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Editor's comments

BY LEWIS F. MATUSZEWICH

Michael R. Lied serves as the Liaison between the Continuing Legal Education Committee of the Illinois State Bar Association and the International and Immigration Law Section Council. He is based in the Peoria office of the law firm Howard & Howard Attorneys PLLC. He frequently provides articles for *The Globe* and other ISBA publications concerning employment related issues. This issue includes his article, "Wage Obligations of H-1B Visa Sponsors."

Mark Wojcik, a Professor at The John Marshall Law School in Chicago, is a former Chair and current Member of the International and Immigration Law Section Council. Professor Wojcik, who

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Wage obligations of H-1B visa sponsors

BY MICHAEL R. LIED

The Immigration and Nationality Act permits certain nonimmigrants to work in specialty occupations temporarily on H-1B visas. To support an H-1B visa application, a U.S. employer must file a Labor Condition Application. The regulations at 20 C.F.R. § 655.731 contain detailed requirements concerning the wages to be paid to H-1B nonimmigrants, and 20 C.F.R. § 655.731(c) particularly focuses on circumstances where an employer is required to pay H-1B employees even where they are in a nonproductive status. If an H-1B employee is in nonproductive status due to a decision by the employer, the employer is required to pay the employee's salary. 20 C.F.R. § 655.73l(c)(7)(i).

However, once there has been a *bona fide* termination of the employment relationship, the H-1B employee is no longer entitled to any further salary. 20 C.F.R. § 655.73l(c)(7)(ii).

Aditya Chettypally entered into an employment agreement with Premier IT Solutions to work under the H-1B visa program from October 1, 2015 through September 3, 2018. Beginning sometime in November 2015, Mr. Chettypally was in a

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Editor's comments

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has had 48 articles published in various ISBA publications, provided us with his article, "Liability for Exporting to Iran Does Not Require Proof that the Exports Actually Arrived in Iran."

Mark J. Collins, Jr. is a student at Southern Illinois University School of Law. His professor, Cindy G. Buys, who is a current Member and former Chair of the International and Immigration Law Section Council, encouraged him as she has with other students, to submit his article, "Brexit: Exiting the European Union, Entering Jurisdictional Questions."

Among the many benefits the Illinois State Bar Association provides to members are *ISBA E-Clips*. *E-Clips* include short summaries of state and federal court cases. The column, "Recent Cases" includes international and immigration related cases from *E-Clips* over the last few months.

If anyone is interested in utilizing the research within their firm to provide an article for *The Globe*, please email your interest to me for information on the procedure and requirements for an article.

As always, thank you to all of our contributors.

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Wage obligations of H-1B visa sponsors

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non-productive status, due to the failure of Premier to provide him work assignments.

On March 21, 2016, Mr. Chettypally filed a complaint with the U.S. Department of Labor Wage and Hour Division, alleging that Premier had committed a number of violations of the Labor Condition Application regulations, including a failure to pay him the agreed upon salary, Approximately one month later, when checking his status on the USCIS website, Mr. Chettypally discovered that Premier had submitted a notice to terminate the H-1B visa and that the termination had been approved. Mr. Chettypally was never directly notified by Premier that his visa had been terminated, nor was he given any payment for transportation home to India. He eventually borrowed funds and returned home.

On February 7, 2017, WHD issued a decision finding that Premier had committed three violations of the H-1B regulations, including failure to pay wages in violation of 20 C.F.R. § 655.731. The Administrator found that there was a failure to pay Mr. Chettypally for both productive and non-productive work, and for travel expenses "associated with the petition."

On February 21, 2017, Mr. Chettypally requested a hearing on the WHD determination. In particular, Mr. Chettypally contended that Premier did not comply with the *bona fide* termination process in that it did not notify him of his employment termination, nor did it provide him with a flight ticket home.

Mr. Chettypally admitted that he eventually received, as part of the back wages ordered by the Administrator, after-the-fact payment for his return trip to India.

It was undisputed that Premier never directly or expressly informed Mr. Chettypally that he was being terminated.

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Rather, Mr. Chettypally found out about the termination when he checked his status on the USCIS website sometime in April, 2016.

Actual notice from USCIS that his employment with Premier was terminated satisfies the notification requirement with respect to Mr. Chettypally. Since the intent of this requirement is obviously to give notice to the H-1B employee and since Mr. Chettypally received actual notice—albeit not directly from Premier, the hearing officer found that the purpose of this requirement had been accomplished.

With respect to the second requirement of whether a bona fide termination had been effected, it was clear that Premier did notify USCIS that the employment relationship with Mr. Chettypally was terminated. With respect to the third requirement, the record established that Mr. Chettypally was not given payment for his return trip home at the time he was forced to leave the United States, though he was later reimbursed for the cost of his trip as a result of the decision by the Administrator.

