## 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

Elejaduse Number	SAMPLE
742832036 0.	U.S. IMMIGRATION 250 WAS
Immigration and Naturalization Service I-94 Departure Record	SEP 1 3 1991 ADMITTED B-2
D.O.E.	July 10, 1993
JOHN 17 Country of Concessbup U.K.	16.04.62

1-94 Arrival/Departure Record

### Documents That May Be in Your Client's Possession

► Arrival/Departure Record, Form I-94.

DEPARTMENT OF HOMELAND SECUR U.S. Customs and Border Protection	OMB No. 1651-0111
Admission Number	no to the United States
302225689 <b>20</b>	ne to the United States
I-94 Arrival/Departure Record	d - Instructions
This form must be completed by all persons except tliens, aliens with immigrant visus, and Canadian C	t U.S. Citizens, returning resident illizens visiting or in transit
Type or print legibly with pen in ALL CAPITAL write on the back of this form.	LETTERS. Use English. Do not
This form is in two parts. Please complete both the 13) and the Departure Record (Items 14 through 17)	e Arrival Record (Items 1 through
When all items are completed, present this form to t	
Item 7 - If you are entering the United States by If you are entering the United States by ship, enter S	land, enter LAND in this space. EA in this space.
	CEF Form 1-94 (10/04)
Admission Number	OMB No. 1651-0111
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 You Live 9. Cit	ly Where You Boarded
10. City Where Visa Was Issued	11. Date Issued (Duy/Mo/Yr)
12. Address While in the United States (Number and Street	r()
13. City and State	
Departure Number	CBP Form I-94 (10/04) OMB No. 1651-0111
302225689· <b>20</b>	
I-94 Departmen Record	
Departure Record	
14. Family Name	
15. First (Given) Name	16. Birth Date (Day/MorYt)
17. Country of Citizenship	
	CBP Form I-94 (E004)
See Other Side	STAPLE HERE

OMB No. 1651-0111 Expiration Date: 11/30/2014

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:

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 law fully 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

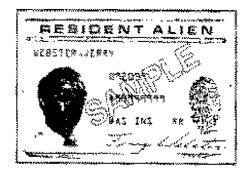
### U.S. Visa Stamp

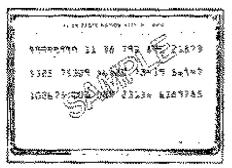


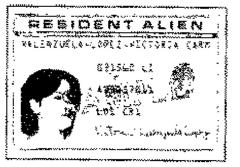
• Governs ability to enter the United States

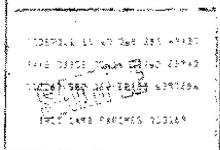
### Sample Immigration Documents

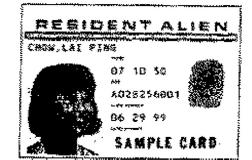
Alien Registration Card, Form I-551













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# Sample Immigration Documents

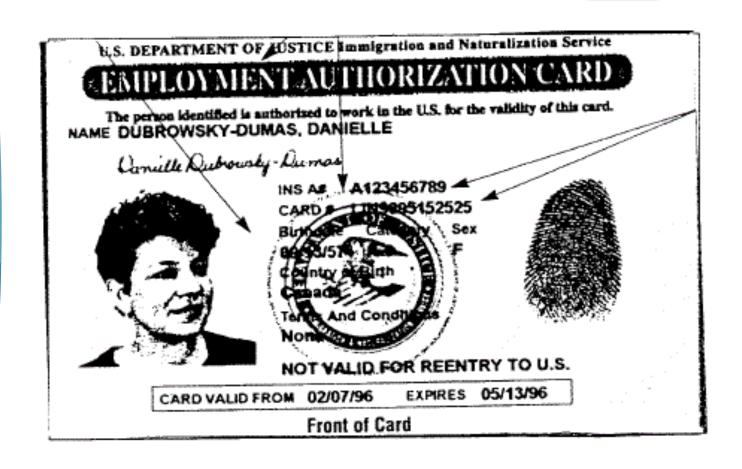
New Alien Registration Card, Form I-551, front and back





### Sample Immigration Documents

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



#### 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. Citizonship and Immigration Services

1-797C, Notice of Action

#### THE UNITED STATES OF AMERICA

siciler seems		FIANCE(E), OR ORPHAN
June 11, 2007	May 30, 2007	GREER, DANIEL C.
October 19, 2007	1 of 1	CRG, CRACE T.

DANIEL C. GRIER

Notice Type: Approval Notice Section: Rushand or wife of U.S. Citizen, 201(b) INA

The above position has been approved, we have each the original visa position to the Department of State National Visa Custor GWCN, 32 Rechester Aurena, Portenseum, 860 02881-2905. MCC processes all opposed temporary says positions that need committer section. The area settember within consular post as the appropriate consulars complete visa processing. MYC will then forward the approved petition to thet commutage.

The NYC will contact the person for whom you are partitioning themsfirstery! concentrate further temigrant wise processing

If you have any questions about your inscense, please forcart the NYC directly. Sowerer, please allow At least 50 days before calling the NYC If your hemoticiary has not received directected from the NYC. The talephone number of the NYC is (603)334-0750.

The approval of this view petition does not in itself grant say longistion status and does not guarantee that the allen beneficiary will subsequently be found to be slightle for a view, for edenseins to the United States, or for an extension, change, or adjustment of status.

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Picase 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 30111 LAGUNA NIGUEL CA 92607-0111 Customer Service Telephone: (800) 375-5283

Form 1-797C (Rev. 01/01/05) N

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

- 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.....

- 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.

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

#### 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 <u>cannot</u> 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).

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

Once the consular officer is satisfied with applicant's true intent, a visa sticker will be affixed to the passport, stating, among other things, the issuance date and expiration date. Some visas are granted for as little as thirty days and others for up to ten years.

