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Practice Pointers | Practice Management | What's Trending | Get Connected | Inter Alia | Member Advantage

APRIL 2015 ▶ ISSUE 6.4

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AMERICAN IMMIGRATION LAWYERS ASSOCIATION

The H-2B Tug of War

The debate over regulatory authority puts seasonal workers, businesses at risk. 14

BEHIND THE CASE

Asylum Granted to Artesia Detainee from Guatemala

EMPLOYMENT

Message Appears to Restrict Employment for F-1 Students

GET CONNECTED

A New Ally in the Battle Against UPL: Librarians

TABLE OF CONTENTS

TABLE OF CONTENTS

Back to the Drawing Board: Elements vs. Phrasing in *Matter of Chairez II*

by Ilaria Cacopardo

Many immigration law attorneys saluted the Board of Immigration Appeals' (BIA) precedent decision in Matter of Chairez, 26 I&N Dec. 349 (BIA 2014) (*Matter of Chairez I*), as a victory of the strict categorical approach to divisibility delineated in Descamps v. U.S., 133 S. Ct. 2276 (2013). True divisibility, according to *Descamps*, occurs when a criminal statute lists "potential offense elements in the alternatives," and, thus, limits the recourse to a modified categorical approach to a very "narrow range of cases" that offer alternative offenses. *See id.* at 2283. [*Descamps* at 2288 defines as elements those facts about a crime that must be proved to a jury unanimously and beyond a reasonable doubt.]

In addition, *Chairez I* also abrogated Matter of Lanferman, 25 I&N Dec. 721 (BIA 2012), and, thus, rejected its expanded approach to divisibility, giving practitioners a strong tool to limit the use of the record of conviction to ascertain removability or eligibility for relief. [Readers will remember that the BIA in *Lanferman* decided that a statute is divisible if some—but not all—violations of the criminal provision give rise to grounds for removal or ineligibility for relief, thus allowing the adjudicator to look to the record of conviction whenever a statute is overly broad, to ascertain which portion of the statute applied to a particular prosecution.]

> "… [W]hat once seemed a welcome and refreshing decision providing consistency and clarity has become muddled once more, creating a lack of uniformity among the circuit courts that eventually may **bring the issue before the U.S. Supreme Court yet again**."

Unfortunately, as we shall see below, in the new Matter of Chairez, 26 I&N Dec. 478 (BIA 2015) (*Matter of Chairez II*), what once seemed a welcome and refreshing decision providing consistency and clarity has become muddled once more, creating a lack of uniformity among the circuit courts that eventually may bring the issue before the U.S. Supreme Court yet again.

Matter of Chairez I

Matter of Chairez I deals with Utah's discharge of a firearm statute. [*See* the October 2014 VOICE for a full discussion of *Chairez I*.] That statute describes the discharge of a firearm in the direction of a person or persons with a mental state of either intent, knowledge, or recklessness. In June 2014, the BIA found that these three distinct mens rea were "means," not required "elements," hence the Utah statute is not divisible and no modified categorical approach could be employed. Assuming the least culpable conduct—recklessness—the BIA found that this is not an aggravated felony crime of violence.

The U.S. Department of Homeland Security (DHS) filed a motion to reconsider *Chairez I* that was bolstered by U.S. v. Trent, 767 F.3d 1046 (10th Cir. 2014). In *Trent*, the U.S. Court of Appeals for the Tenth Circuit interpreted *Descamps* as defining a divisible statute to be one listing "alternative statutory phras[ing]," not alternative elements. *Id.* at 1058. According to the court, alternative phrasing (describing different means of committing an offense) can result in divisibility. And as we all know, divisibility leads to a modified categorical approach that looks to the record of

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***Descamps* and the Categorical Approach**
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next ▶▷

conviction. Because of *Trent*, a short nine months after their original decision, the BIA granted DHS's motion to reconsider and revisited its earlier decision.

Matter of Chairez II

In *Matter of Chairez II*, the BIA confuses our understanding of divisibility and, in the process, throws a significant blow to the uniform application of this concept nationwide. Here, the BIA departs from the rigorous parameters of divisibility established in *Descamps* and *Matter of Chairez I*, albeit only in the Tenth Circuit, and finds divisibility whenever a statute is drafted in the alternative (listing either elements or means). As a result, the BIA reversed itself in part—for the Tenth Circuit only—and found the Utah Code at the center of the case to be divisible because it lists three separate offenses with distinct mens rea, therefore satisfying the requirement of employing alternative statutory phrases. *See Chairez II* at 482. Finding the statute divisible, the BIA thus agrees with the immigration judge's use of the modified categorical approach to establish the aggravated felony charge of removability. The plea agreement specified "knowledge." The BIA vacated the decision in Chairez's case and remanded to the immigration judge.

A New Interpretation of *Descamps*

So what is happening here? Just as practitioners begin to wrap their minds around the concepts of divisibility and the categorical approach, the game board is upended. In *Chairez II*, the BIA adopts the DHS and Tenth Circuit's view that *Descamps* permits a modified categorical inquiry whenever the language of the statute of conviction lists alternative statutory phrases regardless of any distinction between elements or means. *Id.* at 481. In so arguing, DHS relies on footnote 2 of the *Descamps* majority opinion and the September 2014 decision of the Tenth Circuit in *Trent*. The *Descamps* footnote reads, in part, as follows:

> [I]f the dissent's real point is that distinguishing between "alternative elements" and "alternative means" is difficult, we can see no real-world reason to worry. Whatever a statute lists (whether elements or means), the documents we approved in *Taylor* and *Shepard*—*i.e.*, indictment, jury instructions, plea colloquy, and plea agreement—would reflect the crime's elements. So a court need not parse state law in the way the dissent suggests: When a state law is drafted in the alternative, the court merely resorts to the approved documents and compares the elements revealed there to those of the generic offense.

Descamps v. U.S., 133 S. Ct. 2276, 2285.

Under this new interpretation of *Descamps*, it appears that an elements-based approach to divisibility will no longer be "the gate keeper" of the modified categorical approach, as scores of criminal statutes may have alternative statutory phrases and, thus, be divisible. However, as the BIA noted, the circuit courts are divided on how to distinguish means from elements. In circuits that are silent, the immigration judges must follow the logic of *Chairez I*. *See Chairez II* at 481–82. To the chagrin of those of us who seek to truly understand the categorical approach, the BIA recognizes that divisibility is a fluid concept and essentially defers to the federal courts' approach. As a result, federal circuit law trumps *Chairez I*, and practitioners must look to their jurisdiction's approach.

Confusion Going Forward

The ultimate result will be that immigration judges in different circuits will now take different views of what divisibility means. This lack of uniformity among the circuits will certainly lead to more confusion, much to the detriment of noncitizens. Eventually, this issue may end up before the U.S. Supreme Court once again.

