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## **“Greencard”: It’s Not Like the Movies – Preparing Your Clients for Marriage-Based Interviews**

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## "GREENCARD": IT'S NOT LIKE THE MOVIES— PREPARING YOUR CLIENTS FOR MARRIAGE-BASED INTERVIEWS

by Lindsay A. Curcio. Radlyn Mendoza. Michelle Saenz-Rodriguez, Jonathan Willmoth\*

### INTRODUCTION

This article will discuss the issues that arise in U.S. Citizenship and Immigration Services (USCIS) interviews on applications for permanent residence and naturalization. This article accompanies a panel

that includes two mock interviews that provide an overview and insight into what occurs at an interview for adjustment of status to permanent residence and at an interview for naturalization, both based on marriage.

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*Articles do not necessarily reflect the views of the American Immigration Lawyers Association.*

**Lindsay A. Curcio** has been practicing immigration law since 1990. She is an adjunct professor at New York Law School and co-director of the Safe Passage Immigration Project at New York Law School's Justice Action Center. Ms. Curcio is also a solo practitioner handling a wide variety of immigration cases. She is a frequent writer and speaker on immigration law topics as well as Italian studies. Ms. Curcio was awarded a bachelor's degree from Northwestern University, a **J.D.** from Chicago Kent College of Law, and a master's degree in Business Administration from Fordham University.

Radlyn Mendoza has shared her immigration expertise with other attorneys and local judges as a speaker for several CLE courses sponsored by the Norfolk-Portsmouth Bar Association, the Virginia Beach Bar Association, and the Virginia state bar. Ms. Mendoza also has provided attorney training to the Norfolk public defenders' office on the immigration consequences of criminal convictions, and serves as AILA liaison to the Norfolk USCIS office. In 2007, she coordinated the Hampton Roads area's first-ever citizenship day event, with other local attorneys and immigration officers from Norfolk USCIS.

**Michelle Saenz-Rodriguez** began her immigration career as a judicial law clerk to the seven immigration judges in Harlingen, TX, under the attorney general's honor program. She then moved to Dallas, where she and her husband, George Rodriguez, established Saenz-Rodriguez & Associates, PC. Their practice revolves around family-based immigration cases as well as complex litigation and removal defense. Ms. Saenz-Rodriguez is an adjunct professor at Baylor Law School in Waco and has been very involved with the Texas AILA chapter, serving in liaison positions for the Dallas district office.

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### PROFESSIONAL RESPONSIBILITY

The ABA Model Rules of Professional Conduct contain a requirement of "candor to the tribunal." This requirement is generally applied to administrative agencies, including the Department of Homeland Security (DHS). Therefore, the attorney faces possible sanctions and even civil and criminal penalties for violating these rules. ABA Model Rule 3.3 prohibits knowingly making a false statement to a tribunal, submitting false evidence, failing to correct a false statement made to the tribunal, failing to disclose adverse legal authority, and not taking reasonable remedial measures including disclosure to the tribunal if a client intends to or engages in criminal or fraudulent conduct related to the matter at hand. For these reasons, it is important that you carefully review the facts of the case with your clients, and prepare them for their upcoming interview. This will allow you to make sure that your clients are accurately reporting the facts, and allow you to advise them of the possible penalties for providing false testimony.

Additionally, the *Adjudicator's Field Manual* (AFM), to which the adjudicating officer conducting the interview may refer, indicates that when an attorney "insists on responding to questions or coaching the person being interviewed," the officer may terminate the interview.<sup>1</sup> The adjudicating officer also may view the attorney's role as advising the client on points of law, but not responding to questions the officer has asked the client.<sup>2</sup> Lastly, except in limited circumstances, the officer will likely not allow the attorney to serve as interpreter for the client.<sup>3</sup> Therefore, it is important that the attorney

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<sup>1</sup> *Adjudicator's Field Manual* (AFM) § 15.4(b).

<sup>2</sup> AFM §15.8.

<sup>3</sup> AFM §15.7.

properly prepare the clients for interview so that his or her conduct is in compliance with the officer's expectations.

### **MARRIAGE-BASED ADJUSTMENT INTERVIEW**

Prior to any interview with USCIS, it is important that the lawyer meet with his or her clients in order to thoroughly prepare them. In most situations, the clients have not been through this type of interview before and they look to their attorney for guidance. The lawyer must inform them of the kinds of questions they will be asked, the documents they will need to bring with them, and the possible outcomes of the interview.

#### **Effective Preparation**

For marriage-based adjustment of status interviews, begin preparing the clients by reviewing the following forms: I-130 (immigrant petition for alien relative); I-485 (application for adjustment of status to permanent residence); G-325A (biographic information); and I-864 (affidavit of support). Confirm that the information listed on the forms is still correct, and request updated documentation regarding any change of address, employment, and relationships (births, deaths, marriages, and divorces), as well as current documentation relating to any arrests, pending court cases, convictions and other dispositions.

In reviewing the forms and documentation, the clients will become aware of the type of questions or concerns an officer might have regarding their case. These include issues of eligibility to marry (validity of the termination of a prior marriage or the validity of the current marriage), and grounds of inadmissibility including criminal bars, unlawful presence, medical, and public charge issues.

When reviewing the I-861 affidavit of support, be sure that the couple can document their income and that they have the required tax and W-2 forms in their possession. Review the I-864 questions about household members and document any changes since the initial filing of the case. Remember, the determination as to whether the I-864 requirements have been met is made by the officer on the date of interview, so changes to that form are common.

Finally, to help ensure that your clients are on time for the interview, be sure they have clear directions to the USCIS office and explain<sup>4</sup> any special procedures for entering the building.

### **What to Expect at a Marriage-Based Interview and the Type of Questions That May Be Asked**

The following are categories of questions that USCIS adjudicating officers often ask a couple at a marriage-based interview. While the lawyer may prepare the couple for the interview, it is only the couple who may answer the questions.

- Questions concerning basic eligibility for adjustment of status, criminal issues, prior marriages, and entry into the United States. In order to be approved for adjustment of status, the alien must have been inspected and admitted, and have a visa immediately available.<sup>4</sup> In addition, the alien must not be subject to any of the grounds of inadmissibility, including criminal grounds, health related grounds, public charge, immigration violations, and national security.<sup>5</sup>
  - Questions involving deeper inspection into the couple's relationship, such as: What did the couple buy each other for their last Christmas or birthday celebration? What is the color of their kitchen? Who wakes up first each day and when?
- Specific questions raised by the forms or documents submitted regarding the bona fides of the marriage or the applicant's eligibility for adjustment of status. For example, the officer may ask: Why you did not file taxes? Why did you indicate your filing status as "single," and not "married?" For what offense were you arrested? What was the disposition of the arrest? How many children do you have and with whom?
- The officer also will ask the foreign national about his or her entry into the United States as well as any international travel after the application for adjustment of status was filed. If the client travels while the adjustment application is pending without first obtaining advance parole (or they did not travel on a valid H-1B or L-1 nonimmigrant visa), the adjustment application will be deemed abandoned.<sup>6</sup>
- In addition, applicants who have accrued 180 days or more of unlawful presence prior to the receipt of the application for adjustment of status by USCIS, will trigger the three- or ten-year bar (depending on the amount of unlawful presence)

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and Nationality Act (INA) §245(a).

<sup>5</sup> INA §212(a) *et seq.*

Also available as part of the eCourse

[Family-Sponsored Immigration; Navigating the Complexities of Marriage Cases; plus Immigration Issues Involving Minors](#)

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