

## LAWFULLY PRESENT LIST\*

### Lawful Permanent Residents and Applicants for Adjustment

- **Lawful Permanent Residents (LPRs)**

Lawful permanent residents have permission to live and work permanently in the U.S. They may travel abroad and then return to the U.S., as long as they have not abandoned their U.S. residence or committed acts that would make them inadmissible under immigration law. An LPR may apply for naturalization after living in the U.S. for five years (three years if married to a U.S. citizen, or one year for certain persons in the military and veterans). LPRs are “qualified” immigrants and are “lawfully present” in the U.S.

- **Applicants for Adjustment to LPR Status with Approved Visa Petitions**

Individuals whose relatives or employers have petitioned to immigrate them (or, in some cases, who are petitioning for themselves) may be able to adjust to LPR status in the U.S. The qualifying relative (e.g., a U.S. citizen spouse, parent, adult child, or sibling, or an LPR spouse or parent) or employer must first file a petition for an immigrant visa on behalf of the intending immigrant. After the visa petition is approved, there may be a long waiting period before an eligible noncitizen may apply to adjust his or her status. There is no waiting period for “immediate relatives” (spouse, parent, or children) of U.S. citizens or for some employment categories. Individuals with approved visa petitions who have applied for adjustment to LPR status are “lawfully present.”

### Persons Fleeing Persecution

- **Refugees**

Refugees are noncitizens who, while outside the U.S. and their home country, were granted permission to enter and reside in the U.S. because they have a well-founded fear of persecution in their home country. Refugees are “qualified” immigrants and are “lawfully present” in the U.S.

- **Conditional Entrants**

Before “refugee” status was established in U.S. law by the Refugee Act of 1980, nationals of communist countries or of certain countries in the Middle East were admitted as “conditional entrants,” a status similar to refugee status. This classification has not been used since 1980. Conditional entrants are “qualified” immigrants and are “lawfully present” in the U.S.

- **Asylees**

People already in the U.S. who fear persecution in their home country and satisfy the requirements for refugee status may apply for asylum in the U.S. With some exceptions, in order to qualify for asylum, individuals must apply within one year of their last entry to the U.S. A person granted asylum is an “asylee.” After one year in this status, asylees may apply to obtain LPR status. Asylees are “qualified” immigrants and are “lawfully present” in the U.S.

- **Granted Withholding of Deportation or Withholding of Removal**

This status is similar to, but separate from, asylum, for persons whose life or freedom would be threatened if they return to their home country. To obtain “withholding,” individuals must meet a higher evidentiary standard than for asylum, but if they meet this standard they *must* be granted withholding; unlike asylum, the status is not discretionary. Persons granted withholding may be deported to a third country if one will accept them, but they may not be returned to their home country. Unlike refugee and asylum status, this status does not provide a path for individuals to obtain LPR status. Persons granted withholding of deportation or removal are “qualified” immigrants and are “lawfully present” in the U.S.

- **Granted Withholding of Deportation/Removal under the Convention Against Torture (CAT)**

People who have substantial grounds for believing that, if they were returned to their home country, they would be in danger of being subjected to torture may apply for withholding under the CAT. People granted withholding of deportation or removal under the CAT are “lawfully present” in the U.S.

- **Applicants for Asylum or Withholding of Deportation/Removal**

Applicants for asylum or withholding of deportation/removal (including withholding of deportation/removal under the CAT) who are over 14 years old are considered “lawfully present” for ACA eligibility purposes if they have been granted employment authorization. Applicants who are under 14 years of age are considered “lawfully present” if their application for asylum or withholding of deportation/removal has been pending for 180 days.

### Other Humanitarian Immigrants

- **Cuban and Haitian Entrants**

For health care eligibility purposes, this category includes nationals of Cuba or Haiti who (1) were paroled into the U.S., regardless of whether the parole document states “Cuban/Haitian entrant”; or (2) have a pending exclusion or deportation case, or applied for asylum, provided that they are not subject to a final order of deportation or exclusion. Cuban and Haitian entrants are “qualified” immigrants and are “lawfully present” in the U.S.

