The task of finding appropriate job classifications for the rainbow of design occupations can prove difficult for immigration attorneys.

Creating Opportunity

WHAT'S TRENDING

IMMIGRATION & CRIMES

Hoodlum or Hero? Representing the Cooperating Witness

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Hoodlum or Hero? Representing the Cooperating Witness

by Mary E. Kramer

Combating the forces of organized illegal activity worldwide depends on the information revealed by non–U.S. citizens to U.S. law enforcement. Although they are often being investigated or prosecuted, or even have been convicted of a crime already, these "informants" and cooperating witnesses, and their family members, still risk their lives to assist the U.S. government in exchange for protection in the United States. All too often, however, the United States falls short of its obligations. Whether cooperation is gained via a written plea agreement or an unwritten moral obligation, witnesses and their families are exposed to violent repercussions, including assassination and torture, on account of assistance given to the U.S. law enforcement officials. In the absence of affirmative government assistance, defense attorneys must fight for their clients in immigration proceedings and in the federal courts with whatever tools are available.

Cooperating witnesses risk their lives to assist the U.S. government in exchange for protection. All too often, however, the United States falls short of its obligations.

In Rranci v. Att'y Gen. of the United States, 540 F.3d 165 (3d Cir. 2008), the Third Circuit broached the issue of the United States's obligations to witnesses under the United Nations Convention Against Transnational Organized Crime (UNTOC). Article 24 of the UNTOC, "Protection of witnesses," reads, "Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them."

The Third Circuit confronted the issue of whether Rranci, an Albanian citizen who had cooperated with the Department of Justice against an Albanian human smuggling ring, could seek protection from removal under the UNTOC. The appeals court remanded the case to the Board of Immigration Appeals (BIA) with the following instructions: "[T]he BIA should determine how current U.S. law reflects compliance with the specific provisions of the Convention that are relevant to Rranci's claim. We leave interpretation of this issue to the BIA for consideration in the first instance. But the Convention calls into question whether the Government may put Rranci into harm's way in Albania after using his cooperation to obtain a guilty plea from a significant criminal." *Rranci*, 540 F.3d at 179 (internal citation omitted).

Matter of G–K–

As of June 2014, the BIA had not answered the Third Circuit's questions on remand in *Rranci*. However, the Board did address UNTOC jurisdiction in Matter of G–K–, 26 I&N Dec. 88 (BIA 2013). In *G–K–*, the BIA wrote that the United States advances its obligations under the UNTOC through unrelated statutory provisions, including the "S," "T," and "U" visa classifications. The BIA also names the Convention Against Torture (CAT) as providing (in some cases) the protections called for by the UNTOC. In this author's opinion, the BIA's decision sums up this country's lackluster commitment to protecting witnesses as follows: "The relevant provisions in the UNTOC for individuals … who cooperate in a transnational organized crime prosecution do not mandate that such witnesses be granted the right to remain in the signatory country as a form of protection against potential retaliation for their cooperation with the prosecution. Nor do they preclude the removal of such persons to their country of nationality or legal residence." *Id.* at 95 (internal citations omitted). In other words, the United States's right to deport trumps the obligation to protect a vulnerable witness.

> "**Cooperating witness cases should not be presented as 'gang' cases** … since it is not only an invitation for the adjudicator to deny relief, but because the word does not adequately reflect the political and social aspects of the illegal armed organizations' role in many developing countries and their ties to state actors."

Low S Visa Numbers

Matter of G–K– hones in on the S visa category as providing the most logical protection for a witness like Rranci, but cites to no statistics to support the premise that international treaty obligations are advanced largely through S visas. Last year, the AILA South Florida Chapter's Board of Directors filed a Freedom of Information Act (FOIA) request with the Department of Homeland Security (DHS) to get the real numbers—how many cooperating witnesses really obtain this elusive benefit, promised to so many, yet received by so few? At an AILA ICE liaison meeting held in Washington, D.C., in 2010, ICE leadership would not release the numbers, citing "confidentiality" concerns (AILA Doc. No. 10072861). Ironic, since INA §214(k)(4) calls for annual reporting of the numbers to Congress. However, DHS did answer the South Florida Chapter's FOIA request in January 2014 with Statistics on S Immigrant and Nonimmigrant Visas (AILA Doc. No. 14022547).

Under INA §214(k)(1), DHS can issue up to 200 S nonimmigrant "visas" per year. (Of course "visa" is a misnomer. This author has never seen an actual S visa in a passport; only an I-94 or letter indicating "S"—or some other nonimmigrant annotation—to conceal the nature of the status.) According to the FOIA results, in 2013, only 29 persons were approved for S nonimmigrant classification; just 62 persons were approved in 2011 and 2012 combined. In 2010,

only two persons were approved for S nonimmigrant classification.

A law enforcement agency may apply for an S nonimmigrant's adjustment to lawful permanent resident status after three years. According to the FOIA response, in 2013, only six persons adjusted status in the S classification. In 2011 and 2012, the numbers were 54 and 24, respectively.

These shockingly low numbers call into question the very premise of *Matter of G–K–*. Attorney Bonnie Klapper served as an assistant U.S. Attorney for the Eastern District of New York for 26 years before entering private practice. In an e-mail to the author dated June 2, 2014, Klapper wrote, "While the S visa program, in principal, provides a path to legal status for cooperating witnesses, in practice, it has become virtually impossible for a witness to obtain an S visa. The artificial barriers put into place by supervisory government officials, the poor management of the program in D.C., the reluctance of agents and prosecutors to complete the cumbersome paperwork and follow through on the process—these all combine to make the S visa status practically a myth at this point. At the time I retired from the government two years ago, I had witnesses who had been waiting for more than 10 years for their S visas to be approved."

Practice Pointer: Attorneys representing cooperating witnesses should raise the UNTOC in immigration court, contest *Matter of G–K–*, and possibly rely on the FOIA results with an eye toward eventual judicial review. In, a 2012 unpublished Tenth Circuit decision, Musau v. Carlson, the court wrote that there could be jurisdiction to raise an UNTOC claim in habeas proceedings before the federal district court. Cooperating witness cases should not be presented as "gang" cases (the "g" word should be erased from our vocabularies) since it is not only an invitation for the adjudicator to deny relief, but because the word does not adequately reflect the political and social aspects of the illegal armed organizations' role in many developing countries and their ties to state actors. Therefore, asylum should be requested based on social group membership, as well as political opinion. Asylum and withholding of removal are good alternatives for family members with no criminal record.

MARY E. KRAMER is author of Immigration Consequences of Criminal Activity. This article serves as an extension of Chapter 9: "Visas for Cooperating Witnesses." The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

Advising Health Care Clients on Long-Awaited Visa Availability

by Sherry Neal

The excitement of EB-3 visa numbers moving forward—albeit slowly—has proven bittersweet for some health care clients. Unlike most EB-3 employment-based clients who work in the United States while waiting for the visa number to become current, registered nurses rarely qualify for a nonimmigrant employment visa, so their waiting is spent outside the United States. During this long wait—seven years for Filipinos—the needs of the employer-sponsor might change. For example, the health care facility may no longer have a position for a registered nurse, or the position available may be in a different location than what was originally sponsored.

