

The Lawyer and Our History

Practicing immigration law has rarely been more important to the country.

BY MICHAEL MAGGIO

The practice of immigration law is often misunderstood and sometimes envied. Other attorneys believe we spend our days either filling out forms or working on cutting-edge, lifesaving asylum cases. Although there is a kernel of truth to these stereotypes, the practice of immigration law is exceptionally varied, challenging, and satisfying. This is even more so since Sept. 11, 2001, when 19 foreign nationals created a palpable combination of fear and anger that reshaped our country's political and strategic agendas.

This event generated the greatest debate since the McCarthy Era about the tension between civil liberties and national security. It also put immigration practitioners in the unpopular position of defending the foreign-born at a time when suspicion and paranoia about immigrants reign.

It is not new that some see immigrants as a potential fifth column in the land of immigrants. Shortly after citizens of Japanese ancestry were released from internment camps, former Communists with American families faced deportation under an ex post facto law deemed constitutional. A generation before, a young government lawyer named J. Edgar Hoover oversaw the arrest of 2,500 "alien radicals" in one night alone during the infamous Palmer Raids.

LAWYERS AND CLIENTS

This time, our clients perpetrated the terrorist acts, many said. Congress held hearings that characterized the Immigration and Naturalization Service, somewhat accurately, as the most dysfunctional of agencies. Desperate for redemption, the INS locked up hundreds of Arabs and Muslims for *de minimis* immigration violations, often refused to acknowledge their detention, routinely denied access to counsel, and sought deportations based upon secret evidence.

Long-term permanent residents and their American families have been among the hardest hit by the post-Sept. 11 anti-immigrant hysteria. Frequently, ancient and very minor criminal convictions now cause permanent residents to be placed in deportation proceedings, usually after returning from abroad.

'SPECIAL REGISTRATION' PROBLEM

"Special Registration" is a new immigration policy that requires certain male nationals from all Muslim and Arab countries to be fingerprinted, photographed, and interviewed, and to report their departure to the Department of Homeland Security. It affects far more foreign nationals than the post-Sept. 11 dragnet arrests of Arab and Muslim men that were recently criticized by the Department of Justice's inspector general and by former INS Commissioner James Ziglar.

Thousands of innocent and anxious Arab and Muslim men have waited for hours to specially register and keep their immigration records pristine. Even though green card applicants are deemed lawfully present in the United States, hundreds of young men with pending cases—including spouses of U.S. citizens—were incarcerated and placed in deportation proceedings after registering. Consequently, many responsible for ferreting out terrorists see Special Registration as a waste of time and money.

Special Registration, and other post-Sept. 11 changes, especially hurts the hospitality and tourism industries, both important immigration clients. After all, who is interested in traveling to a country where, after flying many hours in an aluminum tube, one faces additional hours waiting for a lengthy, intrusive, and all too often harassing immigration interview? This Soviet-style policy has resulted in multiple incidents such as that which occurred to Ejaz Haider, the editor of Pakistan's most respected English-language newsweekly, who was grabbed by the DHS as he entered the Brookings Institution, where he was a visiting scholar. The bumbling implementation of misguided policies also has meant more work for immigration attorneys, but more anxiety too, as we see limited anti-terrorism resources squandered, and good people harassed.

PERMANENT RESIDENTS AND SEPT. 11

Permanent residents with criminal records, including those whose records have been expunged, have been profoundly impacted by

Sept. 11, and this, too, has changed the practice of immigration law. The National Crime Information Centers database finally is available to immigration inspectors. As a consequence, unsuspecting permanent residents returning from abroad find themselves detained without the right to bond, and in deportation proceedings, often without defenses. These clients find that crime-related provisions of the Immigration Nationality Act read like something from a Kafka novel. In many instances, a returning permanent resident is inadmissible, but not deportable. In other words, a permanent resident with a criminal conviction may not be deportable, but if he leaves the country, upon return, that same legal resident may be detained indefinitely and then removed, even if he has lived here for most of his entire life, raised an American family, and acquired substantial assets.

Salvador Blanco, a permanent resident since 1991, the father of four young motherless American children, and the owner of a D.C.-area restaurant, was imprisoned without bond from June 26 until July 17, because the DHS recently discovered his 1993 conviction for submitting false statements to the Virginia Department of Motor Vehicles, for which he received a one-year suspended sentence. He is now fighting deportation.

Circumstances are equally bad for so-called aggravated felons, who need a travel agent more than an immigration lawyer because they face almost certain deportation, such as the Panamanian woman long employed by the D.C. Department of Education, and a leader in her church, who pleaded guilty to misdemeanor shoplifting. Congress made the misdemeanor grounds for deportation, because a “theft offense” with a sentence of a year or more, even if suspended and expunged, is an aggravated felony.

Business immigration law is the day-to-day work of many immigration practitioners. The government’s granting of visas to two dead Sept. 11 hijackers—six months after the attacks occurred—caused an uproar that spawned a de facto agency policy to deny approvable cases. No company or institution is exempt from the DHS “culture of no.”

Household-name multinational companies, after obtaining work visas for international executives, and then extensions, are told when they seek a second extension that the first two approvals were mistakes. Universities, and other leading biomedical research organizations, including the National Institutes of Health, have scientific visas denied routinely because post-Sept. 11, the DHS apparently knows more about science than they do.

But this additional work does not necessarily translate into additional revenue for business-immigration attorneys, because flat fees and long-term representation agreements predominate. The business immigration bar is not only working longer and harder for fees set during easier immigration times, but they fear the consequences of raising fees when clients are cutting costs.

PARTICIPATING IN HISTORY

All this is but a fraction of the post-Sept. 11 legal and political consequences to immigrants and their American families,

employers, and attorneys. Attitudes toward immigrants with questionable political sympathies first played a defining role in our nation’s political and legal history when the Federalists fought to retain control of Congress and the White House by characterizing Thomas Jefferson’s Republican Party as the party of French Revolutionaries and unwashed Irish immigrants. The debate then shifted to the Alien Act, which authorized the president to deport aliens considered dangerous “to the peace and safety.” Jefferson called it “worthy of the Eighth or Ninth century.” Today, the act’s secret and indefinite detention, national origin- and religion-based registration, and other immigration policies are inconsistent with cherished constitutional principles that do little to fight terror.

Current events and a sense of history make the practice of immigration law exceptionally meaningful, a word too few attorneys would attach to their work. For this and other reasons, professor Margaret Taylor of Wake Forest University School of Law argued persuasively at the American Immigration Lawyers Association’s annual meeting in June that every law student should be required to take immigration law. As she said:

Immigration law teaches students how to read a complicated statute, and it makes administrative law concepts come to life while showing students how an agency operates. Immigration law underscores for students the importance of constitutional rights, not because they see these rights being vindicated, but rather because students of immigration law see a very scary picture of what the world looks like when constitutional norms are not fully enforced by the courts. Immigration law also restores human face to the study of law. Students are moved by the plight of real people they read about in their immigration law case book and, increasingly, the newspapers: real people whose lives are threatened; real people impacted by an unduly harsh statute; real people who are victims of an abusive government power, bureaucratic bungling, and inexcusable delays. Immigration law shows students the power of the law degree for doing good, and that is not something that is generally taught in law school.

Immigration lawyers are constant students of immigration law because the immensely complicated statute that governs our practice is forever changing. And in today’s highly charged political environment, despite the criticisms leveled against us and our clients, immigration lawyers view our work as fundamentally patriotic because defending immigrants involves defending the Bill of Rights. Furthermore, history confirms that our clients define and enrich this country, and are a crucial part of what makes our country worth protecting.

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