Immigration Law Resources

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Introduction

Immigration law is constantly evolving. As a result, the ability to find both current and past rules, regulations, statutes and policy guidelines is of utmost importance to the immigration practitioner. This purpose of this article is to introduce the reader to many of the resources essential to the practice of immigration law, including the relevant statutes, regulations, agencies, and secondary sources of immigration related information. An overview of the relevant government agencies is given in order to familiarize the reader with their functions relating to the administration and enforcement of the immigration laws so that the reader may know which agency to turn to when seeking policy guidance, rules, procedures, and other information.

Government Agencies

Effective March 1, 2003, the former Immigration and Nationality Services (INS) ceased to exist. Its functions were transferred to several different agencies within the newly created Department of Homeland Security (DHS). The Bureau of Citizenship and Immigration Services (BCIS) took over the functions of the INS relating to the processing of applications for, and granting of, immigration benefits. The enforcement functions of the INS were delegated to the Border and Transportation Security directorate (BTS). Three agencies operate under BTS. The Bureau of Customs and Border Protection (CBP) is responsible for enforcement of the immigration laws at the border and points of entry, in conjunction with the Transportation Security Administration (TSA), which has the responsibility for maintaining the safety of all
U.S. Airports. The Bureau of Immigration and Customs Enforcement (ICE) is charged with the enforcement of the immigration laws on the interior.

The Department of State (DOS) is also involved in the administration of the immigration laws. U.S. Consuls in other nations are responsible for processing applications for both immigrant and non-immigrant visas abroad. DOS also aids in determining conditions in other countries and in certain investigations related to visa applications or removal proceedings.

The Department of Labor (DOL) is involved in the adjudication of most employment based petitions for either temporary or permanent foreign workers. Most employment based immigrant or non-immigrant categories require DOL to certify that there are no American workers available to fill the position for which the alien is being hired, and that hiring the alien worker will not adversely affect the wages and working conditions of similarly situated U.S. workers. DOL must make such a certification before BCIS can grant most immigrant or non-immigrant visa petitions. Additionally, individual state labor departments are often involved in the process.

Finally, the Department of Justice (DOJ) has the responsibility for conducting removal proceedings and reviewing certain administrative decisions. Removal proceedings are conducted in front of an Immigration Judge (IJ), who is a type of administrative law judge operating under the Executive Office for Immigration Review (EOIR). Immigration proceedings are administrative in nature. Appeals from decisions of IJs are heard by another organization within DOJ, the Board of Immigration Appeals (BIA). Administrative decisions of BCIS are may be appealed to a separate organization within DOJ, the Administrative Appeals Office (AAO). Some actions or decisions of the BIA or other immigration agencies are ultimately appealable to the U.S. Courts of Appeals, and in rare cases, to the U.S. District Courts.
Sources of Immigration Law and Policy

The primary source of immigration law is the Immigration and Nationality Act (INA), codified in Title 8 of the United States Code (8 U.S.C.). The INA is amended frequently, and some of its provisions are retroactive, and some are not. Some cases will require research into several different versions of the INA, so it is helpful to have bound versions of the statute that are updated with entirely new volumes issued each year (be sure to retain old volumes for comparison). Other statutes related to immigration or aliens can be found in Titles 2 (Congress), 6 (Domestic Security), 7 (Agriculture), 18 (Crimes and Criminal Procedure), 20 (Education), 22 (Foreign Relations and Intercourse), 28 (Judicial Process), 29 (Labor), 42 (Public Health and Welfare), and 50 (War and National Defense) of the United States Code.

The immigration statutes are implemented through regulations that are mainly found in Title 8 of the Code of Federal Regulations. In addition, many of the regulations related to DOL’s immigration functions are located within Title 20 of the Code of Federal Regulations. The regulations, as the INA, are amended often. Regulations related to immigrations and aliens can also be found in Titles 11 (Federal Elections), 14 (Aeronautics and Space), 22 (Foreign Relations), 28 (Judicial Administration), 29 (Labor), 33 (Navigation and Navigable Waters), 42 (Public Health), 46 (Shipping), and 47 (Telecommunications) of the Code of Federal Regulations.

Federal judicial and administrative case law is another significant source of immigration law. Decisions of the U.S. Supreme Court are binding on all lower courts and agencies. Decisions of the Courts of Appeals are also binding precedent for their District Courts and many
Most of the agencies involved in adjudication of immigration related cases or applications have some form of appellate body, the decisions of which are binding on the agency. Case law is key to determining the way courts or agencies interpret the sometimes frustratingly vague statutory or regulatory terms governing immigration and naturalization.

