

Immigration Law

WEEK TWO

Immigration Law and Division of Powers

The Congress writes the law

The Executive Branch writes and interprets regulations. This is done by the Department of Homeland Security

The Courts/Judiciary decide if an action violates the law or the constitution

Government Agencies Involved with Immigration

- ▶ Department of Homeland Security
 - ▶ United States Citizenship and Immigration Services (USCIS)
 - ▶ Immigration and Customs Enforcement (ICE)
 - ▶ Customs and Border Protection (CBP)

Government Agencies Involved with Immigration

- ▶ Department of State/Consular Offices
- ▶ Department of Labor
- ▶ Department of Justice, Executive Office for Immigration Review (EOIR)

Types of Immigration Status

- ▶ CITIZENS through
 - ▶ Birth
 - ▶ Naturalization
 - ▶ Parents (derivation and acquisition)
- ▶ IMMIGRANTS – Lawful Permanent Residents through
 - ▶ Family
 - ▶ Employment

Types of Immigration Status

- ▶ REFUGEES/ASYLEES
- ▶ NON-IMMIGRANTS – TEMPORARY
 - ▶ WORKERS
 - ▶ STUDENTS
 - ▶ VISITORS
- ▶ UNDOCUMENTED
 - ▶ No lawful Permission to remain

Summary of Immigration System

The United States Immigration classifications are divided into two major systems, i.e., temporary and permanent residence. The visas which start with one alphabetical letter, e.g., B-2, are temporary visas. The permanent residence visas are employment or relative-based.

The law is divided into two major visa systems:

- 1: Non-immigrant (NIV), which is temporary visa.
- 2: Immigrant Visa (IV), which grants a “Green Card” or Lawful Permanent Residence.

Sample Immigration Documents

- ▶ Old I-94 Card: Card given to each person who enters the US that shows the date of entrance and status

Exemption Number	742832036 01	SAMPLE
Immigration and Naturalization Service		U.S. IMMIGRATION 250 WAS
I-94 Departure Record		SEP 13 1991
		ADMITTED <u>B-2</u>
		UNTIL <u>July 10, 1993</u> CLASS
14. Family Name	<u>DOE</u>	
15. First (Given) Name	<u>JOHN</u>	16. Birth Date (Day, Mo, Yr) <u>16.04.62</u>
17. Country of Citizenship	<u>U.K.</u>	

I-94 Arrival/Departure Record

Documents That May Be in Your Client's Possession

- ▶ Arrival/Departure Record, Form I-94.

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection OMB No. 1651-0111

Admission Number: *Welcome to the United States*
302225689·20

I-94 Arrival/Departure Record - Instructions
This form must be completed by all persons except U.S. Citizens, returning resident aliens, aliens with immigrant visas, and Canadian Citizens visiting or in transit.
Type or print legibly with pen in ALL CAPITAL LETTERS. Use English. Do not write on the back of this form.
This form is in two parts. Please complete both the Arrival Record (Items 1 through 13) and the Departure Record (Items 14 through 17).
When all items are completed, present this form to the CBP Officer.
Item 7 - If you are entering the United States by land, enter LAND in this space. If you are entering the United States by ship, enter SEA in this space.

CBP Form I-94 (10/04) OMB No. 1651-0111

Admission Number: 302225689·20

Arrival Record

1. Family Name	
2. First Given Name	3. Birth Date (Day/Mo/Yr)
4. Country of Citizenship	5. Sex (Male or Female)
6. Passport Number	7. Airline and Flight Number
8. Country Where Visa Issued	9. City Where You Boarded
10. City Where Visa Was Issued	11. Date Issued (Day/Mo/Yr)
12. Address While in the United States (Number and Street)	
13. City and State	

CBP Form I-94 (10/04) OMB No. 1651-0111

Departure Number: 302225689·20

I-94 Departure Record

14. Family Name	
15. First (Given) Name	16. Birth Date (Day/Mo/Yr)
17. Country of Citizenship	

CBP Form I-94 (10/04) OMB No. 1651-0111

See Other Side STAPLE HERE



Get I-94 Number

I-94 FAQ

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 68523424920

Admit Until Date (MM/DD/YYYY): D/S

Details provided on Admission (I-94) form:

Family Name:

First (Given) Name:

Birth Date (MM/DD/YYYY):

Passport Number:

Passport Country of Issuance: India

Most Recent Date of Entry (MM/DD/YYYY): 06/04/2013

Class of Admission: F1

▶ Effective April 26, 2013, DHS began automating the admission process. An alien lawfully admitted or paroled into the U.S. is no longer required to be in possession of a preprinted Form I-94. A record of admission printed from the CBP website constitutes a lawful record of admission. See 8 CFR § 1.4(d).

