



Immigration Monthly

October 2006

- ***The Semantics Game: Illegal Immigrant vs. Illegal Alien – Defined And Conquered by David D. Murray, Esq.***
- **PERM Workshop, Early Bird Special, New York City, Dec 1st, 2006**

It is time we once and for all decide whether the term "illegal immigrant" can properly be applied to any class of alien present in the United States. I suggest not . . . the term "illegal immigrant" is an oxymoron - one cannot be "illegal" and at the same time be an "immigrant". It's kind of like "jumbo shrimp" or "peace force", "plastic glass" or "pretty ugly" – phrases we all use on a daily basis and think nothing of.

I submit that the correct term for those unlawfully present in the United States is "illegal alien", because they are both aliens and they are illegally present in the country . . . and this equally applies to those who entered without inspection and those who overstayed their visa.

Section 101(a)((15) of the Immigration & Nationality Act of 1952, as amended (INA), defines the term "immigrant" to mean . . . ". . . every alien except an alien who is within one of the following classes of nonimmigrant aliens." And therein lies the rub.

I do not believe that in drafting this statute back in 1952 it was intended by the legislature to include persons unlawfully present within the borders of the United States as being immigrants.

To rectify this uncertainty, perhaps when fulfilling president Bush's promise of "comprehensive immigration reform", which must include a complete redrafting the INA, this is one of the many things that should be taken into consideration. But before that happens (I'm holding my breath waiting), how should the term "immigrant" legally defined?

I believe it should be defined logically, not necessarily literally, applying a sort of judicial, interpretation. Let's face it, back in 1952 the present massive illegal immigration as we know it today did not exist. In 1952, legislators could not have envisioned a time, just fifty years later, when there would be in excess of ten million illegals present in the United States, working and blending in with society, even demonstrating for their rights. Heck, demonstrating did not even become popular until someone woke up and decided Negro people were Americans too, and should be allowed to vote, eat in restaurants along with Whites, attend the state universities and sit in the front of the bus.

If I were a jurist, and the issue of interpreting the INA definition of "immigrant" came before me, I would interpret the definition to mean "every alien lawfully present" or "those lawfully present but not in nonimmigrant status", as it appears to me that this is what the legislature had in mind. I know, the black letter of the law does not say that . . . I can read . . . but common sense and legislative intent must be called upon from time to time. Common sense does not tell me that the legislature intended that people who were present in the United States without lawful authorization were in fact to be considered "immigrants". And I do not believe it was the legislative intent to create a sub-class of immigrants, i.e., as has been suggested by some, labeling them "illegal immigrants", because as I mentioned before, this is oxymoronic and not defined that way anywhere

Immigration Monthly is a FREE monthly periodical on immigration law and policy, mailed out to over 11,500 immigration professionals. To receive a free subscription please write to webmaster@ilw.com (specify "Immigration Monthly" in subject line) or send a mailed-in request for subscription to ILW.COM, PO Box 1830, New York, NY 10156. Interested in submitting an article for consideration in Immigration Monthly? Write to: editor@ilw.com. Interested in advertising in Immigration Monthly? Write to editor@ilw.com. Publisher: Sam Udani; Legal Editor: Michele Kim. Copyright 2006 ILW.COM, American Immigration LLC

The PERM Workshop

**New York City: December 1st,
2006 8:30am-5pm**

Speakers: Joel Stewart & others

**Early Bird Special Deadline
Nov. 1 Register Now!**

Registration & Breakfast 8:30am-9:00am

Session 1: 9:00am-10:30am

Mechanics of PERM, Preparation of PERM, Prevailing wage

Session 2: 10:45pm-12:15pm

The Recruitment Process & Strategy, Regular Recruitment, Review of Resumes, Contacting and Interviewing US Workers, Recruitment Reports & Categorizing Reasons for Rejection, Preparing the Record File and Supporting Documents.

Lunch Program & Presentation 12:15pm-1:45pm

Session 3: 1:45pm-3:15pm

Restrictive Requirements, Defining Normal Requirements, Audit Proofing, Electronic Filing

Session 4: 3:30pm-5pm

Audits, Motions for Reconsideration, Appeals to BALCA, & Federal Court Litigation

Order online at www.ilw.com/workshops

Order by mail: ILW.COM, P.O. Box 1830, New York, NY 10156

Order by Fax: 212-545-0869

Order by Phone: 212-545-0818

Questions? write to webmaster@ilw.com

in the INA or the Regulations. And if it were, it would most likely be defined somewhere just under "governmental wisdom".

