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IMMIGRATION PRACTICE IN ARKANSAS: A PRACTITIONERS' GUIDE

*Patrick W. McAlpine**
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I. INTRODUCTION

Very few issues have caught the attention of the Arkansas public in the last decade than the issue of immigration, specifically Hispanic immigration to this state. Much has been made of the recent census data showing Arkansas with the highest percentage growth among Hispanics in the 1990's.¹ Carrying that rate of growth out to the year 2010, Arkansas' Hispanic population will have grown to approximately 145,000 inhabitants.

In the face of this immigration, the legal community in the state has been slow to react. A small but growing number of practitioners market themselves to the immigrant population, but relatively few have the expertise necessary to provide adequate representation for immigrants if their problems extend beyond the garden-variety criminal or family law issues.

Because immigration is localized in certain areas of the state, however, its effects are not discussed statewide. In particular, the legal community has not significantly addressed the ramifications of the influx of immigrants to Arkansas. In many cases, neither immigrants nor attorneys are prepared for the challenges presented by representation of immigrants.

Although there is a great deal of uncertainty among Arkansas practitioners as to immigration law issues, the immigration legal market is an unfilled niche in this state.² While immigration law is a complex and transient area of the law, it is not completely indecipherable for

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1. Arkansas's Hispanic population was projected to increase from 19,876 to 53,729—a 170.3% increase—between 1990 and 1999. See Paul R. Campbell, U.S. Bureau of the Census, *Population Projections for States by Age, Sex, Race, and Hispanic Origin: 1995 to 2025* (Oct. 1996) <<http://www.census.gov/population/www/projections/pp147.html>>.

2. As of May 16, 2001, the Arkansas Bar Association's Internet lawyer locator service only listed five attorneys under the immigration and naturalization section. See Arkansas Bar Association, *arkansasfindalawyer.com* (visited May 16, 2001) <<http://www.arkansasfindalawyer.com>>.

Arkansas lawyers. This article will attempt to provide some guidance for Arkansas practitioners looking to expand their practices into the immigration field. The article will provide a series of common scenarios and will then discuss the law applicable to each scenario.

II. POSSIBLE IMMIGRATION SCENARIOS

A. Scenario 1

You get a phone call from a prospective new client, saying only that he needs the help of an attorney and makes an appointment to see you. When he comes in, the client informs you that he needs immigration advice. The client shows you paperwork indicating that he is currently in removal proceedings in front of an immigration court. A "MASTER" hearing in front of an immigration judge is set for the next week. You want to help, but immigration seems like such a complex and specialized area of the law. What can you do?

B. Scenario 2

A client makes an appointment to see you about an immigration matter. It is unclear what exactly the problem is until you meet in person. At your meeting, the client informs you that he wants your help to "become legal." When you use the time-tested method of getting rid of unwanted potential clients (asking for a retainer), the potential client takes out several large bills and places them on your conference table.

C. Scenario 3

One of your clients, a hospital, is hiring a physician for its staff. After the hospital conducts interviews, its choice for the position is a top-notch foreign physician. You receive a call from the human resources manager at the hospital asking you how it should go about hiring this individual. What must the hospital do before the physician comes on staff?

III. IMMIGRATION CHECKLIST FOR ARKANSAS PRACTITIONERS

A. Communication

1. *Ensure That You Are Able to Communicate with Your Client*

The strongest attorney-client relationships are built on good communication between lawyer and client. In fact, all attorneys are under an ethical obligation to keep their clients informed of developments in their cases.³ With immigration clients, however, this most fundamental duty is often in jeopardy from the inception of the attorney-client relationship.

The most obvious cause of any communication problem is a language barrier. Often, clients with immigration problems do not have a good command of the English language. Sometimes, the very heart of their immigration problems is their inability to communicate with immigration authorities or other government or regulatory personnel. One solution to the language problem is the use of professional translation services.⁴ As is often the case, however, most clients and most lawyers will not wish to hire a professional translator before seeing the extent of any possible case and whether the reward will be worth the out-of-pocket expense involved in hiring such people. In this case, family members are invaluable tools to help attorneys keep in contact with their clients. In immigration practice, an attorney should never discount the influence of family members on a client. Conversely, an attorney should not underestimate the assistance family members can give in representation.

The best way to approach the translation problem in an immigration law practice is to speak the language spoken by most of your clients, or have attorneys or paralegals in your office who have some foreign

3. Model Rule of Professional Conduct 1.4:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.4 (2000).

4. There are several professional translation services listed in the Little Rock telephone directory. Various entities such as the Centro Latino, Catholic Social Services, and University of Arkansas at Little Rock may also have information on translators or professional translation services. The immigration court in Memphis uses a professional translation service. Federal regulations provide that a client may request the services of a translator at any hearing held before an immigration court. See 8 C.F.R. § 3.22 (2001) (discussing oaths required of court interpreters).

language ability. This allows for more direct communication and the ability to explain complex legal issues clearly, without running the risk of incorrect or misleading translation.

2. *Use a Clear Engagement Letter*

It is a good idea in any attorney-client relationship to have an engagement letter tailored to the particular representation.⁵ A clear and concise engagement letter can save you many headaches later in the relationship and will answer many clients' questions on the front end. An engagement letter should be simple and straightforward. If necessary, the letter should be translated into a language the client can read. An attorney should not rely on an interpreter to translate an engagement letter "on the fly" at your first face-to-face meeting with a potential client. You should have an accurate, professional translation done prior to your first meeting with your client.

