This workshop was held at the 2018 Equal Justice Conference in San Diego, California.

Title:
New Age Of Immigration: Impact On Communities Of Color

Presenters:
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[Cultural Competency]
The landscape of immigration is influx. Immigrant communities of Color are disproportionately impacted. Experts will provide an overview on ways people enter and remain in United States and how they can stay here or change their status once here as the backdrop to this panel discussion. The bulk of the discussion will center on what's currently going on in the country in terms of enforcement, DACA, ICE in the courthouses and during ICE check-ins, the travel ban, and TPS, and how advocates who do not practice in this area can flag and prepare for immigration issues and the impact of the current policies and consequences for immigrants of color they may represent.
Audrey Carr is the Director of Immigration and Special Programs at Legal Services, NYC, where she supervises the organization’s immigration and veterans practices. Ms. Carr formerly worked for the United Nations Development Fund for Women in New York and in Harare, Zimbabwe. She has extensive experience representing clients seeking asylum and with deportation, consular processing, Federal Court litigation and family-based immigration cases, including work with battered immigrants and crime victims. Ms. Carr is admitted to the New York State Bar, the U.S. District Court for the Southern District of New York and the Eight Circuit Court of Appeals. She is a member of the American Immigration Lawyers Association and the New York VAWA Working Group. She speaks fluent French and is extensively involved in advocacy on immigration, language access and veterans rights.
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Ms. Joann Lee is a Special Counsel on Language Justice at the Legal Aid Foundation of Los Angeles (LAFLA). Bilingual in Korean, Ms. Lee has provided direct legal services to the growing Asian and Pacific Islander immigrant population in the Los Angeles area at LAFLA since 2000. She specializes in the areas of family and immigration law and has extensive experience navigating court and government systems to obtain meaningful linguistic access for limited English proficient individuals. Active in the local community, Ms. Lee has served on the boards of the Korean Resource Center, Center for the Pacific Asian Family, and Korean American Bar Association of Southern California. Ms. Lee holds a Juris Doctorate from George Washington University Law School and a Bachelor’s degree in social policy and women’s studies from Northwestern University.
New Age Of Immigration: Impact On Communities Of Color

National Legal Aid & Defender Association
Equal Justice Conference 2018
San Diego, CA
SOURCES OF LAW

• U.S. Const. art. I, §8, cl. 3. gives Congress control over foreign commerce and uniform rule of naturalization

• Immigration and Nationality Act of 1952, as amended (INA)

• Title 8, Code of Federal Regulations
AGENCIES

Department of Homeland Security
• U.S. Citizenship and Immigration Services (USCIS)
• Immigration and Customs Enforcement (ICE)
• Customs and Border Protection (CBP)

Department of Justice
• Immigration Courts
• Board of Immigration Appeals

Department of Health and Human Services
• Office of Refugee Resettlement

Department of State
• Embassies
• Consulates

Department of Labor
Three Buckets

- United States citizen (USC) – Birth in the U.S., Derivation, Acquisition, Naturalization
- Lawful Permanent Resident (LPR) – Born overseas, right to live/work in the U.S.
- Everyone Else
Everyone Else

- Asylee
- Refugee
- Parolee
- Conditional Permanent Resident
- Special Immigrant Juvenile Status
- VAWA Self-Petitioner
- U Visa Applicant
- Withholding/Deferral of Removal
- H2A/H2B
- Victim of Trafficking
- Deferred Action Status
- Temporary Protected Status
- Deferred Enforced Departure
- V Status
TERMINOLOGY

• **Immigrant** foreign born and comes to U.S. with intent to permanently reside here. Abandons home country/residence

• **Nonimmigrant** comes to US temporarily with no intention of residing in the US permanently, keeps residence abroad.

A nonimmigrant can become an immigrant
**Terminology**

- **Undocumented** Enter and remain in the U.S. without legal permission.

- **Removal Proceedings** To appear in Immigration Court

- **Admissible** Being admitted into the U.S.
TERMINOLOGY

- **Visa** Document issued to a noncitizen at U.S. Consulate/Embassy permitting entry into the U.S.

