

The Green Card



Judge Lawrence O. Burman, Founder and Designated Mascot of The Green Card.

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2018 ILS SECTION AWARDS PRESENTED AT ANNUAL CONFERENCE



Section Chair Betty Stevens announces the Barry Frager Award recipient.

Each year, ILS presents several specific awards in recognition of outstanding member achievements. This year's ceremony was May 19, 2018 at the National Civil Rights Museum. Awards included:

- Younger Lawyer of the Year: Rachel Thompson
- Government Lawyer of the Year: Ozlem Barnard
- NGO Lawyer of the Year: Joint Award to Debbie Anker and Karen Musalo
- Outstanding New Member: Shannon LaGuerre-Maingrette
- Barry Frager Award for Service to the ILS: Prakash Khatri

Here are some memorable moments from the event:



Left to right: Regina Germain, Gail Pendelton and Professor Debbie Anker



Left to right: Barry Frager, Prakash Khatri and Betty Stevens



Rachel Thompson and Betty Stevens



Rachel Thompson hi-fives her colleagues after winning her award.

2018 ANNUAL CONFERENCE PHOTO ALBUM



Ray Fasano and Helen Parsonage mull over the conference program.



A conference panel packs the house



Unofficial spokesmodels



Judge Amiena Khan and Lauren Anselowitz holding up the NY/New Jersey contingent.



ILS Board Member Derek Julius and Brad Banias enjoying the conference.



Professor Debbie Anker and Dr. Alicia Triche at the advanced asylum law panel.

2018 ANNUAL CONFERENCE PHOTO ALBUM (CONT.)



Barry Frager keepin' it real at the National Civil Rights Museum reception.



Judge Paul Schmidt takes to the streets to recruit his Due Process Army.



Happy Conference Attendees



Judges Ashley Tabaddor and Amiena Khan

Editor's Message

DR. ALICIA TRICHE



With much enthusiasm, and a little bitter-sweetness, I bid you welcome to the final Green Card of 2018. This year's legal developments have rained down at a break-neck speed; and as a Bar Association, we have done our best to keep up. ILS has grown and expanded, with new officers, amended by-laws, and a record number of CLEs, webinars, and program events. Our flagship

Annual Immigration Conference now joins a vast sea of other ships, in a fleet that seems continually expanding. As the holidays come to a close, I invite you to take a moment to reflect, enjoy the pictures, review the news, and consider the writings of our devoted ILS members—who, especially in 2018, have displayed a tireless devotion to our core FBA mission: “to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary and the public they serve.”

Interpreting Pereira: A Hint of Things to Come?

BY HON. JEFFERY CHASE

I haven't posted for a while. I've been extremely busy, but there was something else: my response to so many recent events has been just pure anger. Although I've written the occasional "cry from the heart," I don't want this blog to turn into the rantings of an angry old man.

So I resume posting with a case that provides a glimmer of hope (and, hopefully, a hint of things to come?). Last week, the U.S. Court of Appeals for the Eleventh Circuit, a court generally known for its conservatism, issued an order granting an emergency stay of removal in the case of Manuel Leonidas Duran-Ortega v. U.S. Attorney General. As is common in such types of grants, the three-judge panel issued a decision consisting of two sentences, granting the stay, and further granting the request of interested organizations to allow them to file an amicus ("friend of the court") brief.

What made this decision noteworthy is that one of the judges on the panel felt the need to write a rather detailed concurring opinion. Among the issues discussed in that opinion is the impact of the Supreme Court's decision in *Pereira v. Sessions* (which I wrote about here: <https://www.jeffreyschase.com/blog/2018/9/1/the-bia-vs-the-supreme-court>) on Mr. Duran-Ortega's case. As in *Pereira*, the document filed by DHS with the immigration court in order to commence removal proceedings lacked a time and date of hearing. In her concurring opinion, Judge Beverly B. Martin observed that under federal regulations, jurisdiction vests, and immigration proceedings commence, only when a proper charging document is filed. The document filed

in Mr. Duran-Ortega's case purported to be a legal document called a Notice to Appear. But as Judge Martin noted, "The Supreme Court's recent decision in *Pereira* appears to suggest, as Duran-Ortega argues, that self-described "notice to appears" issued without a time or place are not, in fact, notice to appears" within the meaning of the statute.