As part of the engagement letter and initial contact process, an attorney should have accurate contact information for her clients and potential clients. Because immigration clients tend to be somewhat itinerant, it is imperative to stress the need for the client to keep you informed of changes of address, phone number, etc. In addition, immigration practitioners must tell their clients to immediately forward to counsel any documents they receive from the Immigration and Naturalization Service ("INS") or immigration court. This is especially important where counsel has not entered a formal appearance for the client.⁶ Failure to keep apprised of a client's whereabouts or failure to

5. See MODEL RULE OF PROFESSIONAL CONDUCT 1.5(b). This rule states: "When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation." *Id.*

6. Immigration practice is "form-driven." Depending on the nature of pending proceedings against a client, a lawyer must submit one of two types of Notice of Entry of Appearance Forms, a G-28 form or an EOIR-28 form. The G-28 form is used in such administrative immigration proceedings before the INS as petitions for naturalization, employment authorization, or permanent residence. The EOIR-28 form is used when your client is in proceedings before the Immigration Court. Printable G-28 and EOIR-28 forms are available on the Internet. See United States Department of Justice, Immigration and Naturalization Service, *Forms and Fees* (visited Mar. 15, 2001) <<http://www.ins.usdoj.gov/graphics/formsfee/forms/index.htm>> [hereinafter *Forms and Fees*]; United States Department of Justice, Executive Office for Immigration Review, *EOIR Forms* (visited Mar. 15, 2001) <<http://www.usdoj.gov/eoir/formlist.htm>>.

receive notices of hearings or other important deadlines can have serious adverse consequences for the attorney.⁷

B. The Initial Interview

Unless your immigration practice is driven primarily by a long-standing client that you do much business with, such as a large employer, your immigration clients will likely be new to you. It is important to have a standing policy in effect in your office so that other attorneys and staff know how to handle new immigration matters properly. One rule of thumb is that you should never take an immigration case “sight-unseen.”⁸ Prior to accepting representation in any immigration matter, you should set up an initial interview.⁹ For your own protection and for the client’s comfort, the initial interview is a crucial part of the representation.

At the initial interview, make sure to ask and fully understand the following elements of the prospective client’s immigration problem:

- Nationality;¹⁰
- Date of entry into the United States;
- Mode/method of entry—undocumented or documented;
- Current immigration status;
- How long their current immigration status lasts;
- Marital status;
- Children—when, where, and to whom they were born;
- Any ongoing immigration proceedings;
- Criminal history;
- Selective Service history if applicable; and
- Employment status/documentation.

7. See 8 C.F.R. §§ 3.101-3.109 (2001) (discussing attorney discipline in immigration proceedings).

8. AMERICAN IMMIGRATION LAWYERS ASSOCIATION, IMMIGRATION & NATIONALITY LAW HANDBOOK 34 (2000).

9. The sequence of events should progress as follows: (1) initial client contact (usually by telephone call); (2) conflicts check; (3) face-to-face interview; (4) conflicts check (for other names/entities discussed in the interview); (5) engagement letter.

10. The term “national” as defined in the Immigration and Nationality Act means “a person owing permanent allegiance to a state.” 8 U.S.C. § 1101(a)(21) (1994). The term “naturalization” means “the conferring of nationality of a state upon a person after birth, by any means whatsoever.” 8 U.S.C. § 1101(a)(23) (1994).

It is a good idea to ask potential clients to bring copies of all immigration documents to the initial interview. This practice will help you get a better handle on the nature of the problem and upcoming deadlines.

At the beginning of the interview, discuss your standard billing practices for immigration matters. Decide on your own (without reference to particular clients) how you want your immigration practice to develop economically.

C. After Taking the Case—File the Proper Forms

To represent an alien before the INS, you must file Form G-28; to represent an alien before the immigration court, you must file Form EOIR-28.¹¹ Once you decide to take the immigration case, file the appropriate form as soon as possible. The important part of entering your appearance is that you will be copied on all correspondence from the INS or the immigration court related to your client. Do not file the form, however, until you are certain you are willing and able to represent the client, because the INS or Immigration Court will list you as that client's attorney of record. If you subsequently decide not to take the case and the client (or a subsequent attorney) fails to appear for a hearing or otherwise neglects responsibilities, the immigration court may impose sanctions on the attorney of record.¹²

D. Monthly Status Calls

Immigration clients (like all clients) want to know what is happening with their case. As such, even if there is nothing to report, a periodic status letter helps your client feel like he is getting value for his money.

E. Contact with the Immigration Court/INS Office

Often, the INS office handling your client's case is unavailable via telephone. If that is the case, send letters in order to get action on your client's file. An immigration court has a clerk and a standard docketing procedure, just like regular courts.¹³

11. 8 C.F.R. pt. 292 (2001). *See also supra* note 6 (listing Internet sites with online forms).

12. *See* 8 C.F.R. § 292.3 (2001).

13. *See* 8 C.F.R. § 3.1 (2001). The address of the Immigration Court Clerk in

IV. THE IMMIGRATION COURT

A. The Immigration Court System

The Office of the Chief Immigration Judge (“OCIJ”) is headed by the Chief Immigration Judge, who is supported by two Deputy Chief Immigration Judges and eight Assistant Chief Immigration Judges.¹⁴ These Assistant and Deputy Chief Immigration Judges provide overall program direction, articulate policies and procedures, and establish priorities for more than 200 United States Immigration Judges located in the fifty-two immigration courts throughout the United States.¹⁵ Immigration judges are responsible for conducting formal court proceedings, and act independently in their decision-making capacity.¹⁶ Their decisions are administratively final, unless appealed or certified to the Board of Immigration Appeals (“BIA”).¹⁷

Most of the cases heard by immigration judges are removal proceedings. In removal proceedings, Immigration Judges determine whether an individual arriving from a foreign country should be allowed to enter the United States, or in the case of individuals who are living in the country, whether they should be removed. Each judge has jurisdiction to consider various claims and forms of relief available in exclusion: deportation, removal, and asylum proceedings.¹⁸ If deportability or inadmissibility is proven, the immigration judge will then focus on the type of relief from removal that may be available to the alien. The major forms of relief from removal include asylum, relief under the United Nations Convention Against Torture, cancellation of removal, adjustment of status, and voluntary departure.¹⁹

Memphis is: Immigration Court Clerk, Clifford B. Davis Federal Building, 167 North Main, Room 460, Memphis, Tennessee 38103. The telephone number is (901) 544-3818.

14. *See id.*

15. *See* 8 C.F.R. § 3.9 (2001).

16. *See* 8 C.F.R. § 3.10 (2001).

17. *See* 8 C.F.R. § 3.1(b); 8 C.F.R. § 3.39 (2001).

18. *See* 8 C.F.R. § 3.14 (2001).

