

BUSINESS IMMIGRATION, WORKFORCE, AND COMPLIANCE LAW

Professor Michael Wildes

Benjamin N. Cardozo School of Law

Course Materials:

1. Casebook: Immigration and Citizenship, Process and Policy, T.A. Aleinikoff Eighth Edition (2016), West Publishing Co.
2. Supplemental Material: direct link available at www.wildeslaw.com
User ID: student Password: liberty
3. Safe Haven in America: Battles to Open the Golden Door, Michael Wildes (2018), ABA Book Publishing
4. Recommended: John Lennon vs. The USA, Leon Wildes (Author), Michael Wildes (Foreword), (2016) American Bar Association
5. Recommended: Immigration & Nationality Laws of the United States: Selected Statutes, Regulations, and Forms, T.A. Aleinikoff (2014), West Publishing Co.

CONTACT INFORMATION

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CLASS PARTICIPATION/ATTENDANCE:

Students will be expected to read assigned materials and be prepared to participate in class discussions. In accordance with school policy, a student whose absences exceed twenty (20) percent of the total number of classes will be barred from taking the final examination and in such instance will receive the grade of "F" in the course. In any class students may be called on at random. If you are not prepared for class, kindly advise beforehand and expect to be called on sometime in the next two or three classes. Relevant statutes have been provided for each class. Given the complexity of the Immigration Act, students are not expected to concentrate heavily on the statutes unless otherwise informed in advance in class.

GRADING:

Your final grade will be comprised of in-class work/participation and a final examination. The final examination will be open book; students may use all course materials and personal notes as well as outlines. The final exam will comprise ninety (90) percent of your final grade. Your level of class participation comprise ten (10) percent of your final grade and will be used to adjust your grade upward or downward, for example from a B to a B+ or conversely from a B to a B-.

COURSE DESCRIPTION:

This is a two credit course on Business Immigration. This class is designed to provide you with a practical understanding of the employment-based immigration system in the United States. In this regard, the class will focus very heavily on administrative decisions and administrative case law. We will examine nonimmigrant and immigrant visas, changes and adjustments in status, issues concerning artists and students, and immigration compliance as well as the constitutional issues surrounding immigration enforcement. Our class will also focus on the immigration-related hurdles that employers face. We will discuss current issues and controversies as well as the political and public policy factors in an evolving context which are shaping the reform of U.S. immigration law. The purpose of this course is to give each student a working knowledge of employment-based immigration and workplace compliance laws and issues. It will cover corporate and individual practice, immigration litigation, immigration enforcement/compliance and consular practice.

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READING ASSIGNMENTS

CLASS ONE: CLASS OVERVIEW

August 29, 2018

1. Casebook: p. 235-268, 269-279, 380-387

CLASS TWO: NONIMMIGRANT VISA OVERVIEW

September 5, 2018

1. Supplemental Materials: *Memorandum from Wildes and Weinberg, P.C.*
2. Relevant statutes:
 - a. CIMT: INA § 212(a)(2)(A)(i)(I)
 - b. Aggravated Felony: INA §§101(a)(43), 237(a)(2)(A)(iii)
 - c. Nonimmigrant Waiver: INA § 212(d)(3)

CLASS THREE: COMMERCIAL/BUSINESS VISITOR VISA ISSUES

September 12, 2018

1. Casebook: p. 393-401
2. Cases:
 - a. *International Union of Bricklayers and Allied Craftsmen v. Meese*, 616 F. Supp. 1387 (1985). P. 395
 - b. *Matter of Hira*, 11 I. & N. Dec. 824 (BIA 1965). (Supplemental Materials).
3. Supplemental Materials:
 - a. Cyrus D. Mehta and Myriam Jaidi, *B-1 in Lieu of H1-B Visa in Jeopardy: Don't throw the Baby Out With the Bathwater* (May 26, 2011)
4. Relevant statutes:
 - a. Admission: INA § 101(a)(13)
 - b. Immigrant Intent Doctrine: INA § 214(b)
 - c. Other Relevant Statutes: INA § 101(a)(15)(B); 22 C.F.R. §41.31; 9 F.A.M. 41.31 n. 8

CLASS FOUR: TRANSITIONING INTO THE WORKFORCE

October 3, 2018

1. Casebook: p. 386-393; 516
2. Cases:
 - a. F-1: *U.S. v. Bazargan*, 922 F.2d 844, 877 (8th Cir. 1993) (Supplemental Materials)
3. Supplemental Materials:
 - a. *Students and Employment*, USCIS
 - b. *H-3 Nonimmigrant Trainee or Special Education Exchange Visitor*, USCIS
 - c. *Exchange Visitors*, USCIS
 - d. *Practical Training for Qualified Students*, USCIS
 - e. Q & A: *Extension of Optional Training Program for Qualified Students*, USCIS (April 4, 2008)
4. Relevant statutes:
 - a. F Visa: INA § 101(a)(15)(F)
 - b. J Visa: INA § 101(a)(15)(J)

