UNIT ONE

OVERVIEW OF IMMIGRATION AND THE LAW

This Unit Covers an Introduction to Basic Concepts and Practices in Immigration Law, Including:

- Citizenship and alienage (Part One);
- Removal from and admission into the United States (Part Two),
- Ways that a person can become a lawful permanent resident (Part Three),
- Kinds of immigration status (Part Four);
- Structure of the DHS (Part Five); and
- The Immigration Act (Part Six)

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Laura is a Mexican citizen living in Mexico. She wants to move to the United States to find work to support her family. She crosses the border at night by walking through the Rio Grande River near Brownsville, Texas.

Marta is from the Philippines. She wants to come to the United States to visit her sister and go to school. She obtains a visitor's visa from the U.S. consulate in Manila. When her plane lands at the Los Angeles Airport, she goes through immigration inspection.

Asmeer was born in New York City.

PART ONE: CITIZENSHIP AND ALIENAGE

§ 1.1 A Nation with Borders

One idea controls U.S. immigration law: the United States is a nation with protected borders.

Immigration authorities may challenge any person who tries to come into the United States. People who can show that they are **U.S. citizens** may enter. People who are not U.S. citizens are called "**aliens**" under the immigration laws. (A more appropriate and less offensive name is "non-citizens," but because the U.S. immigration law covered in this manual uses the term aliens, we use it here in order to minimize confusion.) Aliens must meet several requirements set out by law in order to enter or stay in the United States.

Only officers of the U.S. government can give an alien permission to enter the U.S., or to stay here once she has entered.

> **Example 1.1:** To apply for a U.S. visitor's visa in the Philippines, Marta went to a U.S. consulate in Manila. The consulate is a U.S. government office located in another country. The government of the Philippines cannot give Marta a visa to visit the U.S.; only a U.S. consular official can do this.
>
> When Marta landed at the airport, an employee of the U.S. Customs and Border Protection, or CBP, inspected her. Only a CBP official may give an alien permission to physically enter the United States. Marta needed this permission in addition to the visa from the U.S. consulate.

The United States Congress writes the laws about citizens and aliens. The current laws are called collectively the **Immigration and Nationality Act of 1952**, as amended **(the INA)**. The INA is the basic immigration statute (law) which we will cover in this guide.

The Immigration and Naturalization Service (INS) was for many years the main federal government agency that administered U.S. immigration law. However, effective March 1, 2003, Congress dissolved the INS, and all of its functions were assumed by the Department of Homeland Security (DHS). Immigration laws are now administered and enforced by three separate divisions within the DHS: the U.S. Customs and Border Protection (CBP), the U.S. Citizenship and Immigration Services (USCIS), and the U.S. Immigration and Customs Enforcement (ICE).

CBP's main responsibility is apprehending aliens attempting to enter into the U.S. illegally, and checking freight and baggage entering the United States for compliance with customs and trade laws. ICE's mission includes managing investigations of document, identity, visa, and immigration fraud; investigating immigration violations and migrant smuggling; and detaining, prosecuting, and removing undocumented and deportable aliens. USCIS's mission is the adjudication of petitions for immigration benefits, such as family petitions, naturalization applications, and asylum applications.

The DHS also writes most of the **regulations** that accompany the Immigration and Nationality Act (the Act, or INA). Regulations are meant to implement the laws set out by Congress in the statute. Regulations usually provide more detail about how the various agencies will implement the laws. Regulations governing the conduct of the immigration courts and the Board of Immigration Appeals, known collectively as the Executive Office for Immigration Review (EOIR), are written by the Department of Justice. This is because the EOIR is part of the Department of Justice. Almost all immigration regulations, including those governing EOIR, are found in title 8 of the U.S. Code of Federal Regulations, referred to as 8 CFR. We'll discuss DHS, CBP, ICE, USCIS, EOIR and the regulations in more detail below.

NOTE: Finding Your Way in the INA and the Regulations. The INA is divided up into sections, which are numbered. This allows us to refer to different parts of the law. For example, Section 208 of the Act is written as "INA § 208."

The immigration regulations are also divided into sections, which correspond to sections in the INA. For example, INA § 208 discusses applications for asylum. Section 208 of the regulations also deals with asylum. That would be written as "8 CFR § 208."

After DHS was created, the regulations governing DHS and EOIR were split into two separate parts, many of which are identical. This was to differentiate between DHS and EOIR as separate agencies within separate departments in the federal government. Generally, regulations governing EOIR have a "1" before them but otherwise are nearly identical to the DHS regulations. So, in the example above, 8 CFR § 208 contains the DHS regulations pertaining to asylum, and 8 CFR § 1208 contains the EOIR regulations pertaining to asylum. Though these regulations generally parallel each other, they also contain differences due to the different adjudicators governing the case. In this example asylum officers adjudicate asylum claims before DHS, and immigration judges adjudicate asylum claims before EOIR.

An important purpose of this guide is to help you become comfortable using the Act and the regulations. If you have a copy of the INA and the regulations now, please look up the sections that we will discuss in this unit. It is generally a good practice to first look up what the INA provides as the law on a topic, then turn to the regulations to learn how DHS will enforce or implement that law.

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§ 1.2 Who Is a Citizen? Who Is an Alien?

Anyone who is born in the United States, including Puerto Rico, is a U.S. citizen. (The only exception is the child of a foreign diplomat.) In addition, many people who are born outside the United States acquire U.S. citizenship from their parents. Some of these people may not even know that they are U.S. citizens.

> **Example 1.2-a:** Asmeer was born in New York. She has been a U.S. citizen since the moment she was born. The fact that her parents are here without papers does not hurt her status as a U.S. citizen.
>
> Teresa was born in the Dominican Republic. Although she does not know it, her grandfather was once a U.S. citizen, and he passed citizenship on to her mother, who passed it on to Teresa. Teresa has been a U.S. citizen since the moment of her birth in the Dominican Republic. See **Unit 17**.

Anyone who is not a U.S. citizen is an "alien." **Section 1.16** describes the various types of immigration status an alien may have. One significant difference among them is that "immigrants" generally intend to make the U.S. their home, but "non-immigrants" are only granted visas for a temporary period and a specific purpose—not to make the U.S. their home. An immigrant is someone who has been granted lawful permanent residence, also known as a green card.

> **Example 1.2-b:** Sarwan has had a green card for twenty years. Marta is here temporarily on a tourist visa. Laura entered the U.S. without papers and has no lawful immigration status. All of them are aliens, and subject to the immigration laws.

What rights does a U.S. citizen have under immigration laws? A U.S. citizen can never legally be thrown out of the U.S. (**removed** or deported) or stopped from entering the U.S. (**not admitted**). Neither CBP nor ICE can arrest, detain, or do anything else to a U.S. citizen, unless he or she is suspected of having committed a crime.

> **Example 1.2-c:** Teresa crossed into the U.S. illegally from the Dominican Republic. She is picked up by ICE in a raid and detained. Her husband comes to you for help. After studying the law, you realize that Teresa is really a U.S. citizen. If you can prove that she inherited U.S. citizenship from her grandfather and mother, Teresa will be released. ICE

will have to treat her like any other U.S. citizen: it cannot keep her in jail (immigration detention) or remove her (force her to leave the United States).

Aliens do not have this protection. If an alien commits certain acts, or does not have a visa or other immigration papers, he or she can be deported or removed. This is true even if the person has a green card. Plus, any alien who tries to enter the U.S. at the border may not be admitted if he or she has committed certain acts or does not have a visa or other papers.

Example 1.2-d: Sarwan is a permanent resident and convicted of selling marijuana. Under the immigration laws, any alien who receives a drug conviction can be removed (deported). If ICE discovers the conviction, it will bring Sarwan before an immigration judge. The judge can order ICE to remove Sarwan and send him back to India. In addition, Sarwan will lose his green card.

