepts and practices in immigration law, including:

- Citizenship and “alienage” (Part One);
- Removal from and admission into the United States (Part Two);
- Ways that a person can become a lawful permanent resident (Part Three);
- Kinds of immigration status (Part Four);
- Structure of the DHS (Part Five); and
- The Immigration Act (Part Six).

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Laura is a Mexican citizen living in Mexico. She wants to move to the United States to find work to support her family. She crosses the border at night by walking through the Rio Grande River near Brownsville, Texas.

Marta is from the Philippines. She wants to come to the United States to visit her sister and go to school. She obtains a visitor’s visa from the U.S. consulate in Manila. When her plane lands at the Los Angeles Airport, she goes through immigration inspection.

Asmeer was born in New York City.

PART ONE: CITIZENSHIP AND “ALIENAGE”

§ 1.1 A Nation with Borders

NOTE: Over the years, community members, including those directly impacted by immigration laws, have become more directly involved in advocating for changes to the U.S. immigration system. One area of advocacy that has been led by community members is to change the historical and discriminatory language that has been used to label persons who are not U.S. citizens.

People who can show that they are **U.S. citizens** may enter and stay inside the country without much worry. People who are not U.S. citizens have been called “**aliens**” under the immigration laws and are legally limited from entering and staying permanently inside the United States. Although U.S. immigration laws use the term “aliens,” advocates have pushed to eradicate such a derogatory and offensive term from the laws and from common usage.

Although the term is still found throughout different laws and policies, community members have seen some victories. For example, recently the Executive Office for Immigration Review (EOIR), which includes the immigration courts and Board of Immigration Appeals (BIA), and United States Citizenship and Immigration Services (USCIS) decided to replace the term “aliens” with other less offensive terms like “noncitizens” and “persons.”¹ These agencies are discussed in detail in **§ 1.23**.

¹ See EOIR, Policy Memorandum 21-27: Clarify the agency’s use of terminology regarding noncitizens, (July 26, 2021), <https://www.justice.gov/eoir/book/file/1415216/download>.

Throughout this manual, you'll notice that we have also chosen to use terms like "noncitizens" unless there is a need to cite to a specific law or policy for reference.

In the United States, only officers of the U.S. government can give a noncitizen permission to enter the country, or to stay here once they have entered.

Example 1.1: To apply for a U.S. visitor's visa from the Philippines, Marta went to a U.S. consulate in Manila. The consulate is a U.S. government office located in another country. The government of the Philippines cannot give Marta a visa to visit the United States; only a U.S. consular official can do this.

When Marta landed at the airport, an employee of U.S. Customs and Border Protection (CBP) inspected her. Only a CBP official may give a noncitizen permission to physically enter the United States. Marta needed this permission in addition to the visa she obtained from the U.S. consulate.

The U.S. Congress writes the laws about U.S. citizens and noncitizens. The current laws are collectively called the **Immigration and Nationality Act of 1952**, as amended (**the INA**). The INA is the basic immigration statute (law) that we will cover in this guide.

For many years, the Immigration and Naturalization Service (INS) was the main federal government agency that administered U.S. immigration law. However, on March 1, 2003, Congress dissolved the INS, and all of its functions were assumed by the Department of Homeland Security (DHS). Immigration laws are now administered and enforced by three separate divisions within the DHS: U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE).

CBP's main responsibilities are apprehending noncitizens attempting to enter the United States without permission and checking freight and baggage entering the United States for compliance with customs and trade laws. ICE's mission includes managing investigations of document, identity, visa, and immigration fraud; investigating immigration violations and migrant smuggling; and detaining, prosecuting, and removing undocumented and deportable noncitizens. USCIS's mission is to adjudicate affirmative petitions for immigration benefits, such as family petitions, naturalization applications, and asylum applications.

The DHS also writes most of the **regulations** that accompany the INA. Regulations are meant to implement the laws set out by Congress in statute. Regulations usually provide more detail about how the various agencies will implement the laws. Regulations governing the conduct of the immigration courts and the Board of Immigration Appeals (BIA), known collectively as the Executive Office for Immigration Review (EOIR), are written by the U.S. Department of Justice. This is because EOIR is a branch of the Department of Justice. Almost all immigration regulations, including those governing EOIR, are found in Title 8 of the U.S. Code of Federal Regulations, referred to as 8 C.F.R. We'll discuss DHS, CBP, ICE, USCIS, EOIR, and the regulations in more detail below.

NOTE: Finding Your Way in the INA and the Regulations. The INA is divided into sections, which are numbered. This allows us to refer to different parts of the law. For example, Section 208 of the INA is written as "INA § 208."

Like the INA, immigration regulations are also divided into sections, which correspond to sections in the INA. For example, INA § 208 discusses applications for asylum. Section 208 of the regulations also deals with asylum. That would be written as “8 C.F.R. § 208.”

After DHS was created, the regulations governing DHS and EOIR were split into two separate parts, many of which are identical. This was to differentiate between DHS and EOIR as separate agencies within different departments in the federal government. Generally, regulations governing EOIR have a “1” before them but otherwise are nearly identical to the DHS regulations. So in the example above, 8 C.F.R. § 208 contains the DHS regulations pertaining to asylum, and 8 C.F.R. § 1208 contains EOIR regulations pertaining to asylum. Though these regulations generally parallel each other, they also contain differences due to the different adjudicators governing these cases. For example, asylum officers adjudicate asylum claims before DHS and would look to 8 C.F.R. § 208 for guidance, and immigration judges adjudicate asylum claims before EOIR and would look to 8 C.F.R. § 1208.

An important purpose of this guide is to help you become comfortable using the INA and the regulations. If you have a copy of the INA and the regulations, please look up the sections that we will discuss in this unit. It is generally good practice to first look up what the INA provides as the law on a topic, then to turn to the regulations to learn how DHS or EOIR will enforce or implement that law.

§ 1.2 Who Is a Citizen? Who Is a “Noncitizen”?

Anyone who is born in the United States, including Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands (on or after November 4, 1986), is a U.S. citizen (the only exception is the child of a foreign diplomat). In addition, many people who are born outside the United States acquire U.S. citizenship from their parents. Some of these people may not even know that they are U.S. citizens.

Example 1.2-a: Asmeer was born in New York. She has been a U.S. citizen since the moment she was born. The fact that her parents are here without papers does not impact her status as a U.S. citizen.

Teresa was born in the Dominican Republic. Although she does not know it, her grandfather was once a U.S. citizen, and he passed U.S. citizenship to Teresa’s mother, who passed it on to Teresa. Teresa has been a U.S. citizen since the moment of her birth in the Dominican Republic. See **Unit 17**.

Anyone who is not a U.S. citizen is considered a noncitizen.² **Section 1.16** of this manual describes the various types of immigration statuses a noncitizen may have. When assessing these immigration statuses, there are some common usages: “immigrants,” which generally refer to persons who intend to make the United States their home, and “nonimmigrants,” which generally refer to those who are only granted visas for a temporary period and a specific purpose and do not intend to make the United States their home. Persons who do not have any lawful immigration status are known as undocumented.

² This includes persons born in American Samoa and Swains Island that are generally considered U.S. non-citizen nationals and not U.S. citizens. *See* INA § 308.

Example 1.2-b: Sarwan has had a green card for twenty years. Marta is here temporarily on a tourist visa. Laura is undocumented because she entered the United States without papers and has no lawful immigration status. All of them are noncitizens and subject to U.S. immigration laws.

What rights does a U.S. citizen have under immigration laws? A U.S. citizen can very rarely be legally thrown out of the United States (**removed or deported**) or stopped from entering the United States (**not admitted**). There are limited circumstances in which a person can be subject to denaturalization proceedings which can revoke U.S. citizenship, such as when a person naturalized by concealing a material fact. But generally speaking, neither CBP nor ICE can arrest or detain a U.S. citizen.

