

# Immigration Law And Its Interplay With Family Law

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**Faith Nouri is a principal attorney at Nouri Law Corporation and has a dual license to practice law in the U.S. and Canada. Ms. Nouri represents clients from 26 countries and handles California contested family law and international abduction issues, as well as U.S. and Canadian immigration and cross-border issues, including inadmissibility into each country. She is the Past Executive Committee member and Chair for L.A. County Bar Association, Immigration Section and an Officer of the American Immigration Lawyers Association for Southern California. Ms. Nouri established a liaison with the Los Angeles Directors and was the representative of local associations for number of years with the Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agencies upon formation of the Department of Homeland Security, post 9/11.**

**She is a Family Law Specialist, designated by the State Bar of California; Minor's Counsel in both Orange County and Los Angeles County Superior Courts; certified mediator with training from the Straus Institute for Dispute Resolution, Pepperdine School of Law; and certified Collaborative Divorce Attorney as designated by the Collaborative Divorce Institute of Phoenix, Arizona. She also assists the Superior Court of California as a Mediator.**

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# Screening & Onboarding the Undocumented Foreign Nationals: Issues To Spot

## Use of Social Security Number

- Undocumented does not equal illegitimate social security number
- Use of social security number with the intent to deceive is a felony. 42 USC 408(a). But, in the Ninth Circuit, use of a false social security number is not a CIMT. *Beltran-Tirado v INS*, supra, (9<sup>th</sup> Cir. 2000).
- I-9 employer verification process. 18 USC1546(b)

# Courthouse Security

- Pre-existing Orders of Removal & Shifts in Immigration Enforcement
  - Courthouses do not fall under ICE or CBP's previous policies concerning enforcement actions at or focused on sensitive locations, nor do they fall within the protected areas memorandum. However, the April 27, 2021, Memorandum from Tae Johnson, ICE Acting Director, and Troy Miller, CBP Acting Commissioner, entitled "Civil Immigration Enforcement Actions in or Near Courthouses" remains in effect. Enforcement actions at courthouses will only be executed in limited circumstances against individuals falling within the public safety priorities of DHS's civil immigration enforcement priorities. Such enforcement actions will, absent exigent circumstances, not lead to arrest of non-targeted individuals and will, wherever practicable, take place outside of public areas of the courthouse.

# Minefields to Avoid during Testimony or Depositions

- Grounds for Objection:
- Evid. Code §§940, 913 and 5<sup>th</sup> [right against self-incrimination] Amendment to the US Constitution. *Zonver v Superior Court* (1969) 270 CalApp2d 613 [5<sup>th</sup> Amendment may be asserted in civil case]; *People v. Holloway* (2004) 33 Cal4th 96 [no adverse inference from assertion of 5<sup>th</sup> Amendment per Evid. Code §913
  - Right to privacy pursuant to Amendments 1 – 10 and 14 of the US Constitution as well as Art. 1, Sec. 1 of the California Constitution.
  - Irrelevant and not reasonably calculated to lead to discovery of admissible evidence.
  - 8 CCR 10455(e) regarding providing SS#
  - Conflicted Def. Atty.: counsel taking a position contrary to client's interest if failed to verify immigration consequences thereby subjecting clients to prosecution under federal law

# Minefields to Avoid during Testimony or Depositions

- Opens the door to questions about immigration status or lawful ability to work in USA. Moreover, testifying to entering and departing the US may implicate grounds for inadmissibility for the undocumented worker, e.g., INA 212(a)(9)(C) a person re-entering or attempting to reenter without authorization after being unlawfully present for over one year is inadmissible for 10-years. Testimony regarding when the undocumented worker first migrated to the United States also implicate other forms of relief, e.g., 8 USC 1229b

# Minefields to Avoid during Testimony or Depositions

## False Claim to USC Law Post-September 30, 1996

Requires (1) Representation of US Citizenship; (2) Representation was False; (3) Made or any Purpose or Benefit Under the INA or ANY Federal or State Law Including voter registration, I-9, employment applications, etc.

