

December 2004

**Noncitizens
and Minnesota Law**

A Guide for Legislators

This publication addresses how various state laws apply to noncitizens. It includes information about noncitizens and explanations of laws applying to farm ownership, crime, K-12 and higher education, employment, eligibility for health care and social services programs, driver's licenses, taxation, and various other areas.

Noncitizens and Minnesota Law is a cooperative project by legislative analysts in the Research Department of the Minnesota House of Representatives. Topical questions should be addressed to the analyst who covers that subject.

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Introduction

The U.S. Census Bureau estimates for 2003 that 3.6 percent of the Minnesota population are not U.S. citizens. This represents about 175,000 individuals out of a total population of 4.9 million. Most of these individuals are immigrants who intend to make Minnesota their permanent home. They also include temporary residents (e.g., students or those temporarily working for Minnesota employers) who intend to return to their home countries, refugees, and undocumented aliens. This publication explains how various state laws apply to noncitizens.

Part 1 provides some background material on immigration, such as information about the numbers of immigrants, where they come from, and information about the foreign-born population. It also describes the various types of immigrants, including lawful permanent residents, refugees and asylees, temporary residents, and undocumented aliens. It discusses the history of the country's immigration policy, from early in the country's existence to the most recent changes to federal immigration laws. Lastly, it explains some constitutional issues regarding noncitizens in Minnesota laws.

Part 2 discusses how various state laws apply to noncitizens. It includes information on farm ownership, criminal laws, K-12 and higher education, employment issues, eligibility for health care and social service programs, driver's licenses, taxation of noncitizens, and other issues.

A glossary at the end defines various terms used in this publication. An appendix provides supplementary statistical information about immigrants to Minnesota.

Unless otherwise noted, all citations are to Minnesota Statutes 2004.

A Note on Terminology

We use the term “noncitizen” in this publication to refer to the various types of foreign-born people who are in this country temporarily or permanently. There are many different terms and legal definitions for noncitizens depending on the status given to them by the United States Citizenship and Immigration Services, which is the division of the U.S. Department of Homeland Security that regulates immigration. For more on the types of noncitizens, please see the section beginning on page 19.

In some areas, the law uses a term other than “noncitizen” to refer to people who have immigrated to this country but are not citizens. For example, some laws refer to noncitizens as “aliens.” At some places in this publication, we use the term that the statutes in that area use to refer to noncitizens.

The information in this publication focuses mainly on noncitizens who are in this country legally.

Part 1

Immigration to the United States and Minnesota

by Brenda van Dyck

Many people seek to enter the United States every year for a variety of reasons. Some want to join family members already in this country. Others want to come here to work. Still others are fleeing persecution. This section contains some of the most recent information available on who has come to this country and where they came from. It includes statistics on the number of immigrants to the United States and Minnesota, the foreign-born population, refugees, asylees, naturalization, and employment. An appendix at the end of this publication provides more statistical information.

The Number of Immigrants to the United States and Minnesota

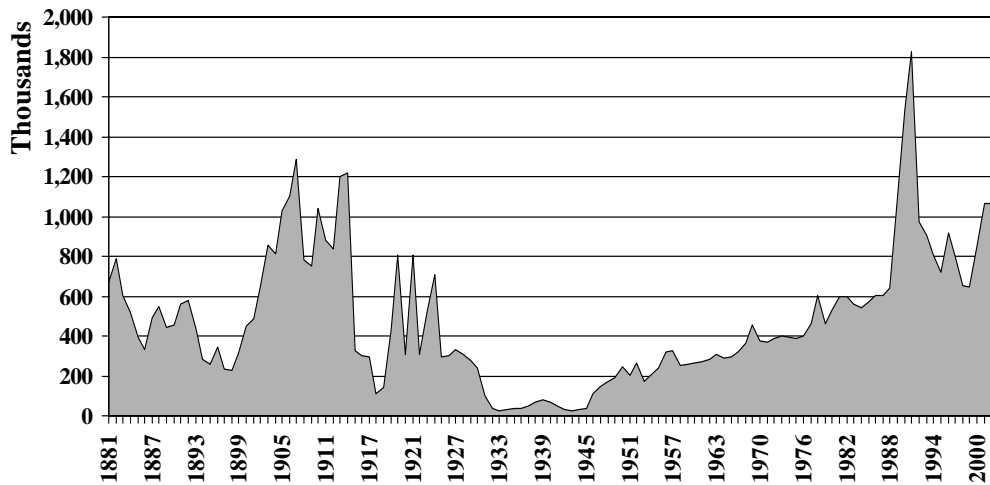
In federal fiscal year 2003, 705,827 people immigrated to the United States.¹ This is down by 34 percent from fiscal year 2002 when 1,063,732 people immigrated to the United States. U.S. Citizenship and Immigration Services (USCIS) attributes the drop in the number of immigrants from 2002 to 2003 to security checks that affected application processing.

The number of immigrants is down by more than one million from 1991, when immigration peaked with an all-time high of 1,827,167. During the decade of the 1990s, nearly 9.1 million immigrants came to this country. This surpasses the previous high of 8.8 million admitted in the first decade of the 1900s. Figure 1 below shows the fluctuations in immigration over time. Immigration reached its highest levels at the turn of the 20th century and near the end of the century, while it dipped considerably during the time of the first and second world wars.

¹ *Yearbook of Immigration Statistics, 2003*. U.S. Citizenship and Immigration Services, Department of Homeland Security (September 2004). U.S. Citizenship and Immigration Services (USCIS) uses federal fiscal years in compiling annual immigration statistics. Federal fiscal years run from October 1 to September 30. "Fiscal year" in this section refers to the federal fiscal year.

When discussing the number of people who have "immigrated," this means the number of people who have been granted "legal permanent residency." It is the number of people who plan to be in this country permanently. It does not include temporary visitors ("nonimmigrants"), people here under temporary protected status, or illegal immigrants. For more about these categories, see the immigrant types section.

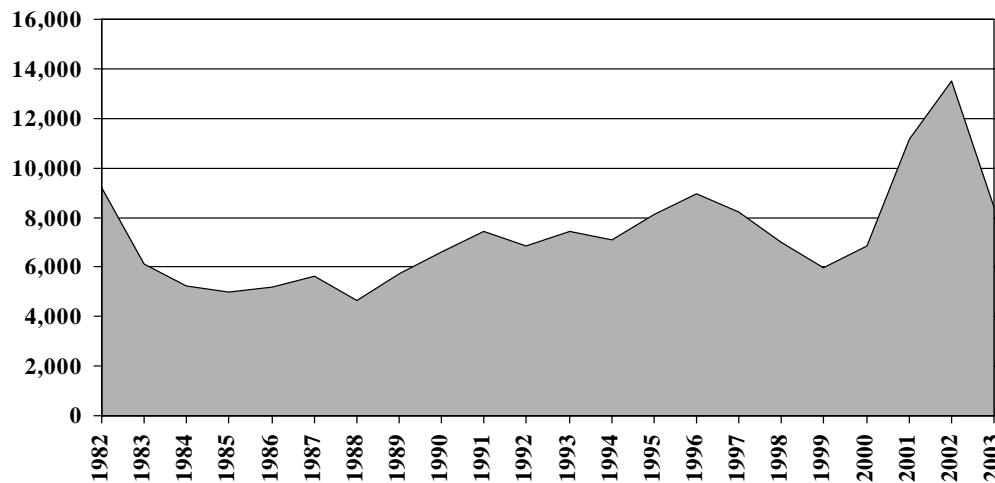
Figure 1
Number of U.S. Immigrants
FY 1880-2003



Source: U.S. Citizenship and Immigration Services

In Minnesota in 2003, there were 8,435 immigrants.² This is down 38 percent from 2002 when 13,522 people came to Minnesota. Immigration had increased since 1999 until this year. In fact, the 2002 immigration rate was the highest it had been in previous 20 years.

Figure 2
Number of Immigrants to Minnesota
FY 1982-2003

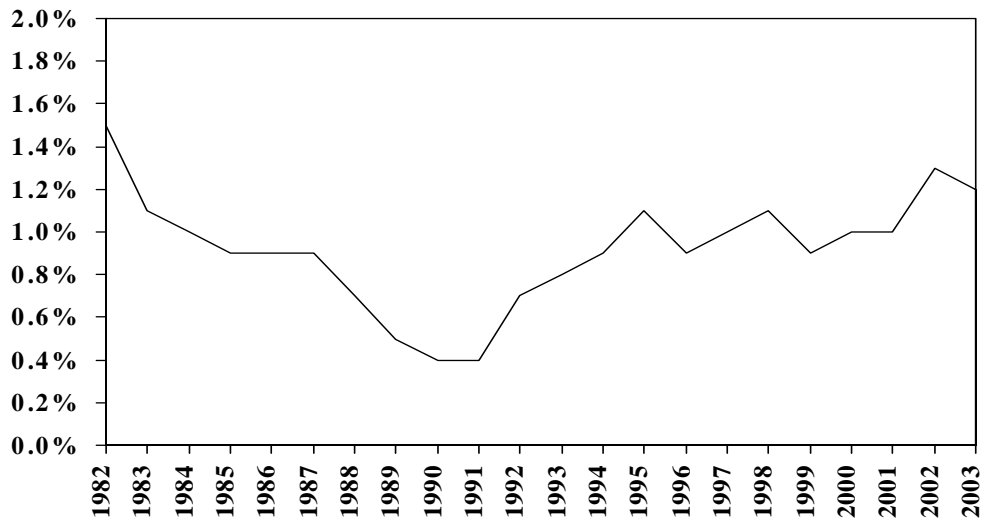


Source: U.S. Citizenship and Immigration Services and Minnesota State Demographic Center

² The USCIS determines which state an immigrant is going to from the legal permanent residence application, where applicants have to designate their intended state of destination. This figure doesn't account for secondary migration, where an immigrant moves here from another state.

The number of immigrants who came to Minnesota in 2003 represents only about 1.2 percent of the total U.S. immigration for that year.

Figure 3
Percent of U.S. Immigrants Who Came to Minnesota
FY 1982-2003



The immigration rates to Minnesota have roughly corresponded to national immigration rates in the last ten years. (See Table 22 in the appendix for more detailed information on the number of immigrants to Minnesota and the United States.)

Nearly two-thirds of all immigrants in 2003 settled in six states: California, New York, Florida, Texas, New Jersey, and Illinois.³ These have been the top states of destinations for immigrants since 1971. Minnesota did attract a larger share of immigrants than its share of the nation's population. In fiscal year 2003, Minnesota ranked 18th among states for total immigration compared with 21st in total population.⁴

Immigrants tend to be more geographically concentrated than the rest of the population. In addition, they tend to settle in metropolitan areas. The top destination cities for immigrants in 2003 were the nation's largest cities, like New York, Los Angeles, Chicago, Washington, D.C., Miami, and Houston.

³ These six states comprise less than 40 percent of the nation's population.

⁴ *Statistical Abstract of the United States: 2003*, U.S. Census Bureau (2003): 22.

Where Immigrants Were Born

For immigrants to the United States in 2003, the top ten countries represented were Mexico, India, Philippines, China, El Salvador, Dominican Republic, Vietnam, Colombia, Guatemala, and Russia.

Immigration trends in Minnesota mirror those of the nation as a whole. In the 19th century, most immigrants came from Europe. In the mid-20th century, more immigrants came from North American countries like Mexico and Canada. In the late 20th century, more immigrants came from Asia. Most recently the number of Africans immigrating to the United States has increased.

The 13,522 people who immigrated to Minnesota in fiscal year 2002⁵ were from 160 different countries. The top countries were Somalia, India, Ethiopia, Mexico, China, and Vietnam. While Minnesota only received 1.3 percent of all immigrants who came to the United States in 2002, the state had high percentages of immigrants from Somalia (35 percent), Liberia (13.5 percent), Laos (12.7 percent), and Ethiopia (12.1 percent).

Table 1
Immigrants to the U.S. by Top Countries of Birth: FY 2003

Country	Number	Percent
Mexico	115,864	16.4%
India	50,372	7.1%
Philippines	45,397	6.4%
China	40,659	5.8%
El Salvador	28,296	4.0%
Dominican Republic	26,205	3.7%
Vietnam	22,133	3.1%
Colombia	14,777	2.1%
Guatemala	14,415	2.0%
Russia	13,951	2.0%
Total for top 10	372,069	52.6%

Source: U.S. Citizenship and Immigration Statistics

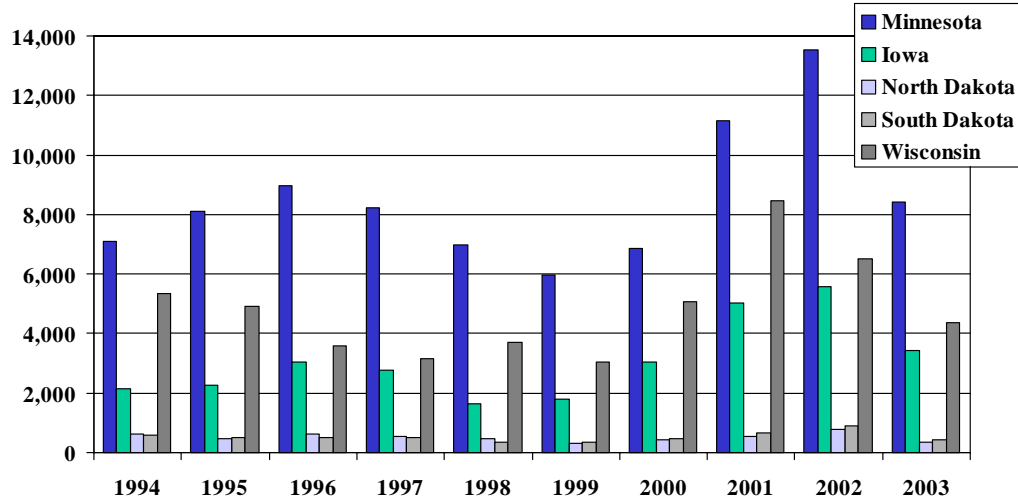
⁵ While a total of 8,435 people immigrated to Minnesota in fiscal year 2003, a more detailed breakdown of where they came from was unavailable, so fiscal year 2002 numbers are used here.

Table 2 Immigrants to Minnesota by Top 20 Countries of Birth: FY 2002				
Country	Number to MN	Percent of total MN immigrants	Number to US	Percent who immigrated to MN
Somalia	1,588	11.7%	4,537	35%
India	1,001	7.4%	71,105	1.4%
Ethiopia	918	6.8%	7,574	12.1%
Mexico	756	5.9%	219,380	0.3%
China	704	5.2%	61,282	1.1%
Vietnam	601	4.4%	33,627	1.8%
Russia	496	3.7%	20,833	2.4%
Canada	456	3.4%	19,519	2.3%
Bosnia-Herzegovina	442	3.3%	25,373	1.7%
Philippines	399	3.0%	51,308	0.8%
Liberia	388	2.9%	2,879	13.5%
Ukraine	325	2.4%	21,217	1.5%
Kenya	285	2.1%	3,207	8.9%
Nigeria	262	1.9%	8,129	3.2%
United Kingdom	214	1.6%	16,181	1.3%
Korea	196	1.4%	21,021	0.9%
Guatemala	172	1.3%	16,229	1.1%
Laos	160	1.2%	1,257	12.7%
Sudan	158	1.2%	2,924	5.4%
Colombia	146	1.1%	18,845	0.8%
Total for top 20	9,667	71.9%	626,427	
Source: USCIS and MN Department of Administration, State Demographic Center				

Almost all, 91 percent, of immigrants who came to Minnesota in fiscal year 2002, first moved to the metropolitan areas of Minneapolis-St. Paul, Rochester, and St. Cloud.

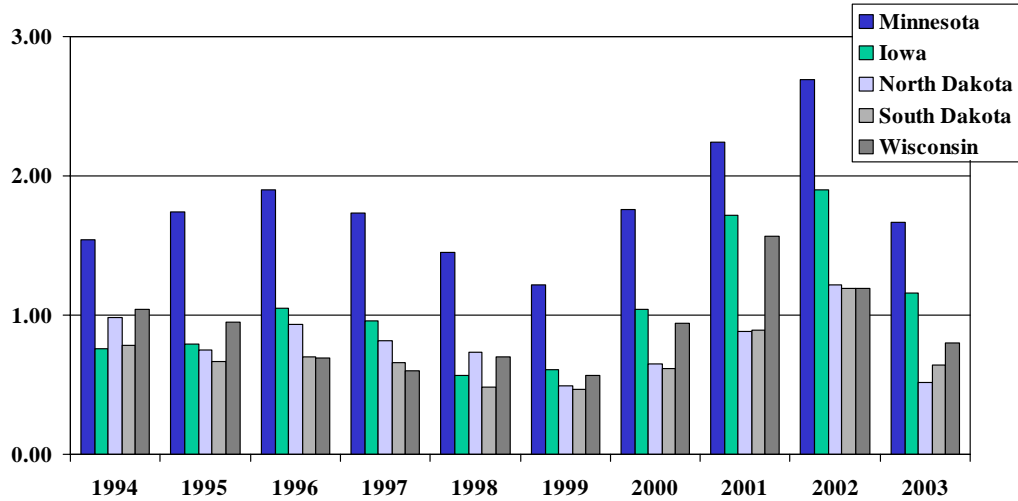
Of the five-state region, Minnesota leads in immigration, followed by Wisconsin and Iowa. Comparatively, North Dakota and South Dakota have low levels of immigration.

Figure 4
Number of Immigrants to Minnesota and Surrounding States
FY 1994-2003



Source: U.S. Citizenship and Immigration Services

Figure 5
Number of Immigrants per 1,000 Population for Minnesota and Surrounding States
FY 1994-2003



Source: U.S. Citizenship and Immigration Services

The Foreign-born Population in the United States and Minnesota

According to the U.S. Census Bureau, in March 2003, there were 33.5 million foreign-born people living in the United States, representing 11.7 percent of the U.S. population.⁶ The Census Bureau defines foreign-born as anyone not born a U.S. citizen (for example, a person could be born in a foreign country but if she was born to U.S. citizens, she would be a U.S. citizen). The foreign-born population includes both naturalized citizens and noncitizens.

Of the 3.5 million foreign-born people in the United States in 2003, 53.3 percent were born in Latin America, 25.0 percent in Asia, 13.7 percent in Europe, and 8.0 percent in Other Regions⁷ (See Figure 6).

While immigration levels in the 1990s and early 2000s have been high, the percentage of the foreign-born population is less than it was at the turn of the century, when it was around 15 percent. It was at a low of 5 percent in 1970. From 1990 to 2000, the foreign-born population increased by 57 percent, from 19.8 million to 31.1 million.⁸ The foreign-born population is projected to double by 2050, accounting for 15 percent of the total population.⁹

In 2003, 11.3 percent of the total foreign-born population lived in the Midwest.¹⁰ Less than 1 percent lived in Minnesota.

In Minnesota in 2003, the Census Bureau estimates that there are 299,192 foreign-born people.¹¹ This represents about 6.1 percent of the state's total population. From 1990 to 2000, the state's foreign-born population increased by 130.4 percent. The largest foreign-born populations in the state are from Asia (41.3 percent) and Latin America (21.1 percent).¹² (See the appendix for

⁶ Luke J. Larsen. *The Foreign-born Population in the United States: 2003*. Current Population Reports, P20-551, U.S. Census Bureau (August 2004): 1.

⁷ The Census Bureau uses definitions from the United Nations for regions. Latin America includes Central America, South America, and the Caribbean; Other Regions includes areas of North America, Africa, and Oceania.

⁸ Nolan Malone, Kaari F. Baluja, Joseph M. Costanzo, and Cynthia J. Davis. *The Foreign-Born Population: 2000*. Census 2000 Brief, C2KBR-34, U.S. Census Bureau (December 2003): 2.

⁹ Randy Capps, Jeffrey S. Passel, Daniel Perez-Lopez, and Michael Fix. *The New Neighbors: A User's Guide to Data on Immigrants in U.S. Communities* (Washington, D.C.: The Urban Institute, 2003): 4.

¹⁰ Larsen, *Foreign-born Population*, 2. The Midwest includes Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

¹¹ The Census Bureau uses the 2003 American Community Survey to collect information about U.S. households. Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate is represented through the use of a confidence interval. The confidence interval computed for this data is 90 percent and can be interpreted roughly as providing 90 percent certainty that the true number falls between the lower and upper bounds. For the lower and upper bounds of Minnesota's foreign-born population for 2003, see Table 24 in the appendix.

¹² The Minnesota State Demographic Center estimates the size of immigrant communities in the state. Immigrant communities are different from the Census's calculation of foreign-born populations in that the Center's estimates comprise both foreign-born and native-born people. The Center uses data from the 2000 Census, the Minnesota Department of Education, the Department of Homeland Security, and the Minnesota Department of Health to make its estimates. According to the center's estimates, Minnesota's largest immigrant populations are

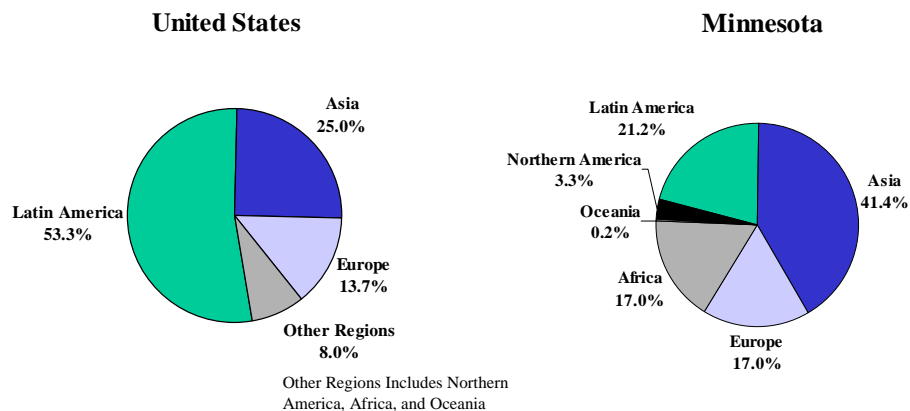
more information on the state's foreign-born population.)

At the turn of the 19th century, the state's percentage of foreign-born population was much higher. In 1900, 29 percent of the state's population of 505,318 was foreign-born. Many of the remaining native-born had at least one foreign-born parent.¹³

The areas where people come from have changed, as well. In 1900, the largest foreign-born populations were from Germany, Sweden, and Norway. In 2000, the largest foreign-born populations were from Mexico, Laos, and Vietnam (see the appendix for more information). Minnesota has the largest population of Somali immigrants in the country, and the second largest population of Hmong.

Of all regions, people from Asia constitute most of the foreign-born population at 41.3 percent, followed by Latin America at 21.1 percent (Latin America includes Central and South Americas). (See Figure 6.)

Figure 6
Regions of Foreign-Born Populations: 2003



Source: U.S. Census Bureau

Latinos, Hmong, Somalis, Vietnamese, Russians, Laotians, Cambodians, and Ethiopians. Barbara J. Ronningen. "Estimates of Selected Immigrant Populations in Minnesota: 2004." *Population Notes*, Minnesota State Demographic Center (June 2004): 6.

¹³ Martha McMurry. *Turn of the Century: Minnesota's Population in 1900 and Today* (St. Paul: Minnesota Planning, State Demographic Center, 1999): 12-13.

Of the state's foreign-born population as of 2000, more than half came to the country between 1990 and 2000. In addition, 37.4 percent of the foreign-born population have become citizens. (See Table 3.)