Example 1.2-c: Teresa crossed without permission into the United States from the Dominican Republic. She is picked up by ICE in a raid and detained. Her husband comes to you for help. After studying the law, you realize that Teresa is really a U.S. citizen. If you can prove that she inherited U.S. citizenship from her grandfather and mother, Teresa can be released. ICE will have to treat her like any other U.S. citizen; it cannot keep her in jail (immigration detention) or remove her (force her to leave the United States).

Noncitizens do not have this protection. If a noncitizen commits certain acts or does not have a visa or other legal immigration status, they can be deported or removed. This is true even if the person has a green card. Plus, any noncitizen who tries to enter the United States at the border may not be admitted if they have committed certain acts or do not have a visa or other legal immigration status.

Example 1.2-d: Sarwan is originally from India and has become a lawful permanent resident (green card). Sarwan was convicted of selling cocaine. Under the immigration laws, any noncitizen who receives a drug conviction can be removed (deported). If ICE discovers the conviction, it can bring Sarwan before an immigration judge. The judge can order ICE to remove Sarwan and send him back to India. In addition, Sarwan will lose his green card.

Marta lied to the U.S. consulate in the Philippines in order to obtain her tourist visa. A noncitizen who commits fraud to obtain a visa may not be admitted at the border. If CBP at the airport discovers that Marta committed fraud, they can refuse to let her enter the United States. In fact, Marta can only challenge CBP's decision through a hearing if she swears under oath that she is actually a lawful permanent resident, a refugee (someone who has been granted refugee status), or an asylee (someone who has been granted asylum in the United States), or if she asks for asylum or says that she fears persecution in the Philippines. Otherwise, CBP can refuse to let Marta enter the United States, and she is not entitled to have the decision reviewed by a court.

PART TWO: WHO IS DEPORTABLE? WHO MAY NOT BE ADMITTED?

In the examples discussed in **Part One**, Sarwan and Marta got in trouble with immigration authorities. Their problem was that they came within what are known as grounds of inadmissibility or deportability. The grounds of inadmissibility and deportability are basic parts

of immigration law. We will study them in detail in **Unit 3** and throughout this guide, but the following is an overview of these concepts.

§ 1.3 The Grounds of Inadmissibility

The grounds of inadmissibility can be thought of as a list of the kinds of noncitizens that Congress wants to “keep out” out of the country. They apply to noncitizens who want to enter the United States temporarily or permanently and also to noncitizens who apply for certain kinds of immigration status. The list is found at INA § 212(a). Congress came up with the first version of this list in 1882. Ever since, Congress has added and subtracted items from the list of grounds of inadmissibility. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress revised and added grounds, and changed the name used in the INA from “grounds of exclusion” to “grounds of inadmissibility.”

The grounds of inadmissibility punish many different kinds of behavior and status. For example, a noncitizen is inadmissible for having “bad” behavior if they:

- Have been convicted of certain crimes;
- Are considered a terrorist;
- Helped smuggle other noncitizens into the United States; or
- Have committed immigration fraud.

A noncitizen is also inadmissible as a potential threat to the U.S. public if they:

- Have certain contagious diseases; or
- Are likely to become dependent on the government for subsistence in the United States.

A noncitizen is also inadmissible if they:

- Do not have a valid visa or legal permission to enter the United States; or
- Have entered the United States without permission.

These are just a few examples. The list of grounds of inadmissibility found at INA § 212(a) is quite long. Throughout this guide you will become quite familiar with the various grounds of inadmissibility.

Exercise 1.3: Take a copy of the Immigration and Nationality Act. Find INA § 212(a). See if you can answer the following questions. (Note: the hardest part may be finding the right subsection of 212(a) in your copy of the INA. Keep trying!) Answers are at **Appendix 1-A**.

1. Stella has been a sex worker for several years. Might she be inadmissible under INA § 212(a)(2)(D)?
2. Marta lied to a consular officer so that she could get a visa to come to the United States. Might she be inadmissible under INA § 212(a)(6)(C)?
3. Laura does not have any visa or legal permission to get into the United States. Might she be inadmissible under INA § 212(a)(6)(A)?
4. Maurice is currently married to four women because he believes in polygamy. Might he be inadmissible under INA § 212(a)(10)(A)?

§ 1.4 What Can Happen to a Noncitizen Who Is Inadmissible?

A noncitizen who comes within a ground of inadmissibility is called an “**inadmissible**” noncitizen. An advocate might describe the person’s situation by saying “my client is inadmissible.” The opposite is an “**admissible**” **noncitizen**: a noncitizen who does not come within any ground of inadmissibility.

The grounds of inadmissibility apply to noncitizens who are either trying to gain lawful admission (legally enter) the United States, or who have entered the United States without proper legal immigration status and were not inspected by an immigration officer at the border. The inadmissibility grounds are the legal bases for keeping the person out. If a Customs and Border Protection agent decides that a noncitizen who is trying to enter the United States is inadmissible (for example, because the agent thinks their entry documents are fake, they are likely to be primarily dependent on government assistance, or they have committed a crime), the noncitizen may have a very difficult time gaining entry to the United States. The agent may refuse to let them enter and try to convince them to withdraw their request to enter. If the agent asserts that the person is lying at the time of entry or lied to get their visa (visa fraud), the agent can similarly bar their entry. In many cases, the noncitizen will not have the right to see a judge (This procedure is called expedited removal. For more information about expedited removal, see **Unit 10**).

If a noncitizen enters the United States without permission, they can be **removed** from the country (forced to leave) for being inadmissible. The inadmissibility ground that would apply is being present in the United States without having been admitted or paroled. See INA § 212(a)(6)(A). Thus, a noncitizen who entered the United States without permission and lived here for twenty years would still be held to be “inadmissible” and “seeking admission” if they were not inspected and admitted by an immigration officer when they entered.

The grounds of inadmissibility are also used as the test for those who may receive some kinds of immigration benefits and status. For example, if a person is married to a U.S. citizen and is applying for a green card through the marriage, they will face the grounds of inadmissibility. If the person is inadmissible, for example, because of immigration or criminal violations, their application for a green card may be denied.

To sum up, an inadmissible noncitizen might have problems in three different contexts. One, they might not be admitted at the U.S. border. Two, if they enter the United States without being admitted, they could be removed for being inadmissible. And three, they might be ineligible to become a lawful permanent resident or acquire some other immigration status.

§ 1.5 The Grounds of Deportability

The grounds of deportability apply to noncitizens who **have already been admitted to the** United States, either for a temporary stay or as permanent residents. (The grounds of deportability do not apply to a person who entered the United States without being inspected and admitted as discussed above. Instead, the grounds of inadmissibility would apply.)

The grounds of deportability are a list of reasons or conduct for which a person who was admitted to the United States could be **removed** (forced to leave the United States). The list is found in INA § 237. A noncitizen who comes within a ground of deportability is a “**deportable**” **noncitizen**.

The list includes several grounds that are similar to grounds of inadmissibility and some that are different. For example, noncitizens can be removed if they:

- Have been convicted of certain crimes;
- Are considered a terrorist;
- Obtained legal status by committing marriage fraud;
- Helped smuggle noncitizens into the United States;
- Falsely claimed to be a U.S. citizen in order to get a benefit from the government; or
- Were inadmissible at the time they were admitted to the United States.

The last ground is important. A noncitizen is deportable if, at the time they were admitted to the United States, they really were inadmissible. In other words, noncitizens whom the Customs and Border Protection (CBP) could have refused to admit to the United States do not have the right to stay in the United States just because the CBP made a mistake by admitting them at the border.

Example 1.5: Marta is inadmissible because she committed visa fraud when she obtained her visitor’s visa at the U.S. consulate in the Philippines. Despite that, she managed to get through CBP inspection at the Los Angeles International Airport because at the time, CBP did not detect the fraud, and she was admitted to the United States.

