



**NEW YORK  
LAW SCHOOL**

# Helping Immigrant Children: Other Relief

Presentation by Professor Lenni Benson [Dec. 9, 2014]

The Safe Passage Project at New York Law School

[www.safepassageproject.org](http://www.safepassageproject.org)

# Sources of Immigration Law

- The Immigration and Nationality Law (INA)
  - Codified in Title 8 of the U.S. Code
- Regulations issued by the relevant governing agency
  - Most, **not all**, are found in Title 8 of the Code of Federal Regulation (C.F.R.)
- Board of Immigration Appeals Decisions and Federal Courts
- Admin. Appeals Office (USCIS)
- **Guidance documents:** memoranda, field manuals, interpretative policy statements, local rules, EOIR Practice Manual; F.A.Q.'s.
- Much of immigration law is found in the informal administrative guidance materials.

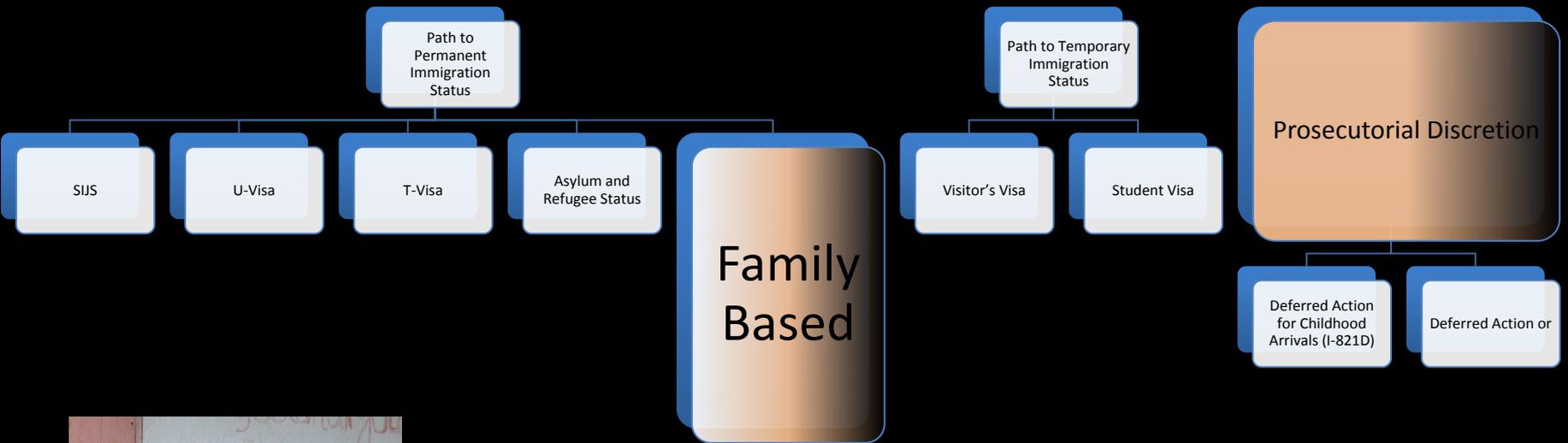
# NOTICE TO APPEAR:

## Triggers Jurisdictional Differences

The Notice to Appear or “NTA” is the charging document in removal proceedings. The NTA contains two main parts:

- (1) Allegations
- (2) Charges of removability

It is imperative that you review the NTA in great detail. Do not take anything for granted.



In many immigration cases, there may be multiple forms of relief. The topics covered in this hour are less common.

But remember this visual: it is possible that a child has many different paths to status.

# Derivative Citizenship



Parent's naturalize

<http://www.uscis.gov/policymanual/PDF/NationalityChart3.pdf>

Many elements and the law varies; usually child had to be LPR in U.S. at time of one or both parent's naturalization.

# Citizenship by Blood

<b>Nationality Chart 1</b> <i>Children Born Outside U.S. in Wedlock</i>			
PERIOD IN WHICH CHILD WAS BORN	CITIZENSHIP OF PARENTS AT TIME OF CHILD'S BIRTH	PARENTS' RESIDENCE & PHYSICAL PRESENCE PRIOR TO CHILD'S BIRTH	CHILD'S RETENTION REQUIREMENT
<i>STEP 1: Determine period in which child was born</i>	<i>STEP 2: Determine parents' citizenship at time of child's birth</i>	<i>STEP 3: Did USC parent meet residence or physical presence requirement prior to birth? (If Yes, child was a USC at birth)</i>	<i>STEP 4: Did child meet retention requirement (if any)? (Child lost citizenship on date it became impossible to meet requirement)</i>
<b>Prior To May 24, 1934</b>	Either parent a USC*	USC parent resided in U.S.	Not Applicable
<b>On or After May 24, 1934 and Prior To Jan. 13, 1941</b>	Both parents USCs	At least one USC parent resided in U.S.	Not Applicable
	One USC parent and one alien parent	USC parent resided in U.S.	** 5 years residence in U.S. or OLP between ages 13 and 21 (must start before age 16) OR ** 5 years continuous physical presence in U.S. between ages of 14 and 28 (must start before age 23) OR ** 2 years continuous physical presence in U.S. between ages of 14 and 28 (must start before age 26) OR Exempt, if at time of child's birth, USC parent was employed by U.S. Government or specified organization (Exemption does not apply if parent used a special provision). <b>See Notes 1, 2, 4</b>
<b>On or After Jan. 13, 1941 and Prior To Dec. 24, 1952</b>	One USC parent and one alien parent	USC parent resided in U.S. or OLP for 10 years, at least 5 after age 16  Special provisions for parents with honorable service in U.S. armed forces:  (1) Between 12/7/41 & 12/31/46, 10 years of residence, at least 5 after age 12  (2) Between 1/1/47 & 12/24/52,	5 years residence in U.S. or OLP between ages 13 and 21 (must start before age 16) OR 5 years continuous physical presence in U.S. between ages of 14 and 28 (must start before age 23) OR 2 years continuous physical presence in U.S. between ages of 14 and 28 (must start before age 26) OR Exempt, if at time of child's birth, USC parent was employed by U.S. Government or specified