Health care clients need guidance on what to do when a visa number is available, but the same job is not. Immigration attorneys should advise clients—whether the petitioner or the beneficiary—on what to do.

1 If the petitioner has the same position available, then the nurse can proceed with the interview. After all, this is what both parties wanted years ago when USCIS approved the petition.

"In sum, all the years of waiting for visa availability **need not be in vain**."

2 If the original sponsor still has a nursing position for the nurse, but an aspect such as the location is different from the one in the original I-140 petition, then there may be a need to file a new I-140 petition and retain the priority date. If the nurse doesn't want to accept the new location or other change in the terms of employment, then he or she should review any contracts that he or she may have signed with the original sponsor and also consult a contract attorney to avoid a contract breach.

3 If there is no position available, but the petitioner expects one to be available in the near future, then the petitioner and beneficiary can agree to intentionally delay the immigrant visa process so that the consular interview will coincide with the job opening.

4 If there is no longer a job available and not likely to be one available anytime soon after the visa date becomes current, then the nurse should seek a new sponsor. The new sponsor will need to file a new I-140 petition, but can also retain the original priority date. The original petitioner may consider helping in finding a new sponsor by reaching out to a colleague in the industry who may want to hire the nurse. In so doing, the petitioner may be able to recoup some of its original costs from the new sponsor; at the very least, the petitioner will be providing goodwill in pairing the nurse with another employer.

In sum, all the years of waiting for visa availability need not be in vain. A registered nurse can retain the original priority date to either refile a new I-140 with the original sponsor who has a change in the position or file an I-140 with a new sponsor. And a new sponsor can benefit from having the nurse arrive in the United States relatively quickly, thereby reaping the rewards of the previous sponsor's time and effort in the initial recruitment.

SHERRY NEAL is a partner at Hammond Law Group, LLC in Cincinnati, where she leads the firm's health care immigration practice group. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

Business Visitor Travel to Hong Kong

by Grace Shie and Becki L. Young

Because of the ease of business travel to Hong Kong, which allows visa-free entry to more than 150 nationalities, employers frequently ask about the activities that business visitors may pursue. The Hong Kong Immigration Department, which controls the movement of people into Hong Kong, has published the following list of permitted activities for business visitors on its website:

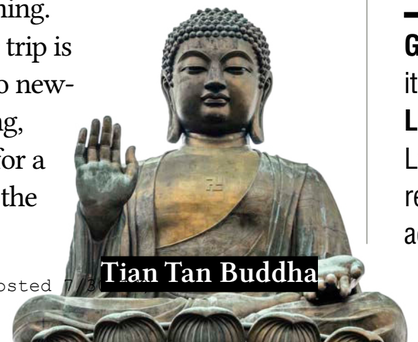
- concluding contracts or submitting tenders;
- examining or supervising the installation/packaging of goods or equipment;
- participating in exhibitions or trade fairs (except selling goods or supplying services directly to the general public, or constructing exhibition booths);
- settling compensation or other civil proceedings;
- participating in product orientation; and
- attending short-term seminars or other business meetings.

Activities beyond the scope of those listed above by the Hong Kong Immigration Department generally trigger a visa requirement. For example, business visitor status prohibits productive work or training, no matter how brief the stay.

Common scenarios that employers encounter include the following:

1 A U.S. employer will send a U.S. citizen manager to Hong Kong for two weeks to attend a conference hosted by a trade association, as well as client meetings to be held at the offices of the employer's Hong Kong subsidiary. Because attendance at seminars and meetings falls within the list of permitted activities for business visitors, the U.S. citizen employee may travel to Hong Kong visa-free.

2 A U.S. employer will send a newly hired U.S. citizen associate to Hong Kong for two months to receive training (both classroom-style and on-the-job training) provided by the Hong Kong subsidiary. Training participants will include new hires from affiliated offices around the world. Business visitor status is not appropriate for training activities, whether the person is providing or receiving training. Because the purpose of the trip is for the associate to undergo new-hire orientation and training, this employee must apply for a training visa sponsored by the Hong Kong subsidiary.



Tian Tan Buddha

3 A U.S. employer will send a U.S. citizen consultant to Hong Kong for a three-month assignment. During the assignment, the consultant will provide project management services to the employer's client, while remaining a U.S. employee on U.S. payroll. Because of the productive work to be performed and services to be delivered, the consultant must apply for an employment visa sponsored by the employer's Hong Kong subsidiary or, as a potential alternative, the Hong Kong client. Although the 90-day visa-free period would cover the length of the short-term assignment, productive work is prohibited for business visitors.

Employers should give themselves lead time to prepare applications for employment or training visas, as well as to await processing, which could last approximately four to six weeks. Business visitor travel to Hong Kong during this processing time is permitted so long as activities are restricted until approval is received.

GRACE SHIE is a partner at Mayer Brown and a member of its employee and benefits group in Washington, DC. **BECKI L. YOUNG** is a partner at Hammond Young Immigration Law in Rockville, MD. The authors' views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

BACKTRACK

Transferring Personnel to Australia

AILA InfoNet Doc. No. 14073041. (Posted

The L-1: Upending a Solid Employment Visa Option

by Jordana A. Hart

Despite virtually all U.S. business sectors calling for additional visa availability based on the needs of our economy, a new set of restrictions is threatening to curtail one of the most popular visa categories—the L-1 intracompany transferee category.

Introduced in 1970, the L-1 visa program allows foreign companies to transfer executives and senior managers under L-1A, and "specialized knowledge" professionals under L-1B, to U.S. subsidiaries or affiliates for a temporary period. In 1990, Congress added some real-world flexibility by allowing the transferred manager to manage a "function" or core department, rather than just managing staff. Officers were instructed to consider the needs of the organization "in light of [its] overall purpose and stage of development." *See* INA §101(a)(44)(C); 8 CFR §204.5(j)(4)(ii). Importantly, Congress broadened the definition of "specialized knowledge," which involves having knowledge of the foreign company's products, services, or processes.

The L-1 visa classification also allows a foreign company without a U.S. office to send an executive, manager, or specialized-knowledge worker to establish a U.S. presence, giving this "new office" 12 months to launch and meet certain requirements for a visa extension.

Employers and immigration counsel are painfully aware that the days of consistent, predictable decisions by U.S. Citizenship and Immigration Services (USCIS) on well-documented L-1 petitions are over. The number of denials and requests for additional evidence is rising. Immigration watchers say determinations by front-line USCIS adjudicators, coupled with non-binding decisions of the agency's Administrative Appeals Office, have methodically obliterated Congress's original intent. "This bottoms-up movement from within USCIS gradually has taken on the trappings of black letter law and been copied and adopted" by the other agencies tasked with enforcing immigration law, says immigration attorney Angelo Paparelli in a two-part series on the latest L-1 visa troubles.

