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IMMIGRATION & NATURALIZATION

We proudly call ourselves a "nation of immigrants." Just about every U.S. citizen can trace his or her heritage back to "the old country." Because of this, at some time in virtually every American family's past, they've had to contend with U.S. immigration and nationality laws. Immigration laws are the laws that control the terms of admission of non-citizens to the United States and establish restrictions on their ability to live and work in this country. Nationality laws regulate issues of citizenship. This pamphlet is intended to provide service-members with basic information about many of the immigration and nationality issues that arise in the military context. Because these laws and procedures are highly technical and ever changing, it is crucial that you ensure you have the latest, most up-to-date information from the agency that oversees immigration benefits. Contact ***U.S. Citizenship and Immigration Services (USCIS)****, the successor agency in the* ***Department of Homeland Security*** *to the* ***Immigration and Naturalization Service (INS)****, for more information and current regulations, guidance, and forms. All of this can be obtained by going to the* ***USCIS*** *website,* ***www.uscis.gov****.*

1. BASIC PRINCIPLES: CITIZENS v. ALIENS

Everyone who is neither a citizen nor a national of the United States is considered an "alien." Aliens essentially fit into two categories: immigrants and non-immigrants. An *immigrant* is a non-citizen who intends to gain admission to and remain permanently in the U.S. An immigrant seeks *lawful permanent resident* (commonly called "Green Card") status to live and work in the U.S. indefinitely. The law presumes that all aliens who come to this country are immigrants unless they fall into a specific *non-immigrant* category. Non-immigrants are temporary visitors to the U.S., such as tourists or students. They are afforded fewer rights and privileges than immigrants, and are generally not authorized to work in the U.S.

Congress has established an immigration selection system that limits the number of immigrants allowed to come to the U.S. Most people who immigrate do so by way of family sponsorship, as relatives of U.S. citizens or lawful permanent residents (LPRs). The U.S. government allows only a certain number of relatives of LPRs to immigrate from each country in any given year. This means that some countries have many more would-be U.S. immigrants in this category than visa slots available. As a result, it can take years before these people can obtain visas to immigrate. By contrast, *immediate relatives* (spouses, parents, and unmarried children under the age of 21 of U.S. citizens), are not subject to numerical limitations on their immigrant visas, so usually can immigrate much more quickly, just as soon as the paperwork is processed by **USCIS**.

Generally, aliens who do not possess a visa, either immigrant or non-immigrant, are not admissible to the United States. However, there are some exceptions to this requirement. Canadians and citizens of countries that participate in a *visa waiver program* do not need a visa to enter the U.S. as visitors. Visa waiver program countries are those that the U.S. government believes present a low risk of immigration fraud and/or terrorism. We have reciprocal arrangements with all of the visa waiver countries so U.S. citizens are similarly not required to have a visa to travel there.

People who come from countries for which the U.S. requires a visa, and who seek admission to the U.S. at a port of entry without a proper visa or other permit, if detected by an inspector from **U.S. Customs and Border Protection (CBP)**, a new **Department of Homeland Security** agency made up of the portions of the former INS and the U.S. Customs Service that control the border, will be refused admission. Aliens with no legal right to admission to the U.S. who nevertheless manage to get into the United States by fraud or by crossing through the desert or otherwise illegally, have few rights. If they are caught by the **U.S. Border Patrol** (now part of **CBP**), or **U.S. Immigration and Customs Enforcement (ICE)**, another agency of the **Department of Homeland Security** that consists of the investigative parts of the former INS and former Customs Service, they can be *removed*, a legal proceeding to return them to their home country that used to be called *deportation*.

Even aliens who obtained legal admission to the U.S. can jeopardize their ability to remain in the country by committing certain crimes or by engaging in other conduct that is inconsistent with the status in which they were admitted. They, too, can be *removed* from the United States and forced to return to their native countries. On the other hand, a lawful permanent resident that has been law-abiding may eventually *naturalize* to become a U.S. citizen if he or she meets certain other requirements. A naturalized citizen has all of the same rights and privileges as a citizen who acquired this status at birth.

