ILLINOIS STATE BAR ASSOCIATION

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The Globe

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

EDITOR'S COMMENTS

BY LEWIS F. MATUSZEWICH

I am pleased to accept Tejas Shah's request to serve another year as the Editor of *The Globe* for the International and Immigration Law Section. Laid out in his "Message from the Chair" are the ambitious goals he has set for this coming year.

Lynne Ostfeld accomplished significant steps for the Section this past year, including her constant vigilance in obtaining material for *The Globe*.

Tejas was also honored at the Illinois State Bar Association's Annual Meeting, as one of two selectees for Young Lawyer of the Year recognition made by the Young Lawyer's Division of the ISBA. The material on his selection is included in this issue. In addition to the "Message from the Chair," Tejas also provided the articles on "Recent H-2B Program Changes Require Careful Planning by Employers" and "Court Upholds Consular Non-Reviewability."

We round out this issue of The Globe with Recent Cases, with the summaries provided by the ISBA E-Clips.

If any author or potential author has questions concerning the mechanics of submitting articles for consideration in *The Globe*, please call or e-mail me. I look forward to working with Tejas and the rest of the Section membership this coming year.

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MESSAGE FROM THE CHAIR

BY TEJAS SHAH

It is my honor and privilege to serve as the Chair of the Illinois State Bar Association's 2015-16 Immigration and International Section Council. I look forward to building upon the contributions that my immediate predecessors as chair (Lynn Ostfeld and Scott Pollock) and the 2013-14 and 2014-15 section councils have made to the ISBA community.

This year's section council steps into its role at a very interesting and exciting time in both immigration and international law. A host of executive actions impacting our immigration laws are being implemented by the federal government. These executive actions are designed to modernize our business immigration rules, provide work authorization to an expanded number of individuals, and address

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(Notice to librarians: The following issues were published in Volume 60 of this newsletter during the fiscal year ending June 30, 2014: *August, No. 1; September, No. 2; October, No. 3; December, No. 4; January, No. 5; March, No. 6; April, No. 7; June, No. 8).*

other shortcomings of our immigration system. While these changes fall short of the fundamental changes that only legislation can achieve, they nevertheless offer renewed opportunities and hope to immigration lawyers who counsel clients in an imperfect system every day.

Changes to federal immigration laws are also occurring through litigation. Executive actions impacting the status of the undocumented remain the subject of litigation in federal courts. Additionally, the Attorney General recently set aside long-standing guidance that would permit the fact-finder to consider facts outside the record of conviction to determine whether or not a conviction represents a "Crime of Moral turpitude" (CIMT). This guidance had been the subject of intense litigation, with a split between the different Circuit Court of Appeals on whether or not this approach is permitted under the statute. While the Board of Immigration Appeals has yet to provide guidance on the new analytical framework for determining whether a crime is a CIMT, the setting aside of the prior approach will have a significant impact on thousands of immigrants convicted of committing crimes in the United States. Furthermore, advocates such as Scott Pollock are seeking to improve outcomes for immigrants through lawsuits.[1]

Our section council bears the significant responsibility of explaining these changing laws to the ISBA community and the Illinois public. We do so through frequent CLEs, our quarterly newsletter (the Globe), and our council's participation in ISBA public service programming.

Our section council concentrates on more than just immigration law, and we are proud to include members concentrating on customs and trade law, international family law, international business transactions, and others with a background in international human rights. We are pleased to welcome several new members, including:

1. Shama Patari, an attorney at Barnes Richardson focusing on customs and trade law;
2. Kenny Bhatt, an attorney at the Kenjay law firm;
3. Sofia Zneimer, a principal at her law firm focusing on immigration, business and general litigation, and ADR;
4. Alexander Konetzki, focusing on business law, litigation, and dispute resolution at the Bernstein law firm. He has a background in international human rights law and was the former National Voter Protection Hotline Director for President Obama's second re-election campaign.

We also welcome back Mark Wojcik, a former member of the ISBA Board of Governors and former chair of the ISBA International and Immigration Law Section Council. Additionally, we are fortunate to have Lewis Matuszewich, our newsletter editor, continue his commitment to ensuring that the Globe remains the ISBA's best newsletter. Juliet Boyd has agreed to once again serve as our CLE coordinator notwithstanding her significant responsibilities as chair of the traffic section council, and past section council chair Scott Pollock will assist her with these responsibilities. Lynn Ostfeld, immediate past chair, will serve as our liaison for consular corps activities.

