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ILLINOIS STATE BAR ASSOCIATION

The Globe

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

Editor's comments

By Lewis F. Matuszewich

The ISBA Web site has added features to benefit the members of the various Section Councils.

If you visit the ISBA Web site (www.isba.org) click on the "Member Groups" which appears on the toolbar across the top of the page. Then when you click on "Sections" a list of the ISBA Sections appears. The new feature appears to the right of the name of each Section. You will see "Download Prospectus." Click on the one for International and Immigration Law and you will find a brief summary of the prior bar year's activity of the Section. In this case it will show that during 2012-2013 the Section sponsored one CLE program relative to Employment Eligibility Verification Form I-9 and published seven newsletters – *The Globe*. The articles that appeared in the newsletter are listed alphabetically by title of the article.

In addition, the Prospectus shows some of the legislation reviewed by the Section Council, simplifies joining the ISBA International and Immigration Law discussion list and states the mission of the Section Council. This Prospectus is open to anyone that visits the ISBA website, not just members of the Section. There is a quick link for anyone to join the Section and it has been indicated that this Prospectus will be updated each year reflecting the Section's activities.

Another new feature is found by going to the "Publications" link on the toolbar at the top of the ISBA homepage. In the dropdown menu, click on

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Employers sanctioned for failure to correctly complete I-9 forms

By Michael R. Lied; Howard & Howard Attorneys PLLC; Peoria, IL

As a couple of recent cases make clear, I-9 Form errors can prove costly. Form I-9 is completed and retained by employers to assure new employees are legally authorized to work in the United States.

In the first case, the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE") filed a complaint alleging that Anodizing Industries, Inc. violated 8 U.S.C. § 1324a(a)(1)(B) by hiring 26 employees for whom it failed to timely prepare and/or present I-9 forms.

ICE asserted that visual inspection of the company's I-9s reflected that they were not timely completed. The government pointed out that the 26 employees named in the complaint had hire dates ranging from October 10, 1988 to July 26, 2010, and that the 21 I-9s that actually did have a completion date entered in section 2 reflected a date of August 12, 2010, 13 days after service of the Notice of Inspection and one day before the forms were delivered to ICE.

The Chief Administrative Hearing Officer's ("CAHO") visual examination of Anodizing's I-9 forms confirmed, with one exception, the accuracy of the government's contention that the

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If you're getting this newsletter by postal mail and would prefer electronic delivery, just send an e-mail to Ann Boucher at aboucher@isba.org

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"Section Newsletters." Locate and click on the International and Immigration Law listing, note this is by name of the Section Council not name of the publication; therefore you click on International and Immigration Law and will not find *The Globe* listed. Once that page opens, you will see the heading "The Globe" and it will list all issues published from the most current, January 2014, back through to 1999. If you click on a specific issue, such as September 1999, each of the articles will be described as well as certain court cases referred to in the issue. To have access to these past issues and their articles, you need to be a member of the Section and login with your ID and Password.

Another reference point is the new list by authors. Visit the "Publication" tab on the toolbar, look for "Section Newsletter" and you will see to the right "Author Index." When you click on that, the name of every author that has published since 1999 will be indicated with the number of articles that have appeared in any ISBA publication. When you click on the name, the specific list of titles and appearance dates and a one sentence summary will be presented.

For example, Section Council member Patrick M. Kinnally has published 57 articles. Most recently, he has published "Personal representatives and special administrators in tort claims: There is a difference" which appeared in the December, 2013 issue of *Civil Practice and Procedure*, and "Admonitions in the criminal trial court: Waiver of Counsel, Jury Demand, and Non-citizen Guilty Pleas after Padilla v. Kentucky" which appeared in the November, 2013 issue of *The Globe*. The earliest article of Pat's that is listed is "Costs: an imbroglio for trial courts and practitioners" which appeared in the October, 2000 issue of *Civil Practice and Procedure*.

Former Chair and current Section Council member, Cindy Buys has 32 articles listed. This includes "The continuing evolution of immigration law to address issues of domestic violence" which appeared in the June, 2004 issue of *The Globe*, to "Right to counsel for immigrants: *Franco-Gonzalez v. Holder*" which appeared in the July, 2013 issue of *The Globe*.

These are new tools, that with time and practice, you will find very beneficial for research and cross referencing your ideas.

In this issue of *The Globe*, our thanks to Michael Lied with the firm of Howard & Howards Attorneys, PLLC, concerning "Employers sanctioned for failure to correctly complete I-9 forms" which originally appeared in the ISBA *Labor & Employment Law* newsletter in December, 2013. Also appearing in this issue are "Intercountry adoptions and surrogacy: cautionary tales" provided by Ramsey Senno, an attorney with the Abear Law Offices, and a companion piece "Intercountry adoptions and surrogacy: cautionary tales – Part II" provided by Erika Rahden, an Associate with the Abear Law Offices. Both of these articles were forwarded for use in *The Globe* by Lynne Ostfeld, Vice Chair of the International and Immigration Law Section Council.

We have included an announcement of the 9th Annual Silk Road Conference in May 16, 2014, being held at the Illinois Institute of Technology's Kent School of Law.

As always, thank you to all of our contributors.

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Employers sanctioned for failure to correctly complete I-9 forms

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timeliness violations were apparent on the face of the forms. Each form was completed more than three days after the employee was hired.

