Immigration Law Today
NOV|DEC.08 VOL. 27|NO. 6

'Til Death Do Us Part

The Immigration Consequences of Foreign Divorce Proceedings

- NIVs for Working Dependents
- John Hoeffner & Michele Pistone: Globe-Trotting Couple
- Retirement for Immigration Lawyers

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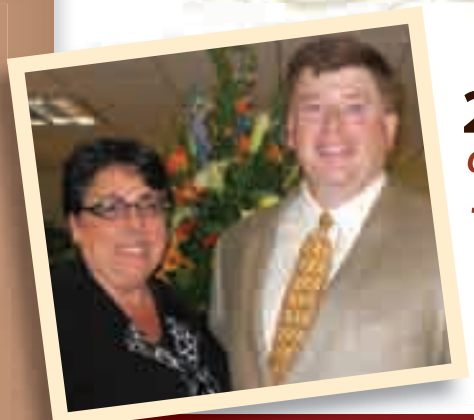

"NOTABLE QUOTE"

The answer to immigration is what it was last year: comprehensive reform that extends order and the rule of law to a system that is broken in a million complex ways.

—Editorial, *The New York Times*, Sept. 18 2008

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MANAGING EDITOR Tatia L. Gordon-Troy

ASSISTANT EDITOR Kristine Tungol Cabagnot

EDITOR-IN-CHIEF Crystal Williams

CONTRIBUTORS Roxana Bacon, Dan Berger, Nina Maja Bergmar, Jan Brown, Nick Chavez, Emma Coates-Finke, Leigh Ganchan, Iliana Holguin, Synta Keeling, Charles Kuck, Richard Link, Kathleen Moccio, Jonathan Montag, Kristi Nelson, Rebecca Schapiro, W. Randall Stroud

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CONTACT INFORMATION

Reprint requests; editorial comments; letters to the editor; proposals for submission of articles: ILT@AILA.ORG

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Let Us Be the Voice for Family Unification Through Immigration

THE REUNIFICATION OF FAMILIES is the foundation of our immigration system, and more importantly, the foundation of our society. Virtually every immigration law in place today is either designed to encourage families to reunite in the United States or to stay together as they immigrate. There are laws to reunite refugee families, keep the families of employment-based immigrants together, and, of course, enable a variety of close family members to immigrate to the United States if their relatives are U.S. citizens (USCs) or lawful permanent residents (LPRs). Congress has clearly and consistently emphasized the importance of families as the foundation of our overall immigration strategy. Or, at least it says it has.

Current System Not Family-Friendly

Unfortunately, the reality of this nation's family-based immigration system is that it is woefully inadequate in reuniting families in any reasonable timeframe. Congress's failure to include family members in the legalization programs of the past—such as that in the Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603, 100 Stat. 3359)—have caused two decades of delays in reuniting families. U.S. Citizenship and Immigration Services' (USCIS) failure to timely adjudicate applications to reunite the families of asylees has caused serious harm to individuals. Inadequate numbers of available family-based immigrant visas have caused up to an estimated 40-year wait for siblings of USCs from Mexico. That is not a "line"; that is a mockery.

These "laws" also have clearly and directly contributed to undocumented immigration to the United States. How many know of legal immigrants who were joined in the United States by their spouses and children, who came without documents, simply to be reunited?

Inadequate numbers of available family-based immigrant visas have caused up to an estimated 40-year wait for siblings of USCs from Mexico.

We can no longer ignore the impact that this broken family-based immigration system has on the entire debate surrounding "illegal" immigration.

Legal Conundrum

These problems arise from the laws already in place. What about the problems caused to those families with children over the age of 21 and who cannot mentally or physically care for themselves as they immigrate to the United States? Or immigrants of the same gender who seek to be together permanently in the United States? The same problems arise for those who immigrate as parents of USCs, but who have to leave their minor children behind because of a bizarre quirk in our immigration laws. The reality is that we have a long way to go before these laws reflect U.S. values—family unity, equal access to the immigration system to all USCs and LPRs, and reasonable "lines" for immigrating to the United States.

Fight for Change

For those on the front lines of immigration—whether in the trenches of daily battles in immigration court, in USCIS interviews, or in efforts to get answers out of faceless bureaucrats—we must redouble our efforts for change. This change is one that can positively impact America—and immigrants—for the next generation. I call on our members to be that voice. With your clients, reach out to your representatives and senators. Ask for change, call for change, and demand change. I can assure you that if you are not willing to get into these trenches, change will not come fast enough to satisfy the demands of this now-broken immigration system. Let us be the voice for these families.

AILA President CHARLES H. KUCK *serves as managing partner of Kuck Casablanca LLC in Atlanta and is the editor-in-chief of* AILA's Immigration Litigation Toolbox, *2nd Ed.*

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Alumna Leads UNM's Crusade to Represent Detainees

OBTAINING PRO BONO REPRESENTATION for immigrants in detention always has been a challenge. It became even more challenging, however, when U.S. Immigration and Customs Enforcement (ICE) began building and contracting with detention facilities located in remote areas of the country. The difficulty with obtaining pro bono representation for detainees was perhaps nowhere more evident than in New Mexico. Although the capacity of the numerous facilities in New Mexico utilized by ICE to house immigrant detainees easily surpassed 1,000, no nonprofit legal service providers or pro bono attorney resources were available to immigrants in detention in the entire state. The lack of legal services available to immigrants in detention in New Mexico led one graduate of the University of New Mexico (UNM) School of Law to take action.

From One Bold Step

Jennifer Landau is a 2006 alumna of UNM School of Law. "As a law student, I was shocked by the lack of legal services available to immigrants in removal proceedings in New Mexico," said Landau. "Then, in my third year … I discovered that immigrants from all over the country were being detained in downtown Albuquerque and that DMRS [Diocesan Migrant & Refugee Services, Inc.], the closest nonprofit service provider, was located 300 miles away in El Paso."

Landau consulted with attorneys at DMRS about this representation crisis and decided to design a fellowship project to respond to these legal needs. The fellowship proposal submitted to Equal Justice Works by Landau and DMRS was approved, and in September 2007, Landau began working on the primary goal of the fellowship: to expand DMRS's capacity to provide legal services to immigrants in removal proceedings in New Mexico by developing a sustainable local

Jennifer Landau (front, center) is joined by Professor Carol Suzuki (right) and UNM law students who won an asylum case in the spring 2008 semester.

infrastructure for representation using pro bono attorney resources and other area legal service providers.

Landau soon began discussions with her alma mater regarding the possibility of providing legal representation to immigrants in removal proceedings through UNM's Community Lawyering Clinic. In the spring of 2008, three law students began working on the case of a man who was persecuted by an extremist political party for his religious and political views and who had been charged with blasphemy—a crime punishable by death in his native country.

Under the supervision of Landau and UNM clinical law faculty professor Carol Suzuki, the students handled every aspect of the case, including preparing an amended application for asylum and accompanying affidavit to be submitted to the immigration court, writing a legal brief in support of the asylum claim, and arguing the case before the immigration judge (IJ) in El Paso. In total, the students spent nearly 400 hours working on the case, and wept with joy when the IJ granted their client's request for asylum.

Classroom Commitment

In addition to the continuing referral of asylum cases to the Community Lawyering Clinic, UNM has extended its commitment to assisting immigrants facing removal from the United States by approving a new Immigration Law with Practicum course for the fall 2008 and spring 2009 semesters. With the assistance of local immigration practitioner Christina Rosado-Maher, Landau began working with the first nine students of the practicum in August 2008, which is designed to provide students with an overview of immigration law and its practical application in the El Paso immigration court. The classroom portion of the course includes both substantive immigration law topics and skills training. In addition, students have the opportunity to represent low-income immigrants in removal proceedings and are responsible for all aspects of the cases assigned to them, including meeting with clients, performing intake interviews, maintaining client files, conducting legal research, developing affidavits, gathering evidence, preparing and filing applications for relief and legal briefs, and trial preparation and advocacy.

Along with the individual litigation cases assigned to the students, they also are responsible for conducting telephone intake interviews with detainees at the newly constructed Otero Service Processing Center, a unit of the Otero County Prison facility exclusively housing immigrant detainees in Chaparral, NM. The recent expansion of the Otero facility has caused the number of immigrant detainees housed at the facility to skyrocket from between 200–300 to about 1,000 as of June 23, 2008. Phase II of the expansion—which is projected to be completed sometime in 2009—will further increase the detained population at the facility to an estimated 2,500 detainees. After conducting telephone interviews with Otero detainees, practicum course students are responsible for researching the immigration consequences of any criminal activity and identifying the most appropriate form of relief from removal for the detainee, if any.

On-the-Job Training

The nine students currently enrolled in the practicum collectively represent eight indigent individuals seeking various forms of relief from removal, including asylum and Special Rule Cancellation of Removal for battered spouses and children of U.S. citizens and lawful permanent residents (LPRs). The fall 2008 practicum had more than 10 students on the waiting list for the course, which has now been approved to continue into the spring 2009 semester. In addition to underwriting the cost of the students' travel from Albuquerque to El Paso to attend their clients' hearings, UNM also has committed to ensuring that their students become truly familiar with the immigration court and detention system by financing a three-day trip to El Paso to tour the local immigration court, the various detention facilities, and to meet with El Paso →

PRO BONO PROFILE:

Meet Karen Grisez

It is from the numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance.

—Robert F. Kennedy

While the work of all pro bono lawyers provides a ray of hope to those caught in the darkness of immigration enforcement, there are those stars like Karen Grisez, who shine brightly. Karen, who shares her birthday with the late Robert F. Kennedy, also shares his passion for public service. She serves as special counsel for public service in the Washington, D.C., office of Fried Frank, where she takes on the toughest pro bono challenges daily. For instance, the government detained a man for three and one-half years before it used a document it knew was not his to deport him to a country that was not his own. After that third country returned him to the United States, Karen took his case to the federal court, successfully obtained a reopening, and ultimately prevailed in obtaining asylum for her client. Today, he is a lawful permanent resident.

While justice prevailed in that case, Karen notes that "justice in other cases is threatened by ongoing detention, which induces people without counsel to give up their rights. "Without pro bono counsel, detainees cannot hope, nor can they fend off, the coercive impact of ongoing detention in an opaque system.

The fact that competent counsel often makes the difference between life and death for pro bono clients motivates Karen not only to take cases but to accept the most difficult ones. She explains that she has been fortunate to develop an expertise.

"It is my obligation as a lawyer to work to the highest levels of my ability on behalf of indigent clients," said Karen.

Karen's professionalism and extraordinary talent provide hope to the hopeless and inspiration to the immigration bar. While not all attorneys have litigation talents, each one has countless opportunities to accept pro bono cases. By accepting the challenges presented, we, too, can shine.

Courtesy of Kathleen Moccio, member of the AILA National Pro Bono Services Committee.

nonprofit staff attorneys working overtime to represent the ever-expanding detainee population in New Mexico.

Although Landau's successful collaboration with the UNM School of Law during the first year of her fellowship is undoubtedly a major accomplishment, she still recognizes that there is much work to be done to ensure that immigrant detainees in New Mexico have access to representation before the immigration court. Landau continues to investigate methods by which she and DMRS can collaborate with other legal service providers to provide representation to immigrant detainees in New Mexico. In response to the large number of immigrant detainees transferred from various eastern states, Landau is currently investigating the possibility of collaborating with New York law schools to develop a system whereby students can assist with the legal research and criminal history investigations of New York detainees transferred to New Mexico. Many of these transferees are often long-time LPRs who are potentially removable for past criminal conduct, and who have been transferred thousands of miles away from their family, support networks, and legal representatives.

True Inspiration

Landau is currently in the second and final year of her fellowship. While this fruitful fellowship is coming to an end, UNM and her commitment to representing the detained population in New Mexico should continue to serve as inspiration to law students across the country. This endeavor is an example of how it's never too early to start making a difference in the lives of those around us. ILT

ILIANA HOLGUIN *is the executive director of Diocesan Migrant & Refugee Services, Inc., the largest provider of free and low-cost immigration-related legal services in west Texas, and a member of the American Immigration Lawyers Association (AILA) National Pro Bono Services Committee.*


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A Family That Works Together, Stays Together

by Leigh N. Ganchan

Visa Categories for Nonimmigrant Working Dependents

Family unity is of universal importance. Most people who immigrate to the United States aspire to travel as a family or send for their remaining family members posthaste. For children of foreign nationals coming to work temporarily in the United States, there are many nonimmigrant category options. The most frequently used categories are easily attainable for the typical expatriate family with young children. However, when the family composition or circumstances do not align with the "norm," families have to consider other options to stay together and/or to permit the child to work. A variety of situations can make foreign national parents feel like plans to work in the United States are being derailed by the question of what to do with their dependents. However, there are several alternative visa categories that may be just the ticket to keeping nonimmigrant family units intact.

Summer Work and Travel Program

Although college students from around the world dream of studying in the United States, some choose to pursue their studies abroad while their parents are on assignment in the United States. If the child is under 21, they might avail themselves of a dependent visa that corresponds to their parent's category, such as L-2 or H-4. Such dependent status would allow them to remain in the United States during their school breaks or longer, but would not allow them to apply for employment. Even more problematic is the case of a dependent who is over 21 years of age. In this case, the child no longer qualifies for the dependent visa, and would need to find a category that would allow him or her to spend time with the family in the United States and, if desired, to obtain work. The J Summer Work and Travel program category set forth in 22 CFR §62.32 might provide a viable solution, provided that the child can show he or she has no immigrant intent.

This J program authorizes foreign university students to travel and work in the United States during their summer vacations for a maximum of four months. Students from New Zealand and Australia are authorized to assume this →

PHOTO NICK MONU / ISTOCK

A Family That Works Together, Stays Together

status for up to 12 months. The overarching goal of this category is to involve students in U.S. daily life through temporary employment of a "commercial or industrial nature." While participants usually work in nonskilled service positions at resorts, hotels, restaurants, and amusement parks, the program does permit internships in U.S. businesses and other organizations (*e.g.*, architecture, science research, graphic art/publishing and other media communication, advertising, computer software and electronics, and legal offices). The regulations expressly prohibit placement as domestic household help or in positions requiring participants to invest their own money for inventory, such as door-to-door sales.

