Top NINE Immigration Must-Knows for Family Law Attorneys

By Elizabeth R. Blandon, Esq.

Board Certified by Florida Bar, Immigration and Nationality Law
Chair, South FL Asylum Committee, American Immigration Lawyers Association
Chair, Immigration Section, Broward County Bar Association
AV Rated Preeminent Attorney by Martindale-Hubbell
10.0 Superb Rating by Avvo

BLANDON LAW
Opening the door to success

2853 Executive Park Drive, Suite 103 Weston, FL 33331
(Tel) 954-385-0157 www.Blandon-Law.com

“Fear is like a black cavern that is terrifying.

Once you enter the cavern and explore it, you realize that you can go through it and get out of it.”

— Isabel Allende

Your Clients Can Get Help from The Privacy of Home

You are reading this because you want to help someone in need. Well, picture your clients' faces when you tell them their immigration goals can become a reality without driving to the office of another attorney.

First, using this guide, you are able to spot possible immigration issues. Then, you share your secret: Technology has advanced to the point where some clients can obtain legal permanent residency ("green cards") without leaving the comfort of home.

Although this guidebook answers many immigration-related questions, you do not need to know everything.

Blandon Law has an effective method to provide immigration advice to clients throughout the United States via a free tablet product. Our **Case Concierge™** provides one-click video conferences with attorneys.

In addition, it provides one-click access to a transcription website. Using transcription, clients and witnesses speak directly into the tablet. They then email us these draft statements which our team polishes for grammar; easily-readable evidence makes all the difference.

The **Case Concierge™** has been an invaluable resource to help clients without transportation and domestic violence survivors who may be tracked by their abusers.

Whether they retain us or not, your clients keep the **Case Concierge™** — and, in response to your concern for them, they remain loyal to you.

Table of Contents

Introduction

This book tells the story of two different family law attorneys. They both represent foreign-born persons who are living in the United States. Unfortunately, hypothetical Attorney Ignor is not aware of the immigration consequences of the legal advice he is providing to his clients.

On the other hand, Ms. Victoria has read preliminary information about immigration. As a result, she can spot issues and ask clients for additional information. Based on this evidence, her advice does not place clients in jeopardy.

Each chapter discusses a different scenario where family law and immigration law intersect. Practice tips for the family law practitioner are also included.

Keep in mind that this book references Florida's family law and immigration law as of January 2018. The latter is constantly changing. Moreover, the practice of

immigration law is also heavily affected by executive orders, regulations, and the enforcement priorities of the current administration. To request free monthly newsletters about these updates, send an email to ERBlandon@blandon-law.com.

1. "Immigration" Does Not Exist

There is no single "Immigration" agency. A foreign national may interact with several agencies and federal departments depending on the complexity of the issues faced.

As an example, a foreign-born national may need a visitor visa to initially enter the United States. These are issued by our embassies and consulates, which are part of the Department of State (DOS). Visas have a specific purpose and are limited in duration. For example, the usual duration of stay on a (B1/B2) visitor visa is 6 months.

Once in the U.S., the visitor may decide that she wants to live permanently in this country. If a company wishes to hire the foreign national, the enterprise must follow a multi-step process. Generally (but not always), that process of legal permanent residency based on employment begins with the filing of a labor certification application with the Department of Labor (DOL). Labor certifications that are denied can be reviewed by the Board of Alien Labor Certification Appeals (BALCA).

If the labor certification is approved, the employer will need to file a petition with U.S. Citizenship and Immigration Services (CIS). Generally, petitions that are denied can be appealed to the Administrative Appeals Office (AAO).

Immigration Service Centers are under the jurisdiction of the Department of Homeland Security (DHS). Certain Service Centers are the nationwide specialists for specific types of cases. For example, the Vermont Service Center reviews petitions filed under the Violence Against Women Act (VAWA). More about VAWA is explained in Chapter 7 of this guide.

When foreign nationals need to visit a local immigration office, such as to have fingerprints taken or for an interview, that appointment is scheduled at a Field Office. Some local Field Offices handle specific

types of cases. For example, Asylum Offices review applications for protection filed by foreign nationals who fear returning to their home country, but are not in removal proceedings. A free ebook about asylum can be found online at Blandon-Law.com.

