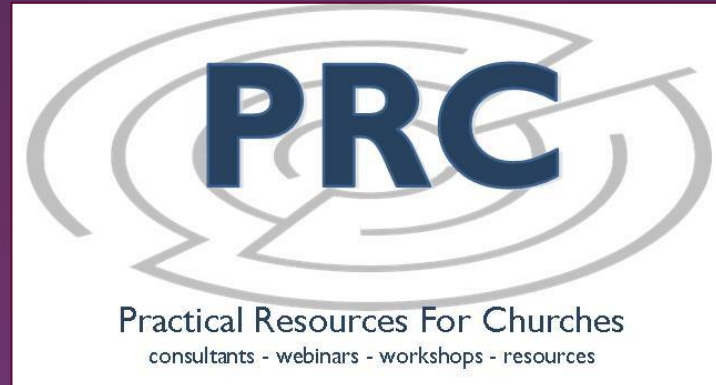


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Immigration Law 101

TJ MILLS, SAM BLECHER & ALEXIS
DUECKER

NY- JUSTICE FOR OUR NEIGHBORS

MAY 7, 2020

Who are we?



Our Mission

New York- Justice for Our Neighbors (JFON) is a faith-driven ministry, welcoming immigrants into our churches and communities by providing free, high-quality immigration legal services, education, and advocacy.

<http://ny-jfon.org>

Main Government Agencies Involved

- ▶ U.S. Department of Homeland Security
 - ▶ U.S. Citizenship and Immigration Service (U.S.C.I.S.)
 - ▶ Immigration and Customs Enforcement (ICE)
- ▶ U.S. Department of Justice
 - ▶ Immigration Courts (Administrative Courts)
 - ▶ Board of Immigration Appeals
- ▶ Department of State
 - ▶ National Visa Center
 - ▶ U.S. Embassies and Consulates
- ▶ Department of Labor

Types of Immigration Status

- ▶ U.S. Citizens (USCs)
- ▶ U.S. Legal Permanent Residents (LPRs)
- ▶ Temporary Residents
 - ▶ Sometimes will have a work permit, but not always
- ▶ Non-immigrants
- ▶ Undocumented Immigrants
 - ▶ Those who came to the U.S. illegally
 - ▶ Those who came legally but overstayed their visas

How does an undocumented person get legal status?

- ▶ Family-based immigration
- ▶ Employment-based immigration
- ▶ Humanitarian Programs

Family Based Immigration

- ▶ A U.S. Citizen can apply for his or her:
 - ▶ Spouse
 - ▶ Children
 - ▶ Parents
 - ▶ Siblings
- ▶ A Legal Permanent Resident can apply for his or her:
 - ▶ Spouse
 - ▶ Unmarried children

Family-based immigration – the waiting line

Immediate Relatives (spouses, minor unmarried children, and parents of U.S. Citizens) (IR)	Immediate (no waiting line)
Spouses and minor children of Legal Permanent Residents (F2A)	1-2 years
Adult unmarried children of Legal Permanent Residents (F2B)	7-21 years
Adult children of U.S. Citizens (F1 or F3)	7-21 years
Siblings of U.S. citizens (F4)	13-24 years

I-130 Petition for
Alien Relative –
filed with U.S.CIS

Immediate Relatives can
go immediately on to
next step

Preference
Categories wait in
line

Consular Processing
(at U.S. consulate in
home country –
through U.S. State
Department)

Adjustment of Status
(within U.S. – through
U.S.CIS)



RECEIPT NUMBER EAC123434789		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(S), OR ORPHAN
RECEIPT DATE June 3, 2006	PRIORITY DATE May 21, 2006	PETITIONER A029 34 3409 GUPTA, Manisha
NOTICE DATE January 14, 2010	PAGE 1 of 1	BENEFICIARY JADAV, Smita Dipesh
Manisha Gupta 23445 W Parker Road Allen, TX 75002		Notice Type: Approval Notice Section: Sister or brother of U.S. Citizen, 203(a)(4) INA

The above petition has been approved. We have sent the original visa petition to the Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate.

