

# The Green Card

*Welcome to the Newsletter of the FBA's Immigration Law Section*  
EILEEN SCOFIELD, CHAIR

## Quote of the Month

Sitting on a sofa on a Sunday afternoon  
Going to the candidates' debate  
Laugh about it, shout about it

When you've got to choose  
Every way you look at it you lose.

—Simon & Garfunkel, *Mrs. Robinson*, 1968

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BY JASON DZUBOW

**The Philosophy Behind the Asylum Affidavit**

If you ask three lawyers how to write an asylum affidavit, you're likely to get three (or more) opinions.

An applicant's affidavit is the heart of her asylum case. It explains who she is, what happened to her, and why she needs protection. It's also an opportunity to address weak points in the case and to mitigate inconsistencies that may have come up in prior encounters with U.S. government officials.

Given how important it is, it's not surprising that different lawyers have different ideas about how to write a good affidavit. Some lawyers write long, very detailed affidavits. Others write short, perfunctory affidavits or do not write affidavits at all. Most of us—including me—fall somewhere in the middle.

There's probably no "right" answer here, but for me, at least, the arguments for a detailed—but not too detailed—affidavit are the most convincing.

One problem with providing a lot of detail in an affidavit is that it creates more opportunities for inconsistencies: If there are more facts in the affidavit, the applicant has more to remember. For example, if the written statement indicates that the applicant ate peppered tuna with Nicoise salad before he was arrested, he better say that he ate peppered tuna with Nicoise salad when he testifies. Otherwise, the adjudicator might take the inconsistency as a lie, which could cause the applicant to lose his case.

Taken to an extreme, the concern about consistency between the written and oral testimony might suggest that the best approach is a less-detailed affidavit, or even that no affidavit is needed at all. From the attorney's point of view, this would be nice, since the affidavit represents a large portion of the work we do. And it's always convenient when the best interest of the client (avoiding inconsistencies) and the best interest of the lawyer (laziness) are aligned.

However, I think there is a major risk involved with using a minimal (or non-existent) affidavit. First, under the REAL ID Act, an applicant is required to submit evidence when it is available. Typically, this consists of letters attesting to the persecution or other aspects of the case, medical reports, police records, and country condition information. Many of these documents will include dates (for example, a letter might indicate that the applicant was arrested on May 15, 2010) or other details. It is important that the applicant herself is aware of all these dates and details, and that her testimony be consistent with them. Writing an affidavit, and having the applicant read it, is one way to help ensure consistency between the applicant's testimony and her supporting evidence.

Also, the affidavit is useful for ensuring consistency between all the different pieces of evidence. Instead of

comparing each letter to every other letter, you need only compare each letter to the affidavit. As long as every document is consistent with the affidavit, every document should be consistent with every other document. And if everything is consistent, it bolsters the applicant's credibility.

I suppose you could write out the affidavit to help the applicant with his story and to help ensure consistency, but then not give the affidavit to the Asylum Officer or Immigration Judge. In this way, you would gain the benefits of having an affidavit while avoiding the risk of inconsistencies created by submitting the affidavit. But I'm not a fan of this approach, as I think the affidavit benefits the decision-maker in several ways. For one thing, it gives the decision-maker a detailed understanding of the case, which, if presented correctly, should go a long way towards producing a successful outcome.

Second, it allows the applicant to point out and mitigate weak points in his case. Most Asylum Officers and Immigration Judges are pretty smart, and they're experienced enough to hone in on problems in a case. If the problems can be overcome and explained in the affidavit, it will help satisfy the decision-maker before she even meets the applicant. This will allow the decision-maker to focus on the portions of the case that you want to emphasize.

In addition, in court, an applicant's oral testimony is often incomplete. Court testimony is commonly truncated to save time (especially where the Immigration Judge and DHS attorney are already familiar with the story from the affidavit and thus do not need to hear the applicant repeat his entire tale). Should the application for asylum be denied, the affidavit is useful on appeal, and many lawyers—including yours truly—have used affidavit testimony to help win an appeal with the Board of Immigration Appeals or the federal circuit court.

So for all these reasons, I think a comprehensive affidavit is beneficial to the case. But of course, it is possible to include too much detail, which can trip up an applicant. The trick is to find the balance between providing the necessary information to convince the decision-maker and to humanize the client, but not so much information that the client can't keep track of it all and the legally-relevant facts become obscured by irrelevant detail. Enough, but not too much. It's an art, not a science, and with experience, each lawyer develops a style that works for his clients and hopefully helps achieve the clients' goals.

**Did Immigration Advocates Help Create Donald Trump?**

As Donald Trump marches (goose steps?) toward the Republican nomination, there's been much hand wringing about the reasons for his rise. But if you listen to his sup-

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porters, there are a few themes that stand out.

One big issue is immigration. Last June, Mr. Trump called Mexican immigrants “rapists” and he has advocated banning all Muslims from entering the United States. Indeed, for a time, the *only* issue on the Trump campaign website was immigration (or maybe more accurately, anti-immigration).

There are many explanations for why Mr. Trump’s xenophobia has resonated with his supporters: Fear of terrorists and criminals, economic and cultural concerns, racism and white supremacy. In a way, these are not new. For most of our country’s history, U.S. immigration policies have reflected such sentiments, and at various times, all sorts of people have been blocked from entering the United States.

Here, however, I am interested in a different question: Whether the work of immigration advocates to help asylum seekers has contributed to the climate that produced Donald Trump.

Now wait just one gosh-darned second here, you say. Isn’t this like blaming Jews for the Holocaust or blaming African Americans for the KKK? I think there’s a difference. Allow me to explain—

Over the last 20 or so years, we’ve seen a marked expansion in the types of people who qualify for asylum. Some of this was Congressionally sanctioned--protecting victims of forced abortion, for example--but mostly, it was the result of creative lawyers pushing the boundaries of the law to protect their clients. Litigation has resulted in protection for victims of female genital mutilation, domestic violence, and forced marriage. To a more limited extent, victims of criminal gangs can also qualify for protection (sometimes), and many talented attorneys are working hard to improve asylum-case outcomes for such people, whose lives often are at risk.

Until about 2012 or 2013, the effort to broaden the categories of protection was somewhat theoretical. More people were eligible, but the number of asylum seekers actually applying remained relatively stable. But then things changed.

Between 2009 and 2012, increasing numbers of people—mostly Central American—began arriving at the Southern border to seek asylum (in FY 2009, there were about 5,500 such asylum seekers; in FY 2012, there were over 13,600). Since 2013, the numbers have skyrocketed. The most recent data shows that well over 6,000 people *per month* are requesting asylum at the border.

Most of the Central American applicants don’t easily fit within the traditional protected categories of asylum. They are fleeing criminal gangs and domestic violence, but given the expanded range of people who can qualify for protection, they now have a realistic possibility of receiving asylum.

As the number of migrants from Central America was on the upswing, activists for the DREAM Act began seeking asylum in order to highlight their own plight (the DREAM Act, which has been stalled in Congress, would grant residency to certain undocumented immigrants who

were brought here as children and who have lived their lives in the United States, but who currently have no lawful immigration status). The DREAM activists received a lot of attention in the media, and they demonstrated in a public way that asylum seekers could arrive at the Southern border, request protection, and be paroled into the country to pursue their cases.

It seems likely that these two events--changes in the law wrought by litigation and wide-spread publicity about asylum seekers gaining entry into the U.S. at the border--helped lead to the current spike in migration. This is not to say that people coming here for asylum are not also fleeing severe violence in their home countries--they are: Honduras, El Salvador, and Guatemala are three of the most dangerous places on Earth. But when you look at data about violent crime in those countries, there is little evidence correlating increased violence with increased migration. In other words, these countries had previously been very violent; something else seems to have spurred the current wave of migration. Quite possibly, that “something else” includes an improved legal climate and publicity about asylum.

Added to all this is the Obama Administration’s decision to allow an additional 10,000 Syrian refugees to resettle in the U.S. at a time when fear of terrorism seems to be at an all-time high. This decision was not made in consultation with Congress; the President has the power to make such a decision and he did. A slew of Republicans weighed in against the move.

We now return to Donald Trump.

The idea that “liberal elites” are making decisions to encourage more immigration, and that ordinary Americans (i.e., Trump supporters) have no say in these decisions, fits neatly into Mr. Trump’s narrative. This world view is not unrelated to reality. Indeed, as we’ve seen, recent changes related to asylum and refugee policies likely have brought more immigrants to the United States, and these changes were not reached by consensus, or even by a democratic process. Rather, they were achieved through litigation and civil disobedience, or via executive action--all methods of choice for the “liberal elite.”

Should we—the liberal elite—have done things differently? I’m not sure, but I certainly won’t apologize for the work of advocates and activists to represent our clients and to expand the law. That is our job and our duty. The President’s decision to bring more Syrian refugees here was also the right choice, and—to me at least--represents a fairly tepid response to a massive crisis.

But obviously there is a problem. Many people feel left out of the decision-making process, and that is wrong. Immigration profoundly affects who we are as a country, and Americans--all Americans--have a right to participate in the policy debate on that topic. In taking action to protect our clients and save lives, we “elites” have, to a certain extent, trampled over the democratic process.

Perhaps this is all dust in the wind: People who support xenophobes like Mr. Trump aren’t likely to have their minds changed by refugee sob stories or even by evidence that immigration actually helps the country. The sad state

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of our national discourse has prevented the type of rational policy debate that we need to move towards a broader consensus. Against mounting evidence, the optimist in me still believes that democracy works. I'd like to see a little more of it in our national conversation about immigration.

### **When Lawyers Lie**

The case of Detroit-area immigration lawyer David Wenger has been in the news lately. Mr. Wenger was recently sentenced to 18 months in prison for counseling his client to lie to the Immigration Court.

