ILLINOIS STATE BAR ASSOCIATION

OCTOBER 2016 VOL 54 NO. 2

The Globe

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

Editor's comments

BY LEWIS F. MATUSZEWICH

This issue of *The Globe* emphasizes the International and Immigration Law Section Council's continual interest in increasing the awareness of and improving the language and implementation of 725 ILCS 5/13-8, relating to the guilty pleas to improve compliance with judicial notification.

Patrick Kinnally, Chair of the Section Council, and Cindy Buys, former Chair of the Section Council and currently Legislative Liaison for the Section Council, have prepared a Memorandum that has been distributed to all other ISBA Committees and Section Councils explaining the background of the statute and the reasons for the suggested changes. Anyone interested in obtaining additional information can contact Patrick Kinnally (pkinnally@kfkllaw.com) or Cindy Buys (cbuys@law.siu.edu).

In addition, Patrick Kinnally contributed his article, "A Useful Resource: TRAC Immigration" and Cindy Buys provided our readers with an announcement concerning the Russian Law Students Project of Southern

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Memo

BY PATRICK M. KINNALLY AND CINDY G. BUYS

TO: ISBA Committees and Section Councils

FROM: International and Immigration Law Section Council
Patrick M. Kinnally, Chair
Cindy G. Buys, Legislative Liaison

DATE: August 15, 2016

RE: 725 ILCS 5/113-8

The International and Immigration Law Section Council has approved and urges the Illinois State Bar Association to support an amendment to 725 ILSC 5/113-8 relating to guilty pleas to improve compliance with judicial notification of the immigration consequences of guilty pleas.

Text of the proposed amendment
(new language is underlined)

> Before the acceptance of a plea of guilty, guilty but mentally ill, or nolo contendere to a misdemeanor or a felony offense, the court shall give the following advisement to the defendant in open court:
>
> "If you are not a citizen of the United States, you are

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Editor's comments

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Illinois University School of Law. Anyone interested in more information concerning the Russian Law Student Project, should contact Dean Fountaine at cfountaine@law.siu.edu.

Michael R. Lied, of the law firm of Howard & Howard Attorneys PLLC and the ISBA CLE Committee's Liaison to the International and Immigration Law Section Council, provided his article, "Okay to Ask Application if They Need Immigration Sponsorship"

Natalie L. Pesin, a new member of the International and Immigration Law Section Council, provided a Casenote on "*Ferreira v. Lynch.*"

In "Recent Cases" we list decisions over the past four months.

As always, thank you to all of our contributors.

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Memo

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> hereby advised that conviction of the offense for which you have been charged may have the consequence of deportation, exclusion from admission to the United States or denial of naturalization under the laws of the United States."
>
> Any plea accepted by the court without the benefit of this advisement shall be a nullity and shall have no consequences.

Background

In January 2004, the Illinois General Assembly passed an amendment to the Illinois Criminal Statute which says:

> Before the acceptance of a plea of guilty, guilty but mentally ill, or nolo contendere to a misdemeanor or a felony offense, the court shall give the following *advisement* to the defendant in open court:
>
> "If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequence of deportation, exclusion from admission to the United States or denial of naturalization under the laws of the United States."
>
> * * *

725 ILCS 5/113-8 (emphasis added).

Prior to that time, persons who were not U.S. citizens sometimes accepted guilty pleas without understanding that they could face removal from the United States in addition to the agreed upon criminal sanctions. The defendant was then unpleasantly surprised when, after having completed his criminal sentence, he was taken into immigration custody and placed in deportation proceedings. Many defendants claimed they would not have pled guilty if they had known it would mean almost certain deportation from the country, separating them from their families, jobs and homes. For some time, members of the trial bar pushed for this legislation (Moran and Kinnally, "Aliens, Guilty Pleas and the Risk of Deportation: Time for Legislative Action," *Illinois Bar Journal* (2001) Vol. 89, pp.194-198). As a result of the amendment to 725 ILCS 5/113-8, this warning is now posted on many courtroom walls or in hallways in circuit courts around the state.

The Globe

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Interpretation of 725 ILCS 5/113-8 by Illinois Courts

Despite the mandatory language of the statute, some trial judges are not giving this required admonition. Some judges may believe the posting of the notice of this advisement in court rooms is sufficient. Other judges may be relying on written agreements in court orders signed by the accused. But this is not what the law requires. Quite plainly, it directs:

***

"the court shall give the following advisement to the defendant in open court."

***

That language denotes it must be given, and insists, much like the waiver of a jury trial, it be announced in open court when the accused is present. *See People v. Thornton*, (2nd Dist. 2006) 363 Ill.App.3d 481.