Marta lied to the U.S. consulate in the Philippines in order to get her tourist visa. An alien who commits fraud to get a visa may not be admitted at the border. If CBP at the Los Angeles airport discovers that Marta committed fraud, they can refuse to let her come into the U.S. In fact, Marta will only be able to get a hearing if she swears under oath that she is actually a lawful permanent resident of the United States, a refugee (someone who has been granted refugee status), an asylee (someone who has been granted asylum in the United States), or if she asks for asylum or says that she fears persecution in the Philippines. Otherwise, they can refuse to let Marta enter the U.S., and she is not entitled to have the decision reviewed by a court.

PART TWO: WHO IS DEPORTABLE? WHO MAY NOT BE ADMITTED?

In the examples discussed in **Part One**, Sarwan and Marta got in trouble with immigration authorities. Their problem was that they came within a ground of inadmissibility or deportability. The grounds of inadmissibility and deportability are basic parts of immigration law. We will study them in detail in **Unit 3** and throughout this guide, but the following is an overview.

§ 1.3 The Grounds of Inadmissibility

The grounds of inadmissibility are a list of the kinds of aliens that Congress wants to "keep out." They apply to aliens who want to enter the United States temporarily or permanently, and also to aliens who apply for certain kinds of immigration status. The list is found in the INA, at § 212(a). Congress came up with the first version of this list in 1882. Ever since that time, Congress has added and subtracted items from the list of grounds of inadmissibility. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress revised and added grounds, and changed the name used in the Act from "grounds of exclusion" to "grounds of inadmissibility."

The grounds of inadmissibility punish many different kinds of behavior and status. For example, an alien is inadmissible for having "bad" behavior if he or she:

- has been convicted of certain crimes;
- is a terrorist
- helped smuggle other aliens into the U.S.;
- has committed immigration fraud;

An alien is also inadmissible as a potential threat to the U.S. public, if he or she:

- has certain contagious diseases;
- will probably go on welfare in the U.S.;

An alien is also inadmissible if he or she:

- does not have a valid visa or legal permission to enter the U.S.;
- has entered the U.S. without permission

These are just a few examples. The list of grounds of inadmissibility found at INA § 212(a) is quite long. Throughout this guide you'll become quite familiar with the various grounds of inadmissibility.

Exercise 1.3: Take a copy of the Immigration and Nationality Act. Find INA § 212(a). See if you can answer the following questions. (Note: the hardest part may be finding the right subsection of 212(a) in your copy of the INA. Keep trying!) Answers are at **Appendix 1-A**.

1. Stella has been a prostitute for several years. Might she be inadmissible under INA § 212(a)(2)(D)?
2. Marta lied to a consular officer so that she could get a visa to come to the U.S. Might she be inadmissible under INA § 212(a)(6)(C)?
3. Laura does not have any visa or legal permission to get into the U.S. Might she be inadmissible under INA § 212(a)(6)(A)?
4. Maurice is currently married to four women because he believes in polygamy. Might he be inadmissible under INA § 212(a)(10)(A)?

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§ 1.4 What Can Happen to an Alien Who Is Inadmissible?

An alien who comes within a ground of inadmissibility is called an **inadmissible alien**. An advocate might describe the person's situation by saying "my client is inadmissible." The opposite of an inadmissible alien is an **admissible alien**: a noncitizen who does not come within any ground of inadmissibility.

The grounds of inadmissibility apply to aliens who are either trying to gain lawful admission (legally enter) the United States, or who have entered the United States without documents and were not inspected by an immigration officer at the border. The inadmissibility grounds are the legal bases for keeping the person out. If a CBP agent at the border decides that an alien who is trying to enter the United States is inadmissible (for example, because he thinks her entry documents are fake, or she is likely to go on welfare, or she has committed a crime), the alien may have a very difficult time gaining entry to the U.S. The border officer may refuse to let her enter, and try to convince her to withdraw her request to enter. If the officer asserts that the person is lying at the time of entry or lied to get her entry visa (visa fraud), he can bar her entry and in many cases the person will not have the right to see a judge, in a procedure called expedited removal. For more information about expedited removal, see **Unit 10**.

If an alien enters the U.S. illegally, she can be **removed** from the U.S. (forced to leave) for being inadmissible. The inadmissibility ground that would apply is being present in the U.S. without having been admitted or paroled. See INA § 212(a)(6)(A). Thus, an alien who entered the U.S. illegally and lived here for twenty years would still be held to be "inadmissible" and "seeking admission" because she was not inspected and admitted when she entered.

The grounds of inadmissibility also are used as the test for who may receive some kinds of immigration benefits and status. For example, if a person is married to a U.S. citizen and is applying for a green card through the marriage, he will face the grounds of inadmissibility. If the person is inadmissible, for example, because of immigration or criminal violations, his application for a green card may be denied.

To sum up, an inadmissible alien might have problems in three different contexts. She might not be admitted at the U.S. border. If she enters the U.S. without being admitted, she could be removed for being inadmissible. And, she might be ineligible to become a lawful permanent resident or acquire some other immigration status.

§ 1.5 The Grounds of Deportability

The grounds of deportability apply to a person who **already has been admitted to** the United States, either for a temporary stay or as a permanent resident. (As we discussed above, the grounds of deportability do not apply to a person who entered the U.S. illegally, without being inspected and admitted. The grounds of inadmissibility apply to that person.)

The grounds of deportability are a list of reasons or conduct that can result in a person who was already allowed in to be **removed from** (forced to leave) the United States. The list is found in the INA, at § 237. An alien who comes within a ground of deportability is a **deportable alien**.

The list includes several grounds that are similar to grounds of inadmissibility and some that are different. For example, an alien can be removed if he or she:

- has been convicted of certain crimes
- is a terrorist
- obtained legal status by committing marriage fraud
- helped smuggle aliens into the U.S.
- falsely claimed to be a U.S. citizen in order to get a benefit from the government
- was really inadmissible at the time he or she was admitted to the U.S.

The last ground is important. An alien is deportable if, at the time the person was admitted to the U.S., he really was inadmissible. In other words, aliens whom the CBP could have refused to admit to the United States do not have the right to stay in the U.S. just because the CBP made a mistake by admitting them at the border.

> **Example 1.5:** Marta is inadmissible because she committed visa fraud when she got her visitor's visa at the U.S. consulate in the Philippines. Despite that, she managed to get through CBP inspection at the Los Angeles International Airport because at the time CBP did not detect the fraud, and she was admitted to the U.S.
>
> Three months later, CBP discovers that they should not have admitted Marta when she came in. Marta is deportable now because, at the time she entered the U.S., she was actually inadmissible.

Exercise 1.5: In your copy of the INA, turn to § 237. Answer the following questions. Answers are at **Appendix 1-A**.

1. Fidel is a permanent resident who has been living in the U.S. for some time. He is paid $1,000 to bring some Mexican citizens across the border illegally. Fidel gets everyone across the border, and then is arrested by CBP. Might Fidel be deportable under INA § 237(a)(1)(E)?

2. Flavia was convicted of assault with a deadly weapon and sentenced to two years in prison. This offense is a "crime involving moral turpitude." Might Flavia be deportable under INA § 237(a)(2)(A)(i)? Might Flavia be deportable for any other reason?

3. Laura crossed the border secretly in order to avoid the CBP inspection point. Is she inadmissible or deportable? (careful) Might Laura be inadmissible under INA § 212 (a)(6)(A)?

4. Martin borrowed his brother's border crossing card to get through CBP inspection at the Mexican border. He had active tuberculosis but did not tell the CBP officer at the border.