Mr. Wenger's client is a 45-year-old Albanian citizen who has lived in the U.S. since he was six months old. The client's family, including his daughter, live in the United States as well. Apparently, the client landed in removal proceedings due to a 2013 controlled-substance conviction, but the source of Mr. Wenger's troubles stem from the client's decades-old conviction for criminal sexual misconduct.

It seems that Mr. Wenger feared that if the Immigration Judge became aware of the sexual misconduct conviction, the client would have been deported. Having witnessed the tragedy of deportation many times, and particularly the pain it causes to the children of the deported, Mr. Wenger took matters into his own hands and tried to cover up the old conviction. It didn't work.

Now, Mr. Wenger is going to jail and the client--while still in the United States--faces an uncertain future.

Mr. Wenger's tale has caused some buzz among my fellow immigration lawyers. Mostly, it is described as "sad," and certainly there is an undercurrent of sympathy for a man whose advocacy crossed a line that we, as lawyers, are trained to approach. I've known criminal defense lawyers, for example, who say that if you don't go to jail for contempt once in a while, you're not doing your job. And certainly there is an element of truth to this: When you are advocating for an individual against The Man, you have to use all the tools at your disposal and push the limits of the law to protect your client. That is our job--and our duty--as lawyers. But such zealous advocacy has inherent risks, as Mr. Wenger's story reminds us.

So I suppose I understand Mr. Wenger's motivation to lie. But I do not understand how he thought he might get away with it in this particular case. The U.S. government keeps records of criminal convictions, and the DHS attorney in the case would likely have known about the old conviction. So even if you are not morally opposed to lying, I don't see the point of lying about something that the government knows already.

The temptations faced by Mr. Wenger are amplified in my practice area--asylum--where the U.S. government rarely has independent evidence about the problems faced by asylum seekers overseas, and significant portions of most such cases depend on the client's own testimony. I've encountered this myself a few times when clients have asked me to help them lie ("Would my case be stronger if I said X?"). How to handle such a request?

The easy answer, I suppose, is to tell the client to take a hike. That is not my approach. I am sympathetic to people

fleeing persecution who do not understand the asylum system, and who think that lying is the only way to find safety (and who often come from places where lying to the government is necessary for survival). In many cases, such people need to be educated about the U.S. asylum system. When a client asks me to lie, I explain that as an attorney, I cannot misrepresent the truth. I also explain why lying will likely not help achieve the client's goal, and how we can present the actual case in a way that will succeed. Hopefully this is enough to convince the client to tell the truth.

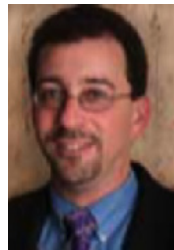
For individual clients, of course, this type of honesty sometimes has its drawbacks: Cases may be lost, people may be deported--possibly to their deaths, and families will be separated. Some lawyers find this price too high. If you believe your client will be deported to his death and you can save him by lying, perhaps the lie is justified. Mr. Wegner, no doubt, felt that he was doing the right thing for his Albanian client (though a review of Mr. Wegner's disciplinary record reveals that he has not always served the best interests of his clients). And there are certainly attorneys who believe that the ends justify the means. But I am not one of them.

When all is said and done, I will not lie for a client. I don't think it is effective, and even if we get away with it in one case, I fear that it would hurt my credibility as a lawyer--and thus my ability to be an effective advocate--in all my other cases. I also feel that it damages the system, which hurts honest applicants.

In the final analysis, even if we ignore his other disciplinary issues, it is difficult for me to feel too sorry for Mr. Wegner. While a lawyer's zealous representation of his client is admirable, the willingness to cheat corrodes our immigration system and ultimately harms the very people that lawyers like Mr. Wegner purport to help. For me, even the argument that lying is a necessary form of civil disobedience in an unjust system falls flat. Civil disobedience is about sitting at the lunch counter; not stealing the food.

Despite all the imperfections of the immigration system, our primary job as lawyers is to work within that system to assist our clients. We also have a role to play in criticizing and improving the system. But when lawyers lie, we fail as both advocates and as reformers. ■

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## Asylum in a Changing World

BY JEFFREY S. CHASE

U.S. asylum policy is a product of the tension between the public sentiments of compassion and fear. In the words of a former Deputy UN High Commissioner: “The public will not allow governments to be generous if it believes they have lost control.”<sup>1</sup> Although asylum can be traced back at least to the Old Testament, for all practical purposes, U.S. asylum policy began on the eve of World War II.

### WWII: Millions displaced

In the late 1930s, no asylum or refugee provisions existed under U.S. law. Furthermore, there was little public support for the admission of refugees. While the Great Depression created a fear of admitting refugees to compete for jobs, the strong anti-semitic sentiments of the time dampened public sympathy. In 1938, President Roosevelt convened representatives of western governments in Evian, France to discuss the admission of Jewish refugees fleeing the Nazis. With the exception of the Dominican Republic (which agreed to issue 100,000 visas to European refugees, of which only 600-plus were actually used), those in attendance refused to open their doors. The U.S. representative stated that his country would accept no refugees; the Canadian representative went one step further, exclaiming that “none would be too many.”

A secret intervention, code-named “Operation Texas,” rerouted some refugees to Houston, TX. Although many were placed into deportation proceedings upon arrival, the program saved as many as 400 lives. It is widely believed that Lyndon Johnson (then a congressman) was responsible for the program.<sup>2</sup> Otherwise, U.S. policy was exemplified by its treatment of the ship the *St. Louis*, labeled the “Voyage of the Damned,” carrying over 900 Jewish refugees from Germany. The refusal of the U.S. to permit the ship to dock in Florida in May 1939 eventually forced its return to Europe.

During World War II, the processing of visas for Jews wishing to escape the Nazis was overseen by Breckinridge Long, a special assistant Secretary of State. Long prevented the issuance of 90 percent of visas earmarked for Jews fleeing the Nazis by directing U.S. consulates to “put every obstacle in the way” of visa applicants “and to require additional evidence and to resort to various administrative devices which would postpone and postpone the granting of the visas.”

The U.S. did allow 982 Jews determined to be at high risk into this country as parolees. Strong opposition from Congress and the press caused this group to remain in detention in upstate New York until 1947.

### Post-war: Displaced Person (DP) camps established in Europe

Intended as a temporary solution, western European

governments established Displaced Person (DP) camps; believing that refugees housed there would soon return to their pre-war homes. However, the camp populations actually continued to grow in the years following the war. Some refugees no longer had homes to return to; others did not wish to live among those who had persecuted them during the war. Some Jewish returnees were subsequently forced to flee by homegrown nationalist groups.

President Truman sent former INS commissioner Earl G. Harrison to visit and assess conditions in the DP camps. Harrison reported “we appear to be treating the Jews as the Nazis treated them, except we are not exterminating them.”

### Aftermath: 1951 Convention

Coming to the conclusion that the refugee population would not repatriate of its own accord, Western European governments convened in Geneva in 1951, and succeeded in creating the present-day definition of “refugee.” After designating “race, religion, nationality and political opinion” as bases for refugee status, the Swedish plenipotentiary to the Convention advocated for the addition of a fifth, “catch-all” category that would afford status to those clearly in need of protection but who did not fall within the above four categories. As a result, “particular social group” was added as a protection ground.

The Convention’s scope was limited geographically to Europe and to events occurring before Jan. 1, 1951. Although the United States sent an observer, it was not a signatory to the Convention, which it viewed as a European issue.

### U.S. policy after WW II

Although President Truman was alarmed by the Harrison report, Congress would pass only piecemeal acts and parole for limited groups of interest, i.e. British orphans (but not Jews); and later, Hungarians (in 1956) and Cubans (in the early 1960s), as anti-communist sentiment prevailed over anti-immigrant fears.

In 1952, Congress enacted the I&N Act (the McCarran-Walter Act). Section 243(h) of the Act provided legislative protection to refugees in the form of withholding of deportation. Under this section, the Attorney General was “authorized” (not required) to withhold deportation to any country where “in the Attorney General’s opinion” the applicant would suffer physical persecution. Such relief was both discretionary and temporary. The legal standard was also restrictive, as, for example, the U.S. Court of Appeals for the Third Circuit interpreted the term “physical persecution” as meaning “confinement, torture, or death.”

The Immigration and Nationality Act of 1965 created a 7th Preference visa category for refugees from Communist countries and the Middle East only. Furthermore, section 243(h) was

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amended, with its “physical persecution” requirement replaced by “persecution on account of race, religion or political opinion.” However, withholding of deportation remained discretionary, and was unavailable in exclusion proceedings.

In 1966, Congress passed the Cuban Refugee Adjustment Act, which allowed Cuban nationals with one year physical presence in the U.S. to adjust status to that of a lawful permanent resident. This statute impacted hundreds of thousands of Cuban parolees; 78,000 of whom arrived in the U.S. in 1962 alone.<sup>3</sup>

#### **1967: NY Protocol creates universal refugee definition**

By 1967, world events led the international community to expand refugee protection. The 1967 Protocol (acknowledged by the U.N. General Assembly at its New York headquarters) accorded the refugee definition of the 1951 Convention universal application by removing its limitations as to time and place. The United States became a signatory to the Protocol in 1968, when it was ratified by Congress. However, it took another 12 years for the new definition to be incorporated into U.S. law.

#### **Nov. 1970: Simas Kudirka incident**

On November 23, 1970, Simas Kudirka, a Lithuanian sailor, leaped from his soviet vessel onto a U.S. Coast Guard ship in a bid for asylum. The ships were docked next to each other at Martha’s Vineyard, where U.S. and Soviet officials were meeting to discuss fishing rights. While Soviet officers insisted on his return, Coast Guard officials were unable to obtain official guidance from Washington for hours. The Coast Guard eventually allowed Soviet officers to board the Coast Guard ship and forcibly return Kudirka, which was accomplished in a brutal manner in full view of the Coast Guard crew. The incident spurred the creation of an asylum procedure, resulting in the publication of regulations in 1974, and the creation of an official I-589 application form. The regulations granted “special inquiry officers” (the predecessors of immigration judges) authority to consider claims for relief under Art. 32 and 33 of the 1951 Convention. The regulations also required a State Department advisory opinion.