Table 3 Minnesota Foreign-Born Population by Date of Entry and Citizenship: 2000		
Category	Total	Percent of Foreign-Born
All foreign-born	260,463	100%
Foreign-born who entered the U.S. between 1990 and 2000	141,968	54.5%
Foreign-born, naturalized citizens	97,308	37.4%
Foreign-born, not citizens	163,155	62.6%
Source: U.S. Census Bureau		

Another characteristic of foreign-born populations in the state is the different languages they speak at home. According to the 2000 Census, 8.5 percent of people in Minnesota lived in a home where a language other than English was spoken.

Table 4 Persons with Home Language other than English: 2000		
	Total	Percent of Population
Home language, English only	4,201,503	92.5%
Home language other than English	389,988	8.5%
Home language Spanish	132,066	2.9%
Home language other Indo-European languages*	110,644	2.4%
Home language Asian and Pacific Island languages*	103,520	2.3%
Home language other languages*	43,758	1.0%
* See the appendix for a comprehensive list of these languages and the number of speakers in the state. Source: U.S. Census Bureau		

Refugees Who Come to Minnesota and the United States

Refugees are an important category of immigrants. Refugees are people who flee their countries due to actual persecution or fear of persecution (for more about refugee and asylees, see the immigrant types section). According to the United Nations High Commissioner for Refugees, there were 9.9 million refugees in the world on January 1, 2004. The United States is committed to resettling at least 50 percent of these refugees.¹⁴

In fiscal year 2003, 28,422 people were admitted into the country as refugees. Most refugees came from Europe and Africa; Ukraine and Liberia were the countries with the most refugees. The federal government sets annual ceilings for refugees from different areas of the world. The number of refugees admitted in 2003 was well below the 70,000 ceiling. The State Department reports that this is due to “security concerns and resulting program changes necessitated by the events of 9/11.”¹⁵

Country	Arrivals	Percent
Ukraine	5,065	17.9%
Liberia	2,957	10.4%
Iran	2,471	8.7%
Sudan	2,140	7.6%
Somalia	1,993	7.0%
Serbia & Montenegro	1,839	6.5%
Ethiopia	1,704	6.0%
Russia	1,394	4.9%
Sierra Leone	1,378	4.9%
Vietnam	1,356	4.8%
Total for top 10	22,297	78.7%

Source: U.S. Citizenship and Immigration Services

Region	FY 2003 Ceiling	FY 2003 Admitted	FY 2004 Ceiling	FY 2004 Projected Arrivals	Proposed FY 2005 Ceiling
Africa	20,000	10,717	30,000	28,500	20,000
East Asia	4,000	1,724	8,500	8,200	13,000
Europe	16,500	11,269	13,000	10,000	9,500
Latin America/Caribbean	2,500	452	3,500	2,800	5,000
Near East/South Asia	7,000	4,260	3,000	2,500	2,500
Unallocated	20,000	--	12,000	0	20,000
Total	70,000	28,422	70,000	52,000	70,000

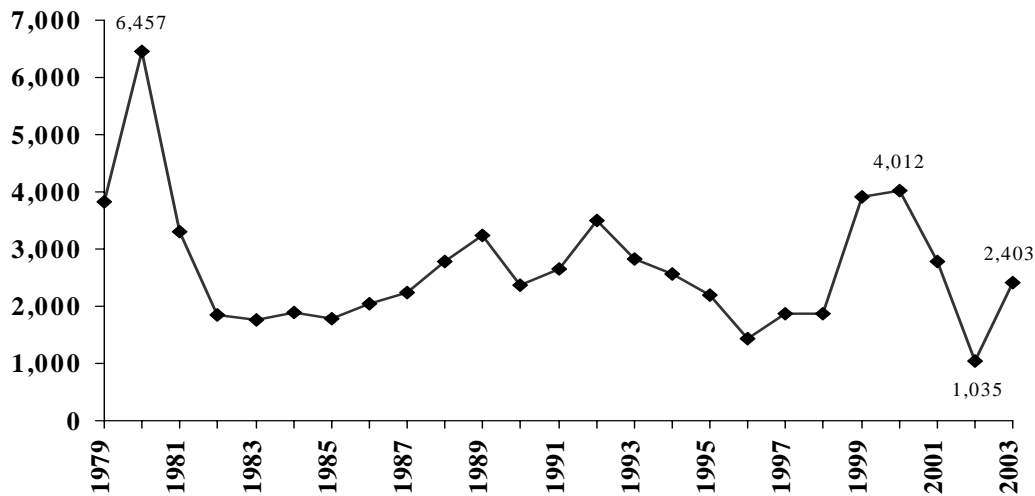
Source: U.S. State Department

¹⁴ U.S. Departments of State, Homeland Security, and Health and Human Services. *Proposed Refugee Admissions for FY 2005: Report to Congress* (September 2004).

¹⁵ *Ibid.*

According to the Minnesota Department of Health, 2,403 refugees from 30 different countries arrived in the state in 2003.¹⁶ The largest groups of refugees came from Ethiopia and Somalia. This number is up from 2002, when only 1,035 refugees came to the state, which is the least amount of refugees to arrive in the state in the last 25 years. The most refugees to arrive in the state during that same period was 6,457 in 1980.

Figure 7
Refugees to Minnesota
1979-2003



Source: Minnesota Department of Health

¹⁶ The Minnesota Department of Health uses calendar years to compile its data, while USCIS and the State Department use federal fiscal years.

Minnesota has received more refugees from Africa than the rest of the country. About 80 percent of the refugees entering the state in 2003 were from Ethiopia, Somalia, Liberia, and the Sudan. In contrast, of refugees who came to the United States, 31 percent were from these four countries in fiscal year 2003.

In December 2003, the U.S. government announced plans to settle 15,000 Hmong refugees from Laos who have been living in the Wat Tham Krabok village in Thailand. In 2004, some of these Hmong refugees began arriving in Minnesota; a total of 5,000 of these refugees are expected to settle in Minnesota this year.

Table 7 Top Ten Countries for Refugees to Minnesota: 2003		
Country	Number	Percent
Ethiopia	773	32.2%
Somalia	684	28.5%
Liberia	373	15.5%
Former Soviet Union*	251	10.4%
Sudan	100	4.2%
Sierre Leone	61	2.5%
Burma	27	1.1%
Togo	18	0.7%
Cuba	16	0.7%
Vietnam	13	0.5%
Total for top 10	2,316	96.3%
Total for State	2,403	
* Includes Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Ukraine, and Uzbekistan.		
Source: Minnesota Department of Health		

People Granted Asylum in the United States and Minnesota

An asylee is a person who is in this country and who is unwilling or unable to return to his or her country because of persecution or fear of persecution. The only difference between refugees and asylees is where they are located when they apply for legal admittance into this country. In fiscal year 2003, 15,470 people were granted asylum by the U.S. government. (The government received 46,272 applications for asylum.) The top countries from which people were granted asylum were Columbia, China, and Haiti. In Minnesota, 147 people were granted asylum.

Table 8 Asylum Granted by Top Ten Countries: FY 2003		
Country	Number	Percent
Columbia	2,990	19.3%
China	2,410	15.6%
Haiti	1,160	7.5%
Cameroon	823	5.3%
Ethiopia	576	3.7%
Armenia	462	3.0%
Liberia	353	2.3%
Iraq	326	2.1%
Togo	324	2.1%
Iran	322	2.1%
Total for top 10	9,746	63%
Total for country	15,470	
Source: U.S. Citizenship and Immigration Services		

Number of Immigrants Who Became Naturalized Citizens

Many of the people who come to this country and stay here become citizens. To be eligible for citizenship, a person must be at least 18 years old, be a legal permanent resident, and have lived in this country continuously for five years. Some exceptions apply for people in particular circumstances (e.g., foreign-born children adopted by U.S. citizens). Naturalizations tend to lag behind legal immigration by six to seven years.¹⁷

Based on the 2000 Census, of the 31.1 million foreign-born people living in the United States, 40.3 percent had become naturalized citizens. In Minnesota for that year, 37.4 percent of the 260,463 foreign-born had become naturalized citizens. The Census Bureau's 2003 American Community Survey (see footnote 11) shows higher naturalization rates of 41.4 percent for the country and 41.5 percent for Minnesota.

The rate of naturalization changes with the amount of time a person has been in this country. In addition to the legal waiting period, one would expect ties to the new country to increase with the length of residence. The data appear to bear this out. Of those who arrived in this country before 1970, 80.9 percent of the foreign-born population had become citizens by 2003, compared to 14.7 percent who had entered this country in 1990 or later.

The Department of Homeland Security (DHS) estimates the country's legal permanent resident (LPR) population at 11.4 million in 2002.¹⁸ Of this, 7.8 million are eligible for naturalization. In Minnesota, DHS estimates the LPR population in 2002 at 100,000, of which, 62,000 are eligible for naturalization. In 2003, 463,204 people became U.S. citizens. This is down 19 percent from 2002 when 573,708 people were naturalized.

In 2003, 463,204 people became U.S. citizens. This is down 19 percent from 2002 when 573,708 people were naturalized. Of the 463,204 people who became citizens in 2003, 6,232 lived in Minnesota.

DHS reports that applications for naturalization were lower in 2002 and 2003; this may be partly due to a decline in legal immigration in the late 1990s. For people who became citizens in 2003, the median number of years between when they were granted legal permanent residence and citizenship was eight years.¹⁹

Immigrants and Employment in the United States

One of the major reasons people come to this country is to work. Some argue that immigrant labor has a positive effect on the economy by supplying workers for unskilled, low-paying jobs. Others counter that immigrants displace native-born workers.

¹⁷ *Yearbook of Immigration Statistics*, 132.

¹⁸ Nancy F. Rytina. *Estimates of the Legal Permanent Resident Population and Population Eligible to Naturalize in 2002*. U.S. Department of Homeland Security, Office of Immigration Statistics (May 2004): 1.

¹⁹ *Yearbook of Immigration Statistics*, 135.

According to the U.S. Census Bureau, there were 19 million foreign-born workers over the age of 16 in the United States in 2003. This compares to a total civilian workforce of 145 million. Foreign-born workers account for roughly one in eight workers in the country; in 1960, foreign-born workers represented one of every 17 workers.²⁰ The Bureau of Labor Statistics reports that between 1990 and 2001, new immigrants who arrived in the United States accounted for 50.3 percent of the growth in the nation's workforce.

In 2000, the foreign-born, on average, were slightly less likely to participate in the workforce than the native-born (66.7 percent vs. 67.2 percent), but foreign-born people who were less well-educated than their native-born peers were more likely to participate in the labor market.²¹ About 59 percent of foreign-born workers without a high school education were in the workforce in 2000, compared to 37.4 percent of the native-born population without a high school education. With increased levels of education, the participation rates between foreign- and native-born workers are closer. For example, of college graduates, the participation rate for foreign-born workers is 76.9 percent compared to 79.9 percent for native-born workers.

In 2000, foreign-born workers earned about 75.6 cents for every dollar earned by native-born workers.²² As for the type of work foreign-born workers perform, the top categories for employment were professional occupations (26.9 percent) and service occupations (23.3 percent).

Another major issue is illegal immigrants coming to this country to work. It is difficult to ascertain the number of illegal immigrants in the country and the number of illegal immigrants in the workforce. In compiling its statistics on the foreign-born population, the Bureau of Labor Statistics includes legal immigrants, legal nonimmigrants, and illegal immigrants. The Urban Institute estimates that there are 9.3 million illegal immigrants in the country.²³ (See the section of types of immigrants for more information on illegal immigrants.)

Table 9 Occupations of Foreign-born Workers in the U.S.: 2003		
Occupation	Number	Percent
Management, professional, and related occupations	5,175,000	26.9%
Service occupations	4,492,000	23.3%
Sales and office occupations	3,474,000	18.0%
Farming, fishing, and forestry occupations	304,000	1.6%
Construction, extraction, and maintenance occupations	2,276,000	11.8%
Production, transportation, and material moving occupations	3,551,000	18.4%
Total	19,273,000	
Source: U.S. Census Bureau, Current Population Survey		

²⁰ Katherine Loh and Scott Richardson. "Foreign-Born Workers: Trends in Fatal Occupational Injuries, 1996-2001." *Monthly Labor Review*, Bureau of Labor Statistics (June 2004): 42.

²¹ Abraham Mosisa. "The Role of Foreign-born Workers in the U.S. Economy." *Monthly Labor Review*. Bureau of Labor Statistics (May 2002): 4-5.

²² Mosisa, 9.

²³ Jeffrey S. Passel, Randy Capps, and Michael Fix. *Undocumented Immigrants: Facts and Figures*. Urban Institute Studies Program, January 12, 2004.

Types of Immigrants

by Brenda van Dyck

There are several categories that the federal government uses to classify immigrants to this country. The major classifications are lawful permanent residents, refugees and asylees, temporary residents, and undocumented aliens.

Legal or lawful permanent residents (LPRs)

Legal or lawful permanent residents (LPRs) are foreign-born people who have been given permission to permanently live and work in the United States. Immigrants gain lawful permanent residence by obtaining a visa, or “green card.” Legal permanent residents are granted admission to the country through a variety of visas, but most people immigrate to the United States to reunite with family or seek employment.

Types of Visas

Immigration through a family member. An immigrant must be sponsored by a U.S. citizen or a LPR of the United States. The sponsor has to prove that he or she can support the family member at 125 percent of the poverty level. U.S. citizens can petition to have the following relatives immigrate to the United States: spouses, unmarried children, married children, siblings, and parents. LPRs can petition to have spouses and unmarried children of any age immigrate.

Visas for family unification are granted through a preference system. Immediate relatives of U.S. citizens (parents, spouses, and unmarried children under 21) don't have to wait for a visa number if their visa petition has been approved by the USCIS. For the rest of the relatives, visa numbers are granted in the following manner.

- ▶ First preference: unmarried, adult children over the age of 21 of U.S. citizens
- ▶ Second preference: spouses of LPRs and their unmarried children under 21, and the unmarried children of LPRs
- ▶ Third preference: married sons and daughters of U.S. citizens
- ▶ Fourth preference: brothers and sisters of adult U.S. citizens

The process for gaining legal permanent residence can be a long one. There are not as many visa numbers available as there are people who want to come to the United States, so there can be a long waiting period for many potential immigrants. Table 10 shows the dates by which a U.S. citizen or LPR would have to had filed a family relative petition in order for that relative to apply for permanent residence.

For countries that have had a large number of immigrants who have come to the United States, there are not as many visa numbers available, so there is a longer wait. The per-country limit is 7 percent (25,620) of the total annual family-sponsored preference limit (226,000) and employment-based preference limit (at least 140,000). For example, if a U.S. citizen wanted to

bring her Indian brother to the United States, she would had to have filed the relative petition before April 8, 1992, in order for her brother to begin the application process for a visa. The U.S. State Department updates the waiting times monthly in its Visa Bulletin.

Family Preference	All countries except those listed	China (mainland born)	India	Mexico	Philippines
1: Unmarried children of U.S. citizens	Dec. 22, 2000	Dec. 22, 2000	Dec. 22, 2000	Oct. 15, 1994	Oct. 15, 1990
2A: Spouses and children of LPRs	Aug. 15, 2000	Aug. 15, 2000	Aug. 15, 2000	Oct. 15, 1997	Aug. 15, 2000
2B: Unmarried children over the age of 21 of LPRs	Aug. 1, 1995	Aug. 1, 1995	Aug. 1, 1995	Feb. 15, 1992	Aug. 1, 1995
3: Married children of U.S. citizens	Dec. 22, 1997	Dec. 22, 1997	Dec. 22, 1997	Jan. 22, 1995	June 1, 1990
4: Siblings of adult U.S. citizens	Nov. 22, 1992	Nov. 22, 1992	April 8, 1992	Nov. 22, 1992	Sept. 22, 1982

Source: U.S. State Department

For fiscal year 2004, the maximum number of family preference visas available is 226,000. There is no numerical limit for visas for immediate relatives of U.S. citizens. In fiscal year 2003, the family preference visa limit was also 226,000, but only 158,894 of these visas were issued. For immediate relatives of U.S. citizens (those who don't have to wait for a visa number), 332,657 visas were granted.²⁴

Immigration through employment. A person may immigrate to this country if he or she is sponsored by an employer. There are five categories for granting permanent residence for employment: priority workers; professionals with advanced degrees or people with exceptional ability; skilled or professional workers; special immigrants; and immigrant investors.

- Priority workers comprise a few different categories. The USCIS classifies priority workers as people with extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors or researchers; and managers and executives who may be transferring to the United States.

²⁴ *Yearbook of Immigration Statistics, 2003*. U.S. Citizenship and Immigration Services, Department of Homeland Security (September 2004): 20.

- Professionals with advanced degrees or people with exceptional ability means people with exceptional ability in the arts, sciences, or business, people with advanced professional degrees, and qualified physicians who will practice medicine in an area of the United States that is underserved.
- Skilled or professional workers are defined as people with bachelor's degrees (who don't qualify under one of the higher preferences listed above), skilled workers who have at least two years of training and experience, and unskilled workers.
- Special immigrants are religious workers and employees or former employees of the U.S. government.
- Immigrant investors are people who must create or invest in an existing business, who must invest between \$500,000 and \$1,000,000 in an area with an unemployment rate of 150 percent of the national average, and who must create at least ten full-time jobs in a new business or retain employees of an existing business. There are 10,000 visas available annually for immigrant investors.

The waiting time for employment-based visas is not as long as it is for family-sponsored preference visas. For visa numbers available for January 2005, the only area where there is a backlog is for workers from China, India, and the Philippines for the third preference category, which is for skilled workers, professionals, and other workers. For these workers, the date by which the employers had to file a petition is January 1, 2002. The per-country limit is 7 percent (25,620) of the total annual family-sponsored preference limit (226,000) and employment-based preference limit (at least 140,000).

In fiscal year 2003, there were 171,532 visas available for employment-based visas. The government issued 82,137.

Immigration through diversity lottery. People from countries with low rates of immigration to the United States can apply for a visa through the diversity lottery. There are 55,000 diversity visas available annually. Of these, 5,000 are available for people from Nicaragua and Central America (mainly Cuba) under the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

The State Department randomly selects about 110,000 applicants from a pool of qualified entries. To be eligible for the diversity lottery, an applicant must be at least 18 years old and have either a high school education or its equivalent, or two years of work experience in the last five years.

Diversity visas are divided among six geographic regions: Africa, Asia, Europe, North America, Oceania, and South America and the Caribbean. The visas are divided so that the regions with lower amounts of immigration get more visas. No one country can receive more than 7 percent of the available diversity visas available in a year. Countries that have sent more than 50,000 immigrants to the United States in the last five years do not qualify for diversity visas.

In fiscal year 2003, 46,347 immigrants were admitted to the country with diversity visas. In addition, 2,577 visas were granted under the NACARA.²⁵

Other classification of immigrants. While the methods detailed above are the primary vehicles for people to immigrate to the United States, there are other ways. For example, the Legal Immigration Family Equity Act of 2000 provides special provisions for certain people to adjust their immigration status. Or, under the Violence Against Women Act (VAWA), spouses and children of U.S. citizens and LPRs can petition for legal permanent residence without their abuser's assistance or knowledge.

The Department of Homeland Security estimates the legal permanent residency population was 11.4 million in 2002.²⁶

Refugees and Asylees

Refugees can be admitted into the United States if they have fled their country of origin because they have been persecuted or they fear they will be persecuted because of their race, religion, nationality, political opinion, or membership of a social group. The main difference between refugees and asylees is where they are located when they apply for admittance into the United States. If a person is not in the United States, he or she may apply to enter the United States as a refugee; if a person is already in the United States, he or she can apply for asylum.

The United Nations High Commissioner for Refugees (UNHCR) interviews people who believe they are refugees and qualify for UNHCR protection. If the UNHCR determines a person cannot safely return to his or her home and qualifies for third-country resettlement, it may refer the person for resettlement in the United States. A USCIS representative will then interview that person and decide if that person is eligible for resettlement into the United States. People with criminal backgrounds and serious health problems are ineligible for resettlement in the United States.

The president works with Congress to set annual ceilings for refugees. For fiscal year 2004, the annual refugee admission is 70,000, divided among six regions: Africa (30,000); East Asia (8,500); Europe and Central Asia (13,000); Latin America and the Caribbean (3,500); Near East and South Asia (3,000); and 12,000 reserve.

In fiscal year 2003, 28,422 people were admitted into the country as refugees. More than a third (37 percent) of the refugees came from Ukraine, Liberia, and Iran. In the same year, 15,470 were granted asylum. More than a third (34.9 percent) of the asylees were from Colombia and China. (See the statistics section for citations and more information about refugees and asylees.)

²⁵ *Yearbook*, 20.

²⁶ Nancy F. Rytina. *Estimates of the Legal Permanent Resident Population and Population Eligible to Naturalize in 2002*. U.S. Department of Homeland Security, Office of Immigration Statistics (May 2004): 1.

Temporary Residents

Many people enter the United States as temporary visitors. These are people who come into the country temporarily for a specific reason. This could include people coming here for business or pleasure travel, to study, or to work temporarily. The USCIS classifies temporary visitors as “nonimmigrants.”

In order to be granted temporary admission as a nonimmigrant, several requirements must be met. Among the most important, the visit must be temporary, and the nonimmigrant must agree to leave the country at the end of the authorized stay.

In fiscal year 2003, there were 27.9 million nonimmigrant admissions. Most, 87.2 percent, entered as tourists or visitors for business.²⁷

Another type of temporary residency is people who are here under temporary protected status (TPS). This legal status was created by the Immigration Act of 1990 and provides temporary protected status for people displaced from their countries due to natural or manmade disasters. Grants of TPS are initially made for six to 18 months, but may be extended depending on the situation.

Illegal Immigrants

Illegal immigrants are foreign-born people who are in this country without the proper authorization; they don't have a valid visa or other necessary documentation to be here legally. These people are technically known as “undocumented aliens.”

Typically, illegal immigrants are in the country because they have snuck into the country, they have overstayed their nonimmigrant visas, or they have otherwise violated the terms in which they were admitted to the country.

The Urban Institute estimates that there are 9.3 million illegal immigrants in the country and between 75,000 and 100,000 in Minnesota. During an average year in the 1990s, the Institute estimated that between 300,000 and 500,000 illegal aliens entered the country every year.²⁸

²⁷ *Yearbook*, 78.

²⁸ Jeffrey S. Passel, Randy Capps, and Michael Fix. *Undocumented Immigrants: Facts and Figures*. Urban Institute Studies Program, January 12, 2004.

Federal Immigration Policy Over the Years

by Brenda van Dyck

The federal government regulates immigration policy for the country. Immigration policy can be seen as a sort of bellwether to social and cultural ideas about immigrants. Early laws more heavily restricted who could and could not come to this country. Later laws reflect a shift away from keeping certain people out of the country toward a policy that was more inclusive. This section highlights some of the more significant immigration laws in the country's history.

The government has tried to control immigration almost since the country's beginnings. In 1798, Congress passed the Alien and Sedition Acts, which allowed the president to deport aliens who were "dangerous to the peace and safety of the United States." The law also extended the waiting period for aliens to become citizens from five years to 14. (In 1802, this waiting period was restored to five years.)

