



Boston Bar
ASSOCIATION

Immigration Law Section

Winter 2011 **Newsletter**

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By Jessica Chico

ARTICLES WANTED

All members are invited and encouraged to contribute an article on any subject of interest. Please contact **Angel Kozeli** at ekozeli@kozeliilaw.com to submit an article.

About the Section

The new section has been launched in response to the growing needs of Boston-area attorneys in a field that is becoming increasingly dynamic and ever-evolving. The inaugural year of the section began on September 1, 2010 and is free for BBA members for the first year. The section is Co-Chaired by Anita Sharma, an attorney working at Political Asylum/ Immigration Representation (PAIR) project here in Boston, and an alum of the BBA's Public Interest Leadership Program and Ellen Kief, a solo practitioner focusing on immigration and family law and past Co-Chair of the Immigration Law Committee.

Explaining why the section was created in the June 15, 2010 press release by the Boston Bar Association, co-chair Anita Sharma said, "Immigration practitioners in Boston see a variety of clients - including vulnerable asylum seekers who have escaped great trauma and who have little resources, U.S. citizens and legal permanent residents who seek status for close family members, foreign national students who pursue studies in the Boston area and U.S. businesses seeking talent from the global marketplace." Co-chair Ellen Kief added: "Immigration issues have been at the forefront of our nation in recent years, with passionate stances being taken on both sides of immigration reform and practice. We are looking forward to a dynamic year."

The new section has created special committees based on the specific issues of business immigration, family immigration, services to asylum seekers and refugees, removal defense, and pro bono immigration work. In addition, the section will provide its members opportunities to meet with local and national experts as well as one on one mentoring.

Section Co-chairs



Ellen Kief

Law Office of Ellen Kief
ekief@kiefllaw.net

Attorney Ellen Susser Kief focuses her Law Practice on U.S. Immigration Law, Family Law, and Mediation. Born in Montreal, Ms. Kief is a dual national, USA/Canadian. She presently serves as the Co-Chair of the BBA Immigration Section, and on the Family Law Section Steering Committee. She served as the Co-Chair of the Solo/Small Firm Section 2009-2010, and as Co-Chair of the BBA Immigration Committee from 2007-2009. She served on the BBA Pro Bono Real Estate Committee and participated in Lawyer for the Day and limited assistance programs. Attorney Kief was elected to serve as the American Immigration Lawyers Association (AILA) National NMD Governance for New England and Canada. She serves as the AILA New England Congressional Liaison and she served as the AILA representative to the Community Based Organizations (CBO). She presently serves on the Executive Board of the New England-Canada Business Council (NECBC). Attorney Kief is very active in the legal community providing legal representation, outreach, and education. She was the recipient of the 2007 Denis Maguire Award Honoring Outstanding Work in Commitment to Justice. She is involved as a panel speaker of various topics related to Immigration Law, Family Law, and Solo Small Firm Practice.



Anita Sharma

PAIR Project
asharma@pairproject.org

Anita P. Sharma, Esq., is the Asylum Attorney at the PAIR Project. Anita received her LL.M. in International Legal Studies from American University Law School, concentrating in Human Rights and Humanitarian Law. She earned her J.D., cum laude, from Suffolk University Law School and graduated with distinction in the Intellectual Property and High Technology Law concentration. She received her B.A., summa cum laude, in English Literature from Suffolk University. Anita is currently an adjunct professor of English at Suffolk University. She serves as co-chair of the Liaison Committee on Asylum for the New England Chapter of the American Immigration Lawyers Association (AILA) and as the 2010-2012 co-chair for the newly formed Immigration Section of the Boston Bar Association. Anita is also an advisory council member of Public International Law and Policy Group (PILPG). She was selected for the 2008-09 Boston Bar Association Public Interest Leadership Program. Anita received the BBA's John G. Brooks Public Service Award in 2006 for her outstanding representation of asylum-seekers and for serving as a mentor to hundreds of pro bono lawyers who represent PAIR clients. She previously worked at WARLAW, a Delhi-based NGO that focuses on women's rights in India. Anita joined PAIR in 2002.

