

# **General Immigration Issues**

**Speakers:**

**Sharon L. Ames, Esq. & Robert R. Reittinger, Esq.**  
*Directors, Regional Immigration Assistant Center, Region #2  
Rome, NY*

**Sponsored by the:**  
**Oneida County Bar Association**  
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**Oneida County Public Defender, Criminal Division**  
**Oneida County Supplemental Assigned Counsel Program**  
**New York State Defenders Association, Inc.**  
**New York State Office of Indigent Legal Service**

**Chair: Frank J. Nebush, Jr., Esq.**  
*Oneida County Public Defender, Criminal Division*

**Saturday, October 22, 2016**  
**9:00 a.m. – 12:00 p.m.**

**Mohawk Valley Community College**  
**1101 Sherman Avenue**  
**Utica, NY**  
**IT Building, Room 225**

**MCLE Credits: 2 Professional Practice and 1 Ethics**



**PLEASE TO SURE TO TURN OFF YOUR CELLPHONE**

**AND**



**SIGN IN**

## SPEAKERS

**Sharon L. Ames** is the Director, Immigration of the Region #2, Regional Immigration Assistance Center (RIAC) in Rome, New York. She had her own solo law practice in Syracuse since 1984, where she practiced in the areas of criminal defense both in private practice and as an Assistant Public Defender in Cortland County; and in family law, both as assigned counsel and as a Law Guardian. Since 1999, she has practiced exclusively in Immigration law. She earned her B.A. degree from St. Lawrence University and her J.D. from Syracuse University College of Law. Sharon is fluent in Spanish.

**Robert R. Reittinger** is the Director, Criminal of the newly created Region #2, Regional Immigration Assistance Center in Rome, New York. Robert is a graduate of St. Thomas University School of Law, Miami Florida, where he received his Juris Doctorate and Master of Laws. Robert began his legal career working as an intern and assistant public defender for the Broward County Public Defender's Office. Upon returning to New York State Robert began his private practice focusing on criminal law. Robert was appointed Assistant County Attorney for the County of Oneida Department of Law as Kendra's Law attorney and as lead family court attorney. Robert has also worked as first assistant Oneida County Public Defender, Criminal Division as DWI defense counsel, First Assistant Appellate Counsel and Chief Appellate Counsel.

# AGENDA

**Saturday, October 22, 2016**

*REGISTRATION: 8:30 a.m. – 9:00 a.m.  
IT Building Room 225*

**9:00 a.m. – 10:30 a.m.**     **“An Overview of the Immigration Process and Available Defenses”**

*Sharon L Ames, Esq., Director, Immigration  
Region #2, Regional Immigration Assistance Center*

**10:30 a.m. – 10:40 a.m.**     **BREAK**

**10:40 a.m. – 12:00 p.m.**     **“CRIMMIGRATION: A Basic Criminal Immigration Overview in Criminal Court”**

*Robert R. Reittinger, Esq., Director, Criminal  
Region #2, Regional Immigration Assistance Center*

**MCLE Credits: 3  
2 Professional Practice and 1 Ethics**

# **Immigration Practice “A to Z”**

*An Overview of the Immigration Process and Available Defenses*

**Sharon L. Ames, Esq.**

*Director, Immigration*

*Region #2, Regional Immigration Assistance Center*

**General Immigration Issues**

*Mohawk Valley Community College*

*IT Building 225*

*Saturday, October 22, 2016*



# **IMMIGRATION PRACTICE “A TO Z”**

**An Overview of the  
Immigration Process and  
Available Defenses**

1



# **“ADMISSION” TO THE UNITED STATES**

2

FAMILY

EMPLOYMENT

HUMANITARIAN



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### Key Terms:

**“IMMIGRANT”** : Anyone who is entering the U.S. to stay here *permanently*.

**“NONIMMIGRANT”**: Anyone who is Entering the U.S. for a *temporary* stay.

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**Why is it important to specify?  
Isn't everybody who is not a  
U.S. citizen an "immigrant"?**

**These are "terms of art" in immigration law.**

**Eligibility for many visas is determined by a person's "intent" as to why they are seeking admission to the United States.**

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**"Immigrant" intent means the person is intending to stay here permanently after they enter.**

**"Nonimmigrant" intent means the person is only intending to stay here for a certain length of time, depending on the reason for travel and the type of visa.**

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## Immigrants

- Lawful Permanent Residents (green card)
- Conditional Permanent Residents (2 year green card)
- Those with immigrant visas
- Asylees
- Refugees

## Nonimmigrants

- Visitors (tourists, temporary business visitors) (B-1/B-2)
- Students(F-1)
- Agricultural and other temporary workers (H-1A, H-2B)
- Exchange students (J-1)
- Skilled workers(H-1B)

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## “Dual intent” visa: H-1B

Although a nonimmigrant status, “immigrant intent” permitted because H-1B status often leads to employment-based permanent residence.

