



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

Meeting Minutes

Friday, January 28, 2005, Texas Service Center, Dallas, Texas 10:30 - 2:30 pm

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
Eugene Flynn, Dallas Practitioner
Andrew Gee, Houston Practitioner
Jodi Goodwin, Harlingen Practitioner
Robert Loughran, Austin Practitioner
Catriona Lyons, Texas Department of Health and Human Services, Refugee Program Coordinator
Anne Monahan, San Antonio Practitioner
Lynn Olinger, Dallas Practitioner
Paul Parsons, Austin Practitioner
Ken Pasquarell, District Director, San Antonio, USCIS
Lilly Plummer, Odessa Practitioner
James Prappas, Houston Practitioner
Hussein Sadruddin, Non-Profit Member, International Rescue Committee
Evelyn Upchurch, Director, Texas Service Center, USCIS

Guests:

Deanya Kueckelhan, Regional Managing Assistant Attorney General, Texas Attorney General's Office
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
Rosario Mezo, Catholic Charities, Dallas
David Roark, Central Region, Acting Regional Director, USCIS
Jessica Roberts Executive Staff Assistant to Evelyn Upchurch, TSC, USCIS
Tracy Tarango, Assistant District Director, Dallas District Office, USCIS

Minutes of Prior Meeting

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

The meeting began with a video prepared and directed by Evelyn Upchurch of the Texas Service Center. The video was a virtual tour of the entire TSC operation and very pleasantly received.

Reports

Texas Attorney General, Dallas Region, Deanya Kueckelhan: The Dallas Region reported they have a large number of Hispanic Language issues. These are issues affecting the Spanish-speaking communities. The Dallas Region encourages the reporting of scams against these communities as well as the filing of complaints. Complaints can be filed in person, by mail, or online. There are bilingual employees at all of

their offices. Scams they see deal with notarios and non-accredited agencies preying on immigrants. She highlighted one case against Fidelina Cuevas DBA Grupo EXA. Grupo was doing radio spots and investigators got copies of the radio infomercials and were able to admit transcripts as exhibits at trial. Grupo also had a website. Based on this the Attorney General filed suit against Grupo based on the Deceptive Trade Practices Act which is the foundation of consumer protection causes of action. All they have to show is that the consumer was deceived. You are not required to show damages, you do not have to have a victim. The Attorney General's goal is to stop the illegal behavior, not shutting businesses down. Ms. Kueckelhan talked about the types of evidence they use, civil penalties, restitution, attorney's fees and court costs. She reported the finalization of the City Mortgage case on Monday for 3.3 million dollars. The Attorney General has the authority to freeze assets. She reports the courts have been generally receptive to their lawsuits challenging these various scams.

Ms. Kueckelhan remarked briefly on the problem of balancing the need for witnesses and the immigration status of some complainants. They currently have 2 cases pending in this region: Carbajal in Hood county and the Grupo case remarked of above. They are looking at many others. Of course, they can't file every case but try to file the ones they can prepare and win on hoping for a deterrent effect.

The other area major area of complaints is in mortgage/ home issues. City Mortgage Services, Inc. was run by two aliens who offered mortgage repayment services. The case was ultimately brought to litigation and ended with a 3.3 million dollar judgment. The scam was to draft customers' bank accounts for their mortgage payments, but then not actually pay the mortgage. The Attorney General's office was able to educate consumers so they could stop the bank drafts.

Ms. Kueckelhan also discussed some of the contempt orders against Cuevas in the Grupo case as well as the issue of having an attorney involved in that case. He trial of the Grupo case is set for the end of March or early April. In the Grupo case the bank deposits were over 1.7 million dollars. And that was just what was deposited in the bank!. Grupo's website would come up if you searched for INS. In the Carbajal case Mr. Carbajal was impersonating a federal judge. Anyone can get the PSA's the AG's office has done from the AG's Press Office: contact Paco Felici. In response to questions about difficulty finding persons willing to complain, she noted that once the consumers started to see action out of the AG's office, the AG's office started to see more complaints.

