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Immigration News Update

February 8, 2010

Welcome to Immigration News Update, your resource for the latest developments in U.S. immigration laws, procedures, and breaking news. Immigration News Update is published bi-monthly by Bashyam Spiro, a firm committed solely to the practice of Immigration and Nationality Law. To further explore what is happening in immigration across our nation and the world follow us on [Twitter](#) and [Facebook](#).

To hear what our clients and staff say about our firm, please click [here](#).

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Bashyam Spiro LLP handles U.S. immigration cases in all 50 states and around the world. We are located at The Summit Building, 4101 Lake Boone Trail, Suite 200, Raleigh, North Carolina 27607. Telephone: 919-833-0840. Web Site: www.bashyamspiro.com.

Information You Can Use: Launching New Video Segment "Immigration Minute"

At Bashyam Spiro we know that the communities we serve, as well as media and business professionals, are eager to learn more about our firm's personality, philosophy, demeanor and the work that we do.

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People do business with people, so we want the public to meet *our people!*

We recently started producing a video series called the "Immigration Minute. This web video series will allow viewers to hear our staff answer legal questions and speak about current immigration issues. At Bashyam Spiro we want to provide something of value to clients and the community at large.

This week we discuss Temporary Protected Status for nationals of Haiti. To view our 'Immigration Minute' video, please click [here](#).

Reminder: February 10th Breakfast Seminar for Employers—Recent USCIS Memo Regarding Employer-Employee Relationship for H-1B Applications

This free seminar is limited to employers only. Seating is limited.

To register or to request additional information, please send an email to info@bashyamspiro.com.

Time: 8:30 am - 9:30 am

Location: The Summit, 4101 Lake Boone Trail, Suite 200, Raleigh, NC 27607

Random Checks at POEs for Returning Nonimmigrant Employment-based Visa Holders

Recently, the American Immigration Lawyers Association (AILA) received reports that a number of H-1B nonimmigrants were detained at the Newark, New Jersey Port of Entry and questioned about their employment. Some of these foreign nationals were not admitted to the U.S.

Upon further investigation, AILA discovered that their employers were being investigated by the Department of Homeland Security for ongoing fraud. Although this seemed to be a reasonable explanation, US Customs and Border Protection (CBP) later informed AILA that Newark CBP is instituting a new policy of random checks for employment-based nonimmigrant visa holders. Presumably, these random checks will simply consist of more detailed questions than are typically asked. If, after initial inspection, the CPB officer has further concerns about the visa holder's application for admission, the visa holder will be referred to secondary inspection for further questioning. If CBP finds discrepancies in previously filed petitions and visa applications, the visa holder may be forced to withdraw their application for admission or be subject to expedited removal from the United States.

We are not aware of a country-wide random check policy at all ports of entry. Please keep in mind that it is always within a CBP Officer's discretion to ask detailed questions about the visa holder's employment and /or send them to secondary inspection.

To prepare for inspection, we advise you to thoroughly review your visa petition and all supporting documents carefully prior to entry. Employers should be prepared for calls from CBP Officers seeking to confirm information obtained from the visa holder. Employers should also keep in mind that CBP officers may review public information such as that found on company websites. Thus, it is essential to keep public information updated and accurate.

We will provide additional information as it becomes available at www.bashyamspiro.com.

Success Story: After a 7 Year Fight, Ahmed Finally Gets His Green Card

By Ame Coats, Senior Counsel, Bashyam Spiro LLP

This past Friday evening, as I was settled on the couch watching the sleet and snow, I checked my emails from earlier in the day. I clicked on an email from USCIS. Usually these emails are good news, so I'm excited to read them.

When I saw the words "I-485 Adjustment of Status Notice of Approval" and matched it up with the client, I was shocked. I actually had to put my laptop aside for a bit and take it in. This approval wraps up the longest and most frustrating marriage-based green card case I've ever worked on. I could not believe that the approval had finally come through.

Ahmed first came to Bashyam Spiro about 7 years ago. His green card application, based on a petition filed by his mother, had just been denied. USCIS denied Ahmed's case because he had not provided all of the criminal records that they requested. The charges were minor cigarette tax charges, which had all been dismissed except for one misdemeanor. The single misdemeanor was clearly not serious enough to bar Ahmed from getting a green card.

My first inclination on this case was to file a Motion to Reopen and provide certified copies of the requested records. However, Ahmed had been waiting for months and months for this decision. While he was waiting, he decided to marry his US citizen girlfriend. He did not realize that by getting married, the petition that his Permanent Resident mother had filed for him would be automatically revoked. A Motion to Reopen was not an option because the underlying petition his mother filed was no longer any good.

