



# CATHOLIC LEGAL IMMIGRATION NEWS

## Legalization Readiness - Gathering Supporting Documentation

By Peggy Gleason

Regardless of what legalization program is eventually enacted and implemented, applicants will need to submit supporting documents to establish that they qualify. What documents are likely to be needed? What is the best way to organize them? How should clients now be counseled on ways to gather these documents? By looking at the prior legalization under the Immigration Reform and Control Act (IRCA) of 1986, and at the current proposals, we can estimate what may be required once a new legalization program is enacted.

Basic Elements. Most legalization proposals require proof of identity, continuous physical presence/ residence in the United States, and employment history. The time period over which applicants need to prove these elements will depend on the final version of the statute. Date and manner of entry to the United States are also likely to be facts that applicants will have to establish. Suggested documents to prove these elements are listed on the legalization Web page at [www.cliniclegal.org](http://www.cliniclegal.org).

Warning. While continuing to plan for the day when legalization is implemented, it is necessary to warn clients once again that no legalization exists at this moment. They should not pay fees to anyone to file an application. Nonetheless, clients can be advised that should legalization pass, it is best to be prepared with an organized set of documents.

Save that Piece of Paper. Immigration practitioners are accustomed to helping their clients gather documentation since most immigration applications require supporting proof. Many immigrants have already learned to become hoarders of documentary records, as well. They have learned through personal experience that the Immigration Service or some other government entity may ask them to prove where they have been during a given period time, what they have been doing, and whether they paid taxes while doing it. Those who have not learned this yet need to be counseled.

Show clients the list of suggested documents for legalization. Ask them which ones they have and which ones they can obtain. Give the client a list of documents to gather before your next meeting. Then ask them to organize the documents by date, starting with the present and working their way back in time. For some clients, you will need to do the organizing. A box for all the documents will help keep them organized. During IRCA, applicants used both the shopping bag and box method of gathering documents. The box is vastly preferable! Documents can be reordered easily, and new ones can be inserted alongside others that date from the same year.

Which Documents? How best to go about gathering legalization documents will depend on the details of the legalization law. We can estimate what will be needed from our prior experience in both legalization and other immigration programs. We need to recognize that all documentary requirements, especially those for identity, are likely to be stricter in today's world of heightened security concerns than they were twenty years ago.

IRCA Legalization Experience. During IRCA, applicants had to prove that they had been continuously physically present in the United States since January 1, 1982, that they were unlawfully present from January 1, 1982 up to the date of application, that they did not have convictions for one felony or three misdemeanors, that they were admissible or could obtain a waiver, and that they filed their application during the one-year period that ended on May 4, 1988. General humanitarian waivers were available for many grounds of inadmissibility. The burden of proof was set at preponderance of the evidence, meaning that the evidence as a whole showed that the facts sought to be proved were more probable than not.

The law stated that information from the applicant was confidential, unless fraud was found in the application. Confidentiality meant that the information in the application could not be used for any purpose but to adjudicate it. Thus, applicants did not risk deportation unless they committed fraud. The applicant was granted temporary residence initially, and had to return within a limited application period to apply for permanent residence. At that second stage, admissibility was re-

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examined, and the applicant had to show basic knowledge of English language skills and knowledge of civics.

Applicants had to provide documents to show identity, residence, presence in the United States, and unlawful status. Some programs advised applicants to have one document for each month that they lived in the United States. Over time, some gaps in documentation were allowed if applicants presented otherwise credible cases. The regulations gave detailed lists of possible documents that applicants could use, and also allowed "other credible evidence." 8 CFR § 245a.4(b)(4).

The farmworker program during IRCA, called the Seasonal Agricultural Worker (SAW) program, required applicants to prove that they had worked in agriculture for 90 days during a one-year period. The applicant had to prove identity, residence, and employment history. Just like in the general amnesty program, the SAW applicant had to be admissible, but humanitarian waivers were available for many grounds. The regulations specifically recognized the difficulty that farmworkers faced in providing documents verifying employment history and allowed a broad standard of documentation sufficient to establish eligibility by a "just and reasonable inference." 8 CFR § 210.3(b)(1). When a SAW applicant testified credibly that the employer refused to provide employment records, the regulations required that the Immigration Service attempt to secure the records, by request or by subpoena.

Documentary Standards Now. We don't know exactly what documents will be needed for any new legalization program. However, the elements of identity, continuous presence/residence and employment history are currently required in many other immigration applications. We can anticipate from our experience with programs such as the Nicaraguan Adjustment of Central American Relief Act (NACARA), the Haitian Refugee and Immigrant Fairness Act (HRIFA), and general family-based petition filing what the current documentary requirements will look like. Advocates are promoting a burden of proof and confidentiality provisions similar to those of IRCA. It will make an enormous difference if confidentiality is protected, since applicants would not risk removal by coming forward.

Types of Documents. Identity documents were important during IRCA, and will be doubly so during any future legalization. A current passport or certified copy of a birth certificate can prove identity. A national identity document with photo issued by a foreign government will also be helpful. Vital statistics documents issued by a government source – birth, marriage, divorce and death certificates – can also help establish identity.

Identity can be proven by a U.S. or state government-issued photo identification document. The Department of Motor Vehicles needs to be approached carefully in many

states. Find out what your state requires for a driver's license or a non-driver's identification card before advising any undocumented person to approach them. While government sources are favored by the Immigration Service for documentation, undocumented people must be aware of risks of enforcement.

