

CHURCH LEADER'S **GUIDE** TO  
**I**MM**I**GRAT**I**ON



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Pastors and other church leaders are uniquely positioned in immigrant communities to develop relationships and demonstrate the truth of the gospel. The Church Leader's Guide to Immigration has been designed as a resource for those on the front lines of ministry who need practical guidance. The questions in this guide were gathered by the authors over several years from local churches and national denominational leaders in the U.S. The questions and answers are not intended to be exhaustive, but designed to lay a foundation for further study. Each section lists additional resources that offer a more in-depth discussion of the presented topics.

The guide has been divided into three parts:

- **SECTION ONE**  
**Biblical & Missiological Foundations for Immigrant Ministry:**  
**Discerning God's Heart**
- **SECTION TWO**  
**Immigration Legal Issues**
- **SECTION THREE**  
**Developing an Immigration Legal Ministry**

We hope this will be a useful tool for the reader and welcome feedback and suggestions on topics/questions that should be added to the guide at the following email address: **welcomingthestranger@wr.org**

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## Biblical & Missiological Foundations for Immigrant Ministry: Discerning God's Heart

Before a church can effectively engage in ministry with immigrants, the leadership and membership of the congregation must address some basic questions about immigration, which is still a complicated and controversial issue in our society.

This first section of the Church Leader's Guide to Immigration seeks to provide answers to some common questions, to help church leaders think through how to sensitively address this issue with their congregations, and to carefully consider how to respond.

## My church isn't primarily an immigrant congregation—why should immigration matter to me?

In a significant and increasing number of local churches in the United States, immigrants form the majority of the congregation, and immigration issues thus impact church leaders in obvious ways. For many other congregations, though, where most members are native-born U.S. citizens, generations removed from their own ancestral immigrant experiences, immigration is not a pressing issue. Given that many Americans view immigration first and foremost as a political issue, it's also an issue many pastors would prefer to avoid.

If we avoid the realities of immigration, though, we risk missing out on an incredible missional opportunity. Missiologists have found that immigrants are often amongst the most receptive groups of people to the gospel; all around the world, God is at work through the movement of people to advance his kingdom.<sup>2</sup> Scripture tells us that God has a design in the movement of people: that “from one man he made every nation of men, that they should inhabit the whole earth; and he determined the times set for them and the exact places where they should live” (Acts 17:26).<sup>3</sup> While there are important economic and geopolitical reasons for why migration occurs, above them all is the hand of God in the movement of people for a particular purpose: “so that they would seek him and perhaps reach out for him and find him” (Acts 17:27).

Missiologists have noted at least three ways that God is working through migration: through ministry *to* immigrants who do not yet know Jesus, *through* immigrants who function as agents of mission, ministering to their own people group, and *beyond* the immigrant experience, as immigrants, many of whom bring a vibrant Christian faith with them to their new country, share the gospel with native-born citizens of their host country who are not yet followers of Christ.<sup>4</sup> While many in American society see immigration as a threat, missiologist Tim Tennent argues that “the immigrant population actually presents the greatest hope for Christian renewal in North America.”<sup>5</sup>

Sadly, most American evangelicals are missing this missional opportunity. The Faith Communities Today survey finds that just one in ten evangelical churches in the U.S. has *any* sort of ministry or ministry partnership

focused on reaching immigrants,<sup>6</sup> and even in those churches that do specifically seek to minister to immigrants, usually only a small fraction of the congregation is engaged.

The relative slowness to embrace this missional opportunity may be a symptom of the fact that most American evangelicals do not think about immigration from a Christian perspective. A 2010 Pew Research Center poll found that just 12 percent of white evangelicals say their opinions about immigration are influenced primarily by their faith.<sup>7</sup> The vast majority view immigration through a different lens: based on the rhetoric of their favorite cable news personality, the position of their preferred political party, or their perceptions (often inaccurate) of the effects of immigration on their and the country's economic well-being. Consequently, polls find that most white evangelicals see immigrants as "a burden on our country" and believe that further immigration "threatens traditional American customs and values,"<sup>8</sup> and thus miss out on the missional opportunity of the transforming Gospel in the lives of these immigrants.

Addressing the policy question from a distinctly Christian perspective, then, is vital both because it is a necessary element of seeking the justice that God requires that includes all people (Isa 1:17) and because the policy question from solely a political point of view becomes a stumbling block that keeps many American evangelicals from responding in biblically faithful ways to the missional opportunity presented by immigration.

If we apply a biblical ecclesiology to the topic of immigration, we also recognize that, in the words of National Association of Evangelicals president Leith Anderson, "they are us," because immigrant congregations account for the fastest growth in American evangelicalism.<sup>10</sup> Scripture teaches that their suffering is to be our suffering as well, since we are all part of one, interdependent body (1 Cor 12:26). We cannot fully enter that reality, fulfilling the unity of his followers for which Christ prays (John 17:20-21), unless we wrestle with an appropriate, biblically-informed response to the challenges facing many of our immigrant brothers and sisters.

## What does the Bible actually say that might inform how I and the people of my church think about immigrants and immigration issues?

A World Relief colleague recently commented that, in more than sixty years of church-going, she had never heard a sermon about immigration. She's not alone: 84 percent of white evangelicals in the U.S. say they have never heard their pastor or other clergy discuss the topic of immigration.<sup>11</sup> That's not because the Scriptures are silent on the matter though: immigration is actually a common theme throughout the Bible. The Hebrew word *ger*—which most English translations render as “foreigner,” “alien,” or “sojourner,” but which Tim Keller argues convincingly should actually be “immigrant”<sup>12</sup>—appears ninety-two times in the Old Testament.<sup>13</sup> By the count of theologian Orlando Espin, “Welcoming the stranger... is the most often repeated commandment in the Hebrew Scriptures, with the exception of the imperative to worship only the one God.”<sup>14</sup>

The references to the immigrant in the Old Testament follow a few recurring themes. First, many of the heroes of the narrative of Scripture—Abraham, Jacob, Joseph, Ruth, David, Daniel—were themselves immigrants, crossing borders under many of the same circumstances as today's migrants: fleeing poverty and famine, aiming to reunify a family, seeking asylum, or trafficked involuntarily. The parallels between the biblical narrative and the realities of today's immigrants are many.

God also has a great deal to say about how Christians should treat immigrants: he repeatedly challenges his people, the Israelites, to remember their own history as immigrants in the land of Egypt, and, once God has established them in the Promised Land, to allow their ancestors' experience to inform the way they treat the immigrants who come into their land. “Do not oppress a foreigner,” God commands, “you yourselves know how it feels to be foreigners, because you were foreigners in Egypt” (Exod 23:9).

The immigrant appears frequently in the Old Testament alongside three other vulnerable groups of people who compose what Nicholas Wolterstorff calls the “quartet of the vulnerable”: the resident alien, the orphan, the widow, and the impoverished.<sup>15</sup> God makes clear that he loves these vulnerable individuals, whom he commands his people to love and

protect. “Do not oppress the widow or the fatherless, the foreigner or the poor” (Zech 7:10). The prophet Malachi warns that “those who defraud laborers of their wages, who oppress the widows and the fatherless, and deprive the foreigners among you of justice” will be judged alongside adulterers, perjurers, and sorcerers (Mal 3:5). “The Lord watches over the foreigner and sustains the fatherless and the widow,” the Psalmist proclaims, “but he frustrates the way of the wicked” (Psa 146:9). “The Lord your God... defends the cause of the fatherless and the widow, and loves the foreigner residing among you, giving them food and clothing” (Deut 10:17-18).

God not only loves immigrants, he also establishes specific rules to ensure that they could meet their own basic needs, commanding the Israelites not to harvest the entirety of their fields, but to leave the edges “for the poor and for the foreigner residing among you” (Lev 23:22). God insists that the immigrant be granted the same labor protections as Israelites, including a Sabbath day’s rest (Exod 20:10), freedom from oppression (Deut 24:14), and timely payment of wages (Deut 24:15). In almost every aspect of Israelite life, the immigrant was to “be treated as your native-born” (Lev 19:34), which stood in stark contrast to the laws of the societies surrounding Israel, which showed little regard for immigrants.<sup>16</sup>

In the New Testament, Jesus reiterates the command to love one’s neighbor. His parable of the Good Samaritan—to the Jewish listener, someone of a different ethnic group and adversarial religious tradition—makes clear that the term “neighbor” is defined broadly. The New Testament also repeatedly calls the Christian (Rom 12:13, 1 Pet 4:9), and church leaders in particular (1 Tim 5:10), to hospitality. To most contemporary readers, as Christine Pohl notes, hospitality “now chiefly refers to the entertainment of one’s acquaintances at home and to the hospitality industry’s provision of service through hotels and restaurants,”<sup>17</sup> but the hospitality to which Scripture calls us—*philoxenia*, in Greek—means “the love of strangers.”<sup>18</sup> When we welcome a stranger, Scripture suggests that we might be welcoming “angels without knowing it” (Heb 13:2) or even, as the Parable of the Sheep and the Goats conveys, Christ himself (Matt 25:35, 40).

## How do we respond specifically to immigrants who are here illegally, who have overstayed a visa or entered without inspection?

The Bible has much to say that would guide how a Christian thinks about immigration—the preceding chapter is just an incomprehensive summary—but it does not give any explicit instructions about how to respond to *illegal immigration*. Most immigrants in the United States—about 70 percent according to the U.S. Department of Homeland Security—reside lawfully, either as naturalized U.S. citizens, lawful permanent residents, or valid temporary visa-holders.<sup>19</sup> With about 30 percent of the foreign-born population present unlawfully, though, the question of how to respond to the undocumented is too significant to ignore.

Scripture does speak to the question of how the Christ-follower should relate to the civil government: Rom 13 insists that everyone ought to “be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God” (Rom 13:1). Paul goes on to say that “whoever rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves” because “rulers do not bear the sword for no reason” (Rom 13:2, 4). Peter similarly admonishes followers of Jesus to “submit yourselves for the Lord’s sake to every human authority” (1 Pet 2:13). We are clearly and repeatedly called to love and defend the cause of the immigrant, but also to be subject to the laws of the state. How, then, do we respond to immigrants whose very presence is a violation of law?

Fortunately, these commands do not really contradict one another, at least for most American Christians, because there are actually very few ways that a U.S. citizen could run afoul of U.S. immigration law. Federal law does not prohibit any of the activities that most churches or individuals might take part in as they relate to undocumented immigrants: we can preach the gospel to them, teach them in Sunday School (or let them teach us), provide food assistance from a food pantry, and offer English classes—and never violate the law. There is no legal requirement on citizens or churches to report those whom they suspect are present unlawfully. The only likely area where a church or individual could violate the law would

be employing an immigrant who is not authorized by the state to receive compensation for employment. In many ways, we can minister effectively and still comply with the law. (See Chapters 7 and 8 for further explanation of laws related to immigrant ministry.)

It is important to note, though, that some states have passed laws that could change this dynamic. Most notably, states such as Arizona and Alabama have made it a crime—punishable by up to ten years in prison in some cases—to knowingly transport someone who is undocumented “in furtherance of the unlawful presence of the alien.”<sup>20</sup> Courts have yet to conclusively decide whether driving someone to church, to English classes, or to the hospital would qualify as a crime, but the fact that certain individuals (law enforcement, first responders, and child protective services) are exempted, but not church staff or volunteers, has many concerned with what they view as an infringement on their religious liberty. After all, bringing people—regardless of their legal status—to church is a primary strategy for evangelism for many churches, which in turn is central to their mission, and transporting someone in need to get help is precisely the example that Jesus gives of what it means to fulfill the Great Commandment’s injunction to “love your neighbor as yourself” (Luke 10:27). As pastor Rick Warren notes, “A good Samaritan doesn’t stop and ask the injured person. ‘Are you legal or illegal?’”<sup>21</sup>

These new laws at the state level—and the possibility that similar legislation could become law at the federal level, such as a vaguely-worded, narrowly-failed 2005 bill that would have made it a felony offense to “assist” someone undocumented to reside in the United States<sup>22</sup>—force an important question: are there ever instances when the Christian, in order to follow biblical commands, must disobey certain laws of the state?