This year's section council will focus on several objectives, including but not limited to:

1. Continuing to educate and disseminate new legal developments to our fellow lawyers through CLEs and publications.
2. Engaging with students and new lawyers through panels about "careers in international and immigration law".
3. Continuing our engagement with the Consular Corps in Chicago.
4. Providing comment and opinions on proposed legislation relevant to immigrants and the field of international law.
5. Providing educational programming to the public, which is a particularly acute need in light of the high concentration of unauthorized practitioners of immigration law ("notaries").

These activities are very significant to the public and to the legal community in Illinois. For example, our section council, led by Professor Cindy Buys from Southern Illinois University, has played a significant role in advocating for a consular

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notification bill that would ensure local law enforcement's compliance with the requirements of federal and international law. We will continue to offer updates as this bill progresses, and hope to serve as a significant resource on immigration and international law issues to the Illinois community. We encourage you to continue reading the Globe, our newsletter on international and immigration law issues, and to consider submitting a publication. We also encourage you to view our archived studio programs, which are intended as a resource for ISBA members, and to propose topics of interest to you to our section council.

We thank you for your involvement with our section council and look forward to an exciting year!

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1. Mr. Pollock and several other plaintiffs recently filed a lawsuit in the United States District Court for the Western District of Washington to compel the USCIS to issue employment authorization cards within the regulatory timeframe of 90 days. In recent months, USCIS has routinely taken longer than 90 days to adjudicate such applications notwithstanding 8 C.F.R. section 274a.13(d).

Chicago lawyer receives Young Lawyer of the Year Award from ISBA

Tejas Shah, a resident of Chicago's near west side, a lawyer at Kreizelman Burton & Associates, in Chicago, will receive a 2015 Young Lawyer of the Year Award from the Illinois State Bar Association (ISBA) at the organization's 139th Annual Meeting on Friday, June 19, at the Grand Geneva Resort in Lake Geneva, Wis.

Each year, the ISBA selects two outstanding young lawyers for the award – one from Cook County and the other from outside Cook. Shah is being recognized for his professional and volunteer work in Cook County.

An immigration lawyer, Shah has lectured at several law schools, including at an international conference in Bangalore, India last year, and he has written extensively on immigration topics. He is secretary of the ISBA's International and Immigration Section Council and a regular speaker at the ISBA's continuing legal education programs, including the first annual Immigration Law Update held in 2014. He also served on a special task force to identify ways that the ISBA can be valuable to new lawyers. He has been active in the Indian American Bar Association of Chicago where he volunteered at their neighborhood legal clinic, and in the American Immigration Lawyers Association.

ISBA President Umberto S. Davi (at left) presented the Young Lawyer of the Year award to International & Immigration Law Section Chair Tejas Shah (at right) at the Awards Luncheon at the ISBA's Annual Meeting in Lake Geneva on Friday, June 19th.

In his nomination, lawyer Scott Pollock wrote that "Tejas embodies the ISBA's strong commitment to excellence in the legal profession, support for all Illinois lawyers, the provisions of legal services to all Illinoisans, and diversity and inclusion in the profession."

The 33,000-member ISBA (isba.org), with offices in Springfield and Chicago, provides professional services to Illinois lawyers, and education and services to the public through a website (illinoislawyerfinder.com), consumer brochures, and distribution of legal information. ■

Recent H-2B program changes require careful planning by employers

BY TEJAS SHAH

Background on the H-2B temporary worker program

The H-2B program provides visas for temporary, non-agricultural positions to foreign nationals in the United States. Traditionally, employers have used the H-2B program to fill positions whose temporariness can be demonstrated either because the employer has an "intermittent," "seasonal," "one-time occurrence," or "peakload" need. Many industries with temporary needs, including construction, gardening, coaching, and tourism are heavily dependent upon H-2B workers.

The H-2B program is subject to an annual quota of 66,000 visas. Congress has divided this quota into two halves, with the first half of the quota (33,000 visas) available for positions with a start date during the first half of the USCIS fiscal year (Oct. 1 to March 31). The remaining visa numbers are only available for positions involving employment start dates during the second half of the fiscal year (April 1 to September 31).

