ILLINOIS STATE BAR ASSOCIATION

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The Globe

The newsletter of the Illinois State Bar Association's Section on International & Immigration Law

Editor's comments

BY LEWIS F. MATUSZEWICH

This issue features articles by former Chairs of the International and Immigration Law Section Council. Patrick M. Kinnally served as Chair during the 2016-2017 ISBA year and provided five articles for *The Globe* during that year alone. This issue includes his article, "Pleading Guilty and Immigrant Criminal Defendants: A Renewed Call for a New Law."

Shannon Shepherd served as Chair of the Section Council during the 2006-2007 ISBA year. Her article, "Immigration Enforcement in the Workplace Likely to Increase," appears in this issue.

In addition, Lynne Ostfeld, Chair from 2014-2015 received the Medal of Knight of the French National Order of Merit for her work as Legal Advisor to the French Consulate in Chicago. A picture of Lynne and Consul General Vincent Floreani is included in this issue.

In this issue we feature the biography of Geeta Shah, Associate Editor of *The Globe* in, "Meet the Section Council." Michael

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Pleading guilty and immigrant criminal defendants: A renewed call for a new law

BY PATRICK M. KINNALLY

In our state criminal courts the conflux of liberty interests and immigration consequences with respect to guilty pleas has never been more apparent than today. (*Jae Lee v. United Sates* (*Lee*) U.S. S. Ct. No. 16-327 (June 23, 2017). Illinois has a judicial admonition law (725 IL CS 113-8), which is toothless (*People v. Leon* (2009) 387 Ill.App.3d 1025, *People v. Del Villar* (2009) 235 Ill. 2d 507). We can do better.

The tension between making the best plea deal for client a that keeps him or her out of jail, but may have consequences with respect to deportation is unmistakable. A heightened focus on immigration enforcement by federal and state regulators adds to this provoking brew. But let there be no mistake; criminal defendants,

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***(Notice to librarians:** The following issues were published in Volume 54 of this newsletter during the fiscal year ending June 30, 2017: September, No. 1; October, No. 2; November, No. 3; February, No. 4; March, No. 5; May, No. 6).*

Editor's comments

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Lied, who is a frequent contributor to *The Globe,* provided us with his article, "New I-9 Form and Employer Handbook."

Also appearing in this issue is, "International legal education: A scholar's journey" authored by Sheena L. Hart, a third-year law student at Southern Illinois University. This article first appeared in *Law Related Education*, the newsletter of the ISBA's Standing Committee on Law Related Education for the Public.

In "Recent Cases" we list decisions from ISBA E-Clips.

As always, thank you to all of our contributors.

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Pleading guilty and immigrant criminal defendants

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immigrant or citizen, have a Sixth Amendment right to the effective assistance of counsel. (*Lee*).

Lee immigrated to the United States at age 13 in 1982. He was a lawful permanent resident. He never became a United States citizen. He was a successful restaurateur. Also, he allegedly sold illegal drugs. He was indicted for possessing contraband with intent to distribute. The government apparently had a formidable case.

Lee's criminal defense lawyer told him going to trial was very risky and if he pleaded guilty he would get a lighter sentence. Probably, this was accurate. Also, his attorney told Lee he would not be deported if he pleaded guilty. Lee accepted the plea agreement based on that guidance. He had no real defense to the indictment. The reason he did so was for a lighter sentence. He did not know that his agreement would result in mandatory deportation.

At his plea colloquy when the federal magistrate warned him that "a conviction could result in your being deported, and would that affect his decision to plead guilty, Lee's response was "yes." He balked. Persuaded by his lawyer he pled guilty, any way.

Thereafter, Lee sought to vacate his conviction on the basis that in accepting the plea his criminal defense counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment. The record showed Lee's attorney was errant in his advice. His lawyer admitted that truth at an evidentiary hearing.

In *Strickland v. Washington* 466 US 668 (1984) our Supreme Court held that to obtain relief because of ineffective counsel a criminal defendant must establish two propositions. First, that his/her attorney's performance fell below an objective standard of reasonableness. Next, that the attorney's inferior conduct created a reasonable probability that if the attorney had performed adequately, the consequence of the criminal proceeding would have been different. As to the latter, the touchstone is whether that inadequate performance resulted in prejudice.

The government conceded in *Lee* that his trial counsel's performance was deficient. A federal magistrate concluded Lee's plea should be set aside and his conviction vacated since Lee had received ineffective assistance of counsel. The government argued no prejudice could result because Lee's guilt was poignant: and concomitantly,

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no one would have decided to plead otherwise.

