

# Outline for immigration defense

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## Introduction

As background, I anticipate that the Trump regime is going to make many immigration changes, none of which are favorable to immigrants. (See the Project 2025 section on the Department of Homeland Security which details systemic, far-reaching shifts to well-established immigration law, regulations, and procedures). With that in mind, I am trying to put together some guidelines for assessing cases, questions to ask to elicit pertinent facts, and identifying possible defenses to removal. I realize some questions may seem repetitive – but sometimes, people may need a question asked more than once, or in a different way, to recollect events and details.

A note on applicable forms of relief from removal: Since different Immigration Judges (IJ's) and different USCIS adjudicators may have different views of what they consider an approvable application for removal relief or other immigration benefit, it is best to err on the side of caution and seek all types of relief that may be applicable to the particular fact circumstance of the alien you are assessing. In other words, do not let your own pre-judgment of a case hinder the potential for trying to get as many “bites of the apple” as possible. At the end of the day, it is the alien's life, not yours. The most important caveat I have is that you should not be making or propagating any false or frivolous claims.

As always, if you are not an immigration attorney, please consult with one before filing any immigration-related applications for anyone. Also note that this guidance is not legal advice and should not be used as such. This is only a list of basic questions In order to evaluate which possible options for relief from removal would be the best remedy for a removable alien. Differing standards and elements to qualify for diverse forms of relief from removal may also require tweaks to questions, in order to bring to light the nuances needed to qualify for these different forms of relief. Given the very complex nature of immigration law, this analysis is obviously not exhaustive.

## **A brief explanation of some relevant immigration terms:**

**USC:** US Citizen

**LPR:** Legal Permanent Resident (someone with a “green card”) Also called a Resident Alien.

**DHS:** Department of Homeland Security, which is the primary federal department for immigration benefits and enforcement. Component agencies include the USCIS (Benefits), **USICE** (enforcement) and USCBP (customs, entry control, and immigration enforcement at the border) Note that all of these agencies are authorized to issue NTA’s.

**USCIS:** United States Citizenship and Immigration Service

**USICE:** United States Immigration and Customs Enforcement

**USCBP:** United States Customs and Border Protection

**A#:** the A# is the identifying number that DHS assigns to every alien, whether legal or, undocumented, if apprehended whether at the US border or elsewhere, or if the alien applies for some benefit from the USCIS.

**Alien:** an individual who is NOT a US citizen and therefore subject to removal from the US if the alien commits immigration or criminal violations. Aliens may be resident aliens (LPR) or non-resident aliens (see below for explanation)

**Removal or Removal Proceedings:** the process by which a LPR or non-LPR alien is granted due process, hearing at immigration court, and then either ordered removed or permitted to remain in the USA. The removal process begins when the DHS issues an NTA to the alien.

**NTA:** Notice to Appear (the charging document that DHS serves on aliens who are placed in removal (formerly deportation) proceedings.

**EOIR:** Executive Office for Immigration Review – under the DOJ, not the DHS. “Immigration Court”.

**IJ:** Immigration Judge, presides over Immigration Court.

**Relief from Removal:** A term used to describe a process or application that a removable alien can file either with the DHS or with the Immigration Court to prevent the alien’s removal from the USA.

**Cancellation:** A process of relief from removal for LPR or non-LPR aliens to remain in the USA by applying for such cancellation to an Immigration Judge.

**Qualifying Relative:** A US Citizen or Legal Permanent Resident (usually at minimum a Parent, Spouse or Child) through who the alien may qualify for a waiver of removal – normally requires a minimum showing of “extreme hardship” to such USC or LPR relative.

**UAC:** Unaccompanied Alien Child – a child under age 18 entering the USA without a parent.

**AOS:** Adjustment of Status – the process by which a non-LPR applies to become an LPR (“Permanent Resident”) and receives a “green card” (“Adjusts” status).

**Non- resident alien:** An alien who is NOT an LPR (Resident Alien – see above) or a US Citizen

**Physical presence:** Literally, what it means – an alien may be in lawful or unlawful physical presence in the USA. Physical presence does not mean legal presence. To illustrate: he or she may be present in the USA under one of these commonly encountered situations: (a) legally in the USA in valid non-immigrant status, no violations or immigration or criminal law; (b) Entered without inspection (EWI); (c) Entered with a valid non-immigrant visa and then fell “out of status” (lost the visa status they held due to their actions or inaction); (d) entered without valid documents and was permitted to enter into the USA to pursue a claim for asylum, TPS, or Humanitarian Parole; (e) legally in the USA in the possession of a valid non-immigrant visa, but may have committed some offense or action that makes them removable from the USA) and/or (f) entered the USA legally under a protective grant of Humanitarian Parole or other emergency authorization and remains in the USA under such protection.