▶ If an employer, local, state or federal agency requests admission information, present your admission (I-94) number along with any additional required documents requested by that employer or agency.

▶ Note: For security reasons, we recommend that you close your browser after you have finished retrieving your I-94 number.

NEW I-94 CARD

U.S. Visa Stamp



Classification

Validity Dates

- Governs ability to enter the United States

Sample Immigration Documents

- ▶ Work Permit or Employment Authorization Document (EAD), Form I-688 (A or B).



U.S. DEPARTMENT OF JUSTICE Immigration and Naturalization Service

EMPLOYMENT AUTHORIZATION CARD

The person identified is authorized to work in the U.S. for the validity of this card.
NAME DUBROWSKY-DUMAS, DANIELLE

Danielle Dubrowsky-Dumas

INS No. A123456789
CARD No. I1234567890123456789
Birth Date Category Sex
02/07/57 F
Country of Birth
Canada
Terms And Conditions
None



NOT VALID FOR REENTRY TO U.S.

CARD VALID FROM 02/07/96 EXPIRES 05/13/96

Front of Card

Documents That May Be in Your Client's Possession

- ▶ Other documents showing DHS has received an application for status..

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

CASE NO. I-130 - IMMIGRANT PETITION FOR RELATIVE, FIANC(E), OR ORPHAN		
RECEIPT DATE June 11, 2007	PRIORITY DATE May 30, 2007	PETITIONER GREER, DANIEL C.
WORK DATE October 19, 2007	PAGE 1 of 1	MONITORING CWG, GRACE T.
DANIEL C. GREER		Notice Type: Approval Notice Section: Husband or wife of U.S. Citizen, 201(b) 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) 534-0700**.

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.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
P. O. BOX 36111
LAGUNA HILLS, CA 92657-0111
Customer Service Telephone: (800) 375-5283

Form I-797C (Rev. 01/31/04) N

Sources of Law

- ▶ Hierarchy of Authority
- ▶ Immigration and Nationality Act
- ▶ Regulations
- ▶ Operating Instructions and Policy Manuals

Sources of Law

- ▶ Relationship Between Statute, Regulations, and Internal Immigration Directives:
 - ▶ Statutes provide legal framework
- ▶ **Example:** SEC. 214, 8 U.S.C. 1184. (a)(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe.....

Sources of Law

- ▶ Regulations provide more detail.
- ▶ **Example:** 8 CFR §214.2 (b) Visitors – (1) General. Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of a religious denomination may be granted extensions of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations.

Sources of Law

- ▶ Operating Instructions and Policy Manuals fill in the gaps in the Regulations.
- ▶ **Example:** *USCIS Policy Manual, Vol. 6, Chapter 2, Special Immigrant Juveniles:* “Special immigrant juvenile (SIJ) classification is available to children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law.”

INA: Immigration and Nationality Act

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Also known as the Hart-Celler Act, the law eliminated the national origins quota system, which had set limits on the numbers of individuals from any given nation who could immigrate to the United States.

It created a seven-category preference system that gives priority to relatives and children of U.S. citizens and legal permanent residents, professionals and other individuals with specialized skills, and refugees.

Codified: Title 8: Aliens and Nationality

8 C.F.R.

- ▶ Title 8 of the Code of Federal Regulations
- ▶ Contains the principal set of rules and regulations issued by federal agencies regarding aliens and nationality.

Samuel's Story

Samuel is from Jamaica. He applied for a B1/B-2 tourist visa at the U.S. consulate in Jamaica and entered on the visa 5 years ago, traveling by air. Last year he met Theresa and they got married. Theresa is a U.S. citizen. She is sponsoring him for a "green card" and filed an immediate relative petition for Samuel but has not received approval yet. **Samuel can adjust his status in the US to that of a lawful permanent resident (get a "green card") because he was inspected and arrived with a B-2 visa.** Samuel was celebrating his first-year anniversary with friends and drank a little too much. As he was walking down the sidewalk erratically, he was stopped by police in Reading, Pennsylvania. His immigration status was questioned, and he was turned over to immigration officials who placed him in removal proceedings. He was given a paper to go to U.S. Immigration Court.

Question for Discussion

- ▶ What immigration agencies did Samuel interact with?