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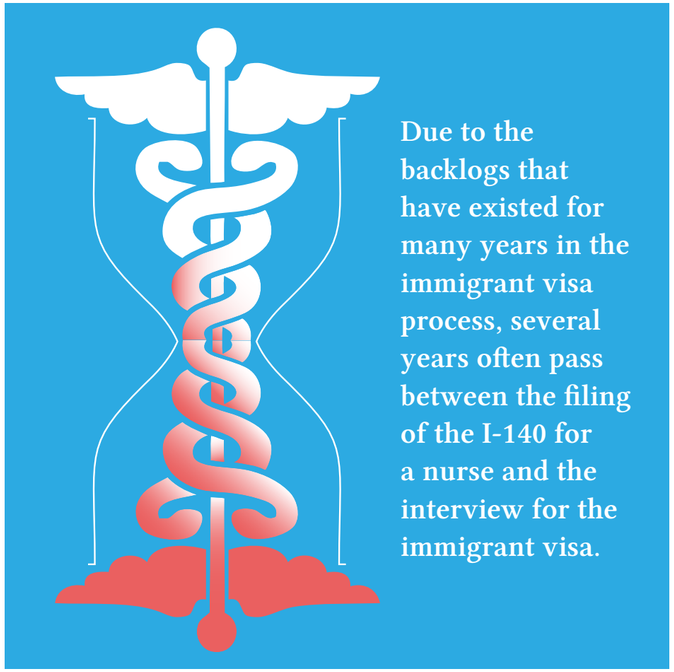
The Problem of Worksite Location on 'Schedule A' Cases

by Sherry Neal

Worksite location can be a tricky issue for some I-140 petitioners, especially staffing companies. Due to the visa backlog for most immigrant visas, the location of the job opportunity might not remain the same throughout the permanent residence process. U.S. Citizenship and Immigration Services (USCIS) provides some flexibility for Schedule A cases filed by employers who have work available, but don't know the exact location where the employee will work. Specifically, the USCIS Adjudicator's Field Manual, revised by a 2006 USCIS memorandum, provides the following guidance:

- *If the employer knows where the Schedule A employee will be placed:* the notice must be posted at the worksite(s) where the employee will work and the prevailing wage where the worksite is located.
- *If the employer has multiple locations (or client locations), but does not know where the Schedule A worker will work:* the notice is posted at all the relevant worksites and the wage is determined based on the location of the company's headquarters.
- *If the employer has no current locations or clients and does not know where the prospective Schedule A worker will work:* the petition cannot be approved because there is not an actual job opportunity.



Due to the backlogs that have existed for many years in the immigrant visa process, several years often pass between the filing of the I-140 for a nurse and the interview for the immigrant visa.

Schedule A and I-140 Petitions for Registered Nurses

The USCIS guidance for Schedule A cases is helpful if the employer and attorney know at the beginning of a case that there might be a change or uncertainty in the location of the work. But what if a Schedule A case was already filed for a specific location and there is a change in worksite location after the I-140 approval? While this scenario can occur in any kind of case, it is especially problematic for I-140 petitions for registered nurses. Most nurses don't qualify for a temporary work visa, so they, unlike workers in most other occupations, don't have the benefit of working in the United States concurrently while the immigrant petition is processed. Instead, the employer files an I-140 petition and the nurse must wait for the immigrant visa to enter the United States. Due to the backlogs that have existed for many years in the immigrant visa process, several years often pass between the filing of the I-140 for a nurse and the interview for the immigrant visa. When the visa number becomes current, the original sponsor may no longer have a job available, leaving the nurse to try to find another sponsor/employer to petition for permanent residence.

next ▶▷

"Until there is DOS guidance, **employers will need to file a new I-140 petition if there is a change in work location**, otherwise they risk a denial of the immigrant visa at the consulate."

Sometimes, however, the original sponsor still has a nursing job available, but the opening is at a different location than that originally listed in the I-140 petition. In this situation, certainly the petitioner can file a new I-140 petition for the nurse and retain the same priority date as the original petition. However, a new filing is costly and time-consuming. The USCIS filing fee is $580 plus $1,225 for optional premium processing, and it takes approximately 6 to 12 months to navigate through the immigrant process from USCIS to the National Visa Center to the consulate. Thus, employers typically want to avoid the refiling and proceed instead with the original filing. After all, the employer may see the change in location as insignificant since the job duties, and other conditions of employment remain the same. However, the U.S. Department of Labor, USCIS, and the U.S. Department of State (DOS) rarely view worksite location as insignificant.

USCIS Stakeholders Call on January 15

In the January 15, 2015 USCIS Stakeholders call, an attorney asked USCIS about the very issue of worksite changes for Schedule A cases. USCIS stated that any change in work location will require the filing of a new I-140 immigrant visa petition unless the new work location is within the same "area of intended employment" as the original location. Nebraska Service Center Liaison Committee Q&As from Business Issues Teleconference (Jan. 15, 2015) at AILA Doc. No. 15032561 (*posted* Mar. 25, 2015). The "area of intended employment" is defined as the area within normal commuting distance of the place (address) of intended employment. In theory, this provides a little flexibility for changes in worksite. However, this "opinion" by USCIS is not in writing, and there has not been any guidance from DOS on how consular officers will adjudicate consular processing immigrant petitions with a change in worksite location. Until there is DOS guidance, employers will need to file a new I-140 petition if there is a change in worksite location, otherwise they risk a denial of the immigrant visa at the consulate.

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Petitions for Nurses and Allied Healthcare Workers

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◁◀ *previous*

Argentina: Not Just a Tourist Destination

by Pablo Calaza and Becki L. Young

Argentina has long been one of the most seductive and alluring places in the world to visit. From the sophisticated Old World atmosphere of the capital, Buenos Aires, to the rugged, isolated beauty of "the gateway to Antarctica" in Patagonia, Argentina has something to entice every traveler. Couple this with the fact that Argentina's population is already composed largely of the descendants of immigrants, and it's no wonder that the country is a magnet for visitors.

Not surprisingly, business travelers are no exception to this. And with the manufacturing and service sectors having replaced agriculture as the largest contributors to the economy, the level of foreign business travel to Argentina is now growing in leaps and bounds. To help facilitate this growth in business travel, particularly from countries like the United States and China that invest heavily there, the Argentine government has taken official measures to streamline immigration into the country, making it even easier for many foreign nationals to enter for the purpose of conducting business. Several of these measures, along with their limitations, are discussed below.

Business Visas

The National Migration Bureau (NMB) in Argentina issues visas for business travel into the country. This business visa is considered a "Transitory Special Residence" that will be granted to a foreigner who "habitually performs businesses or commercial/economic transactions, for account, risk, or capital of his own or with participation in companies or legal entities that develop such activity, or in representation of these." In practice, this visa allows foreigners to attend meetings, explore business opportunities, or meet with Argentine companies and individuals that plan to conduct business abroad.

The business visa can be obtained directly outside of Argentina. To expedite this process, an applicant should obtain an entry permit from the NMB. Afterward, he or she can obtain the visa from the Argentine consulate with jurisdiction over his or her place of residence. If the applicant meets all the requirements, the Dirección Nacional de Migraciones (Immigration Authority) will grant a 30-day stay renewable business visa from the day the business traveler enters the country.

next ▶▷

RENURE

Only legal entities or individuals duly registered before the *Registro Nacional Unico de Requirentes de Extranjeros* (RENURE) may request a business visa. These companies are required to keep this registry updated each year and report any modification or the termination of the relationship with the foreigner. Noncompliance exposes the company to potentially serious penalties, including cancellation of the registration.

Restrictions

Business visas do not allow foreigners to work in Argentina. Noncompliance with this rule may trigger labor, tax, social security, and immigration consequences for the foreigner and/or the foreign or local company involved.

Special Cases

The Argentine government has executed business visa waiver agreements with certain countries—*e.g.*, the United States, the United Kingdom, Brazil, Australia, and New Zealand—to allow foreigners holding passports from those countries to enter Argentina and perform business activities without a visa for up to 90 days. Business visitors from India must apply in advance outside Argentina for a five-year multiple-entry business visa to allow the business visit.

◁◀ *previous*

"**Business visas do not allow foreigners to work in Argentina.** Noncompliance with this rule may trigger labor, tax, social security, and immigration consequences."

