

Refugee Information, Laws and Rights

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Immigration And Refugee Terms and Definitions Involving Aliens

A general summary of U.S. immigration terminology follows. Any references below to USCIS refer to the United States Citizenship and Immigration Services.

Alien

An individual who is not a U.S. citizen or U.S. national.

U.S. National

An individual who owes his sole allegiance to the United States, including all U.S. citizens, and including some individuals who are not U.S. citizens. For tax purposes the term "U.S. national" refers to individuals who were born in American Samoa or were born in the Commonwealth of the Northern Mariana Islands who have made the election to be treated as U.S. nationals and not as U.S. citizens.

U.S. Citizen

- An individual born in the United States.
- An individual whose parent is a U.S. citizen.*
- A former alien who has been naturalized as a U.S. citizen
- An individual born in Puerto Rico.
- An individual born in Guam.
- An individual born in the U.S. Virgin Islands.

***The Child Citizenship Act**, which applies to both adopted and biological children of U.S. citizens, amends Section 320 of the Immigration and Nationality Act (INA) to provide for the automatic acquisition of U.S. citizenship when certain conditions have been met. Specifically, these conditions are:

- One parent is a U.S. citizen by birth or through naturalization;
- The child is under the age of 18;

- The child is residing in the United States as a lawful permanent resident alien and is in the legal and physical custody of the U.S. citizen parent; and
- If the child is adopted, the adoption must be final.

Compacts of Free Association

The following countries are independent republics, which were once part of the Trust Territory of the Pacific administered by the United States on behalf of the United Nations;

- Federated States of Micronesia
- Republic of Marshall Islands
- Republic of Palau

Upon reaching independence, each of the above nations has signed a Compact of Free Association (CFA) with the United States. Under the terms of each CFA, the United States undertakes the responsibility for the external defense of each republic, and undertakes certain responsibilities involving financial aid and support for each republic. As stipulated by each CFA, citizens of the above-named republics may freely enter the United States without a visa, may remain in the United States for an indefinite period of time, and may be employed in the United States without restriction. A citizen of one of the above republics who enters the United States should be issued a U.S. Citizenship and Immigration Services (USCIS) Form I-94 Arrival Departure Record bearing one of the following stamps:

- CFA/FSM for the Federated States of Micronesia
- CFA/MIS for the Republic of Marshall Islands
- CFA/PAL for the Republic of Palau

Even without an I-94 as noted above, a citizen of one of the republics named above may still reside, travel, and work in the United States without restriction.

Immigrant

An alien who has been granted the right by the USCIS to reside permanently in the United States and to work without restrictions in the United States. **Also known as a Lawful Permanent Resident (LPR). All immigrants are eventually issued a "green card" (USCIS Form I-551), which is the evidence of the alien's LPR status.** LPR's who are awaiting

the issuance of their green cards may bear an I-551 stamp in their foreign passports.

Immigrant visas are available for aliens (and their spouses and children) who seek to immigrate based on their job skills. If an alien has the right combination of skills, education, and/or work experience and are otherwise eligible, the alien may be able to live permanently in the United States. Per USCIS, there are five employment-based immigrant visa preferences (categories): EB-1, EB-2, EB-3, EB-4 and EB-5. Refer to the USCIS Permanent Worker web site for more details.

Refugee status or asylum may be granted to people who have been persecuted or fear they will be persecuted on account of race, religion, nationality, and/or membership in a particular social group or political opinion.

Refugees

Refugee status is a form of protection that may be granted to people who meet the definition of refugee and who are of special humanitarian concern to the United States. Refugees are generally people outside of their country who are unable or unwilling to return home because they fear serious harm. One may seek a referral for refugee status only from outside of the United States. One may seek a referral for refugee status only from outside of the United States.

Under U.S. law, the term refugee is defined in 101(a)(42) of the Immigration and Nationality Act (INA).

INA Section 101(a)(42) The term "refugee" means:

