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

Editor's comments

BY LEWIS F. MATUSZEWICH

Members of the International and Immigration Law Section Council continue to be major supporters of *The Globe*, by providing thoughtful and informative articles. In this issue, Section Chair Tejas Shah along with two other members of his law firm (Franczek Radelet), Songhee Sohn and Peter Land, co-authored the article, "New STEM OPT Extension Rules to Extend the Program Have Been Proposed."

Michael R. Lied of Howard & Howard Attorneys PLLC, who for the last three years has served as the Liaison between the International and Immigration Law Section Council and the ISBA's Continuing Legal Education Committee, contributed the article, "Sometimes Employer May Lawfully ask for Additional Documents after Internal I-9 Audit."

Sofia Zneimer, a newly appointed member of the International and Immigration Law Section Council, in the last issue provided us with the article, "Immigration Status Needs Expert Testimony If Relevant" and in this issue contributed, "Undocumented,

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New STEM OPT extension rules to extend the program have been proposed

BY TEJAS SHAH, SONGHEE SOHN AND PETER LAND

On October 19, 2015, the Department of Homeland Security published eagerly anticipated proposed STEM OPT Extension rules that, if adopted would allow U.S. employers greater flexibility for employing foreign nationals graduating from United States higher education institutions in qualifying STEM fields. These proposed changes were previewed as early as November 2014, when the Obama administration announced that it would take numerous executive actions to reform U.S. immigration rules. However, the specific timeline for the proposed regulation's publication was accelerated by *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*,

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Documented, or Citizen? Ask the Experts!"

As always, thank you to all of our contributors and if any other reader of *The Globe*, whether or not a member of the International and Immigration Law Section, would like to contribute an article, please forward your draft or your idea for an article to me at the email address below.

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STEM OPT

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14-cv-529 (D.C. Aug. 12, 2015), which, as of February 12, 2016, vacates the previous 2008 interim regulation on the subject.

The proposed rules preview changes to the practical training guidelines for foreign students who are currently studying or have completed studies in the academic areas of science, technology, engineering and mathematics (STEM) in the U.S. and elect to work to enhance their knowledge in a STEM field. The most important components of the new rule are:

- It increases the STEM OPT extension to 24 months while retaining the requirement for employment with an E-Verify enrolled employer to qualify for this extension.
- It provides a more formal definition of the "STEM fields" eligible for the 24 month extension.
- It requires employers incorporate a formal mentoring and training requirement into the STEM OPT period.
- It also requires employers to attest that the STEM OPT will not lead to terminations, layoffs or furlough of a U.S. worker and further attest that the terms and conditions of employment of STEM OPT students will be commensurate to those provided to the employer's similarly situated U.S. workers

History of the STEM OPT Extension

The STEM OPT Extension is a subset of the Optional Practical Training (OPT) program that provides foreign students studying at SEVIS-accredited U.S. higher education institutions on F-1 visas the right to work and again practical training in their field of study during or after completing their studies. In general, OPT provides for 12 months of practical training with an approved United States employer. Employers seeking to employ F-1 students beyond that date have been expected to sponsor them for work authorization, such as an H-1B. In some cases, students have an independent basis for work authorization beyond the expiration of their work authorization, such as marriage to a U.S. citizen.

Most employers have relied on the H-1B visa to sponsor F-1 students for work authorization towards the end of their OPT period. The H-1B cap and lottery system has resulted in many such applications being rejected, frustrating many employers' goals. In 2008, the Department of Homeland Security promulgated the STEM OPT Extension and increased the OPT for certain foreign students studying in STEM fields for an additional 17 months, amounting to a total OPT period of 29 months. The extension was enacted in part to provide more training to STEM graduates and to address unmet labor needs in the U.S. economy. However, the Department promulgated the STEM OPT Extension regulation without requesting

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public notice and comment as required by the Administrative Procedures Act (APA). Under the Act, federal agencies must publish a proposed rule and request public notice and comment, gather and review the comments, and only then promulgate a final rule that incorporates the notice and comments or provides reasons why the notice and comments were not adopted into the final rule. The Department promulgated the 2008 rule without public notice and comment by relying on 5 U.S.C. §553(b) which, the agency argued, allowed it to dispense with the notice and comment requirement because there was "good cause" that the notice and comment procedures were "impracticable, unnecessary or contrary to public interest" due to, among other reasons, the increasing competition faced by the United States in areas of science, technology, engineering and mathematics from foreign nations such as China and India.