Anodizing Industries implicitly acknowledged that it did not complete the forms promptly but sought to minimize the significance by insisting that preparing the I-9 paperwork was merely a technicality. The CAHO disagreed. Timely and proper completion of I-9 forms is precisely what the law and regulations require: the form must be completed for each new employee within three business days of the individual's commencement of employment, and each failure to properly prepare, retain, or produce the form upon request constitutes a separate violation.

Failure to prepare an I-9 in a timely fashion is not only a substantive violation but also a serious one, because an employee could potentially be unauthorized for employment during the entire time his or her eligibility remains unverified. The longer an employer delays in preparing an I-9 form, the more serious is the violation.

The government has the burden of proof with respect to liability and the penalty, and must prove the existence of any aggravating factor by a preponderance of the evidence. The CAHO found most of the statutory factors were favorable to Anodizing Industries in that the company was a small business with no unauthorized workers or history of previous violations.

The CAHO observed that a general public policy of leniency to small entities is set out in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (2006) as amended.

The potential penalties for the 26 violations shown in the case ranged from $2860 to $28,600. The government sought a total of $25,525.50. The CAHO adjusted the penalties downward as a matter of discretion to an amount closer to the upper mid-range, at the rate of $600 for each I-9 violation, for a total penalty of $15,600.

United States v. Anodizing Industries, Inc., 10 OCAHO No. 1184.

(UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, OFFICE OF THE CHIEF ADMINISTRA-

TIVE HEARING OFFICER 2013).

In the second case, Ketchikan Drywall Services, Inc. ("KDS") petitioned a U.S. Court of Appeals for review of a decision of an Administrative Law Judge ("ALJ") in favor of U.S. Immigration and Customs Enforcement ("ICE") on 225 out of 271 alleged Form I-9 and a resulting civil penalty of $173,250.

KDS is a drywall installation company, and employs four full-time employees and approximately 20 part-time employees. It hires additional employees as needed on a project-by-project basis. KDS does not hire workers "in the field," but requires them to go to its main office first to fill out I-9 Forms.

In 2000, KDS received a Warning Notice from the Immigration and Naturalization Service ("INS") following an audit of its I-9 Forms. In 2006, KDS hired a new Controller with I-9 training who initiated efforts to improve compliance.

In March 2008, ICE served a Notice of Inspection on KDS. After the inspection, ICE served a Notice of Intent to Fine ("NIF"), which ordered KDS to pay a civil penalty of $286,624.25.

KDS requested a hearing before an ALJ. The ALJ adopted ICE's proposed base penalty, but adjusted it downwards to reflect the fact that fewer violations had been proven than alleged. The ALJ rejected both parties' arguments regarding aggravating or mitigating factors, and ordered KDS to pay a civil penalty of $173,250.

In its petition for review, KDS contended that many of the violations that the ALJ found were not violations at all, on the ground that it had copied and retained documentation for these employees and that any omissions from the I-9 Forms themselves were either minor or could be filled in by reference to the copied documents.

The court disagreed. Requiring that the parties take the time to copy information onto the I-9 Form helps to ensure that they actually review the verification documents closely enough to ascertain that they are facially valid and authorize the individual to work in the United States.

KDS argued in the alternative that even if it had not complied with all of its verification and documentation obligations under § 1324a(b), its noncompliance should nevertheless be treated as good faith compliance because any deficiencies were merely "technical or procedural," made in spite of a "good faith attempt to comply."

This was not a winning position. KDS argued first that it was not responsible for errors or omissions made by employees in Section 1 of its I-9 Forms, but the statute clearly makes employers responsible for documenting employee work authorization.

KDS also argued that it sufficed for an employee to attest that he or she was authorized to work generally, and that there was no requirement for the employee to check a specific box in Section 1 of the I-9 Form. Again, the language of the statute compelled a contrary conclusion.

Next, KDS maintained that its retention of copies of certain of its employees' documents excused deficiencies on the I-9 Forms, where the copied documents provided the necessary information.

Again, the court disagreed. Where the employee has not attested to the specific category of eligibility into which he or she fits, the statutory requirement is unfulfilled, regardless of whether other documentation might allow ICE to deduce the specific category to which the employee would have attested.

KDS argued that the ALJ erred in both the choice and application of the penalty calculation, but the court dismissed this argument.

Finally, KDS argued that the ALJ's findings with regards to the seriousness of the violations were arbitrary and capricious. The ALJ had declined to mitigate the penalty, noting that KDS had provided no "reasonable basis" for finding that any of the violations were not serious.

According to the court, KDS misconstrued the nature of the violations for which penalties were imposed when it argued that for many cases "the only violation was the failure to attach the copies [of the relevant verification documents] to the I-9 form." Instead, the penalties were imposed for substantive deficiencies on the I-9 Forms themselves. KDS' petition for review was denied. *Ketchikan Drywall Servs., Inc. v. Immigration & Customs Enforcement*, ____ F.3d ___, 2013 WL 3988679 (9th Cir. 2013).

The lesson from these cases is that the seemingly mundane task of verifying identity and work authorization on Form I-9 is serious business. ■

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Inter-country adoptions and surrogacy: Cautionary tales

By Ramsey Senno, Esq.

