

Immigrants and Foreign Nationals

Domicile Workshop 2021

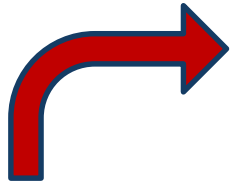
Presented by VACRAO

**Lee Andes
Assistant Director for Financial Aid
State Council of Higher Education for Virginia**



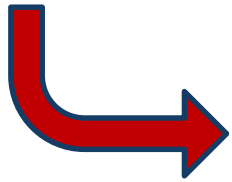
**STATE COUNCIL OF HIGHER
EDUCATION FOR VIRGINIA**

Two paths to in-state tuition



- **Path 1: Domicile**

- Traditional route reviewing whether the individual has demonstrated *domicile* (not just physical presence).
- Eligible to be considered for state financial aid.



- **Path 2: Tuition Equity exception**

- Not a domicile review.
- Meeting the conditions results in eligibility for in-state tuition.
- Eligible for state financial aid beginning 2022-23 award year.

Students may choose to be reviewed for in-state tuition under either option.

- No need to go through domicile review first.

Domicile Review

Distinguishing the Terms

ADMISSION —

- **No federal or state law prohibiting admission for most students**
- **There are some restrictions for certain non-immigrant students such as the B-1 visa.**
- **Each institution has its own admission's policy.**

DOMICILE --- If admissible, can they legally form the

“intent to remain”

Important Definitions

Domiciliary Intent- present lawful intent to remain indefinitely.

Eligible Alien -

- Student has an immigration status which permits the “intent to remain” indefinitely in Virginia.
- This does not mean automatically eligible for in-state tuition.
- Student is eligible to be reviewed for domicile.

Ineligible Alien -

- Student not in a valid immigration status, or is in a circumstance which does not permit intent to remain indefinitely in Virginia.



Basic Process – the “First Door”

Does their legal authorization permit the intent to remain indefinitely?

“D. Any alien holding an immigration visa or classified as a political refugee may establish domicile in the same manner as any other student.

However, absent congressional intent to the contrary, any individual holding a student visa or another temporary visa does not have the capacity to intend to remain in the Commonwealth indefinitely and is therefore ineligible to establish domicile and receive in-state tuition charges.”



Domicile Review via:

- **Individual**
- **Parent**
- **Spouse**
- **Legal guardian**

Non-Citizens: Ineligible Visa Status

If holding an **ineligible** visa type, the student “...**shall be ineligible for Virginia domicile and for in-state tuition charges.**”

- Aliens without either legal presence or other circumstance that permits the “intent to remain,” cannot establish domicile on their own or through anyone else.
- Ineligible dependent aliens cannot “stand in the shoes” of an eligible parent (or legal guardian or spouse).
- No matter how long lived in Virginia, no matter if they are married to US citizen, no matter if it’s a federal delay.

Exceptions:

- “Notwithstanding” provisions explicitly granting access to in-state tuition.
- Aliens legally residing under the authority of something other than a visa and such authority permits the “intent to remain” (DACA, Asylum, etc. – see Addendum A).

Categories of “Eligible Aliens”

- **Permanent Residents (“green card” holders)**
 - Conditional Permanent Residents
 - Adjustment of Status Applicants
- **Eligible nonimmigrant categories**
- **Other categories**
 - Temporary Protected Status (“TPS”)
 - Asylee
 - Refugee
 - Deferred Action for Childhood Arrivals (“DACA”)



Non-Citizens: Addendum A

“Eligible” means eligible to be reviewed for domicile.

Visa	Eligibility Classification	Description	Government Information
Foreign Government Officials			
A-1	Eligible	Ambassador, public minister, career, diplomatic or consular officer who has been accredited by a foreign government recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien’s immediate family. Such individuals may be reviewed for domicile.	INA Section 101(a)(15)(A)(i) 8 CFR 214.2(a)
A-2	Eligible	Other foreign government officials or employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and members of their immediate family. Such individuals may be reviewed for domicile.	INA Section 101(a)(15)(A)(ii) 8 CFR 214.2(a)
A-3	Eligible	Attendants, servants, or personal employees of A-1 and A-2, and members of their immediate family. Such individuals may be reviewed for domicile.	INA Section 101(a)(15)(A)(iii) 8 CFR 214.2(a)
Visitors			
B-1 B-2 BBBCV	Ineligible	An alien having a residence in a foreign country which there is no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.	INA Section 101(a)(15)(B) 8 CFR 214.2(b)

Visa Eligibility Status

“Eligible” means eligible to be reviewed for domicile.

Visa	Description	Eligibility Status
	Asylee	Eligible
	Amnesty	Eligible
	Parolees	Ineligible
	Permanent Resident	Eligible
	Temporary Protected Status	Eligible
	Undocumented	Ineligible
A-1	Foreign Government	Eligible
B-1	Visitors	Ineligible
C-1	Aliens in Transit	Ineligible
E-1	Treaty Traders	Eligible
F-1	Student	Ineligible
G-1	Government	Eligible
H-1	Workers	Eligible
H-2	Workers	Ineligible
I	Media	Eligible
J-1	Exchange Visitors	Ineligible
K-1	Fiance	Eligible

Non-Citizens: Moving from a Status

Either obtain the visa or other document confirming new status, or use the I-797 form used to respond to immigration requests:

- **From “ineligible” nonimmigrant visa to an “eligible” visa:**
 - **“Change of status” Need to be “Approved”**
- **From a visa to “Permanent Resident”:**
 - **“Adjustment of Status” ... Need only “Receipt Notice”**
- **Renewing a nonimmigrant visa:**
 - **“Extension of Status” ... Need only “Receipt Notice”**

Non-Citizens: Important Points

If parents are without current legal status / presence (undocumented, illegal, etc.)...

