

# Arizona Interagency Farmworkers Coalition, INC

## IMMIGRATION POSSIBILITIES





# Presenters

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# Overview



- Adjustment of Status
- 245(i) Petitions
- Military Parole-in-Place
- I-601A Stateside Waiver
- Deferred Action for Childhood Arrivals (DACA)
- Special Immigrant Juvenile Status (SIJS)
- U Nonimmigrant Status (U-visa)
- T Nonimmigrant Status (T-Visa)
- Violence Against Women Act (VAWA)



# What is Adjustment of Status?

- Applying for Permanent Resident Status, Green Card, or Mica
- Must have a petitioner: employer; U.S. citizen spouse, parent, child, sibling; or LPR spouse or parent.
- Must be admissible.
- Must have lawful entry into country and/or current lawful status.



# What Is the Process?

- ❑ File Forms I-130 or I-140; I-485; I-765; and I-864
- ❑ Submit proof of identity and relationship
- ❑ Generally 4-5 months, but may last up to 9
- ❑ An interview may be required



# What is 245(i) Protection?

- INA §245(i) allows individuals to adjust status even if they did not enter the country lawfully or did not maintain their lawful status
- 245(i) protection applies to the individual, so once you are protected, generally it remains with you
- 245(i) protection can extend to spouse and children



# Who Qualifies for 245(i) Protection?

- Form I-130 or Labor Certification must have been submitted prior to April 30, 2001
- It must have been approvable when filed
- Requires a penalty fee of \$1,000 along with Form I-485A



# What is Military Parole-in-Place?

- ❑ A grant of parole to spouses and children of active or inactive service members of the U.S. military
- ❑ Parole is granted for one year
- ❑ Work authorization eligible
- ❑ Is considered a lawful entry for purposes of adjustment of status



# What Is the Process for Military Parole-in-Place?

- No Fee
- Form I-131 with two passport style photographs
- Include proof of relationship
- Include proof of active military status, such as military ID; or include proof of inactive status, such as Form DD-214
- File with local U.S. Citizenship and Immigration Service Office
- Interview not required, but may be scheduled



# What Is the I-601A Stateside Waiver?

- ❑ Certain individuals who are not eligible to adjust status will need to attend an immigrant visa interview with the consulate of their home country
- ❑ If the individual has accumulated more than six months of unlawful presence (days in the United States without status), they are barred from re-entering the United States for three or ten years
- ❑ Previously, the individual would leave, attend the interview, and then apply for the waiver, which could delay six to nine months
- ❑ The I-601A is approved before he/she attends their interview, greatly speeding up the process



# Who Is Eligible for the I-601A?

- Spouse or child of U.S. citizen or lawful permanent resident
- Accrued more than six months of unlawful presence
- Otherwise admissible
- Must demonstrate their U.S. citizen/lawful permanent resident spouse or parent will suffer extreme hardship.



# What Is the I-601A Process?

- Must have approved Form I-130
- Must have paid National Visa Center Fees
- Submit Form I-601A
- Submit letters from applicant and applicant's spouse and/or parents
- Submit corroborating evidence of the hardship
- Generally a three to six month process
- Schedule interview with home country consulate
- Re-enter the United States as a lawful permanent resident



# What is DACA?

- ❑ June 15, 2012, announcement by Secretary of Homeland Security
- ❑ Certain young people can request “deferred action” on a case-by-case basis
- ❑ Upon approval, can live and work in U.S. without fear of removal (deportation)
  - ❑ Unless new ground of removability occurs
- ❑ Individuals who qualify for DACA are considered “low priority” for removal.
- ❑ Renewable every two years.



# What is DACA? Cont'd

- Deferred Action is **NOT** the DREAM Act
  - ▣ No lawful status is granted and no path to citizenship exists.
  - ▣ Not lawful status, but it is “lawful presence”
  
- Work permits are granted for the duration of deferred action if “an economic necessity for employment” exists



# Who is eligible for DACA?

- An individual who:
  - 1. was under the age of 31 as of June 15, 2012;
  - 2. came to the U.S. before reaching the age of 16;
  - 3. has continuously resided in the U.S. from June 15, 2007, to present;
  - 4. was physically present in the U.S. on June 15, 2012, and at the time of making his/her request for deferred action.



# Who is Eligible? Cont'd

- ▶ 5. entered without inspection before June 15, 2012, or whose lawful immigration status expired as of June 15, 2012;
- ▶ 6. is currently in school, has graduated or obtained a certificate of completion for high school, has obtained a GED (by the date of application), or was a honorably discharged veteran of the Coast Guard or Armed Forces; and
- ▶ 7. has not been convicted of a felony, a “significant misdemeanor,” or three or more misdemeanors, and does not represent a public safety or national security threat.



# The Process



- Applications have been accepted since August 15, 2012. There is no deadline to apply.
  
- All applicants will apply to USCIS EXCEPT:
  - ▣ Person who is currently in detention. If in detention, the application will be addressed to ICE.
  
- Must be 15 years or older to apply UNLESS
  - ▣ You are currently in removal proceedings. If you are in removal proceedings, you may apply even if you are under 15 years of age.