USCIS Central Region, David Roark: Mr. Roark distributed the goals for all of the offices in the Central Region. These goals are closely monitored and if an office gets behind, his staff calls on them to see how they can be made more efficient. A copy of the goals is attached to the minutes. Dallas is currently 9 months for I-485s and N-400s. El Paso is about 3-4 months for the same applications. Harlingen is at around 6 months for both applications, but Harlingen still has a backlog they are working as well. Houston is around 11 months for I-485s and around 4 months for N-400s. San Antonio is around 5 months for both types of applications. The ultimate goal is to be so quick in adjudicating the principal applications that they will not need to do ancillary applications such as travel and work permits. By the end of the year, Houston and Dallas will be in a position not to need to adjudicate EADs or I-131s. For some offices outside of Texas the percentages of goal met to date are very low because those offices were already very current, such as Denver and Indianapolis.

Eugene Flynn asked about the DORA (Dallas Office Rapid Adjustment) program and the possible expansion to other offices. Mr. Roark indicated that the program would not spread to other offices because of the investment the agency has already made in the up-front processing at the national Benefits Center. Comments regarding the "right size" of offices and the fact that employees are shifted from one office to the other just when things start to go right at their first office. Roark also commented on the possibility of converting some employees from term to perm. Roark anticipates that all of the Central Region offices should be "current" by the end of this year.

TSC Report, Evelyn Upchurch and Ninfa Luna: The TSC continues to break through their backlog and are moving along great. Ms. Luna gives the most recent processing report, tips for filing, and mailbox list. The Processing Report is attached to the minutes. Processing dates for all applications/petitions on this Processing Time Report are correct including the I-539s and the I-824s. These dates reflect the oldest dates

being processed. She reports the January Visa Bulletin retrogressed on China, India, Philippines for employment-based visas. The reason for such a big change in the visa numbers was because they were processing through 485s in greater numbers than in the past. So now one cannot file the 485 concurrent with an I-140 for a person from these countries because of the fact that no visa is available. If the priority date is reached while the I-140 is pending, or rather if the priority date becomes available, then you can file the 485. Ms. Luna reported there is talk of I-140s going Premium Processing eligible!

On the H-1B applications the training fee is back in place, \$1500 for employers of more than 25 people and 750 for employers of less than 25 people. This fee is already effective and must be paid along with the filing fees unless exempt. In addition, there is a new Anti-fraud fee taking effect on March 8, 2005 in the amount of \$500.00. With respect to the H1B visa cap, there is a 20,000 cap for those applicants with a masters degree or higher. Basically, a cap within a cap. TSC is already expecting a surge in filing for H1B and H2B visas on April 1, 2005. When questioned about persons with masters degrees that do not get one of the 20,000 visas, TSC responded those individuals will then be eligible to apply for an H1B number provided the overall H1B cap has not been met.

In response to questions regarding a group of I-130s transferred to the NBC, TSC remarked they would check on those 5,000 or so I-130s and see where they are in the process. In response to questions regarding the expediting of I-130's for persons in removal proceedings, TSC noted they would be within the 6-month processing time by the end of the year.

TSC also announced they started receiving live calls from the Customer Service Center on December 20, 2004. There are several criteria the Customer Service Center is using to refer a call: 1) question relating to a change of information on an I-129 2) where the separation of a family unit is involved 3) non-receipt of a document such as an LPR card, EAD, advanced parole 4) Approval notice on an I-129 and more than a week has gone by and the KCC has not received it and 5) question relating to an RFE.

Dallas CIS Report, Tracy Tarango: The DORA program (Dallas Office Rapid Adjustment) is completing 52% of cases before day 90. They are experiencing several week waiting periods for a DORA appointment. Once you have an appointment, it can take up to three hours to complete the interview and security checks. After the interview the case is then sent to the lock box to process the fees and then to NBC to make the file. The Dallas office sees one benefit of DORA is keeping the staff on their toes. DORA requires certain milestones to be reached by certain number of days after filing. For example: The cases must be monitored so that if the case is not going to be ready for approval by day 60, a letter must be sent by day 75 to advise the applicant to come in for an EAD. Initially, I-765s and I-131s are not even accepted on DORA cases. Of the 50% of the DORA cases not completed by day 90, only 25% pursue the issuance of an EAD.

The Dallas office was given 6 permanent positions for IIOs and the announcements closed last week. Currently, they have detailed DAOs that have been at the academy and not adjudicated cases. They also have 8 new CIS Assistants or clerks. Dallas is on track to meet their adjudication goals. On the process they are utilizing is a "modified" interview for clean cases at the LIFE Act building.