19. *See* United States Department of Justice, Executive Office for Immigration Review, *Office of the Chief Immigration Judge* (visited Mar. 15, 2001) <<http://www.usdoj.gov/eoir/ocijingo.htm>>. The Chief Immigration Judge also administers the Criminal Alien Institutional Hearing Program, which currently has programs in nearly all 50 states, Puerto Rico, the District of Columbia, and selected Bureau of Prison facilities. The aim of this program is to adjudicate the immigration status of alien inmates incarcerated by federal, state, and municipal correctional authorities. *See id.*

B. The Board of Immigration Appeals

The BIA is the highest administrative body for interpreting and applying immigration laws. The BIA is located in Falls Church, Virginia, and hears oral arguments much like a standard court of appeals.²⁰ The BIA has been given nationwide jurisdiction to hear appeals from certain decisions rendered by immigration judges and by district directors of the INS in a wide variety of proceedings in which the Government of the United States is one party and the other party is either an alien, a citizen, or a business firm.²¹

20. See 8 C.F.R. § 3.1(e) (2001).

21. See 8 C.F.R. § 3.1(b) (2001). This regulation gives the complete appellate jurisdiction of the BIA. The regulation states:

(b) *Appellate jurisdiction.* Appeals shall lie to the Board of Immigration Appeals from the following:

(1) Decisions of Immigration Judges in exclusion cases, as provided in 8 CFR part 240, subpart D.

(2) Decisions of Immigration Judges in deportation cases, as provided in 8 CFR part 240, subpart E, except that no appeal shall lie seeking review of a length of a period of voluntary departure granted by an Immigration Judge under section 244E of the Act as it existed prior to April 1, 1997.

(3) Decisions of Immigration Judges in removal proceedings, as provided in 8 CFR part 240, except that no appeal shall lie seeking review of the length of a period of voluntary departure granted by an immigration judge under section 240B of the Act or part 240 of this chapter.

(4) Decisions involving administrative fines and penalties, including mitigation thereof, as provided in part 280 of this chapter.

(5) Decisions on petitions filed in accordance with section 204 of the act (except petitions to accord preference classifications under section 203(a)(3) or section 203(a)(6) of the act, or a petition on behalf of a child described in section 101(b)(1)(F) of the act), and decisions on requests for revalidation and decisions revoking the approval of such petitions, in accordance with section 205 of the act, as provided in parts 204 and 205, respectively, of this chapter.

(6) Decisions on applications for the exercise of the discretionary authority contained in section 212(d)(3) of the act as provided in part 212 of this chapter.

(7) Determinations relating to bond, parole, or detention of an alien as provided in 8 CFR part 236, subpart A.

(8) Decisions of Immigration Judges in rescission of adjustment of status cases, as provided in part 246 of this chapter.

(9) Decisions of Immigration Judges in asylum proceedings pursuant to § 208.2(b) of this chapter.

(10) Decisions of Immigration Judges relating to Temporary Protected Status as provided in 8 CFR part 244.

(11) Decisions on applications from organizations or attorneys requesting to be included on a list of free legal services providers and

The BIA consists of up to twenty-one Board Members, including a chairman and two vice chairmen.²² The BIA considers matters and renders decisions in one of four ways:

1. The BIA uses a panel system similar to that used by the United States Circuit Courts of Appeal.²³ Cases are assigned to specific panels pursuant to the chairman's administrative plan. The chairman may change the composition of the sitting panels and may reassign board members from time to time.²⁴
2. The BIA may, by majority vote or by direction of the chairman, assign a case or group of cases for full en banc consideration.²⁵ Full en banc consideration is reserved for matters that merit particular consideration and scrutiny. Therefore, relatively few cases are considered en banc.
3. The BIA may, by majority vote or by direction of the chairman, assign a case or group of cases for limited en banc consideration.²⁶ A "limited" en banc involves the chairman and eight board members.²⁷
4. Certain matters require the consideration of only a single board member.²⁸

decisions on removals therefrom pursuant to § 3.65.

(12) Decisions of Immigration Judges on applications for adjustment of status referred on a Notice of Certification (Form I-290C) to the Immigration Court in accordance with §§ 245.13(n)(2) and 245.15(n)(3) of this chapter or remanded to the Immigration Court in accordance with §§ 245.13(d)(2) and 245.15(e)(2) of this chapter.

Id. The BIA also has jurisdiction by certification in any case arising under 8 C.F.R. § 3.1(b). See 8 C.F.R. § 3.1(c) (2001). The Board has discretion to review certified cases, but does not have to take them. See 8 C.F.R. § 3.7 (2001). See also United States Department of Justice, Executive Office for Immigration Review, *Board of Immigration Appeals* (visited March 15, 2001) <<http://www.usdoj.gov/eoir/biainfo.htm>>.

22. See 8 C.F.R. § 3.1(a)(1)(2001); United States Department of Justice, Executive Office for Immigration Review, *Board of Immigration Appeals* (visited March 15, 2001) <<http://www.usdoj.gov/eoir/biainfo.htm>>.

23. See 8 C.F.R. § 3.1(a)(1). Matters before the Board are generally adjudicated by sitting panels of three Board Members, who render decisions by majority vote. See *id.*

24. See *id.*

25. See 8 C.F.R. § 3.1(a)(4)(i).

26. See 8 C.F.R. § 3.1(a)(4)(ii).

27. See 8 C.F.R. § 3.1(a)(4)(ii).

28. See generally 8 C.F.R. § 3.1(a), (d) (2001). 8 C.F.R. § 3.1(a)(7) states:

Affirmance without opinion. (i) The Chairman may designate, from time-to-time, permanent Board Members who are authorized, acting alone, to affirm decisions of Immigration Judges and the Service without opinion. The

In addition, the BIA is responsible for the recognition of organizations and accreditation of representatives requesting permission to practice before INS, the immigration courts, and the board.²⁹ Decisions of the BIA are binding on all INS officers and immigration judges unless modified or overruled by the Attorney General or a federal court.³⁰ Its decisions are subject to judicial review in the federal courts.³¹ The majority of appeals reaching the BIA involve orders of removal and applications for relief from removal. Other cases before the BIA include the exclusion of aliens applying for admission to the United States, petitions to classify the status of alien relatives for the issuance of preference immigrant visas, fines imposed upon carriers for the violation of immigration laws, and motions for reopening and

Chairman may designate certain categories of cases as suitable for review pursuant to this paragraph. (ii) The single Board Member to whom a case is assigned may affirm the decision of the Service or the Immigration Judge, without opinion, if the Board Member determines that the result reached in the decision under review was correct; that any errors in the decision under review were harmless or nonmaterial; and that (A) the issue on appeal is squarely controlled by existing Board or federal court precedent and does not involve the application of precedent to a novel fact situation; or (B) the factual and legal questions raised on appeal are so insubstantial that three-Member review is not warranted. (iii) If the Board Member determines that the decision should be affirmed without opinion, the Board shall issue an order that reads as follows: "The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. See 8 CFR 3.1(a)(7)." An order affirming without opinion, issued under authority of this provision, shall not include further explanation or reasoning. Such an order approves the result reached in the decision below; it does not necessarily imply approval of all of the reasoning of that decision, but does signify the Board's conclusion that any errors in the decision of the Immigration Judge or the Service were harmless or nonmaterial. (iv) If the Board Member determines that the decision is not appropriate for affirmance without opinion, the case will be assigned to a three-Member panel for review and decision. The panel to which the case is assigned also has the authority to determine that a case should be affirmed without opinion.

