

# **GARDEN STATE CLE LESSON PLAN**

**A 1.0 credit course**

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## **ADVOCACY IN IMMIGRATION COURT**

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**With**

**Alan Peyrouton, Esq.**

**And featuring**

**Robert Ramsey, Senior Instructor**

### **Program description**

What happens in Immigration Court can destroy happy lives and break up families, devastate innocent children who are often United States citizens. There are a few courts of record where the stakes are higher and the need for effective advocacy greater. This important one-credit CLE class will teach you what you need to know about advocating on behalf of a desperate client in Immigration Court.

**I. Introduction**

- **Alan Peyrouton, Esq.**

**II. Immigration practice, generally**

- **Need to tell families the hard situation that they find themselves in**
- **Civil court not criminal, but those who are in removal proceedings (pending deportation) are in custody and are in a secured facility, like a criminal**
- **Most individuals who are in removal proceedings have committed a crime**
- **Any offense that results in an arrest where the law enforcement agency must run background and ask for ID, when ID cannot be produced ICE (Immigration Customs and Enforcement) has advised local police to notify them to see if they are legal**
- **ICE has more interest in northern NJ, as opposed to southern NJ**
- **ICE asks for name and any information regarding identification that person has in possession**
- **When there is no inspection at port of entry there is a red flag that person is here without proper documentation – “EWI” – entered without inspection**
- **Once EWI, very little relief available**
- **EWI – gets the attention of ICE without anything further, but then the crime that they are alleged to have committed determines whether they are eligible for bond upon removal – bond gets returned when home country government confirms person has returned – bonds can be \$7,500 -\$25K**

**III. How does the process work (based on a hypothetical)**

- **Police are called to domestic violence case, and person is arrested, actor is drunk, visible injuries, parties live together, have children who were born in US**
- **Actor has no good ID and police call ICE – ICE determines EWI**
- **Immigration ultimately comes to pick up person from municipal police department**
- **Criminal bail may be \$25K with 10% but ICE puts on detainer without bail**

- **ICE sends immigration officer to interview and determines what country from, when arrived in US, when and where entered, how entered, and determine not admitted lawfully**
- **No 5<sup>th</sup> amendment protections because civil proceeding**
- **Person will remain in custody until finished with charge**
- **Most of the time victim of DV comes to court to withdraw charges, and case is dismissed but actor does not leave jail – transferred to Elizabeth detention center**
- **Handed notice to appear (NTA) – informing of federal governments accusations against them**
- **4-5 counts – you are not a legal citizen of the US, you are a national of another country, you are not entitled to be here, you have been convicted of an aggravated felony, and then list of applicable statutes**
- **Don't have to be convicted of anything to be incarcerated in detention center**
- **Was the person EWI or whether he came on a Visa and overstayed**
- **To be eligible for bond it is important to know of prior convictions – no absolute right to bond, certain things make you ineligible for bond – not eligible for bond with any type of felony**
- **If person does not have prior convictions, person has children, and has lived here for 20 years, government will offer attorney for person a certain bond number – negotiation between attorney and government**
- **Assistant Chief Counsel for Department of Homeland Security**
- **You will know ahead of time what the bond was**
- **In negotiations – talk numbers then provide some important facts about client**
- **Have a hearing if cannot work out the numbers for a bond – usually hearings are adverse to client**
- **Bond must be posted by friends and family – no 10% - cash only – no bond company**
- **Takes a few days after bond is paid in order for person to be released**
- **At bond hearing/negotiations – judge goes through notice to appear and charges – and ask whether admit or deny**
- **Whether attorney “concedes” to statutes or not**

- **Judge will explain to client that have a small window of time to get money to bond out – otherwise next appearance judge decides what is going to happen**
- **Argue that to send person back home would be extreme hardship on family – person working, in US for 20 years, family**
- **Look at whether your client qualifies for cancellation of removal: if EWI then very difficult, how long has he been in the US**
- **If person only has EWI with no prior record, his ability to stay depends on the situation – a lot of work to advocate**
  - **Options**
    - **Leave voluntarily, discharge bond, and then apply for waiver from your own country (however 3, 5 or 10 year bar to return); if falls in love and gets married to a US citizen in his country, then she returns and petitions for him – must file waiver to clean his illegal entry**
    - **Stay and fight it**
    - **Allow removal**
    - **Disappear [bond is lost and order of deportation is entered and waiting for them if they come in contact with ICE again]**