Forty percent of the “undocumented” population in the United States entered legally but remained longer than the date that they were authorized to be here. After being placed "in removal proceedings," persons without authorization need to explain to a judge in Immigration Court why they should be allowed to remain in the U.S. despite this unauthorized presence. If the Immigration Judge denies the case, an appeal is filed with the Board of Immigration Appeals.

2. *Naturalization Relieves the Financial Burden of the USC[1] Spouse*

In some situations, a family law attorney may financially harm his or her client by advising a separation. Continuing to live together may financially help a U.S. citizen who is married to a foreign-born spouse.

Foreign nationals who are permitted to live in the United States, known as legal permanent residents (LPRs), are never an economic burden to the government. If they are sponsored by an employer, they are guaranteed a salary which is equal to or greater than the prevailing wage given to Americans for the same job.

---

[1] USC means U.S. citizen. See the Glossary at the back for other terms.

Likewise, U.S. citizen family members who sponsor LPRs (including spouses) **must guarantee that they will provide financial assistance should the foreign national ever become unable to pay for their own care**. This contract, which is signed by the sponsor, is known as an *Affidavit of Support* (Form I-864).

In most cases, a U.S. citizen who married a foreign-born spouse signed this contract pledging monetary responsibility. Even after a divorce, the sponsoring spouse is still answerable to the government under that contract.

The *Affidavit of Support* is in effect until one of several things happens:

- the foreigner becomes a U.S. citizen
- the foreigner can be credited with 40 quarters of work (usually 10 years)
- the foreigner or the sponsor dies

Because foreigners can become U.S. citizens much faster if they remain married to their U.S. citizen spouses, ask your client, "Is your spouse already a U.S. citizen?" If your client is foreign-born, you should also ask, “Are you already a U.S. citizen?”

Blandon Law would usually represent the legal permanent resident (LPR) in their efforts to obtain citizenship through naturalization.

If the couple is still married and living together, the LPR can apply for citizenship within three years after getting the green card. However, if they are divorced OR SEPARATED, the foreign spouse will need to wait five years to apply for naturalization.

Thus, it is in the best interest of the petitioning spouse for the foreign national to become a U.S. citizen as soon as possible. The only way this might be accomplished is to continue to live together as a married couple. In many cases, living in marital disharmony under the

same roof for a few more months is well worth the result.

Now it is time to check in with our two family law attorneys:

Mr. Ignor: Advising for Divorce

Jane, a legal permanent resident, comes to see Mr. Ignor to ask about a divorce. She has been a legal permanent resident for three years. Her attorney explains the process of divorce. He also explains that she does not abandon rights to their marital home if they separate. Then, because the client is foreign-born, and Mr. Ignor does not know about the immigration consequences of the divorce, he advises Jane to go see an immigration attorney.

Interested in saving her money for the divorce process, however, Jane never consults with an immigration lawyer. What Jane will never know is that *she is currently eligible for citizenship*, but as soon as she

walks out of the home she shares with her U.S. citizen husband, she will add a two year wait time to becoming a citizen.

This lack of information may also cost Jane because there are job opportunities that are available to U.S. citizens which are not available to LPRs.

Ms. Victoria: Advising to Delay Divorce

In another part of town, Ms. Victoria is advising a U.S. citizen who is considering divorcing his foreign-born spouse. Like Jane, Jim's wife has been a legal permanent resident for three years and – because they are married and still living together – she is eligible for citizenship.

Knowing that Jim has signed an *Affidavit of Support* and is obligated financially FOR 10 YEARS unless

his wife becomes a U.S. citizen, Ms. Victoria advises Jim to encourage his wife to become a U.S. citizen as quickly as possible. Then, after she becomes a U.S. citizen, they can separate and complete the divorce.

3. Immigration Consequences of Failing to Pay Child Support

Child support, as you know, is an order requiring one former spouse to pay the other a specified amount for the care and maintenance of a child. If the divorce occurred in a foreign country, and child support is not ordered by any court, then this does not apply.

Child support has immigration consequences because any failure to pay this obligation is deemed a lack of good moral character. In other words, a foreigner, including an LPR, who has failed to make child support payments may be ineligible for immigration benefits including citizenship.