8 C.F.R. § 3.1(a)(7).

29. See 8 C.F.R. § 3.1(d)(4). This section states:

(4) *Rules of practices: Discipline of attorneys and representatives.* The Board shall have authority, with the approval of the Director, EOIR, to prescribe rules governing proceedings before it. It shall also determine whether any organization desiring representation is of a kind described in § 1.1(j) of this chapter, and shall regulate the conduct of attorneys, representatives of organizations, and others who appear in a representative capacity before the Board or the Service of any special Inquiry Officer.

8 C.F.R. § 3.1(d)(4).

30. See 8 C.F.R. 3.1(g) (2001).

31. See 28 U.S.C. § 1331 (1994).

reconsideration of decisions previously rendered.³² The BIA is directed to exercise its independent judgment in referring cases to the Attorney General.³³ BIA decisions designated for publication are printed in bound volumes entitled *Administrative Decisions Under Immigration and Nationality Laws of the United States*.³⁴

C. Researching and Citing Immigration Decisions³⁵

In both Immigration Courts and before the BIA, controlling case precedent is reported in BIA Precedent Decisions, published in a bound reporter entitled *Administrative Decisions Under Immigration & Nationality Laws of the United States* (“I&N Decisions”).³⁶ Like traditional case reporters, the proper citation form includes the volume number, the reporter abbreviation (“I&N Dec.”), the first page of the decision, the name of the adjudicator (BIA, A.G., etc.), and the year of the decision.³⁷ When a precedent decision has not yet been published in a bound volume of the reporter, the decision can be cited to the BIA, but should be listed according to its “Interim Decision” number.³⁸ The Interim Decision citation should be used *only* when a precedent decision is still in slip opinion form.

All precedent decisions should be cited using “*Matter of*” rather than “*In re.*”³⁹ Not all BIA decisions are binding precedent. Like many courts, the BIA makes determinations whether decisions should be “precedent” or “non-precedent” decisions. As in most courts, citation to non-precedent BIA cases by parties not bound by the decision is

32. See 8 C.F.R. § 3.1(b) (2001); 8 C.F.R. § 3.2 (2001).

33. See 8 C.F.R. § 3.1(h) (2001).

34. Precedent decisions are also available on the Internet. See United States Department of Justice, Executive Office for Immigration Review, *Board of Immigration Appeals Precedent Decisions* (visited March 15, 2001) <<http://www.usdoj.gov/eoir/efoia/bia/biaindx.htm>>.

35. Much of this material is taken from the BIA Practice Manual, which is also available on the Internet. See United States Department of Justice, Executive Office for Immigration Review, *Board of Immigration Appeals Practice Manual* (visited Mar. 15, 2001) <<http://www.usdoj.gov/eoir/bia/qapracmanual/pracmancover.htm>>.

36. See BOARD OF IMMIGRATION APPEALS, DEPARTMENT OF JUSTICE, BIA PRACTICE MANUAL 50 (2000), available at <<http://www.usdoj.gov/eoir/bia/quapracmanual/pracmancover.htm>> [hereinafter BIA PRACTICE MANUAL].

37. See *id.* For example, a decision reported in the I&N Decisions reporter would be cited as follows: *Matter of Gomez-Giraldo*, 20 I&N Dec. 957 (BIA 1995). See *id.*

38. See *id.* For example, an interim decision would be cited as follows: *Matter of Gomez-Giraldo*, Interim Decision 3242 (BIA 1995). See *id.*

39. See *id.*

discouraged.⁴⁰ When citation is necessary, the citation should include the alien's full name, alien registration number, and the decision date.⁴¹

The Attorney General and certain officers of the INS also issue precedent decisions binding on the BIA. Like BIA precedents, these decisions are released first in slip opinion Interim Decision form and later in the bound editions of *I&N Decisions*. Attorney General and INS precedent decisions should be cited in accordance with the same rules.⁴² Federal and state court cases used in immigration proceedings should be cited according to standard legal convention found in the *Bluebook*.⁴³

V. LOCAL PRACTICE

The immigration court serving Arkansas is located in Memphis, Tennessee, but an attorney does not have to be a member of the Tennessee Bar to practice before the immigration court. An attorney can be a member of the bar of the highest court of any state to practice in immigration court.⁴⁴ Non-attorneys can also be credentialed to practice before an immigration court.⁴⁵

40. *See id.*

41. *See id.* For unpublished cases, the use of "*Matter of*" is not favored. In addition, the petitioner's INS file number can be used to cite the decision. For example, see Jane Smith, A12 345 678 (BIA July 1, 1999). *See id.*

42. *See* BIA PRACTICE MANUAL, *supra* note 36, at 50.

43. *See id.*

44. *See* 8 C.F.R. § 292.1(a) (2001). *See also* 8 C.F.R. § 1.1(f) (2001). 8 C.F.R. § 1.1(f) states:

The term *attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law.

8 C.F.R. § 1.1(f).

45. *See* 8 C.F.R. § 292.1 (2001). This section provides for great flexibility in that many types of persons are able to represent others before the Immigration Court.

(a) A person entitled to representation may be represented by any of the following:

(1) *Attorneys in the United States*. Any attorney as defined in § 1.1(f) of this chapter.