The H-2B application process is complex and has traditionally involved several steps, including:

1. The Department. of Labor's (DOL) issuance of a prevailing wage, which represents a threshold minimum wage that must be paid to the H-2B worker for the offered position. The employer must offer the higher of the actual wage rate paid to U.S. workers or the prevailing wage to the H-2B worker and use this wage rate during recruitment, as described below.
2. Requiring employers to complete certain mandatory recruitment steps to elicit applications from able, qualified, and willing U.S. workers who can fill the position;
3. Certification by the DOL that the position is temporary ("temporary labor certification"); and
4. The submission of an H-2B worker application to USCIS.

If the H-2B worker is abroad, the Department of State must also issue a visa to the worker.

By regulation, these steps must be completed within very specific timeframes in advance of the employer's date of need, and the DOL's certification of an H-2B application (the Form ETA 9142B) can often become a hyper-technical process.

Recent H-2B developments have introduced uncertainty into the program:

The H-2B program has been the subject of frequent litigation, specifically over DOL regulations governing prevailing wages (which do not involve private employer surveys), and the temporary labor certification process. Since 2008, separate lawsuits in Florida and Pennsylvania have found their way to the U.S. Court of Appeals for the Eleventh Circuit and Third Circuit, respectively, resulting in multiple injunctions and suspensions of the H-2B program. The most recent and significant lawsuit in Florida (*Perez v. Perez*) resulted in a federal court enjoining the DOL's 2008 prevailing wage issuance rules after the court found that the DOL had not been delegated authority by Congress to issue such rules, leaving the DOL unable to discharge its responsibility of issuing prevailing wages for this vital program as of March 4, 2015. After a temporary stay of this ruling resulted in a temporary resumption of the program, the DOL and USCIS then issued an Interim Final Rule (IFR) on April 29, 2015, which is, at least right now, in effect.

Impact on H-2B Employers

The H-2B program remains active, although further legal challenges to H-2B program rules remain on the horizon.

Due to the uncertainty in this program over the past six months in particular, the DOL has also announced emergency transition procedures for positions with start dates prior to October 1, 2015, to allow employers to complete recruitment and related steps on an expedited basis. Employers should be aware that the IFR announcement made on April 29, 2015, makes certain changes to the program, the most relevant of which are:

1) The maximum yearly period of need is now nine, rather than 10, months (the only exception to this rule is for one-time occurrences, which can be longer than one year);
2) The definition of full-time employment (FTE) is now 35, rather than 30, hours per week.
3) Changing the timeframes for recruitment and the filing of the temporary labor certification request.

In the meantime, the quota for the second half of the FY2015 fiscal year has been exhausted. Thus, only the following applications are not subject to the quota and can request a start date prior to October 1, 2015.

1. H-2B workers in the United States or abroad who have been previously counted towards the cap in the same fiscal year;
2. Current H-2B workers seeking an extension of stay;
3. Current H-2B workers seeking a change of employer or terms of employment;
4. Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
5. H-2B workers performing labor or services in the Commonwealth of the Northern Mariana Islands and/or Guam until December 31, 2019.

Applicability of FLSA Guidelines or Wage Deduction Rules

The IFR does not change the applicability of FLSA guidelines or wage deduction rules within this program. The employment of H-2B workers must remain consistent with the Fair Labor Standards Act (FLSA), and employers must carefully document hours worked and ensure that employees receive proper overtime compensation.

The H-2B program retains very specific limitations on acceptable deductions from the H-2B employee's wages. The employer should make deductions mandated by state and federal law (FICA contributions, for example), and may in certain circumstances deduct the reasonable costs of transportation and lodging at the worksite. The employer can never deduct the costs associated with H-2B program sponsorship, including attorney fees, recruitment costs, and other similarly related expenses. The H-2B employee must receive at least the prevailing wage, or the wage rate listed in the recruitment materials for U.S. workers, "free and clear". Additionally, this wage rate must not be contingent upon any bonuses or commissions and should be a guaranteed wage.

The H-2B program remains an important source of workers for employers with temporary needs and plays a critical role in our economy. Nevertheless, given the flux and uncertainty within the H-2B program and the impact of the new IFR on recruitment timelines, employers with temporary worker needs during 2015 and the first half of 2016 are well-advised to begin planning now. ■

Tejas Shah is a 2006 graduate of the George Washington National Law School. Tejas concentrates on employment-based immigration as well as matters involving federal litigation, deportation defense, citizenship, and family-based permanent residency. He may be reached at tns@franczek.com.