Three months later, CBP discovers that they should not have admitted Marta when she came in. Marta is deportable now because, at the time she entered the United States, she was actually inadmissible.

Exercise 1.5: In your copy of the INA, turn to INA § 237. Answer the following questions. Answers are located in **Appendix 1-A**.

1. Fidel is a permanent resident who has been living in the United States for some time. He is paid \$1,000 to bring some Mexican citizens without inspection across the U.S. border. Fidel gets everyone across the border and then is arrested by CBP. Might Fidel be deportable under INA § 237(a)(1)(E)?
2. Flavia was convicted of assault with a deadly weapon and sentenced to two years in prison. This offense is a “crime involving moral turpitude.” Might Flavia be deportable under INA § 237(a)(2)(A)(i)? Might Flavia be deportable for any other reason?
3. Laura crossed the border secretly in order to avoid the CBP inspection point. Is she inadmissible or deportable? (Careful!) Might Laura be inadmissible under INA § 212(a)(6)(A)?
4. Martin borrowed his brother’s border crossing card to get through CBP inspection at the Mexican border. He had active tuberculosis but did not tell the CBP officer at the border. Might he have been inadmissible under INA § 212(a)(1)(A)(i) when he was admitted? Might he now be deportable under INA § 237(a)(1)(A) for more than one reason?

§ 1.6 What Can Happen to a Noncitizen Who Is Deportable?

If Immigration and Customs Enforcement discovers that a noncitizen is deportable, it can bring the noncitizen into **immigration court** for **removal proceedings**. This is true even if the person

has a green card. In some cases, no matter how sympathetic the person's case is, the person will likely be removed (deported).

Example 1.6: Michelle is a French citizen who has had a green card for twenty years. She has six U.S. citizen children. She owns her own home and runs a business that employs twenty U.S. citizens. If she is convicted of drug trafficking, she almost certainly will be removed for being deportable, no matter how much harm this may cause to her family and employees.³

§ 1.7 Removal Proceedings: Admissibility, Deportability, Burden of Proof, and “Expedited Removal”

Noncitizens who are in the United States can be placed in **removal proceedings** if Immigration and Customs Enforcement (ICE) charges them with being inadmissible or deportable. First, ICE must present evidence that the person is a noncitizen. Once ICE does so, and if the immigration judge finds that ICE is correct about the person being inadmissible or deportable, the person can be “removed” (deported) from the United States.

Whether your client faces the grounds of inadmissibility or deportability in removal proceedings depends upon whether they have been lawfully **admitted** to the United States. This also determines who will have the **burden of proof** in the removal case: ICE or your client. The burden of proof means that a particular side must convince the judge of their position. If the facts presented to the court are insufficient, then the burden of proof has not been met. For example, if ICE argues that a person obtained their visa by fraud but does not have enough evidence to show that it was fraud, then ICE would not have met its burden of proof.

If your client has **not been lawfully admitted** to the United States, they face **the grounds of inadmissibility**. In that case, **the client has the burden of proving that they are admissible**. This means that if the client does not present persuasive evidence that they are admissible, they will be removed. See INA § 240(c)(2).

If your client **has been lawfully admitted**, they face **the grounds of deportability**. In that case, **ICE has the burden of proving that the client is deportable**. This means that if ICE does not present sufficient evidence that the client is deportable, the client will not be ordered removed. See INA § 240(c)(3).

If ICE believes a person is removable, it will begin removal proceedings by filing a **Notice to Appear** (NTA) with the immigration court.⁴ The NTA contains a list of charges made by ICE against the person.⁵ The NTA states the nature of the proceedings; the legal authority under which the government is conducting the proceedings; the charges against the noncitizen; the noncitizen's obligations to the government while in proceedings;⁶ and the sections of law that the

³ If Michelle faced certain harms upon return to France, for example, torture or persecution, she might qualify for some humanitarian relief. *See* Unit 14.

⁴ You can see a sample Notice to Appear in Unit 10.

⁵ These charges are not facts, they are just allegations made by the agency, and may be challenged. *See* Unit 10.

⁶ This includes the responsibility to notify the government of any change of address. *See* Unit 10.

noncitizen violated. In other words, ICE charges the person with being a deportable or an inadmissible noncitizen. See **Unit 10** for detailed information on the NTA.

An important issue is whether the client will be allowed to have a removal hearing before a judge or whether an official of one of the three Department of Homeland Security (DHS) branches alone will order them removed. Generally, we want our clients to have a **removal hearing** before an **immigration judge** instead of just having a DHS agent decide their fate. An immigration judge might be more impartial than a DHS agent and more likely to follow the rules. There is more of an opportunity to present evidence and make legal arguments in immigration court. Also, the client can apply for **relief** from removal, and if they win, they would not be removed and might even obtain a green card.

Other DHS agencies like Customs and Border Protection (CBP), however, have the power to order the removal of certain noncitizens who have not been admitted *without* giving them the chance to take their case before a judge in a removal hearing. This is called the **expedited removal** process. People currently subject to this process are noncitizens who are at the border applying for admission, are within 100 miles from the border and have been in the United States for 14 days or fewer, and arrive by sea, if 1) They have no entry documents; or 2) CBP claims that they have fake documents, they lied to obtain the documents, or lied to enter the border (committed visa fraud).⁷

There are a few exceptions to this rule. People who assert that they are lawful permanent residents, refugees or asylees, or Cuban citizens or nationals and people who claim that they fear persecution in their home country can obtain a removal hearing before a judge, even if they are stopped at the border (before being admitted).

Under the statute, DHS can choose to apply expedited removal to anyone in the United States who entered without permission if the person cannot demonstrate that they have been present in the United States for at least two years. In these cases, the person is not issued a Notice to Appear in front of the immigration judge. Instead, the person is issued a removal order by the CBP or ICE officer handling their case. For the government to apply expedited removal, the United States must have full diplomatic relations with the person's home country.

Most people who are subject to expedited removal are people charged at the border with committing visa fraud or not having documents. In general, any noncitizen who has been lawfully admitted into the United States has the right to appear before an immigration judge in removal proceedings.

The important right to remain silent. Although a person charged with being inadmissible has the burden to show they are admissible, ICE first has to provide the court with evidence that they are a noncitizen. If ICE has no evidence that the person being charged is a not a U.S. citizen, then the person cannot be removed. The immigration courts have no power over U.S. citizens.

⁷ Former President Trump sought to expand expedited removal, but his order never went into effect, and President Biden withdrew expanded expedited removal on March 21, 2022. DHS, *Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal* (Mar. 21, 2022), <https://public-inspection.federalregister.gov/2022-05961.pdf>.

Unfortunately, often it is our clients themselves who give ICE the crucial information that they are noncitizens and deportable or inadmissible.

Example 1.7-a: Laura was picked up by ICE near San Antonio, Texas. She admitted to ICE officers that she is a Mexican citizen and that she entered the United States without inspection. ICE can use this statement to write the charges in the Notice to Appear and to prove that Laura is a noncitizen who has not been lawfully admitted and should be removed for being inadmissible.

Andre was also picked up by ICE near San Antonio. He confessed to the ICE officers that he is a Mexican citizen who had been lawfully admitted to the United States using a border-crossing card but then had simply stayed here for three years. ICE will use this statement to write the charges in the Notice to Appear and to prove that Andre was admitted but now is deportable and should be removed because he stayed longer than he was permitted.

In both examples above, immigration authorities used the individual's own statements to show they were not citizens of the United States. In reality, any person who is in the United States has the right to refuse to speak with ICE. In some cases, if the person is willing to remain silent, ICE will not be able to get the facts it needs to write up charges for the Notice to Appear or to meet its burden of proof in court. Then ICE cannot remove the person—even if the noncitizen does not have immigration papers. See **Unit 19**.

