

# Key Definitions and Concepts

*originally written and updated by Richard Boswell\**

**Richard Boswell** is Professor of Law and Director of the Immigrants' Rights Clinic at the UC Law, San Francisco (formerly UC Hastings). He is a frequent lecturer throughout the United States and abroad before lawyers, judges, academics, and others on a wide range of immigration topics. Professor Boswell is the author of numerous books and law review articles in the immigration field, most notable of which is his law school casebook, *Immigration Law and Procedure: Cases and Materials* (5th ed. 2018). He is also a co-author (with Professors Karen Musalo and Jennifer Moore) of *Refugee Law and Policy: A Comparative and International Approach* (5th ed. 2019). Professor Boswell served as co-editor-in-chief of the *Clinical Law Review* and was President of the Clinical Legal Education Association. He is a long-time member of American Immigration Lawyers Association (AILA) and has served on its board of governors. Professor Boswell has also worked in a number of places, including the West Bank and Gaza, Central and South America, (and most recently, in Haiti), consulting on the establishment of clinical legal education and rule-of-law programs.

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**Adjustment of Status.** The process of obtaining **LAWFUL PERMANENT RESIDENT** status in the United States without having to leave the United States to do so. Adjustment of status should be distinguished from “change of status,” which generally applies to **NONIMMIGRANTS** changing from one nonimmigrant status to another. Adjustment of status is unavailable to many (but not all) persons who entered the United States without **INSPECTION**, or who violated status while in the United States, or on whose behalf an application for **LABOR CERTIFICATION** or a **PREFERENCE** petition was not filed on or before April 30, 2001.<sup>1</sup>

**Admission.** The process of permitting a person to be physically and legally present in the United States. Admission is part of the **INSPECTION** process. A person may be inspected and admitted or **PAROLED** into the United States or, instead of being admitted, placed in **REMOVAL** proceedings or removed through **EXPEDITED REMOVAL**. Once a person is admitted to the United States, a number of legal rights and protections attach.

**Affidavit of Support.** A declaration given by a U.S. citizen or **LAWFUL PERMANENT RESIDENT** who resides in the United States and who will provide financial support to a foreign national who is seeking to enter the United States or to **ADJUST STATUS**. The purpose of the declaration is to satisfy the public charge grounds of inadmissibility found at INA §212(a)(4).

**Aggravated Felony.** A crime specifically defined in INA §101(a)(43) that may make a person **DEPORTABLE**. Aggravated felon status creates numerous substantive and procedural disabilities with respect to, e.g., **ASYLUM**, **INADMISSIBILITY**, **REMOVAL**, and judicial review.<sup>2</sup> An aggravated felon is ineligible for most forms of relief from removal, and following completion of the criminal sentence, will likely be placed in an expeditious process for **REMOVAL**.

**Alien.** Any person who is not a citizen or a national of the United States. Only “aliens” are subject to the immigration laws. Even **LAWFUL PERMANENT RESIDENTS** are considered “aliens” until they become U.S. citizens, and as such, are still subject to the immigration laws—including all of the grounds of **REMOVAL**.<sup>3</sup>

**Arrival-Departure Record (I-94).** A form issued to foreign nationals upon arrival at the time of **INSPECTION**. Information on the form indicates the person’s **ADMISSION** status and the period of authorized stay. Formerly a

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\* Excerpted from *Essentials of Immigration Law* by Richard Boswell (AILA 2024 ed.).

<sup>1</sup> See INA §245.

<sup>2</sup> INA §§208, 212, 237–42.

<sup>3</sup> Scholars have written a great deal about the use of the term “alien,” and while it is prevalent throughout the INA, it has been the subject of much criticism. See Kevin R. Johnson, *“Aliens” and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons*, 28 U. Miami Inter-Am. L. Rev. 263, 264–66 (1997); Rachel Rosenbloom, *The Citizenship Line: Rethinking Immigration Exceptionalism*, 54 B.C. L. Rev. 1965, 1966–68 (2013). It is worth noting that President Biden’s Exec. Order 14012 studiously avoided using the term “alien.” See *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, 86 Fed. Reg. 8277 (Feb. 2, 2021).

handwritten document, since April 2003, the I-94 is issued in an electronic format for those arriving by sea or air and is available to the traveler on the U.S. CUSTOMS AND BORDER PROTECTION (CBP) website.<sup>4</sup>

**Asylum.** A discretionary benefit accorded to certain persons in the United States who demonstrate that they are unable or unwilling to return to their country on account of persecution or a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.<sup>5</sup> One year after the receipt of asylum status, asylees may apply for **LAWFUL PERMANENT RESIDENCE**. The **REAL ID Act**<sup>6</sup> altered the standards and evidentiary burdens governing asylum, **WITHHOLDING OF REMOVAL**, and other discretionary forms of **RELIEF FROM REMOVAL**. It requires asylum applicants to demonstrate that one of the enumerated grounds was or will be “at least one central reason” for their persecution and allows immigration judges to require credible **ASYLUM** and **WITHHOLDING** applicants to obtain corroborating evidence “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”<sup>7</sup>

**Asylum Ban.** A short-lived regulation during the Trump Administration that was intended to foreclose asylum relief for persons fleeing persecution who attempted to enter the United States at the southern border at locations other than designated ports of entry.<sup>8</sup> The application of the ban was enjoined by a federal court, and the ban was eventually set aside by the Biden Administration.<sup>9</sup> See also **TRANSIT BAN**.

**Border Crossing Card (BCC).** An identity card issued by a consular officer or an immigration officer to a foreign national who is a **LAWFUL PERMANENT RESIDENT**, or to a foreign national who is a resident in Mexico or Canada, for the purpose of crossing the border from Canada or Mexico.<sup>10</sup> The biometric BCC is a laminated, credit-card-style document with many security features and has a validity period of 10 years. Called a “laser visa,” the card is both a BCC and a B-1/B-2 visitor visa. Mexican visitors to the United States, whether traveling to the border region or beyond, receive a laser visa.

