Immigration Law Overview
December 13, 2017

Dalia Castillo-Granados, Director
ABA’s Children’s Immigration Law Academy (CILA)
History

- Immigration Laws Past & Present
- Sources for Current Laws

Types of Immigration

- Inadmissibility
- Nonimmigrants
- Employment-based immigration
- Family-based immigration
- Humanitarian-based immigration

Unaccompanied Alien Children (UAC)

- Background
- Current Protections
Worldwide

- 244 million international migrants worldwide in 2015, or about 3.38% of the world’s population.
- In 2014, there were 19.5 million refugees in the world and 1.8 million asylum seekers.
- Turkey, Pakistan, and Lebanon are the three highest refugee-hosting countries.


United States

- About 3.5% of the US population are undocumented immigrants.
- Border apprehensions have gone down significantly in the last 15 years, from about 1.7 million in 2000 to about 337,000 in 2015.
## Past & Present

### The First 100 Years

Unrestricted immigration?
No numerical limits to immigration
Complex hybrid of state and federal policy

### 1875-1952

- 1875-1917: First restrictions
- 1917 – 1951: Quota system based on race & nationality
- 1952: **Immigration & Nationality Act**

### 1952- 2000

- 1965: Elimination of racial and national origin quotas
- 1986: Legalization
- 1996: IIRIRA - dramatically increased penalties

### 2000- Present

- Expansion of protections for vulnerable populations
Sources of Law

- Statutory
  - Title 8 of the U.S. Code
  - Immigration & Nationality Act

- Regulations
  - Title 8 of the Code of Federal Regulations

- Policy & Guidance
  - Policy Memorandum from immigration agencies (USCIS, ICE, CBP)

- Case Law
  - Administrative Appeals Office
  - Board of Immigration Appeals
  - Circuit Courts
  - U.S. Supreme Court

(The Immigration Law Bible)
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A project of the American Bar Association funded by the Vera Institute of Justice and the Texas Access to Justice Foundation.

- **Undocumented Immigrant**
- **Nonimmigrant**
- **Immigrant Visa**
- **Lawful Permanent Resident (LPR)**
- **U.S. Citizenship**
Inadmissibility

- Admission: lawful entry into the US after inspection and authorization by an immigration officer.

- Grounds of Inadmissibility:
  - Health-related grounds
  - Economic grounds
  - Criminal grounds
  - Moral grounds
  - Violation of immigration laws
  - Fraud and material representation
  - Security and related grounds

- Some waivers available
Nonimmigrant Visas

- Foreign nationals who enter for a temporary period and are restricted to activities consistent with their visa.
  - B: Temporary visitor
  - F: Students and trainees
  - H: Skilled/unskilled workers
  - O: Extraordinary ability in the sciences, arts, education, business, or athletics
  - L: Intracompany transfers
  - R: Religious workers
  - S, T, U: Law enforcement
Employment-based Immigration

- Total per year: 140,000
- EB-1: Persons of extraordinary ability (28.6%)
- EB-2: Persons holding advanced degrees or having exceptional ability (28.6%)
- EB-3: Professionals, skilled, and other workers (28.6%)
- EB-4: Special immigrants (7.1%)
- EB-5: Investors (7.1%)

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Family-based Immigration

- Total per year - 480,000
- Immediate Relatives
  - Child, spouse, or child of USC
- Preference categories
  - First preference - Unmarried sons and daughters of USC
  - Second preference - (A) Spouses and unmarried children of LPRs; (B) Unmarried sons and daughters of LPRs
  - Third preference - Married sons and daughters of USC
  - Fourth preference - Brothers and sisters of USC

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# Special Immigrant Juvenile Status (SIJS)

**Eligibility Criteria**
- Unmarried and under age 21
- Declared dependent on a state “juvenile” court or legally committed to or placed under the custody of an agency or department of State, or an individual or entity appointed by a State court
- Judicial determination that reunification with one or both parents not viable due to abuse, abandonment, neglect, or a similar basis found under state law
- Judicial determination that it would not be in the child’s best interest to be returned to their country of origin.

**Special Procedures for unaccompanied children seeking asylum**
- Must have suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
- Must possess information concerning the criminal activity;
- Must have been helpful, currently being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity;
- Must obtain certification from federal, state, or local law enforcement authority regarding helpfulness; and
- The criminal activity must have occurred in the U.S.

## Asylum
- Past persecution and/or a well-founded fear of future persecution
- Nexus (“on account of”)
- Protected ground (Race, religion, nationality, membership in a particular social group, or political opinion)
- Failure of state to protect
- Special procedures for unaccompanied children seeking asylum

## U Visa
- Must have suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;
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## TVisa
- Must have been a victim of a severe form of trafficking in person (sex trafficking or labor trafficking through the use of force, fraud, or coercion);
- Is physically present in the U.S. on account of trafficking;
- Has complied with any reasonable request for assistance from law enforcement agencies; and
- Would suffer extreme hardship involving unusual and severe harm upon removal.

## VAWA
- Spouse/child of a U.S. citizen or Lawful Permanent Resident or parent of a U.S. citizen;
- Subject to battery or extreme cruelty;
- Lived with the abuser;
- If based on marriage, must show “good faith” marriage; and
- Must show good moral character
Adjustment of Status

Lawful Permanent Residency

Green Card

I-485
Voluntary Departure

Eligibility Criteria

- Request prior to a merits hearing, requests no other relief, concedes removability, waives appeal;
- Has not been convicted of an aggravated felony and is not deportable under any security or related provisions.

The IJ may grant up to 120 days to depart.

- Failure to depart results in a possible civil penalty and denial of other relief.

Request in Immigration Court → If granted, must depart the U.S. → May be able to return lawfully if allowed.
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Children Migrating Alone

- Detention of immigrant children
  - 1984 INS Policy
  - 1993 Supreme Court case- Reno v. Flores
  - 1997 Flores Settlement Agreement
- Protections for children
  - Exempt from expedited removal through INS policy after IIRIRA
  - “Least restrictive setting”
Current UAC Protections


► 6 USC 279(g)(2)
  
  ► The term “unaccompanied alien child” means a child who—
    
    ► (A) has no lawful immigration status in the United States;
    
    ► (B) has not attained 18 years of age; and
    
    ► (C) with respect to whom—
      
      ► (i) there is no parent or legal guardian in the United States; or
      
      ► (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

► Additional legal protections and broadened types of immigration relief.
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