Section Leadership

Asylum Committee

Marianne Stanuias is an Associate with the firm of Ross, Silverman LLP. Ms. Stanuias has successfully represented numerous asylum-seekers in interviews with U.S. Citizenship & Immigration Services and in hearings before the Immigration Court, and has represented immigrants in deportation proceedings in Immigration Court and before the Board of Immigration Appeals. In 2008, Ms. Stanuias was presented with the PAIR Project's *Pro Bono* Attorney of the Year Award for her work with asylum-seekers. She also has served as a mentor for other attorneys providing *pro bono* representation to PAIR clients in asylum and deportation proceedings.

Gina Gebhart joined Ropes & Gray's Boston office in 2005 as an associate in the Litigation Department. She has been involved with the firm's *pro bono* asylum program helping indigent clients seeking political asylum in the United States. She has represented clients in filing affirmative asylum applications and preparing for asylum interviews before the USCIS, in removal proceedings before the Boston Immigration Court, and in appeals before the Board of Immigration Appeals and the First Circuit Court of Appeals. Gina earned a B.A. in Anthropology and Biology from Washington University in St. Louis and her J.D. from Washington University School of Law.

Business Immigration Committee

Marisa Howe is an associate in the Boston office of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C., where she practices in the Immigration Section serving corporate and small business clients. Her practice concerns all aspects of employment-based immigration, including Alien Labor Certifications, Outstanding Researcher and Extraordinary Ability Petitions, Adjustment of Status, and non-immigrant visa applications. Marisa co-authored "Thinking Outside the Box: Business Visas for

Non-Profits," for the May/June 2007 issue of *Immigration Law Today*. She also is a frequent panelist with MCLE, teaching immigration law principles to other practitioners.

John Gallini is an AV-rated immigration and nationality practitioner with the law firm of Morse, Barnes-Brown & Pendleton, PC. He covers all facets of employment-based immigration, as well as family immigration and naturalization. He has in-depth experience providing strategic immigration advice and counsel to both small entrepreneurial businesses and multinational corporations. John is nationally recognized for his expertise in representing distinguished professors, scientists and technology workers under the extraordinary ability, outstanding researcher, and national interest waiver immigrant visa categories. His writing has been published in *Science's* online magazine, *Nextwave*, as well as in *Mass High Tech*. He frequently serves as a panel speaker and author on business immigration law and advanced strategies for immigration practitioners for Massachusetts Continuing Legal Education (MCLE).

Family Law Committee

Jane C. Chiang is the founding attorney of Sedna Law, P.C. Her practice is focused exclusively on immigration law. Ms. Chiang represents businesses, families, and individuals. She earned degrees from the George Washington University Law School, and the Elliott School of International Affairs. She speaks French and Chinese. In her spare time, Ms. Chiang donates legal assistance to QARI (Quincy Asian Resources, Inc.) and the Asian immigrant community the organization serves. Ms. Chiang has also lectured on student immigration issues in the Cambridge, Boston, and Quincy areas, including to international students at Quincy College and Northeastern University.

Abby Colbert is managing staff attorney with the Irish Immigration Center in Boston, MA.

Pro Bono Committee

JoHanna Flacks-Jatta is the Pro Bono Director at Medical-Legal Partnership | Boston (MLP | Boston), serving as a liaison to all of MLP | Boston's private bar partners. Before joining MLP | Boston in 2006, JoHanna was in private practice, and provided pro bono services to the Cape Cod Anti-Discrimination Task Force in its campaign to establish the Barnstable County Human Rights Commission. Prior to that, she served as Assistant General Counsel for the Boston Public Health Commission, and Senior Investigator for the Boston Fair Housing Commission. She began her career as a labor-side employment discrimination litigation associate. JoHanna graduated from the University of Oklahoma College of Law and Brandeis University.

Elizabeth Badger is currently a visiting assistant professor of law at Boston University School of Law. In the past, she's worked as the Robert J. Hildreth Fellow at PAIR in Boston, MA representing workers arrested in immigration raids, mentoring volunteer attorneys who represent those workers, and assisting other detained immigrants whose rights had been violated. Elizabeth also worked with the Massachusetts Law Reform Institute coordinating Massachusetts immigration experts on projects to protect immigrants' rights, such as monitoring the implementation of 287(g) agreements, teaching communities how to defend themselves against racial profiling, and advocating against state court enforcement of immigration laws. Elizabeth also served as an immigration law clerk for the U.S. Court of Appeals for the Second Circuit from 2005 until she joined PAIR in 2007.

