



Immigration Practice - 15th Edition

by Robert C. Divine and Blake Chisam

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Book Outline

Immigration Practice guides readers through all aspects of immigration law in one volume, complete with over 3,000 footnote citations to the wide range of statutes, regulations, court and administrative cases, policy memos, operations instructions, agency interpretive letters, and internet sites that a lawyer needs for complete understanding of a particular problem. No other source merges the practical with commentary and analysis so helpfully.

The book explains in understandable language and meaningful and dependable detail the substantive issues and the practical procedures a lawyer needs to handle a specific immigration matter, complete with checklists of forms, supporting evidence, and other strategies needed for application/petition packages. The book has unparalleled coherence, integration and consistency.

Highlights

- Liberally cross references to other sections in the book where related topics are discussed (because so many topics are interrelated).
- Line-by-line instructions on how to complete the most commonly used forms to avoid embarrassing mistakes.
- Lists the contents of packages to file with government agencies: forms and fees, detailed support letters, and other supporting evidence.
- Explanations of potentially applicable visa options organized according to the attributes of the foreign national (and the employer), rather than classifications in alphabetical order, so that practitioners can make sense of options in light of the client in the office.
- Comparisons and charts of attributes and procedures of such topics as nonimmigrant visa classifications, procedures to permanent residence, and standards of "extreme" hardship.
- Citations throughout the book, and collection in the extensive CD-ROM Appendix, to primary source materials and the most useful Internet site URLs with explanation of the increasingly helpful free databases and tools available through each one.

What's New

- Internet Links: Constantly increased and updated links to government web sites containing current contact information, forms, primary law sources of all types, case status information, and processing and substantive guides--all referenced by pinpoint citations in the text. See Chapter 5 explaining sources of law, Appendix C and D-1 showing web links, and the CD-ROM in the back cover providing one-click access! Readers are strongly encouraged to review and use the CD-ROM and to consider saving Appendix C, D-1, and E-1 into their hard drives or saving the links to their internet browser "favorites" or "bookmarks" for ready reference all the time.
- Upgraded removal-related treatment: significant improvements to Chapters 10, 11, and 16 by attorney who has worked for immigration courts several years.
- Supreme Court decisions: effects of limited marijuana distribution offense as aggravated felony (§ 10-6(b)(1)(vi)); tax offenses as aggravated felonies (§ 10-6(b)(1)(vi)); rejection of "comparable grounds rule" for 212(c) eligibility (§ 10-6(b)(1)(vii)); modified categorical approach applies only to divisible statutes (§ 10-6(b)(2)(i)); non-retroactivity of Padilla decision (§ 10-6(b)(2)(vi)); rejection of the "statutory counterpart rule" for § 212(c) waivers (§ 11-5(f)); invalidation of the Defense of Marriage Act § 14-7(a)(2)(i); non-imputation to child of firm resettlement of parents (§ 16-4(c)).
- Lower federal court decisions: concerning such issues as: recognizing a beneficiary to have standing to challenge a USCIS petition denial (§ 2-2(a)(1)(I)); reviewability of good moral character determinations and other (§ 2-2(a)(1)(I)); court order of USCIS to speed up FOIA certain responses (§ 4-2); CBP FOIA process (§ 4-2); DOL case disclosure data (§ 4-5); need to exhaust remedies under DHS TRIP to challenge inclusion on watch list (§ 10-3); CIMT crime determinations (§ 10-6(b)(1)(iii)); effect of a single firearm sale (§ 10-6(b)(1)(vi)); 212(h) waiver eligibility in regard to post-entry adjustment but not as to stand alone request (§ 10-6(b)(3)); interference with police helicopter using laser light as CIMT (§ 10-6(c)); whether post-entry adjustment is an admission for § 212(h) waivers (§ 10-6(b)(3)); whether there is an involuntariness or duress exception to the terrorism support bar (§ 10-6(c)); enforcement of I-864 financial support obligations (§ 10-6(d)(2)); mandatory