The District Court disagreed as did the Sixth Circuit Court of Appeals (*Lee v. United States*) 825 F. 3d 311 (CA6 2016) with the government. Both concluded the evidence of Lee's guilt was compelling and he would have "almost certainly" been found guilty and received a longer sentence. Accordingly, Lee could not show he was prejudiced. The United States Supreme Court reversed this decision.

The court observed Lee knew his ability to obtain an acquittal was remote. And, that his attorney's conduct had nothing to do with that. Notwithstanding, the court observed that his plea was based on the very fabric of the consequences of pleading guilty-namely, he would be deported. In short, the Supreme Court held that if Lee knew he would be deported by pleading guilty he would have gone to trial. The court concluded Lee demonstrated a reasonable probability that absent his counsel's errors he would not have pleaded guilty; and, that prejudice- the risk of deportation, was paramount in his guilty plea. The risk of deportation was an actual impairment.

In October 2016, Professor Cindy Buys and the author suggested, respectfully, to our General Assembly that an admonition statute should be enacted in light of *People vs. Del Villar*. (*The Globe*, ISBA, Oct. 2016 Vol. 54 NO.2).

The proposal stated:

> Before the acceptance of a plea of guilty, guilty but mentally ill, or *nolo contendere* to a misdemeanor or a felony offense, the court shall give the following advisement to the defendant in open court;
>
> "If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States or denial of naturalization under the laws of the United States."
>
> Any plea accepted by the court without the benefit of this advisement shall be a nullity and shall have no consequences.

Lee confirms the virtue of that proposal. *Ad hoc* adjudication is important to all of us as it was to Mr. Lee. Where we can achieve the identical corollary through legislation that achieves the same aim, that should be our goal. The responsibility for informing a criminal defendant of the consequences of a guilty plea should be a governmental function, not one based on what might be the "best" deal a criminal defense attorney thinks might be the preferable alternative to affect a client's liberty interest, where the client's plea culminates in certain deportation.

Foremost, a guilty plea is a contract with the accused and the prosecutor. Both should not only know, but promote what that pact includes and what will be the aftermath of the deal they make, including deportation. Which, in the final rendition, becomes the judgment of the court. We can do better for those whom need it most. The rule of law requires no less. ■

Patrick Kinnally concentrates in general and commercial litigation, immigration and citizenship and administrative, environmental and local government law. Pat, former Chair of the International and Immigration Law Section Council, can be reached at Kinnally Flaherty Krentz Loran Hodge & Masur PC by phone at (630) 907-0909 or by email to pkinnally@kfkllaw.com.

Immigration enforcement in the workplace likely to increase

BY SHANNON M. SHEPHERD

Most of the immigration-related news these days has been focused on travel bans and increased arrests and deportations of individuals. But on the business side, employers can certainly expect to see increased visits from Immigration and Customs Enforcement (ICE) officers checking both the employees and the employer's compliance with I-9 requirements. Employers may seek our guidance on how to help their employees prepare for such visits, and how to prepare their businesses as well.

How employers can prepare their employees

Employees should know their rights. Many organizations, such as the ISBA's own Immigration & International Law Section, the Chicago Chapter of the American Immigration Lawyers Association, and the ACLU conduct regular presentations to help individuals know their rights when they encounter ICE agents either at work, home, or in a public place. If ICE officers come to a place of business, employees should not panic and run away. Instead, the employee should know that they have the right to remain silent, and do not have to answer any questions without a lawyer.

Employees should tell ICE officers that they choose to remain silent, if that is their choice. Remaining silent includes refusing to comply with certain instructions. For example, if ICE officers ask employees to stand in groups according to their immigration status, the employees do not have to comply with this instruction, or can stand in a place not designated. If they are asked where they were born or how they entered the US, they can remain silent. They can refuse to show identity documents showing what country they are from. On the other hand, employees should not show false documents and should not lie.

ICE officers cannot compel an employee to speak or to sign any document until that employee has had the chance to speak to a lawyer. The officers should provide the employee(s) with a list of pro bono attorneys, if needed. Finally, ICE Officers must give foreign nationals the opportunity to speak to their consulate, if they are being detained.

How Employers can prepare their businesses

Employers should also know their rights as business owners. If ICE comes to your client's place of business, your client does not have to admit them without a warrant, just like any other law enforcement agent. And like their employees, employers do not have to show any documents or answer any questions about their business or their employees without a lawyer present. You should advise your client to contact you immediately if ICE comes to visit.

