



1-1-2012

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### Recommended Citation

Patricia Gittelson, *Wearing the White Hat: Legal Representation of Immigration Clients*, 23 NOTRE DAME J.L. ETHICS & PUB. POL'Y 109 (2009).

Available at: <http://scholarship.law.nd.edu/ndjlepp/vol23/iss1/3>

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## WEARING THE WHITE HAT: LEGAL REPRESENTATION OF IMMIGRATION CLIENTS†

PATRICIA GITTELSON\*

This article is a primer on the legal care of immigration clients. It is presented from my personal perspective, having interacted with people seeking immigration advice for several years. I am a sole practitioner focusing on family and deportation defense in the immigration arena. I love being with people, and the rewards of this field come mostly in satisfaction and hugs, more so than monetary gain. I have always found the personal interactions the most rewarding part of the practice. Typically, clients begin by seeking admission, then adjustment to permanent resident status, and finally to citizenship. However, in today's "enforcement" climate, clients are often already in proceedings when they come to me. I enjoy the fact that I can affect lives beyond those I meet, or who even live in the United States. I find great satisfaction in taking people from a possible state of concern, sometimes induced by ignorance of the law, to a place of confidence through empathy, understanding their situation and the law as it applies to them. The law governing immigration derives from statute, Title 8 of the Code of Federal Regulations and the Immigration and Nationality Act ("INA"), as well as from case law. I do not profess to state all applicable law here, only a small sampling.

Proper information gathering is crucial to any case, as well as to your protection as an attorney. This begins with the client intake form, before the first appointment. Be sure the potential client ("PC") or representative family member or friend knows to bring all documents and gather all information about the client. The questionnaire should be a skeleton for you to build on. Mine begins with the personal information of the "PC." I am fortunate in that I speak Spanish, because I have found that it is always best if you can have the PC complete their intake form in their native tongue or with an interpreter. My questionnaire starts with asking what they came to discuss. The form then asks for personal information, birth information, passport, and health. It

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† On September 30, 2008, the *Notre Dame Journal of Law, Ethics & Public Policy* hosted a panel discussion entitled "Yearning to Breathe Free: Immigrants and the American Dream." A version of this paper was presented at that event.

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requests information regarding immigration history; immigration status; the date, place, and manner of entry; how long they have been here; and what age they were when they entered. Finally, the form asks for their arrest and tax payment records. I also get biographical details for their immediate family. Some attorneys use lengthy questionnaires, but I believe in getting much of the detailed information from the PC and/or their family in the initial personal interview. I believe in complete communication and that is best done face to face.

In the immigration arena language can lead to effective communication problems. I live in Los Angeles where the majority of people speak Spanish, as do I. When there are communication difficulties I rely on my co-workers or the client to have access to someone who can interpret. Often the interpreter is a family member who can also provide information.

Your first impression of the client, and they of you, is very important. Use your intuition. Be aware of cultural differences in how business is approached. Some clients will want to jump right in, and have questions ready; some will want to know you better before disclosing details. Many folks come with a family member or friend. I like this because there is a second pair of ears listening that is detached from the situation.<sup>1</sup> There is a level of trust on both sides that must be established for a successful working relationship. Personally, I do not charge for the initial interview, preferring that clients get information rather than fear wasting their money and remaining unaware of their options. I try to limit the time to less than twenty minutes, but time permitting I will go over their situation in more detail, or grant another interview at no charge if I feel there is more information needed to complete a preliminary evaluation of the case. You want to see or at least know about all immigration documents for the PC and immediate family members.

Any details of "contact" with police and/or immigration officials are also important. Usually the information revealed in the interview will

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1. It is important to note that communications made in the presence of a third party are not privileged unless the third person served as an intermediary, necessary to interpret or explain the client's condition, as described above. See EDNA SELAN EPSTEIN, *THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK-PRODUCT DOCTRINE* 267 (5th ed. 2007).

CAL. EVID. CODE § 912(d) expressly provides that disclosing a privileged communication in confidence does not waive the privilege when it is "reasonably necessary" to accomplish the purpose for which the lawyer was consulted. Similarly, CAL. EVID. CODE § 952 expressly provides that a confidential communication may be disclosed to third parties "who are present to further the interest of the client" or those "to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted."

Nevertheless, under the Federal Rules of Evidence, the federal courts in cases where they have jurisdiction have the flexibility to develop rules of privilege in accordance with common law principles. *Trammel v. United States*, 445 U.S. 40, 47 (1980).

lead to other situations not disclosed on the questionnaire. These can include other forms of relief, or conversely, other problems not foreseen by the client. Be prepared to give honest and straightforward information, because in many cases, you will have to be the bearer of bad news.

As I proceed in moving forward on a case, I ask the PC for further details, depending on the issues in the case, to flesh out the following aspects of the case:

One of the most important questions to ask is about their entry into the United States. As I stated above, the basics are where, when, and how. I also ask if they at any time since their original date of entry left and returned to the United States. This information, as well as the manner of entry (admitted or entry without inspection), has consequences for many forms of relief. Lawful admission is defined as the “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”<sup>2</sup> Someone who enters without being lawfully admitted is deemed to have “entered without inspection” (“EWI”).

