

AILA Presidential Installation Speech

June 16, 2011

A man and his wife are desperate to leave their country. They will do almost anything to get over a border that has become virtually impossible to cross. They are in their very early twenties, with a 15 month old daughter.

The couple has saved a sum of money to hire a man who will provide them with false passports and guide them across the border. They choose a strategic time to go, and they are just plain lucky when the border patrol asks no questions and waves them across.

This is not an event that took place yesterday a few miles from here. This is a story that happened almost 63 years ago on a different continent. It's the story of Sam and Bernice Pelta, my mother and father, and how they were able to escape from post-war Poland, after the physical and ideological boundary we used to call the Iron Curtain came down and essentially prevented legal movement from Eastern to Western Europe. In Poland they lived about an hour from the border with Northern Germany, but the border they crossed with false passports was the one between Poland and Czechoslovakia, the beginning of a long journey south and then north, that involved several more illegal and nerve-wracking border crossings before they finally made it to the British-occupied zone in Germany, where they spent several years in a displaced persons camp. Finally, in 1952, they came to the United States, and were among the last immigrants to be processed at Ellis Island before it was closed as an immigrant processing station. Here is a photo of my sister Sylvia, on the SS General Taylor, the ship that brought them to their new home. When this photo was taken, Sylvia could not speak English. A few years ago she was named Teacher of the Year by the Philadelphia Public School system.

The qualities that got my parents over those borders in 1948 were the very same ones that made them wonderful immigrants to the United States—their courage, their decisiveness, their refusal to accept their lot in life and their drive to seek something better for themselves. Once here, my parents became patriots who were in awe of the country that had taken them in. No one was prouder than my father, as he walked the streets of his adopted and beloved home town of Philadelphia, a free man with a future, walking down the streets where Benjamin Franklin and Thomas Jefferson once lived.

I grew up in a community of Holocaust survivors, who, in the wake of their terrible losses, became each other's extended family. Each one of them had a unique survival and immigration story. For most of them, the ghettos and camps of Europe had been their high school and college, and when they came to America, many of them pursued the professions for which their wartime activities had laid the groundwork. My father, for example, had worked in a gear factory in a labor camp that was part of Buchenwald, and became a mechanical engineer in the U.S. Of course, some Holocaust survivors, such as George Soros and Eli Wiesel, had accomplished and highly publicized careers after coming to the United States. Most of the Holocaust survivors I knew growing up achieved a quieter, but no less significant victory over their oppressors, and in doing so, made their mark on their new country. Like my parents, they went about rebuilding their shattered lives, they

worked hard, loved and provided for their families, and their dearest wish was that their children would outdo them in every possible way—educationally, professionally and financially. These are the immigrants who inspired me to embrace our very special profession, and the knowledge of what they contributed to the U.S. continues to infuse meaning into the work that I do on a daily basis.

But at the same time, I am also haunted by those who couldn't get to our shores. There were 938 passengers on the German transatlantic liner, the St. Louis, most of whom were Jewish refugees fleeing Nazi Germany. In May 1939, the ship sailed from Hamburg to Cuba, where the passengers expected to disembark. Unbeknownst to the passengers, a week before they sailed, the president of Cuba had invalidated their landing certificates, and changed the rules for entry. After frantic negotiations with the Cuban government failed, the St. Louis sailed slowly toward Florida. The ship was so close to our shores that the passengers could see the lights of Miami, as they hoped against hope, that they could be admitted to this country. Some even cabled President Roosevelt and the State Department. One passenger received a response from State, indicating that passengers "must await their turns on the waiting list and qualify for and obtain immigration visas before they may be admissible into the United States."

Ultimately, the St. Louis was turned away, and sailed back to Europe, where some refugees were admitted by Great Britain. The rest were admitted by the Netherlands, Belgium and France, and half of those refugees were killed during the Holocaust.

President Roosevelt could have issued an Executive Order to admit the St. Louis passengers outside of existing immigration quotas. He did not. Why did this most fearless of presidents fail to act? The Great Depression had left millions of Americans jobless, and the American public was staunchly against any relaxation of the immigration quotas. Three months earlier, Congress had allowed the Wagner-Rogers Act, a bill that would have admitted 20,000 refugee children from Germany outside of the immigration quotas, to die in committee. And of course there were other political considerations—isolationist Republicans had gained seats in Congress in the 1938 election, and Roosevelt was strategically considering a run for an unprecedented third term.

