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## Tax Preparer Testimony May Lead to Deportation

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Two cases when considered together raise the prospect that communications in writing and notes and recollections of conversations between taxpayers and return preparers may have serious consequences for members of the immigrant community (those taxpayers who are on VISA or Green Card status). The cases are *Edwards v. U.S.* on appeal from the Ninth Circuit to the U.S. Supreme Court and *Kawashima v. Holder*, decided by the U.S. Supreme Court on February 21, 2012.

*Edwards* holds that there is no taxpayer-return preparer privilege in criminal proceedings. Meaning that the return preparer can be called before a Grand Jury on in court, to testify about communications with the taxpayer. *Kawashima* holds that a conviction for tax evasion involving \$10,000 or more constitutes an "aggravated felony" for purposes of the deportation statutes. The result of integrating the holdings is illustrated as follows:

- (1) An immigrant taxpayer confides to a return preparer about unreported income, such as an unreported offshore financial account which should have been disclosed in the prior years on a Report of Foreign Bank Account ([FBAR](#)). The taxpayer previously signed income tax returns that deny having such accounts, a false statement crime which is an act of tax evasion.
- (2) An immigrant taxpayer who has foreign assets which must be disclosed with the taxpayer's Form 1040 for 2011 and either refuses to make the disclosure or makes a false or incomplete disclosure. Signing a return under these circumstances could be viewed as a false statement crime constituting an act of tax evasion.

In both cases the return preparer could, based on the holdings of *Edwards*, be called to testify against the taxpayer and if the taxpayer is present in the U.S. on a VISA or Green Card, upon conviction be subject to the civil and criminal penalties and deportation.

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The potential for deportation as a result of a criminal conviction on a tax case can be avoided if the taxpayer makes a “voluntary disclosure”. A participant in the Offshore Voluntary Disclosure Initiative, (OVDI) can avoid prosecution if the terms of the OVDI are met.

The two cases combined should send an important message to all immigrant taxpayers about risk of non-compliance and the benefits of coming forward.

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