J. No student shall be deemed ineligible to establish domicile and receive in-state tuition charges solely on the basis of the immigration status of his parent.

...the student might be eligible if they have a legal status/presence that permits domiciliary intent, such as being U.S. citizen.

- **No matter what the previous legal circumstance, if student has a “Receipt Notice” for “Adjustment of Status to Permanent Resident” ... they can be reviewed; however...**

...one year period can begin no earlier than date on the notice.

Review of Categories and Documentation

Applicants for Permanent Resident

- **Eligible.**
- **Must produce an I-797 Receipt Notice showing pending Permanent Resident application (usually I-485 Application to Adjust Status).**
- **Domicile can be established as early as the official Receipt Date listed on the alien's I-797 Receipt Notice.**
- **Permanent Resident is the only category where a pending application is sufficient. Others require approval.**



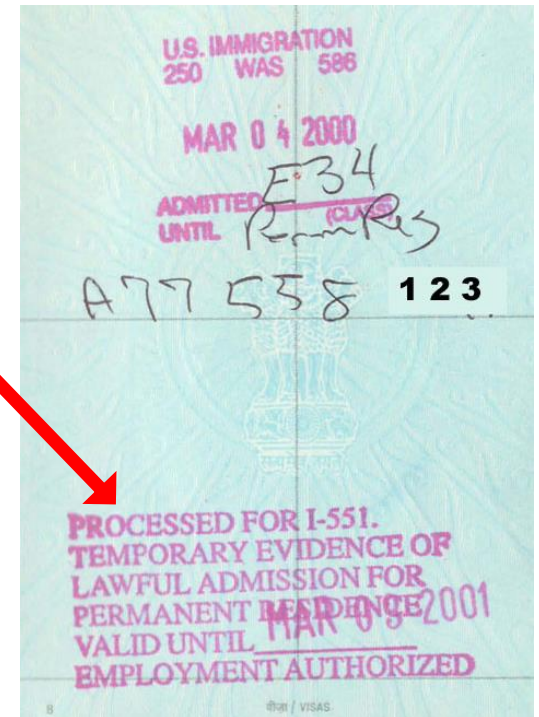
Permanent Residents

- Eligible. Individual has been granted the privilege of residing permanently in the U.S. as an immigrant in accordance with the immigration laws.
- Usual evidence is I-551 Card (“green card”).

Permanent Resident Card



I-551 Stamp in Passport



Evidence: Permanent Resident – “approval”

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797, Notice of Action

UNITED STATES OF AMERICA

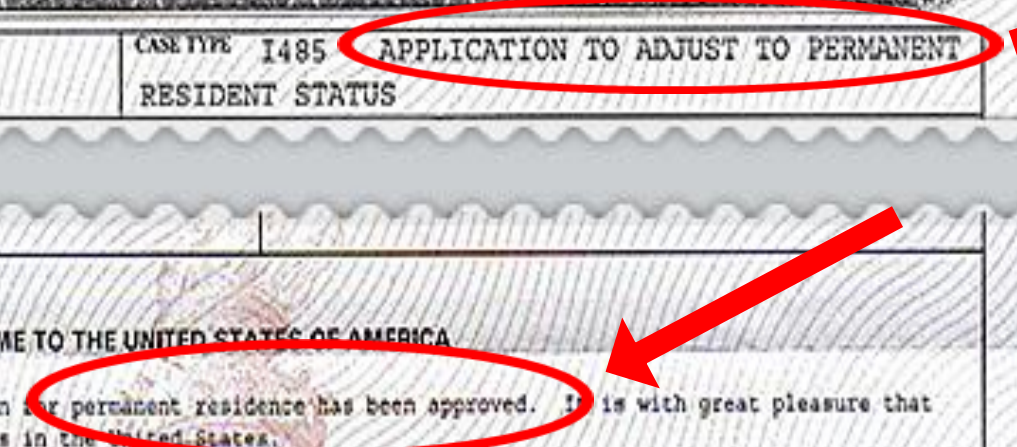
RECEIPT NUMBER LIN-08-065- [REDACTED]	CASE TYPE I485 RESIDENT STATUS	APPLICATION TO ADJUST TO PERMANENT
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WELCOME TO THE UNITED STATES OF AMERICA

This is to notify you that your application for permanent residence has been approved. It is with great pleasure that we welcome you to permanent resident status in the United States.

At the top of this notice you will see a very important number. It is your USCIS A# (A-number). This is your permanent resident account and file number. This permanent account number is very important to you. You will need it whenever you contact us.

We will soon mail you a new *Permanent Resident Card*. You should receive it within the next 3 weeks. You can use it to show your new status. **When you receive your card you must carry it with you at all times if you are 18 or older. It is the law.**



WELCOME NOTICE OF ACTION

Evidence: Permanent Resident – “receipt”

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

UNITED STATES OF AMERICA

RECEIPT NUMBER EAC-99-██████████	CASE TYPE 1485 APPLICATION TO ADJUST TO PERMANENT
RESIDENT STATUS	APPLICANT A ██████████ ██████████
RECEIVED DATE September 1, 19██	PRIORITY DATE
NOTICE DATE September 21, 19██	PAGE 1 of 1
██████████ ██████████ ██████████	Notice Type: Receipt Notice
	Amount received: \$ 245.00

The above application or petition has been received. It usually takes 180 to 240 days from the date of this receipt to go to a decision on this type of case. Please notify us immediately if any of the above information is incorrect. Our customer service phone number is 1-800-542-2539.

