Northwest Immigrant Rights Project
Immigration 101

For Service Providers

Presented 9/21/2018 by
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Northwest Immigrant Rights Project

• Only organization providing comprehensive immigration legal services for low-income people in Washington State
• Focus primarily on direct legal services
• Also engage in: impact litigation, systemic advocacy, community education
• Four offices: Seattle, Granger, Wenatchee, Tacoma
Today’s Training: What we will cover

• Basic Overview of Immigration System
• Removal (Deportation) Proceedings and Detention
• Protections for Vulnerable Populations
• Developments Under the New Administration
• Empowering Communities
• Frequently Asked Questions by Providers / Allies
  • Q&A at the end

Basic Overview

Of the immigration system
Terminology of Immigration Agencies

**Department of Homeland Security (DHS):**
- USCIS – Citizenship and Immigration Services
- ICE – Immigration and Customs Enforcement
- CBP – Customs and Border Protection

**Department of Justice (DOJ):**
- Executive Office for Immigration Review (EOIR)
  - Board of Immigration Appeals (BIA)
  - Immigration Court

**Department of State:**
- U.S. Embassies and Consulates abroad

Citizens and Non-Citizens

- **U.S. Citizens (USC):**
  - Born, Naturalized, Acquired/Derived

- **Non-Citizens: Three General Categories:**
  - Lawful Permanent Residents (LPR) = Green Card Holders
    - Asylees / Refugees
  - Temporary Legal Status: Students, Temporary Workers, Visitors/Tourists, TPS, U visas
  - Undocumented: Visa Overstays/Entered w/o permission

- **Why “Undocumented Immigrant”?**
How to get a Green Card?
How to get a Green Card?

- Main avenues of obtaining Lawful Permanent Residence (LPR) or “Green Card” Status:
  - Through a Family Member (around 65%)
  - Through Employment Visa (around 14%)
  - Asylum / Refugee Status (14%)
  - Others (Diversity Visa, Other Humanitarian Protections, etc.)

Green Card (LPR) through Family Member

- “Immediate” Category:
  - USC Spouse → Non-Citizen Spouse
  - USC Parent → Non-Citizen Minor Child
  - USC Son or Daughter (>21) → Non-Citizen Parent

- “Waitlist” Categories (Preferences):
  - Spouse, unmarried children of Green-Card holders
  - Adult Children, Married Children, Siblings of USC

- Note: No Uncles/Aunts, Grandparents
  - Same-Sex Marriages now recognized by immigration law

- Family Petitions Require “Sponsor”
How Long is the Waitlist?

• Now (October 2018) Processing Petitions For
  • Spouse of LPR from Mexico filed in Aug 2016
  • Unmarried Son of USC from Philippines filed Dec 2006
  • Married Daughter of USC from Mexico filed Dec 1995
  • Sister of USC from Philippines filed Jun 1995

• Process
  • File Petition (I-130)
  • Wait Until It is “Current” - Visa Bulletin
  • Person does not have status while they are on waitlist (even if petition has been “approved”)

Green Cards Through Employment

• In practical terms, available only to holders of advanced degrees, certain professionals, persons of extraordinary ability, investors:
  • Most require employer to obtain “labor certification” showing no minimally qualified US workers available
  • As a practical matter, individuals who are undocumented in the U.S. and without family ties are not going to be able to secure green cards through employment
**Asylum / Refugee Status**

- Refugees: Obtain “refugee” status outside U.S.
- Asylees: Obtain “asylum” inside the U.S.
- After one year in the U.S. can apply for green card
- Both refugees and asylees must show “well-founded fear” of persecution in home country AND that persecution will be because of their:
  - Race, Religion, Nationality, Political Opinion, Membership in Particular Social Group
- **Note: General Strife / Economics Not Sufficient**
- Asylees, refugees may petition for spouse/unmarried children

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**“Adjustment of Status”**

- **Key Point:** If individual is in the U.S., they must be eligible to “adjust status” to Lawful Permanent Resident (LPR);
- People who crossed the border without permission generally cannot adjust status via family or work;
  - Exceptions: petition filed on or prior to 4/30/2001, TPS as an admission (9th and 6th Cir.), others
- If person entered on a visa (with permission), then may be eligible if “immediate relative”
- If not eligible for adjustment, will need to leave U.S. to complete process, BUT may be barred from returning
Green Card to Citizenship

• Legal Permanent Residents (LPRs) eligible to “naturalize” (become U.S. citizens):
  • Generally after 5 years of being LPR;
  • If married to US Citizen, after 3 years;
• Must meet other requirements;
• **Warning:** If applicant has criminal convictions, naturalization process can be dangerous and could lead to deportation proceedings;
• **Note:** LPRs are not required to become citizens (but many benefits to citizenship)

Employment Authorization

• Legal Permanent Residents (LPRs) are authorized to work (green card is enough)
• Certain temporary status (asylee, TPS, U visa, DACA, etc...) generally come with a “work permit” card (“Employment Authorization Document” (EAD)
  • Valid for a certain period of time
• Sometimes can get EAD while application pending
• If you have EAD, can get Social Security Number
• If no legal status and no application pending, then usually no EAD.
How to Get a Green Card (LPR)?