- **Paroled into the U.S.**

Individuals paroled into the U.S. are permitted to enter the country for humanitarian or public interest reasons. Some parolees are allowed to enter the U.S. temporarily, e.g., to receive medical treatment. Others are permitted to enter with the understanding that they will remain permanently by applying for asylum or filing a family visa petition. Persons paroled into the U.S. are “lawfully present” — and those whose parole is expected to last at least one year are also “qualified” immigrants.

- **Temporary Protected Status (TPS)**

Temporary protected status is granted to individuals physically present in the U.S. who are from countries designated by the secretary of the U.S. Department of Homeland Security as unsafe to accept their return. Persons granted TPS, and applicants for TPS who have been granted employment authorization, are “lawfully present.”



- **Deferred Enforced Departure (DED)**

Deferred enforced departure is a status very similar to TPS. DED is granted to noncitizens from particular countries by presidential proclamation or other executive action. DED status was granted, for example, to nationals of the People's Republic of China (1990), El Salvador (1994), Haiti (1997), and Liberia (1999). DED status allows eligible persons to remain lawfully in the U.S. for a limited, specified period and to receive employment authorization. Persons granted DED are "lawfully present."

- **Deferred Action**

Immigration officials may exercise prosecutorial discretion in favor of a noncitizen who otherwise would be subject to deportation or removal proceedings. Deferred action is granted by USCIS administratively for a limited number of reasons, including the age or physical condition of the person (if it affects his or her ability to travel), the likelihood that another country will accept the person or that he or she will qualify for some other status, the presence of "sympathetic factors," and the adverse publicity that may result from the individual's removal from the U.S. Individuals granted deferred action based on other administrative policies remain eligible as "lawfully present." An exception is the subgroup **Deferred Action for Childhood Arrivals (DACA)** which is excluded from eligibility for the health insurance exchanges and the premium tax credits. Individuals granted deferred action based on other administrative policies remain eligible as "lawfully present".

- **Special Immigrant Juveniles**

Children who are declared dependent on the juvenile court and who are eligible for long-term foster care may apply for adjustment of status when a court or agency determines that return to their country of origin is not in their best interest. Children who have applied for special immigrant juvenile status are "lawfully present."

## **Survivors of Domestic Violence, Trafficking, and Other Serious Crimes**

- **Domestic Violence Survivors**

Battered spouses and children may be "qualified" immigrants and "lawfully present" if they have an approved (1) self-petition for an immigrant visa filed under the Violence Against Women Act (VAWA) or a prima facie case determination on a self-petition, (2) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (3) application for cancellation of removal/ suspension of deportation under VAWA. The parent and/or child of a battered spouse or child are also "qualified" and "lawfully present."

- **Victims of Trafficking and Their Derivative Beneficiaries**

Immigrant survivors of a severe form of human trafficking who are certified by (or, if a minor, receive an eligibility letter from) HHS's Office of Refugee Resettlement (ORR) are eligible for federal benefits, such as Medicaid and CHIP, to the same extent as refugees in every state. Trafficking survivors with a T visa or a prima facie case determination on a T visa application are "qualified" immigrants and are "lawfully present" in the U.S.

- **U Visa Holders**

U visas are available to victims of serious crimes who possess information concerning this criminal activity; have been helpful, are being helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of this criminal activity; and suffered "substantial physical or mental abuse" as a result of the victimization. U visa holders, as individuals with a valid nonimmigrant status, are "lawfully present" in the U.S.

## **Persons with Valid Nonimmigrant Status**

- **Nonimmigrant Visa Holders**

Nonimmigrant visa holders include tourists, students, and visitors on business, as well as individuals who are permitted to live and work in the U.S. indefinitely. Nonimmigrants who have not violated the terms of their status are considered "lawfully present."

- **Citizens of Micronesia, the Marshall Islands, and Palau**

Citizens of the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau have special rights under Compacts of Free Association signed by the U.S. They are nonimmigrants who are allowed to enter, reside, and work in the U.S. indefinitely, and are "lawfully present" in the U.S.