Judge Martin (a former U.S. Attorney and Georgia state Assistant Attorney General) continued that the *Pereira* decision "emphasized" that the statute does not say that a Notice to Appear is "complete" when it contains a time and date of the hearing; rather, he quotes the *Pereira* decision as holding that the law defines that a document called a "Notice to Appear" must specify "at a minimum the time and date of the removal proceeding." The judge follows that quote with the highlight of her decision: "In other words, just as a block of wood is not a pencil if it lacks some kind of pigmented core to write with, a piece of paper is not a notice to appear absent notification of the time and place of a petitioner's removal proceeding."

As this Reuters article reported (<https://www.reuters.com/article/us-usa-immigration-terminations/u-s-courts-abruptly-tossed-9000-deportation-cases-heres-why-idUSKCN1MR1HK>) enough immigration judges had a similar reading of *Pereira* to terminate 9,000 removal cases in the two months between the Supreme Court's decision and the issuance of a contrary ruling by the Board of Immigration Appeals, in which the BIA's judges, out of fear of then-Attorney General Jeff Sessions, chose appeasement of their boss over their duty to reach fair and



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independent decisions.

Judge Martin referenced that BIA decision, *Matter of Bermudez-Cota*, but stated: “This court need not defer to *Bermudez-Cota* if the agency’s holding is based on an unreasonable interpretation of the statutes and regulations involved, or if its holding is unambiguously foreclosed by the law..In light of *Pereira* and the various regulations and statutes at issue here, it may well be the case that deference is unwarranted.”

For those readers who are not immigration practitioners, attorneys with ICE (which is part of the Department of Homeland Security) and the Office of Immigration Litigation (“OIL”) (which is part of the Department of Justice, along with the BIA) have been filing briefs opposing motions to terminate under *Pereira* using language best described as snarky. A recent brief fled by OIL called the argument that proceedings commenced with a document lacking a time and date must be terminated under *Pereira* “an unnatural, distorted interpretation of the Supreme Court’s opinion,” and a “labored interpretation of *Pereira*.” A brief recently filed by ICE called the same argument an “overbroad and unsupported expansion of *Pereira* [which] is unwarranted and ignores the Court’s clear and unmistakable language.”

There is an old adage among lawyers that when the facts don’t favor your client, pound the law; when the law doesn’t favor your client, pound the facts; and when neither the law nor the facts favor your client, pound the table. I find the tone of the government’s briefs as sampled above to be the equivalent of pounding the table. The government is claiming that to interpret the Supreme Court’s language that “a notice that lacks a time and date is not a Notice to Appear” as meaning exactly what it says is an unnatural, distorted interpretation that is labored and ignores the clear language of the Court. The government then counters by claiming that the natural, obvious, clear interpretation is the exact opposite of what *Pereira* actually says.

So although it is just the view of one judge in one circuit in the context of a concurring opinion, it nevertheless feels very good to see a circuit court judge calling out the BIA, OIL, and DHS on their coordinated nonsense. Two U.S. district courts have already agreed with the private bar’s reading of *Pereira*, in *U.S. v. Virgen Ponce* (Eastern District of Washington) and in *U.S. v. Pedroza-Rocha* (Western District of Texas). At this point, this is only cause for cautious optimism. But as an immigration lawyer named Aaron Chenault was articulately quoted as saying in the above Reuters article, for now, *Pereira* (and its proper interpretation by some judges) has provides “a brief glimmer of hope, like when you are almost drowning and you get one gasp.” Well said.

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“Like water seeping through an earthen dam...”

BY HON. JEFFERY CHASE

In addressing 44 newly-hired immigration judges earlier this week, their new boss, Jeff Sessions, demonstrated not only his usual level of bias (to a group charged with acting as impartial adjudicators), but a very strange grasp of how our legal system works.

