

BRAUWERMAN LAW FIRM, P.A.

Immigration & Nationality Law

A Progressive Law Firm Dedicated to Traditional Values SM

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The Immigration Connection

April 2011

Welcome to the **Brauwerman Law Firm** newsletter. You are being sent this newsletter because of your interest in immigration and nationality matters. Should you wish to unsubscribe you may do so below.

The Several States and the REAL ID Act.

DHS final rule changes the date that States must be in full compliance with the REAL ID Act to January 15, 2013 to ensure that driver's licenses and identification cards meet the security requirements of the Act. The rule is effect March 7, 2011.

Is an Alien Who has been Ordered Removed Under Certain Sections of the INA and is Detained Under INA 241(a)(6) Entitled to a Bond Hearing?

The Ninth Circuit Court of Appeals has answered the question in the affirmative. The court in deciding *Diouf v. Napolitano* on March 7, 2011 reversed the district court and held that an individual facing prolonged detention under INA §241(a)(6) is entitled to release on bond unless the government establishes that he is a flight risk or a danger to the community.

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Featured Article



Jeffrey N. Brauerman, formerly a United States Immigration Judge, has served as Regional Counsel for the Southern Region of the U.S. Immigration and Naturalization Service and Chief Legal Officer for its Miami District office.

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CONNECTING THE DOTS.....

This month's suggestion is that any lawful permanent resident alien who intends to be outside the USA for extended periods of time should apply for a reentry permit from USCIS. This can prevent the Department of Homeland Security from asserting that the alien has abandoned his lawful permanent resident status since it is prima facie proof of an intent to remain a permanent resident.

Immigration Judge's *Sua Sponte* Authority to Reopen Proceedings at Any Time vs. Authority to Reopen and Rescind in Absentia Removal Order Only if Motion is Filed Within 180 Days of Entry. Which Trumps Which?

The U.S. Court of Appeals for the Fifth Circuit decided in *Gregoire v. Holder* on March 4, 2011 (No. 09-60254) that the specific statutory authority [INA 240(b)(5)(C)(I)] limiting the time to file a motion to reopen trumps the authority found at 8 CFR 1003.23(b)(1) authorizing an immigration judge to reopen any case "upon his own or her own motion at any time..." The BIA had reversed the *sua sponte* order of the immigration judge reopening the removal order.

Is an Attempt Conviction a Crime Involving Moral Turpitude?

The Board of Immigration Appeals answered this question in the affirmative. It held in *Matter of Vo*, 25 I&N Dec. 426 (BIA Mar. 5, 2011) that, where the substantive offense underlying an alien's conviction for an attempt is a crime involving moral turpitude (CIMT), the alien is considered to have been convicted of a CIMT for purposes of INA Sec. 237(a)(2)(A) [8 USCA Sec. 1227(a)(2)(A)] (2006) even though that section makes no reference to attempt offenses.

Is Extortionate Extension of Credit Categorically an Aggravated Felony Under Immigration Law?

The U.S. Court of Appeals for the Eleventh Circuit, disagreeing with the BIA, in *Accardo v. U.S. Att'y Gen.* decided on March 10, 2011, held that a violation of 18 USC §892(a) for making an extortionate extension of credit, is not categorically an aggravated felony crime of violence under INA §101(a)(43)(F). The Court said section 892 encompasses some behavior that falls within the aggravated felony definition (threat of violence) and some that does not (threat to reputation). Interestingly, the immigration judge originally decided that the modified categorical approach had to be used and under that analysis terminated removal proceedings. The immigration judge's decision had been reversed by the BIA. The alien had admitted that there had been a threat to a party's reputation, which, as indicated above, is included in the statute.

Finding of Marriage Fraud vs. Finding of Failure to Meet Burden of Proof.

The Brauerman Law Firm was recently successful in obtaining a ruling from the Board of Immigration Appeals (BIA) that there was insufficient

evidence to conclude that the U.S. citizen's marriage to the alien was "fraudulent". Rather, the Board held that there was only a failure to meet the burden of proof. Our firm did not represent the parties before the USCIS.

During a consultation we suggested that the parties appeal because a finding of "marriage fraud" is fatal to any subsequent family based or employment based petition. Now when our client remarries he only has to prove the bona fides of the new marriage.

Over the last couple of years immigration examiners have found "marriage fraud" in every case wherein the questions and answers during separation examinations have resulted in discrepancies that were not satisfactorily explained.

Call Us Today For A Professional Consultation

Jeffrey N. Brauwerman, of [Brauwerman Law Firm, P.A.](#), is available for consultations in either of our two offices and is also available for telephonic consultations.

We look forward to meeting with you and ultimately providing you with representation. Please note that a consultation does not constitute an attorney-client relationship although information disclosed during the consultation to any member of the firm will be strictly confidential.

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