#### **March 1980: Refugee Act**

Sponsored by Senator Edward Kennedy, Congress passed legislation adapting the 1967 Protocol’s refugee definition into U.S. domestic law. However, implementing regulations were not published for another ten years. In the interim both the INS and BIA interpreted the term “well-founded fear” to mean “more likely than not.” In 1987, the Supreme Court held in *Cardoza-Fonseca v. INS* that “well-founded fear” required a lesser showing of fear than the “clear probability” standard. In its decision, the court cited language in which a 10% chance of persecution was found sufficient to satisfy the standard.

#### **Corresponds with events creating public fear of lack of control:**

The above developments in asylum law coincided with events that incited anti-refugee sentiment in the American public. The Mariel boat lift resulted in the arrival of 125,000 Cuban refugees in Spring and Summer of 1980 alone. The young governor of Arkansas, Bill Clinton, agreed to the White House’s request

to house a number of the new arrivals in Arkansas prisons. Subsequent prison riots resulting from this decision were blamed for Clinton’s reelection defeat.

At approximately the same time, some 25,000 Haitians arrived in the U.S. by boat. Also arriving in hopes of refuge were Central Americans fleeing civil wars in Nicaragua, El Salvador and Guatemala. Furthermore, the Islamic revolution in Iran caused a lesser number of foreign students from that country to consider seeking refuge here as well.

#### **1981: President Reagan initiates Haitian interdiction program**

The continued influx of Haitian refugees on unsafe boats led President Ronald Reagan to create a program using Coast Guard vessels to interdict Haitian boats at sea and return them to Haiti without affording their passengers the right to apply for asylum. The program greatly contrasted with the treatment of Cubans arriving in similar fashion, who were routinely paroled and later allowed to adjust status. Then Associate Attorney General Rudolph Giuliani was involved in both planning and publicly defending the program.

#### **April 1987: Creation of APRU**

In April 1987, Attorney General Edwin Meese created the Asylum Policy and Review Unit, an independent agency within the Department of Justice. Not part of either the INS or EOIR, APRU was charged with reviewing asylum decisions from a foreign policy perspective, and was authorized to request the Department of Justice to override the decisions of both agencies. The unit was disbanded in 1993.

#### **1989: June 4 (Tiananmen Square) crackdown in China**

Following the pro-democracy protests in China and the subsequent government crackdown, the Bush administration designated the granting of Temporary Protected Status to Chinese nationals in the U.S. The administration further implemented an informal policy directing INS attorneys and asylum offices to grant asylum to victims of China’s coercive family planning policies. The Bush administration published proposed regulations intended to codify this practice. However, the regulations were never finalized, and were withdrawn by the Clinton Administration in early 1993.

#### **Nov. 1989: the “Lautenberg Amendment”**

Legislation sponsored by Rep. Frank Lautenberg created a presumption of well-founded fear to certain classes of refugee applicants, including Jews and other religious minorities from the Soviet Union and Iran, and to nationals of Vietnam, Laos, and Cambodia. The legislation applied only to those applying as refugees overseas under section 207 of the I&N Act, and not to those present in the U.S. and applying for asylum under section 208. Thus, the determination of whether an individual possessed a well-founded fear of religious persecution could be determined by where the application was filed.

#### **Oct. 1990: Regs Implementing 1980 Refugee Act**

Ten years after becoming law, regulations were finally published incorporating the provisions of the Refugee Act of

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1980. The regulations created a new affirmative procedure, with seven INS Asylum Offices, staffed by a specially trained Asylum Officer Corps. The regulations also altered the procedure regarding advisory opinions by the Department of State (created in the aftermath of the Kudirka affair); codified the presumption of well-founded fear created by past persecution, and allowed certain applicants unable to demonstrate that they would be singled out for persecution to qualify by showing a “pattern or practice” of persecution of similarly situated individuals.

### **1990: ABC class action settlement**

In 1990, the Department of Justice reached a settlement with plaintiffs in a class action lawsuit claiming bias in the adjudication of hundreds of thousands of asylum claims filed by nationals of El Salvador and Guatemala. Under the settlement in *American Baptist Churches v Thornburgh*, approved by the U.S. District Court for the Northern District of California in January 1991, class members would have their asylum applications adjudicated de novo pursuant to the 1990 regulations, with recommended denials reviewed by the INS Central Office for Refugees, Asylum, and Parole.

### **Late 1994-early 1995: Asylum Reform**

A combination of factors led to a drastic increase in asylum applications in the early 1990s. Reasons included the ABC class settlement; an increase in travel to the U.S. by former Soviet subjects accustomed to favorable Lautenberg Amendment treatment; a slow start to adjudications by the new Asylum Offices (accompanied by the regulatory right to employment authorization 90 days after filing), and the creation of marriage fraud penalties in the late 1980s. The result: in 1985, 16,622 new applications were filed affirmatively with the INS; in 1988, 60,736; in 1995, 154,464 asylum applications were received. There were 464,121 pending asylum applications at beginning of FY 1996; only 11% of affirmative applicants were being scheduled for interviews.

In 1993, a fatal shooting outside of CIA headquarters in January was followed a month later by the first World Trade Center bombing. The fact that the terrorists involved in both attacks were paroled into the U.S. after stating a desire to apply for asylum drew much public and Congressional attention to the asylum system. That June, the smuggling ship *The Golden Venture* was run aground on Rockaway Beach in Queens, NY; its nearly 300 passengers dashed for shore in broad daylight, setting off a media frenzy.

In response, the Clinton administration enacted new regulations effective 1/02/1995. The new rules mandated that asylum applications be adjudicated within 180 days, with only cases that are granted asylum or not completed within the specified time resulting in the issuance of employment authorization.

### **1994 - 1996: Expanded view of asylum eligibility by BIA, INS**

At the same time, the BIA and INS issued groundbreaking decisions expanding the scope of asylum. The Board’s 1994

decision in *Matter of Toboso-Alfonso* recognized sexual orientation as a basis for asylum. The following year, the INS published guidelines for adjudicating asylum claims filed by women. In 1996, the BIA issued its first gender-based asylum decision, *Matter of Kasinga*, granting asylum based on a fear of being subjected to Female Genital Mutilation.

### **1996: IIRAIRA:**

In the election year of 1996, Congress passed a major enforcement-based immigration bill. IIRAIRA included several asylum-related provisions, including a one-year filing deadline for asylum claims; a lifetime bar from immigration benefits for those found to have filed fraudulent asylum claims, and an amendment to the refugee definition to include opposition to coercive population control within the definition of “political opinion.”

### **Later Developments:**

In 1999, rules were published allowing for applications for protection under Article III of the U.N. Convention Against Torture. In late 2000, the Clinton administration published proposed regulations relating to domestic violence-based asylum claims. However, final regulations have yet to be published. In 2005, the REAL ID Act contained provisions barring asylum to those who provided material aid to terrorists; the legislation also granted broader discretion to immigration judges’ credibility determinations, and added the “one central reason” test to nexus determinations. ■

*Jeffrey S. Chase is a Senior Legal Advisor with the Board of Immigration Appeals, Executive Office for Immigration Review, (EOIR) at the U.S. Department of Justice. The author wrote this article in his personal capacity, and the views expressed herein are solely his views and do not necessarily represent positions of EOIR or the U.S. Department of Justice. This article is dedicated to the late Arthur C. Helton, my first mentor and hero in the field of asylum law, who taught me so much and inspired me to learn the rest.*

W.R. Smyser, *Refugees: Extended Exile*, New York: Praeger (1987), at 119. quoted in David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 U. PA L.R. 1247, 1269-70 (1990).

### **Endnotes**

<sup>1</sup>W.R. Smyser, *Refugees: Extended Exile*, New York: Praeger (1987), at 119. quoted in David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 U. PA L.R. 1247, 1269-70 (1990).

<sup>2</sup>I first heard this story recounted at the 1994 AILA awards ceremony by the late Sam Williamson, who as a young immigration lawyer in Houston represented many of the arriving refugees. Also see Smallwood, James (2009) “Operation Texas: Lyndon B. Johnson, The Jewish Question and the Nazi Holocaust,” *East Texas Historical Journal*: Vol. 47: Iss. 1, Article 6.

<sup>3</sup>Ruth Ellen Wasem, *Cuban Migration to the United States: Policy and Trends*, Congressional Research Service, June 2, 2009, at 1-2.

## USA v. Olivar: Conspiracy To Commit Criminal Acts Prior To Naturalization Can Still Result In Revocation Of Citizenship

BY CYRUS D. MEHTA

One of the advantages of becoming a US citizen is that one is no longer susceptible to being deported from the United States, especially if the person has been convicted of a crime. While being convicted of a crime results in criminal penalties, a US citizen can at least take comfort that that there will be no removal, and the United States will continue to remain home for the convicted person.

Think again.