IMMIGRANT v. NONIMMIGRANT VISAS

Immigrant Visa

- ▶ Permission to enter and reside within a country to live and work permanently

Nonimmigrant Visa

- ▶ Permission to enter the country and remain for a temporary period
- ▶ Foreign national seeking visa possesses “**nonimmigrant intent**”

Nonimmigrant Intent: Proven intent to return to country of origin following expiration of stay

VISA APPLICATION PROCESS

Applying for a visa from abroad at a U.S. Consulate is known as, “**Consular Processing**”

- ▶ Embassies and Consulate General offices are controlled by the
- ▶ Department of State or “**DOS**”
- ▶ Each Embassy has a consular section where officers decide whether a particular visa application should be approved

Consular Processing: applying for an Immigrant or nonimmigrant visa from abroad

HOW DOES A VISA WORK?

- ▶ A visa to enter the United States provides the following important information
 - ▶ Biographical information
 - ▶ Type of Visa
 - ▶ Duration of Visa validity
- ▶ window of time in which a foreign national may present him or herself for entry into the U.S.
- **Customs and Border Protection (CBP) Officer**—determines if, in what category and for how long foreign national can enter
 - ▶ Visa issued by consular officer doesn't guarantee entry

VISA WAIVER COUNTRIES (VWP)

visit: <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html>

► Recent Change:

- Barred usage for those that have visited designated countries (e.g. Iran) and certain dual nationals
- Must obtain ESTA permission before travel
- Each registration valid for 2 years!
- MAX STAY: 90 Days
- No Extensions of Stay | No change of visa classification

VISA EXEMPT STATUS

- Canadians and Bermudians are deemed “**Visa Exempt**,” meaning that except for a very few specific nonimmigrant visa classifications foreign nationals from visa exempt countries do not need a visa at all to enter the U.S. as nonimmigrants

Visa Exempt: the ability to enter the U.S. without the need for a foreign national to obtain a visa stamp.

NONIMMIGRANT WAIVERS

- Many nonimmigrant visa applicants require an underlying petition or application to be approved first by the USCIS before a corresponding nonimmigrant or immigrant visa can be made.
- However, an approval of an application or petition does not guarantee that a visa itself will be granted.
- For example, a foreign national can have an approved benefit petition but still be deemed inadmissible to the United States because of a previous immigration violation or criminal conviction

NONIMMIGRANT WAIVERS

- For those seeking nonimmigrant visas who are inadmissible, it is possible to obtain a **nonimmigrant waiver** under INA §212(d)(3).
- When deciding whether a waiver should be granted, the embassy or consulate will consider:
 - The risk of harm in admitting the foreign national
 - The serious nature of the acts that caused the inadmissibility, and
 - The importance of the foreign national's reason for seeking entry to the United States.

Nonimmigrant Waiver: A waiver that allows a foreign national to overcome a ground of inadmissibility for temporary stays in the United States.

OBTAINING A NONIMMIGRANT VISA STAMP

- Recommended first step: check the specific requirements and procedures in the country where the individual is submitting the visa application
- Visas for studying or temporary work generally require a pre-approved application, or “**petition**” before the foreign national applies for a visa at a U.S. consular office
- All foreign nationals seeking to obtain a visa stamp at a consular office abroad must complete **Form DS-160, Online Nonimmigrant Visa Application**

TEMPORARY VISITORS FOR BUSINESS (B-1) AND PLEASURE (B-2)

- The visitor B visa classification is one of the most versatile nonimmigrant visa classifications available to foreign nationals
- It permits entry for a number of purposes, for example:
 - To attend business meetings or conferences
 - Or to vacation in the United States
- It cannot however be used to engage in “productive work”

Productive Work: Involves duties or activities that would normally be performed by a U.S. worker, and/or activities that result in financial gain for the U.S. employer

Temporary Visas Visitors for Business (B-1) and Pleasure (B-2)

The application for a B-1 and/or B-2 visa is filed with the consulate or embassy in the home country or current place of residence abroad. The process involves an interview with the consular officer, who will analyze the application and interviews the individual. If the officer suspects preconceived intent, such as intent to work or marry rather than visit, the application will be denied. Applicant must have ties to home country and adequate funds to carry out purpose of visit.

Temporary Visas Visitors for Business (B-1) and Pleasure (B-2)

An Applicant must complete the nonimmigrant Visa Application, DS-160. The following documents are required:

- (a) passport valid at least six months beyond intended stay(s) in the U.S.;
- (b) One recent photo;
- (c) Proof of ties to home country, e.g., savings account, employment, tax returns, and/or real estate owned;
- (d) (i) If visit is for business, a letter from the employer outlining temporary nature of business trip,

(ii) If visit is for pleasure, a letter of invitation from friend or relative in the U.S. and notarized affidavit of support, together with a U.S. tax return;
- (e) Copy of round trip airline ticket; and
- (f) Proof of family relationship, e.g., marriage certificate and birth certificate(s).