In reality, there are three basic classes into which non-US-citizens fall when they enter the United States - (1) Nonimmigrant; (2) Permanent Resident; and (3) Illegal. (I am not herein splitting hairs as to exactly what category a refugee, asylee, or other parolees or other special immigrants may fall, as it is not germane to this analysis - immigration is a complex and multi-layered subject.)

Nonimmigrants who legally enter the United States and who subsequently overstay their nonimmigrant visas, become "illegal aliens", right along with those who sneaked across the border in the dead of night, or ran through the traffic lanes at Tijuana. They are not immigrants, although perhaps we could technically call them "migrants", since they have migrated, like flock of birds flying north in the summer (I wonder, are birds "aliens"? - but since they do not have permanent residence, or any lawful status, they cannot be immigrants, because the legislature never intended there to be two classes of immigrants - one legal and one illegal - and nowhere in the INA is it suggested otherwise.

In a recent Immigration Daily featured article, [Paul Oreffice](#) attempted to define "immigrant" and this definition was quoted in a subsequent Immigration Daily featured article by [R. Blake Chisam](#) as, "An immigrant is a person who obtains an immigration visa from a U.S. Consulate, expresses a wish to become a U.S. citizen, and abides by the law." But is an incorrect definition, because there is no requirement under the law or regulations that an immigrant, i.e. a permanent resident, need not ever express "a wish to become a U.S. citizen.

Although a dictionary of the English language cannot be relied upon to define legal terms (that's why Mr. Black published his dictionary), many dictionaries define "immigrant" as something like, "people who leave a country to settle permanently in another". To an immigration lawyer, however, the words "settle permanently" are words of legal art. My Black's Law Dictionary, Revised Fourth Edition (yeah, an old one - I'm old), does not define "immigrant", but defines "immigration" as, "The coming into a country of foreigners for purposes of permanent residence".

Applying lawyer's logic to both these definitions, illegal aliens are not "coming" the US for purposes of permanent residence, or settling permanently, because they have no right or reasonable expectation to reside permanently. And they are not "leaving" their country for that purpose either. In actual fact, their purpose of coming is merely to find work, and often to send money home to their families in their native land - pure and simple economics. And they unlawfully work,

notwithstanding that they are breaking law, and notwithstanding that their breaking the law subjects them to the ten-year bar to admissibility set forth in INA Section 212(a)(9)(B), which will most likely prevent them from ever becoming a permanent resident, much less a citizen, of the United States.

I submit that a subjective, wishful intent to settle permanently - to possibly, maybe, someday become a permanent resident, if the law changes - does not rise to the level of a present objective intent to "settle permanently", any more than my entry into a bank evidences my intention of becoming a millionaire by somehow getting into the bank vault and carrying out sacks of money.

The bottom line is, an uninspected alien, or an overstay, simply cannot, as a matter of law, be "coming" to the United States "for purposes of settling permanently" and therefore they are not immigrants. Applying real world logic, and a realistic construction of the present US immigration law, along with a realistic construction of the dictionary definitions, we can only conclude that illegal aliens are not immigrants, and thus should not be referred to as such.

I believe it is time we all got the semantics straight. It is time we called an illegal alien an illegal alien, and forget the dictionary definitions, which are slow to change, and not interpret the INA so literally as to believe that it confers such status on a person who is unlawfully present. As a practical matter, to ignore the distinction and to call persons illegally present in the United States "immigrants" is not only contrary to common sense, law and regulations, but demeans those who actually are immigrants by virtue of their lawful permanent residence status.

Likewise, we must not confuse the term "citizenship" with "permanent residence" . . . it is not citizenship that any form of amnesty would award, but permanent residence - and there can be no such thing, as president Bush suggests, as "earned citizenship" under the terms proposed. The president and his advisors should get their terminology straight, because this abuse of language only shows their lack of understanding of the subject, since even a person who earns their right to stay in the United States permanently may never qualify for citizenship, because of other intervening prohibitive events.

If the immigration lawyers, the president, the press - especially the president and the press - and the general public would all homogenize their terminology, casting political correctness to the wind (the term "illegal alien" is not a four-letter word), it would go a long way toward achieving understanding and harmony in the immigration debate. But so long as the term "immigrant" is applied to both legal and illegal aliens alike, and so long as the word "citizenship" is confused with "permanent residence", we will never all be on the

Family- based Immigration

Nuts & Bolts

**Editor: Charles Wheeler,
of the Catholic Legal
Immigration Network,
Inc. (CLINIC)**

Child Status Protection Act

**A Practitioner's Guide
by Charles Wheeler, of
the Catholic Legal
Immigration Network,
Inc. (CLINIC)**

Order online at www.ilw.com/books

Order by mail: send the order form with payment to
ILW.COM P.O. Box 1830, New York, NY 10156

Order by Fax: 212-545-0869

Order by Phone: 212-545-0818

Questions? write to webmaster@ilw.com.