China

In 2013, the Argentine and Chinese governments entered into an agreement whereby the nationals of each country are allowed to apply for the relevant business visas at the embassy or consulates of the respective countries. The visas are valid for two years, and visas for multiple entries of 90 days each are issued to business travelers upon receipt of a diplomatic note, official letter, letter of notification, or letter of invitation.

Other Special Visas

Market researchers, scientists, professionals, technicians, artists, as well as visitors to congresses, fairs, and expositions, can obtain special short-term visas to pursue related activities. In addition, foreigners who enter the country as tourists can apply for a special visa that allows them to perform remunerative activities for 90 days (the foreigner can obtain two visas within a one-year period). The NMB grants this visa on a same-day basis.

Practical Tips

- Each consulate has different requirements, so it is best to start the application process as soon as possible. Sixty days before travel is ideal.
- Any documents submitted to the consulate should be prepared in Spanish.
- There is no definition of business, tourism, or work in Argentine immigration law, but as a general rule, these terms are interpreted in a similar manner as those under U.S. immigration laws.

Conclusion

Business visitors who want to visit Argentina with commercial or investments purposes should apply for the correspondent visa that allows them to develop such activities. Many factors, including the description of the intended activities, the length of the visit, the nationality of the applicant, and the timing of the trip, help to determine the appropriate visa to request when traveling to Argentina. Labor, tax, and social security issues will also impact the choice of visa. Business visitors should be aware of the options available and the limitations with each special visa.

PABLO CALAZA is an attorney at Baker & McKenzie LLP in Argentina. **BECKI L. YOUNG** is a partner at Hammond Young Immigration Law, LLC in Silver Spring, MD.

Can A Foreign National Volunteer? The Risk of Violating Status

by Myriam Jaïdi

Many attorneys have been asked whether a foreign national can volunteer without violating their immigration status. Given the high stakes, the knee-jerk answer generally would be: "Don't do it." Caution makes sense because a foreign national found to have worked without authorization could face deportation, in addition to ineligibility to change, extend, and/or adjust status. Moreover, entities that use volunteers face potential civil and criminal sanctions for employing individuals without authorization.

But what if an individual comes to you asking whether he or she can volunteer? Worse yet, what if they have already done so? Where do you start? How do you counsel them?

There is no easy answer. The term "volunteer" is not defined in either the Immigration and Nationality Act or the implementing regulations, so whether something constitutes unauthorized employment is determined on a case-by-case basis … a scenario fraught with uncertainty and risk.

"The term 'volunteer' is not defined in either the Immigration and Nationality Act or the implementing regulations, so whether something constitutes unauthorized employment is determined on a case-by-case basis … **a scenario fraught with uncertainty and risk.**"

Defining 'Employment' with Regard to Maintaining Status

The regulations governing employer sanctions provide very general definitions of "employer," "employee," and "employment," with the key factors being the provision of "services or labor" for "wages or other remuneration" in the United States. *See* 8 CFR §274a.1(f)–(h). Legacy Immigration and Naturalization Service (INS) took a broader view of employment in assessing the maintenance of status,[1] and it is important to remember that any analysis of volunteering should be framed by the limits of the person's actual status. Although various legacy INS correspondence, general counsel opinions, administrative decisions, and policy memoranda all analyze employment in different contexts for different purposes, they do provide important guidance on the subject. Analysis of these legacy INS sources reveals a focus on two factors in particular: (1) the benefit to the volunteer; and (2) control of the volunteer.

Benefits to the Volunteer

Legacy INS has indicated that if a benefit was required by the volunteer or offered by the entity in exchange for the volunteer's services, then the volunteering is more likely to be deemed unauthorized employment. The Board of Immigration Appeals has stated that benefits, including room and board or pocket money, do, in fact, constitute unauthorized employment. *See* Matter of Hall, 18 I&N Dec. 203 (BIA 1982). In addition, the expectation of a benefit, even a non-remunerative future benefit such as a job offer, may also trigger a conclusion of unauthorized employment.

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"**The right to control** is, therefore, a very important tool in helping to determine whether a volunteer's services constitute unauthorized employment."

What about reimbursement for travel or other reasonable incidental expenses? Does this qualify as a benefit to the volunteer? The BIA has not yet weighed in on this point, so when faced with the situation, an attorney could try arguing by analogy that such reimbursement is allowed for a B-1 nonimmigrant without compromising nonimmigrant status, so the same rule should apply to other nonimmigrants, as well. Not surprisingly, however, the risk that this argument will be rejected remains.

The Right to Control

An entity's right to control a volunteer's services has long been recognized by legacy INS and U.S. Citizenship and Immigration Services (USCIS) as the central element in defining an employer-employee relationship. In a 2010 memo, for example, USCIS used the issue of control for the purpose of adjudicating H-1B petitions. The right to control is, therefore, a very important tool in helping to determine whether a volunteer's services constitute unauthorized employment.

Determining Control

To help identify who has the right to control a volunteer's services, elicit information regarding the volunteer's ability to decide when, and for how long, he or she works, whether the volunteer had to maintain a time log, etc. Also, review the details of the volunteer's activities in the context of the organization to find out whether the volunteer is engaged in activities that normally would be performed by a paid employee of that organization. Finally, don't limit the type of employer to just organizations. These same principles also can apply to volunteering for a self-employer, as well!

Parting Thoughts

Although it is probably best to avoid volunteering as a nonimmigrant, there may be some room to argue that it is not unauthorized employment. Teasing out and analyzing the terms and conditions under which a person volunteers or has volunteered may make the difference between maintaining status and removal.

1 *See* P. Virtue, *Classification of Visiting University Lecturers* (Aug. 20, 1993) Genco Op. No. 93-61, 1993 WL 1504008.

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Asylum Granted to Artesia Detainee from Guatemala

by Sheeba Raj

Thanks to the Artesia Pro Bono Project, a mother and her young son fleeing gang violence in Guatemala last summer have been granted asylum in the United States. In an unpublished decision dated December 12, 2014, Immigration Judge Eileen R. Trujillo determined that the woman, whose husband was targeted by M-18 in Guatemala, was eligible for asylum because she established past persecution on account of her membership in a particular social group.

Dree Collopy, a partner at Benach Ragland LLP in Washington, D.C., represented the respondents pro bono. She recalls meeting them during a volunteer stint in Artesia, N.M. in September 2014. "They needed an attorney who was more experienced in immigration court," Collopy explained, "so they basically asked me to jump in and handle a few bond hearings that were going to be on the docket that day. I went in and this client was one of the women who I represented."

Collopy established such a strong connection with the woman that she agreed to see the case through to the end. At times, however, it was challenging for them to maintain this connection, not just because of the long distance between Artesia and Washington, D.C., but because of the phone system that U.S. Immigration and Customs Enforcement (ICE) had set up at that time for detainees and their attorneys to communicate. "[T]hese refugees, who had fled with nothing but the clothes on their backs, didn't have money to put into their account to even call their attorney, which is a serious access-to-counsel due process violation," Collopy said. For a while, Collopy and her client's husband were forced to deposit their own money into the account. Not until the attorneys at Artesia successfully lobbied ICE to implement a phone system for the clients to use in the attorneys' trailer did this practice stop.

> "I think it's incredibly important to **litigate with an eye toward appeal**."
> —AILA Attorney and Asylum author Dree Collopy

Advice for Other Asylum Attorneys

Regarding other attorneys also pursuing asylum on account of their clients' membership in a particular social group, Collopy recommends preparing to argue eligibility based on two different criteria: (1) the standard articulated in Matter of Acosta, 19 I&N Dec. 211 (BIA 1985); and (2) the three-part test clarified and reaffirmed in Matter of M–E–V–G–, 26 I&N Dec. 227 (BIA 2014), and its companion case, Matter of W–G–R–, 26 I&N Dec. 208 (BIA 2014).

