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- articles (/wex/wex\_articles)
- español (/wex/espanol)
- Inbox Project (/wex/inbox)
- search (/wex/search)
- FAQ (/wex/FAQ)

## Immigration

### Immigration law: an overview

Federal immigration law determines whether a person is an alien, the rights, duties, and obligations associated with being an alien in the United States, and how aliens gain residence or citizenship within the United States. It also provides the means by which certain aliens can become legally naturalized citizens with full rights of citizenship. Immigration law serves as a gatekeeper for the nation's border, determining who may enter, how long they may stay, and when they must leave.

Congress has complete authority over immigration. Presidential power does not extend beyond refugee policy. Except for questions regarding aliens' constitutional rights, the courts have generally found the immigration issue as nonjusticiable (/wex/justiciability).

States have limited legislative authority regarding immigration, and 28 U.S.C. § 1251 (<http://www.law.cornell.edu/wex-cgi/wexlink?wexns=USC&wexname=28:1251>) details the full extent of state jurisdiction. Generally, 28 U.S.C. § 994 (<http://www.law.cornell.edu/wex-cgi/wexlink?wexns=USC&wexname=28:994>) details the federal sentencing guidelines for illegal entry into the country.

By controlling the visa (/wex/visa) process, the federal government can achieve the goals of its immigration policies.

There are two types of visas (/wex/visa): immigrant visas and nonimmigrant visas. The government primarily issues nonimmigrant visas to tourists and temporary business visitors. The government divides nonimmigrant visas into eighteen

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different types, but for most types, does not impose a cap on the number that may be granted in a year. Only a few categories of non-immigrant visas allow their holders to work in the United States. Immigrant visas, on the other hand, permit their holders to stay in the United States permanently and eventually to apply for citizenship. Aliens with immigrant visas can also work in the United States. Congress limits the quantity of immigrant visas, which numbered 675,000 in 1995. Many immigrant visas remain subject to per-country caps.

## Early history of American immigration law

Congress's first attempt to set immigration policy came in 1790 with the enactment of the Naturalization Act of 1790 (<http://www.historicaldocuments.com/ImmigrationActof1790.htm>). This Act restricted naturalization to "free white persons" of "good moral character" and required the applicant to have lived in the country for two years prior to becoming naturalized. In 1795 an amendment (<http://www.usconstitution.com/naturalizationactof1795.htm>) increased the residency requirement to five years. The five-year requirement remains on the books to this day.

Upon ratification of the Fourteenth Amendment (<http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentv>), all children born within the United States received citizenship at birth. In 1870 Congress broadened naturalization laws to allow African-Americans the right to become naturalized citizens. Asian Americans, however, did not receive such a right for many years. Xenophobia from an influx of Asians between 1850 and 1882 prompted Congress to pass the Chinese Exclusion Act (<http://www.ourdocuments.gov/doc.php?flash=true&doc=47&page=transcript>), which restricted further Chinese immigration.

In 1921 Congress passed the Emergency Immigration Act, creating national immigration quotas, which gave way to the Immigration Act of 1924 (<http://www.historicaldocuments.com/ImmigrationActof1924.htm>), capping the number of permissible immigrants from each country in a manner proportional to the number already living within the United States. The aggregate number from the eastern hemisphere could not eclipse 154,227 immigrants. Franklin D. Roosevelt's Administration essentially closed to the country to immigration essentially during the Great depression, drastically reducing the numbers per country that could enter the United States.

## Modern immigration law

The Immigration and Nationality Act of 1952 (INA) (<http://www.law.cornell.edu/wex-cgi/wexlink?wexns=USC&wexname=8:chapter12>), also known as the McCarran-Walter Act, eliminated all race-based quotas, replacing them with purely nationality-based quotas. The INA continues to influence the field of American immigration law. To enforce the quotas, the INA created the Immigration and Naturalization Service (INS). The INS served as the federal agency that enforced these caps for remainder of the 20th century.

When Congress passed the INA, it defined an "alien" as any person lacking citizenship or status as a national of the United States. Different categories of aliens include resident and nonresident, immigrant and nonimmigrant, and documented and undocumented ("illegal"). The terms "documented" and "undocumented" refer to whether an arriving alien has the proper records and identification for admission into the U.S. Having the proper records and identification typically requires the alien to possess a valid, unexpired passport and either a visa, border crossing identification card, permanent resident card, or a reentry permit. The INA expressly refuses stowaway aliens entry into the U.S.