## Testimony regarding controlled substances

There does not need to be a conviction, but rather if it is determined that you are a drug abuser or addict you are inadmissible to the United States under INA Section 212(a)(1)(A)(iv) – Health Related Ground of Inadmissibility

Simply indicating you smoke marijuana or have smoked marijuana in the past is grounds for being inadmissible

To overcome grounds of inadmissibility, a civil surgeon must find you are in remission from the addiction

# ANNULMENT

- Annulment vs Divorce
- In re Marriage of Goodwin-Mitchell and Mitchell (2019) 40 Cal.App.5th 232, (a fraudulent intent to stray from the marital bed or a concealed intent to marry solely to obtain favorable immigration status may support annulment).



# DOMICILE

- In re Marriage of Dick (1993) 15 Cal.App.4<sup>th</sup> (A party's nonimmigrant alien status does not bar that party from establishing domicile for purposes of a dissolution action.)

## **DOMESTIC VIOLENCE**

- Are there any limitations for a foreign national to file for TRO ?
- Family Code 6320 (Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.”)

# Spousal Support & Affidavit of Support

- In re Marriage of Kumar (2017) 13 Cal.App.5th 1072 (I-864 affidavit creates a contractual right to support independent from state s/s statutes; immigrant spouse has standing to enforce the support obligation in state court; no duty to mitigate damages.)
- Prenuptial Agreement
- Postnuptial Agreement
- Violation of Affidavit of Support

## U VISA

U Visa: U Visa is available to helpful victims of a qualifying crime

Qualifying Crimes: Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Felonious Assault, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Sexual Exploitation, Rape, Torture, Slave Trade, Trafficking, Witness Tampering

In order to apply for a U Visa, you need to obtain a U Visa Certification (Form I-918B) from a Certifying Agency

A Certifying Agency can be any authority responsible for the investigation, prosecution, conviction, or sentencing of qualifying criminal activity, including Law Enforcement, Prosecutor's Office, Judges, Family Protective Services, Equal Employment Opportunity Commission, and Labor Departments

The key is that a Qualifying Crime must have occurred

## **SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)**

- Applicable to individuals under 21 who have been subject to abuse, abandonment, or neglect by one or both parents
- Must have a valid juvenile court order issued by a state court which finds that the minor/ward is dependent on the court or in the custody of a state agency or department or an individual or entity appointment by the court
  - Custody, Guardianship, Dependency, Delinquency
- Court must also find that parental reunification is not viable
- Finally, court must find it is not in the best interests of the minor/ward to return to their country of nationality or the parent's country of nationality or last habitual residence

## **REMEDIES AVAILABLE TO FOREIGN NATIONALS**

### **42B – CANCELLATION OF REMOVAL FOR CERTAIN NONPERMANENT RESIDENTS**

#### **Requirements:**

10 years of physical presence in the US

Not Convicted of Certain Crimes

Removal would result in exceptional and extremely unusual hardship to US citizen or Lawful Resident Spouse, parent or child (21 and under)

Only an Immigration Judge can grant this relief – Risk of Removal

Only 4,000 grants permitted per year

Generally, hardship to the applicant isn't a major factor, but it is considered especially under circumstances where the qualifying relative is greatly affected

Also, potential where a partner passes away and it becomes a situation where an individual is left to raise US citizen children alone

## **VIOLENCE AGAINST WOMEN ACT (VAWA)**

On March 16, 2022, President Biden signed into law the Violence Against Women Act Reauthorization Act of 2022

Applicable to Male

Under the federal Violence Against Women Act (VAWA), you may be eligible to become a lawful permanent resident (get a Green Card) if you are the victim of battery or extreme cruelty committed by:

- A U.S. citizen spouse or former spouse;
- A U.S. citizen parent;
- A U.S. citizen son or daughter;
- A lawful permanent resident (LPR) spouse or former spouse; or
- An LPR parent.

# Questions & Queries

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