

PROTECTING EMPLOYEE & CONSUMER RIGHTS



ATTY. CONRADO JOE SAYAS

BUSINESSES that involve the continuous flow of customer traffic require the constant attention of customer service employees. These businesses face the difficult task of balancing the need of the business to provide uninterrupted customer service and the need of the employees to rest or take their meals. When employees need to take breaks mandated by law, they have to be relieved of their duties for the duration of the break and another employee must take up their post. Otherwise, the service interruption results in substantial loss of income or other detriment to the company.

Some customer service employees who provide uninter-

rupted service include parking attendants and cashiers, valets, security guards, grocery cashiers and waiters. To keep the payroll costs down, there is a tendency among some employers to hire only the bare minimum number of employees. However, some employers do not take into account the need for extra staff who can relieve other employees who need to go on lunch breaks, rest breaks, bathroom breaks or unexpected emergencies. Many large and small companies have failed to establish a procedure that enforces and monitors lunch and rest breaks as required by law.

Some employees are told that they can get their breaks only when they are not busy or when they have an available reliever. Since they may always be too busy to leave their assigned posts and there is no reliever available, employees may simply suffer through this ordeal. Some

would have to work through their lunch and would have to forego the rest breaks altogether. When these practices are tolerated, they could develop into a larger legal problem for the employer. The situation is aggravated when some managers respond to employee complaints of rest and meal break violations by threatening to fire the complainant.

Employers whose business necessities prevent them from giving lunch breaks and rest breaks to their employees can solve this problem by paying their employees the extra hour of compensation that the law requires. Employers cannot just ignore the lunch and rest break rules as if they do not exist. Neither can employers claim as excuse or defense that the employees "waived the right" when they did not take their breaks or they did not ask for extra pay.

The California Wage Orders

require employers to provide the meal and rest breaks to hourly workers under the following rules:

Meal breaks. A 30-minute meal period must be authorized for each employee for every 5 hours of work. During the meal period, the employee must be relieved of all duties. If the employee is not relieved of all duties, the employee is considered to be "on-duty" and the meal period will be counted as time worked. If the meal break is not provided as required, the employer shall pay the employee one hour of pay at the employee's regular rate for each workday that the meal break is missed. When a meal period is waived, the employee is entitled to compensation for all the working time, including any on-the-job meal periods.

Rest period. Rest breaks should be authorized for all employees whose total daily work

time is at least three and one-half (3 1/2) hours. The required rest time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours. If the rest break is not provided as required, the employee shall be paid one hour of pay at the regular rate for each workday that the rest period is missed.

Companies who ignored break time rules learned the hard way that they cannot sacrifice the employees' welfare for the company's bottom line. In 2005, one of the world's largest retailers was ordered to pay over \$170 million in damages to about 116,000 of its former and current California employees for this violation. Several restaurant chains have faced similar lawsuits to recover compensation for workers' missed breaks. These lawsuits serve as an important lesson to employers everywhere: The needs of the

business do not justify or excuse violations of the lunch and rest break rules.

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IMMIGRATION EDGE



ATTY. DANIEL HANLON

IN an abrupt turn around, the US Court of Appeals for the 9th Circuit granted a joint motion to dismiss a case in which it had previously ruled that a person who entered the US through the use of a fraudulent document had not been "admitted" to the US, such that the person was not eligible to seek adjustment of status to green card. The Court vacated its prior decision, as the parties agreed to reopening the case before the Board of Immigration Appeals (BIA) where they will re-argue whether a waiver of misrepresentation remains available in conjunction with an application for adjustment of status, as had long been the practice in the Immigration Courts and before the BIA.

In *Orozco v. Mukasey*, 521 F.3d 1068 (9th Cir 2008) the court evaluated whether a person who attained entry through the use of a green card issued in the name of another person, could apply

Ninth Circuit vacates Orozco; restores relief for fraudulent admission

for adjustment of status in the US. Generally, a person must establish that he was "admitted" to the US in order to seek adjustment of status. In making an application for adjustment of status, an applicant must also prove that he is not "inadmissible" to the US. Certain grounds of inadmissibility may be "waived" during the process, such as prior criminal convictions or immigration violations. For instance, a person who previously entered the US under an assumed name, as was the case in *Orozco* could be granted a waiver of inadmissibility due to fraud, if he could establish that his US Citizen or green card holding spouse or parent would suffer "extreme hardship" if he were not admitted to the US as a green card holder.

For years, the waiver application under INA §212(i) was used to waive application of inadmissibility due to fraud in conjunction with an application for adjustment of status. BIA and Federal Court jurisprudence acknowledged that a waiver, if granted, operates to "cure" the ground of inadmissibility due to fraud, such that the applicant

for adjustment of status with a waiver would be deemed to have been legally admitted and thus eligible to seek adjustment of status.

Initially, the Court in *Orozco* held that even a waiver of a prior entry through fraud could not operate to render that entry an "admission" under the Immigration Act for the purposes of seeking adjustment of status. Each year, many people enter the US under an "assumed name" or through some other form of fraud. While this illegal conduct cannot be condoned, the Immigration & Nationality Act has long provided for certain waivers of illegal conduct based on a person's after-acquired equities in the US, such as the existence of strong family ties and hardships to innocent family members due to the deportation of the offender. The Court's decision in *Orozco* appeared to eviscerate the long-standing practice of allowing waiver applications to render a previous entry through representation an "admission."

