



# Immigration and Naturalization Fundamentals

**Ruth Ellen Wasem**  
Specialist in Immigration Policy

May 20, 2003

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

RS20916

## Summary

Congress typically considers a wide range of immigration issues and now that the number of foreign born residents of the United States—32.5 million in 2002—is at the highest point in U.S. history, the debates over immigration policies grow in importance. As a backdrop to these debates, this report provides an introduction to immigration and naturalization policy, concepts, and statistical trends. It touches on a range of topics, including numerical limits, refugees and asylees, exclusion, naturalization, illegal aliens, eligibility for federal benefits, and taxation. This report does not track legislation and will not be regularly updated.

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## Introduction

Four major principles underlie U.S. policy on legal permanent immigration: the reunification of families, the admission of immigrants with needed skills, the protection of refugees, and the diversity of admissions by the country of origin. These principles are embodied in federal law, the Immigration and Nationality Act (INA) first codified in 1952. Congress has significantly amended the INA several times since, most recently by the Enhanced Border Security and Visa Reform Act of 2002 (P.L. 107-173).<sup>1</sup>

An *alien* is “any person not a citizen or national of the United States” and is synonymous with *noncitizen*. It includes people who are here legally, as well as people who are here in violation of the INA. Noncitizen is generally used to describe all foreign-born persons in the United States who have not become citizens.

The two basic types of legal aliens are *immigrants* and *nonimmigrants*. Immigrants are persons admitted as legal permanent residents (LPRs) of the United States. Nonimmigrants—such as tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors, or intracompany business personnel—are admitted for a specific purpose and a temporary period of time. Nonimmigrants are required to leave the country when their visas expire, though certain classes of nonimmigrants may adjust to LPR status if they otherwise qualify.<sup>2</sup>

The conditions for the admission of immigrants are much more stringent than nonimmigrants, and many fewer immigrants than nonimmigrants are admitted. Once admitted, however, immigrants are subject to few restrictions; for example, they may accept and change employment, and may apply for U.S. citizenship through the *naturalization* process, generally after 5 years.

## Numerical Limits and Preference Categories

Immigration admissions are subject to a complex set of numerical limits and preference categories that give priority for admission on the basis of family relationships, needed skills, and geographic diversity. These include a *flexible worldwide cap* of 675,000, not including refugees and asylees (discussed below), and a *per-country ceiling*, which changes yearly. Numbers allocated to the *three preference tracks* include a 226,000 minimum for family-based, 140,000 for employment-based, and 55,000 for diversity immigrants (i.e., a formula-based visa lottery aimed at countries that have low levels of immigration to the United States). The per country ceilings may be exceeded for employment-based immigrants, but the worldwide limit of 140,000 remains in effect. In addition, the *immediate relatives of U.S. citizens* (i.e., their spouses and unmarried minor children, and the parents of adult U.S. citizens) are admitted outside of the numerical limits of the per country ceilings and are the “flexible” component of the worldwide cap.

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<sup>1</sup> Other major laws amending INA are the Immigration Amendments of 1965, the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

<sup>2</sup> Nonimmigrants are often referred to by the letter that denotes their section in the statute, such as H-2A agricultural workers, F-1 foreign students, or J-1 cultural exchange visitors. CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by (name redacted) and (name redacted).

The largest number of immigrants is admitted because of family relationship to a U.S. citizen or immigrant. Of the 1,064,318 legal immigrants in FY2001, 64% entered on the basis of family ties. *Immediate relatives of U.S. citizens* made up the single largest group of immigrants, as **Table 1** indicates. *Family preference immigrants*—the spouses and children of immigrants, the adult children of U.S. citizens, and the siblings of adult U.S. citizens—were the second largest group. Additional major immigrant groups in FY2001 were *employment-based preference immigrants*, including spouses and children, *refugees and asylees* adjusting to immigrant status, and *diversity immigrants*.<sup>3</sup> The Bureau of Citizenship and Immigration Services (BCIS) in the Department of Homeland Security (DHS) is the lead agency for immigrant admissions.<sup>4</sup>

**Table 1. FY2001 Immigrants by Category**

<b>Total</b>	<b>1,064,318</b>
Immediate relatives of citizens	443,964
Family preference	232,143
Employment preference	179,195
Refugee and asylee adjustments	108,506
Diversity	42,506
Other	58,495

## Refugees and Asylees

Refugee admissions are governed by different criteria and numerical limits than immigrant admissions. Refugee status requires a finding of persecution or a well-founded fear of persecution in situations of “special humanitarian concern” to the United States. The total annual number of refugee admissions and the allocation of these numbers among refugee groups are determined at the start of each fiscal year by the President after consultation with the Congress. Refugees are admitted from abroad. The INA also provides for the granting of *asylum* on a case-by-case basis to aliens physically present in the United States who meet the statutory definition of “refugee.”<sup>5</sup>