In *United States of America v. Orden Olivar*, \_\_\_ Fed. Appx. \_\_\_, No. 14-55336, 2016 WL 1553906 (9<sup>th</sup> Cir. April 18, 2016), the Ninth Circuit Court of Appeals upheld the revocation of citizenship of a naturalized person who was convicted of criminal conspiracy for acts undertaken prior to applying for naturalization. Olivar, a native of the Philippines, was naturalized as a US citizen in May 2002. In the same year, according to a Law360 story by Matthew Buttman, *9th Circ. Affirms Paralegal's Post-Fraud Loss of Citizenship* (April 19, 2008), Olivar began working at a law firm in the Los Angeles area in 2002. Seven years later, in early 2009, he was indicted on conspiracy charges in connection with a visa fraud scheme. Olivar and a second individual recruited people who were not authorized to work in the U.S., charging them anywhere between \$1,000 and \$7,500 to find a business that would sponsor them for an employment-based immigrant visa. They filed applications with the Labor Department and immigration authorities claiming the individuals would be working in skilled positions, like accountants or public relations specialists, according to Law360. The businesses allegedly never actually intended to employ the individuals, the prosecutors alleged. Olivar was also accused of helping the immigrants falsify their education and work experience if they didn't meet the requirements for the H-1B visa, by using false diplomas, transcripts and reference letters. Olivar eventually pled guilty to conspiracy to commit visa fraud in April 2009 in violation of 18 USC 2, 371 and 1546 and was sentenced to just over one year in jail. Federal authorities later started efforts to revoke his citizenship, claiming he lacked good moral character in the five year period leading up to naturalization in May 2002 based on unlawful acts that adversely reflected upon his good moral character. These acts involved a conspiracy to commit visa fraud, which was a crime involving moral turpitude.

While this sounds Kafkaesque, it is possible to lose the coveted US citizenship if a person is convicted of a crime, based on conduct that occurred prior to naturalization. While a person only knows for certain about the crime being committed at the point of conviction, prior acts, or

even an agreement to commit acts in the future, can potentially lead a court to conclude retroactively that acts prior to conviction adversely reflected on the person's good moral character.

The Form N-400, Application for Naturalization, asks broadly "Have you ever committed a crime or offense for which you have never been arrested?" In a prior blog, *Crime Without Punishment: Have You Ever Committed A Crime For Which You Have Not Been Arrested?* available at [blog.cyrusmehta.com/2012/07/crime-without-punishment-have-you-ever-committed-a-crime-for-which-you-have-not-been-arrested.html](http://blog.cyrusmehta.com/2012/07/crime-without-punishment-have-you-ever-committed-a-crime-for-which-you-have-not-been-arrested.html), this author puzzled on how an immigration attorney should advise a client to answer this overbroad question. It is impossible to know whether a person has committed a crime or offense, unless it is proven beyond reasonable doubt in the criminal justice system. It may thus be problematic to advise a client to admit to a commission of a crime on the N-400 application when one does not know what provision of the law was violated, and whether the applicant met all the elements of that offense. Since this overbroad question also requires admitting non-criminal offenses, it would be difficult, and frankly ridiculous, to plumb through the memory of the client to recall every minor offense that may have been committed in this person's life, which may include such insignificant offenses as jay walking (a daily occurrence in New York City!) or driving above the speed limit. Nevertheless, failure to disclose whether a person has committed a crime for which there was no charge or arrest can be used against the person if there is a conviction after the naturalization. In *U.S. v. Bogacki*, 925 F. Supp.2d 1288 (2012) for example, the defendant was convicted for conspiracy to bring in and harbor aliens, make false statements, commit mail fraud and wire fraud, and fraud by misuse of immigration documents, among others, after he had naturalized. However, the government was successful in denaturalizing him for his failure to specifically mention the question about committing a crime for which you have not been arrested on the N-400 application.

In *USA v. Olivar*, the Ninth Circuit Court of Appeals avoided relying on this ambiguous question on the N-400 application, and instead found that he lacked good moral character during the five year period preceding his naturalization. According to the Court, "The district court made clear that the Appellant was denaturalized because he lacked good moral character during the statutory period, and did not find that Olivar should be denaturalized because he made a material misrepresentation on his natu-

ralization form.” What is unusual about *USA v. Olivar* is that he had only agreed to commit a criminal act in the future, and the essential element of conspiracy, the overt act, only occurred after his naturalization. Was Olivar a criminal during the five year period prior to his naturalization, and thus lacking in good moral character? The following extract from the Law360 story is worth noting:

During oral arguments earlier this month, his attorney, Nimrod Haim Aviad of Crowell & Moring LLP, acknowledged that authorities alleged the conspirators began discussing the visa scheme back in 2001, several months before Olivar became a citizen.

But Aviad said no one acted on the plan until after Olivar’s naturalization. So, when Olivar was sworn in as a U.S. citizen, he was not a criminal and had not committed an illegal act, Aviad argued.

“When I agree to commit an act, that does not mean that I committed it,” he said. “That is the very basic principle that underlies the law of conspiracy.”

Judges appeared to be skeptical of the argument.

“So somebody could decide to engage in four or five illegal conspiracies to smuggle drugs, smuggle aliens, do a whole bunch of stuff, and say ‘but hold off, I’m going to become a citizen next week and then we’ll start buying the guns?’” Circuit Judge Susan P. Graber asked. “And that’s okay?”

As a result of his conviction in 2009, Olivar is no longer a US citizen based on an agreement prior to his naturalization to commit criminal acts in the future, and is potentially deportable. His case is especially striking since conspiracy, in addition to proving that two or more people two or more people were in agreement to commit a crime, also requires an “overt act” taken in furtherance of the crime. In *USA v. Olivar*, the applicant could not have been accused of conspiracy during the statutory period requiring good moral character prior to naturalization as the overt act had occurred long after he had become a citizen. This appears to be a case of first impression,

and the Ninth Circuit’s conclusion seems to be at odds with the law of conspiracy. Even with respect to decisions involving deportation, the only relevant decision involving deportation as a result of conspiracy that this author found (with David Isaacson’s assistance) is *Matter of T*, 2 I&N Dec. 95 (1944). In *Matter of T*, the respondent was found not to be deportable for a crime involving moral turpitude committed within 5 years *after* entry as the overt act in that conspiracy occurred prior to his entry into the United States. The respondent, however, was still found deportable for having admitted to the commission of a crime involving moral turpitude prior to this entry, but it is significant that the charge of deportability for the commission of a crime after entry was not sustained as the overt act took place prior to entry.

Because the Ninth Circuit’s decision in *USA v. Olivar* does not appear to be crystal clear, this is not going to be the last word on whether citizenship can be revoked based on an agreement to commit a crime prior to naturalization, but where the overt act occurred after naturalization. ■

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*This article originally appeared on The Insightful Immigration Blog, [blog.cyrusmehta.com](http://blog.cyrusmehta.com).*

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Dr. Alicia Triche is Chair of the Section’s Publications Committee.

## How Trump Could Get Mexico to Pay for a Border Wall—Maybe

BY ALEX NOWRASTEH

Republican frontrunner Donald Trump claims he is going to build a wall along the border and get Mexico to pay for it. This has been laughed off as infeasible, perhaps even a little nutty. Yet perhaps we should have held back our disdain a little longer. In 1954, President Eisenhower prompted the Mexican government to deploy troops along the border to stop Mexicans from entering the United States. While Mexico didn't build a wall, they attempted to stem the tide of Mexicans emigrating to the United States and their government paid for it. This might sound great to immigration restrictionists until they realize how Eisenhower did it.

After months of failed negotiations between the two countries over the terms of the Bracero guest worker visa, the U.S. departments managing the visa issued a press release on Jan. 15, 1954 stating that migrants who entered would be immediately awarded a labor contract and a job. Outraged by this attempt to cut them out of the negotiations, the Mexican government deployed 5,000 soldiers along the border to threaten, detain, and deter migrants who tried to enter the United States.

Deborah Cohen sums up the resulting chaos:

“When the United States actually pulled back the gate and opened the border on Jan. 22, chaos ensued. Hundreds of hopeful migrants rushed past the barrier, *aided by the extended arms of United States Border Patrol agents*, even as Mexican soldiers charged the men, trying to prevent them from crossing. Soldiers grabbed their countrymen, often by the shirt, and yanked them back as they were pulled towards the other side by United States border guards. [Mexican] Troops pelted men with fists, guns, water, and clubs in a vain attempt to contain this rush of bodies [emphasis added].”

Mexicans who avoided their own military and made it across the border found helpful Border Patrol and INS officers who guided them to labor recruiters who gladly transported them to farms for legal work in the United States.

Negotiations to renew the Bracero program broke down for two main reasons. The first is that the Mexican government sought a monopoly on the export of labor. Article 123 of the Mexican Constitution of 1917 controlled the hiring of Mexican citizens abroad. Cloaked in nationalistic justifications, it was a scheme that created a Mexican government labor monopoly to skim off rents. To empower Article 123, historian Ernesto Galarza describes a Mexican immigration law passed in 1932 that “authorized the confiscation of vehicles uses to transport persons to the border for the purposes of facilitating their illegal entry into the United States.” Galarza means “ille-

gal entry” under Mexican law, not U.S. law. Simply put, the Mexican government wanted higher rents and the U.S. government was reluctant to grant them.

The second reason negotiations broke down is that Eisenhower wanted the Mexican government to contribute to migration control by patrolling their side of the border. The Bracero program had existed since 1942 as a bilateral labor agreement between the two countries but unlawful Mexican immigration persisted. The Mexican government's failure to control illegal Mexican emigration and never ending American demand for workers lulled them into a position of salutary neglect so that by the early 1950s almost 2 million Mexican unauthorized immigrants were working in the United States. Eisenhower wanted that stopped and thought the Mexicans could help. The Americans eventually solved it themselves.

The negotiations broke down in 1953 and 1954, prompting the Eisenhower administration's January 1954 announcement that any Mexican who showed up would be granted a work visa. Mexico quickly acceded to American demands and soon Bracero workers were flowing freely back and forth across the border again - to the economic benefit of everybody involved.

Eisenhower's opening of the border with Mexico in January 1954 was only possible because of the Bracero guest worker visa program that tied the two governments together. If a future President Trump negotiated a large scale guest worker visa program that allowed many temporary Mexican guest workers in annually and legalized most of the unauthorized immigrants in the United States, he could gain the diplomatic leverage to prompt Mexico to build a wall—or at least deploy some troops in a fancy show.

