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April 2015
American Immigration Lawyers Association
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Going Solo? Tips to Get You Off the Ground

by Emily Amara Gordon

I still remember the first time I heard, "you should hang your own shingle one day." It was the spring of my second year in law school and I was interviewing for a job with a lawyer who, little did I realize at the time, would be one of many people who would help lay the foundation, brick by brick, of my law practice.

I was so worried about getting that part-time job that I could not understand why he was talking to me about opening a practice. My concerns were one-dimensional: get my first job in a private immigration firm in downtown Boston.

Opening my own practice? I barely understood what an I-130 was at the time, much less how I would ever manage to run a law office.

> "... [H]aving an active domain name and a law license is not an automatic formula for consistent business. It takes time ... **but eventually, my first client led to 10 clients, which led to a busy law office.**"

I ended up getting the job, but more importantly, that lawyer, that interview, and that one short sentence had inspired me in ways I could not have appreciated at the time. Eighteen months later, I opened an immigration practice immediately after being sworn in to the Massachusetts Bar. I joked to the freshly minted lawyer sitting next to me at the swearing-in ceremony that my first client was waiting for me outside for the moment when I could finally practice law. The only problem was I did not have a client waiting outside and my first client wouldn't walk into my office until three months later.

I had moments, especially during those first three months of no income mixed with bleeding office expenses, when I seriously questioned my decision to "go solo." Another one of my "brick layers" told me not to give up, as the clients would come. He assured me that having an active domain name and a law license is not an automatic formula for consistent business. It takes time. I didn't believe him, but eventually, my first client led to 10 clients, which led to a busy law office.

Are you thinking about opening your own practice, or are you battling through the infant months of your new office? Here

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LOOKING FOR A MENTOR? Tap into AILA's Mentor Directory, where experienced practitioners can anser your questions on practice management, ethics, and more!

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are some survival tricks to get through the obstacle course of going solo:

Your bricklayers could be hiding where you least expect them.

Bricklayers, mentors, supporters—it takes a village to create and sustain a law practice. Have an open mind and recognize the potential in every experience you have and in every person you meet. While in law school, my professor placed me in an immigration clinic at a legal services office. At first, I was disappointed that I was not selected for a clinic at a private firm, but the legal services clinic ended up being fundamental to my law practice. My former clinic supervisor has helped me with numerous issues, has put me in touch with other lawyers, and continues to mentor me. Although I did not appreciate it until I started practicing law, that clinic was an incredibly valuable experience. Fortunately, I did not turn it down because it wasn't what I thought I needed at the time.

Be engaged and always be civil.

Opposing counsel could be your next referral source. Effectively advocating for your clients does not mean you should forget to be civil. The basics can get you far: be appreciative, be humble, and offer to help. Whether you live in a big city or a small town, the legal profession is small. No one forgets bad manners or a poor attitude.

FOR MORE INFORMATION:
The Entrepreneurial Lawyer: How to Run a Successful Immigration Practice (.PDF)

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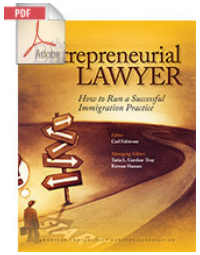

Use technology to your advantage.

The practice of law is much easier and less expensive today than it was thirty years ago due to the accessibility of technology. From saving money on storage by scanning documents to having immediate access to your office files via the cloud, technology should be your new best friend.

Know your industry.

Talk to other immigration lawyers in your geographic area to learn how they generate business, set legal fees, and run their practices. Don't start charging hourly rates because you think you will make more money when the standard practice in your area is flat fee pricing. Clients are smart shoppers; they compare notes and research lawyers. Recognize when it's better to follow the crowd than to be an innovator.

Don't let anyone discourage you; never give up.

For every two people who encourage you, there will be three people who will tell you that you will fail. Treasure what the two positive people say and forget everyone else. Even today's most successful managing lawyers thought that going solo was incredibly challenging. They survived, and so will you. Give it everything, approach the practice one day at a time, and don't give up. The beauty of this is that you will be a better lawyer tomorrow than you were today.

Emily Amara Gordon is the principal attorney of the greater Boston immigration law practice, Amara Immigration Law, LLC and a New Members Division Liaison to the AILA New England Chapter. She can be reached at gordon@amaralaw.com.

