



# IMMIGRATION LAW

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LAW OFFICES OF ARGUETA & GOMEZ

# About Our Firm

- 9 years of experience in immigration law (7 as an attorney)
- Practice focused on family-based, humanitarian, and removal defense cases
- Regularly represent clients in Immigration Court and before USCIS
- Conduct individual (merits) trials in immigration courts across the country
- Coordinate cases involving both Immigration Court and USCIS proceedings



# Different Types of Immigration Statuses a Non-U.S. Citizen can have

- ▶ If someone is not a U.S. citizen/national, they generally fall into one of two categories: Permanent Status or Temporary Status
- ▶ Permanent status: Lawful Permanent Resident (i.e. green card holder), Refugee/Asylee, some Employment-Based Visas
- ▶ Temporary Status:
  - ▶ Student visa (F-1)
  - ▶ Tourist visa (B-2)
  - ▶ Employment-based visas
  - ▶ Humanitarian statuses: U Visa / T Visa
    - ▶ DACA
    - ▶ Temporary Protected Status (TPS)
    - ▶ Parole (including Parole-in-Place)

# Understanding The Immigration Process

## 3 Primary Pathways to Immigration

There are 3 primary ways a non-U.S. citizen can immigrate to the United States.



### 1. FAMILY-BASED IMMIGRATION

- ✓ U.S. citizen or Lawful Permanent Resident (LPR) sponsors a qualifying relative.
- ✓ Most common pathway for immigrants.
- ✓ **Examples:** Spouse, parent, child, sibling, or other family members.



### 2. EMPLOYMENT-BASED IMMIGRATION

- ✓ Employer sponsors someone to come work in the U.S.
- ✓ Based on skills, education, experience, or labor needs.
- ✓ **Examples:** H-1B (specialty occupation), EB-2/EB-3 (professional & skilled workers), EB-5 (investors).



### 3. HUMANITARIAN IMMIGRATION

- ✓ For individuals who need protection or qualify under special programs.
- ✓ Designed to help vulnerable populations.
- ✓ **Examples:**
  - Refugees / Asylum Seekers
  - U Visa / VAWA
  - TPS (Temporary Protected Status)
  - DACA
  - Parole Programs (including PIP)



Each pathway has different requirements, timelines, and risks.

- ▶ **Family & Employment-Based Immigration**  
→ Subject to annual visa limits  
(Exception: Immediate Relatives of U.S. citizens)
- ▶ **U Visa**  
→ Annual cap (10,000 per year) → long waitlists
- ▶ **SIJS (Special Immigrant Juvenile Status)**  
→ Subject to visa availability (EB-4 backlog)
- ▶ **Refugee Admissions**  
→ Annual cap set by the President
- ▶ **TPS (Temporary Protected Status)**  
→ No cap, but depends on country designation/redesignation

# Humanitarian Based

## HUMANITARIAN IMMIGRATION PROGRAMS

Programs designed to protect vulnerable individuals and provide relief in the United States.

