



IMMIGRANT LEGAL ADVOCACY PROJECT

MEMORANDUM

TO: Portland Charter Commission
FROM: Beth Stickney, Esq.*, Executive Director
DATE: March 8, 2010
RE: **Noncitizen Voting: Immigration documents**

I have been asked to provide information on the ease or lack thereof of determining a person's immigration status. This is relevant to the issue of whether the Commission, if it were to recommend that noncitizens residents of Portland be allowed to vote in municipal elections regarding local candidates and questions, would decide to limit that privilege to only certain noncitizen City residents, or open it up to all noncitizens who are residing in Portland. I will address various categories of noncitizens permitted to live in the U.S. indefinitely in turn.

A. NONCITIZENS WITH PERMANENT/INDEFINITE STATUS

I. Lawful Permanent Residents (LPRs). These are individuals who are allowed to live in the U.S. permanently and indefinitely (ie. for their entire lifetimes) as long as they comply with relevant laws. Colloquially, they are known as having "green cards." However, that does not mean that there is only one type of document – a single "green card" – that establishes their status. Note that the time it takes for the plastic, wallet sized "green card" to arrive in the mail to a new resident or a resident replacing a lost or expiring card can range from a few weeks to several months or even a year. Also note that the current iteration of the "green card" expires in most cases ten years from issuance, but that does not mean that the person's residency ends; it means that the permanent resident is expected to update his "green card" every 10 years in order to supply a more current photo and to retire cards with older security features. Some cards expire in two years. These individuals do not retain legal status unless they have filed paperwork with Immigration authorities (USCIS) to retain their status.

Among the documents that a permanent resident might have showing legal status are:

- I-551 Permanent Resident card (the "green card") with 10 year expiration date (note that the card is only lightly tinted with green)
- I-151 or I-551 Resident Alien card (the "green card") with no expiration date (note that the card may be pink or yellow hued but is not green)
- I-551 Resident card (the "green card") with 2 year expiration date, together with letter from USCIS showing receipt of form I-751 that extends the I-551 for one year
- Various earlier versions still in circulation of the "green card" called the "Alien Registration" card or "Resident Alien" card or "Alien Registration Receipt" card (may be grey, blue or green, depending on the version)

* Admitted in Massachusetts; practice in Maine limited to Immigration and Nationality matters

- Visa in Passport with additional entry date stamp that turns the visa into a temporary I-551 “green card”
- Passport with “Temporary evidence of I-551....” stamp on a passport
- A small, white “I-94” card bearing the “Temporary evidence of I-551....” stamp on it
- A letter from USCIS showing approval of an application under INA §245 or §248
- A “Welcome Letter” from USCIS
- A letter confirming receipt of form I-90, a request to replace or renew the I-551 Permanent resident card
- A court order from one of the many Immigration Courts across the United States that are part of the Executive Office of Immigration review granting relief from removal such as “Adjustment of Status” or “Cancellation of Removal” or “Registry”
- A letter from the Board of Immigration Appeals granting any of the statuses noted in the previous bullet point (the decision may be sustaining an appeal by the respondent or denying an appeal by the Department of Homeland Security)
- An order from one of the Federal Courts of Appeals granting any of the statuses noted in the previous bullet point (the decision may be sustaining an appeal by the respondent or denying an appeal by the Department of Homeland Security)
- A “Reentry Permit” travel document
- Various other documents.

2. Refugees. Refugees are allowed to live permanently in the U.S. if they follow relevant immigration laws, after having been granted safe haven following past or from possible future persecution. Documents showing refugee status include:

- A small, white, paper “I-94” card bearing the “Admitted as a refugee under INA §207....” stamp on it.
- A letter from USCIS stating that the person has been admitted as a refugee under INA §207
- An “Employment Authorization” card bearing the “Section of Law” code “A3” on it (valid evidence of status even if expired)
- A letter from USCIS showing receipt of form I-102 requesting replacement of the I-94 card (note that persons with other statuses who have lost their I-94 cards could also have this letter)
- A USCIS “Refugee Travel Document” noting status as a refugee under §207 on the biographic data page.

3. Asylees. Asylees are allowed to live permanently in the U.S. if they follow relevant immigration laws, after having been granted safe haven following past or from possible future persecution. Documents showing asylee status include:

- A small, white, paper “I-94” card bearing the “Admitted as an asylee under INA §208....” stamp on it.
- A letter from USCIS stating that the person has been granted asylum
- An “Employment Authorization” card bearing the “Section of Law” code “A5” on it (valid evidence of status even if expired)

- A USCIS “Refugee Travel Document” noting status as an asylee under §208 on the biographic data page.
- A letter from USCIS showing approval of form I-730 granting asylum status
- A letter from USCIS showing receipt of form I-102 requesting replacement of the I-94 card (note that persons with other statuses who have lost their I-94 cards could also have this letter)
- A court order from one of the many Immigration Courts across the United States that are part of the Executive Office of Immigration Review granting asylum relief under INA §208.
- A letter from the Board of Immigration Appeals granting asylum relief under INA §208 (the decision may be sustaining an appeal by the respondent or denying an appeal by the Department of Homeland Security)
- An order from one of the Federal Courts of Appeals granting asylum relief under INA §208 (the decision may be sustaining an appeal by the respondent or denying an appeal by the Department of Homeland Security)
- Various other documents.

