LEGAL OPTIONS FOR UNDOCUMENTED IMMIGRANTS

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“Undocumented”

- An individual who entered the U.S. without being inspected or who overstayed a valid nonimmigrant visa
Immigrant

- A foreign national who intends to reside in the U.S. permanently
Undocumented Population in the U.S.

- Approximately 11.1 million
- Between 95 to 160K in Wisconsin
- 5.1 million children with at least one undocumented parent (79% U.S. citizens)

Source: Pew Hispanic Center, 2010
Proportion of Undocumented Population

- MEXICO 60%
- CENTRAL AMERICA 12%
- ASIA 11%
- SOUTH AMERICA 5%
- EUROPE & CANADA 4%

Source: Hispanic Pew Center, 2010
Why Undocumented?

✨ Supply and Demand

✨ Lack of adequate visas

✦ Wisconsin dairy farms

✨ Jobs unfilled by U.S. citizen labor

✨ Increased border security?
Obtaining lawful status

- Asylum (rare for Mexican FN)
- Visa based on harm or cooperation (S, T, U visas)
- Cancellation of removal if placed into removal proceedings
- Employment-based under very limited circumstances
- FAMILY-BASED IMMIGRATION
THRESHOLD QUESTIONS IN FAMILY-BASED IMMIGRATION LAW

✧ Qualifying family member?
✧ Immediate visa available?
✧ Adjustment of Status or Consular Process?
✧ Inadmissible?
Qualifying Family Members

- Immediate Relatives of U.S. Citizens
  - Spouses of USC
  - Parents of Adult (21+) USC
  - Children (under 21 and unmarried) of USC parents
Qualifying Family Members

✧ Preference Categories

✧ Adult Children (21+) of USC parent
✧ Spouses and children of LPR
✧ Siblings of Adult USC (21+)
Immediate Visa Availability

- Immediate relatives of USC are not subject to numerical limit
- Family members in preference categories must wait until priority date becomes current (visa quota)
- State Department Visa Bulletin
Adjustment of Status

- Applying for lawful permanent residency (a “green card”) while remaining in the United States

- Preferable to Consular Processing:
  1. Work permit while application pending
  2. Lawyer may be present at interview
  3. Faster process
  4. Can remain in the U.S. during litigation (if necessary)
Consular Processing

- Applying for lawful permanent residency at the U.S. consulate abroad

- If the foreign national is already living in the U.S., consular processing is less desirable than adjustment:

  (1) Lengthy separation from family members

  (2) Unlawful presence waiver

  (3) Lawyer may not be present at consulate interview

  (4) Denial=Self-Deportation
GENERAL REQUIREMENTS TO ADJUSTMENT OF STATUS

✧ “Admission” to the U.S. (e.g. entered the U.S. on valid tourist visa)
  ✧ “245i” Exception
✧ Remain in lawful status UNLESS immediate relative of a U.S. citizen (visa overstay can adjust)
✧ A visa must be immediately available at the time of filing
✧ Admissible to the U.S.
✧ No outstanding deportation order
Inadmissibility

- Section 212(a) of INA

- Most common reasons for being inadmissible:
  (1) Entering the U.S. without inspection (“EWI”)
  (2) Unlawful presence or other significant violation
  (3) Criminal convictions or conduct (e.g. drug offenses, crimes of “moral turpitude”)
  (4) Fraud/Misrepresentation committed on immigration officer
  (5) False claim to U.S. citizenship
EXAMPLE #1

Maria was admitted to the U.S. on a visitor’s visa in 2003. She overstayed her visa and began working in the U.S. without authorization. In 2008, Maria married Dave, a U.S. citizen.

Since Maria was admitted to the U.S. and she is an immediate relative of a U.S. citizen, Maria can apply for adjustment of status even though she overstayed her visa.
EXAMPLE #2

Maria, a Mexican citizen, arrived in the U.S. by crossing the border through the Arizona desert in 2003. In December of 2008, her husband, a lawful permanent resident, filed a petition on her behalf. The petition is now current.

Since Maria was not lawfully admitted, she cannot adjust status. Maria will have to apply for lawful permanent residency at the U.S. consulate in Juarez. She will also need to seek an unlawful presence waiver.
EXAMPLE #3

Maria & Roberto entered the U.S. without inspection 13 years ago. Their son, who is a naturalized USC, is over the age of 21. Maria & Roberto have taken care of him after he was seriously injured in an automobile accident last year. They decide to pursue their green cards at the U.S. consulate in Juarez based on their son’s petition.
Removal Proceedings

- Issuance of Notice to Appear ("NTA")
- Serious consequences for failing to appear at hearing
- Undocumented may be eligible for relief even if found removable:
  - Asylum/Withholding of Removal
  - Adjustment of Status
  - Cancellation of Removal
Cancellation of Removal

- 10 years of continuous residency before service of Notice to Appear
- Good moral character for 10 years
- Not been convicted of certain offenses
- Exceptional and extremely unusual hardship to spouse, parent, or child who is a USC or LPR
Driver’s Licenses

- Only foreign nationals who can provide documentary proof of lawful status in the U.S. can apply and obtain a driver’s license in U.S.

- REAL ID Act (Rep. Sensenbrenner)
Who can apply for a driver’s license in Wisconsin?

- Lawful permanent residents and conditional permanent residents
- Non-immigrant visa holders
- Refugees and asylees
- Pending asylum application or adjustment application
- Pending or approved TPS application
- Approved deferred action status

Driver’s Licenses and the Undocumented

- Operating a vehicle without a driver’s license is a crime (Wis. Stat. § 343)
- Mandatory auto insurance (effective June 1, 2010)
- An arrest greatly increases the chances that an undocumented immigrant will be placed into removal proceedings
Will I get deported if...?

- Worker’s compensation claim
  - Identity Theft
  - SCR 20:1.2(d)
- Attending court hearing
- Initiate divorce or other family-court proceeding
  - VAWA self-petitions or U visa
- Arrest or conviction