2. BRINGING A FOREIGN SPOUSE TO THE U.S.

Service-members who marry while stationed overseas usually desire to bring their foreign spouses with them when they return to live in the United States. This can be done in one of two ways.

***Overseas Processing*:** The service-member may sponsor the foreign spouse for an immigrant visa by filing a *Form I-130, Petition for Alien Relative*, at a U.S. embassy or consulate in the country of the spouse's nationality or citizenship, or by filing the same application in the USCIS office that has jurisdiction over the petitioner's (sponsors) place of residence. The correct designation where to send the I-130 to can be found on the *Instructions for Form I-130*, which is also available on the internet at www.uscis.gov under Forms.

This petition simply establishes the fact of the relationship between the sponsor and the beneficiary, *i.e*., their marriage. The sponsor must show that the couple is legally married and that the sponsor is a U.S. citizen or legal permanent resident of the United States (called an "LPR" for short, and typically referred to by the public as a "Green Card Holder"). Once the *I-130* is approved, the foreign spouse will be called to the U.S. embassy or consulate for a visa interview, and processed to immigrate to the United States.

***U.S. Processing*:** The second way to bring the foreign spouse to the United States is to, again, file the *Form I-130, Petition for Alien Relative*, in the United States, at a Service Center, at the addresses above. The correct designation where to send the I-130 to can be found on the *Instructions for Form I-130*, which is also available on the internet at www.uscis.gov under Forms.

While the *I-130* is pending, the U.S. citizen spouse also files a *Form I-129F, Petition for Alien Fiancé(e)*. Even though this latter form is called a *Petition for Alien Fiancé(e)*, it can be used in situations where the couple is already married and desires to have the foreign spouse join the U.S. citizen spouse in the United States prior to the completion of the processing of the *I-130*. Nevertheless, the *I-129F* must be approved before the foreign spouse will be permitted to enter the U.S. on what is called a *"K" non-immigrant visa*. Once the foreign spouse is in the United States, he or she must also file a *Form I-485, Application for Adjustment of Status to Permanent Residence* at the appropriate Service Center address, above, in order to stay in the U.S. permanently. Only when both the *I-130* and *I-485* are approved will the foreign spouse become an LPR.

3. FOREIGN SPOUSES ALREADYIN THE U.S. CAN ADJUST THEIR STAUSE TO LPR

A foreign spouse who is already in the United States in some status, *e.g*., as a non-immigrant visitor, or through admission under the Visa Waiver Program, can apply to adjust his or her status to lawful permanent residence by first having the U.S. citizen or LPR spouse file a *Form I-130, Petition for Alien Relative*, on his or her behalf, at the appropriate Service Center address, above. Once the *I-130* is approved, the foreign spouse must file a *Form I-485, Application for Adjustment of Status*. This is also filed at the appropriate Service Center, at the address, above. However, if the sponsoring spouse is a U.S. citizen, both applications can be filed at the same time at the local

USCIS office in the district in which the couple resides. To find the address for the local USCIS district office, please refer to the USCIS website, www.uscis.gov.

4. MARRIAGES OF LESS THEN 2 YEARS' DURATION RESULT IN *CONDITIONAL* PERMANENT RESIDENT STATUS

Permanent resident status is considered *conditional* if it is based on a marriage that was less than two years old on the day permanent residence was granted to an alien spouse. The reason it is conditional is to prevent marriage fraud. In other words, the law requires that couples married less than two years demonstrate that their marriage was not entered into to evade the immigration laws of the United States, such as was depicted in the movie, "*Green Card*." Ninety days before two years expire after the date the foreign spouse was granted permanent residence, the couple must jointly apply at USCIS to remove the conditions on the alien's residence. This is done by filing, at the appropriate Service Center, at the address, above, a *Form I-751, Petition to Remove the Conditions on Residence,* signed by both spouses, if the couple is still married. The correct designation where to file the *Form I-751, Petition to Remove the Conditions on Residence,* can be found at www.uscis.gov under Forms.

