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Immigration Law

Myths of Immigration Law and Challenges of the Practice

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The discussion of U.S. Immigration law and who should be permitted to work and live in the United States has waxed and waned in popularity and importance in the public discourse since the "discovery" of America by Christopher Columbus and the dawning of our democratic nation. The public debate, however, over the last decade has seemingly reached a fever pitch not in small measure due to the multitude of ways the common person is immersed in the barrage of the 24-hour news cycle. It is natural that many nations would debate questions of national identity, immigration and preservation of native culture from time to time. However, the United States was formed out of the notion that individuals from all over the world with different cultural and religious backgrounds could come together to form a more perfect union and that those differences would serve to make this country stronger and stand apart from the nations that had come before and after it.

From the tone of the headlines in traditional media, the flashes of information gleaned from new media and the apparent inability of Congress to act on comprehensive immigration reform, it appears we may be far from that original notion. Those immersed in the practice of U.S. immigration law have a front row seat to the dysfunction of the framework of the country's current immigration laws and their daily effect on businesses and individuals. It is the immigration lawyer's daily struggle to find ways to help clients navigate through the inconsistent application and enforcement of U.S. immigration law and policy.

This article will explore some of the most popular and entrenched myths concerning U.S. immigration law and law practice. It is meant to serve as a window into the life of a U.S. immigration lawyer and make observations about the current state of our immigration laws and policy.

Myth: Anyone can come to the United States to work, live and visit.

The daily lives of all U.S. immigration lawyers amount to one pursuit on behalf of their clients: how they can assist with bringing individuals to the United States or keeping them here either temporarily or permanently, whether for employment, tourism, entrepreneurship, family re-

unification or the myriad other reasons that draw millions to our shores every year. A U.S. immigration lawyer is first and foremost an educator, educating the public daily on what is and is not possible under the current immigration laws. The novice lawyer can be overwhelmed with this simple question, as the plain language of our statutes and regulations may make it appear there is a way to bring anyone to the United States at any time for any purpose. This is unfortunately not true.

Our laws are very limited as to who can enter the country and what they can do once here. There are fixed quotas in many categories, especially for those deemed "the best and brightest," and our laws do not bend easily to accommodate fluctuations in the economy or the needs of the United States or foreign businesses actively engaged in the U.S. economy.

Many visa categories require pre-petition approval from the U.S. Citizenship and Immigration Services (USCIS), a daunting process by itself. But once an individual has an approved petition, the road is still far from over. With very narrow exceptions, most citizens of foreign countries must apply for a visa from the U.S. Department of State to enter the country based on the category already pre-approved by USCIS, then go through the inspection process at U.S. ports of entry conducted by the U.S. Customs and Border Patrol (CBP). For the most part U.S. Embassies and Consulates, the visa-issuing bodies of the State Department, do the Herculean job of processing the millions of applications they receive on a yearly basis around the world, as does CBP for the millions of visitors that arrive for inspection at our land, air and sea ports of entry.

U.S. immigration lawyers are tasked with assisting with those applications that do not go smoothly or are inherently fraught with problems because of the individuals' past immigration or criminal history or other unusual circumstances. U.S. employers and individuals generally do not understand when they are told that someone cannot come into the United States because of their history and that waivers of those grounds of inadmissibility are not automatic. It does not make sense to most laypeople that once they have identified someone who is crucial to the success of their business, or the love of their life, that the person cannot travel to the U.S. freely.

U.S. immigration lawyers work within the bounds of the current law to identify the most advisable visa category for each person, prepare the significant paperwork it requires to overcome the burden of proof for eligibility and then help navigate the final stages of visa issuance and admission to the United States that each category entails. U.S. immigration lawyers want to say yes to their clients, but spend the majority of each day saying no—or at the very least explaining the numerous steps it takes to get someone to the U.S. in a temporary or permanent capacity and keep them here lawfully.

Myth: U.S. immigration law is simple, non-biased and applied consistently.

Consistency is the elusive fantasy of U.S. immigration law. While consistency, integrity, transparency, and efficiency are the stated noble goals of USCIS and all the offices under the umbrella of the Department of Homeland Security (DHS), none of these goals has come to fruition. U.S. immigration lawyers explain on a daily basis to businesses that wish to hire foreign workers or set up offices in the United States that a petition that was approved a month ago may not go through today. The facts and documentation presented may be virtually identical, but each petition stands on its own to be judged.

Most of the statutes and regulations governing U.S. immigration law have not changed for

decades, even after the repeated call for reform from both sides of the debate on immigration law. However, the actual implementation of policy and adjudication of the laws changes daily. It is no small feat to ask clients to provide voluminous personal or business documentation to establish eligibility for a benefit, explain why all of it is absolutely required and then explain that, no matter what might be sent for review to USCIS, or the Department of Labor or other relevant government agencies, they may still face requests for even more documentation. The system is overly burdensome and not efficient by any stretch of the imagination.