Dallas has two anti-fraud officers that belong to CIS. The Dallas office is cooperating with the Texas Attorney General in the *Carbajal* case by providing one of their IIOs for testimony. Casita Maria, an accredited representative, was discredited recently. The office reports approximately 400 N-400 cases are pending security clearances and "a lot" more I-485s pending clearances.

Hussein Sadruddin and Lynn Olinger will draft a letter to the FBI to explain how the security clearance delays are problematic.

San Antonio CIS Report, Kenneth Pasquarell: The San Antonio District office is well within the six-month national goal for adjudications and has been taking on work from other offices in the Central Region. In the past fiscal year the San Antonio District has adjudicated over 4,500 N-600 applications for certificates of citizenship filed in the St. Paul and Chicago Districts and has an additional 500 of those cases in the final stages as that project winds down. They have now shifted their remote processing unit to adjudicate non-

interview adjustment of status cases forwarded by the National Benefit Center in Kansas City. The office has taken on these additional challenges to support USCIS Director Eduardo Aguirre's mandate that any available capacity be utilized to meet the President's goal of a six-month processing time for adjudications.

Director Pasquarell gave an overview of the new USCIS staffing plan that is being implemented agency wide. The blueprint for the USCIS plan is the HQ Staffing Analysis Module (SAM) which links staffing allocation to levels of incoming casework at each field office. The SAM is a logical approach to staffing since USCIS is a "user fee" agency that mandates that fees received be used toward the adjudication of applications and petitions. The SAM provides for quarterly reviews to adjust staffing for increases and decreases in filing patterns at field offices. This is a departure from previous INS staffing plans that put greater emphasis on pending casework, including backlogs. In addition, where previous staffing focused primarily on officer corps positions without regard to support staff, the SAM takes a more balanced approach.

The last staffing increase in the San Antonio District was during the LIFE Act when the office received 20 additional District Adjudications Officer positions and some contract clerical support. The infusion of personnel under the LIFE Act gave San Antonio and other field offices an opportunity to eliminate or at least drastically reduce backlogs in line with the President's mandate to have all USCIS casework within a six month processing window by the end of Fiscal Year 2006. These LIFE Act DAOs were term appointments, (temporary positions) generally with initial appointments of one year with three annual extension options for a maximum of four years. San Antonio like many other offices in USCIS will lose its authority for term DAO positions on September 30, 2005. At the present time there are 18 District Adjudication Officers in that category. Under the SAM the San Antonio District will hire an additional 9 permanent DAO positions and hope to be able to select the term officers already trained and in place. Additionally the office will be selecting 3 CIS Assistants and have been allocated 4 additional contract clerical support positions. The USCIS service centers are also being staffed at a level to be able to handle their receipts and will be advertising a great number of positions as they become available. It is hoped that term employees seeking permanent positions in USCIS will also apply for those service center vacancies. The term employees across the board are highly qualified and fully trained. They represent a huge investment both by the Service and by the individual employees in training and experience, Mr. Pasquarell is hopeful that as many as possible can be accommodated either in field offices or service centers.

Mr. Pasquarell closed his report by asking that if anyone has a client who has been granted permanent resident status in proceedings by an Immigration Judge (IJ) but who has yet to receive their alien registration card please contact the District Director having jurisdiction over that persons place of residence. He explained that files in Immigration Judge "grant" cases are carried from the proceedings by ICE Trial Attorneys and forwarded to Detention and Removal (DRO) by the trial litigation unit if there is no appeal of the IJ's decision. The DRO cancels any outstanding bonds and removes the persons name from the deportation database. After those actions the file is usually transferred to USCIS for processing of the I-551. In some cases in the past the file was inadvertently routed to the records section after the DRO action. If USCIS is not made aware of the grant they cannot start the processing for the I-551. Mr. Pasquarell says that there are processes being formulated and put in place nationally as well as individual office efforts to get a handle on these type cases but if you are aware of any individual case yet to be issued a card please bring it to the attention of the respective district office.

AILA Report, Jodi Goodwin: AILA National is working on the REAL ID act, Sesennbrenners response to the negative immigration provisions not being passed in the Intelligence Reform Act. AILA thinks this is a really bad law, but we will have to do advocacy on this measure such as using Contact Congress. AILA National just finished the Mid Year meeting in Cabo and is working toward Lobby Day and Conference in March. The Annual Conference will be in Salt Lake City in June. Also, AILA National is working on H1B and H2B fixes so that we can come out of the visa blackout. AILA Texas is preparing for its own conference in Austin in April and continuing with the local liaison with the District Offices and Asylum offices, and Department of Labor.