Removal Defense Committee

Nikiki T. Bogle is the Managing Partner in the law firm of Bogle & Chang, LLC and Chair of the firm's Immigration, Criminal and Entertainment Practice Groups. Ms. Bogle concentrates her practice on corporate immigration, family immigration, international, human rights, criminal appeals and music matters. Ms. Bogle's Immigration practice encompasses both business immigration and family immigration. She represents companies, employees, families and individuals in assessing immigration options to live and work in the United States. Ms. Bogle is also a *Pro Bono* Child Immigration Attorney with the National Center for Refugee and Immigrant Children, where she represents unaccompanied immigrant children in removal proceedings before the Department of Homeland Security.

William E. Graves, Jr. is a partner at Graves & Doyle. His practice is concentrated in the area of immigration law. Mr. Graves is a graduate of New York University and The George Washington University School of Law in 1992. He has spoken at national and local conferences on immigration law. He is a member of the American Immigration Lawyers Association and serves as a national mentor on waiver and removal issues. He served as a Peace Corps volunteer in the Democratic Republic of Congo.

Section Programs

Upcoming Events

Children Across Borders: A Panel Discussion on International Custody Disputes & the Enforceability of Foreign Divorce Decrees

Wednesday, January 26, 2011 4:00 PM

This program will feature attorneys Claudia Grégoire and Paul Foley from two recent Massachusetts international custody cases: Bellec v. Bellec and Chahara v. Yatim, respectively. The speakers will draw lessons from those cases on 1) jurisdictional questions, including the application of treaties, and 2) whether and when Massachusetts courts will enforce foreign custody judgments.

CLE: International Adoptions

Thursday, January 27, 2011 3:00 PM

Over the last two years there has been an increase in children adopted from foreign countries. In 2008, more than 17,000 children were issued a visa to come to the US.

The Hague Adoption Convention regulates the sending and receiving of adopted children across borders and has imposed a new immigration procedure for certain adoptions. This new procedure departs significantly from the immigration structure already in effect. At this seminar, you will learn to distinguish whether the Hague Convention applies, and the differences between Convention procedures and adoption and orphan petitions. Attendees will also learn about alternatives to adoption that would provide permanent residence to the child.

Immigration Judges Panel

Wednesday, February 23, 2011 4:00 PM

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Section Programs

Past Events

Immigrant Eligibility for Public Benefits: Separating Myth from Reality

Thursday, September 23, 2010 12:00 PM

Harmful misinformation circulates widely about whether immigrants are eligible for public benefits necessary to afford basic needs with low income. Immigrants are frequently warned that benefits will affect their immigration status or ability to sponsor others. Such warnings are sometimes wise but just as often are mistaken - therefore depriving immigrants and their citizen family members of much-needed benefits. At this roundtable, Christina Dacchille of Medical-Legal Partnership Boston, a benefits lawyer who completed an Equal Justice Works fellowship on the intersection between public benefits and immigration law, busted myths and highlighted concerns of interest to low-income immigrant clients. This was an especially timely presentation, given the recent public debate about immigrant rights and publicly supported resources.

It's Not Just Arizona: An Update on State and Local Immigration Initiatives Affecting Businesses Nationwide

Tuesday, October 19, 2010 12:00 PM

States and municipal governments are increasingly taking the initiative to regulate immigration at a local level. Despite the fact that immigration has historically been regulated at the federal level, many states and some local jurisdictions have created legislation aimed at targeting illegal immigration, in order to step in where they feel the federal government has failed to do so. These state regulations and local ordinances specifically target private corporations and impose severe penalties for the employment of undocumented workers (including temporary and permanent revocation of business licenses) and/or require corporations to participate in standardized employment verification programs (i.e. E-verify) in order to conduct business and/or work pursuant to certain contracts within their state.

