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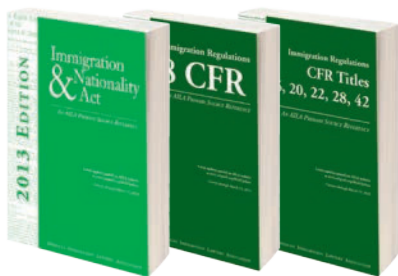


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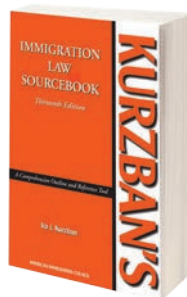
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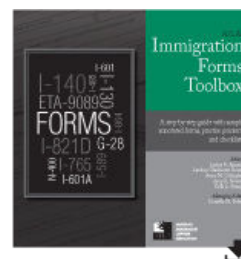
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**GRAPHIC DESIGNERS**  
Bradley Amburn, Robert Bequeaith

**NEW MEDIA ASSOCIATE**  
Jessica Eise

**CONTRIBUTORS**  
Nadeen Aljijakli, Gary Endelman, Christine D. Mehfood, Myles Mellor, Roseanne "Rosie" Milano, Jonathan L. Moore, Danielle Polen, Ted Ruthizer, Paul J. Saraukas, Teresa A. Statler, Anna Stepanova, Julia Manglano Toro, Cletus M. Weber, Becki L. Young

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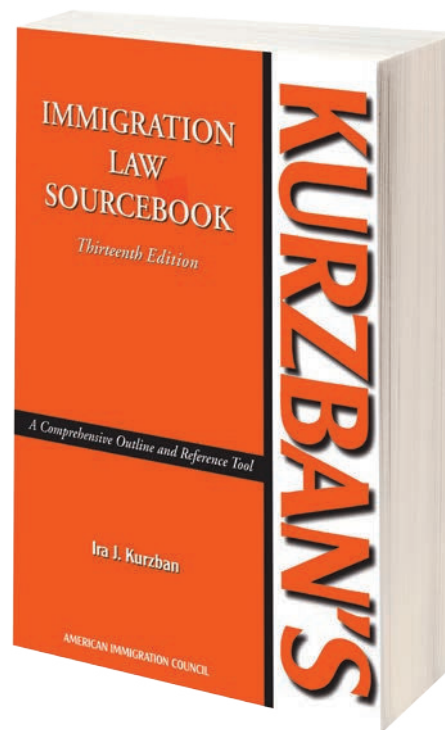
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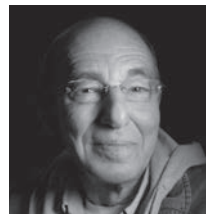
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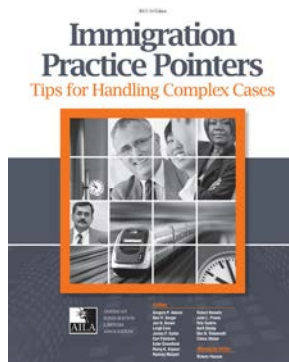
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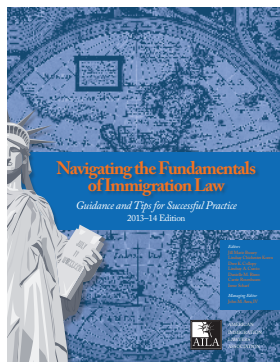
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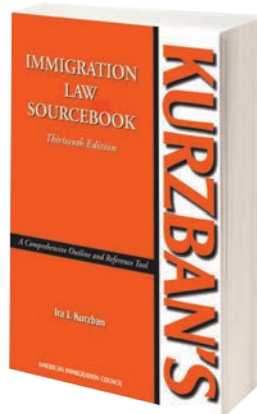
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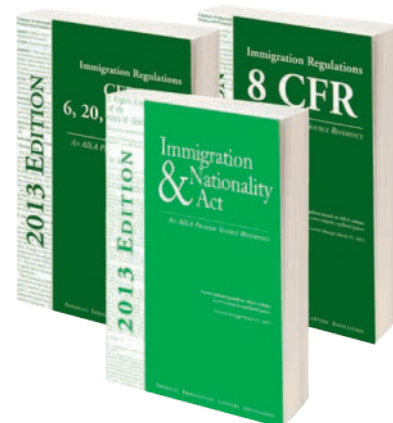
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# UNSOLICITED ADVICE

from Cletus M. Weber

## Newer Practitioners: CIR Is Your Time to Shine

**C**omprehensive Immigration Reform (CIR) has not yet passed, but based on my own experience with the Immigration Act of 1990 (IMMACT90), I think CIR bodes especially well for newer practitioners—irrespective of whether you hope to handle the anticipated “blue card” cases.

### The IMMACT90 Example

IMMACT90 was similarly a comprehensive statute,

and such new legislation always has some quirks in it. My law partner and I had graduated from law school in the late 1980s, just before IMMACT90 passed. With some fortuitously contrarian reading of the new law, we were able to capitalize on the fact that in passing the National Interest Waiver (NIW) provision, Congress intended to waive the “job offer” requirement in addition to simply waiving the labor certification process. This meant self-petitioning was possible for



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NIW cases, which was a major break from the employer-sponsor provisions standard in labor certification. It was perhaps easier for us to see as newer practitioners because the “job offer” requirement had not yet become so deeply engrained.

We immediately began filing hundreds of these cases for researchers around the country and hired several additional lawyers to help us. Times were relatively slow in other areas of employment-based immigration law, but we were so busy we could hardly keep up.

## History Will Repeat

CIR similarly presents a golden opportunity to break into immigration law. As a newer practitioner, you are every bit as likely to stumble upon a major quirk, potentially one that few others—even an experienced practitioner—can see. With the currently rapid spread of information, it will be more difficult for such a quirk to go unnoticed for long, but there is still potential for rapid growth if you discover a successful new way of looking at CIR provisions.

## Opportunity in Volume

Even if you fail to make a similar discovery in CIR itself, the sheer magnitude of new cases expected to roll out of CIR is extraordinary. Employment and family cases currently amount to hundreds of thousands of cases per year, but CIR will create millions of additional cases. Even if this increase in cases is spread out over many years, that still constitutes a manifold increase over current case volumes. Even if you never file a “blue card” case, you will likely experience an

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**Demonstrators gather in front of the U.S. Capitol during a demonstration for immigration reform in Washington, D.C., on April 10.**

uptick in clients as other practitioners shift focus or simply become too busy.

## Seize the Moment

Large changes in immigration law have the power to substantially alter your career—especially if you are just getting started. Do not take a passive role. Proactively study and contribute to CIR, and you will reap many rewards. ▀

**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.

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by Jonathan L. Moore

## The PERM Appeal File: Foundation for Appellate Success

**W**hen the Department of Labor denies a PERM application, counsel may file a motion to reconsider hoping for a swift reversal. Those hopes are dashed, however, when, instead of a certified PERM, counsel receives a CD and a notification that the case has been forwarded to the Board of Alien Labor Certification Appeals (BALCA). Because the appeal file contained on this CD is the prism through which BALCA will view the facts of the case, ensuring that the appeal file is accurate and complete is the first step in any successful appeal.

### *What Do the PERM Regs Say About the Appeal File?*

When transmitting an appeal to BALCA, the certifying officer (CO) must assemble an indexed, consecutively paginated appeal file. *See* 20 Code of Federal Regulations (CFR) §656.26(b). It is the CO's duty to ensure that this appeal file contains the complete application file and "all the written material ... upon which the denial was based." *Id.* §656.26(b)(1). The CO must send a copy of the appeal file to the employer. *Id.* §656.26(b)(3).

The appeal file must be accurate and complete because BALCA's review of the facts of the case is limited to the contents of the appeal file. *See id.* §656.27(c). If there are deficiencies in the appeal file compiled by the CO, employers have a regulatory right to "furnish or suggest" to BALCA any documentation that was submitted to the CO prior to the final determination. *Id.* §656.26(b)(3). Properly exercising this right is important—an employer cannot hope for vindication on

appeal if deficiencies in the appeal file prevent BALCA from meaningfully reviewing the case. *See, e.g., Matter of Thomas Jefferson Univ.*, 2010-PER-1400, at 4 (BALCA Aug. 7, 2012) (remanding when omissions from the appeal file "prevent[] the Board on appeal from rendering a meaningful decision").

### *Addressing Deficiencies in the Appeal File*

Counsel should review the appeal file as soon as possible to identify any omissions or inaccuracies. If documents are missing, counsel will need to determine if filing a supplement is necessary. When making this determination, first evaluate whether the omission from the appeal file is material. If the omitted document is not at issue on appeal, supplementing the appeal file does not provide any real benefit to the employer. Similarly, if a key document is missing from the employer's audit response in the appeal file, but that document appears elsewhere in the appeal file—for example, as an exhibit to a motion to reconsider—it may be preferable to simply "suggest" the omission to BALCA in the employer's brief, rather than "furnish" another copy.

Next, consider whether the omission could have occurred when the CO digitized the case file and copied it onto the CD (*e.g.*, the appeal file is paginated as "Page \_\_ of 100," but is only 50 pages). In that scenario, the best remedy may be to request a paper copy of the appeal file from the CO (which should, theoretically, be complete). The CO's memorandum accompanying the appeal file contains instructions for making this request. Assuming the paper copy contains the omit-


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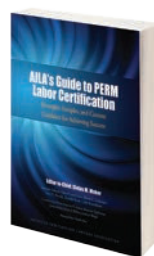
ted documentation, the employer could supplement the appeal file with a copy of the complete paper file.

Additionally, because a supplement can only include documentation that was submitted to the CO before the final determination (20 CFR §656.26(b)(3)), consider explaining when and how the documents in the supplement were submitted to the CO—ideally, by relying on contextual clues already existing in the appeal file. For example, was the document listed in the cover letter to the audit response? Is there other evidence in the appeal file that suggests that the omitted documentation was previously submitted?

### Format of a Supplement to the Appeal File

The CO transmits the appeal file to BALCA electronically. *See, e.g., Matter of Lindsborg Cmty. Hosp. Ass'n*, 2012-PER-3395, at 2 (BALCA Sept. 19, 2012). Thus, any voluminous supplement to the appeal file also should be provided in an electronic format, such as on a CD, preferably with consecutive pagination for ease of citation. The employer must send a copy of any supplement to the associate solicitor. *See* 20 CFR §656.26(b)(3).

The regulations do not specify a deadline for supplementing the appeal file. BALCA has previously noted that waiting until after the completion of briefing is



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“too late.” *Matter of Thomas Jefferson Univ.*, 2010-PER-1400, at 10. The best practice would be to submit any supplement no later than with the employer's Statement of Intent to Proceed, which is filed after BALCA docket the appeal.

### Conclusion

The appeal file is an important component of any PERM appeal. Analyzing this file early—and ensuring its accuracy—will allow practitioners to put their clients in the best position for success at BALCA. ▀

**Jonathan L. Moore** is an attorney with McCandlish Holton, PC in Richmond, VA. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

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by Christine D. Mehfoud

## Integrating E-Verify into Your Existing Form I-9 Process

I can't tell you how many times I have heard, "We participate in E-Verify so we don't need to worry about our Form I-9s, and we don't need any Form I-9 training." Nothing could be further from the truth. Participation in E-Verify is an "add-on" rather than a "replacement" to a sound Form I-9 process, and, in fact, E-Verify carries with it additional compliance requirements.

