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Immigration 101

By Ann Massey Badmus

Overview



- Legal Immigration Status Options for Foreign Nationals
- Employer Immigration Compliance
- Immigration and Criminal Defense
- Immigration and Family Law
- Q&A

Statute and Regulations

Immigration and Nationality Act (INA) (1952) 8 USC
§1101 et seq

- 8 CFR § 100 et seq
- 22 CFR § § 41, 42, 45 and 46

Immigration Control and Reform Act (IRCA) (1986) 8
USC §1324a, 1324b

- 8 CFR §274a

The Agencies

- U.S. Citizenship and Immigration Service (USCIS)– www.uscis.gov – immigration benefits and services
- U.S. Customs and Border Protection (CBP) – www.cbp.gov – border patrol and international travel facilitation
- U.S. Immigration and Customs Enforcement (ICE) – www.ice.gov – investigation and enforcement of employer compliance and removal of illegal aliens



The Agencies (cont.)



U.S. Department of State (DOS) – visa issuance at embassy posts worldwide
www.travel.state.gov



Immigrant and Employee Rights Section of Department of Justice
<https://www.justice.gov/crt/immigrant-and-employee-rights-section>

The Agencies (cont.)



Executive Office for Immigration Review (EOIR) – immigration court for removal and asylum

www.justice.gov/eoir

Board of Immigration Appeals (BIA) – immigration appeals from EOIR and DHS
<http://www.justice.gov/eoir/biainfo.htm>



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Legal Immigration Options

Employment-Based Nonimmigrant Categories



- Visitors for Business or Tourism (B) (includes Visa Waiver Program/ESTA)
- Students (F and M)
- Professional Workers (H-1B)
- Exchange Visitors (J)
- Extraordinary Ability (O-1)
- Canadian & Mexican Professionals (TN-1)
- Intra-Company Transferees (L-1)
- Treaty Traders and Investors (E-1/E-2)
- Family Members (F-2, J-2, H-4, L-2, O-3, TD)

What is Permanent Residency?



- Authorization to live & work indefinitely in the United States
- May be abandoned or revoked
- Generally required before immigrant can become a citizen
- No voting rights

Employment-Based Immigrant Categories

- First Preference (EB-1)
 - Extraordinary Ability, Outstanding Researcher, Multinational Executive
- Second Preference (EB-2)
 - Labor Cert required: Advanced Degree Professionals, Bachelors plus 5 years experience
 - Nat'l Interest Waiver of the Labor Cert
- Third Preference (EB-3) (Labor cert required)
 - Skilled Worker (2+ years experience), Bachelor's Degree
- Fourth Preference (EB-4)
 - Religious workers
- Fifth Preference (EB-5) - Investors



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Family-Based Immigration



- Sponsored
 - “Immediate relatives” (never a quota)
 - Green Card holders sponsoring their spouses, children, unmarried sons & daughters (annual quota)
 - U.S. Citizens sponsoring sons/daughters, siblings (annual quota)
- Derivative – can apply to Employment too
 - Spouses
 - Children under the age of 21
- Same-Sex marriages recognized



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Employer Immigration Compliance

Executive Order
“Enhancing
Public Safety in
the Interior of
the United
States”
(1/25/2017)

Immigration and Customs Enforcement (ICE)

Authorized the hiring of 10,000 ICE agents across the United States. This increase in the number of ICE officers will have a direct impact on employers as it relates to I-9 compliance and ICE audits of Forms I-9 as well as enforcement actions (RAIDS).

ICE Enforcement Policy



The image shows the top portion of the Employment Eligibility Verification Form I-9. At the top left is the Department of Homeland Security logo. The title is "Employment Eligibility Verification" with "Department of Homeland Security" and "U.S. Citizenship and Immigration Services (USCIS)" below it. On the top right, it says "USCIS Form I-9" and "OMB No. 1613-0047". Below the title is a "START HERE" instruction and an "ANTI-DISCRIMINATION NOTICE". The main section is "Section 1. Employee Information and Attestation". It contains fields for "Print Name" (Family Name, Given Name, Middle Initial), "Address" (Street Number and Name, Apt. Number, City or Town, State, Zip Code), "Date of Birth", "U.S. Social Security Number", "E-mail Address", and "Telephone Number". There are checkboxes for "I am a citizen of the United States", "I am a lawful permanent resident", and "I am an alien authorized to work". Below these are fields for "Alien Registration Number / USCIS Number", "Form I-94 Admission Number", "Foreign Passport Number", and "Country of Issuance". At the bottom of this section is a "Signature of Employer" field and a "Preparer or Translator Certification" section with fields for "Signature of Preparer/Translator", "Print Family Name of Preparer", "Given Name of Preparer", "Middle Initial", "Address", "City or Town", "State", and "Zip Code".