Spurred by anti-fraud legislation in March 2013 by Sen. Charles Grassley (R-IA), the Office of the Inspector General (OIG) of the Department of Homeland Security issued recommendations in a report released in August 2013 that some say could upend the L-1 visa option. The OIG report reverberated in the press, particularly in India, because

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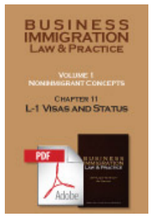
CHAPTER



Business Immigration L-1 Visas and Status (.PDF)

+ LIBRARY

certain large Indian IT outsourcing firms are the largest users of the L-1B visa. The National Foundation for American Policy speculated almost two years before the release of the OIG report whether there is a "conscious policy" at U.S. consulates in India to deny L-1B visas for programmers and engineers. The fear is that companies are using the L-1B visa to get around the numerical limit and tough requirements of the highly used H-1B visa for professionals. But the OIG said in its report it could discern no such pattern.

USCIS approvals for L-1 petitions peaked in 2007 at 57,218 and declined to 33,301 in fiscal 2011, according to the OIG report. Indian companies were the heaviest users of the program with 26,919 mostly L-1B approvals in fiscal 2011. The United Kingdom, Japan, Canada, and Mexico maintained the next highest number of L-1 approvals, respectively, with a total of 16,823 issued in fiscal 2011, according to the OIG report.

The OIG said it was concerned that L-1 "new office" extensions were being improperly granted. It also found serious discrepancies in USCIS decisions on L-1B cases, including the fact that adjudicators reach different decisions despite similar fact patterns because, as officers have long complained, the definition of "specialized knowledge" remains nebulous and subjective despite previous guidance.

"USCIS approvals for L-1 petitions **peaked in 2007 at 57,218 and declined to 33,301 in fiscal 2011**, according to the OIG report."

The report also determined that smaller businesses in particular face greater scrutiny, specifically gas stations and convenience stores, as well as petitions that involve the hiring of a family member. So what do the OIG recommendations adopted by USCIS and other agencies mean for U.S. employers?

1 USCIS must publish guidance that clarifies concretely for officers the interpretation of "specialized knowledge" for the L-1B visa. This rehashing of the requirements threatens to create more requirements not intended by Congress.

2 This year, USCIS expects to begin fraud detection site visits before approving L-1 extensions for new offices. This could lead to delays in extension approvals for the majority of businesses that are not engaged in fraud.

3 USCIS will increase communication with consular officers starting in 2015, after it begins to interface with the Department of State database system on L-1 visas. This means USCIS will screen L-1 beneficiaries against a list of people previously denied visas at consulates.

4 U.S. Customs & Border Protection (CBP) officers will get more L-1 visa training at the Canadian border and airport pre-flight inspection. Unlike other applicants, Canadians apply for the L-1 visa at the border or airports, and OIG found that CBP officers need more hands-on training and heightened access to USCIS databases.

5 CBP and USCIS must establish a better system of collecting the L-1 fraud fee while processing L-1 travelers at the Canadian border.

The United States grapples with outdated immigration laws that essentially block all but the wealthiest entrepreneurs. It has the country limping along under an arduous permanent residence process that can last years for even the most talented and necessary workers. Even international students have limited ways to remain after they graduate from U.S. colleges.

JORDANA A. HART is an immigration attorney with David J. Hart P.A. in Miami and co-chair of the Media Advocacy Committee of AILA's South Florida chapter. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

AILA InfoNet Doc. No. 14073041. (Posted 7/30/14)

Behind the Case: The Widow Penalty

CASE: *Williams v. Sec'y, Dep't Homeland Sec.*, No. 13-11270 (11th Cir., Jan. 17, 2014)
ATTORNEY: Brent Renison, et al.

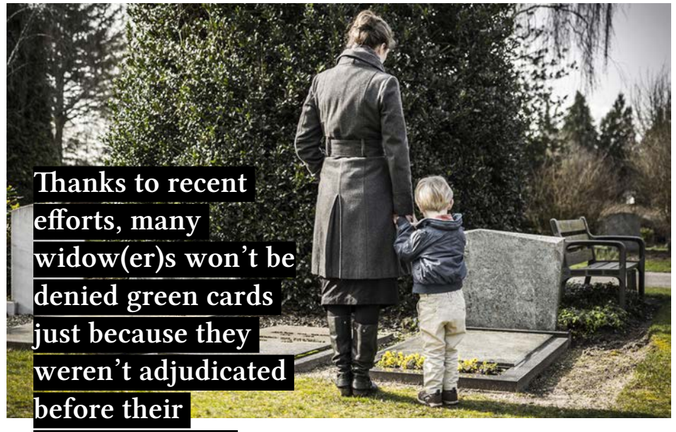
by Sheeba Raj

Thanks to strenuous advocacy by attorneys, legislators, and families, hundreds of immigrant widow(er)s dealing with the loss of their spouses wouldn't have to contend with the denial of their green-card applications simply because they weren't adjudicated before the death of the spouse. The widow penalty, as it is known, was abolished in 2009 when Congress amended INA §201(b)(2)(A)(i) to eliminate the requirement that self-petitioning widows of U.S. citizens be married at least two years at the time of the death.

In 2004, Brent Renison, of Parrilli Renison LLC in Portland, OR, and other attorneys around the country started representing members of this group. "[O]ne of the key challenges was trying to get everybody talking to each other, sharing ideas and information, and collaborating on litigation and also on advocacy to try to get the law changed," Renison explained. "We started using a list serve to help coordinate our litigation efforts to try to go out to different circuits and challenge the widow penalty."

Raquel Pascoal Williams, a Brazilian native, was one of Renison's clients whose application was ultimately denied because of the "widow penalty." She had married Derek Williams on January 11, 2002. He petitioned for her later that year and she filed an application for adjustment of status. But before the petition and application were adjudicated, her husband died of sleep apnea. Just before Congress ended the widow penalty in 2009, Williams remarried, but then divorced. That marriage ended her ability to self-petition as a widow, due to the remarriage bar in INA §201(b)(2)(A)(i). Also in 2009, Congress enacted INA §204(*l*), which provides that if a petition was filed on an immigrant's behalf before the petitioner's death, then the benefit was to be based on the relationship immediately before death. Renison sought to have Williams's case reopened based on the new INA 204(*l*), but USCIS opposed it and applied the remarriage bar, even though INA 204(*l*) contained no remarriage bar.

