

Immigration & Immigrant Workers

THE BASICS

April 2009

I. IMMIGRANTS IN THE U.S. WORKFORCE

As of November 2008, it is estimated there are about 37.7 million immigrants in the U.S.¹ Immigrants constitute nearly 16 percent of the nation's non-farm labor force,² and they are overrepresented in industries that pay low wages and are often replete with unsafe working conditions such as residential construction, food preparation, hospitality and other service jobs, and manufacturing, as well as agricultural work.³ There are many categories of immigrants and immigration status itself is very fluid in that people's immigration status may change a number of times over their lifetime. It is estimated that 34 percent of foreign-born individuals living in the United States are naturalized citizens, 32 percent are lawful permanent residents, and 30 percent are undocumented immigrants. Another 3 percent of foreign-born persons are temporary legal residents.⁴ The majority of immigrants are from Latin America and Asia: 32 percent are from Mexico, 26 percent are from Asia, 24 percent are from other Latin American countries, 14 percent are from Europe and Canada, and 5 percent are from Africa or other countries.⁵ There are approximately 7.8 million undocumented workers in the U.S. labor force⁶, representing approximately five percent of U.S. workers and 1 out of every 5 low wage workers.⁷

These statistics and other recent studies clearly establish the fact that foreign-born workers comprise of a significant portion of the U.S. workforce, and likely will continue to do so at a growing rate. It is therefore imperative that employment and labor attorneys, unions, and advocates strive for at least a basic understanding of the particular issues that affect immigrant workers. This knowledge will not only impact your work with immigrant laborers. Because immigrants work alongside U.S. citizen workers, even fundamental knowledge of immigrant workers' rights will also serve to strengthen the labor and employment rights of the U.S. labor force as a whole.

This document outlines the basic immigration concepts, categories, and laws relating specifically to immigrant workers. Immediately following this document is a more in-depth Glossary of immigration terms that offer definitions for immigration statuses and immigration-related terms, including definitions for various terms used below.

II. CATEGORIES OF IMMIGRANTS

A. Undocumented Workers

Undocumented immigrants do not have employment authorization—i.e. permission to work in the U.S. from the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services bureau (USCIS).⁸ This population of workers is particularly vulnerable to workplace abuse, discrimination, and exploitation, and as such, has a uniquely difficult time asserting their



LOS ANGELES (Headquarters)
3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC
1444 Eye Street, NW
Suite 1110
Washington, DC 20005
202 216-0261
202 216-0266 fax

employment and labor rights. All workers, regardless of immigration status, enjoy certain protections under federal and state labor and employment laws. While all workers, including undocumented workers, have rights under state and federal wage and hour laws, many federal employment discrimination laws, health and safety laws and the right to form and join a union, specific issues pertaining to immigrant workers arise with respect to the remedies available to those workers.⁹ A U.S. Supreme Court decision from March of 2002, *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137 (2002), held that undocumented workers who were wrongfully terminated for union organizing activities do not have the same remedies as other workers, insofar as they cannot recover back pay for retaliation that violates their labor rights under the National Labor Relations Act (NLRA). In addition, not all anti-discrimination laws protect undocumented workers. Nonetheless, workers regardless of their immigration status continue to be protected under most U.S. employment and labor laws.¹⁰ However, the anti-discrimination protections under section 274B of the Immigration and Nationality Act do not protect undocumented workers.

B. Immigrants with Employment Authorization

This section reviews the most common categories of immigrants you may encounter in your work. It does not include naturalized U.S. citizens since they are treated identically to a U.S.-born citizen for purposes of establishing their authorization to work in the U.S. There are numerous avenues through which an immigrant worker could be granted work authorization. Some of the immigration status categories confer permanent permission to work in the U.S., while others give only temporary (albeit in some cases, renewable) work authorization.¹¹

1. Categories Authorizing Permanent Immigration Status:

- **Lawful Permanent Residents (LPR):** Also known as “green card holders,” these individuals have the right to work and live permanently in the United States, as well as to travel outside the U.S. There are various ways an individual can become a LPR, e.g., through a family visa petition filed by a spouse or family member who is an LPR or U.S. Citizen. The Permanent Resident Card (Form I-551) (commonly referred to as a “green card”) is proof of an individual’s permanent residency status. An LPR can also show proof of status by a foreign passport with a Permanent Resident Stamp, I-551.

However, while the Permanent Resident Card or Stamp has an expiration date (e.g. DHS issues green cards for 10-year periods), the status of LPR itself does not expire. LPR’s are eligible to become U.S. citizens (i.e. to “naturalize”) either 3 or 5 years after obtaining LPR status (depending on the manner in which they obtained LPR status). An LPR may lose his or her status and become subject to removal or deportation by the DHS if s/he is convicted of certain crimes, as defined by federal immigration law.

- **Asylees and Refugees.** Individuals who have been granted political asylum (by the DHS or an Immigration Judge) or refugee status (by the DHS), and who have not yet become Lawful Permanent Residents. Asylees and refugees have the right to work, to travel outside the U.S., and to receive certain public benefits.