In addition, Collopy also urges attorneys to build a strong record in court. "I think it's incredibly important to litigate with an eye toward appeal," she said, "and by that I mean building a really good record based on social distinction and particularity." In other words, attorneys should document their client's story, based on the client's own personal statement of events, in such a way that the deleterious effects of the client's membership in a particular social group is highlighted and explained as thoroughly as possible in the asylum brief. It is also important to have strong witnesses who can speak to social distinction, particularity, and nexus, as well as documentary evidence corroborating the applicant's claims. This way, on appeal, the full record of events has already been established in a manner that is beneficial both to the client and to the attorney.

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

Empowering Women: Balancing Opportunity and Equality in Firms

by Ruth McChesney, Ruby L. Powers, and Harlan York

Recent studies indicate that several factors may hinder the promotion of women to positions of leadership. One key factor is that, while women generally lack confidence, men tend to be overconfident (for examples, see The Confidence Code by Katty Kay and Claire Shipman). Why? From childhood, boys are applauded for going after the star roles, whether it be the quarterback, pitcher, home run hitter, or even the captain of the chess team. Girls, on the other hand, are rewarded for being polite, raising their hand, and following the rules. These values are systemically cultivated and ingrained at home, in schools, and through the media.

In the workplace, however, these rules don't apply. Real world examples of this abound. For instance, according to one study, 56 percent of men in academia were more likely to cite their own work, seeing it as a perfectly acceptable and legitimate practice of self-promotion. Women, however, were uncomfortable with doing this, regarding it as wrong and akin to cheating.

So how do we overcome these biases? Specifically, what purposeful actions can law firms—one of the most notorious institutions with accepted norms of gender inequality—take to ensure that female attorneys engage in professional development and growth opportunities, receive equal pay and promotions, and become successful leaders? Here are three recommendations for overcoming gender bias.

1. A Seat at the Table

Ensure that women are truly included in management and development meetings, whether it's a legal strategy session, a discussion on overcoming biased treatment by a judge, or a conference on how to improve the delivery of legal services. Encourage women to participate and safeguard their ability to contribute without being talked over by louder, deeper-voiced members. Recognize and acknowledge their individual contributions.

2. Female Employee Engagement

This should be at the core of any service-related business and is especially important in the legal field, where attorneys are entrusted to represent the firm's clients.

- **COMMUNICATE THE FIRM'S MISSION STATEMENT AND STRATEGIES.** Elicit individual mission statements from employees. Effectively link the firm's goals and mission statement with those of the female attorneys and identify how this will result in mutually beneficial outcomes.

- **PROVIDE SPECIFIC CONSTRUCTIVE FEEDBACK** with roadmaps for improvement and success; celebrate accomplishments with praise and recognition. Specify the impact of these behaviors, both positive and negative. Be honest and forthright, but address issues from the perspective of well-being and growth; criticism and recognition can be great opportunities for professional development.

- **PROVIDE WOMAN-TO-WOMAN MENTORSHIP AND SUPPORT.** Studies show that most men will overestimate their accomplishments and value, so they will claim sole credit for their achievements. Most women, on the other hand, will attribute their success to hard work, luck, and help from others. It is no wonder that studies also show that men will initiate negotiations for salary increases four times more often than women. L. Babcock & S. Laschever,

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Women Don't Ask: Negotiation and the Gender Divide (Princeton University Press 2009) (citing 2002 study by Linda Babcock, Michele Joy Gelfand, Deborah Small, and Heidi Stayn). Further, when women negotiate salary, they will ask for 30 percent less than men. *Id.*

- *Help female attorneys identify opportunities and encourage active involvement. Don't wait for them to "raise their hand." Acknowledge their particular strengths; invite participation in professional growth.*
- *Demonstrate how stepping up to new challenges and venturing outside their comfort zone can generate positive results and increase their professional advancement.*
- *Validate the importance of giving credit where due, but also claiming credit where earned. There is value in recognizing individual and group achievements.*

3. Work-Life Balance

Don't tolerate everyday sexism, criticism, or gossip about women taking flex-time or time off to take a sick child or family member to the doctor or simply to take care of a loved one. This isn't solely a female attorney issue, but it is often seen as one. (*See* Managers Distrust Women Who Ask For Flextime More Than Men by Dana Wilkie in Society for Human Resource Management, 2013).

"For workplace equality to truly take effect … the entire leadership and management of the law firm must commit to proactive principles and practices that will **ensure women attorneys will flourish in their organization**."

- **SPECIAL SCHEDULES AND FLEXTIME.** This is a great tool for retaining top talent and increasing employee engagement and success. Expectations should be clearly outlined and communication should remain open.

- **HARNESS AND LEVERAGE TECHNOLOGY.** This is the great equalizer. Smartphones, laptops, and other gadgets enable telecommuting from home, the waiting room, and any place Wi-Fi connections exist. Other than a perceived one, there is no difference between a male attorney working at the airport between flights (their commitment to their job is applauded) and a female attorney doing the same or working from home (they are "checking out").

- **PERSONAL TIME OFF.** Don't lose a great employee to family or medical emergencies or birth of a child. Recognize the special value of long-term employees and reward with paid time off or maternity leave. Keep attorneys engaged until the minute they take their leave. Embolden attorneys to continue the aggressive pursuit of their career if they so choose.

For workplace equality to truly take effect and become the norm, the entire leadership and management of the law firm must commit to proactive principles and practices that will ensure women attorneys will flourish in their organization. The law firm is a business. With an almost gender-balanced AILA membership, immigration firms must recognize that the effective engagement and integration of women as key players will ensure the success and longevity of the firm.

To effect true change and equal opportunities for female attorneys, purposeful and explicit actions with very specifically-intended results are required.

RUTH MCCHESNEY was the sole managing partner of the San Antonio-based firm of DeMott, McChesney, Curtright & Armendariz, LLP. She currently serves on the firm's executive board and its management committee. **RUBY L. POWERS** is the founder of Law Office of Ruby L. Powers, P.C. in Houston. **HARLAN YORK** runs his five-attorney immigration firm in Newark, NJ. The authors' views do not necessarily represent the views of AILA nor do they constitute legal advice or representation.