Usually, if ICE is conducting an investigation into whether a business has complied with immigration law, it will be in the context of an I-9 audit. In such cases, ICE will not usually just show up demanding to see the employer's I-9 files. Instead, they will provide the employer with a 10-day notice requiring the employer to turn over its I-9 files. ICE will then review the files for any technical and/or substantive violations. If technical violations are found, the employer will be issued a notice listing each violation and giving an opportunity to comply. If substantive violations are found, ICE will issue a notice of intent to fine the employer.

To avoid both technical and substantive violations, it is a good idea for employers to conduct a self-audit every so often. As attorneys, we can help our clients review and ensure compliance so that they can avoid liability. If, during the course of the audit, the employer discovers an employee does not have the proper documentation, the employer must not continue to employ that person until he or she has obtained employment authorization. Employers can refer their employees to experienced immigration lawyers to determine if their status can be adjusted.

Employers generally don't purposefully hire undocumented workers. But the realities of the U.S. labor force are that even the most scrupulous employer may find itself in the difficult position of discovering that some of its dedicated employees do not have legal immigration status. As long as the employer can demonstrate good faith compliance with immigration law, that is a defense that can either overcome or mitigate most I-9 violations.

Since the current administration has made clear that immigration enforcement will be a top priority, we are bound to field more questions from concerned clients about how to anticipate, prepare, and react to a visit from ICE. ■

Shannon M. Shepherd is a partner at Immigration Attorneys, LLP, in Chicago. Shannon served as Chair of the International and Immigration Law Section Council during the 2006-2007 ISBA year. Shannon received her J.D. from The John Marshall Law School in Chicago. She handles all types of immigration cases. For more information on how employees and employers can prepare for immigration enforcement, she can be reached at 312.661.9100, or via email at sshepherd@immattyllp.com.

This article previously appeared in the ISBA Employee Benefit and The Corporate Lawyer newsletters

Former Chair Lynne Ostfeld honored with the Medal of Knight of the French National Order of Merit

Chicago attorney Lynne R. Ostfeld was honored Thursday, June 29, by the government of France during a reception and ceremony at the Union League Club of Chicago. In the name of the President of France, she received the Medal of Knight of the French National Order of Merit from Consul General Vincent Floreani.

In addition to her 32-year Illinois practice in business law, civil litigation and estate planning, Ostfeld is of counsel to the French firm of Allain, Kaltenbach, Plaisant, Raimon, Doulet & Bore of Paris and Vincennes.

A legal advisor to the French Consulate in Chicago since 1999, she is secretary of the Union Internationale des Avocats (International Sale of Goods Commission), and a member of its Contract Law, Civil Litigation, and Food Law Commissions.

An adjunct professor of International Agri-Business Law at The John Marshall Law School, Ostfeld is past chair of the Illinois State Bar International and Immigration Law Section Council and several committees of the Chicago Bar Association. She is currently president of the Nordic Law Club and chair of the CBA International & Foreign Law Committee. ■

Lynne R. Ostfeld poses with Vincent Floreani, Consul General of France in Chicago

Meet the section council: Geeta Shah

The International and Immigration Law Section Council brings to the ISBA a wide range of experiences and interests. Below is an introduction to Section Council Member, Geeta Shah. In 2016, Ms. Shah was appointed Associate Editor of *The Globe,* the newsletter of the International and Immigration Law Section of the ISBA, a position continued in 2017-2018.

Geeta Shah

Ms. Geeta Shah's practice focuses both on employment based immigration and family based immigration matters at Global Immigration Associates, PC. She also heads the Pro Bono effort at Global Immigration Associates, PC by working closely with a Chicago college to address their students and community's immigration needs.

Ms. Shah graduated with a Bachelor's degree in Political Science and India Studies from Indiana University, Bloomington. She obtained her Juris Doctor from DePaul University College of Law where she earned a Certificate in International & Comparative law with a focus on immigration related coursework. She served as the Symposium Editor for the DePaul Rule of Law Journal putting on the annual symposium; The Changing Face of America: Immigration and the American Identity. Ms. Shah received a Law Achievement Scholarship and Benjamin Hooks Distinguished Public Service Award from DePaul University College of Law.

