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AN IMMIGRATION DIALOGUE

VOICE

MAY-JUNE 2013

VOL. 4 ISSUE 3



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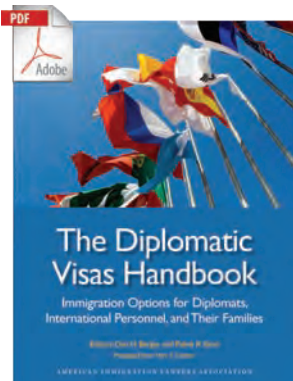
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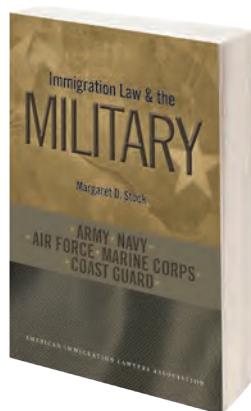
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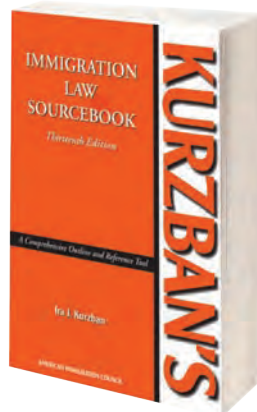
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UNSOLICITED ADVICE

from Cletus Weber


Take II: How the Government Can Help You Help Your Client

In the [March/April issue](#) of *VOICE: An Immigration Dialogue*, I suggested that immigration lawyers could help their clients by trying to understand the adjudication process from the adjudicator's perspective. Specifically, I suggested that two major concerns are: (1) very little time to adjudicate cases, and (2) high suspicion of fraud. As promised, in this issue, I provide some tips for addressing these adjudicator concerns.

Don't Make the Adjudicator Think

A technology writer named Steve Krug wrote an excellent book on website design called [Don't Make Me Think](#). I think immigration lawyers should adopt that approach: don't make the adjudicator think. Some tips:

- **Obey.** Review government instructions, as well as AILA best-practices guidance, liaison meeting minutes, and so on, to determine government preferences. Many instructions are inconsistent; but at least consider available guidance.
- **Summarize.** Determine the absolutely most important points of the case and put them right up front in a single paragraph, so the adjudicator immediately sees exactly what the case is about.
- **Use pictures.** Beautiful, clear, persuasive prose is nice, but pictures, diagrams, etc., (especially in color) can be equally beautiful, clear, and persuasive—all without the wait.
- **Limit characterizations.** Clearly and confidently express the facts and trust the adjudicator to get it. Instead of using excruciatingly painful and similar characterizations of fact, just explain that "the jailers crushed your client's fingers in the iron hinges of the jail door." That causes more pain than any characterization of the same facts.
- **Use headings.** Adjudicators can find what they need more quickly. Only bury among page-long paragraphs of headingless text those facts you must disclose but prefer not to highlight.
- **Yell.** If something is critical, highlight it to death. The adjudicator will not be offended.



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- **Annotate.** If only one or two lines inside a multiple-page document are applicable, annotate the first page—e.g., “Sales price and date of sale are on page X.”
- **Tab.** Tab major sections of your documentation so adjudicators can find what they need quickly.

Eliminate Inconsistencies

Adjudicators should be reasonably skeptical, but factual inconsistencies can cause unreasonable skepticism, sometimes even if the inconsistencies are immaterial. Thus, try to build your case’s credibility not just through factual strength, but factual consistency. Some tips:

- **Facts.** Make sure you know the facts well to begin with so everything the adjudicator sees is factually consistent. Just to be clear, though, the point is not to make up or bend existing facts to achieve consistency. The point is to learn exactly what the facts are and then address inconsistencies, so you can tell the client’s true story with as few inconsistencies as possible.
- **Major inconsistencies.** If you have a major inconsistency on a central fact of the case, you normally achieve greater credibility by addressing it directly rather than simply hoping the adjudicator fails to notice it.
- **Minor inconsistencies.** “Range” modifiers, such as “about,” “around,” “generally,” etc., might be enough to cover material inconsistencies that are not major elements of the case. For example, if you have “10” in one document and “14” in another, you might harmonize by summarizing the inconsistent amounts as “10 to 14” or “about a dozen.”



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- **Immaterial inconsistencies.** By definition, you normally can ignore legally immaterial inconsistencies. Nonetheless, even minor inconsistencies can dilute credibility. Consider whether something inconsistent can be left out altogether.
- **Unknown inconsistencies.** The most dangerous inconsistencies are the ones you do not know about. Do everything you reasonably can to uncover them, so you do not inadvertently put the client on a path toward problems.

Best of luck in making the adjudicator’s job easier—and your client’s case stronger. ▼

Cletus M. Weber is co-founder of Peng & Weber, PLLC, based in Mercer Island, WA. He is editor-in-chief of [AILA’s Guide to PERM Labor Certification](#). The author’s views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.



BLOGOSPHERE

by Christine D. Mehfoud

Employer Alert! E-Verify Is in Your Future

After months of anticipation, a bipartisan group of eight senators, known as the “Gang of Eight,” introduced the “[Border Security, Economic Opportunity, and Immigration Modernization Act](#)” (S. 744) in the U.S. Senate on April 17, 2013, thereby sending the debate on comprehensive immigration reform into full swing. Set aside for a moment a discussion of the pros and cons of expanding our nonimmigrant visa programs, providing a path to citizenship for the 11 million undocumented immigrants currently living in our country, and building massive

fences and using unmanned drones to secure our borders. More to come on those topics later. For now, it appears highly likely that E-Verify will be mandatory for all employers in the foreseeable future.

S. 744 requires all employers to use E-Verify and includes a phase-in period that ranges from 90 days to four years based on the type of employer and the number of employees. Failure to verify work authorization through E-Verify after the mandatory enrollment date raises a presumption that the employer knowingly hired an unauthorized worker.



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"FOR NOW, IT APPEARS ... E-VERIFY WILL BE MANDATORY FOR ALL EMPLOYERS IN THE FORESEEABLE FUTURE."

Not only is mandatory E-Verify a part of S. 744, but it is also the subject of numerous other bills recently introduced in Congress. For example, [H.R. 478](#), introduced in February, makes E-Verify permanent and mandatory, and requires every person who hires one or more employees to use E-Verify. [S. 202](#), introduced in January, expands the use of E-Verify and, among other things, requires employers to check the status of current employees within three years and allows employers to run a candidate through E-Verify as part of the application process. Currently, employers (except certain federal contractors) are prevented from using E-Verify for their current workforce and may not use E-Verify until after they have offered, and the candidate has accepted, a job.

In addition to the introduced bills mandating E-Verify, the program already has funding. In March, Congress [granted](#) U.S. Citizenship and Immigration Services an additional \$111 million to fund the E-Verify program, which indicates the importance Congress places on it and signals that E-Verify is here to stay regardless of whether and when comprehensive immigration reform occurs.

As of February 2013, more than [430,000](#) employers were enrolled in E-Verify. If you are already using E-Verify as part of your immigration compliance



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program, consider yourself ahead of the curve. If you are not yet using E-Verify, it is only a matter of time. ▼

Christine D. Mehfood is a lawyer with McGuireWoods LLP, and maintains a blog on immigration enforcement via [Subject to Inquiry](#).

The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.





by Jonathan L. Moore

Decoding DOL's 'Default' Prevailing Wage Rate

For the past several years, practitioners occasionally received prevailing wage determinations from the National Prevailing Wage Center (NPWC) in PERM cases for certain professional positions with a “default” wage of \$80 per hour or \$166,400 annually. Recently, however, this “default” wage increased to \$90 per hour or \$187,200 annually. The explanation for where this number comes from—and why it recently increased—lies in how the Occupational Employment Statistics (OES) survey collects and synthesizes wage data.

How is the OES data collected?

The survey that the Bureau of Labor Statistics

(BLS) uses to obtain wage data for the OES asks employers, for each Standard Occupational Classification (SOC) code, to state the number of employees that they have within each of 12 wage ranges. See BLS, [Survey Methods and Reliability Statement for the May 2012 Occupational Employment Statistics Survey](#) 4-5 (2013). **These wage ranges are illustrated in Table 1.**

How does this lead to the \$90/hour “default” wage?

NPWC confirmed in an FAQ that the OES lacked sufficient data for some high-paying occupations, such as physicians, dentists, and chief executives. See

Changes to Migration Law in the Netherlands

by Becki L. Young and Ilya Hoekerd

On June 1, 2013, the long-awaited [Dutch Modern Migration Policy Act](#) (the act) will enter into force.

The act will enable migrants to apply for a provisional residence permit (if so required),¹ with the actual residence permit acquired through

a single procedure instead of two separate consecutive procedures.

Employers will become “sponsors” of migrants who intend to live in the Netherlands to perform salaried employment. Sponsors will be able to submit visa applications on behalf of the migrants while the migrants are still abroad. Legal entities can even apply for so-called “authorized sponsorship.” Authorized sponsors will benefit from the [Dutch Immigration and Naturalisation Service’s](#) (IND) assumption that they fulfill all relevant obligations.

They will be able to issue their own statements to confirm that the migrant meets the conditions for the grant of a visa, without having to send underlying documentation to the IND.

Employers already admitted to the current [Dutch Highly Skilled Migrant Scheme](#) will automatically obtain authorized sponsorship, provided that they have submitted at least one visa application for a knowledge migrant that has been granted by the IND in the period since June 1, 2012.





Table 1



Interval	Hourly Wages	Annual Wages
Range A	Under \$9.25	Under \$19,240
Range B	\$9.25 to \$11.49	\$19,240 to \$23,919
Range C	\$11.50 to \$14.49	\$23,920 to \$30,159
Range D	\$14.50 to \$18.24	\$30,160 to \$37,959
Range E	\$18.25 to \$22.74	\$37,960 to \$47,319
Range F	\$22.75 to \$28.74	\$47,320 to \$59,799
Range G	\$28.75 to \$35.99	\$59,800 to \$74,879
Range H	\$36.00 to \$45.24	\$74,880 to \$94,119
Range I	\$45.25 to \$56.99	\$94,120 to \$118,559
Range J	\$57.00 to \$71.49	\$118,560 to \$148,719
Range K	\$71.50 to \$89.99	\$148,720 to \$187,199
Range L	\$90.00 and over	\$187,200 and over

[Frequently Asked Questions and Answers, Prevailing Wage – PWDs for Specific Occupations](#). The OES had a footnote for those occupations stating that the wage was equal to or greater than the highest wage interval in the OES survey. When NPWC issued the FAQ

in 2010, the highest wage interval was either “\$70.00 per hour or \$145,600 per year” or “\$80.00 per hour or \$166,400 per year.” *Id.* NPWC stated that it would issue a prevailing wage based on the OES footnote (*i.e.*, either the \$70/hour or \$80/hour wage). *Id.* In ➔

Sponsors will have specific obligations under the act. For example, the sponsor will be required to report changes that are relevant to the migrant’s right to live in the Netherlands. Furthermore, the sponsor must save certain information about the migrant for up to five years after the sponsorship ended. The sponsor must also ensure careful recruitment and selection. The IND will be entitled to verify the sponsor’s compliance. If the sponsor (or migrant) fails to fulfill its obligations under the Act, the IND can impose penalties.