“Under federal law, employers are required to verify the identity and employment eligibility of **all individuals** they hire, and to document that information using the Employment Eligibility Verification Form I-9. ICE uses the **I-9 inspection program** to promote compliance with the law, part of a comprehensive strategy to address and deter illegal employment. Inspections are one of the most powerful tools the federal government uses to ensure that businesses are complying with U.S. employment laws.”

2018 Enforcement Actions

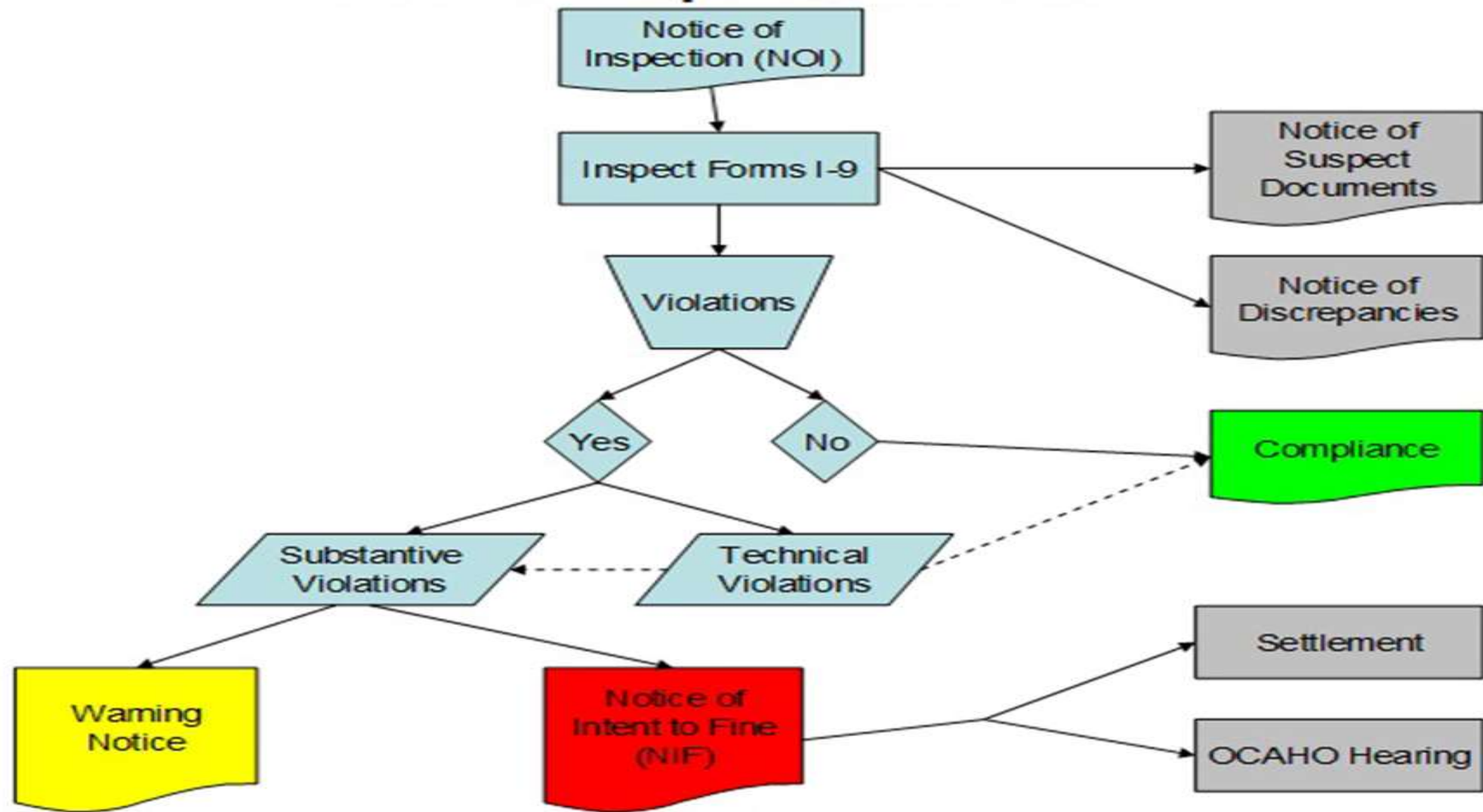
- ICE inspection of 6093 workplaces compared to 1718 workplaces in 2017 – 400% increase!
- 984 administrative arrests at worksites, more than five times the 172 arrests in 2017
- In FY2017, businesses were ordered to pay \$97.6 million in judicial forfeitures, fines and restitution, and \$7.8 million in civil fines, including one company whose financial penalties represented the largest payment ever levied in an immigration case (Asplundh Tree Experts).

