

Immigration 101

Questions & Answers

By **Ali Brodie**, Attorney, Isaacson Rosenbaum, P.C.

www.heaacolorado.org



What is the process to earn U.S. citizenship for an undocumented high school graduate? What is the average length of time to become a U.S. citizen?

An individual may become a U.S. citizen through a process called Naturalization. Typically, in order to be eligible for naturalization, the individual must be 18 years of age or older, and have been a lawful permanent resident for a certain amount of time before filing. A lawful permanent resident is also commonly known as a person who holds a green card. Certain individuals may be eligible for naturalization if they have been a lawful permanent resident for at least five years and meet all other requirements associated with the application. Individuals may also qualify for naturalization if they have been a lawful permanent resident for three years, are the spouse of a U.S. citizen, and meet all other requirements associated with the application.

You may apply for naturalization by filing Form N-400, Application for Naturalization. The application is filed with U.S. Citizenship and Immigration Services (USCIS). After filing, the applicant will receive a Receipt Notice from the government confirming that it has received the application and will begin processing. The applicant will then receive a Biometrics Notification scheduling the applicant to appear for biometrics. Once the applicant's biometrics are complete and the government has finished initial processing, the applicant will receive an appointment notice requesting them to appear for their naturalization interview at the local USCIS Field Office. At the interview, the applicant will be issued the civics exam and will be tested on their ability to both read and write in English. If the applicant has a successful interview, he or she will be recommended for U.S. citizenship and will be scheduled to take their Oath of Allegiance to the United States. One is not a naturalized U.S. citizen until he or she has received their Certificate of Naturalization.

The time it takes to naturalize varies across the country. USCIS is working to make the average national processing time six months. The current USCIS Denver Field Office processing timeframe for Applications for Naturalization is currently five months. The current fee associated with filing Form N-400, Application for Naturalization, is \$675.00.

It is important to note that you may already automatically be a U.S. citizen if your biological or adoptive parent(s) became a U.S. citizen prior to your 18th birthday, pursuant to the Child Citizenship Act. In this case, you would not need to apply for naturalization but instead for a Certificate of Citizenship by filing Form N-600, Application for Certificate of Citizenship. There are special requirements for children born out of wedlock and for stepchildren. You should contact an attorney if you believe you may automatically be a U.S. citizen.

For further information concerning the Naturalization process, you may consult the USCIS document "A Guide to Naturalization (M-476)," available for free online.

Undocumented students who graduate from college with a degree are still unable to work legally in the United States. What options are available for students after college or career training if they are undocumented?

Even though these graduates were brought to the United States years ago as undocumented children and have lived in the U.S. for most of their lives, they are undocumented and therefore unable to work legally in the U.S.. Under the current immigration laws, most of these graduates have no way of obtaining legal status in the United States. Typically, a child would derive legal status through their parents. Because their parents are undocumented, the children are unable to obtain legal status.

Generally, in order to legally work in the U.S., an individual must have work authorization either through status as a lawful permanent resident or through a visa. Lawful permanent resident status is typically derived from a parent or spouse. Undocumented individuals who have been present in the United States for a number of years are typically ineligible for a visa. As such, undocumented graduates are unable to work legally in the United States.

What benefits would be provided if the federal government took action by passing the DREAM Act or Comprehensive Immigration Reform?

DREAM Act

Each year, thousands of intelligent and talented students graduate from high school, including those students who were brought to the United States years ago as undocumented immigrant children. Upon high school graduation, many of these undocumented children face barriers with regards to higher education. The Development, Relief and Education for Alien Minors (DREAM) Act is proposed federal legislation which would allow undocumented immigrant students a path to U.S. citizenship. In order to qualify under the DREAM Act, the immigrant student must have lived in the United States for at least five years, entered the United States before the age of 16 (15 years or younger), and have good moral character without a criminal record. These students would be provided a path to U.S. citizenship in exchange for one of the following: (a) two years of a bachelor's degree program; or (b) two years of military service.

Comprehensive Immigration Reform Act of 2010

The United States immigration laws are in need of a major overhaul. The concept of 'Comprehensive Immigration Reform' has been introduced and defeated a number of times. The most recent legislation, the Comprehensive Immigration Reform Act of 2010, was introduced by Senators Menendez (D-NJ) and Leahy (D-VT). The summary below provides the sections and some of the key components of each section as presented in the Comprehensive Immigration Reform Act of 2010.