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Navigating the New Office L Petition

by David Wilks

The New Office L petition provides foreign corporations and entrepreneurs access to the U.S. market. It lets foreign employers transfer employees acting in a managerial, executive, or specialized knowledge capacity to a U.S. affiliate, subsidiary, or branch that has been open for less than one year.

As noted at 8 CFR § 214.2(l)(3)(v)-(vi), New Office L petitions require extensive documentation, including items not required by a typical L-1 petition. This includes:

- Proof of sufficient physical premises;
- Proof of ability to pay the foreign national, and to commence business in the U.S.; and
- Proof that the U.S. entity will support an executive or managerial position after one year (for the new office L-1A). This includes explaining the U.S. entity's proposed organizational scope, structure, and financial goals.

While obtaining a New Office L may require more effort than a standard L petition, the following tips are designed to help you guide your clients to success:

1 PREPARE YOUR CLIENT. The New Office L is going to require your clients to gather a lot of paperwork (leases, business plans, stock certificates, tax returns, etc.). Even after providing extensive documentation, you may still receive an RFE, particularly if your client is a small business. Make sure that your clients understand that the process may require significant time and effort on their part.

2 DOCUMENT THE QUALIFYING RELATIONSHIP. In the context of a New Office L, it is not uncommon for USCIS to request certain proof of the qualifying relationship, such as stock certificates, stock ledgers, and board of director meeting minutes verifying the stock ownership of the company.

3 PREPARE FOR VIBE CONCERNS. USCIS will attempt to verify the qualifying relationship through the Validation Instrument for Business Enterprises or "VIBE" system. VIBE checks the information provided against the information available on the Dun and Bradstreet[1] ("D&B") database. Because the New Office L, by definition, involves a recently established business entity, D&B will very likely have little to no information on the U.S. employer, resulting in a non-confirmation and an RFE. Updating D&B can sometimes take weeks. If updating D&B takes too long, consider submitting a notarized affidavit from the U.S. entity certifying that the stock certificates and ledger that you are submitting accurately reflect the ownership structure. You may also consider providing a legal memo explaining the relevant state law that governs the stock certificates and ledger, to further explain why the certificates and ledger verify the qualifying relationship.

4 PREPARE A BUSINESS PLAN. USCIS generally expects a business plan to accompany New Office L petitions. The plan should thoroughly document the financial goals of the coming year. If you are filing for a manager or executive, it should also show that after one year, the foreign national will be functioning in a managerial or executive capacity.

5 MANAGERS AND EXECUTIVES MUST ALREADY BE MANAGERS AND EXECUTIVES. Unlike with a standard L-1A petition, a New Office L-1A is not available for employees who worked for the company abroad in a specialized knowledge capacity.[2] Employers bringing specialized knowledge employees would need to petition for a New Office L-1B.

6 PREPARE FOR THE EXTENSION. New Office L extensions can be just as demanding as the initial submissions. Explain to your clients that by the end of the one year, they will need to prove to USCIS that their U.S. office is performing at a level that supports the employee. If you are extending an L-1A petition, and it does not look like staffing levels would allow the foreign national to meet the definition of a manager or executive, consider asking USCIS for one more year to meet the requirements. You could also consider moving the employee to a specialized knowledge position and requesting L-1B status.

While even the strongest New Office L petition cases can receive government pushback, the tips mentioned above should help you make the process smoother for you and your clients.

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1 A private company that specializes in providing corporate data and credit history.

2 8 CFR §214.2(l)(3)(v)(B)

Forming Families Through International Adoption

by Meghann E. LaFountain

U.S. citizens regularly turn to other countries to adopt children. They may meet the child on a mission trip abroad and fall in love, they may be matched with a random child after expressing their desire to adopt, or the child may be a relative. In all of these cases, the adoptive parents have a number of complicated hurdles to surmount before the United States will bestow any immigration benefits on the children.

When approached by a potential client seeking to do an international adoption, you must first identify the type of adoption the client is seeking. INA § 101(b), which defines "child," lists three methods for adoption: the I-130 petition (§ 101(b)(1)(E)), the orphan adoption (§ 101(b)(1)(F)), and the Hague adoption (§ 101(b)(1)(G)). Each has different requirements and a different process to follow. A brief summary of each route can be found below.

