

The Chinese People and US Immigration Laws

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Most immigration laws don't typically apply to aliens from specific countries, but occasionally do. These are de jure, or by law. Also, certain phenomena exist that have de facto, result by fact, legal effects on a particular nationality.

I. De Jure immigration laws

A. Historical

1. 1st immigration laws in 1798
2. Chinese Exclusion Acts passed 1882, authorized deportations on executive orders for Chinese aliens whom unlawfully remained in the US. This law remained part of US immigration law until 1943.

B. Distinguish Nonimmigrant, Immigrant visas and Naturalization

1. Nonimmigrants are temporary, limited in scope and time
2. Immigrants (permanent residence, evidence for which is known as "green card") are unlimited in length. You have the right to live and work indefinitely
3. Naturalization – acquisition of US citizenship by judicial means

C. Nonimmigrant Visas - temporary – "E" investor and trader visas

1. Taiwanese qualify based upon treaty of friendship, commerce and navigation
2. PRC and Hong Kong don't have these treaties
3. Result: Scrutiny for fraud in using other visa categories that don't work as well

D. Immigrant Status – permanent - Chinese Student Protection Act of 1992

1. In response to Tianamen Square protests
2. Allows for green card (permanent residence) and requires:
 - a. nationals of the PRC only (no dual nationals)
 - b. present in the US some time between 6/5/1989 and 4/11/1990 or would have been but for a brief, casual and innocent departure from the US
 - c. resided continuously in the US since 4/11/1990, other than brief departures
 - d. not present in PRC for more than cumulative 90 days between 4/11/1990 and 10/9/1992

- e. applied for “adjustment of status” during the one year application period from 7/1/1993 – 7/1/1994
- 3. Those eligible for this benefit are exempted from certain bases of ineligibility for other immigrants:
 - a. no labor certification is required
 - b. no travel document requirement
 - c. if the applicant was a J-1 exchange visitor with two-year foreign resident requirement, that requirement is waived
 - d. any other basis of ineligibility waivable, other than controlled substance traffickers, terrorists, those who pose serious adverse foreign policy consequences, persecutors of others
 - e. eligibilities overlooked: public charge, contagious diseases, other criminals, illegal entrants

E. Naturalization

- 1. When naturalizing, Chinese characters are required on the application and checked against the alien’s passport to inspect for fraud
- 2. Requirement of “Attachment to the US government” – Former membership, contact with Communist party organizations, or subscribing to a communist publication do not per se constitute lack of attachment to the US government. Depends on other facts.

II. De Facto Immigration laws

- A. Distinction between HK, PRC and Taiwan – Laws varied as these were considered separate. Since HK has returned to PRC, there are only two distinctions: between Taiwan and the PRC.
- B. Many Chinese scholars hold J visas, with a requirement that mandates that they return to China for two years before applying for several common types of visas. The requirement is waivable in limited circumstances.
- C. China mainland born have separate visa charginability; Taiwan is included in worldwide numbers
- D. Asylum and refugee claims
 - 1. fear of abortion or coerced sterilization as a result of “one couple, one child” population control policy of PRC – Some of those cases in certain jurisdictions was approved as political persecution. Others were not. Cases approved considered the right to procreate a fundamental right, however, when persecution is populous wide, it is not considered persecution under most interpretations.
 - 2. Prosecution as persecution: Prosecution for violation of China’s exit laws or failure to serve in military doesn’t constitute persecution. Crime must be:
 - a. Political in nature
 - b. Not receive fair trial prior to punishment
 - c. Governmental improper motive in prosecution

- d. Disproportionate punishment motivated by political acts or beliefs
3. Golden Venture nationals – Boat that landed in NY harbor. The Chinese people on board were put into exclusion proceedings, and are entitled to apply for asylum. A motion for evidentiary hearing on their claims was denied because these people didn't submit evidence to support their claims. The argument that their claims were prejudiced by the Clinton administration's desire to expedite their removal and by ex parte intra-government communications was not found persuasive.

C. Denaturalization – Wen Ho Lee

1. Evidence of discriminatory motivation: Chinese, but he was Taiwanese, not Communist. Was government unaware of the distinction?
2. Facts: 59 counts of breaching national security reduced to 1 felony count for "mishandling nuclear secrets." Plea bargain was for time served, 278 days. The object of his transgression was touted as the "crown jewels of nuclear weaponry science". In reality, "99% of it was already available to the public." (Per Compuserve online news 9/13/2000). Some law professors want an investigation of the government's conduct.
3. Had Dr. Lee been convicted of espionage, he would have been stripped of his citizenship and required to serve his criminal sentence in the US, at the conclusion of which, he would have been removed to Taiwan.