Example 1.7-b: Mario was stopped by ICE near El Centro, California, but he refused to speak to them. He continued to refuse even though ICE agents pressured him to talk and threatened to arrest him.

Because ICE did not know what country Mario was from and how he entered the United States, it was not able to prove the crucial facts to the judge. ICE could not prove that Mario came under any ground of deportation or inadmissibility; it could not even prove that he was not a U.S. citizen. Since ICE could not meet its burden of proof, the hearing could not go forward, and ICE had to let Mario go free.

Removal proceedings, burden of proof, and other defenses are discussed in more detail in **Unit 10**. More information about who has been admitted and who is still “seeking admission” is provided in **Unit 3**.

Exercise 1.7: For each story, answer the following three questions: Have the following people been lawfully admitted into the United States or not? Would they be charged with being inadmissible or deportable? Will they have the burden of proof, or will ICE or CBP (whichever agency is responsible) have the burden of proof in the examples below? Do they have a right to a removal hearing before a judge? (Answers at **Appendix 1-A**.)

1. Cecilia crosses the border without inspection. Fifteen days later, she is arrested by ICE in San Diego. What if she were arrested in San Diego when she was only in the United States for a week?

2. Monique flies into the United States from Africa. She tells the CBP officer at the inspections booth that she has false documents. She says that she fled her home country because she is afraid of persecution, and she wants political asylum.
3. Sonny enters the United States on a student visa. Later he sent \$300 to his friend to help the friend enter the United States with false documents. ICE finds out about this and arrests Sonny.

PART THREE: BECOMING A LAWFUL PERMANENT RESIDENT

§ 1.8 What Is a Lawful Permanent Resident?

Many of our clients want to become lawful permanent residents of the United States or help another family member become a permanent resident. This section will discuss permanent residence and give an overview of the ways to obtain it.

People use a few terms to describe permanent resident status. A permanent resident is someone who has a **green card**, has **immigrated**, is a **lawful permanent resident (LPR)**, has **adjusted status to permanent resident**, or received an **immigrant visa**. All of these terms mean the same thing.

A lawful permanent resident has several important rights, including the right:

1. To live and work permanently in the United States;
2. To travel in and out of the United States (with some restrictions);
3. To help other family members (spouse, minor children, and unmarried sons and daughters) immigrate by filing a visa petition for them; and
4. To apply for U.S. citizenship after some years as a permanent resident.

How can a noncitizen become a lawful permanent resident? We will discuss this topic at length in this guide. This is a brief overview of the ways that someone can become a permanent resident.

We are presenting this list to underline the fact that the grounds of inadmissibility are closely related to permanent residence. *Noncitizens who are inadmissible may have a very difficult time becoming lawful permanent residents.* The grounds of inadmissibility apply at the border and almost any time a person applies to immigrate.

§ 1.9 A Noncitizen Who Is Inadmissible May Not Be Able to Immigrate; Waivers of Inadmissibility

In each application discussed below, people who want to immigrate must meet two tests: they must qualify for the particular means of immigrating, and they must be **admissible**.

Even if a noncitizen appears inadmissible, they may still be able to immigrate. That is because certain grounds of inadmissibility do not apply in some immigration applications. For other grounds of inadmissibility, applicants may be permitted to ask to **waive** (forgive) the ground of inadmissibility. (We discuss waivers of inadmissibility in detail in **Unit 6**.) The point is that

whenever someone applies for permanent residence, you must check the law to see what grounds of inadmissibility could apply, and then whether there is a waiver available.

§ 1.10 Immigration Through a Family Visa Petition: INA §§ 203, 204

Some people can become lawful permanent residents through their family members. A lawful permanent resident or a U.S. citizen can file a visa petition on behalf of certain close family members. To get the visa approved, the family must prove that the person submitting the visa petition is a permanent resident or U.S. citizen, that the noncitizen who wants to immigrate (obtain lawful permanent residence) is related to that person, and that the relationship can form the basis for an immigrant visa petition under one of the listed preference categories (see **Unit 4** for more information on preference categories).

After the visa petition is approved, the person may apply to immigrate. Some people can immigrate very soon after the visa petition is approved. Others may have to wait many years or more. How long the person must wait to immigrate depends upon the kind of visa petition submitted and where the person waiting to immigrate was born.

People who immigrate through a family visa petition must be admissible. We discuss immigration through family visa petitions in **Units 4–7**.

§ 1.11 Asylum: INA § 208

A person who cannot return to their own country because they fear persecution may apply for asylum in the United States. See INA § 208. The person may apply by mailing an application to a U.S. Citizenship and Immigration Services Asylum Office. Alternatively, if they have been arrested by Immigration and Customs Enforcement or Customs and Border Protection and brought before an immigration judge or an asylum officer, they can ask the immigration judge or the asylum officer for asylum.

A person who has been granted asylum is an **asylee**. One year after receiving asylum, the asylee is eligible to apply for adjustment to permanent resident status. See INA § 209. The person must be admissible at that time. However, some grounds of inadmissibility do not apply to asylees. In addition, there is a broad waiver of other grounds of inadmissibility that is available for humanitarian reasons. We discuss asylum in **Unit 14**.

§ 1.12 Refugee Status: INA § 207

A person who is *outside* the United States and who cannot stay in or return to their country because of fear of persecution may apply for refugee status. See INA § 207. If the government approves the application, the person may enter the United States legally as a **refugee**. One year after entering, the person can apply to adjust status to permanent residence. See INA § 209. The person must be admissible, but refugees are exempted from many grounds of inadmissibility.

§ 1.13 Registry: INA § 249

A person who has lived in the United States since before January 1, 1972 may apply to immigrate by making a “record of admission for permanent residence.” This process is known as **registry**. See INA § 249.

For those that have lived in the United States for a long time, this is a great option because some grounds of inadmissibility do not apply, but the person must be able to establish good moral character at the time of application. Although most people who are eligible have already benefited from registry by obtaining permanent residence, advocates could still encounter people who have not. Registry is discussed in **Unit 16**.

§ 1.14 Amnesty: The Legalization and SAW Programs INA §§ 245A, 210

In 1986, Congress passed a law that created three legalization (also known as amnesty) programs for undocumented people (noncitizens without any immigration status) in the United States. The application periods for these special programs have closed, but you might encounter people that obtained status through these programs or tried to apply. The first legalization program was for people who have lived in the United States since January 1, 1982. The Special Agricultural Worker (SAW) program was for people who did agricultural work in the United States during at least one year from 1985 to 1986. The Cuban-Haitian program was for certain people from Cuba and Haiti.

The legalization programs had two phases. In the first phase, people became lawful *temporary* residents for a period of time. In the second phase, temporary residents applied for lawful *permanent* residence. Participants were required to be admissible generally, but several grounds of inadmissibility did not apply or could have been waived. Several other requirements applied. See **Unit 16**.

Some people who might have been eligible for legalization were denied benefits because of the way the former INS interpreted the legalization laws. Some filed class action lawsuits against the INS, and ultimately Congress enacted a law, called the LIFE Act,⁸ which contained provisions for these class members to apply again for legalization. This program is discussed in **Unit 16**.

§ 1.15 Cancellation of Removal for Non-Permanent Residents INA § 240A(b)

People without immigration status who have lived in the United States for ten years may be eligible to apply for cancellation of removal in immigration court. It is not possible to walk into a U.S. Citizenship and Immigration Services (USCIS) office and apply; the person must be in removal proceedings before an immigration judge. Generally, neither Immigration and Customs Enforcement nor USCIS will put a person in removal proceedings solely for the purpose of allowing them to apply for cancellation of removal. Thus, this is an application of last resort, meaning that one applies only if they are facing removal. If the immigration judge grants cancellation of removal, the person will become a lawful permanent resident as of the date of the judge's decision.⁹

People who apply for cancellation of removal must show four things: that they have continuously resided in the United States for at least ten years before their removal proceedings began; that they have “good moral character;” that they have never been convicted of certain crimes; and that their spouse, parent, or child who is a U.S. citizen or lawful permanent resident would suffer

⁸ The full name of the LIFE Act is the Legal Immigration Family Equity Act, Pub. L. 106-553, §§ 1101–1104, 114 Stat. 2762, 2762A-142–2762A-149 (Dec. 21, 2000).