Moreover, the statute says the court "shall" give the advisement as to a "misdemeanor or felony offense" in "open court". Since this statutory requirement is mandatory, a cogent argument can be made that such warning must be given orally by the trial court in open court. It does not suffice merely to have placards attached to courtroom walls which state such a caveat.

Lower courts in Illinois split on the issue of whether the failure to provide the admonishment would result in vacation of a guilty plea. One division of the First District Appellate Court held the trial court's failure to give the admonishment did not permit the defendant to vacate his guilty plea. See *People v. Bilelgene* (2008) 381 Ill.App.3d 292. But in *People v. Del Villar* (2008) 383 Ill.App.3d 80, another division vacated a plea where the admonishment was not announced in open court.

The Second District joined the *Bilelgene* majority opinion in concluding the language of the statute, even though it says the trial court "shall" give the admonishment, does not mean a trial judge has to do that. *People v. Leon* (2009) 387 Ill. App.3d 1035 (Ill.App. 2d Dist.). This ruling ignores the definite requirement of a statute in the guise of what the court decrees as statutory interpretation. The *Leon* court found that even though the legislature said a trial judge shall give the admonition, the word "shall" does not mean "shall." And, because it did not, the imperative of giving the admonition was not mandatory but only directory.

To get to this result, the *Leon* court noted there was no statement in the legislation which indicated that any consequence would ensue if the trial judge failed to obey the statute. *(People v. Robinson* (2005) 217 Ill.43). It is true, as the *Leon* court observed, that whether a statute is mandatory or directory is a question of legislative intent. However, *Leon* fails to focus on what consequences flow from the failure to give the admonition. It seems quite obvious that the General Assembly was concerned that unknowing defendants, not judges, prosecutors, or defense attorneys, were entering into plea arguments – contracts with the government – that were not undertaken with full knowledge of the consequences of the deal they were making. See *People v. Reed* (1997) 177 Ill.2d 389; *People v. Youngbey* (1980) 82 Ill.2d 556 The *Leon* tribunal ignored the fact that plea agreements are contracts that require the parties who enter into them must do so with full knowledge of all the terms of such a pact.

Instead, the *Leon* court focused on the "type of plea" which dictates whether the admonition must be given. Apparently, the variety of a plea only applies to people who are immigrants, whether documented or otherwise. The court observed the statute would also apply to every citizen, which the legislature could never have intended. This is odd logic for two reasons: although there may be different kinds of plea agreements (*Alford*, *etc.*) such contracts are not generally classified on citizenship status (or lack thereof). The statute does not classify whether a person is a permanent resident alien, is undocumented, or is a citizen. It applies to all defendants. Next, the legislature did say trial courts need to give the admonishment to every defendant in plain and concise terms and in "open court". The legislature did not say you only give such a warning to non-citizens in some other venue such as chambers.

In reversing the Appellate Court in *Del Villar*, the Supreme Court effectively has rendered the Illinois guilty plea admonishment statute toothless. (*People v. Del Villar*, 235 Ill. 2d. 507 (2009) ("*Del Villar*").

Leobardo Del Villar, at a circuit court hearing on November 2, 2005, pleaded guilty to aggravated unlawful use of a weapon by a felon. Before doing so, the trial judge asked him whether he was entering into the plea agreement in return for a sentence recommendation, freely and voluntarily. He answered affirmatively. The trial court next asked, "Are you a citizen of the United States?" and Del Villar said, "Yes." Sentencing was deferred until the end of November, when a term of four years imprisonment was to be imposed.

Two weeks later, Del Villar asked the trial court to vacate his plea stating he was a legal permanent resident alien, not a United States citizen, and the trial court failed to admonish him consistent with 725 ILCS 5/113-8. The trial court refused the request because Del Villar had lied to the court in November about his citizenship status. The Appellate Court reversed, stating the trial court was required by the statute to warn Del Villar based on the statute's plain and mandatory language. The Supreme Court disagreed, and reinstated Del Villar's plea based on the guilty plea he sought to withdraw in the trial court.

The plain language of the statute says, "The trial court shall give the following advisement to the defendant in open court". This would seem to be a straightforward command that a lay person reading the statute would understand. However, in a bifurcated analysis predicated on a thirty-year-old California Supreme Court opinion (*Morris v. County of Marin*, (1977) 18 Cal. 3d 901, 908) (*Marin*), the Illinois Supreme Court said the admonition statute posed two questions: (a) whether the statute is mandatory or permissive; and (b) whether the statute is mandatory or directory. (see, e.g., *People v. Robinson* (2005) 217 Ill. 2d 43). Even though the initial inquiry may find a statue to incorporate an obligatory duty (i.e., "the trial court shall give the advisement"), according to the Supreme Court, it is the resolution of the second question that determines whether a statute is truly mandatory. Thus, if the statute does not contain a provision which dictates a particular consequence for noncompliance

by the governmental actor, it is directory in nature. The upshot being, in Del Villar's situation, there is no consequence for the trial court's failure to admonish him.