Pending: Changes to the Foreign Nationals Employment Act

Another Dutch bill relevant for immigration professionals, although currently still pending, is expected to enter into force in the near future. Once adopted, it will change the [Dutch Foreign Nationals Employment Act](#) and tighten procedures to obtain work privileges in the Netherlands. The maximum duration of a work permit will be limited to one year (instead of the current three years) and a work permit application can be declined if the employer has been

penalized for violation of Dutch employment law (for example, the [Dutch Working Conditions Act](#)). The Dutch legislature states that these changes are necessary to protect the local labor market during the economic crisis. ▼

Washington, D.C., Chapter member Becki L. Young co-manages the Global Immigration & Mobility Practice (GIM) Group in Washington, D.C. Ilya Hoekerd heads the GIM Group in Amsterdam.

¹ U.S. nationals do not require a provisional residence permit to enter the Netherlands.


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subsequent liaison minutes, the Department of Labor (DOL) explained that, while there was not sufficient data to provide detailed prevailing wages, there was “enough valid data” to determine that the wage exceeded the “default” wage listed in the OES footnote. See DOL Liaison Committee, Minutes of DOL Stakeholders Meeting (Feb. 10, 2011), at 6–7, AILA InfoNet Doc. No. 11021834.

The NPWC’s use of this “default” wage has real-world consequences for employers. Despite DOL’s statutory mandate to “provide at least four levels of wages commensurate with experience, education, and the level of supervision,” INA §212(p)(4), the “default” wage is not divided into four levels. In other words, an employer will receive the same prevailing wage determination regardless of the level of training, education, or experience required for the position. Thus, when it applies, the “default” wage artificially inflates prevailing wage determinations for entry-level positions.

Why did the “default” recently change to \$90/hour?

The OES is based on a three-year survey cycle of data collection. See [2012 Survey Methods and Reliability Statement](#). This means that the final OES data for any given year consists of the most recent survey data combined with the data from the preceding three years. *Id.*

BLS began collecting OES data using \$90 per hour and over as the highest wage interval in May 2009.¹ As a result, 2011 was the first time that there were three cycles of data that had been collected using \$90 per hour and over as the highest wage range (*i.e.*, 2009, 2010, and 2011). After the 2011 data was released in 2012, it resulted in NPWC issuing prevailing wage determinations based on the higher “default” wage.



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Conclusion

A practitioner’s options when receiving a “default” prevailing wage are limited. As previously noted, the NPWC blindly follows the OES data when issuing prevailing wages. However, one should consult the [Online Wage Library](#). A “default” wage will apply when this library says that “[l]eveled wages cannot be provided . . . due to limitations in the OES data” for the selected area and SOC code. See, *e.g.*, [FLC Wage Results, Anesthesiologists \(29-1061\) in Richmond, VA MSA](#). By consulting this library, counsel can predict when they will receive the “default” wage and whether to explore using an alternative wage survey. ▮

Washington, D.C., Chapter member **Jonathan L. Moore** is an attorney with McCandlish Holton, P.C. in Richmond, VA. The author’s views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

¹ Compare BLS, [Survey Methods and Reliability Statement for the May 2008 Occupational Employment Statistics Survey 4](#) (2009) (listing highest wage interval as \$80/hr and above), with BLS, [Survey Methods and Reliability Statement for the May 2009 Occupational Employment Statistics Survey 4](#) (2010) (listing highest wage interval as \$90/hr and above).

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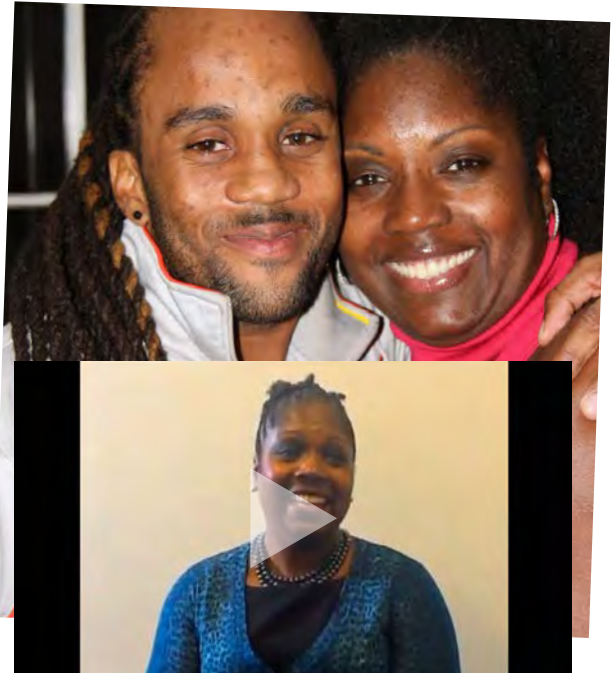
'My Family Is My Brother'

Nadine was in her teens, living in Trinidad, when she learned that her parents were expecting a baby. Although she was surprised by their decision, Nadine welcomed her new brother with open arms ... literally. That night, the midwife hadn't arrived for the delivery yet, so Nadine delivered her brother. From then on, Nadine was like a second mother.

This special bond deepened as Nadine and her brother lost their father, grandfather, mother, grandmother, and stepfather. They have managed to maintain close ties despite Nadine's move to the United States 25 years ago as a graduate student.

In the face of such adversity, Nadine's brother managed to complete his education and start a professional career. "[S]o, he's not destitute, but I tend to look at him as an emotional refugee," Nadine said. "He's living in a country where he doesn't have his family anymore."

Nadine is her brother's closest surviving relative. Under the current U.S. immigration system, however, he is not considered an immediate relative. "[T]he way the legislation is written now, it says that your immediate family is your parents, your spouse, and your children," said Nadine, a naturalized U.S. citizen. "But my parents are dead, and I've never been married, so I don't have a spouse, and I've never had children, so my family is my brother. That's my family. And based on the way the legislation is written, he doesn't really count. He gets to wait all the way at the back of the line, where we've



WATCH Nadine tell her story at a recent briefing on family immigration.

been for seven years." She estimates the wait to last for yet another five years.

Nadine implores legislators to rethink the definition of "immediate family" as comprehensive immigration reform gets underway. "Our siblings are our immediate family. ... America treasures family." She added, "I have been a U.S. citizen for 15 years and before that, I was a U.S. permanent resident for five years, so I have had a 20-year commitment to this country and so all of my working years have been spent in the U.S. So, it's not reasonable for anyone to think that, at this stage, I would give up my U.S. citizenship and go back to live with my brother, but it is reasonable that he would live with me" ▼

COURTESY PHOTO; VIDEO BY JESSICA EISE



For more information, check out AILA's
[Asylum EAD Clock](#) resource page.

ASYLUM FOR ATHEISTS

The Intersection of Three Protected Grounds

by Elizabeth R. Blandon

Persons labeled as atheists have been targeted since Roman times. In fact, even Christians and Muslims were targeted for legal persecution as atheists because they did not believe in the correct deity of the times. See K. Armstrong, [A History of God: The 4000-year Quest of Judaism, Christianity, and Islam](#) 98, 147 (Random House 1994); S.G. Gey, "Atheism and Freedom of Religion," in M. Martin, [The Cambridge Companion to Atheism](#) 250–253, 260–262 (Cambridge University Press 2007).

In 2009, the Pew Research Center for the People & the Press conducted a [survey](#) of scientists who are members of the American Association for the Advancement of Science. The results indicate that 41 percent of respondents neither believed in God nor a "universal spirit or higher power," compared to just 4 percent of the public who felt that way.

To Coin a Phrase ...

There is such a thing called the Brights movement, which seeks to coin the term "bright" to describe persons whose "worldview is free of supernatural and mystical elements." The noun developed as a more positive and cheerful term, imitating the use of the term "gay" in place of homosexual. This group includes secular humanists, naturalists, agnostics, and deists. Although

Read more on
[The Brights](#).


it is difficult to quantify the number of "brights"¹ in the world, a broad figure estimates the number at more than one billion.

Brights in Islamic countries face brutal repression. Denying Islam (becoming an apostate) is traditionally punished by death for men and by life imprisonment for women. Inhumane treatment for brights has been documented in Iran, Egypt, Pakistan, Somalia, United Arab Emirates, Qatar, and Yemen.

Despite this horrid treatment, foreign nationals may not know that they can obtain protection (and eventually a green card) in the United States on account of their beliefs. One of my recent asylum victories involved a university student from Iran who feared her toddler daughter would be taken from her if she were forced to return to her homeland. At the initial consultation, she focused on the domestic violence. In arguing her eligibility for asylum, I emphasized how the Iranian courts and the police refused to help her because she rejected Islam.

Information Gathering

The attorney should gather information while keeping three of the five grounds of eligibility for asylum in mind. Because atheism is difficult to define as a religion, it is best to maintain that the client deserves asylum based on three protected grounds: religion, political opinion, and membership in a particular social group.



"THE ATTORNEY SHOULD GATHER INFORMATION WHILE KEEPING THREE OF THE FIVE GROUNDS OF ELIGIBILITY FOR ASYLUM IN MIND: RELIGION, POLITICAL OPINION, AND MEMBERSHIP IN A PARTICULAR SOCIAL GROUP."

ILLUSTRATION BY BRADLEY AMBURN

After gathering information about the client's personal circumstances, the first source that a practitioner should turn to when determining whether to represent a bright is the annual [Department of State's \(DOS\) International Religious Freedom Report](#). This country condition report tracks how governments treat persons based on their beliefs. For example, last year in West Sumatra, a man was arrested for creating a Facebook page titled "Minang Atheist." See D.

Behreandt, "[Man Sentenced to Prison for Atheism](#)," *American Daily Herald*, June 15, 2012; Syofiardi Bachyul Jb, "['Minang atheist' sentenced to 2.5 years in prison](#)," *The Jakarta Post*, June 14, 2012.

Second, review the country's legal system. Many laws are blatantly religious. Sharia, or Islamic law, is the primary source of legislation in Egypt, for example. In such countries, the government forbids Muslims from converting to another religion. ➡

Finally, review the websites of organizations, such as the [International Humanist and Ethical Union](#). Its annual [Freedom of Thought](#) report details laws and practices that punish or restrict atheism. For example, the [2012 report](#) tracked the seven countries where the state executes persons for being a bright. The credibility of the organization is such that the United Nations' special rapporteur on freedom of religion accepted the report. See M. Fisher, "[The seven countries where the state can execute you for being atheist](#)," *The Washington Post*, Dec. 10, 2012.

Atheism as a Religion

Atheism is distinguished from theism in that the former denies the existence of supernatural deities and the latter recognizes them. According to the [UN-HCR Handbook](#), persecution on account of religion may assume various forms, including the "prohibition of membership in a religious community, of worship in private or in public, of religious instruction, or serious discriminatory measures imposed on persons because they practice their religion or belong to a particular religious community." See *United Nations, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* at 13, U.N. Doc. HCR/IP/4 (1992).