Might he have been inadmissible under INA § 212(a)(1)(A)(i) when he was admitted? Might he now be deportable under INA § 237(a)(1)(A) for more than one reason?

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§ 1.6 What Can Happen to an Alien Who Is Deportable?

If ICE discovers that an alien is deportable, it can bring the alien into **immigration court** for a **removal hearing**. This is true even if the person has a green card. In some cases, no matter how sympathetic the person's case is, the person will be removed (deported).

> **Example 1.6:** Michelle is a French citizen who has had a green card for twenty years. She has six U.S. citizen children. She owns her own home and runs a business that employs 20 American citizens. If she is convicted of drug trafficking she almost certainly will be removed for being deportable, no matter how much harm this may cause to her family and employees.[1]

§ 1.7 Removal Proceedings: Admissibility, Deportability, Burden of Proof and "Expedited Removal"

Noncitizens who are in the United States can be brought into **removal proceedings** if ICE charges them with being inadmissible or deportable. First, ICE must present evidence that the person is an alien. Once ICE does so, and if the judge finds that ICE is correct about the person being inadmissible or deportable, the person can be "removed" (deported) from the United States.

Whether your client faces the grounds of inadmissibility or of deportability in removal proceedings depends upon whether she has been lawfully **admitted** to the United States. This also determines who will have the **burden of proof** in the removal case, ICE or your client. The burden of proof means that a particular side must convince the judge of their position. If the facts presented to the court are equally balanced, then that side has not met their burden of proof. For example, if ICE argues that a person obtained their visa by fraud, but does not have enough evidence to show that it actually was fraud, then ICE would not have met its burden of proof.

If your client has **not been lawfully admitted** to the United States yet, she faces **the grounds of inadmissibility**. In that case, **the client has the burden of proving that she is admissible**. This means that if the client does not present persuasive evidence that she is admissible, she will be removed. See INA § 240(c)(2).

If the client **has been lawfully admitted**, she faces the **grounds of deportability**. In that case **ICE has the burden of proving that the client is deportable**. This means that if ICE does not present persuasive evidence that the client is a deportable alien, the client will not be ordered removed. See INA § 240(c)(3).

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[1] If Michelle faced certain harms upon return to France, for example torture or persecution, she might qualify for some humanitarian relief. See Unit 15.

If ICE believes a person is removable, it will begin removal proceedings by filing a Notice to Appear with the immigration court.[2] The Notice to Appear contains a list of charges made by ICE against the person.[3] The Notice to Appear states the nature of the proceedings; the legal authority under which the government is conducting the proceedings; the charges against the alien, the alien's obligations to the government while in proceedings,[4] and the sections of law that the alien violated. In other words, it charges the person with being a deportable or an inadmissible alien. See **Unit 10**, **§ 10.3** for detailed information on the Notice to Appear.

An important issue is whether the client will be allowed to have a removal hearing before a judge, or whether an official of one of the three DHS branches alone will order her to be removed. We want our clients to have a **removal hearing** before an **immigration judge**, instead of just having a DHS agent decide their fate. An immigration judge might be more impartial than a DHS agent and more likely to follow the rules. There is more of an opportunity to present evidence and make legal arguments in immigration court. Also, the client can apply for **relief** from removal, and if she wins she would not be removed at all.

The CBP, however, has the power to order the removal of certain noncitizens who have not been admitted *without* giving them the chance to take their case before a judge in a removal hearing. This is called the **expedited removal** process. People currently subject to this process are noncitizens who are at the border applying for admission, if

a. they have no entry documents, or
b. CBP claims that they have fake documents or lied to obtain the documents or enter at the border (committed visa fraud).

There are a few exceptions to this rule. People who assert that they really are permanent residents, refugees or asylees, Cuban citizens or nationals, and people who claim that they fear persecution in their home country can obtain a removal hearing before a judge, even if they are stopped at the border (before admission).

Under the statute, DHS can choose to apply expedited removal to anyone in the U.S. who entered illegally if she cannot demonstrate that she has been present in the U.S. at least 2 years. Although the government has not been applying the entire two-year rule, as of January 2006, the government has applied expedited removal to noncitizens who have either been in the United States for 14 days or less, and are apprehended within 100 miles of any U.S. land border, or who have arrived by sea and are apprehended within 100 miles of any coastal border area. In these cases, the person is not issued a Notice to Appear in front of the immigration judge. Instead, the person is issued a removal order by the CBP or ICE officer handling her case. For the government to apply expedited removal, the U.S. must have full diplomatic relations with the person's home country.

[2] You can see a sample Notice to Appear in Unit 10, Appendix 10-A.
[3] These charges are not facts, they are just allegations made by the agency, and may be challenged. See Unit 10.
[4] This includes the responsibility to notify the government of any change of address. See Unit 10.

In practice, most people who are subject to expedited removal are people charged at the border with committing visa fraud or not having documents. In general, any noncitizen who has been lawfully admitted into the United States has the right to appear before an immigration judge in removal proceedings, except for non-permanent residents convicted of certain serious crimes.

The Important Right to Remain Silent. Although a person charged with being inadmissible has the burden to show she is admissible, *ICE first has to provide the court with evidence that she is an alien*. If ICE has no evidence that the person being charged is a not a U.S. citizen, then the person cannot be removed. The immigration courts have no power over U.S. citizens. Unfortunately, often it is our clients themselves who give ICE the crucial information that they are aliens and deportable or inadmissible.

> **Example 1.7-a:** Laura was picked up by ICE near San Antonio, Texas. She admitted to ICE officers that she is a Mexican citizen and that she entered the U.S. without inspection. ICE will use this statement to write the charges in the Notice to Appear and to prove that Laura is an alien who has not been lawfully admitted and should be removed for being inadmissible.
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> Andre was also picked up by ICE near San Antonio. He confessed to the ICE officers that he is a Mexican citizen who had been lawfully admitted to the U.S. using a border-crossing card, but then had simply stayed here for three years. ICE will use this statement to write the charges in the Notice to Appear and to prove that Andre was admitted but now is deportable and should be removed.

In both of the above examples, immigration authorities used the individual's own statements to show they were not citizens of the United States. In reality, any person who is in the United States has the right to refuse to speak with ICE. In some cases, if the person is willing to withstand strong pressure, ICE will not be able to get the facts it needs to write up charges for the Notice to Appear or to meet its burden of proof in court. Then ICE cannot remove the person—even if he or she has no immigration papers. See **Unit 19**.

> **Example 1.7-b:** Mario was stopped by ICE near El Centro, California, but he refused to speak to them. He continued to refuse even though ICE agents pressured him to talk and threatened him with jail.
>
> Because ICE did not know what country Mario was from and how he entered the U.S., it was not able to prove the crucial facts to the judge. ICE could not prove that Mario came under any ground of deportation or inadmissibility; it could not even prove that he was not a U.S. citizen. Since ICE could not meet its burden of proof, the hearing could not go forward, and ICE had to let Mario go free.

Removal proceedings, burden of proof and other defenses are discussed in more detail in **Unit 10**. More information about who has been admitted and who is still "seeking admission" is provided in **Unit 3**, **§ 3.1**.

Exercise 1.7: For each story, answer the following three questions. Have the following people been lawfully admitted into the U.S. or not? Would they be charged with being inadmissible or deportable? Will they have the burden of proof or will ICE or CBP (whichever agency is responsible) in the examples below? Do they have a right to a removal hearing before a judge? (Answers at **Appendix 1-A**.)