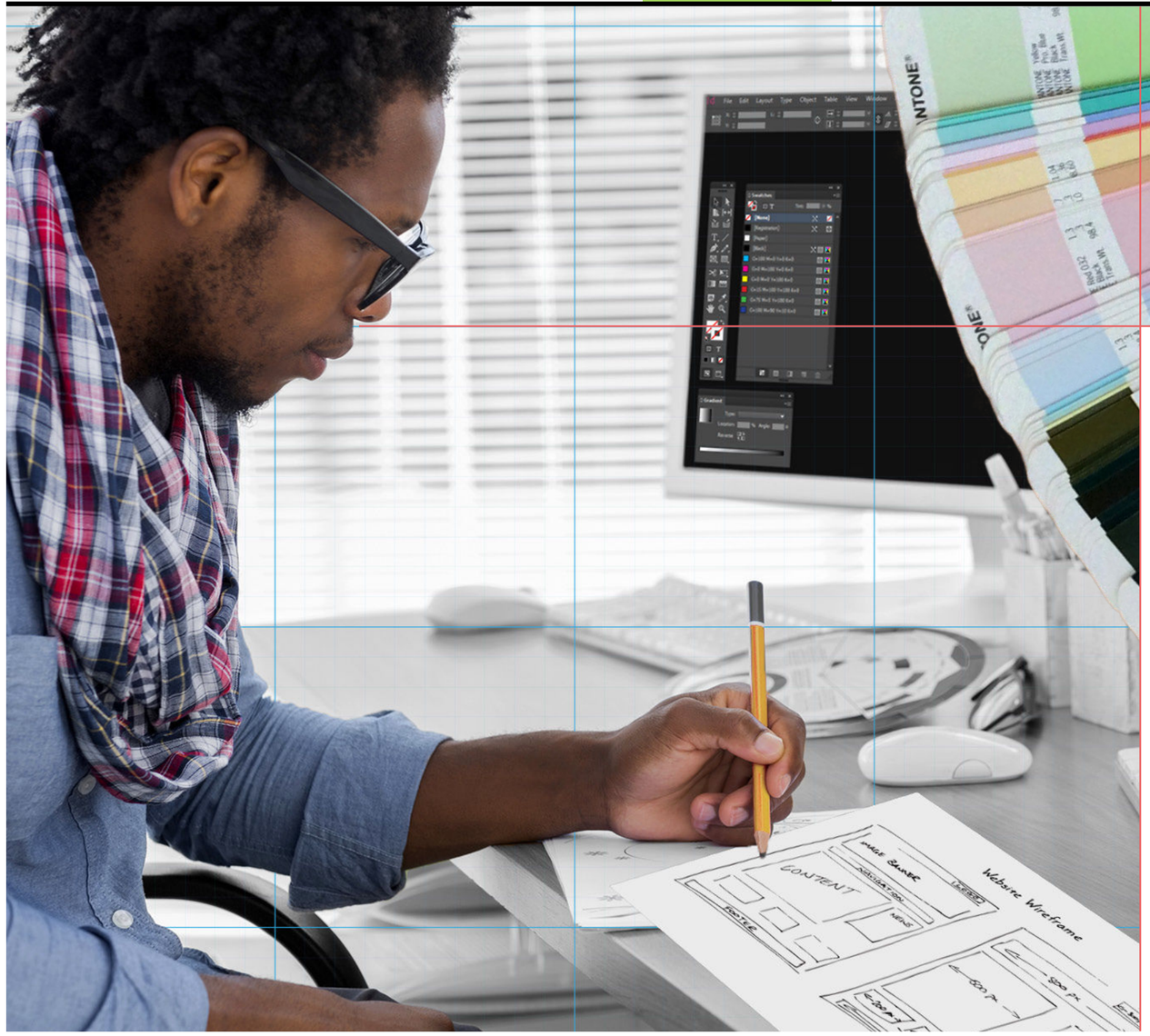
After several administrative denials, Renison filed suit in federal district court in May 2012. And nearly three years later, in Williams v. Sec'y, Dep't Homeland Sec., No. 13-11270 (Jan. 17, 2014), the Eleventh Circuit sided with Williams, saying, "The fact that in one simultaneous legislative act within the same bill amendment, one section retained a remarriage bar, and the other section contained no such bar, is clear evidence that Congress did not intend to impose a remarriage bar on cases coming under [INA 204(*l*)]."