The need to curtail illegal immigration prompted Congress to enact the Immigration Reform and Control Act (IRCA) (<http://www.usdoj.gov/crt/cor/byagency/doj1255a.htm>) of 1986. The IRCA toughened criminal sanctions for employers who hired illegal aliens, denied illegal aliens federally funded welfare (</wex/welfare>) benefits, and legitimized some aliens through an amnesty program. The Immigration Marriage Fraud Amendments (<http://thomas.loc.gov/cgi-bin/bdquery/z?d099:HR03737:%7CTOM:/bss/d099query.html>) of 1986 sought to limit the practice of marrying to obtain citizenship. The Immigration Act ([http://www.law.cornell.edu/usc-cgi/get\\_external.cgi?type=pubL&target=101-649](http://www.law.cornell.edu/usc-cgi/get_external.cgi?type=pubL&target=101-649)) of 1990 thoroughly revamped the INA by equalizing the allocation of visas across foreign nations, eliminating archaic rules, and encouraging worldwide immigration.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 ([http://www.law.cornell.edu/usc-cgi/get\\_external.cgi?type=pubL&target=104-208](http://www.law.cornell.edu/usc-cgi/get_external.cgi?type=pubL&target=104-208)) revolutionized the process of alien entry into the United States. The IIRIRA ([http://www.law.cornell.edu/usc-cgi/get\\_external.cgi?type=pubL&target=104-208](http://www.law.cornell.edu/usc-cgi/get_external.cgi?type=pubL&target=104-208)) eliminated the term "entry," replacing it with "admission." An application for admission occurs whenever an alien arrives in the U.S. regardless of whether the arrival occurs at a designated port-of-entry. Applicants at either designated

ports or otherwise must submit to an inspection by U.S. customs, even if the applicant possesses an immigrant visa. The IIRIRA also employs the term "arriving alien" to describe applicant aliens attempting to enter the U.S., regardless of whether they arrive at a designated port, a non-designated point on the border, or are located in U.S. waters and brought to shore.

## Post-9/11 reform

On March 1, 2003, the Department of Homeland Security opened, replacing the INS. The Bush Administration had designed the Department of Homeland Security to foster increased intelligence sharing and dialogue between agencies responsible for responding to domestic emergencies, such as natural disasters and domestic terrorism. Within the Department, three different agencies - U.S. Customs and Border Enforcement (CBE), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE) - now handle the duties formerly held by the INS. Currently, the CBE handles the INS's border patrol duties, the USCIS handles the INS's naturalization, asylum, and permanent residence functions, and the ICE handles the INS's deportation, intelligence, and investigatory functions.

## Refugee and asylum seekers

The Refugee Act of 1980 defines the U.S. laws relating to refugee immigrants. Under the Refugee Act, the term "[[wex:refugee|refugee]]" refers to aliens with a fear of persecution upon returning to their homelands, stemming from their religion, race, nationality, membership in certain social groups, or political opinions. Anyone who delivers a missing American POW or MIA soldier receives refugee status from the United States.

The United States, however, denies refugee status to any alien who actively persecuted individuals of a certain race, political opinion, religion, nationality, or members of a certain social group. As a matter of public policy, the government also typically refuses refugee applicants previously convicted of murderer.

For refugees who have "firmly resettled" in another country, the United States will deny a request for refugee admission. The government considers refugees "firmly resettled" if the refugees have received an offer of citizenship, permanent residency, or some other permanent status from a foreign country.

Under international law, the [[wex:geneva\_conventions|Geneva Convention]], or the laws of the United States, foreign citizens who have become disillusioned with their homeland cannot take temporary refuge within the United States. The Refugee Act of

1980 specifically leaves out temporary refuge as a form of refugee status that the U.S. government will recognize.

To qualify for refugee status under the persecution provision, the refugee applicant must prove actual fear. A proof of actual fear requires meeting both a subjective and an objective test. The subjective test requires that the refugee actually have an honest and genuine fear of being persecuted for some immutable trait, such as religion, race, and nationality. Seekers of asylum (/wex/asylum) must show a fear that membership in a social or political group has caused past persecution or has caused a well-founded fear that persecution will occur upon returning. The applicant meets the objective standard by showing credible and direct evidence that a reasonable possibility of persecution exists upon the applicant's return to the homeland.

The President retains the ultimate decision making authority when determining the number of refugees to allow into the country during a given year.

## Deportation

[[wex:deportation|Deportation]] refers to the official removal of an alien from the United States. The U.S. government can initiate deportation proceedings against aliens admitted under the INA that commit an aggravated felony within the United States after being admitted. An alien's failure to register a change of address renders the alien deportable, unless the failure resulted from an excusable circumstance or mistake. If the government determines that a particular alien gained entry into the country through the use of a falsified document or otherwise fraudulent means, the government has the grounds to deport.

