

The Globe

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

Editor's comments

BY LEWIS F. MATUSZEWICH

The International and Immigration Law Section Council continued its student outreach program for law students with a presentation at the Southern Illinois University School of Law, organized by Professor Cindy Galway Buys, former Chair and current member of the Section Council. Professor Buys supplied the description of the event that is included in this issue.

In this sixth issue of *The Globe*, Michael R. Lied's article, "Employee's Suit for Green-Card Sponsorship Fails" is the third article that Michael has provided for publication in *The Globe* since last July.

Michael serves as the CLE Committee of the Illinois State Bar Association liaison to the International and Immigration Law Section Council.

Florian Jörg has contributed a new, "Updates in Swiss Business Law," and this is the second article he has authored for *The Globe* this ISBA year. In addition, *The Globe* has featured two articles by Lukas Wyss, another member of Florian's firm in Switzerland.

Since 2009, from time to time we have been able to include brief introductions to members of the International and

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ISBA Career Panel at Southern Illinois University

CINDY G. BUYS

Four members of the International and Immigration Law Section Council participated in a career panel discussion at the Southern Illinois University School of Law in April, 2017. The panel is part of the ongoing student outreach by the Section Council and was hosted by the International Law Society at SIU and moderated by one of its officers, second year law student, Sheena Hart.

Approximately 20 students, ranging from first years to third years, attended the panel discussion. Section Council Chair, Patrick Kinnally talked about his lengthy career, which has included significant work with the immigrant population. Section Council Secretary, Shama Patari, explained the customs process to students, including tariff classifications and antidumping

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Immigration Law Section Council. This issue includes a "Meet the Section Council" feature on Natalie L. Pesin, who brings the Council extensive experience, first as a participant and now as a judge, in the Jessup International Moot Court Competition.

Recently, *The Corporate Lawyer* included material on immigration related issues of interest to corporate in-house counsels. In this issue we are reprinting from the March, 2017 issue two articles: "Reminder: U.S. Citizenship and Immigration Services' new digital form I-9

has taken effect" and "USCIS to suspend premium processing service beginning April 3", authored by Jacob Hogg, Rebecca Mancini, and Gary Glenn.

Thank you to everyone that has contributed to *The Globe* during this current ISBA year.

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ISBA Career Panel at Southern Illinois University

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rules and procedures. Section Council member David Aubrey talked about the connection between defending human rights and representation of victims suffering mesothelioma. Finally, another Section Council member, Sophia Zneimer, told many stories of immigrant clients who struggled to be admitted or to remain in the United States. Each panelist had good advice for the students as they prepare for their careers. Following the panel discussion, the group moved to Walkers'

Bluff, a Southern Illinois winery, for an enjoyable networking event.

This event was organized by Cindy Galway Buys, Professor at the Southern Illinois University School of Law and currently a member and a former Chair of the International and Immigration Law Section Council.

The photograph below was taken by Steve Buhman of Southern Illinois University. ■



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The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

Employee's suit for green-card sponsorship fails

BY MICHAEL R. LIED

Lucia Gason, a citizen of Belgium, is employed by Dow Corning Corporation. After working for Dow Corning's affiliate in Belgium for 14 years she worked for Dow Corning in the United States under temporary visas, starting in 2007.

Dow Corning offered Gason a promotion to a director position at its Michigan office in 2011.

Two Dow Corning employees talked with Gason about this offer. According to Gason, a Dow Corning employee named Landry-Chan mentioned "localization" (meaning a transfer to a permanent assignment in the United States). Dow Corning's Relocation Administrator Kim Butler confirmed that "localization necessarily includes Dow Corning sponsoring that employee for a green card."

Gason understood that localization resulted in termination of her Belgian contract and required her to submit to Dow Corning's terms and conditions of United States employment, including that her employment would be "at will" and could be terminated with or without cause at any time.

In February 2012, Gason accepted the offer to localize in Michigan and became the Director of Indirect Capital Procurement for Dow Corning. Dow Corning retained a law firm as outside counsel to assist with Gason's green-card application.