A legalization and the creation of a large scale guest worker visa program would make such a wall even more irrelevant than it would currently be (unlawful immigration from Mexico has essentially stopped) but at least we'd have a more functional immigration system. ■

*This post originated in Cato-at-Liberty Blog, and was written with the help of Andy Yuan.*

## All Checks and No Balances—The Systemic Failure to Protect EB-5 Investors

BY ANGELO A. PAPARELLI

Several widely-publicized actions by the Securities Exchange Commission (SEC), and the inevitable litigation that has piled on in consequence, have pressure-tested the EB-5 ecosystem and found it defective. Simply stated, the system too likely and too often fails. Sadly, many EB-5 investors, after writing half-million-dollar or greater checks, ultimately have learned that no balances remain in their capital accounts and no green cards land or stay in their own and their family's wallets.

Stripped of cash and cards, an unacceptable number of EB-5 investors find out that they have been fleeced. This calamity is not necessarily attributable to the ever-present moral hazard of failing to thoroughly investigate a proposed investment, and imprudently placing at-risk funds into an unsound business opportunity. Rather, the flaw lies in structural and process failures of misfeasant government officials and market participants to take care that EB-5 investors are adequately protected from errant or unscrupulous promoters, developers, regional-center principals and migration agents, and from sundry Ponzi schemers, garden-variety fraudsters and sophisticated con artists.

No EB-5 stakeholders and the ecosystem itself cannot continue to thrive if too many investors are defrauded of money and the promised permanent residency. Clearly, a healthy, sustainable EB-5 ecosystem cannot endure without meaningful investor protections and reliable safeguards that promote real job creation.

### Why is this happening?

**Culprit number one—thoughtless lawmakers.** The successive Congresses that crafted and amended the EB-5 program surely must have known that some degree of fraud, waste, and abuse are the inevitable byproducts of all government programs. Yet, lawmakers never included investor protections in the enabling EB-5 legislation. Even more appalling, our legislators should have foreseen that foreign investors, many of whom lack rudimentary English fluency or business savvy, would at once be dazzled by the allure of a green card and likely unaware of the risk that the *U.S. government's own* EB-5 program would be unsafe.

The Immigration Act of 1990, the law that ushered in the EB-5 program, and follow-on amendments, never authorized federal immigration administrators to debar from program participation blatantly out-of-compliance regional centers, developers, hucksters and their co-conspirators, or to protect investors from the harsh consequences of clearly foreseeable fraud and financial crimes. On the contrary, Congress knew from the outset that some deals will likely go south because scoundrels might hoodwink investors,



or because other investments involve business plans with little likelihood of actual success.

Nonetheless, from inception, the law has provided that conditional residency would end and EB-5 investors brought before immigration judges in deportation proceedings if investments were not sustained—something that's hard to do if one has been swindled—or the requisite jobs were not created.

Congress should also have known that securities law enforcers and immigration administrators would probably not quickly uncover the shenanigans hiding in some unregistered investments whose job-creating worthiness—by legislative design—would only be determined some two years hence.

Regrettably, Congress never provided for a real-time, on-the-scene watchdog to protect investors' interests and make sure that promised actions supposedly leading to job creation for U.S. workers would actually happen.

**Culprit number two—unaware and insensitive bureaucrats.** As the SEC has acknowledged, it arrived several years late to the EB-5 program, having been oblivious for too many years to the Commission's established statu-

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tory duty to protect investors in all securities transactions, including EB-5 deals. While SEC enforcement of EB-5 investments has fortunately intensified in the last few years and months, the Commission most often will likely play only an *ex post facto* enforcement role in punishing wrongdoers and trying to make investors whole once a deal has already failed or investors have been hurt, unless a whistleblower or grieving investor surfaces sooner.

So too have immigration administrators been derelict. Regulations of the legacy agency, the Immigration and Naturalization Service (INS), and the current Department of Homeland Security immigration components—U.S. Immigration & Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS)—offer defrauded investors no relief or even the possibility that discretion might be favorably exercised. To be sure, USCIS has tasked its Fraud Detection and National Security Directorate to make unannounced site visits to projects and regional centers and called for investor interviews when the issue of removing conditions on residency are to be ultimately adjudicated. These actions, however, have yet to occur in great numbers, may not be efficacious, or may just be too little too late.

### **Culprit number three—EB-5 market participants.**

The construction, lending and escrow industries—sectors especially active in EB-5 projects—have long been accustomed to the salutary, sentinel effect of meaningful oversight. Money doesn't move from one contracting party to another unless predetermined and mutually agreed conditions are satisfied. The ever-present risk that funds or assets will be stolen, lost or wasted, or that desired outcomes might not be achieved, can be eliminated or mitigated if a real-time watchdog monitors contract compliance and fulfillment. The same safeguard could readily be applied for the protection of EB-5 investors and the assurance of job creation—but until now EB-5 market players seemed not to care. Instead, conflicts of interests continue to abound in the EB-5 industry and wrongdoers still go undetected until it's too late.

### **What's to be done?**

All three culprits can expiate their sins if they act together or at least separately to introduce a new participant in the EB-5 ecosystem—the independent fiduciary—a person or firm that would represent the interests of investors in trying to assure the ultimate return of principal, the maximization of profits (once job creation at the requisite level has been confirmed by USCIS), and the ultimate prize—unconditional permanent residence.

An independent fiduciary would act much like a bank officer who decides whether agreed conditions have been satisfied before releasing progress payments of loan proceeds. The investors' independent fiduciary could also perform:

- an auditing function to confirm that required business and accounting records are maintained, and only per-

missible expenditures are paid,

- corporate secretary/treasurer functions to make timely disclosures to investors of financial activities, monitor fund administration and job creation/hiring, give notice of the time, date and methodology for investors to vote on corporate matters, and report any significant developments or material changes to the business plan,
- a watchdog function to confirm that insurance underwriter conditions are fulfilled and required permits and licenses are maintained; and
- an education and information function to explain to investors the role and activities of the independent fiduciary, and formally confirm to government officials how EB-5 program requirements are met when and as they are due.

Other loss mitigation safeguards could also be established. These include (a) the expanded availability and acquisition of EB-5 insurance to pay a form of indemnity (the return of the investment) if investor petitions are not approved or conditions on residence are not removed, (b) the addition of other traditional forms of insurance protection (e.g., fidelity bonds, and coverage for errors and omissions, business interruption, directors and officers liability and general liability), and (c) the use of letters of credit.

Without eliminating moral hazard, Congress could provide in the forthcoming integrity measures that a regional center's or project developer's engagement of an independent fiduciary, purchase of particular types of insurance, and/or arrangement for a letter of credit would serve as a good-faith prohibition against the denial or loss of lawful permanent resident status in cases where the SEC, ICE or USCIS determines that EB-5 investors have been defrauded.

USCIS could add similar protections in its (reportedly) soon-to-be-published EB-5 regulations. The agency could also specify by regulation or policy memorandum circumstances where the exercise of prosecutorial discretion should be exercised and of the full range of its parole authority and employment authorization are granted to defrauded but otherwise admissible EB-5 investors.

Market players should also have "skin in the game" of protecting EB-5 investors. They should require the engagement of independent fiduciaries and procurement of appropriate insurance coverages or letters of credit that reduce but do not eliminate all investment risk so that USCIS's at-risk capital requirements are nonetheless satisfied. Market participants should also recognize that risk reduction will add costs but likely generate overriding cost savings that will redound to the benefit of primary lenders, project developers and regional centers while also attracting migration agents, investment advisors and the EB-5 investors themselves. Ultimately and ideally, only deals with fiduciary and insurance protections will be marketable.

Checks and balances—the brainchildren of the

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Founding Fathers—established our constitutional form of government that has endured for centuries. One of these features is the protection of minorities against majority power. So too will a new system of checks and balances protect vulnerable EB-5 investors likely reduce the prospect that investors will write very sizable checks but yield no balances in their capital accounts or place green cards in their wallets. ■

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## Article

# When Citizenship Is Denied Due To Unauthorized Employment

## BY NOAH KLUG

*Law360, New York (June 20, 2016, 1:23 PM ET)*

The Eighth Circuit recently issued a decision regarding a naturalization (citizenship) denial in *Al-Saadoon v. Holder*.<sup>1</sup> The court of appeals upheld the lower court's finding that Farok Abdulmajid Hamod's 2007 U.S. naturalization (citizenship) application was correctly denied, based on Hamod's acceptance of unauthorized employment prior to adjusting to lawful permanent resident (LPR) status (green card).<sup>2</sup>

The U.S. Citizenship and Immigration Services officer adjudicating Hamod's naturalization application noticed the unauthorized Islamic Cultural Community Center employment in Hamod's application form, where the applicant is required to list employment for the past five years.<sup>3</sup> Hamod indicated that he had worked for the ICCC from 2000 until present, which led the officer to question whether Hamod had been properly authorized for this employment.<sup>4</sup> What makes this case so interesting is (1) the unique and lengthy history of Hamod's naturalization application, and (2) the way in which his acceptance of unauthorized employment was used as a basis to deny his naturalization application.