4. Parolees. These are individuals allowed into the U.S. for humanitarian reasons. Many of Portland’s Southeast Asians were paroled into the U.S. when the U.S. government wanted to let them in as refugees but there were not enough refugee visas available. Many of these individuals will eventually be able to apply for permanent residency, but may have to wait decades before they are able to apply. In the meantime, they are paroled “indefinitely” and allowed to remain in the U.S. for the rest of their lives as long as they follow relevant immigration laws. Note that there are also persons paroled into the U.S for one year periods that can be extended for multiple years at USCIS’s discretion. Documents showing parolee status include:

- A small, white, paper “I-94” card bearing the “Paroled into the U.S. under INA §212(d)(5)....” on it. The card will either state “indefinitely” or will have an expiration date on it, depending on the period of time that the government granted. If there is an expiration date, the status can frequently be extended.
- An “Employment Authorization” card bearing the “Section of Law” code “A5” on it
- A letter from USCIS showing receipt of form I-102 requesting replacement of the I-94 card (note that persons with other statuses who have lost their I-94 cards could also have this letter)

5. Withholding of Removal/Convention Against Torture (CAT) relief. These are individuals who are permitted to remain in the U.S. until conditions improve in their countries so that they will not face persecution or torture. This could be years or decades. They are not permitted to apply for permanent residency (or ultimately, U.S. citizenship) unless they come to qualify to apply for residency on some other basis while here with “Withholding” or “CAT” status. Documents include:

- An “Employment Authorization” card bearing the “Section of Law” code “A10” on it

- A court order from one of the many Immigration Courts across the United States that are part of the Executive Office of Immigration review granting withholding of removal or Convention against Torture relief
- A letter from the Board of Immigration Appeals granting withholding of removal or Convention against Torture relief (the decision may be sustaining an appeal by the respondent or denying an appeal by the Department of Homeland Security)
- An order from one of the Federal Courts of Appeals granting withholding of removal or Convention against Torture relief (the decision may be sustaining an appeal by the respondent or denying an appeal by the Department of Homeland Security)

B. OTHER QUASI-PERMANENT STATUS CATEGORIES

Not listed above are many other categories of persons issued **nonimmigrant** (temporary) visas, **but the visas are intended to keep the individuals here until they are able to apply for permanent residency**. Included in this category are persons who are able to live and work in the U.S. under the following statuses:

- **“Family Unity” program recipients** (who are certain spouses and children (ie. under 21 years old and unmarried) of Permanent Residents and are legally here while waiting to get to the top of the residency waiting list and while their residency paperwork is in process)
- **K-visa recipients** (who are certain spouses and children (ie. under 21 years old and unmarried) of U.S. citizens and are on K visas while their residency paperwork is in process)
- **V-visa recipients** (who are certain spouses and children (ie. under 21 years old and unmarried) of Permanent Residents and are on V visas while waiting to get to the top of the residency waiting list and while their residency paperwork is in process)
- **U-visa holders** (who are victims of domestic violence or other crimes)
- **T-visa holders** (who are victims of human trafficking)

These individuals may have various forms of proof of status including:

- Visas in their Passports
- Employment Authorization cards with various codes
- Letters from USCIS referencing their status
- Various other documents.

C. OTHER LONG-TERM STATUSES

As I mentioned when I appeared before the Charter Commission on February 11, 2010, Portland has many residents who are in “temporary” statuses who are nonetheless living here long term and may have put down roots, and who may have U.S. citizen or noncitizen children in our schools. They are in statuses that do not inevitably lead to permanent residency, but they may qualify for permanent residency through other means while in their temporary statuses (for example, a person with TPS may fall in love with and marry a U.S. citizen and obtain permanent residency through the marriage; a professional worker (and her spouse and

children) may obtain residency through a petition filed by the employer). These statuses include, among others:

- **Persons with Temporary Protected Status (TPS):** This is a status granted to citizens of certain countries when the U.S. government believes it is unsafe for them to return to their countries. In Portland, Hondurans have lived here with TPS since late 1998, Salvadorans since March 2001, Somalis, Sudanese and others for more than a decade.
- **Persons on Professional Working Visas:** These include H visas, L visas, E visas and others, with the visa holders (and their spouses and children) able to live here for up to 6 years or longer if the employer initiates the permanent residency process before their visa expires
- **Foreign students:** Foreign students include not just undergraduates but also those who are pursuing post-graduate study, and their spouses and children. Many of these students live here for years and can live here for more than a decade if they are pursuing undergraduate through PhD degrees, and may obtain residency through their education and skills, ultimately.

These individuals may have various forms of proof of status including:

- Visas in their Passports
- White, paper “I-94” cards
- Employment Authorization cards with various codes
- Letters from USCIS referencing their status
- Various other documents.

D. SUMMARY AND RECOMMENDATIONS

As noted above, even to try to discern the status of those who have the most permanent statuses, such as permanent residents and refugees and asylees, involves reviewing many different documents that a person may potentially present. It also should be noted that Immigration documents are constantly in flux, so that any list of documents that doesn't also allow the individual to present “any other document issued by Immigration or other relevant federal authorities or relevant courts that appears on its face to be genuine” or some such language will inevitably become quickly out of date, and will lead to erroneous exclusion of noncitizens that Portland actually intended to permit to vote.

If Portland did not want to open noncitizen voting to all noncitizens who can show that they actually reside in Portland, a less cumbersome and costly approach than verifying immigration documents, both for the City Clerk's office and for those who want to register to vote, would be to have noncitizens who wish to vote in local elections swear or attest to their status. This could be accomplished most simply by having the voter registration form include language that the person registering affirms under pains and penalties of perjury that the person has legal immigration status, or similar language. I recommend that the Charter Commission consider this or a similar approach.