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bond hearing after six months of detention (§ 11-3(f)); ICE detainees found to lack authority (§ 11-3(g)); representation in immigration court at government expense for aliens with serious mental disabilities (§ 11-4(g)); stop-time and petty offense exceptions relating to cancellation of removal (§ 11-5(f)); revelation of the BIA's erroneous reliance for decades on nonexistent provisions of Mexican Constitution affecting legitimation issues (§ 12-3(d)(3)); rejection of BIA's rule against nunc pro tunc adoption orders (§ 14-7(b)(3)); invalidation of FSBPT efforts to restrict applicants from certain countries to sit for physical therapy exams (§ 15-2(c)(2)); use of impeachment evidence only to terminate asylum (16-2(b)); asylum claims of German homeschooled, and mixed motive cases (§ 16-4(a)(3)); social group asylum claims (§ 16-4(a)(3)); expansive implications of inconsistencies in testimony (§ 16-4(a)(4)); "particularly serious crimes" barring asylum claims (§ 16-4(c)); special asylum procedures for unaccompanied children (§ 16-4(c)); adjustment eligibility of alien who entered without inspection and then obtained TPS (§ 16-7(a)(6)); eligibility of after-acquired spouse under Cuban Adjustment Act (§ 16-7(e)); preempted state law provisions aimed at aliens, employers, and landlords (§ 19-4(l)(3)).

- BIA decisions on such issues as: what constitutes a drug trafficking crime (§ 10-6(b)(1)(iv)); implications of child pornography conviction (§ 10-6(b)(1)(vi)); possession of ammunition by a convicted felon (§ 10-6(b)(1)(vi)); availability of "stand-alone" § 212(h) waiver without adjustment application (§ 10-6(b)(3)); service of NTA on a minor (§ 11-3(b)); service of NTA and other safeguards for aliens with serious mental conditions (§ 11-4(g)); approval of administrative closure of removal cases (§ 11-5(d)); termination of asylum, then removal and relief in proceedings (§16-2(b)); relocation issues in asylum claims (§ 16-4(a)(3)).
- Regulations, government policy memorandums, other decisions, and government web site enhancements concerning such matters as: differing government renderings of single name for certain persons (§ 1-6(a)(3)); USCIS refusal to accept stamped signatures for attorneys on G-28 (§1-6(a)(3)); USCIS use of bar codes for forms, and danger of making marginal notes on forms (§1-6(a)(3)); USCIS use of customer-completed "e-Request Service" inquiries (§ 2-2(a)(1)(F)); movement of all visa processing to the electronic CEAC system (§ 2-3(a)); replacement of the CBP Inspectors Field Manual with the Officer's Reference Tool and the beginning effort to replace the USCIS Adjudicators Field Manual with the online Policy Manual (§ 5-4); replacement of the paper I-94 card for air and sea entries with an "automated" online I-94 record (§ 7-4(b) and other sections); new section on "Other Redress for Adverse Results (on visas and admissions, § 7-4(c)(14)); the radical implications of Matter of Arrabally and Yerrabally concerning the effects of departure under advance parole (§§ 8-7(d)(2)(i) and 10-6(f)); modernization of the immigrant visa process (§ 8-8); new "Provisional Unlawful Presence Waivers" within the U.S. using Form I-601A (§ 10-6(f)); exception to false claim to U.S. citizenship inadmissibility if claim made before individual was age 18 (§ 10-6(g)); EOIR Online representative registration system (§ 11-3(e)); ICE Parental Interests Directive and ICE "eBOND" online bonding process (§ 11-3(f)); ICE non-renewal of 287(f) agreements (§ 11-3(g)); Deferred Action for Childhood Arrivals (§ 11-3(h)(3)); ICE recognition and implementation of statute allowing post-removal challenges (§11-8(b)); new USCIS Policy Manual provisions on naturalization eligibility and process, including residence, selective service, § 319(b) special rules, and other issues, and new N-400 form and instructions (Chapter 12); Government-side implementation of the Supreme Court's recognition of same-sex marriage (various chapters); exceptional circumstances allowing foreign-country filing of I-130 petitions where no USCIS office is located (§ 14-5(a)); implications of a withdrawn I-140 (§ 15-1(h)); various policy developments concerning EB-5 investors (§ 15-2(f)); numerous BALCA cases and DOL positions affecting the PERM labor certification process and the publication of data about applications (§ 15-3); updated Affirmative Asylum Procedures Manual (§ 16-3(a)); USCIS memo on "exceptional circumstances" for failure to appear at asylum interview (§ 16-3(a)(1)(iii)); litigation settlement agreements to share asylum officer interview notes in FOIA (§ 16-3(a)(2)), concerning asylum applicant work authorization process and "Clock" (§ 16-3(c)), and failure to appear at I-730 interview (§ 16-3(f)); bundling of related L-1 petitions (§ 17-3(b)(4)(i)); presumed L-1 visa validity for maximum reciprocity duration but sometimes more limited stays from CBP (§ 17-3(b)(7)); filing I-129 petition for Canadian TN, and duration of Mexican TN separate from visa validity (§ 17-4(c)(2)(ii)); H-1B and H-2A flip-flopping administrative and congressional positions (§ 17-4(d) and 17-5(e)(1)); "B-1 in lieu of H" in effect but "under review" (§ 18-3(1)(2)(B)); accreditation requirements for F-1 language training programs (§ 18-4(d)(1)); cessation of CBP stamping of I-20 forms (§ 18-4(d)(3)); use of electronic ELIS system for certain changes of status (§ 18-4(d)(4)); new "cap gap" and STEM OPT extension policies (§ 18-