Sessions told the new class of judges that lawyers “work every day - like water seeping through an earthen dam - to get around the plain words of the INA to advance their clients’ interest. Theirs is not the duty to uphold the integrity of the Act.”

Later in his remarks, Sessions opined that “when we depart from the law and create nebulous legal standards out of a sense of sympathy for the personal circumstances of a respondent in our immigration courts, we do violence to the rule of law and constitutional fabric that bind this great nation.”

To me, the above remarks evince a complete misunderstanding of how our legal system works.

In 1964, the U.S. Supreme Court decided *Katzenbach v. McClung*, a landmark civil rights case. In order to find that the federal Civil Rights Act applied to a local, family-owned barbecue restaurant in Alabama, DOJ attorneys persuaded the Supreme Court that there was federal jurisdiction under the Constitution’s Commerce Clause because of segregation’s impact on interstate commerce. I’m no Constitutional law expert, but I’m not sure that when its authors afforded Congress the power “to regulate Commerce with foreign Nations, and among the several States,” that this is what they had in mind. Was creatively interpreting the Commerce Clause in order to end segregation “like water seeping through an earthen dam” to get around the clear words of the Constitution? Did ending segregation constitute, in Sessions’s opinion, doing violence to the rule of law out of a sense of sympathy for the black victims of Alabama’s racist policies?

Every positive legal development is the result of an attorney advancing a creative legal argument, often motivated by a sense of sympathy for unfair treatment of a class of individuals in need of protection. Many landmark decisions have resulted from such attorneys offering the court an unorthodox but legally sound solution to a sympathetic injustice. This is actually how the legal system is supposed to operate. Our laws are made by Congress, and not the Executive branch. When Congress drafts these laws, they and their staffers are well aware of the existence of lawyers and judges and their ability to interpret the statutory language.

Had Congress not wanted our asylum laws to be flexible, allowing them to be interpreted in myriad ways to respond to changing types of persecution carried out by different types of actors, it could have said so. When the courts found that victims of China’s coercive family planning policies did not qualify for asylum, Congress responded by amending the statutory definition of “refugee” to cover such harm. In the four years

following the BIA’s conclusion that victims of domestic violence qualified for asylum, Congress notably did not enact legislation barring such grants. To the contrary, after Jeff Sessions issued his decision with the intent of preventing such grants, a Republican-led Congressional committee unanimously passed a measure barring funding for government efforts to carry out Sessions’ decision, a clear rebuke by the legislative branch of Sessions’s view that such claims are illegitimate. https://www.washingtonpost.com/politics/gop-led-house-committee-rebuffs-trump-administration-on-immigrant-asylum-claim-policy/2018/07/26/3c52ed52-911a-11e8-9b0d-749fb254bc3d_story.html?utm_term=.809760180e2a.

Interestingly, Sessions finds it perfectly acceptable to use unorthodox interpretations of the law when it serves his own interests. For example, he argues that he is upholding “religious liberty” in defending the right of bigots to discriminate against LGBTQ individuals. <https://www.advocate.com/politics/2018/7/30/sessions-launches-new-lgbt-assault-religious-liberty-task-force>. The conclusion drawn from this inconsistency is that Sessions does not oppose creative interpretations of the law; he rather believes that the only proper interpretation of the law is his.

One of the problems with this approach is that Sessions doesn’t actually know anything about the law of asylum. And yet he somehow feels entitled to belittle the analysis of the leading asylum experts in academia, the private bar, USCIS, ICE, and EOIR, all of whom have repeatedly found victims of domestic violence to satisfy all of the legal criteria for asylum. In its 1985 decision in *Matter of Acosta*, (a case that Sessions cited favorably in his controversial decision), the BIA noted that the ground of “particular social group” was added to the 1951 Convention on the Status of Refugees (which is the basis for our asylum laws) “as an afterthought.” The BIA further noted that “it has been suggested that the notion of ‘social group’ was considered to be of broader application than the combined notions of racial, ethnic, and religious groups and that in order to stop a possible gap in the coverage of the U.N. Convention, this ground was added to the definition of refugee.” (The full decision in *Acosta* can be read here: <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2986.pdf>).