The failure of Premier to comply with all the requirements for bona fide termination did not, in itself, constitute a basis for directing the payment of additional wages beyond that ordered by the Administrator. Although the payment for the return trip to India was after-the-fact, Mr. Chettypally was nevertheless fully compensated for his return trip. According to the hearing officer, if an H-1B employee is informed that his employment is terminated, and the employer has filed the requisite documentation with USCIS, and the individual returns home on his own, it is difficult to see how the regulations justify payment of additional salary for the period the individual is no longer in this country. Since Mr. Chettypally had already left the country as of May 13, 2016, he was in no position to continue working for Premier. In view of the WHD Administrator's decision to require Premier to provide full back pay from November 1, 2015 through May 13, 2016, and to provide, although after-the fact, the cost of a return trip home, Premier had no further financial obligation to Mr. Chettypally. *Chettypally v. Premier IT Solutions, Inc.,* 2017-LCA-00006.

Rites LLC is an IT consulting company located in Virginia. On March 30, 2012, the Department of Labor's Wage and Hour Division issued a letter notifying Rites that it was the subject of an investigation to determine compliance with the H-1B Labor Condition Application provisions of the Immigration and Nationality Act. The investigation involved 27 employees, including Usha Kiran Danda.

On September 18, 2015, Rites and the Administrator of the Wage and Hour Division of the U. S. Department of Labor entered into a Back Wage Compliance and Payment Agreement. The Agreement stated that "[a]s a result of th[e] investigation monetary violations were found resulting in 26 employee(s) due back wages in the amount of $61,595.92." Mr. Danda was not listed among the 26 employees covered by the Agreement.

On March 23, 2017, the Administrator issued a second determination letter to Rites. The March 23, 2017 determination letter stated that "it has been determined that your firm committed the following violations":

> failed to pay wages as required in violation of 20 C.F.R. § 655.731.... failed to provide notice of the filing of LCA(s) in violation of 20 C.F.R. § 655.734.... failed to maintain documentation, as required by 20 C.F.R. § 655.731(b), 20 C.F.R. § 655.738(e), 20 C.F.R. § 655.739(i) and/or 20 C.F.R. § 655.760(c).... and failed to comply with the provisions of subpart H or I in violation of 20 C.F.R. § 655.735(c).

As to the remedy for the violations, the letter stated: "Your firm owes back wages in the amount of $134,029.86 to one (1) H-1B nonimmigrant, Usha Kiran Reddy Dandy."

The parties disputed the start date of the back wage assessment for Mr. Danda. The Administrator contended the start date should be October 1, 2008, and Rites argued the start date should be January 8, 2009, the first day of the validity period on Rites' H-1B petition.

The sole issue was the start date for Rites' obligation to pay back wages to Mr. Danda. There was no dispute that Mr. Danda became employed by Rites, never obtained an assignment but was not validly terminated, and was therefore is entitled to back wages for his employment. The parties agreed on the rate of pay for the back wages and that wages were due through September 22, 2011. They disagreed only as to the start date for the payment of back wages.

An employer is required to pay full wages to an H-1B nonimmigrant, even if the worker is in nonproductive status for lack of assigned work, "after the nonimmigrant has entered into employment with the employer." 8 U.S.C. § 11 82(n)(2)(C)(vii)(l); 20 C.F.R. § 655.73l(c)(7)(i). An H-1B worker "enters into employment" with an employer "when he/she first makes himself available for work or otherwise comes under the control of the employer, such as by waiting for an assignment, reporting for orientation or training, going to an interview or meeting with a customer, or studying for a licensing examination, and includes all activities thereafter." 20 C.F.R. § 655.73l(c)(6)(i).

The Administrator argued that Mr. Danda entered into employment with Rites by October 1, 2008, because he moved to Richmond, Virginia, in September 2008 to work for Rites; began an eight-week training class for Rites sometime in September 2008; and began receiving job postings. Rites countered that the training class was open to the public; that the purported job posting emails did not clearly relate to available positions and did not establish that any job opportunities had a start date prior to January 8, 2009; that the Administrator failed to produce any direct documentation of employment, such as W-2s, I-9s, timesheets, or similar documents; and that its co-owner, Mr. Vakkalanka, unambiguously stated that Mr. Danda was not an employee of the company prior to approval of the petition in January 2009. Rites also argued that in any event, the obligation to pay wages is not triggered "merely because the employee chooses to make himself available to work," but rather depends on when the employee

becomes eligible to work through approval of the H-1B petition.

The hearing officer found that Mr. Danda made himself available to work for Rites when he moved to Richmond, Virginia, and began participating in Rites' training class.

The H-1B "portability" provision allows an H-1B worker to change employers, and states that a "nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status ... is authorized to accept new employment upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant .... Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease." 8 U.S.C. § 1184(n).

The hearing officer concluded that the portability provision applied. USCIS had investigated Mr. Danda and granted him H-1B status with a prior employer, Vayu Inc., and investigated and approved Rites' petition, based on a "[c]hange of employer," to "[a]mend the stay of the person(s) since they now hold this status." The approval by USCIS was evidence that Mr. Danda had been lawfully admitted into the U.S.; that the petition was not frivolous; and that Mr. Danda had not been employed without authorization prior to the filing of Rites' petition. Therefore, the portability provision applied to him.