The district court rejected the Department's arguments that this "fiscal emergency" warranted bypassing the public notice and comment requirement of the APA and vacated the 2008 rule as a "serious procedural deficiency." However, in light of the substantial hardship that an immediate order to vacate would cause to foreign students on an OPT and the employers who have employed these students, the court stayed the order until February 12, 2016. The race to enact a new regulation that would comply with the APA's requirements thus began.

Changes Proposed by DHS in the New STEM OPT Extension Regulation

Most significantly, the proposed regulation would allow F-1 students with STEM degrees to extend the OPT period by 24 months for each STEM degree obtained in the United States. This means that an F-1 nonimmigrant student with one degree in a STEM field may lawfully work for a US employer under OPT for a total of 36 months. DHS explains that the extension was increased from the previous 17 months due to the "complexity and typical durations" that are common in STEM research, development, testing and other projects and require months or years for completion.

The DHS's new proposed regulations, if adopted without further revision, would also for the first time define a "STEM field" that qualifies certain F-1 visa holders to a STEM OPT extension as a mathematics, natural sciences (including physical sciences and biological/agriculture sciences), engineering or engineering technologies, and computer/information sciences and related fields (as defined by the Department of Education). This definition is intended to address current STEM needs in the US economy while balancing the potential for future changes.

Additionally, DHS proposes that employers incorporate a formal mentoring and training to STEM OPT students to enhance the students' skill and exposure to valuable practical work experience directly related to their fields of study. To assuage concerns that STEM OPT students may distort the domestic labor market by accepting lower wages, DHS proposes that employers attest that the STEM OPT will not lead to terminations, layoffs or furlough of a U.S. worker and further attest that the terms and conditions of employment of STEM OPT students will be commensurate to those provided to the employer's similarly-situated U.S. workers.

Finally, DHS proposes to retain the automatic "cap-gap" extension for STEM OPT F-1 visa holders who have filed H-1B petitions and change of status requests so long as the student's petition has an employment start date of October 1 of the following fiscal year. The existing cap-gap rule has significantly eliminated the disruption felt by students and potential employers where an F-1 student is required to leave the country or terminate employment, even though he or she has an approved H-1B petition, due to the OPT period ending before the effective date of the H-1B petition, namely October 1st.

Impact on F-1 Students and STEM OPT Employers

The 2008 regulations still remain in effect until February 12, 2016, which means that STEM OPT extensions in the interim will be granted for an additional 17 months under the current rule. Students should apply for OPT under the 2008 procedures and employers should follow the existing guidelines until the final rules are promulgated, although it remains to be seen whether DHS will issue a full 17-month extension for OPT extension requests filed on or before that date in light of the agency's prior experience with improperly issued employment authorization cards to DACA recipients, which were the subject of an injunction issued by Judge Andrew Hanen in Texas.

Significantly, the February 12, 2016 deadline may be stayed yet again as the *Washington Alliance* plaintiffs have appealed the District Court's ruling to the U.S. Court of Appeals for the District of Columbia Circuit, particularly with respect to the Judge's finding that DHS had the authority to issue the 2008 STEM OPT extension regulation (although, as noted, she found that it was procedurally defective). Nevertheless, DHS's actions in publishing this proposed rule ensure that DHS is procedurally on track to publish a new rule by February 12, 2016, when the existing rule is set to expire per the District Court's ruling. While U.S. employers and foreign STEM graduates should pay careful attention to this situation as it continues to evolve, one thing is certain – many U.S. employers and STEM graduates will sleep easier now that DHS has taken timely action to implement a new STEM OPT extension rule. ■

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Sometimes employer may lawfully ask for additional documents after internal I-9 audit

BY MICHAEL R. LIED

Attorney Stacey A. Simon requested guidance on how to advise a client following an internal audit of the client's Forms I-9. First, Simon sought advice on what steps the client should take with respect to possibly falsified permanent resident cards. Simon stated that her firm's inclination was to advise the client to meet with the employees whose documentation was doubtful and request the employees to present different documentation. Simon was concerned, however, that this post-employment request for different documentation could result in possible discrimination complaints because the affected employees share the same national origin. Second, Simon asked whether her firm had an obligation to train the client in "what to look for in a valid green card" or whether such training is "outside the scope of what their HR should be trained to do since that would take them beyond the 'reasonable person' standard?"

