

GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

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LESSON PLAN AND EVALUATION**

IMMIGRATION LAW

With

Renee LeMarre-Sumners

And featuring

Robert Ramsey, Senior Instructor

Program description

One thing is for sure there is no shortage of foreigners, in New Jersey, who need the help of a lawyer with their immigration issues. In fact, cousin, business is “A-Boomin!”

I. Introduction

- Renee LeMarre-Sumners – 22 years experience in the field
 - Work comes from referrals – attorneys and clients
- Program designed to help new attorneys
- Clients come from different countries
- Must advise clients of whole picture – can't close Pandora's box after it is open
- Employers will try to sponsor individuals to come to US and work – usually technical, computer background; farmers – different levels of eligibilities for each type of work

II. Client is in the US and wants to stay

- How did you get here initially? Legally? Illegally?
- Where did you enter?

III. Student visas

- Make application in home country once determine what school you will attend – also based on time period
- Renewable for certain time periods depending on field of study
- Application made to US Embassy in home country – must already have been accepted to school – schools have specific personnel to contact in order to get the proper information
- Universities, colleges, community college (under specific circumstances)
- Application should be completed in connection with a school in the US to facilitate the process
- Getting harder to get this type of visa
- Biggest area of study for student visas is engineering, technical, math and sciences
- Humanities and other such areas of study are more “generic” so less chance of getting a student visa – unless there is a special area you intend to study
- Every school caps the number of student visas for each year – on number of student visas and area of study
- Student visa allows person to be in US for the time of study – cannot work for money – purpose of visa is for school
- Student visa application requires that you have a certain amount of liquid assets such that you won't need to work
- Can travel – but need school approval and can't be during school term
- Can return to home country during visa term
- At expiration of student visa term, you must leave
- Most of the time student visa holders will return to the US with work visas

IV. H1 Employment Visa

- H1B is a non-immigrant visa in the US under the Immigration and Nationality Act, section 101(a)(15)(H)
- Make application from your home country through universities in the home country
- Universities have a network that they maintain for purpose of recruitment, networking with colleges and universities in US and with employers in US
- Large employers seek certain types of employees
- Example: Pharmaceutical industry
 - Have certain number of open categories where they try to fill those with people from other countries
 - Have departments that work to recruit those specific individuals to employ them here
- Protocol that attorney must follow on behalf of employer – client is the employer, not the employee
- Employer cannot ask for employee to pay for attorney to get them to the US but can make other arrangements with employee, i.e. must work for company for certain number of years
- Once employer has identified individuals who they want to hire, attorney comes involved – screening, interviewing, newspaper ad requirements, mailings, forms, tax documents, personal documents of employee/employer which need to be filed with application
- Various questionnaires as to what employer has done to try to secure employee from the US before going outside US
- Heavy burden on employer to make application
- Hard to secure and confirm information regarding potential employees – relying on information provided by employee in another country – records and documentation may not be as detailed as in US
- Employee must be willing to have criminal background check done – but to what extent when dealing with a foreign resident
- Many people want to stay after they come here for work but cannot convert that visa
- Period of employment is term of visa – can be 20 or 30 years
- Visa has to be renewed periodically and have to show that employer tried to get employees from US and with no ability to do so
- Usually a point person in the company/employer who is the attorney contact to facilitate information and documentation
- Employers are recruiting from all over the world

V. Visitors

- Person wants to visit for a particular time to travel then leave
- Apply in home country
- Limited time frame – usually 3-6 months
- Some countries you don't need a visa to travel from US abroad – you can always leave – it is coming back that can be problematic

- Cannot work while here on visitors visa – supposed to be here traveling

VI. Asylum Seeker

- Used to be that anyone can file for asylum – burden on individual to show would be persecuted for religion, sexual preference, or some other political tie
- When person applies, documents must be gathered to prove being persecuted
- Unless country is identified as one where people are being persecuted, it is difficult to prove
- For countries that were identified, people are given waivers for asylum
- Not a visa situation because idea is that you are trying to get out of the country – emergency – saving life – not planning to return
- Could be detained if you try to enter without papers – must file where you enter the US
- Once you are in the US – entitled to due process, including hearing
- Asylum is difficult to prove, need affidavits from individuals who know you, people to attest that you were involved in the government
- Asylum for person and children/family – if left children in home country – then not strong argument for asylum