What are NOT Ways to get Green Card?

• The following, by themselves, are NOT sufficient reasons for someone to be eligible for green card:
  • Having come to the U.S. at a young age
  • Having lived in the U.S. for a long time
  • Having U.S. citizen children under age 21
  • Being a very good, committed worker
  • Having a serious medical condition (or having a child with a serious medical condition)
Removal (Deportation) Proceedings

And Immigration Detention

- Process to determine if an individual should be deported from the United States;
- Two questions:
  - Is the individual removable (inadmissible or deportable)?
  - If so, do they have a defense to deportation?
    - Asylum, cancellation, family visa petition, etc...
- Who is removable?
  - Individuals with no status or expired status;
  - Green card holders (LPRs), primarily b/c of criminal conviction
- Note: Some people may not get hearing before imm judge
How Do People End Up in Removal Process?

• Interaction with Criminal Justice System:
  • ICE detains an individual after they were in jail or contact with probation officer
• Filing an application that is denied:
  • USCIS refers the case to ICE
• Other interactions with ICE and Border Patrol:
  • Stopped at the border, identified by ICE at raid, etc...
• People in removal proceedings may be detained or not detained: default now is to detain

Immigration Court

• Two courts in our region:
  • Seattle: Non-detained cases;
  • Tacoma: Detained cases at NW Detention Center
• Important: There is NO right to an appointed attorney in immigration court if the person cannot afford private attorney.
• Many people are forced to represent themselves:
  • Approximately 35% of removal cases in Seattle and 92% of those completed in Tacoma were unrepresented!!!
List of Pro Bono Legal Services Providers

Seattle immigration Court

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<th>Region</th>
<th>State</th>
<th>Location</th>
<th>Contact Information</th>
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<tbody>
<tr>
<td>Northwest</td>
<td>Washington</td>
<td>623 Second Avenue, Suite 460</td>
<td>Seattle, WA 98104</td>
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<tr>
<td></td>
<td></td>
<td>Tel: (206) 888-4666</td>
<td>Fax: (206) 888-4666</td>
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<td><a href="http://www.nwirp.org">www.nwirp.org</a></td>
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| | | | Seattle immigration Rights Project - Western Office
| | | | 37 South Weller Avenue, Suite C |
| | | | Seattle, WA 98104 |
| | | | Tel: (206) 730-0999 |
| | | | Fax: (206) 730-0999 |

*Note: The list above is subject to change, please visit the website for the most up-to-date information.**
Northwest Detention Center

- Operated by The Geo Group (private contractor)
- Located in Port of Tacoma
- Size
  - In late 2009, expanded from 1,000 to 1,575 beds
- Government agencies on site
  - EOIR (Tacoma Immigration Court)
  - ICE (incl. Deportation Officers and ICE Trial Attorneys)
- Current population includes:
  - Community members detained in Pacific NW region
  - Asylum seekers transferred from southern border
Detention ends with...

- Removal (Deportation)
- Voluntary Departure
- Release on Bond
- Parole
- Grant of Protection:
  - Asylum
  - Cancellation of Removal
  - Adjustment of Status
  - U Visas
  - T Visas
  - Others...

Immigration Protections

For Vulnerable Populations
Cancellation of Removal

• Available as a defense to removal (cannot apply affirmatively) and available to undocumented, even if EWI
• Must have physical presence in the U.S. for at least 10 years
• Must have good moral character, no serious criminal convictions
• Must have a U.S. Citizen or LPR spouse, child, or parent and the deportation would result in “exceptional and extremely unusual” hardship to that relative
• If granted by Immigration judge, will result in LPR status
• To emphasize: One can only obtain this protection if already in deportation proceedings and it is difficult to obtain

Violence Against Women Act (VAWA)

• Protection for Spouses and Children of Abusive U.S. Citizens and Lawful Permanent Residents (Green Card Holders)
• Must be married or divorced within past two years
• Abuser must be USC or LPR
• Does not require police to have been called
• If approved, can obtain green card status
U Visas