- **Out of Status** Persons who entered with a nonimmigrant visa and either violated the conditions of their visa or stayed beyond their authorized period of stay (overstays).
HOW TO BECOME A LAWFUL PERMANENT RESIDENT

Getting in (being “admitted”)
• Family based petitions (most common)
• Employment based petitions
• Registry petitions (1/1/72)
• Diversity Visas (lottery program)
• Suspension of Deportation / Cancellation of Removal
• Asylum / Refugee
• Foreign Investors
• Private bills through Congress
FAMILY BASED PETITIONS

• USC can petition for:
  – **Immediate Relatives**
    • Immediate Relative = Spouse, Parent or child.
    • Child = under 21 years old and unmarried.
  – **Sons/Daughters** older than 21 years or married
  – **Siblings**
FAMILY BASED PETITIONS

• LPRs can petition for
  - Spouse
  - Child
  - Unmarried Son/Daughter
PROCESS OF APPLYING FOR LAWFUL PERMANENT RESIDENT STATUS WITHIN THE U.S.

• USC/LPR (“Petitioner”) files:
  - Form I-130 (Alien Relative Petition) and I-485 (Application to Register Permanent Residence or Adjust Status) for family member (“Beneficiary”)
  - I-864 Affidavit of Support
  - Medical Exam

• Biometrics Check

• **General Rule**: applicants for adjustment of status must have been inspected and admitted or paroled into the US and must be in lawful immigration status.

• **Exception**: Immediate Relatives must only have been inspected and admitted or paroled into the US. Can be out of status. Unauthorized employment OK for IR.
PROCESS OF APPLYING FOR LAWFUL PERMANENT RESIDENT STATUS OUTSIDE THE U.S.

Petitioner (USC/LPR) files
- Form I-130 with USCIS for family member (“Beneficiary”).
- Petition must be approved by CIS.
- Approved Petition sent to National Visa Center (NVC).
- When visa available, NVC notifies petitioner to pay visa application and Affidavit of Support fees.
- Once fees paid, Petitioner submits Beneficiary’s visa application and Affidavit of Support with the NVC.
- NVC forwards file to Embassy/Consulate where Beneficiary resides.
Employment Authorization Card
a/k/a “work permit” or EAD

- Code is letter + number (and you can Google it!)
- Eight- or Nine-digit Alien Registration Number

Note: new EADs being issued since 5/2017
Permanent Resident Card
(“Green Card”)

1. What is her A#?

2. What is her code?

Note: new GCs being issued as of 5/2017
INADMISSIBILITY GROUNDS

• Unlawful Presence:
  - Present in the U.S. (out of status or undocumented) for 180 days or more, but less than 1 year, may be barred from reentering the United States for 3 years - § 212(a)(9)(B)(i)(I).
  - Present in the U.S. for 360 days or more, may be barred from reentry for 10 years - §212(a)(9)(B)(i)(II).
INADMISSIBILITY GROUNDS

• 10 Year Bar: Any alien who has been unlawfully present for aggregate of more than 1 year or has been ordered removed AND enters or attempts to reenter the US without being admitted or paroled is inadmissible. May apply for permission to reenter after 10 years. – INA § 212(a)(9)(C)(i)(I),

• Permanent Bar
OTHER INADMISSIBILITY GROUNDS

• Criminal Convictions and commission of crimes
• False Claim to US citizenship – no waiver
• Fraud/Misrepresentation
• Health Related Grounds
• National Security Grounds
• Smuggling
• Student visa violators
LIMITS ON ADJUSTMENT

• If marriage less than 2 years old, beneficiary granted Conditional Residence (CR)

• K-1 fiancé(e) can only adjust if marry USC petitioner within 90 days of entry. Become CR

No adjustment if enter on K-1 and marry another USC or LPR
A person reaching the United States, who is unable or unwilling to return to his/her home country, may be granted asylum by a showing of past persecution or a “well-founded fear” of future persecution.

Persecution must be based on one or all of five statutory grounds:

- Race
- Religion
- Nationality
- Political Opinion
- Membership in a Particular Social Group

ONE (1) YEAR BAR
VIOLENCE AGAINST WOMEN’S ACT (VAWA)

Self petition for victims of DV

• Abuser must be USC or LPR
• Applicant must be spouse, child or parent.
• Must prove:
  - physical abuse and/or mental cruelty
  - married in good faith
  - resided together / joint life
  - GMC
T Nonimmigrant Status

 Trafficking Visa

- 4 years permission to live & work in US
- Certain derivative family members also eligible for T
- Eligible for some public benefits
- Must be victim of severe form of trafficking in persons
- In US as a result of being trafficked
- Has complied with reasonable request for assistance from Federal, State, or local
- investigation or prosecution of acts of trafficking or related crimes
- Suffer extreme hardship if removed
- Submit Personal Statement
U NONIMMIGRANT STATUS