Almost all Christian traditions acknowledge that, in certain circumstances, civil disobedience is permissible and even required. Martin Luther King, Jr. was echoing St. Augustine when he argued that “an unjust law is no law at all.”<sup>23</sup> While disobeying the unjust segregation laws of the Jim Crow-era American South, King and other Civil Rights leaders remained “subject” to them, non-violently accepting imprisonment and other consequences, however unjust, for their disobedience. They followed in the biblical tradition of heroes like the Hebrew midwives who defied Pharaoh’s genocidal order (Exod 1:17), Shadrach, Meshach, and Abednego who refused to worship Nebuchadnezzar’s idol and went to the fiery furnace (Dan 3:18-19), and the Apostle Peter, who boldly told the authorities who

had commanded the apostles to stop preaching in the name of Jesus, “We must obey God rather than human beings!” (Acts 5:29).

Whether or not laws such as Arizona’s sufficiently infringe upon religious freedom that civil disobedience is warranted for (or even required of) the Christian is perhaps a question of individual conscience, but Christians should use their voice in a democratic government to fervently oppose any legislation that could limit our rights to minister lawfully in the first place.

The question of Scripture’s repeated commands to be subject to civil government’s authority is even more challenging for believers who are undocumented immigrants. Matthew Soerens conveys the story of a friend—a theologically-educated Baptist—who is anguished by his unlawful presence in the United States. He came to the U.S. about twenty years ago from Mexico, desperate to provide for his wife and two children. He wants desperately to get right with the law, but he has found that current law provides no hope of legalizing his status, even if he were to return to Mexico. His challenge is that he also takes very seriously the biblical teaching that “anyone who does not provide for their relatives, and especially for their own household, has denied the faith and is worse than an unbeliever” (1 Tim 5:8). In his case, he does not believe he could provide for his family—now three people more than when he left his village, where the economic situation has not substantially improved—if he returned.

Christians may reasonably disagree on the correct, biblical answer to this individual’s dilemma. Most could agree, though, that a legal framework that forces individuals to choose between obeying the law and providing for their families could be improved. Many pastors of immigrant congregations around the country would love to be able to advise people in this situation to do both: to get right with the government (paying a fine for their violation of law as necessary) *and* to stay and provide for their families, but that would require reform of current U.S. immigration law.

**The people in my church seem more focused on economic, social, and political concerns than on what the Bible says—I'm a pastor, not a policy expert or an academic: how do I respond to these questions, and what sort of public policies might a Christian support?**

While it is appropriate that pastors and church leaders begin any conversation on immigration with biblical and missional foundations, immigration does have political, public safety, economic, and social ramifications to which we should be equipped to respond. If we cannot address the legitimate concerns that many within our churches have regarding the impact of immigrants on their community, which have led many to see immigration as a threat, they are unlikely to embrace a biblical perspective that presents immigration as a missional opportunity. Furthermore, if we avoid discussion of various public policy responses to immigration issues, some will presume that “compassion” necessarily means “amnesty,” or, on the other side, that “respect for the law” is code for “mass deportation.”

Most evangelical leaders are actually remarkably unified both in recognizing the need for reform and the basic principles that should guide it, principles that steer clear of the extreme responses of either blanket amnesty or of mass deportation. More than 200 prominent evangelical leaders have signed onto a statement calling for immigration reform that:

- *Respects* the God-given dignity of every person.
- *Protects* the unity of the immediate family.
- *Respects* the rule of law.
- *Guarantees* secure national borders.
- *Ensures* fairness to taxpayers.
- *Establishes* a path toward legal status and/or citizenship for those who qualify and who wish to become permanent residents.<sup>24</sup>

The diverse set of leaders who have affirmed these basic principles stretches across denominations, ethnicities, political affiliation, and geography, including many of the most influential Christian leaders in the United States. Signatories include popular authors such as Max Lucado,

Shane Claiborne, and Margaret Feinberg; presidents and other academic leaders from some of the most respected evangelical seminaries and colleges; leaders of parachurch organizations including Focus on the Family, World Vision, InterVarsity Christian Fellowship, the Navigators, World Relief, and Prison Fellowship; influential pastors such as Bill Hybels, J.D. Greear, Tony Evans, Matt Chander, and Rich Nathan; and executives of eighteen evangelical denominations, including the Southern Baptist Convention, the Assemblies of God, the Evangelical Free Church of America, the Christian & Missionary Alliance, the Wesleyan Church, the Salvation Army, and the Church of the Nazarene.

What might those principles look like when translated into actual immigration policy? Not all of those named above necessarily agree on the specifics of legislation, but what many have advocated is a Comprehensive Immigration Reform policy that would essentially have three fundamental goals:

1. Make it *harder* to immigrate or work unlawfully.
2. Make it *easier* to immigrate lawfully.
3. Allow those who are currently present unlawfully to earn the chance to get right with the law.

Addressing each of these necessary elements of reform would resolve the underlying economic and legal problems within our current laws that have led to such dysfunction.

### **MAKE IT HARDER TO IMMIGRATE OR WORK UNLAWFULLY**

Very few people think that illegal immigration is a good thing. It is both a potential problem for our national security as well as being a mockery of the biblical ideal of the rule of law. Our immigration laws should not be routinely ignored. The government should do everything reasonably possible to ensure that everyone who enters the United States does so with a valid visa. Since about 45 percent of the undocumented immigrants in the U.S. did not enter illegally in the first place, but overstayed a valid temporary visa, we also need better systems to ensure that visitors respect the terms of their visa.<sup>25</sup> One of the easiest ways to deter both unlawful entries as well as visa over-stayers would be to develop an efficient, enforceable workplace authorization system: almost all undocumented immigrants, regardless of their mode of entry, come to work, and if they were unable to find work without the proper documents, they would be unlikely to migrate in the first place.

It's important to note that making it harder to immigrate or work unlawfully is actually the one element (of the three elements of Comprehensive Immigration Reform presented here) on which the U.S. government has made substantial progress in the last several years, beginning under the Bush Administration and continuing under the Obama Administration. The U.S.-Mexico border is more secure than at any time since the 1970s.<sup>26</sup> Because of the confluence of an exponential increase in border security spending over the last decade and the dramatic slowdown in attempted unlawful border crossings (primarily a result of the lack of available jobs in the midst of an economic slowdown), the U.S. government now spends about \$7,500 *per person* apprehended attempting to enter unlawfully, up from \$1,400 just five years earlier—because Congress continues to appropriate more money for enforcement even while the number of individuals attempting to enter has declined.<sup>27</sup> With net migration between Mexico and the United States now at zero,<sup>28</sup> some border patrol agents actually say they are “bored.”<sup>29</sup> Though politicians sensationalize isolated cases of violence along the border, crime data show that violent crime rates in the border region have been on the decline for the past several years and are actually lower than both the national average and the crime rates in other parts of those same border states.<sup>30</sup>

Much of the progress in securing our borders, though, is probably due to the economic downturn. If and when the U.S. economy begins to grow more rapidly, more jobs will be created, including many jobs in sectors (such as agriculture) that few American workers have proven willing to perform at prevailing wages, and, without reform, illegal immigration will resume.<sup>31</sup> In the past, the federal government has often turned a blind eye to unauthorized work confirmed by easily-falsifiable documents. That's at least in part because unauthorized immigrant labor plays a vital economic role—contrary to popular perception, more than 95 percent of economists surveyed by the *Wall Street Journal* say illegal immigrants have benefited the U.S. economy<sup>32</sup>—and if employment authorization laws were strictly enforced and borders carefully guarded without amending our current visa system, our national economy would suffer. Since no president wants to preside over an economic downturn, administrations of both major political parties have, for the past several decades, regularly turned a blind eye to unauthorized work. This is while undocumented immigrants, 75 percent of whom the Social Security Administration estimates have payroll taxes deducted from their paychecks,<sup>33</sup> contribute as much as \$15 billion a year to the Social Security system, a fund from which, without legal status, they will never be eligible to benefit.<sup>34</sup>

The wink-and-nod system employed for the past several decades mocks the biblical principle of rule of law (Rom 13:1) as both immigrants and employers

violate the law, usually without penalty. It also opens up vulnerable undocumented immigrants to exploitation, since their lack of legal status makes many afraid to report unsafe working conditions, wage theft, or even situations of human trafficking, where they are forced or coerced to work involuntarily, for private economic and even sexual gain.<sup>35</sup> The only alternative, though, if we want a growing economy *as well* as a genuinely secure border and consistently-enforced employment authorization laws, is to enact the second element of Comprehensive Immigration Reform, which is...

### **MAKE IT EASIER TO IMMIGRATE LAWFULLY**

Most Americans, who never have any reason to interact with our federal immigration legal system, presume that the United States of America has some sort of a logical, functional legal system to deal with immigrants. Most suppose that there is some process by which someone who wanted to immigrate to the United States to fill an available job for which no U.S. citizen has applied could fill out some paperwork and enter in a lawful fashion. Many presume that, like a visit to the Department of Motor Vehicles or some other government agency, it is a bureaucratic process with lots of paperwork and fees and probably not the best customer service, but that if someone were to fill out the right form and wait a reasonable period, they could migrate to the U.S. Those who entered illegally or overstayed a visa, many think, are merely too impatient to wait their turn in line, or perhaps too uneducated to wade through the bureaucracy.

The reality is that our current immigration laws, though they work for some, are an archaic mess of quotas that are woefully out of touch with—and unresponsive to—a dynamic U.S. labor market.

Many of the current laws were written way back in 1965 and do not address present issues. There are four primary ways that a would-be immigrant could come to and work in the U.S. on a permanent basis: through a family sponsor, through an employer sponsor, by winning the Diversity Lottery, or if designated as a refugee fleeing persecution.

Our family-based immigration system, which accounts for at least 226,000 permanent visas per year, allows U.S. citizens and Lawful Permanent Residents (those with “green cards”) to file petitions for their close relatives (but not for grandparents, cousins, uncles and aunts, or other more distant relatives).<sup>36</sup> The system works fairly well if you happen to be the spouse, minor child, or parent of an adult U.S. citizen (presuming that the beneficiary has not already entered the United States unlawfully),

but the system is very backlogged for most other qualifying relationships as a result of quotas written into the law. One pastor in Illinois, for example, migrated lawfully and filed for his wife and minor children back in El Salvador as soon as he arrived in the U.S. with his green card; he had to wait about five years before they were able to migrate to join him. The worst-case scenario is for a U.S. citizen who files a petition for her sibling in the Philippines: those cases are currently being processed only if they were filed prior to 1989, a backlog of more than two decades.<sup>37</sup>

The employment-based immigration system is, in my analysis, even more problematic. There were 140,000 employer-sponsored immigrant visas available in 2011.<sup>38</sup> The vast majority of these visas—all but 5,000—can only possibly be granted to “highly-skilled” workers, defined by law as those with advanced degrees or exceptional abilities.<sup>39</sup> The U.S. labor market, though, requires many more foreign-born workers than that limited quota each year in sectors that do not require a Master’s degree. To put that number in historical perspective, a century ago, 5,000 immigrants came through Ellis Island on an average day, most of whom, if we had the same classifications and restrictions then as we do now, would have been deemed “low skilled.”<sup>40</sup>

The third possibility for lawful immigration is to win the Diversity Visa Lottery. The Diversity Lottery provides for 50,000 immigrant visas per year to individuals who have at least a high school education or two years of professional experience in particular fields. The odds of winning the lottery were only about one in 250 for Fiscal Year 2013.<sup>41</sup> Furthermore, certain countries, including Mexico, the Philippines, India, China, South Korea, and other countries that already send many emigrants to the U.S., are ineligible even to apply.

