

Where on Earth did this Client Come From...And Why does it Matter?

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by: Meaghan E. Tuohey-Kay, Esq.,

Law Office of Meaghan Tuohey-Kay

532 Lafayette Ave.

Hawthorne, NJ 07506

Phone: (973)423-5548; Fax (973)423-2036

Even if you don't practice immigration law, chances are you have clients who are impacted by it. Having a basic understanding of the concepts and pitfalls in that area is necessary to protect your client and to provide the best advice possible.

Immigration status affects nearly every area of a client's life and therefore should always be a consideration when advising a course of action. A plea bargain resulting in very little jail time can still result in removal from the country; a simple municipal proceeding can end with the client in immigration detention; and an employment dispute takes on additional complications when one party is an immigrant. A client's immigration status, if not addressed by the attorney up front, may become apparent only after it presents a problem.

During an initial client meeting an attorney should always inquire about a client's immigration status. Attorneys should remember not all immigrants have accents, many have been raised in the United States (U.S.) and Canadians face the same immigration consequences as any immigrant. Many clients may be reluctant to reveal their undocumented status for fear of being reported to the government. Reassurance should be given at the outset that not only is all information confidential, but that complete honest is necessary in order for the client to obtain the full benefit of the attorney's efforts.

Despite the rhetoric, getting into the U.S. is not an easy task. Individuals enter either as immigrants intending to live permanently in this country, or as non-immigrants coming temporarily to perform a specific task. Immigrants can become legal permanent residents (LPR) if a relative or employer sponsors them. Becoming an LPR means the person gets a "green card," which actually is pink not green. LPRs can live and work in this country and eventually apply for citizenship.

The most common way to become an LPR is through family sponsorship. A citizen or LPR may file a petition with the United States Citizenship and Immigration Service (USCIS) for a spouse, parent, child, or sibling. Depending on the type of relationship between the immigrant and the petitioner, the wait for the green card can be as long as 15 years. This wait is a result of the limited number of immigration visas issued each year. Spouses, unmarried minor children and parents of citizens have no waiting period and become LPRs as soon as their paperwork is completed, usually within a few months.

Additionally, employers can sponsor their employees. Usually the jobs are in specialized areas requiring advanced training. The waiting period for an employment visa is often

shorter than for a family based one. Employers may also bring workers to this country temporarily. These non-immigrants may stay only as long as the job lasts. After the job ends they must return to their home country.

Generally tourists must apply for a non-immigrant visa at a U.S. consulate. They are not permitted to work in this country and must leave when their period of authorized stay is over, usually limited to six months.

Students may obtain non-immigrant visas, valid for the length of their studies. The university they plan to attend must file an application before a consulate will grant the student a visa. Once in this country, students must attend school full-time and are not permitted to work. After their studies are completed they must leave.

Individuals fleeing persecution on account of their race, religion, nationality, political opinion or membership in a particular social group are called refugees. If they are already in this country they may apply for protection, called “asylum.” An applicant for asylum must prove to the government that she cannot return to her country because she suffered past persecution or has a well-founded fear of future persecution. An applicant for asylum must apply during her first year in the U.S. Both refugees and asylees are permitted to work and after one year they can apply for a green card.

Finally, there are people in the United States who do not have the government’s permission to be here. These “undocumented” individuals may have entered this country legally but their authorized stay expired or they may have entered illegally looking for a better job. In the U.S. they face a harsh existence filled with prejudice and exploitation. The fact they remain speaks to the conditions they are escaping in their home country.

In addition to the statuses discussed above, there exist a multitude of esoteric classifications. Any confusion over the obligations and privileges of a certain status should be resolved before other work on a case begins.

The various statuses impact not only the personal life of a client (i.e. whether they can reunite with their family) but also their interaction with the legal world. One of the areas where immigration intrudes the most is in the criminal area.

The immigration consequences of some crimes can be much more severe than the punishment imposed by the criminal justice system. Criminal attorneys must always confirm a client’s immigration status and verify how that status will be impacted by a plea or conviction.

To make matters even more complicated, immigration law classifies crimes in a unique manner. In general, crimes are “Crimes involving Moral Turpitude” (CMTs) or “Aggravated Felonies”. CMTs include crimes against property such as theft and fraud, crimes against persons such as assault and kidnapping, and crimes against the government such as bribery and counterfeiting. A conviction can result in a client, even an LPR, being removed from the country.

An Aggravated Felony is a crime in which a sentence of one year or more is imposed. Some CMTs may also be Aggravated Felonies, as well as fraud over \$10,000 and all drug offenses, other than a single possession of less than 30 grams of marijuana. Conviction for an Aggravated Felony makes the client removable and inadmissible to the country.

Whether a client is charged as a juvenile or an adult is also a factor. Keeping the case in juvenile court will usually lessen the immigration consequences. Children also have immigration options available to them that adults do not, so cases involving undocumented minors warrant special research into ways to legalize their status.

Recently around the country and even in some New Jersey towns, municipal court appearances have resulted in a client being taken into immigration custody. Occasionally an overly aggressive town official will suspect that some individuals on the docket are undocumented and request an immigration officer be present in court. Once the individual makes their presence known in court, the officer will literally swoop down and haul the client to jail. This can be mitigated or avoided all together if the attorney knows of the undocumented status ahead and has a plan of action prepared.

Another area where immigration often rears its head is in family matters. Unfortunately one spouse's status may be used to leverage a better deal. The documented spouse can threaten the other with removal – and the often-permanent separation from the children this involves. Attorneys should be aware their client may be victimized in this manner, and should strive to avoid using this weapon against others. On a positive side, victims of domestic violence have an opportunity to self-sponsor themselves for immigration, making them less reliant on an abusive spouse.

In addition to the matrimonial sphere, immigration status often comes up in elder law. A senior citizen may suddenly find themselves losing benefits because they are not citizens, or unclear about their status because they originally entered the country before modern immigration regulations. Adult children may even be unaware of their parent's status until a governmental office denies a benefit.

Finally, one of the most discussed areas involving immigration is employment and labor. Immigrant employees, documented and undocumented, benefit from many but not all of the protections offered American workers. Conflicts involving unpaid wages, discrimination and harassment may all be effected by the employee's status. Employers must also be savvy about immigration laws in order to not run afoul of documentation regulations. While most labor and employment lawyers are now quite fluent in immigration law, those attorneys who only occasionally take these cases should be aware that immigration may come up.

Each of these areas, as well as many others, can take an entire article to fully explore. However, in general, practitioners will do well to remember that a client's immigration status can complicate many seemingly simple matters. Even technical issues, like the lack of a social security number or working under an alias, may pose a problem.

Addressing a client's status at the initial meeting can prevent difficulties down the road and lead to better representation.

Meaghan E. Tuohey-Kay is an attorney with the Law Office of Stuart Gavzy in Little Falls, New Jersey. Her practice includes immigration, bankruptcy, and real estate.

This article is meant to give general information and not intended to provide specific legal advice. If you have any questions about immigration law you should speak to a qualified attorney.

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