



IMMIGRATION LAW 101

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Source: *GPSolo*, SEPTEMBER/OCTOBER 2013, Vol. 30, No. 5, IMMIGRATION (SEPTEMBER/OCTOBER 2013), pp. 12-15

Published by: American Bar Association

Stable URL: <https://www.jstor.org/stable/23630738>

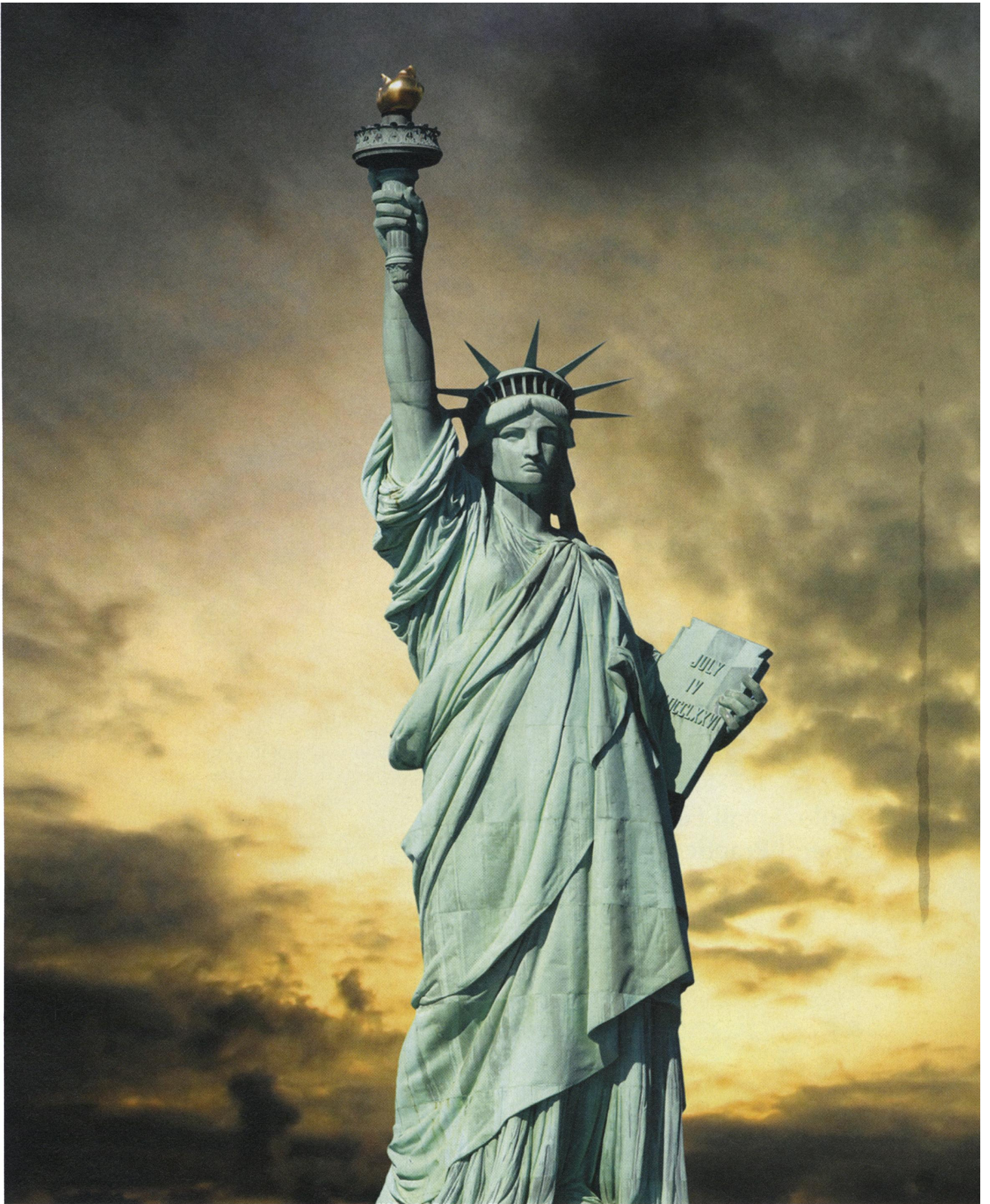
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IMMIGRATION LAW 101

By Joshua Daley Paulin

Writing this article reminds me of the line from Thomas Bergin's and Paul Haskell's *Preface to Estates in Land and Future Interests*: "Concise' histories have a way of becoming 700-page books." So I'll attempt to restrain myself. Every lawyer believes that his area of law is the most arcane, or the most interesting, or some other superlative (hopefully!), and I suppose I'm no different. Immigration law is widely regarded as second only to tax law in its statutory complexity.