(2) *Law students and law graduates not yet admitted to the bar*. A law student who is enrolled in an accredited law school, or a law graduate who is not yet admitted to the bar, provided that:

(i) He or she is appearing at the request of the person entitled to representation;

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid

Proceedings before the Memphis Immigration Court usually follow a pattern—the court will hold a “Master Calendar” hearing in which the court sets a date and time for the main hearing and allocates court time for the hearing.⁴⁶ Parties may submit a written pleading in lieu of a

program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and

(iv) The law student’s or law graduate’s appearance is permitted by the official before whom he or she wishes to appear (namely an immigration judge, district director, officer-in-charge, regional director, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative representing an organization described in § 292.2 of this chapter who has been accredited by the Board.

(3) *Reputable individuals.* Any reputable individual of good moral character, provided that:

(i) He is appearing on an individual case basis, at the request of the person entitled to representation;

(ii) He is appearing without direct or indirect remuneration and files a written declaration to that effect;

(iii) He has a preexisting relationship or connection with the person entitled to representation (e.g., as a relative, neighbor, clergyman, business associate or personal friend), provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.

8 C.F.R. § 292.1(a).

46. See MEMPHIS IMMIGRATION COURT, UNITED STATES DEPARTMENT OF JUSTICE, LOCAL OPERATING PROCEDURES 2 (1999). available at <<http://www.usdoj.gov/eoir/efoia/ocij/locoproc.htm>>. The Local Operating Procedures provide that parties shall be prepared for the following at the Master Calendar hearing:

1. Respondent shall be prepared to respond to the allegations contained in the charging document.
2. Respondent shall be prepared to indicate all applications should for relief from immigration proceedings.
3. Respondent shall be prepared to state (in hours) the estimated time needed to present the case and if an interpreter will be required at the Individual Calendar hearing.

personal appearance at the Master Calendar hearing.⁴⁷ Proceedings before an immigration court are somewhat informal—attorneys and clients remain seated to address the Court and procedure at hearings follows the rules contained in 8 C.F.R. §§ 3.31-3.41. The Memphis Immigration Court has a set of Local Operating Procedures that all attorneys and litigants must follow.⁴⁸ In addition to information about the Master Calendar and individual hearings, the Local Operating Procedures contain filing requirements and proposed forms for commonly-used motions and orders.⁴⁹

VI. THE INS ADMINISTRATIVE SYSTEM

Many different types of requests for benefits are adjudicated, at least initially, through the INS administrative procedures. These benefits include:

- Emergency travel;
- Naturalization;
- Lawful permanent residency;
- Temporary visitors;
- International adoptions;
- Temporary protected status;
- Asylum/refugees; and
- NAFTA immigrants.

The INS procedure is usually less formal than immigration court, and the review provided by the INS is administrative in nature. Two of the most common forms of immigration benefits or immigration relief administered initially by the INS are naturalization and asylum.

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4. The Immigration and Naturalization Service (INS) shall be prepared to establish respondent's deportability/removability or to contest the applicant's admissibility and state its position on all issues and applications for relief.

Id.

47. *See id.* The written pleading must contain the information required in Procedure 3A, and be in compliance with the format specified in Appendix C to the Local Operating Procedures. This pleading must also be accompanied by a motion to waive presence pursuant to 8 C.F.R. § 3.25, and be accompanied by a proposed order in the format required by Appendix E of the local operating procedures. *See id.*

48. *See id.*

49. *See id.*

A. Naturalization

The Immigration and Naturalization Act⁵⁰ sets out the requirements for naturalization under United States law. The source of the naturalization provisions is in the United States Constitution.⁵¹ To be naturalized, an applicant must:

1. Reside continuously in the country for five years⁵² after being lawfully admitted for permanent residence;⁵³
2. Be eighteen years old at the time of filing the application for naturalization;⁵⁴
3. Be a person of good moral character;⁵⁵

50. 8 U.S.C. §§ 1101-1105 (1994 & Supp. V 1999).

51. *See* U.S. CONST. art. I, §8.

52. Residence in the United States must occur (a) subsequent to lawful admission for permanent residence; and (b) for a period of five years immediately preceding the filing of the application for naturalization. *See* 8 U.S.C. § 1427 (1994 & Supp. V 1999). This residency requirement is shortened to three years for persons married to United States citizens. *See* 8 U.S.C. § 1430 (1994 & Supp. V 1999). Applicants are considered residents of the state from which their annual federal income tax returns have been and are being filed. *See* 8 C.F.R. § 316.5(b)(4) (2001).

53. *See* 8 U.S.C. § 1427(a) (Supp. V 1999). There are some exceptions for persons not lawfully admitted if those person served in the United States military service. *See* 8 U.S.C. 1440(a) (Supp. V 1999). In addition, any person who is naturalized while not lawfully admitted for permanent residence is subject to denaturalization proceedings. *See Fedorenko v. United States*, 449 U.S. 490, 506 (1981).

54. *See* 8 U.S.C. 1445(b) (1994).

55. *See* 8 C.F.R. § 316.10 (2001); 8 U.S.C. § 1427(a)(3) (Supp. V 1999); 8 U.S.C. § 1101(f) (1994 & Supp. V 1999). "Good moral character" is defined in the negative by the immigration laws. *See* 8 U.S.C. § 1101(f) (1994 & Supp. V 2000). The following classes of persons are not eligible for naturalization because they lack "good moral character": (1) anyone convicted of murder; (2) anyone convicted of an aggravated felony after 1990; (3) anyone convicted of one or more crimes of moral turpitude, except as specified in 8 U.S.C. § 1182(a)(2)(ii)(II); (4) anyone convicted of two or more offenses for which the aggregate sentence actually imposed was five years or more; (5) anyone convicted of violation of any law of the United States, any State, or any foreign country related to a controlled substance, except a single offense for simple possession of 30 grams or less of marijuana; (6) anyone who admits committing any criminal act described in 8 C.F.R. § 316.10 even if there was never a formal charge; (7) anyone confined to a penal institution for an aggregate of 180 days or more; (8) any who has given false testimony to obtain an immigration benefit; (9) anyone involved in "prostitution or commercialized vice" as defined in 8 U.S.C. § 1182(a)(2)(D); (10) anyone involved in the smuggling of a person or persons into the United States; (11) anyone practicing polygamy; (12) anyone convicted of two or more gambling offenses; (13) anyone who earns his or her income principally from illegal gambling activities; or (14) anyone who is or was a habitual drunkard. *See* 8 C.F.R. § 316.10 (2001).