We filed another adjustment of status for Ahmed; this time on the basis of his marriage to his US citizen wife. About 4 months after filing, the denial notice that Ahmed received came back to haunt us. The Immigration Service had placed Ahmed in deportation proceedings in Atlanta, Georgia. From a procedural standpoint, deportation proceedings at this stage of the green card process is a nightmare. It changes the order in which applications are adjudicated and who has the power to do the adjudicating. Not to mention court hearings located hundreds of miles from where Ahmed and I both lived.

In order to get the deportation proceedings terminated, USCIS had to approve 1 particular petition out of the entire green card application packet that we filed. This was a huge challenge because Ahmed's physical file was bouncing back and forth between the USCIS office in Charlotte and a Department of Homeland Security attorney in Atlanta. I placed numerous inquires through the attorney liaison at the USCIS office in Charlotte. It didn't seem to help. When I felt that we had hit a brick wall with the attorney liaison, we contacted a congressional office for help. At this stage, we were simply asking for Ahmed's file to remain at the Charlotte USCIS office long enough for an officer to interview Ahmed and adjudicate the 1 petition necessary to get the deportation proceedings terminated. The congressional office made their best efforts on Ahmed's behalf, but it still took a ridiculous amount of time.

Finally, Ahmed and his wife were scheduled for an interview at the USCIS office in Charlotte. The petition was approved. Then, I had to go back and forth with the Department of Homeland Security's attorney and the Immigration Court to formally have the proceedings terminated.

After the proceedings were terminated, we had to completely refile the green card application again and pay approximately \$1000 in filing fees again. After refiling, out of the blue, the Immigration Service asked for evidence as to why Ahmed did not report to his local Immigration Office for special registration in 2002/2003. (There was a Post 9/11 law requiring nationals of Middle Eastern countries to do so.) Since Ahmed is from the West Bank in Palestine and not a citizen of any country, we explained to the Immigration Service by letter that he was not required to register. USCIS accepted our argument and continued processing the case. However, when we filed to renew Ahmed's employment authorization the following year and the year after that, USCIS sent a Request for Evidence to us asking the exact same question again. Ahmed almost lost his job one year because the Request for Evidence caused a significant delay in obtaining his employment authorization.

Finally, Ahmed and his wife were scheduled for an interview on his green card application at the Charlotte USCIS office in late 2007. The interview went well, but we did not receive a decision right away. In June of 2008, a USCIS office opened up in Raleigh. The Charlotte

office transferred thousands of pending cases to Raleigh. Ahmed's case was one of those. Months went by. Finally, we had to get a congressional office involved again to get Ahmed's case moving. It was 1 ½ years after the Raleigh office opened before Ahmed was scheduled for another interview.

After the interview in November of 2009, the officer who interviewed Ahmed sent a letter to us requesting additional criminal records. We had only been given 30 days. Ahmed and I were frustrated. It had been incredibly difficult to communicate with the New York court system to obtain the records we had submitted at the interview. And we had provided every court document that was in his file. At Ahmed's interview, I even made a special point to discuss the availability of records with the officer.

For a split second, I had doubts. I thought to myself, "Have we gone through all of this only for Ahmed's case to get denied for the exact reason his first green card case was denied?" But those doubts turned to anger which turned to adrenalin. I ordered every criminal record check that exists for the state of New York. When the New York Court wouldn't respond to our calls and faxes, I found a firm there to get the court records for us. I spent a workday writing a legal memorandum that I shouldn't have had to write to explain why a low level misdemeanor cigarette tax conviction did not bar Ahmed from becoming a Permanent Resident. We mailed our response to USCIS and waited.

Now, after 7 years, the waiting is finally over. It's mindboggling that these 7 years resulted from Ahmed's failure to submit proper records to USCIS and the Immigration Officer's failure to give him a second chance to correct his mistake. I just hope Ahmed can move on with his life, but I have to wonder what toil 7 years of anxiety and fear has taken on his marriage, his son, and himself.

Ame Coats, Senior Counsel: Ame Coats graduated from the Campbell University School of Law with a Juris Doctor degree. She is a member of the American Immigration Lawyers Association; her practice at the firm is focused on employment and family-based immigration, naturalization and asylum.

Please note: Client's name in this article has been changed to protect client/attorney confidentiality.

Sampling of Big Ticket Items in the President's Proposed FY2011 DHS Budget

- 4.6 Billion to support 20,000 border patrol agents, border control fencing, and border control technology
- Over 2.5 Billion for removal and detention operations 134.7 Million for expansion of

- E-Verify and SAVE—programs which confirm a foreign national's immigration status for purposes of employment and obtaining public benefits
- 94 Million for 300+ new CBP Officers to enhance screening of passengers and cargo at Ports of Entry
 - 84.7 Million to improve information sharing between USCIS, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and other Department of Homeland Security Components. This includes any information maintained about you!

HELPFUL LINKS

To access some helpful immigration related web sites, please click [here](#).

To schedule a consultation, please send an email to info@bashyamspiro.com or click [here](#).

To learn more about Bashyam Spiro LLP, please visit www.bashyamspiro.com.

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