1. Cecilia crosses the border illegally. Fifteen days later, she is arrested by ICE in San Diego. What if she was arrested in San Diego when she was only in the U.S. for a week?
2. Monique flies in to the U.S. from Africa. She tells the CBP officer at the inspections booth that she has false documents. She says that she fled her home country because she is afraid of persecution, and she wants political asylum.
3. Sonny enters the U.S. on a student visa. Later he sent $300 to his friend to help the friend illegally enter the U.S. ICE finds out about this and arrests Sonny.

PART THREE: BECOMING A LAWFUL PERMANENT RESIDENT

§ 1.8 What Is a Lawful Permanent Resident?

Many of our clients want to become permanent residents of the United States, or to help a family member become a permanent resident. This section will discuss permanent residency and give an overview of the ways to obtain it.

People use a few terms to describe permanent resident status. A permanent resident is someone who has a **green card**, or who has **immigrated,** is a **lawful permanent resident** or **LPR**, has **adjusted status to permanent resident** or received an **immigrant visa**. All these terms mean the same thing.

A permanent resident has several important rights, including the rights:

1. to live and work permanently in the United States,
2. to travel in and out of the U.S. (with some restrictions),
3. to help other family members (spouse and unmarried sons and daughters) immigrate by filing a visa petition for them, and
4. to apply for U.S. citizenship, after some years as a permanent resident.

How can an alien become a lawful permanent resident? We will discuss this topic at length in this guide. This is a brief overview of the ways that someone can become a permanent resident.

We are presenting this list to underline the fact that the grounds of inadmissibility are closely related to permanent residency. *Aliens who are inadmissible may have a very difficult time becoming lawful permanent residents.* The grounds of inadmissibility do not only apply at the border. They apply almost any time a person applies to immigrate.

§ 1.9 An Alien Who Is Inadmissible May Not Be Able to Immigrate; Waivers of Inadmissibility

In each application discussed below, people who want to immigrate must meet two tests: they must qualify for the particular means of immigrating, and they must be **admissible**.

Even if a noncitizen appears inadmissible she may still be able to immigrate. Certain grounds of inadmissibility might not apply in some applications. In others, applicants may ask USCIS to **waive** (forgive) the ground of inadmissibility. (We discuss waivers of inadmissibility in detail in **Unit 6**.) The point is that whenever someone applies for permanent residency, you must check the law to see what grounds of inadmissibility apply, and then whether your client comes within one of those grounds.

Some types of applications do not require that the person is "admissible," but might require that the person is of "good moral character. The **good moral character requirement** is related to the grounds of admissibility, but is not the same. A person who comes within certain grounds of inadmissibility—especially the grounds related to crimes—cannot establish good moral character required for some immigration benefits. In addition, there are other bars to good moral character that are not based on inadmissibility grounds. An important thing to understand about good moral character is that it need only be shown for a certain amount of time, for example, the preceding five years. We shall discuss good moral character in **Units 3** and **11**. In some cases, a person is "admissible" even though she is not a person of "good moral character." Likewise, a person can show the required time period of good moral character, but still be inadmissible.

§ 1.10 Immigration through a Family Visa Petition INA §§ 203, 204

Some people can become lawful permanent residents through their family members. A lawful permanent resident or a U.S. citizen can file a visa petition on behalf of certain close family members. To get the visa approved, the family must prove that the person submitting the visa petition is a permanent resident or U.S. citizen, that the alien who wants to immigrate is related to that person, and that the relationship can form the basis for an immigrant visa petition under one of the listed visa categories.

After the visa petition is approved, the person may apply to immigrate. Some people are able to immigrate very soon after the visa petition is approved. Others may have to wait up to ten or twelve years or more. How long the person must wait to immigrate depends upon the kind of visa petition which was submitted, and where the person waiting to immigrate was born.

People who immigrate through a family visa petition must be admissible. The USCIS can waive some grounds of inadmissibility. We discuss immigration through family visa petitions in **Units 4**–**7**.

§ 1.11 Asylum: INA § 208

A person who cannot return to her own country because she fears persecution may apply for asylum in the United States. See INA § 208. The person may apply by mailing an application to a USCIS Asylum Office. Or, if she has already been arrested by ICE or CBP and brought before an immigration judge or an asylum officer, she can ask the immigration judge or the asylum officer for asylum.

A person who has been granted asylum is an **asylee**. One year after the grant of asylum, the asylee is eligible to apply for adjustment to permanent resident status. See INA § 209. The person must be admissible at that time. However, some grounds of inadmissibility do not apply to asylees. In addition, there is a broad waiver available for other grounds for humanitarian reasons. We discuss asylum in **Units 14** and **15**.

§ 1.12 Refugee Status: INA § 207

A person who is *outside* the United States and who cannot stay in or return to his or her country because of fear of persecution may apply for refugee status. See INA § 207. If the government approves the application, the person may enter the U.S. legally as a **refugee**. One year after entering, the person can apply to adjust status to permanent residency. See INA § 209. The person must be admissible, but refugees are exempted from many grounds of inadmissibility.

§ 1.13 Registry: INA § 249

A person who has lived in the United States since before January 1, 1972 may apply to immigrate by making a "record of admission for permanent residence." This process is known as **registry**. See INA § 249.

For those that have lived in the United States for a long time, this is a great option because some grounds of inadmissibility do not apply, but the person must be able to establish good moral character at the time of application. Registry is discussed in **Unit 16**.

§ 1.14 Amnesty: The Legalization and SAW Programs INA §§ 245A, 210

In 1986, Congress passed a law that created three legalization (also known as amnesty) programs for undocumented people in the United States. The application periods for these special programs have closed, but you will encounter people that obtained status through these programs or tried to apply. The first legalization program was for people who have lived in the U.S. since January 1, 1982. The Special Agricultural Worker (SAW) program was for people who did agricultural work in the U.S. during at least one year, from 1985 to 1986. The Cuban-Haitian program was for certain people from Cuba and Haiti.

The legalization programs had two phases. In the first phase, people became lawful *temporary* residents for a period of time. In the second phase, temporary residents applied for lawful *permanent* residency. Participants were required to be admissible generally, but several grounds of inadmissibility did not apply or could have been waived. Several other requirements applied. See **Unit 16**.

Some people who might have been eligible for legalization were denied benefits because of the way the former INS interpreted the legalization laws. Several groups of these people filed class action lawsuits against the INS, and ultimately Congress enacted a law, called the LIFE Act,[5] which contained provisions for these class members to apply again for legalization. This program is discussed in **Unit 16**.

§ 1.15 Cancellation of Removal for Non-Permanent Residents INA § 240A(b)

People who have lived in the United States for ten years may be eligible to apply for cancellation of removal in immigration court. It is not possible to walk into a USCIS office and apply; the person must be in removal proceedings before an immigration judge. Generally, neither ICE nor USCIS will put a person in removal proceedings solely for the purpose of allowing her to apply for cancellation of removal. Thus, this is an application of last resort, meaning that one applies only if they are facing removal. If the judge grants cancellation of removal, the person will become a lawful permanent resident as of the date of the judge's decision.[6]

People who apply for cancellation of removal must show four things: that they have continuously resided in the United States for at least ten years before their removal proceedings began; that they have "good moral character;" that they have never been convicted of certain crimes, and that their spouse, parent, or child who is a U.S. citizen or lawful permanent resident would suffer "exceptional and extremely unusual hardship" if they were removed. INA § 240A(b). It is very difficult to qualify for cancellation of removal because the hardship requirement is so onerous. Cancellation of removal is discussed in **Unit 11**.

Exercise 1.15: The following people come to your office. You must answer two questions about each person (answers are at **Appendix 1-A**):

a. Might the person be eligible to immigrate? How?
b. From the facts you have, might there be a problem in the case?