## “Hybrid” visa: K-1 fiance(e)

Technically a nonimmigrant visa classification, but treated as an immigrant visa because the person is coming to marry USC and stay in the U.S. permanently.

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## Family-based immigration: Immediate Relatives

- Spouse of a USC
- Child under 21 whose parent is a USC  
“Child” includes stepchild\* and adopted child\*\*

\*Marriage creating stepparent relationship must occur prior to stepchild’s 18<sup>th</sup> birthday

\*\* Adoption must be finalized prior to adopted child’s 16<sup>th</sup> birthday

- Parent of a Child over 21 who is a USC

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## FAMILY-BASED IMMIGRATION STATUS

FIRST (1 <sup>ST</sup> ) FAMILY-BASED PREFERENCE	Unmarried Son or Daughter of USC	INA §203(a)(1)
SECOND (2 <sup>ND</sup> ) FAMILY-BASED PREFERENCE	LPR Spouse and “Child” & Unmarried Son or Daughter	INA § 203(a)(2)
SECOND (2A) FAMILY-BASED PREFERENCE	Spouse and “Child” of LPR	INA § 203(a)(2)(A)
SECOND (2B) FAMILY-BASED PREFERENCE	Unmarried Son & Daughter of LPR	INA § 203(a)(2)(B)
THIRD (3 <sup>RD</sup> ) FAMILY-BASED PREFERENCE	Married Son & Daughter of USC	INA § 203(a)(3)
FOURTH (4 <sup>TH</sup> ) FAMILY-BASED PREFERENCE	Brother or Sister of USC (USC sibling must be 21 yrs old +)	INA § 203(a)(4)

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# State Department Visa Bulletin November 2016

Family-Sponsored  
All Chargeability Areas  
Except Those Listed

		CHINA (mainland)	INDIA	MEXICO	PHILIPPINES
■ F1	22OCT09	22OCT09	22OCT09	08APR95	01SEP05
■ F2A	22JAN15	22JAN15	22JAN15	08JAN15	22JAN15
■ F2B	15APR10	15APR10	15APR10	08OCT95	15FEB06
■ F3	22JAN05	22JAN05	22JAN05	01DEC94	08AUG94
■ F4	01DEC03	01AUG03	15FEB03	08MAY97	08MAY93

Above dates = the "Receipt Date" of the filed Form I-130, Petition for Alien Relative

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-november-2016.html>

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## EMPLOYMENT-BASED IMMIGRANT VISAS

*1 <sup>st</sup> Priority Worker	(a) Aliens w/Extraordinary ability* (b) Outstanding Profs & Researchers (c) Multinational Execs & Managers	INA § 203(b)
*2 <sup>nd</sup> Advanced Degree & Exceptional Ability Foreign Nationals	(a) Aliens with Advanced Degrees (b) Aliens with Exceptional Ability (Note: * National Interest Waiver)	INA §203(b)(2)
3 <sup>rd</sup> Skilled Workers, Professionals and Unskilled Workers	(a) Skilled Workers (b) Professionals (c) Unskilled Workers	INA §203(b)(3)
*4 <sup>th</sup> Special Immigrant (defined in INA §101(a)(27)(C) –(M))	Includes reacquisition of citizenship and returning residents; religious workers; court-protected juveniles; and US Consulate employees in Hong Kong*	INA §203(b)(4)
*5 <sup>th</sup> Investors (2 yr conditional LPR status)	Invest \$ 1 million+ (or \$500,000+ in target rural & high unemployment areas) in new or existing business and create 10+ jobs for USC's*	INA §203(b)(5)

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## State Department Visa Bulletin November 2016

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-november2016.html>

### Employment based

All Chargeability Areas Except Those Listed		CHINA (mainland born)	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	15JUL12 C	01NOV07	C	C	C
3rd	01JUL16	15APR13	01JUL16	08MAR05	01JUL16	01APR11
Other	01JUL16	01SEP05	01JUL16	08MAR05	01JUL16	01APR11
4th	C	C	15JUL15	C	C	C
Rel.Wkrs	C	C	15JUL15	C	C	C
5 <sup>th</sup> (C5,T5)	C	08MAR14	C	C	C	C
5 <sup>th</sup> (I5, R5)	C	08MAR14	C	C	C	C

- Above dates = the "Receipt Date" of the filed Form I-140, Petition for Alien Relative
- "C" = current (i.e., no backlog exists for visa to be issued)

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## DIVERSITY IMMIGRANT VISA - LOTTERY

**= random lottery selects the beneficiaries INA § 203(e)(2)**

- 1 APPLICATION PER YR; and
- HIGH SCHOOL OR EQUIVALENT;
- or
- 2 YRS EMPLOYMENT EXPERIENCE IN A JOB REQUIRING MIN. 2 YRS TRAINING OR EXPERIENCE WITHIN PRECEDING 5 YRS OF APPLICATION
  
- **Ineligible:** Citizens from BRAZIL, CANADA, CHINA (mainland-born), COLOMBIA, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, GUATEMALA, HAITI, INDIA, JAMAICA, MEXICO, PAKISTAN, PERU, PHILIPPINES, POLAND, SOUTH KOREA, UNITED KINGDOM (except Northern Ireland) and its dependent territories, and VIETNAM.

