

IMMIGRATION AND
NATIONALITY LAW:
PROBLEMS AND
STRATEGIES

IMMIGRATION AND NATIONALITY LAW: PROBLEMS AND STRATEGIES

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INTRODUCTION

The four authors of this book love immigration law. We have devoted our professional careers to working and teaching in this ever changing, always challenging area of law. Together we have more than 100 years of experience in the field. Three of us continue to practice law as our main occupation. All of us teach a variety of courses in the immigration law field, from introductory survey courses to advanced seminars or clinical courses. We agreed to write this book because we are equally committed to sharing our knowledge and helping others enter this field. To give you a sense of who we are and what we bring to this book we include our biographies at the end of this introduction.

Over our years of practice, many people have asked us, “Is there a book I could read to learn more about immigration law? I really would like to handle some immigration cases but there is no one at my firm/school/company who knows anything about this field.” While we could have recommended many great treatises, traditional academic casebooks, and continuing legal education materials, none of those materials both introduced the reader to the legal concepts and revealed the experience of practicing immigration law. To be a great advocate in this field you need to know more than the statutory provisions and key cases. You have to understand the many government agencies involved and how to navigate the wide variety of adjudications that are central to the U.S. immigration system. Accordingly, this book is designed for both law students and attorneys.

We hope you will actively engage with this book. We have created hypotheticals or problems that ask you, from a variety of legal roles, to learn how to solve common immigration problems. In one problem you may be a government inspector assessing the qualifications and criteria for admission to the United States. In another problem you may be in-house corporate counsel facing simultaneous strategic employment, immigration, and corporate planning issues. By working through these problems you will observe the immigration process from initial sponsorship to the United States, to seeking admission at the border, to finding and maintaining status and securing permanent resident status within the United States. The text then moves you through the complex issues of determining whether a person is inadmissible or barred from securing status or entering the United States. We then explore the removal process and which categories of people and what type of behavior can subject a noncitizen to expulsion. We continue with an examination of the forms of relief from removal and asylum and other humanitarian protections. We close with the ultimate goal of many immigrants — naturalization. We also explore other ways that people acquire or derive U.S. citizenship. If you engage in the problems, we believe you will come out of the study of the materials in this book understanding the substance and process that make immigration law so challenging and rewarding.

We have many people to thank and each of us has contributed to the list of acknowledgments below. Each of us feels lucky to be in this field. Remarkable people have mentored and inspired us over the years. We hope to continue that tradition through this book.

Lenni B. Benson

As a lawyer and friend, I thank Roxana Bacon and Nancy-Jo Merritt: two of the

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smartest and most determined immigration analysts, litigators, and reformers in a field of many fierce and talented people. Roxana also generously helped me my find my first opportunities to teach in the field and I have been doing so part or full time since 1987. As a full time professor, I appreciate the guidance and support that I received from my friends and constant mentors: Hiroshi Motomura, Margaret Taylor, and Mary Crock. I am also grateful for the resources and support supplied by the administration, staff, and students of New York Law School. Russell Wheeler, my research partner for a report written for the Administrative Conference of the United States, helped me study the removal adjudication system and inspired me with his many abilities to objectively assess procedures and volumes of data. I also benefitted from the hundreds of NYLS alumni who regularly share stories from practice. I am particularly grateful to my parents, Bernard and Ramona Benson, and my family, John, Max, Lily, Sheila, and Harry Wellington. My family and our bull dog Maisie shared our kitchen with drafts of these chapters for many years. I thank them for their patience, good humor, and the necessary long walks.

Lindsay A. Curcio

I am delighted to have the opportunity to work on this book with my co-authors, who are valued friends. I thank my parents, Terry and Orlando Curcio, who gave me an interest in travel, genealogy, and books. It came in handy. I am especially grateful to Arthur DiVittis, Jr., who is my partner in life as well as in many creative projects. Thank you to the students and alumni of New York Law School. I remember with gratitude my favorite teacher and mentor, the late Dr. Martin de Maat from The Second City. Heartfelt thanks to those who have provided me with support and inspiration: Brian S. Schick, Esq., Stuart J. Reich, Esq., Lewis Tesser, Esq., Frances Berger, Esq., Nancy Katz, Rock Albers, Esq., Elaine Witty, Esq., Clayton Cartwright, Esq., Michael Rothmel, Esq., Thomas C. Sanchez, Esq., Bill Pardue, Joan Fabian, Fred and LaVonn Schlegel, Terry Brathwaite, Camille Mackler, Esq., Suzanne McCoy, and Randy Larson.

Veronica M. Jeffers

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Stephen Yale-Loehr

I thank Maury Roberts, former chairman of the Board of Immigration Appeals and editor of Interpreter Releases, who taught me so much about immigration law. I also thank the many immigration lawyers and professors around the country who took time out of their busy schedules to help me learn immigration law. I thank my parents Ray and Joan Loehr, my wife Amy, and our children Liz, Jon, and Alex, for their support and encouragement. I have learned a lot from them about character, aspirations, and perseverance, and hope that some of those values have found their way into this book.

