

Call for Justice, LLC—United Way 2-1-1 Training Paper

Session 9: Basic Immigration Law

February 14 and 15, 2013: Selena Britzius-Negash, Program Director, Immigrant Law Center of Minnesota

Featured Speaker's Topic

This month, Attorney Selena Britzius-Negash will talk about immigration law.

What is Immigration Law?

Immigration law consists of laws and regulations that apply to people who immigrate legally or illegally to the United States. For the most part, immigration laws are federal in nature—that is, the federal government makes and enforces most of the laws and regulations that pertain to immigrants. (However, some states have enacted their own immigrant laws—Arizona for example. When this happens, there's always the risk of those laws clashing with federal immigration law.)

Immigration has long been central to the history (and richness) of the United States. The problem is that it's also historically been a political issue, something which continues to this day.

It's also important to bear in mind that immigration law is highly specialized, and something which most attorneys know nothing about. Thus, Twin Cities metro referrals (as well as state-wide immigration referrals) most likely will go to a handful of programs.

Citizenship

The starting point in immigration law is that federal law divides all individuals within the borders of the United States (which includes territories the U.S. controls) into two categories: citizens and non-citizens.

Originally, the U.S. Constitution referred only to “natural born citizens” without defining the phrase. Subsequently, Congress passed the 14th Amendment (if you've seen the movie, “Lincoln,” you know this) in which Congress defined citizenship to mean, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

As a result of the 14th Amendment, the government will first look at someone's birth location as a way of determining citizenship. If a person is born in the U.S. (note: from here on out, we include U.S. territories within any reference to “U.S.”), then that person is automatically a

citizen. Additionally, if a child is born to a U.S. citizen (regardless of the location of the birth), the child may be able to derive citizenship from his or her parent.

Citizenship can also be achieved through a process called **naturalization**. This is where immigrants who are lawful permanent residents pass a written test of their knowledge of U.S. history and government institutions, and then take an oath in which they swear allegiance to the U.S. In cases where parents become naturalized citizens, their children who are younger than 18 and who are permanent residents, may automatically become U.S. citizens, too. Not every person born in another country, who happens to be residing in the U.S., is eligible to become a naturalized citizen.

There are many people (millions in fact—no one knows how many for sure) who are in the U.S. who aren't citizens. Some are here legally (on **temporary status** such as students or tourists) and some have more permanent legal status such as "**Lawful Permanent Resident**" (otherwise known as having a "green card"). Others are here illegally, also known as "**undocumented**" since they don't have the federal government-issued papers that allow them to be in the U.S.

RED FLAG: the question of whether someone is or isn't a citizen, or whether they're a Lawful Permanent Resident or enjoy some other status, is very complicated. Stress this to the caller and recommend that they attend a clinic (or call the Immigrant Law Center) for help.

Immigration

"Immigration" occurs when a person permanently moves to the U.S. from another country. Over time, the U.S. has had various "immigration policies," where it's favored one group or philosophy about immigration, only to then change that policy and adopt another.

In 2011, the largest percentage (65%) of immigrants coming to the U.S. did so for family reasons (such as a close relative already residing in the U.S.). The next largest percentage (16%) of immigrants came to the U.S. for political reasons—to avoid oppression (or worse) in their home or birth countries. Employment opportunities (such as doctors or engineers) form the third largest group of immigrants to the U.S. (13%).

1. Special Immigration Statuses

The federal government has also determined that various other reasons/human conditions exist which justify allowing for legal immigration (and the possibility of naturalized citizenship). As a result, in some instances, people who would otherwise be here illegally can obtain protected status and avoid deportation.

For example, the government has determined that **illegal immigrants who are also victims of violent crimes and who cooperate with law enforcement authorities** to prosecute the

perpetrator should be entitled to special protection. In those instances, the victims can apply for a special visa (known as a “**U-Visa**”).

In other instances, the federal government has granted protected status (called a “**T-Visa**”) to **victims of human trafficking** (such as the sex trade, slave trades or instances of where people are brought to the U.S. under false pretenses). Again, the victim needs to cooperate with any criminal investigation centering on the trafficking.

The government also has a program known as **Temporary Protected Status (TPS)** for people from countries that have experienced civil strife or natural disasters that make it difficult for repatriation. The countries that are currently designated for TPS by the Department of Homeland Security are: El Salvador, Haiti, Honduras, Nicaragua, Somalia, Sudan, South Sudan and Syria.

Finally, for spouses, children and parents of abusive U.S. citizens or Permanent Residents, there is protection through the **Violence Against Women Act**. For abused, abandoned or neglected juveniles, there is something called **Special Juvenile Immigration Status**. There are very particular qualifying criteria for these programs; again, specialized programs will be familiar with these criteria.

RED FLAG: Obviously, certain key facts can affect someone’s status and determine whether they qualify for a specialized program. Once more, this is a reason to consult a trained immigration attorney and something to stress to the caller.

