



The Compass®

Immigration News

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Experience Key to Finding a Good Immigration Attorney



MANAGING PARTNER,
DAVID SWAIM

Over the past few years finding a good immigration attorney has become increasingly difficult. The number of attorneys who claim to be immigration attorneys in North Texas has grown from less than 20 ten years ago to more than 150 today. The problem is that many of these attorneys have very little experience and very often can do far more harm than good. In addition to improper advice, bad strategies and charging clients for work which is never done, we have seen recent examples of individuals taken to the Immigration Service for interviews and placed in deportation proceedings even though the applicant was never eligible for any benefit. The situation is getting so bad that we are now seeing at least one case per week where an inexperienced attorney commits such serious errors that there is no way to correct the problem. There are, however, ways for you to find a good, honest immigration attorney who has experience and can properly advise you and your family.

WHAT TO LOOK FOR

One of the best ways to do this is to determine if the attorney is board certified by the State Bar of Texas. To qualify for this certification, the attorney must complete a required number of cases in all areas of immigration law, must have practiced for at least five years, and must pass an extensive written examination. Only two states have this expert designation, Texas and California, so take advantage of this when looking for an immigration lawyer in Texas.

Of course, not all good immigration attorneys are board certified. There are a few attorneys who have many years of experience and can properly represent you in the immigration process but you need to ask some basic questions to find out if the attorney is right for you. *Continued on page 6*



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By:
MAGGIE MURPHY,
ATTORNEY AT LAW

Unanswered Questions Regarding the Child Status Protection Act

In the last issue of the Compass, I discussed the Child Status Protection Act of 2002 (CSPA), which addressed the problem of minor children losing their eligibility for certain immigration benefits on their 21st birthdays, as a result of significant delays in government processing. The age-out dilemma that faced many families who were awaiting permanent residence was resolved in many cases by this law.

The CSPA states that, so long as certain criteria are met, children are able to retain the “child” classification, even after they turn 21, for the purpose of obtaining permanent residence. For example, a child is 20 when her father’s company obtains an approved labor certification application on his behalf. The company immediately files an I-140 immigrant petition for the father. Regardless of when the I-140 petition for the father and corresponding I-485 applications for his family are approved, the daughter will be protected from “aging-out.” Under the CSPA, the criteria were met, and so her age is “frozen” under 21, she is a “child.”

But what happens to her H-4 status? The father was H-1B and his family were all H-4. Federal regulations define H-4 dependent eligibility as being valid only for the spouse and

minor children of the H-1B nonimmigrant worker. When the daughter turns 21, therefore, she should technically lose her status. And if she remains out of status for over 180 days, she is not eligible for adjustment of status to permanent resident in the United States.

It seems only logical that, since the purpose of the CSPA is to protect children from aging-out so that they may obtain immigration benefits, either in the form of an immigrant visa or adjustment of status to permanent resident in the United States, valid nonimmigrant status should also be “frozen” to protect the child from aging out. However, the CSPA does not address this issue.

We have requested an opinion on this issue from the Bureau of Citizenship & Immigration Services (BCIS, formerly INS). Until this question is answered by the BCIS, we suggest that all children in this situation consider changing status from H-4 to F-1 student, or some other category in which they will be able to maintain valid status in the United States and be eligible for adjustment of status. If you have questions about whether your fact scenario fits into the CSPA, please contact our office immediately so that we may assist you with the CSPA analysis.

“So long as certain criteria are met, children are able to retain the “child” classification, even after they turn 21. . .”



Illegal No Longer

Senator Cornyn Introduces Guest Worker Legislation



BY: MEGAN
RAESNER,
ATTORNEY
AT LAW

Just how many millions of undocumented workers are there in the United States? Where are they employed? What taxes do they or don't they pay?

Senator John Cornyn soon hopes to be in a better position to answer these types of questions. The Republican from Texas has recently announced his bill for a "guest worker program," which would allow aliens to apply for a "blue card" if they are from eligible foreign countries and have an employer sponsor.

Such a card would grant those qualified the right to enter the United States to work legally on a temporary basis. The authorized period of stay under Cornyn's plan depends on whether the guest worker in question is considered seasonal or non-seasonal. A seasonal worker would be permitted to work in the U.S. only nine months a year, but would be entitled to reapply each subsequent calendar year. Conversely, while the non-seasonal guest worker would be granted his status 12 months at a time, he would be limited to a total of three years of authorized stay.

However, after completing three continuous years in the program and returning to an eligible foreign country, the participant may then be able to submit an application for legal permanent residency, which could receive expedited consideration. A guest worker would be unable to adjust his status to that of legal permanent resident within the United States.