- c. H-3 Visa: INA § 101(a)(15)(H)(iii)
- d. Sample of other relevant statutes and regulations:
 - i. INA § 221(g); 8 C.F.R. § 212.7(c); 22 C.F.R. §§ 41.63(a)(2)-(3); 22 C.F.R. § 62.2; 9 F.A.M. § 41.31 n. 8

CLASS FIVE: EMPLOYMENT-BASED NONIMMIGRANT VISAS

October 10, 2018

1. Casebook: p. 401-405; 406-409; 419-421; 422-432
2. Cases:
 - a. H1-B: *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000) (Supplemental Material)
 - b. L1-A: *Brazil Quality Stones v. Chertoff*, 532 F.3d 1063 (2008) (Supplemental Material)
 - c. EB-1(3): *IBM Corp.*, BALCA Case No.: 2009-PER-00132 (2009) (Supplemental Material)
3. Supplemental Materials:
 - a. Donald Neufeld, *Determining Employer-Employee Relationship for Adjudication of H1-B Petitions, Including Third Party Site Placements*, USCIS (May 08, 2010)
 - b. *Interpretation of the Term “Specialized Knowledge” in the Adjudication of L1-B Petitions*, American Immigration Lawyers Association (Jan. 24, 2012)
4. Relevant statutes:
 - a. H Visa: INA § 101(a)(15)(H)(i)(B); 8 C.F.R. §§ 214(h)(4)(ii), 214.2(h)(4)(iii), 214.6.H(16)
 - b. L Visa: INA § 101(a)(L), 8 C.F.R. §§ 212.2(l), 214.6(L)(16)
 - c. EB-1(3): INA §§ 101(a)(44), 203(b)(1)(3)

CLASS SIX: VISAS FOR ARTISTS, RESEARCHERS, SCIENTISTS, AND INDIVIDUALS IN BUSINESS, ETC.

October 17, 2018

1. Casebook: p. 405-406, 374
2. Cases:
 - a. EB-1: *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (Supplemental Materials)
 - b. EB-1(a): *Muni v. INS*, 891 F.Supp 440 (NDI 1995), (Supplemental Materials)
3. Supplemental Materials:
 - a. *Clarifying Guidance on “O” Petition Validity Period Revisions to the Adjudicator’s Field Manual (AFM) Chapter 33.4(e)(2) AFM Update AD10-36*, USCIS
 - b. Donald Neufeld, *Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications*, USCIS (November 20, 2009)
 - c. *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, USCIS
4. Relevant statutes:
 - a. O Visa: INA § 101(a)(15)(O); INA § 214(a)(2)(A); 8 C.F.R. 214.2(O)

- b. EB-1INA § 203(b)(1)(A); INA § 203(b)(1)(C); INA § 203(b)(1)(B); 8 C.F.R. 204.5(h)
- c. P Visa: INA § 101(a)(15)(O); INA § 214(a)(2)(A); 8 C.F.R. 214.2(p)

CLASS SEVEN: INVESTORS AND ENTREPRENEURS

October 24, 2018

1. Casebook: p. 409-412
2. Cases:
 - a. **E-2: *Nice v. Turnage*, 752 F.2d 431 (9th Cir. 1985) (Supplemental materials)**
 - b. **EB-5: *Matter of Ho*, 27 I&N Dec. 206 (BIA 1998) (Supplemental materials)**
3. Supplemental Materials:
 - a. *E-1 Treaty Traders*, USCIS
 - b. Donald Neufeld, *Adjudication of EB-5 Regional Center Proposals and Affiliated Form I-526 and Form I-829 Petitions; Adjudicators Field Manual (AFM) Update to Chapters 22.4 and 25.2 (AD09-38)*, USCIS (December 11, 2009)
 - c. Recommended: *Guidance on EB-5 Adjudications Involving the Tenant-Occupancy Methodology*, USCIS
 - d. Recommended: Edward J. Carroll and Susan L. Pilcher, *Investor's Due Diligence*
4. Relevant statutes:
 - a. E Visa: INA §§ 101(a)(15)(e); 8 C.F.R. § 214.2(e); 9 F.A.M. § 41.51, Exh.1; 9 F.A.M. § 41.51 n.2, Exh. 7
 - b. EB-5: INA § 203(b)(5); 8 C.F.R § 204.6; *see generally* § 22.4(a)(2) of the Adjudicator's Field Manual

