

Immigration: A General Overview



Angela D. Adams

Adams Immigration Law LLC

angela@adamsimmigration.com

adamsimmigration.com

(317) 967-6000

This presentation is for informational purposes only and should not be considered legal advice.

Roadmap

1. Overview of Existing Immigration Law
2. Why can't undocumented immigrants just "get legal?"
3. Executive Orders
4. Next Steps?

Some Facts to Get Started...

- Indiana has 358,801 immigrant residents, 5.4% share of the population, \$2.9 billion taxes paid.
- 25% of pop growth in Indiana 2000-2015 due to immigration.
- In all states, there are more jobs open than there are workers to fill them.
- The US has a large and growing shortage of mental health professionals.

Source: New American Economy

Nonimmigrant, Immigrant, or US Citizen?

- Nonimmigrant: Temporary visa/status issued for a specific purpose with an expiration date and intent to return to home country
- Immigrant: Permission to live and work in the US indefinitely with certain limitations
- US Citizen: Apply to become a citizen through process called “naturalization”
- State and Federal laws use term “alien”

Nonimmigrant Visa Categories

- Visitor Visas: B1/B2, Visa Waiver
- Work visas: H, I, L, E, O, P, Q, R, TN
 - H-1B specialty occupation: 85,000 annual cap
 - H-2B seasonal labor: 66,000 annual cap
- Government visas: A, G, C
- Student visas: F, J, M, and OPT
- S, T, U for victims of violent crimes
- K fiancé visas
- Temporary Protected Status (TPS)

Immigrant Visa Categories

- Lawful Permanent Resident (LPR) a.k.a. “green card”
- Immediate relatives, family-based and employment-based preference categories
- Humanitarian: Asylee, Refugee, VAWA, SIJ
- Naturalization to become US citizen after 3-5 years as LPR

Undocumented Immigrants: Two Categories

1. Someone who “overstays” a visa
2. Someone who “entered without inspection” (EWI)

State and Federal laws use term “illegal”

Overstay

- Can only fix status in U.S. if “immediate relative” (spouse, parent or child) of U.S. citizen
- If over 21, no longer immediate relative
- If entered in lawful nonimmigrant visa status, but overstayed, not eligible to change status in U.S. to another nonimmigrant visa
- 3/10 year bar: 180 days = 3 year bar; 1 year of unlawful presence = 10 year bar if leave the U.S.

Entry Without Inspection (EWI)

- Unlawful entry means cannot adjust or change status in the U.S.
- Must leave the U.S. and apply for a visa abroad, but 3/10 year bar
- Eligible for waiver of 3/10 year bar if qualified relative would suffer “extreme hardship”
- Unless 245(i) (April 30, 2001)
- But 212(a)(9)(c) a.k.a. “9C”—unlawful re-entry after 1 year in US or prior deportation

Family-Based Preference Categories for Permanent Residency

- First: Unmarried sons and daughters of US citizens (over 21)
- Second: Spouses and children, unmarried sons and daughters of permanent residents
- Third: Married sons and daughters of US citizens (over 21)
- Fourth: Brothers and sisters of adult citizens

Employment-Based Preference Categories for Permanent Residency

- First: Extraordinary Ability, Outstanding Professors/Researchers, Multinational Executives or Managers
- Second: Advanced Degree or Exceptional Ability
- Third: Skilled Workers, Professionals and other
- Fourth: Special Immigrants, Religious Workers
- Fifth: Employment Creation (Investors)

So, why can't undocumented immigrants just "get legal?"

- Backlogs of 5-22 years for family and employment based permanent immigration categories (*see U.S. Department of State Visa Bulletin*)
- EWI ineligible for adjustment of status in the US
- 3 and 10-year bars for unlawful presence
- 9(C) Illegal reentry after unlawful presence of at least one year or prior deportation = 10 year bar with no waiver
- Lack of employment-based nonimmigrant visas

What happens when a person is placed in removal/deportation proceedings?

- Certain criminal history or prior removal order=no hearing/expedited removal
- Can't turn yourself in
- Released on own recognizance, post bond, or mandatory custody
- Right to an attorney and a hearing before Immigration Judge in most cases
- Deportation/removal is administrative proceeding before a federal Immigration Judge
- Backlog for hearing
- IJ decides whether to grant **relief from removal**, voluntary departure or removed
- Uptick in detentions of easy targets

Lack of immigration status leads to...