I-9 Compliance Best Practices



- Work with counsel to conduct a proactive internal audit.
- Conduct regular training for HR personnel and team leaders/managers who interact with employees as to the do's and don'ts of communicating with employees.
- Establish immigration compliance I-9 standard operating procedures.
- Establish a 'tickler' calendar reminder system to handle reverification for those employee's with work authorization documents containing an expiration date.

Form I-9 Inspection Process





Call your lawyer



Understand the scope of the inspection



Know your rights and responsibilities



Protect privileged documents

ICE Worksite Inspection: Employer Rights & Responsibilities

Anti-Discrimination Rules



- Citizenship/Immigration Status Discrimination
- National Origin Discrimination
- Retaliation or Intimidation
- Unfair documentary practices

Immigrant and Employee Rights Section of Department of Justice
<https://www.justice.gov/crt/immigrant-and-employee-rights-section>



Prohibits request for more or different documents than required or rejection of genuine-looking documents



Protects ALL work authorized individuals

Document Abuse



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Citizenship Status Discrimination

Prohibits different treatment because of citizenship, for example:

- “Preferring H-1B Visa holders”
- “Preferring undocumented workers”
- “U.S. citizen only hiring policy”

Recruitment Questions About Immigration Status



- Non-Discrimination Requirement
 - No Discrimination Allowed Between U.S. Citizens, U.S. Nationals, Permanent Residents, Asylees, Refugees, and 1986 amnesty program's "Temporary Residents."
 - Employers are NOT allowed to ask "Are you a U.S. Citizen?" or "Do you have a Green Card?"
 - Employers NOT allowed to request specific documents or to require "more or different" documents than the minimum required.



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Immigration and Criminal Defense

Padilla v. Kentucky

Immigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it. There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain. The duty of the private practitioner in such cases is more limited. When the law is not succinct and straightforward (as it is in many of the scenarios posited by JUSTICE ALITO), a criminal defense attorney need do no more than *advise a non-citizen client that pending criminal charges may carry a risk of adverse immigration consequences*. But when the deportation consequence is truly clear, as it was in this case, the *duty to give correct advice is equally clear*.

Justice Stevens
U.S. Supreme Court

Analysis



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- Determine client's immigration status
- Relate the crime to the immigration consequences, i.e. crime of moral turpitude, aggravated felony, etc
- Understand the immigration consequences, i.e. inadmissibility, deportability, naturalization bar
- Avoid a conviction - 8 USC §1101(a)(48) – conviction is a judgment of guilt OR plea of guilt, no contest, or ***admission of facts that results in some punishment, regardless of suspension of sentence***

Consult an Immigration Attorney



- Confirm immigration status
- Fashion a plea to avoid harsh immigration consequences
- Create a record for immigration relief
- Pursue visa options



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Immigration and Family Law

Divorce or legal separation can terminate permanent residence or other legal status

- Pending application
- Conditional permanent residence
- Derivative beneficiary (spouse of employment-based application)
- Dependent visa status



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Affidavit of Support Obligations for US citizens and permanent resident sponsors

- Provide support for the immigrant relative at an income level of at least 125% of the U.S federal poverty guidelines.
- Repay Federal, State, local and private government agencies.
- Inform Federal and State government agencies of any changes in address.

Affidavit of Support Obligations for US citizens and permanent resident sponsors



Obligations terminate only when the immigrant does either of the following:

- Becomes U.S. citizen
- Work for 40 qualifying quarters under the Social Security laws
- Permanently departs the United States
- Dies



Intake Questions

- Where were you born?
- Are you a U.S. citizen?
- If not, what is your immigration status?
- Is your spouse a U.S. citizen? If not, what is his/her status?
- Are your children U.S. citizens? If not, what is their status?
- How did you obtain permanent residence?
- Have you applied for permanent residence?





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