1. Maurice's mother is a United States citizen. Maurice first entered the United States on a student visa in 1984. He obtained the visa by fraud.
2. Estella has lived in the U.S. since July 4, 1968.

[5] The full name of the LIFE Act is the Legal Immigration Family Equity Act, Pub. L. 106-553, enacted on December 21, 2000.
[6] However, there is a limit to how many of these grants can be given in a single year. See Unit 11.

3. Ng is a lawful permanent resident. He was recently charged with possession of cocaine for sale.
4. Roberto came to the U.S. after soldiers terrorized his village because they suspected the villagers of supporting anti-government guerrillas. Roberto fears he could be killed if he returns.
5. Iman came to the United States on January 1, 1983, and has been living here ever since. In 1986 he was convicted of a serious crime.
6. Flavio came here last month. He has no family in the U.S. and is not afraid to return to Costa Rica, where he was born.

PART FOUR: FORMS OF IMMIGRATION STATUS

§ 1.16 Immigration Status

Lawful permanent residence is one kind of immigration status. Aliens in the United States may have different kinds of immigration status. The following list provides the various types of status that exist under current law. A person who is removed will lose lawful immigration status.

Lawful permanent residents or Green Card-holders have the right to work and live permanently in the United States, and travel to other countries. There are many ways to become a lawful permanent resident. These are discussed in **Part Three**.

Permanent resident status is shown by an Alien Registration Card, I-551 ("green card"—although actually these cards have been many different colors over the years including blue, white or pinkish); a foreign passport with Permanent Resident Stamp; or a Lawful Temporary Resident Card (I-688) with a permanent resident sticker. Another way to show lawful permanent resident status is an I-94 (white card) with a photo and a stamp of "Temporary Evidence of Permanent Resident Status, I-551." A person who has lost his green card and has applied for a replacement may have this type of card.

Lawful temporary residents are people who are in the process of getting legal status through one of the "amnesty" programs described in **§ 1.14** and **Unit 16**. An applicant for a program may have a "work authorization" card marked I-688A. A temporary resident will have a card marked "I-688" on it. A person who has completed the amnesty program and became a permanent resident will now have a regular residency card, but could have the older I-688 with a permanent residency sticker on it. (There are not many people with lawful temporary resident status around anymore; most have adjusted to lawful permanent resident status.)

Asylees and Refugees are people who have been *granted* asylum or refugee status and who have not yet become permanent residents. Asylees and refugees have the right to work, to travel outside the U.S., and to accept certain public benefits.

Non-Immigrant Visa Holders. Many people—for example, tourists, students and temporary workers—are in the U.S. on temporary non-immigrant visas. A non-immigrant is someone who has come to the United States *for a temporary time and a specific purpose*. For example, a person may come as a tourist for three months in order to visit the United States. Common non-immigrant visas are visitor or tourist ("B-1/B-2" visa) and student ("F-1" visa). Non-immigrant visas are defined in INA § 101(a)(15). See **Appendix 1-D** for a list of the non-immigrant visa categories.

Documents that show non-immigrant status are the foreign passport with a non-immigrant visa stamp from a U.S. consulate and an I-94 card showing entry with inspection.

Border Crossing Card is a kind of non-immigrant visa. It allows the person to cross into the United States for up to 72 hours per visit. The person must stay within 25 miles of the border. The purpose of the trip must be to visit. People who come to the U.S. with Border Crossing Cards do not have visas in their passports and usually do not have their passports stamped with a date of entry. 8 CFR § 212.6.

Aliens with Temporary Status. At times Congress or USCIS will permit certain groups of aliens to have temporary permission to live and work in the United States. This status does not necessarily lead to becoming a permanent resident.

1. **Temporary Protected Status (TPS).** In the Immigration Act of 1990, Congress created the "Temporary Protected Status" (TPS) category for persons who are from certain countries which are going through civil war, natural disasters, or other dangerous conditions. The first TPS designation made by Congress was for persons from El Salvador who entered the United States on or before September 19, 1990, but there are now many others. The list of countries is updated regularly, and you can check the USCIS website for a current list of countries with designated TPS status at www.uscis.gov/tps. The law is found at **INA § 244**. See **Unit 14** for more discussion of TPS.

2. **Deferred Enforced Departure, Formerly Extended Voluntary Departure.** This is very similar to Temporary Protected Status. Most recently, DED has been granted for Liberian nationals, with President Obama granting the latest extension through September 30, 2014. Those with DED are authorized to work in the United States, but are generally not considered in lawful status for other immigration benefits.

3. **Family Unity Pursuant to § 301 of the Immigration Act of 1990.** Some spouses and children of people who participated in the legalization programs are eligible for temporary permission to live and work in the United States under the Family Unity program. Family Unity is discussed in **Unit 16**.

4. **Parolee.** The USCIS and/or CBP may choose to "parole" a person into the United States, i.e., just let the person in, in for variety of reasons. See 8 CFR § 212.5.

5. **Deferred Action.** USCIS grants deferred action to self-petitioners for family immigrant visas under the Violence Against Women Act (VAWA) (see **Unit 5**, **§ 5.20**), and in its discretion to certain immigrants and visitors with compelling circumstances. A grant of deferred action means ICE will not deport these noncitizens, even though they are removable. VAWA self-petitioners maintain deferred action status until they adjust status to lawful permanent residence.

6. **Deferred Action for Childhood Arrivals (DACA).** This special program began in 2012 for certain undocumented people that came to the U.S. prior to their 16th birthday and have been in the United States since June 15, 2007. It is a special deferred action program with its own application process. DACA recipients receive authorization to work, but in reality, this is not a status that, at this time, leads to more permanent status. Like regular deferred action above, a grant of deferred action means ICE will not deport these noncitizens, even though they are deportable. See **Unit 16** for a full discussion about DACA.

7. **Deferred Action for Parents of American and Lawful Permanent Residents (DAPA)**. On November 20, 2014, President Obama announced a new deferred action program for undocumented immigrants who are the parent of a U.S. citizen or lawful permanent resident, and have lived in the United States since before January 1, 2010. Like DACA, DAPA grants work authorization and protection from deportation, but does not lead to permanent status. As of April 2016, this program is enjoined and immigrants who are eligible cannot request DAPA until it is allowed to be implemented. See **Unit 16** for a full discussion of DAPA.

8. **Prosecutorial Discretion.** Prosecutorial discretion is not a status, but can reflect the government's decision not to continue pursuing removal of someone, but without the work permit or security of deferred action. The idea behind it is that ICE should concentrate on high-priority cases and forego removing people with close ties to US citizens, long-term presence in the United States, or minor criminal problems. ICE, as an enforcement entity, has always had the discretion to choose which cases to pursue. However, there have been some recent developments in how ICE is supposed to view these types of cases (see **Unit 16** for more information on prosecutorial discretion policies).

9. **"K" Visa Holder.** This is a temporary status available to the fiancée of a U.S. citizen and that fiancée's children after the approval of a fiancée petition, or to the spouses and minor children of U.S. citizens who are waiting outside the United States for the approval of an immigrant visa petition.

10. **"S" Visa Holder.** A very few "S" visas are available each year to persons who can provide critical information about terrorist or organized crime activities. This type of visa is also known as the "informant" visa. It rarely leads to eligibility for any other more permanent status.

11. **"T" Visa Holder.** "T" visas are available to victims of "a severe form of trafficking in persons," who are in the U.S. because of the trafficking, and who would suffer "extreme hardship involving unusual and severe harm" if removed from the U.S. This visa is also available to the victim's spouse and children (and parents, if the victim is under 21 years old). T visa holders may apply for permanent residence after 3 years.