The NVC will contact the person for whom you are petitioning (beneficiary) concerning further immigrant visa processing steps.

If you have any questions about visa issuance, please contact the NVC directly. However, please allow at least 90 days before calling the NVC if your beneficiary has not received correspondence from the NVC. The telephone number of the NVC is (603) 334-0700.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Employment based Immigration

- ▶ Some employment visas are immediate (for professionals who are outstanding in their field, for instance); but others can take up to 11 years to get.
- ▶ People with unlawful presence in the U.S. in general will not qualify for employment-based immigration.
- ▶ Most of employment-based immigration will be for highly skilled immigrants rather than general laborers or service-providers.
- ▶ Most employment-based immigration programs REQUIRE the employer to pay all government and attorney fees – which means non-profits rarely need to provide employment-based immigration services.

Humanitarian Programs

▶ Refugees & Asylees

- ▶ Must be fleeing their country of origin because they have been persecuted in that country or because they have a “well-founded fear of persecution on account of race, religion, nationality membership in a particular social group or political opinion.”
- Refugees were given refugee status overseas, and then allowed to come to the U.S.
- Asylees come to the U.S. first in some other status, and then apply for asylum here.

Humanitarian Programs

- ▶ Violence Against Women Act benefits for immigrants
 - ▶ Assists battered spouses of USCs or LPRs
- ▶ U-visas for victims of violent crimes
 - ▶ Allows for a visa that eventually leads to LPR status for victims of violent crimes who assist law enforcement in the investigation and prosecution of that crime.
- ▶ T-visas for victims of trafficking
- ▶ Temporary Protected Status
 - ▶ Country-specific and time-specific – for example some Hondurans have TPS, but only those who entered the U.S. BEFORE December 30, 1998.
 - ▶ Never leads to residency or citizenship

Humanitarian Programs

- ▶ Deferred Action for Childhood Arrivals (DACA)
 - ▶ For young immigrants who were brought to the U.S. as children, have been in the U.S. since early 2007, and has graduated from high school, or is currently in school. This is a TEMPORARY program and never leads to permanent residency or citizenship.
- ▶ Cancellation of Removal
 - ▶ Has lived in the U.S. for more than 10 years, who then gets apprehended by Immigration and placed in deportation proceedings, and who can show that their U.S. citizen or LPR spouse, children, or parents would suffer “exceptional and extremely unusual” hardship if the immigrant were to be deported.

Humanitarian Programs

- ▶ SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)
 - ▶ For young immigrants who:
 - ▶ Are under 21 years of age in N.Y. (some states only go up to 18, this goes by state law).
 - ▶ Are unmarried
 - ▶ Are declared dependent on the state
 - ▶ It is not in his or her best interest to return to their home country
 - ▶ He or she has been abused, abandoned or neglected by one or both of their parents.
 - ▶ The immigrant gets an order from state court first then that order can be sent in for a juvenile visa and eventually LPR Status.

Grounds of Inadmissibility (INA 212)

Grounds of Deportability (INA 237)

Reasons you cannot come to the U.S., even if you qualify, or can be deported from the U.S. even if you have legal status:

- Crimes
- Immigration Offenses
 - Entry without inspection (EWI)
 - Unlawful Presence in the U.S.
 - 10-year bar; permanent bar
 - Smuggling
 - Visa Fraud
 - False Claim to U.S. Citizenship
- Health-related grounds
- National Security-related grounds
- Public Charge

Waivers for Grounds of Inadmissibility/Deportability

- ▶ There are waivers for some grounds:
 - ▶ Unlawful presence
 - ▶ Some crimes
 - ▶ Visa Fraud
- ▶ But no waivers available for others:
 - ▶ False claim to U.S. citizenship
 - ▶ Certain crimes
- ▶ Some programs allow exceptions:
 - ▶ For example, refugees, VAWA, and U-visa holders are not subject to public charge grounds

How does an immigrant become a U.S. Citizen?

