

TOPICS ON IMMIGRATION: DEFERRED ENFORCEMENT DEPARTURE, TEMPORARY PROTECTIVE STATUS, VISAS BASED ON THE VIOLENCE AGAINST WOMEN ACT, TEMPORARY VISAS, U VISAS, WITHHOLDING OF REMOVAL AND RELIEF UNDER THE CONVENTION AGAINST TORTURE

prepared for the University YMCA Welcome Center
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AN OVERVIEW OF ENTERING AND RESIDING IN THE US AS A NON-CITIZEN (7/1/2018)

There are three ways that a foreign national can enter the US:

1. By receiving a green card which entitles one to permanent residence
2. By receiving a temporary visa which allows one to stay in the US temporarily
3. By entering the US without permission

These three ways of entering the US have given rise to the following three broad categories of foreign nationals residing in the US:

1. Immigrants with permanent resident status, also called green card holders
2. Those with temporary permission to reside in the US. This diverse group includes:
 - A. Visitors with temporary visas
 - B. People who have received temporary protection from adverse circumstances such as persecution, war, natural disaster or crime
 - C. People who entered or stayed in the US without permission and who have been given temporary permission by the Executive branch of the Federal Government to remain in the US under the Deferred Action for Childhood Arrivals (DACA)
3. Those who lack proper authorization to be in the US. This group includes:
 - A. People who entered the US without going through customs, also referred to as undocumented immigrants
 - B. Visitors who overstayed their temporary authorization to be in the US
 - C. People who lost their permanent immigration or temporary resident status by committing a serious crime or by committing fraud in their immigration or visa application, and who remain in the US without authorization.

In many cases, people with temporary resident status can apply for a permanent resident status, and there are well defined criteria that permit permanent residents to obtain citizenship. After a resident obtains naturalized citizenship, they have all the rights and privileges of native-born citizens. However, even having permanent resident status does not prevent a resident from being deported due to immigration fraud or other serious crimes.

US residents who become naturalized citizens have the same rights and privileges as native born citizens with one exception: naturalized citizens can be denaturalized and then deported by a Federal Court for any of the following reasons:

1. Falsification or Concealment of Relevant Facts During Immigration or Naturalization Application;
2. Refusal to Testify Before Congress (This requirement to testify in order to maintain citizenship; status expires after 10 years of becoming naturalized)

3. Becoming a member, within five years of becoming a naturalized citizen, of a group designated as subversive by the US government, such as Al Qaeda or the Nazi Party;
4. Dishonorable Military Discharge following a general court-martial within five years of beginning military service.

Source: <https://immigration.findlaw.com/citizenship/can-your-u-s-citizenship-be-revoked-.html>
<https://www.ilrc.org/essentials-of-asylum-law>

The book this website describes is a comprehensive overview of asylum law.

https://therefugeecenter.org/resources/daca-and-the-travel-ban-update/?gclid=CjwKCAjw9-HZBRAwEiwAGw0QcWO1twEhpoVYwpDK79eSGtihXP2t2kyjRX1RrM4vagqkZDhSC1p1IRoC1OYQAvD_BwE

TEMPORARY PROTECTIVE STATUS (TPS) (4/23/2018)

TPS and Asylum Status are both a form of temporary permission to reside in the US, and they can, at first glance, seem similar, but the differences are significant:

1. Purpose

Asylum is meant to provide either temporary or permanent residence to foreign nationals from anywhere in the world who suffer persecution. TPS is meant to provide temporary residence only to foreign nationals who have fled their country due to war or natural disaster, and/or cannot return safely due to ongoing war or natural disaster.

2. Eligibility

Anyone from any country in the world who can prove they are members of a persecuted class in their country of origin can apply for asylum, but only nationals of countries designated by the Department of Homeland Security can apply for TPS. As of 4/23/2018, the following countries are designated for TPS:

El Salvador	Honduras	Nicaragua	South Sudan	Syria
Haiti	Nepal	Somalia	Sudan	Yemen

For a list of current ‘TPS countries’, see <https://www.uscis.gov/humanitarian/temporary-protected-status>.

