

Enjoy the Meal: A Mix of Immigration and Domestic Relations Law

By: Natalia Wilson

Immigration visas are alphabet soup (Visas A-Z). Domestic Relations is a main course. When the two practice areas mix, practitioners need the proper recipe to avoid adverse consequences to their clients. Many experienced immigration attorneys recommend you consult with them at the outset of identifying a possible immigration issue to discuss the impact of divorce, custody and visitation, child support, and criminal prosecution, etc. on a client's immigration status. Unfortunately, practitioners sometimes learn the hard way at their client's expense.

When representing a foreign national (legal or illegal) in a domestic relations matter, an intersection of immigration and domestic relations law is often unavoidable. Since immigration laws change rapidly, collaborating with an immigration attorney is in the client's best interest. To minimize the effects of a possible food fight in your matter, highlighted below are a few common intersections in domestic relations and immigration that practitioners should understand.

Divorce: Divorce or even executing a property settlement agreement can eliminate one's eligibility for an immigration benefit. Although a foreign national client may be contemplating a divorce, you should discuss their immigration status to ensure they have already adjusted their status to a legal permanent resident ("green card"), their eligibility is due to an employment-based petition, or probe to find out if they are a survivor of domestic abuse and qualify under the Violence against Women Act ("VAWA"). Also, the obligations established by an Affidavit of Support (a document required to ensure an applicant will not become a public charge) continue even after divorce. Therefore, clients should be made aware of how a settlement or even an order of the Court addressing support issues may impact their immigration standing.

Child Custody & Visitation: A court may consider one's immigration status when determining the best interest of the child, which is the standard for making custody and visitation determinations between mother, father, and, in some instances, third parties with the appropriate standing. If your client's immigration status is in jeopardy, the likelihood of success in obtaining primary physical custody of the child may be diminished.

Child Support: If your client fails to meet a child support obligation and is convicted for such failure, their immigration status may be impacted. For example, he or she may be unable to renew a green card before an expiration date or even petition for naturalization, the process of obtaining U.S. citizenship. They may also have problems with travel inside and outside of the United States. Furthermore, when completing an Affidavit of Support, sponsors may factor in child support payments received to meet the requirement.

Domestic Assault/Protective Order: If your client has convictions for domestic assault and battery or for a protective order violation, their adjustment of status to a legal permanent resident may be stopped; they may even be subject to deportation. Therefore, discussing the implications of a conviction with a client are extremely important, as you may be able to work out an agreement, such as a mutual dismissal of cross criminal complaints in a divorce scenario, rather than defending against a claim with a probable unfavorable outcome.

By asking the right questions in the beginning, you may be able to avoid unfavorable consequences. When initiating engagement with a foreign national client, consider these practice pointers for a basic recipe:

- Know your client's immigration status (non-immigrant v. immigrant). You need to know if there is an application pending and the stage of the process of the application.
- Know your client's intentions. Find out whether they intend to remain in the United States or seek to travel often.
- Know the history of the entry to the United States. Find out whether they entered on a non-immigrant visa (temporary) or immigrant visa (employment or family-based petition).
- Obtain the documents evidencing their immigration status. If you are not familiar with I-94 cards, Visas, or Work Authorization documents, consult with an immigration attorney.
- Do not scare off the client. Some clients who are unsure of their immigration status are not trusting. They may think you will report them to the authorities. If you cannot help, seek out a referral for them.
- Be considerate of cultural differences and customs. Demonstrate cultural competence and exercise cross-cultural communication skills. Do not assume your client is or is not a foreign national (legal or illegal).

Natalia Wilson is an associate in the law firm of Huff, Poole & Mahoney, P.C. She can be reached at 552-6090 or nwilson@hpmlaw.com