LAWFUL ADMISSION, LAWFUL STATUS, LAWFUL PRESENCE, & PERIOD OF AUTHORIZED STAY IN U.S. IMMIGRATION LAW

POLICY EXPLAINER | APRIL 2025

Understanding the differences among *lawful admission*, *lawful status*, *lawful presence*, and *periods of authorized stay* is essential in understanding the basics of immigration law. These terms—while closely related—are legally distinct and often confused. Misinterpretations can result in confusion in drafting or applying laws and lead to unjust denials of benefits or unlawful findings of "illegality".

1. Lawful Admission: One way to enter the US "legally"--and not always an actual physical "admission"

A noncitizen is lawfully admitted when they have entered the U.S. after inspection and authorization by an immigration officer. *INA § 101(a)(13)(A), 8 U.S.C. § 1101(a)(13)(A)*

Significance:

- One of two ways to meet the requirement for adjustment of status under *INA § 245(a)*
- Does not by itself confer lawful status
- Parole is *not* considered an admission — *INA § 101(a)(13)(B); § 212(d)(5)(A)*
- Can be violated (e.g., an overstay following lawful admission)

In some contexts, a grant of status may also be considered an "admission." *See Matter of Garnica Silva* (BIA 2017) (U nonimmigrant status is an admission for purposes of finding deportability for Crime Involving Moral Turpitude within 5 years of admission); but *see also Sanchez v. Mayorkas* (US 2021) (TPS is not an admission for Adjustment of Status, also dicta that U status is not an admission)

2. Parole – Entry Without Admission but NOT a "Lawful Admission"

Parole allows a noncitizen to enter the U.S. temporarily without being formally admitted. It is a discretionary tool used for urgent humanitarian or significant public benefit reasons. *INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)*

"An alien who is paroled … shall not be considered to have been admitted." — *INA § 212(d)(5)(A)*

Legal Significance:

• **Not a lawful admission**, but **does satisfy the "inspected and admitted or paroled"** requirement for adjustment of status under INA § 245(a)

• Parolees are often **lawfully present**, even though they lack lawful status

• Advance parole (e.g., for DACA recipients) can restore eligibility for adjustment after an Entry Without Inspection (EWI)

• U visa applicants with bona fide determinations have often been granted **deferred action**, and **some may have received parole** under USCIS policy (2021 BFD guidance), allowing access to work authorization and in some cases adjustment under INA § 245(a) .

3. Lawful Status - Recognized Immigration Classification Defined by Statute or Regulation

A noncitizen has lawful status when they are present in the U.S. under a recognized legal category (e.g., student, temporary worker, asylee) as conferred by statute or regulation.

→ **Governing Law:** Not explicitly defined in the INA; interpreted via DHS and USCIS policy (e.g., Matter of Blancas-Lara, 23 I&N Dec. 458 (BIA 2002))

Significance:

- Status is often granted by USCIS approval of a visa, change of status, or extension
- Termination of status does not necessarily mean unlawful presence begins immediately (see below)
- **VAWA self-petitioners** are not in lawful status until their VAWA is approved and **adjustment is granted**, but they may be in a **period of authorized stay** while applications are pending. *USCIS Policy Manual, Vol. 7, Part B, Ch. 2* says "Approval of a VAWA self-petition does not grant lawful immigration status."
- **U and T visa recipients** gain lawful status *upon approval of their visas* (U nonimmigrant status or T nonimmigrant status).
- **Pending U, T, VAWA, and asylum cases do not confer lawful status,** but can result in *authorized stay or deferred action.*

In some contexts, a grant of status may also be considered an "admission." *See Matter of Garnica Silva* (BIA 2017) (U nonimmigrant status is an admission for purposes of finding deportability for Crime Involving Moral Turpitude within 5 years of admission); but *see also Sanchez v. Mayorkas* (US 2021) (TPS is not an admission for Adjustment of Status, also dicta that U status is not an admission)
→ *Matter of Blancas-Lara,* 23 I&N Dec. 458 (BIA 2002)

4. Lawful Presence – Relevant to Unlawful Presence and Inadmissibility Bars

Whether a person is **lawfully present** concerns whether they are accruing *unlawful presence* under immigration law, particularly for the purposes of inadmissibility bars under *INA § 212(a)(9)(B)* and *(C), 8 U.S.C. § 1182(a)(9)(B), (C)*. DHS Policy Interpretation, USCIS Policy Manual, Vol. 8, Part O

Unlawful presence is a term of art used to trigger the:

- **3-year bar** (for 180+ days of unlawful presence and departure);
- **10-year bar** (for 1+ year of unlawful presence and departure); and
- **Permanent bar** under *INA § 212(a)(9)(C)* (for re-entering the US without authorization after more than one year unlawful presence and departure or after removal)

- **Special Rule for Minors:**
  - **Unlawful presence for 3/10-year bars** does *not* accrue before age 18. *INA § 212(a)(9)(B)(iii)(I)*
  - However, **unlawful presence does count** for purposes of the **permanent bar** under *§ 212(a)(9)(C)*, even if accrued as a minor. *Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997)

⚠️ This distinction means a minor brought to the U.S. without inspection, who stays for more than a year, departs and then reenters without parole or admission, may be permanently inadmissible—even if they never accrued unlawful presence for the 3/10-year bars.

Note:
This part of the INA went into effect on April 1, 1997 so unlawful time in the US, departures, and re-entries do not count towards unlawful presence if they happened prior to that date.