[http://travel.state.gov/visa/immigrants/types/types\\_1318.html](http://travel.state.gov/visa/immigrants/types/types_1318.html)

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## IMMIGRANT VISA THROUGH REFUGEE AND ASYLUM STATUS

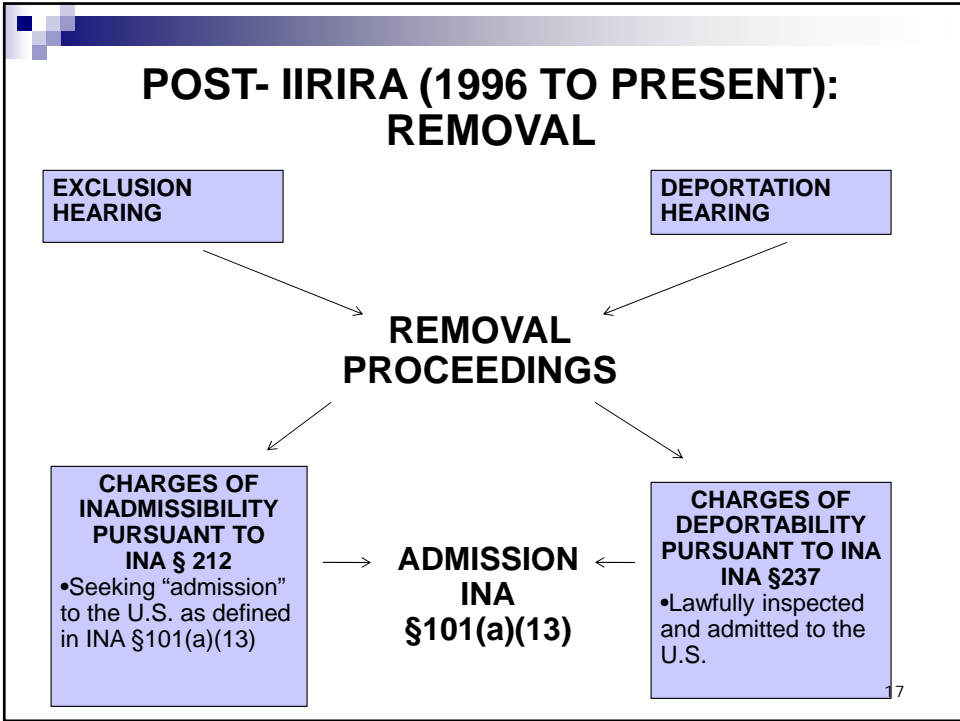
If client was:	Client may apply for permanent resident status:
Admitted to the US as: <ul style="list-style-type: none"><li>• a refugee</li><li>• a qualifying family member of an asylee</li></ul>	1 year after your entry into the United States
Granted Asylum in the United States	1 year after the grant of your asylum status

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## REMOVAL PROCEEDINGS

### IMMIGRATION COURT REPRESENTATION

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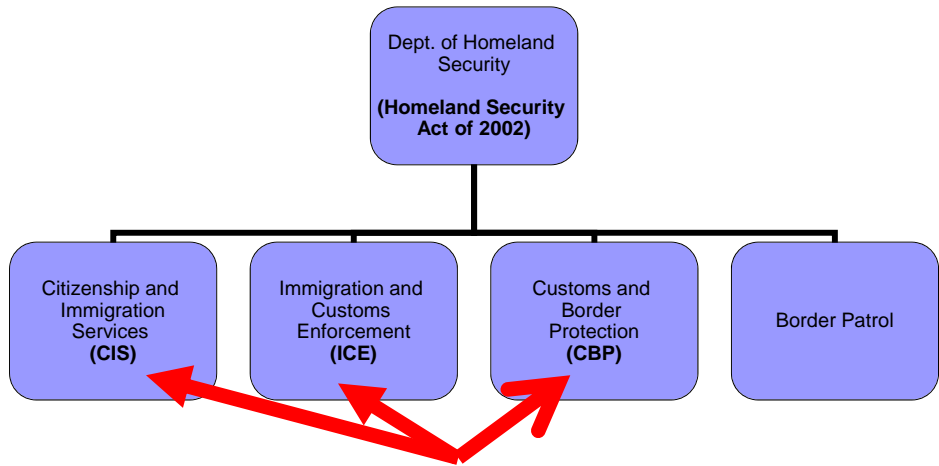
## DEPORTABILITY vs. INA §237 INADMISSIBILITY INA §212