EWI can be grounds for inadmissibility. Persons detained at the border are deemed inadmissible.<sup>3</sup> A person may be deemed inadmissible on other grounds related to health,<sup>4</sup> economic status that may lead to becoming a public charge,<sup>5</sup> as well as on criminal grounds for commission of certain crimes,<sup>6</sup> and several other miscellaneous grounds. Each aspect of these grounds must be closely examined because there are often-times waivers and other solutions available, but the key is to know everything about the case up front and from the client—as opposed to learning negative details after the fact from the government.

You must consider the possibility of obtaining a waiver of inadmissibility for certain clients.<sup>7</sup> The availability of a waiver, and which waiver to apply for, will depend on the particular circumstances. If a person is a lawful permanent resident there is a waiver called “Cancellation of Removal.”<sup>8</sup> Another version of this is also available to non-permanent residents.<sup>9</sup> There are qualifications that must be met that are spelled out

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2. Immigration and Nationality Act § 101(a)(13)(A), 8 U.S.C.A. § 1101 *et seq.* (West 2008) [hereinafter INA].

3. *Id.* § 212(a)(6)(A)(i).

4. *Id.* § 212(a)(1).

5. *Id.* § 212(a)(4).

6. *Id.* § 212(a)(2).

7. See Dep’t of Homeland Sec., U.S. Citizenship & Immigr. Serv., Form I-601 Instructions, OMB No. 1615-0029 (Oct. 30, 2008), <http://www.uscis.gov/files/form/I-601instr.pdf>.

8. See U.S. Dep’t of Justice, Exec. Office for Immigr. Rev., Application for Cancellation of Removal for Certain Permanent Residents, OMB No. 1125-0001 (Jan. 2006), <http://www.usdoj.gov/eoir/eoirforms/eoir42a.pdf>.

9. See U.S. Dep’t of Justice, Exec. Office for Immigr. Rev., Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, OMB No. 1125-0001 (Jan. 2006), <http://www.usdoj.gov/eoir/eoirforms/eoir42b.pdf>.

in the INA.<sup>10</sup> Waivers will also vary according to the ground of inadmissibility.

I also calculate the time the PC has been present unlawfully in the United States. This time can be calculated in a number of ways. Some periods will have consequences of barring the individual from readmission for a certain period of time. There are also exceptions to this section that can help a client.<sup>11</sup>

Most forms of relief require a showing of good moral character.<sup>12</sup> These “equities” can be demonstrated through tax returns for the past few years, social security records, and not taking government assistance (citizen family members qualify without detriment to the noncitizen). Information about their employment history such as employment status, and details of the same, are important. The occupation, length of employment, and status within the company are all relevant. Also, the PC’s educational level and future plans to continue may be a factor. If the PC and family own property and have local business ties, this is also helpful. Their involvement and commitment to the community is an important factor. This involves church membership and other extracurricular activities such as coaching or tutoring. You may need to request detailed information and reference letters.

It is vital that you ask if the PC has ever had contact with police or immigration officials—anywhere in the world. If the answer is yes, or vague, or even if it just triggers your sense of doubt, I would get their record from the state(s) they’ve lived in previously as well as now, and from the FBI. If there was any encounter with immigration, you must file for a Freedom of Information Act (FOIA) request.<sup>13</sup> Any problems can make filing an application potentially dangerous to the client, so I always caution to wait until the results are received by my office. The state and federal information based on fingerprints usually comes within a couple of months. The FOIA to the Immigration Service can take as long as a year. If the PC was detained at a specific location, I send a second FOIA request to that location. After the reports arrive, I call the client in and we discuss the information and how it affects our options. If there are arrests, I request the court documents to get more details. There may be waivers available for some crimes.

If the PC is facing removal, I always get the full lowdown on immediate relatives: name, relationship, immigration status, age, address, and health. Extended family ties here and in their home country may also be relevant. We want to know the potential effect of the PC’s removal on their family. Regarding children, find out about their school and extra-

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10. INA, *supra* note 2, § 240A(a)–(b).

11. *Id.* § 212(a)(9)(B).

12. *See, e.g., id.* § 240A(b)(1)(B).

13. *See* Freedom of Information Act, 5 U.S.C.A. § 552 (West 2008).

curricular activities, educational level, language abilities, developmental or special educational needs, medical and psychological issues, and the effect these will have on the impact of potential relocation to their home country, and on their development and ability to flourish.

The main complaint that I hear against attorneys is their unavailability. My co-workers are all familiar with my cases and my schedule, so they can take information and give me the basis for the client's concerns before I call them back. I always try to do so within the same business day, or the next day at the latest. It is important to remember that these people are dealing with personal/life issues, and worry more than a client that is involved in a monetary legal matter. Make no mistake: in many cases, you will have nothing less than the future lives of the client and family members in your hands, and this is an awesome challenge and responsibility. It would seem that I am a rare breed, in that I give my cell phone number to most of my clients. Few abuse it, and I have often gotten calls from family members who I can help, or at least comfort, outside normal business hours. Accessibility and the availability to communicate is my personal preference, and I have never regretted it.

Family immigration law is personal. Because of the huge stakes involved in this area of practice, nothing less than the fate and direction of the lives of your clients, and almost always their family's fate, is in your hands. The responsibility necessarily comes with a large measure of personal engagement on the part of counsel. I have found that the personal satisfaction of actually helping these clients to achieve the most valuable of all possessions—their United States citizenship—is one of the most rewarding experiences that an attorney can enjoy.