## Exclusion and Removal

All aliens must satisfy State Department consular officers abroad and DHS Bureau of Customs and Border Protection inspectors upon entry to the U.S. that they are not ineligible for visas or admission under the so-called “grounds for inadmissibility” of the INA. These criteria categories are:

- health-related grounds;

<sup>3</sup> The largest group in the “other category” are the 18,926 Nicaraguans who adjusted to LPR status through special legislation, the Nicaraguan and Central American Relief Act of 1997.

<sup>4</sup> Other agencies with primary responsibility for immigration functions are the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, both in DHS. See CRS Report RS21504, *Immigration-Related Funding in the President’s FY2004 Budget Request*, by (name redacted).

<sup>5</sup> CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by (name redacted).

- criminal history;
- national security and terrorist concerns;
- public charge (e.g., indigence);
- seeking to work without proper labor certification;
- illegal entrants and immigration law violations;
- lacking proper documents;
- ineligible for citizenship; and,
- aliens previously removed.

Some provisions may be waived or are not applicable in the case of nonimmigrants, refugees (e.g., public charge), and other aliens. All family-based immigrants entering after December 18, 1997, must have a new binding affidavit of support signed by a U.S. sponsor in order to meet the public charge requirement.

The INA also specifies the circumstances and actions that result in aliens being removed from the United States, i.e., deported. The category of *criminal* grounds has been of special concern in recent years, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 expanded and toughened the deportation consequences of criminal convictions. The category of *terrorist* grounds has also been broadened and tightened up by the USA Patriot Act of 2001. (P.L. 107-77).

## Statistical Trends

The annual number of LPRs admitted or adjusted in the United States rose gradually after World War II, as **Figure 1** illustrates. However, the annual admissions never again reached the peaks of the early 20<sup>th</sup> century. The BCIS data present only those admitted as LPRs or those adjusting to LPR status. The growth in immigration after 1980 is partly attributable to the total number of admissions under the basic system, consisting of immigrants entering through a preference system as well as immediate relatives of U.S. citizens, that was augmented considerably by legalized aliens.<sup>6</sup> In addition, the number of refugees admitted increased from 718,000 in the period 1966-1980 to 1.6 million during the period 1981-1995, after the enactment of the Refugee Act of 1980. The Immigration Act of 1990 increased the ceiling on employment-based preference immigration, with the provision that unused employment visas would be made available the following year for family preference immigration.

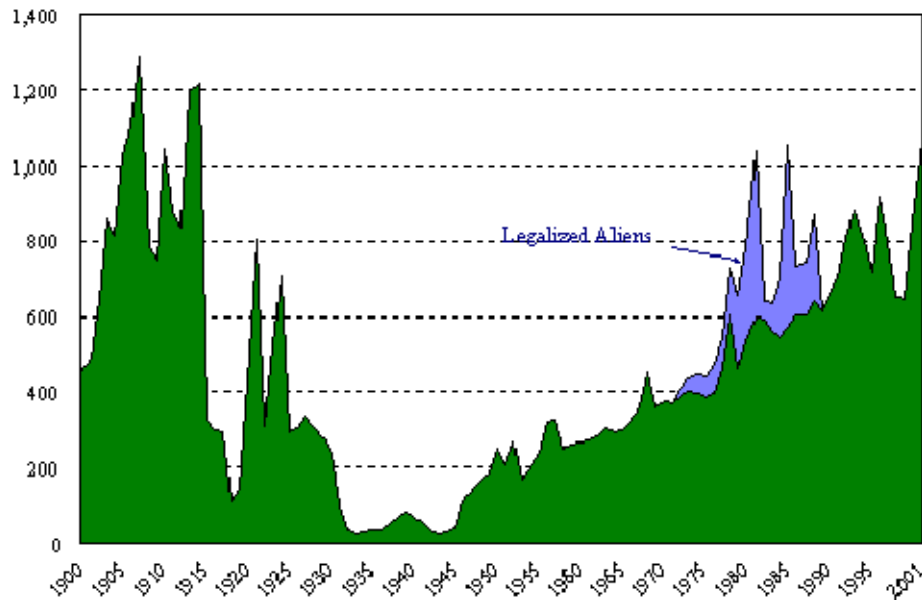
There are two major statistical perspectives on trends in immigration. One uses the official BCIS admissions data and the other draws on Bureau of Census population surveys. The BCIS data present only those admitted as LPRs or those adjusting to LPR status. The census data, on the other hand, include all residents in the population counts, and the census asks people whether they were born in the United States or abroad. As a result, the census data also contain long-term temporary (nonimmigrant) residents and unauthorized residents.