**Cancellation of Removal.** A discretionary remedy for a **LAWFUL PERMANENT RESIDENT** who has been a permanent resident for at least five years and has resided continuously in the United States for at least seven years after having been admitted in any status, who has not been convicted of an aggravated felony. Cancellation of removal is also available to persons who are not permanent residents and who have been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of their application or the date of a **NOTICE TO APPEAR**, if the person has been of good moral character during such period, has not been convicted of certain offenses, and establishes that **REMOVAL** would result in exceptional and extremely unusual hardship to their U.S. citizen or permanent resident spouse, parent, or child.<sup>11</sup> Applicants cannot be absent from the United States for more than 90 days in a single occurrence or a total of 180 days during the 10 years and continue to maintain “physical presence.”<sup>12</sup>

**Chargeability.** In administering the annual immigrant **QUOTA**, restrictions are determined both by when the **PREFERENCE PETITION** was filed on behalf of the applicant and the person’s country of origin. “Chargeability” refers to the country a person’s visa is to be counted against in the administration of the immigrant **QUOTA**. The rules relating to chargeability are found at **INA §202(b)**.

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<sup>4</sup> U.S. Customs and Border Protection, Arrival/Departure Forms: I-94 and I-94W, <https://cbp.gov/travel/international-visitors/i-94>.

<sup>5</sup> **INA §208**. See also **INA §101(a)(42)** (defining the term “refugee”).

<sup>6</sup> Pub. L. No. 109–13, 119 Stat. 231 (May 11, 2005).

<sup>7</sup> **INA §208(b)(1)(B)**.

<sup>8</sup> Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33829 (July 16, 2019).

<sup>9</sup> *Al Otro Lado v. Wolf*, 497 F. Supp. 3d 914, 921 (S.D. Ca. 2019), 2022 WL 15399693 (Sept. 20, 2022) (appeal dismissed as moot).

<sup>10</sup> **INA §101(a)(6)**.

<sup>11</sup> **INA §240A**.

<sup>12</sup> **INA §240A(d)(2)**.

**Citizenship and Immigration Services.** See U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS).

**Consular Processing.** The process of applying for an IMMIGRANT VISA at a U.S. consular post outside the United States for prospective IMMIGRANTS who are not in the United States or who are ineligible for ADJUSTMENT OF STATUS.<sup>13</sup> The term may also be used in reference to the processing of nonimmigrant visas. See also NON-IMMIGRANTS.

**Credible Fear Interview.** An interview conducted by an ASYLUM officer in the expedited REMOVAL process to determine whether an individual can be bound over to an IMMIGRATION JUDGE for a hearing on the merits of their ASYLUM claim.<sup>14</sup>

**Crime Involving Moral Turpitude (CMT or CMT).** A particularly depraved offense that serves as a ground of inadmissibility.<sup>15</sup> A conviction for a statutory offense will involve moral turpitude if one or more of the elements of that offense have been determined to involve moral turpitude. The most common elements involving moral turpitude are: (1) fraud; (2) larceny; and (3) intent to harm persons or thing[s].<sup>16</sup>

**“Crimmigration.”** The growing field of immigration study and practice that encompasses the overlap between criminal law and immigration law.<sup>17</sup>

**[U.S.] Customs and Border Protection (CBP).** The administrative agency under the U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) that has as its primary function the inspection of persons seeking admission and goods brought into the United States.

**Dates for Filing.** A designation found in the U.S. DEPARTMENT OF STATE monthly *Visa Bulletin* that informs applicants for IMMIGRANT VISAS or ADJUSTMENT OF STATUS that the applications on that date will be given priority for adjudication. The Dates for Filing refers to the “priority” date and the specific visa category under which the applicant is proceeding, and does not mean that there are VISAS currently available for those persons. See also ADJUSTMENT OF STATUS, FINAL ACTION DATE, IMMIGRANT VISAS, PRIORITY DATES, and VISA BULLETIN).

**Deferred Action.** Extraordinary relief in the form of PROSECUTORIAL DISCRETION where the government takes no action to remove a person although the person may be technically INADMISSIBLE or DEPORTABLE. The relief may be granted in cases with compelling humanitarian factors. A person under deferred action is considered to be lawfully present in the United States for purposes of applying for certain public benefits.<sup>18</sup>

**Deferred Action for Childhood Arrivals (DACA).** A special form of DEFERRED ACTION created by the Obama administration in 2012 to permit certain persons who had come to the United States as children to apply for and receive deferred action consideration and certain benefits, including an EMPLOYMENT AUTHORIZATION DOCUMENT (EAD).

**Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).** A special form of DEFERRED ACTION established by the Obama administration in 2014 that would permit certain parents of U.S. citizens and LAWFUL PERMANENT RESIDENTS to remain in the United States. The program was expected to protect up to 4.4 million persons from removal. DAPA relief was enjoined by a federal judge in 2015, and that decision was revised by a federal appellate court and the stay remained in place. The appellate court decision remains in effect as a result of a deadlocked 2016 U.S. Supreme Court decision.<sup>19</sup>

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<sup>13</sup> See 22 CFR Parts 40 and 42.

<sup>14</sup> See INA §235(b)(1)(A)(ii).

<sup>15</sup> INA §212(a)(2)(A)(i)(I).

<sup>16</sup> 9 *Foreign Affairs Manual* (FAM) 302.3-2 (B)(2)(b) (rev'd 2022).

<sup>17</sup> See, e.g., Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 Am. U. L. Rev. 367 (2006); César Cuauhtémoc García Hernández, *Creating Crimmigration*, 2013 BYU L. Rev. 1457 (2013).

<sup>18</sup> 8 CFR §102.12(a)(4)(v).

<sup>19</sup> See *Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015), 809 F.3d 134 (5th Cir. 2015), *Unite States. v. Texas*, 136 U.S. 2271 (2016), *reh'g denied*, 137 U.S. 285 (2016).

**Deferred Enforced Departure (DED).** A nonstatutory form of RELIEF FROM REMOVAL granted to persons of certain nationalities present in the United States for compelling humanitarian reasons, usually involving natural disaster or civil unrest. See also EXTENDED VOLUNTARY DEPARTURE.

**Denaturalization.** The procedure through which a person may be deprived of U.S. citizenship that was originally obtained by NATURALIZATION.

**[U.S.] Department of Homeland Security (DHS).** The agency into which the legacy Immigration and Naturalization Service (LEGACY INS) was folded, effective March 1, 2003. The benefits functions of legacy INS transferred to the U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS), while the enforcement functions transferred to U.S. CUSTOMS AND BORDER PROTECTION (CBP) and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE).