We will send you a written notice as soon as we take a decision on this case. You can also use the phone number below to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case at the top of this notice.

Evidence: Permanent Resident – “receipt”

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt	NOTICE DATE June 19, 2017
CASE TYPE I-485, Application to Register Permanent Residence or Adjust Status	USCIS ALIEN NUMBER [REDACTED]
RECEIPT NUMBER [REDACTED]	RECEIVED DATE June 14, 2017
PRIORITY DATE June 14, 2017	PREFERENCE CLASSIFICATION 201 B INA SPOUSE OF USC
[REDACTED]	
PAYMENT INFORMATION: Application/Petition Fee: \$1,140.00 Biometrics Fee: \$85.00 Total Amount Received: \$1,225.00 Total Balance Due: \$0.00	
[REDACTED]	
NAME AND MAILING ADDRESS	
The above application/petition has been received by our office and is in process. Please verify your personal information listed above and immediately notify the USCIS National Customer Service Center at the phone number listed below if there are any changes.	
Please note that if a priority date is printed on this notice, the priority does not reflect earlier retained priority dates.	

Evidence: Permanent Resident – “conditional”

THE UNITED STATES OF AMERICA
I-797 | NOTICE OF ACTION | DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

I-751 RECEIPT NOTICE

Receipt Number : EAC-[REDACTED] Receipt Date: 06/19/2017
Reference Number: A207[REDACTED] Receipt Time: 19:22
Petitioner: [REDACTED], ALLISON E.

D. GLUCKMAN
MCCANDLISH HOLTON PC
PO BOX 796
RICHMOND, VA 23218

**** THE ABOVE RECEIPT NUMBER MUST ACCOMPANY ALL INQUIRIES ****

Amount Received: \$680.00

Your conditional resident status is extended for a period of one year. During the one-year extension you are authorized employment and travel. (This extension and authorization for employment and travel does not apply to you if your conditional resident status has been terminated.)

In order to further process your petition, you will be receiving an Application Support Center(ASC) appointment notice with a specific time, date, and location to capture your fingerprints, photo, and signature. You MUST wait for your appointment notice before going to the ASC for biometric processing.

NOTE: Conditional resident applicants including conditional resident

I-797 Receipt Notice for Form I-751

Conditional Permanent Residents

- **Eligible.**
- **“Two-year” instead of “permanent” green card (through marriage or investment)**
- **Same evidence as permanent green card.**
- **If card has expired, need proof that individual has applied to make card permanent (either I-751 receipt for marriage cases or I-829 for investment cases).**



Immigrant Petitions – **not eligible** for domicile

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER XXXXXX XXXXXX	CASE TYPE: I130 IMMIGRANT PETITION FOR RELATIVE, CATEGORY: F1, F2, F3, F4	
RECEIPT DATE January 14, 2005	PRIORITY DATE January 3, 2005	PETITIONER XXXXXXXX
NOTICE DATE June 15, 2005	PAGE 1 of 1	BENEFICIARY XXXXXXXXXXXXX A.
Type: Approval Notice Category: husband or wife of U.S.		

I-130 Family Petition

These petitions are preliminary steps required prior to filing for Adjustment of Status to Permanent Resident. These **do not** confer a status eligible to establish domicile.

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action


THE UNITED STATES OF AMERICA

RECEIPT NUMBER SRC-09-178- [REDACTED]	CASE TYPE: I140 INDEPENDENT PETITION FOR ALIEN WORKER	
RECEIPT DATE May 21, 2009	PRIORITY DATE May 21, 2009	PETITIONER [REDACTED]
NOTICE DATE August 7, 2009	PAGE 1 of 1	BENEFICIARY A007 [REDACTED]
Notice Type: Approval Notice		

I-140 Employment Petition

Refugees

- Eligible to establish domicile. Refugees are admitted into the U.S. for an indefinite period of time.
- Proof of refugee status usually includes passport and I-94 endorsed to show refugee status or EAD with category A3 or A4.
- **There is a separate provision that allows automatic in-state tuition for two years.**



Departure Number
[REDACTED] 05

Immigration and Naturalization Service
I-94
Departure Record

ADMITTED AS A REFUGEE
PURSUANT TO SECTION 207 OF
THE INA FOR AN INDEFINITE
PERIOD OF TIME. IF YOU DEPART
THE U.S. YOU WILL NEED PRIOR
PERMISSION FROM INS TO
RETURN.
EMPLOYMENT AUTHORIZED.

NYC DATE IMM.OFF.

[REDACTED] JUL 20 1998 NYC 1597 [REDACTED]

17 Country of Citizenship
RUSSIA

Asylees


- Eligible to establish domicile. Asylees are individuals granted asylum after arriving in the U.S. Valid indefinitely.
- Asylum is granted either by U.S. Citizenship and Immigration Services (“USCIS”) or by an Immigration Judge.
 - If granted by USCIS, proof can include EAD with category A5, asylum approval notice, or I-94 card
 - If granted by an Immigration Judge, proof can include EAD with category A5, court order, or I-94 card
- Must be “Approved”
(“Pending” is not sufficient)



It has been determined that you are eligible for asylum in the United States. Attached please find a completed Form I-94, Arrival-Departure Record, indicating that you have been granted asylum status in the United States pursuant to § 208(a) of the Immigration and Nationality Act (INA) as of 1/28/13. This grant of asylum

Respondent's application for:
 Asylum was () granted () denied () withdrawn.
 Withholding of removal was () granted () denied

U.S. Department of Homeland Security
1525 Wilson Blvd.
Mailstop 2500
Arlington, VA 20598-2500



U.S. Citizenship and Immigration Services

Date: 01/28/2013

RE: [REDACTED]

Asylum Approval

Dear [REDACTED]

This letter refers to your request for asylum in the United States filed on Form I-589.