In the last decade, intercountry adoptions have plummeted; however, even with the reduced numbers, the potential for abuse, exploitation, and fraud by attorneys, parents, and adoption agencies is still a considerable problem. Recently, issues include a stunning guilty plea from a celebrated family law attorney who masterminded a baby-selling ring, and post-adoption rejection by American parents. These abuses have also precipitated geopolitical tensions and the unilateral termination of an international treaty regarding intercountry adoption by Russia. While these problems are not significant when compared to the number of successful adoptions, practitioners should still be mindful of these cautionary tales when engaging in the field of international adoption.

In 2011, international adoptions hit their 15-year low, resulting in a reduction from 45,000 completed adoptions in 2004 down to 25,000.[1] Completed international adoptions by American parents also mirrored this global trend. In 2012, the U.S. Department of State, our Central Authority under the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, reported only 8,668 intercountry adoptions completed in the United States, compared to 22,991 completed adoptions in 2004.[2] These relatively low numbers are somewhat unsettling when compared to the number of orphans. In 2011, UNICEF estimated there are 17,900,000 orphans worldwide with neither parent living.[3]

The reason for the decrease of international adoptions and the disparate numbers range from the high cost associated with international adoption, home countries imposing stiffer requirements on adoptive parents, countries unilaterally banning international adoption, and the United States banning adoptions from certain countries due to fraud. For example, regarding the high cost of intercountry adoption, the State Department's 2012 annual report states that adoption service providers "reported charging between zero dollars and $64,357 for all adoption services, with half charging less than $28,425 and half charging more... country-specific services includ[e] foreign country program expenses, contributions, care of child expenses, and travel/accommodations."[4] These figures may or may not reflect the fees charged by the American attorney retained to finalize the adoption in state court.

Additionally, recently introduced bipartisan legislation, Children in the Family First Act ("CHIFF"), aims to decrease the number of worldwide orphans.[5] If enacted, CHIFF will streamline our interested federal agencies and reallocate existing international assistance to encourage the permanent placement of orphaned children in their "home country" or internationally. While CHIFF may cure some of the reasons for the decline in international adoptions, it will not cure basic human greed.

High fees charged by adoption agencies and the potential for financial exploitation by unscrupulous attorneys, among others, has resulted in horrifying headlines. On February 24, 2012, attorney Theresa Erickson, was sentenced to five months in prison and nine months of home confinement for her role in a baby-selling ring.[6] She and her co-conspirator, attorney Hilary Neiman, were charged with conspiracy to commit wire fraud after it was discovered that they used numerous gestational carriers to "create an inventory of unborn babies that they would sell for $100,000 each."[7] Ms. Erickson circumvented California law, which bars the sale of parental rights for purposes of adoption but allows paid surrogacy arrangements, by sending the gestational carries overseas for embryo implementation.[8] If the surrogates carried the child into the second trimester, they would fraudulently offer the unborn child to prospective parents claiming it was the result of a previous uncompleted legitimate surrogacy arrangement.[9] In declarations and pleadings, Ms. Erickson also fraudulently misrepresented to the Superior Court of California that the unborn children were the result of legitimate surrogacy arrangements.[10]

The damage to the gestational carriers, the children and to surrogacy continues to unfold. One surrogate mother told Judge Battaglia that "she miscarried and was forced to name and cremate the child by herself."[11] In another instance, a gestational carrier living in a state that did not honor surrogacy arrangements was on doctor ordered bed rest due to premature labor contractions.[12] In response, Ms. Erickson, in contravention to the doctor's orders, advised that she should "get out to California as soon as possible in order to avert an adoption."[13] If the baby was born in a state that did not honor surrogacy arrangements, then adoption was required to modify her parental rights and presumably, Ms. Erickson could not collect her fee. In other instances, late into their pregnancy, the surrogate would learn that the prospective parents did not even exist.[14]

In her sentencing hearing, Judge Battaglia condemned Ms. Erickson's actions stating she had created a "parade of tragedy" and that he was personally offended that a lawyer would manipulate the laws.[15] For her "parade of tragedy," Ms. Erickson and her co-conspirators made over $400,000 in profit from the sale of unborn children and parental rights.[16] Sadly and quite disconcerting, attorney Theresa Erickson, was considered a "star" in reproductive law, an expert on surrogacy, egg donations and embryonic transfers, a television and radio commentator, and served professional organizations dealing with reproductive law.[17] After her sentencing, she warned that "Surrogacy and adoption in California is a 'billion-dollar industry' that is 'corrupt' call[ing] herself the "tip of the iceberg" when it [came] to people abusing the system."[18]

However, the "parade of tragedy" can also stem from the adopted children's parents. In April 2010, Tory Ann Hansen, a registered nurse, placed her seven-year-old adopted Russian son, named Artyom, alone, on a ten-hour flight to Moscow.[19] Artyom's biological mother was an alcoholic from a small town near Vladivostok, Russia.[20] Her parental rights were previously terminated by Russian authorities, leading to Ms. Hansen's adoption of Artyom and his residence in Tennessee for almost a year.[21] Upon his arrival in Moscow, in Artyom's knapsack, along with magic markers, and candy, a typewritten note was found. In the note, Ms. Hansen flatly stated "After giving my best to this child, I am sorry to say that for the safety of my family, friends and myself, I no longer wish to parent this child… he is violent and has severe psychopathic issues…[I] was lied to and misled by the Russian orphanage workers about his troubles."[22] Artyom was delivered from the

airport to the Russian Education of Ministry by a paid "guide" that nurse Hansen had found on the Internet.[23] While Russian authorities have disputed nurse Hansen' claims and a positive post-adoption social worker's report supports their contention, her statements' underline the need to have independent medical and psychological evaluation performed before the adoption is finalized.

