

Basic Facts About Undocumented Students

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By Joy Athanasiou¹

1. What is an Undocumented Student?

Many people assume that undocumented means illegal, however, the term “undocumented student” describes all of the students in the United States who don’t have documentation of lawful status. While the term undocumented includes students without any lawful status in the U.S., it also includes students who have applied for permanent residence or other types of status and are awaiting approval. Some students have cases pending in the Immigration or Federal Courts awaiting final decision, a process which can take several years. It also includes a few students who have lawful status but cannot get the proper documentation thereof. Even some U.S. citizens are undocumented because they can’t get proof of their citizenship, particularly after the increased identification requirements imposed by the Congressional REAL ID Act of 2005 and several state laws.

2. Why don’t undocumented students apply for legal status?

The undocumented student population came to the U.S through different ways and most undocumented students don’t qualify for lawful status. Our immigration laws contain numerous restrictions, and with few exceptions, bar any type of status without a perfect immigration history. While some entered unlawfully, many students came to the U.S. on a visa or had lawful status at one time, but later became ineligible to extend their status or adjust to permanent residence.ⁱ

Fatoumata entered the U.S. with a visa at age 10 from West Africa. She had been kept as a child slave, forced to work long hours, was not allowed to attend school, and was physically abused and neglected. When her visa expired, Fatoumata didn’t qualify to extend her status. Now she is fighting for asylum status in the U.S., which may take years and often results in deportation.

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The U.S. immigration system is based primarily on employment and family sponsorship. There are many different temporary visa categories, each with distinctive rules and restrictions. For individuals coming to the U.S. permanently, they must first be sponsored, then wait for visa eligibility, and finally apply for permanent residence. After five years as a Permanent Resident in most cases, an individual can apply for U.S. citizenship.

Unfortunately, several needed visa categories simply don't exist under current law and the majority of the existing categories involve years-long or even decades-long waiting lists. Many undocumented students have had petitions pending for years but are still waiting for case approval. Other students got kicked out of line because they turned 21, got married or a parent or sponsor died.

Beverly entered the U.S. from Honduras with her family in 1991. Her parents applied for lawful status that same year. By the time Beverly's father was granted permanent resident status in 2006, she had already turned 21, therefore Beverly no longer qualified and now faces deportation.

Some students don't qualify for sponsorship and are excluded from the system entirely. Students from Mexico suffer most. For Mexico, the current processing date for most family based categories is 1992, which has not advanced in the past 10 years. In other words, an individual may now obtain permanent residence based on a Petition filed in 1992, if he or she remains eligible. Mexican citizens also suffer disproportionately from the "permanent bar" a lifetime bar to lawful status for anyone who traveled home and returned to the U.S. This bar is nearly always triggered by a brief trip home for a family member's death or illness.

Tony entered the U.S. from Mexico in 1992 at age 3. A petition was filed that year for his Mother by his U.S. citizen grandfather. Now, the petition is finally current and the family can apply for permanent residence, however, because Tony traveled home for one week for his grandmother's death in 2006, he is permanently barred from ever obtaining lawful status.

The visa backlogs and numerous legal restrictions result in an entire generation of undocumented students raised in the U.S., with U.S. citizen or permanent resident parents and younger siblings. Because the student is the oldest child in the family, he or she is barred from legal status or forced to wait 20-40 years for case approval. By that time, the window of opportunity to attend college has long passed.

3. If the federal DREAM Act passes, undocumented Colorado students will NOT be able to attend our public colleges at in-state tuition rates.

While the DREAM Act would grant lawful status to undocumented students, in its current form, it doesn't require states to provide in-state tuition. Therefore, Colorado will likely need to pass state legislation in addition to the federal DREAM Act in order for these students to attend our public colleges at in-state tuition rates.