The final way that an individual might be eligible to immigrate lawfully to the U.S. is if he meets the legal definition of a refugee, an individual who has fled his country because of persecution on account of his race, religion, political opinion, national origin, or social group.<sup>42</sup> In Fiscal Year 2011, the U.S. admitted about 56,000 refugees; approximately 25,000 more individuals were granted asylum, meaning that they were found once already in the United States to meet the legal definition of a refugee.<sup>43</sup> Providing safe haven to those fleeing persecution - including many who are targeted specifically because of their Christian faith - is a vital humanitarian function of our immigration system as well as an important foreign policy tool in terms of diplomacy. It is important to understand, though, that those fleeing poverty or natural disasters do not legally qualify as refugees. And even among those who do meet the legal definition of a refugee—the United Nations High Commissioner for Refugees counts 15.4 million refugees worldwide (not including Internally Displaced People)<sup>44</sup>—only a fraction of one percent each

year will be resettled to the U.S., so the fact that a person who is forced to flee persecution in their country is certainly not a “golden ticket” to be allowed to migrate to the U.S.

This system works fairly well for some individuals, but it leaves a lot of would-be immigrants without an option. We often hear that immigrants without legal status should “go home and come back the legal way,” but the reality for many is that there was probably no legal possibility of coming in the first place, and no legal way of returning if they were to leave now. An immigrant in the Chicago area who migrated unlawfully in 1990 from Mexico is quite typical: her only family members in the U.S. with legal status were cousins who were ineligible to petition for her; she came to work, but the fast food restaurant jobs she has held for more than two decades would not qualify her as “highly-skilled,” so her odds of an employment-based visa were practically zero; she is from Mexico and thus ineligible to apply for the Diversity Visa Lottery; and, though she was fleeing poverty, she was not fleeing persecution. For someone in her situation, there is no line to wait in to migrate lawfully: it would not have mattered if she had waited twenty years or two hundred years, she would probably never be eligible to migrate lawfully to the U.S.

The reality is that, since there were jobs available and employment authorization laws were ignored, she came to the States anyway and quickly found work. Now, she is fairly well integrated into U.S. society, with two U.S. citizen children whose first language is English, and her employer does not want to lose her. Our society, which appreciates cheap fast food, does not want to lose her, either.

If we are to be serious about securing the border and enforcing employment authorization laws, we need to adjust our dysfunctional visa system. That does not mean opening the doors wide open, but it does mean setting our visa quotas at levels that meet the needs of and are sensitive to the U.S. labor market, rather than our current static quota, which might have made sense in 1965 but does not today. In keeping with our national values, we should also adjust the family reunification visas so that a wife need not wait years to be reunited to her husband and minor children, and we should continue—and consider expanding—our efforts to provide refuge to those fleeing persecution.

This sort of visa reform should be common sense, especially for those who believe the free market—with minimized restrictions on the flow of goods and capital as well as labor—is the most efficient economic

system. A combination of a reformed visa system, border security, and an enforceable employment authorization system should dramatically reduce future illegal immigration while also allowing our economy to grow. The most controversial question, though, remains: how do we respond to those who are already present unlawfully?

### **ALLOW THOSE WHO ARE CURRENTLY PRESENT UNLAWFULLY TO EARN THE CHANCE TO GET RIGHT WITH THE LAW**

There are really only a few possible options for what to do with the estimated 11.5 million immigrants currently living in the United States without legal status.<sup>45</sup> On one extreme, the federal government could attempt to deport all of them. There are a few reasons why almost no one in Congress, on either side of the political aisle, has realistically suggested this proposal. First of all, the cost to the U.S. government to undergo such a massive deportation effort would be huge: the Department of Homeland Security estimates that the cost would be about eighty billion dollars;<sup>46</sup> some independent estimates peg the cost at \$285 billion.<sup>47</sup> Those are just the costs of *removing* 11.5 million people, not including the costs of trying to keep them from coming back, which many—separated from U.S. citizen spouses or children—are likely to attempt. Furthermore, the cost to the U.S. gross domestic product of not having those undocumented immigrants participating in the economy as workers, consumers, and taxpayers could be as much, according to one study, as \$2.6 *trillion* over a decade.<sup>48</sup>

On the opposite end of the spectrum, there are some who believe the solution is to grant amnesty to all those who are undocumented. Most evangelical leaders do not believe that amnesty is the best *governmental* policy, but the derision with which some Christians speak of amnesty is a bit ironic, given that amnesty is merely a synonym for grace, which is at the very center of the gospel. Scripture makes clear that we are saved from our sins by Christ's atoning death on the cross, "not by works" (Eph 2:9). A minority of Christians do advocate a governmental policy of amnesty for undocumented immigrants—a forgiving and forgetting of the offense of those who have entered the U.S. or have overstayed a visa unlawfully—and point to Jesus's parable of the unmerciful servant (Matt 18:21–35) as a rationale. We who have been forgiven so much (by God), they argue, should be quick to forgive others.

While there is a place for mercy in our treatment of undocumented immigrants, there is an important distinction between Jesus's command to his disciples to forgive extravagantly (Matt 18:22) and the role of the state, which Scripture says is God's instrument "to bring punishment"

(Rom 13:4). As individuals, we are called to forgive over and over again, but if the state were to forgive every offense, there could be no order and no true justice.

The question, then, is not whether the state should forgive (or, as we do now, ignore) violations of law, but rather what an appropriate penalty would be. Unlawful presence in the United States is a civil (not criminal) offense,<sup>49</sup> and, while clearly unlawful, it does not require malicious intent; in fact, while we may not condone the breaking of law, most Americans would likely consider crossing a border or overstaying a visa if it were the only option available to provide for their families. With the exception of the relatively few who have committed serious crimes, then, an appropriate penalty could be a reasonable monetary fine, from which those who were brought into the country as children or trafficked in under force, fraud, or coercion should be exempt. (Those that have committed serious criminal offenses *would* be deported.)

Having paid a fine, these individuals could then be granted a probationary legal status permitting them to work and travel lawfully. After a few years, having demonstrated that they have been paying taxes, working toward learning English, and avoiding criminal problems (all of which most undocumented immigrants are already doing), they would be eligible for Lawful Permanent Resident status. Five years later, like any other Lawful Permanent Resident, they would be eligible to apply for naturalization if they can pass a test of spoken and written English, American history, and knowledge of government (a test that surveys suggest at least a third of Americans would probably fail).<sup>50</sup> “Such a solution,” says theologian John Piper, “would give honor to the law and show mercy to the immigrants.”<sup>51</sup>

This sort of Comprehensive Immigration Reform is actually remarkably popular. 72 percent of Americans—including a majority of both Republicans and Democrats—favor such a plan, which includes both border security and a path to citizenship for undocumented immigrants.<sup>52</sup> 65 percent of white evangelicals surveyed agreed as well.<sup>53</sup> Yet when Republican President George W. Bush pushed for such legislation in 2007, it failed to pass through the Senate, with most of the opposition coming from the President’s own party.<sup>54</sup>

The reason that a largely popular reform would fail is that a vocal minority opposed to the bill—who characterized it, despite a proposed fine for each undocumented immigrant of as much as \$5,000,<sup>55</sup> as “amnesty”—flooded congressional offices with phone calls, faxes, and letters. The majority

of Americans who supported the bill, however, were largely silent. After all, the individuals most dramatically impacted by the bill, immigrants themselves, could not vote, and polls suggest that immigration policy ranks near the bottom of issues that concern American voters most.<sup>56</sup> It's not *our* (U.S. citizens') problem.

It *is* our problem, though. The Church, as Anglican Archbishop of Canterbury William Temple once said, "exists for the benefit of its non-members."<sup>57</sup> If the Church will not speak out for the interests of those who are marginalized in our society, who will? That's one reason that it is so important that American evangelicals recognize that, as good stewards of our citizenship, we are called to "speak up for those who [at least on a political level] cannot speak for themselves" (Prov 31:8), advocating for policies that are consistent with biblical values of justice, compassion, and hospitality.

The question of how we engage immigration policy is vital to the efficacy of our efforts to respond to the missional opportunity of immigration. We cannot effectively minister to undocumented immigrants while ignoring the injustices of immigration policy any more than one could minister to African-Americans in the Jim Crow-era American South while staying silent on the question of the Civil Rights Movement. Our presentation of the gospel—that Jesus loves and died for each person—rings hollow if our words, actions, or our support for particular political candidates is understood by our immigrant neighbors to mean that, while Jesus may love them, we loathe them and would prefer they not be in our communities.

To the contrary, when we welcome immigrants and advocate with them for just, compassionate, and reasonable policies, we live the truth of the gospel that we proclaim, that Christ welcomes each of us in our imperfection. In the process, as many evangelical churches and denominations are already experiencing, we may also find that the immigrants arriving in our communities strengthen and revitalize American evangelicalism.

## How can I be a good steward of my influence in addressing public policy issues without inappropriately becoming partisan or politicized?

To paraphrase pastor Bill Hybels, there should be two non-options for the church as it considers the topic of immigration: we can neither allow the local church to become a partisan, politicized organization, nor bury our heads in the sand.<sup>58</sup> Advocacy—speaking boldly and eloquently to those with decision-making authority on behalf of those within our churches and communities whose voices are not always heeded—is an important part of being a steward of the influence that God has entrusted to us. However, we should be cautious in addressing issues with a political component such as immigration, ensuring that we are guided by biblical principles and not by partisan talking points.

The most valuable contribution that most church leaders can make to the national dialogue on immigration policy is simply to remind both their congregations and their elected officials of the biblical principles that they believe should guide the debate—without necessarily getting caught up in the complexities of specific policies. Yet public policy debates do ultimately matter because they impact the lives of specific human beings, who have inherent dignity as people made in the image of God (Gen 1:27).

A precursor to advocacy, for most church leaders, will be discipling their congregation in the direction of a distinctly biblical, missional view of immigration. That might mean focusing sermons, an Adult Education class, or a small group study on the topic of immigration in Scripture. One helpful introductory discipleship tool is the “I Was a Stranger” Challenge, created by the Evangelical Immigration Table, which is a simple bookmark listing forty Bible passages related to the topic of immigration, designed to be read one verse per day for forty days. The National Association of Evangelicals and World Relief have also prepared a Learning Group curriculum appropriate for small groups that could be a helpful discipleship tool.

One way to communicate a distinctly Christian approach to immigration issues that might reach beyond one’s own congregation would be to host a special forum on immigration, potentially with a guest speaker or a

panel of individuals addressing the topic from a variety of perspectives. Ensuring that the personal narratives of immigrants themselves (especially from among those who are fellow believers) are included is vital, to ensure that we are listening appropriately to those most impacted by immigration policy.

Another opportunity to challenge the larger community to consider biblical principles as they think about immigrants and immigration policy would be to write an Op-Ed for the local newspaper. Most newspapers are eager to consider such guest columns, particularly from leaders within the local community who are writing on a timely issue such as immigration. You should check the website of your local newspaper to see if they have specific guidelines for submissions of Op-Eds or guest columns, but most such columns are between 500 and 750 words. Letters to the Editor are another great way to make your voice heard. They are shorter than an Op-Ed piece and often respond to a past specific article.

Finally, church leaders can advocate for immigrants by reaching out to their Members of Congress. Most elected officials *want* to hear the opinions of their constituents, particularly those of faith leaders who can provide a moral perspective on the pressing public policy issues of our day. In fact, many Members of Congress are themselves Bible-believing Christians, so reminding them what the Scriptures say on this topic can be a unique form of discipleship.

