

9 Mistaken Beliefs About Immigrants & The Law

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Immigration law is often viewed as a niche practice area. Perhaps for this reason there are a number of common misperceptions about immigration law and immigrants in the Bar at large. Here are a few we have encountered:

- 1. Anyone can apply for a work permit.** Unfortunately, there is no garden variety work permit that just anyone can apply for. As a U.S. employer, or would-be worker, there's no one-size-fits-all solution. Instead, authorization is tied to specific visa categories and other immigration benefits. Bottom line: whether a work solution is available will always be fact-dependent.
- 2. An undocumented person can't receive L&I.** Legal immigration status is not required to be eligible for L&I benefits in Washington State. Employers must tread carefully if they believe an employee claiming benefits is undocumented; singling out that employee for scrutiny of immigration status may run afoul of anti-discrimination laws.
- 3. I don't need to validate work authorization for my own law firm staff/lawyers.** All U.S. employers are required to ensure new hires are authorized to work in the country. The Form I-9 must be completed within three business days of a new hire, and the employer must inspect the supporting documents.¹ All employers need to follow the guidelines for completing and retaining these mandatory forms.²
- 4. Most immigrants coming into the U.S. come from Mexico.** Many believe that immigration into the U.S. consists mostly of Mexican nationals. Yet in 2013, of 990,553 people who became legal permanent residents of the United States, only 135,038 (14%) came from Mexico.³ Most immigration

¹ See USCIS, Form I-9 (rev'd March 8, 2013), available at <http://www.uscis.gov/i-9>.

² USCIS, M-274, *Handbook for Employers, Guidance for Completing Form I-9* (rev'd Apr. 30, 2013), available at <http://www.uscis.gov/i-9>.

³ Randall Monger and James Yankay, *U.S. Lawful Permanent Residents: 2013*, Annual Flow Report, Office of Immigration Statistics, U.S. Department of Homeland Security (May 2014), available at http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2013.pdf.

attorneys work routinely with folks from all continents, and those interested in the practice area should not shy away merely due to lack of Spanish ability.

5. **Immigration attorneys just “fill out forms.”** Most attorneys think their area of practice is uniquely complex, because we’re each familiar with the nuances of our own field. The complexities of immigration law are especially vexing because it sometimes *seems* that a mere “form” simply needs to be “filled out.” Without a working knowledge of the immigration statute (and regulations, and case law, and agency guidance) it’s not possible to know what benefit should be pursued. We welcome all of our colleagues to learn more about the immigration bar,⁴ but urge caution with immigration matters that appear simple.
6. **Permanent residence = citizenship.** While a common point of confusion, this distinction matters. “Lawful permanent residents” are admitted to live and work indefinitely in the U.S. After three years (if married to a U.S. citizen petitioner) or five years (everyone else), a resident may apply for citizenship. Residents are subject to grounds of deportation and can lose their status if they take up residency abroad; citizens are set for life. For someone beginning the process of living permanently in the U.S., they will be applying for residency, not citizenship. (Don’t worry, NPR gets this confused all the time).
7. **Family lawyers can ignore immigration law.** One of the joys of a niche law practice is getting to ignore most other areas of law. But sometimes we’re forced to cross over. Following the *Padilla* decision, criminal attorneys have been forced to navigate the impossibly complex world of “crimmigration” advice. It’s not as rough for matrimonial attorneys, but one should at least learn about the Form I-864, Affidavit of Support. Under this immigration form, a U.S. petitioner is required to support his or her foreign national spouse potentially forever.⁵ It is best practice to screen clients for immigration status in family law matters. If the individual is a foreign national, an immigration attorney can usually quickly assess whether status would be impacted by dissolution proceedings or vice versa.

⁴ Washington has a particularly active chapter of the American Immigration Lawyers Association. See <http://www.aila.org/> (last visited March 10, 2015).

⁵ Cf. *Suing on the I-864 Affidavit of Support; March 2014 Update*, Greg McLawsen, 19 BENDER’S IMMIGR. BULL. 343 (Apr. 1, 2014), available at <http://bit.ly/1sJp1dL>.

- 8. Most immigrants in the U.S. entered illegally.** There are approximately 41 million individuals of foreign origin living in the United States. Of those 41 million, about 19 million have become naturalized U.S. citizens.⁶ The remaining 22 million are made up of legal permanent residents, other types of temporary visa holders, and undocumented immigrants. It is estimated that there are about 12 million undocumented immigrants. However, it is also estimated that 40% of those currently considered “undocumented” came legally into the United States using a valid visa and simply overstayed. Therefore, using rough estimates, only about 7.2 million of the 41 million immigrants in the United States came to the United States by illegally crossing a border.
- 9. Undocumented immigrants don’t have to worry about filing income tax returns.** Every person in the United States who earns income above the specified minimum must file Federal income tax returns. Even undocumented immigrants who don’t have a valid social security number must file income tax returns using an individual tax identification number (ITIN). Indeed, filing income tax returns on a yearly basis may be helpful for certain immigration processes as a way of showing the applicant’s good character.

⁶ Jie Zong and Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute (February 26, 2015), <http://bit.ly/1hwyQGg>.