## V. REQUIREMENTS FOR U.S. CITIZENSHIP, IMMIGRATION, AND VISAS

### A. Overview

The Fourteenth Amendment to the U.S. Constitution defines citizens as "all persons born or naturalized in the United States and subject to the jurisdiction thereof."[175] Citizenship also can be conferred individually or collectively by statute. For example, by statute, U.S. citizens include individuals born abroad to an American parent.[176]

Noncitizens fall into three categories for purposes of U.S. immigration law. First, noncitizens who enter illegally or who violate the terms of their visa status are referred to as "unlawful" or "unauthorized." Second, individuals who are admitted temporarily as visitors for a specific purpose are "nonimmigrants."[177] Nonimmigrants are required to leave the country at the end of the time allotted them for the specific purpose.[178] Third, noncitizens who receive permission to live and work permanently in the United States are called by various names, including "immigrants," "resident aliens," "lawful permanent residents," "permanent residents," or may be referred to as "green card holders."[179] Immigrants are not citizens but they are allowed to reside permanently within the United States, may apply for U.S. citizenship through the naturalization process, are able to work without restriction, with limited exceptions for government employment. All immigrants in the United States are protected by the Constitution, but the extent of that protection varies according to the status of their presence here. Similarly, all immigrants enjoy most of the statutory protections accorded by Federal and State law, but the extent of that protection also varies by alienage status.[180]

A noncitizen seeking to enter the United States generally is required to present valid documentation for entry, usually a visa and a passport. These requirements, however, can be waived in certain circumstances. The Department of State and the INS form a "double check"

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[175] U.S. Const. amend. XIV, sec. 1.

[176] 8 U.S.C. sec. 1401.

[177] *See* Congressional Research Service, CRS Report for Congress, *98-918: Immigration Fundamentals* (September 15, 1999) and Congressional Research Service, CRS Report for Congress, RS20916: *Immigration & Naturalization Fundamentals* (May 18, 2001).

[178] *Id.*

[179] Immigrants are defined as anyone who does not fall within one of the nonimmigrant classifications. 8 U.S.C. sec. 1101(a)(15).

[180] *See* Congressional Research Service, CRS Report for Congress, *98-918: Immigration Fundamentals* (September 15, 1999).

system for entry into the United States. The Department of State grants visas.[181] The INS inspects individuals upon arrival at a port of entry and determines whether they are admitted into the country.[182] There are many grounds for inadmissibility, including criminal history, security and public health considerations, the likelihood of becoming a public charge, and documentary requirements violations.[183] Some grounds can be waived.[184] Even for grounds that cannot be waived, an individual may be "paroled" into the United States for emergency or humanitarian reasons.[185]

Among the grounds for inadmissibility is a provision that makes inadmissible former U.S. citizens who renounce their citizenship to avoid taxation.[186] Individuals seeking permanent resident status cannot obtain a waiver of this ground of inadmissibility and therefore, cannot return to the United States on a permanent basis. Individuals seeking to enter the United States temporarily, however, may obtain a waiver of this ground of inadmissibility.[187] Thus, while such individuals cannot establish permanent residency in the United States, they may receive a waiver to permit them to visit the United States as a nonimmigrant.

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[181] Under section 428 of the Homeland Security Act of 2002 ("Homeland Security Act"), Pub. Law 107-296, consular officers will continue to issue visas, but they will do so under the general supervision of the Secretary of Homeland Security. The Secretary of Homeland Security also will have general authority to refuse visas in accordance with immigration law, a power not currently given to the Secretary of State. The Secretary of State will retain authority to deny visas on foreign policy and national security grounds. The Homeland Security Act is not intended to fundamentally alter the immigration and nationality policy of the United States.

[182] Under subtitle D of the Homeland Security Act, enforcement functions of the INS, including inspections, will be performed under the Bureau of Border Security, Department of Homeland Security.

[183] 8 U.S.C. sec. 1182(a).

[184] 8 U.S.C. sec. 1182(d), (h), (i), (k), (l).

[185] 8 U.S.C. sec. 1182(d)(5). A grant of parole is temporary permission to be present in the United States. The parolee is required to leave when the conditions supporting his or her parole cease to exist. Parole does not constitute formal admission into the country.

[186] Sec. 212(a)(10)(E) of the Immigration and Nationality Act (the "INA"); 8 U.S.C. sec. 1182(a)(10)(E).

[187] 8 U.S.C. sec. 1182(d)(3).