⁹ However, there is a limit to how many of these grants can be given in a single year. See Unit 11.

“exceptional and extremely unusual hardship” if the noncitizen were removed. See INA § 240A(b). Though not impossible, it is difficult to qualify for cancellation of removal because the hardship requirement is so onerous. Cancellation of removal is discussed in **Unit 11**.

Exercise 1.15: The following people come to your office. You must answer two questions about each person (answers are at **Appendix 1-A**):

From the facts below, how might the person be eligible to immigrate? Might there be a problem in the case?

1. Maurice’s mother is a U.S. citizen. Maurice first entered the United States on a student visa in 1984. He obtained the visa by fraud.
2. Estella has lived in the United States since July 4, 1968.
3. Ng is a lawful permanent resident. He was recently charged with possession of cocaine for sale.
4. Roberto came to the United States after soldiers terrorized his village because they suspected the villagers of supporting anti-government guerrillas. Roberto fears he could be killed if he returns to his country.
5. Iman came to the United States on January 1, 1983 and has been living here ever since. In 1986, he was convicted of a serious crime.
6. Flavio came here last month. He has no family in the United States and is not afraid to return to Costa Rica where he was born.

PART FOUR: FORMS OF IMMIGRATION STATUS

§ 1.16 Immigration Status

Lawful permanent residence is one kind of immigration status. Noncitizens in the United States may have different kinds of immigration status. The following list provides the various types of status that exist under current law. A person who is removed will lose their lawful immigration status.

Lawful permanent residents or green card holders have the right to work and live permanently in the United States and travel to other countries. There are many ways to become a lawful permanent resident. These are discussed in **Part Three**.

Permanent residents can prove their lawful status through an “Alien Registration Card, I-551” (often referred to as a “green card”—although these cards have been many different colors over the years, including blue, white, and pink); a foreign passport with Permanent Resident Stamp; or a Lawful Temporary Resident Card (I-688) with a permanent resident sticker. Another way to show lawful permanent resident status is an I-94 (white card) with a photo and a stamp of “Temporary Evidence of Permanent Resident Status, I-551.” A person who has lost their green card and has applied for a replacement may have this type of card.

Lawful temporary residents are people who are in the process of getting legal status through one of the “amnesty” programs described in **§ 1.14** and **Unit 16**. An applicant for a program may have a “work authorization” card marked I-688A. A temporary resident will have a card marked

“I-688” on it. A person who has completed the amnesty program and became a permanent resident will now have a regular residence card but could have the older I-688 with a permanent residence sticker on it. (There are not many people with lawful temporary resident status around anymore; most have adjusted to lawful permanent resident status.)

Non-Citizen Nationals are people who acquire U.S. nationality without becoming U.S. citizens. This applies to most people born in outlying U.S. possessions of American Samoa and Swains Island. Non-citizen nationals may obtain and travel on a U.S. passport that indicates their non-citizen national status as well as their identity. They are allowed to live and work in the United States without restrictions and can apply to become a U.S. citizen. However, until that time, non-citizen nationals cannot vote in federal U.S. elections.

Asylees and refugees are people who have been *granted* asylum or refugee status and who have not yet become permanent residents. Asylees and refugees have the right to work, to travel outside the United States, and to accept certain public benefits.

Nonimmigrant visa holders. Many people—for example, tourists, students, and temporary workers—are in the United States on temporary nonimmigrant visas. A nonimmigrant is someone who has come to the United States *for a temporary time and a specific purpose*. For example, a person may come as a tourist for three months to visit the United States. Common nonimmigrant visas are visitor or tourist (“B-1/B-2”) and student (“F-1”) visas. Nonimmigrant visas are defined in INA § 101(a)(15). See **Appendix 1-C** for a list of the nonimmigrant visa categories.

Documents that show nonimmigrant status include a foreign passport with a nonimmigrant visa stamp from a U.S. consulate and an I-94 card showing entry with inspection.

Border crossing card is a type of nonimmigrant visa. It allows the person to enter the United States for up to seventy-two hours per visit. The person must stay within twenty-five miles of the border. The purpose of the trip must be to visit. People who come to the United States with border crossing cards do not have visas in their passports and usually do not have their passports stamped with a date of entry. See 8 C.F.R. § 212.6.

Noncitizens with temporary status. At times, Congress or U.S. Citizenship and Immigration Services (USCIS) will permit certain groups of noncitizens to have temporary permission to live and work in the United States. This status does not necessarily lead to becoming a permanent resident.

1. **Temporary Protected Status (TPS).** In the Immigration Act of 1990, Congress created the Temporary Protected Status (TPS) category for persons who are from certain countries that are going through civil war, natural disasters, or other dangerous conditions. The first TPS designation made by Congress was for persons from El Salvador who entered the United States on or before September 19, 1990, but there are now many others. The list of countries is updated regularly and has changed more over the years with more countries being added. You can check the USCIS website for a current list of countries with designated TPS status at <http://www.uscis.gov/tps>. The law is found at INA § 244. See **Unit 16** for more discussion of TPS.
2. **Deferred Enforced Departure (DED)—formerly Extended Voluntary Departure.** This is very similar to Temporary Protected Status in that it is a discretionary grant that

- can be extended based on the countries that are chosen by DHS. Those with DED are authorized to work in the United States but are generally not considered to have lawful status for other immigration benefits. For a complete list of countries covered, visit <https://www.uscis.gov/humanitarian/deferred-enforced-departure>.
3. **Family Unity Pursuant to § 301 of the Immigration Act of 1990.** Some spouses and children of people who participated in the legalization programs are eligible for temporary permission to live and work in the United States under the Family Unity program. Family Unity is discussed in **Unit 16**.
 4. **Parolee.** USCIS or Customs and Border Protection may choose to “parole” a person into the United States, i.e., just let the person in, for a variety of reasons such as for emergency purposes. See 8 C.F.R. § 212.5.
 5. **Deferred action.** A grant of deferred action means ICE will not deport these noncitizens, even though they are removable. Typically, persons with deferred action can also apply to receive work authorization. USCIS grants deferred action in certain circumstances, including to self-petitioners under the Violence Against Women Act (VAWA) (see **Unit 5**), U visa petitioners while they remain on the wait list for U nonimmigrant status (see **Unit 15**), and those pending a grant of Special Immigrant Juvenile Status (see **Unit 5**).
 6. **Deferred Action for Childhood Arrivals (DACA).** This special program began in 2012 for certain undocumented people that came to the United States prior to their sixteenth birthday and have been in the United States since June 15, 2007. It is a special deferred action program with its own application process. DACA recipients can receive authorization to work, but DACA does not lead to a more permanent status. Like regular deferred action above, a grant of deferred action means ICE will not deport them. As of the writing of this manual, there is current litigation and proposed regulations on DACA. See **Unit 16** for a full discussion about DACA.
 7. **Prosecutorial discretion.** Prosecutorial discretion is not a status but reflects the government’s decision not to continue pursuing removal of someone. It does not provide a work permit or the security of deferred action. The idea behind it is that ICE should concentrate on high-priority cases and forego removing people with close ties to U.S. citizens, long-term presence in the United States, or only minor criminal problems. ICE, as an enforcement entity, has always had the discretion to choose which cases to pursue and has announced policies to expand its use of prosecutorial discretion during the Biden administration (see **Unit 16** for more information on prosecutorial discretion policies).
 8. **K visa holder.** This is a temporary status available to the fiancé(e) of a U.S. citizen and that fiancé(e)’s children after the approval of a fiancée petition or to the spouses and minor children of U.S. citizens who are waiting outside the United States for the approval of an immigrant visa petition.
 9. **S visa holder.** Very few S visas are available each year to persons who can provide critical information about terrorist or organized crime activities. This type of visa is also known as the “informant” visa. It rarely leads to eligibility for any other more permanent status.