After the Civil War, individual states began passing their own immigration laws. In 1875, the U.S. Supreme Court declared the regulation of immigration a federal responsibility. In the same year, the federal government prohibited criminals and prostitutes from coming into the country. This was the first time the government restricted immigration for people it considered undesirable.²⁹

Table 11
A Timeline of Major U.S. Immigration Laws

Chinese Exclusion Act of 1882

- Stopped immigration of Chinese laborers for ten years
- Prohibited Chinese immigrants from becoming citizens

Immigration Act of 1882

- The nation's first general immigration law
- Established central control of immigration with the Secretary of Treasury
- Imposed a 50-cent tax on aliens arriving in the United States

Contract Labor Law

- First law that made it illegal to import aliens to the United States to work

Immigration Act of 1891

- First comprehensive attempt to control immigration
- Established the Bureau of Immigration within the Treasury Department
- Further restricted who could enter the country

Immigration Act of 1907

- Incorporated and consolidated earlier immigration laws
- Required aliens to state whether they intended to stay in the United States temporarily or permanently and classified them as immigrants or nonimmigrants upon entry
- Allowed the president to refuse to admit into the country anyone detrimental to U.S. labor conditions

²⁹ In 1875 law prohibited bringing individuals from the Far East to the United States without their free and voluntary consent and made it a felony to contract to supply "coolie" labor—unskilled laborers from the Far East—to American businesses. 18 Stat. 477 (1875).

The country experienced an immigration boom in the 1880s, admitting more than 5.2 million people from 1881 to 1890.³⁰ Ninety percent of these immigrants were from Europe, with Germans, the English, and the Irish representing 60 percent of European immigrants. Also late in the 19th century, American businesses began advertising overseas for laborers who would immigrate to the United States to work on railroads, farms, and in mines.³¹ After a number of non-European immigrants began to arrive in the United States, particularly in the western portion of the country, the country responded by imposing limits on Asian immigrants. From the decade of 1860 to the decade of 1870, the number of Asian immigrants doubled.

In 1882, Congress passed the Chinese Exclusion Act, which stopped Chinese laborers from immigrating to the United States for ten years and barred Chinese immigrants from becoming citizens. These immigration and naturalization bans were later expanded to all Asians. This was the first time the government barred entry into the United States based on ethnicity. In the same year, Congress also passed its first general immigration law, which established central control of immigration through the Secretary of the Treasury. It established a 50-cent tax per immigrant to pay for immigrant regulation and care. It also restricted “convicts, lunatics, idiots, and persons likely to become public charges” from entering the country.³²

Table 11
A Timeline of Major U.S. Immigration Laws

Immigration Act of 1924

- Established the first limit on immigration; the overall limit was 150,000 annually
- Established the “national origins quota system,” which set the immigration quota at 2 percent of national origin present in the United States in 1890 (based on the 1890 census)
- Established a preference system for quotas

Immigration and Nationality Act of 1952

- Brought the multiple immigration and naturalization laws under one comprehensive statute
- Revised the quota system by changing the formula to one-sixth of 1 percent of national origin present in 1920
- Eliminated race as a factor for naturalization
- Gave preference to skilled immigrants whose services were urgently needed in the United States

Immigration and Nationality Act Amendments of 1965

- Abolished the national origins quota system and eliminated national origin, race, and ancestry as bases for immigration to the United States
- Visas granted on a first-come, first-served basis
- Established a seven-category preference system, with the higher preferences for family unification and skilled labor
- Set a total annual immigration limit of 290,000: 170,000 from the Eastern Hemisphere (with a limit of 20,000 per country) and 120,000 from the Western Hemisphere

³⁰ *Yearbook of Immigration Statistics, 2003*. U.S. Citizenship and Immigration Services, Department of Homeland Security (September 2004): 11.

³¹ *America’s Newcomers: An Immigrant Policy Handbook*. Ed. Ann Morse. (Denver: National Conference of State Legislatures, 1994): 50.

³² 22 Stat. 214 (1882).

Fear of immigrants displacing native workers in jobs drove much of the country's early immigration policy. Three years after the government barred Chinese laborers from coming to the United States, it passed the Contract Labor Law. This law made it illegal to bring immigrants to the United States under contract for doing any type of labor or service. The law excepted: aliens who were temporarily in the United States who hired other immigrants as secretaries, servants, or domestics; actors, artists, lecturers, and domestic servants; and skilled aliens working in an industry not yet established in the United States.

The government made its first comprehensive attempt to control immigration through the Immigration Act of 1891. This law established a federal entity, the Bureau of Immigration, within the Treasury Department to administer all immigration laws (except for the Chinese Exclusion Act). It further restricted people who could enter the United States to include people with contagious diseases, felons, polygamists, and people who received financial assistance to get here. The law also allowed for the deportation of any alien who entered the country illegally.

In 1903, Congress expanded the list of people inadmissible to this country to include "anarchists, or persons who believe in, or advocate, the overthrow by force or violence the government of the United States, or of all government, or of all forms of law, or the assassination of public officials." The law also allowed for the deportation of aliens who became public charges within two years after coming to this country if the causes of their poverty existed before they came here.

The first decade of the new century would bring another boom in immigration. From 1901 to 1910, almost 8.8 million people immigrated into the United States. Annual immigration peaked in 1907 at 1,285,349.³³

Table 11
A Timeline of Major U.S. Immigration Laws

Refugee Act of 1980

- Set in place the first systematic procedure for dealing with the admission and resettlement of refugees
- Set worldwide limit on immigration of 270,000, excluding refugees
- Defined the term "refugee" as defined by the United Nations Protocol on Refugees

Immigration Reform and Control Act of 1986

- Allowed illegal aliens who had been in the country since January 1, 1982, to become legalized immigrants
- Created sanctions for employers who knowingly hired illegal immigrants

Immigration Act of 1990

- Increased total annual immigration limit to 675,000
- Created "diversity" visas for people coming from countries that were disadvantaged under previous immigration laws (non-European countries)
- Created "temporary protected status" for people fleeing their countries because of armed conflict or natural disasters

Source: U.S. Citizenship and Immigration Services

³³ *Yearbook*, 11.

In 1907, Congress enacted a law that required aliens to declare if they intended to stay temporarily or permanently in the United States. It also added to the list of people who weren't allowed into the country to include "idiots, imbeciles, feebleminded persons, epileptics, insane persons," anyone who had committed a crime involving "moral turpitude," "professional beggars," children under 16 years old unaccompanied by a parent, people who were "mentally or physically defective" if the defect would affect the person's ability to earn a living, and women who were coming here for "prostitution or for any other immoral purpose."³⁴

The 1907 law allowed the president to refuse to admit people into the country if he thought their immigration would be detrimental to labor conditions in the United States. This was aimed mainly at immigrants from Japan. At the same time, the U.S. government entered into a "gentlemen's agreement" with Japan in which the Japanese government agreed to not issue passports to people who intended to come to the United States to work, while the United States agreed to allow in family members of existing Japanese immigrants.³⁵

In 1917, the country went even further by prohibiting the immigration of Asians, or people from the Asian-Pacific triangle (excluding Japan and the Philippines). Congress also required immigrants to be literate in order to enter the country.

The Immigration Act of 1924 was the first federal attempt to put numerical limits on immigration. The law established the "national origins quota system," which set quotas for immigration that favored immigrants from northern and western European countries. Immigration was based on the proportion (2 percent) of national origin groups present in the United States, based on the 1890 census. (Beginning in 1927, the benchmark year changed to 1920.) The overall limit on immigrants was 150,000. The law also barred people from coming into the country if they weren't eligible to become citizens (this mainly applied to people from Asia). The law also set up a system of preferences for immigration. In the same year, Congress established the U.S. border patrol.

The 1924 law governed immigration policy until 1952 when the Immigration and Nationality Act was passed. The 1952 law brought into one statute all the various laws that governed immigration and naturalization. It eliminated race as a factor restricting immigration by making all races eligible for naturalization. It continued the national origins quota system but changed the formula for the quotas to one-sixth of 1 percent of the number of foreign-born people in the United States in 1920. It also allowed all countries a minimum quota of 100, with a maximum of 2,000 for most natives of countries in the Asia-Pacific triangle. It repealed the ban on contract labor and established a quota preference for skilled laborers whose services were urgently needed in the United States.

The national origins quota system remained in effect until it was repealed in 1965. The Immigration and Nationality Act Amendments of October 3, 1965, eliminated national origin,

³⁴ 34 Stat. 898 (1907).

³⁵ U.S. Library of Congress. "Immigration...Japanese." *The U.S. Mainland: Growth and Resistance*. <http://memory.loc.gov/learn/features/immig/japanese3.html>.

race, and ancestry as bases for immigration to the United States. In place of national origin, immigrant visas were allocated on a first-come, first-served basis, following a seven-category preference system based on family unification and occupational skill. The law established a preference for refugees, limited to people fleeing from communist-dominated countries or the Middle East.

The law set immigration limits of 170,000 from the Eastern Hemisphere (with a 20,000 per-country limit) and 120,000 from the Western Hemisphere. In 1976, this same 20,000 per-country limit was applied to the Western Hemisphere. These two hemispheres were combined in 1978 into a total annual ceiling of 290,000.

In 1980, Congress adopted the first comprehensive law to establish procedures for admitting and resettling refugees in the United States. The Refugee Act of 1980 removed refugees as a category in the preference system, defined the term “refugee” to conform with the United Nations Protocol on Refugees, established procedures for Congress and the administration to annually set the numbers and allocations of refugees to be admitted for each fiscal year, as well as respond to emergency refugee situations, and established a domestic resettlement program for refugees. It reduced the overall immigrant quota to 270,000.

The Immigration Reform and Control Act of 1986 was an attempt to deal with illegal aliens in the United States. It authorized the legalization of aliens who had been in the United States unlawfully since January 1, 1982. It created sanctions for employers who knowingly hired, recruited, or referred aliens who weren’t authorized to work in the United States. And it increased enforcement at U.S. borders.

The last major reform of U.S. immigration laws was in 1990. The Immigration Act of 1990 increased the total immigration cap to 675,000 beginning in fiscal year 1995 (it was 700,000 in fiscal years 1992 through 1994). This represents about a 40 percent increase in the number of immigrants allowed in the country. The 675,000 are divided into the following categories: 480,000 family-sponsored, 140,000 employment-based, and 55,000 diversity immigrants. The diversity admissions category covers countries disadvantaged under the previous immigration system (non-European countries). The law increased the per-country limit from 20,000 to 25,000. It also created a “temporary protected status” for people fleeing their countries because of armed conflict or natural disasters.

Recent action on immigration policy has been aimed at illegal immigration, welfare use by immigrants, and terrorism. In conjunction with welfare reform, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This law imposed restrictions on benefits for noncitizens, increased resources for immigration enforcement and border enforcement, and changed exclusion and deportation procedures.

Constitutional Issues in State Statutes Regulating Noncitizens

by Deborah McKnight

A state's power to regulate noncitizens (called aliens in federal statutes and court cases) depends in part on the terms of the federal Constitution, in part on Supreme Court decisions protecting the federal government's exclusive authority over immigration, and in part on a federal civil rights statute that applies to noncitizens. Legislators considering a proposal that (1) would treat noncitizens, especially those lawfully present in the country, differently from citizens and (2) is not authorized or required by federal law, may want to research whether the proposal would be vulnerable to constitutional attack.

Provisions of the federal Bill of Rights use the term "person" to apply to noncitizens as well as to citizens. For example, even illegal immigrants have a right to due process before being incarcerated.³⁶ The right to just compensation for the taking of property applies at least to lawful noncitizens.³⁷ Also, because the Fourteenth Amendment guarantee of equal protection of the laws applies to "persons," the Supreme Court has held this provision applies to state regulation of both legal and illegal noncitizens, as well as to citizens.³⁸

On the other hand, federal constitutional provisions that use the term "citizen" grant rights that only apply to citizens. Because all the Bill of Rights provisions on the right to vote use the term "citizen," noncitizens do not have a constitutional right to vote.³⁹ In addition to restrictions allowed by the express terms of the federal Constitution, the Supreme Court has held that states may exclude even legal noncitizens from certain activities that are seen as core political functions, such as serving on a jury,⁴⁰ being police officers,⁴¹ or teaching in public schools.⁴²

Some state statutes have been struck down as a violation of the federal government's exclusive power under the Constitution to regulate immigration.⁴³ There appear to be two different tests a

³⁶ *Wong Wing v. United States*, 163 U.S. 228, 238, 16 S.Ct. 977, 981 (1896).

³⁷ *Russian Volunteer Fleet v. United States*, 282 U.S. 481, 51 S.Ct. 229 (1931).

³⁸ *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 1070 (1886) (invalidated discriminatory enforcement of commercial laundry ordinances against noncitizens); *Plyer v. Doe*, 457 U.S. 202, 102 S.Ct. 2382 (1982) (state may not exclude illegal noncitizen students from public schools).

³⁹ See United States Constitution, Amendments XV, XIX, XXIV, and XXVI.

⁴⁰ *Perkins v. Smith*, 370 F. Supp. 134 (D. Md. 1974), aff'd without opinion 426 U.S. 913, 96 S.Ct. 2616 (1976).

⁴¹ *Foley v. Connelie*, 435 U.S. 291, 98 S.Ct. 1067 (1978).

⁴² *Ambach v. Norwick*, 441 U.S. 68, 99 S.Ct. 1589 (1979).

⁴³ United States Constitution, Art. I, §8, cl. 4; Art. I, §8, cl. 3; *Toll v. Moreno*, 458 U.S. 1, 10, 102 S.Ct. 2977, 2982 (1982).

state statute must meet, depending on whether it regulates noncitizens lawfully in the country or those unlawfully in the country.

In reviewing a state statute that prohibited the employment of individuals with no lawful right to be U.S. residents, the Supreme Court in *Decanas v. Bica* upheld the statute because (1) it dealt with a subject (namely the regulation of working conditions) that is within the police powers of the states; (2) it did not conflict with any federal statute; and (3) no federal statute or legislative history showed a congressional intent to pre-empt the subject—and, in fact, other federal law approved appropriate state laws criminalizing knowing employment of illegal aliens.⁴⁴

In contrast, *Toll v. Moreno* indicates that states may not impose on lawful resident noncitizens restrictions not contemplated by Congress.⁴⁵ The case involved the State of Maryland's refusal to allow the children of G-4 aliens domiciled in the state to qualify for in-state university tuition. The Supreme Court found that this refusal violated the Supremacy Clause in that it conflicted with Congress's exclusive control over immigration, which also implicates congressional power over international trade and foreign relations.⁴⁶ The Court found that Congress wanted to encourage this group of noncitizens for purposes of diplomatic functions and international trade. The Congressional intent was manifested by (1) the explicit decision not to bar these individuals from establishing a domicile in the country and (2) the grant of special tax exemptions to these noncitizens through treaties, international agreements, and federal statutes. The Court found that if the State of Maryland charged the children of this group of noncitizens nonresident tuition, it would in effect wipe out the advantages Congress tried to create for them and thus violate Congress's supremacy over immigration.

Finally, a federal civil rights statute provides that all persons within the jurisdiction of the United States have the same rights in every state and territory to engage in specified civil activities and be treated the same before the law.⁴⁷ The statute applies to noncitizens and prohibits discrimination by state governments as well as private parties, though by its own terms it does not apply to the actions of the federal government. An early case decided under this statute invalidated a California statute that prohibited lawful aliens who could not become citizens from getting a commercial fishing license.⁴⁸

⁴⁴ 424 U.S. 351, 356-57, 361, 96 S.Ct. 933, 937, 939 (1976).

⁴⁵ 458 U.S. 1, 102 S.Ct. 2977 (1982).

⁴⁶ 458 U.S. 10, 102 S. Ct. 2982.

⁴⁷ 42 U.S.C. § 1981.

⁴⁸ *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 68 S.Ct. 1138 (1948).

Part 2

Agriculture: Noncitizen Farmers

by Sam Rankin

This section discusses the history of Minnesota laws governing noncitizens and farming and explains current state policy. The term “alien” is used in this section because Minnesota Statutes uses that term for the laws on farmland ownership.

Few areas of real property law or agricultural policy have been as controversial as land ownership, and especially farmland ownership, by noncitizens. Restrictions on the ability of aliens to hold and own land were embedded in the common law of England and migrated to the New World with the first English settlers. After the United States gained independence, modified versions of the common law prohibitions on alien land ownership were adopted by many states.

Early decisions by the U.S. Supreme Court held that control over regulation of landownership was primarily vested in the states. State laws governing landownership did not develop in a uniform fashion. As the nation expanded westward, various states took widely divergent approaches toward encouraging or restricting landownership by aliens.

The Minnesota Legislature has wrestled with this issue on more than a hundred occasions during the past 153 years. It has changed alien farm law more than 35 times since 1851—several of the changes represented dramatic reversals of previous policy.

Current Minnesota Policy on Alien Farmers

Minnesota Statutes, sections 500.221 and 500.222, define terms and establish the basic policy, plus specific exceptions, for alien ownership or use of Minnesota farmland. The basics are summarized below.

- ▶ Minnesota generally imposes alien landownership restrictions only on “agricultural land.” Agricultural land is defined as land that has not been zoned for nonagricultural uses by a local government unit.
- ▶ An alien renting or leasing agricultural land is treated the same as an alien purchasing or owning agricultural land.
- ▶ A person who is classified by the U.S. government as a “permanent resident alien” is not restricted by alien farmland ownership policy. The statutes define a permanent resident alien as someone who has been lawfully admitted to the United States for permanent residence or who holds a nonimmigrant treaty investment visa.
- ▶ A person who holds of a nonimmigrant treaty investment visa is only allowed to engage in dairy farming in the state, and the person must live in his or her principal dwelling place in Minnesota for ten months out of every year. The dairy farmer is limited to an interest in a maximum of 1,500 acres. Further, the person must be actively pursuing U.S.

citizenship within three years after acquiring an interest in Minnesota agricultural land.

- ▶ Every permanent resident alien and investment visa holder must file a report with the Commissioner of Agriculture within 30 days of acquiring an interest in agricultural land in the state. Additional reports must be filed in January of each year. The Department of Agriculture makes forms available for filing these reports.
- ▶ A corporation or other business entity with over 20 percent foreign ownership cannot own or operate a farm in the state, even if it is the type of entity that otherwise could do so under Minnesota's corporate farm law. There are a few narrow exceptions to foreign corporations and businesses holding an interest in agricultural land, including the following:
 - land acquired through the enforcement of a debt, but any land so acquired must be divested within three years
 - land held by a person, corporation, or business under the terms of a treaty between the United States and a foreign country
 - land used for transportation purposes by a common carrier
 - land used for research or experimental purposes that was grandfathered in at the time restrictions were re-imposed in 1977
 - tracts of land less than 40 acres that are used for pumping equipment by a foreign pipeline company
 - land held by an E-2 investment visa holder on August 1, 2003, but the person must become eligible under other provisions to continue holding the interest in land beyond August 1, 2008
- ▶ Current law specifies detailed procedures the Commissioner of Agriculture can use to enforce landownership and use restrictions on alien persons and foreign corporations and businesses.
- ▶ The law provides that a grandfathered right to retain ownership of a parcel of agricultural land can be transferred to a different parcel of land if a local unit of government and the landowner agree to exchange the land.

Chronology of Laws: Alien Farmers

1851 *Revised Statutes of the Territory of Minnesota* is adopted, borrowing heavily on the *1849 Revised Statutes of the State of Wisconsin*. This document contains an unequivocal policy statement at chapter 49, section 35, allowing aliens unrestricted rights to own land:

Any alien may acquire and hold lands, or any right thereto or interest therein, by purchase, devise, or descent; and he may convey, mortgage, and devise the same, and if he shall die intestate, the same shall descent to

his heirs; and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descent in like manner, and with like effect, as if such alien were a native citizen of this territory or of the United States.

1858 Minnesota is granted statehood.

1859 Virtually identical language concerning alien landownership is carried forward from Minnesota territorial statutes to Minnesota law as expressed in *The Public Statutes of the State of Minnesota, 1849-1858*.

1866 Editors of the *General Statutes of the State of Minnesota* for 1866 simplify the language of the alien landownership law at chapter 75, section 22, to read:

Aliens may take, hold, transmit and convey real estate; and no title to real estate shall be invalid on account of the alienage of any former owner.

1887 The legislature reverses the state's policy on landownership by aliens. This is reflected in the title of chapter 204 of *General Laws of the State of Minnesota*: "An act to restrict the ownership of real estate in the State of Minnesota to American citizens and those who have lawfully declared their intentions to become such, and so forth, and to limit the quantity of land which corporations may acquire, hold, or own."⁴⁹

- ▶ This law prohibits a person who is not a citizen, or a person who "has not lawfully declared their intentions to become" a citizen, to acquire, hold, or own real estate acquired after December 31, 1888.
- ▶ A corporation or association with more than 20 percent of its ownership held by people who are not U.S. citizens is prohibited from acquiring title to any real estate after December 31, 1888, unless the right to hold land is protected by a treaty between the U.S. government and a foreign country.
- ▶ Aliens or alien corporations who acquire the land by inheritance or by foreclosing on a mortgage or by the collection of a debt are exempted from the above prohibitions.
- ▶ Also exempted are corporations that own an amount of land necessary to operate a railway, canal, or turnpike. (The language of chapter 204 is silent about whether this exemption applies only to domestic corporations.)
- ▶ All property acquired, held, or owned in violation of the new law is forfeited to the state.

⁴⁹ This was a period of economic unrest and distress, a decade after the founding of the Patrons of Husbandry (Grange), and a time when the overwhelming economic dominance by the railroad corporations and Standard Oil was feared by virtually all farmers and others in production-level enterprises.

Laws 1887, chapter 204, may also have been a Minnesota legislative response to the federal "Territorial Land Act of 1887," which Congress passed out of concern over major investments by Europeans in large tracts of land in the newly opened territories.

1889 The legislature passes chapter 113, which amends the 1887 law to soften some of its harshest provisions and to reduce the effects of contract or title impairment brought about by an action to collect a debt, enforce a lien, or resolve other security interests. The amendments also create an additional exemption for “actual settlers upon farms of not more than one hundred and sixty (160) acres of land.” Also, a new provision explicitly exempts aliens and foreign corporations from the prohibition on “holding or acquiring” lots or parcels of land not exceeding six lots of fifty feet frontage by three hundred feet in depth each ... within and forming a part of the platted portion of an incorporated city....”

In order to be valid and binding, actions for forfeiture of land to the state must be commenced within three years after real estate has been acquired by an alien prohibited from owning land. Further, new language settles any issue regarding the title of a real property because a former owner was a prohibited alien.

1897 Chapter 112 of General Laws 1897 adds a further exception to the enforcement section reading: “...none of the provisions of this act shall apply to any person or corporation actually engaged in the business of selling land to actual settlers, provided they shall dispose of all such lands within ten (10) years from the time of acquiring title thereto, or the same shall be forfeited and the forfeiture enforced as provided in this section.”

1905 The legislature contracts to have the text of Minnesota statutes and laws edited, compiled, and adopted as Revised Laws Minnesota 1905. Alien ownership restrictions that were previously located at section 5875 to 5879 are codified in chapter 59 as sections 3235 to 3239. During codification the language is reorganized and simplified, but the meaning remains essentially the same as that passed in 1887 and amended in 1889 and 1897.

1907 Chapter 439 of General Laws of Minnesota for 1907 amends the 1905 codification to provide that an alien or corporation selling land to “actual settlers” must dispose of all property held at the time of enactment of the amendment (1907) by 1917.

1911 Laws of Minnesota for 1911, chapter 130, creates a new provision allowing persons or corporations “actually engaged in manufacturing in the State of Minnesota” to hold land reasonably necessary for carrying on its business. However, within ten years after any part of the land ceases to be used for purposes of its business, the corporation must dispose of the excess land.

1927 *Mason’s Minnesota Statutes, 1927*, a major restructuring and recodification of Minnesota law, moves the sections relating to alien landownership to chapter 59, sections 8076 to 8080. The 1927 recodification does not make significant policy changes.