Naturalization requires a legal permanent resident to have maintained good moral character for a five-year period (or three years if applying as the spouse of a U.S. citizen). Other behaviors that could be considered a lack of good moral character include: repeated drinking under the influence, certain types of arrests, or even interfering in the marriage of another and causing a divorce. It is a very subjective determination. This is true even in no-fault states where alienation of affections is not considered for divorce purposes.

Let us assume that Jane does not know how her child support obligations might affect her citizenship and her family law attorney, Mr. Ignor, also has no clue. In the marital settlement agreement, Mr. Ignor knows that Jane may have difficulty paying the child support obligation. Trying to conclude the divorce quickly (as his client wishes), however, Mr. Ignor advises her to simply "do her best" and seek a modification of child support later.

As it turns out, Jane can neither make the child support payments regularly, nor can she afford to hire Mr. Ignor again to modify the child support. So, the years pass, and she pays what she can when she can. The child support payments are not made through a depository or through income withholding.

Fortunately, the father of her child does not demand larger payments, and no one is the wiser until the day she applies for citizenship. At her interview, Jane will be asked how many marriages she has had and how

many children she has. Even if her child is over 18 years of age, Jane will be asked to demonstrate that she made all required child support payments during the five years prior to her citizenship application. Of course, Jane will have a substantial sum of child support outstanding if she cannot prove she made payments for all five years. She will not be able to become a U.S. citizen.

Contrast that scenario with the advice given by Ms. Victoria. She advises her client, Jim, to organize his financial obligations in such a way that he can prove all child support payments.

Thanks to Ms. Victoria's quick thinking and her clear explanation of the need to document every penny paid on behalf of his children, Jim was able to become a U.S. citizen when the time came.

Since failure to make child support is considered a lack of good moral character in immigration law, it can also

impact a foreigner's ability to obtain legal permanent residency (“the green card”).

Similarly, good moral character must be shown to avoid deportation. An immigration judge must examine all evidence indicating that the person exhibits good moral character.

Often, the judge will focus on whether the individual has paid income taxes, but failure to pay child support is also a consideration. This might strike some as an extremely unusual situation, given that undocumented foreign nationals do not have authorization to work in this country. However, the fact remains that child support is a consideration when determining good moral character.

Do not let your client be deported because he or she could not document their child support payments.

4. *Citizenship of a Child with a Court Order for Shared Responsibility ("Legal Custody")*

Surprisingly, you may have U.S. citizen clients who do not know they are U.S. citizens. This is because they derived citizenship. The other two ways to become a citizen of the United States are to be born here or to naturalize by applying with the U.S. Citizenship and Immigration Services (USCIS).

To derive citizenship from parents, there are several different laws that apply. One of the most interesting is *The Child Citizenship Act of 2000*.

This law makes it possible for foreign-born children to acquire U.S. citizenship automatically when the following conditions are met:

- At least one of the child's parents is a U.S. citizen by birth or naturalization
- The child is under 18 years of age

- The child is residing in or has resided in the United States in the legal and physical custody of the U.S. citizen parent

This law also applies to parents who adopt foreign-born children, but it does not apply to stepchildren.

Importantly, this law allows a foreign-born child to become a U.S. citizen on the day that her parent becomes a U.S. citizen. The problem arises when the parents are divorced.

If physical custody is not given to both parents, but only to the parent who is a legal permanent resident (or an undocumented immigrant), actual harm is going to happen to this child. Whenever there is a U.S. citizen or legal resident parent, it is important for family law attorneys to specifically indicate in divorce-related paperwork that the U.S. citizen or legal resident parent has some physical custody.

This issue usually arises when the father raises no issue and allows the mother to have complete custody

over the children. He may settle for visitation. Unfortunately, if the father is a U.S. citizen and the mother is not, this can cause their child to lose out on the benefit of becoming a U.S. citizen automatically.

That child would have to wait until she is 18 years of age to apply for citizenship on her own. This is a much longer and arduous process then just applying for a U.S. passport directly with the Department of State.

Although the term “legal custody” is used in immigration law, the term “shared responsibility” is used in family law for some states.

This is not just something that happens every now and then. It often happens in situations where a U.S. citizen husband marries a foreign-born woman, and they subsequently become parents to a child born outside the United States.