Dow Corning began a restructuring program in late 2012. Gason's position as Director of Indirect Capital Procurement was eliminated, but she accepted an offer to begin work as a Procurement Shared Services Manager. The green-card application process needed to start over because of her new position.

Gason was slow in providing information needed for the green-card application. She finally completed and

updated a requirements chart and the finalized master document in April 2014, after a coworker sent a message to Gason stating that "[t]iming is becoming a critical issue in this matter. Your prompt response is needed."

Unfortunately, Gason's leadership and management style was the subject of criticism from members of her team. Dow Corning terminated Gason's employment as the Procurement Shared Services Manager, and her supervisor informed Gason that the green-card application process would end. He offered her a position as a manager in Belgium beginning in 2015.

Gason filed her first complaint and a motion for a preliminary injunction to prevent her transfer to Belgium in March 2015. The district court denied her motion for a preliminary injunction.

Gason filed an amended complaint in April 2015. She contended that Dow Corning made fraudulent misrepresentations concerning her application for a green card, that those misrepresentations made Dow Corning liable to her on a theory of promissory estoppel. Moreover, she alleged that Dow Corning's failure to obtain a green card for her constituted a breach of contract.

Dow Corning moved for summary judgment. The district court, applying Michigan law, concluded that there was no evidence upon which a reasonable juror could find that Dow Corning represented to Gason that it would obtain a green card for her; that whatever promise Dow Corning did make to Gason was insufficiently specific as a matter of law to trigger liability under a theory of promissory estoppel; and that no evidence existed upon which a reasonable juror could find that Gason and Dow Corning "mutually agreed that Dow would obtain a

Green Card for her." Gason appealed.

According to the appeals court, Gason's claim of fraudulent misrepresentation could be divided into two parts. She first contended that Dow Corning affirmatively and fraudulently promised to sponsor her green-card application during the conversations about her promotion to a management position in 2011. Second, Gason claimed that Dow Corning committed "silent fraud" when it did not inform her that it intended to cease its efforts to sponsor her green-card application in 2014.

There was no evidence in the record that Dow Corning, at the time it represented to Gason that her promotion would include localization in the United States (and thus sponsorship through the green-card application process), actually knew that the representation was false. The undisputed evidence established that Dow Corning went to considerable length to support Gason's green-card application: it retained outside counsel, followed up on unanswered requests for Gason to complete certain documents, and regularly facilitated conversations between Gason, the law firm, and Dow Corning's own relocation specialists to ensure that the green-card application process was moving along.

A promise to *obtain* a green card for Gason would have been impossible for Dow Corning to carry out because Dow Corning cannot issue green cards. The most that Dow Corning could have promised Gason was to sponsor her in the green-card application process. Dow Corning in fact carried out that promise. There was consequently no evidence on which a reasonable juror could find that Dow Corning fraudulently misrepresented a material fact to Gason.

The record showed that Gason agreed to at-will employment when she accepted

a localized position in the United States. She also delayed the green-card application process by not timely submitting paperwork. The undisputed evidence further showed that Dow Corning went to considerable length to carry out its promise to sponsor her application.

Forcing Dow Corning to continue to sponsor her application or to pay damages for ceasing to do so would 1) strip Dow Corning of its rights under Gason's at-will employment contract, 2) ignore Gason's contributions to the delay, and 3) disregard the fact that Dow Corning made concerted

efforts to carry out its promise. The court affirmed the district court's ruling on the promissory-estoppel claim.

A breach-of-contract claim requires proof that a contract existed. If Gason believed that Dow Corning promised to obtain a green card for her, there was no evidence of mutuality of agreement on that point. To the extent that the parties mutually, if impliedly, agreed that Dow Corning would make a good-faith effort to sponsor Gason's green-card application, Dow Corning fulfilled that promise by retaining counsel to assist in the matter

and regularly seeking Gason's participation when she was dilatory in completing the necessary paperwork. Summary judgment in favor of Dow Corning was affirmed.