**EWI:** Entry Without Inspection (that is, illegal entry, evaded Border Patrol)

**Citizenship:** The final step in the immigration journey. To become a US citizen, an alien must first become a “Legal Permanent Resident”.

<b>Interviewer's name</b> <b>Phone no.</b> <b>Email</b>	
<b>Interviewee's name</b> <b>Phone no.</b> <b>Email</b>	
<b>Date and place</b>	

**Disclaimer and acknowledgment**

I, the interviewee above, acknowledge that I am voluntarily providing my personal and family immigration and other information to the interviewer for the sole purpose of assessing my eligibility for immigration relief. I understand that the interviewer is not an attorney and is not giving me legal advice. I understand that the sole purpose of this assessment is to identify possible opportunities for immigration relief in the United States. I am responsible for finding a qualified attorney to file any appropriate applications on my behalf, and I will show this assessment to that attorney.

Yo, el entrevistado anterior, reconozco que estoy proporcionando voluntariamente mi información personal y familiar de inmigración y otra información al entrevistador con el único propósito de evaluar mi elegibilidad para el alivio de inmigración. Entiendo que el entrevistador no es un abogado y no me está dando asesoramiento legal. Entiendo que el único propósito de esta evaluación es identificar posibles oportunidades de alivio migratorio en los Estados Unidos. Soy responsable de encontrar un abogado calificado para presentar las solicitudes apropiadas en mi nombre, y le mostraré esta evaluación a ese abogado.

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Interviewee

**Assessing the case: Unless otherwise specified, all questions relate to the interviewee facing removal (deportation):**

Does the alien have copies of any documents issued by DHS / “immigration”/ Border Patrol / Police / Other government agency / immigration court? Issued an NTA?	
Look at these documents, if any, carefully – find the A#, if any:	
Ever used any fake name or fake documents? What name? When? Explain.	

**Status Questions:**

Note: In many cultures, domestic partners refer to each other as “Husband” or “Wife” even if they are not legally married. Make sure that such domestic partners are actually legally married or not in order to properly identify applicable forms of relief for each as individuals or together as a married couple.

Legally married?	
Have Marriage Certificate?	
Have Birth Certificate for self, spouse, if married, and ALL children, USC or not?	
Legal Permanent Resident?	
Have a “Green Card”?	
When was the “Green Card” Issued?	
When does the “Green Card” expire?	
Basis for issuance of the Green Card (how did the alien get the green card? – family / employment / asylum / visa lottery / other?)	

## Criminal History:

ANY Criminal record anywhere else in the world outside the USA? (Include even minor drug offenses, firearms offenses, thefts, assaults, non-violent crimes, DUI's and expunged or sealed convictions – be VERY RIGOROUS on this particular topic)

### CRIMES OUTSIDE THE USA

Crime 1	Get particulars: What happened?	
	When did the incident occur?	
	Were they arrested?	
	When and where did this arrest occur?	
	What was the charge?	
	What was the outcome of the case? (Found Guilty / not Guilty / Tried / charges dismissed / acquitted, etc.)	
	What penalties were assessed where the alien was found guilty?	
	What was the punishment? (Prison / fine / combination / probation)	
	If sentenced to prison, for how long?	
	How much time actually served?	
	Have documentation of the above crimes?	
	If yes, can provide them?	
	If no, possible to get from overseas?	

**CRIMES OUTSIDE THE USA Continued** Add additional pages if needed.

Crime 2	Get particulars: What happened?	
	When did the incident occur?	
	Were they arrested?	
	When and where did this arrest occur?	
	What was the charge?	
	What was the outcome of the case? (Found Guilty / not Guilty / Tried / charges dismissed / acquitted, etc.)	
	What penalties were assessed where the alien was found guilty?	
	What was the punishment? (Prison / fine / combination / probation)	
	If sentenced to prison, for how long?	
	How much time actually served?	
	Have documentation of the above crimes?	
	If yes, can provide them?	
	If no, possible to get from overseas?	

