

Key Definitions and Concepts

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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** moving 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, 2001.¹

Admission. The process of permitting someone to be physically and legally 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, a number of legal rights and protections attach.

Affidavit of Support. An affidavit 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 **ADJUST STATUS**.

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.² 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**.

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 handwritten document, is, since April 2003 for those arriving by sea or air, in an electronic format and is available to the traveler on the **CUSTOMS AND BORDER PROTECTION (CBP)** website.³

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

* Updated from the 2016–17 edition of *Navigating the Fundamentals of Immigration Law* (AILA 2016).

¹ See **INA §245**.

² **INA §§208, 212, 237–42**.

³ www.cbp.gov/I94

on race, religion, nationality, membership in a particular social group, or political opinion.⁴ One year after the receipt of asylum status, asylees may apply for **LAWFUL PERMANENT RESIDENCE**.

The **REAL ID Act**⁵ 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.”⁶

Border Crossing Card (BCC). An identity card issued to a foreign national who is lawfully admitted for permanent residence, or to a foreign national who is a resident in Mexico or Canada, by a consular officer or an immigration officer for the purpose of crossing the border from Canada or Mexico.⁷ 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.⁸ 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.”⁹

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**.¹⁰

Crime Involving Moral Turpitude (CIMT or CMT). A particularly depraved offense that rises to the level of serving as a ground of inadmissibility.¹¹

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].¹²

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

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

⁴ INA §208. See also INA §101(a)(42) (defining the term “refugee”).

⁵ Pub. L. No. 109–13, 119 Stat. 231 (May 11, 2005).

⁶ INA §208(b)(1)(B).

⁷ INA §101(a)(6).

⁸ INA §240A.

⁹ INA §240A(d)(2).

¹⁰ See 22 CFR Parts 40 and 42.

¹¹ INA §212(a)(2)(A)(i)(I).

¹² 9 *Foreign Affairs Manual (FAM)* 40.21(a) N2.2.

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.¹³

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.¹⁴

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 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 CUSTOMS AND BORDER PROTECTION (CBP) and IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE).

Deportability, Grounds of. Acts that when proven by the government, make a person subject to deportation.¹⁵

Deportation. The removal, ejection, or transfer of a person from a country because his or her 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)¹⁶ 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 through the naturalization of parents or, under certain circumstances, to foreign-born children adopted by U.S. citizen parents, provided certain conditions are met.¹⁷

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 1990¹⁸ that makes available up to 55,000 immigrant visas per federal fiscal year to persons from low-admission states and low-admission regions.¹⁹ The Diversity Immigrant Visa Lottery (DV) program

¹³ 8 CFR §102.12(a)(4)(v).

¹⁴ *See Texas v. U.S.*, 86 F. Supp. 3d 591 (S.D. Tex. 2015), 809 F.3d 134 (5th Cir. 2015), *U.S. v. Texas*, 136 S.Ct 2271 (2016), *reh’g denied* 137 S.Ct. 285 (2016).

¹⁵ INA §237(a).

¹⁶ Pub. L. No. 104–208, 110 Stat. 3009 (Sept. 30, 1996).

¹⁷ INA §320; 8 CFR §320.

¹⁸ Pub. L. No. 101–649, 104 Stat. 4978 (Nov. 29, 1990).

¹⁹ INA §203(c).

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 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.

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 INADMISSIBILITY) are set forth under INA §212.

Expedited Removal. A procedure, established by IIRAIRA, authorizing 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 his or her home country.²⁰

Extended Voluntary Departure. A nonstatutory form of relief where 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.”²¹

Green Card. An expression that refers to the document carried by a LAWFUL PERMANENT RESIDENT that provides proof of his or her 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 cannot establish 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.²²

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.²³

²⁰ INA §235; 8 CFR §235.3(b).

²¹ *See e.g.*, 75 Fed. Reg. 15715 (2010).

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

²³ INA §201(b)(2)(A)(i).

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.²⁴ This characterization of immigrants shifts the burden to the person seeking admission to establish his or her 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.²⁵

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 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.

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.²⁶ 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.

Inspection. The process that all persons must go through when they arrive at the border. A person is asked to present proof of his or her 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).²⁷ A labor certification does not entitle the foreign national to ADMISSION; a VISA petition must still be filed on his or her behalf. The PERM regulations (effective March 28, 2005) established the current system for filing labor certifications.²⁸

Labor Condition Application (LCA). An attestation by an employer seeking to hire an H-1B 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 may also 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

²⁴ INA §101(a)(15).

²⁵ INA §214(b).

