



Immigration Practice 2009-2010 Edition

by Robert C. Divine and Blake Chisam

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We are the leading immigration law publisher. Our free *Immigration Daily* reaches an audience of over 36,000 subscribers. Our immigration portal web site is the largest on the Internet with over 50,000 pages of information. We assist your practice via our periodicals, seminars, and Yellow Pages.

Book Outline

Immigration Practice guides readers through 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.

The book explains in understandable language and meaningful and dependable detail the substantive issues and the practical procedures a lawyer needs to handle a specific immigration matter, complete with checklists of forms, supporting evidence, and other strategies needed for application/petition packages. The book has unparalleled coherence, integration and consistency.

- Liberally cross references to other sections in the book where related topics are discussed (because so many topics are interrelated).
- Line-by-line instructions on how to complete the most commonly used forms to avoid embarrassing mistakes.
- Lists the contents of packages to file with government agencies: forms and fees, detailed support letters, and other supporting evidence.
- Explanations of potentially applicable visa options organized according to the attributes of the foreign national (and the employer), rather than classifications in alphabetical order, so that practitioners can make sense of options in light of the client in the office.
- Comparisons and charts of attributes and procedures of such topics as nonimmigrant visa classifications, procedures to permanent residence, and standards of "extreme" hardship.
- Citations throughout the book, and collection in the extensive CD-ROM Appendix, to primary source materials and the most useful Internet site URLs with explanation of the increasingly helpful free databases and tools available through each one.
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What's New in Immigration Practice 2009-2010 Edition

- Constantly increased and updated links to government web sites containing current contact information, forms, primary law sources of all types, case status information, and processing and substantive guides—all referenced by pinpoint citations in the text. See Chapter 5 explaining sources of law, Appendix C and D-1 showing web links, and the CD-ROM in the back cover providing one-click access! Readers are strongly encouraged to review and use the CD-ROM and to consider drawing Appendix C, D-1, and E-1 into internet browser "favorites" or "bookmarks" for ready reference all the time.
- Use by USCIS of the "EDGE" database of the American Association of Collegiate Registrars and Admissions Officers. § 1-8.
- The Attorney General's overturning of *Matter of Lozada*, finding no constitutional right to effective assistance of counsel in immigration proceedings but allowing discretionary motions for "deficient performance of counsel." §§ 11-3(e), 11-7.
- CBP's "ESTA" electronic pre-clearance system for Visa Waiver Program visitors. § 18-3(b)(2)(iii).



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- Revised and expanded discussion of biometrics procedures and background checks across all relevant agencies, § 1-6(c).
- New section on Special Rules for Military Members and Family, with cross references to specific procedures throughout the book, § 1-7(a).
- References to New DOS Forms DS-160 and DS-230 electronic visa applications. §§ 7-3(d) and 8-8(d)(1).
- When original vs. stamped attorney signatures may be required. § 1-6(a)(3).
- Burden and standard of proof and RFE practices in light of benefit fraud assessments, increasing anti-fraud efforts, and other restrictive developments. § 1-7.
- Expanded discussion of EAJA fee availability and procedures. § 2-2(a)(1)(I).
- Considerations in whether to seek to limit the scope of representation in G-28. §§ 3-5 and 11-3(b).
- New rules for discipline of attorneys, and implications of duty of candor. § 3-6 and chapters 11 and 16.
- Expanded FOIA opportunities under Obama directives and agency implementation. Chapter 4.
- Further implications of DOS' PIMS electronic system for petition packages, visa appointments, etc. § 7-2(c).
- Update of the nonimmigrant classifications chart to include typical limitations on visa validity, labor attestations. § 7-3(c)(1).
- US-VISIT taking of biometrics of returning permanent residents. § 9-2(c)(1).
- Overhaul of the discussion of "Nonimmigrant Intent," using new FAM discussion about students, new R regulations, and new discussion about TN workers. § 7-3(c)(4).
- Analysis of how visa number management works and implications for practice. § 8-3(e).
- Developments concerning following-to-join and I-824. § 8-4(a)(2).
- Improved analysis of Child Status Protection Act, petition conversion, and related provisions. §§ 8-4(d), 14-7(d)
- USCIS' 245(k) memo concerning adjustment of status for employment beneficiaries. § 8-7(b)(5).
- Clarification of when and how to accomplish transfer of petition underneath a pending adjustment application. § 8-7(d)(1)(iii).
- Attorney General's new method of analyzing crimes for moral turpitude. § 10-6(b)(1)(i).
- Revised medical examination requirements for civil surgeons in the U.S. and for panel physicians overseas. §§ 8-7(c), 8-8(d)(2)(i), 10-6(a).
- Updated discussion of the "categorical approach" to determining criminal removal grounds and when and how it applies, and other developments arising from BIA precedent decisions. § 10 6(b).
- Developments in definitions of terrorist and material support for inadmissibility and asylum bars, and new inadmissibility concerning Child Soldiers Act. §§ 10-6(c), 16-4(d).
- Developments in family financial sponsor I-864 liability. § 10-6(d)(2).
- Improvement of discussion of immigration violator (unlawful presence, etc.) bars, including references to USCIS Adjudicators Field Manual. § 10-6(f).
- More references to the Immigration Court Practice Manual



