FALL OF 2008
IMMIGRATION LAW AND PROCEDURE
MASSACHUSETTS SCHOOL OF LAW

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EXAM INSTRUCTIONS


Questions 1 through 5 are each worth 20 points. Read the facts completely and analyze the situation. Detail the advice you would give to your client.

The following clients have come to you for a consultation. Use your knowledge, the Act and the September 2008 Visa Bulletin to analysis and discuss their situation. Detail the immigration process for each client and the likelihood of a favorable outcome. Spot the issues and determine which regulation[s] and form[s] that is necessary in each case. Results may not be immediate.

Abbreviations:

USC = United States citizen
LPR = lawful permanent resident
BCIS & ICE = formerly Immigration Service
QUESTION 1

Max is a native and citizen of Jamaica who received his LPR status in 1998 at the age of 24. He informs you that he obtained his LPR status through marriage to his wife Beverly, a naturalized USC. Beverly married Max in Jamaica on January 1, 1996 and returned to the United States to process his petition. Pursuant to the approved visa petition Max received an interview at the American Consulate at which time the American Consulate approved his immigrant visa and he entered the US on February 14, 1998 at Miami, Florida.

Beverly, his wife, works as a registered nurse in Miami, Florida and they have three (3) USC children. His children were born on 12/1998; 1/2000 and 3/2001. The family resided together until Max left Miami in March of 2002 and moved to Jamaica Plain, MA.

Presently Max is living with Raquel and their six (6) months old son Gene. Raquel is from El Salvador who entered the United States three (3) years ago on a tourist visa from El Salvador. She has no legal status.

Max tells you he wants to apply for US citizenship but his has numerous concerns. His job situation since his entry into the US has been sporadic. Presently he is a Boston Cab driver and has numerous traffic violations. Also in September of 2003 he was arrested in Dorchester, MA for the charge of Assault and Battery w/a dangerous weapon (baseball bat) when he was being robbed in his cab. He pled guilty and received six months probation and paid court costs.

His last trip outside the US was in 2002 when he returned to Jamaica for his mother’s funeral.

What do you need to obtain/know from Max to determine if he is statutorily eligible for US citizenship? What are the requirements?

Discretionarily: what concerns do you have about his LPR status, family and employment etc. regarding his application process?
QUESTION 2

Bruno entered the United States as an F-1 student in 2004 to attend Salem State College. His course of study is business administration. During his studies, he rented an apartment with two other classmates. Also during school breaks and long weekends he has traveled within the United States.

In 2006 he completed his Associate’s Degree. In June of 2006, he traveled home to Brazil for the summer vacation. He returned to the US in September of 2006 to continue with his education. He attended school fulltime at Merrimack College and graduated in May of 2008 with a Bachelor’s degree in Business Administration.

Presently he is employed with Lindt’s Chocolates as a payroll supervisor.

Bruno comes from a wealthy family in Brazil. He has traveled to the United States on many occasions before attending college.

He also tells you that he is engaged to Claudia who is also from Brazil. Claudia is a 2nd year student at Mass College of Art.

Bruno wants to remain permanently in the United States and seeks your advice.

What information and documentation do you need from him to review his status?

With the information you receive, what is your advice on his present status?

What can be done, if anything for him to remain in the United States, or for him to return in the future?

Can Claudia be included in his future plans?
QUESTION 3

John Grant is a 42 year old citizen of the United States, born in Palm Beach, Florida. John is presently employed as a Senior Partner with Whittier Trust Funds. He currently resides in Dover, MA. He was previously married and has one 19 year old son, David.

John tells you that on a trip to St Maarten in September of 2007, he met Andrea. Andrea was on St. Maarten with her girlfriend for an extended vacation. Andrea is from Slovakia. When he returned home to the US, he kept thinking about her and he knew that she would be in St Marten until November 30. He then booked another trip and returned for 2-3 days to visit with her again before she returned to Slovakia.