As a young attorney, I learned (from the late, great asylum scholar Arthur Helton) that at the last moment, the Swedish plenipotentiary to the 1951 Convention pointed out that there were victims of Hitler and Stalin in need of protection who did not fall under the other four Convention grounds of race, religion, nationality, or political opinion. A fifth, catch-all ground was therefore proposed to serve as a “safety net” in such cases. In other words, the reason the particular social group category was created and is a part of our laws was because the Convention’s drafters, perhaps “like water seeping through an

earthen dam,” created an intentionally nebulous legal standard out of a sense of sympathy for victims of injustice. The ground was therefore created to be used for the exact purpose decried by Sessions.

Because of the strength of such legal authority, Sessions’s decision in *Matter of A-B-*, in spite of dicta to the contrary, actually still allows for the granting of domestic violence and gang violence-based asylum claims. The decision criticized the BIA’s precedent decision in *Matter of A-R-C-G-* for reaching its conclusion without explaining its reasoning in adequate detail. However, where the record is properly developed, a legally solid analysis can be shown to support granting such claims even under the standards cited by Sessions.

This is what makes Sessions comments to the new class of immigration judges so disturbing. Having appointed judges whom his Justice Department has found qualified, he should now leave it to them to exercise their expertise and independent judgment to interpret the law and determine who qualifies for asylum. But in declaring such cases to lack validity, belittling private attorneys innovative arguments, and equating the granting of such claims to doing violence to the rule of law, Sessions aims to undermine right from the start the judicial independence of the only judges he controls. EOIR’s management has demonstrated that it has no intention of pushing back; instead, it asks how high Sessions wants the judges to jump.

Knowing this, how likely is one of the 44 new judges to grant asylum to a victim of domestic violence who has clearly met all of the legal criteria? New immigration judges are subject to a two-year probationary period. It’s clear that a grant of such cases under any circumstances will be viewed unfavorably

by Sessions. In a highly publicized case, EOIR’s management criticized a judge in Philadelphia whose efforts at preserving due process they bizarrely interpreted as an act of disobedience towards Sessions, and removed the case in question and more than 80 cases like it from the judge’s docket.

So if a new judge, who may have a family to support, and a mortgage and college tuition to pay, is forced to choose between applying the law in a reasoned fashion and possibly suffering criticism and loss of livelihood, or holding his or her nose and adhering to Sessions’s views, what will the likely choice be?

Sessions concluded his remarks by claiming that the American people “have spoken in our laws and they have spoken in our elections.” As to the latter, Americans voted against Trump’s immigration policies by a margin of 2.8 million votes. As to the former, Congress has passed laws which have been universally interpreted by DHS, EOIR, and all leading asylum scholars as allowing victims of domestic violence to be granted asylum based on their membership in a particular social group. It is time for this administration to honor the rule of law and to restore judicial independence to such determinations.



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Executive Board Welcomes New Secretary, Kate Melloy Goettel



ILS Executive Branch officers are a particularly hard-working breed, who usually serve on the Executive Committee for several years of their lives, climbing the traditional leadership ladder through many stages. This Fall, ILS installed our newest executive, Kate Melloy Goettel. Kate is currently a litigation attorney at the National Immigrant Justice Center in Chicago. Prior to

joining NIJC, Kate worked for seven years in the Department of Justice's Office of Immigration Litigation, most recently as senior litigation counsel. Kate has practiced in nearly 40 federal district courts, seven courts of appeal, and the U.S. Supreme Court. Before joining DOJ, Kate clerked for two years for a U.S. District Judge. Kate graduated with distinction from the University of Iowa College of Law. During law school, she worked in the law school's immigration clinic and interned in NIJC's asylum project. Kate previously served as a Peace Corps Volunteer in Kosrae, Micronesia. She is licensed by the state of Iowa.

DC Leadership Luncheons Expand to San Francisco and Chicago

In 2018, industrious ILS members followed the lead of the esteemed Prakash Khatri, and instituted their own series of luncheons. In San Francisco, ILS Board member Kelli Duehning hosted successful events with USCIS District Director John Kramar and the Field Office director for Customs and Border Patrol. Finally, Justin Burton has scheduled the first Chicago leadership luncheon for January 24, 2019.



