# EOIR's eREGISTRATION SYSTEM

After a long series of hints of what was coming, the Executive Office of Immigration Review has finally installed its "eRegistration" program. The purpose of this new program is twofold: First, it is the preliminary step in anticipation of transitioning to an all on-line filing system similar to the Federal Courts. Second, it is a method to ensure that only authorized individuals are permitted to appear in court. As would be expected there were some initial problems for attorneys to complete the registration process, but it appears that these issues have been resolved.

There are two steps in the registration process. The first step of the process requires the individual (both attorneys and accredited representatives) to go to the EOIR's website and logon to a link to create an account. In this step, the individual will input basic information about themselves through an on-line form. HINT – the name that you enter into the system must match the name on your photo-ID. The link to this on-line form is https://portal.eoir.justice.gov/. Once the individual creates their account, they will receive an e-mail confirming that they have successfully completed the first step of the process. The e-mail will provide the individual with a "User ID" and "EOIR ID."

The second step of the process is for the individual to present themselves at their court so that their identity can be confirmed. This is accomplished by presenting the designated court staff member with a valid photo identification. This is why it is important that the name used to register in step one must match the name on the photo-ID. If the names do not match, it may prevent the registration process from being completed. EOIR has provided a link to a list of the courts at which the ID verification can take place and which forms of ID will be accepted. http://www.justice.gov/eoir/engage/eRegistry/courts-eRegistry.htm. Some may view this part of the process as silly, especially if you have been practicing at your local court for years and everyone, from the court staff to the immigration judges, is well aware of who you are. However, without completing this step, the registration process is not complete.

It should be noted that the identification verification process in the second step must be completed within 90 days of completing the on-line registration process in step one. If the second step is not completed within 90 days, the individual will have to start from the beginning and reregister on-line. It should also be noted that anyone who intends to appear in immigration court must complete both steps of the process by December 10, 2013. If both steps are not completed by that time, the individual may be prohibited from appearing on behalf of their client until they complete the entire registration process.

Once you have completed the process, you should begin using your EOIR ID number on all G-28's and E-28's. This ID number will be entered into the court's case management system.

# BEST PRACTICES: PRESENTING YOURSELF, YOUR CLIENT and the EVIDENCE

From the movie, "A Few Good Men"

And the courtroom begins clearing out. KAFFEE, JO and SAM are packing up their various papers.

SAM speaking to his co-counsel JO
I strenuously object? Is that how it works? Objection. Overruled. No, no, no, no, I strenuously object! Oh, well if you strenuously object, let me take a moment to reconsider.

JO
I got it on the record.

SAM
You also got it in the jury's head that we're afraid of the doctor. You object once so they can hear you say he's not a criminologist. You keep after it and it looks like this great cross we did was just a bunch of fancy lawyer tricks. It's the difference between paper law and trial law!

This scene was certainly not a stellar example of how to present yourself, your client or the evidence. There could be many different explanations for why Jo committed this mistake, but one obvious reason is "confidence." It is doubtful that had Jo been a confident litigator, she would have made the objection. Being confident in court can take you a long way on presenting yourself, your client and the evidence in the best manner. And being confident in court doesn't have to be something "you're just born with." We have all seen attorneys in court that appear as if they have no business being there – they stumble over their words; they hesitate when questioned by the judge; they appear uncertain in their argument. By the same token, we've all seen attorneys in court that are, as we say in Texas, "All hat and no cowboy" – they are loud and demonstrative (often firebrands) but fail to argue anything of substance. In the examples above, the former attorney lacks any confidence and the latter attorney lacks the right type of confidence. The right type of confidence can be learned and comes from preparation in two crucial aspects: knowledge of the facts and knowledge of the law.

## I. Knowledge of the Facts

If you are going to be a confident litigator, you must be an expert on the facts of your case. It seems almost ridiculous to even have to remind attorneys of this simple idea because it would seem inherent when you choose to walk into court and present a case on your client's behalf. Yet there is not a day that goes by in which attorneys appear in court and obviously do not know even fundamental facts about their client or the case. If asked, Immigration Judges

would agree that they see a significant percentage of attorneys unfamiliar with the facts of the case. Certainly there are many reasons why an attorney would lack the requisite knowledge but unless the reason involves the client deceiving the attorney or the client failing to disclose facts, there is little excuse for an attorney not to know.

Above all, you should be an expert on the facts of the case. In theory, it should be impossible for the government or the judge to know more about your client than you do. Further you must have a thorough understanding of what your client and witnesses will testify to. In turn you must use this knowledge to scrutinize your relief applications for apparent contradictions. Nothing will get your client a faster negative credibility finding than a conflict between the facts alleged in the relief application and their testimony.

Obviously to be the expert on the facts, you must spend a great deal of effort to obtain relevant information and then spend an equal amount of time scrutinizing the documents. You don't ever want to be the last to know that the tax return your client provided to you shows that the "child" listed on the tax return as a dependent is not a child and has never even lived in this country. By the same token, it is crucial that you know what your client will testify to before filing your relief application with the court. For example, if the first time you learn that the 42B says your client has never left the U.S. when he just testified that he was caught several times by ICE and kicked back, try not to let that tightness in your chest be obvious to everyone in the court room. Digging, and then digging some more into your client's story minimizes surprises in court.

When it comes to "bad facts," do not gloss over or minimize them. Do not play a game of hide-the-ball with bad facts. Doing so will almost certainly lead to two very bad consequences: First, the immigration judge will hold such tactics against your client in the form of, for example, a negative credibility finding or a finding that you client has not demonstrated adequate rehabilitation or remorse. Second, you leave the door wide open for either the immigration judge or the government attorney to massacre your client on cross examination. This can only allow them to make the bad facts appear in an even worse light.