4. Show attachment to the principles of the Constitution and favorable disposition to the good order and happiness of the United States;⁵⁶ and
5. Pass tests over history and government of the United States⁵⁷ and demonstrate literacy in the English language.⁵⁸

Applicants can leave the country during the five-year period, but any absence that lasts more than one year breaks continuous residence.⁵⁹

To begin the naturalization process, an applicant files Form N-400.⁶⁰ After the form is filed, the INS will schedule an interview with the applicant. If the INS reviewer discovers a ground for removability, the applicant can be referred to the appropriate administrative officer.⁶¹ If the applicant meets all the requirements for naturalization, he or she will be referred for a final hearing. This final hearing is also the ceremony at which the naturalization oath is administered. If an applicant fails to show up for the oath ceremony, the naturalization can be denied.⁶²

One of the common problems that arises in naturalization applications is registration for Selective Service. Under federal law, every male United States citizen between the ages of eighteen and twenty-six must register.⁶³ If a person immigrated to the United States prior to age twenty-six and knowingly and willfully failed to register with Selective Service, they can be denied naturalization based on lack of good moral character.⁶⁴ Since many undocumented aliens make a concerted effort

56. See 8 C.F.R. § 316.11(a) (2001).

57. See 8 U.S.C. § 1423(a)(2) (1994). If an applicant fails, he or she may have another try within 90 days after the first test. See 8 C.F.R. § 312.5(a) (2000).

58. See 8 C.F.R. § 312.1(a) (2001).

59. See 8 U.S.C. § 1427(b) (2000). Absences of six months or less are deemed not to break the continuous residence period; absences between six months and one year create a rebuttable presumption of abandonment of permanent residence. The burden is on the applicant to show that the continuous residence requirement is met. See, e.g., *In re Naturalization of Vafaei-Makhsos*, 597 F. Supp. 499 (D. Minn. 1984).

60. See *Forms and Fees*, *supra* note 6. The N-400 must be filed with the INS office having jurisdiction over the applicant's place of residence. In the Western District of Arkansas, the INS office with jurisdiction is in Fort Smith; residents of the Eastern District must file in Memphis. See *id.*

61. Attorneys should review the grounds for removability with their client prior to filing any application for naturalization. See 8 U.S.C. § 1227 (Supp. V 1999).

62. See 8 C.F.R. § 337.10 (2001).

63. See 8 C.F.R. § 315.3(b) (2001). The Selective Service System's records are conclusive evidence of failure to register. See *id.*

64. See 76 Interpreter Releases 562-63, 573-75 (Apr. 12, 1999); 64 Interpreter

not to create a paper trail, many naturalization applicants fall into this category.

Another interesting issue arises in cases of dual citizenship. Dual citizenship often arises as a matter of international law in situations where the United States naturalizes a person whose native country does not recognize expatriation. The United States generally does not favor dual citizenship.⁶⁵ The United States does not require a dual citizen to elect one nationality over another.

B. Asylum Procedure⁶⁶

Asylum claims are a large percentage of the claims for relief administered by the INS and by the immigration courts. When an applicant files an asylum claim, the case is assigned to an asylum officer within the INS's Office of International Affairs.⁶⁷ If the asylum application is denied, the applicant can appeal that determination to an immigration court.⁶⁸

Once an asylum claim is fully denied by the INS and all appeals have been asserted or are time-barred, the applicant is often referred for removal proceedings in immigration court where asylum can again be raised as a method of relief from removal.⁶⁹ If successful, the immigration court will grant an order withholding removal and granting asylum. The alien will then be eligible to adjust status to an alien lawfully admitted for permanent residence.⁷⁰

The Justice Department recently published new regulations pertaining to asylum procedures.⁷¹ The new rules went into effect January 5, 2001.⁷² These amendments changed the prior asylum standard for relocation to another part of the same country.⁷³ The new rule allows asylum officers discretion to deny an asylum application based solely on past persecution in certain circumstances.⁷⁴ On asylum

Releases 1314, 1329 (Nov. 23, 1987).

65. See *Rogers v. Bellei*, 401 U.S. 815, 832 (1971).

66. See generally 8 C.F.R. § 208 (2001).

67. See 8 C.F.R. § 208.9 (2001). The burden of proving eligibility for asylum remains on the alien throughout the process. See 8 C.F.R. § 208.13 (2001).

68. See 8 C.F.R. § 208.31(f) (2001).

69. See 8 C.F.R. § 240.33 (2001).

70. See 8 U.S.C. § 1158 (Supp. V 1999); 8 U.S.C. § 1159 (1994 & Supp. V 1999).

71. See 65 Fed. Reg. 76,121 (2000) (to be codified at 8 C.F.R. § 208).

72. See *id.*

73. See 65 Fed. Reg. 76,121, 76,126; 8 C.F.R. § 208.13 (2001).

74. See 65 Fed. Reg. 76,133 (2000) (to be codified at 8 C.F.R. § 208.13(b)(1)(i)).

applications based on past persecution, the asylum officer can deny relief if (A) there has been a "fundamental change in circumstances" in the applicant's country; or (B) the asylum applicant could avoid future persecution by relocating to another part of the country.⁷⁵

VII. IMMIGRATION AND EMPLOYMENT—THE H-1B VISA

United States employers faced with a shortage of qualified workers have increasingly turned to foreign workers to fill these job openings. This is especially true in the high-tech industry. Many Arkansas practitioners would be surprised to know that, like their national counterparts, Arkansas employers routinely employ foreign workers in a wide range of "professional" occupations. These positions include, but are not limited to, physicians, university professors, software engineers, computer scientists, policy analysts, and production managers. Many employers who could be effectively using foreign workers are simply unaware of this option.

One of the most common mechanisms employers use to obtain lawful work status for foreign workers is through the H-1B visa. This section of the article will explore some of the most important aspects of the H-1B visa.

A. Introduction

H-1B visas are non-immigrant visas. That is, they are temporary in nature. An important characteristic associated these visas is that the employer must serve as the petitioner when applying for the visas with the INS. An alien is not allowed to petition on his own. The alien is the "beneficiary."

