

Paschal on Immigration Law, What's Hot & What's Not

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Paschal Nwokocha talks to the *Minnesota Lawyer Magazine* on March 1, 2009 about the latest trends in immigration law.

WHAT'S HOT & WHAT'S NOT: IMMIGRATION LAW

By Michelle Lore *Associate Editor*

The downturn in the economy is having a dramatic effect on the practice of immigration law, an area that's complicated even in good financial times.

Immigration lawyers are busy advising their corporate clients on everything from conducting layoffs of foreign workers to complying with new rules relating to the verification of the legal status of employees. And while the U.S. Immigration and Customs Enforcement agency has ramped up its efforts to locate people working here illegally, the immigration courts have cut back on staff and are having trouble keeping up with the cases.

"Our local immigration courts are extremely stretched," said Minneapolis immigration attorney Paschal Nwokocha, chair of the Minnesota/Dakotas chapter of the American Immigration Lawyers Association. "The court system is not equipped to handle the inflow of immigrants."

Nwokocha talked with *Minnesota Lawyer* last week about some of the important issues the immigration law bar is handling, as well as a few that appear to be settled, at least for now.

WHAT'S HOT

Status of Liberian immigrants

The legal status of thousands of Liberians living in the Twin Cities area is up on the air right now.

They are members of a group who fled their country's civil war in 1989 and are currently enrolled in the Deferred Enforced Departure program, which allows them to remain and work in the United States. Unless they are granted an extension, they will be vulnerable to deportation when the DED expires on March 31.

"The question is now what happens," said Nwokocha. "Are we going to renew their status, are we going to get them some sort of permanent stay or do we want them out of this country?"

Efforts are underway at both a national and state level to get the DED renewed. The ultimate decision belongs to President Barack Obama.

“If you look at a place like Brooklyn Park, if the decision is made not to extend it, the economy is so down that a lot of people are going to leave and the impact on the community is going to be unimaginable,” said Nwokocha.

Federal mandamus actions

Immigration lawyers are increasingly taking their problems with local immigration offices to federal court.

According to Nwokocha, more and more practitioners are filing mandamus actions to get relief for their clients when the immigration office fails to act. Things like issuing or renewing a work permit or granting or denying a citizenship application are taking an exorbitantly long time, he said. “It takes going to a federal court [and] filing a petition for the [immigration] service to issue a decision.”

Nwokocha said that the process works, but it’s likely the federal courts are going to become overwhelmed. “I know it’s a matter of time and they are going to have a backlog,” he said.

Employment issues

With all of the layoffs occurring around the country, immigration attorneys are busy advising their business clients on things like properly letting go of foreign workers who are here based on a sponsorship from the company — such as an H-1B visa or an L-1 visa.

Attorneys are also counseling employers on compliance with E-Verify, which allows electronic verification of the employment eligibility of newly hired employees. Employers seeking a federal contract must comply with E-Verify, ensuring that all employees are here legally and authorized to work.

“I can imagine with the stimulus package and a lot of money coming down, there will be companies and businesses that want to get a federal contract that will have to comply with E-Verify,” said Nwokocha.

Similarly, immigration lawyers are busy advising employers on the revised I-9 Form that goes into effect next month.

All employers are responsible for completion and retention of the form for new hires — citizens and noncitizens. Employers must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I-9.

According to Nwokocha, the new form contains specific requirements relating to the authorization documents workers must produce. Immigration lawyers, he said, are advising businesses on the new requirements, particularly with respect to foreign nationals — what documents to ask for and what documents not ask for in order to avoid exposure to potential discrimination lawsuits.

WHAT'S NOT

New worker petitions

While layoff and employee verification issues are hot, anything relating to filing petitions for new workers is not.

Usually, the end of March and early April is a busy time of the year for immigration attorneys because it's when they file for H-1B visas. But it won't be this year, said Nwokocha. Companies just aren't hiring right now and can't justify bringing in workers from overseas when there are so many unemployed Americans around.

Similarly, efforts to move foreign workers from H-1B status to permanent residency status are virtually at a halt because of the requirement that employers first test the labor market for U.S. workers.

“Because of the economy, if you test the market you may end up with people more qualified for a position. ... So that option is not as readily available,” said Nwokocha.

Comprehensive reform

In recent years, it looked as if comprehensive immigration reform was on its way. But the downturn in the economy has all but ended those talks.

Nwokocha said that while President Obama and both houses of Congress appear to be receptive to immigrants and the idea of immigration reform, it may be a while before it gets serious attention.

“The stars are all lined up — except the economy is not on our side,” he said. “I don't think anybody is going to talk about it until the economy changes.”

Immigration

An area that can be considered “hot” or “not hot,” depending on how it's looked at, deals with the right to effective counsel in removal proceedings.

During the final days of the Bush administration, outgoing Attorney General Michael Mukasey ruled in *Matter of Enrique Salas Compean* that because immigrants who are the subject of removal proceedings have no constitutional right to counsel at the government's expense — they only have the privilege to retain private counsel if they so

choose — then they cannot assert a constitutional right to effective assistance either. The ruling reversed years of precedent.

“In that sense, it’s been settled,” said Nwokocha. “But there are forces that are fighting this that are not giving up. ... The new attorney general [Eric Holder] has agreed to review it and look at it again.”

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