**CRIMES INSIDE THE USA**

Crime 1	Get particulars: What happened?	
	When did the incident occur?	
	Were they arrested?	
	When and where did this arrest occur?	
	What was the charge?	
	What was the outcome of the case? (Found Guilty / not Guilty / Tried / charges dismissed / acquitted, etc.)	
	What penalties were assessed where the alien was found guilty?	
	What was the punishment? (Prison / fine / combination / probation)	
	If sentenced to prison, for how long?	
	How much time actually served?	
	Have documentation of the above crimes?	
	If yes, can provide them?	



**CRIMES INSIDE THE USA Continued** Add additional pages if needed.

Crime 2	Get particulars: What happened?	
	When did the incident occur?	
	Were they arrested?	
	When and where did this arrest occur?	
	What was the charge?	
	What was the outcome of the case? (Found Guilty / not Guilty / Tried / charges dismissed / acquitted, etc.)	
	What penalties were assessed where the alien was found guilty?	
	What was the punishment? (Prison / fine / combination / probation)	
	If sentenced to prison, for how long?	
	How much time actually served?	
	Have documentation of the above crime?	
	If yes, can provide them?	

**Immigration and Travel History: (for each of these questions, GET DATES!)**

<p>Have a foreign passport?          Passport Number?          Passport expiry date?</p>	
<p>Have a visa to the USA?</p>	
<p>What type of visa? (Visitor, student, worker, etc.)</p>	
<p>Manner of entry to the USA? (entered with visa that is still valid / EWI / had visa, now invalid / valid entry, now overstayed / asylee / refugee / parolee)</p>	
<p>Any departures outside the US since last entry of more than 90 days, or 180 days in the aggregate for all absences from the USA?</p>	
<p>Dates of arrivals to and departures from the USA? (start with most recent arrival to the USA and work backwards)</p>	
<p>Ever left the USA under the color of law (returned at the border, previously deported from the USA, accepted voluntary departure, withdrew application for admission)          When?          Why?</p>	
<p>Previously issued a prior order of Deportation (Removal) by Border Patrol / CBP / ICE / Immigration Court?</p>	
<p>Ever failed to appear in immigration court?          When?          Where?</p>	
<p>Have a prior Notice to Appear (NTA)?</p>	

## Immigration and Travel History continued

Removed from the USA at any time after a prior entry (even if returned at the US border)?	
Recall signing any papers if removed from the USA?	
Ever fingerprinted by any US government agency including DHS, Border Patrol, ICE, USCIS, US Marshals, State or local police, Sheriff?	
How many years (total) has the alien been in the United States?	
If entered legally, when fell out of status?	
Committed any acts which would break physical presence and thus disqualify the alien from immigration benefits (example – commission of crimes such as drug offenses or felonies, or apprehended and served with Notice to Appear (NTA) (make this assessment yourself)	
More than 10 years residency in the USA prior to criminal / immigration act which broke residency for cancellation purposes? (make this assessment yourself)	

## **A Brief Explanation of Cancellation of Removal**

Cancellation of removal for permanent residents - form E-42A:

- Obtained LPR status lawfully and do not fall within certain categories (persecutors, terrorist)
- Not been convicted of an aggravated felony
- Been an LPR for at least five years
- Have seven years of continuous residence in the United States since admission in any status

Cancellation of removal for non-permanent aliens: form E – 42B:

- Been physically present in the United States continuously for at least ten years;
- Good moral character;
- Not been convicted of certain offenses [crimes listed in INA sections 212(a)(2) [controlled substance violations], 237(a)(2) [Criminal offenses], or 237(a)(3) [Failure to register and falsification of documents]];
- Removal would cause exceptional and extremely unusual hardship to LPR or U.S. citizen parent, spouse or child.

## **US Citizen Son or Daughter**

If the alien's USC child is 21 or older, or is going to turn 21 soon, consider filing an immigrant relative petition for undocumented parent(s) on form I-130. Upon approval, application for Provisional Unlawful Presence waiver, I-601A and then return to home country to "consular process", then can return to USA legally as LPR.

In order to qualify for an I-601A waiver, the alien must show:

- Good moral character (Even a DUI can be disqualifying);
- No prior removal from the USA;
- Termination of any pending immigration court proceedings;
- No departure from the USA after entry;
- Show "extreme hardship" to qualifying USC or LPR relatives.