This interpretation of a legislative decree is remiss for various reasons. It relies on *People v. Huante* (1991) 143 Ill.2d 61, for the proposition that immigration consequences relating to a guilty plea and subsequent conviction are collateral to that process. *Huante* did not involve a legislative decree. Rather, *Huante* involved a claim of ineffective assistance of counsel under the Sixth Amendment due to the attorney's failure to properly advise his client of the immigration consequences regarding entering a plea consistent. The admonishment statute is not an interaction between a client and a lawyer: it is a governmental duty, the work of a trial judge, which has been created by the legislature.

In addition, the issue in *Del Villar* is one of procedural default: namely, the trial court's failure to do what that statue requires. Indeed, the trial court asked Del Villar if he was a United States citizen. Later, when the trial court learned Del Villar was a non-citizen, he refused to admonish him because of his prior prevarication. The fact remains, however, he is still a non-citizen and the consequences which flow from that status are the ones the statute sought to address at the time the plea was entered, whether or not he lied about his immigration status.

Understandably, the trial court was concerned, as it should be, that Del Villar lied to the court. Yet, this does not diminish the court's responsibility to comply with the statute, and ensure the plea Del Villar was agreeing to was knowing and voluntary.

Lastly, the court's reliance on *Marin*, a decision of the California Supreme Court, is troubling. Procedurally, it is very doubtful that members of our Illinois General Assembly were reading California jurisprudence as to how the statutes they enact should be interpreted at the time the admonition statute was drafted. Also, the court's mandatory/directory analysis in *People v. Robinson* postdates the admonition statute's effective date.

On substantive level, as Justice Freeman observed in his concurring opinion in *Del Villar*, the majority opinion's two-part test for determining when a statute is mandatory is confusing to say the least. Although the *Marin* court acknowledged the interpretive dichotomy of mandatory/permissive and mandatory/directory, it rejected its application to the facts of the case before it. *Marin* had nothing to do admonishing defendants in Illinois trial courts or California tribunals.

Whether one agrees with the requirement of advising any defendant, citizen or otherwise, of the consequences relating to a plea of guilty is not the issue, but the law. 725 ILCS 5/113-8 is not a Supreme Court Rule, but a law enacted by the Illinois legislature. Where the purpose of such legislation is to ensure that a defendant "knowingly and voluntarily" makes an agreement (i.e., guilty plea), then the analysis cannot proceed based on statutory interpretation alone. The statute's purpose, as it states, is that a trial judge is *to advise* the defendant of the potential consequences a conviction may create with respect to "deportation, exclusion from the United States or denial of naturalization under the laws of the United States." This is not a passive role, but one that ensures a guilty plea is knowing, voluntary and informed. It cannot be collateral to a conviction when it is the judge's job to ensure the plea is knowing and voluntary and the admonition is the means to that end. The consequences of not complying with the statute must be the focus, and for non-citizens that consequence may be banishment to a country they never knew.

The purpose of the proposal is to make plain what the General Assembly stated over a decade ago, i.e., what 725 ILCS 5/113-8 means. The consequence of failing to give admonishment by a trial judge should denote the plea is a nullity; alternatively, it should accord the defendant the right to withdraw the guilty plea. The defendant would be placed in the same position as before the guilty plea.

Accordingly, the International and Immigration Law Section Council requests that the ISBA support an amendment to 725 ILCS 5/113-8 to provide the specific consequence of nullification of a guilty plea entered without the benefit of a judicial admonishment regarding potential immigration consequences to ensure that this admonishment is considered mandatory by the Illinois courts. ■

Cindy G. Buys is a Professor of Law and Director of International Law Programs at the Southern Illinois University School of Law. She serves as the Legislative Liaison to the International and Immigration Law Section Council and is a member of the Women and the Law Committee of the Illinois State Bar Association. She may be reached at cbuys@siu.edu.