Ms. Shah is admitted to practice law in the State of Illinois. Currently she is a member of various bar associations including the American Immigration Lawyers Association. Ms. Shah also acts as a Mentor to a high school student through the HFS Chicago Scholars volunteer program. Ms. Shah serves on the Young Leaders' Network, a network formed by the Chicago Lawyers' Committee for Civil Rights to help young lawyers and leaders to connect after the rhetoric of the November 2016 election cycle. ■

New I-9 form and employer handbook

BY MICHAEL R. LIED, HOWARD & HOWARD ATTORNEYS PLLC

US Citizenship and Immigration Services released a revised version of Form I-9, Employment Eligibility Verification on July 17, 2017. On September 18, 2017, employers must use the revised form with a revision date of 07/17/17 N. USCIS revised the Form I-9 instructions as well as the list of acceptable documents on Form I-9.

USCIS also published the updated M-274, Handbook for Employers: Guidance for Completing Form I-9. The Handbook for Employers provides employers with detailed guidance for completing Form I-9, Employment Eligibility Verification. The new version, dated July 2017 replaces the previous version. ■

International legal education: A scholar's journey

BY SHEENA L. HART

The idea of studying international law is intriguing to most people. It sounds fun and adventurous. But how does a law student learn about international law? Law students specializing in International & Comparative Law study topics in globalization, international business, and immigration.

In my journey as a law student at Southern Illinois University School of Law, I have found that the best way to learn international law is to have a passion for understanding how the United States legal system interacts with foreign legal systems.

Summer 2016, was my first experience studying international law. I took a class in legal globalization and traveled to Cuba. My goals were to study Cuba's health care and legal systems in comparison to the United States' systems. The most interesting concept I learned was that Cuba does not have a tax system. In Cuba, businesses are nationalized by the government. However, as relations with the United States normalize and conditions improve, Cubans have been allowed to operate small private businesses. Currently, small business owners do not pay taxes, but as more Cubans see the value in owning a private business the Cuban government is considering the idea of making the business owners pay tax. Business owners are not happy about paying it. I spoke with a small business owner who said, "Cubans do not want to pay taxes because taxes are the devil." The tax issue in Cuba is an ongoing development that I continue to monitor.

In January 2017, I studied international white collar crime in Sydney, Australia. A large sum of the money that is laundered out of the United States is electronically transacted through various countries until it is stopped in the Sydney banking system. The money is often destined to end its journey in China, unless it is caught by the United States' Internal Revenue Service (IRS) in Sydney. The group I traveled with met with an IRS Special Agent Attaché who explained the significance of stopping various types of white collar crime in the global community. Interestingly, the agent discussed phone call scammers as a source of white collar crime. He explained how the IRS worked with the government of India to stop a warehouse of people from making calls to U.S. citizens claiming to be the IRS. The scammers would tell people that they owed back taxes and needed to pay immediately. Unsuspecting U.S. citizens, especially the elderly, paid large sums of money to the scammers.

Photo by Greg Wendt, SIU University

While in Sydney, I also visited several accounting law firms. Topics discussed included fraud and embezzlement within large companies. Luckily, the Sydney trip was not all about legal education; the group found time to visit a nature reserve and pet wallabies and koalas.

In May 2017, my most recent international legal education adventure led me to St. Louis, Missouri, to the International Institute. The Institute is a refugee resettlement center that assists immigrants called "New Americans," with housing, job placements, and skills such as English for beginners. I toured the facility with my asylum and refugee law class. I observed the newest New Americans conversing in groups of their own ethnic peers, while others who had been there longer flowed freely among the masses. Being at the International Institute was an eye-opening experience in what it means to be an American. Many of these people come to the United States as refugees persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. Most Americans think immigrants come from war torn areas in the Middle East. However, the truth is— they come from everywhere. New Americans are from Central and South America, Africa, Russia, China, and every country that have such persecution of citizens.

My studies in international law included submitting papers and completing skills-based paperwork, such a mock application for asylum. Overall, studying international and comparative law is a lot of work, but also, an adventure. ■

Sheena L. Hart is a third-year law student at Southern Illinois University specializing in International and Comparative Law. She has served as a board member for the SIU International and Immigration Law Society for two years. She is a student member of the Illinois State Bar Association. She may be reached at slhart2s@siu.edu.