Alberto Ruisanchez, Deputy Special Counsel of the Office of Special Counsel for Immigration-Related Unfair Employment Practices responded in An October 23, 2015 letter. He gave this advice.

To prevent discrimination in violation of the anti-discrimination provision, an employer (or its representative) conducting an internal Form I-9 audit should conduct the audit in a consistent manner—treating similarly-situated employees in a similar manner—and should not treat employees differently based on citizenship status or national origin.

In addition, an employer should apply the same level of scrutiny to Form I-9 documentation and not apply different levels of scrutiny based on citizenship status or national origin. An employer which subjects documentation to additional scrutiny based on the citizenship or national origin of the employee presenting the documentation may violate the anti-discrimination provision.

If, after following these principles during an audit, an employer identifies documentation that does not reasonably appear to be genuine or relate to the employee and requests that the employee present alternative documentation, the request for alternative documentation is unlikely to violate the anti-discrimination provision. If the employer requests alternative documentation, the employer should not request specific documents (though the employer may state that the particular document called into question by the internal audit may not be used again for Form I-9 purposes). The employee should be permitted to present his or her choice of other documents, as long as they are acceptable for employment eligibility verification purposes.

Ruisanchez directed Simon to ICE regarding her question of whether her firm was obligated to train its client on "what to look for in a valid green card." ■

Undocumented, documented, or citizen?

BY SOFIA ZNEIMER

Although "[i]t is unknown, at any point in time, how many unauthorized aliens are in the United States; what countries they are from; when they came to the United States; where they are living; and what their demographic, family, and other characteristics are,"[1] chances are that many attorneys who have never practiced immigration law, will encounter the issue of a client or an opposing party's immigration status or citizenship.

Outside of immigration law, the question of immigration status and citizenship often arises in criminal cases where alienage is an element of the crime,[2] or in advising criminal clients to take a plea, where the U.S. Supreme Court recognized a Sixth Amendment right to counsel on immigration consequences of a guilty plea.[3]

In the civil context, an often overlooked issue is the United States citizenship of parties in cases removed to federal court on the basis of diversity. Where the parties on both sides of a lawsuit are not United States citizens there is no diversity even if all parties are lawfully in the United States and even if they are lawful permanent residents of the United States.[4] In contemplating a removal or objecting to removal to federal court, it is important to investigate the citizenship of each party because if there is no United States citizen on at least one side of the lawsuit, the federal court has no jurisdiction.[5] This is true, even in the case of lawful permanent residents suing each other, or a limited liability company or companies owned by non United States Citizens suing each other or another alien or a foreign corporation.[6] Any judgment of the federal court entered without jurisdiction, can be challenged, even after a statue of limitations has elapsed.

Therefore, in criminal and potential diversity cases, the citizenship of the parties is relevant and needs to be investigated to ensure proper advice or proper federal subject matter jurisdiction. Once a person is found to be an alien, whether such person is lawfully or unlawfully in the United States continues to be relevant in criminal matters. However, this same issue is irrelevant in civil cases. Moreover, whether a person is lawfully or unlawfully here often cannot be answered with a simple "yes" or "no."

This article maintains that the status of a non-citizen in the United States is not relevant and argues that such determination requires factual, statutory, regulatory, and case analysis, and requires expert opinion. Thus, deposition questions or Requests to Admit addressed to a party to admit or deny whether he or she is in the United States illegally or some other permutation of this question can be compared to a party being asked to admit or deny that he or she has a Traumatic Brain Injury or some other medical diagnosis that must be proven by an expert testimony. Such questions are improper and should be challenged.