Family Members Following to Join the J-1 Exchange Visitor

The spouse and children of a J-1 visa holder can apply for visas after the principal applicant has already traveled. In general, they must present the following:

- **Form DS 2019, SEVIS-generated, and approved by the sponsor;**
- **Proof that the principal applicant (the person who received the DS-2019 or IAP-66) is maintaining his or her J visa status;**
- **Copy of the J-1's (principal applicant's) visa;**
- **Proof of relationship to the principal applicant; and**
- **Proof of sufficient money to cover all expenses in the United States.**

Spouses and children of exchange visitors may not enter the United States before the principal visitor enters for the first time. For more information, see ***http://travel.state.gov/visa/temp/types/types_1267.html***.

The Summer Work and Travel program is only for bona fide post-secondary students enrolled in and actively pursuing a degree or a full-time course of study at an accredited educational institution, or as that status is defined in their local educational system. A student who has finished his or her coursework but has yet to formally graduate is not eligible unless he or she demonstrates enrollment in another degree program. Students attending a vocational school are not eligible to participate in the Summer Work and Travel program unless they can demonstrate that their study will ultimately lead to a degree from an accredited post-secondary institution. Excepted from these restrictions are New Zealand and Australian citizens who have graduated from a post-secondary college or university in their home country within the last 12 months or are vocational students pursuing studies at a tertiary-level, accredited educational institution.

Students must participate in the program through pre-approved sponsor organizations. The current sponsor list is located on the U.S. Department of State (DOS) website at *http://exchanges.state.gov/jexchanges/*. Participants usually have prearranged employment, but for those who do not, sponsors must ensure that participants have sufficient funds to support themselves during their job search. Further, sponsors must try to help participants who have not found a job on their own after one week.

Program regulations permit participants to repeat the program more than once. However, sponsors are required to limit the number of repeating participants to no more than 10 percent of the number of their previous year's participants. Form DS-2019 is the foundational immigration document for this category listing the program dates during which the participant is allowed to work. Participants are allowed a 30-day period beyond the program dates entered on DS-2019 during which they may travel domestically and/or prepare for and depart from the United States.

B-2 Visitor Category and Dependents

Both the U.S. Customs and Border Protection's *Inspector's Field Manual* and the *Foreign Affairs Manual* (FAM) recognize that the B-2 classification also can be used in special circumstances, such as for those who are household members of a foreign national in long-term nonimmigrant status, but who are not eligible for derivative status under that nonimmigrant's visa classification. This broadened application of the B-2 classification can resolve the problems created by U.S. immigration law's alarming lack of specific provisions to help nonimmigrant parents of special-needs children who are older than 21 years old. Individuals in this situation are usually able to obtain a one-year period of admission to the United States and six-month extensions thereafter for the duration of the principal beneficiary's nonimmigrant status.

PRACTICE POINTER: Although the authorized stay will likely be shorter, even the child of a lawful permanent resident or a U.S. citizen may be classified as a nonimmigrant B-2 visitor if the purpose of the travel is to accompany or follow-to-join the parent for a temporary visit.

While a dependent admitted in this situation would not be authorized to accept employment, there is potential for limited study. The pertinent law clearly bars from "B" classification those coming *primarily* for the purpose of study, but it does not preclude a bona fide visitor from *incidental* study. A cautious "B" visa applicant who expects to take a short course incidental to their temporary visit could request the following visa notation described in FAM §41.31 N.10.6, "Study incidental to visit; I–20 not required," although it does appear that this particular visa endorsement is essential to a valid status.

Treaty Trader/Investor Dependents

Unlike most other nonimmigrants, including those in H and L status, Treaty Trader/Investor visa holders need not show that they are coming to the United States for a specific, limited period of time. In fact, many traders and investors properly maintain "E" status for years or even decades. This lack of time limitation has caused some consulates to question whether they can issue a B-2 visa to a trader or investor's dependent relative household member who is otherwise ineligible for derivative status under the E category. DOS has historically viewed this as a "compelling circumstance" and has allowed such dependent relatives to have the benefit of a more liberal application of the B-2 classification.

Many E-category parents worry that given the significance of citizenship to this category, their children-with citizenship in a country different from their own-will not be accorded derivative status. Fortunately, it is well-settled that the child is entitled to the same classification irrespective of their nationality. Unlike the principal's spouse, once the child is admitted in E status, though, he or she will not be accorded work authorization incident to status.

Occasionally, the principal (perhaps via an intensive Google search) will happen upon legacy-INS Operations Instruction (OI) §214.2(e), which might appear at first glance to permit the child to work in the United States. Based on treaties and earlier immigration laws, the OI explains that children of a treaty trader or treaty investor:

> [S]hall not be deemed to have violated status if they [accept employment]; and so long as the principal E nonimmigrant is maintaining status no action shall be taken to require their departure.

PRACTICE POINTER: It is important to help the client understand that while such employ-ment might not necessarily lead to removal →

A Family That Works Together, Stays Together

proceedings, it would likely make the dependent child ineligible for adjustment of status under INA §245(c), and for change of status under INA §248. Additionally, it also would expose the employer to significant fines and penalties under the employer sanctions provisions.

J-2 Minor Children

In contrast to the lack of employment authorization for dependent children in virtually every other nonimmigrant category, U.S. Citizenship and Immigration Services has provided for the employment of the dependents of J-2 exchange visitors. Professors and research scholars, teachers, trainees, students, and others can potentially avail themselves of the exchange visitor category. Each subgroup is subject to restrictions on the type and extent of employment, depending on the nature of the particular exchange program. The dependent J-2 minor children are comparatively free from restriction. Once they have made a showing that the income will be "used to support the family's customary recreational and cultural activities and related travel, among other things" and not to "support the J-1 principal alien," the employment authorization document can be issued. Even though authorization may not exceed the length of the J-1's stay or span longer than four years, the J-2 dependent is free to engage in any type of employment during that time. Both the J-2 and his or her employer are exempt from Federal Insurance Contribution Act taxes during this period of admission. Therefore, where the principal's plans allow for a choice between the J category (with its corresponding duration limitations and potential for triggering the two-year home country residence requirement) and another category, the J option might be the more attractive of the choices for families.

Keeping Families Intact

These nonimmigrant workers may be in the United States for a temporary basis, but this status should not deprive them of valuable time with their children, even temporarily. For almost every unique family make-up, there is usually some category—such as those summarized above—to help foreign workers keep their families intact.

LEIGH N. GANCHAN *leads the business immigration practice group for Haynes and Boone LLP in Houston and is board-certified in Immigration and Nationality Law. Ganchan recently served as chair for the American Immigration Lawyers Association (AILA) Liaison Committee to the Texas Service Center and served on the National AILA/USCIS Liaison Committee.*

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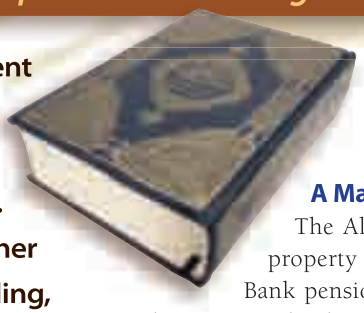
'Til Talaq Do Us Part

The Immigration Consequences of Foreign Divorce Proceedings

by Synta E. Keeling

Dr. Irfan Aleem, a 29-year-old Oxford doctoral candidate, married Ms. Farah Aleem, an 18-year-old high school graduate, on July 16, 1980, in Pakistan. On their wedding day, they entered into a marriage agreement that laid down a dowry of 51,000 rupees (approximately $2,500 USD) but made no mention of any other property arrangements between the couple in the event of a divorce. The newly married couple departed Pakistan to live in London for four years. The Aleems later moved to Potomac, MD, where Dr. Aleem would work for the World Bank and where the couple would reside, building a personal wealth of more than $2 million during their 20 years together and having two U.S. citizen (USC) children.

In 2003, Ms. Aleem, a lawful permanent resident (LPR) who maintained no ties to Pakistan, filed for divorce in the Circuit Court of Montgomery County, MD. In May 2003, Dr. Aleem responded to her complaint. As the divorce suit was pending, Dr. Aleem went to the Pakistani embassy and performed *talaq*—an Islamic divorce through which he could orally declare three times that he has divorced Ms. Aleem. Under Pakistani law, the *talaq* enabled him to obtain a divorce within 90 days of notice to Ms. Aleem and to enforce the 1980 marriage contract, intending to solely award Ms. Aleem a sum of $2,500.



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A Matter of Divorce

The Aleems had acquired substantial marital property during the past two decades—a World Bank pension valued at approximately $1 million, real property valued at $850,000, personal property valued at $80,000, and two cars (*see Aleem v. Aleem*, 404 Md. 404, 407, 947 A.2d 489, 491 (2008)). Under Maryland law, Ms. Aleem could potentially receive up to half of the marital property. In May 2008, Maryland's highest court ruled that *talaq* was contrary to Maryland's constitutional provisions of equal protection and due process to women. The court refused to recognize Dr. Aleem's *talaq* and enabled Ms. Aleem to obtain a Maryland divorce.

While this suit might have little do to with immigration law at first glance, the ruling raises important questions about the immigration consequences of foreign divorces in preparing and filing family-based immigration petitions where I-130 applicants have a foreign divorce. What happens if neither party to a *talaq* actually contests this

ritual? What if a person obtains *talaq* in the United States then seeks to marry a USC or LPR in this country?

A divorce can dramatically reduce the processing times for adult children of USCs and LPRs. It also can affect a USC's ability to petition for a foreign spouse. In some cases, the validity of a divorce even has implications on an applicant's familial legitimation and consequential eligibility for an immigration benefit (*see Matter of Hassan*, 16 I&N Dec. 16 (BIA 1976)). Notwithstanding, divorcing a spouse either to expedite the immigrant visa processing time or solely to upgrade to a more preferential visa category will result in an I-130 denial (*see Matter of Aldecoaotalora*, 18 I&N Dec. 430 (BIA 1989)).

A Foreign Divorce's Validity

When filing I-130 petitions on behalf of a client, an attorney must evaluate—among other factors—the validity of the petitioner and the beneficiary's divorces and marriages. For a domestic U.S. divorce, the general rule is that "a decree of divorce valid where rendered is valid everywhere and will be recognized … under the 'Full Faith and Credit' clause of the United States Constitution … provided that recognition would not contravene public policy." (*See Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983).) Thus, even if a divorce is not valid under another state's laws, a state will recognize the final divorce rendered in another state.

For a divorce obtained abroad, the principle of comity applies, in which a sovereign nation will recognize the acts of another nation as valid so long as the act does not offend public policy. (*See Aleem v. Aleem*, p. 8; *Matter of Assan*, 18 I&N Dec. 218 (BIA 1975).) While not given the benefit of "full faith and credit," a divorce obtained in a foreign country will be recognized in the United States so long as it does not run afoul of an individual state's public policy. For choice of law, the Board of Immigration Appeals (BIA) has held that the applicable law for determining the validity of a divorce is the law of the jurisdiction of domicile or residence at the time of divorce.[1]

Regardless of whether the foreign divorce was rendered abroad, I-130 divorcé(e)s must establish that they met procedural and substantive requirements of that jurisdiction granting the divorce (*see Matter of Ma*, 18 I&N Dec. 70, 71 (BIA 1974)). In the case of spouses no longer domiciled in the jurisdiction rendering the divorce, a foreign divorce will not be valid for immigration purposes if the spouses failed to establish domicile for some period of time as a married couple or failed to establish some other significant indicia of presence in the jurisdiction at the time of their divorce.

U.S. Citizenship and Immigration Services (USCIS) will likely not recognize a foreign divorce secured in absentia by parties who were neither physically present in the foreign jurisdiction at some point during the marriage nor domiciled there at the time of divorce.

Case law provides that the I-130 nondomiciliary must show that: (1) the divorcing parties married in the jurisdiction where they divorced; (2) they lived there as a married couple for a period of time; (3) they appeared for divorce proceedings in person or through an authorized representative; and (4) they were citizens of the country granting the divorce (*see Matter of Ma*). →

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'Til talaq Do Us Part

Should Clients Move to Another State?

As a result of the *Aleem* ruling, attorneys filing cases on behalf of Maryland clients will have to carefully inquire about *talaq* or other nontraditional divorces for clients. There is case law that suggests some states may recognize *talaq* for immigration purposes where the husband seeking it completely complies with the applicable jurisdiction's law in obtaining *talaq*.[2] However, comity will not be extended to a divorce that violates a state's law or public policy.

While states such as Maryland have a vested interest to ensure that equal protection and due process are afforded to its residents, there are some unintended consequences of this ruling for immigration purposes. What may I-130 applicants do if they are a party to a *talaq* and then they seek immigration benefits as existing or future residents of a particular state?

The *Aleem* ruling ends I-130 applicants' ability to obtain an immigration benefit if they ended their marriages through *talaq*. Under Maryland law, *talaq* violates basic equal protection and substantive due process (*see Aleem v. Aleem*). Thus, comity would not apply to recognize the practice of *talaq* even if at the time of divorce, the I-130 applicant was domiciled in the jurisdiction that rendered the *talaq* even though that applicant may not have had any intention of living in Maryland in the future.

> **[a] foreign divorce will not be valid for immigration purposes if the spouses failed to establish domicile for some period of time as a married couple or failed to establish some other significant indicia of presence in the jurisdiction at the time of their divorce.**

For example, a naturalized USC and Maryland resident files an I-130 for his adult Pakistani daughter who is married. The daughter and her husband enter the United States in H status. The couple then establishes residency in Maryland and becomes domiciled there. The husband later goes to the Pakistani consulate in Washington, D.C., to obtain a *talaq* in compliance with Pakistani law. The USC father will not be able to argue for the upgrade of his daughter's I-130 from the family-based, third preference category to family-based, first preference. Under Maryland law, her divorce through *talaq* is not recognized.