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

Announcement – Russian Law Students Project

The Russian Law Students Project is seeking volunteer presenters for the 2016-17 academic year. The Russian Law Students Project connects U.S. attorneys with Russian law students at Udmurt State University in Izhevsk, Russia. Volunteer attorneys are asked to speak via videoconference on a topic of their choice for one hour. Past volunteers have enjoyed the experience and observed that the students are attentive and appreciate the opportunity to learn about U.S. law and practice their English. The Russian Law Students Project is sponsored by the ABA Section on International Law's International Human Rights Committee and is hosted by Dean Cynthia Fountaine and students at Southern Illinois University School of Law. If you are interested in learning more about the program or volunteering, please contact Dean Fountaine at cfountaine@law.siu.edu. ■

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Back by popular demand! Lawsuits are often lost or won based on motion practice…so don't miss this seminar that reviews motion practice from the initial filing of the lawsuit through post-trial motions. Attorneys involved in litigation and trial practice with intermediate to advanced levels of experience who attend this seminar will better understand:

- How to file a motion for change of venue and forum non conveniens;
- Motions to dismiss and summary judgment motions;
- Motions to obtain and preserve evidence, including electronic data;
- The strategic use of motions in limine before the trial;
- The requirements for requesting/defending temporary restraining orders and injunctive relief;
- The post-trial motions appellate issues that counsel wishes you knew; and
- The recent ethical issues that have confronted the legal profession.

Agenda

8:50 – 9:00 a.m. Introduction

9:00 – 9:45 a.m. Motions for Change of Venue and Forum non Conveniens
Robert R. Duncan, Duncan Law Group, LLC, Chicago

9:45 – 10:30 a.m. Dispositive Motions
Hon. Daniel T. Gillespie, Circuit Court of Cook County, Chicago
P. Shawn Wood, Seyfarth & Shaw, Chicago

10:30 – 10:45 a.m. Break (beverages provided)

10:45 – 11:30 a.m. Motions to Obtain and Preserve Evidence
Kimberly A. Davis, SpyratosDavis, LLC, Lisle
E. Angelo Spyratos, SpyratosDavis LLC, Lisle

11:30 a.m. – 12:15 p.m. Motions in Limine
Hon. Russell W. Hartigan, Circuit Court of Cook County, Western Springs

12:15 – 1:15 p.m. Lunch (on your own)

1:15 – 2:00 p.m. Temporary Restraining Orders and Injunctive Relief
Cathy A. Pilkington, Pilkington Law Offices, Chicago

2:00 – 2:45 p.m. Post-Trial Motion Appellate Issues
Robert R. McNamara, Swanson Martin & Bell, LLP, Chicago

2:45 – 3:00 p.m. Break (refreshments provided) - Sponsored by the Illinois Bar Foundation

3:00 – 4:00 p.m. Overview of Recent Ethical Issues Confronting the Profession
TBD, Illinois Attorney Registration and Disciplinary Commission, Chicago

4:00 – 4:15 p.m. Closing Questions and Comments

A useful resource: TRAC Immigration

BY PATRICK M. KINNALLY

Anyone interested in immigration policy based on quantitative analysis should consider consulting TRAC Immigration [Transactional Records Access Clearinghouse] (TRAC). TRAC has various programs which originate at Syracuse University, my father's alma mater. TRAC's Immigration Project is a compendium of statistical information from government data bases, which determine their accuracy, and then provide it in an electronic forum for the general public. http://trac.syr.edu/immigration.

The topics it covers include reports written in plain prose which address current immigration subjects like administrative and criminal enforcement of immigration laws, removal hearings, and immigration judge decision making. Let me give you two examples. All are displayed at TRAC's website. Let's look at TRAC's work.

Law Enforcement

The Department of Homeland Security (DHS) has a Priority Enforcement Program (PEP) which enables DHS to work with state and local police agencies to take into custody individuals whom pose a danger to public safety before these individuals are released into state communities.

Historically, immigration enforcement was based on voluntary agreements between federal and state law enforcement agencies (LEAS). One of the primary methods was the use of Form I-247 which is a detainer from DHS to a local agency to hold an arrested and incarcerated alien. The use of detainers declined markedly from a high of 70% in 2008 to low of 40% in 2014. This resulted in DHS recruiting LEAS to use the detainer program, (*Policies for the Apprehension Detention and Removal of Undocumented Immigrants*, November, 2014). This form has changed with respect to priorities for removal. It has now morphed into three forms: (I-247N) Request for Voluntary Notification of Release of Suspected Priority Alien; I-247D, Request for Voluntary Action; I-247X, Request for Voluntary Transfer.

In December 2015, DHS Secretary Jen Johnson stated the DHS outreach Program on detainers was successful; and that 16 of the largest state or municipal LEAS were again accepting detainers.

TRAC's analysis finds this statement to be suspect. It found:

- half of the I-247's served during the first two months of 2016 targeted individuals who do not have any criminal record
- 80% of I-247s issued ask that persons be detained beyond the normal period under PEP protocol (i.e. 48 hours)
- while recorded refusal rates by LEAs has fallen sharply, the proportion of occasions where Immigration and Customs Enforcement (ICE) took custody of the individual after issuing I-247 requests continues to decline . It is now below forty percent.