All of this sounds painfully familiar, doesn't it? When I look at these faces, I cannot help but think that America fleetingly held these lives in the palm of its hand. And I feel sure, somehow, that the St. Louis passengers, and for that matter the 20,000 refugee children we might have admitted, would have ultimately contributed more to our country than they would have taken from it. But most importantly, I believe that as a nation we may have missed a moral opportunity, an opportunity to show that we could do the right thing even in the face of difficult political consequences.

It's really no different today. It will take enormous leadership and courage to get past the politics of immigration. With Congress having dropped the ball on comprehensive reform, we have to call on the Obama administration now to take some bold first steps—not just talk-- to show Capitol Hill and the American public what needs to be done to set the right course for this country on immigration. As David stated, the President has the authority. Si, se puede, Mr. President. You take the lead and perhaps Congress will follow. So much is at stake.

With no action from Congress or the White House, undocumented and legal immigrants alike are now at the mercy of state initiatives that seem to rival each other in offensiveness. The Alabama law signed last week is so full of hate it shocks the conscience and sickens the soul. The vacuum left by Federal lawmakers has been filled by people who want to use ugly and dehumanizing proposals to divide this country just as surely as we were divided 150 years ago. Their goals are un-American, they are swimming upstream against the tide of our history and our culture, and we cannot allow them to win.

Those of us on the ground in this battle know that even more is at stake. Every day we work with a set of laws that are essentially antiquated and completely out of step with the global realities of the 21st century. We know that this country cannot afford to ignore a deteriorating system that is eroding the very fabric of our national identity and stifling our ability to compete with other countries. But there's something else we know. There are 11 million people living in our country who would add 1.5 trillion in Gross Domestic Product over the next ten years if they were legalized. We have about 1 million DREAM kids—as American as you and I—who could contribute over 2 billion, net, to our federal revenues over the next ten years—if they could gain conditional residence. All the major studies show that that in the long run, immigrants boost productivity in the U.S. and revitalize depressed areas, like Utica, New York, Indianapolis and MacArthur Park in Los Angeles. And employers need them. We know—and must continue to tell lawmakers and the American public—that fixing the system is more than a moral imperative. Fixing the system is one of the absolute best investments we can make in the future of our country. It is literally a business opportunity that we can't afford to leave on the table.

In his State of the Union address in January, President Obama told us that our generation's "Sputnik" moment had arrived. He was talking about our need to invest in research and development to revive the economy and maintain our global leadership. Being a student of history I did some reading up to see what we did after our real Sputnik moment arrived—in 1957, when the Soviet Union's launch of the Sputnik satellite caught us completely off-guard. Well, one of the things we did was to establish NASA. And as the first head of NASA's Marshall Space Flight Center, we appointed a brilliant German scientist, Dr. Wernher von Braun -- to help us beat the Russians in the Space Race. We did that even though Wernher van Braun had been, in a previous life, a teeny tiny bit . . . Nazi. So—to summarize-- in reaction to our first Sputnik moment, we hired an immigrant and gave him an amnesty of sorts, if I may use that word. Well, maybe not amnesty, but we certainly exercised some prosecutorial discretion. I love history.

I agree with President Obama that our Sputnik moment is here. It is a time when the country must change direction lest we fall behind our competitors. And thankfully, there is renewed public discourse about what we knew in 1957, and what we in AILA witness first hand every day in our work with our clients --America will only rise to the challenge of this generation's Sputnik moment with the help of key foreign talent –business people, geniuses, entrepreneurs and innovators. The numbers tell us all we need to know, and they have been all over the papers: More than half of Silicon Valley companies started since 1995 were started by immigrants. According to the U.S. Patent Office, immigrants secure patents at double the rate of U.S. inventors. In 2010, foreign students in the U.S. received more than 60% of all U.S. engineering doctorates, and according to our friends at the Department of Labor, workers in the engineering and science fields fuel half of our sustained economic expansion. America should be putting out an enormous welcome mat for

these talented, energetic people. Instead, new studies show that, faced with an inhospitable immigration system, thousands are leaving the U.S., investing their money and their intellect in their home countries—and creating jobs there as well. A prime example is Kunal Bahl, whose story has been covered widely in the press. He returned to India after facing visa problems in the U.S., and founded Snapdeal, creating 400 jobs in New Delhi. And here is what worries me-- while we can obtain statistics on how many foreign nationals leave the U.S., we can't ever know how many smart and motivated people simply decide not to come here, because it is just too hard.