Each Member of Congress lists their local district office(s) and telephone numbers on their website, accessible at [www.House.gov](http://www.House.gov) and [www.Senate.gov](http://www.Senate.gov). Any constituent is welcome to call and leave a message for their Member of Congress. As a church leader, you may also be able to arrange an in-person meeting with your Member of Congress when he or she is home within the congressional district, or at least to meet with his or her staff. You could also travel to Washington, D.C. and seek to set up an appointment (in advance of your trip) with your Representative and/or Senators or their staff there.

You need not be an expert on public policy to meet with legislators: it is their job to figure out the details of policy, but as a constituent, and particularly as a leader who represents the views of many of their constituents, you can make a unique contribution simply by highlighting the broad principles that you believe should guide their decisions and explaining why, as a local church leader, this issue matters to you and your congregation.

**I know this is an issue that we need to address, but I'm not sure how to do it without driving people out of my church. How do I best go about this to minimize pushback from people in my church who don't think we should be showing any sort of compassion to immigrants?**

Immigration is a controversial issue, to be sure. Because so many of the people within our local churches view the issue primarily as a political issue, many will instinctually look to the (official or unofficial) spokespeople of their preferred political party or ideology, rather than to Scripture, for cues on how to think about the topic—and their first response to any view other than the one they have already formed is negative.

Because it is a uniquely complex topic likely to spur strong opinions, we recommend beginning a discussion on a church's response to immigrants with the leadership of the church (elders, clergy, staff, etc.) before engaging the entire congregation. If the church's leadership understands and commits to a senior leader's biblical and missional reasoning for addressing the topic of immigration, they will be ready to respond from that perspective to questions and concerns that they hear from laypeople. If they engage laypeople without the leader's prior input, the risk for division increases.

The way we approach immigration as Christians is critical. The primary reasons that evangelical Christians should care about immigration issues are biblical and missional as opposed to political, and those approaches should unite orthodox evangelical Christian rather than divide them. Not all evangelical Christians will (or need to) agree on the best public policy solutions to immigration issues, but we should all be able to agree that immigrants, regardless of legal status, are people made in God's image for whom he sent his Son to die, and our response to immigrants should be as God's servants, helping them retain their inherent dignity and communicating God's desire to be in relationship with them. The political, economic, and cultural issues should be engaged only secondarily, and always in the context of the larger biblical message.

Solid biblical teaching and fact-based responses to the concerns that many within our churches have about immigration are important

first steps, but the crucial piece is relational: it's very hard to *love* the people God has brought into our communities if we do not get to *know* them. Church leaders would do well to look for opportunities to build mutual relationships between immigrant and non-immigrant believers. Partnering with a primarily-immigrant congregation to join together in serving the larger community or in studying God's word together might be one way for a primarily-non-immigrant congregation to help facilitate these relationships. There are many opportunities to serve the immigrant community, but leaders should also highlight the many ways that the non-immigrant Christian community can learn from their immigrant brothers and sisters as well. Hopefully, we will be quick to recognize that immigrants can be agents—not just objects—of mission.<sup>59</sup> They are sent by God to bless and equip us as well.

**BOOKS**

- *Welcoming the Stranger: Justice, Compassion and Truth in the Immigration Debate*, by Matthew Soerens and Jenny Hwang Yang (InterVarsity Press, 2009)
- *Christians at the Border: Immigration, the Church and the Bible*, by Dr. Daniel Carroll Rodas (Baker Academic, 2008, 2013; also available in Spanish as *Cristianos en La Frontera*)
- *Strangers Next Door: Immigration, Migration and Mission*, by Dr. J.D. Payne (InterVarsity Press, 2012)
- *Diaspora Missiology: Theory, Methodology and Practice*, edited by Dr. Enoch Wan (Institute of Diaspora Studies, 2011)
- *The Next Evangelicalism: Freeing the Church from Western Cultural Captivity*, by Dr. Soong-Chan Rah (InterVarsity Press, 2009)

**LEARNING RESOURCES**

- “I Was a Stranger” Challenge bookmarks available for free download or for purchase in paper form at [www.evangelicalimmigrationtable.com/iwasastranger](http://www.evangelicalimmigrationtable.com/iwasastranger)
- “Immigration by the Numbers” Fact Sheet, available at <http://welcomingthestranger.com/learn-and-discern/immigration-by-the-numbers/>
- “Welcoming the Stranger: Discovering and Living God’s Heart for Immigrants” Learning Group Guide, from World Relief and the National Association of Evangelicals, available free for download or for purchase in printed form at [www.welcomingthestranger.com](http://www.welcomingthestranger.com)

**VIDEO RESOURCES**

- Bill Hybels and Heather Larson Interviewing Matthew Soerens (July 28, 2010) available online at [www.g92.org/watch](http://www.g92.org/watch)
- G92 Conference video series, featuring Dr. Daniel Carroll, Matthew Soerens, Stephan Bauman, and others: <http://bit.ly/G92Conference>
- Urban Entry “Send These” video, available at <http://www.urbanentry.org/index.php/videos/ue4-send-these/about>

## IMMIGRATION LEGAL ISSUES

A photograph of a woman and a young child. The woman is on the right, looking off to the side with a serious expression. The child is on the left, also looking off to the side. They are both wearing dark clothing. The background is a simple, slightly out-of-focus indoor setting.

While engaging in relationship with immigrants, church leaders are often confronted with the complexity of immigration law and the emotional and practical effects on individuals and their families.

Section two of the Church Leader's Guide attempts to answer common questions about immigration law and help church leaders identify the steps individuals can take to understand their immigration options, find solutions, and protect themselves from abuse.

## Can we legally serve undocumented immigrants as a church?

In previous chapters, we discussed how churches, denominational leaders, and other non-profits often struggle to determine the best ways to partner with immigrants in their communities, especially those that do not have lawful immigration status. They desire to build relationships and serve, but are concerned they might be breaking the law. It is difficult to give a definitive answer to some of the concerns discussed below. Many of the laws are ambiguous and have not been tested in court. In order to measure their risk, churches will need to consider the policies and attitudes, and outcomes of similar cases in their region. It may be beneficial to some to build relationships with local law enforcement in partnership with other immigrant ministries to educate them about your community and understand their enforcement priorities.

### UNDOCUMENTED IMMIGRANTS AND THE LAW:

The Immigration and Nationality Act<sup>60</sup> (INA) is the federal law that sets out guidelines for foreign nationals in the United States. The INA governs which foreign nationals can enter the United States and what activities each individual can participate in while he/she is visiting or residing in the U.S. It also defines the responsibilities of employers and others in their interactions with immigrants.

In most cases, being present inside the United States without a valid immigration status is not considered a criminal act, but rather a civil violation of the INA.<sup>61</sup> Examples of other types of civil violations are traffic infractions, littering, failure to file income taxes by the deadline, smoking inside a public building, etc. The consequences of civil violations usually result in warnings or fines. However, civil violations of immigration law are enforced through detention (jail) and removal from the United States.<sup>62</sup> Detention facilities are operated by local county jails, the Department of Homeland Security, the federal Bureau of Prisons, and often contracted out to *for-profit* companies.<sup>63</sup>

It is important to emphasize that in recent years states such as Indiana, Georgia, South Carolina, Alabama, Arizona, and others have attempted to pass their own restrictive immigration laws in their individual states. Many

portions of these laws have been blocked in federal courts. However, some restrictive policies remain state law. It is important to understand the laws and policies of your particular state.<sup>64</sup>

### **OBLIGATION TO REPORT UNDOCUMENTED IMMIGRANTS**

The INA does not prohibit association with those who do not have a lawful immigration status, *nor does it require U.S. citizens or others to report* the presence of an individual without lawful immigration status. Churches are free to put their faith into practice and open the doors of their church building to all immigrants without verifying their immigration status.

### **BENEVOLENCE FUNDS, CHURCH FOOD PANTRIES, AND OTHER PROGRAMS**

Churches are lawfully able to provide access to benevolence ministries, including short term cash assistance and emergency housing. All immigrants, regardless of status, are able to receive assistance from non-governmental agencies, such as food pantries, shelters, medical care from free medical clinics, and emergency medical care from a hospital. In most states undocumented immigrants are able to file law suits and seek protection from the courts. For example, if a woman without legal immigration status is a victim of domestic violence, she would have access to a domestic violence shelter and an order of protection from the court.

### **HARBORING, SHIELDING, CONCEALING, AND TRANSPORTING UNDOCUMENTED IMMIGRANTS**

The INA provides for criminal penalties when an individual transports an undocumented immigrant *in furtherance of his or her unlawful presence* in the United States or harbors, conceals, or shields undocumented immigrants.<sup>65</sup> The language of this law can be frightening and confusing. It is unlikely that a church would be fined or members face jail time for promoting the well-being of undocumented immigrants in their community in line with their mission as a church. However, there is always a level of risk, depending on local attitudes and policies. Find out more from your local community leaders.

### **TRANSPORTING**

Simply transporting an undocumented immigrant to a work site, school, grocery store, etc. has not been a legal issue for most individuals. These actions have not been considered to be “in furtherance of unlawful presence.” However, transporting an undocumented immigrant in order to prevent detection by immigration enforcement or the police; the use

of police scanners while transporting an undocumented individual; or helping someone cross the border without detection would all likely be a violation of this particular law.<sup>66</sup>

### **HARBORING, CONCEALING, AND SHIELDING**

There is not a concrete definition of these terms and the courts have not been consistent in their findings. However, allowing undocumented volunteers to participate in the life of the church, offering temporary rent assistance, food, offering assistance with immigration applications, or teaching English have not been considered harboring, concealing, or shielding undocumented immigrants. Activities that have been found in court to be harboring, concealing, or shielding are: setting up a security system to detect law enforcement whereabouts; calling to warn an individual that the police or immigration enforcement is coming to his/her home or place of business; encouraging an undocumented immigrant to lie about his/her status or use false documentation; assisting with sham marriages that are for the sole purpose of obtaining a visa; and employing undocumented individuals.

### **LOSS OF 501(C)(3) STATUS**

The Internal Revenue Service (IRS) governs the granting and revocation of 501(c)(3) tax-exempt status for charitable organizations. The primary purpose of a church is to share the love and gospel message of Jesus Christ. Most churches operate exclusively for charitable purposes. They do not exist to financially benefit their staff or board, to operate as a partisan action group, or to encourage violence and civil unrest.

If a church or non-profit intentionally encourages illegal activity or assists in the planning of a crime, these actions would be considered contrary to public policy by the Internal Revenue Service (IRS). For example, encouraging an undocumented immigrant to lie to law enforcement, transporting or helping to smuggle someone across the U.S. border, providing false documents or other similar acts would likely be considered contrary to public policy.

However, sharing space or leadership with another church, some of whose members are undocumented, hosting a Bible study in your home with undocumented participants, offering access to the church food pantry, and assisting undocumented families with services necessary for health and safety are all within the charitable purposes of a church. Under current case law, these activities would not lead to the revocation of 501(c)(3) status.

### EMPLOYING AN UNDOCUMENTED INDIVIDUAL

The INA specifically prohibits employers from *knowingly hiring employees* who are not authorized to work in the U.S.<sup>67</sup> Employers who do can be sanctioned (fined) or in extreme cases, may face criminal consequences. Criminal consequences are usually reserved only for serious repeat offenders.

This provision does not apply to hiring independent contractors.<sup>68</sup> Independent contractors carry on an independent business and are hired by a church for a specific piece of work. Caterers, event planners, web designers, painters, are common examples of independent contractors who are hired for a time limited, specific project. These individuals would not be placed on church payroll and are not employees of the church. The church would have control only over the result of the project, but not the day-to-day work hours or duties of the contractor.