USCIS Chart on Birth OUTSIDE The U.S.

Not an application!

Visit the USCIS website at:

<http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter4.html>

# Family Based Immigration



Family is not defined by **LOVE** but by statutory relationships.



# INA § 201(b)(2)(A)(i)

(b) Aliens not subject to direct numerical limitations:

(2)(A)(i) The term “immediate relatives” means the children, **spouses**, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age.

**NO DERIVATIVES. IMMEDIATE RELATIVES INDEPENDENTLY QUALIFY. Example: Step-child of U.S. citizen needs a petition.**

# INA § 203(a)

## (a) Preference Allocation for Family-Sponsored Immigrants.

(2) Spouses and unmarried sons and unmarried daughters of permanent resident aliens. - Qualified immigrants –

(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence, shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraphs

KEEPS FAMILY INTACT. STUDY FOLLOWING TO JOIN; 203(d)



# Big Picture

## 1) Start by making sure the client is not a U.S. citizen

--remember people can be born abroad and have claims to citizenship (See chapter 9 materials; *see, e.g.*, INA §§ 301 or 309 or 320. Naturalization is usually in § 316.)

## 2) Is the individual self-sponsoring?

--few categories allow self-sponsorship  
--VAWA is an example in the family-based category

--review INA § 203(b)(1)(a) -  
Extraordinary Ability for an example in the employment-based categories

In a sense Special Immigrant Juvenile Status is a self-sponsoring category.



# Family or Employment Based?

## 1) Carefully evaluate the educational and work background of the individual

- credentials evaluations may be needed

- petitions can only require elements or experience the individual actually already possesses

E.g., if a person is in school completing a MBA, it might be best to wait for the completion of the degree—unlikely with children but check the family!

## 2) Evaluate the full family background

- does the client have a U.S. citizen relative

- not every relative can be a sponsor; e.g., same-sex marriage is not yet a basis to sponsor a spouse or a loving grandmother is not equivalent to a mother under the INA.

# Immediate Relatives

- Carefully assess the definitions
- Watch out for common mistakes
  - Not all children can qualify as a “child” under the statute; INA § 101(b)
- If using the immediate relative category, each person needs his or her own petition—there are no accompanying relatives under INA § 201. *Cf.* INA § 203(d) for the derivatives in the other categories.



**Who is an immediate relative?  
Not all relationships are recognized.**

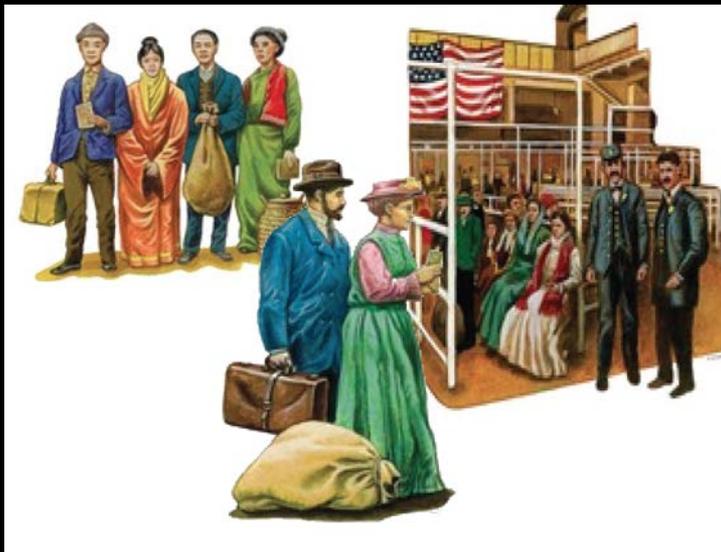


# Waits as of Dec. 2014

- Family Based 2A
  - Spouses and minor children of LPR
    - Worldwide: 22 March 2013
    - Mexico: 01 Jan 2013
  - Unmarried adult children of LPR
    - Worldwide: 22 Feb 2008
    - Mexico: 01 Oct 1994

# QUOTA DELAYS FOR SECTION 203(b)

## Family Preference Cut-Off Dates



Children and spouses of lawful permanent residents

Children over 21 of U.S. citizen parents

Brothers and Sisters of U.S. citizens

# How Long Does Client Wait?

# U.S. DEPARTMENT OF STATE VISA BULLETIN



## TRAVEL.STATE.GOV

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U.S. Department of State

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A to Z Index

Visas Questions? ▶

Temporary Visitors to the U.S. ▶

Immigrants to the U.S. ▶

**Visa Bulletin**

Forms

Photograph Requirements ▶

Fees and Reciprocity Tables

## Visa Bulletin

Print Email

The Visa Bulletin offers valuable information about immigration\*. Click on the appropriate link below to find the desired bulletin.