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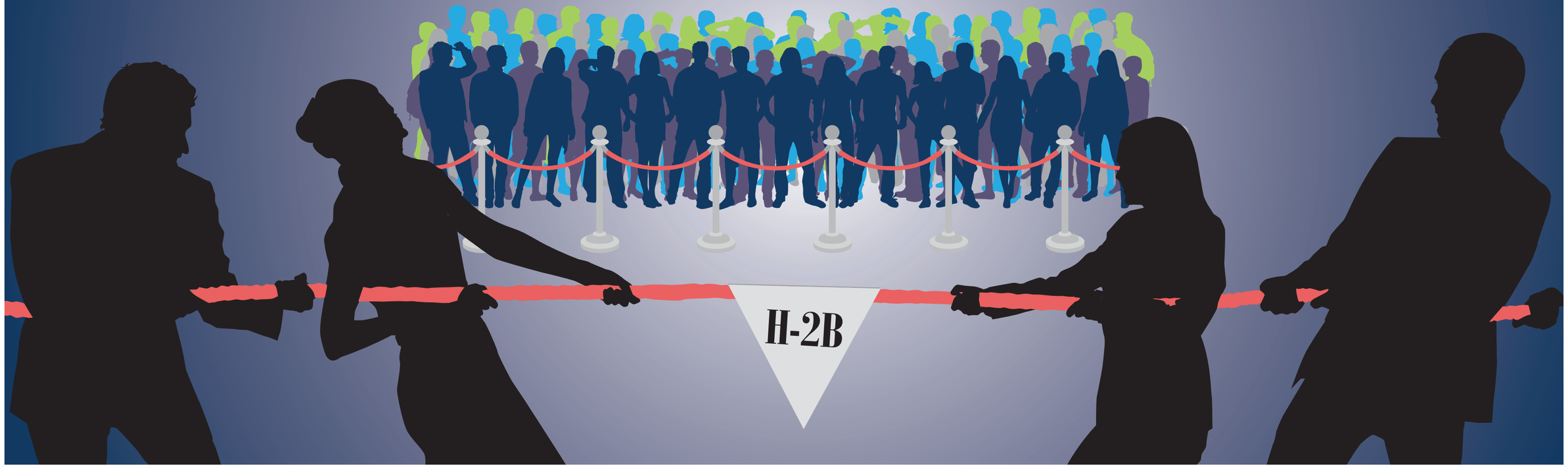
The H-2B Tug of War

The debate in the courts regarding whether DOL has any regulating authority over the H-2B program is putting seasonal workers, businesses, and the U.S. economy at risk.

by Kenneth K. Schmitt



On March 4, 2015, the U.S. District Court for the Northern District of Florida effectively shut down the H-2B seasonal employment work visa program, ruling in Perez v. Perez that the U.S. Department of Labor (DOL) had no authority under the Immigration and Nationality Act (INA) to issue regulations concerning the program. Instead, the court said, formal H-2B rulemaking authority rests solely with U.S. Citizenship and Immigration Services (USCIS), while DOL is only authorized to play a consulting role. As a result, the H-2B regulations DOL issued in 2008 were vacated, forcing USCIS and DOL to stop accepting and processing H-2B prevailing wage and temporary labor certification applications. Then, on March 16, DOL promptly filed an unopposed motion to stay the *Perez* order until April 15. This was followed by USCIS's announcement on March 17 that it would resume adjudications of non-premium processed H-2B petitions based on DOL-issued temporary labor certifications (premium processing remains suspended). These stop-gap measures are the only things preventing hundreds of employers and thousands of desperately needed workers from being left in limbo when the 33,000 H-2B numbers become available on April 1.

Regardless of the short-term outcome, however, the precarious nature of this situation long-term—DOL also stated in its March 16 motion that it will not seek

"Why is a dispute over bureaucratic rulemaking authority allowed to **push seasonal small businesses to the brink of failure and hold the U.S. economy hostage in the process?**"

further stays, and therefore will no longer process H-2B labor certifications under the 2008 rules after April 15—and the potential harm it presents not just to affected employers but, by extension, to the U.S. economy at large, begs the question: how did it all come to this? Why is a dispute over bureaucratic rulemaking authority allowed to push seasonal small businesses to the brink of failure and hold the U.S. economy hostage in the process? The short, and perhaps most important, answer, of course, rests in the fact that the 114th Congress, like all of its recent predecessors, has failed to pass a comprehensive immigration reform bill. Passage of such a bill might have rendered all our present concerns moot. On a deeper level, however, the roots of the current H-2B crisis can be traced back nearly a decade, back to when DOL might be said to have first stepped beyond its purely consultative role. An examination of these roots, therefore, is useful to truly understanding the nature of the problem.

DOL's Consultative Role in the Program

DOL's recent H-2B troubles date back to 2008. In that year, DOL implemented a rewrite of the regulatory provisions governing prevailing wages and its labor certification process, found at 20 CFR §655, part A. *See* 73 Fed. Reg. 78020 (Dec. 19, 2008). The statutory authority for DOL's regulation has long been considered to derive from the consultative language set out in INA §101(a)(15)(H)(ii)(b) and §214(c). Together, these provisions delegate to USCIS responsibility to adjudicate H-2B applications in consultation with "appropriate agencies." DOL's consultative role has traditionally been in the form of Prevailing Wage Determinations (PWD) and overseeing recruitment based labor certifications intended to protect the domestic labor market.

Over the past several years, DOL's H-2B regulations have come under legal attack in two different courts for two different reasons. First, DOL's PWD methodology, set forth in 20 CFR §655.10, has been challenged in the Eastern District of Pennsylvania. Second, DOL's very authority to regulate H-2B's has been challenged in the Northern District of Florida.

CATA II, *CATA III*, and Prevailing Wage Determinations

In a 2008 Rule, DOL first incorporated the four-tiered PWD regime used for H-1Bs into the H-2B program.

Next, prompted by litigation now referred to as CATA I, DOL attempted in a 2011 rule to move to a single, median wage PWD method and to eliminate PWDs based on employer surveys. Congress acted immediately to defund this 2011 rule, however, and it was never implemented.

CATA II

In 2012, the use of four-tiered PWDs in the H-2B program was challenged in Pennsylvania. The litigation that followed has come to be known as CATA II. The *CATA II* court concluded in early 2013 that DOL lacked authority to use a four-tiered PWD process. In response, DOL and USCIS suspended processing all H-2B applications until both agencies issued a joint Interim Final Rule (IFR) a month later. The IFR implemented a single arithmetic mean wage PWD. DOL also announced that labor certifications previously approved using four-tiered PWD's would receive supplemental PWDs (SPWD), and employers were required to adjust the wage paid to meet the SPWD.

CATA III

The IFR following the *CATA II* suspension of the program was challenged before the Board of Alien Labor Certification Appeals (BALCA) in Island Holdings, LLC, 2013-PED-00002. In its decision, BALCA ruled that DOL lacked the authority to require an employer to pay a wage different than previously certified and invalidated DOL's SPWDs. In response, further litigation ensued. *See Comite de Apoyo a los Trabajadores Agricolas (CATA) v. Perez*, 2014 WL 3629528 (E.D. Pa. 2014). BALCA's decision was then reversed by the U.S. Court of Appeals for the Third Circuit, which sustained DOL's SPWDs and also voided DOL's use of employer wage surveys to establish PWDs. *See CATA v. Perez* (*CATA III*), 774 F.3d 173, 191 (3rd Cir. 2014). In December 2014, DOL issued a Notice of Intent to Issue Declaratory Order, overruling the BALCA decision and reaffirming the PWD provisions contained in the IFR.

> "Over the past several years, DOL's H-2B regulations have come under legal attack in two different courts for two different reasons. First, DOL's PWD methodology ... Second, **DOL's very authority to regulate H-2B's has been challenged in the Northern District of Florida**."

Thus, DOL headed into 2015 with newly minted guidance asserting that its 2013 IFR was alive and well, with the exception that employer wage surveys would no longer be accepted. *See* updated DOL FAQ's issued in March 2013. But trouble loomed on the horizon.

Bayou Lawn & Perez: Déjà Vu All Over Again

The CATA litigation in Pennsylvania was brought by worker rights groups effectively seeking to increase PWDs. However, separate litigation in Florida challenged DOL's rules on behalf of small businesses upset with the added cost imposed by those rules. This attack initially took aim at DOL's rule rewrite of 2012 (2012 rule). *See* 77 Fed. Reg. 10038 (Feb. 21. 2012). The 2012 rule imposed a pre-certification process on employers who wanted to utilize both the H-2B program and additional worker protections. The 2012 rule was never implemented, however, because a Florida district court preliminarily enjoined it, and this was then affirmed on appeal. *See* Bayou Lawn & Landscape Services v. Sec'y of Labor, 713 F.3d 1080 (11th Cir. 2013).