Please note: If a church were to hire an independent contractor they knew was undocumented, it might raise the issue of harboring, concealing, and shielding. Churches and other charitable organizations have not been the subject of many criminal cases, but it is important to understand the implications of employing them – even if it is unlikely that it would result in criminal consequences.

## For our undocumented church members, are there limits on their leadership and service in our congregation?

Churches are free to worship and create their own internal policies and procedures regarding governance and organization. Immigrants who enter the U.S. with leadership, teaching, evangelistic or other spiritual gifts may use these gifts legally within the context of a local church.

Alabama has implemented new restrictive immigration laws that prevent undocumented immigrants from entering into contracts with the state. (HB 56) These new laws may prevent an undocumented pastor from applying for a minister's license.

### ORDINATION OR CREDENTIALING OF UNDOCUMENTED PASTORS

Currently, the Immigration and Nationality Act does not prohibit foreign nationals from seeking or being granted ordination or other church credentialing. A problem arises when employment by the church is a requirement for a specific credential. A church may only hire employees who have a valid immigration status that grants permission to work. It is important to note that not all visas permit employment. An immigrant with a tourist visa does not have permission to work while visiting the United States. Similarly, international students have very limited work authorization and may be required to work only if it directly relates to their course of study.

*Alabama has implemented new restrictive immigration laws that prevent undocumented immigrants from entering into contracts with the state. (HB 56) These new laws may prevent an undocumented pastor from applying for a minister's license.*

### ELDERS, DEACONS, AND OTHER LAY LEADERS OR VOLUNTEERS

An employee is an individual who provides services or labor for an employer in exchange for wages or other remuneration. This does not include volunteers who do work without any expectation of compensation. Churches are not required to confirm the immigration status of a volunteer.

Volunteers can be reimbursed for expenses related to their volunteer work. Reimbursement is the payment of the individual's actual monetary expenses. These are his/her out of pocket expenses: such as travel costs

to an event; money spent on photocopying on behalf of the church; or food costs while traveling or hosting an event.

Reimbursement is not considered compensation for services rendered. However, compensation is not simply monetary. If an individual meets the definition of an employee and is compensated through housing, use of a vehicle, or other non-monetary remuneration – that individual might be considered an employee for immigration purposes and not a volunteer. A volunteer offers their time without the expectation of any kind of compensation.

Background checks for youth volunteers can present a challenge if an individual does not have a social security number. Organizations such as Protect my Ministry<sup>70</sup> can provide background checks in an individual's home country using legal name, date of birth, the address in the foreign country, and Mother's maiden name in Spanish speaking countries. However, these background checks can be expensive, average costs are \$21 - \$180, depending on the country involved.

## How does a non-citizen enter the United States, become a permanent resident, or gain citizenship?

Immigration law is complex and can be difficult to navigate. One basic fact, such as a date of entry into the United States or family relationship can drastically change an individual's immigration options. Non-citizens face several hurdles when attempting to visit or live permanently inside the United States.

### HURDLE ONE: MEETING THE REQUIREMENTS FOR A PARTICULAR IMMIGRATION BENEFIT/RELIEF

Example One: Teddy is a pastor in Kenya and has been invited by a church in Oklahoma to be their pastor. Teddy has been inside the United States before as a pastor on an R-1 religious worker visa. The church and Teddy must consider the immigration options for a church that wants to employ a pastor from Kenya. An R-1 visa worked in the past, so the church may start there and explore whether Teddy meets the current requirements of that visa.

**EXAMPLE ONE:** *Teddy is a pastor in Kenya and has been invited by a church in Oklahoma to be their pastor. Teddy has been inside the United States before as a pastor on an R-1 religious worker visa. The church and Teddy must consider the immigration options for a church that wants to employ a pastor from Kenya. An R-1 visa worked in the past, so the church may start there and explore whether Teddy meets the current requirements of that visa.*

There are hundreds of immigration benefits and remedies each with a set of unique requirements. If an individual wants to visit the United States, live in the United States permanently, "fix" his immigration status, or avoid removal from the United States, he must find an immigration benefit or remedy that applies to his unique situation.

There are four basic categories of immigration benefits: non-immigrant visas, immigrant visas, relief from removal/deportation, and humanitarian programs.

Non-immigrant visas allow an individual to visit the United States for a specific period of time for a specific purpose. These visas range from "A"

all the way through the alphabet to the “V” visa.

The most common non-immigrant visas are:

- B-2 visa: Tourists
- F-1 visa: Students
- H1B visa: Temporary workers

Immigrant visas allow an individual to apply for permanent residence in the United States. As mentioned in chapter four, the most common ways an individual gains permanent residence in the United States are through:

- Family visas: Immediate family members who have citizenship in the United States or lawful permanent residence can apply for a visa on behalf of their spouses and children. US citizens are able to apply for siblings and parents as well. Uncles, cousins, close friends, grandparents, and others are not eligible for this visa.
- Employment visas: Employers are able to apply for immigrant visas on behalf of employees. However, these visas are generally reserved for highly skilled workers with at least a bachelor’s degree.
- Diversity visa lotteries: Individuals from countries with low levels of immigration to the United States are able to apply for a lottery. If his/her number is drawn, he/she may be able to live permanently in the United States. Individuals from Mexico do not currently qualify for a diversity visa because of the high levels of immigration from that country.
- Refugee/Asylee status: Those that fear persecution in their home countries are able to apply for refugee or asylee status. Refugees apply from outside the United States through the United Nations High Commissioner for Refugees (UNHCR). Asylees are individuals with the same fear of persecution, but who apply for protection while living inside the United States.

*Teddy and his employer have decided to pursue the religious worker visa. There are two types of religious worker visas, a non-immigrant temporary visa and an immigrant visa that leads to permanent residence. Teddy and the church should investigate both options. Teddy will need to decide if he wants to make the U.S. his home and get a “green card” or if he simply wants to work in the U.S. for a few years. The immigrant visa option will have more requirements and scrutiny than the temporary non-immigrant visa.*

Some immigration benefits are only available in immigration court. These

immigration options are often called “relief from removal.” An individual may meet the basic requirements of the benefit, but are unable to apply for it, unless he/she has been placed in deportation proceedings before an immigration judge.

Humanitarian programs are usually short term programs that provide relief to individuals from a particular country. For example, after the earthquake in Haiti those Haitians inside the U.S. were able to apply for Temporary Protected Status (TPS). This immigration benefit allowed Haitians who qualified to live and work inside the U.S. temporarily while they waited for Haiti to stabilize.

### HURDLE TWO: GROUNDS OF INADMISSIBILITY

The United States Congress is responsible for making laws that govern who can enter and live inside the borders of the United States. The laws govern the categories of immigration benefits and who is eligible. The laws also define categories of individuals who are prohibited from entering the United States

*Unfortunately, when Teddy was on the R-1 visa in the past, he inadvertently violated the rules of the visa. The church could not pay him enough, so he took on a second job part time with a construction company. The R-1 visa does not allow for secular employment.*

*This previous violation may prevent Teddy from applying for a new R-1 visa.*

or applying for an immigration benefit. These individuals may meet the broad requirements of a particular visa, but then find themselves blocked by one of the grounds of inadmissibility. The most common grounds or reasons an individual might not be allowed to gain legal status are:

- Conviction of certain crimes
- Individual poverty or poverty of family members living inside the United States for fear these individuals will rely on government financial benefits
- Previous violation of immigration laws, intentional or unintentional

A non-citizen may qualify for an exception to the ground (a waiver); however the waiver process usually has hurdles of its own.

### HURDLE THREE: FINANCES

In Teddy’s case, the church must demonstrate an ability to compensate him as an employee. If they cannot meet that requirement, then Teddy will be unable to receive the religious worker visa.

The immigration process can be costly. Some non-citizens are able to qualify for an immigration benefit and overcome the grounds of inadmissibility, but are unable to afford the visa processing and application fees, travel expenses, or attorney fees.

Further, some immigration benefits require financial evidence as part of the visa requirements. A student coming on an F-1 visa must demonstrate he/she can pay for school as part of the visa application process.

*In Teddy's case, the church must demonstrate an ability to compensate him as an employee. If they cannot meet that requirement, then Teddy will be unable to receive the religious worker visa.*

#### **HURDLE FOUR: PROCESS**

Teddy decides to visit the U.S. as a tourist before he applies for the religious worker visa. He is granted a B2 visa and travels to the border. The officer there asks to inspect his bag. Inside he finds a letter from the church offering Teddy employment. The officer could decide that Teddy's true intention is to seek employment, not tourist activities during his visit, and turn him away.

The immigration process can be as complex as navigating the hundreds of immigration options. An individual could overcome all three hurdles above, only to be tripped up on hurdle four. The United States Citizenship and Immigration Service (USCIS) has several processing sites. Applications are mailed to different sites depending on the type of application, where the applicant lives, and whether the application is mailed by courier (such as Fed Ex) or regular mail. Each application also requires documentation to support the facts claimed in the application. The required documents are not always clearly spelled out in the instructions on the application. If the application is incomplete, then USCIS will send a request for evidence with a specific deadline for a response. If an individual does not respond in time, the application is denied and the applicant must re-apply.

*Teddy decides to visit the U.S. as a tourist before he applies for the religious worker visa. He is granted a B2 visa and travels to the border. The officer there asks to inspect his bag. Inside he finds a letter from the church offering Teddy employment. The officer could decide that Teddy's true intention is to seek employment, not tourist activities during his visit, and turn him away.*

#### **HURDLE FIVE: INSPECTION AND ADMISSION**

Individuals' documentation must be inspected at the border or airport upon their arrival into the United States. The immigration officer has the

discretion to turn an individual away even though he/she received approval of a visa from the U.S. embassy in their home country. For example, if the officer suspects fraud or discovers a previous immigration violation, the individual is refused entry and asked to return home.

### **HURDLE SIX: MAINTAINING LAWFUL IMMIGRATION STATUS**

Immigration benefits have two sets of requirements. The first set allows the individual to apply and receive the benefit. The second set is a list of rules one must follow in order to keep the visa or immigration benefit. The rules are unique to each immigration benefit. If the rules are violated, even innocently, the immigration benefit can be revoked.

## How can a church hire an immigrant pastor?

The most common visa for pastors and other church staff is the religious worker visa. However, an individual in the United States on a student visa may have a one year option of working for a church after he/she completes his/her academic program. A few churches and other denominationally affiliated non-profits have successfully used the H1B visa. However, the H1B is rarely the best option for a pastor entering the U.S. to work for a church.

This chapter will focus on the requirements of the religious worker visa. There are two types of religious worker visas. The R-1 visa grants temporary employment, while the Special Immigrant Religious Worker visa grants permanent residence and can open the door for U.S. citizenship. It is common, though not required, for an individual to enter the U.S. on the R-1 visa and change to the Special Immigrant visa two years later.

### RELIGIOUS WORKER VISAS

#### **R-1 Visa:**

- Grants *temporary employment* for up to 5 years
- For pastors and others employed in a religious occupation (music ministers, youth leaders, etc.)
- By a church or affiliated non-profit organization having valid 501(c)(3) status

#### **Special Immigrant Religious Worker Visa:**

- Grants *permanent residence* (a green card)
- For pastors and others employed in a religious occupation (music ministers, youth leaders, etc.)
- By a church or affiliated non-profit organization having valid 501(c)(3) status

### REQUIREMENTS FOR PASTORS/EMPLOYEES

#### **Membership:**

The employee must have been a member of the hiring denomination or a similar denomination for two years prior to applying for the R-1 or Special Immigrant visa. It is important to make a connection between the hiring church/denomination and the church/denomination that holds the employee's membership. There may not be a direct connection but there

may be evidence of association, common founders, or other similarities that can be utilized.