Thus Mr. Danda was entitled to back wages from the first date that he "entered into employment" with Rites following the date of filing of Rites' I-129 petition. Rites filed its I-129 petition on September 18, 2008, and Mr. Danda entered into employment with Rites as of October 1, 2008. Therefore, Mr. Danda was entitled to back wages as of October 1, 2008. *Administrator, Wage and Hour Division v. Rites LLC,* 2017-LCA-00011. ■

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Liability for exporting to Iran does not require proof that the exports actually arrived in Iran

BY MARK E. WOJCIK

Companies that export goods and services need to know about their customers. To avoid legal problems, exporters need an export compliance program and they need to look out for red flags and possible transshipments to prohibited countries. If a company does not investigate where its products end up, even a company that sells a product as simple as a car stereo system might unexpectedly face a civil penalty of more than $4 million. And oddly enough, a new court decision shows that civil liability may not depend on goods actually arriving in a prohibited destination.

In 1995, President William Jefferson Clinton imposed comprehensive trade sanctions on the Islamic Republic of Iran for that country's "support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction."[1] President Clinton imposed these trade sanctions against Iran under the International Emergency Economic Powers Act ("IEEPA"),[2] a federal statute that allows the U.S. President to declare national emergencies and to regulate foreign commerce in response to unusual and extraordinary foreign threats to the American economy, national security, or foreign policy.[3] The trade sanctions are enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), which promulgated the Iranian Transactions and Sanctions Regulations.[4] Under those regulations, OFAC can impose civil penalties against any U.S. person who exports goods to a third party knowing, or having reason to know, that the goods will then be further exported to Iran.[5] The OFAC regulations specifically prohibit "the exportation, reexportation, sale, or supply, directly or indirectly . . . on any goods, technology, or services to Iran" by U.S. individuals and businesses, including exportations to third countries with "knowledge or reason to know" that the goods are "intended specifically" to be re-exported to Iran.[6]

The ban on exports to Iran is comprehensive and the specific goods exported do not need to have any military capabilities in order to fall under the Iranian Transactions and Sanctions Regulations.[7] In one recent case, a company that sold sound systems, video players, and other accessories for cars was found to have violated the sanctions and subjected to a civil penalty of more than $4 million. Between 2008 and 2012, Epsilon Electronics, an electronics company based in California, had sent 39 shipments of

consumer goods (with a total value of about $3.4 million) to a distributor in Dubai.[8] The distributor in Dubai had offices in Dubai and Tehran, and the distributor's website boasted of "its 10 long years of experience on Iran's car, audio & video market."[9] Epsilon, the American company, was charged with knowing that exports sent to the Dubai distributor would likely end up in Iran because Epsilon had copied images from the Dubai distributor's website and put them in a photo gallery labeled "Iran" on its own website.[10]

The Office of Foreign Assets Control sent Epsilon a prepenalty notice of a $4,073,000 fine for the 39 shipments, charging the company with knowing or having reason to know that the shipments would be further sent to Iran.[11] The company argued that it did not know (and had no reason to know) that goods were destined to be transshipped to customers in Iran.[12] OFAC was not persuaded by this defense and it issued a final penalty notice for $4,073,000.[13]

The company sued OFAC in federal district court, seeing declaratory and injunctive relief against enforcement of the civil penalty.[14] The district court upheld the civil penalty, however. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the judgment as to 34 of the 39 shipments, but it remanded the case because of questions as to whether five of the 39 shipments were to be sold in the United Arab Emirates or were destined to be sent to customers in Iran.[15]

In attempting to defend itself against the OFAC civil penalty, the company argued that OFAC had not shown that any of the goods sent to Dubai had actually arrived in Iran.[16] The company's view was that there was simply no proof that it had violated the law unless the agency showed that the goods had actually arrived in the Islamic Republic of Iran. OFAC argued that the Iranian Transactions and Sanctions Regulations did not require it to show that the goods entered Iran.[17] Section 560.204 of those regulations provides:

> Except as otherwise authorized . . . the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:
>
> (a) Such goods, technology, or services are intended specifically for supply, transshipment, or rexportation, directly or indirectly, to Iran or the Government of Iran. . . .[18]

The D.C. Circuit found that the regulation requires only (1) exportation of goods to "a person in a third country" and (2) "knowledge or reason to know" that the recipient of the goods intended to send the goods on to Iran.[19] The court held that actual arrival of the goods in Iran is not required to impose liability under this regulation.[20] Liability was imposed here because the distributor in Dubai receiving the goods had offices only in Dubai and Tehran, and because the distributor in Dubai was found to "reexport [ ] most, if not all, of its products to Iran."[21] As stated by the D.C. Circuit, "an exporter may be found liable under section 560.204 if it ships goods from the United States to a third country, with reason to know that these goods are specifically intended for reexport to Iran, even if the goods never arrive in Iran."[22]

Senior Circuit Judge Silberman, concurring in part and dissenting in part, would have credited the exporter's argument that there should be no violation of the regulation absent evidence that any goods actually arrived in Iran. Judge Silberman stated that OFAC had "fudged the answer to the crucial question" of whether the goods were actually sent to Iran.[23] Judge Silberman also criticized the majority for improperly freezing "the agency's interpretation of an ambiguous regulation."[24]