Naturalization:

- ▶ Must be a Legal Permanent Resident, and generally must have been so for at least 5 years
- ▶ Must be at least 18 years of age
- ▶ Must have lived continuously in the U.S. for the past 5 years
- ▶ Must be a person of good moral character
- ▶ Must be able to speak, read, and write English, and be able to answer basic questions about the history and government of the United States.
- ▶ NOTE: There are many other detailed requirements, and a number of exceptions or waivers to the above requirements – be sure to carefully read and understand the statute and regulations before attempting to assist someone in a naturalization application.

Citizenship:

* Some children who were born outside of the U.S. but have U.S. citizen parents may derive or acquire U.S. citizenship without going through the naturalization process.

Quick Review:

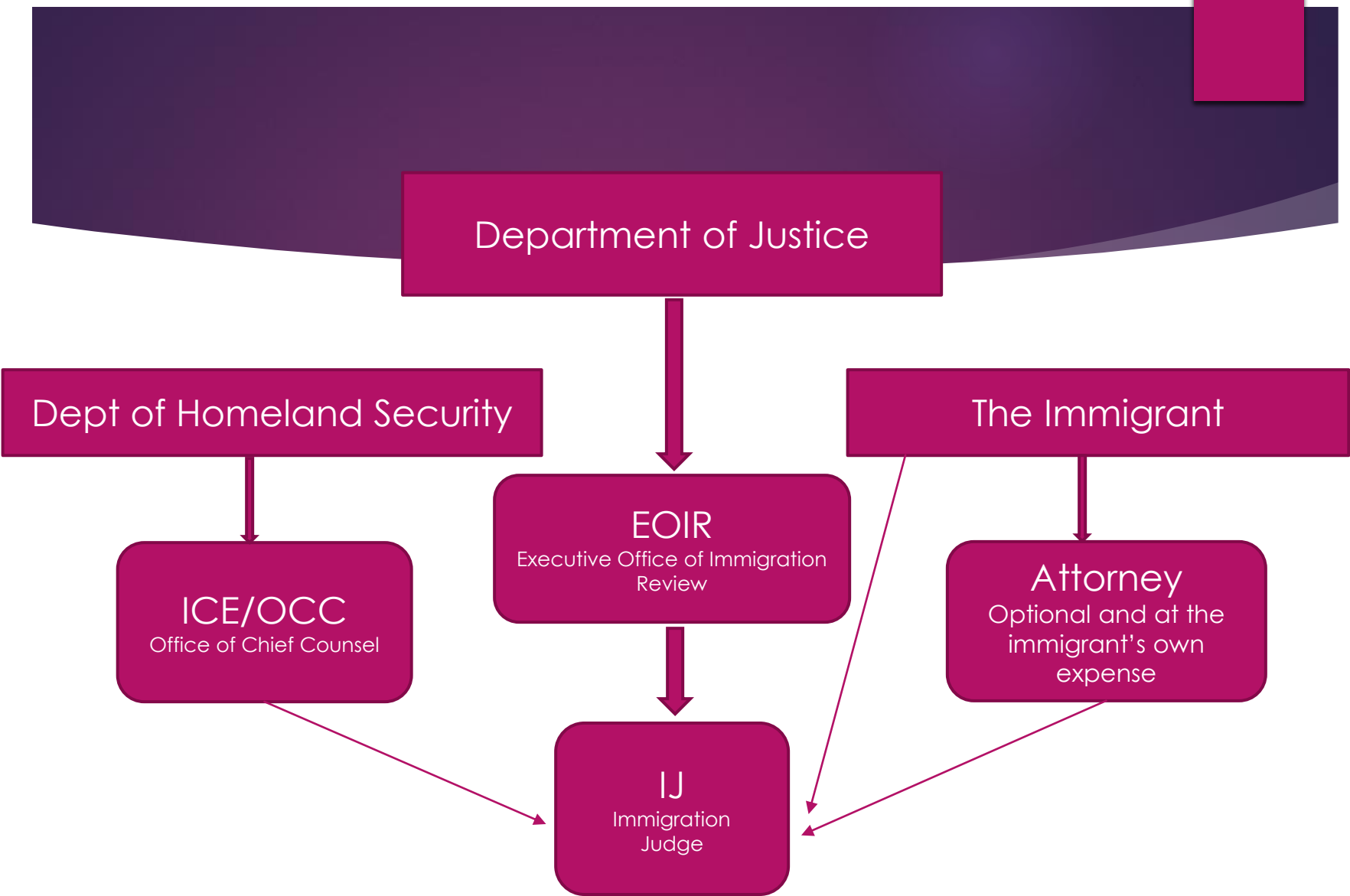
1. Is there a way for the immigrant to obtain legal status?	2. Is the immigrant inadmissible or deportable?	If no, to both, eventually the person may obtain legal status.	3. Can the immigrant become a U.S. citizen?
Family-based Employment Asylee or Refugee VAWA or U-visa DACA TPS Other...	Crimes Immigration offenses Health-related National Security Public Charge	If yes to either, no legal status is available to that person.	Only if the immigrant was able to qualify for legal permanent residency (not just a temporary program).