	DACA (Deferred Action for Childhood Arrivals)	U VISA (Victims of Crime)	TPS (Temporary Protected Status)	SIJS (Special Immigrant Juvenile Status)	VAWA (Violence Against Women Act)	ASYLUM & REFUGEE STATUS
<b>WHO QUALIFIES?</b>	Individuals who came to the U.S. as children, meet certain age, education, and residency requirements, and have no disqualifying criminal history.	Victims of qualifying crimes who have suffered mental or physical abuse and are helpful to law enforcement in the investigation or prosecution.	Nationals of certain countries experiencing armed conflict, environmental disaster, or other extraordinary and temporary conditions.	Unmarried individuals under 21 who were abused, neglected, or abandoned by one or both parents and have a qualifying state court order.	Survivors of abuse by a U.S. citizen or lawful permanent resident spouse, parent, or child.	Individuals who fear persecution in their home country based on race, religion, nationality, political opinion, or membership in a particular social group.
<b>WHAT IT PROVIDES</b>	<ul style="list-style-type: none"> <li>Deferred action from removal for a period of time</li> <li>Employment authorization</li> <li>Protection is renewable</li> </ul>	<ul style="list-style-type: none"> <li>Up to 4 years of status</li> <li>Employment authorization</li> <li>Path to a green card (after 3 years)</li> </ul>	<ul style="list-style-type: none"> <li>Temporary protection from removal</li> <li>Employment authorization</li> <li>Renewed in designated periods</li> </ul>	<ul style="list-style-type: none"> <li>Classification as a special immigrant</li> <li>Path to a green card</li> </ul>	<ul style="list-style-type: none"> <li>Ability to self-petition for a green card</li> <li>Work authorization while case is pending</li> </ul>	<ul style="list-style-type: none"> <li>Protection from removal</li> <li>Ability to apply for a green card after 1 year (asylees)</li> </ul>
<b>KEY POINTS</b>	<ul style="list-style-type: none"> <li>Not a path to a green card</li> <li>Executive action program</li> <li>Must reapply to maintain benefits</li> </ul>	<ul style="list-style-type: none"> <li>Annual cap: 10,000 principal visas (plus derivatives)</li> <li>Long waitlists</li> </ul>	<ul style="list-style-type: none"> <li>Not a path to a green card</li> <li>Must re-register during each designation period</li> </ul>	<ul style="list-style-type: none"> <li>Requires state court findings</li> <li>Subject to visa availability (EB-4 category)</li> </ul>	<ul style="list-style-type: none"> <li>Does not require abuser's knowledge or participation</li> <li>Confidential process</li> </ul>	<ul style="list-style-type: none"> <li>Asylum: must apply within 1 year of arrival (with exceptions)</li> <li>Refugee admissions are processed abroad</li> </ul>
<b>LIMITATIONS / CONSIDERATIONS</b>	<ul style="list-style-type: none"> <li>Not available to everyone</li> <li>Policy is subject to change</li> <li>No direct path to permanent residence</li> </ul>	<ul style="list-style-type: none"> <li>Must show helpfulness to law enforcement</li> <li>Significant backlogs</li> </ul>	<ul style="list-style-type: none"> <li>Depends on country designation/redesignation by DHS</li> <li>Can be terminated or not extended</li> </ul>	<ul style="list-style-type: none"> <li>Backlogs based on country of birth</li> <li>Can take several years to become available</li> </ul>	<ul style="list-style-type: none"> <li>Must prove eligibility and the abuse</li> <li>Not available for all types of relationships</li> </ul>	<ul style="list-style-type: none"> <li>Refugee admissions subject to annual cap set by the President</li> <li>Asylum requires proof of persecution or well-founded fear</li> </ul>



Each program has specific eligibility requirements, benefits, and limitations.  
*Consulting with an experienced immigration professional is key.*

- These programs are often independent of family or employer sponsorship
- Applications are typically filed with USCIS (not Immigration Court). Individuals in Immigration Court may need: Continuances, OR Termination of proceedings

# Family-Based Immigration

Category	Relationship	Who Can Petition?	Visa Availability	Wait Time
<b>Immediate Relatives (IR)</b>	Spouse of U.S. Citizen	U.S. Citizen	<b>No annual limit</b>	Typically faster
	Unmarried child (under 21) of U.S. Citizen	U.S. Citizen	<b>No annual limit</b>	Typically faster
	Parent of U.S. Citizen (21+)	U.S. Citizen (must be 21+)	<b>No annual limit</b>	Typically faster
<b>Family Preference (F1)</b>	Unmarried son/daughter (21+) of U.S. Citizen	U.S. Citizen	<b>Subject to annual limits</b>	Often years
<b>Family Preference (F2A)</b>	Spouse or unmarried child (under 21) of LPR	Lawful Permanent Resident	<b>Subject to annual limits</b>	Can vary (sometimes current)
<b>Family Preference (F2B)</b>	Unmarried son/daughter (21+) of LPR	Lawful Permanent Resident	<b>Subject to annual limits</b>	Often long wait
<b>Family Preference (F3)</b>	Married son/daughter of U.S. Citizen	U.S. Citizen	<b>Subject to annual limits</b>	Long wait
<b>Family Preference (F4)</b>	Brother/sister of U.S. Citizen (21+)	U.S. Citizen (must be 21+)	<b>Subject to annual limits</b>	*Very long wait

