

Immigration cases we will take

The following are the types of immigration cases we will accept:

- Family based immigration petitions– I-130 (*beneficiary* must be HIV+)
- Family based adjustment of status with prior documentation or FOIA file (*beneficiary* must be HIV+)
- Immediate Relative one-stop applications (*beneficiary* must be HIV+)
- Asylum and refugee adjustment of status –preferably with FOIA file or past documentation
- HIV waiver RFE requests – client or prior attorney must provide full documentation of prior case
- LIFE adjustment of status – **ONLY** with FOIA file
- Asylum cases based on HIV status
- VAWA self- petition and adjustment of status where self-petitioner is HIV+
- Some defense of deportation cases – cancellation of removal – NO criminal
- Medical waiver for naturalization where medical problem is HIV-related

IMMIGRATION CASE SCREENING FORM

1. What does client want (ie greencard, workpermit, HIV waiver etc.)

2. What country are you from? _____

3. When did you first come to the U.S.? _____

4. How did you enter?(type of visa) _____ (if ewi check 245i)

5. Have you left the U.S. since then Yes NO

6. Dates and manner of all entries _____

7. Are now you married Yes No Immigration status of spouse _____

8. How many times have you been married _____

9. Have you ever been divorced Yes NO

Date and Place of divorce(s) _____

10. List names and ages of relatives living in the U.S. and their immigration status

11. Do you have minor children living outside the U.S. Yes No

12. Have you filed any applications with Immigration in the past? Yes No

When _____

What kind of application? _____

What was the outcome of the application? _____

Name of any lawyer or advocate who helped _____

13. Since you have been living in the U.S. have you had any contact with the Police? Describe _____

Arrest(s) Date and Place _____

14. Have you ever been before an immigration judge? Yes No

Date and location of Court _____

15. Have you ever been stopped by Immigration Authorities? Yes No

Describe circumstances including date and place. _____

Immigration basic document checklists

This is a list of documents you should get from all clients with open immigration cases regardless of whether we end up doing anything or not. These will help us determine eligibility issues right off the bat without having to waste the client's time. If you cannot obtain an item listed please consult with a supervising attorney.

- a. Birth Certificates for all parties
- b. Passport or travel document for all parties
- c. LPR card or work permit
- d. Certificate of naturalization
- e. Driver's license
- f. FOIA file if possible
- g. FBI fingerprints
- h. Any prior petitions or immigration papers they may have including receipts
- i. I-94 cards or border crossing card
- j. Marriage Certificates
- k. Divorce certificates or death certificates
- l. Court dispositions for all arrests
- m. Taxes
- n. Health insurance information if available

How Do I become a LPR

Routes to become a legal permanent resident:

- Family-Based Petition
 1. Adjustment of status, family member is in the U.S.
 2. Consular Processing, family member is abroad
- Employment Petition- we don't do; refer to private attorney
- Asylum/Refugee Adjustment
- Miscellaneous- Life, Amnesty, Registry, VAWA, etc.

General Process

1. Family Petition, I-130 filed
2. I-130 approved = priority date received
3. LPR application submitted
4. 2 years – interview scheduled
5. HIV waiver brought to interview and decision made
6. 5 years wait apply citizenship

A. FAMILY PETITION (I-130)

Immediate Relatives (submit I-130 and I-485 together)

- Spouses of USC
- Unmarried minor children of USC
- Parents of USC over age 21

Preference System (submit I-130 to get priority date)

- Adult children of USC- married 3rd; unmarried 1st
- Siblings of UCS over age 21- 4th
- Spouses and minor children of LPR- 2A
- Unmarried adult sons and daughters of LPR- 2B

Filing the I-130 confers no immigration benefit- it merely gets the person a place on the waiting list. When the Visa Bulletin issued by the State Department lists the person's priority date, submit the I-485.

B. LEGAL PERMANENT RESIDENCE (I-485)

Potential problems for I-485 applications:

- **Entered EWI-** Not eligible *unless* they are an asylee or their I-130 was filed before April 30, 2001. If they did file I-130 before 4/30/01, they must submit I-485 and pay \$1,000 penalty. If they filed between 1/14/98 and 4/30/01, must also submit proof of physical presence on 12/21/00.

- **Unlawful presence and exit-** 3 year bar if unlawfully present for 180 days after 4/1/97 and then depart US; 10 year bar if unlawfully present for 1 year after 4/1/97 and then depart US. Family waiver is available for spouses and children of USC's and LPRS.
- **Unlawful presence and illegal re-entry or attempted illegal re-entry-** permanent bar. Waiver available after 10 years.
- **Previous deportation-** if at border, 5 year bar. Other removal, 10 year bar. Second removal, 20 year bar. Waiver is available.
- **Failed to attend deportation hearing-** barred 5 years.
- **Committed serious crime-** find out exact disposition, length of sentence and incarceration, etc.
- **Not a "public charge"-** Family income 125% of fed pov line; no federal means-tested public benefits.
- **HIV+** need to submit HIV waiver (see below)

Applicants will receive EAD within 90 days of submitting application.