**Upcoming month's visa bulletin:** July 2011

**This month's visa bulletin:** June 2011

**Archived visa bulletins:** May 2011 and before

### Comprehensive Lists of Cut-Off Dates:

Family Preference:

- Worldwide (non-oversubscribed countries only) Family Preference Cut-Off Dates from FY1992-2010
- China (mainland-born only) Family Preference Cut-Off Dates from FY1992-2010
- India Family Preference Cut-Off Dates from FY1992-2010
- Mexico Family Preference Cut-Off Dates from FY1992-2010
- Philippines Family Preference Cut-Off Dates from FY1992-2010

### We Want You to Know

Visa News

Adoption Alerts

Diversity Visa

Visa Waiver Program (VWP)

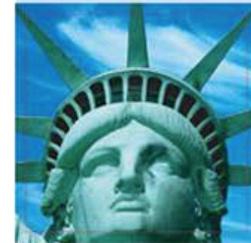
Iraqis & Afghans-SIV

Business Visa Center

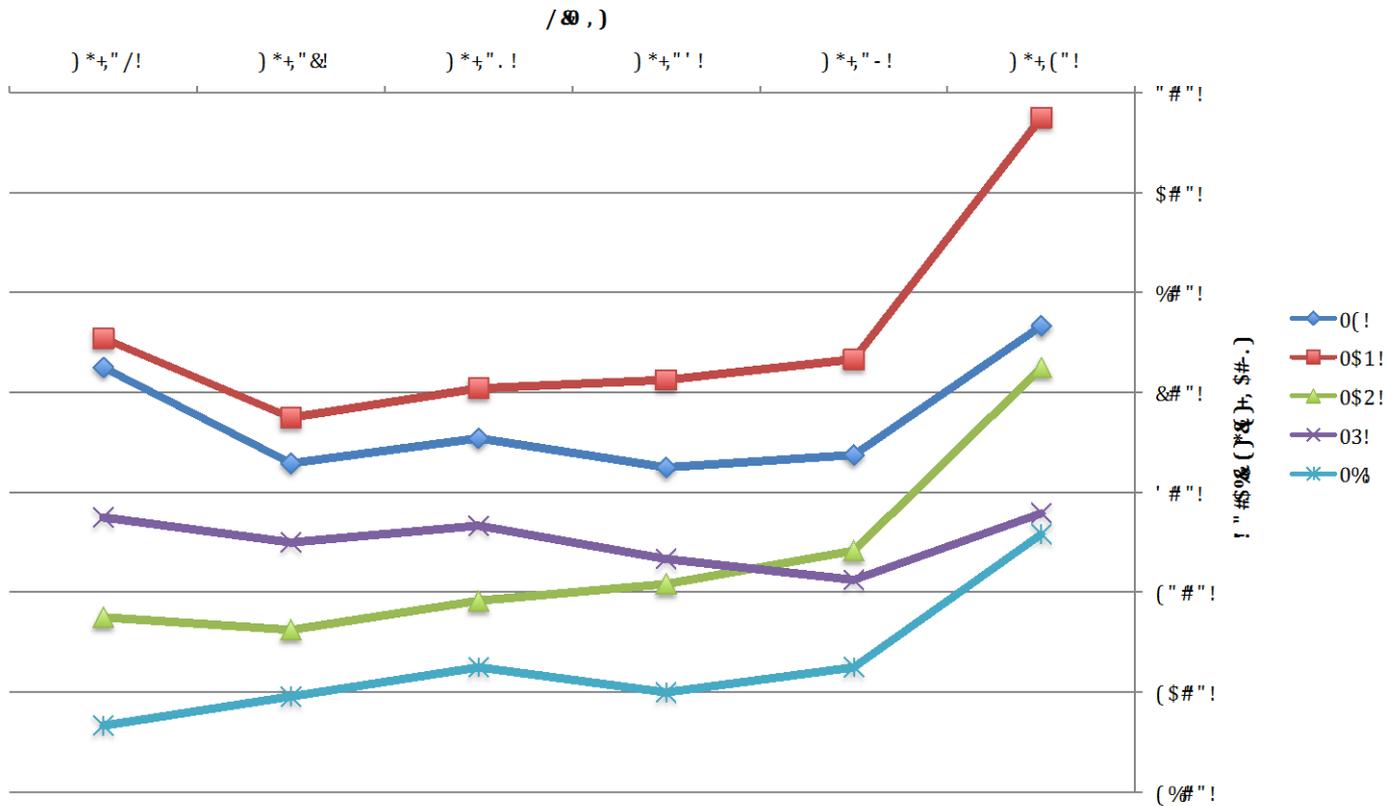
Customer Service

Statement To Visa Applicants

Fraud Warning



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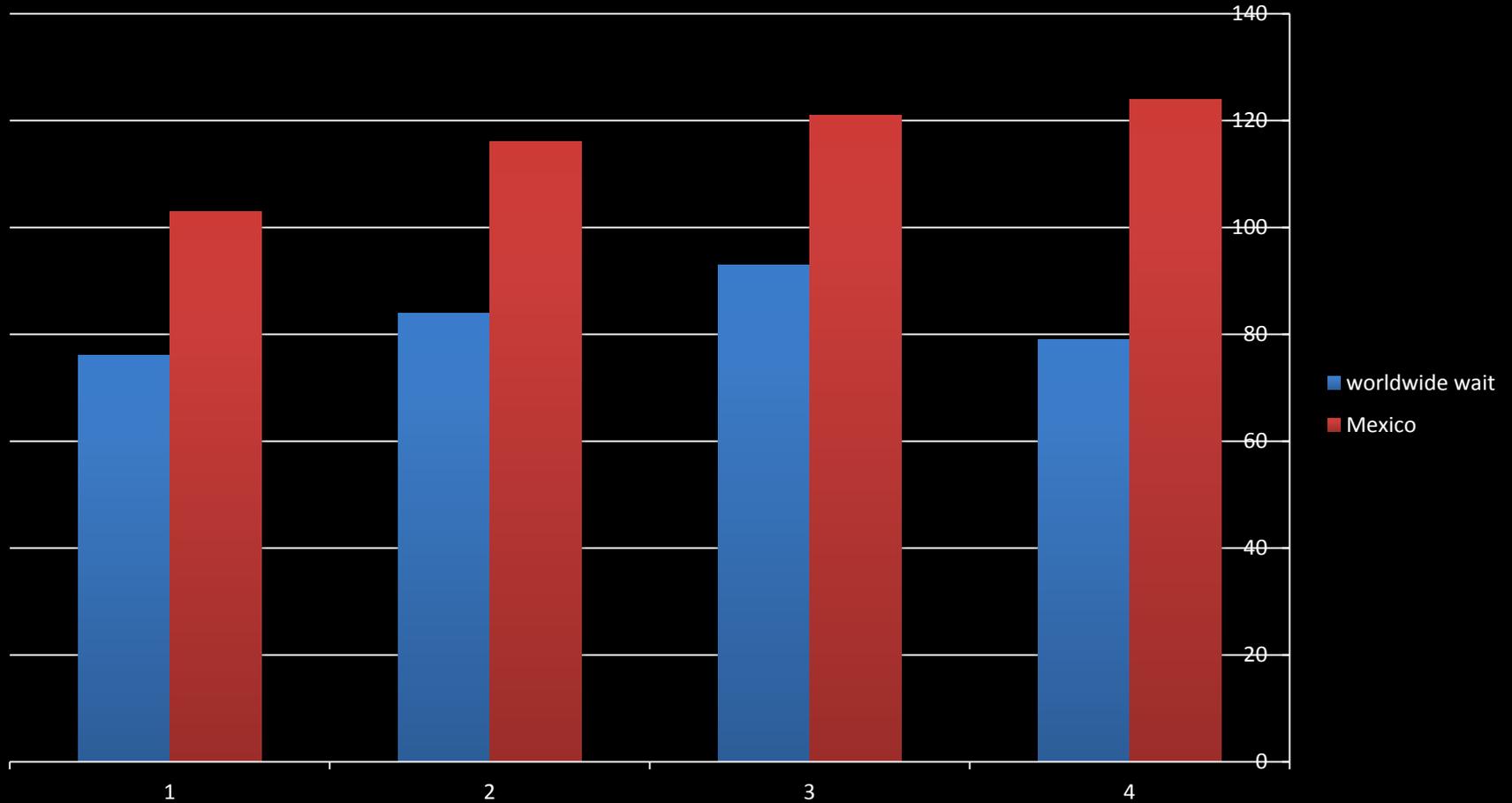


	10/2010	10/2009	10/2008	10/2007	10/2006	10/2005
<b>F1</b>	02/2006	07/2003	04/2002	11/2001	05/2000	04/2001
<b>F2A</b>	04/2010	06/2005	01/2004	11/2002	04/2001	11/2001
<b>F2B</b>	04/2005	08/2001	12/1999	08/1998	01/1997	04/1996
<b>F3</b>	05/2002	01/2001	06/2000	02/2000	10/1998	04/1998
<b>F4</b>	12/2001	04/1999	10/1997	04/1997	09/1995	02/1994

