Immigration Basic Concepts

U.S. Citizenship & Immigration Services (USCIS): Federal agency that provides Immigration benefits. USCIS is under the Department of Homeland Security and formerly known as Immigration & Naturalization Services (INS).

U.S. Immigration & Customs Enforcement (ICE): Federal agency that handles immigration enforcement and deportation. ICE is under the Department of Homeland Security and formerly known as Immigration & Naturalization Services (INS):

Immigration Court or Removal/Deportation Proceedings: Administrative Courts overseen by the Department of Justice to review deportation process of foreign nationals. Deportation is a civil proceeding, not criminal. Because deportation is not a criminal procedure, foreign nationals are not protected by the same Constitutional Rights given to criminal defendants, like right to an attorney.

Non-immigrant visas: Foreign nationals who are in the US temporarily such as student visas, tourists/business visas, performers/athletes, temporary worker, diplomatic visas, etc.

Legal Permanent Residents/”Green Card” holders: Foreign nationals who are allowed to live and work in the United States indefinitely.

Naturalization: Process which a foreign national is able to become a US citizen. Generally, a person must be a legal permanent resident for 5 years, be a person of good moral character, demonstrate a knowledge of US history & government, and be able to speak, read, and write in English.

Immigration through Employment: In general, the US government allows foreign nationals to work in the US if an employer can show that he or she is unable to fill that position with a US citizen. These jobs usually require a higher education and/or expertise or specialized skills.

Immigration through Family Members: A US citizen can request the US government to allow his or her foreign national spouse, children, parents, and brothers and sisters to live in the United States as legal permanent residents.

A legal permanent resident can request the US government to allow his or her foreign national spouse or unmarried children to live in the United States as a legal permanent resident.

Generally, if the foreign national family member entered the US with a visa, Immigration can process the application in the US. If the family member is living outside the US, the US Embassy will process the visa. However, if the family member entered undocumented, he or she must return to his or her country so the US Embassy can process the visa.

There is a quota of 226,000 family members that can immigrate to the US every year. Because of this quota some family members wait 5 to 20 years before they are able to come to the US. There are no quotas limits for spouse, unmarried children under 21, and parents of US citizens.

Immigration through Humanitarian Relief:

Refugee: A person who fears returning to his or her home country because of persecution of well-founded fear of persecution by the government on account of his or her race, religion, nationality, membership in particular social group, or political opinion. Refugee applications are processed through the US Embassies and the person arrives in the US with refugee status.
Asylum seeker: A person who fears returning to his or her home country because of persecution of well-founded fear of persecution by the government on account of his or her race, religion, nationality, membership in particular social group, or political opinion. Asylum seekers must file their asylum application with USCIS within the first year of entering the United States.

Temporary Protected Status (TPS): Foreign nationals of designated countries, whose home countries have been affected by natural disasters, are allowed to live and work in the US temporarily until their home countries recover. i.e. Honduras & Nicaragua was affected by Hurricane Mitch in 1998. El Salvador was affected by earthquakes in 2001. Haiti was affected by earthquakes in 2010. TPS must be renewed every 6 to 18 months.

Violence Against Women Act (VAWA): Allows the spouse and children of US citizens or legal permanent residents to apply for residency on their own if they are battered or abused.

Special Immigrant Juvenile Status (SIJS): Allows a juvenile to apply for residency if a Juvenile Court determined that it is not in the child’s best interest to be reunited with his or her parents based on abuse, neglect, etc. and the juvenile is placed in foster care or under court supervision.

U-visa (Victims of Certain Crimes): Allows temporary status for victims of certain crimes who cooperate with the investigation of the crime. e.g. rape, domestic abuse, false imprisonment, abduction, witness tampering, involuntary servitude, etc.

Other Immigration Concepts:

Diversity Visa/”Visa Lottery”: Allows 50,000 randomly selected applicants to immigrate to the US from countries with low immigration rates. In 2010, 13.6 million people entered visa lottery.

Undocumented Immigrants: Foreign nationals who entered the US without being inspected at a border crossing port or foreign nationals who entered the US at a border crossing port but have overstayed their visa.

3/10 year bar for undocumented time in US: If a foreign national has lived in the US undocumented or overstayed his or her visa for 6 months, once he or she leaves the US, the US Embassy will not grant another visa to return until he or she has lived in their home country for 3 years.

If a foreign national has lived in the US undocumented or overstayed his or her visa for more than 1 year, once he or she leaves the US, the US Embassy will not grant another visa to return until he or she has lived in their home country for 10 years.

The 3/10 year can be pardoned if the foreign national’s US citizen or resident spouse or parent will suffer “extreme hardship” with him or her. i.e. hardship that is greater than “normal” separation.

Employment Authorization Documents/EAD/”work permits”: Allows a foreign national to temporary work in the United States. Note: in order to apply for a work permit, a foreign national must have an immigration status that allows him or her to work.

“Aggravated Felony”: Crimes that may make a foreign national permanently ineligible for immigration benefits such as: murder, rape, drug trafficking, firearms trafficking, violent crimes, theft crimes, ransom, child pornography, gambling offenses, prostitution, sabotage, treason, fraud, alien smuggling, forgery, counterfeiting, obstruction of justice, bribery, failure to appear, etc. If occurred in US, these crimes may lead to deportation.