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- Cases and regulations discussing appeals and motions even after physical removal. §§ 11-6(a) to 11-7.
- New cases and improved discussion concerning scheduling of hearings and in absentia orders and motions to rescind or reopen. § 11-3.
- Orantes litigation. § 11-3(e).
- Entire history of prosecutorial discretion memos of various agencies. § 11-3(h)(1).
- William Wilberforce Trafficking Victims Protection Reauthorization Act, affecting procedures for children in proceedings, improving victims' relief, and overhauling special immigrant juvenile benefits. §§ 11-4(g), 14-13, 17-5(h)(1)(iii), and 17-6.
- Rewriting of sections on departure before or after removal hearing, §§ 11-5(b), continuance, administrative closure, or termination, § 11-5(c), and voluntary departure (based on S.Ct. decision and new regulations), § 11-5(i).
- Various BIA cases affecting which criminal convictions disqualify aliens from cancellation of removal, and discussion of possible waiver. § 11-5(f).
- The importance of amending one's social security record after obtaining permanent residence and citizenship. §§ 8-7(e) and 12-3.
- Clarification of identity, procedures, and work authorization for non-citizen nationals. §§ 12-3(a)(1), 19-
- Clarification of procedures to challenge a Certificate of Loss of Nationality (regulations eliminating the Board of Administrative Review in Dept. of State). § 12-5(c)(3)(i).
- Clarification of the import of the International Marriage Broker Regulation Act. § 14-6.
- Substantial re-write of all aspects of removing conditions from permanent residence in family cases. § 14-7(a)(5)(i).
- Improved discussion of "ability to pay" issue. §§ 15-1(l), 15-3(c)(4).
- Degree equivalency cases. § 15-2(b)(2).
- EB-5 investor issues concerning USCIS' rejection of promises to refund in the event of I-829 denial and USCIS' requirement that even regional center jobs be planned to be created within 2 years. §§ 15-2(f)(3).
- DOL centralization of PERM and H-2 processes in two National Processing Centers and its implementation of the "iCert" electronic system for LCA and PERM filings.
- BALCA cases about correctable insignificant errors, Kellogg language, requirements allegedly implicit in the duties, language requirements, corporate maintenance failures, SWA job order errors, newspaper advertisement requirements, seasonal employment, journal web postings, postings lacking employer's name or CO address or wage, "chilling effect" of requiring proof of resume items, "overqualification" rejection, remands from BALCA. § 15-3, et seq.
- Increase in "supervised recruitment" and audit of cases filed by law firms targeted by DOL out of concern for excessive involvement in recruitment. §§ 15-3(d)(5) and (d)(6), 15-3(e).
- USCIS' acceptance of labor certifications filed more than 180 days after approval when they have been previously used with any I-140 before 180 days. § 15-3(i)(1).
- Clarification of procedures for family of refugees and asylees, both during and after principal's process, including DOS and USCIS scrutiny of I-730 family relationships for refugees and asylees. §§ 16-2(d), 16-3(f).
- BIA decisions concerning gang members as a social group. § 16-4(a)(3).
- DHS General Counsel's revision of approach to aliens released on parole (no longer considered parole under 212(d)(5)) and impact on released Cubans now needing separate humanitarian parole for adjustment eligibility. §§ 8-7(b)(1), 16-7(e).