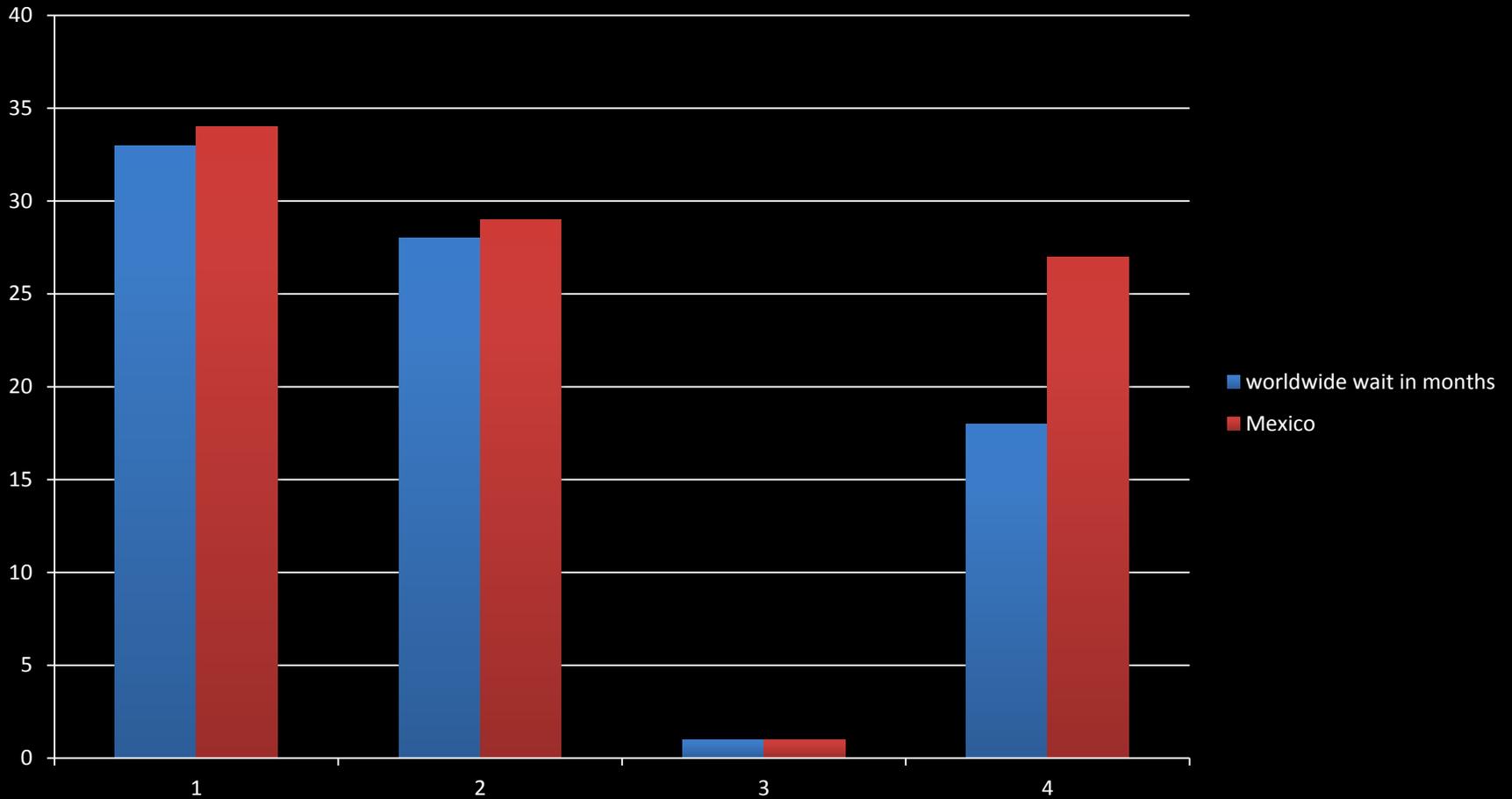
# Remember Derivative Family Benefits

- Be thorough—interview the family
  - Sometimes children can qualify under old petitions that were filed for other family members
    - Following to join has no official “time limit”
  - Evaluate the entire family: E.g., a “U” visa for a parent can give a derivative status to the child.

# Family Based 1<sup>st</sup> Preference Wait in months



# Unmarried Child of LPR



But Visa Priority Date may **not** = VISA

Danger!

If your client is subject to a ground of inadmissibility—then the client may not be able to immigrate.



# Obama announced new Parole In Place

- Avoiding Overseas travel and DEPARTURE from the United States may help some immigrants to complete adjustment of status in the U.S.
- **PAROLE IN PLACE IS IMPORTANT**
- [http://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_parole\\_in\\_place.pdf](http://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf)

# Getting there?

## Adjustment of Status

- Section 245 is a generous but technical statute
  - ❑ Admission, inspection or parole[not for SIJS case]
  - ❑ Visa currently available
  - ❑ Not subject to inadmissibility
  - ❑ Usually no unlawful presence and no unlawful work

Waiver for Immediate Relatives

## Overseas Visa Process

- The usual course but expensive and slow
- Visa category must be current
- Visa petition preapproved
- Fees must be paid
- Passports Needed
- Departure triggers many consequences – potential bars

# The Long Last Step

- Process Can Change Outcomes
  - Evaluate if individual is eligible for adjustment of status
    - In status
    - No unauthorized work
    - Inspected and admitted
    - Visa Priority Date is current
  - Evaluate if travel abroad will trigger overstay bars under INA § **212(a)(9)**
- Every case is different—but be wary of DEPARTURE from the U.S.

## COMPARING IMMIGRANT VISA PROCESSING AND ADJUSTMENT OF STATUS

### Immigrant Visa Petition

EB = Form I-140 or

FB = Form I-130 or I-360

(Filed with USCIS)

### IN THE U.S.

Application for  
Adjustment of Status to  
Permanent Resident  
(Form I-485) through  
USCIS & local USCIS  
Administrative Support  
Centers

←OR→

### OUTSIDE THE U.S.

Immigrant Visa Processing  
a/k/a Consular Processing  
(DS230-1, DS230-2) through  
the U.S. Department of State,  
National Visa Center & U.S.  
Consular Post abroad

# Which is faster?

- Adjustment may feel seamless as individual remains in the U.S.
- Work authorization is possible for adjustment applicants
- Timing will depend on workloads in regional service centers and whether an interview is required
- Travel outside the U.S. requires special ‘advanced parole’

- Overseas processing can be faster in some cases due to low waits at the consulate
- For families overseas this may be the preferred method
- Attorney role is reduced or limited
- Difficulty in entering the U.S. while process is pending
- Almost no judicial intervention if something goes wrong

# Here comes Section 212

No matter which process individual uses, the inadmissibility provisions of INA § 212 are relevant.