Removal Proceedings

- ▶ “Removal” = Deportation
- ▶ Removal Proceedings are a judicial process in which the immigrant appears in Immigration Court in front of an Immigration Judge (an administrative law judge).
- ▶ Both undocumented immigrants and legal residents can be placed in Removal Proceedings if they fall under grounds of inadmissibility or deportability.

How do you get placed into removal proceedings?

- ▶ Get caught by ICE while illegally crossing the border into the U.S.
- ▶ Get caught by ICE once you are already inside the U.S.
 - ▶ Work place raid
 - ▶ Random or targeted stop on the street
 - ▶ ICE comes to your home
 - ▶ Police arrest you for something else, and then turn you over to ICE
- ▶ File an affirmation application which is then denied, and USCIS then places you into removal proceedings
- ▶ If you do not get apprehended and placed into proceedings by ICE (or CIS), you cannot get into removal proceedings



Removal Proceedings Process:

1. Apprehension
2. Released on own recognizance or detained. If detained, may be given a bond determination, or may be denied bond
3. **Bond hearing** (optional, and you have to request it)
4. Master Calendar Hearing (similar to an arraignment)
5. Individual Hearing – also called a Merits Hearing

Mandatory Detention

- ▶ If an immigrant is subject to Mandatory Detention, she will not be eligible for a bond. INA 236(c)
- ▶ Who is subject to Mandatory Detention?
 - ▶ Immigrants who were legally admitted to the U.S. and have committed any of the following crimes:
 - ▶ Two crimes involving moral turpitude (CIMTs)
 - ▶ Aggravated felony - INA 101(a)(43)
 - ▶ A controlled substance offense
 - ▶ A firearms offense
 - ▶ Terrorism
 - ▶ Immigrants who are seeking admission (including a returning legal permanent resident), or entered the U.S. without permission and have committed any of the following crimes:
 - ▶ One CIMT (subject to petty offense exception)
 - ▶ Controlled Substance offense
 - ▶ Drug trafficking offense
 - ▶ Two or more offenses with aggregated sentence of incarceration of 5 years or more
 - ▶ Prostitution
 - ▶ Domestic violence or violation of a protection order

Hearings In Immigration Court

- ▶ Master Calendar Hearing
 - ▶ Immigrant admits or denies allegations
 - ▶ Immigrant declares any remedies he will be seeking
 - ▶ Judge sets a date for individual hearing
 - ▶ Master Calendar Hearings are often continued
- ▶ Individual (or Merits) Hearing
 - ▶ Trial – this is the immigrant’s chance to prove that he qualified for whatever remedy he or she is seeking. Witnesses can be called, evidence presented, and the trial is adversarial – ICE/OCC will be arguing that the immigrant should be deported.

What are common remedies or defenses in Removal Proceedings?

- ▶ Cancellation for non-LPRs
 - ▶ 10 years of presence before being apprehended
 - ▶ U.S. Citizen or Legal Permanent Resident child(ren), spouse, or parent(s)
 - ▶ Good Moral Character
 - ▶ Removal would cause exceptional and extremely unusual hardship to USC or LPR child(ren), spouse, or parent(s).
- ▶ Cancellation for LPRs
- ▶ Asylum/Withholding of Removal/Convention Against Torture
- ▶ VAWA/U-visa/T-visa
- ▶ Family-based immigration

What is a “Public Charge”?