In addition, the current U.S. immigration laws are less welcoming to certain types of employment and familial relationships and there are country quotas in place to curtail immigration from certain areas of the world. The United States was built on and has thrived from the continuing influx of inexpensive skilled and non-skilled labor. Many people may think that the immigrants of today are different than those who came in the past and that immigrants comprise a larger part of our population. However, there are a number of studies and census records that debunk these myths,¹ as well as myths regarding immigrants' payment of taxes, displacement of U.S. workers from jobs, the draining of the U.S. economy, depression of wages and the unlawful use of federal public benefits.² Those discussions are outside of the scope of this article.

U.S. immigration lawyers, however, must help their clients understand the various laws that discriminate against certain work and family-based immigration categories. The visa categories are generally very limited and most types of skilled and unskilled labor have no place in our current system at all. In a number of business visa categories, definitions and certain educational requirements are becoming more and more obsolete in many burgeoning fields of industry. U.S. immigration laws have not kept up with these developing fields, and the United States is thus losing top talent to other countries that are more welcoming and adaptable to the new global economy.

It is very difficult to explain to U.S.-educated, foreign-born workers, who are working, living and positively contributing to the U.S. under one of the few employment-based temporary visa categories our system does provide for, and whose employers have already spent thousands of dollars on the years-long process for sponsoring an employee for permanent residence, why it will take five to 10 years or more for them and their families to reach the final stages of the employment-based green card process, simply because they were born in countries not favored under the current system (e.g. India, China).

Explaining family-based U.S. immigration to clients can be equally as daunting. A sibling desperate to be reunited with his or her brother or sister living in a country with economic and social upheaval does not understand why it will take 10 to 15 years for their family member to be eligible for a green card or why this immigrant visa category is ripe for elimination if and when there is any immigration reform in the future.

Nor do U.S. citizens understand the hurdles and delays they must go through to have a foreign-born spouse join them in the United States. President Barack Obama, his administration and USCIS in particular, are well aware of the hardship of separating U.S. citizens from their spouses and have made inroads in decreasing adjudication and processing times, but more must be done to eliminate the delays and change the laws to streamline the process.

Myth: U.S. immigration is so rife with fraud that anyone can file these papers.

There is a perception from many members of Congress and the public that our current U.S. immigration system is open to significant fraud and misuse. No doubt there are those who seek to gain benefits for which they are not eligible, or that distort facts and documents to gain such benefits. There is no area of law that is immune to malfeasance. However, USCIS, the State Department, the Labor Department, CBP and all the agencies involved in the implementation of immigration law have safeguards in place to combat fraud. The majority of those seeking to enter the United States are doing so to positively contribute to our society and otherwise would not choose to go through the significant hurdles they must navigate to get here and remain lawfully which includes using the services of a U.S. immigration lawyer.

U.S. immigration lawyers have a duty to combat the perception of significant fraud, as well as their professional responsibilities. The practice of law should always be taken with the utmost care and the highest levels of professionalism, but the practice of U.S. immigration law should be held to an even higher standard. The relationships developed and the level of trust between a U.S. immigration lawyer and client is a sacred trust. Missed deadlines, insufficient documentation or careless advice can lead to the harshest consequences that cannot be undone.

The unauthorized practice of law (UPL) is of the utmost concern to immigration lawyers and to the U.S. government. U.S. immigration lawyers grapple with how to help individuals who have been irretrievably harmed by those preying on ignorance, rumors and fear in certain immigrant communities. UPL is not only found in poor communities—there are many who also seek to exploit the complexity of U.S. immigration law to take advantage of even the educated and wealthy.

While the debate concerning U.S. immigration reform rages on in Congress and the media, immigration lawyers will continue to navigate the waters between providing sound, well-researched legal advice and advancing the needs and wishes of their clients. Conversations with clients will continue to be complex and have to account for the shifting sands in policy and adjudication. The practice of U.S. immigration law would be best served by debunking as many myths as possible and focusing attention on improving our current system.

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Endnotes:

1. Top Ten Myths About Immigration by Leo Anchondo of Justice for Immigrants, Immigration Policy Center, 2010, <http://www.immigrationpolicy.org/high-school/top-10-myths-about-immigration>.

2. Immigration Myths and Facts. U.S. Chamber of Commerce, Labor, Immigration and Employee Benefits, Oct. 23, 2013, https://www.uschamber.com/sites/default/files/legacy/reports/Immigration_MythsFacts.pdf.

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