



**State Bar of Texas
Committee on Laws Relating to Immigration and Nationality**

Meeting Minutes

Friday, October 29, 2004, San Antonio District Office 10:30 - 3:00

Regular Business Meeting

Paul Parsons, Chairman, called the meeting of the State Bar of Texas Committee on Laws Relating to Immigration and Nationality to order at 10:35 a.m. The committee was established in 1982 to study current and proposed laws pertaining to immigration and nationality and to make recommendations for improvements to these laws. The committee is comprised of private immigration lawyers, an immigration judge, the director of a pro bono asylum project, the director of a CIS regional service center, a CIS district director, accredited representatives of non-profit organizations recognized by the Board of Immigration Appeals, and public representatives.

The following persons were in attendance:

Committee members:

Becky Burdette, Houston Practitioner
Mario Rojo del Busto, International Faculty & Scholar Services, Texas A & M University
Andrew Gee, Houston Practitioner
Jodi Goodwin, Harlingen Practitioner
Alpha Hernandez, Del Rio Practitioner
Carmen Perez, Minority Board Member
Robert Loughran, Austin Practitioner
Catriona Lyons, Texas Department of Health and Human Services
Anne Monahan, San Antonio Practitioner
Maria Elena Morales, Laredo Practitioner
Paul Parsons, Austin Practitioner
Ken Pasquarell, District Director, San Antonio, USCIS
James Prappas, Houston Practitioner
Hussein Sadruddin, Non-Profit Member, International Rescue Committee
Evelyn Upchurch, Director, Texas Service Center, USCIS
Paula Waddle, Harlingen Practitioner
Peter Williamson, Houston Practitioner

Guests:

Wiley Blakeway, Supervisory DAO, San Antonio District, USCIS
Elaine Mueller Cantu, Supervisory DAO, San Antonio District, USCIS
Timothy Coates, Supervisory DAO, San Antonio District, USCIS
Jacque Crouse, Community Relations Officer, San Antonio District, USCIS
J. B. Dudley, Interim IIO Supervisor, San Antonio District, CBP
Virginia Villarreal Kahn, Anti-Fraud Officer, San Antonio District, USCIS
Harvey Lugo, Anti-Fraud Officer, USCIS, San Antonio District, USCIS

Ninfa Luna, Assistant Center Director for Non-immigrant Business Product Line, Texas Service Center, USCIS

Javier Maldonado, Executive Director, Immigration Project, Lawyers Committee for Civil Rights

Anthony Marshall, Supervisory DAO, San Antonio District, USCIS

Carlos Pabon Martinez, ASC Manager, San Antonio District, USCIS

Edna Ramon Butts, Special Assistant Attorney General, Texas Attorney General's Office

Debra Rodriguez, Corpus Christi Practitioner

Chris Saucedo, Supervisory DAO, San Antonio District, USCIS

Daniel Solis, Port Director for San Antonio, CBP

Minutes of Prior Meeting

By unanimous vote, the minutes of the last meeting were approved as published.

Reports

AILA Report, Jodi Goodwin: At the National level, AILA is working on several issues with respect to H1B and H2B visa numbers being exhausted for FY 05. In addition, AILF is contemplating litigation against EOIR for the use of the video hearings. Much of the advocacy is focused on the bad immigration provisions that were placed in H.R. 10. And National is working on setting advocacy priorities for the next year. The Texas Chapter is having its Fall Conference the first week of November at the Magnolia Hotel in Houston.

TSC Report, Evelyn Upchurch and Ninfa Luna: The good news to report is that the A76 study on outsourcing of immigration information officers has been cancelled. The filing of I-129's requesting Premium Processing has almost doubled. Since reaching the I-129 cap we can no longer e-file any H1B cases.

The Kentucky Consular Center has been receiving all of their nonimmigrant approvals for the last several months. TSC staff were able to visit the KCC about a month ago and have not found any complaints by attorneys for the processing of NIVs.