- **Member of a federally-recognized Indian tribe or American Indian Born in Canada**

- **Resident of American Samoa**

## **Longtime Residents**

The "lawfully present" category also includes individuals who have been in the U.S. for a long period of time and who are completing the process of securing lawful permanent residence or who cannot be returned to their home country and are therefore likely to remain in the U.S.

- **Lawful Temporary Residents and Applicants for Legalization under IRCA**

Under the Immigration Reform and Immigrant Control Act of 1986 (IRCA), two categories of noncitizens were allowed to legalize their status: (1) "General amnesty" or legalization immigrants, who had resided unlawfully in the U.S. since prior to January 1, 1982, and (2) "special agricultural workers" (SAWs) or "section 210" immigrants, who had performed agricultural work for a specified period prior to IRCA's enactment. Legalization under IRCA was a two-stage process under which applicants first applied for and obtained lawful temporary resident (LTR) status. After obtaining LTR status, general amnesty immigrants were required to apply for lawful permanent resident status. SAW applicants, on the other hand, automatically became LPRs after having LTR status for a certain period of time. Lawful temporary residents are "lawfully present." Applicants for legalization who are granted work authorization are also "lawfully present."

- **Legalization under the LIFE Act**

The Legal Immigration and Family Equity (LIFE) Act, enacted in 2000, provides for the adjustment of status of individuals who filed written claims for class membership in one of three class action lawsuits that challenged the former Immigration and Naturalization Service's implementation of the 1986 (IRCA) legalization program: *Catholic Social Services, Inc. v Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993); *League of United Latin American Citizens v. INS, vacated sub nom. Reno v.*



# KHBE Medicaid Training Material

*Catholic Social Services, Inc.*, 509 U.S. (1993), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993). To adjust under LIFE, individuals must show, among other things, that they were continuously physically present in the U.S. during the period between November 6, 1986, and May 4, 1988, and that they applied for class membership before October 1, 2000. Applicants for adjustment under LIFE who have been granted employment authorization are “lawfully present.”

- **Family Unity**

Family Unity status provides protection from deportation/removal and eligibility for employment authorization to the spouses and children of noncitizens who legalized under IRCA. To qualify for Family Unity, a person must have been the spouse or child of an amnesty immigrant as of May 5, 1988, and must have been residing in the U.S. since that date. In December 2000, the LIFE Act also extended Family Unity status to the spouses and unmarried minor children of individuals eligible to become permanent residents through the “late amnesty” legalization program of that law. To qualify for LIFE Act Family Unity, individuals must have been present and residing in the U.S. on December 1, 1988, and must currently be the spouse or minor child of an individual who is eligible for adjustment under LIFE. All persons granted Family Unity status are “lawfully present.”

- **Applicants for Cancellation of Removal or Suspension of Deportation**

Individuals in removal proceedings who establish that they have been continuously present in the U.S. for at least ten years, that they have good moral character, and that their removal would cause “exceptional and extremely unusual hardship” to a U.S. citizen or LPR parent, spouse, or child may apply for the discretionary relief of cancellation of removal. For individuals in deportation rather than removal proceedings, suspension of deportation is available. Applicants for suspension must establish that they have seven years of continuous physical presence in the U.S. and good moral character, and demonstrate that their deportation would cause extreme hardship to themselves, or to a parent, spouse, or child. Applicants for cancellation of removal and suspension of deportation who are granted employment authorization are “lawfully present.”

- **Order of Supervision**

Individuals with final orders of deportation or removal whom the immigration authorities are unable to remove may be released under an order of supervision. Individuals under an order of supervision are eligible for employment authorization. Persons under an order of supervision who have employment authorization are “lawfully present.”

- **Registry Applicants**

Individuals who have resided continuously in the U.S. since January 1, 1972, and who meet the requirements of LPR status may adjust their status by applying for “registry.” Applicants for registry who have been granted employment authorization on this basis are “lawfully present.”

**\*Resources:** <https://www.healthcare.gov/immigrants/immigration-status/>  
[www.nilc.org](http://www.nilc.org)