

State Council of Higher Education for Virginia

ADDENDUM B

Common Forms & Definitions

In Support of the Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates

The following tables provide definitions and explanations for various terms, documents, and agencies associated with immigration services. The list and explanations are non-exhaustive.

Terms	
National	The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.
US Citizen	US citizenship is acquired through birth or naturalization (the name of the process for applying for citizenship in the US).
U. S. Territories & Commonwealths (excluding those uninhabited)	<ul style="list-style-type: none">a. American Samoa (Territory)b. U.S. Virgin Islands (Territory)c. Guam (Territory, in Micronesia)d. Puerto Rico (Commonwealth)e. Northern Mariana Islands (Commonwealth, in Micronesia) <u>Minor Outlying Islands:</u> <ul style="list-style-type: none">f. Midway Islands (no indigenous inhabitants)g. Wake Atoll (Territory, consisting of Wake, Wilkes & Peale Islands; in Micronesia; no indigenous inhabitants; claimed by Marshall Islands)h. Palmyra Atolli. Bajo Nuevo Bank (disputed with Colombia)

Documents

Green Card /Permanent Resident

Once a person receives a “green card”, he/she is a permanent resident. The person is permitted to reside in the US indefinitely even though he/she is not a US citizen.

I-94 Card

A document that non-immigrant foreign nationals receive when they enter the US. This card is marked with the person’s date of entry into the US, the immigration classification, and the person’s permitted length of stay in the US.

Immigrant Visa

Those holding an immigrant visa are permanent residents, and may remain in the United States without any time limitation.

Nonimmigrant Visa

“Nonimmigrant” means that the visa classification has a temporary duration only; the person holding a nonimmigrant visa cannot remain in the US indefinitely.

Passport

A travel document issued by a national government that identifies the holder as a national of the issuing state. The passport holder presents the passport to enter and pass through foreign countries.

Visa

A document giving an individual permission to request entrance to a country. A person usually applies for the visa at the consulate of the country for which they are seeking entry before departure.

AGENCIES:

United States Citizenship and Immigration Services

The United States Citizenship and Immigration Services (“USCIS”) is the bureau of the United States Department of Homeland Security (“DHS”) which performs many of the functions that were carried out by the Immigration and Naturalization Service (“INS”) prior to 2003. USCIS is responsible for the administration of immigration services and benefits. This responsibility includes adjudicating asylum claims, issuing employment authorization documents, adjudicating visa petitions for nonimmigrant temporary workers, granting lawful permanent resident status (“green card” applications) and granting citizenship.

Department of State

The Department of State (“DOS”) is responsible for issuing or denying visas to noncitizens who wish to enter the US temporarily or as permanent citizens. Once USCIS approves a visa petition, the approval is forwarded to the State Department’s National Visa Center (“NVC”). The NVC checks the petition for accuracy and completeness, creates a file, and

sends the file to the appropriate US consulate overseas. The DOS also oversees the operation of consular offices at US embassies and consulates around the world, where nonimmigrant visa applications are processed.

Once USCIS approves a visa *petition*, the beneficiary will need to file a visa *application* with the appropriate US consulate abroad. In some nonimmigrant category cases, a personal interview at the consulate office will be required of the beneficiary. The beneficiary will need to persuade the consulate that he or she fits the definition of the applicable visa-status and is not subject to any of the grounds for inadmissibility into the US. Both immigrant and nonimmigrant visa applicants are required to have their visas stamped by their respective consular office before entry into the US.

Department of Labor

The Department of Labor (“DOL”) oversees the labor certification process for employment-based immigration. Prior to filing petitions for some employment-based green card classifications, an employer must obtain labor certification in order to show that there are no US workers able, willing, qualified, and available for the position for which a labor certification is being sought, and that the employment of the foreign national will not have an adverse effect on the wages and working conditions of US workers. Once the requisite recruitment steps are completed, a labor certification application should be submitted to the DOL processing center that serves the state in which the job is being offered.