**Deportability, Grounds of.** Acts that, when proven by the government, make a person subject to DEPORTATION.<sup>20</sup>

**Deportation.** The removal, ejection, or transfer of a person from a country because their presence is deemed inconsistent with the public welfare. Prior to 1996, the term “deportation” was used to describe the ejection of a person who had managed to gain “entry” into the United States either legally or illegally. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)<sup>21</sup> replaced the term “deportation” with “REMOVAL.” Deportation is not considered a form of punishment. Grounds for deportation are set forth at INA §237. LAWFUL PERMANENT RESIDENTS are subject to removal if any of the GROUNDS OF DEPORTABILITY apply to them.

**Derivative Citizenship.** Citizenship conveyed to children by virtue of their parent’s U.S. citizenship, whether through the NATURALIZATION of parents or, under certain circumstances, to foreign-born children adopted by U.S. citizen parents, provided that certain conditions are met.<sup>22</sup>

**Derivative Status (Generally).** An immigration status or benefit that may be acquired through a relationship to another individual (usually referred to as the primary beneficiary). Derivative status or benefits are generally available to the spouse or minor unmarried children of the primary beneficiary.

**Diversity Lottery.** The generic name given to the immigrant visa lottery program established by the Immigration Act of 1990<sup>23</sup> that makes available up to 55,000 immigrant visas per federal fiscal year to persons from low-admission states and low-admission regions.<sup>24</sup> The Diversity Immigrant Visa Lottery (DV) program is administered by the U.S. DEPARTMENT OF STATE (DOS), which establishes the rules for the lottery and tracks the available visa numbers.

**Dual Nationality.** The simultaneous possession of two citizenships. It results from the fact that there is no uniform rule of international law relating to the acquisition of nationality. Dual nationality can occur by birth in one country to citizens of another country, by marriage to a foreign national, or by foreign NATURALIZATION. Though dual nationality is not favored under U.S. law, and U.S. naturalization law requires renunciation of allegiance to all other sovereigns, U.S. law does not require that the country to which a NATURALIZATION applicant is renouncing allegiance act in any way to withdraw or revoke the citizenship of the applicant upon successful NATURALIZATION in the United States. Certain countries do not accept dual citizenship, and instead require relinquishment of former citizenship upon NATURALIZATION to U.S. citizenship.

**Employment Authorization Document (EAD).** A USCIS document, Form I-766, evidencing the right of certain foreign nationals to accept employment while in the United States. See also WORK PERMIT.

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<sup>20</sup> INA §237(a).

<sup>21</sup> Pub. L. No. 104–208, 110 Stat. 3009 (Sept. 30, 1996).

<sup>22</sup> INA §320; 8 CFR §320.

<sup>23</sup> Pub. L. No. 101–649, 104 Stat. 4978 (Nov. 29, 1990).

<sup>24</sup> INA §203(c).

**Exchange Visitor.** A foreign national coming temporarily to the United States as a participant in a program approved by the U.S. DEPARTMENT OF STATE (DOS) for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.

**Exclusion.** The procedure existing prior to IIRAIRA for the ejection of persons seeking admission to the United States. The term “exclusion” under current immigration law refers to the various bases under which a person could be found to be inadmissible to the United States. The grounds for exclusion (now known as INADMISSIBILITY) are set forth under INA §212.

**Expedited Removal.** A procedure, established by IIRAIRA, authorizing U.S. Immigration and Customs Enforcement (ICE) to quickly remove certain INADMISSIBLE foreign nationals from the United States. The authority covers foreign nationals who are INADMISSIBLE because they have no entry documents or because they have used counterfeit, altered, or otherwise fraudulent or improper documents. The authority covers foreign nationals who arrive in, attempt to enter, or have entered the United States without having been ADMITTED or PAROLED by an immigration officer at A PORT OF ENTRY. ICE has the authority to order removal, and the foreign national will not be referred to an immigration judge except under certain circumstances if the foreign national makes a claim to legal status in the United States or demonstrates a CREDIBLE FEAR of persecution if returned to their home country.<sup>25</sup>

**Extended Voluntary Departure.** A nonstatutory form of relief whereby individuals from a designated country were granted work authorization and temporary RELIEF FROM REMOVAL due to civil unrest, natural disaster, or other compelling humanitarian factors. Compare with TEMPORARY PROTECTED STATUS (TPS), which is provided for under the IMMIGRATION AND NATIONALITY ACT (INA). This relief has also been termed “DEFERRED ENFORCED DEPARTURE.”<sup>26</sup>

**Final Action Dates.** A designation in the monthly VISA BULLETIN that denotes that VISA numbers should be currently available for persons whose applications were filed (and have PRIORITY DATES) on or before that date.

**Green Card.** An expression that refers to the document carried by a LAWFUL PERMANENT RESIDENT that provides proof of their status. The document is officially referred to as an “I-551” (Alien Registration Receipt Card or Permanent Resident Card).

**Humanitarian Asylum.** The conferral of ASYLUM where a person has not established a well-founded fear of future persecution, but has suffered past persecution of a severe nature, or there is a reasonable possibility that the person would experience other serious harm if returned to their home country.<sup>27</sup>

**Immediate Relatives.** A category of immigrants not subject to the annual QUOTAS, including spouses and minor unmarried children of U.S. citizens. Immediate relatives also include parents of U.S. citizens where the petitioning son or daughter is at least 21 years of age.<sup>28</sup>

**Immigrant.** A LAWFUL PERMANENT RESIDENT of the United States. Defined, in the negative, as “every alien except an alien who is within one of the ... classes of nonimmigrant aliens” under the INA.<sup>29</sup> This characterization of immigrants shifts the burden to the person seeking admission to establish their clear eligibility for such status. Accordingly, all “aliens” are (with some exceptions) presumed to be immigrants until they establish that they are entitled to NONIMMIGRANT status.<sup>30</sup>

**Immigrant Visa.** Permission obtained from an overseas U.S. consul for a foreign national to be admitted to the United States for permanent residence. A visa is issued subsequent to establishing eligibility for admission on a permanent basis under the INA. An immigrant visa has a six-month validity, and the intending immigrant

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<sup>25</sup> INA §235; 8 CFR §235.3(b).