Now assume that the same daughter marries in Pakistan. Her marriage later ends when her husband divorces her through *talaq* while they are residing and are domiciled in Karachi. The daughter then enters the United States in H status. This *talaq* divorce still will not effectively upgrade this daughter to first preference even though Maryland has no interest in this Pakistani divorce proceeding and even though she was domiciled in Pakistan at the time of divorce.

PRACTICE POINTER: In both instances, the immigration attorney should advise the I-130 beneficiary to either pursue the I-485 application in another state that recognizes *talaq* as a valid form of divorce or secure a divorce that complies with Maryland law and, thus, cures the defect.

Ensuring Clients Are Properly Divorced

For immediate relative petitions, divorce issues are readily apparent. For backlogged cases, these issues may become critical, especially if I-130 beneficiaries reside abroad, waiting for severely backlogged cases that can take several years to process. Below are some tips that may be helpful in counseling clients.

Any Ceremony Counts

Ask the I-130 applicants if they have ever been married anywhere in the world and about the circumstances of any ceremony ending in marriage or divorce. Some clients erroneously believe that USCIS will not consider traditional ceremonies as valid for a variety of reasons or that such ceremonies are difficult to document. They believe that American customs differ significantly from some traditional customs and that these practices cannot be relied on to establish a divorce. It also is important to advise clients about the fraud and/or criminal implications of not fully disclosing all marriages and divorces on USCIS or consular applications.

Inform Clients of Backlog

Advise clients of the effects of divorce for family-based first, second, and third preference cases so that they can proactively provide updated documentation regarding the validity of new marriages and/or divorces. Clients often pursue I-130 cases without knowing the effects of the backlog. By informing them about the duration of the backlog in immigrant visa processing, they are more likely to keep counsel informed of subsequent marriages and divorces and to send the evidence of these events for review. In some cases, obtaining the proof of a foreign marriage or divorce can be time-consuming. At-

PHOTOS: LEFT: IGORSPB / DREAMSTIME; RIGHT: ILBUSCA / ISTOCK

torneys want to avoid delays in submitting additional evidence to USCIS or the National Visa Center just in case a visa category becomes current, but could later retrogress in subsequent months.

Beware of Ethical Matters

Immigration law is federal practice except where matters of state law creep in as they do for many kinds of family-based cases. Many immigration lawyers have offices in states where they are not licensed or have clients that have marriages and divorces in jurisdictions where they are not licensed. Attorneys' advice to clients about the divorces from other states or countries where they are not licensed is considered unauthorized practice of law (UPL). Immigration practitioners should review ethics rules regarding UPL to understand the limitations of advising clients on foreign divorces.

attorneys can seek affidavits from professors, anthropologists, or other experts from universities and institutions—such as the Smithsonian Institute—to establish the practice and customs behind traditional divorces.

PRACTICE POINTER:

If there is doubt as to the validity of a foreign divorce from a sister state or a foreign country, attorneys and their clients should seek the opinion of local family law counsel in the state or country where the clients obtained the divorce. Build relationships with family law attorneys on state law regarding divorce and marriage.

In the case of the Aleems, Pakistani counsel provided an expert affidavit on the substantive and procedural requirements of *talaq*. Such an analysis may be warranted for similarly situated immigration clients. →

PHOTOS LEFT: KICKSTAND / ISTOCK; RIGHT: DEM10 / ISTOCK

'Til Courts Do Us Part

DOS Document Finder

Review the U.S. Department of State's (DOS) document finder for appropriate country rules on divorce and marriage procedures and documentation. DOS offers a search engine on its website that details not only visa reciprocity with various countries, but also the availability (and, in some cases, the validity) of legal marriage and divorce documents (*see http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html*). This is a useful guide to see what kinds of information clients need to establish whether a divorce is valid.

Creative Fact-Finding

Be creative on how you can obtain evidence of nontraditional divorces and marriages. Attorneys can seek affidavits from professors, anthropologists, or other experts from universities and institutions—such as the Smithsonian Institute—to establish the practice and customs behind traditional divorces. This is especially helpful if the attorney suspects that the client may have had a separation instead of an actual divorce.

Divorce Consequences

It is unreasonable for clients to counsel their adult children to postpone marriage decisions for the sake of a green card. However, clients must be aware of the multi-year backlog problem and the effects of marriages and divorces. Careful evaluation of the validity of foreign divorces will ensure that clients can successfully petition for LPR status. ILT

SYNTA E. KEELING *is an immigration attorney with the Law Office of Nancy Lawrence in Fairfax, VA, where she specializes in employment– and family-based immigration.*

Notes

1 *Matter of Weaver,* 16 I&N Dec. 730, 733 (BIA 1979) (Holding that Bahamian law, not Connecticut law, controlled the validity of a divorce rendered in the Dominican Republic, where the divorcing couple resided in Bahamas at the time of the divorce. Connecticut law required parties to a foreign divorce to be domiciled in the jurisdiction granting the divorce.)

2 *Matter of Karim*, 14 I&N Dec. 417 (BIA 1973). (Finding that a *talaq* divorce in Pakistan is invalid for immigration purposes because the husband failed to comply with procedures set forth under Pakistani law.); *Matter of Faruque*, 10 I&N Dec. 561 (BIA 1964). (Recognizing a beneficiary's in absentia *talaq* since England recognized this divorce while the beneficiary was residing in England.)

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JOHN "JACK" HOEFFNER AND MICHELE PISTONE met in law school and began dating the day they were sworn-in to the bar together. Now married and the proud parents of Julia, their 4-year-old daughter, Hoeffner and Pistone work together in clinical education at Villanova University School of Law. Their combined scholarship and teaching has taken them recently to Malta, Italy, and now to American University Washington College of Law in Washington, D.C., where they are visiting professors in the immigrant rights section of the International Human Rights Law Clinic. Last year, they coauthored *Stepping Out of the Brain Drain: Applying Catholic Social Teaching in a New Era of Migration*, described by one reviewer as "an original, bracing, and controversial rethinking" of the consequences of migration from developing to developed countries. *Immigration Law Today* asked Hoeffner and Pistone about what it's like as a couple working together in the immigration field, the places their careers have taken them, and the projects they have in store.

Jack, Michele, and 4-year-old daughter Julia celebrate Carnivale in Malta.

Michele, how did you get involved in immigration law?

Michele Pistone: I began taking asylum cases pro bono when working as an associate at Wilkie, Farr and Gallagher. I had worked very closely with Elisa Massimino, who at the time was the legal director of Human Rights First. She asked me if I could substitute for her while she was going on maternity leave, and my firm allowed me to do this as a pro bono project. So for a period of several months during that year, I was placed as the legal director, working on the asylum provisions of the 1996 immigration bill. We created Committee to Preserve Asylum, which was a coalition of human rights groups and faith-based groups to fight against the one-year deadline. I met Phil Schrag during that time, who had just started his asylum clinic at Georgetown. He would have young lawyers, who want to go into teaching, work in the clinic to learn about clinical education. So I took that position and then went full time into teaching. The time I spent at Human Rights First was really pivotal—being able to work full time on immigration and also human rights issues.

How did you get started with immigration law, Jack?

John Hoeffner: I got started mainly through osmosis, being close, hearing about everything from Michele and talking it over. Michele likes to talk things out—I learned a lot that way. Eventually, we just started writing together. I had gone to Georgetown on a fellowship like Michele's, but in a different clinic—the appellate litigation clinic. Then I went to Fulbright & Jaworski and then Jones Day. After that, I was writing, but not legal stuff. More plays … It hasn't resulted in any financial windfalls or anything [laughing]… but it was good. And then our daughter was born and I was actually writing with Michele and taking care of Julia until I went back into teaching at Villanova.

You were in Europe recently?

MP: Yes, I taught a course in comparative asylum and refugee law [this past summer]. Villanova and St. Thomas Law School in Minnesota have a joint summer program in Rome at a school called John Cabot. It was really fun teaching it in Rome because the students were very interested in it. I was able to use the history of persecution of Christians in Rome, because we saw a lot of art during the day. My class was from six to eight at night, so we had the whole day to see the city. It was really neat to be able to relate what is happening now with immigration—particularly asylum and persecution—with the historical things that have happened in Rome. We lived right next to the Pantheon.

JH: Our daughter is so spoiled! She's four, she's lived in Rome, she talks about the Pantheon …

MP: And the Vatican—we saw the Pope.

JH: She talks about that. And we lived in Malta for six months when she was 2—she talks about that, too.

What were you doing in Malta?

JH: Michele had a Fulbright scholarship to study European asylum law, refugee law.

MP: And also to help the University of Malta create a refugee law clinic. Malta joined the [European Union] EU in 2004, and, as a result, they—like all the new countries joining the EU—had to develop an asylum system. They did that very quickly, and then shortly after they joined the EU, boatloads of people started coming that hadn't come to Malta before.

JH: Literally boatloads!

MP: Right. From Libya to Malta. They really had an undeveloped system in terms of how to deal with it. They were developing it and they did a really good job, but one thing that the university was thinking about was to create a refugee law clinic so that they could educate new →

On the Record with . . .

John Hoeffner & Michele Pistone

Authors, Scholars, Globe-Trotting Couple

by Richard J. Link

lawyers who could then help to represent the refugees. So that was the Fulbright scholarship that I got, and it was so much fun. It was a really great program.

JH: It was fun, that's true—but it was also very interesting just to see how highly charged the issue was in Malta. You know how highly charged it is here—well in Malta, I would think it's more so. In fact, when we were there, there [was] a bunch of firebombings or arsons of cars and houses of pro-immigration advocates. The security person from the embassy (the Fulbright is through the U.S. embassy and State Department) came to visit our apartment to check it out. He advised not to write anything for the newspapers until we left. So it was a good lesson to see the universality of the emotion attached to the issue.

What is your role as a clinical professor?

MP: One of the clinics that I teach at Villanova is called CARES (the Clinic for Asylum, Refugee, and Emigrant Services), and my students and I represent asylum-seekers who are fleeing persecution. I've been doing that for nine years at Villanova, and then this year I came to American as a visiting professor, and Jack and I are both teaching in the International Human Rights Law Clinic. There are 32 students in the clinic, half of whom are in the immigrant rights section, which is the section that we're teaching in. I find that it's a great way for students to learn about the practice of law. I find that in the context of clinical education, immigration is a wonderful field to be working in because it's so rich in a lot of ways. One is cultural difference—it's a wonderful way to teach students to be sensitive to cultural difference, because, by their nature, our clients are very different from us. Also, the stories of our clients [are] so compelling that the students really get deeply involved in the cases. They put in so much time and they're just so energetic and excited about the cases, because they see that they're going to have a real impact on someone's life …

[I]t really doesn't matter who gets the credit. If you're looking at another type of relationship that might become an issue more than it is with us.

JH: The stories are not only compelling but they're very accessible. Also, often in terms of legal process, the story has a beginning, middle, and an end, as opposed to other types of litigation you might think of where a student gets a small part of it and never knows what happens. That fact also has something to do with the enthusiasm of the students, because it allows them to take ownership of the case. They know they'll be around to the end. If you know you're going to have to deal with disappointed clients, you just feel more responsibility and more enthusiasm. There's the possibility of a good result at the end.

MP: At American, students are working on more than one case at the same time, and we have a really rich variety of cases. We're working on T visa, U visa cases, asylum, some cancellation of removal, voluntary departures, representing clients who are in detention, some H-2B work, and some §287(g) stuff, so it's a very good, broad range of cases.

Are you working on another big joint project? What do you have in store?

JH: We just finished a chapter on Catholic social teaching on unemployment law for an upcoming book.

MP: And then I have something I've been working on about the Iraqi refugee crisis. We've been talking about that a lot lately and trying to think proactively in terms of learning about the experience that we had during this war, and thinking about how our systems can change so that in the future when we do go to war, there's some kind of mechanism to proactively think about the potential ramifications and refugees that might flow and how to address that as part of the initial planning.

What is it like working and living together as a couple? What are the advantages or disadvantages?

MP: As a scholar, I love the fact that I have someone who I can brainstorm with in terms of my ideas. I can feel really comfortable because Jack's not going to critique me in the way that others might. He's very supportive, so it's like this open space where you can talk your ideas out with someone you trust. The couples who don't really know anything about what their spouse does—that just seems so odd to me because we work so closely together. I like the fact that we're involved in each other's professional careers. And as for the weaknesses—I can definitely tell you weaknesses!

JH: Let me hear them!

MP: Well one, I would say, it's hard to kind of segregate your life, because the benefit is also a weakness. There are times when there's a lot of work to do and sometimes if it's not part of your home life you can shut the door and leave it at work. But when it is part of your home life, you get home and you're making dinner and thinking and talking about work, and it's really hard to say "OK, we need to go on a date."

What about you, Jack—do you have any advantages that you'd like to add to Michele's?