CLE: Advanced Topics in Asylum Law: Standards and Recent Trends for Particular Social Group

Wednesday, October 20, 2010 4:00 PM

Sponsored by the Immigration Law Section, Family Law Section, and New Lawyers Section, this 3-hour CLE focused on defining membership in a particular social group, determining when membership in a particular social group can be the basis for a claim to asylum and knowing how to present such a claim to adjudicators in a compelling way. The panel also discussed attempts to use the concept of social group to establish a basis for asylum in the areas of persecution based on gender, domestic violence, or sexual orientation as persecution, and persecution based on refusal to participate in gang activities.

The Marriage-Based Adjustment Interview from the Perspective of USCIS

Thursday, November 4, 2010 12:30 PM

At this brown bag, former USCIS Adjudications Officer Lieselot Whitbeck will offer her expertise and insight into the marriage-based adjustment of status interview. Topics will include an overview of the interview process from the perspective of USCIS, proving the bona fides of the marriage and officers' techniques for reviewing the relationship, tips for interview preparation for attorneys and their clients, interview surprises, and issues with documentary evidence and criminal dockets. There will be an opportunity for questions and discussion.

Young, Alone, & Away from Home: Special Immigrant Juvenile Status “How-To” for Pro Bono Lawyers

Wednesday, November 10, 2010 - 2:30 PM

Ann Cooper of Kids in Need of Defense will present a training on how to pursue an application for Special Immigrant Juvenile Status for undocumented children living in the United States who have been abused, abandoned or neglected and for whom return to their country of origin is not in their best interest.

Job Termination of Visa Holders: Responsibilities of the Employer and Employee

Tuesday, November 16, 2010, 12:00 PM

The hiring of foreign workers can be a complicated process and it carries with it the assumption of certain responsibilities and liabilities. In the context of a lay off or termination, the process and responsibilities can be different depending on the visa status of the foreign worker. Matthew Lee, Tocci, Goss & Lee, will discuss important concepts and rules pertaining to the employment of foreign workers and the potential problems an employer and a terminated employee may face.

CLE: Double Jeopardy: Strategies, Rights & Remedies for Immigrant Survivors of Domestic Violence

Wednesday, November 17, 2010, 3:00 p.m. - 6:00 p.m.

Join the immigration section for panel discussion about unique challenges in the representation of domestic violence survivors who are also confronting the challenge of uncertain immigration status. Discuss client counseling strategies, and learn about the violence against women act (VAWA), U-Visas, and T-Visas, all of which offer pathways to status for this especially vulnerable population. The panel will be composed of Valerie Fisk of Community Legal Services and Counseling Center, Hema Sarangapani in private practice, Maria Muti of the Victims Rights Law Center, and Donna Kane of the Vermont Service Center.

Life After Asylum: Seeking Derivative Asylum for Family Members and Waivers and Other Relief Related to Adjustment of Status

Wednesday, December 1, 2010, 12:00 PM

Abby Colbert of the Irish Immigration Center will provide an introduction to some common situations and challenges faced by asylees as they seek to apply for derivative asylum status for their eligible relatives and then to adjust status to permanent residence. She then will facilitate a discussion

among all of the participants. Participants are encouraged to bring their case-specific questions and to share their experiences in these areas.

Establishing the Family Relationship

Monday, December 6, 2010, 4:00 PM

Speaker Eleanor J. Newhoff will examine the “how” and “why” of establishing a family relationship in the immigration context. This will include a description of the types of cases that require the establishing of a family relationship, by documentary or other means, such as visa cases, derivative status in employment cases, asylum and other cases. We will look at some of the problems that arise in these contexts. We will also look at the cases in which the family relationship has become dysfunctional, abusive or absent, in order to qualify for a status such as a VAWA applicant, special immigrant, U-visa applicant or in gender-based asylum cases.

The Impact of Padilla v. Kentucky: A Discussion With Judges, Prosecutors and Defense Attorneys

Thursday, December 16, 2010, 4:00 PM

On March 31, 2010, the Supreme Court held in *Padilla v. Kentucky* that non-citizen defendants have a Sixth Amendment right to advice about immigration consequences prior to resolving criminal cases, and that the failure to properly advise such clients about immigration consequences constitutes ineffective assistance of counsel. This significant decision clearly affects the responsibilities of criminal defense attorneys. But what impact does it have on the roles of prosecutors and judges? Come hear a panel discussion with federal and state judges, prosecutors and defense attorneys on how their roles have been affected by this case.