In addition to processing labor certifications for some employment-based immigration categories, the DOL is also responsible for processing Labor Condition Applications (“LCA”) for temporary workers in the H-1B category. Before an employer can petition the USCIS to employ H-1B workers, it must first obtain an LCA, which must be submitted with the H-1B petition sent to the USCIS. The LCA should attest that the employer will pay the required wage rate to the H-1B workers, that employment of the H-1B workers will not adversely affect the working conditions of similarly employed US workers, that there are no labor disputes regarding the occupational positions at the places where the H-1B workers are to be employed and that notice of the LCA filing is provided to the requisite parties. The DOL also enforces wage and hour issues relating to foreign nationals (and other workers as well).

State Workforce Agency

The State Workforce Agency (“SWA”), formerly called the State Employment Security Agency (“SESA”), assists with the labor certification process. SWA refers to the state agency that regulates labor and employment at the state level. Before submitting an application for labor certification with the DOL, the applying employer must place a job order for the job in which it hopes to place a foreign national. Additionally, the employer must seek a prevailing wage determination for that job from the SWA. The prevailing wage information is required for the labor certification application. The job order placed through the SWA is also required as part of the recruitment process that should precede a labor certification application.

Other Definitions:

Military Definition of Dependent

In support of Section 17 D of the Domicile Guidelines

Taken from: http://www.law.cornell.edu/uscode/37/usc_sec_37_00000401----000-.html

- (a) **Dependent Defined.**— In this section, the term “dependent”, with respect to a member of a uniformed service, means the following persons:
- (1) The spouse of the member.
 - (2) An unmarried child of the member who—
 - (A) is under 21 years of age;
 - (B) is incapable of self-support because of mental or physical incapacity and is in fact dependent on the member for more than one-half of the child’s support; or
 - (C) is under 23 years of age, is enrolled in a full-time course of study in an institution of higher education approved by the Secretary concerned for purposes of this subparagraph, and is in fact dependent on the member for more than one-half of the child’s support.
 - (3) A parent of the member if—
 - (A) the parent is in fact dependent on the member for more than one-half of the parent’s support;
 - (B) the parent has been so dependent for a period prescribed by the Secretary concerned or became so dependent due to a change of circumstances arising after the member entered on active duty; and
 - (C) the dependency of the parent on the member is determined on the basis of an affidavit submitted by the parent and any other evidence required under regulations prescribed by the Secretary concerned.
 - (4) An unmarried person who—
 - (A) is placed in the legal custody of the member as a result of an order of a court of competent jurisdiction in the United States (or Puerto Rico or a possession of the United States) for a period of at least 12 consecutive months;
 - (B) either—
 - (i) has not attained the age of 21;
 - (ii) has not attained the age of 23 years and is enrolled in a full time course of study at an institution of higher learning approved by the Secretary concerned; or
 - (iii) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this paragraph pursuant to clause (i) or (ii);
 - (C) is dependent on the member for over one-half of the person’s support;
 - (D) resides with the member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the Secretary concerned may by regulation prescribe; and
 - (E) is not a dependent of a member under any other paragraph.
- (b) **Other Definitions.**— For purposes of subsection (a):
- (1) The term “child” includes—
 - (A) a stepchild of the member (except that such term does not include a stepchild after the divorce of the member from the stepchild’s parent by blood);
 - (B) an adopted child of the member, including a child placed in the home of the member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the child by the member; and
 - (C) an illegitimate child of the member if the member’s parentage of the child is established in accordance with criteria prescribed in regulations by the Secretary concerned.
 - (2) The term “parent” means—
 - (A) a natural parent of the member;
 - (B) a stepparent of the member;
 - (C) a parent of the member by adoption;
 - (D) a parent, stepparent, or adopted parent of the spouse of the member; and
 - (E) any other person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age.