Currently, I-130s and I-129Fs are being sent to California Service Center. Consular returns are going straight to CSC as well. Practitioners note, if you receive an RFE from CSC, send it back to CSC. If the RFE is sent from TSC, then send it back to TSC. If the I-130 was transferred to the CSC, then you should follow the processing dates for the CSC to determine when to expect an adjudication of your I-130. Because of the I-130 and I-129F shift to CSC, they are realigning the work load with other application types. I-539s are moving really quickly, I-140 and I-485 (employment based) are moving forward as well. Generally, practitioners can expect a first in first out system of adjudication, but sometimes the security checks take longer on a particular case that would hold up other cases. Instead of holding the cases, they are moving the cases forward that are ready to be completed. More cases are being shipped to the District Offices for interview because they are moving on the I-485s. In those cases, the District

Office does the final adjudication. When a case is sent to District, the reason or issue that needs to be investigated is sent along with the file.

TSC is moving forward on I-751 adjudication because of the void in the I-130 processing. Case Status Online is not real helpful for I-751 purposes because they are tracked in a different system than other applications. The reason for the shifting of the I-130 work to the CSC is that it is easier to move the work than the people. They are using this reallocation of resources to work toward the processing goal of 6 months and anticipate meeting this goal provided there is no new legislation that changes their allocation of resources. In addition, they are doing staffing studies to determine the appropriate size of staff for the office based on the current workload. The shift of I-130s to CSC will continue until further notice. The TSC processing date for I-130s is not moving because they are finishing up those I-130s that were started by TSC. If TSC started the adjudication, then TSC will finish it. The I-129F's are not moving on processing date for the same residual clean up of old cases started by TSC.

San Antonio CBP Report, Daniel Solis: Currently working on unified primary training. Old Customs officers are being trained on immigration and vice versa. Currently have 10 legacy Customs officers who are training on immigration 3 officers at a time. Training is first general classification training, then 8 days of classroom instruction, then 5 days of OJT with journeyman, then 5 days of OJT with supervisor. There are future plans for Immigration officers to be trained on customs issues, but those plans will be several years in the making. The individual officer decides when they feel they are ready for primary inspection on their own.

Notes there are changes to the deferred inspection process. A document released two days prior to this meeting indicates when and where a person should go for deferred inspection.

As of October 26, 2004 all visa waiver countries must present a machine readable passport. If they do not have one, then they are given a one-time waiver and instructed they will not be allowed further entry without a machine readable passport. Note also that children who may have been included on their parent's passports now must have their own machine readable passport. If they don't have a machine readable passport but do have a visa stamped into the passport, they can enter using the visa.

Ports of entry have now been given authority to make corrections to I-94s. Most corrections can be made by the port, but some things cannot be changed such as port of entry or inspector #. In certain circumstances admission codes can be changed. If you realize there is a mistake you can go to deferred inspection for correction.

San Antonio CBP helps out the Austin POE when they have their immigration officer is out sick. Richard Mendez is the Port Director in Austin. Their bosses are in Dallas and Houston.

Various questions arose about people having their LPR status approved while they are out of the country and returning on an advanced parole, the policy with respect to all

entrants using advanced parole being sent to secondary inspection, exit procedures of US Visit and departure after a timely filed extension.

Mr. Solis emphasizes that his officers are trained to use discretion when applicable, waivers are available.

San Antonio ICE Report: No representatives from ICE. Greg Ball and Marc Moore were in Laredo for a meeting with Asa Hutchison, Deputy Secretary, Department of Homeland Security.

San Antonio CIS Report, Kenneth Pasquarell: San Antonio has met their goals for both timeliness of processing applications as well as number of applications processed. Mr. Pasquarell asked several of his upper-level employees to report on their specific programs.

Wiley Blakeway made preliminary comments about the Natz program. He invited practitioners to phone with problems or questions to 210-967-7074. He reminds practitioners that they need to be made aware immediately of any N-600's filed for persons in removal proceedings, or in custody. Practitioners should email sna.citizenship@dhs.gov to alert them of the N-600 being filed. Please be sure to advise where the client is physically located. Reminder that jurisdiction for filing the N-600 is governed by where the individual is physically residing, therefore, if a person is in custody, file in the District having jurisdiction over the jail, not their home.