Penalties for export violations can be issued by the U.S. Department of the Treasury, the U.S. Department of Commerce, or the U.S. Department of State. In recent years, these three agencies have significantly increased the number of penalties issued as well as the size of those penalties. It is more important than ever for companies to ensure that they know their foreign customers and that they have in place a strong export compliance programs. Attorneys knowledgeable about the import and export laws should offer to audit clients who want to ensure that they are in compliance with the law to avoid or correct any violations. And as this latest case shows, it is not even necessary for goods to arrive in Iran to incur civil liability for shipments to that country. ■

Professor Mark E. Wojcik teaches International Trade Law and International Business Transactions at The John Marshall Law School in Chicago. He is a member of the Section Council and a former Chair of the ISBA Section on International and Immigration Law.

1. Epsilon Electronics v. United States Department of the Treasury, 857 F.3d 913, 916 (D.C. Cir. 2017)(quoting Executive Order No. 12,959, 60 Fed. Reg. 24,757 (May 6, 1995)).
2. 50 U.S.C. § 1702.
3. *Epsilon Electronics,* 857 F.3d at 916.
4. 60 Fed. Reg. 47,061 (Sept. 11, 1995), codified as amended at 31 C.F.R. pt. 560.
5. *Epsilon Electronics,* 857 F.3d at 916.
6. *Id.* at 916-17 (citing 31 C.F.R. § 560.204).
7. *Id.* at 917-18.
8. *Id.* at 917.
9. *Id.* at 926.
10. *Id.*
11. *Id.* at 917-18.
12. *See id.* at 918.
13. *Id.*
14. *Id.*
15. *Id.* at 927-32. As to these five shipments, there was a possibility that they could be sold in the United Arab Emirates rather than being sent to Iran. *Id.* at 927-28.
16. *Epsilon Electronics,* 857 F.3d at 919.
17. *Id.* OFAC argued that "[u]nder the unambiguous terms of the regulation, actual reexportation to Iran by the person in the third country is not required for a violation." *Id.*
18. 31 C.F.R. § 560.204.
19. *Epsilon Electronics,* 857 F.3d at 920.
20. *Id.*
21. *Id.* at 924.
22. *Id.*
23. *Id.* at 933 (Silberman, J., dissenting).
24. *Id.* at 934 (Silberman, J., dissenting).

Brexit: Exiting the European Union, entering jurisdictional questions

BY MARK J. COLLINS, JR.

With the United Kingdom's exit from the European Union comes many new legal issues, all of which concern relations between the soon-to-be non-EU United Kingdom, and the countries which choose to remain EU members. One of the UK's concerns moving forward and out of the EU is the level of control which the European Court of Justice will exercise over it as a practical matter.[1] The European Court of Justice will no longer have direct jurisdictional control over the UK, once the UK has completely left the EU.[2] This newly arising lack of jurisdiction leaves Europe with many questions about European dispute resolution—some of which are economic in nature, e.g., how the European "single market" will function in the future—particularly with regard to the UK.

Some background on the issue

Including the United Kingdom, the European Union is made up of 28 countries.[3] The union was created by the Treaty on European Union (also known as the Maastricht Treaty, after Maastricht, Netherlands, where it was approved in 1991).[4] The treaty was ratified by all European Community (EC) states on February 7, 1992, and went into effect on November 1 of the following year.[5] Two of the most noteworthy changes which the creation of the EU brought about are the currency shared by some members (the euro) and the European central banking system, though there are also non-economic changes, such as those in foreign policy and security policy.[6] Within the European Union structure is the European Court of Justice. The ECJ interprets *European* law and how it should be applied.[7] The court is located in Luxembourg, with panels of judges from member states who can issue judgments which are binding, even to national courts of member states.[8] The ability to issue binding judgments is a very important issue in the Brexit realm.

The UK has a few options for the future, and without a European Parliament to make the decision for it, British Parliament can pretty well make whatever decision it sees fit (with economic and social influence from remaining EU members). For example, one option for Britain may be to create a new court to issue advisory judgments concerning European law, which British Parliament or courts then could adopt, or not. Whatever the future may hold concerning the institution of a new arbiter of European law, the Government of the UK has made its stand very clear, writing in its Enforcement and dispute resolution: A future partnership paper, "In leaving the European Union, we will bring about an end to the direct jurisdiction of the Court of Justice of the European Union," and, "The UK will take steps to implement and enforce our agreements with the EU within our domestic legal context."[9]

The legal implications

This situation deals with several international legal principles. The first is that of state sovereignty, and more specifically, that states must consent in order to be bound by judgments of international tribunals. Under the issue of sovereignty are the subissues of whether a state is acting as its own judge, and if this is a legally acceptable action. It appears that a common-sense principle of equity is that one party to a dispute cannot be its own judge, and thereby the judge of its opposing party. It is hardly imaginable that the opposing party in such a case would not take issue with such a scenario. Although the situation with the UK and the EU seems far different than this at first glance, it is actually quite similar. Although it is not in dispute that European law would be the governing law to be interpreted in certain situations, what is disputed by the UK is which court will have jurisdiction to make that interpretation. If the UK should decide that UK courts should interpret the European law, then it is not only being its own judge, like the Libyan Government tried to be in The Texaco/Libya Arbitration, but it will also be creating UK law and precedent, due to its common law legal system.[10] This will create issues in the future, as those within UK jurisdiction will be bound by these common law interpretations of European law, but EU members will not.