### **Qualifications for the position:**

The purpose of the visa is for a qualified employee to fill a position within a church or affiliated non-profit. The regulations do not permit an individual to enter the US on either visa for the purpose of training. The employee must be fully trained and credentialed according to the requirements of the denomination. For example, it would be allowable for a pastor to have a local minister's license but be pursuing ordination, as long as the local license satisfied the requirements of the denomination.

The special immigrant religious worker visa requires two years of compensated experience in a similar position immediately preceding the date of the application. Generally, the two years must be continuous. The experience can be gained in the US or abroad.

### **JOB DESCRIPTION REQUIREMENTS**

The church/employer must provide a written job description that describes each of the elements below.

### **Hours and Responsibilities:**

The R-1 visa requires the employee to work a minimum of 20 hours per week. The I-360 special immigrant visa requires a 35 hour work week. It is important to provide a weekly schedule and job description that demonstrate the amount of time required to perform the job.

The position must be a "religious" occupation and require the employee to understand the creed or doctrine of the denomination. For example, a math teacher in a Christian school would not be considered a religious occupation, unless the employee had to understand the creed in order to teach math. There must be something about the job itself that requires knowledge of doctrine. Worship leaders, youth leaders, and church planters would be examples of religious occupations. Administrative duties can be included, but should not be the primary duties of the job. Preaching, discipleship, visitation, delivering sacraments would all be considered "religious functions" and should be the primary responsibilities.

### **Compensation:**

The employee must be compensated. The position cannot be a volunteer position. When applying for the R-1 visa, compensation may be presented in a package and is not required to be based solely on salary. The package

could include housing, a vehicle, health insurance, etc. The poverty guidelines should be used as a guide for the R-1 visa. The guidelines can be found at [www.usics.gov](http://www.usics.gov) under form I-864P.

The special immigrant religious worker visa salary must meet minimum wage requirements.

Documentation of ability to provide the salary is essential. Bank statements, asset statements, independent audits, budgets, financial reports are all helpful in demonstrating the financial status of the church.

### **EMPLOYER REQUIREMENTS**

Must be a non-profit religious organization in the United States:

The church or organization must have 501(c)(3) status and provide documentation.

#### **Evidence of organization and governance:**

A church must demonstrate how they are organized and governed. If the local congregation is connected to a larger denomination or association, they must provide documentation of the relationship. In addition, the employer must provide access to a manual or constitution that describes the following:

- History of the church or denomination
- Beliefs
- Government/Structure
- Membership requirements
- Staff credentialing requirements

#### **Non-Profit Organization:**

A non-profit organization that is not a church must provide documentation that demonstrates their affiliation to a larger denomination or church. The Articles of Incorporation or by-laws may be sufficient. Descriptions of the history of the non-profit, brochures, videos, or other documents may also provide helpful connections.

### **COMMON MISTAKES AFTER ARRIVAL**

In order to maintain a valid immigration status, it is important that the pastor and the hiring church fully understands the requirements of the visa. A violation of the visa often results in the revocation of the immigration status. The most common mistakes are listed here:

## SECTION TWO: IMMIGRATION LEGAL ISSUES

- R-1 visa holders are required to work at least 20 hours a week. If the pastor falls below 20 hours a week, is fired, or resigns, the employer is required to report this information to USCIS within 14 days.
- The R-1 visa is tied to the initial employer. The pastor must stay employed at the original location and cannot change churches unless the new church he works for files a new R-1 visa application. The pastor cannot begin the new employment until that application is approved.
- The R-1 visa prohibits any secular employment. The pastor cannot work as a waiter, painter, web designer, or in any other non-religious occupation. The pastor can work for two churches part time, but each church must file a separate R-1 visa application. The pastor cannot begin work until one application is approved and only for the approved location.
- The children and spouse of an R-1 employee can come to the U.S. with their family member on an R-2 visa. The children must be under 21. Once the child turns 21, they are no longer eligible for the R-2 visa. The child must either change to an alternate visa or leave the United States. A student visa might be an option for children who no longer qualify for the R-2 because of age.
- Spouses on the R-2 visa are prohibited from working while in the U.S. unless they change from the R-2 visa to an alternate visa that permits employment.

It is important that a local church, regional office or denominational headquarters contact a World Relief attorney or another immigration attorney that specializes in employment issues *before* hiring a foreign national or filing any paperwork with USCIS. Mistakes are often irreversible and have long term consequences for the foreign national pastor or religious worker and the hiring church. Find more information at [www.worldrelief.org/immigrant-legal-services](http://www.worldrelief.org/immigrant-legal-services) or by e-mail at [religiousworker@wr.org](mailto:religiousworker@wr.org).

## What if a church member is detained by the police or immigration authorities?

The threat of detention and removal from the United States threatens many immigrants. Those without lawful status live in fear of the “midnight knock at the door.” However, undocumented immigrants are not the only group that faces the possibility of detention. Lawful permanent residents (green card holders), refugees, and other lawfully present immigrants who have certain criminal convictions may also have reason for concern. Deportation is not reserved for serious crimes and can be used for convictions that occurred many years in the past and that did not result in jail time.

Every non-citizen, especially those without lawful immigration status, need a family safety plan in place

*Every non-citizen, especially those without lawful immigration status, need a family safety plan in place*

There are several “trigger points” for arrest and detention.<sup>73</sup> Non-citizens should be aware of these triggers and know their rights in each specific context and have a plan in place in case they are detained. A family safety or action plan should include giving power of attorney to a trusted relative or friend. This person will be able to make financial decisions and provide care for children of the detained individual. Important original documents, including passports; copies of immigration applications and other correspondence from the government; birth certificates; marriage certificates; bank statements; leases or mortgage documents; and any other important paperwork should be kept together in a firebox or other safe location for quick access if detention does occur. A trusted relative or friend should be aware of the location of these documents.

The following is an outline of the rights of immigrants if approached by law enforcement in a variety of circumstances. Esperanza, a Christian non-profit that provides a variety of resources for immigrants and churches, has developed a “Survival Guide.” Much of the information below can be found in the guide along with other important information. The guide can

be purchased for a small fee on the Esperanza website [www.esperanza.us](http://www.esperanza.us) and is well worth the nominal price.<sup>74</sup>

### RIGHTS IN ANY CONTEXT

- The right to remain silent. If you wish to exercise that right, say so out loud. You may have to give your name and other basic biographical information.
- The right to refuse to consent to a search of yourself, your car or your home.
- If you are not under arrest, you have the right to calmly leave unmolested.
- The right to a lawyer if you are arrested. Ask for one immediately.
- Regardless of your immigration or citizenship status, you have constitutional rights such as the right to an attorney in a criminal case.

### RESPONSIBILITIES IN ANY CONTEXT

- Do stay calm and be polite.
- Do not interfere with or obstruct the police.
- Do not lie or give false documents.
- Do prepare yourself and your family in advance in case you are arrested.
- Do remember the details of the encounter

### EVERYDAY LOCATIONS: HOME, WORKPLACE, STREET, TRAINS, AND BUSES

#### If you are stopped for questioning

- Stay calm. Don't run. Don't argue, resist or obstruct the police, even if you are innocent or police are violating your rights. Keep your hands where police can see them.
- Ask if you are free to leave. If the officer says yes, calmly and silently walk away. If you are under arrest, you have a right to know why.
- You have the right to remain silent and cannot be punished for refusing to answer questions. If you wish to remain silent, tell the officer out loud. In some states, you must give your name if asked to identify yourself.
- You do not have to consent to a search of yourself or your belongings, but police may "pat down" your clothing if they suspect a weapon. You should not physically resist, but you have the right to refuse consent

for any further search. If you do consent, it may negatively affect you later in court.

**If you are questioned about your immigration status**

- You have the right to remain silent and do not have to discuss your immigration or citizenship status with police, immigration agents or any other officials. You do not have to answer questions about where you were born, whether you are a U.S. citizen, or how you entered the country. (Separate rules apply at international borders and airports, and for individuals on certain nonimmigrant visas, including tourists and business travelers.)
- If you are not a U.S. citizen and an immigration agent requests your immigration papers, you must show them if you have them with you. If you are over 18, carry your immigration documents with you at all times. If you do not have immigration papers, say you want to remain silent. Do not lie about your citizenship status or provide fake documents.

**If the police or immigration agents come to your home**

- If the police or immigration agents come to your home, you do not have to let them in unless they have certain kinds of warrants.
- Ask the officer to slip the warrant under the door or hold it up to the window so you can inspect it. A search warrant allows police to enter the address listed on the warrant, but officers can only search the appropriate areas and for the items listed. An arrest warrant allows police to enter the home of the person listed on the warrant if they believe the person is inside. A warrant of removal/deportation (ICE warrant) does not allow officers to enter a home without consent.
- Even if officers have a warrant, you have the right to remain silent. If you choose to speak to the officers, step outside and close the door.

**If you are contacted by the FBI**

- If an FBI agent comes to your home or workplace, you do not have to answer any questions. Tell the agent you want to speak to a lawyer first.
- If you are asked to meet with FBI agents for an interview, you have the right to say you do not want to be interviewed. If you agree to an interview, have a lawyer present. You do not have to answer any questions you feel uncomfortable answering, and can say that you will only answer questions on a specific topic.

**If you are arrested**

- Do not resist arrest, even if you believe the arrest is unfair.
- Say you wish to remain silent and ask for a lawyer immediately. Don't give any explanations or excuses. If you can't pay for a lawyer, you have the right to a free one. Don't say anything, sign anything or make any decisions without a lawyer's input.
- You have the right to make a local phone call. The police are not allowed to listen if you call a lawyer.
- Prepare yourself and your family in case you are arrested. Memorize the phone numbers of your family and your lawyer. Make emergency plans if you have children or take medication.
- Special considerations for non-citizens:
  - Ask your lawyer about the effect of a criminal conviction or plea on your immigration status.
  - Don't discuss your immigration status with anyone but your lawyer.
  - While you are in jail, an immigration agent may visit you. Do not answer questions or sign anything before talking to a lawyer.
  - Read all papers fully. If you do not understand or cannot read the papers, tell the officer you need an interpreter.

**If you are taken into immigration (or "ice") custody**

- You have the right to a lawyer, but the government does not have to provide one for you. If you do not have a lawyer, ask for a list of free or low-cost legal services.
- You have the right to contact your consulate or have an officer inform the consulate of your arrest.
- Tell the ICE agent you wish to remain silent. Do not discuss your immigration status with anyone but your lawyer.
- Do not sign anything, such as a voluntary departure or stipulated removal, without talking to a lawyer. If you sign, you may be giving up your opportunity to try to stay in the U.S.
- Remember your immigration number ("A" number) and give it to your family. It will help family members locate you.
- Keep a copy of your immigration documents with someone you trust.

### **Stopped by police while driving**

In several local communities, the numbers of non-citizens detained after traffic stops is on the rise. Broken tail lights, missing tags, and minor traffic violations can all lead to being stopped by police and asked about immigration status.

- Stop the car in a safe place as quickly as possible. Turn off the car, turn on the internal light, open the window part way and place your hands on the wheel.
- Upon request, show police your driver's license, registration and proof of insurance.
- If an officer or immigration agent asks to look inside your car, you can refuse to consent to the search. But if police believe your car contains evidence of a crime, your car can be searched without your consent.
- Both drivers and passengers have the right to remain silent. If you are a passenger, you can ask if you are free to leave. If the officer says yes, sit silently and eventually leave. Never argue. Even if the officer says no, you have the right to remain silent.