Betty Stevens presents Prakash the 2018 award for exceptional service

2018 YLD Webinars a Smashing Success

In 2018, the Young Lawyer's Division continued their series of groundbreaking, highly popular "webinar" presentations initiated in September of 2017. Andre Murkia, Lauren LaPore and Rachel Thompson were some of the major contributors. Each webinar was attended by around 70 people—sometimes including Immigration Judges and other government officials! The last 3 panels included:

- September 25, 2018: Dr. Alicia Triche and Chair Betty Stevens on Asylum and Credible Fear in the Aftermath of Matter of A-B-

- October 30, 2018: Exploring Employment-Based Options for TPS and DACA recipients, with Advisory Board member Desirée Goldfinger and Cheryl R. David

- November 29, 2018, Practice Tips on Screening Victims of Trauma and Violence, with panelists Laura Flores Bachman and Karen Crawford

A Primer on I-9 Forms and Immigration Compliance

BY BRUCE E. BUCHANAN, SEBELIST BUCHANAN LAW PLLC

Many attorneys, including lots of immigration attorneys, who do not practice worksite enforcement or employer immigration compliance, wonder who has to complete an I-9 form (also referred to as Form I-9), who doesn't, and circumstances surrounding employees who fraudulently complete I-9 forms.

Immigration Reform and Control Act

I-9 forms originated out of the 1986 Immigration Reform and Control Act (IRCA). Central to IRCA is a section that creates an employer sanctions system that requires all employers in the United States to verify the identity and employment authorization of all employees hired since the law was passed in 1986. Employers have become a central part of the immigration enforcement process by taking over responsibility for verifying that their employees are legally in the country. Employers are not permitted to "knowingly" hire or employ unauthorized immigrants, and proper completion of the Form I-9 is the method for employers to demonstrate a lack of knowledge that a particular employee is ineligible for employment.

Employer Obligations

Employers have six basic obligations:

1. Have employees fully and properly complete Section 1 of the Form I-9 no later than the date employment commences.
2. Review the required documents to provide identity and employment authorization to ensure that they appear genuine and that they apply to the person presenting them.
3. Properly complete Section 2 of the Form I-9, and sign and date the employer certification within three business days of the date that the employment commences (so-called Monday–Thursday rule).
4. Retain the Form I-9 for the required retention period.
5. Re-verify employment authorization for employees presenting a time-limited Employment Authorization Document (EAD) or other type of time-limited document.
6. Make the Forms I-9 available for inspection if requested by certain federal agencies.

I-9 Form

The Form I-9 is the two-page form that employees and employers complete in order to verify their identity as well as prove they are allowed to work in the United States. The form itself has three sections:

Section 1 must be completed by the employee. The employee must provide their name, address, date of birth, and other names used, and whether they are a U.S. citizen or national, lawful permanent resident, or an alien with authorization to be employed. Additionally, the employees may provide his or her e-mail address, telephone number, and Social Security number (SSN), though if the employer uses E-Verify, the SSN is mandatory.

If the employee is a permanent resident, he or she must provide an "Alien number" or USCIS number. And if the employee is an alien with employment authorization, he or she must provide his or her alien or admission number and the expiration date of the employment authorization, if applicable, or the country of his or her foreign passport and number accompanied by a Form I-94/94A Arrival-Departure Record bearing the same name as the passport and containing an endorsement of the individual's nonimmigrant status and authorization to work for a specific employer along with the expiration date of the employment authorization. Employees must sign and date Section 1 of the Form I-9 attesting that the statements and documents are not false.

Employees also are required to present to the employer, documentation from the "Lists of Acceptable Documents" demonstrating identity and employment authorization.