A finding of inadmissibility at a consulate abroad is more difficult to remedy

- Remember the dual check system
- Individual's can be challenged again at the border by CBP inspectors
- Fraud or misrepresentation at any stage can create permanent bars to immigration

When does Section 212 apply?

At the  
Consulate  
applying for a  
visa

At the  
port of  
entry  
seeking  
admission

## Inadmissibility in the immigrant visa process

Adjustment  
of Status

- USCIS examiner
- Discretion can also be a factor

Overseas  
Processing

- Consular determination

# SIJS Cases: Generous Provisions Unique to SIJS

## Adjustment of Status before USCIS

- Children who are “dependent on the family court” meaning that they have been subject to a family court proceedings are able to take their special immigrant juvenile findings and file a petition on form I-360.
- Special exemption from “admission” for adjustment.
- At this stage the child will also have to complete an immigration background check that requires fingerprints, medical and an interview.

## Possible Immigration Court Adjustment

- If a child is in removal proceedings, the process is a bit more complicated.
- The regulations require that ICE close the proceeding before the immigration court before the child can proceed to adjustment before the USCIS.
- In some cases, children would make their adjustment application before the Immigration Judge.

**Exemption from many grounds under Section 212 !!**

# Advanced Issues

## Family Based Adjustment

- How are UAC “admitted”
  - If a form of parole, child might be eligible for Section 245 adjustment [Cubans with I-94; **broader argument can be made**]
  - Case law has found limiting adjustment of status where parole was made at the border violates the clear language of Section 245.
  - But if not a “parole” but release from detention, child may not be prima facie eligible

## Parole in Place?

- Discretionary and not frequently used in the past
  - Argue danger to child in travel
  - Argue special, limited category
  - Application made to District Director
  - Broader use now due to Executive Action

*Succar v. Ashcroft*, 394 F.3d 8 (1st Cir. 2005)(struck down limit on adjustment) in 2006 USCIS issued a new rule for people “paroled” into the U.S.

Canada? Mexico? Bermuda? ???

**If Adjustment is impossible—is  
Visa Processing in safe 3<sup>rd</sup>  
Country an option?**

In rare situations or times of war, the Department of State has allowed foreign nationals to complete the immigrant visa process at a third country post. Visit the Foreign Affairs Manual and consult experienced attorneys to learn more about special procedures.

# Getting Married During Removal

What does the INA have to say?

INA § 245 (e) – Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings:

- An alien seeking an immigrant visa for a marriage entered into while administrative or judicial proceedings are pending may not have the status adjusted.
- **Exception** – Does not apply if it is established by clear and convincing evidence that the marriage was entered in good faith and according to the laws of where the marriage occurred and the marriage was not entered into for the purpose of procuring admission.



# Adjustment of Status Through Marriage to a U.S. Citizen



- Immediate relative – not subject to preference categories and priority date backlogs
- Burden is higher if married once in proceedings
- Is Marriage “lawful”?
  - Age
  - Consent
- Adjustment Requires “admission”
- **Ethical** challenges abound with minors and marriage

Applying for Adjustment of Status requires submitting a comprehensive package to USCIS emphasizing the legitimacy of the marriage

- \*tender age and courtship matters

- \*burden on proving bona fides

- \*barriers for future relief if a person engages in marriage fraud



# Adjustment of Status Forms

- I-485: Application for Adjustment of Status
- G-325A Biographical Information
- Fees or fee waiver request on I-912
- I-693 Medical Exam & 4 passport style photographs
- I-765 Application for Employment Authorization
- Records of all juvenile adjudications/criminal convictions & evidence of rehabilitation
- Other evidence of equities



# Procedure: Process and Sometimes “Relief”

Motions for  
Administrative  
Closure  
and Termination  
of Proceedings in  
the Immigration  
Court



# MOTIONS TO TERMINATE

## Challenging the Grounds of Removal

- Claim of citizenship
- Improper Service
- 4<sup>th</sup> Amendment Violations
- 5<sup>th</sup> Amendment Violations
- Competence
- Erroneous charges
- No Evidence

## Due to Relief

- Asylum Granted by USCIS
- SIJS petition approved
  - SIJS findings made and I-360 pending?
- Immediate Relative
  - But regulations allow adjustment before the court if person was paroled or inspected
- Other good cause or agreed to with DHS



# Administrative Closure

- Administrative closure is a tool used throughout Federal Court system to manage dockets
- This procedure is used to temporarily remove a case from an Immigration Judge's active calendar



*Matter of Avetisyan,*  
25 I&N Dec. 688 (BIA 2012)

- Issue: Whether IJ or BIA has authority to administratively close a case if either party to the proceedings opposes
- Holding: IJ or BIA has authority to order closure, even if party opposes, *if it is otherwise appropriate under the circumstances.*