If less than 40 percent of undocumented immigrant prisoners are being transferred to federal custody for removal hearings, one has to pause as to whether the purpose of the I-247 program is effective. Perhaps, it may improve. Public safety, of course, is paramount. But incarcerated undocumented immigrants with no criminal history perhaps should not be the priority for ICE. Undocumented immigrants convicted of felony crimes involving personal safety crimes should be a center piece of enforcement.

Removal Hearings

As of July, 2016 the average time persons have been waiting to have their immigration hearing to be heard by an immigration law judge is 676 days from the date the Notice to Appear (NTA) is filed. This does not mean the date when the case is finally adjudicated. In Illinois, this wait time is 929 days. One has to wonder why this is so. I just received an NTA for a client, a lawful permanent resident for 2019. His criminal conviction was for a controlled substance offense for personal use, an Illinois misdemeanor. (INA 237 (a)(2)(B)(i) (*Carachuri-Rosendo v. Holder*, 130 S.Ct. 2577 (2010)) (*Mellouli v. Lynch* (135 S.Ct. 1980 (2015)). You have to wonder why these NTA's are even filed. In *Carachuri* and *Mellouli* the Untied States Supreme Court has declared such offenses are not deportable ones.

Couple this with the fact that as of July 2016 over 500,00 cases were pending in Immigration Courts in the United States. This is an amazing number. In June 2016 the backlog represented an average of 1819 cases awaiting resolution for each of the 273 judges now on the bench of the Executive Office for Immigration Review. Basically, that backlog denotes about 2.5 years of existing cases to close even if no new cases are filed currently.

Notwithstanding, the fact of this delay, TRAC reports that as of the first 10 months in fiscal year 2016 immigration judges determined that 57% of noncitizens in removal proceedings were entitled to stay in the United States. Any disinterested person must wonder what is the reason for charging individuals where almost sixty percent are not removable to begin with. Government inefficacy seems apparent. We need not make work that creates a result which may have been a foregone conclusion at its outset.

Take a look at TRAC. It will provide you with information you may be able to use in your advocacy for immigrants. It represents a disturbing calculus for an immigration enforcement and administrative court system that is bloated and confounded by delay. ■

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

OK to ask applicants if they need immigration sponsorship

BY MICHAEL R. LIED, HOWARD & HOWARD ATTORNEYS PLLC

Attorney Christopher L. Thomas of Ogletree Deakins asked the Office of Special Counsel whether it is permissible for employers to ask the following questions of job applicants:

A. Do you now, or will you in the future, require sponsorship (e.g., H-1B visa status, etc.) to work legally for THE COMPANY in the United States?
B. If you will require sponsorship, do you currently hold Optional Practical Training (OPT)?
C. If you currently hold OPT, are you eligible for a 24-month extension of your OPT, based upon a degree from a qualifying US institution in Science, Technology, Engineering, or Mathematics (STEM), as defined by Immigration & Customs Enforcement (and as outlined in the following government website: <https://www.ice.gov/sites/dcfault/files/documents/Document/20l6/stem-list.pdf>?

For Thomas' client, a negative answer to the third question would apparently be reason for disqualification.

On June 15, 2016 Alberto Ruisanchez responded that an employer that asks all of its job applicants whether they will require sponsorship now or in the future and refuses to hire those who require sponsorship would likely not violate 8 U.S.C. 1324b. Similarly, an employer that asks questions designed to prefer certain classes of nonimmigrant visa holders (e.g., STEM OPT students) over other classes of nonimmigrant visa holders is unlikely to violate the INA's prohibition against citizenship status discrimination.

However, he pointed out that asking job applicants detailed questions about their immigration or citizenship status may deter individuals who *are* protected from citizenship status discrimination, such as refugees and asylees, from applying due to a misunderstanding about their eligibility for the position. ■

Ferreira v. Lynch

BY NATALIE L. PESIN

Court of Appeals granted alien's petition for review of Boards order, which upheld IJ's decision to deny relief on grounds that the alien was not credible and lacked corroborating evidence because. Alien claimed that the notes from her credible-fear interview are unreliable because (1) the notes were not a transcript but a summary; (2) no follow up questions were asked that would have cleared up the contradictory statements; (3) the alien had difficulty understanding the questions and this was evident in the notes; and (4) the alien had prior negative experiences with the government in her home country thus causing her reluctance to reveal information. Further, the board did not explain how they reached their decision. The Board and IJ overlooked documents that supported the alien's testimony including medical reports documenting rape. Instead the Board ruled that she lacked corroborating evidence. However, alien submitted over 400 pages of documents as evidence, including police reports and medical reports.

