

Title: Thinking Biblically about Immigration

Description: What does U.S. law say about immigration and seeking asylum, and how do current policies play out on the ground? How can we think about such a highly partisan topic from a Christian perspective? Join us as we seek to think biblically about U.S. immigration.

I. Introduction

- Authority of the Scriptures. As Christians, our main authority for life and godliness is the Bible.
- Popular myths, but what are the facts?

II. Section 1: Immigration Law 101

a. Definition of Terms – Lawful Immigration Status

i. U.S. citizen

- Born in the U.S. – *jus soli* “right of the soil”; protected by the 14th Amendment in 1868
 - “All persons born or naturalized in the United States, and subject to the jurisdiction thereof.”
- Through parentage – *jus sanguinis* “right of blood”
 - Acquisition at Birth - INA 301, 309
 - “In general, a person born outside of the United States may acquire citizenship at birth if all of the following requirements are met at the time of the person’s birth: The person is a child of a U.S. citizen parent(s); The U.S. citizen parent meets certain residence or physical presence requirements in the United States or an outlying possession before the person’s birth in accordance with the applicable provision; and the person meets all other applicable requirements under either INA 301 or INA 309.
 - Derivation after birth - Child Citizenship Act of 2000
 - The Child Citizenship Act of 2000 allows foreign-born, biological, and adopted children of U.S. citizens to acquire U.S. citizenship if they satisfy certain requirements before age 18. The Act applies to children who did not acquire U.S. citizenship at birth.

- Through Naturalization – Title III of INA; INA 318
 - Naturalization is the process by which U.S. citizenship is granted to a lawful permanent resident after meeting the requirements established by Congress in the Immigration and Nationality Act (INA)
 - ii. Lawful Permanent Resident
 - Permanent status, right to live/work/travel.
 - Significant due process rights
 - iii. Refugee/Asylee
 - Permanent status with opportunity for LPR conferral after 1 year
 - Under domestic law, both must meet the definition of refugee in INA 101(a)(42)
 - “The Immigration and Nationality Act (INA) defines a refugee as an individual who has experienced past persecution or has a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion.”
 - iv. Nonimmigrants
 - “A nonimmigrant is a noncitizen who is admitted to the United States for a specific temporary period of time.”
 - Alphabet soup of temporary visas/status (B-2, F-1, H1B)
 - v. Miscellaneous Temporary Provisions – not actually status, but temporary provisions authorized by the administration on a case-by-case basis; typically for significant public benefit or humanitarian purpose
 - Examples include Deferred Action for Childhood Arrivals, Humanitarian Parole, etc.
 - vi. Undocumented
 - Either entered U.S. surreptitiously or overstayed lawful permission to enter
 - INA uses term “illegal alien”; in daily parlance we use “undocumented” not out of political correctness but instead as recognition that being here without papers is typically one of the deepest sources of pain for individuals in that situation
- III. Overview of Avenues for Relief – Permanent Status/U.S. Citizenship
- a. Family Based

- i. Over 60% of permanent U.S. immigration occurs via family (true since 1965; Hart-Cellar Act)
- ii. United States Citizen (USC) can petition spouse/child/parent/sibling
- iii. Lawful Permanent Resident (LPR) can petition spouse/child
- iv. Wait times can take over a lifetime – see Immigrant Visa Bulletin

b. Employment Based

- i. 140,000 green cards allocated to this category (about 14%)
- ii. Demand far outstrips supply – both demand from immigrants AND demand of U.S. economy
- iii. Limited and cumbersome process that hasn't been updated since Immigration Act of 1990 that set current numerical caps (economy has changed significantly since then)

c. Diversity Lottery Visa

- i. Intended to bring individuals from underrepresented countries to U.S.
- ii. 50,000 issued annually, about 11 million apply (1 in 200 chance to win opportunity to apply for green card)
- iii. Earliest version began in 1986, intended to reverse the unintended consequences of the 1965 Act which resulted in heavier Latin American/Asian migration. Goal was to encourage migration from European countries historically represented in U.S.
- iv. Current version passed in 1990 Act; diversity visas “are distributed among six geographic regions and no single country may receive more than seven percent of the available DVs in any one year.”
- v. Overtime, result is DV lottery favors applicants from Africa/Asia

d. Humanitarian Provisions

- i. Examples include those for victims of domestic violence/violent crimes/human trafficking, who initially receive a temporary grant of status and may then apply for permanent residency
- ii. Refugees/asylees may apply for a green card and may receive it after 365 days of physical presence in U.S.