In response, DOL continued its H-2B involvement under its 2008 rule with the PWD modifications discussed above. Then, December 18, 2014, the *Bayou Lawn* injunction became permanent, finally ending the 2012 rule once and for all. In response, DOL continued to merrily administer PWDs and labor certifications under its 2008 rule.

"Unfortunately we are left with just **one more unanswered failure from the 114th Congress**. Déjà vu all over again."

The Current State of Affairs

Unfortunately, one day after the *Bayou Lawn* final injunction, a suit was filed in the same Florida court now challenging DOL's authority to enforce its 2008 Rule in *Perez v. Perez*. The *Perez* court followed the *Bayou Lawn* precedent and permanently enjoined DOL's 2008 rule on March 4, 2015. The injunction in *Perez* has now left DOL in the heat of H-2B season unable to issue PWD's or labor certifications under any formula.

With hundreds of employers and thousands of H-2B workers anxiously awaiting second half Fiscal Year 2015 numbers to come available, DOL announced on March 4, 2015 that it would no longer accept or process ETA 9141s or ETA 9142s. USCIS followed suit on March 9, 2015, announcing that it would no longer accept or process H-2B I-129s.

Then, on March 14, 2015, DOL and USCIS issued a joint statement announcing that they will, once again, issue another IFR in an attempt to sort out this H-2B mess. This was followed by a March 16 DOL motion to stay the March 4 order in *Perez* from taking effect until April 15 (accompanied by a promise by DOL not to process H-2B labor certifications after April 15 if the motion is granted), and then by a March 17 announcement by USCIS to resume adjudication of H-2B petitions based on DOL-issued temporary labor certifications (though H-2B premium processing remains suspended), thereby providing at least temporary relief for those who rely on the H-2B program.

One wonders, however, if filing desperate, last-minute motions to stay and issuing repeated IFRs (and FAQs for that matter) are really the best way to administer a foreign labor program vitally important to our struggling economy. Would we even be in this situation if Congress had risen to the challenge of passing meaningful and comprehensive immigration reform? Could they have addressed DOL regulatory ambiguity with a simple statutory fix? Unfortunately, we are left with just one more unanswered failure from the 114th Congress. Déjà vu all over again.

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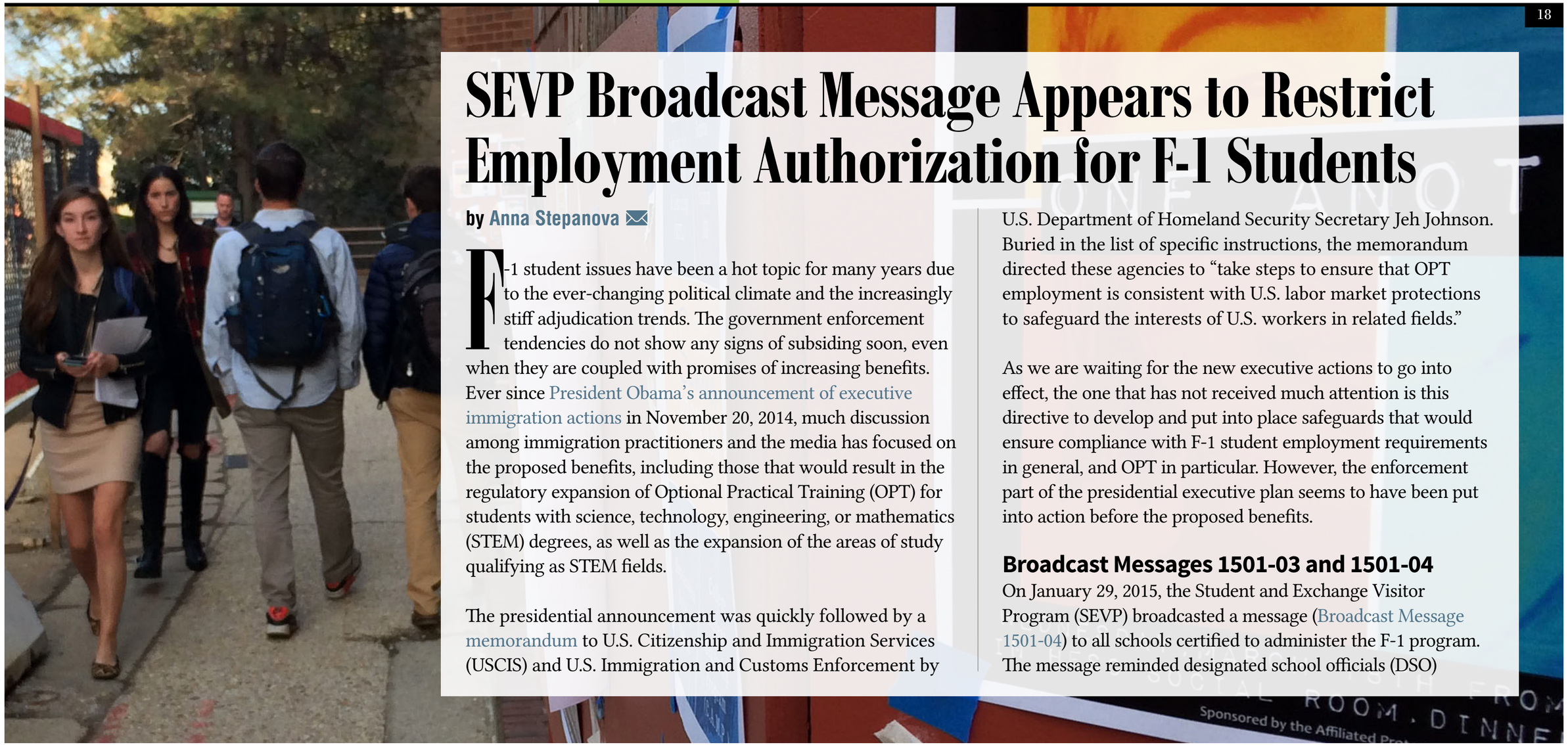

SEVP Broadcast Message Appears to Restrict Employment Authorization for F-1 Students

by Anna Stepanova

F-1 student issues have been a hot topic for many years due to the ever-changing political climate and the increasingly stiff adjudication trends. The government enforcement tendencies do not show any signs of subsiding soon, even when they are coupled with promises of increasing benefits. Ever since President Obama's announcement of executive immigration actions in November 20, 2014, much discussion among immigration practitioners and the media has focused on the proposed benefits, including those that would result in the regulatory expansion of Optional Practical Training (OPT) for students with science, technology, engineering, or mathematics (STEM) degrees, as well as the expansion of the areas of study qualifying as STEM fields.

The presidential announcement was quickly followed by a memorandum to U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement by U.S. Department of Homeland Security Secretary Jeh Johnson. Buried in the list of specific instructions, the memorandum directed these agencies to "take steps to ensure that OPT employment is consistent with U.S. labor market protections to safeguard the interests of U.S. workers in related fields."

As we are waiting for the new executive actions to go into effect, the one that has not received much attention is this directive to develop and put into place safeguards that would ensure compliance with F-1 student employment requirements in general, and OPT in particular. However, the enforcement part of the presidential executive plan seems to have been put into action before the proposed benefits.