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- USCIS new harsh approach to technology and other staffing companies. § 17-4(b)(4)(i).
- USCIS' requirement of masters degrees for occupational and physical therapy positions. § 17-4(b)(4)(ii).
- New cap counting procedures, clarification of the "ceased to be employed" with an H-1B cap-exempt employer, the "cap gap" solution for students, further clarifications of AC21 extensions of H-1B beyond the 6-year maximum, and premium processing of immigrant petitions to enable AC21 benefits. § 17-4(b)(4)(iii).
- Major new regulations for H-2A and H-2B temporary workers and for nonimmigrant and immigrant religious workers. §§ 17-4(d), 17-5(b), 17-5(e)(1).
- Updated discussion of nurse credentialing, licensing and immigration. § 17-5(c)(2).
- CGFNS' clarification of professions not included in requirement for health care worker certification. § 17-5(c)(4).
- ESTA procedures for Visa Waiver Program entrants. § 18-3(b)(2)(iii).
- New Guam-CNMI visa waiver program. § 18 3(b)(3).
- New rules and details for Optional Practical Training, including increased accountability for nature of work and breaks in employment, "cap gap," and "STEM OPT." § 18-4(d)(9)(iii).
- New Form I-9 and Handbook for Employers and specific guidance about I-9 completion for unique circumstances such as refugees and asylees, H-1B portability, 240-day rule extensions, TPS auto-renewals, §§ 7-5(b)(1), 16-2(e), 16-3(d), 16-7(a)(5), 17-4(b)(4)(iii), 19-4(b).
- Additional discussion about social security numbers and individual tax identification numbers and the practical mechanics for employers in relation to I-9 issues. § 19-4(b).
- Analysis of current issues with no-match letters and other possible sources of "constructive knowledge, including changed identities of workers. § 19-4(e).
- Greatly expanded discussion of E-Verify's mechanics, federal government contractor requirements, and state law requirements for verification. § 19-4(l).
- General updating and improvement of discussion of employment authorization in general. § 19-5 et seq.

For Detailed Table of Contents, see [here](#).

TESTIMONIALS

Some of the most experienced and acclaimed immigration lawyers in the nation have said:

"Immigration Practice is a handy reference work for both the novice and the experienced practitioner with a novel organizational approach that focuses on real life situations rather than the statutory category."

Daryl Buffenstein is Chair of the national immigration practice group of Paul, Hastings, Janofsky & Walker LLP. He is Former President of the American Immigration Lawyers Association (AILA) and recently ended a four-year term as AILA's General Counsel. He was the 1997 recipient of AILA's Founders Award.

"Immigration Practice is filled with practical, down to earth information in a format that is easy to use. I bought one for each member of my staff."

Peter Williamson, Houston, TX. Mr. Williamson is Former President of AILA (1994-1995) and served as Chair of the Texas Chapter, on the National Board of Governors (1982-present), and on the National Executive Committee.

"Immigration Practice fills a niche that needed filling: A single volume with all the basics explained in plain English for newcomers, and plenty of sophisticated discussion with lots of footnotes for old hands. The appendix alone is worth the price of the book! It has all the addresses, phone numbers, and lists that are needed constantly in immigration practice, plus tips on how to fill out the most common forms. I keep this volume on my desk as a convenient and thorough reference. You can tell that it was prepared an experienced practitioner who understands the practical side of an immigration practice and who is result oriented."



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Dale M. Schwartz, Schwartz & Kuck, Atlanta, GA is Former President of AILA (1986-87), and has testified as an expert witness before committees of the U.S. House of Representatives and the United States Senate on immigration legislation. Mr. Schwartz was Co-Chairman of the Immigration Law Committee of the Section of Litigation of the American Bar Association.

"Immigration Practice is an absolutely fabulous resource, unlike anything else on the market, oriented toward the attorney rather than the paralegal."

David Ware, Metairie, LA is very active in AILA including: Vice-Chair, Committee on International Students (1995 to Present); Treasurer, Louisiana Chapter, 1984 to 1988; INS Liaison Chair, 1988 to 1989; NAFSA Region III Liaison, 1992 to 1995.

"I ordered a copy of Immigration Practice. We love it, and are using it frequently."

Elizabeth Stern, Shaw Pittman, Washington, DC heads the firm's Business Immigration practice group.