Another issue here is treaty formation. Although the UK often uses the word "agreement" when discussing future negotiations with the EU, what it is really talking about is a treaty between it, as a third party, and the EU. The UK wrote in the above-mentioned Enforcement and dispute resolution paper, "Under the UK's constitutional arrangements, the agreements we expect to reach with the EU will not automatically become part of the UK's internal legal order."[11] What the UK is noting here is that there is not one figure within the UK Government who can unilaterally create binding law upon the UK through treaty formation. Rather, the treaty must go through the UK's legislative process in order to become binding law (think, e.g., about our American system of treaty ratification). The UK must also be careful that it does not violate its obligations under treaties which it has not exited.

Final thoughts and suggestions for the future

Lord Neuberger, President of Britain's Supreme Court, has come out openly and

said that, absent any legislation from the British Parliament explaining the stand judges should take, the United Kingdom's courts will have to simply give it their best effort to determine a proper outcome.[12] In my opinion, it is wise for the UK courts to continue to enforce ECJ decisions, unless Parliament passes a statute that says otherwise. The UK's exit from the European Union has already been a trigger for conflict between it and current EU member states. Taking the stand that the UK can interpret European law however it pleases likely would not help any of its foreign relations between it and EU members. Furthermore, the UK must note that the only persons on which British law would be binding, should the court defer from ECJ rulings, would be those persons operating within the UK, under the UK courts' jurisdiction. Those operating outside the UK, but within the EU, find themselves bound by ECJ jurisdiction, and in the event that the United Kingdom's courts should rule opposite of the European Court of Justice, those under the ECJ's jurisdiction would be forced to ignore the UK ruling. This would create economic problems and could possibly lead to destruction of future trade agreements between the UK and the EU.

The way the European Union is structured, even when a non-member state makes an agreement with a *particular, single* EU-member state, it is indirectly creating a flow of trade/commodities with other EU-members who are not parties to the contract. This is because (1) European law controls each of the member states, and trade is a largely regulated topic within this mechanism, and (2) once within the EU (by entering the party to the trade/commodities contract), those trade/commodities become available to citizens of other EU-member countries, by virtue of unrestricted travel between various states, intermember commerce, etc. It is for these reasons, and to escape possible sanctions issued by the European Union against the United Kingdom because of potential, future disagreement concerning dispute outcomes, that the United Kingdom should informally submit itself to the judgments of the European Court of Justice. It is likely *domestically,* politically unwise to create legislation which binds the UK under the European Court of Justice, as this would be very contrary to the purpose of the UK's exit, and could have dire consequences in future politics and polling. Not doing so, however, could make negotiations with the European Union concerning their future "agreement" difficult. If the EU does not totally buy into embracing the UK's sovereignty and ability to judge itself, then the UK should submit itself to arbitration. The arbitration tribunal should consist of three judges: one selected by the UK, one selected by the European Parliament, and one selected by the European member state which is also affected by the arbitration. The UK should legislate that any such arbitration is binding upon it.

The current Government of the United Kingdom has to strike a balance here between pleasing its domestic constituents, ensuring continued, domestic power in future politics, and pleasing the European Union, including each of the member states. This is going to be a tricky situation, and will likely require the United Kingdom to give up some of its sovereignty in order to continue enjoying the benefits it wishes to retain. If the United Kingdom wishes to argue that a foreign court should not have jurisdiction over it, it must also consider that its approach of using European Court of Justice decisions as advisory opinions and then determining the decisions' validity after their issuance is an attempt to extend its domestic jurisdiction to EU member states involved in some of these disputes. ■

Mark J. Collins, Jr. is a J.D. candidate at the Southern Illinois University School of Law. He may be reached at mc6651@siu.edu.