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BIOGRAPHIES:

Lenni B. Benson

Lenni Benson grew up in rural Arizona on a citrus farm but managed to ignore all immigration issues until she graduated from Arizona State College of Law in 1983. She became a member of a corporate law firm in Phoenix, Arizona. Roxana Bacon joined the firm in 1984, bringing a large number of immigration clients, from corporations to refugees, to the firm. Lenni practiced in the firm's litigation and corporate departments before specializing in immigration in 1986. She continued to practice with Roxana Bacon through a number of firms until Lenni ended her full time practice in 1994 as a partner in the Los Angeles office of Bryan Cave, LLP, an international law firm with offices in eight countries.

In 1994, Lenni joined the faculty of New York Law School in Manhattan, New York. She teaches civil procedure, administrative law, immigration, and nationality law. She has been an adjunct professor at Columbia Law School for several years. She has served in leadership or board positions in the following organizations: the American Immigration Lawyers Association (AILA); the American Immigration Law Foundation (now the Immigration Policy Center); the Center for Human Rights and Constitutional Law Foundation; the ABA Section on Administrative and Regulatory Law Immigration subcommittee; the Bar Association of the City of New York; the Lexis Advisory Board; and the American Association of Law Schools Immigration Section. She has edited immigration treatises or texts for both AILA and the National Immigration Project of the National Lawyers Guild.

In 1999, AILA presented Lenni with the Elmer Fried Excellence in the Teaching of Immigration Law Award. In 2011–12, she served as a consultant to the Administrative Conference of the United States, writing with Russell Wheeler a detailed study of the immigration removal system. She is the director of the Safe Passage Project at New York Law School, a pro bono clearing house and project based learning course where pro bono attorneys and law students represent immigrant youth.

Lindsay A. Curcio

Lindsay A. Curcio has practiced immigration law since 1990. She opened her solo practice in Brooklyn, New York in 2000. Lindsay has been an adjunct professor teaching immigration law courses at New York Law School since 2002. From 2007 to 2012, she served as Co-Director with Lenni Benson of the law school's Safe Passage Immigration Project. Lindsay is a Fellow at the Center for International Legal Studies in Salzburg, Austria and is an active AILA member, serving on local and national committees. Lindsay has a bachelor's degree in Spanish from Northwestern University, a J.D. degree from IIT-Chicago Kent College of Law, and a master's of business administration degree with a concentration in marketing and a designation in international business from Fordham University. Currently she is studying towards an LL.M. in transnational commercial practice at Lazarski University/Center for International Legal Studies. She also is an actress who performs improv, old time radio play recreations and stand-up comedy.

Veronica M. Jeffers

A fourth-generation native of Los Angeles, an attorney and itinerant student, Veronica

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has lived and worked throughout the United States and around the world. Having been a tourist, accompanying family member, foreign national student, and nonimmigrant worker herself, the practice of U.S. immigration law was a natural fit. A graduate of Wellesley College and Harvard Law School, she is currently an associate attorney in the Los Angeles office of Fragomen Del Rey Bernsen and Loewy LLP and a member of the adjunct faculty at Southwestern Law School in Los Angeles.

Stephen Yale-Loehr

Like Lenni, Steve Yale-Loehr knew nothing about immigration law until after he finished law school. Steve received his B.A. degree from Cornell University in 1977 and his J.D. cum laude from Cornell Law School in 1981. He was editor-in-chief of the *Cornell International Law Journal*. After graduation he clerked for a federal judge.

From 1982 to 1986 Steve practiced law at a large law firm in Washington, D.C., where he was first exposed to immigration law. From 1986 to 1994 he was managing editor of *Interpreter Releases* and executive editor of *Immigration Briefings*, two leading immigration law publications.

Steve is co-author of *Immigration Law and Procedure*, the leading 20-volume treatise on U.S. immigration law, published by LexisNexis. He also teaches immigration and asylum law at Cornell Law School as an adjunct professor and is of counsel at Miller Mayer in Ithaca, New York.

Steve is the coauthor or editor of many books, including *Green Card Stories; America's Challenge: Domestic Security, Civil Liberties and National Unity After September 11; Balancing Interests: Rethinking the Selection of Skilled Immigrants; Global Business Immigration Practice Guide; J Visa Guidebook; Understanding the Immigration Act of 1990*; and *Understanding the 1986 Immigration Law*, and numerous law review articles.

Steve is annually listed in *Chambers Global, Chambers USA*, and *An International Who's Who of Corporate Immigration Lawyers* as one of the best immigration lawyers in the world. He is frequently quoted in the press on immigration issues and has often testified before Congress. He is the 2001 recipient of AILA's Elmer Fried Award for excellence in teaching and the 2004 recipient of AILA's Edith Lowenstein Award for excellence in advancing the practice of immigration law.

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