Anthony Marshall reported on the San Antonio Naturalization unit as follows:

The naturalization unit covers 78 counties plus 6 counties (Bosque, Freestone, Hamilton, Hill, Leon and Limestone) located in the Waco division of the Western District of Texas in the Dallas District Office, one county (Washington) located in the Austin division of the Western District of Texas in the Houston district and one county (Terrell) located in the Del Rio Division of the Western District of Texas in the El Paso district.

The Citizenship program consists of (2) two SDAO's, 8 DAO's, 1 Exams Assist., 2 contract clerks and 2 student aides.

This was one the first units in the country to reach the administration's goal of a six-month turnaround for naturalization. We have also maintained this time period turnaround for N-600's and N-565's. We reached according to the latest reports 117.4% of goal for FY 2004 which placed us at the top for all offices within the Central Region. The office completed 6,952 N-400, 974 N-600, and 595 N-565 applications for a total of 8,521 Nationality applications for FY 2004.

The unit emphasizes the military expedite naturalization program. There are approximately 15-20 military personnel naturalized each month by the San Antonio District office. Effective October 1, 2004, the military who qualify no longer pay the application and biometric fees (\$390.00). On October 1, 2004, the USCIS began the

processing of the N-400 application, interviewing and naturalizing active duty service personnel at or near their overseas locations.

Chris Saucedo reported on the San Antonio I-485 Unit as follows:

The I-485 Unit is composed of 2 Supervisory District Adjudications Officers, 11 District Adjudications Officers, 1 Exams Assistant, 2 Student Aides, 4 Contract Employees, 1 Application's Clerk and 1 Information Officer.

For FY 2004, the SNA District office received 8,984 filings for adjustment of status. The office adjudicated 9,802 cases for FY 2004, and more importantly, maintained a 4-5 month period between the filing of the I-485 and final decision being made on such cases. In doing so, the office met 125% of the numerical goal as set by the regional and headquarters offices.

In addition, the office orchestrated the "Chicago N600" project, whereas 3 district adjudications officers reviewed and adjudicated N-600 (Application for Certificate of Citizenship) filed at the Chicago District office in an effort to reduce the overall national backlog. To date, the office has successfully adjudicated over 3500 applications and counting from that district. In addition, and concurrently, the SNA office also orchestrated a "St. Paul, MN" project under the same guidelines as the Chicago project, and the same three adjudicators decided over 700 N-600's filed at the St. Paul, MN office.

Beginning in October 2004, the SNA office embarked on a new project called the "NBC Project," aimed at helping the National Benefit Center reduce their backlog of pending I-485's from around the country. This effort is going strong, with the first 700 files already in the office and being reviewed by a crew of 4 district adjudications officers.

Timothy Coates reported on the San Antonio Collateral/Supporting Programs as follows:

The San Antonio District office has the following supporting functions and programs in addition to the I-485 and N-400 programs. The Unit is staffed by one Supervisor, one Exams Assistant and 7 adjudications officers. The unit conducts:

IBIS (Interagency Border Inspection System) Unit staffed by 3 district adjudications officers. Their responsibilities include performing IBIS checks, including the final resolution of any possible hits, on all incoming applications/petitions and scheduled appointments.

Orphans unit that is staffed by one full-time adjudicator and an alternate. This unit has an average wait time to adjudication of 14-20 days after receipt of a complete orphan's package, successful background clearance, and satisfactory home study.

Congressional inquiry unit that is staffed by one full-time adjudicator and an alternate. Most congressional inquiries are responded to the same day they are received, and are

handled in accordance with the national SOP.

I-751 (Petition to Remove the Conditions on Permanent Residence) and I-130 (Petition for Alien Relative) unit that is staffed by 4 alternating adjudications officers. Judicially filed I-130's are adjudicated as expeditious as possible, provided that the unit has ample time to obtain the file from the trial and litigation unit. Similarly, if the I-130 was filed with the Service Center, the unit will make every effort to obtain the originally-filed I-130 from the Service Center as expeditiously as possible.

