

COUNSEL

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About Counsel

A newsletter publication of Paschal Nwokocha Law Offices, LLC, Counsel is dedicated to the needs and interests of our clients and subscribers.

Each issue of Counsel explores specific areas of immigration law, which may be of personal or business interest to its readers.

Counsel does not constitute legal advice. Readers are urged to consult an attorney before acting on any information contained in this publication.

Our Mission

At Paschal Nwokocha Law Offices, our mission is to provide the highest quality professional, client-driven legal services to businesses and individuals at reasonable rates.

We believe the Immigration and Nationality laws of the United States should work for our clients, *not* against them. And we employ all available tools to seek the best possible solutions on their behalf.

New Immigration Filing Fees

On September 23rd, 2010, the United States Department of Homeland Security announced final rules raising the immigration filing fees. The new fees go into effect November 23, 2010. While the application for citizenship saw no fee increase, the rest of the applications saw significant increases. For instance, the filing fee for Relative Petitions increased from \$355 to \$420, and Permanent Resident application fee will go from \$930 to \$985.

At Paschal Nwokocha law offices, we are encouraging applicants who have been considering filing applications to do so before November 23, 2010. The new fee will affect all applications post marked after November 23, 2010.

On a related note, on August 13, 2010, President Barack Obama signed into law legislation increasing the filing fees of some categories of H-1b petitions. Public Law 111-230 requires submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions. This affects cases with post marked dates of August 14, 2010 or later. This increase only affects petitioners with 50 or more employees, and with more than 50 percent of their U.S. employees in H-1B or L-1B non immigrant status.

Padilla v. Kentucky: Major Decision from the U.S. Supreme Court.

On March 31, 2010, the U.S. Supreme Court issued a major decision in the field of Immigration Law. The decision affects immigrants who pleaded guilty to criminal charges without being well-informed of the immigration consequences of such plea.

Mr. Padilla, a Vietnam War veteran, who was a Lawful Permanent

Resident of the United States for more than 40 years pleaded guilty to transporting large amounts of marijuana drug charges in Kentucky. At the time of the plea, his criminal defense attorney informed him that he did not have to worry about his immigration status since he had been in the country for “so long.” It turned out, however, that with his conviction, deportation was mandatory.

The Kentucky Supreme Court held that the immigration consequences of Mr. Padilla’s criminal conviction were a “collateral consequence” not a direct consequence of his conviction, that therefore his criminal defense attorney need not advise him upon it. The U.S. Supreme Court overturned the Kentucky Supreme Court and by extension all Courts (including the Minnesota Supreme Court) who have held that immigration consequences are only collateral, and should not be a basis to withdraw guilty plea. The U.S. Supreme Court held that failure to fully advise a criminal defendant of the immigration consequences of the plea amounts to violation of the Sixth Amendment right to effective assistance of counsel. It is not enough to tell a defendant that he may be deported if convicted; in situations where “the deportation consequence is truly clear”, the “duty to give correct”, clear advice is “equally clear.”

What does that mean to the average immigrant?

If an immigrant is facing removal proceedings based on a criminal conviction, it is imperative that counsel and the immigrant review the record of the conviction to make sure that the immigration consequences of the conviction were fully discussed.

In the event the immigration consequences were not fully discussed, the immigrant could file a *Padilla* motion to get the Court to throw out the conviction. That, however, does not prevent the

government from re-charging the immigrant in criminal court.

Once vacated under *Padilla*, the government cannot use the conviction as a ground for deportation or removal. There would have to be new a conviction.

At Paschal Nwokocha Law Offices, we have been involved in a number of *Padilla* motions. Feel free to contact our office if you or your loved ones are in removal proceedings because of any past criminal convictions you want evaluated for possible *Padilla* Motions.



Religious Worker Program—Ever Changing Law

The Religious Worker program continues to experience dramatic changes. It is important that anyone interested in visas under this program seek help from an attorney who handles such matters on regular basis.

In June 2009, the U.S District Court in Washington State issued the Ruiz-Diaz decision. Under Ruiz Diaz, applicants could file Forms I-360, Special Immigrant Petitions for Religious Workers and Forms I-485, Adjustment of Status applications concurrently.

In August 2010, the Ninth Court of Appeals issued a decision reversing the district court. This reversal decision means that the Immigration Service could go back to its pre-June 2009 practice of insisting that a Form I-360 must be approved before one can file a Permanent Residency application.

At Paschal Nwokocha Law Offices, we have kept up with these changes. We have filed a flurry of petitions before the Ninth Circuit Order goes into effect.



2010: Year of Record Immigration Enforcement.