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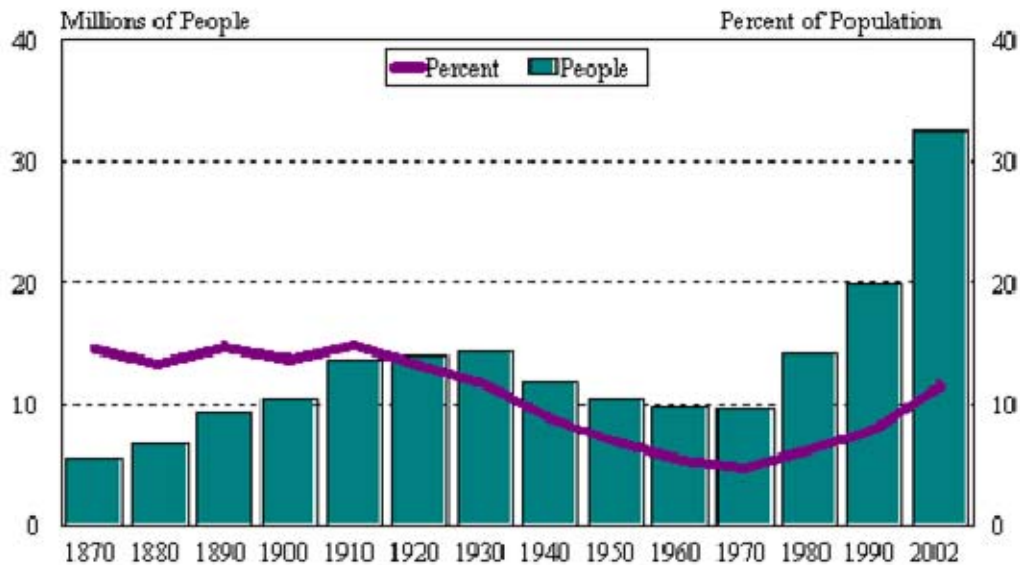
<sup>6</sup> The Immigration Reform and Control Act of 1986 legalized several million aliens residing in the United States without authorization.

The percent of the population that is foreign born, depicted in **Figure 2**, resembles the trend line of annual admissions data presented in **Figure 1**. It indicates the proportion of foreign born residents is not as large as during earlier periods, but is approaching historic levels at the turn of the last century. **Figure 2** illustrates that the sheer number—32.5 in 2002—has more than doubled from 14.1 million in 1980 and is at the highest point in U.S. history.

**Figure 1. Annual Immigrant Admissions and Status Adjustments, 1900-2001**



**Source:** CRS presentation of BCIS data. Aliens legalizing through the Immigration Reform and Control Act of 1986 are depicted by year of arrival.

**Figure 2. Foreign-Born Residents of the United States, 1870-2002**

**Source:** CRS presentation of data from *The Foreign-Born Population: 1994* by K.A. Hansen & A. Bachu, U.S. Bureau of Census (1995); *The Population of the United States*, by Donald J. Bogue (1985); and the March 2002 Supplement of the CPS.

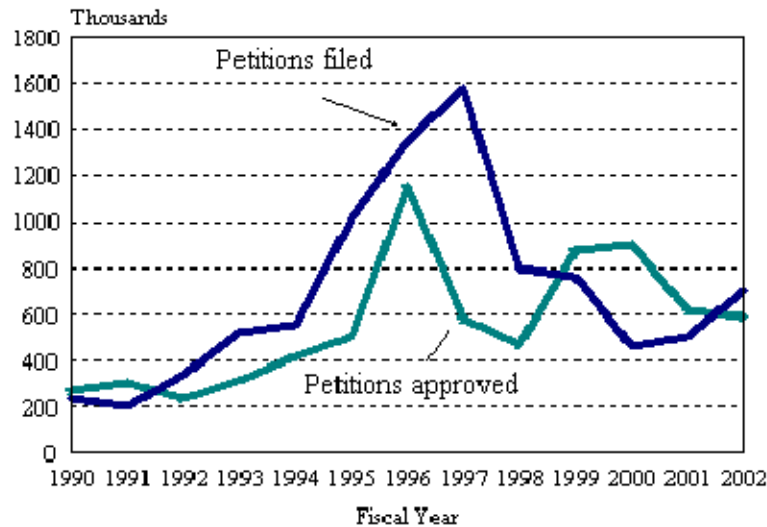
## Naturalization

Another tradition of immigration policy is to provide immigrants an opportunity to integrate fully into society. Under U.S. immigration law, all LPRs are potential citizens and may become so through a process known as *naturalization*. To naturalize, aliens must have continuously resided in the United States for 5 years as LPRs (3 years in the case of spouses of U.S. citizens), show that they have good moral character, demonstrate the ability to read, write, speak, and understand English, and pass an examination on U.S. government and history. Applicants pay fees of \$310 when they file their materials and have the option of taking a standardized civics test or of having the examiner quiz them on civics as part of their interview.

