**IMMIGRATION LAW – Facts**

*Intro*

* Most of immigration falls under DHS (CBP, ICE, CIS).
* Consular officers fall under the State Department.
* IJ’s, BIA fall under the DOJ.
* History: For 70 years preceding 9/11, the DOJ incorporated the INS (the principal unit incorporating immigration functions). DHS took over in the aftermath of 9/11.
* CBP: Passport Review, Border Patrol, other Customs officials.
* ICE: Locating, arresting, charging persons illegally in the US, Immigration Court representation, anti-fraud/smuggling, anti-unauthorized employment of non-citizens, anti-money laundering/child pornography, detention facilities operators.
* CIS: Handles visa, LPR, citizenship stuff.
* Regulations: INA, CFR.
* DOJ – EOIR.
* Dep’t of State - BCA: A visa means that you can travel to the US and apply for admission at the border.
* Consular officers technically have autocratic power to give or deny visas.
* DHS makes visa policy.
* DOL: For a worker to come in, American workers must be unavailable where the workers is going (for that work), and wages will not go down.

*Sources of Federal Immigration Power*

* 1st Immigration law prohibited the entry of criminals, prostitutes etc., with a distinct anti-Chinese bias.
* Chinese came in –this really pissed off Americans in the West.
* *Chinese Exclusion Cas)*: A treaty = an act of Congress – not superior, can be changed by Congress.
* The Chinese are not citizens but aliens, the Government has the power to exclude them if it so chooses.
* This is a power that the Government has, it is not the Court’s place to second-guess the Government’s choice to exclude.
* 1892: Chinese Immigration banned – every Chinese had to get a certificate or risk being deported.
* *Fong Yue Ting*: Any foreigner can be deported, Chinese cannot be citizens, Congress allows a Chinese person to go before a judge to prove non-deportability before deportation.
* Commerce Power: Migration is commerce.
* Naturalization Power: Uniform rule of Naturalization.
* War power: Stop entry of aliens, expel aliens during wartime.
* Inherent power of a sovereign

*Immigration Legislation*

*O-J-O*-: Suspension of deportation case – “Extreme hardship” to spouse, parent or child. This was a close one – there was good moral character, continuous physical presence, and the guy had his whole livelihood in the US (but no family), so the BIA used the discretion it was given by the statute. The standard got changed to “exceptional and extremely unusual hardship” by IIRIRA, Congress did not like how O-J-O- came out.

IIRIRA (Illegal Immigration Reform and Immigrant Responsibility Act of 1996)

Increased Border Patrol/Investigative Personnel, increased smuggling/fraud penalties, Reformed exclusion/deportation procedures.

*Monrea*l: Post-IIRIRA. M had 2 USC kids, GMC, and Cont. Phys. Pres., but there was no exceptional and extremely unusual hardship suffered to immediate relatives – not to the 2 kids who had to move, because they weren’t sick/with special need

*Nonimmigrants*

**Generally**

* Presumption of being an immigrant (Defined in the immigrant Sec. of INA 101(a)(15): You have to prove that you are a non-immigrant if you come in on that kind of visa.
* Dual intent doctrine: Unless you are in on an H1 or an L visa, you cannot indicate to the consular officer at the time of entry that you want to stay in the US permanently, even legally.
* B1, B2: Visitors for Business, Pleasure
* C: Transit
* E: Treaty Traders, investors, and their families
* F, M, J: Students, Exchange Visitors +
* A, G, N: Diplomats etc.
* H, O, P, Q, R: Temporary Workers, Trainees +
* I: Foreign Media Reps
* K: Spouses/fiancées of USC’s +
* Intra-company transfers +
* Most nonimmigrants apply at consulates, supporting documentation is required (school letter, employment stuff etc.)
* But nonimmigrants are not guaranteed to be admitted until they get to the border and .
* I-94 determines non-immigrants rights/limitations, not visa.
* Citizens of some countries can waive visa requirements.
* Non immigrants can change visa status under INA 248.

Business Immigration requires some kind of labor cert to protect American labor.