Recent cases

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

Perez-Fuentes v. Lynch, No. 14-2504 (November 22, 2016) Petition for Review, Order of Bd. of Immigration Appeals

Petition dismissed and denied in part Ct. of Appeals lacked jurisdiction to consider merits of alien's appeal of Bd.'s denial of his application for cancelation of removal, where alien alleged in part that his removal would work exceptional and extreme hardship on his American-citizen daughter. Instant decision by Bd. was discretionary in nature and was precluded from review under 8 USC section 1252(a)(2)(B). Moreover, Ct. rejected alien's claim that IJ prevented him from receiving full and fair hearing by failing to develop record regarding potential hardship arising out of his removal, where alien's responses to IJ's questions indicated that alien's daughter would not face substantially different hardship than what would be expected from alien's deportation. Ct. also rejected alien's claim that IJ ignored evidence contained in seven untranslated documents, where alien failed to establish that said evidence had bearing on finding that alien's deportation would not work extreme hardship on his daughter.

Chavarria-Reyes v. Lynch, No. 15-3730 (December 30, 2016) Petition for Review, Order of Bd. of Immigration Appeals

Petition denied exhaustion rule under section 1252(d)(c)(1) precluded Ct. of Appeals from considering alien's claim that IJ failed to notify him of right to early voluntary departure under 8 USC section 1229(a), where alien had failed to raise issue before Bd. of Appeals. Ct. rejected alien's argument that it would be unfair to apply exhaustion rule where ability to raise issue depended on very knowledge that IJ had failed to convey. Moreover, plain-error rule under Fed. R. Crim. P. 52(b) does not apply to civil litigation or to civil administrative proceedings. Ct. further observed that agency's procedural checklist incorrectly advises IJs to inform aliens about voluntary departure possibility only if IJ first decides that alien is ineligible for any kind of relief. (Dissent filed.)

Xiang v. Lynch, No. 16-2189 (January 3, 2017) Petition for Review, Order of Bd. of Immigration Appeals

Vacated and remanded record failed to support IJ's denial of alien's asylum application based on claim that Chinese officials forced her to obtain three abortions based upon China's strict family planning policies. While IJ did not find alien credible based, in part, on her failure to corroborate her claim that she experienced three forced abortions, record contained some evidence that alien experienced at least one forced abortion. If true, alien would be entitled to rebuttable presumption of having well-founded fear of future persecution under 8 USC section 1101(a)(42)(B) based on single forced abortion, and thus remand was required for IJ's determination as to whether alien had experienced one forced abortion for purposes of considering alien's asylum request under such presumption.

Rivera v. Lynch, No. 16-3225 (January 12, 2017) Petition for Review, Order of Bd. of Immigration Appeals

Petition denied record contained sufficient evidence to support IJ's denial of alien's applications for asylum and withholding of removal relief, even though alien claimed that he had fear of future persecution if forced to return to El Salvador because certain gangs would kidnap or extort him due to their perception that as long-term resident in U.S. he had money to satisfy their demands. Alien conceded that no one in El Salvador had ever threatened him or his family and denied that he had any fear that he would be harmed by El Salvador govt. itself. As such, alien failed to show that he was likely target of violence so as to support his applications for relief.

S.A.B. v. Boente, Nos. 15-1834 et al. Cons. (February 2, 2017) Petition for Review, Order of Bd of Immigration Appeals

Petition denied record contained sufficient evidence to support IJ's denial of alien's asylum and withholding of removal requests based on finding that alien was member of OLF, which qualified as Tier III terrorist organization as defined under 8 USC section 1182(a)(3)(B)(iv)(III). Record showed that: (1) alien had joined OLF in 2001 and had made small contributions to said organization; and (2) alien was aware of television reports in Ethiopia that OLF had killed Ethiopian security forces in its opposition to Ethiopian govt. Moreover, alien's membership in OLF precluded her from obtaining either asylum or withholding of removal relief, although alien was entitled to deferred removal based on evidence that Ethiopian govt. had continued hostility to members of OLF. Moreover, Ct. of Appeals lacked jurisdiction to review USCIS denial of alien's request to lift terrorism bar associated with her membership in OLF, since USCIS had sole unreviewable discretion to lift said bar.

Garcia-Hernandez v. Boente, No 15-2835 (February 7, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

IJ did not err in finding that alien was statutorily ineligible to obtain cancelation of removal relief, where alien had 2010 State of Illinois conviction for violating domestic order. Under 8 USC section 1227(a)(2)(E)(ii), alien is removable where court has determined that alien violated portion of order that provided for protection against credible threats of violence, repeated harassment or bodily injury to person for whom protection order was issued, and instant conviction precluded alien from obtaining cancelation of removal relief, where record showed that alien had pleaded guilty to charge alleging that he had harassed individual and violated injunction to stay away from said individual.