I-212's (Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal) are adjudicated by one adjudicator on a chronological basis based upon date of filing.

NTA's (Notice to Appear) are written in chronological order (date received by NTA unit) by one adjudicator and reviewed by a part-time CIS attorney that visits SNA one week out of every month. Currently, the office is being very pro-active in seeking to obtain a permanent CIS attorney to this office that will make the NTA and appeals process more efficient.

Appeals to I-130's and waiver application are reviewed, written, and placed in record of proceeding order by two alternating adjudicators. Such appeals are reviewed by the visiting attorney and then routed to the proper appeals review venue.

Elaine Cantu reported on InfoPass as follows:

What is InfoPass? InfoPass is an Internet application that allows the public to schedule an appointment to visit a United States Citizenship and Immigration Services office. InfoPass is currently available in all CIS offices nationwide.

Customer can access InfoPass by simply typing <http://www.uscis-infopass.com> in their internet browser window – InfoPass does not require special software to run. Customers follow simple screen prompts asking for zip code, name, date of birth, and phone number and are allowed to choose the date and time they prefer to visit their local immigration office. The appointment confirmation can be easily printed and instructions on the notice inform the customer of the office's address, along with the appointment date and time, a confirmation number, and brief instructions.

Where can the public use InfoPass? The public can access InfoPass from the comfort of their own home or office. Alternatively, those with no Internet access may create an appointment at an Internet café, library, school or other public resource. Employers have been overwhelmingly supportive of InfoPass and may assist their employees in making the scheduled appointments. Further, relatives, friends, and neighbors with Internet access have been creating InfoPass appointments.

How and why do CIS employees use InfoPass? CIS employees can use InfoPass to report what customers appear for, and how long it takes to process each customer. They may also general local usage statistics that allow each office to fine-tune the

system to work for their particular office.

Important points regarding InfoPass: InfoPass allows a customer to make an appointment that is convenient to their work and family schedule. Customers are served expeditiously and do not wait in line. Customers may cancel their appointment by using their unique identification number located at the bottom of their appointment print out. If a customer loses their appointment letter, they may reprint it by accessing InfoPass by entering all information required and their original appointment letter will appear on the screen.

Ken Pasquarell gave an overview of current staffing levels and the concept of "right-sizing." The term positions they have from LIFE are set to end in March of '05 but has gotten word yesterday that will be extended through September 30, 2005. Based on the "right size" for the office, he believes that about 9 of the term employees will be lost to attrition. Headquarters is trying to look at lifting the hiring freeze so they can offer permanent positions, even if they are support positions. Even after considering the "right size" and the positions possibly being lost due to attrition, San Antonio stands to be able to convert more term employees to permanent positions than most offices.

With respect to background and security checks. Fingerprints can have a response in a day, however name check are unpredictable. An attorney should not do an inquiry based on the waiting for a result on a name check for at least 6 months, and then each month thereafter. The inquiry should be sent to the appropriate email address for natz or adjudications. An expedite on a name check can only be done in very limited circumstances such as: removal proceedings, diversity visa, military, or age out.

The Anti-fraud officers gave a quick presentation about their new positions. They are both new officers with newly created positions. They are being able to investigate cases by researching at the office and doing actual field investigation. They are authorized to investigate any applications that CIS adjudicates. Just as they find blatant fraud, they are also able to clear questionable cases.

Lawyers Committee for Civil Rights, report, Javier Maldonado: Lawyers Committee handles impact litigation affecting immigrants rights. David Armendariz is their new staff attorney. Current litigation includes a class action certified for the San Antonio, Harlingen and Houston Districts regarding the temporary proof of lawful status for person granted permanent residency by an Immigration Judge. The class has been certified and the case is scheduled for a hearing on a summary judgment motion for December. There is another class action filed as a nation-wide class in California and there is a large firm assisting with that class action. During the summer, Lawyers Committee filed a class action regarding the determination by the Immigration Judge of the "voluntariness" of the stipulated removal orders being issued in the Harlingen District. A hearing is set for early December on that case. Another class action was recently settled regarding the issuance of work permits and social security cards for those individuals with pending N-600 applications. The settlement will serve as a model for regulations on the issue.