After forcibly taken from one mother and abandoned by another, Artyom was eventually placed in a Moscow group home for boys.[24] However, not before Russia's children's ombudsman, Pavel Astakhov, used Artyom as a prop in a television interview where he attempted to demonstrate the abuses in international adoption.[25] In 2012, Artyom's teacher stated that he "tries to forget about his life in the States" and that "he gets along well with other children and has almost forgotten English, preferring not to speak it."[26] Ms. Hansen has replied to the controversy with cognitive dissonance, stating, "All I can say he was very happy when he was on the plane…Witnesses have said that he was running all around and he was happy. There were stewardesses watching over him."[27]

Ms. Hansen's actions caused a diplomatic incident and inflamed already tense relations between the U.S. and Moscow. Then Russian foreign minister, Sergey V. Lavrov, called for the temporary suspension of adoption of Russian children by Americans.[28] Then Russian president, Dmitri Medvedev, stated in response to Artyom's case and other incidents of abuse by American parents that it was a "monstrous deed…the fact that the quantity of such cases in America is on the rise…[w]e should understand what is going on with our children, or we will totally refrain from the practice of adopting Russian children by American adoptive parents."[29] The American ambassador to Russia had earlier stated that he was "deeply shocked and outraged" over nurse Hansen's actions.[30]

American parents in the middle of the adoption process were crushed upon learning of temporary ban, one prospective parent said "My heart is sinking…[w]e knew about laws changing in midstream, that these foreign governments are very bureaucratic, and that there is a lot of posturing that causes delays. But we picked Russia because it seemed like we had a pretty good chance. Now we don't know what to do."[31]

Russian foreign minister, Sergey V. Lavrov's proposed temporary ban eventually became a permanent ban with passage of *On Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation*.[32] The law was passed by Russia's Duma on December 21, 2012, then approved by the Federation Council on December 26, 2012 and became effective on January 1, 2013.[33] The law prohibits "U.S. citizens from adopting children who are Russian citizens."[34] Further, it bans the selection and transfer of Russian children to U.S. citizens for adoption.[35] Sadly, it also explicitly terminated a U.S./Russian treaty titled "Cooperation in Child Adoption" signed in Washington D.C. on July 13, 2011.[36] While many have framed the passage of Russia's anti-adoption law as a part of a broader reaction to deteriorating U.S./Russian relations, specifically President Obama signing the Magnitsky Act, the Russian government's reaction may be well founded. For example, attorney Erickson's post-conviction warning that she is just the "tip of the iceberg" regarding adoption abuses supports Russia's analysis and concerns.

However, considering the number of successfully completed international adoptions and the enormous need for adoptive parents worldwide, these incidents are probably the exception and the not the rule. These cautionary tales should serve as a stark reminder to practitioners to the collateral effect of poorly managed or poorly vetted intercountry adoptions. Poorly vetted and managed international adoptions can ruin lives and threaten the viability of international adoption on a systematic level. Attorneys practicing in this field should be cognizant of the dangers and the pitfalls associated with intercountry adoption, making sure they perform their due diligence regarding all parties and issues involved. ■

Attorney Ramsey Senno is a graduate of the John Marshall School of Law and an associate with Abear Law Offices. He practices law throughout Cook, DuPage, Kane and Kendall counties. He is also the former Vice-Chair of the Chicago Bar Association's Committee on International and Foreign Law and has co-presented to the Chicago Bar on the issues of International Adoption/International Data Privacy and Protection.

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Inter-country adoptions and surrogacy: Cautionary tales, Part II

By Erika Rahden, Abear Law Offices

A Chicago couple was recently forced to return a child they adopted from South Korea after the child lived with them over seven months. The couple thought that they had legally adopted the child from South Korea, but the country of South Korea contended otherwise and intervened in the couple's adoption case in Cook County, Illinois and forced the case into federal court.

The couple had previously adopted a child from South Korea through an adoption agency. The adoptive mother was a South Korean born American citizen and had relatives in South Korea. A relative in South Korea informed the couple of an unwed pregnant woman living in a homeless shelter in South Korea that was seeking to have her child adopted. The couple met with an immigration lawyer in Chicago who provided the couple with lawyers in South Korea who they could contact to arrange a private adoption. The couple was advised that a private adoption could be arranged. The couple flew to South Korea with their daughter for the birth of the child. After the birth of the child, the biological parent's rights to the child were terminated. A South Korean court granted the couple a foreign order to the child.

The couple then obtained a visa for the adoptive child. The couple cleared customs in South Korea without incident and boarded a plane to Chicago. Upon arriving at Chicago O'Hare international airport, the couple was stopped by the United States Custom and Border Protection. Customs held the couple for more than 10 hours, questioning whether the couple had a legal visa to bring the child into the United States. The couple was finally allowed to leave customs with the child, but given a court date to appear and not before South Korean officials learned of the incident.

Although the child's biological parent's had legally terminated their rights in South Korea and the child was in fact orphaned, South Korea asserted that the couple did not meet their country's strict criteria for adoption from South Korea and the child should be returned to South Korea and placed for adoption there. After months of legal wrangling in federal and state court and involving several federal agencies, the couple was ordered to give up the child. The child was then returned to South Korea, who would determine where the child would be placed.[1] This is a stark example of what can go wrong in an international adoption.