(A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or

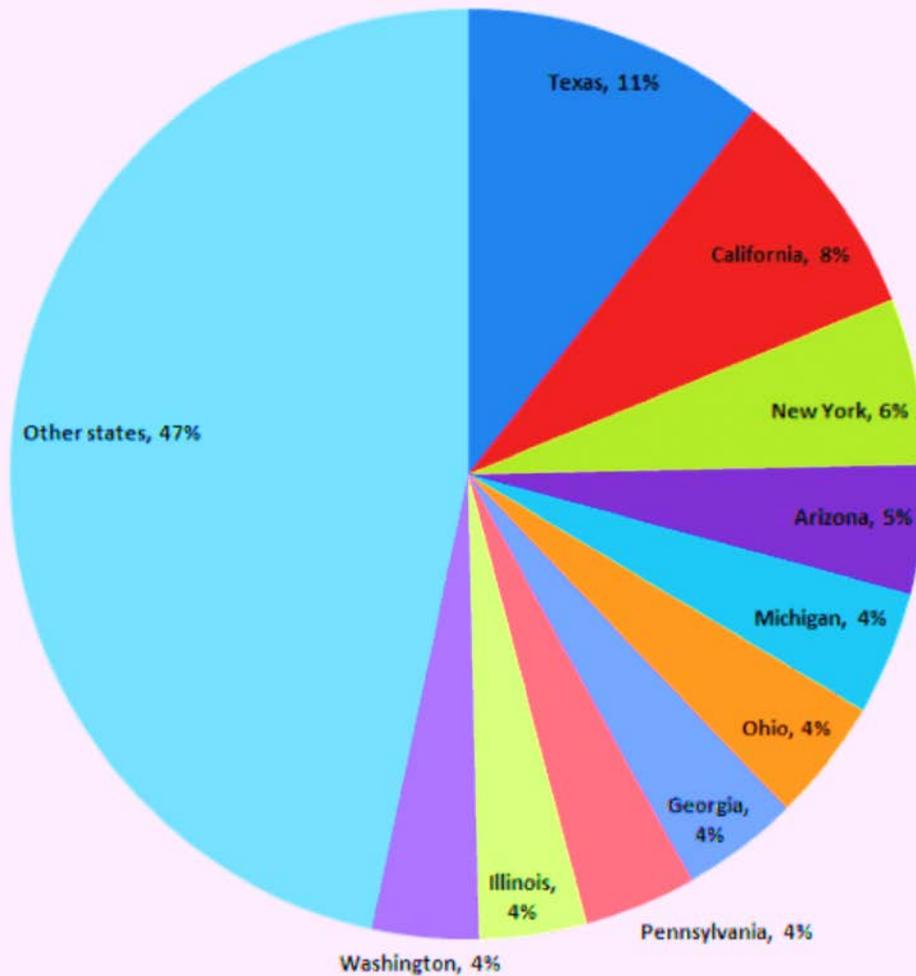
(B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion.

Table 1. Top Ten Origin Countries of Refugee Arrivals, FY 2013-15

2015			2014			2013		
Country	Number	Percent	Country	Number	Percent	Country	Number	Percent
Burma	18,386	26.3	Iraq	19,769	28.2	Iraq	19,488	27.9
Iraq	12,676	18.1	Burma	14,598	20.9	Burma	16,299	23.3
Somalia	8,858	12.7	Somalia	9,000	12.9	Bhutan	9,134	13.1
Dem. Rep. Congo	7,876	11.3	Bhutan	8,434	12.1	Somalia	7,808	10.9
Bhutan	5,775	8.3	Dem. Rep. Congo	4,540	6.5	Cuba	4,205	6.0
Iran	3,109	4.4	Cuba	4,062	5.8	Iran	2,578	3.7
Syria	1,682	2.4	Iran	2,846	4.1	Dem. Rep. Congo	2,563	3.7
Eritrea	1,596	2.3	Eritrea	1,488	2.1	Sudan	2,160	3.1
Sudan	1,578	2.3	Sudan	1,315	1.9	Eritrea	1,824	2.6
Cuba	1,527	2.2	Afghanistan	753	1.1	Ethiopia	765	1.1
All other countries, including unknown	6,870	9.8	All other countries, including unknown	3,182	4.5	All other countries, including unknown	3,302	4.7
Total	69,933	100.0	Total	69,987	100.0	Total	69,926	100.0

Source: MPI analysis of WRAPS data.

Figure 4. Refugee Arrivals by Initial State of Residence, 2015



Each year, thousands of persons outside their country of origin who fear or face persecution if they return apply for refugee status and come to live in the United States. **The number of refugees that may be admitted to the United States is limited by an annual ceiling. In fiscal year (FY) 2015, the United States resettled 69,933 refugees.**

In fiscal year (FY) 2015, Utah accepted 1,173 refugees into the state. Of those, 314 were from Somalia, 248 were from Burundi, 155 were

from Iraq, 151 were from the Democratic Republic of Congo, 70 were from Bhutan and the small number remaining were from other countries.

The Office of Immigration Statistics Annual Flow Report provides information on the number of persons who filed applications for refugee status, were approved for refugee status, or were admitted to the United States as refugees.

Asylum

Asylum status is a form of protection available to people who:

- Meet the definition of refugee
- Are already in the United States
- Are seeking admission at a port of entry
- You may apply for asylum in the United States regardless of your country of origin or your current immigration status.