\*A U.S. citizen can petition their sibling today... and that sibling may not immigrate until 2040 or later, depending on what country they are from

# Issues That Arise During Family Based Cases

- ▶ Visa Backlogs & Priority Dates
  - ▶ Wait times can be years to decades
- ▶ Aging out of children
  - ▶ A "child" can turn 21 and no longer be considered a child, converting their petition to a different category
  - ▶ Child Status Protection Act (CSPA) sought to help with this
  - ▶ Unlawful entry/presence by beneficiary during or after petition is filed
  - ▶ Causes inadmissibility if following the normal consular processing; needs to be eligible for a waiver
  - ▶ Certain exceptions if person entered lawfully (inspected and admitted/paroled) and then fell out of status or is out of status
- ▶ Criminal history of Beneficiary
  - ▶ Criminal history of petitioner largely irrelevant unless subject to Adam Walsh

# EMPLOYMENT-BASED IMMIGRATION (OVERVIEW)



Employment-based immigration is based on a job offer or employer sponsorship to fill labor or skill needs in the U.S.

### TEMPORARY (NONIMMIGRANT) VISAS

*Work in the U.S. for a limited time*

- H-1B – Specialty Occupations**
  - Degree/skill-based jobs
  - Employer-sponsored
- L-1 – Intra-Company Transfer**
  - Transfer within the same company
  - Managers or specialized roles
- Other Work Visas**
  - Other visas depending on role and industry

### PERMANENT (GREEN CARD) PATHWAYS

*Live and work in the U.S. permanently*

- EB-1 – Priority Workers**
  - Includes EB-1A (Extraordinary Ability), EB-1B (Outstanding Professors/Researchers), EB-1C (Multinational Managers/Executives)
  - ✓ No labor certification (PERM) required
  - EB-1A may self-petition (no employer required)
- EB-2 – Advanced Degree / Exceptional Ability**
  - Advanced degree or exceptional ability
  - ⚠ Labor certification (PERM) usually required
- EB-3 – Skilled Workers / Professionals**
  - Skilled workers, professionals, or other workers
  - ⚠ Labor certification (PERM) required

### KEY REQUIREMENTS

- Employer sponsorship is usually required
- Labor certification (PERM) required in many categories
- Subject to annual visa caps and backlogs
- Process is often complex, multi-step, and employer-driven

### BOTTOM LINE

Employment-based immigration is a major pathway, but it is highly structured and driven by employer sponsorship.