The Administration is beginning to get it. In January President Obama issued an Executive Order requiring agencies to ensure that regulations promote "economic growth, innovation, competitiveness and job creation and predictability." DHS recently issued a plan to comply with the Executive Order. And the White House has held meetings with interest and advocacy groups in improving the immigration system for innovators and entrepreneurs.

But all of this is simply not enough to keep talent from leaving the U.S. Why should an entrepreneur go to the trouble of getting an E visa to start a small business here, when there is essentially no way for him to stay permanently to grow that business? What about foreign students in graduate entrepreneurship programs—how do we retain them and the exciting companies they create after their practical training expires? And how can we ask a gifted Indian engineer to remain in the United States at the mercy of continuous H-1B renewals, when, by the time she gets her green card, her lawyer will be in a rocking chair at the AILA retirement home in Boca? AILA needs to make certain that Congress pays attention to these problems and soon--before it's too late.

What's more, the message implicit in President Obama's State of the Union Address, and in his Executive Order, will need to trickle down and create a sea change in the mentality of those who adjudicate applications filed by foreign talent and by the employers who want and need that talent. And AILA must continue to be the voice that carries that message. One of the things we will do in the upcoming year is spend time talking to our agency counterparts about being friendly to business—especially small business. Those in charge at DOL must be made to understand that when the agency looks for hyper-technical reasons to deny an approvable labor certification, it is not creating opportunities for U.S. workers, it is wasting the valuable resources of American employers. It is unconscionable for the Department of State to allow a visa renewal to languish for months and even years at a consulate, with no explanation, in the black hole known as "administrative processing," while a U.S. company waits for a key employee. Just now, when our economy is so fragile, why are we seeing adjudications that create an impossible and impermissible evidentiary standard for managers and specialists in start-up businesses? This is certainly not the time for the government to snuff out emerging companies started by foreign investors, companies that bring new technologies and new ideas, companies with the potential to employ U.S. workers.

Every day, in our practices, we are seeing money and talent leave for friendlier shores after being frustrated here. So who better than AILA members to say to these agencies: America can't "win the future" until you understand—from top to bottom, --that your decisions have a direct and substantial impact on the U.S. economy. And we need to be taking the stories of our frustrated clients to the press, and into Federal Court.

In just a few moments you will hear one of my favorite songs, "Always Something There to Remind Me," by the British singer, Sandie Shaw. I guess win some sort of prize for talking about Sandie Shaw and Wernher von Braun in the same speech. Who was Sandie Shaw? She was a young woman from a factory town in England whose rendition of this Burt Bacharach, Hal David song rocketed to the top of the UK's pop charts in 1964, when she was 18 years old. She had a number of other hit songs in the next year or so and was invited to appear on a variety show in the U.S. produced by Ed Sullivan. Despite letters from Warner Brothers Records, as well as Music Business and Billboard Magazine, 26 other press clippings and other documentation, the INS denied Sandie Shaw's petition to be classified as an alien of distinguished merit and ability, essentially stating that she had been a one-hit wonder. Sandie Shaw, known in the UK as the Barefoot Princess, went on to record many more songs, win the Eurovision song contest, write a rock opera, study at Oxford, qualify as a psychotherapist and establish a practice providing psychological healthcare to arts professionals.

As many of us are well aware, after 40 plus years, USCIS still cites Matter of Shaw, and I thought it might be interesting for you to know about the real person behind that case, and what she did with her life. I like to think that some things have changed for the better since that case was decided. We now have O visas, and the EB-1 classification. And after all, someone granted a visa to Justin Bieber. Probably someone with a 12 year old daughter.

But some things haven't changed. When it comes to the really extraordinary minds and creative spirits that seek to come to our shores or to stay in the U.S. in all fields --science, the arts, business, engineering, entertainment, culture -- fundamentally, it sometimes just seems that USCIS is using the same standard that Supreme Court Justice Potter famously used to define pornography: "I know it when I see it."

At our Sputnik moment, at a time when adjudicators should be excited and proud to approve an extraordinary ability petition for the next Sergei Brin, 12,000 EB-1 visa numbers have gone unused this year. In the cases we are filing for the best and the brightest, we are receiving demands for excessive documentation, as well as denials that reject probative evidence and often strike our clients as dismissive of their achievements. And it is due in part to a guidance memo that has caused adjudicators a great deal of confusion, and allowed them to apply a highly subjective standard to the accomplishments of professionals in fields and industries with which the examiners have no familiarity.