Alien was asking for asylum because of fear of her husband who had beaten, raped and kidnapped her. Alien took her children to a Christmas party hosted by her ex-husbands family. Upon return from the party, alien's husband beat and choked her, then raped her. He was in jail for only four days. Upon his release he went to her place of employment telling her that she had to go back with him or he would kill her and her children. Alien quit her job and moved to a town 50 miles away. About a year later, husband forced his way into her apartment and beat her. Two months later, husband grabbed alien off of the street, forced her into his car. Husband took her into the wood and raped her. There was a discrepancy in the statements that dealt with the time and place the rapes and beating occurred. Court of Appeals found this discrepancy to be trivial. Thus, the Board erring in failing to address the alien's claims that the notes from interview were unreliable and ignoring material evidence are grounds to grant the petition of review and remand the case for further proceedings. ■

Ms. Pesin received her J.D. from the University of La Verne College of Law in Southern California. She is an Associate Attorney with the law firm of Matuszewich & Kelly, LLP in their Crystal Lake office and focuses in the areas of Wills and Trusts; Probate; Divorce; Child Custody; Business; and General Litigation. She may be reached at npesin@mkm-law.com.

Recent cases

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

***Guzman-Rivadeneira v. Lynch,* No. 14-3734 (May 13, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition denied**

Bd. could properly find that alien (citizen of Ecuador) was removable based on alien's 1993 California conviction for possession of counterfeit prescription blanks, which Bd. deemed to be crime involving moral turpitude. Moreover, alien procedurally defaulted his claim that said conviction did not qualify as crime involving moral turpitude, where: (1) alien's original lawyer conceded before IJ that said conviction was crime involving moral turpitude; and (2) alien's second lawyer failed to ask Bd. to relieve alien of first lawyer's concession and further failed to take procedural steps needed to obtain relief based on claim of ineffective assistance of counsel by showing, among other things, that prior attorney had been informed of instant allegations of ineffective professional performance.

***Yuan v. Lynch*, No. 15-2834 (June 28, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition granted**

Record failed to contain sufficient evidence to support IJ's denial of asylum/withholding of removal requests by alien (native of China), where alien alleged that he was persecuted/beaten by Chinese officials because of his asserted opposition to China's coercive population-control policy, and where instant denial was based on IJ's finding that alien's testimony was not credible and lacked corroboration. While record contained inconsistencies in arguably four areas of alien's testimony that included his description of his medical treatment, his arrival at hospital after receiving certain injuries, his workplace harassment and his description of his brother's whereabouts, any inconsistencies were not material to his main claim, as established by his medical records, that he sustained injuries arising out of his assaults by Chinese officials. As such, remand was required to permit Bd. to further assess alien's eligibility for asylum/withholding of removal based on merits of case.

***Putro v. Lynch*, No. 14-2430 (July 7, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition granted**

Agency erred when construing alien's petition to remove certain conditions to her permanent resident status as result of her marriage to U.S. citizen as request by alien for waiver of joint petition requirement, under circumstances where alien's husband had died during conditional period. As such, alien did not need said waiver because her husband's death during conditional period automatically exempted her from joint-filing requirement. Moreover, IJ, when ultimately finding that alien was removable because alien had entered into sham marriage, improperly placed burden on alien to show that her marriage was bona fide instead of placing burden on govt. to show that her marriage was not bona fide. Thus, remand was required so that IJ can evaluate alien's petition under proper legal standard.

***Ferreira v. Lynch*, No. 15-2603 (August 5, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition granted**

Record failed to support IJ's denial of alien's asylum and withholding of removal applications based on claim that alien's country (Dominican Republic) would not protect her from her common law husband, whom alien claimed repeatedly raped, beat and kidnapped her. While IJ did not find alien credible based on alleged inconsistencies between alien's testimony at removal hearing and her statements to asylum officer during "credible-fear" interview, remand was required because Bd. failed to address alien's claim that notes taken by officer during of alien's interview were not reliable, and that Bd. improperly ignored certain documentary evidence, including police complaint and doctor's report, that supported her testimony. Ct. further observed that some inconsistencies found by IJ were trivial.

***Lozano-Zuniga v. Lynch*, No. 15-2488 (August 12, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition denied**

Record contained sufficient evidence to support IJ's denial of application for withholding of removal by alien (citizen of Mexico), even though alien testified that he feared that his return to Mexico would subject him either to acts of physical violence by Zetas gang or to forced participation in drug trafficking efforts by said gang due to his status as young returning Mexican from U.S. or his status as practicing member of Seventh Day Adventist religion. Ct. agreed with IJ's finding that alien had failed to show that he would be target of persecution upon his return, where alien presented only general claims of unrest in Mexico. Also, alien failed to present any specific facts that he would be targeted/harmed by Zetas gang, especially where he had not incurred persecution from said gang prior to his departure from Mexico at age 14.