Interview will be scheduled in 1 ½ to 2 years; at interview present HIV waiver.

Officer takes 6 months to 2 years to decide HIV waiver.

Applicants cannot travel outside the US without an advance parole (and applicants with enough unlawful presence to trigger a bar cannot leave US until they receive their greencard).

C. REFUGEE/ASYLEE ADJUSTMENT OF STATUS

- Refugees can adjust their status after one year of physical presence in the US
- Asylees can adjust their status after they have spent one year in the U.S. in asylee status.
- Family members (spouse and children) of refugees and asylees can adjust status with them even if they are not asylees or refugees themselves.
- If HIV+ need an I-602 waiver (see below)

D. VAWA (I-360)

- For child or spouse that is battered by a USC/LPR parent or spouse. LifeSpan does VAWA cases (also divorces, OPs, etc) 312/408-1210.
- Spouse must show:
 1. Legally married to USC/LPR
 2. Entered marriage in good faith not just for immigration benefits
 3. Battered or subjected to extreme cruelty during the marriage
 4. Good moral character

- After VAWA applicant is approved, applicant may submit I-485. Eligible for many public benefits. HIV waiver standard is relaxed- no family relationship required

What do I need for an HIV waiver?

HIV WAIVER

- For Family Petitions (I-601):
 1. Need a LPR or USC spouse, parent or child. Provide proof of relationship.
 2. Pose a minimal danger to the public health. Affidavit from applicant
 3. Minimal possibility of the spread of HIV
 4. Private medical insurance, financial resources to cover the cost of medical care, and/or incur no cost to a government agency without that agency's prior consent.
- For Refugees/Asylees (I-602): Do not have to meet the public charge element, and they don't need to have a LPR/USC family member. Just need to show that waiver is in the public interest, humanitarian reason, or for family unity.

CITIZENSHIP (N-400)

We do not do citizenship cases; refer the individual to a local community organization (see ICIRR Illinois Citizenship Services Directory).

Requirements for naturalization:

1. Lawful Permanent Resident (greencard)
2. for **five years** (three years if they are married to a US. citizen)
3. no serious crimes
4. paid their taxes and
5. pass English and civics exam
6. No medical exam is required; HIV is not an issue.

What kinds of Public Benefits do Undocumented Immigrants Qualify for?

1. PUBLIC BENEFITS

- SSDI, some undocumented immigrants are theoretically eligible to receive benefits--must be assessed on a case by case basis
- SSI not eligible
- Can apply for USC children, for Food Stamps, TANF,

2. HEALTHCARE

- Emergency medical care (emergency room cannot turn you away, but they can bill you, charity waivers are available at some hospitals)
- KIDCARE, prenatal, Labor & Delivery
- WIC, nutrition for babies, counseling ect.
- ADAP, AIDS Drug Assistance Program, help pay for medications

3. HOUSING

- HOPWA, emergency assistance for housing
- Shelters
- Assistance with paying gas bills LIHEAP, need SS#

4. EDUCATION

- Public schools
- School lunch program
- Headstart

ADDITIONAL RESOURCES

Websites

www.uscis.gov --- Federal Statutes and Regulations, also cases status, forms, instructions, Infopass appointments, good general info website.

www.aila.org – American Immigration Lawyer’s Association website, contains updates on processing times, new Memoranda from CIS –some content requires log-in -- see Ruth if needed

<http://bibdaily.com/> --Bender’s Immigration News Daily -- to check out what is going on at the BIA and Circuit Courts

<http://www.nationalimmigrationproject.org/> -- National Immigration Law Project has great resources on waivers

<http://www.nilc.org/immspbs/index.htm> -- This site has a handy chart on which benefits programs immigrants are eligible for.

<http://www.iglhrc.org/site/iglhrc/> -- has news and resources related to LGBT immigrants

<http://illinoislegaladvocate.org/> -- has training videos on VAWA, asylum and a plethora of other topics that may be of interest – to view them you need a log-in – ask anyone in the office

Books

Kurzban’s Immigration Law Sourcebook – In the ALCC conference room library , more current edition is on-line at AILA Link (see below).

Federal Immigration Laws and Regulations – West Text is in Conference room library
CLINIC’s Family Law Immigration Handbook- Conference room

Software

3 computers are equipped with AILA Link – Ruth’s, Beth’s and Kate’s. This software allows you to save forms for clients, and contains all of AILA’s publications and recent BIA decisions, DHS memoranda for research – if you need to use it, just ask one of us nicely.

Check them out!! ☺