# The Application

- ❑ The forms to be used are: G-1145, I-821D, I-765, and I-765WS
- ❑ Cost is \$465.
- ❑ You will be required to go to an appointment at the USCIS office to have your fingerprints and digital photo taken (You need not submit a fingerprint card.)
- ❑ Fee Exemptions are provided in very limited circumstances



# Current Litigation

- The Supreme Court did not reach a decision in the litigation
- It is ongoing and a decision on the merits could be favorable
- Largely dependent on next president



# Special Immigrant Juvenile Status

- ▶ A special immigrant juvenile is an immigrant who is present in the U.S. who
  - ▶ (1) is under twenty-one years of age;
  - ▶ (2) is unmarried;
  - ▶ (3) has been declared dependent on a juvenile court located in the U.S. or whom such a court has legally committed to or placed under the custody of, an agent or Department of a State, or an individual or entity appointed by a State or juvenile court located in the U.S.;



# SIJS (cont'd)

- (4) Whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law; and
- (5) for whom it has been determined in administrative or judicial proceedings that it would not be in the child's best interest to be returned to their or their parents previous country of nationality or country of last habitual residence.



# SIJS (cont'd)

- ▶ SIJS covers youth that entered the U.S. without permission and/or who are present without a valid travel document;
- ▶ SIJS covers youth who have been placed in the care of a family member by the juvenile court (guardianship) and those in foster care;
- ▶ In Arizona, the juvenile court loses jurisdiction when the child turns 18
  - ▶ Must obtain juvenile court order prior to the age of 18



# SIJS (cont'd)

- ▶ Three step process;
  - ▶ (1) Intake: marital status; abandonment, abuse or neglect; family reunification; best interests; whether there is an open juvenile court case, or identify potential guardianship or foster care resources;
  - ▶ (2) obtain state juvenile court order establishing eligibility requirements
  - ▶ (3) petition U.S. Citizenship and Immigration Services for SIJS



# SIJS Factors to consider

- ▶ Child granted SIJS cannot later petition for biological or prior adoptive parents
  - ▶ SIJS creates an immediate route to permanent resident status, in contrast to asylum or U or T visas
  - ▶ SIJS is a fairly efficient and predictable process
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# What Is the T Visa?

- ❑ Special nonimmigrant status for victims of human trafficking.
  - ❑ Sex trafficking: recruiting a person for commercial sex act through force, fraud, or coercion.
  - ❑ Labor trafficking: recruiting a person for labor or services through force, fraud, or coercion.
- ❑ Protects victims of involuntary labor and service.
- ❑ Enables individuals to receive federal benefits.
- ❑ Assists Law Enforcement Agencies (“LEA”) in detecting and prosecuting human trafficking.



# Who Is Eligible for the T Visa?

- ❑ Victim of trafficking in persons.
- ❑ Present in the United States on account of trafficking.
- ❑ Willing to comply with a *reasonable* request from LEA in the investigation or prosecution of human trafficking.
  - ❑ If under the age of 18, the person can qualify for the T Visa without assisting in the investigation or prosecution.
- ❑ Must be “admissible” but the T Visa forgives many immigration violations and criminal convictions.
- ❑ Demonstrate extreme hardship if the individual were to be removed from the United States.



# How To Determine Eligibility for T-Visa.

- ❑ A person is trafficked when:
  - ❑ Recruited, harbored, moved, or obtained;
  - ❑ By force, fraud, or coercion;
  - ❑ For involuntary labor, debt bondage, slavery, or commercial sex acts.
- ❑ Trafficking is different than smuggling or labor exploitation.
  - ❑ Smuggling is about crossing a border and is of a more voluntary nature. Smuggling may develop into trafficking.
  - ❑ Labor exploitation involves financial harm and various mistreatments of immigrants. Again, labor exploitation may develop into trafficking.
- ❑ Trafficking exists on a spectrum with smuggling and exploitation. When in doubt, consult with a practitioner.



# What Is the U Visa?

- ❑ Protect vulnerable victims, assist domestic violence survivors, and provide relief for victims of crimes.
- ❑ Helps Law Enforcement Agencies (“LEA”) overcome a victim’s fear of detection. Encourages reporting crimes to police and cooperation with prosecution.
- ❑ Lawful nonimmigrant U status is granted for four years
  - ❑ Employment authorization provided during deferred action and nonimmigrant U status.
  - ❑ May apply for permanent resident status after three years.
  - ❑ May include spouse, children, parents, and/or siblings for U status and permanent residency



# Who Is Eligible for the U Visa?

- ❑ Victim of designated crime.
  - ❑ Long list of eligible crimes; see INA §101(a)(15)(U) or consult a practitioner if unsure.
- ❑ Suffered substantial abuse as result of the crime.
- ❑ Was helpful or was willing to be helpful in investigation and/or prosecution of the crime.
- ❑ Must be “admissible” but the U Visa forgives many immigration violations and criminal convictions.
- ❑ LEA must certify helpfulness on Form I-918B.
  - ❑ Many LEAs have a designated process and contact person for U Visa Certification.



# How to Determinate Eligibility for U-Visa.

- Was the person a victim of the crime?
  - Did he or she EVER call the police?
  - Is there a police report or can a police report be obtained?
  - Did he or she ever obtain an order of protection?
- Did he or she suffer substantial harm?
  - Long-term physical injury or emotional/psychological harm
  - Does he or she need/want to start therapy or counseling?
- Some victims of crimes are traumatized and evaluating their case for U nonimmigrant status may be complicated and difficult. Patience and understanding is key.



# VAWA

- ▶ Person (male or female) subjected to battery or extreme cruelty
- ▶ By a U.S. citizen or lawful permanent resident spouse or parent
  - ▶ File within 2 years of divorce;
- ▶ With whom you resided
- ▶ Good moral character
- ▶ Good faith marriage



# Who is covered as a 'child?'

- Abused biological child
  - Abused step-children
  - Abused mother or father can include children from other relationships in self-petition
  - Termination of parental rights does not end relationship for VAWA relief
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THANK YOU!