As noted in my last [blog](#), it is only a matter of time before E-Verify becomes mandatory for all employers. However, before you rush out and join E-Verify thinking it is a panacea for all your Form I-9 woes, it is important to plan how your team will integrate E-Verify into your existing immigration compliance program. While E-Verify compliance is complicated and we don't recommend jumping in without guidance from experienced counsel, below are a few points that all employers need to understand.

### What Is E-Verify?

E-Verify is a "free" and "voluntary" Internet-based system, operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA), that electronically verifies the employment authorization status of newly-hired employees. Employers submit information from an employee's Form I-9 to the system through a secure website, and the system automatically searches for the information in SSA's and USCIS's respective databases. If the system matches the submitted information with the databases, the employer is immediately notified that the worker is confirmed (98.3 percent receive confirmation within 24 hours). If E-Verify cannot

confirm the data, then employers receive a tentative nonconfirmation (TNC). Employers must follow specific procedures to allow workers to correct erroneous nonconfirmations.

### E-Verify Brings with It Additional Government Scrutiny

The USCIS Monitoring and Compliance Branch, created in 2007, is responsible for identifying E-Verify usage patterns that suggest identity fraud or employer misuse of the system. In addition, the E-Verify [memorandum of understanding](#) (MOU) requires that an employer agree to cooperate with the Department of Homeland Security (DHS) and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding [the employer's] use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

The E-Verify MOU further provides that information given to DHS by the employer may be used "to enforce the Immigration and Nationality Act (INA) and Federal criminal laws." By participating in E-Verify, the employer is regularly providing information to the government it could use in a criminal investigation of the employer. USCIS also has entered into memoranda of agreement with Immigration Customs and Enforcement (ICE) and the Department of Justice's [Office of Special Counsel](#) (OSC) for referring cases of suspected employer misuse of E-Verify and discrimination matters to ICE and OSC. USCIS will





also provide those agencies with information regarding ongoing administrative and criminal investigations when requested.

## How Does E-Verify Work?

Employers submit information provided on an employee's Form I-9 in to the E-Verify website. The E-Verify system will return one of three results:

- Employment Authorized: the employee is authorized to work.
- SSA Tentative Nonconfirmation (TNC): there is an information mismatch in the SSA database.
- DHS Verification in Process: DHS will usually respond within 24 hours with:
  - Employment Authorized or
  - DHS Tentative Nonconfirmation

If the employee is Employment Authorized, employers record the result and close the case in E-Verify to complete the Form I-9/E-Verify process. If the employee receives a TNC, however, the employer must follow specific detailed steps to resolve the TNC. Failure to follow the TNC process can result in significant penalties.

## E-Verify Timing

Employers must complete the Form I-9 before entering any employee information into E-Verify. Employers must enter the employee's Form I-9 information into E-Verify for all newly-hired employees no later than the third business day after the employees' start date. If the employee does not have a Social Security number (SSN), the employer must note the Form I-9 and set it aside until the employee obtains an SSN. The employer will need to monitor and follow up with the employee and should create an E-Verify case once the employee has an SSN.

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## Posters

Once enrolled in E-Verify, employers are required to post certain notices in English and Spanish in an area visible to prospective employees (which may include the employer's website):

- E-Verify participation
- OSC anti-discrimination notice

## Additional Form I-9 Process Requirements

When an employer participates in E-Verify, the Form I-9 rules for that employer alter slightly. For example, if an employee presents a "List B" identity document during the Form I-9 process, E-Verify users may only accept it if it contains a photo. In addition, the E-Verify photo match tool allows the employer to match the photo on a document to the photo that DHS has on file for that employee, which helps to detect document fraud. As a result, if an employee chooses to provide one of the following documents, the employer is required to make a photocopy of the document and retain it with the Form I-9: ➡


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(1) Employment Authorization Document (Form I-766); (2) Permanent Resident Card (Form I-551); or (3) U.S. Passport or Passport Card. The photocopy requirement exists for E-Verify users regardless of whether the employer photocopies and retains other documents presented during the Form I-9 process. The employer is required to match the photo on the document with the photo provided through E-Verify.

## Additional Auditing Requirements

Employers who participate in E-Verify should add E-Verify compliance to their regular Form I-9 audit schedule. The E-Verify component will determine whether the employer received the appropriate work authorization through E-Verify for all relevant employees and has stored confirmation of that authoriza-


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tion with the Form I-9. The E-Verify component will focus on ensuring that the E-Verify-specific additional Form I-9 process requirements are being followed. ▼

**Christine D. Mehfoud** 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.



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by Teresa A. Statler

## What We Can Learn from Newcomers to America About Health, Happiness, Hope

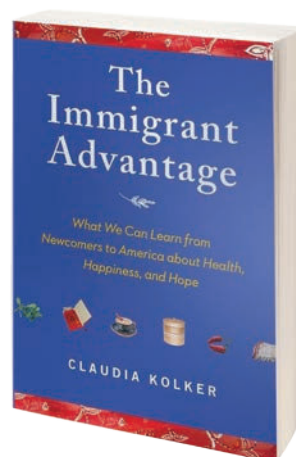
Intrigued by the success of immigrant friends, award-winning journalist Claudia Kolker investigated several customs brought to the United States by immigrants and their families. These customs are unfamiliar to most Americans, but Kolker believes that they help explain the “immigrant paradox”—why immigrants, even from poor and dangerous homelands, tend to be healthier and happier in many respects than native-born Americans.

In [\*The Immigrant Advantage: What We Can Learn from Newcomers to America about Health, Happiness, and Hope\*](#),

Kolker discusses several customs, including the Vietnamese Money Club or *hui*; the *cuarentena* or Mexican custom of “mothering” a new mother for 40 days after giving birth; the South Asian “assisted” marriage (different from “arranged” marriage); and the Korean *hagwon* or after-school programs for children and teenagers. She also researches some of the reasons why residents of a poor Chicago barrio are healthier than equally struggling black residents in the next neighborhood.

### Vietnamese Traditions

The most interesting chapters describe the Vietnamese Money Club. In the chapter, “How to Save,” Kolker starts a *hui* with her Houston friends and neighbors. A *hui* is “a centuries-old Vietnamese tradition that harnesses peer pressure to force its members to save money. [T]he *hui* hinges on one transaction: every month, cash in hand, members meet to contribute their dues. And each month, a different player takes that lump sum home, interest-free.” Kolker tells us about the “thousands” of *huies* that have launched successful businesses, restaurants, and fishing boats for Vietnamese immigrants here in the United States.



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The members of Kolker’s *hui* used their cash to pay off loans, finance a graduate degree, and make down payments on cars. Like the Vietnamese immigrants who trust each other, Kolker and her friends found that something so “foreign” became “utterly conventional: the promise that you could play by the rules and not be betrayed.”

Kolker, a working mother, dives into the Vietnamese custom of *com thang* or “monthly rice” delivery to her Houston home, and tells us about it in the chapter, “How to Eat.” Her excitement at having a fresh, healthy, and inexpensive evening meal delivered to her front door, after a long day at the office, is something anyone can understand and look forward to. She tells us that this delicious tradition hinges on two core Vietnamese values: “the importance of tremblingly fresh ingredients and the need to eat with other people. To serve these demands, *com thang* cooks . . . have devised a repertoire of services.” In the United States, and at least in Houston, these have morphed to include daily home delivery of a menu decided by the *com thang* provider, with a renewable, monthly subscription. *Com thang* helps busy families eat together. ➡




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## A Mexican Tradition


In "How to Be a Good Neighbor," Kolker interviews residents of Chicago's Little Village neighborhood, who predominately hail from small Mexican towns and villages. Although there is a strong correlation between poverty and sufferers of asthma, especially in U.S. inner cities, Little Village has extraordinarily low rates of the disease, as well as other illnesses. Kolker learns that these statistics are attributed to the robust social interactions of Little Village's residents. As they did back home, Little Village residents frequently pass the time on stoops and sidewalks, socializing and watching children. They also walk to small stores and markets, since many do not have cars. The outdoor activity not only raises their immunity, but the vigilance of people out and about also lowers the area's crime rate, relative to similarly-situated neighborhoods.

## A Korean Tradition

Kolker also finds impressive the Korean *hagwons*, intensive programs in different subjects that supplement Asian students' regular curriculum. In "How to Learn," she attributes the high academic achievement of Asian Americans to the *hagwons*, which incorporate the traits of the best schools and offer relationships with supportive tutors. As a result, students' grades and their motivation tend to improve. Also, immigrant parents prefer *hagwons* because they are more affordable than private school tuition.

*The Immigrant Advantage* is a refreshingly positive portrayal of immigrants in America. This would be an excellent choice for book groups. ▀

**Teresa A. Statler** practices law in Portland, with an emphasis on family-based, asylum, and removal cases.


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*In Search of the American Dream*



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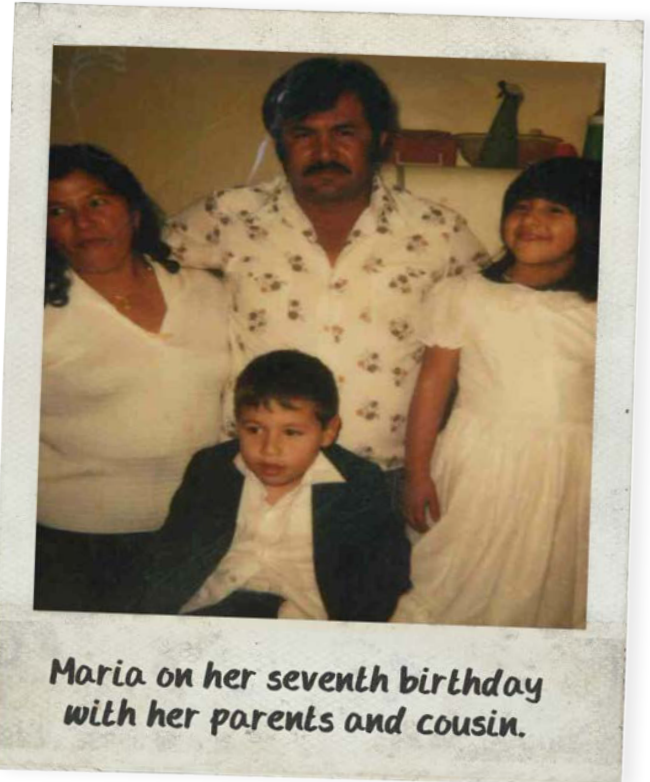
## From Mexico to California: Being Smuggled in as a Child

by Sheeba Raj

AILA member Maria De La Luz Hernandez was 6 years old the first time she had ever traveled in a car. She had trouble keeping food down as the car made its way from her destitute town in Guanajuato, Mexico, to Tijuana—the first leg in a long, exhausting journey to a better life in the United States. To stanch the vomiting, the driver gave her gasoline mixed with sugar to drink. Accompanying her were her mom, Ursula, one of her brothers, Juan, and her unnamed clay doll.

“Many hours passed by and when I woke up, I thought I was in another world,” Maria said, instead of her grandmother’s farm, which is where she thought she was going and the only place she had ever visited outside her town. “There were so many lights, buildings, and paved roads! . . . The strangest thing of all was the people! They were so fair skinned. I thought perhaps they were sick! In my hometown, we were all dark and indigenous looking.”

And as if the 2½-day journey and change in scenery weren’t shocking enough to Maria, in Tijuana, she was soon snatched from her mom’s arms by two female strangers and placed in a hotel with other crying children and hardly any adult supervision. She said that these women, who turned out to be coyotes, separated her from her mom and brother out of concern that



*Maria on her seventh birthday with her parents and cousin.*

her fussiness would derail meticulously crafted plans to escape to the United States.