**Patel's Library
by P J. Patel
&
Immigration Practice by
Robert C. Divine and R.
Blake Chisam**

2005-06 Editions

The Whole ACT-INA

The Ninth circuit has purchased copies of The Whole ACT for every one of its courts. This unique and useful research tool contains hundreds of annotations providing a brief synopsis of the provisions referenced in any particular INA section and digests of Supreme Court decisions.

20/22/28 CFR Plus & 8 CFR Plus

These publication contains immigration related regulations of the Department of Labor (20 CFR), Department of State (22 CFR), Department of Justice (28 CFR), and the complete set of INS regulations (8 CFR) with an exhaustive topical.index.

Patel's Citations

Citations of Administrative Decisions under Immigration and Nationality Laws: This unique and incomparable research tool provides instant access to the history and current status of all I&N administrative precedents.

Immigration Practice by Robert C. Divine and R. Blake Chisam

Immigration Practice covers all aspects of immigration law in one volume, complete with over 3,000 footnote citations to the wide range of statutes, regulations, court and administrative cases, policy memos, operations instructions, agency interpretive letters, and internet sites that a lawyer needs for complete understanding of a particular problem. No other source merges the practical with commentary and analysis so helpfully.

Order online at www.ilw.com/books

Order by mail: send the order form with payment to
ILW.COM P.O. Box 1830, New York, NY 10156

Order by Fax: 212-545-0869

Order by Phone: 212-545-0818

Questions? write to webmaster@ilw.com.

same page. I hope someone out there is listening.

So, semantics resolved, what to do with the illegal aliens?

I am a great fan of Emma Lazarus' poem, "The Golden Door". But poets are often idealists, and that poem was written in a different time, a different age. And what Emma was talking about, of course, was legal immigration from around the world, coming on boats, not by airplane, automobile or foot -people coming to a land that needed immigrants to spark to the economy of a new and developing nation. Let us not confuse Emma's well-meaning observations of her day with the dilemma that today faces the United States of America. It is truly a different age, especially along our southern border, where over the past two centuries leaders of many of the countries south of that border have, through greed, power mongering and corrupt politics, created an environment of poverty and economic stagnation, while at the same time the Catholic Church was putting the kybosh on birth control and planned parenthood, resulting in overpopulation, resulting in a natural migration northward, where there was prosperity and jobs. The old "carrot-and-stick" syndrome.

We must remember that while touching, Emma's epic poem is not a government regulation, notwithstanding that it appears on a government-owned monument at the entrance to New York Harbor. The last time I looked at the US Constitution, the INA and 8 CFR, I found no mention of any right, law or regulation granting immigration benefits on the basis a qualifying as ". . . tired, poor, huddled masses yearning to breathe free . . .," much less allowing any benefits to ". . . the wretched refuse of your teaming shore . . ." In fact, quite to the contrary, since the US government attempts to disallow the wretched refuse of the world through tight security checks, affidavits of support and educational and experiential requirements for some visas.

The bottom line is, no matter what we call them, "illegal immigrants" or "illegal aliens", we all know about whom we are talking . . . it's people who chose to break the law, and who seek to benefit from it by demanding that the nation whose laws they have broken accept them and forgive them.

Well, maybe they are right. Yes, these illegal aliens broke the law, but they were encouraged by laws that were not enforced for the past twenty years, and a nation of laws that does not enforce its laws is not a nation of laws at all. Today's illegal aliens were, over the past twenty years, more than ever encouraged by a laxsidasical system of laws that encouraged hard working people to break those laws, enabling them to obtain jobs with US employers, who broke the law and benefited from the cheap, reliable labor. Does not this nation of laws now owe something to these hard working law breakers? Perhaps so, or perhaps we should just round them up like criminals, deport them,

and then let them come back in as “guestworkers”, all nice and legal.

If America is ever going to resolve the failure to enforce its immigration laws over the past two decades, it will not be before the mid-term elections in November, and I predict it will not be within the Bush administration, because after the mid-terms, win or lose, there will be no incentive to pass this contentious legislation in light of the soon impending presidential election - when immigration will again be a hot potato, and when immigration will again be put on the back burner, for fear of offending certain segments of voters. It will be relegated to the dusty basement of the House and Senate office buildings, right along with Tax Reform, Social Security Reform and the establishment of a National Health Care System, with politicians making speeches, taking stands and doing nothing.