For Crime Victims

• Suffer substantial physical or mental abuse as a result of criminal activity
• Must have information about the criminal activity and is helpful, has been helpful or is likely to be helpful in the investigation or prosecution of the criminal activity by Federal, State or local authorities
• If victim is under 16, parent, guardian or “next friend” eligible
• Requires certificate from law enforcement confirming status as crime victim & assistance with investigation and/or prosecution of criminal activity
• Must submit personal statement
Derivative Citizenship

Through the naturalization of a parent. Child must be:

- under age 18 at the time of parent’s naturalization;
- an LPR;
- in the physical and legal custody of the naturalized parent.
U.S. CITIZENSHIP

• Acquisition of Citizenship

Children born outside of the U.S. to at least one parent who is a USC at the time of the child’s birth. Need to know:

- law in place at time of child’s birth
- parent’s marital status
- how long USC parent resided in U.S. prior to child’s birth and at what age?
U.S. CITIZENSHIP

• Naturalization
  - LPR for 5 years
  - 18 years or older
  - Physical presence
  - Reside in state where application to be filed for 3 months
  - Good Moral Character
Termination of Benefits

- The Trump Administration has ended TPS for many countries and DACA…all those affected should arrange for departure or seek lawful admission to the U.S., if eligible!
- TPS for Haiti terminates 7/22/19
- TPS for Honduras terminates 7/5/18
- TPS for Nicaragua terminates 1/5/18
- TPS for Sudan terminates 11/2/18
- TPS for South Sudan terminates 5/2/19
- DACA ends 3/5/18
CHALLENGES

• DHS does not provide language access
• Fear of reporting to law enforcement & seeking relief in courts
• Law enforcement not recognizing victims or culture of DV/SA/trafficking
• Lack of supportive services with linguistically & culturally appropriate services
• Lack of affordable housing
• Legal standards difficult to meet
• USCIS making more arbitrary decisions, not following policy
• ICE targeting those even with relief pending & groups that have been historically protected
What’s happening now?

• Widespread arrests of immigrants
  – Outstanding orders of removal
  – Criminal convictions
  – Arrest history
  - People of Color
Where are arrests happening?

- Homes
- Courthouses
- Street
Deportation Priorities

• DHS is targeting those who:
  • have criminal **convictions**
  • have been **charged** with crimes
  • engaged in **fraud** with any government agency
  • have a final **order** of removal but never left the US
Constitutional Rights

• Regardless of status, everyone in the US has:
  – The Right to Remain Silent
  – The Right to have an Attorney present
  – The Right to be Free From “Unreasonable Searches and Seizures”
Street Encounters

What you should do
• Give your name
• Present identification
• Remain silent if asked:
  – place of birth
  – immigration status
  – how you entered the US
• Ask if you are being detained; if not, simply walk away!

What you should NOT do
• Give a fake name or alias
• Present false documents/ID
• Present any document that contains country of birth
• Answer questions without having an attorney present
• Sign documents without an attorney reviewing them
• Communicate in any language unless fluent
At Your Home

Law enforcement (police and/or ICE) can only enter your home if:

(1) Someone in the home grants permission; or
(2) If they have a warrant, signed by a judge in the name of the individual being sought
At Your Home

**What you should do**

- Ask “who is it” thru door.
- If they say “police” ask if they are immigration officers.
- Ask if they have a warrant; if so, ask them to slide it under the door or hold it up against a window so you can inspect it.

**What you should NOT do**

- Open the door!!!
- Give them permission to enter the home.
- Answer questions.
- Hide anyone, esp. in closets.
- If they enter without consent, do not stop objecting!!!
“Show me your papers!”

- US citizens are **NOT** required to carry any proof of status on their person, and no one is required by law to have or carry a form of identification.

However…

- Those who have permission to be in the US (either permanently or temporarily) are required to carry proof of their immigration status at all times (i.e. green card holders)….so always carry valid immigration docs but **do not** carry papers from another country, such as a foreign passport, as they can be used against you in the deportation process.
At Your Home

HAVE A PLAN

• Find someone you trust to care for your children if you are detained and that your child has the telephone number and that they know what to do if you do not return home

• Make sure your children’s school knows who can and cannot pick up your child from school

• Write down instructions if your child has any medical conditions

• Draft a Power of Attorney or Designation of Parental Authority to allow a relative or friend to make decisions about your child

• If you have U.S. citizen children, make sure they have U.S. passports. You can apply for a passport at any U.S. post office and at www.travel.state.gov
Q: Can the government deport me without a hearing?
A: It depends!
If you entered the U.S. without inspection, and have been here for less than 2 years, than ICE can remove you without a hearing.