A prospective client recently came to me and stated her interest in her and her partner adopting from an Eastern European country where her family was from. She and her partner had been trying to adopt for several years through domestic adoption agencies and were frustrated with the process. The prospective client stated that there was a priest, who was also a lawyer her extended family knew, who assured her that she could adopt privately and he would be able to match her with a child. After checking the United States Department of State Web site, I informed her that she could not privately adopt from this country. Although I was sorry that I could not provide the prospective client with the answer she wanted, it may have averted a future legal disaster. One of the most important things you can do in counseling clients in international adoption is to set realistic expectations about what can go wrong. Here are some of the problems that can and will arise in an international adoption.

1. Cost

In 2012, the median cost charged for an international adoption by an adoption agency reported to the United States Department of State was $19,512.53 with a range of $6,200 to $160,217.[2] Adoptive parents can also expect to pay additional fees for the following: foreign adoption agency fees, home study fees, legal fees for a foreign and domestic adoption attorney, medical fees, translation fees, visa fees and travel costs. Adoptive parents should be advised that even though they have expended considerable sums to an adoption agency, there is no guaranty they will be successful in being matched with a child. Although adoptive parents will most likely have a contract with their adop-

tion agency for the services the agency will provide, there are very limited legal remedies available against an agency if an adoption is not successful.

2. Time

In 2012, the average time to complete an international adoption after an adoptive parent was matched with a child was 385 days. [3] This average does not include the time spent by an adoptive parent waiting to be matched with a child, which can take several months if not years.

3. Travel

Most foreign countries require adoptive parents to travel to the foreign country and stay in the foreign country for a certain length of time before they can leave the country with the adoptive child. It is not uncommon for adoptive parents to be required to spend several weeks in a foreign country. There are many occasions when adoptive parents learn that there is a problem with the adoptive child or a delay in the legal process and have to stay several more weeks or leave and return later to complete the process. Adoptive parents need to understand that they are at the mercy of the foreign country in deciding whether or not they can leave with the child.

4. Legal Complexity

In international adoption, there are international treaties, United States federal, state, and local laws, as well as the federal, state, local, even tribal laws of a foreign country. There are bound to be conflicts and disagreements among the government entities and unfortunately a child can become the center of an international dispute.

Depending on which country a parent is adopting from, the adoption may be governed by the Hague Adoption Convention.[4] The Hague Adoption Convention was created to safeguard children against trafficking, illegal adoption and other abuses. Countries that are parties to the Hague Adoption Convention must follow specific criteria for an adoption to be approved by both the sending country and receiving country of the child. The specific Hague Adoption Convention requirements include: an approved Hague Adoption Convention adoptive service provider, a valid home study, education requirements on adoption, a medical exam and medical history of the child and proper visa requirements to be met.

There are many countries that United States citizens adopt from that are not members of the Hague Adoption Convention. Adopting from a country that is not a member of the Hague Adoption Convention does not necessarily mean there will be fewer requirements for adoptive parents. There are different visa requirements to be met for a non-Hague Adoption Convention country in order to legally bring the child into the United States and for the United States to grant the adoptive child citizenship.

All children adopted by a United States citizen are eligible for United States citizenship under the Child Citizenship Act of 2000.[5] The Child Citizenship Act of 2000 is a federal law that grants automatic citizenship to foreign born children adopted by United States citizens. All immigration requirements have to be met prior to the child entering the United States in order for the Child Citizenship Act of 2000 to apply.

5. Fraud

One of the best ways for adoptive parents to combat fraud is to choose a reputable adoption agency. Even if an adoptive parent has done everything right, there are unfortunately instances of human trafficking and fraud that take place. It is important that adoptive parents ask as many questions as possible about the circumstances that led to the child being orphaned and to obtain as much documentation as possible.

6. Medical Problems

Children who are orphaned are often victims of malnourishment and lack of adequate or no medical care. These children may also have been subjected to abuse, fetal alcohol syndrome, and never have had a regular or primary caretaker to attend to their physical let alone emotional and developmental needs. While a child from an orphanage may look healthy and even pass the required medical exam, trauma and lack of care may show up years later in the form of reactive detachment disorder or post-traumatic stress disorder. Despite adoptive parents providing a loving and nurturing home, these children will require extensive medical and psychological treatment that adoptive parents were not anticipating. An adoptive parent needs to be informed that once a child is adopted, the child is legally treated the same as a biological child and any problems that arise are their sole responsibility.

7. International Incidents

If something goes wrong and a foreign country will not grant a foreign judgment of guardianship or adoption, adoptive parents should not expect the United States Department of State to come to their aid. Adoptive parents also need to be cognizant that their actions in a foreign adoption can affect the relationship of the United States and the other country. An adoptive parent does not want to be responsible for a foreign country closing their doors to future adoptions by United States citizens.

8. Restrictions

Other countries have the sole discretion to set restrictions on who is eligible to adopt children from their country. These restrictions exist whether the country is a party to the Hague Adoption Convention or not. These countries can discriminate based upon factors such as age, marital status, religion, health, sexual orientation and ethnicity. The United States and the Hague Adoption Convention do not have jurisdiction to lift these requirements and adoptive parents will be required to work within these restrictions, even if they seem unfair and discriminatory.