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Material Support to Terrorism: Impact on Asylum and Derivative Asylum Applicants

Tuesday, January 18, 12:00 PM

Anwen Hughes, Senior Counsel of the Refugee Protection Program of Human Rights First will present a general overview of the topic, outlining how the material support to terrorism bar for asylum is triggered, providing an explanation of the terror list tiers and possible waivers, and giving an update on recent material support holds on I-730s and I-485s & movement of Southern Cameroons National Council (SCNC)/ Social Democratic Front (SDF) applications. Daniel Lev, Associate at Ropes & Gray

LLP then will share some of his personal experiences, dealing with material support issues that have come up in asylum cases he has worked on and will open up the discussion for others to share and discuss experiences they have had and to ask advice of Ms. Hughes and Mr. Lev in addressing the issues they have encountered.

Haiti One Year Later: Human Rights & Development After the Earthquake

Wednesday, January 19, 2011, 4:00 PM

January 12, 2011 will mark the one-year anniversary of the devastating earthquake in Haiti. Hundreds of thousands of people were killed and approximately 1 million were left homeless. As the Haitian people have struggled to rebuild over the past year, the events of January 2010 have set forth numerous debates on human rights and development, humanitarian aid, and U.S. immigration policy. Please join our esteemed panelists Brian Concannon, Institute for Justice & Democracy in Haiti, Donna Barry, Partners in Health, Bill Graves, Graves & Doyle, and Manolia Charlotin, Boston Haitian Reporter, as we look at these and other issues.

Balancing Counterterrorism and Human Rights

Monday, January 24, 2011, 12:30 PM

Professor Amos Guiora, an international law expert who teaches at the SJ Quinney College of Law, The University of Utah, will present on global perspectives on counterterrorism and balancing counterterrorism and civil rights.

Post-Deportation Motions to Reopen: Legal Hurdles and Recent Developments

Jessica Chicco, Supervising Attorney, Post-Deportation Human Rights Project

Those who have been deported and those who have left the country while under an order of deportation are generally barred by administrative regulations from reopening their immigration proceedings. Similarly, those with pending motions to reopen or reconsider are deemed to have withdrawn their requests by their departure, even when they are forcibly removed. These regulations lead to disparity of treatment between individuals who remain in the United States who are attempting to challenge their removal orders and those who have departed, who seek to do the same.

The Supreme Court held earlier this year in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), that immigrants have a Sixth Amendment right to be informed by their criminal defense attorneys of the immigration consequences of entering a guilty plea. The court reasoned that noncitizens may choose not to plead guilty to an offense, and instead go to trial or plead to a different offense, if the conviction will make them deportable. Justice Stevens, who wrote the majority opinion, placed particular emphasis on the “virtually mandatory” nature of deportation as a result of certain criminal convictions. *Id.* at 1478. Following *Padilla*, individuals who were not informed by their criminal defense counsel of the potential immigration consequences of their guilty pleas may be able to challenge their convictions and seek to have them vacated on this basis. Courts and the Board of Immigration Appeals (BIA) have long recognized that the vacatur of a conviction that formed the basis for removal is an appropriate reason for reopening immigration proceedings. See *DeFaria v. INS*, 13 F.3d 422, 423 (1st Cir. 1993); *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003).

In recent years, the Supreme Court has recognized that motions to reopen are “important safeguard[s]” intended “to ensure proper and lawful disposition” of immigration proceedings, *Dada v. Mukasey*, 128 S. Ct. 2307 (2008). The Court also recently affirmed federal court jurisdiction to review agency denials of motions to reopen. *Kucana v. Holder*, 130 S. Ct. 827 (2010). The right to file one motion to reopen and one motion to reconsider, long authorized by regulations, was first codified in 1996. The statute adopted time and numerical limitations from the regulations, but it does not forbid motions filed by individuals who have departed the United States. 8 U.S.C. § 1209(a)(c)(6) & (7). The regulations barring motions filed by those who are “the subject of” exclusion, deportation, or removal proceedings,” and stating that departure constitutes the withdrawal of a pending motion, however, have remained in place. 8 C.F.R. § 1003.23(b)(1) and § 1003.2(d).

