

IMMIGRATION LAW UPDATE

What You Need to Know Now

By David C. Koelsch

Immigration law is a fast-moving practice area and seems likely to pick up speed, especially if Congress and the Obama administration tackle comprehensive immigration reform in 2013. Because immigration law is complex and constantly evolving and the stakes for clients are so high, it is a highly specialized practice. Yet all Michigan attorneys can benefit from knowing the basics in order to spot legal issues that may require referral to an immigration law specialist. In particular, criminal law attorneys need to stay current on the immigration consequences of specific criminal convictions and affirmative duties to immigrant defendants.

Michigan's Immigrants

Michigan's immigrants are an impressive group:

- They are more educated than native-born Michiganders: 37 percent of Michigan's immigrants have a four-year college degree compared to 24 percent of native-born residents.
- They are entrepreneurial: Michigan's immigrants are nearly three times more likely to start a business than native-born Michiganders.
- They are productive and hard working: 64 percent of our immigrants are of working age compared to 51 percent of the non-immigrant population. This is critical, as Michigan loses many working-age residents because of retirement and emigration.
- They are tech-savvy: immigrants started 33 percent of all high-tech firms in Michigan and are six times more likely than native-born Michiganders to start high-tech firms.

- They are inventors: Michigan's immigrants are seven times more likely than non-immigrants to file an international patent, and 45 percent of Michigan's international patent applications identify an immigrant as a key inventor.²

Comprehensive Immigration Reform

President Obama has declared comprehensive immigration reform (CIR) one of the top priorities for his second term, and congressional leadership from both political parties has signaled a willingness to tackle the contentious issue. While most of the attention on CIR centers on whether and how to provide a path to legal status for the approximately 10 million undocumented immigrants in the U.S., CIR will also likely increase the numbers of visas available to immigrants educated in the U.S. or those with sought-after skills and experience. Immigration attorneys will be able to use CIR to help corporate clients build and sustain an efficient, highly skilled workforce. Immigration attorneys will also help families who can use CIR to prevent deportation of loved ones and to sponsor family members. Michigan attorneys need to know the broad outlines of CIR to advise clients on how they might benefit and, if CIR is enacted, refer clients to experienced immigration attorneys.

Deferred Action for Childhood Arrivals

In June 2012, the Obama administration instituted the Deferred Action for Childhood Arrivals (DACA) program. Implemented by the Department of Homeland Security, the program defers any possible removal action and provides work permits for individuals who entered the U.S. at a young age and may face removal through

no fault of their own. At least 12,000 Michigan residents qualify for deferred action under DACA.³ The program does not provide permanent status and is valid only for two years, but if Congress passes comprehensive immigration reform, persons granted DACA relief would likely have a path to legal status.

Michigan attorneys with undocumented immigrant clients may want to consider DACA relief. It offers protection from removal and allows clients to work legally. The client must (1) be between ages 15 and 30; (2) have lived in the U.S. since June 15, 2007; (3) have been present in the U.S. on June 15, 2012; (4) have no serious criminal offenses; and (5) be in or have graduated high school, pursuing his or her education, or serving in the military.⁴ But DACA is tricky. It's wise to consult an experienced immigration attorney regarding the client's eligibility, risks and benefits of applying, and the application process.

Prosecutorial Discretion

The Obama administration directed Immigration and Customs Enforcement (ICE) to focus its deportation activities on the removal of immigrants with criminal convictions and repeated immigration violations. ICE reviewed pending immigration court cases and exercised prosecutorial discretion to refrain from removing immigrants who have clean records, are immediate family members of U.S. citizens, or have longstanding ties to the U.S. ICE may also decide not to initiate removal proceedings against targeted immigrants who fit these criteria. Immigration attorneys specializing in removal defense can help Michigan attorneys explore the pros and cons of deferred action for undocumented clients.

"Crimmigration" Law

Most Michigan attorneys understand the severity of immigration laws with respect to criminal convictions. Even minor criminal convictions—or just an admission of responsibility for a crime—can lead to removal. Criminal defense attorneys and prosecutors need to know whether specific Michigan crimes are the equivalent of either "aggravated felonies" or "crimes involving moral turpitude" because such offenses could trigger removal.⁵ An updated chart of Michigan crimes and their immigration analogs can be found at <http://lawschool.udmercy.edu/images/Faculty/ILMichiganImmigrationConsequences.xls>. Criminal attorneys must accurately and thoroughly advise individuals of the immigration consequences of any guilty plea. This is now a clear mandate following the United States Supreme Court's decision in *Padilla v Kentucky*,⁶ which held that a criminal defense attorney fails to provide effective assistance of counsel unless he or she properly advises a client regarding the immigration consequences of any criminal conviction.⁷

A Useful Resource: The American Immigration Lawyers Association

Immigration law is a specialty practice area and immigration law attorneys often limit their services to subspecialties such as

Immigration Law in Michigan

- The Michigan chapter of the American Immigration Lawyers Association includes 310 members—a small fraction of Michigan's 42,000 attorneys.
- Michigan hosts at least 10 nonprofit organizations whose primary mission is serving the legal needs of low-income immigrants. Three of Michigan's law schools have immigration law clinics, which train future immigration attorneys while also serving low-income immigrants.
- Located in the Federal Building in Detroit, the U.S. Immigration Court in Michigan has four immigration judges. This court annually decides removal or deportation cases for approximately 6,000 immigrants.⁷
- The U.S. Department of Homeland Security (DHS) has a large presence in Michigan with a main office in Detroit and a field office in Grand Rapids. The DHS contracts the use of county jails for detaining immigrants in Monroe, Battle Creek, Port Huron, and Sault Ste. Marie.

removal defense, family sponsorship, and employment-based immigration. Although membership in the American Immigration Lawyers Association (AILA) isn't mandatory for Michigan immigration lawyers, nearly all are AILA members. AILA membership provides access to national, regional, and state education conferences and webinars. AILA also publishes helpful guides for complex immigration practice areas and can help Michigan attorneys find an experienced immigration lawyer in their area. Visit <http://www.aialawyer.com> for more information. ■



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FOOTNOTES

1. The United States Department of Justice, Executive Office for Immigration Review, *Statistical Year Book* <<http://www.justice.gov/eoir/statpub/syb2000main.htm>>. All websites cited in this article were accessed December 13, 2012.
2. Global Detroit, *Overview of Global Detroit Initiative*, available at <http://www.globaldetroit.com/wp-content/files_mf/1327698551Global_Detroit_Study.overview.pdf>.
3. Immigration Policy Center, *Who and Where the DREAMers Are* <<http://www.immigrationpolicy.org/just-facts/who-and-where-dreamers-are>>.
4. Homeland Security, *Deferred Action for Childhood Arrivals: Who Can Be Considered?* <<http://www.dhs.gov/blog/2012/08/15/deferred-action-childhood-arrivals-who-can-be-considered>>.
5. 8 USC 1227(a)(2)(A).
6. *Padilla v Kentucky*, ___ US ___, 130 S Ct 1473; 176 L Ed 2d 284 (2010).
7. *Id.*, 130 S Ct 1486.