10. **T visa holder.** T nonimmigrant status is available to victims of “a severe form of trafficking in persons,” who are in the United States because of the human trafficking, and who would suffer “extreme hardship involving unusual and severe harm” if removed from the United States. See INA § 101(a)(15)(T)(i). This visa is also available to the victim’s spouse and children (and parents, if the victim is under twenty-one years old). T visa holders may apply for permanent residence after three years. The T visa eligibility requirements and application process are covered in **Unit 15**.
11. **U visa holder.** The U nonimmigrant status is available to noncitizens who are victims of certain enumerated forms of criminal activity, possess information concerning that criminal activity, and would be helpful to the investigation or prosecution of that criminal activity. A federal, state, or local law enforcement official must certify that the noncitizen victim is, has been, or is likely to be helpful in the investigation or prosecution of the crime. Some spouses, children, parents, and siblings of some crime victims may also be granted a visa as derivatives of the principal U visa holder. U visa holders may apply for permanent residence after three years. The U visa eligibility requirements and petition process are covered in **Unit 15**.
12. **V visa holder.** This is a temporary status available to the spouses and minor children of lawful permanent residents who have been waiting to immigrate through petitions filed by their permanent resident relative for at least three years. The family visa petitions had to have been filed on or before December 21, 2000. Nonetheless, you might encounter noncitizens who have held this status in the past or have such a visa.

§ 1.17 Applicants for Lawful Status

People who have submitted applications to adjust to lawful permanent resident status have permission to live in the United States and may sometimes obtain work authorization. However, until they submit their adjustment application, beneficiaries of family visa petitions do not generally have the right to be employed and live in the United States. If found in the United States before they have received their immigrant visa, these people may be subject to removal and deportation. (See **Unit 10**). These terms are explained in **Unit 4**.

Documents that show a person is an applicant for lawful status may vary. A work authorization card, correctly marked I-94, stamped copy of an application form, or next court appointment notice may show a person’s current status.

§ 1.18 Undocumented Immigrants

Undocumented immigrants are people in the United States without legal permission. Many people enter the United States by crossing the border without permission, inspection, or admission. This is commonly referred to as “**entry without inspection**” or **EWI**. Others enter on a nonimmigrant visa but do not leave the United States when their permission to stay has expired (such as those coming on a tourist or student visa). DHS often refers to this type of person as an “**overstay**.” Moreover, a person who entered with a nonimmigrant visa may also be found to be undocumented if they disobeyed the terms of the visa or obtained it by fraud.

Undocumented immigrants may be removed from the United States through removal proceedings discussed above. In general, unless they obtain lawful status, they cannot obtain work authorization or have legal permission to live in the United States.

Example 1.18: Tae-bak is an undocumented worker from Korea who has lived in the United States for five years. His mother is ill in Korea. He wants to know if there is some way to get permission to visit his mother and return to the United States. Tae-bak is not eligible to apply for any lawful immigration status.

Tae-bak cannot get permission to travel and return to the United States. Permission to travel and to work is only given to people who have lawful status or in some cases, to people who have submitted an application for lawful status. If Tae-bak asks ICE or USCIS for travel permission, ICE or USCIS will turn down his request and might put him in removal proceedings.

Some undocumented people are eligible to apply for some way to immigrate. See **Part Three**. They may even unknowingly be U.S. citizens. See **Unit 17**. Or they may at least be eligible to apply for temporary status such as Family Unity or Temporary Protected Status. See **§ 1.16**. Undocumented immigrants who obtain these forms of relief are sometimes entitled to permission to stay and work in the United States while the application is being considered.

PART FIVE: THE DEPARTMENT OF HOMELAND SECURITY

§ 1.19 What Is DHS?

The Department of Homeland Security (DHS) has five missions: (1) preventing terrorism and enhancing national security; (2) border security; (3) enforcing immigration laws; (4) cyber security; and (5) ensuring resilience to disasters. The immigration functions of DHS have been divided among three separate entities within the DHS: Immigration and Customs Enforcement (**ICE**), Customs and Border Protection (**CBP**), and U.S. Citizenship and Immigration Services (**USCIS**).

ICE is made up of more than 20,000 employees and is charged with the enforcement of immigration and customs laws within the United States. ICE enforces federal laws governing border control, customs, trade, and immigration. ICE has two main components—Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO).

CBP is comprised of more than 60,000 employees and is one of the world's largest law enforcement organizations. It is charged with keeping persons deemed terrorists and their weapons out of the United States while facilitating lawful international travel and trade. It is responsible for border management and control, combining customs, immigration, border security, and agricultural protection.

USCIS functions with about 20,000 employees and is responsible for granting immigration benefits. USCIS is responsible for adjudicating immigrant visa petitions, naturalization petitions, asylum and refugee applications, family, and employment-based petitions, and issuing employment authorization documents.

The DHS has the authority to administer, enforce, and issue regulations regarding visas adjudicated by consular officers and the authority to develop homeland security training programs for consular officers from the Department of State (DOS). However, it does not have the authority to alter the employment status of diplomatic and consular officers, who remain employees of the DOS.

Some aspects of immigration law are handled by other governmental agencies.

The U.S. Department of Justice, subject to the direction and regulation of the U.S. Attorney General, has jurisdiction over the Executive Office for Immigration Review (the immigration courts and the Board of Immigration Appeals).

The DOS manages the U.S. consulates abroad, which may issue immigrant and nonimmigrant visas to noncitizens who are outside the United States.

The care and custody of unaccompanied noncitizen children is under the authority of the Office of Refugee Resettlement in the Department of Health and Human Services.

An Office for Civil Rights and Civil Liberties has been established with the DHS to be responsible for reviewing, assessing, and reporting civil rights abuses, including racial and ethnic profiling, by employees and officials of the department. Similarly, DHS's Office of Inspector General reviews agency functions and some types of complaints. Reports of such abuses must be made to Congress annually. See **Unit 19**.

There is also an Office of Fraud Detection and National Security within USCIS that is responsible for detecting and preventing both fraud by immigrants and fraud perpetuated against immigrants by unscrupulous immigration service providers.

In addition, there is the Office of the USCIS Ombudsman, which is directly under and reports to the Secretary of DHS. The function of this office is to field complaints, suggestions, and criticisms about USCIS and to initiate changes that will make the agency function more efficiently. Practitioners may inform the Ombudsman's office of processing problems encountered with their cases.¹⁰

See "Structure of the Department of Homeland Security," **Appendix 1-B**.

Question for Discussion: USCIS may appear to be a political institution. For example, the agency that formerly handled some of the adjudications currently handled by USCIS (the Immigration and Naturalization Service, also known as the "INS") approved over 50 percent of the applications for political asylum from Poland when the government was under Communist control. At the same time, it denied over 96 percent of the applications for asylum from El Salvador, which had a government supported by the United States.

Do you think that the fact that USCIS is under the U.S. president's authority has any effect on USCIS policies? Are there any other USCIS decisions which might be viewed as being "political"?

¹⁰ The USCIS Ombudsman can be contacted via email at cisombudsman@dhs.gov. Further information on this office can be found on the DHS website at <http://www.dhs.gov/>.