GROUNDS OF DEPORTABILITY (apply to lawfully admitted noncitizens, such as a lawful permanent resident (LPR)—greencard holder)	GROUNDS OF INADMISSIBILITY (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)
LPR's ("Greencard Holder")	Refugees & Asylees, Undocumented, Non-LPRs
Nonimmigrants (ex. visitors, students, workers on valid status)	Returning LPR's (Green Card Holders) (i.e., even after brief departure from U.S.)
Visa "Overstayers" (ex. overstayed authorized period of stay in U.S.)	Nonimmigrants (i.e., persons seeking permission to visit, work or go to the school in the U.S.)

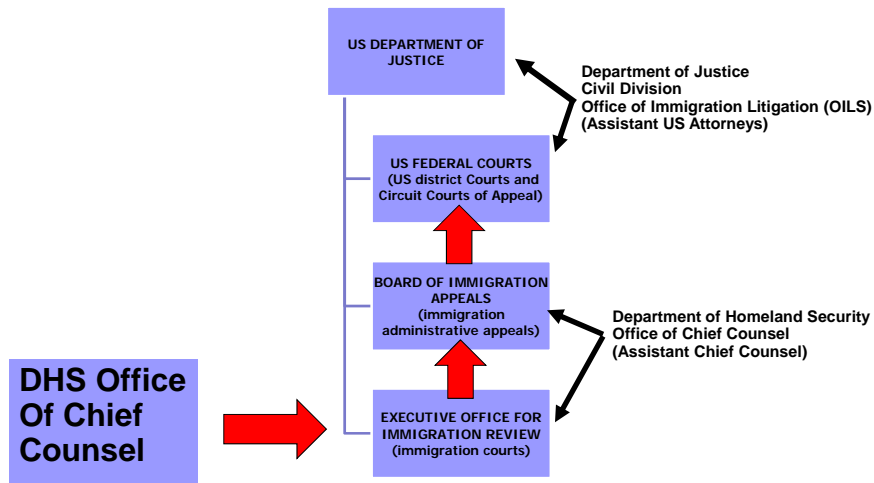
# WHO CAN BE REMOVED?

- Lawful Permanent Resident** • Admitted to the U.S. as a green card holder
- Refugee or Asylee** • Granted refugee status outside of the U.S. or asylum status from within the U.S.
- Nonimmigrant** • Admitted to the U.S. on a temporary basis (i.e., to visit, attend school, work, etc.)
- Humanitarian Relief** • Granted temporary protection within the U.S. (i.e., TPS, DACA, T, U or S visa, etc.)
- Undocumented** • Entered the United States illegally (i.e., without being inspected and admitted)

# WHO IS AUTHORIZED TO ISSUE AN IMMIGRATION DETAINER?



# IMMIGRATION COURT SYSTEM



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## SAMPLE "NOTICE TO APPEAR"

### ALLEGATIONS:

- 4.) You are not a citizen or national of the United States;
- 5.) You are a native of the Dominican Republic and a citizen of the Dominican Republic;
- 6.) You were admitted to the United States at Champlain, New York on July 15, 1983 as a legal permanent resident;
- 7.) You were, on October 29, 1990, convicted in the Supreme Court, of the State of New York, County of New York, for the offense of Criminal Sale of a Controlled Substance, in the 2nd degree, to wit, cocaine, in violation of section 220.41 of the New York State Penal Law.

### CHARGE:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the Act.

Section 237(a)(2)(B)(1) of the Immigration and Nationality Act (Act), as amended, in that, at anytime after admission, you have been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 102 of the Controlled Substances Act [21 U.S.C. 8022]), other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

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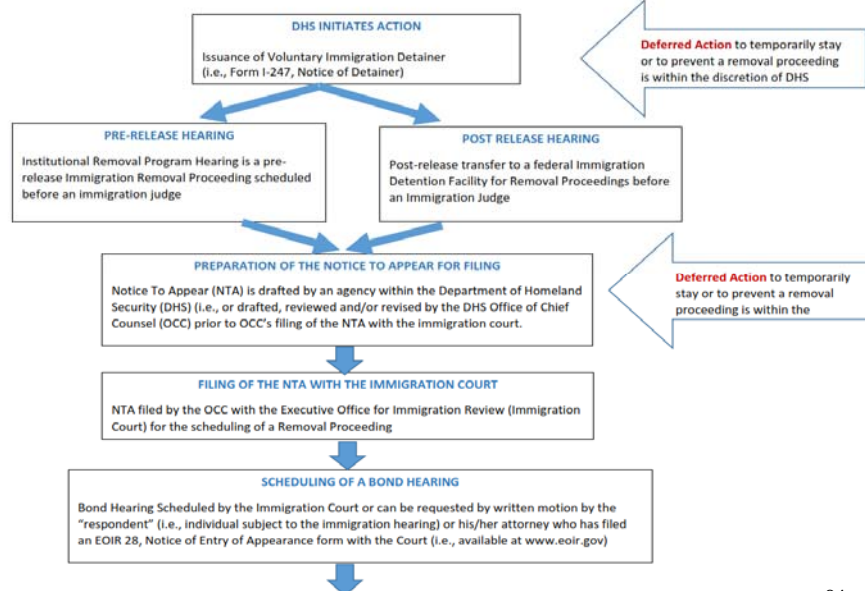
# REMOVAL HEARING PROCEDURES