<sup>26</sup> See, e.g., 75 Fed. Reg. 15715 (2010).

<sup>27</sup> 8 CFR §§208.13(b)(1)(B)(iii), 1208.13(b)(1)(B)(iii); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

<sup>28</sup> INA §201(b)(2)(A)(i).

<sup>29</sup> INA §101(a)(15).

<sup>30</sup> INA §214(b).

must apply for admission during this period. See also PREFERENCE CATEGORIES, LABOR CERTIFICATION, and VISA.

**[U.S.] Immigration and Customs Enforcement (ICE).** The administrative agency under DHS primarily responsible for the enforcement of the immigration laws within the United States. This is to be contrasted with the determination of whether a noncitizen is eligible for immigration benefits, for which authority is held by U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS).

**Immigration and Nationality Act of 1965 (INA).** The statute that forms the basic body of U.S. immigration law. Found at Title 8 of the U.S. Code, 8 USC §§1101 *et seq.*, as amended.

**Immigration Judge.** Sometimes referred to as “Special Inquiry Officer,” the person responsible for presiding over REMOVAL hearings.<sup>31</sup> Immigration judges are employed by the Executive Office for Immigration Review (EOIR), a division of the U.S. Department of Justice (DOJ).

**Inadmissibility.** Any one of numerous grounds listed in INA §212(a) that make a person ineligible for lawful ADMISSION into the United States.

**Individual Calendar Hearing.** This term is used interchangeably with a “merits” hearing, and refers to an evidentiary proceeding before an IMMIGRATION JUDGE on contested matters involving challenges to REMOVABILITY, and the determination of eligibility for RELIEF under the INA.<sup>32</sup> See also MERITS HEARING.

**Inspection.** The process that all persons must go through when they arrive at the border. A person is asked to present proof of their right to enter the country. At the end of the process of inspection, a person is either ADMITTED, REMOVED, or PAROLED into the country. See also PRIMARY INSPECTION.

**Labor Certification.** Certification by the U.S. Department of Labor (DOL) that there exists an insufficient number of U.S. workers able, willing, qualified, and available at the place of proposed employment, and that employment of the foreign national for whom certification is sought will not adversely affect the wages and working conditions of U.S. workers similarly employed. (The employer must, therefore, offer the job at the “prevailing wage” in the particular market).<sup>33</sup> A labor certification does not entitle the foreign national to ADMISSION; a VISA petition must still be filed on their behalf. The Program Electronic Record Management (PERM) regulations (effective March 28, 2005) established the current system for filing labor certifications.<sup>34</sup>

**Labor Condition Application (LCA).** An attestation by an employer seeking to hire an H-1B, H-1B1, or E-3 NONIMMIGRANT to four conditions of employment: (1) that the employer is paying the H-1B nonimmigrant at least the higher of the actual wage paid by the employer to others in the same occupation with similar experience and qualifications, or the prevailing wage for the occupation in the geographical area of the work site; (2) that the employment of the H-1B nonimmigrant will not adversely affect the working conditions of similarly employed workers; (3) that there is not a strike, lockout, or work stoppage in the occupation for which the H-1B nonimmigrant is being hired; and (4) that notice of the hiring of the H-1B nonimmigrant has been provided.

**Laser Visa.** See BORDER CROSSING CARD.

**Lawful Permanent Resident (LPR).** A person accorded the benefit of being able to reside in the United States on a permanent basis. Such a person may engage in employment but may not vote in U.S. elections. LPR status is the status gained by a person who is admitted to the United States with an IMMIGRANT VISA or who has been granted ADJUSTMENT OF STATUS. Lawful permanent residence also may be obtained after a person has been granted ASYLUM or was admitted to the United States as a REFUGEE. In addition, a person who has been in the United States for more than 10 years and is able to establish the requisite degree of hardship may be granted permanent residence following the “CANCELLATION” OF REMOVAL proceedings. LPR status may be taken away for the commission of certain acts that can result in DEPORTABILITY or INADMISSIBILITY, or lost through “abandonment.” Also called “legal permanent resident” or “green card holder.”

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<sup>31</sup> INA §§101(b)(4), 240.

<sup>32</sup> *Immigration Court Practice Manual* §4.16.

<sup>33</sup> INA §212(a)(5).

<sup>34</sup> 69 Fed. Reg. 77325 (Dec. 27, 2004).

**Legacy INS.** A reference to the Immigration and Naturalization Service (e.g., “a legacy INS memo”) that acknowledges its status as the predecessor to the U.S. DEPARTMENT OF HOMELAND SECURITY (DHS).

**Legalization.** A program established by the Immigration Reform and Control Act of 1986 (IRCA)<sup>35</sup> that permitted the grant of temporary resident status to certain foreign nationals who were later entitled to apply for permanent residence.<sup>36</sup> Also referred to as “temporary resident status” and “amnesty.”

**Master Calendar Hearing.** Proceeding conducted before an IMMIGRATION JUDGE to determine how the applicant/respondent pleads to the NOTICE TO APPEAR. At this hearing, the IMMIGRATION JUDGE will advise the applicant/respondent of the consequences of failing to appear at later hearings, deadlines for filing for relief, and setting the date for future appearances in the proceedings.<sup>37</sup>

**Merits Hearing.** Hearing held before an IMMIGRATION JUDGE to determine whether the applicant meets the requirements for the particular form of RELIEF FROM REMOVAL sought under the INA. See also INDIVIDUAL CALENDAR HEARING.

**Metering.** Reference to a controversial policy instituted by U.S. CUSTOMS AND BORDER PROTECTION (CBP) of restricting the number of ASYLUM and other applicants for protection from harms from being adjudicated on any particular day. Metering is one of the tools of implementing the MIGRANT PROTECTION PROTOCOLS. It is not clear when the policy began, but it was first publicly reported in May 2018.<sup>38</sup> See MIGRATION PROTECTION PROTOCOLS.