Despite the obstacles that adoptive parents can face, international adoption is still a viable alternative for those seeking to adopt and if done correctly can create a loving and lasting family. It is our job as counselors to set realistic expectations for our clients and the tools necessary to navigate a complicated, costly and lengthy legal process. ■

Erika Rahden is an associate at Abear Law Offices, which concentrates in family law and adoption. She can be reached at Erika@abearlaw.com

1. Black, Lisa and Rubin, Bonnie Miller. "Evanston Couple Fights for South Korea Adoption." Chicago Tribune 18 Jan. 2013. Web. 18 Jan. 2013; Black, Lisa. "Evanston Couple Dealt Setback in Adoption of South Korean Baby." Chicago Tribune 14. Jan. 2013. Web. 14. Jan. 2013.

2. United States Department of State, Bureau of Consular Affairs, *FY 2012 Annual Report on Intercountry Adoption* (January 2013).

3. United States Department of State, Bureau of Consular Affairs, *FY 2012 Annual Report on Intercountry Adoption* (January 2013).

4. The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention).

5. 8 U.S.C. § 1431-33

Press release

9th ANNUAL SILK ROAD CONFERENCE RETURNS TO CHICAGO MAY 16, 2014, AT IIT

(CHICAGO)---Representatives of the Central Asian diplomatic, business, and academia communities will return to Chicago to participate in the 9th Annual Silk Road Conference scheduled on Friday, May 16, 2014, at Illinois Institute of Technology's Kent School of Law Auditorium, 565 West Adams St., in Chicago. The event will be highlighted by pre-conference business and educational activities, field studies programs, and a seminar focusing on "Understanding the Challenges of Central Asian Logistics". Organized by the Central Asian Productivity Research Center, a strategic alliance of professionals representing government, business, and academia from nations along the Silk Road region, the conference is sponsored by Northern Illinois University, in DeKalb, Illinois and supported by several foreign business organizations.

The CAPRC, which was founded in Turkey and Azerbaijan in May and June 1999, will celebrate its 15th anniversary during the conference.

Registration is $50.00, including a networking breakfast, a specially-designed business lunch, and the Diplomatic Reception.

For registration and information contact Harry Lepinske at lepinske@sbcglobal.net or by phone at 708-246-5556. ■

Recent cases

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

N.L.A. v. Holder, No. 11-2706 (March 3, 2014) Petition for Review, Order of Bd. of Immigration Appeals. Petition granted

Record failed to support ALJ's and Bd.'s denial of asylum application by alien (native of Columbia), who asserted that she was persecuted by organization called FARC, where FARC kidnapped her father and killed her uncle due to their status as landowners and their refusal to pay tributes to FARC. FARC's warning to father that alien would be harmed if tributes were not paid was evidence of alien's own persecution by FARC, since threat was backed up by violence to alien's relatives. Fact that alien was not personally contacted by FARC did not render alien's persecution claim "derivative" to any asylum claim made by father. Moreover, ALJ could consider hearsay evidence regarding FARC's activities subsequent to issuance of said threat to support alien's claim of future persecution, and alien could base instant claim on her membership in social group comprising of Columbian landowners. Ct. also noted evidence in record supporting alien's claim that Columbian govt. was not effective in controlling FARC's torturous activities.

Darif v. Holder, No. 12-1050 (January 2, 2014) Petition for Review, Order of Bd. of Immigration Appeals. Petition denied

Ct. of Appeals lacked jurisdiction to review Bd.'s order removing alien on ground that alien, as conditional permanent resident, had been previously found guilty of marriage fraud under 8 USC section 1325(c) when obtaining initial visa to enter U.S., where basis of alien's appeal was Bd.'s denial of his application for waiver of removal on extreme hardship grounds under 8 USC section 1186a(2)(4). Ct. of Appeals generally lacks jurisdiction to review Bd.'s discretionary decisions, and extreme hardship waiver is discretionary form of relief. Moreover, alien had waived any due process claim arising out of his removal hearing by failing to raise issue in his initial appellate brief, and alien otherwise failed to establish any prejudice arising out of his hearing before IJ, where Bd. made independent decision to deny application for extreme hardship waiver.

Chen v. Holder, No. 13-2505 (March 10, 2014) Petition for Review, Order of Bd. of Immigration Appeals. Petition denied

Ct. of Appeals lacked jurisdiction to consider alien's appeal of Bd.'s denial of her asylum application based on claim that Chinese govt. subjected her to persecution on account of her political opinion where she registered protest that govt. had taken her business without just compensation, since asylum application was filed more than one year after her entry into U.S. Fact that alien did not speak English, did not understand applicable law and lacked money to hire attorney did not require different result. Moreover, with respect to alien's withholding of removal request, IJ could properly find that govt.'s harm to alien by forcibly removing her from her business and subjecting her to three-day arrest was not based on her expression of political opinion, but rather, was based on her personal dispute with Chinese govt.