- No Social Security number (but may get an ITIN)
- Ineligible for driver's license or state ID card
- Decreased access to college and no financial aid
- Limited healthcare coverage (ER only)
- Ineligible for public assistance and unemployment benefits
- Mixed status families: one family member is stuck
- Perceived lack of legal remedies and institutional mistrust
- Fear of seeking out help for mental health and addiction issues

Barriers to Seeking Treatment

- Lack of data about immigrants and access to mental health
- Ineligible for financial assistance or insurance benefits
- Cultural stigma associated with seeking treatment
- Language barriers
- Awareness of existing resources
- Political climate

Executive Orders

- Deferred Action for Childhood Arrivals (DACA)
- Travel restrictions
- Public Charge
- April 22 Presidential Proclamation Suspending the Entry of Certain Immigrants into the United States.

Deferred Action for Childhood Arrivals (DACA)

Requirements:

- Entered U.S. before 16;
- 5 years of continuous residence and physical presence in the U.S. since June 15, 2007, and on June 15, 2012;
- Enrollment in or graduation from high school or other qualifying educational program or obtained GED;
- No convictions for felonies, multiple misdemeanors, or significant misdemeanors; and
- At least 15 at time of filing and not older than 30 on June 15, 2012.

What does DACA do?

- Two-year employment authorization
 - Can get SSN and driver's license
 - Renewable biannually
- Two-year grant of prosecutorial discretion to defer removal action (deportation)
- “Lawfully present” but no “lawful status”

What does DACA not do?

- Not a path to permanent residence or U.S. citizenship
- No “lawful status” in the U.S.
- Not eligible for state or federal financial aid or governmental assistance
- Currently awaiting SCOTUS decision whether DACA program will continue to exist

Public Charge as of Feb 2020

- Public charge is a ground of inadmissibility that could impact eligibility for a visa
- Not a new concept—Affidavit of Support required when applying for green card but now added form I-944
- Legal standard: whether “more likely than not at any time in the future” to receive public benefits.
- Monetizable and non-monetizable public benefits both included

“Monetizable” Public Benefits

Receipt of an amount more than 15% of federal poverty guidelines (FPG) for a household of one will be a heavily weighted negative factor (in 2018, 15% of the FPG was \$1,821).

- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- Any other federal, state, or local cash benefit program for income maintenance
- Supplemental Nutrition Assistance Program (SNAP)
- Housing Choice Vouchers (Section 8 public housing)
- Section 8 Project-Based Rental Assistance

“Non-Monetizable” Public Benefits

Benefits that DHS cannot determine cash value. Threshold is time-based – a cumulative 12 months in a 36-month period, with receipt of two of these benefits counting double (2 for one month = 2 months) toward the 12-month threshold.

- Non-emergency Medicaid (except for Medicaid services provided by the Individuals with Disabilities Education Act and Medicaid services received by foreign-born adoptees)
- Premium and cost-sharing subsidies for Medicare Part D
- Institutionalization for long-term care at government expense
- Subsidized housing under the Housing Act of 1937

Public Benefits and Taxes

- Anyone with SSN pays into SS
- Anyone with ITIN pays taxes
- Anyone who owns property pays property taxes
- DACA working lawfully; paying taxes
- However, mixed status families and DACA are not eligible for economic stimulus or other public benefits

Presidential Proclamation Suspending Entry...

- Only applies to individuals outside of the US who does not have a valid immigrant or nonimmigrant visa.
- Exempt are LPRs, spouses and children of US citizens, nonimmigrant visa holders, and asylum seekers.
- This does not change much since USCIS and borders have been closed since Mar 20.

Next Steps

- Educate (you are here)
- Recognize value that immigrant workers and clients bring to the field
- Identify real challenges and opportunities
- Join institutional forces and create unlikely allies and partnerships for advocacy efforts
- Use your trade associations for governmental relations...tell your story with real data and real people

Next Steps cont.

- Launch industry-based local research agenda.
- Talk to elected officials, publicly and privately.
- Invest in a diverse workforce...Don't be afraid of the immigration process.
- Invest in community outreach to diverse populations.

Examples of Real Challenges?

- Mental Health Centers will not take undocumented immigrants who are placed in state hospitals under civil orders because this would be unreimbursed maintenance medical care.
- Some states have created a fund for this purpose.
- Is this something that could be done in Indiana?

Other Real Challenges?

- What challenges are you facing in your institution or organization?
- What do you need to know?
- What tools or resources do you need to do your job better?
- How to improve outreach to the immigrant community and providers?

Resources

National resources

- New American Economy
- American Immigration Lawyers Association
- National Immigration Forum
- National Immigration Law Center

Local resources

- Neighborhood Christian Legal Clinic
- Immigrant Welcome Center
- Exodus Refugee
- Coalition for Our Immigrant Neighbors
- Indiana Latino Institute

Questions?

Angela D. Adams

Owner/Managing Attorney

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angela@adamsimmigration.com

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