Importantly, the new DHS U.S. Citizenship and Immigration Services announced that it concurs with a June 2002 opinion that asylees and refugees are authorized to work whether or

not they have work authorization documents. For a copy of this decision, go to <http://uscis.gov/graphics/lawsregs/handbook/AsylumOGC061702.pdf>.

2. Most Common Categories Authorizing Temporary Immigration Status:

- Temporary Protected Status (TPS). The Temporary Protected Status, created by the Immigration Act of 1990, is a category for persons who are from certain countries undergoing civil war, natural disasters, or other dangerous conditions. The Secretary of the DHS has the authority to designate a country (or part thereof) for TPS, and to extend and terminate TPS designations. During the period for which a country has been designated under the TPS program, TPS beneficiaries may remain in the U.S. and may obtain work authorization. However, TPS does not lead to Lawful Permanent Resident status. When the TPS designation of a country is terminated, beneficiaries revert to the same immigration status they maintained before TPS (unless that status had since expired or been terminated) or to any other status they may have acquired while registered for TPS. Designations, extensions, and terminations of TPS are published in the Federal Register.¹² In addition, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) posts TPS updates on its website at http://www.usdoj.gov/crt/osc/htm/work_extension.html.
- “K” Visa holder. A temporary status available to either the fiancé(e) of a US citizen after the approval of a fiancée petition, or to the dependents of the fiancé(e).
- “V” Visa holder. A temporary status available to the spouses and minor children of Lawful Permanent Residents who have been waiting to immigrate through petitions filed by their LPR relative for at least 3 years. The family visa petitions must have been filed on or before December 21, 2000.
- “T” Visa holder. These visas are available to victims of human trafficking, as defined by the Victims of Trafficking and Violence Protection Act of 2000. T visa status is a form of non-immigrant status, and authorizes presence in the U.S. for 3 years. During these 3 years, a T visa holder is eligible to receive work authorization. The DHS issues work authorization for one-year periods, and the T visa holder must apply each year for a renewal. After 3 years, a T Visa holder may be eligible to apply for LPR status.
- “U” Visa holder. These Visas, also created by the Battered Immigrant Women Protection Act of 2000, within the Victims of Trafficking and Violence Protection Act of 2000, are available to immigrants of certain crimes enumerated in the Act, and who meet other requirements established by the statute including helping law enforcement in the investigation or prosecution of criminal activity. U Visa holders can be granted work authorization, and may be eligible to apply for LPR status after 3 years of maintaining U Visa status.

Immigrants who are authorized to work are protected from immigration-related discrimination if at the time of hire the employer requires more or specific documents than are required by law. The worker has the choice of deciding which documents to produce to prove her identity and work authorization. If you believe an employer has committed document abuse, or reverified a worker’s

employment authorization documents when he or she shouldn't have, call an immigrant rights group, worker center, or contact your union representative if you are part of a union. You can also call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), which is a part of the U.S. Department of Justice, Civil Rights Division. OSC helps immigrant workers whose employers have discriminated against them when they show that they are allowed to work in the U.S. OSC is NOT a part of immigration and assists workers by contacting employers to correct improper behavior. No one who calls OSC's hotline will be referred to the immigration authorities. If eligible, the worker may be able to file a charge with OSC against the employer. A union or an advocate from an immigrant rights group may also serve as the charging party on the charge.

You can contact them at 1-800-255-7688 or, for TDD 1-800-237-2515 (both numbers are free). You also can write the OSC at:

U.S. Department of Justice, Civil Rights Division Office of Special Counsel for Immigration-Related Unfair Employment Practices
950 Pennsylvania Avenue, N.W., Washington, D.C. 20530

¹ Papademetriou, Demetris and Terrazas, Arron, *Immigrants and the Current Economic Crisis* (Migration Policy Institute, Jan. 2009).

² *Ibid.*

³ *Ibid.*

⁴ Jeffrey S. Passel, *U.S. Immigration: Trends, Characteristics & Impacts* (Pew Hispanic Center, Sept. 2008).

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Capps, Fix, Passel, et al., *A Profile of the Low-Wage Immigrant Work Force* (Urban Institute, 2003).

⁸ DHS, formerly the Immigration and Naturalization Service, or INS. In 2003, the INS was dissolved and the DHS was created.

⁹ For more information on issues relevant to immigrant workers, see *Overview of Key Issues Facing Immigrant Workers*, NILC (Dec. 2007), available at http://www.nilc.org/immsemplymnt/emp_issues_ovrvw_2007-11-20.pdf.

¹⁰ See *Issue Brief: Workplace Rights of Undocumented Workers After the Supreme Court's Hoffman Plastic Ruling*, NILC (March 2006), http://www.nilc.org/immsemplymnt/IWR_Material/Attorney/Issue_Brief_Workplace_Rights_post_Hoffman_3-06.pdf.

¹¹ See also, *Chart: Immigrants with Employment Authorization*.

¹² For more information on TPS and renewing work authorization, see NILC's toolkit available at <http://www.nilc.org/immsemplymnt/ircaempverif/index.htm#tps1>.