If there is a divorce, it may not be unusual for that child to remain with the mother outside the United

States. At Blandon Law, these fathers often come into our office asking if their teenage children are eligible for any sort of immigration benefit when it nears time for them to attend university. A U.S. citizen child residing in the states will pay much lower tuition than a foreign-born child.

During the review of divorce documents, we sometimes sadly discover that the father received neither legal nor physical custody rights over the child. Thus, the child cannot become a citizen without applying on his or her own behalf. This could have been avoided if the father had received at least ***partial*** legal and physical rights in the divorce documents.

5. Divorce Prior To Removal of Conditions

Foreign nationals can obtain legal permanent residency in the United States based on marriage to a U.S. citizen or a legal permanent resident. Different rules apply as to how long it will take for a foreigner to obtain a green card based on who they marry and whether they are outside the United States.

If the couple has been married for less than two years on the day the foreigner receives legal permanent

residency, the process is not over. There is a second step known as *Removal of Conditions*.

After the first step (initial filing for the green card), the foreign-born spouse obtains conditional residency. This status expires within two years. If the couple does not take the next step, the foreigner can be placed in removal proceedings (formerly known as deportation).

It is such a crucial step that immigration sends a letter to the couple at their last known address, and at the immigration interview each person must sign a document indicating that they are aware of the dire consequences.

After receiving the two-year residency, the couple must wait about a year and a half before proceeding to the second step. During this time, they should gather evidence that the marriage is progressing normally. For example, they are buying joint property and

completing other long-term goals that they set for themselves.

If the marriage is successful, they go to the next step. This is jointly filing an application known as *Removal of Conditions* (Form I-751) within the 90 days prior to the two-year anniversary of getting the green card.

Of course, some marriages end in divorce before two years. Some couples have such problems during the first year of marriage that they are at least thinking about divorce before the two-year deadline has expired. These foreigners then turn to family law attorneys.

Mr. Ignor: No Hurry in Deciding Whether to Divorce

In our example, Mr. Ignor advises Jane, a foreigner, about the divorce process. However, because she is a legal permanent resident it may never have occurred to the family law attorney that there are immigration

consequences to that divorce. He might not be aware that, because certain steps have not been taken, Jane might be put in deportation proceedings and ordered to leave the United States.

Ms. Victoria: **Decide Today Whether to Divorce**

By contrast, Ms. Victoria counsels Jim differently. When he comes to see her about getting a divorce from his U.S. citizen wife, Ms. Victoria asks how long he has been a resident and whether he has filed Form I-751.

When Jim indicates that his temporary green card is about to expire in two months, but he has not yet filed for Removal of Conditions, Ms. Victoria saves the day. She advises him that he should quickly decide whether to file for the divorce. Simply stated, Jim has no time to waste.

This is because Form I-751 can only be filed:

- within three months prior to the two-year anniversary if the couple is still happily married
- any time after a divorce is completed
- any time if the couple is still married but there is abuse in the relationship

To avoid being placed in deportation, Jim should try to complete the divorce, if indeed divorce is what he is wanting, before the two years have expired. Ms. Victoria just saved Jim from appearing before an Immigration Judge.

Based on Ms. Victoria's advice, Jim begins a quick divorce with minimal contesting of the joint property they have in common. Since the divorce is finalized before the two-year deadline, Jim applies for Form I-751 based on divorce and is never placed into deportation proceedings.
Unfortunately, Jane was placed in deportation proceedings because her divorce was not finalized at the time that her residency expired.

It is also important to note that cases of abuse can create additional hurdles when it comes to immigration and divorce. Abusers use power and control on their victims, and this can escalate when they fear they are about to lose that control over their spouse. A free ebook to help domestic violence survivors with immigration benefits is available at Blandon-Law.com.

When an abuse survivor is trying to obtain a divorce, the abuser may try to make the process take longer,

knowing that the abused spouse needs the divorce to self-petition for Removal of Conditions. The best way to address this is through a *Motion to Bifurcate* — getting an order terminating the marriage, but with family court retaining jurisdiction to decide property division or child care issues later.

6. *Employment-Based Residency: Green Card Despite Separation*

Separation and divorce can impact the ability to obtain legal permanent residency, even when the immigration case is based on employment. There are several categories that allow a foreign worker to receive a green card because a U.S. employer needs the services of that person. In addition, the worker's spouse and children under 21 years of age also receive green cards.