[The Guidelines on International Protection: Religion-Based Refugee Claims](#) define religion so as to include non-theistic and atheistic beliefs. "Beliefs may take the form of convictions or values about the divine or ultimate reality or the spiritual destiny of humankind. Claimants may also be considered heretics, apostates, schismatic, pagans or superstitious, even by other adherents of their religious tradition and be persecuted for that reason." See *United Nations, Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the*



Status of Refugees at 3, U.N. Doc. HCR/GIP/04/06.

Unfortunately, in order to win an asylum case in the United States on account of religion, applicants must demonstrate that they ascribe to "both beliefs and practices" of a certain group. See [Canas-Segovia v. INS](#), 970 F.2d 599, 601 (9th Cir. 1992). That may be the greatest obstacle. It is impossible to identify one ideology or set of behaviors that all brights obey. Simply stated, there is no Sanctuary of Skeptics.

Atheism as a Political Opinion

In addition, granting asylum to a bright based on religion is rationally contradictory. The comedian Bill Maher has [said](#), "Atheism is a religion like abstinence is a sex position." The better argument would be for brights to seek protection on account of their political opinion. After all, the suffering occurs because harmful government policies are permitted due to the religious beliefs of the majority. Brights oppose both.

An example of such a case is [Matter of S-A-](#), 22 I&N Dec. 1328, 1335 (BIA 2000). A young woman from Morocco opposed not only her father's ortho-


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dox Muslim beliefs, but also the regime that allowed the torture of women in that society based on those beliefs. In Morocco, her father burned her for wearing short skirts as opposed to the burqa, beat her for speaking with a man, and forbade her to attend school. He was able to abuse her because the police in Morocco—following Muslim law—give a father unfettered power over the life of his daughter. The Board of Immigration Appeals (BIA) granted her asylum.

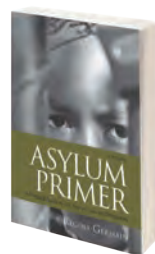
The government practices of several countries limit freedom of religion. For example, in Pakistan, speech is repressed if it is not in the “interest of the glory of Islam.” [International Religious Freedom Report for 2011, Executive Summary](#). There, brights are arrested for blasphemy.

Persecution on account of political opinion means “persecution on account of the *victim’s* political opinion, not the persecutor’s.” [INS v. Elias-Zacarias](#), 502 U.S. 478, 482 (1992) (emphasis in original). To meet this burden, applicants must show, through direct or circumstantial evidence, that there is a causal connection between the harm suffered (or feared) and their political opinion.

Individuals also may be persecuted for political opinions that they are erroneously believed to hold. This is particularly important when representing brights who often are harmed because they do not conform to the beliefs of those held by the majority. Their statements should indicate how often others noticed that the applicant failed to follow sermons or attend ceremonies.

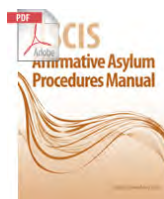
Atheists as Members of a Particular Social Group

In [Matter of Acosta](#), 19 I&N Dec. 211, 233 (BIA 1985), modified on other grounds by [Matter of Mogharrabi](#), 19 I&N 439 (BIA 1987), the Board of Immigration Appeals interpreted the phrase “perse-



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AILA's Asylum Primer


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Procedures Manual (PDF)


cution on account of membership in a particular social group” to mean:

“[P]ersecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic. The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership. The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis. However, whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.”

Persons who have been harmed on account of their membership in a specific community would have the strongest case for asylum. In a case that received national media attention, an immigration judge granted asylum to a German woman based on her membership in the Church of Scientology. D. Frantz, “[U.S. Immigration Court Grants Asylum to German Scientologist](#),” *New York Times*, Nov. 8, 1997.

Historically speaking, however, Scientology is not a religion. It is an association that developed from a ➔

self-help belief system introduced by L. Ron Hubbard. Canada, France, Germany, and the United Kingdom do not give Scientology the comparable religious status that it has in the United States. See E.V. Gallagher & M.W. Ashcraft, *Introduction to New and Alternative Religions* 185 (2006); C. Caulcutt, "[France labels Scientology a fraud, not a church](#)," *GlobalPost*, Feb. 3, 2012; DOS, Bureau of Democracy, Human Rights and Labor, [International Religious Freedom Report for 2011](#) ("The [German] government does not consider Scientology a religion ..."); DOS, Bureau of Democracy, Human Rights and Labor, [International Religious Freedom Report for 2010](#) ("The [British] government has not classified the Church of Scientology as a religious institution ...").

In conclusion, religion can only hold a sacred place in our lives when we cherish the right to decline it.

Our forefathers, having fled religious intolerance in England, prudently drafted the First Amendment of the Constitution to forbid the making of a law establishing a religion or prohibiting the free exercise of religion. Persecution can happen anywhere that the belief system is mandated by the government or imposed by those with the power to abuse. As explained in this article, atheism is protected by international human rights law and practitioners should explore their clients' belief systems thoroughly. By so doing, they will consider all possible alternative grounds for asylum when representing clients.

So, seek and ye shall find. ▀


South Florida Chapter member **Elizabeth R. Bandon** is a Florida board-certified immigration attorney, who speaks Spanish and French. Bandon [blogs](#) about asylum.




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American Immigration Lawyers Association

AILA InfoNet Doc. No. 13052949. (Posted 5/29/13)



How to Avoid Staffing Nightmares

... And Find the Right People to Back You Up!

by Ruby L. Powers, Hilary T. Fraser, and Meghan Moore

There are certain advantages of running a law firm with a smaller staff, such as easier communication, greater accessibility, and more direct management. However, it can also bring some difficult challenges. What happens, for example, when a solo practitioner goes on vacation or maternity leave? Who stays in charge? Who will cover her work?

Coverage and other common staffing nightmares, such as lost files, computer crashes, missed deadlines, ethical mischiefs, and even criminal violations, can be successfully managed by a practitioner who plans ahead and:

- **Chooses teammates well;**
- **Creates corporate culture;**
- **Uses systems of checks; and**
- **Keeps staff happy!**

Choosing Your Teammates

Your professional reputation, your liability, and the feasibility of your practice depend not only on you, but also on the employees who run your office. Perhaps more importantly, as a partner, owner, and/or supervising attorney, you are responsible for them and their work while they are on your watch.¹ How you select your employees can save time and energy spent in training and even putting out fires down the road.



For more tips on running your practice, see AILA's [Practice Management](#) page.

The Interview Process

Consider vetting applicants through a multi-step interview process that involves more than a simple in-person interview. That is, assign tasks for applicants related to the job duties that they will be expected to perform. For example, if second-language skills are required, conduct a mock client phone call in that language or have the applicant perform a translation at the interview. This will give you the ability to assess concrete skills in addition to personality and experience.

When hiring an attorney, in addition to requiring a writing sample, give the applicants a research assignment ahead of time and ask that they come to the interview prepared to present a moot court argument to you and your partners. Alternatively, request that they prepare a short brief based on the research assignment so you can evaluate their legal research and writing skills.

Consider the opinions of more than one person. Invite your applicants (one at a time) to have lunch with your current staff and/or associates and get feedback from your team afterward. Also, require at least two references and check them. Even if the applicant has no work experience on which to rely, someone, such as a teacher or pastor, should be able to speak about the applicant. ➔

ILLUSTRATION BY BRADLEY AMBURN/
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Protect Yourself and Your Practice

Under most states' ethics rules, as a partner or supervising attorney, you are responsible for the conduct of your employees, both non-lawyers and lawyers² So run a criminal background check on a prospective applicant who might handle business funds, client funds, blank checks, or accounting in any capacity. Also, verify graduation from law school and admission to the bar by calling the law school and your state bar. Require each new hire to pass a probationary period (length likely to depend on your individual practice) during which frequent evaluations are performed. Finally, keep meticulous personnel files in which the employees' signatures appear on reviews and memoranda.

As your firm grows, so will your history of staffing successes and failures. The strength of your staff reflects your willingness to analyze your mistakes, as well as your accomplishments. When an employee is terminated, write a memo that explains the reason and keep it in his or her file. When an employee quits, have an open and honest conversation about the motivation for leaving. But don't just leave it there; take the time to reflect on why your employee/employer relationship has ended and make the necessary changes, to your hiring process, if appropriate, so you can avoid a repeat situation.

Corporate Culture: What Would You Like Yours to Be?

Corporate culture is a vital element of a business regardless of its size. Create an atmosphere where your staff feels motivated to work and comfortable to request guidance. Also, implement clear rules to allow your business to run smoothly. That is, to avoid misunderstandings, tell your staff about what you expect of them and what they should expect of you. An

"UNDER IOLTA AND DISCIPLINARY AND PROFESSIONAL CONDUCT RULES, CLOSE PARTNER MONITORING OF TRUST ACCOUNT PAYMENTS AND TRANSFERS MANAGED BY NONATTORNEY STAFF IS IMPERATIVE."



employee handbook is an excellent way to introduce the company's policies to your staff. You can address topics, such as dress code, appropriate behavior, reviews, etc. Also, lead by example and set the bar high. Finally, cultivate an image to your clients that reflects professionalism, collaboration, and efficiency.

Let your experience shape the growth of your business. Think about what you liked and did not like, what worked and what didn't. Create a successful corporate culture by being creative and flexible, combining different experiences and making adjustments that fit your company's needs.

Be a Team

The success of your firm depends greatly on the strength of your staff. Make your employees feel like they're a part of your team. After all, individually, every employee brings an important contribution, but what is most invaluable is the work they create together. Therefore, show them your appreciation.

Also, it is important to promote interaction among your team members, even in a professional environ-



ment. Simple social events, such as holiday gift exchanges, birthday celebrations, and casual Fridays, allow staff to get to know each other and establish rapport. The more comfortable they are with each other, the better they will work together.

Successful Systems of Cross-Checks

How can you achieve great staffing without spending a lot of time or money? Be creative and systematic.

Don't Do It All Yourself

Using temporary help for administrative tasks, such as bookkeeping, payroll, recruiting, accounting, copying, and delivery, can save money and reduce the sting of losing employees that you trained yourself. Local schools and chambers of commerce, as well as youth employment services, can refer student interns who can work effectively on marketing, graphics, IT, website development, and similar projects. Some have entrepreneurial classes that require students to pursue community business projects. You can even enlist the help of a staffing agency to facilitate the search. And using online business services—[Box](#), [Dropbox](#), [LinkedIn](#), [Craigslist](#), [AILA InfoNet](#), and [Google Apps for Business](#)—as alternatives to employing your own IT employees and business systems can decrease time and money expended.

Personnel Rules

Invest time in creating a detailed employee handbook. Address important topics, such as dress code, personal use of the Internet, client confidentiality, professional tone, noise, clean office environment, overtime, lunch breaks, paid time off, snow days, and sick days. This manual can minimize your exposure to violations of employment law. Also, follow the handbook yourself.

Be Rigorous on Money and Records

Invest considerable time in developing clarity and trust with the employees who handle your money. Institute a comprehensive multi-person system for reconciliation of accounts. Partners should be heavily involved in money management. Under IOLTA and disciplinary and professional conduct rules, close partner monitoring of trust account payments and transfers managed by nonattorney staff is imperative. Also, retaining partner-only access to financial statements, IT and banking passwords, partnership income tax returns, and other compensation records is sensible. Make a practice of reviewing financial reports and accounts at every partners meeting.

