

REAL ID Act – Title II (2005)

- Improved security for drivers' licenses and personal identification cards
 - The only kind acceptable at federal agencies
- Personal ID info on card
- Documentation before issuance
- State must require **evidence of lawful status**
 - USC / national
 - LPR
 - Conditional PR
 - Approved asylee or refugee
 - Unexpired nonimmigrant visa
 - Pending application for asylum
 - Pending / approved TPS
 - Approved deferred action status
 - Pending AOS

This set can only end up with a temporary license/ID.

- Display expiration date
- Can be renewed with presentation of valid status evidence

- **Systematic Alien Verification for Entitlements (INA §404)**
 - To verify legal status of any applicant other than a USC

Criticism (NYCLU 2007):

- DMV agents will be making judgment calls about immigrant status
- Immigrants will lose driver's license
- Immigrants will have a hard time documenting status

National Immigration Law Center (2016)

- States can still issue licenses that are not REAL ID compliant if an immigrant doesn't qualify. (Discretionary by state though.)
- The list above misses a few people:
 - Withholding of removal/deportation
 - Paroled into U.S.
 - U-visa & T-visa applicants
 - Discretionary stays for applicants for cancellation of removal (administrative closure)
 - People under an order of supervision.

Immigration Equality <https://immigrationequality.org/asylum/asylum-manual/immigration-basics-real-id-act/>

The changes that the Real ID Act made to prior law included an amended burden of proof for asylum and withholding of removal claims, a standard regarding sufficiency of evidence, and provisions relevant to credibility determinations. The law applies:

To new asylum, withholding and Convention Against Torture (CAT) applications filed on or after May 11, 2005 (for rebuttable presumptions of credibility); and

retroactively to all cases with a final order of removal (for review of finding as to availability of corroborating evidence)

Amended Burden of Proof

- “To establish that the applicant is a refugee within the meaning of INA §(101)(a)(42)(A), the applicant must establish that race, religion, nationality, membership in a PSG, or political opinion was or will be **at least one central reason** for persecuting the applicant.”
- Demonstrate a clear nexus between the persecution and the protected ground.

Corroborating Evidence

- Heavy burden on applicant to corroborate their asylum, WH & CAT claims:
 - **Testimony** is sufficient if it is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.
 - Adjudicator may require **other evidence** to corroborate otherwise credible testimony, unless it is unreasonable to ask for it
 - “In determining whether the applicant has met the applicant’s burden [of proof], the trier of fact may weigh the credible testimony along with other evidence of record.”

Credibility

- Trier of fact may base credibility determination on:
 - Demeanor, candor, or responsiveness of applicant or witnesses
 - Inherent plausibility of the applicant or witness’s account
 - Consistency between written & oral statements (considering circs)
 - Internal consistency of each statement
 - Consistency with evidence of record & DOS reports
 - Inaccuracies or falsehoods contained in the statements, **whether or not material to the asylum claim.** (Used to be just things that went to the heart of the matter.)

Review Standards

- Federal courts preserved their authority to order stays of removal
- Where an IJ fails to make an explicit credibility finding, the petitioner/client and any witnesses enjoy a rebuttable presumption of credibility.
- IJ’s finding regarding the availability of corroborating documents is a finding of fact—not reversible unless unreasonable.