1. Dan Roberts, *What is the European Court of Justice and why does it matter?*, The Guardian, (August 23, 2017) https://www.theguardian.com/politics/2017/aug/23/european-court-of-justice-ecj-why-does-it-matter.
2. Chris Morris, *Reality Check: What is the European Court of Justice?*, BBC (August 23, 2017), http://www.bbc.com/news/world-europe-40630322.
3. *European Union (EU): European Organization*, Britannica.com, https://www.britannica.com/topic/European-Union (last visited: Sept. 24, 2017).
4. *Id.*
5. *Maastricht Treaty: Europe [1991]*, Britannica.com, https://www.britannica.com/event/Maastricht-Treaty (last visited: Sept. 24, 2017).
6. *European Union (EU): European Organization*, Britannica.com, https://www.britannica.com/topic/European-Union (last visited: Sept. 24, 2017).
7. Dan Roberts, *supra.*
8. *Id.*
9. Department for Exiting the European Union, 'Enforcement and dispute resolution – a future partnership paper' (2017) <https://www.gov.uk/government/publications/enforcement-and-dispute-resolution-a-future-partnership-paper> accessed November 28, 2017.
10. *See: The Texaco/Libya Arbitration* (1977) 17 L.L.M. 1.
11. Department for Exiting the European Union, *supra.*
12. Kevin Rawlinson, *Judge calls for clarity on status of ECJ rulings in UK after Brexit*, The Guardian (August 8, 2017), https://www.theguardian.com/politics/2017/aug/08/judge-calls-for-clarity-on-status-of-ecj-rulings-in-uk-after-brexit.

2018 ISBA Election

Positions Available are:

- **3rd VP**
- **6 seats on the Board of Governors (1 each in Cook and Board Areas 1, 3, 4, 6, and 8) and**
- **22 seats on the Assembly in Cook County.**

Nominating petitions are now being accepted and must be filed by 4:30 p.m. on Wednesday, January 31, 2018. Petitions must be physically submitted with original signatures. Candidates' biography and photo should be submitted at www.isba.org/election/bioform.

Find out more at www.isba.org/elections.

Student outreach program

BY LEWIS F. MATUSZEWICH

The International and Immigration Law Section has implemented a Law Student Outreach Program by providing attorneys the chance to visit a law school and explain to law students the professional opportunities in the areas of immigration and international law. Currently, the program is chaired by David W. Aubrey (Edwardsville, IL), who serves as Secretary of the International and Immigration Law Section Council for this ISBA year.

The most recent effort was made at Northern Illinois College of Law in DeKalb, Illinois and the presenters were Michelle Rozovics (Crystal Lake, IL), who serves as the current Chair of the Section Council, Patrick M. Kinnally (Aurora, IL), last year's Section Council Chair, and David W. Aubrey.

During the 2016-2017 ISBA year, a presentation was made at DePaul College of Law. The presenters were David W. Aubrey, Kiki Mosley (Chicago, IL) and Lewis F. Matuszewich (Crystal Lake, IL). Earlier during the 2016-2017 year, a presentation at Southern Illinois University, arranged by Professor and now Assistant Dean Cindy Buys, included presentations by Patrick M. Kinnally, Sophia Zneimer (Chicago, IL), Shama Patari (Chicago, IL), current Vice-Chair of the Section Council, and David W. Aubrey.

During 2015-2016, David Aubrey and Lewis Matuszewich participated in a presentation at the University of Illinois College of Law in Urbana, Illinois.

Southern Illinois University also hosted in 2014-2015 and included presentations by Scott Pollock (Chicago, IL), former Chair of the Section Council, Michelle Rozovics, and David W. Aubrey. ■

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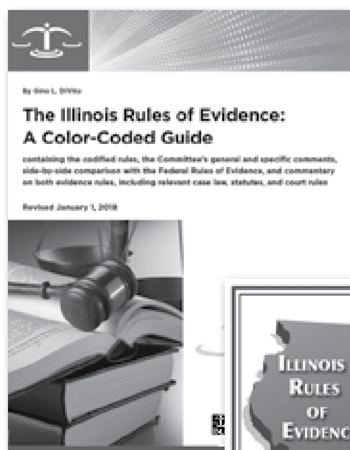

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Recent cases

The following case summaries appeared in recent ISBA E-Clips:

Baez-Sanchez v. Sessions, No. 16-3784 (October 6, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition granted

Bd. erred in finding that IJ lacked authority to grant alien's request to waive alien's inadmissibility (and thus to temporarily halt alien's removal) while alien seeks U visa from Department of Homeland Security, where Bd.'s finding was based on conclusion that 8 CFR section 1003.10(b) did not include such power when describing powers and duties of IJ. Ct. of Appeals found that such power was theoretically included in 8 CFR section 1003.10(a), where that section grants IJ ability to exercise Attorney General's powers over immigration. Remand, though, was required for Bd. to address Attorney General's argument that: (1) Attorney General himself has no authority to grant waivers of inadmissibility to aliens seeking U visas; and (2) if Attorney General does possess such authority, it could only be used with respect to aliens who seek such relief prior to entering U.S.

Garcia v. Sessions, No. 16-3234 (October 11, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Bd. did not err in refusing to consider alien's appeal of his asylum request, under circumstances where: (1) alien had been subject to prior removal order that had been entered in absentia; (2) alien had re-entered U.S. and sought asylum after being apprehended by Border Patrol. Ct. of Appeals, in overruling *Delgado-Arteaga,* 856 F.3d 1109, found that alien had standing to seek asylum relief, even though he was subject to reinstatement of his prior removal order. However, alien was barred under 8 USC section 1231(a)(5) from obtaining asylum relief due to fact that he was subject to reinstated order of removal at time he sought said relief. Fact that general asylum statute under 8 USC section 1158(a) provided that regardless of his status, alien could apply for asylum relief did not require different result.