As for opening files, envision the path of the representation at the outset. In other words, have a clear system in place from the first consultation that sets in motion the fee agreement, billing process, file name, conflicts check, assigned attorney and staff, research and drafting responsibilities, record keeping, file storage, and retention. A good new case memo and a designated employee for your billing and records system can accomplish this goal.

Follow a Factory Model

While lawyers pride themselves on intellectual originality, there is no way to run an effective immigration law firm without thinking about your office like a factory. Role assignment, process maps, templates, specialization, teamwork, and performance metrics are essential. Building a simple process requires some brilliance and labor. As a wise attorney once advised, “Spend two out of five days improving your templates.”

Efficiency is also a key to effectiveness. Here are some time-saver ideas to help improve efficiency:

- Make e-mail templates (.oft) in Microsoft Outlook for client correspondence for ➔

consistency in professional tone when used by your staff.

- Ensure all staff and attorneys use uniform signature blocks that identify their office titles.
- Store topic-specific client memoranda so staff may transmit, but not give advice.
- Build a library of templates for Request for Evidence replies, cover letters, document indexes, stock paragraphs for common arguments, etc. Guide staff to draft filings from a specified template.
- Create uniform conventions for naming and saving documents and subfolders—e.g., “final filings,” “forms,” “start-up”—so your employees know where to save or find an item without instruction. For paperless offices, this is particularly important.
- Allow staff to draft basic newsletters or news releases distributed through a service, such as [Constant Contact](#), an inexpensive and fun way to inform your clients and market your firm.
- Teach staff how to use process maps that assign roles and clarify accountability; this avoids gaps in coverage and duplication of effort.
- Let employees train each other by creating videos explaining proofreading, attorney ethics, etc.
- Require staff to use checklists for almost every task! Have a “My Firm Process” folder where common tasks are reduced to a checklist. Let staff draft the checklists.

Specialization of staff on a substantive level is a privilege of larger offices that blunts the trauma of turnover and focuses supervision on a smaller group. For example, one person does PERMs and another writes unique worker case summaries. If your office is sufficiently large enough to permit specialization, assign one person to perform clerical duties, such as scanning and tracking all mail as it arrives. If data

capture from arriving mail (electronic and surface) is done before mail distribution, your record keeping and calendar functions occur more reliably, and attorneys devote more attention to case substance. Also, Outlook rules can be set up to direct all .gov e-mails, for example, to a staffer who enters, saves, and distributes them. Outlook calendars can share reminders with the assigned attorney and staff invited to that event.

Specialization of staff also allows “teams” or small group meetings to target problem solving and build esprit, and energizes good-natured competition in your office. Whether in small teams or with your whole office, the significance of regular meetings to supervise, inspire, and model intangibles—such as problem-solving and collegiality—cannot be underestimated. Set a recurring meeting schedule and stick to it. Always follow a set agenda distributed prior to the meeting to allow preparation by staff and attorneys and prompt thoughtful contributions from them.

Consider building your own database for client records. A pseudo-database can be built from Outlook contacts “User Defined Fields.” A database product, such as Microsoft Access, is relatively user-friendly. Hire a part-time IT person to build a simple database that suits your practice. The beauty of a database is that it forces organizational thinking: What fields are important? Who records what and where? What reports do I need for me or my client? From a database flows a process map.

Make Them Happy

Happiness Makes for Efficiency and Success

There are several things you can do to keep your staff efficient, motivated, and happy. Hold regular staff reviews (every three months during the first year of


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employment, and then every six months), so you can give feedback on their performance and address their concerns and suggestions. Also, praise their accomplishments and offer incentives. Give them assignments and other opportunities to help them grow professionally.

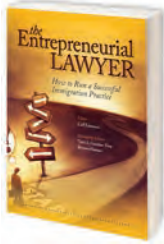
The 3 Rs

Recognize staff for their high level of responsibility and performance—it is most deserved in immigration practice! For example, allow a staffer to take the lead on presenting a topic at a staff meeting, drafting a client communication, or designing a work process innovation. Or acknowledge a staffer by name to a client or your firm. But never criticize a staff person before your group or clients. The buck stops with the attorney. If your staffer makes an error, you apologize for it. Their work product is judged as yours, so make a commitment to work with your staff in a way that advances all interests.

Reward all your staff for hard work with treats, outings, or group meals on their own or with the firm's partners. Celebrate your group and show your enjoyment of their company with photo albums, T-shirts, and annual events. Monetary rewards through uniform profit-sharing bonuses show your appreciation for the group as a whole. Non-monetary rewards, such as providing free legal help for immigration or other legal problems and allowing family members in the office, also reinforces goodwill. Reward staff by creating opportunities for their advancement—e.g., by co-authoring articles, writing grad school recommendations, assigning them work in their field of interest, etc. This shows that you respect them as people. Reward more senior or special staff with scheduling flexibility and extra time off.

Respect for your staff is integral to good management. Respect can take different forms—from your presence and availability in the office to your recep-

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tivity to employees' input. Of course, say please and thank you.

Staffing does not need to be a nightmare. As long as you plan ahead, choose teammates well, create corporate culture, use systems of checks, and keep your staff happy, your firm can run efficiently and successfully. ▀

Ruby L. Powers runs her own practice, which handles all areas of immigration law, in Houston. **Hilary T. Fraser** is a senior immigration partner at Miller Mayer, LLP in Ithaca, NY, and handles business immigration matters. **Meghan Moore** is a founding member of Avanti Law Group, PLLC in Grand Rapids, MI. She practices immigration law exclusively, with a focus on waivers of inadmissibility.

¹ See Model Rules of Prof'l Conduct R. 5.1 and 5.3.

² See Model Rules of Prof'l Conduct R. 5.1 and 5.3.



Get *Bitten* by the Social Media Bug

by Greg Siskind

For years, immigration lawyers have been on the vanguard of modern law practice management. For examples, we abandoned the billable hour decades ago. Members of our ranks used case management technology before most lawyers knew such software existed. And the first highly successful law firm websites were launched by immigration lawyers.

So it shouldn't surprise anyone that the first law firms to venture into social media were run by immigration lawyers. They started with blogs (short for

"web logs") in the 1990s. Most people know by now that blogs are online journals that are collections of short posts. Now, there are more than 100 million of them. "Blog" is also a verb and when someone is "blogging," they are writing entries on their blog. Blogs range from simple webpages with brief posts on a particular topic and links to other websites, to more elaborate pages that incorporate multimedia and are themselves often integrated into other web pages.

More recently, other forms of social media, such as Facebook, Twitter, LinkedIn, and Google+, have been added to the social media marketing toolbox.

Lawyer Blogs

In May 1998, I set up an “online diary” on my website to keep readers apprised of legislative developments surrounding the H-1B nonimmigrant visa debate. I wasn’t familiar with the term “blog” because it wasn’t coined until six months later, but the page was the first legal blog on the Internet and I happily claim to be the first lawyer blogger. The H-1B legislation diary was extremely popular and, in one day alone, received more than 50,000 hits as people were scouring the web looking for any information on that subject. If you’re interested in seeing that page, go to [the Wayback Machine](#) and see our site as it looked in December 1998.

My firm, Siskind Susser, P.C., now has several blogs that cover a variety of subjects. I write for [Greg Siskind on Immigration Law and Policy](#). I also write blogs on several narrow immigration subjects, such as health care immigration, EB-5 visas, I-9s, and E-Verify.

Today, there are dozens of immigration law blogs. A few of my favorites include:

- [Angelo Paparelli on Dysfunctional Government](#)
- [AILA Leadership Blog](#)
- [ImmigrationProf Blog](#)
- [America’s Voice Blog](#)
- [Joel Stewart’s Labor Certification Blog](#)
- [Bender’s Immigration Bulletin](#)
- Reid F. Trautz, Director of AILA’s Practice and Professionalism Center, has an excellent blog called “[Reid My Blog](#).”

Why Blog?

If you’re considering blogging, there are several good reasons to invest the time and effort. Among the advantages:

- It is an extremely effective way to market a niche practice;
- Blogs are an easy way to promote firm developments;



For more social media tips, see the [Technology page](#) from AILA’s Practice and Professionalism Center.

- Blog tools are typically located on third-party websites and new software is usually not required;
- Content for a blog can be generated quickly, so if you don’t have the time to write long articles, a blog can be a nice alternative;
- Search engines love blogs, and posts on a blog are frequently picked up by search engines within hours;
- Blogs are great for recycling content, such as articles, PowerPoint presentations, video and audio files, etc.;
- Blogs are a nice way to interact with clients and potential clients since you can allow comments to your posts; and
- It is easy to collaborate with others so that multiple people can contribute content to the blog rather than everything going through one person.

Why Not Blog?

While I typically evangelize on the benefits of blogging, other marketing tools might fare better. Here are some of the minuses:

- A blog can easily become stale without regular attention. There is no accepted frequency for posting, but at least a couple of posts per month should be the goal;
- A blog is not a substitute for other marketing endeavors, such as writing books and articles;
- It can be tough to monitor your firm’s content on a blog since it is so easy and quick to post. Be sure you and your colleagues know how to use the software properly;
- The informal nature of a blog might not complement your firm’s image fit; and ➔

ILLUSTRATION BY BRADLEY AMBURN



"WHILE YOU CAN HAVE A SUCCESSFUL BLOG THAT FOCUSES BROADLY ON IMMIGRATION, YOU MIGHT FIND THAT A BLOG FOCUSING ON A MUCH NARROWER SPECIALTY WILL BETTER HIGHLIGHT YOUR EXPERTISE."

- It is not always easy to generate content for a narrow niche website.

Why Wait?

Blogging is wonderful because you don't need knowledge about web programming and a website of your own (though, if you have a webpage, you can incorporate the blog into the site). Just set up a blog by completing an online form.

Like blog readers, there are many companies that provide blogging software, but I'll mention a few of the big ones. If you are looking to create a blog hosted by someone else rather than you, three popular choices are [Google's Blogger](#), [TypePad](#), and [Blogsmith](#). In my experience, Blogger and Typepad are incredibly easy to use.

You might also choose to buy standalone software and host the blog yourself. Three of the market leaders for this type of software are [Movable Type](#), [Word Press](#), and [Text Pattern](#).

Follow the software's prompts, and, within minutes, you will have designed a professional-looking blog. And posting is as simple as using e-mail or word processing software.



Google's Blogger is easy to use and free for bloggers.

What to Post?