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4(d)(9)(iii); possible need for separate waivers for different J experiences subject to § 212(e) (§ 18-5(b)(2)(ix)); revisions to M-274 Handbook for Employers for I-9, USCIS "I-9 Central" web site, and IRS tightening of ITIN application process (§ 19-4(b)); ICE policies about auditing electronically generated I-9 forms (§ 19-4(h)); OCAHO reductions of ICE I-9 fines on employers (§ 19-4(j)); ICE definition of "technical and procedural" errors subject to correction under good faith rules (§ 19-4(j)); USCIS revision of E-Verify MOU and new notice to workers about TNC resolution, expansion of E-Verify "photo tool," and "lock out" of suspect SSNs from E-Verify (§ 19-4(l)(1)).

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TESTIMONIALS

Some of the most experienced and acclaimed immigration lawyers in the nation have said:

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- **R. Mike Borland**, Borland & Borland, Attorneys at Law, P.C., Midland, Texas

"Immigration Practice is excellent and very practical. I use it for my Immigration Law classes. My students appreciate the focus on the real-life practice of Immigration Law, as opposed to the theory and policy of immigration. The charts regarding eligibility for various visas and forms of relief are indispensable for students and practitioners alike."

- **David C. Koelsch**, Assistant Professor and Director, Immigration Law Clinic, University of Detroit Mercy School of Law, named by AILA as Outstanding Immigration Law Professor for 2009.

"Immigration Practice is a handy reference work for both the novice and the experienced practitioner with a novel organizational approach that focuses on real life situations rather than the statutory category."

- **Daryl Buffenstein** is a leader of the national immigration firm of Barry, Appleman, & Leiden. He is Former President and General Counsel of the American Immigration Lawyers Association (AILA).

"Immigration Practice is filled with practical, down to earth information in a format that is easy to use. I bought one for each member of my staff."

- **Peter Williamson**, Houston, TX. Mr. Williamson is Former President of AILA (1994-1995) and served as Chair of the Texas Chapter, on the National Board of Governors (1982-present), and on the National Executive Committee.