It has been determined that you are eligible for asylum in the United States. Attached please find a completed Form I-94, Arrival-Departure Record, indicating that you have been granted asylum status in the United States pursuant to § 208(a) of the Immigration and Nationality Act (INA) as of 1/28/13. This grant of asylum includes your dependents listed above who are present in the United States, who were included in your asylum application, and for whom you have established a qualifying relationship by a preponderance of evidence.

You have been granted asylum in the United States for an indefinite period; however, asylum status does not give you the right to remain permanently in the United States. Asylum status may be terminated if you no longer have a well-founded fear of persecution because of a fundamental change in circumstances, you have obtained protection from another country, or you have committed certain crimes or engaged in other activity that makes you ineligible to retain asylum status in the United States. See INA § 208(c)(2).

Now that you are an asylee, you may apply for certain benefits, which are listed below. You are also responsible for complying with certain laws and regulations, if such laws and regulations apply to you. These

IMMIGRATION COURT
1901 BELL STREET, SUITE 200
ARLINGTON, VA 22202

In the Matter of [REDACTED]

[REDACTED]

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 11-14-16. This memorandum is solely for the convenience of the parties. If the proceedings should be applied or reopened, the oral decision will become the official opinion in this case.

The respondent was ordered removed from the United States to AFGHANISTAN or in the alternative to .

Respondent's application for voluntary departure was denied and respondent was ordered removed to AFGHANISTAN or in the alternative to .

Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ with an alternate order of removal to AFGHANISTAN.

Respondent's application for:
 Asylum was () granted () denied () withdrawn.
 Withholding of removal was () granted () denied () withdrawn.
 A Waiver under Section was () granted () denied () withdrawn.
 Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:
 Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
 Cancellation under section 240A(b) (2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
 Adjustment of Status under Section was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
 Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
 Respondent's status was rescinded under section 246.
 Respondent is admitted to the United States as a until .
 As a condition of admission, respondent is to post a \$ bond.
 Respondent knowingly filed a frivolous asylum application after

USCIS Asylum Approval

Immigration Judge Order

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

ASYLUM STATUS
Granted Indefinitely
Section 208
Immigration and Nationality Act

Departure Record

Admission Number

[REDACTED]

JAN 09 2017

Theresa Chalup

[REDACTED]

[REDACTED]

DD/MM/YY

[REDACTED]

21 Country of Citizenship

IRIANI

CBP Form I-94 (05/08)

See Other Side

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I-94



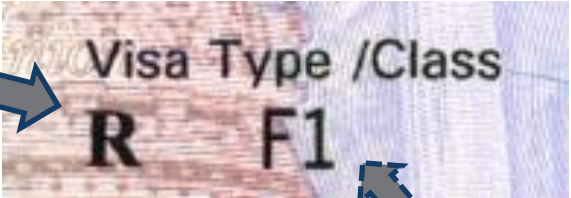
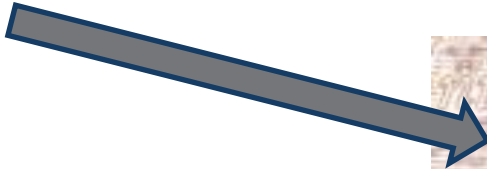
Temporary Protected Status

- Eligible to establish domicile.
- Temporary Protected Status (“TPS”) is a humanitarian status which protects people from certain countries.
- Usual proof is Employment Authorization Document (“EAD”) with Category A12.
- <https://www.uscis.gov/humanitarian/temporary-protected-status>



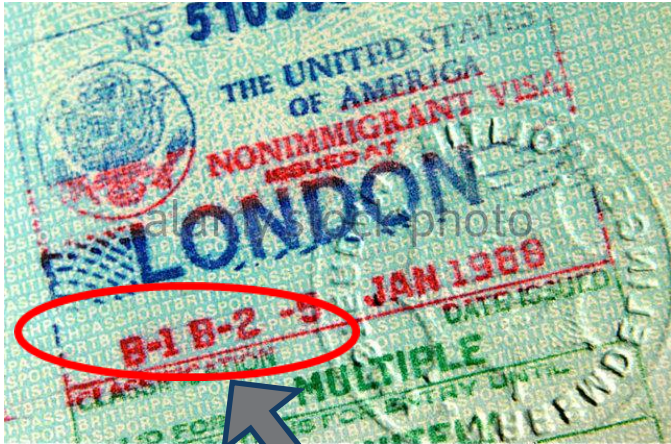
Sample Evidentiary Documents: VISA

Don't confuse this for the visa "type."
This is an F-1 visa. The R simply means
"regular."




Visa Passport Stamp

Visa



Evidence: I-94 Card

Electronic I-94

 U.S. Customs and Border Protection
Securing America's Borders

OMB No. 1651-0111
Expiration Date: 11/30/2014

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 66714346
Admit Until Date (MM/DD/YYYY): D/S

ONLINE I-94

Details provided on Admission (I-94) form:

Family Name: WON
First (Given) Name: Jae
Birth Date (MM/DD/YYYY): 01/01/1951
Passport Number: JTV12345
Passport Country of Issuance: New Haven
Date of Entry (MM/DD/YYYY): 06/15/2013
Class of Admission: **J-1**


▶ Effective April 26, 2013, CBP began automating the admission process. An alien lawfully admitted or paroled into the U.S. is no longer required to be in possession of a prepared Form I-94. A record of admission printed from the CBP website constitutes a lawful record of admission. See 8 CFR § 1.4(i).