So you've set up your blog. Now what? First, analyze your target audience to determine what type of content makes sense. Consider these audiences:

- **Potential Clients**—These are the most obvious readers to target, but remember not to make the posts self-promotional. The best form of Internet marketing is providing helpful information and demonstrating your expertise on a subject.
- **Clients**—These folks are often forgotten in your marketing and that's a big mistake. Blogs are a great way to communicate with your clientele and keep them satisfied. A large portion of new business results from gaining work from existing clients and from referrals by current and past clients.
- **Outside Lawyers**—Lawyers who don't practice immigration law search the Web like anyone else to find a lawyer to whom a client can be referred. Blog posts showing expertise on a subject or simply a geographic focus are sometimes enough to generate the attorney's referral.
- **Lawyers in Your Own Firm**—Immigration lawyers at medium- and large-size multispecialty firms often have trouble getting noticed by attorneys in their own firms who potentially have work to refer. A well-written blog is one way to educate your firm's lawyers regarding what the immigration lawyer does and why the nonimmigration lawyer's clients need to connect with the specialist.
- **Reporters**—Journalists frequently use the web as a key source in their story research and lawyers who quickly post useful information on a topic get calls from reporters.
- **Government and Court Officials**—I'm often surprised when I hear officials from U.S. Citizenship & Immigration Services (USCIS)



and the Department of State tell me they have read my blog posts. While I am often very critical of the agencies, I try to be fair. This has had the unintended side benefit of helping me build goodwill with agency officials, which has sometimes helped my clients.

- **Law Students and Potential Hires**—Some law firms report that the majority of their web traffic comes from law schools and that's almost certainly coming from law students researching potential employers. Also, lateral hire job candidates search online for information on a prospective employer. In either case, a well-written blog can definitely help make a good impression.

Getting People to Read

Once you've decided who you're aiming to reach, here are some tips on how to produce a blog that people want to read:

1. **KEEP IT SHORT.** Blog posts longer than a couple of paragraphs likely turn off readers who are pressed for time. Better to make a short post and then link to a longer version.
2. **UPDATE FREQUENTLY.** A blog that is rarely updated can make a worse impression than not having a blog at all. If anything, it shows the writer lacks follow-through potential, something that is not a great impression for an immigration lawyer to project. There are exceptions to this rule, such as a blog on a particular subject no longer in the news. How frequently a blog needs to be updated may depend on how hot the subject is, but certainly don't go several months without an update.
3. **LINK TO OTHER BLOGS AND WEBSITES.** One of the most important functions of a blog is not

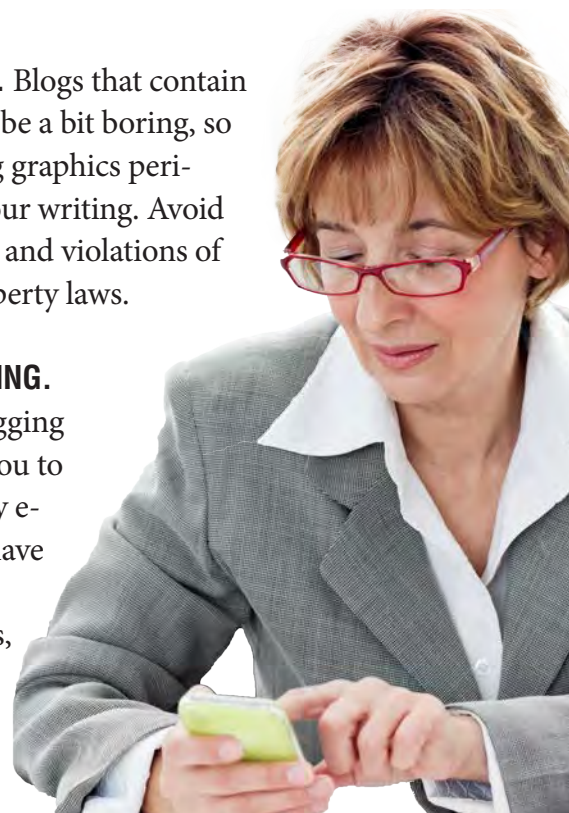
just to produce original content, but also to tell readers where they can go to find helpful information. To that end, don't be afraid to link to writings by other lawyers. You'll build goodwill with your readers and fellow lawyers.

4. **EMBED CONTENT IN YOUR BLOG.** For immigration lawyers, there is a ton of content in the public domain that you can upload to a site like [Docstoc](#) and then get an embed code that can easily be incorporated into a blog post so that the document is visible in your blog post. Readers can see the document and flip from page to page while staying on your blog. What to post? New cases, government memos, pending bills, and other non-copyrighted materials are common examples. PowerPoint presentations can be uploaded to Docstoc or to [SlideShare](#), and readers can view a presentation right from within your blog. You can also embed YouTube videos, podcasts, and other types of content.

5. **ADD GRAPHICS.** Blogs that contain strictly text can be a bit boring, so consider adding graphics periodically with your writing. Avoid cheesy graphics and violations of intellectual property laws.

6. MOBILE BLOGGING.

Most of the blogging services allow you to post to a blog by e-mail, so if you have a phone with e-mail capabilities, you're in business. ➔



7. FIND YOUR ANGLE. While you can have a successful blog that focuses broadly on immigration, you might find that a blog focusing on a much narrower specialty will better highlight your expertise. For example, are you one of the top immigration lawyers representing universities? Focus your blog on that topic. Or are you the world's foremost authority on children's immigration issues? Write about that. Immigration blogs focusing on a particular geographic market are a natural. You can focus on immigration enforcement in your area, talk about the goings-on at your local USCIS, CBP, and ICE offices, etc.

8. TURN OFF COMMENTS? This is a question that is not easy to answer. Comments are certainly a way to engage your audience and keep people coming back to your blog. But they also create headaches when people post inappropriate remarks or spam your comments section with ads. You can remove comments easily, but it's important to stay on top of them. Of course, it is also hard to decide when to permit a free flowing discussion with different points of view and when to remove posts that your community will find offensive.

9. MONETIZE YOUR CONTENT? In exchange for compensation, some blog software programs allow you to have ads appear on the blog. You usually don't control the content, so it's possible, for example, for an anti-immigration group's ad to show up on your site because of the content. I know a few immigration lawyers who accept ad money so this is not far-fetched. But you'll need to weigh a number of downsides, such as whether ads alienate readers and detract from the overall image you are seeking to project.

Syndication

Until early 2006, I had bookmarked a couple of blogs that I would check periodically, but I only browsed them occasionally. And then I learned about something called "content syndication," and blogs quickly became a more important part of my Internet experience.

Content syndication generally refers to a common way of formatting a blog that allows for the content of the blog to easily be picked up as a "feed" by blog reading software, as well as other blogs. There are two common formats for bloggers to create a feed: RSS (short for "really simple syndication") and Atom. Blogs that are created in one or both of these formats will usually have a button or buttons that say RSS, Atom, XML, Subscribe, or something similar.

You'll need a blog reader to then read these "feeds." Blog readers can be found on the web or you can download standalone software that pulls down the content. Google Reader was one of the most popular feed readers, but it will be retired on [July 1, 2013](#). There are a number of alternatives, however, including [Feedly](#), one I happen to have used for awhile. With Feedly, as well as similar readers, you organize the blogs you read and configure your feeds by category. Also, Feedly has apps for mobile devices that allow you to keep up with your blog feed on the go.

"SOCIAL MEDIA CAN RETURN SUBSTANTIAL DIVIDENDS. BUT YOU NEED TO GO IN WITH YOUR EYES WIDE OPEN. WRITE COMPELLING CONTENT REGULARLY AND FORESEE WHAT PEOPLE WANT TO READ AND SEE."



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Twitter

[Twitter just turned 7 years old](#), but it has changed the world in such a short time. Whether it is because of [its role in the Arab Spring](#), [the announcement of the resignation of a pope](#), or [the disgrace of a congressman](#), the simple little software program is now part of the culture of communication in this country.

Within the immigration field, a number of lawyers are making names for themselves on Twitter. David Leopold, current general counsel and past president of AILA, for example, is well known for [his use of Twitter](#). ABC News and Univision recently listed 20 people to follow on Twitter to stay informed on the immigration reform debate. David and I were the two immigration lawyers on that [list](#).

Immigration lawyers commonly use Twitter for advocacy and news. In my case, I post short comments on Twitter about immigration and use my Twitter feed to link to my blog posts.

Success on Twitter depends on attracting followers and getting them to comment on and retweet your tweets. You can start building followers with your own clientele. You can also market your Twitter account in your e-mail signature block, on your website, and on your business cards. If you post useful content, you will get noticed.

Facebook and LinkedIn

If you don't know about [Facebook](#), you've been living on another planet for the last several years. Some lawyers use Facebook as a communication tool. I choose not to post promotional or other work-related information on Facebook because I don't want to annoy my friends and family with too much chatter about my work. On the other hand, my law firm has a Facebook page where we can post content similar to what we would place on our blogs and Twitter. If you are going to use Facebook, I would suggest you be discreet and not overwhelm your network with too

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many posts about your practice.

[LinkedIn](#), on the other hand, is designed precisely for networking. Lawyers use it more than Facebook. LinkedIn is not being used for conversations nearly as much as Twitter, but there are a number of groups on LinkedIn that allow for conversations. In fact, there are thousands of discussion groups on every topic imaginable.

Conclusion

Social media can return substantial dividends. But you need to go in with your eyes wide open. Write compelling content regularly and foresee what people want to read and see. Fortunately, unlike websites, where it is difficult to get noticed, there is still plenty of room in social media for immigration lawyers interested in delving into this area. ▀

*Mid-South Chapter member **Greg Siskind** is a founding partner of Siskind Susser, P.C. He has written several books, including LexisNexis's J-1 Visa Guidebook, the ABA's Lawyers Guide to Marketing on the Internet, and Society for Human Resource Management's Employer's Immigration Compliance Desk Reference. This article will be republished this summer in the upcoming edition of Immigration Practice Pointers.*

BRIDGING THE GAP

by Sheeba Raj

Protecting International Human Rights on National Soil

The Human Rights and Special Prosecution (HRSP) section of the Department of Justice (DOJ), [established in 2010](#), strives to defend human rights by ensuring that the United States is not a safe haven for human rights violators.

“Together with our law enforcement partners, we work to identify, investigate, and prosecute individuals who have committed human rights violations, war crimes, [or] atrocities overseas and then have come to the United States,” explained Kathleen O’Connor, deputy chief of HRSP. “We see this as our mission to ensure that those individuals who have been persecuted back in their home country and are seeking a new life should not have to face their persecutor here in the United States.”

Although the alleged misconduct occurred abroad,

perpetrators could be charged under various U.S. statutes, including those proscribing [genocide](#), [torture](#), [war crimes](#), and [recruitment or use of child soldiers](#).

In some instances, however, the U.S. laws were passed after the offensive conduct was committed, so HRSP is forced to pursue other avenues of justice. For example, it can review the perpetrator’s immigration file to determine whether he or she falsely answered the questions, such as: “Have you ever committed a crime for which you have not been charged?” If so, then HRSP can charge him or her with immigration fraud. Another tool is civil denaturalization, which involves a lower standard of proof than the criminal charge. They also collaborate with Homeland Security Investigations (HSI) to help uncover evidence that would support

D.C. Chapter Swaps CIR Expectations over Dinner with D.C. Insiders

From politicians to practicing attorneys to policy analysts, much has been said and written in recent years about the dire need for swift comprehensive immigration reform (CIR) to reunite families and salvage the U.S. economy. At the AILA Washington, D.C. Chapter dinner

meeting on March 21, 2013, attendees heard from legislative experts about the evolution of U.S. immigration law and policy, and shared their views.