## RIGHT TO COUNSEL:

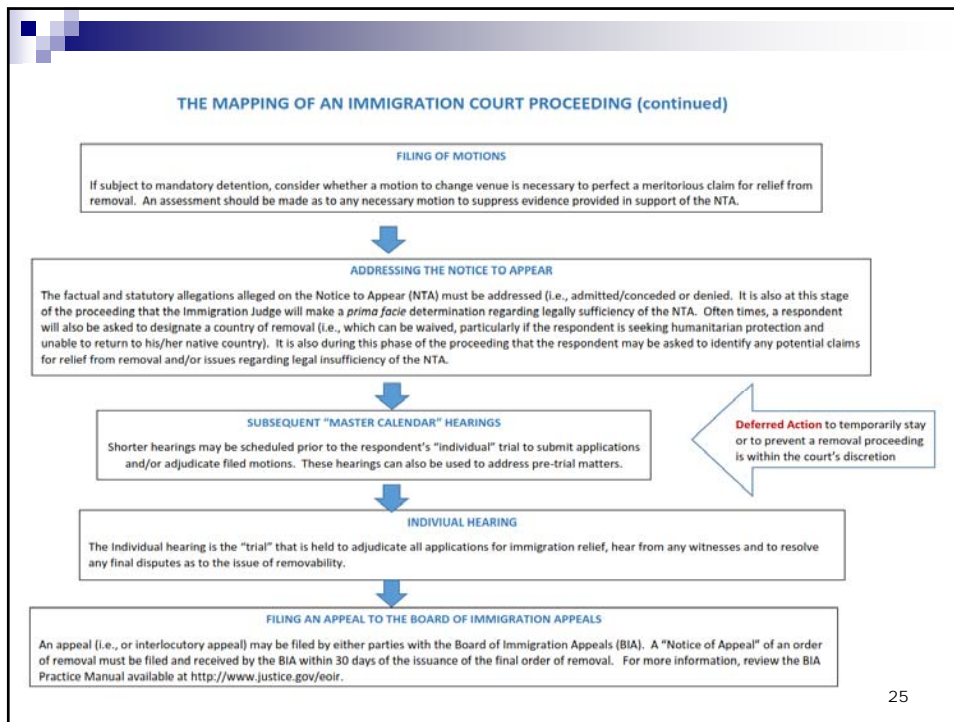
- Have the right to be represented by counsel at no expense to the Government by counsel of the alien's choosing who is authorized to practice in such proceedings (see INA §240(b)(4)(A)).
- If cannot afford legal counsel - must be informed of free legal services in the area (see 8 C.F.R. §240.10(a)(2)).

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### THE MAPPING OF AN IMMIGRATION COURT PROCEEDING



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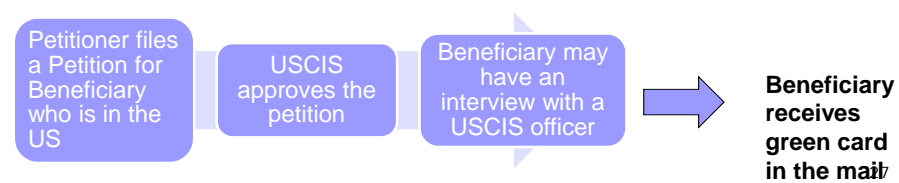
- ## COMMON FORMS OF RELIEF
- LPR cancellation
  - 212(h) waiver
  - Adjustment of status
  - Non-LPR cancellation
  - Asylum/ Refugee Adjustment
  - Withholding of Removal
  - UN Convention Against Torture Treaty
  - Temporary Protected Status (TPS)
  - Naturalization
  - Acquired or Derived Citizenship
  - VAWA
  - DV waiver for Victims
  - Special Immigrant Juvenile (SIJ) Status
  - T and U Visa
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# BECOMING A PERMANENT RESIDENT OF THE U.S.