Hussein Sadruddin will draft a letter regarding the REAL ID Act.

Lawyers Committee for Civil Rights Report, Javier Maldonado: Updates on the status of the two class action lawsuits challenging the issuance of temporary proof of status to individuals granted status in immigration proceedings. The government indicates they will release a regulation on the types of security clearances that must be complete prior to adjudication, but the types of clearances needed has nothing to do with the lawsuit which is challenging the failure to provide temporary proof of lawful status. The Texas case is scheduled for summary judgment hearing on February 1, 2005. The nation-wide case is in the process of discovery. Lawyers Committee also has a class action pending with regard to the use of stipulated removal orders that is pending a reset hearing.

Funding is current for about 6 months of the year and Lawyers Committee is trying to open up private funding sources. In addition, they have recruited firms to work with them on two of the large cases. The other attorney working at Lawyers Committee is David Armendariz.

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

1) ProBAR Trainings and Notable Meetings

Between October and December, ProBAR staff participated in several trainings and notable meetings. I attended the Texas AILA conference in Houston where I addressed an inviting audience about volunteer opportunities at ProBAR. I also attended the first Immigration Task Force meeting in Austin organized by Texas Lawyers' Care to help coordinate efforts relating to immigration representation and advocacy throughout the state. ProBAR hosted a pro bono asylum training in November at the local Harlingen firm, Adams & Graham. ProBAR staff also provided six training sessions for the security guards at the Port Isabel Detention Center (PIDC), speaking to approximately 30 guards at each session. In these sessions we explained ProBAR's purpose, the services we offer at the detention center, and the role of the rights presentations. Finally, we participated in a two-day regional meeting to focus on the problem of human trafficking. The meeting included representatives from law enforcement as well as legal and social service agency staff.

2) Shift in Detention Priorities at the Border

ProBAR staff and volunteers continue to work to bring legal information, orientation, and representation to indigent detainees at PIDC. During the last three months of the year, Immigration and Customs Enforcement (ICE) detention priorities shifted, resulting in a change in the detainee population. According to top officers at the detention center, detention space will be reserved primarily for people subject to several forms of mandatory detention. This includes immigrants with criminal convictions, individuals in reinstatement of removal proceedings, expedited removal proceedings, and people with outstanding removal orders. Many of the Central Americans apprehended for the first time in the Brownsville/McAllen area are issued Notices to Appear and then released on their own recognizance. Meanwhile, in the Laredo area, first time entrants are prosecuted and immediately placed in expedited removal proceedings. The varying procedures used in different parts of the border make for a confusing and irrational immigration policy.

3) Volunteer Participation

ProBAR has received an increasing number of inquiries from interested volunteers throughout the country. This is at least in part, because Karen Grisez, an attorney with Fried, Frank, Harris, Shriver & Jacobson, LLP, and a member of the ABA Immigration Commission, wrote several articles for national publications describing her trip to ProBAR last summer. The most recent article was published in AILA's *Immigration Law Today* magazine, reaching thousands of immigration attorneys nationwide. At the same time, the recent shift in the detained population has made it more difficult to find cases appropriate for volunteer attorneys. While there is never a lack of detained people in need of representation, the cases last longer and are more complicated than ever before. We have responded by trying to recruit more volunteers from the

local area who are available to work with the clients over a longer period of time. Over the past three months we had six attorneys and two law students take on cases with ProBAR. The lawyers all came from cities in Texas, including Austin, Laredo and the Valley.

4) Legal Orientation Project (LOP)

During the last three months of the year we continued to give live, daily rights presentations to all detainees the day after arriving at the detention center. This ensures that people are aware of what process they might be in, and what remedies they may have to avoid a future removal order. From October 1 through December 31 we gave 61 rights presentations to 1,508 detainees, resulting in 203 individual orientations. We also provided 4 pro se workshops to 19 participants. In the month of December, we received our annual visit from our LOP funders, Steve Lang, Pro Bono Coordinator at EOIR, and Amy Maurer from Norwich University. Mr. Lang and Ms. Maurer were very pleased with the ProBAR LOP, and claim it is one of the strongest sites in the country.