- 1939** The newly appointed “Revisor of Statutes” is instructed to codify Minnesota laws passed since 1905 and publish them as Minnesota Statutes. Over a period of several years, the Revisor’s Office organizes statutes and laws with a new numbering system. Some of the drafts of statutes were printed but never officially enacted. Nonetheless, the language and organizational structure of the statutes is modernized by 1941, again with a minimum of substantive policy changes. Restrictions on landownership by aliens and non-American corporations are rewritten and become section 500.22.
- 1945** The 1941 statute, section 500.22, is rewritten again to correct technical errors and to remove the exception for persons or businesses selling lands to actual settlers. Also, the 5,000-acre limitation on corporations owning land now applies only to corporations engaged in farming operations.
- 1947** An amendment adds railroad corporations to the list of persons and businesses exempted from the prohibition on owning farmland.
- 1953** An amendment adds “common carriers” to the list of persons and businesses exempted from the prohibition on owning farmland.
- 1959** Amendments to the alien ownership clause validates the ownership of lands received by an alien in the dissolution of the assets of a corporation. Of much greater significance, section 500.22, subdivision 2, is repealed. This subdivision had prohibited ownership of Minnesota land by a corporation with greater than 20 percent foreign stockholders. The effect was to apply a 90,000-square-foot ownership limit (from subdivision 1, which was not repealed) on all aliens and all corporations not chartered in the United States. Domestic corporations engaged in farming, on the other hand, were capped at 5,000 acres of Minnesota land.
- 1971** A major new section of statute (500.23) requires that foreign (alien) and domestic corporations that own or lease agricultural land and use it for growing crops or keeping poultry or livestock must annually report their status and holdings to the Secretary of State.
- 1973** Subdivisions 3, 4, and 5 of Minnesota Statutes, section 500.22 (which had dealt with both alien ownership and corporate ownership in the same section) are repealed and the restrictions on corporate ownership are rewritten as a new section 500.24. Section 500.23 (which had been created just two years before) is also repealed, and the policy of requiring annual reports from corporations owning or leasing farmland is incorporated into the new section 500.24. Annual reports are to be made to the Commissioner of Agriculture rather than the Secretary of State. At this time the remaining restriction on aliens is contained in section 500.22, subdivision 1, which reads:

Except as hereinafter provided, no person, unless he be a citizen of the United States or has declared his intention to become a citizen, and no corporation, unless created by or under the laws of the United States or some state thereof, shall hereafter acquire lands, or any interest therein, exceeding 90,000 square feet, except such as have been or may be acquired by devise or inheritance, or by a distribution to stockholders of any assets of a corporation upon dissolution of the corporation or otherwise, and such as may be held as security for indebtedness. The provisions of this section shall not apply to actual settlers upon farms of not more than 160 acres, or to citizens or subjects of a foreign country whose rights to hold land are secured by treaty.⁵⁰

- 1977** Existing restrictions on Minnesota landownership by aliens and non-American corporations (consisting of section 500.22, subdivision 1) are repealed and a new section is created to deal with alien landownership policy.
- ▶ Much of the restrictive language repealed in 1959 and 1973 is reenacted as section 500.221. Once again, non-American corporations are defined as those with less than 80 percent of each class of stock held by citizens or permanent resident aliens of the United States.
 - ▶ One significant variation from the pre-1973 law is that the newly re-enacted restrictions apply only to “agricultural land,” which is defined to exclude land zoned for nonagricultural purposes.
 - ▶ Existing alien landowners (individual and corporate) are grandfathered in. A few exemptions remain (such as for aliens or non-American corporations using land for transportation or common carrier purposes).
 - ▶ Any interest in agricultural land acquired by an alien person or a non-American corporation through enforcement of a debt must be disposed of within three years after the interest is acquired.
 - ▶ Alien owners of agricultural land (individuals, corporations, and those operating under any other business structure) are required to submit a detailed initial report (within 90 days after enactment of the law), and other reports annually, to the Commissioner of Agriculture. Information in the reports is to be made available to the public.
- 1978** Ownership restrictions for domestic corporations are changed to exclude the production of poultry or poultry products from the definition of farming, thus allowing vertically integrated corporations in the poultry business to own or lease Minnesota farmland. However, the definition of land restricted for use by aliens and non-American corporations continues to read “land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products....”

⁵⁰ Note that the restriction on alien ownership is applicable to all Minnesota land, not just farmland.

- 1981** Alien ownership restrictions in section 500.221 are tightened.
- ▶ A permanent resident alien owner must actually reside within the United States for at least six months out of each 12-month period.
 - ▶ New provisions require divestiture of an interest in agricultural land within one year after an individual or corporation fails to qualify as an alien authorized to own farmland. In certain circumstances the Commissioner of Agriculture can extend the time period allowed for divestiture.
 - ▶ The Commissioner of Agriculture is given authority to investigate (with subpoena power) any information leading the commissioner to believe that a violation of alien ownership may exist.
 - ▶ Corporate ownership restrictions are applied to pension or investment funds and family trusts. Some existing holdings by family trusts are grandfathered in.
- 1983** An amendment to the alien corporate ownership provisions allows a non-American corporate pipeline company to own 40-acre parcels of land as sites for pumping stations.
- A separate amendment increases the fee for filing the required annual report from \$35 to \$50 and adds an additional fee of \$10 for each additional quarter section of land reported.
- 1989** Aliens or non-American corporations involved in vegetable processing are allowed to own agricultural land if the land is necessary to meet pollution control laws or rules.
- 1996** A new exemption from alien landownership restrictions allows a corporation organized under the laws of Minnesota to hold an interest in land for the production of timber and forestry products. Pending development of the land for the production of timber and forestry products, the land must not be used for farming except under lease to an entity authorized to farm in the state.
- 2002** A new section of law allows for the transfer of real estate between an alien landowner (that owner being grandfathered in because the land was acquired prior to June 1, 1981) and a local unit of government in such a way that the alien owner of the land being transferred will secure the same ownership rights to own the newly acquired land.
- 2003** An amendment provides that an alien who held an interest in agricultural land as of May 28, 2003, and had a nonimmigrant treaty investment visa, would have five years to dispose of the property or become a U.S. citizen or a permanent resident alien.
- 2004** An amendment to the definition of “permanent resident alien” opens eligibility for certain aliens to farm if they hold a nonimmigrant treaty investment visa. These visa holders may engage only in dairy farming, only on no more than 1,500 acres, and within three years they must be actively pursuing U.S. citizenship. They must report any land purchase activity to the Commissioner of Agriculture within 30 days.

Criminal Laws

by Jeffrey Diebel and Jim Cleary

This section discusses the applicability of state and federal criminal laws to noncitizens. It includes a discussion on criminal convictions that can lead to a noncitizens deportation and in what circumstances a noncitizen may possess a firearm.

Minnesota Law

Minnesota's criminal laws apply equally to citizens as well as noncitizens. Likewise, citizens and noncitizens are both entitled to the same constitutional protections that are intended to provide criminal defendants with fair and speedy trials, including public defense for financially eligible defendants.⁵¹ The penal consequences of a criminal conviction are also the same for citizens and noncitizens. However, the collateral consequences of a Minnesota criminal conviction can differ significantly for citizens and noncitizens. The fundamental difference is that noncitizens may be deported as a consequence of certain criminal activity. As discussed below, federal immigration law calls for the deportation of noncitizens as a consequence of both federal and state criminal convictions for certain offenses.

The Minnesota Legislature has enacted two laws that are intended to help federal immigration officials learn when a noncitizen is convicted of a felony in Minnesota. Minnesota law mandates that when any person is convicted of a felony in Minnesota and is sentenced to jail or prison, the person in charge of the prison or jail must inquire about the nationality of the person. If the jailer believes the person is an alien, the jailer is obligated to contact the U.S. immigration officer in charge of the district where the person is incarcerated. The jailer must provide the immigration officers with (1) the date of and the reasons for the alien's commitment, (2) the length of time for which the alien is committed, (3) the country of which the alien is a citizen, and (4) the date on which and the port at which the alien last entered the United States.⁵²

Minnesota law also requires court officials to cooperate with immigration officials investigating noncitizen felony convictions. If a U.S. immigration officer requests a copy of the complaint or indictment, the judgment, sentence, or any other record pertaining to the felony conviction of an alien, the court administrator must provide the officer with a certified copy of the requested document at no charge.⁵³

⁵¹ See *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982); *Shaughnessy v. Mezei*, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956 (1953); *Wong Wing v. United States*, 163 U.S. 228, 16 S.Ct. 977, 41 L.Ed. 140 (1896).

⁵² Minn. Stat. § 631.50.

⁵³ Minn. Stat. § 631.51.

Federal Law

Under federal immigration law, noncitizens are subject to removal from the country for a wide range of state and federal criminal acts. Foremost, conviction for a crime of moral turpitude is grounds for removal of a noncitizen.⁵⁴ A crime of moral turpitude involves an act that is intrinsically evil or wrong.⁵⁵ Common examples of crimes that involve moral turpitude include murder, sexual assault, arson, assault with a weapon, and criminal fraud.

Another large category of crimes for which a conviction constitutes grounds for removal is known as “aggravated felonies.”⁵⁶ There are 21 aggravated felonies including all of the most common heinous, violent, and serious felonies (e.g., murder, drug trafficking, burglary, etc.). Included in the list are “crimes of violence,” for which the term of imprisonment is at least one year. This is a very broad subcategory as indicated by its definition:

[A]n offense the commission of which includes as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that in commission of it, physical force against a person or property may be used.⁵⁷

There are also other criminal grounds for removal of a noncitizen provided for in federal law.⁵⁸ This list includes drug offenses, illegal possession or attempted possession of a firearm, domestic violence crimes, and a variety of federal crimes. *Id.* The totality of all these provisions demonstrates that more often than not, a noncitizen’s criminal conviction, particularly if it is a felony, will constitute grounds for removal of the person from the United States. As with most immigration issues, each case is unique and this discussion only offers the reader a limited summary of the crimes that can lead to removal. There is a wide array of additional issues that are relevant to assessing whether a person will be removed or deported from the country based on a criminal conviction.

Firearms and Noncitizens

Minnesota law places restrictions on the possession of firearms by noncitizens. First, it is unlawful for illegal aliens to possess a handgun, assault weapon, or any other type of firearm in Minnesota.⁵⁹ An illegal alien who violates the prohibition on possession of firearms typically

⁵⁴ 8 U.S.C. § 1227(a)(2)(A)(i) and (ii).

⁵⁵ *Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994), *aff’d*, 72 F.3d 571 (8th Cir. 1995).

⁵⁶ 8 U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. § 1101(a)(43).

⁵⁷ 8 U.S.C. § 1101(a)(43)(F).

⁵⁸ 8 U.S.C. § 1227(a)(2).

⁵⁹ Minn. Stat. § 624.713, subd. 1, cl. (j)(5).

commits a gross misdemeanor.⁶⁰ However, under certain circumstances the illegal alien may be guilty of a felony.⁶¹

Second, chapter 624.719 of Minnesota Statutes prohibits any “nonresident alien” from possessing a firearm “except to take game as a nonresident under the game and fish laws.” The game and fish laws define “resident” as any U.S. citizen or resident alien who has maintained a legal residence in the state for at least the immediately preceding 60 days prior to applying for a fish or game license.⁶² For fish and game purposes, a nonresident is anyone who does not fall within the definition of resident.⁶³ (See page 80 for information on hunting and fishing licenses.)

In other words, if a person is a *legal* resident alien (noncitizen), that person may possess firearms but only for hunting. If a legal resident alien is found in possession of a firearm for any other purpose, the firearm is contraband and may be confiscated by law enforcement.⁶⁴ However, there are no criminal penalties prescribed for this conduct. On the other hand, because *illegal* aliens are not “resident aliens,” they may not possess firearms even for hunting game.

Finally, under the Minnesota Personal Protection Act of 2003 (MPPA), a noncitizen is ineligible to obtain a permit to carry a handgun unless the person is a “permanent resident of the United States.”⁶⁵ However, a Minnesota District Court Judge recently ruled the MPPA as unconstitutional. Unless the ruling is overturned upon appeal, the MPPA is no longer applicable to issuing pistol carry permits in Minnesota.

The void left by the court’s ruling on the MPPA is occupied by the laws governing the issuance of permits to carry handguns that were in statute before the legislature enacted the MPPA. Under those laws, only illegal aliens were expressly barred from receiving a permit to carry a handgun.⁶⁶ Nevertheless, as discussed earlier, section 624.719 prohibits all nonresident aliens from possessing firearms for any purpose (except that a legal nonresident alien may possess a firearm for the purpose of hunting). Thus, not even a legal nonresident alien may obtain a permit to carry a pistol.

The Federal Gun Control Act of 1968 (GCA) prohibits illegal aliens from purchasing or possessing all types of firearms.⁶⁷ In 1999, Congress amended the federal GCA to also prohibit, with certain exceptions, the transfer to and possession of firearms by aliens admitted legally to the United States under a “nonimmigrant visa.”⁶⁸ In essence, nonimmigrant aliens are a new

⁶⁰ Minn. Stat. § 624.713, subd. 2(c).

⁶¹ Minn. Stat. § 624.713, subd. 2(a) (defendant under age 18 in possession of a pistol or assault weapon), and subd. 2(b) (defendant previously convicted of a crime of violence in possession of any firearm).

⁶² Minn. Stat. § 97A.015, subd. 42. Also see clauses (1) to (4) for additional categories of “resident.”

⁶³ Minn. Stat. § 97A.015, subd. 33.

⁶⁴ Minn. Stat. § 624.719.

⁶⁵ Minn. Stat. § 624.714 (2003).

⁶⁶ Minn. Stat. § 624.714, subd. 5 (2002).

⁶⁷ 922 U.S.C. 18, subd. d, para. 5.

⁶⁸ Section 121 of Public Law 105-277, the Omnibus Appropriations Act for 1999.

category of prohibited persons for gun control purposes. This category—nonimmigrant aliens—includes, in large part, persons traveling temporarily in the United States for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain foreign workers.

Exceptions to this federal firearms prohibition for nonimmigrant aliens are:

- 1) nonimmigrant aliens who possess a valid hunting license issued in the United States, or who enter the United States to participate in a competitive target shooting event or to display firearms at a sports or hunting trade show;
- 2) certain diplomats, foreign government officials, foreign law enforcement officers, and distinguished visitors, each of whom must be approved by the State Department; and
- 3) persons with a waiver from the U.S. Attorney General.

Note that the definition of nonimmigrant alien *does not include* permanent resident aliens (i.e., aliens with a green card).

Note also that federal law generally regulates firearms ammunition in the same manner as firearms.

Education for Noncitizens

by Lisa Larson and Kathy Novak

This section discusses K-12 and higher education for noncitizen students. It includes information on K-12 education requirements affecting noncitizen students, numbers of noncitizen students in schools, and languages spoken. The higher education section provides information on student visas, data collected about noncitizen students, tuition, and financial aid.

Noncitizen students in Minnesota's K-12 public schools

Students who are foreign-born, whose native language is not English, and whose families may speak any one of about 80 languages currently attend Minnesota elementary and secondary schools. The students vary greatly in terms of former and current socioeconomic status, prior education, and literacy in their native language. School districts in small rural communities and large urban centers must teach the students English, provide learning opportunities that accommodate cultural differences, ensure that all students acquire basic reading, math, and writing skills, and counteract the trend that low-income students of color tend to achieve lower standardized test scores than other students. Immigrant or noncitizen students, including children of undocumented immigrants, are subject to the state's compulsory attendance law and must attend school.

Noncitizen Students' Right to a Public Education

Under the 1982 U.S. Supreme Court decision in *Plyler v. Doe*, undocumented children who are not legal residents of the United States have the same right as citizens and permanent residents to attend public school through grade 12. The Texas statute challenged in *Plyler* denied funds to Texas school districts for the costs of educating children not "legally admitted" to the United States and allowed districts to refuse to enroll such children.

The Court based its decision on the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, finding that residency requirements were constitutional only if properly defined, uniformly applied, and designed to further a substantial state interest. The Court, concerned that denying undocumented children access to an education severely punished the children for their parents' behavior, found that the Texas residency requirements did not meet these tests. The decision gives all immigrant students access to public schools, regardless of immigration status, and prevents improper distinctions between documented and undocumented students.

As a result of the *Plyler* decision, schools must not:

- ▶ refuse to admit students based on their immigration status;
- ▶ treat undocumented students in a fundamentally different way from other students;
- ▶ engage in practices that make undocumented students and their families fearful and dissuade them from enrolling in school or in programs to which they are entitled;

- ▶ require students or their families to disclose their immigration status or make inquiries of students and their families that may reveal their status; and
- ▶ require students to provide Social Security numbers.

The federal Family Educational Rights and Privacy Act (FERPA) prohibits schools from providing information about students' undocumented status to outside agencies, including the Department of Homeland Security, without parents' consent or a valid court order. Public school personnel are not required to enforce U.S. immigration laws.

Although schools must not ask about students' immigration status, the schools can verify students' residence for school attendance purposes. Schools may ask immigrant families, for example, to provide rent receipts or utility bills to establish residency in the school district. "Residency" for school attendance purposes is different from "residency" for immigration purposes. Schools may not ask immigrant children to provide a green card, visa, passport, alien registration number, Social Security number, nor any other proof of citizenship or immigration status in order to register for school. Schools may ask for a birth certificate or similar document to establish students' age and may ask for a medical history to determine whether students have been immunized against certain diseases.

Noncitizen Students in Special Programs

Public schools must provide non-English speaking, noncitizen students with special programs to help the students develop language and literacy skills and learn what other students are learning. Schools must continue to help noncitizen students in English as a second language and bilingual education programs until they develop sufficient language skills to fully compete with native English speakers.

Undocumented students attending public school may participate in various publicly funded education-related programs, including immigrant and migrant education programs, special education programs, early childhood programs, compensatory education programs, free and reduced price meal programs, and English language programs. Students sometimes may be asked to prove their date of birth and date of entry in the United States but need not be individually identified as undocumented immigrants as a condition of participation. The services provided under such programs may include additional reading and math help, help with basic language and literacy skills, student counseling, tutoring, and summer school instruction. Immigrant families' fear of and unfamiliarity with schools and school districts, language barriers, and schools' lack of resources may prevent schools from meeting the educational needs of immigrant students.

Noncitizen Student Enrollment

According to the Minnesota Department of Education (MDE), noncitizen students represented 2 percent of the entire K-12 student population in the 2003-04 school year.⁶⁹ Although noncitizen

⁶⁹ This compares to a total noncitizens population estimate of 3.6 percent of state residents.

students comprise a relatively small percent of all students, the numerical rate of their increase between school years was substantial. For example, between the 2002-03 and 2003-04 school years, the number of noncitizen students enrolled in school increased by 32.7 percent, compared to an overall student enrollment increase of 0.6 percent. Table 12 shows the annual increase in noncitizen K-12 enrollment for the last three years.

Table 12							
Number of Noncitizen K-12 Students and All K-12 Students, by School Year							
	2000-01	2001-02	% change	2002-03	% change	2003-04	% change
Noncitizen students*	9,313	11,614	24.7%	15,414	32.7%	16,232	5.3%
Total enrollment**	845,050	841,697	-0.4%	836,854	0.6%	832,039	-0.6%
Noncitizens as a percentage of all students	1.1%	1.4%		1.8%		2.0%	

* Noncitizen student counts include some students enrolled in nonpublic schools.
 ** Enrollment numbers are taken from the MDE Student Data Center, fall enrollment reports. Enrollment numbers result from a fall count of public school students in kindergarten to 12th grade.
 Source: Minnesota Department of Education

Noncitizen Student Languages

The MDE compiles data on the languages spoken by students in Minnesota schools. During the 2003-04 school year, nearly 80 languages were spoken by students in Minnesota public schools. English was the primary language spoken at home for more than 90 percent of students. The top non-English languages spoken at home were Spanish and Hmong. (For more information on languages spoken in Minnesota homes, see the appendix.)

Table 13		
Top Ten Primary Languages Spoken at Home		
2003-04 School Year		
Language	Students	% of Total
English	754,933	90.7%
Spanish	26,065	3.1%
Hmong	21,613	2.6%
Somali	5,734	0.7%
Vietnamese	2,910	0.3%
Russian	2,346	0.3%
Laotian	2,258	0.3%
Cambodian	1,718	0.2%
Chinese	1,581	0.2%
Arabic	1,020	0.1%

Source: Minnesota Department of Education

Noncitizen students in Minnesota’s higher education system

Admission to the Country and Visa Classifications

Federal law governs the admission of foreign students to the United States to pursue higher education. Student visas are issued by U.S. consuls, which must consider the applicants’ permanent ties to their homelands and their intentions to depart the United States after their studies. U.S. consuls must also consider the applicants’ proficiency in English and access to sufficient funds to cover expenses throughout the period of their studies. The applicant must present credible evidence that the funds are available for all expenses during the first year and will be available for subsequent years of study. In addition, a foreign student must be accepted by a higher education institution and meet the educational criteria of that institution.

Table 14
Student Visa Classifications for Higher Education

Visa classifications for bona fide students who are U.S. aliens with a residence in a foreign country that the alien has no intention of abandoning.*	
F-1	Full-time student enrolled in a college, university, seminary, conservatory, academic high school, private elementary school, other academic institution, or language-training program
F-2	The alien spouse and minor children accompanying or joining an F-1 visa holder
J	A bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or person with specialized knowledge in a program designated by the U.S. Information Agency. This classification includes participants in graduate medical education and the alien spouse and minor children accompanying or joining the visa holder.
M-1	A student pursuing a full course of study at an established vocational or other recognized nonacademic institution that has been approved by the U.S. Attorney General. These institutions include flight training schools. Participating institutions must agree to report the termination of attendance of visa holders.
M-2	The alien spouse and minor children accompanying or joining an M-1 visa holder.
* Higher education institutions may also be concerned with the H visa category, which governs specialty occupations.	

Information Collected about Noncitizen Students

State law does not govern admission to public postsecondary education or the information that is collected from applicants. The application forms of Minnesota’s two public higher education systems—the University of Minnesota and the Minnesota State Colleges and University (MnSCU)—require information on the applicant’s residency, citizenship, and visa status. Application forms also request an applicant’s Social Security number as an optional piece of information. MnSCU requires international students and nonimmigrants to complete separate application forms. Admission to Minnesota’s public postsecondary institutions does not depend on being a legal resident of the United States.

Federal Reporting on International Students

In 1996, Congress mandated an automated reporting system for international students, faculty, and researchers. The development of this system was accelerated after September 11, 2001. The USA Patriot Act reestablished the January 30, 2003, implementation deadline for the SEVIS reporting system (Student and Exchange Visitor Information System) for students with F and M visas. Postsecondary institutions must be certified to enroll in SEVIS. SEVIS requires institutions to update the following information on international students:

- ▶ failure to maintain enrollment status or complete a program
- ▶ change in a student's name or U.S. address
- ▶ early graduation
- ▶ the institution's disciplinary actions related to criminal conviction
- ▶ other information requested by SEVIS on student status

Educational Benefits – Resident and Nonresident Tuition

A federal law passed in 1996 prohibits an illegal alien from receiving higher education benefits based on residence in a state unless the benefit is available in the same amount, duration, and scope to any U.S. citizen or national.⁷⁰ Under this law, undocumented students living in Minnesota are ineligible for resident tuition rates.

Nonresident tuition rates at most public colleges and universities in Minnesota are up to twice the resident rate of tuition. Minnesota state law does not establish resident and nonresident tuition rates or eligibility criteria for resident and nonresident rates. Minnesota law establishes criteria for payment of state appropriations to the governing boards of the University of Minnesota and MnSCU. These criteria are based on Minnesota residency and include:

- ▶ students who reside in the state for one or more calendar years before applying for admission;
- ▶ dependent students with a parent or guardian who resides in the state at the time of application;
- ▶ Minnesota residents who were temporarily away from the state without establishing residency elsewhere;
- ▶ migrant farm workers in Minnesota over a period of two years immediately prior to admission or their dependents; and
- ▶ persons who relocated to Minnesota for employment or their dependents and spouses.⁷¹

The governing boards of MnSCU and the University of Minnesota set tuition policy, approve tuition rates, and establish or approve eligibility criteria for payment of resident tuition. The policies are based on the definitions used in the payment of state appropriations. The policies also provide other exemptions from nonresident tuition. For example, MnSCU board policies

⁷⁰ 8 U.S.C. § 1623.