DHS has a campaign to pick up persons living in the United States who have orders of deportation. Some people may not even know that they have been ordered to be deported or they may think that because the deportation order was entered many years ago it is no longer a problem. If you were ever in immigration court proceedings before but did not return to court, you may have been ordered deported in your absence. Persons with prior orders of deportation have been entered onto a national "absconder" list. Immigration authorities have been working together with local law enforcement to pick up "absconders." This can happen anywhere including at the border or even if you are stopped for a traffic violation.

### **Stopped at the Airport after Traveling Abroad**

Upon re-entering the United States, all noncitizens have to go through Department of Homeland Security screening (DHS, formerly known as the Immigration and Naturalization Service). Many have traveled to their home countries in the past without any problem, but the government now regularly updates its computers at airport inspection. The computers have access to criminal records and prior orders of deportation. There is no statute of limitations under the immigration laws and you may be stopped for convictions that occurred many years ago. If you have a criminal conviction you should consult a reputable immigration practitioner or

attorney before traveling abroad to make sure that you will be able to re-enter the United States without a problem.

### **Interviewed While in Jail**

You will likely be interviewed by a DHS agent and will be asked about your immigration status. You may not even realize that DHS was interviewing you. You will be placed into removal proceedings if there is a basis under the immigration laws to do so. The DHS officer will first place a “detainer” on you. Once you have completed your time in prison or jail, you will be transferred to DHS custody. Federal law says that state and local law enforcement authorities may only hold persons on immigration detainers for 48 hours after the completion of their jail time. This means that once you have completed your jail time, the immigration officials must take you into custody within two days. If they do not, you should contact your criminal defense lawyer and ask him or her to file a writ of habeas corpus with the state court demanding your release.

### **Immigration Applications**

Most, if not all, applications to the United States Citizenship and Immigration Services (USCIS), an agency within DHS, now require security clearances and/or fingerprints as part of the application process. This includes applications for citizenship, renewal of green cards, employment authorization documents and even “status inquiries” to USCIS. USCIS now uses very sophisticated databases for their security clearances which identify old criminal convictions from anywhere in the U.S. When fingerprints are taken, USCIS gets a list of all your arrests and convictions. If you have a criminal conviction that makes you removable, your application is likely to be denied and you very likely will be placed in removal proceedings.

### **If I am in detention, what do I need to know?**

After you are arrested, you will be placed in a holding cell or temporary processing station where you will be fingerprinted and interviewed. (Sometimes, some processing occurs during the arrest.) After being processed, you will be assigned a deportation officer. Write down the name and phone number of the officer assigned to your case. Your immigration officer should give you a document, called a Notice to Appear (NTA), which contains the immigration charges against you. This document will help you or a lawyer figure out your case. Make sure to ask for the document if it is not given to you within 72 hours of your arrest. Shortly thereafter, you will be moved to either an immigration detention center,

local jail, or a military base where you will stay while your immigration case is pending. While detained, you may be transferred to out-of-state facilities. You could be transferred in the middle of the night, so keep a copy of all your legal documents with you at all times. If your papers are stored in detention/jail, ask the staff for your legal papers immediately after you hear that you are being moved.

### **Telephone Call**

You have the right to make a telephone call after you are detained. Memorize the telephone number of your attorney, family member, friend or union spokesperson, and contact him/her immediately. Your phone calls may be blocked. If you have trouble reaching your family or attorney, ask jail staff if they have blocked the number. Also, have your family contact their local telephone company to make sure that they can receive phone calls from the detention center or jail.

### **Bond Hearing**

You should always request a bond hearing. You may not be eligible for bond if you: (1) have a previous deportation order, (2) have certain criminal convictions, (3) were arrested at the border/airport, or (4) the government suspects you have terrorist ties.

In this hearing, the judge considers whether you present a danger, a national security threat, or a flight risk. You should submit any documents that show you have a permanent address, stable employment, relatives with legal status in the United States, and any evidence of strong ties to the community. You should also ask family and friends to attend the hearing and to testify to these issues or send written letters of support.

If you cannot afford to pay the bond you can ask the immigration judge to lower your bond at the bond hearing.

In order to pay the bond, you will need a cashier's check, their full name, A# home address, date of birth, and country of birth. Only individuals with lawful immigration status are able to pay the bond.

### **If an immigrant in your church has been detained, what should you do?**

#### **Find their location<sup>76</sup>**

In order to locate the detained individual, you will need their full name, date of birth, and A#. The A number is on immigration documents and

looks like: A99 999 999. Once you have this information, contact the following:

- Local Immigration and Customs Enforcement Detention and Removal Office. You can find contact information at <http://www.ice.gov/about/dro/contact/htm>. Ask for a supervisor.
- The individual's consulate. You can find the embassy contact information at <http://www.embassy.org/embassies>.
- A local immigration attorney that specializes in detention cases.
- Remove collect call blocks from your phone in case the individual tries to contact you.

**Start gathering important documents**

- A copy of the Notice to Appear
- Any immigration documents
- Any criminal history
- Letters from employers and others showing good ties to the community

### **VIDEOS**

- <http://detentionwatchnetwork.wordpress.com/know-your-rights/>

### **LEARNING RESOURCES**

- Excellent manual that explains the detention and removal system and discusses deportation prevention <http://familiesforfreedom.org/sites/default/files/resources/Deportation101Manual-FINAL%2020100712-small.pdf>
- Cards that can be printed and handed out to individuals about what to do if stopped by law enforcement [https://www.aclu.org/files/assets/bustcard\\_eng\\_20100630.pdf](https://www.aclu.org/files/assets/bustcard_eng_20100630.pdf)
- A Q&A Guide to State Immigration Laws <http://www.immigrationpolicy.org/special-reports/qa-guide-state-immigration-laws>
- Esperanza's Survivor's Guide [www.esperanza.us](http://www.esperanza.us)

### **INFORMATION ON IMMIGRATION OPTIONS**

- United States Citizenship and Immigration Services [www.uscis.gov](http://www.uscis.gov)
- United States Immigration Customs and Enforcement [www.ice.gov](http://www.ice.gov)
- State Department <http://travel.state.gov/content/visas/english.html>

### **ORGANIZATIONS**

- Migration Policy Institute [www.migrationpolicy.org](http://www.migrationpolicy.org)
- Detention Watch Network [www.detentionwatchnetwork.wordpress.com](http://www.detentionwatchnetwork.wordpress.com)
- Catholic Legal Immigration Network [www.cliniclegal.org](http://www.cliniclegal.org)
- Esperanza [www.esperanza.us](http://www.esperanza.us)

## Developing an immigration legal ministry

Section three of the Church Leader's Guide provides an overview of the steps necessary to start an immigration legal ministry.

## Can a church help with immigration applications?

Church pastors, staff, and members have government permission to assist immigrants through the immigration process in limited ways. In general, non-lawyers are not permitted to give legal advice and could face civil and criminal charges for unauthorized practice of law.

### UNAUTHORIZED PRACTICE OF LAW

Individual states define the practice of immigration law differently. In some states, even filling out an immigration form can be considered practicing law.

Attorneys, paralegals and law students working under the supervision of an attorney, and Board of Immigration Appeals accredited individuals who work for a non-profit organization that has been recognized by the Board of Immigration Appeals are the only individuals who can practice immigration law.

Unauthorized practice of law can have serious negative consequences for a church and the immigrants being advised. Immigration law is complex, a challenge for even the most seasoned practitioners. One fact, such as a date or family relationship can change the outcome of a case. A successful attempt at helping with an immigration application can lead to false confidence. The stakes are extremely high in many immigration cases. A mistake can mean deportation and separation of family members.

### PRACTICAL STEPS FOR CHURCHES

Churches provide a place of trust. Immigrants are often willing to share the truth about their immigration status with church leaders. Unburdening what is sometimes a shameful secret can provide a measure of spiritual and emotional relief to families that often live in fear. There are several additional ways churches can assist in the immigration process without practicing law.

1. Host an informational or group processing workshop in your church building in partnership with immigration attorneys or non-profit legal service providers<sup>77</sup>

## SECTION THREE: DEVELOPING AN IMMIGRATION LEGAL MINISTRY

2. Accompany an immigrant to his/her appointment with an immigration attorney or BIA representative and assist with document collection and preparing the application
3. Provide informational brochures and other educational materials provided by reputable immigration legal service organizations
4. Get involved in detention center ministry for detained immigrants<sup>78</sup>
5. Provide citizenship preparation and English classes<sup>79</sup>

## What to consider before developing a church based immigration legal program

The Department of Justice recognized the need for affordable immigration legal services and set up a process in which non-attorneys could become credentialed to offer legal advice in immigration cases. The Executive Office for Immigration Review through the Board of Immigration Appeals offers accreditation to non-attorneys. This accreditation allows a non-attorney to practice immigration law. The accredited representative is able to give immigration legal advice, fill out forms, act as a representative of the client before the Department of Homeland Security, and, with full accreditation, represent immigrants in immigration court.

This is known as the *recognition and accreditation process*<sup>80</sup>. Recognition pertains to the physical location where immigration law is being practiced. Accreditation refers to the person qualified to practice immigration law at a recognized site. If a church-based legal clinic has volunteer or staff attorneys, federal credentialing may not be required. Below are things to consider before opening a legal clinic.

### SUPPORT OF THE CHURCH AND SURROUNDING COMMUNITY

It is important that the legal clinic fit into the overall mission of the church. The Board of Immigration Appeals (BIA) will only recognize sites in non-profit organizations that can demonstrate that they operate with a religious, charitable or social service purpose. It is also important to research the local community to determine where *other legal clinics*<sup>81</sup> are located. For some church based clinics, a needs assessment that evaluates the *demographics*<sup>82</sup> of the local community may be helpful.

### OFFICE SPACE

There must be a space where *confidential* interviews with immigrant clients can be conducted. Files with client information and other sensitive materials must be kept in a *secure location*. Offices will need to be equipped with computers with case management software, copy machines, scanners, locking filing cabinets, a legal resource library and other basic office supplies. It is important to decide the hours of operation in the initial planning stages as it may have an impact on the office space needed and staff to be hired. Having some service hours on evenings

and Saturdays is highly recommended to accommodate immigrants who work full-time during the day.

### REFERENCE MATERIALS AND OPERATIONAL COSTS

The donation of office space and the majority of supplies is common for church-based sites. However, case management software and reference materials will be an out-of-pocket cost incurred by each site. Most case management systems have a startup cost as well as a yearly charge based on the number of cases opened each year. Sites should budget at least \$300 per year for this software as well as additional funding for startup costs.

The government requires that each site must house an immigration law library. This library can be a mix of internet and hardcopy resources. It is highly recommended that each site budget roughly \$500 to purchase resources such as Kurzban's Immigration Law Sourcebook, updated versions of the Immigration and Nationality Act (INA), the Code of Federal Regulations (8CFR), and/or resources specific to the site's area of specialty. Library costs for subsequent years of operation will be less than year one.

### STAFF OR VOLUNTEERS

It is important to evaluate whether an unpaid volunteer is committed to the legal clinic long term. Turnover in legal personnel can affect the client's case and trust in the organization. The site should also consider whether additional support staff or volunteers will be needed to answer phones, track appointments, make copies, and other administrative tasks. Under the current law, recognition of a site is only required if a non-attorney accredited representative will be working there without the supervision of an attorney. If a person has been previously accredited at another site, he or she must reapply at the new site. Accreditation is tied to each recognized site; it is not transferable.

### TRAINING

In order to apply for BIA recognition and accreditation, the site personnel will need to identify at least one person who will apply for accreditation and be responsible for offering immigrant legal services at the recognized site. This person will need to participate in *basic immigration law training*<sup>83</sup> as well as additional *immigration law trainings*<sup>84</sup> on specific topics. Once accredited, the representative will be required to attend training sessions on a continuing basis to maintain legal competency. As stated above, a

site with attorney volunteers or staff may not require separate recognition and accreditation; however, further training is essential to maintaining competency.