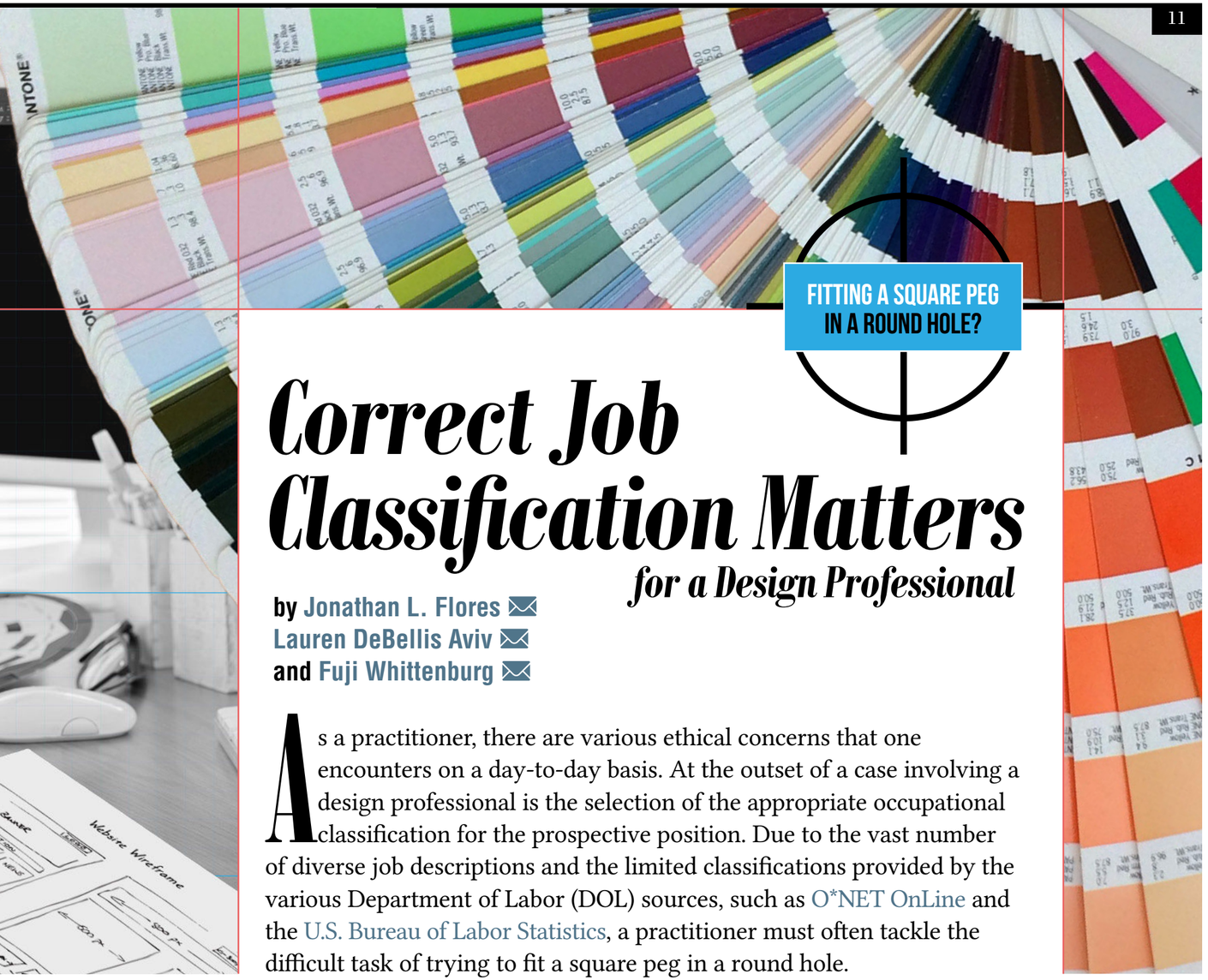


Thanks to recent efforts, many widow(er)s won't be denied green cards just because they weren't adjudicated before their spouses' deaths.

In April 2014, Williams finally received her green card. She looks forward to visiting relatives in Brazil with the son she shares with her deceased husband.

SHEEBA RAJ is the staff legal editor and reporter for VOICE.





FITTING A SQUARE PEG IN A ROUND HOLE?

Correct Job Classification Matters

for a Design Professional

by Jonathan L. Flores
Lauren DeBellis Aviv
and Fuji Whittenburg

As a practitioner, there are various ethical concerns that one encounters on a day-to-day basis. At the outset of a case involving a design professional is the selection of the appropriate occupational classification for the prospective position. Due to the vast number of diverse job descriptions and the limited classifications provided by the various Department of Labor (DOL) sources, such as O*NET OnLine and the U.S. Bureau of Labor Statistics, a practitioner must often tackle the difficult task of trying to fit a square peg in a round hole.

Despite the difficulties that can be presented when evaluating a job description for a design professional, a practitioner needs to effectively counsel employers in accurately categorizing the position that the foreign national will be assuming. The practitioner and employer must select the most accurate O*NET occupational code classification and appropriate level for the position duties. Although wage is a relevant factor to consider, the wage cannot solely drive the selection of the accurate job classification. If an inappropriate job classification is selected and a complaint from an aggrieved party is filed with DOL, per 20 CFR §655.806(a), DOL will conduct an investigation to determine whether a violation of DOL regulations has occurred.

Similarly, when evaluating a position for a Trade NAFTA (TN), the appropriate job on Appendix 1603.D.1. to Annex 1603 of NAFTA[1] must be determined (*e.g.*, Graphic Designer, Interior Designer, etc.). It is important to counsel the employer to be honest about the true job duties, and then see whether the job is on the NAFTA list rather than simply looking for the closest TN job match and fashioning the job description around it. One of the most difficult, but valuable, pieces of advice an attorney can provide is to tell a client that a case cannot be ethically filed as a TN. Indeed, ethical considerations often drive the conclusion that a case simply cannot be filed, either because the employer is not willing to pay the required wage, or the job position is not a TN occupation. This reality is why attorneys are so important to this process.

Planning the Leap to EB-1

Once the foreign national design professional has begun his or her career, it is a suitable time to provide guidance on how to build a strong portfolio with permanent residency in mind. Under 8 CFR §204.5(h), the EB-1-1 is the immigrant visa classification for aliens of extraordinary ability. Most practitioners will agree that EB-1 adjudications have become more difficult, especially with the implementation of the new two-step analysis in Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010). As practitioners, we are oftentimes consulted when it is too late. Very rarely does a client, early in his or her career, ask for guidance on how to build a strong portfolio with permanent residency in mind; but if the opportunity arises, below are a few considerations that a practitioner may find helpful when advising a client on how to prepare a successful EB-1 extraordinary-ability immigrant visa petition.

Do Your Homework

Carefully study the EB-1 regulatory criteria, the USCIS policy memoranda, and AILA publications to familiarize yourself with the regulatory requirements and current adjudication trends. Of particular note, in 2010, USCIS issued a policy memorandum (AILA Doc. No. 11020231) providing guidance to USCIS officers when evaluating evidence submitted in support of an immigrant visa petition for aliens of extraordinary ability under INA §203(b)(1)(A).

> **Practice Pointer:** Practitioners should first carefully review the client's CV, credit list, or résumé and familiarize themselves with his or her career and accomplishments to gain a firm understanding of the client's particular field. Schedule a consultation with the client to review the enumerated criteria for EB-1 Aliens of Extraordinary Ability under 8 CFR §204.5(h)(3)(i)–(x) to not only further explore ways that the client can meet the criteria as applied in his or her field, but to strategize an immigration plan. Perhaps the client never thought about judging the design competition at his or her school, but he or she should. Perhaps the client has never thought about writing a scholarly article about the trends in graphic design, or had dismissed a request for an interview for a major newspaper in his or her home country, etc. Help your clients by bringing these various opportunities to their attention, thereby maximizing their chances of success.

Credit Given, or Not

Often when a client completes a questionnaire or intake sheet, inevitably, a few key credits cannot be given their due weight because of the lack of supporting evidence or documentation. At the time the work was completed by the beneficiary, for example, it is easier to request a letter from the company or client confirming the importance of his or her role on the project or his or her particular impact on the field. It may prove valuable to advise clients to request such letters at the time of employment, or at least reserve the opportunity to return to the individual should a letter be needed in the future.

In the field of design, credits typically are an afterthought. For example, in a promotional spot for a television show, the individual is credited as a graphic designer when in fact he or she was actually the art director. If the promo spot is nominated for a Daytime Emmy Award for "Outstanding Achievement in Main Title and Graphic Design," a credit of art director would be more persuasive and direct than a credit as graphic designer; however, an actual credit is better than no credit at all.

All Press Is Good Press

To satisfy the regulatory criteria about published material, per 8 CFR §204.5(h)(3)(iii), the published material must be by or about the individual, and must be published in major media. This is the most direct use of press in support of an EB-1 immigrant visa petition; however, not all press will be directly about the individual, but will be about his or her work or the project on which he or she worked. Although it may not suffice to satisfy the published material criterion, it may be used to establish that the beneficiary satisfies other criteria. For example, if the beneficiary cannot find a copy of the certificate or award, press coverage about the beneficiary winning the award may be submitted as evidence in satisfaction of this criterion.