If the couple is divorced on the two-year anniversary date of the alien's conditional permanent residence or the sponsoring spouse has died, the foreign spouse may file to remove the conditions on his or her own, but must request a waiver of the joint filing requirement. To obtain a waiver, the conditional resident alien must show that the marriage was entered into in good faith and that it would be an extreme hardship on the foreign spouse to lose permanent residence status, among other requirements. **(Note that this is a complicated situation, and if you are an alien spouse who needs to file the petition to remove the conditions on your permanent residence because the time has come, and you can not obtain your U.S. citizen spouse's signature, for whatever reason, you should consult with an immigration attorney.)**

[Special note for couples who have a spouse deploying or deployed:

USCIS has made special arrangements to assist service-members who are either conditional residents or who are married to foreign spouses who are conditional residents. While every effort should be made to complete the *I-751* processing before deployment of the service-member, if it has been filed but not completed before the deployment, USCIS will place the matter in "overseas hold," which means that it will not be adjudicated until the service-member returns to the U.S. However, the foreign spouse's conditional residence status will be extended in one-year increments until the *I-751* can be finally adjudicated. If the deployment has already occurred before the *I-751* is due to be filed, USCIS will accept the *Form I-751* signed only by the spouse who remains in the U.S., either the conditional resident, if the service-member is the U.S. citizen who has deployed, or the U.S. citizen spouse of a conditional resident service-member who has deployed. The spouse filing the form on his or her own must submit proof of the service-member's military deployment, such as a copy of his or her military orders.]

5. BRINGING YOUR FOREIGN-BORN CHILDREN TO THE UNITED STATES

Most people know that anyone born in the United States is a U.S. citizen at birth. Perhaps you didn't know, however, that children born overseas of two U.S. citizen parents are, by law, also U.S. citizens at birth. Nevertheless, since the foreign country where your child was born may recognize birth in that country as a basis for citizenship in that country, and because your child's foreign birth certificate, alone, will not establish his or her U.S. citizenship since it will show a birth abroad, it would be wise to contact the nearest U.S. embassy or consulate in that country to apply for a *U.S. passport* for your child, and also, perhaps, to apply for a *Consular Report of Birth Abroad*. This will establish that your child is a U.S. citizen when it is time to return with him or her to the U.S.

If only one parent of a child born overseas is a U.S. citizen, the law sets up some additional requirements for the child to acquire U.S. citizenship. These requirements typically relate to the physical presence of the U.S. citizen parent in the United States for a certain period of time before the birth of the child. Obtaining a *Certificate of Citizenship* from USCIS for such a child is imperative.

If your child born abroad permanently resides, or will permanently reside, in the U.S, you can obtain evidence of your child's citizenship by applying for a *Certificate of Citizenship*. You will need to file form *N-600, Application for Certificate of Citizenship,* and submit it to the local USCIS District Office, at the address you'll find on the USCIS website, www.uscis.gov. You can also apply for a *U.S. passport* for your child from the Department of State. Refer to the Department of State website, www.state.gov, for instructions on how to apply for a *U.S. passport*.

Adoption of a foreign-born child by U.S. citizen parents is another means by which a child can become a U.S. citizen. Orphans adopted by a U.S. citizen parent are citizens once their adoption is final and they have lawfully entered the United States as permanent residents.
Foreign children who are adopted by U.S. citizens who reside overseas are also entitled to citizenship, but under slightly different criteria. Such children may file for naturalization during a legal, temporary visit to the U.S. so long as they are under 18 and their parents or grandparents meet certain other eligibility criteria.

6. BRINGING YOU FOREIGN-BORN FIANCEE TO THE U.S.

If you are a military member engaged to marry a foreign national and he or she is still overseas, you may want to file a *Form I-129F, Petition for Alien Fiancé(e)* so that your fiancé(e) can join you in the United States before the marriage. The *I-129F* is filed at the Service Center with jurisdiction over the sponsor's place of residence. Please check where to file the at www.uscis.gov under Forms.

The *I-129F* must be approved before the foreign fiancé(e) will be permitted to enter the U.S. on what is called a *"K" non-immigrant visa*. The couple must marry within 90 days of the foreign fiancé(e)'s arrival in the United States. Once the marriage has occurred, the foreign spouse must also file a *Form I-485, Application for Adjustment of Status to Permanent Residence* at the appropriate Service Center address, above. Only when the *I-485* is approved will the foreign spouse become an LPR.