²⁶ INA §§101(b)(4), 240.

²⁷ INA §212(a)(5).

²⁸ 69 Fed. Reg. 77325 (Dec. 27, 2004).

United States for more than 10 years and is able to establish the requisite degree of hardship may be granted permanent residency 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.”

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 DEPARTMENT OF HOMELAND SECURITY (DHS).

Legalization. A program established by the Immigration Reform and Control Act of 1986 (IRCA)²⁹ that permitted the grant of temporary residence status to certain foreign nationals, who were later entitled to apply for permanent residence.³⁰ Also referred to as “temporary resident status” and “amnesty.”

Naturalization. “[T]he conferring of nationality of a state upon a person after birth, by any means whatsoever.”³¹ 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 he or she has a residence abroad that he or she has 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. *But see* 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 in a particular NONIMMIGRANT category. However, a visa does not guarantee admission. An immigration inspector can deny entry if he or she believes 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 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 he or she was 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 Form I-94.

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 he or she were still at the border’s edge seeking permission to enter.³² 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.

PERM (Program Electronic Review Management). A system established by the DOL, effective March 28, 2005, for filing applications for LABOR CERTIFICATION. PERM uses an automated computer system for employers to file electronically attestation forms regarding their compliance with all regulatory requirements.³³

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

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) he or she is married to a LAWFUL

²⁹ Pub. L. No. 99–603, 100 Stat. 3359 (Nov. 6, 1986).

³⁰ INA §245A.

³¹ INA §101(a)(23).

³² INA §212(d)(5).

³³ 20 CFR Parts 655 and 656.

PERMANENT RESIDENT or is the unmarried son or daughter of a lawful permanent resident; or (2) he or she is the son, daughter, or sibling of a U.S. citizen (irrespective of marital status); or (3) his or her employer has obtained a LABOR CERTIFICATION for eventual employment in the United States. Whether the person meets the quota restriction will depend on his or her 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.

Pre-inspection. A procedure where 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.³⁴ *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 is filed.³⁵ If the noncitizen relative has a priority date on or before the date listed in the VISA BULLETIN, then he or she is 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.³⁶

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.

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 were IMMIGRANT VISA applicants and who were 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.³⁷

Quotas. There are 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 ensuring that persons are issued VISAS in the order in which they applied and that no more than 25,620 (7 percent of the total) are issued to nationals of any one country in a given fiscal year. *See* PREFERENCE CATEGORIES.

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 his or her 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.³⁸ Refugee admission to the United States is based on annual allocations as established between the executive and legislative branches. A refugee, once admitted, may apply in one year for PERMANENT RESIDENT status. *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.

³⁴ INA §235A.

³⁵ 8 CFR §204.1(c).

³⁶ 8 CFR §204.5(d).

³⁷ 8 CFR §212.7.

³⁸ INA §101(a)(42).

Removal. The procedure used to eject persons who are seeking ADMISSION 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.

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

Service Centers. 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).³⁹ TPS status is granted by the DHS secretary following consultation with other “appropriate agencies.”⁴⁰ The designation may be extended and the decision to confer the benefit is not subject to judicial review.⁴¹

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.

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, 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.⁴²

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

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 verify the identity of travelers coming in and out of the United States.

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).⁴³

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.

³⁹ INA §244; 8 CFR §§244.2, 1244.2.

⁴⁰ INA §244(b)(1).

⁴¹ INA §244(b)(5).

⁴² INA §212(a)(9)(B).

⁴³ 9 FAM 40.37 N1.1.

Visa Waiver Program (VWP). A program under which nationals of 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 October 30, 2000.

Voluntary Departure. A procedure (immigration benefit) that permits an otherwise REMOVABLE person to leave the United States of his or her 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 the consequences of having a removal order entered against them.⁴⁴ The failure to comply with voluntary departure may have severe immigration consequences.

Waiver. An immigration benefit that may be granted by USCIS, a consular officer, or an IMMIGRATION JUDGE that renders a ground of INADMISSIBILITY or DEPORTABILITY inapplicable. Each waiver has its unique substantive and procedural requirements.⁴⁵ 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 of Removal. A remedy available to persons who establish that their lives or freedom would be threatened if deported to their home country on account of race, religion, nationality, membership in a particular social group, or political opinion.⁴⁶ 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 employer and employment. Other foreign nationals physically present in the United States may have the right to apply for an EMPLOYMENT AUTHORIZATION DOCUMENT (EAD).

⁴⁴ See INA §240B.

⁴⁵ 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.

⁴⁶ INA §241(b)(3).