***Yang v. Lynch*, No. 15-3357 (August 12, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition denied**

Record contained sufficient evidence to support IJ's denial of application for asylum/withholding of removal by alien (citizen of China), even though alien alleged that his return to China would subject him to forced sterilization under China's one-child policy. IJ could properly disbelieve alien's claims, where alien testified inconsistently about: (1) his lack of knowledge as to whether he could legally have second child; and (2) health of his

first son. Moreover, alien failed to provide corroborating evidence confirming his claim of treatment or procedures received by his wife or son during their hospital stays. Also, alien testified inconsistently regarding his claim that he was being pursued by Chinese officials seeking to forcibly sterilize him.

***Fuller v. Lynch*, No. 15-3487 (August 17, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition denied**

Record contained sufficient evidence to support IJ's denial of alien's application for withholding of removal based on claim that alien would be subjected to persecution due to his bisexuality if forced to return to Jamaica. Alien was removable based on expiration of his conditional permanent resident. Moreover, while alien testified about his negative experiences as bisexual man in Jamaica, as well as his alleged incidents of physical harm and harassment, IJ found that alien was not believable in his claim that he was bisexual, based in part on fact that: (1) alien had been married and had fathered children by two different women; (2) record contained significant inconsistencies with respect to claims of harassment/harm that included approximate 10-year discrepancy with respect to date of alleged shooting; and (3) alien's seven letters supporting his claim of bisexuality were stylistically suspicious. Ct. found that while alien's marriage and children were not inconsistent with his claim of bisexuality, other significant aspects of his claims of alleged harassment/harm were incredible and supported instant denial of his application under applicable deferential standard of review. (Dissent filed.)

***Arias v. Lynch*, No. 14-2839 (August 24, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition granted**

Ct. of Appeals granted alien's petition for review of Bd.'s order, which affirmed IJ's denial of alien's application for cancelation of removal, where: (1) said removal was based on alien's conviction under 42 USC section 408(a)(7)(B) for use of false social security number in order to work for employer; and (2) IJ and Bd. found that said conviction was crime of moral turpitude that precluded alien from obtaining any cancelation of removal relief. Ct. doubted that said offense was categorically crime of moral turpitude in all factual settings, and in any event, remand was required, since: (1) framework used by IJ and Bd. under Silva-Trevino I was subsequently vacated by Attorney General, and thus reconsideration was warranted under new framework/standard; and (2) it is uncertain under any new framework whether IJ and Bd. will be able to look beyond elements of alien's offense in order to find that said offense is crime of moral turpitude.

***Santashbekov v. Lynch*, No. 15-2359 (August 24, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition denied**

Record contained sufficient evidence to support IJ's denial of alien's asylum petition on grounds that alien was not credible, even though alien claimed that he faced persecution for his political activism as member of youth wing of political opposition party in Kyrgyzstan. Record supported IJ's and Bd.'s finding that alien was not credible with respect to certain important factual allegations regarding identify of individual who allegedly was member of different political party and who had allegedly detained and beaten alien on several occasions. Moreover, alien presented implausible story as to why said individual would travel 400 kilometers to persecute alien and proffered inconsistent testimony as to when he had joined his own political party. As such, IJ could deny application, even if said inconsistencies and implausible stories did not go to heart of asylum application.

***Cisneros v. Lynch*, No. 15-3238 (August 25, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition denied**

Bd. did not err in reversing IJ's grant of alien's application for waiver of inadmissibility under section 212(h) of INA, where: (1) alien became removable based on his prior conviction on charge of unarmed bank robbery, which, in turn, resulted in alien's loss of his legal permanent resident status; and (2) Bd. found that regulation (8 CFR section 1217(d)), that precluded any discretionary exercise of waiver where alien was involved in violent or dangerous crime unless extreme hardship was established, applied to circumstances of alien's application. Moreover, while IJ found that alien's removal would cause extreme financial hardship on his children, Bd. found that said hardship was not extreme. Ct. further noted that it lacked jurisdiction to review instant section 212(h) waiver denial and rejected alien's argument that: (1) instant regulation was in conflict with congressional intent set forth in section 212(h); (2) Bd. applied said regulation improperly; (3) his conviction was not crime of violence; and (4) Bd. improperly failed to consider certain hardship evidence.