5) Immigrant Children's Assistance Project (ICAP)

The Children's Project continues to serve large numbers of children in detention. Notably, the reunification process has sped up over the past few months and children are getting out of detention faster than ever before. For many years, ProBAR partnered with Proyecto Libertad in giving rights presentations to the children at the different detention sites. Recently, Proyecto staff decided to completely pull out of detention work, including the efforts of a paralegal that served unaccompanied minors. Today, ProBAR is the only connection these children have to free legal services. ProBAR completed three minors asylum cases in the last few months, winning two. The decision in the third case is still pending. One client was a 16-year-old Guatemalan boy who refused to assist a notorious street gang with drug trafficking. The gang retaliated by killing the young boy's father, and promising to kill him as well. The Immigration Judge granted the case with no appeal from the government. The second case was on behalf of a 15 year old Guatemalan orphan who had been adopted, neglected and then abandoned by a woman in Chiapas, Mexico. This young man had no idea where exactly he was born, or how he ended up living in Mexico. He won asylum based on a future street child theory. The last case was on behalf of a 16 year old Honduran girl whose parents were murdered over a land dispute. The decision in that case is still pending.

6) Adult Cases Completed

Over the past three months ProBAR won two adult asylum cases, two withholding of removal cases and one LPR cancellation of removal cases. During this same period we also lost two cancellation cases. A brief description of each case follows below:

A. Joe Phillip came to the United States six years ago as a refugee from Liberia when he was only 13 years old. His mother sent him under an assumed identity to reunite with family in Minnesota. Soon after arriving in the United States, this young man's family broke up and he was sent to live with one relative after another. It didn't take long for him to get into trouble and end up on probation. Joe didn't tell us that he was living under a false identity for several months. Once we learned his true story, we were able to convince the Immigration Judge to give him another chance in the United States and grant him asylum under his true identity.

B. Sisay is a 23-year-old man from Ethiopia. His father was persecuted politically in that country and died while Sisay was seeking refuge in the United States. The government asserted that Sisay could return to Eritrea because his father was of Eritrean descent. Sisay's attorney used his connections to obtain a letter from the highest ranks of the Eritrean government demonstrating that he would not be automatically accepted into that country. Winning asylum for Sisay ended a four-year odyssey of seeking refuge around the world.

C. ProBAR won withholding of removal for Wilford, 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 the client was not in reinstatement of removal proceedings.

D. Nadiuska is a young woman from Venezuela who became involved in the opposition movement after Hugo Chavez became president. Nadiuska was kidnapped and threatened by a paramilitary group associated with the government. The Judge granted withholding of removal because she was in reinstatement of removal proceedings, thereby ineligible for asylum.

E. ProBAR represented Ricardo, a 32-year-old Mexican national and LPR who was charged with two crimes of moral turpitude. One of the crimes involved forging a \$26 check when the applicant was 17 years old. Ricardo had lived in the United States with his entire family since he was four years old. The Judge granted cancellation based on the applicant's significant equities in the United States.

F. ProBAR volunteer Krista Eyler represented Fidela, a Mexican national and LPR of the United States in a cancellation of removal case. The Immigration Judge pretermitted the case when he found Fidela had been convicted of a drug crime considered an aggravated felony. Our client opted not to appeal the Immigration Judge's decision.

G. ProBAR represented Angel Salinas, another Mexican national and LPR for cancellation of removal. Mr. Salinas had significant equities in the United States including his LPR wife and four US citizen children, one severely disabled. The Judge found that the man's five years in commuter status made him ineligible for cancellation of removal. After several months in detention, the client decided not to appeal.

1) Future CLE Seminar

ProBAR is looking forward to presenting another CLE on February 18 entitled "The Nuts & Bolts of Removal Defense: How to Successfully Represent Your Clients in Immigration Court." We have recruited some of the best immigration lawyers and professors in Texas to serve as panelists. The event will be held at the Bahia Mar resort on South Padre Island.

2) Conclusion

ProBAR staff and volunteers continue to adapt to the changing immigration laws and policies on the border, in order to make maximum use of our resources. We thank the Committee for continuing to support our efforts and helping to make ProBAR a leading pro bono project.

