

CRIMMIGRATION COMMUNICATION



IMMIGRATION STATUS IS NOT OBVIOUS. IT CAN BE DAMAGED BY CRIMINAL CONVICTIONS

Immigration Law is complex, and can be counter-intuitive. Long term residents of the US may lack lawful immigration status, while recent arrivals may be in stable Lawful Permanent Resident status. It is impossible to tell a person's immigration status without asking detailed questions, and maybe even reviewing documents. To complicate matters, criminal charges and convictions impact eligibility for each immigration status differently.

Below is an overview of available immigration statuses. You must take time to identify your client's immigration status so that you can receive accurate immigration advice from the Long Island Regional Immigration Assistance Center. We are available and willing to help gather information and provide advice to you about how your client's contact with the criminal system will affect the client's immigration status whenever needed! Our intake form is designed to identify a person's immigration status or eligibility for status when completed, and we can help you and your client complete the form.

US Citizen: Citizenship can be acquired at birth, by operation of law, or after an application process. The laws governing bestowing and acquiring citizenship have changed over time. One excellent outcome of an investigation into immigration status is identifying previously unknown US citizenship. US citizens cannot be deported and criminal convictions (unless for fraud in the Naturalization process) will not impair status as a citizen.

Lawful Permanent Residence (a "greencard"): The highest and most protective immigration status short of US citizenship. To become a US citizen, a non-citizen usually must first attain LPR status. There are many ways to access LPR status, each with its own requirements. LPR status can only be terminated after removal proceedings in immigration court. LPR status can be terminated by an immigration judge after certain criminal convictions; termination leads to deportation. Thus, we talk about "deportable offenses" when discussing LPR's convictions, but LPRs may also be barred from lawfully re-entering the US after international travel, and so we also discuss "inadmissibility."

Cancellation of Removal (COR): One means of accessing LPR status available to certain undocumented non-citizens present in the US for more than ten years whose US citizen or LPR relatives would suffer "extreme and unusual hardship" if the non-citizen were deported. COR is also available to certain long-term LPRs convicted of deportable offenses where they can show that they deserve to remain in the US. Some criminal convictions can bar eligibility for COR.

Asylum, Withholding of Removal, and protection under Article III of the Convention Against Torture (called CAT) are humanitarian-based immigration benefits for non-citizens who fear persecution or torture in their home country. Asylum allows a person to become an LPR eventually, but Withholding of Removal and CAT do not offer a path to becoming an LPR, although holders of these statuses cannot be deported unless the status is revoked. Eligibility for these immigration statuses will be affected by conviction for a "particularly serious crime," which must be determined on a case by case basis, and has a different meaning depending on the benefit.

Family-Based Immigrant Visas and Employment-based Immigrant Visas: Allow certain people who have not triggered inadmissibility or who can show eligibility for a waiver of inadmissibility to become Lawful Permanent Residents. Inadmissibility and eligibility for waivers are impacted by criminal convictions.



VAWA and U-Visa protections: For victims of domestic violence-based crimes. This constellation of immigration benefits allows people who have been victims of intimate partner violence to qualify for protection from removal and eventual access to Lawful Permanent Residence. This status requires extensive documentation of the abuse experienced. U visas also require certification from law enforcement, including police, prosecutors, and/or judges, that the victim has been, is being, or will be helpful in the investigation or prosecution of certain crimes. Some criminal convictions will bar access to these benefits.

T-Visa: For victims of human trafficking, including labor and sex trafficking, this is a status with generous eligibility criteria for those who can show that they have been victims of cross-border trafficking in persons. This status requires certification by specific law enforcement entities to qualify. Numerous waivers of related criminal conduct and convictions are available for T visa applicants; nevertheless, some criminal convictions can impact eligibility for this status.

Temporary Protected Status: Is available to certain citizens of countries that the US government has determined are too dangerous to receive deportees due to natural disaster or civil strife. The list of TPS-designated countries changes often. TPS can be barred or terminated for individuals convicted of certain crimes, even crimes which do not trigger inadmissibility.

Temporary Visa: A visa is permission to travel to the US for a specific purpose (for example, tourism, work, business) and a specific amount of time. However, permission to enter and a duration of stay must be granted at the border. There are as many categories of visa as letters from A-V, many with up to 4 subcategories. This discretionary permission to live in the US may be revoked upon arrest or conviction for certain crimes.

DACA: Deferred Action for Childhood Arrivals: Is a temporary protection from deportation for certain young people who were brought to the US as children. DACA status provides a work authorization and protection from removal, but can be lost with convictions for certain crimes, even crimes which do not trigger inadmissibility.

Undocumented: An undocumented person has entered the US either lawfully and then fallen out of lawful status, or unlawfully. An undocumented person may be eligible for any of the above lawful immigration statuses, depending on circumstances. An undocumented person is likely inadmissible, but waivers of inadmissibility may be available. Certain convictions may trigger additional bases for inadmissibility which cannot be waived.

A word on “inadmissibility” and “deportability.” The immigration law uses numerous terms of art to capture categories of non-citizens who are permitted to enter and remain in the US. “Inadmissibility” refers to the category of persons who are not permitted to enter the US, although some people who are legally inadmissible may have already physically entered the US. Inadmissibility can be based on criminal convictions or public health grounds, among other bases. Deportability is a much narrower category of events, including criminal convictions, which result in a person being sent out of the United States, or “deported”.

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