## Consular Processing:



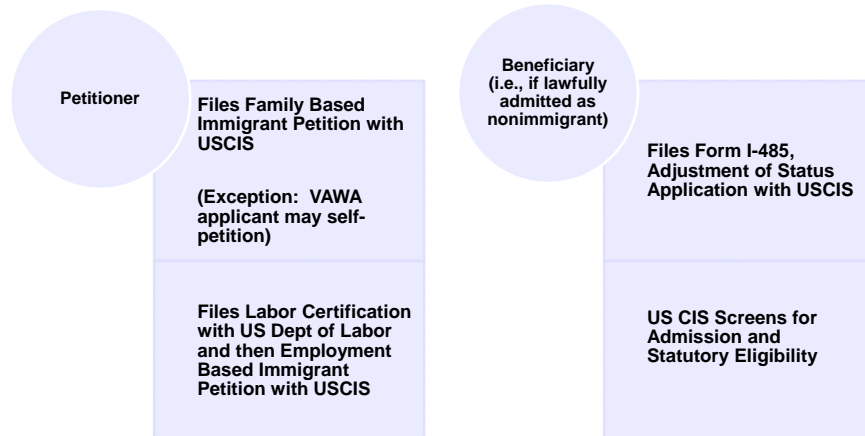
## Adjustment of Status:



# ADJUSTMENT OF STATUS

STEP ONE:  
CAN THE CLIENT APPLY FOR A GREEN CARD?

# OBTAINING IMMIGRANT VISA FROM WITHIN US See INA § 245



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## ADJUSTMENT OF STATUS INA § 245 (a), (c)

- Adjustment replaces visa processing abroad and provides for a form of immigration relief from removal
- **RULE:** INA §245(a) requires that applicant must be inspected and “admitted” or paroled INA 212(d)(5)(A)  
– **“EWI” NOT ELIGIBLE TO ADJUST**
- Filing of Form I-485 when immigrant visa is immediately available

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## ADJUSTMENT OF STATUS

- **INA §245(i)**: covering persons who were in the United States on **December 21, 2000** who had a immigrant visa petition or labor certification filed for them by **ON OR BEFORE April 30, 2001**

(INA §245(i) IS NOW REPEALED)

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## INELIGIBLE FOR ADJUSTMENT OF STATUS

- Entered without Inspection (and outside of INA 245(i))
- Worked without authorization before filing (exception: immediate relative)
- Unlawful immigration status on the date of filing (exception: immediate relative)
- Failed to maintain continuously a lawful status since admission (exception: immediate relative)
- Terrorist deportable under INA §237(a)(4)(B)
- Admitted as alien crewman
- Admitted as “transit without a visa”
- Admitted under VWPP (exception: immediate relative)
- Admitted as an informant nonimmigrant INA §101(a)(15)(S)

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# ADJUSTMENT OF STATUS

STEP TWO:  
IS THE CLIENT ELIGIBLE FOR A  
GREEN CARD (i.e., admissible  
pursuant to INA §212?)

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## HEALTH-RELATED GROUNDS

- Communicable Diseases INA §212(a)(1))

8 diseases are listed as communicable diseases of inadmissibility including:

- active TB
- AIDS (HIV removed by President Obama 11/3/2009)
- leprosy
- several venereal diseases (ex. syphilis)

Vaccination requirements and documentation

- Physical or mental disorder – threat to public safety
- Drug abuser or drug addict

**WAIVERS: INA §212(g) waiver is available.**

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**CRIMINAL GROUNDS**  
**INA § 212(a)(2)**

**“CONVICTION”**  
or  
**“ADMISSION”**

**CIMT – petty offense exception**

**NO exception for Drug crimes**

<b>GROUND OF INADMISSIBILITY</b> (apply to noncitizens seeking lawful admission, including LPRs who travel out of US)
Conviction or <i>admitted commission</i> of a <b>Controlled Substance Offense</b> , or DHS has reason to believe individual is a drug trafficker > No 212(h) waiver possibility (except for a single offense of simple possession of 30g or less of marijuana)
Conviction or <i>admitted commission</i> of a <b>Crime Involving Moral Turpitude (CIMT)</b> > Crimes in this category cover a broad range of crimes, including: <ul style="list-style-type: none"> <li>◆ Crimes with an <i>intent to steal or defraud</i> as an element (e.g., theft, forgery)</li> <li>◆ Crimes in which <i>bodily harm</i> is caused or threatened by an intentional act, or <i>serious bodily harm</i> is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes)</li> <li>◆ Most sex offenses</li> </ul> > <i>Petty Offense Exception</i> —for one CIMT if the client has no other CIMT + the offense is not punishable > 1 year (e.g., in New York can't be a felony) + does not involve a prison sentence > 6 months
<b>Prostitution and Commercialized Vice</b>
Conviction of <b>2 or more offenses</b> of any type + <b>aggregate prison sentence of 5 years</b>

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## SECURITY-RELATED GROUNDS

- **Security Related Grounds**
  - INA §212(a)(3)(C) clear negative for foreign policy impact associated with their admission
  - Secretary of State must have reasonable ground to believe alien's entry/proposed activities within the US would have **potentially serious adverse foreign policy consequences**
  - **Two Exceptions:**
    - **Political figure**
    - **Alien's past, current or expected beliefs, statements or associations**
  - INA §212(a)(3)(B) engaged in **terrorist activity** and those the consular officer had **reasonable ground to believe are likely to engage in** such activity after entry.