JH: One is that it really doesn't matter who gets the credit. If you're looking at another type of relationship, that might become an issue more than it is with us. And this is very much the flip side of what Michele was saying, but the other person is always around. We can't turn it off either, so you have to take the bitter with the sweet. ILT

RICHARD J. LINK *is a legal editor at AILA Publications.*

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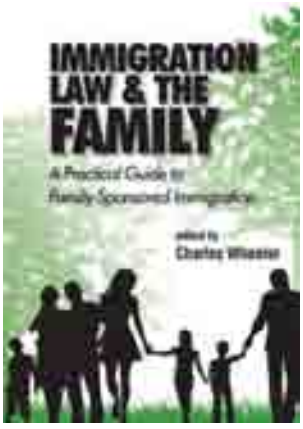

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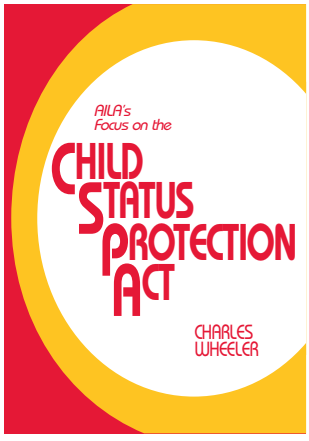

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A New Day for Unaccompanied Immigrant Minors

Perez-Olano's Impact on Their Right to Self-Petition

THE FEDERAL GOVERNMENT DOES NOT DISCRIMINATE when it comes to detention—it even detains unaccompanied immigrant minors. Like many minors in detention centers across this nation, John (not his real name) never knew his birth mother. He was "sent" by his abusive father to the United States from Kenya to go "on vacation" with a woman he had met just a day earlier. After he arrived in the United States, his father told him to "just stay," and he never heard from his father again. Scared and lonely, he saved money by mowing lawns and bought a bus ticket to Canada to try to find his stepmother. She was the only person who had ever taken care of him, but had left Kenya several years before him. When John attempted to cross the border into Canada (by himself), he was arrested by the U.S. border patrol and sent to a Chicago immigrant juvenile detention facility. He remained in that facility for several months until it became overcrowded, at which time he was transferred to a second detention center in Chicago. He was detained for six months before being transferred to a foster care family in Michigan. John remains in federal custody presently and is living with his fourth federal foster care family.

Fortunately, Congress has passed a law to afford minors an opportunity to become lawful permanent residents (LPRs). However, the U.S. Department of Homeland Security (DHS) implemented an internal policy that is inconsistent with the law passed by Congress and effectively deprives immigrant minors of their rights thereunder. Thanks to a recent court ruling in *Perez-Olano v. Gonzales, et al.*, No. 05-03604 (CD CA, Jan. 8, 2007), the overreaching internal policy has been stricken.

Special Immigrant Juvenile Status

Congress passed a law in 1990 that created a method for abused, neglected, and abandoned noncitizen children to become LPRs of the United States. The special immigrant juvenile (SIJ) provisions of INA §101(a)(27)(J) allow an immigrant child to petition U.S. Citizenship and Immigration Services (USCIS) to be recognized as a special immigrant juvenile. To be eligible for SIJ classification, a state juvenile court must make an SIJ-predicate order finding that: (1) the child is dependent on the court or a state agency; (2) the child is eligible for long-term foster care due to abuse, neglect, or abandonment; and (3) it would not be in the child's best interest to be returned to his or her home country. The SIJ-predicate order is often referred to as a "dependency order." Once a child obtains a state court SIJ-predicate order, he or she may file for SIJ status. A child who is granted SIJ status may then apply for LPR status under INA §245.

The SIJ statute contains a provision that limits state court jurisdiction with respect to immigrant children in federal custody stating, "No juvenile court has jurisdiction to determine *the custody status or placement* of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction" (emphasis added). (*See* INA §101(a)(27)(J)(iii)(I).) The attorney general and DHS instituted an internal policy that construed this provision to require that *all in-custody* minors seeking SIJ status first obtain specific consent from U.S. Immigration and Customs Enforcement (ICE) before proceeding to state court for an SIJ-predicate order even when the state court was not asked to determine the custody status or placement of the minor. On July 9, 1999, Thomas Cook, Acting Assistant Director, Adjudications Division, circulated a Memorandum for Regional Directors, containing field guidance on SIJs. It stated:

> In the case of juveniles in INS custody, the Attorney General's consent to the juvenile court's jurisdiction must be obtained before proceedings on issuing a dependency order for the juvenile are begun. Therefore, if a juvenile court issues a dependency order for a juvenile in INS custody without first obtaining the Attorney General's consent to the jurisdiction, the order is not valid.

This internal policy created several practical problems for minors seeking SIJ status, including John. First, there are apparently no guidelines or standards applied by ICE for deciding requests for specific consent. Indeed, the ICE officer at the ICE headquarters in Washington, D.C., responsible for deciding requests for specific consent, admitted that she did not know of standards articulating abuse, neglect, or abandonment, and that there is no standard of proof for granting requests (*see Perez-Olano, supra*,

at n.13). Second, there is no timeframe for ICE to decide requests for specific consent. There are numerous instances where ICE failed to make a decision on a request before the minor turned 18 years old, and thus "aged-out" of SIJ status eligibility (*see Perez-Olano*). Third, there is no mechanism for appealing a denial of a request for specific consent.

In John's case, the request for specific consent was submitted on May 2, 2007, and his counsel (also this author) has made numerous written and telephonic inquiries about the status of the request. These letters and telephone messages went unanswered for six months, until in November 2007, when ICE informed John's counsel that Mary Evans, Chief of the Juvenile and Family Residential Management Unit of ICE, and the officer responsible for deciding requests for specific consent, was reviewing the internal procedures for deciding requests for specific consent and that a decision would not be made until the revised procedures were in place. At the same time ICE was reviewing its internal policies, John, now 16 years old, was facing deportation back to Kenya where there is no one to care for him.

A federal court recently struck down the internal policy requiring specific consent for all in-custody minors. John's deportation was thankfully halted on January 30, 2008, due to a one-page letter from Evans stating that pursuant to *Perez-Olano*, "[T]he Department is enjoined from requiring specific consent when a minor only seeks state court jurisdiction for an SIJ-predicate order."

The *Perez* Decision

In *Perez-Olano v. Gonzalez*, a group of immigrant youth challenged agency policies and practices with respect to the special immigrant juvenile provisions of the Immigration and Nationality Act (INA). The plaintiffs challenged the defendants' policy requiring in-custody minors to obtain ICE's specific consent. The plaintiffs contended that INA §101(a)(27)(J) does not authorize the defendants to require specific consent for an SIJ-predicate order because such orders do not "determine the custody status or placement" of an in-custody minor. The defendants countered that a state court's SIJ-predicate order does alter "custody status and placement." Hence, the court was asked to interpret the scope of the SIJ-specific consent requirement.

On January 8, 2008, the U.S. District Court for the Central District of California entered summary judgment in favor of the plaintiffs with respect to their challenge to the specific consent requirement for all in-custody minors. The court held that the "specific consent requirement" was unambiguously limited to instances when a state court will determine custody status or placement (*see* INA §101(a)(27)(J)(iii)(I)).

At least for now, unaccompanied minors may freely exercise their right to seek SIJ status under the laws created by Congress.

The court then looked to dictionary definitions of the terms "custody," "status," and "placement" because the statute did not contain any such definitions. Applying the common dictionary definitions, the court held:

> When the federal government is itself an immigrant minor's custodian, the statute is clear that a state court lacks jurisdiction to alter such custody absent the federal government's specific consent. Similarly, when the federal government is itself an immigrant minor's custodian, the statute does not provide state courts with jurisdiction to alter such custody by seeking to place an immigrant minor in a foster home or other location, absent the specific consent of the federal government which has custody and therefore makes placement decisions … The specific consent requirement, however, does not apply to all SIJ-predicate orders, as is Defendants' policy. After all, a state court's SIJ-predicate order—that includes findings of dependency, abuse, neglect, and abandonment, and the child's best interests—does not alter a minor's custody status or placement, unless the state court additionally seeks to alter a particular child custody arrangement, assigns the child to a foster home, or takes some similar action.

The court explained that its reading of the statute furthered important congressional objectives, noting that Congress created the SIJ classification to "protect abused, neglected, and abandoned immigrant youth through a process allowing them to become legal permanent residents," and that the "SIJ statute affirms the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests." The court found that the defendants' reading of the statute, always prohibiting an in-custody minor from seeking an SIJ-predicate order unless he or she obtains ICE's specific consent, "is inconsistent with the plain language of the statute." Accordingly, the court entered a permanent injunction against the defendants, stating:

> Defendants' application of the specific consent requirement, under circumstances not provided for by the statute, deprives immigrant minors in federal custody of the SIJ protection prescribed by Congress … Immigrant minors seeking SIJ protection are vulnerable, are without parental support, and are unfamiliar with the legal system; thus, they are unable to bring challenges to Defendants' policy … The Court, therefore, orders a permanent injunction that requires Defendants to apply the specific consent requirement according to the plain language of the statute, as interpreted here. Defendants are enjoined from requiring specific consent before an immigrant minor may seek a SIJ-predicate order in state court. Defendants may not require specific consent when a state court's SIJ predicate order will not determine custody status or placement.

Impact on SIJS Cases

The *Perez* decision will have an immediate impact on pending requests for specific consent and on all future →

SIJS cases. Under *Perez*, immigrant minors will no longer have to obtain specific consent before seeking an SIJ-predicate order in state court. They can proceed directly to state court for the SIJ-predicate order, which is what John has now done.

PRACTICE POINTER: It is important for counsel to know that the *Perez* decision restores the rights created in the special immigrant juvenile provisions of the INA. However, it does not give unaccompanied minors any new rights nor does it automatically grant them special immigrant status.

Congress already recognized the need for creating a method for abused, neglected, and abandoned immigrant children to become LPRs, and the *Perez* decision merely reinstates that method by striking down the additional requirement imposed by DHS's internal policy.

Continuing Saga

Be aware, however, that Mary Evans's January 30, 2008, letter states that the "Department disagrees with th[e] [*Perez*] court's findings of fact and conclusions of law, and is considering whether to seek further review of the court's decision." In fact, ICE did file a notice of appeal at the U.S. Ninth Circuit Court of Appeals on February 5, 2008. The plaintiffs filed a cross-appeal on February 19, 2008. At least for now, unaccompanied minors may freely exercise their right to seek SIJ status under the laws created by Congress.

The *Perez* decision also serves as an important reminder of the need for checks and balances in our governmental system. The people elected the members of Congress. Congress passed a law creating rights. The executive branch (DHS) adopted an internal policy that interfered with those rights. The judiciary struck down the internal policy and restored the congressional rights. This is not the first time the executive branch was found to have acted beyond the scope of its authority, and this author is sure it will not be the last. Yet it is difficult to fathom the government's motives in implementing a policy that interfered with the rights of abused, neglected, and abandoned children. ILT

KRISTI NELSON *is a named partner in Chen Nelson Roberts Ltd. in Chicago.*

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PERM Related Services

Non-professional jobs need to be advertised only on 2 Sundays in the local newspaper, whereas the Professional jobs, besides the 2 Sunday ads, need 3 additional forms of recruitment to be conducted based on a list of recruiting methods contained in the rule.

PERM Service Options

Adnet can help with recruitment in 6 out of this list of 10 options provided by the Labor Department. We will continue to keep adding to the services that we already provide.

★ Daily / Weekly Newspapers
★ Local / Ethnic Media
★ Internet Job Search Sites
★ Employer Websites & Hosting
★ Campus Placement
★ Radio Ads
★ Trade / Professional Organizations

Media Research

We will continue to give you recommendations of where to run ads. This service remains free of charge and our recommendations will continue to reflect the changes that are required under the new rule.

Internet Advertising

There are numerous recruitment / employment websites on the Internet where we can place advertisements for you to fulfill all requirements under the new PERM rule

Most leading newspapers also run parallel web sites of their own where your ads (web-ads) can be placed. These web sites maintain the recruitment advertising profile of their parent newspapers.

Prevailing Wage Determination

Using the job description provided by the Attorney, Adnet will complete the prevailing wage form and send it to the specified State Workforce Agency.

Job Order

Adnet will prepare the job order form and send it to the employer or attorney (depending on the state specifications) to place with the State Job Bank for 30 days.

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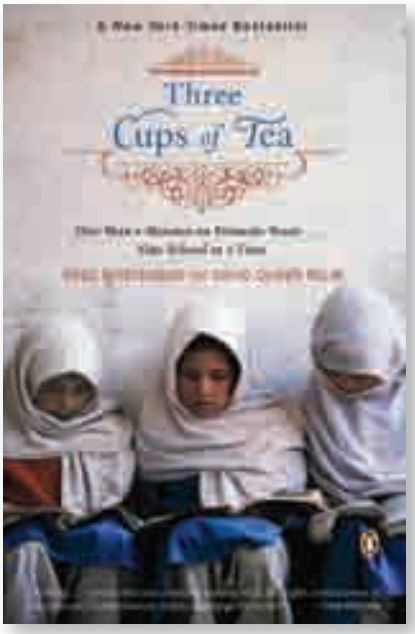
Toasting Education with *Three Cups of Tea*

ONE MAN FIGHTS ALMOST SINGLE-HANDEDLY FOR THE CHILDREN'S RIGHT TO EDUCATION in the volatile regions of Pakistan and Afghanistan. His vision to promote change has become a grassroots movement engaging global communities in a joint effort to build schools where both boys and girls can learn equally. This story of hope and inspiration is chronicled in the award-winning biographical account, *Three Cups of Tea: One Man's Mission to Promote Peace … One School at a Time* (Penguin; paperback, $15), co-written by journalist David Oliver Relin and Greg Mortenson, the man and driving force behind this crusade for education.

Greg Mortenson is the cofounder of the Central Asia Institute (*www.ikat.org*) and Pennies for Peace (*www.penniesforpeace.org*). He has a remarkable ability to bond with people from extremely different backgrounds and earn their trust. His efforts grew out of the vacuum of a lack of public education in many parts of Pakistan, and he brings a local perspective to the global war on terror. Mortenson has been awarded Pakistan's *Sitara-e-Pakistan* (Star of Pakistan) for his courage and humanitarian efforts to promote education and literacy in rural areas over the last 15 years. For more information, visit the official website at *www.threecupsoftea.com*.



The Formative Years

Growing up in Tanzania as the son of U.S. missionaries, Morteson learned compassion and personal responsibility at an early age. He attended the International School of Moshi—founded by his mother—and grew up seemingly without a concept of racial boundaries. Mortenson learned the importance of loyalty and cooperation from his father, who worked side-by-side with Tanzanians to build the Kilimanjaro Christian Medical Center (KCMC). Mortenson remembers, "The expats wanted him to say, 'Look what we've done for you.' But he was saying, 'Look what you've done for yourselves and how much more you can do.'" Mortenson remembered his father's words years later when he, too, set out to empower villages through local initiatives, careful not to impose his own ideas on the local population.