Lawful Permanent Residency

Individuals who are the beneficiary of a family petition filed by certain U.S. citizen or Permanent Resident family members can request visas and **Lawful Permanent Residency (LPR)** at the Consulate or Embassy abroad or with the Department of Homeland Security in the U.S. There is a legal analysis that takes place for an LPR application, which includes determining whether the applicant has certain criminal convictions, has ever engaged in immigration fraud, or is subject to any other “grounds of inadmissibility” to the U.S. Sometimes the “grounds” can be waived.

Assuming a non-citizen is granted LPR, the non-citizen can apply for naturalization 5 years after obtaining LPR status. (In cases of LPRs who are married to U.S. citizens, this can be shortened to 3 years.) The ultimate advantage to naturalization is that it eliminates the risk of deportation (unless it’s later determined there was fraud in the process) and the LPR’s minor children can derive citizenship. Of course, there’s also the right to vote.

Removal (formerly called “Deportation”)

Removal is the process of physically relocating someone from the United States and sending them back to their home country. Anyone who is undocumented—at any age, and regardless of

whether they've built a life here or are actively employed—can be removed. This also includes anyone who has overstayed or violated the terms of their visa. Moreover, even if someone has a valid visa and is “legal,” they are subject to removal if they fraudulently completed visa-related paperwork or if they engage in criminal activity in the U.S.

U. S. Immigration, Customs and Enforcement (“ICE”) is charged with effecting removal. The process of removal involves a series of hearings (unless the non-citizen agrees to removal). Non-citizens can be housed (“detained”) in either federal or state facilities (e.g. jails) while they await final adjudication on removal. In Minnesota, the minimum release bond (e.g. a paper promise to appear for all hearings) is typically \$10,000.

Importantly, for those subject to removal, there is no right to government-appointed counsel. As a result, half of the non-detained and 84% of the detained non-citizens have no counsel.

Removal applies equally to non-citizen children. For children born in the U.S. to illegal immigrants (meaning the child is actually a U.S. citizen even if the mother is not), the child can remain in the U.S. or be sent with the parent to the parent’s country of origin.

RED FLAG: There is in place an informal program for people who are facing removal who are detained and either haven’t been able to pay their bond yet or aren’t eligible for a bond. This program, called the **Minnesota Detention Project**, is a collaboration between the Immigrant Law Center, the Advocates for Human Rights, and the immigration law clinics of St. Thomas, William Mitchell, and Hamline law schools. There are also private attorneys who volunteer on a pro bono basis.

Through this program, all immigration detainees who are in removal proceedings and who are unrepresented have the opportunity to have their case reviewed with a lawyer (or a supervised law student) and be represented at their initial master calendar hearing (only) in detained court. Respondents who appear to have a viable form of relief may be referred to a nonprofit agency, or will at least receive a list of private attorneys who specialize in immigration law.

READ THIS TO CALLERS: “There is no one to contact to request these services. The volunteers are simply there at all initial master calendar days. Family members can call the Immigration Court hotline to find out the date of the hearing for the loved one and then simply show up at immigration court if they want to attend the hearing. The Court hotline is 1-800-898-7180. They will need to enter the Alien # (or A#) of the detainee. The detainee should have their number and can give it to their friends/family so that they can be calling to see when the court will be.”

Deferred Action for Childhood Arrivals (DACA)

In June, 2012, the federal government announced that certain young people who were brought to the U.S. as children will be eligible to receive “deferred action” and employment

authorization for 2 years. This deferred action is subject to renewal, so it's possible to extend the applicant's status. Additionally, recipients of DACA can apply for a social security card and driver's license and/or state identification document.

In Minnesota, it's estimated that somewhere between 2500 and 4100 individuals are potential applicants for DACA. To date, the Immigrant Law Center of Minnesota has processed over 900 potential DACA applicants

The key requirement for DACA is that the applicant child/youth must have entered the U.S. before age 16, and that they have continuously resided in the U.S. since June 15, 2007. The applicant must be currently in school or graduated from high school or honorably discharged from the military. This also requires that the applicant not have a felony or significant misdemeanor history.

RED FLAG: Make sure to ask Selena as many questions as possible about DACA. This program will be in the forefront of the news for some time.

How Asylum Differs from Lawful Permanent Residency

"Asylum," basically means "a right to be safe." In the context of immigration, it refers to a country's decision to allow an immigrant to remain within that country's borders where the immigrant is fleeing persecution in their home country.

To qualify for asylum, the applicant must be physically present in the U.S. (Thus, this differs from immigration in that an immigrant can apply for a U.S. visa in their home country.) The applicant must establish past persecution or a "well-founded fear" of future persecution in his or her home country on account of race, religion, nationality, membership in a particular social group, or political opinion.

Various United Nations Conventions and Protocols guarantee the right to asylum in signatory countries (with the U.S. being a signatory). However, asylum is a discretionary process and may be denied even when the applicant is otherwise eligible. A person will be denied asylum in instances where he/she commits a serious crime or assists in the persecution of someone else or provides material support to a terrorist organization.