Some of these cases can take years to finalize. Generally, the greater the amount of work experience or the higher the level of education of the foreign national, the faster the family will receive a green card.

The problem occurs when a family law attorney has a consultation and both spouses are foreigners. At first blush, it appears that there is no conflict with immigration law because neither spouse is filing a petition for the other. However, it is important to ask whether there are any immigration cases pending for either of the spouses. This example will explain why:

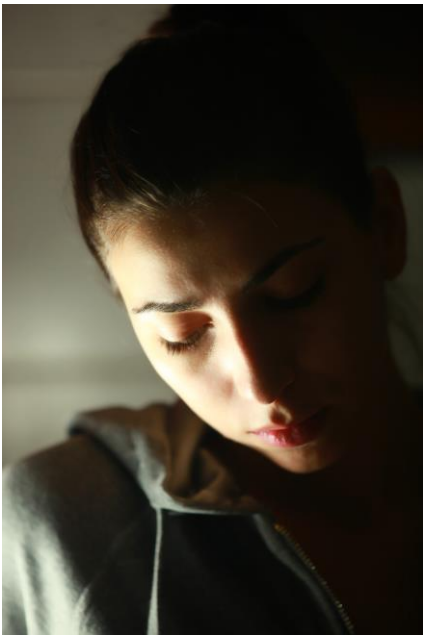
Mr. Ignor sees no impediments to the dissolution of Jane's marriage, so he counsels that she can proceed with her divorce.

Ms. Victoria, however, advises her client, Jim, to delay the filing of the divorce. In his case, his foreign wife has been petitioned for a green card by an employer. **Even though Jim and his wife are physically separated and living in two different residences, he can still obtain a green card based on that marriage.** As a result, it is in his best interest to delay filing a petition for divorce until he has his green card.

Likewise, it will be in the best interest of his soon-to-be ex-wife for Jim to be a legal permanent resident. If they have minor children for whom a support order is likely to be entered, Jim will be able to make child support payments if he is living legally in the United States and has work authorization through a green card. Without a green card, Jim would be forced to leave the United

States and would not be subject to any child support order.

7. Residency Based on Non-Physical Relationship Trauma (VAWA)



One of the least used methods to obtain U.S. legal permanent residency is the *Violence Against Women Act.* This may have to do with the name of the law. Even though it is called "violence against women," this law applies equally to men and **does not require physical acts of violence.**

Under VAWA, survivors of **extreme *mental* cruelty** OR physical abuse can petition for themselves. They can be ex-spouses of abusers, current spouses of

abusers, or persons who reasonably believe that they are spouses of abusers. The abusers can be U.S. citizens or legal permanent residents.

What counts as mental cruelty for an immigration case is conduct that does not necessarily rise to the level of abuse in family court. Humiliation in public, threats of deportation, and an abuser's threat to commit suicide are all considered forms of mental cruelty.

Family law attorneys must understand one critical element of these cases: the two-year deadline. A person *must* apply for legal permanent residency under VAWA no later than two years after divorcing the abuser.

Thus, Ms. Victoria, who is aware of the provisions of VAWA, would advise her client Jim that he should seek out immigration counsel immediately while he is in the process of divorce.

Mr. Ignor, however, does not know about the VAWA deadline. Since he is only aware that his client is a foreign national who is now divorced from a U.S. citizen, Mr. Ignor might not give his client much-needed information that could help her remain in the United States after the termination of the marriage.