Court upholds consular non-reviewability 5-4

BY TEJAS SHAH

For the first time in over 40 years, the Supreme Court revisited the seemingly well-settled doctrinal issue of consular non-reviewability in *Kerry v. Din*, 576 U.S. ____ (2015). In a decision with significant implications for visa applicants, the Court once again held that Consular decisions to deny visas and to exercise authority over the immigration laws were judicially unreviewable.

Under the Immigration and Nationality Act (INA), 66 Stat. 163, no alien may enter or permanently reside in the United States without first obtaining a visa. This case involved a visa petition filed by a naturalized U.S. Citizen, Ms. Fauzia Din, on behalf of her spouse, an Afghani citizen named Kanishka Berashk. Ms. Din's visa petition seeking to classify Kanishka as an "immediate relative" was approved by the Department of Homeland Security. Under the INA, if the petition is approved, the foreign national may then submit a visa application to the US consulate and appear for an interview with a consular officer. It is then the responsibility of the consular officer to ensure that the applicant is not "inadmissible" under any provision of the INA, such as the terrorism bar at INA § 212(a)(3)(B) denying admission to those with suspected past or present involvement in acts of terrorism. If the officer finds the applicant inadmissible, his/her application is denied. Further, under 8 U.S.C §1182(b)(2)-(3), the Government is not required to provide notice to an alien found inadmissible under the terrorism bar.

When Berashk appeared for a visa at a U.S. Consulate, his application was denied under the terrorism bar. No further information was provided. Seeking to understand why the application was denied, Din requested an explanation but was never provided one. While Berashk, a resident and citizen of Afghanistan, had formerly been a civil servant of the Taliban regime, the terrorism bar is one of the most complex provisions of the INA and the specific provision of the terrorism bar that resulted in the denial of his application was unclear.

Although Berashk was a non-citizen, and thus had no right of entry or cause of action, Din was a naturalized citizen who brought the petition through the "immediate relatives" provision of the INA. This gave her the opportunity to challenge this decision in the federal courts, and she filed a complaint in Federal District court claiming that both the application of 8 U.S.C.. section 1182(b)(2)-(3) and the denial of Berashk's application were unconstitutional. Din sought a writ of mandamus directing the United States to properly review Berashk's visa application and provide an explanation for the denial. The District Court found in favor of the Government and granted their motion to dismiss.

Ninth Circuit Reverses

However, the Ninth Circuit Court of Appeals reversed, holding that Din was entitled to a review of the State Department's decision on her husband's application due to her protected interest in her right to marriage. The court further found that the Government deprived Din of a liberty interest without due process in violation of the Fifth Amendment when it denied Berashk's visa application without effectively explaining this decision.

Supreme Court

The Government immediately filed a petition instead with the Supreme Court, which granted certiorari and, in the end, reversed and remanded. Justice Scalia,

writing for the plurality, noted that there were two central questions that governed the disposition of the case. First, and of primary importance, Scalia noted that the Court must determine if the denial of Berashk's visa actually deprived Din of any protected interest. Only if the Court found that a protected liberty interest had been violated would it then continue and weigh the Government's interests against Din's private interests to assess the risk of an erroneous deprivation of a liberty interest (*Eldridge* analysis). In response to the first question, Scalia reflected on the history of the Due Process Clause's origins in England's Magna Carta and its original limited protection of life, liberty, or property (as adopted in the Fifth Amendment). These protections were limited, however, as they largely only applied to the protections of one's own person, the ability to transport *one's self*, and the free use of one's acquisitions. As a right to immigration through marriage implicates none of the rights historically established in the concept of Due Process, Justice Scalia and the plurality reasoned that the right was not protected by Due Process. Justice Scalia also pointed out the "checks and qualifications," such as the terrorism bar, that Congress has written into immigration law is proof that those decisions are left exclusively to the legislature and are not in the purview of the judicial branch.

Justice Kennedy wrote a concurring opinion in which Justice Alito joined. Justice Kennedy's opinion assumed that Ms. Din had a protected liberty interest in the outcome of her husband's visa application, but that the government had met the requirements of procedural due process in this case. Justice Kennedy reasoned that Congress' plenary authority over immigration and delegation of that authority to the Executive rendered the latter's decision on a visa application sufficient when it provided a "facially legitimate and bone fide" reason for its action. Justice Kennedy concluded that the Executive had met its responsibility by informing Berashk that his visa application had been denied because of the terrorism bar.