To be eligible for Asylum status, a foreign national must demonstrate that they are members of a group that will suffer persecution if they are forced to return to their country of origin. The condition of war in one’s country does not, per se, establish proof of persecution for purposes of Asylum. To be eligible for TPS, a foreign national must be fleeing war or a natural disaster from a TPS-designated country. Persecution is not a precondition for TPS eligibility.

3. Differences in the Annual Numbers of Foreign Nationals Allowed to Enter the US Under Each Program

4. Rights and Privileges Under Each Program

SOURCES

https://en.wikipedia.org/wiki/Temporary_protected_status
<https://whitt.law/differences-between-tps-and-asylum/>
[101\(a\)\(42\) of the Immigration and Nationality Act \(INA\)](https://immigrationforum.org/blog/fact-sheet-temporary-protected-status/)
<https://immigrationforum.org/blog/fact-sheet-temporary-protected-status/>
<https://www.everycrsreport.com/reports/RS20844.html>

VISAS BASED ON THE VIOLENCE AGAINST WOMEN ACT (VAWA) (4/23/2018)

Female non-citizens living in the US who are trying to escape an abusive relationship, or who are victims of certain crimes, may be eligible for government protection and possibly legal permanent status under certain conditions, even if they are currently undocumented and do not meet the above eligibility requirements for asylum. Such protections and permanent status opportunities are governed not by asylum provisions, but by the Violence Against Women Act (VAWA) passed in 1994 and re-authorized most recently in 2013. This outline does not deal with VAWA eligibility. Information on VAWA and how to apply for its protections can be found at <https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-provides-protections-immigrant-women-and-victims-crime> and <https://www.uscis.gov/humanitarian/battered-spouse-children-parents>.

SOURCES:

<https://www.nolo.com/legal-encyclopedia/should-you-apply-u-visa-vawa.html>
<https://www.cfuis.com/violence-against-women-act-vawa/>

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U VISAS (4/23/2018)

<https://www.nolo.com/legal-encyclopedia/should-you-apply-u-visa-vawa.html>

WITHHOLDING OF REMOVAL (previously called Withholding of Deportation)

CONVENTION AGAINST TORTURE

CAT "deferral of removal" prohibits returning noncitizens to a country where they would likely face torture. Deferral of removal is granted to noncitizens who pose a security risk in the United States, usually due to criminal convictions, terrorist activity, or participation in the persecution of others.

Deferral of removal under CAT is a more temporary form of relief. Deferral of removal under CAT is appropriate for individuals who would likely be subjected to torture, but who are ineligible for withholding of removal, such as persecutors, terrorists, and certain criminals.

Immigration regulations create two separate types of protection under CAT.³ The first type of protection is another form of withholding of removal under CAT. Withholding of removal under CAT prohibits the return of an individual to their home country. This status can only be terminated if the individual's case is reopened and if the DHS establishes that they are no longer likely to be tortured in their home country.

The second type of protection is called deferral of removal under CAT. Deferral of removal under CAT is a more temporary form of relief. Deferral of removal under CAT is appropriate for individuals who would likely be subjected to torture, but who are ineligible for withholding of removal, such as persecutors, terrorists, and certain criminals. This status can be terminated more quickly and easily than withholding of removal if the individual is no longer likely to be tortured if forced to return to their home country. Additionally, an individual granted deferral of removal under CAT may be detained by the DHS if they are deemed to be a threat to the community.

Like regular withholding of removal, the benefits to both forms of CAT relief are limited. An individual who is successful under a CAT claim cannot be removed from the United States to the country from which they fled persecution, but they can be removed to a third country if one is available. An individual granted CAT cannot adjust their status to legal permanent resident, but can obtain work authorization.

(https://www.immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/immigration-basics-relief-under-cat/#.WxW7_vBOnvQ)

and

<https://www.nolo.com/legal-encyclopedia/differences-asylum-withholding-removal-protection-convention-against-torture.html>