A "refugee" differs from an asylum-seeker in that a refugee is considered for refugee status while the refugee is outside the U.S. (and thus, this is exactly the opposite of asylum-seekers who are only considered once they are in the U.S.). Additionally, refugee applications are handled by the U.S. Refugee Program, which works to resettle individuals in the U.S. However, someone can be made a refugee for the same reason someone becomes an asylum-seeker—such as being displaced because of war or violence in their home country.

Legal Resources re: Immigration Law

Primary Legal Resources

HENNEPIN COUNTY

1. **Mid-Minnesota Legal Aid Immigration Law Project, 612-332-1441.** Eligibility is based on 125% of the Federal Poverty Guidelines (FPG), although if someone (individual or family) is at 200%, there is a good chance that standard deductions (the cost of rent or other necessities) will bring the person in need to the 125% level.
1. **Clinic for Immigration Legal Matters—Park Avenue United Methodist Church, 3400 Park Ave. South, Minneapolis, 612-825-6863.** Thursdays between 3:00-5:00, walk-in. Must be a low income (200%) resident of Hennepin County who does not have an attorney.
2. **Clinic for AIDS Patients—Minnesota AIDS Project, 1400 Park Ave Minneapolis (612) 341-2060.** Must be clients of Minnesota AIDS Project to make an appointment at the clinic.

RAMSEY COUNTY

1. **SMRLS, Refugee, Immigrant and Migrant Services, 651-291-2837 or 1-800-652-9733.** For eligibility, 200% is probably the figure to plug into any conversation; however, of course, tell the caller to make sure they contact SMRLS to make certain whether or not they'll qualify.

TWIN CITIES GENERALLY AS WELL AS THE ENTIRE STATE OF MINNESOTA

1. **Immigrant Law Center of Minnesota, both in St. Paul and Worthington. 651-641-1011 or 1-800-223-1368.** Eligibility: serves people with household incomes below 187.5% FPG. For people who are over-income or whom it can't serve, ILCM provides a list of private attorneys who specialize in immigration law.
2. **Immigration Law Pro Bono Clinic, 612-642-1114.** The Immigrant Law Section of the Minnesota State Bar Association has established a Pro Bono Clinic, effective January 28, 2013, for permanent residents ("green card holders") in connection with filing for the following types of immigration benefits:
 - I-130 relative petitions; and

- I-90 applications to renew legal permanent resident status; and
- N-600 applications for certificates of citizenship.

The clinic is limited to the above filings only. The MSBA Immigration Section's Pro Bono Clinic can be reached at **612-642-1114**.

The clinic will be "virtual" insofar as clients will call into a voicemail system and be referred to law students who will screen each client for financial and basic legal eligibility before making the case available to a volunteer attorney. The client then becomes the client of the volunteer attorney, who is paired with a law student to provide service. A volunteer attorney or law student will return calls within 3 business days.

3. **St. Cloud—Mid-Minnesota Legal Aid. 1-888-360-2889.** Eligibility is the same as MMLA in Minneapolis.
4. **Wilmar—Mid-Minnesota Legal Aid. 1-888-360-3666.** Eligibility is the same as MMLA in Minneapolis.
5. **Advocates for Human Rights (Asylum Cases). 612-341-3302.** Services for asylum-seekers in Minnesota.

Fallback Referrals

1. **LawHelpMN.org.** This has a pretty sizable section of information on immigrants and immigration law.

Referral Help for Zoey

While Zoey's desire to help Dorri is admirable, she needs to consider all of the potential complications of taking in Dorri.

First, there's the issue of "harboring" someone you know is an illegal immigrant. While people are rarely, if ever, prosecuted for such actions, it means that letting Dorri stay with Zoey's family isn't risk-free.

Then there's the issue of "the Hulk" and how he could represent a threat to Dorri and Zoey and her family. It's possible that Dorri might qualify for a U-visa, although some kind of physical harm must have been threatened to Dorri (and she would have to cooperate with law enforcement in investigating and prosecuting the Hulk).

Dorri's (and Zoey's) best bet might be asylum due to Bahrain being a country which might threaten Dorri's safety if she returned there.

The good news: 2-1-1 needs to make only one referral—to the Immigrant Law Center. They can take things from there!

This Month's Tips

- 1. We'll say it one more time: this is a really specialized area of the law. 98 out of 100 attorneys won't know anything about immigration law. 1 of the 2 remaining attorneys will know enough to be dangerous. Thus, it's crucial that the caller actually gets to a real immigration lawyer. It is okay to suggest to the caller that they ask the attorney about the attorney's immigration experience.**
- 2. We suspect you will get calls from a variety of people at a variety of income levels seeking an immigrant law attorney. Many non-citizens will get their referrals from others in their communities, but some people won't know where to turn, and thus will come to 2-1-1. The best you can do is to get them to a program where they'll be triaged and directed to the right place.**

Let us know if you have questions. Thanks!

**Ellie and Jillian
Call for Justice, LLC**