Aljabri v. Holder, No. 12-1229 (March 11, 2014) N.D. Ill., E. Div. Reversed and remanded

U.S. Citizenship and Immigration Service (USCIS) lacked jurisdiction to act on alien's application for naturalization where, as here, USCIS delayed ruling on said application for nine-year period, and where alien had filed lawsuit in Dist. Ct. under 8 USC section 1447(b) after said nine-year period requesting that Dist. Ct. either naturalize him or declare him U.S. citizen. However, on remand, Dist. Ct. may look to fact that alien had been convicted of aggravated felony during said nine-year period, so as to find that alien lacked good moral character necessary for naturalization. Also, Dist. Ct. erred in holding that it lacked subject matter jurisdiction under 8 USC section 1252(a)(2)(B)(ii) to act on alien's request since, according to Ct. of Appeals, said statute did not apply to naturalization decisions.

L.D.G. v. Holder, No. 13-1011 (March 12, 2014) Petition for Review, Order of Bd. of Immigration Appeals. Petition granted

IJ erred in finding, in context of removal proceeding, that he lacked jurisdiction to

consider alien's request for waiver of inadmissibility under 8 USC section 1182(d)(3)(A), where instant alien sought waiver of inadmissibility in order to obtain U Visa. Moreover, IJ and USCIS have concurrent jurisdiction to consider instant waiver request, and Ct. further noted that even if IJ eventually grants said waiver, USCIS retained authority to grant or deny U Visa, which, if granted, would stave off any removal of alien, where said removal was based on alien's uninspected entry into US and her prior drug conviction.

***Tian v. Holder*, No. 13-2130 (March 13, 2014) Petition for Review, Order of Bd. of Immigration Appeals. Petition denied**

Bd. did not err in denying application by alien (native of China) for asylum and withholding of removal, even though alien alleged that he was victim of persecution in 1989, when he aided others in pro-democracy demonstration. Ct. of Appeals lacked jurisdiction to consider alien's asylum application, which had been filed beyond applicable one-year limitation period, and alien did not otherwise assert existence of either change of circumstances in China or exceptional circumstances that would explain instant delay. Moreover, as to instant withholding of removal request, record supported IJ's determination that alien was not credible with respect to his claim of past or future persecution, where alien had remained in China for 10-year period after 1989 demonstration without incident, and where he had received job promotions during said period. ■

Upcoming CLE programs

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.

May

Thursday, 5/1/14- Webinar—Introduction to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 11:00.

Thursday, 5/1/14- Teleseminar—Trusts and the New Medicare Tax. Presented by the Illinois State Bar Association. 12-1.

Friday, 5/2/14- Chicago, ISBA Chicago Regional Office—Beyond Bullying and School Violence: Issues and Best Practices. Presented by the ISBA Education Law Section. All Day.

Friday, 5/2/14- Springfield, President Abraham Lincoln Hotel—Civil Practice Update. Presented by the ISBA Civil Practice and Procedure Section. 9:00-4:00.

Friday, 5/2/14- Teleseminar—Attorney Ethics and Elder Abuse (Live Replay from 1/10/14). Presented by the Illinois State Bar Association. 12-1.

Friday, 5/2/14- East Peoria, Embassy Suites—Insurance, Surety Bonds, and Bankruptcy Issues for Construction Projects. Presented by the ISBA Construction Law Section, ISBA Commercial Banking, Collections and Bankruptcy Section, ISBA Insurance Law Section, and ISBA Tort Law Section. 8:25am-4:15pm.

Monday, 5/5/14- Webinar—Advanced Tips to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 11:00.

Tuesday, 5/6/14- Teleseminar—Limitations on Closely Held Company Owners-Business Opportunities and Non-competes. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/7/14- Teleseminar—Attorney Ethics When Supervising Other Attorneys (Live Replay from 1/24/14). Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/7/12- Chicago, Standard Club—Tips of the Trade: A Federal Civil Practice Seminar 2014. Presented by the ISBA Federal Civil Practice Section. 9-4:30.

Friday, 5/9/14- Webinar—Boolean (Keyword) Searches on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 11:00.

Friday, 5/9/14- Teleseminar—Ethics of Beginning and Ending an Attorney-Client Relationship. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/14/14- Teleseminar—Ethical Issues for Business Attorneys (Live Replay from 1/7/14). Presented by the Illinois State Bar Association. 12-1.

Thursday, 5/15/14- Teleseminar—Role of "Trust Protectors" in Trust Planning. Presented by the Illinois State Bar Association. 12-1

Thursday, 5/15/14- Chicago, ISBA Chicago Regional Office—It's Not Just Family Law Anymore. Presented by the ISBA Family Law Section. 8:30-5.

Friday, 5/16/14- Teleseminar—Ethics of Working with Witnesses. Presented by the Illinois State Bar Association. 12-1.

Friday, 5/16/14- Chicago, ISBA Chicago Regional Office Suite 950—2014 SIU Health Care Institute (viewing of live webcast). Presented by SIU and the Illinois State Bar Association and the ISBA Health Care Section. 9-3:30.

Monday, 5/19/14- Teleseminar—Attorney Ethics and Digital Communications (Live Replay from 1/31/14). Presented by the Illinois State Bar Association. 12-1.

Tuesday, 5/20/14- Teleseminar—2014 Sexual Harassment Update. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/21/14- Teleseminar—Techniques for Tax Efficiently Withdrawing Capital From a Closely Held Company. Presented by the Illinois State Bar Association. 12-1.

Thursday, 5/22- Friday, 5/23/14- Carbondale, SIU School of Law. Attorney Education in Child Custody and Visitation Matters in 2014 and Beyond. Presented by the ISBA Bench and Bar Section, SIU School of Law and The Dispute Resolution Institute. 12:30-5pm; 9-4:45.