An example can illustrate the complexity of the immigration statutory and regulatory scheme. Imagine that your client, X, suffered serious injuries in an accident and his doctors believe that he will not be able to do the job he used to do in the future. Significant part of X's damages depends on his claim for a future wage loss. The opposing counsel suspects that the client may be in the country illegally, and argues that since X is claiming a future wage loss, the opposing counsel is entitled to know if X is an "illegal alien." The opposing counsel argues that X's illegal status is relevant because if X is an "illegal alien" then he cannot work in the United States in the future and, therefore, cannot claim a future wage loss. The opposing counsel has sent the following Request to Admit to X "Admit or deny that you are a undocumented alien."

X shares that he was not born in the United States and that he entered this country without inspection in 1997, and has been working without permission ever since. He and his wife have one child born abroad, and two children born in the United States after their entry. Their youngest U.S. citizen child has a serious medical condition that requires specialized medical care. X is afraid that if he has to leave the United States, his child would not be able to receive the specialized treatment she needs. In addition, a few years ago his foreign born child was a victim of a violent crime and X helped the police and the prosecution put the perpetrator in jail for a long time. In addition, X is afraid to go back to his home country because he believes he will be subject to persecution abroad. X also states that one of his grandmothers was a United States citizen.

What should X's attorney do? Should the attorney withdraw X's wage loss claim? Should X admit that he is undocumented? Is X an illegal alien?

The answers to the above questions are "No," "No," and "No."

X is not qualified to give an answer to this Request to Admit because he is not an expert in immigration law. The attorney needs to file a written objection pursuant to Illinois Supreme Court Rule 216(c) and ask the judge to rule that the request to admit is improper.

1. Relevancy of Immigration Status

Illinois Supreme Court Rule 216(a) limits requests to admit to "relevant" facts, and the immigration status of an injured claimant is not relevant. Evidence that a person may be undocumented is immaterial, confusing, incendiary, derogatory, and will create a substantial danger of undue prejudice to the plaintiff. Such evidence is irrelevant[7] because even if X might not be able to remain and work in the United States, X's reduced job opportunities as a result of his inability to work may have even more profound consequences for him if his country provides less opportunities for a person

with his injuries. His inability to work would not end with his stay in the United States.

2. Who is an "illegal alien"?

The answer is, no one. The term "illegal alien" is not used in the Immigration and Nationality Act. A person who has entered the United States may be removable from the United States if he or she is inadmissible under INA §212, 8 U.S.C.A. § 1182 (West), or deportable under INA §237, 8 U.S.C.A. § 1227 (West). Generally, only an immigration judge can determine removability of an alien in removal proceedings.[8]

Even if an immigration judge finds that an alien is removable from the United States, the judge will generally consider whether there is any relief from removal. The Immigration and Nationality Act provides for various waivers, political asylum, withholding of removal, cancellation of removal, adjustment of status, and other relief that may allow a deportable or a removable alien to remain and work in the United States indefinitely or permanently. Compare for example the categories of aliens the Social Security Administration considers eligible for disability benefits.[9] This group includes persons who have final orders of removal or deportation (i.e., aliens an Immigration Judge had found to be removable or deportable), that the U.S. government cannot remove or deport.

3. If X is a removable alien from the United States, does he have any relief from removal?

When determining a client's ability to remain in the United States, an attorney must investigate whether his or her client has any short or long term relief from removal. Apart from the very protracted removal process, an alien may be able to seek relief before the immigration court or the immigration service that provide interim work authorization. To continue our example, X appears to have several forms of relief from removal. First, X's family appears eligible for a U visa because his child was a victim of a violent crime and X and his family assisted the prosecution. The Immigration and Nationality Act provides that an alien who was a victim of certain criminal activity and "has been helpful, is being helpful, or is likely to be helpful" can file a petition for a U visa status.[10] If the victim is under 21 years of age the victim's "spouse, children, unmarried siblings under 18 years of age, …and parents of such alien" qualify for a U visa as well.[11] If X receives a U visa, he will be able to live and work in the United States. After three years in U status, X will be eligible for a green card and can work in the United States, and five years later, he can apply for naturalization to become a United States citizen.