12. **"U" Visa Holder.** The "U" visa is available to immigrants who are victims of certain enumerated forms of criminal activity, possess information concerning that criminal activity and would be helpful to the investigation or prosecution of that criminal activity. A federal, state, or local law enforcement official must certify that the immigrant victim is, has been or is likely to be helpful in the investigation or prosecution of the crime. Some spouses, children, parents and siblings of some crime victims may also be granted a visa as derivatives of the U visa holder. U visa holders may apply for permanent residence after 3 years.

13. **"V" Visa Holder.** This is 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 permanent resident relative for at least 3 years. The family visa petitions had to have been filed on or before December 21, 2000. Nonetheless, you might encounter noncitizens who have held this status in the past or have such a visa.

§ 1.17 Applicants for Lawful Status

People who have submitted applications to adjust to lawful permanent resident status have permission to live in the U.S., and may sometimes obtain work authorization. However, until they submit their adjustment application, beneficiaries of family visa petitions do not generally have the right to work and live in the U.S. If found illegally in the U.S., before they have received their immigrant visa, these people may be subject to removal and deportation. (See **Unit 10**). These terms are explained in **Unit 4**.

Documents that show a person is an applicant for lawful status may vary. A work authorization card or correctly marked I-94, or a stamped copy of an application form or next court appointment notice may show a person's current status.

§ 1.18 Undocumented Immigrants

Undocumented immigrants are people who are in the U.S. without legal permission. Many people enter the United States by crossing the border illegally. This is commonly referred to as "**entry without inspection**" or **EWI**. Others enter on a non-immigrant visa but don't leave the U.S. when their permission to stay (marked on Form I-94) has expired. USCIS often refers to this type of person as an "**overstay**." A person who entered with a non-immigrant visa may not have a valid visa if he disobeyed its terms, or obtained it by fraud.

Undocumented immigrants may be removed from the United States through removal proceedings discussed above. In general, unless they obtain lawful status they cannot obtain work authorization, permission to live in the U.S., or permission to travel.

> **Example 1.18:** Tae-bak is an undocumented worker from Korea who has lived in the U.S. for five years. His mother is ill in Korea. He wants to know if there is some way to get permission to visit his mother and return to the U.S. Tae-bak is not eligible to apply for any lawful immigration status.
>
> Tae-bak cannot get permission to travel and return to the U.S. Permission to travel and to work is only given to people who have lawful status, or in some cases to people who have submitted an application for lawful status. If Tae-bak asks ICE or USCIS for travel permission, ICE or USCIS will turn down his request and might put him in removal proceedings.

Many undocumented people are eligible to apply for some way to immigrate. See **Part Three**, above. They may even unknowingly be U.S. citizens. See **Unit 17**. Or they may at least be eligible to apply for temporary status such as Family Unity or Temporary Protected Status. See **§ 1.16**, above. Undocumented immigrants who obtain these forms of relief are sometimes entitled to permission to stay and work in the U.S. while the application is being considered.

PART FIVE: THE DEPARTMENT OF HOMELAND SECURITY

§ 1.19 What Is DHS?[7]

The Department of Homeland Security (DHS) has five missions: (1) preventing terrorism and enhancing national security; (2) border security; (3) enforcement of immigration laws; (4) cyber security; and (5) ensuring resilience to disasters. The immigration functions of DHS have been divided among three separate entities within the DHS: Immigration and Customs Enforcement (**ICE**), Customs and Border Protection (**CBP**), and Citizenship and Immigration Services (**USCIS**).

Immigration and Customs Enforcement (ICE) is made up of about 20,000 employees and is charged with the enforcement of immigration and customs laws within the United States, among other investigative duties to protect borders and enhance public safety. ICE enforces federal laws governing border control, customs, trade and immigration. ICE has two main components—Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO).

[7] On November 25, 2002, President George W. Bush signed into law the sweeping Homeland Security Act of 2002 (H.R. 5005). This Act merged an estimated 22 federal agencies or agency components with over 170,000 employees into a new Department of Homeland Security (DHS). On January 22, 2003, the Senate confirmed former U.S. Representative and Pennsylvania Governor Tom Ridge, as the first Secretary of the new agency. On March 1, 2003, the DHS came into being.

Customs and Border Protection (CBP) is comprised of about 60,000 employees and is responsible for curbing illegal immigration, stemming the flow of illegal drugs, protecting U.S. agricultural and economic interests, regulating and facilitating international trade, collecting import duties, and enforcing U.S. trade laws.

Citizenship and Immigration Services (USCIS) functions with about 17,000 employees and is responsible for granting immigration benefits. USCIS is responsible for adjudication of immigrant visa petitions, naturalization petitions, asylum and refugee applications, family and employment-based petitions, and the issuance of employment authorization documents.

The DHS has the authority to administer, enforce, and issue regulations regarding visas adjudicated by consular officers, and the authority to develop homeland security training programs for consular officers from the Department of State. However, it does not have the authority to alter the employment status of diplomatic and consular officers, who remain employees of the Department of State.

Some aspects of immigration law are handled by other governmental agencies.

The Department of Justice, subject to the direction and regulation of the Attorney General, has jurisdiction over the Executive Office for Immigration Review (the immigration courts and the Board of Immigration Appeals).

The Department of State manages the U.S. consulates abroad, which may issue immigrant and non-immigrant visas to noncitizens who are outside the United States.

The care and custody of unaccompanied alien children is under the authority of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services.

An Office of Civil Rights has been established with the DHS to be responsible for reviewing, assessing, and reporting civil rights abuses, including racial and ethnic profiling, by employees and officials of the department. Similarly, DHS's Office of Inspector General reviews agency functions and some types of complaints. Reports of such abuses must be made to Congress annually. See **Unit 19**.

There is also an Office of Fraud Detection and National Security (FDNS) within USCIS that is responsible for detecting and preventing both fraud by immigrants and fraud perpetuated against immigrants by unscrupulous immigration service providers.

In addition there is the Office of the USCIS Ombudsman, which is directly under the Secretary of DHS and reports to the Secretary. The function of this office is to field complaints, suggestions and criticisms about the functioning of USCIS and to initiate changes that will make it function

more efficiently. Practitioners should inform the Ombudsman's office of processing problems encountered with their cases.[8]

See Chart "Structure of the Department of Homeland Security," **Appendix 1-B**.

Question for Discussion: The USCIS may appear to be a very political institution. For example, the agency that formerly handled some of the adjudications currently handled by USCIS (the Immigration and Naturalization Service, also known as the "INS") approved over 50% of the applications for political asylum from Poland when the government was under Communist control. At the same time it denied over 96% of the applications for asylum from El Salvador, which had a government supported by the U.S.

Do you think that the fact that USCIS is under the President's authority has any effect on USCIS policies? Are there any other USCIS decisions which might be viewed as being "political"?

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§ 1.20 The Structure of the DHS Immigration Agencies

A. Districts and Field Offices

USCIS has divided the U.S. into Districts to serve immigrants and their families. Within Districts are various local offices, referred to as Field Offices. The local Field Offices are where people go for interviews and services with USCIS. ICE might be housed in the same buildings as USCIS Field Offices, however USCIS Field Office Directors have authority over only the service functions. ICE handles the enforcement functions. ICE employees do not report to the USCIS Field Office Director. However, often ICE personnel still operate out of Field Offices, and CBP employees, who are responsible for border issues, also have a presence in the Field Offices, in the Deferred Inspections unit.

B. National Customer Service Center

The USCIS has a National Customer Service Center (NCSC) available via a toll-free "hotline" telephone number: 1-800-375-5283. The NCSC hotline provides basic eligibility and "how to" information, including hours of operation for USCIS offices, lists of local civil surgeons, and listings of Application Support Centers [where people applying for USCIS benefits must have their fingerprints taken]. People can also obtain USCIS forms through this number or by calling the forms hotline, 1-800-870-3676, or by submitting a request online at www.uscis.gov/forms-by-mail. The USCIS plans to expand the NCSC's services in the future.