While engaging in the current immigration debate, now that we have the semantics correct, we must remember that when the tired, poor, huddled masses arrived at Ellis Island, they legally immigrated and were admitted as immigrants. They learned English and they assimilated into the American culture, while at the same time adding their own cultures into the melting pot. And that's the way it should be, because America was, is and hopefully always will be a nation of immigrants. But we are also a nation of laws, and it is respect for those laws that is the tie that binds the fabric of our society.

About The Author

[David D. Murray](#) is an attorney with offices located in Newport Beach, California. A graduate of Ball State University and Western State University College of Law, Mr. Murray has been a successful practitioner and consultant in connection with business law and immigration matters since 1978. His practice concentrates in the areas of Civil Litigation, Copyright, Trademark, and Trade Secrets Litigation, Employment Law, Contracts, International Transactions, and U.S. Business and Family Immigration matters. Mr. Murray served in the U.S. Army from 1967 to 1969, including deployment to the Republic of South Vietnam, where in addition to regular military duties, he served as a professor of English at the University of Hue. Holding a Merchant Marine Captain's license for both sail and power vessels up to 100 net registered tons, Mr. Murray has sailed in excess of 100,000 miles in sailing boats between 22 and 197 feet in length. When not practicing law, or otherwise engaged in other various business endeavors, Mr. Murray is an avid Harley-Davidson motorcycle enthusiast, an amateur guitarist (electric and acoustical), five-string banjo picker, writer, poet, philosopher, backpacker, hiker, sailor, skier, and lover of the great outdoors.

THE PERM BOOK, Editor: Joel Stewart

Contains Over **Nine Hundred Pages** Of Information:

- A section-by-section interpretation of the PERM rule by Joel Stewart and his commentary on the rule
- A box-by-box discussion of Form 9089 by Joel Stewart, including a handy checklist for filing a PERM case
- Articles by many noted practitioners on specific topics arising from the PERM rule
- Essential reference materials: 14 documents
- Additional CD-ROM reference materials: Over 100 megabytes, over 1,400 files

Includes one free issue of PQ: The PERM Quarterly.

PQ: The PERM Quarterly is a quarterly periodical designed to help practitioners stay on the top of the latest in PERM. Each printed issue will feature the latest developments in PERM with analysis from leading practitioners. To stay on the top of the latest in PERM throughout the year, subscribe to PQ: The PERM Quarterly.

Relief From Removal: A Practitioner's Guide,

Editor: Jill Sheldon, Catholic Legal Immigration Network (CLINIC), is a practical guide to all aspects of relief from removal cases. This manual provides a detailed description of the law, as well as strategies for defending clients in removal proceedings. Chapters cover an overview of removal proceedings, asylum, cancellation of removal, adjustment of status, NACARA, withholding of removal, and relief under the Convention Against Torture. More information about this book will be provided on this page in due course.

Immigration Consequences Of Criminal

Convictions, Editor: Jill Sheldon, Catholic Legal Immigration Network (CLINIC) is a practical guide to the immigration consequences of criminal convictions. It provides detailed information to assist legal advocates in analyzing the potential immigration consequences of criminal conduct. The manual covers the basic framework for evaluating the impact of crimes, and discusses in detail crime-based inadmissibility and deportability grounds, establishing good moral character, detention and removal issues, post conviction relief, and judicial review. More information about this book will be provided on this page in due course.

The Nurse Immigration Book, Editor: William

A. Stock Details to be announced.

Order online at www.ilw.com/books

Order by mail: send the order form with payment to
ILW.COM P.O. Box 1830, New York, NY 10156

Order by Fax: 212-545-0869

Order by Phone: 212-545-0818

Questions? write to webmaster@ilw.com.

Classifieds

Credential Evaluation Service

3-Year Degree from India (Pakistan, etc.) evaluated for I-140 Visas as “single source” educational evaluation.

International (CCI) www.TheDegreePeople.com evaluates the 3-Year degree as equivalent to the US Bachelor's degree, using a course by course, expanded report converting contact hours as well as an expert opinion letter, and extensive documentation. **While there are no guarantees when dealing with the USCIS (INS) we have had success as can be seen at: <http://www.thedegreepeople.com/testimonials.html>.** The Indian 3-Year Bachelor's Degree is materially identical to the UK 3-Year Bachelor's Degree because the English set up the Indian higher education system when they occupied India. The UK, Israeli, and many European 3-Year Bachelor's degrees are routinely accepted by USCIS (INS) as equivalent to the US Bachelor's degree. The Indian/PK/Bangladesh 3 year degree has not been accepted. Until now. By properly and thoroughly evaluating the degree, Career Consulting International has had good success having the Indian degree accepted. This is crucial when applying for the I-140 which does not allow for the combination of degrees or combining a degree with work experience. It must be a SINGLE SOURCE degree equivalency for the I-140. The 3-Year Degree must be equivalent to a US bachelor's degree. Combinations will not be accepted. For sample evaluation and expert letters, see www.3YearDegree.com. Mention Immigration Monthly to receive a free initial consultation – Call our office at 1-800-771-4723 or info@cci123.com