Mortenson's sister, Christa, served as an additional source of inspiration in his life. Suffering from severe epilepsy, Christa struggled courageously to live a normal life. The beginning of *Three Cups of Tea* introduces Mortenson as a trained nurse and an avid (some would say obsessive) climber, who is trying to cope with Christa's recent death. Seeking to honor the memory of his sister, he attempts to climb the world's second tallest peak, K2, located in northern Pakistan, but fails to make it to the top.

Wrecked with exhaustion after his failed climb, Mortenson stumbles to the secluded village of Korphe. The villagers welcome him with overwhelming hospitality. Still delirious, he vows to build a school, hoping to battle poverty in the region through education. Mortenson returns to San Francisco to sell his few belongings and raise money for the Korphe school. He immediately faces his first setback in the ignorance and passivity that he encounters among the wealthy American population. Growing increasingly frustrated, he sits down to write 580 letters to celebrities across the nation, in the hope of receiving the financial support needed to embark on his mission. After much waiting, a sole response from a rich businessman and climber is enough to get Mortenson back on his feet and on a plane to Pakistan. That $12,000 check—along with Mortenson's rugged determination—is enough to dramatically change Korphe with its first school.

Once back in Korphe, Mortenson faces reality. No longer malnourished or feverish, he sees his utopia with new eyes—barred by corruption, poverty, and tribal warfare. His conviction is further put on trial when he is abducted for eight days by renegades, but his determination to deliver grows stronger with each obstacle he encounters. Unaware of the complexity of his mission, Morteson embarks on a lifelong journey that will bring together two worlds over three cups of tea.

Aliens with Extraordinary Skills: Of Love and Green Card

"Aliens with Extraordinary Skills," which opened on September 22, 2008, at the Julia Miles Theater in New York City under the direction of Tea Alagic, is a play by internationally acclaimed Romanian playwright Saviana Stanescu about two clowns, Nadia and Borat, who come to the United States from Moldova and Kazakhstan on extraordinary ability visas to work at a circus. Upon arriving, the clowns discover that the circus does not exist, and receive letters threatening deportation from immigration authority. They move to New York City and meet Lupita, a Dominican immigrant, and Bob, an American who falls in love with Nadia.

The play is based on a true story of two people arrested in Florida for sponsoring immigrants through extraordinary ability visas to work at a circus that existed only on paper. The immigrants, who were unwittingly in possession of fraudulent visas, received letters threatening deportation after they arrived in the United States. In "Aliens," legacy Immigration and Naturalization Service (INS) plays its role through letters the clowns receive, and in the two INS agents who appear repeatedly in dreamlike sequences to threaten the main characters with deportation. INS is given a stylized, fantastical role, mostly in the nightmares of the two main characters.

Called "a delightfully cracked fairy tale" by *Time Out* New York and "an enchanting piece of theater" by the *New York Times*, Stanescu describes the play as "four people alienated in different ways" who are "trying to engineer happiness to see what their place in the world [is]." A Bosnian immigrant, Stanescu has obviously translated her own experiences into a touching and effective experience for the theatergoer. "Aliens with Extraordinary Skills" ran through October 26, 2008.

For more information, see www.womensproject.org/aliens_playwright.html.

Courtesy of REBECCA SCHAPIRO, *a paralegal at Curran & Berger.*

Three Cups of Tea

The book's title is derived from a custom of the Balti people, who inhabit the villages surrounding K2 and make most of their living off the mountains. A village chief, Haji Ali, taught Morteson, "The first time you share tea with a Balti, you're a stranger. The second time you're an honored guest. The third time you share a cup of tea, you become family …You must make time to share three cups of tea." Under Ali's guidance, Mortenson learned that building relationships was just as important as building projects.

Relin's decision to write *Three Cups* in the third person—with "Mortenson" appearing about once per paragraph—disrupts the flow a bit. That being said, Relin does not fail to incite in the reader both an awe for Mortenson's determination and accomplishment, and a curiosity for the geography and customs of rural Pakistan and Afghanistan. Relin is at his best recounting in great detail the long negotiating sessions and meals that Mortenson shared along the way, and the tremendously difficult journeys he endured just to reach some of the villages in which he worked. It is hard for us to understand the remoteness of the mountains of Pakistan. On Morteson's climb up K2, for example, it took him 70 days just to get to where he stopped short of the top. Nothing moves quickly, which is a real test for an American accustomed to doing business efficiently. After his first negotiating session, Relin describes the scene:

> In the late afternoon of the second full day of haggling, Mortenson, swollen with tea, sloshed toward the Khyaban with Abdul on the back of a cart pulled by a small horse that looked even more exhausted than they felt. His shalwar pocket was crammed with receipts for hammers, saws, nails, sheets of corrugated tin roofing, and lumber worthy of supporting schoolchildren. All the materials would be delivered beginning at dawn the next day to the truck they'd hired for the three-day trip up the Karakoram Highway.

Vulnerable Hero

Mortenson is a heroic figure, and like most heroes, he goes through times of isolation and sadness. He also attacks a problem with maniacal intensity and an almost complete disregard for personal safety and comfort (and at times hygiene). One friend describes barbecuing on a snowy night when Mortenson was asked to go out and turn the salmon. "I looked out on the patio," she said, "and saw Greg, standing barefoot in the snow, scooping up the fish with a shovel, and flipping it, like it was the most normal thing in the world … That's when I realized that he's just not one of us. He's his own species."

With his insight into custom and culture, Mortenson conquers the hearts of both Afghanis and Pakistanis, the respect of both friends and foes. He is welcomed and →

accepted by tribesmen and government officials, along with imams and even some Taliban members. His selfless dedication to the region allows him to form new bonds of loyalty throughout Pakistan and northern Afghanistan, enabling him to take on new challenges and build more schools.

Mortenson's ability to convince the people around him on the importance of education—especially for girls—makes him a striking figure in the war against terror. The madrasahs, Muslim schools that are commonly funded and directed by Islamic fundamentalists, are the sole path to education for many young boys and girls. Mortenson seeks to fight terror by providing an alternate future for these children, although the number of madrasahs seems to dwarf the number of schools that he builds.

As of 2008, Mortenson has established more than 78 schools that provide education to over 28,000 children, including 18,000 girls. According to Mortenson, educated women are more likely to restrain their sons from joining the Taliban. Furthermore, educated women are able to provide for their families, which limits Taliban tactics to recruit the vulnerable and the poor. As Nicholas Kristoff points out, "Military force is essential in Afghanistan to combat the Taliban. But over time, in Pakistan and Afghanistan alike, the best tonic against militant fundamentalism will be education and economic opportunity." (N. Kristoff, *The New York Times*, "It Takes a School, Not Missiles," July 13, 2008).

I realized that if we were counting on our military technology to win the war on terror, we had a lot of lessons to learn.

—Greg Mortenson

The political history of Pakistan further suggests the need for new strategies to combat extremism. Former President Pervez Musharraf's seizing of government power in 2001 through a *coup d'etat* allowed for increased U.S. involvement in Pakistan. Al-Qaeda had begun to spread rapidly throughout the region, and Musharraf became America's prime ally in the fight against terrorism. However, the alliance failed to prevent the Taliban insurgency from settling in the mountains of Afghanistan and Pakistan. New madrasahs were built from generous donations provided by wealthy Al-Qaeda leaders

like Osama bin Laden, and public schools were quickly outnumbered in the northern region. The Taliban lured children into the madrasahs with the promise of a better future. Mortenson was almost alone in offering boys and girls an alternative.

Books over Bombs

Mortenson's credo of education over bombs becomes even more relevant as the political situation in Pakistan unfolds after Musharraf's resignation in August 2008. The power vacuum following this event allowed for a short period of uncontrolled Taliban activity in Pakistan, and it is yet to be seen how current President Asif Ali Zardari will respond to the Taliban threat.

The need to think outside the box, as Mortenson has done, is highlighted in one of the last pages of *Three Cups of Tea*. He is flying above the Arabian Sea, and across the aisle is a:

> [B]earded man in a black turban staring out the window through a high-powered pair of binoculars. When the lights of ships at sea appeared below them, he spoke animatedly to the turbaned man in the seat next to him. And pulling a satellite phone out of the pocket of his shalwar kamiz, this man rushed to the bathroom, presumably to place a call.Down there in the dark was the most technologically sophisticated navy strike force in the world, launching fighters and cruise missiles into Afghanistan. I don't have much sympathy for the Taliban, and I didn't have any for Al-Qaeda, but I had to admit that what they were doing was brilliant … with even their primitive radar knocked out, they were … [using] plain old commercial flights to keep track of the Fifth Fleet's positions. I realized that if we were counting on our military technology to win the war on terror, we had a lot of lessons to learn.

For an interesting discussion of Mortenson's work on the Diane Rehm Show at the National Public Radio station, see *http://wamu.org/programs/dr/08/03/19.php*.

DAN H. BERGER *is chair of the AILA Board of Publications and a named partner at Curran & Berger in Northampton, MA, where* EMMA COATES-FINKE, *a sophomore English major at Vassar College, is a research assistant.* NINA MAJA BERGMAR *is from Sweden, where her father founded The World's Children's Prize for the Rights of the Child (www.childrensworld.org). She is a sophomore Government major at Dartmouth College and interned at Curran & Berger last summer.* *The authors wish to thank Ethan Plunkett, graduate student at the University of Massachusetts, for his insights on this book.*

Moving On

An Immigration Lawyers' Primer for Retirement

AFTER MORE THAN 30 YEARS OF PRACTICING LAW, setting up and running a law firm, teaching at the local law school, and writing and lecturing about immigration law policy, I retired two years ago at age 63. It was the right decision, but I do not proselytize. I direct these comments and offer modest advice to those who are considering retirement. For those who may be feeling restless, increasingly aware of one's mortality, bored with routine, permanently exhausted from current policies, or ready to fulfill a long-postponed dream, moving out of the practice of law—temporarily or permanently—may well be the right step.

A Transition, Not a Conclusion

Retirement in this context means leaving the active practice of law to do something else. It does not mean for one to don a polyester leisure suit on one's way to a decade in the Barcolounger. If you are feeling like all you want to do is pull the covers over your head, you need to engage, not retire! If you are in the doldrums when you read this and grab the thought of retirement like a castaway's lifeline, *do not retire*. Do something less permanent—a sabbatical, a vacation, an Outward Bound weekend, yoga—until you get your bearings and regain your balance. Don't confuse an internal unhappiness with a need to change your outside professional situation; retirement under those conditions is really cold-turkey withdrawal from all that is familiar—shocking to the mind and body, and dangerous.

The "retirement" I refer to is a transition, not a conclusion. It is a chance to open new doors and new windows, let in light and air and see what other facets might shine. It is a time of growth and excitement at all that is still out there, waiting to be discovered, admired, or enjoyed. It requires a certain amount of resources—internal and external—and a lot of preparation.

Have a Plan and Follow Through

Retirement shifts your life and the lives of those around you at a profound level. It should not be done on a whim, in anger, or in fear, but rather as a carefully considered option, checked against who you are, what you want, what you can do, and what those who will be most affected think, feel, and do about your decision.

You should know the psychology that attends most retirements, the stages that can range from euphoria and giddiness to anxiety and depression. You want to avoid the latter, embrace the former, and never feel trapped.

The Personal Inventory

Although I had a three-year plan in place to exit the practice, I had no understanding of how much my decision was mirroring the path my father's career had taken. He was my subconscious model for how to live a rich, productive, and very long life (he died at 97), the key to which was moving on to different challenges even at the peak of a fulfilling career.

A good way to begin your plan is a soul-searching list that covers these points:

1. **What you like and don't like about your current job;**
2. **What you would miss about your current job; and**
3. **What you can and cannot change about your job to better reflect your goals.**

Prioritize your answers to have a deeper level of awareness about what fulfills you and what doesn't. Include the emotional as well as the practical. It isn't enough to say, "I like my clients." Why do you like them? What about them touches something inside you? Be especially candid about assessing whatever status practicing law has brought you. Can you give that up? Can you be satisfied without your title? What happens when no one calls for advice? Dig deep and be honest.

Run your list by two or three of your closest friends (including spouses and partners) who know you better than you care to admit. Pick people who have seen you at your worst, not just your shining best, so their observations are as comprehensive as possible. Be prepared to hear some painful truths; not every decision you made was brilliant, and your soft professional underbelly is not all that at-

tractive. Unless you have a solid picture of your present work performance as evaluated by those who are touched by it on a regular basis, your list will be myopic and misleading.

Finally, go see a professional. Outside help is critical to the success of being emotionally and mentally prepared for The Big Step. There are psychologists who specialize in transitions, who know the pitfalls and surprises of such big changes in one's life, and who have worked with professionals doing just what you are considering.

Be sure that your spouse/partner goes with you for some of the sessions, or has separate professional resources. Sudden togetherness can be its own recipe for disaster unless the likely issues ("This is MY space!" "Just because I am home doesn't mean I have to do all YOUR chores!" "What do you mean, 'budget?'") are anticipated and discussed well before they occur.

My own experience is instructive. Such insight could only have come (and did!) from a pro, from someone who asked a lot of questions that seemed barely relevant at the time but turned out to hold the key to my motivation pre-retirement and my satisfaction after.

The Number Crunch

For everyone I know who has been in this game for decades, the money is secondary to the emotional and intellectual satisfaction practice affords. Just because you can leave the practice does not mean you should.

Most people think retirement is all about money; quitting is the reward for making and saving enough assets to continue a comfortable lifestyle without a paycheck. This is the wrong conclusion—at least for immigration lawyers.