Other common grounds for deportation include the following: aiding or encouraging another alien to enter the country illegally; engaging in marriage fraud to gain U.S. admission; participating in an activity that threatens the U.S.'s national security; voting unlawfully; and failing to update the government with a residential address every three months, regardless of whether the address has changed. The last of these policies served as the grounds for the government to deport 2,000 Pakistanis following the September 11th attacks.

If the government brings a proceeding for deportation because of fraud or falsification, the government bears the burden of proving by clear and convincing evidence that alleged falsification or fraud occurred and that the falsification or fraud proved material to the granting of admission to the alien. Upon such a proof, the government has established a rebuttable presumption that the alien gained admission through material falsification or fraud. To

rebut the presumption, the alien must demonstrate by a preponderance of the evidence (/wex/preponderance) that admission would have been granted even without the falsification or fraud.

## menu of sources

### Federal Material

#### U.S. Constitution

- Article I, Section 8 - Congressional Authority to Establish Uniform Rules of Naturalization (<http://www.law.cornell.edu/constitution/constitution.articlei.html#section8>)
- CRS Annotated Constitution:
  - Article I: Aliens ([http://www.law.cornell.edu/anncon/search/display.html?terms=immigration&url=/anncon/html/art1frag66\\_user.html](http://www.law.cornell.edu/anncon/search/display.html?terms=immigration&url=/anncon/html/art1frag66_user.html))
  - Search the Annotated Constitution (<http://www.law.cornell.edu/anncon/search/index.html?query=immigration>)

#### Federal Statutes

- 8 U.S.C., chapter 12 (<http://www.law.cornell.edu/wex-cgi/wexlink?wexns=USC&wexname=8:chapter12>) - Immigration and Nationality
- 8 U.S.C., chapter 13 (<http://www.law.cornell.edu/wex-cgi/wexlink?wexns=USC&wexname=8:chapter13>) - Immigration and Naturalization Service
- 18 U.S.C., Part I, chapter 69 (<http://www.law.cornell.edu/wex-cgi/wexlink?wexns=USC&wexname=18:chapter69>) - Nationality and Citizenship (in the context of crimes)

#### Federal Regulations

- 8 C.F.R. (<http://www.law.cornell.edu/cfr/cfr.php?title=8>) - Aliens and Nationality

#### Judicial Decisions

- U.S. Supreme Court:
  - Recent Immigration Decisions (<http://www.law.cornell.edu/supct/search/index.html?query=immigration+or+INS>)
  - liibulletin Oral Argument Previews (<http://www.law.cornell.edu/supct/cert/search/index.html?query=immigration+or+INS>)
- U.S. Circuit Courts of Appeals: Immigration Cases (<http://www.law.cornell.edu/usca/search/index.html?query=%2Bimmigra%20%2BINS>)

# International Material

## Conventions and Treaties

- Human Rights Treaties (<http://fletcher.tufts.edu/multi/humanRights.html>)

## Other References

### Key Internet Sources

- Federal Agencies:
  - Citizenship and Immigration Services (<http://www.uscis.gov/graphics/index.htm>)
  - Department of Justice (<http://www.usdoj.gov/>)
- Immigration Law (<http://www.nolo.com/legal-encyclopedia/immigration/>) (Nolo)
- American Immigration Law Foundation (<http://www.aifl.org/>)
- Immigration Equality's Immigration Law Glossary (<http://www.lgirtf.org/template.php?pageid=26>)
- ITA's Immigration Law Resources (<http://www.immigration-usa.com/law.html>)
- Siskind's Immigration Bulletin (<http://www.visalaw.com/bulletin.html>)

### Useful Offnet (or Subscription - \$) Sources

- Good Starting Point in Print: David S. Weissbrodt and Laura Danielson, *Immigration Law and Procedure in a Nutshell* ([http://www.amazon.com/Immigration-Law-Procedure-Nutshell/dp/0314154167/ref=pd\\_bbs\\_sr\\_1?ie=UTF8&s=books&qid=1216743235&sr=1-1](http://www.amazon.com/Immigration-Law-Procedure-Nutshell/dp/0314154167/ref=pd_bbs_sr_1?ie=UTF8&s=books&qid=1216743235&sr=1-1)), West Publishing Company, 5th ed. (2005)

## other topics

- Category: Group Rights ([/wex/category/group\\_rights](/wex/category/group_rights))
- Naturalization (</wex/naturalization>)
- Alienage (</wex/alien>)

**Keywords:** [immigration \(/category/keywords/immigration\)](/category/keywords/immigration)

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