**Migrant Protection Protocols (MPP).** Often referred to as “REMAIN IN MEXICO.” A policy requiring most individuals who arrive at the U.S.-Mexico border without proper documentation to wait in Mexico while their claims for ASYLUM or protection from harm are adjudicated. The policy was initiated on January 25, 2019, through a memorandum from the DHS secretary.<sup>39</sup> In June 2021, the Biden administration terminated the program, and a group of states initiated a legal action to enjoin its termination. A district court in Texas enjoined the termination. That decision was appealed and was pending review before the U.S. Supreme Court,<sup>40</sup> which then affirmed the Biden Administration’s authority to end the program.<sup>41</sup> See also REMAIN IN MEXICO, METERING.

**Naturalization.** “[T]he conferring of nationality of a state upon a person after birth, by any means whatsoever.”<sup>42</sup> Under U.S. law, persons may become naturalized after they have been LAWFUL PERMANENT RESIDENTS for a period prescribed by statute.

**Nonimmigrant.** A person who can establish that they have a residence abroad that they have no intention of abandoning, who is coming to the United States for a temporary period, and who fits into a specifically defined category under INA §101(a)(15). Nonimmigrant categories include certain temporary employees, students, tourists, TREATY INVESTORS, and foreign government officials. See also IMMIGRANT.

**Nonimmigrant Visa.** A document signifying that a consular officer believes that the noncitizen to whom the VISA was issued is eligible to apply for ADMISSION to the United States in a particular NONIMMIGRANT category. However, a VISA does not guarantee ADMISSION, and an immigration inspector can deny entry if they believe that the applicant for ADMISSION is not admissible under the category for which the visa was issued. The period of validity of a VISA establishes the time during which the noncitizen may apply for ADMISSION at a U.S. PORT

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<sup>35</sup> Pub. L. No. 99–603, 100 Stat. 3359 (Nov. 6, 1986).

<sup>36</sup> INA §245A.

<sup>37</sup> See *Immigration Court Practice Manual* §4.15(a).

<sup>38</sup> See Savitri Arvey & Stephen Leutert, *The Conversation: Thousands of Asylum Seekers Left Waiting at the US-Mexico Border*, Public Radio International (Jun 17, 2019), at <https://perma.cc/MV54-U8JK>.

<sup>39</sup> See Memorandum from DHS Secretary Kirstjen Nielsen to USCIS Director L. Francis Cissna, et al., *Policy Guidance for Implementation of the Migrant Protection Protocols* (Jan. 25, 2019).

<sup>40</sup> See *Texas v. Biden*, 20 F.4th 928 (5th Cir. 2021), cert. granted 2022 WL 497412 (Feb. 22, 2022).

<sup>41</sup> *Biden v. Texas*, 597 U.S. \_ (2022).

<sup>42</sup> INA §101(a)(23).

OF ENTRY. VISAS may be valid for as few as 30 days or up to 10 years, and may be limited to a single entry or may be valid for multiple entries during the period of validity. The VISA's period of validity is not the same as the authorized period of stay in the United States. The authorized period of stay, which is indicated on the ARRIVAL-DEPARTURE RECORD (I-94), may be less than the VISA's period of validity, or may be much longer (typically when single-entry visas are valid only for a limited period of time). It is important to understand that it is the decision made at the PORT OF ENTRY at the time of inspection and indicated on the I-94, and not the VISA, that determines a NONIMMIGRANT's status and its validity as to time and purpose. A noncitizen is not out of status if they were properly admitted pursuant to a valid VISA and the VISA has expired, provided the person is still within the authorized period of stay indicated on the Form I-94.

**Notice to Appear (NTA).** Document (otherwise referred to as an I-862) which, when properly served on the applicant/respondent, informs and requires that they present themselves to an IMMIGRATION JUDGE on a specific date, time, and place to answer to charges that they may be subject to REMOVAL from the United States. Once properly served, the document places jurisdiction of the proceedings with the immigration court.<sup>43</sup>

**Parole.** Permission granted by DHS allowing a person to physically enter the United States without being considered to have legally entered the country. Parole is a legal fiction. A person paroled into the United States is treated in a legal sense as if they were still at the border seeking permission to enter.<sup>44</sup> While parolees are not afforded any legal rights or benefits greater than those seeking admission, they are provided with legal documents that permit their presence in the United States. Examples include parole for humanitarian or family unification purposes, parole for DACA recipients, and parole to proceed with the process of ADJUSTMENT OF STATUS that would otherwise be considered to have been abandoned.

**Parole in Place (PIP).** A special form of discretionary immigration relief granted to the immediate relatives of military personnel who have not previously been lawfully admitted or PAROLED into the country, thereby making them eligible for ADJUSTMENT OF STATUS to that of LAWFUL PERMANENT RESIDENT. While currently only available to relatives of military personnel, Parole in Place could arguably be extended as a discretionary benefit to any person who has not been ADMITTED to the United States. The policy on behalf of military families, which had been under attack by the Trump administration, was recently codified in legislation signed into law.<sup>45</sup>

**PERM (Program Electronic Review Management).** A system established by the U.S. Department of Labor (DOL), effective March 28, 2005, for filing applications for LABOR CERTIFICATION. PERM uses an automated computer system for employers to electronically file attestation forms regarding their compliance with all regulatory requirements.<sup>46</sup>

**Permanent Resident.** See LAWFUL PERMANENT RESIDENT (LPR).

**Port of Entry.** Designated locations where all persons seeking lawful admission to the United States are required to present themselves for inspection.<sup>47</sup>

**Preference Categories.** Categories by which IMMIGRANT VISAS are allocated on the basis of an annual QUOTA. In order to qualify for ADMISSION, the intending IMMIGRANT must show that: (1) they are married to a LAWFUL PERMANENT RESIDENT or are the unmarried son or daughter of a lawful permanent resident; or (2) they are the son, daughter, or sibling of a U.S. citizen (irrespective of marital status); or (3) their employer has obtained a LABOR CERTIFICATION for eventual employment in the United States. Whether the person meets the QUOTA restriction will depend on their relationship with a U.S. citizen or lawful permanent resident, as described above, or whether the employment is of a skilled or unskilled nature. See also IMMIGRANT VISA.

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<sup>43</sup> *Innovation Law Lab v. Nielsen*, 366 F. Supp. 3d 1110 (N.D. Cal. 2019) (issuance of nationwide injunction), 924 F.3d 503 (9th Cir. 2019) (stay of injunction entered by Ninth Circuit panel).

<sup>44</sup> INA §212(d)(5).