Voluntary Agencies Report, Hussein Sadruddin: Hussein reports a challenge facing them is the issue of guardianship for refugee minors. Attached minors, those who come with an uncle or aunt, etc., need guardianships done for them and there is a lack of attorneys willing to do guardianships pro bono. Reports of getting RFE's for the signatures on applications and suggests to write the names in both English and the native language. He also reports lots of calls about PERM. People are coming in town to give seminars on PERM, paid seminars. This is a new scam being used to target immigrant communities and Paul Parsons wants to write a letter to get money to get PSAs out to warn people about PERM scams. Another issue they are dealing with now is the Memorandum of Understanding signed by the Los Angeles County Sheriff's Department with ICE for combined enforcement of immigration violations.

Rosario Mezo, Catholic Charities reports that they are helping to combat UPL by assisting client in filing complaints. She also reminds members to spread the word they have a grant to deal with VAWA and T and U cases.

Texas Department of Health and Human Service Report, Catriona Lyons: Reports that 40% of refugee arrivals are children mainly from African countries. They are having trouble with the birth dates being wrong on the I-94 and the children subsequently being placed in inappropriate grade levels in school based on the incorrect birth date.

Reports continued difficulty in obtaining employment authorization or social security numbers.

There are plans for workshops by the Center for Survivors of Torture to help practitioners recognize the effects of torture. They also continue to work on the trafficking issues and announced there is funding provided to law enforcement in Austin, Houston, El Paso and San Antonio to identify and educate on trafficking issues. Finally, there is a need for pro bono attorneys in the Midland area as they are starting to see cases in that city. Paul asks for draft of a letter for the committee to send regarding the incorrect dates of birth on the refugee children's I-94s.

Immigration Litigation Update, Greg Ahlgren:

Case:	Background:	Holding:
<p><i>Clark v. Suarez Martinez</i>, – S.Ct. –, 2005 WL 50099 (Jan. 12, 2005)</p>	<p>Inadmissible alien brought habeas petition challenging his indefinite detention. The United States District Court for the Northern District of Florida, No. 02-00019-CV-5-19-MMP, Maurice M. Paul, J., denied the petition, and alien appealed. The United States Court of Appeals for the Eleventh Circuit, <u>337 F.3d 1289</u>, affirmed. In unrelated case, the United States District Court for the District of Oregon granted habeas petition filed by another similarly situated alien, and the United States Court of Appeals for the Ninth Circuit, 2003 WL 23892563, summarily affirmed. Certiorari was granted in both cases.</p>	<p>The Supreme Court, Justice Scalia, held that: 1) Supreme Court's prior holding in <i>Zadvydas v. Davis</i>, that Immigration and Nationality Act (INA) limits time that government may detain aliens who have been found removable to that reasonably necessary to effect removal, also applies to aliens deemed inadmissible to United States; 2) reasonable period of time is presumptively six months for each of these two categories of aliens; and 3) aliens were entitled to release. Judgment of Ninth Circuit affirmed; judgment of Eleventh Circuit reversed. Justice <u>O'Connor</u> concurred and filed opinion. Justice <u>Thomas</u> dissented and filed opinion, in which Chief Justice <u>Rehnquist</u> joined in part.</p>
<p><i>Jama v. Immigration and Customs Enforcement</i>, – S.Ct. –, 2005 WL 49257 (Jan. 12, 2005)</p>	<p>Alien petitioned for writ of habeas corpus, seeking to bar Immigration and Naturalization Service (INS) from removing him to Somalia. The United States District Court for the District of Minnesota, John R. Tunheim, J., <u>2002 WL 507046</u>, granted petition. INS appealed. The United States Court of Appeals for the Eighth Circuit, <u>329 F.3d 630</u>, reversed. Certiorari was granted.</p>	<p>The Supreme Court, Justice Scalia, held that Somalia's inability to consent in advance to alien's removal did not preclude his removal to Somalia as country of his birth. Affirmed. Justice <u>Souter</u> filed dissenting opinion, in which Justices <u>Stevens</u>, <u>Ginsburg</u>, and <u>Breyer</u> joined.</p>

