

BRAUWERMAN LAW FIRM, P.A.

Immigration & Nationality Law

A Progressive Law Firm Dedicated to Traditional Values SM

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The Immigration Connection

November 1, 2011 Edition

Welcome to the **Brauerman 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.

This Saturday when I opened the New York Times I saw this editorial and after I read it I wanted to share it with my clients and colleagues because this is why we love what we do and why we continue to work so diligently.

America, Renewed. (From the NY Times 10/29/11)

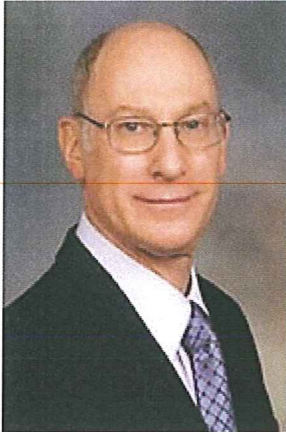
On Friday, October 28th a brilliant morning sun piercing their eyes, 125 Americans-to-be got ready to take the citizenship oath on Liberty Island (in New York City).

Officials were collecting Form N-445's [final updates to applications] and passing out little flags. Television crews were taking video for the morning shows while an organizer of the event coached the group to cheer like a studio audience. But none of the bustle and distraction - part of a day of celebration for the Statue of Liberty's 125th birthday - could dim the power of the ceremony.

They were from 46 countries. Some were poor, some frail and old, a good sampling of the New York City area.... Though overshadowed by the statue, they were the real deal, not the symbol. They raised their right hands and plowed through the long, stilted oath. "I will perform work of national importance under civilian direction when required by the law....." They got to the end ("So help me God"), and at the moment, America was as new as Friday morning.

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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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A speaker, Interior Secretary Ken Salazar, ennobled the event by going off script. He urged the citizens to engage in civic life, **to push for immigration reform so the undocumented will "not live in the shadows of fear, but come into the sunlight."** He did not mention the elected officials, Republicans mostly, who have urged punishment without mercy on those who violate laws that they refuse to reform.

Soon these citizens may take up that struggle, but, on Friday, they had other things to do. Tiberiu Gireada, 22, from Romania, had to go back to Hunter College. Saidou Zakou, 34, from Niger, had told his boss at a Bronx clothing store that he had something to do in the morning but would be back at work after.

News About the Brauerman Law Firm and Jeffrey N. Brauerman.

For the 17th consecutive year, Jeffrey N. Brauerman has been chosen by his peers to be listed in the publication *The Best lawyers in America*. The Brauerman Law Firm, has once again been chosen as one of the "Best Law Firms in America" by *U.S. News and World Report.com*.

Important Eleventh Circuit Cases

U.S. Court of Appeals for the 11th Circuit Rejects *Silva-Trevino* Framework for Looking Beyond Conviction Record to Determine Whether or Not a Conviction is for a Crime Involving Moral Turpitude.

On October 12, 2011, the U.S. Court of Appeals for the Eleventh Circuit decided *Sanchez-Fajardo v. U.S. Att'y Gen.* ___ F.3d ___ (11th Cir. October 12, 2011). (Mr. Fajardo-Sanchez had been a client of our firm in the past and we perfectly set up the record of proceedings for the Petition for Review.) The Court joined the 4th, 6th, 8th and 9th Circuits in rejecting the Attorney General's decision in *Matter of Silva-Trevino*.

Under the *Silva-Trevino* doctrine, one that arose from the Attorney General's decision in the waning days of the Bush Administration, to determine whether an alien's prior conviction triggers application of the Act's moral turpitude provisions, adjudicators should: (1) look first to the statute of conviction under the categorical inquiry set forth in that opinion and recently applied by the Supreme Court in *Duenas-Alvarez*; (2) if the categorical inquiry does not resolve the question, look to the alien's record of conviction, including documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript; and (3) if the record of conviction does not resolve the inquiry, consider any additional evidence the adjudicator determines is necessary or appropriate to resolve accurately the moral turpitude question.

This has proven problematic in practice. Pre-*Silva-Trevino* law had been in place for many decades. So far only the Seventh Circuit has upheld the *Silva-Trevino* framework.

With the demise of *Silva-Trevino* in the 11th Circuit the immigration court, when determining whether or not the alien has been convicted of a crime involving moral turpitude, can no longer look outside the record of conviction. What this means is, once again, police reports and other evidence outside of the record cannot be considered. Why is this so important? Sometimes police reports contain very incendiary facts. It is the law, not the facts, that must be considered when deciding the moral turpitude issue.

Rescission v. Removal Proceedings Issue Involved in Latest 11th Circuit Case.

The court, in *Alhuay v. U.S. Att'y Gen.*, ___ F.3d ___ (11th Cir. Oct. 26, 2011) found that INA §246, limiting rescission of an erroneously granted adjustment of status to the five year period after adjustment is granted, applies only to rescission and not to the initiation of removal proceedings. Therefore, although after the five-year period has run, an affected alien may be placed in removal proceedings. The Court pointed to its earlier *dicta* (a conclusion or statement of law in another decision that was not necessary to the disposition of the earlier case) in *Savoury v. U.S. Att'y Gen.*, 449 F.3d 1307, 1314 n.2 (11th Cir. 2006) for support of its holding in *Alhuay*.

"Sought to Acquire" under the Child Status Protection Act ("CSPA") Interpreted by the 11th Circuit.

In *Medina Tovar v. U.S. Att'y Gen.*, ___ F.3d ___ (11th Cir. Jul. 19, 2011) the Court found the term "sought to acquire" lawful permanent residence within one year of a visa number becoming available is broad enough to encompass substantial steps taken toward the filing of the application.

Prior interpretations under the CSPA required that an application for permanent residence actually be filed within the stipulated one-year time period. Now only substantial steps need be taken towards filing.

Our office recently won a case, even before this decision was issued, wherein we proved that the alien retained the services of an attorney to start putting together the application, even though it was not filed within the mandated one-year time frame.

Call Us Today For A Professional Consultation

Jeffrey N. Brauerman, of Brauerman 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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