§ 1.20 The Structure of the DHS Immigration Agencies

A. Districts and Field Offices

USCIS has divided the United States into districts to serve immigrants and their families. There are various local offices within each district, referred to as Field Offices. The local Field Offices are where people go for interviews and services with USCIS. In addition, USCIS operates larger service centers that receive and process certain applications and “lockbox” locations for filing of applications. Although USCIS, ICE, and CBP often operate out of the same Field Office, their functions are separate. For example, ICE handles the enforcement functions of DHS and does not report to the USCIS Field Office Director. However sometimes all agencies are involved in specific tasks, such as in the Deferred Inspections unit.

B. USCIS Contact Center

USCIS has a Contact Center available via a toll-free “hotline” telephone number: 1-800-375-5283. The Contact Center hotline provides basic eligibility and “how to” information, including hours of operation for USCIS offices, lists of local civil surgeons, and listings of Application Support Centers (where people applying for USCIS benefits must have their fingerprints taken). Additionally persons can sometimes set up appointments with the local USCIS Field Office by using the Contact Center.

C. Website address

USCIS also has a website, found at <http://www.uscis.gov/>, which contains useful information for practitioners and the general public. It is now possible to file some forms electronically and to check the status of a pending case online.

D. Office of Border Patrol (CBP)

CBP’s border security mission is led at ports of entry by CBP officers from the Office of Field Operations, along U.S. borders by agents from the Office of Border Patrol, and from the air and sea by agents from the Office of Air and Marine. The task of the Border Patrol is to patrol the borders with Canada and Mexico and areas in neighboring states of the border in order to stop unlawful entry of noncitizens. In reality, the Border Patrol may have stations or checkpoints hundreds of miles from any U.S. border. Recently Congress has been expanding the role of the Border Patrol. The Border Patrol now participates in drug interdiction; it has been given authority to arrest anyone committing a crime; and its officers are using more advanced weapons. CBP Border Patrol Sectors, and the areas of the country over which they exercise control, are listed in 8 C.F.R. § 100.4(d). A Chief Patrol Agent heads each Border Patrol Sector.

The USCIS District Office and the CBP Border Patrol Sector are independent; neither can tell the other what to do.

§ 1.21 USCIS, ICE & CBP Offices, and the Saga of the “A-File”

Department of Homeland Security (DHS) Field Offices fulfill many functions like handling applications and overseeing removal issues throughout different regions around the world. An important part of your job is to discover which DHS unit handles which function and whether that unit is under U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs

Enforcement (ICE), or Customs and Border Protection (CBP). This way you will know where to mail applications or inquire about different issues. You can save yourself a lot of time and energy if you learn how to navigate throughout DHS.

USCIS has several Field Offices throughout the United States which handle interviews for non-asylum cases, adjustment of status applicants, and naturalization ceremonies. You can find a field office near you at the USCIS website. In addition to the Field Offices, there are five USCIS Service Centers, which process and adjudicate certain immigration applications and petitions but do not provide in-person services like interviews. These are: (1) the Vermont (Eastern) Service Center; (2) the Nebraska (Northern) Service Center; (3) the Texas (Southern) Service Center; (4) the California (Western) Service Center; and (5) the Potomac Service Center. Many applications are filed directly with the Service Centers.

Affirmative asylum applications (by those who are not in proceedings before an immigration judge) are handled by designated USCIS Asylum Offices located in: Arlington, VA; Chicago, IL; Houston, TX; Los Angeles, CA; Miami, FL; San Francisco, CA; New York, NY; and Newark, NJ. (See **Unit 14** for more information on asylum.) These offices are part of USCIS but are centralized into a separate unit of USCIS called the Refugee, Asylum, International Operations Directorate.

USCIS also has seven international locations in Beijing and Guangzhou, China; Nairobi, Kenya; New Delhi, India; Guatemala City, Guatemala; Mexico City, Mexico; and San Salvador, El Salvador.¹¹ These offices generally offer support related to relative petitions for refugees and asylees, re-entry permits for lawful permanent residents, biometrics, waivers for grounds of inadmissibility, and applications for permission to reenter after a person is removed or deported.

There is another important reason to learn how USCIS works: you may have to find your client's A-file.

The saga of the “A-File”

Whenever a person is arrested and placed in removal proceedings or files an application for an immigration status, an “alien registration file,” commonly referred to as the “A-File” (or formerly the “Service file”) is created for that person. At the present time, only one file usually will exist for a person regardless of whether the file was created by USCIS, ICE, or CBP. This is a holdover from the days when there was only one immigration agency. When the file is created, a noncitizen registration number or “A-number” is assigned to the person. The A-number is an eight- or nine-digit number which begins with the letter A. The three DHS immigration agencies will knowingly only create and use one file and A-number for each noncitizen. (A person may end up with more than one file or A-number by mistake, for example, if the person has used different names with the different agencies.) The three immigration agencies track all cases by use of the A-number.

Because many of the A-files are physical files, often USCIS, ICE, or CBP may temporarily or permanently be unable to find the person's A-file. This may be because a different DHS agency or office has the file and has not written this down correctly. This can be bad for your client

¹¹ In 2019 and 2020, USCIS closed thirteen international offices <https://www.uscis.gov/news/news-releases/uscis-will-adjust-international-footprint-to-seven-locations>.

because *if an immigration officer cannot locate the file, it is very difficult to convince the officer to take any action on the person's case*. So for example, if you want the officer to adjudicate an application or grant employment authorization, you need to locate the file. If you know how USCIS, ICE, and CBP work, you may be able to conduct your own search for the file by calling officials in other units until you find it.

Of course, there are times when it is in the noncitizen's interest that the file is lost. This is especially true if the person could be deported, but ICE is no longer paying attention to them because there is no file to remind them.

The agencies are currently in the process of moving to electronic format for applications and files. However, to date, physical A-files still exist. New applications and forms might have an electronic format and might be scanned instead of printed into a physical file. However, for most, keeping track of the physical A-file will still be very important.

§ 1.22 How Does a Field Office Work?

This is an example of how a typical Field Office might divide its tasks between different branches and units of the three DHS immigration agencies.

1. **USCIS-Citizenship Branch** handles applications for naturalization to U.S. citizenship and decides cases in which a person wants to prove that they already are a U.S. citizen. The USCIS Service Centers, however, do the initial processing of all naturalization applications. Most naturalization applications must be filed at a designated PO Box address depending on where the applicant lives, not directly with the Service Centers, even though the Service Centers do all the initial processing.¹²
2. **USCIS-Examinations or Adjustments Branch** handles applications that a person can make in front of an immigration officer, such as adjustment of status applications. (If someone has already been placed in removal proceedings before a judge, they usually have to file the application with the judge instead of USCIS.)

Examinations and Adjustments Branches may contain different units to handle the different applications. For example, the **Adjustment Unit** generally handles applications for family-based adjustment of status. Although the applications are adjudicated at the Field Office where the person lives, the applications are filed with the regional Service Center (see § 1.21 for more information).

The Examinations Branches of District Offices used to handle family- and work-related visa petitions in addition to adjustment applications, but that is no longer the case. Now all family-based, stand-alone visa petitions (I-130 visa petitions) are filed with the regional Service Center.

3. **ICE-Enforcement and Removal Operations** branch, or **ERO**, is a part of ICE, not USCIS, but may be located within the same Field Office. The ERO is in charge of noncitizens who have already been **placed in removal proceedings** (a Notice to Appear has been issued and the person will go before an immigration judge) **or are otherwise**

¹² Go to <http://www.uscis.gov/> and click on the forms menu, then search or scroll down to the N-400 and click on it. You will find a page with filing instructions for the form.

facing removal. The **ERO** may accept bond money and order the person's release from detention. It also handles some applications for work authorization and extensions of permission to be in the United States. If the person is going to be removed, the **ERO** will arrange for transportation and travel documents.

In short, the ERO handles most matters that involve taking a noncitizen into custody and their removal from the United States.