<p><i>Leocal v. Ashcroft</i>, 125 S. Ct. 377 (Nov. 9, 2004)</p>	<p>Alien sought review of the Board of Immigration Appeals' (BIA) order that he be deported because his conviction for driving under the influence of alcohol (DUI) and causing serious bodily injury in an accident, in violation of Florida law, was an aggravated felony. The United States Court of Appeals for the Eleventh Circuit dismissed his petition for review.</p>	<p>On grant of petition for writ of certiorari, the United States Supreme Court, Chief Justice <u>Rehnquist</u>, held that abrogating <u>Le v. United States Attorney General</u>, 196 F.3d 1352, alien's conviction for driving under the influence of alcohol (DUI) and causing serious bodily injury in an accident, in violation of Florida law, was not a "crime of violence," and therefore, was not an "aggravated felony" warranting deportation. Reversed and remanded.</p>
<p><i>United States v. Rueda-Rivera</i>, – F. 3d. –, 2005 WL 39763 (5th Cir. Jan. 10, 2005)</p>	<p>Defendant was convicted in the United States District Court for the Western District of Texas, Kathleen Cardone, J., of being found in the United States following deportation and removal, without having obtained the consent of the Attorney General or the Secretary of the Department of Homeland Security, and he appealed.</p>	<p>The Court of Appeals held that admission of certificate of nonexistence of record (CNR), which reflected that deported defendant had not received consent to re-enter the United States, did not violate defendant's rights under the Confrontation Clause. Affirmed.</p>
<p><i>Zhang v. Ashcroft</i>, – F. 3d. –, 2004 WL 3001165 (5th Cir. Dec. 29, 2004)</p>	<p>Alien petitioned for review of decision of the Board of Immigration Appeals (BIA) denying him asylum, withholding of deportation, and protection under the Convention Against Torture (CAT).</p>	<p>The Court of Appeals, Edith H. Jones, Circuit Judge, held that the alien was not entitled to asylum, withholding of deportation, and protection under the CAT on ground that his live-in girlfriend, a Chinese national living in China, was fined and forced to have an abortion pursuant to China's population control program. Affirmed.</p>
<p><i>United States v. Garcia-Mejia</i>, – F. 3d. –, 2004 WL 2937670 (5th Cir. Dec. 20, 2004)</p>	<p>The United States District Court for the Southern District of Texas, Nancy F. Atlas, J., imposed sentence on a defendant convicted of illegal re-entry by a previously deported alien subsequent to a conviction for an aggravated felony, and defendant appealed.</p>	<p>The Court of Appeals held that: 1) condition of supervised release prohibiting defendant from possessing dangerous weapons was not vague or overly broad, and 2) "felony" and "aggravated felony" provisions of section of Immigration and Nationality Act (INA) prohibiting illegal re-entry by a previously deported alien subsequent to a conviction for an aggravated felony did not violate <u>Apprendi</u>. Affirmed.</p>
<p><i>United States v. Martinez-Mata</i>, – F. 3d. –, 2004 WL 2830794 (5th Cir. Dec. 10, 2004)</p>	<p>Alien was convicted of illegal reentry offense by the United States District Court for the Southern District of Texas, <u>Randy Crane</u>, J., and he appealed from sentence imposed.</p>	<p>The Court of Appeals, Edith Brown Clement, Circuit Judge, held that Texas state law offense of retaliation of which alien had previously been convicted did not have as element the use of physical force, and was not "crime of violence," alien's prior conviction of which would support 16-level enhancement in his base offense level. Vacated and remanded.</p>

<p><i>Roy v. Ashcroft</i>, 389 F. 3d 132 (5th Cir. Oct. 20, 2004)</p>	<p>Alien petitioned for review of Board of Immigration Appeals order denying application for withholding of removal or for relief under Convention Against Torture (CAT).</p>	<p>The Court of Appeals held that: 1) court had jurisdiction; 2) alien's due process claim was barred by his failure to exhaust administrative remedies; 3) evidence supported finding that Christian alien from India did not face clear probability of persecution, such as would warrant withholding of removal; and 4) evidence supported denial of relief under CAT. Petition denied.</p>
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Other Business:

DOL Regional Training Session on PERM: Becky Burdette reports the new regulations for alien labor certification are out and a new 10-page form for online filing. This includes more specific instructions on the recruitment, but the prevailing wage determination still comes from the SWA. Charlene Giles was the person who engineered the RIR program so she is good candidate for the new program. March 28, 2005 is when PERM starts. All other cases are being switched to the backlog reduction centers to complete processing. With PERM, supposedly we will get an approval, denial or audit within 30 days of filing. The DOL will audit randomly or for cause. If all goes as published in the regulations, one can expect a labor certification in 60 days. She reports there is a provision for conversion of cases from the regular filing process to PERM, but there is a risk of losing the old priority date.

The meeting of the State Bar Committee on Laws Relating to Immigration and Nationality was adjourned at 2:55 p.m. The next meeting will be held in El Paso, Texas.