<sup>45</sup> National Defense Reauthorization Act of 2020, Pub. L. No. 116-92 (2019); Camila DeChalus, *House Lawmakers Introduce Military Families Parole in Place Act*, in Congressional Quarterly Roll Call (Dec. 6, 2019).

<sup>46</sup> 20 CFR Parts 655 and 656.

<sup>47</sup> Ports of entry are listed at 8 CFR §100.4.

**Pre-inspection.** A procedure whereby a person completes immigration INSPECTION prior to departing the foreign country, such that no further immigration INSPECTION is required upon arrival in the United States.<sup>48</sup> See also ARRIVAL-DEPARTURE RECORD.

**Primary Inspection.** The first or initial examination at a PORT OF ENTRY where a person arriving is subjected to questions to determine whether they may be ADMITTED.

**Priority Date.** The date on which a person submitted documentation establishing prima facie eligibility for an IMMIGRANT VISA. For family-based immigrants, the priority date is the date on which the family-based petition was filed.<sup>49</sup> If the noncitizen relative has a priority date on or before the date listed in the VISA BULLETIN, then they are eligible for an IMMIGRANT VISA. For employment-based cases, it is the date of the filing of the LABOR CERTIFICATION application, or if no labor certification is required, the date the IMMIGRANT VISA petition is filed.<sup>50</sup>

**Prosecutorial Discretion.** The authority exercised by every law enforcement agency, including ICE and other enforcement agencies within DHS, to set enforcement priorities and decide to what extent to pursue a particular case based on those priorities. The authority has been posited in support of programs such as DEFERRED ACTION, EXTENDED VOLUNTARY DEPARTURE, DEFERRED ENFORCED DEPARTURE, DACA, and DAPA.

**Provisional Waiver.** Sometimes referred to as a “provisional unlawful presence waiver,” a WAIVER established in March 2013, allowing spouses, children, and parents of U.S. citizens who are IMMIGRANT VISA applicants and who are otherwise subject to the UNLAWFUL PRESENCE ground of INADMISSIBILITY at INA §212(a)(9)(B)(i) to obtain a decision from USCIS on the WAIVER prior to being interviewed at a consulate abroad for their IMMIGRANT VISA.<sup>51</sup>

**Public Charge Rule.** A controversial regulatory modification by the Trump Administration, interpreting the statutory provision (8 USC §1182(a)(4), INA §212(a)(4)) restricting the admission of persons who are “likely to become a public charge.”<sup>52</sup> The rule—which had been challenged in federal court—made it more difficult for noncitizens to come to the United States.<sup>53</sup> The Biden Administration restored the historical meaning of the term “public charge.”<sup>54</sup>

**Quotas.** Annual numerical restrictions on many forms of immigration status. Certain NONIMMIGRANT categories are restricted to a set number of persons who may be ADMITTED in any given fiscal year. Similarly, the number of persons who may be granted PERMANENT RESIDENCE is also restricted and allocated between the family and employment categories. Strict attention is paid to the IMMIGRANT category, as well as to ensuring that persons are issued VISAS in the order in which they applied and that no more than 25,620 (seven percent of the total) are issued to nationals of any one country in a given fiscal year. See also PREFERENCE CATEGORIES.

**Reasonable Fear Interview.** Review conducted in the EXPEDITED REMOVAL process by an ASYLUM officer to determine whether the applicant has established a “reasonable possibility” of persecution (for an ASYLUM or WITHHOLDING OF REMOVAL claim) or torture (for relief under the Convention Against Torture) in the claimed country for REMOVAL, sufficient to allow them to pursue the claim before an IMMIGRATION JUDGE.

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<sup>48</sup> INA §235A.

<sup>49</sup> 8 CFR §204.1(c).

<sup>50</sup> 8 CFR §204.5(d).

<sup>51</sup> 8 CFR §212.7.

<sup>52</sup> Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (2019). The regulation became effective on February 24, 2020. For additional discussion, see 96 Interpreter Releases (Oct. 7, 2019).

<sup>53</sup> See, e.g., *City and County of San Francisco v. U.S. Citizenship and Immigration Services and State of California v. DHS*, 408 F. Supp. 3d 1057 (N.D. Cal. 2019) (injunction of implementation of regulation), 944 F.3d 773 (9th Cir. 2019) (stay of injunction granted); *State of Washington v. DHS*, 408 F. Supp. 3d 1191 (E.D. Wash. 2019), 944 F.3d 773 (9th Cir. 2019) (stay of injunction granted).

<sup>54</sup> Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55472 (Sept. 09, 2022).

**Reduction in Recruitment (RIR).** An alternative method of LABOR CERTIFICATION under the system in place before March 28, 2005. Since that time, RIR and conventional labor certification were completely revamped by the DOL PERM rules.

**Refugee.** A person outside the United States who is unable or unwilling to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>55</sup> Refugee admission to the United States is based on annual allocations as established between the executive and legislative branches. A refugee may apply for LAWFUL PERMANENT RESIDENT status one year after ADMISSION as a refugee. See also ASYLUM.

**Relief from Removal.** Any number of immigration benefits that allow a person otherwise subject to REMOVAL to avoid formal REMOVAL from the United States. Common forms of relief from removal include: CANCELLATION OF REMOVAL for non-permanent residents, ADJUSTMENT OF STATUS, and VOLUNTARY DEPARTURE.

**Remain in Mexico Program.** A highly controversial policy initiated by the Trump administration in 2019, requiring applicants who arrive at the southern border between the United States and Mexico to remain in Mexico while they await processing for ADMISSION to the United States. The policy effectively required ASYLUM seekers and others to wait for their CREDIBLE FEAR INTERVIEWS and ultimate adjudication of any potential ASYLUM claim in Mexico. See MIGRANT PROTECTION PROTOCOLS.

**Removal.** The procedure used to eject persons who are seeking ADMISSION to the United States, as well as those who have been ADMITTED to the United States. Prior to the enactment of IIRAIRA in 1996, the terms “DEPORTATION” and “EXCLUSION” were used.