> "Carefully study the EB-1 regulatory criteria, the USCIS policy memoranda, and AILA publications to familiarize yourself with the regulatory requirements and current adjudication trends. **Of particular note … USCIS issued a policy memorandum providing guidance to USCIS officers** when evaluating evidence submitted in support of an immigrant visa petition for aliens of extraordinary ability under INA §203(b)(1)(A)."

Published material/press can help support the following: evidence of the distinguished nature/reputation of the organization for which the individual has worked in a lead or critical role; evidence of the reputation of the association (or past members) of which the individual is a member; evidence of commercial success (*e.g.*, reported ticket sales); widespread public commentary in the field about the individual or his work in support of his original artistic contributions of major significance to the field; evidence of the individual's work being displayed at artistic exhibitions or showcases; evidence demonstrating the national or international scope of an award and the reputation of the organization itself.

This is an excerpt from "Beauty in the Eye of the Beholder: Visas for Design Professions," published in AILA's Immigration Practice Pointers, 2014 Ed., used as the handbook for AILA's 2014 annual conference.

1 North American Free Trade Agreement (NAFTA), U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 296, 612 (entered into force Jan. 1, 1994).

JONATHAN L. FLORES is an associate attorney with Haight Law Group, PLC in Los Angeles. **LAUREN DEBELLIS AVIV** is a partner at Daniel Aharoni & Partners, LLP in New York. **FUJI WHITTENBURG** is an associate attorney with Mitchell Silberberg & Knupp LLP in Los Angeles. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

More firms are looking to establish an international presence to keep pace with the increasingly global nature of immigration law. But before your firm takes the plunge, there are several things to consider.

by Richard Alvoid

Going International: The Next Best Move?

The increasingly global nature of immigration law, coupled with rapidly advancing technology, make it more possible than ever for small immigration law firms to hang a shingle in another country. It didn't hurt that I earned an M.S. in international relations and gained proficiency in Italian and Spanish. And my wife is Italian. All of these factors certainly contributed to my decision to open an office in Italy. My background and lovely wife have enhanced my ability to maintain that office while still servicing clients at my Florida location. Truth be told, a move like this can be difficult and isn't for everyone. These practice tips are drawn from my experience as a dual-continent solo practitioner.

Most small firms probably would not be able to afford an independent office abroad, but would instead prefer space-sharing arrangements or even a home office. You might be fortunate enough to enjoy a trusting relationship with a locally licensed attorney who will not only offer you free office space, but will benefit from your presence by interacting with additional clients. And the reality of staffing an overseas office is such that onerous tax and labor rights might render it impossible. Better options would include either a satellite office, a partnership with a local attorney, or foreign interns willing to volunteer to enhance their résumé—and speak English doing it.

And while the United States is a party to many tax treaties with foreign countries preventing double taxation and allowing certain foreign housing exclusions, the Internal Revenue Service is increasingly taking an enforcement approach on anything that smells foreign, and the several tiers of the foreign government might require you or your business entity to pay taxes. For more guidance, see the Foreign Account Tax Compliance Act (March 2010) and Report of Foreign Bank and Financial Accounts.

The Legalities of Establishing a Foreign Office

Before practicing U.S. law in a foreign country, you must have the proper immigration status to do so and meet the requirements to establish a foreign office. Ask yourself, for example, must you be licensed or registered by the local bar or can you practice as you want without notifying the foreign government? As for your business entity, does local law require you to establish a second entity or register your American company?

For my overseas office, in particular, I sent a request for a formal opinion with the local bar association of lawyers. The opinion provided that a non-EU lawyer acting in cooperation with an Italian law firm need not register with the local bar and need not have the foreign credentials formally recognized if practicing exclusively the foreign law. At the moment (things change fast in Italy), there is no regulation addressing the practice of non-EU lawyers in Italy.

On the American side, I requested an ethics opinion from my bar association asking whether I could form an international partnership with an Italy-licensed attorney, and the response did not prohibit me from doing same. On both sides of the Atlantic, then, it seemed that my situation was uncharted territory, and neither bar was able to point to specific rules or regulations. I suspect this will change, as more and more of these types of international arrangements become more common.

Day-to-Day Operations

Next, consider the consequences of constantly being absent from one of your offices. Is the person left in charge loyal and responsible enough to handle your protracted absences? Is your system of accounts receivables foolproof? Do your staff members have the wisdom to know when a situation is urgent enough to call you in the dead of night several time zones away?

As for technology, it has advanced society to the point where the two-office distinction is less significant. Data can be equally accessed from a cloud or remotely by both offices. Copy machines with jaw-dropping scanning capabilities and direct e-mail functions are readily affordable. Messages can be transmitted instantaneously, whether the recipients are on two different continents or in side-by-side offices. Phone calls can be forwarded to your computer or local cell phone. And best of all, your staff or clients can virtually appear with just a couple of mouse clicks using Skype at no charge! But if your clients in the United States are not comfortable with webcam meetings from their home, they can appear at your main office where you will appear by video, much like immigration courts today. Most of the time, my clients do not know where I am, and my presence rarely matters beyond the initial meeting and handshake.

Cultural Considerations

The most salient characteristic about a foreign country is that it is, well, "foreign." One not-so-obvious example is that the foreign national who wants to go to the United States is usually less motivated to hire you in his or her own neighborhood than a foreign national who is already in the United States and wants to remain there. This apparent paradox seems in line with our tendency to be willing to more aggressively defend what we have—continued presence in the United States—versus expending resources on new acquisitions, such as status in another country. In other words, clients abroad are often in the planning stages of possibly immigrating to or visiting the United States, so they typically are gathering information and weighing options. They are often aspirational, with relatives and friends perhaps not so excited to see them leave for the United States to chase a pipe dream. In short, the typical client abroad does not yet have his or her proverbial foot in the door. Clients in the United States, on the other hand, already have overcome the obstacle of actually being admitted to the country and have established personal and professional ties. Of course, there are many exceptions, such as clients abroad who want to join their loved ones in the United States or who need help proving a difficult citizenship/naturalization case, etc. But, in general, don't be surprised if your clients abroad are not as eager to hire you as those based in the United States.

"In short, **the average solo practitioner will find it challenging to fund a sustained overseas presence** and to manage two offices in two countries."

Is It Worth It?

Considering the loss of time attributed to frequent travel, jet lag, the change in time zones, as well as the loss of quality time with loved ones, you must ask yourself—after the pizazz of a foreign office has worn off—if your small firm will be able to sustain an international presence. In all frankness, most solo practitioners would not be able to financially sustain an overseas office unless it is unstaffed, where only sporadic visits are made (think CLE cruise ships). Exceptions would be if a solo practitioner happens to have a large number of clients hailing from the location of the office, or, even better, the solo practitioner has language or cultural fluency of the region—or at least access to such fluency in the form of, say, a wife, relative, or reliable international partner. One final exception would be where the practitioner has a niche expertise that is in demand in that particular region that would yield lucrative cases, such as with EB-5s, Es, or Ls. In short, the average solo practitioner will find it challenging to fund a sustained overseas presence and to manage two offices in two countries.