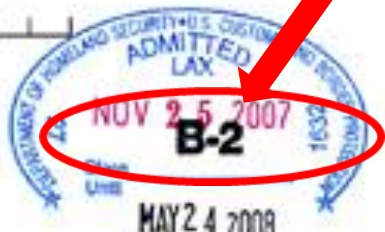
▶ If an employer, local, state or federal agency requests admission information, present your admission (I-94) number along with any additional required documents requested by that employer or agency.

▶ Note: For security reasons, we recommend that you close your browser after you have finished retrieving your I-94 number.

I-94

Departure Number: 161851470 · 17
OMB No. 1651-0111





I-94
Departure Record

14. Family Name
15. First (Given) Name
16. Birth Date (Day/Mo/Yr)
17. Country of Citizenship
VIETNAM

CBP Form I-94 (10/04)



Most Recent I-94

Admission (I-94) Record Number : 48662

Most Recent Date of Entry: 2017 July 11

Class of Admission : K2

Admit Until Date : 10/08/2017

Details provided on the I-94 Information form:

Last/Surname :

First (Given) Name : RUOTONG

Birth Date : December

Passport Number : E85

Country of Issuance : China

[Get Travel History](#)

► Effective April 26, 2013, DHS began automating the admission process. An alien lawfully admitted or paroled into the U.S. is no longer required to be in possession of a preprinted Form I-94. A record of admission printed from the CBP website constitutes a lawful record of admission. See 8 CFR § 1.4(d).

► If an employer, local, state or federal agency requests admission information, present your admission (I-94) number along with any additional required documents requested by that employer or agency.

► Note: For security reasons, we recommend that you close your browser after you have finished retrieving your I-94 number.

CBP Form 1482-0111
Registration Date: 07/27/2017

[For inquiries or questions regarding your I-94, please click here](#)

[Accessibility | Privacy Policy](#)

Departure Number
1 513601376 06

Immigration and Naturalization Service
I-94
Departure Record

SAMPLE
IMMIHELP.COM

U.S. IMMIGRATION
NEW YORK, N.Y. 2887 **5**

2 MAR 21 1999 **3**

ADMITTED UNTIL (CLASS)
H1B
Dec 2017 **4**

14. Family Name
GUPTA

15. First (Given) Name
RAHUL

16. Birth Date (Day/Mo/Yr)
11 23 74

17. Country of Citizenship
INDIA

See Other Side

STAPLE HERE

Withholding/deferral of removal

- **Eligible. Ordered removed, but removal withheld for humanitarian reasons.**
- **Proof of withholding or deferral of removal includes**
 - immigration judge's order or
 - EAD with category **A10**.



Deferred Action for Childhood Arrivals (DACA)

- **Eligible.**
- **DACA is a special humanitarian category available to “DREAMers” who came to the U.S. before turning 16.**
- **DACA approval allows student to establish domicile. In-state tuition no earlier than a year later.**
- **Proof of DACA includes I-797 Approval Notice for Form I-821D or EAD with category (c)(33).**



Evidence: Deferred Action for Childhood Arrivals (DACA)

- I-797 DACA Notice Of Action – Approval Notice

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797, Notice of Action

UNITED STATES OF AMERICA

RECEIPT NUMBER LIN- [REDACTED]		CASE TYPE 1821D CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS	
RECEIPT DATE March 21, 2013	PRIORITY DATE	APPLICANT A [REDACTED]	
NOTICE DATE October 30, 2013	PAGE 1 of 1		
[REDACTED] THE LEGAL AID SOCIETY 199 WATER STREET NEW YORK NY 10038		Notice Type: Approval Notice Valid from 10/30/2013 to 10/29/2015	

Notice of Deferred Action:

This notice is to inform you regarding U.S. Citizenship and Immigration Services's (USCIS) decision on your Form I-8210, Consideration of Deferred Action for Childhood Arrivals.





RECEIPT NUMBER [REDACTED]		CASE TYPE I821D CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS	
RECEIPT DATE August 21, 2015	PRIORITY DATE	APPLICANT [REDACTED]	
NOTICE DATE October 2, 2015	PAGE 1 of 1		
[REDACTED]		Notice Type: Approval Notice Valid from 10/02/2015 to 10/01/2017	

Notice of Deferred Action:

This notice is to inform you regarding U.S. Citizenship and Immigration Services's (USCIS) decision on your Form I-821D, Consideration of Deferred Action for Childhood Arrivals.

USCIS, in the exercise of its prosecutorial discretion, has decided to defer action in your case. Deferred action is an exercise of prosecutorial discretion by USCIS not to pursue the removal of an individual from the United States for a specific period. Deferred action does not confer or alter any immigration status.

Unless terminated, this decision to defer removal action will remain in effect for 2 years from the date of this notice.

This form does not constitute employment authorization, nor may it be used in place of an Employment Authorization Document. The 90-day period for reviewing Form I-765, Application for Employment Authorization, filed together with Form I-821D begins as of the date of this approval notice. If Form I-765 is granted, you will receive your Employment Authorization Document separately by mail. Subsequent criminal activity after your case has been deferred is likely to result in termination of your deferred action. This notice does not provide permission to travel outside of the United States.

I-797 Approval Notice for Form I-821D

DACA: Unique Domicile Issues

- **DACA students' parents are often out of status and cannot establish domicile. Under domicile law, it is presumed that a dependent student shares parents' domicile.**
- **But the presumption is rebuttable. DACA students came to the U.S. before 16 and have established lives here. Usually enough to rebut presumption. Parents' documents can be useful.**
- **If DACA expires, student can no longer be considered a Virginia domiciliary. Must show evidence of having filed for an extension.**



Tuition Equity Provision

In-state tuition under the Tuition Equity provision

§ 23.1-505.1. Eligibility for in-state tuition and state financial assistance programs.