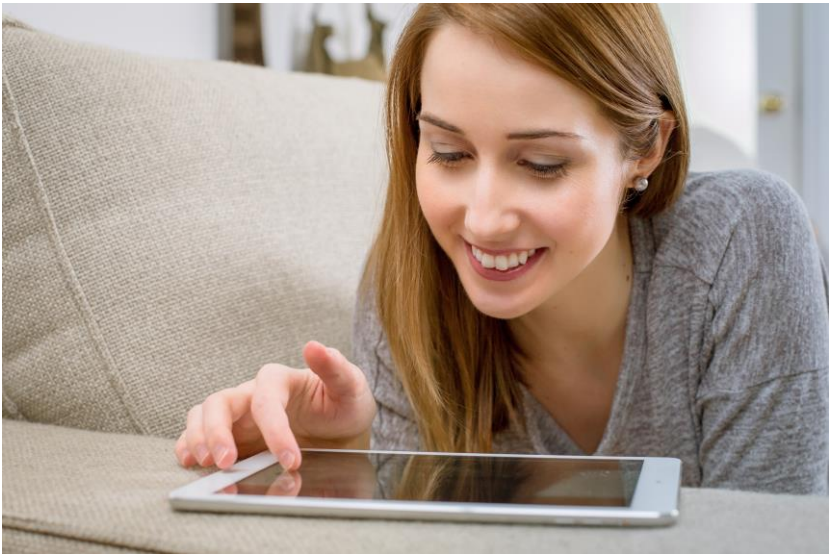
Blandon Law has been successful in obtaining green cards for survivors of abuse, including the following:

- A woman who was humiliated in public by having her hair extensions torn out
- A woman who was humiliated in public because she was a cancer survivor, and her husband said she could no longer fulfill him sexually
- A woman whose husband threatened to have her deported unless she agreed to allow a mistress in their marital bed
- A woman whose husband threatened to kill himself if she did not remain with him

- A woman whose husband shook her because she was texting his male cousin

Importantly, in these cases, there were no hospital records, no police reports, and usually few witnesses who were willing to confirm that the cruelty happened.

With the **Case Concierge™** product, Blandon Law is able to represent survivors who live in any part of the United States.



8. Spouse of a Temporary Worker and Separation or Divorce

Spouses of foreigners who are in the United States with work visas will have a tough time during separation or divorce. Some spouses have work authorization; however, their work authorization is only valid as long as they are the dependent of a multinational manager, executive or an investor. As soon as that marriage terminates, so does the spouse's status and work permit. There is no grace period. They will not even be allowed to work one day after the divorce.

Because the consequences can be so immediate, a family law attorney who knows about immigration will be of great benefit to the foreign spouse in this situation. The best course of action is to delay the divorce until the spouse has obtained his or her own status.

For example, if an investor and his/her spouse are working towards a divorce, the divorce should not be finalized until the investor's spouse has obtained a new status. Some might think that the easiest status to obtain in such a situation would be student status.

For this to happen, the potential student needs to process a visa outside the United States, but only *after* the school has admitted the potential student. This can be impossible, however, if the admission is not set to start for several months or the investor's spouse has already completed sufficient education, or simply does not want to pursue any further education. Fortunately, another option exists.

If the investor's spouse has the same citizenship as the investor (or another citizenship allowing for investor visas), she can become an investor in her own right. The funds to start the new business would come from the expected distribution of properties upon divorce.

Although it is not necessary to have the new business up and running to obtain an investor visa, the funds do need to be available prior to the issuance of the visa.

9. Adoption Before Sixteenth Birthday

Another must-know: get the adoption decree before the child becomes 16 years of age.

For immigration purposes, a foreign-born child must be adopted before his or her 16th birthday to be eligible for immigration benefits. The only exception is for the siblings of an adopted child; a sibling may be eligible for immigration benefits if he or she is less than 18 years of age at the time of adoption.

Interestingly, even an adopted child cannot benefit from adoption by a U.S. citizen or legal permanent resident until the parent has lived with and had legal custody of that child for two years. In the real world, this may require a decree from the family court prior

to the adoption indicating that the adopting parent has legal custody. Fortunately, the two-year residence requirement can begin before the child is adopted.

The importance of adoption for immigration law cannot be overstated. In immigration law, a person is a child based on several definitions including the one just given for an adopted child. **Once that person is the adopted child of a U.S. citizen or legal permanent resident, he or she will receive all the benefits accorded to a natural-born child of that adopting parent.**

In some cases, where the adopting family has had two years of joint residency with the child, as well as two years of legal custody, but the adoption is not full and final, it is possible to get an adoption decree even after the child is an adult. This is known as a *nunc pro tunc* adoption decree. Even though the decree will be issued by the court when the foreign-born person is an adult, it will have the legal consequences as if the child had

been adopted before he or she was 16 years old. Using this method, and the benefit of *The Child Citizenship Act of 2000*, a foreign-born child might be able to obtain immediate citizenship from a U.S. citizen parent.