• Protection for victims of certain crimes, including domestic violence and sexual assault
• Must have:
  • Suffered substantial physical or mental abuse
  • Been helpful or be willing to be helpful in investigation or prosecution of the crime
  • Occurred in the U.S. (or violated U.S. law)
• No relationship with perpetrator necessary
• Application must include Law Enforcement/Prosecutor/ Judge/CPS Certification of Helpfulness

Asylum / Withholding of Removal

• Protection for individuals who fear being persecuted in home country b/c of their race, religion, nationality, political opinion or membership in a particular social group.
• To qualify for asylum: Must apply within 1 year of arrival; after, eligible for withholding, but much tougher;
• Also Convention Against Torture: if likely to be tortured.
Special Immigrant Juvenile Status (SIJS)

• Protection available to youth if:
  • Juvenile court declares youth to be court dependent or legally commits child to state/private agency OR private person;
  • Youth cannot be reunited with one or both parents because of abuse, neglect or abandonment;
  • Juvenile court finds it is not in the youth’s best interest to return to his/her home country; and
  • Youth is under 21 and unmarried

Vulnerable Youth Guardianship (VYG)

• Vulnerable Youth Guardianship in WA, signed into law in May 2017
  • RCW 13.90 – allows 18-20 year olds who qualify for SIJS to:
    • petition for a guardian and get an SIJS predicate order entered.

• NOTE: USCIS is pushing back on these visa petitions. Youth who are SIJS eligible should get the SIJS order signed before they turn 18.
Other Protections

• T Visa – Victims of Trafficking:
  • Protection for victims of human trafficking (sex or labor trafficking)

• Temporary Protected Status (TPS):
  • For citizens of certain Countries who have been present since a specific time AND registered for TPS (or can sometimes file late);
  • El Salvador (2001); Haiti (2011); Honduras (1999); Nicaragua (1999); Somalia (2012); Sudan (2013); South Sudan (2011); Syria (2016); Nepal (2015); Yemen (2015).

• Important: DHS has announced that TPS will end for countries listed in red in 2018-2020 (depending on country)

Developments

Under current admin
Deferred Action for Childhood Arrivals (DACA)
- Background

• Program created by Obama Administration in 2012 to defer deportation and provide work permits to undocumented individuals who:
  • Entered the U.S. before the age of 16
  • Have lived in the U.S. since June 15, 2007
  • Were born on or after June 16, 1981
  • Were in school, completed H.S., obtained G.E.D.
  • Did not have disqualifying criminal offenses
  • Meet other requirements
• Received 2-year work permit, SSN; could be renewed
• NOT a law; executive action

Rescission of DACA

• Numbers (in March 2017)
  • National: 787,000+ DACA recipients
  • WA: 17,843 DACA recipients
• Sept. 5 Rescission Announcement:
  • No more initial applications unless already pending
  • DACA recipients have been able to pursue renewal beyond expected expiration date (Mar 5, 2018) because of legal challenges
• NOTE: Lawsuits pending, challenging the Administration’s actions against DACA
What Will Happen to DACA Recipients?

• Even if DACA ends and no replacement, we do NOT anticipate enforcement action against DACA recipients generally
• At greater risk:
  • Those with criminal convictions
  • Those with prior deportation orders
  • Those who come in contact with criminal justice system
• Recommend DACA recipients consult with an immigration attorney regarding other immigration options

“Muslim Ban” Executive Orders

• January 25 Executive Orders
  • Interior Enforcement
  • Border Security
  • DHS Implementation Memos issued February 20
  • Dec. 2017 – SCOTUS allowed 3rd version (Proclamation) to go into effect, pending challenges, effectively overturning earlier “bona fide” relationship test
• SCOTUS decision in June 2018 – upheld Proclamation
• Restricts entry by certain non-citizens from Chad, Iran, Libya, North Korea, Syria, Venezuela and Yemen
Changes to Other Forms of Protection?

- Most forms of protections are written in law, so President can’t change them: i.e. U visas, VAWA protections, asylum, SIJS
- However:
  - U.S. Attorney General’s authority is altering case law and demands of EOIR
  - Refugee admission ceiling reduced to 45,000 in FY 2018, lowest since 1980 (actual admissions likely under 23,000)
  - Central American Minors Program was terminated
  - Ending TPS
  - Increased risk if applications are denied (i.e. placed in deportation proceedings)
  - Congress could modify some of these protections in future

Likely Changes to Immigration Enforcement

- Increased focus on anyone who interacts with criminal justice system
- Increased “fugitive operations teams” looking for those with prior deportation orders (and those encountered along the way)
- Increased enforcement near border (including northern counties and Olympic peninsula)
- Workplace raids
- Eliminate use of prosecutorial discretion
- Even more immigration detention
Empowering Communities

What Can Undocumented People Do?