IV. Section 2: Thinking Biblically about U.S. Immigration Law

- Made in the image of God – start at the beginning
- Genesis 1:26-27 Then God said, “Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground. So God created mankind in his own image, in the image of God he created them; male and female he created them.

- Biblical command to love our neighbors – no exceptions
- Missional opportunity – for “us” and for “them”
- Christians are subject to ruling authorities – the rule of law matters

V. Section 4: U.S. Asylum Law

a. Definition of terms

- i. Asylum seeker – Generally one who is coming to the U.S. to seek safety. Includes those who have applied for asylum but do not yet have a decision.
 1. Right to seek asylum is enshrined in domestic and international law
 - a. U.S. immigration law
 - b. Universal Declaration of Human Rights Article 14
 - i. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
 - c. 1951 Refugee Convention and 1967 Protocol (U.S. is a party to); non-refoulement is the core principal, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom.
- ii. Asylee - Under domestic immigration law, asylees are individuals in the United States who meet the definition of refugee in INA 101(a)(42)
 1. An alien (foreign national) who is physically present in the U.S. (whether or not at a designated U.S. port of entry) may pursue asylum, regardless of that person’s immigration status or manner of entry into the country. INA 208
 2. “The Immigration and Nationality Act (INA) defines a refugee as an individual who has experienced past persecution or has a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion.” INA 101(a)(42)
- iii. Parolee – INA 212(d)(5) The Attorney General, may...in his discretion parole into the U.S. temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the U.S., but such parole of such alien shall not be regarded as an admission of the alien.”

b. Asylum 101

- i. Persecution – harm, must be perpetrated by the state or someone the state is unable or unwilling to control

1. *Cardoza v. Fonseca* 480 U.S. 421 (1987); the Court found a 10% chance of persecution occurring upon return is sufficient
 2. *Matter of Mogharabbi* 19 I&N Dec. 439 (BIA 1987); persecution must be subjectively felt and objectively reasonable
- ii. On account of – at least one central reason for the persecution must be the individual’s protected ground (can’t be just generalized violence); INA 208 (b)(1)(B)(i)
 1. *INS v. Elias Zacarias*, 502 U.S. 478 (1992); persecutor’s motive must be on account of one of the enumerated protected grounds
 2. “Mixed motive” of persecutor is allowed and must be evidenced by either direct or circumstantial evidence Real ID Act 2005
 - iii. Protected ground – Race, Religion, National Origin, Political Opinion, Particular Social Group (PSG)
 1. *Matter of Acosta*, 19 I.&N. Dec. 211 (1985); protected grounds reflect a person’s immutable characteristics – those traits so fundamental that they cannot or should not be required to change
- c. Government Branches Adjudicating Asylum
- i. Department of Homeland Security (DHS) - three entities below housed under the former INS prior to 2022
 1. Customs & Border Patrol (CBP)
 - a. Responsible for Credible Fear Interviews (CFI) at the border
 2. Immigration & Customs Enforcement (ICE)
 - a. Responsible for detention and enforcement; serve as counsel for the government in adversarial proceedings
 3. United States Citizenship & Immigration Services (USCIS)
 - a. Officers interview to adjudicate affirmative asylum claims; cases that are refused are “referred” to EOIR
 - ii. Executive Office for Immigration Review (EOIR) – immigration court
 1. Immigration judges “IJs” adjudicate
 2. Cases may be appealed up through the Board of Immigration Appeals, appropriate Circuit court, and Supreme Court