***Notwithstanding § 23.1-502 or any other provision of law to the contrary,* any student who**

- (i) attended high school for at least two years in the Commonwealth and either (a) graduated on or after July 1, 2008, from a public or private high school or program of home instruction in the Commonwealth or (b) passed on or after July 1, 2008, a high school equivalency examination approved by the Secretary of Education;*
- (ii) has submitted evidence that he or, in the case of a dependent student, at least one parent, guardian, or person standing in loco parentis has filed, unless exempted by state law, Virginia income tax returns for at least two years prior to the date of registration or enrollment; and*
- (iii) registers as an entering student or is enrolled in a public institution of higher education or private institution of higher education in the Commonwealth,*

In-state tuition under the Tuition Equity provision

...is eligible for in-state tuition regardless of citizenship or immigration status, except that students with currently valid visas issued under 8 U.S.C. § 1101(a)(15)(F), 1101(a)(15)(H)(iii), 1101(a)(15)(J) (including only students or trainees), or 1101(a)(15)(M) are not eligible.

All such students shall be afforded the same educational benefits, including access to financial assistance programs administered by the Council, the State Board, or a public institution of higher education, as any other individual who is eligible for in-state tuition pursuant to § 23.1-502.

Information obtained in the implementation of this section shall only be used or disclosed to individuals other than the student for purposes of determining such educational benefits.

High school attendance and completion:

- ***attended high school for at least two years in the Commonwealth and either***
 - ***(a) graduated on or after July 1, 2008, from a public or private high school or program of home instruction in the Commonwealth or***
 - ***(b) passed on or after July 1, 2008, a high school equivalency examination approved by the Secretary of Education;***
 - Refers to the General Educational Development (GED) test

High school attendance

- **Proof of Enrollment** is verified by either copy of school transcript, letter from school showing dates of attendance, or, in the case of home school students, evidence that the letter of intent has been filed with the local school district for each period of enrollment.
- **High school** refers to the freshmen (grade 9), sophomore (grade 10), junior (grade 11) and senior (grade 12) years. School attendance during lower grade levels does not count toward the requirement.
- **Recognized schools:** The student's high school attendance for two years could be in either a Virginia public school or Virginia private school or enrollment in a home school curriculum as recognized by the Virginia public school district superintendent.

In-state tuition under the Tuition Equity provision

- For minimum of two full years
 - **The student must demonstrate enrollment into a Virginia high school or combination of Virginia high schools for two full years prior to the date of initial enrollment into a Virginia college. These years need not be successive and may include partial years. Examples include:**
 - ✓ Student began enrollment as of first day of classes in fall 2019 and maintained enrollment through graduation in May 2021. The student completed two full years: 2019-20 and 2020-21.
 - ✓ Student began enrollment as of January 2019 and maintained enrollment in any Virginia school through December 2020. The student completed two full years: half year of January to May 2019, full year of 2019-20, and additional half year August to December 2020.
 - ✓ Student completed the full 9th grade in 2018-19 in Virginia and then moved out of state. Student returned to complete 12th grade in 2020-21. Student completed two full years of high school in Virginia.
 - ❖ Student began enrollment in October 2020 and maintained enrollment through May 2021. Student did not complete the full two years of enrollment.

In-state tuition under the Tuition Equity provision

High school completion

- **Demonstrate high school completion in Virginia**
 - On or after July 1, 2008
 - Graduation from a Virginia public high school or private high school
 - Passed a general equivalency exam (GED) approved by the Virginia Department of Education or
 - Completed home school instruction (self certified).
- **Timing of completion**
 - The law does not provide a timeframe; therefore, such attendance and graduation need not have been in the immediate prior year to enrollment in higher education except that high school graduation must have occurred on or after July 1, 2008.

Individual reviewed for filing Taxes

- *(ii) has submitted evidence that he or, in the case of a dependent student, at least one parent, guardian, or person standing in loco parentis has filed, unless exempted by state law, Virginia income tax returns for at least two years prior to the date of registration or enrollment; and*

In-state tuition under the Tuition Equity provision

Individual filing state income taxes:

- An **independent student** or emancipated minor or
- For a **dependent student**, the parent (biological, adoptive or step) or guardian (court ordered legal guardianship or custody) residing with the dependent student or claiming the student as a dependent for tax purposes or

In-state tuition under the Tuition Equity provision

In loco parentis

- In absence of one of the above, a person standing “**In loco parentis**” of a dependent student and residing with the student.
 - In loco parentis (*borrowing from FMLA*)
 - Persons who are *in loco parentis* include those with day-to-day responsibilities to care for or provide substantial financial support for the student. Means “in place of a parent,” or “instead of a parent,” refers to situations in which someone other than a biological parent takes on the role of parent to a dependent child without formally adopting the child.
 - The “in loco parentis” relationship should be scrutinized to verify that the individual is residing with the student and acting in place (not on behalf) of a parent.
 - Is an individual person. For purposes of this provision, cannot be an organization, agency or institution.

In-state tuition under the Tuition Equity provision

Exemptions for filing taxes:

Exemptions in law are found in the Code of Virginia, § 58.1-321.