7. OBTAINING AUTHORIZATION TO WORK

It is unlawful for aliens to work in the United States unless they have been granted "work authorization." Green Card holders are authorized to work, and need only present their green cards to show that they have this right. On the other hand, most aliens who are in the United States in non-immigrant status are not entitled to work authorization, most notably, aliens in visitor or tourist status, except in certain limited circumstances, such as when such an alien has an application pending to change his or her status to permanent resident status, and only if he or she files a *Form I-765, Application for Work Authorization*. Of course, if an alien is in the United States illegally, he or she would not be authorized to work, as a general rule, but if he or she should be encountered by the immigration enforcement divisions of the Department of Homeland Security, such as the U.S. Border Patrol or U.S. Immigration and Customs Enforcement, and placed in *removal proceedings*, he or she can apply for work authorization in conjunction with some of the waiver applications he or she might make to try to avoid removal. In any event, all applications for work authorization must be filed in accordance with the instructions on the form.

8. BECOMING A CITIZEN THROUGH NATURALIZATION

Naturalization is the means by which an individual who was not born in the United States, and who did not acquire citizenship at birth through parentage or some other means, becomes a citizen. It requires the filing of an application, the *Form N-400, Application for Naturalization*, and the fulfillment of certain other requirements. Generally, those requirements are that the individual be age 18 years or older, have been a permanent resident alien for a certain period of time (usually 5 years), they be a person of good moral character, and that they have resided in the United States for a certain period of time (generally 5 years), and have been physically present in the district in which they file for naturalization for the preceding 6 months, and demonstrate the basic ability to read, write, and speak the English language, as well as basic knowledge of the United States government and history. After the petition is approved by USCIS, the applicant will be asked to take an *Oath of Allegiance to the United States of America*. Upon taking the Oath, the applicant becomes a naturalized U.S. Citizen.

Remember that when dealing with USCIS it is imperative that every filing is done at to the correct service center. Please check for the right designation at www.uscis.govv under Forms.

Spouses of U.S. citizens (INA Section 319)

Lawful permanent residents who are married to U.S. citizens may file for naturalization after residing continuously in the United States for only 3 years, rather than the usual 5 years, immediately preceding the filing of the application.

Military members receive special treatment

USCIS has established a toll-free "Military Help Line" exclusively for members of the military and their families: 1-877-CIS-4MIL (1-877-247-4645).

i. LPRs with 1 year of military service (INA Section 328)

Persons who have served in the U.S. Armed Forces can file for Naturalization based on their current or prior U.S. military service. The requirements for eligibility are that the applicant must have served honorably or have separated from the service under honorable conditions, have completed 1 year or more of military service, and be a legal permanent resident (LPR) at the time of his or her examination by USCIS on the *Form N-400, Application for Naturalization*. Filing for naturalization under this provision of the law, Section 328 of the Immigration and Nationality Act of 1952, as amended (INA), excuses the applicant from any specific period of residence or physical presence within the United States, so long as the application is filed while the applicant is still serving with the military or within 6 months of an honorable discharge. These applications can be filed directly at this address:

U.S. Citizenship & Immigration Services

Facilitated Military Unit

P.O. Box 87426

Lincoln, NE 68501-7426

ii. Service during hostilities (INA Section 329)

By Executive Order Number 13269, dated July 3, 2002, President Bush declared that all those persons serving honorably in active-duty status in the Armed Forces of the United States at any time on or after September 11, 2001 until a date to be announced, are eligible to apply for naturalization in accordance with the “service during hostilities” statutory exception in Section 329 of the INA to the naturalization requirements. Such a service-member is eligible to file an application for naturalization if, at the time of enlistment, reenlistment, extension of enlistment, or induction, such person was in the United States, the Canal Zone, American Samoa, or the Swains Islands, or, on

board a public vessel owned or operated by the United States for noncommercial service, *whether or not admitted to the United States for permanent residence*. These applications can be filed directly at the **Facilitated Military Unit address, above**.