Wednesday, 5/28/14- Teleseminar—UCC Issues in Real Estate Transactions. Presented by the Illinois State Bar Association. 12-1.

Thursday, 5/29/14- Teleseminar—Trust Investments: A Guide to Trustee Duties & Liability under the UPIA. Presented by the Illinois State Bar Association. 12-1.

Friday, 5/30/14- Teleseminar—Attorney Ethics and Social Media. Presented by the Illinois State Bar Association. 12-1.

June

Tuesday, 6/3/14- Teleseminar—Family Feuds in Trusts. Presented by the Illinois State Bar Association. 12-1.

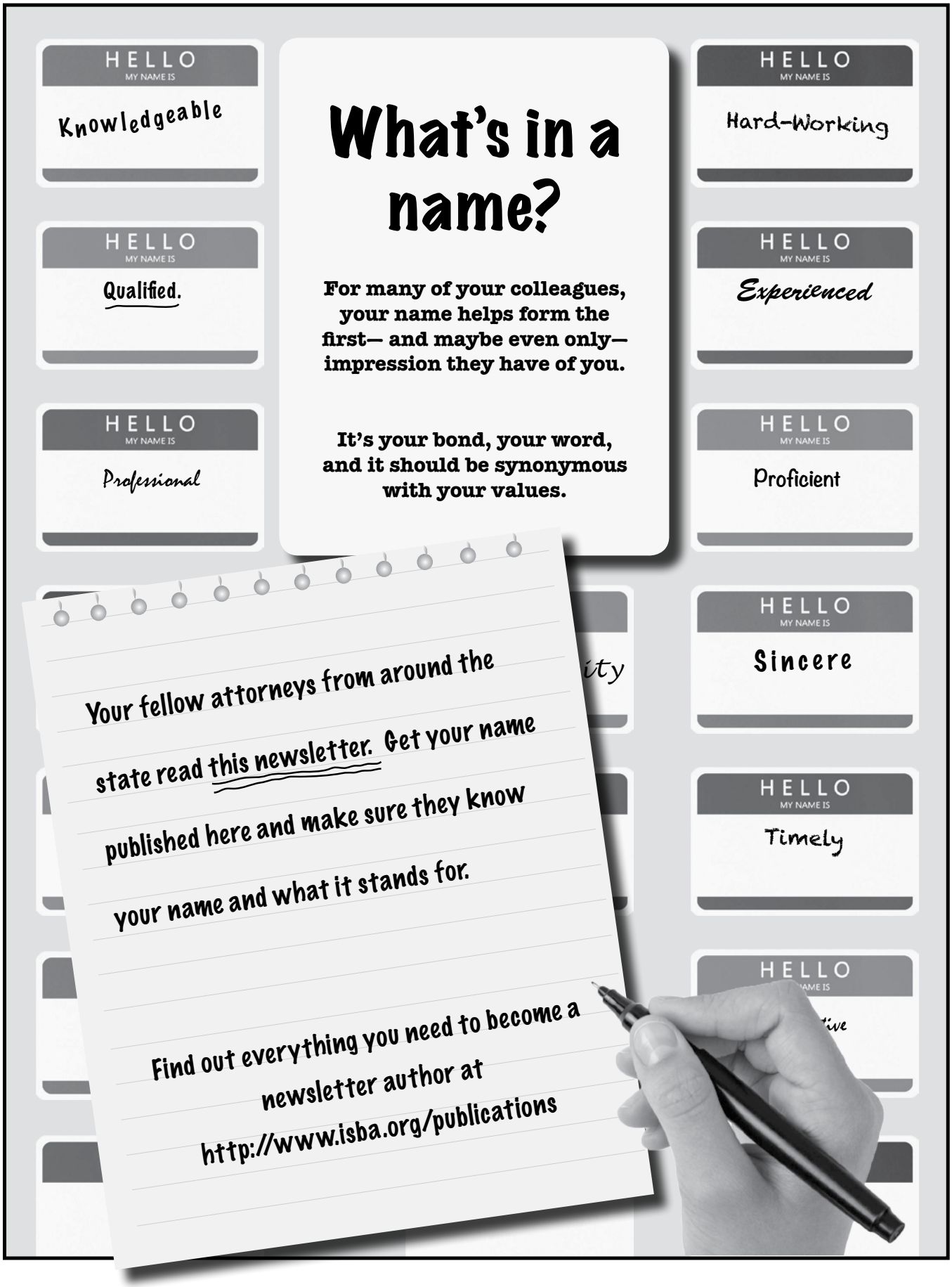
Wednesday, 6/4/14- Teleseminar—2014 Ethics in Litigation Update, Part 1. Presented by the Illinois State Bar Association. 12-1.

Thursday, 6/5/14- Teleseminar—2014 Ethics in Litigations Update, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 6/5/14- Lombard, Lindner Conference Center—Real Estate Transactions- Beyond the Ordinary and Mundane and Interactive Ethics and Professionalism Panel Discussions. Presented by the ISBA Real Estate Section. 9-4:15.

Friday, 6/6/14- Live Studio Webcast (room C)—The Do's & Don'ts of the BAIID Machine. Presented by the ISBA Traffic Laws and Courts Section. 12-1.

Friday, 6/6/14- Webinar—Introduction to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:00. ■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