

PITFALLS OF SELF-REPRESENTATION IN IMMIGRATION MATTERS

As attorneys, we often are asked whether the assistance of a lawyer really is necessary when applying for immigration benefits. This is especially true in the context of employment-based immigration issues, and particularly when clients present applications for work benefits through the North American Free Trade Agreement (NAFTA) at local ports-of-entry.

At first blush, the process may seem like nothing more than the presentation of a job offer and the completion of a few forms. If you're the type of person who enjoys preparing your own tax returns, it may be something that you would want to try and tackle on your own. Additionally, avoiding the payment of legal fees usually looks like an attractive option to many people.

That is, until an issue arises that may jeopardize the ability to work in the U.S. and even, in extreme situations, the future ability to enter the United States at all. The complexities of U.S. immigration law leave most lay people completely in the dark when it comes to the types of issues that could turn a seemingly simple process into a nightmare.

We see these cases all the time, and, unfortunately, in most instances, the clients don't come to us until it's too late. The typical example is when a client initially decides to handle his own immigration matter and apply for work authorization at one of the local ports of entry. In many cases, the client will heed the advice of a lay person who advises how easy it is for Canadians to obtain work authorization through the NAFTA. Based on that faulty advice, the client decides to provide evidence that does not disclose certain determinative facts. The border officials don't deny the application outright, but instruct the client to come back with more information.

The individual goes back and presents paperwork that leads the officers to compare their notes with what the client had said before. They question him at length and make a determination that he lied during his previous visit.

At that point, the bridge officials explain that they intend to enforce their authority to issue an expedited order of removal. This is an order of deportation that can be issued right from the port of entry and without a hearing in front of a U.S. immigration judge. Because there was a finding of material misrepresentation in the context of an immigration benefits application, the individual will be ordered inadmissible from the United States **for life and for any reason**.

When the client finally comes to us, we have to explain that there is no right to a formal appeal of an expedited order of removal. There is no opportunity to have the matter revisited by an immigration court or any other federal tribunal. The only way we could try to resolve it is to go back to the same port that issued the order and argue that the officers were incorrect in their assessment that the prior statements should be considered a material misrepresentation. Otherwise, the client will have to wait a few years and then to try to file special waiver applications that, if approved, would allow him to again apply for work authorization and lawfully enter the U.S. despite the prior order.

Clearly, the message here is that lay persons who are unfamiliar with the ever-evolving U.S. immigration laws should think twice before handling their own cases. This is particularly true when there is something in an applicant's background that may trigger further investigation, including a prior unsuccessful application for immigration benefits and/or a criminal conviction. Even if the prior incident wouldn't seem that serious to anyone else, including lawyers who don't regularly practice in this field, it is imperative to understand that U.S. immigration law has its own set of rules.

For more information on immigration and the application process, please contact Jill Apa at Barclay Damon.

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