“There’s a transformation on the Hill now,” said Tamar Jacoby, President and CEO of [ImmigrationWorks USA](#), a national coalition of small business owners striving to shape better immigration law. “Every office you go in, whichever chamber and whichever

party, they say ‘We have to do something,’” she said.

The dinner meeting at the Hyatt Regency, which is a stone’s throw from Capitol Hill, came in advance of AILA’s National Day of Action on April 11, 2013. David Shahoulian, Democratic Chief Counsel to the House Judiciary Committee’s Subcommittee on Immigration Policy and Enforcement, encouraged attorneys to bring clients to congressional leaders’ offices. “This is a particularly good


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a removal case if the person has no status.

If the authorities in the perpetrator's home country have the willingness and capacity to pursue charges, DOJ can facilitate extradition.

O'Connor encourages AILA attorneys to spread the word to their clients. "What we're focusing on is the conduct of the human rights violator. We are not focused on the immigration status of the victim or the witness," she said. "[A]ssuming there is a victim or a witness who is undocumented, but has suffered persecution and comes forward to work with us on putting together a prosecution, the U.S. government has tools available to assist in that way, so there are U visas for victims and S visas for witnesses. ... We also work closely with U.S. Attorney's Offices throughout the United States and each of those offices has a Victim-Witness Unit within the office" in order to ensure that the concerns of the victim or witness are addressed before proceeding with the case.

"We take all of the referrals very seriously, but we work closely with our law enforcement compo-

nents, both within the Department—that would be the [FBI's Genocide and War Crimes Unit](#)—as well as within the [Department of Homeland Security – HSI's Human Rights Violators and War Crimes Unit](#), to vet those referrals [and] tips to ensure that they're credible and corroborated by other evidence." ▀

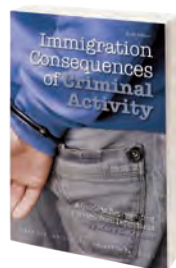
time to meet with some of [the representatives] because they are in this period of transition and might need that extra push," he said.

One attendee, Palma Yanni, counsel at Dickstein Shapiro and past AILA president, emphasized that families and employment go hand-in-hand, so CIR should address both. "It's not employment vs. family," Yanni said. "Two [of my clients, who are Extraordinary Ability immigrants,]

have now left the U.S. because they were the head of their family and they couldn't bring their family back. So, there's no separation between the family cases and the employment, because, in order to keep our contributing employment-based immigrants, they have to know that they can reunite with their families."

Several attorneys voiced frustration over the three- and ten-year bars, which, they say, have →

"THERE'S A TRANSFORMATION ON THE HILL NOW. EVERY OFFICE YOU GO IN, WHICHEVER CHAMBER AND WHICHEVER PARTY, THEY SAY 'WE HAVE TO DO SOMETHING.'"


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BRIDGING THE GAP

contributed significantly to the undocumented status of so many immigrants living in the United States. “We’re virtually holding them hostage because of these ... bars,” said Sonal Mehta Verma, an associate at Fragomen, Del Rey, Bernsen & Loewy. “We’re talking about family reunification here, but there are a great number of people who have not been allowed to go back home because of these three- and ten-year bars.”

As for the “exceptional and extremely unusual hardship”

standard that applicants of cancellation of removal must meet to obtain relief, Julia Mangano Toro, a solo practitioner in Washington, D.C., worried that many deserving applicants — those who have jobs, pay taxes, and have had continuous physical presence in the United States for more than 10 years—are unable to overcome this evidentiary threshold.

“[T]he judges say that they’re bound by the legislative language, so this has to be a legislative reform,” Toro added.

In response, Shahouljian and Greg Chen, AILA’s director of advocacy, said that congressional representatives are aware of the issue. “We have heard, without naming any offices, positive responses about the need to reform that particular standard,” Chen said. “I think there is sympathy and recognition that the system has limited discretion.”

Chen urged attorneys to [e-mail](#) case examples, so that reform proposals can be justified to congressional leaders. ▽

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"[Mary Kramer's] ability to explain the law in practical terms is unparalleled, making the book an indispensable tool for every lawyer who deals with the intersection between removal procedures and criminal conduct."

—Amy Peck, Iowa-Nebraska Chapter member

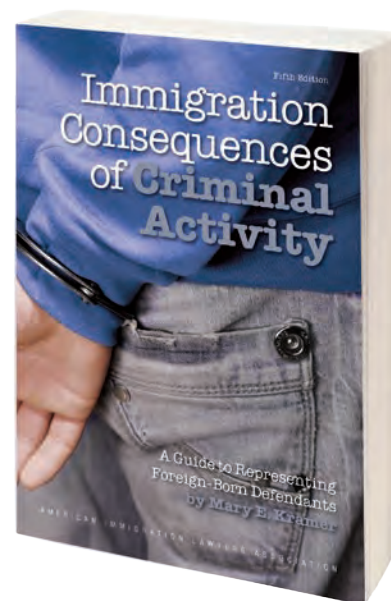
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BEHIND THE CASE

by Sheeba Raj

BEHIND THE CASE

CASE:

Franco-Gonzalez v. Holder, No. CV 10-02211 DMG, slip op. (C.D. Cal. Apr. 23, 2013)

ATTORNEY:

Ahilan T. Arulanantham

Legal Representation for Mentally Challenged

The U.S. District Court for the Central District of California, in a recent opinion, has required the government to provide legal representation to mentally challenged detainees in Arizona, California, and Washington.

In an opinion dated April 23, 2013, California federal district Judge Dolly M. Gee wrote, “Plaintiffs’ ability to exercise [their] rights is hindered by their mental incompetency, and the provision of competent representation able to navigate the proceedings is the only means by which they may invoke those rights.” [Franco-Gonzalez v. Holder](#), No. CV 10-02211 DMG, slip op. (C.D. Cal. Apr. 23, 2013).

The court has not yet issued guidelines to determine when a mentally ill respondent needs an attorney. “We are hopeful that we can resolve that question through settlement,” said Ahilan T. Arulanantham, deputy legal director of the American Civil Liberties Union of Southern California. To that end, on April 22, [Immigration and Customs Enforcement](#) and the [Executive Office for Immigration Review](#) each released a memo intending to enhance procedural protections for

mentally deficient individuals to be implemented nationwide—not just in Arizona, California, and Washington—by the end of 2013. “But if the parties cannot settle that claim, then it remains to be litigated,” Arulanantham noted.

Arulanantham praised the collaboration during the litigation between the ACLU, the Mental Health Advocacy Services, the Northwest Immigrant Rights Project, Public Counsel, and Sullivan and Cromwell LLP. “[T]he case was brought on behalf of people detained in Washington, California, and Arizona and we thought it was critical to know about the on-the-ground practices happening where there were class members ...,” he said. Nevertheless, it was a challenge to coordinate the weekly Friday afternoon calls for three years and discuss strategies during this time.

BEHIND THE CASE

CASE:

Matter of Name Not Published (BIA 2012)

ATTORNEY:

Kevin Crabtree

BIA: Daughter’s Talent Too Important

[In an unpublished decision](#), the Board of Immigration Appeals (BIA) granted cancellation of removal to the respondents because a deportation order


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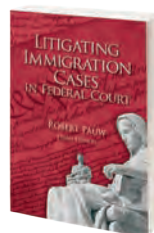
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would undermine the flourishing career of their U.S. citizen daughter, an extremely talented dancer.

“As an 11 year old child[,] she is a professional dancer, employed by an NBA franchise,” the BIA noted. “Due to her demonstrated aptitude[,] she trains with adults. Moreover, she dances competitively with two dance schools. These facts establish she is extremely talented. This talent has provided her with unusual opportunities.” The BIA concluded that because of the daughter’s talent, and the significant opportunities available in this country, “the hardship created by her inability to continue dancing is substantially beyond that which would typically result when a close family member leaves the United States.”

To illustrate the child’s aptitude and accomplishments in hip-hop dancing during the immigration court hearing, Kevin Crabtree, an attorney at the Law Office of Robert L. Lewis in Oakland, CA, relied on documentary evidence and testimony from the child’s mother. He showed the immigration judge full color photos of the child performing at NBA games. He also provided information about the high admissions standards of each of the two schools that the child attends, one of which even features her profile on its website. And through the examination of the child’s mother, Crabtree was able to demonstrate how her hip-hop knowledge and career management were critical to her daughter’s rising success. In retrospect, Crabtree said that he also would have called on witnesses from the schools and the NBA team to testify, as well, to describe the child’s flair for dancing.

A few weeks before submitting the BIA’s decision to AILA for publication, Crabtree noticed [In re Ruperto Andrade](#), A097 681 046 (BIA Sept. 17, 2012), another cancellation of removal case involving a child with stellar credentials. “I was wondering if



FOR MORE ON LITIGATION:

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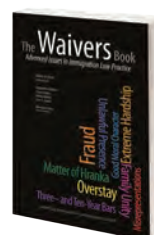
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it’s part of a trend of the [Obama] administration recognizing exceptionally gifted children, in a sense, and I kind of think that might be consistent with DACA and DREAM Act,” he said.

To increase the chances of prevailing on an application for cancellation, Crabtree advises attorneys delve into their client’s past, “find the hook that’s going to matter to the judge,” and explore it. ▼

Sheeba Raj is a legal editor for AILA and reporter for VOICE.



PASS THE MIC

Editorial, Comments, and Opinions



by
Neil S. Dornbaum
New Jersey
Chapter
Member Neil
S. Dornbaum
is a member of
Dornbaum &
Peregoy, LLC.
Newark, NJ.
His practice
is limited to
immigration
and nationality
law, with special
emphasis on
corporate and
employment-
based
immigration
matters.

Walking the Halls of Congress, Making a Difference

Having attended National Day of Action (NDA) for the last decade, this year had a different feel. Whether it was the blooming of the cherry blossoms—which signifies renewal—or the 400-plus AILA members volunteering their time and energy, the morning breakfast briefing was abuzz. The anticipation of a Senate bill, coupled with strong indications that comprehensive immigration reform was a legislative priority, swelled the ranks of AILA members participating in NDA.

In particular, the New Jersey delegation was double the number of past years. This allowed the group to divide evenly to cover all of our congressional districts, which was seen as critical, given the split of six Republican and Six democratic congressional districts. We had arranged for our entire delegation to attend an afternoon briefing with our senators, one of whom was [Sen. Robert Menendez](#), a member of the “Gang of Eight” responsible for drafting [S. 744: Border Security, Economic Opportunity, and Immigration Modernization Act](#)).

Our contingent included a DACA recipient who was enrolled in a master’s program at American University. She became out of status in the United States after the Department of State (DOS) revoked her U.S. passport, which was issued to her mistakenly, despite the fact she was born in the United States to Haitian diplomats. Her unusual story highlighted the complexity of the U.S.

immigration system and the need for reform for her fellow students and others caught in a maze of laws that fail to protect the future generations who will contribute significantly to this country.