Nonimmigrant

An alien who has been granted the right by the USCIS to reside temporarily in the United States. Each nonimmigrant is admitted into the United States in the nonimmigrant status, which corresponds to the class of visa with which, or purpose for which, he entered the United States (e.g., a foreign student may enter the United States on an F-1 visa, which corresponds to the F-1 student status in which he was admitted to the United States). Aliens in some nonimmigrant statuses are allowed to be employed in the United States, and others are not. Some nonimmigrant statuses have rigid time limits for the alien's stay in the United States, while others do not.

Each nonimmigrant status has rules and guidelines, which must be followed in order for the nonimmigrant to remain "in status." A nonimmigrant who violates one of these rules or guidelines will fall "out of status." An nonimmigrant who remains "out of status" for at least 180 days is deportable and will be unable to re-enter the United States for 3 years. A nonimmigrant who remains "out of status" for at least 365 days is deportable and will be unable to re-enter the United States for 10 years.

Illegal Alien

Also known as an "Undocumented Alien," is an alien who has entered the United States illegally and is deportable if apprehended, or an alien who

entered the United States legally but who has fallen "out of status" and is deportable.

Nonimmigrant Visas

A nonimmigrant visa allows a nonimmigrant to enter the United States in one of several different categories, which correspond to the purpose for which the nonimmigrant is being admitted to the United States. For example, a foreign student will usually enter the United States on an F-1 visa, a visitor for business on a B-1 visa, an exchange visitor (including students, teachers, researchers, trainees, alien physicians, au pairs, and others) on a J-1 visa, a diplomat on an A or G visa, etc. The categories of nonimmigrant visas correspond exactly to the "nonimmigrant status" assigned to each nonimmigrant upon his arrival, based on the purpose for which the nonimmigrant was admitted to the United States. For example, a foreign student who enters the United States on an F-1 visa is considered to be in F-1 student status after he enters the United States; and he will remain in that status until he violates the conditions prescribed for that status, or until he changes to another nonimmigrant or immigrant status with USCIS permission, or until he leaves the United States.

An undocumented or "illegal alien" is an alien who entered the United States illegally without the proper authorization and documents, or is an alien who once entered the United States legally and has since violated the terms of the status in which he entered the United States or has overstayed the time limits of his original status.

Approximately 95% of the foreign academic student in the United States have entered the country on F-1 (student) or J-1 (Exchange Visitor) visas. Foreign vocational students usually enter the United States on M-1 visas. Foreign students and faculty members might also enter the United States on Q (Cultural Exchange Visitor) visas; however, the number who do so is small. A large number of foreign teachers and researchers have entered the United States on J-1 (Exchange Visitor) visas; but a great many of the foreign faculty members have also entered the United States on H-1b visas (Specialty Occupation), O-1 visas (Alien with Extraordinary Ability), and TN visas (NAFTA Professional from Canada or Mexico).

Most students in F-1 or J-1 status have no specific time limits imposed on their stay in the United States (evidenced by the notation D/S (Duration of Status) on their immigration Form I-94), while aliens in most other

nonimmigrant statuses have various time limits imposed on their stay in the United States. Aliens in some nonimmigrant statuses are allowed to be employed in the United States, while nonimmigrants in other statuses are not. Nonimmigrants who are allowed to be employed in the United States can usually get a United States social security number.

Foreign Students in F-1 or J-1 status are usually allowed to be employed for no more than 20 hours per week during the academic year, but are allowed to work 40 hours per week during the summer and other vacations. Certain students may be allowed to work off campus with permission from USCIS or from the Designated School Official (usually the foreign student advisor). Certain students in hardship situations are issued Employment Authorization Documents (EAD) and are allowed to work off campus with no hour limitations. F-1 students are allowed to be employed for a maximum of 12 months in "practical training" jobs both on and off campus. These are jobs which are related to the student's subject area of study. See Taxation of Aliens by VISA Type and Immigration Status for a summary of visa types. Details on the types of nonimmigrant visas may be found on the U.S. Citizenship and Immigration Services web site.

Visa Waiver Program (VWP)

The Visa Waiver Program (VWP) enables citizens of participating countries to travel to the United States for tourism or business for 90 days or less without obtaining a United States visa. The VWP is administered by the Attorney General in consultation with the Secretary of State. The Visa Waiver Program (VWP) was created by an act of Congress as a pilot program in 1986 and implemented in 1988. Congress passed legislation to make the program permanent in October 2000, and the President signed the legislation on October 30, 2000.

Rights and Responsibilities of Refugees in the U.S.