Sehgal v. Lynch, No. 15-2334 (February 22, 2016) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in granting defendant's motion for summary judgment in plaintiff-alien's action challenging immigration authorities' denial of his request under I-130 petition seeking lawful permanent resident status based upon his marriage to U.S. citizen, where instant denial was based on finding that alien had previously attempted to gain lawful residency status by fraudulent marriage to another woman. Substantial evidence, included written admission by alien that he paid former wife and another individual for help in obtaining permanent residency status, supported finding that alien's earlier marriage was fraudulent. Ct. rejected alien's claim that his written confession was coerced, where alien could produce only vague and inconsistent contentions of misconduct to undermine his confession of marriage fraud.

Hazama v. Tillerson, No. 15-2982 (March 20, 2017) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in dismissing plaintiff-aliens' petition for writ of mandamus seeking review of denial of plaintiff's visa application by consular official during plaintiff's process of becoming permanent resident. Consular official denied said application on ground that plaintiff had committed crime of moral turpitude, had been previously removed from U.S., and had personally engaged in terrorists activity that consisted of rock-throwing incident when plaintiff was 13 years old. Ct. could not review instant denial under consular nonreviewability doctrine, where consular based denial on facially legitimate and bona fide reason. Ct. further noted that there was nothing in record to suggest that visa was denied for constitutionally troublesome reason such as religious discrimination, or that consular official was proceeding in bad faith.

Morfin v. Tillerson, No. 15-3633 (March 20, 2017) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in dismissing plaintiff-alien's action under Administrative Procedure Act, seeking to review denial of visa application as part of his process to obtain permanent resident status, where consular official based said denial on belief that plaintiff had been involved in drug trafficking. Consular official gave legitimate reason for denying plaintiff's visa application, and plaintiff's indictment on drug charge supplied said official with reason to believe that plaintiff had trafficked in cocaine. As such, Dist. Ct. was prevented from reviewing instant denial under Mandel, 408 U.S. 753.

Delgado-Arteaga v. Sessions, No. 16-1816 (March 23, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition dismissed and denied in part.

Record contained sufficient evidence to support IJ's order denying alien's application for withholding of removal to Mexico, where said denial was based, in part, on finding that alien's prior Illinois drug trafficking conviction qualified as "particularly serious crime," and that alien had failed to establish either that his prior conviction did not have adverse effect on juveniles or that alien played only peripheral role in his drug-trafficking conviction. Ct. rejected alien's claim that Bd. erred by not referring his appeal to three-member panel, where Ct. found that single Bd member had discretion to refer alien's case to three-member panel. While Ct. further found that Bd. had erred in engaging in fact-finding when affirming IJ's conclusion that alien's state-court conviction qualified as particularly serious crime, alien did not establish any prejudice where other evidence found by IJ sufficiently supported IJ's conclusion.

Yusev v. Sessions, Nos. 16-1338 & 16-2242 Cons. (March 23, 2017) Petition for Review, Orders of Bd. of Immigration Appeals. Petition denied

Bd. did not err in denying alien's motion to reopen their applications for asylum and withholding of removal based on claim that their counsel was ineffective. Said motion was untimely, since it was filed more than 90 days from entry of removal order. Fact that Bd. had partially reopened case on date subsequent to removal order did not serve to extend relevant 90-day period for filing motion to reopen case. Moreover, aliens presented inadequate reason for filing late motion to reopen case, where: (1) aliens explained that reason for tardy motion was their investigation of instant ineffective assistance of counsel claim; and (2) aliens had only sent letter to their former counsel expressing their displeasure with his performance and sent complaint to ARDC during said investigation period. Also, aliens failed to present viable ineffective assistance of counsel claim where evidence that aliens claimed should have been presented to Bd. was only cumulative to evidence already before Bd.

Arej v. Sessions, No. 15-2061 (March 28, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition granted

Bd. erred in affirming IJ's denial of alien's motion to reopen his removal proceedings that previously resulted in order directing alien's removal to Sudan, where purpose of motion to reopen was to obtain opportunity to file late asylum application in which alien alleged that his removal to either Sudan or South Sudan would subject him to either religious persecution or to dangerous civil war. Record showed that alien had filed motion to reopen beyond applicable 90-day deadline for doing so, and while Bd. found that alien had failed to present evidence of changed circumstances in either Sudan or South Sudan so as to explain late filing of motion to reopen, Ct. of Appeals found that new consideration of alien's motion to reopen was required, where Bd. had ignored evidence of changed circumstances in both Sudan or South Sudan.