The dissenting opinion by Justice Breyer contended that Ms. Din had an implied non-fundamental right to due process since this matter impacted her ability to live with her husband in the United States. He thus concluded that the balancing test mandated by procedural due protection should apply, and that the government's justification failed to sufficiently inform Ms. Din about the reasons for the denial of this visa application. At the very least, Justice Breyer wrote that she was entitled to a more reasoned explanation of the denial so that she would have a "fair opportunity to meet the case" that resulted in separation from her husband.

Impact of the Decision

The Supreme Court upheld a long standing tradition of judicial deference to the decisions of US Consulates regarding the granting or denial of immigration visas. The case outlined here touches specifically on the consular ability to deny visas to non-resident spouses who violate provisions of the INA. However, the holding of *Kerry v. Din* highlights the non-reviewability of consular decisions by judicial bodies and has significant relevance to employers sponsoring employees for temporary visas and permanent residency.

The continuing application of the doctrine of consular non-reviewability means that employers and individual employees whose visa applications are denied or subject to lengthy "administrative processing" delays at Consular posts will continue to have very limited recourse to challenge such actions. Unlike decisions made by the Department of Homeland Security, which can be challenged administratively and through the federal courts, denials of visa applications by Consular posts remain beyond the scope of judicial review and thus subject to uncertainty. Employers with key employees who are traveling abroad and will thus require a visa to return to the United States will be well-served by ensuring that all risks and potential grounds of inadmissibility are thoroughly examined before the foreign national employee departs from the United States. ■

Tejas Shah is a 2006 graduate of the George Washington National Law School. Tejas concentrates on employment-based immigration as well as matters involving federal litigation, deportation defense, citizenship, and family-based permanent residency. He may be reached at tns@franczek.com.

Recent cases

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

Khan v. Holder, No. 13-2106 & 13-3385 Cons. (September 4, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Bd. did not err in finding that "terrorism bar" under 8 USC section 1182(a)(3)(B)(i)(I) applied so as to bar alien's (citizen of Pakistan) request for asylum and other relief based on finding that alien had supported faction of Mohajir Qaumi Movement in Pakistan (a Tier 3 terrorist group), where said group resorted to violent measures to terrorize fellow Pakistani citizens. "Terrorist activity" is defined to include acts that alien knows, or reasonably should know, affords material support for terrorist organization, and record showed that alien's attendance at instant organization's meetings, his distribution of supportive flyers and his recruitment of others qualified as material support for purposes of imposing instant bar. Ct., though, observed that alien had forfeited his best argument (by failing to raise it before Bd.) that he was actually unaware that organization had authorized terrorist acts committed by others in organization.

Jeudy v. Holder, No. 13-3174 (September 15, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition granted.

Bd. erred in finding that alien had not accrued seven years of continuous residence in U.S. that was required to support alien's request for cancellation of removal under 8 USC section 1229b(a), after finding that "stop-time" rule under section 1229b(d)(1), which took effect in 1997, could be applied retroactively to cut off alien's period of continuous presence as of date of alien's 1995 drug conviction. Stop-time rule could not be applied retroactively, where Congress did not provide any clear statement of retroactive intent, and alien was eligible to seek cancellation of removal where: (1) his 1995 drug conviction did not stop time for his continuous residence in U.S. as of time of said conviction, and (2) alien had accrued seven years of continuous residence at some point in 1996, which was prior to 1997 effective date of stop-time rule.

Antia-Perea v. Holder, Nos. 12-3641 et. al Cons. (September 25, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Record contained sufficient evidence to support Bd.'s removal order, even though it was based solely on documentary evidence that included Form I-213, which contained alien's admission that he was not U.S. citizen and was citizen of Columbia. Alien did not testify at removal hearing so as to call into question statements contained in Form I-213, and finding of removal can be supported based only on documentary evidence. Also, IJ did not err in denying alien opportunity to cross-examine author of Form I-213, where alien failed to introduce evidence challenging contents or reliability of Form I-213.

Velasco-Giron v. Holder, No. 12-2353 (September 26, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Bd. did not err in removing alien (citizen of Mexico) based on series of criminal convictions and finding that alien's conviction concerning California statute (engaging in sexual intercourse with 15-year-old minor, where alien was three years older than said minor) qualified as "aggravated felony" that precluded alien from applying for cancellation of removal relief. Ct., in relying upon 18 USC section 3509(a)(8), rejected alien's argument that it should have relied upon section 2243(a), which defined "sexual abuse" as, among other things, engaging in sexual act with 15-year-old minor, where there was four-year age difference between minor and alien. (Dissent filed).