⁷¹ Minn. Stat. § 135A.031, subd. 2.

allow resident tuition for refugees under federal law and authorize MnSCU institutions to adopt policies to exempt nonimmigrant international students from nonresident tuition. Several MnSCU institutions operate under a board-approved tuition waiver programs that authorize a single tuition rate for resident and nonresident students. These campuses can charge resident tuition to undocumented students without being in violation of federal law. The University of Minnesota also has policies providing exemptions to the nonresident classification. None of the exemptions are based on citizenship or immigration status.

Financial Aid

Federal financial aid is provided to eligible undergraduate postsecondary students who are U.S. citizens or eligible noncitizens.⁷² Eligible noncitizens are U.S. nationals, permanent U.S. residents with an alien registration receipt card (a green card), and persons granted refugee, asylum, indefinite or humanitarian parole, Cuban-Haitian entrant, or conditional entrant (pre-1980). All financial aid recipients must have a valid Social Security number.

Minnesota financial aid, through the state grant program, is provided to eligible undergraduate postsecondary students who meet the federal residency requirements and the definition of resident student in state law. To be eligible for a state grant, a Minnesota student must meet one of the following residency criteria:

- ▶ reside in Minnesota for 12 months or more without being enrolled at a postsecondary institution for more than five credits in a term
- ▶ be a dependent student whose parent or guardian lives in the state at the time of application
- ▶ be a graduate of a Minnesota high school who resided in Minnesota while attending high school
- ▶ earned a high school equivalency certificate in Minnesota after residing in the state for at least one year⁷³

⁷² Higher Education Act of 1965, Title IV, Part A, Subpart 1, as amended.

⁷³ Minn. Stat. § 136A.101, subd. 8.

Employment Issues

Minnesota employment laws address noncitizens in terms of unemployment insurance, workers' compensation, employment contracts, and employment assistance programs.

Unemployment Insurance

Generally, employees who have been laid off or terminated can receive unemployment insurance benefits from the state. Minnesota law stipulates that in order for a noncitizen to receive unemployment insurance, he or she must be in this country lawfully, must have been admitted to the country to work, and must be permanently residing in the United States. A noncitizen is not eligible for unemployment insurance for any week he or she was not authorized to work in the United States. Any information that noncitizens must provide to determine their eligibility for unemployment benefits must be required from all applicants for unemployment benefits.⁷⁴

Workers' Compensation

Employees who have suffered work-related injuries or diseases are entitled to certain benefits, or workers' compensation, from their employers. Noncitizens are covered under Minnesota's workers compensation law, as explained in Minnesota Statutes, chapter 176. The law defines "employee" to mean a person who performs a service for hire and includes "alien" in the definition of "employee."⁷⁵

If an alien dies on the job and leaves no dependents in the United States, the Commissioner of Labor and Industry has to give written notice of the death to the consul or other representative of the foreign country the alien is from.

Employment Contracts

Contracts for materials, supplies, or construction for or on behalf of the state government must contain provisions prohibiting the contracts from discriminating against employees on the grounds of race, creed, or color.⁷⁶ This applies to resident aliens who are qualified to work and are available to perform the work the employment requires. This applies to all subdivisions of state government, including counties, cities, towns, townships, schools, school districts, or any other districts in the state. (Noncitizens are also covered under the state's Human Rights Act; see page 67.)

⁷⁴ Minn. Stat. § 268.085, subd. 12.

⁷⁵ Minn. Stat. § 176.011.

⁷⁶ Minn. Stat. § 181.59.

Employment Assistance Programs

Some noncitizens are eligible for a variety of state and federally funded employment assistance programs. Eligible noncitizens are legal permanent residents, refugees and parolees, and other individuals authorized by the U.S. Attorney General to work in the United States. The following programs are administered by the Minnesota Department of Employment and Economic Development.

Workforce Investment Act (WIA). The Federal law, WIA, offers services for adults and youth. The adult program provides employment and training assistance to adults to increase their employment, earnings, and occupational skills. It offers services including job opening information, classroom and on-the-job training, vocational and personal counseling, labor market information, assessment, and various supportive services.

The WIA program for youth offers services to economically disadvantaged and at-risk youth, between the ages of 14 and 21. It offers a variety of educational, training, employment, and support services.

Dislocated Worker Program. This program offers services to dislocated workers so they can return to the labor force. Dislocated workers are people who have been laid off from their jobs because of a change in market demand or an increasing qualification requirement, and who face challenges finding a comparable job. Services include career planning, training and retraining, job seeking assistance, and support services. It is funded by both the state and federal governments.

Senior Community Service Employment Program (SCSEP). SCSEP is a federal program that provides part-time community service jobs for people 55 years old or older who have earnings of less than 125 percent of the federal poverty guidelines. The jobs provide training and experience to acquire or improve skills, so the senior can find unsubsidized employment after the community service job is completed.

Food Support Employment and Training Program (FSET). FSET provides job-related services to people who get food support assistance but no other cash assistance. In return for monthly food support, participants must comply with work requirements. Services provided include education, training, and support services. FSET is funded by both the state and federal governments, and jointly administered by the Minnesota Departments of Employment and Economic Development and Human Services. (For information about the Food Stamp program, see the health and human services section.)

Trade Adjustment Act Program (TAA). TAA is a federally funded program that assists workers who have lost their jobs because of increased imports or foreign competition. Services include training, job search assistance, relocation assistance, and cash benefits.

Health and Human Services

by **Randall Chun, Danyell Punelli, and Don Hirasuna**

This section describes noncitizens eligibility for a variety of state and federal health care and social services programs. Specifically, it provides information on how the eligibility of noncitizens for health and social services programs is determined, the number of noncitizens receiving health care and social services, and services for the new Hmong refugees. It also includes data on noncitizen recipients' use of the Minnesota Family Investment Program.

Determination of noncitizen eligibility for health care and social services

The eligibility of noncitizens for health care and social services programs depends on their U.S. Citizenship and Immigration Services (USCIS) status and varies among programs. For some USCIS statuses, eligibility also depends on when the immigrant entered the United States. Generally, undocumented persons and nonimmigrants⁷⁷ are not eligible for most programs, except for coverage of emergency services through Emergency Medical Assistance and coverage of services through the end of a pregnancy through Emergency Medical Assistance or Medical Assistance.

The table below describes general eligibility requirement for state and federal health care and social services programs. See Table 17 and 18 for more detailed information about eligibility.

Table 15
Noncitizen Eligibility Requirements for State and Federal Programs

Program	Noncitizen Eligibility Requirements <small>Note: U.S. citizens who meet eligibility requirements are eligible for all listed programs.</small>
General Assistance (GA)	<p>Must be a legal noncitizen lawfully residing in the U.S. to be eligible.</p> <p>Legal adult noncitizens who are under age 70 and have lived in the U.S. for at least four years must also meet certain requirements related to English literacy or application for U.S. citizenship.</p> <p>Undocumented persons and nonimmigrants are not eligible.</p>
Minnesota Family Investment Program (MFIP)	<p>Must be a qualified alien or noncitizen otherwise lawfully residing in the U.S. (see Table 18).</p> <p>Noncitizens who are not eligible for federally funded welfare benefits may be eligible for state-funded MFIP benefits. (See Table 18.)</p>

⁷⁷ For definitions of these and other immigration terms, please see the glossary on page 81.

Program	Noncitizen Eligibility Requirements Note: U.S. citizens who meet eligibility requirements are eligible for all listed programs.
	Undocumented persons and nonimmigrants are not eligible.
Minnesota Supplemental Aid (MSA)	<p>Noncitizens may be eligible under some circumstances (see Table 18).</p> <p>Undocumented persons and nonimmigrants are not eligible. Persons who are not eligible for the federal SSI program because of their noncitizen status are not eligible.</p>
Supplemental Security Income (SSI)	<p>Must be a lawful permanent resident who has, or can be credited with, 40 qualifying quarters of work.</p> <p>Legal noncitizens who received SSI benefits on August 22, 1996, or who were residing in the U.S. on that date and later became disabled, are eligible.</p> <p>Refugees, asylees, and aliens whose deportation has been withheld, Cuban or Haitian entrants, or Amerasian immigrants are eligible for seven years after entering the U.S.</p>
Food Stamps (FS)	<p>Legal noncitizens may be eligible if they fall into one of the categories specified under federal law (see Table 18).</p> <p>Noncitizens who are not eligible for federally funded FS may be eligible for state-funded food assistance. Undocumented persons and nonimmigrants are not eligible. (See Table 18).</p>
Emergency General Assistance	<p>Legal noncitizens may be eligible under certain circumstances (see Table 18).</p> <p>Legal noncitizens who have been denied or terminated from SSI due to noncitizen status are not eligible.</p> <p>Undocumented persons and nonimmigrants are not eligible.</p>
General Assistance Medical Care (GAMC)	<p>Noncitizens who are in the U.S. lawfully and meet residency requirements, but do not have a basis for MA eligibility, may be eligible for GAMC (see Table 17).</p> <p>GAMC does not provide coverage for nonimmigrants and undocumented persons. The 2003 Legislature eliminated GAMC coverage for nonimmigrants and undocumented persons who are under age 18, age 65 or over, blind, or disabled, effective July 1, 2003. The 2003 Legislature also eliminated emergency GAMC coverage for all other nonimmigrants and undocumented persons, also effective July 1, 2003. Nonimmigrants and undocumented persons who meet MA eligibility criteria, such as children under age 21, parents of children under age 18, people who are age 65 or older or blind or disabled, may be eligible for treatment of emergency medical conditions (including labor and delivery costs for pregnant women) under Emergency MA.</p>

Program	Noncitizen Eligibility Requirements Note: U.S. citizens who meet eligibility requirements are eligible for all listed programs.
Medical Assistance (MA)	<p>Noncitizens who are in the U.S. lawfully may be eligible to receive either federally funded or state-funded MA, depending upon their immigration classification and date they entered the U.S. (see Table 17). In general the state provides MA coverage for all groups of noncitizens for which MA eligibility is mandatory or optional under federal law.</p> <p>Nonimmigrants and undocumented persons are eligible only for coverage of emergency services (under Emergency MA) and prenatal and postpartum services (under state-funded MA or the State Children’s Health Insurance Program (SCHIP)). To obtain these services, they must meet all other MA requirements except for citizenship and immigration status.</p>
MinnesotaCare	<p>Noncitizens who are in the U.S. lawfully may be eligible to receive either federally funded or state-funded MinnesotaCare, depending upon their immigration classification and date they entered the U.S. (see Table 17). In most cases, federally funded MinnesotaCare is available for the same groups of individuals listed as potentially eligible for MA with federal financial participation (FFP), and state-funded MinnesotaCare is available for the groups listed as potentially eligible for MA without FFP.</p> <p>Nonimmigrants and undocumented persons are ineligible for both federally funded and state-funded MinnesotaCare.</p>
Emergency Medical Assistance (EMA)	<p>Nonimmigrants and undocumented persons may be eligible if they have a basis of eligibility for MA and meet MA income and asset limits, but are ineligible for MA due to their immigration status (see Table 17).</p> <p>Legal noncitizens who have a basis of eligibility for MA but do not meet MA income and asset standards due to the deeming of sponsor income and assets⁷⁸ may be eligible.</p>
Group Residential Housing (GRH)	<p>For aged, blind, and disabled participants: noncitizens may be eligible under some circumstances. Persons who are not eligible for the federal SSI program because of their noncitizen status are not eligible.</p> <p>For all other adults: legal noncitizens who are lawfully residing in the U.S. are eligible.</p> <p>Nonimmigrants and undocumented persons are not eligible.</p>

⁷⁸ Federal law requires the income and assets of sponsors of legal noncitizens to be counted when determining eligibility for certain government programs. Refugees, asylees, and other specified groups of legal noncitizens are exempt from this requirement.

Funding of health care and social services for eligible noncitizens

Funding sources can vary with an individual's immigration status or the time an individual entered the United States. For some programs, the state pays for benefits using state-only dollars if federal funds may not be used for certain categories of noncitizens. The tables that follow describe these differences in more detail.

Number of noncitizens receiving health care and social services in Minnesota

As of March 2004, 47,406 noncitizens received services through a state health care program, 13,866 received Food Stamps, and 11,944 received MFIP grants. Table 16 provides a breakdown by specific program. (See page 62 for more information on noncitizen receipt of MFIP.)

Table 16 Number of Noncitizen Enrollees – Health and Social Service Programs (As of March 2004)			
Program	Funding Source	Recipients	Average Monthly Recipients Total Program FY2004
Health Care			
Medical Assistance	State/federal	30,900	464,209
SCHIP	State/federal	1,938	
Medical Assistance (state-only)	State	2,715	148,339
Emergency Medical Assistance	State/federal	775	
MinnesotaCare	State/federal	4,250	34,873
MinnesotaCare (state-only)	State	2,608	
GAMC	State	3,140	1,080
Other Programs ⁷⁹	Varies	1,080	
Unduplicated Total for Health Care Programs		47,406	
Social Services			
Food Stamps	State/federal	13,643	244,017
Food Stamps (state-only)	State	223	
MFIP	State/federal	7,330	125,436
MFIP (state-only)	State	4,614	
Source: Department of Human Services, Reports and Forecasts Division			

⁷⁹ This category comprises IMD residents (Institution for the Treatment of Mental Diseases), pre-admission screening recipients, the state HIV program, the consolidated chemical dependency treatment fund, the prescription drug program, alternative care, and a miscellaneous category.

Eligibility of new Hmong refugees for health care and social services programs

Approximately 5,000 Hmong were recently allowed to immigrate to Minnesota from refugee camps in Thailand. These refugees began arriving in the state in June. These individuals have been given federal refugee status, which makes them eligible for certain federally funded programs.

Refugees and asylees are eligible for federally funded cash and food assistance. Cash assistance is funded by Temporary Assistance for Needy Families (TANF) program funds, and food support is funded through the federal Food Stamp program. Adults without children are eligible for federally funded Refugee Cash Assistance for up to eight months.

Refugees and asylees may also be eligible for Medical Assistance, MinnesotaCare, and child care assistance if they meet the eligibility requirements. Refugees and asylees who are not eligible for regular MA (e.g., because they are childless adults who are under age 65 and are not disabled and therefore have no basis of MA) are eligible for Refugee Medical Assistance (RMA) if they meet the MA income and asset limits that apply to families and children. RMA is available for an eight-month period, beginning the month the individual entered the United States or the month the individual was granted asylee status.⁸⁰ RMA is funded solely with federal dollars; unlike regular MA, no state match is required. (For more information on adjustment services for refugees, see page 68.)

⁸⁰ Refugees and asylees remain eligible for RMA for the eight-month period, even if their income increases beyond the MA income limit during that period.

Table 17		
Noncitizen Eligibility for Minnesota Department of Human Services Health Care Programs		
Immigration Status/Noncitizen Category Assuming all other eligibility criteria are met (e.g., residency, income and asset limits) eligibility for each program is as follows:	Federally funded Medical Assistance (MA) (Children under 21, pregnant women, disabled, blind, age 65 or older, parents and adult caretakers of children under 19) and State Children's Health Insurance Program (SCHIP) ⁸¹	State-funded MA ⁸² (Persons not eligible for MA with federal funding, including people receiving services through a center for victims of torture who are otherwise ineligible for federally funded MA)
Refugees, conditional entrants, asylees, deportation withheld, victims of trafficking, Cuban/Haitian entrants, certain Amerasians, Canadians born with ≥50% American Indian blood, American Indians born outside U.S. and member of federally recognized tribe, and U.S. military veterans, active duty personnel, and their families	Yes	N/A
<i>Living in U.S. prior to 8/22/96:</i> Lawful permanent residents, paroled > 1 year, certain battered persons ⁸³	Yes	N/A
<i>Arrived in U.S. on/after 8/22/96:</i> Lawful permanent residents ⁸⁴ , paroled > 1 year, certain battered persons	MA–No, until 5 years after entry SCHIP–prenatal care and labor and delivery for uninsured pregnant women, through birth month	Yes, for 5 years (until eligible for federally funded MA) Covers 60 days postpartum services for uninsured pregnant women Covers prenatal and 60 days postpartum services for insured pregnant women (labor and delivery covered under EMA)
Others lawfully residing in U.S. ⁸⁵	MA–No SCHIP–Prenatal care and labor and delivery for uninsured pregnant women, through birth month	Yes Covers 60 days postpartum services for uninsured pregnant women Covers prenatal and 60 days postpartum services for insured pregnant women (labor and delivery covered under EMA)
Nonimmigrants ⁸⁶ and undocumented persons	MA–No SCHIP–prenatal care and labor and delivery for uninsured pregnant women, through birth month	No Covers 60 days postpartum services for uninsured pregnant women Covers prenatal and 60 days postpartum services for insured pregnant women (labor and delivery covered under EMA)

⁸¹ SCHIP is a federal/state program that provides an enhanced federal match (65 percent) for the cost of: (1) MA services to children under age two with household incomes greater than 275 percent but not exceeding 280 percent of FPG; (2) MinnesotaCare services to parents and relative caretakers with household incomes greater than 100 percent but not exceeding 200 percent of FPG; and (3) MA prenatal care, labor, and delivery services for uninsured pregnant women who are ineligible for MA with federal funding, due to immigration status. Postpartum services are covered under state-funded MA. (Insured pregnant women are not eligible for SCHIP but can receive coverage under state-funded MA and EMA.)

⁸² As a condition of eligibility, a noncitizen whenever possible must cooperate with the immigration service to obtain a status that qualifies for federally funded MA.

⁸³ See footnote 92.

⁸⁴ See footnote 93.

⁸⁵ See footnote 94.

⁸⁶ See footnote 95.

Table 17		
Noncitizen Eligibility for Minnesota Department of Human Services Health Care Programs		
Immigration Status/Noncitizen Category Assuming all other eligibility criteria are met (e.g., residency, income and asset limits) eligibility for each program is as follows:	Federally funded MinnesotaCare (Children, pregnant women, and parents and adult caretakers of children)	State-funded MinnesotaCare (Adults without children. Also children, pregnant women, and parents and adult caretakers of children who are not eligible for federally funded MinnesotaCare.)
Refugees, conditional entrants, asylees, deportation withheld, victims of trafficking, Cuban/Haitian entrants, certain Amerasians, Canadians born with \geq50% American Indian blood, American Indians born outside U.S. and member of federally recognized tribe, and U.S. military veterans, active duty personnel, and their families	Yes	Yes, for adults without children (these individuals are not eligible for MinnesotaCare with federal funding)
<i>Living in U.S. prior to 8/22/96:</i> Lawful permanent residents, paroled > 1 year, certain battered persons⁸⁷	Yes	Yes, for adults without children
<i>Arrived in U.S. on/after 8/22/96:</i> Lawful permanent residents⁸⁸, paroled > 1 year, certain battered persons	No, until 5 years after entry	Yes, for adults without children. Pregnant women, parents and caretakers, and children are eligible if they have resided in the U.S. for less than five years (and therefore are not eligible for MinnesotaCare with federal funding).
Others lawfully residing in U.S.⁸⁹	No	Yes
Nonimmigrants⁹⁰ and undocumented persons	No	No

⁸⁷ See footnote 92.

⁸⁸ See footnote 93.

⁸⁹ See footnote 94.

⁹⁰ See footnote 95.

Table 17 Noncitizen Eligibility for Minnesota Department of Human Services Health Care Programs		
Immigration Status/Noncitizen Category Assuming all other eligibility criteria are met (e.g., residency, income and asset limits) eligibility for each program is as follows:	General Assistance Medical Care (GAMC) State-funded (Adults 21-64 who are not disabled, blind, or parents of children under 19)	Emergency MA (EMA) Federally funded for people with an MA eligibility basis ⁹¹
Refugees, conditional entrants, asylees, deportation withheld, victims of trafficking, Cuban/Haitian entrants, certain Amerasians, Canadians born with ≥50% American Indian blood, American Indians born outside U.S. and member of federally recognized tribe, and U.S. military veterans, active duty personnel, and their families	Yes, if not eligible for MA	N/A
<i>Living in U.S. prior to 8/22/96:</i> Lawful permanent residents, paroled > 1 year, certain battered persons⁹²	Yes, if not eligible for MA	N/A
<i>Arrived in U.S. on/after 8/22/96:</i> Lawful permanent residents⁹³, paroled > 1 year, certain battered persons	Yes, if not eligible for MA	Yes, if not eligible for full benefits under federally funded MA Pregnant women are eligible for labor and delivery.
Others lawfully residing in U.S.⁹⁴	Yes, if not eligible for MA	Yes Pregnant women are eligible for labor and delivery.
Nonimmigrants⁹⁵ and undocumented persons	No. GAMC for blind, disabled, children <18, adults ≥65 ended 7/1/03 (these individuals are eligible for EMA for emergency services).	Yes Pregnant women are eligible for labor and delivery.

Source: Table prepared by Lisa Knazan, Health Care Eligibility and Access, Department of Human Services. This table has been modified by House Research and is used with permission.

⁹¹ EMA covers a sudden onset of a physical or mental condition (including labor and delivery) and a chronic medical condition which, if left untreated, could reasonably be expected to place the person's health in serious jeopardy, cause serious impairment to bodily functions, or cause serious dysfunction of any bodily organ or part.

⁹² The spouse or child of a U.S. citizen or lawful permanent resident who has self-petitioned for adjustment of status to lawful permanent resident due to the battery or extreme cruelty of their spouse or parent. Eligibility may extend to the child or parent of the battered person.

⁹³ Until 40 work quarters are credited, a lawful permanent resident's income and resources are considered to include a sponsor's income and resources.

⁹⁴ Includes lawful temporary residents, family unity beneficiaries, deferred enforced departure, temporary protected status, paroled less than one year and applicants for asylum.

⁹⁵ An immigration law term that includes visitors, tourists, foreign students, and a number of other temporary entry classifications which, with a few exceptions, cannot be converted to immigrant resident classifications.

Table 18

Noncitizen Eligibility for Minnesota Department of Human Services Cash and Food Support Programs

Immigration Status Assuming all other eligibility criteria are met residency, income and asset limits, eligibility for each program is as follows:	MFIP Cash Portion (state and federal funding)	MFIP Food Portion⁹⁶ (state and federal funding)	General Assistance (state funding)	Minnesota Supplemental Aid (MSA)⁹⁷ (state funding)	Food Support (state and federal funding)	Emergency General Assistance (state funding)	Refugee Cash Assistance (RCA) (federal funding)
Refugees, asylees, deportation withheld, Cuban/Haitian entrants, Amerasians, and victims of severe forms of trafficking	Yes – Eligible for federally funded benefits.	Yes – Eligible for federally funded benefits	Yes	Eligible for seven years from date of U.S. entry	Yes – Eligible for federally funded food support	Yes	Yes, for all except deportation withheld. Eligible for 8 months from date of arrival in U.S. Asylees – eligible for 8 months from date asylum is granted
Veterans or persons on active military duty, along with spouses and dependent children, Canadians born with ≥ 50% American Indian blood, American Indians born outside U.S. and member of federally recognized tribe	Yes – Eligible for federally funded benefits Canadian born/American Indian born outside U.S. - Eligible for state-funded cash if federal funds can't be used	Yes – Eligible for federally funded benefits	Yes	Yes	Yes – Eligible for federally funded food support	Yes	No
Living in U.S. prior to 8/22/96: Lawful permanent residents, paroled > 1 year, conditional entrants, battered persons, and children of battered persons	Yes – Eligible for federally funded benefits May be eligible for state funded cash if federal funds can't be used	Yes	Yes	Yes	Yes – Eligible for federally funded food support May be eligible for state-funded food if 50 years old or older and not eligible for food support	Yes	No

⁹⁶ The Food Stamp Reauthorization Act of 2002 restored federal food stamp benefits to some legal noncitizens who: are disabled, regardless of date of entry (effective October 1, 2002), are children under age 18, regardless of date of entry into the U.S. (effective October 1, 2003) or have been in the U.S. for more than five years (effective April 1, 2003).