Section 2 is completed by the employer who must verify and attest, under penalty of perjury, which document(s) an employee presented to prove his or her identity and right to work, and that the paperwork was completed in a timely manner. Employees can refer to the "Lists of Acceptable Documents." For example, List A provides documents that prove both identity and authorization to work (such as a U.S. passport or a lawful permanent resident card). Or an employee can provide an identification document from List B (such as a driver's license or state identification) and a document from List C (such as an unrestricted Social Security card or birth certificate) that demonstrates employment authorization.

Section 3 is reserved for employers that must periodically re-verify the Form I-9 if the employee is not authorized to work permanently in the United States. It also can be used for rehiring an employee under certain situations and updating an employee's name due to a name change (using this section for a name change is optional.).

When Must the I-9 Form be Completed?

The Form I-9 process must start on the day an employee starts work or beforehand. The employee must complete the first section of the Form I-9 on the first day of employment and must provide the supporting documents noted on the "Lists of Acceptable Documents" attached to Form I-9 within three business days of the first day of employment (e.g., if the employee's first day is Monday, Section 2 must be completed by Thursday). If the documents are not presented by that point, the employee must be removed from the payroll (though it is permissible to suspend the employee rather than to terminate the employee altogether). It is permissible to have the employee and employer complete the Form I-9 before the first day of employment if the employee has been offered and accepted the job.

Who Must Complete I-9 Form

IRCA requires all employers to have all employees hired

after November 6, 1986, complete I-9 verification paperwork. The Form I-9 requirement applies to all employees, including U.S. citizens and nationals. There is no exemption from the verification requirements because an employee is not full time unless the employee is considered an independent contractor or the person is engaged in casual, nonregular domestic work in a private home.

Who Does Not Have to Complete an I-9 Form

1. Volunteers are not subject to Form I-9 rules because they receive no remuneration for their services. True volunteer positions involve no receipt of pay, and the employee does not receive any other type of benefit in lieu of pay (such as food and lodging);

2. Independent contractors are not subject to the Form I-9 rules, but employers should note that if they outsource work to companies they know use unauthorized employees, they could also be held liable under IRCA;

3. Employees transferring within a company though the Form I-9 may be transferred to the new unit;

4. Employees rehired by a company need not complete a new Form I-9 as long as they resume work within three years of completing the initial Form I-9; however, an employer can legally decide to have a rehire complete a new Form I-9;

5. After employee completes paid or unpaid leave (such as for illness or a vacation);

6. After a temporary layoff of employee;

7. After a strike or labor dispute;

8. Gaps between seasonal employment; and

9. Employee is reinstated after a finding of unlawful termination.

Domestic service employees (housekeepers, kitchen help, and gardeners) and Form I-9

The term “employee” is defined by DHS to exclude those engaged in “casual domestic employment.” Casual domestic employment includes individuals who provide domestic service in a private home that is “sporadic, irregular or intermittent.” The M-274 handbook notes, however, that “those who employ anyone for domestic work in their private home on a regular basis (such as every week)” are required to have the employee complete a Form I-9.

Consequences of False Documentation for Employee and Employer

As you can imagine, not every employee who fills out an I-9 form uses legitimate documentation to prove they are authorized to work. There is a vast underground that provides “fake” green cards, Social Security cards, and driver’s licenses.

What are the circumstances for the employee and employer if employees are hired with fraudulent documentation? For the employee, there could be very serious consequences if the employee checks that he/she is a U.S. citizen. As most

immigration attorneys know, stating you are a U.S. citizen, when you are not, is grounds for deportation and also grounds for denial of citizenship. Years ago, the I-9 form combined U.S. citizen and U.S. national meaning one could assert he/she did not claim to be a U.S. citizen. However, in recent years, the USCIS has changed the I-9 form to separate U.S. citizen from U.S. national.

If an employee checks off he is a lawful permanent resident (LPR) and presents a green card, he is committing fraud but is rarely subject to criminal liability. However, if the employee is using a stolen identity, he/she may be charged with identity theft. The Trump Administration has begun to charge many undocumented workers with identity theft. As for whether that affects an employee’s good moral character, I doubt that one instance will affect their good moral character. Most adjudicators realize undocumented workers have to earn a living in some manner.