The BIA and several Courts of Appeals have interpreted the post-departure regulations as divesting Immigration Judges and the BIA of jurisdiction to consider motions to reopen filed by individuals after their departure or removal. The BIA has taken the position that departure is a “transformative event” that eliminates its jurisdiction. *Matter of Armendarez*, 24 I&N Dec. 646, 648 (BIA 2008) (holding that it lacked jurisdiction to consider a post-departure *sua sponte* motion to reopen). Later, however, the BIA stepped back from its reasoning and held that an exception to the post-departure bar could be made in the case of a motion to reopen an *in absentia* order where the individual did not receive notice. *Matter of Bulnes-Nolasco*, 25 I. & N. Dec. 57 (BIA 2009).

Not all Courts of Appeals that have considered the issue have agreed with the BIA's approach. In the Fourth Circuit, the post-departure regulations have been invalidated as in conflict with the statutory right to file a motion to reopen. *William v. Gonzales*, 499 F.3d 329 (4th Cir. 2007). The Seventh Circuit invalidated the regulation on different grounds, finding it untenable as a rule of jurisdiction, following Supreme Court precedent holding that agencies may not contract their jurisdiction through regulation or case law. *Marin-Rodriguez v. Holder*, 612 F.3d 591 (7th Cir. 2010). The Ninth Circuit has found the regulation invalid where the noncitizen is involuntarily removed, *Coyt v. Holder*, 593 F.3d 902 (9th Cir. 2010), or where the individual departed prior to the issuance of the Notice to Appear, *Singh v. Gonzales*, 412 F.3d 1117, 1121 (9th Cir. 2005), or where the individual departed following the completion of proceedings, *Lin v. Gonzales*, 473 F.3d 979, 982 (9th Cir. 2007). The Ninth Circuit has also held that those who have been removed may seek reopening where a conviction that formed a "key part" of the removal proceeding is vacated. *Cardoso-Tlaseca v. Gonzales*, 460 F.3d 1102 (9th Cir. 2006).

The First, Second, Fifth, and Tenth Circuits have upheld the validity of the post-departure bar against some arguments, although some of these holdings may be vulnerable on the grounds underlying the Seventh Circuit's decision in *Marin-Rodriguez*. Moreover, the First, Second, and Fifth Circuits have not directly addressed the issue of whether the post-departure bar conflicts with the clear statutory language, which was the basis on which the Fourth Circuit invalidated the regulation in *William*. See *Pena-Muriel v. Gonzales*, 489 F.3d 438 (1st Cir. 2007); *Zhang v. Holder*, 201 U.S. App. LEXIS 16681 (2d Cir. 2010); *Ovalles v. Holder*, 577 F.3d 288 (5th Cir. 2009). The Tenth Circuit upheld the regulations in the context of a motion

requesting the Immigration Judge to reopen *sua sponte*, which he has discretion to do "at any time," pursuant to regulation. *Rosillo-Puga v. Holder*, 580 F.3d 1147 (10th Cir. 2009); see 8 C.F.R. § 1003.23 (b)(1) (the BIA also has authority to reopen *sua sponte* pursuant to 8 C.F.R. § 1003.2(a)).

Individuals may seek to reopen their cases and challenge their removal orders in light of the *Padilla* decision, as well as a number of Supreme Court decisions in recent years finding that certain convictions had been erroneously categorized as "aggravated felonies" leading to virtually mandatory deportation. See, e.g. *Carachuri-Rosendo v. Holder*, 130 S.Ct. 2577 (2010); *Lopez v. Gonzales*, 549 U.S. 47 (2006). The interpretation and applicability of the post-departure regulations are of paramount significance to those who have departed the United States under an order of removal, and the validity of the regulations – which is currently the subject of Petition for a Writ of Certiorari – will certainly continue to be challenged.

The Post-Deportation Human Rights Project (PDHRP), part of Boston College's Center for Human Rights and International Justice, focuses on the representation of individuals who have been deported and promotes the rights of deportees and their family members through research, policy analysis, human rights advocacy, and training programs. Many thanks to Christy Rodriguez and Dan Kanstroom for their input on this article. For a more complete Practice Advisory on post-departure motions to reopen, visit www.bc.edu/postdeportation.