Lopez-Esparza v. Holder, No. 13-3376 (October 23, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition granted

Bd. erred in denying alien's petition for cancellation of removal based on alleged 10-year continuous presence in U.S. Applicable regulations allowed alien to be away from U.S. for less than 90-day periods, as well as for any periods in aggregate that were less than 180 days, and record showed that alien was away from U.S. for three trips to Mexico for total of 114 days, with no trip lasting longer than 90 days. While Bd. based denial on failure of alien to be certain as to precise dates for each trip, record established at most that alien spent 137 days outside U.S., and thus would still have qualified for cancellation of removal. Moreover, fact that alien was not precise with respect to start and end dates of his trips, such imprecision did not create uncertainty about whether said trips exceeded instant 180-day limit.

Pine Top Receivables of Illinois, LLC v. Banco de Seguros del Estado, Nos. 13-1364 & 13-2331 Cons. (November 7, 2014) N.D. Ill., E. Div. Affirmed

In action to compel defendant-reinsurance company owned by Uruguay to arbitrate action by plaintiff-insurance company alleging that defendant owed plaintiff $2,352,464.08 under reinsurance contracts, Dist. Ct. did not err in denying plaintiff's motion to strike defendant's answer to complaint due to defendant's failure to post security under Illinois Unauthorized Insurers Process (UIPA) to cover instant claim. Plaintiff conceded that Foreign Sovereign Immunities Act (FSIA) generally applied to defendant, and FSIA barred application of UIPA to defendant since security required by UIPA qualified as "attachment" under FSIA. Moreover, Dist. Ct. did not err in finding that defendant was not obligated to arbitrate parties' dispute,

since contract in which plaintiff purchased instant claim did not include right to demand arbitration.

Cano-Oyarzabal v. Holder, No. 13-2470 (December 22, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Bd. did not err in finding that alien was not eligible for cancellation of removal relief where alien had been convicted on Wisconsin charge of operating vehicle for purposes of fleeing or eluding police officer. Said offense categorically qualified as crime involving moral turpitude, which precluded any cancellation of removal relief, since: (1) said statute required proof that alien knowingly attempted to flee or elude police officer after having been given signal to stop; and (2) alien's conduct greatly increased risk of endangering police officer and others.

Duarte-Salagosa v. Holder, No. 14-2276 (December 30, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition denied and dismissed in part

Record contained sufficient evidence to support Bd.'s denial of alien's petition for withholding of removal, based on claim that return to Mexico would subject alien to future persecution because Mexican drug cartel had previously kidnapped him in Mexico and held him for ransom until he escaped. Alien failed to show that instant kidnapping was motivated by alien's status as member in protected classification, rather than cartel's desire for money. Ct. of Appeals also lacked jurisdiction to consider appeal of denial of alien's asylum claim, where said claim was not filed until 11 years after alien had entered U.S., and where alien had raised no constitutional question of law.

Sibanda v. Holder, No. 14-2157 (February 13, 2015) Petition for Review, Order of Bd. of Immigration Appeals Petition granted

Alien (citizen of Zimbabwe) was entitled to reconsideration of her asylum application, where alien alleged that return to Zimbabwe would subject her to "bride-price" custom that would force her to become bride of her brother-in-law because her husband had died. While alien denied her application because she could not provide meaningful corroboration of her claim, record failed to show that alien could have reasonably obtained said corroboration, given her testimony that her family members sided with brother-in-law, that local police told her twice that they would not help her, and that there was lack of eyewitness to alien's claim that her brother-in-law had attempted to rape her in effort to enforce said custom. Accordingly, remand was required to have IJ make specific findings as to existence of custom and as to whether alien's claims of attacks by brother-in-law were credible.