# Employment Based

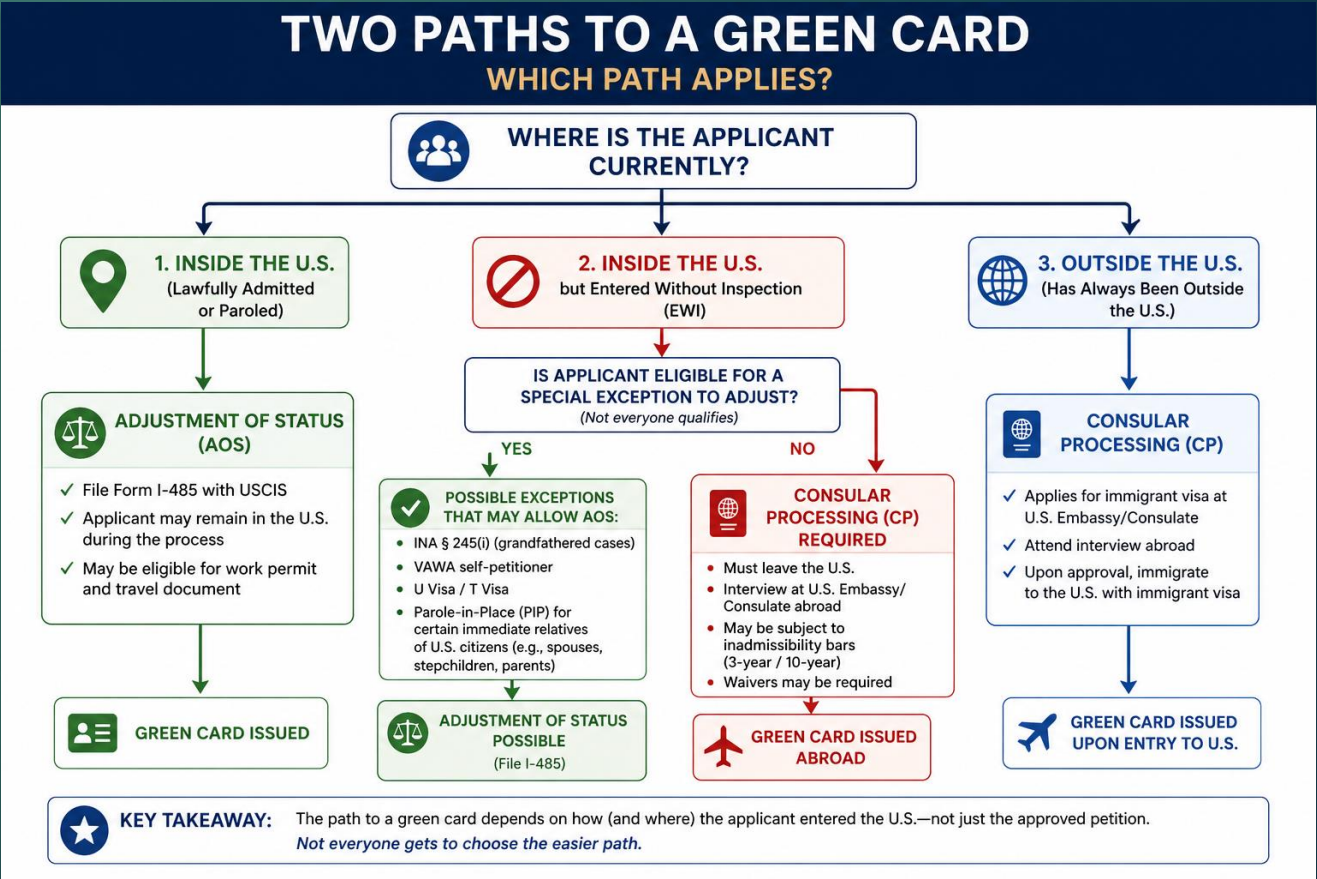
# Paths to a Green Card

- ▶ Before Choosing a Path, Ask:
  - ▶ Is the applicant **inadmissible**?
  - ▶ Any **unlawful presence** issues?
  - ▶ Any **prior removals or orders**?
  - ▶ Any **criminal history**?

**Form I-601**  
 → Waives certain inadmissibility grounds

**Form I-601A**  
 → For unlawful presence (before consular processing)

**Form I-212**  
 → Required after prior removal/deportation



# How does the Status matter when the Individual is involved in a separate criminal/civil matter ?

## CRIMINAL

- ▶ Criminal charges are more serious in immigration law than most people realize Even “minor” offenses can lead to:
  - ▶ Deportation
  - ▶ Inadmissibility
  - ▶ Mandatory detention
  - ▶ Immigration law treats convictions differently: Deferred judgment? Still counts
  - ▶ No jail time? Still matters
  - ▶ Been over 10 years? Still matters most of the time

## CIVIL

- ▶ Family law matters (marriage, divorce) can create or eliminate immigration options (e.g., marriage-based green cards, VAWA eligibility)
  - ▶ Custody and juvenile court findings can directly support immigration relief (e.g., SIJS requires state court orders)
  - ▶ Civil filings and testimony can trigger immigration consequences if there are inconsistencies or allegations of fraud/misrepresentation
- ▶ Work authorization tied to status affects employment and contract issues (ability to work, enforce rights, or recover wages)
- ▶ Clients may avoid courts or withhold information due to fear of immigration consequences, impacting how cases are handled