- **Valid state taxation exemptions are limited to income thresholds of:**
 - \$11,950 for individuals single or married filing separately, or current threshold as updated
 - \$23,900 for married filing jointly, or current threshold as updated.
 - **Income of individuals claiming an exemption from filing may be verified by collecting federal tax form, W2s, bank statements, pay stubs, etc.**
- **Active duty members stationed in Virginia**

In-state tuition under the Tuition Equity provision

Exemptions continued:

- **Individuals with taxable earnings in another state cannot claim an exemption based on the income not having been earned in the Commonwealth.**
 - If the parent/guardian/in loco parentis claims to not have earned enough income to meet the Virginia filing requirement, the institution may verify Virginia residency (not domicile) or request a copy of a federal tax return.
- **Individuals not required to pay state taxes due to a current valid federal treaty retain eligibility under this provision (not a “state” exemption)**
 - The burden of proof falls on the individual to demonstrate eligibility for such exemption, including verification that the eligible immigration status is current and valid and that an existing treaty exempts such individuals from taxation in the United States.

In-state tuition under the Tuition Equity provision

- *...is eligible for in-state tuition regardless of citizenship or immigration status,*
- *except that students with currently valid visas issued under 8 U.S.C. § 1101(a)(15)(F), 1101(a)(15)(H)(iii), 1101(a)(15)(J) (including only students or trainees), or 1101(a)(15)(M) are not eligible.*

In-state tuition under the Tuition Equity provision

Legal status

- Eligibility is generally not dependent upon a person's citizenship or immigration status, or the lack thereof
- **Specific language in the statute, however, excludes from eligibility students in the following visa categories:**
 - Individuals with a current valid F, H3, J, or M visas as of the first day of enrollment
 - Individuals who, subsequent to enrollment, obtain a valid F, J, M, H3 visa.
- **Individuals with a Receipt Notice for I-485 Application for Permanent Residency are no longer held to the restrictions of their prior visa status and so would be eligible.**
- **The status of the parent, guardian, or person standing in loco parentis filing Virginia income taxes for two years prior to the student's enrollment is immaterial and not restricted.**

In-state tuition under the Tuition Equity provision

- *All such students shall be afforded the same educational benefits, including access to financial assistance programs administered by the Council, the State Board, or a public institution of higher education, as any other individual who is eligible for in-state tuition pursuant to § 23.1-502.*

In-state tuition under the Tuition Equity provision

- **Similar to “deemed as domiciled,” students qualifying under the Tuition Equity provision are eligible to be considered for any program requiring Virginia domicile.**
 - **In-state tuition**
 - **State financial aid (including the Tuition Assistance Grant program)**
 - **Any other institutional program reserved for or showing preference for Virginia domiciled residents.**

In-state tuition under the Tuition Equity provision

- *Information obtained in the implementation of this subdivision shall only be used or disclosed to individuals other than the student for purposes of determining in-state tuition eligibility. "*

In-state tuition under the Tuition Equity provision

Protection of student information

- Institutions should gather and retain only the minimum information needed to verify eligibility under this provision.
- Information gathered under this provision
 - Is to be used solely for determining eligibility for in-state tuition under this provision.
 - May not be made available to any other person, including employees of the institution, other than the student and institutional staff necessary for administration of in-state tuition eligibility.
 - Any external subpoena or FOIA for such information should be reported to the institutional counsel before fulfilling the request.

In-state tuition under the Tuition Equity provision

Administrative guidance:

- **Students should not be required to complete the domicile review process prior to consideration under this provision.**
- **Students are not required to provide a reason for seeking eligibility for in-state tuition under this provision rather than the domicile review process.**
- **The law is effective July 1, 2020 and is applicable to all new students enrolling for terms beginning on or after July 1, 2020 as well as all current or previously enrolled students. This provision does not require or permit any retroactive adjustment from out-of-state to in-state tuition for any term beginning prior to July 1, 2020.**
- **This provision provides access to in-state tuition if the student meets the eligibility criteria but not access to state financial aid until 2022-23.**