⁹⁷ To be considered eligible for Emergency Minnesota Supplemental Aid (EMSA), the applicant must be receiving MSA.

Table 18

Noncitizen Eligibility for Minnesota Department of Human Services Cash and Food Support Programs

Immigration Status Assuming all other eligibility criteria are met residency, income and asset limits, eligibility for each program is as follows:	MFIP Cash Portion (state and federal funding)	MFIP Food Portion⁹⁶ (state and federal funding)	General Assistance (state funding)	Minnesota Supplemental Aid (MSA)⁹⁷ (state funding)	Food Support (state and federal funding)	Emergency General Assistance (state funding)	Refugee Cash Assistance (RCA) (federal funding)
<u>Arrived in U.S. on/after 8/22/96:</u> Lawful permanent residents,⁹⁸ paroled < 1 yr, conditional entrants, battered persons and children of battered persons	No, until 5 years after entry May be eligible for state-funded cash before 5 years	Yes	Yes	No	Yes – Eligible for federally funded food support May be eligible for state-funded food if 50 years old or older and no eligibility for federal food support	Yes	No
Lawfully residing in U.S.⁹⁹ on 8/22/96 and receiving Supplemental Security Income (SSI)	No – No concurrent MFIP eligibility when receiving SSI	No – No concurrent MFIP eligibility when receiving SSI	No	Yes	Yes – Eligible for federally funded food support	Yes	No
Others lawfully residing in U.S.	May be eligible for federal funds if admitted to U.S. before 8/22/96, otherwise may be eligible for state-funded cash	No – Not eligible for federally funded food support May be eligible for state-funded food if federal funds can't be used	Yes	No	No – Not eligible for federally funded food support May be eligible for state-funded food if 50 years old or older	Yes	No
Nonimmigrants¹⁰⁰ and undocumented persons	No	No	No	No	No	No	No

Source: Table prepared by the Department of Human Services. This table has been modified by House Research and is used with permission.

⁹⁸ Until 40 work quarters are completed, a lawful permanent resident's income and resources are considered to include a sponsor's income and resources.

⁹⁹ Includes lawful temporary residents, family unity beneficiaries, deferred enforced departure, temporary protected status, paroled less than one year, and applicants for asylum.

¹⁰⁰ Includes visitors, tourists, and foreign students.

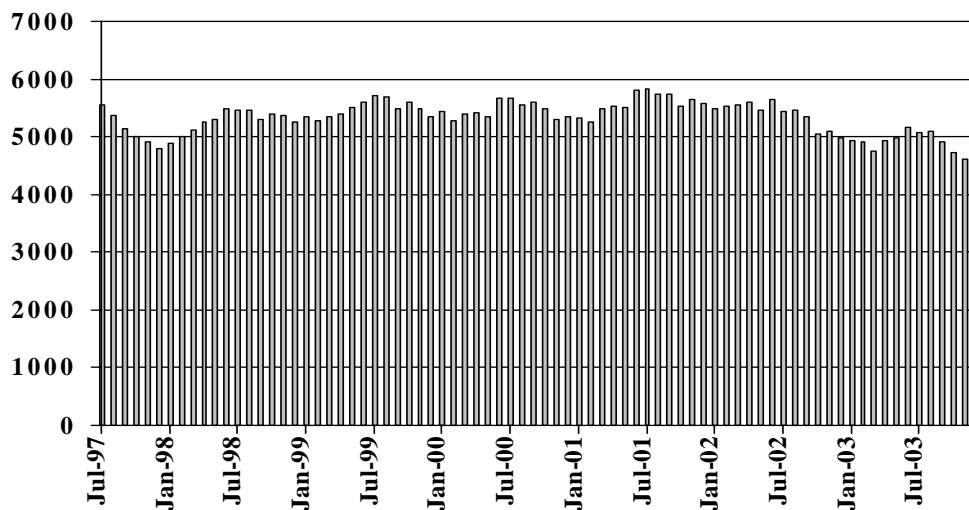
Noncitizens on MFIP

This section provides information about noncitizens' use of the Minnesota Family Investment Program (MFIP). It includes statistics on the number of MFIP cases with noncitizens over time, the percent of cases with noncitizens, the location of noncitizens in the state, and noncitizens' country of origin. The data is from July 1997 to December 2003.¹⁰¹

The Number and Percent of Cases with Noncitizens on MFIP

In December 2003, there were 3,938 MFIP cases with noncitizens. This is down from a peak of 5,822 cases in July 2001. In July 1997, the caseload was slightly lower at 5,596. Caseloads with noncitizens peak in the summer and drop in the winter. Noncitizen cases are those with at least one noncitizen in them.

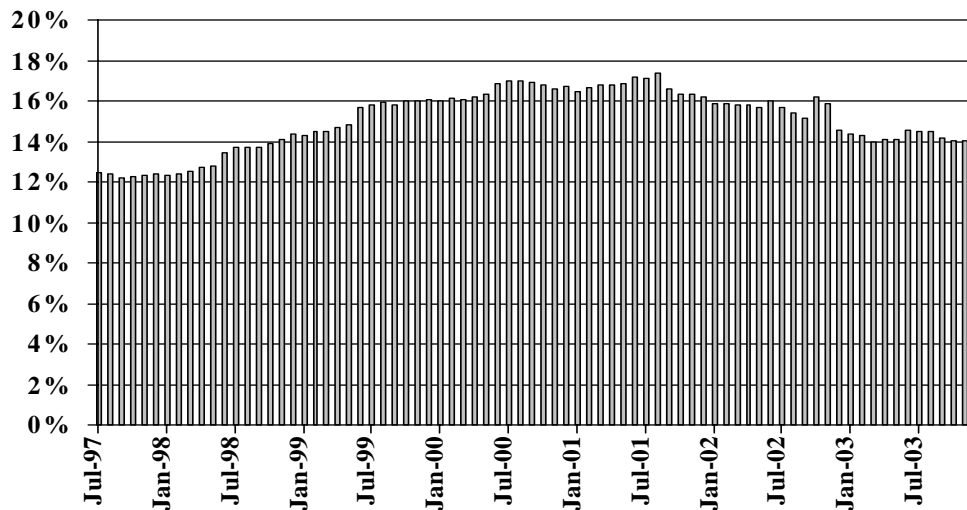
Figure 8
The Number of MFIP Cases with Noncitizens
7/1/1997 through 12/31/2003



¹⁰¹ Case and person eligibility files are from the Minnesota Department of Human Services. The data from July 1997 through December 2003 includes records on citizenship and the type of noncitizenship status. Records of citizenship and alien status were merged to the case file. Noncitizen cases were designated as those cases with at least one noncitizen. Since some persons become citizens after they become eligible for MFIP, the number of noncitizen cases is separately tabulated for each month.

The percent of MFIP cases with noncitizens rose from 12.5 percent in July 1997 to 17.4 percent in August 2001, and fell to 14.2 percent in December 2003. The cyclical trend in the percentages shows peaks in the summer and troughs in the winter.

Figure 9
The Percent of MFIP Cases with Noncitizens
7/1/1997 through 12/31/2003



Geography of Noncitizens on MFIP

In 2003, the central counties of Minneapolis-St. Paul (Hennepin and Ramsey) had the largest **number** of cases, 4,786, with at least one noncitizen. The region with the largest **percentage** of MFIP cases with noncitizens was the southern metropolitan area of the state with 21.4 percent of cases. For nonmetropolitan counties, southern and central Minnesota had more cases with noncitizens and higher percentages of cases with noncitizens than did northern Minnesota.

Region	All Cases	Number of Cases*	Percent of Cases
Minneapolis-St. Paul	33,539	5,498	16.4%
Central Counties	24,980	4,786	19.2%
Surrounding Suburbs	8,559	712	8.3%
Duluth	3,041	<40	<1.3%**
Fargo and East Grand Forks	1,382	142	10.3%
Southern Metropolitan Areas	2,970	637	21.4%
Nonmetropolitan Minnesota	16,734	1,297	7.8%
Central	2,384	255	10.7%
Northeast	1,381	<40	<2.9%**
Northwest	6,464	154	2.4%
Southeast	2,742	309	11.3%
Southwest	3,763	559	14.9%

* The numbers in Table 19 are larger than in Figure 8 because the table includes all recipients for the entire year as opposed to a single month.
 ** Too few observations to report caseload numbers and percentages

Nationality of MFIP Noncitizen Households

There are more than 30 nationalities represented by noncitizens on MFIP. Somalians made up the largest percentage (30.9 percent) of noncitizen cases in 2003. The nine nationalities with the highest number of noncitizens cases made up 73.5 percent of all noncitizen cases.

Nationality	Number of Cases	Percent of Cases
Somalian	2,346	30.9%
Hmong	1,161	15.3%
Mexican	675	8.9%
Ethiopian	361	4.7%
Liberian	307	4.0%
Former Soviet	239	3.1%
Vietnamese	210	2.8%
Ethnic Laotian	161	2.1%
Cambodian	128	1.7%
All Others	2,015	26.5%
Total	7,603	100.0%

Public Safety: Driver Licensing

by John Williams

Noncitizens with legal residence in Minnesota can obtain a driver's license by passing a vision test and written and behind-the-wheel tests. The behind-the-wheel test may be waived if the person already has a driver's license from another state or foreign country that has road testing comparable to Minnesota's.

The elements of Minnesota driver licensing law and rules that are most likely to affect noncitizens are the requirements to prove identity upon applying for a license. A person applying for a driver's license who does not have a current Minnesota license, or who has a Minnesota license that has expired more than five years ago (if it has a photo) or more than one year ago (if it doesn't have a photo) must produce *one primary document* and *one secondary document* to prove identity.

Note that a driver's license from another state is a secondary document, meaning that it is acceptable as proof of identity only if accompanied by a primary document.

Primary and secondary documents are identified in the rules of the Department of Public Safety.¹⁰²

Primary Documents

- ▶ U.S. birth certificate from a state, D.C., Guam, Puerto Rico, or U.S. Virgin Islands
- ▶ Adoption certificate from a U.S. court
- ▶ Certificate of birth abroad, issued by the State Department
- ▶ Report of birth abroad, issued by a U.S. embassy
- ▶ Valid U.S. passport
- ▶ Unexpired active duty or retired U.S. military ID card
- ▶ Valid passport from another country with unexpired I-94 form or I-555 stamp
- ▶ Canadian birth certificate or naturalization certificate, with unexpired and departure form attached that endorses the applicant's presence (requires a secondary document, with photo, issued by Canadian government agency)
- ▶ One of the following valid, unexpired documents from the Department of Justice or Department of Homeland Security:
 - Employment authorization card with photo (I-668 or I-766 series)
 - Permanent resident or resident alien card (I-551 or I-151)
 - Re-entry permit/refugee travel document (I-327, I-571)

¹⁰² Minn. Rules, parts 7410.0100 to 7410.0600

- Certificate of naturalization (N-550, N-570, or N-578)
- Certificate of citizenship (N-560, N-561, or N-646)
- U.S. Citizen ID card (I-179 or I-197)
- Northern Mariana card (I-873)
- American Indian card (I-872)

Secondary Documents

- ▶ A second primary document
- ▶ Driver's license, ID card, or permit from another state, D.C., Guam, Puerto Rico, U.S. Virgin Islands, or Canadian province, with photo, current or expired not more than five years
- ▶ U.S. Social Security card or Canadian social insurance card
- ▶ Certified birth certificate from a jurisdiction other than another state, D.C., Guam, Puerto Rico, or U.S. Virgin Islands
- ▶ Certified government-issued marriage certificate
- ▶ Certified U.S. or Canadian court order containing applicant's full name and date of birth
- ▶ Certified secondary or postsecondary school transcript with full legal name and date of birth
- ▶ Current secondary school student ID card with name, photo, and date of birth or unique ID number
- ▶ Government employee photo ID card from jurisdiction in United States or Canada
- ▶ Current DD-1173 or DD-214 IC card issued by Defense Department
- ▶ Unexpired permit, with color photo, to carry firearm or concealed weapon, issued by U.S. police or sheriff's department
- ▶ Current pilot's license issued by FAA

A person who is a temporary U.S. resident may be required to show additional proof of lawful admission period to the United States, such as a form I-20, DS-2019, I-797, or other official immigration document or receipt.

Rights and Services for Immigrants

Human Rights Act

The Minnesota Human Rights Act prohibits discrimination on the basis of national origin in employment, real property transactions, business transactions, issuance of credit, public accommodations, access to public services, or education.¹⁰³ The act defines “national origin” as “the place of birth of an individual or any of the individual’s lineal ancestors.”¹⁰⁴ The Human Rights Department interprets the phrase to apply to noncitizens, as well as to naturalized citizens and their descendants. (See the department’s web site, www.humanrights.state.mn.us/rsonline4/index.html)

There is no Minnesota appellate case law that expressly interprets the Human Rights Act to apply to noncitizens. An unpublished court of appeals decision, which cannot be cited as precedent, apparently assumes that the act applies to noncitizens.¹⁰⁵ Minnesota courts interpreting the state Human Rights Act provisions on employment discrimination often rely on the provisions of federal employment discrimination law and regulations and the federal cases interpreting them. Under Title VII, the federal employment discrimination law, citizenship requirements that “have the purpose or effect of discriminating against an individual on the basis of national origin” are prohibited.¹⁰⁶

Immigration Assistance Providers

People who provide assistance to immigrants in a language other than English must post a notice stating that they are not attorneys and cannot give legal advice.¹⁰⁷ This applies only to service providers who charge a fee for their services. Under the law, immigration assistance services include advice, guidance, information, or action provided or offered. The notice must appear in English and in every other language that the provider offers services in.

The law also prohibits the service provider from holding other titles that would cause a customer to believe that the person has special professional skills or is authorized to provide immigration advice, from making any false statements or representations to get a person’s business, from taking money for services not performed, and from refusing to return a customer’s documents.

This bill was passed in 1996 to prevent fraud and misrepresentation of notaries public to

¹⁰³ Minn. Stat. ch. 363A.

¹⁰⁴ Minn. Stat. § 363A.03, subd. 25.

¹⁰⁵ *Kajbaf-Nezhad v. Van Valkenburg*, 1990 WL 163080 (Minn. App. 1990) (legal malpractice case where the court discussed the case the lawyer handled for the client).

¹⁰⁶ 29 C.F.R. §1606.5(a).

¹⁰⁷ Minn. Stat. § 325E.031.

immigrants. In Minnesota and other states, immigrants were being charged excessive fees for legal services from people not authorized to provide those services. The term “notary public” translates into “super attorney” in Spanish, so many people thought they were getting legal services from notaries public.

Adjustment Services for Refugees

Refugees who have difficulty adjusting to life in the United States can receive assistance from the Minnesota Department of Human Services. Minnesota Statutes, section 256.484, requires the Commissioner of Human Services to set up a grant program to help refugees who experience depression, emotional stress, and personal crises resulting from past trauma and refugee camp experiences. Social adjustment services are defined in statute to include psychiatric assessment, chemical therapy, counseling, support groups, aftercare, information and referral, and crisis intervention. These services are funded by federal grants. (For more about services for refugees, see the health and human services section beginning on page 52.)

Taxation of Noncitizens

by Joel Michael, Karen Baker, and Nina Manzi

This section explains how federal and state tax laws apply to noncitizens in the areas of income, property, and sales taxes.

As a general rule, a noncitizen who is a resident of Minnesota is taxed on the same basis as a citizen resident. Nonresident aliens are taxed only on their Minnesota source income in a manner similar to, but slightly less favorable than, the rules applicable to nonresidents who are U.S. citizens or permanent residents of the United States.

As a general principle, the tax law—both federal and Minnesota—treats noncitizens and citizens alike. Noncitizens who are residents of the United States and Minnesota must pay tax on their income, property, and sales to the same extent as citizens. Although popular accounts occasionally circulate that immigrants (or refugees) are exempt from federal or Minnesota taxes for a period of years, these are misperceptions or urban legends.

Resident noncitizens also qualify for most tax-based refunds and credits on the same basis as citizens. These refundable credits are administered as part of the federal and Minnesota income taxes, but in reality are more like income transfer or assistance programs designed to achieve mainly nontax, social objectives. Some of these refundable credits include the federal earned income credit, the Minnesota working family credit, the Minnesota dependent care credit, and the Minnesota K-12 education credit. Noncitizens are allowed to participate in these programs, and also in Minnesota's separately administered property tax refund program, on a more or less equal basis with citizens.

Noncitizens who are not residents of the United States (referred as nonresident aliens by federal tax law) are taxed only on their U.S. source income (Minnesota source income for state tax purposes). The income tax rules applicable to these individuals are somewhat less favorable than those applicable to citizens and resident noncitizens. For example, they cannot file married joint returns (qualifying for lower tax rates and other advantageous provisions), claim standard deductions or home mortgage or medical expense deduction, or take certain tax credits. Under Minnesota Department of Revenue guidelines, nonresident aliens are also not allowed homestead property tax benefits.

Taxpayer Identification Numbers and Noncitizens

The Internal Revenue Service (IRS) issues special taxpayer identification numbers (ITINs) to noncitizens who do not qualify for Social Security numbers. Minnesota allows ITINs to be used for some tax administrative and compliance purposes.

Complying with most federal and state taxes requires use of unique taxpayer identification numbers to allow processing and administration of the taxes. For individuals, this typically

requires use of the individual's Social Security number (SSN). For example, in order to file a federal individual income tax return or Minnesota individual income tax return, to claim a Minnesota property tax refund, or to apply for homestead status in Minnesota, an individual must supply his or her SSN. However, not all noncitizens qualify to obtain SSNs.

The Social Security Administration (SSA) issues three types of Social Security cards to noncitizens, depending upon the individual's status:

1. A standard card that permits the individual to work—this would apply to individuals who have been granted permanent residence or asylum, including refugees (e.g., an individual who holds a “green card”)
2. A card bearing the legend, “NOT VALID FOR EMPLOYMENT”—these cards are issued to individuals who are not eligible to work, but are eligible to obtain a Social Security number under another law¹⁰⁸
3. A card bearing the legend, “VALID FOR WORK ONLY WITH DHS AUTHORIZATION”—these cards are issued to individuals who have a temporary visa and permission to work temporarily in the United States¹⁰⁹

Other noncitizens do not qualify to obtain SSNs, but nevertheless must file and pay income tax. For example, a nonresident with U.S. source investment income or an individual who has earnings from unauthorized work must pay income taxes, but may not be entitled to obtain an SSN. Since 1996, the IRS has issued special taxpayer identification numbers to these individuals, called individual taxpayer identification numbers (ITINs). Under IRS policy, these numbers are to be used only for federal tax purposes.¹¹⁰ Notwithstanding this, Minnesota uses ITINs for some limited state tax administration purposes—individual income, property tax refund, and homestead property tax.¹¹¹

The IRS has issued about six million ITINs since 1996 with 60 percent being issued to residents and 33 percent to nonresidents.¹¹² The number of ITINs has increased significantly in the last

¹⁰⁸ There are three bases for SSA to issue SSNs to noncitizens who are not entitled to work: (1) federal law requires it to receive a benefit or service to which the individual is entitled; (2) state or local laws requires it for the individual to receive welfare benefits to which the individual is otherwise entitled; and (3) state or local law requires it to obtain a driver's license. Joint Committee on Taxation, *Present Law and Background Relating to Individual Taxpayer Identification Numbers (“ITINS”)* 5 (March 5, 2004).

¹⁰⁹ *Id.* “DHS” refers to the new Department of Homeland Security. The notation on old cards referred to the “INS” or Immigration and Naturalization Service, which was renamed the U.S. Citizenship and Immigration Services or USCIS and made part of the new DHS.

¹¹⁰ *See Id.* at 6-7 for a description of the process for obtaining an ITIN.

¹¹¹ The Minnesota Department of Revenue is apparently not alone in violating the IRS edict to use ITINs for federal tax purposes only. Other federal agencies and states use them for nontax purposes and private entities, such as banks, use them as well. George Guttman, “Can the IRS Stop the Use of ITINs for Nontax Purposes?” 108 *Tax Notes* 1316-19 (June 2, 2003).

¹¹² Gordon C. Milbourn III, “The Internal Revenue Service's Individual Taxpayer Identification Number Creates Significant Challenges for Tax Administration,” Treasury Inspector General for Tax Administration Report

years, as well as the number of returns filed using ITINs. The number of federal returns processed with ITINs increased by 99 percent over the three-year period ending with tax year 2001.¹¹³ The number of ITINs issued in 2002 (925,000) was a 33 percent increase over the previous year.¹¹⁴

Income Taxation

Noncitizens who are residents of the Minnesota must pay tax on their worldwide income; noncitizens who are not residents are taxed only on their Minnesota source income (e.g., Minnesota earnings and income from investments located in-state).

Resident status. Income tax treatment of noncitizens varies depending upon whether the individual is considered a resident (of the United States and Minnesota) or a nonresident. Resident individuals are taxed on all of their income, while nonresidents are generally taxed only on their U.S. source income (Minnesota source income for state purposes), such as wages earned in the United States or investment income from U.S. sources. The federal tax allows a foreign tax credit for taxes paid on the same income to a foreign country to prevent double taxation of the income.

CAUTION: This section provides general, background information on the income taxation of noncitizens. It is NOT intended as a guide for individuals to use in complying with the federal and Minnesota income taxes. For that type of information, you should refer to Minnesota Department of Revenue *Income Tax Fact Sheet 16* for the Minnesota tax issues, available on the Internet at: www.taxes.state.mn.us/taxes/individ/publications/fact_sheets_by_name/html_content/ifs16_03.shtml or for federal tax issues to Internal Revenue Service *Publication 519*, U.S. Tax Guide for Aliens, available on the Internet at: www.irs.gov/pub/irs-pdf/p519.pdf

Individuals first determine if they are residents of the United States, since that is a condition for being a Minnesota resident. There are two basic tests:¹¹⁵

1. The “**green card test**”—an individual with a permanent resident visa at any time during the calendar year is a resident of the United States for federal income tax purposes.
2. The **substantial presence test**—a multipart test based on physical presence, visa status, and other connections to the United States provides another basis for requiring noncitizens to pay federal income tax on all of their income. Note that this test does *not* require the individual to be legally authorized to reside in the United States. Thus, unauthorized residents (e.g., foreigners who are in the United States without visas) can be

2004-30-023 at 6 (January 2004) (hereafter referred to as “TIGTA Report”). The other 7 percent of ITINs were classified in the “other” category.

¹¹³ *Id.*

¹¹⁴ *Id.* at 7.

¹¹⁵ In addition, a noncitizen who does not meet either of these tests can elect to be taxed as a resident. This is referred to as the “first year election” test. In most cases electing resident status will increase the tax obligation. But in a few circumstances it will be advantageous, since it may allow filing a married joint return and/or claiming other tax benefits. A typical case would be a nonresident who is married to a resident.

residents and be obligated to pay federal tax on their worldwide incomes. It may also entitle them to tax benefits, such as limited types of refundable credits.¹¹⁶

The Minnesota income tax treats individuals as residents either based upon their domicile (the location that the individual treats as a permanent residence or with which he or she has the closest contacts) or on being physically present in the state for 183 days or more in the year. These rules apply equally to citizens and noncitizens. It doesn't matter whether the other location or residence is in another state or in a foreign country.