Texas Attorney General, Consumer Protection Division report, Edna Ramon Butts: A report was given about the current case load that the AG has against immigration consultants and “notarios publico.” The AG’s effort grew out of a Task Force set to evaluate who could do what against persons practicing law without a license. The UPL committee can only do so much; the AG can only do so much. They have worked hard to get prosecutors involved as well and have filed several criminal complaints against notarios. In addition to the actual prosecution and filing suit against these UPL violators, the AG has taken other steps to inform the public that a notary is not a lawyer including the use of flyers and working with the Yellow Pages to have bilingual notices printed before sections about “immigration consultants” and “notaries public.” The flyers are produced in English and Spanish, but the AGs office is willing to have them produced in other languages. Hussein brought it to the attention that complaints are being heard of in the Houston Asian community. To report any new schemes or notarios, please call Edna at 512-936-1872.

Voluntary Agencies report, Hussein Sadruddin: The biggest difficulty now is getting drivers licenses for refugees. They are not able to get a social security number until they get an EAD and those are taking about four to five months. There is also a difficulty in getting the I-94 issued by the Nebraska Service Center to show an indefinite status. The agencies are also trying to educate the Texas Apartment Association about them requiring legal status for renting. This is a large problem for refugees, asylees, victims of human trafficking and VAWA clients. TAA has indicated they are getting their information from DHS, but letters are being written to try to set the record straight with TAA. There is a new unaccompanied minor facility being run by Southwest KEYS. Another problem is that people detained in the Dallas area are being moved to a facility far away from areas where representation is available. It would take at least a four and one-half hour drive to visit the clients. These clients are being moved further away even when there is already a G-28 on file. Generally, telephonic hearings are being conducted, but the IJ’s are insisting on the merit hearings to be live and the people brought in to Dallas for the hearing..

Texas Department of Health and Human Service report, Catriona Lyons: There are many coalitions building up recently around the issue of human trafficking. Several trainings have been given in the Houston area and the Dallas area, however there has been little success in identifying victims. She noted that a human trafficker can be sued civilly as well, this may entice other attorneys to become involved. Attorneys need to be educated in this area. There continues to be a problem with getting refugees their identity documents. The EAD is taking too long and only a few individuals are issued EADs when they initially arrive in the United States, the rest have to wait about 4 to 5 months. This makes it difficult to do anything from driving, to working, or even renting an apartment. They are seeing many unaccompanied minors being granted asylum so they are finding their way into the unaccompanied refugee program. Also, many of the refugees are pregnant so the program is seeing lots of babies being born, including one named Bush Mohammed (in honor of the president who let this refugee come to the United States!)

Pro Bono Asylum Representation Project (ProBAR) report, Meredith Linsky:

1. General Overview and Staff Changes

The past few months have been a time of transition at ProBAR. During August and September, two of our five staff members left the project including Julia Hernandez, the Children's Attorney, and Monica Newcomer, ProBAR's veteran paralegal. Both Ms. Hernandez and Ms. Newcomer ran the children's project and these last few months have been a time of intense training for the new staff members, Marlon Valladares and Megan Yoder. Mr. Valladares is our new children's attorney. He is a recent graduate of UT Austin Law School where he worked in the immigration clinic. He is an immigrant himself having come to the United States from El Salvador as a child. The young people in detention are amazed and inspired to learn that he is from El Salvador. Our new paralegal is a volunteer with the Mennonite Voluntary Service, and comes to us from Indiana. She is new to immigration law and has already attended three immigration law trainings to enhance her learning curve.