In-state tuition under the Tuition Equity provision

Next steps

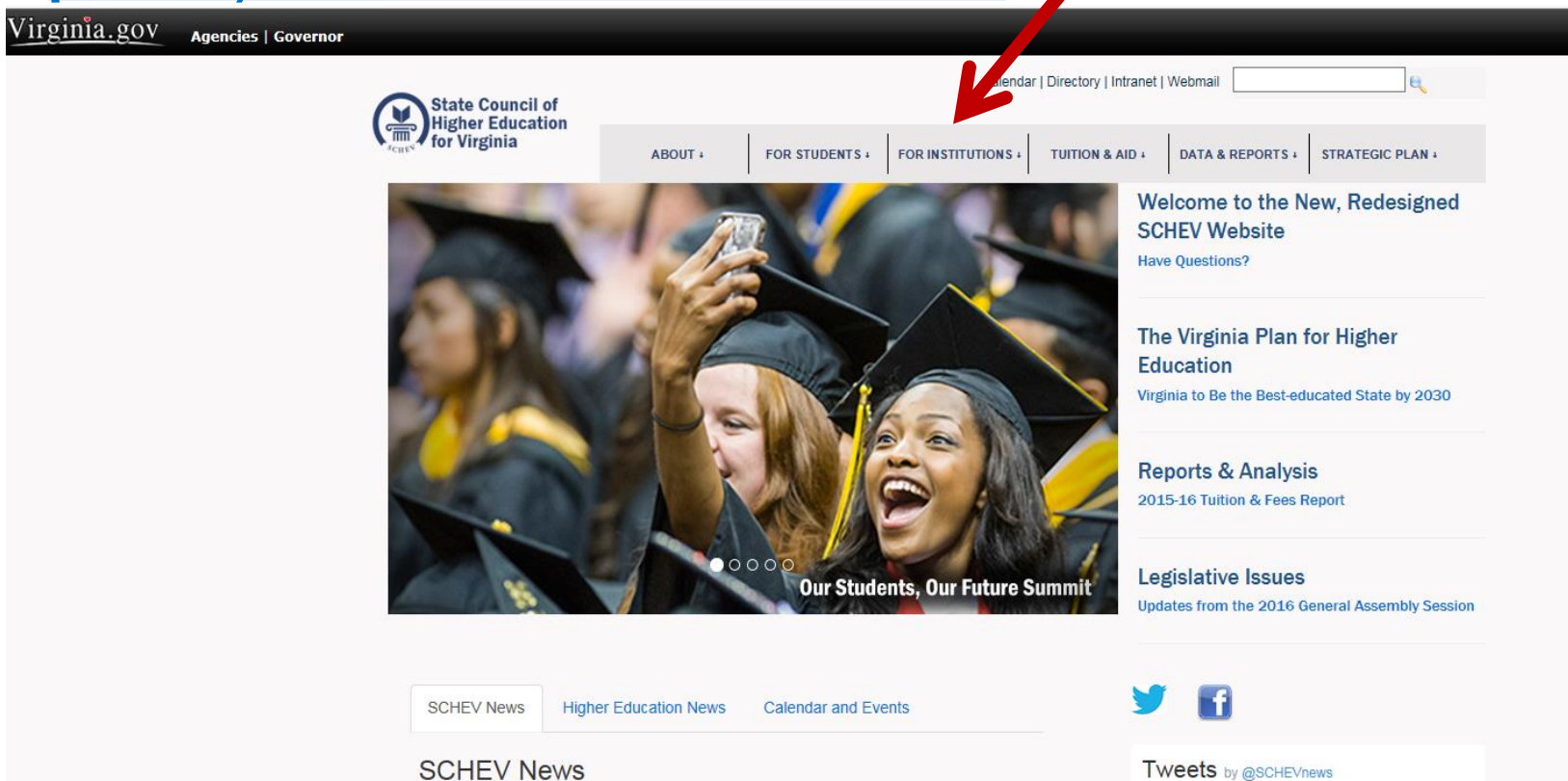
In-state tuition under the Tuition Equity provision

- **Beginning 2022-23, Tuition Equity students can be considered for state financial aid.**
- **Since undocumented students cannot complete the federal FAFSA, SCHEV is in process of developing an on-line application, scheduled to be completed later this year.**
- **This application is only able to determine the family's ability to pay, Expected Family Contribution. It will not be usable to determine whether a student meets the criteria for the Tuition Equity provision.**

Website Resources

- **Domicile information at: “For Institutions” then “Policies and Guidelines” then “Financial Aid and Domicile Officers”**

<http://www.schev.edu/index/institutional/guidance-policies/financial-aid-domicile-officers>



The screenshot shows the SCHEV website homepage. At the top left is the Virginia.gov logo and navigation links for Agencies and Governor. The SCHEV logo is in the top center. A navigation menu below the logo includes: ABOUT, FOR STUDENTS, FOR INSTITUTIONS (highlighted with a red arrow), TUITION & AID, DATA & REPORTS, and STRATEGIC PLAN. Below the menu is a large image of graduates with the text 'Our Students, Our Future Summit'. To the right of the image are several content blocks: 'Welcome to the New, Redesigned SCHEV Website', 'The Virginia Plan for Higher Education', 'Reports & Analysis', and 'Legislative Issues'. At the bottom, there are social media icons for Twitter and Facebook, and a 'Tweets by @SCHEVnews' section.

Website Resources

Finance & Facilities

Financial Aid & Domicile Officers

Private Postsecondary Education

Teaching & Assessment Initiatives

Virginia SARA

Information for Domicile Officers

- [Code of Virginia Relating to Domicile](#)
- [Domicile Guideline](#) | [Printable Version](#)
- [Addendum A - Descriptions and Domicile Eligibility Status for Various Categories of Aliens](#)
- [Addendum B - Common Forms and Definitions](#)
- [Addendum C - Summary of In-State or Reduced Tuition Provisions](#)
- [Establishing Virginia Domicile](#)

DACA Students:

- [Attorney General's Advice to Public Institutions Regarding DACA Students – April 29, 2014](#)
- [Domicile Determinations for Students Under Deferred Action for Childhood Arrivals](#)

Military Provisions:

- [Comparison of Federal and State Military Provisions](#)
- [Veteran's Choice Act: In-state tuition FAQs](#)
- [SCHEV Bulletin - Photocopying Military IDs](#)



Website Resources

Domicile Officer's Web Resources

NOTE: SCHEV provides the following websites for your information and/or additional research.

Descriptions of resident eligibility and responsibility under other state offices

- [Driver's License Eligibility Requirements](#) (Virginia Dept. of Motor Vehicles)
- [Residency Status Definitions](#) (Virginia Dept. of Taxation)
- [Registering to Vote](#) (Virginia State Board of Elections)

Resources pertaining to non-immigrant students

- [US Citizenship and Immigration Services](#) (includes descriptions)
- [2017-18 Federal Student Financial Aid Handbook](#) (contains examples of immigration documentation)
- [US Code Title 8 Chapter 14 Section 1623](#) (undocumented aliens not eligible for educational benefits based on domicile)
- [Office of the Attorney General's Immigration Law Compliance Update Memorandum 2002](#)
- [What the codes mean on an Employment Authorization Document](#) (EAD or "work authorization card")
- [Check status of a pending case](#) (must have a case receipt number)
- [Nonimmigrant classifications](#)
- [Special instructions for B-1/B-2 visitors who want to enroll in school](#)

Questions?

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❖ **<http://www.schev.edu/index/institutional/guidance-policies/financial-aid-coordinators>**