U.S. immigration law is a fascinating field that encompasses many different statuses for people from foreign lands and offers the immigration lawyer varied ways of interacting with agencies and processes as

foreign citizens navigate their way through the system. The immigration lawyer can expect to deal with U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP), which are all part of the U.S. Department of Homeland Security and parts of which formed the old Immigration and Naturalization Service. Some cases involve the U.S. Department of State. For those with interests in litigation, there is the Executive Office for Immigration Review (EOIR), which includes the Immigration Courts and Board of Immigration Appeals (BIA) on the administrative side; other matters may take the immigration lawyer through the U.S. District and Appellate Courts.

Masterfile

NATURALIZATION

For many, obtaining U.S. citizenship is the crowning achievement after years of dealing with the immigration system; for those who will go on to petition relatives by means of their newly acquired citizenship, it's just another step along the way. Before becoming a U.S. citizen, the applicant typically passes through a period of permanent residence, which can vary in length depending on such factors as the applicant's military service or marriage to a U.S. citizen.

The candidate must apply for citizenship, have accumulated sufficient time in permanent resident status, show good moral character, and (with some exceptions based on such factors as age, length of residence, and disability) demonstrate knowledge of civics and the English language. Upon application, the candidate is examined by an immigration officer and, if qualified, is sworn in as a U.S. citizen.

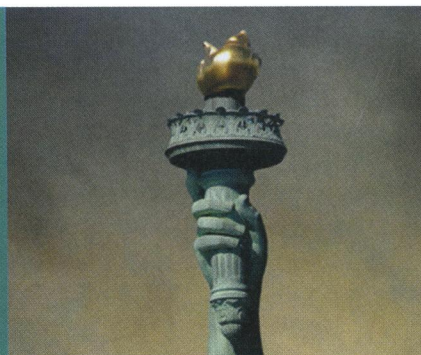
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acquired through USCIS in the United States, in which case it is referred to as "adjustment of status," or at a Department of State outpost abroad, in which case it is referred to as "consular processing."

Although this status is indefinite, the permanent resident can lose status if he or she is deemed to have abandoned it owing to too long of an absence from the United States without the necessary permission. Alternatively, certain criminal acts can be grounds for removal proceedings in the EOIR.

NON-IMMIGRANT VISAS

There are several options for temporary stays in the United States, with purposes including visits for pleasure, work, study, and more. These visas are sometimes informally referred to as "letter visas" or even "alphabet soup" owing to their designation (e.g., B-1, B-2, F-1). Some, such as the B-1/B-2



IMMIGRANT VISAS

The immigrant visa is better known as the green card, or lawful permanent residence. This immigration status allows foreign nationals to live and work in the United States indefinitely. There are many paths to the green card; some obtain their residence through work, others by virtue of petitions filed by their permanent resident or citizen relatives (it's worth noting that a citizen can apply for more relatives than a permanent resident can, and often there's a shorter wait for the relatives of a citizen), still others after spending time in refugee or asylum-recipient status.

Permanent residency can be

business/tourism visa, can be obtained directly at a U.S. consular post, while others, such as the H-1B and L-1A, require that the petition must first be filed with USCIS; upon approval the foreign national can apply for the visa with the consular post if outside the United States. If the applicant is in the United States and in a status that allows for the change, that would be an option.

The non-immigrant visa category is a broad one, including professional workers, artists, athletes, journalists, crews of passenger vessels and commercial airlines, students, investors, business executives, interns, and cultural exchange visitors, among many others.

VICTIMS OF PERSECUTION

People who face persecution for their race, religion, nationality, membership in a particular social group, or political opinion may seek refugee status if outside the United States or, if already in the United States, may apply for asylum. In the United States, this involves a hearing before an asylum officer or in the Immigration Court. Those applying for asylum must make their application within one year of entry or show changed country conditions to qualify. Those who apply outside the deadline can qualify for lesser forms of relief, such as the various forms of withholding of removal (this option is only available before the EOIR).

Additionally, our immigration system offers protection for victims of domestic and gender-based violence under the Violence Against Women Act, and there are visas available for victims of certain serious crimes in the United States who cooperate with law enforcement authorities.

EOIR

The Immigration Court category can be a catchall, as immigrants from anywhere on the immigration continuum could conceivably have a case before the Immigration Court. One who crossed the border illegally a short time ago might be in a master calendar hearing alongside a failed applicant for naturalization who had a criminal matter. Immigrants detained by ICE can seek bond from the Immigration Court in many circumstances.