The language requirement is waived for those who are at least 50 years old and have lived in the United States at least 20 years or who are at least 55 years old and have lived in the United States at least 15 years. Special consideration on the civics requirement is to be given to aliens who are over 65 years old and have lived in the United States for at least 20 years. Both the language and civics requirements are waived for those who are unable to comply due to physical or developmental disabilities or mental impairment. Certain requirements are waived for those who have served in the U.S. military.

For a variety of reasons, the number of LPRs petitioning to naturalize has increased in the past year but has not reached nearly the highs of the mid-1990s when over a million people sought to naturalize annually, as **Figure 3** depicts. The pending caseload for naturalization remains over half a million, and it is not uncommon for some LPRs to wait 1-2 years for their petitions to be processed, depending on the caseload in the region in which the LPR lives.



**Figure 3. Naturalization Petitions and Approvals, FY1990 to FY2002**

**Source:** CRS presentation of Bureau of Citizenship and Immigration Services data.

**Note:** As of September 30, 2002, a total of 623,519 cases were pending.

## Illegal Aliens

*Illegal aliens* or *unauthorized aliens* are those noncitizens who either entered the United States surreptitiously, i.e., entered without inspection (referred to as EWIs), or overstayed the term of their nonimmigrant visas, e.g., tourist or student visas. Many of these aliens have some type of document—either bogus or expired—and may have cases pending with BCIS. The former INS estimated that there were 7.0 million unauthorized aliens in the United States in 2000.

Demographers at the Census Bureau and the Urban Institute estimated unauthorized population in 2000 at 8.7 and 8.5 million respectively, but these latter estimates included “quasi-legal” aliens who had petitions pending or relief from deportation.<sup>7</sup>

## Eligibility for Federal Benefits

Noncitizens’ eligibility for major federal benefit programs depends on their immigration status and whether they arrived before or after enactment of P.L. 104-193, the 1996 welfare law (as amended by P.L. 105-33 and P.L. 105-185). Refugees remain eligible for Supplemental Security Income (SSI) and Medicaid for 7 years after arrival, and for other restricted programs for 5 years. Most LPRs are barred SSI until they naturalize or meet a 10-year work requirement. LPRs receiving SSI (and SSI-related Medicaid) on August 22, 1996, the enactment date of P.L. 104-193, continue to be eligible, as do those here then whose subsequent disability makes them eligible for SSI and Medicaid. All LPRs who meet a 5-year residence test and all LPR children (regardless of date of entry or length of residence) are eligible for food stamps. LPRs entering after August 22, 1996, are barred from Temporary Assistance for Needy Families (TANF) and

<sup>7</sup> U.S. Immigration and Naturalization Service, *Estimates of the Unauthorized Immigrant Population Residing in the United States, 1990 to 2000*, Jan. 31, 2003.

Medicaid for 5 years, after which their coverage becomes a state option. Also after the 5-year bar, the sponsor's income is deemed to be available to new immigrants in determining their financial eligibility for designated federal means-tested programs until they naturalize or meet the work requirement. Unauthorized aliens, i.e., illegal aliens, are ineligible for almost all federal benefits except, for example, emergency medical care.<sup>8</sup>

## **Taxation**

Aliens in the United States are generally subject to the same tax obligations, including Social Security (FICA) and unemployment (FUTA) as citizens of the United States, with the exception of certain nonimmigrant students and cultural exchange visitors. LPRs are treated the same as citizens for tax purposes. Other aliens, including unauthorized migrants, are held to a “substantive presence” test based upon the number of days they have been in the United States.<sup>9</sup> Some countries have reciprocal tax treaties with the United States that—depending on the terms of the particular treaty—exempt citizens of their country living in the United States from certain taxes in the United States.

## **Author Contact Information**

(name redacted)  
Specialist in Immigration Policy  
-redacted-@crs.loc.gov, 7-....

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<sup>8</sup> CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation*, by (name redacted).

<sup>9</sup> This “substantive presence” test is at least 31 days in the current year and 183 or more days in the 2 prior years, according to a formula.

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