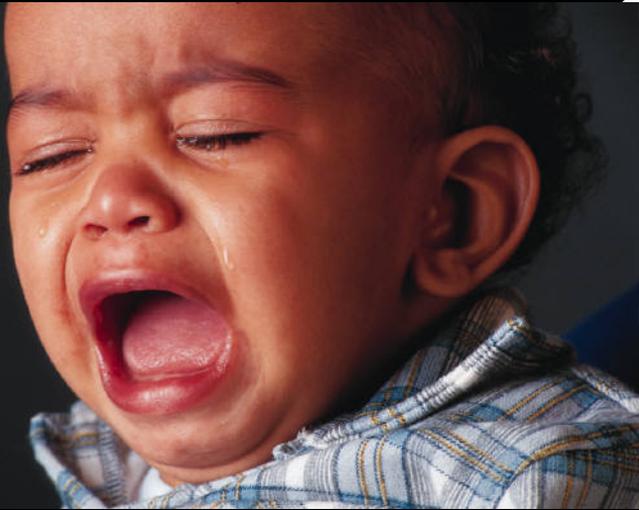
# Administrative Closure vs. **Termination** of Proceedings

- **Administrative Closure:** DHS may move to re-calendar case before Immigration Judge (or reinstate appeal before Board) at any time
- **Termination:** Final Order issued, which is the completion of the proceedings. In absence of successful appeal, DHS would need to file another charging document to initiate new proceedings.

# Relevant factors for Closure

- 1) Reason closure sought;
- 2) Basis for opposition to closure;
- 3) Likelihood that respondent will succeed on other application/petition;
- 4) Anticipated duration of closure;
- 5) Responsibility of either party in contributing to delay; and
- 6) Ultimate outcome of removal proceedings when case recalendared. 25 I&N Dec. 688, 696 (BIA 2012)

# When to use Administrative Closure?



- Pending Asylum Application (UAC Asylum Application adjudicated by USCIS)
- Possible family based visa petition
- Pending Family Court Case related to SIJS
- Other forms of pending relief (U and T non-immigrant status)
- Prosecutorial Discretion; e.g., very young or family unification

# Voluntary Departure

- Voluntary departure (VD) permits an individual, who is otherwise removable, to depart from the country at her own expense within a designated amount of time in order to avoid a final order of removal. INA § 240B.
- Technically, it's a "benefit" that the individual must apply for. In some situations, there are advantages that make VD preferable to a removal order.
- In other instances, it may not be any better, and could even leave certain clients in a worse off situation than if they had been ordered removed.

# Requirements for Voluntary Departure

- Different rules apply when the individual seeks VD prior to the conclusion of hearing vs. after the conclusion of the hearing
- Higher burden on Respondent after conclusion of the hearing.

# Different Vol. Departure Rules

- If sought prior to conclusion of hearing:

- Cannot be an arriving alien
- Waives or withdraws all other requests for relief;
- Concedes removability;
- Waives appeal of all issues;
- Has not been convicted of an aggravated felony and is not a security risk; and
- Shows clear and convincing evidence that he intends and has the **financial ability** to depart. **UAC no financial requirements**
  - Passport or travel document
  - Proof of financial resources

**If granted prior to conclusion of the hearing the IJ may grant a VD period of up to 120 days**

- If sought after the conclusion of hearing:

- Show physical presence for one year prior to the date the NTA is issued
- Show clear and convincing evidence that she intends and has the financial ability to depart **Unless UAC**
- Pay a bond of \$500 (if Judge requires) **Unless UAC under TVPRA**
- Show Good Moral Character for five years prior to the application, and
- Present to DHS valid passport or travel document sufficient to show lawful entry into home country

**If granted after the conclusion of the hearing, the IJ may grant a period of up to 60 days**

# Penalties for failure to depart after Voluntary Departure grant

- If an individual who was granted VD fails to depart within the specified period of time
  - May face monetary fine of up to \$5,000.
  - Is barred, for ten years, from seeking adjustment of status, cancellation of removal, change of status, registry, and voluntary departure.
    - Thus, if a respondent is ordered to voluntarily depart, fails to do so, but later becomes eligible to adjust his status, he will be barred to do so under § 240(b).
    - If he had been ordered removed rather than granted Voluntary Departure, he wouldn't be statutorily barred and could seek a motion to reopen removal proceedings.
  - Once individual fails to voluntarily depart, the VD order becomes a removal order, and any subsequent departure is self-removal 8 C.F.R. § 1240.26(d).

# “Pros” of Voluntary Departure

- If your client hopes to lawfully immigrate in the future, she will not have the removal order 10 year bar; this is one less waiver to seek in the future.
- If your client receives order of VD when she has only accumulated more than 180 days of unlawful presence but under one year → no 3 year bar.
- If your client ends up unlawfully returning to the United States in the future, she avoids criminal exposure for “illegal reentry for removed aliens” (8 U.S.C. § 1326)
  - If prosecuted for illegal reentry after removal, an individual could be subject to up to twenty years in prison.
- May avoid stigma of “deportation” in home country.

