

IMMIGRATION LAW FOR NON-IMMIGRATION PRACTITIONERS

Immigration law is a very complex and frequently bewildering area of law. Both the rules and regulations, as well as enforcement, are subject to shifting political winds and popular pressure. Further, constitutional protections frequently receive minimum attention from immigration courts and the federal courts of appeal, resulting in severely restricted constitutional rights, which would not be tolerated for US citizens. Accordingly, it is important for the immigration practitioner to remain aware of changes in immigration law, and be cognizant of any limitations in practice areas. Non-immigration practitioners must be extremely weary of undertaking any legal proceedings which may affect their client's legal immigration status, and should be quick to consult with a knowledgeable immigration practitioner for assistance as necessary. The consequences of failing to be aware of properly advise your client of adverse immigration consequences are simply too drastic not to take such item seriously, and seek appropriate professional assistance in a timely fashion.

1. Introduction

Immigration law is a creature of statute. It is driven to a large extent by political considerations. The main forces between immigration law historically in the United States has been either racism/nativism and economics, or both.

2. Immigration law structure - 8 U.S.C. § 101 ff; 8 C.F.R. § 3 ff.

- a. Department of Homeland Security - the inside of USA border
- b. State Department - everything outside USA border, with DHS assisting in various roles
- c. Executive Office for Immigration Review
 - i. Immigration Court - initial review of charges of excludability and deportability; reviews cases, hears cases on merits, and issues deportation orders
 - ii. Board of Immigration Appeals - agency judicial body exercising appellate review on cases from the Immigration Court
- d. U.S. Courts
 - i. U.S. Court of Appeals - exercises judicial review over agency decisions from Board of Immigration Appeals
 - ii. U.S. District Courts - habeas corpus and administrative appeals and naturalization issues
 - iii. U.S. Supreme Court - exercises overall certiorari review of immigration cases from U.S. Court of Appeals

3. Admission to the United States

- a. Non-immigrant visas. Common non-immigrant visas:
 - i. B-1/B-2 - tourist visa

- ii. F-1 - student visa
- iii. H-1B - non-immigrant worker in their professions
- iv. K-1 fiancée visa
- v. K-3 spouse of US citizen
- vi. L-1 - intercompany transfer (manager, researcher, etc.)
- vii. M-1 - trade/vocation school visa
- viii. O/P - performing arts, athletics, other visa (for compensation)
- ix. R-1 - religious worker visa
- x. S - federal/state criminal witness
- xi. T - victim of sex trafficking
- xii. U - victim/witness/assisted in prosecution of crime
- xiii. V - beneficiary of an immigrant visa filed by LPR spouse/parent prior to December 20, 2000

b. Immigrant visas (permanent legal resident)

- i. Family based
 - (1) Immediate relative - spouse or unmarried child under 21, and parent or sibling if U.S. citizen is over 21
 - (2) Preference relatives
 - (a) unmarried children over 21 of US citizen
 - (b) spouse and unmarried children under 21 of LPR
 - (c) child over 21 unmarried of LPR
 - (d) married child of USC
 - (e) sibling of USC over 21

c. Employment Based Immigration for Permanent Residents

- i. EB-1 Aliens of extraordinary ability
- ii. EB-2 Aliens of outstanding ability
- iii. EB-3 Skilled workers (2 or more years experience required; unskilled workers - less than 2 years experience required)
- iv. EB-4 Religious worker/missionary/priests/pastors
- v. EB-5 Immigrant investors

4. U.S. Citizenship

- a. All persons born in the US and subject to jurisdiction thereof
- b. Most legal residents - five years as a legal resident, and eighteen years of age, no aggravated felony criminal convictions, read and write rudimentary English, take oath of allegiance
- c. Only three years as LPR if gained residence as spouse of USC
- d. Some persons automatically gain US citizenship, such as children immigrating to the United States as legal residents, then in physical and legal custody of US citizen parent, whether by birth or by adoption
- e. Some children born outside the United States automatically become citizens if

parents or grandparents are US citizens - requirements quite stringent

5. Other immigration benefits under immigration law, such as Temporary Protected Status, asylum, diversity visa lottery
6. Deportation
 - a. Anyone not a citizen can be deported from the United States
 - b. Serious consequences for immigration convictions, including serious misdemeanors in Iowa (can be aggravated felony if receive a sentence of one year whether for theft or assault)
 - c. All drug trafficking charges are deportable, with no waiver
 - d. Almost all drug possession charges are deportable, with no waiver, exception one conviction for possession of 30 grams or less of marijuana (waiver available)
 - e. Any crimes involving dishonesty or sex are deportable in general, with some exceptions - waiver may be available (Important: if you have an immigrant client charged with a crime, please consult with a knowledgeable immigration deportation attorney before entering a plea or deciding how to proceed - see outline regarding Defending Criminal Aliens in Iowa)
7. Employment Verification
 - a. All persons working in the United States must be legally authorized to do so. Employers are required to verify their employee's employment authorization status, by properly completing the I-9 form. Significant penalties attach to failure to properly complete the form and otherwise maintain legal employment authorization within the workplace.
 - b. Employers are also liable for discrimination based on national origin. Significant penalties likewise can attach for discrimination based on national origin.