Any financial planning software asks the key questions to determine your fiscal readiness: what do you have; what will you have; what do you owe; what will you owe; what money do you need to live at an acceptable level of comfort; and what is that level of comfort? If the magic number is there, great! But if it isn't, don't throw the retirement option away. Take a harder look at what you think you need, what you think defines "comfort," and tie it to what you want to do when you leave the practice.

If you cannot afford to leave the practice, even if you are truly a good candidate to do so (*i.e.*, leaving for healthy reasons), you should not. In that situation, you need to take a harder look at what resources you truly need and where you might find tradeoffs that let you achieve your magic number on a faster timetable.

The Execution

Once you are sure you want to retire, develop a plan to transition your practice. This can mean merging with another complementary law firm (my choice), closing down the practice, developing a successor from within or without, or any combination of those options. *The lodestar for your transition plan* →

AILA Silver Circle Interest Group

Several long-time American Immigration Lawyers Association (AILA) members have started a new interest group to focus on issues of interest to members with many years of experience in immigration practice and in AILA. The new group, which has the working title of "Silver Circle," is in the process of generating ideas and making plans for future activities and events, such as working together on significant projects, social events, mentoring, CLE programs, and much more.

One event is already scheduled for the 2009 AILA Annual Conference in Las Vegas, where AILA members Ken Stern and Roxana Bacon will lead a seminar focusing on transition and retirement issues for lawyers. A business meeting and a social event also are planned. Stay tuned for more information about the Silver Circle Interest Group in the next few months!

must be your clients; they must be given your total focus to ensure someone as skilled and caring as you are manages their cases, and their financial arrangements with you must be honored.

Keeping Track of Clients

Do a complete inventory of your clients using a database so you can easily update and track cases by whatever information fields are best suited to your client profile. For example, a family-based practice would track where the second preference cases are sitting so you know which matters have long life-lines and can be transitioned with a minimum of anxiety for the client and a minimum of energy by the receiving attorney. An employment-based practice would likely track dates critical to H visas, as they are in constant crisis and cannot be ignored for even a week. In all cases, you need to develop transition letters to clients so that they know your timetable and exactly what you recommend they do to continue their legal work responsibly.

Financial Cost

It is important to know the financial cost of one's transition plan, such as how many fees one needs to return for cases that have not been completed but are already billed. (*Note:* Always err on the side of generosity; a thousand dollars is small compared to the cost of defending a malpractice or ethics claim.) How much is malpractice insurance to cover the years in which you have

continuing exposure? What is the cost of health insurance for you and/or your family if you have to buy coverage? Do you want to give employees a severance package or bonus? What do you do with cases that no other lawyer wants?

Notice to Clients and Staff

I implemented my transition plan—which involved merging with a national employment law firm—over a three-year period, but I did not inform my clients until 60 days before my departure. Earlier would have been premature since the merger was conditioned on the other firm meeting certain milestones, the last of which occurred six weeks before my projected final day.

In notifying clients of your decision, be sure you leave enough time to avoid panic, but not so much that you create it. In whatever format you decide to deliver your notice, spend the money to have an expert in legal ethics review the document to be certain it meets your state bar's code of professional responsibility.

As with clients, notice to staff should be given only when you are positive you are going to leave, when you have done all the transition logistics you can do without their knowledge, and when there is still time for them to seek other employment. You must anticipate departures as soon as you announce your own and plan accordingly. You may be able to keep key staff until the lights go out if you pay a bonus and/or severance, but you also may be able to handle the last month alone, or with temporary help.

Notice to the Public

In notifying government agencies, professional organizations (including your state bar), and fellow attorneys of your retirement, check with your state bar so you know what is mandatory. Any notices you draft should be succinct, strictly factual, and inform the people about how to reach you in case of an emergency. You want to be sure that no client is abandoned in case some odd circumstance occurs.

Hire Good Counsel

If you are merging with another firm or anointing someone to wear your crown, be sure you hire your own lawyer to manage the process. No one can afford to sell a business—directly or indirectly—without good legal counsel, and when the sale involves departure from a highly regulated profession, every detail needs to be done correctly. Hiring effective counsel to handle the business side of your retirement process is the wisest money you will spend—except for that psychologist mentioned earlier!

Let the Good Times Roll!

Although enjoying the culmination of your retirement planning and execution would seem to be self-executing, it often is not. Perhaps because we have lived decades running hard in a race managed not by us but by clocks, judges, adversaries, clients, co-workers, and state bar rules, dropping →

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into leisure takes a toll. This is where the in-depth planning really pays off. You should know the psychology that attends most retirements, the stages that can range from euphoria and giddiness to anxiety and depression. You want to avoid the latter, embrace the former, and never feel trapped.

Enjoy the Euphoria … Then Get a Grip

I wallowed in not having any deadlines; my only daily routine was morning coffee and reading The New York Times *until my eyes blurred.*

For the first month, expect to feel like you did during the first weeks of summer vacation when you were in the fourth grade—wildly exuberant! Then get a grip. Shape your days so you feel rooted. Be sure you exercise everyday; it provides discipline, releases healthy endorphins, keeps you flexible, and even a little pleased with yourself. If you need to, lose weight; retirement is a lot more fun with a smaller butt and less wheezing.

Do Something That Matters

I climbed a few very high mountains, rode in a 50-mile bike race, and did some ocean swims, each time with my heart in my throat, and each time tickled that I could still push myself into the unknown.

Volunteer your time, but don't pick the first opportunity. And stay away from pro bono immigration cases! Think about something completely outside your known world and go for it. You'll have fun,

stay smart, meet new people, and be energized by the portability of your basic skills: organization, fact-finding, and strategic thinking. Because my husband and I love to travel and are away from home six months out of the year, my choices are global. We work with a women's weaving co-op in Nicaragua, a rural school in Laos, and an eco-guide school for AIDS orphans in Tanzania. We are constantly learning and always glad for the time we have spent in such offbeat ways and places.

If you get drawn back into working for money, do something that you have always wanted to do. Six months after retirement, I was recruited to be the first executive director of a progressive communication/policy group, Western Progress. I agreed to handle the start-up duties for six months but not a day more. My last task was to replace myself, and that happened in the last two weeks. Without a hard stop, I would probably still be there. But with the drop-dead date, I found I was efficient and effective. So whatever you do that looks like a job, be sure you have an option for an early out so that you don't end up needing yet another retirement plan!

Renew acquaintances. How many times have you wished you had time to be a better friend, parent, son, or daughter? Well, now you do. Also, make yourself do something really challenging. You may want to take up competitive Scrabble, read the Great Books, or learn Tuvan throat singing; it doesn't matter as long as you do something you've never done before.

No Looking Back

Don't look back! If you are nervous, even a little scared, and long for the predictability of that old routine, reread your list of personal inventory from above until you truly remember why you needed to exit. Then get back to forming the "new you" so that your retirement is just a series of adventures that *you choose*, for as long as you want to do them. ILT

ROXANA "ROXIE" BACON *retired after 33 years of practicing law in Phoenix, and was an adjunct professor at ASU Sandra Day O'Conner College of Law for 25 years. She was the first woman Arizona State Bar president and received the ABA Margaret Brent Award for lifetime achievement in 2006. Bacon continues to speak and write on immigration law and policy, but has taken up jewelry making, and has just climbed Mount Kilimanjaro for the third time.*

The Ninth Circuit Changes Course on Visa Waivers and Immediate Relative Adjustments

THE NINTH CIRCUIT U.S. COURT OF APPEALS MAKES SOME BAD DECISIONS, and then it makes decisions like *Momeni v. Chertoff*, 521 F.3d 1094 (9th Cir. 2008)—so devoid of analysis and contrary to existing precedent and immigration laws, that it is unfathomable how a three-judge panel would do it. Sadly, despite the case's being plainly contrary to existing precedent and so deeply flawed in several respects, a petition for rehearing and suggestion for rehearing en banc was denied. The decision leaves the vast majority of nonimmigrants who entered under the visa waiver program (VWP) unable to adjust their status in the Ninth Circuit with any degree of certainty that they will not be arrested and deported while it is pending.

Depending on the Kindness of Strangers

In 2005, this author wrote an article, "Visa Waiver Adjustment Applicants Must Depend on the Kindness of Strangers," regarding a client who was admitted to the United States under the VWP and filed an adjustment of status (AOS) application (*see www.ilw.com/articles/2005,1208-montag.shtm*). U.S. Citizenship and Immigration Services (USCIS) would not consider the application because the nonimmigrant was in U.S. Immigration and Customs Enforcement (ICE) custody under a removal order pursuant to the INA §217(b) "no-contest" provision. This provision states that a nonimmigrant may not be provided a waiver unless he or she has waived any right to (1) review or appeal under the act of an immigration officer's determination as to his or her admissibility at the port-of-entry into the United States; or (2) contest, other than on the basis of an application for asylum, any action for his or her removal.

The Ninth Circuit decided that the nonimmigrant could not challenge USCIS's inaction. The result of the holding in that case was ambiguity as to what would happen to a visa-waiver entrant who applied to adjust status. As the court stated below:

> When a visa-waiver entrant files [an] adjustment of status application, he or she has no protection from summary deportation until he or she finally adjusts status. Until then, he or she is not protected by the statute that allows for adjustment of status, regulations and policy that require adjudications, or a Constitutional protection of equal protection, but like Blanche DuBois in Streetcar Named Desire, he or she must depend on the kindness of strangers.

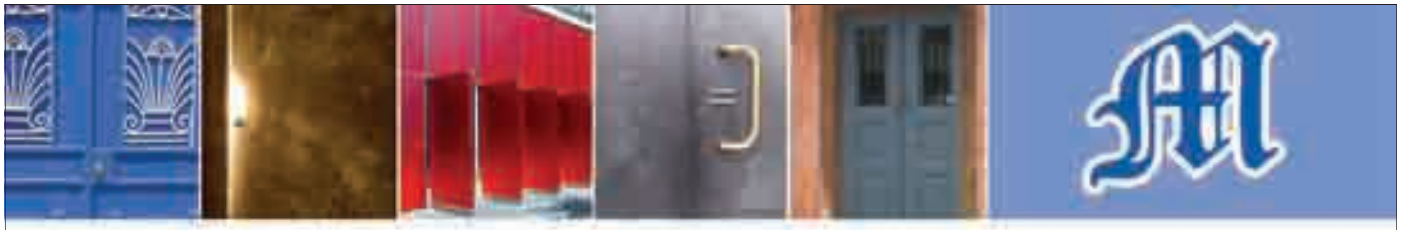
The Court of Appeals Extends Rights to Visa-Waiver Applicants

A reversal of fortunes came in 2005 when the Ninth Circuit issued *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2005), an unambiguous act of kindness to Ms. Freeman and to all visa-waiver entrants who can adjust status to that of permanent residents through immediate relatives (IR). Freeman had two problems that brought her to the Ninth Circuit. She entered under the VWP, and at the time of her admission, she was married to a U.S. citizen (USC). Before the expiration of her 90-day visa-waiver period of admission, she filed an AOS application. Her husband then died. The Ninth Circuit concluded that the death of her husband after he filed a petition did not stop him from being an IR petitioner so AOS could continue. The court then addressed the issue of whether Freeman could adjust as a visa-waiver entrant, looking to the INA §217 statute, which creates a unique status of visitors who do not need to apply for visas. These visitors are disadvantaged in several ways. The VWP limits visa-waiver entrants to a non-extendable (8 CFR §214.1(c)(3)(I)), non-changeable (INA §248(a)(4)), and non-adjustable status (INA §45(c)(4)). An exception to the bar to AOS exists, however, as part of INA §245(c)(4).[1] According to *Freeman* at 1034:

> [A visa waiver entrant] may seek to adjust her status to that of a permanent resident through an immediate relative petition, the procedure invoked by the Freemans. *See Faruqi v. Dep't of Homeland Security*, 360 F.3d 985, 986–87 (9th Cir. 2004) (noting that VWP visitors are eligible "for adjustment of status … on the basis of either (1) an immediate relative petition or (2) an application for asylum."); *see also* 8 CFR §245.1(b)(8).

The court also noted, "Once an adjustment of status application is filed, certain procedural safeguards are in place to ensure fair adjudication of the application (*see* 8 CFR §245).

The *Freeman* court concentrated on Congress's exception to the strictness of the VWP at INA §245(c)(4), →



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and held that this provision meant that visa entrants could adjust under the section. The court also reasoned that it would be anomalous to give this small class of aliens the right to AOS notwithstanding the prohibitions of the VWP but deny them the ability to pursue that right with the protections of administrative review in immigration court and the Board of Immigration Appeals (BIA), as well as judicial review. After *Freeman*, nonimmigrants did not have to rely on ICE's kindness, but had the full panoply of rights afforded to them, as long as INA §245(c)(4) applied. Practitioners in the Ninth Circuit had reasonable assurance that an alien who filed an AOS could pursue it; at least if the adjustment packet was filed before ICE issued a removal order under the authority of the VWP.

The Ninth Circuit Reversal

And then came *Momeni v. Chertoff*. While Freeman based its analysis strictly on INA §245(c)(4), *Momeni*—in unfathomable distinction—did not even mention it. To be entirely clear, the court decided a case about visa waiver AOS without mentioning the statute that explicitly permits it. And as one might imagine, if a court is going to decide whether something is permitted without addressing the statute that permits it, the conclusion will be that such thing is not permitted. This is what the *Momeni* court decided—that ICE has virtually unfettered discretion to grab a visa-waiver entrant with an AOS application pending and deport the applicant. The exception to this is if an AOS was concluded within the 90-period of authorized stay. As *Momeni* decided, "There are legal means by which aliens may marry United States citizens, obtain visas, and obtain adjustment of status, but overstaying the 90 days for tourists in the Visa Waiver Program is not among them." (*See Momeni* at 1096–97.)