The Universal Accreditation Act (UAA)

The UAA is a recent change in U.S. law requiring that certain adoption services be performed by accredited agencies or individuals. This applies to both Hague cases and orphan cases. It is important to get an accredited agency or individual involved in the case immediately. To find an agency, you can search on the State Department website.

This does not eliminate an adoptive parent's need for an attorney! Complicated issues can arise in a case that should be addressed by legal counsel. If done with an attorney initially, an adoptive parent may avoid Requests for Evidence, Notices of Intent to Deny, and Denials by USCIS. If the adoptive parent receives any of these, an attorney may be able to assist in overcoming the problems that USCIS has found with the case.

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Intercountry Adoption—A Steady Option in a Changing World (Seminar Recording)

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Hague Adoptions

When starting an adoption, determine whether the adoption is governed by the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention). This is an international convention designed to protect children. It went into force in the United States on April 1, 2008 and as a result, applies to the international adoption process if a U.S. citizen who is habitually resident in the U.S. is adopting a child who is habitually resident in a different country that has also ratified the Hague Convention.

Pursuing an adoption under the Hague Convention is very formal. In most circumstances, the adoptive parent is matched with a random child by the child's home country. There are several reasons behind this, including the prevention of child trafficking disguised as adoption. A list of countries who are parties to the Hague Convention can be found here.

Orphan Adoptions

If a U.S. citizen wants to adopt a child who lives in a country that is not subject to the Hague Convention, the U.S. citizen can pursue an orphan adoption. The adoptive parent must show that the child meets the legal definition of "orphan," which means that the child's parents have died, disappeared, abandoned or deserted the child, or separated from the child. In other words, it is possible for both parents to be alive for a child to be called an orphan. If only one parent is living, the child can qualify as an orphan if the surviving parent is incapable of providing for the child. (This is governed by the standard of living in the country where the child lives, not by the standard of living in the United States.) Satisfying the orphan definition can often be the most challenging aspect of an orphan adoption.

Pursuing an orphan adoption is less formal than pursuing a Hague adoption. For example, the adoptive parent may identify the child himself, perhaps by going to an orphanage in that country, instead of being matched with a random child.

The I-130 Petition

An adoptive parent may avoid the Hague and orphan processes entirely if he has two years of legal and physical

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custody of the child he is seeking to adopt. Legal custody requires a legal order of guardianship or adoption; it cannot be an informal agreement between biological parents and adoptive parents. Physical custody requires a showing that the adoptive parent lived with the child in a parent-child relationship. The two years of physical custody may be in the aggregate and can be before or after the legal grant of custody. Once both periods of two years are satisfied, the adoptive parent can file an I-130 petition for the child. The two years can be satisfied inside or outside of the United States.

One major exception to this rule is if the child is from a Hague Convention country and now living in the United States. The adoptive parent needs a determination of habitual residence from the child's home country before being able to proceed with the adoption.

Age of the Child

Sixteen years old is the important age to keep in mind for bestowing immigration benefits on a child through international adoption. To adopt a child under the I-130 process, the child must be under the age of sixteen at the time of the adoption. Under the orphan and Hague processes, the petition must be filed before the child turns sixteen. However, in all of these cases, if the child is over sixteen but under eighteen, the child still has an opportunity to be adopted in cases where the adoptive parent is also adopting a sibling of the child and the sibling is under sixteen.

Meghann E. LaFountain is an associate at Howard McMillan & Tycz, LLC in Middletown, CT.

Humanitarian Parole: What Is It? When Can It Be Used?

by Shobhana Kasturi

Humanitarian parole is not exactly a hot button topic of discussion amongst immigration practitioners. What is it about? This form of relief permits an inadmissible individual to visit the United States due to humanitarian reasons and/or for substantial public benefit.[1] While anyone can file for humanitarian parole, a foreign national must have exhausted all other visa avenues to be eligible for parole unless there is a dire emergency or it is impractical. Typically, humanitarian parole may be granted when:

1. a child under 16 needs to be reunified with relatives;
2. there is an urgent need for medical care that the foreign national cannot secure in the home country;
3. a foreign national has to attend a civil or criminal proceeding;
4. a foreign national needs to visit a dying family member; and,
5. there is a dire emergency.