#### **IV. Detention centers**

- **Federal facilities**
- **Federal government has contract with CCA (Correction Corporation of America) – sole purpose to house illegal immigrants**
- **1000 people in Elizabeth – not high security**
- **Elizabeth - Gym, basketball court, library access, meals, etc.**
- **Two benches are inside detention center to address bond issues, etc.**

#### **V. Meeting with client after bonding out**

- **Discuss case with client**
- **See all documentation to support claims made in bond hearing, i.e. kids birth certificates, tax returns showing work history for 20 years, wife's birth certificate or other relevant papers**
- **Explain have to go back to court in Newark and we can apply for cancellation of removal and discuss a fee**

- **Don't give false hope and guarantees**
- **Want to see criminal history**

**VI. Person who entered legally and became a lawful permanent resident and married citizen**

- **Immigration does not recognize same sex marriage or civil unions**

**VII. Person is removable even years after aggravated felony has occurred**

- **Lawful permanent resident**
- **Has 5 kids who are citizens**
- **Commits aggravated felony but gets probation**
- **10 years after aggravated felony ICE picks him up because he is deportable**
- **Look at criminal case – had better option than pleading guilty to agg felony**
- **Criminal attorney from plea should have properly advised of immigration consequences**
- **Attorneys must recognize could be immigration consequences, or recommend an immigration attorney**

**VIII. Person who overstayed Visa**

- **Domestic violence and police arrest actor**
- **Actor entered on student visa lawfully, did not really go to school and went to work – would have popped up on ICE radar because school would alert**
- **Overstays visa, has kids – not married**
- **Can extend Visa for a specific period of time**
- **Once overstay Visa – accrue unlawful presence – the more you accrue you will be barred a certain amount of time from returning; accrual begins when doesn't go to school and also when Visa expires**
- **Once accrue unlawful presence, accrue a bar from returning to US – also you become removable – length of overstaying is length of bar – get a Visa number, return to home country, and then wait for Visa number to come up**
- **When in custody on DV case, then name will come up in computer**
- **Victim wants to drop charges - dismissed**

- **Actor would go from county jail to detention center**
  - **Try to find hardship exception: time in the US, ties to community, family here in US, bona fide marriage and petitions for actor**
  - **Never suggest that parties get married – must go to an adjustment of status hearing to prove that bona fide marriage**
  - **Adjustment of status – came to US on a particular Visa, while here want to get married to US citizen and want to adjust status to lawful permanent resident to remain here and get married**
    - **Complete an I 130 form – Petition for Alien Relative, and**
    - **Form 485 – adjustment of status**
  - **Immigration wants to interview to insure not shame marriage**
  - **Attorney presence at this type of hearing to observe and take notes if there is a need to appeal the hearing officer's determination**
  - **Most common way to argue against overstay situation is for person to get married**
- IX. Persons who cannot return to their country for fear of torture**
- **Convention Against Torture – when person enters country fleeing homeland because of torture, can apply for protection from US government under this law**
  - **Asylum – religious or political persecution – must file within 1 year from entering**
  - **Can enter unlawfully and then file application for asylum**
  - **Asylum – person kidnapped in own country, family in danger, city is invaded with gangs, and scared, and get Visa and come to US and immediately seeks for asylum**
    - **Immigration officer conducts credibility interview to assess how real fear is, “credible fear” interview – start making a case for asylum**
- X. Client consultations**
- **Able to identify whether can help someone from outset**
  - **If know that there is very little to do regarding removal but family wants to have person bonded out**
    - **Help family bond out relative**
    - **Explain in great detail how remote the chances are for the relief that they have available**

- **Very candid**
- **Don't advise clients to disappear**
- **Explain to clients that have to leave voluntarily and what they have to do when back home to get bond, and the consequences of returning illegally to the states**

XI. **Advice for attorneys**

- **Fact sensitive analysis**
- **Sometimes can advocate the post conviction relief issue to assist client**
- **Under Padilla v. Kentucky, 130 S.Ct. 1473 (2010) – it depends what client was advised of in guilty plea**
- **Can appeal at BIA regarding guilty plea**
- **What happens if know that person if returned to his country will be tortured?**
  - **If cannot be deported, then get life supervision**
  - **Cannot get deported to Cuba**
  - **Certain countries are identified for humanitarian reasons where people cannot be deported to**
- **To be an effective advocate:**
  - **Understand every fact of your case, even the bad things**
  - **Different from criminal court – facing deportation, must choose argument to keep client here**
- **Be honest with the client – not to take money for false hope**
- **FOIA (Freedom of Information Act) – getting papers from the government to see what if anything was filed in the past for this person**
- **Keep in mind the cultural differences – trust in attorneys here because of cultural issues**
- **Build trust with adversary**