BACKTRACK

Working in Trinidad and Tobago

RICHARD ALVOID practices immigration law exclusively as a solo practitioner at his offices in Pensacola, FL, and Bologna, Italy. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

AILA InfoNet Doc. No. 14073041. (Posted 7/30/14)

Trading in Times Square for War-Torn Guatemala

by Kerry E. McGrath

I received the offer for my first legal job the day I graduated from law school. My clients were the 500 street kids who stayed at Covenant House, a shelter for runaway and homeless youth in Times Square, when Times Square was marred by drugs, sex, gangs, mafia, and violence.

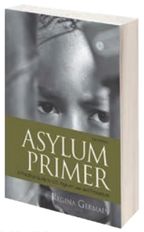
The first day on the job, my boss handed me the "vice" file, a list of sex-trafficking cases that we had referred to the Federal Bureau of Investigation, and during the next two years, I saw my fill of pimps, prostitutes, and johns. I remember the Drug Enforcement Agency officials arriving at the shelter with three girls from Colombia who had been picked up during a drug raid. The girls had arrived in New York expecting to work in a "boutique," but found themselves in a brothel instead. There were no T or U visas in those days, so there was nothing my colleagues and I could do for them. They stayed with us for about a week, and then disappeared to the streets.

Many of my clients hailed from abroad, sent to live with their uncle "Jose Gómez" or "Abdul Mohammed" in New York. They came from all around the world—The Philippines, Russia, Mexico, Vietnam, and Senegal, to name a few. Unable to find a relative among the millions of immigrants in New York, they came to our shelter. There was no provision for special immigrant juveniles at that time, and I remember desperately trying to persuade a distant relative of one of my Ghanaian clients to share his home with his young cousin. It didn't matter to me that he lived in Seattle and had not seen the girl in 10 years. I only knew that the alternative for the child was the New York foster-care system and then the streets.

TOP, CLOCKWISE: Kerry with Covenant House colleagues in Guatemala in 1991; Kerry in Guatemala with Amnesty International in 2001 for a human rights project; Kerry with Covenant House colleagues in New York in 1989.

Many Central American young men who had come to the Covenant House had fled the civil wars in El Salvador, Nicaragua, and Guatemala. They told us

BOOK



AILA's Asylum Primer, 6th Ed.

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"Over the years, clients from Colombia to the Congo have told me similar stories, but at that time of my life, I knew nothing about child soldiers. **One of the first words that I learned from my clients was *anonymo*, which is Spanish for 'death threat.'"**

horrible stories about villages being bombed, relatives disappearing, and boys being picked up on the street and forcibly conscripted into the army. Over the years, clients from Colombia to the Congo have told me similar stories, but at that time of my life, I knew nothing about child soldiers. One of the first words that I learned from my clients was *anonymo*, which is Spanish for "death threat." Two of them had fled Guatemala after they failed to heed the warnings in one such *anonymo*. One of the young men was shot while riding his motorcycle with his girlfriend a week after the death threat arrived at his house. He went into hiding; after his wounds healed, he and his friend trekked from Xela to New York. In my Times Square office, I debated whether to advise them to file asylum applications, knowing that the U.S. government was denying asylum applications from Central America, yet approving them from the Soviet Union and Eastern Europe.

After I left Covenant House in New York, I volunteered with the legal department of Covenant House in Guatemala City, and enrolled in Spanish-language school in Antigua. The Canadian government had given Covenant House a grant to hire four Guatemalan lawyers to combat the disappearance of street children in Guatemala City. Although I spoke little Spanish, and understood even less, the lawyers welcomed me to their team. It was not safe for them to go to the police station, the courts, or the jails alone, and my white skin was a reminder to the Guatemalan government that the Western world was concerned about the human rights of street kids. I remember accompanying one of my colleagues to the central police station, where one of the officers refused to shake my hand. I had no idea what he or the other officers said, but they did not know that. All they knew was that an American was watching.

I have spent the last 23 years working with immigrants in different legal capacities, listening to their stories, offering advice, helping to resolve their legal problems, and trying to improve their lives.

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KERRY E. MCGRATH is a graduate of Duke University and New York University School of Law. She has represented immigrants in New York and Atlanta with a number of public interest organizations. She opened her own practice in 2004.

All in the Family: Meet Gloria and Maurice Goldman

by Sheeba Raj

Gloria Goldman wants you to think that she's Maurice Goldman's sister. But she's actually his mother. And this mother-son legal team has been practicing together in Tucson since 2005.

"I've never felt like I'm his mom [in the office] and I don't think he's felt that way so often," Gloria said. "When he calls me in to introduce me to a client, he'll introduce me by my first name. And, once in a while, he'll say that I'm his mom, but whether he wants to or not, it doesn't matter. People figure it out."

TOP RIGHT, CLOCKWISE: The Goldmans at Maurice's bar mitzvah; The Goldmans at Maurice's graduation from Hofstra University; Maurice and Gloria at their firm.

Gloria, an immigrant herself, came to the United States as a baby. "My parents were survivors of the Holocaust," she explained. "They were Polish and were living in Germany waiting for visas to come to the U.S. after they were liberated in '45, and married after that. I was born in 1948 and we came as refugees in 1949 on an army transport ship because many of the refugees came that way."

But Gloria didn't enroll in law school until she was in her 40s, while Maurice—or "Mo" as he's usually called—was a teenager. "When I graduated in '90–'91, it was a bad recession, so there were no jobs, really, so I decided I can open my own firm, but I better pick a couple narrow areas that I can learn slowly," she said. Gloria practiced bankruptcy and immigration law for a year, but eventually focused solely on immigration law.

Mo came into the picture when he interned for Gloria during a couple of summers while an undergraduate student at Syracuse University. After graduating with his J.D. and M.B.A. from Hofstra University in 2000, Mo decided to work with his mother, but ran his own office in New York City. About five years later, Mo and his wife decided to relocate their family and join Gloria in Tucson. Gloria and Mo still maintain the New York office.

Both have found the move quite fulfilling. "You know who you're working with," Mo explained. "When you work for another law firm, you know the individual, but you may not know their mannerisms, their different personalities, how much you can actually trust the other people you're working with."

"It's really nice because we can call each other at all times," Gloria added. "But I'm real careful about allowing Mo to work the hours that he wants considering that he has three small children."

But even though Gloria and Mo have years of experience practicing immigration law and are always there for each other, they still rely on AILA. "AILA is a real good back-up because there's so much mentoring, and we have so many colleagues that we can go to in any particular situation," Gloria said.

SHEEBA RAJ is the staff legal editor and reporter for VOICE.

AILA InfoNet Doc. No. 14073041. (Posted 7/30/14)

Law Students, Get Started!