As for the employer, the consequences vary depending on whether it knows the employee is not authorized to work. If the employer knowingly hires/ employs an undocumented worker, the employer is subject to hefty civil fines and possibly criminal prosecution if 10 or more undocumented workers are found or the employer was involved in obtaining false ID’s for employees. If the employer did not knowingly hire/ employ undocumented workers, rather it did not realize the employee presented a fake ID, then it will be forced to discharge those employees or be fined.

As for whether individuals (who may later become your clients) should list all employment on I-130’s, I-485’s and/ or asylum petitions, I advise to list all employment. I’d rather defend working unauthorized with a fake green card, then concealing information to the federal government.

What Foreign Nationals are Entitled to Work

The following foreign nationals are entitled to work in the United States simply on the basis of their status: Lawful permanent residents (green card holders); Applicants with a pending application for adjustment of status to lawful permanent resident; Persons admitted as refugees; Persons admitted as parolees; Persons in asylum status; Asylum applicants who have had their cases pending for more than 150 days; K-1 fiancé(e) visa holders; K-3 spouse visa holders; Individuals who have applied for or granted cancellation of removal for the period they hold that status; Persons holding TPS for the period of time their country’s nationals are granted that status; Persons holding T visa status as victims of trafficking; Persons holding U visa status as victims of certain crimes and immediate family members who were included with the petition; Persons approved for Deferred Action for Childhood Arrivals (DACA) program; and Persons granted deferred action or on an Order of Supervision.

What Foreign Nationals are Sometimes Authorized to Work

These individuals are eligible based on working for a specific employer and on meeting certain conditions (authorized to

work on the basis of possessing a valid Form I-94 as opposed to an Employment Authorization Document): E-1/E-2 treaty investors and traders employed by a qualifying company; E-3 visa holders from Australia; F-1 students seeking optional practical training (OPT) in their areas of study; H-1B/H-2A/H-2B/H-3 temporary employees and trainees; H-4 visa holders; J-1 exchange visitors; L-1 intracompany transferees and L-2 spouses and unmarried minor children ; O-1/O-2 visa holders who have extraordinary ability in the sciences, arts, education, business, or athletics, and accompanying aliens; P-1/P-2/P-3 athletes, artists, or entertainers; R-1 religious employees; and TN professionals from Canada and Mexico working pursuant to NAFTA.

A-3/E-1/E-2/E-3/G-5/H-1B/H-2A/H-2B/H-3/I/J-1/L-1/O-1/O-2/P-1/P-2/P-3/R-1/TN visa holders who have expired Forms I-94 but have timely filed for an extension (employment authorization continues for 240 days or until the application is denied).

Conclusion

Immigration law as it relates to immigration compliance issues is a very complicated and specialized area of legal practice. Although this article is a good overview, I advise

you to seek experienced legal counsel for further questions or concerns.



Bruce E. Buchanan is the founding partner of Sebelist Buchanan Law PLLC located in Nashville and Atlanta. He is also “Of Counsel” to Siskind Susser, P.C. on employer immigration compliance matters. Bruce is a 1982 graduate of Vanderbilt University School of Law. Bruce has recently co-authored a book, I-9 and E-Verify Handbook, 2d ed. (2017) and blogs on employer immigration compliance matters at www.EmployerImmigration.com.

He may be reached at bbuchanan@sblimmigration.com or (615) 345-0266.

ILS Sponsors 2018 Veterans & Military Law Section Conference in Puerto Rico

This year, our section was proud to support a CLE presented by the Puerto Rico Chapter and the FBA Veterans and Military Law Section. ILS was an official sponsor of the event. In addition to ethics panels, this year’s CLE also included panels addressing a theme of military law. Considering that, it is no surprise that our unofficial ILS scholar-in-residence on this topic, the distinguished Col. Margaret Stock, presented the panel titled “Military Naturalization and Derivative Citizenship” on November 2, 2018. She was joined by the moderator, Danielle Beach-Oswold, and our current ILS Chair, Elizabeth (Betty) Stevens, who also traveled to Puerto Rico for the conference, and was instrumental in obtaining ILS sponsorship.



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The Green Card

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