The Immigration and Customs Enforcement has continued to ramp up enforcement actions against individuals and businesses. There has been a substantial increase in the number of enforcement/ deportation officers and the lawyers who represent ICE. At the Bloomington, MN immigration court, a third judge has been added. As a clear indication of the enhanced enforcement, due to the number of people now in removal proceedings, it is now taking up to 18 months for an immigrant to have a final hearing date before the Court.

In the 2009 fiscal year, ICE set a new record: it deported about 392,000 immigrants. Of this number, 195,000 were those with criminal convictions. ICE also conducted audits on more than 2,200 employers for hiring undocumented workers and levied fines of more than \$50 million.

These enforcement actions cannot be a substitute for immigration reform. Deportation of criminals is but a small part of what should be a comprehensive, smart immigration process that accomplishes the desired goal of getting millions of people out of the shadows, deporting those that warrant removal, and removing the incentives some employers have to hire undocumented workers.



ICE to Dismiss Up to 17,000 Removal Cases

On August 20, 2010, John Morton, the Assistant Secretary of the U.S. Immigration and Customs Enforcement (ICE), released a memorandum entitled: Guidance Regarding the Handling of Aliens with Pending or Approved

Applications or Petitions. This resulted in false rumor in some immigrant communities, with some believing that the memorandum states that ICE will stop deportation of immigrants; that is not correct.

The memorandum applies to persons in removal proceedings who meet the following criteria:

- The alien [immigrant] must be the subject of an application or petition with USCIS to include a current priority date, if required, for adjustment of status;
- The alien appears eligible for relief as a matter of law and in the exercise of discretion;
- The alien must present a completed "[Application to Register Permanent Residence or Adjust Status \(Form I-485\)](#)", if required; and
- The alien beneficiary must be statutorily eligible for adjustment of status (a waiver must be available for any ground of inadmissibility).

In such cases, the ICE Attorney will ask that the Immigration Judge dismiss the removal proceedings without prejudice to the government from requesting that the alien be removed from the United States if his/her application or petition is denied by the USCIS.

ICE will request that the USCIS rule on the pending petition/ application within 30 to 45 days.

The ICE attorney will not request that the case be transferred to the USCIS if "there are any investigations or serious, adverse factors weighing against the dismissal of proceedings. Adverse factors include, but are not limited to, criminal convictions, evidence of fraud or other criminal misconduct, and national security and other public safety considerations."

It is estimated that the August 20th memo will permit up to 17,000 cases to be removed from the Court's backlog and transferred to the USCIS. While this reduces the

Court's backlog by less than ten percent, it is a step in the right direction.

At Paschal Nwokocha Law offices, we have taken advantage of this memorandum to move for dismissals of a number of cases against some of our clients. It is always a relief to remove the specter of deportation from an immigrant's immediate future.



Annual Green Card Visa Lottery Started on October 5th

On September 22, 2010, the State Department announced that the DV-2012 Online Green Card Lottery will officially begin at noon (EDT) on October 5, 2010 and end at noon (EDT) on November 3, 2010. This year, like last year, up to 50,000 persons may receive permanent residence through the visa lottery. No countries have been added or removed from last year's list of eligible countries.

For DV-2012, natives of the following countries are NOT eligible to apply because the countries sent a total of more than 50,000 immigrants to the United States in the previous five years:

- Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, Poland South Korea, United Kingdom (except Northern Ireland) and its dependent territories and Vietnam

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible to participate.

The law and regulations require that every diversity visa entrant must:

- have at least a high school education or its equivalent or
- have, within the past five years, two years of work experience in an occupation requiring at least two years' training or experience.

Applications will ONLY be accepted [online](#). Go to: <http://www.dvlottery.state.gov/>



Did you know?..

- The *U visa* is a special visa for victims of certain crimes, including crimes of domestic violence and sexual assault among others. The person must be the victim or "indirect victim" of the crime, cooperate with law enforcement in the investigation of the crime, and show that they have suffered on account of the crime. Some of the victim's family members can be included in a U-visa application. It is one of the few immigration options that can waive most immigration violations, including past deportations, visa over stay and certain crimes.

Contact us for more information.

Reader's Corner

Readers are encouraged to send questions and comments to Counsel at Paschal Nwokocha Law Offices.

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Recent Success Story

A client entered the United States illegally in the mid 1990s and was subsequently deported by the Immigration Service. She re-entered illegally again without inspection. With such history, she was barred from gaining any immigration status in the United States--- until she came to consult with us.

We were able to file a U visa petition on her behalf based on incidents of domestic abuse she suffered many years ago. We were also able to get the Immigration Service to waive her many immigration violations. She now has a work permit.

A mid-size corporation undergoing change in management hired us to help bring in a new Chief Executive Officer urgently. Within a 4-day period, our office prepared the necessary documents, filed the complete petition and the new executive arrived in the United States to start work. That was a record!

If you need legal services relating to immigration or other legal issues and would like to schedule a consultation...

Call us for an appointment

612.465.0060

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