



*Troubled Times for U.S. and Foreign Clients: Immigration Tips All Lawyers Can Use**
by Angelo A. Paparelli and Susan K. Wehrer

In the heat of adversarial battle, we lawyers sometimes forget that ours is a helping profession. Yet attorneys in all specialty areas can provide immeasurable aid to their clients merely by encouraging them to become (and remain) aware of the requirements of our nation's immigration laws.

Attentiveness to the rights and obligations created under the immigration laws is not merely a concern for foreign nationals, but also for the American citizens and the U.S. employers who hire or do business with them. After all, if an American client's co-worker, employee, business partner, friend or relative is removed from the United States or barred from returning, the U.S. client's loss may be almost great as that of the banished foreign citizen.

The point is not that all lawyers should become overnight experts in immigration law. To be sure, the field is a complex specialty. Indeed, Immigration and Nationality law is among the areas of legal specialization offered by the State Bar of California. Rather, a word of reminder or of caution to clients about immigration-law compliance is something any lawyer can do. This type of guidance may be all the encouragement needed to prevent an individual from falling out of immigration status and falling into a nightmare of problems.

In the aftermath of September 11, foreign nationals face stricter enforcement of immigration laws while in the United States. Of primary importance is whether foreign nationals are conducting themselves in a manner consistent with the terms and conditions of admission to the U.S. under their particular nonimmigrant or immigrant status. Newspapers are replete with articles discussing the unfortunate consequences – including arrest, detention, prosecution and deportation -- triggered by the failure of foreign nationals to maintain lawful immigration status. In an October 25, 2001 speech for the U.S. Mayors Conference, Attorney General John Ashcroft (the nation's primary enforcer of the immigration regulations) warned that violations of our laws perhaps as trivial as "spitting on the sidewalk" will be enforced with vigor in order to keep America safe.

So how can lawyers help? Attorneys can perform simple tasks. Lawyers can remind clients who interact with foreign nationals to urge foreign citizens to review their immigration-related paperwork and confirm that they always carry appropriate documentation of immigration status. For nonimmigrants (persons allowed to visit or remain in this country for a limited period, perhaps of several years), such documentation will include a Form I-94 (Arrival/Departure Record), issued upon arrival to this country. The white, approximately 3-inch by 4-inch card, endorsed with the visa category and duration of admission, should be stapled in the individual's passport and should always

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be renewed on time in order to reflect a an unexpired period of validity. “Green card holders” (persons allowed to remain permanently in the U.S.) should always carry a valid alien resident card (Form I-551) or a temporary stamp in their unexpired foreign passport that confirms that the card itself is in the process of being manufactured and issued by the government. Foreign nationals employed in the U.S. should possess appropriate evidence of authorization for employment, such as a valid Form I-94 indicating admission to the U.S. in an employment-based work-visa classification, an Employment Authorization Document (Form I-766), or a valid alien resident card.

Just because a nonimmigrant holds a current, unexpired Form I-94 does not necessarily mean, however, that the alien is maintaining lawful immigration status. Foreign nationals should therefore become familiar with the requirements for entry to the U.S. and continued maintenance of status under their particular nonimmigrant visa category. For example, an F-1 academic student must generally maintain a full course of study and refrain from engaging in prohibited forms of employment. As other examples, individuals with a work visa such as the H-1B (worker in a specialty occupation) or L-1 (intracompany transferee) may only work for the employer who sponsored their employment.

Unfortunately, a foreign national may not always be able to control whether he or she remains in lawful immigration status. As a result of the current recession, for example, many workers in H-1B status have been terminated or benched (not paid during nonproductive periods when the employer has insufficient work to assign) and, thus, can no longer fulfill the requirement of their status that they remain actively employed by the H-1B petitioning entity. These individuals will likely be viewed by the INS as being out of status upon termination of their employment, and possibly during any period when they are “on the bench” as well. The approach here is to recommend that such individuals seek immigration counsel’s assistance to apply immediately for another lawful immigration status. Perhaps another employer can be found and the immigration status can be “ported” to the new sponsor (*see, e.g.* http://www.entertheusa.com/publications/a_movable_feast.pdf); perhaps the individual can instead apply to the status of student or visitor for business or pleasure. The message the lawyer who does not practice immigration law can give in this instance is simple: “Get thee to an immigration lawyer or get thee out of the U.S. pronto.” Doing nothing, however, can foreshadow terrible consequences for the individual and his or her immediate family – removal from the U.S. or banishment for perhaps three to ten years.

Lawyers can also remind foreign nationals over the age of 18 to carry documents of identity and proof of the right to be physically present in the U.S. (passports, Forms I-94, Form I-797 approval notices, or alien resident card) at all times. Failure to carry the requisite immigration documents is a misdemeanor punishable by imprisonment for up to 30 days and/or a \$100 fine. When traveling abroad and seeking re-entry to the U.S., and even while traveling within the U.S., foreign nationals should be advised to carry additional photo identification documents, such as a driver’s license; verification of employment, such as a copy of a recent pay stub, if holding a work visa authorizing

employment with a specific employer; and proof of residence, such as a utility bill, if applicable.

Lawyers can also instruct foreign nationals to report any change of address to the Immigration and Naturalization Service within 10 days of the move on Form AR-11 (available from the INS web site at www.ins.usdoj.gov). The willful failure to comply with this requirement can result in criminal misdemeanor charges and/or possible deportation.

In this time of turmoil and enhanced enforcement of the immigration laws, the mantra for all lawyers advising clients who meet, befriend, employ or work with foreign nationals should be the reminder to these foreign citizens: "Stay in status, stay in status, stay in status." In any given case, it may be unclear, however, whether a particular foreign national might have misbehaved or otherwise transgressed the immigration laws. If such questions arise, or if a potential lapse of status is discovered, a qualified immigration attorney should be consulted promptly. These simple lawyerly steps may thus avoid tragic immigration consequences, and bring reassurance to lawyers, immersed all too often in contest and controversy, that they have once again returned to the Samaritan roots of the profession.

BIO:

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