"I have just received your excellent treatise Immigration Practice. I would recommend it highly as a valuable guide not only for a beginning immigration lawyer, but for the seasoned practitioner as well."

Ben Gim, Gim & Wong, New York, NY

In-house counsel have said:

"I am really impressed by Immigration Practice. I picked a few arcane questions to look up and found the subjects right away in the index. The text was clear and practical. We find it very useful."

Joseph K. Venishnick, Labor and Employment Counsel, ASEA Brown Boveri, Inc. Windsor, CT

Newer and regular practitioners have said:

"Immigration Practice is a tremendous guide through every possible contingency that a lawyer may encounter in processing any sort of immigration petition. I would recommend this book for anyone who qualifies for membership in the AILA/YLD."

Ira L. Mazer, Philadelphia, PA

"Immigration Practice is the best reference tool I have looked at on the subject, and actually a good read. For instance, as a new practitioner I avoided filing needless relative petitions by reading the clear discussion about the derivative beneficiaries and "following to join" eligibility and procedures."

Jeffrey Kantor, Arlington, VA

"I truly use Immigration Practice as a bible for immigration practice. I generally read the appropriate area of interest to which I need an answer, then refer to the statute and the regs. It works quite well for me."

Petro Morgos, Cherry Hill, NJ

"I use Immigration Practice in preference to the other immigration law treatises I have tried. It really is the best of its kind - the easiest to use and the most complete."

Jonathan David Guze, Durham, NC

"Immigration Practice has quickly become my immigration "bible" as a first look source, despite having a number of other fine works in my collection."

Byron Toben, Montreal, Quebec (Ill. & NY bar)

"I'm a new disciple of your Immigration Practice book."

Andre Michael Wang, Portland, OR

"I have enjoyed and profited a great deal from Immigration Practice."

Philip Berns, Stamford, CT

"Immigration Practice is one of the most invaluable tools in my library. Although I did not anticipate a career in immigration law, most of my clients are Korean and many are in need of immigration assistance. Needless to say, your book is the next best thing to the Bible. For someone who is just hanging out their shingle and is interested in establishing an immigration practice your book is invaluable."

Seung-Ho Choe, Rockville, MD



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AUTHOR

[Robert C. Divine](#) is the Chairman of the Immigration Group of Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C., a law firm of 560 lawyers and public policy advisors with offices in 14 cities from Washington, D.C. to New Orleans. Mr. Divine served from July 2004 until November 2006 as Chief Counsel and for a time Acting Director of U.S. Citizenship & Immigration Services (USCIS). He is the author of *Immigration Practice*, a 1,600 page practical treatise on all aspects of U.S. immigration law that is revised and reprinted annually to reflect the law's constant changes. He has practiced immigration law since 1986 and is the current Chair of the American Immigration Lawyers Association's Interagency Committee. His practice includes all aspects of U.S. immigration law, representing large and small international and domestic employers, family sponsors, investment regional centers, and individual foreign nationals. He has also litigated significant business matters, including class action employment discrimination, contract, commercial, product liability, antitrust, ERISA benefits, business torts (including RICO, misrepresentation, Consumer Protection Act), and immigration-related criminal matters.

CONTRIBUTING AUTHOR

R. Blake Chisam is currently Legal Counsel to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the United States House of Representatives. Prior to his appointment he practiced exclusively in the area of Immigration and Nationality Law as a partner in the firm of Chisam & Majid. He advised organizations with respect to immigration-related policy, employment, civil rights, and health care law matters, including related white-collar criminal and regulatory compliance issues. Mr. Chisam is an active member of the American Immigration Lawyers Association ("AILA"), for which he currently serves on its Business Litigation committee, and the American Bar Association ("ABA"). In October 2000, Mr. Chisam and his partner Jasmine A. Majid were awarded the prestigious Meritorious Public Service Award from the Director of the U.S. Department of Justice's Executive Office for Immigration Review, which was presented by then Attorney General Janet Reno, in recognition of their "tireless and distinguished pro bono efforts on behalf of unrepresented aliens detained by the ? Immigration and Naturalization Service." Mr. Chisam has lectured on immigration law to law students at universities across the U.S., and he is a frequent author and lecturer to professional associations, academic symposia and community groups. He is admitted to practice in New York, Maryland, Pennsylvania and a host of federal courts.

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