Barragan-Ojeda v. Sessions, No. 16-2964 (April 5, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Record contained sufficient evidence to support IJ's denial of alien's asylum petition, even though alien alleged before Bd. that he had been persecuted in Mexico because of his sexual orientation. Alien's brief reference at asylum hearing to fact that others in employment-related matter in Mexico may have perceived that he was

effeminate was insufficient to raise claim of discrimination against gay men, and Bd. could properly find that: (1) alien's evidence presented to Bd. that he was persecuted in Mexico because of his sexual orientation was new claim that had to be treated as motion to reopen case; and (2) Bd. did not err in finding that said claim did not meet requirements for granting motion for remand and to reopen case, where alien had failed to show that said new evidence was unavailable to him at original asylum hearing. Ct. also rejected alien's due process claim based on contention that IJ had refused his request to close asylum proceeding to public and had improperly questioned him, where alien had failed to raise said procedural claims with Bd.

Silais v. Sessions, No. 15-3277 (April 28, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Record contained sufficient evidence to support IJ's denial of asylum and withholding of removal applications by alien-Haitian citizen, even though alien alleged that he had been subject to persecution on account of his membership in political party, where said persecution was committed by members of rival political party. IJ could properly find that: (1) alien's testimony was inconsistent; and (2) alien had failed to corroborate his claims of physical abuse through affidavits of coworkers or family members residing in Haiti. Ct. rejected alien's claim that Bd. ignored evidence regarding conditions of Haiti and further noted that alien had failed to link said conditions to specific acts of alien's persecution. Moreover, alleged acts of persecution were done by private actors, and alien failed to show that Haitian govt. was either unable or unwilling to protect alien from members of rival political party.

Sanchez v. Sessions, No. 17-1673 (May 24, 2017) Petition for Review, Order of Bd. of Immigration Appeals

Motion to stay removal pending appeal granted Ct. of Appeals granted alien-citizen of Mexico's motion to stay his removal pending appeal, where alien alleged that Bd. had erred in failing to grant his motion to reopen removal proceeding based on allegations that his trial counsel had failed to adequately prepare him for removal proceeding by presenting evidence that two of alien's children spoke only little Spanish and other child had serious medical condition requiring months of physical therapy. Stay of removal pending appeal was appropriate since: (1) Bd. had failed to adequately explain its observation that alien's new evidence would not have altered outcome of removal proceeding; and (2) govt. had failed to respond to alien's claim that his removal would cause severe hardship for his family.

Garcia v. Sessions, No. 16-3234 (June 8, 2017) Petition for Review, Order of Bd. of Immigration Appeals Petition dismissed

Ct. of Appeals dismissed for lack of jurisdiction alien's appeal of Bd.'s order dismissing his asylum application on ground that alien, as individual subject to reinstated order of removal, had no right to seek asylum relief under applicable federal regulations. Under Delgado-Arteaga, No. 16-1816 (May 12, 2017) alien lacked standing to pursue instant appeal because asylum is form of discretionary relief in which there was no liberty issue at stake. As such, alien lacked standing to challenge in instant appeal application of regulations preventing him from applying for asylum relief.

Sessions v. Morales-Santana, No. 15-1191 (June 12, 2017)

The gender-based differential in the law governing acquisition of U. S. citizenship by a child born abroad, when only one parent is a U. S. citizen—a shorter duration-of-residency requirement for unwed U. S.-citizen mothers than for unwed U. S.-citizen fathers—is incompatible with the Fifth Amendment's requirement that the Government accord to all persons "the equal protection of the laws"; it falls to Congress to select a uniform prescription that neither favors nor disadvantages any person on the basis of gender; in the interim, the current requirement for unwed U. S.-citizen fathers should apply, prospectively, to children born to unwed U.S.-citizen mothers.

Maslenjak v. United States, No. 16-309 (June 22, 2017)

To secure a conviction for unlawfully procuring citizenship in violation of 18 U.S.C. §1425(a), the Government must establish that the defendant's illegal act played a role in acquiring citizenship, and where that alleged illegality is a false statement to government officials, the jury must decide whether the statement so altered the process as to have influenced the award of citizenship; here, the District Court erred in instructing the jury that Maslenjak's false statements need not have influenced the naturalization decision.