Broadcast Messages 1501-03 and 1501-04

On January 29, 2015, the Student and Exchange Visitor Program (SEVP) broadcasted a message (Broadcast Message 1501-04) to all schools certified to administer the F-1 program. The message reminded designated school officials (DSO)

Students make their way across campus at Georgetown University in Washington, D.C. —PHOTO BY BRADLEY AMBURN

next ▶▷

of various types of F-1 employment authorization requirements. Interestingly, this guidance superseded Broadcast Message 1501-03 (unavailable online, but obtained by the author from a DSO who received it directly from SEVIS), issued just several days prior, leaving many DSOs perplexed about the government's sources of authority for some of its "reminders." The initial guidance, for example, stated that "DSOs must approve students for on-campus employment." This is in direct contradiction to 8 CFR §214.2(f)(9)(i), which describes on-campus employment as "incident to status."

Additionally, SEVP stated in Broadcast Message 1501-03 that "[t]he DSO must provide the student with a letter of approval and then they should follow the appropriate steps to obtain a Social Security number (SSN)." It is assumed that SEVP referred to the Internal Revenue Service (IRS) requirements for evidence of on-campus employment that requires that the DSO provide a letter for the Social Security Administration necessary for the SSN issuance. However, neither USCIS nor the IRS requires that the DSO issue "a letter of approval [of employment]."

1501-04: A Newly Restrictive Reading

Because some of the employment authorization requirements in the first SEVP Broadcast Message were clearly erroneous, SEVP rescinded it and issued Broadcast Message 1501-04, which is currently in place. Even though SEVP retracted its recitation of nonexistent law about on-campus employment authorization, its current guidance carried over from the initial Broadcast Message a novel restricted reading of the well-established regulation at 8 CFR §214.2(f)(10)(i). This regulation contains the following language:

> Curricular practical training [CPT] is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school.

Despite many years of widely-accepted interpretation of this regulatory language that the phrase "cooperative agreements" only modifies the last object in the sentence—"any other type of required internship or practicum"—SEVP inexplicably changed its position to require that all CPT be authorized "with an employer formally authorized by the school through a cooperative agreement." Broadcast Message 1501-04. The regulatory language presents a sentence structure that linguists refer to as an example of "syntactic ambiguity," which means that more than one interpretation is possible. This new interpretation signals a significant shift from the established practice toward more enforcement actions and stricter adherence to the rules.

In commenting on the cooperative agreement requirement contained in SEVP's Broadcast Message 1501-04, NAFSA: Association of International Educators provided a similar analysis, noting also that current CPT training guidelines posted on the SEVP website still require "a signed cooperative agreement *or* a letter from your employer" (emphasis added). Clearly, SEVP has disseminated contradicting interpretations of the CPT regulations that require further clarification. It is anticipated that the agency will issue its draft guidance on CPT in the near future, which is to be followed by a 45-day comment period.

The latest policy guidance broadcasted by SEVP, both currently in place and rescinded as erroneous by Broadcast Message 1501-04, makes one thing undeniably clear: we should not be deceived by many promises of benefits—especially as they relate to F-1 students—since enforcement actions do not lag far behind and sometimes even come first. Instead, we, as practitioners, should advocate for our F-1 student clients by looking for overly restrictive requirements that may be against the law or established procedure.

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Librarians: Allies Against UPL

by Jennifer Lin

No doubt many attorneys, particularly those who deal primarily with indigent communities, have come across potential clients who simply cannot afford to pay the legal fees charged. So what is an attorney to do when encountering such clients, people who, though poor, still are in desperate need of legal assistance? Turn them away—and thereby turn them toward—the predatory whims of unscrupulous, unlicensed notarios?

Thankfully, there is a new and promising alternative on the horizon, likely just down the street from you: your local public library. Libraries have long been providers of services for immigrants in the form of naturalization and English as a Second Language courses. Recently, however, the federal government has opened broader avenues for certain organizations—including public libraries—to provide low-cost legal services to immigrants without engaging in the unauthorized practice of law.

In 2013, the Hartford Public Library in Hartford, CT became the first library in the nation to be recognized by the Board of Immigration Appeals (BIA) as a legal provider of naturalization and citizenship services. The

next ▶▷▷

BIA has the power to recognize charitable, nonprofit religious, social service, or similar organizations so they are authorized to represent clients before the U.S. Department of Homeland Security, including U.S. Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR). Accredited representatives from the staffs of these organizations can help immigrants apply for benefits, represent them in immigration court, and even guide them in appealing immigration judges' decisions.

What Is Required for BIA Recognition and Accreditation?

Libraries and certain other nonprofits may apply for recognition for the organization and accreditation for their employees concurrently. Accreditation can be partial (permitting the individual to practice before USCIS alone) or full, and is generally valid for three years. The BIA has the authority to withdraw recognition of organizations if they fail to meet the regulatory requirements for recognition, which are found at 8 CFR §292 and §1292.2.

According to 8 CFR §292.2(a), the organization seeking recognition must "make only nominal charges and assess no excessive membership dues for persons given assistance," and must have "at its disposal adequate knowledge, information and experience."

> "[T]he federal government has opened broader avenues for certain organizations—**including public libraries**—to provide low-cost legal services to immigrants without engaging in the unauthorized practice of law."

In Matter of EAC, Inc., 24 I&N Dec. 556, 558 (BIA 2008), the BIA stated that "access to adequate information may … be shown via electronic or Internet access to immigration legal resources." Moreover, adequate staffing and supervision are important, and organizations that do not offer a full-range of legal services can show that they have the ability to discern when it is appropriate to direct immigrants to seek other assistance. *Id.* This BIA precedent decision clarifies the requirements for recognition, so it is important for recognized entities to note that the BIA has the authority to withdraw recognition if they fail to satisfy these criteria.

How Does an Individual Become an Accredited Representative?

Under 8 CFR §292.2(d), an individual may not submit his or her own application to be designated an "accredited representative" by the BIA. Instead, a recognized organization submits the application on the individual's behalf. In *Matter of EAC, Inc.*, the BIA required that all accredited representatives on staff at a recognized organization have broad knowledge and experience in immigration law and procedure. This broad knowledge and experience could be established by the accredited individual's resume, letters of recommendation, and evidence of immigration training completed, including detailed descriptions of the topics addressed.

The BIA further clarified the accreditation process in Matter of Central California Legal Services, Inc., 26 I&N Dec. 105 (BIA 2013). In that case, the BIA stated that a recognized organization's initial application for accreditation of a proposed representative show that the individual has recently completed at least one formal training course designed to give new practitioners a solid overview of the fundamentals of immigration law and procedure.

Preventing the Unauthorized Practice of Immigration Law

The requirements for recognition and accreditation ensure that non-lawyers have a basic understanding of immigration law and regulations to adequately assist members of the public. Specifically, the limited term of accreditation and the BIA's power to withdraw

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

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Winter 2014-15

The Northwest Immigrant Rights Project
West Region

University of Houston Law Center's Immigration Clinic
Central Region

Catholic Charities, Diocese of Cleveland, Migration and Refugee Services
Northeast Region

The Catholic Legal Services Archdiocese of Miami, Inc.
(Jointly with AILA South Florida Pro Bono Project)
Southeast Region

These organizations stand at the forefront of pro bono immigration legal service promoters and providers, and have been chosen as exemplars by their peers. The AILA National Pro Bono Services Committee extends a hearty congratulations!

> "**[A]ttorneys should reach out and connect** with these organizations in order to participate in legal clinics … coordinated by these groups."

accreditation are methods of monitoring the legal representation or service provided by such non-lawyers. Moreover, an accredited representative will ideally possess enough knowledge of immigration law so that he or she will realize when it is necessary to confer with or defer entirely to a trained legal professional on a complex legal matter.