Conclusion

The issues of family law are complex and often intertwined with highly-charged emotional issues and significant changes in clients' circumstances.

When family law cases are complicated by immigration consequences, the stakes are even higher. By reading this guide, you have taken the first step to become a better advocate for your foreign-born clients.

The wheels of justice may be slow, but immigration law is one area where change can be shockingly rapid. When a potential immigration issue arises, it is always best to consult with an experienced immigration expert. At Blandon Law, we work closely with family law attorneys to ensure that your clients do not have

to unnecessarily endure an additional traumatic life change: being forced to leave the country they have chosen as their home.

Questions to Ask Your Clients

Foreign-Born Client with a U.S. Citizen Spouse

1. Are you already a U.S. citizen?
2. Do you have a parent who is a U.S. citizen by birth or naturalization? How old were you when your parent became a citizen?
3. Are you a Legal Permanent Resident?
4. How long have you been a Legal Permanent Resident?
5. When was the date of your marriage and when did you receive legal permanent residency? *(if married less than 2 years on the date of residency, the foreign national spouse MAY be placed in deportation proceedings - see page 21)*
6. Are you still married and living together? *(LPR can apply for citizenship within 3 years after getting the green card)*
7. Are you divorced or separated? Are you living in two separate residences? *(LPR must wait 5 years to apply for naturalization)*
8. Have you been ordered by a court to pay child support? Have you ever been late making those payments? *(during the 5 years prior to citizenship application)*

9. If you are required to pay child support in this matter, is there any reason you would not be able to pay it?
10. Have you paid all your income tax obligations?
11. Do you have any foreign-born children? *(the USC or LPR parent must be awarded at least partial <u>legal and physical custody</u> for the child to qualify for automatic citizenship)*
12. Have you experienced physical harm or mental cruelty in your marriage?
    (physical or non-physical; can include a pattern of humiliation, threats or emotional abuse; abuser can be USC or LPR)
13. Have you adopted children or are you in the process of adoption? How old are the children?

U.S. Citizen Client with a Foreign-Born Spouse

1. Is your spouse already a U.S. citizen?
2. Is your spouse a Legal Permanent Resident?
3. How long has your spouse been a Legal Permanent Resident?
4. When was the date of your marriage and when did your spouse receive legal permanent residency?
   (if married less than 2 years on the date of residency, the foreign national spouse MAY be placed in deportation proceedings - see page 21)
5. Are you still married and living together?
   (LPR can apply for citizenship within 3 years after getting their green card)
6. Are you divorced or separated? Are you living in two separate residences?
   (LPR must wait 5 years to apply for naturalization)

7. Did you sign an Affidavit of Support (Form I-864)?
8. Has your spouse worked for at least 10 years *(40 quarters of work)*?
9. Do you have any foreign-born children? *(the USC or LPR parent must be awarded at least partial <u>legal and physical custody</u> for the child to qualify for automatic citizenship)*
10. Have you adopted children or are you in the process of adoption? How old are the children?

If Both Client & Spouse are Foreign-Born

1. Are there any immigration cases pending for either yourself or your spouse?
2. Is your spouse being sponsored for a green card by an employer? *(consider recommending a delay in filing for divorce until they receive their green card)*
3. Is your spouse in the U.S. under an investor visa or as a manager/executive of a multinational firm?
4. Are you and your spouse citizens of the same country? What is your country of citizenship?

Glossary

A

Asylee – persons in the United States who have been granted refuge due to a well-founded fear of persecution in their homeland. The term also refers to the spouse and children of such a person.

Advance parole – permission to return to the United States after traveling abroad. This is given to foreigners who are not yet legal permanent residents, but have a case pending before the U.S. Citizenship and Immigration Services.

Authorized presence – period during which a foreign national does not accrue time in unlawful status, as permitted by the Department of Homeland Security. Deferred action, appeals to the BIA, and consideration of change of status applications are examples of such time periods. Persons who have authorized presence

are legally present in the United States, for purposes of the immigration laws.

B

Board of Immigration Appeals – also known as the Board, the BIA is an administrative appellate body within the United States Department of Justice. Published decisions of the Board are used as guidelines for Immigration Judges deciding asylum cases.