NDA was not without its normal frustrations, however. It sharpened the lens through which we view how laws are enacted and reminded us how broad messaging obscures the important details. Also, while many of us live and breathe immigration law, many, including our legislators, have only a general sense of the intricacies of the system and the laws to which they may make sweeping changes. One congressman with whom we met had no concept of the distinction between legal permanent residence and citizenship, as well as the benefits conferred by each status. This indicated that the messaging around a pathway to citizenship as opposed to a pathway to legal permanent residence might not have been effective.

On the other hand, it was beneficial to be able to dispel another myth, which was raised in a meeting with another congressman. He told our delegation that he had recently met a businessman from Silicon Valley and was advised that employers were undercutting U.S. wages and working conditions because they could hire two H-1B workers for the price of one American. He failed to understand the role of the Department of Labor in the H-1B process and the labor condition attestations, and the requirements to pay prevailing and actual wages, which in many instances is


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PHOTOS BY JESSICA EISE
BOTTOM PHOTO: MARY KATE MCKENNA

**Rep. Luis
Gutiérrez
addresses
participants.**



not only at, but above, the rate of pay that many companies would be offering to a U.S. worker. He also was unaware of the Fraud Detection and National Security program, which spot-checks H-1B employers for compliance.

The highlight of NDA was the reception hosted by the American Immigration Council. This program featured a tribute to the life and legacy of Carmen DiPlacido, who spent 27 years with DOS influencing law and policy related to consular services, passports, and U.S. citizenship. He passed away unexpectedly this year, and had served as a mentor to many in AILA since leaving DOS for private practice in 1997.

We also heard an inspirational speech from [Suamhirs Rivera](#), a young Honduran who was kidnapped at 16 and brought to America, where he was trafficked and sold. But as a survivor of the foster care system in California, Rivera

now teaches caregivers and service providers how to create a relationship of trust and open communication with children who have been abused and traumatized. We also were treated to stories from [Cristeta Comerford](#), a Philippine national who is the first woman to become executive chef at the White House.

The highlight of the evening was the presentation by Retired General Colin Powell, the son of Jamaican immigrants, who rose to the rank of Four-Star General and served as the 12th chairman of the Joint Chiefs of Staff before retiring in 1993. He then went on to serve as secretary of state under President George W. Bush.

NDA is quite a special experience. It is truly a must for all AILA members because no matter how many times one has walked the halls and visited congressional offices, the novelty and sense of purpose never wear off. Also, the inspiring stories of immigrants thriving in and contributing to the United States reinforces our commitment to comprehensive immigration reform. ▼

**Cristeta
Comerford
accepts
her award
at AIC's
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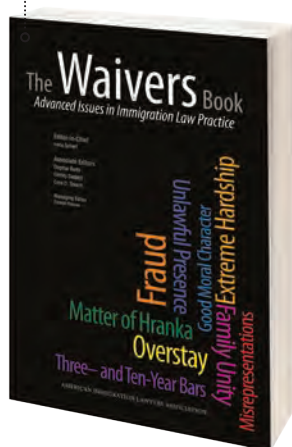
TOP 10 AILA RESOURCES

by Leslie Holman, AILA First Vice President

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The Waivers Book

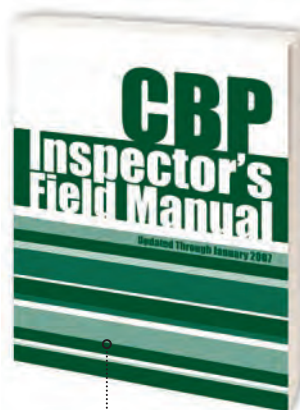
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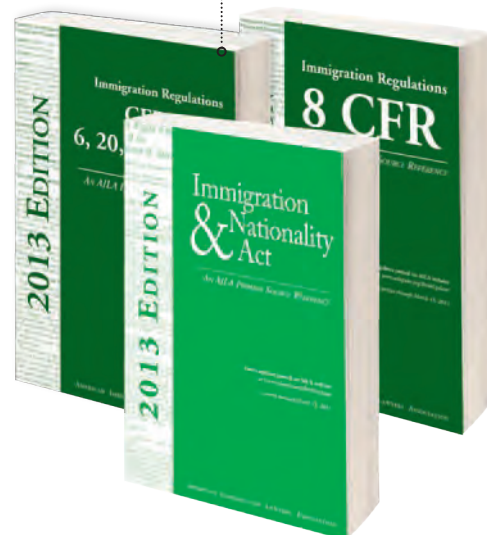
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8

AILA's INA

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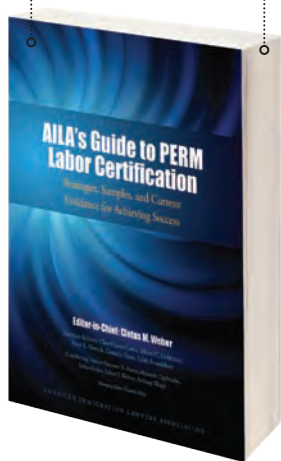
Immigration Nationality Handbook

“Older handbooks changes in procedure newer ones provide and advice that tra



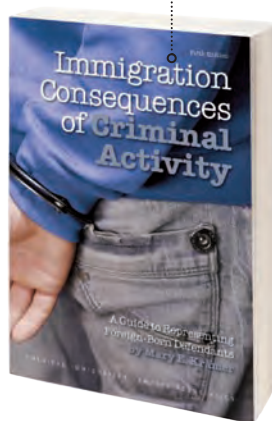
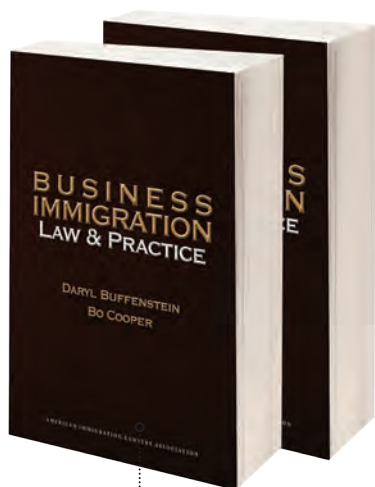
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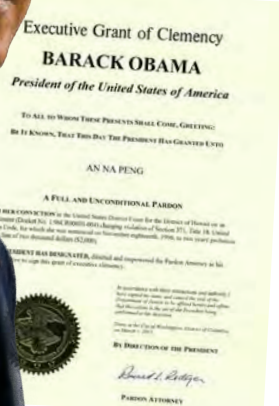
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With Thousands Rejected Each Year, Chinese National Receives Rare Pardon



If you've ever reviewed the [statistics compiled by the Department of Justice](#), you'll notice the stark contrast between the number of applications filed for presidential clemency and those granted during the past 20 years or so. Those applications, filed with the Office of the Pardon Attorney, request pardons, commutation of sentences, remission of fines or restitution, and reprieves. Just since 2009, during the Obama administration, more than 8,800 applica-

tions have been filed for executive clemency, of which only 40 have been granted.

So you can imagine the surprise when Hawaii Chapter member Maile Hirota received word that her client's request for a pardon had been granted. On [March 1, 2013](#), An Na Peng, a Chinese national and resident of Honolulu found guilty of conspiracy to defraud legacy Immigration and Naturalization Service (INS), was one of 17 to narrowly beat the odds and receive clemency from President Barack Obama.

Hirota has practiced immigration law since 1995, and has seen her share of compelling cases, but found that of An Na, her client, quite distinguishable. "It seemed so unjust, the [combination of AEDPA and IIRAIRA](#) rendering her ineligible for relief, when, in

'Providing Noncitizens with Their Day in Court'

The American Immigration Council's Immigration Policy Center and Legal Action Center have released a fact sheet on court reform, highlighting several recent reports on broader due process and biometric data issues that help put the U.S. Senate's deliberations into focus.

[Providing Noncitizens with Their Day in Court](#) discusses some of the critical policy proposals found in S. 744 to ensure that everyone receives due process of law and a meaningful opportunity to be heard. For far too long, immigration courts have failed to provide noncitizens with a system of justice that lives up to American standards of justice. A noncitizen has not truly had his or her day in court if he or she is removed without ever seeing a judge, does not have access to counsel and necessary evidence, or if the decision receives only perfunctory review.

For more information, contact Wendy Feliz at wfeliz@immcouncil.org or (202) 507-7524.

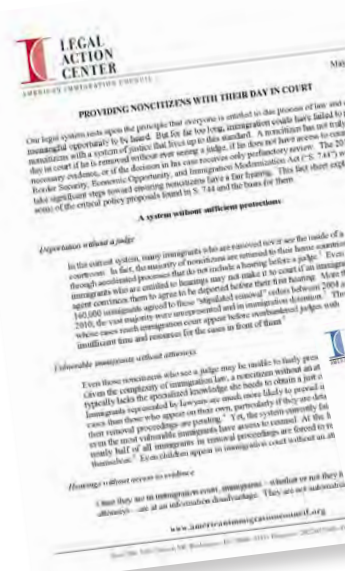



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fact, the district counsel at the time had written a letter that's in the record, saying that this woman is not deportable and then INS turning around a few months later and issuing an NTA," Hirota said. "Those things made it offensive and unbelievable. One of her children was diagnosed with autism right about the same time that the NTA was issued. ... As a mother going through that and then having been told you're not deportable and then all of a sudden you're deportable with no relief. She was a special client." Hirota also noted that An Na was neither convicted of an aggravated felony, nor sentenced to a day in prison.

To strengthen the chances of obtaining this rare remedy, Hirota advises attorneys to consult pardon experts, such as [Margaret Love](#) and [Samuel Morison](#) (she contacted both of them while handling An Na's case). Also, consider engaging the U.S. Attorney's Office that serves the jurisdiction where the conviction arose; it can submit a letter of support to the [Office of the Pardon Attorney](#). Of course, attorneys should help



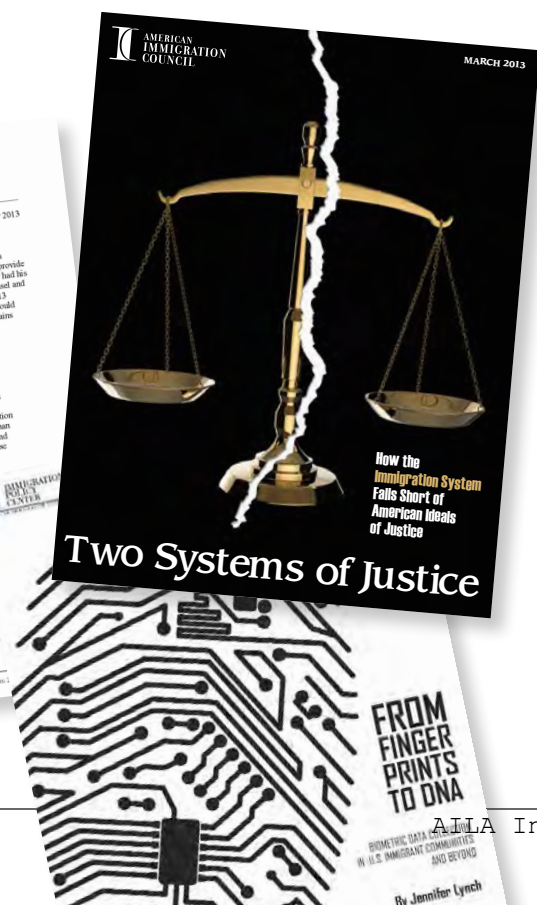
FOR MORE ON PARDONS:

AILA's Focus on Private Bills and Pardons in Immigration

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clients tell their stories by emphasizing their contributions to their community and to the United States. That said, don't allow them to minimize culpability for their convictions, Hirota noted. Also, managing client expectations is imperative, as executive clemency is infrequent and the process leading up to it could take years.