- ▶ •A “public charge” is someone who is likely to depend on public benefits to survive.

History of Public Charge

- ▶ • Since the late 1800s, the U.S. government has considered whether an immigrant is likely to become a public charge, when deciding whether to admit him or her. It applied to people who were completely unable to care for themselves for their lifespan.
- ▶ • Clinton-Era Definition of “public charge” (1999): “A person who is or is likely to become ‘primarily dependent’ on ‘public cash assistance for income maintenance’ or be ‘institutionalized’ for long-term care at government expense.”

New Public Charge Definition

- ▶ DHS New Public Charge Definition, announced by the Department of Homeland Security in the summer of 2019, and took effect February 24, 2020.
- ▶ Applies to “A noncitizen who receives a specified public benefit for more than 12 months in the aggregate within any 36-month period.” *Includes “non-cash” benefits. The Department of Homeland Security will determine if an individual is "more likely than not" to become a public charge in the future.

Challenges to Public Charge

- ▶ Legal organizations have filed ongoing lawsuits arguing that the Public Charge Rule is:
 - ▶ •In conflict with the Immigration & Nationality Act, which only meant to include people completely incapable of supporting themselves.
- ▶ Too vague to be applied consistently
- ▶ Discriminatory
- ▶ These lawsuits are ongoing in various federal courts.

Public Charge

- ▶ The New DHS Public Charge Rule Applies to:
- ▶ 1. Nonimmigrants in the U.S. (people who do not want to stay in the U.S. permanently).
 1. who want to extend their stay.
 2. who want to change their status (i.e. from a student to a work visa).
- ▶ 2. Immigrant applicants for adjustment of status to lawful permanent resident status (“green card” holder) who are in the U.S.

Public Charge

- ▶ The Public Charge Rule DOES NOT Apply to:
 - ▶ Refugees, Asylum, SIJS, U-Visa, and T-Visa holders applying for adjustment to LPR
 - ▶ Applicants for Temporary Protected Status
 - ▶ Applicants applying under VAWA
 - ▶ Some applicants under the LIFE Act Provisions
- ▶ Individuals granted relief under (1) the Cuban Adjustment Act (2) the Nicaraguan Adjustment and Central American Relief Act; and (3) the Haitian Refugee Immigration Fairness Act

Public Charge

- ▶ If the new DHS Public Charge rule applies to me, what benefits count? *For past use and likely future use (some countable benefits are only available to LPRs and citizens).

Public Charge


- ▶ What Benefits Don't Count?

Totality of the Circumstances Test

- ▶ 1. Age
- ▶ 2. Health
- ▶ 3. Family Status
- ▶ 4. Assets, Resources, and Financial Status
- ▶ 5. Education and Skills
- ▶ 6. Prospective Immigration Status & Expected Period of Admission
- ▶ 7. Affidavit of Support

Immigration and Coronavirus

- ▶ Unclear if job loss due to the coronavirus pandemic and reliance on public benefits as a result will negatively affect the public charge determination.
 - According to USCIS, an applicant who has lost her job due to (1) mandatory social distancing/quarantine or (2) an employer's voluntarily shut-down to prevent the spread of COVID-19 can submit a statement that will be considered in the totality of the circumstances.
 - If the applicant must rely on public benefits during the pandemic because of job loss or school closure, the applicant can submit an explanation with supporting documents that will be considered in the totality of the circumstances.



NOTICE: ALL OF THE INFORMATION CONTAINED IN THESE SLIDES IS ONLY MEANT TO BE INFORMATION AS OPPOSED TO LEGAL ADVICE. FOR ANY SPECIFIC QUESTIONS, YOU SHOULD CONSULT WITH AN IMMIGRATION ATTORNEY. THESE SLIDES WERE PREPARED FOR A WEBINAR ON MAY 7, 2020. PLEASE NOTE, THE LAWS AND STATUTES REFERENCED ARE CONSTANTLY CHANGING AND AS SUCH THIS INFORMATION MAY BECOME OUTDATED.