Second, X may be eligible for cancellation of removal.[12] Cancellation of removal is available to aliens who have been physically present in the United States for ten years, who have been persons of good moral character during the ten years, who have not been convicted of certain crimes, and who can show that removal would result in exceptional and extremely unusual hardship to the alien's U.S. citizen or permanent resident spouse, child, or parent.[13] As X has two US citizen children, one of whom has a serious medical condition, he may be able to meet the "exceptional and extremely unusual hardship" burden and receive cancellation of removal from the immigration judge. If the judge grants X cancellation of removal, X can become a permanent resident and can live and work in the United States and apply for naturalization to become citizen five years after he becomes a permanent resident.

A third avenue for relief for X may be asylum or withholding of removal because X's life may be in danger. Thus, X may be eligible to file for political asylum[14] or withholding of removal,[15] which provide for relief from removal if X's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. If X is granted withholding of removal, he will be able to live and work in the United States. If X receives asylum, in one year, he can apply for a permanent residence, which will be backdated to the date of his asylum grant, and then he can apply to become a United States citizen in five years.

4. Should Inability to Speak English Matter?

The suspicion that if someone cannot speak English he or she must be in the country illegally is more evident of societal prejudices than alienage. Under the Immigration and Nationality Act, certain long term permanent residents over a certain age can become United States citizens even if they are not able to speak English.[16]

The question, then, is why the opposing counsel is seeking information about X's immigration status. If X spoke English, would the opposing counsel even consider requesting immigration information? Probably not, and neither should the opposing counsel be permitted to request such information from X.

5. Is X an Alien?

The immigration law is a labyrinth and after going through it, it may turn out that X is not even an alien, but a United States citizen. X has a grandmother that was a United States citizen and this fact is worth investigating further.

6. The Case for Experts

Determining X's status and eligibility to remain in the United States is not a fact but a legal conclusion. It requires analysis of statutes, regulations, memoranda, administrative, state, and federal law. With "only a small degree of hyperbole, the immigration laws have been termed 'second only to the Internal Revenue Code in complexity.'"[17] The Ninth Circuit described immigration law as a "labyrinth almost as impenetrable as the Internal Revenue Code."[18] Even the federal courts, which have jurisdiction over immigration matters and have more knowledge in immigration law than state courts, have recognized the need for an expert witness in immigration law in order to explain the complex body of immigration doctrines: "We agree with the plaintiffs that [expert] testimony about the nature and extent of federal immigration law-a large and complex body of doctrine-would help us to reach our own decision about the constitutionality of the ordinances."[19]

Therefore, even if the court considers X's immigration status relevant (which I insist it is not), the court must require an expert in immigration law to render an opinion about X's status and eligibility to work in the United States.

The story of X is fictional, but the point is that immigration law is simply too complex to permit either party to discuss immigration status without expert testimony. ■

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1. Andorra Bruno, Congr. Research Serv., R41207, Unauthorized Aliens in the United States: Policy Discussion 2 (2014)

2. *See for example,* 18 U.S.C.A. § 922(g)(5) (West) (Possession of a firearm)

3. "It is our responsibility under the Constitution to ensure that no criminal defendant--whether a citizen or not--is left to the "mercies of incompetent counsel." [citation omitted] To satisfy this responsibility, we now hold that counsel must inform her client whether his plea carries a risk of deportation. Our longstanding Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less. *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010)

4. For example, if both plaintiff and defendant are not United States citizens, whether or not one of them is a permanent resident, courts have held that there is no diversity jurisdiction. This issue is very often overlooked, and a removal should be challenged for lack of subject matter jurisdiction.