Since the Court has vacated its prior decision, waivers

should be available, as before, under similar circumstances. Of course, these waivers are not easy to obtain, as an applicant must establish "extreme hardship" to his qualifying relative spouse or parent to have any hopes of receiving a waiver. Applicants for adjustment of status facing obstacles due to prior misrepresentation should consult with competent counsel for a fair evaluation of their eligibility for a waiver and discussion of the associated risks.

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Aged-out children...

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be recalculated pursuant to the CSPA. Despite his age, the son was considered as dependent or "minor" child and was allowed to follow and join his mother in the United States. He arrived as a lawful permanent resident and reunited with his family on June 18, 2008.

On June 18, 2008, the US Consulate in Mumbai, India, approved our request for recalculation of age and allowed the 25-year old son of our client to follow and join her in the United States as her dependent or "minor" child. The client here was petitioned by her sister.

Finally, on October 22, 2008, the US Consulate in Mumbai, India, approved another request for recalculation of age and allowed the 26-year old son of our client to follow and join her in the United States as her dependent or "minor" child. The client here was petitioned by her mother.

If you have any questions regarding this topic, please feel

free to call us at (818) 956-8844 [Glendale] or at (626) 331-8188 [Covina] to schedule an appointment for your free initial consultation. You may also visit us www.palacioslawfirm.com.

Attorney Eugene M. Palacios is the founder and principal of the Law Offices of Eugene M. Palacios, APLC. He has great depth of experience and a successful track record in handling employment and family-based petitions as well as PERM and naturalization applications. He is licensed as an attorney in California and is admitted to practice before US Immigration Courts, the US Central District Court, and California State Courts. He is also an active member of the American Immigration Lawyers' Association. His offices are located at 100 North Brand Boulevard, Suite 600, Glendale, California 91203 and at 800 South Barranca Avenue, Suite 250, Covina, California 91723. (Advertising Supplement)

The above article does not, and is not intended to, constitute legal advice for a specific immigration problem and does not create an attorney-client relationship between our office and the reader. It is for informational purposes only and reflects our law firm's opinions and views on general issues. (Advertising Supplement)

PROBLEM SOLVED



ATTY. KELLY O'REILLY

DISRUPTION, it's something I have become quite accustomed to as the father of five children. Plans change, appointments rescheduled and calendar's rearranged; I've learned these last few years to expect the unexpected and to roll with the punches. However, in an immigration context some changes are not expected nor are they something you can easily get over, especially if it's a knock on your door at 6 am by ICE officers.

There is an obvious increase in the amount of raids and apprehensions carried out nationally by the Immigration Service's enforcement arm, namely, Immigration and Customs Enforcement or ICE. Reports are coming in daily of new ICE enforcement teams being organized and given the charge to seek out and apprehend foreign nationals who have overstayed their visa, failed to report to school, were previously ordered deported or have a criminal conviction.

These teams—using intelligence that includes information gathered from employment records, social security numbers, DMV records and fingerprints—have proven most effective. Enforcement actions or as ICE euphemistically calls them, "audits," have resulted in raids on restaurants, manufacturers, farm operations and even private homes.

When it comes to timing for these raids or audits there is no safe period. Raids are often conducted during the busiest hours for employers and early

A knock on your door

in the morning for private residences. Individuals are separated from their loved ones and co-workers, interviewed and fingerprinted. Employer I-9 records are reviewed and the individual required to prove status and eligibility. This can be a frightening process even for those who are in status.

If the foreign national is undocumented the ICE officers will arrest and incarcerate the alien. The alien will quickly be put in the process known as deportation. During deportation proceedings the alien may ap-

will initially look familiar, there is a judge, an attorney for the Immigration Service and your own counsel, the process will not.

Delays in the system are common causing great frustration with the immigration bar, adversarial feelings abound as counsel for the Immigration Service will be zealous in seeking the foreign nationals forced departure. It is confusing, it is different and it is scary.

As you can see by the previous an average day can quickly change to a series of events that

“When it comes to timing for raids or audits, there is no safe period. Raids are often conducted during the busiest hours for employers and early in the morning for private residences.”

ply for release from custody by posting a bond. Such a release is not automatic in all cases, especially if the alien has already received a previous order of deportation.

If the alien has already been ordered deported the ICE team can work quickly without much in the way of judicial review to put the alien on a plane back to his or her home country. At this point it is imperative that the foreign national call an immigration attorney immediately to see if there is some way to prevent his or her quick departure from the US.

Once in custody the undocumented or previously deported alien will enter the enigmatic world of immigration court. A system that bares little semblance to the court system most folks are familiar with. A system with its own language, procedure and dynamics. Though it

will place you in a situation you do not want to experience. So what can you do?

If your immigration status or situation falls within this scenario just discussed, you should immediately seek out a reputable immigration attorney with experience in court. There are ways to proactively correct your status that will prevent that raid or knock on the door. Take the step now and meet with an attorney and find out what can be done before you experience that disruption at 6 am.

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Call our office for appointment (626) 284-1142 and ask for Angie or Jess. Atty. Yang will personally interview you

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