C

Citizen – a member of the United States, eligible to participate in its government with rights such as holding public office, voting in elections, and being eligible for government jobs.

Convention Against Torture – referred to as CAT, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment is an agreement signed by member countries to avoid torture around the world. Persons who may be tortured in their home country cannot be deported, even if their asylum case is denied.

Common-law marriage – a civil union that is not a marriage. If the relationship is recognized in the country where the common-law marriage occurred, Immigration will treat the couple as married for purposes of a green card.

E

Employment authorization – work permission issued by the U.S. Citizenship and Immigration Services. This is commonly called a work permit.

F

Foreign national – anyone who is NOT a citizen of the United States is a foreign national. Although foreign nationals may have entered through different methods

and have different ties to their communities, they must apply to the government if they wish to work and remain legally in the United States. Thus, it is important to become a U.S. citizen at the earliest opportunity.

G

Green card – the government-issued identification card issued to legal permanent residents

I

Immigration – the informal term used to describe federal officers who work with U.S. Citizenship and Immigration Services. It is an agency within the Department of Homeland Security, granting benefits such as asylum, work permits, legal permanent residency and naturalization. Officers of other agencies – including Customs and Border Patrol or Immigration and Customs Enforcement – are often called Immigration officers as well.

L

Legal permanent resident – referred to in this book as an LPR, a foreign national who is allowed to work and remain in the United States indefinitely. To become a United States citizen (USC), an LPR must make an application, pass tests, and swear an oath of allegiance.

N

Naturalization – the process by which a foreign national becomes a U.S. citizen.

P

Priority date – the date that a petition, including a self-petition, is received by Immigration. Only when the priority date is current can the foreigner file the application for residency. The monthly Department of State Visa Bulletin shows which priority date is current that month.

R

Refugee – a foreign national who is outside of the United States and seeks protection in a second country because of harm suffered in their homeland.

Removal – prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, issuing an order to return foreign nationals to their homelands was known as deportation. Today, it is removal.

Removal of Conditions – foreigners who received residency before the two-year anniversary of their marriage must file Form I-751 within the 90-day period before the green card expires. The only two exceptions to this filing deadline are abuse and divorce.

S

Status – persons are deemed to be in status when Immigration has formally approved their visa, application, or petition. The duration of status varies based on the benefit granted.

U

U Visa – legal status and work authorization granted to a victim of certain crimes who is willing to help law enforcement with prosecution.

United States citizen – referred to as a USC in this book, a person who was either born in the United States of America, derived citizenship or naturalized.

V

Violence Against Women Act– VAWA is a series of laws that provides immigration benefits to spouses, children or parents of abusers.

Acknowledgements

To everyone who provided suggestions, constructive critiques and moral support, I appreciate your contributions to this effort more than you can know.

I would also like to include a special note of thanks to family law attorney Fernanda Torres, Esq. Before becoming a family law attorney, Ms. Torres worked at Blandon Law. Her input has been invaluable in creating this guide, which I hope will be a useful resource to better serve your clients.

Thank you also to Mesia Quartano for her guidance and editing prowess.

About the Author

Because she is passionate about removing the fears of the vulnerable, Elizabeth R. Blandon has been practicing

immigration law for almost twenty years. The association of lawyers of her state has certified her as an "immigration expert." Fewer than 100 lawyers in Florida have been honored with this Board Certification.

The Martindale-Hubbell Peer Review Rating System rated Ms. Blandon AV. This score – which is the highest rating possible – reflects the confidential opinions of both judges and other attorneys regarding Ms. Blandon's legal ability and adherence to the highest level of professional ethics.

Her numerous reviews from clients and professional peers on the website AVVO have given her the highest rating (10.0 Superb) as well as the Clients' Choice award. She is regularly invited to speak at immigration seminars and has been featured in international news media, including *The New York Times*.

She founded Blandon Law to help survivors of abuse make a life for themselves in the United States – whether they are fleeing from a person or the government of a country. Clients come to Blandon Law from across the United States and are citizens of over 80 countries.

Ms. Blandon graduated from the University of Pennsylvania Law School, considered one of the best in the nation. Before studying law, Ms. Blandon honed her writing skills at Boston University where she earned two degrees, one in Literature and another in Journalism. Ms. Blandon also speaks fluent Spanish and French.