Also, the beneficiary of the petition must be residing outside the United States.The parole is granted for the duration of the emergency and is temporary in nature. A foreign national may adjust status to a permanent resident (e.g., parolee secures asylum, parolee is a beneficiary of a relative petition) while in the United States. It is important to note that the parole does not mean an admission to the United States and does not grant any benefits. If the maximum parole period of 1 year expires without a re-parole, the foreign national must leave the United States.

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Who has jurisdiction?

Immigration and Customs Enforcement (hereinafter referred to as ICE), United States Citizenship and Immigration Services (hereinafter referred to as USCIS) and Customs and Border Protection (hereinafter referred to as CBP) all have concurrent authority to parole individuals.
ICE can authorize parole of foreign nationals outside the United States for law enforcement matters.USCIS (HAB) can parole a foreign national outside the United States for humanitarian and other purposes. CBP can grant parole at United States ports of entry.

What factors are considered when parole is granted?

Some key factors considered during the adjudication of the application are identified below.

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In family reunification cases[2], the following are considered:

- Whether all immigration visa avenues been exhausted, as parole is not granted if an applicant is attempting to by-pass the routine visa process; and
- Proof of bona fide relationship between the relative (within the United States) and the applicant.

In medical cases, the following are considered:

- The severity of the medical condition;
- The lack of availability of such medical treatment in the applicants home country;
- A medical determination for the need of immediate medical treatment;
- Sufficient documentation to support the medical claim; and
- The ability to pay for the medical procedure (via insurance or otherwise) and the ability to have a paid ticket to return from the United States.

In emergency cases, the following are considered:

- Sufficient medical documentation to support the claim that a relative is on their death bed;
- Proof of bona fide relationship; and
- Proof that there is no other relative in the United States that can assist with estate matters.

Also, the parole is not likely to be granted if it is obvious that the parolee has intentions of staying longer than the allowed parole. Hence, when deciding whether humanitarian parole is a form of relief that could be utilized, it is vital to examine whether there is an emergency and, in a majority of cases, whether all other visa options have been exhausted.

What is the process of filing for humanitarian parole?

To start the process, Form I-131, Application for Travel Document, a non-refundable $305 (there is no fee waiver), and a comprehensive statement of facts should accompany the application package. In addition, the identification of the applicant (i.e. passport) and immigration status of the petitioner based in the United States should also be given. Any documents that support the various criteria (birth/marriage/death certificates) for the type of parole requested should be part of the submission.

Form I-134 (Affidavit of Support) also needs to be provided along with income tax returns for the prior two years, current employment information, insurance coverage (applicable to medical cases), immigration status of the sponsor if not the same as the petitioner. A parolee may ask for a re-parole 90 days prior to its expiration. To re-parole a new application (along with the fees and Affidavit of Support) would need to be filed along with a copy of the I-94 (Arrival/Departure Record) issued at parole time. If parole is not granted, then there is no appeal relief. However, a new application demonstrating a substantial change in circumstances may be filed.

Commentary

According to the USCIS, 25 percent of twelve hundred or so applications are granted annually and they are not liberally granted. However, this should not be a dissuasive factor. As in every area of the law, the envelope is yet to be pushed into the area of humanitarian parole. The questions are: Are practitioners aware of this relief and are they examining applicability to their cases? When doing consults (intakes), do practitioners check to see if this form of relief is applicable? Is this form of relief on their intake checklist? Awareness about this form of relief is key. As practitioners are informed and more viable applications are filed, it could prompt an evolution of case law in this area.

Shobhana R. Kasturi is a member of AILA. She has her own immigration practice in the Chicago land area and also is a volunteer attorney for World Relief Chicago.

1 Section 212(d)(5) of the Immigration and Nationality Act, Title 8, United States Code, Section 1182(d)(5): (the Attorney General has the authority to parole aliens into the United States); Sections 402 and 421 of the Homeland Security Act of 2002, P.L. 107-29:(transfers authority for immigration matters, including parole, to the Secretary of DHS); and Title 8, C.F.R., Section 212.5: (provides guidelines for the parole of foreign national into the United States)

2 2008 United States Government Accountability Office, GAO Report to Congressional Requesters, IMMIGRATION BENEFITS Internal Controls for Adjudicating Humanitarian Parole Cases Are Generally Effective, but Some Can Be Strengthened, (Page 41)