Rodriguez-Contreras v. Sessions, No. 17-1335 (October 12, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition granted

Bd. erred in finding that alien (citizen of Mexico) was required to be removed under 8 USC sections 1227(a)(2)(A)(iii) and 1229b(a)(3) without any possibility of discretionary relief from removal due to alien's prior Illinois conviction for felon in possession of weapon under 720 ILCS 5/24-1.1(a), which Bd. found to be qualifying "aggravated felony." Said conviction did not qualify as aggravated felony, where: (1) said conviction could be established through possession of air gun; and (2) air gun, or any other pneumatic weapon, was not "firearm" under federal law. As such, remand was required for Bd. to consider whether removal proceeding should be dismissed outright, as well as any claim for discretionary relief from removal that would allow Bd. to consider fact that alien's conviction actually involved weapon that would qualify as firearm.

Asectic v. Sessions, No. 17-1202 (October 17, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition denied and dismissed in part

Record contained sufficient evidence to support Bd.'s removal order under 8 USC section 1227(a)(1)(A), where record showed that alien had failed to disclose in his successful refugee application fact that he had served in Bosnian Serbian army during Bosnian conflict. Alien had admitted that he willfully misrepresented his military service, and such misrepresentation was material where truthful statement would have led to further investigation by immigration official. Fact that individual hired by State Department to assist alien in his refugee application advised alien not to report said military service on refugee application did not require different result. Also, Ct. of Appeals lacked jurisdiction to review Bd.'s denial of alien's discretionary request to waive his removability under 8 USC section 1227(a)(1)(H).

Acquaah v. Sessions, No. 16-3277 (November 6, 2017) Petition for Review. Order of Bd. of Immigration Appeals Petition granted and denied in part

Ct. of Appeals remanded to Bd. alien's application to remove conditions on his permanent resident status based on his marriage to U.S. citizen, where: (1) IJ ultimately found that Dept. of Homeland Security properly terminated alien's permanent resident status on ground that alien's application constituted marriage fraud; (2) IJ rejected alien's application for "good faith" waiver of removal based on fact that alien had failed to disclose in prior testimony that he had remarried original wife at time he was still married to U.S. citizen, and that he had subsequently fathered child in U.S. by original wife; and (3) Bd. found that alien was statutorily ineligible for fraud waiver under 8 USC section 1227(a)(1)(H). Bd. erred when it found that absence of specific fraud charge precluded availability of fraud waiver and should have considered whether charge sustained against alien, i.e., termination of conditional resident status on basis of his marriage to U.S. citizen, was related to fraud. Also, if sustained charge is related to fraud, Bd. needs to consider whether severe health issues of alien's U.S. citizen daughter, for whom he is only surviving parent, warrants exercise of favorable discretion.

Taylor v. McCament, No. 17-1943 (November 17, 2017) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in dismissing for

lack of standing plaintiff-alien's claim under Administrative Procedure Act seeking order to compel U.S. Citizenship and Immigration Services (USCIS) to immediately issue 80,000 U-visas to those, like plaintiff, who were placed on waiting list for said visas. Record showed that relevant agencies failed to timely create regulations to enable individuals to apply for U-visas, which, in turn helped to cause instant backlog of U-visa petitions. However, plaintiff lacked standing to seek requested relief in instant case since: (1) Victims Protection Act limits number of U-visas that may be issued each fiscal year to 10,000; and (2) even if Dist. Ct. ordered USCIS to issue 80,000 U-visas, USCIS could not do so because of 10,000 U-visa statutory cap.

Rodriguez v. Sessions, No. 17-1568 (November 22, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Bd. did not err in affirming IJ order that found that alien (native of Mexico) was statutorily ineligible to seek cancellation of her removal, where alien had been convicted of violating order of protection under Wisconsin law. Bd. could properly find that said conviction precluded alien from seeking cancellation of removal relief under 8 USC section 1227(a)(2)(E)(ii), where record showed that: (1) alien had been enjoined under protection order; (2) at least one part of said order involved protection against credible threat of violence, where state court directed alien to refrain from acts of domestic abuse; and (3) alien pleaded no contest to having knowingly violated domestic abuse order by remaining on premises at issue in order. Fact that alien may not have acted violently by remaining on premises was irrelevant.

Calderon-Ramirez v. McCament, No. 16-4220 (December 5, 2017) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in granting defendants' motion to dismiss plaintiff-alien's petition for writ of mandamus requesting that Dist. Ct. compel defendants to immediately adjudicate his pending U-visa application under circumstances where said application had been pending for approximately 1.5 years. Although plaintiff has right to adjudication regarding his application for both U-visa waiting list and for U-visa itself, plaintiff was not entitled to mandamus relief, since plaintiff failed to set forth any facts that would differentiate himself from other petitioners filing ahead of him whose applications had also not been adjudicated. Moreover, plaintiff was not entitled to similar relief under Administrative Procedure Act since instant 1.5 year delay was not unreasonable given 150,000 increase in pending U-visa applications.