According to the bill, certain classes of aliens would be rendered ineligible to enjoy guest worker status: those under the age of 18 and those who have been convicted of one

felony or three misdemeanors in the U.S. Any undocumented worker already in the U.S. would also be disqualified from participation unless he applies for guest worker status within the first year of the program's enactment.

By passing this bill, Cornyn hopes to alleviate the feelings of helplessness and vulnerability inherent in being an undocumented worker. The bill strictly prohibits employers from paying a guest worker less than minimum wage and obligates them to compensate employees in a timely manner. Further, the bill does not leave the guest worker without remedy should any infraction occur; indeed, an employer found in violation of the law could face not only a debarment from the program for up to 10 years, but also the same penalties that would attach were the worker a U.S. citizen could be imposed. But to get to that point, guest workers would experience peace of mind knowing that they could report any exploitation or abuse without fear of deportation by the BCIS or retaliation from their employers.

Cornyn also asserts that his program will balance the foreign workers' concerns and U.S. interests. An employer seeking to hire a guest worker must first advertise the available position within the local market, so as to give able and willing U.S. citizens and residents the opportunity to apply. The Senator ambitiously declares that his plan will preserve homeland security, while facilitating more efficient enforcement of labor and immigration laws. Only time will tell whether Cornyn will be successful in convincing the rest of Capitol Hill that his guest worker program will in fact provide a "common sense solution to our broken immigration system."



BY: BARBARA NELSON
SENIOR PARALEGAL

Immigration Updates

THE DEPARTMENT OF STATE (DOS)

If you need a new visa to reenter the United States – advanced planning is strongly advised before traveling. The latest news from DOS is that most nonimmigrant visa applicants are now required to have a personal interview as part of the visa processing. Delays are definitely expected in most countries. Already, DOS has indicated that there are delays of four weeks or more in certain countries. DOS states that it can't predict how long it will take to adjudicate individual cases. Always check with the consulate before making plans to obtain a visa. Either call or check the DOS website for updated information.

As of July 23, 2003, DOS has requested the Consuls to prioritize students and exchange visitors' interviews due to the upcoming fall semesters. Hopefully, this announcement will help to eliminate the problems seen last summer and fall with students and professors coming to the U.S. during the implementation of the security clearance checks.

Changes to the Visa Waiver Program (VWP): DOS has announced that effective October 1, 2003 all travelers entering the U.S. under the VWP must present a machine-readable passport. If you do not carry a machine readable passport, you will be required to obtain a visa before coming to the U.S. This applies to both adults and children.

What is a machine readable passport? According to DOS, "a machine readable passport can generally be identified by the presence of two type-face lines printed at the bottom of the biographical page that can be read by machine." You can check with your passport office to determine if you have the correct passport. Remember this change only pertains to individuals entering the U.S. under the visa waiver program.

Changes at the U.S. Consulates in India – All AC offices in India are now requiring a personal interview for all categories of nonimmigrant visas. The drop-off box procedures have also changed. You will need to check the DOS website to see if it will have an impact on your pending travel plans. Appointments must be scheduled through the website. There are several categories which are exempt from the personal interview. They are (a) persons renewing or replacing a visa of the same category which is still valid or which expired less than twelve months ago; (b) persons sixty years of age or older (if a visa has never been refused); (c) children under 14 where both parents can prove they have U.S. visas and they are physically present in India; (d) government officials on official travel for the central government.

DOS – Revalidation Update: It is currently taking ten to twelve weeks to renew a visa through the State Department. Remember the Visa Office only accepts revalidations of employment categories: E, H, I, L, O, and P from applicants who hold a visa of the same category and, of course, meet other criteria.

THE DEPARTMENT OF LABOR (DOL)

Unfortunately progress on cases at the SWA (State Workforce Agency) and DOL offices remains the same. Most SWA offices are still working on April, 2001 or earlier. DOL backlogs are increasing including the RIR (Reduction in Recruitment) cases. We are hearing that NOF's (Notice of Findings) and Remands are increasing in other areas of the country. In Texas, we thought we were the only region being affected by RIR denials, remands and NOF's. However, the same trend is happening in other regions including California and Illinois. In our region significant delays still occur once you have responded to the RIR NOF. We currently have approximately 1600 NOF responded cases pending for almost one year. The major delays are the IT layoff situation.

In the last issue of *The Compass*, I mentioned that the PERM program "maybe" ready sometime between April and July – well it has changed again. First we were told by September. However, at a recent seminar attended by Mr. Swaim, he was informed that it would probably be published by "late fall." When questioned what is late fall, DOL stated, "it would be until December 21, 2003."