Updated By Kristina Gasson (as published on the All Law website)

If you came to the United States as a refugee, you will be given certain additional protections after you arrive -- and also accept certain responsibilities. Here's a review of what to expect and do.

Resettlement Assistance

The U.S. Office of Refugee Resettlement (ORR), in partnership with various nonprofit agencies and volunteers, will provide you with certain benefits from the day you arrive in the United States. These may include help with things like finding and furnishing an apartment, getting acquainted with the bus and public transport system in your area, enrolling your children in school, finding a doctor, learning English, and hunting for a job. You may also be eligible for Refugee Cash Assistance (RCA) or Refugee Medical Assistance (RMA), administered through your state government. However, you can claim this only during your first eight months in the United States. And not everyone receives cash benefits. It's meant as a backup in case you are unable to find work. You are expected to become self-sufficient within a year of your arrival in the United States.

Right to Stay and Work in the U.S.

As a refugee, you are allowed to remain indefinitely in the United States – at least, until conditions in your home country improve and you are no longer afraid to return. Your Form I94 Arrival/Departure Record will provide proof of your status. You can use it to obtain a **U.S. Social Security card**, which you must show to employers when you start working. To apply for a Social Security card, go to www.ssa.gov, call its toll-free number at 1-800-772-1213, or visit a local Social Security office. You can also apply for a work permit (better known as an Employment Authorization Document or EAD). It's a handy form of photo ID. The work permit will need to be renewed on an annual basis. To apply, see How to Apply for a Work Permit. No fee is required with your first I-765.

Right to Reunite With Overseas Family Members

You may have already gained refugee status for your close family members (spouse and unmarried children under 21 years of age). However, if some of them remained overseas up until now, or did not receive refugee status with you - even though they're now in the U.S. - you can petition for them to join you, or to receive what is called "derivative refugee status."

Note that the persons must have qualified as your spouse or child on the date you entered the U.S. as a refugee, and the relationship must continue to exist. In other words, you cannot marry or adopt someone now and claim them as your derivative. Nor can you bring in a spouse from whom you have divorced.

To request derivative refugee status for your family, submit USCIS Form I-730, Refugee and Asylee Relative Petition, to the USCIS Nebraska Service Center. The form is available for free download on the I-730:

Refugee/Asylee Relative Petition page of the USCIS website.

There is a deadline: You must file the form I-730 for each qualifying family member within two years of the date you entered the U.S. as a refugee. If you have missed that date, talk to an attorney. It is possible for USCIS to make an exception and extend this time period for humanitarian reasons. Traveling In to and Out of the U.S.

Refugees are allowed to travel outside the United States. However, even if you already have your own passport, you will need to get a Refugee Travel Document for use when reentering the United States. You can apply for this by filing USCIS Form I-131. It's available for free download on the I-131 Application for Travel Document page of the USCIS website. If you don't have your own passport, this document will be accepted by other countries as a passport equivalent.

One important caution: **Do not travel back to the country from which you gained refugee status. If you do, then you may be found to have given up your refugee status,** because you no longer fear persecution there.

Right to Apply for a Green Card One Year After U.S. Entry

A refugee will need to wait one full calendar year in order to begin the process of applying for U.S. lawful permanent residence (a green card). You'll apply using a procedure known as "adjustment of status."

Note that refugees pay no fee to the Form I-485 required to adjust status. In addition, refugees do not have to pay biometrics (fingerprinting) fees. Responsibility to Pay U.S. Taxes

As residents of the United States, refugees must pay income and other taxes. Tax returns, and (if you earned enough) payment of taxes to the federal and state government are due every April 15. Nonprofit agencies may be able to help you with your tax return at low cost or for free.

Responsibility to Obey U.S. Laws

As a refugee, you must be aware of your responsibilities under U.S. law. An important one is that you notify USCIS of any change in your address. You must do so within ten days of moving using Form AR-11, Alien's Change of Address Card. You can file this online at the USCIS website at www.uscis.gov.

If you are a male refugee between the ages of 18 and 26, you must register for the U.S. Selective Service – that is, the list of people who may be called upon in a military draft. Sign on to the Selective Service website at www.sss.gov or pick up a Selective Service "mail-back" registration form at your nearest U.S. post office.

Of course, you must also comply with other U.S. laws, for example by not committing any crimes. Failure to comply with these responsibilities could result in loss of your status and right to remain in the United States.

STUDY GUIDE: The Rights of Refugees

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Refugee Rights Under International Law

The definition of a refugee has varied according to time and place, but increased international concern for the plight of refugees has led to a general consensus. As defined in the **1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention)**, a refugee is defined as a person who

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution...