[8] The USCIS Ombudsman can be contacted via email at cisombudsman@dhs.gov. Further information on this office can be found on the DHS website at: www.dhs.gov/dhspublic/index.jsp. (Click on DHS Organization.)

C. Website Address

The USCIS also has a website, which can be found at: www.uscis.gov which contains useful information for practitioners and the general public alike. It is now possible to file some forms electronically and to check the status of a pending case online. The website tells you how to do so.

In addition, USCIS operates larger service centers that receive and process certain applications and "lockbox" locations for filing of applications.

D. Office of Border Patrol (CBP)

CBP's border security mission is led at ports of entry by CBP officers from the Office of Field Operations, along U.S. borders by agents from the Office of Border Patrol, and from the air and sea by agents from the Office of Air and Marine. The task of the Border Patrol is to patrol the borders with Canada and Mexico, and rural areas in neighboring states of the border, in order to stop unlawful entry of aliens. In reality, the Border Patrol may have stations or checkpoints hundreds of miles from any U.S. border. Recently Congress has been expanding the role of the Border Patrol. The Border Patrol now participates in drug interdiction; it has been given authority to arrest anyone committing a crime; and its officers are using more advanced weapons. CBP Border Patrol Sectors, and the areas of the country over which they exercise control, are listed in 8 CFR § 100.4(d). A Chief Patrol Agent heads each Border Patrol Sector.

The USCIS District Office and the CBP Border Patrol Sector are independent; neither can tell the other what to do.

§ 1.21 USCIS, ICE & CBP Offices and the Saga of the "A-File"

USCIS Field Offices fulfill many functions. Each office is divided into different branches, or sections, which handle the different functions. For example, one unit may be responsible for adjustment cases, while another handles naturalization cases. An important part of your job is to discover which unit handles which function, and whether that unit is under USCIS, ICE, or CBP. This way you will know where to go to get things done. You can save yourself a lot of time and energy if you know how to get around.

In addition to the Field Offices, there are five USCIS Service Centers: 1) the Vermont (Eastern) Service Center; 2) the Nebraska (Northern) Service Center; 3) the Texas (Southern) Service Center; 4) the California (Western) Service Center; and 5) the Potomac Service Center. Many applications are filed directly with the Service Centers. One exception to this is the Potomac Service Center. On March 1, 2016, USCIS began transferring certain cases to the Potomac Service Center from other service centers to balance workloads. This includes certain applications for employment authorization (From I-765) files by F-1 and M-1 students and J-1 dependents.

Affirmative asylum applications (by those who are not in proceedings before an immigration judge) are handled by designated Asylum Offices located in: Arlington, VA; Chicago, IL; Houston, TX; Los Angeles, CA; Miami, FL; San Francisco, CA; and Newark, NJ. (See **Units 14** and **15** for more information on asylum.) These offices are part of the USCIS, but are entirely separate from the local USCIS District Directors' jurisdiction. They are centralized into a separate unit of USCIS called the Refugee, Asylum, International Operations Directorate.

There is another important reason to learn how USCIS works: you may have to find your client's A-file.

The Saga of the "A-File"

Whenever a person is arrested and placed in removal proceedings, or files an application for an immigration benefit, an "alien registration file," commonly referred to as the "A-File" or (formerly) the "Service file" is created for that person. At the present time, only one file usually will exist for that person whether the file has been created by USCIS or ICE or CBP. This is a holdover from the days when there was only one immigration agency. When the file is created, an alien registration number or "A-number" is assigned to the person. The A -number is an eight or nine digit number which begins with the letter A. The three DHS immigration agencies will knowingly only create and use one file and A-number for each alien. (A person may end up with more than one file or A-number by mistake, for example if the person has used different names when arrested by ICE.) The three immigration agencies track all cases by use of the A-number.

Often, USCIS, or ICE, or CBP may temporarily or permanently be unable to find the person's A-file. This may be because a different agency of DHS or office has the file and hasn't written this down correctly. This can be bad for your client, because *if an immigration officer cannot locate the file, it is very difficult to convince the officer to take any action on the person's case.* So, for example, if you want the officer to decide an application or grant employment authorization, you very much want to locate the file. If you know how USCIS or ICE or CBP work, you may be able to conduct your own search for the file by calling officials in other logical units until you find it.

Of course, there are times when it is in the alien's interest that the file is lost. This is especially true if the person could be deported, but ICE is no longer paying attention to him or her because there is no file to remind them.

The agencies are currently in the process of moving to electronic format for applications and files. However, to date, physical A-files still exist. New applications and forms might have an electronic format, and might be scanned instead of printed into a physical file. However, for most, keeping track of the physical A-file will still be very important.

§ 1.22 How Does a Field Office Work?

This is an example of how a typical Field Office might divide its tasks between different branches and units of the three DHS immigration agencies.

1. **USCIS-Citizenship Branch** handles applications for naturalization to U.S. citizenship, and decides cases in which a person wants to prove that he or she already is a citizen. The USCIS Service Centers, however, do the initial processing of all naturalization applications. Most naturalization applications must be filed at designated PO Box address depending on where the applicant lives, not directly with the Service Centers even though they do all the initial processing.[9]

2. **USCIS-Examinations** or **Adjustments Branch** handles applications that a person can make in front of an immigration officer, such as adjustment of status applications. (If someone has already been placed in removal proceedings before a judge, they usually have to file the application with the judge instead of USCIS.)

   Examinations Branches may contain different units to handle the different applications. For example, the **Adjustment Unit** generally handles applications for family-based adjustment of status. Although the applications are adjudicated at the Field Office where the person lives, the applications are filed with the National Benefits Center's Chicago Lockbox, and not with each individual Field Office's Adjustment Unit.

   The Examinations Branches of District Offices used to handle family and work-related visa petitions in addition to adjustment applications, but that is no longer the case. Now all family based, stand-alone visa petitions (I-130 visa petitions) must be filed at a Chicago Lockbox address.[10] (See **Unit 5**.) The Chicago Lockbox then forwards the petitions to the appropriate USCIS Service Center. If the service center thinks that there may be some problem with the petition—for example, if it suspects a married couple of committing marriage fraud—it will send the petition back to the Field Office for an interview or investigation. There, the Visa Petitions/Fraud Unit of the Examinations Branch may handle the interview.

3. **ICE-Enforcement** and **Removal Operations Branch**, or **ERO** is a part of ICE, not USCIS, but may be located within the same Field Office. The ERO is in charge of aliens who have already been **placed in removal proceedings** (a Notice to Appear has been issued and the person will go before an immigration judge) **or are otherwise facing removal**. The **ERO** may accept bond money and order the person's release from detention, and handles some applications for work authorization and extensions of permission to be in the United States. If the person is going to be removed, the **ERO** will arrange for transportation and travel documents.

   In short, the ERO handles most matters that involve taking a noncitizen into custody and their removal from the U.S.

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[9] Go to www.uscis.gov and click on the forms menu, then search or scroll down to the N-400 and click on it. You will find yourself at a page with filing instructions for the form.
[10] There are different PO Box addresses for the Chicago Lockbox depending on the applicant's place of residence.

4. **ICE-Office of the Chief Counsel** is the office of the trial attorneys who represent DHS against people in removal proceedings.

   CAUTION: Here, two ICE branches—ERO and Office of Chief Counsel—have control over the same person (anyone in removal proceedings). This is an excellent file-losing opportunity for ICE.

5. **ICE-Investigations Branch** conducts investigations of people under suspicion by ICE, conducts raids, and often is in charge of employer sanctions work.