In the meantime, two male coyotes took her mom and brother to the inspection line and instructed them to say that they were en route to the market. The guys then went across the border to receive them after they cleared the checkpoint.

A day later, Maria reunited with her family in southern California. One of the two women who had taken Maria at Tijuana posed as her mom and brought her over the border. But the journey was not over yet. The last in a ➔

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# IMMIGRATION STORIES

## *In Search of the American Dream*

string of coyotes—a man clad in a black wig and dark shades—was driving a Cadillac. He put Ursula in the truck with three other guys while Maria scrunched herself in the bottom of the front passenger seat and Juan at the floor of the rear passenger area. For Maria, the drive seemed to last an eternity. The dark, confined space amplified the sounds of cars whizzing by, as well as the coyote's demands to remain still.

About two hours elapsed before the coyote stopped on the side of a road and allowed Ursula and Juan to sit inside the car. "The coyote had warned us that he would be playing loud music and if the music stopped, it meant Border Patrol had noticed us and [he] was pulling the car over," Maria said. "However, if the music kept playing, then we were okay ... the music never stopped playing."

The coyote drove them to Los Angeles, where they reunited with Maria's father, Guadalupe. "I had not bonded with my father since I only had one memory of him and that was during the two weeks he had [come] to visit us when I was 5 years old," she explained. "I remember not knowing who that strange man was. I recall one incident when he took me to kindergarten and I ran to the other side of the street because I didn't want him to walk with me since he was a complete stranger to me." Maria was just a year old when her father left the family home in Guanajuato to find better opportunities in the United States. It took him four years to save enough money to pay for that brief trip home.

In Los Angeles, money exchanged hands and Maria's father brought his family to a garage overflowing with 50 people. Less than a year later, after he brought his six siblings and their children to the United States, the entire family relocated to a one-bedroom apartment. Also living in this cramped space were two of Maria's maternal uncles and four cousins, as well as seasonal farm workers picking produce in Orange County.

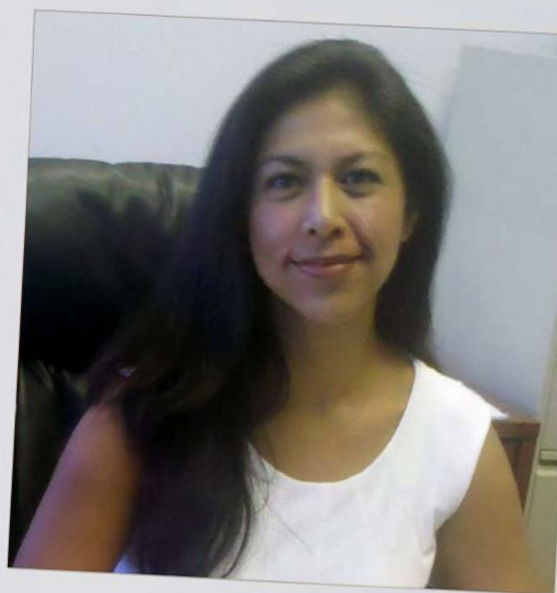
**"I WAS  
THE ONE  
THAT WAS  
GOING  
TO MAKE  
THAT  
CHANGE  
HAPPEN  
FOR  
OTHERS."**



"From the moment we entered the United States until I was probably 16 years old, we always lived with minimum five, six families in one apartment," Maria said. "[W]e thought that was normal until we started having friends from school and realizing that we were extremely poor and we were illegal ... and that was the reason why we had to live in the conditions that we were living."

But living in stifling quarters wasn't the only characteristic that distinguished Maria from many of her peers. For instance, she first entered the workforce at the age of 9 when she made snow cones at a local liquor store. As time wore on, no job was beneath Maria, and the laundry list of odd jobs expanded to include stints as a fast-food chain restaurant employee, a collections agent, a tutor, a customer service representative for national corporations, and a kindergarten assistant, just to name a few. While many of these random jobs seem unconnected, they each served as a stepping stone for Maria's professional advancement.

However, not everyone was in Maria's corner. Maria unexpectedly experienced some resistance from her guidance

**Maria De La Luz Hernandez**

counselor, who tried to dissuade her from attending college and suggested that she instead enroll in a home economics program because, in his mind, Mexicans just have children. Shaken but undeterred, Maria headed straight to California State University–Fullerton, where friendly staff gave her an application. Ultimately, she graduated from that school with a degree in criminal justice and a minor in Spanish. Later, she earned a master's in Mexican American Studies from California State University–Los Angeles.

But Maria felt that additional schooling was necessary to help lift others from crushing poverty and hopelessness. She toyed with the idea of teaching, but nixed it in favor of practicing law. “With teaching, I did not know if my advice would be followed by those I preached it to,” she explained. “However, with the law, I was the one that was going to make that change happen for others.” On August 16, 2001, Maria visited Western State College of Law in the hopes of joining the incoming class. She was told that applications were no

longer being accepted because orientation was scheduled to start the following day. Undeterred yet again, Maria persuaded the administrators to review her application. A couple of hours later, she got a call welcoming her into the class. She graduated in December 2005.

After working at several immigration law offices, Maria joined her current employer, [Malcolm Cisneros](#) in Irvine, CA, in July 2008. Two years later, she established the firm's immigration practice. Despite her success, the foul stench and taste of the gasoline-sugar concoction that she drank 31 years ago during that seemingly endless journey between two border nations, two separate worlds, remain seared in her memory. Because of her rare background as a U.S.-licensed attorney and a formerly undocumented immigrant, Maria understands the stakes all too well and easily establishes rapport with prospective clients who lack money and hope, especially those who have been victimized by notarios. “[T]hey know that someone understands them and is not out to rip them off or exploit them in any way,” she said.

Maria's upward trajectory, which includes her naturalization in 1995, has brought her much happiness, but it is always tempered by thoughts of her hardworking mother and father—the same father whom a 5-year-old Maria once regarded as a stranger. Every morning before he left for work, Maria's father would check his children's homework to make sure it was complete. Little did they know that he was illiterate; he was simply making sure that numbers and letters filled the pages. But in October 2012, thanks to Maria's help, he became a U.S. citizen. “He made me the most proud woman on earth on that day as he answered many difficult English civics questions that U.S.-born citizens would not have been able to answer correctly,” she recalled. “I accompanied him to his swearing-in ceremony and watched as tears rolled down his face as he solemnly swore to uphold all the laws of this country.” ▼



# ENJOYING THE FRUITS OF ONE'S LABOR

## Navigating F-1 Status

by Anna Stepanova

“**T**he roots of education are bitter, but the fruit is sweet,” said Aristotle. In other words, the hard work of a devoted student paves a road to ultimate lifelong success. However, in today’s strict F-1 enforcement environment, this road may have hidden unexpected bumps that are not at all related to the sweat and tears of academic labor.

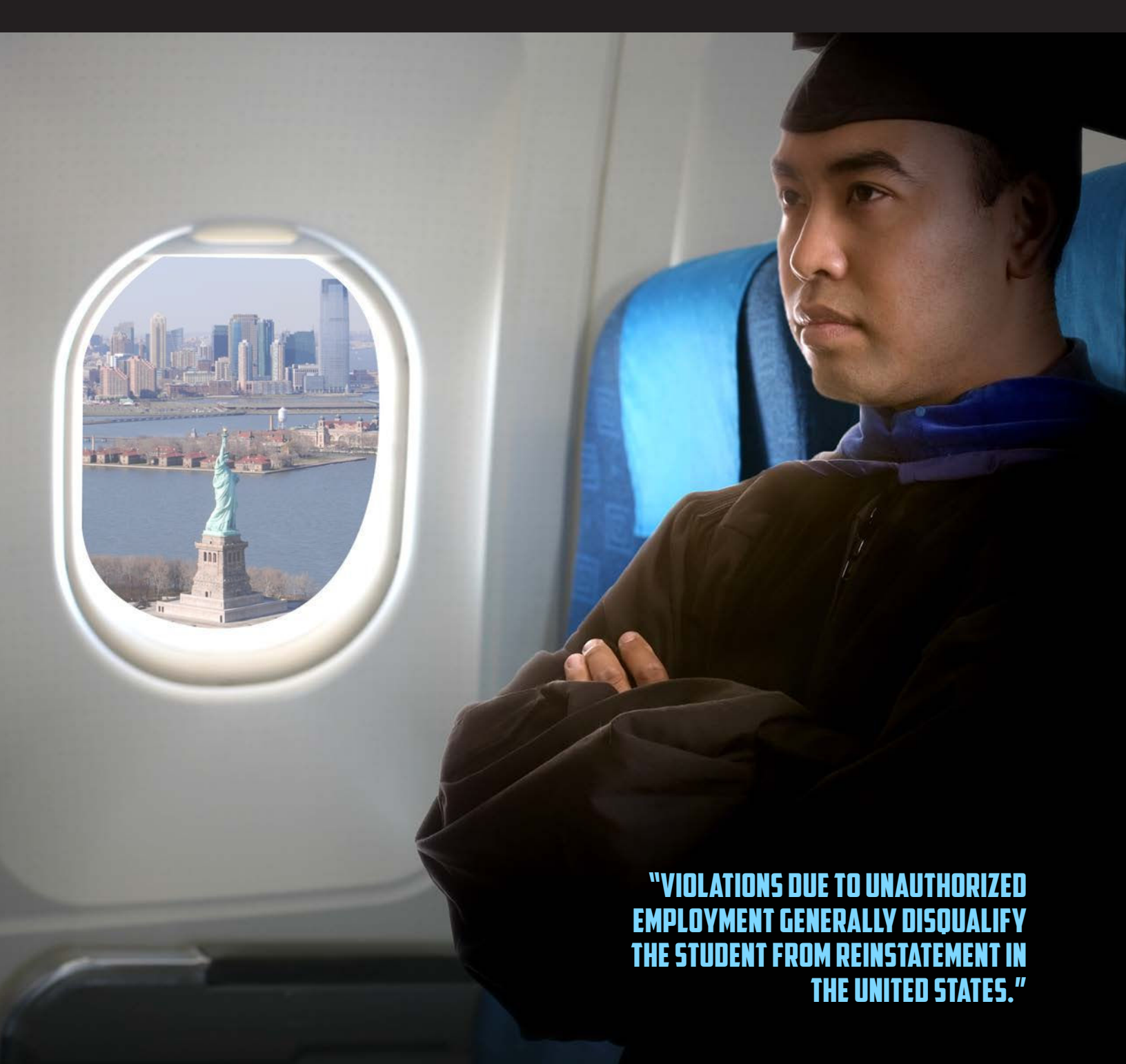
The government’s actions in strict F-1 enforcement are premised upon the ever-growing number of unscrupulous schools that lure foreign-national students with promises of immediate employment authorization, easily accessible online education, accelerated programs of study, and assistance with job placement after graduation. The results are often less than sweet—many students are denied Optional Practical Training, changes of status (most commonly, to H classification), nonimmigrant visas, and admission to the United States. In some rare instances, students may be found to have committed fraud/misrepresentation, which results in a permanent ineligibility for any immigration benefits in the future unless an appropriate waiver is obtained first. The following are practice pointers that attorneys should bear in mind when confronting F-1 status issues:

### Ensure Clients Avoid Problem Schools

Certain factors, such as indulging in online coursework easily accessible from any geographic location, receiving continuous employment authorization from the get-go, and taking classes only held in the evenings or on weekends, are likely to lead to a possibly “fatal” F-1 status violation. The best way to avoid such a problem is for students to enroll in a reputable university or college accredited by a recognized accrediting agency.