Again, the Immigration Court is an administrative one with all that entails, but a respondent in an Immigration Court proceeding might have relief from removal (what used to be called deportation or exclusion) unavailable anywhere else. For example, people with no status at all can obtain cancellation of removal before an immigration judge, which would result in permanent resident status. On the other hand, people in removal proceedings can, if qualified, adjust status, obtain waivers of grounds of inadmissibility, or win asylum as they would in non-court proceedings.

It is important to note that the right to counsel in Immigration Court proceedings is a statutory right, not a constitutional one; an immigrant may be represented by counsel at no expense to the U.S. government.

If a case is denied before the Immigration Court, written appeals may be filed to the BIA; occasionally, cases will be selected for argument before the board in Falls Church, Virginia.

FEDERAL COURT PRACTICE

Immigration practitioners will sometimes appeal BIA denials (of both Immigration Court and USCIS decisions) to the appropriate U.S. Court of Appeals; also, mandamus relief is available in the District Courts for some stalled applications before USCIS. The District Courts are a remedy for stalled applications for naturalization, and attorneys can seek fees under the Equal Access to Justice Act.

TEMPORARY STATUS

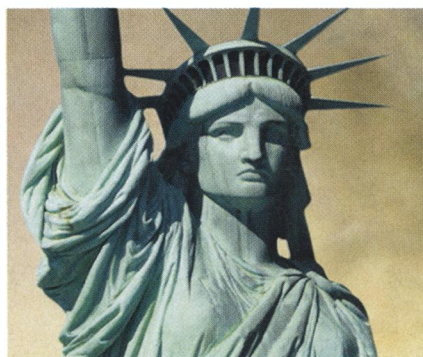
From time to time, people who can't return to their home countries owing to natural disasters or civil disorder can be granted Temporary Protected Status (TPS) in the United States; the 2010 Haitian earthquake and the unrest in Syria since 2011 are good examples. TPS can be extended but does not in itself grant a path to permanent status in the United States. In some cases, the extension can be quite lengthy. Certain nationals of El Salvador were granted TPS in 2001, and their TPS has been extended most recently until 2015.

Another example of temporary status is the Deferred Action for Childhood Arrivals (DACA) of 2012, which gave temporary work authorization for immigrants who had entered the United States as children and met the requirements of the program.

DISCRETIONARY RELIEF

In some situations, there might not be any formal category of relief available; however, in unusual circumstances a government agency might close proceedings or exercise prosecutorial discretion based on length of stay in the United States, hardship to U.S. citizens,

the circumstances of the immigrant's arrival, ties to the community, criminal history, or medical issues, among other considerations. In truly meritorious cases, congressional assistance can make the difference between relief and removal.



allowed to present a case before the Immigration Court if detained.

IMMIGRATION SCAMS

Many immigrants have been victimized by people who hold themselves out as immigration experts but who

**Admission to a crime
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a formal conviction.**

CRIMINAL ISSUES

Criminal issues can seriously affect an immigration case. Outcomes that would be excellent for a U.S. citizen could result in removal for a foreign national; if a non-citizen has a criminal issue, it's important to look both at the immigration and criminal consequences of any given outcome. Admission to the facts of a crime during an immigration interview can be grounds for removal, even in the absence of a formal conviction.

IMMIGRANT INTENT

For visitors entering with most non-immigrant visas, it may be necessary to demonstrate the intent and ability to depart the United States in a timely fashion. This sometimes comes up in the context of a foreign national who is engaged to or married to a U.S. citizen or permanent resident and enters the United States on a visa where immigrant intent is not allowed; in such a case, the CBP officer can refuse entry.

VISA WAIVERS

Citizens of 37 countries (as of 2013) who plan to visit the United States for pleasure for a period of no more than 90 days need not obtain a visa. The trade-off is that extensions of stay are available only in the most extreme circumstances, and such foreign national may not be

are not attorneys; some of these scammers call themselves *notarios*. The ABA Commission on Immigration (americanbar.org/groups/public_services/immigration.html) has initiated the Fight Notario Fraud project (tinyurl.com/7pdmrcg); as lawyers, we must educate our clients as to who is competent to guide people through this complicated process.

FURTHER RESOURCES

Immigration law is constantly in flux, so it's important to stay current on developments in the law. The leadership of the ABA Solo, Small Firm and General Practice Division is committed to making the Division home to immigration lawyers, among others, so be sure to take advantage of the resources offered by the Division (americanbar.org/gpsolo) and its Immigration Law Committee (tinyurl.com/bh642zh). ■

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