B. Specialty Occupation

H-1B visas are one of the most commonly used categories of employment visas and are granted to individuals that are qualified to perform services in "specialty occupations." The Immigration and

75. *Id.* The new section also imposes a qualifier on the "relocation" prong of the test: it must be reasonable to expect the applicant to move to another part of the country. *See id.* According to the INS, the "relocation" principle is found in case law and BIA decisions. *See Singh v. Ilchert*, 63 F.3d 1501 (9th Cir. 1995); *Matter of Acosta*, 19 I&N Dec. 211, 235 (BIA 1985); 65 Fed. Reg. 76,127, 76,128 (2000) (to be codified at 8 C.F.R. § 208).

Naturalization Act of 1952 (“INA”) defines specialty occupation as “an occupation that requires—(A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.”⁷⁶

The regulations indicate that at least one of four criteria should be met for a job to qualify as a specialty occupation. First, the minimum entry requirement for the position is a bachelor’s or higher degree or its equivalent.⁷⁷ Second, the degree requirement is common to the industry or, in the alternative, the position is so complex or unique that it can be performed only by an individual with a degree.⁷⁸ Third, the employer normally requires a degree or its equivalent for the position.⁷⁹ Fourth, the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree.⁸⁰ It is crucial that the degree be related to the position in that it prepared the alien for the job field.

C. Meeting the Requirements

A beneficiary has three options to meet the requirements for performing in a specialty occupation. First, the beneficiary must have full state licensure, if it is required to practice in the state where the individual will live.⁸¹ Second, the beneficiary must have completed a United States bachelor’s or higher degree, or the foreign equivalent, in the specialty or a related field as a minimum for entry into the occupation in the United States.⁸² The INS will accept a foreign degree if it is shown that it is equal to a United States degree. Third, the beneficiary must have the education, training, or experience in the specialty which is equivalent to the completion of a degree.⁸³

Equivalency can be shown by an evaluation by a college official authorized to grant credit for training and/or experience in the specialty, the results of college-level equivalency examinations or special credit programs, or certification or registration from nationally recognized

76. 8 U.S.C. § 1184(i)(1) (1994).

77. *See* 8 C.F.R. § 214(h)(4)(iii)(A) (2001).

78. *See id.*

79. *See id.*

80. *See id.*

81. *See* 8 U.S.C. § 1184(i)(2) (1994); 8 C.F.R. § 214.2(h)(4)(iii)(C) (2001).

82. *See* 8 U.S.C. § 1184(i)(2); 8 C.F.R. § 214.2(h)(4)(iii)(C).

83. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (2000).

professional associations for the specialty.⁸⁴ In a “three for one rule,” the INS may determine equivalency by allowing three years of specialized training and/or work experience to substitute for each year of college-level education the beneficiary does not have. Further, the petitioner can show the beneficiary’s expertise by testimonials of at least two authorities in the specialty occupation, membership in a recognized association in the specialty occupation, or other methods.⁸⁵ The only way to show equivalence to an advanced or master’s degree, however, is to have a bachelor’s degree and at least five years of experience in the specialty.⁸⁶ Finally, if the position requires a doctorate, the beneficiary must have a doctorate or foreign equivalent.⁸⁷

D. Special Considerations for Foreign Physicians

Foreign physicians seeking to practice medicine and provide primarily patient care have special requirements. First, these physicians must pass Steps 1, 2, and 3 of the United States Medical Licensing Examination (“USMLE”).⁸⁸ Second, foreign physicians must establish competency in English by passing the Educational Commission for Foreign Medical Graduates’ English examination (“TOEFL”).⁸⁹ If the physician is a graduate of an accredited medical school, these requirements are waived.⁹⁰

E. Length of Stay

Employers expending time and money to obtain visas for foreign workers should be concerned with the length of time the worker may stay in the United States while holding an H-1B visa. The INS allows an individual to be physically present in the United States for a maximum of six years in H-1B status. The maximum length of time an alien will be approved for in an initial petition for H-1B status is three years.⁹¹ The petitioner must file a subsequent petition to extend the

84. *See id.*

85. *See id.*

86. *See id.*

87. *See id.*

88. *See* 8 U.S.C. § 1182(j)(2) (1994).

89. *See id.*

90. *See id.*

91. *See* 8 U.S.C. § 1184(g)(4) (1994); 8 C.F.R. §§ 214.2(h)(9)(iii)(B)(1), (h)(13)(iii)(A), (h)(15)(ii)(B)(1) (2001).

alien's stay in the United States for up to three more years.⁹² However, upon leaving the United States for one year, an alien is eligible for an additional six years in H-1B status.⁹³

F. Department of Labor Requirements

Before filing a petition for an H-1B visa with the INS, the employer must first file a Labor Condition Application ("LCA") Form ETA 9035 with the Department of Labor. The Department of Labor must certify the LCA, and the LCA is then sent with the petition to the INS. In the LCA, the employer attests that it is paying the H-1B worker the higher of either (1) the actual wage the employer pays to other individuals similarly employed with similar experience and qualifications, or (2) the prevailing wage for that position in the geographical area of employment.⁹⁴ In the LCA, the employer is also required to make further attestations. First, the employer must state that the working conditions for the worker will not adversely affect the working conditions of other workers similarly employed.⁹⁵ Second, the employer promises that there is no strike, lockout, or work stoppage in the course of a labor dispute.⁹⁶ Third, the employer assures that it has given its employees notice of the filing of the LCA through posting or notice to a bargaining representative, if applicable.⁹⁷ Fourth, the employer states that it has provided, or will provide, a copy of the LCA to the H-1B worker.