**Is there a Qualifying Relative: (especially important for all types of waivers and immigrant visa options)**

Note: Qualifying relative must be LPR spouse or US citizen spouse, parent or child

\*US citizenship can be acquired through birth in the USA / naturalization / birth abroad to US citizen / service in military etc.

<b>Any United States citizen (USC) children?</b>		
Child 1	Name	
	Place of birth	
	Date of birth	
	Custodian	
	Address	
	How became US citizen? *	
Child 2	Name	
	Place of birth	
	Date of birth	
	Custodian	
	Address	
	How became US citizen? *	
Child 3	Name	
	Place of birth	
	Date of birth	
	Custodian	
	Address	
	How became US citizen? *	
Child 4	Name	
	Place of birth	
	Date of birth	
	Custodian	
	Address	
	How became US citizen? *	

## Qualifying Relatives continued

\*US citizenship can be acquired through birth in the USA / naturalization / birth abroad to US citizen / service in military etc.

<b>Any USC/LPR spouse or USC parent?</b>		
Legal permanent resident (LPR) spouse?	Name	
	Place of birth	
	Date of birth	
	Address	
US citizen spouse?	Name	
	Place of birth	
	Date of birth	
	Address	
	How became US citizen? *	
US citizen father?	Name	
	Place of birth	
	Date of birth	
	Address	
	How became US citizen? *	
US citizen mother?	Name	
	Place of birth	
	Date of birth	
	Address	
	How became US citizen? *	

## Qualifying Relatives continued

Does any immediate US citizen or Legal Permanent Resident family member:	Have any significant physical or mental health issues?	
	Have amazing academic promise, musical, artistic or athletic ability?	
	Is fluent or literate in the language of the alien relative's native country?	
	Have a family member who resides in the USA and who is able to and willing to care for the minor children if the parents are removed from the USA?	
	Own or co-own a business with any USC immediate relative which hires US workers and pays taxes in the USA?	
Does the alien provide substantial support for any US citizen relative who may have special needs or health issues?		
If yes, does the alien want to fill out and have paperwork at hand to protect any minor children in the event that the alien parent is detained and removed from the USA?		
Reasons for coming to the US from foreign country?		
Describe conditions in the alien's home country: Educational, health care, crime and safety, economy, opportunities for employment, etc. (Don't need details – just a quick assessment – good / bad; safe / unsafe; and why?)		
Assess - could removal of the alien cause "Exceptional and Extremely Unusual Hardship to the USC or LPR spouse, parent or child of the alien?"		

## Asylum/Withholding/CAT

Get as many details as alien will share – be sensitive of trauma issues

\* A few instances of verbal harassment, verbal abuse, or veiled threats are not “persecution”. To be considered persecution, harm must usually be tangible, physical and severe, either directly to the alien or to others similarly situated to the alien.

Experienced past persecution* because of:	Race?	
	Religion?	
	Membership in a particular social group?	
	Nationality?	
	Political opinion?	
Summarize the persecution*: Who did what to you? What did they say? When? Where?		
Fleeing from violence? By whom?		
Experienced domestic violence in the home country?		
Experienced sexual abuse in the home country?		
LGBTQ+ person?		



## Asylum/Withholding/CAT continued

Any threat of future persecution* because of:	Race?	
	Religion?	
	Membership in a particular social group?	
	Nationality?	
	Political opinion?	
Did you go to the police? If Yes, what did the police do? Do you have the police report(s)? If No, why did you <u>not</u> go to the police?		
Has more than one year passed since you entered the USA? ** If Yes, why did you not file your asylum application in the first year?		

\*\* An asylum applicant must file for asylum within one year of entering the USA, unless some emergency circumstance prevented them from doing so. A example of such circumstance would be – chronic medical/mental condition, victim of crime, battered spouse etc. Another excuse for failure to file for asylum within one year of entry is “changed country conditions” – for instance, the alien’s home country was safe when they left, but then circumstances changed for the worse due to regime change, sectarian violence, political turmoil, invasion, war, or the like.

If **Yes** to the above questions, then possible relief may be:

Asylum, Withholding of Removal or Relief under the United Nation’s Convention against Torture:

To apply, file on Form I-589 – can be filed with the USCIS (if not in removal proceedings), or with the EOIR (if already served with the NTA and scheduled for appearance at the EOIR) – file with as much supporting evidence as can be initially obtained.

**NOTE:** DO NOT delay filing the asylum application in order to wait for and obtain evidence. The application can be supplemented later with additional supporting evidence.