5. Article III of the Constitution limits jurisdiction only to "Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." U.S. Const. Art. III, § 2. Courts have declined to accept jurisdiction in cases involving aliens on both sides. For example, in *Saadeh v. Farouki*, 107 F.3d 52 (D.C. Cir. 1997), the DC Circuit Appellate Court noted that "[P]ursuant to 28 U.S.C.A. § 1332(a) (West), permanent resident aliens are deemed to be citizens of the State in which they reside. This deeming provision, however, was not intended to extend the reach of the Court's diversity jurisdiction beyond its traditional bounds and thereby permit a foreign alien to sue another alien living in another state…despite the plain language of 28 U.S.C.A. § 1332(a), the alienage amendment 'clearly appears to have been intended only to eliminate subject matter jurisdiction of cases between a citizen and an alien living in the same state.' . . . There is no reason to conclude, however, that the amendment was intended to create diversity jurisdiction where it did not previously exist. *Saadeh*, 107 F.3d at 60(quoting *Lloyds Bank PLC v. Norkin*, 817 F. Supp. 414, 419 (S.D.N.Y. 1993)) (concluding that Congress intended to contract diversity jurisdiction, not expand it). See also *Arai v. Tachibana*, 778 F. Supp. 1535, 1543 (D. Haw. 1991)(holding that "absolutely nothing in the legislative history indicates any congressional intent to alter the state of the law regarding complete diversity for alienage jurisdiction purposes."); *A.T.X. Exp., Ltd. v. Mendler*, 849 F. Supp. 283, 284 (S.D.N.Y. 1994)(holding that deeming provision "was intended to restrict, not expand, diversity jurisdiction."); *Woods-Leber v. Hyatt Hotels of Puerto Rico, Inc.*, 951 F. Supp. 1028, 1030-31 (D.P.R. 1996) *aff'd,* 124 F.3d 47 (1st Cir. 1997)(noting that "it is agreed that this 'deeming' provision was at least designed to prevent 'the incongruity of permitting a permanent resident alien living next door to a citizen to invoke federal jurisdiction for a dispute between them while denying a citizen living across the street the same privilege.'" (citation omitted)). *Banci v. Wright*, 44 F. Supp. 2d 1272 (S.D. Fla. 1999)("…the law does not confer jurisdiction where a permanent resident alien is suing a citizen of a foreign state (or is suing a permanent resident alien residing in another State), and to hold otherwise would require an unconstitutional application of Section 1332(a)'s deeming provision").

6. "The citizenship of an LLC is the citizenship of each of its members." *Camico Mut. Ins. Co. v. Citizens Bank*, 474 F.3d 989, 992 (7th Cir. 2007).

7. *Diaz v. Chicago Transit Auth.*, 174 Ill. App. 3d 396, 406, 528 N.E.2d 398, 404-405 (Ill. App. Ct. 1st Dist. 1988).

8.INA §240(e)(2), 8 U.S.C.A. § 1229a(e)(2) (West).

9. WHO IS A QUALIFIED ALIEN?

There are seven categories of qualified aliens. You are a qualified alien if the Department of Homeland Security (DHS) says you are in one of these categories:

- Lawfully Admitted for Permanent Residence (LAPR) in the U.S., which includes"Amerasian immigrant" as defined in P.L. 100-202, with a class of admission AM-1 through AM-8;
- Granted conditional entry under Section 203(a)(7) of the Immigration and Nationality Act (INA) as in effect before April 1, 1980;
- Paroled into the U.S. under Section 212(d)(5) of the INA for a period of at least one year;
- Refugee admitted to the U.S. under Section 207 of the INA;
- Granted asylum under Section 208 of the INA;
- Deportation is being withheld under Section 243(h) of the INA, as in effect before April 1, 1997; or removal is being withheld under Section 241(b)(3) of the INA;
- "Cuban and Haitian entrant" as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 or in a status that is to be treated as a "Cuban/ Haitian entrant" for SSI purposes.

In addition, you can be a "deemed qualified alien" if, under certain circumstances, you, your child or parent were subjected to battery or extreme cruelty by a family member while in the United States.

Social Security Administration, http://www.socialsecurity.gov/ssi/spotlights/spot-non-citizens.htm (accessed Oct 9, 2015)

10. INA §101(a)(15)(U)(i), 8 U.S.C.A. § 1101(a)(15)(U)(i) (West)

11. *Id.*

12. INA §240A(b)(1), 8 U.S.C.A. § 1229b(b)(1) (West).

13. *Id.*

14. INA §208, 8 U.S.C.A. § 1158 (West)

15. 8 C.F.R. § 208.16

16. **INA §312 (b)(2).**

17. E. Hull, Without Justice For All 107 (1985); *Castro-O'Ryan v. U.S. Dept. of Immigration & Naturalization*, 847 F.2d 1307 (9th Cir. 1987).

18. *Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1334 (9th Cir. 2000) *amended,* 213 F.3d 1221 (9th Cir. 2000).

19. *Lozano v. City of Hazleton*, 241 F.R.D. 252 (M.D. Pa. 2007).

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