4. **ICE-Office of the Chief Counsel** is the office of the trial attorneys who represent DHS against people in removal proceedings.

NOTE: Here, two ICE branches—ERO and Office of Chief Counsel—have control over the same person (anyone in removal proceedings). This is an excellent opportunity for ICE to lose someone's file.

5. **ICE-Investigations Branch** conducts investigations of people under suspicion by ICE, conducts raids, and is often in charge of employer sanctions work.
6. **CBP-Deferred Inspection** may be in charge of people who are charged with being inadmissible and want to fight their case. If someone does not pass screening upon entry into the United States, they might be referred for a deferred inspection at a local office for further inquiry.
7. **USCIS-Legalization** handles legalization, any remaining amnesty applications, and outreach.
8. **USCIS-Field Office Director.** The head of the local USCIS office is the Field Office Director. All section heads and points of contact within a USCIS office report to the Field Office Director. Often, we go to the Field Office Director to negotiate USCIS policies, to ask for special relief for an individual when lower authorities will not give it, or to make other complaints. The Field Office Director ultimately reports to a District Director, who may oversee more than one field office. The District Director is not directly involved with services of the Field Office but focuses on management of the district. Nonetheless, in larger policy issues, the District Director is a useful point of contact.
9. **Immigration Court or Executive Office for Immigration Review (EOIR)** is not a part of DHS but sometimes has its courtroom and offices in the same building as USCIS District Offices. EOIR is discussed in the next section.

§ 1.23 Immigration Court and the BIA: The Executive Office for Immigration Review

The **Executive Office for Immigration Review (EOIR)** is the immigration court system.¹³ EOIR has several parts. However, the two parts that are most relevant to us are the **immigration courts** and the **Board of Immigration Appeals (BIA)**.¹⁴

The immigration courts include **immigration judges** and their staff. These are the courts that hold removal hearings. There are over sixty immigration courts around the country, several of which are located within immigration detention centers. At the immigration court, an ICE trial attorney (**District Counsel**) represents the DHS. An immigration attorney, Department of Justice Accredited Representative (see **Unit 13**), and other authorized individuals may represent the noncitizen. However, in many cases, a person in removal proceedings before the immigration court is not able to find or pay for legal help and must represent themselves.

The BIA is the Department of Justice’s administrative appeals court for immigration cases. It handles **appeals** from immigration court decisions, appeals of denials and revocations of I-130 family visa petitions, and appeals of K fiancé visa revalidation denials. For example, if either the noncitizen or ICE disagrees with a final decision made by an immigration judge, they can appeal the decision to the BIA. That is, the party can ask the BIA to review the case and make its own decision about how the case should have been decided. The BIA is in Virginia and most appeals are reviewed on paper, without any parties physically attending the court.

NOTE: The court system and ICE are different and have different files—submit your documents to both sides! Sometimes it is difficult to remember that ICE and EOIR are distinct agencies, but they are. If a person is in removal proceedings, the immigration court will start its own file on them. This file will only contain things that either ICE or you submit to the court. It might not, for example, contain everything in the A-file. Thus, if you submit a document to ICE, it does *not* automatically go to EOIR. Additionally, if documents were submitted to USCIS before the person was put in removal proceedings, they do not automatically go to the court. If you want the prior submissions to be part of the court’s record, you must submit the documents to the court and provide a copy to opposing counsel (Office of Chief Counsel for ICE).

Neither ICE nor the noncitizen may give documents to the EOIR without giving the other side a copy for review. See 8 C.F.R. § 1003.32(a). If you submit a document to an immigration court or the BIA, you *must* submit a copy to ICE and prove that you did so. This is called “proof of service.”

PART SIX: THE IMMIGRATION ACT

This unit has covered a lot of the basics of immigration law. We will close this unit by coming back to the beginning and taking a brief look at the Immigration and Nationality Act.

¹³ Formerly, the immigration court system was part of INS, and the judges were INS employees. This system—where INS employed both judge and prosecutor—led to criticism that the immigration court should be more impartial and independent. In 1983 the court system was taken out of INS and became EOIR. EOIR is now a separate agency within the Department of Justice. The EOIR reports to the U.S. Attorney General.

¹⁴ You can look up other parts of EOIR by going to <http://www.justice.gov/eoir/>.

§ 1.24 The INA

Our current immigration laws are mostly located in the **Immigration and Nationality Act of 1952, as amended (INA)**. This is a law (**statute**) that was passed by Congress in 1952.

Once Congress passes a law, it is free to pass other laws that amend (change) the first law. Since 1952, Congress has passed several other laws, which have changed the INA. Some of the major laws that have amended the INA are the: Immigration Reform and Control Act of 1986 (IRCA); Immigration Act of 1990; Illegal Immigration Reform and Immigrant Responsibility Act of 1996; Violence Against Women Act of 1994; and Trafficking Victims Protection Act of 2000. Laws like these can also be reauthorized in subsequent years in ways that continue to change the INA.

Example 1.24: Before IRCA was passed in 1986, a U.S. employer could not be punished for hiring noncitizens who did not have special permission to work. IRCA added the “employer sanctions” program to the INA. Now employers face some penalties under the INA if they hire unauthorized workers.

The INA is a set of laws about noncitizens and U.S. citizens. It covers at least five important things. We have discussed most of them in this unit. They are:

1. Who can become a U.S. citizen, and who already is one?
2. Who can immigrate, or become a permanent resident? What are the different ways a person can immigrate?
3. Who can come to the United States temporarily on a nonimmigrant visa (e.g., student, tourist)?
4. Who can be removed from the United States? What are the grounds of deportability? What happens in a removal hearing?
5. Who can be admitted to the United States? What are the grounds of inadmissibility? What happens when someone presents themselves at the border?

The INA also covers other subjects. These include the rights and duties of noncitizens (work authorization, travel permission, etc.), the employer sanctions and anti-employment discrimination programs, unusual status like Family Unity, and immigration violations that are criminal offenses.

§ 1.25 Agency Regulations

The INA is a statute (law), written by Congress. Like many statutes, it is often written in general terms.

Once Congress writes an immigration law, it hands it over to the Department of Homeland Security (DHS) and Executive Office for Immigration Review (EOIR) to make up rules for exactly how they will implement and enforce the law. These rules are the regulations.¹⁵ The

¹⁵ When the INS existed, the rules were created by the Department of Justice, under the attorney general, because the INS was part of the Department of Justice. Now that the immigration laws are to be administered by DHS and EOIR, DHS and EOIR are responsible for creating the regulations. As mentioned

regulations are generally found in Title (volume) 8 of the U.S. Code of Federal Regulations. This is written as 8 C.F.R. The regulations have the force of law. While DHS is the main agency that writes regulations to implement immigration laws, EOIR, Department of State (DOS), and Department of Labor all create regulations to implement various immigration laws.

DHS and EOIR gain a tremendous amount of control over the law by their ability to make the regulations. They can decide what form applications must be in, what rights noncitizens have at different points in the procedure, what evidence is acceptable, and some details about eligibility for benefits. If DHS or EOIR writes a regulation that seems to conflict with the statute, or goes beyond what Congress required, we can challenge this in court.

The DOS operates the U.S. consulates abroad, which may issue immigrant and nonimmigrant visas to noncitizens who are outside the United States. Their regulations are published at Chapter 40 of the U.S. Code. If your clients immigrate through consular processing, you will want to know the rules set out by the DOS.

FOR FURTHER INFORMATION, SEE:

Catholic Legal Immigration Network, Inc., *Immigrants' Rights Manual*

National Lawyers Guild, *Immigration Law and Defense*

Ira J. Kurzban, *Kurzban's Immigration Law Sourcebook*

Additionally, ILRC produces many in-depth manuals on various aspects of immigration law:
<http://www.ilrc.org/>

above, generally the DHS and EOIR regulations parallel each other, but there are some significant differences.