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Immigration Update: "Friending" the Department of State on Facebook; BIA Shines a Light on the EAD Requirement for E and L Spouses; and an Unusual New Member of the California State Bar

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Happy New Year!

This month: "Friending" the Department of State on Facebook, BIA shines a light on the foggy EAD requirement for E and L spouses, and an unusual new member of the California State Bar.

The Department of State and Social Media

The U.S. Department of State released a comprehensive list detailing its global social media presence that extends through Facebook, Flickr, Twitter, Instagram, YouTube and even Pinterest. Time-sensitive information affecting various posts or travel alerts is now more easily accessed by the public. These channels also allow the Department of State to more immediately distribute alerts and notifications regarding procedural changes, and they provide potential travelers an opportunity to research more country-specific details than what may be posted on the travel.state.gov website. A full listing of the official social media accounts associated with the Department has been made available here.

E-2 Spouse Not Required to Obtain EAD?

A recent decision of the Board of Immigration Appeals (BIA), *Matter of Lee*, sheds light on the requirement for spouses of E-2 (and L-1) nonimmigrants to obtain separate work authorization documents. The unpublished BIA decision reverses denial of an adjustment application and rules that the E-2 spouse is not required to obtain an employment authorization document (Form I-766)(EAD) prior to working.

Although it is in the Immigration & Nationality Act that an alien spouse admitted in L-2 or E-2 status *shall* be authorized by the Attorney General to engage in employment, DHS has not officially stated that the passport, I-94 record and marriage certificate would satisfy I-9 purposes for an E-2 or L-2 spouse. The regulations at 8 CFR 274a.12, where the Department of Homeland Security (DHS) officially lists what documents are acceptable in certain situations, do not list E and L spouses at all, likely because DHS has never undertaken to incorporate the relatively new statute about E and L spouse work authorization as stated above into those regulations. The regulations do not list E and L spouses in 8 CFR 274a.12(a) among "Aliens authorized employment incident to status," nor do the regulations list E and L spouses in 8 CFR 274a.12(c) among "Aliens who must apply for employment authorization." The Social Security Administration, in written minutes from a meeting with the American Immigration Lawyers Association, has stated that "CIS agrees that spouses of Es and Ls are authorized to work incident to status and need not present EADs to demonstrate work authorization or obtain an SSN and has so advised SSA."

Ultimately, it is not entirely clear whether such employment is authorized solely on the basis of evidence of their status as an E-2 or L-2 spouse, or whether a separate EAD is also necessary. In an abundance of

caution, we always recommend that our E-2 and L-2 spouses obtain an EAD, but the *Matter of Lee* decision provides further support that such EAD may not be required.

Full BIA decision is available here.

Admission to the State Bar for an Undocumented Immigrant

On January 2, 2014, the California Supreme Court ruled in a landmark case that Sergio Garcia could be admitted to the California State Bar despite being unlawfully present in the United States. The decision followed a California bill that became effective on January 1, 2014 (Bus. & Prof. Code § 6064, subd. (b); Stats. 2013m ch. 573, § 1, enacting Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended Sept. 6, 2013). This California legislation was enacted to satisfy and properly interpret 8 U.S.C. § 1621, which generally restricts undocumented immigrants' ability to obtain a professional license, but expressly authorizes a state to enact a law to authorize such ability.

From the California decision in *In re Sergio C. Garcia*, S202512:

The new [California] statute also reflects that the Legislature and the Governor have concluded that the admission of an undocumented immigrant who has met all the qualifications for admission to the State Bar is fully consistent with this state's public policy, and as this opinion explains, we find no basis to disagree with that conclusion.

Garcia, born in Mexico, first came to the United States with his parents as a 17-month-old infant and lived in California until 1986 when he and his family returned to Mexico. He and his family returned to the United States in 1994 when Garcia was 17 years old. Garcia's father obtained lawful permanent resident status and filed a petition for "alien relative to obtain permanent resident status" for his teenage son in 1995. More than 19 years have passed since this filing and due to extensive backlogs in this category for Mexican citizens, a visa number is still not available for Garcia to become a permanent resident. As part of the State Bar's review of Garcia's moral character and fitness to practice law, an extensive background investigation was made of his employment, past activities and contributions to the community, which resulted in the determination that he possessed the requisite good moral character to qualify for admission to the State Bar. Numerous organizations joined in filing an *amici* brief, including the American Immigration Lawyers Association, American Civil Liberties Union, Asian Law Caucus, National Immigration Law Center, Legal Aid Society – Employment Law Center and National Asian Pacific American Bar Association.

In the unanimous ruling written by Chief Justice Tani Cantil-Sakauye, the court reasoned that immigration officials would not likely pursue sanctions against an undocumented immigrant such as Garcia who had been living in the United States for years, was educated in this country and whose sole unlawful conduct was his presence.

Under these circumstances, it must be concluded that the fact that an undocumented immigrant's presence in this country violates federal statutes is not itself a sufficient or persuasive basis for denying undocumented immigrants, as a class, admission to the State Bar.

The impact from this decision has already been lighting up blogs, talk shows and media currents throughout the country. How this will further ignite the already explosive immigration debate over immigration reform remains to be seen.