

# Immigration Matters

By Evan George



What, if any, changes to the U.S. immigration system can we expect under the Obama administration? While a comprehensive overhaul of the U.S. immigration laws might still be a long time coming, there is reason to believe that there will

be certain immigration related reforms in the not too distant future.

One such area of legislative reform addresses the issue of young people who were brought to the United States by their family as undocumented children. These undocumented youth have grown up in the United States, stayed in school, and kept out of trouble; however, when they turn 18 years old, they find themselves as illegal aliens in the only country that they have ever known. Due to factors beyond the undocumented youths' control, i.e., that their parents brought them illegally or forced them to overstay their visa, they are prevented from adjusting their status to legal permanent residency, they face barriers to higher education, they are not allowed to work or obtain a driver's license, and they have to live in constant fear of detection, detention and deportation by the immigration authorities. These undocumented youth often have little or no ties or experience in their home country, and they are ultimately stuck in a state of limbo in the United States because they bear an inherited title of an illegal immigrant passed on to them by their parents.

The Development, Relief and Education for Alien Minors ("DREAM") Act (S. 729) was first introduced in the Senate in 2001 and has garnered a lot of bipartisan support. It was reintroduced in the Senate on March 26, 2009 by Richard Durbin (D-IL) and Richard Lugar (R-IN), and in the house, where the bill is called the American Dream Act (H.R. 1751), by Howard Berman (D-CA), Lincoln Diaz-Balart (R-FL), and Lucille Roybal-Allard (D-CA). The DREAM Act would enable certain undocumented youth who either attend college or serve in the U.S. military to apply for lawful status and, eventually become eligible for U.S. citizenship. It would also eliminate a federal provision penalizing states that provide in-state tuition without regard to immigration status.

In order to qualify for conditional permanent resident status under the DREAM Act, an applicant who is under the age of thirty must have been brought to the United States before their 16th birthday (at least five years before the date of the bill's enactment), and must have

either graduated from high school, been awarded a GED, or been accepted to college. Undocumented youth who have committed certain crimes would not qualify for the DREAM Act. At the end of a six-year conditional residency, the DREAM Act immigrants can apply for United States citizenship if they demonstrate good moral character and have completed at least two years of college or military service.

Another area of potential change deals with the issue of what Constitutional rights non-citizens are entitled to in our deportation system. The outgoing Bush administration dealt an eleventh hour blow against the due process protections that non-citizens in the U.S. deportation system have relied upon for decades. On January 7, 2009, Attorney General Michael Mukasey (AG) issued a decision in the *Matter of Compean*, 24 I & N Dec. 710 (A.G. 2009), an appeal of an Immigration Judge's deportation order before the U.S. Department of Justice, Board of Immigration Appeals, holding that non-citizens in removal proceedings do not have a Constitutional right to counsel.

The AG held that removal proceedings are civil in nature and, as such, non-citizens in this process do not have any rights under the Sixth Amendment of the Constitution, which applies only to criminal proceedings. The AG stated that although the Fifth Amendment's Due Process Clause does apply in removal proceedings, non-citizens only have a statutory privilege to retain private counsel at no expense to the Government, and not a general right to counsel. By extension, the AG held that if a non-citizen does not have a right to counsel, then s/he does not have a specific right to effective assistance of counsel, thereby eliminating the non-citizen's remedy of reopening a case where they were the victim of incompetent or fraudulent action, or complete failure of action.

Under the Obama Administration, the decision in *Matter of Compean* could be reversed. During his Senate confirmation process, Attorney General Holder indicated that he would reexamine *Matter of Compean*. AG Holder stated: "The Constitution guarantees due process of law to those who are the subjects of deportation proceeding. I understand Attorney General Mukasey's desire to expedite immigration court proceedings, but the Constitution requires that those proceedings be fundamentally fair."

If you have an immigration-related issue or question, feel free to contact me at 352-378-5603 or [evan@evangeorge-law.com](mailto:evan@evangeorge-law.com).