As a law student, maybe your upbringing, employment, coursework, or study abroad has stoked an interest in immigration law. Follow VOICE every other month as it presents stories from immigration practitioners about their careers. **GET CONNECTED** with AILA members who offer information and inspiration.

Catholic Charities of the Archdiocese of NY

by Camille J. Mackler

When I entered law school, I had no intention of practicing law, or even taking a bar exam, because I had my sights set on a career in public policy. But after attending New York University School of Law's Public Interest Career Fair, I landed a summer internship at Catholic Charities of the Archdiocese of New York, which changed my plans dramatically.

During that summer, I worked under the tutelage of Raluca Oncioiu, a staff attorney and fellow AILA member. She represented low-income clients seeking asylum and relief from removal. I still remember two clients: one was a Chinese Falung Gong practitioner pursuing asylum and the other a cancer-stricken Pakistani seeking cancellation of removal so she could remain in the United States with her three U.S.

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an AILA news production

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THE IMMIGRATION INTERNSHIP

Law student volunteers at the 2014 AILA Annual Conference in Boston took some time out to of their schedules to speak about their summer internships. Hear about their experiences and their advice for fellow law students who are interested in pursuing a career in immigration law.

citizen children. I also accompanied Oncioiu to the Immigration and Customs Enforcement detention facility in Queens to screen potential clients.

Before law school, I had a taste of the legal profession when I worked as a paralegal in a major law firm handling securities litigation. But thanks to my stint at Catholic Charities, I fully understood how a law license could enhance someone else's life. When I returned as a second-year student that fall, I enrolled in my first immigration law class, and I've never looked back.

The Immigration Justice Clinic at Pace Law School

by Henry M. Mascia

I obtained my first immigration internship in an unorthodox way. I was looking for immigration experience to improve my application for a fall internship at the Executive Office for Immigration Review (EOIR). Because I already had a six-week summer internship, many organizations rejected my applications. Instead of giving up, I called Prof. Vanessa Merton, the director of the Immigration Justice Clinic at Pace Law School, my alma mater. I introduced myself to her, explained my goals, and asked if I could volunteer at the clinic for a few weeks. To my surprise, she agreed.

During my short time at the Immigration Justice Clinic, I conducted research for a client who feared being returned to Haiti due to the mistreatment of criminal deportees. Working on a challenging legal issue for a client whose life quite literally depended on the outcome of the proceeding was exhilarating. I also gained invaluable experience in client relations when an immigrant woman, who was being abused by her spouse, walked into our office with her young daughter seeking advice on her legal rights.

This three-week volunteer position was a stepping stone in the development of my career. I was offered a fall internship with EOIR, and in an unusual arrangement, I received academic credit through the Immigration Justice Clinic. After clerking for the New York State Court of Appeals upon graduation, I returned to the EOIR as a judicial law clerk through the U.S. Attorney General's Honors Program. I'm tremendously grateful to Prof. Merton for giving me the internship that launched my successful and meaningful career in immigration law.

CAMILLE J. MACKLER is the director of training and technical assistance at the New York Immigration Coalition. **HENRY M. MASCIA** is an associate at Rivkin Radler in Uniondale, NY, where he is developing the firm's immigration practice while working in the appellate practice group.

Living 'Illegal': The Human Side of the Story

by Teresa A. Statler

BOOK

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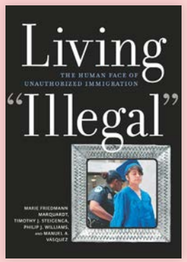
Authored by four Georgia and Florida academics, Living "Illegal": The Human Face of Unauthorized Immigration is the story of immigrants' lives—how they manage to live day-to-day in the shadows, often in anti-immigrant communities, as well as how they enrich those same communities. The authors have chosen to focus on undocumented Mexicans, Guatemalans, and Brazilians; the book is an eye-opener in setting forth their daily struggles. For an immigration lawyer, however, there is little that is new or surprising here with regard to the authors' portrayal of those living under the radar of local and immigration authorities.

Refreshingly, the authors make it clear that immigrants enter the United States illegally because there is no "line" in which to stand to obtain a visa legally. They mention the backlogs in the family preference categories and how this has contributed to illegal immigration. They also note that "ultimately, when enough people from a single area make the choice to migrate, a network of micro connections forms and this network perpetuates further migration"—including how immigrant churches of varying denominations have become a unifying force both for the immigrants and for communities at large.

BOOK



Living 'Illegal': The Human Face of Unauthorized Immigration

The New Press, 2011, 336 pages

The most interesting chapter, "Migrants Mobilize: Finding a Voice in Local and National Debates," focuses on: (1) Jupiter, FL's new center for day laborers and how that came about in a town that was quite polarized on the issue of immigration; and (2) the young DREAMers in Gwinnett County, GA, who created a "Trail of Dreams," a nonviolent civil protest in the form of a five-month walk from Miami to Washington, D.C.

In conclusion, the authors state that "ethical and moral principles" should guide lawmakers in enacting "intelligent and humane" immigration legal reform. They urge political leaders and elected officials to overcome the racism and xenophobia that has been evident at various times in our nation's history, including the present, and to "take special care not to repeat the mistakes of the past and succumb to the temptation of scapegoating immigrants."

WHAT'S HAPPENING!

KLASKO, RULON, STOCK & SELTZER, LLP celebrates its 10th anniversary with relocating to a larger office at 1601 Market Street in Philadelphia.

Mid-South Chapter member **L. PATRICIA ICE** has received a community service award from the Magnolia Bar Association for her immigration work in Mississippi.

Central Florida Chapter member **ELIZABETH RICCI** has successfully represented, pro bono, Vietnam-era veteran Mario Hernandez in his plight for U.S. citizenship.

Southern California Chapter member **KWANG-YI GER GALE** has joined the business immigration practice group at Tonkon Torp LLP in Portland, OR.

TERESA A. STATLER practices law in Portland, OR, where she specializes in family-based immigration, asylum, and removal defense. The author's views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

Get to Know Agora and Your Digital Library

by Jorge Ramirez

With just a few swipes, clicks, and presses, today's technology allows for vast amounts of information to quickly appear on all sorts of devices, such as computers, tablets, and smartphones. Nowadays, it seems that everyone, ages 8 to 80, has access to at least one of those devices on a regular basis. Immigration attorneys are no different. And because of technology, there are more options available when buying content for immigration research and professional development. AILA's Agora e-commerce website was built with the notion that purchasers would desire quick and easy access to information, hence the reason why Agora now sells numerous electronic products, such as podcasts (free for members), several books in PDF format (*i.e.*, Provisional Waivers: A Practitioner's Guide), even audio and web seminars that provide continuing legal education. All of these electronic items, once purchased, are housed in your digital library on Agora, which you can access from anywhere, anytime.

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JORGE RAMIREZ is a website specialist with AILA.

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ABOUT

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