CLASS EIGHT: RELIGIOUS WORKER MATTERS/ ETHICAL CONSIDERATIONS IN THE PRACTICE OF IMMIGRATION LAW

October 31, 2018

1. Casebook: p. 366-369
2. Supplemental Materials:
 - a. *Procedures for Calculating the Maximum Period of Stay for R-1 Nonimmigrants (AFM Update AD12-03)*, USCIS
 - b. Handout: *R-1 Nonimmigrant Religious Worker*
 - c. Richard L. Skinner, *Letter Report: The Special Immigrant Nonminister Religious Worker Program (OIG-09-79)*, DHS (June 11, 2009), p. 1-6
 - d. *Ninth Circuit Court of Appeals Overturns the Permanent Injunction Issued by the District Court in Ruiz-Diaz v. United States, No. 09-35734 (9th Cir. Aug. 20, 2010); AFM Update AD11-01*
 - e. Sample Request for Evidence
3. Relevant statutes:
 - a. R Visa: INA § 101(a)(15)(R); INA § 101(a)(27)(C)(ii); 8 C.F.R. §§ 214.2(r)(1-3)
 - b. Special Immigrant Religious Worker: INA § (a)(27)(C)(i); INA § 203(B); 8 C.F.R. § 204.5(m)

CLASS NINE: EMPLOYMENT-BASED PERMANENT RESIDENCE

November 7, 2018

1. Casebook: 349-366

2. Cases:
 - a. *Agma Systems LLC*, BALCA Case No.: 2009-PER-00132 (2009)
 - b. *In the Matter of Information Industries, Inc.*, 88-INA-82 (BALCA 1989), p. 356
3. Relevant statutes:
 - a. Please Refer to the casebook text

CLASS TEN: THE TRANSITION: MAINTAINING THE NONIMMIGRANT VISA AND ADJUSTING YOUR STATUS

November 14, 2018

1. Casebook: p. 485-503
2. Cases:
 - a. Change of Status: *Lee v. Mukasey*, 527 F.3d 1103 (10th Cir. 2008) (Supplemental Materials)
 - b. Lawful Status: *Bokhari v. Holder*, 622 F. 3d 357 (5th Cir. 2010) (Supplemental Materials)
 - c. Adjustment of Status: *Administrative Appeals Office Decision re: Kuwaiti National* (Supplemental Materials)
3. Supplemental Materials:
 - a. *Changing My Nonimmigrant Status*, USCIS
 - b. *Instructions for Form I-539, Application to Extend/Change Nonimmigrant Visa, USCIS*
 - c. Sample forms: I-129, I-140, I-485, I-539
4. Relevant statutes:
 - a. Unlawful presence: INA § 212(a)(9)(c)
 - b. Change/Adjustment of Status: INA § 248, INA § 245(a), INA § 245(c), INA § 245(i), INA § 245(k); INA § 222(g); 8 C.F.R. § 214.1(c)(4)

CLASS ELEVEN: GOVERNMENT ENFORCEMENT: WHAT EMPLOYERS CAN EXPECT

November 28, 2018

1. Casebook: p. 1106-1114, 1122-1129, 1207-1213
2. Cases:
 - a. Authorized Employment: *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), p. 1122
 - b. Constructive Knowledge: *Collins Food Intl v. INS*, 948 F.3d 549 (9th Cir. 1991), p. 1110
 - c. E-Verify: *Chamber of Commerce v. Whiting*, 564 U.S. ___ (2011), p. 1207
3. Supplemental Materials
 - a. Sample form: I-9 with instructions
4. Relevant Statutes:
 - a. INA § 274A; 8 U.S.C. § 1324a; 8 U.S.C. §1373(3)

CLASS TWELVE: FEDERAL IMMIGRATION LITIGATION/FINAL REVIEW

December 5, 2018

1. Casebook: 1191, 1215-1229, 1255, 1271-1284, 895-898, 923-926
2. Cases:
 - a. Aguilera-Enriquez v INS (Supplemental Materials)
 - b. Lennon v. INS, 527 F.2d 187 (1975) (permanent residence despite marijuana conviction), (Supplemental material)
 - c. Lennon v Richardson, 378 F.Supp. 39 (1975) (enjoining deportation proceedings), (supplemental materials)
 - d. Lennon v United States, 387 F.Supp. 561 (1975) (selective prosecution) (supplemental materials)
 - e. Suggested Video: U.S. v John Lennon (Lionsgate Entertainment)
3. Relevant statutes:
 - a. *See generally*: INA § 212; INA § 236; INA §236(a)(3); INA § 240