In the aftermath of the [Tri-Valley University \(TVU\) shutdown](#) in January 2011, which is likely the most notorious abuser of the F-1 program, it became abundantly clear that the new generation of private for-profit and often unaccredited schools presents a real threat to the legitimacy of the F-1 program. TVU’s most notable violations included an almost exclusively online course of study and employment authorization that did not comply with F-1 regulations. As a result of the government’s raid and shutdown of the school, all students’ Student and Exchange Visitor Information System (SEVIS) records were terminated, leaving the students scrambling for options to remain in the United States in valid status. SEVIS was launched in 2002 as a system for tracking F-1/M-1 students and J-1 exchange visitors.





**"VIOLATIONS DUE TO UNAUTHORIZED  
EMPLOYMENT GENERALLY DISQUALIFY  
THE STUDENT FROM REINSTATEMENT IN  
THE UNITED STATES."**

Schools like TVU often encourage and even facilitate F-1 status violations by aggressively advertising significant benefits to prospective students above and beyond what reputable universities or colleges can offer. Some students are clearly victims of erroneous advice from the designated school official (DSO), and victims of their own ignorance and desire to maximize work authorization options while in F-1 status.

However, others are aware of the questionable path they have taken but are still willing to take the risk of falling out of status based on the assurances from these schools and their friends and colleagues, who have obtained benefits from these programs.

The best advice in this situation is, of course, to avoid problem schools altogether. However, when advising students who already have encountered or are ➔

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likely to encounter status problems based on their enrollment at a problem school, attorneys should discuss possible courses of action to minimize or avoid these problems. Depending on a situation, possible strategies may include reinstatement, departure from the United States and subsequent re-entry in F-1 status as an alternative to reinstatement, re-entry in a different status, and/or change or adjustment of status in the United States.

## Curricular Practical Training

Most common problems arise out of improper employment authorization, online course work, and enrollment in less than full-time study. Pursuant to 8 Code of Federal Regulations (CFR) §214.2(f)(10), a student in F-1 status can be authorized for Curricular Practical Training (CPT) after a full academic year of full-time study.

With regard to the full academic year requirement before CPT authorization, one of the most notable exceptions is the enrollment in a graduate program that requires immediate participation in CPT. 8 CFR §214.2(f)(10)(i). Note that the one-year of study requirement does not mean that the student must be in F-1 status during that entire year. The legacy Immigration and Naturalization Service (INS) policy, impliedly adopted post-SEVIS by the Student and Exchange Visitor Program (SEVP), expressly allowed such study to count toward the one full academic year in statuses that permit full-time enrollment (*i.e.*, A, E, G, H, J, L, O, and TN). The same policy applies to F-1 applicants for OPT under 8 CFR §214.2(f)(10). The SEVP manages schools and nonimmigrant students with F and M visa classifications on behalf of the Department of Homeland Security. SEVIS is administered by the SEVP, which is part of U.S. Immigration and Customs Enforcement (ICE). Additionally, CPT must be an “integral” part of an established curriculum. But what does this term really mean? It may be either required

by the curriculum or, if not required, the student must receive credit for the training. SEVP, [Training for Designated School Officials](#), at 48. In other words, if CPT is not required (which is the most common scenario), then the student must register it as a class.

A vast number of U.S. Citizenship and Immigration Services’ (USCIS) Requests for Evidence concerning CPT require that there be a cooperative agreement between the school and the employer. While the regulation at 8 CFR §214.2(f)(10)(i) does appear to require that sponsoring employers have “cooperative agreements with the school,” according to the long-standing policy, the cooperative agreement requirement always has been interpreted as a symbol of the partnership between the school and the employer in providing real-life practical learning to F-1 students. Therefore, in the absence of a cooperative agreement, counsel should argue that, by authorizing CPT, the school accepted the terms of employment judging the work to be compliant with the CPT requirements.

## Online Classes

Another common area of alleged F-1 status violations is a prohibitively high number of classes taken online. Pursuant to 8 CFR §214.2(f)(6)(i)(G), no more than one online class not exceeding three credits can be taken during each academic term. As problem schools thrive on distance learning, this is a frequent issue for all students who ever attended a school flagged by USCIS as a violator. In our technologically advanced world, online education can take many forms, including online classwork that can be completed at times convenient to the student; “simulcast” courses that offer a virtual classroom experience; classes held at a specific location with the instructor appearing via Skype, etc. Short of both students and the instructor being present during a scheduled class in the same physical space, USCIS does not normally accept any other arrangements as meeting the physi-



cal presence requirement. The logic is clear—if the student is not required to meet with his or her instructor at a school facility on a regular basis, the purpose of F-1 visa classification allowing the student to enter and remain in the United States has all but vanished.

When presented with a problem of online course work exceeding the permissible maximum of hours, attorneys should look for evidence of some type of physical participation in the form of periodic in-person meetings with the instructor or a final presentation/report requiring physical presence, which should satisfy the physical presence requirement.

## Failure to Take Full Course Load

Another common violation area is falling below the full course load without obtaining proper authorization from a DSO. Most often, students have to take fewer classes than they would need to maintain a full course load in their last semester. Some may assume that, because it is such a common situation, they do not need anything more than their academic advisor's assurance that they are on the right track to graduate. Unfortunately, this is not the case and USCIS's watchful eye is likely to reveal the missing authorization.

Other exceptions to the full-time study requirement are relatively rare and USCIS is acutely aware of that fact. Nonetheless, counsel should go over all the exceptions to make sure that none applies. Exceptions to the full-time study requirement are enumerated in 8 CFR §214.2(f)(6)(iii), including medical issues or difficulty with the English language, which would also require authorization from the DSO.

## DSO's Role in F-1 Maintenance

The DSO is put in charge of the F-1 student's immigration matters under 8 CFR §214.2(f). In its role as the agency with the power and authority to grant certification to schools for attendance by a nonimmigrant student, SEVP makes sure that the school and

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its DSOs meet the requirements of 8 CFR §214.3(h) (1). When students set foot on the school's campus, they look to their guide and advisor on immigration matters, their DSO. If the DSO provides improper advice, incorrect authorization for CPT, reduced course load, or online course work, or no proper authorization where needed and requested, then the DSO is at least partially responsible for the student's failure to maintain valid F-1 status. In that case, counsel should try to show that the student relied on the advice of the DSO, which ultimately led to the status problem.

Pre-SEVIS, INS Operations Instructions (OIs) recognized the role played by the DSO in expressly excusing the student from failure to maintain a full load of classes if it was based on the DSO's advice. OI 214.2(f)(10) stated that "[s]tudents who are taking a less than full course of study on the advice of the designated school official are considered in status and are not precluded from participation in practical training if they are also otherwise eligible." While SEVP did not expressly indicate its position with regard to this policy, it could be argued that it should continue ➔



in the absence of SEVP expressing its opinion otherwise. It should be noted that problem schools often have DSOs misadvising its F-1 students on a number of issues. Many cases involving failure to maintain F-1 status are successfully resolved when it is clearly shown that the basis for the violation was an improper action by the DSO.

## Overcoming a Status Violation

When devising a proper strategy to resolve a violation, counsel should consider the role of the DSO and his or her level of involvement in the student's case, as well as the severity of the violation. Violations due to unauthorized employment generally disqualify the student from reinstatement in the United States. In other cases, F-1 reinstatement may be an option if the violation occurred within the last five months. In many cases, however, USCIS looks at the time period in F-1 status beyond the five-month period, and if it determines that the violations started before that time, it could be a basis for denial unless there were exceptional circumstances that prevented the student from applying sooner. Of course, if there is no inadmissibility bar, the student may decide to travel and re-enter in valid F-1 or another nonimmigrant status. In deciding whether to pursue this option, counsel should be aware of recent reports of fraud inadmissibility findings made by the consulate with regard to F-1 students attending problem schools. Other options within the United States may include requests to change status nunc pro tunc under 8 CFR §248.1(b) with an argument that the violation resulted through no fault of the student but because of extraordinary circumstances beyond his or her control.

## Thinking Ahead: You Can't Be Too Careful

The number of possible F-1 violations is by far greater than the ones described here. But one thing should

be clear: in today's political environment, students are scrutinized more than ever and even minimal violations can result in the loss of F-1 student status. International students make a significant contribution into the U.S. economy and advancement in the global market. Most students come to the United States with an open mind and determination to make the best out of their hard work deeply rooted in the principle of education. Let's make sure that the fruits of their labor are not bitter or even bittersweet! ▀

**Anna Stepanova** is an immigration attorney at the Murthy Law Firm in Owings Mills, MD. Her practice is focused on complex administrative appeals, motions, and responses to Requests for Evidence. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

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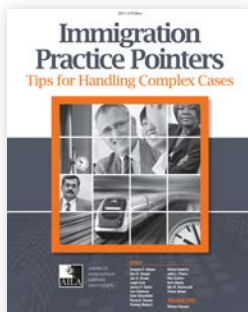
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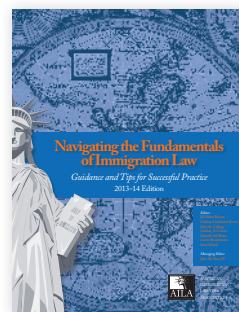


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For more information on this topic,  
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# U.S. Serves as Safe-Haven for Syrians with TPS Extended

by Nadeen Aljijakli

Thousands of Syrians across America breathed a heavy sigh of relief in response to the announcement by the U.S. Department of Homeland Security (DHS) on June 17, 2013, that Temporary Protected Status (TPS) would be extended until March 31, 2015.

Syria was originally designated for TPS on March 29, 2012, and expected to last through September 30, 2013. DHS not only extended TPS for previously eligible Syrians, but also re-designated the qualifying date, opening the door for thousands of Syrians who came to the United States after March 2012 to benefit. It is rare, historically, for the U.S. administration to change the originally designated TPS cutoff date for a country. However, it recognized the dire need in the case of Syria “because the extraordinary and temporary conditions in Syria that prompted the 2012 TPS designation have not only persisted, but have deteriorated, and because there is now an ongoing armed conflict in Syria that would pose a serious threat to the personal safety of Syrian nationals if they were required to return to their country.” [78 Fed. Reg. 36223](#) (June 17, 2013).

In the face of limited immigration options, thousands of Syrians were left to confront the dangerous realities of returning to their home country. Despite the harrowing violence on the ground, many Syrians simply do not have viable claims for asylum, as the political conditions that affect the population as a whole are generally not considered to be persecution. DHS has stated that there are approximately 2,600 Syrian TPS holders

who are expected to re-register for TPS under the extension. *Id.* The agency further estimates that 9,000 additional individuals may be eligible for TPS under the re-designation of Syria. *Id.* With the United Nations estimating nearly 100,000 people killed in Syria since the start of the regime’s crackdown on dissidents in March 2011<sup>1</sup> and nearly 1.7 million Syrians displaced across national borders,<sup>2</sup> the TPS extension for Syria is certain to have a far-reaching impact on the Syrian population in the United States.

## Eligibility

To be eligible for TPS, the applicant must be a Syrian national, or a person considered to be stateless who last habitually resided in Syria. INA §244(c)(1)(A). The latter clause may apply to Palestinian refugees with Syrian travel documents. Evidence of nationality for Syrians is typically shown by either the passport, or the *hawiyeh*, the national identification card, as the birth record is not always accessible. The other basic requirements of TPS for Syrians are that the applicant has been continuously residing in the United States since June 17, 2013; and, for initial applicants, that he or she must be physically present in the country on October 1, 2013. The Immigration and Nationality Act (INA) allows an exception to the continuous residence and continuous physical presence requirements for “brief, casual and innocent absences” from the United States. INA §244(c)(4)(A).