The case is *Gason v. Dow Corning Corporation*, __ Fed. Appx. __; 2017 WL 65564 (6th Cir., 01-06-2017). ■

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Updates in Swiss business law

BY FLORIAN S. JÖRG

In the period from August 1, 2016 through January 1, 2017, the following significant changes to Swiss business law became effective:

1. Swissness legislation

The Swissness legislation entered into force as from 1 January 2017. Its aim is to safeguard the value of the label, "Switzerland", to lasting effect. The use of the designation "Switzerland" remains voluntary. Companies which want to make use of "Swissness" for advertising purposes must now satisfy criteria of origin. The new legislation still provides, however, that geographical names and marks which are not understood by the relevant commercial circles as an indication of a certain origin of the goods and services concerned, are not deemed to be indications of origin. Therefore, they need not satisfy the criteria of origin.

Industrial products are now only permitted to make use of the indication of origin "Switzerland," if 60% of the production costs have accrued in Switzerland and, in addition, if the most important manufacturing step takes place in Switzerland. Production costs are conceived of as being the costs of research and development, material and production.

Expenses which accrue in connection with packaging, transport, distribution and marketing are not deemed to be production costs. The act and the associated ordinance contain various exceptions, however, in order to take special cases into account. There is the possibility, for instance, of excluding the costs of raw materials and semi-finished products that are not available in Switzerland from the calculation method. Special provisions are also applicable to foodstuffs and natural products, as well as to watches.

For a service to be advertised as Swiss, both the registered office and a place of actual management of the service providers must be situated in Switzerland.



Swiss cross



Swiss coat of arms

If the above-mentioned Swissness criteria are satisfied, the Swiss cross may now also be used as an indication of origin for goods. However, the Swiss cross must not be confused with the Swiss coat of

arms:

The use of the Swiss coat of arms continues to be reserved for the Swiss Confederation, with very few exceptions.

The responsibility for the lawful utilisation of the label "Switzerland" is with the companies themselves. In cases of infringement, the act provides possibilities of intervention for competitors, professional and trade associations, consumer protection organisations and authorities. Users of an indication of origin now have to provide proof that their use of it is admissible. The onus of proof is thus reversed.

2. Automatic exchange of information in tax matters

The Federal Act on the International Exchange of Information in Tax Matters entered into force as from 1 January 2017. The Swiss banks (and also the Swiss branches of foreign banks) will now automatically provide the Federal Tax Administration with information about each reportable account. The Federal Tax Administration will then pass this information on to the relevant tax authorities of the partner states. An account is deemed reportable in Switzerland if the person or legal entity that holds it is

resident in a partner state pursuant to the partner state's tax law. Certain accounts which offer scant risk of being abused for tax evasion are exempt from the automatic exchange of information.

When a new account is opened, Swiss banks are now obliged to obtain a self-disclosure from all clients and, on the strength of this, check whether they have to treat this new account as a reportable one. For this reason, such self-disclosures have to contain the account holder's complete name, date of birth, residential address, country of fiscal residence and tax identification number. Banks also have to

check whether existing clients' accounts are reportable. The information to be forwarded includes the account holder's personal data, account number, account balance or account value, as well as the total gross yield. These data will be collected in the course of 2017. The actual exchange of data will commence in 2018. To all intents and purposes, this new regime will result in the abolition of banking secrecy for foreign bank clients from partner states in tax matters. ■

Dr. Florian S. Joerg, MCJ, is a partner in the Zurich office of Bratschi Wiederkehr & Buob Ltd.,

one of the largest independent Swiss law firms. He graduated from the University of St. Gallen Law School and obtained a postgraduate degree from NYU Law. His areas of practice include corporate law, M&A and banking law. Florian advises mainly both foreign and domestic companies and banks. He is also a lecturer for private law at the University of St. Gallen Law School. Further, Florian is admitted to the Swiss bars and to the bar in New York (not practicing) and he is a member of IBA, ABA, IPBA and NYSBA. Currently, he is also the co-chair of ABA SIL's M&A and Joint Venture Committee, a former co-chair of the Europe Committee and a Fellow of the American Bar Foundation. For questions please contact Florian S. Jörg at +41 58 258 10 00 or by email to florian.joerg@bratschi-law.ch.

Meet the Section Council

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, Natalie L. Pesin.