A. *Border Enforcement*

This section concerns the security of our borders. Specifically, the section provides for an increased number of Customs and Border Patrol (CBP) officers at both our Northern and Southern borders, enhanced cooperation with Mexico regarding border security, improvement of infrastructure along the ports of entry on both the Northern and Southern borders, and greater resources for the Bureau of Alcohol, Tobacco, Firearms and Explosives to combat the current smuggling and trafficking of firearms.

B. *Interior Enforcement*

This section provides for reforms with regards to unauthorized entries and removals, and immigrant detention. Specifically, the section provides for heightened security concerning the entry and exit of nonimmigrants, increased civil and criminal penalties for illegal entry and reentry, and greater penalties for individuals using fake or stolen passports or other documents. The Act calls for detention reforms. Specifically, the Act provides for greater protections for children caught in immigration enforcement situations, prevention of separation of families with children, requires that detainees receive timely and proper medical care, and eliminates the requirement that asylum applicants must file within one year.

C. *Worksite Enforcement*

This section creates a mandatory national employment verification system for all employers.

D. *Reforming America's Legal Immigration System*

This section relates to several topics including: establishing employment-based immigration policies, reducing family and employment visa backlogs and promoting family unity, and revising and expanding the current temporary worker programs and worker protections. With regard to promoting family unity, the Act calls for a revision of the current unlawful presence bars, broader grounds for waiver of hardship, and reduction in backlog waiting times by reclassifying spouses and children of lawful permanent residents as immediate relatives.

E. *Legalization of Undocumented Individuals*

This section creates a provisional legal status for undocumented immigrants called Lawful Prospective Immigrant (LPI). This status would provide the individual with work and travel authorization and the future opportunity to apply for Lawful Permanent Resident status. This section also provides for the adoption of all aspects of the DREAM Act.

F. *Immigrant Integration and Other Reforms*

This section mainly enhances the governmental resources and efforts to integrate immigrants into U.S. communities. Part of this initiative involves expanding the government's investment in U.S. history and civics education and English literacy.

undocumented students in 11 states? Which is, jurisdictionally, the most relevant to Colorado?

Legislation granting in-state tuition has passed in 11 states, thereby providing in-state tuition to all students who graduate from their high schools and who meet the residency requirements of the state, regardless of immigration status. The following states have passed in-state tuition legislation: California, Texas, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Utah, Washington, and Wisconsin. In 2008, Oklahoma passed a law ending its in-state tuition benefits for undocumented students.

There are presently two major lawsuits in California and Nebraska challenging the legality of their in-state tuition laws. The California Supreme Court heard arguments on October 5, 2010, concerning the lawsuit challenging the 2001 California law which allows students who graduate from a California high school to attend any public higher education institute at in-state tuition rates. A ruling from the court is expected within three months. If the California Supreme Court upholds the 2001 law, it is possible that the case will be appealed to the U.S. Supreme Court.

The Nebraska lawsuit was filed on January 25, 2010, in Jefferson County District Court. The Judge had set a deadline of October 4, 2010, for attorneys to offer written arguments. The lawsuit, filed on behalf of several Nebraska residents, challenges the 2006 Nebraska law allowing certain undocumented students to pay in-state college tuition on the basis that these Nebraska residents claim their taxes are being used to support the state law in violation of federal law. The case is currently pending.

Colorado is part of the United States Tenth Circuit Court of Appeals. The territorial jurisdiction of the Tenth Circuit includes Colorado, Oklahoma, Kansas, New Mexico, Wyoming, Utah, and parts of Yellowstone National Park that extend into Montana and Idaho.

What does the United States Constitution say about immigration and a student's equal protection rights with regard to higher education?

The Constitution does not provide a fundamental right to education. The Equal Protection Clause of the Fourteenth Amendment provides that "No State shall...deny to any person within its jurisdiction the equal protection of the laws." The term 'person' has been held to include both U.S. citizens and aliens, regardless of legal status.

In 1982, the U.S. Supreme Court held that all children in the United States, regardless of immigration status, are guaranteed equal access to public schools for kindergarten through twelfth grade (*Plyler v. Doe*). This landmark case allowed undocumented children to attend K-12 public schools for free. The U.S. Supreme Court however did not affirmatively extend this right to higher education. As a result, many undocumented students complete high school and are often left on their own with uncertain futures and the inability to pay for college. Arguably, by not extending this right to higher education, the United States is losing on its investment after educating these children through twelfth grade.

¹ *Plyler v. Doe*, 457 U.S. 202 (1982).

What has been the outcome of legal challenges to similar laws that implement in-state tuition for