"Immigration Practice fills a niche that needed filling: A single volume with all the basics explained in plain English for newcomers, and plenty of sophisticated discussion with lots of footnotes for old hands. The appendix alone is worth the price of the book! It has all the addresses, phone numbers, and lists that are needed constantly in immigration practice, plus tips on how to fill out the most common forms. I keep this volume on my desk as a convenient and thorough reference. You can tell that it was prepared by an experienced practitioner who understands the practical side of an immigration practice and who is result oriented."

- **Dale M. Schwartz**, Schwartz & Kuck, Atlanta, GA is Former President of AILA (1986-87), and has testified as an expert witness before committees of the U.S. House of Representatives and the United States Senate on immigration legislation. Mr. Schwartz was Co-Chairman of the Immigration Law Committee of the Section of Litigation of the American Bar Association.

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- **David Ware, Metairie**, LA is very active in AILA including: Vice-Chair, Committee on International Students (1995 to Present); Treasurer, Louisiana Chapter, 1984 to 1988; INS Liaison Chair, 1988 to 1989; NAFSA Region III Liaison, 1992 to 1995.



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--**K. Craig Dobson, Esq.** Dobson Immigration Law & Policy, LLC. Hilton Head Island, SC.

AUTHOR

Robert C. Divine is a Partner and leader of the Immigration Group of Baker Donelson, a law firm of over 550 lawyers and public policy advisors with offices in 13 cities from Washington, D.C. to New Orleans.

Mr. Divine has over 25 years of immigration law experience and served in Washington, D.C. from July 2004 until November 2006 as the first presidentially appointed Chief Counsel of United States Citizenship & Immigration Services (USCIS), the world's largest immigration services agency within the Department of Homeland Security (DHS). From July 2005 until July 2006, he served as Acting Director and then Acting Deputy Director of USCIS. In early 2004 he served as an expert for the U.S. Commission on International Religious Freedom evaluating the impact on asylum claims from DHS' implementation of expedited removal procedures.

He has practiced immigration law since 1986 and in the last several years has chaired the American Immigration Lawyers Association's "Inter-Agency" Committee and its Liaison Committee to the U.S. Department of State. He has served as an expert witness in U.S. and foreign courts.

His practice includes all aspects of U.S. immigration law, representing large and small international and domestic employers, investors, developers, regional centers, family sponsors, and individual foreign nationals. He has also litigated significant business matters, including class action employment discrimination, contract, commercial, product liability, antitrust, ERISA benefits, business torts (including RICO, misrepresentation, Consumer Protection Act), and immigration-related criminal matters.

CONTRIBUTORS

R. Blake Chisam is Fragomen's Director of Professional Practices and the Firm's Data Privacy Officer. In his role as Director of Professional Practices, Blake oversees a team of professionals that drives efficiency and quality assurance for Fragomen. As Data Privacy Officer, Blake is responsible for daily issues related to data privacy compliance, and is the point-of-contact for all data privacy matters.



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Blake was previously senior counsel to the immigration subcommittee for the U.S. House Committee on the Judiciary, where he worked on policy and oversight issues related to employment-based immigration, international law, border security, immigration enforcement, refugee issues, naturalization and citizenship. In addition to his former role with the House Judiciary Committee, Blake served as Staff Director and Chief Counsel for the House Committee on Standards of Official Conduct (Ethics Committee) from 2009-2011, and counsel to the Ethics Committee Chair and Senior Policy Advisor to Representative Zoe Lofgren in 2009. During his tenure, Blake directed an unprecedented number of complex Congressional ethics investigations and served as lead counsel in high-profile House ethics disciplinary hearings.

Prior to his government service, Blake practiced immigration and nationality law in the private sector. His practice focused on advising organizations with respect to immigration-related policy, employment issues and other related matters. Blake is a sought-after speaker and guest lecturer and has published many commentaries on immigration law including a book, *Immigration Practice*, which he co-authored. In 2000, he was awarded the Meritorious Public Service Award by former Attorney General Janet Reno.

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