**Restriction on Removal.** See WITHHOLDING OF REMOVAL.

**Request for Evidence (RFE).** Request made by USCIS to a petitioner or applicant seeking an immigration benefit for additional evidence in support of a claim. Generally, an RFE is accompanied with a list of additional information that is needed to complete adjudication of the benefit.<sup>56</sup>

**Safe Third-Country Agreements.** Agreements between the United States and foreign governments in which the governments provide assurances that ASYLUM seekers will be provided with certain minimum levels of protection from harm. The first of such agreements was entered into with Canada in 2004. A series of three additional agreements were entered into with Guatemala, El Salvador, and Honduras by the Trump administration in 2019. These three agreements were challenged in federal court and were eventually ended by the Biden Administration.<sup>57</sup>

**Secondary Inspection.** The procedure beyond the initial screening by CBP to determine whether a person will be ADMITTED to the United States. At “secondary inspection,” applicants for ADMISSION are subjected to more questioning.

**Service Centers.** USCIS offices established to handle the filing, data entry, and adjudication of certain applications for immigration services and benefits. The applications are mailed to USCIS service centers; service centers are not staffed to receive walk-in applications or questions.

**SEVIS (Student and Exchange Visitor Information System).** An internet-based software application used to track and monitor NONIMMIGRANT students and EXCHANGE VISITORS and their dependents.

**Temporary Protected Status (TPS).** A status permitting residence and EMPLOYMENT AUTHORIZATION to nationals of foreign states for a period of not less than six months or no more than 18 months, when such states have been appropriately designated by the government because of extraordinary and temporary political or physical conditions in such state(s).<sup>58</sup> TPS status is granted by the DHS secretary following consultation with

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<sup>55</sup> INA §101(a)(42).

<sup>56</sup> 8 CFR §103.2(b)(8)(iii).

<sup>57</sup> DOS Press Release, *Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras* (Feb. 26, 2021). <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/>.

<sup>58</sup> INA §244; 8 CFR §§244.2, 1244.2.

other “appropriate agencies.”<sup>59</sup> The designation may be extended, and the decision to confer the benefit is not subject to judicial review; however, its revocation has been found to be subject to review when based on an improper basis.<sup>60</sup>

**Title 42.** A policy invoked by the Centers for Disease Control (CDC) pursuant to 42 USC §265 prohibiting the admission and requiring the immediate return of noncitizens coming across a land border in response to the COVID-19 pandemic. The ban was applied in March 2020. The admission bar was enjoined as applied to unaccompanied minors.<sup>61</sup> The Biden administration had acquiesced to the injunction, but only as to its application to unaccompanied minors. An appeals court upheld its application to preclude asylum protection, but prohibited its invocation without screening for restriction on removal and Convention Against Torture (CAT) claims.<sup>62</sup> The policy expired May 11, 2023, after the CDC announced that it was lifting the public health emergency for COVID-19 effective that date.

**Transit Ban.** In February 2023, the Biden Administration issued a notice of proposed rulemaking that would preclude asylum protection to persons arriving at the U.S. southern border who do not apply for asylum according to series of procedures described in the proposed rules. The rule requires that applicants apply for admission at a designated port of entry using a newly created, so-called “CBP One App” to schedule the time and place of their arrival. Failure to follow the procedure and making physical entry would create a “rebuttable presumption” for denial of credible fear in the expedited removal process.<sup>63</sup> It is expected that the restrictions will be challenged in federal court when and if they are finalized.<sup>64</sup> The plan has become known as the “Transit Ban” and has its origins in a more restrictive sanction first promulgated by the Trump Administration, which precluded asylum seekers from being able to avail themselves of protection if they traveled through certain countries and failed to apply for asylum or entered the United States at a location other than a designated port of entry.<sup>65</sup> Under the rule, asylum seekers were required to seek admission at a “port of entry.” The ban was found unlawful by a federal court in *Al Otro Lado v. Wolf*,<sup>66</sup> (denial of government’s request for stay). The case was eventually dismissed as moot when the Biden Administration rescinded the Trump policies.<sup>67</sup> See also ASYLUM BAN, METERING, MIGRATION PROTECTION PROTOCOLS.

**Travel Ban.** Description given to the broad ban on travel to the United States from a number of predominantly Muslim countries at the inception of the Trump administration by a series of executive orders. The travel ban was ultimately upheld by the U.S. Supreme Court in *Trump v. Hawaii*.<sup>68</sup>

**Treaty Investor.** A NONIMMIGRANT visa classification that permits a national of a country with which the United States maintains a treaty of commerce and navigation to be admitted to the United States when investing a substantial amount of capital in a U.S. business.

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<sup>59</sup> INA §244(b)(1).

<sup>60</sup> INA §244(b)(5). See, e.g., *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 415 (D. Mass. 2019); *Saget v. Trump*, 375 F. Supp. 3d 280, 330 (E.D.N.Y. 2019).

<sup>61</sup> See *Huisha-Huisha*, 27 F.4th 718 (D.C. Cir. 2022); see also *P.J.E.S. v. Wolf*, 108 F. Supp. 3d 451 (D.D.C. 2020); Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 16559 (Mar. 24, 2020).

<sup>62</sup> Although the ban and expulsions were framed as a response to COVID-19, it has not been applied to other persons coming to the United States. For a critique of the policy, see Morgan Sandhu, *Unprecedented Expulsion of Immigrants at the Southern Border: The Title 42 Process, COVID-19 and The Law: Law and Policy to Address Basic Needs and Marginalized Populations*, Harvard Law School (Dec. 26, 2020), at <https://covidseries.law.harvard.edu/unprecedented-expulsion-of-immigrants-at-the-southern-border-the-title-42-process/> and <https://perma.cc/78NR-2EGC>.

<sup>63</sup> Notice of Proposed Rulemaking: Circumvention of Lawful Pathways, 88 Fed. Reg. 11704 (Feb. 23, 2023).

<sup>64</sup> Britain Eakin, *New Asylum Rules Target Travel Through Other Countries*, Law360 (Feb. 21, 2023).

<sup>65</sup> Asylum Eligibility and Procedural Modifications. 84 Fed. Reg. 33829 (July 16, 2019).

<sup>66</sup> 497 F. Supp. 3d 914, 921 (S.D. Ca. 2019), 952 F.3d 999, 1016 (9th Cir. 2020).

<sup>67</sup> *Al Otro Lado v. Wolf*, 2022 WL 15399693 (Sept. 20, 2022).