- **Humanitarian Relief Applicants:**
  - U, T, VAWA, and asylum applicants with pending petitions are often in **periods of authorized stay** and **not accruing unlawful presence** once their applications are filed and receipted.
  - Approval of these applications generally confers **lawful presence**, though not always lawful status unless the underlying visa/status is granted.

Examples of Lawful Presence Without Lawful Status:
- DACA recipients (by DHS memo)
- DALE recipients (by DHS policy)
- Parolees (unless explicitly curtailed)
- Individuals with pending adjustment or extension applications

5. Period of Authorized Stay - A DHS Permitted Presence Even Without Lawful Status

A *period of authorized stay* is a timeframe during which DHS permits a noncitizen to remain in the U.S., regardless of whether they hold lawful status. This can be based on:

- A pending application (e.g., adjustment of status under *INA § 245*, pending U or T visa application)
- Discretionary deferral (e.g., Deferred Action)
- Parolees with valid parole periods
- Decisions from immigration courts or stays of removal

→ *Matter of S-I-K-*, 24 I&N Dec. 324 (BIA 2007)

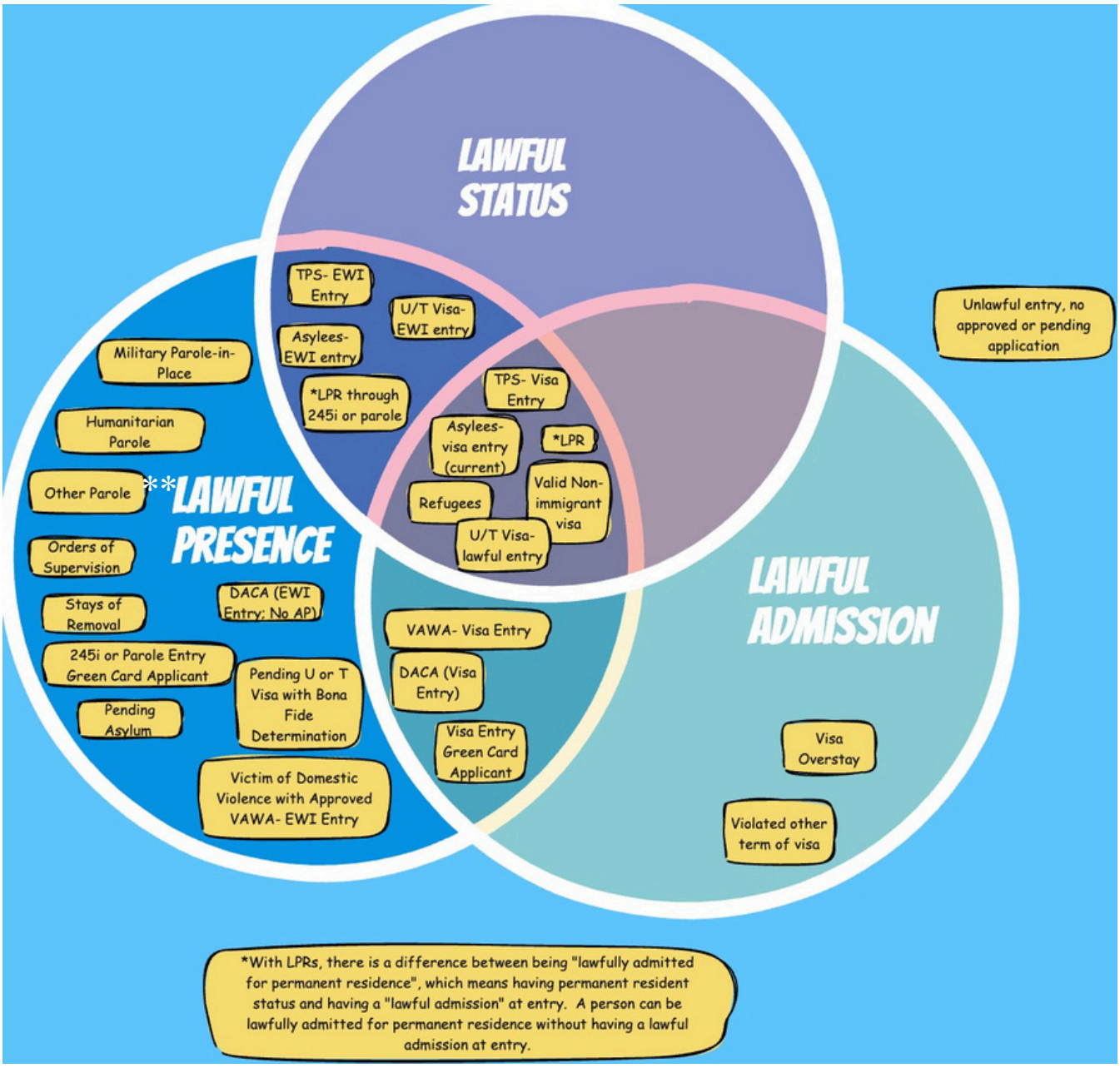
Texas Immigration Law Council

LAWFUL ADMISSION, LAWFUL STATUS, LAWFUL PRESENCE, & PERIOD OF AUTHORIZED STAY IN U.S. IMMIGRATION LAW

POLICY EXPLAINER | APRIL 2025

Significance

- A noncitizen may avoid accruing unlawful presence during this period, even if technically out of status
- Frequently misunderstood in removal proceedings and benefit adjudications



Remember: **"Lawful presence" is not a single, uniform legal category in U.S. immigration law. Its meaning varies by statute, regulation, and program. No provision of the Immigration and Nationality Act supplies a universal definition. The categories in this diagram are not "accruing unlawful presence" for the purposes of INA § 212(a)(9)(B).