**Questions to qualify for other possible relief (get details!):**

Ever been a victim of a crime in the United States? (U-visa) What, where, when? Police report?	
Ever been a victim of human trafficking in the United States, whether for sexual purposes, labor, or some other reason? (T-Visa) What, where, when? Police report?	
Has a USC or LPR relative ever filed an I-130 Immigrant Visa petition for the alien? Have receipt notice from USCIS?	
What is the status of that I-130 petition? (pending / approved / denied) – if approved, may be able to seek I-601A waiver of unlawful physical presence.	
Is an LPR spouse eligible for naturalization? – may be more beneficial to file for Immigrant Visa through naturalized USC spouse rather than LPR spouse especially because of long wait for Adjustment of Status for alien spouses of LPR’s (USC spouse can sponsor his or her spouse, parent or child as Immediate Relative, with NO Immigrant visa quota limitations) [Generally, LPRs need 5 years to naturalize.]	
Minors: Asylum application with USCIS – if no NTA filed with Immigration Court, file for asylum with USCIS; If NTA filed with Immigration Court, then file application for Asylum with the Immigration Court (to ensure compliance with the one-year rule) AND the USCIS, and file motion to terminate case in immigration court and remand to USCIS per US District Court final settlement in J-O-P-litigation.	
Minors who entered as UAC’s –have contact with parents in home country or parents in the USA? If not, then may qualify for SIJS relief.	
USC minor child turning 21 soon? May be able to “sponsor” undocumented parents on turning 21. See above. (File Form I-130.)	

**To Summarize: Possible relief – identify all that may apply:**

**LPR cancellation:** If LPR alien has 7 yrs total of Physical Presence in the USA, five of which in any status, and minimum 2 years as permanent resident, and has NOT been convicted of an Aggravated Felony, then the alien may qualify for Cancellation for Permanent Residents (EOIR 42A)

Process: File EOIR-42A with the EOIR (Immigration Court) Possible?

**NON-LPR cancellation:** If the removable NON-LPR alien has 10+ years uninterrupted physical presence in the USA (aside from “brief, casual and innocent” absences not aggregating more than 180 days in total or 90 days in a single trip), then may be eligible for Cancellation of Removal for NON-Permanent Residents (EOIR-42B);

Process: File EOIR-42B with the EOIR (Immigration Court) Possible?

**Application for U visa** – form I-918 – File with USCIS Possible?

**Application for T visa** - Form I-914 – File with USCIS Possible?

**Application for asylum**, withholding of removal, or relief on the United Nations convention against torture - form I-589

Process: File with USCIS if NOT in removal proceedings at EOIR (Affirmative asylum); file with EOIR if in removal proceedings (Defensive asylum) Possible?

**Petition for immigrant relative-form I – 130.** (if approved, it is not relief by itself, but can lead to other applications – for example – USC spouses or USC adult children applying for undocumented spouses or parents)

Process: File with USCIS Possible?

**Provisional waiver of unlawful presence – form – I-601A: –**

If alien has USC/LPR spouse or USC child 21 years or older, such relative can:

- File and receive approved I-130 (Currently min. 8-10 mos at USCIS)
- Pay Department of State fee
- File form I-601A (currently 3+ years at USCIS)
- On approval of I-601A, move to terminate Immigration Court proceedings (if any)
- Complete immigrant visa documentation at National Visa Center
- Travel to home country to seek Immigrant visa at US Consulate and return to USA

Process: First file I-130 with with USCIS, then I-601A with USCIS – then follow steps above

Possible?

**SIJS status** – useful to gain immigrant visa status for UAC’s:

Possible?

- state court proceedings - approval of guardianship or foster care
- Form I – 360 with USCIS
- Form I-485 for AOS with USCIS if priority date current

**Protecting UAC’s if in removal proceedings** at EOIR: Move to remand UAC cases to USCIS for asylum application processing – form I – 589 under Matter of J – O – P – (US District Ct, Southern District of Maryland, Case 8:19-cv-01944-GJH, December 21, 2020; final settlement issued November 25, 2024 – see my website for further details)

Possible?

**Interviewer: Once completed, please give a copy of this questionnaire to the interviewee and show this questionnaire to a supervising attorney. Thank you.**

Please visit [www.immigration-america.com](http://www.immigration-america.com) for details and instructions on many of the above immigration topics and forms of relief.