# How does the Deportation Process work?

- ▶ Administrative court proceedings (not criminal court)
  - ▶ No jury –decided by an Immigration Judge
  - ▶ No government-appointed counsel
  - ▶ Immigration Courts do not fall under Article III but are under the Department of Justice. Judges are employees of the Department of Justice appointed by the Attorney General
- ▶ Governed by immigration statutes, regulations, and EOIR procedures (not traditional rules of evidence)
- ▶ Burden is on the government initially to prove removability/deportability, but burden then shifts to individual to prove eligibility for relief (i.e. Asylum, Cancellation of Removal, Green Card, Withholding of Removal, etc.)
- ▶ Deportability: A person who has been admitted to the U.S. can be removed if they later violate immigration laws or commit certain offenses.
- ▶ Inadmissibility: A person can be denied entry/deported or a green card if they fall within specific grounds that make them ineligible to be admitted to the United States.

## How It Begins

- Bond Proceedings
- Formal Removal Proceedings

### Bond Proceedings

If detained, the alien may request that an IJ review the custody determination, unless the alien belongs to a class subject to detention without bond under federal law. Either party may appeal to the BIA.

### Master Calendar and Merits Hearings

A "Master Calendar" hearing is first held to address the charges of removability and any claims of relief from removal. Aliens who are not detained and have counsel may file written responses in lieu of the Master Calendar hearing. A merits hearing is scheduled to consider contested issues and applications for relief.

### IJ's Decision and Appeal

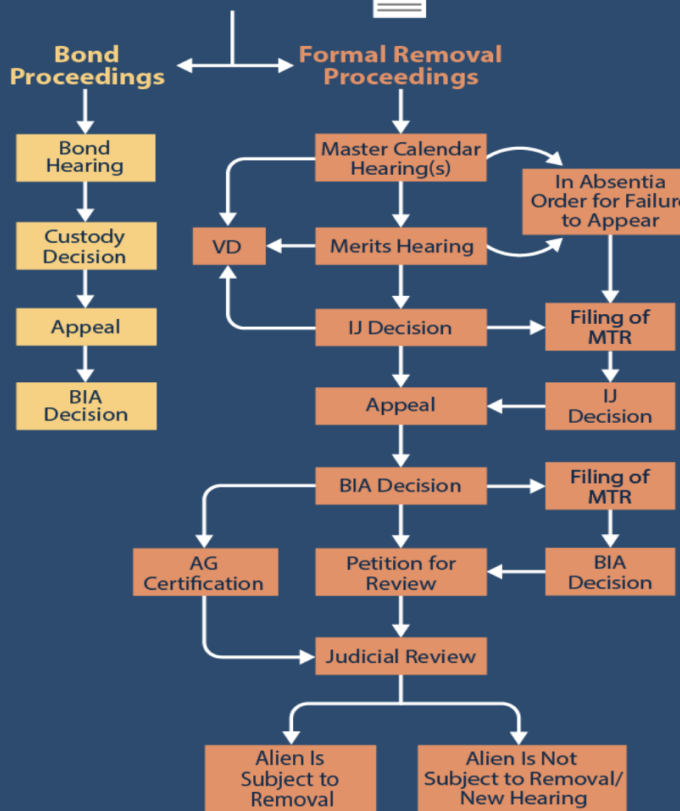
The IJ adjudicates the alien's application for relief as well as any contested removability issues. The IJ may end the proceedings (e.g., if DHS fails to sustain the charges). The IJ's decision is administratively final unless the IJ grants a motion to reopen or reconsider (MTR) or the decision is appealed to the BIA.

### BIA Decision

The BIA may either summarily dismiss an appeal or issue a merits decision. If the BIA affirms an IJ's order of removal, it becomes a final order. The BIA may reopen or reconsider a case either upon a party's motion or *sua sponte* (on its own).

The Department of Homeland Security (DHS) begins removal proceedings by filing with the immigration court a Notice to Appear (NTA), a charging document against the alien. During **removal proceedings**, some respondents are detained by DHS. IJs may review custody determinations of detained respondents upon their request during **bond proceedings**.

