

Immigrants Living with HIV: Pathways to Employment and Health Care

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Date: July 11, 2018

Who are immigrants?

- An non-citizen is any person who is not a US citizen or US national.
- An immigrant is an non-citizen who is in the US or intends to come to the US.

Who are immigrants?

- A green card holder, or legal permanent resident, is an immigrant. He intends to reside in the US permanently and may lawfully do so.
- A non-immigrant does not intend to live in the US, rather he has a foreign residence he will not abandon, but comes to the US for a specific purpose. For example, a visitor comes to the US for tourism, or a student comes to the US to study.
- Non-immigrants are allowed to remain in the US for a certain period to accomplish their purpose. For example, a visitor is usually allowed to be in the US for 6 months.

Who are immigrants?

- The undocumented, or illegal, immigrant is:
 - a non-citizen who comes to the US unlawfully, most commonly, by furtively crossing the US-Mexico or US-Canada border, or
 - a non-citizen who comes to the US legally but, most commonly, stays in the US beyond her permitted time. For example, the tourist who is allowed to be in the US for 6 months but stays beyond the 6 months.

Who are immigrants?

- Other immigrants:
 - Refugees or asylees,
 - Non-citizens in Temporary Protected Status (TPS),
 - Non-citizens in Deferred Action status,
 - Non-citizens in Removal Proceedings,
 - Non-citizens Permanently Residing Under Color of Law (PRUCOL).

Which immigrants can work in the US?

- Can the green card holder work in the US? What about the tourist? Can a foreign student work in the US? Can the undocumented person? What if he is in Removal Proceedings? Can the refugee work?
- Under the Immigration Reform Act of 1986 it is the employer who bears responsibility of insuring that each of her employees is legal to work in the US.
- The employer must require the employee to present documents showing that he is legal to work in the US. For example, a US passport, legal permanent resident card (green card), or, employment authorization card. The employer must verify the documents, copy them, and keep them on file.

Green card holders can work in the US.

- Legal permanent residents can work in the US without time or categorical restriction.
- A green card holder can work as a car mechanic for 10 years, or 20 years, or all her life.
- Or, she can work as an investment banker for 10 years, or 20 years, or all her life, or as a lifeguard, or as a attorney, or as a professor, or figure skater, or any combination of these.

Non-immigrants can work in the US.

- The ability of a non-immigrant to work in the US can be bounded by employer, type of work, and time.
- For example, an F-1 non-immigrant student can work for up to 12 months in her field of study during her studies or after graduation.
- An H-1B specialty occupation non-immigrant can work for his sponsoring employer for up to 6 years.

Non-immigrants can work in the US.

- A TN non-immigrant professional, say an accountant, from Canada or Mexico, can work in the US for her sponsoring employer for up to 3 years.
- A U visa non-immigrant crime victim can work in the US for 4 years, in any field and for any employer.
- Some non-immigrants cannot work in the US. A tourist cannot work in the US. Working contradicts the purpose, and therefore the terms and conditions, of her presence in the US.

Other immigrants can work.

- A Honduran national in TPS status can work for any employer in any field for the duration of TPS – the current period expires January 5, 2020.
- An non-citizen in Deferred Action for Childhood Arrivals status – Obama’s 2012 Dreamers – can work for any employer in any field for 2 years.
- An non-citizen with refugee or asylee status can work in the US for any employer in any field for as long as she holds that status.

Eligibility for an immigrant status with right to work.

- How do I become a green card holder? How do I get a F-1 student visa? How can I qualify for asylum? Is everyone eligible for TPS? Can I get Deferred Action? What if I am HIV+? Does that make a difference for any of these programs?
- There are only certain paths to legal permanent resident status. For example, via a US citizen family member, through an employer, by winning the lottery of visas, by having continually resided in the US since before January 1, 1972, or by being a Cuban who has been physically present in the US for one year after a legal entry.

Eligibility for an immigrant status with right to work.

- The non-immigrant categories each have their own set of distinct requirements.
- For example a U visa crime victim must 1) be the victim of a qualifying crime, 2) have suffered substantial physical or mental abuse consequent to the crime, and 3) have assisted in the investigation or prosecution of the crime.
- An H-1B non-immigrant must have a bachelor's degree or equivalent in a specialty occupation, and must have a sponsoring employer who will pay her the prevailing wage for her occupation.

Eligibility for an immigrant status with right to work.

- The “other” categories also have particular requirements.
- For example, an applicant for TPS must show that she is a national of the designated country and has been in the US continuously since the date her country was designated for TPS.
- An non-citizen in removal proceedings with an application for cancellation of removal pending can apply for a work authorization card.

Inadmissibility HIV+ is negative

- For many, but not all, immigrant status' that include the right to work the applicant must show that he is admissible to the US. And if he is not admissible, but is inadmissible, that he qualifies for a waiver of inadmissibility.
- Persons who have a communicable disease of public health significance are inadmissible to the US.

Inadmissibility HIV+ is negative

- From 1993 to January 4, 2010, HIV was defined as a communicable disease of public health significance. And persons who were HIV+ were inadmissible to the US.
- HIV is no longer defined as a communicable disease of public health significance.
- And HIV status is no longer relevant for the those immigrant status' which require the applicant to be admissible, for example, legal permanent resident status, all non-immigrant visa categories, and TPS.
- HIV+ applicants for such do not need to demonstrate anything additional if they are eligible for the immigrant status they seek. Thus, the HIV+ Canadian lawyer seeking TN status is in the same position as the HIV- Canadian lawyer seeking TN status.

Inadmissibility HIV+ as positive

- Are there benefits in immigration law based on being HIV+? Can I get a work card just because I am HIV+? Is it, say, easier to win asylum if I am HIV+? Can I get deferred action based on being HIV+?
- There are no immigration benefits explicitly tied to HIV+ status.
- There are no reported cases granting asylum on the basis of HIV+ status.
- When HIV was defined as a communicable disease of public health significance AIDS patients sometimes requested Deferred Action.