The facts of the case appear to indicate that Hamod's acceptance of unauthorized employment may have been an unintentional and somewhat understandable personal error. He entered the United States on an R-1 religious worker visa in 1999, to begin employment as a teacher at the Al-Amal School in Minnesota.<sup>5</sup> After working for the school for around one year, he became involved with the ICCC and began to lead prayer services, give lectures, provide counseling, conduct marriage ceremonies, etc.<sup>6</sup> While the Al-Amal School and the ICCC are separate legal entities, the record seems to indicate that they are closely affiliated.<sup>7</sup>

The ICCC then petitioned on Hamod's behalf for

a green card in August 2000, which was approved in December 2000.<sup>8</sup> The issue: Hamod's R-1 religious worker visa authorized him only to work for the petitioning organization (the Al-Amal School). Hamod was therefore only authorized to work for the ICCC at the very earliest in December 2000, when his immigrant petition sponsored by ICCC was approved.<sup>9</sup> Hence, his ICCC employment earlier in 2000 (and arguably until August 2002, when the U.S. Immigration and Naturalization Service granted Hamod's LPR application) was unauthorized.<sup>10</sup>

It is common to see unauthorized employment lead to the denial of an LPR application, but much less common to see this factor lead to the denial of an application for naturalization. Section 245(c)(2) of the Immigration and Nationality Act (INA) provides that a foreign national "who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States" is ineligible to adjust to LPR status.<sup>11</sup>

With regards to naturalization, however, unauthorized employment is not an explicit bar. To qualify for naturalization, the applicant must:

1. Be a lawful permanent resident;<sup>12</sup>
2. Meet the good moral character requirements;<sup>13</sup>
3. Be 18 years of age or older;<sup>14</sup>
4. Meet the continuous residence and physical presence requirements;<sup>15</sup>
5. Be "attached to the principles of the Constitution of the United States and well-disposed to the good order and happiness of the United States;"<sup>16</sup>

6. Be willing to bear arms, perform noncombatant service, or work of national importance;<sup>17</sup>
7. Not be otherwise barred from naturalizing;<sup>18</sup>
8. Demonstrate knowledge of the English Language, U.S. history and U.S. government;<sup>19</sup> and
9. Take an oath of allegiance.<sup>20</sup>

So the question becomes, how did Hamod's unauthorized employment lead to the denial of his naturalization application? The history of his application appears a bit strange. It seems that although his application was filed in 2007, for some reason it was not adjudicated until three years later in 2010.<sup>21</sup> According to the USCIS website, the average processing time for a naturalization application around that period for the Minnesota Field Office was only five and a half months, so one wonders why the case languished for such a long time.<sup>22</sup>

Adding to this intriguing case history, when a USCIS officer finally adjudicated Hamod's application, he denied it for failure to meet the second requirement listed above: good moral character.<sup>23</sup> Hamod administratively appealed the decision, only to see it upheld.<sup>24</sup> Notably, when USCIS affirmed the denial in the administrative appeal, it based its decision not only on failure to demonstrate good moral character, but also on the finding that Hamod was not a lawful permanent resident.<sup>25</sup>

Both findings, that Hamod did not have good moral character and was not a lawful permanent resident, appear to be based on Hamod's period of unauthorized employment before obtaining permanent resident status. Both findings are somewhat noteworthy and merit a closer examination and consideration in advising clients of potential ramifications of engaging in unauthorized employment. It is interesting to note that both the district court and circuit court focused solely on Hamod's purported failure to be in legitimate LPR status and declined to address whether he had demonstrated good moral character.

Section 316.10(b) of Title 8 of the Code of Federal Regulations (CFR) enumerates the following classes of applicants who shall be found to lack good moral character:

- Convicted of murder or other delineated serious crimes;
- Violated any law relating to a controlled substance, other than simple possession of 30 grams or less of marijuana;
- Has given false testimony to obtain any immigration benefit, if the testimony was made under oath or affirmation and with an intent to obtain an immigration benefit, even if it was not material;
- Was involved in prostitution or commercialized vice;
- Was involved in the smuggling of a person or persons into the United States;
- Has practiced or is practicing polygamy;
- Committed two or more gambling offenses for which the applicant was convicted;
- Earns his or her income principally from illegal gambling activities; or
- Is or was a habitual drunkard;

- Willfully failed or refused to support dependents, unless the applicant establishes extenuating circumstances; or
- Had an extramarital affair which tended to destroy an existing marriage, unless the applicant establishes extenuating circumstances.

It is difficult to see how USCIS based a failure to demonstrate good moral character finding on Hamod's unauthorized employment. Perhaps that is why the district court and circuit court focused instead on USCIS' finding that Hamod had not been lawfully admitted as a permanent resident.

This finding poses potential concern for future naturalization applicants. District courts have held previously that, where fraud or false testimony is not involved, USCIS may not deny naturalization by claiming that the applicant lacks LPR status ab initio without following the rescission procedures set forth in 8 CFR § 246.1 and doing so within the five-year time period specified in INA § 246.<sup>26</sup>

As such, we now have a circuit court decision that runs counter to these previous district court decisions and establishes that USCIS may retroactively find that the naturalization applicant's LPR status was not correctly approved. This may result in the disturbing determination that the applicant does not meet the naturalization requirement of being in LPR status, despite the fact that USCIS never followed the required rescission procedures. It means that any green card holder who is considering applying for naturalization must be on notice that USCIS may retroactively adjudicate his LPR application and deny his naturalization application, if the officer determines that the LPR application was not correctly granted. This case also serves as an important reminder to employers of foreign nationals, as well as foreign nationals themselves, to ensure that they have a crystal clear understanding of the parameters of the relevant U.S. work visa categories. Adhering to these parameters and not commencing employment until clearly authorized to do so is imperative.



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#### **Endnotes**

<sup>1</sup>No. 14-3807 (8th Cir. 2016).

<sup>2</sup>Id.

<sup>3</sup>Id. at 3.

<sup>4</sup>Id.

<sup>5</sup>Id. at 2.

<sup>6</sup>Id. at 2.

<sup>7</sup>See *Al-Saadoon v. Holder*, No. 12-cv-2949, at 3 (D. Minn. Oct. 21, 2014).

<sup>8</sup>Id. at 4.

<sup>9</sup>Id. at 12.

<sup>10</sup>Id.

<sup>11</sup>INA § 245(c)(2).

<sup>12</sup>INA § 318.

<sup>13</sup>INA §§ 316(a)(3), 101(f); 8 C.F.R. §§ 316.10, 329.2(d).

<sup>14</sup>INA § 334(b).

<sup>15</sup>INA § 316(a); 8 CFR § 316.5.

<sup>16</sup>INA § 316(a)(3); 8 CFR § 316.11.

<sup>17</sup>INA § 337(a)(5)(A) – (C).

<sup>18</sup>See INA § 313 et seq.

<sup>19</sup>INA § 312(a); 8 CFR §§ 312.1, 312.2(c).

<sup>20</sup>INA § 337.

<sup>21</sup>*Al-Saadoon v. Holder* at 4 – 5.

<sup>22</sup><https://www.uscis.gov/archive/archive-news/uscis-updates-projected-naturalization-processing-times>

<sup>23</sup>*Al-Saadoon v. Holder* at 5.

<sup>24</sup>Id.

<sup>25</sup>Id. at 6.

<sup>26</sup>*Agarwal v. Napolitano*, 663 F.Supp.2d 528, 539-41 (W.D. Tex. 2009). But see *Olayan v. Holder*, 833 F.Supp.2d 1052, 1061-64 (S.D. Ind. 2011) and *Adegoke v. Fitzgerald*, 784 F.Supp.2d 538 (E.D. Pa. 2011).

## Immigration News

### SECTION BOARD MEMBER AWARDED EXCELLENCE IN TEACHING AWARD

**NEW ORLEANS, LA-** The Baton Rouge (LA) Advocate (6/26) reports that “the American Immigration Lawyers Association has awarded the Loyola Law Clinic’s Hiroko Kusuda the 2016 Elmer Fried Excellence in Teaching Award.” The report says that “Kusuda is the director and a professor of immigration law within the Loyola College of Law’s Stuart H. Smith Law Clinic and Center for Social Justice.” The Advocate explains that “clinic students learn litigation skills to represent non-citizens before the U.S. Department of Justice Immigration Courts, the Board of Immigration Appeals and federal and state courts” while working “to bring about policy changes to reduce the systematic problems that face immigrant communities.”

### ANNUAL AWARDS CEREMONY HONORS SECTION MEMBERS

**NEW ORLEANS, LA** -May 12, 2016, the Immigration Law Section hosted its annual awards reception at the John Minor Wisdom Courthouse for the Fifth Circuit Court of Appeals. The marble halls of the Fifth Circuit composed a majestic background for the awards ceremony, which was beautifully arranged by Maria Conticelli and the FBA conference staff. Awards chair Dr. Alicia Triche emceed the ceremony along with fellow committee members, Judge Dorothy Harbeck and Professor Amelia Wilson. The two “voting” committee members, Professor Karen Musalo and Judge Eliza Klein, were also in attendance.

The two section awards were selected internally by the awards committee. The Barry Frager award went to **Mark Shmueli** for his outstanding contribution to ILS over the past year, particularly in his role at the helm of the annual conference. The newer member award went to **Professor Debbie Anker** for her valued contributions as one of our most recent ILS participants.

National awards are nominated by ILS at large, then



From Left: Judge Dorothy Harbeck, Dr. Alicia Triche (in back:) Amelia Wilson.

voted upon by the full committee. This year, the younger lawyer of the year was a tied award presented to **Tina Goel** and **Kristen Kimmelman**, both of whom are dedicated rising stars in the section. The NGO lawyer of the year was **Jeremy Jong**, who was honored for his intrepid work at the Oakdale Federal Detention Center (and surrounding areas). Government lawyer of the year was **Judge Amiena Khan**, who has become one of the most important and appreciated educators in our section at recent conferences. Finally, the lawyer of the year award went to UT **Professor Denise Gilman**, who has recently joined ILS. Professor Gilman was recognized for her work securing legal representation and advancing both international and US refugee law for members of “the surge” arriving in Texas.

### EOIR SWEARS IN NEW IMMIGRATION JUDGES

**FALLS CHURCH, VA** – The Executive Office for Immigration Review (EOIR) announced the investiture of

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new immigration judges.