Natalie L. Pesin

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Natalie is a Section Council Member of the International and Immigration Law Section Council. Natalie practices with a general civil practice firm and works out of Matuszewich & Kelly, LLP's principal office in Crystal Lake. Natalie attended the University of California, Davis where she received a B.A. in Political Science and received her J.D. from the University of La Verne College of Law.

Natalie has been admitted to practice in Illinois as well of the U.S. District Court for the Northern District of Illinois. Natalie participated in the JESSUP International Moot Court Competition while attending University of La Verne College of Law and now participates as a judge in the competition. Natalie is also a member of the ISBA's Local Government Section Council. ■



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Reminder: U.S. Citizenship and Immigration Services' new digital form I-9 has taken effect

BY JACOB HOGG, REBECCA MANCINI AND GARY GLENN - MILLER CANFIELD

As of Jan. 22, 2017, employers are now required to switch over to the revised Form I-9 for all newly hired employees. This new "smart" Form I-9 can be downloaded at <<https://www.uscis.gov/i-9>>.

Employer representatives overseeing the employment eligibility and verification process must ensure that the new Form I-9 with the revision date of Nov. 14, 2016 is used for all new hires going forward. When completing the new Form I-9 online, required fields with missing or incorrectly formatted information will be now be flagged for completion. The form also offers drop-down menus and a designated blank space to explain unusual circumstances that before could only be written in the margins. All other employer requirements to timely complete, store and retain the Forms I-9 remain unchanged.

Along with the new "smart" Form I-9 taking effect, employers should also be aware of a few practice pointers that may clarify some common questions about this new process.

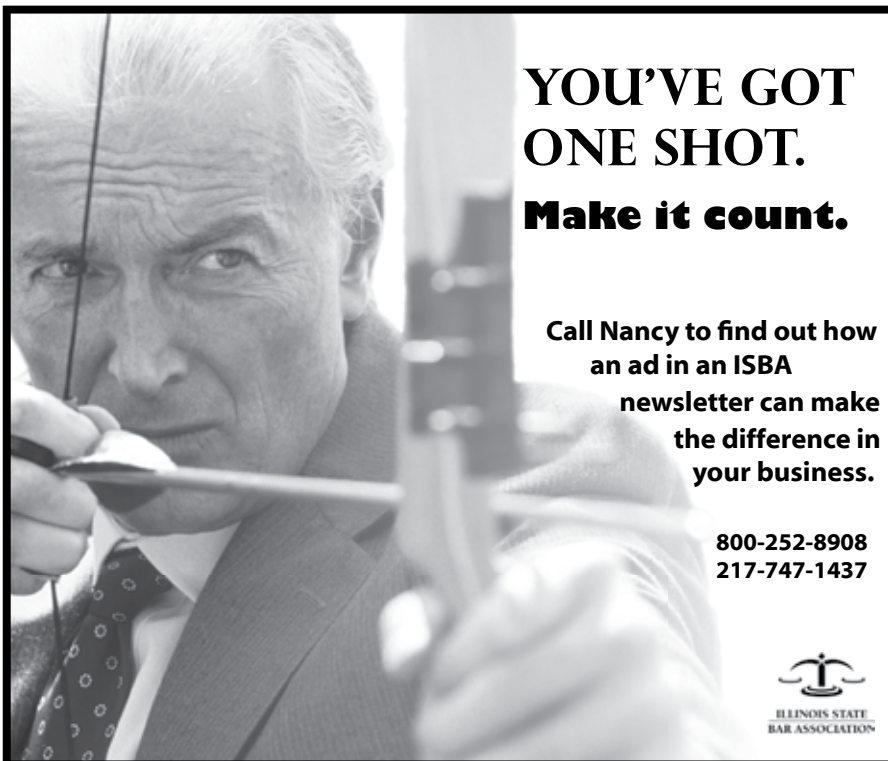
- Since the new Form I-9 must be used, the old Form I-9 with the revision date of Mar. 8, 2013 will no longer be accepted for new hires after Jan. 21, 2017.
- As implemented by USCIS on Aug. 1, 2016, any Form I-9 paperwork errors – including the failure to use the new forms – will result in significantly higher fines for employers than before. These increased fines also apply to the employment of individuals not authorized to work in the U.S.
- Although there is a Spanish version of the Form I-9, it can only be used by employers and employees in Puerto Rico or as a guide to assist Spanish-

speaking employees filling out the English version of the form in the U.S.