Chances are, whatever the bad facts may be, the judge and the government already know about them anyway. Confront bad facts from the very beginning. Instead of preparing your client to answer questions from the judge or government about the bad facts, you should ask the tough questions. The questions will be no less uncomfortable or difficult to answer for your client, but rest assured, your client would rather the questions come from you. In doing so, not only do you demonstrate that you are confronting the bad facts, but to a certain extent, it may also permit you to frame the story in a better light. Another benefit is that it potentially cuts off entire lines of questioning from the judge or trial attorney. If you have spent enough of time going through all the facts – good and bad – what more is there to ask of your client? At worst, the trial attorney or judge pulls out a few insignificant facts from your client. At best, they spend

their time rehashing the same facts. If this happens, don't waste time with unnecessary objections to their questions – let them reemphasize the facts you wanted to bring out anyway!

Sometimes the facts of the case require an understanding of complicated medical issues. No one expects you to be a medical expert, but you better be able to explain the diagnosis and prognosis of the medical condition in terms that the judge can use. At the same time, you should not expect the judge to have the time to review or understand voluminous medical records or how this translates, for example, into a hardship factor for your client's benefit. Instead, include a written summary from a doctor describing the medical conditions a qualifying relative may have, the prognosis of their condition and how your client's presence impacts the relative's condition. In fact, including such a summary is always a good idea regardless of whether you are submitting extensive medical records.

If you are an expert about the facts of your case, you will gain the confidence to speak in a manner that conveys your client's story in best manner possible. If you do this in each case, over time, the judge and the government will recognize you as someone who is thoroughly prepared regardless of whether it is a good case or a bad case.

## II. Knowledge of the Law

Anyone whose practice involves removal cases knows that nine times out of ten, the government holds all the cards. Many times the case is over before you walk into the courtroom. This is almost always because your client is not eligible for relief and the only thing remaining to reach the end of the line is for them to admit the facts and concede the charge on the Notice to Appear (NTA). While the facts and charge listed on the NTA are usually correct, that does not mean that mistakes aren't made or that improper interpretations have been made. Above, I outlined why it is important for you to be the expert regarding the facts of the case. As it relates to the law, you must be at least the equal of the judge and the government attorney.

Often your knowledge of the law is the only card you have to play because the facts of the case are so bad. This card can be particularly powerful if you are challenging the conventional interpretation of the law or are citing to authority that seems unknown to everyone else in the court room. For example, the conventional interpretation is that §204(c) findings are death sentences to new immigrant visa petitions. When you argue that this interpretation is wrong, eyebrows will be raised! When you argue that the regulations require an affirmative showing by DHS that there is substantial and probative evidence that the marriage was entered into to evade the immigration laws ***and*** that the evidence must be in the alien's file ***and*** that the evidence must be given to the new petitioner for an opportunity to rebut the finding before DHS can deny the new I-130[1] you will have demonstrated that you have done your homework.

[1] 8 CFR §204.2(a)(1)(ii); *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990)

Another example of demonstrating your knowledge and willingness to challenge the conventional interpretation involves cases in which your client appears to have admitted to committing a crime involving moral turpitude (CIMT) or some drug offense, both of which may be a ground of inadmissibility under INA §212(a)(2)(A)(i). Your client may have been put into removal after appearing at an adjustment of status application interview in which she "admitted" to possessing crack cocaine. From the trial attorney's perspective, the case appears to be open and closed because she even introduces the written transcript that your client signed at the adjustment interview admitting to possessing the drugs. As a practioner, you can clearly see on the paper that your client admitted to possession and you can see that §212 only requires your client to admit to committing acts of the drug offense to be inadmissible. You may even believe that your client possessed the drugs. This is where knowledge of the law becomes very important as you would learn that all admissions aren't equal and that only after the government jumps through several hoops can they use a supposed admission as a basis for inadmissibility. Surprisingly, even in cases where an alien unequivocally admits that he committed a CIMT or a certain drug offense is not necessarily an admission that can serve as a ground of inadmissibility. Why? Because the law requires the alien to admit to the specific elements of the crime and does not accept the simple admission to the crime. *See, e.g.*, *Matter of C*, 1 I&N Dec. 14 (BIA AG 1940). In this case, for the admission to be held against your client, the government would have to, among other things, provide your client the legal definition of "possession of a controlled substance." *See Matter of K*, 7 I&N Dec. 594 (BIA 1957).

Unlike being an expert about the facts of the case, being expert on the law has long term benefits. The benefits of being a fact expert are necessarily limited to the individual case. Everyone may see that you have thoroughly prepared for the case but the benefits are fleeting. There will always be another case for which you have to become an expert of the facts. Being an expert on the law grants you credibility long after the individual case has faded from memory. This is particularly true if you are fortunate enough to identify an area or nuance of the law that either the judge or the government is less familiar. For a significant period of time thereafter, both parties will remember you as someone who "knows their stuff" and that they must be prepared if they intend to challenge an argument you are making about the law.

## III. Conclusion

To present yourself, your client and the evidence, you must have confidence in what you are doing. This does not require or even imply that you must stand on top of your table and scream as show of phony confidence. Some of the best litigators are quiet "killers" who let their expertise shine through in their knowledge of the facts and the law. This quiet confidence comes from thorough preparation. Sure, there will be times where you may have to argue more aggressively and it takes confidence to do this. Judges and government lawyers respect someone that they see as thoroughly prepared and not afraid to punch back. Of course, like most everything in life, you will naturally gain more confidence in litigating the more you do it. The obvious benefits of going into court, making mistakes or getting your teeth kicked-in can be

equally valuable in building your confidence for the future.  If you couple these hard knock lessons with thorough preparation, you will position yourself to confidently present yourself, your client, and the evidence in court.