"I was just so surprised that the pardon process would take seven years," Hirota said. "I was also hoping that this would ... highlight[]... the need for the president to exercise his clemency powers in a positive way to help immigrants because, for so many people, it's a last resort." ▮



[Two Systems of Justice](#) is a special report that explores how the justice system for immigrants falls far short of the American values of due process and fundamental fairness. In fact, the immigration system lacks nearly all the procedural safeguards we expect in the U.S. criminal justice system. Given the high stakes involved in immigration cases and the increasing criminalization of immigration law, the report concludes that we must no longer tolerate a system that deprives countless individuals of a fair judicial process.

[From Fingerprints to DNA](#) is a special report that explains the different technologies for collecting biometrics, as well as how that data is collected, stored, and used. It raises concerns about data sharing, legal protection, and technological problems, then proposes changes to control and limit the storage of biometrics to benefit not only immigrants, but all people in the United States. ▮

POETIC JUSTICE

1000 nightmares

by Julia Manglano Toro

over 1000 people deported a day last year
over 1000 families separated from each other
each day last year
get your head around it
you can't
it's too large a number

hundreds of government agents processing people
processing paper
processing numbers
a number, not a name
a number attached to another country
not considered a person, parent, sibling, spouse

1000 a day
1000 people taken away
1000 walking into the unknown
1000 wandering into nothingness
1000 nightmares

going away
away from the familiar
scared about what is to come
going towards a different country no longer home
towards a town with no one and no work
towards a nightmare

here they could have been an artist
here they could have owned a business
here is where their home is
here is where they send their kids to school
here is where they work for all
1000 a day
1000 people taken away
1000 walking into the unknown
1000 wandering into nothingness
1000 nightmares

here they had a dream
that turned and crashed upside down
into a nightmare
everyone's worst nightmare
you can't imagine



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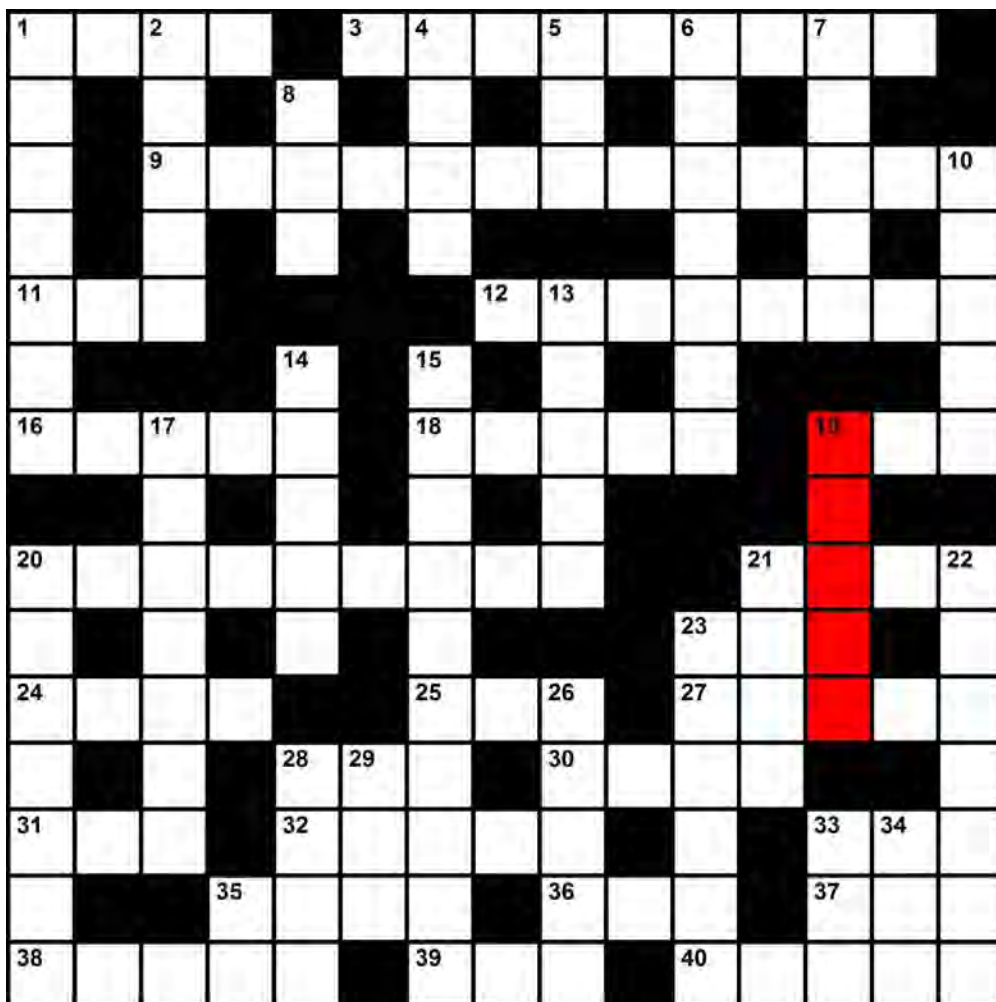
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ACROSS

1. A.k.a. Simpson-Mazzoli Act
3. New category of visa designated under IMMACT90
9. The legal process for handling this immigration legal concept was changed under IIRAIRA
11. The PATRIOT Act enabled greater sharing of information between DOS and legacy ____
12. Inquiries
16. 1996 Act, which was an effort by Congress to deal with terrorism
18. Offer a viewpoint
19. Protected status created under IMMACT90, abbr.
20. Sworn statement
21. Runaway victory
23. Zero
24. Pull, of a permit or approval
25. An attack on employees of this agency was one incident, which led up to IIRAIRA in 1996
27. Black ink item

Enter the code hidden in this puzzle to **save 20%*** on your purchase of **Immigration Forms Toolbox**.

*Expires 12/31/13



28. Part of an exchange
30. Send ____, deport
31. Watch closely
32. 1998 Act, which affected the status of immigration legislation regarding Haitians
33. Act enabling citizens to gain government information
35. Note to a secretary perhaps
36. ____red with the same brush
37. The PATRIOT Act required the development of ____metric technology to verify IDs
38. The PATRIOT Act permitted detention for ____ days pending a decision to charge them
39. Compass direction
40. Leaning

DOWN

1. 1997 Act, which changed the legal mechanisms relating to grounds for removal
2. Regulations
4. Legal memo heading (2 words)
5. Historical period
6. Search and ____
7. Hears a case
8. Be decisive
10. Approvals
13. Remove
14. Visas created under IMMACT90 for persons in sciences, arts, business and athletics (3 words)
15. Guilty verdict and punishment assigned: in IIRAIRA its definition was broadened
17. Adversaries of the prosecution
19. Equipment, data sources, software, etc., used to get the job done
20. IMMACT90 increased these from 5,000 to 10,000 per year
21. Insurer's calculation
22. Post 9/11 legislation, which tripled the number of border agents and inspectors
23. 1997 Act relating to status of Nicaraguans and Cubans in the U.S. since Dec. 1995
26. Diminish
28. Subsequently
29. Branch
33. Investigative group

34. Bribe to influence a legal outcome
35. North eastern state



Get the **answers to** last issue's puzzle!

WHAT'S HAPPENING

THE 4-1-1

The Mississippi Commission on the Status of Women chose Mid-South Chapter Member **L. Patricia Ice** as a finalist for the 2013 Woman of the Year Award for her significant contributions to the legal and judicial field.

Minnesota/Dakotas Chapter Member **Satveer Chaudhary** recently moved his immigration and criminal defense practice to downtown Minneapolis.

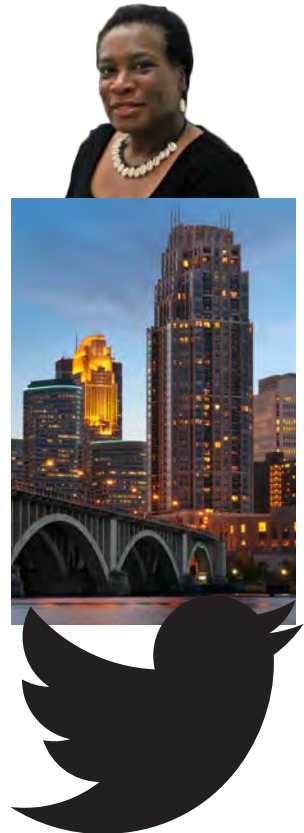
Connecticut Chapter Member **Najia Sheikh Khalid** has been selected to serve as co-chair of the Diversity Committee of her firm, Wiggins and Dana LLP.

Northern California Chapter Members **Atessa Chehraz** and **Daniel Horne** have been named partners of Jackson & Hertogs LLP in San Francisco.

Southern California Chapter Member **Andrea Szew** has recently opened an office in Las Vegas. She continues to maintain an office in Los Angeles.

Wildes & Weinberg P.C. has opened two new offices, one in Miami and another in Aventura, FL. The firm continues to operate offices in Englewood, NJ, and New York City.

ABC News and Univision recently listed 20 immigration experts to follow on Twitter to stay on top of the immigration reform debate. Ohio Chapter Member **David Leopold** and Mid-South Chapter Member **Greg Siskind** made the list.



FOLLOW:

@DavidLeopold

@gsiskind

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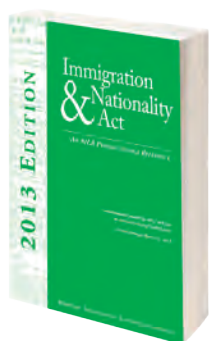


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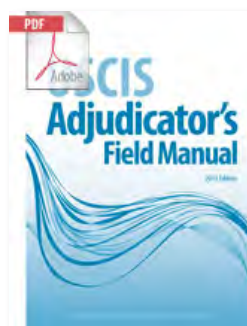


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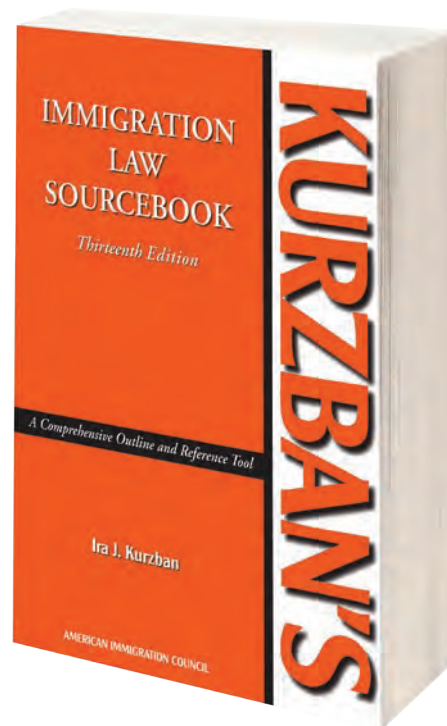
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