2. Volunteer Attorneys

Five Texas attorneys have agreed to take ProBAR cases over the past three months. Three are local attorneys who have returned to represent additional clients, and two are first time volunteers. We also have a returning law graduate with us for two weeks in October, from Ohio. We have scheduled a pro bono asylum training on November 19, 2004, at the local law firm of Adams & Graham, L.L.P., in Harlingen, Texas. At this training we hope to attract new volunteers who will help us with cases of both adults and minors. The ProBAR Coordinator will also be attending the Texas AILA annual conference in Houston on November 4 and 5, to recruit additional volunteers.

3. Legal Orientation Project

ProBAR staff continues to give live, daily rights presentations at the Port Isabel Detention Center (PIDC). For several years, ProBAR staff gave the rights presentation to individuals the day before their first court hearing. During this past summer, we noticed a significant decrease in the number of people attending the presentations. This was due to the increase in the use of stipulated removal orders, reinstatement of removal proceedings, and the release on recognizance for immigrants (mostly Central Americans) entering the United States for the first time. We became concerned that many people were not going to court and had little or no information about their proceedings and avenues for relief. As a result, ProBAR staff met with top PIDC officers to arrange giving the rights presentations to individuals upon arrival at the detention center. Immigration and Customs Enforcement (ICE) officials agreed that it was in the best interest of all to provide timely information to detainees. Thus, on August 17, ProBAR began providing rights presentations to people who had arrived at the detention center the previous day. While we have had to adapt the presentation to include descriptions of these summary proceedings, we are pleased to be reaching a larger audience. From August through October, ProBAR gave 60 rights presentations

to 1,130 detainees resulting in 191 individual orientations. We have also arranged to give orientations to detention center security staff on ProBAR and the rights presentations.

4. Highlights of Recent Cases

During the months of August, September, and October, we closed fewer cases than in the previous months, mostly due to our transition period. Here are a few highlights of our most recent cases:

- We won the adjustment case of a Guatemalan man in removal proceedings who qualified for a visa through his U.S. citizen wife. This case was challenging because he had past convictions and difficulty finding a qualifying sponsor for the affidavit of support.
- We won cancellation of removal for a legal permanent resident of the United States, originally from Mexico, who had worked as a fisherman in Brownsville, Texas for 30 years. He was charged with a single misdemeanor conviction for domestic violence.
- We won the asylum case of a Guatemalan minor who endured years of numbing violence at the hands of his abusive father.
- In another unaccompanied minor case, we represented a 14 year old Nigerian boy who was admitted to the United States on a visitor visa. The boy was separated from his mother at the Houston airport when immigration officers found a large quantity of drugs in her suitcase, arresting her and sending her to federal prison. The young man was charged with inadmissibility and sent to an ORR shelter. The Immigration Judge granted our motion to terminate this boy's case and we are now helping him figure out whether to try to remain in the United States or return to Nigeria with his family there. The boy's mother recently pled guilty to the drug crime and now faces five to ten years in prison.
- We lost the case of a young Honduran boy who fled Honduras fearing a notoriously violent street gang. This young man claimed to have been forced to join the gang and left without ever harming anyone. The Immigration Judge found him not credible, but the volunteer attorneys have agreed to appeal the case to the Board of Immigration Appeals.
- We won withholding of removal for a detained Haitian man who worked on behalf of President Aristide promoting elections in that country. Our client had been detained previously in New Jersey where he abandoned his asylum application and requested removal after five months in detention. The Judge commented that he would have granted asylum if it had been possible.
- Finally, just this week, we won a complicated asylum case for a young man from Liberia who arrived in the U.S. as a refugee at the age of 12, but then ended up homeless, and committed a felony offense. He now has a second chance to start his life over in the United States.

5. Conclusion

Despite the ever-increasing assault on the rights of immigrants and asylum-seekers, especially those in detention, ProBAR has been able to continue to provide a basic level of orientation and guidance to the detainees in South Texas. None of this would be possible without the continued support of the State Bar of Texas and this Committee. Thank you for your efforts.

The meeting of the State Bar Committee on Laws Relating to Immigration and Nationality was adjourned at 3:05 p.m. The next meeting will be held on Friday, January 28, 2005, in Dallas.