For instance, this author’s client, a J-1 visa holder living and working in the United States was abroad at a conference when TPS was originally designated for Syria. He provided evidence of his continuous residence in





**A war plane bombed the city of Serevaniye—this March 22, 2013, photo captures the aftermath.**

the United States, as well as the temporary nature of his trip, including the conference program. He was granted TPS despite his absence during the eligibility date.

Applicants who are re-registering for TPS are not required to provide any documentation of continuous

residence and physical presence unless later requested to do so by U.S. Citizenship and Immigration Services (USCIS). For initial applicants, physical presence on October 1, 2013, will be presumed unless there are red flags indicating otherwise, which may lead ➔

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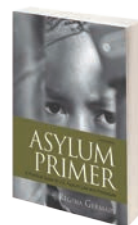
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USCIS to request further documentation. A final decision will not be made for initial applicants until after October 1, 2013, the official re-designation date. However, applicants should apply as soon as practicable in order to obtain employment authorization, if desired, and to avoid longer processing times.

## Bars to TPS

Statutory bars similar to those for asylum apply to TPS, such as the persecutor and firm resettlement bars. [The application for TPS](#) asks several questions regarding participation in military and other groups. As Syria has a two-year compulsory military-service requirement that applies to most adult males, many applicants will be required to provide an addendum explaining the circumstances of their military service. In one case, this author's client explained that although he received standard weapons training during his military service, he did not participate in armed combat or violence. His application was granted without issue.

Other applicants who have dual nationality or have spent significant time in other countries outside of Syria, which is especially common for Syrians pursuing academic and professional opportunities, may also need to demonstrate that they were not firmly resettled in those countries. For example, a Syrian client, who was born in Venezuela and lived in the country until the age of 5, was granted TPS after providing a statement explaining that although she carried the Venezuela passport, she had never returned there or maintained any ties to the country. Another Syrian client, who had spent many years of his life in Saudi Arabia, was able to establish that his resident status in the country was merely temporary because it was linked to his educational training and work. He, therefore, maintained his eligibility for TPS. USCIS has stated that it will assess whether such bars apply on a case-by-case basis. USCIS, Questions and Answers, "[Designation of](#)



### FOR MORE ON ASYLUM:

AILA's Asylum Primer, 6th Ed.



Introduction to Removal: Applying for Relief  
(Conference Recording)



[Syria for Temporary Protected Status](#)," (Mar. 29, 2012).

Processing times have not been published by USCIS for Syria TPS applications. Some cases were processed and approved within a few months while others took nearly a year for adjudication. TPS applicants with pending asylum applications appear to be taking significantly longer for processing, as USCIS must have access to all the applicant's "A" files in order to make a final decision.

While TPS has undoubtedly provided a safe haven for Syrians in the United States, there has not been any humanitarian/refugee immigration option that specifically allows Syrians abroad to travel to the United States despite the dire refugee crisis. Only this month did the Obama Administration announce that it may permit some limited refugee processing and resettlement, but the impact is expected to be small.<sup>3</sup> In the meantime, although their future remains uncertain, eligible Syrians in the United States have some comfort in knowing that they can remain safely here at least until March 2015. ▀

**Nadeen Aljijakli**, a Syrian-American, is a partner at Aljijakli & Kosseff, LLC with offices in Cleveland and New York City. She specializes in complex removal defense, as well as family-based immigration. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

<sup>1</sup> "Syria death toll at least 93,000, says UN," BBC, June 13, 2013.

<sup>2</sup> M. Castillo, "Angelina Jolie turns spotlight on Syria," CNN, June 21, 2013.

<sup>3</sup> "U.S. ready to accept thousands of Syrian refugees," RT, Aug. 9, 2013.



# Immigration Reform

**It's a complicated issue.**

But our country needs to see real change and that means Congress has to act.

It's not a perfect process but real reform would bring our immigration system into the 21st century and address the needs of families, businesses, and undocumented residents.

Some may try to take advantage so until a new law is in place, be smart and seek good legal advice.

Immigration reform done right strengthens our economy and upholds the values that America was built on.

**Support Real Immigration Reform Now to Build America's Future.**



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

# Intelligent and Wise: Out of the Mouth

by Sheeba Raj

**T**he American Immigration Council (AIC) honored the first-place winner of its Community Education Center's 16th Annual 'Celebrate America' Fifth Grade Creative Writing Contest in San Francisco on June 28. Ten-year-old Erin Stark of Enetai Elementary School in Bellevue, WA, read her poem (featured right) titled, "[What Would You Miss About Immigrants if They Didn't Come to America?](#)" during AIC's Immigrant Achievement Awards ceremony. Chosen from



COURTESY OF AIC

among thousands of entries nationwide, the piece asks what one would do if immigrants stopped coming to the United States. Erin's winning entry will be read into

**Winner Erin Stark accepts her certificate from AIC Executive Director Ben Johnson in San Francisco.**

the Congressional Record and all top five winners will have a flag flown over the Capitol.

Erin's poem was inspired by her fifth-grade teacher Monica Chun's lessons about immigration. "I thought immediately about food, holidays and contributions [of immigrants]-like buildings", Erin said.

The second place winner is Julianne Capp of Las Vegas, the third

## 'Celebrating America,' D.C.-Style

**A**dding to the chorus of supporters of immigration to the United States are three Washington, D.C.-area fifth graders who participated in AIC's 16th Annual 'Celebrate America' Creative Writing Contest.

The Washington, D.C. Chapter's first-place winner, Revanth Vejju, addressed attendees at the chapter's dinner meeting on May 22. "Immigrants are the pigments that are used to color America. ... It is not hard to see, but immigrants are the very reason that American

food, architecture, and economy are not the same as they were 50 years ago." Revanth attends Greenbriar West Elementary School in Centreville, VA.

"A couple of days ago, I learned how Halloween was created," said Derek Chu, the D.C. Chapter's second-place winner and a student at Carderock Springs Elementary School in Potomac, MD. "It was created to celebrate a Christian festival and was once called 'All Hallow's Eve.' This shows that even though I am not Christian, I am able to learn about Christianity and others such as Judaism, Islam, Baha'i, Hinduism, Taoism,

Buddhism, and much more."

Third-place winner Alexandra Stone, who is enrolled in Holy Trinity School in Washington, D.C., shared an anecdote about her Italian great-great grandfather, who punched his college professor after the professor said, "You'll never make it, you dumb Italian!" After being expelled from that college, her great-



COURTESY OF SHEILA STARKER HAHN



# s of Babes

place winner is Helen Agee of Dallas, and honorable mentions are Emma LaTendresse of Portland, OR, and Jeffrey Phong of Los Angeles.

The celebrity judges of the national contest are all immigrants including Olympic gold medalist Henry Cejudo, co-founder of National Organization for Women Sonia Pressman Fuentes, award-winning author Edwidge Danticat, and Presidential Medal of Freedom recipient Gerda Weissman Klein.

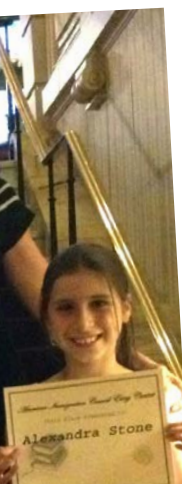
Twenty-one AILA chapters participated in the contest. ▼

great grandfather enrolled in another school and ultimately made his way through medical school. "Although my great grandfather shouldn't have punched his professor, my point is that he kept on trying and didn't give up."

The three winners each received a commemorative

certificate, an educational savings bond, and a gift certificate.

Revanth Vejju also won tickets to Six Flags. ▼



## *What Would You Miss About Immigrants if They Didn't Come to America?*

*Would you miss the food?*

*The pot stickers, sushi, and dumplings,*

*Pizza, spaghetti, curry, or crepes?*

*Just think about it for a minute or two,*

*Could you survive eating fish at every meal? Could you?*

*Immigrants are coming every day,*

*Variety is what they bring with them in every way.*

*Would you miss the holidays?*

*Day of the Dead, and Chinese New Year*

*Hanukah, Kwanzaa, and Ramadan, too?*

*Why did the Christians travel the distance,*

*Was it to share their beliefs and Christmas?*

*Immigrants are coming every day,*

*Variety is what they bring with them in every way.*

*Would you miss their art?*

*Painting, literature, and music?*

*Plays, sculpture, and design?*

*Life would be dull without art,*

*People might become sad and would get broken hearts.*

*Immigrants are coming every day,*

*Variety is what they bring with them in every way.*

*Would you miss the things they made?*

*Railroads, canals, communities, and skyscrapers,*

*Schoolhouses, highways, churches, and businesses?*

*What would kids do without schools?*

*We might turn into fools!*

*Immigrants are coming every day,*

*Variety is what they bring with them in every way.*

*Immigrants are coming every day.*

*They bring recipes, celebrations, talents, and skills.*

*Variety is what they bring with them in every way.*

*USA would be bland without immigrants,*

*Now our nation is colorful and the joy is infinite.*

by Paul J. Sarauskas and Becki L. Young

## Non-EU Business Travelers to Italy

**W**hile we all know that Italy is by far one of the world's greatest tourist destinations, fortunately, doing business in Italy is also popular and made easier by the procedures in place. Italy's rules about what a business visitor can do are broader than the rules in most other jurisdictions and, in many cases, may allow the performance of certain activities that one might think would require work authorization and a work visa.

### What constitutes a “business” visit?

**ACTIVITY:** In Italy, “business” covers traveling to Italy for “economic or commercial purposes; to make contacts with local businesses or carry out negotiations; or to learn, to implement or to verify the use of goods bought or sold via commercial contracts and industrial cooperation.”<sup>1</sup>

This vague definition allows business visitors some flexibility when engaging in business activities. That is, as long as the activity falls within the above definition, then the person engaged in that activity can enter Italy without a work authorization or work visa, which are both required for non-EU nationals who intend to “work” in Italy. Examples of some ac-

**“WHEN AN ACTIVITY FALLS WITHIN A GRAY AREA, SEEK A WORK PERMIT AND WORK VISA TO AVOID NONCOMPLIANCE AND POSSIBLE SANCTIONS.”**

tivities that may be considered permissible business activities depending on an analysis of all the factors involved include:

- Attending business meetings, interviews, seminars, conferences, trade shows;
- Negotiating contracts;
- Installing, maintaining, and repairing a product, including software that was manufactured by a foreign company and sold to an Italian company;
- Making customer sales calls and delivering goods;
- Training, hiring, and terminating staff; and
- Researching and/or preparing surveys.

**DURATION:** A business visitor can stay in Italy for up to 90 days in each 180-day period. The 180-day period begins when the visitor first enters any [Schen-](#)

### Milan Expo 2015

**A**s of this publication, there are 131 countries participating with more than 20 million visitors and businesses expected to attend the [Milan 2015 Expo](#), which promotes “the idea that everyone on the planet should have access to food that is healthy, safe

and sufficient.” It is scheduled to take place from May 2015 to October 2015. For those coming as business visitors for less than 90 days, the above rules will apply. For official participants and those staying more than 90 days, while not eliminating the immigration requirements entirely, the Italian government has promised to provide

quicker and easier solutions for work and residence permits. See [and Execution of the Agreement Between the Italian Republic and the International Exposition Bureau on the Necessary Measures to Facilitate Participation at the 2015 U.N. Expo in Milan](#), Law, Jan. 14, 2014, art. 6 (Gazz. Uff. Jan. 25, 2014).



gen country. The 90 days can be used all together or in multiple trips depending on the business needs. The 90 days include not only the days spent in Italy on business, but also any days as a tourist, and any days spent in any other Schengen country. The 90 days cannot be extended, and upon exhausting the 90 days, the visitor must leave the Schengen area until the next 180-day period begins.<sup>2</sup>

**VISA:** According to Italy's Ministry of Foreign Affairs, [citizens from certain countries](#) do not need a visa for business visits up to a maximum of 90 days and can enter with only their passports. [All other citizens](#) must apply for a business visa from the [Italian diplomatic post with jurisdiction over their place of residence](#). A business visa issued by another Schengen country will enable the holder to also conduct business in Italy within the terms of the visa.<sup>3</sup> In this case, the visitor will have to [register](#) with the local police office within eight days of entry.