Lenjinac v. Holder, No. 14-1807 (March 17, 2015) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Record contained sufficient evidence to support Bd.'s denial of alien's request for deferral of his removal under Convention Against Torture provisions, even though alien asserted that his return to Bosnia-Herzegovina would subject him to death threats, where members of military in his native country had previously killed male members of his family during civil war, and where his criminal conviction in U.S. would result in detention and torture in Bosnian prison system upon his return. Alien failed to present any evidence that anyone in Bosnia retained interest in torturing him upon his return. Fact that torture happened to others in Bosnia or in its prisons did not require different result

Chen v. Holder, No. 14-2411 (April 1, 2015) Petition for Review, Order of Bd. of Immigration Appeals Petition granted

Bd. erred in denying alien's motion to reopen his removal proceedings, where alien alleged that his attorneys had mishandled his case by neglecting to offer available evidence to support alien's asylum application. While record showed that alien had submitted two counterfeit birth control certificates of his alleged children in attempt to establish that return to China would subject him to persecution as violator of China's one-child policy, remand was required, where Bd. ignored potentially convincing evidence contained in motion to reopen establishing that alien had fathered two children. Accordingly, Bd. should determine if alien's attorneys incompetently neglected to offer favorable evidence that might have resolved inconsistencies in record identified by IJ, and whether IJ would have ruled against alien in light of new evidence.

Palma-Martinez v. Lynch, No. 14-1866 (May 11, 2015) Petition for Review, Order of Bd. of Immigration Appeals Petition denied

Record contained sufficient evidence to support IJ's order removing alien (native of Guatemala) on grounds that alien was removable under section 237(a)(2)(A)(i) of INA for having committed crime of moral turpitude arising out of his conviction for conspiracy to transfer false identification document. While alien argued that he was eligible for stand-alone waiver of inadmissibility under section 212(h) of INA, alien was not eligible for said waiver since: (1) section 212(h) limits said waiver to aliens who seek visa, admissions or adjustment of status; and (2) alien was merely attempting to use waiver to avoid his removal.

Hadmid v. Holder, No. 14-1477 (April 21, 2015) Petition for Review, Order of Bd. of Immigration Appeals Petition granted

Record failed to support IJ's denial of asylum application by alien (native of Mongolia) who asserted that he feared future persecution if forced to return to Mongolia, due to fact that he had been threatened by agents of partially-owned govt. mining operation after he had denounced two prominent and corrupt Mongolian politicians. While IJ found that alien was not credible because his testimony at hearing differed from interviews alien gave at airport upon his entry into U.S., alien was entitled to remand for new credibility determination where transcripts of airport interviews suggested that alien

faced significant language barrier in understanding what was being asked of him.

Kerry v. Din, No. 13-1402 (June 15, 2015)

The Ninth Circuit's judgment—that Din's liberty interest in her marriage entitled her to judicial review of her husband's visa denial, and that the Government deprived her of that interest without due process by denying the visa application without giving a more detailed explanation of its reasons—is vacated, and the case is remanded.

Reyes Mata v. Lynch, No. 14-185 (June 15, 2015)

The Fifth Circuit erred in declining to take jurisdiction to review the Board of Immigration Appeals' decision denying Mata's request for equitable tolling of the time limit for filing a motion to reopen Mata's deportation case.

Ortiz v. Martinez, No. 14-2048 (June 15, 2015) N.D. Ill., E. Div. Affirmed

Dist. Ct. did not err in denying plaintiff-Mexican citizen's petition under Hague Convention seeking return of plaintiff's daughter that defendant-mother of child had removed to Chicago, where Dist. Ct. could properly find that although said child had been wrongfully removed from Mexico, child abuse exception to Convention's mandatory-return rule applied so as to support instant denial. Record contained substantial evidence that plaintiff had sexually-abused his daughter, where defendant and expert witness who had examined daughter testified to said abuse. Moreover, Dist. Ct.'s credibility findings were entitled to deference, where plaintiff had failed to establish that evidence relied upon by Dist. Ct. was "legally incredible."

Lara v. Lynch, No. 14-3305 (June 18, 2015) Petition for Review, Order of Bd. of Immigration Appeals Petition granted

Record failed to support IJ's removal order of alien, citizen of Mexico who had been married to U.S. citizen, where remand was ordered after IJ denied alien's request for permanent residency through issuance of discretionary waiver under 8 USC section 1186(a)(C)(4)(B) for individuals who can show that they had entered into failed marriages in good faith. Bd. affirmed IJ's denial of discretionary waiver based on legal error, where: (1) Bd. elected to credit all of alien's testimony, including his contention that love, rather than residency, motivated him to accept former wife's marriage proposal; (2) govt. failed to present any contrary evidence; and (3) under applicable preponderance of evidence standard, only conclusion that Bd. could logically reach was that alien's marriage was bona fide. ■

Upcoming CLE programs

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

October

Thursday, 10/1/15- Teleseminar—Estate & Trust Planning for Non-traditional Families.