Articles 12 - 30 of the Refugee Convention set out the rights which individuals are entitled to once they have been recognized. as Convention refugees:

- All refugees must be granted identity papers and travel documents that allow them to travel outside the country
- Refugees must receive the same treatment as nationals of the receiving country with regard to the following rights:
- Free exercise of religion and religious education
- Free access to the courts, including legal assistance
- Access to elementary education
- Access to public relief and assistance
- Protection provided by social security
- Protection of intellectual property, such as inventions and trade names
- Protection of literary, artistic and scientific work
- Equal treatment by taxing authorities

Refugees must receive the most favorable treatment provided to nationals of a foreign country with regard to the following rights:

- The right to belong to trade unions
- The right to belong to other non-political nonprofit organizations
- The right to engage in wage-earning employment

Refugees must receive the most favorable treatment possible, which must be at least as favorable to that accorded aliens generally in the same circumstances, with regard to the following rights:

- The right to own property
- The right to practice a profession
- The right to self-employment
- Access to housing
- Access to higher education

Refugees must receive the same treatment as that accorded to aliens generally with regard to the following rights:

- The right to choose their place of residence
- The right to move freely within the country
- Free exercise of religion and religious education

- Free access to the courts, including legal assistance
- Access to elementary education
- Access to public relief and assistance
- Protection provided by social security
- Protection of intellectual property,
• such as inventions and trade names
- Protection of literary, artistic and scientific work
- Equal treatment by taxing authorities

Three Types of Constitutional Rights

The Constitutional rights are of three different types:

Constitutional rights that are only secured for citizens. The most notable of these are the rights to vote and be elected for office.

Constitutional rights that are secured for citizens and permanent residents. The common interpretation of the Constitution is that where it says "the people," it usually refers to citizens and permanent residents. An example of such right is the second amendment - "the right of the people to keep and bear Arms, shall not be infringed" (since it says "the people," it refers to citizens and permanent residents, not any other aliens).

Rights that everyone has. For example, no one should be deprived of life, liberty or property without due process of the law, regardless of their immigration status.

Constitutional Law

By Raoul Lowery Contreras.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The U.S. Supreme Court settled the issue well over a century ago. But even before the court laid the issue to rest, a principal author of the Constitution, **James Madison, the second president of the United States, wrote: "that as they [aliens], owe, on the one hand, a temporary obedience, they are entitled, in return, to their [constitutional] protection and advantage."**

The U.S. Supreme Court ruled in *Zadvydas v. Davis* (2001) that "due process" of the 14th Amendment applies to all aliens in the United States whose presence maybe or is "unlawful, involuntary or transitory."

Twenty years before *Zadvydas*, the Supreme Court ruled that the state of Texas could not enforce a state law that prohibited illegally present children from attending grade schools, as all other Texas children were required to attend.

The court ruled in *Plyler* that:

The illegal aliens who are ... challenging the state may claim the benefit of the Equal Protection clause which provides that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.' Whatever his status under immigration laws, an alien is a 'person' in any ordinary sense of the term ... the undocumented status of these children does not establish a sufficient rational basis for denying benefits that the state affords other residents.

A decade before *Plyler*, the court ruled in *Almeida-Sanchez v. United States* (1973) that all criminal charge-related elements of the Constitution's amendments (the First, Fourth, Fifth, Sixth and the 14th) such as search and seizure, self-incrimination, trial by jury and due process, protect non-citizens, legally or illegally present.

Three key Supreme Court decisions in 1886, 1896 and 1903 laid the 14th Amendment basis for the consistent ruling of the court that aliens, legal and illegal, have constitutional protection in criminal and certain civil affairs in the justice system.

In *Yick Wo v. Hopkins* (1886), the court ruled that:

Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons of similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution [the 14th Amendment].

In *Wong Win v. United States* (1896), the court ruled that:

It must be concluded that all persons within the territory of the United States are entitled to the protection by those amendments [Fifth and Sixth] and that even aliens shall not be held to answer for a capital or other infamous crime, unless on presentment or indictment of a grand jury, nor deprived of life, liberty or property without due process of law.

In summary, the entire case of illegal aliens being covered by and protected by the Constitution has been settled law for 129 years and rests on one word: "person." It is the word "person" that connects the dots of "due process" and "equal protection" in the 14th Amendment to the U.S Constitution and it is those five words that make the Constitution of the United States and its 14th amendment the most important political document since the Magna Carta in all world history.

"Aliens," legal and illegal, have the full panoply of constitutional protections American citizens have with three exceptions: voting, some government jobs and gun ownership.

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