• Know your rights (more to come)
• Create a family safety plan (more to come)
• Keep informed of developments
• Beware of scams
• Consult with attorney or accredited rep to see if there are options to obtain status
• Save money (if possible)
• Collect/save documents that show residence in US
Know Your Rights

• All people (regardless of immigration status) have basic constitutional rights

• Right to remain silent
  • Critically important: in most instances, voluntary disclosure is how immigration knows someone is undocumented

• Right to be safe in their homes
  • Immigration/law enforcement generally must have a judicial warrant in order to enter a home

• Right to labor protections

Family Safety Plan

• Important: Detention may not happen to most families but important to be prepared

• Care of children if parent(s) detained:
  • Who is authorized to pick up child from school?
  • Powers of attorney/medical authorizations
  • Documents for children (i.e. passport if US citizen)

• Template at: www.nwirp.org/resources/know-your-rights/

• Contingency planning for property (i.e. car, home, business, other assets)
What To Do If Detained By ICE?

- Do NOT sign documents without legal help
  - Could waive important rights
- Contact attorney/legal services organization as soon as possible
- Some people may be eligible to ask for release on bond
- Implement safety plan

If Someone Detained by ICE

- Q. Where can someone go for help if someone is arrested by ICE?
  - A. Ideally, hire private attorney to ensure representation in court; if not possible and individual in NW Detention Center, call NWIRP’s Tacoma office: 253-383-0519 and leave message with full name and A# (if known) of detainee:
    - Note: Tacoma office can provide legal orientation to person detained, but can only provide representation in very limited number of cases
  - A. Also recommend calling WA Immigrant Solidarity Network’s raid response hotline (1-844-RAID-REP) to report ICE raids/arrests
“Sanctuary” Localities / Policies

• “Sanctuary” term generally refers to policies that prevent local jurisdiction (i.e. city) from using its own resources to help with immigration enforcement
• For instance, they may mean that local police won’t cooperate with ICE or won’t hold people in jail for ICE
• NWIRP supports these policies
• However, these policies do NOT mean that ICE agents cannot, on their own, engage in enforcement activity in that jurisdiction or location
• ICE currently has policy restricting enforcement in “sensitive locations” but unclear if this will continue
Will current administration impact...?

- State-funded financial aid for undocumented or DACA-mented students?
  - For the most part, no
- Use of data to track undocumented individuals?
  - Potentially, yes
- Drivers licenses for undocumented individuals?
  - Undocumented people will continue to have access
- Access to public benefits for undocumented individuals or their families?
  - NOTE: leaked proposed change to Public Charge rule

How to Get Good Legal Advice

- Private Attorneys:
  - Good Advice is Expensive, but research expertise
  - Cases Often Take a Long Time
  - Law is Bad: Attorneys are not Magicians
  - Important to Be Realistic About Chances
- Bad Attorneys / Consultants / Notarios:
  - Important to Get Things In Writing
  - If it sounds too good to be true...
  - Unauthorized Practice of Law: Big Problem
- BIA-Recognized Agencies
  - Accredited representatives: authorized to practice imm law
Legal Resources

• Nonprofit Agencies:
  • National Immigration Legal Services Directory:
    • www.immigrationadvocates.org/nonprofit/legaldirectory/
  • Executive Office for Immigration Review Roster of BIA-Recognized Agencies:
    • www.justice.gov/eoir/find-legal-representation

• Private Immigration Attorneys:
  • American Immigration Lawyers Association (AILA) Referral Service:
    www.ailalawyer.com

• Non-Immigration Legal Questions:
  • www.washingtonlawhelp.org

NWIRP Intake Process

• Western Washington:
  • Call 206-587-4009 or 800-445-5771

• Eastern Washington:
  • Wenatchee: 509-570-0054 or 866-271-2084
  • Granger: 509-854-2100 or 888-756-3641

• If possible, specify issue: asylum, naturalization, domestic violence, removal, detention, family visa;
• Please let clients know that they must leave a message with their name and phone number, and that we cannot take every case;
• NWIRP protects confidentiality
Resources

Q&A

• www.nwirp.org
• www.waimigrantsolidaritynetwork.org