VII. Other ways to enter

- If an individual gets engaged to a citizen, can make application to have person come under “fiancé” visa = permission to enter US and must get married after certain period of time after application is filed – must provide detailed information about wedding as part of application process
- If married in another country and want to bring spouse to US, must make application – best made in US because foreign countries will take longer

VIII. Client who is not here legally

- If overstay any visa, you are out of status – once that happens you must go back – must go back to home country to adjust status
- If here illegally but have children and a spouse who are citizens, must file application that would allow you to stay – filed by spouse – must show didn’t get married just to stay – maybe file for hardship issue because if returned to country cannot provide for family, hardship for children
- Where to file papers depends on where person resides
- Application would be filed and then would get a hearing notice
- Immigration offices have forms for free
- Benefit to having an attorney – insures that all paperwork is filed properly and in correct place, and will assist in hearing

- When someone overstays = required to return to home country to adjust status
- The longer you are in US, the more attached to US and arguably harder to return – “home” country isn’t home anymore
- 50/50 chance of changing status after overstaying visa
- Each decision is fact sensitive
- If overstay visa, can return to your country and have spouse who is US citizen to apply and bring you to US that way – long process
- Deportation can be suspended if arguments shown illustrate hardship for family members (in US or home country)
- Hardship can look at who is primary caretaker of children
- Recent legislation – not going to penalize children of non-resident parents who are brought here by parent, totally Americanized
- Once person is allowed to stay – deportation is suspended, and application to amend status is filed (green card)

IX. Green Card Holders and Criminal Offenses

- Green card allows to permanently remain in US, can leave US and come back – after 5 years can apply for naturalization
- Attorneys who have clients with green cards who have been here for 5 years should encourage clients to apply to become citizens – because jeopardy for criminal offenses to be deported
- Certain criminal offenses – not much discretion for deportation
- US government is on top of criminal cases – less time to wait before deportation
- Antiterrorism and Effective Death Penalty Act of 1996, aggravated felonies, moral turpitude, shoplifting, domestic violence – all bases for deportation – no matter how long you have lived in US
- Padilla v Kentucky, 130 S.Ct. 1473 (2010) – lawfully in US, served in military, committed a deportable offense, here for 40 years – deported
- Fear of opening pandora’s box
- Clients in detention center – police must initiate by contacting ICE, each department has a different policy – uneven enforcement
- Make application to post bond to get client out of detention center – filed with court – can discuss in advance with attorney for INS – bond allows release pending next hearing date – look at criminal history, type of offense
- Criminal basis for removal:
 - doesn’t effect citizens;
 - those here illegally – removable even without criminal offense – can be removed before criminal charges are entered; evaluate the following issues: children? Work? How long? Paying taxes? Own real estate? Married? Employer relationship? Age of children? Criminal record?;
 - those here legally are most effected

X. Advice to Clients

- If you want to stay here, on visa – get green card
- If here on green card – apply for citizenship
- If not here legally but want to stay – options to sponsor, i.e. employer, residence of 10 years or more,
- Want to make applications before detained by ICE – timing
- Pandora's box argument – once you file you have exposed yourself
- May have to leave in order to adjust status – application submitted while in US, then go to embassy abroad in order to get visa; 3-5 year process

XI. Advice to Attorneys

- Satisfying area of the law to help people, people appreciate your efforts
- If you can't help person, don't take the case
- Small fee to see if something was filed previously and to see if there was a result before being retained to make a new application, etc.
- Have to know what criminal offenses trigger removal if person is here legally, look at BIA interpretation of each crime
- Do best job for client while being honest about potential outcomes