### HANDS-ON EXPERIENCE

The identified person must obtain hands-on experience under the supervision of either an attorney or BIA accredited representative. In order to become accredited, an individual must demonstrate that he or she has observed client interviews and filled out a number of immigration forms. Ideally, a candidate for accreditation will practice these skills under the tutelage of the experienced supervisor until both are comfortable with the individual practicing independently.

### TECHNICAL LEGAL SUPPORT

If the organization does not have an immigration attorney or fully accredited representative on staff, it must show that any accredited representative working at the organization has access to either a local immigration attorney who will answer questions free of charge or an organization that has agreed to provide legal technical support. As part of the collaborative coalition, World Relief would provide this ongoing support.

### LIABILITY INSURANCE

It is important to obtain liability insurance to cover any potential malpractice claims such as failure to competently represent a client. Some insurance companies offer coverage for recognized sites and accredited individuals. It is important to address coverage of volunteer attorneys and other non-attorney volunteers with insurance companies.

### FINANCES

The application for recognition and accreditation requires a *budget*<sup>85</sup> and a plan for how those costs will be covered. The Board of Immigration Appeals allows programs to charge nominal fees for their services, but does not allow a program to fully cover their costs through those fees. It is important to demonstrate other sources of *income to offset the costs of running the site*<sup>86</sup>.

## Frequent questions attorneys ask about church-based immigrant legal service programs

Attorneys are usually unfamiliar with Board of Immigration Appeals Recognition and Accreditation for non-lawyers and if they are solicited, they may be concerned that their, or another, church or denomination is planning to engage in unauthorized practice of law. The questions below are a great starting place for a denomination's office of general counsel or attorneys within local congregations who wish to partner or participate in some way.

### WHAT IS BIA "ACCREDITATION?"

The Board of Immigration Appeals (BIA) gives permission for non-lawyer representatives to be "accredited" when it finds they are specially qualified based on specified requirements to represent immigrants on behalf of a recognized organization ("recognition" is described below). The BIA will accredit non-lawyers only when they work for a recognized organization and will never accredit a non-lawyer who tries to practice immigration law on his or her own.

There are two kinds of accreditation: "partial" and "full." A partially accredited representative may represent immigrants before the Department of Homeland Security (DHS) only. A fully accredited representative may represent immigrants before both the DHS and the Executive Office for Immigration Review (EOIR) (the immigration courts and the BIA). In order to receive full accreditation, individuals must show they have court experience and a higher level of training than partially accredited representatives.

An individual must seek accreditation for each site at which he or she will practice immigration law. Accreditation is tied to a site, and is not portable.

Please note that attorneys need never become "accredited." Accreditation is intended for non-attorneys only. Attorneys who are members in good standing of a bar of any state, commonwealth, possession or territory of the US or the bar of the District of Columbia do not need accreditation to represent immigrants in their own practice or on behalf of a recognized organization.

### **WHAT IS BIA “RECOGNITION” THEN?**

An organization is “recognized” when the BIA gives a non-profit organization in the US permission to practice immigration law before DHS and/or EOIR, which include the immigration courts and the BIA. By regulation, a non-profit religious, charitable, social service or similar organization established in the US that has been approved for recognition is called a “recognized organization.”

Because immigration law is such a complex field, in order to qualify for recognition, organizations must demonstrate, through qualified staff, that it has the ability to identify all immigration issues, not just those for which that the organization provides service. This is so the organization is competent to recognize an issue and refer a client to an attorney or another accredited representative who is qualified to handle the issue at hand.

In addition, if an organization has distinct offices providing legal immigration services at separate locations, the branch offices of an organization must be individually recognized, based on the same qualifications.

An organization can lose its recognition, and the accredited representatives would then no longer be accredited as a part of the organization. The BIA may withdraw recognition of any organization that has failed to maintain qualifications required for recognition, and the DHS may conduct an investigation and request the BIA to withdraw recognition. If recognition is lost, the organization must cease to offer immigrant legal service. Claiming recognition or accreditation status after such status has been withdrawn is an instance of the unauthorized practice of immigration law.

### **CAN ACCREDITATION OR RECOGNITION BE TRANSFERRED FROM ONE ORGANIZATION/PERSON TO ANOTHER?**

No. Accreditation is given to a specific individual working for a specific organization at a specific location. It is not portable in any way.

### **WHAT IS REQUIRED FOR AN ORGANIZATION TO BECOME RECOGNIZED AND FOR STAFF TO BECOME RECOGNIZED?**

There is a thorough and at times lengthy process for accreditation and recognition through the BIA. This process includes an in depth application process in which the following documentation and/or information is likely to be required in order to successfully complete the process:

- Proof of non-profit status (determination letter from IRS or other tax records)
- Proof of religious, charitable or social service mission
- Proof that the organization is not dependent on fees or membership dues
- Documentation identifying sources of income from fees, grants, donations or other sources
- Organizational operating expenses
- Annual report
- Operating budget for past and current fiscal years
- Financial audits
- Resumes of staff to show background, education instruction and degrees, description of relevant employment, volunteer work, and licensures
- Documentation regarding relevant trainings and conferences of individuals, including certificates of completion and meaningful supervised experience with immigrant representation, such as hands-on training assisting with immigration forms and interviews, and assisting accredited representatives or attorneys in cases before the immigration court.
- Listing of resources available to the organization or staff in areas outside of primary areas of knowledge.
- For organizations with partially accredited staff only, proof of access to other practitioners with greater experience such as an attorney or another organization with an attorney or fully accredited representative on staff, including agreements for such access and payment of any attendant fees. For example, an organization without an attorney on staff should enter into a formal written agreement with another recognized organization, an attorney, or a national non-profit network for technical advice to ensure that the organization can provide knowledgeable legal service.
- Letters of recommendation from persons and organizations that can describe with particularity the immigration knowledge of the applying organization's staff and how the author of the letters knows the staff members and his or her expertise.
- Documented process for case handling and referral when immigration matters are outside of the practice areas of the applying organization.
- Access to basic resources (Immigration and Nationality Act, Code of

Federal Regulations and BIA precedent decisions), as well as advanced resources such as an extensive immigration law library, a research sharing agreement with a recognized organization or law firm, or a formal consulting arrangement with licensed attorneys for other accredited representatives.

- For individuals, proof of good moral character, such as through letters of recommendation and available public records indicating lack of criminal record, favorable credit reports and background checks.

### **WHAT ARE THE LIMITS ON BIA PRACTICE?**

Non-attorney representatives may not practice in any area of law outside of immigration law.

Fully accredited representatives may appear before the DHS, the immigration courts, and the BIA. They must demonstrate the ability to write legal briefs and motions, question witnesses in court, and demonstrate oral advocacy skills.

Partially accredited representatives may only practice before the DHS, and do not need to show legal research and writing skills, and training in trial and appellate advocacy. The vast majority of applicants for accreditation seek partial accreditation only.

### **ARE BIA REPRESENTATIVES SUBJECT TO STATE ETHICS RULES?**

Yes, as well as the disciplinary methods of each jurisdiction related to the unauthorized practice of law.

### **IS THERE ANY SUPERVISION OF ACCREDITED REPRESENTATIVES?**

Yes. As explained above, accredited representatives must be adequately supervised and trained. However, the supervision required by the BIA is less stringent than the traditional sense of the word. The BIA requires “access to a technical legal support provider” as the supervisor of partially accredited representatives. It is not required that this provider be on site overseeing day-to-day activities. Support can be rendered primarily through email and phone correspondence. The recognized organization must merely prove that there is a written agreement that it will have access to the technical legal support provider for assistance with new or difficult cases. The BIA process requires proof of this supervision, and recognition and accreditation status can be removed without adequate supervision.

### **DO ACCREDITED REPRESENTATIVES HAVE TO COMPLETE FORMAL CONTINUING LEGAL EDUCATION (CLE)?**

Not formally, but they do need to prove they have undergone legal education from the time of application through the date of renewing accreditation (every three years). So, in essence, the BIA requires proof of continuing legal education but not through a formal “CLE” process as implemented by most state bars.

### **WHAT IS THE DIFFERENCE BETWEEN A BIA REPRESENTATIVE AND A “NOTARIO?”**

While not a lawyer, a BIA representative has gone through training and certification in accordance with federal regulations and is subject to disciplinary procedures of individual jurisdictions. On the other hand, “notario” refers to an individual who has not undergone such training and certification, and is in fact practicing law without a license and is engaged in scamming a vulnerable population. Such individuals should be reported to the *proper authorities*<sup>87</sup>. An updated list of recognized organizations and accredited individuals can be found on the BIA’s website.<sup>88</sup>

### **ARE BIA RECOGNIZED SITES IN COMPETITION FOR PRIVATE ATTORNEYS’ BUSINESS?**

No. BIA recognized sites must provide low cost or free legal services, services at rates that for-profit attorneys could not afford to charge and remain for-profit. In addition, with the advent of Comprehensive Immigration Reform, it is clear that the US bar lacks sufficient private practitioners to handle the estimated twelve million plus potential clients in need. In the same way that legal aid services are provided for low income individuals, BIA sites will be able to offer legal aid in an area that most legal aid services are not able to accommodate currently, a problem that will only be compounded by the increased demand that will come with immigration reform.

#### **NOTE:**

While not required in order to receive recognition or accreditation, World Relief and other technical support agencies strongly advise BIA recognized sites to carry malpractice insurance

### **BIA RECOGNITION AND ACCREDITATION RESOURCES**

- Step-By-Step Guide by World Relief and Catholic Legal Immigration Network (CLINIC) [https://cliniclegal.org/sites/default/files/world\\_relief\\_and\\_clinic\\_bia\\_guide\\_oct\\_2013.pdf](https://cliniclegal.org/sites/default/files/world_relief_and_clinic_bia_guide_oct_2013.pdf)
- BIA Recognition and Accreditation Webinar presented by CLINIC and World Relief <https://cliniclegal.org/resources/bia-recognition-and-accreditation-start-and-expanding-programs>

### **CLINIC BIA RECOGNITION AND ACCREDITATION TOOLKIT**

- <https://cliniclegal.org/resources/toolkit-bia-recognition-accreditation>

### **BIA FAQs**

- <http://www.justice.gov/eoir/ra/RandAFAQsPrintableVersion.pdf>

### **IMMIGRATION LAW TRAININGS**

- World Relief <http://worldrelief.org/immigrant-legal-services/events>
- Immigrant Legal Resource Center—Basic Immigration Law Course <http://www.ilrc.org/trainings-seminars/basic-immigration-law-course>
- Immigration Advocates Network (IAN) <http://www.immigrationadvocates.org/>
- Catholic Legal Immigration Network (CLINIC) <https://cliniclegal.org/training/calendar>

### **FIND AN IMMIGRATION ADVOCATE**

- BIA Roster of Recognized Organizations and Accredited Individuals <http://www.justice.gov/eoir/ra/raroster.htm>

### **IMMIGRATION LEGAL SERVICE PROVIDERS**

- <http://www.immigrationlawhelp.org/>
- American Immigration Lawyers Association <http://www.aila.org/content/default.aspx?docid=10180>

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- American Immigration Lawyers Association <http://www.aila.org/content/default.aspx?docid=10180>

### **REPORT THE UNAUTHORIZED PRACTICE OF IMMIGRATION LAW**

- USCIS Avoid Scams <http://www.uscis.gov/uscis-tags/unassigned/avoid-scams>
- Stop Notario Fraud <http://www.stopnotariofraud.org/>

## SECTION 1

CHAPTER 1

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### **CHAPTER 7**

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