The posting requirements mandate that the employer must give notice of the filing of the LCA to the collective bargaining representative, or if there is not one, post notices of the LCA at two conspicuous locations at each place of employment where the H-1B nonimmigrants will be employed.⁹⁸ These notices should be posted within thirty days before the date the LCA is filed with the Department of Labor ("DOL") and remain posted for ten days. The public disclosure requirements state that the employer must make available at its offices for public examination a copy of the LCA and necessary supporting documenta-

92. See 8 U.S.C. § 1184(g)(4); 8 C.F.R. §§ 214.2(h)(9)(iii)(B)(1), (h)(13)(iii)(A), (h)(15)(ii)(B)(1).

93. See 8 C.F.R. §§ 214.2(h)(13)(i)(B), (h)(13)(iii)(A) (2001).

94. See 8 U.S.C. § 1182(n)(1)(A) (1994 & Supp. V 1999).

95. See 8 U.S.C. § 1182(n)(1)(A)(ii) (1994).

96. See 8 U.S.C. § 1182(n)(1)(B) (1994).

97. See 8 U.S.C. § 1182(n)(1)(C) (1994 & Supp. V 1999).

98. See 8 U.S.C. § 1182(n)(1)(D) (1994); 20 C.F.R. § 655.734(a)(1) (2001).

tion regarding the H-1B worker and other similarly situated employees.⁹⁹

G. Filing with the INS

Once the DOL has certified the LCA, the employer should file the beneficiary's petition with the INS. The INS forms include Form I-129 and H Classification Supplement and Form I-129W—the H-1B Data Collection and Filing Fee Exemption form. The filing fee is \$110.00. Additionally, employers are required to submit a supplemental fee.¹⁰⁰ The fee was increased from \$500.00 to \$1,000.00 as a result of the October 2000 enactment.¹⁰¹ Several types of employers are exempt from the fee, including the following: (1) institutions of higher education and related or affiliated nonprofit entities; (2) nonprofit research organizations; and (3) government research organizations.¹⁰² The October 2000 enactment created new exemptions, including elementary and secondary schools and certain nonprofits that engage in curricular training for higher education students. The beneficiary is not allowed to pay the \$1,000.00 fee. The entire amount must be paid by the employer.¹⁰³

H. Travel Costs

Employers are often surprised to learn that, in certain situations, they may be liable to pay a foreign employee's travel costs abroad. If an individual with an H-1B is terminated before the end of the period of authorized stay, the employer must pay the reasonable costs of return transportation of the beneficiary to the individual's last place of foreign residence.¹⁰⁴ "Termination" includes termination for cause, however, the employer does not have to pay travel costs when the nonimmigrant voluntarily terminates his own employment.¹⁰⁵

99. See 59 Fed. Reg. 65,646-80 (1994).

100. See 65 Fed. Reg. 10,678-85 (2000) (to be codified at 8 C.F.R. § 103.7).

101. See Immigration and Nationality Act Amendments of 2000, Pub. L. No. 106-311, 114 Stat. 1247.

102. See 8 U.S.C. § 1182(p)(1) (Supp. V 1999); 8 C.F.R. § 214.2(h)(19)(iii) (2001). See also 65 Fed. Reg. 10,678-85 (2000); 8 C.F.R. § 214.2(h)(19)(iii)(C), (iv) (2001).

103. See 8 U.S.C. § 1182(n)(2)(C)(vi)(II) (Supp. V 1999).

104. See 8 U.S.C. § 1184(c)(5) (1994 & Supp. V 1999); 8 C.F.R. § 214.2(h)(4)(iii)(E) (2001).

105. See 8 C.F.R. § 214.2(h)(4)(iii)(E) (2001).

I. H-1B Numerical Cap

As employers in increasing numbers have begun to rely on H-1B visas, the numerical cap associated with them has left many employers empty-handed. Only 115,000 H-1B visas were allowed to be issued in fiscal years 1999 and 2000.¹⁰⁶ In fiscal year 2000, this cap was reached on March 21, 2000.¹⁰⁷ Recent legislation signed into law by President Bill Clinton, however, seeks to remedy this problem. On October 17, 2000, President Clinton signed into law, the American Competitiveness in the Twenty-First Century Act.¹⁰⁸ This legislation increases the number of H-1B visas to 195,000 each year for the next three years.¹⁰⁹ Further, the law exempts from the cap individuals who are employed at institutions of higher education, their related and affiliated non-profit institutions, and individuals who are employed by non-profit or governmental research organizations.¹¹⁰

J. Other Visas

This section has focused exclusively on the H-1B visa as a tool for employers to employ qualified foreign workers; however, there are numerous other visas that may be utilized by employers. Some examples of these visas, which are outside the scope of this article, include the following: (1) H-2A visas which allow employers to hire temporary or seasonal agricultural workers;¹¹¹ (2) H-2B visas which cover temporary nonagricultural workers;¹¹² and L-1 visas which cover intracompany transferees.¹¹³

VIII. POSSIBLE SOLUTIONS FOR SCENARIOS

A. Scenario 1

In Scenario 1, it is likely that this client has been referred for removal proceedings before the immigration court. If the Master

106. See 8 U.S.C. § 1184(g)(1)(A) (Supp. V 1999).

107. 65 Fed. Reg. 15,178 (2000).

108. See American Competitiveness in the Twenty-First Century Act of 2000—Immigration and Infrastructure, Pub. L. No. 106-313, 114 Stat. 1251 (2000).

109. See *id.*

110. See *id.*

111. See 8 C.F.R. § 214.2(h)(5)(i) (2001).

112. See 8 C.F.R. § 214.2(h)(6)(i) (2001).

113. See 8 C.F.R. § 214.2(i) (2001).

Calendar hearing is coming up soon, you should make an appointment to meet with the prospective client as soon as possible. The prospective client should have paperwork describing the charges of removal so that you can be prepared to respond to the immigration judge at the Master Calendar hearing. You must be prepared for all matters that might be raised at this hearing, including naming all grounds for relief and estimated time necessary to present the client's case.¹¹⁴

If there are any applicable grounds for relief from removal, you will need to raise them at the Master Calendar hearing. After the hearing, you should sit down with the client at the earliest possible opportunity to go over each ground for relief and assess its likelihood of success.

B. Scenario 2

As unusual as this sounds, potential immigration clients are often in possession of large amounts of cash. The first step is to ensure that there is a method for this person to become legal. If not, you should advise immediate departure from the country. If there is a method for the person to adjust status to an alien lawfully admitted for permanent residence, or to a naturalized citizen, you should make sure the person understands the possible risks and benefits of each method.

C. Scenario 3

The hospital should obtain an H-1B visa for this physician. The first step is to make sure the physician has passed Steps 1, 2, and 3 of the USMLE as well as the TOEFL. In the alternative, the physician may have graduated from an accredited medical school. After filing an LCA with the DOL, the H-1B petition may be filed with the INS. By properly steering your client through the immigration laws and regulations surrounding H-1B visas, the hospital will be able to effectively utilize a highly-qualified foreign worker.

114. See MEMPHIS IMMIGRATION COURT, *supra* note 46, at 2.