Of course, a court of appeals should not ignore a binding precedent, in this case, *Freeman*. How does a court work around the nettlesome issue of a case-on-point contrary to the ruling it wants to make? It distinguishes the case, as *Momeni* did:

> In *Freeman*, the alien married the United States citizen before entering the Visa Waiver Program and sought an adjustment of status within the 90 days she could stay. But she was thwarted from adjusting her status by the subsequent death of her husband in a car accident, shortly before their first wedding anniversary. We noted that there are "likely to be a small percentage of VWP entrants in Mrs. Freeman's position," [444 F.3d at 1036 n.9] a very sympathetic one, and held that in that case the adjustment of status statute superseded the no contest provision. [444 F.3d at 1037.]
>
> We characterized this no contest clause in *Handa v. Clark* [401 F.3d 1129 (9th Cir. 2005)] as "the linchpin of the [Visa Waiver] program, which assures →

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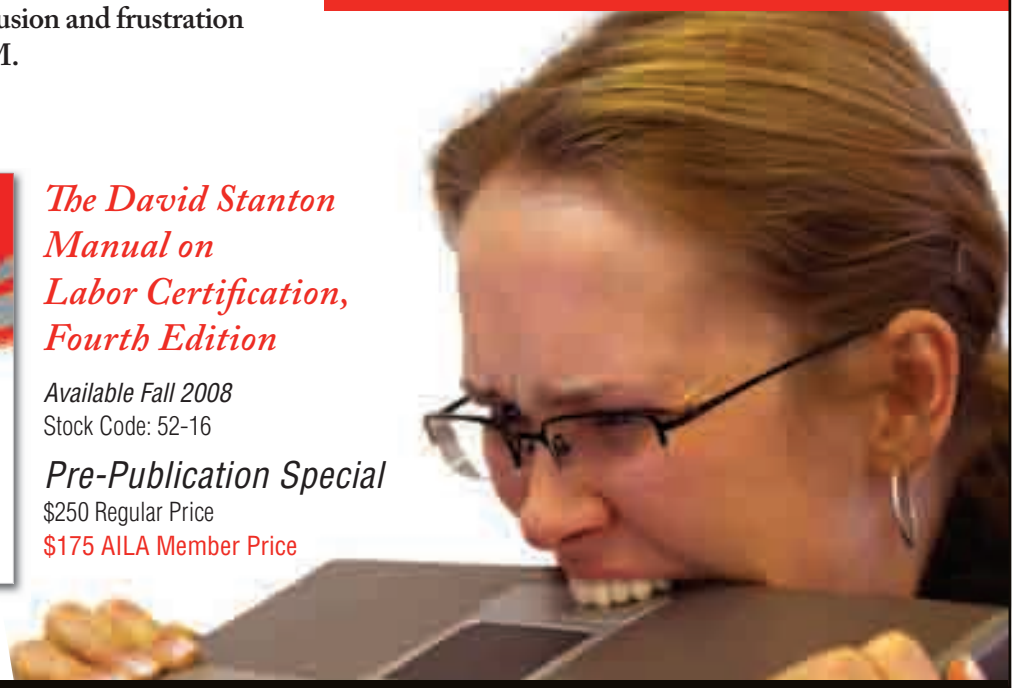

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that a person who comes here with a VWP visa will leave on time and will not raise a host of legal and factual claims to impede removal if he overstays." [*Handa v. Clark*, 401 F.3d 1129, 1135 (9th Cir. 2005)]. Freeman was an exception because she was eligible to adjust her status at the time she arrived, under 8 USC §1254 (sic), she applied within her 90 days, and she would have obtained her adjustment of status but for her husband's death. *Momeni*, though, doesn't fall within this narrow exception.

Flawed Distinctions

The *Momeni* court finds an exception to its rule pertaining to visa-waiver entrants—even those adjusting as IRs. The exception is for those IR visa-waiver entrants who can accomplish an AOS within 90 days, the authorized period of stay for a visa waiver entrant (see INA §217(a)(1)). There are several flaws to this exception.

Maintaining Status

INA §245(c)(4) states that an alien "admitted" under the VWP can adjust status. Nothing states that the alien must maintain that status. While aliens seeking AOS other than as IRs must maintain their status,[2] this rule does not apply to IR adjustment applicants (*see* INA §245(c)(2)). There is no basis for the court to read a requirement of being in status into INA §245(c)(4), presuming that the *Momeni* court even read INA §245(c)(4), a presumption for which there is no evidence in the decision.

Unrealistic Time Period for Completion

It is nearly impossible for anyone to adjust status in less than 90 days. No USCIS district processes AOS applications in less than 90 days. This means that no one can meet the requirement of adjusting before the period of admission expires. Further, the period of time it takes to adjust status is completely beyond the applicant's control. *Momeni* did not even carve out an exception for those who filed while still in status.

Risky Conduct

Momeni notes favorably that Freeman entered the United States under the VWP while married to her husband and that she and her husband filed the AOS application before her 90-day period of stay expired. The only reason she did not complete the adjustment, says the court, is because her husband died. This is ludicrous on two counts. First, the AOS would not have been concluded in 90 days even if Mr. Freeman was immortal. As noted, AOS processing simply does not happen in 90 days—and probably cannot happen because of all the steps involved. Second, for a nonimmigrant

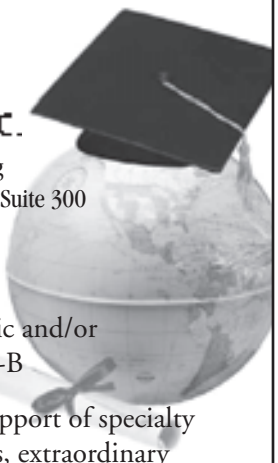
to enter the United States and be in the position to file an AOS application that can be adjudicated in 90 days would run afoul of the rules related to nonimmigrant admission, rendering the admission at a minimum, questionable, and also, possibly fraudulent.

U.S. Department of State regulations and INA §214(b) make clear that a nonimmigrant seeking admission under the VWP must have nonimmigrant intent (*see* 9 FAM 40.63 N4.7-1). A foreign national who comes to a port of entry and tells an officer that he or she is seeking admission as a visa waiver applicant, but has a USC spouse and will be filing for AOS, will not be admitted into the United States and would most probably be charged with fraud if these facts are concealed. Also, if the nonimmigrant does not disclose these facts and is admitted under the VWP, he or she could conceivably be denied AOS for using the VWP in a fraudulent manner. In fact, this is what happened to Freeman. USCIS subsequently denied her AOS for abusing the VWP (*see Freeman v. United States Dist. Court*, 489 F.3d (9th Cir. May 29, 2007) (*Writ of mandamus denied*)). The exact facts that made Freeman worthy of a special exception in the eyes of the *Momeni* court and distinguishes her case from *Momeni's*—being married at the time of admission and filing an adjustment immediately after her admission—are negative factors under the Immigration and Nationality Act,[3] and could have barred her admission altogether.

U.S. Department of State regulations and INA §214(b) make clear that a nonimmigrant seeking admission under the VWP must have nonimmigrant intent.

Momeni states that the *Freeman* court had these factors in mind when it decided the case because it indicated that it was carving out an exception for what was likely to be a small percentage of VWP entrants in Freeman's position (*see Freeman* at 1036 n.9]. This is actually a distortion of footnote 9, which states:

> We are not persuaded by the government's argument that allowing Mrs. Freeman to escape the no-contest clause (even if only to renew or review her adjustment of status application prior to being removed) would counter the purpose of the VWP, which was to →



avoid the potentially onerous and numerous proceedings that would otherwise occur when DHS attempts to remove those who have overstayed their 90-day visas. Not only will there likely be a small percentage of VWP entrants in Mrs. Freeman's position, but Congress itself granted the adjustment of status right to these aliens. There is no reason to suspect that Congress failed to appreciate the consequences of its act.

The footnote in *Freeman* is quite explicit in that it finds that Ms. Freeman escapes the "no-contest" clause by filing an AOS application, not for having filed it before her period of admission expired. The court also is clear that the reason for this is what Congress intended. The court does note that the exception is for a small number of visa-waiver entrants, but by this, it means that of the millions of foreigners who come to visit the United States under the VWP, only a small number fall in love with and marry USCs and seek AOS or have adult USC sons or daughters that can petition for them—not that a small number come to the United States already married to USCs with the pre-conceived intent to file an AOS only to have the USC spouse die in a car crash (*see www.dhs.gov/xlibrary/assets/statistics/publications/NI_FR_2006_508_final.pdf*).

Curing the Oversight

The Ninth Circuit has bigger fish to fry than the VWP. Still, it is lamentable when one panel can ignore a key statute in interpreting the law and can misinterpret a prior precedent in order to reverse it without going en banc. It also is lamentable that no judge took enough time to notice this casuistry when Momeni filed for en banc reconsideration. The issues in *Freeman* and *Momeni* may come back to the court of appeals one day. Hopefully, that panel will assert that its holding in 2005 was not as trivially narrow as the *Momeni* court would have us believe, and the court will address this curious intra-circuit split. ILT

JONATHAN D. MONTAG *is a member of the Immigration Law Today Editorial Advisory Board and practices immigration law in San Diego.*

[1] The clause states, "[Adjustment of Status shall not be applicable to] an alien (other than an immediate relative as defined in section 201(b)), who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217."

[2] See INA §245(c)(8); *Matter of M–*, 5 I&N Dec. 622 (BIA 1954).

[3] But see *Matter of Cavazos*, 17 I&N Dec. 215 (BIA 1980), which held that, "Where a finding of preconceived intent was the only negative factor cited by the immigration judge in denying the respondent's application for adjustment of status as the beneficiary of an approved immediate relative visa petition and no additional adverse matters are apparent in the record, and where significant equities are presented by the respondent's United States citizen wife and child, a grant of adjustment of status is warranted as a matter of discretion." In Freeman's case, she had no children and her husband died, presenting none of the equities present in *Matter of Cavazos*.

CHAVEZ WORLD

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How to Talk to Conservatives About Immigration

THE DEBATE OVER IMMIGRATION REFORM displays no known patterns. People across party lines say they want secure borders. Some Democrats and Republicans even offer similar solutions to the issues of higher visa quotas and the chance for "illegals" to gain legal status. (For what it's worth, the platform of the Libertarian Party goes even further in its support of open immigration.) While those who favor reform come from all sides of the aisle, the vocal opposition to laws that would help working families who are out-of-status comes primarily from conservatives. This always has seemed strange to me, a long-time conservative, because I think conservative principles support the call for this type of immigration reform. Still, the original definition of the word "conservative" is someone opposed to change, so it is not surprising to see their opposition to new legislation.

A Change Will Do You Good

Immigration reform is not going to happen until conservatives are convinced that such change is a good thing. If American Immigration Lawyers Association (AILA) members are going to persuade conservatives to join in this movement, one must consider their basic motivations. It is too easy and harmful to our goals if we dismiss opponents of immigration as simple racists. Many are opposed to reform based on ideas about national security, national sovereignty, employment, the fear that immigrants will be a further drain on the welfare state, or simply that immigrants will change "our way of life." The best way to bring conservatives to our side, then, is to show them that immigration reform is consistent with basic conservative principals, and that providing workers a path to legal status will help grow the U.S. economy. In other words, show conservatives that if you apply conservative principles to the issue, the logical conclusions are that more immigrants will improve our standard of living, and that bringing "illegals" into status actually improves our national security.

Not all people use logic to make political decisions. Yes, there are those who will fight immigration reform because they are simply uneasy with the idea of large groups of foreigners settling in the United States. Conservatives, however, are usually proud of the fact that their beliefs are based on logical principles. (How many times have we heard conservatives complain that liberals make decisions based on emotions rather than logic?) An appeal to the underlying principles of conservatism and logical application of those principles to the facts should go a long way to diminish the resistance conservative Americans have to immigration reform. Still, there will be those who cannot explain their opposition to increased immigration—it just doesn't "feel right" to them.

Giving these workers some way to work legally not only keeps businesses, families, and the U.S. economy stable, it creates wealth and ensures that these workers will be paying the payroll taxes that will be so critical in just a few years.

Conservative Principles Support Immigration Reform

The classic conservative model has clear ideas about what is required for a successful society. All of these ideas and principles can be used to make the case for immigration reform. Thus, by identifying the basic principles around which most conservatives make political decisions, one can show the arguments for reform that are supported by these conservative principles.

The nuclear family is vital to a productive society.

Conservatives believe the nuclear family (father, mother, and children) is the foundation of every stable, successful society. There is no record in human history of significant economic progress in any country that was not based on the nuclear family. As a corollary, children usually do better when they grow up in a house with both parents. Conservatives often argue

that juvenile delinquency and its associated costs for society occur more frequently in children from single-parent households. For this reason (and also for religious reasons), conservatives often work against any legislation that threatens the traditional nuclear family (regardless of whether the threat is real or just perceived).

It is important that AILA members share experiences with conservative friends about how many families exist now with one U.S. citizen (USC) parent and one parent who is out-of-status. The Pew Hispanic Center has estimated there are as many as two million "mixed-status" families in the United States. It is likely that if the non-USC parent is forced to go back to the home country, the USC children would still grow up here. That means children growing up without both parents, and a household more likely to go on public assistance as it becomes unable to pay for basic necessities. According to the Federal Interagency Forum on Child and Family Statistics study of 2006, "[C]hildren living in families with a female head with no husband present continued to experience a higher poverty rate (42 percent) than children living in married-couple families (8 percent)."

Wealth is created by productivity; it is not a zero-sum game. Both parties benefit from a voluntary transaction.

With regard to the economy, it is easy to say that conservatives favor free markets and limited government, but there are even more basic principles that support those beliefs. For example, conservatives believe that wealth is something created by humans. Just because one person gets richer does not mean another gets poorer—a rising economic tide lifts all boats.