A variety of special residency rules can also apply—for example under tax treaties and to U.S. military personnel (who occasionally are noncitizens). Minnesota deems U.S. military personnel who are stationed outside Minnesota to be nonresidents, regardless of any other factors that otherwise may determine residency. Tax treaties with the country that is the noncitizen's tax home may dictate rules of residency or that certain types of income are from foreign sources.

Income Subject to Tax. As noted above, resident noncitizens generally are subject to tax on all of their income, just as citizens are. Federal law explicitly provides:

All citizens of the United States, wherever resident, and *all resident alien individuals* are liable to the income tax imposed by the [Internal Revenue] Code whether the income is received from sources within or outside of the United States. Treas. Reg. § 1.1-1(b) [Emphasis added]

Minnesota follows this rule as well by using federal taxable income as the starting point in computing the Minnesota income tax.

Nonresidents, by contrast, pay federal tax only on their income from U.S. sources.¹¹⁷ These sourcing rules are complicated, particularly as they relate to investment income and trade and business income. In broad outline, U.S. source income includes the following:

- ▶ Earnings from personal services performed in the United States
- ▶ Pensions earned for services performed in the United States, including U.S. Social Security benefits
- ▶ Interest paid by U.S. residents, domestic corporations, the U.S. government and state and local governments, and foreign businesses derived from a trade or business operated in the United States
- ▶ Dividends paid by domestic corporations

¹¹⁶ Undocumented individuals—i.e., individuals who are not legally authorized to be in or work in the United States—cannot claim the federal earned income credit or the Minnesota working family credit, even if the law treats them as residents for taxpaying purposes. Under IRS procedures (which Minnesota follows), claimants and dependents must have SSNs to qualify. However, they can claim the refundable federal child credit and the refundable Minnesota K-12 education and the dependent care credits.

¹¹⁷ Income subject to tax includes income that is effectively connected to a trade or business conducted in the United States.

- ▶ Rents, royalties, and capital gains from property located in or used in the United States

Computation of Minnesota tax for nonresidents (whether noncitizens or citizens) is apportioned using the share of Minnesota source income to total income.¹¹⁸ The sourcing rules differ somewhat from the federal rules. For example, pension income is sourced to the state or country in which it is received, not where the services were performed that earned the pension.¹¹⁹ Similarly, investment income from personal property—stocks, bonds, bank accounts, and so forth—are sourced to the state or country of residence, not where the paying individual or business is a resident or domiciled. However, rents on Minnesota real estate or income derived from operating a trade or business in Minnesota (e.g., a partnership or S corporation) are sourced to Minnesota.

Various exclusions apply under federal law to exempt some types of U.S. source income that is received by nonresidents. For example, interest paid by banks, insurance companies, and other financial institutions is excluded, if it is not connected with a trade or business conducted in the United States. Interest on certain types of corporate bonds is exempt to nonresidents. Income for personal services paid by foreign employers may also be excluded—for example, for students, small amounts (\$3,000 or less) for short periods, and so forth. For resident noncitizens, all of the regular income tax deductions and exclusions apply.

Filing Status. The regular filing status rules apply to noncitizen residents—that is, they may file as married joint, single, head of household, and so forth. Married nonresidents, by contrast, must file married separate returns, resulting in the application of narrower brackets and effectively higher tax rates.¹²⁰ These filing status rules also apply to the Minnesota tax; taxpayers must use the same filing status for Minnesota purposes as they do for federal.

Deductions. The same deductions generally apply to noncitizen residents as to citizens. Noncitizens who are not residents, by contrast, are subject to limits on their deductions. For example, they are not allowed to claim the standard deduction or the itemized deductions for home mortgage interest or medical and dental expenses. These federal rules all generally flow through to the Minnesota income tax through Minnesota's use of federal taxable income in computing Minnesota tax.

¹¹⁸ The mechanical computations differ from the federal practice in that tax is computed using total income and, then, is reduced by the Minnesota percentage. By contrast, federal tax excludes non-U.S. source income completely from the tax computation. This mechanical difference affects the tax rate(s) that apply to the income, since the rate schedules are progressive. Excluding income from the tax computation (the federal approach) reduces the rate that applies to the income, because more income will be taxed at lower bracket rates.

¹¹⁹ This exemption is explicitly provided in state law, but in most cases federal law also prevents the state from taxing pension income received by nonresidents, even if the pension was earned in the state. Minn. Stat. § 290.17, subd. 2(a)(3).

¹²⁰ I.R.C. § 6013(a)(1) (2003). They can, however, elect to be taxed as residents, allowing them to file married joint returns. I.R.C. § 6013(g) (2003). Resident noncitizens or U.S. citizens married to a nonresident alien may file as heads of household if they do not elect to treat the nonresident spouse as a resident. As discussed in the text below, this does not, however, allow them to claim the federal earned income credit (or the Minnesota working family credit) as a head of household filer, if they are considered married for purposes of the credit.

Tax Rates. The same federal and state tax rates apply to the citizens and resident noncitizens. For nonresidents special federal tax rates apply to certain investment income not effectively connected with a U.S. trade or business.

General Tax Credits. Resident noncitizens generally qualify for the same federal and state tax credits as citizens, including the refundable credits; some of these credits include the federal child tax credit, the federal and Minnesota child and dependent care credits, and the earned income credit (Minnesota working family credit), the federal education credits, and the Minnesota K-12 education credit. One exception to this general rule is a resident noncitizen who is married to a noncitizen who is not a resident. Unless the nonresident elects to be taxed as a resident, such a married couple cannot file a joint return. The inability to file a joint return prevents a married couple from claiming the following:

- ▶ The federal earned income credit¹²¹
- ▶ The Minnesota working family credit¹²²
- ▶ The Minnesota dependent care credit for a child under age one¹²³
- ▶ The Minnesota K-12 education credit¹²⁴
- ▶ The Minnesota marriage penalty credit¹²⁵

Nonresidents can claim some federal credits (e.g., the child tax credit, the child and dependent care credit, the retirement savings credit, and the adoption credit), but not others (e.g., the earned income and the education credits) unless they elect to be taxed as residents.¹²⁶ Nonresident single and head of household filers can claim the Minnesota K-12 education credit and the Minnesota dependent care credit, except the deemed credit for families with children under the age of one, if they otherwise qualify.

Credit for Taxes Paid to Other Jurisdictions. The federal income tax allows a foreign tax credit. This credit is designed to prevent double taxation of the same income by both a foreign country and the United States. It offsets the federal tax paid on the income by the amount of tax paid on the same income to a foreign government. Minnesota does not allow a similar credit for subnational income taxes paid to foreign governments (other than Canadian provinces). By contrast, Minnesota does allow a credit for taxes paid to other states and provinces of Canada,¹²⁷ which functions in a manner similar to the foreign tax credit, for a resident's income that is taxed

¹²¹ I.R.C. § 32(d). The IRS also requires claimants and qualifying children to have SSNs to qualify for the credit. This prevents undocumented workers from claiming a credit even if they elect to be treated as residents.

¹²² Minn. Stat. § 290.0671, subd. 1 (requiring a claimant to be eligible for the federal earned income credit).

¹²³ Minn. Stat. § 290.076, subd. 1(c)(2).

¹²⁴ Minn. Stat. § 290.074, subd. 2(a).

¹²⁵ Minn. Stat. § 290.0675, subd. 2.

¹²⁶ The federal child credit includes a limited refundable credit for low-income individuals. The Treasury Inspector General reports that \$151 million of refundable child credits were paid to resident noncitizens who were unauthorized workers. TIGTA Report, *supra* note 112, p. 28.

¹²⁷ Minn. Stat. § 290.06, subd. 22 (i).

by both Minnesota and another state.¹²⁸ The federal foreign tax credit does apply to these subnational taxes, but in some circumstances the total foreign taxes exceed federal income tax liability and, thus, the amount of the foreign tax credit. In those instances, the foreign subnational taxes are allowed as a subtraction in computing Minnesota taxable income.¹²⁹

Income Tax and Undocumented Workers. It is widely recognized that a large number of noncitizens who are not authorized to do so still work in the United States. These include individuals who are in the United States on visas (e.g., student or tourist visas) that do not allow work and individuals who have entered the country illegally.¹³⁰ These individuals may work in the cash economy and, thereby, avoid compliance with the tax system in that way. If they are employed in the aboveground economy, their employers will, as the law provides, typically require them to supply an SSN. The individual may do so by using someone else's legitimate SSN or by using an SSN that has not been issued.

When such an undocumented worker receives a Form W-2 reporting wages and withheld taxes, the worker must decide whether to (1) file a tax return either using the erroneous SSN or an ITIN or (2) simply ignore the filing obligation. The IRS advises these individuals to file using an ITIN. It is unclear what proportion of these individuals actually does so. The IRS has issued a large number of ITINs, but only about a third of them have actually been used to file returns.¹³¹ In 2000, over a half million federal returns were filed where the primary filer used an ITIN. These returns reported \$10.7 billion in adjusted gross income and tax of \$184 million.¹³² The Treasury Inspector General estimated that of 350,000 filers used ITINs and reporting wages in tax year 2000, 265,000 used someone else's SSN and 89,000 used SSNs that had never been issued (i.e., they simply made them up).¹³³

¹²⁸ In addition to the credit for residents, Minnesota has a credit for taxes paid to the state of domicile by a nonresident that applies in very narrow circumstances. See Minn. Stat. § 290.06, subd. 22a.

¹²⁹ Minn. Stat. § 290.01, subd. 19b(9). This provides only a small amount of relief from double taxation, since a subtraction provides a benefit equal to the foreign subnational tax paid multiplied by the Minnesota tax rate (5.35 percent to 7.85 percent, depending on the bracket). A credit, by contrast, would fully offset the foreign tax paid to the extent it applied.

¹³⁰ The then INS estimated that in 2000 there were about 7 million unauthorized immigrants in the United States and about 60,000 or 0.9 percent of them were in Minnesota. Office of Policy and Planning, United States Immigration and Naturalization Service, "Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000," (2003). The Census Bureau generated higher estimates of 8.7 million. United States Census Bureau, "ESCAP II: Demographic Analysis" A-5 (Oct. 13, 2001).

¹³¹ George Guttman, "Can the IRS Stop the Use Of ITINs for Nontax Purposes?" 108 *Tax Notes* 1316 (June 2, 2003) reports that the IRS had issued five million ITINs since the program began in 1996, but only a third of them were used to file returns.

¹³² TIGTA Report, *supra* note 112, at 42. See also Paula N. Singer and Linda Dodd-Major, "Identification Numbers and United States Government Compliance Initiatives," 112 *Tax Notes* 1429 (Sept. 20, 2004) for a discussion of the issues involved with tax compliance and administration relative to undocumented workers.

¹³³ TIGTA Report, *supra* note 112, at 3. Earnings by individuals using false SSNs create a serious administrative and compliance burden for the Social Security Administration, the IRS, and employers. When SSA is unable to match up wage statements with correct SSNs, the amounts of wages and taxes are recorded in a special "Earnings Suspense File" and efforts are made to resolve to whom these amounts belong. This involves efforts by the IRS and employers, as well as SSA. The amounts in this file have been growing rapidly—by about five million

Data on Income Tax Filing by Noncitizens. Citizenship status is not reported on tax returns, so it is not possible to determine how many noncitizens file and pay Minnesota income tax or claim nonrefundable credits. However, the number of income filers using ITINs can be tabulated. This is a small subset of all noncitizens, since it represents those individuals who are unable to obtain SSNs. Thus, it excludes those with lawful permanent resident status or green cards. Users of ITINs are typically individuals on visas allowing temporary residence and work (e.g., some foreign students), nonresidents (e.g., spouses of lawful permanent residents who are still living in their home countries and owners of investments in Minnesota), and individuals who are not legally in the United States (e.g., undocumented workers).

For tax year 2003, the Department of Revenue reports that 7,666 returns were filed using ITINs as a taxpayer identification number.¹³⁴ They reported Minnesota taxable income of about \$144 million and paid tax of \$9.2 million. ITIN filers also claimed \$10.6 million of refundable credits. Thus, as a group, filers using ITINs claimed about \$1.4 million more in tax refunds than they paid in tax.

Property Taxation

Resident noncitizens qualify for homestead status and property tax refunds on the same basis as noncitizens. Noncitizens who are not residents generally cannot qualify for either.

Homestead Status. The Minnesota property tax law provides reduced taxes for property that is classified as a homestead (or agricultural homestead). The value of this reduction has varied considerably over the years. Since the 2001 property tax reform, the principal advantage is that the property qualifies for the market value homestead credit.¹³⁵ This credit equals 0.4 percent of the taxable market value of the home up to a maximum of \$304. The value of the credit is reduced (ultimately to zero) by 0.09 percent of the market value over \$76,000, with the credit fully phased out or eliminated when market value exceeds \$414,000.

In order to qualify for homestead treatment, the law requires that the property and its owner meet three basic requirements:

1. The property must be residential real estate (i.e., a home)
2. The owner must occupy the property as a homestead (permanent home)
3. The owner must be a Minnesota resident¹³⁶

records and \$17 billion per year since 1990. GAO, "Tax Administration IRS Needs to Consider Options for Revising Regulations to Increase the Accuracy of Social Security Numbers on Wage Statements," 6 (August 2004).

¹³⁴ The reported data are as of early December 2004. It does not reflect later filings.

¹³⁵ Agricultural homesteads qualify for more generous property tax reduction, as compared with nonhomestead agricultural properties. These reductions include both lower class rates and a market value credit, which is not subject to reduction. For a discussion of Minnesota's law restricting ownership of farm land by noncitizens, see the agriculture section of this report beginning on page 33.

¹³⁶ Minn. Stat. § 273.124, subd. 1. The relative homestead rules allow certain relatives of an owner to occupy the property and the property can still qualify as a homestead.

The last requirement may present an issue for a noncitizen who is an owner-occupant. The law does not define a Minnesota resident. The Tax Court, in construing the statute, has looked to the individual income tax's definition of "resident" for guidance. The income tax uses a multipart, facts-and-circumstances test that looks at the extent of the individual's contact with Minnesota to determine residency.¹³⁷ A restricted visa (as contrasted with permanent residency status or holding a "green card"), such as a student visa, likely would be a factor in determining whether one is a Minnesota resident for homestead purposes.

The law also requires each owner and spouse who occupies the property to provide an SSN when applying to the county or city assessor for homestead status.¹³⁸ If an SSN is an absolute requirement, noncitizens who cannot obtain an SSN would be disqualified. However, the Department of Revenue's *Assessment Manual* provides that an individual can use an ITIN issued by the IRS to meet the requirement, if the individual's spouse has an SSN.¹³⁹ This implies that if no owner-occupant qualifies to obtain an SSN, homestead status is unavailable and an ITIN cannot be used.¹⁴⁰ Most assessors apparently apply the law in this manner (i.e., disqualifying owners if one spouse does have an SSN).¹⁴¹

Property tax refund. Minnesota provides property tax refunds to homeowners whose property taxes are high relative to their incomes and to renters whose rent payments on their principal residence are high relative to their incomes. This program is generally available only to low- and moderate-income individuals; individuals whose incomes exceed dollar thresholds do not qualify.¹⁴²

Noncitizens qualify for property tax refunds on an equal basis with citizens. The program requires a claimant to be a resident of Minnesota under the individual income tax rules.¹⁴³ The individual income tax rules deem an individual to be a resident, if the individual is physically

¹³⁷ See, e.g., *Bergstrom v. County of Hennepin*, 1995 WL 221591 (Minn. Tax 1995). The income tax rule is Minn. R. 8001.0300 (2002). An individual who is physically present in Minnesota for more than 183 days is deemed to be a resident for income tax purposes. It seems unlikely that meeting this criterion would be sufficient to be a resident for homestead purposes, since the law does not explicitly adopt the income tax rules. In similar contexts, the legislature has explicitly provided that the income tax residency rules apply. Minn. Stat. § 290A.03, subd 8(a) (income tax residency rules apply under the property tax refund program).

¹³⁸ Minn. Stat. § 273.124, subd 13.

¹³⁹ Minn. Dept. of Revenue, *Property Tax Administrators Manual*, vol. 1 (Assessors) § 3313. The spouse could have an SSN because he or she is a citizen or has a green card or a limited purpose Social Security card.

¹⁴⁰ The *Assessor's Manual* is unequivocal in this regard: "This [use of an ITIN] only applies in situations where one spouse has been granted permission to work in the USA, has received a Social Security number and their spouse has not. ITIN numbers are not an acceptable alternative to Social Security numbers in any other circumstance." *Id.*

¹⁴¹ Unlike administrative rules, the *Assessor's Manual* does not have the force of law and is only the Department of Revenue's interpretative guidance for assessors. Phone conversations with several assessors in the metropolitan area confirmed that they follow the practice outlined in the *Assessor's Manual*.

¹⁴² For more information on the property tax refund program, see the House Research web site at: <http://www.house.leg.state.mn.us/hrd/issinfo/ssrptrp.htm>.

¹⁴³ Minn. Stat. § 290A.03, subd. 8(a).

present in the state for 183 days or more in calendar year. As a result, a noncitizen who does not meet the more general residency test based on the extent of connections with Minnesota can qualify for a property tax refund based on being physically present in the state for at least 183 days. However, these individuals will not qualify for property tax refunds as homeowners if their homes do not qualify for homestead status (e.g., because he or she does not have a green card and thus does not have an SSN).¹⁴⁴ Renters in this situation can qualify for a renters property tax refund.

As is the case with the income tax data, the number of noncitizens claiming property tax refunds cannot be identified, since citizenship status is not reported on the MIPR forms. However, data is available on the number of individuals who use ITINs to claim property tax refunds. For 2004 filings, 2,641 individuals with ITINs claimed property tax refunds.¹⁴⁵ Of these, 78 percent were renters and 23 percent homeowners.¹⁴⁶ Although homeowners with ITINs generally cannot claim property tax refunds, it is possible to do so if their spouses have SSNs. \$1.7 million in refunds were paid to individuals using ITINs (a little over \$1.3 million to renters and a little more than \$0.3 million to homeowners). The median household income of renters was about \$14,000 and \$19,100 for homeowners.

Sales and Use Tax

The sales and use tax is the third major source of state and local tax revenue in Minnesota. The tax applies to taxable sales made in Minnesota and use of taxable goods or services in the state, if the sale was made in another state. The tax makes no distinction between purchases made by or used by citizens versus noncitizens.

Summary of Refundable Credit Rules

The following table summarizes the federal and Minnesota rules on whether noncitizens can qualify under various refundable tax credit programs (income- and property tax-based). The table assumes that all of the other requirements for the credits are met (aside from legal status and residency of the noncitizens).

¹⁴⁴ Minn. Stat § 290A.03, subd. 13 (requiring homestead classification or application for classification approved by assessor). The Department of Revenue generally will not pay property tax refunds without a property tax statement from the county showing a qualifying homestead tax, indicating a homestead classification of the property. A married homeowner with an ITIN can qualify for homestead classification, if the spouse has an SSN.

¹⁴⁵ These are refunds based on property tax paid in 2004 and rent paid in 2003. They reflect filings as of early December 2004 and, thus, do not include late filings (which are permitted through August 2005).

¹⁴⁶ The percentage of homeowners and renters add to slightly more than 100 percent, because some individuals claim refunds as both homeowners and renters. This typically occurs in the year a renter purchases a home or marries an existing homeowner. DOR was unable to identify as few records as either homeowners or renters.

Table 21
Refundable Federal and Minnesota Tax Credits
Qualification Rules for Noncitizens by Residency and Legal Status

Credit Program	Residents with Green Card	Other Residents*	Nonresidents**
Federal credits			
Earned income tax credit (EITC)	Yes	No – must have SSN	No
Refundable child credit	Yes	Yes	Yes, if the child is a citizen or resident alien
Minnesota credits			
Working family credit	Yes	No – follows federal EITC rules	No
K-12 education credit	Yes	Yes	Yes, for unmarried individuals
Dependent care credit	Yes	Yes	Yes, for unmarried individuals
Homeowner property tax refund	Yes	No, unless spouse has SSN	No
Renter property tax refund	Yes	Yes	No
<p>* These are individuals who meet the appropriate residency test (federal and/or Minnesota) or who have elected residency status (typically a spouse of a citizen or of an individual with a green card). These individuals do not have green cards (and SSNs) and include undocumented workers. The table assumes these individuals do not have SSNs and use ITINs to file their tax returns.</p> <p>** Assumes that these individuals do not have SSNs and have not elected under the federal procedure to be treated as residents.</p>			

Miscellaneous

Hunting and Fishing Licenses

Noncitizens can hunt and fish in Minnesota. For the purposes of hunting and fishing, Minnesota Statutes define “resident” as a U.S. citizen or resident alien who has legally resided in the state for at least 60 days before applying for a license.¹⁴⁷ A nonresident is a person who does not live in this state. The same hunting and fishing requirements apply to residents (citizens and noncitizens) and nonresidents alike, but nonresidents must pay higher licensing fees.

In addition to providing a form of identification (e.g., Minnesota driver’s license), a person who applies for a hunting or fishing license has to provide a Social Security number. The 2003 Legislature passed this law to conform to requirements of the 1996 federal welfare reform act; collection of Social Security numbers is intended to help states enforce child support programs. People who don’t have Social Security numbers have to complete a special form stating that they haven’t been issued a Social Security number.

Voting and Office Holding

An individual is eligible to vote in Minnesota if he or she has been a citizen of the United States for three months.¹⁴⁸ Because eligibility to hold state and local office is based on eligibility to vote, an individual must have been a citizen for three months in order to run for office here.¹⁴⁹

¹⁴⁷ Minn. Stat. § 97A.015, subd. 42.

¹⁴⁸ Minn. Const. Art. VII, §1. The original state constitution did not require an individual to be a citizen in order to vote. That requirement was added by an amendment adopted in 1896. *Laws of Minnesota 1895*, chapter 3; *Minnesota Legislative Manual 2003-2004*, St. Paul: Minnesota Secretary of State, 2003: 274.

¹⁴⁹ Minn. Const. Art. VII, § 6.

Glossary of Immigration Terms

These terms are defined using a variety of sources. The source for each term is denoted by a number in brackets following the definition. In some cases, terms have been updated and definitions abbreviated. Definitions for terms with no source note were written by the authors. The sources appear at the end of the glossary.

Alien: Any person not a citizen or national of the United States. [5] (In this publication, aliens are referred to as noncitizens.)

Amerasian: This category was created for children who were born in Cambodia, Korea, Laos, Thailand, or Vietnam between 1951 and 1982 and who were fathered by a U.S. citizen. [1]

Asylee: Similar to a refugee in that the individual has demonstrated that he or she would be subject to or has a fear of persecution if forced to return to the country of origin, this is a person who seeks asylum and is already present in the United States when he or she requests permission to stay. Asylees are eligible to adjust to lawful permanent resident status after one year of continuous residence in the United States. [1]

Conditional entrant: Individuals who sought to enter the United States before 1980 because of a fear of persecution were called conditional entrants. Since the United States became a signatory to the Geneva Convention in 1980, these individuals have been called refugees. [1]

Cuban/Haitian entrant: This category was created for the Cuban and Haitian arrivals of 1980 who were allowed to obtain work permits and to apply for public assistance. Cuban and Haitian entrants were eligible for most refugee services. [1]

Deferred enforced departure: This is a status very similar to temporary protected status, and is given to particular nationalities by presidential proclamation or other executive action. This status allows eligible persons to remain lawfully in the United States for a limited, specified period, and to receive employment authorization. [4]

Department of Homeland Security (DHS): The federal agency that houses the U.S. Citizenship and Immigration Services bureau, which regulates immigration. The agency was created in 2002 to prevent terrorist attacks and protect the country against threats and hazards.