We continue to see NOF's issued DOL on the lay-off issues as well as backlog reduction letters. Once a response is made it ordinarily takes DOL three to four months to act on the response.

BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES (BCIS)

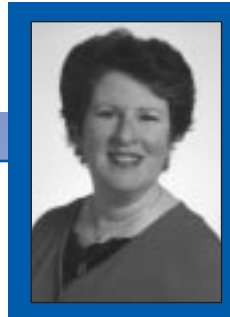
You can no longer contact a Service Center in order to check the status of your case. You must now go through an "800 number" customer service line for all status requests. There are two levels of customer service personnel. The first level is for basic information. If it is more complex you will be transferred to another customer service representative who will take the information from you, refer the question to the Service Center and the Service Center has 14-30 days to respond in writing. Therefore, don't expect timely answers to questions!

According to the Texas Service Center, EAD (Employment Authorization Document) approvals are now being completed within the required 90 days. TSC has indicated that L-2 EAD requests will not be processed until the L-1 has been approved. This is due to the I-129 division only handles the L-1 processing; the I-765 (EAD) division handles all L-2 EAD cards.

May 29, 2003, BCIS started a new electronic filing system. The first two forms to be implemented in the new system are the I-765 (Employment Authorization Document) and the I-90 (Renew or Replace a Permanent Resident Card). Eventually, BCIS intends to have approximately 50 forms available for e-filings.

Processing Times

BY: MINDY WOLFSON,
SENIOR PARALEGAL



Immigration and Naturalization Service Processing Times as of July 15, 2003

CALIFORNIA SERVICE CENTER

I-140 - 04/18/2003 I-485 - 11/16/2001 I-765 - 04/10/2003 I-131 - 04/23/2003

NEBRASKA SERVICE CENTER

I-140 - 01/28/2003 I-485 - 08/22/2001 I-765 - 05/08/2003 I-131 - 05/08/2003

TEXAS SERVICE CENTER

I-140 - 12/13/2002 I-485 - 12/01/2003 I-765 - 06/27/2003 I-131 - 02/10/2003

VERMONT SERVICE CENTER

I-140 - 10/01/2002* I-485 - 01/01/2002 I-765 - 06/02/2003 I-131 - 06/11/2003

* Nurses are 06/24/2003

MISSOURI SERVICE CENTER

I-129F - 05/30/2003

State Employment Security Agency / Department of Labor Processing Times as of July, 2003

Texas SESA

Basic – 04/2001

RIR – 12/2002

California SESA

Basic – 04/2001

RIR – 08/2002

Illinois SESA

Basic – 01/2001

RIR – 04/2003

Texas DOL

01/2000

11/2002

California DOL

05/2002

09/2002

Illinois DOL

07/2002

05/2003

Oklahoma SESA

Basic – 04/2001

RIR – 11/2001

New York SESA

Basic – 03/2001

RIR – 04/2001

Oklahoma DOL

01/2000

11/2002

New York DOL

03/2003

07/2003

WHAT QUESTIONS TO ASK

- First, ask how many cases like yours the attorney has handled and the success or failure rate. Be very careful if an attorney “guarantees” an outcome. This is not only unethical but the result promised is unlikely to happen. Only the government can guarantee anything in the immigration process.
- Second, ask the attorney how he or she gained their experience. Most of the attorneys who have suddenly claimed to be “immigration attorneys” in the past few years have little or no experience and use your case to gain their experience. Try to find attorneys who worked at immigration law firms for several years or acquired some other type of immigration experience before they opened their office.
- Third, don’t use price to make your decision. Remember that you usually get what you pay for. Make sure the attorney uses a written contract and details exactly what will be done and for what price. Most immigration cases are fixed fees, and you need to find out what and how much the attorney will do for that fee. Many times, low fees just mean that you have to do more of the work. In a fee-based situation, some attorneys may just keep asking for “more payment” which is, in effect, an hourly contract but you have no way of knowing how much time is spent on your case.

Hourly contracts, however, are used in some cases if the case is complicated but this can be to your advantage since you will know exactly what is being done on your behalf.

AVOID “CONSULTANTS”

Finally, never, ever use immigration “consultants” or non-lawyers of any type. This may sound like an advertisement for lawyers but it is really not in your best interest to engage them. These consultants can ruin people’s lives and once the damage is done there is usually very little that a reputable immigration attorney can do to fix the problem.

Hopefully these rules will help you find the right attorney for you, your family or your business. Remember, it is your case and you employ the lawyer. You are the “boss” so make sure you find the right person to work for you.

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