## Notice to Appear



**In Absentia Order of Removal**  
Failure of an alien to appear at a hearing will result in the IJ issuing an in absentia order of removal if DHS establishes removability.

**Voluntary Departure (VD)**  
Eligible aliens may request to voluntarily depart the United States (at their own expense) as an alternative to removal.

**Attorney General (AG) Certification**  
Occasionally the Attorney General may review a BIA removal decision and issue a superseding opinion.

**Judicial Review**  
An alien may seek judicial review of a removal order that is deemed *administratively final*. Review may be unavailable for certain individuals (e.g., those who committed certain crimes) and for those seeking to challenge denials of discretionary forms of relief. Notwithstanding these limitations, courts may review constitutional claims and questions of law.



# IMMIGRATION BOND

Who Gets a Hearing & What's Happening Now (2025–2026)



## PERSON IN ICE DETENTION

They may be able to request bond (release) from an Immigration Judge (IJ).



## CAN THEY REQUEST BOND?

It depends.



### YES – GENERALLY ELIGIBLE

They can request a bond hearing before an Immigration Judge (IJ).



#### BOND HEARING BEFORE IJ

They judge will consider:

- ✓ Not a danger to the community
- ✓ Not a flight risk



#### POSSIBLE OUTCOMES



Judge Sets Bond Amount

OR



Judge Denies Bond



### NO – MANDATORY DETENTION

They are not eligible to request bond.



**Certain criminal convictions**  
(aggravated felonies, crimes involving moral turpitude, etc.)



**Recent entrants / border cases**  
(arrived without inspection or attempted entry)



**Prior removal / re-entry issues**  
(previous removal order or re-entry after removal)



**Other categories under law**  
(as defined by statute and BIA interpretations)



## CURRENT LEGAL BATTLES



**Government push:**  
Expanding “mandatory detention” categories (fewer people get bond)



**BIA decisions:**  
Limiting who is eligible for bond hearings



**Federal courts pushing back:**  
Some courts require bond hearings anyway



**RESULT:**  
Eligibility can depend on jurisdiction and ongoing litigation.

# Immigration Bond Eligibility & Current Legal Developments



## WHAT THIS MEANS IN PRACTICE



Bond eligibility varies by jurisdiction.



Significant increase in federal habeas litigation.



Bond hearings have decreased significantly under recent policies.



The law is actively changing right now.



## BOTTOM LINE

Bond eligibility is one of the **most actively changing** areas in immigration law.

# Notice to Appear

- ▶ Government files the charging document with the Executive Office for Immigration Review (EOIR) i.e. immigration court
  - ▶ Government list out the factual allegations against the Respondent (non-citizen)
  - ▶ The factual charges are used to establish the legal charges: under what provision under the Immigration Nationality Act (INA)
- ▶ Most of the time, factual allegations are **admitted** and charge(s) of removability/deportability are **conceded**. Generally, the fight is over the relief and establishing client is eligible and warrants relief.
- ▶ Government must establish that Respondent was properly served and NTA is legally valid. Most of the time, defective NTAs will not necessarily mean the case against Respondent is dismissed, but treated like a claims processing rule, meaning DHS can simply remedy (correct) the NTA. See *Matter of R-T-P*, 28 I &N Dec. 828 (BIA 2024)

# Master Calendar Hearing

- ▶ Short, procedural hearing
  - ▶ Usually just 5-10 minutes
  - ▶ Immigration Judge will:
    - ▶ Advise Respondent of rights, consequences of failure to appear,
    - ▶ Confirm Respondent is aware they have a right to be represented, if not already
    - ▶ Take Pleadings (may have hearing if allegations/charges denied)
    - ▶ Set deadlines to file relief, address any other issues, ask if any collateral relief being sought
    - ▶ Judge almost never makes a ruling on the merits of a case or renders any kind of final decision. This has changed recently. See *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025) (granting Judge;s the ability to pretermite an application for failure to establish *prima facie* eligibility).
  - ▶ Government has burden to show noncitizen is removable as charged in the NTA
  - ▶ Once pleadings are taken, removability is established, Judge will ask for a country of removal to be designated, then ask about any relief being sought (most of the time, relief with the Court has already been filed by the hearing).