It is advisable for current and prospective accredited representatives to attend training courses and workshops on the fundamentals of immigration law. They also must plan to stay aware of current events that affect members of their community—*e.g.*, the recent developments surrounding Deferred Action for Parental Accountability—while they engage in providing legal services to the public.

Additional Resources

In addition to the regulations and BIA precedent cases, more information on the recognition and accreditation processes is available on the U.S. Department of Justice's website. The Catholic Legal Immigration Network, Inc. has also published guides and articles on BIA recognition and accreditation. To further assist members of the public, the BIA itself publishes a roster of recognized organizations. Each of these resources will help organizations apply for BIA recognition and accreditation.

Working Together

Ideally, organizations recognized by the BIA to provide legal immigration services will have attorneys or firms to which they can refer those individuals whose cases require a level of expertise beyond the scope of what they are able to provide. Likewise, attorneys should reach out and connect with these organizations in order to participate in legal clinics (by performing consults that may or may not result in the establishment of an attorney-client relationship) coordinated by these groups. In this way, BIA-recognized organizations, their accredited representatives, and attorneys can work together to make sure that the immigration-related legal needs of all individuals are met, and not just those who can easily afford to pay for them.

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My Circuitous Path to Becoming an Immigration Lawyer

by Robert V. Torrey

"Not all those who wander are lost." This quote from J.R.R. Tolkien's poem, "All That Is Gold Does Not Glitter," describes the unpredictable, unplanned, and decidedly lengthy path I took to become an immigration lawyer. In describing that path, it's best that I start from the beginning.

Wandering the World in Pursuit of Romantic Dreams

When I graduated from Ole Miss in 1994 with a bachelor's degree in history, attending law school was the farthest thing from my mind. Instead, I wanted to pursue graduate studies to become a Russian history scholar. But while completing a master's program in European history, I became disillusioned with the discipline of historical studies and redirected my focus toward Near Eastern Hellenistic and Roman-era archaeology. I was absolutely convinced this field was the one for me! However, as with the goal of becoming a Russian history scholar, my dreams of becoming an archeologist soon faded away, too, replaced by a new clarity of vision regarding the harsh truths about what

Robert and his wife take their first family photo with their newly adopted children in 2005.

a career in academia might entail. So, after several years of wandering through life as a graduate student and living in foreign countries, I finally came face-to-face with the reality of having to find a job. Though I didn't realize it at the time, that reality check led me down the path that I've traveled to this point.

My First Foray into Immigration

On a cold morning in December 2001, I began my first full-time job as an international student advisor at the University of North Texas. Before that day, I had no idea what a designated school official (DSO) was, nor did I know anything about U.S. immigration law. I had lived in France for two years, however, and also had studied at Moscow State University for a semester, excavated in Israel, and traveled to Tunisia, England, Spain, Andorra, Italy, Greece, Canada, and Mexico. I even spoke Russian and French with a little Hebrew thrown in. Because of these skills I possessed and the experiences I had had, working as an international advisor made complete sense to me. And yet, how little did I know at that time of the world that I had entered and the wonders yet to be discovered! My job served as a portal into the realm of immigration law, and not just the area of F-1 regulations. Over time, the idea of becoming an attorney began to germinate in the back of my mind, and two subsequent events helped push these thoughts into the forefront of reality.

The Two Events That Led Me To Become an Immigration Lawyer

The first event occurred when a student who had been

next ▶▷

arrested for aggravated sexual assault came to my office, along with his uncle, seeking guidance. I wanted to help this young man as much as I could, but I knew what my limitations were as an international student advisor. Since I was not an attorney, all I could do was encourage them to seek legal advice from someone who was. This event helped cement my desire to become an attorney.

The second event occurred when my wife and I learned that we could not have children without the assistance of modern medicine. We chose to adopt children (yes, plural!) from Russia. While handling all the immigration documentation and paperwork, I completed my application to law school. In 2005, we brought home two brothers and a sister, aged 6, 4, and 2, and I got to put my prior language studies to good use. That fall, I enrolled in the night program at Texas Wesleyan School of Law, now the Texas A&M School of Law, in Fort Worth. Life was rough, but very exciting: just as I had begun law school, I also had started a family and had continued working full-time. And during my entire time in law school, I maintained that full-time job, much of which involved handling all the temporary worker visas for the University of North Texas system. It further exposed me to the actual practice of immigration law and all the joys and complications that come with working under our current immigration system.

Robert's children—Philip, Alexander, and Annamarie—exploring Dinosaur Valley State Park in Texas in 2013.

I graduated from law school in December 2009. In May 2011, I received my law license. In the end, my pathway to become an immigration attorney followed a long and winding road, but I was never lost. I just traveled farther and longer to arrive at my destination. I cannot wait to see what the future holds!

ROBERT V. TORREY runs his own practice in Denton, TX.

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Opening a New Practice: What I Wish I Knew When I Started

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Savor the Cherry Blossoms and Lobby for Immigration Reform!

by Maurice Goldman

Fifteen years ago, I attended my first National Day of Action (NDA) with AILA. At that time, it was known as "Lobby Day." It was an empowering experience that I wanted to replicate every year. With a couple exceptions, I have been fortunate enough to do this. Here are six compelling reasons why I keep coming back, and why I think you should go, as well, on April 16.

Six Reasons You Should Attend NDA

EDUCATION! During one of my first NDA trips, Nevada Chapter member Peter Ashman told me: By virtue of being a lawyer who specializes in immigration law, you are the expert, so you are best qualified to educate members of Congress and their staff (most of whom are not immigration experts) about our problematic immigration laws and how to fix them. I still pass along this same credo to practitioners making their first trip.

CAMARADERIE! NDA is a great way to work with your fellow chapter members in persuading legislators to make the right choices on immigration reforms. While we often sound like a broken record, asking year after year for the abolition of the same ill-conceived laws—*e.g.*, the three– and ten-year bars, or the implementation of a legalization process—our perseverance will eventually pay off! By working alongside veterans of the NDA, newer practitioners can offer a fresh voice to help articulate very difficult concepts.

> "[Y]ou are the expert, so **you are best qualified to educate members of Congress** and their staff. …"

ADVOCACY! Given your chosen profession, you are already an advocate. This starts, of course, with being a champion for your clients. However, members of Congress don't see you prepare legal briefs for court or tricky applications to USCIS, nor do they see you counsel a client during an intake. Therefore, explaining to legislators your workday is extremely important because it provides real-life examples to support the need for humane and sensible immigration laws.

CLIENTS! Speaking of providing real-life experiences, the most memorable aspect of NDA is the opportunity to bring along your clients or others who are personally impacted as examples. One year, our office brought along a client whose family has been shattered due to INA §212(a)(9)(C). His ability to convey the heartache that he faces daily spoke volumes to legislators, especially those who tend to be hostile toward reform.

AWARDS! The American Immigration Council's D.C. Immigrant Achievement Awards celebrate the accomplishments of extraordinary immigrants and advocates nationwide. It will take place on Thursday after the NDA activities. I have always walked away from this event inspired, and I guarantee you will, too!

CHERRY BLOSSOMS! Hey, why not? You work hard and you deserve a break once in a while. After pounding the pavement on Thursday, you should check out AILA's Spring CLE Conference the next day, but then bask in the cherry blossoms, which are expected to peak between April 9 and April 13. See you in D.C. on April 16!

EVENT

AILA's National Day of Action 4.16.15

2015 National Day of Action

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MAURICE GOLDMAN works for Goldman & Goldman, PC in Tucson, AZ. He is a former chair of AILA's Arizona Chapter.

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