Friday, 10/02/15- Rockford, NIU Rockford—Solo and Small Firm Practice Institute Series—A Closer Look: Securing and Growing Your Practice – Fall 2015. Presented by the ISBA. 8:15-5:15 pm.

Tuesday, 10/6/15- Webinar—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3-4.

Tuesday, 10/6/15- Teleseminar—Insurance and Indemnity in Real Estate.

Wednesday, 10/7/15- Teleseminar—Choice of Law and Choice of Forum in Contracts.

Thursday, 10/08/15- Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3-4.

Thursday, 10/8/15- Teleseminar—Health Care Issues in Estate Planning.

Thursday, 10/8-Friday, 10/9/15- Grafton, Pere Marquette State Park and Lodge—A Family Law Financial Trial. Presented by the ISBA Family Law Section. 8:30-5:30 both days.

Friday, 10/09/15- Springfield, Lincoln Land Community College Logan Hall Room 1138—Computer Basics 2015: Is This Thing On? Presented by the ISBA Senior Lawyers Section, Co-sponsored by the ISBA Young Lawyers Division. 8:30-12:15 am.

Monday, 10/12/15- CRO and Fairview Heights, Four Points Sheraton—Advanced Workers Compensation. Presented by the ISBA Workers Compensation Section. 9:00 am – 4:00 pm.

Monday, 10/12/15- Teleseminar- LIVE REPLAY—Ethics, Disqualifications & Sanctions.

Tuesday, 10/13/15- WEBINAR—Health Care Workshop: "At Risk" – Advising Health Systems that Own a Health Insurer. Presented by ISBA Health Care Section Council. 12-1:30 (central time, speaker on Eastern).

Tuesday, 10/13/15- Webinar—Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3-4.

Tuesday, 10/13/15- Teleseminar—Advanced Choice of Entity, Part 1.

Wednesday, 10/14/15- Teleseminar—Advanced Choice of Entity, Part 2.

Friday, 10/16/15- CRO—Guardianship Bootcamp 2015. Presented by the ISBA Trusts and Estates. ALL DAY.

Friday, 10/16/15- Elgin Community College—Traffic Law Updates- Fall 2015. Presented by the ISBA Traffic Law and Courts Section Council. 8:55- 4 pm.

Monday, 10/19/15- Teleseminar—2015 Americans With Disabilities Act Update.

Tuesday, 10/20/15- Teleseminar—2015 Americans With Disabilities Act Update.

Wednesday, 10/21/15- Bloomington-Normal Marriott Hotel—Real Estate Law Update- 2015. Presented by the ISBA Real Estate Law Section Council. 8:30 am – 4:30 pm.

Wednesday, 10/21/15- Teleseminar-LIVE REPLAY—Business Planning with S Corps, Part 1. Thursday, 10/22/15- CRO STUDIO WEBCAST. Navigating a Section 31 Enforcement Case. Presented by the Environmental Law Section Council. 9:30-10:45 am.

Thursday, 10/22/15- CRO—Practice Management, The Cloud, and Your Firm. Presented by the ISBA. 1:00 pm- 4:30 pm.

Thursday, 10/22/15- Teleseminar- LIVE REPLAY—Business Planning with S Corps, Part 2.

Friday, 10/23/15—CRO—From Opening to Close—A Construction Trial and the Technology to Win Your Case. Presented by the Construction Law Section Council; Co-Sponsored by the Real Estate Law Section Council. 8:30-4:45.

Tuesday, 10/27/15- Teleseminar—Offers-in-Compromise: Settling Tax Liability for Individuals and Business Owners.

Wednesday, 10-28- Friday, 10-30—CRO—Advanced Mediation/Arbitration Training Master Series. Presented by the ISBA. 8:00-5:00 each day.

Friday, 10/30/15- Danville Public Library—Pro Bono Practice and Professionalism: the Basics of Estate Planning, the Guardianship Process, and Family Law. Presented by the ISBA Standing Committee on the Delivery of Legal Services. 9:30 am- 4:30 pm.

November

Tuesday, 11/03/15- Teleseminar—Indemnification & Hold Harmless Agreements in Business & Real Estate.

Wednesday, 11/04/15- Teleseminar—Estate & Income Tax Planning Issues in Divorce.

Thursday, 11/05/15- ISBA Regional Office—Hot Topics in Criminal Law in Illinois- 2015. Presented by the ISBA Criminal Justice Section Council. 9:00 am-5:00 pm. ■

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