Business visas, which can allow single or multiple entries, can be issued for less than 90 days. The Italian consulate has broad discretion in issuance. Applicants may have to wait seven to 30 days from the time of their application for the visa to be issued.

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o Facilitate  
Universal  
4, 2013, n. 3,  
2013, n. 21).



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Going Global: Trends  
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## Conclusion

The above is not an exhaustive or definitive summary of what a business visitor to Italy is permitted to do; rather, it is a sample of what the rules allow for based on the facts of a particular business visit. That is, there may be situations where what seems like a business activity actually may exceed the scope of permissible activity because there is no clear line provided by the authorities. Other considerations, such as tax, social security, health, and safety, also factor into the decision about whether to seek a visitor visa or a work visa. When an activity falls within a gray area, seek a work permit and work visa to avoid noncompliance and possible sanctions. ▀

**Paul J. Sarauskas**, a bilingual and dual American-Italian citizen, is an attorney with Baker & McKenzie's Global Immigration & Mobility Group (GIM) in Milan. **Becki L. Young** co-manages the GIM Group in Baker & McKenzie's Washington, D.C., office. The authors' views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

1 [Translation of Ministry of Foreign Affairs Decree of July 12, 2000:](#)

2 See Law 68/2007; Testo Unico of July 25 1998, Law 286; Decree of the President of the Republic, Aug. 31, 1999, no. 394.

3 European Union, [Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders \("Schengen Implementation Agreement"\)](#), ch. 4, art. 19, para. 1, June 19, 1990.



# GOING GLOBAL



## *Global Migration Section*

**The Global Migration Section (GMS)** boasts a diverse membership of AILA attorneys and international associates (foreign attorneys who are not licensed in the United States and, therefore, are ineligible for AILA membership) from across the world. Join this

burgeoning community of global migration practitioners and enjoy benefits, such as networking opportunities, education and publications, teleconferences, a quarterly digest; and much more.

The GMS hosts quarterly conference calls to discuss

## Going Global Has Never Been Easier—Join AILA’s Global Migration Section



*by Ruslan Bocancea*

**T**he [Global Migration Section \(GMS\)](#) comprises AILA members and international associates who are interested in furthering the practice of global migration. It provides a forum for members to share ideas and to receive mentorship on global migration-related issues.

The GMS has helped me gain a reputation for being able to identify reputable practitioners worldwide. Recently, a partner at a large law firm in Minneapolis asked me to help her locate an attorney in Poland who is familiar with Polish bribery laws and the U.S. Foreign Corrupt Practices Act. I sent an e-mail to the GMS’s listserve seeking recommendations. It took less than 30 minutes to receive more than 10 referrals, including three personal phone calls. The law firm’s partner was very grateful. I have since received one U.S. immigration-related

referral from this firm, which was the result of my assistance.

The GMS also enabled me to secure several reputable international clients. Recently, a well-known law firm in the Netherlands was seeking Romanian counsel familiar with Romanian visa issues. One of the firm’s corporate clients wanted to temporarily transfer several Indian-born IT specialists from the Netherlands to Romania to provide consulting services to a

**Connect and share experiences with fellow Global Migration Section members and international associates around the globe using the section’s [tools and resources](#).**





international updates and last met in May to discuss Asia. [A recording of the call is available on Agora](#). The GMS is hosting its next call on August 28 and will focus on China and Hong Kong. Be sure to check the [calendar of events](#) for upcoming calls and meetings.

The GMS also publishes the quarterly [Global Migration Digest](#). The publication offers comprehensive updates regarding a wide range of countries.



large international financial institution. Fortunately, several GMS members recommended my work. I ended up advising the law firm and its corporate client on securing the temporary business visas. This opportunity would not have been possible without being a member of the GMS.

Finally, the section's [digest](#) is an excellent educational resource that keeps me up to date on recent global migration developments, whether it involves Canada's specialized knowledge workers, the new exit-entry law in China, or even the German's *Beibehaltungsgenehmigung* (yes, this is a real word).

To learn more about the GMS or to join the section, please contact AILA at [membership@aila.org](mailto:membership@aila.org). 🇺🇸

**Ruslan Bocancea** is the principal of the Bocancea Law Firm. He practices immigration law in Minneapolis and Bucharest, advising individuals and companies on immigration and visa matters.

# INSZOOM

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# PASS THE MIC

*Editorials, Comments, and Opinions*



by  
**Rosanne  
"Rosie"  
Milano**

*Rosanne "Rosie" Milano is an associate attorney at Barker, Epstein, Loscocco & McHaffey in Boston and has practiced immigration and nationality law exclusively since 2007.*

## New to Immigration Law? Mind Your Ps and Qs

It is an exciting and optimistic time right now, particularly for immigration practitioners. The past several weeks alone have seen the U.S. Supreme Court strike down Section 3 of the Defense of Marriage Act as unconstitutional, thus finally [enabling same-sex couples to file marriage-based petitions](#). The day following that decision, the U.S. Senate passed a long-anticipated (albeit imperfect) comprehensive immigration reform bill. Countless numbers of immigrants who have lived and worked for decades without status in the United States are enthusiastic about what these new legal changes could mean for themselves and their families.

These changes bring with them a new crop of lawyers wanting to break into the field of immigration law. While I am excited to work with these new attorneys—they will undoubtedly have new perspectives and ideas—I have a few words of advice for newer practitioners: Mind your Ps—professional ethics—and Qs—quality mentors/education.

In particular, some lawyers I have encountered are admittedly looking to capitalize on what they see is a "hot" field of law because they believe it to be "easy." While many of us practitioners would agree that some of the immigration forms we complete for clients are "easy" to understand, the theory and practice behind the forms are not. For example, a newer lawyer may be able to figure out which forms his or her client will need to file a green-card application, but may not understand all the grounds

of inadmissibility that would make the client ineligible.

As far as ethical issues go, contact your state's ethics board or highest court, particularly if you plan on practicing in a state where you did not pass the bar exam. A colleague of mine is moving out of state and learned that she could not practice immigration law without specifically taking the bar exam in her new home state, despite being licensed in another state and only wanting to practice immigration law.

Also familiarize yourself with your state's ethical rules and standards. For example, in Massachusetts, it is considered malpractice to publicly hold oneself knowledgeable in a particular area without a firm knowledge of that law.<sup>1</sup> As such, advertising for or taking on immigration clients without at least knowing legal basics about immigration law, as well as standard legal practices—including fee structures—will not only result in poor advice for your clients, but can lead to a potential malpractice claim or sanctions against you.

I recommend educating yourself through workshops, seminars, and mentors. Attend seminars and webinars on immigration law before retaining clients. It would be wise to supplement your education with AILA publications, trainings, conferences, and

**"IT WOULD BE WISE TO SUPPLEMENT  
PUBLICATIONS, TRAININGS, CON**





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**Get started, get connected, and get involved as a new member of AILA!**

webinars. There is a wealth of information out there; you just have to look for it.

Also, I highly recommend the use of a qualified mentor. Find a local practicing attorney that you respect and see if he or she is willing to guide you. AILA's New England Chapter has a mentor program that pairs newer lawyers with experienced ones for a more individualized experience. Our chapter has a New Members Division where newer practitioners can listen to talks given by seasoned members and ask questions. If your local chapter does not have a New Members Division, suggest to your chapter chair that you start one. Moreover, attending chapter meetings are a great way to sharpen your skills and meet other practitioners. The New England Chapter offers a teleconference option for attorneys who cannot physically join meetings.

In sum, it behooves all new practitioners to get involved and take advantage of all available resources before opening for business. After all, at the end of the day, every client that walks through your door is counting on you to mind your Ps and Qs in order to help make his or her dreams a reality. ▀

1 See, e.g., Mass. R. Prof. C. [1.1\(1\)](#) and [7.4](#).

**YOUR EDUCATION WITH AILA  
CONFERENCES, AND WEBINARS."**

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Launching an Immigration Practice  
(Online Tutorial)

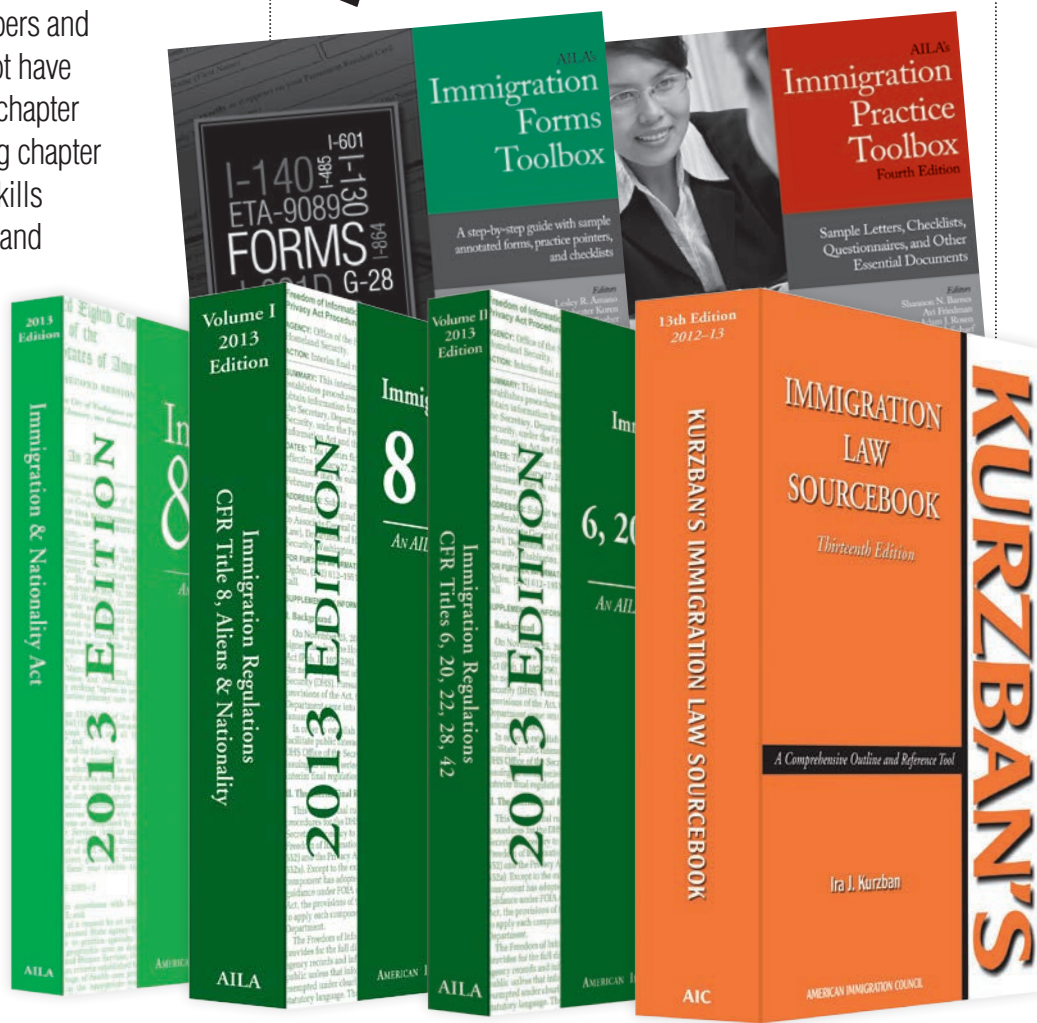
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## POETIC JUSTICE

### Still Waiting

by Julia Manglano Toro

Julia Manglano Toro is a Chicago-born mother of three. She is a Washington, D.C.-based solo practitioner.