Government agencies are also a significant source of information. Many of the agencies promulgate official policy statements or memoranda. In addition, many of them have information about their rules and procedures available. All of the government agencies discussed above maintain websites that contain a wealth of information (though not always presented in an easily searchable fashion). You can download forms, policy guidelines, agency rules, regulations and procedures, an other information. The DOS website provides access to information about conditions in countries around the world, as well as contact information to all U.S. Consulates operating abroad. Significantly, the DOS website contains a searchable version of the Foreign Affairs Manual.

In addition to government entities, there are several other organizations that provide valuable immigration related information on the web. The preeminent web resource is AILA InfoNet, operated by the American Immigration Lawyers Association (AILA). AILA InfoNet offers up to the minute Immigration related information, and maintains liaison committees with several government agencies. These committees communicate with government agencies in

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1 But note: Circuit Court decisions are often only binding on cases originating in the Circuit in which they sit, not binding on agencies as a whole.
2 The U.S.C.I.S homepage can be found at http://uscis.gov/graphics/index.htm; the EOIR homepage can be found at http://www.usdoj.gov/oeir/; the BIA homepage can be found at http://www.usdoj.gov/oeir/biainfo.htm; the DOL homepage can be found at http://www.dol.gov/; the Employment and Training Administration’s homepage can be found at http://www.doleta.gov/; the DOL/ETA’s Foreign Labor Certification Division homepage can be found at http://workforcesecurity.doleta.gov/foreign/.
3 The DOS homepage is available at http://www.state.gov/; background materials on countries can be found at http://www.state.gov/r/pa/ei/bgn/; and the online version of the Foreign Affairs Manual is available at http://foia.state.gov/REGS/Search.asp. Additional DOS resources are available from the DOS Electronic Reading Room, at http://foia.state.gov/default.asp.
4 Available at: http://www.aila.org/
order to clarify procedures, policies and other information promulgated by the agencies. The information gained through these communications are available on InfoNet, and serve as an invaluable resource for keeping abreast of changes in policies or procedures. AILA InfoNet is also a good source of Immigration related publications, such as statutes and regulations, as well as practice guides etc.

In addition to AILA, the American Immigration Law Foundation (AILF) also operates a website that contains valuable Immigration related news and information. Another decent web resource is ILW. ILW offers daily or weekly immigration law updates, and has good, up to date information. ILW tends to have a more commercial orientation than either AILA or AILF.

LexisNexis and Westlaw are excellent resources for finding federal case law. Both services offer access to immigration related administrative decisions from the BIA, the Board of Alien Labor Certification Appeals (BALCA) and various other agencies. Westlaw has a feature called “Immigration Practitioner” that is quite useful.

In addition to statutes, regulations, government agencies, and the internet, there are several useful practice oriented publications available that the practitioner should be aware of. The first of these is Kurzban’s Immigration Law Sourcebook. This book is updated annually, and covers a broad array of immigration topics. Each topic is discussed briefly, followed by a digest of relevant case law interpreting relevant concepts, statutes or regulations. This is by far one of the best resources available for both beginning and experienced practitioners.

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5 Available at: http://www.ailf.org/.
6 Available at: http://www.ilw.com/.
7 Ira J. Kurzban, Kurzban’s Immigration Law Sourcebook, American Immigration Law Foundation (10th Ed. 2005)
Another useful publication is *Immigration and Nationality Law Handbook*, published annually as a two volume set. This publication presents a broad range of fundamental immigration topics. The Matthew Bender Publishing Company offers several useful loose-leaf publications that are continually updated. Of these is Immigration Law and Procedure, a multivolume set including explanations of immigration terms, concepts and procedures, and also reproducing various statutory, regulatory and agency source material and forms. Notably, this publication contains various policy and procedural memoranda and internal operating procedures and guides for agency employees, as well as the Foreign Affairs Manual, statutes, regulations, new immigration acts and laws, and, significantly, it is all indexed. Bender’s also publishes a weekly digest, *Bender’s Immigration Bulletin*.

*Interpreter Releases; Report and Analysis of Immigration and Nationality Law*, are weekly publications by the Thomson West Publishing Company, which contain articles on recent cases and developments in immigration law. *Interpreter Releases* report on pending legislation, changes in policy and other news, as well as providing summaries of current case law, including BALCA decisions. Thomson West offers a long list of other immigration titles, including statutory compilations, such as *Federal Immigration Laws and Regulations*, and practice guides.

There is, of course, a wealth of other printed material available from these and other publishers, and a wealth of information available on the internet related to immigration and nationality. However, the foregoing should provide the reader with an overview of the available

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11 *Federal Immigration Laws and Regulations*, 2005 ed. Thomson/West (2005). This is the Author’s personal preference for this type of publication. It is updated every year, and keeping old volumes around is strongly recommended, as it makes researching old versions of statutes or changes in statutes more convenient.
sources generally, as well as some specific resources that are useful to new and experienced practitioners alike.