Trump. v. International Refugee Assistance Project, No. 16-1436 (June 26, 2017)

The petitions for certiorari are granted, and the Government's stay applications are granted in part. The injunctions remain in place only with respect to foreign nationals and refugees who have a credible claim of a bona fide relationship with a person or entity in the United States.

Cojocari v. Sessions, No. 16-3941 (July 11, 2017)

Petition for Review, Order of Bd. of Immigration Appeals Petition granted Record failed to contain sufficient evidence to support IJ's denial of alien's application for asylum and withholding of removal relief, where alien alleged that police in Moldova persecuted him on account of his political beliefs. Although IJ found that alien was not credible in his persecution allegations, govt. introduced no evidence that actually rebutted alien's claims of series of arrests and beatings by police or his claim that return to Moldova would likely result in continued arrests and beatings. Moreover, alien introduced substantial documentary evidence that included hospital and arrest records that corroborated his testimony about said incidents. Also, IJ placed outsized importance on alien's inconsistencies regarding minor details about incidents of persecution. As such, alien was entitled to remand for new consideration of his claims. ■

Upcoming CLE programs

TO REGISTER, GO TO WWW.ISBA.ORG/CLE OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

September

Thursday, 09-07-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday and Friday 09-7 & 8, 2017 – Chicago, ISBA Regional Office— Guardian Ad Litem, Child Representative, and Attorney for Minor Child Training – 2017. Presented by Family Law.

Friday, 09-08-17 – Lincoln Heritage Museum, Lincoln, IL—1st Annual Lawyer Lincoln's Legacy: Lessons for Today. 9 a.m.-4:30 p.m.

Wednesday, 09-13-17 – LIVE Webcast—Title VII Now Covers Sexual Orientation – The Law That Made History. Presented by Labor and Employment. 12-2 pm.

Thursday, 09-14-17 – LIVE Webcast— Environmental Due Diligence in the Era of President Trump. Presented by Real Estate. 12-1 p.m.

Thursday, 09-14-17 - Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 09-15-17 – Fairview Heights, Four Points by Sheraton—Solo and Small Firm Practice Institute. All Day.

Wednesday, 09-20-17 – LIVE Webcast— Construction Escrow, Lien Waivers and Sworn Statements: Best Practices. Presented by Construction Law. 12-1 p.m.

Thursday, 09-21-17 - Webinar— Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm

Wednesday, 09-27-17 – LIVE Webcast Webinar—HIPAA and How It Applies To YOU. Presented by Employee Benefits. 12-1 p.m.

Thursday, 09-28-17 – HIPAA For Employer-Sponsored Health Plans. Presented by Insurance Law. 12-2:15 p.m.

October

Wednesday, 10-04-17 LIVE Webcast— Issues to Recognize and Resolve When Dealing With Clients of Diminished Capacity. Presented by Business Advice and Financial Planning. 12-2 pm.

Thursday, 10-05-17 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—Fall 2017 Beginner & Advanced DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

Friday, 10-06-17 – Chicago, ISBA Regional Office—Pathways to Becoming Corporate General Counsel and the Issues You Will Face. Presented by Corporate Law. Time: 9:00 am – 12:30 pm

Monday, 10-09-17 – Chicago, ISBA Regional Office—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Monday, 10-09-17 –Fairview Heights—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Wednesday, 10-11-17 – LIVE Webcast—Enforcing Illinois' Eviction Laws: A Basic Guide to Landlord Remedies and Tenant Rights. Presented by Real Estate Law. 12-1 pm.

Wednesday, 10-11-17 – LIVE Webcast—Working Effectively with Interpreters. Presented by Delivery of Legal Services. 2-3:30 pm.

Thursday, 10-12-17 - Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Monday-Friday, 10-16 to 20, 2017 – Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training Master Series. Master Series

Thursday, 10-19-17 - Webinar— Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 10-19-17 – Bloomington— Real Estate Law Update – Fall 2017. Presented by Real Estate.

Wednesday, 10-25-17 – Webinar— Working with Low Income Clients. Presented by Delivery of Legal Services. 12-1:30 pm.

Friday, 10-27-17 – Chicago, ISBA Regional Office—Solo and Small Firm Practice Institute. All Day.

Friday, 10-27-17 – LIVE Webcast—Solo and Small Firm Practice Institute. All Day.

November

Wednesday, 11-01-17 – ISBA Chicago Regional Office—Anatomy of a Medical Negligence Trial. Presented by Tort Law. All Day. ■

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