He tells you that after she returned to Slovakia they kept in communication via e-mail and telephone calls. Approximately in February of 2008, John decided that he wanted to meet her family and he traveled to Slovakia for a two (2) week vacation. The couple stayed at the Radisson Hotel in the capital city of Bratislava. They spent their time sightseeing and getting to know each other and the city.

After his return to the US, he tells you that the relationship progressed and he decided to plan a trip to meet in Paris. Paris was easy for her to travel to and he would be there on business. They met in September of 2008.

They discussed a future trip for her to the U.S. to visit but he tells you that Andrea had applied for a visitor’s visa at the U.S. Consulate. However, because she is not working, they did not issue her a visa and therefore is unable to travel to the U.S.

They have talked about their future and how they could be together and start a life. This is when they discussed the possibility of marriage.

John’s family has not met Andrea. Because he has so many family members in the US he wants to start his married life in the U.S.

He comes to you for advice on how she would be able to legally enter the U.S. He would like to plan a spring wedding in Palm Beach, Florida and needs to know what is to be done to accomplish this.

What is your advice on how to proceed with getting Andrea into the US?

What will be the process?

Where will the initial petitions be processed?

What can be expected after that?

What documents do you need from John and Andrea?

Ultimately, if and when Andrea arrives in the United States, what will be the continued process?
QUESTION 4

You have received a phone call from Martine Dexter who resides in New Jersey. She has informed you that her brother, Wes, has been arrested and detained by Immigration and Customs Enforcement (ICE) officers. He is presently detained in Plymouth County House of Correction, Plymouth, MA.

Martine and her family are from Haiti. Her entire family, consisting of four (4) siblings and her mother, are all naturalized USC and or LPR’s living in the NJ, NY, MA and FLA.

Her brother, Wes is a LPR, married to Marie (USC) since January 2001 and they have two (2) USC children. The live and own their home in Milton, MA.

She tells you the facts, as she knows it: Wes initially entered the US on a B-2 tourist visa in 1987. After his marriage to Marie in January of 2001, Marie filed for his LPR and he received his lawful status in November of 2001 at the Boston immigration office. He has always resided in MA. He has been employed at various jobs since his entry. Currently he works part time as a cab driver and is a stay at home dad to his two (2) children. His wife, Marie, is an equity trader with State Street Financial.

Recently, he was picked up by the ICE officers after his criminal case was completed in Dedham District Court. In August of 2008, he initially was charged with Assault and Battery, against his son. The story is that after having dinner with the family, Wes locked the keys in his car. In the parking lot at Applebee’s, the car window was opened a bit. He was trying to get his son’s small arm through the opening when the child started to cry. Patrons of the restaurant called the police on him. He was charged with A&B, against a family member.

The next day after his arraignment in Dedham District Court, Wes and his family were paying the bail. Wes started to yell at his son saying “see what trouble you got your Daddy into”. The officers over heard that and informed the Clerk of Court. Wes was then charged with intimidation of a witness.

For both cases, Wes pled guilty and received a 364 days suspended sentence on each count. Due to these charges and convictions, ICE took him into custody after the sentencing. Under the immigration regulations he is mandatorily detained by the Service and is not eligible to be release on bond.

He is now before the Immigration Court for removal proceedings.

What, if anything, is he eligible to apply for before the Court, to defend his status in the U.S.? Does he qualify for any relief?

What information and documentation do you need from him and his family to prepare for your case?

What will be the standard of review the Court will be looking into before deciding his case?
QUESTION 5

Fundamental definitions and procedural distinctions encompass U.S. immigration laws; we discussed several of them in detail during the semester, including the following:

**DEFINE** the word or phrase given, according to US immigration laws; and **EXPLAIN WHY** each word or phrase given is important. Provide the section of law and example for each

A. Step-Child  
B. Nonimmigrant  
C. Conviction  
D. Good Moral Character