**Kuyomars Golparvar, Immigration Judge, York PA**

Attorney General Loretta E. Lynch appointed Kuyomars Golparvar to begin hearing cases in April 2016. Judge Golparvar received a Bachelor of Arts degree in 1998 from The George Washington University and a Juris Doctor in 2002 from the University of Pittsburgh School of Law. From 2004 through April 2016, Judge Golparvar served in various capacities, including: division chief, section chief, senior advisor to the principal legal advisor, deputy chief counsel, and assistant chief counsel for Immigration and Customs Enforcement, Department of Homeland Security. From 2003 through 2004, Judge Golparvar was an associate attorney for Deasy & Whitehill PC, in Pittsburgh. In 2013, Judge Golparvar joined the faculty at The George Washington University Law School where he serves as an adjunct professor. Judge Golparvar is a member of the District of Columbia and Pennsylvania Bars.

**Robin J. Rosche, Immigration Judge, Chicago IL**

Attorney General Loretta E. Lynch appointed Robin J. Rosche to begin hearing cases in April 2016. Judge Rosche received a Bachelor of Science degree in 1997 from the University of Wisconsin-Milwaukee, a Juris Doctor in 2000 from Marquette University Law School, and a Master of Laws in 2005 from the University of London, University College. From 2014 through March 2016, Judge Rosche served as a general attorney for Customs and Border Protection, Department of Homeland Security (DHS). From 2005 through 2014, Judge Rosche served as an assistant chief counsel for Immigration and Customs Enforcement, DHS. From 2000 through 2004, Judge Rosche served as an assistant district attorney for the Milwaukee County District Attorney's Office. From 1988 through 1997, Judge Rosche served in various capacities including: uniformed patrol officer, undercover officer and detective for the Milwaukee Police Department in Wisconsin. From 1983 through 1987, Judge Rosche served as a security police investigator for the U.S. Air Force at Ramstein Air Base, in Germany. Judge Rosche is a member of the State Bar of Wisconsin.

**Nathan N. Aina, Immigration Judge, Los Angeles CA**

Attorney General Loretta E. Lynch appointed Nathan N. Aina to begin hearing cases in June 2016. Judge Aina earned a Bachelor of Science degree in 1997, and a Master of Public Administration and a Juris Doctor in 2001, all from Brigham Young University. From 2002 to May 2016, Judge Aina served as an assistant chief counsel for Immigration and Customs Enforcement, Department of Homeland Security, entering on duty through the Attorney General's Honors Program. Judge Aina is a member of the Utah State Bar.

**John B. Carle, Immigration Judge, Philadelphia PA**

Attorney General Loretta E. Lynch appointed John B. Carle to begin hearing cases in June 2016. Judge Carle

earned a Bachelor of Arts degree in 1990 from the State University of New York at Binghamton and a Juris Doctor in 1993 from the State University of New York at Buffalo Law School. From 2007 to May 2016, Judge Carle served as an assistant chief counsel for the Office of the Chief Counsel, Immigration and Customs Enforcement, Department of Homeland Security. From 2000 through 2007, Judge Carle served as an assistant district attorney for the City of Philadelphia District Attorney's Office. From 1995 through 2000, Judge Carle served as an assistant district attorney for the Erie County District Attorney's Office, in Buffalo, N.Y. From 1993 through 1995, Judge Carle served as an associate attorney for Magner, Love & Morris PC, in Buffalo, N.Y. In 2013, Judge Carle joined the faculty of the Villanova University School of Law where he serves as an adjunct professor. Judge Carle is a member of the Pennsylvania Bar.

**Barbara Cigarroa, Immigration Judge, Port Isabel TX**

Attorney General Loretta E. Lynch appointed Barbara Cigarroa to begin hearing cases in June 2016. Judge Cigarroa earned a Bachelor of Arts degree in 1978 from Harvard University, a Master of Social Work degree in 1993 from Washington University, and a Juris Doctor in 1993 from the Washington University School of Law. From 2008 to May 2016, Judge Cigarroa served as a senior attorney for Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS). From 2003 through 2008, Judge Cigarroa served as an assistant chief counsel for ICE, DHS. From 1993 through 2003, Judge Cigarroa served as a trial attorney for the former Immigration and Naturalization Service, Department of Justice, entering on duty through the Attorney General's Honors Program. Judge Cigarroa is a member of the State Bar of Texas.

**John G. Crews II, Immigration Judge, Port Isabel TX**

Attorney General Loretta E. Lynch appointed John G. Crews II to begin hearing cases in June 2016. Judge Crews earned a Bachelor of Liberal Studies degree in 1981 from Boston University and a Juris Doctor in 1985 from Southern Methodist University. From 1997 to May 2016, Judge Crews served as an assistant U.S. attorney for the District of New Mexico, U.S. Attorney's Office, Department of Justice (DOJ). From 1987 through 1997, Judge Crews served as an assistant U.S. attorney for the Southern District of Texas, U.S. Attorney's Office, DOJ. Judge Crews is a member of the State Bar of New Mexico.

**John P. Ellington, Immigration Judge, York Immigration Court**

Attorney General Loretta E. Lynch appointed John P. Ellington to begin hearing cases in June 2016. Judge Ellington earned a Bachelor of Science degree in 1990 from Georgia State University, a Juris Doctor in 1993 from the Dickinson School of Law, and a Master of Liberal Arts degree in 2014 from the University of Pennsylvania. From 2014 to May 2016, Judge Ellington served as general counsel and from 2002 to 2014 as government trial counsel,

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for Immigration and Customs Enforcement, Department of Homeland Security. From 2000 through 2002, Judge Ellington served as deputy attorney general for the Fraud Section, Pennsylvania Office of the Attorney General, in Norristown, Pa. From 1997 through 2000, Judge Ellington served as an assistant district attorney for the Office of the Berks County District Attorney, in Reading, Pa. Since 1991, Judge Ellington has served in various capacities for the U.S. Navy Judge Advocate General's Corps, including: from 2014 through 2018, as a military judge; from 2012 through 2014, as senior judge advocate for investigations and inspections; and from 2009 through 2012, and previously from 2003 through 2006, as a staff judge advocate. Judge Ellington is a member of the Pennsylvania Bar.

**Justin W. Howard, Immigration Judge, Kansas City MO**

Attorney General Loretta E. Lynch appointed Justin W. Howard to begin hearing cases in June 2016. Judge Howard earned a Bachelor of Arts degree in 1998 from Kansas State University and a Juris Doctor in 2002 from American University. From 2008 to May 2016, Judge Howard served as an assistant chief counsel for the Office of the Chief Counsel, Immigration and Customs Enforcement, Department of Homeland Security. From 2006 through 2008, Judge Howard served as an associate attorney for Shook, Hardy & Bacon LLP, in Kansas City. From 2002 through 2005, Judge Howard served as an assistant state's attorney for the Miami-Dade Office of the State Attorney, in Miami. Judge Howard is a member of the Florida and Missouri Bars.

**Alison R. Kane, Immigration Judge, Denver CO**

Attorney General Loretta E. Lynch appointed Alison R. Kane to begin hearing cases in June 2016. Judge Kane earned a Bachelor of Arts degree in 1997 from Syracuse University and a Juris Doctor in 2003 from the Boston College Law School. From 2010 to May 2016, Judge Kane served as an assistant chief counsel for Immigration and Customs Enforcement, Department of Homeland Security. From January 2010 through June 2010, and previously from 2005 through 2007, Judge Kane served as an associate for Fragomen, Del Rey, Bernsen & Loewy LLP, in New York City and Philadelphia. From 2004 through 2005, Judge Kane served as an attorney advisor for the Executive Office for Immigration Review, Department of Justice. Judge Kane is a member of the New York State Bar.

**James M. Left, Immigration Judge, Adelanto CA**

Attorney General Loretta E. Lynch appointed James M. Left to begin hearing cases in June 2016. Judge Left earned a Bachelor of Arts degree in 1988 from Pacific Lutheran University and a Juris Doctor in 1994 from the Pepperdine University School of Law. From 2013 to May 2016, and previously from 2008 through 2009, Judge Left served as a senior attorney for Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS). From 2009 through 2013, and previously from 2007 through 2008,

Judge Left served as a special assistant U.S. attorney for the U.S. Attorney's Office, in Los Angeles. From 2004 through 2007, Judge Left served as an assistant chief counsel for ICE, DHS. From 2002 through 2004, Judge Left served as an associate legal advisor for the National Security Law Division, ICE, DHS. From 1997 through 2002, Judge Left served as an assistant district counsel for the former Immigration and Naturalization Service, Department of Justice. Judge Left is a member of the State Bar of California.

**Clay N. Martin, Immigration Judge, Pearsall TX**

Attorney General Loretta E. Lynch appointed Clay N. Martin to begin hearing cases in June 2016. Judge Martin earned a Bachelor of Arts degree in 1984 from Hendrix College and a Juris Doctor in 1987 from the St. Mary's University School of Law. From 2008 through May 2016, Judge Martin served as a senior attorney for the Office of the Chief Counsel (OCC), Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS). From 2002 through 2007, Judge Martin served as an assistant chief counsel for OCC, ICE, DHS. From 1995 through 2002, Judge Martin served as chief deputy prosecuting attorney for the 18th West Judicial District Prosecuting Attorney's Office, in Polk and Montgomery counties, Ark. From 1992 through 1995, Judge Martin served as an assistant district attorney for the Bexar County District Attorney's Office, in San Antonio. From 1989 through 1991, Judge Martin served as an attorney for Riddle and Brown, in Dallas. From 1988 through 1989, Judge Martin served as an attorney for Soules and Wallace, in San Antonio. From 1987 through 1988, Judge Martin served as an attorney for Hill, Heard, Oneal, Gilstrap & Goetz, in Arlington, Texas. Judge Martin is a member of the Arkansas Bar and the State Bar of Texas.