6. **CBP-Deferred Inspection** may be in charge of people who are charged with being inadmissible and want to fight their case. If someone doesn't pass screening upon entry into the U.S., they might be referred for a deferred inspection at a local office for further inquiry.

7. **USCIS-Legalization** handles legalization, any remaining amnesty applications, and outreach.

8. **USCIS-Field Office Director**. The head of the local USCIS office is the Field Office Director. All section heads and points of contact within a USCIS office report to the Field Office Director. Often we go to the Field Office Director to negotiate about USCIS policies, to ask for special relief for an individual when lower authorities will not give it, or to make complaints. The Field Office Director ultimately reports to a District Director, which may oversee more than one field office. The District Director is not directly involved with services of the Field Office, but focuses on management of the district. Nonetheless, in larger policy issues, the District Director is a useful point of contact.

9. **Immigration Court** or **Executive Office for Immigration Review (EOIR)** is not a part of DHS, but sometimes has its courtroom and offices in the same building as USCIS District Offices. The EOIR is discussed in the next section.

§ 1.23 Immigration Court and the BIA: The Executive Office for Immigration Review

The **Executive Office for Immigration Review (EOIR)** is the immigration court system.[11] The EOIR has several parts. However, the two parts that are most relevant to us are: the **immigration courts** and the **Board of Immigration Appeals (BIA)**.[12]

[11] Formerly, the immigration court system was part of INS and the judges were INS employees. This system—where INS employed both judge and prosecutor—led to criticism that the immigration court should be more impartial and independent. In 1983 the court system was taken out of INS and became EOIR. EOIR is now a separate agency within the Department of Justice. The EOIR reports to the Attorney General.

[12] You can look up other parts of EOIR by going to www.justice.gov/eoir/.

The immigration courts include **immigration judges** and their staff. These are the courts that hold removal hearings. There are 56 immigration courts around the country, several of which are located within immigration detention centers. At the immigration court, an ICE trial attorney (**District Counsel**) represents the DHS. A private attorney or BIA Accredited Representative (see **Unit 13**) may represent the alien. However, in many cases a person in removal proceedings before the immigration court is not able to find or pay for legal help and must represent himself or herself.

The Board of Immigration Appeals is the Department of Justice's administrative appeals court for immigration cases. It handles **appeals** from immigration court decisions, appeals of denials and revocations of I-130 family visa petitions, and appeals of K visa revalidation denials. For example, if either the alien or ICE disagrees with a final decision made by an immigration judge, he or she can appeal it to the BIA. That is, the party can ask the BIA to review the case and make its own decision about how the case should have been decided. The BIA is in Virginia and most appeals are reviewed on paper, without any parties physically attending the court.

NOTE: The Court System and ICE Are Different and Have Different Files. Submit Your Documents to Both Sides! Sometimes it is difficult to remember that ICE and the EOIR are distinct agencies, but they are. If a person is in proceedings, the immigration court will start its own file on him or her. This file will only contain things that either ICE or you submit to the court. It might not, for example, contain everything in the A-file. Thus, if you submit a document to ICE, it does *not* automatically go to EOIR. Additionally, if documents were submitted to USCIS before the person was put in court, they do not automatically go to the court. If you want the prior submissions to be part of the court's record, you must submit the documents to the court and provide a copy to opposing counsel (Office of Chief Counsel for ICE).

Neither ICE nor the alien may give documents to the EOIR without giving the other side a copy for review. 8 CFR § 1003.32(a). If you submit a document to Immigration Court or the BIA, you *must* submit a copy to ICE and prove that you did so. This is called "proof of service."

PART SIX: THE IMMIGRATION ACT

This unit has covered a lot of the basics of immigration law. We will close this unit by coming back to the beginning, and take a brief look at the Immigration and Nationality Act.

§ 1.24 The INA

Our current immigration law is the **Immigration and Nationality Act of 1952, as amended (INA)**. This is a law or **statute** which was passed by Congress in 1952.

Once Congress has passed a law, it is free to pass other laws, which amend (change), the first law in basic ways. Since 1952, Congress has passed several other laws, which change the INA. One such law was the Immigration Reform and Control Act of 1986 (IRCA). Another was the Immigration Act of 1990. A more recent, major change is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

> **Example 1.24:** Before IRCA was passed in 1986, a U.S. employer could not be punished for hiring aliens who did not have special permission to work. IRCA added this "employer sanctions" program to the INA. Now employers face some penalties under the INA if they hire unauthorized workers.

The INA is a book of laws about aliens and citizens. It covers at least five important things. We have discussed most of them in this unit. They are:

1. Who can become a citizen, and who already is one?
2. Who can immigrate, or become a permanent resident? What are the different ways a person can immigrate?
3. Who can come to the United States temporarily on a non-immigrant visa (e.g., student, tourist)?
4. Who can be removed from the United States? What are the grounds of deportation? What happens in a removal hearing?
5. Who can be admitted to the U.S.? What are the grounds of inadmissibility? What happens when someone presents themselves at the border?

The INA also covers other subjects. These include the rights and duties of aliens (work authorization, travel permission, etc.); the employer sanctions and anti-employment discrimination programs; unusual status like Family Unity and Temporary Protected Status; and immigration violations that are criminal offenses.

§ 1.25 Agency Regulations

The INA is a statute (law), written by Congress. Like many statutes, it is often written in general terms. It is hard enough to get Congress to agree to any law, without having it agree on details.

Once Congress writes a law, it hands it over to DHS and EOIR to make up rules for exactly how they will implement and enforce the law. These rules are the regulations.[13] The regulations are found in Title (volume) 8 of the U.S. Code of Federal Regulations. This is written as 8 CFR. The regulations generally have the force of law. While DHS is the main agency that writes regulations

[13] When the INS existed, the rules were created by the Department of Justice, under the Attorney General, because the INS was part of the Department of Justice. Now that the immigration laws are to be administered by DHS and EOIR, DHS and EOIR are responsible for creating the regulations. As mentioned above, generally the DHS and EOIR regulations parallel each other, but there are some significant differences.

to implement immigration laws, EOIR, Department of State and Department of Labor all create regulations to implement various immigration laws.

DHS and EOIR gain a tremendous amount of control over the law by their ability to make the regulations. They can decide what form applications must be in, what rights aliens have at different points in the procedure, what evidence is acceptable, and some details about eligibility for benefits. If DHS or EOIR writes a regulation that seems to be in conflict with the statute, or goes beyond what Congress required, we can challenge this in court.

The Department of State operates the U.S. consulates abroad, which may issue immigrant and non-immigrant visas to noncitizens who are outside the United States. Their regulations are published at Chapter 40 of the U.S. Code. If your clients will immigrate through consular processing, you will want to know the rules set out by the Department of State.

Filing Fees for Some Petitions/Applications

For up-to-date information on current filing fees and the correct form to use, always consult the USCIS website first at www.uscis.gov. Fees and forms change frequently. The filing fee amounts below went into effect on November 23, 2010 and remain current at this printing.

I-130	$420
I-485	$1070 ($985 + $85 biometrics fee)
I-485A	$1000 (only for those submitting adjustment applications under INA § 245(i))
I-601	$585
I-751	$505 (plus a possible $85 biometric fee, see instructions)
N-400	$680 (595 + $85 biometrics fee)

FOR FURTHER INFORMATION, see:

Catholic Legal Immigration Network, Inc., *Immigrants' Rights Manual*
National Lawyers Guild, *Immigration Law and Defense*
Ira J. Kurzban, *Kurzban's Immigration Law Sourcebook*

Additionally, ILRC produces many in-depth manuals on various aspects of immigration law: www.ilrc.org