USCIS has been extremely open, and has welcomed additional comments from AILA on this issue. Two weeks ago, a hardworking AILA taskforce submitted these comments, which were excellent. The same taskforce will work to help AILA members develop and file approvable cases, despite a legal standard has become a moving target.

But in light of the President's goal of keeping our doors open to key talent, and in the spirit of the President's Executive Order, I believe the agency should withdraw this problematic guidance memo and go back to the drawing board. I respectfully ask Director Mayorkas to review, personally, some of the decisions in these cases. And I ask that USCIS work with us and other groups to develop appropriate standards that provide clarity and background information to the

adjudicators, so that they can make the right decisions in this vital green card category, which holds so much promise for the future of our country.

Well, I promised myself that I would not “kvetch” too much during my speech. I don’t want to be like the three grandmothers eating lunch at the Jewish delicatessen (stop me if you’ve heard this one . . .). The waiter comes to the table and says “Ladies, is ANYTHING alright?”

There are many things that are alright. The battle in the court of public opinion over immigration is still raging, but we are beginning to win in small ways, with DREAMERS and business people at the vanguard, showing through words and action that immigration is good for America. Yes, the Supreme Court decision on Arizona’s e-Verify law was disappointing, but we should keep in mind that the most offensive parts of SB 1070 –legally very distinct from e-Verify-- have been declared unconstitutional and Utah’s copycat law has been blocked. And just last week the Supreme Court declined to review a case challenging the policy of charging in-state tuition to undocumented immigrants in California. Several states have announced that they will not participate in Secure Communities, an ill-conceived program that doesn’t make us secure, and tears communities apart. These are not small skirmishes in a greater battle, but important victories that we can and should build on.

We continue to have significant meaningful dialogue with our agency partners, and our views are heard, our expertise is respected, and quite often, in ways that are sometimes nuanced, and sometimes dramatic, we change policy. The leaders of two of those agencies are here with us today as keynote speakers, John Morton and Alejandro Mayorkas, and we commend both of them for keeping the lines of communication open even when we disagree passionately on the issues, and for seeking stakeholder input on new programs and policy changes. And we certainly applaud the DHS-wide initiative to combat unauthorized practice of law. That is certainly more than “alright.”

What is really “alright” –no, what is truly great-- is all of us, the members of AILA. We are an amazing group, a group I am extremely proud to represent. We NEVER give up. Whether we are protesting detention conditions, pursuing asylum claims for victims of Mexican drug violence, appealing an unreasonable H-1B denial, or challenging the constitutionality of DOMA in the context of a removal proceeding, we simply never give up. I like to think that in our determination to find solutions for our clients, we are St. Judes, patron saints of impossible causes and desperate situations. And in our passion to obtain the right results from the agencies and the courts, we are superheroes who do battle every day in the name of truth. One of the things that makes us unique as a bar association is how much we help, mentor and inspire each other, and so we are also Jedi Masters, passing on our skills and knowledge to the next generation of Jedi knights. Thank you for your dogged persistence, and PLEASE--keep doing what you’re doing. Make no mistake—this is not a profession—God knows we’re not in this for the money. Being an immigration lawyer is a calling.

There is no limit to what we can achieve together with the support of our fantastic national office, under the leadership of Crystal Williams, and under the stewardship of our hardworking Executive Committee and Board of Governors. They also NEVER give up. AILA’s staff constantly looks for creative new ways to educate us, they make us into capable and convincing media spokespersons and

advocates to agencies and legislators, they alert us to new trends in the field, and they provide us with tools to build successful practices and do excellent work for our clients. Now, through my colleague David's legacy and the energy of AILA national, hopefully more of us will become able litigators as well. Thank you, AILA national.

We know who immigrants are. Immigrants are Sam, Bernice and Sylvia Pelta. Immigrants are the rocket scientists, the entertainers, the computer geniuses, the investors, but also the construction workers, the fast food workers, the lettuce pickers, the nannies and the hotel workers, people who come here from a hundred different places speaking a hundred different languages, bringing their energy, their abilities and their dreams. We are the ones who make them a part of the fabric of America and we know that is what will "win the future."

Thank you.