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## PUBLIC CHARGE or IMMIGRATION VIOLATOR

### ■ Public Charge

- § 212(a)(4)(A) - “likely at any time to become a public charge...”

### ■ Illegal Entrants and Immigration Violators

- ...present in the U.S. **without being admitted\*\*** or **paroled** or
- **fails or refuses to attend removal proceeding**
- who seeks admission to the U.S. **within 5 years** of subsequent **departure** or removal is inadmissible
- **fraud** and **willful misrepresentation of material facts**

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## FALSE US CITIZEN CLAIM

### ■ FALSELY CLAIMING CITIZENSHIP – INA §212(a)(6)(C)(ii)

- Falsely representing to be a U.S. citizen for any purpose or benefit under the INA or under State or Federal Law.
- **EXCEPTION:** alien has U.S. citizen parent and resided in the U.S. prior to age 16 and “reasonably believed” at the time of making the representation that he/she was a citizen.

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## NO DOCUMENTATION OR VISA

- **DOCUMENTATION REQUIREMENTS – INA §212(a)(7)(A)(i)(I) and (II):**
- Not in possession of a valid unexpired visa, reentry permit, border crossing ID card, or other valid entry document and valid, unexpired passport or other travel document or document of identity and nationality
- or-
- Visa is issued without compliance to INA § 203 (i.e., immigrant visa preference categories)

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## UNLAWFUL PRESENCE INA §212(a)(9)

### UNLAWFUL PRESENCE:

- INA §212(a)(9)(B) as of April 1997
  - 3 yr bar (for unlawful presence 6 mos to 1 yr)
  - 10 yr bar (for unlawful presence 1 yr or more)
- **(NOTE:** the 3- and 10-year bar only apply to those who depart the U.S. making adjustment of status favorable)
- **“UNLAWFUL PRESENCE”** includes EWI, overstay of authorized nonimmigrant status (See *INA §212(a)(9)(B)(ii)*)

**WAIVER: INA §212(a)(9)(B)(v) waiver to 3- and 10-year bar is available.**

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## **INADMISSIBILITY: UNLAWFUL PRESENCE INA §212(a)(9)**

**“UNLAWFUL PRESENCE” defined as:**

- **EWI or VISA OVERSTAY**
- **Exceptions:**
  - **Minors (ex. under 18 years of age)**
  - **Asylee applicant**
  - **Family unity pursuant to INA §301**
  - **Battered women and children**
  - **Victims of Severe Trafficking**
  - **Tolling for “good cause”**

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## **INA §212(h) WAIVER**

- **If a crime renders alien inadmissible, waiver is available for certain inadmissible offenses if**
- **Not a drug offense (except for one time simple possession of 30 gms of marijuana)**
- **not murder or torture**
- **\* Alien is spouse, parent, son or daughter of USC or LPR and**
- **\* Denial of alien’s admission would be an extreme hardship for relative**
- **\* AG must consent**
- **-OR-**
- **Activities of inadmissibility occurred more than 15 years before the date of admission, visa application or adjustment of status and admission is not contrary to the national welfare, safety or security of the US. Applicant must show rehabilitation. (exception: 15 years not required to waive inadmissibility for prostitution).**

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# ADJUSTMENT OF STATUS

STEP THREE:  
HOW DOES YOUR CLIENT  
APPLY FOR A GREEN  
CARD?

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## FILING APPLICATION FOR ADJUSTMENT OF STATUS

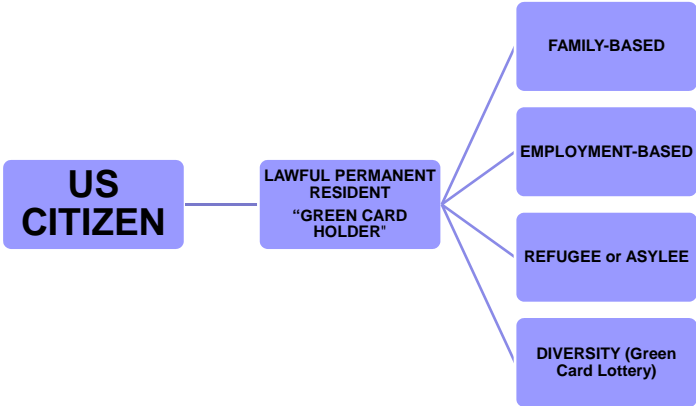
- Approval Notice I-130, Petition for Alien Relative
- File I-485, Application to Adjust Status
- File Affidavit of Support (i.e., Form I-864, Affidavit of Support)
- File supporting documentation (i.e., evidence of family, employment, diversity or refugee/asylee status)
- File I-601, Application for Waiver of Grounds of Inadmissibility with supporting evidence