Section 329 of the INA also applies to service-members who served on active duty during World War I, World War II, the Korean Conflict, the Vietnam Conflict, and Operation Desert Shield/Desert Storm.

NOTE: The Air Force Judge Advocate General has issued a legal opinion that concludes that any Reserve or Guard member of the Armed Forces who serves at least one day on active duty during the time period prescribed may qualify for the expedited processing under Section 329. *See* OpJAGAF 2002/33, 16 August 2002.

iii. Posthumous citizenship (INA Section 329A)

Non-citizen service-members who die while serving honorably in an active-duty status during a declared period of hostilities, including *Operation Enduring Freedom*, and whose death was as a result of injury or disease incurred in or aggravated by that service, are eligible for posthumous naturalization. An application for posthumous citizenship can be filed on behalf of the deceased service-member only by the next-of-kin or another representative. If the application is approved, the individual is declared a U.S. citizen retroactively to the day of his or her death.

9. TRAVEL OUTSIDE THE UNITED STATES BY NON-CITIZENS WHO HAVE APPLICATIONS FOR IMMIGRATION BENEFITS PENDING WITH USCIS

It is very important that aliens present in the United States not do anything to jeopardize the status they hold. If they are in the U.S. on a tourist visa, for example, and have applied to adjust their status to lawful permanent residence, they cannot travel abroad without first seeking and obtaining permission of USCIS. If they fail to obtain this permission, they will be considered to have abandoned their pending application with USCIS and will not be allowed to reenter the U.S. to continue to pursue the application. In order to avoid this problem, it is essential that such applicants file a *Form I-131, Request for Advance Parole*. You should file this request at the office where your primary application is pending, either the appropriate Service Center, at the address above, or the local District Office, at the address you'll find on the USCIS website, www.uscis.gov.

10. CHANGE OF ADDRESS WHILE AN APPLICATION IS PENDING WITH USCIS

If you move while an application is pending with USCIS, be extra careful about notifying the office that is processing your application of your new address. If you filed an application or petition at a Service Center, call the National Customer Service Center to update your address by phone at:

1-800-375-5283

If you filed an application or petition at a local USCIS office, write a letter to that office, addressed like this:

USCIS [fill in name of district] District Office

[Street]

[City, State, Zip Code]

Attention: Change of Address

Include in your letter your name as it appears on the application, your "A-number", your old address and your new address.

11. OBTAINING ADDITIONAL INFORMATION

This guide should not be considered anything more than a basic introduction to the subjects discussed. Where a particular form is mentioned, please be aware that typically you will be required to file several other forms at the same time. The details of the process and a full list of all the forms required and the fees associated with these forms is available on the USCIS website, www.uscis.gov. The USCIS website provides extremely helpful, detailed guidance on how to proceed. Please consult the USCIS website before you attempt to file any paperwork with USCIS. If you take a few minutes to read the *Frequently Asked Questions* that relate to your area of inquiry, you will be well rewarded. Immigration and nationality law and procedures are extremely complicated. However, obtaining immigration or citizenship benefits will be a very important step in your life or the life of a family member. Be patient. Once you get through the process, it will be well worth it!

12. SETTING UP AN APPOINTMENT WITH AN USCIS OFFICER

Need further information or help from an Immigration Officer? Use InfoPass, a free, easy and convenient Internet-based system that allows the public to schedule an appointment. Go to www.uscis.gov and select "InfoPass Appointment Scheduler" and follow the steps. Be sure to print the appointment notice and bring it with you to the immigration office.

Note: This pamphlet was prepared by Lt Col Patricia Vroom, USAFR, a reserve IMA attached to Luke AFB. Lt Col Vroom works in her civilian capacity as U.S. Immigration and Customs Enforcement Chief Counsel for Arizona. June 9, 2004

The pamphlet has been updated 08/2012. Due to the highly regulated nature of immigration law, we advise that members check www.uscis.gov regularly. Always use the latest forms available at

that website and read the instructions carefully. Please contact your local legal office for assistance.