

ER 413
IMMIGRATION STATUS

(a) Criminal Cases; Evidence Generally Inadmissible. In any criminal matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to ER 607. The following procedure shall apply prior to any such proposed uses of immigration status evidence to show bias or prejudice of a witness:

(1) A written pretrial motion shall be made that includes an offer of proof of the relevancy of the proposed evidence.

(2) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing outside the presence of the jury.

(4) The court may admit evidence of immigration status to show bias or prejudice if it finds that the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status.

(5) Nothing in this section shall be construed to exclude evidence if the exclusion of that evidence would violate a defendant's constitutional rights.

(b) Civil Cases; Evidence Generally Inadmissible. Except as provided in subsection (b)(1), evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of a party's cause of action.

(1) *Posttrial Proceedings.* Evidence of immigration status may be submitted to the court through a posttrial motion made under CR 59(h) or CRLJ 59(h):

(A) where a party, who is subject to a final order of removal in immigration proceedings, was awarded damages for future lost earnings; or

(B) where a party was awarded reinstatement to employment.

(2) *Procedure to review evidence.* Whenever a party seeks to use or introduce immigration status evidence, the court shall conduct an in camera review of such evidence. The motion, related papers, and record of such review may be sealed pursuant to GR 15, and shall remain under seal unless the court orders otherwise. If the court determines that the evidence may be used, the court shall make findings of fact and conclusions of law regarding the permitted use of that evidence.

[Adopted effective September 1, 2018; Amended effective November 2, 2021.]