# Relief with the Immigration Court

## TYPES OF RELIEF IN IMMIGRATION CASES

PERSON IN REMOVAL PROCEEDINGS

WHERE CAN RELIEF BE OBTAINED?



### IN COURT

(Before the Immigration Judge)

#### PROTECTION-BASED RELIEF



#### Asylum

- Persecution (5 grounds)
- 1-year filing rule (with exceptions)
- Path to green card



#### Withholding of Removal

- "More likely than not"
- Higher burden than asylum
- No green card



#### CAT (Torture Protection)

- Torture by/with government
- No permanent status
- Country-specific relief

#### STATUS-BASED RELIEF



#### Cancellation of Removal

- 10+ yrs physical presence
- Good moral character
- Qualifying relative (USC/LPR spouse, parent, child)
- "Exceptional and extremely unusual hardship"



#### Adjustment of Status

- Approved petition (I-130, etc.)
- Must be admissible
- Court OR USCIS jurisdiction



### OUTSIDE COURT (USCIS)

(No Jurisdiction of the Immigration Judge)

#### VICTIM-BASED RELIEF



#### U Visa

- Victim of qualifying crime
- Helpful to law enforcement
- Can lead to LPR



#### T Visa

- Victim of trafficking
- Cooperation (some exceptions)
- Can lead to LPR



#### VAWA

- Abuse by USC/LPR
- Self-petition
- Can lead to LPR

#### OTHER RELIEF



#### SIJS (Special Immigrant Juvenile Status)

- For minors
- State court findings required
- Can lead to LPR



#### DACA / TPS

- Temporary protection
- No direct path to LPR



**KEY TAKEAWAY:** Each form of relief has different requirements, different burdens of proof, and very different outcomes.

What if Collateral Relief is pending?

Judge may grant a continuance  
But not guaranteed

Court looks at:

- Likelihood of approval
- Stage of the case
- Prior continuances

Trend: Judges are increasingly less willing to wait indefinitely...especially under recent BIA decisions

What if Collateral Relief is Approved?

Options may include:

- Termination of proceedings, OR Proceeding with Adjustment of Status (depending on relief)

Depends on jurisdiction + posture of case

# Merits Hearing (Trial)

- Full individual (trial) hearing before an Immigration Judge
  - Respondent testifies under oath
  - Witnesses (Fact and Expert witnesses) may testify
  - Documentary evidence is submitted (Affidavits, country condition reports, police/medical records, supporting witness statements, etc.)
  - Subject to cross examination by government attorney and to Judge questioning (judge's play an active role in questioning)
  - Credibility is key –cases are often won and lost based on credibility
  - Hearings can last 2-4 hours
- Judge will render decision at the conclusion of the hearing or will issue written decision later

# Hot Topics in Immigration Court Right Now

## Pretermission of Asylum Cases

- Judges can deny without a full evidentiary hearing if no prima facie showing

## Administrative Closure is limited

- Courts are less willing to pause cases even with pending (or even approved) collateral relief.
- Focus is on case completion.

## Continuances are Harder to Obtain

- Must show relief is already filed, viable, not speculative, and reasonable time period

## More Restrictive BIA Decisions

- Narrow interpretations of Asylum, Cancellation of Removal, the weight a Judge should give expert witness testimony, and when an applicant can be deemed credible

## Faster Timelines & Strict Deadlines

- Cases are moving quicker than before
- Early mistakes are harder to fix

# How can we assist families/individuals facing immigration issues

- ▶ **Identify immigration issues early**  
→ Ask about status, entry, prior cases
- ▶ **Gather complete and accurate information**  
→ Immigration history, criminal records, family relationships
- ▶ **Track deadlines and court dates carefully**  
→ Missing a hearing can lead to automatic removal
- ▶ **Spot red flags**  
→ Prior removal orders, criminal history, fraud/misrepresentation
- ▶ **Refer and coordinate with immigration counsel when needed**  
→ Early action can preserve options and avoid mistakes



Questions ?