Waiting  
For something new  
New opportunities  
New forms to fill out  
New waiting times  
New delays

Nothing happening  
Nothing new  
No change  
All the same  
Just fading dreams  
Still waiting

Working the midnight shift  
Sending someone else to drop off the kids  
As has been done in the past  
For the past 12 years  
No more than 20 years

More than 20 years here  
And no legal status  
No one would believe it  
Working, paying taxes, living,  
Loving, family, friends  
All these years  
Waiting

Waiting  
For something new  
New opportunities  
New forms to fill out  
New waiting times  
New delays

Waiting to continue studies  
Waiting to get a better job  
Waiting to get better pay  
Waiting to stop the anxiety  
Waiting to end the distress  
Waiting to stop waiting  
All these years  
Only waiting





## AILA CROSSWORD

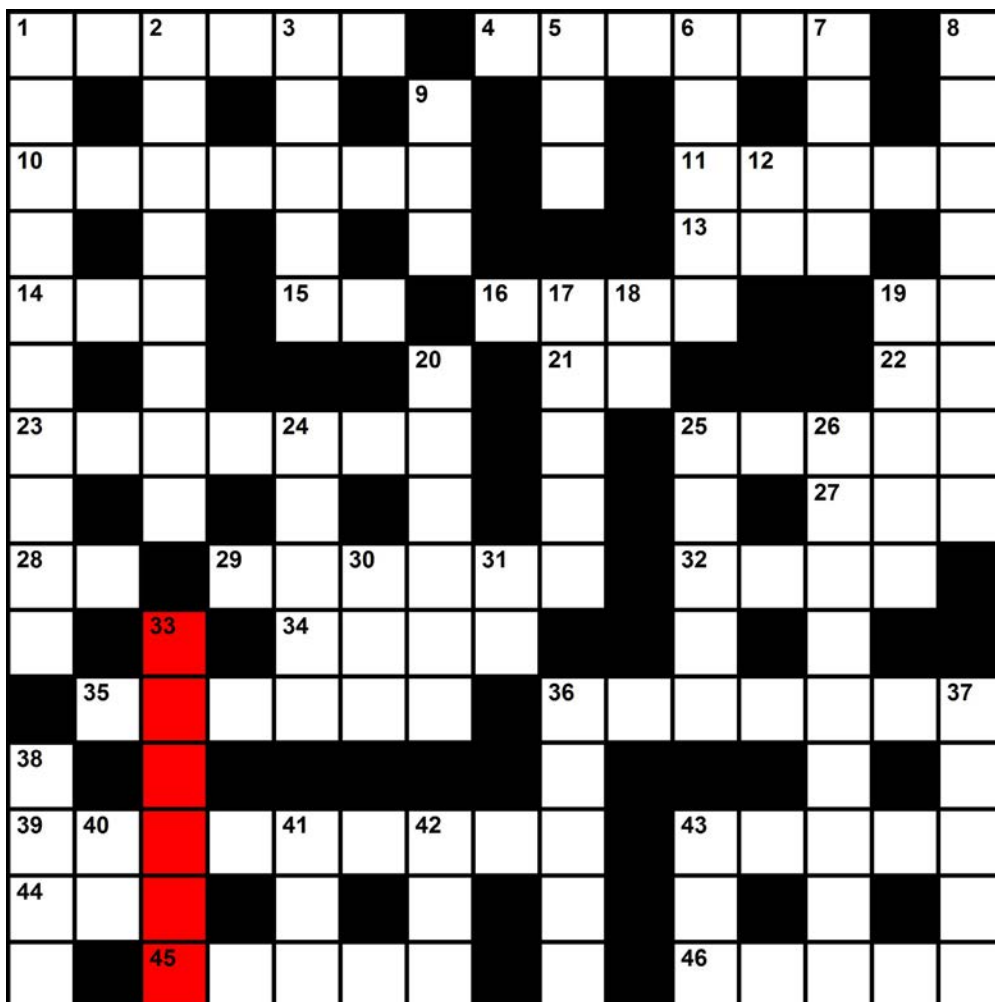
[Download & Print!](#)

### ACROSS

1. Senator who is a member of the "Gang of Eight"
4. Frame, as in a Bill (2 words)
10. This electronic process for employers to confirm legal status of workers would be improved by the Bill
11. Subject for discussion
13. Cry for help
14. Chuck Schumer, member of the Gang of Eight, was born here, abbr.
15. A vote against
16. An amendment was passed to provide immediate work authorization for aliens in this status (abbr.)
19. Morning time
21. Prosecutor
22. Augusta state
23. Nation that has historically welcomed people from other nations offering an opportunity for a better life
25. Hot ash in a dying fire
27. Pre Homeland Security organization
28. Take action

Enter the code hidden in  
this puzzle to get  
**\$150 off\*** a new  
**AILALink subscription!**

\*Expires 12/31/13



29. Swear (to)
32. Walked on
34. Fee amount
35. Per the Bill, offenses at this level would disqualify for a path to citizenship
36. Graham's amendment provided for termination of visas for people in this status if they returned to their countries
39. Per the new Immigration Bill, paying these would be one requirement to attain "Registered provisional" status (2 words)
43. Employed
44. Watch closely
45. The Gang of Eight \_\_\_\_ firm on the core principles of the Bill
46. Supports

### DOWN

1. Per the Bill, agricultural workers who are undocumented immigrants would have a chance to qualify for these after 5 years (2 words)
2. Government departments, such as Homeland Security and DEA
3. Person in a country who is not a citizen of that country
5. Provisional status under the Bill for eligible undocumented aliens, abbr.
6. The Bill includes setting up this program for low-skilled guest workers, capped at 20,000
7. Approve a Bill
8. Undocumented immigrants under 16, graduated from high school, who have been in the U.S. for over 5 years
9. Yes vote
12. Therefore
17. Accept a policy or plan
18. Neighbor of Oregon
19. Improve, of a Bill for example
20. Protection from harm (a concern in the Bill in relation to preventing the immigration of terrorists for example)
24. Opener
25. The Bill increases border security to prevent illegal \_\_\_\_
26. Type of process the Bill proposes for use with E-verify to strengthen it
30. Light brown
31. Compass point
33. Per the Bill, these have to be increased to protect the borders
36. Good point
37. Dems and GOP for example
38. Encourage in wrongdoing
40. Cry of distress

41. Number of years dreamers would need to serve in the military or college to be eligible for citizenship per the Bill
42. Marked, as a ballot
43. The Bill will increase the number of these types of visas for high-skilled workers



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





# BALANCE

by Danielle Polen



## Mother Nature's Gift of Balance

**A**fter staffing AILA's annual conference in San Francisco, I was fortunate to be able to travel down to the Monterey Bay area for a few days of rest and relaxation. Spending time in nature always has been one of my primary methods for bringing balance back into my life, and the rugged, central California coast is one of the most potent "recharging stations" for me. Although my mini-retreat lasted only a few days, I came away feeling wonderfully restored, thanks to the daily doses of Vitamin G that I ingested.

While the term "Vitamin G" is sometimes used to refer to Riboflavin, it is also a term used by researchers to describe the beneficial effects of spending time in nature, with the "G" referring to the green space around us. And most of us could use more of it. [Numerous studies](#) have shown that there is a positive relationship between the amount of green space in our living environment and our physical and mental health and longevity. In one [Ohio State University study](#), researchers found that even the frustrations of commuting were lessened when drivers' commutes took them through more scenic vistas as opposed to the more cluttered, urban settings. Quite simply, nature can be an antidote for stress.

For those who already feel overcommitted, trying to schedule time outdoors on a regular basis might seem more stressful than restorative. But even small doses of Vitamin G are better than none at all. I may not have the luxury of living on the California coast and enjoying long, morning walks by the sea on a daily basis, but I can stroll around my neighborhood with my three dogs. You may not have the time this summer to hike the Appalachian Trail or join a rowing club, but could you commit to biking to work a few days a week? Instead of working through lunch, could you take a 15-minute stroll outside? If even that seems dubious,

**"WHILE THE TERM 'VITAMIN G' IS SOMETIMES USED TO REFER TO RIBOFLAVIN, IT IS ALSO A TERM USED BY RESEARCHERS TO DESCRIBE THE BENEFICIAL EFFECTS OF SPENDING TIME IN NATURE, WITH THE 'G' REFERRING TO THE GREEN SPACE AROUND US."**

could you, at least, sip your morning coffee on your front porch and enjoy nature as it awakens around you?

You may find that opportunities to boost your intake of Vitamin G present themselves regularly once you become open to them. Instead of plunking down on the couch or in front of your favorite electronic device this evening, why not gather your family or friends and enjoy an impromptu picnic outdoors?

Here's to the healing beauty of nature and to being in balance.

**POSTSCRIPT:** In an interesting bit of synchronicity, my mother, who accompanied me on my Monterey Bay mini-retreat, sent me a newspaper clipping from the Las Vegas Sun shortly after I'd drafted this column (yes, she still sends real letters and real newsprint) featuring an article about "[Camp Grounded](#)," a digital detox summer camp where "grown-ups go to unplug, get away, and be kids again." Mom, who enjoys annotating the various items that she sends me, had forcefully underlined the phrase "disconnect to reconnect," and had scribbled in the margin, "You'll want to sign up for the next one of these, dear." Perhaps Mother really does know best. ▼

**Danielle Polen** is AILA's associate director of publications. She practices and teaches yoga in Washington, D.C., and leads workshops and retreats throughout the United States, Puerto Rico, and Mexico.



[NotarioFraud.org](http://NotarioFraud.org)

## Beware of the promises of *Notarios!*

**Immigration Reform  
Hasn't Happened Yet.**

**STOP** because while there is a lot of excitement around immigration reform, the truth is that no new law has been passed.

Do not believe *notarios* and other unauthorized consultants who say there is a new law in order to steal your money.

**WAIT** until real reform is enacted, hopefully later this year. The wrong help can harm your chances of becoming a lawful resident or citizen.

**TALK** to a qualified immigration attorney, **ASK** questions, and **REPORT** notarios who are trying to take advantage of you or your family.