During IRCA, the regulations specifically allowed the following documents to prove identity: passport; birth certificate; a national identity document with photo and fingerprint; driver's license or similar state-issued document; baptismal or marriage record; and affidavits. Affidavits would not likely be repeated on any current list of required documents to establish identity.

Even assumed names could be overcome by a 1986 amnesty applicant. By regulation, if convincing documentation of actual identity was presented, the applicant was able to show records under an assumed name to establish continuous residence. The applicant had the burden of proving his or her true identity and that there was a common identity in such records. A similar provision in a current legalization would help many would-be applicants who happen to be working under false names or social security numbers.

Continuous U.S. Presence/Residence and Employment Documents. Continuous presence and residence are elements that are required in many types of immigration applications. For residence, dated records such as rent receipts, bank records, credit statements, lease, home ownership papers, utility bills, and names and contact information for landlord and neighbors will be useful. Gather school records from the children, medical records of all sorts for the family, car records, and all the basic vital statistics documents: birth, marriage, divorce, and death certificates. If a client should be paying child support, gather the documents to show it is being paid. Any dated documents received from the Immigration Service will help establish this paper trail. Photos of the person at work or at home may help support the application. Photos should be dated, described, and identified by the applicant. Other proof of residence can include church and community organization memberships, records of donations, dated receipts, correspondence received in the United States, receipts for money sent abroad while the applicant was in the United States, records from the Department of Motor Vehicles, and insurance records.

Employment records include tax returns and social security records, check stubs, employer and other work-related records, such as auxiliary benefits and insurance.

Taxes. Tax returns and Internal Revenue Service (IRS) printouts showing tax payments are excellent proof of residence and employment history. Clients should be advised that the Immigration Service routinely requires tax returns

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for applications, and the agency expects applicants to file returns for all years of employment in the United States. Advise clients to consult a reputable accounting service or the IRS to do this. They may need to establish a payment plan with the IRS if back taxes are owed. If clients have valid social security numbers, their social security earnings records are vital as proof of residence and employment.

The IRS can issue an Individual Taxpayer Identification Number (ITIN) by mail or through a certified acceptance agent if a client lacks a social security number. An ITIN can be used to file taxes. While the IRS remains bound by confidentiality laws, approaching them by mail if an applicant is undocumented may be preferable to making a personal appearance.

More Employment Records. In addition to tax and social security records, applicants may be able to prove employment history with pay stubs, employment-related programs or benefits, certificates, and awards.

Less credible employment proof includes notarized letters or declarations of employers, managers and co-workers. Ask clients to write down the names and contact information of such people, even if letters will be requested at a later time. All attempts to obtain official employment records from the employer should be documented. If the employer refuses to provide needed records, the applicant may be able to present secondary documents. Demonstrating the unavailability of the primary employment records because of the employer's failure to comply may enhance the credibility of secondary documents.

Persons who work for cash payments, such as domestic workers and day laborers, will have the most difficult time establishing work history. Counsel such clients to keep an employment notebook with all starting and ending dates of their jobs, hours, addresses, payment received, and supervisory contact. The person should deposit their pay in the bank if possible to establish a record of amounts received.

Declarations. Declarations are generally disfavored as proof, but sometimes they can help to corroborate other evidence. Employers and co-workers might confirm that an applicant worked during certain time periods at a particular location. This would have to be presented with other evidence of employment to have probative value. Declarations of relatives and members of the community may also help prove residence, but only if presented in addition to other documents.

If declarations are permitted by the Immigration Service as secondary documents, complying with certain standards will help give them credibility. A declaration should be written by someone who has personal knowledge of the fact he or she is testifying to. The declarant should be legally residing in the United States, should state all the contact

information, and should specify his or her immigration status. The declaration should be signed under penalty of perjury, and should be attached to a copy of a photo identification document of the declarant. Right now, it would be helpful to have clients make lists of names, addresses, and all phone numbers of people who could corroborate where the person lived and worked, as well as noting the person's immigration status. Any actual statements could be gathered later when the details of the legalization program are known.

Credible Documents. In general, a document issued by a government source is deemed more credible than those issued by a non-government source. U.S. or state government sources are deemed most reliable by the Immigration Service, but documents issued by foreign governments will be valuable as well. Documents with photos, fingerprints, or seals are regarded as more credible. Documents that are originals or certified copies are deemed more reliable than ordinary copies. Documents that are issued contemporaneous with the event described are deemed more credible than later-issued documents. Documents should have dates to be credible. Anyone issuing a sworn declaration should write a detailed statement that includes all contact information and a copy of photo identification. A foreign document has enhanced credibility if it is certified by the embassy. Photos may be used as additional documentation, especially if one identifies who took the photo, what is in the picture, and when it was taken.

Foreign language documents should be accompanied by a translation. The translator is someone fluent in English and the language of the document, who can swear that the translation is an accurate one. 8 CFR § 204.1(f)(3). Word-for-word, rather than summary translations, are best.

Immigrants should start organizing their documents now. Put all these documents in a box, and organize them by year. It will help applicants for all types of immigration benefits and will enable them to apply without delay for any legalization program that ultimately passes. It will also help anyone providing immigration legal assistance to evaluate each case and provide concise information on eligibility.

## **FOR MORE INFORMATION ON CLINIC'S LEGALIZATION PROJECT**

<http://www.cliniclegal.org/Legalization.html>