Deportation: The formal removal of an alien from the United States when the alien has been found removable for violating the immigration laws. Deportation is ordered by an immigration judge without any punishment being imposed or contemplated. This is also known as removal. [5]

Diversity: A category of immigrants replacing the earlier categories for nationals of underrepresented countries and countries adversely affected by the Immigration and Nationality Act Amendments of 1965 (P.L. 89-236). [5]

Family unity beneficiary: A status providing protection from deportation and eligibility for employment authorization to the spouses and children of noncitizens who legalized under the Immigration Reform and Immigrant Control Act of 1986 (IRCA). To qualify for family unity, a person must have been the spouse or child of an amnesty immigrant as of May 5, 1998, and must have been residing in the United States since that date. Family unity status is also available to other specified individuals. [4]

Federal Fiscal Year: The budget year for the U.S. government, which is the 12-month period beginning October 1 and ending September 30.

Foreign-born: Anyone residing in the United States who was not born a U.S. citizen; includes both naturalized citizens and noncitizens.

Foreign corporation (or non-American corporation): A term used in agriculture law that means any corporation, wherever organized, that has more than 20 percent ownership held by persons who are not U.S. citizens or permanent resident aliens.

Green card: A wallet-sized card showing that a person is a lawful permanent resident (immigrant) in the United States. It is formerly known as the Alien Registration Receipt Card, Form I-151 or I-1551. It is also known as the permanent resident card. It used to be green, hence its name; USCIS currently uses pink and pink-and-blue for the cards.

Illegal alien: Also known as an undocumented or unauthorized immigrant, this is someone who enters or lives in the United States without official authorization, either by entering illegally or violating the terms of his or her visa (for example, entering without inspection by the USCIS, entry based on fraud, overstaying his or her visa, or working without authorization). [1]

Immigrant: The term is often used generally to refer to aliens residing in the United States, but its specific legal meaning is any legal alien in the United States other than those in the specified class of nonimmigrant aliens such as temporary visitors or students. [2]

Immigration and Nationality Act: The federal law that governs immigration and the issuance of visas.

ITIN: ITIN refers to Individual Taxpayer Identification Number. The Internal Revenue Service (IRS) issues ITINs to use in filing tax returns by alien individuals who do not qualify to obtain Social Security numbers. Both residents and nonresident aliens (either of whom may have federal and state tax filing obligations) can obtain and use an ITIN to file their tax returns. The ITIN program was begun in 1996 and was intended to be limited to use for tax filing. However, it has been used more broadly as an identification number for other government programs and by some private sector firms. These uses are not authorized by the enabling Treasury regulations. Treas. Reg. 301.6109(d)(3) (issued for use in connection with federal tax filing requirements). Individuals can obtain an ITIN by applying to the IRS on Form W-7 or to a variety of other entities (other federal agencies, educational institutions, financial institutions, and so forth) that qualify as “acceptance agents” under IRS procedures.

Lawful permanent resident (LPR): An LPR is an immigrant who has been lawfully accorded the privilege of residing permanently in the United States. Lawful permanent residents are granted admission to the United States on the basis of family relation or job skill. Refugees and asylees may adjust to LPR status after one year of continuous residence. Lawful permanent residents may be issued immigrant visas by the Department of State overseas or adjust to LPR status with the USCIS after entering the United States. Generally, lawful permanent residents are those individuals who have “green cards” and are permitted to apply for naturalization after five years of U.S. residence. [2]

Lawful temporary resident: A person who applied for and was given amnesty under the provisions of the Immigration Reform and Control Act of 1986. [3]

Naturalization: The conferring, by any means, of citizenship upon a person after birth. [5]

Noncitizen: Anyone residing in this country who is not a citizen of the United States.

Nonimmigrant: Nonimmigrants are those who are allowed to enter the United States for a specific purpose and for a limited period of time, such as tourists, students, business visitors, diplomats and specialty occupations, such as high-tech workers or seasonal agriculture workers. [2]

Not qualified alien: The term means any immigrant who is not a “qualified alien,” including undocumented immigrants, nonimmigrants, and most PRUCOL immigrants. “Not qualified” immigrants are ineligible for federal, state, and local public benefits covered by welfare reform, unless a specific exception applies. [2]

Parolee: The Justice Department has discretionary authority to permit certain individuals or groups to enter the United States in an emergency or because it serves an overriding public interest. Parole may be granted for humanitarian, legal, or medical reasons. These entrants are granted temporary admission, are ineligible for special federal benefits, and are not on a predetermined path to permanent resident status. [1]

Permanent Resident Alien: An alien admitted to the United States as a lawful permanent resident. [5]

Permanent Resident Visa: Permanent resident visa is not a technical legal term; this report uses it to refer the right to be a lawful permanent resident of the United States. This right is most commonly referred to as a green card (this terminology is even used by the USCIS). Holding a green card entitles noncitizens (aliens) to many benefits, including the right to live and work in the United States and the right to travel to and from the United States indefinitely.

Permanently residing under color of law (PRUCOL): PRUCOL is not an immigration status provided by the USCIS; rather, it is a legal term that applies to aliens in the United States “under statutory authority and those effectively allowed to remain in the United States under administrative discretion.” Prior to the enactment of the 1996 federal welfare reform law, PRUCOL status meant that an alien was considered to be legally residing in the country for an

indefinite period for the purpose of determining benefit eligibility for public assistance, including Medicaid. Examples of PRUCOL include: those granted indefinite voluntary departure; those residing in the United States under orders of supervision; those who have lived in the United States continuously since January 1, 1972; aliens granted stays or suspension of deportation; and aliens whose departure USCIS does not contemplate enforcing. [1]

Qualified alien: The term, created in the 1996 welfare reform legislation (P.L. 104-193), refers to lawful permanent residents, refugees, Cuban and Haitian entrants, asylees, aliens paroled into the United States for a period of at least one year, aliens granted withholding of deportation by the USCIS, aliens granted conditional entry into the United States, and certain battered alien spouses and children. “Qualified” immigrants are generally eligible for federal public benefits on the same basis as citizens if they entered before August 22, 1996, when the welfare law was enacted. Qualified immigrants entering after August 22, 1996, are generally barred from federal assistance for five years. Different restrictions and limits apply to qualified immigrants’ eligibility, depending on the immigration category. [2]

Refugee: A person who flees his or her country due to persecution or a well-founded fear of persecution because of race, religion, nationality, political opinion, or membership in a particular social group. Refugees are eligible for federal resettlement assistance. Refugees are eligible to adjust to lawful permanent resident status after one year of continuous residence in the United States. [1]

Removal: The expulsion of an alien from the United States. This is also known as deportation. This expulsion may be based on grounds of inadmissibility or deportability. [5]

Resident Alien: A non-U.S. citizen currently residing in the United States. [5]

Temporary protected status: A temporary grant of permission to remain in the United States and to work that is granted to nationals of a particular country when the attorney general determines that unstable or dangerous conditions in that country warrant such relief. The attorney general has most commonly designated temporary protected status for either one-year or 18-month periods, but it is also common for temporary protected status designations to be extended if unstable conditions persist in the country. [3]

Undocumented person: See illegal alien.

U.S. Citizenship and Immigration Services (USCIS): The division of the Department of Homeland Security that regulates immigration and naturalization. It was formerly known as the Immigration and Naturalization Service.

Victims of severe forms of trafficking: This category refers to individuals who have been subjected to “a severe form of trafficking in persons” and who are either: (1) under 18 years of age; or (2) have been certified by the federal government as being willing to assist in the investigation and prosecution of severe forms of trafficking in persons and who either have made an application for a visa or whose continued presence in the United States is being ensured by the attorney general in order to prosecute traffickers in persons. [4]

Visa: A permit for a person to apply to enter the United States. The U.S. State Department has the responsibility for issuing visas, and most visas are issued by State Department embassies or consulate offices abroad.

Withholding of deportation: This immigration category refers to individuals who would be deportable but who are not being deported because the federal attorney general has determined that the individual's life or freedom would be threatened if returned to his or her home country because of race, religion, nationality, political opinion, or membership in a particular social group. [1]

Sources

The definitions in the glossary are from the following sources, specified by the number in brackets at the end of each definition.

- [1] From Appendix J: Common Terms, in Ann Morse et. al. *America's Newcomers: Mending the Safety Net for Immigrants*, National Conference of State Legislatures, April 1998.
- [2] Common Immigration Terms, from the web site of the National Conference of State Legislatures, accessed July 23, 2004, at <http://www.ncsl.org/programs/immig/ImmigrationTerms04.htm>
- [3] Glossary of Key Immigration Terms, last updated April 2004, from the web site of the National Immigration Law Center, accessed August 16, 2004 at http://www.nilc.org/immsemplymnt/IWR_Material/Attorney/Glossary.pdf.
- [4] National Immigration Law Center, *Guide to Immigrant Eligibility for Federal Programs*, fourth edition, 2002.
- [5] Glossary and Acronyms, from the U.S. Citizenship and Immigration Services web site, accessed August 4, 2004 at <http://uscis.gov/graphics/glossary.htm>.

Appendix: Supplemental Statistical Information

The appendix supplements the section on information about immigrants and contains a variety of statistical information. Among the information here are statistics on the number of immigrants to the United States and Minnesota, information on the foreign-born population in Minnesota, and information on languages spoken in the state.

Number of Immigrants to the United States and Minnesota

In federal fiscal year 2003, 705,827 people immigrated to the United States.¹⁵⁰ This is down by 34 percent from fiscal year 2002 when 1,063,732 people immigrated to the United States.¹⁵¹

In Minnesota in 2003, there were 8,435 immigrants.¹⁵² This is down 38 percent from 2002 when 13,522 people came to Minnesota. Immigration had increased since 1999 until this year. In fact, the 2002 immigration rate was the highest it had been in previous 20 years. The number of immigrants who came to Minnesota in 2003 represents only about 1.2 percent of the total U.S. immigration for that year.

The tables here provide historical information on immigration to the United States and Minnesota, and where immigrants were from. (See Table 1 and Table 2 in the main text for more information on where immigrants were from.)

¹⁵⁰ *Yearbook of Immigration Statistics, 2003*. U.S. Citizenship and Immigration Services, Department of Homeland Security (September 2004).

¹⁵¹ The events of September 11, 2001, occurred at the end of the federal fiscal year 2002. USCIS attributes the drop in immigration from 2002 to 2003 to security checks implemented after September 11 that caused a backlog in processing applications for people seeking legal permanent residence in the United States.

¹⁵² The USCIS determines which state an immigrant is going to from the legal permanent residence application, where applicants have to designate their intended state of destination. This figure doesn't account for secondary migration, where an immigrant would move here from another state.

Year	Minnesota	U.S.	Percentage of Immigrants Who Came to Minnesota
1982	9,192	594,131	1.5%
1983	6,103	559,763	1.1%
1984	5,243	543,903	1.0%
1985	4,995	570,009	0.9%
1986	5,189	601,516	0.9%
1987	5,621	601,708	0.9%
1988	4,665	643,025	0.7%
1989	5,704	1,090,924	0.5%
1990	6,627	1,536,483	0.4%
1991	7,461	1,827,167	0.4%
1992	6,851	973,977	0.7%
1993	7,438	904,292	0.8%
1994	7,098	804,416	0.9%
1995	8,111	720,461	1.1%
1996	8,977	915,900	0.9%
1997	8,233	798,378	1.0%
1998	6,981	654,451	1.1%
1999	5,956	646,568	0.9%
2000	8,671	849,807	1.0%
2001	11,166	1,064,318	1.0%
2002	13,522	1,063,732	1.3%
2003	8,435	705,827	1.2%

Source: U.S. Citizenship and Immigration Statistics

Region	Number	Percent	Country	Number	Percent
North America	250,726	35.5%	Mexico	115,864	16.4%
Asia	244,759	34.7%	India	50,372	7.1%
Europe	100,769	14.3%	Philippines	45,397	6.4%
South America	55,427	7.8%	China	40,659	5.8%
Africa	48,738	6.9%	El Salvador	28,296	4.0%
Oceania	4,377	0.6%	Dominican Republic	26,205	3.7%
Unknown	1,211	0.2%	Vietnam	22,133	3.1%
			Colombia	14,777	2.1%
			Guatemala	14,415	2.0%
			Russia	13,951	2.0%
			Total for top ten	372,069	52.6%

Source: U.S. Citizenship and Immigration Statistics

The Foreign-Born Population in Minnesota

In 2003, the U.S. Census Bureau calculated the foreign-born population in Minnesota using the American Community Survey. It estimates the foreign-born population in the state as 299,192. This represents about 6.1 percent of the state's total population. The following table gives the range of estimates for the survey.

	Estimate	Plus or minus	Range
Total:	299,192	16,424	282,768 - 315,616
Year of entry 2000 or later:	61,922	11,548	50,374 - 73,470
Naturalized citizen	2,631	1,894	737 - 4,525
Not a citizen	59,291	11,512	47,779 - 70,803
Year of entry 1990 to 1999:	110,097	13,266	96,831 - 123,363
Naturalized citizen	35,404	6,680	28,724 - 42,084
Not a citizen	74,693	11,611	63,082 - 86,304
Year of entry 1980 to 1989:	74,700	8,618	66,082 - 83,318
Naturalized citizen	42,441	7,024	35,417 - 49,465
Not a citizen	32,259	7,011	25,248 - 39,270
Year of entry before 1980:	52,473	7,418	45,055 - 59,891
Naturalized citizen	43,588	6,980	36,608 - 50,568
Not a citizen	8,885	2,790	6,095 - 11,675

Source: 2003 American Community Survey, U.S. Census Bureau

Table 25 reflects the region of birth for the foreign-born population in Minnesota. Of all regions, Asia represents the most foreign-born at 41.3 percent, followed by Latin America at 21.1 percent (Latin America includes Central and South Americas).

Region of Birth	Total	Percent of Total
All foreign-born	299,192	100.0%
Europe	50,594	16.9%
Asia	123,514	41.3%
Africa	50,460	16.9%
Oceania	631	0.2%
Latin America	63,194	21.1%
Northern America	10,799	3.3%

Source: 2003 American Community Survey, U.S. Census Bureau

Of the state's foreign-born population, more than half came to the country between 1990 and 2000. In addition, 37.4 percent of the foreign-born population have become citizens.

Category	Total	Percent of Foreign-Born
All foreign-born	260,463	100%
Foreign-born who entered the U.S. between 1990 and 2000	141,968	54.5%
Foreign-born, naturalized citizens	97,308	37.4%
Foreign-born, not citizens	163,155	62.6%
Source: U.S. Census Bureau		

Of individual countries represented by the foreign-born population, Mexico is the highest with 16 percent, followed by Laos, with 10.0 percent.

Country	Number	Percent of Total	Country	Number	Percent of Total
Mexico	41,592	16.0%	Russia	4,915	1.9%
Laos	25,968	10.0%	Ethiopia	4,646	1.8%
Vietnam	15,727	6.0%	Philippines	4,518	1.7%
Canada	13,183	5.1%	Cambodia	4,226	1.6%
Korea	11,853	4.6%	Ukraine	3,357	1.3%
India	10,510	4.0%	El Salvador	2,769	1.1%
China	10,003	3.8%	Ecuador	2,621	1.0%
Thailand	8,738	3.4%	Japan	2,599	1.0%
Germany	7,717	3.0%	Nigeria	2,393	0.9%
United Kingdom	5,284	2.0%	Bosnia and Herzegovina	2,193	0.8%
Total for top 20				184,812	71.0%
Source: 2000 Census, U.S. Census Bureau					

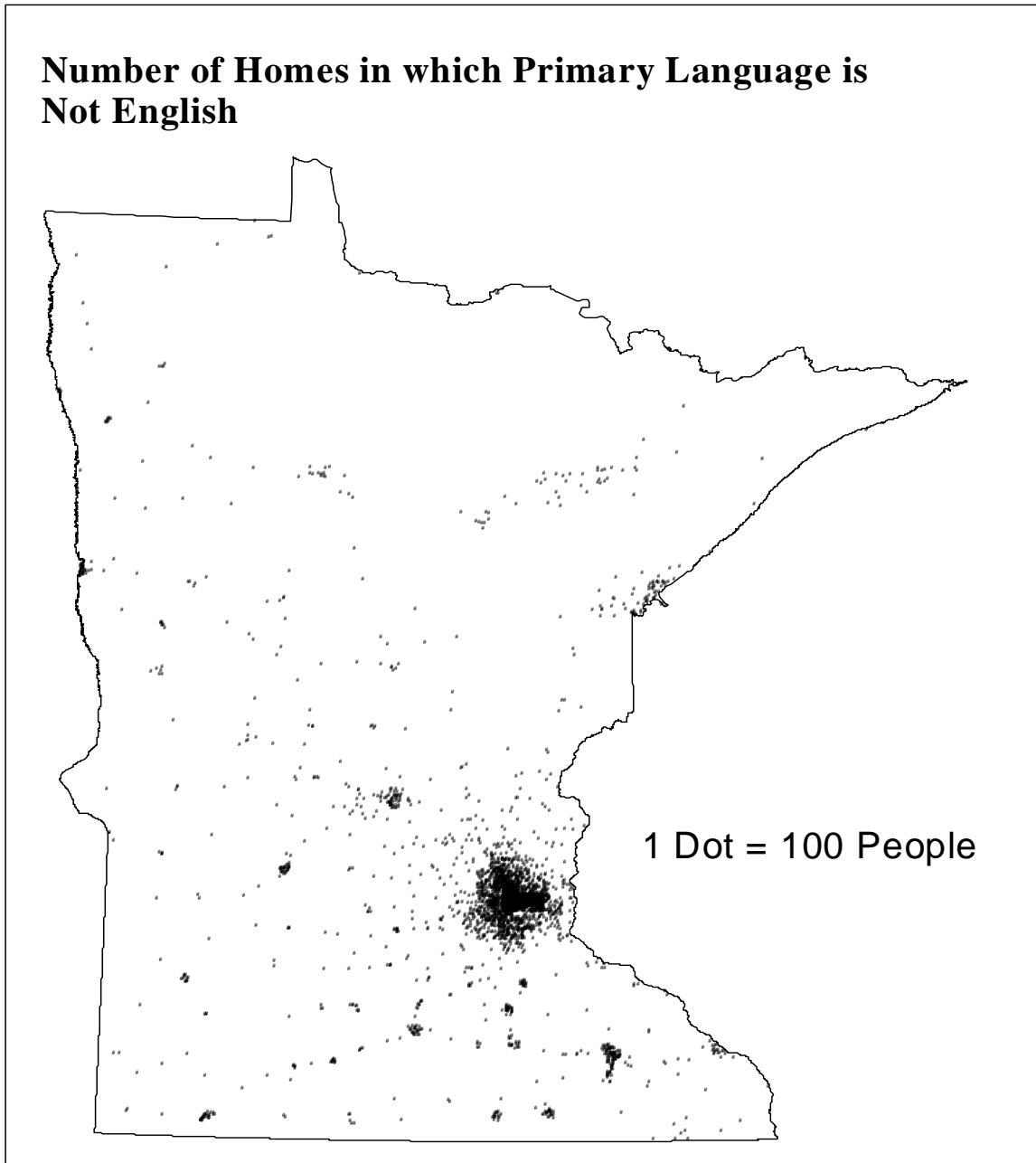
The gender distribution of the foreign-born in Minnesota is roughly half; males make up 50.7 percent of the population while females make up 49.3 percent. Adults 18 years old and older make up nearly 83 percent of the foreign-born population.

Table 28 Gender and Age Distribution of Foreign-born Minnesota Residents: 2000	
Total:	260,463
Male:	132,093
Under 18 years	22,277
Naturalized citizen	5,731
Not a citizen	16,546
18 years and over	109,816
Naturalized citizen	40,605
Not a citizen	69,211
Female:	128,370
Under 18 years	22,245
Naturalized citizen	6,895
Not a citizen	15,350
18 years and over	106,125
Naturalized citizen	44,077
Not a citizen	62,048
Source: 2000 Census, U.S. Census Bureau	

Languages Spoken in Minnesota Households

Languages spoken in Minnesota homes are another indicator of the types of foreign-born populations in the state. According to the 2000 Census, 8.5 percent of people in Minnesota lived in a home where a language other than English was spoken.

Figure 10



Of the 8.5 percent of people who spoke languages other than English, 2.9 percent spoke Spanish, 2.4 percent spoke Indo-European languages, 2.3 percent spoke Asian or Pacific Island languages, and 1.0 percent spoke other languages. The Census Bureau uses four main language group classifications for non-English languages, as defined after the table.

Table 29 Languages Spoken in Minnesota: 2000		
	Number	Percent
Population (5 years and older)	4,591,491	100
Speak only English	4,201,503	91.5
Speak a language other than English	389,988	8.5
Speak Spanish or Spanish Creole	132,066	2.9
Speak other Indo-European Languages	110,644	2.4
French (incl. Patois, Cajun)	15,744	0.3
French Creole	341	0
Italian	3,173	0.1
Portuguese or Portuguese Creole	1,355	0
German	35,072	0.8
Yiddish	484	0
Other West Germanic languages	2,246	0
Scandinavian languages	12,722	0.3
Greek	1,464	0
Russian	9,629	0.2
Polish	4,370	0.1
Serbo-Croatian	3,554	0.1
Other Slavic languages	6,256	0.1
Armenian	47	0
Persian	2,096	0
Gujarathi	957	0
Hindi	2,630	0.1
Urdu	2,499	0.1
Other Indic languages	2,974	0.1
Other Indo-European languages	3,031	0.1
Speak Asian and Pacific Island Languages	103,520	2.3
Chinese	12,578	0.3
Japanese	3,789	0.1
Korean	4,321	0.1
Mon-Khmer, Cambodian	5,479	0.1
Miao, Hmong	41,673	0.9
Thai	1,046	0
Laotian	7,987	0.2
Vietnamese	16,503	0.4

Table 29 Languages Spoken in Minnesota: 2000		
	Number	Percent
Other Asian languages	5,146	0.1
Tagalog	3,667	0.1
Other Pacific Island languages	1,331	0
Speak Other Languages	43,758	1.0
Navajo	34	0
Other Native North American languages	5,862	0.1
Hungarian	665	0
Arabic	5,572	0.1
Hebrew	1,270	0
African languages	24,747	0.5
Other and unspecified languages	5,608	0.1
Source: 2000 Census, U.S. Census Bureau		

The U.S. Census divides languages spoken other than English into four major groups: Spanish, other Indo-European languages, Asian and Pacific Island languages, and other languages. Under those categories, the following languages are included:

Spanish

- Spanish and Spanish Creole

Other Indo-European languages

- French, French Creole; Italian; Portuguese and Portuguese Creole; German, other West Germanic languages (i.e., Dutch); Yiddish; Scandinavian languages; Greek; Russian; Polish; Serbo-Croatian and other Slavic languages (i.e., Czech) ; Armenian; Persian; Gujariti; Hindi; Urdu; other Indic languages (i.e., Bengali); and other Indo-European languages (i.e., Albanian)

Asian and Pacific Island languages

- Chinese; Japanese; Korean; Mon-Khmer, Cambodian; Miao, Hmong; Thai; Laotian; Vietnamese; other Asian languages (e.g., Tamil); Tagalog; and other Pacific Island languages (i.e., Indonesian, Hawaiian)

All other languages

- Navajo; other Native North American languages (i.e., Cherokee); Hungarian; Arabic; Hebrew; African languages; other and unspecified languages (i.e., Finnish, Syriac)