

Memorandum in Support with Modifications

INTERNATION SECTION COMMITTEE ON IMMIGRATION AND NATIONALITY

International #1

June 24, 2010

S. 7218-A
A. 10162-B

By: Senator Diaz
By: M. of A. Brodsky

Senate Committee: Codes
Assembly Committee: Governmental Operations
Effective Date: 180th day after it shall have become
a law

AN ACT to amend the general business law, in relation to implementing the immigrant assistance service enforcement act

LAW AND SECTION REFERRED TO: Section 460-h of the general business law

THE INTERNATIONAL SECTION COMMITTEE ON IMMIGRATION AND NATIONALITY SUPPORTS THIS LEGISLATION WITH MODIFICATIONS

This bill would amend the New York State General Business Law to grant the New York State Department of State the power to issue licenses to immigration providers and to require those who act as such to be so licensed.

Discussion

The bill makes two broad assumptions. The first is that the definition of "immigration assistance service" or "immigration service provider" is not in conflict with federal law. We disagree in that the broad sweep of duties contemplated to be performed by these providers clearly conflict with federal law and its interpretation of the practice of immigration law. Additionally, there is an assumption that affected immigrants who are aggrieved will be knowledgeable enough to pursue a claim against the offending party. Historically, many aliens are both ignorant of judicial and administrative procedures, and fearful of bringing attention to themselves in any public foray.

In order to address these concerns, we feel that the bill should be amended to clearly limit and define what an immigration service provider may actually do for a customer. Such providers can only lawfully provide ministerial assistance, such as obtaining blank forms requested by the customer. To the extent that these bills contemplate the selection and completion of forms by the provider, there is a contradiction in the federal interpretation of regulations that provide for whom may practice immigration law.

Chevron USA v. Natural Resource Defense Council, 467 U.S. 837 (1984) tells us that if an agency interpretation of a Federal regulation or law is reasonable, then the agency is entitled to deference. Thus, if the agency's interpretation of what constitutes the practice of law is entitled to deference, then the interpretation of those activities that constitute the practice of law and who can practice are law are equally entitled to deference and have the effect of law. In other words, the Federal government has set the ceiling for those who are entitled to practice immigration law. This Bill attempts to expand those persons who can practice law, namely the selection and completion of forms, and is in direct conflict with the ceiling placed by Congress through its agencies.

Former Immigration and Naturalization Commissioner Doris Meissner, in a Memorandum to INS Regional Directors, Service Center Directors, District Directors and Officers In Charge, dated January 18, 1995, states that:

"The practice of law includes advising individuals concerning the selection, completion and filing of service forms, in addition to actually appearing before a service officer... Even advice limited to something as "simple" as selecting and completing the proper form constitutes the practice of law, since this advice depends on a legal conclusion that the client is eligible for the particular benefit. 'An accurate determination of such eligibility requires extensive knowledge of often complex immigration laws and their applicability to individual cases.'..." (Emphasis supplied)

Solutions

We recommend that the pending bill be modified to specifically define what an immigration service provider cannot do. In particular, the bill should specify that an immigration service provider may not engage in the practice of law, including the providing of advice to individuals concerning the selection, completion, or filing of forms for, and/or appearing before an officer of U.S. Citizenship & Immigration Services, Immigration & Customs Enforcement, Customs & Border Protection, or any other immigration related agency or sub-agency of the Department of Homeland Security; and/or an Immigration Court, Immigration Judge, the Board of Immigration Appeals or any other agency or sub-agency of the Executive Office for Immigration Review of the US Department of Justice; and/or The National Visa Center, the US Department of Labor, a US consular post, or any other agency or sub-agency of the US Department of State or judicial review in any US Court of any determination made by any of the foregoing agencies.

Conclusion

The Committee on Immigration and Nationality of the International Section is committed to the proposition that there should be wide access to legitimate legal services for all non-citizens. However, instead of attempting to enable "immigration service providers" through a vague definitional approach to what they may do, we feel that such providers should be clearly restricted to those activities that do not constitute the unauthorized practice of law. We further support pro-bono initiatives through the Immigration Bar and Bar in general, and also support the increased availability of

representatives accredited by the Executive Office of Immigration Review and U.S. Citizenship & Immigration Services, as defined at 8 CFR Section 292(a)(4) and 8 CFR Section 1292(a)(4).

Based on the foregoing, the New York State Bar Association Committee on Immigration and Nationality of the International Section **SUPPORTS** this legislation if modified as suggested.

Committee Co-Chairs: Jan H. Brown, Esq.
 Matthew Stuart Dunn, Esq.

Memo prepared by: Jan H. Brown, Esq.