Matushkina v. Nielsen, No. 17-1336 (December 7, 2017) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in dismissing plaintiffs-aliens' action under Administrative Procedure Act that challenged denial of one plaintiff's 2015 immigration visa application that, in turn, was based on 2009 finding by U.S. Customs and Border Protection that said plaintiff was inadmissible because she had attempted to enter U.S. on fraudulent basis. While Dist. Ct. found that plaintiffs lacked standing to challenge 2009 determination as it related to 2015 denial of plaintiff's immigration visa, Ct. of Appeals found that, although plaintiff had standing to file instant claim, dismissal on the merits was appropriate, since: (1) instant case constituted indirect challenge to visa denial that was not subject to judicial review under Bruno, 197 F.3d 1153; and (2) review of 2009 determination that plaintiff had committed fraud when attempting to enter U.S. would constitute improper full-blown review of merits of said determination, especially where stated basis for 2009 decision was bona fide and facially legitimate. ■

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Thursday, 02-01-18 – LIVE Webcast—The Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) Permit Program. Presented by Business Advice and Financial Planning. 1:30PM – 2:30PM.

Friday, 02-02-18 – Bloomington, IL—Hot Topics in Agriculture Law – 2018. Presented by Agriculture Law. All-day.

Friday, 02-02-18 – ISBA Chicago Regional Office—2018 Federal Tax Conference. Presented by Federal tax. All Day.

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Feb 6 - June 26—Fred Lane's ISBA Trial Technique Institute.

Wednesday, 02-07-18 – Webinar—TITLE INSURANCE 101: HOW TO HANDLE COMMON TITLE INSURANCE AND COVERAGE ISSUES IN RESIDENTIAL REAL ESTATE TRANSACTIONS—A Primer for New Attorneys and Those 'New' to Real Estate Law Practice. Presented by Real Estate. Time: 2-3 PM.

Friday, 02-09-18 – SIU Carbondale—Central and Southern Illinois Animal Law Conference. Presented by Animal Law. 8:00AM to 5:30PM.

Tuesday, 02-13-18 Webinar—Cloud Services for Lawyers. Practice Toolbox Series. 12:00-1:00 PM.

Wednesday, 02-14-18 – LIVE Webcast—What's New: Updates to the AIA Contract Documents. Presented by Construction Law. 12:00-2:00 PM.

Monday, 02-19-18 – Chicago, ISBA Regional Office—Workers' Compensation Update – Spring 2018. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Monday, 02-19-18 –O'Fallon—Workers' Compensation Update – Spring 2018. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Monday, 02-26-18 Webcast—Annual 2018 Immigration Law Update – Reviewing the First Year of the Trump Administration. Presented by International and Immigration. Time: 12:00-1:00 PM.

Tuesday, 02-27-18 Webinar—Security is Only as Good as the Weakest Link: Security Measures Every Lawyer Should Take. Practice Toolbox Series. 12:00-1:00 PM.

Wednesday, 02-28-18 – ISBA Chicago Regional Office—Copyright and Student Records Issues in Education. Presented by Education Law. 9:00 AM- 12:30 PM.

Wednesday, 02-28-18 – LIVE Webcast—Copyright and Student Records Issues in Education. Presented by Education Law. 9:00 AM- 12:30 PM.

March

Friday, 03-02-18 – ISBA Chicago Regional Office—9th Annual Animal Law Conference. Presented by Animal Law. 9:00AM to 4:30PM.

Monday, 03-05-18 – LIVE Webcast—Nuts & Bolts of a DUI Blood Draw Case. Presented by Traffic Law. 12:00-1:00 PM.

Tuesday, 03-06-18 – LIVE Webcast—The Ethics of Social Media for Attorneys and Judges. Presented by Bench and Bar. 1:00-2:30 PM.

Wednesday, 03-07-18 – LIVE Webcast—Fixing the Underperforming Practice. Presented by LOME. 12:00-1:00 PM.

Thursday, 03-08-18 – ISBA Chicago Regional Office—The Complete UCC. Master Series, Presented by the ISBA. 8:30-5:00.

Thursday, 03-08-18 – LIVE Webcast—The Complete UCC. Master Series, Presented by the ISBA. 8:30-5:00.

Friday, 03-09-18 – ISBA Chicago Regional Office—Malpractice Avoidance Program. Presented by Trusts and Estates. 8:30-4:00.

Friday, 03-09-18 – Webcast—Malpractice Avoidance Program. Presented by Trusts and Estates. 8:30-4:00.

Monday, 03-12 to Friday, 03-16— Pere Marquette Lodge, Grafton IL—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

Tuesday, 03-13-18 – LIVE Webcast—Don't Panic – What to do When a Letter Arrives from the ARDC. Presented by ARDC. 2:00-3:00 PM.

Thursday, 03-15-18 – Webinar—Hello My Name is PAC: An Introduction to the Attorney General's Public Access Duties. Presented by Local Government. 12:00-1:00 PM.

Friday, 03-16-18 – Holiday Inn & Suites, Bloomington—Solo and Small Firm Practice Institute. All day. ■

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