[WWW.USCIS.GOV](http://WWW.USCIS.GOV)

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# Becoming a U.S. Citizen

## HOW TO BECOME A U.S. CITIZEN




## HOW TO BECOME A U.S. CITIZEN

- must be Lawful Permanent Resident (LPR);
- must be a resident continuously for 5 years (or 3 years for LPR's from USC marriage) immediately preceding the date of filing the application;
- must have resided at least 3 months within the state in which petition is filed;
- must not be absent from the U.S. for a continuous period of more than 1 year during the periods for which continuous residence is required;
- must be a person of good moral character for the requisite 5 years (or 3 years for LPR spouse to a USC) (note: 8 USC § 1101(f) "good moral character");
- must be attached to the principles of the Constitution and be well disposed to the good order and happiness of the U.S.;
- must not be a subversive/member of the communist party/convicted deserter/an alien who has removal proceedings pending or an outstanding order of deportation/ or an alien who has received relief from the Selective Service System based on his alien age;
- must demonstrate an elementary level of reading, writing and understanding of the English language.

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## DERIVATIVE CITIZENSHIP: CHILD CITIZENSHIP ACT OF 2000

Pursuant to INA §320, a child is a US citizen if,  
as of February 27, 2001:

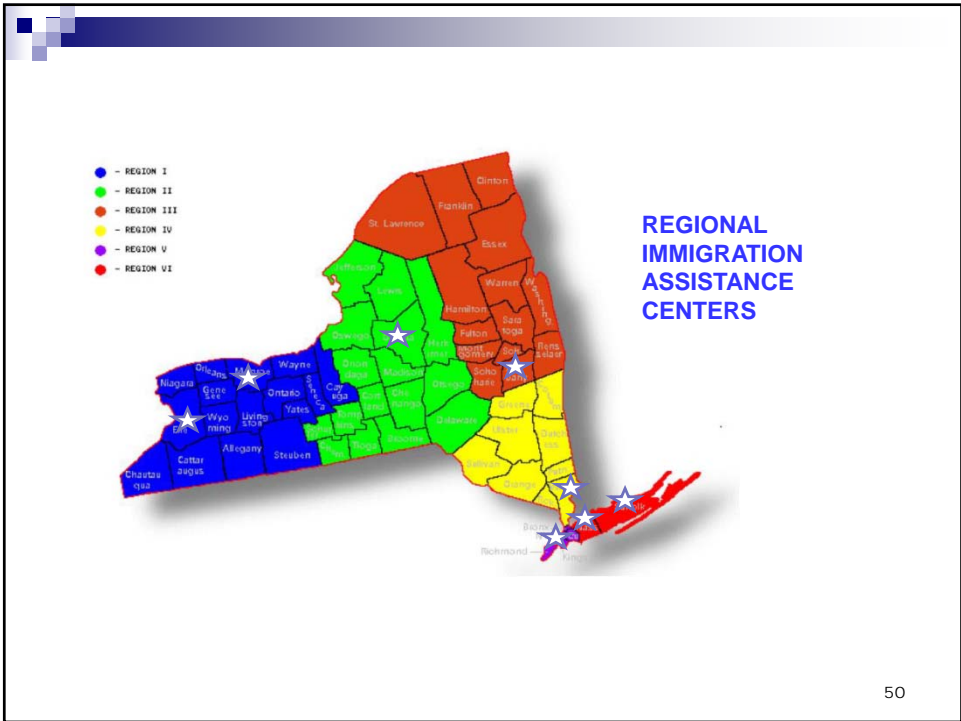
- child is UNDER 18 yrs of age and
- One parent is a U.S. citizen (i.e., biological or adoptive parent if adoption completed before child was 16 yrs of age) and
- The child is residing in the legal and physical custody of the U.S. citizen parent and
- The child was lawfully admitted to the U.S. as an immigrant (i.e., admitted for LPR status). 

NOTE: If client is 18 yrs or older as of 02/27/01 – refer to Citizenship Chart

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# WHERE TO GET HELP

## Immigration Resources





**CNY REGIONAL IMMIGRATION  
ASSISTANCE CENTER**

**Oneida County Courthouse  
302 N. James Street  
Rome 13440**

**Sharon Ames, Esq.**  
[sharon.ames@verizon.net](mailto:sharon.ames@verizon.net)

**Bob Reitinger, Esq.**  
[rreitinger@twcny.rr.com](mailto:rreitinger@twcny.rr.com)

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