O- extraordinary ability demonstrated by national acclaim

**O –Visa**

* “Extraordinary ability…which has been demonstrated by sustained national or international acclaim,” in the arts. CFR 214.2(o)(3)(iii)
* Fashion blogger: Material in Major Publications, Expert Recognition for Employment in an Essential Capacity with Orgs. of Distinguished Rep, Work of Major Significance, Relatively High Salary, Guild Certificaiton.
* Singer: Lead/starring participant in events with distinguished rep., nationally/international acheivemnts as shown by reviews, role for distinguished org, a record of successes shown by publications, recognition for acheivemnts, relatively high salary.
* P: Culturally unique

H-1B Non- Immigrant visa petition

1. Foreign national, 2) comes to perform specialty occupation requiring a bachelor’s degree or more, 3) has a bachelors degree or more.

Steps

1. Employer applies to the DOL for cetification of the Form ETA-9035 LCA
2. Employer files a petition for H-1B visa classification for the foreign national – change or status, extension, whatever.
3. The foreign national needs to submit his h-1B application to a consular office abroad whenever he leaves.

* LCA – Must be filed with the DOL no earlier than 6 months before the scheduled start of employment.
* Must include all potential worksites if possible
* Employer must attest the it will pay the worker the higher of the prevailing wage level for that occupational classification by all area employers OR the actual wage level paid to all other individuals in the company in the position.
* Benefits must also be the same.
* The employer must hold on to documentation used to established the wage – prevalining wage determination from the SWA or a private survey – the wage offered must meet/exceed that wage.
* His employment cannot affect the working conditions of those similarly situated – they must be the same as before, same as for substantially similarly skilled workers at the site or in the same area of employement, or if there are no others, the same as for workers in other kinds of employment.
* Notice be posted in 2 conspicuous locations.
* The employer can’t be an H-1B dependent employer, cant have willfully violated or misrepresented something on an LCA in the last 5 years.
* Dependent employer – must provide evidence of recruitment efforts in the US or proof the worker makes more than 60K or holds a masters.
* A dependent employer 1) must not dismiss any similarly placed US worker, 2) will not place the worker with another employer without asking whether that would displace an employee within 90 days before and after the placement, 3) The employer must have made good faith efforts to recruit in the US first.
* Petition and application includes 1) Form I-129, letter of support with position duties/requirements, supporting docs (degree, transcript, company info)

BCC – Border Crossing Card, you can’t go too far into the US.

*Immigrants*

5 Categories: Family Sponsored, Emplyment Based, Diversity, and Humanitarian.

No ceiling for immediate relatives, spouses, children of USC’s

INA 203(a) – Immediate Relatives – spouses, children, parents if over 21.

Preference Categories

A child must be under 21, unmarried – the definition includes stepchildren and legitimated children, if the qualifying relationship was established before the child reached 18 – adopted if before 16 – usually also includes children born out of wedlock

No numerical ceilings

1) Unmarried sons and daugthers of USC, 2A: Spouses and Children of LPR;s

* Family Sponsored Preferences: You can’t go from a preference that is current to another one that is current.
* If you file an I-130 or an I-140 in a particular preference, you have to stay in that preference, unless the petitioner’s status changes.
* Where you have a labor certification: Premature filing of the I-485 (they will give the packet back to you).
* Waivers are available where a joint petition is not feasible.
* Waivers are not absolute.
* Death: gay couple case

*Inadmissibility*

*Citizenship*

*Undocumented Aliens*

*Deportability*

- You start with the conviction

*Removal Proceedings*

*Asylum/Withholding*

* PULA
* Restriction on removal is a form of relief from removal – you don’t get full asylum, no path to LPR, citizenship.

*Cancellation of Removal*

* Only defensive.

*Voluntary Departure*

* Prior to NTA: Caught in a raid.
* VD – what is the limit on when you can come back into the US.
* You can come back.
* Getting yourself put into removal proceedings can be very beneficial, because it gets rid of the bar.

*T&U Type Visas*

*Immigration and Professional Responsibility*