-- However, if you indicate that you are afraid to return to your country and intend to apply for asylum, an asylum officer must interview you.
If you are undocumented and have been in the U.S. for more than 2 years, and have never been in removal proceedings, then you are entitled to a hearing before an immigration judge.

-- But the law says the burden of proof is on you to prove to the government that you have been here for at least 2 years. Considering carrying this kind of evidence with you, along with evidence of family ties in the U.S., other ‘equities,’ for example, copies of U.S. citizen children’s birth certificates.

Q: Can the government deport me if my children are born in the US?
A: Yes. Having U.S. citizen children does not provide you rights to remain in the U.S. It can help your case but it’s not an immediate path to legal status. However, the government cannot deport US citizens.
Q: What if I have been ordered removed already?
A: ICE can detain you at any time to remove you from the US with no hearing.
   – However, if you are eligible for relief that you were not eligible for before, such as **asylum** or **adjustment of status**, you may be able to **reopen** your case. Consult with an attorney.
   – You can also file a “Stay of Removal” with ICE. If approved ICE you will be able to remain in the country and be eligible for work authorization.

Q: What if I was ordered removed, left the US, and re-entered without inspection?
A: ICE can detain you at any time to remove you from the US with no hearing.
   -- **However, if you express a fear of persecution or torture in your home country, you may be eligible for withholding of removal or relief under the Convention Against Torture.** Consult with an attorney.
Common Questions

Q: How will immigration law change?
A: Unknown. Current proposal (RAISE ACT) include:
- Ending the visa lottery system
- Ending family migration
- Reducing number of refugees admitted to the U.S.
- Penalizing immigrant recipient of public benefits
- Restricting Ability to change visa status within the U.S.
- Continued enforcement of the Travel Ban
- Introducing a point system based on skills
- English proficiency
What about false information?

- An individual who knowingly makes a misrepresentation to USCIS/ICE or knowingly fails to disclose facts to USCIS/ICE, to receive an immigration benefit, will be treated as an immigration enforcement PRIORITY!!
  - Result:
    - Criminal prosecution; and/or
    - Deportation from the United States.
- “Misrepresentation” includes:
  - Submitting fraudulent documents
  - Lying about dates or other information affecting eligibility
  - Omitting information such as criminal history
How to Avoid Immigration Fraud

• Anyone can help:
  - translate and notarize documents
  - obtain documents
  - write down answers on forms

• Only an attorney or BIA representative can:
  - tell you the immigration benefits you’re eligible for
  - help you answer questions on an application
  - represent you before any immigration agency
  - help you prepare for an immigration interview
  - give legal advice about your immigration case
Immigration Fraud

To report immigration fraud:

https://www.uscis.gov/avoid-scams/report-scams
ICE Detentions

Call ICE at (212) 264-5085
or
search online at www.ice.gov/locator
with the person’s name, date of birth, and country of origin
HELPFUL WEBSITES

• USCIS forms, fees, INA & regulations: www.uscis.gov
• Poverty Guidelines: http://aspe.hhs.gov/poverty/10poverty.shtml
• Civil Surgeon Locator: https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=CIV
• Visa Bulletin:
  • http://www.travel.state.gov/content/visas/en/law-and-policy/bulletin.html
• National Visa Center: https://travel.state.gov/content/visas/en/immigrate/immigrant-process/documents/Submit_documents.html
Nana Gyamfi

Nana Gyamfi, JD is a human rights attorney, a Board member of Black Alliance for Just Immigration (BAJI), an adjunct professor in the Pan African Studies Department at the California State University Los Angeles, the host of "Conversations On the Way: The Asafo Edition " on Pacifica Radio’s 90.7FM KPFK and Radio Justice, and an organizer and activist associated with various local, national, and international causes.

As a Movement attorney, Nana addresses the social justice challenges of Black and other marginalized communities of color through legal advocacy, organizing, and involvement in community causes and activism. Her almost twenty-five years of experience led her to co-founded Justice Warriors 4 Black Lives, a Black collaborative project of community members fighting on the legal frontlines of Black liberation. She also heads the Community Legal Clinic & Restorative Justice Center (CLCRJC) where she provides legal advice and consultation, advocacy, alternate dispute resolution, and "legal-ease" workshops regarding constitutional and human rights.

Nana received her undergraduate degree from Cornell University, and her Juris Doctorate from UCLA School of Law.