<sup>68</sup> *Trump v. Hawaii*, 138 U.S. 2392 (2018).

**Unlawful Presence.** Presence in the United States after the expiration of the authorized period of stay, or presence in the United States without having been ADMITTED or PAROLED. The period of authorized stay, usually noted on Form I-94 or I-94W, must end on a date certain. Thus, for example, Canadians ADMITTED without being issued an I-94, and F, J, and M students and exchange visitors admitted for “duration of status” (D/S) who overstay, do not accrue unlawful presence until and unless an IMMIGRATION JUDGE or DHS official finds such person to be out of status. Violation of status (*e.g.*, the F-1 student who works without authorization) does not constitute unlawful presence. Depending on the period of unlawful presence, a person may be barred from re-admission for a period of three or 10 years.<sup>69</sup>

**U.S. Citizenship and Immigration Services (USCIS)** (*or, less frequently, CIS*). Part of the U.S. DEPARTMENT OF HOMELAND SECURITY (DHS), USCIS is the administrative agency responsible for overseeing and adjudicating immigration benefits under the INA.

**U.S. Department of State (DOS).** The cabinet agency bearing the primary responsibility for all matters relating to foreign affairs and U.S. consular officer operations. In addition to agency officers making decisions on all visas, they also make determinations as to the issuance of U.S. passports.

**US-VISIT (U.S. Visitor and Immigrant Status Indicator Technology Program).** A program designed by DHS to collect and share information on foreign nationals traveling to the United States. This system allows the U.S. government to record the entry and exit of non-U.S. citizens and to verify the identity of travelers coming in and out of the United States.

**Visa Bulletin.** A monthly bulletin issued by the U.S. DEPARTMENT OF STATE, Bureau of Consular Affairs, informing Consular Officers, USCIS officials, and IMMIGRATION JUDGES adjudicating ADJUSTMENT OF STATUS applications of current processing times for the issuance of IMMIGRANT VISAS. The bulletin is issued by the U.S. DEPARTMENT OF STATE as the agency that monitors and controls the administration of the IMMIGRANT QUOTA system.<sup>70</sup>

**Visas Viper.** The “Visas Viper Terrorist Reporting Program” was a mechanism created in response to the deficiencies discovered in the aftermath of the 1993 World Trade Center bombing. The program was designed to provide a way “for routinely and consistently bringing suspected terrorists” to the consular section’s attention for the purpose of entering names into the DOS “Consular Lookout and Support System” (CLASS) and into the CBP “Interagency Border Inspection System” (IBIS).<sup>71</sup>

**Visa.** An official endorsement, obtained from an overseas U.S. consul, certifying that the bearer has been examined and is permitted to seek ADMISSION to the United States at a designated PORT OF ENTRY. There are both IMMIGRANT VISAS and NONIMMIGRANT VISAS. A visa does not grant the bearer the right to enter the United States; it merely allows one to seek ADMISSION at a PORT OF ENTRY.

**Visa Waiver Program (VWP).** A program under which nationals of certain countries with which the United States has an agreement can enter the United States for up to 90 days as visitors for business or pleasure without first obtaining a VISA from a U.S. consulate. No extension or change of status is permitted. The Visa Waiver pilot program became permanent on October 30, 2000. This program has become more popularly referred to as ESTA, which is the acronym for the Department of Homeland Security’s “Electronic System Travel Authorization.”<sup>72</sup>

**Voluntary Departure.** A procedure (immigration benefit) that permits an otherwise REMOVABLE person to leave the United States of their own accord. There is a limit of 120 days for prehearing voluntary departure and 60 days for post-hearing voluntary departure. Most forms of voluntary departure allow beneficiaries to avoid

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<sup>69</sup> INA §212(a)(9)(B).

<sup>70</sup> The *Visa Bulletin*, including archives of past bulletins, can be found at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>.

<sup>71</sup> U.S. Gov’t Accountability Office, GAO-05-859, *Border Security: Strengthened Visa Process Would Benefit from Improvements in Staffing and Information Sharing* (2005).

<sup>72</sup> <https://esta.cbp.dhs.gov/>.

the consequences of having a REMOVAL order entered against them.<sup>73</sup> The failure to comply with voluntary departure may have severe immigration consequences.

**Waivers.** An immigration benefit that may be granted by USCIS, a consular officer, or an IMMIGRATION JUDGE that renders inapplicable a ground of INADMISSIBILITY or DEPORTABILITY. Each waiver has its unique substantive and procedural requirements.<sup>74</sup> Waivers may also be used to remove an impediment to obtaining a VISA or status. As a general proposition, most grounds of INADMISSIBILITY and DEPORTABILITY are waivable.

**Withholding Only Proceedings.** Removal hearing where the only relief before the immigration court is the applicant's eligibility under either the Convention Against Torture or withholding of removal. See WITHHOLDING OF REMOVAL.

**Withholding of Removal.** A remedy available to persons who establish that their lives or freedom would be threatened if they were deported to their home country on account of their race, religion, nationality, membership in a particular social group, or political opinion.<sup>75</sup> Withholding of removal does not confer the right to stay in the United States; a person granted withholding of removal may be removed to any country, other than their home country, that is willing to accept them. Also known as "restriction on removal."

**Work Permit.** There is no single document in U.S. immigration law that is a "work permit." Citizens, nationals, and LAWFUL PERMANENT RESIDENTS are automatically authorized to be employed in the United States. Certain NONIMMIGRANT VISA categories include, as an incident of status, employment authorization either with or without limitation to a particular employer or after application and approval by USCIS. Virtually all EMPLOYMENT AUTHORIZATIONS for NONIMMIGRANTS or undocumented foreign nationals (where authorized) is limited as to time, and most are limited as to the nature of the employer and employment. Other foreign nationals physically present in the United States may have the right to apply for an EMPLOYMENT AUTHORIZATION DOCUMENT (EAD).

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<sup>73</sup> See INA §240B.

<sup>74</sup> Certain grounds of inadmissibility, as well as the two-year home residency requirement for exchange visitors, can be waived under specific circumstances. USCIS can also grant a waiver of the labor certification and job offer requirement to professionals with advanced degrees and foreign nationals of exceptional ability if it is deemed to be in the national interest.

<sup>75</sup> INA §241(b)(3).