**Donald C. O'Hare, Immigration Judge, Los Angeles CA**

Attorney General Loretta E. Lynch appointed Donald C. O'Hare to begin hearing cases in June 2016. Judge O'Hare earned a Bachelor of Arts degree in 1984 from Macalester College, a Master of Arts degree in 1987 from the University of Minnesota, a Juris Doctor in 1992 from the California Western School of Law, and a Master of Laws degree in 1994 from the University of Virginia School of Law. From 2003 to May 2016, Judge O'Hare served in several capacities, including as deputy chief counsel, assistant chief counsel, and a senior attorney for the Office of the Chief Counsel, Immigration and Customs Enforcement, Department of Homeland Security. From 1997 through 2003, Judge O'Hare served as an assistant district counsel for the former Immigration and Naturalization Service, Department of Justice. From 1992 through 1993, Judge O'Hare was a staff attorney for the Pension Benefit Guaranty Corp., in Washington, D.C. Judge O'Hare is a member of the State Bar of California.

**Jeannette L. Park, Immigration Judge, Los Angeles CA**

Attorney General Loretta E. Lynch appointed Jeannette L. Park to begin hearing cases in June 2016. Judge Park earned a Bachelor of Arts degree in 1996 from the Uni-

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versity of California, Berkeley, and a Juris Doctor in 2000 from the Boston College Law School. From 2003 to May 2016, Judge Park served as an assistant chief counsel for the Office of the Chief Counsel, Immigration and Customs Enforcement, Department of Homeland Security. From 2000 through 2003, Judge Park served as an assistant district counsel for the former Immigration and Naturalization Service, Department of Justice. Judge Park is a member of the State Bar of California.

**Ana L. Partida, Immigration Judge, Los Angeles CA**

Attorney General Loretta E. Lynch appointed Ana L. Partida to begin hearing cases in June 2016. Judge Partida earned a Bachelor of Arts degree in 1996 from San Diego State University, a Master of Forensic Sciences degree in 1998 from National University, and a Juris Doctor in 2002 from the New England School of Law. From 2003 to May 2016, Judge Partida served as an assistant chief counsel for the Office of the Chief Counsel (OCC), Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS). From 2002 through 2003, Judge Partida served as an assistant district counsel for the former Immigration and Naturalization Service, Department of Justice. Judge Partida is a member of the New Jersey State Bar.

**Georgina M. Picos, Immigration Judge, Houston TX**

Attorney General Loretta E. Lynch appointed Georgina M. Picos to begin hearing cases in June 2016. Judge Picos earned a Bachelor of Business Administration degree in 1987 from Florida International University and a Juris Doctor in 1991 from St. Thomas University School of Law. From 1994 to May 2016, Judge Picos served as an assistant chief counsel for the Office of the Chief Counsel, Immigration and Customs Enforcement, Department of Homeland Security. From 1992 through 1994, Judge Picos served as an associate attorney for the Law Offices of Magda Mon-

tiel Davis PA, in Miami. Judge Picos is a member of the Florida Bar.

**Jayme Salinardi, Immigration Judge, Kansas City MO**

Attorney General Loretta E. Lynch appointed Jayme Salinardi to begin hearing cases in June 2016. Judge Salinardi earned a Bachelor of Arts degree in 1994 from the University of Missouri-Columbia and a Juris Doctor in 1999 from the University of Missouri-Columbia. From 2012 to May 2016, Judge Salinardi served as deputy chief counsel for the Office of the Chief Counsel (OCC), Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS). From 2003 through 2012, Judge Salinardi served as assistant chief counsel and senior attorney for OCC, ICE, DHS. From 2000 through 2003, Judge Salinardi served as an immigration attorney for Fallon, Bixby, Cheng & Lee, in San Francisco. In 2011, Judge Salinardi joined the faculty of the University of Missouri School of Law where he serves as an adjunct professor of law. Judge Salinardi is a member of the State Bar of California.

**Sandra J. Santos-Garcia, Immigration Judge, Adelanto CA**

Attorney General Loretta E. Lynch appointed Sandra J. Santos-Garcia to begin hearing cases in June 2016. Judge Santos-Garcia earned a Bachelor of Arts degree in 1998 and a Juris Doctor in 2001, both from the University of California, Berkeley. From 2010 through 2016, Judge Santos-Garcia served as a senior attorney for the Office of the Chief Counsel (OCC), Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS). From 2001 through 2010, Judge Santos-Garcia served as assistant chief counsel for OCC, ICE, DHS. Judge Santos-Garcia is a member of the State Bars of Arizona and California. ■

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## PUBLISH IN THE GREEN CARD!

*The Green Card* always seeks news items and articles of all sorts. Have you formed a new firm, gotten promoted, or won a big case? Send me an article. I'm especially interested in hearing about Section activities (with photos!), such as luncheons, CLE's and Younger Lawyer activities. Here is your chance to gain the respect and admiration of your friends and colleagues! Send your article to me at [LBurman@aol.com](mailto:LBurman@aol.com) in Word format. Photos should not be imbedded in the Word document. Please attach them as jpegs to your email.

# Federal Bar Association 2016 Annual Meeting and Convention

# CLEVELAND

## SCHEDULE AT A GLANCE ★ SEPT. 14-17

### WEDNESDAY, SEPTEMBER 14

2:00 p.m.–4:00 p.m. **Special Argument Session with Sixth Circuit Swearing-In Ceremony, U.S. Court of Appeals for the Sixth Circuit**

3:00 p.m.–5:00 p.m. **Registration Open**

5:00 p.m.–7:00 p.m. **Offsite Welcome Reception**  
**Calfee, Halter & Griswold LLP**  
*Hosted by the Northern District of Ohio Chapter*  
*Sponsored by Calfee, Halter & Griswold LLP*

### THURSDAY, SEPTEMBER 15

7:00 a.m.–5:00 p.m. **Registration Open**

7:30 a.m.–8:30 a.m. **Breakfast for Younger Lawyers**

8:00 a.m.–5:30 p.m. **FBA Board of Directors Meeting**

7:30 a.m.–8:30 a.m. **CLE Sessions**

8:30 a.m.–8:45 a.m. **Welcome Remarks**

9:00 a.m.–5:00 p.m. **Silent Auction Open**

9:00 a.m.–12:30 p.m. **CLE Sessions**

12:30 p.m.–2:00 p.m. **Younger Lawyers Division Awards Luncheon**  
*Sponsored by Baker & Hostetler*  
*Paul S. Grewal, Facebook Vice President and Deputy General Counsel for Worldwide Litigation, former U.S. Magistrate Judge, CAND*

*Keynote:*

2:15 p.m.–4:30 p.m. **CLE Sessions**

**TBD**

**Offsite Networking Reception at Alley Cat Oyster Bar**  
*Hosted by the Northern District of Ohio Chapter*  
*Bar sponsored by FBA Federal Litigation Section*

### FRIDAY, SEPTEMBER 16

7:00 a.m.–5:00 p.m. **Registration Open**

7:30 a.m.–12:15 p.m. **CLE Sessions**

9:00 a.m.–2:30 p.m. **Silent Auction Open**

11:15 a.m.–12:15 p.m. **Legislative Update with Bruce Moyer**

12:30 p.m.–2:00 p.m. **Fellows of the Foundation of the FBA Luncheon**  
*Sponsored by FBA Labor & Employment Law Section*

*Keynote:*

2:00 p.m. **Naturalization Proceeding**  
**Federal Reserve Bank**

2:15 p.m.–4:30 p.m. **Business Meetings**

7:00 p.m.–11:00 p.m. **Offsite Reception**  
**Rock and Roll Hall of Fame and Museum**  
*Hosted by the Northern District of Ohio Chapter*  
*Sponsored by Thompson Hine*

### SATURDAY, SEPTEMBER 17

7:30 a.m.–5:00 p.m. **Registration Desk Open**

8:00 a.m.–2:00 p.m. **Silent Auction Open**

8:30 a.m.–11:30 a.m. **National Council Meeting**

12:00 p.m.–2:00 p.m. **FBA Awards Luncheon**  
*Sponsored by FBA Sections and Divisions*  
*U.S. Sen. Sherrod Brown (D-Ohio)*

*Keynote:*

2:15 p.m.–5:00 p.m. **FBA Business Meetings**

**Presidential Installation Banquet Activities**  
*Hosted by the Dayton Chapter and Sponsored by LexisNexis*

6:00 p.m.–7:00 p.m. **Cocktail Reception**

7:00 p.m.–9:00 p.m. **Installation Dinner**

9:00 p.m. **Post-Banquet Celebration**

# The Green Card

Immigration Law Section  
Federal Bar Association  
1220 North Fillmore Street, Suite 444  
Arlington, VA 22201

## 2015-2016 Immigration Law Section Officers:

<b>CHAIR</b>	<b>VICE CHAIR</b>	<b>TREASURER</b>	<b>SECRETARY</b>	<b>IMMEDIATE PAST SECTION CHAIR</b>
Eileen Scofield Atlanta, GA	Hon. Lawrence O. Burman Arlington, VA	Barry L. Frager Memphis, TN	Elizabeth (Betty) Stevens Fairfax, VA	Hon. Robin Feder Boston, MA

## 2015-2016 Immigration Law Section Board of Directors

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Hon. Irene Feldman <i>Eloy, AZ</i>	Claire Kelly <i>Arlington, VA</i>	Alicia Morgan <i>Miami, FL</i>	Ashley Tabaddor <i>Los Angeles, CA</i>	
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George Ganey <i>Bethesda, MD</i>	Hon. Amiena Khan <i>New York, NY</i>	Hon. Lee O'Connor <i>Los Angeles, CA</i>	Rachel Thompson <i>Salem, VA</i>	
Amy Gell <i>New York, NY</i>		Jan Pederson <i>Washington, D.C.</i>	Robin Trangsrud <i>Sunnyvale, CA</i>	