Back Office Services

We offer a wide range of back-office & clerical support services to immigration attorneys in NIV and IVs, including managing checklists, form completion, drafting cover/employer letters, consular processing assistance, follow-up/correspondence with clients and other related services. Our services cover document generation, data entry, accounts, scheduling/calendaring, clerical & archival. Adnet Services, Inc. <http://www.adnetservices-nyc.com>. Headquartered in New York City, Adnet Services provides the highest quality services to law firms enabling them to cost effectively and securely outsource law firm back office processes, and focus on increasing earning, growth and servicing their clients. We work as your partner offering tailored services that accelerate product delivery. With state-of-the-art communication facilities and infrastructure, our offsite center functions as a virtual extension of your office providing 24 x 7 support and significant cost savings. Convenient billing options are available. For more info. Contact Johaina Mumtaz at johaina.mumtaz@adnetservices-nyc.com or call 212 406-3503 ext 224.

PERM Services

Adnet Advertising Agency Inc. has provided labor certification advertising services to immigration attorneys since 1992. Adnet helps attorneys find appropriate places to run labor cert ads, places the ads, obtains the tearsheets, and offers a variety of billing options. Attorneys can manage the entire ad process through Adnet's secure web-based Ad-management system. Most of Adnet's services are free since we receive a commission from the newspapers and journals where the ad is placed. Adnet services large international law firms as well as solo practice attorneys. Call us at 212-587-3164, visit www.adnet-nyc.com, or email us at information@adnet-nyc.com. Contact us today to find out why we are the ad agency of choice for immigration attorneys since 1992.

To place an ad here, email: editor@ilw.com.

Order Form

Item (please circle items)	Price
PERM Workshop, Early Bird Special, New York City, Dec 1 st , 2006 (if purchased by November 1 st)	\$799
THE PERM BOOK - Editor: Joel Stewart	\$499
PQ: The PERM Quarterly: one year subscription (4 issues)	\$199
Child Status Protection Act by Charles Wheeler	\$199
Family-based Immigration: A Practitioner's Guide - Editor: Charles Wheeler	\$199
Relief From Removal: A Practitioner's Guide – Editor: Jill Sheldon	\$199
Immigration Consequences Of Criminal Convictions – Editor: Jill Sheldon	\$199
The Nurse Immigration Book - Editors: Dan Berger, Joseph Curran & William A. Stock	\$499
Immigration Practice 2006-2007 Edition by Robert C. Divine and R. Blake Chisam	\$225
The Whole Act 2005-2006 Edition by P.J. Patel	\$199
20/22/28 CFR Plus 2005-2006 Edition by P.J. Patel	\$99
8CFR Plus 2005-2006 Edition by P.J. Patel	\$99
Patel's Citations 2005-2006 Edition by P.J. Patel	\$199
Patel's Immigration Law Library 2005-2006 Edition by P.J. Patel (Includes 20/22/28 CFR Plus, 8 CFR Plus, The Whole Act & Patel's Citations)	\$499
Order Total	_____

Please check one:

Check enclosed (Payable to ILW.COM)

Credit Card (American Express/Visa/Master Card/Discover)

Name on the card: _____

Card No. _____

Exp. Date _____ (MM/YY)

Billing Address _____

Card Holder's Signature _____

Phone _____

E-mail address _____

Provide shipping address if different than above _____

Order online at www.ilw.com/books and www.ilw.com/workshops

Order by Phone: 212-545-0818 Order by Fax: 212-545-0869

To order by mail, send this order form with payment to ILW.COM, P.O. Box 1830, New York, NY 10156

For orders outside the continental US, to order by Email or if you have any questions please write to webmaster@ilw.com.



Immigration Monthly

October 2006

- *The Semantics Game: Illegal Immigrant vs. Illegal Alien – Defined And Conquered by David D. Murray*
- **PERM Workshop, Early Bird Special, New York City, Dec 1st, 2006**



**Immigration
Monthly**

ISSN 1557-1394

**ILW.COM
P. O. Box 1830
New York, NY 10156**