***Gutierrez v. Lynch*, No. 16-1534 (August 24, 2016) Petition for Review, Order of Bd. of Immigration Appeals Petition dismissed and denied in part**

Record contained sufficient evidence to support IJ's denial of alien's application for withholding of removal to Mexico based on his proposed social group of Mexican nationals whose family members have suffered persecution at hands of Zetas gang and other drug cartels in Veracruz, Mexico. Alien was removable based on his Wisconsin drug possession conviction, and record showed that alien had not experienced past persecution prior to his entry into U.S. Moreover, although alien presented evidence of pervasive drug violence by drug cartels in Mexico, he failed to present any evidence that Zetas gang would target him because of his family ties. Also, alien had failed to present evidence that he could not reasonably relocate to another part of Mexico to avoid persecution. ■

Upcoming CLE programs

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November

Wednesday, 11-02-16—Linder Conference Center, Lombard—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

Thursday, 11-03-2016—Webcast— Settlement and Severance Agreements: The Non-Pecuniary Terms. Presented by Labor and Employment. 1:00 p.m. – 3:00 p.m.

Thursday, 11/03/16- Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Tuesday, 11-08-16- Webinar—Practice Toolbox Series. File Retention. 12:00 – 1:00 p.m.

Wednesday, 11-09-2016—Webcast— Estate Planning with Digital Assets. Presented by Trusts and Estates. 12:00 – 1:00 p.m.

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Friday, 11-11-16—Chicago, ISBA Regional Office and live Webcast. Motion Practice from Pretrial through Post Trial. Presented by Civil Practice and Procedure. 8:50 a.m. - 4:00 p.m.

Wednesday, 11-16-16— Chicago, ISBA Regional Office and live Webcast. Illinois' Not for Profit Property Tax Issues, Part 2. Presented by SALT. 9:00 a.m. – 1:00 p.m.

Thursday, 11/17/16- Chicago, ISBA Regional Office—Family Law Table Clinic Series (Series 2). Presented by Family Law. 8:30 am – 3:10 pm.

Thursday, 11-17-16—IPHCA, Springfield—Open Meetings Act: Conducting the Public's Business Properly. Presented by Government Lawyers. 12:30 – 4:00 p.m.

Thursday, 11/17/16- Webinar— Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

Friday, 11-18-16- Chicago, ISBA Regional Office & Live Webcast—Jury Deselection: The Law and Voir Dire Techniques for Jury Selection. Presented by the ISBA. 9:00 a.m. – 4:00 p.m.

Wednesday, 11-30-16—Webcast— Environmental Law for the General Practitioner: Fundamentals on Handling Hazardous Waste at Your Client's Business. Presented by Business Advice & Financial Planning. Co-sponsored by Environmental Law. 11:00 a.m. – 12:00 p.m.

Wednesday, 11-30-16—Webcast— Environmental Law for the General Practitioner: A Thumbnail Sketch of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund). Presented by Business Advice & Financial Planning. Co-sponsored by Environmental Law. 1:00 a.m. – 2:00 p.m.

December

Thursday, 12-01-2016- Webinar— Using a Blawg to Build and Enhance Your Professional Profile and Your Practice—Presented by LOME. 12:00-1:00 p.m.

Thursday, 12-01-2016—Webcast— Written Discovery: Knowing What to Ask for and How to Get It—Part 1. Presented by Labor and Employment. 1:00 p.m. – 3:00 p.m.

Friday, 12-02-2016—Chicago, ISBA Regional Office and Live Webcast—Decedent's Trust and Estate Administration. Presented by Trusts and Estates. 9:00 a.m. – 5:00 p.m.

Friday, 12-09-16- Chicago, Sheraton—Midyear Meeting—History on Trial: The Alton School Cases (Tentative Title). Presented by the ISBA; co-sponsored by the Illinois Supreme Court Historical Preservation Commission. 1:15-2:45 p.m.

Friday, 12-09-16- Chicago, Sheraton— Midyear Meeting—Lessons in Professional Responsibility: From the Law Practice of Abraham Lincoln (Tentative Title). Presented by the ISBA. 3:00 p.m. - 4:30 p.m.

Tuesday, 12-13-16- Webinar—Practice Toolbox Series. Microsoft Word Power Hour. 12:00 – 1:00 p.m.

Wednesday, 12-14-16- Webcast- HOT TOPIC—Traffic Case Law and Legislative Update 2016 – Changes Which Affect Your Practice and Clients. Presented by Traffic Law. 12:00 p.m. – 1:00 p.m.

Thursday, 12-15-16- Webcast—Senate Bill 100: Sweeping Changes to Student Discipline in Illinois in 2016. Presented by Education Law. 10:00 a.m. – 12:00 p.m.

January

Thursday, 01-12-17- Live Webcast— Immigration Law Update Spring 2017—Changes which Affect Your Practice and Clients. Presented by International and Immigration. 12:00- 1:30 p.m.

Wednesday, 01-18-17- Live Webcast— The Nuts and Bolts of Drafting Non-Disclosure Agreements: Tips for the Practicing Lawyer. Presented by Business & Securities. 10:00 a.m. – 11:00 a.m. ■

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