# “Cons” of Voluntary Departure

- Must purchase an open-ended, direct ticket to home country; usually ~ \$1,000. Children who are UAC don't have to pay.
- If your client is detained → getting a VD grant does not allow him to be released prior to departing the country.
- If ticket and passport are not provided to the ICE, your client will sit in jail for an additional 60 days before the VD grant automatically converts into a removal order, prolonging his time in detention.
- Does not protect against other inadmissibility bars;
  - If your client already has accrued more than one year of unlawful presence, he will still face the ten year bar if seeking to lawfully immigrate in the future.

# Counseling Your Client

- Whether to seek PD or give up?
  - Prepare them for the time frame.
  - Request adjournments to explore and file for relief in order to build in time to file request for PD.
- Whether to seek VD or accept a removal order
  - Identify your client's priorities and figure out how each option maps with those goals.
  - Remember – not always a given that you will get this relief as it is purely discretionary

# Prosecutorial Discretion

- What is it?
  - The Supreme Court has defined prosecutorial discretion (PD) as “[T]he authority of an agency or officer to decide what charges to bring and how to pursue each case.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

## Ways in which PD may be exercised

- Prosecutorial discretion may be exercised at any stage of an immigration case. May be exercised when deciding whether to:
  - Lodge a detainer while someone is in criminal custody;
  - Initiate removal proceedings by filing an NTA;
  - Focus enforcement resources on particular violations or conduct;
  - Detain or release someone on bond, supervision, or personal recognizance;
  - Settle or dismiss a removal case (e.g. agree to administrative closure or termination of removal proceedings);
  - Stay a final order of removal; or
  - Pursue an appeal; and/or execute a removal order

# 2011 Prosecutorial Discretion

- On June 17, 2011, Immigration and Customs Enforcement (ICE) Director John Morton issued a memorandum outlining a list of factors that his staff should consider with regard to immigration enforcement priorities. This is often referred to as “the Morton memo.”
  - <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>
- Morton issued a second memorandum on the same day highlighting ICE’s recognition that cases involving crime victims, witnesses, and certain plaintiffs required a heightened standard of prosecutorial discretion (“the second memo”).

# Factors relevant to Prosecutorial Discretion determinations

- Favorable Factors:
  - Whether the case falls within agency guidelines;
  - Graduation from U.S. high school and/or pursuit of higher education;
  - Greater emphasis on family Veterans/members of U.S. armed forces, long-time LPRs, elderly, minors, seriously ill or disabled, victims of trafficking, abuse, or other crimes, those in United States since childhood warrant “particular care”;
- **Negative Factors** warranting “particular consideration”:
  - National security risks,
  - serious felons,
  - repeat offenders or those with lengthy criminal records, known gang member;
  - or “egregious” immigration violators

# The “Second 2011 Memorandum”



- Absent special circumstances, it is against ICE policy to initiate removal proceedings against crime victims and witnesses, or to remove those in the midst of legitimate efforts to protect their civil rights.
- In the absence of serious adverse factors (such as national security concerns, serious criminal history, significant immigration fraud, human rights violations), exercising prosecutorial discretion “*will be appropriate.*” (emphasis added).

# Obama 2014 Announcement

- New 2014 Memoranda posted on ICE website suggest that 2011 memoranda may have been largely repealed.
- Some analyze the latest 2014 policies as prioritizing the removal of the most recent entrants.
- Children may still be a special hardship case, especially **where they cannot be safely repatriated.**

## Priority 1 (threats to national security, border security, and public safety)

Aliens described in this priority represent the highest priority to which enforcement resources should be directed:

- (a) aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- (b) **aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States;**
- (c) aliens convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 52 I(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;
- (d) aliens convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and
- (e) aliens convicted of an "aggravated felony," as that term is defined in section 101(a)(43) of the Immigration and Nationality Act at the time of The conviction.

The removal of these aliens must be prioritized unless they qualify for asylum or another form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, **there are compelling and exceptional factors** that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority.

## Priority 2: (misdemeanants and new immigration violators)

(c) aliens apprehended anywhere in the United States after unlawfully entering or re-entering the United States and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014 ;

# Strategy

- If relief is problematic [is this the right time?]; or
- client does not currently qualify for any forms of legal relief, you may want to consider filing a request to the Assistant Chief Counsel for DHS, ICE seeking prosecutorial discretion.
  - That request could involve asking for:
    - consent to join your application for **administrative closure** or
    - termination of removal proceedings; or
    - **agreement to stipulate** to a grant of relief on the papers alone.

# Preparing a Request for Discretion

Tell a story

Contextualize your client's life

Thoroughly document all the circumstances

Gather external corroboration

Use experts if available

Aid your client to “speak” through affidavits

- \* is media involvement appropriate?
- \* consider the value of political support or a role for elected officials carefully

# Deferred Action Requests

- Distinct from Deferred Action for Childhood Arrivals (DACA).
- While this technically falls under the umbrella of prosecutorial discretion, advocates may seek deferred action (DA) from ICE, Office of Enforcement and Removal Operations (ERO) for a client in removal proceedings with no other options. Request made after a final order.
- Sometimes ICE will decide to not effectuate an immigration judge's removal order; instead individuals will be granted reprieve from deportation for a limited period of time—usually one, sometimes two years—during which time they may obtain work authorization.

# The best outcome: it may come with tenacity!

## Permanent Resident Status

After five years of permanent resident status, and once the child is 18, she can apply to naturalize to become a U.S. citizen.





Photo used with permission.

For resources in representing child migrants:

<http://www.safepassageproject.org>