For more information go to [www.stopnotariofraud.org](http://www.stopnotariofraud.org)



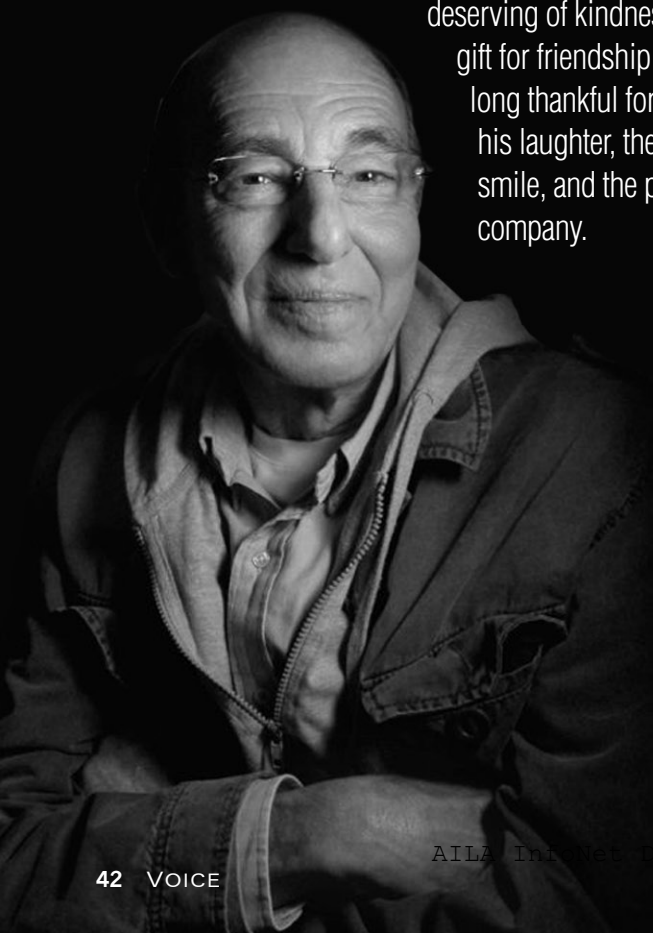
AMERICAN  
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## AILA Mourns the Loss of Edward Gudeon

by Gary Endelman

It was a Friday night in Washington, D.C., at the AILA National Conference and I was moderating a panel on citizenship when this tall, distinguished gentleman walked casually to the microphone and announced that he was going to become a British citizen and was doing so with the intent of keeping his U.S. citizenship. My introduction to Ed Gudeon! Ed went on at some length mixing humor with erudition, injecting both laughter and learning into a crowd that, by then, needed both in large doses. Over the next 20+ years, I came to work with Ed on a number of complex and complicated cases never failing to benefit from his wise counsel, his warm friendship, his vast legal scholarship, and his refusal to take himself too seriously. Ed was comfortable in his own skin, street smart and book learned, unwilling to tolerate pomposity in any form, and always remembering

that people, at heart, were decent and deserving of kindness. He had a gift for friendship and I shall be long thankful for the sound of his laughter, the magic of his smile, and the pleasure of his company.



by Ted Ruthizer

In the late 1970s, I met a young lawyer who decided that being based in London was a great opportunity for a U.S. immigration lawyer. I scoffed at the notion and thought there was no way someone could support a practice on the other side of the Atlantic. How wrong I was. Ed was the first U.S. immigration lawyer to move full-time to London, and he paved the way for many AILA members. Not only was Ed a pioneer, but he was such a quick study that he became indispensable with his considerate and very thoughtful advice and guidance on cases over the years.

Ed and I had several things in common—we were both Long Island boys, we both did our undergraduate work in Pennsylvania, we both attended law schools in New York, and we both started our careers as starry-eyed idealists. Ed built a reputation for providing superb representation to a wide range of clients, ranging from famous fashion models, legendary rock musicians, film and theater directors, and corporate chieftains, to the many not-so-famous British and other foreign nationals.

Ed died way too soon of a massive heart attack. But he will be remembered very warmly by many friends and colleagues who had interactions with him over the past 35 years. I can still picture Ed standing outside one of the large seminars at each AILA annual conference schmoozing with the best of them, telling wonderful stories, and attracting a big crowd of AILA members playing hooky from the program inside to share in the pearls of wisdom and wit emanating from Ed's lips. Farewell, Ed. ▀

**Ted Ruthizer and Gary Endelman** are long-time AILA members.



# Immigrant Entrepreneurs, Innovation, and Welcoming Initiatives

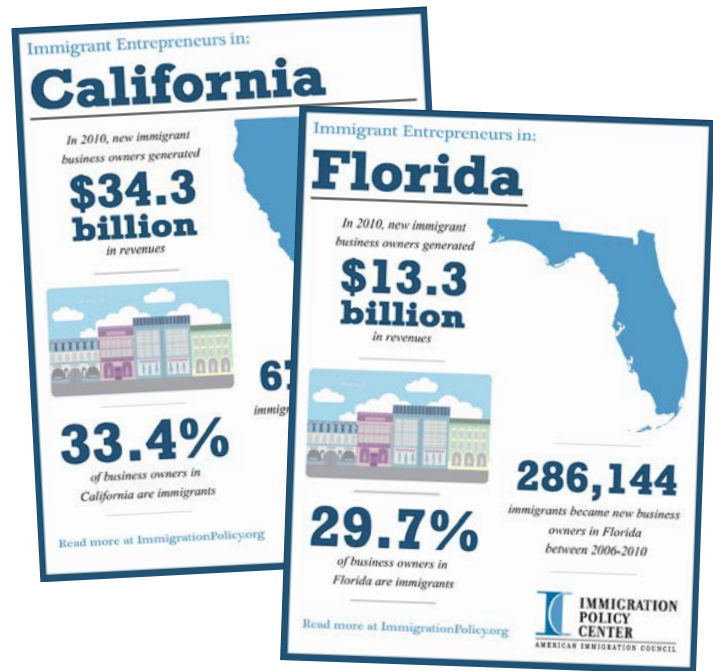
**T**he Immigration Policy Center (IPC) has released 10 new state fact sheets and accompanying infographics, highlighting the contributions of immigrant entrepreneurs and innovators in each state's economy. Visit [IPC's webpage](#) to view factsheets on all 50 states.

## Din v. Kerry

The U.S. Court of Appeals for the Ninth Circuit has determined that there are limited exceptions to the doctrine of consular nonrenewability. In [Din v. Kerry](#), No. 10-16772 (9th Cir. May 23, 2013), the court stated that consular officers must give a facially legitimate reason to deny a visa for the spouse of a U.S. citizen. Heidi C. Larson Howell, an associate at Los Angeles office of Sidley Austin LLP, noted the difficulty in challenging consular nonreviewability because so few exceptions exist. She noted that the seminal case, *Bustamante v. Mukasey*, 531 F.3d 1059 (9th Cir. 2008), was the springboard for her team's research. The government's deadline for filing a petition for en banc hearing was August 8.

## ICE Agrees to Release Thousands of CAP Records

A U.S. district court in Connecticut approved a [settlement](#) in a Freedom of Information Act (FOIA) lawsuit challenging the refusal of U.S. Immigration and Customs Enforcement (ICE) to release tens of thousands of documents about the Criminal Alien Program (CAP),



Read about the [contributions of immigrant entrepreneurs and innovators in 10 states, including California and Florida.](#)

one of the agency's largest enforcement programs. CAP currently is active in all state and federal prisons, as well as in more than 300 local jails throughout the country and is implicated in approximately half of all deportation proceedings. Although CAP supposedly targets the worst criminal offenders, the program also appears to target individuals with little or no criminal history for deportation and [to incentivize pretextual stops and racial profiling](#). For a comprehensive overview of what currently is known about the CAP program, including valuable insights gained from a deposition of CAP Unit Chief Jamison Matuszewski taken during the litigation, see our [CAP Fact Sheet](#). ▀

# WHAT'S HAPPENING

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## THE 4-1-1

Washington, D.C. Chapter member **Edward N. Leavy** passed away on July 23. Not only did he run his own boutique immigration law firm in Bethesda, MD, he also operated several assisted living facilities for the elderly in Silver Spring, MD. Leavy's loved ones ask that donations be made to the [Hebrew School at Temple Emanuel](#) in Kensington, MD, the [Hope Connections for Cancer Support](#) in Bethesda, MD, or any charity.

Washington, D.C. Chapter member **Elizabeth R. Campbell** passed away in June. A steadfast advocate for asylees' rights, Campbell became Bread for the City's legal clinic director in 2000. In 2008, she worked at the D.C. Bar Pro Bono Program as a managing attorney and ran her own practice in Silver Spring, MD. Her family asks that donations be made to her favorite charity, [Bread for the City](#).

Texas Chapter member **John A. Nechman**, a partner with Katine & Nechman LLP and an adjunct professor at South Texas College of Law, was [named](#) Male Grand Marshal of the 2013 Houston LGBT Pride Celebration.

Central Florida Chapter member **Elizabeth Ricci** was named 2012–13 Zontian of the Year by the Zonta Club of Tallahassee. [Zonta International](#) is a worldwide advocacy group for the promotion of the status of women and children.

Former AILA President and current Georgia-Alabama Chapter member **Dale M. Schwartz** has been named [chair](#) of the board of the Hebrew Immigrant Aid Society.

The law firm of Elliot Pishko Morgan, based in Winston-Salem, NC, is now known as Elliot Morgan Parsonage. **Helen Parsonage** is a member of the Carolinas Chapter.

New York Chapter member **Roxanne Levine**, a partner at Tarter Krinsky & Drogin LLP in New York, was nominated to Chambers USA 2013 as an exceptional lawyer in the U.S. immigration field.

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## ANNIVERSARIES

### 30 Years of AILA Membership

**Emmanuel D. Akpan** 8/25/1983  
**Ann Lake Bryant** 8/25/1983  
**Ramon Carrion** 7/22/1983  
**Asher I. Frankel** 8/5/1983  
**Pnina R. Graff** 8/8/1983  
**Paul Soreff** 8/5/1983  
**Elaine F. Weiss** 7/23/1983

### 25 Years of AILA Membership

**Cynthia A. Aziz** 8/19/1988  
**Elise S. Berman** 7/12/1988  
**Charles W. Best III** 8/8/1988  
**Laurie A. Bonilla** 8/9/1988  
**Tammy Fox-Isicoff** 8/15/1988  
**John Wheat Gibson Sr.**  
7/1/1988

**Robert N. Gottfried** 7/20/1988  
**Syed Naiyer Izfar** 7/22/1988  
**Edward Lau** 8/23/1988  
**Margaret W Pascual** 7/21/1988  
**Naomi Schorr** 8/19/1988  
**Liam Schwartz** 8/8/1988



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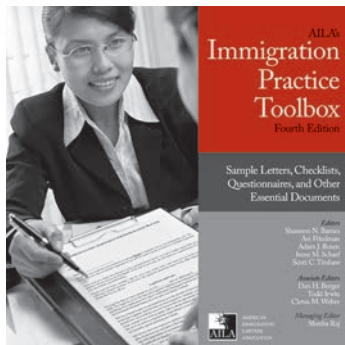




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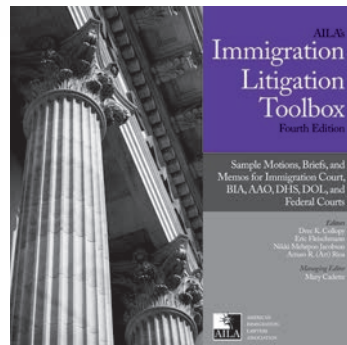
**AILA's Toolbox Series** consists of the resources you and your law office staff need to practice efficiently and successfully run a law office—templates for everyday law practice documents, annotated immigration forms, and sample litigation documents.



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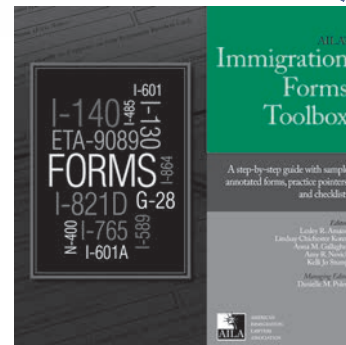
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