Both parties to a voluntary transaction believe they will be better off after the transaction is complete. If a party does not feel like he or she is coming out ahead in a transaction, he or she does not complete the transaction. Employment transactions work the same way. You would not hire someone if you did not think you were getting value for your money, and an employee will not work for you if one does not think one is getting enough money to justify the work one provides. Conservatives believe government should stay out of this picture, because no central authority can make these decisions for a large and dynamic population. Only you can decide what transactions work best for you.

The United States becomes wealthier and stronger as more voluntary transactions (including employment) take place.

In less than 150 years, the United States became the wealthiest country with the strongest economy on the planet. This wealth and economic activity came largely from the private sector, with individuals making their own economic decisions. Freedom alone does not do this; there are plenty of small countries with few laws or regulations, yet those countries are not wealthy. The United States has a system of government that protects investment, contract rights, and private property rights. The government also provides the means for legal redress to everyone. If you don't get what you were promised from a voluntary transaction, the government gives you a forum to make your claim and to collect on it if you are successful. For that reason, a stable economy is only possible if there also is a stable government.

If a conservative argues that illegal aliens are a drain on social services, remind him or her that people who are born in the United States are generally a drain on government services (primarily education) for at least 18 years until they grow up and start working. An adult immigrant who starts work when he or she enters this country, however, immediately contributes to the economy, and the government did not have to invest money in his or her education and care from birth.

Taxes and regulations reduce the number of voluntary transactions, thus reducing the creation of wealth.

Conservatives also say, repeatedly, that if you tax something you get less of it. We've all heard the campaign arguments from conservatives that when government taxes →

income and capital gains, the incentive to work and invest is reduced. Such a tax does not necessarily have to be monetary for it to act as a disincentive; government regulations alone can increase the cost of something to the point that the regulations become a strong disincentive to action.

For some reason, many conservatives believe that undocumented workers do not pay taxes. This is a strange belief, because conservatives are always the first to argue that any new tax on a business is merely passed on to consumers in the form of higher prices. Many undocumented workers still have payroll taxes taken out of their paychecks, even if they use a tax identification number instead of a Social Security number. Immigrants pay sales taxes on everything they buy. There isn't just the regular state sales tax, but also gasoline taxes, excise taxes, and other taxes imbedded in products. Immigrants have to live somewhere, even if they are just renting, so they pay property taxes on their home, either directly or through their rent. Many voters do not realize this, but even undocumented workers often file income tax returns with the IRS and pay income tax.

Let's free up the resources that DHS currently uses to chase "Pedro the carpenter" so it can spend more time chasing the next Mohamed Atta.

Government bureaucracy by its nature is inefficient and makes mistakes, and the baby boomers are about to become a huge drain on Social Security and Medicare.

There are other ideas that conservatives usually hold or, at least, will probably agree with if you ask them. One is that government bureaucracy is inefficient and makes mistakes, mostly because it is not operated on a profit incentive. Another is that Social Security and Medicare are in trouble because the baby boomers are about to start retiring. Also, one cannot have a stable society if more than 10 million people are "unregistered" and living outside the system. Finally, small businesses generate more new jobs each year than large corporations. (Both McCain and Obama made this point often during the campaign.)

Baby boomers are about to enter their retirement years. This huge bulge in our demographic curve is now starting to draw Social Security checks. Millions will become eligible for Medicare in just a few years. In a recent speech at North Carolina State University, former Labor Secretary Robert Reich warned that, while Social Security can survive the baby boomers with just a few minor tweaks in the current system, the real problem will be the huge medical costs for baby boomers that the federal government is obliged to pay through Medicare. For that reason, it would really help to have 10 million or more immigrant adults working in the system legally, contributing through their payroll taxes to the Social Security and Medicare systems. This would actually reduce the amount of payroll taxes the rest of Americans would otherwise have to pay. Driving these productive workers away, on the other hand, will only weaken the existing Medicare system and cost all of us more in the long run.

Conservatives must be forced to acknowledge that, by their own principles, all of the labor performed by immigrants has made this country wealthier. Even with millions of undocumented workers in the United States and with the regular influx of many legal immigrants, the unemployment rates are considerably low. All of this labor generates wealth that helps the entire economy. To switch to an aggressive deportation "solution" not only stops the generation of wealth, but it disrupts families, employers, landlords, retailers, and the tax base for some communities. Even without deportation, we cannot keep a stable government if millions of people have to live outside the system. Giving these workers some way to work legally not only keeps businesses, families, and the U.S. economy stable, it creates wealth, and ensures that these workers will be paying the payroll taxes that will be so critical in just a few years.

Deter Anti-Immigration Proposals

Taking this action even further, one has to block some of the ridiculous proposals floated in Washington, the purpose of which is

supposedly to combat illegal immigration. With the alleged goal of preventing an immigrant parent from earning a paycheck, I am often shocked to hear fellow conservatives calling for national identification programs, employment registry programs, or some other national bureaucratic nightmare that would transfer a huge amount of power to Washington over every business decision regarding the hiring of a new employee. There have been many horror stories about innocent people showing up on the "no-fly" lists at airports as suspected terrorists. Imagine a job offer that was suddenly taken away because the company could not get approval from some bureaucrat in Washington, D.C., to hire you. I actually tried to make this point to an aide for a conservative congressman during AILA's Lobby Day last year. The aide was confused by my opposition to these plans, and she told me that businesses actually want these government controls over their ability to employ whomever they wish. In any event, (and my experience with Congress aside) it should be easy for trained lawyers to point out the contradictions in philosophy of any conservative that argues more regulations and burdens on businesses are a good thing.

One of the strongest objections to immigration reform for undocumented workers is that the current immigration morass is the product of prior amnesties. Economist and syndicated columnist Thomas Sowell, for example, has argued in his column that, when three million immigrants were able to legalize their status, that motivated 10 million more undocumented immigrants to come here, and they are now awaiting their own amnesty. If we are persistent, we should be able to convince opponents of immigration reform that, no matter whether it encourages future illegal entries, the existing workers in the United States have made it a wealthier country, and the standard of living has gone up because of them. There is no static number of jobs available, since jobs are created by a dynamic and free economy. More people create more demand and that creates more jobs, more wealth, and our rising economic tide lifts all of our boats.

National Security Interest

One final concern about immigration is national security. While I agree with my fellow conservatives about the need for better security at the borders, I am baffled by the idea that it somehow makes us more unsafe if we get millions of people who already live among us to register themselves in the system. The 10 million people who are outside the system already are here—inside the United States. How is it more unsafe if these people give the Department of Homeland Security (DHS) their names, addresses, and employment information? If anything, providing undocumented people an avenue to become part of the system makes this country safer. Once the "illegals" are registered, classified, licensed, numbered, and tagged like the rest of us, we can let U.S. Immigration and Customs Enforcement chase the small number of truly dangerous aliens who choose to stay invisible. Let's free up the resources that DHS currently uses to chase "Pedro the carpenter" so it can spend more time chasing the next Mohamed Atta. That should make our country more secure.

This is certainly not an exhaustive list of arguments that can be used in favor of meaningful immigration reform when talking to conservatives. Like many political topics, some people already have made up their minds and will not consider new arguments, even if they are supported by logic. Still, we need to be persistent in our attempts to engage conservatives in debate about their opposition to expanding the base of legal immigrants working in the United States, and it should help if we do it using the principles that conservatives profess to hold dear.

W. RANDALL STROUD *practices immigration law in Raleigh.*

PRACTICE PROFILE:

Meet Steven Thal

Steven "Steve" Thal heads a two-attorney, seven-person immigration practice in Minnetonka, MN. He is a 1982 cum laude graduate of the University of Minnesota Law School. Prior to law school, Steve spent two years in the Peace Corps in Ecuador. He is a past chair of the American Immigration Lawyers Association's (AILA) Minnesota/Dakotas Chapter and past chair of the Minnesota State Bar Association immigration section. He has served on various AILA national committees and has been a frequent speaker at AILA seminars. In addition to serving on the AILA Board of Governors, Steve also has served for two terms on the American Immigration Law Foundation Board of Trustees. He holds an "A-V" rating from Martindale-Hubbell and is listed in its Directory of Preeminent Lawyers. *Minneapolis-St. Paul* magazine and *Twin Cities Business Monthly* have recognized Steve as a "Super Lawyer" in immigration law. He also has received the AILA National Presidential Commendation for "creative and tireless advocacy" on behalf of immigrants.

GETTING PERSONAL

DATE & PLACE OF BIRTH: February 13, 1954; St. Paul, MN

FAMILY: spouse, Peggy Brakken-Thal, married for 33 years; two children, (1) Christina Brakken-Thal, age 24, 2006 Williams College graduate in mathematics, currently an MD/PhD student at the University of Minnesota; and (2) Sean Brakken-Thal, age 21, 2008 University of Puget Sound graduate in math and physics, now a student at University of Southern California, pursuing a second degree in aeronautical engineering.

FAVORITE TYPE OF FOOD: Seafood—fresh fish, oysters, shrimp, lobster, mussels, calamari

MUSIC CURRENTLY IN YOUR IPOD/MP3/IPHONE:
Jersey Boys, Franki Valli and the Four Seasons, Alison Krauss, Michael Buble, Norah Jones, Paul McCartney,

Chicago, Bonnie Raitt, Dave Frishberg, Nachito Herrera

FAVORITE BOOK/AUTHOR: *Living Poor: A Peace Corps Chronicle* by Moritz Thomsen; Favorite author: James Michener

MOST PRIZED POSSESSIONS:
A woodcarving from a Russian immigrant client, Leonid Zakurdayev, which won first place at the International Wood Carver's Congress.

MOST MEMORABLE PERSONAL MOMENT:
The birth of my children.

MOST MEMORABLE PROFESSIONAL EXPERIENCES:
Receiving the AILA President's Award for "Creative and Tireless Advocacy," and traveling as the "road manager" and tour leader with client, Cuban pianist Nachito Herrera and the band Puro Cubano, to the St. Lucia Jazz Festival in the Caribbean.

THREE TIPS FOR IMMIGRATION PRACTITIONERS:
1. Your current clients are your best source for additional work and referrals for new clients.
2. Don't be afraid to say no to a bad case or decline matters you're not interested in pursuing.
3. Be active professionally: get involved in advocacy, write articles, speak to groups, volunteer, and stay connected with other attorneys, both within and outside the immigration field.

WORDS TO LIVE BY:
Wisdom is the reward you get for a lifetime of listening when you would rather have talked.
— Mark Twain

BROWN AROUND TOWN

Who benefits from an ICE Workplace Sweep?

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STATUS CHECKS ✔

Honors and Appointments

Haynes and Boone, LLP has been selected as the **2008 recipient** of the **W. Frank Newton Award** for **outstanding pro bono efforts**, one of the highest honors awarded by the State Bar of Texas.

Maria Trina Burgos was honored for her dedication and service on behalf of the **Pro Bono Project** by the **Cuban American Bar Association** in Miami.

Shawn Matloob has been awarded the **Outstanding Volunteer in Public Service** award by the Volunteer Legal Services Program of the **Bar Association of San Francisco**.

Past AILA Utah Chapter Chair **Barbara Melendez** is named by ***Business Connect*** magazine as one of Utah's top **Influential Hispanic Business Leaders**.

Kelly McCown was honored by **Bay Area Lawyers for Individual Freedom** with its **2008 Minority Bar Coalition Unity Award** for her legal services and leadership on diversity issues.

2008 Super Lawyers magazine named **Kristina Rost** a "**Rising Star**" in New England.

Mira Mdivani was named **Best of the Bar** by the ***Kansas City Business Journal*** for the fifth consecutive year.

Maile M. Hirota was selected by her peers as one of the "**Best Lawyers in America**" in Immigration, 2008–09. She also was honored as one of Hawaii's "**Forty Under 40**" leaders for 2008 by the ***Pacific Business News*** in Honolulu.

Stetson Law School in Florida has created the **Immigration Law Association**, with **Jean Pierre Espinoza** elected as the association's **first president**.

Announcements

The Law Offices of Jan Allen Reiner will be moving to 291 Broadway, Suite 1407, New York, NY 10007. The telephone, fax, and e-mail information will remain the same.

Audrey L. Allen recently spoke at the **Montgomery Country Bar Association's Labor and Employment 2008 Update** on immigration law basics for employment attorneys.

Michele Coven Wolgel is giving **lectures in** Haifa and Netanya, **Israel**, about U.S. citizenship and other relevant points of the current immigration law.

Patrick Hatch was a **speaker** on immigration law for employers at the **Seventh Annual Fusion Hispanic Market Advantage Conference** in Cary, NC.

On the Move

Yun "Wendi" Kao has recently joined **Webber Law Firm, LLC** in Edina, MN, as an associate attorney, focusing on employment-based immigration law. Wendi is fluent in written and spoken Mandarin Chinese, Hokkien (Taiwanese), and Japanese.

Amy Novick has recently joined **The Haynes Immigration Law Firm** in Washington, D.C., as of counsel. Amy will add her J-1 waiver and investor practice to the firm's business, family, and deportation defense practice.

Audrey L. Allen has recently joined **Halberstadt Curley, LLC** in Pennsylvania as of counsel, and will chair the firm's newly established Immigration and Nationality practice.

Author, Author

Mira Mdivani published a book entitled ***I-9 Self-Audit, the Best Way to Prevent I-9 Disasters***.

David Chapman wrote an **op-ed** about the presidential election, which was published in the ***Fargo Forum*** and picked up nationally by **Google News**.

New Parents

Summer Robertson and her husband, James, welcomed daughter **Liberty Keil** on June 1, 2008.

Heather Segal and her spouse, Ezra Braves, are excited to announce the birth of their third son, **Jaden Harrison**, on August 25, 2008.

In Memoriam

Robert P. (Bob) Wiemann, Chief of the Administrative Appeals Office (AAO) at U.S. Citizenship and Immigration Services (USCIS), has died. Mr. Wiemann served for more than two decades in the legacy Immigration and Naturalization Service and with the current USCIS. He will be remembered for his efforts to raise the standing of the AAO, improve the quality of its decisions, and bring transparency to the office.

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