- The new Form I-9 was created with the intention that it is completed online to assist with compliance; however, it is not truly electronic. Employers may complete the form online or fill out a printed version of the new document. Whether the form is completed online or by paper, employers must still follow the prior standards for signing, storing and retaining Forms I-9.
- Signature date fields on the new form now require "Today's date" eliminating

the ability to backdate the document.

- A new rule went into effect on Jan. 17, 2017 which permits certain Employment Authorization Document (EAD) holders to provide an expired EAD for I-9 purposes for employment up to 180 days after expiration. An expired EAD will be considered unexpired for Form I-9 purposes if the employee also submits proof of a timely filed EAD renewal in the same eligible employment authorization category previously granted as evidenced on a Form I-797C Receipt Notice. ■




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USCIS to suspend premium processing service beginning April 3

BY JACOB HOGG, REBECCA MANCINI AND GARY GLENN - MILLER CANFIELD

USCIS announced that it will suspend premium processing of all H-1B filings beginning April 3, 2017. The suspension includes all FY 2018 H-1B cap-subject petitions, cap-exempt cases, extensions, amendments, and change of employer petitions filed on or after April 3, 2017.

USCIS indicated that the temporary suspension will help them reduce overall H-1B processing times and to prioritize adjudication of pending petitions in a backlog. It is anticipated that the suspension will last for up to six months.

During the suspension, employers may be able to request expedited processing if a case meets USCIS' established expedite criteria. Such requests are reviewed and

granted rarely at USCIS' discretion for emergencies, severe financial loss to company or person, or humanitarian reasons, for example.

Impact of the Suspension on FY 2018 Cap Petitions

As FY 2018 H-1B cap-subject petitions may not be filed before April 3, 2017, the suspension applies to all regular and master's cap submissions this year. This change will not affect the lottery process for timely submitted petitions but will limit the ability plan ahead. For example, F-1 students who are seeking a change of status to H-1B will no longer have the ability to use the premium processing service to plan for continued cap gap employment periods.

In addition, the suspension may delay foreign nationals from international travel while changes of status are pending.

Options to Take Action before April 3

H-1B extensions may be filed no sooner than six months prior to the expiration date of the current period of stay. Non-extension filings should be reviewed on a case-by-case basis to determine whether the premium processing suspension impacts other foreign nationals at this time.

We will continue to monitor developments related to the premium processing suspension and will update you with any important developments. ■

Upcoming CLE programs

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June

Thursday, 06-01-17 – 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, 06-02-2016—NIU Conference Center, Naperville—Solo & Small Firm Practice Institute Series: A Balancing Act: Maximize Your Technology with Minimized Expense. ALL DAY.

Thursday, 06-08-17 – Chicago Regional Office—Commercial Loans/ Documenting For Success and Preparing For Failure. Presented by Commercial Banking, Collections & Bankruptcy. 9:00 a.m. – 4:30 p.m.

Thursday, 06-08-17 – LIVE Webcast— Commercial Loans/Documenting For Success and Preparing For Failure. Presented by Commercial Banking, Collections & Bankruptcy. 9:00 a.m. – 4:30 p.m.

Thursday, 6-08-17 – 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.

Friday, 06-09-17 – Chicago Regional Office—Estate Administrative Issues: Are You Prepared to Handle Some of the Difficult Issues Facing Your Client?

Presented by Trust and Estates. 9:00 a.m. – 4:15 p.m.

Friday, 06-09-17 – LIVE Webcast— Estate Administrative Issues: Are You Prepared to Handle Some of the Difficult Issues Facing Your Client? Presented by Trust and Estates. 9:00 a.m. – 4:15 p.m.

Tuesday, 06-13-17 – Webinar—Excel Power Hour. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 06-14-17 – Live Webcast— Implicit Bias: How it Impacts the Legal Workplace and Courtroom Dynamics. Presented by the ISBA Committee on Racial and Ethnic Minorities and the Law. 12:00 -2:00 pm. ■

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